

## New Jersey Court of Errors and Appeals.

The NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL M. WILSON, EDWARD DOUGHTY, WILLIAM B. GUILD, JAMES H. TICHENOR, DAVID A. HAYES and DANIEL PRICE, Appellants,

and

On Appeal.

LUCIUS Q. C. ELMER, Attorney General, and at the relation of ISAAC VAN WAGENEN and others, and ISAAC VAN WAGENEN and others, Respondents.

### BILL OF COMPLAINT.

To the Honorable Oliver S. Halsted, Chancellor of the State of New Jersey—

Informing, sheweth unto your Honor, Lucius Q. C. Elmer, Esq. Attorney General of the State of New Jersey, in behalf of said State, and by and at the relation of Isaac Van Wagenen, William Wright, John H. Stephens, Aaron B. Ward, James R. Sayre, Jr., Calvin Tomkins, Elias Tomkins, Abner S. Reeve, David Ripley, John M. Lawrence, Horace J. Poinier, Jeremiah D. Poinier, Edward G. Faitoute, in behalf of themselves and of the owners of docks and wharves, store houses, lumber, coal and brick yards in the City of Newark, on the Passaic river, and of other real estate in said city, on the shore of said river, and other owners of vessels navigating said river to and from said city, and using trade, commerce and navigation therein. 5

And also humbly complaining, shew unto your Honor, your orators, Isaac Van Wagenen, William Wright, John H. Stephens, Aaron B. Ward, James R. Sayre, Jr., Calvin Tomkins, Elias Tomkins, Abner S. Reeve, David Ripley, John M. Lawrence, Horace J. Poinier, Jeremiah D. Poinier, and Edward G. Faitoute, in behalf of themselves and others as aforesaid.

That by an act of the Legislature of the State of New Jersey, approved the fourteenth day of February in the year of our Lord one thousand eight hundred and forty-nine, Daniel M. Wilson, Edward Doughty, Robert Dod, James H. Tichenor, David A. Hayes, Alexander N. Dougherty, James Keene, Daniel Price, John Chadwick, James H. Halsey, James Miller, George Dougherty, John S. 20

Peshine, James M. Quinby, Charles Alling, Reuben D. Baldwin, Calvin S. Dennis, Jabez Cook, Ambrose Williams, David H. Tichenor, David M. Fitzgerald, Charles O. Bolles, Amos Wilcox, Stille Manning, Samuel H. Gardner, Calvin Dodd, Samuel F. Righter, 5 William Frame, Ai Fitch, Horace J. Poinier, and such other persons as might thereafter be associated with them, were constituted a body corporate and politic in law, by the name of "The Newark Plank Road and Ferry Company." That amongst other things contained in that Act, the President and Directors of said Company 10 were thereby authorized and invested with all the rights and powers necessary and expedient to survey, lay out and construct a plank road, not exceeding sixty and not less than twenty-four feet in width; in the middle of said road to be formed a special, artificial road, of not less than sixteen feet in width continuous, or two tracks 15 of eight feet wide each, of substantial plank or timber, laid down in a substantial form and workmanlike manner so as to present a smooth and even surface, in order to secure a good, smooth and sufficient road at all seasons of the year, and in no case to rise above four degrees in a parallel with the horizon; to commence in the City 20 of Newark, east of Broad street and thence passing by the most convenient and direct course to the bank of the Passaic river, near the old Ferry, and across the meadow between said Passaic and Hackensack rivers and through the county of Hudson, in the most eligible route, to its point of termination in said county and opposite 25 the City of New York.

And amongst other things, it was by the said Act further declared that it should be lawful for said Company, at any time, to drive piles and erect or build piers, wharves, platforms, ferry stairs and other works necessary for the said road and ferries thereon, in the Passaic 30 and Hackensack rivers: Provided that no steam power should be used on said road, nor iron rails or other obstructions to common travel placed thereon, and that the free and uninterrupted navigation of vessels in said rivers, or either of them, was not thereby prevented by any bridge or other obstruction in said rivers, in any manner 35 whatever.

And also by the said Act it was declared that said Act should be deemed and taken to be a public act, and should at all times and in all Courts and places whatsoever, be recognized as such, and should be commenced within two years and continue in full force for the 40 term of fifty years, and that said Act should take effect immediately.

As in and by the said Act of the Legislature, to which the Attorney General aforesaid and your orators beg leave to refer, may and will more fully and at large appear.

And the Attorney General, at the relation aforesaid, and your orators further shew that after the passage of said Act the said 5 Plank Road and Ferry Company were organized by the appointment of their officers authorized by said Act, and that Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes, Daniel Price, and others whose names are unknown to the said Attorney 10 General and to your orators, are the present Directors of said Company; the said Daniel M. Wilson is the President thereof, and David A. Hayes is the Secretary thereof.

And the Attorney General, at the relation aforesaid, and your orators further shew unto your Honor that the Passaic river, in this 15 State, and upon which the City of Newark is situate, now is, and from time immemorial has been, a public navigable river; that the tide flows and ebbs therein from the water commonly called Newark Bay, formed by the junction of said Passaic and Hackensack rivers, to, and from ten to fifteen miles above the City of Newark, and that 20 all the citizens and inhabitants of this State always have had, and of right now have and ought at all times to have, the free use and navigation of said river, and be permitted at all times to pass and re-pass, and navigate up and down the said river without any lett, obstruction or hindrance whatever; that said Passaic river is a narrow 25 and crooked river, and in most parts thereof shallow and difficult of navigation, admitting of vessels drawing not to exceed ten to twelve feet of water; that a very large and extensive navigation and commerce is carried on upon said river, especially from and to the City of Newark, which is now a large manufacturing and commercial 30 place, containing at least forty thousand inhabitants; that said river is navigated by various descriptions of vessels, that four steamboats ply regularly between the City of Newark and the City of New York; that vessels of various size and tonnage are engaged in the navigation of said river, and that the arrivals and departures of vessels at 35 and from said city average at least forty per day, excepting in the winter season when the navigation is obstructed by ice; that said City of Newark is a port of entry under the laws of the United States, and is a place of great manufacturing and commercial importance. 40

And the Attorney General, at the relation aforesaid, and your orators, further shew that your orators are the owners of docks and wharves, storehouses, lumber and coal yards, and other real estate upon said Passaic river, at the City of Newark, and the owners of  
 5 and interested in steamboats and other vessels engaged in commerce, navigating said river, to and from said city and between the said city and the city of New York and various other ports and places in the United States, to a large extent, and are some of them carrying on merchandize and are dealers in lamber, brick, lime, coal, and  
 10 divers other articles, for the transportation of which they depend upon the navigation of said river, and that the keeping of the navigation of said river free and unobstructed is of vital importance to their interests and to the present and future growth and prosperity of the city of Newark, and the advancement of manufactures, trade  
 15 and commerce in general.

And the said Attorney General, at the relation aforesaid, and your orators further shew unto your Honor that the said Directors, of the said The Newark Plank Road and Ferry Company, have caused a survey to be made of the route of their road and ferry, and  
 20 have located and agreed upon the same, and lately commenced and are now engaged in constructing the same; that the said route crosses said Passaic river at or near what is known as the old ferry, being a point below said city of Newark, where anciently a ferry was established on said river; that said river at that point, from bank to  
 25 bank, including the shore on both sides, does not exceed eight hundred feet in width.

And the said Attorney General, at the relation aforesaid, and your orators, shew that the construction of said plank road and ferries was not commenced within two years after the approval of the  
 30 aforesaid Act of Incorporation or Charter, according to the provision thereof in that respect herein before mentioned; that the said Act was approved and became a law on the twenty-fourth day of February in the year of our Lord one thousand eight hundred and forty-nine, and the construction of said road and ferries, or either  
 35 of them, or any part thereof, was not commenced until some time in the month of April, in the year of our Lord one thousand eight hundred and fifty-one, being about two years and two months after the approval of said Act; and the said Attorney General, in behalf of the State of New Jersey, and your orators, submit to your  
 40 Honor that the said Company have no right, power or authority, by

the said act of incorporation, to construct said road and ferries, or any or either of them, or any part thereof, without further authority given them by the Legislature, the term limited by the said Act for the commencement thereof having expired before the same was commenced.

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And the said Attorney General, at the relation aforesaid, and your orators, further shew unto your Honor that the said Company, and the aforesaid Directors thereof, not regarding the provisions and restrictions of the aforesaid Act in respect to the navigation of the said Passaic river, but seeking to promote their own interest and 10 convenience at the expense of the public and especially to the great damage and inconvenience of your orators and others similarly situated, and the damage of all the good citizens of the city of Newark, and of all others having occasion to navigate said river, or who are in any wise interested in the commerce of this State, have caused a 15 plan to be devised for erecting their ferry and piers at and across said river, in such manner as greatly to obstruct and injure the navigation of said river and altogether to prevent the free and uninterrupted navigation thereof; and the said Company and the said Directors thereof have agreed upon said plan and determined to carry 20 the same into effect; that the said plan so devised, agreed on and determined to be carried into effect, contemplates the erection of a long pier upon each side of said river, projecting from each bank of said river into the waters thereof, so that about five hundred feet of the width of said river will be occupied by said piers, leaving an 25 opening or space between said piers, at their termination in said river, of only three hundred feet, for the passage of steamboats and other vessels navigating said river; that said ferry, as said Attorney General, at the relation aforesaid informs, and your orators shew, is intended to be carried on by a boat or boats, to be propelled for the 30 transportation of wagons, coaches, carriages, carts, and all other kinds and descriptions of vehicles, and of horses, cattle, oxen, sheep, hogs, and all other manner of beasts, by steam; the said boat or boats to be guided between said piers by endless chains, extending from one of said piers to the other thereof; that a boat suitable for 35 the convenient carrying on of the business of said Company will necessarily be from seventy-five to one hundred feet long, and upon the plan aforesaid will necessarily, at all times, lay in the water lengthwise between said piers or across the river, thereby still further reducing the space for the passage of vessels along said river. 40

And the said Attorney General, at the relation aforesaid, and your orators, further shew unto your Honor that the said Plank Road Company, and the said Directors by their agents, workmen and servants, are now actively engaged in erecting a pier or bulk-head on the south-westerly side of said river, upon the plan aforesaid; that 5 piles have already been driven into the bed of said river to the distance of one hundred and fifty feet from the river bank, so that the same is already a great obstruction to the navigation of said river, that boats navigating said river have already run foul of and against 10 the said erection, so far as the same has progressed.

And the said Attorney General, at the relation aforesaid, and your orators further shew that the erection of said ferry and piers or bulkheads, in manner aforesaid, will form an obstruction to the tides and currents in said river; that eddies will be created about 15 the same, and deposits of mud and dirt be made by which the river, already too shallow, will be, to an injurious extent, filled up and obstructed, and that the said piers or bulkheads will pen back the ice and form a great obstruction to the same running out of said river, and delay the opening of the navigation thereof for at least 20 ten days beyond the time when the said river, by the natural flow of the ice thereon, would be clear of the same and the navigation thereof unobstructed by the same.

And the said Attorney General, at the relation aforesaid, and your orators further shew unto your Honor, that the erection of said 25 ferry and piers or bulkheads, as aforesaid, will be a great nuisance to all the citizens of the city of Newark, and will greatly impede the commerce and manufactures of said city and the growth and prosperity thereof, that, in particular, the value of all the docks and wharves, store houses, manufacturing establishments, lumber, brick 30 and coal yards, erected and located upon and along said river and depending on the free navigation thereof, will be greatly depreciated, and also that other lands lying on said river, which are susceptible of being used for wharves and commercial purposes, and which derive their principle value therefrom, will be greatly damaged.

And the said Attorney General, at the relation aforesaid, and your orators further shew unto your Honors, that the erection of 35 said piers or bulkheads are not at all necessary for the purpose of the said road and ferry across the Passaic river; that proper and convenient wharves upon said river may be constructed without 40 causing any serious obstruction to the navigation thereof, and the

said Attorney General, on behalf of the State, insists, and your orators respectfully insist and submit that the said Company, or the Directors thereof, or their agents, workmen or servants, have no right or authority to carry their said plan into effect, or to drive piles, or erect and build piers, wharves, platforms, ferry stairs, or any other works in or upon said Passaic or Hackensack rivers, which shall in any way interfere with or obstruct the free navigation of said rivers, or whereby the free and uninterrupted navigation of vessels in said rivers, or either of them, can or may be obstructed in any manner whatever; and on the contrary thereof, that all such erections are expressly prohibited by the charter of said Company. 5 10

But now, so it is, may it please your Honor, that the said The Newark Plank Road and Ferry Company, and the said Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes, 15 Daniel Price, and others confederating with them, not regarding the provisions or the charter or act of incorporation of said Company, in that respect, persist in continuing to construct the said road, notwithstanding the same was not commenced within the time limited by said charter, and they consequently have no right or authority to 20 construct the same; and also further disregarding the provisions of the said charter or act of incorporation in respect to the free navigation of the said Passaic river, and contemning the authority of the State of New Jersey and the well defined common right of the citizens thereof to the free and uninterrupted navigation of said Passaic 25 river, and reckless of the great immediate damage and injury which your orators will be subjected to and sustain thereby, persist in their determination to erect the said ferry and piers or bulkheads, in manner aforesaid, and continue the work of actually erecting and constructing the same, and pretend and give out that they have author- 30 ity and are warranted by their charter in so doing; the contrary whereof, the said Attorney General, at the relation aforesaid, and your orators charge to be true, inasmuch as the said river Passaic is a public navigable river, and the navigation thereof cannot in any way be lawfully obstructed without the authority of the Legislature; 35 and that said Company, by said charter or act of incorporation, is expressly prohibited from doing any thing by which the free and uninterrupted navigation thereof by vessels, can be in any manner whatever prevented.

And the said Attorney General, and your orators, further charge 40

that the said piers, wharves, docks or other works of said Company, cannot lawfully be erected or constructed along, in or upon said river, in such way as in any manner to hinder, obstruct or prevent the free and uninterrupted navigation of said river.

5 All which actings and doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your relators and orators, and to the public wrong and nuisance of all the citizens of the State of New Jersey, navigating the said Passaic river or interested in the navigation thereof. To  
 10 the end therefore that the said The Newark Plank Road and Ferry Company may in such manner as is required by law and the practice of this Court, and the said Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel Price, and their con-  
 15 federates, when discovered, may, upon their corporal oaths, full, true and perfect answer make to all and singular, the premises, as fully as if the same were herein again repeated, and they thereto particularly interrogated, with all the attendant circumstances and incidental transactions, and that it may be decreed that the said The  
 20 Newark Plank Road and Ferry Company have no right, title or authority under the aforesaid act of incorporation or charter, to construct said road or ferries, for that the said road or ferries were not commenced within the time limited by said act or charter for the commencement thereof, and that the said The Newark Plank Road  
 25 Company and the said Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel Price, the defendents in this cause, their agents, engineers, workmen and servants, may be restrained by the order and decree, and writ of injunction of this  
 30 Court, from carrying into effect the plan devised and agreed upon and determined to be carried into effect as aforesaid, for erecting the ferry and piers at and across said river as aforesaid, and from constructing and erecting said piers into and upon said river, according to said plan and as herein before stated and set forth, that they are  
 35 proceeding to do, and are actually engaged in doing, and also from driving any spiles or erecting or building any piers, bulkheads, wharves, platforms, ferry stairs or other works, in or upon the said Passaic river, whereby the free and uninterrupted navigation of said river may be in any wise interfered with and obstructed, or the free  
 40 navigation of said river by vessels in any manner prevented, and

from driving any piles or erecting or building any pier or bulkheads, wharves, platforms, ferry stairs or other works, in or upon the said Passaic river, other than such as are authorized in and by said act of incorporation or charter, and in the manner and subject to the restrictions and prohibitions contained in said act or charter, 5 and also from making any obstructions or erections whatever in the said river where the waters thereof are navigable. And that the nuisance and obstruction to the navigation of said Passaic river already created by driving piles therein for the erection or construction of a pier as aforesaid, may by the direction, order or decree of this honorable Court, be abated, and that your Honor may grant such further and other relief as the nature of the case may require and shall be agreeable to law and equity. 10

May it please your Honor, the premises considered to grant to the said Attorney General and your orators, a writ of injunction, 15 issuing out of and under the seal of this honorable Court to be directed to the said The Newark Plank Road and Ferry Company, Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes, Daniel Price, and their confederates when discovered, their 20 agents, engineers, workmen and servants, restraining and enjoining them, and every of them, as aforesaid; and also a writ of subpoena issuing out of and under the seal of this honorable Court, to be directed to the said The Newark Plank Road and Ferry Company, and the said Daniel M. Wilson, Charles Alling, Edward Doughty, 25 Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel Price, and their confederates when discovered, commanding them and every of them, on a certain day and under a certain penalty therein to be inserted, said Company, according to law, and said other persons, personally 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 and abide by such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience. 30

LUCIUS Q. C. ELMER,

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*Attorney General, New Jersey.*

ASA WHITEHEAD,

*Solicitor and of Counsel with relators and complainants.*

STATE OF NEW JERSEY, }  
 County of Essex. } ss.

Isaac Van Wagenen, James R. Sayre, Jr., John M. Lawrence and Aaron B. Ward, four of the complainants in the foregoing bill of  
 5 complaint named, being duly severally sworn, according to law, on their oaths, do say that those facts, matters and things in said bill mentioned and set forth, which relate to the acts and deeds of any other person or persons than the complainants in said bill named, they verily believe to be true; and that all other facts, matters and  
 10 things in said bill mentioned and set forth are true.

ISAAC VAN WAGENEN,  
 JAMES R. SAYRE, JR.,  
 J. M. LAWRENCE,  
 AARON B. WARD.

15 Sworn and subscribed before me, at Newark, this 17th day of June, A. D., 1851.

DANIEL DODD, JR.,  
*Mast. in Chan. of N. J.*

20 STATE OF NEW JERSEY, }  
 County of Essex. } ss.

John Gaffy, of the city of Newark, in the said county, being duly sworn according to law, on his oath, saith, That he has heard the statements in the foregoing bill of complaint contained, touching the  
 25 intended construction of the ferry of The Newark Plank Road and Ferry Company, and the statements therein contained touching the Passaic river, its navigation and the obstruction thereof, which will be occasioned by the erection, as therein mentioned, of the piers or bulkheads for the ferry of said company, over said river, as proposed  
 30 by said company, read, and that the same are true: And deponent further saith that he is the master of the steamboat Passaic, plying on said river twice a day, between said city of Newark and the city of New York, and has for the last ten years, or thereabouts, been the master of a steamboat plying on said river between said cities,  
 35 and for about fifteen years prior to that time was employed as a pilot on the Hudson river; and deponent further saith that he is well acquainted with said Passaic river, and the navigation thereof; that he has observed the piling put down in said Passaic river for said piers or bulkheads and is fully satisfied that the same, and said piers  
 40 or bulkheads, when built, will be a most serious and dangerous ob-

struction to the navigation of said Passaic river; that they will render still more difficult the already difficult navigation of the river; that in addition to their narrowing the river, they will render it still more shallow, the effect thereof being to collect the mud and dirt about them, and so to fill up the river; that said pier or bulkheads 5 are placed in a situation than which (on account of the tide) no place at or in the vicinity of Newark could have been selected more injurious to the navigation of the river, and that but two places could be selected where equal injury would be done; that said piers and bulkheads, when built, will, on account of the obstruction which 10 they will so occasion, tend very greatly to injure the carrying trade which is now extensively carried on at said Newark, and many navigators now plying between Newark and other cities and towns will be deterred from prosecuting said trade to and from Newark; that about ten or fifteen years ago, by reason of the obstruction of a small 15 pier built by the Morris Canal and Banking Company, projecting about thirty or forty feet into the river, at the outlet of their canal, the river on the western side thereof has greatly filled up at that pier, the water shoaled, the channel narrowed, and the navigation become much more difficult. Deponent further saith that he is 20 clearly of opinion that no pier or bulkhead, of any considerable size, is required on either side of said river for said ferry, much less pier or bulkhead of the size and extent proposed to be erected by said company; and that no pier of more than thirty feet, or forty feet in length, is, in deponent's opinion, required for said ferry on the west- 25 ern side of the river; and that a pier of much less extent will be sufficient on the eastern side. And deponent further saith that the obstruction which said piers or bulkheads, if built as proposed by said company, will occasion to the navigation, by penning back and obstructing the passage of ice, will be far greater than stated in said 30 bill in that behalf.

JOHN GAFFY.

Sworn and subscribed before me, at Newark, N. J., this 17th June, 1851.

DAN'L DODD, JR., 35  
*Mast. in Chan.*

STATE OF NEW JERSEY, }  
County of Essex. } ss.

David Cox, of the city of Newark, in said county, being duly sworn according to law, on his oath, saith that he is and for from 40

fifteen to twenty years last past has been engaged in navigating the river Passaic, and that lately for about three years has been master of a steamboat plying between said Newark and the City of New York—that he has heard read the foregoing bill of complaint and  
 5 the foregoing affidavit thereto annexed of Captain John Gaffy—and that the statements contained in them in relation to the navigation of the said Passaic river, and to the obstruction to said navigation by the piers and bulkheads so proposed to be erected in said river by the said Plank Road and Ferry Company are true, as are also  
 10 the statements in said affidavit of Captain Gaffy in relation to the effect of the pier heretofore erected by the Morris Canal and Banking Company—and that this deponent fully concurs in the opinions expressed by said Captain Gaffy in his affidavit that there is no necessity whatever for extending the said piers and bulkheads to the extent  
 15 proposed by the said Plank Road and Ferry Company, and that piers and bulkheads of the size and extent mentioned by him would be sufficient for the purposes of said ferry of said Company.

DAVID COX.

Sworn and subscribed before me at Newark, this 17th day of June  
 20 A. D. 1851.

DAN'L DODD, Jr.

*Mast. in Chan. of N. J.*

25 STATE OF NEW JERSEY, }  
 Essex Co. } ss.

Jeremiah L. Wilsey of the city of Newark in the County afore-  
 said being duly sworn on his oath saith that for more than thirteen  
 years past he has been, and is now, engaged in navigating the river  
 Passaic—that he has heard read the foregoing bill of complaint and  
 30 the affidavits of John Gaffy, and David Cox, and that this deponent  
 fully concurs in the facts and opinions expressed therein, as to the  
 effect of the proposed erection of piers and bulkheads by the Plank  
 Road and Ferry Company—that there is no necessity for erecting  
 them of the size and extent proposed and that the injury that will be  
 35 caused to the navigation of the said river Passaic by the said erections,  
 are rather underrated than overrated in the said bill and the said  
 affidavits—and that piers of the size and extent suggested by Captain  
 Gaffy would be sufficient for said Ferry—and that the facts stated  
 by him in reference to the effect of the pier erected by the Morris  
 40 Canal Company are true.

J. L. WILSEY.

Sworn and subscribed before me at Newark, N. J., this 17th June, 1851.

DAN'L DODD, Jr.  
Master in Chancery of N. J.

ORDER TO RESTRAIN DEFENDANTS.

IN CHANCERY OF NEW JERSEY. 5

BETWEEN

LUCIUS Q. C. ELMER, Esq're, Attorney General of the State of New Jersey, at the relation of ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, and others, and ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD and others Compl'ts.

and

On Bill &c.

The NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL M. WILSON, CHARLES ALLING, EDWARD DOUGHTY, AIT FITCH, WILLIAM B. GUILD, JAMES H. TICHENOR, CALVIN S. DENNIS, DAVID A. HAYES and DANIEL PRICE, def'ts,

Upon reading and filing the bill of complaint in this cause, and the several affidavits thereunto annexed, It is ordered by the Chancellor, on motion of Asa Whitehead, solicitor for, and of counsel with the relators, and complainants, on this eighteenth day of June, 10 in the year of our Lord, one thousand eight hundred and fifty-one, that the defendants in this cause do shew cause, if any they have, before the Chancellor at his Chambers in the City of Newark, on Monday, the thirtieth day of June instant, at ten o'clock in the forenoon, why an injunction should not issue pursuant to the prayer 15 of said bill, and it is further ordered that in the mean time the said defendants, their agents, engineers, workmen, and servants, do desist, and absolutely refrain, under the penalty that may fall thereon, from carrying into effect the plan in said bill stated to have been devised, agreed upon, and determined by the said The Newark 20 Plank Road and Ferry Company, and the Directors thereof, for the erecting of their ferry, and piers, at and across the Passaic river, at the city of Newark, which plan is in said bill stated to contemplate the erection of a long pier, or bulkhead upon each side of said river projecting from each bank of said river, into the waters thereof, so 25 that about five hundred feet of the width of said River will be occupied by said piers, or bulkheads; one of which piers or bulkheads it is set forth in said bill the said The Newark Plank Road

and Ferry Company, and the directors thereof, by their agents, workmen and servants are now actively engaged in erecting on the south-westerly side of said river, on the plan aforesaid, and that piles have already been driven into the bed of said river to the distance of one hundred and fifty feet from the river bank; and from constructing and erecting said piers into and upon said River according to said plan, until the further order of this Court.

O. S. HALSTED, C.

ANSWER OF DEFENDANTS.

IN CHANCERY OF NEW JERSEY.

10 BETWEEN

THE NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL M. WILSON, CHARLES ALLING, EDWARD DOUGHTY, AI FITCH, WILLIAM B. GUILD, JAMES H. TICHENOR, CALVIN S. DENNIS, DAVID A. HAYES, and DANIEL PRICE,  
Defendants,

and

LUCIUS Q. C. ELMER, Attorney General of the State of New Jersey, in behalf of said State; and by and at the relation of ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD, JAMES R. SAYRE, Jun'r, CALVIN TOMKINS, ELIAS TOMKINS, ABNER S. REEVES, DAVID RIPLEY, JOHN M. LAWRENCE, HORACE J. POINIER, JEREMIAH D. POINIER, and EDWARD G. FAITOUTE; and ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEVENS, AARON B. WARD, JAMES R. SAYRE, Jun'r., CALVIN TOMKINS, ELIAS TOMKINS, ABNER S. REEVE, DAVID RIPLEY, JOHN M. LAWRENCE, HORACE J. POINIER, JEREMIAH D. POINIER, and EDWARD G. FAITOUTE, Complainants.

On Bill &c.

The joint and several answers of The Newark Plank Road and Ferry Company, and Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel Price, to the information of Lucius Q. C. Elmer, Attorney General of the State of New Jersey, in behalf of said State, by and at the relation of Isaac Van Wagenen, William Wright, John H. Stephens, Aaron B. Ward, James R. Sayre, Jr., Calvin Tomkins, Elias Tomkins, Abner S. Reeve, David Ripley, John M. Lawrence, Horace J. Poinier, Jeremiah D. Poinier, and Edward G. Faitoute in behalf of themselves and of the owners of docks and wharves, storehouses; lumber, coal and brick yards, in the city of Newark on the Passaic river, and of

other real estate in said city, on the shore of said river, and others owners of vessels navigating said river to and from said city, and using trade, commerce, and navigation therein, and to the bill of complaint of Isaac Van Wagenen, William Wright, John H. Stephens, Aaron B. Ward, James R. Sayre, Jr., Calvin Tomkins, 5 Elias Tomkins, Abner S. Reeve, David Ripley, John M. Lawrence, Horace J. Poinier, Jeremiah D. Poinier, and Edward G. Faitoute, in behalf of themselves and others aforesaid.

These defendants now and at all times hereafter saving and reserving to themselves, all, and all manner of advantage of exceptions 10 to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof, as these defendants are advised is material for them to make answer unto—they answering say that The Newark Plank Road and Ferry Company was incorporated by an act of the 15 Legislature of the State of New Jersey, entitled "An act to incorporate the Newark Plank Road and Ferry Company, approved the twenty-fourth day of February, eighteen hundred and forty nine," which act is declared to be a public act, and to which these defendants beg leave to refer, and pray that the said act may be taken as 20 a part of this their answer.

And these defendants in further answering say that the present Directors of the said The Newark Plank Road and Ferry Company, are Daniel M. Wilson, Edward Doughty, David A. Hayes, John M. Davies, Calvin S. Dennis, John Chadwick, Daniel Price, William B. 25 Guild, Ai Fitch, Charles Alling, Edwin Van Antwerp, James H. Tichenor, and Robert Dod, and that the officers of said Company are Daniel M. Wilson, President; Edward Doughty, Vice President; David A. Hayes, Secretary; and Daniel Price Treasurer—and the said Daniel M. Wilson, David A. Hayes, Calvin S. Dennis, Daniel 30 Price, Ai Fitch, Edward Doughty, William B. Guild, Charles Alling, and James H. Tichenor, respectfully insist that they have no interest in, or connection with, the matter set forth in said bill, other than as stockholders, directors, or officers of the said The Newark Plank Road and Ferry Company, and should not have been 35 made parties in this suit.

And these defendants in further answering say that the said Company is by the said act invested with all the powers necessary to construct a Plank Road, to commence in the City of Newark, east of Broad Street, and thence passing by the most convenient and 40

direct course, to the bank of the Passaic river, near the old ferry, and across the meadows, between the said Passaic and Hackensack rivers, and through the County of Hudson in the most eligible route, to its point of termination in said County, and opposite the City of  
 5 New York, and are further invested with all the rights and powers requisite to authorise them to erect, in connection with the said Plank Road, a ferry across the Passaic river near what is known as the old ferry. And to that end, are also invested with the right of driving piles and erecting piers, extending out into the Passaic river,  
 10 on each side of the same, and that the said Company are not only invested with the right and power, but are required to keep a ferry boat, impelled by steam, horse-power, or otherwise, at the ferry in said bill of complaint, and hereinafter mentioned.

And these defendants in further answering admit that the Passaic  
 15 river is a navigable tide river up to, and for several miles above the City of Newark, and as such is a public highway, and is very valuable to the commercial interest, convenience, and general prosperity of the said City, and that commerce is carried on by means of, and upon said river, between the citizens of Newark, and of New Jersey,  
 20 with the citizens of many of the other States, and these defendants admit that the City of Newark has been made a port of entry by the Government of the United States, and the commerce carried on upon said river is not alone internal in its character, but is carried on among the several States, and that not only all the citizens of  
 25 this State as in said bill of complaint is stated, but all the citizens of the United States have had, and of right now have and ought at all times to have the free use and navigation of said river and should not be, and of right cannot be, prevented from navigating the said river, by any bridge, or other obstruction, in any manner whatsoever.  
 30 And these defendants further say that there are by authority of the Legislature of this State, across the said Passaic river, within the limits in which the said river is navigable, and where the tide ebbs and flows, several bridges in which draws of from twenty-four feet to thirty feet in width, are constructed so that the said bridges may  
 35 not prevent the free and uninterrupted navigation by vessels of said river—that two of the said bridges are across the said river at the City of Newark, and that some of the said complainants own wharves, docks, or other property on said river, above one or both of said bridges, and some below said bridges.  
 40 And these defendants in further answering say that the Legislature

of this State have the right to authorize the construction of bridges or ferries across said navigable tide river which the citizens of this and other States are so entitled to use as a public highway as aforesaid, only when such bridges or ferries do not prevent the free navigation of said river by the citizens of this and other States ; and 5 the Legislature of this State, as in duty bound, in granting charters to railroad, turnpike, and bridge companies, have always been careful to insert such provisions in the charters granted, as should clearly indicate that such companies were not at liberty to prevent the free and uninterrupted navigation of said river, either by the erection of 10 bridges or other obstructions—and the same care has been taken by the Legislature in preserving the navigation of other navigable tide rivers in this State. But these defendants respectfully insist that while it is unlawful for the State, or any body politic, to prevent the free navigation by vessels of said river, that it is perfectly lawful 15 for the State, or for any body politic, having the authority of the State for that purpose, to erect bridges over said river, or to construct ferries with piers, out into the said river, provided that by adequate draws in such bridges, or by sufficient openings between said piers, vessels of the capacity used in said rivers can, being 20 managed with ordinary skill and care, pass and repass through such draws and openings. And these defendants admit that the Legislature, when they granted the charter to the Newark Plank Road and Ferry Company, while they authorised them to erect piers, extending from each side of the Passaic river, out into the river, and author- 25 ised them to establish a ferry across said river, and to use boats propelled by steam or horse power, therein did also provide that the free and uninterrupted navigation of vessels in said river should not be prevented by any bridge or obstruction, in any manner whatever. And these defendants in further answering say that the act incorpor- 30 ating the Newark Plank Road and Ferry Company clearly shows, the Legislature by no means intended, when they granted the right of constructing piers and making a ferry, and when they provided that the free and uninterrupted navigation of said river should not be prevented by any bridge or obstruction in any manner whatever, 35 anything more than there should be a free and uninterrupted passage for vessels between the said piers. And with a view of preserving the safe navigation of said river while the Newark Plank Road and Ferry Company should have the privilege of erecting piers into the said river, expressly provide by the eleventh section of the charter 40

of said Company that said Company should keep at said ferries, persons capable of managing the boats, and should cause a lamp to be put up at the extreme point of said piers, to be lighted before dark, and to be kept lighted until day.

- 5 And these defendants further answering admit that the said The Newark Plank Road and Ferry Company have determined to construct a ferry across the Passaic river, as authorised by their charter, at the point where the ferry known as the old ferry, formerly was located; and that for that purpose are about erecting piers, extending  
 10 out into the river from each side thereof, so as to leave an opening between the said piers of three hundred feet, and admit that they intend having, and that they have already partly constructed the piers on each side of said river. But these defendants expressly deny that the erections by the said The Newark Plank Road and  
 15 Ferry Company made, or the further erections contemplated, are made or contemplated, in disregard of any of the provisions or restrictions of the Charter of the said Company, but respectfully insist that the same are allowed by the said charter, and further deny that they the said Company and the Directors thereof or any, or  
 20 either of them, seek to promote their own interest at the expense of the public, or to the damage and inconvenience of the complainants, or of any other persons whatsoever, and also deny that the construction of the piers as proposed will obstruct or injure the navigation of the said river in any material manner, or that it will at all  
 25 prevent the free and uninterrupted navigation of said river with ordinary care.

And these defendants further answering say that the said river at the place where said ferry is located, is but six hundred and fifty feet in width from bank to bank, and at the same place, the said  
 30 river is but five hundred and eighty-five feet in width, from low-water mark on the west side to low water-mark on the east side of said river—that the piles for the pier on the west side of said river, have been driven in said river about one hundred and ten feet from low-water mark on the said west side and that piles for the pier on  
 35 the east side of said river, have been driven in said river about forty feet from low-water on the east side of said river; that said piles are driven in rows about twenty feet apart—that said rows run parallel with the banks of the river, and have seven spiles on each row.  
 And that the said Company propose for the purposes of fenders to their  
 40 ferry boat, to extend from the last row of piles on the west side, two

rows of piles, one from each end of the row now driven ; said fenders to extend about fifty-seven feet towards the centre of said river, making the whole distance from the end of said fenders, to low-water mark, on the west side of said river, one hundred and sixty-seven feet. And that the said Company propose driving another row of 5 piles on the east side of said river, twenty feet from the last row now driven, and extending fenders from the same, in the same manner, and of the same length as on the west side, so that the pier, with the fenders, will extend into the river, one hundred and twenty feet from low-water mark, on the east side of said river, leaving a 10 space of three hundred feet between the two extremes of the two fenders at the end of each pier, according to the plan represented on the drawing hereto annexed, and which these defendants pray may be taken as a part of this, their answer.

And these defendants further answering say they admit that said Pas- 15 saic river, in some parts, is a narrow and crooked river, and in most parts thereof, shallow and difficult of navigation ; and that the channel of said river varies from one hundred feet to near three hundred feet in width, but for the most part, the channel of said river is not over one hundred and fifty feet in width ; but these defendants deny that the said 20 river is narrow, or crooked, or difficult of navigation at, or near, the point where said piers have been commenced—but, on the contrary, aver that for near a mile and a half below, and for over nine hundred feet above, said piers, the river is almost straight ; and that the channel at said piers and for two hundred and fifty yards below, and 25 three hundred yards above, the same, is of nearly a uniform depth of between nine and ten feet at low tide—and about two hundred and seventy-five feet in width—that between said piers and the mouth of said river, the channel for some distance is not more than one hundred and fifty feet in width, and not seven feet in depth at low 30 tide.

And these defendants in further answering say that at low water the river on the west side is six feet six inches deep at the row of piles now driven farthest in the river ; and at the end of the proposed fender to be erected from said row of piles, the water is eight feet 35 six inches in depth, at low water ; and that at the row of piles proposed to be driven on the east side of said river the water is seven feet three inches deep at low water, and at the end of the fenders proposed to be constructed into the river from said last mentioned pier, is ten feet in depth at low water, and continues about that 40

depth to within about twenty-five feet of the fenders on the west side of said river.

And these defendants in further answering say that The Newark Plank Road and Ferry Company propose having a boat of about  
5 sixty feet in length on said ferry in Passaic river, propelled by horse-power with wheels, and not, as in said bill mentioned, to be guided by an endless chain, extending from one of said piers to the other, but to be guided by and with a rudder in the same manner as is usual with all other boats of the kind.

10 And these defendants further answering say that the opening to be left between said piers and fenders as contemplated, will all be deeper water than is found near the mouth of said river, so that any vessel which navigates said river can sail at any point between said  
15 piers, and that while the piers leave for vessels a free passage of three hundred feet in width, they do not prevent the free and uninterrupted navigation of vessels in said river; and that in fact the passage way for vessels of any considerable size between the said  
20 piers, when finished, will be as wide as the passage way for vessels of any considerable size will be, in front of the wharves owned by the complainants where wharves are made to usual deep water on the east side of said river, and these defendants believe it to be as wide as the passage way for such vessels now is, in front of the wharves of the complainants; and these defendants further say that if it be true,  
25 as stated in said bill, that boats have already run foul of, or against, the erections already made by the said The Newark Plank Road and Ferry Company, when there is a passage way of four hundred and thirty-five feet in width, and when the largest sailing vessels navigating said river, are not more than thirty feet in width, such boats must either have been run afoul of such erections intentionally, or  
30 in consequence of extreme carelessness, or great want of skill.

And these defendants in further answering say that the said The Newark Plank Road and Ferry Company contemplate erecting said piers by driving the piles in rows twenty feet apart as hereinbefore stated, and covering the top with plank; and the said rows of piles  
35 running parallel with the river, and being twenty feet apart, with no obstructions between the same; the said piers will not prevent the free passage of water, nor dam or divert the same, or occasion any eddies, or deposites, or constitute any material obstruction to the passage of the ice formed in said river.

40 And these defendants in further answering say they believe it to

be true as stated in said bill, and therefore admit, that the said complainants are the owners of wharves, dock, or other property, on the Passaic river, but respectfully insist that they thereby gain no control over, or property in, the said river, other than other citizens have ; and, so long as the free passage of vessels in said river is not 5 prevented, have no right to interfere with the Newark Plank Road and Ferry Company in constructing their piers and ferry in said river, as authorised by their charter.

And these defendants in further answering say that the said The Newark Plank Road and Ferry Company have been authorised and 10 intrusted by the State of New Jersey to construct a highway for the citizens of Newark, and the whole adjoining country, to the City of New York ; that such highway is much required for the common business, comfort, safety, and advantage of the whole community ; and is calculated to promote the interest of the people of the City of Newark 15 and the adjoining country, and is greatly desired by them ; and that in order to make such road or highway convenient, and to prevent great delay in crossing said river, without a bridge across the same, and in order the better to enable The Newark Plank Road and Ferry Company to keep the said ferry open and free from ice in the winter 20 season and to preserve their ferry boats from being injured by the swell made by steam boats it is requisite and necessary that the ferry and piers should be constructed as contemplated by the said Company ; and that the said ferry and piers so constructed as contemplated, with the said road, instead of greatly impeding the growth 25 and prosperity of the said City of Newark, will greatly promote the same, as well as the growth and prosperity of the whole County of Essex, and instead of depreciating, will enhance, the value of property in said City, and the adjoining country.

And these defendants further answering respectfully insist that 30 The Newark Plank Road and Ferry Company, are incorporated, by their very title, for the purpose of constructing said ferry ; and, to that end, are authorised to erect piers out into the river from each side of the same, by their charter, to such an extent that vessels might, possibly, run against said piers, unless lights were kept burn- 35 ing on the same ; and that they do not, in contemplation of law, or in fact, prevent the free and uninterrupted navigation of said river, which the Legislature was bound to protect : and that they do not violate the restrictions of their charter, which provides, for the uninterrupted navigation of said river.

And these defendants in further answering say that they have never discovered any provision in the said act incorporating the Newark Plank Road and Ferry Company, approved the twenty-fourth day of February, eighteen hundred and forty-nine, requiring  
 5 said Company to commence the construction of either their road, or other works, in two years from the passage of the said act, or any provision, by which the benefit of said act is forfeited, if not so commenced; and these defendants respectfully submit to this Honorable Court, that the said act contains no such provisions.

10 And these defendants in further answering say that if the said act shall be construed to contain any such provisions, the rights of the said The Newark Plank Road and Ferry Company are in no manner affected thereby; for, although it may be true that the said Company did not actually cause the ground to be broken for the construction  
 15 of said road, until two years and two months after the passage of said act, yet the business of constructing said road, was actually commenced long before the expiration of two years after the passage of said act; that the said Company was, under the provisions of said act, formed; and the Directors of said Company were elected  
 20 on the second day of June, eighteen hundred and fifty; that surveys were made; and the road, for the most part, located, by a vote of the Board of Directors, on the twenty-sixth day of November, eighteen hundred and fifty; and that in the said month of November contracts and agreements for the right of way for said road were  
 25 entered into between the said Company and divers individuals, over whose lands the said road was located; that in the month of December, eighteen hundred and fifty, the said Company advertised for proposals for constructing said road and the piers in said river; and that the said acts and doings of said Company were done in good  
 30 faith, and thereby the construction of the said road was commenced within two years after the approval of said act; and that in pursuance of said act, and of such survey, agreements, and location, the said road has since been nearly all graded, and the ferry partially constructed; that such grading was commenced in the month of  
 35 April, eighteen hundred and fifty-one. But that organising the Company to construct said road, making the survey for said road, locating the same where it has since been partially made, is part and parcel of the construction of said road.

And these defendants further say that if they are now interrupted  
 40 in completing their road, and in constructing their ferry, according to

the plan herein set forth, great and irreparable injury will be done to them, in successfully carrying out the project of opening a convenient way for the people of the City of Newark, and of New Jersey, generally, of travelling in their own conveyances, to and from the City of New York; and that such a road is the more desirable as there is now no safe road to the City of New York for citizens travelling in their own conveyances. 5

And these defendants deny all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for these defendants to make answer unto, and not herein or hereby, well and sufficiently answered, confessed, or avoided, traversed or denied, is true to the knowledge or belief of these defendants; and they pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained. 10

DAVID A. HAYES, 15  
*Sol. and of Counsel with Def'ts.*

*The Newark Plank Road and Ferry Company by*

D. M. WILSON,

*President.*

[L. S.]

STATE OF NEW JERSEY, }  
Essex Co. } ss.

The above answer was on this ninth day of July, eighteen hundred and fifty-one, taken before me under the Seal of the Newark Plank Road and Ferry Company, and on the oath of Daniel M. Wilson, President of said Company; and the said Daniel M. Wilson being before me duly sworn did depose and say that he had read the said answer and that he knew the contents thereof, that the matters and things set forth and contained in the said answer, so far as the same relate to his own acts and deeds or to his acts and deeds as President of the said Company are true, and so far as they relate to the acts and deeds of the said Company or of any other person or persons he believes them to be true. 20 25

D. M. WILSON. 30

Subscribed and sworn before me at Newark, this 9th day of July, 1851.

DAVID K. BOYLAN,  
*Master in Chancery.*

STATE OF NEW }  
 JERSEY, } ss.

Daniel M. Wilson, Charles Alling, Ai Fitch, William B. Guild,  
 James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel  
 5 Price being duly, severally, sworn according to law, on their oath do  
 say, that the facts, matters and things in the foregoing answer men-  
 tioned and set forth, so far as they relate to their own acts and doings  
 are true, and so far as they relate to the acts and doings of others  
 they believe them to be true.

10 D. M. WILSON,  
 CHARLES ALLING,  
 AI FITCH,  
 WM. B. GUILD,  
 JAMES H. TICHENOR,  
 C. S. DENNIS,  
 DAVID A. HAYES,  
 15 D. PRICE.

Subscribed and sworn before me, at Newark, this 9th day of  
 July, 1851.

DAVID K. BOYLAN,  
*Mast. in Chancery.*

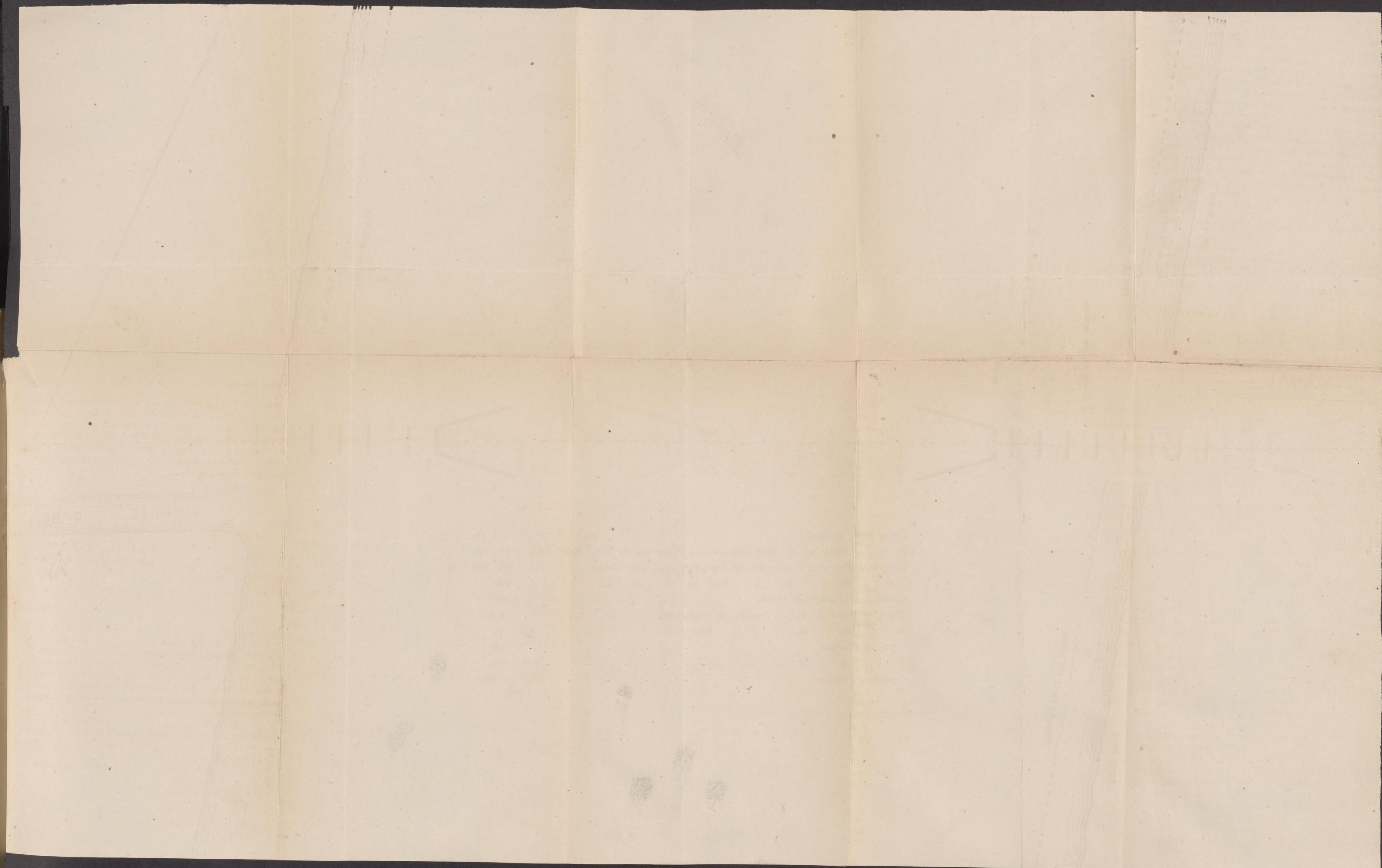
STATE OF NEW }  
 JERSEY, } ss.

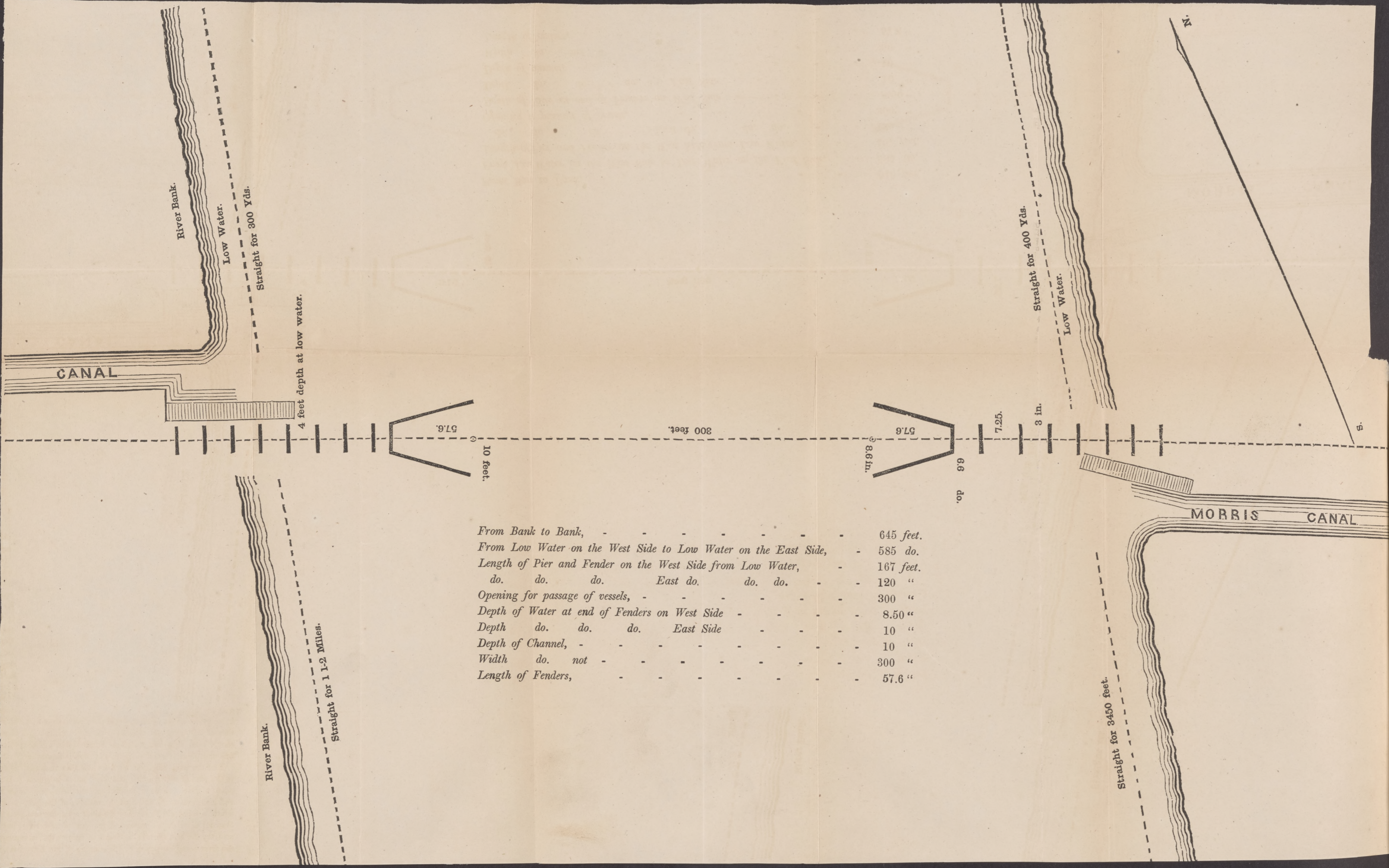
20 Edward Doughty, alleging himself conscientiously scrupulous of  
 taking an oath, being duly affirmed, according to law, saith that the  
 facts, matters and things in the foregoing answer mentioned and set  
 forth, so far as they relate to his own acts and doings are true, and  
 so far as they relate to the acts and doings of others he believes  
 25 them to be true.

EDW. DOUGHTY.

Subscribed and affirmed before me, at Newark, this 9th day of  
 July, 1851.

DAVID K. BOYLAN,  
*Mast. in Chancery.*





From Bank to Bank, - - - - -	645 feet.
From Low Water on the West Side to Low Water on the East Side, -	585 do.
Length of Pier and Fender on the West Side from Low Water, -	167 feet.
do. do. do. East do. do. do. - - - - -	120 "
Opening for passage of vessels, - - - - -	300 "
Depth of Water at end of Fenders on West Side - - - - -	8.50 "
Depth do. do. do. East Side - - - - -	10 "
Depth of Channel, - - - - -	10 "
Width do. not - - - - -	300 "
Length of Fenders, - - - - -	57.6 "

AFFIDAVITS ANNEXED TO THE ANSWER  
OF THE DEFENDANTS.

IN CHANCERY OF NEW JERSEY.

BETWEEN

LUCIUS Q. C. ELMER, Esq'r, Attorney General of New Jersey, ex rel.  
ISAAC VAN WAGENEN and others, and ISAAC VAN WAGENEN  
and others Complainants,

and

THE NEWARK PLANK ROAD AND FERRY COMPANY, and  
others Defendants.

STATE OF NEW JERSEY, }  
Essex County. } ss.

Augustus S. Baldwin, (alleging himself to be conscientiously  
scrupulous of taking an oath,) being duly affirmed according to law,  
saith, that he now is, and for more than twenty years has been con-  
nected with the United States navy; that he now is a lieutenant in  
said navy, and has so been for about ten years last past; that in the  
discharge of the duties of said office he has been much engaged in  
superintending the soundings of the navigable rivers of the United  
States, in taking surveys of the same, and in ascertaining obstruc-  
tions to the navigation of said rivers; that he has seen the plan of  
the ferry by which "The Newark Plank Road and Ferry Company"  
propose to cross the Passaic river at or near the location of what  
was formerly known as the "Old Ferry;" that he has taken sound-  
ings in the said Passaic river at the said ferry, and has taken a sur-  
vey of the said river both above and below the said piers; that the  
river at the said piers and above and below the same is straight;  
that the channel between the said piers is wider than in other places  
in said river above and below said piers; that from a careful examina-  
tion of said river and piers he is satisfied that the said piers if they  
should leave an opening of three hundred feet will not obstruct the  
free and uninterrupted navigation of vessels in said river materially.

And the said affirmant further saith that inasmuch as according  
to the plan of constructing said ferry he is informed it is not pro-  
posed to place boards or planks between the several rows of piles,  
and inasmuch as the effect of the running of the ferry boat in the  
winter season, will be to keep the river open, the said piers will not  
obstruct or delay the passage of ice out of said river, but on the  
contrary the said affirmant is clearly of opinion that in consequence of  
the river being kept open by the running of the ferry boat, the ice

will pass from and through that part of the river where the ferry is located more freely than if there was no ferry there constructed and used.

And the said affirmant further saith that when vessels pass up  
5 and down said river by means of "beating," the piers being narrow  
and the passage way being at least three hundred feet wide, when in  
many places on said river the channel is not half that width, the  
piers will constitute no obstruction to beating up and down said  
river. And that if any vessel has or shall run afoul of said piers,  
10 it must be in consequence of the most culpable carelessness.

And the said affirmant further saith, that from his knowledge of  
said river from actual examination of the same, and from an ex-  
amination of charts of the same taken under the authority of the  
Government of the United States, he is well satisfied that the ferry  
15 will not prevent the free navigation of said river; that while at  
several points above and below the said ferry there is considerable  
difficulty attending the navigation of said river, the passage for ves-  
sels between the piers erected will be safe and easy.

A. S. BALDWIN.

20 Taken, affirmed and subscribed at Newark, N. J., July 9th, 1851,  
before me,

T. FRELINGHUYSEN, JR.,  
*Master in Chancery.*

25 STATE OF NEW }  
JERSEY, } ss.

Francis H. Harper having been duly sworn doth depose and say  
that he now resides and has for eight years last past resided in the  
City of Newark in the County of Essex and State of New Jersey,  
30 that he is now captain of a schooner and that he has for twenty-two  
years last past been engaged in sailing vessels and for the last twelve  
years had charge of vessels, and for three years last past has been  
engaged as captain of a vessel in the Passaic river; that he is well  
acquainted with the navigation of the said Passaic river, of the  
35 course and depth of the channel of said river from its mouth to the  
Rail Road bridge; that the said river, where the Newark Plank  
Road and Ferry Company have commenced building the piers for  
their road, is for near a mile below said piers and for near four hun-  
dred yards above said piers, nearly straight, that the channel, at said  
40 piers and for near four hundred yards above and near three hundred

NEW JERSEY

yards below is wider and deeper than in any other part of said river except at the wharves in the City of Newark extending for about a half a mile from the Rail Road bridge down to the dock of Mr. Quinby ; that the said river is in some parts very difficult of navigation but that the best and easiest part of said river for navigation is 5 at said piers and for about three hundred yards above and below said piers of said Company ; that if a space of three hundred feet is left between said piers he this deponent cannot see how said piers will increase the difficulty of navigating said river, and that if a space of three hundred feet is left open between said piers, the said piers will 10 not obstruct the navigation of said river, and that there is no part of said river where piers could have been built in said river, where they could have been of less injury to the navigation of said river than the part selected by said Company for said piers ; that from the manner of constructing said piers with piles, in rows twenty feet 15 apart, they will not create any eddies or cause the mud or dirt to collect in said river and so fill up said river but will on the contrary be of benefit by causing the water to be thrown in the centre of the river and thereby increasing the depth of the channel ; that he this deponent has seen said piers within the last five days and examined 20 them and the depth of the river where said piles are driven and that from said examination this deponent will say, that he has a vessel drawing nine feet of water, which is about the greatest depth any vessel navigating said river draws, and that the piers constructed as proposed by said Company will be no obstruction to this deponent in 25 navigating said river with his vessel ; and that said piers cannot in any way injure the carrying trade, which is now carried on in said river between the City of Newark and other places, and that this deponent does not believe that the said piers will be of any material injury to the navigation of said river by penning back or obstructing 30 the passage of ice in or out of said river.

And this deponent further deposes and saith that about two hundred yards below said piers the channel of said river begins to grow narrower and shallower than at said piers, until it becomes near the mouth of the river about one hundred and fifty feet in width and not 35 over five feet in depth at low water.

F. H. HARPER.

Sworn and subscribed before me, at Newark, this 7th day of July, 1851.

L. SPENCER GOBLE, 40  
Master in Chan.

STATE OF NEW }  
 JERSEY, } ss.

Samuel Richards having been duly sworn doth depose and say that he resides, and for forty years last past has resided, in the City of Newark in the County of Essex and State of New Jersey, that he has heard read the foregoing affidavit of Francis H. Harper, and that he fully concurs in the statements made in said affidavit and believes them to be true so far as they relate to the river Passaic and to the channel of said river and to any obstruction, the piers about to be erected by The Newark Plank Road, and Ferry Company in said river, will be to the navigation of said river; that this deponent for twenty-five years last past has been well acquainted with the Passaic river from its mouth up to the turnpike bridge and also with the channel of said river from its mouth up to said bridge; that this deponent is well acquainted with the river and channel at the old ferry, and that he saw the bulk head erected by the Morris Canal and Banking Company and has from time to time observed the effect produced on the river and channel by said bulk head; that said bulk head being solid and not allowing the water to run under it has at its sides caused eddies and a deposit of mud and dirt at the sides of the bulk head but had no effect on the channel of the river until the said Canal Company afterwards when cleaning the canal deposited the mud and dirt taken out of the canal at the ends of the bulk head into the river, which deposit still remains there; that this deponent is well satisfied that if the said Canal Company had erected a pier on piles so that the water could have run under the pier no eddies would have been created or deposits of mud or dirt made; that in water of any depth it is impossible for a pier erected on piles to cause any accumulation of dirt or mud.

And this deponent further deposeth and says that the greatest cause of any change in the depth of the river Passaic from near the mouth of said river up to the Rail Road bridge is the wash created by large and swift steam boats passing up and down said river; that within the last ten or fifteen years the banks of the river have washed away so that the river in a greater part of its length has widened at least fifteen feet and the mud and dirt so washed from the banks have been deposited in the channel.

And this deponent further deposeth that no place in said river between its mouth and the Rail Road bridge could be selected, where so little obstruction would be caused or so little injury would

be done to the navigation of said river by the erection of piers, as at the place where the said Newark Plank Road and Ferry Company have commenced their piers in the Passaic river.

And this deponent further deposeth that from his knowledge of the Passaic river and of its tides an opening of three hundred feet 5 between the piers as proposed by the said Plank Road Company, is amply sufficient for the navigation of said river by any vessel that can possibly pass over the bar at the mouth of the river and that said piers will be of no injury to the navigation of said river or of any trade thereon.

SAMUEL RICHARDS. 10

Sworn and subscribed before me, at Newark, this 7th day of July, 1851.

L. SPENCER GOBLE,  
Master in Chan. 15

STATE OF NEW }  
JERSEY, } ss.

Samuel Nichols having been duly sworn doth depose and say that he now resides, and for the last five years has resided, in the City of Newark in the County of Essex and State of New Jersey, that for thirty-five years he has followed the sea and been engaged in sailing 20 vessels and for twenty-five years has been a master of vessels; that he has seen many piers built out into rivers and knows the effect produced by such piers in rivers; that wherever it has come under his personal observation he has invariably found that all erections into rivers always increases the depth of the channel; that by nar- 25 rowing the stream the water must necessarily be deeper and the current more uniform in its course; that this deponent has noticed the piles driven in the Passaic river by The Newark Plank Road and Ferry Company for their piers at the Old Ferry on the Passaic river and examined the plan on which said Company propose erect- 30 ing said piers for their ferry; that from his knowledge he is well satisfied that it will increase the depth of the water in the channel of the river instead of decreasing it; that said piers will not create any eddies or deposits of mud or dirt; that by leaving an opening of three hundred feet between the piers, said piers will be no 35 obstruction to the free and uninterrupted navigation of vessels in said river, whether propelled by steam or sails, and this deponent is surprised that any one acquainted with the navigation of vessels in

rivers would have any objection to said piers or suppose that they would render the navigation of the river any more difficult or dangerous by reason of said piers.

S. NICHOLS.

5 Sworn and subscribed before me, at Newark, this 8th day of July, 1851.

A. S. HUBBELL,  
*Master in Chancery.*

10 STATE OF NEW }  
JERSEY, } ss.

John A. Simonson having been duly sworn doth depose and say that he now resides and for three years last past has resided in Philadelphia; that he is a native of Staten Island and always lived  
15 there until he removed to Philadelphia; that he has all his life been engaged in boating and coasting; that for nine years last past he has been engaged in sailing vessels up and down the Passaic river, and is well acquainted with said river and its channel; that he has heard  
20 read the foregoing affidavit of Francis H. Harper, and that he fully concurs in the statements made in said affidavit and believes them to be true so far as they relate to the Passaic river and to the channel of the river and to the piers about to be erected in said river by The Newark Plank Road and Ferry Company, and to the effect of  
25 said piers, and to said piers being any obstruction to the navigation of said river; that he is now engaged in boating coal from Philadelphia to Newark and has for the last four years been exclusively engaged in that business and is now landing his ninth cargo in the City of Newark since the seventeenth-day of March last; that his  
30 vessel is one hundred feet long and draws six and a half feet water, low riged and difficult to manage; that since the present piles in the Passaic river have been driven by the said Company he has beaten both out and in said river and by said piles with a head wind and found no difficulty; that if a space between said piers of three  
35 hundred feet be left it will be amply sufficient for any vessel trading in said river and will be no obstruction to any vessel that can pass the bar at the mouth of the river; and will leave open the free and uninterrupted navigation of said river for vessels; and that said piers with such an opening will not deter any vessel from coming up said river or prevent any trade on said river; that it would make no  
40 difference to this deponent in sailing on said river whether the piers

were there or not if an opening of three hundred feet between said piers is left in the centre of the river where the channel is ; that it would be of great benefit to vessels passing up and down said river at night to have said piers erected in the river if a light was hung out at each pier ; that said piers cannot cause any eddies or create any deposite of mud or dirt from the manner in which they are to be erected. 5

JOHN A. SIMONSON.

Sworn and subscribed before me this 8th day of July, 1851, at Newark. 10

JNO. WHITEHEAD,  
*Master in Chancery.*

STATE OF NEW }  
JERSEY, } ss. 15

John L. Brown having been duly sworn doth depose and say that he now resides in the City of Newark ; that for nine years last past he has been engaged in sailing vessels up and down the Passaic river and for the last six years as captain of vessels ; that he is well acquainted with the Passaic river and its channel ; that he has heard 20 read the foregoing affidavit of Francis H. Harper and that he fully concurs in the statements made in said affidavit and believes them to be true so far as they relate to the Passaic river and to the channel of said river and to any obstruction the piers about to be built by The Newark Plank Road and Ferry Company in said river will 25 be to the navigation of said river and to the effect said piers will have on the depth of said river or in depositing mud or dirt or making eddies in said river ; that if lights are kept at night on said piers the navigation of said river will not by said piers be rendered 30 any more difficult than it now is.

JOHN L. BROWN.

Sworn and subscribed before me, at Newark, July 9th, 1851.

C. H. ANDRUSS,  
*Master in Chancery.*

STATE OF NEW }  
JERSEY, } ss. 35

William Jackson of the City of Newark having been duly sworn doth depose and say—that he for fifteen years last past has been a captain of vessels navigating the Passaic river to the City of New-

ark; that he has seen the plan of the ferry by which the Newark Plank Road and Ferry Company propose to cross Passaic river at the "old ferry" by which plan an opening of three hundred feet is left between the said piers; that the said deponent is satisfied  
 5 that the said piers leaving an opening of three hundred feet will not prevent the free and uninterrupted navigation of said river by vessels or be any obstruction to the said navigation.

WILLIAM JACKSON.

Sworn and subscribed before me at Newark, July 9th, 1851.

10

A. S. HUBBELL,  
*Master in Chancery.*

IN JUNCTION.

IN CHANCERY OF NEW JERSEY.

BETWEEN

LUCIUS Q. C. ELMER, Esq're, Attorney General of the State of New Jersey, at the relation of ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS and others, and ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS and others, Complainants.

and

The NEWARK PLANK ROAD AND FERRY COMPANY, CHARLES ALLING, EDWARD DOUGHTY, AI FITCH and others, Defendants.

*On Information,  
and bill  
&c.*

The argument of the order made in this cause on the eighteenth day of June last past requiring the defendants to show cause why an injunction should not issue against them in pursuance to the prayer of the information and bill filed in this cause, coming on to  
 15 be heard on the 17th day of July in the year of our Lord one thousand eight hundred and fifty-one, before his Honor the Chancellor at the City Hotel in the City of Newark, in the presence of Asa Whitehead, Benjamin Williamson and William Halsted of counsel on the part of the Attorney General and the complainants  
 20 and of David A. Hayes and Frederick T. Frelinghuysen of counsel with the defendants and the information and bill of complaint and the answer of the defendants and also certain affidavits, which had been taken on the part of the Attorney General and the complainants and on the part of the defendants being read and the matter  
 25 having been debated by the counsel of the respective parties, the Chancellor took time to consider thereof and upon such considera-

## OPINION OF CHANCELLOR

*On the 24th of February, 1849.*

On the 24th of February, 1849, the Legislature of New Jersey passed an act entitled "An act to incorporate the Newark Plank Road and Ferry Company." By the 8th section of this act the said Company are authorized to survey, lay out and construct a plank road, to commence in the city of Newark, east of Broad street, and thence passing by the most convenient and direct course to the bank of the Passaic river near the old ferry, and across the meadow between said Passaic and Hackensack rivers, and through the county of Hudson, in the most eligible route to its point of termination in said county and opposite the city of New York; and the said section further provides, that it shall be lawful for the said Company at any time to drive piles and erect or build piers, wharves, platforms, ferry stairs, or other works necessary for the said road and ferries thereon, in the said Passaic and Hackensack rivers; Provided always, that the free and uninterrupted navigation of vessels in said rivers or either of them is not thereby prevented by any bridge or other obstruction in said rivers, in any manner whatever.

The 11th section of the said act provides, that the said Company shall keep and maintain not less than two good and sufficient ferry-boats, propelled or moved by steam, horse-power or otherwise, for the safe transportation of horses, carriages, passengers, goods and other commodities, one boat on each of the said rivers, at the respective ferries, and persons capable of managing the said boats;— and the said Company shall cause to be put a lamp at the extreme point of each pier at said ferries, which said lamps shall be lighted every evening, before dark, and continue lighted until daylight next morning.

The bill prays an injunction restraining the said Company from projecting piers, wharves, &c., into the Passaic river, on either side thereof, and from obstructing, by any works at the ferry across the Passaic, the free and uninterrupted navigation of the said river.

The Company have already driven piles in the river, on each side thereof, to some distance from the banks; and have thereby indicated the distance to which they intend to project piers into the river.

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tion the Chancellor being of opinion that the charter or act of incorporation of the Newark Plank Road and Ferry Company authorizes said Company to build their wharves or piers in the Passaic river to such an extent only, as to enable ferry boats of the Company of suitable dimensions to reach such wharves or piers at 5 low water, and such other works beyond the ends of the wharves or piers as may be necessary for safely receiving their ferry boats and holding them at the ends of the piers for the safe and convenient passage across said ferry (if any such other works be necessary) 10 that it was the intention of the Legislature that the river should be ferried by steam boats or other boats, and that it is to be ferried accordingly, as far as fairly practicable and that the road and wharves or piers are to be constructed to the ferry: And the Chancellor being further of opinion that the plan of the Company 15 mentioned in the said information and bill and the answer of the defendants, by which the said Company propose to construct their wharves, piers and other works in and upon the Passaic river and upon which they were proceeding to construct the same at the time of filing the said information and bill extends into the river to the obstruction of the navigation of vessels therein, beyond what is 20 necessary for the purpose aforesaid, and beyond what is contemplated or authorized by the charter or act of incorporation of said Company.

This Court do thereupon on this twenty-first day of July in the year of our Lord one thousand eight hundred and fifty-one on motion 25 of Asa Whitehead, solicitor for and of counsel with the complainants and in behalf of said Attorney General, order, adjudge and decree that a writ of injunction do issue directed to the said The Newark Plank Road and Ferry Company and the other defendants in said bill named, their engineers, agents and workmen, enjoining 30 and restraining them and every of them from constructing their works in and upon the said Passaic river upon the plan in said bill and answer mentioned or in the manner in said answer set forth and also from extending their piers or wharves into said river beyond points on each side thereof which may be reached by ferry boats of 35 the Company of suitable dimensions, at low water.

And the Chancellor not having before him sufficient information to give any more specific direction as to the manner in which the wharves, piers and other works of said Company in said river shall be constructed, it is necessarily for the present left to the judgment 40

of the said Company, subject to the provisions of their charter, the directions contained in this order, and the action of the proper authorities, if the provisions of said charter shall be violated.

O. S. HALSTED, C.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

BETWEEN

LUCIUS Q. C. ELMER, Esq., Attorney General of the State of New Jersey, at the relation of ISAAC VAN WAGENEN, and others, and ISAAC VAN WAGENEN and others, Compl'ts.

and

The NEWARK PLANK ROAD AND FERRY COMPANY and others,  
Defendants.

}  
On Bill &  
injunction

The defendants, The Newark Plank Road and Ferry Company,  
5 Daniel M. Wilson, Edward Doughty, William B. Guild, James H. Tichenor, David A. Hayes, and Daniel Price, hereby appeal from so much of the final decree, made in this cause, bearing date the twenty fifth day of July, eighteen hundred and fifty one, as orders adjudges and decrees that a writ of injunction do issue directed to The Newark  
10 Plank Road and Ferry Company, and the other defendants in said bill named their engineers, agents, and workmen, enjoining and restraining them and every of them from constructing their works in and upon the said Passaic river upon the plan in said bill and answer mentioned or in the manner in said answer set forth, and also from  
15 extending their piers or wharves into said river beyond points on each side thereof, which may be reached by ferry boats of the Company of suitable dimensions at low water, to the Court of Appeals in the last resort in all causes of law.

DAVID A. HAYES,

*Sol. and of Counsel with Defendants.*

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Dated March 21, 1854.

I conceive there is a good cause for appeal in the above stated cause.

FRD'K T. FRELINGHUYSEN,

*Counsel with the Def'd'ts.*

25

## APPEAL.

## COURT OF APPEALS IN THE LAST RESORT.

BETWEEN

The NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL M. WILSON, EDWARD DOUGHTY, WILLIAM B. GUILD, JAMES H. TICHENOR, DAVID A. HAYES, and DANIEL PRICE Appellants,

and

LUCIUS Q. C. ELMER, Esq're, Attorney General of the State of New Jersey, by and at the relation of ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD, JAMES R. SAYRE, Jun., ELIAS TOMPKINS, CALVIN TOMPKINS, ABNER S. REEVE, DAVID RIPLEY, JOHN M. LAWRENCE, HORACE J. POINIER, JEREMIAH D. POINIER and EDWARD G. FAITOUTE; and ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD, JAMES R. SAYRE, Jun., ELIAS TOMPKINS, CALVIN TOMPKINS, ABNER S. REEVE, DAVID RIPLEY, JOHN M. LAWRENCE, HORACE J. POINIER, JEREMIAH D. POINIER, and EDWARD G. FAITOUTE, Respondents.

On Bill  
&c.Petition  
for  
Appeal.

*To the Honorable The Court of Errors and Appeals in the last resort in all causes.*

The humble Petition of the Newark Plank Road and Ferry Company, Daniel M. Wilson, Edward Doughty, William B. Guild, James H. Tichenor, David A. Hayes, and Daniel Price, the appellants in the above stated cause, respectfully shew that your petitioners find themselves agrieved by a final decree made in the 5 Court of Chancery by Oliver S. Halsted, Esquire, late Chancellor of the State of New Jersey, bearing date the twenty first day of July, eighteen hundred and fifty one, wherein the above named Respondents were Complainants, these appellants, the Newark Plank Road and Ferry Company, Daniel M. Wilson, Edward Doughty, 10 William B. Guild, James H. Tichenor, David A. Hayes, and Daniel Price; and Charles Alling, Ai Fitch and Calvin S. Dennis were defendants in this respect; that the said final decree orders that a writ of injunction do issue directed to the appellants The Newark Plank Road and Ferry Company, and the other defendants in the 15 said bill named, their engineers, agents, and workmen, enjoining and restraining them and every of them from continuing their works, in and upon the said Passaic river, upon the place in the said bill and answer mentioned, or in the manner in said answer set forth and also from extending their piers or wharves into said river beyond 20

points on each side thereof which may be reached by Ferry boats of the said Company, of suitable dimensions at low water.

And your petitioners humbly appeal from that part of said decree which orders said injunction, upon the ground that the same is erroneous and that said injunction ought not to have been ordered, and that the said the Newark Plank Road and Ferry Company have a just and legal right to construct their works in, and upon the said Passaic river, upon the place and in the manner in the said answer mentioned, and that the said Company have a just and lawful right to extend their piers or wharves into said river beyond points on each side thereof which may be reached by ferry boats of the Company, of suitable dimensions at low water.

Your petitioners therefore pray that the said decree of the Chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court may seem meet.

Dated April 19, 1854.

DAVID A. HAYES,  
*Solicitor and of Counsel with Appellants.*

## New Jersey Court of Errors and Appeals.

The NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL  
M. WILSON, EDWARD DOUGHTY, WILLIAM B. GUILD, JAMES  
H. TICHENOR, DAVID A. HAYES and DANIEL PRICE, Appel-  
lants,

and

On Appeal.

LUCIUS Q. C. ELMER, Attorney General, and at the relation of ISAAC  
VAN WAGENEN and others, and ISAAC VAN WAGENEN and  
others, Respondents.

### BILL OF COMPLAINT.

*To the Honorable Oliver S. Halsted, Chancellor of the State of  
New Jersey—*

Informing, sheweth unto your Honor, Lucius Q. C. Elmer, Esq.  
Attorney General of the State of New Jersey, in behalf of said  
State, and by and at the relation of Isaac Van Wagenen, William  
Wright, John H. Stephens, Aaron B. Ward, James R. Sayre, Jr.,  
Calvin Tomkins, Elias Tomkins, Abner S. Reeve, David Ripley, 5  
John M. Lawrence, Horace J. Poinier, Jeremiah D. Poinier, Ed-  
ward G. Faitoute, in behalf of themselves and of the owners of  
docks and wharves, store houses, lumber, coal and brick yards in  
the City of Newark, on the Passaic river, and of other real estate  
in said city, on the shore of said river, and other owners of vessels 10  
navigating said river to and from said city, and using trade, com-  
merce and navigation therein.

And also humbly complaining, shew unto your Honor, your ora-  
tors, Isaac Van Waganen, William Wright, John H. Stephens,  
Aaron B. Ward, James R. Sayre, Jr., Calvin Tomkins, Elias Tom- 15  
kins, Abner S. Reeve, David Ripley, John M. Lawrence, Horace J.  
Poinier, Jeremiah D. Poinier, and Edward G. Faitoute, in behalf of  
themselves and others as aforesaid.

That by an act of the Legislature of the State of New Jersey,  
approved the fourteenth day of February in the year of our Lord 20  
one thousand eight hundred and forty-nine, Daniel M. Wilson, Ed-  
ward Doughty, Robert Dod, James H. Tichenor, David A. Hayes,  
Alexander N. Dougherty, James Keene, Daniel Price, John Chad-  
wick, James H. Halsey, James Miller, George Dougherty, John S.

Peshine, James M. Quinby, Charles Alling, Reuben D. Baldwin, Calvin S. Dennis, Jabez Cook, Ambrose Williams, David H. Tichenor, David M. Fitzgerald, Charles O. Bolles, Amos Wilcox, Stille Manning, Samuel H. Gardner, Calvin Dodd, Samuel F. Righter, 5 William Frame, Ai Fitch, Horace J. Poinier, and such other persons as might thereafter be associated with them, were constituted a body corporate and politic in law, by the name of "The Newark Plank Road and Ferry Company." That amongst other things contained in that Act, the President and Directors of<sup>sa</sup> said Company 10 were thereby authorized and invested with all the rights and powers necessary and expedient to survey, lay out and construct a plank road, not exceeding sixty and not less than twenty-four feet in width; in the middle of said road to be formed a special, artificial road, of not less than sixteen feet in width continuous, or two tracks 15 of eight feet wide each, of substantial plank or timber, laid down in a substantial form and workmanlike manner so as to present a smooth and even surface, in order to secure a good, smooth and sufficient road at all seasons of the year, and in no case to rise above four degrees in a parallel with the horizon; to commence in the City 20 of Newark, east of Broad street and thence passing by the most convenient and direct course to the bank of the Passaic river, near the old Ferry, and across the meadow between said Passaic and Hackensack rivers and through the county of Hudson, in the most eligible route, to its point of termination in said county and opposite 25 the City of New York.

And amongst other things, it was by the said Act further declared that it should be lawful for said Company, at any time, to drive piles and erect or build piers, wharves, platforms, ferry stairs and other works necessary for the said road and ferries thereon, in the Passaic 30 and Hackensack rivers: Provided that no steam power should be used on said road, nor iron rails or other obstructions to common travel placed thereon, and that the free and uninterrupted navigation of vessels in said rivers, or either of them, was not thereby prevented by any bridge or other obstruction in said rivers, in any manner 35 whatever.

And also by the said Act it was declared that said Act should be deemed and taken to be a public act, and should at all times and in all Courts and places whatsoever, be recognized as such, and should be commenced within two years and continue in full force for the 40 term of fifty years, and that said Act should take effect immediately.

As in and by the said Act of the Legislature, to which the Attorney General aforesaid and your orators beg leave to refer, may and will more fully and at large appear.

And the Attorney General, at the relation aforesaid, and your orators further shew that after the passage of said Act the said 5 Plank Road and Ferry Company were organized by the appointment of their officers authorized by said Act, and that Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tiehenor, Calvin S. Dennis, David A. Hayes, Daniel Price, and others whose names are unknown to the said Attorney 10 General and to your orators, are the present Directors of said Company; the said Daniel M. Wilson is the President thereof, and David A. Hayes is the Secretary thereof.

And the Attorney General, at the relation aforesaid, and your orators further shew unto your Honor that the Passaic river, in this 15 State, and upon which the City of Newark is situate, now is, and from time immemorial has been, a public navigable river; that the tide flows and ebbs therein from the water commonly called Newark Bay, formed by the junction of said Passaic and Hackensack rivers, to, and from ten to fifteen miles above the City of Newark, and that 20 all the citizens and inhabitants of this State always have had, and of right now have and ought at all times to have, the free use and navigation of said river, and be permitted at all times to pass and re-pass, and navigate up and down the said river without any lett, obstruction or hindrance whatever; that said Passaic river is a narrow 25 and crooked river, and in most parts thereof shallow and difficult of navigation, admitting of vessels drawing not to exceed ten to twelve feet of water; that a very large and extensive navigation and commerce is carried on upon said river, especially from and to the City of Newark, which is now a large manufacturing and commercial 30 place, containing at least forty thousand inhabitants; that said river is navigated by various descriptions of vessels, that four steamboats ply regularly between the City of Newark and the City of New York; that vessels of various size and tonnage are engaged in the navigation of said river, and that the arrivals and departures of vessels at 35 and from said city average at least forty per day, excepting in the winter season when the navigation is obstructed by ice; that said City of Newark is a port of entry under the laws of the United States, and is a place of great manufacturing and commercial importance.

And the Attorney General, at the relation aforesaid, and your orators, further shew that your orators are the owners of docks and wharves, storehouses, lumber and coal yards, and other real estate upon said Passaic river, at the City of Newark, and the owners of  
 5 and interested in steamboats and other vessels engaged in commerce, navigating said river, to and from said city and between the said city and the city of New York and various other ports and places in the United States, to a large extent, and are some of them carrying on merchandize and are dealers in lumber, brick, lime, coal, and  
 10 divers other articles, for the transportation of which they depend upon the navigation of said river, and that the keeping of the navigation of said river free and unobstructed is of vital importance to their interests and to the present and future growth and prosperity of the city of Newark, and the advancement of manufactures, trade  
 15 and commerce in general.

And the said Attorney General, at the relation aforesaid, and your orators further shew unto your Honor that the said Directors, of the said The Newark Plank Road and Ferry Company, have caused a survey to be made of the route of their road and ferry, and  
 20 have located and agreed upon the same, and lately commenced and are now engaged in constructing the same; that the said route crosses said Passaic river at or near what is known as the old ferry, being a point below said city of Newark, where anciently a ferry was established on said river; that said river at that point, from bank to  
 25 bank, including the shore on both sides, does not exceed eight hundred feet in width.

And the said Attorney General, at the relation aforesaid, and your orators, shew that the construction of said plank road and ferries was not commenced within two years after the approval of the  
 30 aforesaid Act of Incorporation or Charter, according to the provision thereof in that respect herein before mentioned; that the said Act was approved and became a law on the twenty-fourth day of February in the year of our Lord one thousand eight hundred and forty-nine, and the construction of said road and ferries, or either  
 35 of them, or any part thereof, was not commenced until some time in the month of April, in the year of our Lord one thousand eight hundred and fifty-one, being about two years and two months after the approval of said Act; and the said Attorney General, in behalf of the State of New Jersey, and your orators, submit to your  
 40 Honor that the said Company have no right, power or authority, by

the said act of incorporation, to construct said road and ferries, or any or either of them, or any part thereof, without further authority given them by the Legislature, the term limited by the said Act for the commencement thereof having expired before the same was commenced.

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And the said Attorney General, at the relation aforesaid, and your orators, further shew unto your Honor that the said Company, and the aforesaid Directors thereof, not regarding the provisions and restrictions of the aforesaid Act in respect to the navigation of the said Passaic river, but seeking to promote their own interest and convenience at the expense of the public and especially to the great damage and inconvenience of your orators and others similarly situated, and the damage of all the good citizens of the city of Newark, and of all others having occasion to navigate said river, or who are in any wise interested in the commerce of this State, have caused a plan to be devised for erecting their ferry and piers at and across said river, in such manner as greatly to obstruct and injure the navigation of said river and altogether to prevent the free and uninterrupted navigation thereof; and the said Company and the said Directors thereof have agreed upon said plan and determined to carry the same into effect; that the said plan so devised, agreed on and determined to be carried into effect, contemplates the erection of a long pier upon each side of said river, projecting from each bank of said river into the waters thereof, so that about five hundred feet of the width of said river will be occupied by said piers, leaving an opening or space between said piers, at their termination in said river, of only three hundred feet, for the passage of steamboats and other vessels navigating said river; that said ferry, as said Attorney General, at the relation aforesaid informs, and your orators shew, is intended to be carried on by a boat or boats, to be propelled for the transportation of wagons, coaches, carriages, carts, and all other kinds and descriptions of vehicles, and of horses, cattle, oxen, sheep, hogs, and all other manner of beasts, by steam; the said boat or boats to be guided between said piers by endless chains, extending from one of said piers to the other thereof; that a boat suitable for the convenient carrying on of the business of said Company will necessarily be from seventy-five to one hundred feet long, and upon the plan aforesaid will necessarily, at all times, lay in the water lengthwise between said piers or across the river, thereby still further reducing the space for the passage of vessels along said river.

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And the said Attorney General, at the relation aforesaid, and your orators, further shew unto your Honor that the said Plank Road Company, and the said Directors by their agents, workmen and servants, are now actively engaged in erecting a pier or bulk-head on the south-westerly side of said river, upon the plan aforesaid; that 5 piles have already been driven into the bed of said river to the distance of one hundred and fifty feet from the river bank, so that the same is already a great obstruction to the navigation of said river, that boats navigating said river have already run foul of and against 10 the said erection, so far as the same has progressed.

And the said Attorney General, at the relation aforesaid, and your orators further shew that the erection of said ferry and piers or bulkheads, in manner aforesaid, will form an obstruction to the tides and currents in said river; that eddies will be created about 15 the same, and deposits of mud and dirt be made by which the river, already too shallow, will be, to an injurious extent, filled up and obstructed, and that the said piers or bulkheads will pen back the ice and form a great obstruction to the same running out of said river, and delay the opening of the navigation thereof for at least 20 ten days beyond the time when the said river, by the natural flow of the ice thereon, would be clear of the same and the navigation thereof unobstructed by the same.

And the said Attorney General, at the relation aforesaid, and your orators further shew unto your Honor, that the erection of said 25 ferry and piers or bulkheads, as aforesaid, will be a great nuisance to all the citizens of the city of Newark, and will greatly impede the commerce and manufactures of said city and the growth and prosperity thereof, that, in particular, the value of all the docks and wharves, store houses, manufacturing establishments, lumber, brick 30 and coal yards, erected and located upon and along said river and depending on the free navigation thereof, will be greatly depreciated, and also that other lands lying on said river, which are susceptible of being used for wharves and commercial purposes, and which derive their principle value therefrom, will be greatly damaged.

And the said Attorney General, at the relation aforesaid, and your orators further shew unto your Honors, that the erection of said piers or bulkheads are not at all necessary for the purpose of the said road and ferry across the Passaic river; that proper and convenient wharves upon said river may be constructed without 40 causing any serious obstruction to the navigation thereof, and the

said Attorney General, on behalf of the State, insists, and your orators respectfully insist and submit that the said Company, or the Directors thereof, or their agents, workmen or servants, have no right or authority to carry their said plan into effect, or to drive piles, or erect and build piers, wharves, platforms, ferry stairs, or any other works in or upon said Passaic or Hackensack rivers, which shall in any way interfere with or obstruct the free navigation of said rivers, or whereby the free and uninterrupted navigation of vessels in said rivers, or either of them, can or may be obstructed in any manner whatever; and on the contrary thereof, that all such erections are expressly prohibited by the charter of said Company.

But now, so it is, may it please your Honor, that the said The Newark Plank Road and Ferry Company, and the said Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes, Daniel Price, and others confederating with them, not regarding the provisions or the charter or act of incorporation of said Company, in that respect, persist in continuing to construct the said road, notwithstanding the same was not commenced within the time limited by said charter, and they consequently have no right or authority to construct the same; and also further disregarding the provisions of the said charter or act of incorporation in respect to the free navigation of the said Passaic river, and contemning the authority of the State of New Jersey and the well defined common right of the citizens thereof to the free and uninterrupted navigation of said Passaic river, and reckless of the great immediate damage and injury which your orators will be subjected to and sustain thereby, persist in their determination to erect the said ferry and piers or bulkheads, in manner aforesaid, and continue the work of actually erecting and constructing the same, and pretend and give out that they have authority and are warranted by their charter in so doing; the contrary whereof, the said Attorney General, at the relation aforesaid, and your orators charge to be true, inasmuch as the said river Passaic is a public navigable river, and the navigation thereof cannot in any way be lawfully obstructed without the authority of the Legislature; and that said Company, by said charter or act of incorporation, is expressly prohibited from doing any thing by which the free and uninterrupted navigation thereof by vessels, can be in any manner whatever prevented.

And the said Attorney General, and your orators, further charge

that the said piers, wharves, docks or other works of said Company, cannot lawfully be erected or constructed along, in or upon said river, in such way as in any manner to hinder, obstruct or prevent the free and uninterrupted navigation of said river.

- 5 All which actings and doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your relators and orators, and to the public wrong and nuisance of all the citizens of the State of New Jersey, navigating the said Passaic river or interested in the navigation thereof. To  
 10 the end therefore that the said The Newark Plank Road and Ferry Company may in such manner as is required by law and the practice of this Court, and the said Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel Price, and their con-  
 15 federates, when discovered, may, upon their corporal oaths, full, true and perfect answer make to all and singular, the premises, as fully as if the same were herein again repeated, and they thereto particularly interrogated, with all the attendant circumstances and incidental transactions, and that it may be decreed that the said The  
 20 Newark Plank Road and Ferry Company have no right, title or authority under the aforesaid act of incorporation or charter, to construct said road or ferries, for that the said road or ferries were not commenced within the time limited by said act or charter for the commencement thereof, and that the said The Newark Plank Road  
 25 Company and the said Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel Price, the defendants in this cause, their agents, engineers, workmen and servants, may be restrained by the order and decree, and writ of injunction of this  
 30 Court, from carrying into effect the plan devised and agreed upon and determined to be carried into effect as aforesaid, for erecting the ferry and piers at and across said river as aforesaid, and from constructing and erecting said piers into and upon said river, according to said plan and as herein before stated and set forth, that they are  
 35 proceeding to do, and are actually engaged in doing, and also from driving any spiles or erecting or building any piers, bulkheads, wharves, platforms, ferry stairs or other works, in or upon the said Passaic river, whereby the free and uninterrupted navigation of said river may be in any wise interfered with and obstructed, or the free  
 40 navigation of said river by vessels in any manner prevented, and

from driving any spiles or erecting or building any pier or bulkheads, wharves, platforms, ferry stairs or other works, in or upon the said Passaic river, other than such as are authorized in and by said act of incorporation or charter, and in the manner and subject to the restrictions and prohibitions contained in said act or charter, 5 and also from making any obstructions or erections whatever in the said river where the waters thereof are navigable. And that the nuisance and obstruction to the navigation of said Passaic river already created by driving spiles therein for the erection or construction of a pier as aforesaid, may by the direction, order or decree of this honorable Court, be abated, and that your Honor may grant such further and other relief as the nature of the case may require and shall be agreeable to law and equity. 10

May it please your Honor, the premises considered to grant to the said Attorney General and your orators, a writ of injunction, 15 issuing out of and under the seal of this honorable Court to be directed to the said The Newark Plank Road and Ferry Company, Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes, Daniel Price, and their confederates when discovered, their 20 agents, engineers, workmen and servants, restraining and enjoining them, and every of them, as aforesaid; and also a writ of subpoena issuing out of and under the seal of this honorable Court, to be directed to the said The Newark Plank Road and Ferry Company, and the said Daniel M. Wilson, Charles Alling, Edward Doughty, 25 Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel Price, and their confederates when discovered, commanding them and every of them, on a certain day and under a certain penalty therein to be inserted, said Company, according to law, and said other persons, personally to be and appear before 30 your Honor, in this honorable Court, then and there to answer all and singular the said premises, and to stand to and abide by such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

LUCIUS Q. C. ELMER,

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*Attorney General, New Jersey.*

ASA WHITEHEAD,  
*Solicitor and of Counsel with relators and complainants.*

STATE OF NEW JERSEY, }  
 County of Essex. } ss.

Isaac Van Wagenen, James R. Sayre, Jr., John M. Lawrence and Aaron B. Ward, four of the complainants in the foregoing bill of  
 5 complaint named, being duly severally sworn, according to law, on their oaths, do say that those facts, matters and things in said bill mentioned and set forth, which relate to the acts and deeds of any other person or persons than the complainants in said bill named, they verily believe to be true; and that all other facts, matters and  
 10 things in said bill mentioned and set forth are true.

ISAAC VAN WAGENEN,  
 JAMES R. SAYRE, JR.,  
 J. M. LAWRENCE,  
 AARON B. WARD.

15 Sworn and subscribed before me, at Newark, this 17th day of June, A. D., 1851.

DANIEL DODD, JR.,  
*Mast. in Chan. of N. J.*

20 STATE OF NEW JERSEY, }  
 County of Essex. } ss.

John Gaffy, of the city of Newark, in the said county, being duly sworn according to law, on his oath, saith, That he has heard the statements in the foregoing bill of complaint contained, touching the  
 25 intended construction of the ferry of The Newark Plank Road and Ferry Company, and the statements therein contained touching the Passaic river, its navigation and the obstruction thereof, which will be occasioned by the erection, as therein mentioned, of the piers or bulkheads for the ferry of said company, over said river, as proposed  
 30 by said company, read, and that the same are true: And deponent further saith that he is the master of the steamboat Passaic, plying on said river twice a day, between said city of Newark and the city of New York, and has for the last ten years, or thereabouts, been the master of a steamboat plying on said river between said cities,  
 35 and for about fifteen years prior to that time was employed as a pilot on the Hudson river; and deponent further saith that he is well acquainted with said Passaic river, and the navigation thereof; that he has observed the piling put down in said Passaic river for said  
 40 piers or bulkheads and is fully satisfied that the same, and said piers or bulkheads, when built, will be a most serious and dangerous ob-

struction to the navigation of said Passaic river; that they will render still more difficult the already difficult navigation of the river; that in addition to their narrowing the river, they will render it still more shallow, the effect thereof being to collect the mud and dirt about them, and so to fill up the river; that said pier or bulkheads are placed in a situation than which (on account of the tide) no place at or in the vicinity of Newark could have been selected more injurious to the navigation of the river, and that but two places could be selected where equal injury would be done; that said piers and bulkheads, when built, will, on account of the obstruction which they will so occasion, tend very greatly to injure the carrying trade which is now extensively carried on at said Newark, and many navigators now plying between Newark and other cities and towns will be deterred from prosecuting said trade to and from Newark; that about ten or fifteen years ago, by reason of the obstruction of a small pier built by the Morris Canal and Banking Company, projecting about thirty or forty feet into the river, at the outlet of their canal, the river on the western side thereof has greatly filled up at that pier, the water shoaled, the channel narrowed, and the navigation become much more difficult. Deponent further saith that he is clearly of opinion that no pier or bulkhead, of any considerable size, is required on either side of said river for said ferry, much less pier or bulkhead of the size and extent proposed to be erected by said company; and that no pier of more than thirty feet, or forty feet in length, is, in deponent's opinion, required for said ferry on the western side of the river; and that a pier of much less extent will be sufficient on the eastern side. And deponent further saith that the obstruction which said piers or bulkheads, if built as proposed by said company, will occasion to the navigation, by penning back and obstructing the passage of ice, will be far greater than stated in said bill in that behalf.

JOHN GAFFY.

Sworn and subscribed before me, at Newark, N. J., this 17th June, 1851.

DAN'L DODD, JR., 35  
*Mast. in Chan.*

STATE OF NEW JERSEY, }  
County of Essex. } ss.

David Cox, of the city of Newark, in said county, being duly sworn according to law, on his oath, saith that he is and for from 40

fifteen to twenty years last past has been engaged in navigating the river Passaic, and that lately for about three years has been master of a steambot plying between said Newark and the City of New York—that he has heard read the foregoing bill of complaint and  
 5 the foregoing affidavit thereto annexed of Captain John Gaffy—and that the statements contained in them in relation to the navigation of the said Passaic river, and to the obstruction to said navigation by the piers and bulkheads so proposed to be erected in said river by the said Plank Road and Ferry Company are true, as are also  
 10 the statements in said affidavit of Captain Gaffy in relation to the effect of the pier heretofore erected by the Morris Canal and Banking Company—and that this deponent fully concurs in the opinions expressed by said Captain Gaffy in his affidavit that there is no necessity whatever for extending the said piers and bulkheads to the extent  
 15 proposed by the said Plank Road and Ferry Company, and that piers and bulkheads of the size and extent mentioned by him would be sufficient for the purposes of said ferry of said Company.

DAVID COX.

Sworn and subscribed before me at Newark, this 17th day of June  
 20 A. D. 1851:

DAN'L DODD, Jr.

*Mast. in Chan. of N. J.*

STATE OF NEW JERSEY, }  
 25 Essex Co. } ss.

Jeremiah L. Wilsey of the city of Newark in the County afore-  
 said being duly sworn on his oath saith that for more than thirteen  
 years past he has been, and is now, engaged in navigating the river  
 Passaic—that he has heard read the foregoing bill of complaint and  
 30 the affidavits of John Gaffy, and David Cox, and that this deponent  
 fully concurs in the facts and opinions expressed therein, as to the  
 effect of the proposed erection of piers and bulkheads by the Plank  
 Road and Ferry Company—that there is no necessity for erecting  
 them of the size and extent proposed and that the injury that will be  
 35 caused to the navigation of the said river Passaic by the said erections,  
 are rather underrated than overrated in the said bill and the said  
 affidavits—and that piers of the size and extent suggested by Captain  
 Gaffy would be sufficient for said Ferry—and that the facts stated  
 by him in reference to the effect of the pier erected by the Morris  
 40 Canal Company are true.

J. L. WILSEY.

Sworn and subscribed before me at Newark, N. J., this 17th June, 1851.

DAN'L DODD, Jr.

Master in Chancery of N. J.

ORDER TO RESTRAIN DEFENDANTS.

IN CHANCERY OF NEW JERSEY. 5

BETWEEN

LUCIUS Q. C. ELMER, Esq're, Attorney General of the State of New Jersey, at the relation of ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, and others, and ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD and others Compl'ts.

and

The NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL M. WILSON, CHARLES ALLING, EDWARD DOUGHTY, AI FITCH, WILLIAM B. GUILD, JAMES H. TICHENOR, CALVIN S. DENNIS, DAVID A. HAYES and DANIEL PRICE, def'ts,

On Bill &c.

Upon reading and filing the bill of complaint in this cause, and the several affidavits thereunto annexed, It is ordered by the Chancellor, on motion of Asa Whitehead, solicitor for, and of counsel with the relators, and complainants, on this eighteenth day of June, 10 in the year of our Lord, one thousand eight hundred and fifty-one, that the defendants in this cause do shew cause, if any they have, before the Chancellor at his Chambers in the City of Newark, on Monday, the thirtieth day of June instant, at ten o'clock in the forenoon, why an injunction should not issue pursuant to the prayer 15 of said bill, and it is further ordered that in the mean time the said defendants, their agents, engineers, workmen, and servants, do desist, and absolutely refrain, under the penalty that may fall thereon, from carrying into effect the plan in said bill stated to have been devised, agreed upon, and determined by the said The Newark 20 Plank Road and Ferry Company, and the Directors thereof, for the erecting of their ferry, and piers, at and across the Passaic river, at the city of Newark, which plan is in said bill stated to contemplate the erection of a long pier, or bulkhead upon each side of said river projecting from each bank of said river, into the waters thereof, so 25 that about five hundred feet of the width of said River will be occupied by said piers, or bulkheads; one of which piers or bulkheads it is set forth in said bill the said The Newark Plank Road

and Ferry Company, and the directors thereof, by their agents, workmen and servants are now actively engaged in erecting on the south-westerly side of said river, on the plan aforesaid, and that piles have already been driven into the bed of said river to the distance of one hundred and fifty feet from the river bank; and from constructing and erecting said piers into and upon said River according to said plan, until the further order of this Court.

O. S. HALSTED, C.

ANSWER OF DEFENDANTS.

IN CHANCERY OF NEW JERSEY.

10 BETWEEN

THE NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL M. WILSON, CHARLES ALLING, EDWARD DOUGHTY, AI FITCH, WILLIAM B. GUILD, JAMES H. TICHENOR, CALVIN S. DENNIS, DAVID A. HAYES, and DANIEL PRICE, Defendants,

and

LUCIUS Q. C. ELMER, Attorney General of the State of New Jersey, in behalf of said State; and by and at the relation of ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD, JAMES R. SAYRE, Jun'r, CALVIN TOMKINS, ELIAS TOMKINS, ABNER S. REEVES, DAVID RIPLEY, JOHN M. LAWRENCE, HORACE J. POINIER, JEREMIAH D. POINIER, and EDWARD G. FAITOUTE; and ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEVENS, AARON B. WARD, JAMES R. SAYRE, Jun'r., CALVIN TOMKINS, ELIAS TOMKINS, ABNER S. REEVE, DAVID RIPLEY, JOHN M. LAWRENCE, HORACE J. POINIER, JEREMIAH D. POINIER, and EDWARD G. FAITOUTE, Complainants.

*On Bill &c.*

The joint and several answers of The Newark Plank Road and Ferry Company, and Daniel M. Wilson, Charles Alling, Edward Doughty, Ai Fitch, William B. Guild, James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel Price, to the information of Lucius Q. C. Elmer, Attorney General of the State of New Jersey, in behalf of said State, by and at the relation of Isaac Van Wageningen, William Wright, John H. Stephens, Aaron B. Ward, James R. Sayre, Jr., Calvin Tomkins, Elias Tomkins, Abner S. Reeve, David Ripley, John M. Lawrence, Horace J. Poinier, Jeremiah D. Poinier, and Edward G. Faitoute in behalf of themselves and of the owners of docks and wharves, storehouses; lumber, coal and brick yards, in the city of Newark on the Passaic river, and of

other real estate in said city, on the shore of said river, and others owners of vessels navigating said river to and from said city, and using trade, commerce, and navigation therein, and to the bill of complaint of Isaac Van Wagenen, William Wright, John H. Stephens, Aaron B. Ward, James R. Sayre, Jr., Calvin Tomkins, 5 Elias Tomkins, Abner S. Reeve, David Ripley, John M. Lawrence, Horace J. Poinier, Jeremiah D. Poinier, and Edward G. Faitoute, in behalf of themselves and others aforesaid.

These defendants now and at all times hereafter saving and reserving to themselves, all, and all manner of advantage of exceptions 10 to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof, as these defendants are advised is material for them to make answer unto—they answering say that The Newark Plank Road and Ferry Company was incorporated by an act of the 15 Legislature of the State of New Jersey, entitled "An act to incorporate the Newark Plank Road and Ferry Company, approved the twenty-fourth day of February, eighteen hundred and forty nine," which act is declared to be a public act, and to which these defendants beg leave to refer, and pray that the said act may be taken as 20 a part of this their answer.

And these defendants in further answering say that the present Directors of the said The Newark Plank Road and Ferry Company, are Daniel M. Wilson, Edward Doughty, David A. Hayes, John M. Davies, Calvin S. Dennis, John Chadwick, Daniel Price, William B. 25 Guild, Ai Fitch, Charles Alling, Edwin Van Antwerp, James H. Tichenor, and Robert Dod, and that the officers of said Company are Daniel M. Wilson, President; Edward Doughty, Vice President; David A. Hayes, Secretary; and Daniel Price Treasurer—and the said Daniel M. Wilson, David A. Hayes, Calvin S. Dennis, Daniel 30 Price, Ai Fitch, Edward Doughty, William B. Guild, Charles Alling, and James H. Tichenor, respectfully insist that they have no interest in, or connection with, the matter set forth in said bill, other than as stockholders, directors, or officers of the said The Newark Plank Road and Ferry Company, and should not have been 35 made parties in this suit.

And these defendants in further answering say that the said Company is by the said act invested with all the powers necessary to construct a Plank Road, to commence in the City of Newark, east of Broad Street, and thence passing by the most convenient and 40

direct course, to the bank of the Passaic river, near the old ferry, and across the meadows, between the said Passaic and Hackensack rivers, and through the County of Hudson in the most eligible route, to its point of termination in said County, and opposite the City of  
 5 New York, and are further invested with all the rights and powers requisite to authorise them to erect, in connection with the said Plank Road, a ferry across the Passaic river near what is known as the old ferry. And to that end, are also invested with the right of driving piles and erecting piers, extending out into the Passaic river,  
 10 on each side of the same, and that the said Company are not only invested with the right and power, but are required to keep a ferry boat, impelled by steam, horse-power, or otherwise, at the ferry in said bill of complaint, and hereinafter mentioned.

And these defendants in further answering admit that the Passaic  
 15 river is a navigable tide river up to, and for several miles above the City of Newark, and as such is a public highway, and is very valuable to the commercial interest, convenience, and general prosperity of the said City; and that commerce is carried on by means of, and upon said river, between the citizens of Newark, and of New Jersey,  
 20 with the citizens of many of the other States, and these defendants admit that the City of Newark has been made a port of entry by the Government of the United States, and the commerce carried on upon said river is not alone internal in its character, but is carried  
 25 on among the several States, and that not only all the citizens of this State as in said bill of complaint is stated, but all the citizens of the United States have had, and of right now have and ought at all times to have the free use and navigation of said river and should not be, and of right cannot be, prevented from navigating the said river, by any bridge, or other obstruction, in any manner whatsoever.

30 And these defendants further say that there are by authority of the Legislature of this State, across the said Passaic river, within the limits in which the said river is navigable, and where the tide ebbs and flows, several bridges in which draws of from twenty-four feet to thirty feet in width, are constructed so that the said bridges may  
 35 not prevent the free and uninterrupted navigation by vessels of said river—that two of the said bridges are across the said river at the City of Newark, and that some of the said complainants own wharves, docks, or other property on said river, above one or both of said bridges, and some below said bridges.

40 And these defendants in further answering say that the Legislature

of this State have the right to authorize the construction of bridges or ferries across said navigable tide river which the citizens of this and other States are so entitled to use as a public highway as aforesaid, only when such bridges or ferries do not prevent the free navigation of said river by the citizens of this and other States ; and 5 the Legislature of this State, as in duty bound, in granting charters to railroad, turnpike, and bridge companies, have always been careful to insert such provisions in the charters granted, as should clearly indicate that such companies were not at liberty to prevent the free and uninterrupted navigation of said river, either by the erection of 10 bridges or other obstructions—and the same care has been taken by the Legislature in preserving the navigation of other navigable tide rivers in this State. But these defendants respectfully insist that while it is unlawful for the State, or any body politic, to prevent the free navigation by vessels of said river, that it is perfectly lawful 15 for the State, or for any body politic, having the authority of the State for that purpose, to erect bridges over said river, or to construct ferries with piers, out into the said river, provided that by adequate draws in such bridges, or by sufficient openings between said piers, vessels of the capacity used in said rivers can, being 20 managed with ordinary skill and care, pass and repass through such draws and openings. And these defendants admit that the Legislature, when they granted the charter to the Newark Plank Road and Ferry Company, while they authorised them to erect piers, extending from each side of the Passaic river, out into the river, and author- 25 ised them to establish a ferry across said river, and to use boats propelled by steam or horse power, therein did also provide that the free and uninterrupted navigation of vessels in said river should not be prevented by any bridge or obstruction, in any manner whatever. And these defendants in further answering say that the act incorpor- 30 ating the Newark Plank Road and Ferry Company clearly shows, the Legislature by no means intended, when they granted the right of constructing piers and making a ferry, and when they provided that the free and uninterrupted navigation of said river should not be prevented by any bridge or obstruction in any manner whatever, 35 anything more than there should be a free and uninterrupted passage for vessels between the said piers. And with a view of preserving the safe navigation of said river while the Newark Plank Road and Ferry Company should have the privilege of erecting piers into the said river, expressly provide by the eleventh section of the charter 40

of said Company that said Company should keep at said ferries, persons capable of managing the boats; and should cause a lamp to be put up at the extreme point of said piers, to be lighted before dark, and to be kept lighted until day.

- 5 And these defendants further answering admit that the said The Newark Plank Road and Ferry Company have determined to construct a ferry across the Passaic river, as authorised by their charter, at the point where the ferry known as the old ferry, formerly was located; and that for that purpose are about erecting piers, extending  
 10 out into the river from each side thereof, so as to leave an opening between the said piers of three hundred feet, and admit that they intend having, and that they have already partly constructed the piers on each side of said river. But these defendants expressly deny that the erections by the said The Newark Plank Road and  
 15 Ferry Company made, or the further erections contemplated, are made or contemplated, in disregard of any of the provisions or restrictions of the Charter of the said Company, but respectfully insist that the same are allowed by the said charter, and further deny that they the said Company and the Directors thereof or any, or  
 20 either of them, seek to promote their own interest at the expense of the public, or to the damage and inconvenience of the complainants, or of any other persons whatsoever, and also deny that the construction of the piers as proposed will obstruct or injure the navigation of the said river in any material manner, or that it will at all  
 25 prevent the free and uninterrupted navigation of said river with ordinary care.

And these defendants further answering say that the said river at the place where said ferry is located, is but six hundred and fifty feet in width from bank to bank, and at the same place, the said  
 30 river is but five hundred and eighty-five feet in width, from low-water mark on the west side to low water-mark on the east side of said river—that the piles for the pier on the west side of said river, have been driven in said river about one hundred and ten feet from low-water mark on the said west side and that piles for the pier on  
 35 the east side of said river, have been driven in said river about forty feet from low-water on the east side of said river; that said piles are driven in rows about twenty feet apart—that said rows run parallel with the banks of the river, and have seven spiles on each row. And that the said Company propose for the purposes of fenders to their  
 40 ferry boat, to extend from the last row of piles on the west side, two

rows of piles, one from each end of the row now driven ; said fenders to extend about fifty-seven feet towards the centre of said river, making the whole distance from the end of said fenders, to low-water mark, on the west side of said river, one hundred and sixty-seven feet. And that the said Company propose driving another row of piles on the east side of said river, twenty feet from the last row now driven, and extending fenders from the same, in the same manner, and of the same length as on the west side, so that the pier, with the fenders, will extend into the river, one hundred and twenty feet from low-water mark, on the east side of said river, leaving a space of three hundred feet between the two extremes of the two fenders at the end of each pier, according to the plan represented on the drawing hereto annexed, and which these defendants pray may be taken as a part of this, their answer.

And these defendants further answering say they admit that said Pas-saic river, in some parts, is a narrow and crooked river, and in most parts thereof, shallow and difficult of navigation ; and that the channel of said river varies from one hundred feet to near three hundred feet in width, but for the most part, the channel of said river is not over one hundred and fifty feet in width ; but these defendants deny that the said river is narrow, or crooked, or difficult of navigation at, or near, the point where said piers have been commenced—but, on the contrary, aver that for near a mile and a half below, and for over nine hundred feet above, said piers, the river is almost straight ; and that the channel at said piers and for two hundred and fifty yards below, and three hundred yards above, the same, is of nearly a uniform depth of between nine and ten feet at low tide—and about two hundred and seventy-five feet in width—that between said piers and the mouth of said river, the channel for some distance is not more than one hundred and fifty feet in width, and not seven feet in depth at low tide.

And these defendants in further answering say that at low water the river on the west side is six feet six inches deep at the row of piles now driven farthest in the river ; and at the end of the proposed fender to be erected from said row of piles, the water is eight feet six inches in depth, at low water ; and that at the row of piles proposed to be driven on the east side of said river the water is seven feet three inches deep at low water, and at the end of the fenders proposed to be constructed into the river from said last mentioned pier, is ten feet in depth at low water, and continues about that

depth to within about twenty-five feet of the fenders on the west side of said river.

And these defendants in further answering say that The Newark Plank Road and Ferry Company propose having a boat of about  
5 sixty feet in length on said ferry in Passaic river, propelled by horse-power with wheels, and not, as in said bill mentioned, to be guided by an endless chain, extending from one of said piers to the other, but to be guided by and with a rudder in the same manner as is usual with all other boats of the kind.

10 And these defendants further answering say that the opening to be left between said piers and fenders as contemplated, will all be deeper water than is found near the mouth of said river, so that any vessel which navigates said river can sail at any point between said piers, and that while the piers leave for vessels a free passage of  
15 three hundred feet in width, they do not prevent the free and uninterrupted navigation of vessels in said river; and that in fact the passage way for vessels of any considerable size between the said piers, when finished, will be as wide as the passage way for vessels of any considerable size will be, in front of the wharves owned by the  
20 complainants where wharves are made to usual deep water on the east side of said river, and these defendants believe it to be as wide as the passage way for such vessels now is, in front of the wharves of the complainants; and these defendants further say that if it be true, as stated in said bill, that boats have already run foul of, or against,  
25 the erections already made by the said The Newark Plank Road and Ferry Company, when there is a passage way of four hundred and thirty-five feet in width, and when the largest sailing vessels navigating said river, are not more than thirty feet in width, such boats must either have been run afoul of such erections intentionally, or  
30 in consequence of extreme carelessness, or great want of skill.

And these defendants in further answering say that the said The Newark Plank Road and Ferry Company contemplate erecting said piers by driving the piles in rows twenty feet apart as hereinbefore stated, and covering the top with plank; and the said rows of piles  
35 running parallel with the river, and being twenty feet apart, with no obstructions between the same; the said piers will not prevent the free passage of water, nor dam or divert the same, or occasion any eddies, or deposites, or constitute any material obstruction to the passage of the ice formed in said river.

40 And these defendants in further answering say they believe it to

be true as stated in said bill, and therefore admit, that the said complainants are the owners of wharves, dock, or other property, on the Passaic river, but respectfully insist that they thereby gain no control over, or property in, the said river, other than other citizens have ; and, so long as the free passage of vessels in said river is not prevented, have no right to interfere with the Newark Plank Road and Ferry Company in constructing their piers and ferry in said river, as authorised by their charter. 5

And these defendants in further answering say that the said The Newark Plank Road and Ferry Company have been authorised and intrusted by the State of New Jersey to construct a highway for the citizens of Newark, and the whole adjoining country, to the City of New York ; that such highway is much required for the common business, comfort, safety, and advantage of the whole community ; and is calculated to promote the interest of the people of the City of Newark and the adjoining country, and is greatly desired by them ; and that in order to make such road or highway convenient, and to prevent great delay in crossing said river, without a bridge across the same, and in order the better to enable The Newark Plank Road and Ferry Company to keep the said ferry open and free from ice in the winter season and to preserve their ferry boats from being injured by the swell made by steam boats it is requisite and necessary that the ferry and piers should be constructed as contemplated by the said Company ; and that the said ferry and piers so constructed as contemplated, with the said road, instead of greatly impeding the growth and prosperity of the said City of Newark, will greatly promote the same, as well as the growth and prosperity of the whole County of Essex, and instead of depreciating, will enhance, the value of property in said City, and the adjoining country. 10 15 20 25

And these defendants further answering respectfully insist that The Newark Plank Road and Ferry Company, are incorporated, by their very title, for the purpose of constructing said ferry ; and, to that end, are authorised to erect piers out into the river from each side of the same, by their charter, to such an extent that vessels might, possibly, run against said piers, unless lights were kept burning on the same ; and that they do not, in contemplation of law, or in fact, prevent the free and uninterrupted navigation of said river, which the Legislature was bound to protect : and that they do not violate the restrictions of their charter, which provides, for the uninterrupted navigation of said river. 30 35 40

And these defendants in further answering say that they have never discovered any provision in the said act incorporating the Newark Plank Road and Ferry Company, approved the twenty-fourth day of February, eighteen hundred and forty-nine, requiring  
 5 said Company to commence the construction of either their road, or other works, in two years from the passage of the said act, or any provision, by which the benefit of said act is forfeited, if not so commenced; and these defendants respectfully submit to this Honorable Court, that the said act contains no such provisions.

10 And these defendants in further answering say that if the said act shall be construed to contain any such provisions, the rights of the said The Newark Plank Road and Ferry Company are in no manner affected thereby; for, although it may be true that the said Company did not actually cause the ground to be broken for the construction  
 15 of said road, until two years and two months after the passage of said act, yet the business of constructing said road, was actually commenced long before the expiration of two years after the passage of said act; that the said Company was, under the provisions of said act, formed; and the Directors of said Company were elected  
 20 on the second day of June, eighteen hundred and fifty; that surveys were made; and the road, for the most part, located, by a vote of the Board of Directors, on the twenty-sixth day of November, eighteen hundred and fifty; and that in the said month of November contracts and agreements for the right of way for said road were  
 25 entered into between the said Company and divers individuals, over whose lands the said road was located; that in the month of December, eighteen hundred and fifty, the said Company advertised for proposals for constructing said road and the piers in said river; and that the said acts and doings of said Company were done in good  
 30 faith, and thereby the construction of the said road was commenced within two years after the approval of said act; and that in pursuance of said act, and of such survey, agreements, and location, the said road has since been nearly all graded, and the ferry partially constructed; that such grading was commenced in the month of  
 35 April, eighteen hundred and fifty-one. But that organising the Company to construct said road, making the survey for said road, locating the same where it has since been partially made, is part and parcel of the construction of said road.

And these defendants further say that if they are now interrupted  
 40 in completing their road, and in constructing their ferry, according to

the plan herein set forth, great and irreparable injury will be done to them, in successfully carrying out the project of opening a convenient way for the people of the City of Newark, and of New Jersey, generally, of travelling in their own conveyances, to and from the City of New York; and that such a road is the more desirable as there is now no safe road to the City of New York for citizens travelling in their own conveyances. 5

And these defendants deny all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for these defendants to make answer unto, and not 10 herein or hereby, well and sufficiently answered, confessed, or avoided, traversed or denied, is true to the knowledge or belief of these defendants; and they pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained. .

DAVID A. HAYES, 15

*Sol. and of Counsel with Def'ts.*

*The Newark Plank Road and Ferry Company by*

D. M. WILSON,

*President.*

[L. S.]

STATE OF NEW JERSEY, }  
Essex Co. } ss.

The above answer was on this ninth day of July, eighteen hundred and fifty-one, taken before me under the Seal of the Newark 20 Plank Road and Ferry Company, and on the oath of Daniel M. Wilson, President of said Company; and the said Daniel M. Wilson being before me duly sworn did depose and say that he had read the said answer and that he knew the contents thereof, that the matters and things set forth and contained in the said answer, so far as the 25 same relate to his own acts and deeds or to his acts and deeds as President of the said Company are true, and so far as they relate to the acts and deeds of the said Company or of any other person or persons he believes them to be true.

D. M. WILSON. 30

Subscribed and sworn before me at Newark, this 9th day of July, 1851.

DAVID K. BOYLAN,

*Master in Chancery.*

STATE OF NEW }  
 JERSEY, } ss.

Daniel M. Wilson, Charles Alling, Ai Fitch, William B. Guild,  
 James H. Tichenor, Calvin S. Dennis, David A. Hayes and Daniel  
 5 Price being duly, severally, sworn according to law, on their oath do  
 say, that the facts, matters and things in the foregoing answer men-  
 tioned and set forth, so far as they relate to their own acts and doings  
 are true, and so far as they relate to the acts and doings of others  
 they believe them to be true.

10

D. M. WILSON,  
 CHARLES ALLING,  
 AI FITCH,  
 WM. B. GUILD,  
 JAMES H. TICHENOR,  
 C. S. DENNIS,  
 DAVID A. HAYES,  
 D. PRICE.

15

Subscribed and sworn before me, at Newark, this 9th day of  
 July, 1851.

DAVID K. BOYLAN,  
*Mast. in Chancery.*

STATE OF NEW }  
 JERSEY, } ss.

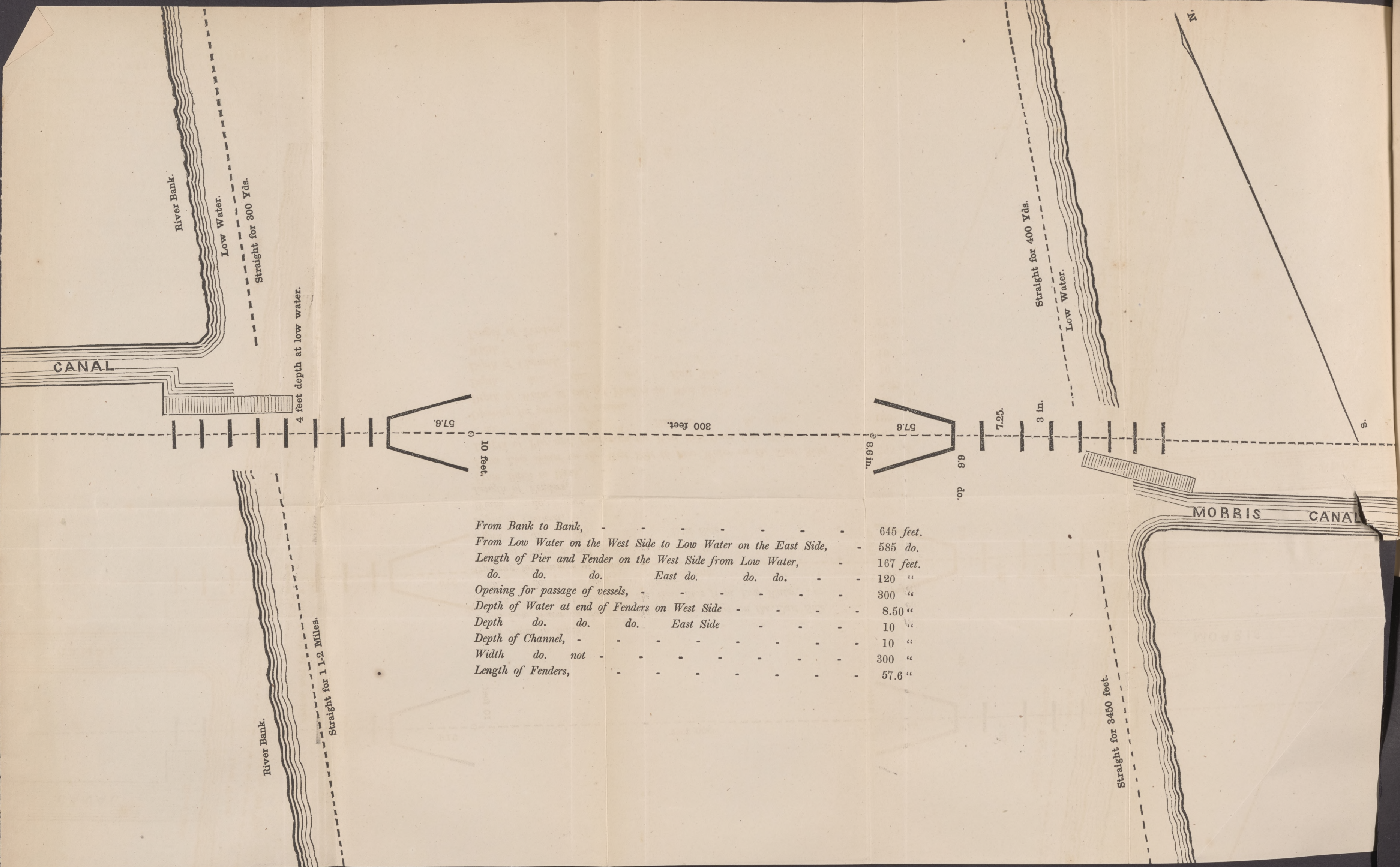
20 Edward Doughty, alleging himself conscientiously scrupulous of  
 taking an oath, being duly affirmed, according to law, saith that the  
 facts, matters and things in the foregoing answer mentioned and set  
 forth, so far as they relate to his own acts and doings are true, and  
 so far as they relate to the acts and doings of others he believes  
 25 them to be true.

EDW. DOUGHTY.

Subscribed and affirmed before me, at Newark, this 9th day of  
 July, 1851.

DAVID K. BOYLAN,  
*Mast. in Chancery.*





From Bank to Bank, - - - - -	645 feet.
From Low Water on the West Side to Low Water on the East Side, - - - - -	585 do.
Length of Pier and Fender on the West Side from Low Water, - - - - -	167 feet.
do. do. do. East do. do. do. - - - - -	120 "
Opening for passage of vessels, - - - - -	300 "
Depth of Water at end of Fenders on West Side - - - - -	8.50 "
Depth do. do. do. East Side - - - - -	10 "
Depth of Channel, - - - - -	10 "
Width do. not - - - - -	300 "
Length of Fenders, - - - - -	57.6 "

AFFIDAVITS ANNEXED TO THE ANSWER  
OF THE DEFENDANTS.

IN CHANCERY OF NEW JERSEY.

BETWEEN

LUCIUS Q. C. ELMER, Esq'r, Attorney General of New Jersey, ex rel.  
ISAAC VAN WAGENEN and others, and ISAAC VAN WAGENEN  
and others Complainants,

and

THE NEWARK PLANK ROAD AND FERRY COMPANY, and  
others Defendants.

STATE OF NEW JERSEY, }  
Essex County. } ss.

Augustus S. Baldwin, (alleging himself to be conscientiously 5  
scrupulous of taking an oath,) being duly affirmed according to law,  
saith, that he now is, and for more than twenty years has been con-  
nected with the United States navy; that he now is a lieutenant in  
said navy, and has so been for about ten years last past; that in the  
discharge of the duties of said office he has been much engaged in 10  
superintending the soundings of the navigable rivers of the United  
States, in taking surveys of the same, and in ascertaining obstruc-  
tions to the navigation of said rivers; that he has seen the plan of  
the ferry by which "The Newark Plank Road and Ferry Company"  
propose to cross the Passaic river at or near the location of what 15  
was formerly known as the "Old Ferry;" that he has taken sound-  
ings in the said Passaic river at the said ferry, and has taken a sur-  
vey of the said river both above and below the said piers; that the  
river at the said piers and above and below the same is straight;  
that the channel between the said piers is wider than in other places 20  
in said river above and below said piers; that from a careful examina-  
tion of said river and piers he is satisfied that the said piers if they  
should leave an opening of three hundred feet will not obstruct the  
free and uninterrupted navigation of vessels in said river materially.

And the said affirmant further saith that inasmuch as according 25  
to the plan of constructing said ferry he is informed it is not pro-  
posed to place boards or planks between the several rows of piles,  
and inasmuch as the effect of the running of the ferry boat in the  
winter season, will be to keep the river open, the said piers will not  
obstruct or delay the passage of ice out of said river, but on the  
contrary the said affirmant is clearly of opinion that in consequence of  
the river being kept open by the running of the ferry boat, the ice

will pass from and through that part of the river where the ferry is located more freely than if there was no ferry there constructed and used.

And the said affirmant further saith that when vessels pass up  
5 and down said river by means of "beating," the piers being narrow and the passage way being at least three hundred feet wide, when in many places on said river the channel is not half that width, the piers will constitute no obstruction to beating up and down said river. And that if any vessel has or shall run afoul of said piers,  
10 it must be in consequence of the most culpable carelessness.

And the said affirmant further saith, that from his knowledge of said river from actual examination of the same, and from an examination of charts of the same taken under the authority of the Government of the United States, he is well satisfied that the ferry  
15 will not prevent the free navigation of said river; that while at several points above and below the said ferry there is considerable difficulty attending the navigation of said river, the passage for vessels between the piers erected will be safe and easy.

A. S. BALDWIN.

20 Taken, affirmed and subscribed at Newark, N. J., July 9th, 1851, before me,

T. FRELINGHUYSEN, JR.,

*Master in Chancery.*

25 STATE OF NEW }  
JERSEY, } ss.

Francis H. Harper having been duly sworn doth depose and say that he now resides and has for eight years last past resided in the City of Newark in the County of Essex and State of New Jersey,  
30 that he is now captain of a schooner and that he has for twenty-two years last past been engaged in sailing vessels and for the last twelve years had charge of vessels, and for three years last past has been engaged as captain of a vessel in the Passaic river; that he is well acquainted with the navigation of the said Passaic river, of the  
35 course and depth of the channel of said river from its mouth to the Rail Road bridge; that the said river, where the Newark Plank Road and Ferry Company have commenced building the piers for their road, is for near a mile below said piers and for near four hundred yards above said piers, nearly straight, that the channel, at said  
40 piers and for near four hundred yards above and near three hundred

yards below is wider and deeper than in any other part of said river except at the wharves in the City of Newark extending for about a half a mile from the Rail Road bridge down to the dock of Mr. Quinby ; that the said river is in some parts very difficult of navigation but that the best and easiest part of said river for navigation is 5 at said piers and for about three hundred yards above and below said piers of said Company ; that if a space of three hundred feet is left between said piers he this deponent cannot see how said piers will increase the difficulty of navigating said river, and that if a space of three hundred feet is left open between said piers, the said piers will 10 not obstruct the navigation of said river, and that there is no part of said river where piers could have been built in said river, where they could have been of less injury to the navigation of said river than the part selected by said Company for said piers ; that from the manner of constructing said piers with piles, in rows twenty feet 15 apart, they will not create any eddies or cause the mud or dirt to collect in said river and so fill up said river but will on the contrary be of benefit by causing the water to be thrown in the centre of the river and thereby increasing the depth of the channel ; that he this deponent has seen said piers within the last five days and examined 20 them and the depth of the river where said piles are driven and that from said examination this deponent will say, that he has a vessel drawing nine feet of water, which is about the greatest depth any vessel navigating said river draws, and that the piers constructed as proposed by said Company will be no obstruction to this deponent in 25 navigating said river with his vessel ; and that said piers cannot in any way injure the carrying trade, which is now carried on in said river between the City of Newark and other places, and that this deponent does not believe that the said piers will be of any material injury to the navigation of said river by penning back or obstructing 30 the passage of ice in or out of said river.

And this deponent further deposes and saith that about two hundred yards below said piers the channel of said river begins to grow narrower and shallower than at said piers, until it becomes near the mouth of the river about one hundred and fifty feet in width and not 35 over five feet in depth at low water.

F. H. HARPER.

Sworn and subscribed before me, at Newark, this 7th day of July, 1851.

L. SPENCER GOBLE, 40  
*Master in Chan.*

STATE OF NEW }  
 JERSEY, } ss.

Samuel Richards having been duly sworn doth depose and say that he resides, and for forty years last past has resided, in the City of Newark in the County of Essex and State of New Jersey, that he has heard read the foregoing affidavit of Francis H. Harper, and that he fully concurs in the statements made in said affidavit and believes them to be true so far as they relate to the river Passaic and to the channel of said river and to any obstruction, the piers about to be erected by The Newark Plank Road and Ferry Company in said river, will be to the navigation of said river; that this deponent for twenty-five years last past has been well acquainted with the Passaic river from its mouth up to the turnpike bridge and also with the channel of said river from its mouth up to said bridge; that this deponent is well acquainted with the river and channel at the old ferry, and that he saw the bulk head erected by the Morris Canal and Banking Company and has from time to time observed the effect produced on the river and channel by said bulk head; that said bulk head being solid and not allowing the water to run under it has at its sides caused eddies and a deposite of mud and dirt at the sides of the bulk head but had no effect on the channel of the river until the said Canal Company afterwards when cleaning the canal deposited the mud and dirt taken out of the canal at the ends of the bulk head into the river, which deposite still remains there; that this deponent is well satisfied that if the said Canal Company had erected a pier on piles so that the water could have run under the pier no eddies would have been created or deposites of mud or dirt made; that in water of any depth it is impossible for a pier erected on piles to cause any accumulation of dirt or mud.

And this deponent further deposeth and says that the greatest cause of any change in the depth of the river Passaic from near the mouth of said river up to the Rail Road bridge is the wash created by large and swift steam boats passing up and down said river; that within the last ten or fifteen years the banks of the river have washed away so that the river in a greater part of its length has widened at least fifteen feet and the mud and dirt so washed from the banks have been deposited in the channel.

And this deponent further deposeth that no place in said river between its mouth and the Rail Road bridge could be selected, where so little obstruction would be caused or so little injury would

be done to the navigation of said river by the erection of piers, as at the place where the said Newark Plank Road and Ferry Company have commenced their piers in the Passaic river.

And this deponent further deposes that from his knowledge of the Passaic river and of its tides an opening of three hundred feet between the piers as proposed by the said Plank Road Company, is amply sufficient for the navigation of said river by any vessel that can possibly pass over the bar at the mouth of the river and that said piers will be of no injury to the navigation of said river or of any trade thereon.

SAMUEL RICHARDS.

Sworn and subscribed before me, at Newark, this 7th day of July, 1851.

L. SPENCER GOBLE,

*Master in Chan.*

STATE OF NEW JERSEY, } ss.

Samuel Nichols having been duly sworn doth depose and say that he now resides, and for the last five years has resided, in the City of Newark in the County of Essex and State of New Jersey, that for thirty-five years he has followed the sea and been engaged in sailing vessels and for twenty-five years has been a master of vessels; that he has seen many piers built out into rivers and knows the effect produced by such piers in rivers; that wherever it has come under his personal observation he has invariably found that all erections into rivers always increases the depth of the channel; that by narrowing the stream the water must necessarily be deeper and the current more uniform in its course; that this deponent has noticed the piles driven in the Passaic river by The Newark Plank Road and Ferry Company for their piers at the Old Ferry on the Passaic river and examined the plan on which said Company propose erecting said piers for their ferry; that from his knowledge he is well satisfied that it will increase the depth of the water in the channel of the river instead of decreasing it; that said piers will not create any eddies or deposits of mud or dirt; that by leaving an opening of three hundred feet between the piers, said piers will be no obstruction to the free and uninterrupted navigation of vessels in said river, whether propelled by steam or sails, and this deponent is surprised that any one acquainted with the navigation of vessels in

rivers would have any objection to said piers or suppose that they would render the navigation of the river any more difficult or dangerous by reason of said piers.

S. NICHOLS.

5 Sworn and subscribed before me, at Newark, this 8th day of July, 1851.

A. S. HUBBELL,  
*Master in Chancery.*

10 STATE OF NEW }  
JERSEY, } ss.

John A. Simonson having been duly sworn doth depose and say that he now resides and for three years last past has resided in Philadelphia; that he is a native of Staten Island and always lived  
15 there until he removed to Philadelphia; that he has all his life been engaged in boating and coasting; that for nine years last past he has been engaged in sailing vessels up and down the Passaic river, and is well acquainted with said river and its channel; that he has heard read the foregoing affidavit of Francis H. Harper, and that he fully  
20 concurs in the statements made in said affidavit and believes them to be true so far as they relate to the Passaic river and to the channel of the river and to the piers about to be erected in said river by The Newark Plank Road and Ferry Company, and to the effect of said piers, and to said piers being any obstruction to the navigation  
25 of said river; that he is now engaged in boating coal from Philadelphia to Newark and has for the last four years been exclusively engaged in that business and is now landing his ninth cargo in the City of Newark since the seventeenth day of March last; that his vessel is one hundred feet long and draws six and a half feet water,  
30 low rigged and difficult to manage; that since the present piles in the Passaic river have been driven by the said Company he has beaten both out and in said river and by said piles with a head wind and found no difficulty; that if a space between said piers of three hundred feet be left it will be amply sufficient for any vessel trading  
35 in said river and will be no obstruction to any vessel that can pass the bar at the mouth of the river; and will leave open the free and uninterrupted navigation of said river for vessels; and that said piers with such an opening will not deter any vessel from coming up said river or prevent any trade on said river; that it would make no  
40 difference to this deponent in sailing on said river whether the piers

were there or not if an opening of three hundred feet between said piers is left in the centre of the river where the channel is ; that it would be of great benefit to vessels passing up and down said river at night to have said piers erected in the river if a light was hung out at each pier ; that said piers cannot cause any eddies or create any deposite of mud or dirt from the manner in which they are to be erected. 5

JOHN A. SIMONSON.

Sworn and subscribed before me this 8th day of July, 1851, at Newark. 10

JNO. WHITEHEAD,  
*Master in Chancery.*

STATE OF NEW }  
JERSEY, } ss. 15

John L. Brown having been duly sworn doth depose and say that he now resides in the City of Newark ; that for nine years last past he has been engaged in sailing vessels up and down the Passaic river and for the last six years as captain of vessels ; that he is well acquainted with the Passaic river and its channel ; that he has heard read the foregoing affidavit of Francis H. Harper and that he fully concurs in the statements made in said affidavit and believes them to be true so far as they relate to the Passaic river and to the channel of said river and to any obstruction the piers about to be built by The Newark Plank Road and Ferry Company in said river will be to the navigation of said river and to the effect said piers will have on the depth of said river or in depositing mud or dirt or making eddies in said river ; that if lights are kept at night on said piers the navigation of said river will not by said piers be rendered any more difficult than it now is. 20 25 30

JOHN L. BROWN.

Sworn and subscribed before me, at Newark, July 9th, 1851.

C. H. ANDRUSS,  
*Master in Chancery.*

STATE OF NEW }  
JERSEY, } ss.

William Jackson of the City of Newark having been duly sworn doth depose and say—that he for fifteen years last past has been a captain of vessels navigating the Passaic river to the City of New- 35

ark ; that he has seen the plan of the ferry by which the Newark Plank Road and Ferry Company propose to cross Passaic river at the " old ferry " by which plan an opening of three hundred feet is left between the said piers ; that the said deponent is satisfied  
 5 that the said piers leaving an opening of three hundred feet will not prevent the free and uninterrupted navigation of said river by vessels or be any obstruction to the said navigation.

WILLIAM JACKSON.

Sworn and subscribed before me at Newark, July 9th, 1851.

10

A. S. HUBBELL,  
*Master in Chancery.*

INJUNCTION.

IN CHANCERY OF NEW JERSEY.

BETWEEN

LUCIUS Q. C. ELMER, Esq're, Attorney General of the State of New Jersey, at the relation of ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS and others, and ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS and others, Complainants.

*and*

The NEWARK PLANK ROAD AND FERRY COMPANY, CHARLES ALLING, EDWARD DOUGHTY, AI FITCH and others, Defendants.

*On Information,  
 and bill  
 &c.*

The argument of the order made in this cause on the eighteenth day of June last past requiring the defendants to show cause why an injunction should not issue against them in pursuance to the prayer of the information and bill filed in this cause, coming on to  
 15 be heard on the 17th day of July in the year of our Lord one thousand eight hundred and fifty-one, before his Honor the Chancellor at the City Hotel in the City of Newark, in the presence of Asa Whitehead, Benjamin Williamson and William Halsted of counsel on the part of the Attorney General and the complainants  
 20 and of David A. Hayes and Frederick T. Frelinghuysen of counsel with the defendants and the information and bill of complaint and the answer of the defendants and also certain affidavits, which had been taken on the part of the Attorney General and the complainants and on the part of the defendants being read and the matter  
 25 having been debated by the counsel of the respective parties, the Chancellor took time to consider thereof and upon such considera-

tion the Chancellor being of opinion that the charter or act of incorporation of the Newark Plank Road and Ferry Company authorizes said Company to build their wharves or piers in the Passaic river to such an extent only, as to enable ferry boats of the Company of suitable dimensions to reach such wharves or piers at low water, and such other works beyond the ends of the wharves or piers as may be necessary for safely receiving their ferry boats and holding them at the ends of the piers for the safe and convenient passage across said ferry (if any such other works be necessary) that it was the intention of the Legislature that the river should be ferried by steam boats or other boats, and that it is to be ferried accordingly, as far as fairly practicable and that the road and wharves or piers are to be constructed to the ferry: And the Chancellor being further of opinion that the plan of the Company mentioned in the said information and bill and the answer of the defendants, by which the said Company propose to construct their wharves, piers and other works in and upon the Passaic river and upon which they were proceeding to construct the same at the time of filing the said information and bill extends into the river to the obstruction of the navigation of vessels therein, beyond what is necessary for the purpose aforesaid, and beyond what is contemplated or authorized by the charter or act of incorporation of said Company.

This Court do thereupon on this twenty-first day of July in the year of our Lord one thousand eight hundred and fifty-one on motion of Asa Whitehead, solicitor for and of counsel with the complainants and in behalf of said Attorney General, order, adjudge and decree that a writ of injunction do issue directed to the said The Newark Plank Road and Ferry Company and the other defendants in said bill named, their engineers, agents and workmen, enjoining and restraining them and every of them from constructing their works in and upon the said Passaic river upon the plan in said bill and answer mentioned or in the manner in said answer set forth and also from extending their piers, or wharves into said river beyond points on each side thereof which may be reached by ferry boats of the Company of suitable dimensions, at low water.

And the Chancellor not having before him sufficient information to give any more specific direction as to the manner in which the wharves, piers and other works of said Company in said river shall be constructed, it is necessarily for the present left to the judgment

of the said Company, subject to the provisions of their charter, the directions contained in this order, and the action of the proper authorities, if the provisions of said charter shall be violated.

O. S. HALSTED, C.

REPLICATION OF COMPLAINANTS.

IN CHANCERY OF NEW JERSEY.

BETWEEN

LUCIUS Q. C. ELMER, Esquire, Attorney General of New Jersey, at the relation of ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD, JAMES R. SAYRE, Jun'r, CALVIN TOMKINS, ELIAS TOMKINS, ABNER S. REEVE, DAVID RIPLEY, JOHN M. LAWRENCE, HORACE J. POINIER, JEREMIAH D. POINIER, and EDWARD G. FAITOUTE; and ISAAC VAN WAGENEN, WILLIAM WRIGHT, JOHN H. STEVENS, AARON B. WARD, JAMES R. SAYRE, Jun'r., CALVIN TOMKINS, ELIAS TOMKINS, ABNER S. REEVE, DAVID RIPLEY, JOHN M. LAWRENCE, HORACE J. POINIER, JEREMIAH D. POINIER, and EDWARD G. FAITOUTE, Complainants.

On Bill for  
Injunction &c.  
and answer.

and

THE NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL M. WILSON, CHARLES ALLING, AI FITCH, WILLIAM B. GUILD, JAMES H. TICHENOR, CALVIN S. DENNIS, DAVID A. HAYES, and DANIEL PRICE, Defendants.

Replica-  
tion.

These repliants, saving and reserving to themselves all and al  
5 manner of advantage of exception to the manifold insufficiencies of  
the said answer, for replication thereunto say, that they will aver  
and prove their said bill to be true, certain and sufficient in the law  
to be answered unto, and that the said answer of the said defendants  
is uncertain, untrue and insufficient to be replied unto by these re-  
10 pliants; without that, that any other matter or thing whatsoever, in  
the said answer contained, material or effectual in the law to be re-  
plied unto confessed and avoided, traversed or denied, is true; all  
which matters and things these repliants are and will be ready to  
aver and prove as this Honorable Court shall direct and humbly  
15 pray, as in and by their said bill they have already prayed.

ASA WHITEHEAD,

Solicitor for and of Counsel with complainants.

## DEPOSITIONS.

IN CHANCERY OF N. J.

BETWEEN

The ATT'Y GENERAL, &c., on information of JOHN H. STEPHENS  
and others Relator & Compl'ts,

and

The PLANK ROAD COMPANY and others, Def'ds.

On Bill  
&c.

Examination of witnesses in the above cause, on the part and behalf of the complainants, taken this third day of December, A. D., 1851, at ten o'clock, in the forenoon, pursuant to due notice, legal service whereof was acknowledged by the Solicitor of the Defendants

Present Asa Whitehead, Solicitor for the Complainants, and David 5  
A. Hayes, Esq., for the Defendants.

Ellis Dunn, a witness produced on the part of the Complainants, being duly sworn according to law, doth depose and say: I reside at the city of Newark, I am a surveyor by profession, and am the City Surveyor of the City of Newark. A map purporting to be a diagram 10 of part of the Passaic River, and of the works of the Plank Road Company being shown to the witness, he says, I made this map representing a part of the Passaic River and the works of the Plank Road Company at and in the Passaic River, on each side. This 15 map is a true representation of the works of the Plank Road Company at these points. The black lines running on each side of the river, running nearly north and south, represent the sedge bank of the river. I cannot say whether the water flows up to these banks at high water. I suppose the river flows up to the banks as represented by these black lines. There is salt meadow upon both sides. 20 The figures in black ink upon the red line running across from bank to bank, represent the width of the river. The width of the river from bank to bank is six hundred and seventy-seven feet. The pier built upon the west side of the river is one hundred and thirty seven feet into the river from the sedge bank. The pier on the east side of 25 the river is ninety feet into the river from the sedge bank. The black dots running out into the river from the end of the piers, represent the spiles driven into the river, they are called fenders. These fenders extend into the river seventy feet on the west side and sixty-eight feet and a half on the east side, from the end of the piers. The 30 rows of black dotting on the piers, across the piers, represent the rows of piles driven to support the piers. The red figures along the north-

erly side of the piers and inside of the northerly black lines represent the distance between the rows of piles. The figures in red ink on the centre line of the piles represent the width of the piers. I did not take the soundings of the river. I measured the south pier of the  
 5 Morris Canal. The figures in red ink upon that indicate its width and length. The dotted red ink lines running across the river, between the ends of the fenders, represent the distance between the fenders. That distance is three hundred and twenty feet. The measurements of which I have spoken were all made accurately, some of them  
 10 were measured over twice to be satisfied. I am satisfied they are all correct. The northerly pier of the Morris Canal and the pier on the east side of the river of the Canal Company, are represented on the map about as they are built. I measured the pier of the Morris  
 15 Canal Company, on the east side of the river. It is seventy-five feet long by ten feet wide. The southerly pier of the Morris Canal Company on the west side is accurately represented with reference to its situation as to the bank of the river, and as it is in every respect. We had a fair chance to measure this one, the other one we did not measure. I mean the one on the west side; it was  
 20 inconvenient to get at the northerly one.

And being cross examined by Mr. Hayes, the witness says—The width of the river is taken as regards the banks, and not as to high or low water mark. I do not know any thing about the high or low water marks, there is no representations of them on the map. The  
 25 black lines represent where the grass grows, it represents the banks of the river.

And being re-examined in chief—The bank from which I measured is perpendicular or nearly so. I do not know of any place on the map where it is not so, except just adjacent to the works of the  
 30 Company where it slopes a little, occasioned, as I think, by the works of the Company or of the Morris Canal Company. South of the piers the bank was caved in considerably, occasioned, I have no doubt, by the action of the water.

ELLIS DUNN.

35 Sworn and subscribed before me at Newark, the 3d day of December, A. D., 1851.

JNO. WHITEHEAD,  
 M. C. C.

George A. Van Wagenen, a witness produced on the part of the  
 40 Complainants, being duly sworn according to law, doth depose and

say, I reside at Newark, New Jersey. I have known the Passaic river fifteen years. I have been in the habit of going up and down it for the last fifteen years, frequently—in my own boat generally—a small sail boat—and also in other vessels. I think I am acquainted with the navigation of the river. I have examined the works of the Plank Road Company, erected in the river on both sides, and I have also taken and noted the depth of the water, with reference to the piers and fenders of the Plank Road Company. (The map referred to in Ellis Dunn's testimony was here offered in evidence by the Counsel of the Complainants, and I have marked the same exhibit W No. One on the part of said Complainants.) And said map being now shown to the witness he says—The measurements I made were made on Saturday, the twenty second day of November, 1851, between three and a quarter and three and a half in the afternoon. At that time we supposed it to be low water. I supposed it to be low water. Joel W. Condit, David Cox, Captain Cadmus and Thomas H. Stephens were with us. They assisted and participated in this measurement. From my knowledge of the river and the tides it was low water. At the north easterly corner of the west pier we found six feet and four inches. Ten feet towards the bank we found seven feet six inches. Twenty-one feet farther we found seven feet four inches. Twenty feet inside of that we found six feet. Nineteen feet six inches inside of that we found four feet; and at the end of the Morris Canal's south pier we found three feet six inches; then crossing over the pier and going to the south east corner of the pier, at that corner we found six feet nine inches; ten feet inside of that six feet seven inches; twenty-one feet inside of that seven feet six inches; twenty feet inside of that six feet five inches; nineteen feet and a half inside of that three feet six inches; at the extreme end of the north fender on said pier we found six feet eight inches. It is about the same all along the north row of fenders on to the piers, at the centre or near the centre of the pier, (west side pier) we found from six feet three to six feet five inches. On the east side I was not in company with the same gentlemen as on the west side. I made the measurements on this side a short time previous—a few days. We found the depth of the water on the front of the pier from seven feet five to seven feet six inches; ten feet inside on the south side we found four feet; and nineteen feet six inches inside of that three feet. These last measurements were made at low water. I do not recollect of making the measurements

at that time on the north side of the east pier. The character of the bottom of the river on the north side for five hundred yards above the last pier is harder than it is in most other places. The bottom of the river at the works of the Plank Road Company on the west side and running two-thirds across is muddy; it is also muddy on the east side; there is a hard spot in the deep water between the piers, near the eastern piers; some of it runs in between the fenders of the east pier, and some of it outside of them. I should think there would be no difficulty in dredging on either side so as to make a slip and wharf close to the shore at low water mark. A ferry in my opinion could be made in that way so as to be convenient for ferry boats of a suitable size and dimensions. It is not in my opinion necessary for the Plank Road Company to build their piers out into the river so far as they have done, to create a convenient ferry for their purposes. I should say for the last forty or fifty feet of the piers on the west side they gain no depth of water. In my opinion boats drawing from three to three and a half feet of water could be built of sufficient size for their purposes. You can build, if you choose, boats drawing from three to three and a half of water, of greater capacity than others drawing six feet. Question—Suppose it necessary to have three feet and half of water for the boat, and the boats' brought head to the wharf, how near to the wharf is it necessary that that water should be? That depends somewhat upon the manner on which the boats are built. If the boats are built in the common way that ferry boats are, with a rudder at each end, it would be necessary to have that depth of water close up to the wharf, so as to protect the rudder. From the softness and depth of the mud, there I think the rudder would be sufficiently protected. I think the rudder could be run into the mud six inches, and perhaps deeper without the slightest injury. Question—In your opinion could a ferry boat of sufficient size and dimensions reach the east end of the south Morris Canal pier, at all times of tide, without any inconvenience? Answer—I think it could. Question—How far, if any, is the pier on the east side of the river projected into the river than is necessary for the convenient accommodation of suitable boats for this ferry without reference to the dredging? I should think twenty feet—I know that the channel below where the Canal goes into the river has changed since the erection of the canal piers, and gone more into the river. It formerly followed the west bank, it has now gone more into the middle of the river. Whether this change has arisen

from eddies occasioned by their pier or deposits made by the Canal Company I cannot say. If the eddies were created they were created by the canal piers. It is reasonable to suppose that they would create eddies. The south pier is, I think, planked up part of the way on the south side. I think the whole of the way, but I won't be positive as to that. The character of the bottom of the river on the western shore is soft mud. I suppose that this soft mud has been created in a measure by the wash from the Morris Canal. I have understood that they made deposits there. Question—What would be the effect of these ferry boats constantly crossing the river upon this soft mud? I don't know what would be the effect. I don't think it would have the slightest tendency of filling up the river. I know that steamboats lying along side of a slip do displace the mud, but my experience in regard to ferry slips is not sufficient to let me tell what would be the exact effect. Question—Whether or not tide flowing continually under the piers and through the fenders would have any effect to wash away the mud that would be disturbed by the action of the boats? I think it would slightly, if mud is riled up then it must flow off with the tide. [Examination was here adjourned by consent of parties until Thursday, the eleventh day of December, instant, at the same hour and place. December eleventh, the parties as before, and the examination in chief of George A. Van Wagenen was continued.]—I examined a boat lying at one of the slips of the Plank Road and Ferry Company on the east side of Passaic River, apparently a new boat and never used, which I have understood was a boat procured by the Company. Its mate or a similar boat, also new, was then in use on the ferry; the boat in use was a horse boat propelled by four horses; the boat I examined was calculated for four horses. I found the boat I examined to be a scow boat, flat bottomed, drawing two feet of water. I examined this boat on Saturday last.

And being cross examined by Mr. Hayes.—I am in the lumber business with Isaac Van Wagenen, who is a partner of mine. The firm is I. & G. A. Van Wagenen. Isaac Van Wagenen is one of the relators and complainants in this cause. Our place of business is on the Passaic River, in the city of Newark, below the Rail Road Bridge. Our firm contributed toward the carrying on of the suit. We did not agree to make further contributions to that effect and the firm have not, to my knowledge, subscribed any paper to make further contributions. I cannot say in relation to my partner

whether he has taken any active measures in this cause; I have not except as to inform myself about facts. I went expressly to examine the boat and measure the water; I can't tell at whose suggestion I did this. I can hardly tell whether it was at my own  
 5 suggestion or somebody else's that I went to examine the boat and measure the water; it was talked over and it was agreed that some one should go. I went and examined the boat for the purpose of being a witness. I saw the mate of this boat I have examined operating there. That boat is not sufficient to succeed there with the  
 10 present arrangement of the piers. I doubt whether that boat is of sufficient power and capacity to cross the river at all times with the necessary speed. She has power enough to contend with the current but not against current and strong wind both. She started from the wrong place. What I mean by that is this, that she started from  
 15 the end of the pier and when she reaches the extremity of the fender she must naturally head down stream with the tide. I have never been engaged as captain or sailor, except in my own sail boat. I have never been engaged in the management of ferries or ferry boat, nor in any other business than the lumber business. At the  
 20 time I measured the depth of the water I did not stay until the tide changed and ran up. I came away with the other persons who were with me. When I examined this boat it was empty; no horse or any thing else on it at all. I have examined personally the bottom of the river at the point where I examined at the time I have spoken of; it  
 25 was twenty years ago, catching crabs. I was there sixteen years ago. I suppose I have examined the bottom there a dozen times since then—won't be positive—while engaged in the same occupation and otherwise.

And being re-examined in chief—I was born within fifty yards of  
 30 the Passaic and brought up on it. I have always been in the habit of going over it for all my life, and in my business I have had a great deal to do with boats of all classes, both large and small. I have navigated my own craft, have been my own pilot and captain  
 35 in and out of the river, into York Bay frequently, and frequently down to Sandy Hook and below that. I have had occasion to measure the depth of the water frequently, in dark nights particularly. Coming up we would have to measure the water to ascertain where the channel was. I think if these boats that I saw there could start in slack water, further in shore, it would be an advantage to  
 40 them; if the ferry was longer the same difficulty that now exists

would not to the same extent. The ends of the piers are so situated that the boats start in the strength of the tide.

And being re-cross examined—The craft I mention as navigating myself is a small sail pleasure boat, drawing two feet to two feet and a half without the centre board, one of these was a flat bottomed 5 boat and all without stationary keel.

GEO A. VAN WAGENEN.

Sworn before me, the 3d day of December 1851, and subscribed the 11th Dec. 1851.

JNO. WHITEHEAD. 10

William Havens, a witness produced and sworn on the part of the Complainants, being duly sworn according to law doth depose and say—I reside at Hoboken, Hudson County, New Jersey. I am engaged on a ferry, running a ferry boat from Hoboken to New York 15 foot of Barclay street. I am the master of the boat. I have been employed there in that business since the first day of July 1824. It is the ferry of the Messrs. Stephens that I am employed on. I have been up and down the Passaic some considerable, was never engaged on it steadily. I have been up and down the river so that I can 20 take a vessel up and down the river. Have done it; have noticed that part of the river where the piers of the Morris Canal are. [The map marked No. one on the part of the Complainants being shown to the witness he says:] I have seen this map before once. [The attention of the witness being called to the figures representing the 25 depth of the water along the piers and across the river, and in front of the piers and by the fenders, as before sworn to, he says:] I can't see where there was any use of projecting their piers and fenders so far into the river for the purpose of accommodating boats suitable for this ferry. The lighter boat you could get and the 30 lighter draft would be the best in my opinion for that ferry. It would be the best to get boats from three to three and a half feet of water. We have a boat, a new boat, at our ferry drawing five and a half feet of water, and on the Hoboken side at low tides the mud is bare from six to ten feet, and I have seen it further than that, 35 right out along her side, outside the boat and between the fenders. Sometimes we have to run her up pretty sharp. We can run her any where through the mud; but there is a little difficulty in getting her into the spiles, as they have been filling up the lots round there, and that has wedged the spiles too close together. Upon such 40

a ferry as this the more room you have the better. I mean the longer the ferry the better. The reason is that you have more room to handle your boat if you go out of the slip in an ebb tide you swing down and before you can get your boat round, you

5 are pretty well over to the other side, and then there is a difficulty in getting the boat in an attitude to go into the slip on the other side. A boat, a steamboat I mean, a horse boat I don't know anything about, of a light draft, is easier managed than a boat of heavy draft ; I should n't think there would be much difference between a steam

10 boat and a horse boat if you have the same speed. I suppose a steam boat has the most power, tho' I suppose there are horse boats of as much power as some small steam boats. I have seen very small steam boats. A boat is more easily controlled the greater the power you have upon it. Question—If the piers of the Company were built

15 as near as possible to the banks of the river, as a general rule would the expedition in crossing be greater or less than as now erected ? If these piers were brought up close to the banks there would be very little difference if any in time, but you would have a better chance in starting and landing, because you would stand some chance of having

20 slack water on both sides. Question—Whether or not the time that would be lost as the piers now are, by the boats swinging out by the tides and wind, if the line of the piers would be greater than the difference in the distance, if the piers were close to the shore ? That would be often the case if the winds were blowing fresh or the tides were

25 running strong, and as a general rule would be the case. As a general thing I think you would have the advantage in starting from the piers as near to the shore as they could be made. If I had charge of a boat at this ferry, to run a boat, I should prefer to have the piers as close in to the shore as possible. It would be easier working

30 her. In starting a boat from the west slip with open fenders with a strong ebb tide her head will fall down and she will sag against the spiles until her stern is clear of the spiles. Ques.—How far would she get down the stream with a strong ebb tide starting from the west pier, before you could bring her head to in the direction

35 of the other pier ? It would depend upon what kind of a boat you have ; if you have a heavy boat she would go down below the dock probably the width of the boat, probably more, I mean below the fenders. There would be difficulty at times in getting into the opposite slip. It would always be difficult in a strong tide—you


40 would n't have in twelve hours not over an hour of slack water. In

our navigating across the North river, we have difficulty by the tide or the wind carrying our boats out of the line of the docks. I should think there would be no difficulty in bringing a boat of suitable size and dimensions for this ferry to the end of the Morris Canal pier, where it is three feet six inches deep of water. Quest.—In your judgment 5 would it or would it not be better to have close piers for this Company? Answer—It would be better. Quest.—Supposing the ground to be soft on each side and you was called upon to locate the slips of this Company would you or would you not consider it advantageous to dredge some for the purpose of getting the slips 10 close into the shore? I should work back into the bank as far as I could in order to be clear of the ice and to get more room between the ferries. The action of the boats in the slips would have the effect to deepen the water and this whether the slips were close or not. You can run the boat into the mud; it could not do any 15 harm. We run our boats into the mud every low water.

And being cross examined—I do n't recollect now how long ago it is that I navigated the Passaic. I have been called upon several times to come up with the Hoboken, one of the steam ferry boats, in the place of the Passaic steam boat. When I speak of a boat 20 of three to three and a half feet water being the best for this ferry I mean a steam boat. I guess it must be two feet, not over that, from the bows to where this boat drawing five feet and a half of water I have mentioned at our Ferry draws that depth of water. I could n't tell how much deeper the water is where the boat runs 25 than it is where the mud appears at its side as I have mentioned. I can't tell how far the boat runs into the mud. The distance you can run a boat through the mud depends upon the character of the mud, whether it is soft or hard. I can't tell how deep the mud is in the centre of our slip where we run our boats before we come to 30 hard bottom. I suppose mud will vary on the same river as to hardness and softness and as to depth before you come to hard bottom. I do not know the character of the mud as to its softness or hardness, or as to its depth where these piers are in the Passaic river. I suppose you will get about eight hours of a strength of 35 tide out of twelve hours. You will find for the whole eight hours that it will affect the steering of the boat. It does not depend upon the distance of the ferry that we are troubled by the winds and tide as I mentioned in my principal examination, because we have a better chance to manage our boats. The wind and tide would not 40

have any more effect upon a boat running a mile than it would a quarter of a mile. The effect upon the boat by a wind or tide depends upon their strength and force. I believe the Hoboken ferry has been cleaned out once in about twenty-five years. I have never known of the ferry on the New York side being dug out. We have never had ours dug out. The dock on the New York side was shifted out some thirty feet, some seven years ago.

And being re-examined in chief. The reason why the Hoboken ferry was dug out at the time I have mentioned, was to make a slip for the Canal Street ferry; where they put their swinging bridge it was all bare. We excavated it for the purpose of making a slip for the boat. When the distance is long you can with more ease overcome the effect of wind or tide.

WILLIAM <sup>his</sup>  HAVENS.  
mark

15

Sworn and Subscribed before me, at Newark, this 11th day of December, A. D. 1851.

JNO. WHITEHEAD.

20 Riley Parker, a witness produced on the part of the complainants, being duly sworn according to law doth depose and say, I reside at Hoboken, Hudson County, New Jersey. I am engaged in ferrying from Hoboken to New York, Barclay street, on the ferry of the Messrs. Stevens. I am captain, master of one of their steamboats;

25 I have been so, I think it is, ten years next April. Before that I was engaged in coasting, as master of vessels, for seven years. I have navigated the Passaic river. I traded here about two years, steadily, from Barnegat to the Passaic dock. I remember the point in the Passaic river where the Morris Canal opens into it. (The

30 map marked exhibit No. One on the part of the complainants being shown to the witness, he says:) Ques.—If you were going to direct the manner in which a ferry should be made across the river for the Plank Road Company, at the point where their works are now erected, in what way would you do it with respect to the location

35 of the slips having regard to economy, convenience and expedition?  
Ans.—I should in the first place get all the space I could between the two shores; I think it would be cheaper for the Company, and the boats could be handled easier, if the boat came clear to the bank or her length into it, because she would entirely then be out of

40 the tide and you would be able to get steerage way on your boat

when you came to the tide so that you would have command of your boat, and you could head her for the opposite pier without any difficulty. I think there would, between the plan I have just suggested and the plan represented on this map, be a saving of time in the plan I suggest. Quest.—State if you please the practical difficulties 5 in the plan adopted by the Company as represented by this map? Answer—The first difficulty is on an ebb or flood tide, it makes no difference which, the distance is so short that you have got between the two slips. It would be impossible to head a boat up or down so as to fetch on the other shore before you would be across and you 10 cannot get any command of your boat until she leaves the fenders, and not exactly then until some, may be forty or fifty feet, and that will fetch you some hundred and fifty feet above or below as the tide and wind might be. If you get below you must naturally get your vessel above before you can come in. You must get the advantage of 15 the tide or you will be apt to tear all this pack of fender down; I mean the fender that lies nearest the boat in that position. I should think a boat could be built with three feet or three and a half feet to answer every purpose for that ferry. You couldn't of course build her right sharp. A boat of that draft would be better than a 20 boat of heavier draft; the more draft the harder your boat will work, either steam or sailing boat, I mean the more a boat takes hold of the water the harder she will be to manage. I don't see where it is any advantage to the Plank Road Company to extend their piers and fenders into the river as they have done, but it is to 25 their disadvantage. Question—Whether there was any necessity for the Company to extend their piers and fenders into the river as they have done for the accommodation of their boats without reference to the question of excavation? Ans.—I don't see any necessity whatever, because the longer distance they can get the more it 30 is their advantage in running a ferry boat. I think three feet and a half of water would be sufficient for them to have where their boat headed to at the pier. In a boat raked at both ends there would be some distance between the point where she comes to the pier, and where her full draft of water commences about fifteen feet 35 measuring on deck. I should think a boat raked in this manner would be a great deal the best for this ferry over a sharp built boat. When I mentioned fifteen feet I had in my mind in the calculation a boat not over a hundred feet long. Quest.—Please look at the map and state to what point in the natural state of the river, with- 40

out having reference to any dredging or excavation, you think boats of suitable size and dimensions for the purposes of this ferry could come? Answer—I know she could come with ease to this point on the map. (The witness here pointed out the row of piling next  
 5 west to the east end of the Morris Canal pier on the west side of the river.) I wouldn't like to say as to the next row of pilings, because I don't know; there is no depth of water marked there. Quest.—Suppose the bottom is soft between these two rows of pilings, what do you think of the practicability of the boats going  
 10 to the next row of pilings? I think she could with ease. (The attention of the witness was here directed to the east side of the river.) I think a boat of suitable size and dimensions could go to this point on the map. (The witness here pointed out the third row of pilings from the west end of the pier.) I speak of a boat of the construction I have recommended for this ferry—a raked boat. You can  
 15 run a sharp boat's stern and rudder into the mud some distance. I couldn't say how far; have never tried it; I have no doubt at all you could run a boat a foot and a half into the mud on either one of these banks, and every time you run into the mud the better;  
 20 she will stir it up and paddle it away. The shores along salt meadow are muddy and soft so far as I have known. I have made observations of the shores of the Passaic river, wherever I have been ashore on either side below Nutmann's reach I have found it muddy and soft, but I can't say how deep the mud is. I do not  
 25 think I could run one of the sharp boats of the Hoboken ferry up to these points I have designated where suitable boats for this ferry could come. I think slips could be deepened by dredging so as to accommodate the Hoboken boats. The effect of boats running into and out of a slip would not be to make the water any shoaler if she  
 30 didn't touch the bottom, but if she did touch the bottom it would make it deeper, unless there was a heavy wash of sand; if the bottom were soft she would deepen the slip. I know this by observation; they moved the Canal street about the width of it, and when they got it done I went round to look at it, and it was entirely dry  
 35 where we had to come, and now we have no difficulty, and we have not excavated a bit, not a shovelfull. We have had low tides lately; we had a very low one last Tuesday, as low a one as I have seen in a year. Some of the boats, all of them I guess, run into the mud on that occasion, they made a pretty good track where their  
 40 noses run; we had to run them pretty sharp to get them to the bridge.

And being cross-examined. It is, I think, about fifteen years since I followed coasting in the Passaic in vessels. I have been here since in a ferry boat, steamboat. I think I haven't been here but three times since I have been ferrying, and then I came in a steamboat. I have had no opportunity of examining the shores of 5 the Passaic since I was here in a sail boat. I have been engaged in no other ferry than the Hoboken ferry. The distance that the rudder would extend from the end of the keel would, I should think, be four feet in a boat of a hundred feet long. If a line be dropped perpendicularly from the end of a raked boat, I couldn't tell how 10 near the end of the rudder would be to the end of the line. A sharp boat, when you have got a straight course, steers the steadiest, goes the straightest I mean, but you cannot turn it so easy, you want more room, you must take just such a circle, you can't force her. It is very seldom that the rudder runs down as deep as the 15 keel. I don't know as I ever saw one. I don't think I ever saw a rudder on a ferry boat that drew as little water as three feet and a half. I don't know that I have ever seen a ferry boat a hundred feet long that drew as little water as three feet and a half. I think about five feet is an average of the draft of water on ferry boats on 20 the North river. Ferry boats on that river are about one hundred and fifty feet long. We have boats on our ferry drawing less than five feet; not over three or four inches less. In a boat a hundred feet long and drawing three feet and a half water, the rudder should not be quite as deep as the keel, the keel should protect the rudder, 25 the rudder should be some three or four inches, four inches is sufficient, above the keel. I can't say that I have much acquaintance or knowledge of other ferry boats than the boats of our ferry. I have handled others, but none except on the North river. I have no personal knowledge of what the bottom of the river now is where 30 the Plank Road works are. I think the last time that I ever went down this river in a sail craft I stretched a little too far and went ashore just at the point where these works are, or not fifty yards from where they are; I have had no personal knowledge of this point since then. They have three brand new boats now at our ferry. 35 There are two old ones which have been spliced; the old ones were about one hundred feet long before they were spliced, I can't tell exactly however. Our boats are all sharp built except one, and she has got her old bows, the new ones are sharp built.

And being re-examined in chief. The place where I run ashore 40

as mentioned in my cross-examination, the bottom was very sharp. I have never examined the draft of any ferry boats on the Hudson river, except those opposite New York, or any other ferry boats.

RILEY A. PARKER.

5 Sworn and subscribed before me, at Newark, this 11th day of December, A. D., 1851.

JNO. WHITEHEAD.

James M. Pool, a witness produced on the part of the complain-  
 10 ants, being duly sworn according to law, doth depose and say, I reside at Newark ; I am engaged in steamboating ; am pilot of the steamboat Passaic ; I have been in that employment for nearly eleven years ; eleven years next spring ; the Passaic runs from Newark to New York ; before I was pilot of this boat I followed  
 15 the water for eleven years, a greater portion of that time on the Passaic river ; I am well acquainted with the navigation of the river ; I consider that I am ; to some extent I have learned the character of the bottom of the river ; the shores where the Plank Road crosses the river are muddy, soft mud, the soft mud runs up  
 20 to the bank on both sides ; I can't give the exact depth of the mud on the shores, but I should suppose the mud is eight or ten feet deep ; I have no doubt you could run a pole down there from eight to ten feet deep, I have reference to the mud close to the shores ; when you come out from the shore, say a hundred feet, the bottom  
 25 gets a little harder. The Passaic is what we call a flat boat, flat on the bottom, her bow is sharp, she is two hundred and twelve feet keel, her draft is four feet, her common draft, is that, when she has on an ordinary load ; we can carry one thousand passengers ; our ordinary load is from seventy-five to one hundred, in summer we  
 30 carry generally three hundred, we have had as many as nine hundred ; at our heaviest load of passengers and freight it won't make more than six inches difference in the draft ; she is very flat on the floor. Question—What description of boat is best adapted for the Plank Road ferry over the Passaic ? I should think that a boat of  
 35 light draft of water would be best ; the lighter the better ; the reason is that you have a better chance to manage her, turn quicker and handle her easier every way there ; where there would be shoal water, a good deal of the time, one half of the time at any rate ; a boat of light draft is more easily managed in any water, more easily  
 40 turned. Question—What draft of boat would be sufficient and con-

venient for this ferry? A boat of three feet, not over three feet and a-half of water, would be sufficient, and as convenient as any as regards draft of water. Question—In your opinion how should a ferry be constructed over the Passaic river to be most economical, convenient, and expeditious for the business of the Plank Road Com- 5  
pany? I should have made the slips close up to the banks of the river, on both sides, instead of making these bridges and ferry slips out into the river as far as they have projected them. One thing I would do this for would be to save expense: another thing would be to get more expedition. The convenience would be that those who 10  
have the handling of the boats could handle them easier in going across from one slip to the other. As a general thing I think there would be a considerable gain of time by the plan I suggest—taking one day with another this would be the case. As the slips now stand, coming out with an ebb-tide before you can get any steerage 15  
way on your boat, your boat, in consequence of the sweep of the tide, will drop below the fenders, so that she will have to go down and turn again up the river to get to the opposite slip, whereby she is going to lose considerable time by that operation. The boat could eventually come into the opposite slip, but you would have to go up 20  
again above the pier, and head in with the tide; if they undertook to get in from below, the chances would be that they would either knock the fenders down or break their boat to pieces; it would, generally speaking, be the same with a flood-tide. There would be no difficulty in bringing a suitable boat for this ferry up to the end 25  
of the pier of the Morris Canal, on the west side of the river; and on the east side of the river, without excavating, I don't think they could come in much further than the west end of the Morris Canal pier on that side. I should think there was no necessity for the Company to extend their piers and fenders into the river as they 30  
have done; I think they have worked against themselves in doing that; if I had to manage that ferry I would rather have it a thousand feet than five hundred feet; I could work it in quicker time; as the piers are now arranged in a flood or ebb-tide they never could go straight across, they would have to make a course in the form of 35  
a letter S so as to get into the opposite slip, by being driven below the slip out of which they start by the tide, and being obliged to go above the opposite slip to take advantage of the tide to get into that slip with any safety. The Plank Road Company would be more troubled with the ice in the short ferry than in a long one, because 40

these piers out in the river would catch the ice and choke the river, by the cakes of ice riding on one another and sinking where water is shoal ; I should prefer the long ferry to break up the ice when the ice was formed in the river, but not so as to stop navigation, for the  
 5 reason that there is more chance to work the boat and form a straight course. There is no difficulty at these points where the Company's works are, in excavating slips into the bank—no difficulty at all ; I don't know anything about the expense of excavating, not particularly acquainted with the expense of excavating, but I am acquainted  
 10 with the expense of driving spiles, and from what I have seen and heard of the expense of excavating, I should think the Company could have excavated twenty feet into the bank for half of the expense that it has cost them to put in all these spilings ; my opinion is that it would have been most economical and convenient for the  
 15 Company to have excavated their slips half way into the bank, and not have run their fenders beyond the end of the Morris Canal pier on the west side and proportionably on the east side ; there is no difficulty in excavating on the east side ; there might be harder ground on the top where the Morris Canal have dumped their mud  
 20 and it has dried, but the ground is naturally the same ; it is all soft mud.

And being cross-examined : I have not been particularly engaged in ferrying ; I was engaged in that business for some two months, on Sundays, at the Hoboken ferry, with one boat ; I don't know that I  
 25 can say that I have seen a ferry boat of as light draft as the Passaic ; never saw the draft of any one of them ; the Passaic is not a raked boat, she is sharp bow ; I have been within a hundred yards of these points on the shore ; within the last ten years the water may have shoaled a little on the west side, I don't know that it has altered at  
 30 all on the east side, no natural alterations at all there ; no alterations except where the Canal Company have dumped some mud there.

And being re-examined the witness says : There has been very low tides ; last Tuesday we had a very extraordinary low tide, we got stuck in the mud, then in the slip at New York ; no such tide as  
 35 that occurs often, not more than four times in the course of a year ; I don't think I have noticed as low a tide as that during the last twelve months, except that I remember one the last year after we laid up, about the twenty-third of December.

JAMES M. POOL.

Sworn and subscribed before me at Newark, this 11th day of December, A. D., 1851.

JNO. WHITEHEAD, *M. C. C.*

David Cox, a witness produced on the part of the complainants, 5  
 being duly sworn, according to law, doth depose and say—I reside  
 at the city of Newark, New Jersey. I attend to the freighting busi-  
 ness for Stephens, Condit & Co., at present. I have been a naviga-  
 tor heretofore, navigating vessels on the Passaic river between Belle-  
 ville and New York, and Newark and New York. It is in the 10  
 neighborhood of twenty-five years, twenty-two, I think it is, that I  
 have been engaged in navigating the Passaic; I have navigated sail  
 vessels and steamboats both on this river. Last summer I quit; I  
 was on the steamboat all summer and then quit; about the fifteenth  
 of September I think I quit. I consider I know all about the river 15  
 and its navigation, as far as can be learned. I have seen the works  
 erected by the Plank Road Company upon and into the river for the  
 purposes of their ferry; I have been there for the purpose of ex-  
 amining the works, and I have examined them; the last time I was  
 there was on Saturday, the 22d day of November last; I did not 20  
 sound myself at that time; I was with the man in the boat who did  
 sound, and I examined the pole every time; at that time the memo-  
 randum was taken by Thomas H. Stephens, who was on the bridge,  
 on the west side; Mr. George A. Van Wagenen was the person  
 who took the soundings; we began on the west side to take these 25  
 soundings; I examined the notes which Mr. Stephens took of the  
 soundings, and they were correct. I hold in my hands a memoran-  
 dum of the soundings made on the 22d day of November; this me-  
 morandum was made by Mr. Stephens, and compared by me with the  
 soundings as they were made in the boat and found to be correct; 30  
 I begin on the north east corner of the westerly pier; the first  
 sounding on the corner is six feet four inches; next sounding, at  
 the distance of ten feet on the pier, is seven feet six inches; the  
 next, at the distance of about twenty feet, is seven feet four inches;  
 and the next, at about the same distance, is six feet; and the 35  
 next, at about the same distance, four feet; and at the end of  
 the southerly pier of the Morris Canal, is three feet six inches—  
 the soundings across the end of the pier, starting at the first point  
 and going south, six feet three inches and six feet five inches, that  
 was on the outside of the end of the present pier; on the southeast 40

corner of the pier, six feet nine inches ; ten feet or about that inside of that, six feet seven inches ; twenty feet inside of that, seven feet six inches ; twenty feet or thereabouts inside of that, is six feet five inches ; twenty feet inside of that is three feet six inches. I took  
5 soundings on the same place, on the eighteenth day of November last. The same November Capt. Stephen Cadmus was in the boat, and Thomas H. Stephens was also with us then. The soundings we took then were the same as those I have already given, as taken on the 22d of November, with the variation of perhaps an inch. On the  
10 eighteenth I measured the depth of the water at the ends of both fenders on the west side ; on the northeast outer fender of the west side the sounding was six feet eight inches ; and on the other fender, on the southeast corner, it was the same ; between the fenders there were four soundings made ; I cannot give the distance between each  
15 sounding ; one sounding, about the centre of the range of the outer piles of the fenders, six feet eight inches ; and the other three, made about the centre of the whole of the fenders, about midway between the end of the pier and the end of the fenders, were all six feet and a half. I measured the depth of the water on the other side, on the  
20 same 18th of November, on the north side of the pier at the end of it—at the north corner it was seven feet two inches ; ten feet inside of that, on the north side, four feet six inches ; and nine feet and a half inside of that it was three feet, that was the last sounding on that side ; the sounding on the front of the pier, at the north side,  
25 was seven feet ; the next sounding was seven feet ; the next was seven feet six inches ; and the next sounding was seven feet five inches ; the depth of the water on the outside of the range of the north fenders, on the east side, was eleven feet six inches ; inside of the north fenders and right along side of them, running into the pier,  
30 the first sounding was ten feet ten inches ; the next ten feet ; the next nine feet two inches, and the next eight feet. I made no sounding at the end of the south fenders. I took soundings across the river between the piers commencing on the west side. I cannot tell the distances between each sounding, but they were made at the  
35 distance of about ten to fifteen feet, as fast as we could well make them going at a slow rate. The first was seven feet ; the next seven feet ; the next seven feet two inches ; the next seven feet nine inches ; the next was eight feet two inches ; the next was nine feet ; the next was nine feet eight inches ; the next ten feet ; the next ten and a  
40 half ; the next was ten and a half ; the next was ten feet ten inches ;

the next was eleven and a half; the next was twelve feet, and the next was eleven feet and a half. All these measurements were as accurate as I could do them. We measured with a rod marked upon it for feet and half feet. We took care not to make the water too deep. Both of these measurements were made at a low average of 5 low water. We have in that part of the river as deep water as we have in any other part of it. The east bank is one of the boldest banks we have on our river—that part of it at least. The west bank was never so good as the east bank—the water was never so deep there. Some fifteen years ago, when I first went as master of a ves- 10 sel, we used to sail up along that west bank at six feet water where now it is almost dry, not quite—the main boom would rub along in the rushes on the bank, but now, since that Canal has been opened there and the piers extended out, by some means or other, I cannot tell what, except the extension of the pier creating an eddy on each 15 side of it, and by that means the mud has settled along for about from a half mile to a mile south of it, and shoaled the water very much; and north of it, from about a quarter to a half mile, the water has also shoaled very much. The Plank Road Company have not made their ferry any more convenient than it would have been 20 by their going nearer to the shore. It must be fifty to fifty-one feet that they might have gone in from the end of the pier on the west side, and had as deep water as they have now; on one side it would have been more and on the other side not quite so much. Quest.—Whether or not there would be any difficulty in their bringing, at all 25 times of the tide, ferry boats of convenient dimensions to the end of the Canal south pier? Ans.—No, sir, none, in my opinion. Quest.—What, in your judgment, would be a convenient ferry boat for that ferry? Ans.—In my opinion a ferry boat at that ferry would not require to draw more than two feet of water at the end that would 30 come to the wharf. Quest.—What would be the shape of the lower part of the boat from the end down to the water at the deepest draft of water? The present system of building ferry boats, when they have plenty of water, is to bevel, or rake them, would be the proper term; they are made this way so as to make them convenient to go 35 over ice and obstructions of that nature, and by this mode of constructing boats they have a projection by which the rudder and keel of the boat would be distant from eight to twelve feet from the plumb of the pier. Quest.—In a boat of the construction you have just spoken of, eighty feet long, what would be the distance from the 40

plumb of the pier to the point in the boat where there would be the greatest draft of water? The greatest draft of water in a boat of this construction would be in the centre of the boat, that's my opinion; such a boat as this, I think, would be a suitable boat for this

5 ferry; a ferry boat for that ferry must be made very wide and beveled: a boat of this description is not suitable for deep water, they will answer; they build their ferryboats to draw all the water they can where they have plenty, but boats drawing much water will not answer for the Passaic River—the reason is because there is not dis-

10 tance enough to manage a boat drawing much water, the pressure of the water is so much against it that it cannot be turned so soon; a boat drawing much water is more difficult to be managed in a short ferry than one drawing little water; it is more difficult to manage a boat in a short than a long ferry. Quest.—Which would be most

15 convenient for the Plank Road Company, to make their wharfs as close into the shore as possible, or to project them out into the river, as they have? Ans.—In my opinion it would be most convenient for time, and in every other respect, to make an excavation into the bank than make any projection whatever into the river. I am partially

20 acquainted with the bottom of the river at these points; I never sounded them but once, but I am very well acquainted with the bottom of the river all along; the character of the bottom there, for about one-third of the way from the bank of the west side, except occasionally, we would in sounding strike a spot of tough clay, in

25 soft mud, and the balance of the bottom is sand, but we can shove a pole into any part of it; on the west side of the river there would be no difficulty in digging to make a slip, none at all, in my opinion; on the other side there is no difficulty either, only it is rather harder, a higher bank; I don't mean to say that the earth is hard on the

30 east side, only that it is drier than it is on the other; it is nothing but the soft mud. Quest.—From the character of the bottom of the river at this point what, in your opinion, would be the effect upon the bottom of the river inside of the fenders by the boats continually plying? Ans.—At the present arrangement of the piers it would

35 have no effect at all whatever, it would neither deepen or shallow, so far as the boats are concerned. Quest.—Suppose the boats ran in as far as the canal pier, would there be any effect produced? Ans.—I think there would; the effect would be that the boat would run nearer the mud at the bottom and stir it up, and by this means the

40 mud would start out from there either way, as the tide was, and the

place where the boat came in would be deepened; my opinion is that before the boat run a month at the point where there is four feet water she would have six, allowing that she started with drawing four feet water; my opinion is that any boat convenient for that ferry could start now from the end of the Morris Canal south pier, 5 and run from there without any excavation whatsoever. The end of the east pier of the Plank Road could have gone in twenty feet without excavation. As far as sail vessels are concerned these works of the Plank Road Company into the River are a very serious obstruction indeed. The reasons are these: in beating up with a large vessel, of which there are a large number coming to Newark, without we can get our tacks to come right it is not one time in ten that we can fetch through without getting foul or coming to anchor; and another thing if there is no wind the current sets so on the flood-tide it is almost impossible to get through, in fact I don't think it can be 10 done without you have some propulsion power on your vessel in a calm; and just so it is on the ebb-tide, the ebb-tide takes one side of the river and the flood-tide takes the other; with a free wind and your vessel under management there is no difficulty in getting through. As to the effect upon the ice by these piers my opinion is 20 that it will be a very serious obstruction to the ice running out of the river. My reasons are that the ice coming round the point by the curve in the river on the ebb-tide it rubs along the east bank and by that means it loses its velocity, and just about the time it would begin to gain velocity again and ease up it fetches up against the piers 25 on the east side and the ice will stop there, whereas if the pier was farther down, two miles, it would go through, for the river grows wider and straitens below. In my opinion the construction of these works would prevent the ice breaking up above them as soon as it would otherwise, for a longer time. In all my experience navigating this river with steamboats we have more trouble with ice from 30 the Chemical Works down to the bar than all the rest of the bay and river.

And being cross-examined, by Mr. Hayes, the witness says:—At the time we took these measurements we did not remain there till 35 the tide turned; we remained there some twenty minutes after the measurements were made; the reason why we did not remain any longer was because the tide is an hour running down after it is low tide, and it will swell when it is running down. We were there about an hour and a half on the 18th of November measuring. We 40

commenced measuring on the west side. On the twenty-second we were there some considerable time longer than we were the first. We remained there some time before we commenced measuring. We sometimes have lower tides than we had the days we were there  
 5 measuring, but seldom though. We measured with a pole. The pole was an inch and a half across, made out of a two inch plank, of an octagon shape. I have been on the steamboat about five years; during that time I was master of a vessel, a sail vessel, a year. It is about three miles and a half from the Chemical Works to the bar;  
 10 it is about a mile and a quarter from the bridge, where I sailed my boat from, to the Chemical Works. I have never been engaged in ferrying, either sailing or constructing ferry boats. There are no ferries between Belleville and the Bay, and no ferry boats.

And being re-examined by complainants—When we were there the  
 15 first time I was satisfied that the tide had done falling, by taking a particular mark on a log that was there, in the end of the small pier of the Morris Canal that projects out into the river. I watched that mark until we could not perceive that it fell any more. We did the same thing the second time. We thought it was a little lower the  
 20 second time than it was the first.

And being re-cross-examined—I am in the employ of the firm of Stephens, Condit & Co. Have been in their employ about one year. Prior to that time I was interested in the concern for about six or eight years. John H. Stephens and Joel W. Condit are both mem-  
 25 bers of that firm. John H. Stephens is one of the complainants in this bill. Their business is transporting goods and merchandise between Newark and New York, by both sail and steamboats.

And being re-examined—I have no interest now in any transportation on the river, or in any sailing vessels on the river.

30 DAVID COX.

Sworn and subscribed before me, at Newark, this 3d day of December, A. D., 1851.

JNO. WHITEHEAD, M. C. C.

35 Stephen V. C. Cadmus, a witness produced on the part of the complainants, being duly sworn according to law, doth depose and say—I reside in Newark. I have been accustomed to navigate Passaic river for about thirteen years, principally between Newark and New York; some part of the time between Belleville and New York.  
 40 I ceased that business about five weeks ago. I have seen and ex-

amined the works of the Plank Road Company into the Passaic river, on the eighteenth and twenty-second days of November last. I made and assisted in making the soundings of the water upon both of these days. I have examined this map marked exhibit W. No. One. It appears to be a true representation of the works of the 5 Company upon the river. As near as my memory serves me there is no variation between the figures on this map representing the depth of the water and the soundings taken by us on those two days.

Quest.—Is it necessary that these piers should be projected so far into the river to make a convenient ferry for the transaction of the 10 business of the Plank Road Company? Ans.—It is entirely unnecessary. Quest.—How much nearer could the wharf be made on the west side to the shore than it is now and the Company be equally well accommodated? I think about one hundred and fifty feet from 15 the end of the fenders, and on the east side of the river about eighty feet from the end of the fenders. On the west side of the river there would be no difficulty in dredging, and on the east side a little. The character of the bottom of the river on the east side is a little harder than it is on the other in consequence of the old ferry road having 20 been there, and its becoming packed. I think it could be cut out with a spade any how. Quest.—Would there be any difficulty at any time of tide in coming to the end of the south pier of the Morris Canal Company with a boat of suitable dimensions for this ferry? Ans.—None at all. I think a boat drawing not over three 25 feet of water would answer their purpose at this ferry. It would be no better for the Company to have a boat drawing water over that. Quest.—Would it be more convenient for the Company to transact their business with their ferry as short as it could be made or as long as it could be made? Ans.—As long as it could be 30 made; it would give better chance to handle the vessel; the lighter the draft of water of a vessel the better. At the time we measured the water we considered it low water; we took a mark and watched it; if there was a fall of water after that it was very trifling, and we made allowances for all that fell. I should call it a little extra low tide; it might have been an average tide, but I should call it extra 35 low tide. Quest.—With a ferry boat of a proper construction with a head to, how far would it be from the plumb of the pier to the rudder and keel of the boat? Ans.—That would depend upon the builder; some would like one way and some another; but the most of ferry boats are raked pretty well. A boat with an ordinary rake 40

and projection of the guards, the rudder and keel would be eight or ten feet from the plumb of the pier. Quest.—Suppose the boat ran at the pier into four feet water, what would be the effect of the action of the boat upon the depth of the water? I think it would naturally deepen; it would make a bed which the current would carry away; steamboats when they lay to alongside a wharf have this effect, but I don't know how it is when they come into the wharf; it would not have the same effect if they came into the slip head to, unless they did it on purpose, which they could do by working their engines while in the slip. I should think a boat could run into the mud on the west side of the river if she didn't have water enough to float her by six inches. The continual running of a boat into the water deeper. The best water and freest navigation in the river is along where the piers are, for about three miles, commencing at Point no Point, a half or three-quarters of a mile above the piers. In my opinion these works of the Company are a great obstruction to the navigation of the river; it makes it dangerous and difficult when two or three vessels meet there; steamboats perhaps meet at the same time; sometimes the winds are light, and it will be difficult to clear them; if there are no winds at all and you depend on the current and can't row, you are bound to go foul of the piers on the east side. I think they will have a tendency to stop the river with ice two weeks longer than ordinary, at the least calculation. The ice generally stops navigation about two weeks, and this will stop there about four, the ice will dam up there; the ice has not stopped the navigation more than two weeks during the last three years. I formerly ran a vessel from Belleville. The difference in the opening of the navigation at Belleville and Newark is ordinarily two weeks later at Belleville. I attribute this difference to the bridge at Newark. The navigation of the river is generally opened sooner at the wharfs in Newark below the Rail Road Bridge than below at the Plank Road. We encounter ice at the straight run of the river before mentioned after the river is clear of ice up at the wharfs and to Point no Point; the ice generally stops at Point no Point, there is more jam there, and consequently the ice below lies without running out of the river. I think these piers and fenders would have the tendency to block up the ice on both sides by the pier, to a great height at both ebb and flood, and prevent the ice running out, and this jamming of the ice against the piers would render the passage

smaller. (The counsel of the Defendants here objected to all parts of the testimony of David Cox and Stephen V. C. Cadmus, relating to the general effect of the works of the Company upon the navigation of the river.)

And being cross-examined—I have been in the employ of 5  
Stephens, Condit & Co. I am doing nothing at present. I have  
had no experience in running or the constructing of ferry boats. A  
ferry boat could be built with a keel drawing not more than three  
feet of water, eighty feet long and sufficient to carry passengers and  
carriages across the Passaic River. The keel of such a boat would 10  
not be over eight inches, and that would make it six inches below  
the bottom. I came away with Capt. Cox once when we examined  
the water; another time I went away with a small boat, and remained  
a short time after he did. I never have sounded the mud or tried it  
at these piers, except shoving off with a small boat. I have never 15  
examined the ground on the east side any more than sailing through  
the canal and seeing the logs of the old Ferry Road stick out. The  
tides vary much as to their lowness in the river; I can't say how  
much. They are governed much by the wind. The northwest wind  
will drive it out, and the northeast will drive it in. I don't think 20  
there is such a thing as getting an average of tides.

And being re-examined by Complainants—The current will run  
out after the water has ceased to fall for about an hour, and the  
water swells before the current has ceased to run out.

S. V. C. CADMUS. 25

Sworn and subscribed before me, at Newark, this 4th day of  
November, A. D., 1851.

JNO. WHITEHEAD, M. C. C.

IN CHANCERY OF N. J. 30

BETWEEN

LUCIUS Q. C. ELMER, Esquire, ex relat: of WILLIAM WRIGHT  
and others Comp'ts,

and

THE NEWARK PLANK ROAD AND FERRY COMPANY, and  
others Def'd'ts. 35

On bill,  
&c.

Examination of witnesses in the above cause on the part of the  
Complainant taken before me by consent of parties at my Office in  
the city of Newark, New Jersey, on the fourteenth day of January,  
A. D., 1852, in the presence of Asa Whitehead, Esq., for the Com-  
plainants and David A. Hayes, Esq. for the Defendants. 40

JNO. WHITEHEAD, M. C. C.

William H. Harris, a witness produced on the part of the Complainants, being duly sworn, says—I reside at Little Falls, in Passaic County, New Jersey. I formerly resided in the City of Newark. I have been acquainted with the Passaic River from my boyhood.

5 I have had occasion to have transportation done between New York and Newark on the river to a considerable extent for the last fifteen years. I own, and have owned for the last fifteen years, boats used on the Morris Canal, used for the transportation of stone from Little Falls to Newark, and sometimes I have sent to Jersey City. I am

10 acquainted with the soil of the river bank at the place where the canal meets the river. I have had some experience in excavating there. I had very little experience in excavating the original soil, but mostly that that had been washed in. I excavated the canal between the Passaic River and Hackensack River, that had

15 washed in. I sank the canal four feet, or four feet four inches, below low water mark; there is no difficulty in excavation after the water is out, there is some difficulty in keeping water out; there is no difficulty in making arrangements to keep the water out now, but the expense; the water will ooze through the ground, it is porous

20 there. We kept two horse-power at work there night and day in pumping the water out. The character of the dirt that was removed there was soft; the estimate we made after the water was out, that we could move the dirt from the bottom of canal at the same rate we could sand, ten cents per yard. From my experience

25 obtained by cutting drains through the original meadow to relieve our coffer dam, I should judge the soil of the bank of the river is the same as the soil we took out of the bottom of the canal. I think there is no difficulty in excavating on both sides of the river at the Plank Road works so as to form slips for boats to lie in. It

30 is a question of dollars and cents as to how much money it would take. Quest.—How much would it cost to excavate a slip a hundred feet long, forty five wide and twelve feet deep? A slip of this description, twelve feet deep on the meadow, and carried out level in depth, would cost four hundred and fifty dollars, including coffer

35 dam and all expenses. I have some doubts whether it could be done any cheaper by a dredging machine. The dirt outside of the bank in the river, when the tide flows, could be dredged cheaper than dug; but the dirt of the meadows could be dug cheaper than dredged. I think the outside dredging could be done for twenty cents a yard; it

40 could be done for that at the time we dug the canal, and it is upon

that I judge. I think the bank on the east side of the river is bold, this was the case on both sides; we used to go up with our boats close up to the bank. (Exhibit W. No. One being shown to the witness, he says) Quest.—In your judgment would or would it not be more convenient for the Plank Road Company to have their slips 5 constructed by excavation into the bank, as has been suggested, or as it appears they have been constructed, by said exhibit? I should say that as regards teams, it would be more convenient than as now constructed. My reasons are that there would be much more room than it is now. I think teams could not be managed on the bridge 10 as it is now, there is not room enough; that's my view of it. Quest.—Would there be any more advantage obtained in the crossing of boats to and from the slips on either side? Ans.—That's a matter I couldn't answer, as I have no more experience than the effect the tide has upon the boats in my employ in crossing the river. From 15 what knowledge I have of starting boats, I think certainly it would be better for the boats to start in slack water. I think the difficulty would be very great in the middle of the river by the tide pressing the boat against the piles or carrying the boats down the river. That is my opinion merely, I have no practical knowledge on the subject. I 20 have seen difficulty in bringing a boat straight across the river; it was when they were building the bridge across the Hackensack River.

And being cross-examined, the witness says—It was six years before we excavated there in the canal, that the canal had been dug out. When we excavated, the mud had washed in nearly level with 25 the mud in the river at low water mark.

And being re-examined, the witness says—The filling up in the canal which we excavated, was occasioned in part by the washing in of the dirt from the banks of the canal, but the greater part from the tides of the rivers and by the meeting of the tides of the two 30 rivers, by which there would be no current in the canal, and consequently the sediment settled in the canal; that was the conclusion we came to. I think the canal had not been much used for four years previous to the time we excavated. If the canal had been 35 constantly and steadily used, in my judgment, it would have remained open a much longer time; there could be no doubt about that.

WM. H. HARRIS.

Sworn and Subscribed before me, at Newark, this 8th day of January, A. D. 1852.

JNO. WHITEHEAD, M. C. C. 40

TESTIMONY ON PART OF DEFENDANTS.  
IN CHANCERY OF NEW JERSEY.

BETWEEN

5 LUCIUS Q. C. ELMER, Esq., Attorney General &c., *ex relations*,  
ISAAC VAN WAGENEN, and others, and ISAAC VAN WAG-  
ENEN and others, relators and Compl'ts } *On Et'l &c*  
and  
15 The NEWARK PLANK ROAD AND FERRY COMPANY and others,  
Defendants.

Examination of witnesses in the above cause, on the part of  
10 the Defendants taken this twenty fourth day of December, A. D.,  
1851, at my office in the City of Newark, pursuant to notice, due  
service whereof was acknowledged.

Present, ASA WHITEHEAD, Esq., for Complainants, and  
D. A. HAYES, Esq., for Defendants.

15 JNO. WHITEHEAD, Master and Examiner.

Aaron M. King, a witness produced on the part of the Defend-  
ants, being duly sworn according to law doth depose and say—I  
reside in the City of Newark, N. J. I have made a measurement  
of the depth of the water in the Passaic River several times, at or  
20 about the place where the Plank Road works are situated I have  
memorandums of the measurements I made The thirteenth day of  
November, a board was put down in the water in front of the piers  
on the west side by Mr. Dennis, and that board was taken up  
on the eighteenth day of November and measured by me. The  
25 measurement of the board that day was six feet one inch, that is the  
depth of the water. I have measured the depth of the water in  
front of that pier; it was on the twenty-second day of November; it  
was in the same place. The depth of water then was five feet, ten  
inches; I measured there again the twenty sixth of November; on  
30 that day the depth was five feet, one inch; I measured there again  
the twenty-ninth; the depth then was five feet, eleven inches; I  
measured again the ninth of December; it was then four feet, nine  
inches; I made no other measurements on that spot. I measured  
on the north side of the same pier at the second and third and fourth  
35 tier of piles from the front of the pier, on the twenty second day of  
November; at the second row of piles it was then seven feet and  
eight inches; at the third row five feet, ten inches; at the fourth  
row three feet, ten inches. I measured at the third and fourth row  
of piles on the twenty-sixth of November; one of the workmen put  
40 down the pole at the third row of piles, and measured the pole with  
his rule in my presence; the measurement was four feet, eight

inches. At the fourth row of piles I measured myself; the depth was two feet, six inches. I measured at the whole row of piles on the north side of the same pier on the twenty ninth of November; at the first row of piles the depth was seven feet, three inches; at the second row it was the same; at the third, five feet, nine inches; 5 at the fourth row, three feet, five inches. On the ninth of December I measured the first and fourth row of piles; at the first, the measurement was five feet; at the fourth it was two feet, one inch. I measured on the south side of the same pier on the twenty-ninth of November; measured at all the four rows of piles; at the first row 10 the measurement was seven feet; at the second, seven feet, four inches; at the third row six feet; at the fourth, three feet, four inches. I measured at the fourth row of piles on the ninth of December; the depth was two feet six inches. On the twenty ninth of November, I measured in front of the pier on the east side of the river; 15 the depth was six feet, ten inches. On the ninth of December I measured again in the same place, as near the middle of the pier as possible, and the depth then was five feet five inches. I measured on the north side of east pier on the twenty-ninth of November, at the first and second row of piles from the front; at the first row it was 20 four feet, eleven inches; at the second it was two feet. I measured again on the ninth of December at the first row of piles, and the depth was three feet, five inches; there was a little water close by the second row of piles at one end, but in the front of that row of piles toward the centre of the river, the mud was bare of water. I 25 measured on the south side of the east pier on the twenty ninth of November, at the first and second row of piles; at the first row the depth was five feet; at the second row it was three feet, six inches. I measured there again at the first row of piles on the ninth of December; the depth was three feet, nine inches. These were all 30 the correct measurements I made at these points, or at any other.

And being cross-examined the witness says—I am in the employment of the Plank Road Company, keeping their books, and paying off the men, under the orders of Mr. Dennis, who is the Superintendent of the Road. My business has been to be there more or 35 less every day on the piers, and clear through the work on Bergen Hill. I used first to go down to Bergen Hill and stay there all the week until Saturday night; but now I come home every night, and go down nearly every day; that is since about the first of November. I think we made no other measurement on the board put down by 40

Mr. Dennis, excepting the eighteenth day of November. I do not know that there was an unusually low tide on the eighteenth day of November. It now occurs to my recollection that Mr. Dennis did not put down that board, but that he only fixed it, and others put it  
 5 down. I am not much acquainted with the subject of tides in the river. The way I came to make the measurement on that particular day, the eighteenth day of November, was, to get the measurement at low tide. I was not requested as I know of; don't recollect that I was to make the measurement that day. Mr. Benjamin Sandford  
 10 was present at that measurement. I don't know that the tides were unusually low at the times I measured, except what was said by those who were there. From my own observation, what I had seen of the tides, I suppose upon two of the occasions I measured them, the tides were lower than I had seen them at all before. I heard the  
 15 remark made on one of the occasions, the ninth of December, that the tides were lower than common. I think the same remark was made before, but I am not certain. The reason I measured on the ninth of December, was, that it was low tide, and because I perceived it was lower than I had seen it before. I do not know enough  
 20 about the subject of tides to know what is meant by ordinary low water. I don't know anything at all about the subject. I always have to ask about it. I don't think the variations in the depth of water, at the different places, agreed at each measurement; that is my impression; it can be told by comparison; at one time I know  
 25 it didn't. Mr. Douglass, Winegar Mellville, were all present at one measurement. At another time James Tichenor's son was present. I took care to measure upon them several times when it was low dead water, except at one or two times when they said the tide was coming in a little.

30

AARON M. KING.

Sworn and subscribed before me, at Newark, this 24th day of December, A. D., 1851.

JNO. WHITEHEAD.

35 John Douglass, a witness produced on the part of the Defendants being duly sworn according to law, doth depose and say—I reside at Newark, N. J. My employment for the last few years has been dealing in fish and oysters; prior to that I followed the water, coasting from Fire Island. I have navigated the Passaic River, and  
 40 am acquainted with its banks and water. I suppose for five or six

years I was in the habit of going up and down the Passaic; navigated it in a small sloop, with John Young. I was a hand on board the sloop, and since then I have been master. I have been acquainted with the river and its shores at the place where the Plank Road works are built. I should think there had been a change in 5 the width of the river at the ferry within the last ten or fifteen years. I should think the river had widened there all of from fifteen to twenty feet. I always supposed the width had been increased by the steamboat washing the banks. I suppose the washing of the banks by the steamboat has filled up the river; the water is shoaler 10 there than it used to be; we used to run up there pretty close. The bank is yet still caving in on the west side of the river south of the works. I have this summer seen a portion of the banks cave in there, I mean I have seen the sod hanging over, and afterward I saw the sod had fallen off. *Q*uest—What becomes of the mud under the 15 sod and the sod that falls off into the river from the bank? *Ans*—To the best of my calculation it falls off there by the wash of the steamboat, and the mud and sod settles in the river and forms a flat in the river. I was present once while Mr. George A. Van Wageningen, Messrs. Condit, Stephens, Capt. Cox, were there measuring 20 the depth of the water at the pier. I had a conversation with Mr. Stephens about low water; I can't say that Mr. Van Wageningen was present at the conversation; he was there all the time. I thought it was not low water at the time they measured, and spoke about it at the time. I had a conversation with Mr. Henry Stephens and Capt. 25 Cox and Mr. Condit about low water; I said it couldn't be low water not till after four o'clock. Mr. Cox spoke and said it was high water in New York at eight, which would fetch it at two there, that is, low water at two o'clock. I couldn't say what time it was they left; had no time with me. I should judge it was about half past two o'clock 30 that they left; it was before three I should judge. The water fell after they left. I got into my small boat and rowed across to the east side, and observed when I got out on the pier, nearly at the end of the pier, a line around a spile near the north end of the pier; when I was going up on the pier I noticed that the tide was just down 35 to that line. I then went over to the Hackensack River, which is three quarters of a mile; went on foot; didn't stay there any length of time, not but a very few minutes; came back on foot, and when I came back the water was below that line, probably five or six inches, as well as I could judge; when I got over on the west side, 40

after I came back, I asked Mr. King what time it was; he pulled out his watch and said it was half past four o'clock. I was some little time at the east pier before I crossed over to the other side, and it was some little time after I got over to the west side before I asked Mr. King what time it was. Mr. King measured with a pole the depth of the water at that time. Mr. King measured on the west side, and while he was measuring I noticed the tide was rising; I can't tell how much it had risen when he commenced measuring. I measured once at the piers the depth of the water; it was on the

10 first of December; on the west side, in front of the pier; I think it was the first of December; the depth of the water there was five feet, eight inches. I have measured the depth of the water at other times, measured there and got five feet, one inch. Mr. King was then with me, I think; measured there at other times; got four feet

15 nine inches; can't tell the dates. I think Mr. King was there measuring the same day. On the first day of December, I measured at the first row of piles on the west side of the river; on the north side of the pier got six feet nine inches; at the second row, got six feet eleven inches; at the third row, got five feet three inches; at the

20 fourth row, got two feet nine inches; on that same side I have measured at other times; can't tell the dates; at the third row, north side of the piers, got four feet eight inches; at the fourth, same day, got two feet six inches; the same day that I measured and got four feet nine inches in front, I got two feet and one inch

25 on the fourth row of piles. I measured on the south side on the first of December, at the first row of piles, got six feet five inches; at the second row, got six feet eight inches; at the third, five feet six inches; at the fourth row, got three feet two inches; I made other measurements on the south side, and on the same day that I

30 got four feet, nine inches in front of the pier, I got two feet six inches at the fourth row of piles, on the south side. I measured the pier on the east side, on the first day of December; got in front of the pier, six feet six inches; at the second row of piles, on the south side, got four feet eleven inches; and on the north side, at

35 the same row of piles, got four feet six inches. The tide had not commenced rising then, I think; that is the only measurement I made on that side. Quest.—What is the effect produced at low tide on the depth of the water by the waves created by the steamboat passing up and down the water? Ans.—I should suppose two feet;

40 I mean that the motion of the steamboat will make the water two

feet less in depth when the boat was passing. I have noticed the effect produced there by the passage of the steamboat during this last fall. I have seen the steamboat which the Plank Road have there at this ferry; I don't know her draft exactly, but I suppose it is five feet; that boat was moored on the south side of the west pier for about a week; she laid nearly parallel with the front of the west pier, with one end towards the pier, and the other end from the pier south, right up and down the river; she was fastened to the spilings at the south fenders, and with lines on the piles on the pier. During the time she was there, at low water she was aground, so far aground as to keel over; at one time in particular, I noticed she keeled over considerable. I have been working on these piers for the Company, so as to know the nature of the mud at these piers; have examined it a little. It would, in my judgment, cause the slips to fill up if they were excavated at these piers. The swell from the steamboat and the current of the water would, I should suppose, cause it to fill up. If a steamboat should run into the mud at these piers, I think she would pack that mud, and as soon as ever the boat should leave, there would be a rush of tide which would carry the mud into the hole made by the boat, and the effect of the frequent repetition of this would be to harden the bottom where the boat come; that's my view of it. If there was still water it wouldn't have the tendency to fill up so much; but at the mouth of the pier where the tide is constantly whirling round, it would have the tendency of filling up. If a boat is aground in the centre, it will require more power to get her off than it would if she was merely aground at one end. If the boat was only aground at her bows, it would be easier to get her off. The difference in draft of the boat there is between what she draws empty and when loaded, would be about six inches. At the times I made these measurements there was one extra low tide. I think I have seen lower tides in the Passaic River than that, I think I have; didn't measure them, but to the best of my judgment I think I have; I don't know that the channel of the river has changed for the last ten or fifteen years, but I think the bank of the river has on the west side; I mean that the bank has changed by the bank peeling off on that side and forming a flat, as I have mentioned.

And being cross-examined the witness says—I am in the employ of the Company now, and live in the little house they have built down there at their works, and am employed by them to keep the ferry there on the west side. There is no specified time that I have

agreed for ; don't know where the Company got this steamboat ; it was heretofore used in the East River, at one of the ferries there, between Peck slip and Long Island ; she is one hundred feet and ten inches long. I have seen the new horse-boats the Company have  
5 procured to use there on their ferry. I believe their draft is eighteen inches, or two feet, when they are light. I suppose one of these boats would draw more than this when they are water-soaked, and get heavier. I think they would draw now, as they are now this amount, eighteen inches or two feet. This steamboat appears to be  
10 flat ; she is not a keel boat. I think there is more water on the front of the pier than there is on the bar. I can't tell how much more ; don't think there is much difference, not much, if any. I think the Passaic grounded on the bar on the day I measured and found four feet nine inches on the front of the pier ; I supposed she  
15 had, because she was behind her time ; I don't know whether she had or not. I haven't seen any tide so low this summer or fall as it was the day I measured and found four feet and nine inches in front of the pier. I don't know that I have ever seen a ferry boat ; don't know that I have ever been on one when there was a scant of water ;  
20 I have never been engaged in navigating a ferry boat. There would be no difficulty in these horse boats coming to the fourth row of pilings on the west side, not as they now are, light, if you can get them across the river ; these horse boats will not do for this river ; if they were loaded you could not bring them up to the fourth row  
25 of pilings in ordinary low tide ; you might with some difficulty. I have noticed, I think I have, the effect of the steamboat on the banks of the river at other points than this ; one quite particular point is right by the Morris Canal bank, between Downer's dock and Chemical Works ; it has washed there considerable, and I have  
30 noticed across the river of its washing away at the point of a small creek and filling it up. The river bottom at these works is soft, as a general thing, and you can find some pretty hard bottom there. They have got the piles there driven in some eight or ten feet into the mud. I saw one drawn and it was stained by the mud some  
35 eight or ten feet. What has been filled up by the action of the steamboat must necessarily be soft, but so that you can walk over it by sinking in some six or seven inches. If there was a close pier, I don't know that the effect of the steamboat passing in and out would have the effect to deepen it, but I should think not ; it would peel  
40 of for a few times. I can't say how often it is expected the boat

will ply backwards and forwards across this ferry. I don't know that the tides have ranged very low this winter for the last month or six weeks, except the one I mentioned before. This line I have mentioned, hung the same way it did when I came back as when I left; it might have been moved by some one, but it is not at all probable; I never saw it before; I don't know that the wind blew any more when I came back than it did when I left; it wasn't blowing very hard. I don't recollect how deep Mr. King found the water that day when he put down the pole. I think I made measurements that day, but kept no memorandum of them; I recollect we made less water than Mr. Van Wagenen. That day I measured in front of the piers and alongside of the piers on the west side. I didn't measure for the benefit of the Company, but only to satisfy myself, in consequence of my having said that it was low tide. I only measured once at the request of the Company, and that was on the first of December.

And being re examined, the witness says—I do not think those horse boats can be used on this ferry. They have been tried and found that they couldn't be used. The reason is on account of the want of power, and being scow-built, the ice will wedge under them, and they haven't power to stem the tide and blow.

JOHN DOUGLASS.

Sworn and subscribed before me, at Newark, this 24th day of December, A. D., 1851.

JNO. WHITEHEAD, M. C. C. 25

The examination was here adjourned by consent of parties until the 31st December, at 10 o'clock A. M., A. D., 1851, at my office.

December 31st., 1851, 10 o'clock A. M.—The parties met as before.

JOHN WHITEHEAD. 30

George McDonald, a witness produced on the part of the Defendants being duly sworn according to law, doth depose and say—I reside in Newark; have resided on the Neck, about three or four hundred yards from the river; have lived there on the Neck about that distance from the river since 1819. My present residence, I should judge, was little over a mile from the Plank Road Ferry; my business has been fishing a good deal in the spring, and a good part of the time working on my place. Since my residence there, I have known the river and its channel at the ferry. I should think

there has been a change in the width of the river at that point; the river has widened there, and the steamboat still widens it whenever she runs there, by tearing down the bank, and not only there, but all along. I should think along there, on the west side, as high as I could judge, all of thirty feet of the bank has caved in; I can't tell exactly. The mud that falls down the bank as the steamboat passes down, falls down right by the bank, and I should suppose would go to the deepest place, finally into the channel. I think there has been a change in the depth of the river. It is not so deep as it used to be along by the west shore there, not by considerable. The steamboat and the Morris Canal Company have been the occasion of this. There have been changes in the other parts of the river there by the Chemical Works, and all along and over by Dey's meadows; I lay it to the steamboat; I don't see anything else that can do it.

The way the steamboat does it is this: when the tide is low, the steamboat is large for the river and draws all the water after her; to speak within bounds, I think I have seen waves four feet high going all along the bank after the boat, a great body of water, and this tends to wash the banks down. I think there has been an increased alteration in the width of the river, almost the length of the river, and I think there has been a general lessening of the depth of the water in the river from its mouth up as high as Dey's meadow. The effect of a flat bottomed boat running upon the mud in the Passaic River, I should think would have the tendency of hardening the mud. The mud there is decayed stuff, rushes and leaves; I think it is that; some parts of it will stick, if you run an oar down there, it will stick so that you can hardly pull it out. It is filled up there by the mud from the Morris Canal, by their machine; they had a pier built out there, and they dug it out there and emptied it out into the river this last summer. The nature of the mud that the Canal Company took out there is just the same all the way down to the bottom; all that I have seen is. The steamboat, I expect, as she passes up and down, washes the mud higher up to the channel. I think the effect, if an excavation into the bank were made there for the purpose of running a boat into it, by the steamboat and tides, would be to fill it up if there were any bank there for them to wash off; if the excavation were made out into the river. I think the same effect would be produced. I measured the depth of the water at the piers, it was just where they commenced digging. I measured at the end of the pier; I don't know when it

was, it was in May, I think; it was on the west side, on the end of the pier; it was, I should judge, six feet, and ten feet on the other side at the end of the pier where the boat goes up to. I don't know whether a row of piles has been taken up there or not, when I measured, there was, I think, at the time they stopped working there and I went over to Hackensack working. The deep water used to be always where it is now, on the east side. It used to be a great deal deeper than it now is; when I measured the depth of the water, it was a common low water; there had been no wind that day, and it couldn't have been anything more than common low water. I have seen the tides three feet lower than it was then. 5 10

And being cross examined, the witness says—I don't know exactly how long it is since a steamboat has run in the Passaic; I should suppose ten years, as nigh as I can recollect, since the Passaic commenced. There was a steamboat before that, the Newark used to run here. I never see any wearing of the banks before the Passaic run. The river was growing narrower before the Passaic run, except where there was a bold bank. The banks before the Passaic run, rather encroached on the river than the river on the bank; the river was growing narrower, and I should think deeper. Right below the Plank Road there was a bold bank; the bank didn't grow out below the Plank Road Ferry, but it did above all the way from the ferry up to "*Point no Point*," where the bank encroached on the river; the grass grew out to the river and into the water at high tide; the encroachments took place on both sides of the river, in places. It is pretty much all bold shore up to the Chemical Works on the east side, except at one place, Mr. Richard's fish-haul, which used to be low there, but is now bold. The grounds all the way from a little below the Chemical Works to the mouth of the river is salt meadow; I don't call it salt marsh; I don't call anything marsh that I can go on to; if I go on to it and go up to my knees, I should call it marsh. It is not so soft there that you can't drive a team along the bank of the river. I don't know how deep the mud is there, never tried it. I have run down an oar, can't run it down four or five feet deep; have run it down a foot and a half, or the like of that, to hold a boat; there is some deep mud there since they have filled it up as much as they have. I don't know how deep they have filled it up, never took any notice to see how deep they have filled it up. I should think the mud is full as deep as the bottom of the river in the channel; if it is deep as that, I would 35 40

make it as deep as sixteen feet from high water mark. I should think it is as deep as this to hard bottom, where the bank used to be before the bank was washed away by the steamboat. I don't think the water is as deep as it used to be on the east side. I don't know as the effect of a steamboat would be to either deepen the water in a slip or lessen the water by continually running in and out, and by the action of its wheels, and by the action of the tides. If a boat was laying still and the wheels moving, it would have the effect of displacing the mud a little until the Passaic came along, and then it would fill up again; the Passaic draws the mud out into the channel of the river. I should suppose at low water in the river the channel used to be about nine feet, before the Passaic run. I should think along there, from the old ferry road for half a mile down the river, the channel used to be ten or eleven feet deep at low water, eleven feet, I guess. I have measured the channel, but not exactly, never measuring it any more than with an oar; have measured the channel in that way all along there; have measured there for the purpose of seeing whether there are two channels or not, for they say where there are two channels you can't catch any fish; for the bank in the middle keeps the lines of the net from the bottom.

And being re-examined in chief—*Quest.*—When you speak of hard bottom, do you mean to say when you can't go any farther?  
*Ans.*—Yes, I should think it was hard then; I can't tell what the hard bottom is; there may be a bottom of rocks there.

Re cross examined—When I speak of hard bottom, I mean a different soil than of the meadow, as sand, or gravel, or clay, or all mixed together, the same as the upland.

GEORGE McDONALD.

Sworn and subscribed before me, at Newark, this 31st day of December, A. D. 1851.

JNO. WHITEHEAD, M. C. C.

Samuel Richards, a witness produced on the part of the Defendants, being duly sworn according to law, doth depose and say—I reside in Newark, and have lived here forty-eight years. I live on the Neck, not far from the river. I have followed the water pretty considerable during the last twenty years, fishing and the like, sometimes oystering and hunting. I have been acquainted with the river and its channel from its mouth to the docks at Newark, for the last twenty years, and for that length of time with the river and its

channel at the place where the Plank Road crosses it. Quest.— During the last twenty years has there been any change in the width of the river, if so, what change? Ans.—On an average, I think the river is twenty-five feet wider than it was twenty years ago, and at the place where the Plank Road Ferry crosses the river it is more 5 than thirty feet wider; I should judge twenty feet on this side and ten feet on the other; it may be more. As long ago as I can recollect, the channel used to be on the east shore, and now the water is very nearly of one depth all the way across. There used to be two channels, there, I think, when I first knew the river. In 10 some parts of the river, on an average, I think there has been a change of five feet in the depth of the river; five feet shallower, I mean; it is very nearly of one depth all the way across; this widening of the river is growing worse and worse every year by the washing away of the bank, the river is filling up all the whole course 15 by the washing away of the bank and the filling in of the bogs or bank of the meadow. The effect of this washing away of the bank is to extend a flat out from the shore; the bank falls down into the river and presses the mud farther out, and so extends the flat into the river. This is chiefly caused by fast steamboats, making a great 20 swell, and the action of that swell on the bank so as to undermine it. There was no widening of the river before steamboats run in the river; we have fisheries in the river, or my father has, and before the steamboats commenced running, we didn't have to put in gravel, but now we might put in any quantity every year, make a new one 25 almost, and the steamboat would wash it away every year almost. I have known this swell to move a stone that a person couldn't lift from near the bank out into deeper water. When the gravel is removed by the swell, nothing is deposited in its stead. The gravel deposited for the fishery makes a sort of rise up to the bank, and 30 when it is washed away the spot where the gravel was is made level with the mud on each side along the bank; and at our material fishery, the one we think the most of, we have to plank it up, or it would wash it away, bank and all. I know the steamboat Passaic running in the river; she makes two trips a day in the summer to New York 35 and back, and one in the winter. I have seen the swells as high as seven feet along the shore. I saw a yawl once near the bank with some persons in it, when the old Newark run, and the swell of that boat carried the yawl boat and the persons in it up as high as eight feet at least, and deposited the boat on the bank. The 40

average height of the swells of the Passaic at low tide are five feet ; the lower the water the more swell she makes. In case of any excavation in the bottom of the river, I think the effect of the swell would be to fill up the excavation. The mud in the river is of a  
 5 sticky nature, but still a swell will loosen it a little, and in still water it will settle again. Quest.—What would be the effect of a flat bottomed boat running continually on to this mud, would it pack it hard or not? Ans.—It would wear away the soft mud until it came down to the hard mud. Quest.—If while the boat is not in the  
 10 place swells are created, what would be effected by the swells upon the mud. A swell would help fill it up at high water, and at low water if the current is running fast, and the water is turbid, it will continue so, but if the water slack, the mud will settle, and this will help to fill it up. The mud that is washed off from the shore must  
 15 settle somewhere, and it is as apt to settle in deep water as anywhere ; and the swell of the boat will create this wash of the mud from the shore. In case of a deposit when this boat is moving in and out continually, the effect of the boat's action on the deposit would be to pack it down, to move the most of it out by the sides of the boat.

20 And being cross-examined—I have never been connected with the navigation of the river beyond what is necessarily connected with my business of fishing and hunting. The mud along the shore generally is pretty soft ; what is washed from the shore is not necessarily very soft ; what we call the bank is what we may call turf ; and when it  
 25 is washed away from the bank this material will not become soft mud, but will settle down as it is washed away ; when it comes to soft mud it will settle down in that, and when it comes to hard bottom it will remain on the hard bottom and remain there for years. I don't know as I can tell how deep the mud is along there at the  
 30 Plank Road Works ; it may be from four to six feet deep ; never tried the depth of the mud ; never tried to run an oar down there into the mud ; have run the oar down into the mud there a foot or eighteen inches to fasten my boat. I suppose it is five or six feet deep where the bank is washed away. I shouldn't think the mud any deeper  
 35 towards the channel than it is at the shore ; the nearer you get towards the shore the deeper the mud. I don't believe there is any more mud now where the bank is now than there was where the shore used to be, or that it is any deeper. The bottom at the Plank Road Ferry is mostly soft bottom ; there is a little gravel there. I take it  
 40 to be all channel there ; it is pretty nearly all of one depth there

all the way across the river ; it was when I sounded it some three years ago ; it was right across there where I sounded. The deepest place I made there was about six feet, I think, I didn't measure it, but only sounded it with an oar. I shouldn't wonder if it was deeper there now, it was filled up there by the Morris Canal. It must be 5 ten or twelve years since the Passaic commenced running in the river. The Newark was running in the river may be ten or fifteen years. I think the Newark made a rather worse swell than the Passaic. I noticed a wearing away of the banks before the Passaic run ; there was very little difference between the two boats. The Newark, 10 I think, made a larger swell than the Passaic, but I don't know that the Newark made as much damage as the Passaic. The Passaic is a swifter boat. I have no means of judging of the size of the washing away of the bank, than by watching the progress of the washing away. I judge of the height of the swells by the height of 15 the bank ; I have never measured the swells by rule. I have no means of judging of the height of the swells except by my eye, except that I know pretty nearly the height of the banks, and where the swells come as high as the banks ; I know their height pretty near. I have noticed the works erected there in the river by the 20 Plank Read Company. I don't think they will answer as well as they might ; they can make them work, I suppose ; I think they might have a better plan. I don't think a boat can work in those slips, not to advantage. I think they cannot make a boat lay square, and they can't go from one slip to the other conveniently. I think 25 the ferry is too short for them to work. I should think there was no difficulty in erecting these piers close into the bank on each side. It is not a very easy job to excavate the mud there. The Morris Canal excavated a good deal there. It would be an easy job to do it the way they had it done ; they did it by machines ; I suppose 30 that is the best way to do it. I think they might put their slip thirty feet nearer into shore on the west side, may be more. I don't know but that they might a hundred feet, never measured the distance I have not taken enough notice of it to know how much farther they might go in nearer shore. In my judgment, it would 35 be better for them to go back as far as they could and retain the same depth of water. I don't think it would be better for them to go farther back even if they should have to excavate some, because it would be filling up. I don't think it would be of any advantage to them to excavate at all, even if it didn't fill up. I think the river is 40 wide enough to make a good ferry. It would be my judgment that it

would be better for them to go as near the shore as possible, provided they could get water enough. I think the action of the tide would, as the slips are now arranged, send the boats up or down, as the tide was, and make a difficulty in getting into the opposite pier.

- 5 It is more than I can tell how this difficulty is to be remedied, I am not enough of a navigator; but I suppose they would have to back, run down or up as the tide might be, so as to get advantage of the tide to get into the opposite pier. I believe the Newark has never been run as a freight or passage boat since the Passaic commenced,
- 10 except once or twice she may have taken the place of the Passaic. If a boat were a keel boat, running continually in and out, the effect of this would not be to deepen the water in the slip. The mud stirring up in the river would not deposit itself in the same place, but other mud would. A keel boat will press the mud out more
- 15 than a flat boat; a flat boat will pack the mud down and it will ooze out at the sides. Quest.—Suppose a slip was a close slip planked upon both sides, would the tides tend to fill it up more than an open slip? Ans.—Certainly it would; it would tend to form still water; if a boat were passing continually in and out of such a slip, I think
- 20 it would tend to fill it up.

- And being re-examined in chief—Quest.—You have spoken of the mud at the Plank Road works at the bottom of the river as being soft; does or does not the mud become harder and more compact the deeper you go in it? Yes, it grows harder. It will require
- 25 fifty pounds strength I suppose to draw an oar out of the mud there put in a foot or eighteen inches. Quest.—Can you push an oar down into the mud there out from the shore more than eighteen inches without great effort? (objected to.) It depends upon where you put your oar; there are some places there where the mud is
- 30 soft, and you can put it down three feet with one hand, and some places where I can't put it down eighteen inches without my whole weight, and there are some places where I couldn't put it down three inches with one hand. What I mean by the water being of one
- 35 depth, is not from shore to shore, but after you get out to a certain depth. The Morris Canal have excavated there three times in the same place, I believe. The place had filled up, and it didn't take long to do that either, it took only about two years. If they had put their mud in the right place, above and below the place excavated, it wouldn't fill up so soon; but it would fill up, but take a
- 40 longer time.

And being re-cross-examined by Mr. Whitehead—If a stone

wall had been built out into the river, on each side of the excavation, it would still have filled up, but not so soon. It would have filled up from the settling of the water running in from the river.

SAMUEL RICHARDS.

Sworn and subscribed before me, at Newark, this 2d day of 5  
January, A. D., 1852.

JNO. WHITEHEAD, M. C. C.

IN CHANCERY OF N. J.

BETWEEN

LUCIUS Q. C. ELMER, Esq., ex relat: of WILLIAM WRIGHT }  
and others, WILLIAM WRIGHT and others Comp'ts,

and

THE NEWARK PLANK ROAD AND FERRY COMPANY, and }  
others Def'd'ts.

O: Bill,  
&c.

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Examination of witnesses taken April 22d, 1852, 10 o'clock,  
A. M., at my office, in the City of Newark, pursuant to notice,  
service acknowledged. Present, David A. Hayes, Esq., for Defend-  
ants, Asa Whitehead for Complainants.

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Edward Carter, of full age, being duly sworn according to law,  
doth depose and say—I reside at Newark. I am a civil engineer, by  
profession; have been engaged in that business seventeen years; I  
guess eighteen years. I am City Surveyor of the City of Newark.  
I am the engineer of the Newark Plank Road and Ferry Company.  
(A map being shown to the witness.) This is a map of the piers on the  
Passaic River where the Plank Road crosses that river, and is a copy  
on a large scale of the map annexed to the answer of the Defendan  
s in this cause, with some alterations. The alterations on the east  
side of the river are in this, that the row of piles farthest out in the  
river was not driven in at the time of the answer, and the second  
row of piles has been taken up. On the west side one row of piles  
has been taken up, which was farthest in the river, and one row of  
piles taken up, which was the second row driven from the west end  
of the pier. This last was taken up for the purpose of changing the  
line of the canal, and the flow there raised three feet and nine inches,  
for the space of forty feet, and a braced bridge made there over the  
canal; it was raised for the passage of the boats; it was not high  
enough for them without that raising; the line of the canal was  
changed because it was necessary for the crossing of the canal boats  
from the Morris Canal from one bank to the other. One reason was,

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- the difficulty of getting across and not interfere with the pier on the other side, the canal boats I mean, getting across, and another was, the moment the boats passed out of the canal on the west side, they came in contact at certain stages of the tide with the pier and the
- 5 ferry boats; another difficulty was, the canal on the east side was not directly opposite the canal on the west side, and at certain stages of the tide it was difficult to reach it. Quest.—What was the effect on the ferry of having the canal boats passing the two piers? Ans.—Great interruption to the passing of the ferry boats,
- 10 and the canal boats also, liable to come in contact with each other. Quest.—Can you state to what extent it would interfere with the passage of the ferry boats? Ans.—That would depend upon the amount of business done upon the canal. There was a good many boats passing there last season, one almost every hour, one or more
- 15 I should think. Quest.—Can or cannot a ferry boat pass while a canal boat is passing? Ans.—It cannot. It would take a canal boat, as the piers were constructed last year or as they are this year, on an average, all of ten minutes to pass. Quest.—At whose instance was the alteration in the canal made, who required it to be
- 20 done? Ans.—The Morris Canal Company. Quest.—What is the difference in the width between these two piers in the river, as they are now built, compared with the map appended to the answer in this answer. Ans.—It is now about fifty feet wider, making the opening now about three hundred and fifty feet. Quest.—Are the
- 25 Company now making any alteration in the piers, if so, what are they? Ans.—The two first bents farthest in the river are to be taken out on each side, and a floating bridge to be put in their place forty feet in length. Quest.—Can that floating bridge on the west side of the river be brought nearer shore than the plan proposed,
- 30 and if not, why? It cannot conveniently, for the reason that it would make too steep a grade from the end of the bridge over the canal to the end of the floating bridge, where it is attached to the pier. Quest.—How is it on the east side in regard to bringing it nearer to the shore? It cannot be brought any nearer shore there,
- 35 for the reason that we haven't sufficient depth of water there. Quest.—What has been the experience of the Company as to the present construction of the piers, without a floating bridge. Ans.—A great difficulty in getting to the boat, off and on the boat. It would not answer with any convenience without a floating bridge.
- 40 Quest.—What has been the result of the experience of using horse

boats there at this ferry? Ans.—We found them impracticable; we couldn't pass, hadn't sufficient power to cross the river on account of the tides carrying them up and down the stream, taking them out of the line. Quest.—Do you know the rate of the current there? I don't think I could be able to tell; at certain stages of the wind and tide there is a very strong current, running probably eight miles to the hour, six to eight miles to the hour. Quest.—What is your opinion as to any boat driven by wheels with steam or horse power of going straight across the river, whether it starts from the piers or from the shore? Ans.—I have been decidedly of the opinion that every plan has been impracticable, except one with an endless chain attached from one shore to another, passing through the boat. Quest.—For what purpose has this alteration been made of floats put in the piers, and with what object? Ans.—To make the passage more easily from the bridge to the boats off and on the boats, and for the purpose of using an endless chain. Quest.—What do you mean by endless chain? Ans.—A chain passing over a drum in the boats, fastened to the end of each pier. Quest.—What plan is the Company now constructing a boat on for the purpose of running at this pier? Ans.—One for the purpose of using a steam engine with a chain passing through the boat. Quest.—Where is the engine to be put? On board the boat, for propelling the boat with this endless chain passing round the drum in the boat. Quest.—What effect will that chain have upon the navigation of vessels passing through the piers up and down the river? Ans.—It will not interrupt the free navigation of the river. Quest.—The difference between the present plan and the plan attached to the answer which you state is fifty feet, and which you said was between the piers, did you include in the piers, and mean by piers also wings? Ans.—I included the wings in the piers, and the fifty feet is the clear space between the wings of the two piers.

And being cross-examined—The Morris Canal has actually been dug out under the Plank Road; that was commenced at least a month ago, and it may be six weeks. It was completed a few days ago; it is hardly completed yet, nearly so. The principal part of the work has not been done within the last two weeks, there has been more excavating done within the last two weeks, for the reason that the tides have been coming in there; but there has not been more labor done within the last two weeks. This alteration in the Morris Canal was done at the expense of the Plank Road Company.

The distance between the two piers was lengthened forty feet by the taking up of the two rows of piles. I think the rows of fenders were not actually driven longer than as they were shown in the answer, they may have been a few feet. The answer showed fifty-  
 5 seven, and the fenders may have been sixty feet, perhaps sixty-five feet. I have not measured there except by the length of the boat. I know them by that. I have not measured the distance between the ends of the fenders on the different sides of the river since they  
 10 were driven. I think the difficulty of propelling a boat across the river is not less on a long ferry than on a short ferry in encountering the tides, although I have had no experience on the subject. The collision of the Morris Canal boats with the Plank Road Ferry boats was occasioned by their tracks crossing each other. I think the  
 15 canal was built in 1834, I mean the part of it between Newark and Jersey City, and it has always been used and located in the same place. I have always been of the same opinion, that the plan I have mentioned here, of an endless chain, was the only practicable plan of propelling boats across the river at this ferry of the Plank Road  
 20 Company, and this has been my advice to the Company whenever they have asked my advice; and I had this plan almost matured when the Company concluded upon horse boats. These bridges that were built into the river were built originally under my direction. The floating bridges that I have mentioned will extend into  
 25 the river about the same distance that the piers did when they were finished, or as they were before we took up the two rows of piles for the purpose of substituting the floating bridges in their place. I made the plan attached to the answer. I think that plan was carefully and accurately made from surveys and measurements made on  
 30 the ground.

And being re-examined in chief—The cost of the alteration made for the Canal when completed will be three thousand dollars at least. The cost already made has been two thousand dollars. I think this  
 35 difficulty of the crossing of the canal-boats was first discovered after the road commenced running, I mean when the piers were finished. I never heard of the difficulty before that time. When I speak of the length of the wings I mean the length of the wings in a direct line across, not of the length of the wings themselves.

And being re-cross examined—The length of the fenders or wings are not laid down on this map from actual measurement, but from  
 40 the length of the boats and by the eye. I had the length from the

two extremes of the piers on the land and deducted out the length of the piers to get the distance between them. The actual distance between the west end of the floating bridge on the east side of the river and the east end of the floating bridge on the west side is four hundred and sixty-five feet. I mean by the three hundred and forty-nine feet marked in lead pencil on the map the distance between the points on each side of the river parallel with the ends of the wings. I should think the greatest obstruction to the passage of the Morris canal-boats across the river is the projection of the wings. I should think there would be difficulty at some stages of the tide of the Morris canal-boats floating against the piers before they get out into the river. I have made actual measurement of the three hundred and forty-nine feet. I made it last summer: stretched a wire across. That was before the alteration was made, and before we had finished driving piles, and before we had driven any fenders at all on either side. In making that measurement we measured from shore to shore, and in doing that we got the three hundred and forty-nine feet, by assuming that the fenders or wings extend sixty feet in a straight line from the end of the piers.

EDWARD CARTER. 20

Sworn and subscribed to before me, at Newark, this 22d day of April, A. D., 1852.

JNO. WHITEHEAD.

April 22d, A. D., 1852, at my office, in the city of Newark, the parties met as before. 25

Selah Hill, a witness produced and sworn on the part of the Defendants, being duly sworn according to law, doth depose and say. I reside at Jersey City; am a civil engineer and machinist and engaged in building bridges and wharves, boats and steam engines. I have examined the place where the Plank Road crosses the Passaic River; was there a few weeks ago for the purpose of examining where the floats should be put. I have contracted to build the floats. I am well acquainted with the currents in the Passaic and Hackensack Rivers; have known them for the last fifteen years, more or less; I know their tides. I and Lawrence Vreeland excavated the Morris Canal between the Passaic and Hackensack between 1834 and 1835. I examined the pier on the east side for the purpose of putting down a float. If the pier is on the River I found that the

- Bridge would have to go out ten feet further into the River in consequence of the low tides which I did not understand when I took the contract. I won't be confined exactly to ten feet. It might have been something over. The reason why I could not put it back
- 5 further into shore is that the river end of the float would be liable to get aground. I think it would fill up, it might be excavated to answer the purpose but it would have to be renewed every year. It would fill up by the tides flowing. Quest.—How deep must the water be there to accommodate a float and make it convenient? It ou ht to
- 10 have three feet. Quest.—What allowance must you make for extra low water at that place? Answer—From two and a half to three feet. Quest.—In the decision you made as to where the float was to be put on the east side, was or was it not made from actual measurement? It was made from actual measurement. Quest.—Did you
- 15 examine the pier on the west side for the purpose of locating float? Ans.—Yes. Where did you decide to put it in relation to the present pier? I recommended to have it put at the end of where the bridge now is, finding the water about right. Quest.—Could or could it not have been put further back and made a convenient ferry?
- 20 I think not under the present circumstances. Quest.—Why could it not? Ans.—It would make too great an ascent from the bridge to the road. Quest.—How far in from the present front of the present pier will the floating bridge extend towards the shore? Forty feet. Quest.—How is the floating bridge there fastened? Fastened
- 25 to the cap on top of the bent or row of piles, by straps of iron to form a hinge. Quest.—Have you seen the experiment tried of steam boats crossing the Passaic or Hackensack Rivers, or both, or boats driven by wheels? Ans.—I have seen them used and tried on both Rivers. Quest.—Can or cannot a convenient Ferry be made on the
- 30 Passaic River at the place where the Road crosses it with boats driven by wheels? It cannot. Quest.—Why not? In consequence of the tides up and down the River throwing them out of their line; when a boat is going out of the slip the tide, if it is running down, will throw the forward end of the boat down the river before the after
- 35 end gets clear of the fenders which prevents the boat being managed by its rudder. Quest.—Would it or would it not make any difference in this whether the boat started from the end of the piers or close to the shore? That depends upon the tide, I might have said current, for sometimes there is a tide and no current; there is a time of the
- 40 tide called slack water when there is no current. Quest.—When the

current is running in the Passaic River would it make any material difference whether it started from the shore or from the end of the piers? I have not examined the currents just at that point sufficiently to give an answer. (Quest. objected to on the ground that the testimony has heretofore been closed upon the general subject, the 5 cause noticed and the parties before the Chancellor for the purpose of hearing it, and postponed because the Chancellor had not time to attend to it.) Quest.—What depth of water would be required for a boat which would be convenient for this Ferry? Ans.—Five and a half to six feet. Quest.—What in your opinion is the best manner of 10 constructing a Ferry over the River at this point? By using a chain fastened at each side of the River passing around power rollers inside of the boat, those rollers driven by steam. Quest. In what way is a boat now being constructed for a Ferry there? To work with a chain and steam engine and power roller. Quest. What 15 depth of water will be necessary for this boat? When loaded, I think it will draw about four and a half to five feet; from five and a half to six feet is necessary to work such a boat in. Quest.—What is your experience, if any, with regard to excavations in the Passaic River filling up? Ans.—*Where excavations are made 20 across the current, they fill up verry rapidly, for instance, where you excavate a slip across the current two, three or four or five feet deep, it would probably fill up from six to twelve months.* (Answer objected to as not responsive to the question.) Quest.—At what point in the Passaic River is your experience as to excavations? Ans.—At the 25 entrance of the Morris Canal, on the east side of the river, and south side of the Plank Road pier. Quest.—What will be the effect upon the navigation of the river by this chain boat? I don't see how it can interfere with the navigation at all. Quest.—When and where have you been engaged upon the Passaic or Hackensack 30 Rivers, or both, and what have you done? It was 1834 and 1835 in excavating the Morris Canal from the Passaic to the Hackensack River; the nearest point to that was the Hackensack Bridge of the New Jersey Rail Road; the last fall I rebuilt the foundation of the Rail Road and Turnpike Bridges. I worked around the Hackensack 35 River from 1836 to 1839. I built two bridges across the Passaic River at Newark, built one 1840 and 1841. I was engaged at the Rail Road Bridge across the Passaic River at Newark.

And being cross-examined by Thomas H. Stephens, in behalf of the Complainants—I have never been master of a vessel in the Pas- 40

saic River, but I have been on board of vessels and steered them. I have never followed what is called boating as a business. I did not sound the water on the west side of the river any farther in than was necessary for the work. Quest.—Did you sound in shore inside of  
 5 the forty feet, the length of the floating bridge? Ans.—I did not. A distance of fifty feet farther would not make any difference in this ferry for the purpose of the Plank Road Company, that is to say, it would make no difference in running the boat, whether it be three hundred or three hundred and fifty feet, excepting in time. It would  
 10 take one-seventh longer. I suppose a boat may cross this ferry in from one to two minutes. I never saw on a navigable stream of water a boat used in the way this boat is to be used, which is now in process of construction. I have taken no particular pains to examine as to how far these piers and fenders ought to extend out  
 15 into the river for the convenience of a ferry. I merely examined as to how the floats ought to be put. I have never been to examine whether the excavations at the mouth of the canal on the west side of the river has filled up; I have as to canal on the east side of the river, and it has filled up there all up from Passaic River to the  
 20 Hackensack. When an excavation is made in shore, for the purpose of a ferry, where there is no current, it is more apt to fill up than where there is a current. These extraordinary low tides occur more frequently in the spring, with strong westerly winds; they occur perhaps a dozen times a year, and continue for two or three days at  
 25 a time in succession of the tides. You would have to get a long way in slack water before the boats would get sufficient steerage way to stem the current. This is the flat bottomed boat that the Company are now building. The Morris Canal could have crossed the road farther back; it would have been more expensive, the  
 30 grade of the Plank Road would have been less, but as to whether the floating bridge could have been brought in nearer shore, I cannot answer. If there is sufficient depth of water farther back, and the Morris Canal had been put farther back and the grade of the road lessened, this floating bridge could have been put farther in shore  
 35 on the west side. I did not measure the depth of the water farther in shore. I found it right where the Company wanted to put the floating bridge and located it there. I suppose the Plank Road Company could have located their road and ferry at a different point, either north or south of the Morris Canal, but in either case it would  
 40 have involved considerable more expense.

And being re-examined in chief—Quest—If at any point in the River the water was less than five feet could you cross it with this boat you mention? It would run very close; it might touch; if it did touch it might slue the boat and prevent it being steered. If a boat runs very close and don't touch it would be very hard to steer 5 her.

And being re-cross-examined—Quest—Do you not think that a steam ferry boat would be advantaged in the regularity of her trips and being less subjected to collisions, in a broad passage of a river where there is a tide way than in a narrow one? Undoubtedly. 10  
 Quest—You say you have never seen one of these chain boats operate, how then can you say that you don't believe it will interfere with the navigation of the River? Answer—I say so from my general knowledge of business, and not from any particular experience I have in chain boats. But I have no hesitation in saying I don't be- 15 lieve it will interfere.

SELAH HILL.

Sworn and subscribed before me, at Newark, April 24th, 1852-

JNO. WHITEHEAD.

The Defendants offered in evidence the map referred to in Edward 20 Carter's examination and I have marked the same Exhibit H No. one, April 24, 1854, on the part of the Defendants.

JOHN WHITEHEAD.

ORDER REFERRING CAUSE TO CHIEF JUSTICE GREEN. 25  
 IN CHANCERY OF NEW JERSEY.

BETWEEN

LUCIUS Q. C. ELMER, Attorney General &c., on the relation of  
 ISAAC VAN WAGENEN, and others, and ISAAC VAN WAG-  
 ENEN and others, Compl'ts

and

The NEWARK PLANK ROAD AND FERRY COMPANY and others,  
 Defendants.

On Bill &c 30

The Chancellor having been concerned as counsel in this cause deems it necessary and proper to call to his assistance the Honorable Henry W. Green, Chief Justice of the Supreme Court, to hear the 35 motion now pending in this cause and any other motions or arguments that may be had therein and to advise the Chancellor what order or orders, decree or decrees ought to be made therein; and the said Chief Justice is accordingly called to assist the Chancellor and to advise him as aforesaid.

B. WILLIAMSON, C. 40

Dated March 31, 1853.

## DECREE AND ORDER APPOINTING MASTERS.

IN CHANCERY OF N J.

BETWEEN

5 LUCIUS Q. C. ELMER, Attorney General of the State of New Jersey, }  
 on the relation of ISAAC VAN WAGENEN, and others, and ISAAC }  
 VAN WAGENEN and others, Comp'ts, } *On bill,*  
*and information,*  
*&c.*  
 and }  
 THE NEWARK PLANK ROAD AND FERRY COMPANY, and }  
 others Def'd'ts. }

This Court having made an order in this cause on the twenty-first  
 10 day of July, one thousand eight hundred and fifty-one, whereby it  
 appears that the Chancellor was of opinion that the charter or act  
 of incorporation of the defendants, the Newark Plank Road and  
 Ferry Company, authorizes said Company to build their wharves or  
 piers in the Passaic River to such an extent only as to enable Ferry  
 15 Boats of the Company, of suitable dimensions to reach such Wharves  
 or Piers, at low water, and such other works beyond the ends of the  
 Wharves or Piers as may be necessary for safely receiving their  
 ferry boats, and holding them at the ends of the Piers, for the safe  
 and convenient passage across said Ferry (if any such other works  
 20 be necessary); that it was the intention of the Legislature, that the  
 River should be ferried by steam boats or other boats, and that it is  
 to be ferried accordingly, as far as fairly practicable; and that the  
 Chancellor was further of opinion, that the plan of the Company  
 mentioned in the information and bill, and in the answer of the  
 25 defendants, by which the said Company proposed to construct their  
 Wharves, Piers, and other works, in and upon the Passaic River,  
 and upon which they were proceeding to construct the same, at the  
 time of filing the information and bill, extended into the River, to  
 the obstruction of the navigation of vessels therein beyond what was  
 30 necessary for the purpose aforesaid, and beyond what is contemplated  
 by the act of incorporation, or Charter of the Company; and that  
 the Court did thereupon order, that an injunction should issue  
 restraining the defendants from constructing their works in and upon  
 the Passaic River, upon the plan in said bill and answer mentioned,  
 35 or in the manner in said answer set forth, and also from extending  
 their Piers or Wharves into said River, beyond points on each side  
 thereof, which might be reached by ferry boats of the Company, of  
 suitable dimensions, at low water, and an injunction having been issued  
 on the said order or decree on the fourth day of August, one  
 40 thousand eight hundred and fifty one, according to the directions

thereof, and duly served, a notice was afterwards given by the complainants, to the defendants, of an application to the Chancellor, that an attachment issue against the defendants for a contempt of this Court, in violating the said order and injunction, in this, that they had erected their Piers and other works further into the navigable waters of the Passaic River on both sides thereof, than by said order and injunction was permitted or allowed, and contrary to said order and injunction, and also in this, that they have continued and have not removed the obstructions erected by them previous to said order and writ of Injunction; which were contrary to law and said order, but had made and were proceeding to make the same permanent, and also of an application at the same time to refer it to one of the Masters of this Court, or to some suitable person or persons to ascertain and report to the Court the manner in which said Piers or Wharves and other works of said Company should be erected in order to conform to the directions contained in said order and decree and writ of injunction, and also for an order directing so much of said Piers and Wharves and other works of said company as are contrary to or in violation of said order and injunction to be abated and removed.

And the said application coming on to be heard before this Court on the sixteenth day of July, in the year of our Lord one thousand eight hundred and fifty-two, at the State House in the City of Trenton, in the presence of Asa Whitehead of Counsel for the Complainants, and David A. Hayes and Frederick T. Frelinghuysen, Esquires, of Counsel for the Defendants, and the pleadings, evidence and proceedings in the cause having been read, and the arguments of the Counsel of the parties heard, and time taken to consider thereof until this time, and it now appearing to the Court that the order and injunction of the Court before mentioned have been violated by the defendants, in this, that the defendants have not refrained from extending their Piers or Wharves into the River Passaic beyond points on each side thereof which may be reached by ferry boats of The Newark Plank Road and Ferry Company of suitable dimensions at low water, and that in this respect the work is constructed in violation of said order and injunction, and that no fact or circumstance has been shown which can justify such violation or relieve the defendants from the penalties of a contempt of the authority of this Court.

It is thereupon on this sixteenth day of November, in the year of 40

our Lord one thousand eight hundred and fifty-two, on motion of Asa Whitehead of Counsel with the Complainants ordered, adjudged and decreed, that a writ of attachment do issue against the defendants in this cause for the contempt aforesaid. But inasmuch

5 as it does not appear by the evidence before the Court, to what extent the said order and injunction has been violated, nor how far the works of the Company will require to be altered in order to conform to the order and injunction of the Court:—It is further ordered that before the said attachment issue against the defendants

10 it be referred to Joseph P. Bradley, Esquire, one of the Masters of this Court, and Ashbel Welsh, Esquire, and Aaron Robertson, Esquire, who are hereby and for this purpose appointed Masters of this Court, with all the power and authority of Masters of this Court, to ascertain and report to the Court, with all convenient

15 speed, the manner in which the Piers, Wharves and other works of the said Company on said river should be constructed in order to conform to the aforesaid order and injunction of the Court, and that they do particularly report the depth of water necessary to float boats of suitable dimensions to be used at said Ferry, the

20 proper construction and draught of such boats, the distance to which the Piers or Wharves should extend into said river upon each side, in order to enable ferry boats of suitable dimensions to reach the same at low water, and whether wings or fenders beyond the ends of the Piers or Wharves are necessary for boats propelled by an

25 endless chain, and if the same are necessary, the proper extent of such wings or fenders:—and it is further ordered, that the depositions and other proofs already taken in the cause may be used before the said Joseph P. Bradley, Ashbel Welsh and Aaron Robertson, and that such further depositions and proofs may be taken as may be

30 proper and necessary, and it is further ordered, that the application for an order to abate any part of the works of the defendants, be, in the present stage of the cause, denied, and it is further ordered, that the said Joseph P. Bradley, Ashbel Welsh and Aaron Robertson make report with all convenient speed, and all further

35 equity and directions are reserved until the coming in of said report.

B. WILLIAMSON, C.

I respectfully advise His Honor, the Chancellor, to make the foregoing order.

HENRY W. GREEN.

NOTICE OF APPEAL.

IN CHANCERY OF N. J.

BETWEEN

LUCIUS Q. C. ELMER, Esq., Attorney General, &c., *ex rel.*, of  
 ISAAC VAN WAGENEN, and ISAAC VAN WAGENEN and others, } *On Bill, &c* 5  
 Complainants, and  
 THE NEWARK PLANK ROAD & FERRY Co., & al., Defendants.

The defendants, the Newark Plank Road and Ferry Company, Daniel M. Wilson, Edward Doughty, William B. Guild, James H. Tichenor, David A. Hayes, and Daniel Price, hereby appeal from so much of the final decree made in this cause in this Court, bearing 10  
 date the sixteenth day of November in the year of our Lord one thousand eight hundred and fifty two, as orders, adjudges and decrees that a writ of attachment do issue against the defendants in this cause for the contempt set forth in said decree, to the Court of Er-  
 rors & Appeals in the last resort in all causes of law. 15

DAVID A. HAYES, Sol. & of  
 Counsel with Def'ts.

I consider there is good cause of Appeal in the above stated cause.

FRED. T. FRELIGHUYSEN, Counsel with Def't. 20

PETITION FOR APPEAL.

COURT OF APPEALS IN THE LAST RESORT, &c.

BETWEEN

The NEWARK PLANK ROAD AND FERRY COMPANY, DANIEL  
 M. WILSON, EDWARD DOUGHTY, WILLIAM B. GUILD, JAMES  
 H. TICHENOR, DAVID A. HAYES, and DANIEL PRICE Appel- 25  
 lants,  
 and

LUCIUS Q. C. ELMER, Esq're, Attorney General of the State of New  
 Jersey, by and at the relation of ISAAC VAN WAGENEN, WIL-  
 LIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD, *On Bull*  
 JAMES R. SAYRE, Jun., CALVIN TOMPKINS, ELIAS TOMP- *&c.*  
 KINS, ABNER S. REEVE, DAVID RIPLEY, JOHN M. LAW- 30  
 RENCE, HORACE J. POINIER, JEREMIAH D. POINIER and  
 EDWARD G. FAITOUTE; and ISAAC VAN WAGENEN, WIL-  
 LIAM WRIGHT, JOHN H. STEPHENS, AARON B. WARD  
 JAMES R. SAYRE, Jun., CALVIN TOMPKINS, ELIAS TOMP-  
 KINS, ABNER S. REEVE, DAVID RIPLEY, JOHN M. LAW-  
 RENCE, HORACE J. POINIER, JEREMIAH D. POINIER, and  
 EDWARD G. FAITOUTE, Respondents. 35

*To the Honorable, The Court of Errors and Appeals in the last resort in all causes.*

The humble Petition of the Newark Plank Road and Ferry Com-  
 pany, Daniel M. Wilson, Edward Doughty, William B. Guild, James 40

H. Tichenor, David A. Hayes, and Daniel Price, the appellants in the above stated cause respectfully shew that, your Petitioners feel themselves aggrieved by a final decree made in the Court of Chancery by Benjamin Williamson, Esq., Chancellor of the State of New Jersey, bearing date the sixteenth day of November, eighteen hundred and fifty-two, wherein the above named Respondents were Complainants; these Appellants, the Newark Plank Road and Ferry Company, Daniel M. Wilson, Edward Doughty, William B. Guild, James H. Tichenor, David A. Hayes, and Daniel Price and Charles Alling, Ai Fitch and Calvin S. Dennis, were Defendants in this respect, that the said decree ordered that a Writ of Attachment do issue against the Defendants in the said cause for an alleged contempt set forth in said decree.

And your Petitioners humbly appeal from that part of said decree which so orders a Writ of Attachment to issue against the Defendants, upon the ground: that the same is erroneous; that the same ought not to have been ordered; that the Defendants had not been guilty of any contempt as set forth in said decree, and that said decree is founded on unjust, illegal, and erroneous proceedings.

Your Petitioners therefore pray that the said decree of the Chancellor may be 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 May 15th, 1854.

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DAVID A. HAYES, Solicitor  
and of Counsel with the above named Appellants.

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