New Jersey Court of Errors and Appeals

Between UNITED NEW JERSEY RAILROAD & CANAL CO., *et als.*, *Complainants-Respondents,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants-Appellants.*	*On Bill.* *On Appeal from Chancery.* *Case No. 1.*
Between BOOTH & FLINN, LIMITED, *Complainants-Respondents,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants-Appellants.*	*On Bill.* *On Appeal from Chancery.* *Case. No. 2.*

BRIEF OF DEFENDANTS-APPELLANTS.

Hudson Railroad & Transportation Company and Crucible Steel Company of America.

This is an appeal from the Court of Chancery by—

1st. The Hudson Railroad & Transportation Co. and also

2nd. Crucible Steel Company of America.

FACTS.

The two suits in Chancery (see title above), involving somewhat the same questions and the same subject matter, were consolidated at the hearing be-

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low and are now consolidated for the purposes of argument on appeal.

The suits are for injunctions against the obstruction of a portion of the so-called public street in the Town of Harrison. The land in controversy is the so-called Cumberland street, sixty feet wide extending 236.72 feet from Fourth street, east. This so-called street is shown on the Gilbert Map of 1852 (Exhibit C. 1, case opposite page 242). This map shows also what is known as the Preston Tract, which is not a part of the Gilbert Tract but joins it on the east. The map of the Preston Tract (Exhibit C. 2, case opposite page 244) also shows the Gilbert Tract on the west. The so-called Cumberland street is altogether upon the Gilbert Tract and is bounded on the easterly side by the Preston Tract. From this point of boundary running east is the so-called extension of Cumberland street mentioned in the agreement of May 17, 1901, hereinafter referred to. The bed of this so-called Cumberland street, namely 236.72 feet running from Fourth street, east is owned by the Hudson R. R. & Transportation Co. (Exhibit D. 4, case, page 270). The said railroad also owns the land on both sides of the street for one hundred feet east of Fourth street (Exhibits D. 2, D. 3, D. 5, case, pages 267, 268, 269, 271). The obstructions against which the injunctions are sought were placed in the bed of the so-called Cumberland street within one hundred feet east of Fourth street by the Hudson R. R. & Transportation Co. Thus the obstructions were placed entirely upon the land of the Hudson R. R. & Transportation Co.

In the year 1888 the street known as Cumberland street, on the Preston Tract (which is claimed by the complainants to be an extension of the portion of the so-called street under dispute) was vacated between Fifth and Sixth streets by ordinance of the Town of Harrison. In 1895 another ordinance was passed vacating all the streets on the Preston Tract (case,

pages 127, 128, 129, 130). See testimony of Mr. Gardner (case, pages 119, 120, 139, 140). (See also Exhibit C. case, page 275.) See testimony of Mr. Day (case, page 234).

On May 17, 1901, an agreement was entered into by the complainants United New Jersey R. R. & Canal Co. and Pennsylvania R. R. Co., Crucible Steel Co. of America, Young Estate and Draper Estate, which parties were owners of land on and in the vicinity of the Preston Tract, by which agreement they endeavored to establish a right of way over the so-called extension of the so-called Cumberland street, which said extension would extend from the point where the Gilbert and Preston Tracts joined, that is at the point 236.72 feet east from Fourth street and extending easterly through the Preston Tract (see Exhibit B of Bill of Complaint of case No. 1, case, page 16).

It is important to note here that none of the parties to this 1901 agreement owned the bed of the so-called Cumberland street, or the land on either side of the street for one hundred feet east of Fourth street, either at the time the agreement was made or since, but as stated before the bed of the street and the land on each side of the street for one hundred feet east of Fourth street WAS OWNED BY THE HUDSON R. R. & TRANSPORTATION CO. WHICH SAID RAILROAD WAS NOT A PARTY TO THIS AGREEMENT OF 1901. NOR WAS ANY PREDECESSOR IN TITLE OF THE SAID RAILROAD A PARTY TO THIS AGREEMENT OF 1901.

The said Hudson R. R. & Transportation Co. which did the obstructing on its own land was made one of the parties defendant to the bills of complaint.

The Crucible Steel Company of America which

company owns the land directly east of the land of the Hudson R. R. & Transportation Co. was made another party defendant.

The Town of Harrison was a party defendant in Case No. 2.

Case No. 2 between Booth & Flinn, Ltd., and Crucible Steel Company of America, *et al.,* was prior in time. The complainants sought in their bill to restrain the Crucible Steel Company of America, Hudson R. R. & Transportation Co. and the Town of Harrison from obstructing a portion of the so-called Cumberland street in the Town of Harrison, New Jersey, beginning at Fourth street and extending east 236.72 feet, on two grounds:

FIRST, that the street was a public street,

And, SECOND, that it was a private right of way. The complainant brought its bill as a licensee for the Pennsylvania Railroad and the Harrison Land Company under a contract to deposit waste material and sand upon the land of the said corporations.

Case No. 1 was brought by the United New Jersey Railroad and Canal Company and the Pennsylvania Railroad against the Crucible Steel Company of America and the Hudson Railroad and Transportation Company, from obstructing said portion of the said street, as in Case No. 2, *on the one ground that the said portion was a private right of way. The Harrison Land Company,* which was made a defendant in both suits, filed answers and cross-bills setting out *both grounds of public street and a private way.* The Crucible Steel Company and the Hudson Railroad and Transportation Company filed answers to the bills in both suits, and also the cross-bills of the Harrison Land Company in both suits, denying that the disputed portion of the so-called Cumberland street was either a public street or a private way. The

Town of Harrison answered likewise *Case No. 2.* The complainants of *Case No. 1* answered *Case No. 2* as defendants, and the complainants of *Case No. 2* answered Case No. 1 as defendants. Replications were filed by the complainants to the answers in both suits.

The Crucible Steel Company of America was incorporated under the laws of the State of New Jersey. The Hudson Railroad and Transportation Company was incorporated under the laws of the State of New Jersey, the Corporation Act of 1896. (See Exhibit C. 13, Case, page 265.)

These two corporations are absolutely separate and distinct.

The land in the disputed portion of Cumberland street, that is the bed of the street and the land on each side of the so-called street is owned by the Hudson Railroad and Transportation Company. The Crucible Steel Company does not own, and never did own, any of the said 100 feet directly east of Fourth street, at which point the barrier is placed. (See Exhibit D. 2, D. 3, D. 4, D. 5. Case, pages 267-269-270-271.)

There were conveyances made by the complainants of Case No. 1 to the Crucible Steel Company of America, which deeds were admitted in evidence by the complainants.

But no deeds were made by the complainants to the other defendants, the Hudson Railroad and Transportation Company.

The deeds which were made to the Crucible Steel Company of America were of land on the Preston Tract and not on the Gilbert Tract and did not have anything to do with the 100 feet of Cumberland street east of Fourth street.

In the opinion of the Vice-Chancellor it was decided that an injunction would lie in favor of the com-

plainants and the Harrison Land Company defendant in both cases, against Crucible Steel and Hudson Railroad and Transportation Company on the ground that the disputed portion was a private way, and not on the ground that it was a public street. The Vice-Chancellor said:

> "That the case is decided solely on the rights of the complainants and the Harrison Land Company to injunction under the agreements and deeds, and the form of injunction will be settled." (Case, page 299, line 38.)

But the Vice-Chancellor did decide that no injunction should be granted on the ground that the said disputed portion was a public street (see Case, page 299). Final decrees were made accordingly, and the defendants, Crucible Steel Company of America, and Hudson Railroad and Transportation Company now appeal this Honorable Court.

SEVERAL FACTS SHOULD BE NOTED IN THESE CASES.

(A) By the agreement of 1901 the private way extends westerly and only to the edge of the Gilbert Map of 1852, or 236.72 feet east of Fourth street and does not extend to Fourth street. Thus this agreement does not and did not, intend to cover the disputed portion of the so-called Cumberland street, 236.72 feet east of Fourth street.

(B) The Hudson Railroad and Transportation Company WAS NOT A PARTY TO THIS AGREEMENT (Case, page 16).

(C) No proof was made that the executors of the Young Estate had any power or authority to sign this agreement for the estate, thus the agreement would have no validity.

(D) No proof is made that either the complainants or the Harrison Land Company ever bought any land under the Gilbert Map of 1852.

(E) The land sold by the Pennsylvania Railroad to the Crucible Steel Company was on the Preston Tract.

(F) THE HUDSON RAILROAD AND TRANSPORTATION COMPANY DID NOT BUY FROM, OR SELL TO, EITHER THE COMPLAINANTS OR THE HARRISON LAND COMPANY ANY LAND WHATSOEVER. THIS COMPANY DID NOT HAVE ANY DEALINGS WHATEVER WITH COMPLAINANTS.

(G) The Hudson Railroad and Transportation Company is not the agent of the Crucible Steel Company as claimed by the other side. In fact, they are two separate and distinct corporations. See Case, page 176; Case, page 265, Exhibit C. 13.

(H) The testimony of Mr. Illingworth shows that the Crucible Steel Company does not own any stock whatsoever in the Hudson Railroad and Transportation Company; that the accounts of the two corporations are separate and distinct; that the improvements, expenses and taxes of the railroad are paid for by the railroad, and that the railroad owns one hundred feet right of way extending from the Passaic River north. It also owns all the disputed portion of Cumberland street, 236.72 feet, and that the Hudson Railroad and Transportation Company owns equipment necessary to operate its railroad. (Case pages 175-176-177 etc.)

(I) The testimony shows that the placing of the obstructions on the disputed portion of Cumberland street was paid for by the Hudson Railroad and Transportation Company (Case, page 180).

(J) The Old Yellow Road, which complainants attempt to rely on as a consideration for making the

1901 agreement was not proven to be a road at all. (See Case, pages 146, 147, 150, 151, 152.) Cutting and hauling hay by an individual is no such proof. Further, the Old Yellow Road did not extend to the land of the Harrison Land Company, but stopped some distance therefrom.

(K) The Pennsylvania Railroad, in fact, had several exits from its property, which it, itself, gradually cut off by elevating its railroad tracks, first at Seventh street, then at Sixth street, then at Fifth street, and then demanded that the Hudson Railroad and Transportation Company, not a party of the agreement of 1901, should bear the burden of allowing the Pennsylvania Railroad an exit over its land to Fourth street (see Case, pages 119, 120, 127, 130, 139, 140, 234, etc.). The Pensylvania Railroad has in fact, bound itself in by a Chinese wall, of its own making. But there is a way open under Fifth street (see Case, page 148, line 13), and also by the Passaic River.

(L) The disputed portion of the so-called Cumberland street is not marked or graded, and is, in fact, unfitted for vehicular travel. (See Case, page 202, Profile Exhibit D. 1) (Case, opposite page 266.) The so-called street is uneven and rugged and full of holes and hollows and at 300 feet dips off into the meadow and swamp, a few feet from Fourth street (page, 202, etc.).

(M) PENNSYLVANIA R. R. DID NOT PROVE ITS CASE.

Martin L. Gardner, witness for the complainants, in Case No. 1, did not submit any legal proof as to the leasing of the United New Jersey Railroad and Canal Company to the Pennsylvania Railroad. Gardner was the only witness on this point (Case, page 103, etc.).

(N) The testimony of Thomas Ryan (case, page 143, etc.), is of little use to the complainants, as it did not show any usage of the Old Yellow Road that amounted to anything at all. It does show, however, that there is a passage under Fifth street now in existence and open (see Case, page 148, line 13).

"A Fifth street is open now, but is only a tunnel.

"Q There is a passage under Fifth street?

"A To walk, yes, sir.

"Q Can you drive through it?

"A I don't know as you could take a team through there; I never tried it. I can't give the width of it."

(O) The testimony of Daniel Otto (Case, page 150) is of no use to show the existence of the Old Yellow Road, as Otto only cut hay in the meadow and did not have to cross the railroad track at all. In fact, this witness and Ryan showed in their testimony that the Pennsylvania Railroad arbitrarily cut off their exits from these tracts by elevating their railroad.

(P) The Court should bear in mind that this case is not one which appeals strongly to equitable jurisdiction, for the reason that it is a contest on the part of the complainants, who, after they had closed every avenue of exit for the selfish purpose of more conveniently conducting their own business, are now endeavoring to fasten arbitrarily the entire burden of the street for passageway upon the defendants' lands. Especially remember that the Harrison Land Co. got $22,000 or $25,000 from the Pennsylvania Railroad for permitting the Pennsylvania Railroad to close the other streets (Case, page 236, line 38).

(Q) A serious difficulty arises when it is sought to accurately and definitely, and with certainty, locate Cumberland street, so-called. This is import-

ant, as the defendants have not proven the so-called location, and the location is variously given on various maps. For instance, if this case was pending in a court of law instead of equity, the ejectment proceedings and the judgment would have to give the location of the street with absolute certainty. *Of the Court of Chancery no less is required, so that we repeat, it is important to locate Cumberland street* (Case, pages 203, 208, 209).

LAW AND ARGUMENT.

The first portion of this brief is devoted entirely to one of the defendants, The Hudson Railroad and Transportation Company, and the second portion of the brief is devoted to the Crucible Steel Company of America.

Point I.

The Hudson Railroad and Transportation Company is a separate and distinct corporation from the other defendant, the Crucible Steel Company of America (see Exhibit C. 13, Case, page 265).

The said Railroad Company was incorporated under the laws of New Jersey, Act of 1896 (Exhibit C. 13, Case, page 265), while the Crucible Steel Company was incorporated under the laws of the State of Pennsylvania.

The Hudson Railroad and Transportation Company is not the agent of the Crucible Steel Company, or *vice versa,* but is a separate entity. To be sure, some of the stockholders and officers of the one company are likewise stockholders and officers of the other, but the two companies have been incorporated under the laws of New Jersey and are distinct and separate. Thus the Hudson Railroad and Transportation Company is not bound by any acts that the

Crucible Steel Company has itself done, nor is the Crucible Steel Company bound by the acts of the Railroad Company. In Cook on Corporations, 7th edition, Vol. 3, page 2143 it is said:

"The New York Court of Appeals has laid down "the general rule as follows: 'In no legal sense "can the business of a corporation be said to be "that of its individual stockholders. It is true "that they have an interest in the business car- "ried on, and an influence in controlling its con- "duct; but they have created a legal entity to "prosecute such business, make its contracts, and "be responsible for its obligations, and that "entity is alone responsible to persons dealing "with it for the conduct of such business.' "(People *vs.* American Bell Tel. Co., 117 N. Y., "241, 255.) This rule is fundamental. It is the "explanation and cause of the marvelous increase "of corporations in modern times. The stock- "holders are not liable on the contracts of the "corporation. The separate existence and entity "of the corporation is recognized and preserved. "The Courts will refuse to ignore the corporate "existence, even though all the stock is owned by "one person or by another corporation. Peter- "son *vs.* Chicago, etc. Ry., 205 U. S., 364; Federal "etc. Co. *vs.* Bunker Hill etc. Co., 187 Fed. 474."

People vs. *American Bell Tel. Co.*, 117 N. Y., 241, 255.

And further cases cited in Cook on Corporations, 7th edition, Volume 3, page 2143.

And in the case of *Waycross Air Line Ry. Co.* vs. *Offerman & W. R. Co.*, 35 S. E. (Ga.), 275, it was decided:

"Contracts made by one corporation are not "binding upon another corporation merely be- "cause the stock in both is owned by the same "persons."

In New Jersey the same matter has been decided in the case of *Jackson* vs. *Hooper,* 76 N. J. Equity, 592, at page 599, where it is said:

> "The complainant and the defendant, though "owning the entire stock of the two corporations, "are not as expressed by Chief Justice Waite, in "the leading case of Pullman Palace Car Co. *vs.* "Missouri Pennsylvania Ry. Co., 115 U. S., 587, "the corporation in the sense of that term, as "applied to the management of the corporate "business or the control of the corporate prop- "erty. * * * 'A corporation is a legal person "just as much as an individual,' said the Court "in Sheffield Building Society, 22 Q. B. D., 476. "And in Society *vs.* Abbott, 2 Beav., 567, Lord "Langdale, Master of Rolls, held that, as in this "case, great confusion arises by the failure to "distinguish the body corporate from the indi- viduals who constitute, 'not the corporation, but "all the members of the corporation.' "

(Testimony of Mr. Illingworth, case, pages 177, 178, 179, 180.)

Point II.

The Hudson Railroad and Transportation Company, being a separate and distinct corporation, is not bound in any respect by the Agreement of 1901. Neither the Hudson Railroad and Transportation Company nor its predecessors in title were parties to this agreement. Yet the railroad or its predecessors in title owned 100 feet of the disputed portion on both sides of the so-called Cumberland street, and also the land in the bed of the street itself for 236.72 feet, prior to, at the time of, and since the making of the Agreement of 1901. (See Exhibits D. 2, D. 3, D. 4, D. 5, Case, pages 267, 269, 270, 271.) Thus the owners of the 100 feet of the disputed portion never had

anything to do with the Agreement of 1901 and thus no estoppel works against the Hudson Railroad and Transportation Company. *Waycross Air Line Ry. Co.* vs. *Offerman & W. R. Co.*, 35 S. E. (Ga.), 275.

Point III.

The Hudson Railroad and Transportation Company is not bound by any estoppel arising from any deeds either made by or to the Hudson Railroad and Transportation Company.

(A) There were no deeds introduced in evidence by the complainants which would show any estoppel to bind the said railroad. The deeds which were introduced in evidence were those relating to the Crucible Steel Company and did not cover any of the 100 feet of the disputed portion. The Crucible Steel Company does not now, and never has, owned any of this 100 feet of the disputed portion. The Hudson Railroad and Transportation Company owns such portion as is shown in the deed introduced by the defendant (Exhibits D. 2, D. 3, D. 4, D. 5, case, pages 269, etc.). In fact, in the deeds to the Hudson Railroad and Transportation Company Cumberland street is mentioned, but this would not estop the said Railroad Company in favor of the complainants, because:

(1) None of the complainants were parties or privies to these deeds, and thus no estoppel could act to their advantage, and

(2) The mention of the said Cumberland street in the said deeds was for boundary only.

13 Cyc., pages 455, 456, 457.

Meredith vs. *Sayre*, 32 N. J. Eq., page 557.

Point IV.

The Hudson Railroad and Transportation Company is not bound by any estoppel to deny that the so-called street is a private way, because of any dedication made or any maps filed or any lots sold in respect to said maps, because they are not a party to any of them.

(A) There was no dedication made. In order to bind by estoppel, the land must be dedicated by the owner filing a map and selling the lots under said map, and the complainants did not show any ownership in Hiram Gilbert, the one who filed the maps. Thus there is no dedication and thus there can be no estoppel binding on the Hudson Railroad, etc., from contending that there is no private way.

Camden vs. *McAndrews and Forbes Co.,* 88 Atl., 1034.

Eureka vs. *Fay,* 40 Pac.(Cal.), page 235.

Lawrenceburg vs. *Wesler,* 37 N. E. (Ind.), page 956.

Edenville vs. *Chicago etc. Ry. Co.,* 41 N. W. (Ia.), page 568.

Porter vs. *Stone,* 1 N. W. (Ia.), page 601.

Hannabal vs. *Droper,* 36 Mo., page 332.

Telard vs. *Portland,* 2 Oreg., page 46.

(B) In the second place, in order to work an estoppel in this respect, the one in whose favor estoppel is claimed must have bought land from the owner who filed the map and dedicated the streets. There is nothing in this case which shows that any of the complainants bought any land under the Hiram Gilbert Map of 1852. By looking at said map it is evident that there is no land on Cumberland street shown on said map east of the disputed portion, and the evidence shows that the Hudson Railroad and Transportation Company owned the blocks on both sides for 100 feet directly east of Fourth street of

the said disputed portion and the street itself. (See Exhibit C. 1, Case, opposite page 242.) In fact, the disputed portion is the end of the map on Cumberland street, and any lands which the complainants might have bought on Cumberland street east of the disputed portion was bought under a different title and is not due to any reliance upon the said Gilbert Map of 1852, which would work an estoppel on the Hudson Railroad and Transportation Company.

(C) In order to create estoppel because of a dedication, one setting up such estoppel must show that the way wherein he claims the right is reasonably necessary for enjoyment of the land which he bought under the dedication. Here it is shown on the map of 1852 there is no land owned by the complainants which they bought under the said map of 1852, situate on Cumberland street, and there is only one other possible portion of the land which they might have bought under the said map, which said portion is situate west of Fourth street and far north of Cumberland street. In fact, there is no land owned by the complainants under said map of 1852 which could justly claim this private right of way as reasonably necessary for the enjoyment of said land.

> "A reference to a plan laying out a large tract "of land does not necessarily give every pur- "chaser of a lot a right of way over every street "laid down on it. Although a grantee is some- "times entitled to have ways kept open which his "land does not touch, if they are necessary or "convenient in order to reach a highway, he ac- "quires no right of way by implication over "streets which his land does not touch, and which "do not lead to a public street or highway."
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> 14 Cyc page 1180. Note, 67.
>
> *Pearson* vs. *Allen,* 23 N. E. (Mass.), page 731.
>
> *Reis* vs. *New York,* 80 N. E. (N. Y.), page 573 at 577.
>
> *Foerster* vs. *Eulers,* 113 N. Y. S., page 480.

Point V.

As a matter of fact, *the complainants have caused all other ways of exit from whatever property they hold near Cumberland street to be closed by town ordinances,* and have virtually shut themselves off from the defendants' streets and have enclosed themselves as within a Chinese wall, except at Fifth street and by water, and, therefore, should not arbitrarily be allowed to say that they have a right of way over the so-called street. See city ordinances of 1895 offered in evidence by complainants (Case, pages 127, 128, 129, 130). Testimony of Mr. Gardner (Case, pages 119, 120, 139, 140). See also Exhibit C., case of *Young* vs. *Pennsylvania Railroad*, case, page 275, and testimony of Edward A. Day, relative thereto (case, page 234, etc).

Point VI.

The Hudson Railroad and Transportation Company is not bound by any right by prescription for nothing is shown in this case to warrant it.

Point VII.

The complainants stated that they are going to make extensive improvements on their property, but have not given any evidence of such improvements, except a statement of their own imagination.

Point VIII.

The Hudson Railroad and Transportation Company is not bound on the ground that the disputed portion of the so-called street is a way of necessity. It is not a way of necessity.

(A) There is no dominant and servient tenement proven or which can be proven. There never was unity of ownership of complainants and the land of

the Hudson Railroad and Transportation Company, hence there can be no way of necessity.

> "A way of necessity, such as the law recognizes, "derives its origin from a ground or reservation, "and cannot exist where there never was any "unity of ownership of the alleged dominant and "servient estates, for no one can have a way of "necessity over the land of a stranger."
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> 14 Cyc., page 1172.
>
> *Nichols* vs. *Luce,* 24 Pickering, 102.
>
> *Ellis* vs. *Blue Mountain,* 41 Atl., 856.
>
> *Toothe* vs. *Bryce,* 50 N. J. Eq., 589.
>
> *Taylor* vs. *Wright,* 76 N. J. Eq., 121.

(B) A way of necessity is based on necessity, and not convenience, and if there exists a way by water, there is no way of necessity across another's land. The complainants have a way by Fifth street or by water, namely the Passaic River (Case, page 148, line 13).

> *Hildredth* vs. *Googins,* 91 Me., 227.
>
> *Warren* vs. *Blake,* 54 Me., 276.
>
> *Dolliff* vs. *B. & M. R. R.,* 68 Me., 176.
>
> *Krugsley* vs. *Land Imp. Co.,* 86 Me., 280.
>
> *Steven* vs. *Orr,* 69 Me., 324.

Point IX.

The Hudson Railroad and Transportation Company is not bound by any acts or admissions made by the Crucible Steel Company, because the Hudson Railroad and Transportation Company is not a party to these acts or admissions.

(A) The application made to the Town of Harrison for the vacation of the so-called street was made by the Crucible Steel Company of America and not the Hudson Railroad and Transportation Company (testimony of Mr. Illingworth, Case, pages 181, 182, 183, 184, 185).

(B) Any admissions which the Crucible Steel Company may have made in the suit of the *Harrison Land Company* vs. *the Crucible Steel Company* was made by the said Crucible Steel Company and not by the Hudson Railroad and Transportation Company.

Point X.

The reservation made by the Town of Harrison in the proposed ordinance for the vacation of Cumberland street does not work an estoppel, for the reason that the town only wished to reserve whatever rights any party might have in said street and if they had no rights, none would be reserved and thus none created. The Agreement of 1901 does not affect the disputed portion of the so-called street. The town was seeking only to vacate whatever easement there might be in favor of the public and created nothing anew. The reservation is therefore mere surplusage and void.

People vs. *Chicago,* 154 Ill. Appeals, 578.

Point XI.

The proposed ordinance for the vacation of the said Cumberland street did not bind by estoppel, for the said proposed ordinance was only an attempt by the town to quit-claim whatever rights it might have in said street, and if it had no rights, then none would be granted. This is more specifically set out in the question of Cumberland street as a public street (see this brief, pages 19, 20 and 21).

Point XII.

The disputed portion of the so-called Cumberland street is not a public street because there was no dedication. There was no proof of any ownership of property designated in Gilbert at the time the map was filed. In fact there is nothing in the evidence to show

any title in Hiram Gilbert or anyone else when different maps were filed. In order to have a dedication in this respect, the map must have been filed by the owner of the land and the land sold relative to said map. The one who files the map and makes the sale must have the title, which fact has not been shown in this case. "In establishment of dedication, the title of dedication as well as act of dedication must be proved."

13 Cyc., page 443.

City of Camden vs. *McAndrews & Forbes Co.*, 88 Atl., 1034 (1913, N. J., E. and A.).

Eureka vs. *Fay*, 40 Pac. (Cal.), page 235.

Lawrenceburg vs. *Wesler*, 37 N. E. (Ind.), page 956.

Point XIII.

The so-called street is not a public street even though it may have been dedicated to the public by map of Hiram Gilbert 1852, for it has *never been accepted* as a public street.

Schmidt vs. *Spaeth*, 82 N. J. L., page 575.

Holmes vs. *Jersey City*, 12 N. J. E., page 299.

Pope vs. *Town of Union*, 18 N. J. E., 228.

Attorney-General vs. *Morris Railroad*, 19 N. J. E., page 286.

N. Y. & L. B. R. R. vs. *South Amboy*, 28 Vr., 252.

Keyport vs. *Freehold R. R.*, 74 N. J. L., 480.

Wood vs. *Hurd*, 5 Vr., 872.

(A) The so-called street has never been accepted by public act. There is no evidence of any formal act of the town showing any acceptance of the said dedication of the alleged street

13 Cyc., 469; 13 Cyc., 474. Note 43.

State vs. *Tucker*, 36 Ia., page 485.

(1) The fact that the so-called street is laid out on a tax map or in a tax book, shows no acceptance by the town for this was done only for the convenience of the taxing authorities (as per testimony, pages 119, 124, 129).

See *Camden* vs. *McAndrews & Forbes,* 88 Atl., 1034, at 1036.

In *Schmidt* vs. *Spaeth,* 82 N. J. L., page 575 at 578, Chief Justice Gummere says: "In the present case no formal act by the authorities of Camden was shown which tended to indicate an acceptance by them of the proffered street. It is true that there was a delineation of it upon the city plan book (*i. e.,* city tax book) but there was no proof that this plan book was in the custody or under the control of the municipal board in charge of the city streets, nor that the delineation of the street therein was done under its sanction, or even with its knowledge."

(2) The mere omission by the town to tax the bed of the street was no acceptance by the town of the said street.

Fuller vs. *Belleville Township,* 67 N. J. Eq., pg. 468.

See *Camden* vs. *McAndrews & Forbes,* 88 Alt., page 1034 at 1036.

(B) The so-called street has never been accepted by public user. There is no evidence to show that the public, or any appreciable part thereof, has ever used the so-called street. In order to prove acceptance by public user it is necessary that there be a general user of people in general. "User by parties hauling wood and stone (*or hay*) and no one else, over a rough road is not enough." *Fairchild* vs. *Stewart,* 89 N. W. (Ia), page 1075.

13 Cyc., pg. 466, note 62.
Schmidt vs. *Spaeth,* 82 N. J. L., pg. 575.
State vs. *Tucker,* 36 Ia., pg. 485.

Further, it is clearly shown by the evidence that the said disputed portion of the said street is not fit for usage. It being swamp land and an unbroken wilderness. See plan and profile map made by Mr. Kreimer (Exhibit D. 1, Case opposite, page 266).

Examination of Mr. Kreimer (Case, page 202, line 39, etc.). Question—"Cumberland street east of Fourth street has never been traveled? Answer—"No. Not physically fit to be traveled." Question—"In other words, it has never been used?" Answer—"It could not be used, no." There is no proof in the testimony that the Hudson Railroad & Transportation Company bought any land whatsoever under any of the maps. Titles show that the Hudson Railroad & Transportation Company bought from a party named Blake. Evidence Exhibit D. 4 (case, page 270) and there is no evidence introduced by the complainants that shows any such buying under any maps or from any one, Gilbert, or others who owned the land and filed the maps.

Point XIV.

There could not be a dedication or an acceptance of the disputed portion of the so-called street, because there is no accurate map on file. Three maps on file and the taxing maps are all different as shown by the following:

(a) The map of 1837 does not show Cumberland street at all and the streets shown on said map are unnamed and between the main line of the Pennsylvania Railroad and the Passaic River there is one block less on map of 1837 than on the map of 1852, and, therefore, it is impossible to locate Cumberland street on map of 1837 at all.

(b) The map of 1854 does not show Cumberland street. Mr. Kreimer in the testimony, page 207, etc.,

says that the map of 1854 was made because the map of 1852 was error, and there are several blocks on map of 1854 which do not appear on the map of 1852.

(c) The map of 1852 shows that the blocks on Fourth street and Cumberland street, are 80 feet and on Fourth street north and south of Gloucester street they are shown as 105 feet, and on the taxing maps said blocks are shown as 100 feet on Fourth street.

(d) On map of 1852, beginning at Fourth street on Cumberland street running east, the disputed portion is shown as 175 feet in length on the north side of Cumberland street and 152 feet on the south side of Cumberland street and 162 feet six inches on the center line. On the taxing map the length on the north side of Cumberland street is shown as 245½ feet on the north side of Cumberland street; 228 feet, five inches on the south line of Cumberland street; and 236 feet eight and three-quarter inches on the center line of Cumberland street (testimony, Case, pages 209-210).

(e) The maps are old and have shrunken, and there is no scale on any of the said maps (testimony, case, page 203).

Point XV.

The decree in the case of Booth & Flinn against the Crucible Steel Co., *et als.*, should not have been enrolled for the reason that at the time of the enrollment there was nothing for the decree to act upon. The complainant, Booth & Flinn, brought its bill as a licensee under the contract to fill in certain portions of land with dirt, and at the time of the enrollment, the work had been entirely completed. The complainant, Booth & Flinn, had no further interest in the litigation and thus a decree in its favor was inoperative and should not have been made.

Point XVI.

As there is no evidence in the case that the disputed portion of the so-called Cumberland street is a public street, the decrees, so far as regards the question of a public street, should have been made in favor of the defendants the Hudson Railroad and Transportation Company and the Crucible Steel Company of America. Estoppel having been considered prior in this brief.

(A) Booth & Flinn, in its bill, asked for an injunction on two grounds, one of which was that Cumberland street was a public street. The Vice-Chancellor found that Cumberland street was not a public street, and therefore, the decree in the Booth & Flinn case should have been made in favor of the defendants, as respects the question of a public street as well as estoppel. "The case is decided solely on the rights of the complainants and the Land Company to injunction under the agreements and deeds." (See case, page 299, line 38.) See opinion of Vice-Chancellor, case, page 277, at page 299.

Diocese vs. *Toman,* 70 Atl., 881.

(B) The United New Jersey Railroad and Canal Company tried its case together with the case of Booth & Flinn.

(C) The Harrison Land Company, which filed a cross-bill in each of the two cases, has no interest in the disputed portion of the so-called Cumberland street. The Land Company sought injunction on the two grounds, as a public street as well as a private way. And so the decree should have been against the said Land Company as regards the public street.

Point XVII.

There should have been no decree entered in either case in favor of the Harrison Land Company.

(A) The Harrison Land Company did not buy under the Gilbert Map of 1852, and, therefore, had no rights of estoppel under the said map.

(B) The Land Company did not grant or receive as grantee any land under the Gilbert Map. The Land Company did not grant to or receive grants from either the Hudson Railroad and Transportation Company, or the Crucible Steel Company of America, nor from any of their predecessors in title.

(C) Neither the Land Company nor its predecessors in title (the Young Estate) bought or sold under the Preston Tract.

(D) There is no proof in this case that the executors of the Young Estate, the predecessors in title of the Land Company, had any authority to sign the agreement of 1901, and thus the Land Company has no rights under that agreement.

(E) As stated elsewhere in this brief, the Land Company has no rights as against the Hudson Railroad and Transportation Company under the agreement of 1901, because the said Railroad Company was not a party to the said agreement.

(F) The Old Yellow Road did not run to the Young Estate, or to the land of the Harrison Land Company, and thus any conclusion which might be drawn from the fact of the existence of this Old Road would not act to the advantage of the Harrison Land Company. The Old Yellow Road was not taken away until the Pennsylvania Railroad elevated its railroad tracks.

(G) The Harrison Land Company in its cross-bills in each case sought an injunction against the defendants on the two grounds of a private way and a public street and thus the decree should be against

the Land Company on the public street portion of its bill. (See brief, *supra,* page 4, line 32), as well as on estoppel.

Point XVIII.

There is no irreparable injury shown in these two cases and the complainants should have sought their remedies at law and not in the Court of Equity. The defendants, Hudson Railroad and Transportation Company and Crucible Steel Company of America, are both responsible corporations and could readily respond in damages.

Todd vs. *Staats,* 15 Dick. Ch., 507.
Defiance Fruit vs. *Fox,* 2 Buch., 297.
Collity vs. *Stine,* 10 Buch., 405.

PART OF BRIEF RELATING PARTICULARLY TO THE CRUCIBLE STEEL COMPANY OF AMERICA.

Important. No injunction should go against the Crucible Steel Company of America because all it did was to build the barrier for the Hudson Railroad and Transportation Company and the Railroad Company maintained it on its own land. The Railroad Company paid the Crucible Steel Company of America for the work done in building the barrier (case, page 180).

Point XIX.

The Crucible Steel Company of America is not estopped to deny that the disputed portion of Cumberland street is a public street. These points are discussed in the brief of the Hudson Railroad and Transportation Company. (See pages 18, 19, 20 and 21 of this brief.)

Point XX.

The Crucible Steel Company of America is not estopped to deny that the disputed portion is a private way under the agreement of 1901.

(A) The agreement of 1901 extends only up to the disputed portion, and does not include the said disputed portion. It is apparent that the parties to the agreement did not intend to include the said disputed portion in the agreement, if so they would have so stated, and would have extended the agreement up to Fourth street. It was *not* the intention to affect the 236.72 feet next to Fourth street. But they now ask the Court to make a new agreement.

(B) The fact that the easterly line of the said disputed portion of said Cumberland street is mentioned in the said agreement of 1901, does not act as an estoppel to bind the Crucible Steel Company to consider the disputed portion as a private way, but only acts as a boundary line and does not act as an estoppel.

13 Cyc., pg. 455, 456, 457.
Meredith vs. *Sayre,* 32 N. J. Eq., 557.

(C) The agreement of 1901 has no validity. There is no proof that the executors of the Young Estate had any authority or power to sign the agreement and bind the Young Estate. If the said executors had no power or authority under the Young will to make this agreement, then the agreement is not binding upon any of the parties to the said agreement, and the Crucible Steel Company is not estopped.

Point XXI.

The Crucible Steel Company of America is not bound by any estoppel arising from any deeds, either made by or to itself. The deeds made to the Crucible Steel Company, which were introduced in evidence, did not concern the disputed portion of the said street. The deeds were bought under a different tract and a different map altogether, which said tract is east of the Gilbert Tract, namely the Preston Tract.

Point XXII.

The Crucible Steel Company of America is not bound by any estoppel because of any dedication of the disputed portion of the so-called Cumberland street.

(A) No dedication has been proven. (See this brief, pages 14, 18 and 19.)

(B) The complainant bought no land under the Gilbert Map of 1852. (See brief, page 7.)

(C) The Crucible Steel Company bought no land under the Gilbert Map of 1852, as was said in the other part of this brief. The land bought under this map of 1852 was bought by the Hudson Railroad and Transportation Company a separate and distinct corporation from that of the Crucible Steel Company of America.

Point XXIII.

The points in the brief of the Hudson Railroad and Transportation Company which relate to brief of the Crucible Steel Company of America are to be considered a part also of this part of the brief.

Point XXIV.

No injunction should lie in either case against the Hudson Railroad and Transportation Company because of any obstruction for the reasons set out in the first part of this brief.

If this is so, then no injunction should lie in either case against the Crucible Steel Company of America because the so-called obstructions were placed in the so-called Cumberland street at the direction of the Hudson Railroad and Transportation Company and the said Hudson Railroad and Transportation Company paid for having the obstructions so placed there. Whatever obstructions were placed in the so-called

street by the Crucible Steel Company of America was placed upon the property of the Hudson Railroad and Transportation Company and at the railroad's direction (see Case, page 180).

Point XXV.

No counsel fees should have been allowed the complainants or the Harrison Land Company in either case as the conclusions of the Vice-Chancellor was a split verdict. Case No. 2 of Booth & Flinn was tried on the theory that Cumberland street was a public street and a private way.

The cross bill of the Harrison Land Company in each case was also based upon the conclusion that Cumberland street was a public street and a private way and the bill of the United New Jersey Railroad and Canal Company in case number one was tried together with case number two on order of consolidation, and the Vice-Chancellor found in his conclusions upon the hearing of both cases together that Cumberland street was a private way but not a public street. See conclusions of the Vice-Chancellor (case, page 299).

Case of *Diocese* vs. *Toman*, 70 Atl., page 881.

As the decision of the Court was split, as in the present cases, the complainants have won on one of the points and the defendants on the other; then there should be no counsel fees allowed either party.

Point XXVI.

The Town of Harrison has only preserved the peace and has done nothing more. Testimony of Mr. Walsh (see Case, pages 230, 231).

We respectfully submit, for the above reasons, the decrees in each case should be reversed with costs.

Respectfully submitted,

PEIRCE & HOOVER,

Solicitors and Counsel with Defendants-Appellants.

New Jersey Court of Errors and Appeals

BETWEEN UNITED NEW JERSEY RAILROAD & CANAL COMPANY, ET ALS., *Complainants-Respondents,* *and* THE CRUCIBLE STEEL COMPANY OF AMERICA, ET ALS., *Defendants-Appellants.*	ON BILL, &c. ON APPEAL FROM CHANCERY—Case No. 1.

BRIEF FOR UNITED NEW JERSEY RAILROAD & CANAL COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY.

This case was heard before Vice Chancellor Emery. His opinion is found on Page 277 of the printed book and is printed with head notes in 95 Atl. p. 243.

The case involved the protection of complainants' rights in a private right of way obstructed by a formidable barrier placed across the way by Crucible Steel Company. The nature of the barrier appears in the 3 photographs, Exhibits 10 and 11.

The grounds of appeal are from the part of the decree enjoining the Steel Company and Hudson Railroad & Transportation Company (whose practical identity with the Steel Company is sufficiently indicated by the Vice Chancellor's opinion, p. 285, lines 27-40), from obstructing the complainants in the use of Cumberland Street, and directing the defendants to remove the barrier they had placed there; also to pay costs and a counsel fee of $250.

In concluding his opinion (page 299), the Vice Chancellor said:

> "The case is decided solely on the rights of complainant and the Land Company to injunction under the agreements and deeds, and the form of injunction will be settled."

The Complainants-Respondents are:

The United New Jersey Railroad and Canal Company, a corporation of the State of New Jersey; and the Pennsylvania Railroad Company, its Lessee, a corporation of the State of Pennsylvania.

The defendants in the original bill were:

The Crucible Steel Company of America, a corporation of the State of New Jersey; and the Hudson Railroad & Transportation Company, a corporation of the State of New Jersey (Case p. 1).

The bill was filed on the 20th day of November, 1913, and on that day it was ordered "that the defendants show cause on Tuesday next why the prayer of the bill of complaint for an injunction should not be granted." (Case p. 23).

On the return of the Rule it was stipulated by all parties that the order to show cause should be continued until the final hearing, which was fixed for January 28, 1914, and that in the meantime the Booth & Flinn Company should continue their filling on the land of the complainants in accordance with the contract of the 20th day of May, 1913, and that such stipulation should be without prejudice to either party. In the meantime the pleadings were to be completed so as to be ready for the final hearing.

The final hearing was continued until April 7th, 1914.

On the 30th day of November, 1913, an order was entered by consent of all parties that the Bill of Complaint be amended by adding the Harrison Land Company and Booth & Flinn, Limited, as defendants. (Case p. 24).

The Harrison Land Company filed with their answer a cross-bill against the Crucible Steel Company and the Hudson Railroad & Transportation Company. (Case p. 70, 74.)

To that cross-bill the Crucible Steel Company and the Hudson Railroad & Transportation Company have filed a joint answer. (Case p.96.)

On application of Booth & Flinn, Limited, an order was made that the issues in the suit of Booth & Flinn against the Crucible Steel Company and others, pending in this Court, be consolidated with this cause for the purpose of hearing. (Case p. 102.)

Object of Suit.

The object of this suit is to prevent the Crucible Steel Company and the Hudson Railroad & Transportation Company from interfering with the complainant's use of Cumberland Street and the grading by them of said street for such use.

Issues.

Broadly stated, the issue is the rights of the respective parties in the disputed portion of Cumberland Street by virtue of the agreements and deeds.

Facts.

On November 5, 1913, the Crucible Steel Company stopped Booth & Flinn from passing over Cumberland Street in the Town of Harrison, from Fourth Street to the Marsh lands of complainants. (Harrison, Case p. 158, l. 20-41, p. 159, l. 1-30.)

Booth & Flinn had entered into a written contract on May 20, 1913, to fill up these lands for the complainants, and were about to perform this contract when prevented by the Crucible Steel Company. (Gardner, Case p. 113, l. 12-40, p. 13.)

This marsh land was that part of the Preston tract lying between Cumberland Street and the Passaic River, adjoining the westerly boundary line of the Preston tract. (Gardner, Case p. 113.)

Complainants, some years ago, had determined to reclaim this marsh land for a freight delivery yard, as their public duty to a part of the City of Newark. (Gardner, p. 123, l. 5-40). The plan was finally adopted in August, 1911. (Ex. C-9, Case p. 264.)

The filling in that Booth & Flinn were about doing was in preparing this land in accordance with this plan for a freight delivery yard. (Gardner, Case p. 124, l. 18-25.)

Booth & Flinn had a contract with the Passaic Valley Sewerage Company to excavate Section No. 7 of that sewer. (Case p. 107, l. 18-24.)

On the Gilbert Map of 1852 (Ex. C-1, p. 242), Cumberland Street is laid down 60 feet wide, extending easterly from the Passaic River easterly to 7th Street, and crossing 3rd, 4th, 5th and 6th Streets at right angles.

The Gilbert Map was filed in the Clerk's Office of Hudson County in July, 1852, and continuously ever since that date the lots on that map have been conveyed by reference to that map. Deeds to both complainants and defendants contained such reference.

On the map of 1837, called "Map of the Preston Tract" (Ex. C-2, p. 244), an unnamed street 60 feet wide is shown as extending easterly from the Passaic River across intervening streets to the location of Seventh Street, substantially as Cumberland Street is shown on the Gilbert Map of 1852.

On January 2, 1873, Lathrop conveyed to complainants the Preston Tract (Ex. C-3, p. 254.)

On August 14, 1888, Cumberland Street between Fifth Street and Sixth Street was vacated by the Town. (Case p. 128, l. 28).

On October 1, 1895, the Town vacated all the street on the Preston Map of 1837 (Case p. 127, l. 31-40), south of the southerly line of Railroad Avenue. (Case p. 106. l. 41, 107 l. 1-11.)

In 1903 the complainants elevated their main tracks through the Town of Harrison. (Gardner, Case p. 119, l. 10-20.)

Only one street in the Town of Harrison crosses the main line of the complainants' Railroad, and that is Fourth Street. That is an under-grade crossing.

Fourth Street is graded, paved and curbed, and connects the main portion of the Town of Harrison on the north with the City of Newark on the south, crossing the Passaic River at Jackson Street by a bridge. (Gardner, Case p. 119, l. 30-35; p. 125, l. 1-30.)

Cumberland Street, east of Fourth Street, for a distance of 400 feet, has been filled in—the land at that point and southerly to the Passaic River being marsh land.

The present elevation of this filling is a little lower than the surface of Fourth Street.

Prior to May, 1901, in addition to the streets laid down on the Gilbert Map and the map of the Preston Tract, an old road existed leading from near the Passaic River at Fox Island across the Preston Tract and across the land occupied by the Crucible Steel Company, to Sixth Street, at which, at that time, there was a crossing of the main line of the complainants. (Gardner, Case p. 114, l. 31-40; p. 115, l. 1-5.)

The Atha & Illingsworth Iron Works were conveyed to the Crucible Steel Company on August 13, 1900.

Several years after the elevation of the railroad the complainants constructed on the Preston Tract south of the elevated railroad, their large Manhattan Transfer Station, and southerly thereof various elevated tracks appurtenant thereto, at a

very large expense, which completely blocked off the old road shown on Ex. C-4, p. 258. (Gardner, Case p. 120, l. 10-40; p. 121, l. 1-40.)

After May, 1901, the Crucible Company by buildings, elevated railroad tracks and pits, completely destroyed the old road over the Crucible Steel property (Case p. 121, l. 10-40.) All the streets shown on the Gilbert Map east of Fourth Street and south of the main line of the complainants' railroad have been vacated by the Town.

On February 4, 1907, Grimm conveyed to the defendant the Hudson Railroad & Transportation Company, in Block 80, Lots from 1 to 18 inclusive on the Gilbert Map; and in Block 83, Lots 1 to 12 inclusive on the Gilbert Map (case p. 267, Ex. D-2).

And on January 15, 1910 (Case p. 270, Ex. D-4) by another deed he conveyed a plot of land shown on the Gilbert Map as follows:

> "All that part of Cumberland Street lying between the easterly line of Fourth Street and the easterly boundary of the East Newark tract, and Blocks 80 and 83 as laid down on said map;"

reciting, however, that

> "It is the intention of the parties of the first part to convey all right, title and interest, if any, in and to Cumberland Street" (case p. 269, Ex. D-3).

On May 17, 1901, the complainants, as party of the first part, the Crucible Steel Company, as party of the second part; James H. Young and others, as parties of the third part, and Ruth Dana Draper, as party of the fourth part, entered into a contract by which, for a consideration by each to the other paid, each covenanted and agreed with the others and each of them, that a strip of land 60 feet in width and extending from Cum-

berland Street easterly across the said lands "of the parties hereto be and the same is hereby dedicated and appropriated as a road; the said strip of land so dedicated being east of Fourth Street at the end of Cumberland Street as laid out on the Gilbert Map"; and that "Cumberland Street, of which the land above described is an extension, is shown on the map of the Gilbert Tract above referred to, and on the official map of the Town of Harrison, made by Young & Borie, surveyors; it is 60 feet in width and crosses Fourth Street at right angles extending easterly to the said boundary line of the Gilbert and Preston tracts. The northeast corner of Fourth and Cumberland Streets is 2020 feet southerly from New Jersey Railroad Avenue; The distance from Fourth Street along the northerly line of the Preston Tract is shown differently on the different maps."

The second, third and fourth parties released and surrendered to the complainants

> "All rights of way over the Preston Tract or "any part of it arising from any source whatever, which they or any of them may have "or claim to have."

On June 22, 1910, the complainants by warranty deed conveyed to the Crucible Company part of the Preston tract beginning on the northerly line of Cumberland Street and Fifth Street, and describe it as the Cumberland Street extended by the agreement of 1901 (case p. 259, Ex. C-5).

On the 13th day of November, 1911, the complainants conveyed by warranty deed to the Crucible Steel Company another tract of land in the northerly line of Cumberland Street, part of the Preston tract. The beginning of this tract is on the easterly line of the Gilbert tract as shown on the Gilbert Map 1852 (case p. 262, Ex. C-6).

ARGUMENT.

POINT I.

The covenants by the respective parties to the agreement of 1901 operated to grant an easement, a right of way, in favor of each of said parties, over Cumberland Street as "dedicated" and "defined" in said agreement.

Van Horn v. *Clark,* 56 Eq. 476;
Brewer v. *Marshall,* 18 Eq. 337;
Portsmouth National Bank v. *Portsmouth Savings Bank,* 53 Atl. 1017;
Lengyel v. *Meyer,* 70 Eq. 501;
Atlantic City v. *New Auditorium,* 63 Eq. 644;
Wilkinson v. *Suplee,* 31 Atl. 36;
O'Neil v. *Holbrook,* 121 Mass. 102;
14 Cyc, 1162;
10 *A. & E. Ency.* 413;
Washburn on Easements, 2nd Ed., Sec. 44.

The intention of the parties to the agreement is clear and shows a desire on their part to have this strip of land, Cumberland Avenue, set aside for the purpose of affording them a means of access to and from their lands. They wanted to dedicate it for a public street. The late Vice Chancellor Emery questioned whether the dedicated strip was accepted by the public.

While the complainants urged that their rights in Cumberland Street should be protected, first because it was private way, and second because it was public way, no appeal has been taken in this suit from the determination of the Vice Chancellor that a public way was not sufficiently proven and consequently that fact has no importance in this suit.

In the case of *Dill* v. *Board of Education*, 47 Eq. 421, 10 L. R. A. 276, the Court held:

> "Where the owner of land makes a map of "it, showing a street upon it, and sells lots "abutting upon and calling for such street, "but the same is never used or accepted by "the public, the purchasers, nevertheless, ac- "quire the same rights in the street so called "for as against the original owner and each "other, as they would if it were in fact a pub- "lic street."

To the same effect see

White v. *Tide-Water Oil Co.*, 50 Eq. 1;
Booraem v. *Hudson Co. R. Co.*, 40 Eq. 557.

In *Dodge* v. *Penna. R. R. Co.*, 43 Eq. 351, the Court at Page 358 said:

> "and where land is conveyed as abutting on a proposed street, before a public highway in "fact exists there, and a way over such pro- "posed street is essential to the beneficial en- "joyment of the land granted, or even a de- "sirable accessory to it, the implication that "until the proposed street becomes an actual "highway, the grantee shall have the use of it "as a means of passage to and from his land, "seems not only to be reasonable and just, "but absolutely necessary to give effect to the "manifest intention of the parties."

POINT II.

ESTOPPEL.

The complainants maintain that the Crucible Steel Company and the Hudson Railroad & Transportation Company are estopped from preventing the complainants from utilizing Cumberland Street as a means of access to the property in question.

The equitable principle insisted on by the complainants is as stated by Vice Chancellor Pitney, in *Sumner* v. *Seaton,* 2 Dick. Ch., p. 103 (47 Eq.):

> "The true ground of *equitable estoppel* I conceive to be that the party in reliance upon the existence of a certain state of facts, has so changed his position that he cannot be restored to his former position and will suffer serious loss if the facts prove to be different from what he supposed them to be, and the estoppel arises against the party who is responsible for his action on such a mistaken belief and it operates to prevent him from asserting the contrary."

Cited and amplified in

Ruckelschaus v. *Oehme,* 3 Dick. 451;
Morris v. *Joyce,* 18 Dick. (63 Eq.) 549.

And in the Court of Errors:

Camden v. *Ward,* 67 N. J. L., 564;
Pomeroy Equity Jurisprudence, 3d, Ed. Sec. 802.

This estoppel arises——

First: From the contract of May 17, 1901 (p. 16).

Second: From the deed, Exhibit C-5, dated June 22, 1910, from the complainants to the Steel Company.

Third: From the deed Exhibit C-6, dated November 13, 1911, from the complainants to the Steel Company.

Fourth: From the serious loss to the complainants if prevented from using Cumberland Street, because of their change of position since 1901, on their belief that they would always have a right to cross and recross over Cumberland Street as established by the agreement of 1901 aforesaid.

EXHIBIT C-6.

This conveyance was a warranty deed and was accepted by the Steel Company.

On the date of its acceptance (November 13, 1911), the title to the land between Fourth Street and the Preston tract was in the Steel Company and the Hudson Railroad & Transportation Company, or one of them.

This conveyance described the property conveyed as follows:

> "BEGINNING at a point in the easterly line of the tract known as the Gilbert tract shown on a map entitled 'Map of lots in East Newark for Hiram Gilbert, Clark and Bacot, City Surveyors, July 15, 1852, filed in the office of the Register of Hudson County as Map No. 234, said point being in the north line of Cumberland Street (sixty feet wide) at the end of said street as laid out on said map and mentioned in an agreement between the said the United New Jersey Railroad Company and Canal Company and Crucible Steel Company of America and others, dated May 17, 1901, and recorded in Book 794 of Deeds for Hudson County, page 207, and said point being at the distance of two hundred and forty-five feet and three one-hundredths of a foot measured eastwardly along the northerly line of the said Cumberland Street from its intersec-

tion with the easterly line of Fourth Street and extending thence along the line of said Gilbert Tract, which is the dividing line between that tract and the tract known as the Preston Tract, the three following courses and distances, viz:— * * * * * * to a point in the northerly line of a strip of land sixty feet wide dedicated and appropriated as a road by the above recited agreement dated the seventeenth day of May, 1901, and thence westwardly along the said northerly line north eighty-two degrees twenty-four minutes west three hundred and fourteen feet and ninety-seven one-hundredths of a foot to the place of beginning."

Attention is called to the care displayed, because, while the agreement of May 17, 1901, stated that the distance from Fourth Street along the northerly line of Cumberland Street to the boundary line of the Preston tract was shown differently on different maps, but did not state what the distance was, and Kreiner testified (Case p. 208-209) that this distance as shown on the Gilbert Map of 1852 was 175 feet, yet this deed, Ex. C-6, states this distance to be "two hundred and forty-five feet and three one-hundredths of a foot."

Attention is called to the expression "appropriated as a road."

The word "road" ordinarily signifies a way for horses and carriages, actually existing, to some thoroughfare.

Cumberland Street was so located that it had no access to any thoroughfare, except by Fourth Street.

Exhibit C-5 was also accepted after the title was in the same defendants. It also referred specifically to the agreement of May 17, 1901, and described Cumberland Street in language which shows that the complainants believed, and were

acting on the belief, that they were entitled to free access to their property from Fourth Street over Cumberland Street.

The acceptance of these deeds by the Crucible Company, containing the recital of the existance of the agreement of May 17, 1901, was a re-execution and affirmation of that agreement.

Am. & Eng. Cyc., Vol. 44, page 66.

The recitals as to Cumberland Street were intended to be a statement which both parties agreed to admit as true and as binding, notwithstanding the deed was only executed by the complainants.

In *Cooper* v. *Louanstein,* 37 Eq. 285, the grantor sought to restrain the grantee from obstructing the view from grantor's window over the grantee's lot. The deed contained a clause by which the grantor was to enjoy two windows looking out upon the grantee's lot, "which windows shall not be hindered or obstructed in any way by grantee." The great weight of authority makes such recitals binding on grantee as well as on grantor.

Judge Depue, in the Court of Errors, says (p. 310):

> "A contract, the terms of which are reduced to writing, though signed by one party only, if delivered and accepted by the other party, becomes the written contract of both parties. All the authorities agree that the grantee in a deed which has been accepted by him is bound by the stipulation on his part contained therein."

And again, on page 311:

> "The deed is evidence that he made the agreement contained in it, and a Court of Equity will restrain him from doing what he agreed not to do."

The following cases are in point:

Finley v. *Simpson,* 22 L. 311;
Earle v. *New Brunswick,* 38 L. 47;
Woodruff v. Woodruff, 44 Eq. 349, 1 L. R. A. 380;
Golden v. *Knapp,* 41 L. 215.

The Crucible Steel Company, having granted the complainants a right of way by the agreement of May 17th, 1901, cannot now do anything in derogation of said contract. It cannot deny the full operation and effect, nor can it in any way defeat or interfere with the enjoyment of the rights obtained by the complainants under the agreement.

Baltimore &c. R. R. Co., v. *Bouvier,* 70 Eq. 158;
Burhaus v. *Vanness,* 10 L. 102;
Abert v. *Bordine,* 20 L. 394;
Wyckoff v. *Gardner,* 20 L. 556;
Millican v. *McNeil,* 114 S. W. 106, 21 L. N. S. 60;
Jenkins v. *Collard,* 145 U. S. 546, 36 L. Ed. 812;
16 Cyc 686, and cases cited in notes there.
Herman v. *Roberts,* 119 N. Y. 37, 7 L. R. A. 226.

The contract of May 17, 1901, was manifestly for the purpose of providing a way over Cumberland Street to Fourth Street, in place of any of the other ways of access either existing by reason of immemorial use or created by maps filed and deeds of lots referring thereto.

All such ways were released and surrendered by this agreement, leaving no other road to large tracts of valuable land.

Since 1901 the complainants have expended large sums, under the obvious expectation that no obstacle would be interposed by the Steel Com-

pany in the way of their enjoyment of Cumberland Street as a way to and from Fourth Street (Gardner case, p. 120-121).

It is evident that the parties would not have executed the agreement, except on such expectation.

The complainants have devoted the land south of Cumberland Street to a freight disposal station. For that purpose the land is of great value to the complainants and to the Public, if access to Fourth Street is undisturbed.

This freight delivery yard was in the mind of complainants in 1901 and the plan of it was adopted in August, 1911, prior to the deed of November 11, 1911, to the Steel Company, and the contract to grade the land for said station was made on May 20th, 1913 (Gardner case, p. 123-126).

It is a well established principle in equity that a person will not be permitted to take advantage of his own wrong after having induced another, either by tacit acquiescence or express words, to expend money, give up rights, or change his position in any other way in reliance upon words or acquiescence.

Jarman v. *Freeman,* 78 Eq. 464;
Philhower v. *Todd,* 78 Eq. 312;
Dougherty v. *Dougherty,* 7 Eq. 643;
Southard v. *Morris Canal &c. Co.,* 1 Eq. 518;
Morris &c. R. R. Co. v. *Prudden,* 20 Eq. 530;
Morris Canal Co. v. *Diamond &c. Mills,* 73 Eq. 414;
Smith v. *Rowland,* 90 Atl. 183.

POINT III.

The Hudson Railroad & Transportation Company should be enjoined along with the Crucible Steel Company.

The bill so alleges (par. 3, page 4, line 24 of the printed book).

The answer to this allegation of the bill is as follows (par. 3 case p. 90):

> "The defendants deny that the Crucible Steel Company own the stock of the Hudson Railroad & Transportation Company."

They do not deny that it was organized by the Crucible Steel Company, and that the stock is held in the interest of the Crucible Steel Company.

The testimony of the Manager of the Crucible Steel Company, commencing on page 170, is to the effect that all the officers of the Railroad Company are officers of the Crucible Steel Company; that the office of the railroad company is at Pittsburgh, in the office of the Crucible Steel Company (p. 172); that the control of the property of the railroad company is in the Manager of the Steel Company; that the length of the railroad is less than a quarter of a mile, and that the company was organized for the purpose of transporting the freight of the Crucible Company within its own lines.

And on page 180 line 30; that the Crucible Steel Company placed the obstructions on Cumberland Street; that about a month afterwards the expense was charged to the Hudson Railroad & Transportation Company; that the application to the Town of Harrison, to vacate Cumberland Street, in June, 1913, was signed by the Crucible Steel Company, in which they stated that they owned the land fronting on Cumberland Street and offered to give $8,000. to the Town for a quit-claim deed

of the land in Cumberland Street from Fourth Street to the Preston line; and afterwards, in a written application, the Crucible Steel Company stated that the object for which they desired the Town to vacate Cumberland Street was that the Crucible Company might use the parts of the street so vacated to erect buildings as additions to the Crucible Plant (p. 181, 182 and 183).

And on page 172 line 25 &c, that the only business of the Railroad Company was in connection with the carrying of freight and merchandise around the Crucible Steel Company's property at Harrison, and that it had no other business.

This testimony shows that the Crucible Steel Company is the equitable owner of the property in the name of the Hudson Railroad & Transportation Company; that it has exercised dominion and control over it; and that it has treated the land as its own. By taking title to the land in the name of the Hudson Company, the Crucible Steel Company is defeating the rights of the complainants under the agreement of 1901, by means of a subterfuge. In view of these facts, any acts by the Hudson Company in derogation of the rights of the complainants under the agreement of 1901 and the deeds above set forth, must be taken as the acts of the Crucible Steel Company, which, in reality, is the prime mover.

The court's attention is especially called to the citation from Cook on Corporations, 7th Ed., Vol. 3, pages 2142-3, referred to by defendants at page 11 of their brief. The entire section from which that extract is taken is not given by them. It commences:—

> *"Dummy" corporations—The courts will ignore the corporate existence where it is fraudulently used to do what the stockholders cannot legally do. An individual or corporation owning all the stock of another corporation is not ordinarily liable for the debts of*

the latter. A corporation is in law a person or entity entirely distinct from its stockholders and officers. It may become insolvent and yet not make them insolvent. It may commit fraudulent or *ultra vires* acts and yet they be not liable therefor. It may do acts which its stockholders as individuals may be under contract not to do, and the stockholders may do acts which the corporation cannot do. The disabilities of the corporation are not disabilities of the stockholders, nor are the disabilities of the stockholders the disabilities of the corporation. Hence it is that a corporation is often organized to act as a "cloak" for frauds. Such cases as these are becoming common, and the courts are becoming more and more inclined to ignore the corporate existence, when necessary, in order to circumvent the fraud. Thus, it has been held that, where a person has contracted that he will not do a certain act, he cannot form and control a corporation and have the corporation do that act."

In the leading case of *United States* v. *Milwaukee Refrigerator Transit Company,* reported in 142 Fed. at page 247, the court held that a corporation will be looked upon as a legal entity, as a general rule, and until sufficient reason to the contrary appears; but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons; and where one corpration was organized and is owned by the officers and stockholders of another, making their interests identical, they may be treated as identical, when the interests of justice require it.

At page 255 the court says:

"Applying the rule here laid down to the circumstances shown to surround the Brew-

ing Company and Transit Company, can it be doubted that there really is, in substance and effect, an identity of interests, or that the Brewing Company, considered as an association of individuals, really owns and fully controls the Transit Company?''

In this case the Pabst Brewing Company of Milwaukee organized a dummy corporation—Milwaukee Refrigerator Transit Company—as a device to cover rebates on large shipments of beer. The directors of the Brewing Company owned the majority of the stock and controlled the Transit Company. The Brewing Company then contracted with the Transit Company for the shipment of all of its freight, the former thereby indirectly securing for itself concessions and rebates which were unlawful under the Elkins Act of 1903.

To like effect,

Smith v. *Moore,* 199 Fed. 689;
In re McCarthy Portable Elevator Co., 196 Fed. 247; affirmed in 201 Fed. 923;
Ling & Lane Lumber Co. v. *United States,* 196 Fed. 493;
In re Rieger, Kapner & Altmark, 157 Fed. 609;
First National Bank v. *Trebein Co.,* 59 Ohio St. 316; 52 N. E. 834;
Martin v. *D. V. Martin Company,* 88 Atl. 612.

In *Union Pacific Ry.* v. *Chicago &c. Ry.,* 163 U. S. 564, the Court held that a contract between three local companies by which one runs over the tracks of another for consideration paid to the third, is legal as to the second corporation, where such second corporation is a mere dummy of a third corporation, and the earnings of both corporations go together.

In *Kelly* vs. *Ning Ass'n.,* 2 Cal. App., 460, the

Court held that where one corporation owns all the stock and purchases all the property for another corporation, and employs a person to do work for the latter, it is liable for his wages, on the ground that the subordinate company was merely an agency or instrumentality for carrying out the purposes of the former.

See also,

Donovan v. *Purtell,* 216 Ill. 629; 1 L. R. A. n. s. 176;

Beal v. *Chase,* 31 Mich. 490;

Le Page Company v. *Russia Cement Co.,* 51 Fed. 941;

Hagy v. *McGuire,* 147 Pa. St. 187;

Fitzgerald v. *Fitzgerald Company,* 41 Neb. 374.

It is undoubtedly the law that a corporation is considered as an entity, without regard to the corporators who compose it. It is considered a juristic person, a thing distinct from its constituent parts. The law courts in the main adhere strictly to this view of a corporation. While at law the figurative entity theory takes the shape of a dogma and is often applied vigorously, without regard to its true purpose and meaning, in equity, however, the conception of a corporate entity is used merely as a formula for working out the rights and equities of the real parties in interest.

In the case at bar, is it not sheer effrontery to maintain in a court of equity that the Hudson Railroad & Transportation Company, incorporated not under the act concerning Railroad Corporations, but under the act for incorporating miscellaneous corporations, viz.: "An Act concerning Corporations, Revision of 1896," is so settled, so distinct, so unrelated to the Crucible Steel Company that this mis-called railroad engaged in operating within the property lines of

the Crucible Steel Company, is entitled to assert the innocence of a stranger? The Vice Chancellor found as a fact that the barrier of steel and concrete was erected by the Crucible Steel Company on the property of the Hudson Company—a strange liberty for the Steel Company to take with the lands of the Hudson Company unless there were some understanding between them. He also found that as between the two companies, the expense of the erection of the barrier was charged in the first instance to the Steel Company, and was subsequently charged to the Hudson Company. He also found that the manager of the Steel Company is a director of the Hudson Company and "personally has control of the property of the latter company, and was connected with placing the obstruction by the Crucible Steel Company, and on behalf of the Steel Company applied for the vacation of Cumberland Street."

All the officers of the Hudson Company are officers of the Steel Company. The Hudson Company, although a New Jersey corporation, has an office at Pittsburgh in the office of the Steel Company. Under these circumstances, it is medieval to attempt to set up separate entity as a legal barrier to evade the responsibility of the Steel Company under the agreements and deeds.

This court in common with others has never hesitated, where the needs of equity demanded it, to strip away the corporate form and deal with the essence. Or, as this court said in *Breslin* v. *Fries-Breslin*, 70 Law 274-282:

> "The law deals with the corporation as an "artificial person. Equity realizes that this "legal entity is but a legal fiction. Looking "through the form, it discerns the sub-"stance."

See also *Perkins* v. *Trinity Realty Co.*, 69 Eq. 723-732.

"No citation of cases is necessary to es-
"tablish the well settled doctrine that courts
"of equity will disregard the corporate form
"where justice requires it, and its retention
"is not needed to protect some interest re-
"quiring protection."

POINT IV.

Counsel fees were properly allowed.

Defendants, in their brief, contend that no counsel fees should have been allowed the complainants, on the ground that the decision of the Court of Chancery is a "split verdict".

Diocese of Trenton v. *Toman,* 70 Atlantic, 881, is cited. That case holds that where complainant and defendant are each successful on one or more substantial issue, neither is entitled to costs as against the other.

In this case the defendants were in no way successful on any of the questions. The bill filed prayed an injunction on several grounds—that Cumberland Street was a public street, that complainants had a private right of way therein, &c.

The theory of the appellant seems to be that a decree should cover all the negations that arise in the course of the controversy, and should state what contentions of the parties are disallowed. It has been decided in this State in *Bull* v. *International power Co.,* 93 Atl. 86, that it is not the practice in this State to adjudicate a negation.

When the appellant claims that the complainant was partially successful because the Vice Chancellor decided that Cumberland was not a public street, we submit he confuses issues with the arguments to uphold them. In effect the complainant said to defendant: "You ought not to obstruct Cumberland Street and prevent my using it, first because I have rights to it as a private way, and second because it is a public way."

On this last the Vice Chancellor held otherwise, but the issue was whether or not the defendants had the right to obstruct the complainants in their use of the *locus in quo*. Really the complainants' contention was in the alternative. They said it is either a private way or a public way. Whichever it is, our rights are clear.

The relief prayed for was granted on the ground that the complainants had a private right of way over Cumberland Street. It was unnecessary for the court to decide upon the question as to whether or not Cumberland Street had become public. The opinion held that it had not. This does not show that the defendants were successful on any issue. The Chancery Act of 1915 provides as follows:

> "Section 6—Costs. The court, upon making any order or decree may charge the successful party with costs or a reasonable counsel fee, or both, in any case in which the court shall deem it just to do so."

The court in its discretion in this case has allowed the complainants a counsel fee of $250, and, even assuming that the defendants are correct in their contention that complainants were only partly successful in the suit, still, under this section of the Act, the counsel fee should remain as allowed.

POINT V.

It is respectfully submitted that the decree of the Court of Chancery should in all things be affirmed.

VREDENBURGH, WALL & CAREY,
Solicitors for Complainants,
The United New Jersey R. R. & Canal Co. and The Pennsylvania R. R. Co.

ALBERT C. WALL,
Of Counsel.

New Jersey Court of Errors and Appeals

THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY, *Complainants-Respondents,* *and* CRUCIBLE STEEL COMPANY OF AMERICA AND HUDSON RAILROAD AND TRANSPORTATION COMPANY, *Defendants-Appellants,* HARRISON LAND COMPANY, BOOTH & FLINN, LIMITED, *Cross Complainants,* *Defendants-Respondents.*	*On Bill.* *On Appeal from Chancery.* *Case No. 1.*
BOOTH & FLINN, LIMITED, *Complainant-Respondent,* *and* CRUCIBLE STEEL COMPANY OF AMERICA AND HUDSON RAILROAD AND TRANSPORTATION COMPANY, *Defendants-Appellants,* THE TOWN OF HARRISON, *Defendant,* THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, AND HARRISON LAND COMPANY, *Defendants, Cross Complainants, Respondents.*	*On Bill.* *On Appeal from Chancery.* *Case No. 2.*

Brief for Harrison Land Company and Booth & Flinn, Ltd.

STATEMENT.

These two suits were instituted in the Court of Chancery for a similar object, viz: for an injunction to restrain the defendants, the Crucible Steel Com-

pany of America and Hudson Railroad and Transportation Company, from obstructing a way, road or street in the Town of Harrison, called "Cumberland street," and to require these defendants to remove the barriers or obstructions they had placed upon the said street.

In the original bill of the United Company only the two defendants above mentioned were joined; but subsequently by amendment the Harrison Land Company and Booth & Flinn, Limited, were added as defendants (p. 24). Booth & Flinn, Limited, appeared and filed its answer (p. 85); and the Harrison Land Company appeared and filed an answer and cross-bill (p. 70).

In the suit of Booth & Flinn, Limited, not only were the defendants, the Crucible Company and the Hudson Railroad and Transportation Company originally made parties *but also the Town of Harrison.* And by an amendment the United New Jersey Railroad and Canal Company, the Pennsylvania Railroad Company and the Harrison Land Company were also made defendants (p. 69). The Harrison Land Company likewise appeared in this suit and filed an answer and cross-bill (p. 73).

The two suits were tried together (p. 102). The appeals are from the decrees entered in the two suits, which decrees in effect granted the relief prayed for in the respective bills of complaint and cross-bills.

There is no serious dispute with reference to the facts involved in these cases. All of that part of the Town of Harrison (then East Newark) lying south of the main track of the Pennsylvania Railroad (and part of the town lying north thereof) consisted in the years 1837 and 1852 of two tracts of lands, one called the "Gilbert Tract," and the other, the "Preston Tract" or the "Canada Farm," or "Kennedy Farm." These two tracts were laid out into blocks, lots and

streets, the streets being laid out co-incidentally and in entire correspondence on both tracts. (Maps, pp. 242, 244.)

The United New Jersey Railroad and Canal Company in 1873 became the owner of the second of these tracts (pp. 107, 254).

In 1901 all of the lands in Harrison lying south of the main track of the railroad and east of Fourth street were owned by the United New Jersey Railroad and Canal Company (of which the Pennsylvania Railroad Company was lessee), the Crucible Steel Company, the Young Estate (now the Harrison Land Company) and the Draper Estate (now the Pennsylvania Railroad Company), except a small tract, at one time owned by one Blake, which immediately adjoined Fourth street on the east on both sides of Cumberland street.

This excepted tract extended along Cumberland street from the easterly side of Fourth street to the westerly boundary line of the "Preston Tract" or "Canada Farm," a distance approximately of 236 feet (p. 56). This tract now belongs to the defendant, Hudson Railroad and Transportation Company.

In 1901 the Pennsylvania Railroad Company and the Crucible Steel Company, as is evidenced by their subsequent actions, had in mind the extension and improvements of their respective properties in such way as would exclude all access on any of the streets or roads extending through them to the lands belonging to the Young Estate and to the Draper Estate.

The Crucible Company shortly thereafter erected buildings and other barriers, of one kind and another, across the old road which gave access from the centre of the town to the lands of the Young Estate (pp. 114, 116 *et seq.*, 121). It also instituted proceedings before the Common Council of the town which resulted in the vacation of the streets running through its property which if opened and graded would have afforded the only means of reaching the Young lands

from the north (Ex. C. 4, p. 258; pp. 100, 127, 128-130).

The Pennsylvania Railroad Company had in mind the elevation of its railroad tracks through Harrison (p. 118), the effect of which when made was to take away all possibility of reaching the lands of the Harrison Land Company through Fifth, Sixth and Seventh streets (pp. 118 *et seq.*).

These changes in the roads lying to the north and northwest of the lands of the Harrison Land Company subsequently destroyed all possible access to those lands, except through Cumberland street (pp. 126, 130 and 197).

This being the situation, it became necessary for these two companies, the Pennsylvania Railroad Company and the Crucible Company to come to some arrangement with the owners of the lands of the Young and Draper Estates, so as to give them some other and some certain means of access to their properties. Thereupon, the agreement of May 17, 1901, was executed (p. 16). This agreement was made between the United New Jersey Railroad and Canal Co. of the first part, Crucible Steel Company of America of the second part, James H. Young and Mason Young, surviving executors of and trustees under the last will and testament of Henry Young, deceased, of the third part, and Ruth Dana Draper, sole devisee and legatee of William H. Draper, deceased, of the fourth part, and in it the parties thereto did agree, among themselves, as follows:

> "That a strip of land sixty feet in width an extension of Cumberland street easterly across the said lands of the parties hereto be and the same is hereby dedicated and appropriated as a road, the strip of land so dedicated beginning east of Fourth street at the end of Cumberland street as laid out on the Gilbert Map and in the aforesaid dividing line between the Preston Tract and

the Gilbert Tract and running thence easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties hereto to the middle of the said ditch which forms the easterly boundary of the said land of the party of the fourth part. Cumberland street of which the land above described is an extension, is shown on the map of the Gilbert Tract above referred to and on the official map of the Town of Harrison, made by Young and Borrie, Surveyors. It is sixty feet in width and crosses Fourth street at right angles extending easterly to the said boundary line of the Gilbert and Preston Tract; the northeast corner of Fourth and Cumberland street is two thousand and twenty feet southerly from New Jersey Railroad avenue. The distance from Fourth street along the northerly line of Cumberland street to the boundary line of the Preston Tract is shown differently on the different maps" (p. 18).

And also:

"It is further agreed that any of the parties hereto may at any time, but without expense to the others or to any of them, fill in and grade the said road or any part of it, and this agreement shall bind the successors, heirs, executors and assigns of the respective parties" (p. 18).

The executors of the Young Estate then owned their lands in fee simple (pp. 99, 245, 257), as was found by the learned Vice-Chancellor (p. 283) and had a right to enter into the agreement.

CUMBERLAND STREET.

Cumberland street, mentioned and provided for in this agreement of May 17, 1901, was a paper street laid out on the Hiram Gilbert Map and on the map of the "Preston Tract" (pp. 241-244). Its extreme

westerly line commenced at the Passaic River and extended thence easterly across Second, Third and Fourth streets and from Fourth street it extended easterly through the Preston Tract and through the lands of the Young Estate (now Harrison Land Company) to the Draper lands.

All of this is shown more particularly by the Town Maps 5, 6, 11 and 12, which were put in evidence (p. 194) and the Survey Map of August 8, 1913, Exhibit C. 7, H. L. Co. (p. 196), which has been left out of the Printed Case but which is found in the Printed Case of the Harrison Land Co. against the Crucible Steel Co.

The important point in the agreement was to give access through Cumberland street to Fourth street to the owners of the lands who executed the agreement. Fourth street was and is one of the main thoroughfares of the Town of Harrison. It ran north and south, reaching Newark on the south by means of the Jackson street bridge and also reaching all the important points and places of Harrison on the north (p. 125).

The public character of Cumberland street.

Cumberland street, through its whole length, had been recognized by the town on all its maps (the Town Maps which were put in evidence, but which are not printed in the record, and pages 192, 196-198, 199).

The bill of complaint of Booth & Flinn, Ltd., claimed that Cumberland street between Fourth street and the westerly boundary of the Preston Tract was "a public highway" (p. 27) and that "Cumberland street easterly from Fourth street is still a public street" (p. 29). To this bill of complaint, as we have seen, the Town of Harrison was made a party and filed an answer, and it did not deny the allegations of the bill with respect to the public character of Cumberland street (p. 88).

The Crucible Steel Co., also, in its answer did not deny the public character of that street (p. 94).

The cross-bills of the Harrison Land Co., in both cases, claimed and charged that "Cumberland street is and has always been a public street or highway" (p. 77). The answers of the Crucible Steel Co. to the cross-bills also fail to deny the public character of Cumberland street (p. 93 and 96).

It also appeared that in 1911 the Crucible Steel Co. applied to the Town of Harrison for the vacation of Cumberland street to the line of the Preston Tract. And again, in 1913, it made a similar application; and under the second application public notice of intention to vacate Cumberland street was given by the town authorities and, after the said notice had been published, an ordinance was introduced in the Common Council for the vacation of Cumberland street and passed to its first and second readings and was published, as required by law. All the proceedings with regard to the vacation of Cumberland street are shown in the Printed Book in the case of the Harrison Land Co. against the Crucible Steel Co. at pages 5, 16, 17, 22, 37, which was admitted in evidence (pp. 156-158, 220).

Furthermore, in the suit of the *Harrison Land Co.* vs. *Crucible Steel Co.,* to which the Town of Harrison was a party (the record in which was, as we have seen, admitted in evidence in the suits (pp. 156-158, 220), the bill of complaint, in paragraph III, charged that Cumberland street extending easterly from Fourth street a distance of about two hundred and thirty-six feet "is and is recognized as one of the public streets of said town." The answer in this suit of the Crucible Co., in its third paragraph says: "Defendant admits that said street is a public street in the Town of Harrison for the distance of two hundred and thirty-six and seventy-two one-hundredths of a foot (236.72) measuring *south*" (obviously intended for east)

"from Fourth street," and its principal answering affidavit declares that "Cumberland street which has been a public street for the distance of about two hundred and thirty-seven feet extending easterly from Fourth street has never been used as a street." Of more importance, the answer of the Town of Harrison, in its 3rd paragraph, declares: "Defendant admits that said street, Cumberland street, is a public street in the Town of Harrison for the distance of two hundred and thirty-six and seventy-two one-hundredths feet (236.72) measuring *south* from Fourth street." And this answer was filed separately and by the regular counsel of the municipal corporation, Messrs. Michael T. and Hugh C. Barrett (Case, *Harrison Land Co.* vs. *Crucible Steel Co.*, pp. 2, 39, 44, 47). *Cumberland street recognized as a highway.*

In addition to the agreement of May 17, 1901, various deeds were put in evidence which showed the recognition by the Crucible Steel Co. of Cumberland street as a way:

(1) Deed from United New Jersey Railroad & Canal Co. of America, dated June 22, 1910 (pp. 111, 259).

(2) Deed from Same to Same, dated November 13, 1911 (pp. 111, 262).

(3) Exhibit C. 7a, deed from Benjamin Atha & Illingworth Co. to Crucible Steel Co., dated August 13, 1900 (p. 190).

(4) George F. Blake and wife to Hudson Railroad & Transportation Co., dated January 15, 1910 (p. 270).

All these deeds conveyed lands on Cumberland street.

Hudson Railroad & Transportation Co.

After the agreement of 1901, and in 1907, the Crucible Steel Co. acquired the lands abutting on Cumberland street between the easterly line of Fourth street

and the westerly line of the Preston Tract, in width about 237 feet. It did not, however, take title in its own name. Title was taken in the name of Hudson Railroad & Transportation Company (pp. 267-271). It would seem to be obvious, from the testimony, that the Hudson Railroad & Transportation Company is in no just sense a separate corporation. It is controlled by the Crucible Company and is really part of that company. The annual report of the Transportation Company for 1913 showed that its office was at the office of the Crucible Company (p. 265); that it had but $20,000 of issued stock; and there is also a list of directors, all of whom, it subsequently appeared from the testimony, were officers and directors of the Crucible Co. (p. 171). It further appeared from the testimony that the business of the Transportation Company was "to convey freight and merchandise around the Crucible Steel Company's property and that its business is entirely with that company, and that it has no other business" (p. 172). It is obvious, from reading the testimony of Mr. Illingworth (pp. 170, *et seq.*) that the Hudson Railroad & Transportation Company has no independent existence outside of the Crucible Company, and that the lands in question, for the purposes of this action at least, although in the name of the Hudson Railroad & Transportation Company, are, in fact, owned by the Crucible Company.

The lands of the Young Estate, consisting of over seventeen acres, with a frontage of about 1,200 feet on Passaic River, to which are attached the riparian rights, are of large value. At the time of the agreement of 1901 and for some years thereafter there was no development or improvement of these lands and, therefore, the actual use of Cumberland street was not necessary. But in the year 1913 the Harrison Land Company began to improve its lands and for that purpose it entered into an agreement with Booth

& Flinn, Ltd., looking to the filling in and grading of Cumberland street and the filling in of the property (pp. 51-82).

For some reason, which does not appear, the Crucible Steel Co. evidently found the agreement of May 17, 1901, an obstacle to its plans. In 1910 it acquired title in the name of The Transportation Company to the 237 feet of Cumberland street between the easterly line of Fourth street and the westerly boundary of the Preston Tract. And in 1913, about the time when the Booth and Flinn contract was made, it began seriously to put into operation schemes for the destruction of Cumberland street as a thoroughfare. What it did in that year is fully set forth in the Printed Book in the case of *Harrison Land Co.* vs. *Crucible Steel Co. of America,* pp. 5, *et seq.*, 16, 17, 18, 22 and 37. On May 6, 1913, it made an application to the Mayor and Council of the Town of Harrison for the vacation of Cumberland street and other streets, offering to pay the town, if said streets were vacated, $8,000 (which was subsequently paid, p. 35). With the said application, or at about the same time, the Crucible Co. wrote a letter to the Town Council of Harrison, stating as follows: "It is the purpose of this company to use these parts of these streets, together with other land owned by the company, for the purpose of building additions to our present plant from time to time" (p. 37). On June 3, 1913, notice of intention to vacate Cumberland street extending from the easterly line of Fourth street easterly two hundred and thirty-six and seventy-two hundredths feet was given and published as required by law. On July 1, 1913, an ordinance for the vacation of so much of Cumberland street as was described in the notice of intention was passed to its first and second readings (on or about July 31, 1913, further proceedings for the vacation of Cumberland street were held up by the restraining order of the Court of Chancery, p. 26).

The object of the scheme of the Crucible Co. to have the 237 feet on Fourth street vacated is sufficiently plain, owning as it did on both sides of this 237 feet of Cumberland street (more effectively because the title was in its creature, the Transportation Co.). When vacation occurred it could immediately take possession of the said street and close it at that point, thus destroying Cumberland street as a thoroughfare and thus indirectly avoiding the obligations of the Crucible Co. established by the agreement of 1901 and by the estoppels in the various deeds.

On November 5, 1913, it prevented, by force, the agent of Booth & Flinn, Ltd., the contractors for both the Pennsylvania Railroad Company and the Harrison Land Company, from passing over Cumberland street, and shortly thereafter it laid heavy steel rails, steel castings, steel beams buried in cement and barriers over the whole width of Cumberland street at its intersection with its easterly line of Fourth street, which barriers, as the pleadings and testimony show, and the photographs display, were of a most substantial and extraordinary character (pp. 8, 23, 80, 90, 95, 98, 131, 158 *et seq.*, 180 *et seq.*, 231).

It therefore appears:

(1) That Cumberland street, whether a public highway or otherwise, is the only means of access to the lands of the Harrison Land Co.;

(2) That the Crucible Steel Co. on May 17, 1901, by its solemn engagement, bound itself to keep Cumberland street open as a thoroughfare, forever, for the uses of the parties to the agreement;

(3) That by accepting deeds from the United New Jersey Railroad & Canal Co. and others, expressly bounded by Cumberland street, it has estopped itself to deny the existence of that street; and

(4) That notwithstanding its solemn engagements, created by the agreement, and notwithstand-

ing its estoppels, it has now destroyed access to Cumberland street and thereby has destroyed all access to the property of the Harrison Land Co.

For some reason, not apparent, the defendant seems to place some reliance upon the record in the case of *Mason Young, et als.* vs. *Pennsylvania Railroad Company* in the Supreme Court (pp. 238-275). This record was only valuable in that it contained copies of certain ordinances vacating, at the instigation of the Pennsylvania Railroad Company, certain of the streets on the Gilbert Map. As the record discloses and as appears from the testimony (pp. 234 *et seq.*) this suit was with reference to lands located in a different part of the Town of Harrison from the lands of the Harrison Land Company involved in the present suit. The facts of the case in the Supreme Court have no bearing whatever upon the facts in the present case.

ARGUMENT.

I.

CONSIDERING CUMBERLAND STREET AS A PRIVATE WAY THE COMPLAINANTS ARE ENTITLED TO THE RELIEF PRAYED FOR.

(a) By the laying out of Cumberland street on the Gilbert and other maps and by the sales of properties with reference to those maps and that street, the owners of lands interested in that street acquired private rights therein. This is independent of the agreement of May 17, 1901.

Booraem vs. *North Hudson R. R. Co.*, 13 Stew., 557.

White vs. *Tide Water Oil Co.*, 5 Dick., 1, 7.

Morris & Essex R. R. Co. vs. *Prudden*, 4 C. E. Gr., 386, 391.

Clark vs. *City of Elizabeth*, 8 Vr., 120; 11 Vr., 172.

Lennig vs. *Ocean City Ass'n,* 14 Stew., 606.

Dodge vs. *Pennsylvania R. R. Co.,* 16 Dick., 351; 18 Stew., 366.

(b) The agreement of May 17, 1901, gave the Harrison Land Co. private rights throughout the whole length of Cumberland street. The effect of that agreement was to extend and produce Cumberland street and to make it a continuous and the sole highway from Fourth street to the easterly line of the Draper Tract, so that, as between the parties at least, it should remain forever for its entire width, and from end to end, free and unobstructed. This was the obvious intention of that agreement. To refuse relief would have the effect of abrogating and destroying the agreement.

White vs. *Tide Water Oil Co., supra.*

(c) One does not need to be an abutting owner if he can show a personal and property interest especially and immediately affected.

Stephens vs. *Paterson, &c., R. R. Co.,* 5 Vr., 532, 553.

Morris & Cummings Dredg. Co. vs. *Jersey City,* 35 Vr., 142; *Ib.,* 587.

Newark vs. *Hatt,* 50 Vr., 540.

II.

THE COURT OF CHANCERY HAS JURISDICTION TO ENFORCE BY AN INJUNCTION PRIVATE RIGHTS OF WAY.

White vs. *Tide Water Oil Co., supra.*

Lennig vs. *Ocean City Ass'n, supra.*

Herold vs. *Columbia Investment & Real Estate Co.,* 2 Buch., 856-861.

III.

CONSIDERING CUMBERLAND STREET AS A PUBLIC HIGHWAY THE COMPLAINANTS ARE ENTITLED TO THE RELIEF PRAYED FOR.

The learned Vice-Chancellor came to the conclusion that "the proof that Cumberland street east of Fourth street has been accepted by the municipality as a public street which it is obliged to repair for public passage is not sufficient" (p. 298). He seems to have been governed in reaching this conclusion largely by the fact that the Town of Harrison was not a party defendant to the suit (p. 299). But he evidently overlooked the fact that in the Booth and Flinn case the Town of Harrison was made a party defendant, and that the bill of complaint in that suit charged that Cumberland street easterly from Fourth street was a public street and that the Town of Harrison, by its own solicitors, filed an answer to that bill and did not deny the allegations in the bill with respect to the public character of Cumberland street.

Furthermore, it is respectfully insisted that the facts which are above stated with respect to the public character of Cumberland street clearly demonstrate that at least 237 feet of that street easterly from Fourth street is and has always been recognized as one of the public streets of Harrison.

As Cumberland street affords the sole and only access to the property of the Harrison Land Company, the damage which that company has sustained is special and different in kind from that sustained by the public generally and it is, therefore, entitled to special relief.

Ordinarily, the injury which a property owner, as one of the public, suffers in the obstruction of a highway, can only be remedied by indictment or by information through the Attorney-General. But this is

not true where the injury, which is to be redressed, affects the property owner specially, and especially where the obstruction destroys all access to the owner's property. In that case the effect is to destroy the owner's property entirely, and it would amount to a taking of the property without process of law.

It is respectfully insisted that this distinction is well recognized in the cases.

Morris & Cummings Dredg. Co. vs. *Jersey City,* 64 L. (35 Vr.), 142, 147-148; S. C. *Id.,* 588-589. (Action by one not an abutting owner.)

Purcell vs. *Edison Portland Cement Co.,* 65 L. (36 Vr.), 541-542 (where sole access was cut off).

Hatt vs. *Newark,* 79 L. (50 Vr.), 540.

Stevens vs. *Paterson, &c., R. R. Co.,* 34 L. (5 Vr.), 532, 553.

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Van Snack vs. *D. R. Canal Co.*, 20 N. J. L., 249.
Elliott Roads & Streets, pp. 537, 662-663.
2 *Beach on Inj.*, Sec. 1328.

See also:

Dodge vs. *Pa. R. R. Co.*, 16 Stew., 351-356; S. C., 18; Stew., 366.
Read vs. *Camden*, 25 Vr., 347-374.

It is respectfully insisted that the case of *H. B. Anthony Shoe Co.* vs. *West Jersey R. R. Co.*, 12 Dick., 607, relied upon by the learned Vice-Chancellor for his conclusion, is not in point, for the reason that while the obstructions in the highway there complained of interfered with the approach to the premises of the property owner, they did not destroy that approach, for a study of the case will show that the property owner was still left with a way to his property eighteen feet wide. It would have been hardly possible for any court to have permitted the entire access to a property owner's lands to be absolutely destroyed and his property, therefore, taken without compensation, and no such case can be found. It is obvious that there is a great distinction between the case of a property owner, the access to whose property is impeded, even seriously, from one where access is entirely destroyed. We have it in this case especially declared that the defendants proposed to use Cumberland street "for the purposes of building (thereon) additions to its plant." If permitted to work out their wrongful scheme they destroy the entire value of the property of the Harrison Land Company, and thereby the Crucible Steel Company is permitted to violate its solemn obligations under its contract of May 17, 1901.

It is respectfully insisted that the decree is plainly justified by all the circumstances of the case by legal authority and that it should be affirmed.

EDWARD A. & WILLIAM T. DAY,
Of Counsel with the Harrison Land Company and with Booth & Flinn, Ltd.

REPLY TO BRIEF OF RESPONDENTS.

To "(A)":

The agreement of May 17, 1901, shows, with respect to that part of Cumberland street 237 feet directly east from Fourth street, as the Vice-Chancellor found, "that the parties to the agreement intended that this portion should be considered as a way given by a public street for access to the dedicated street" (p. 289). The agreement and its recitals can admit of no other interpretation. Otherwise, the agreement would have been of no more value than the paper upon which it was written.

To "(C)":

The proof was made that the executors of the Young Estate had power to make the agreement, for it appears in the case, and is so found by the Chancellor, that they owned their lands in fee simple (pp. 99, 245, 257, 283).

To "(K)":

The evidence plainly shows that the Pennsylvania Railroad Company had no other access to its property except by Cumberland street. The respondents' brief misstates the fact with regard to Fifth street. The testimony discloses that there is simply a narrow tunnel under the elevated railroad of the Pennsylvania Railroad Company where Fifth street used to be, which gives access to the works of the Crucible Company. As is shown by the testimony, Fifth street south of the Railroad Company has been vacated. The works of the Crucible Company now occupy Fifth street.

However this may be, it is undisputed that the Harrison Land Company has no access to its lands by way of Fifth street or any other street except Cumberland street.

To "(P)":

The allegations here with respect to the Harrison Land Company are not true. The Harrison Land Company did not get "$22,000 or $25,000 from the Pennsylvania Railroad Company for permitting the Pennsylvania Railroad Company to close the other streets." And such a statement should not have been made in the case. The facts are these, as is disclosed by the record in the case in the Supreme Court brought by the Youngs against the Pennsylvania R. R. Co., which the respondents had put in evidence: the Young Estate brought suit against the Pennsylvania Railroad Co. for damages for the destruction of certain streets leading to certain lands belonging to the Young Estate in Harrison, which lands are far removed from and are entirely distinct from those which are involved in the present suit. That suit was decided adversely to the plaintiffs therein (*Young* vs. *Penna. R. R. Co.*, 72 N. J. L., 94). Subsequently, because it needed to use the same in connection with its Manhattan Transfer, the Pennsylvania Railroad Company purchased these lands from the Young Estate. The suit in the Supreme Court has no relation, direct or indirect, to the present suit.

To "(Q)":

There was nothing in the case that showed any trouble whatever in the location of Cumberland street. As a matter of fact, the evidence discloses that it was and is properly located on the map and there is no dispute but that the barriers which have been erected by the respondents are upon Cumberland street.

The Hudson Railroad and Transportation Company is so obviously a creature of the Crucible Steel Company, and that through it the Crucible Company is seeking to avoid its obligations, that we do not need to discuss it.

It should be stated here, however, that the Hudson Railroad & Transportation Company purchased its property with reference to the lay-out of Cumberland street on the Gilbert Map and is bound by the dedication of that street, and its lands were taken subject to the private interests which existed with respect to Cumberland street (pp. 267-271). On general principles, it is estopped to deny the existence of Cumberland street.

Note.

The cases printed herein were consolidated by Order, filed April 11, 1914.

For convenience of the court the papers have been designated as those of Case No. 1 and Case No. 2, respectively in relation to their importance to the matters at issue.

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Case No. 1.

Bill of Complaint of United New Jersey Railroad and Canal Co., et als.

Filed November 20, 1913.

In Chancery of New Jersey.

To His Honor, Edwin R. Walker, Chancellor of the State of New Jersey:

Humbly complaining, show unto your Honor your orators, THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, a corporation of the State of New Jersey, and THE PENNSYLVANIA RAILROAD COMPANY, its lessee, a corporation of the State of Pennsylvania:

1. That your orator The United New Jersey Railroad and Canal Company is a corporation created by consolidation of the Delaware and Raritan Canal Company, the Camden and Amboy Railroad and Transportation Company, and the New Jersey Railroad and Transportation Company.

The Delaware and Raritan Canal Company was incorporated by an Act of the Legislature of the State of New Jersey, entitled, "An Act to incorporate the Delaware and Raritan Canal Company" passed February 4th, 1830."

The Camden and Amboy Railroad and Transportation Company was incorporated by an Act of the Legislature of the State of New Jersey entitled, "An Act to incorporate the Camden and Amboy Railroad and Transportation Company," passed February 4th, 1830.

The New Jersey Railroad and Transportation Company was incorporated by an Act of the Legislature of the State of New Jersey, entitled, "An Act to in-

corporate the New Jersey Railroad and Transportation Company," passed March 7th, 1832.

The Delaware and Raritan Canal Company and the Camden and Amboy Railroad and Transportation Company were consolidated into one company under the powers conferred by an Act entitled, "An Act relative to the Delaware and Raritan Canal Company and the Camden and Amboy Railroad and Transportation Company," passed February 15, 1831. The two companies last named were subsequently consolidated with the New Jersey Railroad and Transportation Company, by virtue of powers conferred by the acts of the Legislature of the State of New Jersey. One of said Acts was entitled, "An Act to confirm certain agreements between the companies owning the railroad lines between New York and Philadelphia," approved February 27, 1867. The other of said Acts is entitled, "An Act to amend an act entitled 'An Act to validate and confirm certain agreements between the companies owning the railroad lines between New York and Philadelphia,'" approved March 14, 1872.

A certificate of organization and adoption of the corporate name of The United New Jersey Railroad and Canal Company was executed by said three companies and filed in the office of the Secretary of State of the State of New Jersey, on May 18, 1872.

On the 30th day of June, 1871, a lease and contract was made between the Delaware and Raritan Canal Company, the Camden and Amboy Railroad and Transportation Company, and the New Jersey Railroad and Transportation Company aforesaid, and the Philadelphia and Trenton Railroad Company, a corporation of the State of Pennsylvania, as parties of the first part, and your orator The Pennsylvania Railroad Company as party of the second part, and by an Act of the Legislature, entitled "An Act to validate and confirm a certain lease and contract between the

companies now known as The United New Jersey Railroad and Canal Company, and The Pennsylvania Railroad Company," approved March 27, 1873, the said lease was validated and confirmed. By the terms of said lease all the property, real and personal, of the lessors was demised for a term of nine hundred and ninety-nine years unto the lessee.

Your orator the Pennsylvania Railroad Company went into possession and use of the demised premises, property and franchises of your orator the United New Jersey Railroad and Canal Company on the 30th day of November, 1871, and has been in such possession and use from thence unto the present time, and has carried on, during the whole of that time, an increasing business of transporting passengers and freight into and across the State of New Jersey, between the cities of Philadelphia and New York.

That the main line of their railroad passes through the Town of Harrison and adjacent to the Kennedy Farm.

2. That in anticipation of the growth of their passenger and freight business, your orators, prior to the year 1900, purchased a tract of land in the Town of Harrison, known as the Kennedy Farm (a part of which was called the Preston Tract). That there existed across said farm rights of way which were continued over that portion of the adjoining tract of land shown on the Gilbert Map of 1852, hereinafter mentioned, which is now owned and occupied by the Crucible Steel Company.

3. That in the year 1852 one Hiram Gilbert, owning the said Gilbert tract, caused a map to be made thereof, entitled, "Map of land in East Newark, of Hiram Gilbert, Clerk & Bacot, Surveyors, July 15, 1852"; which tract was divided into lots, blocks and streets, one of which, called Cumberland street, was shown as sixty feet in width and as extending from

the Passaic River on the west, eastwardly, crossing at right angles Second street, Third street, Fourth street, Fifth street, Sixth street, and ending at Seventh street on the east; and at about that date he caused the said map to be filed in the office of the Clerk (now Register) of the County of Hudson, and thereafter he or his grantees or successors made many conveyances to your orators and to the Crucible Steel Company of America and to different parties, of lots shown on said map, by reference to said map as on file. Among others so conveyed were lots numbered One, Six, Seven and Eight in Block Eighty on said map; fronting on the northerly side of Cumberland street east of Fourth street, and lots numbered One, Eight, Nine and Twelve in Block Eighty-three on said map, fronting on the southerly side of Cumberland street east of Fourth street; being all the land fronting on Cumberland street between Fourth street and the line dividing the Gilbert tract from the Preston tract.

That in the year 1907 these lots were conveyed to the Hudson Railroad and Transportation Company, a corporation of the State of New Jersey, organized by the Crucible Steel Company, all the stock of which is owned by the Crucible Steel Company of America, or in its interest.

4. That on the 17th day of May, 1901, an agreement a copy of which is hereto annexed and marked "Exhibit A" was entered into by and between your orators of the first part, the Crucible Steel Company of America of the second part, James H. Young and Mason Young, surviving executors and trustees under the Last Will and Testament of Henry Young, deceased, of the third part, and Ruth Dana Draper, sole devisee and legatee of William H. Draper, deceased, of the fourth part; which agreement was thereupon recorded in the Register's office of the County of Hudson in Book 794 of Deeds, on page 207. To which agreement your orators beg leave to refer. By which

agreement a right of way over the said Kennedy Farm and over the said Gilbert land in the Town of Harrison, was substituted in lieu of the rights of way previously existing over the Crucible Steel property.

5. That on the 21st day of June, 1910, your orators by deed conveyed to the Crucible Steel Company of America a plot of ground forming part of the said Preston tract, which in said deed is described as follows:

ALL those two certain lots or pieces of land, with the buildings and improvements thereon erected, situate in the Town of Harrison, in the County of Hudson and State of New Jersey, bounded and described as follows, viz:—

One of them, BEGINNING at a point at the intersection of the extended easterly line of Fifth street (60 feet wide) with the northerly line of Cumberland street (60 feet wide) as the said Cumberland street is extended by agreement between the said The United New Jersey Railroad & Canal Co., the said Crucible Steel Company of America, James H. Young and Mason Young, surviving executors of and trustees under the Last Will and Testament of Henry Young, deceased, and Ruth Dana Draper, sole devisee and legatee of William H. Draper, deceased, dated May 17, 1901, and recorded in Book 794 of Deeds for Hudson County, page 207, and extending thence along the said extended easterly line of Fifth street and along the said easterly line of Fifth street as shown on the plan of the said Town of Harrison, and by other land of The United New Jersey Railroad & Canal Co. north 7° 36′ east 220.44 feet to a point in the southwesterly line of land of the said Crucible Steel Company of America; thence by said land as follows, viz.: (1) south 68° east 148.41 feet to a point, and (2) south 32° 41′ east 240.57 feet to a point in the northerly line of Cumberland street extended aforesaid, thence along the said northerly line of said

street, extended, and by other land of the said The United New Jersey Railroad & Canal Company north 82° 24′ west 299.29 feet to the place of beginning.

CONTAINING 43309 square feet, more or less.

And the other of them, BEGINNING at a point at the intersection of the easterly line of said Fifth street with the middle line of former but now vacated Somerset street (60 feet wide) as formerly shown on the said plan of the Town of Harrison, and extending thence by other land of the said The United New Jersey Railroad & Canal Co., north 69° 32′ east 339.98 feet to a point in the westerly line of land of the said Crucible Steel Co. of America, said point being distant 70.04 feet measured southwardly from the southerly line of Middlesex street as shown on the said plan; thence by said land, and partly crossing said vacated Somerset street south 7° 36′ west 159.96 feet to a point in the middle line of vacated Somerset street aforesaid, and thence still by said land and along the said middle line of said vacated Somerset street north 82° and 24′ west 300 feet to the place of beginning.

CONTAINING 23994 square feet, more or less.

And on the 13th day of November, 1911, your orators conveyed to the Crucible Steel Company of America a tract of land described as follows:

ALL that certain lot or piece of land situate in the Town of Harrison, in the County of Hudson and State of New Jersey, bounded and described as follows, viz.:

BEGINNING at a point in the easterly line of the tract known as the Gilbert tract on a map entitled, "Map of Lots in East Newark for Hiram Gilbert, Clark & Bacot, City Surveyors, July 15, 1852," filed in the office of the Register of Hudson County as Map No. 234, said point being in the north line of Cumberland street (60 feet wide) at the end of said street as laid out on said map and mentioned in an agreement between the said The United New Jersey Rail-

road and Canal Company and Crucible Steel Company of America and others, dated May 17, 1901, and recorded in Book 794 of Deeds for Hudson County, page 207, and said point being at the distance of 245.03 feet measured eastwardly along the northerly line of the said Cumberland street from its intersection with the easterly line of Fourth street, and extending thence along the line of said Gilbert tract, which is the dividing line between that tract and the tract known as the Preston tract, the three following courses and distances, viz.: first, north 23° 6′ east 289.84 feet to a stone; second, south 69° 20′ east 85.5 feet to a point and third, south 68° east 159.2 feet to the westerly line of land conveyed to the said Crucible Steel Company of America by the said The United New Jersey Railroad and Canal Company by deed dated the twenty-second day of June, 1910; thence along the westerly line of land so conveyed south 7° 36′ west 220.44 feet to a point in the northerly line of the strip of land 60 feet wide dedicated and appropriated as a road by the above recited agreement dated the seventeenth day of May, 1901; and thence westerly along the said northerly line north 82° 24′ west 314.97 feet to the place of beginning.

CONTAINING 70,349 square feet, more or less. Both of which conveyances were accepted by the said Crucible Company.

6. That on the 20th day of May, 1913, your orators entered into an agreement with Booth & Flynn, Limited (a true copy of which agreement is hereto annexed, marked "Exhibit B"), by which they granted to it a license to deposit the waste material and sand excavated by it from the line of the Passaic Valley sewer on said land of your orators beginning on the southerly side of Cumberland street 229 feet more or less, eastwardly to its intersection with the easterly line of Fourth street.

That the intention of your orators is to have the

said lands, which are meadow lands, filled up to a proper elevation above the river, in order that they may be used for the purposes for which they were purchased, namely, a freight yard, and for which purpose these lands are most favorably situated and now greatly needed.

7. That on or about the 6th day of May, 1913, the said Crucible Steel Company of America made application to the Town Council of the Town of Harrison to have the said town vacate that portion of Cumberland street extending from Fourth street to the easterly line of the Gilbert tract—alleging that it was the abutting owner on each side of Cumberland street for said distance, and that it desired this vacation in order that it might use the land in the street for the purpose of building additions to its present plant, from time to time.

That the said Crucible Company is the owner of a large number of lots shown on said Gilbert map, adjacent to said portion of Cumberland street east of Fourth street on which it has erected many large buildings and carries on an extensive manufacturing business. All of the said lots so purchased were conveyed to it by descriptions which referred to said map.

8. That on the 5th day of November, 1913, said Booth & Flynn, Limited, being about to pass over with their teams and wagons loaded with sand and other waste material excavated from the lands of the Passaic Valley sewer, for the purpose of depositing said material on the said land of your orators, in pursuance of said license, the said Crucible Steel Company of America and the Hudson Railroad and Transportation Company and their agents, by force prevented said Booth & Flynn, Limited, from passing over Cumberland street for the purpose aforesaid.

9. That said companies, in pursuance of their purpose of preventing the use by Booth & Flynn, Limited

(your orators' said licensee) of said portion of Cumberland street as a right of way from Fourth street to the lands of your orators, since the last mentioned date, have obstructed the said way with heavy steel rails across the whole width of Cumberland street at its intersection with the easterly line of Fourth street, and have piled on other portions of this way, between Fourth street and your orators' lands many large steel castings, weighing several tons each, and have located upon it there a large steam derrick, and have stationed there men who threaten to prevent the use of Cumberland street by your orators' said licensee as a right of way for the use of teams conveying said waste material from Fourth street to your orators' said land for the purpose aforesaid; and have prevented and are preventing your orators from using the said right of way for the purpose of filling in said land.

10. That since 1901 the tracks of your orators have been elevated through the Town of Harrison and that a large station for passengers has been erected to the north and east of the said Preston tract, and the Crucible Steel Company of America have, since 1901, erected for manufacturing purposes, to the north and west of the Preston tract, many large buildings for the purposes of their business, and since 1901 the Town Council of Harrison has vacated substantially all the streets shown on the Gilbert map east of Fourth street and south of your orators' railroad, except Cumberland street. By reason whereof no practical way now exists by which ingress or egress by vehicles can be had to the said Preston tract, except by way of Fourth street and Cumberland street. That it is of great importance to your orators and to the public, that the said Preston tracts be used by your orators for the railroad uses for which it was purchased, but that it cannot be so used, except that your orators have access to and from said Preston tract, by way of Fourth street and Cumberland street.

That the main line of your orators' railroad passes over Fourth street by a steel bridge. Fourth street is the only paved street running north and south through the Town of Harrison, which crosses your orators' main line railroad. That Fourth street south of Cumberland street crosses the Passaic River by a steel bridge known as the Jackson Street Bridge, and which connects the Town of Harrison with a dense industrial section of the City of Newark. That the Jackson Street Bridge is the only bridge for vehicular traffic across the Passaic River between the Plank Road Bridge on the south and the Turnpike Bridge on the north—a distance of about three miles.

11. That your orators have annexed hereto a copy of the said Gilbert Map of 1852, and hereby refer to the same, and also photographs of the obstructions interposed by the defendants, in Cumberland street, between Fourth street and your orators' lands.

12. Your orators insist that, by reason of the filing of said Gilbert Map and the sale of lands by reference thereto; and by the recognition by your orators of Cumberland street as shown on said map across your orators' lands; and by reason of the said agreement of August 17, 1901; and by reason of the said conveyances by your orators to the Crucible Steel Company of America, on June 22, 1910, and on November 13, 1911; and by reason of the closing of all previous ways leading from said Preston tract; and by reason of the public purpose for which the Preston tract was acquired by your orators, an easement of a right of way for vehicular traffic exists over the lands of the Crucible Steel Company of America, along the line of Cumberland street, from Fourth street to your orators' said lands, of the width of sixty feet, and that the interference by the Crucible Steel Company of America and the Hudson Railroad and Transportation Company, with your orators' use of said ease-

ment for the purposes aforesaid, is contrary to equity and good conscience, and should be enjoined by this Honorable Court.

In consideration whereof, and for as much as your orators are without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this Honorable Court where matters of this nature are cognizable and relievable;

To the end therefore that the said Crucible Steel Company of America and the Hudson Railroad and Transportation Company may, but without oath, true and perfect answer make to all to all and singular the matters aforesaid, and that the Crucible Steel Company of America and the Hudson Railroad and Transportation Company may be enjoined and restrained from in any manner obstructing said portion of Cumberland street extending from the easterly line of Fourth street two hundred and thirty-six feet and seventy-two one-hundredths of a foot measured along its center line to the land of your orators, or from preventing your orators, their agents, servants and representatives, from traversing and using said portions of said street; and

That the Crucible Steel Company of America and the Hudson Railroad and Transportation Company be ordered to remove forthwith from said portions of Cumberland street any and all obstructions thereon placed by them or either of them, which prevent or interfere with free and unrestricted ingress and egress by your orators, their licensees, servants and representatives over said Cumberland street, and that the surface of said street be restored to the condition in which it was before the placing of the obstructions therein and thereon, as in this bill stated; and

That your orators, their licensees, agents and servants may be decreed by this Honorable Court to have, possess and enjoy full and unrestricted rights of ingress and egress over said portion of Cumberland

street extending from the easterly line of Fourth street;

And that your orators may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience:

May it please your Honor, the premises considered, to grant unto your orators not only the State's writ of injunction issuing out of and under the seal of this Honorable Court to be directed to the said Crucible Steel Company of America and the Hudson Railroad and Transportation Company, enjoining and restraining them and each of them as herein prayed, but also the State's writ of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said Crucible Steel Company of America and the Hudson Railroad and Transportation Company, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray, etc.

VREDENBURGH, WALL & CAREY,
Solicitors for and of Counsel with Complainants.

Complaint, Case No. 1, United N. J. R. R. & C. Co., et als., Exhibit A.

EXHIBIT A.

THIS AGREEMENT, made to take effect the twentieth day of May, A. D. 1913, between THE PENNSYLVANIA RAILROAD COMPANY, lessee of the works and property of the United New Jersey Railroad and Canal Company of the first part, and BOOTH AND FLINN, LIMITED, a Limited Corporation of the State of Pennsylvania, of the second part,

WHEREAS, the party of the second part desires to secure from the party of the first part, upon the terms and conditions hereinafter fully set forth, the permission to deposit waste material and sand on certain land of the party of the first part hereinafter particularly described, situate in the Town of Harrison, Hudson County, New Jersey;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the party of the first part doth hereby permit the party of the second part to deposit, in the manner and in all respects satisfactory to the duly accredited representative of the party of the first part, waste material and sand excavated by the party of the second part from the Passaic Valley sewer, on ALL that certain piece or parcel of land of the party of the first part, situate in the Town of Harrison, Hudson County, New Jersey, bounded and described as follows: BEGINNING at a point in the southerly line of Cumberland street two hundred and twenty-nine feet, more or less, eastwardly from its intersection with the easterly line of Fourth street, and extending thence along the said southerly line of Cumberland street south eighty-three degrees fifty-one minutes east about nine hundred and twenty feet to a point; thence south sixteen degrees nine minutes west about four hundred and eighty feet to the high water line of the Passaic River; thence in a general westerly direction along said high water line, the distance of ten hundred and fifty feet more or less to a point in the exterior line for filling adopted by the Riparian

Commissioners of the State of New Jersey, January 27th, 1877; thence north six degrees sixteen minutes east about eighty feet; and thence north twenty-one degrees thirty-nine minutes east about five hundred and twenty feet to the place of beginning. CONTAINING eight and sixteen one-hundredths (8 16/100) acres more or less.

IT BEING HEREBY COVENANTED AND AGREED by the party of the second part that it will, at its own cost and expense, but in the manner, of the material, and in all respects satisfactory to the said representative of the party of the first part, construct and maintain during the continuance of this agreement, a bulkhead along the said high water line of the land above described, for the purpose of retaining the waste material and sand deposited on said land as above provided, and upon any termination of this agreement the said waste material and sand and said bulkhead shall become the sole and absolute property of the party of the first part without any cost or expense.

The party of the second part doth hereby covenant and agree to and with the party of the first part as follows:

That it shall and will in consideration of the issuance of this permit, pay unto the party of the first part a sum at the rate of one dollar ($1.00) per annum, from the date hereof, to be paid annually, not in advance, during the continuance of this agreement, at the office of the agent for the real estate department of the party of the first part, 324 Market street, Newark, New Jersey, or at such other place as the party of the first part may from time to time designate.

That it will keep and maintain the said bulkhead in good order and repair for actual use at its own expense.

That it will not use the said land for any other purpose than as aforesaid, or permit any other person

or persons, corporation or corporations, to use the same for any purpose whatsoever.

That it will not by any lapse of time by virtue hereof or otherwise, claim any right or title adverse to the party of the first part.

That in consideration of the issuance of this permit it shall and will save and keep harmless and indemnify the party of the first part from and against all claims for damages of whatsoever kind or nature arising in any manner or under any circumstances through the exercise of any right granted or conferred hereby whether such damages be sustained by the party of the second part or by other person or persons, corporation or corporations which seek to hold the party of the first part liable.

That the party of the first part, its successors and assigns shall have the right to revoke and terminate this agreement at any time upon giving notice in writing by legal service to the party of the second part that upon the expiration of sixty days from the time of giving the said notice this agreement shall forthwith cease and determine, and the party of the second part shall thereupon remove all goods and property belonging to it from off the said land and deliver up possession of the same in as good order and condition as when received; and that if it shall neglect or refuse so to do, the party of the first part shall have the right forthwith to remove therefrom all goods and property belonging to the party of the second part at the cost and expense of the party of the second part and the party of the second part hereby authorizes the party of the first part so to do, without any further or other notice, proceeding or process whatsoever, without being liable to the party of the second part or any other person or persons, corporation or corporations for any damage or compensation or to any suit or action for or on account of the same.

IN WITNESS WHEREOF, the said party of the first part has hereunto affixed its corporate seal, and has caused this agreement to be executed on its behalf by Henry E. Tripler its assistant real estate agent and the party of the second part hath hereunto affixed its corporate seal, duly attested, the day and year first above written.

THE PENNSYLVANIA RAILROAD COMPANY,

Lessee.

By (Signed) H. E. TRIPLER,
Asst. Real Estate Agent.

(Signed) ROBT. GROFF,
Asst. Secretary.

Sealed and delivered in the presence of us.

(Two witnesses as to each individual, except executive officers).

BOOTH & FLINN, LIMITED,
By (Signed) W. A. FLINN,
Vice-Chairman.

Attest: Duplicate Secretary.

EXHIBIT B.

AGREEMENT, made this seventeenth day of May, in the year one thousand nine hundred and one, between the UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, party of the first part, CRUCIBLE STEEL COMPANY OF AMERICA, party of the second part, JAMES H. YOUNG and MASON YOUNG, surviving executors of and trustees under the last will and testament of Henry Young, late of Ossining, in the County of Westchester and State of New York, deceased, party of the third part, and RUTH DANA DRAPER, sole devisee and

legatee of William H. Draper, of the City, County and State of New York, deceased, party of the fourth part.

WHEREAS, the said parties own tracts of land in the Town of Harrison, County of Hudson and State of New Jersey, lying south of the main line of the railroad of the party of the first part, and east of the most westerly of the several boundary lines between the tract known as the Gilbert tract shown on a map entitled Map of Lots in East Newark for Hiram Gilbert, Clark & Bacot, City Surveyors, July 15, 1852, filed in the office of the Register of Hudson County as Map No. 234, and the tract known as the Preston Tract, or Canada or Kennedy Farm, shown on map entitled Map of the Preston tract filed in Bergen County Clerk's office July 14, 1837, and extending eastwardly from this line a distance of more than two thousand feet to the middle of a ditch which forms the easterly boundary of a tract of land formerly belonging to the estate of Michael Sanford who died in eighteen hundred and five, which was conveyed to said William H. Draper, deceased, by Ellis F. Draper and Jennie B. Smith and her husband, by deed dated October 27, 1884, and recorded in Book 397 of deeds for Hudson County, on page 567, and

WHEREAS, no public streets or highways exist on said several tracts and the parties of the third and fourth parts claim rights of way over property of the party of the first part embraced in the above mentioned Preston Tract, and

WHEREAS, it is for the interest of all the parties hereto that some recognized way to and through such properties be established and that all claims of parties herein to private rights of ways over such properties or any of them be extinguished:

NOW, THEREFORE, the said parties, in consideration of the premises, and of the sum of one dollar by each to each of the others in hand paid, receipt whereof

is hereby acknowledged, do hereby covenant and agree, each with the others and with each of them that a strip of land sixty feet in width, an extension of Cumberland street easterly across the said lands of the parties hereto, be and the same is hereby dedicated and appropriated as a road, the strip of land so dedicated beginning east of Fourth street at the end of Cumberland street as laid out on the Gilbert Map and in the aforesaid dividing line between the Preston tract and the Gilbert tract, and running thence easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties hereto to the middle of the said ditch which forms the easterly boundary of the said land of the party of the fourth part. Cumberland street of which the land above described is an extension, is shown on the map of the Gilbert tract above referred to and on the official map of the Town of Harrison, made by Young and Borrie, surveyors. It is sixty feet in width and crosses Fourth street at right angles extending easterly to the said boundary line of the Gilbert and Preston tract; the northeast corner of Fourth and Cumberland street is two thousand and twenty feet southerly from New Jersey Railroad avenue. The distance from Fourth street along the northerly line of Cumberland street to the boundary line of the Preston tract is shown differently on the different maps.

And the said parties of the second, third and fourth parts, for the consideration aforesaid, do hereby release and surrender to said party of the first part all rights of way over the Preston tract, or any part of it, arising from any source whatever, which they, or any of them may have or claim to have.

It is further agreed that any of the parties hereto may at any time, but without expense to the others or to any of them, fill in and grade the said road or any part of it, and this agreement shall bind the suc-

cessors, heirs, executors and assigns of the respective parties.

IN WITNESS WHEREOF, the said parties have executed these presents under their respective seals, and the Pennsylvania Railroad Company, lessee of the party of the first part, in token of its assent and approval, hath also executed the same the day and year first above written.

(L. S.) THE PENNSYLVANIA RAILROAD COMPANY.

By CHARLES E. PUGH, *Vice-President.*

Attest:

LEWIS NEILSON, *Secretary.*

(L. S.) THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY.

By F. WOLCOTT JACKSON, *President.*

Attest:

LEROY H. ANDERSON, *Secretary.*

(L. S.) CRUCIBLE STEEL CO. OF AMERICA.

C. E. CLAPP, *Fourth Vice-President.*

Attest:

FRANK B. SMITH, *Secretary.*

JAMES H. YOUNG (L. S.)
Executor & Trustee.

MASON YOUNG (L. S.)
Executor & Trustee.

RUTH DANA DRAPER.

Recorded Register's office 5303 Nov. 8, 1901, 9.45 A. M. Hudson County, New Jersey.
794-207

Affidavit of Martin L. Gardner.

STATE OF NEW JERSEY,
COUNTY OF HUDSON. } *ss.*

MARTIN L. GARDNER, being by me duly sworn on his oath deposes and says:

That he has always lived in the City of Newark. That he is an engineer by profession, and that he has been in the employ of the Pennsylvania Railroad Company for thirty years, and during all that time, with the exception of the last two years, has had his office located in Jersey City, and for the last two years in New York City. That he has had to do, during all that time, principally with the tracks, bridges and roadbed between Philadelphia and New York. That he is well acquainted with the location of the railroad and its surroundings in the Town of Harrison, and of the tract of land known as the Canada and Kennedy farm. That he has had occasion many times in the past to examine the map known as the Gilbert Map of 1852, and that the blue print annexed hereto is a true copy of said map. That upon it is indicated in yellow the land forming part of the old Preston tract conveyed by the complainants in the above bill to the Crucible Steel Company of America, by two Deeds, one in 1910 and the other in 1911, referred to in the bill of complaint.

That he knows that it has been the intention of the Railroad Company, for many years, to locate a large freight yard on the Preston tract, adjacent to Fourth street. That he made several years ago plans to that end. That in his judgment the said land is very well situated for that purpose and at the present time is needed to serve the industries located in that portion of Newark in the neighborhood of the Jackson Street Bridge. That that portion of Newark is built up almost exclusively by manufacturing concerns and that the complainants have no freight yard in that portion of Newark. That the use of said yard was

upon the assumption that Cumberland street would be kept open from Fourth street, for traffic; that without an approach from Fourth street, this freight yard would have no value as a delivery yard.

That in former years and until about the year 1901 there were roadways by which egress and ingress could be had to the Canada or Kennedy farm from the Town of Harrison, which passed over the lands shown on the Gilbert Map, now occupied by the Crucible Steel Company; that one of said roadways crossed what was called Fox Island Creek by a bridge; that creek was then the dividing line between the Gilbert tract and the Canada or Kennedy farm, and ran south of the railroad in a southerly course to the Passaic River. That this bridge was used by teams and vehicles and persons on foot. That it crossed Fox Island Creek somewhere near the junction of Burlington and Seventh streets, and went across the plant of the Crucible Steel Company and thence by way of Fourth or Fifth streets.

That this deponent knew of the agreement of the 17th day of May, 1901, referred to in the bill of complaint. That since the agreement of 1901 those roads across the property of the Crucible Steel Company have been shut off by reason of recent improvements in the Crucible Steel Plant and the railroad, so that at the time of the obstruction of Cumberland street there was no public or private way for vehicular traffic to the Preston tract, except by way of Cumberland street.

That this deponent produces two photographs dated by mistake November 18, 1913. They were actually taken on November 19, 1913, showing the obstructions across Cumberland street at that time. They are marked Nos. 609 and 610. No. 609 shows the barrier or obstruction full length, while No. 610, which is a perspective view, shows a portion of the obstruction.

That the obstructions shown are built of heavy steel rails, bound together by lighter steel rails. Within the enclosure thus shown have been placed heavy steel castings, rendering Cumberland street absolutely impassable for vehicles.

That his deponent has read the bill of complaint and is acquainted with the facts stated therein, and that he believes them to be truly stated; and that the facts, matters and things therein stated are true to the best of deponent's knowledge, remembrance and belief.

MARTIN L. GARDNER.

Subscribed and sworn to before me
this 20th day of November, 1913.

CHAS. J. GORMLEY,
Notary Public.

Case No. 1.

Order to Show Cause.

Filed November 22, 1913.

IN CHANCERY OF NEW JERSEY.

Between THE UNITED NEW JERSEY RAILROAD AND CANAL CO., *et al.*, *Complainant,* *and* THE CRUCIBLE STEEL COMPANY OF AMERICA, *et al.*, *Defendant.*	*On Bill for Injunction.* *Order.*

Upon filiing and reading the bill of complaint and the affidavit thereto annexed; and on motion of James B. Vredenburgh of counsel with complainants,

IT IS, on this twentieth day of November, one thousand nine hundred and thirteen,

ORDERED that the defendants show cause on Tuesday next, at two o'clock in the afternoon, at the Chancery Chambers in the City of Newark why the prayer of the bill of complaint should not be granted.

AND IT IS FURTHER ORDERED that all affidavits to be used by the defendants on the return of this order be served upon the solicitor of the complainant by four o'clock in the afternoon of next Monday.

Respectfully advised,

JOHN R. EMERY,
Vice-Chancellor.

Case No. 1.

Amendment to Bill of Complaint of United N. J. R. R. & Canal Company.

Filed December 18, 1913.

IN CHANCERY OF NEW JERSEY

Between THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, *et al.*, *Complainants,* *and* THE CRUCIBLE STEEL COMPANY OF AMERICA, *et al.*, *Defendants.*	*On Bill for Injunction.* *Order.*

This matter being opened to the court by James B. Vredenburgh, of counsel with the complainants, in the presence of George H. Peirce, Esquire, of Peirce & Hoover, solicitors for and of counsel with the defendant the Crucible Steel Company of America and the Hudson Railroad and Transportation Company; and E. A. & W. T. Day, Esquires, solicitors for and of counsel with the Harrison Land Company; and J. H. Harrison, Esquire, solicitor for Booth & Flinn, Limited; and all parties consenting thereto;

It is, on this 30th day of November, 1913, on motion of James B. Vredenburgh, ordered that the prayer for subpœna in the bill of complaint in this cause be amended by adding thereto the Harrison Land Company and Booth & Flinn, Limited, as defendants, by inserting their names after the name of the Hudson

Railroad and Transportation Company; so that the prayer for subpœna shall read as follows:

> "But also the State's writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said Crucible Steel Company of America, The Hudson Railroad and Transportation Company, the Harrison Land Company, and Booth & Flinn, Limited, commanding them and each of them by a certain day and under a certain penalty therein to be expressed, to be and appear before your honor in this honorable court, then and there to answer all and singular the said premises and to stand to, abide by and perform such order and decree therein as to your honor shall seem meet and shall be agreeable to equity and good conscience."

AND IT IS FURTHER ORDERED, that the said defendants the Crucible Steel Company of America, the Hudson Railroad and Transportation Company, the Harrison Land Company, and Booth & Flinn, Limited, plead, answer or demur to the bill of complaint within thirty days from the date hereof.

PEIRCE & HOOVER,
Solicitors for Crucible Steel Company of America, and the Hudson Railroad and Transportation Company.

EDW. A. & W. T. DAY,
Solicitors for the Harrison Land Company.

J. H. HARRISON,
Solicitors for Booth & Flinn, Limited.

Case No. 2.

Bill of Complaint of Booth & Flinn, Limited.

Filed November 11, 1913.

IN CHANCERY OF NEW JERSEY.

To his Honor, Edwin R. Walker, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor your orator, Booth & Flinn, Ltd., a limited corporation of the State of Pennsylvania, with an office in the City of Newark, County of Essex and State of New Jersey:

1. That on or about the eleventh day of February, nineteen hundred and thirteen, your orator entered into a contract with the Passaic Valley Sewerage Commissioners for the construction of Section 7 of the main intercepting sewer in compressed air tunnel in the City of Newark, Essex County, New Jersey, for the agreed upon price of one million four hundred and thirteen thousand and thirty dollars ($1,413,030); that since the execution of said contract, your orator has been engaged in the doing of the work and the furnishing of the materials necessary and incident to the performance of said contract; that the carrying out of said contract has required and will require the excavation from the line of said proposed sewer of large quantities of waste material and the removal thereof to other locations; that for the purpose of obtaining accessible and proper places for the deposit of the material excavated as aforesaid by your orator, it entered into a certain agreement, dated the twentieth day of May, nineteen hundred and thirteen, with the Pennsylvania Railroad Company, leesee of the works and property of the United New Jersey Railroad and Canal Company, true copy of which said agreement is hereto

annexed and marked "Exhibit A"; that under and by virtue of the terms of said agreement, your orator was granted a license to deposit waste material and sand excavated by your orator from the line of said Passaic Valley Sewer on the lands of said Pennsylvania Railroad Company in the Town of Harrison, County of Hudson, and State of New Jersey, beginning on the southerly line of Cumberland street two hundred and twenty-nine feet, more or less, eastwardly from its intersection with the easterly line of Fourth street, and that at the time of obtaining the said license, the agent of your orator was informed that the portion of Cumberland street aforesaid, lying between Fourth street in the City of Harrison, aforesaid, and the westerly line of the lands covered by said permit was a public highway, and that your orator might use said portion of said street for the purpose of ingress and egress to the lands in said license more particularly described, and that the portion of Cumberland street to the east of the public portion above referred to might also be used for ingress and egress under and by virtue of the terms of a certain agreement dated in the year nineteen hundred and one, to which the Pennsylvania Railroad Company and the Crucible Steel Company of America were parties.

2. That on or about the twenty-eighth day of August, nineteen hundred and thirteen, your orator entered into a certain agreement with the Harrison Land Company, a corporation of the State of New Jersey, wherein and whereby your orator was granted a license to deposit earth, sand, stone, and waste material on all or any portion of that certain tract of land belonging to said Harrison Land Company in the Town of Harrison, County of Hudson and State of New Jersey, bounded on the north and west by lands of the United New Jersey Railroad and Canal Company (Pennsylvania Railroad Company, lessee),

on the south by the Passaic River, on the east by lands formerly of William H. Draper, deceased; that annexed hereto and marked "Exhibit B" is a true copy of said license; that under the terms of said license said Harrison Land Company did grant to your orator, as its agent and representative, the right to use for ingress and egress and to fill in and grade, the street known as Cumberland street, as shown and designated on the official map of said Town of Harrison, and mentioned and described in a certain agreement dated the seventeenth day of May, nineteen hundred and one, between the United New Jersey Railroad Company (the Pennsylvania Railroad Company), party of the first part, Crucible Steel Company of America, party of the second part, James H. Young, *et al,* surviving executors, etc., party of the third part, and Ruth Dana Draper, party of the fourth part.

3. That said Cumberland street is sixty feet in width and is shown upon "Map of lands in East Newark for Hiram Gilbert, Clark and Bacot, surveyors, July 15, 1852" and upon the official map of the Town of Harrison as extending eastwardly from and at right angles to Fourth street, a distance of approximately two hundred and thirty-six feet to the westerly line of lands of the tract known as the Preston tract, and the lands of the Pennsylvania Railroad Company, lessee, etc.; that said portion of Cumberland street is one of the public streets of said Town of Harrison, and in answers filed by the Town of Harrison and Crucible Steel Company of America, defendants, September eighteenth, nineteen hundred and thirteen, in a certain cause pending in this Court btween the Harrison Land Company, complainant, and the said defendants, it was admitted by said defendants that said portion of Cumberland street was a public street.

4. That prior to the seventeenth day of May, nineteen hundred and one, ingress to and egress from the lands of the Pennsylvania Railroad Company, the Henry Young Estate (the predecessor in title of Harrison Land Company), William H. Draper, deceased, and Crucible Steel Company of America, more fully shown upon Exhibit D hereto annexed was over various private ways and public streets running north and south, and east and west, to Fourth street and other public streets in said Town of Harrison; that on or about the seventeenth day of May, nineteen hundred and one, a certain agreement, copy of which is hereto annexed and marked "Exhibit C" was entered into by and between the United New Jersey Railroad and Canal Company and the Pennsylvania Railroad Company, of the first part, the Crucible Steel Company of America, party of the second part, James H. Young and Mason Young, surviving executors of and trustees under the last will and testament of Henry Young, of the third part, and Ruth Dana Draper, sole devisee and legatee of William H. Draper, of the fourth part, which agreement recited that the said parties thereto owned tracts of land in the Town of Harrison lying south of the main line of the railroad of the party of the first part and east of the most westerly of the several boundary lines between the tract known as the Gilbert tract, shown on the "Map of lands in East Newark for Hiram Gilbert, Clark and Bacot, city surveyors, July 15, 1852," extending eastwardly from its line a distance of more than two thousand feet to the middle of a ditch which forms the easterly boundary of the tract of land formerly belonging to Michael Sanford, which was conveyed to William H. Draper; that no public streets or highways then existed on said several tracts; that the said parties of the third and fourth parts claimed rights of way over the property of said railroad company embraced in the Preston tract, and that it was

for the interest of all said parties that some recognized way to and through said properties be established, and that all claims of the parties therein to such rights of way, or any of them, be extinguished, and the parties thereto thereupon covenanted and agreed, each with the others and with each of them that a strip of land sixty feet in width an extension of Cumberland street easterly across the said lands of the parties hereto, be and the same is hereby dedicated and appropriated as a road, the strip of land so dedicated beginning east of Fourth street at the end of Cumberland street as laid out on the Gilbert map and in the aforesaid dividing line between the Preston tract and the Gilbert tract, and running thence easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties hereto to the middle of the said ditch which forms the easterly boundary of the said land of the party of the fourth part. Cumberland street of which the land above described is an extension, is shown on the map of the Gilbert tract above referred to and on the official map of the Town of Harrison, made by Young and Borrie, surveyors. It is sixty feet in width and crosses Fourth street at right angles extending easterly to the said boundary line of the Gilbert and Preston tract: the northeast corner of Fourth and Cumberland streets is two thousand and twenty feet southerly from New Jersey Railroad Avenue. The distance from Fourth street along the northerly line of Cumberland street to the boundary line of the Preston tract is shown differently on the different maps.

And the said parties of the second, third and fourth parts, for the consideration aforesaid, do hereby release and surrender to said party of the first part all rights of way over the Preston tract, or any part of it, arising from any source whatever, which they, or any of them may have or claim to have.

It is further agreed that any of the parties hereto may at any time, but without expense to the others or to any of them, fill in and grade the said road or any part of it, and this agreement shall bind the successors, heirs, executors and assigns of the respective parties; that said agreement, after execution by the parties thereto was recorded in the Register's Office of Hudson County in Book 794 of Deeds for said county on pages 207, etc., to which agreement, or the record thereof, your orator begs leave to refer if it be necessary so to do.

5. That annexed hereto and marked "Exhibit D" is a map showing the location of said Cumberland street (a public street) and of said right of way (a prolongation thereof easterly), and the names and locations of the properties of the respective owners adjacent to said street and right of way on May seventeenth, nineteen hundred and one; that the premises shown on said map in the name of George L. Blake were in the years nineteen hundred and seven and nineteen hundred and ten, conveyed to the Hudson Railroad and Transportation Company, and still appear of record to be owned by it, which corporation your orator is informed, believes and expressly charges, is owned and wholly controlled by the Crucible Steel Company of America, a corporation, which is the owner of all its stock, and upon information and belief has a secret agreement with it for the purchase and control of said premises; that the portion of the land shown on said map in the name of the United New Jersey Railroad and Canal Company (Pennsylvania Railroad Company lessee), which lies north of the northerly line of the prolongation of Cumberland street and immediately east of the land of George L. Blake as shown on said map since the agreement of nineteen hundred and one, has been conveyed to and is now owned of record by the Crucible Steel Company of America; that the portion of the

land shown on the said map in the name of Draper, since the agreement of nineteen hundred and one, has been conveyed to and is now owned of record by the Pennsylvania Railroad Company; that the portion of the land shown on said map in the name of the Young Estate, since the agreement of nineteen hundred and one, has been conveyed to and is now owned of record by the Harrison Land Company; that at the present time all public streets which lie east of Fourth street and south of Railroad avenue (which point is approximately twelve hundred feet north of the north side of Cumberland street), except the portion of Cumberland street running two hundred and thirty-six feet and seventy-two one-hundredths of a foot east from Fourth street, have been vacated; and that neither the Harrison Land Company nor the Pennsylvania Railroad Company, nor your orator, as licensee, have or can have access from any public or other street to the premises of said Pennsylvania Railroad Company and the Harrison Land Company described in said license to your orator, except over said portion of Cumberland street in connection with said private right of way established by said agreement of nineteen hundred and one.

6. That on or about the sixth day of May, nineteen hundred and thirteen, the said Crucible Steel Company of America made application to the Town Council of the Town of Harrison for the vacation of parts of certain streets in said Town of Harrison, and among others that portion of Cumberland street heretofore described as a public street and lying east of Fourth street, a copy of said application being hereto annexed and marked "Exhibit E"; that in explanation of the request for said application the said Crucible Steel Company of America also filed with the Council of the Town of Harrison a statement of grounds upon which it based its said application, a copy of said statement being hereto annexed and

marked "Exhibit F"; that in both said application and statement, said Crucible Steel Company of America stated that it was the owner of the property abutting on the streets therein described, and desired to use said streets "for the purpose of building additions to our present plant from time to time."

7. That since the filing of said application various ordinances were introduced in the Common Council of said Town of Harrison at the instance of the said Crucible Steel Company of America for the vacation of the streets abutting on the property of said company and mentioned in said application; that the ordinances for the vacation of all of said streets except Cumberland street were duly passed by said council upon their third and final readings and all of said streets, except said public portion of Cumberland street, were thereupon vacated; that an ordinance was introduced at the Common Council of said Town of Harrison for the vacation of said portion of Cumberland street, easterly of Fourth street "subject to the agreement made the seventeenth day of May, nineteen hundred and one, between the Crucible Steel Company of America, the United New Jersey Railroad and Canal Company, James H. Young and Mason Young, surviving executors of Henry Young, deceased, and Ruth Dana Draper, devisee of William H. Draper, deceased," and was placed upon its first and second reading, a copy of said ordinance being hereto annexed and marked "Exhibit G"; that said ordinance has not been placed upon its third and final reading nor has Cumberland street been vacated, and Cumberland street, easterly from Fourth street is still a public street of the Town of Harrison, County of Hudson and State of New Jersey.

8. Your orator further shows that on the fifth day of November, nineteen hundred and thirteen, through its agents and representatives, it attempted

to pass with its men and wagons over that portion of Cumberland street east of Fourth street heretofore described as a public highway for the purpose of depositing sand and waste material excavated from the line of the Passaic Valley sewer and for the purpose of exercising its rights under the licenses heretofore referred to from the Pennsylvania Railroad Company and the Harrison Land Company, and of exercising its right as a member of the public to traverse said street; that your orator was unable to enter said portion of Cumberland street because of the obstructions placed there by the Crucible Steel Company of America and its agents; that said obstructions consisted of approximately thirty heavy steel rails sunk and firmly imbedded for a distance of five to ten feet in the ground and extending to a height of from ten to twenty feet above the surface of the ground, and at a distance of approximately four feet apart and placed across the whole width of Cumberland street at or about its intersection with the easterly line of Fourth street, and furthermore, at a distance of approximately fifty feet east of Fourth street twenty-one large steel castings of irregular size and shape, and of a weight of from two to five tons each, were placed, as your orator is informed and believes, by the Crucible Steel Company or its agents; that watchmen of said Crucible Steel Company of America were on guard at or near said point and at the approach of your orator's agents threatened to forcibly eject them, and, if necessary, to shoot your orator's agents; that your orator's agents attempted to remove said obstructions in order that access might be had across said Cumberland street to the lands described in the license above referred to, and while so engaged were forcibly ejected from said portion of Cumberland street by said private watchmen and by the police of said Town of Harrison; that the agents of your orator then stated to said watchmen and to other agents and representatives of the Crucible Steel Com-

pany of America who were present and to the police of the Town of Harrison, that it was the intent and purpose of your orator to cross that said portion of Cumberland street for the purpose of exercising its rights and privileges as a member of the public and for the further purpose of exercising the rights granted to it under the licenses from the Pennsylvania Railroad Company and the Harrison Land Company hereinbefore referred to; and your orator further shows that said agents and representatives of the Crucible Steel Company of America who then and there admitted they were acting on behalf of said Crucible Steel Company of America, and the police of said Town of Harrison, forcibly removed and ejected your orator's agents from said portion of Cumberland street and threatened to arrest any person who attempted to enter upon such street.

9. That on Thursday, November sixth, nineteen hundred and thirteen, your orator's agents had a conference with officers and attorney of the Town of Harrison, and with the manager and attorney of the Crucible Steel Company of America; that at said conference your orator's agent and attorney suggested to the Crucible Steel Company of America that it was imperatively necessary that it enter upon the land of the Pennsylvania Railroad Company and the land of the Harrison Land Company in order that its work on Section 7 of the Passaic Valley sewer be carried out, without prejudice to the rights of either party, and offered to accept the private license of the Crucible Steel Company of America to cross said Cumberland street or the premises of the Crucible Steel Company adjacent thereto; that on Friday, November seventh, nineteen hundred and thirteen, your orator's attorney, with the approval and request of your orator, prepared and submitted a communication to the attorney of the Crucible Steel Company of America, and offered, without prejudice to the rights of either

party, to accept the private license of the Crucible Steel Company of America as hereinbefore set forth; that copies of said letter and the proposed form of license are annexed hereto and marked Exhibits "H" and "I"; that on Saturday, November eighth, nineteen hundred and thirteen, the said Crucible Steel Company of America, through its attorney, refused to grant the license last above referred to, except upon condition that your orator pay to it ten cents a cubic yard for material transported across its property; that this proposition was declined by your orator's attorney on behalf of your orator and with its approval, and the attorney of the Crucible Steel Company stated that your orator should make no further attempt to enter upon Cumberland street, for in such case there would be bloodshed, inasmuch as said attorney had advised the Crucible Steel Company of America to resist with whatever force was necessary such attempt and to prevent your orator's entrance upon said portion of Cumberland street at any cost.

In consideration whereof, and forasmuch as your orator is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable.

To the end therefore, that the said Crucible Steel Company of America, The Hudson Railroad and Transportation Company and the Town of Harrison, may, but without oath, full, true and perfect answer make to all and singular the matters aforesaid, and that the Crucible Steel Company of America, the Hudson Railroad and Transportation Company and the Town of Harrison, may be enjoined and restrained from in any manner obstructing said portion of Cumberland street extending from the easterly line of Fourth street two hundred and thirty-six feet and seventy-two one-hundredths of a foot measured along its center line to the land of the Pennsylvania Railroad

Company, or in any manner obstructing the prolongation easterly of said portion of Cumberland street to lands formerly of Ruth Dana Draper, devisee, etc., or from preventing your orator, its agents, servants and representatives from traversing and using said portions of said street; and

That the Crucible Steel Company of America, and the Hudson Railroad and Transportation Company be ordered to remove forthwith from said portions of Cumberland street, any and all obstructions thereon placed by them, or either of them, which prevent or interfere with free and unrestricted ingress and egress by your orator, its agents, servants and representatives over said Cumberland street, and the right of way which is the prolongation thereof, and further, that the surface of said street and prolongation thereof be restored to the condition in which they were before the placing of the obstructions therein and thereon, as in this bill stated; and

That your orator, its agents and servants may be decreed by this Honorable Court to have, possess and enjoy full and unrestricted public and private rights of ingress and egress over said portion of Cumberland street extending from the easterly line of Fourth street two hundred and thirty-six feet and seventy-two one-hundredths of a foot, more or less, measured along its said line to the lands of the Pennsylvania Railroad Company; and that your orator, its agents and servants may be decreed to have, possess and enjoy the full and unrestricted rights of ingress and egress from and upon the strip of land sixty feet in width, the prolongation of Cumberland street easterly across the lands of the Pennsylvania Railroad Company, the Crucible Steel Company of America, and the Harrison Land Company to the easterly line of lands formerly of Ruth Dana Draper, devisee, as more particularly set forth in said agreement dated the seventeenth day of May, nineteen hundred and one, between the United New Jersey Railroad and Canal

Company (Pensylvania Railroad Company), of the first part, Crucible Steel Company of America of the second part, James H. Young, *et al.*, surviving executors, etc., of Henry Young, deceased, of the third part, and Ruth Dana Draper, sole devisee, etc., of William H. Draper, of the fourth part; and

That the rights of the parties to said agreement then and their respective successors and assigns, may be determined and fixed by the decree of this Honorable Court; and

That your orator may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator not only the state's writ of injunction issuing out of and under the seal of this Honorable Court to be directed to the said Crucible Steel Company of America, Hudson Railroad and Transportation Company and the Town of Harrison, enjoining and restraining them and each of them as herein prayed, but also the state's writ of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said Crucible Steel Company of America, Hudson Railroad and Transportation Company and the Town of Harrison, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orator, as in duty bound will ever pray, etc.

Dated November 11, 1913.

J. H. HARRISON,

Solicitor and of Counsel with Complainant.

Complaint, in Case No. 2, Booth & Flinn, Limited, Affidavit.

IN CHANCERY OF NEW JERSEY.

Between BOOTH & FLINN, LIMITED, *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA AND HUDSON RAILROAD TRANSPORTATION COMPANY AND TOWN OF HARRISON, *Defendants.*	*On Bill, etc.* *Affidavit.*

STATE OF NEW JERSEY, COUNTY OF ESSEX. } *ss.*

MICHAEL N. CHANALIS, being duly sworn on his oath deposes and says that he has examined the "Map of lots in East Newark for Hirman Gilbert, Clark & Bacot, Surveyors, July 15, 1852"; that said map from the record thereof, was filed in the office of the Register of the County of Hudson on January 19th, 1853, as Map No. 234; that upon said map are delineated Cumberland street as described in said bill, and the other streets mentioned in the application of the Crucible Steel Company of America, copy thereof being annexed to complainant's bill as "Exhibit E"; that deponent has examined the original of said application and the original of the grounds upon which said application is based, and that "Exhibits E and F" attached to complainant's bill, are true copies thereof; deponent has examined the ordinance relating to Cumberland street vacation as the same is on file in the office of the Clerk of the Town of Harrison, and that "Exhibit G" attached to complainant's bill is a true copy of said ordinance; that deponent has com-

pared "Exhibit A" annexed to complainant's bill with one of the original copies of said agreement, and says that said "Exhibit A" is a true copy of said original.

Deponent further says that he has examined the records of deeds in the office of the Register of Hudson County and has ascertained therefrom that on May seventeenth, 1901, Cumberland street as shown on "Exhibit D" annexed to complainant's bill, and the blocks immediately to the north and south thereof, were owned by one George L. Blake, and that the same were in the years 1907 and 1910 conveyed to the Hudson Railroad and Transportation Company, and that the deeds to said Blake and said company described said lands by reference to said Gilbert map; that deponent has examined the records in said Register's office, and that the lines of the various properties shown on said "Exhibit D" correctly show the ownership as of May seventeenth, 1901; that since said date the property of the "U. N. J. R. R. & C. Co., P. R. R. lessee," north of the northerly line of the extension of Cumberland street, and immediately to the east of premises of George L. Blake, were conveyed subsequently to the Crucible Steel Company of America, and that the premises shown on said map in the name of Henry Young Estate were subsequently conveyed to and are now held by The Harrison Land Company, a corporation; and the land shown on said map under the name of Draper, was subsequently conveyed to and is now owned by the Pennsylvania Railroad Company; deponent further says that ordinances affecting the vacation of all of the streets mentioned in the application of the Crucible Steel Company of America and annexed to said bill as "Exhibit E" have been passed by the Council of the Town of Harrison upon their third and final readings, with the exception of the ordinance relating to Cumberland street.

Deponent further says that he has inquired of the Secretary of the State of New Jersey and has ascertained that said Crucible Steel Company of America was incorporated July 21st, 1900, and said Hudson Railroad and Transportation Company, February 2d, 1907; that the officers of both companies are the same, and that the principal office of said latter company is located at the office of said former company at Harrison, New Jersey, and that R. H. Illingsworth who is the manager of said Steel Company, is the agent of said Transportation Company upon whom process may be served.

MICHAEL N. CHANLIS.

Sworn and subscribed to before me
this eleventh day of November,
nineteen hundred and thirteen,
at Newark, New Jersey.

JULIA W. DOWNS,
(L. S.) *Notary Public of New Jersey.*

Complaint, in Case No. 2, Booth & Flinn, Limited, Affidavit.

IN CHANCERY OF NEW JERSEY.

Between BOOTH AND FLINN, LTD., *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, HUDSON RAILROAD AND TRANSPORTATION COMPANY, AND TOWN OF HARRISON, *Defendants.*	*On Bill, etc.* *Affidavit.*

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

James F. McKinney, being duly sworn on his oath according to law, deposes and says that he is the general counsel of Booth and Flinn, Ltd., the complainant in the annexed bill: that the matters and things set forth in paragraph one of said bill, relating to the execution of the contract between Booth and Flinn, Ltd., and the Passaic Valley Sewerage Commissioners for the construction of Section 7 of the main intercepting sewer in compressed air tunnel in the City of Newark, Essex County, New Jersey, are true, and that since the execution of said contract Booth and Flinn, Ltd., have been engaged in the doing of the work and furnishing of the materials necessary and incident to the performance of said contract.

Deponent further says that Booth and Flinn, Ltd., entered into a certain agreement with the Pennsylvania Railroad Company, lessee, etc., dated the twentieth day of May, nineteen hundred and thirteen, and that "Exhibit A" annexed to the said bill is a true copy of said agreement, and that deponent, before the execution of said agreement was told by the agent of

the Pennsylvania Railroad Company that pursuant to the agreement of May seventeenth, nineteen hundred and one, Booth and Flinn, Ltd., under its said agreement of May twentieth, nineteen hundred and thirteen, then about to be signed, would have the right of access over Cumberland street, a public street extending easterly from Fourth street, and the private right of way, an extension thereof, established pursuant to the agreement of May seventeenth, nineteen hundred and one, for the purpose of carrying out its contract under said agreement.

Deponent further says that Booth and Flinn, Ltd., entered into a certain agreement with the Harrison Land Company, a corporation, dated the twenty-eighth day of August, nineteen hundred and thirteen; that he has compared "Exhibit B" with the original of said agreement, and that said exhibit is a true copy thereof.

Deponent further says, that on Thursday, the sixth day of November, nineteen hundred and thirteen, he was present at and had a conference with officers and the attorney of the Town of Harrison and the manager and attorney of the Crucible Steel Company of America; that at said conference deponent suggested to the officers of said company that it was necessary that Booth and Finn enter upon the land of the Pennsylvania Railroad Company and the lands of the Harrison Land Company in order that complainant's work on Section 7 of the Passaic Valley Sewer be carried out, and offered to accept the private license of the Crucible Steel Company of America to cross said street, or the premises of the Crucible Steel Company adjacent thereto; that on Friday, the seventh day of November, nineteen hundred and thirteen, deponent prepared and submitted a communication to George H. Peirce, attorney of the Crucible Steel Company of America; that a copy of "Exhibit H" annexed to the above bill, is a true copy of said communication, and

that "Exhibit I" annexed to said bill, is a true copy of the form of license submitted with the said communication; that on the eighth day of November, nineteen hundred and thirteen, said Crucible Steel Company of America, through its said attorney, refused to grant the license last above referred to, except upon condition that Booth and Flinn, Ltd., pay ten cents a cubic yard for all material transported across the land of said Crucible Steel Company; that deponent, on behalf of the complainant herein, declined said proposition and said attorney of the Crucible Steel Company stated to deponent that the complainant herein should make no further attempt to enter upon Cumberland street, for in such case there would be bloodshed, as said attorney had advised said Crucible Steel Company to resist with whatever force was necessary such attempt and to prevent the entrance of said Booth and Flinn upon said portion of Cumberland street at any cost.

Deponent further says that at a conference held in the Town of Harrison on the sixth day of November, nineteen hundred and thirteen, at which were present Honorable Michael T. Barrett, attorney for the Town of Harrison and Honorable John J. Daly, alderman of the Town of Harrison, each stated to deponent that the ordinance introduced in the Town Council for the vacation of Cumberland street had not passed its third and final reading, and had not been finally adopted.

JAMES P. McKINNEY,

Sworn and subscribed to before me, this
11th day of November, 1913.

JULIA W. DOWNS,
Notary Public of New Jersey.

(L. S.)

Complaint, in Case No. 2, Booth & Flinn, Limited, Affidavit.

IN CHANCERY OF NEW JERSEY.

Between
BOOTH AND FLINN, LTD.,
Complainant,
and
CRUCIBLE STEEL COMPANY OF AMERICA, HUDSON RAILROAD AND TRANSPORTATION COMPANY, AND TOWN OF HARRISON,
Defendants.

On Bill.
Affidavit.

J. H. Harrison being duly sworn on his oath according to law says that he acted as the solicitor of Booth & Flinn, Ltd., a certain cause pending in this Court between the Harrison Land Company plaintiff, and the Crucible Steel Company of America, in the Town of Harrison, defendants. That the answers filed by said defendants set forth that Cumberland street in the Town of Harrison, Hudson County, New Jersey, is sixty feet in width and is a public street for the distance of two hundred and thirty-six feet and seventy-two hundredths of a foot east from Fourth street and that the answer of the Crucible Steel Company of America admitted the allegation in the Bill of Complaint in said cause that the title of said Cumberland street easterly from Fourth street to the property of the Pennsylvania Railroad Company and to the land lying thereon on the north and south have been acquired and are now held by said Crucible Steel Company of America or in its behalf.

Deponent further says that he was present on the fifth day of November, nineteen hundred and thirteen when Booth & Flinn, Ltd., through its agent and representatives, attempted to pass with its men and wagons

over Cumberland street in said Town of Harrison, for the purpose of depositing sand and waste material excavated from the line of the Passaic Valley Sewer and for the purpose of exercising its right under the licenses from the Pennsylvania Railroad Company and the Harrison Land Company. That said agents and representatives were unable to enter Cumberland street because of obstructions placed thereon consisting of approximately thirty heavy steel rails sunk or firmly imbedded for the distance of from five to ten feet in the ground and extending to a height of from ten to twenty feet above the surface of the ground and at a distance of approximately four feet apart and placed across the whole width of Cumberland street at or about its intersection with the easterly line of Fourth street. That said obstruction further consisted of twenty-one large steel castings of irregular size and shape and of a weight of from two to five tons each. That watchmen of said Crucible Steel Company of America were on guard and admitted that said obstruction had been placed by said company or its agents. That said watchmen on the approach of the agents and representatives of Booth & Flinn, Ltd., threatened to forcibly eject them, and, if necessary, to shoot them. That the agents and representatives of Booth & Flinn, Ltd., attempted to remove said obstructions in order that access might be had across said Cumberland street to the lands described in the licenses above referred to, and while so engaged were forcibly ejected from said portion of Cumberland street by said private watchmen and by the police of said Town of Harrison; that deponent then stated to said watchmen and to other agents and representatives of the Crucible Steel Company of America who were present and to the police of the Town of Harrison, that it was the intent and purpose of Booth & Flinn, Ltd. to cross that said portion of Cumberland street for the purpose of exercising its

rights and privileges as a member of the public and for the further purpose of exercising the rights granted to it under the licenses from the Pennsylvania Railroad Company and the Harrison Land Company hereinbefore referred to; and that said agents and representatives of the Crucible Steel Company of America then and there admitted they were acting on behalf of said Crucible Steel Company of America; and that the police of said Town of Harrison, forcibly removed and ejected the agents of Booth & Flinn, Ltd. from said portion of Cumberland street and threatened to arrest any person who attempted to enter upon such street.

J. H. HARRISON.

Sworn to and subscribed before me
this 11th of November, 1913, at
Newark, N. J.

JULIA W. DOWNS,
Notary Public of New Jersey.

(L. S.)

EXHIBIT A.

THIS AGREEMENT, made to take effect the twentieth day of May, A. D., 1913, between THE PENNSYLVANIA RAILROAD COMPANY, lessee of the works and property of the United New Jersey Railroad and Canal Company of the first part, and BOOTH & FLINN, LIMITED, a limited corporation of the State of Pennsylvania, of the second part.

WHEREAS, the party of the second part desires to secure from the party of the first part, upon the terms and conditions hereinafter fully set forth, the permission to deposit waste material and sand on certain land of the party of the first part hereinafter particu-

larly described, situate in the Town of Harrison, Hudson County, New Jersey.

NOW THEREFORE THIS AGREEMENT WITNESSETH, that the party of the first part doth hereby permit the party of the second part to deposit, in the manner and in all respects satisfactory to the duly accredited representative of the party of the first part, waste material and sand excavated by the party of the second part from the Passaic Valley Sewer, on ALL THAT CERTAIN piece or parcel of land of the party of the first part, situate in the Town of Harrison, Hudson County, New Jersey, bounded and described as follows: Beginning at a point in the southerly line of Cumberland street two hundred and twenty-nine feet, more or less, eastwardly from its intersection with the easterly line of Fourth street, and extending thence along the said southerly line of Cumberland street south eighty-three degrees fifty-one minutes east about nine hundred and twenty feet to a point; thence south sixteen degrees nine minutes west about four hundred and eighty feet to the high water line of the Passaic River; thence in a general westerly direction along said high water line, the distance of ten hundred and fifty feet more or less to a point in the exterior line for filling adopted by the Riparian Commissioners of the State of New Jersey, January 27th, 1877; thence north six degrees sixteen minutes east about eighty feet; and thence north twenty-one degrees thirty-nine minutes east about five hundred and twenty feet to the place of beginning. Containing eight and sixteen one-hundredths (8 16/100) acres more or less.

IT BEING HEREBY COVENANTED AND AGREED by the party of the second part that it will, at its own cost and expense, but in the manner, of the material and in all respects satisfactory to the said representative of the party of the first part, construct and maintain, during the continuance of this agreement, a bulkhead,

along the said high water line of the land above described, for the purpose of retaining the waste material and sand deposited on said land as above provided, and upon any termination of this agreement the said waste material and sand and said bulkhead shall become the sole and absolute property of the party of the first part without any cost or expense.

The party of the second part doth hereby covenant and agree to and with the party of the first part as follows:

That it shall and will in consideration of the issuance of this permit, pay unto the party of the first part a sum at the rate of one dollar ($1.00) per annum, from the date hereof, to be paid annually, not in advance, during the continuance of this agreement, at the office of the agent for the real estate department of the party of the first part, 324 Market street, Newark, New Jersey, or at such other place as the party of the first part may from time to time designate.

That it will keep and maintain the said bulkhead in good order and repair for actual use at its own expense.

That it will not use the said land for any other purpose than as aforesaid, or permit any other person or persons, corporation or corporations, to use the same for any purpose whatsoever.

That it will not by any lapse of time by virtue hereof or otherwise, claim any right or title adverse to the party of the first part.

That in consideration of the issuance of this permit it shall and will save and keep harmless and indemnify the party of the first part from and against all claims for damages of whatsoever kind or nature arising in any manner or under any circumstances through the exercise of any right granted or conferred hereby whether such damages be sustained by the party of the second part or by other person or persons,

corporation or corporations which seek to hold the party of the first part liable.

That the party of the first part, its successors and assigns, shall have the right to revoke and terminate this agreement at any time upon giving notice in writing by legal service to the party of the second part, that upon the expiration of sixty days from the time of giving the said notice this agreement shall forthwith cease and determine, and the party of the second part shall thereupon remove all goods and property belonging to it from off the said land and deliver up possession of the same in as good order and condition as when received; and that if it shall neglect or refuse so to do, the party of the first part shall have the right forthwith to remove therefrom all goods and property belonging to the party of the second part at the cost and expense of the party of the second part and the party of the second part hereby authorizes the party of the first part so to do, without any further or other notice, proceeding or process whatsoever, without being liable to the party of the second part or any other person or persons, corporation or corporations for any damage or compensation or to any suit or action for or on account of the same.

IN WITNESS WHEREOF, the said party of the first part has hereunto affixed its corporate seal, and has caused this agreement to be executed on its behalf by Henry E. Tripler its assistant real estate agent and the party of the second part hath hereunto affixed its corporate seal, duly attested, the day and year first above written.

THE PENNSYLVANIA RAILROAD COMPANY,

Lessee.

By (Signed) H. E. TRIPLER,
Asst. Real Estate Agent.

Attest:

(Signed) ROBT. GROFF,
Asst. Secretary.

BOOTH & FLINN, LIMITED,
By (Signed) W. A. FLINN,
Vice-Chairman.

Attest:

Duplicate Secretary.

Sealed and delivered in the
presence of us.
(Two witnesses as to each individual,
except executive officers.)

EXHIBIT B.

THIS AGREEMENT, made this twenty-eighth day of August, Nineteen Hundred and Thirteen, BETWEEN HARRISON LAND COMPANY, a corporation of the State of New Jersey, party of the first part, and BOOTH AND FLINN, LIMITED, a limited corporation of the State of Pennsylvania, party of the second part:

WHEREAS, the party of the second part desires to secure from the party of the first part, upon the terms and conditions hereinafter set forth, permission to deposit earth, sand, stone, and waste material on lands of the party of the first part hereinafter more particularly described, situate in the Town of Harrison, County of Hudson and State of New Jersey:

NOW THEREFORE, this agreement witnesseth that the party of the first part doth hereby permit the party of the second part to deposit earth, sand, stone, and waste material on all or any portion of that certain tract of land of the party of the first part, situate in the Town of Harrison, County of Hudson, and

State of New Jersey, comprising about seventeen acres, and shown on official map of the Town of Harrison; said tract being bounded on the north and west by lands of the United New Jersey Railroad and Canal Company (Pennsylvania Railroad Company lessee), on the south by the Passaic River, and on the east by lands formerly of William H. Draper, deceased.

The party of the first part does hereby further permit the party of the second part, as the agent and representative of the said party of the first part, to use for ingress and egress, and to fill in and grade, the street known as Cumberland street, or any portion thereof, said street being shown and designated on the official map of said Town of Harrison and mentioned and described in a certain agreement, dated the seventeenth day of May, nineteen hundred and one, between the United New Jersey Railroad and Canal Company, party of the first part, Crucible Steel Company of America, party of the second part, James H. Young, *et al.*, surviving executors, etc., party of the third part, and Ruth Dana Draper, party of the fourth part:

The party of the second part does hereby covenant and agree to and with the party of the first part that in consideration of the issuance of this permit, it will pay unto the party of the first part the sum of one dollar per annum from the date hereof, to be paid at the expiration of each and every calendar year during the continuance of this agreement at the office of Edward A. and William T. Day, 763 Broad Street, Newark, New Jersey, or at such other place or places as the party of the first part may from time to time designate; that it will not by lapse of time, by virtue hereof, or otherwise, claim any right or title adverse to the party of the first part; that it will save, indemnify and keep harmless the party of the first part from any and all claims for damages of whatsoever

kind or nature arising in any manner or under any circumstances through the exercise of any right granted or conferred hereby; that upon termination of this agreement as hereinafter provided said party of the second part, shall remove all goods and property belonging to it from said land and will deliver up possession of the same; and that if said party of the second part shall neglect or refuse so to do the party of the first part shall have the right forthwith to remove from said lands all goods and property belonging to the party of the second part at the cost and expense of the party of the second part, and the party of the second part does hereby authorize the party of the first part so to do.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be duly executed the day and year first above written.

It is understood and agreed that either of the parties hereto, its successors and assigns, shall have the right at any time to revoke and terminate this agreement by giving written notice to the other party, its successors or assigns, and, upon the expiration of thirty days from the time of giving said notice, this agreement shall forthwith cease and determine.

HARRISON LAND COMPANY,

(L. S.) GEORGE C. KOBBE,
President.

Attest:

WALTER KOBBE, JR.
Secretary & Treasurer.

BOOTH AND FLINN, LTD.,
W. A. FLINN,
Vice-President.

Attest:

S. M. RUTLEDGE.

EXHIBIT C.

AGREEMENT, made this seventeenth day of May, in the year one thousand nine hundred and one, between the UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, party of the first part, CRUCIBLE STEEL COMPANY OF AMERICA, party of the second part, JAMES H. YOUNG and MASON YOUNG, surviving executors of and trustees under the last will and testament of Henry Young, late of Ossining, in the County of Westchester and State of New York, deceased, party of the third part, and RUTH DANA DRAPER, sole devisee and legatee of William H. Draper, of the City, County and State of New York, deceased, party of the fourth part.

WHEREAS, the said parties own tracts of land in the Town of Harrison, County of Hudson and State of New Jersey, lying south of the main line of the railroad of the party of the first part, and east of the most westerly of the several boundary lines between the tract known as the Gilbert tract shown on a map entitled Map of Lots in East Newark for Hiram Gilbert, Clark & Bacot, City Surveyors, July 15, 1852, filed in the office of the Register of Hudson County as Map No. 234, and the tract known as the Preston Tract, or Canada or Kennedy Farm, shown on a map entitled Map of the Preston tract filed in Bergen County Clerk's office July 14, 1837, and extending eastwardly from this line a distance of more than two thousand feet to the middle of a ditch which forms the easterly boundary of a tract of land formerly belonging to the estate of Michael Sanford who died in eighteen hundred and five, which was conveyed to said William H. Draper, deceased, by Ellis F. Draper and Jennie B. Smith and her husband, by deed dated October 27, 1884, and recorded in Book 397 of deeds for Hudson County, on page 567, and

WHEREAS, no public streets or highways exist on

said several tracts and the parties of the third and fourth parts claim rights of way over property of the party of the first part embraced in the above mentioned Preston Tract, and

WHEREAS, it is for the interest of all the parties hereto that some recognized way to and through such properties be established and that all claims of parties herein to private rights of ways over such properties or any of them be extinguished:

NOW THEREFORE, the said parties, in consideration of the premises, and of the sum of one dollar by each to each of the others in hand paid, receipt whereof is hereby acknowledged, do hereby covenant and agree, each with the others and with each of them that a strip of land sixty feet in width an extension of Cumberland street easterly across the said lands of the parties hereto, be and the same is hereby dedicated and appropriated as a road, the stirp of land so dedicated beginning east of Fourth street at the end of Cumberland street as laid out on the Gilbert Map and in the aforesaid dividing line between the Preston Tract and the Gilbert Tract, and running thence easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties hereto to the middle of the said ditch which forms the easterly boundary of the said land of the party of the fourth part. Cumberland street of which the land above described is an extension, is shown on the map of the Gilbert Tract above referred to and on the official map of the Town of Harrison, made by Young and Borrie, Surveyors. It is sixty feet in width and crosses Fourth street at right angles extending easterly to the said boundary line of the Gilbert and Preston Tract: the northeastern corner of Fourth and Cumberland streets is two thousand and twenty feet southerly from New Jersey Railroad avenue. The distance from Fourth street along the northerly line of Cumberland street to the boundary line of the Preston Tract is shown differently on the different maps.

And the said parties of the second, third and fourth parts, for the consideration aforesaid, do hereby release and surrender to said party of the first part all rights of way over the Preston tract, or any part of it, arising from any source whatever, which they, or any of them may have or claim to have.

It is further agreed that any of the parties hereto may at any time, but without expense to the others or to any of them, fill in and grade the said road or any part of it, and this agreement shall bind the successors, heirs, executors and assigns of the respective parties.

IN WITNESS WHEREOF, the said parties have executed these presents under their respective seals, and the Pennsylvania Railroad Company, lessee of the party of the first part, in token of its assent and approval, hath also executed the same the day and year first above written.

THE PENNSYLVANIA RAILROAD COMPANY.

(L. S.) By CHARLES E. PUGH,
Vice-President.

Attest:

LEWIS NEILSON,
Secretary.

THE UNITED NEW JERSEY RAILROAD & CANAL COMPANY,

(L. S.) By F. WOLCOTT JACKSON,
President.

Attest:

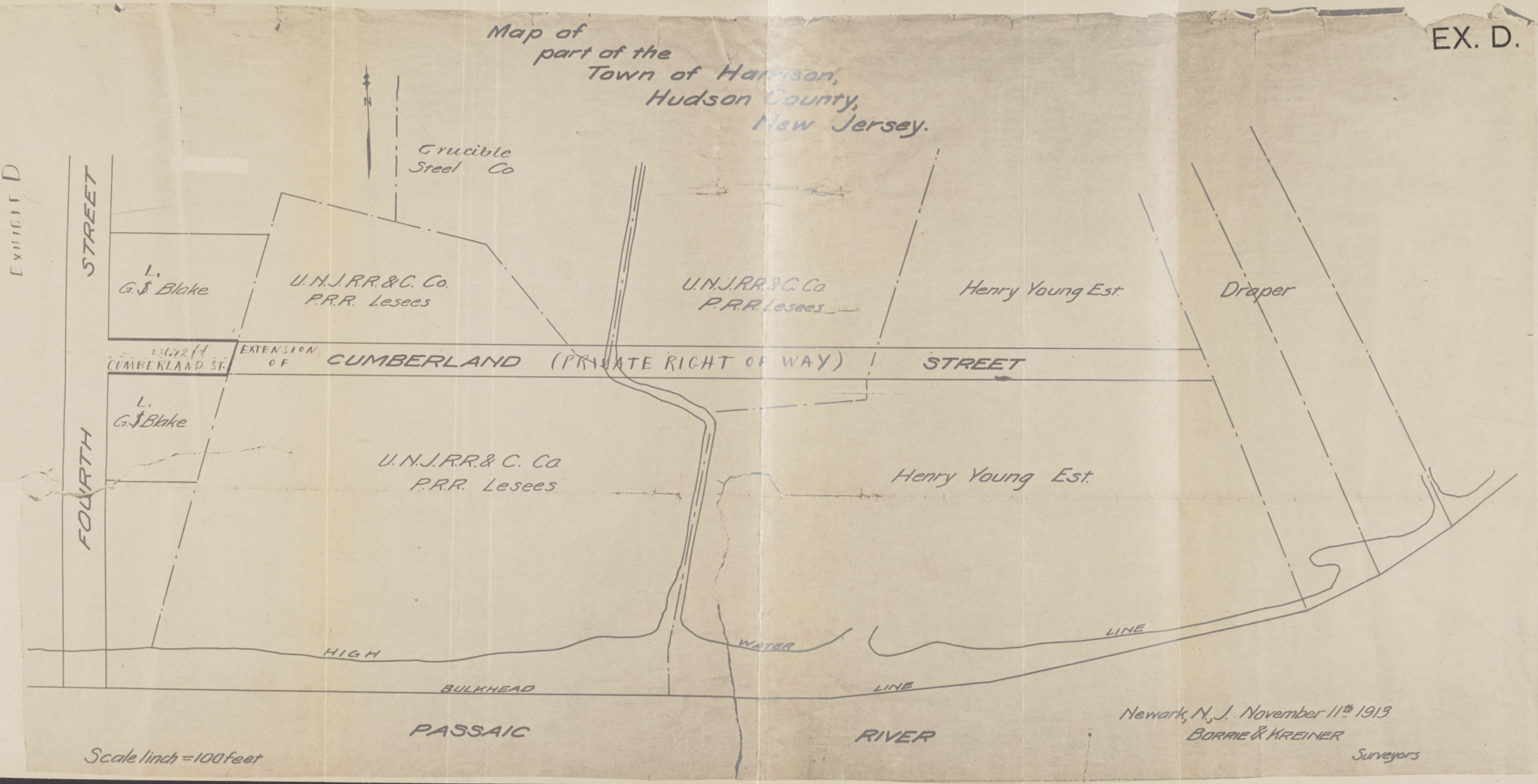
LEROY H. ANDERSON,
Secretary.

CRUCIBLE STEEL CO. OF AMERICA,

(L. S.) C. E. CLAPP,
Fourth Vice-President.

EX. D.

Map of part of the Town of Harrison, Hudson County, New Jersey.



Attest:

FRANK B. SMITH,
Secretary.

JAMES H. YOUNG (L. S.)
Exr. & Trustee

MASON YOUNG (L. S.)
Exr. & Trustee

RUTH DANA DRAPER (L. S.)

Recorded Register's office 5303 Nov. 8, 1901, 9.45 A. M., Hudson County, New Jersey.
794-207.

EXHIBIT E.

Hon. Mayor and Common Council,
Town of Harrison

Dear Sirs:—

We are herewith submitting proposal in connection with the vacation and deeding of certain streets abutting on our property on South Fourth, Fifth and Sixth Streets of your Town as follows:

Hunterdon Street
Burlington Street
Monmouth Street
Gloucester Street between Fourth and
Fifth Street
Salem Street
Cumberland Street
Cape May Street

and Henry Street and vacated property at the East. Fifth Street South of the Pennsylvania Railroad Company's line at Somerset Street to a line at approximately the centre of Salem Street; south of said line street is already vacated.

New Jersey State Library

Fifth Street from Fox Island Creek to Middlesex Street.

Burlington Street

Hunterdon Street and half of Monmouth Street and Somerset Street abutting on our property east of Sixth Street.

The Crucible Steel Co. of America hereby offer $8,000 payable to the Treasurer of the Town of Harrison, N. J., and the Common Council of Harrison to give in return a quit-claim deed on all the property herein mentioned.

Trusting this will meet with your acceptance, we are

CRUCIBLE STEEL COMPANY OF AMERICA,
R. H. ILLINGWORTH,
Mgr. of Atha Works.

EXHIBIT F.

To the Honorable the Council
of the Town of Harrison.

Gentlemen:—

We desire to present to you briefly the grounds upon which we base our application for the vacation of parts of certain streets in the Town of Harrison.

First: It is the purpose of this Company to use these parts of these streets, together with other land owned by the Company, for the purpose of building additions to our present plant from time to time. Such additions to our plant will furnish employment to an increasingly large number of men and in that way will add to the prosperity of the community. The developments recently made by the Pennsylvania Railroad Company to the east of our plant are of such character that if we are allowed to develop our plant at all we must develop it in a westwardly direction.

Complaint, in Case No. 2, Booth & Flinn, Limited, Exhibit F.

In view of the pleasant relations which have existed between your Town Officers and our Company we should be surprised to find any desire to hamper or interfere with that development. The vacation of these parts of these streets, moreover, will restore just that much land to the ratables of the Town.

Second: Practically these streets are, little if anything, more than paper streets. They were dedicated by the filing of a map and the dedication was effected without cost to the Town. Nor has the Town ever paid any money for the working or development of the streets, so that if the application is granted the Town will not be giving up anything for which it has paid any value, nor will it be giving up anything which is of any practical public use.

Third: We state most positively that this application is made solely for the benefit of our Company in the way of developing its business as it is proposed and desired to develop it. Neither the Pennsylvania Railroad Company, nor any other person or corporation has any interest in this matter, and it is not at all contemplated by us that the Pennsylvania Railroad Company shall use this property, or any part thereof, unless such right should be acquired by condemnation against our will, and we are willing to agree that for a period of twenty years the properties thus sought to be released from the dedication will not be in any way used by the Pennsylvania Railroad Company for its railroad purposes unless it be through condemnation proceedings over which we have no control.

Yours very truly,

CRUCIBLE STEEL COMPANY OF AMERICA,

By R. H. ILLINGSWORTH,

Mgr.

EXHIBIT G.

TOWN OF HARRISON

Ordinance—Cumberland Street Vacation.

An Ordinance to provide for the vacation of Cumberland Street extending from the easterly line of Fourth Street easterly 236 72/100 feet, measured along the centre line to the lands of the Pennsylvania Railroad Company, be vacated. Subject to the agreement made the 17th day of May, 1901, between The Crucible Steel Company of America, the United New Jersey Railroad & Canal Company, James H. Young and Mason Young, surviving executors of Henry Young, deceased, and Ruth Dana Draper, devisee of William H. Draper, deceased.

Be it ordained by the Common Council of the Town of Harrison as follows:

Sec. 1. That Cumberland Street, extending from the easterly line of Fourth Street easterly 236 72/100 feet, measured along the centre line to the lands of the Pennsylvania Railroad Company be and the same is hereby vacated. Subject to the agreement made the 17th day of May, 1901, between The Crucible Steel Company of America, the United New Jersey Railroad and Canal Company, James H. Young and Mason Young, surviving executors of Henry Young, deceased, and Ruth Dana Draper, devisee of William H. Draper, deceased.

At a regular meeting of the Common Council of the Town of Harrison held on Tuesday, July 1, 1913, the above ordinance was given its first and second reading, referred to a third reading and ordered published.

JOSEPH P. RIORDAN,
Mayor.

PETER J. GOODMAN,
Town Clerk.

EXHIBIT H.

November 7th, 1913.

George H. Peirce, Esq.,
Prudential Building,
Newark, N. J.

Dear Sir:—

At your suggestion, on behalf of my client, Booth & Flinn, Ltd., and without prejudice to its rights, I hereby submit to you as attorney for the Crucible Steel Company, a proposition that your client license my client to cross its property in the Town of Harrison lying adjacent to Fourth Street in that town, for the purpose of depositing on the Pennsylvania Railroad land material excavated from Section 7 of the Passaic Valley Sewer.

Booth & Flinn, Ltd., arranged with The Pennsylvania Railroad Company for the privilege of filling its said land before your client took steps to secure from the Town of Harrison the sale of its rights in Cumberland and other streets, and it assumed that it would have the right to use what is known as Cumberland street for the purpose of access to the dump.

These lands are the only available place for dumping the very large quantity of sand which Booth and Flinn is getting from its contract excavation, and it is imperatively necessary that it have access to this property at once.

I believe that my client has at the present time not only the right which the public has generally to cross Cumberland Street, but also as licensee of the Pennsylvania Railroad Company has a private right under the agreement of 1901 to traverse Cumberland Street. I am, however, authorized by my client to say that it will accept the license of your client to traverse what is known as Cumberland Street, or to cross your land at any nearby point, and to stipulate that in case it

shall be so licensed it will in no way attempt to establish any hostile right for itself or for any one else in Cumberland street.

I desire to call your attention to the fact that if Booth & Flinn, Ltd., has the right to cross Cumberland Street, and shall be prevented by the Crucible Steel Company from doing so, and shall be compelled, pending the establishment of its rights to secure another dump at a greatly increased expense, it will have a claim for damages in a very large amount.

In view of the fact that Booth and Flinn has no desire to establish a hostile easement, I respectfully ask your immediate attention to the suggestion contained in this communication that Booth & Flinn be permitted to gain access to the property of the Pennsylvania Railroad Company under private license from the Crucible Steel Company in substantially the form herewith submitted.

Yours very truly,

J. H. HARRISON.

EXHIBIT I.

THE CRUCIBLE STEEL COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Pennsylvania, with a place of business in the City of Newark, County of Essex and State of New Jersey, and the owner of lands in the Town of Harrison, Hudson County, State of New Jersey, adjacent to Fourth street, hereby, in consideration of one dollar, receipt of which is hereby acknowledged, licenses Booth & Flinn, Ltd., a corporation organized and existing under the laws of the State of Pennsylvania, to cross that portion of its lands lying between Fourth street, in the Town of Harrison, and land of the Pennsylvania Railroad Company adjacent thereto for the purpose of depositing material excavated by Booth & Flinn, Ltd., from Section 7 of the Passaic Valley sewer upon the land of the said Pennsylvania Railroad.

It is expressly covenanted and agreed by the parties hereto that this license is to continue only during the period of excavation under the said contract of Booth & Flinn, Ltd., and it is covenanted by Booth & Flinn, Ltd., that during the period of its license it will assert no adverse right either in its own name or in the name of any other person to cross the said land of the Crucible Steel Company at any point, or the tract of land sixty feet in width running easterly from Fourth street and known as Cumberland street.

Case No. 2.

Order to Show Cause.

Filed November 13, 1913.

IN CHANCERY OF NEW JERSEY.

Beween BOOTH & FLINN, LTD., *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, HUDSON RAILROAD AND TRANSPORTATION COMPANY AND TOWN OF HARRISON, *Defendants.*	*On Bill, etc.* *Order to Show Cause and Restraining Order.*

Upon reading the bill of complaint of Booth & Flinn, in the above entitled cause, and the verifying affidavits thereto annexed, from which it appears that said Booth & Flinn did on the eleventh day of February, 1913, enter into a contract with the Passaic Valley Sewerage Commissioners for the construction of Section 7 of the main intercepting sewer in compressed air tunnel in the City of Newark, New Jersey; and it further appearing that said complainant entered into a certain agreement dated the twentieth day of May, nineteen hundred and thirteen, with the Pennsylvania Railroad Company, lessee of the works and property of the United New Jersey Railroad and Canal Company, whereby a license was granted to said complainant to deposit waste material and sand, excavated in the line of said Passaic Valley Sewer on lands of said Pennsylvania Railroad Company in the Town of Harrison in said bill more particularly described, and that on the twenty-eighth day of August, nineteen hundred and thirteen, said complainant

entered into a certain agreement with The Harrison Land Company, a corporation, wherein said complainant was granted a license to deposit earth, sand and waste material on a certain tract of land belonging to said The Harrison Land Company in the Town of Harrison, County of Hudson, State of New Jersey, in said agreement more particularly described, and that under the terms of said license said complainant was granted the right to use for ingress and egress, and to fill in and grade said street known as Cumberland street as shown and designated on the official map of said Town of Harrison, and mentioned and described in a certain agreement dated the seventeenth day of May, nineteen hundred and one, between the United New Jersey Railroad Company (the Pennsylvania Railroad Company) and others; and it further appearing that under the terms of said last mentioned agreement, a strip of land sixty feet in width, an extension of Cumberland street across the lands of the parties to said agreement, was dedicated and appropriated as a road; and it further appearing that Cumberland street for a distance of two hundred and thirty-six feet and seventy-two one-hundredths of a foot from its intersection with the easterly line of Fourth street is a public street, and that the agents and representatives of the complainant herein attempted on the fifth day of November, nineteen hundred and thirteen, to pass with men and wagons over said public portion of Cumberland street, and were forcibly ejected therefrom by the agents of the Crucible Steel Company of America, and the police of the Town of Harrison, and that obstructions more particularly described in said bill had been placed across the whole width of Cumberland street at or about its intersection with the easterly line of Fourth street.

It is on this eleventh day of November, nineteen hundred and thirteen, ORDERED that the Crucible Steel Company of America, The Hudson Railroad and Transportation Company and the Town of Harrison

show cause, on Tuesday, the eighteenth day of November, nineteen hundred and thirteen, at ten o'clock in the morning, at the Chancery Chambers in the City of Newark, why they should not be enjoined and restrained from in any manner obstructing said portion of Cumberland street extending from the easterly line of Fourth street two hundred and thirty-six feet and seventy-two one-hundredths of a foot measured along its centre line to the land of the Pennsylvania Railroad Company, or in any manner obstructing the prolongation easterly of said portion of Cumberland street to lands formerly of Ruth Dana Draper, devisee, etc., or from preventing your orator, its agents, servants and representatives from traversing and using said portions of said street; and show cause why the Crucible Steel Company of America, and The Hudson Railroad and Transportation Company should not be ordered to remove forthwith from said portions of Cumberland street, any and all obstructions thereon placed by them or either of them, which prevent or interfere with free and unrestricted ingress and egress of said complainant, its agents, servants and representatives over said Cumberland street and the right of way which is the prolongation thereof, and further, that the surface of said street and prolongation thereof be restored to the condition in which they were before the placing of the obstructions therein and thereon, as in the bill stated.

It is further ordered that true copies of this order and of said bill and affidavits (which copies need not be certified), be served upon the defendants herein or their respective attorneys within two days from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

JOHN R. EMERY,
Vice-Chancellor.

Case No. 2.

Amendment to Bill of Complaint of Booth & Flinn, Limited.

Filed December 4, 1913.

IN CHANCERY OF NEW JERSEY.

Between BOOTH & FLINN, LTD., *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, HUDSON RAILROAD AND TRANSPORTATION COMPANY AND TOWN OF HARRISON, *Defendants.*	*On Bill, etc.* *Amendments to Bill.*

The bill of complaint herein is hereby amended as follows:

First. Amend paragraph three of said bill by striking out all of said paragraph and submitting in the place and stead thereof the following:

3. That by deeds duly recorded in the records of the County of Hudson, New Jersey, Prudden Alling, John G. Jackson and Andrew Rankin, as trustees, acquired title to a large tract of land in the said County of Hudson, and proceeded to lay out a new town called "East Newark"; that said lands were plotted and laid out into lots, streets and avenues, on a map from which lots were sold, entitled "Map of Lots in East Newark, to be sold on Tuesday, 27th September, 1836, at 2 o'clock P. M. on the premises," and filed in the Register's office of Essex County; that thereafter one Richard Dey became the owner of the premises covered by said map and a new map was published, from which lots were sold, entitled "Map of Lots in East Newark to be sold on Thursday, 25th Sept. 1845 at 2 o'clock P. M. on

the premises," which map is filed in the Register's office of Essex County, New Jersey; that both of said maps show a street named "Cumberland Street," as new located, crossing Fourth street easterly to Seventh street; that thereafter, in the year eighteen hundred and fifty two, one Hiram Gilbert, who owned land known as the "Gilbert Tract," caused a map to be made thereof, entitled, "Map of Land in East Newark for Hiram Gilbert, Clark & Bacot Surveyors, July 15, 1852," which map showed the division of said Gilbert tract into lots, blocks, and streets, one of which streets, called "Cumberland Street," was shown as sixty feet in width, extending from the Passaic River on the west eastwardly across Fourth street to Seventh street; that thereafter, on the nineteenth day of January, eighteen hundred and fifty-three, said map was filed in the office of the Clerk of the County of Hudson; that thereafter, said Hiram Gilbert, his grantees or successors, made conveyances to various parties, including The Crucible Steel Company of America, of lots shown on said map by reference thereto, to which map and conveyances, or the record thereof, your orator begs leave to refer for greater certainty if it be necessary so to do; that said Cumberland street is shown upon the official map of the Town of Harrison; the portion of Cumberland street extending two hundred and thirty-six feet and seventy one-hundredths feet at right angles easterly from Fourth street is one of the public streets of said Town of Harrison, and in answers filed by the Town of Harrison and Crucible Steel Company of America, defendants, September eighteenth, nineteen hundred and thirteen, in a certain cause pending in this Court between the Harrison Land Company, complainant, and the said defendants, it was admitted by said defendants that said portion of Cumberland street was a public street.

Second. Amend the interrogating part on page twelve of said bill by inserting after the words "the Town of Harrison," the following: "The United New Jersey Railroad and Canal Company, a corporation, and the Pennsylvania Railroad Company, a corporation, and The Harrison Land Company, a corporation."

Third. Amend the prayer for process on page fourteen of said bill by striking out all of said prayer for process and substituting in the place and stead thereof the following:

May it please your Honor, the premises considered, to grant unto your orator not only the state's writ of injunction issuing out of and under the seal of this Honorable Court to be directed to the said Crucible Steel Company of America, Hudson Railroad and Transportation Company and The Town of Harrison, enjoining and restraining them and each of them as therein prayed, but also the state's writ of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said Crucible Steel Company of America, Hudson Railroad and Transportation Company and the Town of Harrison, The United New Jersey Railroad and Canal Company and the Pennsylvania Railroad Company, and The Harrison Land Company, a corporation, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

J. HENRY HARRISON,
Solicitor for and of Counsel with Complainant.

Case No. 1.

Answer of Harrison Land Co.

Filed December 17, 1913.

IN CHANCERY OF NEW JERSEY.

Between THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, *et als.*, *Complainants,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants.*	*On Bill, &c.* *Answer of Harrison Land Company.*

The answer of Harrison Land Company, defendant, to the Bill of Complaint of The United New Jersey Railroad and Canal Company and The Pennsylvania Railroad Company, complainants.

This defendant answering says:

1. That prior to and at the time of the execution of the agreement, dated May 17, 1901, between the United New Jersey Railroad and Canal Company of the first part, Crucible Steel Company of America of the second part, James H. Young and Mason Young, surviving executors of and trustees under the Last Will and Testament of Henry Young, deceased, of the third part and Ruth Dana Draper of the fourth part, mentioned and set forth in the said bill of complaint and attached thereto as Exhibit B, the said James H. Young and Mason Young, surviving executors and trustees as aforesaid, were the owners and were seized and possessed of a certain tract of land

in the Town of Harrison, in the County of Hudson, in this State, comprising about seventeen acres, described on the official map of said town as bounded by Cumberland, Cape May, Salem and Gloucester streets, running east and west, and Seventh street running north and south, and comprising blocks or part blocks numbers 176 to 183, both inclusive, and lots or part lots on said blocks and on said streets to the number of about two hundred and twenty-eight lots of about twenty-five by one hundred feet each; besides the lands south of said blocks 178 and 179, along the Passaic River, a distance of about 1,200 feet, and the riparian grant appurtenant thereto: which said tract is bounded on the north and west by lands of The United New Jersey Railroad and Canal Company (now the Pennsylvania Railroad Company), known as the Preston Tract, or Canada or Kennedy Farm, on the south by the Passaic River to the exterior line of the said riparian grant, and on the east by lands formerly of William H. Draper, deceased, and which said tract of land is shown on the map annexed to the said bill of complaint in this cause.

II. That on or about the twentieth day of May, nineteen hundred and four, and the seventh day of July in the same year, by deeds duly recorded in said Register's office in Book 896, pages 155 and 175 of Deeds for said County, the said James H. Young and Mason Young, surviving executors of and trustees under the Last Will and Testament of Henry Young, deceased, and all of the beneficiaries under said will and the only *cestuis que trustent* for whose benefit the properties therein described were then held by the said James H. Young and Mason Young, united in a conveyance of said tract of lands, and other lands, and of all rights and interest in any wise relating thereto, to this defendant, said Harrison Land Company, and that by said deeds this defendant became and is still seized and possessed of said tract of land

and of the rights and benefits set forth in the agreement aforesaid; to which said deeds or said records thereof this defendant prays leave to refer if necessary.

III. That prior to said seventeenth day of May, nineteen hundred and one, access to and from the said tract of land of the said Henry Young Estate, was over and across the properties of said Railroad Company, William H. Draper, and Crucible Steel Company of America, a corporation of this State, by various private ways and public streets, running north and south and westerly from said tract of land, to said Fourth street and to other parts of said town.

IV. That since the execution of said agreement and by reason of the vacation by the said Town of Harrison of all other streets running to or through this defendant's said tract of land, said Cumberland street has been and still continues to be the sole and only mode of access by land to and from said property and Fourth street or any public street of said town, and has become and is a way of necessity.

V. That this defendant admits all the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the said Bill of Complaint.

VI. And this defendant joins in the prayer of relief in said Bill of Complaint set forth insofar as said relief is applicable to this defendant.

(The Cross Bill to Case No. 1 is identical with that in Case No. 2 and will be found following the Answer of Harrison Land Co. to Case No. 2, at page 74.)

Case No. 2.

Answer of Harrison Land Company.

Filed December 17, 1913.

IN CHANCERY OF NEW JERSEY.

Between BOOTH & FLINN, LTD., *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants.*	*On Bill, &c.* *Answer of Harrison Land Company.*

The answer of Harrison Land Company, defendant, to the bill of complaint of Booth & Flinn, Ltd., a limited corporation of the State of Pennsylvania, complainant.

This defendant answering says:

I. That while it has no knowledge of the matters and things set forth in paragraph 1 of said Bill of Complaint, it believes the same to be true, and, therefore, admits the allegations in said paragraph contained.

II. And this defendant admits all the matters and things set forth in the other paragraphs in said bill contained.

III. This defendant joins in the prayer of the said bill.

Cases 1 and 2.

Cross Bill of Harrison Land Company.

This defendant, by way of cross bill exhibited against the defendants, Crucible Steel Company of America and the Hudson Railroad and Transportation Company, says:

VII. That this defendant is a corporation organized in or about the year nineteen hundred and four under the laws of the State of New Jersey, and that it was formed, among other things, for the purpose of taking over the real estate holdings in the Town of Harrison, in the County of Hudson, in this State, of which James H. Young and Mason Young, as Surviving Executors of and Trustees under the Last Will and Testament of Henry Young, deceased, were then seized and possessed, and among others of the tract of land in said town comprising about seventeen acres, and particularly described in the first paragraph of this answer.

VIII. That the map referred to in the bill of complaint in this cause entitled "Map of Land of East Newark of Hiram Gilbert, Clark & Bacot, Surveyors, July 1852," which was duly filed in the office of the Clerk of Hudson County on January 19, 1853, shows the layout and plan of nearly all the lots, blocks and highways of the Town of Harrison, and with reference to said map nearly all the lands in said town have been from time to time sold, and also with reference to which the annual taxes imposed by the said town have been assessed. And this defendant shows that the said map, with slight and unimportant changes, chiefly growing out of some inaccuracies therein, has been, for all time, accepted as the plan and layout of said town and of all the streets and highways therein; and that all the streets and highways laid down on said map have been recognized by the said town,

and the dedication thereof as made by said map accepted by the said municipality.

IX. That said Cumberland street, shown on said map, is sixty feet wide, and commencing with the Passaic River on the west runs easterly and crossing Fourth street extends to and into the said seventeen-acre tract of this defendant on the east.

That said Fourth street is a wide finely paved street, with a trolley line thereon, and is the main artery, running north and south, connecting the said Town of Harrison with the City of Newark, by means of a costly bridge over the Passaic River, extending from the foot of said Fourth street to the foot of Jackson street in said city.

X. That prior to said seventeenth day of May, nineteen hundred and one, access to and from the said tract of land of the said Henry Young estate, was over and across the properties of said railroad company, William H. Draper, and Crucible Steel Company of America, a corporation of this State, by various private ways and public streets, running north and south and westerly from said tract of land, to said Fourth street and to other parts of said town.

XI. That on or about the seventeenth day of May, nineteen hundred and one, the agreement between the United New Jersey Railroad and Canal Company of the first part, Crucible Steel Company of America of the second part, James H. Young and Mason Young, Surviving Executors of and Trustees under the Last Will and Testament of Henry Young, deceased, of the third part, and Ruth Dana Draper of the fourth part, and annexed to the bill of complaint in this cause, was entered into; which said agreement recited that the said parties thereto owned tracts of land in said town lying south of the main line of the railroad of the party of the first part, and east of the most westerly of the several boundary lines between the Gil-

bert tract shown upon the above mentioned map, and said Preston tract, or Canada or Kennedy Farm, shown on a map of said tract filed in Bergen County, July 14, 1837, and extending easterly from said line over two thousand feet to the middle of a ditch forming the easterly line of said Draper tract; that no public streets or highways then existed on said several tracts, that the said parties of the third and fourth part claimed rights of way over property of said railroad company, embraced in said Preston tract; and that it was for the interest of all said parties that some recognized way to and through such properties be established, and that all claims of parties therein to private rights of way over such properties or any of them be extinguished—and thereupon covenanted and agreed each with the others and with each of them, as follows, viz., "that a strip of land sixty feet in width an extension of Cumberland easterly across the said lands of the parties thereto be and the same is hereby dedicated and appropriated as a road, the strip of land so dedicated beginning east of Fourth street at the end of Cumberland street as laid out on the Gilbert Map and in the aforesaid dividing line between the Preston tract and Gilbert tract, and running thence easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties hereto to the middle of the said ditch which forms the easterly boundary of the said land of the party of the fourth part. Cumberland street, of which the land above described is an extension is shown on the map of the Gilbert tract above referred to and on the official map of the Town of Harrison, made by Young and Borrie, Surveyors. It is sixty feet in width and crosses Fourth street at right angles extending easterly to the said boundary line of the Gilbert and Preston tracts; the northeast corner of Fourth and Cumberland streets is two thousand and twenty feet southerly from New Jersey Railroad ave-

nue. The distance from Fourth street along the northerly line of Cumberland street to the boundary line of Preston tract is shown differently on the different maps."

That thereupon, for the consideration set forth in said agreement, the parties of the second, third and fourth parts did release and surrender to the party of the first part, all right of way over the Preston tract, or any part of it, arising from any source whatever, which they, or any of them, might have or claim to have; and that it was further agreed that any of the parties might at any time, but without expense to the other, or of any of them, fill in and grade the said road or any part of it; and that said agreement should bind the successors, heirs, executors and assigns of the respective parties.

XII. That said agreement, after execution by the parties above named (including the Pennsylvania Railroad Company), was recorded in the Register's office of Hudson County, in Book 794 of Deeds on page 207; to which agreement or the said record thereof this defendant prays leave to refer if necessary.

XIII. That since the execution of said agreement, and by reason of the vacation by the said Town of Harrison of all other streets running to or through this defendant's said tract of land, said Cumberland street has been and still continues to be the sole and only mode of access by land to and from said property and Fourth street or any public street of said town, and has become and is a way of necessity.

And this defendant charges that the whole of said Cumberland street is and has always been a public street or highway which this defendant and its predecessors in title have had the right to use and enjoy as a means of access to their lands as one of the public and that, in addition to their rights as one of the public, this defendant and its predecessors in title have

had and still have and enjoy a private right of way over the said Cumberland street.

XIV. That on or about the Twentieth day of May, nineteen hundred and four, and the seventh day of July, in the same year, by deeds duly recorded in said Register's office in Book 896, pages 155, and 175 of Deeds for said County, the said James H. Young and Mason Young, Surviving Executors of and Trustees under the Last Will and Testament of Henry Young, deceased, and all of the beneficiaries under said will and the only *cestuis que trustent* for whose benefit the properties therein described were then held by the said James H. Young and Mason Young, united in a conveyance of said tract of lands, and other lands, and of all rights and interest in any wise relating thereto to this defendant, said Harrison Land Company, and that by said deeds this defendant became and is still seized and possessed of said tract of land and of the rights and benefits set forth in the agreement aforesaid; to which said deeds of said records thereof this defendant prays leave to refer if necessary.

XV. That at the time of the execution of the said agreement of May 17, 1901, the parties thereto were seized and possessed of all the lands lying along and abutting upon said Cumberland street from Fourth street to the easterly terminus of said Cumberland street on the lands of this defendant as aforesaid, except the lands on the north and south sides of Cumberland street from the intersection of said street with the easterly line of Fourth street, and running from said line of Fourth street easterly about two hundred and thirty-six and one-half feet to the easterly line of the said Gilbert tract (shown on said map), being lots 1 to 18, both inclusive, in block 80 and lots 1 to 12, both inclusive, in block 83 on said map, which were then owned by one George L. Blake; and the same,

together with said Cumberland street between said Fourth street and the easterly line of said Gilbert tract were, in the years 1907 and 1910, conveyed to the Hudson Railroad and Transportation Company, a corporation of the State of New Jersey, which was organized by the said Crucible Steel Company of America for the purposes of its business, and which was then and is now entirely owned and controlled by the said Crucible Steel Company of America.

XVI. That on or about the twenty-eighth day of August, nineteen hundred and thirteen, this defendant entered into a certain agreement with Booth and Flinn, Ltd., a limited corporation of the State of Pensylvania in and by which it did, among other things, license the said Booth & Flinn, Ltd., to deposit earth, sand, stone and waste material on all or any portion of the said seventeen-acre tract of this defendant, and that under the terms of said license this defendant did grant to the said Booth and Flinn, Ltd., as its agent and representative, the right to use, for ingress and egress, and to fill in and grade the said street, known as Cumberland street, a copy of which said agreement is hereto annexed, marked Schedule A, and made part of this answer.

XVII. That on or about the sixth day of May, nineteen hundred and thirteen, the said Crucible Steel Company of America, made application to the Town Council of the Town of Harrison to have the said town vacate that portion of Cumberland street extending from Fourth street to the easterly line of the Gilbert tract, alleging that it was the abutting owner on each side of Cumberland street, for said distance, and that it desired this vacation in order that it might use the land in the street for the purpose of building additions to its present plant, from time to time.

That the said Crucible Company is the owner of a large number of lots shown on said Gilbert map,

adjacent to said portion of Cumberland street east of Fourth street on which it has erected many large buildings and carries on an extensive manufacturing business. All of the said lots so purchased were conveyed to it by descriptions which referred to said map.

XVIII. That on the fifth day of November, nineteen hundred and thirteen, said Booth & Flinn, Limited, being about to pass over with their teams and wagons loaded with sand and other waste material excavated from the lands of the Passaic Valley Sewer, in pursuance of said license, the said Crucible Steel Company of America and the Hudson Railroad and Transportation Company and their agents, by force prevented said Booth & Flinn, Limited, from passing over Cumberland street for the purpose aforesaid.

XIX. That said companies, in pursuance of their purpose of preventing the use by Booth & Flinn, Limited (this defendant's said licensee), of said portion of Cumberland street as a right of way from Fourth street to the lands of this defendant, since the last mentioned date, have obstructed the said way with heavy steel rails across the whole width of Cumberland street at its intersection with the easterly line of Fourth street, and have piled on other portions of this way, between Fourth street and this defendant's lands many large steel castings, weighing several tons each, and have located upon it there a large steam derrick, and have stationed there men who threaten to prevent the use of Cumberland street by this defendant's said licensee as a right of way for the use of teams conveying said waste material from Fourth street to this defendant's said land for the purposes aforesaid; and have prevented and are preventing this defendant from using the said right of way for the purpose of filling in said land.

XX. This defendant insists that, by reason of the filing of said Gilbert map and the sale of lands by

reference thereto; and by the recognition by this defendant of Cumberland street as shown on said map to and across this defendant's lands; and by reason of the said agreement of August 17, 1901; and by reason of the conveyances by said Railroad Company to the Crucible Steel Company of America, on June 22, 1910, and on November 13, 1911; and by reason of the closing of all previous ways leading from said Preston tract; an easement of a right of way for vehicular and other traffic exists over the lands of the Crucible Steel Company of America, along the line of Cumberland street, from Fourth street to this dedendant's said lands, of the width of sixty feet, and that the interference by the Crucible Steel Company of America and the Hudson Railroad and Transportation Company, with this defendant's use of said easement for the purposes aforesaid, is contrary to equity and good conscience, and should be enjoined by this Honorable Court.

XXI. To the end therefore that the said Crucible Steel Company of America and the Hudson Railroad and Transportation Company may, but without oath, true and perfect answer make to all and singular the matters aforesaid, and that the Crucible Steel Company of America and the Hudson Railroad and Transportation Company may be enjoined and restrained from in any manner obstructing said portion of Cumberland street extending from the easterly line of Fourth street to the land of this defendant, or from preventing this defendant, its agents, servants and representatives, from traversing and using said portions of said street; and

That the Crucible Steel Company of America and the Hudson Railroad and Transportation Company be ordered to remove forthwith from said portions of Cumberland street any and all obstructions thereon placed by them or either of them, which prevent or interfere with free and unrestricted ingress and egress

by this defendant, its licensees, servants and representatives over said Cumberland street, and that the surface of said street be restored to the condition in which it was before the placing of the obstructions therein and thereon, as in this bill stated; and

That this defendant, its licensees, agents and servants may be decreed by this Honorable Court to have, possess and enjoy full and unrestricted rights of ingress and egress over said portion of Cumberland street extending from the easterly line of Fourth street;

And that this defendant may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

EDW. A. & WM. T. DAY,
Solicitors for and of Counsel with the defendant, Harrison Land Company.

SCHEDULE A.

THIS AGREEMENT, made this twenty-eighth day of August, nineteen hundred and thirteen, BETWEEN HARRISON LAND COMPANY, a corporation of the State of New Jersey, party of the first part, and BOOTH & FLINN, LIMITED, a limited corporation of the State of Pennsylvania, party of the second part:

WHEREAS, the party of the second part desires to secure from the party of the first part, upon the terms and conditions hereinafter set forth, permission to deposit earth, sand, stone, and waste material on lands of the party of the first part hereinafter more particularly described, situate in the Town of Harrison, County of Hudson and State of New Jersey:

NOW THEREFORE, *this agreement witnesseth that* the party of the first part doth hereby permit the party

of the second part to deposit earth, sand, stone, and waste material on all or any portion of that certain tract of land of the party of the first part, situate in the Town of Harrison, County of Hudson, and State of New Jersey, comprising about seventeen acres, and shown on official map of the Town of Harrison; said tract being bounded on the north and west by lands of the United New Jersey Railroad and Canal Company (Pennsylvania Railroad Company lessee), on the south by Passaic River, and on the east by lands formerly of William H. Draper, deceased.

The party of the first part does hereby further permit the party of the second part, as the agent and representative of the said party of the first part, to use for ingress and egress, and to fill in and grade the street known as Cumberland street, or any portion thereof, said street being shown and designated on the official map of said Town of Harrison and mentioned and described in a certain agreement, dated the seventeenth day of May, nineteen hundred and one, between the United New Jersey Railroad and Canal Company, party of the first part, Crucible Steel Company of America, party of the second part, James H. Young, *et al.*, surviving executors, etc., party of the third part, and Ruth Dana Draper, party of the fourth part:

The party of the second part does hereby covenant and agree to and with the party of the first part that in consideration of the issuance of this permit, it will pay unto the party of the first part the sum of one dollar per annum, from the date hereof, to be paid at the expiration of each and every calendar year during the continuance of this agreement at the office of Edward A. & William T. Day, 763 Broad street, Newark, New Jersey, or at such other place or places as the party of the first part may from time to time designate; that it will not by lapse of time, by virtue hereof, or otherwise, claim any right or title adverse to

the party of the first part, that it will save, indemnify and keep harmless the party of the first part from any and all claims for damages of whatsoever kind or nature arising in any manner or under any circumstances through the exercise of any right granted or conferred hereby; that upon termination of this agreement as hereinafter provided said party of the second part, shall remove all goods and property belonging to it from said land and will deliver up possession of the same; and that if said party of the second part shall neglect or refuse so to do the party of the first part shall have the right forthwith to remove from said lands all goods and property belonging to the party of the second part at the cost and expense of the party of the second part, and the party of the second part does hereby authorize the party of the first part so to do.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed the day and year first above written.

It is understood and agreed that either of the parties hereto, its successors and assigns, shall have the right at any time to revoke and terminate this agreement by giving written notice to the other party, its successors or assigns, and, upon the expiration of thirty days from the time of giving said notice, this agreement shall forthwith cease and determine.

HARRISON LAND COMPANY,

(L.S.) GEORGE C. KOBBE,
President.

Attest:

WALTER KOBBE, JR.,
Secretary and Treasurer.

BOOTH & FLINN, LTD.,

W. A. FLINN,
Vice-President.

Attest:

S. M. RUTLEDGE.

Case No. 1.

Answer of Booth & Flinn, Limited.

Filed April 11, 1914.

IN CHANCERY OF NEW JERSEY.

Between THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, *et al*, *Complainants,* *and* THE CRUCIBLE STEEL COMPANY OF AMERICA, *et al*, *Defendants.*	*On Bill, etc.* *Answer of Booth & Flinn, Ltd.*

The answer of Booth & Flinn, Ltd., to the bill of complaint of The United New Jersey Railroad and Canal Company, a corporation, and the Pennsylvania Railroad Company, a corporation.

This defendant answering says, that it has no knowledge as to the matters and things in paragraphs 1, 2, 5, 10 and 11 of said bill of complaint alleged, and leaves complainants to make such proof thereof as they may be advised.

This defendant further answering says, that it admits the matters and things in paragraphs 3, 7, 8 and 9 in said Bill of Complaint alleged, and that it admits the execution of the agreement referred to in paragraph 4 of said bill, but as to the terms of said agreement this defendant begs leave to refer to the original thereof.

All of which matters this defendant is ready to maintain and prove, and prays to be hence dismissed with costs.

J. HENRY HARRISON,
Solicitor for and of Counsel with Booth & Flinn, Ltd.

Case No. 2.

Answer of United New Jersey Railroad and Canal Co. and The Pennsylvania Railroad Co.

Filed December 17, 1913.

IN CHANCERY OF NEW JERSEY.

Between
BOOTH & FLINN, LIMITED,
Complainants,
and
THE CRUCIBLE STEEL COMPANY OF AMERICA, *et al,*
Defendants.

Answer to Bill as Amended.

The joint and several answer of THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY and THE PENNSYLVANIA RAILROAD COMPANY, two of the above named defendants, to the bill of complaint of Booth & Flinn, Limited.

These defendants admit that on May 20, 1913, the complainants entered into an agreement in writing with the Pennsylvania Railroad Company, lessee of the United New Jersey Railroad and Canal Company; but for the terms of said agreement they refer to the agreement itself when produced.

They admit that on or about the 17th day of May, 1901, an agreement in writing was entered into between the United New Jersey Railroad and Canal Company and the Pennsylvania Railroad Company, of the first part; the Crucible Steel Company of America, of the second part; James H. Young and Mason Young, surviving executors of and trustees under the

last will and testament of Henry Young, deceased, of the third part; and Ruth Dana Draper, sole devisee and legatee of William H. Draper, of the fourth part. A copy of which agreement is annexed to the bill of complaint and marked Exhibit C.; but for the terms thereof they refer to the agreement.

All of which matters these defendants are ready to maintain and prove, and pray to be hence dismissed with costs.

VREDENBURGH, WALL & CAREY,

Solicitors for and of Counsel with The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company, two of the defendants.

Case No. 2.

Answer of the Town of Harrison.

Filed March 23, 1914.

IN CHANCERY OF NEW JERSEY.

Between BOOTH & FLINN, LTD., *Complainants,* *and* THE CRUCIBLE STEEL COMPANY OF AMERICA, *et al,* *Defendants.*	*On Bill, etc.* *Answer of the Town of Harrison.*

Paragraph 1. Defendant, Town of Harrison, has no knowledge and leaves complainant to prove same.

Paragraph 2. Defendant, Town of Harrison, has no knowledge and leaves complainant to prove same.

Paragraph 3. It admits there was a Hiram Gilbert map filed July 15, 1852. It denies that Cumberland street is one of the public streets of the Town of Harrison beginning at Fourth street and running 237 feet eastwardly. Defendant states that inadvertently in the answer filed in the cause wherein the Harrison Land Company is complainant, the contrary was stated.

Paragraph 4. Defendant, Town of Harrison, has no knowledge and leaves complainant to prove same.

Paragraph 5. Defendant, Town of Harrison, has no knowledge and leaves complainant to prove same.

Paragraph 6. It admits an application to the Town of Harrison to vacate certain streets by the Crucible Steel Company of America, but for the terms

thereof begs leave to refer for greater certainty to said application.

Paragraph 7. It admits that ordinances to vacate streets except Cumberland street were passed by City Council, but that the ordinance effecting Cumberland street has not been finally passed.

Paragraph 8. Defendant, Town of Harrison, has no knowledge, and leaves complainant to prove same.

Paragraph 9. Defendant, Town of Harrison, has no knowledge, and leaves complainant to prove same. Answering defendant denies that complainant has any right to enjoin the Town of Harrison from passing said ordinance, and prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

MICHAEL T. & HUGH C. BARRETT,
Solicitors for Town of Harrison.

Case No. 1.

Answer of the Crucible Steel Company, et als.

Filed March 23, 1914.

IN CHANCERY OF NEW JERSEY.

Between THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, *et als*, *Complainants*, *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als*, *Defendants*.	*On Bill, &c. Answer.*

The Crucible Steel Company of America and the Hudson Railroad and Transportation Company.

Paragraph 1. Defendants have no knowledge and leave complainant to prove same.

Answer to Paraghaph 2. Defendants have no knowledge and leave complainant to prove same.

Answer to Paragraph 3. Defendants have no knowledge and leave complainant to prove the filing of the so-called Hiram Gilbert map of 1852. Defendants deny that conveyances were made by said map. Admits that some conveyance was made to the Hudson Railroad and Transportation Company, but leaves complainant to prove same for greater certainty. Defendants deny that the Crucible Steel Company owns the stock of the Hudson Railroad and Transportation Company.

Answer to Paragraph 4. Defendants admit that there was an agreement made the 17th day of May,

1901, as per Exhibit A annexed to the Bill of Complaint, but deny that same has any effect as (1). There was no consideration passing the Crucible Steel Company of America; (2) The executors of Henry Young were not legally qualified to execute such an agreement; (3) That the devisee and legatee of William H. Draper was not legally qualified to make such an agreement, and deny that the real owners of the land of the so-called Young estate and Draper estate joined in said deed, and deny that the purport and effect of said agreement is set out in the Bill of Complaint, but admit that a correct copy is annexed thereto.

Answer to Paragraph 5. Defendants admit that certain lands were conveyed to it by the complainant, but denies same were to the effect as set out in this paragraph.

Answer to Paragraph 6. Defendants have no knowledge as to Paragraph 6, and leave complainant to prove same.

Answer to Paragraph 7. Defendant Crucible Steel Co. admits that it made application to the Town of Harrison to vacate a street, but denies it to be of the purport and effect as set out in Paragraph 7. Defendant denies that the land is owned by the Crucible Steel Company as conveyed by the Gilbert map of 1852 lying on Cumberland street, and denies that said conveyances were by said map.

Answer to Paragraph 8. Defendants deny that Booth & Flinn were about to pass over Cumberland street with teams and wagons loaded with sand and other waste material, for it is impossible for teams so to do owing to the fact that the land on Cumberland street immediately next to Fourth street makes a drop of from ten to twelve feet and drops further from point to point as you go east, so that it is impossible for teams to pass over same.

Answer to Paragraph 9. Defendants admit that the Hudson Railroad and Transportation Company erected a barrier on its land at the point of so-called Cumberland street, but deny that any teams could possibly have used it.

Answer to Paragraph 10. Defendants have no knowledge and leave complainant to prove same.

Answer to Paragraph 11. Defendants have no knowledge and leave complainant to prove same. Answering defendants further answering say that they deny the complainant's rights (1) by reason of filing any map; or (2) by recognition by complainants of so-called Cumberland street as shown on any map; (3) or by reason of the so-called agreement of August 17, 1901; (4) or by reason of the so-called conveyances by complainant to the Crucible Steel Company; (5) or by reason of the so-called closing of any previous ways leaving from said Preston tract; (6) or by reason of the so-called public purpose for which the Preston tract was alleged to have been acquired that any easement of a right of way for vehicular traffic exists over so-called Cumberland street beginning at Fourth street and extending east a distance of 237 feet, and denies that the defendants have interfered with any rights of the complainant.

Answering defendant's, while not admitting the alleged rights of the complainant, denies that they in any way interfered with same, particularly with any rights, if any complainant has under any conveyance to defendant or by the filing of any map or by reason of the so-called agreement of August 17, 1901.

Defendants deny that the complainants are entitled to any relief and assert that they have an adequate remedy at law for any injury complained of, and that this Honorable Court is not the proper forum to litigate the subject matter of this suit.

Answering defendants deny that complainants are entitled to an injunction restraining defendant, as defendant has not interfered with any of the rights of complainant. In addition thereto there is an adequate remedy at law. Defendant denies that complainant has any rights of ingress and egress over so-called Cumberland street extending easterly from Fourth street a distance of 237 feet.

Defendants pray to be hence dismissed with its reasonable costs and charges in this behalf so wrongfully sustained.

Defendants further show and charge that there is no such street as Cumberland street; that same has never been laid out or accepted by the Town of Harrison, nor have any so-called lot holders under the Gilbert map or any other map any rights on said co-called Cumberland street beginning at Fourth street and extending east a distance of 237 feet. Defendants pray to be hence dismissed with reasonable costs and charges in this behalf sustained.

PEIRCE & HOOVER,
Solicitors for Crucible Steel Company and Hudson Railroad and Transportation Company.

(The Answer to Cross Bill in Case No. 1 is identical with that in Case No. 2, and will be found on page 96.)

Case No. 2.

Answer of the Crucible Steel Company, et als.

Filed

IN CHANCERY OF NEW JERSEY.

Between BOOTH & FLINN, LTD., *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.,* *Defendants.*	*On Bill.* *Answer.*

The answer of the Crucible Steel Company of America and Hudson Railroad and Transportation Company to the Bill of Complaint of Booth & Flinn, Ltd., filed in the above cause.

First. Defendants have no knowledge as to paragraph one and leave the complainant to prove it.

Second. Defendants have no knowledge as to paragraph two and leave the complainant to prove it.

Third. Defendants deny paragraph three.

Fourth. Admit there was an agreement of May 17th, 1901, but for greater certainty, beg leave to refer to said agreement, but deny that under said agreement complainant has any right in the so-called Cumberland street extending easterly 237 feet from Fourth street.

Fifth. Defendants have no knowledge as to paragraph five and leave the complainant to prove same, except that they admit certain conveyances to the Hudson Railroad and Transportation Company, but for greater certainty, beg leave to refer to same.

They deny that Hudson Railroad and Transportation Company is controlled by the Crucible Steel Company of America and insist that it is an independent corporation. As to balance of paragraph five, defendants leave complainant to prove same.

Sixth. Admit an application to vacate streets by the Crucible Steel Company of America, but for greater certainty, beg leave to refer to said application.

Seventh. Admit certain streets were vacated in that an ordinance to vacate Cumberland street was passed on second reading.

Eighth. Deny that complainant attempted to pass with wagons over so-called Cumberland street. Admit there was an attempt to pass with men. Admit that the Hudson Railroad and Transportation Company placed an obstruction on so-called Cumberland street at or near Fourth street.

Ninth. Defendants show that the complainant is now passing over the land of the Crucible Steel Company of America, decline to permit complainant to pass over so-called Cumberland street.

Further answering deny that complainant has any right on Cumberland street for the distance of 237 feet, beginning at Fourth street and extending easterly, and deny that the defendants should be enjoined or that any obstruction should be removed, or that complainant should have the right to pass over Cumberland street as set out in the Bill of Complaint filed in this cause.

Defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Cross Bill on page 96.)

Case No. 1 and Case No. 2.

Answer of the Crucible Steel Company, et als. to Cross Bill.

Case No. 1, Filed March 23, 1914.

Case No. 2, Filed as in time, February 9, 1916.

(As the answers in both cases are identical, only one is printed.)

IN CHANCERY OF NEW JERSEY.

Between THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, *et als.*, *Complainants,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants.*	*On Bill, &c.* *Answer.*

Answer of the Crucible Steel Company of America and Answer of the Hudson Railroad and Transportation Company to the Cross Bill of the Harrison Land Company filed in the above cause, which begins at Paragraph 7 of the Answer filed in the above cause.

In answer to Paragraph 7, defendant says that the Crucible Steel Company of America has no knowledge and leaves the Harrison Land Company to prove same.

Paragraph 8. The Crucible Steel Company of America has no knowledge and leaves the Harrison Land Company to prove same.

Paragraph 9. It denies there is a Cumberland street.

Paragraph 10. It denies that prior to 1901 there was access to the Harrison Land Company's land over the Crucible Steel Company's land.

Paragraph 11. It admits that an agreement was entered in to May 17, 1901, but as to whether or not the conditions of same are correctly set out in the Cross Bill the Crucible Steel Company begs leave to refer to said agreement for greater certainty. It denies, however, that said agreement was executed for the purposes set out in this paragraph. It further denies that said agreement binds the Crucible Steel Company of America for the reason (1) that there is no consideration passing to the Crucible Steel Company of America; (2) that the persons signing for the Young estate and the Draper estate did not have power so to do.

Paragraph 12. Defendant has no knowledge as to paragraph 12 and leaves the Harrison Land Company to prove same.

Paragraph 13. It denies paragraph 13.

Paragraph 14. Defendant has no knowledge as to paragraph 14 and leaves complaint to prove same.

Paragraph 15. Defendant has no knowledge as to paragraph 15 and leaves complainant to prove same, except that it admits that the Hudson Railroad and Transportation Company owns block 80 and Block 83. It denies that the Hudson Railroad and Transportation Company is owned, and controlled by the Crucible Steel Company of America, but alleges it is a separate and independent corporation.

Paragraph 16. Defendant has no knowledge and leaves the Harrison Land Company to prove same.

Paragraph 17. The Crucible Steel Company admits it applied to the Town Council of Harrison to vacate Cumberland street, but begs leave to refer to said application for greater certainty as to its terms. It admits the Crucible Steel Company owns land, but as to whether same is on the Gilbert map referred to, it leaves complainant to prove same. Defendant denies that said conveyances were by descriptions referring to said map.

Paragraph 18. It denies that Booth & Flinn attempted to pass over Cumberland street with teams and wagons loaded with sand, as it is impossible so to do, but admits the Hudson Railroad & Transportation Company did prevent some men passing on foot.

Paragraph 19. It admits that so-called Cumberland street at or near the intersection of Fourth street has been obstructed by the Hudson Railroad & Transportation Company, but denies the rest of paragraph 19.

Paragraph 20. It denies paragraph 20.

Paragraph 21. It denies that the Harrison Land Company is entitled to enjoin or restrain the Crucible Steel Company of America or the Hudson Railroad and Transportation Company as set out in the Cross Bill. It insists that the Crucible Steel Company and the Hudson Railroad & Transportation Company should not be ordered to remove obstructions placed by the Hudson Railroad & Transportation Company at or near the intersection of Fourth street with the so-called Cumberland street. It denies that the Harrison Land Company is entitled to pass over so-called Cumberland street from Fourth street east a distance of 237 feet, and prays to be hence dismissed with reasonable costs in its behalf most wrongfully sustained.

PEIRCE & HOOVER,
Solicitors for Crucible Steel Co. of America and Hudson Railroad and Transportation Company.

Replications.

Filed

Case No. 1, April 9, 1914, April 7, 1915.
Case No. 2, January 5, 1914, April 9, 1915.

Stipulation.

Re demise of Henry Young and his Last Will and Testament.

Filed November 26, 1914.

IN CHANCERY OF NEW JERSEY.

Between THE UNITED NEW JERSEY RAILROAD AND CANAL CO., *et als.*, *Complainants,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants.*	*Stipulation.*

It is hereby stipulated and agreed, for the purpose of the trial of the above stated cause, as follows:

1. That one Henry Young of Westchester County, in the State of New York, died prior to the year 1876, leaving a Last Will and Testament, dated August 10, 1874, which was duly proved, and an exemplified copy of said will and the probate thereof and the letters testamentary issued thereon were thereafter duly filed and recorded in the office of the Surrogate of Hudson County in this State; and by said will he did constitute and appoint his sons, Henry L. Young, James H. Young and Mason Young, the survivors and last survivors of them, as executors and trustees under the said will, and with such estate as the will provides for; and that the typewritten copy of the said will in Mr. Day's possession may be put in evidence, with the same effect as if the original or an exemplified copy had been produced.

2. That said Henry Young died possessed of a certain mortgage covering, with other lands, the premises now claimed to be owned by the Harrison Land Company and mentioned in paragraphs 1, 2 and 7 in the answer of said company filed in this cause; that proceedings of foreclosure upon said mortgage were brought in the Court of Chancery of New Jersey by the said executors of Henry Young, deceased, and that under the final decree and execution thereon in said cause the said lands and premises, with other lands and premises, were sold by John S. Barkalow, Master, and the same bought in and purchased at said sale by Mason Young, Henry L. Young and James H. Young, executors of Henry Young, deceased, and a deed made therefor to them, dated December 9, 1875, and recorded in the office of the Register of Hudson County on January 7, 1876, in Book 293 of Deeds at page 384, a printed copy of which said deed may be produced at said trial in place of the original, or the record thereof. Subject to any objection as to its materiality.

3. That subsequently Henry L. Young died and that said James H. Young and Mason Young thereafter acted as surviving executors and trustees.

4. It is admitted that several ordinances of the Mayor and Council of Harrison vacating the several streets and highways between Fifth and Sixth streets, which were passed on August 14, 1888, and the ordinance vacating the streets and highways, &c., laid out on a map of the Preston tract, as passed October 1, 1895, and the ordinance to vacate Morris avenue, &c., as passed October 1, A. D. 1895, and an ordinance as passed June 10, 1901, vacating a portion of Burlington street, all may be proved from the printed record in the case of *Young* vs. *Pennsylvania Railroad Company* from pages 179 to 184, both inclusive, with-

out the production of the original records or proceedings, subject to any objection as to its materiality.

5. And that the Harrison Land Company is a corporation duly organized under the laws of the State of New Jersey on May 20, 1904.

Dated March 23rd, 1914.

PEIRCE & HOOVER,
Solicitors of the Defendants, Crucible Steel Company of America and Hudson Railroad and Transportation Co.

EDW. A. & WM. T. DAY,
Solicitors of Harrison Land Company.

Opening—Consolidation.

IN CHANCERY OF NEW JERSEY.

Between
UNITED NEW JERSEY RAILROAD & CANAL COMPANY, *et als.*,
Complainants,
and
CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*,
Defendants.

Transcript of shorthand notes of testimony and proceedings in the above entitled cause before Hon. John R. Emery, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, April 7th, 1914, at 10 A. M.

Appearances:

Mr. Vredenburgh, of Vredenburgh, Wall & Carey, for complainant.

Mr. Edward A. Day, of Edward A. & William T. Day, for defendant, Harrison Land Company.

Mr. Peirce, of Peirce & Hoover, for defendant, Crucible Steel Company of America and Hudson Railroad & Transportation Co.

Mr. J. Henry Harrison, of Munn & Church, for Booth & Flinn, Limited.

Mr. Harrison. There are two cases set down, the one referred to by Mr. Vredenburgh and the Booth & Flinn case against the Crucible Steel Company. The allegations of the two bills are substantially the same, and I believe the prayers for relief are identically the same. It seems to me it would be proper to move to consolidate the two cases for the purpose of hearing.

(It is consented that the two cases referred to may be heard together for the purpose of hearing.)

Court. Draw your order of consolidation.

MARTIN L. GARDNER, sworn for complainant.

Direct examination by Mr. Vredenburgh.

Q Where do you live?
A Newark, New Jersey.
Q How long have you lived there?
A All my life.
Q What is your profession?
A That is civil engineer.
Q In whose employ are you at the present time?
A Pennsylvania Railroad Company.
Q How long have you been in their employ?
A About thirty years.
Q And in what capacity?
A In various capacities but all the time engaged on engineering work.
Q What road does the Pennsylvania Railroad Company operate?
A The United New Jersey Railroad and Canal Company in New Jersey and the other railroads, the West Jersey and Sea Shore and several other roads.
Q But it operates, among others, the United New Jersey Railroad and Canal Company in New Jersey?
A Yes.
Q Does the main line of that railroad extend through the Town of Harrison?
A Yes, sir.
Q Are you acquainted with that main line?
A I am.
Q And the lands adjoining the main line in the Town of Harrison?
A Yes, sir.
Q How long have you been acquainted with those?
A I should say about forty years.
Q Has your business or has your duties as an employee of the Pennsylvania Railroad led you to have any particular knowledge of the main line in Harrison?

A Yes, sir.

Q Have you in the course of that business seen the map of 1852, entitled, "Map of lands in East Newark, for Hiram Gilbert, Clark and Baco, City Surveyors, Jersey City, July, 1852?"

A Yes, many times.

Q I show you a copy of it—the original, I think, was offered in evidence—

Mr. Peirce. The original is here.

Mr. Vredenburgh. Yes. For my purpose I offer that copy, because it has something on it.

Q Is that a copy of the map to which I just referred? (Witness shown map.)

A Yes, sir.

Q Have you added anything to that map that was not there before?

A Yes, sir.

Q What have you added?

A We have indicated in yellow on the map all conveyances from the United New Jersey Railroad and Canal Company to the Crucible Steel Company of America, land lying along Cumberland street.

Q That is indicated in yellow?

A Yes, sir.

Mr. Vredenburgh. I offer that map in evidence.

Mr. Peirce. I would like to cross examine as to the accuracy of the map.

Cross examination by Mr. Peirce.

Q What was your method of making that copy?

A It is a copy of the map of 1852 which has been used for the last thirty or forty years to show the lay out of streets and lots.

Q How did you make this map?

A It was made from a tracing; this is what we call a blue print or a white print.

Q This is a white print from some tracing?

A Yes.

Q And the tracing was made by whom?

A Made by my department years ago from a map in the possession of Clark & Baco.

Q You cannot say that on this blue print, that the streets and lots will scale exactly as the original map on file, because you have not compared them since the blue print was made?

A We would not resort to scaling for the distances governing the location of these streets and lots.

Q Answer the question. (Last question repeated.)

A I would say with a slight contraction or shrinkage, due to blue printing, that the map would scale fairly well, and I might add that this map—it was not necessary to resort to scaling, because the distances are shown on the map.

Mr. Peirce. I move to strike that out.

Q At no time then have you compared this blue print with the original on file?

A It was a copy of the original.

Q (*By the Court.*) You mean this particular tracing now offered the witness has not personally compared with the original map on file. What have you to say about that?

A I haven't compared it personally, but it is a copy.

Court. If the original is here—

Mr Peirce. I object to the offer.

Court. I will withhold ruling on it for the present.

(Copy of map marked Exhibit C. 1 for identification.)

Further direct by Mr. Vredenburgh.

Q Are you also acquainted with the map entitled "Map of the Preston tract, formerly part of the Canada Farm, adjoining East Newark. Filed July 14, 1837?"

A Yes.

Q (*By the Court.*) You produce here a blue print; what is this blue print?

A This is a blue print of the original map known as Map of the Preston Tract, formerly part of the Canada Farm adjoining East Newark, dated July 14, 1837.

Q (*By the Court.*) Where is that original map?

A Hackensack.

Mr. Vredenburgh. To this map is annexed a certificate by Charles F. Thompson, Clerk of the Court of Common Pleas in and for the County of Bergen, being a court of record, with a seal, that the foregoing is a true copy of the original map of the Preston tract, formerly Canada Farm adjoining East Newark, as the same remains on file in my office at Hackensack, as No. 8, filed July 14, 1837; and it is under seal and the certificate is dated the 31st day of March, 1914. I offer that map in evidence.

Mr. Peirce. I have no objection to using this as a picture, but I object to the accuracy of it.

Court. I will allow these copies to be put in and I will hear counsel as to the proof.

(Marked Exhibit C. 2 for identification.)

Court. If it becomes essential to determine whether this is an accurate reproduction of the original, there will be no difficulty about that.

Examination by Mr. Day.

Q That map which you have just spoken of, is that a map of the property that is referred to in an ordinance, the title of which I will read to you:

"An ordinance to vacate all the streets, high-

ways, avenues, alleys, public squares and public places laid out on map of the Preston tract formerly part of the Canada Farm adjoining East Newark, which premises formerly belonged to Jacob Haff, and which map was filed in the Clerk's Office in the County of Bergen on July 14, 1837, or on any other map made for the town, lying south of the southerly line of Railroad avenue as delineated on said map."

That is the title of an ordinance passed October 1, 1897, by the common council of the Town of Harrison, and I ask you whether the map referred to in that ordinance is the same map to which you have just testified?

A It is.

Mr. Harrison. Contract between the Passaic Valley Sewerage Commissioners and Booth & Flinn, Limited, for construction of section No. 7 of the main intercepting sewer in compressed air tunnel in the City of Newark, New Jersey, is offered by consent, with the stipulation that a copy may be used, subject to objections as to relevancy.

Court. It is stipulated that a copy of that contract was offered in evidence as if the original were offered, and subject to the same objections that counsel would make to the original, and the witness to prove the original copy may be discharged.

Further examination by Mr. Vredenburgh.

Q I show you a certified copy of a deed from Francis S. Lathrop and wife to the United New Jersey Railroad and Canal Company, dated January 2, 1873, and ask you whether that is all of the property shown on the map of the Preston tract or part of it?

A I have read the deed over and it is a copy of

the deed describing the Preston tract or Canada Farm.

Mr. Vredenburgh. I offer that certified copy in evidence.

(Marked Exhibit C. 3.)

Q Looking at the maps in evidence, the Gilbert map and the map of the Preston tract, will you tell us or describe the most westerly line bounding these two tracts—the most westerly of the several boundary lines between the tract known as the Gilbert tract shown on that Gilbert map and the tract known as the Preston tract?

A In a general way, the westerly lines are similar.

Q Which is the most westerly of those lines?

A The most westerly line would be the line of the Preston tract, some 240 odd feet east of Fourth street; at that point the lines of the Preston tract change frequently, but the boundaries of the Preston tract and the Gilbert tract on both maps are about the same so far as they go.

Q Are there several westerly boundary lines between those two tracts?

A Yes, sir.

Q Then the most westerly of those is the one that is near Fourth street?

A Yes, sir.

Q And it runs from the river westerly how far?

A To the Passaic River.

Q I say this most westerly of the boundary lines between the Canada Farm and the Preston tract runs northerly how far from the river; to Salem street, is it not, and then the line is continued still further north to Monmouth street, is it not?

A I don't quite understand your question.

Court. The Gilbert tract and the Preston tract adjoin.

Q I call your attention to the description in the

agreement of 1901, and I am asking you about that; it says that the parties own tracts of land in the Town of Harrison, County of Hudson and State of New Jersey, lying south of the main line of the railroad of the parties of the first part, and east of the most westerly of the several boundary lines between the tracts known as the Gilbert tract and the Preston tract, and I am trying to find out from you definitely which is the most westerly of those several lines?

Court. Have you any map that shows the whole of those tracts together?

Witness. I have a much better map, if you want to introduce it, much clearer.

Q Won't you please produce that map?

A Yes, sir. (Producing map.)

Q What have you now in front of you?

A I produce a map showing the tracks, buildings and improvements generally in that portion of the Town of Harrison bounded by Fourth street on the west, the easterly line of the Preston tract on the east, and the D., L. & W. Railroad on the north. I indicate in red very clearly the boundaries of the Preston tract; in green we represent the conveyances to the Crucible Steel Company, and in yellow we indicate the location of an old road that for many years gave access to and from what is known as the Canada Farm.

By the Court.

Q On this map which you are now describing, where is the Gilbert tract?

A The Gilbert tract is west of this red line.

Q The Gilbert tract lies to the west of the Preston tract?

A Yes, sir.

Q And the deep red line on the west of this map is the boundary line between the Preston tract and the Gilbert tract?

A Yes, sir.

Q And that irregular red line on the west shows the extreme westerly boundary of the Preston tract and the extreme easterly boundary of the Gilbert tract, so far as the Gilbert tract is shown on the map?

A Yes, sir.

Mr. Vredenburgh. I offer that blue print in evidence.

(Marked Exhibit C. 4.)

Mr. Peirce. I would like to ask one question about it.

Cross examination by Mr. Peirce.

Q You say that the two tracts, the Gilbert and Preston tract, come up directly contiguous, and that they are contiguous in all points along the red line?

A The Gilbert tract is adjacent to the Preston tract on the west.

Q But it does not come up flush with it?

A I say it does as I understand it, yes.

Q At all points?

A Yes, it is the division line between the Gilbert tract and the Preston tract.

Q You used the word "adjacent," did you mean it came up exactly to it, or in that neighborhood?

A I would say, to make myself clearer, that it is the division line; this red line is the division line between the Gilbert tract and what is known as the Preston tract or Canada Farm.

Further examination by Mr. Vredenburgh.

Q I show you, Mr. Gardner, a certified copy of a deed from the United New Jersey Railroad and Canal Company to the Crucible Steel Company, dated June 22, 1910, and ask you whether you have located that property on the map C. 4, and if so, how?

A I have. I have indicated this property in green. There were two conveyances, and I have indicated both conveyances in green on Exhibit C. 4.

Martin L. Gardner, cross.

By the Court.

Q Do those two adjoin each other?

A Yes.

Q Have you also indicated in green a division line between the two?

A Yes, sir.

Q Which one of these lots is it, the lot east or west of the division line?

A The description of the line, the deed that I am now reading, would indicate a tract of land lying on the northerly side of Cumberland street and east of what would be Fifth street.

Q Then it is the easterly of the two lots marked in green?

A Yes.

Mr. Vredenburgh. And is marked June 22, 1910.

Witness. I have marked on the map the date of the conveyances.

Mr. Vredenburgh. I offer that deed in evidence.

(Marked Exhibit C. 5.)

By Mr. Vredenburgh.

Q I hand you another certified copy of a deed between the same parties, dated November 13, 1911; does that describe the other piece marked in green, to which you have just referred?

A Yes.

Q And have you marked that on your map "November 13, 1911?"

A Yes.

Mr. Vredenburgh. I offer that deed in evidence.

(Marked Exhibit C. 6.)

Q I show you a deed made the 12th day of August, 1885, between Henry Young, James H. Young

and Mason Young, Executors, &c., under the last will and testament of Henry Young, to the United New Jersey Railroad and Canal Company, and ask you to point out, if you can, on that map, Exhibit C. 4, this portion of the land conveyed.

Mr. Vredenburgh. While he is looking for that, I call attention to the deed from the United New Jersey Railroad and Canal Company to the Crucible Steel Company of America; as part of the deed there is a certificate by the Pennsylvania Railroad, in consideration of the deed, that they release, remise and forever quit-claim all their right and title in the property. There seems to be a deed for some four tracts; I haven't located them all yet, and perhaps I had better wait to have an opportunity to trace them out on the plan later, it will take some time. I wouldn't be quite sure of my deductions now. I will indicate them on one of these plans later. Exhibit C. 4 does not go far enough to indicate the boundaries of all these properties.

Court. Put on as much as there is there.

Mr. Vredenburgh. I will offer the deed after the property is located on the map.

Q I now show you original deed from Ruth M. Draper to the Manor Real Estate and Trust Company; will you point out on the map the land which is covered by that deed, dated February 27, 1911, duly acknowledged and recorded in the office of the County of Hudson on March 31, 1911, in Book 1081 of deeds, page 495, for Hudson County?

A Yes, sir.

Mr. Vredenburgh. I offer that deed in evidence.

(Marked Exhibit C. 7.)

A (Continuing.) The Draper property referred to lies between one of the boundaries between the

Preston tract and the easterly boundary of what is known as the Harrison Land Company, and it is indicated on this map as Ruth Dana Draper.

Court. The Harrison Land Company is what is known as the Young tract?

Witness. Yes, sir.

Court. That shows the location of the Draper tract in blue?

Witness. Yes.

Q I show you a contract between the Pennsylvania Railroad Company, lessee, of the works and property of the United New Jersey Railroad and Canal Company, and Booth & Flinn, Limited, dated the 20th day of May, 1913. That contract has to do with what property on this map?

A A portion of the Preston tract.

Q Which portion of the Preston tract particularly?

A That portion lying between the southerly line of Cumberland street, the Passaic River and the westerly boundary line of the Preston tract and another line parallel therewith and 920 feet easterly therefrom, comprising an area of 12.36 acres.

Q (*By the Court.*) The area covered by that is shown on map, Exhibit C. 4, in the most westerly segment of the Preston tract enclosed in the red lines, and the portion thereof lying south of the southerly line of Cumberland street and extending from that point to the southerly boundary marked in red, and also to the easterly boundary of that segment marked in red; is that right?

A Yes, sir. In other words, all that portion of the Preston tract lying south of the southerly line of Cumberland street shown on this map. Practically all of that lying south of Cumberland street.

Court. Mark that also with a blue pencil, and mark it B and F.

Witness. I have enclosed it within a blue waving line, marked B and F on this map.

Mr. Vredenburgh. I offer in evidence the agreement, being Exhibit B to the bill of complaint, made on the 17th day of May, 1901, between the United Railroad and Canal Company, party of the first part, the Crucible Steel Company of America, party of the second part, James H. Young and Mason Young, surviving executors of and trustees under the last will and testament of Henry Young, and Ruth Ann Draper of the fourth part. It is admitted by the answer. My question is directed to what persons were interested in this tract; they describe them in that contract as parties owning land within certain boundaries, and in your Honor's opinion in the other case, it seemed to me that your attention had not been called to that language, and I am trying to call attention now to it, and that is, that this westerly line runs up to the railroad. That is my claim.

Mr. Peirce. That is a question whether it does or not. The answer does not admit the authority of the various persons to make it. We will admit a copy but deny the authority of the persons to make it.

Mr. Vredenburgh. I offer in evidence the original contract dated May 17, 1901.

(Marked Exhibit C. 8.)

Q Have you shown to the court the Cumberland street spoken of in that contract of 1901?

A I have.

Q At that time was there any road or way leading from this Draper property, the United New Jersey Railroad and Canal Company's property, and the Young property, to the public streets of the Town of Harrison?

A There was a road, yes, sir, at that time.

Q Have you shown it on this map?

A I have.

Q How have you shown it?

A In yellow.

Q At the time of that contract of 1901, in what way was the property of the United roads to which you have referred, the Preston tract, being used?

A Most of it was not at that time used for railroad purposes. There were sand pits and grass, salt hay and so on, and access was had to that land by that road that I have just spoken of, which led orignally across Sixth street, later across Fifth street, and finally by a road adjacent to our railroad tracks down to Fourth street.

By Mr. Peirce.

Q That road didn't touch the Crucible Steel Company's property in any way?

A Originally not, but afterwards yes. When the road was first laid out, before the Crucible Steel Company came there, the Crucible Steel Company had no interest in that property. That road existed years before the Crucible Steel Company came there.

Q This road in yellow as shown on that map never touched the Crucible Steel property?

A Yes, it did.

Q It is not shown on your map?

A It was used with their consent for years.

Mr. Peirce. I move to strike that out.

Court. Yes, reserve your examination until later.

Further direct examination by Mr. Vredenburgh.

Q Will you describe that road that you have shown in yellow; it started where, according to this map?

A It started about at the northeasterly corner of

the Draper tract and proceeded in a northwesterly direction across what would be Seventh street and made an abrupt turn at what would be the junction of Sixth street and Hunterdon street, and thence along what would have been the line of Sixth street, crossing our railroad tracks at grade, and in that way giving a communication between the Preston tract and the Town of Harrison. Later, the grade crossing was removed to Fifth street, and subsequently that was removed, so that we had to proceed along the edge of the railroad tracks or fence down in a westerly direction to Fourth street, and that road existed for some years until the elevation of the tracks.

Q Go back. Near its commencement as shown in yellow, there seems to be a creek of some kind; what is that?

A That is what is known as Burr's Creek.

Q How did they get across that?

A There was a bridge.

Q Then going westerly, it seems to have crossed another bridge; over what stream was that?

A That was known as Fox's Island Creek.

Q Where was Fox's Island?

A It was a plot of ground lying between these creeks; at very high tide there was a mound of land that was about surrounded by water, and it was named Fox's Island. At other times, the whole place was dry, lying practically within the Preston tract, near the corner of the Draper tract.

Q Have you shown the Fox's Island Creek on this map?

A Yes.

Q In what way?

A Indicated in letters. I might say that one of the boundaries shown in red of the Preston tract runs along that Fox's Island Creek.

Q That creek went on down to the river?

A Yes.

Q Then the Burr's Creek went towards the east?

A Yes.

Q And is also marked on your map?

A Yes, sir.

Q Fox's Island was the island between the Passaic River and these two creeks?

A Yes, sir.

Mr. Day. Was Fox's Island more or less on the Young property?

Witness. Part of it.

Q Where did it cross the land between the Preston tract and the Gilbert tract, this road?

A About the line of Seventh street.

Court. Just above the place marked "bridge?"

Witness. Yes.

Q What portion of the Crucible Steel Company property as it was owned in 1901 did this old road cross?

A About two or three hundred feet, I should say.

Court. Where on this map which you now refer to as land that was owned by the Crucible Steel Company at the time of making the agreement, is their land as shown on this map?

Witness. In a general way, it is, and I can describe it. The Crucible Steel Company owned the land lying east of Sixth street for a distance of about 175 feet.

Court. That would extend to what line on this map, the inside line marked red?

Witness. Marked in light red.

Court. Is the property which the Crucible Steel Company owned at the time of making this agreement the property marked in light red on this map?

Witness. That portion of it, yes, sir.

Court. Is there any objection to marking that with an initial C on these blocks?

Mr. Peirce. Not if it is correct.

Court. You have now marked in blocks on this map, with the initial C in red, the lands which you referred to as owned by the Crucible Steel Company at the time of making this agreement?

Witness. Yes, sir.

Q I will ask you whether they did not own to the west of that yellow line at Somerset street?

A Yes, sir.

Court. They also owned the properties west of Sixth street in the angle of the road marked in yellow?

Witness. Yes, practically the whole section of the property between Fifth and Sixth street from the railroad down to the line of the Preston tract was owned at the time of the elevation agreement. The Crucible Steel Company, as I understand it and remember it, owned practically all the property between Fifth and Sixth street, and south of the railroad as far as the lands of the Preston tract.

Q At the date of the agreement of 1901?

A Yes.

Mr. Vredenburgh. You said elevation agreement.

Q In 1901, when that agreement to which we have referred was executed, was the main line of the United New Jersey Railroad and Canal Company a surface line through Harrison or an elevated line?

A It was a surface line.

Q Were there any crossings from north to south of that main line at that time, public street crossings?

A Yes.

Q Where were they?

A Fourth and Fifth street.

Q The Town of Harrison extends on that line from the Passaic River to how far east?

A A mile, I suppose, as far as Frank Creek on the east.

Q Between the Passaic River and Frank Creek was there any crossing of the main line of the United New Jersey Railroad except these two streets that you have mentioned?

A Not to my knowledge.

Q When were the tracks of the united roads elevated through Harrison?

A 1901 and 1902, it took over a year.

Q I thought it was in 1903?

A It probably slumped over into 1903, I haven't the exact date, but the agreement was in 1901.

Q Let me refresh your mind, the contract for the elevation of the tracks in Newark was in 1901?

A Yes.

Q The elevation at Harrison was a couple of years later?

A Part of the general scheme and came a little later.

Q When the tracks were elevated, were there any crossings of the main track in Harrison from north to south?

A Yes.

Q Where?

A Fourth and Fifth street.

Q And was Fourth street a team—

A Was the main thoroughfare crossing.

Q How much were the main tracks elevated above the surface of the street at Fourth street?

A About fifteen feet.

Q What was the width of the crossing there, the full width of Fourth street?

A Yes.

Q At Fifth street what was that crossing?

A That was a narrow crossing; it wasn't the full width, it was about thirty feet; as finally elevated the authorities permitted the railroad to not leave a highway there but to leave a foot passageway so that the tracks as elevated provide a bridge the full width of Fourth street with full clearance at Fourth street, and also a foot passageway at Fifth street, where the tracks were raised less than at Fourth street.

Q Was this elevation made since the contract to which I have referred of 1901 between the parties?

A It was.

Q Since 1901 has the railroad constructed any works upon the Preston tract?

A Yes.

Q What have they constructed?

A It was a part of our electrification scheme on our high speed line to New York, to Thirty-first street; upon a portion of that tract have been erected, at great expense, what is known as the Manhattan Transfer, the tracks and appurtenances in connection with our electrification, buildings and what not.

Q Are those improvements to some extent shown on map Exhibit C. 4?

A Yes.

Q How are they shown?

A By white lines; the plan, C. 4, shows in a general way the tracks and buildings not only of the railroad company but of the Crucible Steel Company as they are to-day. I might say that the dotted lines within the Preston land are projected improvements not yet built; the solid lines are as built.

Q As to the elevation of these tracks above the surface, what is the elevation generally?

A The tracks are elevated so as to give an underclearance at Fourth street of thirteen feet; that grade descends towards the east, so that at Sixth street the elevation above the original surface track is about eight feet.

Q And this Manhattan Transfer, is that elevated above the surface?

A That is still elevated higher.

Q That is a building?

A A long platform on piles.

Q Is it possible now to drive in any way from the Preston tract or the Young tract or the Draper tract across to the public ways to the north?

A It is not possible.

Q What has become of this old road that you said did exist prior to that contract of 1901?

A It has been blocked off by the steel mills, pits, track pits, coal trestles, railroad tracks and embankments, so that at the present time it is impossible to get in or out of the Preston tract, from the built-up section of Harrison.

Q Who has erected the mills to which you referred?

A As I understand it, the Crucible Steel Company of America.

Q Nót the Pennsylvania Railroad?

A No, sir.

Q Nor the United New Jersey?

A No, sir.

Q And the pits, etc., you have spoken of?

A The mills and pits and tracks in connection with the Crucible Steel Company were built by them, as I understand it; the railroad tracks were all built by the railroad.

Court. What do you mean, the main line tracks?

Witness. I am speaking of the railroad tracks that are not used within the limits of the mills.

Q The tracks that are on the property of the Crucible Steel Company have been built by whom?

A The rule is that the tracks on the railroad property are built by the railroad and the tracks on the

mill property are built by the mills and paid for by them; they might have been laid by the railroad, but the mills would pay for it.

Q This map C. 4 seems to indicate railroad tracks both on the railroad property and on the Crucible Steel property?

A Those are the tracks leading to the mills from the railroad; they are what are known as mill sidings —tracks in connection with the Crucible Steel works, to get their stuff in and out.

Q What are those circular white lines indicating tracks to the east of the Crucible Steel property?

A Those are the tracks that are used for turning the cars of the Hudson and Manhattan Railroad, known as the McAdoo cars; the cars are taken in and out there, cleaned, and instead of using a turn-table, they are run around a curve; they are used not only by the Hudson and Manhattan Railroad but by the Pennsylvania Railroad cars and trains.

Q I notice that those tracks go over what is marked the Draper property; is the railroad in possession of that property?

A They are and have been for some years.

Q I notice also that there are faint red lines outside of the deep red lines of the Preston tract to the west; what do they represent?

A The heavy red lines were placed on this map especially to outline plainer to the Court and everybody the Preston tract; the boundaries shown in faint red are the balance of the ownership of the railroad.

Q And part of the Gilbert tract?

A It is now in the name of the Manor Real Estate and Trust Company, outlined faintly in red. The Manor Real Estate and Trust Company is a holding company for the Pennsylvania Railroad Company's lands.

Court. Then those lands are used or occupied by the Pennsylvania Railroad practically through the Manor Trust Company?

Witness. Yes, sir.

Q Has there been any plan made by the railroad company for the utilization for their purposes of any portion of this Preston tract that is south of Cumberland street?

A Yes, sir.

Q What portion have they planned to utilize?

A We had in mind for some years past the utilization of that portion of the Preston tract south of Cumberland street for a freight delivery yard; to that end, plans have been drawn, and I have one here, if you wish it produced.

Q Please produce it.

A (Producing same.)

Q Is it part of your duty as an employee of this company, to make plans for this proposed utilization of lands?

A Yes, sir, improvements of all kinds.

Q When were you called upon first to discuss this subject?

A Eight or ten years ago, around the year 1901 or 1902; in fact, we had it in mind in connection with our elevation matters. We had in mind at that time, and plans were drawn in various ways, to utilize this property, our idea being to have a freight delivery yard located so that the lower section of Newark could be accommodated.

Q This plan that you produce is dated when?

A August 14, 1911.

Q When was it made?

A It had been made some years before that, but never had come to the point of serious consideration.

Q Why was it dated August, 1911?

A Because that was the date when the plan was finally made and approved.

Q Was it dated at the time it was approved?

A Yes.

Q Then it was approved on that date, was it?

A Yes, sir.

Q What does that show with regard to the utilization of the tract to which I referred?

A It shows a freight yard and a freight house with the idea of access along Cumberland street from Fourth street.

Q How is it shown on this map?

A In yellow.

Q And is it shown accurately?

A It is.

Mr. Vredenburgh. I offer that blue print in evidence.

Witness. And if I might go a little further, this filling that Booth & Flinn are doing was all in connection with this proposed improvement. We hope soon to utilize that property as a freight delivery yard for the accommodation of the industrial section of the lower part of Newark, particularly adjacent to the Jackson street bridge.

(Blue print referred to marked Exhibit C. 9.)

Q Is this property shown on Exhibit C. 9, that freight yard, adapted to that purpose; if so, state why?

A Because of its nearness to the main thoroughfare in that section of Harrison, together with the fact that it is near the Jackson street bridge leading to the lower portion of Newark. It particularly impressed the management as being available as a freight delivery yard because of the fact that there are no bridges for two or three miles in either direction to accommodate such business, vehicular traffic, and for years I have been trying to induce the management to locate a freight yard there, but without success, until recently we did get the authority to make a plan and got the approval.

Q You say the main thoroughfare; what do you refer to, what street?

A Fourth street.

Q Why do you call it the main thoroughfare?

A Because it is paved, curbed, flagged and it is a main thoroughfare.

Q Is there any other thoroughfare?

A There is not.

Q Where does it lead to?

A It leads from Newark to the heart of the town of Harrison.

Q How did it cross the Passaic river?

A Over a steel bridge, a substantial bridge.

Q Is there any bridge crossing the Passaic river in that neighborhood for team travel?

A The next bridge for team traffic that way would be the Plank Road bridge, some two miles down, and in the other direction, would be the Turnpike bridge, or Bridge street bridge, about a mile up; so this bridge is the only highway bridge for a mile or two in either direction.

Q Where does that bridge terminate in Newark?

A Jackson street.

Q What is there in the way of manufacturers around that terminus of the bridge?

A It is a very dense manufacturing section, I would say—smelting works, lumber yards, brick yards.

Q What facility is there for this manufacturing at the present time to get freight from the railroad?

A The facilities are very poor in that section; the nearest freight delivery yard would be—that is, of any magnitude, would be the South street yard of the railroad, which is some two miles further west. The Alling street yard is practically monopolized for the beef industry and does not afford the ordinary shipper proper facilities for mixed freight.

Q If Cumberland street is closed, how can the freight traffic reach that freight yard?

A I do not know of any other way to get to that yard except by the way of Cumberland street. That we had in mind always. Of course, that is the only street that is left to us adjacent to our property, having sold the other side to the Crucible Steel Company.

Q Suppose that is closed, what effect will the closing of it have on the projected yard?

A We cannot build the yard, we wouldn't build the yard if Cumberland street were not opened.

Examination by Mr. Day.

Q I show you a blue print entitled, "Newark, N. J., August, 1913, Borrie & Kreiner, Surveyors," what is that?

A It seems to be a lay-out of streets and lots within the boundaries of the Harrison Land Company, as I understand it now, that property lying between the Canada Farm and the Draper land.

Q To the west of that tract is your Canada Farm?

A Yes, sir.

Q And on the east of it is what?

A The Ruth Dana Draper tract.

Q When you have spoken here of the Young property, this is a map of the Young property?

A As I understand, it is now known as the Harrison Land Company.

Q And it is shown where on your map C. 4?

A It is indicated in letters Harrison Land Company and is quite evident as being between the Draper property and the Preston tract.

Q On your map there is a red line shown on the west of this property of the Youngs?

A Yes, sir.

Q And you have placed some pencil marks on the east?

A Yes.

Q And the property of the Harrison Land Com-

pany lies between the red line on that map and that pencil mark?

A Yes, sir.

Q And the Passaic river?

A Yes, sir.

Mr. Day. I offer this blue print in evidence for identification.

(Marked Exhibit 1 for identification for H. L. Co.)

Q You had something to do with vacating streets in the Preston tract or Canada Farm prior to the elevation of the tracks in Harrison, didn't you?

A In a general way, yes, sir.

Q I show you a copy of two ordinances that were passed on October 1, 1895, two in 1895, and one June 10, 1901; look at these three ordinances and then tell us, after these ordinances were passed and these streets and highways mentioned in these ordinances were vacated, whether there was any means of access from your Canada Farm or the Young Estate to Harrison or elsewhere for vehicular traffic or passengers, except by water?

A With the exception of the road testified to.

Q That old road was vacated?

A Not that I know of.

Q Wherever that old road was in the Canada Farm, wasn't it vacated by that ordinance?

A Not that I remember.

Mr. Day. I will read the ordinance.

"An ordinance to vacate all the streets, highways, avenues, alleys, public squares and public places laid out on a map of the Preston tract formerly part of the Canada Farm adjoining East Newark, which premises formerly belonged to Jacob Haff, and which map was filed in the Clerk's Office, in the County of Bergen on July 14, 1837, or on any other map made for the Town

lying south of the southerly line of Railroad avenue as delineated on said map."

Mr. Peirce. I object to that.

Q Do you remember that that ordinance was passed?

A I remember an ordinance passed, which vacated all streets within the Canada Farm, but I recollect nothing with reference to this old road.

Mr. Day. I will read another ordinance: It has been agreed between Mr. Peirce and myself that these ordinances should go in evidence.

Court. I do not understand Mr. Vredenburgh has any objection to the ordinance being put in. The ordinance if put in, would be a cross examination on his question as to there being any public streets, to show what was the status of public streets, so that he may on the cross examination introduce the ordinances to show that streets have been vacated, but to ask whether or not they vacated the old road would not give any more than the witness has already given.

Mr. Day. I offer in evidence an ordinance passed August 14, 1888, by the common council of the Town of Harrison, vacating Gloucester street between Fifth and Sixth streets.

A similar ordinance passed on the same day, vacating Salem street, Burlington street, Cumberland street, Monmouth street, Hunterdon street and Somerset street, all between Fifth and Sixth street.

I offer another ordinance dated March 12, 1891, reading: "That the northerly one-half of Railroad avenue extending from a point 325 feet and 75/100 of a foot easterly of the easterly line of Seventh street easterly for a distance of 1,800 feet more or less, as far as the same extends, be vacated, said portion of Railroad avenue above

vacated being 40 feet in width and lies north of the original right of way of the New Jersey Railroad and Transportation Company."

Then I offer in evidence an ordinance passed on October 1, 1895, which I have previously read, which provides that "all and singular the streets, highways, avenues, alleys, public square and public places as laid out on a map of the Preston tract formerly part of the Canada Farm adjoining East Newark, which premises formerly belonged to Jacob Haff, and which map was filed in the office of the County Clerk of Bergen County, on July 14, 1837, or on any map made for the said Town of Harrison lying south of the southerly line of Railroad avenue as delineated on said maps, be and the same are hereby vacated."

Then another ordinance, passed October 1, 1895, which reads:

"That Morris avenue as the same is laid out on the southerly side of the right of way of the New Jersey Railroad and Transportation Company, now the United New Jersey Railroad and Canal Company, and extending from the westerly line of land formerly belonging to Jacob Haff to the easterly end of the right of way of the Market street Branch of the railroad, be and the same is hereby vacated."

And second,

"That New Jersey Railroad avenue as the same is laid out on the southeasterly side of the right of way of the Market Street Branch of the New Jersey Railroad and Transportation Company, now the United New Jersey Railroad and Canal Company, extending from the easterly end of the same westerly to land belonging to the said New Jersey Railroad and Transportation Company, now the United New Jersey Railroad and Canal Company, be and the same is hereby vacated."

Then there was an ordinance passed June 10, 1901, vacating the southerly twenty feet of street from the easterly line of Sixth street, running easterly about 400 feet to the easterly boundary line of the Gilbert property."

Q I understand you to say, having in mind those ordinances, after the passage of these ordinances, there was no means of access, except by the Passaic river, to the property of the Young Estate or the Harrison Land Company?

A As I understand, the ordinance you referred to vacated all streets within that tract, but the streets were particularly designated as being shown on the map of 1837. This yellow road that I show here on this map had nothing to do with the lay-out of lots and streets.

Q That yellow road did not go to the Young Estate property?

A It did not.

Q So that when you have heard these ordinances read, was there any possible means of access to the Young property except by means of the Passaic river?

Court. What is the date of the last ordinance?

Q Prior to the agreement of 1901, was there any access to the property of the Young Estate and Harrison Land Company, except by means of the Passaic river?

A There would be from the Canada Farm, but the road that has been referred to as leading from the Canada Farm to the Town of Harrison, shown in yellow on this map, while that road did not lead to the Young property, a short detour from that road would take a man or wagon to that property.

Q So that when that old road that you spoke of was blockaded and closed, then all possible access to the Young property or Harrison Land Company property was taken away?

A It was, except by water.

Mr. Vredenburgh. I forgot to put in evidence a photograph of the obstructions. Mr. Gardner, have you a photograph of what obstructions were placed there? The answer admits the obstructions.

Court. These are obstructions on the easterly line of Fourth street at the opening of Cumberland street?

Witness. Yes.

Re-direct by Mr. Vredenburgh.

Q Did you go to Cumberland and Fourth street to see what obstructions had been placed on Cumberland street?

A I did.

Q When did you go?

A On November 19, 1913.

Q Had you been there before that date?

A Yes.

Q And had you seen any obstructions before that date?

A My attention was called particularly to the obstructions at that time, but the time previous to November 19, that I visited the place, there were no such obstructions there.

Q Did you have a photograph made of these obstructions?

A Yes, sir.

Q Does the photograph in front of you show what those obstructions were?

A I have two photographs here, taken the same day, one shows a perspective view, showing the obstructions—or rather the barrier located by the Crucible Steel Company of America across Cumberland street at Fourth street; the barrier consists of heavy steel girders interlaced by lighter girders, and within that enclosure are heavy forgings or castings

weighing several tons each, making a most complete blockage.

Mr. Peirce. You don't know who put that barrier there, of your own knowledge?

Witness. I don't know of my own knowledge who put it up, but judging from the material, I would say undoubtedly it was the Crucible Steel Company, because these castings are all around there.

Mr. Peirce. I move to strike that out.

Court. Yes.

Mr. Vredenburgh. The admission of the answer is that they put them there.

I have here two photographs made ten days before. Will you consent to those going in?

Mr. Peirce. Put them in.

Mr. Vredenburgh. I offer in evidence two photographs made on the 8th of November, 1913.

(Marked Exhibit C. 10.)

I also offer the photograph showing the obstructions.

(Marked Exhibit C. 11.)

Q You say you were there on Fourth street at the junction of Cumberland street before there were any obstructions there; was there anything to prevent a team from being driven over Fourth street to the Preston tract along Cumberland street when you were there after these obstructions?

A There was not, with the exception of a little cutting necessary to place the roadway in shape for trucking. With that exception the roadway was open to the Canada Farm.

Q This cutting of the road, was that a serious matter?

A No, sir, a small matter.

Q What do you mean by a small matter?

A Simply lifting off the dirt.

Q It would take how many men how long to do it?

A I should say it would take probably half a dozen horses and carts and as many men three or four days.

Q That would have made a good road?

A A good enough roadway to be utilized by the contractors for getting the filling in and out of the land that they leased for that purpose.

Q When you say "in and out," you mean from where to where?

A From that portion of the Canada Farm leased to Booth & Flinn for filling purposes.

Q To where?

A To Newark.

Q By what way?

A By the Jackson street bridge, by Fourth street, across Cumberland street to the Canada Farm.

Cross examination by Mr. Peirce.

Q You don't mean to say that the cutting of Cumberland street so as to drive onto it from Fourth street to the Harrison Land Company would have been an easy matter to grade, do you?

A I hadn't any reference to the Harrison Land Company.

Q I am asking you?

A Not at all; the Harrison Land Company is remote from this part.

Q What is the condition of the land leading over to the Harrison Land Company?

A After you get far enough away from Fourth street, it is meadow.

Q At what point would the meadow land begin?

A About a thousand feet from Fourth street.

Q How many feet approximately is it from Fourth street over to the Harrison Land Company?

A About 1,500 feet by scale. I should say about 1,400 feet about.

Q Are you speaking from actual and positive

knowledge as to the condition of the land on Cumberland street east of Fourth street?

A Yes.

Q Beginning at Fourth street, how much of a drop is there from the surface of Fourth street to the surface of Cumberland street as it stands now?

A It is rather irregular now, due to the filling that has been placed there, I suppose by the Crucible Steel Company, but to make a road, it would be a grade, I suppose, to level off, about four or five feet of earth.

Q Do you mean to say that it would only take four feet fill to bring Cumberland street to the surface of Fourth street?

A Your question is not intelligible.

Q (Last question repeated.)

A I don't mean to say that it would take a four feet fill; I mean to say that with some slight grading that a road could be built to connect Fourth street with the meadow elevation.

Q So that the total filling of that land to make a suitable roadway from Fourth street down and cutting back—

A I have made no profile of this road, but I have been on it. My judgment is a road could be made in a very short time suitable for that purpose.

Court. The question is about the extent of the drop. What is your recollection about that? Take the level of Fourth street and Cumberland street as you recall it, east of Fourth street, before any obstructions were placed on it by the defendants or any of them.

Witness. I should say between the meadow level and the level of Fourth street, about six or seven feet.

Q Is there any fill on Cumberland street beginning or adjacent to Fourth street?

A Yes, there has been filling placed in there by the railroad quite some.

Q By what railroad?

A The Hudson Transportation Railroad.

Q Do you know who put it there?

A No.

Q But there is some fill put there?

A Yes.

Q (*By the Court.*) Where is that?

A Within the line of Cumberland street, near Fourth street, there has been some filling done.

Q Referring to the point where the Hudson Railroad crosses Cumberland street, it then drops down further?

A Yes, quite abruptly.

Q Down to the surface of the meadow land?

A Yes, sir.

Q The land to the south of Cumberland street is a natural condition of meadow land, is it not?

A It is practically meadow.

Q And it extends down to a point that is perhaps overflowed at times by the river?

A Yes.

Q You are acquainted with the land owned by the Hudson Railroad and Transportation Company?

A Yes.

Q Your company owns the land on both sides of Cumberland street beginning at Fourth street and extending east to what point?

A As far as the line of the Canada Farm.

Q That would be the red line on C. 4?

A Yes.

Mr. Day. This is not cross examination.

Court. You will have to put the deeds in. This is not evidence of title.

Q You say immediately prior to the contract of 1901—

A The agreement to keep Cumberland street open is what I understand by that.

Q —there was at that time but one road leading over to the east from Fourth street or from the Pennsylvania Railroad?

A That was the road that was commonly used, and shown in yellow on C. 4.

Q (Last question repeated.)

A Yes.

Q Was there no other road then used across the meadows with the exception of the one you have marked on C. 4 in yellow?

A That is the only road I have any recollection of, and our oldest men as well in the service, which was known as the old Fox's Island Creek road, and has been used from time immemorial.

Q It continued up to the right of way of the railroad?

A Yes.

Q When did you elevate the railroad so that the yellow road could not cross?

A The crossing at Sixth street had been removed many years before the tracks were elevated and afterwards placed at Fifth street, and after that the road ran down along the railroad to Fourth street.

Q When did you elevate the road at that point?

A 1902 or 1903.

Q Did the Hudson-Manhattan series of tracks, by which they turned around, instead of using a turntable, affect that road in any fashion?

A Yes.

Q What did it do to it?

A It crossed it.

Q At grade or above?

A A filling was placed over the road.

Q How much of a fill?

A About four feet.

Q That is still there to-day?

A Yes. It is one of the obstructions that the railroad as well as the steel works placed to prevent

access to and from the Canada Farm; one of the obstructions, but came many years after the elevation of the tracks in Harrison.

Mr. Peirce. I move to strike that out.

Court. Just answer the question.

Q It is a fact that the yellow road and through the Crucible Steel is still intact, is it not?

A It is not.

Court. Through the Crucible Steel Company's present property?

Mr. Peirce. Yes.

Q Isn't that road there to-day?

A The old bridge over Fox's Island Creek is there but the road is not there, nor is there a way by which you can get over that road from that Canada Farm.

Court. He is asking, on the land that belongs to the Crucible Steel Company, what have you to say, if you know anything about it, as to whether on that land the road still remains on the lines of the old road; have you any information about that?

Witness. Where the line of the old road has not been obstructed by buildings or tracks, I presume it is there yet; I don't know that it is.

Q Isn't it a fact that many of the factories located in that vicinity have their own sidings over which freight is delivered?

A Yes.

Q Isn't it a fact that you have a Centre street freight yard?

A Yes, sir.

Q And that is much more convenient than South street?

A For that part of Newark, yes.

Mr. Vredenburgh. What part of Newark?

Court. You mean Centre street freight yard in Newark?

Witness. Yes, Centre street, Newark. For that portion of Newark, Centre street freight depot is convenient.

Mr. Vredenburgh. Are you speaking of the foot of Jackson street?

Witness. No.

Q You spoke of a grade crossing at Fourth street, prior to the elevation of the tracks; how wide was that crossing?

A It extended practically from curb to curb, I should say 40 feet; before the tracks were elevated, about 40 feet.

Q What land on that map C. 4 does the Manor Real Estate Company own?

A They own practically all the land bounded by Middlesex, Somerset—all the land shaded in light red, lying south of the railroad and east of the line of the Canada Farm, is now in the title of the Manor Real Estate & Trust Company.

Q What land is in the United New Jersey and Canal Company?

A The Canada Farm shown in red on this map; all property within the heavy shaded red lines is in the title of the United New Jersey Railroad and Canal Company.

Q Was not the plan as to the freight yard drawn subsequent to November 8, 1913?

A No, sir.

Q Do you mean to say that the plan that you have in your hand, marked C. 9, was drawn before November 8, 1913?

A I say it was drawn.

Q You drew that?

A It was drawn under my direction in my office.

Q Where is the original?

A On file in my office, plan No. 3371.

Q How do you fix the date it was drawn?

A The date was placed on the original tracing when it was drawn.

Q Who placed it there?

A The draftsman.

Q You didn't place it there?

A It was placed there under my direction?

Q You didn't place it there personally?

A It was done under my direction. I did not do it personally.

Q How many feet shown on C. 4 did the yellow road stop short of the Harrison Land Company?

A It required a detour of about 300 feet to get from the road shown in yellow on C. 4 to the land of the Harrison Land Company.

Q And that is over the meadow land?

A Yes, sir.

Q The ordinance excavating the so-called streets on the Preston tract were passed at the instance of the Pennsylvania Railroad, were they not?

A As I understand it, yes, sir.

Q And that was in view of the fact that the Pennsylvania Railroad expected to make extensive improvements?

A Yes, sir.

Q And those improvements were the elevating or their various tracks, were they not, or some of the improvements?

A The elevation of the tracks and other improvements incident to the tunnel improvements.

Q Is it not a fact that all the tracks of the Pennsylvania Railroad or the United New Jersey Railroad and Canal Company as shown on Exhibit C. 4 are at an elevation above the surface?

A Yes, they are above the natural surface of the ground.

Q Where the tracks cross Fourth street are they above grade?

A Yes, sir.

Q How much?

A Fifteen feet.

Q How much above grade are they at Sixth street?

A Eight feet.

Q And Fifth street?

A Ten feet.

Q The yellow road that you spoke of on C. 4 is crossed by the tracks of the United Company at an elevation?

A They are now.

Re-direct by Mr. Vredenburgh.

Q I notice one track on the property of the Crucible Steel Company near the foot of what would be Sixth street, across the yellow strip; at what elevation is that track?

A That is one of the descending tracks that leads into the Crucible Steel Works, that is about five feet above the level of the street.

Q That blocks off that yellow strip at that point?

A Oh, yes, completely.

Q What is the distance from Fourth street along Cumberland street to the easterly line of this railroad that you speak of, about, or can't you tell that?

A What railroad?

Q You spoke of the land dropping off after it crosses the railroad down to the meadow; at what distance is that from Fourth street, about, if you know?

Mr. Peirce. The railroad track is about 100 feet from Fourth street now.

A Where it crosses Cumberland street—from the railroad, which is about 100 feet east of Fourth street, the meadow would be about 200 feet further, the natural surface of the meadow, so that in building a road from Fourth street over this railroad track down to the meadow, it would require a grading of about 300 feet in length of ground.

Re-cross by Mr. Peirce.

Q How much of a fill?

A It would be of various amounts, four or five feet, some places more.

Q What would be the greatest fill?

A About six feet, I should say.

Q And about how many feet in length would that be?

A To get a suitable road for trucking—

Q How much of a fill in length of six feet would you have to fill up?

A About 200 or 300 feet.

Q And you said on direct examination that it would take half a dozen carts and half a dozen men a short time to fill that?

A Yes.

Q You still continue to say that?

A I do.

Q Isn't it a fact that there is a trestle work where the old yellow road crosses the track, that comes into the Crucible Steel, and drive under it, with a trestle over it?

A There is a trestle there that can be driven under, but the road that I show on this map does not go under that trestle.

Q Didn't that yellow road used to go under that trestle?

A At one time, yes, sir.

Q But you have changed it and put it on the map some other place?

A Not at all.

Q Why do you say that it does not show on that map?

A It does not show under the trestle that is on this map.

Q It didn't satisfy your purpose to show the trestle?

A Not at all.

Q Why didn't you show the trestle, you have shown the bridges?

A The yellow road was placed upon this map not only from the information from my office, but from the information and memory of the oldest of our employees.

Q (Last question repeated.)

A I don't understand the question.

Q You have always said that there was a trestle?

A Yes.

Q What trestle do you refer to?

A The trestle shown on this map, as being parallel with Sixth street.

Q (*By the Court.*) That is shown on the map and is in crossed lines?

A Yes.

Q At a point that I am now designating, to the south of the United Company's tracks, is there not an old trestle where the yellow road used to go under?

A Yes, there is a trestle.

Q And it is still there to-day?

A Yes, sir.

Q Why didn't you put that trestle on the map?

A This map was made originally with no reference to the location of the Canada Farm or the old farm; it is a map showing the improvements up-to-date; upon that map, for convenience in this suit, we placed the lines of this old road, together with the lines of the Preston tract and other things pertinent to this case, so in locating this old road, I had no idea of locating a trestle that was there 100 years ago or fifty years ago, but this yellow road is the road that we refer to in this case as being in existence many years ago.

THOMAS RYAN, sworn for complainant.

Direct examination by Mr. Vredenburgh.

Q Where do you live?
A Harrison, New Jersey.
Q How long have you lived there?
A All my life.
Q How old are you?
A Forty-four.
Q In whose employ are you at the present time?
A Pennsylvania Railroad.
Q In what capacity?
A Signal man.
Q How near have you lived to the main line where it binds the Crucible property?
A Within 50 feet.
Q Do you recall the old road that used to lead from the Draper plot or Fox Island land down to the Town of Harrison?
A I do.
Q How did it cross the Fox Island Creek?
A By a bridge.
Q Whereabouts about was that bridge, can you tell by looking at this map; have you seen this map before?
A No, sir, I have not.
Q Can you tell about where that bridge was with reference to the Seventh street crossing?
A The Sixth street crossing.

Court. Begin from the railroad company as you first recall the road; from what point did the road commence to run to the river, to the east; about what street in Harrison, if it ran from near any street?

Witness. It started from Sixth street.

Q Then how did it run?
A It ran south with a slight turn to the east, until after they crossed this Fox Island bridge, for about

300 feet, and it turned east and went east as far as where the Shanley stone crusher was located.

Q Whom did you see use that road?

A I saw the Shanley Company use it, and I saw a man drawing hay from the meadows use it; that is about all.

Q To what extent did the Shanley's use it?

A They had a brick stable and stone crusher there, and all the teams went in and out there.

Q Was it in daily use?

A Yes, sir, daily use.

Q When you first remember it, it went over Sixth street?

A Yes, sir.

Q What was the size of this Fox Island Creek?

A The bridge across it I should suppose was about 12 foot.

Q Still there, is it?

A Still there.

Q Was it ever changed over Sixth street?

A Not as I know of.

Q You never knew it to cross in any other place than at Sixth street—the main line of the railroad?

A After the Sixth street crossing was closed up, they went across through Fifth street.

Q (*By the Court.*) How did it reach Fifth street?

A It went through the steel works property.

Q Down as far as Fifth street?

A Yes, sir.

Q When Fifth street was closed up where did it go to?

A There was a road built leading to Fourth street.

Q Over whose property?

A I cannot tell you whether the Pennsylvania Railroad or the Town property, alongside of the railroad.

Cross examination by Mr. Peirce.

Q You know as a fact, that the old road shown in yellow on C. 4, has not been used since 1889, do you not?

A I cannot give no dates.

Q I want your best recollection?

A Since prior to the elevation.

Q When was the track elevated, how long ago?

A I should judge about 1902 or 1903.

Q It was elevated at that point before 1902?

A That crossing was closed before the elevation.

Q Sixth street crossed that?

A Yes.

Q How many years before the elevation of 1901, 1902 or 1903, was the Sixth street crossing closed?

A I should say about two years.

Q That would bring it about 1899?

A Yes.

Q You mean to say that the crossing at Sixth street was not closed before 1899?

A Yes.

Q Isn't it a fact that it was closed three years before the elevation of 1901, 1902 or 1903?

A No.

Q What was the first closing of Sixth street by the railroad?

A Taking up the crossing.

Q What do you mean by that?

A The crossing was taken away from there.

Q Then what happened to the crossing?

A They put it at Fifth street.

Q What crossing do you refer to as having been put at Fifth street?

A They built a new crossing.

Q For what street or road?

A Pennsylvania Railroad.

Q What crossed the Pennsylvania Railroad at Fifth street?

A Anything that went across it.

Q Was it a road?

A Yes.

Q You took the road away from Sixth street and put it up at Fifth street, whereby you could cross the right of way of the Pennsylvania Railroad?

A Yes, sir.

Q At that time did the Pennsylvania Railroad go over the crossing at an elevation?

A No, sir.

Q How did it cross?

A On surface, at grade.

Q When was Sixth street closed, what year?

A About two years before the elevation, I said.

Q That would be when?

A About 1899.

Q Calling your attention again to the crossing at Sixth street, I want to see if I cannot refresh your memory as far back as 1889, to the fact that the road was then closed at that point over the railroad track?

Court. Wasn't it as much as eleven or twelve years before the road was elevated?

Witness. Not as I can recollect.

Q What is the greatest period of time that you can remember back of the time of the elevation?

A I remember the closing of that road.

Q Is there any way you can fix the date of that?

A No, sir, there is not, not the exact date.

Q What was the date that they took away the crossing at Sixth street?

A I cannot tell you the date.

Q Give your best recollection.

A About two or three years before the elevation.

Q Shanley's have used that road recently, have they?

A No, sir.

Q When did they use the road?

A I don't suppose Shanley used that road in—

Q The last twenty years?
A Oh, yes.
Q What is the most recent time they used it?
A I was going to say about ten years.
Q You are speaking now of which road?
A The old road; after the Sixth street crossing was closed, the road went through the steel works property to Fifth street.
Q Is that the time you say that Shanleys used it?
A Yes, they used it while they went through to Fifth street.
Q Did they use it at Sixth street?
A Before it was closed, they did.
Q Did they have a plant there on the meadows prior to the closing of the Sixth street crossing?
A Yes.
Q You are sure of that, are you?
A Yes.
Q You say they used it at Fifth street?
A Yes, after Sixth street was closed.
Q What did they do then?
A They went to Fourth street.
Q When Fourth street was closed what did they do?
A Never knew it to be closed.
Q Still open?
A No, there is no road there now at all.
Q I am asking you about Shanleys; when you took away the Fifth street crossing, you say that Shanleys went up to Fourth street?
A Yes.
Q When was Fourth street closed; I mean the entrance to the yellow road at Fourth street, is it still open?
A Not as I understand; there is no opening at all that I can see.
Q How can Shanley get out there?
A They are not there.

Q When did they discontinue?

A About ten years ago.

Q They discontinued before you closed Fifth street?

A No.

Q When did you close Fifth street?

A I cannot give the date they closed Fifth street.

Q Wasn't it after the elevation of 1902 or 1903; wasn't that what closed Fifth street? What was the reason for closing Fifth street?

A Fifth street is open now, but it is only a tunnel.

Q There is a passage under Fifth street?

A To walk, yes, sir.

Q Can you drive through?

A I don't know as you could take a team through there; I never tried it. I cannot give the width of it.

Q Shanleys after Sixth street was closed, you said, used Fifth street?

A Yes.

Q You said after Fifth street was altered, they then used Fourth street?

Mr. Vredenburgh. He didn't say "altered."

Court. Closed.

Q Which is it, opened or closed on Fifth street?

A At the present time there is an opening to walk through there.

Q Did Shanley ever use that opening?

A Not as I know of.

Q After they discontinued using Fifth street, you say they did use Fourth street?

A Yes.

Q You know that to be a fact?

A Yes.

Q There is no reason why Fourth street couldn't be used at the yellow line to-day?

A There is no way you can get in there to that old road to-day.

Q What prevents it?

A The steel works property and railroad property.

Q Not at the point where the yellow road intersects Fourth street?

A If there is a fence up there, it is blocked off.

Q Who put the fence there?

A I cannot tell you.

Q Isn't it the Pennsylvania Railroad fence?

A No, sir, not as I understand.

Q Do you know where the yellow road intersects Fourth street?

A It never intersected Fourth street, but they come to it by going out through the steel works property.

Q Where did the Shanleys come to Fourth street ten years ago?

A Through the steel works property and to Fifth street and all along the railroad to Fourth street.

Q Will you look at the property; you know what the yellow road means?

A The old road.

Q That is drawn by the Pennsylvania Railroad engineer, showing the yellow road extending along the right of way of the United Railroad to Fourth street?

A Yes.

Q You remember that that was used after Fifth street was closed, right up to Fourth street?

A Yes, sir.

Q What change has occurred at the intersection of the yellow road with Fourth street?

A There is a fence across there and sign on it "Private Property," or was a year ago.

Q Isn't it a fact that at Fifth street your railroad track occupies the yellow road?

A Not as I know of.

DANIEL OTTO, sworn for complainant.

Direct examination by Mr. Vredenburgh.

Q Where do you live?

A Harrison.

Q How long have you lived there?

A About thirty-eight years.

Q Do you recall cutting hay on Fox's Island?

A Yes, sir.

Q Of whom did you get the right to cut hay?

A I bought it, I bought the grass.

Q From whom?

A Charlie Gilbert.

Q Then most of the hay you cut on the Gilbert property?

A Yes, close to the river.

Q Was that on Fox's Island?

A A little farther down, right close to the river.

Q How did you cart your hay from that place to your stable? Where was your stable at that time?

A I lived right around in Railroad avenue, where I live to-day.

Q How did you get your hay from the meadows up to your house?

A I got it through over that bridge there by Shanley's crusher and then come around there by Fox's Island to Sixth street.

Q And then across the railroad at Sixth street?

A Yes, by Fox's Island and then right around to Sixth street.

Q How did you get over Fox's Island Creek?

A I fixed up every year that little bridge.

Q Do you now mean the bridge that led to the Shanley's crusher; did you build that bridge?

A No, Mr. Shanley built that.

Q Then you did build a bridge over some creek; what creek was that?

A Around there by Fox's Island, a little bit of a bridge, we used to fix it every year.

Q Did you drive down there with a wagon and horse?

A Yes.

Q You cut hay from the meadows there down to the river?

A Down to the river, close to the river.

Q Was there a mark of an old road leading down to the river?

A Yes, I cut some grass.

Q When did you first cut there, do you remember what year it was you first went there?

A About 1887.

Q Do you remember the year of the blizzard in 1887?

Court. It wasn't that year.

Q Since you first cut there that one year, how many years did you cut?

A I cut until about 1904.

Q Did you cut most every year?

A Every year.

Q On which side of Fox Island Creek did you cut, or did you cut on both sides?

A I cut there and I cut at Gravel Dock.

Q Did you see anyone else using that road?

A Yes.

Q Who?

A Shanley cut it and then another man cut it.

Court. He is asking you about the using of the road; who used that road beside yourself?

Witness. There was a good road from the crusher out to Railroad avenue and Sixth street.

Court. Were there other people who used it besides you and Shanley?

Witness. Yes, sir.

Court. What did they use it for; you used it to go down and cut salt hay?

Witness. Yes, and cart it.

Court. What did these other people use it for that you saw using it?

Witness. The same thing, cut hay.

Q Do you know whether anyone used it for pasture, to drive their cows on?

A Yes. There was no pasture there; sometimes Shanley had a couple of cows that he drove in.

Q McNeil, wasn't his name?

A And then Spier, that little house close to the steel works, that was burned down a couple of years ago, he had four cows, he drove them around there.

Q What is that paper you have there?

A I made a map; that is Fifth street and that is Sixth street (indicating). I wrote it down, every street and everything, every little bridge.

Court. You made that up yourself?

Witness. A little map from the meadows.

Court. What did you want to show when you made the map?

Witness. Where I cut and where I got out and where I drove in (explaining map).

Cross examination by Mr. Peirce.

Q What road are you talking about?

A That come around there by Shanleys; I drove over the bridge on the meadows.

Q You started to go down to the meadows?

A Yes.

Q When you were hauling up hay from the meadows, you came toward the railroad and what is this little bridge you have here?

A That is the Fox Island bridge.

Q You went on up Sixth street to the railroad?

A Yes.

Q Then how did you go?

A Then I left.

Q Then you came along the railroad to Fifth street and went across the railroad?

A Yes.

Q Was the railroad higher than the surface at Sixth street?

A No, that was low, the railroad, then; the elevation, the short line, is on top now.

Q At the time you drove up Sixth street to the railroad, why didn't you go straight across the street?

A I could not cross.

Q Why?

A There is no street across it; there was no crossing there.

Q What year was that?

A 1888 and 1889.

Q You remember driving under this trestle work over here at Sixth street, do you not?

A Yes.

Q That trestle work is still there?

A Yes.

Q Can you remember the trestle work at Sixth street as far back as 1889?

A Yes, there was a little crossing, but not now.

By the Court.

Q You bought this place in 1887?

A Yes.

Q How soon did you begin to cut hay there? As soon as you got it?

A Yes.

Q As soon as you began to cut hay there, did you cart out all the hay that you cut?

A Yes.

Q Carted it off towards Newark?

A Yes, sir; sometimes there was high water, I had to get it out with sticks.

Q From the time you went there, you came out just at Sixth street by this road; did you ever cross Sixth street with any load of hay?

A Not over the tracks.

Q From the time you first commenced to cart you went down to Fifth street and then crossed at Fifth street?

A Yes.

By Mr. Peirce.

Q After the Sixth street crossing was taken away how did you get out?

A Got around Railroad avenue to Fifth street—from Fifth street.

Q After Fifth street was closed, I mean, how did you get out?

A It is not closed yet.

By the Court.

Q How long is it since you stopped carting hay; do you still keep it up?

A Yes.

Q You still cart hay there every year?

A Carting away pretty near every year.

Q You own the land?

A I only bought the grass.

Q You still cart it away, do you now, except you go to Fifth street and come under the railroad there, instead of going on down to Fourth street?

A No, we go across the railroad; there was no elevation.

Q Where do you go now?

A I don't cut no more hay.

Q How long since you stopped cutting?

A Long ago, about eight or nine years ago.

By Mr. Peirce.

Q The last hay that you carted, how did you get across the track and where?

A I had no track, from the crusher out right by Fox Island.

Q You crossed the Pennsylvania Railroad?

A I lived on Railroad avenue.

Q Which side of the railroad do you live?

A On New Jersey Railroad avenue, on the right side.

Q You live then on the south side of the track?

A Yes.

Q You didn't have to cross?

A No.

RECESS.

MARTIN L. GARDNER, recalled for further

Direct examination by Mr. Vredenburgh.

Q When you were on the stand before you were about to mark on the map the land covered by the deed from Henry L. Young, and others to the United New Jersey Railroad and Canal Company, dated August 12, 1885. Can you point out this land in the deed, the third tract?

A Yes.

Q The third tract, lots 10 to 16 inclusive, and 31 to 36 inclusive, on block 64 of the map of Hiram Gilbert of 1852?

A I can, yes, sir; I marked the lots from 10 to 16 and from 31 to 36 on block 64 on the Gilbert map of 1852 (C. 1), in black.

Mr. Vredenburgh. I offer in evidence deed dated August 12, 1885, recorded October 30, 1885, in Book 409 of deeds for Hudson County, page 157, etc., and the conveyance to which I refer is the third tract, which is described as follows: Third tract as lots 10 to 16 inclusive, and 31 to 36 inclusive, on block 64, these four lots being designated on the map entitled "Map of lots in East Newark of Hiram Gilbert, Clark & Baco, City Surveyors, Jersey City, July 1852, filed January 19, 1853, in Hudson County Clerk's office, No. 197, as follows, namely." I offer it for one purpose, and that is to show that we are owners

of the land near Fourth street on the Gilbert Map, by reference to that map. (Marked Exhibit C. 12.)

Q I will now ask you whether the freight business of the Pennsylvania Railroad has been increasing since you were there or not?

A It has.

Mr. Day. While we are waiting, I will put in the record in the case of Harrison Land Company against Crucible Steel Company. I have here a printed book and the understanding with Mr. Peirce is that that book shall go in subject to any objection there may be as to the relevancy or materiality of any of the papers contained in them.

Mr. Peirce. We do not require the originals produced, of course. The record cannot be handed in in a wholesale fashion, because there are affidavits here used in the hearing on the return day of the rule to show cause, which cannot be dumped into this case and used in that fashion. The record in that case would have to be shown to be material. I do not think he can take all that happened in the other case and throw it in here. I object to the materiality and object also to the—

Court. The affidavits used in that case cannot be put in evidence here. The affidavits could not be even put in in that case. The record only includes the bill and the answer.

Mr. Day. I do not see why I cannot put in their affidavits. I now offer in evidence the bill of complaint in the case of the Harrison Land Company against the Crucible Steel Company, in that book, and the answer of the defendants Crucible Steel Company of America and the Town of Harrison, and the affidavits attached to the an-

swer of the Crucible Steel Company of America, including the supplemental bill, or including any matter by way of supplement.

Mr. Peirce. We object to it.

Court. Your answer might have some bearing; I will not rule it out until I examine it and see what bearing it has.

Mr. Peirce. The purpose of putting it in in that case, there was an admission in the answer that some portion of this was a public street; that was done under misapprehension. I made a motion to amend the answer, which was laid over. I found it was not a public street.

Court. That which was a public street?

Mr. Peirce. The 237 feet; I made the motion some time ago, and your honor said you would not pass on it at that time.

Court. Is that the purpose for which you offer the answer?

Mr. Day. Partially, yes, sir. I have two objects.

Court. You may state them now.

Mr. Day. That is one object. There is an admission by both the defendants, including the Town that the 236 feet found to the east of Fourth street on Cumberland street, is a public highway, and I offer this in evidence, and it seems to me it is material on that point, namely, that there are admissions from the bill and the answer, that this 236 feet belongs to the Crucible Steel Company of America.

Mr. Peirce. I object to the offer.

Court. I will reserve my ruling on the admission of this until your evidence is put in, because it is rebuttal to your case.

Mr. Day. I offer it as part of our own evidence. Furthermore, I was at liberty to produce from that record, instead of producing from the

town, the application of the Crucible Steel Company of America to the Town of Harrison for the vacation of Cumberland street.

Court. Their formal written application?

Mr. Day. Yes. And all the proceedings that are found in this written book with regard to the vacation of that street, instead of producing the record.

Court. You offer these proceedings, and in lieu of offering the original, you offer the copy printed in that book, which isn't objected to because it is a copy. That is as far as this is admissible for the present. It will go in for that purpose, by consent, so you need not produce the original papers.

J. HENRY HARRISON, sworn for complainant.

Direct examination by Mr. Vredenburgh.

Q In November, 1913, were you acting for Booth & Flinn?

A As their attorney, yes, sir.

Q And as such did you have an interview with the officers of the Crucible Steel Company or their employees?

A I think it was on the 5th of November, 1913, when I accompanied the chief engineer and superintendent of Booth & Flinn with fifty or more men in an effort to make an entrance from Fourth street into Cumberland street.

Q Will you please tell us what occurred, so far as it is connected with the defendant, the Crucible Steel Company, or the railroad company?

A We arrived at the entrance about five or five-thirty in the afternoon of the 5th of November, 1913, and found there obstructions consisting of rails perpendicularly imbedded in the ground at a distance apart of perhaps three or four feet, perhaps fifteen or twenty rails in number.

Q Do you refer to the entrance of Cumberland street to Fourth street?

A At the entrance from Fourth street into the easterly side of Cumberland street.

Q Go on.

A Behind this barricade of rails were twenty or more steel castings of greater or less weight. As we approached I stated to two or three watchmen who said that they were representatives of the Crucible Steel Company, that we intended to make an entrance into Cumberland street with out teams which we had there, for the purpose of depositing waste material. Threats were made of bodily injury if we attempted to make the entrance. The men under direction of our superintendent, proceeded to tear down the barricade and to remove with their horses some of the steel castings. After they had been working for perhaps ten or fifteen minutes, a platoon of police arrived and forcible ejected all of the men of Booth & Flinn from the line of the so-called street.

Q Did you have any conversation with the Steel Company's officers there or their attorney?

A I forgot whether Mr. Illingworth was there or not; there was a Mr. Crooks there and two or more watchmen; I really don't recall whether I had a conversation with Mr. Illingworth or not; there were so many things happening that day, that it is not entirely distinct in my mind.

Q Did you ask them or did they state for whom they appeared in resisting your opening of Cumberland street?

Mr. Peirce. Objected to.

Court. State what was said and by whom, as near as you can recollect, in reference to the opening.

A One, and perhaps two of the watchmen, stated

to me that they were acting for the Crucible Steel Company—

Mr. Peirce. I move to strike that out.

Court. It cannot be put in all at once; I will admit it subject to your objection. This is the place on the ground where they claimed the right to go, and it is evidence as the demands made on the ground and persons resisting it. I will hear you on whether you are bound by the evidence.

A (Continuing.) —and that the property which we were attempting to cross was the private property of the Crucible Steel Company—

Mr. Peirce. I move to strike it out on the same ground as before.

Court. I will take the evidence. This is all taken subject to your objection.

A (Continuing.) I stated to them that we were attempting to exercise our license under the Pennsylvania Railroad Company and under the Harrison Land Company for the purpose of depositing our waste material upon the lands of those two corporations. There was also a conversation had with the sergeant in charge of the Harrison police, who appeared on the ground and who stated in effect that we were encroaching upon private property of the Crucible Steel Company. That is about all.

Q Did you subsequently have a conversation with respect to that land with any other of the officers or attorneys of the Crucible Steel Company?

A A few days after the attempted entrance there was a conference in the cigar store of Alderman Daly on Harrison avenue, in the Town of Harrison, at which, as I recall, Mr. Illingworth was present, Mr. George H. Peirce, Alderman Daly, Michael T. Barrett, Hugh Barrett, Mr. McKinney and I.

Q Will you state what was said there with reference to this property?

Mr. Peirce. Wasn't that meeting supposed to be without prejudice, Mr. Harrison, with the idea of making a compromise?

Witness. I think it was, Mr. Peirce; our idea was to work out a *modus videndi* whereby we could close the issue.

Mr. Peirce. I object to it.

Court. I will take it subject to your motion to strike it out.

A The conference lasted for perhaps an hour and a half or two hours. If you would direct my attention to some particular part of the conference, I think perhaps we would save time.

Mr. Peirce. I would like to urge my objection. I understand that where there is a meeting and it is expressly understood and agreed between the attorneys that it is without prejudice—

Court. Before they go into it?

Mr. Peirce. Yes, and whatever happens in the nature of a compromise ought not to be introduced in evidence.

Court. I understand this witness to say that before going into the conference it was agreed that the meeting should be without prejudice for the purpose of compromise.

Mr. Vredenburgh. I do not want to press anything that would place him in the position of not carrying out his agreement. We were not parties to it; we appear here as entirely separate.

Court. I will overrule the admission of that evidence for the present. Later in the case something may occur that might urge me to admit it.

Witness. I would prefer not to testify about it.

Court. You were not parties. It is on the general principle that where the meeting occurs with that view, nobody could take advantage of it. I will exclude that.

Cross examination by Mr. Peirce.

Q You did not have a license from the Harrison Land Company at the time you went to the intersection of Fourth and Cumberland street on the occasion you mentioned?

A My recollection is we did; I can confirm that by looking up the record.

Q What was the date?

A Fifth of November.

Q You secured your license from the Harrison Land Company after that?

A No.

Court. They secured the license from the Harrison Land Company in August.

Mr. Day. 28th of August.

JAMES F. McKINNEY, sworn for complainant.

Direct examination by Mr. Vredenburgh.

Q Are you connected in any way with Booth & Flinn, Limited?

A Yes, I am a member of the law firm of Edward M. Grout and Paul Grout, who are general counsel of Booth & Flinn and have been for some time.

Q Were you present at any time when the question of the Booth & Flinn Company entering the property of the Pennsylvania Railroad Company from Fourth street over Cumberland street was at issue?

A Yes, sir.

Q When was that?

A That was on the 6th of November, Thursday.

Q Had you before that had any conversation with any of the Crucible Steel Company?

A Not that I recall.

Q At that time where did you meet them?

A We met at the place designated by Mr. Harrison—I don't recall the man's name—it was in a store

in Harrison, on the main street, and the persons present, I recall were those named by Mr. Harrison.

Q Will you please state what was said?

Mr. Peirce. I object on the same ground; that was the same conference.

Court. Is this the same interview?

Mr. Peirce. The same interview and one of the counsel.

Witness. I am a witness; I was bound to know such stipulation and never heard of any such stipulation.

Mr. Peirce. Mr. Harrison made the arrangement for us to meet there, and you are one of the counsel with Mr. Harrison.

Witness. Mr. Harrison is my employee.

Mr. Peirce. Then that is so much more binding upon you.

Court. If this is the same interview, I do not think it is admissible under my present ruling.

Witness. I had a further conversation with Mr. Peirce on the following day.

Mr. Day. Go on with that.

Witness. That conversation was pursuant to—

Mr. Vredenburgh. Does your ruling cover also the conversation had subsequently about that?

Court. I don't know.

Q Had you a conversation subsequent to that interview?

A We did on the following day.

Mr. Peirce. It would come under the same ruling.

Court. You will have to cross examine on that.

Cross examination by Mr. Peirce.

Q You called up Mr. Peirce for the purpose of making an arrangement to settle the case?

A I wouldn't say so, no, sir.

Q What was your purpose in calling up?

A To get a *modus vivendi* while we were fighting the case.

Q Wasn't it your purpose to arrange an independent route as distinguished from Cumberland street, so that you could go over and use the Crucible Steel Company's land to deposit dirt upon the Pennsylvania Railroad?

A I think not.

Q Isn't it a fact that that was your purpose?

A It was not.

Q What was your purpose?

A My purpose was to arrange a *modus vivendi* whereby we could exercise our rights pending the litigation.

Q Your purpose was to establish the route, which you did establish, did you not, so you could go over and deposit dirt upon the Pennsylvania Railroad land?

A I think not.

Q Didn't you make such an arrangement?

A No, sir, not the arrangement I proposed at that time.

Q Haven't you made such an arrangement?

A No, sir, not that one.

Q You haven't yet answered my question; haven't you made an arrangement with the Crucible Steel Company as to depositing dirt on the Pennsylvania Railroad and the Harrison Land Company's land by crossing the land of the Crucible Steel Company?

A By direction of the court the order was entered in this case, by the agreement of counsel, yes, sir, but that was not the arrangement—

Q The phone interview was one of the negotiations which resulted in your getting a right of way to go over to the Harrison Land Company and Crucible Steel Company?

A No, I should say not. I am a New York lawyer and I am subject to limitations.

Court. I do not think at this point in the proceeding the foundation for the admissibility of this evidence is yet laid. I will see what their case is and whether this matter possibly may be admitted by way of contradicting their case, as they may set it up, or their rights, and if it is offered for that purpose, then I will see the bearing of it; otherwise, I do not see that it has any bearing on the question of proving title or rights. It is only a question of whether it may be inconsistent with something which they set up or prove hereafter, a case by way of rebuttal, so that for the present I will rule out this evidence, reserving leave for the complainants to apply again to receive the evidence by way of rebuttal.

MILTON E. CHAMBERLAIN, sworn for complainant.

Direct examination by Mr. Vredenburgh.

Q In whose employ are you?

A Booth & Flinn Company.

Q In what capacity?

A Civil engineer, and at the present time temporary general superintendent.

Q And were you employed by them in November, 1913?

A Yes, sir.

Q Were you in the discharge of your duty at Cumberland street and Fourth street, in the Town of Harrison?

A Yes.

Q Did you make an examination of the land, the 237 feet or more, between Fourth street and the land of the Pennsylvania Railroad along Cumberland street, to see what it would cost to put that land in

such condition that it could be used as a road to cart in the stuff?

A Yes, sir.

Q What was your estimate of the amount of work required to do that, prior to any encumbrances being put there by the Crucible Steel Company?

Mr. Peirce. I would like to ask the witness some questions.

Cross examination by Mr. Peirce.

Q What is your business?

A Civil engineer.

Q How long have you practiced your profession?

A Seven years.

Q What experience have you had?

A As a civil engineer on compressed air and caisson work, soft ground tunnel, rock tunnel and Chicago clay.

Q Did you ever have any contracts for cuts or fills that you personally had?

A No, sir.

Q Do you know the market price of filling land in Harrison, New Jersey?

A That depends on so many things.

Q Do you or don't you?

A No, sir, I do not.

Q That applies in a general sense to any fill in Harrison, does it?

A Yes, it does.

Mr. Peirce. I object to the witness's qualifications.

Court. You must show, Mr. Vredenburgh, that he can make an estimate of that kind.

Further direct by Mr. Vredenburgh.

Q What experience have you had in the making of estimates as to the cost of building such a road as that?

Mr. Peirce. Objected to.

Court. Have you had any experience in the course of your business as a civil engineer from which you can make an estimate of the cost of this work; has the character of your work been such as to include that? Tell how and in what respect; give us an idea of what you have done to put you in a position to make an estimate of this kind.

Witness. On every contractor's work there are more or less temporary roads, and sometimes plank roads and sometimes ordinary roads to be built; practically every job has work of that character on it, and in this particular instance—

Court. Do you make up the estimate for that kind of a job?

Witness. No, sir, I do not.

Q How could you tell what it would require for the temporary work?

A My experience in seeing similar roads built and similar circumstances.

Mr. Peirce. I object to the evidence.

Court. I will admit it subject to your objection. I will take it for what it is worth.

Q What was your estimate of the amount of work required to make that road passable, so as to get the teams and loads of Booth & Flinn from Fourth street to the land of the Harrison Land Company and the Pennsylvania Railroad Company?

A Approximately $200.

Q What would that work consist of?

A Grading down a hump which was formed by an incline along an existing railroad track and cutting that hump down and grading it up on a slight grade to the Fourth street sidewalk.

Q Did you go on this property?

A Yes, sir.

Q And examine it?

A Yes, sir.

Q (*By the Court.*) How did you arrive at that amount of $200 for the cost of that work?

A I figured in order to cut that down and get the material down to the dump, that it would take a gang of probably fifteen to eighteen men probably four days to do it, and two teams to cart the material and spread it, and in case of bad weather, there would be a problem of putting in three-inch yellow pine plank to keep the wagons from sinking into the ground.

Q (*By the Court.*) You estimated all that would cost only $200?

A Yes.

Cross examination by Mr. Peirce.

Q What were you going to cut down?

A In crossing the sidewalk of Fourth street at that particular point there is about twenty lineal feet of approximately level ground, cinder fill, and then the bank drops abruptly about five feet down to an existing railroad siding which runs down to the dock.

Q Do you mean there is twenty feet of level ground extending out level with the pavement to the east?

A About twenty feet from the line of Fourth street.

Q Are you figuring from the curb or from the inside line of the sidewalk?

A Inside line of the sidewalk.

Q Then go straight out level with the sidewalk for twenty feet?

A Approximately that, the ground does at present.

Q When did you look at that ground?

A I cannot give you the dates; I looked at it in May of last year and I looked at it a great many times since.

Q Have you looked at the ground with the idea of making an estimate since May of last year?

A No, sir, I have not.

Q Where are your figures?

A I have no figures.

Q You say you were going to cut something down; what were you going to cut down?

A Simply cut an incline through that bank, that is, cut right down through that cinder fill.

Q You refer to the twenty feet?

A Yes.

Q You were going to cut down through that bank, then what?

A Cross the railroad siding at its present grade.

Q Then what?

A Go right straight out to the Pennsylvania Railroad property.

Q Don't you know that the meadow land intervenes where it is nothing but swamp?

A No, sir, it does not.

Q You don't know that?

A It does not.

Q It does not intervene between that point and the Pennsylvania Railroad land?

A No, sir, it does not; it intervenes on Cumberland street.

Q You are talking about Cumberland street?

A Yes, we were going to fill Cumberland street.

Q Then you would have to fill some of the meadow land?

A Yes.

Q You hadn't figured, then, the expense of figuring on the meadow land?

A That is simply at our disposal, that there was no expense to it.

Q You would get enough out of the cut to put it in on Cumberland street where the meadow land is?

Court. They are going to commence to fill right on Cumberland street.

A There are 100 yards a day coming in.

Q You say that you have not made any estimate yourself, but you simply testify from observation?

A Yes, sir, that is my estimate.

Court. I don't think he understands your question.

Witness. I cannot answer it as I would like to.

Mr. Vredenburgh. May I call your Honor's attention—I wanted to ask Mr. McKinney a question and your Honor ruled it out; now I want to bring this to your attention. I want to renew my application; my purpose is to show that any acquiescence that we have given to any other road than through Cumberland street has been based on the assertion on their part that if we attempted to go through Cumberland street there would be bloodshed, as a reason why we acquiesced in some other way.

Court. The time to offer that is when they put up your acquiescence as a bar to your present rights.

I may say on this point, that the stipulation that was actually entered, says that it was done without prejudice.

ROBERT H. ILLINGWORTH, sworn for complainant.

Direct examination by Mr. Day.

Q Where do you live?

A Newark, New Jersey.

Q How long have you lived here?

A About twenty-three or twenty-four years.

Q What is your business?

A I am manager of the Crucible Steel Company of America, at the Harrison plant.

Q How long have you been connected with that plant?

A Since 1891 or 1892.

Q It used to be then the Benjamin Atha-Illingworth Company?

A Yes.

Q You have been connected with it ever since then?

A Yes.

Q The Benjamin Atha & Illingworth Company conveyed that plant to the Crucible Steel Company of America?

A Yes, sir.

Q And you are the manager of that plant over there now?

A Yes.

Q And you have been ever since they have been there?

A Yes.

Q Do you know Mr. Herbert Dupuy?

A Yes, sir.

Q What connection does he have with the Crucible Steel Company of America?

A Chairman of the Board of the Crucible Steel Company.

Q That practically means that he is the head?

A Yes.

Q Do you know Mr. C. C. Ramsey?

A Yes.

Q What is his connection with the Crucible Steel Company?

A He is president.

Q Do you know Mr. John A. Sutton?

A Yes, sir.

Q What is his connection with the Crucible Steel Company?

A First vice-president.

Q Do you know Mr. Charles W. Rowlands?

A Yes.

Q What is his connection with the Crucible Steel Company?

A Secretary.

Q Do you know Mr. G. M. Black?

A Yes.

Q What is his connection with the company?

A General superintendent.

Q And Mr. G. W. Sargeant?

A He is vice-president, I don't know which one.

Q All of these people have their offices in the Oliver Building in Pittsburgh, don't they?

A Yes, sir.

Q That is the place where the Crucible Steel Company also has its office?

A Yes.

Q You have your office at the foot of Fifth street, Harrison?

A Yes, sir.

Q That is where the Crucible Steel Company also has its office?

A Yes, sir.

Q You are a director of the Hudson Railroad and Transportation Company, are you not?

A Yes, sir.

Q What is the business of the Hudson Rialroad and Transportation Company?

Mr. Peirce. I object; that has no bearing on the controversy.

Court. In a general way; it must be connected with the use of the premises in question.

A To convey freight and merchandise around the Crucible Steel Company's property.

Q Its business is entirely with that company, isn't it?

A Yes.

Q No other business?

A No.

Q Its office is in the building of the Crucible Company, too, isn't it?

A Yes.

Q Those people that I have named, every one of them are directors of the company?

A Yes.

Q You make up the reports of that railroad company?

A No, they are made up in Pittsburgh.

Q You have seen them?

A Yes.

Mr. Day. I offer in evidence their last annual report to the Secretary of State.

Q You filed that?

A No.

Q Was it filed from here or from Pittsburgh?

A I don't know.

Q You didn't file it?

A No, sir.

Court. You haven't shown he is an executive officer.

Q They make a return to the State Board of Assessors; do you make that return?

A It is made—no, I do not.

Q You have seen it, haven't you?

A No.

Q Do you know whether they have any railroad cars?

Mr. Peirce. I object.

Court. I will take the evidence.

Q You know about their property?

A Yes.

Q How many miles of railroad have they got?

Mr. Peirce. I object; we have the deeds here.

Court. He said the business of the railroad is to convey freight and merchandise around the property of the Crucible Steel and Iron Company at Harrison. That is the business of that railroad. Has it any other business?

Witness. No.

Court. And all it operates is in connection with the carrying of the freight and transportation at that place?

Witness. Yes.

Court. Do you want anything further in detail?

Mr. Day. I think I ought to show that they don't own any cars, perhaps.

Q You don't own any cars there?

Mr. Peirce. What are you using?

Mr. Day. Their return to the State Board of Assessors.

Court. He is a director of the company; a paper is shown to him which purports to be a copy of the company's return to the State Board of Assessors. The question is asked, looking at that, can you tell anything in reference to the company's property? Does the company own those cars that they use there?

Q The cars are owned by the Crucible Company that this railroad uses?

A Oh, no.

Q Generally?

A No, they are owned by the Hudson.

Q Do they own more than $370 worth of personal property?

A That I don't know positively.

Q The assessed valuation of tangible personal property necessary and used is $370; do you know whether they own any more than that?

A No, I do not know.

Q Who has the control of the property of that company?

A The Hudson Railroad and Transportation Company.

Q Who has it personally?

A I do.

Q How much of a main stem have you got? This report shows you have less than a quarter of a mile?

A A little more than a quarter of a mile.

Court. It is a company incorporated for the purpose of transporting the freight of the Crucible Steel within its own lines?

Witness. Yes.

Q Have you got any land outside of the main stem there 100 feet wide?

A We have 100 feet wide.

Q That is all you have got?

A Yes.

Cross examination by Mr. Peirce.

Q What land does the Hudson Transportation Company own at that point?

Court. You had better put in your own title.

Mr. Peirce. He asked about 100 feet. I will show that that is a mistake.

Court. You may ask him.

Q Referring to the Hiram Gilbert map, tell first what they own south of Cumberland street and then tell what they own north of Cumberland street?

A They own south of Cumberland street to the river and north of Cumberland street to the junction of one of the streets. It is not shown here where it is.

Q Up to what point?

A They own to a point north of Burlington street.

Q They also own the fee of Cumberland street at that point?

A Yes.

Court. You mean the entire 237 feet?

Witness. Yes, sir.

Court. And also own, as you understand, and have title to and fee to the land included within the line of Cumberland street shown on that map east of Fourth street, and also have title to 100

feet in width, that is, the entire line north of Cumberland street?

Witness. North of Cumberland street it is 100 feet wide, and south of Cumberland street 100 feet wide, and in Cumberland street they own the length of 237 feet.

Q The Hudson Railroad is an entirely separate corporation from the Crucible Steel?

Mr. Day. I object.

Court. That is a conclusion of law.

Q Does the Crucible Steel Company as a corporation own any stock whatever in the Hudson Railroad?

Mr. Vredenburgh. Objected to.

A No, sir.

Q Are or are not the accounts and the bookkeeping department of the Hudson Railroad Company entirely distinct from anything connected with the Crucible Steel?

Mr. Vredenburgh. Objected to. Let them produce the books and show.

Court. He has a right to answer.

A Yes.

Q Have your duties as superintendent of the Hudson Railroad anything to do with your duties as superintendent of the Crucible Steel Company?

A No, sir.

Q Have you or have you not received instructions from the officers of the Hudson Railroad Company to keep the affairs of the Hudson Railroad Company entirely distinct and separate from the Crucible Steel Company?

Objected to. Objection sustained.

Q As a fact, have or have not the affairs of the Hudson Railroad Company been kept entirely distinct and separate from the Crucible Steel Company?

Mr. Day. Objected to.

Objection sustained.

Court. Confine your examination to what these companies do with reference to that land.

Q Are or are not any improvements or purchases made on behalf of the railroad made in the name of and charged against the Hudson Railroad Company?

Mr. Day. Objected to.

Objection overruled.

A They are.

Q You say that the Hudson Railroad Company does own 100 feet beginning at the river and running north, up to beyond Burlington street?

A Yes.

Q And have or have they not any tracks on that 100 feet?

A Yes.

Q Is or is not that railroad operated as a railroad?

A Yes.

Q Does or does not that railroad have some equipment?

A Yes.

Q But it is a very short railroad?

A Yes.

Q Does or does not the railroad have a separate bank account?

A That I don't know; I suppose it has; I don't know positively.

Q You haven't anything personally to do with the bank account?

A No, sir.

Q Where is the bank account kept?

A In Pittsburgh.

Q What is the intersection of the Hudson Railroad Company, with what other line?

A The Pennsylvania Railroad.

Q Does or does not the Hudson Company draw cars from the railroad down over its tracks as far as they are laid?

A Yes.

Q The Hudson Railroad Company is still the owner of the property shown in the four deeds which I show you at this time?

A Yes, they are still the owners.

Q You haven't anything to do with making the returns to Trenton?

A No.

Q You don't know what they contain of your own knowledge?

A No.

Q The 237 feet owned by the Hudson Railroad Company from Fourth street east begins at the intersection of Cumberland street, does it not?

A Yes.

Re-direct by Mr. Day.

Q Where are the stock books of the railroad company?

A Pittsburgh.

Q Will you produce them—the law requires them to be in the State of New Jersey—at the next hearing?

A I suppose so, if the Court orders them.

Q We want them produced; will you produce them?

A I haven't anything to do with them.

Q You are subpœnaed to produce them, are you not?

A Yes.

Q Will you produce them at the next meeting?

A I will write to Pittsburgh for them.

Q You say that the Crucible Steel Company does not own any of that stock?

A No.

Q Who owns it?

A It is owned individually.

Q How do you know?

A I know, because I own some of it.

Q How much do you own?
A One share.
Q How much did you pay for it?

Objected to.

Court. Objection sustained, unless someone else paid for it.

Q Did the Crucible Company pay for it or did you pay for it?

Court. If the Crucible Company bought it and paid for it, they have some way to control it.

Q This is a qualifying share you own?
A Yes.
Q How many shares are there out?
A That I don't know.
Q Then how do you know that the Crucible Company does not own any stock; from what do you say that?
A It has been the policy from the time the railroad was incorporated, for the Crucible Company not to own any of the stock.
Q You will have the books here the next time; do they own the locomotive?
A What do you mean?
Q An engine?
A How big?
Q I don't care.
A You might call it a locomotive; it is a travelling crane.
Q Do they own a locomotive?
A We use it as a locomotive.
Q Do you own an engine?
A Yes, we own a locomotive crane.
Q Is there any other locomotive or engine used in the yard?
A Yes, we have three of them.
Q Are they all cranes?
A All locomotive traveling cranes.

Q Do you have any locomotives at all?

A Locomotive cranes.

Q Have you any engines or locomotives besides these traveling cranes that you have spoken of?

A They are locomotive traveling cranes.

Q (*By the Court.*) Anything else in the way of cars?

A Yes, we have flat cars.

Q What else is there; do you have any other power propelling engines except those three traveling cranes?

A Traveling locomotive cranes.

Q Have you any others besides those three?

A You mean just locomotives?

Q (*By the Court.*) What else is there beside the three?

A That is all.

Q Are all those three traveling cranes—do they belong to this railroad company?

A The three traveling cranes—no, one of them does.

Q These obstructions that have been testified to, they are on property of the railroad company, are they not?

A Yes.

Q Who put them there?

Mr. Peirce. This is not re-direct.

Court. He may call him if he omitted it.

A The Crucible Steel Company.

Q Who paid for them?

A The Hudson Railroad and Transportation Company.

Q How do you know that?

A The account was sent to Pittsburgh to be charged up.

Q By whom was the account sent to Pittsburgh?

A One of the clerks in our office.

Q Did you see it?

A No.

Q How do you know it, then?

A I gave orders to have it sent.

Q When?

A About a month after the obstructions were put there.

Q How much was it?

A I don't know.

Q Can you get that account, too?

A Yes.

Q You will have that, will you?

Court. Is that important?

Q Whose men were there guarding these obstructions?

A They were not guarded.

Q There were a good many men there of yours at one time protecting—

A We thought they were able to guard themselves.

Q Whose men were there?

A The Crucible Steel Company.

Q You sent them there?

A No.

Q You had something to do with it?

A Not the night referred to.

Q At any time?

A Yes, afterwards.

Q You had something to do with placing those things there?

A Yes.

Q You made an application for the vacation of this lot 236 feet, didn't you?

A Yes.

Q And didn't you file a statement, signed Crucible Steel Company of America, by R. H. Illingworth, manager?

A Yes.

Q You represented that the Crucible Company owned all this property?

A I guess so, I don't remember. Is it there?

Q You made an application?

Mr. Peirce. I object; that has no bearing upon the controversy here. If the gentleman made a mistake in saying that the Crucible Steel Company owned it, and didn't own it—

Court. It has a bearing on the question as to the control of one by the other, and in reference to this particular piece. I will admit that; if the witness would like to see the original—

Mr. Peirce. We don't ask that the original be produced.

Q You made last year, and in May or June, application to the Mayor and Common Council for the vacation of Cumberland street, didn't you?

A Yes.

Q "And the Crucible Steel Company of America hereby offers $8,000 and to give in return a quit-claim deed of the property herein mentioned," and that was this Cumberland street, wasn't it?

A Yes.

Q The only part of Cumberland street you wanted to vacate was between Fourth street and the line of the Pennsylvania Railroad; am I right about that?

A As far as our property line.

Q All the rest of it you agreed that that should always be kept open?

Mr. Peirce. I object.

A I don't know anything about it; I didn't agree to it.

Q You made that application?

A Yes.

Q Did you say it only extended 237 feet in your application?

Mr. Peirce. The application speaks for itself, and it says 237 feet there.

Court. He signed the paper requesting the

application; that is all he would be required to answer.

Q Later, after you had made that application in the name of the Crucible Steel Company for the vacation of Cumberland street, you filed another application or statement or address to the Honorable Council of the Town of Harrison, signed by you?

A Yes.

Q And you said, first, it is the purpose of this company to use—

Mr. Peirce. I object.

Court. Put the statement in, if you have any further question about that.

Q "It is the purpose of this company to use these parts of these streets together with other land owned by the company for the purpose of building additions to our present plant from time to time," signed Crucible Steel Company of America; you made that statement to them, didn't you?

A That is one part of it.

Re-cross by Mr. Peirce.

Q As a matter of fact, the 237 feet measuring south from Fourth street on Cumberland street, is owned by the Hudson Railroad Company, is it not?

A Yes.

Q And the 100 feet right of way, which you already testified to, is owned by the Hudson Railroad Company?

A Yes.

Q Was it a mistake in putting in the Crucible Steel Company as the owner in the application; how did that happen?

A I don't know.

Q Did you draw the papers?

A No.

Q Were they drawn for you?

A Yes.

Q You signed it as they were drawn?

A Yes.

Q If you had noticed the fact that it stated that the Crucible Steel Company owned that, would you have signed it?

Court. He signed it supposing they did own it. That is all he can say now.

Q Was it called to your attention that in the application there was a statement that the Crucible Steel Company owned that property?

A No.

Court. That is on the face of the paper itself.

Witness. I can explain that. It was drawn up a few minutes before the meeting of the council; we found we had to put it in that night, and it was drawn up in the City Hall, and drawn up hurriedly.

Q (*By Mr. Day.*) Who drew it?

A I don't remember who. Mr. Soden, I think; I don't know who drew it.

Q Then you signed it hurriedly, under those circumstances?

A Yes.

Q Have you had it called to your attention, until the present time, that you signed a statement showing that the Crucible Steel Company owned it?

A No.

Mr. Peirce. What was the date of that application?

Mr. Day. May or June, I don't know which.

Re-direct by Mr. Day.

Q Long after that application you put in another one?

A Yes.

Q How was the second one drawn; was that drawn hurriedly, and who drew that?

A That I don't remember.

Q Where it starts off "We desire to present to you briefly the grounds upon which we base our application for the vacation of parts of certain streets in the Town of Harrison: First, it is the purpose of this company to use these parts of these streets together with other land owned by the company for the purpose of building additions to our present plant from time to time." Put in long months after that first application; who drew that?

A I don't remember.

Q You signed it?

A Yes.

Mr. Day. You will produce the book account and stock books.

Adjourned to Wednesday, April 8, 1914, at 10 A. M.

Continuation of Testimony.
Motion by Mr. Peirce to Amend Answer.

IN CHANCERY OF NEW JERSEY.

Between
UNITED NEW JERSEY RAILROAD & CANAL COMPANY, *et als.*,
Complainants,
and
CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*,
Defendants.

Continuation of testimony and proceedings in the above entitled cause, pursuant to adjournment, before Hon. John R. Emery, Vive-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, April 8th, 1914, at 10 A. M., in the presence of counsel as before stated.

Mr. Peirce. I would like to renew my motion I made some time ago to amend the answer of the Crucible Steel Company and the Town of Harrison. I gave formal notice at that time, and you said you wouldn't take it up, but you would pass on it at some other time. That notice was given during the time of settling the form of the order to be entered after your Honor's conclusions denying the application for the restraining order, after we had had our formal argument, and I make this statement so I can have an opportunity before I am too late—

Court. That case isn't now before me being tried.

Mr. Peirce. But that case is being used in this case, and I want an opportunity to urge my amendment and let you pass on it before this case is disposed of.

Court. The answer of the Crucible Steel Com-

pany in the Harrison Land Company case brought against the Crucible Steel Company and the Town of Harrison, to prevent the passage of an ordinance, is a different case in that respect from this one now on trial, and as I understand, the only relevancy or possible relevancy of the answer in that case is as an admission in that other suit as to the character of these streets. It is now offered for that purpose, among others. It is not between the same parties to the record in this suit. So far as concerns that, it being offered as an admission made in an independent suit, to have effect in this, if retained for that purpose, my present impression would be that in answer to that claim, you in this suit would have a right to put in by way of explanation of that answer all that you would desire to put in in the other suit, so far as it affects that, and that the amendment of the answer in that suit wouldn't be at all necessary for the purpose of getting the weight of whatever you might have in the way of explaining that admission.

Mr. Peirce. I had also expected to explain it. I do not think it is relevant, but assuming that it might be, it might shift the burden of proof to us, which I don't think should happen.

Court. There is no decree entered in the suit, and it is an admission you put in by way of record in another suit.

"It is hereby stipulated and agreed, for the purpose of the trial of the above stated cause, as follows:

1. That one Henry Young of Westchester County, in the State of New York, died prior to the year 1876, leaving a last will and testament, dated August 10, 1874, which was duly proved, and an exemplified copy of said will and the probate thereof and the letters testamentary issued

thereon were thereafter duly filed and recorded in the office of the Surrogate of Hudson County in this State; and by said will he did constitute and appoint his sons, Henry L. Young, James H. Young and Mason Young, the survivors and last survivors of them, as joint tenants and not as tenants in common, as executors and trustees under the said will, and with such estate as the will provides for, and that the typewritten copy of the said will in Mr. Day's possession may be put in evidence, with the same effect as if the original or an exemplified copy had been produced.

(Last will and testament of Henry Young, deceased, offered in evidence and marked Exhibit C. 2 for Harrison Land Co.)

2. That said Henry Young died possessed of a certain mortgage covering, with other lands, the premises now claimed to be owned by the Harrison Land Company and mentioned in paragraphs 1, 2 and 7 in the answer of said company filed in this cause; that proceedings of foreclosure upon said mortgage were brought in the Court of Chancery of New Jersey by the said executors of Henry Young, deceased, and that under the final decree and execution thereon in said cause the said lands and premises, with other lands and premises, were sold by John S. Barkalow, Master, and the same bought in and purchased at said sale by Mason Young, Henry L. Young and James H. Young, executors of Henry Young, deceased, and a deed made therefor to them, dated December 9, 1875, and recorded in the office of the Register of Hudson County on January 7, 1876, in Book 293 of Deeds, at page 384, a printed copy of which said deed may be produced at said trial in place of the original, or the record thereof, subject to any objection as to its materiality."

Mr. Day. I offer in evidence now a printed copy of that.

(Marked Exhibit C. 3, H. L. Co.)

"3. That subsequently Henry L. Young died and that said James H. Young and Mason Young thereafter acted as surviving executors and trustees.

"4. It is admitted that several ordinances of the Mayor and Council of Harrison vacating the several streets and highways between Fifth and Sixth streets, which were passed on August 14, 1888, and the ordinance vacating the streets and highways, &c., laid out on a map of the Preston tract, as passed October 1, 1895, and the ordinance to vacate Morris avenue, &c., as passed October 1, A. D. 1895, and an ordinance as passed June 10, 1901, vacating a portion of Burlington street, all may be proved from the printed record in the case of Young *vs.* Pennsylvania Railroad Company from pages 179 to 184, both inclusive, without the production of the original records or proceedings, subject to any objection as to its materiality.

"5. And that the Harrison Land Company is a corporation duly organized under the laws of the State of New Jersey on May 20, 1904."

Mr. Day. I offer in evidence the deed of Mason Young and James H. Young, surviving executors and trustees under the will of Henry Young, deceased, and a large number of individuals besides, with their wives, to the Harrison Land Company, dated May 20, 1904, and recorded in the Register's Office of Hudson County on October 26, 1904, in Book 896 of Deeds, at page 155, indexed under County Block 1640 &c.

(Marked Exhibit C. 4, H. L. Co.)

I also offer in evidence another deed from Mason Young and James H. Young, surviving executors and trustees under the last will and testament of Henry Young, deceased, to the Harrison Land Company, dated July 7, 1904, and recorded in the Register's Office of Hudson County, in Book 896 of Deeds, at page 175.

(Marked Exhibit C. 5, H. L. Co.)

I also offer in evidence agreement between the Harrison Land Company and Booth & Flinn, Limited, dated August 28, 1913.

(Marked Exhibit C. 6, H. L. Co.)

I also offer in evidence a certified copy of deed from Benjamin Atha & Illingworth Company to Crucible Steel Company of America, dated August 13, 1900, recorded in Book 961 of Deeds for Hudson County, page 94.

(Marked Exhibit C. 7.)

FRANCIS McSORLEY, sworn for Harrison Land Company.

Direct examination by Mr. Day.

Q Where do you live?

A In Harrison.

Q How long have you lived there?

A Since 1868.

Q You hold an office in the town?

A Yes.

Q What is your office?

A Town assessor.

Q How long have you been town assessor?

A Since 1906.

Q How long have you been connected with the government over there?

A Since January, 1906.

Q Are you familiar with the maps of that town?

A Yes, sir.

Q They come in under your jurisdiction?

A Yes.

Q Have you a map of the town that was made in 1901 and was used then?

A It was used then, yes, sir.

Q I want to show the maps that are east of Fourth street and south of the railroad; have you such maps here?

A Yes.

Q Are those the town maps that are still in use?

Mr. Peirce. I object unless it is shown what use is made of them.

Court. Go on and define them.

A Yes, sir.

Q What use are made of them by the town?

A For the purpose of assessing property.

Q For the purpose of taxation?

A Yes.

Q What are they usually called?

A The taxing map.

Q I want to show all the property south of New Jersey Railroad avenue, what is called the Market street branch?

A Page 6 shows the Pennsylvania Railroad, the main line as we call it, at Sixth street, running southwest to Newark.

Q And that shows Fourth street and some of the properties east of Fourth street?

A Yes.

By the Court.

On these taxing maps, you constantly refer to blocks. The Pennsylvania Railroad here is shown in a white space between lines within which no blocks or lots are marked?

A Yes.

Q That indicates what; it is the right of way or main stem?

A Yes, sir.

Q Then there is also a vacant space in block 1720 that is not laid out in lots, what does that mean?

A That at one time was called a park.

Q It is not connected with the railroad company?

A No, the railroad company owns part of it and the Crucible Steel owns part.

Q And part of this block 1720 which is not laid out in lots, and which is not included within the main stem lines of the Pennsylvania Railroad is now owned by the Pennsylvania Railroad or the United Company and another part by the Crucible Steel Company?

A Yes, sir.

Q Do any lines or marks on this map indicate which portion of Block 1720 south of the Pennsylvania Railroad is owned by the Railroad Company and which by the Crucible Steel Company?

A From that point to this point (indicating).

Q There is on this line a lead pencil line parallel with the southerly line of the Pennsylvania Railroad, commencing at the southeast corner of block 1720?

A Northeast corner of block 1720, and running parallel with the Pennsylvania Railroad.

Q That portion of block 1720 nearest the Pennsylvania Railroad is owned by which of the two?

A The parallel block is all owned by the Pennsylvania Railroad Company.

Q Which do you say is owned by the Crucible?

A The balance of block 1720 included within the triangle south of the Pennsylvania Railroad; there are three assessments made on that.

Q To three different persons?

A No, Pennsylvania Railroad is assessed by the State Board of Assessors for its main line as first class; for the strip parallel, about 60 feet wide, as second class, and for the balance there is an assessment as local railroad property, to the Crucible Steel Company.

Q What about the portion of block 1720 that is north of the railroad, the triangular block?

A That is owned by the Hyatt Roller Bearing Company, marked 135, that is the town block.

Examination by Mr. Day.

Q I show you page 5, that is a continuation to the south of that map that you have just been speaking of, page 6?

A Yes.

Q And that shows the property south of Gloucester street?

A Yes, sir.

Q Continuing down to the river?

A Yes.

Q And all east of Fourth street?

A Yes, sir.

Q And there is on that a large white spot, called Canada Farm?

A Yes.

Q Who owns that, as indicated on the assessment books?

A That is owned by the Harrison Land Company and Pennsylvania Railroad Company.

Q The Canada Farm is all owned by the Pennsylvania Railroad Company?

A There is a part of it that is owned by the Crucible Steel Company, which was conveyed to it by the Pennsylvania Railroad Company; all the rest of it is owned by the Pennsylvania Railroad Company.

Q (*By the Court.*) There appear on this unblocked portion on the Canada Farm lead pencil marks; what do those indicate?

A They are for the purpose of indicating the property belonging to the different owners.

Q (*By the Court.*) And it is from those lead pencil marks now on the map that you made the statement as to the portions of that unblocked Canada Farm that belonged to the Crucible Steel Company

and the portions which belonged to the Pennsylvania Railroad Company?

A Yes.

Q On that map, which shows blocks 176, 177 and 178, most of 176 is not plotted out into lots, but to the east of the easterly line of what you call the Canada Farm, in block 176, are certain lots, 35, 70 and 71?

A Yes.

Q Then there are lots blocked out in block 177, and so with 178; to whom does that property belong?

A On block 176 indicated by lots Harrison Land Company owns.

Q And on block 177?

A These laid out in lots belong to the Harrison Land Company; the same condition prevails as to 178.

Q I call your attention to 176, the property bounded on the west by Seventh street, north of Gloucester street, on the east by a tract called "total area 3.40 acres," that is the Draper tract, on the right or east, and then on the south, that is the Passaic River?

A Yes.

Q Which are marked, commencing with the river, 179, 181, and 182. To whom does that property belong?

A To the Harrison Land Company.

Q I observe that to the right of what you call the Draper tract, we still get the Canada Farm?

A Yes.

Q The Canada Farm then went way up north to the railroad and comes down and makes a turn and goes way down to the river again, does it?

A Yes, sir.

Q That belongs to the Pennsylvania Railroad?

A Yes, east of the Draper line belongs to the Pennsylvania Railroad.

Mr. Day: I offer this map in evidence and especially plates 5, 6, 12 and also No. 11.

Q No. 11 shows a blocking out in block 183 south

of Monmouth street and somewhat to the east of Seventh street, is that also a part of the property of the Harrison Land Company?

A The Pennsylvania Railroad claims ownership.

Q To part, and the Harrison Land Company is in possession of the rest?

A It is assessed against the Pennsylvania Railroad Company.

Mr. Peirce. You have offered in evidence the portions of the Atlas which you have designated in your testimony?

Mr. Day. Yes, 5, 6, 11 and 12. I will also offer No. 10, which shows the Canada Farm running up to the railroad again.

Cross examination by Mr. Peirce.

Q You are the assessor?

A Yes.

Q And you use that map for making assessments for taxing purposes?

A Yes, sir.

HARRY P. KREINER, sworn for Harrison Land Co.

Direct examination by Mr. Day.

Q You are a member of the firm of Borrie & Kreiner?

A Yes, sir.

Q And you are surveyors and civil engineers?

A Yes.

Q Mr. Borrie has been an engineer and surveyor for a long number of years?

A Yes.

Q You and Mr. Borrie are the engineers for the Town of Harrison?

A Yes, sir.

Q How long have you been engineer for that town?

A Since January 1, 1907.

Q Mr. Borrie has been engineer for that town since time immemorial almost?

A A great many years.

Q Did you make a survey and map of the property of the Harrison Land Company located on the Passaic river and east of Fourth street?

A Yes, sir, substantially shown on this map.

Q And this is the map made by you?

A Yes, sir, August 8, 1913.

Mr. Day. I will offer that map in evidence now.

(Marked Exhibit C. 7, H. L. Co.)

Q I observe that that map shows on the left or to the west of the property, Canada Farm?

A Yes, sir.

Q That is a well known tract of land, is it not?

A Yes, sir.

Q Belonging to whom, do you know?

A I have heard that it belonged to the Pennsylvania Railroad Company.

Q This property of the Harrison Land Company is bounded on the south by the Passaic river?

A Yes, sir.

Q Do you know whether they have the ownership of the riparian rights there?

A I couldn't answer that question.

Q Is it about 1,200 feet there?

A There is a man here that can answer that, Mr. Gardner, the engineer.

Q I observe on this map there are certain blocks, 177,178, 179, 180, 181, 182 and 183; what are those numbers?

A Those are the block numbers used by the Town of Harrison for taxing purposes.

Q You have been in court here while Mr. McSorley was testifying?

A Yes.

Q Those are the numbers on the map that he testified to?

A Absolutely the same.

Q Are you familiar with the condition of the properties all around that property?

A Quite familiar, yes, sir.

Q Can you say whether or not that it is impossible of access by road to that property of the Harrison Land Company?

A There is no access by any recognized highway to-day.

Q Except what?

Mr. Peirce. I object to his pointing out to the witness what are the means of access to that property—from what points.

Q From Fourth street in Harrison or from the center of Harrison?

The Court. What have you to say about the means of access to the property?

A There was no physical highway by which you could reach this property.

Q Why?

A All the streets which lead to this property lead through the Canada Farm, and they were all vacated by the town ordinance.

Q Do you know anything about Cumberland street?

A Yes, sir.

Q Is that a highway there?

Mr. Peirce. I object.

A Not a physical highway; it is not a street, and has never been filled in or graded.

Q Is it a highway recognized on the maps of the town?

Mr. Peirce. I object to that, the maps speak for themselves.

The Court. Produce the map.

Q Do you know anything about Cumberland street?

A Yes, sir.

Q What have you to say whether or not Cumberland street is down on the maps of the town?

Mr. Peirce. I object.

The Court. Do the maps show this?

Q Will you just refer to the maps of the town?

A Page 5.

Q That is the map produced by Mr. McSorley?

A Yes.

Q I am asking you to tell us what refers to that map about Cumberland street?

Mr. Peirce. I object to that question, it doesn't show anything.

The Court. What appears on that map with reference to Cumberland street?

Q Does Cumberland street appear with reference to Fourth street?

Mr. Peirce. I object to that.

The Court. I will let him say, otherwise I will get up and look at it. He is now asked whether on that map Cumberland street is marked out as a street.

Mr. Day. I would like to call your honor's attention to it.

The Court. I have already seen all the maps.

Q (*By Mr. Peirce.*) That is the only map of the Town of Harrison, is it?

A Yes, sir.

Q (*By the Court.*) You mean these taxing maps of the Town of Harrison are the only maps of the town laid out in blocks that you know of?

A Yes, sir.

FRANCIS McSORLEY, recalled.

Direct examination by Mr. Day.

Q Take Fourth street and Cumberland street on page 5; now you will observe some lots that are bounded by Fourth street, Cumberland street, Canada Farm on the east, Passaic river, and also separated by Cape May—

A Yes, sir.

Q —and then there is property on the north of Cumberland street. To whom is that property taxed?

Mr. Peirce. I object to that; that does not cut any figure at all.

The Court. I will hear your objection as to the effect of it. I will let him give it.

Q (Question read.)

A Lots one to four and 37 to 40 on Fourth street, in block 141, are assessed to the Fidelity Trust Company; lots 1 to 4—

Mr. Peirce. If your honor please, I would like to renew my objection.

The Court. I will take it subject to your objection.

A —and 37 to 40 in block 142 are assessed to the Fidelity Trust Company; lots 1 to 4 and 37 to 40 on block 143 are assessed to the Fidelity Trust Company. There is a plot on the river assessed to the Crucible Steel Company.

Q To whom are the rest of the lots on those blocks assessed?

A On block 141, lots 5 to 10 on Cumberland street, and 4 to 29, 30 to 36, are assessed to the Crucible Steel Company, and on block 142, lots 5, 6 and 7, and part of 8, part of 32, and 33 to 36 to the Crucible Steel Company.

Mr. Peirce. This is all taken subject to my objection.

A —on block 143, part of lot 5 and part of 35 and 36 to the Crucible Steel Company.

Q How long have those lots been taxed that way Mr. McSorley?

A To the best of my knowledge since 1910.

Q Why were they assessed that way, do you know?

Mr. Peirce. I object to that if the court please.

Q Do you know for whom the Fidelity Company is holding this property?

Mr. Peirce. I object. Sustained.

Q (*By Mr. Vredenburg.*) To whom was this property assessed prior to 1910?

A Some was assessed unknown, and some, I think to Judge Banta.

Mr. Day. We rest.

Mr. Vredenburg. We rest.

The Court. The court now asks if there is any appearance on behalf of Booth & Flinn, Limited, in the production of further evidence, the solicitor on the record of Booth & Flinn, Ltd., not being in attendance. Do you, or either of you (addressing Mr. Day and Mr. Vredenburg), on behalf of Booth & Flinn, Ltd., declare their case closed, acting as counsel in connection with Mr. Harrison, or in any other way?

Mr. Vredenburg. I don't, I have no connection with them.

The Court. I ask again, is there anybody here to prosecute the case of Booth & Flinn, Ltd.?

No answer.

The Court. You may proceed with your case.

Mr. Peirce. I make a motion to dismiss on the ground the complainants have not made out a case.

The Court. I decline to rule on any motion to dismiss.

HARRY P. KREINER, called for defense.

Direct examination by Mr. Peirce.

Q You have been sworn in this case?
A Yes, sir.
Q What is the map which I hand you?
A Map of Cumberland street.
Q Who made the map?
A I made the map.
Q What kind of a map is it?
A Plan and profile.
Q It shows Fourth street on the left hand side of the map; now will you tell us the physical features of Cumberland street measuring from Fourth street east?

A Yes, by starting at the sidewalk elevation of Fourth street and Cumberland street and walking east, you will first meet a mound of rough earth about two feet above the street, extending in width about ten feet, and then you would find a depression of about a foot below the sidewalk of Fourth street extending easterly about twenty-five feet, and then you would meet another mound of earth rising about three feet above the flag of Fourth street and extending in width about ten or fifteen feet. You would then descend to an elevation about three feet below the sidewalk of Fourth street and cross the railroad siding.

Q That is the Hudson Railroad?
A I don't know the name of the railroad.
Q (*By the Court.*) Is it a railroad on the lands enclosed within the Crucible Steel Company's property?

A Yes, sir. Thence walking easterly 120 feet approximately, you would cross another siding, and still easterly by a slight rise, and then after that descends rapidly to the meadow level, which is continued 1,200 feet to the land of the Harrison Land Company.

Q It is more than 1,200 feet, is it not, from Fourth street to the Harrison Land Company?

A Yes, sir, about 1,500 feet.

Q At what point distance is that from Fourth street?

A About four hundred feet.

Q Now beyond that point what is the condition of the land?

A All meadow and swampy; sometimes covered with water.

Q (*By the Court.*) You speak of crossing the sidings. Are those the sidings you speak of shown on the plan of Cumberland street below the profile?

A They are.

Q (*By the Court.*) Are they straight lines across Cumberland street?

A They are.

Q (*By the Court.*) How many of those sidings are there?

A Two.

Q (*By the Court.*) And they are the two easterly sets of lines?

A Yes, sir.

Q About how many feet distant from Fourth street is the first siding?

A About fifty or sixty feet.

Q And the second one?

A About 150 or 160 feet.

Q The conditions are such that you can't drive up with a vehicle from Cumberland to Fourth street?

A Yes, sir.

Q And beyond the 300 feet, you say, it is simply a condition of morass and bogs and swamp?

A Yes, sir.

The Court. Mr. Harrison now appearing in court states on behalf of Booth & Flinn, Ltd., they also rest their case with the evidence produced.

Q Cumberland street, from Fourth street east has never been traveled?

A No, it is not physically fit to be traveled.

Q In other words it has never been used?

A It could not be used, no.

Q You are very familiar with the maps of 1837 and 1852?

A Yes, sir.

Q And do you know the physical appearance of those maps?

A Yes, sir, maps of the property.

Q Is it possible to-day to scale correctly the lots or plots shown on either of those maps?

A Well, hardly for any correct purpose.

Q Why not?

A The age of the maps has caused a certain amount of shrinkage which would mitigate against any such use of the maps by scale.

Q Do not some of the lots and some of the streets appear at different widths if you should measure them?

Mr. Day. I object.

The Court. Because of the shrinkage of the map itself?

Mr. Peirce. Yes.

The Court. That question would have to be followed up by something else.

Mr. Peirce. The original maps were to be here.

Q Is there any scale on either of the maps?

A No, sir.

Q (*By the Court.*) On the maps themselves, as you recall, is there any special designation of the scale of the map?

A There are not.

The Court. You have had tracings; when were those tracings made?

Mr. Peirce. Very lately; since this case started.

Cross examination by Mr. Vredenburgh.

Q Have you measured to ascertain what the distance is from the northeast corner of Fourth and Cumberland streets, southerly from New Jersey Railroad avenue?

A I have not as yet.

Q When was this map you have produced made, Mr. Kreiner?

A August 26th, 1913.

Q And at that time you walked over Cumberland street from Fourth street how far east?

A To the lands of the Harrison Land Company.

Q And was there not difficulty in walking along that street from Fourth street to where you show the upland meeting the meadow?

A From there we have the meadow and morass and there is a deep water creek, and then back to the marshes again and then on.

Q I think you didn't quite understand my question; the question is, walking from Fourth street to the point where the upland meets the meadow, you said that was a distance of about—

A Of about 400 feet.

Q After that distance—that 400 feet, is that a fill on the meadow or is it original upland?

A That's fill.

Q What is the character of that fill, is it sand or clay or something of that kind?

A Nearly every kind, slag, refuse, ashes, cinders and clay.

Q Do you know when that was filled?

A I couldn't say that.

Q It has evidently been filled in sometime in the past?

A Yes, sir.

Q Is there any indication of about how long it has been filled?

A Well the indications are that it is not very remote.

Q About that you know nothing other than your observation of it at the present time?

A Yes.

Q (*By the Court.*) How long have you been familiar with this land?

A Since 1888.

Q (*By the Court.*) According to your earliest recollection of it was this place filled?

A No, sir.

Q (*By the Court.*) Are you able now to speak about it as to when it was filled or began to be filled; are you able to give any evidence on that point?

A To the best of my knowledge I would say any fill in there would have been done within the last ten years.

Q When you said that you could not pass over Cumberland street, you meant, I suppose, from what you now say, with a team?

A Exactly, vehicular traffic.

Q You could walk over there?

A Yes, sir.

Q I take it that this map you have in front of you, the one you have been testifying to, shows Cumberland street as it was before the rails or what not were put there as obstructions at the end of the street?

The Court. The rails obstructing the entrance from Cumberland street to Fourth street, or obstructions of any kind; was a map of this made before or after that time; was there anything in the way of a barrier at the intersection of the easterly side of Fourth street and Cumberland street?

A I am at a little loss to remember that particular fact.

Q (*By the Court.*) You don't now recall whether there was a barrier at the end of that entrance?

A I don't remember.

Q What are the northerly parallel white lines west of the rails?

A Lines used by surveyors and engineers to denote the foot of the bank and the top of the bank.

Q (*By the Court.*) They are put on the plan in order to explain the application of that profile, and indicate the foot and top of the bank?

A Yes.

Q I will ask you how far those tracks are apart?

A About one hundred feet.

Q Do you recollect how long they have been there?

A To the best of my recollection within a period of ten years is the best I can do on that.

Q Was there any grading of the land where the tracks are across Cumberland street?

A They are laid on graded land, yes.

Q Land has been graded up before these tracks?

A Filled land—raised up.

Q It is passable for vehicular team travel?

A Vehicular travel between the rails of these two tracks on Cumberland street.

Q (*By Mr. Peirce.*) Do you mean parallel or at right angles?

The Court. On the space which is between the two lines of tracks; his question applies to that.

A That's possible, if you can get the wagon there.

Q Between the most easterly of tracks and the meadow that you speak of—meadow land, is that passable in the same way on Cumberland street to the land of the meadow?

A That's very rough; from here (indicating) is an eight per cent. grade, which would also add to its difficulty. The edge of the meadow land rises very rapidly, which is equivalent to an eight per cent. grade.

Q Have you made any estimate of the time required to make this passable for teams?

A No, sir, I didn't.

Q From Fourth street to the end of the filling?
A No, I have not.

Cross examination by Mr. Day.

Q Mr. Kreiner, you had occasion to examine the map of 1852?
A Yes, sir.
Q What relation does that map bear in relation to the general layout of Harrison?

Mr. Peirce. I object as not proper cross examination.

The Court. I think it is cross examination.

Q (Question read.)
A The map of 1852 bears a very close relationship to the existing layout of the Town of Harrison, with one very serious exception, and that is the distance given on that map between Fourth and Fifth street, which is an error.
Q (*By the Court.*) Do you recall what that is given on the map; you say it is an error?
A An error of twenty feet.
Q Did that require the making of another map?
A Another map was made known as the map of 1854.
Q Was the map of 1854 nothing but a duplication of the map of 1852?

Mr. Peirce. I object as not proper cross examination.

Q The town maps we have had here this morning, are they made with any reference to the map of 1852?

Mr. Peirce. I object, until the witness shows he has made the maps and has knowledge.

Q (*By the Court.*) What have you to say about those?
A I would like to answer that a little bit different, Mr. Day. We use the 1854 map in our work of the town because that is correct.

Q The 1854 map though was a duplication, I understood you to say, of the 1852 map, with the exception of that 20 feet?

A Except there are several blocks which do not appear on the 1852 map.

Q The lower end, where is that?

A I think below Gloucester street, not shown on the 1854 map.

Q What I am trying to find out is, the map of 1852 is the foundation map of all that section of the country, isn't it?

Mr. Peirce. I object to that.

The Court. If it is important enough to have a bearing on the case, produce the maps and I will look at them myself. Produce those and let the witness be examined in reference to them. You are now giving general evidence about papers and maps. I admitted that largely for the purpose of seeing what maps have been in use. If you expect to rely on these maps you will have to show me the maps or copies. I will allow the examination of the witness because it discloses the general maps used.

Mr. Day. I will put in the map of 1854, I have it here.

Q The map of 1852 shows the outline of Cumberland street as it is to-day on the map, doesn't it?

A Yes, sir.

Q As it is laid out practically on this map as produced this morning?

A Practically the same.

Re-direct examination by Mr. Peirce.

Q What map is this you have before you?

A Map Exhibit C. 1.

Q I refer to Map C. 1 and ask you if the distance from Fourth street along Cumberland street to the east as far as the lots are laid out as shown on that

map, is not about 175 feet; I refer to the north line?

A Yes, about 175 feet.

Q What is the distance shown on the south line?

A About 150 feet.

Q What is the length of the lots facing on Fourth street as shown on Exhibit C. 1?

A I can only approximate that—about 80 feet.

Q When I say facing on Fourth street I refer to lots on the east side of Fourth street between Salem and Cumberland streets?

A Yes.

Q Now in the block between Salem and Cumberland streets, are the blocks any longer as facing on the east side?

A Yes.

Q Will you refer to the tax map and tell me whether or not the distance from the east side of Fourth street, as far as to the land where the lots are laid out or plotted, is not more than 175 feet?

A Yes, 245 feet and a half inch, according to the scale on the map.

Q How deep are the lots facing on the east side of Fourth street, between Cumberland and Salem?

A One hundred feet.

Q And how deep are the lots facing on the east side of Fourth street between Cape May and Cumberland?

A One hundred feet.

Q Will not that same discrepancy be shown on the south side of Cumberland street in the same manner?

Q Yes, sir, the exact distance I gave.

Q Give the exact distance?

A 228 feet five inches on the south side of Cumberland street east from Fourth street on the assessment map.

Q (*By the Court.*) Give me the distance at the center on the taxing map.

A Along the center line of Cumberland street is 236 feet, 8¾ inches on the taxing maps of the town.

Q What is the center line of Exhibit C. 1?

A On the 1852 maps, Exhibit C. 1, it is about an approximation of 162 feet 6 inches.

Re-direct examination by Mr. Day.

Q I show you a map entitled "Map of lots in East Newark to Hiram Gilbert by Dean & Thompson, July 1st, 1854." Is that the map of 1854?

A Yes, sir.

Q (*By the Court.*) You are familiar with that map, are you?

A Very.

Q Is this the map that you say makes the corrections?

A Yes, sir.

Q That doesn't show Cumberland street?

A That doesn't show Cumberland street; I testified it showed as far down as Gloucester street—Burlington is the street; Gloucester street is below.

Q Does this map show the correction that has been made in the map of 1852?

A Yes, between Fourth and Fifth streets.

Q Where?

A The distance on the 1854 map, between Fourth and Fifth streets is 500 feet, and the taxing maps of the town on the 1852 map (Exhibit C. 1) it is 480 feet.

Q Now you are speaking with reference to the railroad—north of the railroad?

A North and south.

Q But there is no correction on the 1854 map below Burlington street?

A No, it doesn't cover that territory.

Examination by Mr. Peirce.

Q Is there any New Jersey Railroad avenue shown on the map of 1854 you have before you?

A New Jersey avenue.

Q Is New Jersey avenue shown there?

A No, sir.

Q Is there any New Jersey Railroad avenue shown on Exhibit C. 1?

A No, sir.

Q Is there any New Jersey Railroad avenue on your assessment map?

A On page 2 we have New Jersey Railroad avenue on the taxing maps of the town.

Re-direct examination by Mr. Day.

Q On the other maps what is that known as?

A Morris Railroad avenue.

Mr. Peirce. I offer in evidence the outline map testified to—profile map, made by Borrie & Kreiner, August 26, 1913.

(Marked Exhibit D. 1.)

Examination by Mr. Peirce.

Q You are familiar with the Pennsylvania Railroad land?

A Yes, sir.

Q Is it not a fact they have about 50 feet fronting on Fourth street in the Town of Harrison, south of the railroad on the east side of Fourth street?

A I believe they do.

The Court. If it is important I will let you put in the title if there is any question about it.

Q Your attention is called to page 6, and you are asked whether the Pennsylvania Railroad, the United Railroad or the Manor Investment does not own the section along its right of way in block 137, northeast of Fourth street, parallel with the right of way?

A I believe they do.

Q How many feet have they got there fronting on Fourth street?

A It is not shown correctly here; I cannot give that distance exactly.

The Court. Show on the assessment map those indicated as assessed to this company.

FRANCIS McSORLEY, re-called.

Direct examination by Mr. Peirce.

Q Will you refer to assessment map, page 6, and point out what land is assessed to the Pennsylvania Railroad, or the United New Jersey or the Manor Company in block 137 on the east side of Fourth street?

Mr. Day. I object to that question, I don't see how it is possible to be material.

The Court. I don't either; I will have to trust counsel to some extent; I will take it subject to you objection.

Q (Question read.)

A About sixty feet, more or less.

Q How many feet have they on Hunterdon street in the same block?

A About ninety feet, four inches.

Q Do they own along the right of way according to the assessment map 6 of the Pennsylvania Railroad to the south, say on up to Middlesex street?

A Yes, sir.

Q And on to Sixth street?

A Yes, sir.

Cross examination by Mr. Vredenburgh.

Q Is that the right of way apparently occupied by the Hudson Railroad Company?

Mr. Peirce. I am asking him what the map shows.

Court. He is the assessor, you may ask him.

Q (Question read.)

A The tracks are on that land coming down to and along parallel with Fourth street.

Q Do you know what that railroad is called that runs along there?

A According to the State Board of Assessors re-

ports, the Hudson and Manhattan Transportation Company.

Q (*By Mr. Peirce.*) Don't you mean the Hudson Railroad and Transportation Company, and not the Hudson and Manhattan Railroad?

Q Is any land on either shown as belonging to the Hudson Railroad and Transportation Company, on the taxing maps?

A No, sir.

Q Nowhere in the Town of Harrison?

A No, sir.

Mr. Peirce. I offer in evidence a deed dated February 4th, 1907, from John R. Grimm, unmarried, to Hudson Railroad and Transportation Company, recorded in the Register of Deeds Office for Hudson County, February 4th, 1907, in Book 965 of Deeds, page 468, conveying "All those certain lots of land situate lying and being in the Town of Harrison (formerly called East Newark) in the County of Hudson and State of New Jersey, and known and distinguished on a map entitled 'Map of lands in East Newark for Hiram Gilbert, Clark and Bacot, city surveyors, July, 1852,' " filed in the office of the Clerk of Hudson County, January 19, 1853, as follows:

First Tract. In block eighty, lots numbers one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, being and intended to be all the lands in said block within the eastern boundary of the East Newark tract.

In block number eighty-three, lots numbers one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, being and intended to be all the lands in said block within the eastern boundary of the East Newark tract.

Second Tract. All that tract or parcel of land

and premises, situate, lying and being in the Town of Harrison, in the County of Hudson and State of New Jersey, and being all that tract, parcel or plot of land known and designated as plot 85 on a map entitled "Map of lots in East Newark for Hiram Gilbert, Clark & Bacot, City Surveyors, July, 1852," and duly filed in the office of the Clerk of Hudson County, now register, January 19th, 1853. Said plot number 85 is the easterly boundary of the East Newark tract, bounded on the west by Fourth street, on the north by Cape May or Henry Young street, together with all the land lying between the high water mark of the Passaic River and the exterior line fixed by the Riparian Commissioners, lying in front of said plot to the extent of the grant heretofore made by the Riparian Commissioners to the executors of and trustees under the last will and testament of Henry Young, deceased. By these presents or indenture, it being the intention to convey with the upland, all lands belonging to the party of the first part, and also all riparian rights to lands and land covered with water in front of said plot, to the exterior wharf line, adopted by the Riparian Commissioners, February 17th, 1883, as granted by said Riparian Commissioners by deed November 17th, 1883, and recorded in Liber 384 of deeds for Hudson County on page 696 with other property.

(Marked Exhibit D. 2.)

The Court. You state that covers the strip along Fourth street which the last witness spoke of?

Mr. Peirce. Yes, sir. I also offer deed bearing date February 4th, 1907, from John R. Grimm to Hudson Railroad and Transportation Company, and recorded the same day in the Register's Office of Hudson County, in Book 977 of deeds, page

217, conveying "All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Town of Harrison in the County of Hudson and State of New Jersey."

Beginning at the southeasterly corner of South Fourth street and Burlington street, running thence easterly along the southerly line of Burlington street five hundred (500) feet more or less to the southwest corner of Burlington street and South Fifth street; thence southerly along the westerly line of South Fifth street one hundred (100) feet to the center line of the block; thence westerly along the center line of the block five hundred (500) feet more or less to the easterly line of South Fourth street; thence northerly along the same one hundred (100) feet to the point or place of beginning.

Being the northerly half of block number sixty-five (65) as laid down on a map of property at East Newark, made for Hiram Gilbert.

That's a portion of the same land.

(Marked Exhibit D. 3.)

Also a deed dated January 15, 1910, from George L. Blake and Annie E. Blake, his wife, to Hudson Railroad and Transportation Com- Company, recorded in the Register's Office of Hudson County February 2, 1910, in Book 1050 of Deeds for said County, page 460, on land contiguous thereto, conveying all that piece or parcel of land situate, lying and being in the Town of Harrison, in the County of Hudson and State of New Jersey, shown on a map entitled "Map of lots at East Newark, for Hiram Gilbert, Clark & Bacot, surveyors, July, 1852," and filed in the office of the Clerk (now Register) of Hudson County, January 19th, 1853, as follows:

All that part of Cumberland street lying be-

tween the easterly side of Fourth street and the easterly boundary of the East Newark tract and blocks eighty (80) and eighty-three (83) as laid down on said map.

Being same premises conveyed to said George L. Blake, by deed dated April 14th, 1897, by the executors of Henry Young, deceased, and recorded in Liber 673 of deeds for Hudson County, page 34, &c.

It is the intention of the parties of the first part to convey all right, title and interest, if any, in and to Cumberland street.

(Marked Exhibit D. 4.)

I also offer in evidence deed from the Fidelity Trust Company to Hudson Railroad and Transportation Company, dated January 30, 1912, and recorded in the Register's Office of Hudson County February 6, 1912, in Book 1111, page 245, conveying "All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Harrison in the County of Hudson and State of New Jersey, bounded and described as follows:

Bounded on the south by the southerly line of Salem street; on the west by the easterly line of Fourth street; on the east by a line drawn parallel with Fourth street and distant one hundred feet easterly from the easterly line thereof; and on the north by the southerly line of a tract of land conveyed by Fidelity Trust Company to The United New Jersey Railroad and Canal Company, by deed dated January 3rd, 1912.

Excepting from the above described land and premises so much thereof as is already owned by the party hereto of the second part, to wit: a parcel at the southeast corner of Burlington and Fourth streets having a frontage of one hundred

feet on each of said streets with interior lines parallel to each of said streets of one hundred feet each, be said distances more or less."

(Marked Exhibit D. 5.)

I also offer copy of will which is uncertified, of William H. Draper, recorded in Hudson County, executed in New York and recorded as a foreign will in Hudson County.

(Marked Exhibit D. 6.)

Mr. Day. I wish to object to the deed of the Fidelity Trust Company to Hudson Railroad and Transportation Company. It doesn't appear to have anything to do with this property; I don't see that it has any connection with this property.

The Court. I will take it subject to your objection; I don't know what point he is going to make on it. I will require him, to disclose it on the closing of his evidence, if you want to. What is the object of these deeds for lots not on Cumberland street, Mr. Peirce?

Mr. Peirce. If it has any significance, it goes to show that here is a railroad owning its right of way up to the point where it connects with the Pennsylvania Railroad, and, of course, it is an operating line.

The Court. You put it in as showing the title of the Hudson Railroad and Transportation Company, one of the defendants in the suit, for the land in question up to a point where it connects with the Pennsylvania Railroad? I will hear you on the relevancy of it at the time of the argument.

Mr. Vredenburgh. The record is a little confused about Draper.

GEORGE H. PEIRCE, sworn.

I am the solicitor and counsel with the Crucible Steel Company of America and with the Hudson Railroad and Transportation Company. I drafted and had drawn the answer of the Crucible Steel Company in the case of the Hudson Land Company against the Crucible Steel Company and the Town of Harrison. Such information that I had which led me to draft and file the answer came to me from an employee of the Crucible Steel Company of America, a clerk in the employ of the Crucible Steel Company. The answer was drawn under somewhat pressing circumstances, owing to the fact of the rule to show cause then pending. The person named informed me that Cumberland street was a public street, and upon that information the answer was so drafted. Subsequently I have inquired into the matter, and without putting the matter too strongly, there is very grave doubts as to whether it is a public street or not.

Mr. Day. I ask that that be stricken out; that is a pure conclusion of law.

The Court. I think that is as far as you can go on that. You are not now making an application to amend the answer. This other statement would be admissible on that.

Mr. Peirce. The answer was not sworn to and I had no information except as given to me by Mr. Soden, the gentleman named.

Cross examination by Mr. Day.

Q Wasn't that answer sworn to?

A No, sir, you prayed for an answer not under oath and the answer was filed, but there were affidavits filed in connection with the rule to show cause, which is not a part of the bill for answer.

Q In that answer, Mr. Soden made an affidavit in connection with the filing of the answer, didn't he?

A He made no affidavit to the answer for the reason that you prayed for an answer not under oath.

Q Wasn't his affidavit attached to the answer?

A Not to my knowledge; there were affidavits used in the return of the rule to show cause.

Q Wasn't his affidavit attached to the answer?

A Not to my knowledge.

Q He did appear and he said as follows: "Alfred J. Soden being duly sworn on his oath according to law deposes and says that he is employed by the Crucible Steel Company of America as a mechanical engineer. Deponent has been employed by the present corporation and its predecessors for twenty-one years, and during all that time has an intimate and actual knowledge of the land upon which Cumberland street is located and the meadows thereto extending over to the land of the Harrison Land Company; that Cumberland street, which has been a public street for a distance of about 237 feet extending easterly over Fourth street has never been used, as a street." He did swear to that, didn't he?

A You have the affidavit.

Q I will show it to you and ask you if he didn't swear to it just as I have read?

A The affidavit will speak for itself.

Q I am now asking you if he didn't swear to that?

A You can tell as well as I can.

Q Now just take a copy of that affidavit and look it over and see whether, according to your recollection, he didn't make that?

A If the affidavit shows it.

Q Didn't you draw his affidavit?

A Possibly I did.

Q Will you consent that this affidavit as it appears in the printed case of the Harrison Land Company against the Crucible Steel Company of America, made by Mr. Soden shall go in evidence?

A I will.

Q Then we will consider that in evidence?

A Yes; then that's all you need.

Mr. Day. I am now offering in evidence as I did before, the bill of complaint; the answer of the Crucible Steel Company of America, the answer of the Town of Harrison. Now also the affidavit of Mr. Alfred J. Soden, found on page 44 of the printed record, sworn to August 28th, 1913, before W. E. Calvert, and also the exhibits B., C. and F., found on pages 16, 17 and 37, which referred to the vacating of Cumberland street.

Mr. Peirce. We make no objection to the fact that this is offered and uncertified, and not the original papers.

The Court. It is only admissible as far as the bill and answer. But you now state you would consent that the affidavit of Mr. Soden be admitted. The question is, do you object to the affidavit as printed in the record?

Mr. Peirce. Simply to the fact that it is uncertified.

The Court. I understood you to say that the affidavit of Mr. Soden be admitted in evidence?

Mr. Peirce. That the uncertified copy could be used.

The Court. You said on the stand, "I consent that the affidavit be admitted."

Mr. Peirce. I meant to say I didn't request the original to be produced; that is, could be used the same as if the original was produced—I meant to say just the same as the rest had been.

The Court. Subject to your objection?

Mr. Peirce. Yes, sir.

The Court. I understand the exhibits referred to in the printed record relating to that subject which are now offered in copies, are not objected to as being copies and not the originals of the proceedings, but you desire to reserve your objection as to their relevancy on the issues in the case?

Mr. Peirce. Yes.

Mr. Day. I would like to have that reservation lifted now. Let us argue the question now, because it is a very important one.

The Court. I will not decide one point in the case at this time; this case will all be disposed of together. I do not intend to argue and finally settle on a motion, something that you now say is a reservation in the case. You will have to put in all you think your case requires.

Mr. Peirce. If your honor please, I have gone as far as I can at this time. I should like the opportunity to put in the title of the Pennsylvania Railroad.

The Court. Title to what?

Mr. Peirce. At Fourth street and the railroad and along there.

The Court. Do you want to show then the lands of the Pennsylvania Railroad in connection with the lands of the Hudson Transportation Company, deeds for which have been put in this morning? What is your opinion in reference to it?

Mr. Peirce. I am going to show another way out.

The Court. What is it you want to prove?

Mr. Peirce. I want to prove that at this point the Pennsylvania Railroad owns land, connected with other lands of the Pennsylvania Railroad so they could get out if they desired, but that they have shut themselves off.

The Court. At which point?

Mr. Peirce. Possibly at other points, but that particular point at Fourth street and the railroad, and then I want an opportunity to produce the stock book that has been mentioned.

The Court. You want to prove that there is another way of access to the public streets of Har-

rison, for the Pennsylvania Railroad or the United Railroad Company themselves, other than the way across Cumberland street?

Mr. Peirce. Yes, sir.

The Court. If you claim another way out, that defense should be specially set up in order that they may be prepared with their defense. If you have any case that entitled you to present those proofs, I will hear an application to amend your answer, but it has got to be an issue. There is no issue on this record yet.

Mr. Peirce. I will make that motion to amend the answer.

The Court. This has got to be tried so that all parties know what they have got to meet, and if your answer does not meet it I will require you to meet it. If you urge they have another way out you must say so in your answer.

Mr. Peirce. I will be glad to make it in that shape, and make that motion.

The Court. Put your amendment in shape so I may see what it is. This may open the case. What evidence is there on that subject that you can now produce; is there anybody that knows anything about it.

Mr. Peirce. The evidence will have to come in the nature of copies of deeds to prove they own the lands.

The Court. State now what land you claim is owned and it may be admitted as owned.

MARTIN L. GARDNER, sworn for defendants.

Direct examination by Mr. Peirce.

Q Does not the Pennsylvania Railroad own the land shown on Exhibit C. 4, where you have the yellow drive marked out?

A No.

Q Who does own it?

A At the time the road existed it was owned by the Crucible Steel Company.

Q Who owns it to-day?

A The Crucible Steel Company.

Q Do you mean to say that along the right of way of the New Jersey Railroad ave., where you have the yellow line drawn and showing the road on Exhibit C. 4, is not owned by the Pennsylvania Railroad Company or its subsidiary companies?

A The Crucible Steel Company now owns that tract.

Q What is this red line to the southerly side of the railroad?

A That's purporting to show the ownership of additional right of way.

Q And the Pennsylvania Railroad owns here to the south of the yellow road, do they not?

A They do now.

Q Now, they do own it; now they own between the red line on the south and the red line on the north?

A Yes.

Q And that includes the yellow line or road as marked out on Exhibit C-4?

A Yes, sir.

Q Now, that yellow road is shown on the map extending up to Fourth street, is it not?

A Yes, sir.

Q Then you are mistaken when you say the Crucible Steel Company owns any land between the two red lines I mentioned?

A I am not; at the present time the Pennsylvania Railroad, the lessee own it.

Q That's the United?

A Yes.

Q The red line on the north does run to Fourth street, does it not?

A Yes.

Q And the red line on the south stops at Hunterdon street?

A Yes.

Q And the yellow line does go on to Fourth street?

A Yes.

Q Now the continuation of the southerly line of the yellow road is carried on out across Fourth street by a red line, is it not?

A Yes.

Q And at that point does that show the southerly edge of the right of way of the United Company?

A It does not—the line of the bridge.

Q Is the bridge used by the United Company?

A Yes.

Q Isn't it a fact that the United Company does own the land which would be shown by the red line on the south if it projected up to Fourth street on a straight line from Hunterdon street to Fourth street?

A It is not a fact.

The Court. You claim that the complainants in this case, or one of them, own that land where, on map C. 4, which you now claim is adaptable for a road?

Mr. Peirce. Beginning on the east side of Fourth street, which would be the point of intersection if the red line were south of the railroad on C. 4 and was extended up and intersected the east line of Fourth street, and extended thence along to the right of way of the United Company up to Sixth street, and then in addition to that along Sixth street on over to the meadows.

The Court. That is your claim?

Mr. Day. You claim there are no railroad embankments all along there?

Witness. It is walled in—a great big wall there.

Cross examination by Mr. Vredenburgh.

Q In the first place, does the Pennsylvania Railroad, the United Railroads, or the Manor Real Estate or Trust Company own any land on Sixth street south of Middlesex street?

A Yes, sir.

Q Where?

A It owns the block between Sixth and Seventh, Somerset and Middlesex.

Q What is there on that street at the present time —Sixth street—in front of that property and the Crucible Steel Company on the opposite side of the street?

A Tracks and embankments.

Q Elevated to what extent?

A From four to five feet.

Q Can you drive north along Sixth street from Somerset street to Middlesex?

A You cannot.

Q Can you drive along Sixth street from Hunterdon street to Somerset?

A You cannot.

Q Why not?

A Because of the obstructions, such as tracks, embankments, pits, etc.

Q For whom were they erected?

A For the Crucible Steel Company principally.

Q Now going west from Sixth street towards Fourth street along the yellow line, can you drive there now?

A You could not drive there.

Q Why not?

A Because of the character of the obstructions placed there.

Q What are the characters?

A Tracks, pits, walls and embankments.

Re-direct by Mr. Peirce.

Q Isn't it a fact that the tracks of the Pennsylvania Railroad, the United, or some of its subsidiaries cross Middlesex street?

A Yes.

Q And Somerset?

A Yes.

Q Now you say that those streets are obstructed, did you not?

A I said that Sixth street was obstructed by tracks and obstructions in connection with the tracks laid to the Crucible Steel Company.

Q Isn't it a fact that six or seven tracks of the Hudson Terminal crosses over Somerset street?

A Yes, it is.

Q Are any of the Pennsylvania or subsidiary tracks crossing Middlesex street?

A Yes, the tracks leading to the Crucible Steel Company mostly.

Q And what other tracks?

A And that connection to the Hudson and Manhattan.

Q And isn't that one of the main tracks?

A It is.

Q Where the trains run to Newark?

A It is.

Q Then you wouldn't say the Crucible Steel tracks obstruct that street?

A I would, yes, sir.

Q Notwithstanding the main line of the Hudson and Manhattan Railroad to Newark from New York pass over that line?

A My answer before referred to Sixth street, at the intersection of Middlesex street.

Q I am referring to Middlesex street, and you say the main line of the Hudson and Manhattan Railroad between Newark and New York passes along Middlesex street?

A The main connection between the Pennsylvania Railroad tracks to the tracks leading to the Crucible Steel Works run partly along Middlesex street.

Q Now I am trying to find out about the Hudson and Manhattan Railroad; isn't that on Middlesex street between Sixth street and Seventh street?

A No.

Q Where is it?

A It is about the intersection of Middlesex and Seventh street.

Q And then where does it go?

A It goes around the loop.

Q What is the line I am pointing to now?

A The line your finger is on now is the track that connects with all the tracks leading to the Crucible Steel Company and runs partly along Middlesex street.

Q Where is the Hudson and Manhattan line that runs to Newark?

A That is further north.

Q Indicate it on the map?

A It would be indicated here by the word "Truss," just directly east of what is intended to be a pier carrying a bridge.

Q Now that does finally go over on Middlesex street, does it not?

A No, it does not.

Q Isn't that Middlesex street?

A No.

Q If Middlesex street extended it would be on Middlesex street?

A It would, yes, sir.

The Court. Mr. Peirce, will you see if there is any property on map C. 4, any mark as owned

by the United Company or the Pennsylvania or the subsidiaries or Trust Company which he now claims and desires to show by the production of deeds or other proper evidence is owned by either of those companies?

Mr. Peirce. There is one suggestion, and that is that the red line to the south of the railroad ought to be projected over to the intersection of Fourth street. We should like to produce at a later date such evidence as may be necessary as to this stock book, and I would like, under stress of circumstances, to have the testimony written up so I may have an opportunity to look it over.

The Court. What is it you desire to prove?

Mr. Peirce. It is rather a delicate situation, and I do not care to discuss it.

The Court. If it is a mere question of the ownership of stock with reference at the time of filing the bill, or any other time you fixed since, I can direct that that evidence be taken before Mr. Bindseil. It seems a witness was subpœnaed to produce the stock books, but he did not have personal charge of them and that they are not under his immediate personal control. The ownership of stock would have to be proved in some such way, and that matter of proof is not now complete as to the ownership of the stock. But there is no difficulty in my directing what evidence upon that point be given, and you may at some convenient time fix a time for taking evidence upon that point as to the ownership of the stock; but it you intend to get any, the manager of the Crucible Steel Company is here, who is also a director of the other company. Can anybody give any better evidence than he can?

Mr. Peirce. Yes, sir, very much so.

The Court. Then I want to know who they are and what they will prove? Now I ask you

whether Mr. Illingworth, the manager, is not intended to be produced upon that question?

Mr. Peirce. I don't intend to call Mr. Illingworth on that subject, for the reason that the management is at Pittsburgh. Mr. Illingworth had very little to do with it; the book accounts are there; the bank book is there; the stock book is there, and Mr. Illingworth owns but one share of it and has nothing to do with it.

The Court. He is a director.

Mr. Peirce. He is a nominal director; the management of the railroad is there—the officers are there and the president. Mr. Illingworth is a minor stockholder, and with the exception of one share, all the vast interests are there.

The Court. If you want to produce the other members of the company, and do not intend to call Mr. Illingworth, then they must be examined here and examined before me.

Mr. Peirce. Mr. Illingworth hasn't the facts within his knowledge. I misunderstood what you meant. Of course I wouldn't call on Mr. Illingworth at all.

The Court. You want to produce the officers and managers of your company?

Mr. Peirce. It could be the same day set down for argument. We can dispose of it all in one day, so it won't take another day.

The Court. I will only adjourn to take the evidence in connection with the Crucible Steel Company and the Hudson Railroad and Transportation Company, that being the evidence counsel says he requires, the evidence of the officers of the two companies, who are in Pittsburgh. To make a decree upon the present evidence might not be satisfactory.

Continuation of testimony in the foregoing cause, taken before Hon. John R. Emery, Vice-Chancellor, at the Chancery Chambers, Newark,

New Jersey, on Tuesday, May 12th, 1914, in the presence of counsel as before stated.

Mr. Day. Mr. Peirce has agreed that it shall be admitted on the record that the streets named in the application of the Crucible Steel Company of America, shown on page 16 in the state of the case in the Court of Errors, of the Harrison Land Company against the Crucible Steel Company, were, subsequently to the application, and on August fifth, vacated in accordance with the application—some thirteen or fourteen streets in all, except Cumberland street, by an ordinance made on August 5th, 1913. That is all, as far as I am concerned.

Mr. Peirce. It is admitted by both sides that the Hudson Railroad and Transportation Company is incorporated under the laws of New Jersey, under the general Railroad Act, and that the Crucible Steel Company is incorporated under the general Corporation Act of the State of New Jersey.

ANDREW WALSH, sworn for Crucible Steel Co.

Direct examination by Mr. Peirce.

Q You are an officer of the Town of Harrison?

A Yes.

Q You were present on the occasion of the trouble that occurred at the interception of Cumberland street with Fourth street, between the Hudson Railroad and Transportation Company and Booth & Flynn?

A Yes, sir.

Q Who sent you there?

A The Chief of Police.

Q What were his instructions to you?

Mr. Day. I object to this testimony, for I don't understand that the case is opened indefinitely.

Q Did you do anything more than keep the peace at that time?

A No, sir.

Q Did the police officers of the Town of Harrison do anything more than that?

A No, sir.

Q Was that according to your instructions from your superior officer?

A Yes, sir.

Cross examination by Mr. Vredenburgh.

Q Mr. Walsh, you were there; do you remember what date it was?

A I don't remember the days; I was sent there by the Chief of Police.

Q Where did you go?

A I went down along Fourth street and saw that the law wasn't violated on the street.

Q On Fourth street?

A Yes.

Q What was the violation on Fourth street?

A I said to see that there was no violation.

Q Did you go as far as Cumberland street?

A I went all the way to the bridge.

Q The trouble was on Cumberland street?

A Yes.

Q Did you look at that?

A I passed there; I looked at it, yes, sir.

Q Here is a photograph of Exhibit C. 10; do you recognize the situation?

A Yes, I saw all that stuff there.

Q That is as you saw it that day?

A Yes.

Q You recollect noticing that big sign there?

A I don't remember the sign.

Q You didn't take any particular look at it?

A No, sir.

Q The sign reads, "Private Property. No Tres-

passing Under Penalty of the Law. Crucible Steel Company of America." Did you notice the derrick that is shown there?

A Yes, sir.

Q Was it standing about in that position?

A I cannot say that.

Q So far as your recollection is concerned?

A I was there at different times and saw it.

Q At any time did you see it standing that way?

A I wouldn't say that; I saw the derrick there, but I don't know how it was standing. According to that picture, the derrick was there.

Q Was it on Cumberland street?

A I wouldn't say that.

Q You don't recollect that?

A No.

JOHN ROBERTS, sworn for defendant, Crucible Steel Co.

Direct examination by Mr. Peirce.

Q You are a law student?

A Yes.

Q I show you papers purporting to be copies of deeds from Henry L. Young and others to George L. Blake, and Harrison Land Company to Manor Real Estate Trust Company, the former bearing date April 14, 1897, and recorded in the Register's Office of Jersey City, Hudson County, Book 673, page 34, and the latter bearing date January 14, 1907, and recorded in the same office, in Book 980 of Deeds, page 41, and I ask you if those copies are correct copies, taken by you from the records and compared by you to ascertain that they were correct?

A Yes, they are.

Q What records did you take them from?

A I took them from the Book of Deeds there mentioned in Hudson County.

Mr. Peirce. They are offered in evidence.

(Marked Exhibits A and B for defendant Crucible Steel Company, May 12, 1914.)

The Manor Real Estate deed covers, among others, property on Sixth street and also conveys streets and rights under streets.

Mr. Day. What has it to do with this case?

Mr. Peirce. The purpose of offering the deeds is to show that the Harrison Land Company have surrendered their interest in Cumberland street at the disputed portion in Cumberland street, by virtue of the deed from Henry Young and others to George L. Blake, and George L. Blake in turn has conveyed this interest to the Hudson Railroad and Transportation Company, by the deed already in evidence.

The deed from the Harrison Land Company to the Manor Real Estate Company shows a similar condition as to all the streets bounding upon the property described in this deed, which runs into many lots.

It also goes to show that the Harrison Land Company surrendered and gave up to others many avenues of approach to the litigated portion of the lands.

Mr. Day. I object to the offer of this deed for the reason that in 1907—I speak of the deed from the Harrison Land Company to the Manor Real Estate and Trust Company—it hasn't anything whatever to do with Cumberland street; is in a different part of Harrison and does not refer to Cumberland street.

Court. I will admit it subject to argument, and ruling it out on the hearing or argument.

Mr. Vredenburgh. I object to them.

Court. Those were not put in at the time of the original hearing so that counsel could look over them. If I now admit them, it will be sub-

ject to any application that the complainants may desire to make, in order to raise questions applicable by the admission of these deeds.

Mr. Peirce. That is satisfactory.

EDWARD A. DAY, sworn for defendant Crucible Steel Co.

Direct examination by Mr. Peirce.

Q Will you refer to the printed book in Young *vs.* Pennsylvania, and refer to the pages?

A Instead of putting in evidence and producing the ordinances, I had them all printed in the case that was pending at one time in the Supreme Court against the Pennsylvania Railroad by Young's Executors, in which it became necessary to use these very ordinances, and those ordinances are found in this printed book at page 180, and extending from 180 to 184, and those are the only things that were put in evidence.

Q What streets do they affect?

A It is all in the printed case, if you have read it —Gloucester street, Salem street, Burlington street, Cumberland street, Monmouth street, Hunterdon street, Somerset street; those are the ones you have between Fifth and Sixth streets.

Q Those are the ordinances that you put in evidence?

A No, I put in three others.

Q What are the others?

A One with regard to the northerly half of Railroad avenue, a certain part of it; then all the streets and highways; that was an ordinance, I might say, the previous one of March 12, 1891; and the ordinances that I spoke of first, on pages 180 to 182, were passed in August, 1888. Then came the vacation of the northerly half of Railroad avenue, which was an ordinance passed on March 12, 1891; then came the ordi-

nance vacating all the streets, lanes, highways, &c., on the Preston Tract, which was passed October 1, 1895; then came an ordinance to vacate Morris avenue as the same is laid out on the southerly side of the right of way of the New Jersey Railroad and Transportation Company, which was passed October 1, 1895; then came an ordinance vacating a portion of Burlington street, passed June 10, 1901.

Q Were those ordinances not passed at the instance of the Young Estate or Harrison Land Company?

A They were all passed—the former ones were all passed at the instance of the Crucible Steel Company and were afterwards used by the Crucible Steel Company; and the later ordinances that I have spoken of, as I understand it, were passed by the Pennsylvania Railroad or at their instance, for the purpose of the elevation of the tracks.

Q Did not the Young Estate urge the passing of these ordinances in order to sell lands to the Crucible Steel Company?

A I am quite sure they did not, but I couldn't be positive about that.

Q Wasn't it a condition that the Crucible Steel Company made with their neighbors, that these streets should be vacated before they bought it of you or your clients?

A I don't think so; I don't know, I wasn't acting as counsel for the Company at that time or for the Young Estate and I don't know.

Q You do know that the Justice of the Supreme Court, Mr. Swayze, found in the case of Young against Pennsylvania Railroad, this particular case, that that was a fact, that these streets were vacated in order to sell land to the Crucible Steel Company, do you not?

A I did not; I didn't think it was so; it wasn't one of the points of that case at all; I didn't know it.

Q You were in the case of Mason, Young and others against the Pennsylvania Railroad?

A Yes.

Q You tried the case before the jury?

A Yes.

Q And argued it in the Supreme Court?

A Yes.

Q Did the Supreme Court pass upon that case; was it decided by the Supreme Court?

A Yes, they ordered a new trial.

Q Was there a new trial?

A No, there never was a new trial.

Q Why was that?

A Because at that time we made a settlement with the Pennsylvania Railroad.

Q The Young estate made a settlement with the Pennsylvania Railroad?

A Yes.

Q In that case did the Young estate pay any money to the Pennsylvania Railroad or the Pennsylvania Railroad pay any money to the Young estate in settlement?

A I don't think there was any money passed.

Q You know that the Pennsylvania Railroad paid you a very large sum of money, through your office, in settlement of that case?

A No, they did not. You misunderstand the information I gave you. They simply paid for and bought the real estate which was affected in that case, that is all.

Q How much did they pay for that real estate?

A I cannot tell you.

Q $200,000?

A Oh, nothing like that.

Q $50,000?

A It was under that; I have forgotten now.

Q $25,000?

A I think it was somewhere around $25,000 or

$30,000; I cannot remember; it would be impossible for me; I could easily find out.

Q The purchase of that real estate settled the case of Mason, Young and others, surviving executors, against the Pennsylvania Railroad?

A It did.

Q The subject matter of that suit was the closing up of certain streets, was it not?

A Certainly.

Q And by reason of the payment of the money, you quit-claimed—the Young estate quit-claimed its interest in those streets to the Pennsylvania Railroad?

A It did not directly.

Q What did it do?

A It sold the property which abutted on those streets; that was all that it was necessary to do.

Q Was there a deed of conveyance made of that property to the Pennsylvania Railroad?

A Undoubtedly to them or to someone else; I haven't the deed at all, and I don't know, but undoubtedly there was a conveyance.

Q What streets were affected by that suit?

A That is quite impossible for me to say.

Q Refer to your paper book and tell us?

A New Jersey Railroad avenue or New Jersey avenue, as it is sometimes called; Seventh street, Sixth street, Fifth street, Middlesex street and Somerset street.

Q Any other streets, Mr. Day?

A I don't think there were any other streets.

Q The Pennsylvania Railroad had obstructed those streets and the purpose of the suit was to test their right to so obstruct?

A They had raised their tracks, is my recollection about it, and in so doing they had absolutely destroyed any possible access to our property whatsoever—the lots that were affected by that suit.

Mr. Vredenburg. That isn't correct, Mr. Day.

A (Continuing.) Of course, that was a disputed point.

Mr. Vredenburgh. I object on the ground of materiality.

Court. I will hear you on that; I will take it subject to your objection.

Q You set up in that case that the effect of the vacation and closing of the streets that had gone before took away all means of access from the Youngs' land, except to the north, by Seventh, Sixth, Middlesex and New Jersey avenue, did you not?

Mr. Vredenburgh. The paper itself shows exactly.

Mr. Peirce. I offer in evidence the record in the case of Mason, Young, *et als,* surviving executors, against Pennsylvania Railroad—case then pending in the New Jersey Supreme Court.

Court. Being the printed case or paper book on the argument of the application for a new trial?

Mr. Peirce. Yes, sir.

Mr. Day. I object, as it is immaterial, because he hasn't produced the record.

Court. What record?

Mr. Day. My printed book doesn't produce the record; he must produce the record. He hasn't produced the argument; he may have my argument, if he wants it.

Court. Isn't that the case that was presented as the printed case?

Mr. Day. He has nothing but the printed book.

Court. He has offered the printed case in that suit as printed; does not that show the declaration and the pleas?

Mr. Day. Yes.

Court. You want a certified copy of the record instead of the printed book?

Mr. Day. It was wrong to introduce this record into this case, to encumber the record with that book, in case of an appeal or for any reason. That case hasn't the slightest bearing in any aspect whatever upon the case that we are now trying.

Court. That is my present impression about it. I will control the presentation of any portion of that as part of this record, and also as a part of any record on appeal to be printed, and any admission of that paper book at this time will be admitted only subject to such order as the Court may make in reference to that subject, if it becomes important. I do not now see the importance of it, and I was going to make the ruling on the admission of it subject to any application on the part of the complainants hereafter, when the full bearing of the defendant's admission of the record is shown, for the purpose of opening the proofs, or such further order as it may desire to make, because this has now come in as a matter relating to an old suit, which of course they all must have known about at the time of the original filing of the bills and answers in these cases, and also at the time of the original hearing; but I am desirous that if counsel has any point to present, which he thinks entitles him to claim that the facts shown by that—not by the proof in that case, because they cannot be proofs, but by the mere printed case and the record—have any bearing on this case, I am willing to hear you on that point, and to admit that printed case for that purpose now, subject to any application that may be made by the defendant on the argument either for striking out the entire record or for controlling the record now offered in the printed case, for the purpose of printing on appeal or other proper purpose. What I do not care to do

at present is, to say that nothing offered in the printed case or as part of the record of that case appearing by the printed case has no such bearing on the present suit, that I rule it out now absolutely. We try to control the admission of evidence, so that anything that may be fairly claimed to have a bearing on the case may be presented, but only on terms that makes the present offer entirely just to the other parties, and I therefore admit this subject to your motion to strike it all out on the argument and make such other motion as you desire, in case any part of it is admitted, and I will declare what part of it is admitted. It now only appears that there was a suit brought by Young and that that was pending. Whether that has any effect on the case, I will hear counsel. If it has, and is admitted at all for any purpose, it will be admitted subject to the application on your part to be allowed to meet it, because I must say, on the face of it I don't quite see the bearing.

Mr. Peirce. I produce at the request of the other side the stock book of the Hudson Railroad and Transportation Company.

Mr. Day. Have you the certificate of incorporation?

Mr. Peirce. No, you asked for the stock book and I have got it here.

Mr. Day. I want the transfer book.

Mr. Peirce. There is no transfer book. It has been called for and I offer in evidence the stock book of the Hudson Railroad and Transportation Company.

Mr. Day. It must be proved.

Mr. Peirce. The other side called for the stock book and I produce it; it is bound to be offered in evidence.

Court. They cannot look at it and then decline

to offer it. If they don't take it from you, it is not offered by them.

Mr. Peirce. I have in my hands the stock book of the Hudson Railroad and Transportation Company, which I produce pursuant to the notice.

Court. Have you the written notice?

Mr. Peirce. Pursuant to verbal notice in the court room at the last hearing, made by the complainant's solicitors.

Court. And you now offer the book to them for their use?

Mr. Peirce. I now offer it to them.

Mr. Day. We don't want it.

Mr. Peirce. We rest.

Mr. Vredenburgh. We rest subject to your Honor's ruling to open the proofs, if necessary.

EXHIBIT C. 1.

(See map opposite.)

EX. C.1.


SEVENTH STREET
SIXTH STREET
FIFTH STREET
FOURTH STREET
THIRD STREET
SECOND STREET
FIRST STREET
NEW YORK TO ROAD
MORRIS AVENUE RAILROAD
BERGEN STREET
ESSEX STREET
MIDDLESEX STREET
SOMERSET STREET
HUNTERDON STREET
BURLINGTON STREET
MONMOUTH STREET
GLOUCESTER STREET
SALEM STREET
CUMBERLAND STREET
WARREN STREET
SUSSEX STREET
PASSAIC R.
PASSAIC R.
MAP OF LOTS IN EAST NEWARK FOR HIRAM GILBERT
BLANK AND BACOT CITY SURVEYORS
JERSEY CITY, N.J. JULY 1852.

EXHIBIT C. 1.

For Harrison Land Co.

Blue Print of Survey, Aug., 1913 (omitted from printed State of the Case).

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EXHIBIT C. 2.

(See map opposite.)



Map of the Preston Tract East Newark by which the premises were sold on the 19th May – 10th June & 10 October 1836 formerly belonging to Jacob Haff –

Filed July 14th 1837 in the Clerk's office of Bergen County

Saml H. Berry Clerk

EX. C.2.

TRACING OF B650 4 C.3.8.
TRACING OF B650 R.E.D.

EXHIBIT C. 2.

Harrison Land Co.

The last Will and Testament of Henry Young, of Ossining, Westchester County, State of New York.

I, Henry Young, residing in Ossining, in the County of Westchester, and State of New York, do make, publish and declare this my Last Will and Testament.

First. I direct that my Executors pay all my just debts and the expenses of my funeral out of my estate as soon as conveniently may be after my decease.

Second. I give, devise and bequeath to my beloved wife, Anne M. Young, my Country Seat comprising my dwelling house with the lands, farms and premises adjacent thereto including the plot at the corner of the Post Road and the road leading to said Country Seat in the Town of Ossining in the County of Westchester and State of New York, containing between 55 and 60 acres more or less; to have and to hold the same to her, her heirs and assigns forever, and I also give and bequeath to my said wife all my household furniture, beds, bedding, plates, pictures, printed books and engravings, horses, carriages, harness, cattle, farming utensils, growing crops, provisions and supplies for family use which shall be in or upon said Country Seat dwelling house and premises at the time of my decease and in any other dwelling-house, stable, and premises which shall be occupied or used as and or for our residence and accommodation at or immediately before the time of my decease, to have and to hold the same to her and her executors, administrators and assigns forever.

Third. I give and bequeath to my said wife an annuity or annual sum of $20,000 to be paid to her yearly and every year during her natural life in equal quarter yearly payments from the time of my decease.

New Jersey State Library

Fourth. I give and bequeath to my niece Abby F. Harrington an annuity or yearly sum of $500 to be paid to her yearly and every year during her natural life in equal quarter yearly payments from the time of my decease.

Fifth. I give and bequeath to my niece Isabella G. Hyde an annuity or yearly sum of $500 to be paid to her yearly and every year during her natural life in equal quarter yearly payments from the time of my decease.

Sixth. To provide for the payment of each of the several annuities or yearly sums of money hereinbefore given and bequeathed it is my will and I do hereby devise, order and direct that my executors hereinafter named select, take and set apart from and out of my estate such real property or such personal property, money and securities for money or both real and personal property as in their judgment shall be sufficient to produce an annual interest or income sufficient to pay and satisfy such annuity and in case they shall deem it necessary to change the investment of either such trust fund or any part thereof that they invest the same or the proceeds thereof from time to time in their own names as trustees in bonds secured by mortgages upon productive real estate in the City of New York or Brooklyn or in public stocks or debt of the United States or of the State or City of New York, keeping each fund separate from the other and with and out of the interest and income arising therefrom that they pay the said several annuities and yearly sums of money and each and every of them from time to time as they shall become due and payable until such annuities respectively shall cease and if in any year the interest or income arising and realized from said securities money and property so set apart and held and retained for that purpose or from the securities and

property in which the same shall be invested shall be insufficient I authorize them to supply such deficiency out of my residuary estate and if the same shall be more than sufficient to pay such annuities or yearly sums as shall remain and continue to be payable then it is my will and I devise, order and direct that the excess of such interest and income over and above the amount necessary to pay said annuities in any year be distributed and paid as hereinafter provided for the distribution of surplus income of my residuary estate and that the said securities money and property selected, set apart and held as aforesaid to provide for either of said annuities if so set apart and held shall whenever such annuity shall have ceased to be payable be disposed of distributed and paid in like manner as provided hereinafter for distribution and payment of the surplus income of my residuary estate and until property shall be set apart as herein authorized by my executors for each such fund I direct that each such annuity for which no fund is set apart shall be a charge upon my whole estate.

Seventh. All the rest, residue and remainder of my estate real and personal property rights of property of every kind and description whatsoever and wheresoever which I shall own or possess or to which I shall be entitled at the time of my death I give, devise and bequeath to my sons Henry L. Young, James H. Young and Mason Young, hereinafter also appointed the executors of this my will the survivors and last survivor of them, his or their successors, heirs and assigns to have and to hold the same unto them my said sons Henry L. Young, James H. Young and Mason Young the survivor and last survivor of them and his or their successors, heirs and assigns as joint tenants and not as tenants in common forever upon trust nevertheless and to and for the uses and purposes following, that is to say: in trust to receive, take and hold the said rest, residue and remainder of

my estate property and rights of property and the proceeds of any portion thereof which may be sold during the natural lives of my daughters Martha A. Leavitt and Josephine Y. Churchhill and the longest liver of them with power to invest the said personal property and every or any part thereof and also the proceeds of real property as the same may be realized from time to time as may be necessary or expedient in their discretion having always due regard to the security of the investment in bonds and mortgages upon productive real estate in Cities of the United States containing by the census of the United States over 100,000 inhabitants or in public stocks or debt of the United States or of the State or City of New York or in such other securities or property including stock and bonds of incorporated Companies as they may deem entirely safe to collect get in and receive the rents, interest, income, dividends and profits arising or accruing from or upon such rest, residue and remainder of my estate, property and rights of property and the proceeds thereof and all bonds, mortgages, stocks, securities and property in which the same or any part thereof shall be at any time invested and the income arising therefrom after paying all taxes and assessments of every kind and description which may be levied or assessed upon any property belonging to my estate or any part thereof and all necessary and proper costs, charges and expenses of or attending the care and management of my estate including such office rent and Clerk hire as they may deem necessary and expenses of insuring against fire and of maintaining and keeping in thorough repair all buildings belonging to my estate or in which my estate may have an interest and after making the payments, which my said executors and trustees are hereinafter empowered to make in their discretion to divide at the end of each year all of the net income from my estate in equal shares among my children

who may be then surviving and the issue of any deceased child or children during their respective lives such issue to take *per stirpes* and not *per capita* and I further devise and direct that upon the death of the survivor of my said daughter Martha A. Leavitt and Josephine Y. Churchhill or upon the other determination of this trust the whole of my residuary estate real and personal of every kind and description shall be divided by my said executors in equal shares among my children who may be then surviving and the issue of any deceased child or children, such issue to take *per stirpes* and not *per capita* and I authorize my executors aforesaid to advance money from time to time to each of my said children and to the issue of any deceased child such issue to take *per stirpes* and not *per capita* during each year such advances not to exceed to each child the sum of $2,000 in any one year in anticipation of the division to be made at the end of the year such advances not to bear interest.

In the management of my estate I authorize and empower my executors out of any moneys in their hands to apply such sums as they in their discretion may deem advisable in putting in proper condition for the purposes of sale my real estate of any part or parts thereof (but not for the erection of any building thereon except to replace buildings which may be destroyed) and for the care and protection of any property of the estate which in their judgment may be in any way jeopardized or imperiled and as a large amount of my property is in Railroad Bonds and other Railroad securities I expressly authorize and empower my executors appointed by this my will to apply any moneys in their hands whenever they shall deem it necessary in order to preserve, protect from sacrifice or make available any Railroad Bonds or other Railroad securities or property held by me in such manner as they may judge expedient to secure or protect from sacrifice or make available such Rail-

road Bonds, securities or Railroad property and to enter into any agreement in relation thereto for the reorganization of Railroad Companies whose bonds, securities or stocks they may hold as such executors and to enter into any agreement which they may consider advantageous for the substitution of other bonds, stock or securities for those held by me or by my estate and if they shall deem it necessary I authorize them to borrow moneys for any of the purposes above mentioned and all such payments of money or money advances shall be made if possible out of the income of my estate before any division of income shall take place beyond the sum of $2,000.00 hereinbefore authorized to be advanced annually to each of my children and if such advances cannot be made out of the income then they shall apply so much of the principal of my estate thereto as may be necessary.

I have heretofore given and distributed among my children from time to time portions of my property valued by me at the time of such distribution and amounting upon such valuation at the date of this my will as follows:

To my son, Henry L. Young.....	$201,533.93
To my daughter, Mary C. Barnes..	200,495.17
To my son, James H. Young.....	201,600.00
To my daughter, Martha A. Leavitt	200,882.77
To my son, Mason Young.....	206,576.30
To my daughter, Alice Eaton.....	201,119.31
To my daughter, Josephine Churchhill	200,411.14

making an aggregate of $1,412,558.62 and I direct that my executors and trustees herein named in making the division of the principal of my residuary estate as herein directed shall make such division so that the amount received by each child or the representative of each child *per stirpes* added to the sums previously distributed by me as hereinbefore stated to each child shall be equal. The accounts of moneys

distributed to my children are kept in a ledger in my own handwriting marked Ledger "D" and any amount hereinafter advanced or paid by me to either of my children and debited in such ledger to such child shall be considered an advanced payment or distribution upon account of amounts to be received by such child from my estate under this my will but no interest shall be charged upon any such advance.

In the event that my daughter Martha A. Leavitt and Josephine Y. Churchill or either of them shall live for ten years from the date of my death I direct that the division of my residuary estate among my children hereinbefore provided shall be made at the expiration of such ten years from my death notwithstanding my said daughters or either of them shall then be surviving such division to be then made among my children who may be then surviving and the issue of any deceased child or children in equal shares such issue to take *per stirpes* and not *per capita,* I give to my executors and trustees full power and authority to sell either at public or private sale at such time or times for such prices and upon such terms as to credit as they may deem advisable all or any portion of my real estate and I give them power to mortgage my real estate or any portion thereof as security for any moneys which they may borrow for the purposes hereinbefore named for which authority to borrow money is given and to enter into agreements for the actual partition of any lands or interest in lands or wtaer rights which I may hold in common with any other person or persons and to carry such partition or partitions into effect to lease any or all of my real estate at such rents and for such terms of years as they may deem advisable and I give them full power to make, execute and acknowledge and deliver all such deeds, mortgages, leases and other instruments as may be requisite or necessary to enable them to execute the powers or any of them hereby conferred upon them and I further authorize them to compromise, settle

and adjust upon terms which may seem to them equitable any debts due to my estate and full releases and acquitances to give therefor.

In case it shall at any time be deemed advisable by my executors for the purpose of straightening boundaries or obtaining the whole of blocks or parcels of land of which parts may belong to my estate or of obtaining direct access to navigable waters or to secure water fronts and rights necessary to make any of my property available for manufacturing or commercial purposes to purchase lands and premises lying adjacent to any unimproved portion of my estate I authorize said executors from time to time to make such purchases and to pay therefor out of the property hereby given to them in trust and to exercise as to lands so purchased all the powers given to them herein with reference to my estate.

All powers granted in this will to the executors and trustees herein named shall be deemed and taken to be exercised by and in the discretion of the survivors and last survivor of said executors and trustees in like manner as if in each case the said powers had been given and the said discretion has been directed to be exercised by the survivors and last survivor of them.

I nominate and appoint my sons Henry L. Young, James H. Young and Mason Young, executors of this my last will and testament and I direct that neither of said executors shall be required to give bonds or other security in any State as executor or trustee under this my will, nor shall either be liable for the acts of the other.

I hereby revoke all former and other wills by me made.

IN WITNESS WHEREOF I have hereunto set my hand and seal this tenth day of August, in the year one thousand eight hundred and seventy-four.

HENRY YOUNG (L. S.)

Signed, sealed, published and declared by the said Henry Young to be his last Will and Testament in the presence of us and of each of us who in the presence of each other and of the testator and at his request have signed our names as witnesses.

Eugene Smith, No. 23 East 44th St. New York City.

Theodore R. Shear, No. 314 West 28th St., New York City.

John E. Curran, No. 19 East 46th St., New York City.

I, HENRY YOUNG, do make, publish and declare this Codicil to my last Will and Testament.

I give to the Presbyterian Church of Sing Sing of which the Reverend Wilson Phraner is Pastor, the note of said Church for Five Thousand Dollars held by me, and the sum of Five thousand Dollars, which last named amount I authorize and direct the Executors and trustees named in my Will to pay to the proper officer of said Church at such times during the continuance of the trust created by said Will and in such amounts as they may deem most convenient.

HENRY YOUNG (L. S.)

Signed, published and declared by the said Henry Young as and for a Codicil to his last Will and Testament this seventeenth day of October, A. D. 1874, in the presence of us, who in his presence and in the presence of each other and at his request have hereto subscribed our names as witnesses.

Henry S. Leavitt, New York City.
R. C. Churchill, New York City.

Exhibit C. 3.

EXHIBIT C. 3.

FRANCIS S. LATHROP, *et ux,*

to

THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY.

Deed Book 254, page 279.
Dated January 2, 1873.
Ack'd January 16, 1873.
Rec'd February 17, 1873.
Cons. $124,000 00/100.

* * * * * *

* * all that certain tract or parcel of land and premises situate, lying and being in the Township of Harrison in the County of Hudson and State of New Jersey. Being part of the tract called the Preston tract and formerly part of the Canada farm and adjoining the land of the East Newark Land Company lying between the New Jersey Railroad and the Passaic River as shown on a map of said tract made by S. Dod, Surveyor and filed in the office of the Clerk of the County of Bergen in said State of New Jersey, which said tract is described as follows:

Commencing at the southeasterly corner of said tract at the Passaic River and from thence running 1 north 35 degrees west six hundred and thirty one feet six inches 631′ 6″; thence 2, north 56 degrees four hundred and eighty six feet six inches (486.6); thence 3d, north 28 degrees west fifty one feet (51) to lands now or late of the New Jersey Railroad and Transportation Company; thence 4th, along the southerly boundary line of said lands south 89 degrees and 20 minutes west eighteen hundred and eighty six feet (1886); thence 5 south, 20 degrees and (10) minutes west seven hundred and ten feet six inches (710.6);

Exhibit C. 3.

thence 6th, south (25) degrees and 10 mintues west one hundred and ninety eight feet (198); thence 7th, south 35 degrees west four hundred and sixty two feet (462); thence 8th, south 82 degrees west Two hundred and eighty eight feet six inches (288.6); thence 9th, south 10 degrees and 30 minutes west seven hundred and seventy nine feet six inches (779.6); thence 10th, north 72 degrees west seventy two feet six inches (72.6); thence 11th, north 38 degrees and 30 minutes west two hundred sixty four feet (264); thence 12th, north 72 degrees and 20 minutes west three hundred and ninety three feet (393); thence 13th, south 17 degrees west seven hundred and thirty five feet (735) to the Passaic River; thence 14th, along said River south 78 degrees and 20 minutes east nine hundred and thirty two feet (932); thence 15, north 11 degrees and 30 minutes east four hundred and fifty six feet and nine inches (456.9); thence 16th, north 88 degrees east two hundred and ninety seven feet (297); thence 17th, north 18 degrees east seven hundred and twenty six feet (726); thence 18th, north 85 degrees east one hundred twenty two feet (122); thence 19th, north 53 degrees and 30 minutes east one hundred and twenty two feet (122); thence 20th, north 11 degrees east two hundred and sixteen feet (216); thence 21st, south 49 degrees 30 minutes east forty seven feet (47); thence 22nd, south 24 degrees thirteen hundred and fifty six feet (1356) to the Passaic River; thence 23rd, north 49 degrees 30 minutes east one hundred and ninety three (193) along said River; thence 24th, north 38 degrees and 30 minutes east two hundred and ninety feet and six inches (290.6) along said River thence 25, north 24 degrees and 45 minutes west six hundred feet (600) to a Creek; thence 26th, north 69 degrees east twenty five feet (25); thence 27 north 11 degrees 10 minutes west one hundred and forty eight feet 148; thence 28, north 70 degrees 45 minutes east sixty feet and six

Exhibit C. 3.

inches (60.6); thence 29th, south 20 degrees 45 minutes east one hundred and seven feet (107); thence 30, north 66 degrees east twenty one feet (21); thence 31 north 11 degrees east eighty eight feet and six inches (88.6) thence 32d, north 87 degrees 30 minutes east thirty three feet (33); thence 33, south 28 degrees east one hundred and two feet (102); thence 34, north 71 degrees east twenty six feet (26); thence 35th, north 17 degrees and 30 minutes east seventy eight feet (79); thence 36, south 29 degrees and 10 minutes east four hundred and fifty feet (450) to the Passaic River; thence 37th, north 34 degrees 10 minutes east along said River, seven hundred and sixty one feet and eight inches 761.8; thence 38 north, 49 degrees 45 minutes east along said River four hundred and eighty three feet and nine inches (483.9) to the place of beginning.

Containing ninety acres more or less.

Together with the water right appertaining to the said tract on the Passaic River, excepting out of the above described premises the tract of land adjoining and lying southerly of the New Jersey Railroad of one hundred & forty feet in width by about 1800 feet in length heretofore conveyed by the parties of the first part to the party of the second part by deed dated April 1, A. D. 1869 & recorded January 1, A. D. 1870 and also excepting out of the premises first above described the several pieces or parcels of land which were conveyed by John H. *Reock* and wife to the party of the second part by deed dated November 1st, A. D. 1872, reference being made to the same will more fully appear.

EXHIBIT C. 3.

For Harrison Land Co.

Deed from Barkalow Master to Mason Young, dated Dec. 9, 1875 (omitted from printed State of Case).

EXHIBIT C. 4.

For Harrison Land Co.

Deed of Mason Young, etc., to Harrison Land Co., dated May 20, 1904, recorded in Book 896, page 155 (omitted from printed State of Case).

EXHIBIT C. 4.

(See map opposite.)

EX. C.4.


MIDDLESEX
SOMERSET
HUNTERDON
CRUCIBLE STEEL CO. OF AMERICA
MILL
BRIDGE
BRIDGE
SOLD TO CRUCIBLE STEEL CO. OF AMERICA MAY 13, 1911
SOLD TO CRUCIBLE STEEL CO. OF AMERICA JUNE 28, 1910
FOURTH
FIFTH
SIXTH
SEVENTH
CUMBERLAND
CAPE MAY
HARRISON LAND CO.
SCALE = 1" = 100'

Exhibit C. 5.

EXHIBIT C. 5.

THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY,

to

CRUCIBLE STEEL COMPANY OF AMERICA.

Recd. Book 1067, page 227.
Dated June 22, 1910.
Ack'd June 27, 1910.
Rec'd July 8, 1910.
Cons. $6,057.00/100.

THIS INDENTURE, made the twenty-second day of June in the year of our Lord one thousand nine hundred and ten (1910), BETWEEN, THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, a corporation of the State of New Jersey, party of the first part, *and* the CRUCIBLE STEEL COMPANY OF AMERICA also a corporation of the State of New Jersey, party of the second part;

WITNESSETH, That the party of the first part, for and in consideration of the sum of *Six thousand and fifty seven Dollars and twenty seven cents* lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, its successors and assigns.

ALL THOSE TWO CERTAIN lots or pieces of land, with the buildings and improvements thereon erected, situate in the Town of Harrison, in the County of

Exhibit C. 5.

Hudson and State of New Jersey, bounded and described as follows, viz:

ONE OF THEM BEGINNING at a point at the intersection of the extended Easterly line of Fifth Street (sixty feet wide) with the Northerly line of Cumberland Street (sixty feet wide) as the said Cumberland Street is extended by Agreement between the said The United New Jersey Railroad and Canal Company, the said Crucible Steel Company of America, James H. Young and Mason Young, Surviving Executors of and Trustees under the last Will and Testament of Henry Young, deceased, and Ruth Dana Draper, sole devisee and legatee of William H. Draper, deceased, dated May 17, 1901 and recorded in Book 794 of Deeds for Hudson County, page 207, and extending thence along the said extended Easterly line of Fifth Street and along the said Easterly line of Fifth Street as shown on the plan of the said Town of Harrison and by other land of The United New Jersey Railroad and Canal Company North seven degrees and thirty six minutes East two hundred and twenty feet and forty four one-hundredths of a foot to a point in the Southwesterly line of land of the said Crucible Steel Company of America; thence by said land as follows, viz.: First, South sixty eight degrees East one hundred and forty eight feet and forty one one-hundredths of a foot to a point, and Second, South thirty two degrees and forty one minutes East two hundred and forty feet and fifty seven one-hundredths of a foot to a point in the Northerly line of Cumberland Street extended as aforesaid; thence along the said Northerly line of said Street, extended, and by other land of the said The United New Jersey Railroad and Canal Company North eighty two degrees and twenty four minutes West two hundred and ninety nine feet and twenty nine one-hundredths of a foot to the place of beginning;

Exhibit C. 5.

CONTAINING forty three thousand three hundred and nine square feet, more or less.

AND THE OTHER OF THEM BEGINNING at a point at the intersection of the Easterly line of said Fifth Street with the middle line of former but now vacated Somerset Street (sixty feet wide), as formerly shown on the said plan of the Town of Harrison, and extending thence by other land of the said The United New Jersey Railroad and Canal Company North sixty nine degrees and thirty two minutes East three hundred and thirty nine feet and ninety eight one-hundredths of a foot to a point in the Westerly line of land of the said Crucible Steel Company of America, said point being distant seventy feet and four one-hundredths of a foot measured Southwardly from the Southerly line of Middlesex Street as shown on the said plan; thence by said land and partly crossing said vacated Somerset Street South seven degrees and thirty six minutes West one hundred and fifty nine feet and ninety six one-hundredths of a foot to a point in the middle line of vacated Somerset Street aforesaid and thence still by said land and along the said middle line of said vacated Somerset Street North eighty two degrees and twenty four minutes West three hundred feet to the place of beginning;

CONTAINING twenty three thousand nine hundred and ninety four square feet, more or less.

Exhibit C. 6.

EXHIBIT C. 5.

For Harrison Land Co.

Deed from Mason Young, etc., to Harrison Land Co., dated July 7, 1904, recorded in Book 896 of Deeds, page 175 (omitted from printed State of Case).

EXHIBIT C. 6.

THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY,

to

CRUCIBLE STEEL COMPANY OF AMERICA.

Deed Book 1125, page 209.
Dated Nov. 13, 1911.
Ack'd Nov. 22, 1911.
Rec'd May 31, 1912.
Cons. $7,034.00/100.

* * * * * *

* * convey and confirm unto the said party of the second part, its successors and assigns,

ALL THAT CERTAIN lot or piece of land situate in the Town of Harrison, in the County of Hudson and State of New Jersey, bounded and described as follows, viz.:

BEGINNING at a point in the easterly line of the tract known as the Gilbert Tract shown on a map entitled Map of Lots in East Newark for Hiram Gilbert, Clark and Bacot, City Surveyors, July 15, 1852, filed in the office of the Register of Hudson County as Map No. 234, said point being in the north line of Cumberland Street (sixty feet wide) at the end of said street as laid out on said map and mentioned in

an agreement between the said The United New Jersey Railroad and Canal Company and Crucible Steel Company of America and others, dated May 17, 1901, and recorded in Book 794 of Deeds for Hudson County, page 207, and said point being at the distance of two hundred and forty-five feet and three one-hundredths of a foot measured eastwardly along the northerly line of the said Cumberland Street from its intersection with the easterly line of Fourth Street, and extending thence along the line of said Gilbert Tract, which is the dividing line between that tract and the tract known as the Preston Tract, the three following courses and distances, viz: FIRST, north twenty-three degrees six minutes East two hundred and eighty-nine feet and eighty-four one-hundredths of a foot to a stone; SECOND, South sixty-nine degrees twenty minutes East eighty-five feet and five tenths of a foot to a point; and THIRD, South sixty-eight degrees East one hundred and fifty-nine feet and two tenths of a foot to the westerly line of land conveyed to the said Crucible Steel Company of America by the said The United New Jersey Railroad and Canal Company by deed dated the Twenty-second day of June, 1910, thence along the westerly line of the land so conveyed South seven degrees thirty-six minutes West two hundred and twenty feet and forty-four one-hundredths of a foot to a point in the northerly line of the strip of land sixty feet wide dedicated and appropriated as a road by the above recited agreement dated the Seventeenth day of May, 1901; and thence westwardly along the said northerly line North eighty-two degrees twenty-four minutes West three hundred and fourteen feet and ninety-seven one-hundredths of a foot to the place of beginning; CONTAINING seventy thousand three hundred and forty-nine square feet, more or less;

BEING part of the same premises which Francis S. Lathrop, *et ux,* by deed bearing date the Second day

of January, 1873, and recorded in Book 254 of Deeds for said County of Hudson, page 279, &c., granted and conveyed unto the said The United New Jersey Railroad and Canal Company in fee.

EXHIBIT C. 6.

For Harrison Land Co.

Agreement between Harrison Land Co. and Booth & Flinn, Limited, dated Aug. 28, 1913, same as Schedule "A" annexed to Cross Bill of Harrison Land Co. see page 82.

EXHIBIT C. 7.

Deed from Ruth M. Draper to Manor Real Estate Co., dated Feby. 27, 1911, recorded in Book 1081, page 495 (see page 112).

EXHIBIT C. 7a.

Deed from Benjamin Atha and Illingworth Company to Crucible Steel Company, dated August 13, 1900, recorded in Book 961, page 94 (omitted from printed State of Case).

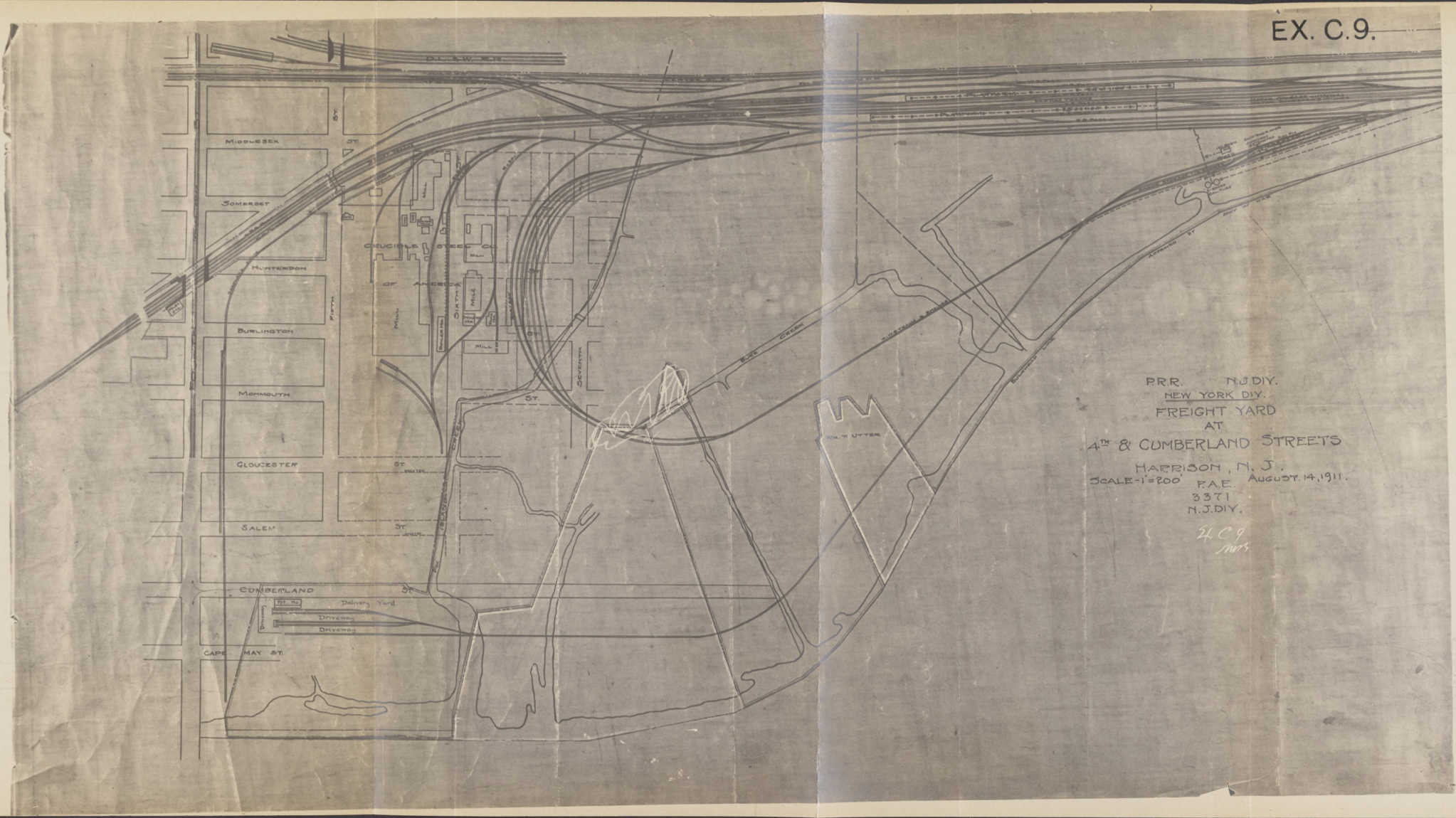
EXHIBIT C. 7b.

Map of property of Harrison Land Company, located on Passaic River and East Fourth St., dated Aug. 8, 1913 (omitted from printed State of Case).

EXHIBIT C. 8.

Agreement dated May 17, 1901, same as Exhibit "B" of Bill of Complaint, Case No. 1 (see page 16).

EX. C.9.



P.R.R. N.J.DIV.
NEW YORK DIV.
FREIGHT YARD
AT
4TH & CUMBERLAND STREETS
HARRISON, N. J.
SCALE-1"=200' P.A.E. AUGUST. 14, 1911.
3371
N.J.DIV.

24 C 9
Mrs

Exhibits C. 10; C. 11; C. 12; C. 13.

EXHIBIT C. 10.

Two photographs (omitted from printed State of Case).

EXHIBIT C. 11.

Photograph omitted.

EXHIBIT C. 12.

Deed dated August 12, 1885, recorded in Book 409 of Deeds, page 157. Third contract which is set out in the testimony (omitted from printed State of Case, see page 155).

EXHIBIT C. 13.

ANNUAL REPORT BY A DOMESTIC CORPORATION.

THE HUDSON RAILROAD AND TRANSPORTATION COMPANY.

ORGANIZED AND REGISTERED UNDER THE LAWS OF THE STATE OF NEW JERSEY.

The corporation above named, organized and registered under the Laws of the State of New Jersey, does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)" and the various acts amendatory thereof and supplemental thereto.

FIRST—The name of the corporation is HUDSON RAILROAD AND TRANSPORTATION COMPANY.

SECOND—The location of the registered office is at office of Crucible Steel Company of America, foot of 5th Street, Harrison, N. J., and R. H. Illingworth is the agent upon whom process may be served.

THIRD—The character of the business is Constructing, Maintaining and Operating a Railroad and

Exhibit C. 13.

as otherwise provided in the Certificate of Incorporation.

FOURTH—The amount of the authorized capital stock is $250,000.00. The amount actually issued and outstanding is $20,000.00.

FIFTH—The names and addresses of all the Directors and Officers, and the term when the office of each expires, are as follows:

NAMES OF DIRECTORS.	ADDRESS.	EXPIRATION OF TERM.
Herbert DuPuy	Oliver Building, Pittsburgh, Pa.	Feb., 1914.
C. C. Ramsey	"	"
Jno. A. Sutton	"	"
Chas. W. Rowlands	"	"
G. M. Black	"	"
G. W. Sergent	"	"
R. H. Illingworth	Foot of 5th St., Harrison, N. J.	"
Officers:		
President, C. C. Ramsey	Oliver Bldg., Pittsburgh, Pa.	Feb., 1914.
Vice-President, Jno. A. Sutton	"	"
2nd Vice-President,	"	"
Treasurer, Geo. A. Turville	"	"
Secretary, Chas. W. Rowlands	"	"

SIXTH—The next annual meeting of the stockholders for election of Directors is appointed to be held on the first Monday of February, 1914, as provided by By-Laws.

SEVENTH—The name of the corporation has been at all times displayed at the entrance of its registered office in this State, and the corporation has kept at its registered office in this State a transfer-book, in which the transfers of stock are made, and a stock-book, containing the names and addresses of the stockholders and the numbers of shares held by them respectively, open at all times to the examination of the stockholders as required by law.

WITNESS our hands the 28th day of February, A. D. 1913.

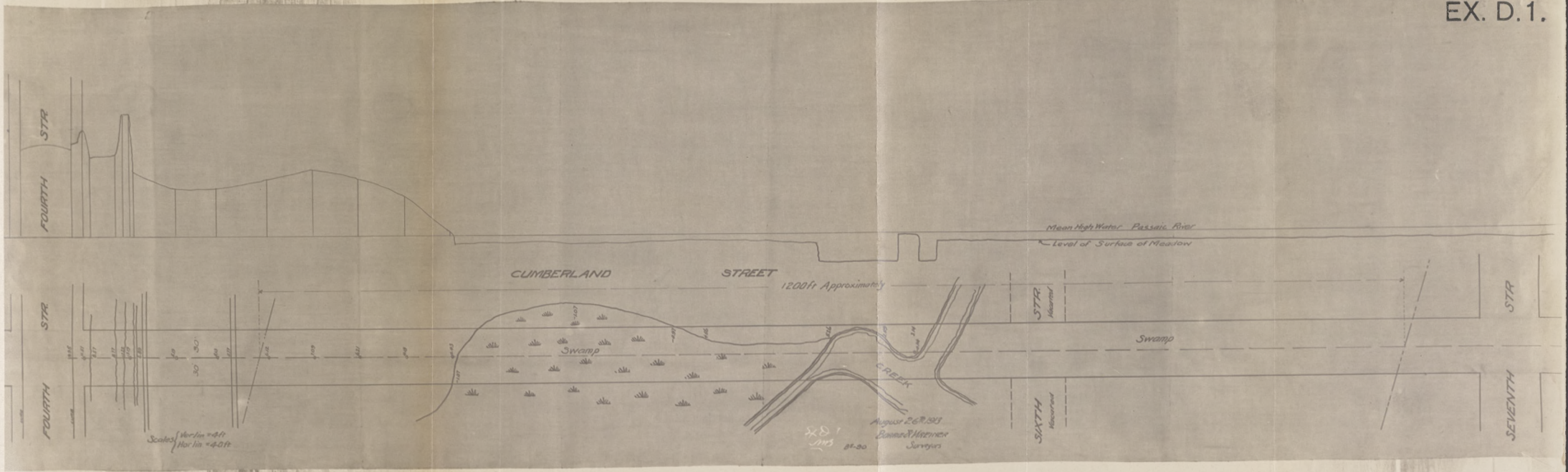
C. C. RAMSEY,
President.

CHAS. W. ROWLANDS,
Secretary.

Endorsed:

"Filed Mar. 1, 1913.
DAVID S. CRATER,
Secretary of State."

EX. D.1.



FOURTH STR.
Mean High Water Passaic River
Level of Surface of Meadow
CUMBERLAND STREET
1200 ft Approximately
Swamp
CREEK
Swamp
STR. Vacated
SIXTH Vacated
SEVENTH STR.
Scales { Ver lin = 4 ft
Hor lin = 40 ft
August 26th 1913
Barrie & Kreiner
Surveyors

Exhibit D. 2.

EXHIBIT D. 2.

JOHN R. GRIMM (unmarried)

to

HUDSON RAILROAD & TRANSPORTATION COMPANY.

Deed Book 965, Page 468.
Dated Feb'y 4, 1907.
Ack'd Feb'y 4, 1907.
Rec'd Feb'y 4, 1907.
Cons. $1, etc.

* * * * * *

* * convey and confirm unto the said party of the second part, and to its successors and assigns forever, (All those certain lots of land situate lying and being in the Town of Harrison (formerly called East Newark), in the County of Hudson and State of New Jersey, and known and distinguished on a Map entitled "Map of lands in East Newark for Hiram Gilbert, Clark & Bacot, City surveyors, July, 1852," filed in the office of the Clerk of Hudson County, January 19, 1853, as follows:—

FIRST TRACT:—In Block eighty, Lots numbers One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Sixteen, Seventeen and Eighteen, being and intended to be all the lands in said Block within the eastern boundary of the East Newark tract.

IN block number eighty-three, Lots numbers one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, being and intended to be all the lands in said block within the eastern boundary of the East Newark tract.

SECOND TRACT:—ALL that tract or parcel of land and premises, situate, lying and being in the

Exhibit D. 2.

Town of Harrison, in the County of Hudson and State of New Jersey, and being all that tract, parcel or plot of land known and designated as Plot 85 on a map entitled "Map of lots in East Newark for Hiram Gilbert, Clark & Bacot, City Surveyors, July, 1852, and duly filed in the office of the Clerk of Hudson County, now Register, January 19th, 1853. Said plot number 85 is the easterly boundary of the East Newark tract, bounded on the west by Fourth Street, on the North by Cape May or Henry Young Street, together with all the land lying between the High Water mark of the Passaic River and the exterior line fixed by the Riparian Commissioners, lying in front of said plot to the extent of the Grant heretofore made by the Riparian Commissioners to the Executors of and Trustees under the last Will and Testament of Henry Young, deceased. By these presents or indenture, it being the intention to convey with the upland, all lands belonging to the party of the first part, and also all Riparian rights to lands and land covered with water in front of said plot, to the exterior wharf line, adopted by the Riparian Commissioners, February 17th, 1883, as granted by said Riparian Commissioners by deed dated November 17th, 1883, and recorded in Liber 384 of deeds for Hudson County on page 696 with other property.

EXHIBIT D. 3.

JOHN R. GRIMM (unmarried)

to

HUDSON RAILROAD & TRANSPORTATION COMPANY.

Deed Book 977, page 217.
Dated February 4, 1907.
Ack'd Feby 4, 1907.
Rec'd Feby 4, 1907.
Cons., $1, etc.

* * * * * *

* * convey and confirm unto the said party of the second part, and to its successors, heirs and assigns forever, ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Town of Harrison, in the County of Hudson and State of New Jersey.

BEGINNING at the Southeasterly corner of South Fourth Street and Burlington Street running thence Easterly along the Southerly line of Burlington Street five hundred (500) feet more or less to the Southwest corner of Burlington Street and South Fifth Street; thence southerly along the Westerly line of South Fifth Street one hundred (100) feet to the center line of the block; thence westerly along the center line of the block five hundred (500) feet more or less to the Easterly line of South Fourth Street; thence Northerly along the same one hundred (100) feet to the point or place of BEGINNING.

BEING the Northerly half of Block number sixty five (65) as laid down on a map of property at East Newark, made for Hiram Gilbert.

EXHIBIT D. 4.

GEORGE F. BLAKE AND ANNIE E. BLAKE, his wife,

to

HUDSON RAILROAD & TRANSPORTATION COMPANY.

Deed Book, 1050, page 460.
Dated Jan'y 15, 1910.
Ack'd Jan'y 17, 1910.
Rec'd Feb'y 2, 1910.
Cons., $100 00/100.

* * * * * *

* * remise, release and forever quit-claim unto the said party of the second, and to its successors and assigns, forever, ALL THAT piece or parcel of land, situate, lying and being in the Town of Harrison, in the County of Hudson and State of New Jersey, shown on a Map entitled "Map of lots at East Newark, for Hiram Gilbert, Clark & Bacot, surveyors, July 1852, and filed in the office of the Clerk (now Register) of Hudson County, January 19th, 1853, as follows:

ALL that part of Cumberland street lying between the Easterly side of Fourth street and the Easterly boundary of the East Newark tract and blocks eighty (80) and eighty-three (83) as laid down on said Map.

BEING same premises conveyed to said George L. Blake, by deed dated April 14th, 1897, by the executors of Henry Young, deceased, and recorded in Liber 673 of Deeds for Hudson County, page 34, &c.

IT IS the intention of the parties of the first part to convey all right, title and interest, if any, in and to Cumberland street.

EXHIBIT D. 5.

FIDELITY TRUST COMPANY

to

HUDSON RAILROAD & TRANSPORTATION COMPANY.

Deed Book, 1111, page 245.
Dated Jan'y 30, 1912.
Ack'd Jan'y 30, 1912.
Rec'd Feb'y 6, 1912.
Cons., $1, etc.

* * * * * *

* * convey and confirm unto the said party of the second part, and to its successors and assigns, forever,

ALL that certain tract or parcel of land and premises, hereafter particularly described, situate, lying and being in the Town of Harrison, in the County of Hudson and State of New Jersey, bounded and described as follows, viz.:

BOUNDED on the *South* by the Southerly line of Salem street; on the *West* by the Easterly line of Fourth street; on the *East* by a line drawn parallel with Fourth street and distant one hundred feet Easterly from the Easterly line thereof; and on the *North* by the Southerly line of a tract of land conveyed by Fidelity Trust Company to The United New Jersey Railroad and Canal Company, by deed dated January 3rd, 1912.

EXCEPTING from the above described land and premises so much thereof as is already owned by the party hereto of the second part, to wit: a parcel at the Southeast corner of Burlington and Fourth streets having a frontage of one hundred feet on each of said

Exhibit D. 6.

streets with interior lines parallel to each of said streets of one hundred feet each, be said distances more or less.

EXHIBIT D. 6.

William H. Draper departed this life on April 26th, 1901.

He left him surviving as his heirs at law and next of kin, the following named persons, to wit:

Ruth Dana Draper, his widow.
William K. Draper, a son.
Martha L. Draper, a daughter.
Charles Dana Draper, a son.
George Draper, a son.
Dorothea Draper, a daughter.
Alice Olin Draper, a daughter.
Ruth Draper, a daughter.
Paul Draper, a son.

He left a Will dated March 19, 1898, which was duly executed and proven before the Surrogate of New York County on June 5th, 1901, and an exemplified copy of said Will together with the proofs of probate was filed in the Office of the Surrogate of the County of Hudson on June 23rd, 1911, and is recorded in Liber 80 of Wills, pages 553, &c.

WILL.

I direct that all my just debts and funeral expenses be paid as soon as possible after my decease.

I give, devise and bequeath all my property, both real and personal of whatsoever nature, and wheresoever situated to my wife, Ruth Dana Draper, her heirs, executors and administrators forever.

I appoint my wife, Ruth Dana Draper, sole Execu-

Exhibit D. 6.

trix of this my Last Will, and direct that no bond be required of her as such Executrix wherever she may qualify.

In witness whereof I have hereunto set my hand, this nineteenth day of March, one thousand eight hundred and ninety-eight.

WILLIAM H. DRAPER (SEAL)

Witnesses:

ALLEN W. JOHNSON
EDWIN O. HOLTER
CHARLES P. HOWLAND

Ruth Dana Draper, the Executrix named in the above will, qualified, and Letters Testamentary were granted to her by the Surrogate of New York County on June 5, 1901.

DEFENDANT'S EXHIBIT A.

HENRY L. YOUNG
JAMES H. YOUNG
and
MASON YOUNG, Exr's of and Trustees under last Will and Testament of Henry Young, dec'd,
to
GEORGE L. BLAKE.

Deed dated April 14, 1897.
Liber 673, page 34.
Cons., $1.00, &c.
Recorded May 7, 1897.
Ack'd

Grant, release and quit-claim unto the said party of the second part and to his heirs and assigns forever:

All the estate, right, title and interest of the parties of the first part and of said testator in and to that certain land in the Town of Harrison (formerly called East Newark) County of Hudson and State of New Jersey and shown on a map entitled "Map of lands in East Newark for Hiram Gilbert, Clark & Bacot, City Surveyors, July, 1852, filed in the Office of the Clerk of Hudson County, January 19, 1853, as follows:

All that part of Cumberland street lying between the easterly side of Fourth street and the eastern boundary of the East Newark Tract and Blocks Eighty (80) and Eighty Three (83) as laid down on said map.

EXHIBIT B.

Deed, Harrison Land Co., to Manor Real Estate & Trust Company, Liber 980, page 41 (omitted from printed State of Case).

EXHIBIT C.

Record and Briefs of Case in New Jersey Supreme Court.

MASON YOUNG, *et al.*, surviving executors, etc.,
Plaintiffs,
vs.
PENNSYLVANIA RAILROAD COMPANY,
Defendant.
} *In Tort.*

This Exhibit was a paper book of two hundred and ten pages in length, and was an action brought to recover damages for the obstruction, by the defendant, of certain streets in the Town of Harrison, known as New Jersey avenue (or New Jersey Railroad avenue), Seventh street, Sixth street, Fifth street, Middlesex street, and Somerset street.

The obstruction complained of are caused by the elevation of the tracks of the railroad company, in pursuance of an agreement of the defendant with the Town of Harrison, dated April 15, 1901, under the authority of the various acts of the Legislature set forth in the contract (p. 14), on what is known as its "Market Street Branch" (now part of its main line), that is, on that part of its line commencing from the junction at or near Seventh street with the "Centre

Street Branch" (formerly the main line) and extending to the Passaic river. The "Market Street Branch" from said junction runs on a curve in a southwesterly direction to the river, crossing Seventh, Sixth and Fifth streets (which run north and south), and Middlesex and Somerset streets (which run east and west). As is indicated on the maps, this "Market Street Branch" occupies the center of an avenue one hundred and sixteen (116) feet in width, called New Jersey avenue or New Jersey Railroad avenue, or Pennsylvania Railroad avenue; and the railroad's right of way is sixty-six feet wide and on either side there is a street or way for the public of twenty-five feet."

NOTE:—This case was settled by the plaintiff, Mason Young, *et als.,* and the Pennsylvania Railroad for Twenty-two Thousand Dollars ($22,000). See testimony of Edward A. Day, printed case, page .

Cases No. 1 & No. 2.

Opinion of the Vice-Chancellor.

Filed August 5, 1914.

IN CHANCERY OF NEW JERSEY.

Between THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, *et al*, *Complainants*, *and* THE CRUCIBLE STEEL COMPANY, *et als*, *Defendants*	*On Bill and Cross Bill.*

Heard on bill, amended bill, answers and cross bill, and replication and proofs.

Mr. James B. Vredenburgh for complainants. (Vredenburgh, Wall & Carey, solicitors.)

Mr. Edward A. Day for defendant Harrison Land Co. (Edward A. & Wm. T. Day, solicitors.)

Mr. George H. Peirce for defendant Crucible Steel Co: (Peirce & Hoover, solicitors.)

Mr. J. Henry Harrison for defendants Booth & Flinn Co., Ltd.

(OPINION.)

On May 17, 1901, four owners of land in the Town of Harrison (formerly called East Newark) entered into a written agreement for the purpose of dedicating as a road a strip of land 60 feet in width, running across their respective lands. The location of their lands and of this strip to be dedicated was, by reci-

tals and covenants in the agreement, fixed with reference to one of the boundary lines (the most westerly) between two tracts then lying within the town, and called the Gilbert and Preston tracts, and by reference to two maps of these respective tracts, previously filed in county offices—the map of lots in the Gilbert tract filed July 15, 1852, in Hudson County, and of the Preston tract filed July 14, 1837, in Bergen County. The Gilbert tract is a very extensive one, located east and north of the bend of the Passaic River opposite Newark and extends into the Town of Harrison north and east, over seven streets running north and south (numbered on the Gilbert map First street to Seventh street), and thirteen streets (or portions thereof) running east and west, and the Gilbert tract comprises over 80 blocks laid off in lots. Fourth street on this map runs from the Passaic River north for thirteen blocks through the tract and was at the time of the agreement, and is now, the avenue of travel connecting Newark, by means of the Jackson Street bridge, with the southern and central parts of Harrison. The strip dedicated was described in the agreement as "a strip of land 60 feet in width, an "extension of Cumberland street easterly across the "said lands of the parties hereto, the strip of land so "dedicated beginning east of Fourth street, at the "end of Cumberland street as laid out on the Gilbert "map, and in the aforesaid dividing line between the "Preston tract and the Gilbert tract, and running "thence easterly between the northerly and southerly "lines of Cumberland street produced across lands of "the parties hereto, to the middle of the ditch which "forms the easterly boundary of the said land of the "party of the fourth part (Draper). Cumberland "street, of which the land above described is an ex- "tension, is shown on the map of the Gilbert tract "referred to, and on the official map of the Town of "Harrison, made by Young & Bowie, Surveyors. It

"is sixty feet in width and crosses Fourth street at "right angles extending easterly to the said boundary "line of the Gilbert and Preston tract; the northeast "corner of Fourth and Cumberland street is 2020 "southerly from New Jersey Railroad avenue. The "distance from Fourth street along the northerly line "of Cumberland street to the boundary line of the "Preston tract is shown differently on different maps."

On the Gilbert map Cumberland street extended east of the Gilbert tract to Seventh street, and partly over the lands not owned by Gilbert, but which were included in the map of the Preston tract previously filed. On this Preston map also the streets as laid out extended west over the Gilbert tract lands, and each of these two maps showed a connected system of streets over the two adjoining tracts, running north and south as well as east and west. Whether these streets, apparently connecting on both the maps, could be located in fact as continuing connected streets, does not appear, but the location of a connecting system of streets on both maps may be important.

On the Town of Harrison map referred to in the agreement Cumberland street extended east of Fourth street, but only to the boundary line of the Gilbert and Preston tracts; and the town official maps made later seem to have substantially adopted the line of the streets as laid down on the Gilbert map. The extensions of the streets from the Gilbert tract over the Preston tract do not appear on the town maps of 1901, and no doubt for the reason that all the streets as laid out on this Preston map were vacated after the Gilbert map was filed and before the agreement of 1901. On August 14, 1888, an ordinance was passed vacating Cumberland street between Fifth and Sixth streets, a portion of this street which was included in the Preston map, and on October 1, 1895, an omnibus vacating ordinance was passed, by which

"all the streets as laid out on the Preston map" were vacated. This latter ordinance had the effect of vacating Cumberland street east of Fourth street from the boundary line between the Gilbert and Preston tracts to Fifth street and from Sixth street eastward, so that the official map of the town referred to in the agreement for designating Cumberland street, which seems to have been made after these vacations of these portions of Cumberland street east of Fourth street, shows Cumberland street running east from Fourth and terminating at the boundary line.

At the time of the agreement and by its terms, Cumberland street was accepted by the parties thereto as then terminating at the boundary line of the Gilbert and Preston tracts.

Starting from the boundary line, the lands of the complainant, the party of the first part to the agreement, came first and extended both north and south of Cumberland street extended, a distance of about 1,200 feet from the boundary line, to near Seventh street, where Cumberland street or its extension reached the lands of the Young executors, party of the third part, and running across them reached the Draper estate, party of the fourth part, which it crossed for a distance of about 700 feet. The Crucible Steel Company, party of the second part, were the owners of land included in the Gilbert tract, including a part thereof which, according to the Gilbert map, and in fact, extended across a detached portion of Cumberland street, which portion as laid out on this map, began about 600 feet east of the boundary line and ran between Fifth and Sixth streets. This land of the Crucible Steel Company abutting on the detached portion of Cumberland street, on the Gilbert map, as well as on Cumberland street as extended by the agreement, is a projection across the street into the lands of the complainants, which were then both east and west of it.

The object and purpose of the parties in making this agreement further appears by the recitals in the paper itself and by its covenants and releases. The agreement first recited that there were no public streets or highways on the several tracts owned by the parties, and that the Crucible Steel Company and the executors of Henry Young (the predecessors in title of the defendant Harrison Land Co.) and Ruth Dana Draper, devisee of William H. Draper, claimed rights of way over property of the complainant embraced in the Preston tract; and then secondly recited that "it is for the interest of all the parties hereto that "some recognized way to and through such property "be established, and that all claim of parties herein "to private rights of way over such properties or any "of them, be extinguished." Then "in consideration "of the premises, and of the sum of one dollar by each "to each paid, the parties do hereby covenant and "agree each with the others and with each of them, "that a strip of land sixty feet in width, an exten- "sion of Cumberland street easterly across the lands "of the parties hereto, be and the same is hereby ap- "propriated as a road, the strip of land so dedicated "beginning east of Fourth street at the end of Cum- "berland street as laid out on the Gilbert map and in "the aforesaid dividing line between the Preston "tract and the Gilbert tract, and running thence east- "erly" &c., as above recited.

After this covenant and agreement of dedication, the parties of the second, third and fourth parts, "for "the consideration aforesaid, further released and "surrendered to the party of the first part all rights "of way over the Preston tract or any part of it aris- "ing from any source whatever, which they had or "claimed to have."

At the time of the execution of the agreement Cumberland street east of Fourth street was not graded or fit for use for vehicular traffic, nor does it appear

that it had ever been so used previously, and from a point about 400 feet east of Fourth street, the land was low meadow or marshy land lying some feet below the upland, and required filling. The complainant, the United New Jersey Railroad Company, then owned a large tract lying on both sides of the proposed extension east of the boundary line extending from beyond Middlesex street on the north to the river, and east as far as Seventh street. This tract had been purchased in connection with the development of the railroad and transportation business by itself or its lessees, the Pennsylvania Railroad Company, and the portion lying south of Cumberland street extended was specially intended for the purpose of freight yards, and access to this tract and over Cumberland street from Fourth street is essential to the development and use of this land for their purposes. Young's executors (now the Harrison Land Co.) owned from the complainant's line between Sixth and Seventh streets, east to the Draper line, also a large tract of meadow land. Upon the execution of the agreement, and by reason of the releases therein contained, there was no access by any streets, highways or way to the lands of the Young estate, except by the dedicated road. These lands also require filling for development or use, and for this purpose access from Fourth street by Cumberland street is necessary.

The defendant, the Crucible Steel Company, as above stated, then owned land formerly part of the Gilbert tract, a small portion of which, between Fifth and Sixth street on the map, was within the lines of the proposed extension of Cumberland street, and their execution of the agreement was therefore necessary for the purpose of dedicating the proposed road. As to the filling and grading of the extension, the agreement provides, "It is further agreed that any of "the parties hereto may at any time, but without ex-

"pense to the others, or to any of them, fill in and "grade the said road or any part of it, and this agree- "ment shall bind the successors, heirs, executors and "assigns of the respective parties."

It is objected that the agreement of dedication and release made by the executors of Young does not appear to be within their powers, under the will, and that as to the Harrison Land Company, their grantees, the agreement is not effective, but there is no substance in this objection for the reason that at the time of the agreement the executors of Young held the absolute fee simple to their portion of the lands in question, by purchase under foreclosure of a mortgage given to their testator. The proceeds of sale of the lands and their control and disposition of the lands might be subject to question by any of the beneficiaries, but they held the legal title in fee simple, and the executors as well as the beneficiaries subsequently united in a deed dated May 20, 1904, conveying the lands to the Harrison Land Company, who as the grantees and assigns of the Young executors are entitled to the benefit of the agreement. At the time of the execution of the agreement of 1901, none of the parties thereto owned any of the land abutting on Cumberland street from Fourth street east to the boundary line. Subsequent to the agreement and by deed of February 4, 1907, the defendant Hudson Railroad and Transportation Company acquired title from John R. Grimm to the lots in Block 80 on the north side of Cumberland street, and also in Block 83 on the south. This deed conveyed the lots by express reference to the Gilbert map, but described only by block and lot numbers and did not expressly refer to streets. By another deed, dated January 15, 1910, George L. Blake and wife conveyed to the Hudson Railroad and Transportation Company "that part of "Cumberland street lying between the easterly side of "Fourth street and the easterly boundary of the East

"Newark (the Gilbert) tract and blocks 80 and 83 "on the Gilbert map," and it was declared to be the intention of the parties to convey all right, title and interest, if any, in and to Cumberland street.

The Crucible Steel Company is engaged in the manufacture of steel on an extensive scale in Harrison, its works and grounds occupying a large part of the land between Fifth and Sixth streets on the Gilbert Map, and from Cumberland street for six or seven blocks to the north. The Hudson Railroad and Transportation Co. was incorporated for the purpose of accommodating its business and for use in connection therewith, and it has no other business. It is claimed that the Crucible Steel Company controls this railroad company and is responsible for its acts, alleged to be in violation of the agreement.

The Crucible Steel Co. desiring, for the purposes of the extension of its works, to vacate streets abutting on its property on Fourth, Fifth and Sixth streets, including Cumberland street, applied to the Common Council for the vacation of these streets, offering to give $8,000 therefor, upon receiving a quit-claim deed on all the property named. Thereupon the Common Council gave notice of intention to vacate Cumberland street east of Fourth street 236 72/100 feet measured along the centre line (the easterly boundary—according to the city map), subject, however, to the agreement of 1901. Application to enjoin such action of the Council was made by the Harrison Land Co., but this was denied (82 N. J. Eq., 12 Buch., 414), but, so far as appears, no further proceedings for vacation have been taken and the status of Cumberland street east of Fourth street to the boundary line, if it has been accepted as a public street, has not been legally changed.

The complainants and the Harrison Land Company desiring now to fill up and improve their lands, have given licenses to do so to Booth & Flinn Co., Limited,

a contracting company engaged in sewer construction, which is prepared and intends to use the lands for filling purposes in connection with their own work. For this use, access to the lands of the Railroad Company and of the Land Company over Cumberland street from Fourth street is necessary for both these parties. To the Land Company such access has been necessary since the agreement releasing its rights of way, and although at the time of the agreement the railroad company might by devious and inconvenient ways, have had such access over its own lands included in the Preston tract, the necessary development of these lands since the agreement in the operation of its railroad has so far appropriated these to the purposes of transportation that there now remains to it no access except by Cumberland street. Access to the dedicated strip of road, the extension of Cumberland street, has been obstructed by a barrier erected not on the extension but across Cumberland street where it crosses Fourth street and on the easterly line of Fourth street. This barrier is a very formidable character and cuts off access to the entire width of Cumberland street. It was erected by the Crucible Steel Company, and upon the lands to which the Hudson Transportation Company has the record legal title. As between the two companies, the expense of the erection was subsequently charged to the Hudson Company. The manager of the Crucible Steel Company plant is a director of the Hudson Transportation Co. and personally has control of the property of the latter company and was connected with placing the obstruction by the Crucible Steel Co., and on behalf of the Steel Co. applied for the vacation of Cumberland street. The stock of the transportation Company does not appear to be actually owned by the Steel Co., but all the officers of the Transportation Co. are also officers of the Steel Co., and it has its office at Pittsburgh in the office of the

Steel Co. The object of the bill of the complainants and cross bill of the Land Company is to establish their right of access to their land over Cumberland street from Fourth street and to compel the removal of the obstruction. The Land Company relies on the agreement and the actions of the parties under it, as the basis for its right to reach Fourth street through Cumberland street, but the complainants further rely on estoppels claimed to arise in their favor by subsequent deeds made by them to the Crucible Steel Co. After the conveyance to the Hudson Railroad and Transportation Co. in 1907 of the blocks north and south of Cumberland street, as shown on the Gilbert map, and in 1910 of the land within the lines of Cumberland street, as shown on this map, the complainants conveyed to the defendant, Crucible Steel Co., two tracts adjoining each other, both located on the north side of the extension of Cumberland street. The first tract was conveyed by deed of June 22, 1910, in which the lot was described as "beginning at a point at the intersection of the extended easterly line of Fifth street (sixty feet wide) with the northerly line of Cumberland street (sixty feet wide) as the said Cumberland street is extended by agreement dated May 17, 1901, recorded," &c. The third course of this description runs "to a point in "the northerly line of Cumberland street extended as "aforesaid; thence along the said northerly line of "said street extended, and by other land of the said "United N. J. R. & Co. Company north 82° 24′ west "299.29 feet to the place of beginning." The second tract adjoined the first tract on the west and was conveyed by deed dated November 13, 1911. The description of this tract referred to the beginning point as being on the easterly line of the Gilbert tract on the Gilbert map of July 15, 1852, filed in Hudson Co., and as "being on the north line of Cumberland street "as laid out on said map and mentioned in the agree-

"ment between the parties to the deed and others, "dated May 17, 1901, recorded, &c., and said point "being at the distance of 245.03 feet measured east- "wardly along the northerly line of the said Cumber- "land street from its intersection with the easterly "line of Fourth street." The third course of this description ran to the westerly line of land conveyed to The Crucible Steel Company by deed of June 22, 1910, and the fourth, along this land "to a point in the "northerly line of a strip of land 60 feet wide dedi- "cated and appropriated as a road by the above re- "cited agreement dated May 17, 1901, and thence west- "wardly along the said northerly line north 82° 24′ "west 314.97 feet to the place of beginning."

These two deeds taken together conveyed to the Crucible Steel Company all of the lands of the complainants lying north of the strip dedicated as a road and left in the complainants as affected by the agreement the lands lying south of the strip dedicated and being the lands which complainants have licensed the Contracting Co. to fill, and access to which over Cumberland street east of Fourth street has been cut off by the defendant, the Crucible Steel Company.

The Harrison Land Company as a party to the agreement of May, 1901, was, by an amendment, made defendant to the bill. By its answer it admits substantially the complainants' rights as alleged in their bill, and by cross bill prays for the relief of removing the obstructions to Cumberland street placed there by the other defendants, the Crucible Steel Company and The Hudson Company, which it is alleged to own and control. These defendants in their answer to the bill and cross bill deny generally that complainants or the Harrison Land Company by reason of the agreement have access from Fourth street over Cumberland street, and also that Cumberland street east of Fourth is a public street or has ever been accepted as such, and they also insist that the remedy, if any, is at law.

Opinion.

EMERY, *V. C.*

(After statement.) The substantial question of law to be decided is the right of the complainants and of the defendant Land Company as against the defendant Crucible Company, under the agreement of 1901, to access over that portion of Cumberland street east of Fourth street as laid down on the Gilbert map, to the "strip of land sixty feet in width, an extension of Cumberland street," dedicated as a road across their respective lands. An objection was made in the answer of the Steel Company and the Hudson R. & Tr. Co. and repeated at the hearing, to the jurisdiction of this court to determine this disputed right, as being purely a legal right to be settled at law, and for the violation of which the remedy was legal and not equitable. The equitable jurisdiction to enforce by injunction the private rights of way arising to grantees from dedications of streets or roads is settled. *Lennig* vs. *Ocean City Assoc.*, 41 N. J. Eq., 14 Stew., 606 (Err. & App., 1886); *Herold* vs. *Columbia Investment & Real Estate Co.*, 72 N. J. Eq. (2 Buch.), 857, 861 (Err. & App., 1907). Injunctions were granted in these cases on covenants for rights of passage in the streets, implied by reason of conveyances referring to the streets designated on the map. A right arising from a dedication of a street or road by express covenant, is entitled to a similar equitable protection. And there is here an additional ground for equitable jurisdiction. So far as relates to the dedicated strip of 60 feet, the covenant and agreement "hereby dedicating" it as a road may be considered as an actual grant of an easement over the lands then owned by the respective parties, and not merely a covenant, if such construction is necessary to carry out the intention of the parties. *Goddard on Easements,* Bennett's Edition, 108. *Trustees* vs. *Lynch,* 70 N. Y., 440,448. *Brewer* vs. *Marshall,* 18 N. J. Eq., 337, 345; *S. C.* on appeal, 19 N. J. Eq., 537, approving opinion of Chan-

cellor on this point, p. 542. 10 A. & E. Ency. (2nd Ed.), 413. But so far as relates to any rights on Cumberland street itself from Fourth street for access to the extension, these rights cannot be in the nature of actual grants of easements over Cumberland street, because neither the Steel Company nor any other of the parties owned lands abutting on that portion of Cumberland street upon which the easement could be actually imposed by grant. Any rights over that portion of Cumberland street for access to the extension must therefore, as between the parties to the agreement, arise as matters purely of contract or estoppel under contract, and not of estate granted, and specific performance by injunction of such contract rights, if any, is the only adequate remedy. The obstruction of Cumberland street east of Fourth so plainly destroys or affects the existence or value of the road dedicated over the extension, that if such obstruction is a violation of contract rights arising under the agreement, equitable relief by injunction is the appropriate remedy.

As to this portion of Cumberland street itself, the agreement by its recitals and covenants shows that the parties to the agreement intended that this portion should be considered as a way given by a public street for access to the dedicated strip. The first recital refers to the non-existence of public streets or highways on their several tracts, and the claim by all of the other parties of rights of way over the complainants' lands embraced in the Preston tract. These private rights of way were claimed as arising partly by reason of the dedications of streets on the Preston tract, by the maps and otherwise, and as existing after the vacation of these streets. As appears by the record in the suit brought by the Young Estate against the Pennsylvania R. R. Co., these claims of right of way relate to several streets laid out in the Preston tract other than Cumberland street. The second re-

cital was most important as declaring the scope and purpose of the whole agreement, and, in my judgment, reached to the very point now in question. This recited that it was for the interest of all parties "that some recognized way to and through such properties be established, and that all claims of the parties to private ways over such properties, or any of them, be extinguished." As to the purpose and scope of the dedication, this recital shows an intention to establish "some recognized way to" as well as through their properties, and, in view of the actual releases of private ways subsequently made in the agreement itself, carrying out that purpose of the recital, the other declared purpose, viz., the establishment of a recognized way, must be considered either as a contract of the parties, that as between them a recognized way to the properties was established by the agreement, or as an estoppel against thereafter denying that the way to the properties established by the agreement was as between them a recognized way. If the recital has the effect of such estoppel arising out of the contract, the continued existence of the recognized way to the properties arising from estoppel may be protected, although none of the parties against whom the estoppel arises, at the time of the agreement owned the lands to which the estoppel applies. In *Ocean City Hotel, &c., Co.* vs. *Sooy*, 77 N. J. L., 527; 73 Atl., 236 (Err. & App., 1909), a conveyance delineating a street and referring to it as a boundary, while inoperative as a dedication because the grantor did not own the street, was operative between the parties as an estoppel to deny the existence of the street.

The covenant of dedication following this recital not only did not limit or restrict this declaration of its purpose, but confirmed and, I think, adopted it, and by the following provisions: First. The dedication was expressed to be "in consideration of the premises," thereby including and reaffirming the gen-

eral purpose of the previous recital, as establishing a way to the properties. Second. The express and formal dedication itself in the agreement is, "A strip of land 60 feet in width an extension of Cumberland street across the lands of the parties, be and the same is hereby dedicated and appropriated as a road."

There is in the dedication itself no further express indication of its purpose, but the purposes declared in the recital in consideration of which the dedication was made, must be considered as operative, and as defining between the parties a special purpose of the dedication, viz., to establish a recognized way to the premises, and the dedication itself "as an extension of Cumberland street" was an express reference to a recognized way, and the only recognized way, which led to the premises through which the dedicated strip ran.

I consider that by the dedicating clause, read in connection, as it must be, with the recital, which was the declaration of its purpose, the dedication as made should be taken, so far as the parties are concerned, as if made in this form, viz.: "A strip of land 60 feet in width an extension of Cumberland street easterly across the said lands of the parties hereto, be and the same is hereby dedicated and appropriated as a road (to the end) that some recognized way to and through such properties may be established." The form or place in this agreement in which its purpose appears is immaterial, and where the purpose, as here, plainly appears by recital, the terms of the dedication, whether it be considered a grant of an easement over the lands they owned or as a contract, must be construed as affected by it. The references in the agreement to Cumberland street in the description of the strip following the dedication, further confirm this construction of the declaration, and show that for the purposes of the agreement and as between the parties, Cumberland street east of Fourth to the boundary

line of the Gilbert and Preston tracts is to be the recognized way to the properties. The strip dedicated begins east of Fourth street at the end of Cumberland street as laid out on the Gilbert map; thence it runs "easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties." Then as specially indicating the status of Cumberland street and fixing its lines east of Fourth street for the purposes of the agreement, it is said that "Cumberland street of which the land above described (the 60 foot strip) is an extension, is shown on the Gilbert map and the official Town of Harrison map" * * * It is 60 feet in width and crosses Fourth street at right angles "extending easterly to the boundary line of the Gilbert and Preston tracts." The definite location of Fourth and Cumberland streets, for the purposes of this agreement, is fixed by reference to the distance of their northeast corner 2,020 feet from a fixed monument, New Jersey Railroad avenue, on the north. These descriptions and locations show that the parties for the purpose of establishing some recognized way to and through their lands adopted a single recognized way. The recognition of this portion of Cumberland street in fixed location and lines as an existing public street as far as the boundary, and the explicit extension of the street by dedication over their lands, established for every one of the parties this "single recognized way to and through" their properties, which it was their object to establish. And it is only by such recognition of Cumberland street as a way in connection with the dedication that such way could be established by the dedication. At the time of the execution of the agreement, Cumberland street east of Fourth as laid down on either of these maps, was not graded, nor could it, in its then condition, be used at all for vehicular travel. But the right of way over this portion of Cumberland street, if it exist by

estoppel or otherwise, under the agreement, must, as it now seems to me, for the purposes of its exercise and enjoyment and so far as these parties are concerned, be considered as if it stood on the legal basis of easement granted on their own lands in the dedicated strip. On this strip the agreement expressly provided for filling and grading, but this did not extend to Cumberland street. As to the way established by the agreement over this portion of this street, the right to grade it, if necessary for the use of the lands of the parties through which the road was dedicated, the right to enter, repair and grade, as between the parties, must be the ordinary and recognized right of a dominant owner. He must keep the way in repair at his own expense and may enter on the servient tenement for that purpose. *Gifford on Easements* (Bennett's Edition) p. 346. Whether this portion of the street has been accepted by the town as a public street admits of question. The town official map affords some evidence of acceptance, *Vreeland* vs. *Torrey*, 34 N. J. Eq., 7 Stew., 312, 313 (Ch. Runyon, 1881); but in view of the Act of 1888 (P. L. 178, 4 Comp. St., 4604), authorizing the vacation of dedicated streets whether accepted or not, the subsequent vacation or proceedings to vacate this part of Cumberland street do not of themselves imply acceptance. No other acts of the town are shown as bearing on the question of acceptance of this portion as a public street, and apparently the town authorities, by allowing the continuance of the barrier, are acting as if this part of the street were not public. And certainly the defendants who have obstructed the way established by the agreement, can, as against the parties, have no right to continue them, merely on the ground that in doing so they also obstruct the public street which was the way established.

This agreement, in my judgment, estops all the parties dedicating the road over their lands as an

extension of Cumberland street with the intention of establishing a recognized way to their lands from Fourth street, from denying that Cumberland street east of Fourth street to the boundary line of the tracts and for the whole width thereof is a way to the properties over which the strip was dedicated as an extension.

Should this construction of the agreement, giving rights of way by estoppel over Cumberland street exist to the boundary, not be correct, and should it be considered that the agreement of dedication gave rights only over the dedicated strip, it would still seem that the complainants and the Land Company are not barred from equitable relief. For it is actionable and a misfeasance for the grantor of an easement to subsequent wilfully annul or avoid his own grant by obstructing its use. *Goddard on Easements*, (Bennett's Ed.) 443. The obstruction in this case practically destroys and annuls the dedication of the strip itself. And for obstructions of a way made by others, but with the knowledge and assent of the servient owner, the dominant owner has a remedy against the servient owner. *Ibid* citing *Dennis* vs. *Sipperly*, 17 Hun., 69.

The complainants, in my judgment, have additional rights by estoppel against the Steel Company, by reason of the subsequent deeds to that company. These deeds (two in number) together conveyed all of the complainants' lands over which the 60 foot strip was dedicated, lying between the easterly boundary of the Gilbert and Preston tracts, and the Steel Company's own lands lying within the dedicated road, and abutting about 1,200 feet on the northerly side of the extension. These lands of the Steel Company were part of the Gilbert tract, and on that map appeared as included in a portion of Cumberland street detached from the other portions of that street. But although thus detached, the grantees of this detached

portion and of the lands abutting thereon on the north, were as grantees of the Gilbert tract, at the time of the agreement, entitled to the benefit of Cumberland street as laid out on the Gilbert map, including especially the portion thereof east of Fourth, and to their easement over this portion by reason of this dedication by this map. By the two conveyances to the Steel Company, it became the owner of the lands connecting the detached portions of Cumberland street as dedicated on the map, and thus, as owner of the lands in the dedicated strip and which were covered by Cumberland street on the Gilbert map, became entitled, under the Gilbert title and the agreement of 1901, to private rights of passage from its lands to Fourth street, and it has these rights of passage to Fourth street superior to the Hudson Transportation Company's title, which was subject to all the dedications by the Gilbert map. By these deeds this valuable private right of continuous passage from its lands abutting on the extension of Cumberland street to Fourth street became fixed, and this circumstance is entitled to weight in considering the effect of these subsequent deeds. The first deed dated June 22, 1910, conveying about 300 feet on the northerly line of the extension, was described as beginning at a point in the "northerly line of Cumberland street (sixty feet wide) as the said Cumberland street is extended by the agreement of May 17, 1901"; the third course runs "to a point in the northerly line of Cumberland street extended as aforesaid; thence along the said northerly line of said street extended to the beginning." The second tract, conveyed November 13, 1911, is described as beginning at a point "in the north line of Cumberland street as laid out on said (Gilbert) map and mentioned in the agreement of May 17, 1901," which point was 245.03 feet measured eastwardly along the northerly line of the said Cumberland street from its intersection with the easterly line of Fourth street.

These deeds plainly proceed on the basis that, as between the parties thereto, and for the purposes thereof, Cumberland street is a continuous street from Fourth street to the lands of the Steel Company included in the agreement of 1901. The grantors manifestly would be estopped from denying that the grantees had the right of way from the premises conveyed over this portion of Cumberland street, and the grantees by the acceptance of the deed with its express references to Cumberland street as a street from Fourth street and over the lands conveyed, affirmed the agreement of 1901, as intended to make of Cumberland street east from Fourth a public street to be extended. They are also in my judgment estopped from denying this effect of the deed and its acceptance, and that Cumberland street east of Fourth street is a public street.

In the absence of a direct covenant that Cumberland street east of Fourth was a public street and should be continued as such, the reference to it, in the agreement or in the deeds, by the recitals or description, as a public street, intended for the purposes of the agreement or deeds to be part of a perpetual continuous recognized way to their lands across which the strip was dedicated, such mutual covenant by implication cannot be held to have arisen between the parties, making each liable to the other for damages as on a covenant, either on the non-existence or the subsequent vacation of this portion of the street. These references by recitals or description should not be held to operate further than as estoppels arising under the agreement and deeds as to all the parties, and those claiming under them, to deny the existence of this portion as a street or way to the dedicated strip, or in any manner interfering to obstruct the other parties to the agreement in the use of it for the purposes of the agreement. This distinction between estoppel and implied covenant is taken by some courts, even where the lands as to which the estoppel is en-

forced belong to the grantor. 8 *A. & E. Ency.* (2nd Ed.) 63. *Howe* vs. *Alger,* 4 Allen, 206, 211 (Mass. 1862). And where the lands are not owned by the grantor or coventntor, the right to relieve must clearly, I think, be based on estoppel. This estoppel will in the present case prevent the Steel Company from doing or alleging anything contrary to the tenor and effect of the agreement and deeds in this respect, and from doing anything, either itself or through others over whose action in reference thereto it has control, to obstruct the enjoyment of the street or way for the purposes of the agreement and deeds.

The bill is filed to protect and enforce complainants' rights arising and claimed under the agreement and deeds, but at the hearing they also claimed a right to a removal of the obstruction, by mandatory injunction, upon the ground that it was the obstruction of a public way from which they suffered special loss or damage, and that although the common nuisance was indictable they were, by reason of this special damage, entitled to remedy by action, including relief by injunction. The New Jersey decisions relied on to support the claim are cases in the law courts in which such actions for special damages were sustained. In *Stevens* vs. *Paterson & Newark R. R. Co.,* 34 N. J. L. (5 Vroom) 532, 553 (Err. & App. 1870), the access of a riparian owner to a navigable river was obstructed by the construction of a railroad on the shore belonging to the state and without any authority from the state. In *Ryerson* vs. *Morris Canal & Banking Co.,* 69 N. J. L. 506 (Sup. Ct. 1903), the owner of three different farms located at considerable distances from each other, on the same highway, was held, on the facts stated in the declaration, to have sustained a special and peculiar damage in passing from one farm to the others, by the non-repair of a bridge on the highway, and to be entitled to an action for the non-repair if defendants were bound to repair. Mr. Justice Pitney, delivering the opinion of the Court,

says, page 506, that "in order to maintain the action plaintiff must have sustained some special damage peculiar to himself, beyond that suffered by the rest of the public entitled to use the way, and that it is sometimes said that the plaintiff's injury should be, not only greater in amount, but different in kind from that suffered by citizens in general." In decisions previous to this latter case, the right to injunction relief for removal of nuisances to highways was denied to complainants who were abutting owners and whose access to the highway was cut off, upon the ground that the right to the highway which complainant enjoyed was only a right as one of the public, and that his injury was not different in character from that which every other citizen sustained. *H. B. Anthony Shoe Co.* vs. *West Jersey R. R. Co.*, 57 N. J. Eq. (12 Dick.) 607, 617 (Err. & App. 1898) (Vansyckel, *J.*) and Garrison, *J.* (concurring) says (p. 619) that it is not seen how the public right can be drawn in question in a suit to which no one representing the public or even the municipality is a party. In *Young* vs. *Penna. R. R. Co.*, 72 N. J. L. (43 Vroom) 94 (Sup. Ct. 1905), this decision of the Appellate Court was held to establish the principle (suggested by Mr. Justice Pitney in the earlier Ryerson case, *supra*, as the ground of some decisions) that the injury must be different in character from that of the public, in order to be redressed by a private action for damages, and such right was denied to the plaintiff where a street dedicated by the defendant had been obstructed by them. In view of the later decisions both in the Court of Errors and Appeals and the Supreme Court, the relief by injunction against obstruction of a public street cannot be granted in this case for two reasons: First, because the proof that Cumberland street east of Fourth has been accepted by the municipality as a public street which it is obliged to repair for public passage is not sufficient. Where an owner has dedicated a street over his lands,

he is estopped from retracting his dedication, and the public right at any time to appropriate the street dedicated, when required, can only be released by the Legislature, or the municipality under its authority. *Hoboken Land and Improvement Co.,* 36 N. J. L. (7 Vroom) 540, 549 (Err. & App. 1873); *McAndrews &c. Co.* vs. *Camden,* 78 N. J. Eq. 244, 248 (Err. & App. 1910). But until there is an acceptance of the street by some municipal act, or by public usage, the public acquire no rights therein, and is subject to no duties by reason of the dedication. *Ibid* and *Atlantic & S. Rwy. Co.* vs. *State Board,* 80 N. J. L. 83, 77 Atl. 609 (Sup. Ct. 1910). No public usage of this portion of Cumberland street has been shown, nor was vehicular travel ever practicable since Fourth street was graded above it. Under these circumstances the adoption of this portion on the map for taxing or city purposes, does not seem such an acceptance as to impose on it the duty of repair for public travel. Proceedings to vacate under the Act of 1888 do not imply acceptance.

In the second place, I am inclined to concur in the view of Justices Garrison, Dixon and Collins in the *Anthony Shoe Co. case, supra,* 12 Dick. 619, that where public right is fairly drawn in question and is to be decided, the public or the municipality must be a party to the proceeding. On an indictment or information by the Attorney-General the public is the formal party asserting the right and the status of the street as a public street is settled finally against all parties. Whether if the Town of Harrison had been made party defendant to this bill as uniting in or allowing the obstruction of a public street, the obstruction of a public street if denied could be tried and relief by injunction granted, is not a matter for decision.

The case is decided solely on the rights of complainants and the Land Company to injunction under the agreements and deeds and the form of injunction will be settled.

Case No. 1.

Final Decree.

Filed December 6, 1915.

IN CHANCERY OF NEW JERSEY.

Between		
UNITED NEW JERSEY RAILROAD & CANAL COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY,	*Complainants,*	*On Bill, &c.* *Final Decree.*
and		
CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*,	*Defendants.*	

This matter coming on to be heard by the Court on the Bill of Complaint, amended bill, answers, cross-bills, answers to cross-bills and replications filed in the cause, and on the proofs taken before the Court, in the presence of Albert C. Wall, Esquire, of counsel for the complainants, George H. Peirce, Esquire, of counsel for the defendants, Crucible Steel Company of America and Hudson Railroad & Transportation Company, and J. Henry Harrison, Esquire, of counsel for the defendant, Booth & Flinn, Ltd., and Edward A. Day, Esquire, of counsel for the defendant, Harrison Land Company; and it appearing by the evidence in the cause that on May 17, 1901, the United New Jersey Railroad & Canal Company, one of the complainants, Crucible Steel Company of America, one of the defendants, and James H. Young, and Mason Young, surviving executors and trustees under

the last will and testament of Henry Young, deceased (whose successor in title is the defendant, Harrison Land Company) and Ruth Dana Draper, sole devisee and legatee of William H. Draper, deceased (to whose rights the complainants have succeeded) entered into an agreement with each other in and by which, among other things, they did dedicate a strip of land in the Town of Harrison, in the County of Hudson, in this State, 60 feet in width as an extension of Cumberland street easterly across the lands of the parties to the said agreement, or some of them, and did thereby dedicate and appropriate the same as a road in order that some recognized way to and through such properties might be established, to the end that all claims of the parties to private ways over the properties in question, or any of them, should be extinguished; and it appearing that the complainants and Harrison Land Company desiring to fill up and improve their lands, have given licenses so to do to the defendant, Booth & Flinn, Ltd., and for this purpose access to their several properties over and the use of Cumberland street from its junction with the easterly side of Fourth street are necessary; and it further appearing that access to the dedicated strip of road, the extension of Cumberland street, has been obstructed by a very formidable barrier consisting of great beams of steel imbedded in cement, which were erected by the defendants, Crucible Steel Company of America and the Hudson Railroad & Transportation Company, on and across Cumberland street where it crosses Fourth street, and on the easterly line of Fourth street on lands to which the Hudson Railroad & Transportation Company has the record legal title, but which obstruction is not erected on the extension mentioned and described in said agreement of May 17th, 1901, and that said barrier cuts off access to the entire width of Cumberland street; and it further appearing that the necessary development of the lands of the

complainant since the agreement of 1901, in the operation of its railroad, has so far appropriated to the purposes of transportation the devious and inconvenient access which the railroad company had in 1901, that there now remains no access to the complainant's land and the lands of the Harrison Land Company, except by Cumberland street, which forms the entire and only access to the properties of the complainants and the Harrison Land Company; and it further appearing that the defendant, Hudson Railroad & Transportation Company, was incorporated for the purpose of accommodating the business of the Crucible Steel Company and for use in connection with the said business, and that it has no other business, and that all its officers are officers and agents of the said Crucible Steel Company, but the stock of the Transportation Company does not appear to be actually owned by the Steel Company; and it further appearing that, subsequent to the making of the said agreement of May 17, 1901, the complainants did convey to the defendant, Crucible Steel Company of America, certain tracts of land described as abutting on said Cumberland street, which deeds conveyed all the lands of the said complainants over which the said 60 foot strip was dedicated lying between the easterly boundary of two tracts known as the Gilbert and Preston tracts, and the Steel Company's own lands lying within the dedicated road, and abutting about 1,200 feet on the northerly side of the extension of Cumberland street; and the Court being of the opinion that the acceptance of these deeds, independent of the said agreement of May 17, 1901, operated as an estoppel upon the said Steel Company and the Hudson Railroad and Transportation Company to deny the acceptance of said Cumberland street, or the intention to make of Cumberland street east from Fourth street a public street to be extended, and further, that the said defendants above named are

estopped from denying that the effect of the deeds and their acceptance is to make Cumberland street, east of Fourth street, a public street; and the Court being of the opinion that said agreement of May 17, 1901, estops all the parties dedicating the road over their lands as an extension of Cumberland street with the intention of establishing a recognized way to their lands to and from Fourth street, as well as their successors in title, including the Hudson Railroad and Transportation Company, from denying that Cumberland street, east of Fourth street, to the boundary line of the tracts in said agreement mentioned, and for the whole width thereof, is a way to the properties over which the strip was dedicated as an extension; and the Court being also of the opinion that an injunction should issue directing the Crucible Steel Company of America and the Hudson Railroad & Transportation Company to remove the barrier erected by them as aforesaid, together with all other obstructions placed by them in said way; and the Court being also of the opinion that the proof that Cumberland street has been accepted by the municipality as a public street, which it is obliged to repair for public passage, is not sufficient; and further, it appearing that the municipality is not a party to the proceedings; and the Court being of the opinion that no injunction should issue predicated upon the theory that said portion of Cumberland street is a public street; and it appearing that this cause was referred to the Honorable John R. Emery, Vice-Chancellor, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein; and the said Vice-Chancellor having reported his findings to the Court, and counsel for the respective parties having appeared before the Chancellor on the settlement of this decree—

It Is Thereupon, on this 4th day of December,

1915, on motion of Messrs. Vredenburgh, Wall & Carey, of counsel with the complainants,

ORDERED, ADJUDGED AND DECREED, and the Chancellor does hereby ORDER, ADJUDGE AND DECREE that the Crucible Steel Company of America and the Hudson Railroad & Transportation Company and each of them, be and they are hereby enjoined and restrained from in any manner obstructing Cumberland street in the Town of Harrison, in the County of Hudson, extending easterly from the easterly line of Fourth street, or from preventing the complainants and the Harrison Land Company and Booth & Flinn, Ltd., their agents, servants and representatives, from traversing, grading and using said portion of said street and from fully enjoying their easements in the same.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants, Crucible Steel Company of America and the Hudson Railroad & Transportation Company, their officers and agents, are hereby enjoined and directed to remove forthwith at their own expense, the barrier and all obstructions and material placed by them or either of them in said way.

AND IT IS FURTHER ORDERED that the complainants and the Harrison Land Company be and they are severally entitled to costs of suit as against the said defendant, Crucible Steel Company of America, together with a counsel fee to the said complainants of the sum of two hundred and fifty dollars; to the said Harrison Land Company of two hundred and fifty dollars, and that execution issue therefor according to the rules and practice of this Court.

E. R. WALKER,

C.

Case No. 2.

Final Decree.

Filed December 13, 1915.

IN CHANCERY OF NEW JERSEY.

Between BOOTH AND FLINN, LIMITED, *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.,* *Defendants.*	*On Bill, etc.* *Final Decree.*

This matter having been duly consolidated for the purpose of hearing with the matter pending in this Court wherein The United New Jersey Railroad and Canal Company and the Pennsylvania Railroad Company, are complainants, and The Crucible Steel Company and others, are defendants, and coming on to be heard by the Court on the bill of complaint, amended bill, answers, cross-bills, answers to cross-bills and replications filed in the cause, and on the proofs taken before the Court, in the presence of J. H. Harrison, Esquire, of counsel for the complainant, George H. Peirce, Esquire, of counsel for the defendants, Crucible Steel Company of America and Hudson Railroad and Transportation Company, and Edward A. Day, Esquire, of counsel for the defendant, Harrison Land Company, and Albert C. Wall, Esquire, of counsel with defendants, United New Jersey Railroad and Canal Company and The Pennsylvania Railroad Company; and it appearing by the evidence in the cause that on May 17, 1901, the defendants, United New Jersey Railroad & Canal Company, Crucible Steel Company of America, James H. Young and Mason Young, surviving executors and Trustees under the last will and testament of Henry Young, deceased (whose suc-

New Jersey State Library

cessor in title is the defendant, Harrison Land Company), and Ruth Dana Draper, sole devisee and legatee of William H. Draper, deceased (to whose rights defendants,* United New Jersey Railroad and Canal Company and The Pennsylvania Railroad Company, have succeeded), entered into an agreement with each other in and by which, among other things, they did dedicate a strip of land in the Town of Harrison, in the County of Hudson, in this State, 60 feet in width as an extension of Cumberland street easterly across the lands of the parties to the said agreement, or some of them, and did thereby dedicate and appropriate the same as a road in order that some recognized way to and through such properties might be established, to the end that all claims of the parties to private ways over the properties in question, or any of them, should be extinguished; and it appearing that the defendants, United New Jersey Railroad and Canal Company and The Pennsylvania Railroad Company and The Harrison Land Company, desiring to fill up and improve their lands, have given licenses so to do to the complainant, and for this purpose access to their several properties over and the use of Cumberland street from its junction with the easterly side of Fourth street are necessary; and it further appearing that access to the dedicated strip of road, the extension of Cumberland street, has been obstructed by a very formidable barrier, consisting of great beams of steel imbedded in cement, which were erected by the defendants, Crucible Steel Company of America and the Hudson Railroad and Transportation Company, on and across Cumberland street where it crosses Fourth street, and on the easterly line of Fourth street on lands to which The Hudson Railroad and Transportation Company has the record legal title, but which obstruction is not erected on the extension mentioned and described in said agreement of May 17,1901, and that said barrier cuts off access to the

* Complainants.

entire width of Cumberland street; and it further appearing that said Cumberland street forms the entire and only access to the properties of the defendants,* United New Jersey Railroad and Canal Company, The Pennsylvania Railroad Company and the Harrison Land Company; and it further appearing that the defendant, Hudson Railroad and Transportation Company, was incorporated for the purpose of accommodating the business of the Crucible Steel Company and for use in connection with the said business, and that it has no other business and that all its officers are officers and agents of the said Crucible Steel Company, but the stock of the transportation company does not appear to be actually owned by the Steel Company; and it further appearing that, subsequent to the making of the said agreement of May 17, 1901, the defendants,* United New Jersey Railroad and Canal Company and the Pennsylvania Railroad Company did convey to the defendant, Crucible Steel Company of America, certain tracts of land described as abutting on said Cumberland street, which deeds conveyed all the lands of the said defendants over which the said 60 foot strip was dedicated lying between the easterly boundary of two tracts known as the Gilbert and Preston tracts, and the Steel Company's own lands lying within the dedicated road, and abutting about 1,200 feet on the northerly side of the extension of Cumberland street; and the Court being of the opinion that the acceptance of these deeds, independent of the said agreement of May 17, 1901, operated as an estoppel upon the said Steel Company and the Hudson Railroad and Transportation Company to deny the acceptance of said Cumberland street, or the intention to make of Cumberland street east from Fourth street a public street to be extended, and further, that the said defendants above named are estopped from denying that the effect of the deeds and their acceptance is to make Cumberland street,

* Complainants.

east of Fourth street, a public street; and the Court being of the opinion that said agreement of May 17, 1901, estops all the parties dedicating the road over their lands as an extension of Cumberland street with the intention of establishing a recognized way to their lands to and from Fourth street, as well as their successors in title, including the Hudson Railroad and Transportation Company, from denying that Cumberland street, east of Fourth street, to the boundary line of the tracts in said agreement mentioned, and for the whole width thereof, is a way to the properties over which the strip was dedicated as an extention; and further estops defendant, Crucible Steel Company of America from doing anything, either itself or through others, over whose action in reference thereto it has control to obstruct the enjoyment of Cumberland street for the purposes of said agreement and deeds; and the Court being also of the opinion that an injunction should issue directing the Crucible Steel Company of America and the Hudson Railroad and Transportation Company to remove forthwith the barrier erected by them as aforesaid, together with all other obstructions placed by them in said street or way; and the Court being also of the opinion that the proof that Cumberland street has been accepted by the municipality as a public street, which it is obliged to repair for public passage, is not sufficient; and that no injunction should issue predicated upon the theory that said portion of Cumberland street is a public street; and it appearing that this cause was referred to the Honorable John R. Emery, Vice-Chancellor, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein; and the said Vice-Chancellor having reported his findings to the Court, and counsel for the respective parties having appeared before the Chancellor on the settlement of this decree;

It Is, on this 13th day of December, 1915, on motion

of Messrs. Church and Harrison, of counsel with the complainants, ORDERED, ADJUDGED and DECREED, and the Chancellor does hereby ORDER, ADJUDGE and DECREE that the Crucible Steel Company of America and the Hudson Railroad and Transportation Company and each of them, be and they are hereby enjoined and restrained from in any manner obstructing Cumberland street, in the Town of Harrison, in the County of Hudson, extending easterly from the easterly line of Fourth street, or from preventing the complainants and the defendants, United New Jersey Railroad and Canal Company, The Pennsylvania Railroad Company and the Harrison Land Company, their agents, servants and representatives, from traversing, grading and using said street or way and from fully enjoying their and each of their several and respective easements and rights in the same.

And it is further ORDERED, ADJUDGED and DECREED that the defendants, Crucible Steel Company of America and the Hudson Railroad and Transportation Company, their officers and agents, are hereby enjoined and directed to remove forthwith at their own expense, the barrier and all obstructions and materials placed by them or either of them in said street or way.

And it is further ORDERED that the complainant and the defendants United New Jersey Railroad and Canal Company, The Pennsylvania Railroad Company and The Harrison Land Company, be and they are severally entitled to costs of suit as against the said defendant, Crucible Steel Company of America, together with a counsel fee to the said complainant of the sum of two hundred and fifty dollars ($250), and that execution issue therefor according to the rules and practice of this Court.

E. R. WALKER,

C.

A true copy.

ROBERT H. MCADAMS,
Clerk.

Case No. 1.

Notice of Appeal of Crucible Steel Co. et als.

Filed December 10, 1915.

IN CHANCERY OF NEW JERSEY.

Between		
UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, AND PENNSYLVANIA RAILROAD COMPANY,		
Complainant-Respondents,		*On Bill &c.*
and		*Notice of Appeal.*
CRUCIBLE STEEL COMPANY OF AMERICA, *et al,*		
Defendant-Appellants.		

The defendants Crucible Steel Company of America, and Hudson Railroad and Transportation Company hereby severally appeal from the final decree of this Court made in the above entitled cause bearing date the fourth day of December, nineteen hundred and fifteen, and from the whole and every part of said decree, to the Court of Errors and Appeals in the last resort in all causes.

Dated December 10th, 1915.

PEIRCE & HOOVER,
Solicitors and Counsel with Defendant-Appellants.

PEIRCE & HOOVER,
Of Counsel with Defendant-Appellants.

I conceive that there is good cause for appeal in the above stated cause.

PEIRCE & HOOVER,
Of Counsel with the Defendant-Appellants.

TAKE NOTICE:—We have this day deposited with the Clerk in Chancery two hundred dollars ($200.00) costs of appeal according to the rules of the Court of Errors and Appeals.

PEIRCE & HOOVER,
Solicitors and Counsel with Defendant-Appellants.

Case No. 1.

Affidavit of Service.

Filed December 20, 1915.

IN CHANCERY OF NEW JERSEY.

Between UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, AND PENNSYLVANIA RAILROAD COMPANY, *Complainant-Respondents, and* CRUCIBLE STEEL COMPANY OF AMERICA, *et al*, *Defendant-Appellants.*	*On Bill etc.* *Affidavit of Service of Notice of Appeal.*

STATE OF NEW JERSEY, COUNTY OF ESSEX. } *ss.*

Arthur Harris being duly sworn on his oath according to law, deposes and says that he is an attorney in the employ of Peirce & Hoover, the solicitors for the defendants Crucible Steel Company of America and Hudson Railroad and Transportation Company in the above entitled cause: that at their request he did, on the tenth day of December, 1915, serve a true copy of the annexed Notice of Appeal, as follows: (1) on Messrs. Vredenburgh, Wall & Carey, solicitors for the complainant, United New Jersey Railroad and Canal Company and Pennsylvania Railroad Company, by handing same to Albert C. Wall personally, and explaining to him the contents thereof; (2) on Messrs. Edward A. & Wm. T. Day, solicitors for the defendant, Harrison Land Company, by

leaving same with the clerk in charge of the office and explaining the contents thereof; (3) on Messrs. Church & Harrison, solicitors for the defendant, Booth & Flinn, Ltd., by handing same to J. Henry Harrison, personally, and explaining to him the contents thereof.

ARTHUR HARRIS.

Sworn and subscribed to before me, this
11th day of December, 1915.

FREDERICK H. HOFFMAN,
Attorney at Law of New Jersey.

Case No. 2.

Notice of Appeal of Crucible Steel Co. et als.

Filed December 23, 1915.

IN CHANCERY OF NEW JERSEY.

Between BOOTH AND FLINN, LIMITED, *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants.*	*On Bill, etc.* *Notice of Appeal.*

The defendants Crucible Steel Company of America, and Hudson Railroad and Transportation Company hereby severally appeal from the final decree of this Court made in the above entitled cause bearing date the thirteenth day of December, nineteen hundred and fifteen, and from the whole and every part of said decree, to the Court of Errors and Appeals in the last resort in all causes.

Dated December 21st, 1915.

PEIRCE & HOOVER,
Solicitors and Counsel with Defendant-Appellants.

JEREMIAH F. HOOVER,
Of Counsel with Defendant-Appellants.

I conceive that there is good cause for appeal in the above stated cause.

JEREMIAH F. HOOVER,
Of Counsel with the Defendant-Appellants.

TAKE NOTICE: We have this day deposited with the Clerk in Chancery two hundred dollars ($200.00) costs of appeal according to the rules of the Court of Errors and Appeals.

PEIRCE & HOOVER,
Solicitors and Counsel with Defendant-Appellants.

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Case No. 2.

Affidavit of Service, No. 1.

Filed December 24, 1915.

IN CHANCERY OF NEW JERSEY.

Between BOOTH AND FLINN, LIMITED, *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants.*	*On Bill, etc.* *Proof of Service of Notice of Appeal.*

20

COUNTY OF ESSEX.
STATE OF NEW JERSEY, } *ss.*

Arthur Harris being duly sworn on his oath according to law, deposes and says that on Tuesday, the 21st day of December, A. D. 1915, he served a true copy of the Notice of Appeal in the above cause as follows:

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(1) On Church & Harrison, Esqs., solicitors for Booth & Flinn, Ltd., by leaving same with the clerk in charge of their offices.

(2) On Edw. A. & Wm. T. Day, Esqs., solicitors for the Harrison Land Company, by leaving same with the clerk in charge of their offices.

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Affidavit of Service.

(3) On Vredenburgh, Wall & Carey, Esqs., solicitors for the United New Jersey Railroad and Canal Company, by leaving same with the clerk in charge of their offices.

(4) On Michael T. & Hugh C. Barrett, solicitors for the Town of Harrison, by serving same on Hugh C. Barrett personally.

ARTHUR HARRIS.

Sworn and subscribed to before me
this 21st day of December, 1915.

FREDERICK C. HOFFMANN,
Attorney at Law of N. J.

Case No. 2.

Affidavit of Service, No. 2.

Filed December 24, 1915.

IN CHANCERY OF NEW JERSEY.

Between BOOTH AND FLINN, LIMITED, *Complainant,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendants.*	*On Bill, etc.* *Affidavit of Service of Notice of Appeal.*

STATE OF NEW JERSEY, COUNTY OF ESSEX. } *ss.*

Arthur Harris, being duly sworn on his oath according to law deposes and says: that he is an attorney in the employ of Peirce & Hoover, solicitors for the defendant, Crucible Steel Company of America, and Hudson Railroad and Transportation Company in the above entitled cause; that at their request he did on the 21st day of December, 1915, serve a true copy of the notice of appeal in the above entitled cause upon Messrs. Vredenburgh, Wall and Carey, solicitors for the defendant United New Jersey Railroad and Canal Company and Pennsylvania Railroad Company by leaving the same with the clerk in charge of the office and explaining the contents thereof.

ARTHUR HARRIS.

Sworn and subscribed to before me
this 21st day of December, 1915.

FREDERICK H. HOFFMANN,
Attorney at Law of New Jersey.

Case No. 1.

Petition of Appeal of Crucible Steel Co. et als.

(Filed December 10 1915)

New Jersey Court of Errors and Appeals

Between UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, AND PENNSYLVANIA RAILROAD COMPANY, *Complainants-Respondents,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et al*, *Defendant-Appellants.*	*On Bill, etc.* *Petition of Appeal.*

To the Honorable, the Court of Errors and Appeals of last resort in all causes:

The several petitions of Crucible Steel Company of America and Hudson Railroad and Transportation Company the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the fourth day of December, in the year nineteen hundred and fifteen, wherein United New Jersey Railroad & Canal Company and Pennsylvania Railroad Company were complainants and Crucible Steel Company of America, Hudson Railroad and Transportation Company, Harrison Land Company, and Booth & Flinn, Ltd., were defendants in this respect, to wit: That the said decree adjudges,

"that the Crucible Steel Company of America and the Hudson Railroad & Transportation Com-

pany and each of them, be and they are hereby enjoined and restrained from in any manner obstructing Cumberland street in the Town of Harrison, in the County of Hudson, extending easterly from the easterly line of Fourth street, or from preventing the complainants and the Harrison Land Company and Booth & Flinn, Ltd., their agents, servants and representatives, from traversing, grading and using said portion of said street and fully enjoying their easements in the same.

"And It Is Further Ordered, Adjudged and Decreed, that the defendants, Crucible Steel Company of America, the Hudson Railroad & Transportation Company, their officers and agents, are hereby enjoined and directed to remove forthwith at their own expense, the barrier and all obstructions and material placed by them or either of them in said way.

"And It Is Further Ordered, that the complainants and the Harrison Land Company be and they are severally entitled to costs of suit as against the said defendant, Crucible Steel Company of America, together with a counsel fee to the said complainants of the sum of two hundred and fifty dollars; to the said Harrison Land Company of two hundred and fifty dollars, and that execution issue therefor according to the rules and practice of this court."

And your petitioners humbly appeal from the whole and every part of the said decree of the Chancellor which decrees as aforesaid, upon the grounds that the said decree is erroneous for that, the said chancellor should have decreed in favor of the defendants Crucible Steel Company of America and Hudson Railroad & Transportation Company as against the complainants and also that the said defendants should not have been enjoined and restrained from obstructing as

aforesaid, nor enjoined or directed to remove the obstructions aforesaid, nor should the complainants or the Harrison Land Company be entitled to costs of suit and counsel fees as against the defendants; and it should have also been adjudged

> "that the prayer for relief asked for the United New Jersey Railroad & Canal Company, Pennsylvania Railroad Company, Booth & Flinn, Ltd., the Harrison Land Company on the grounds that Cumberland street, beginning at Fourth street and extending east 245.3 feet, is a public street, is denied, there being no evidence of an acceptance of the dedication of said street by the Town of Harrison."

Your petitioners therefore pray that the said decree of the said chancellor may be in whole and in every part, aforesaid, reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated December 10th, 1915.

PEIRCE & HOOVER,
Solicitors and Counsel with Defendant-Appellants.

PEIRCE & HOOVER,
Of Counsel with Defendant-Appellants.

Case No. 1.

Affidavit of Service.

(Filed December 21 1915)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, AND PENNSYLVANIA RAILROAD COMPANY, *Complainant-Respondents, and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als., Defendant-Appellants.*	*On Bill, etc.* *Proof of Service of Petition of Appeal.*

STATE OF NEW JERSEY, COUNTY OF ESSEX. } *ss.*

Charles D. Merz being duly sworn on his oath according to law, deposes and says that on the 14th day of December, 1915, deponent served a true copy of the Petition of Appeal filed in the above entitled cause on Edward A. & Wm. T. Day, Esqs., attorneys and solicitors for the Harrison Land Company, by leaving same with the person in charge of their offices.

Deponent also served a true copy of the Petition of Appeal on the said 14th day of December, 1915, on Church & Harrison, Esqs., attorneys and solicitors for Booth & Flinn, Ltd., by leaving same with the person in charge of their offices.

CHARLES D. MERZ.

Sworn and subscribed to before me
this 16th day of December, 1915.

Hedwig M Brener
Notary Public
of New Jersey

Case No. 1.

Affidavit of Service.

(Filed December 21, 1915)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, AND PENNSYLVANIA RAILROAD COMPANY,
Complainant-Respondents,
and
CRUCIBLE STEEL COMPANY OF AMERICA, *et al,*
Defendant-Appellants.

On Bill &c.

Proof of Service of Petition of Appeal.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

Arthur Harris being duly sworn on his oath according to law, deposes that on Tuesday, the 14th day of December, 1915, deponent served a true copy of the Petition of Appeal filed in the above entitled cause on Vredenburgh, Wall & Carey, Esqs., attorneys and solicitors for the United New Jersey Railroad and Canal Company and the Pennsylvania Railroad Company, by leaving the same at their offices in Jersey City with the person in charge thereof.

ARTHUR HARRIS.

Sworn and subscribed to before me
this 16th day of December, 1915.

FREDERICK H. HOFFMAN,
Attorney at Law of New Jersey.

Case No. 2.

Petition of Appeal of Crucible Steel Co. et als.

(Filed December 28 1915)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between BOOTH AND FLINN, LIMITED, *Complainant-Respondent,* *and* CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*, *Defendant-Appellants.*	*On Bill, etc.* *Petition of Appeal.*

To the Honorable, the Court of Errors and Appeals of last resort in all causes:

The several petitions of Crucible Steel Company of America and Hudson Railroad and Transportation Company the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the thirteenth day of December in the year nineteen hundred and fifteen, wherein Booth & Flinn, Limited, is the complainant and Crucible Steel Company of America, Hudson Railroad and Transportation Company, Town of Harrison, Harrison Land Company, United New Jersey Railroad and Canal Company and Pennsylvania Railroad Company were defendants in this respect to wit; that the said decree adjudges:

> "That the Crucible Steel Company of America and the Hudson Railroad and Transportation Company and each of them, be and they are hereby enjoined and restrained from in any manner

obstructing Cumberland street, in the Town of Harrison, in the County of Hudson, extending easterly from the easterly line of Fourth street, or from preventing the complainants and the defendants, United New Jersey Railroad and Canal Company, The Pennsylvania Railroad Company and the Harrison Land Company, their agents, servants and representatives, from traversing, grading and using said street or way and from fully enjoying their and each of their several and respective easements and rights in the same.

"And it is further ORDERED, ADJUDGED and DECREED that the defendants, Crucible Steel Company of America and the Hudson Railroad and Transportation Company, their officers and agents, are hereby enjoined and directed to remove forthwith at their own expense, the barrier and all obstructions and materials placed by them or either of them in said street or way.

"And it is further ORDERED that the complainant and defendants United New Jersey Railroad and Canal Company, The Pennsylvania Railroad Company and The Harrison Land Company, be and they are severally entitled to costs of suit as against the said defendant Crucible Steel Company of America, together with a counsel fee to the said complainant of the sum of two hundred and fifty dollars ($250), and that execution issue therefor according to the rules and practice of this Court."

And your petitioners humbly appeal from the whole and every part of the said decree of the Chancellor which decrees as aforesaid, upon the grounds that the said decree is erroneous for that, the said Chancellor should have decreed in favor of the defendants Crucible Steel Company and Hudson Railroad and Transportation Company as against the complainant and also that the said defendants should not have been

enjoined and restrained from obstructing as aforesaid, nor enjoined or directed to remove the obstructions aforesaid nor should the complainant or the Harrison Land Company, or the United New Jersey Railroad and Canal Company or the Pennsylvania Railroad Company or any of them be entitled to costs of suit or counsel fees or either as against the defendants; and it should also have been adjudged:

> "That the prayer for relief asked for by the United New Jersey Railroad and Canal Company, Pennsylvania Railroad Company, Booth & Flinn, Ltd., and the Harrison Land Company on the grounds that Cumberland street beginning at Fourth street and extending easterly 236.72 feet is a public street, is denied, there being no evidence of an acceptance of the dedication of said street by the Town of Harrison."

Your petitioners therefore pray that the said decree of the said Chancellor may be in whole and in every part, aforesaid, reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

Dated December 27th, 1915.

PEIRCE & HOOVER,
Solicitors and Counsel with Defendant-Appellants.

GEO. H. PEIRCE,
Of Counsel with Defendant-Appellants.

Case No. 2.

Affidavit of Service.

(Filed December 29 1915)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

BOOTH AND FLINN, LIMITED,
Complainant-Respondent,
and
CRUCIBLE STEEL COMPANY OF AMERICA, *et als.*,
Defendant-Appellants.

On Bill, &c.
Affidavit of Service.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

Arthur Harris being duly sworn on his oath according to law deposes and says: that he is an attorney in the employ of Peirce & Hoover, solicitors for the defendant, Crucible Steel Co. of America and Hudson Railroad and Transportation Co. in the above entitled cause; that at their request he did on the 28th day of December, 1915, serve a true copy of the petition of appeal filed in the above entitled cause as follows:

1. On Church & Harrison, solicitors for the complainant, Booth and Flinn, Ltd., by handing same to Mr. Auguste Roche, Jr., partner and explaining to him the contents thereof.

2. On Messrs. Vredenburgh, Wall & Carey, solicitors for the defendants, United N. J. Railroad and Canal Co. and Pennsylvania Railroad Co. by handing same to Mr. Carey, partner, and explaining to him the contents thereof.

Affidavit of Service.

3. On Messrs. Edward A. and William T. Day, solicitors for the defendant, Harrison Land Co., by leaving same with the clerk in charge of the office and explaining the contents thereof.

4. On Michael T. and Hugh C. Barrett, solicitors for the defendant, the Town of Harrison, by leaving same with the Clerk in charge of the office and explaining the contents thereof.

ARTHUR HARRIS.

Sworn and subscribed to before me
this 28th day of December, 1915.

FREDERICK H. HOFFMAN,
Attorney at Law
of New Jersey.

The usual Answers in Appeal, were filed in both Case No. 1 and Case No. 2, by the following United New Jersey Railroad and Canal Company, Harrison Land Company, Booth & Flinn, Limited.



BARRIER ERECTED BY CRUCIBLE STEEL CO. OF AMERICA,
ACROSS
CUMBERLAND ST. AT FOURTH ST. HARRISON [illegible]. 609

NOV. 10TH 1917

CUMBERLAND ST. AT FOURTH ST. HARRISON [illegible] 609


BARRIER PRECTED BY CRUDIS
AT FOURTH ST
NOV 11 1913
611