

NEW JERSEY SUPREME COURT.

The Columbia Delaware Bridge Co.,

Plaintiffs in Error,

vs.

Christianna Geisse and, others, De-

fendants in Error.

Writ of Error to Supreme Court.

Returnable November Term, 1870. J. G. SHIPMAN, *Att'y.*

[Filed November 1st, 1870.]

New Jersey, *ss.*—The state of New Jersey to our
[L. s.] Justices of our Supreme Court of Judicature—GREET-
ING :

Because in the record and proceedings, and also in the giving of judgment in a certain matter of the appointment of freeholders, made by Josiah Dewitt, one of the justices of the peace of the county of Warren, to assess certain damages which Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, Herman Geisse represent they have sustained, against "The Columbia Delaware Bridge Company," by reason of the destruction of a certain ferry over the river Delaware, belonging to them, as they allege, at the village of Columbia, and which appointment was removed into our said Supreme Court, manifest error hath intervened, as is said, to the great damage of the said "The Columbia Delaware Bridge Company," as by their complaint we are informed.

We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the

parties aforesaid in this behalf, do command you that if judgment be given thereupon, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in all causes, to be held at the State House, in the city of Trenton, on the third Tuesday of November next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

10 Witness Abraham O. Zabriskie, Chancellor and President Judge of our said court, this twenty-third day of June, A. D. eighteen hundred and seventy.

H. N. CONGAR, *Clk.*

J. G. SHIPMAN, *Att'y.*

The answer of the Justices of the Supreme Court of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals, in a certain schedule to this writ annexed, as within commanded.

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M. BEASLEY, *Ch. Jus.*

NEW JERSEY SUPREME COURT.

Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christ- ian Henry Geisse, and Herman Geisse, <p style="text-align: center;"><i>ads.</i></p> The Columbia Delaware Bridge Com- pany.	}	On certiorari to Jo- siah Dewitt, Esq., Justice, &c. Judgment of Affirm- ance. J. M. Sherrerd, <i>Att'y.</i>
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As yet, of the Term of November, A. D. eighteen hundred and
 30 sixty-nine.

Witness,

MERCER BEASLEY, Esq.,
Chief Justice.

CHAS. P. SMITH, *Clerk.*

Warren county, ss.—Be it remembered, that heretofore, to wit, on the twenty-eighth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, before Josiah Dewitt, Esquire, one of the justices of the peace in and for the county of Warren, Christianna Geisse, widow, and Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, Herman Geisse, heirs-at-law of Henry Geisse, deceased, recovered a judgment in a certain matter of the appointment of freeholders to assess the damages which they, the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian 10 Henry Geisse, and Herman Geisse, widow and heirs as aforesaid, represented they had sustained against the Columbia Delaware Bridge Company, by reason of the destruction of a certain ferry over the river Delaware, belonging to them, as they allege, at the village of Columbia, in said county and state of New Jersey, and which appointment was removed into the Supreme Court at the term aforesaid, and such proceedings were thereupon had in our said Supreme Court, that afterwards, to wit, at the Term of June, A. D. eighteen hundred and seventy, it was ordered by our said Supreme Court, as follows, to wit: 20

Christianna Geisse and al.,
 ads.
 The Columbia Delaware Bridge Co. } On certiorari to Josiah
 Dewitt, Esq., Justice.

This cause having been argued at the last term of this court, and the court having considered thereof until this term, and the appointment of commissioners complained of appearing to have been, in all respects, according to law—It is ordered, that the said appointment be in all things affirmed, with costs, to be paid by the plaintiffs to the defendants, and that judgment be entered accordingly. On motion of 30

J. M. SHERRERD, *Att'y, &c.*

Therefore it is considered that the said The Columbia Delaware Bridge Company take nothing by their said writ of certiorari, and that the same be dismissed, and that the appointment so thereby removed be, in all things, affirmed as valid and lawful, and that the same do stand in full force and effect.

And it is further considered, that the said Christianna Geisse, widow, and Henrietta Geisse, Emily Geisse, Matilda Geisse,

Christian Henry Geisse, and Herman Geisse, heirs-at-law of Henry Geisse, deceased, as aforesaid, do recover against the said The Columbia Delaware Bridge Company the sum of twenty-seven dollars and sixty-four cents for their costs and charges by them about their defence in this behalf laid out and expended, by the court now here, adjudged to the said defendants, with their assent, and that they have execution thereof according, &c.

Judgment signed this ninth day of June, A. D. eighteen hundred and seventy.

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M. BEASLEY, *Ch Jus.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true transcript from the record of the judgment and proceedings in the above stated cause, as the same remains in my office.

In testimony whereof I have hereto set my hand and [L. S.] the seal of the said court, this first day of October, A. D. eighteen hundred and seventy.

CHAS. P. SMITH, *Clk.*

[Filed November 11, 1869.]

- 20 State of New Jersey, Warren county, *ss.*—Before me, Josiah Dewitt, a justice of the peace in and for said county, on the twenty-eighth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, personally appeared Christianiana Geisse, widow, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, and presented their petition, in writing, verified by their oaths attached to the same petition, setting out that they are the widow and only heirs-at-law of Henry Geisse, late of Columbia, in said county, deceased, in that said Henry Geisse, deceased, in his
- 30 lifetime became the owner and was seized and possessed of a certain ancient ferry across the river Delaware, at Columbia, in said county, from the New Jersey shore of said river to the Pennsylvania shore of the same, from the year of our Lord one thousand eight hundred and twenty-one until his death, which occurred in the year of our Lord one thousand eight hundred

and sixty; that since eighteen hundred and twenty-seven, the rates of tolls to be taken at said ferry were established and fixed by the board of freeholders of the said county of Warren; that upon the death of the said Henry Geisse, the said petitioners, as his heirs, widow, and only heirs-at-law became seized and possessed of the said ferry, with all its immunities, profits and privileges, and have continued in the undisturbed possession of the same, agreeably to the laws of the state of New Jersey in such case made and provided; that the Columbia Delaware Bridge Company, a corporation created by the act of the legislature of 10 the state of New Jersey, dated March 7th, 1839, have erected a bridge across said river at the said village of Columbia, and commenced on the 18th of January last, A. D. 1869, taking tolls and crossing passengers, carriages, wagons, horses, cattle, sheep, and everything else that were used and accustomed to cross said river in the boats and flats of said ferry, and thereby superseding and destroying said ferry, and depriving said petitioners of their ancient and established rights of ferry across said river at said place and receiving compensation therefor; that said petitioners, as owners of said ferry injured by the erection of said bridge, 20 by depriving them from receiving the tolls and other compensation they were accustomed to and had a right to receive from their said ferry as aforesaid, for crossing persons, their carriages, wagons and stock over said river, and that their boats, flats, iron rope and other appurtenances were rendered of very little value; that said petitioners applied to said corporation on the 10th of August, A. D. 1869, to compromise and settle for any and all damages that had or might arise to their interest, privileges and property aforesaid, from the erection of said bridge, but that the said company refused, by giving an evasive and unsatisfac- 30 tory answer, when they proposed to said company to leave all the matters in difference between them to men to settle, which offer was absolutely refused; that said petitioners at the same time gave said company due and legal notice to meet them at the house of Andrew R. Teel, innkeeper, at Columbia aforesaid, on the 17th of August, 1869, at 10 o'clock A. M., for the purpose of compromising said damages; and if they could not do so, then to choose three disinterested freeholders of the neighborhood to ascertain, upon oath or affirmation, said damages; and in case said company refused or neglected to join in said choice, 40

that they would apply to me, as a justice in and for said county, on this day, at 10 o'clock, A. M., to appoint said appraisers; that said petitioners attended at the time and place mentioned in said notice, and continued there two hours, but that no one appeared on the part of said corporation, they therefore on this day applied to me to make the appointment of appraisers as aforesaid, of which notice the attendance of petitioners at the time and place aforesaid, and not appearing of the said corporation, satisfactory evidence was this day produced to me, by the
 10 deposition of Herman Geisse, and now, on this 28th of August, 1869, the said petitioners, in person and by counsel, and the said corporation, by their president, and J. G. Shipman, their counsel, having appeared before me, at my office in said county, and that the counsel of the said corporation admitting the service of said notice and the truth of said deposition, but denying that I had any jurisdiction in the matter; that said petitioners have not sustained any damage nor proved any ownership of said ferry, and because the act of the legislature establishing said
 20 ferry in 1856, contained no provision authorizing the appointment of said appraisers—whereupon duly considering all the said matters presented to me by said parties, my judgment is that said petitioners have fully proved all the matters set forth in their petition, and that I am fully authorized by the said act of the legislature erecting said corporation, to appoint said appraisers, I therefore appoint John L. Smith, George Hiles and Alfred Kern, three disinterested freeholders of the neighborhood, to ascertain, upon oath or affirmation, what damage, if any, said petitioners have or may sustain by reason of the erection of said
 30 bridge, receiving of, said tolls and virtual destruction of their ferry as aforesaid; that said freeholders meet at the house of Levi H. Albertson, innkeeper in said county, on the 6th day of October, 1869, at 10 o'clock A. M., and afterwards, if necessary, on their own adjournment; and that petitioners give fifteen days' notice of said first meeting of said appraisers.

Given under my hand seal the date first above written.

JOSIAH DEWITT,

Justice of the Peace.

October 5th, 1869. Francis H. Hagerman, president of the Columbia Delaware Bridge Company, having presented me a cer-

tiorari, I do accept the same, and send up the proceedings before me to the Supreme Court.

I do hereby certify that the foregoing is a true copy from my docket.

Witness my hand seal, this 23d day of October, 1869.

JOSIAH DEWITT,

Justice of the Peace.

To Josiah Dewitt, Esquire, a justice of the peace of the county of Warren, in the state of New Jersey.

The petition of Christianna Geisse, widow, and of Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, heirs-at-law of Henry Geisse, late of Columbia, in said county, deceased, respectfully showeth, that the said Henry Geisse, deceased, in his lifetime, become the owner and was seized and possessed of a certain ancient ferry across the river Delaware, at Columbia, in said county, from the shore of said river on the New Jersey side of said river, to the shore of the same in the state of Pennsylvania, from the year of our Lord one thousand eight hundred and twenty-one until the time of his death, which occurred on the fifth day of May, in the year 20 of our Lord one thousand eight hundred and sixty; and since the year eighteen hundred and twenty-seven the board of chosen freeholders of the said county of Warren fixed the rates of the tolls to be taken at said ferry; that upon the death of the said Henry Geisse, your petitioners, as his widow and only heirs-at-law, became seized and possessed of said ferry, with all its immunities, profits and privileges, and have continued in the undisturbed possession and use of the same, agreeably to the laws of the state of New Jersey in such case made and provided; that the Columbia Delaware Bridge Company, a corporation created 30 by the act of the Legislature of the state of New Jersey, bearing date March 7th, 1839, have erected a bridge across said river at the said village of Columbia, and commenced on the eighteenth day of January, A. D. eighteen hundred and sixty-nine, taking tolls and crossing passengers, carriages, wagons, horses, cattle, sheep, and every thing else that were used and accustomed to cross said river in the boats and flats of said ferry, and thereby superseding and depriving your petitioners of their ancient and established right of ferry across said river

at said place, and receiving compensation therefor; that your petitioners, as owners of said ferry, are injured by the erection of said bridge, in this, to wit, that they are thereby deprived from receiving the tolls and other compensation that they were accustomed to, and had a right to receive from their ferry as aforesaid, for carrying persons, their carriages, wagons, etc., and stock over said river. Also, in this, to wit, that their boat, flat, wire rope and other appurtenances were rendered of very little value to them; that two of your petitioners (with the knowledge
 10 and consent of all the rest) applied to the said The Columbia Delaware Bridge Company, on the 10th day of August, A. D. 1869, to compromise and settle with them for any and all damages that had or might arise to their interests, privileges and property as aforesaid, from the erection of said bridge, but that said company, by their president, Francis H. Hagerman, gave an evasive and unsatisfactory answer, when one of your petitioners proposed to him to leave all the matters in difference to men to settle, whereupon said Hagerman said, "no, we won't leave it to men;" and having, at the same time, given said com-
 20 pany due and legal notice to meet them at the house of Andrew R. Teel, innkeeper, at Columbia aforesaid, on the 17th day of August, 1869, at 10 o'clock A. M., for the purpose of compromising said damages, and in the event of failing so to do, then to choose three disinterested freeholders of the neighborhood to ascertain, upon oath or affirmation, the said damages; and in case they neglected or refused to join in said choice, that we would apply to you, as a justice of the peace in and for said county, on the 28th day of August, 1869, at 10 o'clock, A. M., to appoint three disinterested freeholders of the neighborhood to
 30 ascertain and determine what damages we are entitled to, by reason of the erection of said bridge and the virtual destruction of our said ferry; that at the time and place specified in said notice, one of your petitioners attended at the house of Andrew R. Teel aforesaid, from 10 o'clock, A. M., till nearly 12 o'clock, M., for the purpose aforesaid, but that no one appeared at the time and place aforesaid on the part of the said The Columbia Delaware Bridge Company to compromise said damages or to select freeholders as appraisers. Therefore we respectfully apply to your honor, as one of the justices of the peace of said
 40 county, to appoint said three disinterested freeholders of said

county to view and appraise said damages, agreeably to the act of assembly of the state of New Jersey, incorporating said Columbia Delaware Bridge Company, passed March 7th, 1839.

And as in duty bound, &c.

CHRISTIANNA GEISSE,
HENRIETTA GEISSE,
EMILY GEISSE,
MATILDA GEISSE,
CHRISTIAN HENRY GEISSE,
HERMAN GEISSE.

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Columbia, Warren county, New Jersey, 28th August, 1869.

State of New Jersey, Warren county, *ss.*—Before me, a justice of the peace in and for said county, on the 28th day of August, A. D. 1869, personally appeared Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, the above petitioners, who, being duly sworn according to law, on their oaths say, that the matters and things therein set forth are true; that the above petitioners, on the 10th day of August, 1869, proposed to said corporation, through their president, Francis H. Hagerman, to compromise 20 and settle the damages sustained by them by the erection of said bridge, and virtual destruction of their said ferry, but that said company would not make or entertain any offer of compromise or settlement of the same, but absolutely denied that said petitioners had any claim whatever upon said company; that said petitioners immediately gave notice that they would meet said company on the 17th day of August, 1869, at the house of the innkeeper aforesaid, to compromise said damages; and in case of failing so to do, mutually to choose three disinterested freeholders of the neighborhood to ascertain said damages, under 30 oath; and that in case said company neglected or refused to join in said choice, that they would apply to Josiah Dewitt, Esquire, a justice of the peace in and for said county, for that purpose; that in pursuance of said notice, one of the above petitioners attended at the time and place aforesaid, for the purpose aforesaid, and continued there until nearly 12 o'clock, M., of said day, and no one appeared on the part of said The Columbia Delaware Bridge Company either to compromise or mutually to

choose, with the above petitioners, the said three disinterested freeholders to ascertain and appraise said damages.

CHRISTIANNA GEISSE,
HENRIETTA GEISSE,
EMILY GEISSE,
MATILDA GEISSE,
CHRISTIAN HENRY GEISSE,
HERMAN GEISSE.

Sworn and subscribed, before me, this 28th day of August,
10 1869.

JOSIAH DEWITT, *J. P.*

John L. Smith, George Hiles and Alfred Kern, Esquires—
Gentlemen: Take notice, you have been appointed by Josiah
Dewitt, Esquire, a justice of the peace in and for the county of
Warren, in the state of New Jersey, as three disinterested free-
holders of the neighborhood, to appraise the damages sustained
and to be sustained by Christianna Geisse, Henrietta Geisse,
Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Her-
man Geisse, by the erection of a bridge across the river Dela-
20 ware, at Columbia, in said county, and thereby virtually destroy-
ing their ancient ferry—and you are requested to meet at the
house of Levi H. Albertson, innkeeper, at Kiln Mills, in said
county, on the sixth day of October next, at 10 o'clock, A. M.,
to hear and examine the same.

Dated September 18th, 1869.

Respectfully, yours,

CHRISTIANNA GEISSE,
HENRIETTA GEISSE,
EMILY GEISSE,
MATILDA GEISSE,
CHRISTIAN HENRY GEISSE,
HERMAN GEISSE.

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Warren county, ss.—Herman Geisse, of full age, upon oath
saith—that on the 18th day of September, 1869, I served the
within notice on Alfred Kern, one of the within named apprais-
ers, by reading it to him and gave him a copy of the same.

HERMAN GEISSE.

Sworn and subscribed, before me, this 6th day of October, 1869.

JOSIAH DEWITT, *J. P.*

John L. Smith, George Hiles and Alfred Kern, Esquires—Gentlemen: Take notice, you have been appointed by Josiah Dewitt, Esquire, a justice of the peace in and for the county of Warren, in the state of New Jersey, as three disinterested freeholders of the neighborhood, to appraise the damages sustained and to be sustained by Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse 10 and Herman Geisse, by the erection of a bridge across the river Delaware at Columbia, in said county, and thereby virtually destroying their ancient ferry; and you are requested to meet at the house of Levi H. Albertson, innkeeper at Kiln Mills, in said county, on the sixth day of October next, at 10 o'clock, A. M., to hear and examine the same.

Dated September 18th, 1869.

Respectfully yours,

CHRISTIANNA GEISSE,

HENRIETTA GEISSE, 20

EMILY GEISSE,

MATILDA GEISSE,

CHRISTIAN HENRY GEISSE,

HERMANN GEISSE.

Warren county, *ss.*—Christian Henry Geisse, of full age, upon oath saith—that he served the within notice on George Hiles, one of the within named appraisers, on the 18th day of September, 1869, by reading it to him, and gave him a copy of the same.

CHRISTIAN HENRY GEISSE. 30

Sworn and subscribed before me, this 6th day of October, 1869.

JOSIAH DEWITT, *J. P.*

To the President and Directors of the Columbia Delaware Bridge Company.

Take notice, that as owners of the ferry across the river Delaware at Columbia, in the county of Warren and state of New

Jersey, we claim damages and compensation for the injury done and that may arise to our ferry property, interests and privileges by reason of the construction of your bridge across said river at Columbia aforesaid ; that we are willing to compromise and settle said damages, and that for that purpose we will meet you at the house of Andrew R. Teel, innkeeper, in said village of Columbia, on the seventeenth day of August, 1869, at ten o'clock in the forenoon of said day. And if we cannot agree about said damages, then we demand that, at the same time and place,
 10 viewers or appraisers be chosen or appointed to estimate, value and appraise the same, agreeably to the provisions of your act of incorporation, passed March 7th, 1839.

And we further notify you, that if you neglect or refuse to join in the choice of the said appraisers at the time and place aforesaid, that we shall apply to Josiah Dewitt, Esquire, a justice of the peace of the said county of Warren, at his office, in the township of Knowlton, in said county, on the twenty-eighth day of August, 1869, at ten o'clock in the forenoon of said day, to appoint three disinterested freeholders of the neighborhood to
 20 view, appraise and ascertain said damages.

Columbia, Warren County, New Jersey, the ninth day of August, 1869.

Your obedient servants,

CHRISTIANNA GEISSE,
 HENRIETTA GEISSE,
 EMILY GEISSE,
 MATILDA GEISSE,
 CHRISTIAN HENRY GEISSE,
 HERMAN GEISSE.

30 State of New Jersey, Warren county, ss.—Before me, a justice of the peace in and for said county, on the 28th day of August, A. D. 1869, personally appeared Herman Geisse, of full age, who, being duly sworn according to law, on his oath saith—that on the 10th day of August, instant, he served the foregoing notice upon Francis H. Hagerman, the president of the Columbia Delaware Bridge Company, by reading the same to him, and giving him a copy of the same; that deponent, with the knowledge and consent of the other parties to said notice, attended at the inn of Andrew R. Teel, mentioned in said notice; deponent

went there before 10 o'clock in the forenoon of that day, and continued there until very near 12 o'clock, noon, of said day, fully authorized to compromise and settle with said company for said damages, and in case they could not agree, then mutually to choose three disinterested freeholders of the neighborhood to ascertain, under oath or affirmation, the damages aforesaid, but that no one appeared on the part of the said The Columbia Delaware Bridge Company.

HERMAN GEISSE.

Sworn and subscribed before me, this 28th day of August, 1869. 10

JOSIAH DEWITT, *J. P.*

John L. Smith, George Hiles and Alfred Kern, Esquires—Gentlemen: Take notice, you have been appointed by Josiah Dewitt, Esquire, a justice of the peace in and for the county of Warren, in the state of New Jersey, as three disinterested freeholders of the neighborhood, to appraise the damages sustained and to be sustained by Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse and Herman Geisse, by the erection of a bridge across the river Delaware, at Columbia, in said county, and thereby virtually 20 destroying their ancient ferry; and you are requested to meet at the house of Levi H. Albertson, inn keeper at Kiln Mills, in said county, on the 6th day of October next, at 10 o'clock, A. M., to hear and examine the same.

Dated September 18th, 1869.

Respectfully yours,

CHRISTIANNA GEISSE,

HENRIETTA GEISSE,

EMILY GEISSE,

MATILDA GEISSE,

CHRISTIAN HENRY GEISSE,

HERMAN GEISSE.

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Warren county, ss.—Christian Henry Geisse, of full age, upon oath saith—that he served the within notice on John L. Smith, one of the within named appraisers, on the 18th day of September, 1869, by reading it to him, and gave him a copy of the same.

CHRISTIAN HENRY GEISSE.

Sworn before me, this 6th day of October, 1869.

JOSIAH DEWITT, J. P.

New Jersey, ss.—The state of New Jersey to Josiah Dewitt, [L. s.] Esq., one of the justices of the peace of the county of Warren, in the state of New Jersey—GREETING:

We being willing, for certain reasons, to be certified of certain proceedings had before you, touching the appointment of John L. Smith, George Hiles and Alfred Kern, freeholders, to assess the certain damages which Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, Herman Geisse represent they have sustained against the Columbia Delaware Bridge Company, by reason of the destruction of a certain ferry over the river Delaware, belonging to them, as they allege, at the village of Columbia, do command you that the petition filed before you by the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Christian Henry Geisse, and Herman Geisse and Matilda Geisse, for the appointment of said freeholders, and your appointment of said freeholders, together with the notices served upon the said company, together
 10 with all things touching and concerning the said proceedings, as fully, in all respects, as they remain before you, by whatever names the said The Columbia Delaware Bridge Company and the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Christian Henry Geisse, Herman Geisse and Matilda Geisse may be called therein, you certify and send to our Justices of our Supreme Court, to be holden at Trenton, in and for the state of New Jersey, on the first Tuesday of November next, that therein may be done what of right, and according to the constitution and laws of this state, ought to be done.

20 Witness, Mercer Beasley, Chief Justice of our Supreme Court at Trenton aforesaid, this 27th day of September, A. D. 1869.

CHAS. P. SMITH, Clerk.

J. G. SHIPMAN, *Att'y.*

State of New Jersey, ss.—In obedience to the within writ, I do herewith send to the Supreme Court of the state of New Jersey the petition filed before me by the said Christianna Geisse and others, the appointment by me of the said freeholders, the notices filed with me, together with all other papers filed before

me in the said matter, as by the said writ I am commanded, as by the transcript under my hand and seal, hereto annexed, will more fully appear.

JOSIAH DEWITT, *J. P.* [L. S.]

Reasons for Reversal.

[Filed February 19, 1870.]

The plaintiffs pray a reversal of the proceedings for the following reasons:

1. Because the said defendants do not show any joint interest in the said alleged ferry in themselves to authorize them to claim damages to their joint interest. 10

2. Because the said defendants have no interest in any ferry for which they can claim damages of the plaintiffs in certiorari.

3. Because if any ferry rights exist at the place designated, no person has any claim in it, except Mrs. Christianna Geisse.

4. Because the justice had no jurisdiction to appoint said freeholders.

5. Because it did not appear before the said justice that the parties could not agree upon the manner nor agreeably adjust the matter in controversy, if any there was. 20

6. Because the said Henry Geisse never had an ancient ferry there, nor had the defendants any ancient ferry rights there.

7. Because the said defendants produced no evidence whatever before the justice to show that they had any ferry at Columbia, or that they were in any wise damaged thereby.

8. Because the said bridge of the said plaintiffs does not in any wise injure the ferry of the said defendants.

9. Because the only claim the said defendants make is for damage done to their ferry rights by depriving them of tolls by reason of the construction of said bridge, the people being turned from crossing on the said ferry and crossing on the bridge, and the fourteenth section of the act incorporating the Columbia Delaware Bridge Company does not contemplate any such damages, but simply provides for damages done to the ferry by placing the bridge on the bank of the river where the defendants were accustomed to land their boats, and thereby preventing them from landing their boats. 30

10. Because the act incorporating the plaintiffs does not give the defendants any claim for damages.

11. Because the company have not located their bridge near the said ferry, but a long distance below it, so as not in the least to interfere with the toll of the said ferry by the defendants.

13. Because Henry Geisse, the husband of Christianna Geisse and the father of the other defendants, and under whom they pretend to claim, on the 6th day of March, 1856, procured an act of the legislature of New Jersey authorizing him to establish a ferry at Columbia; that said act was passed long subsequent to the act incorporating the plaintiffs, and the subsidiary thereto, and that all the rights the defendants have, if any, came to them under the said act; that under the said act neither the said Henry, under said defendants, have any claims whatever for damages against the plaintiffs.

13. That the only privilege or claim the said Henry Geisse obtained under the said act, was to exclude persons from establishing a ferry within a half mile from the ferry of the defendants.

14. Because neither the said Henry Geisse, nor the said defendants, have any rights except such as they may have acquired under the act of the legislature of New Jersey aforesaid, and that by the said act the said defendants have no claim whatever against the said plaintiffs for damages.

15. Because the said proceedings are, in divers other respects, illegal and improper and ought to be set aside.

J. G. SHIPMAN,

Attorney of plaintiffs in certiorari.

Affidavits of the Plaintiffs.

[Filed May 29, 1869.]

30 *Aaron O. Bartow*, a witness on the part of the plaintiffs, being sworn, says—

I took the measure of this locality of this bridge below Columbia street, where the defendants claim this ferry right; the distance on the Jersey side, from the abutment of the bridge to where they drive on the flat at the ferry, is 412 feet; distance on the Pennsylvania side is 363 feet; this map I hold in my

hands, marked *Exhibit A*, on the part of the plaintiffs, represents the bridge, the distances and the ferry; I obtained those distances by actual measurements on the ground.

And being cross-examined, says—

I did not take the bearings of the two streets to each other; I did not measure that; I can't say that Greene street and Columbia street are parallel by actual measurement; I should think they are by the looks of it; I measured from the lower edge of the road, Columbia street, that drives into the flat, in a direct line to the abutment of the bridge, to the upper part of 10 the abutment of the bridge; the offset in the map is just to show the abutment; I never measured the difference between the two streets that run parallel, as I suppose; I did not measure the width of the street that runs to the ferry; never measured it; I can't answer how far it is from the edge of the place where they went on the flat to the lower edge of Columbia street; I never measured it; by ranging with the buildings, I should say we started not far from the lower edge of Columbia street, where they drive on the flat; that is my opinion; it might be ten links one way or the other; might be ten *feet*, too; I am a practical 20 surveyor; have been doing surveying for twenty years or over; I am fifty-six years old; have followed that business for the past twenty years; Francis H. Hagerman was with me when I made this survey; he is the president of the company; Mrs. Geisse was not with me; did not give her notice that I was going to survey there; none of the Geisses were present; I measured with my chain; on the Jersey side I made it six chains and and twenty-four links; on the Pennsylvania side, five chains and fifty links; Francis Hagerman carried one end of the chain and I carried the other; Sheriff Vankirk was with us; Pelter W. 30 Movey came there on the Pennsylvania side when we got to the abutment; this was before we surveyed on the Jersey side; Movey was not with us all the time; Vankirk was with us all the time; he is secretary and stockholder of the bridge company; Mr. Movey is also, I believe, a director and stockholder in the company; I am a stockholder and director myself in the company; Hagerman said, if we have to swear to it, we will carry the chain ourselves; that was the reason; we did not think

disinterested men could not swear to it; we did not think anything about it.

Exhibit marked *A* on the part of the plaintiffs in certiorari offered in evidence.

A. O. BARTOW.

Sworn and subscribed the 28th May, 1869, before me.

JNO. M. SHERRERD, S. C. C.

Plaintiffs in certiorari offer in evidence an act entitled "An act to incorporate the Columbia Delaware Bridge Company," 10 approved March 9th, A. D. 1839. Marked *Exhibit C*. [Objected to.]

Also offer in evidence, as approved by the Legislature of the state of Pennsylvania on the 24th day of June, 1839, found in the acts of the state of Pennsylvania, of the laws of 1839, page 429, &c. This *Exhibit C*. [Objected to.]

Also offer in evidence entitled "An act to establish a ferry across the Delaware river at Henry Geisse's ferry, known by the name of the Columbia Ferry, in the village of Columbia, Warren county, approved March 5th, 1856, contained in the 20 laws of 1856, pages 140 and 141. Marked *Exhibit B*. [Objected to.]

Depositions of Defendants.

[Filed June 9, 1870.]

Depositions on the part of the defendants in certiorari, taken this 11th day of February, 1870, before J. G. Shipman, a commissioner of said Supreme Court, at the office of John M. Sherrerd, in pursuance of a notice given to the attorney of the plaintiff in certiorari, service of which is admitted.

James M. Brugler, being duly sworn according to law, upon 30 his oath saith—

I reside at Columbia, Warren county, New Jersey.

And being shown *Exhibit No. 9* on the part of the defendants, purporting to be a lease from Henry Geisse to George Decker, and

continuance of the same, saith—that is my handwriting in three different places on that paper; I saw the parties sign and acknowledge the same in the three different times, at the dates they bear there, and I signed my name as a subscribing witness at the same time.

And being cross-examined by the counsel of the plaintiffs, saith—

No questions asked.

J. M. BRUGLER.

Subscribed and sworn this 11th February, A. D. 1870, 10
before me.

J. G. SHIPMAN, S. C. C.

Exhibit No. 9 offered, and objected to.

Ephraim A. Bellis, being duly sworn according to law, upon his oath saith—

I reside at Columbia, in this county.

Being shown *Exhibit No. 14* on the part of the defendants, purporting to be a lease from Henry Geisse, by his attorney in fact, Lewis Stumpfel, to George Decker—I am acquainted with the handwriting of Frederick Salliday; he is now deceased; have seen 20
him write frequently; he lived with me near six years—he was my father-in-law; the signature as a subscribing witness to *No. 14* is in his handwriting; also the body of the lease is in his handwriting; I am also acquainted with William Hiberger; have seen him write, and have receipts of him; he lives at present in Brooklyn, in the state of New York, at No. 91 Johnson street.

And being shown *Exhibit No. 1* on the part of the defendants—the signature of William Hiberger, as a subscribing witness to that paper, is in his handwriting.

Exhibit No. 14 on the part of the defendants offered in evi- 30
dence. [Objected to.]

EPHRAIM A. BELLIS.

Subscribed and sworn this 11th day of February, A. D. 1870,
before me.

J. G. SHIPMAN, S. C. C.

Josiah Dewitt, being duly sworn according to law, upon his oath saith—

I reside at Knowlton, two miles from Columbia; I used to be acquainted with the handwriting of Frederick Salliday; I believe that signature to *No. 14* is the handwriting of Frederick Salliday.

And being shown *Exhibit No. 1* on the part of the defendants—I am acquainted with the handwriting of William Hiberger; I believe that to be the handwriting of William Hiberger—have seen him write frequently; traded with him a number of years.

10

JOSIAH DEWITT.

Subscribed and sworn this 11th day of February, A. D. 1870, before me.

J. G. SHIPMAN, S. C. C.

Herman Geisse, being duly sworn according to law, upon his oath saith—

I live in Knowlton, one half a mile from Columbia; I am one of the defendants in this certiorari.

20 Being shown *Exhibit No. 10* on the part of the defendants, purporting to be an agreement between Henry Geisse, Francis H. Hagerman and George Decker, saith—that is my handwriting as a subscribing witness, and saw those parties sign it and acknowledge it, and I signed my name as a witness at the same time.

Being shown *Exhibit No. 11* on the part of the defendants, purporting to be another agreement between the same parties—that is my handwriting as a subscribing witness; I saw the parties sign, and heard them acknowledge the same, and signed my name as a witness at the same time.

30 And being shown *Exhibit No. 13* on the part of the defendants—that is my handwriting, as a subscribing witness; I saw the parties sign that, and heard them acknowledge it, and I signed my name as a subscribing witness at the same time.

Quest. Will you state whether your mother, Christianna Geisse, rented the premises with the consent of the heirs-at-law, and at their request or otherwise? [Objected to.]

Ans. She rented it at their request, and with their consent.

Exhibits Nos. 10, 11 and 13 offered in evidence. [Objected to.]

I know where George Decker is at the present time—he lives in Susquehanna county, Pennsylvania, about ten miles from Montrose; I first knew George Decker in possession of the ferry in 1849; he had rented the ferry of Mr. Stumpfel—he was the agent of my father, Henry Geisse; he continued in possession till the 14th day of June, in the year 1859; then my father rented it to Francis H. Hagerman, the present president of the Columbia Bridge Company; he had it in possession about nine months, to the 1st of March, 1860; George Decker had it of my father, and after his death of my mother, till the year 1866; 10 John Ott rented it of my mother then, in the same way, with the consent of the heirs; Mr. Stumpfel continued to be the agent of my father till 1852, when father removed to Columbia himself; Mr. Stumpfel is dead.

And being cross-examined by counsel for the plaintiffs in certiorari, saith—

I am in my thirty-sixth year; am not married; my mother must be sixty-four, as near as I can tell; Stumpfel died in the year 1854; I don't recollect when he became agent of my father; he was agent in 1849, when I first visited Columbia with my 20 father.

Quest. Did your mother ask consent of C. Henry Geisse, yourself and your sisters, to sign this lease marked No. 13?

Ans. No, sir; she did not ask—she had consent of all the heirs by my father's will; it was always understood that she had the right to do all the business, by virtue of my father's will.

And being re-examined by counsel for the defendants, saith—

The heirs made no objection to her renting it—they knew that she rented it. [Objected to.]

HERMAN GEISSE.

Subscribed and sworn this 11th day of February, A. D. 1870, 30 before me.

J. G. SHIPMAN, S. C. C.

Christian Henry Geisse, being duly sworn according to law, on his oath saith—

I reside in Knowlton, one-half a mile from Columbia; I am one of the defendants in this suit.

Being shown *Exhibit No. 12* on the part of the defendants—I am the subscribing witness to that paper—saw it signed by the parties, and heard it acknowledged, and signed my name as a witness at the same time; the body of this lease is in my handwriting.

Quest. Will you state how your mother came to sign this lease, and not the whole heirs? [Objected to.]

Ans. It was my father's will that my mother should have control of the property, and all the heirs were perfectly satisfied with it; Mr. Stumpfel became my father's agent in 1841, and continued as such till 1852; I don't know when William Hiberger became my father's agent—he was agent in 1840 and 1841, until Mr. Stumpfel commenced his agency; Mr. Stumpfel rented the ferry, as my father's agent, to Jacob Lamb, James Decker and George Decker; James Decker is dead--can't tell exactly how long—about seventeen years, or in that neighborhood.

And being cross-examined by counsel for the plaintiffs in certiorari, saith—

20 My father left a will in writing.

Quest. Do you know of your own personal knowledge, and not from what any person told you, when Stumpfel became your father's agent at Columbia?

Ans. I know it of my own personal knowledge.

Quest. How do you know it of your own personal knowledge?

Ans. I was with my father at Columbia in 1840 and in 1841; before my father left in 1841, he gave the agency to Mr. Stumpfel.

30 *Quest.* How do you know he gave the agency to Mr. Stumpfel, of your own personal knowledge?

Ans. My father gave Mr. Stumpfel a power of attorney—I saw him give it to him; I can't tell where it is—Stumpfel had it; I was then between thirteen and fourteen years of age; I then went to school at Philadelphia; my father was in Philadelphia too; lived there one year, then went back to Europe—went in 1841; I stayed there till in 1846, then came to New York; stayed there from '46 to '49, then went to Nazareth, in Pennsylvania; there a few months, then went to Camden, New Jersey; stayed there from fall of 1849 till the spring of 1850; then to

Allentown, Pa.—stayed there till 1852; thence to Columbia, and have lived there ever since, except from May, 1866, to the spring of 1868; I was at different times on visits to Columbia, from 1847 to 1852.

Quest. Do you know of your own personal knowledge, and not from what any one told you, that Stumpfel rented the ferry to Jacob Lamb, James Decker and George Decker?

Ans. That he rented the ferry to Jacob Lamb, I knew from Stumpfel and Jacob Lamb; that he rented to James Decker, I knew from Mr. Stumpfel; and that he rented to George Decker, I know of my own personal knowledge.

Exhibit No. 12 on the part of the defendants offered in evidence. [Objected to.]

C. HENRY GEISSE.

Subscribed and sworn this 11th February, A. D. 1870, before me.

J. G. SHIPMAN, S. C. C.

Affidavits on the part of the Defendants.

[Filed May 29, 1869.]

Depositions in the above stated case on the part of the defendants 20
in certiorari, before J. G. Shipman, Supreme Court Commissioner, taken by consent, May 28th, 1869, at the office of John M. Sherrerd, in Belvidere.

Jacob Lamb, a witness on the part of the defendants in certiorari, being duly sworn according to law, on his oath saith—

Am in my seventy-ninth year; I live in Mt. Bethel township, Northampton county, Pennsylvania, on the opposite side of the river from Columbia; lived there all my lifetime; was born there; have known the ferry at Columbia ever since my memory serves; my father had the ferry on the Pennsylvania side when 30
I first grew up; there was only one ferry on the Jersey side; I only know of one; there was but one set of crafts, by one ferryman; with the exception of one time they were spliced for one week in the embargo time; John P. Snyder had the ferry on the

Jersey side; William Able had it on the Pennsylvania side; Mr. Able got me to go over and rent the ferry for one week on the Jersey side; I rented it for the one week, turned in crafts all; we took possession of it for one week, and used crafts for five days, and then it froze up and stopped ferrying; paid him fifty dollars for the week; could not have got it for any less, or would not have paid him that; we earned that much, and got it, too; it was in shinplaster time; it passed for money and answered for money.

10 *Quest.* Who owned the ferry, at that time, on the Jersey side?
[Objected to.]

Ans. It was under the care and occupation of this John P. Snyder; I am at a loss to know who was the real owner; I think it belonged to Mr. Mirehoof, who was the principal man at that time, and Snyder was under him.

Quest. Were you present at the sale of Mirehoof's property by Ezekiel Dennis, deputy sheriff under William Darrah, sheriff of Sussex—and if so, state all that you know about it?
[Objected to.]

20 *Ans.* It was at the sale of the property where this pier stone work remained in the centre of the ferry ground, by the sheriff; there is a little something there I can't tell about; the bridge pier and the stone was sold for what it would bring; nothing else sold but the pier and the stone work; it was at sheriff's sale.

Quest. Sale of what?

Ans. It was a public sale; Mr. Geisse bought that pier and the right of the pier, and the stone work, or a part of it, stands there yet.

Quest. Was there or not a ferry right then and there offered
30 for sale, and if so, who bought it? [Objected to.]

Ans. This pier took up the width of the street that led down to the ferry; it stood right in the centre of the street.

Question repeated, and objected to.

Ans. Can't answer that question exactly; not in my memory good enough to say about it.

Quest. Did you not tell me yesterday that Mr. Geisse bought the ferry right and the stone pier at that public sale?
[Objected to.]

Ans. I did say so, and I understood it that way—that buying
40 that shore gave him all the ferry right there was there; and it was so understood at that time.

Quest. Did you ever rent that ferry afterward, and of whom did you rent it? [Objected to.]

Ans. I rented it of Lewis Stumpfel one year.

And being shown *Exhibit No. 1* on the part of the defendants, is asked, says—This is the lease I took of Mr. Stumpfel; I know my own hand; I think I know that writing; can't say positive; looks like the old gentleman's handwriting; I was pretty well acquainted with his handwriting; there has been a ferry kept there regularly ever since I can recollect. [Objected to.]

Exhibit No. 1 on the part of the defendants, offered in 10 evidence and objected to.

Quest. Was there a list of rates of ferriage always kept up at that ferry? [Objected to.]

Ans. There was a board up there, with ferry rates, a good part of the time; can't say it was always up; occasionally the board would get down and then get up again.

And being cross-examined says—

I always lived in Pennsylvania; part of this old pier stands there yet; the ice scarred off the top; lowered it down somewhat; the present bridge stands in the neighborhood of one 20 hundred yards below that pier; can't tell exactly; that, as near as I can guess; that sale was pretty well on toward fifty years ago; can't tell just when it was.

JACOB LAMB.

Sworn and subscribed before me, this 28th day of May, 1869.

J. G. SHIPMAN, S. C. C.

Alexander Decker, a witness for the defendants in certiorari, being sworn, says—

I will be eighty years old the seventh day of January next; live a mile and a half above Columbia; I moved to Columbia in 30 1826; I have known this ferry on the Jersey side since 1812; could not tell exactly who owned it then; I crossed it with Polly Smith, with a four-horse team; I was recommended to her because she was poor, and she was Andrew Smith's mother; this was from the Pennsylvania side; she lived on that side; I don't know who kept the ferry on this side; Dilts kept the ferry on the Pennsylvania side, and I guess on the Jersey side, also; I

carried on this ferry on the Jersey side; that was in 1827; I drove the ferry about ten years, as nearly as I can recollect.

Quest. Of whom did you rent the ferry? [Objected to.]

Ans. I rented it of Henry Geisse; I paid him a regular rent for it—forty dollars a year.

Quest. Why did you give it up? [Objected to.]

Ans. William Hiberger was agent of Henry Geisse, and he asked me so much rent that I could not give it; he asked me three hundred dollars; no other ferry at Columbia on the Jersey
10 side to my recollection; this was conducted regularly as a ferry while I was there, at any rate; I had rates made myself and put up; Hiberger made them for me; I got them from the freeholders and he marked them down for me on a board; from the board of freeholders of the county of Warren. [Objected to.]

Cross-examined says—

I moved away from Columbia in 1837; Henry Geisse, when I rented of him, lived in Columbia; then he went off, and left Hiberger as his agent; I don't know where he went to; then he
20 came back; I can't tell exactly when he came back; he came back and lived there again; I think he died there—won't be sure, though; I don't know whether I ever saw this Christianna Geisse; can't say whether she is the widow of Henry Geisse or not; never knowed no other old Henry Geisse but this one and his son Henry; I applied for these rates from the freeholders soon after I got the ferry; had no written lease from Henry Geisse, only a verbal lease; I got the ferry on the Pennsylvania side of Jacob Ott; I had pretty stout opposition on the other side; Dave Smith run opposition to me from the Pennsylvania side, not on this side; he had no right on this side; but I broke
30 him up; Dave Smith landed anywhere on the Jersey side that he could; he had a right to bring to the Jersey side, but not to take away from it; I did not try to hinder him from landing on the Jersey side; I rented of Ott on the Pennsylvania side, and had a right to land on that side.

Re-examined—

Quest. Was there a public road at the place where you landed from your ferry on the Pennsylvania shore? [Objected to.]

Ans. There was—there was a road there when I went there, and they were traveling it.

Quest. What is the effect of a bridge being erected near a ferry across the Delaware? [Objected to.]

Ans. I expect it is to take in the change that is traveling; it is to stop the ferry, by the look of it; James Decker had the ferry one year, after I left; the ownership of the ferry has been in Geisse ever since I left it. [Objected to.]

Re-cross-examined, says—

Quest. What do you mean by saying, “it stops the ferry entirely, by the look of it?”

Ans. They tell me they drive over the bridge wholly, instead 10 of going by the ferry.

Quest. Do you know of your own personal knowledge that Henry Geisse was the owner of the ferry after you left?

Ans. George Decker rented the ferry of Henry Geisse; I can't say only what I heard them say; I heard George say he had rented of Geisse.

ALEXANDER DECKER.

Sworn and subscribed before me, this 28th day of May, 1869.

J. G. SHIPMAN, S. C. C.

J. R. Bellis, a witness for the defendants in certiorari, being 20 sworn, says—

I am sixty-seven years old the 25th April last; I live in Knowlton township, three-quarters of a mile from Columbia; have lived on the farm, but was born above where Philip lives, on the farm; more than I can tell how long, more than I recollect; Philip's not quite a mile from Columbia; have known this Columbia ferry on the Jersey side ever since I was a boy; when I was a boy, used to go up there; I was present at the sale of the Mirehoof property by the sberiff of Sussex county; it was a public sale by the sheriff; a good many people collected together. 30

Quest. Do you know anything of the ferry right at Columbia being put up for sale by the sheriff or his deputy? [Objected to.]

Ans. I was there; yes, it was set up by, I think, the deputy sheriff; he sold other lots at the same time.

Quest. Did you hear any bids for the ferry right? [Objected to.]

Ans. I did.

Quest. In whose possession has this ferry been from the time of that sale till the death of Henry Geisse? [Objected to.]

Ans. Why, Geisse's—Henry Geisse; I never knowed only the one ferry.

And being cross-examined—

Quest. What do you mean by the ferry right?

Ans. Well, what I mean by the ferry right, they set up the ferry right—that is, the width of the street down.

Quest. Is that what the sheriff set up then and sold—the width 10 of the street down to the water?

Ans. Down to the water.

Quest. Do you know of your own personal knowledge, and not from what you have heard from any other person or persons, that Henry Geisse has been in possession of that ferry since that sale till his death?

Ans. I have knowed several of them ferried there took the possession that way.

Quest. Several of whom?

Ans. I have seed Mr. Decker, here, ferry; his son Jim ferried; 20 George Decker ferried, and Mr. Ott, here; I expect it was nine years ago that Henry Geisse died—somewhere about that time.

JOHN R. BELLIS.

Sworn and subscribed before me, this 28th day of May, 1869.

J. G. SHIPMAN, S. C. C.

Ephraim A. Bellis, a witness on the part of the defendants in certiorari, being sworn, on his oath saith—

I now live in Columbia; I always lived in the township of Knowlton; I was forty-four years old the 3d of last November; have known this ferry at Columbia ever since I was a small boy, 30 going back and forth to Columbia at school.

Quest. Who owned the Columbia ferry when you first knew it? [Objected to.]

Ans. I could not say who was the owner of it when I first knew there was a ferry there; I recollect who had the ferry, but who was the owner of the shore I could not say till some time since, and Mr. Geisse said they was the owner of it; they said they was the owner of the shore this side of the river; the

Jersey side of it; I have been the assessor of the township of Knowlton three years.

Quest. To whom did you assess this ferry right over the Delaware river at Columbia? [Objected to.]

Ans. To Christianna Geisse; I assessed the shore, the land on this, the Jersey side; I did not assess the boats; I was informed that the boats belonged on the other shore to be assessed; I served a notice on the bridge company, on the 19th September, 1868; served it on Francis H. Hageman; served it on him at the request of Henry Geisse—he was the president of the com- 10
pany; I understood he was president of the company; I served it on him by reading it to him, and gave him a copy; he made a few words reply to it; did not say much; said they had better wait till they had made them some damage before they wanted the damage.

And being shown *Exhibit No. 4* on the part of the defendants, he says—This is a copy of the notice I served on Hagerman; this was before the completion of the bridge; they were working at it, putting up the stone work.

And being cross-examined, says—

20

I could not tell exactly when the Geisses told me they owned the shore on this side; it was when Mr. George Decker had the ferry, twelve or fifteen years ago; fifteen years, that long ago any way; did not bring my assessment book along; was assessor last year, and for two years before that; I got it from the blotter of the former assessor, and copied it off on my blotter, and then called upon the Geisses, and they gave it in; Henry Geisse, who gave me the notice to serve, is a son of old Henry Geisse. [Objected to by Shipman as volunteer.]

Being re-examined, says—

30

The duplicates I made as assessor I handed over to the collector, and kept only the blotter, and handed the duplicates over to the collector to collect the assessments.

E. A. BELLIS.

Sworn and subscribed before me, this 28th day of May, 1869.

J. G. SHIPMAN, S. C. C.

John Ott, a witness on the part of the defendants in certiorari, being duly sworn, says—

I reside in Lower Mount Bethel now; I lived three years on the Pennsylvania shore, opposite Columbia; while there I carried on the ferry, on the Pennsylvania side, three years the 8th of January last; I rented the Jersey side of the ferry of Mr. Geisse, and so had the whole ferry three years.

Quest. Which of the Geisses did you rent of? [Objected to.]

Ans. Christianna Geisse, and occupied the whole ferry three 10 years.

I was the owner on my own side; have known this to be a ferry about ten or twelve years, on the Jersey side; I quit ferrying there the 16th January last; one reason I quit was, the bridge was done, and the teams would all go across the bridge; no persons would come to my ferry to be ferried; I was about there two months, off and on, after the bridge was completed; the bridge company has never settled with me for the damages done to me for my loss of ferry.

Quest. Has not Mr. Francis H. Hagerman, the president of 20 the bridge company, offered to settle with you, or promised to settle with you, for your damages, or any other person or persons on behalf of said bridge company? [Objected to as leading and illegal.]

Ans. Well, Mr. Hagerman wanted me to set a price on it several times, what I would take, but I told him not worth while, for I understood they would not give me what I wanted, and therefore I would set no price; then he afterward came to me and wanted me to set a price, and I agreed to do so; this was about the middle of the day, and I should study on it till 30 evening; I came to the post office in the evening, where I expected him to be; he came in for his mail matter, and went out so quick that I had no chance to speak to him; nobody else spoke to me but lawyer Allis, at Easton; he was one of the stockholders, and told me not to proceed against them—that they would settle it with me; he was their lawyer, as far as I know—I would not say about it.

And being cross-examined—

I got the Pennsylvania shore of George Decker, three years ago last January; don't know where he got it—he gave me a

deed for it; my deed is at home; he had an act of the legislature of Pennsylvania passed in 1852—somewhere along there, I guess—could tell if I was at home; I did not know I needed my deed; it is recorded at Easton. [Objected to.]

When I rented the Jersey shore, Henry and Herman Geisse did the business of renting to me; they say they are the sons of old Henry Geisse; we had two written leases—one had run out; then they gave me a new one last winter, or last winter a year; I quit ferrying because my business was gone—kept at it as long as anybody came; on my side the bridge is about fifty yards 10 below the ferry—it may be a little further.

Quest. Is it not about as far again as fifty yards below your ferry?

Ans. I should not think it was—I have never measured it—don't think it is that far.

Re-examined, says—

Henry and Herman rented the ferry to me in the name of Christianna Geisse.

And being shown *Exhibits No. 5* and *6* on the part of the defendants, says—I signed those papers, for the purposes therein 20 mentioned.

Exhibits No. 5 and *No. 6* offered by defendants, and objected to by Shipman.

JOHN OTT.

Sworn and subscribed before me, this 25th day of May, 1869.

J. G. SHIPMAN, S. C. C.

Herman Geisse, a witness on the part of the defendants in certiorari, being sworn, says—

I live at Columbia; am a son of Henry Geisse; he died on the 5th May, 1860, at Columbia; he left a widow; her name is 30 Christianna Geisse; she is still living at Columbia; she is single.

And being shown *Exhibit No. 5*, says—that is my handwriting, as a subscribing witness; saw the parties sign it, and heard them acknowledge it.

Quest. How long has Christianna Geisse, your mother, had possession and the renting of the ferry across the river at Columbia? [Objected to.]

Ans. Ever since the death of my father, which occurred in the year 1860.

And being cross-examined—

My father lived at Columbia at the time of his death; he had lived there about eight years prior to the time of his death.

Quest. Do you know anything about your father, or any one for him, getting an act of the legislature of New Jersey passed about this ferry at Columbia?

Ans. My brother Henry made application to the legislature 10 without being instructed by my father to do so; an act of the legislature was passed; my father was eighty-two years and some months old when he died.

Quest. Did your brother Henry attend to the most of your father's business? [Objected to.]

Ans. Well, he very often did, with his instructions, or under his instructions.

Quest. In 1855, '56 and '57, did not your brother Henry attend to the most of your father's business on account of your father's age? [Objected to.]

20 *Ans.* I do not recollect.

HERMAN GEISSE.

Sworn and subscribed, before me, this 28th day of May, 1869.

J. G. SHIPMAN, S. C. C.

Christian Henry Geisse, a witness on the part of the defendants in certiorari, being sworn, says—

I live at Columbia with my mother, Christianna Geisse—have lived there since April, 1852, with the exception of nearly two years, when I was absent in Ohio.

Quest. In 1852, who owned the ferry at Columbia, across the 30 river Delaware? [Objected to.]

Ans. My father.

Quest. Who continued to own it and rent it, from year to year, until his death, in 1860? [Objected to.]

Ans. My father.

Quest. Who are the different persons you recollect his renting it to? [Objected to.]

Ans. George Decker, Francis H. Hagerman, who is now

president of the Columbia Bridge Company, and after Francis H. Hagerman to George Decker again; George Decker was the last person.

Quest. Since his death, who has had possession and rented said ferry? [Objected to.]

Ans. My mother, Christianna Geisse.

Quest. By what authority did she have possession and rent said ferry? [Objected to.]

Ans. By my father's will.

And being shown *Exhibit No. 3* on the part of the defendants, 10 is asked—Is that a certified copy of your father's will? [Objected to.]

Ans. Yes, sir, it is.

And being shown *Exhibit No. 6* on the part of the defendants—that is my handwriting, as a subscribing witness to that paper; I saw it signed, and heard it acknowledged by the parties; Jacob H. Beck, the other subscribing witness, lives in Pennsylvania; I was present and saw him sign it.

Quest. Who has been in possession and rented the ferry since your father's death? [Objected to.] 20

Ans. George Decker and John Ott rented it of my mother; my mother owned the ferry, and George Decker and John Ott were her tenants.

Quest. Was or was not your mother in possession, and the owner of all your father's property since his death, and with the assent of yourself and brother? [Objected to as leading, and in other respects illegal.]

Ans. She was, and still is, and not only by myself and my brother, but by all the children; she is recognized as the absolute owner of all the property left them by their father; I served 30 a notice on Francis H. Hagerman for my mother, about this matter, in January last, after the completion of this bridge; I swore to the copy of that notice before Esquire Dewitt, and it went to Trenton with the certiorari; before my father returned to Columbia, in 1852, he lived at Camden, N. J., and at Allentown, Pennsylvania; he was also in Germany twenty odd years; he came to this country in 1811, and lived several years at Columbia after he had bought the Columbia property, in 1821; he lived in Philadelphia the time he bought it.

Being shown *Exhibit No. 2* on the part of the defendants, is asked—

Quest. Was that the deed your father got for the property he purchased at Columbia? [Objected to.]

Ans. Yes, sir.

Quest. Did you make any search, or inquiry by letter or otherwise, of the clerk in chancery, for the return of sheriff William Darrah of sales of property at Columbia, under an execution of Daniel Mann, complainant, against Francis Mire-
10 hoof and others, defendants—and if so, what was the result, and when did you make it? [Objected to.]

Ans. I wrote to the clerk of the Court of Chancery about the year 1855, and was informed by him that the sheriff never made any returns; I requested Mr. Sherrerd to write again to Trenton, and this is the letter I received from Mr. Sherrerd.

Exhibit No. 7 offered, and objected to.

Quest. How long have you known the road called Columbus or Columbia street, to be a public highway, leading from the country to the ferry at Columbia? [Objected to.]

20 *Ans.* Since I first came there, which was in 1847, when we went there on a visit.

Quest. Who attended the legislature of New Jersey and obtained the charter for the ferry at Columbia—tell all you know about it? [Objected to.]

Ans. The charter was obtained at my instigation and by my procurement; I was informed that Mr. Aten, who kept the ferry about three miles below Columbia, was going to apply for a charter for his ferry; my curiosity was excited, and I went to see Mr. Aten on the subject; Mr. Aten showed me a copy of his
30 charter, sent to him by Lawyer Johnson, of Easton; I borrowed it of him and copied it, making a few alterations, for instance, in the prohibitory clause as to the distance; Mr. Aten had two miles in his, and I put a half a mile in ours, which distance comprised about the limits of the Columbia property as sold by the sheriff in 1821, when the Columbia property was sold, and when my father bought the ferry right; I advertised in the paper or papers that application would be made for legislation, &c.; my father was very much opposed to it as being entirely unnecessary, and only consuming my time; I thought it somewhat of an
40 honor to have a charter for the ferry, and did not like to stand

back of Mr. Aten, beside I thought that the prohibitory clause would have the effect of simplifying legal proceedings, in case my father's rights should ever be encroached upon; the memorial presented by Mr. George H. Beatty to the legislature, I expressly stated that my father had bought the ferry right in the village of Columbia at sheriff's sale, in the year 1821, and that this charter was solely applied for for the purpose of protecting an old established right; I was well aware that my father obtained by the charter no more rights than he already had, but thought it would simplify legal proceedings, as I stated before; 10 I wrote to Mr. Beatty to know what had become of that memorial; I have his answer here with me; *Exhibit No. 8* is this letter. [Offered and objected to.]

The ferry was in precisely the same condition after the passage of the charter that it was previous to it; the charter has never been made use of; my father was for a long time very much opposed to it, but finally suffered me to go on; he was very old, kind-hearted and good-natured; he yielded to my entreaties in the matter; the ferry is located at the foot of Columbia street, the bridge at the foot of Green street, the next street below; 20 Green street is distant from Columbia street, from corner to corner, 350 feet; the streets run parallel to each other; I know the distance by the lot where we live and the adjoining lot, which takes up the whole distance between the two streets, and was present at a survey recently made for Lilliendehl, of New York; the present bridge company was organized last spring, in the spring of 1868; before that they had done nothing toward erecting a bridge but talk.

And being cross-examined, says—

My age is forty-one years; was not present when this property 30 was sold at Columbia; I copied the charter from Mr. Aten's charter, making a few alterations; may be I read it over to my father after I had drawn it; not certain about that; I got my father to sign the memorial I sent to Trenton, after much opposition; never had a certified copy of the act, after it was passed, at home; never had the book that had it in; I saw the book at 'Squire Dewitt's; I borrowed the book of 'Squire Dewitt, in January or February last, for some days; I knew it had passed before by the newspapers, also Mr. Beatty informed me of it;

Mr. Beatty wrote to me that it had passed ; I think he did ; did not attend to my father's business particularly at that time ; not to recollection at least ; I have one brother and three sisters ; sisters are single ; they live at home ; I was not educated for the legal profession ; never studied law ; Frank H. Hagerman had the ferry from the 14th June, 1859, to the 1st March, 1860 ; I refer, to refresh my memory, to transfer of George Decker's agreement to Francis H. Hagerman, and to the transfer of Francis H. Hagerman's agreement to George Decker again ; this
10 bridge injures our ferry by taking away our tolls, our custom.

C. HENRY GEISSE.

Sworn and subscribed before me, this 28th day of May, 1869.

J. G. SHIPMAN, S. C. C.

Shipman, counsel for plaintiffs in certiorari, objects to *Exhibits Nos. 2 and 3* on the part of the defendants.

Opinion.

[Filed June 22, 1870.]

The opinion of the court was delivered by

DALRIMPLE, J. The certiorari in this case brings up the
20 appointment, made by a justice of the peace of the county of Warren, of three freeholders to appraise the damages sustained by the defendants, by reason of injury done to their ferry across the Delaware river, by the erection of the bridge of the plaintiffs over the same river.

The plaintiffs, by an act of the legislature of this state, passed March 3d, 1839, (*Laws of 1839*, p. 151,) were granted all the privileges and franchises incident to a corporation, as soon as two hundred shares of capital stock were subscribed for. The object of the act was to enable the corporation to erect a bridge
30 over the Delaware at Columbia, in the county of Warren. By the 9th section of the act it is provided that all damages done by the corporation, by entry upon lands for the purpose of obtaining materials necessary for building the bridge, shall be

ascertained by the parties, if they can agree, or if they cannot agree, by the appraisement thereof, to be made on oath, by three disinterested freeholders of the neighborhood, or any two of them, to be mutually chosen; but if either party, on due notice, should neglect or refuse to join in the choice, then the said freeholders to be appointed by a justice of the peace of the county. By the 14th section of the act, it is enacted that the company shall have power to agree with any owners of ferries that may be injured by the erection of said bridge, and to compensate them for any damages that they may sustain; and if they cannot 10 agree with such owners, in such case the damages shall be ascertained and paid in such manner as is provided in the 9th section.

On the 28th August, 1869, the defendants made complaint in writing, duly verified, to a justice of the peace of the county of Warren, that the plaintiffs had erected a bridge over the said river at Columbia, and on the 18th January then last had commenced taking tolls for crossing passengers and vehicles, whereby the defendants' ancient ferry was superseded, and its value destroyed. They prayed for the appointment of commis- 02 sioners to assess their damages, in accordance with the provisions of the plaintiffs' charter. It satisfactorily appearing to the justice that the parties were unable to agree, and that the plaintiffs refused to arbitrate, and that the defendants were injured by the erection of the bridge, he made an appointment, after due notice to and appearance before him of the plaintiffs, of three freeholders to assess the damages alleged by the defendants to have been sustained by them, by the erection of the plaintiffs' bridge. The object of this certiorari is to reverse and set aside that appointment.

I shall confine myself, in the consideration of the case, to 30 those reasons for reversal which were urged on the argument.

The first reason is that the petitioners to the justice for the appointment of freeholders show no joint interest in the ferry, and have no right to an assessment to them jointly. The ferry in question was the property of Henry Geisse, who died in 1860, without having made any legal devise of his real estate. The petitioners for the appointment of freeholders are the widow and children of the deceased. The widow, since the death of her husband, has been, by consent of her children, in actual possession of the ferry, taking the rents and profits thereof. They 40

were all, therefore, interested in the rights appertaining to the property at the time of the erection of the bridge, and it might have been good ground of objection, if all had not joined in the proceedings. How the damages, when recovered, are to be apportioned among them, is a matter with which the plaintiffs have no concern. The damages, if any there are, belong to the widow and heirs-at-law of the deceased. The injury, if any, is to them jointly. A satisfaction of the award of the commissioners will be a full discharge to the plaintiffs. This is all they

10 have a right, under the circumstances, to require.

It is insisted, in the second place, that the defendants have no rights of ferry which can be the subject matter of damages. The evidence is quite satisfactory that the ferry was in existence before the present century, and that Henry Geisse, from the year 1827 to 1860, when he died, personally enjoyed all the privileges and benefits incident to a ferry. He kept up and maintained the particular ferry in question for more than thirty-three years, and when he died it passed into the possession and under the control of his widow and children, who continued in

20 the enjoyment of the property until the year 1869, when the injury complained of was done. On the 6th March, 1856 (*Laws of 1856*, p. 140), the legislature passed an act authorizing Henry Geisse to establish, keep and maintain this ferry, and annexed words of inheritance to the grant, and prohibited all persons "using the said river for the purpose of a ferry within the distance of half a mile above and half a mile below the said ferry." That act is entitled "An act to establish a ferry across the Delaware river at Henry Geisse's ferry, known by the name of 'Columbia Ferry,' in the village of Columbia, Warren county."

30 If, when the plaintiffs erected their bridge, the defendants were not the owners of a ferry, it is difficult to imagine what evidence would establish title to such property. The argument, if I understand it, was that the ferry had no legal existence as such till the passage of the act of 1856, and was not therefore within the contemplation of the legislature at the time of the passage of the defendants' charter. The answer to this argument is, in the first place, that the ferry was in existence long prior to the passage of the plaintiff's charter. In the second place, the act of 1856 in effect only confirms and ratifies, by express grant,

40 the pre-existing rights of the ferry owner and gives him addi-

tional privileges and safeguards. In the third place, the plaintiffs, till long after the passage of the act of 1856, according to the fair inference from all the facts and circumstances before us, had no existence as a corporation. The ferries, the injuries to which, by the erection of the bridge, are provided for in the 14th section of the plaintiff's charter, are those ferries which might be in existence at the time of the erection of the bridge. It can hardly be conceived that the legislature intended to give the plaintiffs an indefinite time within which to become a corporation and build their bridge, and require them only to pay for 10 the ferries in existence when the act of incorporation was passed.

By the third section of the act of 1856, Geisse is authorized to receive such tolls for transporting persons and property across the ferry as should be prescribed by the chosen freeholders of the county of Warren. This is, in substance, the same provision contained in the act concerning ferries passed 6th February, 1799 (*Nixon's Digest*, p. 337), and which relates to all ferries, except it may be to some having special exemption. It was insisted that it not appearing that Henry Geisse, or those who have succeeded him, had, since the passage of the act of 1856, 20 applied to the freeholders to fix the rate of tolls, the defendants could not now claim any rights in the ferry, if any they ever had. As already stated, the rights of the defendants do not depend on the act of 1856; and if they did, would not be forfeited or lost because no application had been made to the freeholders to fix the rate of tolls. The rights of property in the ferry do not depend on the action of the board of freeholders. Chancellor Kent, in the 3d volume of his commentaries, p. 458, says: "An estate in such a franchise, and an estate in land, rests upon the same principle, being equally grants of a 30 right or privilege for an adequate consideration." In the case *Peter v. Kendal*, 6 B. and C. 703, the action was for the disturbance of a ferry, and it was held that the plaintiff was only bound to prove that he was in possession of the ferry at the time when the cause of action arose, and that it was not necessary for him to allege or prove the payment of any specified sum for passage money.

The last objection is that the offer to arbitrate should have been presented to the board of directors of the bridge company, when convened in regular session. It was made in writing, in 40

due and proper form, to the president of the company. This I think was sufficient. The appointment of the commissioners by the justice was right, and must in all things be affirmed with costs.

Justice Bedle concurred.

Assignment of Errors.

[Filed December 15, 1870.]

New Jersey, *ss.*—Afterwards, that is to say, on the third Tuesday of November, A. D. 1870, before the Court of Errors and Appeals in the last resort in all causes, came the said The Columbia Delaware Bridge Company, the plaintiffs in error, by J. G. Shipman, their attorney, and say, that in the judgment and proceedings in the Supreme Court there is error in this, that the said Supreme Court decided that the appointment of commissioners by the said Justice was right and should in all things be affirmed, whereas in truth and in fact the said appointment of commissioners by the said Justice was not right, and should not, in all things, have been affirmed.

And there is also error in this, that the said Supreme Court decided that the said defendants in error had a joint interest in the said pretended ferry, and had a right to have the damages assessed to them jointly, whereas, in truth and in fact, the said defendants had not a joint interest in the said pretended ferry, and are not entitled to have a joint assessment of damages.

There is also error in this, that the said Supreme Court decided that the damages, if any there be, belonged to the widow and heirs-at-law jointly, whereas, in truth and in fact, the damages do not belong to them jointly.

There is also error in this, that the said Supreme Court decided that the evidence was quite satisfactory; that the ferry was in existence before the present century, and that Henry Geisse, from the year 1827 to 1860, enjoyed all the privileges and benefits incident to a ferry; that he kept up and maintained the particular ferry in question for more than thirty-three years;

and that when he died it passed into the custody and control of his widow and children; and that the defendants had such a right of ferry which can be the matter of damage—whereas, in truth and in fact, there is no evidence of the existence of an ancient ferry at the place in question, nor that Henry Geisse kept up and maintained all the benefits and privileges incident to a ferry, nor that he kept up and maintained the particular ferry in question for more than thirty-three years, nor that it passed into the possession of the defendants on the death of the said Henry Geisse; and whereas, in truth and in fact, the said 10 defendants hath not such a right of ferry as can be the subject of damage.

And there is error in this, that the said Supreme Court decided that the said defendants, at the time the plaintiffs erected their bridge, were the owners of a ferry, whereas, in truth and in fact, they were not the owners of a ferry at the said time.

There is also error in this, that the said Supreme Court decided that there was evidence to show that the defendants had a ferry at Columbia, and that they were damaged thereby, 20 whereas, there was, in fact, no such evidence.

There is also error in this, that the said Supreme Court decided that the said defendants could recover damages for injury done to their ferry by competition on the part of the said company for the tolls, and thereby depriving the said defendants of the tolls they would have received if the said bridge had not been built, whereas, in truth and fact, the said defendants are not entitled to recover damages for loss of tolls on their ferry, by reason of the construction of the said bridge, but only such 30 damages as would result to the said defendants from the erection of their said bridge on the ground which the said defendants had used for the purposes of a ferry, on the bank of the river.

There is also error in this, because the said Supreme Court decided that the said Henry Geisse, the father of the said defendants, had a ferry at the place in question before the year 1856, and that the act of 1856 only confirmed and established the pre-existing rights of the ferry owner, and gave him additional privileges and safeguards, and that the plaintiffs, long after the passage of the act of 1856, had no existence as a corporation, whereas, in truth and in fact, the said Henry Geisse 40

had not a right of ferry at the place in question before the year 1856; and whereas, in truth and in fact, the act of 1856 did not confirm and establish the pre-existing rights of the ferry owner, and did not give him additional privileges and safeguards; and the plaintiffs, in truth and in fact, had an existence as a corporation long prior to the passage of the act of 1856.

There is also error in this, that the Supreme Court decided that the ferries, the injuries to which, by the erection of the bridge, are provided for in the 14th section of the charter of the
10 said plaintiffs, are those ferries which might be in existence at the time of the erection of the bridge, whereas, in truth and in fact, the ferries the injuries to which are provided for in the 14th section of the plaintiffs' charter, are not those ferries which were in existence at the time of the erection of the bridge, but at the time of the passage of the plaintiffs' charter.

There is also error in this, that the said Supreme Court decided that the said Henry Geisse did not lose his rights of ferry, if any he had, because he did not apply, under the act of 1856, to the board of chosen freeholders, to fix the rates of tolls,
20 whereas, in truth and in fact, the said Henry Geisse had no right to charge tolls, except such rates as should be fixed by the board of chosen freeholders, under the act of 1856, and having failed to have such rates fixed, the defendants have no rights whatever.

There is also error in this, that the said Supreme Court decided that the offer to arbitrate was sufficiently made when made in writing to the president of the said company, whereas, in truth and in fact, such offer was not sufficient when made to the president of the said company, but should have been made to the board of directors of the said bridge company, when con-
30 vened in regular session.

There is also error in this, that the said Supreme Court decided that the defendants could claim damages for being deprived of their tolls for carrying passengers over their ferry by the use of the said bridge, whereas the said defendants cannot claim damages of the said plaintiffs for being deprived of their tolls over the said ferry.

And there is also error in this, that the said Supreme Court gave judgment for the defendants, when, by law, they ought to have given judgment for the plaintiffs.

40 And the said plaintiffs in error pray that the judgment afore-

said for the errors aforesaid, and for other errors in the said proceedings and record, may be reversed, annulled and for nothing holden, and that they may be restored to all things which they have lost by reason of said judgment.

J. G. SHIPMAN,

Attorney of the plaintiffs in error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Christianna Geisse, et als.,

adsm.

The Columbia Delaware Bridge Company. }

In Error.

Joinder.

10

[Filed December 20, 1870.]

And the said defendants in error, Christianna Geisse, Henrietta Geisse, Emily Geisse, Christian Henry Geisse, Herman Geisse and Matilda Geisse, by John M. Sherrerd, their attorney, come into court here and say that there is no error, either in the record or proceedings aforesaid or in giving the judgment aforesaid, and they pray that the Court may now here proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment may in all things be affirmed, &c.

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JOHN M. SHERRERD,

Att'y for def'ts in Error.

THE NEW JERSEY COURT OF CHANCERY

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New Jersey Court of Errors and Appeals.

THE COLUMBIA DELAWARE BRIDGE
COMPANY,

vs.

CHRISTIANNA GEISSE, *et als.*

} *In Error.*

POINTS FOR DEFENDANTS IN ERROR.

The defendants' points consist of answers to the reasons assigned by the plaintiffs in error, for reversing the order of the Justice of the Peace appointing the Commissioners.

I. It is assigned for reversal that the defendants in error have no interest in any ferry for which they can claim damages. To this point the 2d, 6th and 7th reasons for reversal (*Case, page 15,*) are directed.

The petition (*Case, page 7,*) alleges seizin, and an unbroken possession of forty-nine years. That petition is verified by the oath of the petitioners.

These facts are also fully proved by the following depositions, viz. :—

Jacob Lamb's,	-	-	-	-	<i>Case, pages</i>	23	—	25.	
Alexander Decker's,	-	-	-	-	“	“	25	—	27.
J. R. Bellis',	-	-	-	-	“	“	27	—	28.
John Ott's,	-	-	-	-	“	“	30.		
Herman Geisse,	-	-	-	-	“	“	31.		
C. Henry Geisse,	-	-	-	-	“	“	32.		

These facts are further proved by the following documents, viz. :—

Exhibit No. 1,	Lease to Jacob Lamb.
“	No. 2, Deed to Henry Geisse.
“	No. 5, Lease to John Ott.
“	No. 6, “ “ “
“	No. 9, “ George Decker.
“	No. 10, “ F. A. Hagerman.
“	No. 11, “ “ “
“	No. 12, “ George Decker.
“	No. 13, “ “ “
“	No. 14, “ “ “

These facts are also proved by the act entitled “ An Act to Establish a Ferry across the Delaware River at Henry Geise's Ferry, known by the name of ‘ Columbia Ferry,’ in the Village of Columbia, Warren County,” approved March 6th, 1856.

Laws, 1856, pages 140-1.

This act is, of itself, a sufficient title, and that is so whether it be viewed as an affirmance of a pre-existing right, or as an original grant. It was passed long before the Bridge Company was organized (*see Case, page 35,*) and long before the bridge was located or constructed. *See Case, page 29.*

The objection that no evidence of title was presented to the Justice, is answered by reference to the affidavit to the petition. *Case, page 9.*

II. It is assigned for error that the defendants have no

joint interest in the ferry and damages. The 1st and 3d reasons (*Case, page 13,*) are to this point.

Henry Geisse, the ancestor, made a will, but it is void as a will of real estate because not attested by two subscribing witnesses. Therefore, in respect of his real estate, he died intestate.

Legally, the widow has only an interest in one-third for life. The heirs have a present interest in two-thirds, and a remainder in the other one-third. No partition of the estate has taken place. Beyond all question, then, there is a joint interest. The award, when paid, will extinguish all claim of all these parties on the Bridge Company.

"The general rule," says Chitty (1 *Pleading, page 1,*), "is, the action should be brought in the name of the party whose legal right has been affected, against the party who committed, or caused, the injury."

Again (1 *Chit. Plead., 64,*) "When two or more persons are jointly entitled, or have a joint legal interest in the property affected, they *must*, in general, join in the action, or the defendant may plead in abatement; and though the interest be general, yet, if the wrong complained of caused an entire joint damage, the parties may join, or sever, in the action."

See Weller, et als., vs. Baker : 2 Wilson, 414, 423.

Coryton vs. Lithebye : 2 Saunders, 116, and Note 2.

III. It is assigned for error that the Justice had not jurisdiction to appoint the Commissioners. The 4th and 5th reasons are to this point.

Case, page 115.

The first answer to this objection is found in the 9th and 14th sections of the plaintiffs' charter.

Laws of 1839, pages 154 and 156.

Next, as to the fact that the parties could not agree as to

the damages, nor upon the appointment of arbitrators, the evidence is full.

Case, pages 9, 11 and 12.

There is not a scintilla of evidence to the contrary

IV. It is assigned for error that the bridge does not injure or damage the ferry. The 8th and 11th reasons (*Case, pages 15 and 16,*) are to this point.

The answer is found in the petition and affidavits, *Case, pages 7-9,* and the evidence of *John Ott, Case, pages 30 and 31.*

V. It is alleged for error that *the spot* where the ferry business was carried on was not taken from the defendants, and that their only injury was, and is, the diversion of the patronage of the ferry to the bridge, and that for such an injury no damages can be awarded. The 9th, 10th and 13th reasons are to this point.

Case, pages 15 and 16.

It is true that in the plaintiffs' charter, §14, the *language* is "Any owner, or owners, of ferries that may be injured by the erection of said bridge."

But the proviso in the same section shows that the Legislature meant ferries injured by the bridge being used for travel.

If the site of the ferry landing were occupied by the abutment of the bridge and its approaches, ferrying could not be done there after the erection of the bridge, and the case would then come under the 8th section of the plaintiffs' charter.

The 14th section is obviously and manifestly intended to provide for injuries arising from diversion of travel from a ferry. The idea of that section is, that the Bridge Company shall pay for the loss of the ferry business, and that, after being paid for that loss, the ferry owner shall not be permitted to carry on a ferry business.

VI. It is assigned for error that the defendants have no

ferry rights except what are given to them by the act of 1856. The 12th and 14th reasons are directed to this point.

Case, page 16.

This is immaterial, because, if true, the rights under the act of 1856 were vested before the plaintiffs had any existence as a corporation, before they had any organization, and before their bridge was located.

This point has already been answered by reference to proof of the facts that the ancestor of the defendants had rights there *prior* to 1856, and that the plaintiffs had no vested rights there prior to 1868.

VII. The plaintiffs, in argument, claimed in the Supreme Court that the defendants, and their ancestor, had lost, or forfeited, their rights in and to the ferry, because it did not appear that he, or they, had had rates of toll prescribed by the Board of Chosen Freeholders of Warren County.

The first answer to that is, that no such reason was contained among the reasons filed in the Supreme Court.

The assignment on that point in this Court (*on page 42, line 16, &c.*), is not founded on anything in the record, but is on the opinion of the Court.

This is irregular, and that assignment cannot be regarded in this Court, but must be stricken out.

State vs. Demarest : 3 Vroom, 537.

Moreover, the objection, if considered, is untenable. The act concerning ferries (*Nixon's Dig. 337*) forfeits no rights of property for non-compliance with its mandates. Non-compliance is punished with a penalty of one dollar a day, *nothing more.*

Peter vs. Kendal : 6 Barnwell & Creswell, 703.

Besides, rates of ferriage were prescribed by the Board of Freeholders and put up at the bridge, and there is no proof that they are not there yet, or that they have ever been altered.

Case, page 25, line 12 — 17.

“ “ 26, “ 11 — 14.

“ “ 26, “ 24 — 25.

J. Van...

NEW JERSEY
COURT OF ERRORS AND APPEALS

WRIT OF ERROR
TO SUPERIOR COURT

THE COMMONS BUILDING CO.

GEORGE AND OTHERS

My points for the reversal of the judgment of the Superior Court are
That the defendant does not appear anywhere in the case that the defendant in error had any joint interest in the property in question, and had no right to have the damages assessed to them jointly. There is no evidence whatever that shows that there was in the place any property which had been conveyed to the defendant in error by any deed or otherwise; nor did Henry Geese ever acquire any rights of property there at all; nor did the defendant in error ever take possession of the premises after his death. That the defendant in error was any legally recognized party to the premises in question before the year 1838. In that year Henry Geese procured an Act authorizing him to establish a ferry there, and all the rights which were then given him under that Act, and by that Act he had no rights of action except to prosecute for a penalty persons violating his rights under the Act then granted. That neither Henry Geese, the ancestor nor the defendant in error, ever applied to the Board of Common Freeholders for the rates they might charge, and until that was done they had no rights of property there at all, and having never exercised the privilege, they have no claim whatever for damages. That because the plaintiff's charter for their bridge was granted in the year 1838, long before the said Henry Geese, or the defendant in error, had any right of property there, and the said Henry Geese took the ferry collection in all the years...

NEW JERSEY

COURT OF ERRORS AND APPEALS.

THE COLUMBIA BRIDGE CO.,
Plaintiffs in Error,
AND
GEISSE AND OTHERS,
Defendants in Error.

WRIT OF ERROR
TO SUPREME COURT.

My points for the reversal of the judgment of the Supreme Court, are

First. That it does not appear anywhere in the case that the defendants in error had any joint interest in the Ferry in question, and had no right to have the damages assessed to them jointly.

Second. There is no evidence whatever that shows that there was at the place any Ferry—which the law recognizes as a Ferry; nor did Henry Geisse have any exclusive rights of Ferry there at all; nor did the Ferry pass into the hands of his widow and children after his death.

Third. There never was any legally recognized Ferry at Columbia, the place in question, before the year 1856. In that year Henry Geisse procured an Act authorizing him to establish a Ferry there, and all the rights he had were then given him under that Act, and by that Act he had no rights of action except to prosecute, for a penalty, persons violating his rights under the Act thus granted.

Fourth. Neither Henry Geisse, the ancestor, nor the defendants in error, ever applied to the Board of Chosen Freeholders to fix the rates they might charge, and until that was done they had no rights of Ferry there at all, and having never exercised the privilege, they have no claim whatever for damages.

Fifth. Because the plaintiffs charter for their Bridge was granted in the year 1839, long before the said Henry Geisse, or the defendants, had any right of Ferry there; and the said Henry Geisse took the Ferry subservient to all the rights of the plaintiffs in error.

Sixth. Because this Ferry was not in existence at the time of the passage of the plaintiffs charter, and the charter of the plaintiffs only contemplated such Ferries as were in actual existence at the time of the passage of the act, and not to such as might be in existence at the time of the erection of the Bridge.

Seventh. Because the charter of the plaintiffs did not contemplate the payment of damages for loss of tolls by reason of competition on the part of the company in carrying passengers and freight across the Bridge, but only the payment of such damages as might result from the destruction of the Ferry by the construction of the Bridge at its terminus.

Eighth. Because there was no offer by the defendants in error to arbitrate the said matter—the only offer made being made to the President of the said company, and not to the Board of Directors, which was insufficient.

Ninth. Because the defendants cannot recover damages for being deprived of their tolls by competition on the part of the defendants.

Tenth. Because the plaintiffs cannot have two Ferries at the same time and place. If Geisse ever had any Ferry at Columbia prior to the Act of 1856, all his rights under the pre-existing Ferry became absorbed in the new Ferry granted him by the Legislature under the Act of 1856, and he could exercise no rights unless he enjoyment of that Ferry, that he should get his rates of tolls fixed by the Board of Chosen Freeholders, which he never did.

Eleventh. The Court fell into an error in holding that the Act of 1856 authorized Henry Geisse to establish, keep and maintain this Ferry, and that that act in effect confirms and ratifies by express grant, the pre-existing rights of the Ferry owner, and gives him additional privileges and safeguards. The Act does not make any such provisions, but creates a new Ferry with certain privileges.

J. G. SHIPMAN,

Attorney of the Plaintiffs in Error.

NEW JERSEY

COURT OF ERRORS AND APPEALS

WRIT OF ERROR
IN SUPREME COURT

THE COLUMBIA BRIDGE CO.
Plaintiff in Error
vs.
HENRY GEISSE AND OTHERS
Defendants in Error

My points for the reversal of the judgment of the Supreme Court are

First. That it does not appear anywhere in the case that the defendants in error had any joint interest in the Ferry in question, and had no right to have the damages assessed to them jointly.

Second. There is no evidence whatever that shows that there was at the place any Ferry—while the late recognizance was a Ferry; nor did Henry Geisse have any exclusive rights of Ferry there at all; nor did the Ferry pass into the hands of his widow and children after his death.

Third. There never was any legally recognized Ferry at the place in question before the year 1858. In that year Henry Geisse procured an Act authorizing him to establish a Ferry there, and all the rights he had were then given him under that Act, and by that Act he had no rights of action except to prosecute for a penalty persons violating his rights under the Act thus granted.

Fourth. Neither Henry Geisse, the ancestor, nor the defendant in error, ever applied to the Board of Chosen Freeholders in the year they might charge, and until that was done they had no rights of Ferry there at all, and having never exercised the privilege, they have no claim whatever for damages.

Fifth. Because the plaintiff's charter for their Bridge was granted in the year 1838, long before the said Henry Geisse, or the defendant, had any right of Ferry there; and the said Henry Geisse took the Ferry subsequent to all the rights of the plaintiff in error.

Sixth. Because this Ferry was not in existence at the time of the passage of the plaintiff's charter, and the charter of the plaintiff only contemplated such Ferries as were in actual existence at the time of the passage of the act, and not to such as might be in existence at the time of the erection of the Bridge.

Seventh. Because the charter of the plaintiff did not contain any provision for the payment of damages for loss of tolls by reason of competition on the part of the company in carrying passengers, and might result from the destruction of the Ferry by the construction of the Bridge at its terminus.

Eighth. Because there was no offer by the defendant in error to purchase the said charter—the only offer made being made to the defendant of the said company, and not to the Board of Directors, which was insufficient.

Ninth. Because the defendant cannot recover damages for being deprived of their tolls by competition on the part of the defendant.

Tenth. Because the plaintiff cannot have two Ferries at the same time and place. If Geisse ever had any Ferry at Columbia prior to