

NEW JERSEY  
Court of Errors and Appeals

THE MORRIS & ESSEX RAIL-ROAD  
COMPANY,

*Appellants,*

and

BYRAM PRUDDEN,

*Appellee.*

*Appeal.*

---

VANATTA & DEMOTT,  
*Sols. of Appellants.*

JAS. H. NEIGHBOUR,  
*Sol. of Appellee.*

1845

NEW JERSEY

Court of Errors and Appeals

The Honorable Justices of the Court of Errors and Appeals	and	The Honorable Justices of the Court of Errors and Appeals
		The Honorable Justices of the Court of Errors and Appeals

Bill of Complaint

In the County of New Jersey

To the Honorable Abraham O. Roberts, Esquire, Clerk of the Court of Errors and Appeals, do hereby certify that the following is a true and correct copy of the Bill of Complaint filed in your Court on the 10th day of January, 1845, in the County of Morris and State of New Jersey, that in the year One Thousand Eight Hundred and Twenty-seven one Henry McFarlan, since deceased, was the owner in fee simple of a large tract of land in and adjoining the village of Dover, in the Township, county and State aforesaid, and that said lands were by said Henry McFarlan, in the year last aforesaid, regularly platted and mapped out into streets and blocks for

1845

LOUIS C. VOGT, PRINTER, MORRISTOWN, N. J.

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NEW JERSEY

Court of Errors and Appeals.

THE MORRIS & ESSEX RAIL-ROAD  
COMPANY,

Appellants,

and

BYRAM PRUDDEN,

Appellee.

} *On appeal from the  
decree of the Chancel-  
lor.*

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Bill of Complaint.

(Filed Nov. 13th, 1868.)

IN CHANCERY OF NEW JERSEY.

*To the Honorable Abraham O. Zabriskie, Chancellor of the State  
of New Jersey.*

Humbly complaining, showeth unto your Honor, your Orator, Byram Prudden, of the Township of Randolph, in the county of Morris, and State of New Jersey, that in the year One Thousand Eight Hundred and Twenty-seven, one Henry McFarlan, since deceased, was the owner in fee simple of a large tract of land in and adjoining the village of Dover, in the township, county and State, aforesaid, and that said lands were by said Henry McFarlan, in the year last aforesaid, regularly plotted and mapped out into streets and blocks for

building lots, and the lines, courses and distances of said streets and building lots were regularly fixed and established on the ground, the same being at right angles and parallel to each other ; that one of said streets was then and still is called and known by the name of Blackwell street, running east and west through said village with a width of seventy-five feet, and that another of said streets running next south of and parallel to said Blackwell street was then and still is known and called by the name of Dickerson street, 10 running through said village with a width of sixty-six feet ; that said Blackwell and Dickerson streets were then and still are connected and crossed by several other streets running at right angles thereto, known and called by their respective names of Warren street, Sussex street, Morris street, Essex street, and Bergen street, all leading to and from said Dickerson street and of a width of sixty-six feet, all which said several streets were duly marked and designated on sundry maps and plotes of said village lands by said Henry McFarlan, in the year hereinbefore named, and so ever since have 20 been and still are known and designated, and said streets were at the same time actually thrown open to the public of the width aforesaid.

And your Orator further shows, that after said streets were formed and located the said Henry McFarlan in his life time sold and conveyed by deeds dated on or about the first day of May, in the year one thousand eight hundred and twenty-seven, several lots of land to different persons bounding on and along one or more of said streets, describing said streets, and calling for the same by courses and distances.

30 And your Orator further shows, that after the death of the said Henry McFarlan, which occurred on or about the thirtieth day of June, in the year one thousand eight hundred and thirty, all and singular the lands, tenements, hereditaments and real estate, in the said county of Morris, whereof the said Henry McFarlan, died seized, and of which the lots of land hereinafter mentioned and described as belonging to your Orator, were part and parcel, became and were by an act of the Legislature of the State of New Jersey, entitled, " An act to vest certain real estate whereof Henry McFar- 40 land died seized, in trustees," passed the sixth day of March,

in the year of our Lord one thousand eight hundred and thirty-two, vested in Stephen Van Rensselaer, junior, Henry McFarlan and Daniel Ayers as trustees to sell and dispose of the same.

And your Orator further shows, that said Trustees in pursuance of said power and trust, did in and by their deed, bearing date on or about the first day of April, in the year one thousand eight hundred and thirty-seven, and duly recorded in the Morris County Record of Deeds, in Book T, 3, folios 140, &c., sell and convey to one Eliezer Lampson, the following lot of land, situated in the village of Dover, in the township of Randolph, in the county of Morris, and State of New Jersey, described in said deed, as follows : Beginning at a stake standing on the north-west corner of Dickerson and Morris streets ; thence (1) along the west side of said Morris street north three degrees west seventy-five feet ; thence (2) south eighty-seven degrees west twenty-five feet ; thence (3) south three degrees east seventy-five feet to the north side of Dickerson street ; thence along the north side of said Dickerson street north eighty-seven degrees east twenty-five feet to the place of beginning, containing eighteen hundred and seventy-five square feet, and which said lot of land was afterwards by said Eliezer Lampson and Elizabeth his wife, by deed bearing date on or about the 26th day of March, A. D., 1839, and recorded in the Morris County Record of Deeds in Book T, 3, folios 142 and 143, duly sold and conveyed to your Orator by the same description as above set forth.

And your Orator further shows, that said trustees before named also sold and conveyed to your Orator, by their deed bearing date on or about the first day of April, in the year one thousand eight hundred and thirty-nine, duly recorded in said record of deeds in Book U, 3, folios 192, &c., the following lot of land adjoining the above described lot on the north side of said Dickerson street, bounded and described in said last mentioned deed as follows, to wit : Being in the village of Dover, aforesaid, and beginning at a stake standing on the north side of Dickerson street on a course south eighty-seven degrees west twenty-five feet from the north-west corner of Dickerson and Morris streets ; thence (1)

along the north side of Dickerson street south eighty-seven degrees west seventy-five feet to the south-east corner of the lot sold to Jacob Hurd, by deed bearing date the first day of September, eighteen hundred and thirty-eight; thence (2) along the east side of said lot sold to Jacob Hurd north three degrees west seventy-five feet; thence (3) north eighty-seven degrees east seventy-five feet to the west side of lot sold to Eliezer Lampson, by deed bearing date the first day of April, eighteen hundred and thirty-seven; thence (4) along the  
 10 west side of said lot sold to Eliezer Lampson south three degrees east seventy-five feet to the place of beginning, containing fifty-six hundred and twenty-five square feet.

And your Orator further shows, that he still owns said lots of land, and that on the lot first above described there is erected a wheelright shop being on the north-west corner of Dickerson and Morris streets, the same having been built thereon prior to the purchase of said lot by your Orator, as aforesaid, and that the same is now occupied by one Zenas Prudden as a wheelwright shop, as tenant to your Orator, and  
 20 that on the lot second above described and standing on the north line of said street your Orator erected a dwelling house about the year 1839. And that your Orator has and still does occupy said dwelling house and has always resided on said premises with the family of said Zenas Prudden, a brother to your Orator.

And your Orator further shows, that other parties have erected and own dwellings and other building along the north line of said Dickerson street, according to said original plans and maps of the same, some prior and others subsequent to  
 30 the erections of your said Orator's buildings, among whom are William L. Young, Joseph Roder, Edward A. Stickle and Mahlon Munson, and others.

And your Orator further shows, that said Dickerson street has, at least ever since the date of the said deeds above named, been used and occupied by deponent and the public as and for a public highway, and the same was prior to and at the time of the making and delivering of said deeds for said lots to your Orator, as above set forth, dedicated and opened as a public street and highway leading past and  
 40 along and in front of said dwelling house and shop of your

Orator ; and that your Orator purchased said lots and erected said house, upon the belief and understanding that said Dickerson street had been so laid out, mapped, plotted, and dedicated, and that the same was then opened and dedicated to the public for the passage and repassage of all and every person and persons, in any way or manner, who might choose to use the same freely and uninterruptedly and according to said laid width, as by right all persons, lawfully, might not only as a street of said village but also as a road leading from Dover to Morristown, in said county of 10 Morris, by way of Shongum.

And your Orator further shows, that said street furnishes the only approach to your Orator's house and lot and land, and is in daily use by your Orator and all persons having business with your Orator and the other persons above named, and is much travelled by the public at large, but has never been adopted by the township committee of Randolph Township, or wrought upon by the overseer of the public highways.

And your Orator further shows, that about the year 1848, the Morris & Essex Rail-Road Company in the extension of 20 their Rail-road track from Morristown to Dover, placed their track within six or seven feet of the south line of said Dickerson street and running parallel to the said south line, within the bounds of the same and thereby narrowed said street down to a width of about fifty-two feet, and that said Company has so continued to use the same from that time onward.

And your Orator further shows his said lots are situated between Sussex and Morris streets on the north line of said Dickerson street eastward of the Dover station, and that the 30 Depot of said Company at Dover is situated on the south line of said Dickerson street between Sussex and Warren streets, being in front of the block next west of your Orator's said property.

And your Orator further shows, that said Company have very recently graded a road bed for a second track to their said Rail-road on the north side of said original track and within the bounds of said Dickerson street in front of your Orator's said premises, and in making said road bed have 40 made an embankment between one and two feet high in said

street along said premises of your Orator, thereby raising said street which before that was about on a level with your Orator's premises, and that said embankment for said road bed narrows the width of said Dickerson street to about thirty-nine feet, ten feet of which has always been used and still used as and for a side-walk to and from said cross streets, and that large and ornamental shade trees have stood for at least twenty-five years in front of your Orator's said premises on and along the outer line of said side walk, and  
 10 that the grading of said street and said embankment has been and still is without any authority or consent from your Orator, or from any person or persons having authority to permit the same, and is an encroachment on said street and obstructs the same, and no proceedings have ever been taken by said Company or by any persons for them to procure the proper authority or any right whatever to do the matters and things herein complained of.

And your Orator further shows, that placing said rail-road track as threatened will tend greatly to depreciate the value  
 20 of your Orator's said property, and will do him great and irreparable injury in the premises by reason of narrowing said Dickerson street with said embankment and contemplated rail-road track and by running and transporting thereon their cars and steam engines, and also by spoiling the grade of said street and obstructing the same.

And your Orator shows, that very soon after said Company commenced said embankment in front of your Orator's said premises, your Orator caused to be served a notice in writing signed by your Orator and others on one Frederick  
 30 B. Dalrymple, who was then the station agent of said Company residing at Dover aforesaid, a copy of which said notice is as follows :

To the President, Directors and Company of the Morris & Essex Rail-road, or whom it may concern :

You, and each of you, your agents, and workmen are hereby notified to desist from all further encroachments in, along and upon Dickerson street in the village of Dover, Morris County, New Jersey, by grading and embanking for your road, and by your placing earth, stone and gravel, timber  
 40 and railroad iron therein, and that you forthwith remove all

obstructions from said street heretofore placed there by you, or you will be held liable as trespassers, and dealt with according to law.

Yours, &c.,

(Signed.)

W. L. YOUNG,  
E. A. STICKLE,  
J. RODERER,  
B. PRUDDEN.

Dover, October 5th, 1867.

And your Orator further shows, that since the service of 10 the said notice, the said railroad Company have desisted from laying said track in the immediate front of your Orator's said premises; but your Orator shows that said Railroad Company have very recently made preparations for a second track west of the Dover stated, and on the north side of said former track, and have made arrangements with one or more land owners on the north side of said Dickerson street, and whose lands bounded on the same for a right of way for said second track west of said station and that said Company are now at work grading to the westward of said station.

And your Orator further shows, that said Company are now also again grading eastward of said station, on the north of said first track, and in said street up to within a few yards of said embankment in front of your Orator's premises, and are preparing their said embankment for said second track on the north side of said original track, and that said Company are almost ready to connect their said eastern with their said western work for a second track on the north side of said original track by ties and rails, and that such 31 connection will pass over the said embankment which has been raised in front of your Orator's premises.

And your Orator further shows, that he verily believes said Rail-road Company intend very shortly to lay down a track of ties and rails upon said embankment in front of your Orator's said premises, and thereby permanently narrow the said street and impede your Orator's passage to and from his said premises.

And your Orator charges, that said Rail-road Company have no right to take possession of said street, and interfere 40

with the right of your Orator in the same, and that their conduct in the premises is inequitable and unjust, and your Orator prays the aid of this Court in the premises. To the end, therefore, that the said defendants may upon their several and respective oaths or affirmations, full, true, perfect and distinct answer make to all and every the matters aforesaid, and that as fully as if the same were here again repeated, and they thereto particularly interrogated paragraph by paragraph; and that said defendants, their officers, agents, servants, workmen and laborers, and each and every of them may be perpetually enjoined and restrained from laying and placing their said rail-road track, ties and rails for the same on said newly graded road bed in Dickerson street aforesaid, by and along the said premises of your Orator, and from obstructing, narrowing and encroaching upon the said street, and from doing any injury to said premises of your said Orator, and from running their engines and cars on said contemplated road on the north side of said original track as now and heretofore used by said Company, and that your Orator may have such other and future relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

My it please your Honor, the premises considered to grant to your Orator not only the states writ of injunction issuing out of and under the seal of this honorable Court to be directed to the said The Morris & Essex Rail-road Company, the president, and directors, officers, workmen, laborers, servants and agents, each and every of them under a certain penalty therein to be expressed, that they and every one of them do from henceforth altogether and absolutely desist from laying and placing their said Rail-road track, ties and rails for the same on said newly graded road bed in Dickerson street aforesaid, by and along the said premises of your said Orator, and from obstructing, narrowing and encroaching upon the said street, and from doing any injury to the said premises of your said Orator, and from running their engines and cars on said contemplated road on the north side of their said original track as now and heretofore used by said Company, but also the states writ of subpcena therein and thereby commanding them and

each of them at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court then and there to answer the premises, and to stand to and abide by and perform such decree as to your Honor shall seem meet, &c., and your Orator as in duty bound will ever pray, &c.

JAS. H. NEIGHBOUR, Sol.

A true copy, B. GUMMERE, Clerk.

NEW JERSEY, MORRIS COUNTY, ss. 10

*Henry McFarlan* of said County, being duly sworn according to law on his oath, says--that his age is upwards of sixty years, that his father's name was Henry McFarlan, who died in the month of June, 1830.

That deponent said, father was during the year 1827 the owner in fee simple of certain lands and real estate in the county of Morris, at and adjoining the village of Dover; that deponent has resided at Dover for the last twenty-five years, and that in said year 1827 and previously, his said father had a part of his said lands and real estate at Dover 20 aforesaid, surveyed and regularly laid into streets and blocks of building lots; that Dickerson street and Blackwell street were two streets running parallel to each other, and very nearly east and west, and are next to each other, and that said streets are crossed and connected between said blocks of lots by several other streets named, from the west easterly as follows, to wit; Warren street, next to it Sussex street, next to it Morris street, next to it Essex street, and next to it Bergen street, all parallel to each other, and at right angles to said Dickerson and Blackwell streets, and that all the 30 lines of said streets were duly located on the ground, and established by bearings and distances, and have so much remained up to this present time.

And deponent further says, that his said father in his life time, sold and conveyed lots along the lines of said streets, or on some one or more of them, according to said survey and location by the bearing of said street lines, and that said streets were then dedicated to the public by said Henry McFarlan, deceased.

And deponent further says, that after the death of the 40 said Henry McFarlan, to-wit: about the year 1832, Stephen

VanRensselaer, Daniel Ayers and this deponent were, by an act of the Legislature of the state of New Jersey, appointed trustees to convey lands and real estate whereof said Henry McFarlan died seized, and that by virtue of said appointment said trustees in the year 1837, sold and conveyed to Eliezer Lampson a lot on the northwest corner of said Dickerson and Morris streets, fronting on Dickerson street 25 feet, and 75 feet on Morris street by courses and distances, and naming said streets, and also in the year 1839, sold and conveyed to one Byram Prudden, a lot on the north line of Dickerson street, adjoining said Lampson lot, calling for said Dickerson street, and giving the courses and distances.

And deponent further says, that said two lots above named comprise the premises in said village now owned by said Byram Prudden; and deponent further says, that said premises of said Byram Prudden are located between Sussex and Morris streets, and that all the lots owned by said Henry McFarlan, dec'd., along said streets have been sold according to said street lines as originally laid out, except one or two which are still owned by deponent.

And the deponent further says, that all said streets were at the time of said survey and dedication laid out, designated and known as being sixty-six feet wide, except Blackwell street, which was and still is seventy-five feet wide, and that all of said streets are still known by said above names, and used by the public and lot proprietors.

(Signed)

HENRY McFARLAN.

Sworn and subscribed before me, this 17th day of December, A. D., 1867.

JOSHUA H. BUTTERWORTH,

*Justice of the Peace.*

NEW JERSEY, MORRIS COUNTY, ss.

Byram Prudden, of said county being duly sworn according to law on his oath, says—that he is the complainant named in the annexed bill, and that the matters and things therein set forth are correct and true, so far as they relate to his own acts, and so far as they relate to the acts and doings of others, he believes them to be true,

40 And deponent further says, that in the year 1827, one

Henry McFarlan, since deceased, was the owner in fee simple of a large tract of land, in and adjoining the village of Dover, in the township of Randolph, in the county of Morris, and state of New Jersey, and that said lands were by said Henry McFarlan, in the year last aforesaid, as deponent has been informed and believes to be true, regularly laid out into streets and building lots with fixed and given lines then established, and located on the ground ; that one of said streets is called Blackwell street running east and west through said village, with a width of seventy-five feet ; 16  
 that another of said streets running next south of and parallel to said Blackwell street is Dickerson street, of a width of sixty-six feet, as then laid out ; that said streets were then and still are crossed by several other streets running at right angles thereto, known by the names of Warren street, Sussex street, Morris street, Essex street, and Bergen street, all leading to and from said Dickerson street, and sixty-six feet wide, all which said named streets were duly marked and plotted, together with the building lots bounding thereon, on sundry maps and plots of said village lands by said Henry 20  
 McFarlan, and that the maps annexed to said bill is a true and correct representation of said streets, and town map, also showing the location of the depot of the Morris & Essex Railroad Company at Dover, with the railroad track heretofore used by said company, and also the location of the new or second track on the north of the original track ; and deponent further, says that said streets were by the said Henry McFarlan, dec'd., in his life time, and at or about the time of said laying out of said streets and building lots, actually thrown open to the public of the width aforesaid. 30

And deponent further says, that said Harvey McFarlan, dec'd., in his life time sold and conveyed several lots of land to different persons, bounding on and along said streets and calling for said streets by courses and distances ; and that after the death of said Henry McFarlan, several other lots of land were sold and conveyed by trustees of said Henry McFarlan, dec'd., and of which the lots hereinafter mentioned are part and parcel ; and that said trustees by their deed dated April 1st, 1837, and recorded in the Morris County record of deeds in Book T, 3, folios 140, &c., did sell and 40

convey to one Eliezer Lampson, the following lot of land described in said deed as follows, to-wit :

Being in the village of Dover, in the township of Randolph, Morris County, New Jersey, and beginning at a stake standing on the north-west corner of Dickerson and Morris streets ; thence (1) along the west side of said Morris street N. 3 W. 75 feet ; thence (2) S. 87 W. 25 feet ; thence (3) S. 3 E. 75 feet to the north side of said Dickerson street ; thence along the north side of said Dickerson street (4) N. 10 87 E. 25 feet to the place of beginning, containing 1875 square feet.

And deponent further says, that said lot of land was afterwards by the said Eliezer Lampson and Elizabeth his wife, by deed bearing date on or about the 26th day of March, A. D., 1839, and recorded in the Morris County Record of Deeds, in Book T, 3 folios 142 and 143, sold and conveyed to your Orator, this deponent by the same description as above given.

And deponent further says, that said trustees also sold to 20 your deponent a certain lot of land by their deed of April 1, 1839, and duly recorded in the Morris County Record of Deeds, in book W, 3 folios 192, &c., and which adjoins the lot above described, on the north side of Dickerson street, bounded and described as follows :

Being in the village of Dover aforesaid, and beginning at a stake standing on the north side of Dickerson street on a course S. 87 W. 25 feet from the north-west corner of Dickerson and Morris streets ; thence (1) along the north line of Dickerson street S. 87 W. 75 feet to the south-east corner of 30 the lot sold to Jacob Hurd by deed of September 1, 1838 ; thence (2) along the east side of said lot sold to Jacob Hurd, north 3° W. 75 feet ; thence (3) N. 87 E. 75 feet to the west side of the lot sold to Eliezer Lampson by deed of April 1, 1839 ; thence (4) along the west side of said lot to Eliezer Lampson S. 3 E. 75 feet to the place of beginning, containing 5675 square feet.

And deponent further says, that he is still the owner of said lots of land ; that there is on the first lot, on the corner of Morris and Dickerson street a wheelwright shop built 40 thereon prior to the purchase of the lot by this deponent ;

that said shop now is, and has been for a great many years occupied by one Zenas Prudden, brother to this deponent, as a wheelright shop, as tenant to your deponent, and that deponent had erected on the lot secondly above described, in the year 1839, a dwelling house wherein your Orator, this deponent, has always resided and still does reside with the family of Zenas Prudden.

And deponent further says, that other parties have erected and own dwellings and other buildings along the north line of said Dickerson street, according to said original plans 10 and maps of the same, some made prior to and others subsequent to your Orator's, this deponent's said dwelling among whom are William L. Young, Joseph Roderer, Edward A. Stickle, Mahlon Munson, Alexander Elliott, Guy M. Hinchman and others.

And deponent further says, that said Dickerson street has, at least ever since the date of said Deeds to this deponent, been used and occupied by deponent and the public as and for a public highway, and the same was prior to and at the time of delivery of said deeds dedicated and opened as a 20 public street and highway, and used as such, leading past and along in front of said dwelling house and shop of your orator, this deponent, and that deponent purchased said lots, and erected said dwelling thereon, on the belief and understanding that said Dickerson street had been so laid out, mapped, plotted and dedicated, and that the same was then opened and dedicated to the public for the passage and re-passage of all and every person and persons in any way or manner they might at any time choose to use the same as a passage way for all kinds of travel. 3

And deponent further says, that said Dickerson street furnishes the only approach to your orator's house, and lot, and lands, and is in daily use by your orator, and all persons having business with your orator, and the other persons above named, and is much travelled by the public at large, but that the same has never been adopted by the township Committee of Randolph township, or wrought upon by the overseer of the public highways.

And deponent further says, that about the year 1848, the Morris & Essex Rail-road Company extended the line of 4

their Rail-road from Morristown in said county of Morris, the then terminus thereof to Dover aforesaid, and had their terminus at their present depot or station in Dickerson stree for several years thereafter, and up to or about the year 1852, when said Rail-road track was extended to Hackettstown in the county of Warren, that said depot still remains in its original place, and that said Company in bringing their said Rail-road into Dover as aforesaid, placed their track within the lines or bounds of said Dickerson street, and about six feet from the south line of said street for a distance of nearly half a mile east of said station, and for about three hundred feet or more west of said station, passing in front of said premises of said deponent, and thereby narrowed said street down to a width of about fifty-two feet, and that said Company has so continued to use the same from that time.

And deponent further says, that his said premises are situate between Sussex and Morris streets on the north side of said Dickerson street eastward of the Dover station, and that said station is situate between Sussex and Warren streets on the south side of said Dickerson street, being in front of the block next west of your orator's, this deponent's said premises.

And deponent further shows, that said Company have very recently graded a road bed for a second track to their said Rail-road on the north side of their said original track as placed and used since 1848, and within the bounds of said Dickerson street the whole length of said street as above stated, and being in the immediate front of deponent's said premises, and in making said road bed have erected an embankment between one and two feet high in said street, along said premises of deponent, thereby raising said street, which before that was about on a level with your orator's premises, and that said embankment for said second road bed or track narrows the width of said Dickerson street down to about thirty-nine feet and that ten feet of said thirty-nine has always been used and still is used as and for a side walk, with curb stones as the outer line thereof, to and from the premises of deponent, and to and from said cross streets, and in passing along on the north side of said Dickerson street, and that de-

ponent has growing on the outer line of said side walk, in front of his said premises, large and ornamental shade trees, which have stood there for at least twenty-five years, and that the grading of said embankment in said street, has been and still is without any authority or consent from your orator or from any person or persons having authority to permit the same, and is an encroachment on said street and obstructs the same, and that no proceedings have been taken by said Company or by any persons for them to procure the proper authority or consent to do the matters and things 10 charged against them in this affidavit and in deponent's said Bill.

And deponent further says, that the placing of said embankment and said second rail-road in said Dickerson street along in front of deponent's said premises as threatened and contemplated, will tend greatly to depreciate the value of deponent's said property, and will do him great and irreparable injury in the premises, by reason of narrowing said Dickerson street thereby, and by running thereon their cars and steam engines, and also by spoiling the grade of said 20 street and obstructing the same.

And deponent further says, that very soon after said Company commenced said embankment in front of your orator's said premises, your orator caused to be served a notice in writing, signed by your orator, this deponent, and others, on one Frederick B. Dalrymple, then station agent for said Company at Dover aforesaid, requiring said Company to desist from further grading in said street, or making said embankment or placing thereon their Rail-road track.

And deponent further says, that since the service of said 30 notice, said Rail-road Company have desisted from laying said track in front of deponent's said premises, but that they have recently made preparations for a second track west of the said station, and on the north side of said original track, and have made arrangements with one or more land owners on the north side of Dickerson street, whose lands bound on the same for a right of way for said second track west of said station, and that said Company are now at work grading to the westward of said station.

And deponent further says, that said Company are now also again engaged at grading to the eastward of said sta- 40

tion on the north side of said original track, and in said Dickerson street up to within a few yards of said embankment in front of deponent's premises, and are preparing their embankments for a second track on the north side of said original track; and that said Company are almost ready to connect their said eastern with their said western work for a second track on the north side of their said original track, in the said street, by ties and rails; and that such connection with pass over the said embankment which has been raised  
 10 in front of deponent's premises as aforesaid.

And deponent further says, that he verily believes said Company intend very shortly to lay down a track of ties and rails upon said embankment in front of deponent's said premises, and that they will thereby narrow said Dickerson street down to about twenty-nine feet in width, and will impede and hinder your deponent's passage to and from his said premises.

And deponent further says, that said Rail-road Company have no right to take possession of said street, and interfere  
 20 with the right of your deponent in the same, and that their proceedings are inequitable and unjust, and that deponent has always objected, and still does object, to all said acts and doings of said Rail-road Company.

And deponent also presents herewith the affidavit of Henry McFarlan, in support of his complaint.

BYRAM PRUDDEN.

Sworn and subscribed before me this 9th day of November, A. D., 1868.

CHAS. A. GILLEN,

*Commissioner.*

BYRAM PRUDDEN,

Complainant,

*and*THE MORRIS & ESSEX RAIL-ROAD  
COMPANY,

Defendants.

*Answer.*

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**Answer.**

20

## IN CHANCERY OF NEW JERSEY.

The Answer of the Morris & Essex Rail-road Company, defendants, to the Bill of Complaint of Byram Prudden, complainant.

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies, in the complainant's 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 answer and say that they admit that Henry McFarlan, since deceased, in his life time was the owner of a large tract of land in and about Dover, in the said county of Morris, and that he died seized of said lands, or a considerable part thereof, but these defendants deny that said Henry McFarlan opened any streets in Dover, except streets on which he sold lots in his life time, which were very few, and that said Henry McFarlan never did anything on the ground to lay out or mark or open Dickerson street.

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These defendants further admit, that the names and locations of the streets in the said town of Dover are substantially, as stated in said Bill of Complaint, but as to Dickerson street, these defendants say that the same, as laid down on said Henry McFarlan's map mentioned and referred to in said bill of complaint, commenced at Sussex street and terminated at the point of the mountain, and from Sussex street to below Bergen street, was laid down and located wholly and entirely in and upon and within the limits of a that and  
 10 long previously existing highway, being a turnpike road and the residue of said Dickerson street, from below Bergen street, was on and by said map, principally located, so that about two-thirds of Dickerson street in width was located on and wit' in the limits of said turnpike road; and these defendants further say, as to that part of Dickerson street which adjoins and goes along by the said lots of the complainant, and is included within the surveyed way of these defendants, the title to the land thereof remained in the said  
 20 Henry McFarlan and his heirs or trustees until the same was conveyed to these defendants, in the year eighteen hundred and forty-eight, as hereinafter stated, and the same still continues in these defendants.

These defendants have been informed, and they believe it to be true, that the said complainant did become the owner of the two lots of land described in his said Bill of Complaint, and therein claimed by him by means of the deeds of conveyance, in that behalf mentioned in said bill, but his said deeds distinctly terminate his land at the north line of Dickerson street.

30 And these defendants in further answering say, that if the said complainant has any right in or to said Dickerson street, it is at the most the right to pass to and from his said lots along said street on the north side of the way of these defendants, and that so long as he has room for that purpose his right in that behalf, if any he has is not interfered with, and these defendants have never hindered or prevented, nor do they now propose or intend to hinder or prevent the said complainant from going to or from his said lots along said Dickerson street, along the north side of the way  
 40 of these defendants.

And these defendants in answering respectfully submit and insist that they had lawful authority and a right to locate their said rail-road along and through the said town of Dover, where and as they did locate the same; that they have lawful authority and right to keep and maintain their said rail-road where it is now located in and through the said town of Dover, and within the limits of their surveyed and recorded way and on their own land, they have the right to lay down and keep and maintain as many rails and tracks as their wants may require, and as these defendants may deem necessary; that by the sixth section of the original charter of these defendants, passed January 29th, 1835, it is provided "that the president and directors of the said Company be, and they are hereby authorized and invested with all the rights and powers necessary and expedient to survey, lay out and construct a rail-road or lateral roads from one or more suitable place or places in the village of Morristown, to intersect one or more place or places in the rail-road, known by the name of 'The New Jersey Rail-road and Transportation Company,' at Newark, or at Elizabeth-town, in the county of Essex, or between those places, not exceeding sixty-six feet wide, with as many sets of tracks and rails as they may deem necessary; and it shall be lawful for the said president and directors, their agents, engineers, superintendents, or others in their employ, to enter at all times upon all lands or water for the purpose of exploring, surveying, levelling, or laying out the route or routes of such rail-road or lateral roads and of locating the same, and to do and erect all necessary works, buildings and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such road or lateral roads shall have been determined upon and a survey of such route or routes deposited in the office of the Secretary of State, then it shall be lawful for the said Company by its officers, agents, engineers, superintendents, contractors, workmen, and other persons in their employ to enter upon, take possession of, hold, have, use, occupy, and excavate any such land, and to erect embankments, bridges, and all other works necessary to lay rails, and to do all other things which shall be suitable or

"necessary for the completion or repairs of said road or  
 "roads, subject to such compensation as hereinafter provi-  
 "ded; that by the fourteenth section of said act, it was  
 "enacted that the road or roads authorized by this act be  
 "and the same are hereby declared a public highway and  
 "shall be constructed with a track for one or more horses,  
 "and free for the passage of any rail-road carriage thereon  
 "with passengers or property upon payment of the tolls pre-  
 "scribed by this act, *provided* always, that the said carriages  
 10 "so used thereon shall be of the same description in the  
 "form of wheels, and length of axles as those used by the  
 "Company, and shall be so regulated as to the time of start-  
 "ing and rates of travelling as not to interfere with the car-  
 "riages of the Company."

That by the second section of a supplement to the char-  
 acter of these defendants passed March 2d, 1836, it was enacted;  
 "that it shall be lawful for the said the Morris & Essex  
 "Railroad Company to construct a branch, or lateral rail-  
 "road or railroads from some suitable and convenient point  
 20 "or points of their main road, and leading thence to the iron  
 "works upon Rockaway river, at or near Boonton, or Pow-  
 "erville; and also to construct as above said lateral, or  
 "branch railroads from Denville, Rockaway and Dover, or  
 "from any of those places so as to connect with the Morris  
 "and Essex Railroad, at some convenient point or points  
 "and to enable said company to effect the objects before ex-  
 "pressed, they are hereby invested with all the rights, pow-  
 "ers and privileges given and granted by the aforesaid act  
 "entitled "an act to incorporate the Morris & Essex Rail-  
 30 "road Company" and said company shall be subject to all  
 "the restrictions, limitations, conditions and provisions in the  
 "said act contained in the same manner and to the same ef-  
 "fect as if the said company had been originally authorized  
 "by said act to construct all or any of the before mentioned  
 "roads."

That by further supplement to the said charter, approved  
 February 25th, 1846, by the first section thereof, it was pro-  
 vided that the supplement to the charter of these defendants  
 passed 2d March, 1836, should not be so construed as to  
 40 limit the time for the construction of the branch or lateral

roads in said supplement mentioned to the fourth day of July, 1845,

By the second section of this act of 25th February, 1846, it was enacted, That it should be lawful for these defendants when a branch or lateral road to Dover shall be completed, to continue the same to Stanhope; and that "for the purpose of carrying into effect the objects of this act and of the afore-  
"said supplement the said company are hereby invested with  
"all the rights, power, and privileges given and granted by  
"their original act of incorporation and the several supple- 10  
"ments thereto and subjected to the several restrictions con-  
"tained in said acts."

And these defendants in further answering say that their railroad from Morristown to Dover was surveyed, located and built after the passage of the act last quoted from, and was located with reference to its extension to Stanhope. That the natural hilly condition of the country immediately about the said town of Dover is such that to extend their railroad to Stanhope from Dover these defendants were com-  
peled to cross the Rockaway river at Dover, with their rail- 20  
road at the point on said river where it now crosses the same which is at the westerly end of the said town of Dover, that to reach that point on said river these defendants were obliged to lay out their said road through the said town of Dover and, through said town, these defendants did not only locate the said railroad so as to do the least possible injury to private or other property but also where its location was most satisfactory to the inhabitants and property owners of the said town and on no other location through or near to said town of Dover, then the one it now has, could the said 30  
railroad have been extended from Morristown to Dover and thence to Stanhope with so little injury to private property, or interference with public rights.

And these defendants further say, that their said railroad as it was constructed through Dover and now is, was surveyed and adopted by the President and directors of these defendants and afterwards, that is to say, on the nineteenth day of June, in the year eighteen hundred and forty six was filed in the office of the secretary of State, so much of which survey as is material to this suit was as will hereinafter appear by 40

quotations hereinafter made from the deed made by the Trustees of the estate of the said Henry McFarlan to these defendants.

And these defendants further say, that although the said public road hereinbefore mentioned, from Sussex street to the point of the mountain was at one time a portion of the turnpike of the Union Turnpike Company; yet that portion of said turnpike, and so much thereof as went on through the village of Dover, was forty years and  
 10 more ago abandoned or surrendered, and after that until the year 1848, the said road from Sussex street to the point of the mountain was worked, repaired and kept in order at the expense of the said township of Randolph, by and under the direction of the overseers of the highways of said township; that when these defendants had, so as aforesaid surveyed and located their said rail-road to and through the town of Dover, in order to facilitate the construction of said rail-road  
 20 divers, ten and more of the citizens of said village being freeholders and residents of the said county of Morris, by petition at the term of May, 1848, applied to the Court of Common Pleas of the said county of Morris, to appoint six surveyors of the highways of the said county to lay out a public road in said township of Randolph, beginning at a stake in a public road leading from Dayton C. Freeman's to the village of Dover, which stake is near the point of the mountain lying easterly of said village, and ending at the intersection of Blackwell and Sussex streets in said village; also, to vacate the public road then lying between the said points, and such proceedings were had upon the said petition, pursuant to the statutes in such case made and provided that said Court appointed the surveyors petitioned for, and said surveyors met and laid out the new road and vacated the old road mentioned in said petition, and made reports thereof both bearing date the twenty-sixth day of June, 1848, which reports with a map showing the new road laid out and the old road which they vacated, were filed in the office of the Clerk of the county of Morris, on the 8th day of July, 1848, to  
 30 which record these defendants pray leave to refer.

And these defendants further say, that by virtue of the  
 40 returns, the said so-called Dickerson street south of and

along the said complainant's said lots ceased to be and above and below the complainant's lots, ceased to be and never since has been a public road, highway, or street.

And these defendants further say, that said Dickerson street, so far as it differed or varied from the said old turnpike road was a mere paper street, and never before these defendants constructed their rail-road to and through Dover had any visible existence on the ground, and up until the year 1849, the only visible used road south of Blackwell street from Sussex street to the point of the mountain, was 10 the said old turnpike road, which was so as aforesaid vacated in the year 1848, and said road from Sussex street to the point of the mountain, always prior to the year 1848, was worked and kept in repair at the expense of the said township of Randolph by overseers of the highways.

And these defendants further say, that after they had surveyed and laid out their said rail-road as aforesaid to and through Dover, and after all of the public roads south of Blackwell street east of Sussex street, and from thence to the point of the mountain had been vacated as aforesaid, 20 and while the title to all the land in front or south of the complainant's lots, from the complainant's line to William Ford's, or what had lately been William Ford's land, a strip sixty or sixty-six feet wide, belonged to and the title thereof, was vested in the trustees of the estate of Henry McFarlan, deceased.

And the trustees of said estate, to-wit: Stephen Van-Rensselaar, Henry McFarlan and Daniel Ayers, by their deed of conveyance, bearing date September 7th, 1848, duly executed, acknowledged and delivered to these defendants, 30 " did convey to these defendants " the right, power and privilege to make, build, construct, maintain and keep up under " their charter and the supplement, or supplements thereto, " such part or portion of their rail-road, now in course of " construction or hereafter to be constructed, as may pass " on, over, or through the lands and premises of the said " parties of the first part hereinafter described: fifty feet in " width at the graded surface hereinafter mentioned, that is " to say, twenty-five feet in width on each side of the fol- " lowing lines of courses so far as the same lines run through 40

" and over the lands and premises of the said parties of the  
 " first part, situate and being in the township of Randolph,  
 " in the county of Morris, aforesaid, beginning at a stake  
 " standing on a course south ten degrees and fifty-four min-  
 " utes east one chain and sixteen links from a maple tree, a  
 " corner of lands of the said parties of the first part and now  
 " or late of one Dayton C. Freeman, being also about fifty  
 " feet southerly of the north side of Dickerson street ;  
 " thence from said stake running (1) south eighty-seven and  
 10 " a half degrees west fifty-two chains and fifty-two links ;  
 " thence (2) north eighty-nine degrees west one chain ;  
 " thence (3) north eighty-seven degrees west one chain ;  
 " thence (4) north eighty-four degrees west one chain ;  
 " thence (5) north eighty-one and a half degrees west one  
 " chain ; thence (6) north seventy-nine degrees west one  
 " chain ; thence (7) north seventy-six degrees west one chain ;  
 " thence (8) north seventy-three degrees west one chain ;  
 " thence (9) north seventy degrees west one chain ; thence  
 " (10) north sixty-seven degrees and a half degrees west one  
 20 " chain ; thence (11) north sixty-four and a half degrees west  
 " one chain ; thence (12) north sixty-one and a half degrees  
 " west one chain ; thence (13) north fifty-eight and a half degrees  
 " west one chain ; thence (14) north fifty-five and a half de-  
 " grees west one chain ; thence (15) north fifty-three degrees  
 " west one chain ; thence (16) north fifty degrees west one  
 " chain ; thence (17) north forty-eight degrees west one  
 " chain ; thence (18) north forty-six degrees west one chain ;  
 " thence (19) north forty-four degrees west one chain ; thence  
 " (20) north forty-two degrees west one chain ; thence (21)  
 30 " north forty-one degrees west one chain ; thence (22) north  
 " thirty-nine degrees west one chain ; thence (23) north thir-  
 " ty-two degrees west six chains across the pond to the front  
 " of the hill and to end with the last mentioned line, as said  
 " lines of courses are now staked and in part graded, and ac-  
 " cording to the map hereto annexed, the said width of fifty  
 " feet to be at the graded surface of the road and as well on  
 " embankment as an excavation, where the same are or may  
 " be respectively required on the said lines of courses." As  
 by reference to the said deed, and to which these defendants  
 40 pray leave to refer, will more fully and at large appear.

And these defendants further say, that no such map ap-

pears to have been connected with said deed, nor can the map referred to in said deed, if it ever existed, now be found.

And these defendants in further answering say, that their rail-road as it was finally adopted and built upon, in and through the said town of Dover, and in front of the said complainant's said lots, was surveyed and staked out, and the work of the grading thereof was commenced in or about the summer of 1846.

That when the said rail-road was surveyed, staked out and constructed in and through the said village of Dover, and before and ever since that time, the said complainant did reside and has resided on one of his said lots, and more than twenty years before filing said bill he knew perfectly and fully that said rail-road was located fifty feet wide through Dover, and built so as to include within the location of the way a considerable portion of the southerly side of what was called Dickerson street, and so as to place the track or tracks of the said rail way in front of his said lots. within what was called Dickerson street, and the com- 20  
plainant also knew more than twenty years before the filing of his said bill of complaint that these defendants believing that they had a right so to do, intended to and had taken, and permanently applied a considerable portion of that strip of land called Dickerson street and particularly in front of the said lots of the said complainant to the uses and purposes of their said rail-road; that the said complainant like nearly all of the then residents of Dover has solicitous to have said rail-road located as it then was and now is, and he encouraged these defendants to so locate the same, and 30  
while these defendants believed that they had a legal right to locate their said rail-road through Dover as it was and is located, while the said defendants knew that these defendants had that belief, and while the said complainant saw and knew that these defendants were expending large sums of money to construct and establish their said rail-road, as it then was and is now located along in front of his said lots, he made no objection thereto until the service of the notice set out in said bill, and did nothing to prevent these defend- 40  
ants from so doing until he filed his said bill of complaint.

And these defendants now respectfully submit, that the said complainant is and should be equitably estopped from interfering with these defendants in using, for the lawful use of their rail-road, any part of the so-called Dickerson street which was included in their said survey; and they further submit, that inasmuch as the said complainant can show no foundation for calling said Dickerson street a street or highway, except dedication, it is manifest that so far as the said complainant is concerned the dedication (if any there ever  
 10 was,) of that part of Dickerson street included in the said survey of these defendants, has ceased and been extinguished and is no longer a road or highway except for the use of steam engines and cars drawn thereby.

And these defendants further say, that their said rail road from at or near the point of the mountain to about the north line of Sussex street is a straight line, and then at or near Sussex street the said rail-road begins to curve and it continues on a curve until it has crossed whatever there is or ever was of Dickerson street west of Sussex street; and  
 20 these defendants respectfully submit, that they have a perfect legal right to cross Dickerson street west of Sussex street on a curve as they now do with their rail-way.

And these defendants in answer further say, that after they had located and built their said rail-road as aforesaid through the said town of Dover, and years after it had been in use there in its present location, and when it was in actual use, namely, on the 19th of February, 1851, a supplement to the charter of these defendants was passed and approved by the tenth section of which supplement it was enacted, as follows:

30 "That the present rail-roads of said Company, and the  
 "road or roads authorized by this act, shall be taken and  
 "deemed public highways for the use of steam engines and  
 "cars propelled by steam engines only."

And these defendants respectfully submit and insist, that the enactment last quoted makes the rail-way and rail-road of these defendants, as surveyed, laid out and constructed in and through the said village of Dover when said act was approved a lawful, public highway for the use of steam  
 40 engines and cars propelled by steam engines, and is such lawful, public highway now.

And these defendants admit, that they have graded the ground for another track on the north side of their present rail-road track in front of complainant's premises, and that said second track when completed will be about thirty-nine feet from the northerly line of what is called Dickerson street, and that the grading for said second track in front of the complainants premises is made by an embankment which is between one and two feet high, but said second track as graded and as it will be when completed is and will be wholly on the land of these defendants, which was so as afore- 10  
said conveyed to them by the said Henry McFarlan.

And these defendants in further answering say, that they have a second track west of their Dover station for several miles, and also east of Morris street in Dover for a long distance leaving only a small space in and near to the front of the complainant's premises in which the second track is not completed, and the wants and convenience of the business of these defendants require that said double track should be completed as soon as possible; that the rail-road of these defendants has a double track from Hoboken to near the 20  
Morristown station, and it is the intention of these defendants and necessary for their business and the wants of the public that their rail-road should be double tracked from the Hudson to the Delaware rivers; and these defendants as in duty bound to do, have been pushing forward that work as rapidly as possible, and the not having a double track through Dover is subjecting these defendants to great inconvenience and loss in the transaction of their business.

And these defendants in further answering say, that ever since their rail-road to Dover has been in use they have used 30  
the land on the north side of their track in front of the complainant's premises, within the lines of their fifty feet in width, and where the grading has been done for the said second track, for their own purposes at their free will and pleasure and without interruption, and at nearly all times have had it covered in whole or in part with wood, lumber and other property, which prevented it from being used as a road and precluded ordinary travelling over it quite as much or more than it will to lay down and use said second track, and when said second track shall be laid and put in use the facilities for 40

traveling on what is called Dickerson street in front of the complainant's premises, will be as great and as good as they have been at any time in over twenty years last past.

And these defendants in further answering deny that the laying down of said double track in front of the complainant's premises will do him any great or irreparable injury, or any injury whatever; and they respectfully submit that if the laying of said second track can be regarded as working any injury to the complainant, it is not and cannot be such  
 10 an injury as will require or justify restraining these defendants from laying down and using said second track.

And these defendants say, that they have a right to have and maintain their rail-road as it is now located through said town of Dover, and to lay and use as many tracks within the limits of their fifty feet in width of right of way as they may see fit, and that their rights in that respect rest upon the grants made to them by the Legislature of this State, contained in their charter and the supplements thereto; upon the aforesaid deed made to them by the trustees of the  
 20 estate of Henry McFarlan, deceased, upon the identity in front of the complainant's premises, of Dickerson street with the old turnpike road and the vacation in 1848, according to law, of the said public road in front of the complainants premises, and upon more than 20 years possession under a valid title by these defendants of their said right of way.

And these defendants respectfully submit that the said complainant in his said bill of complaint, does not show any special or peculiar injury to himself, distinct from the public in respect of or for which he could maintain an action at  
 30 law or a suit in this honorable court against these defendants, and for this objection these defendants respectfully claim the same advantage and benefit as if they had demurred to the said Bill of Complaint.

And these defendants deny all unlawful combination, &c.

NEW JERSEY

Court of Errors and Appeals.

Between  
THE ATTORNEY-GENERAL OF THE STATE  
OF NEW JERSEY, EX. REL. EDWARD  
A. STICKLE AND OTHERS, RELATORS,  
AND

Complainants,  
*and*  
THE MORRIS AND ESSEX RAIL-ROAD  
COMPANY,  
Defendants.

Bill.

Bill of Complaint.

(Filed Dec. 2d, 1868.)

*To the Honorable Abraham O. Zabriskie, Chancellor of the State  
of New Jersey.*

Informing showeth unto your Honor, George M. Robe-  
son, Esquire, Attorney General of the State of New Jersey,  
in behalf of said State, and by and at the relation of Mah-  
lon Munson, William L. Young, Joseph Roderer and Ed-  
ward A. Stickle, in behalf of themselves and of the other  
owners of the dwelling houses, store houses, shops, barns,  
stables, manufactories and tenements, situate, lying and be-  
ing on the north side of Dickerson street, in the village of  
Dover, in the township of Randolph, county of Morris, and  
State of New Jersey. And also humbly complaining, show 10

unto your Honor, your Orators, Mahlon Munson, William L. Young, Joseph Roderer and Edward A. Stickle of the said township of Randolph, in behalf of themselves and others, as aforesaid; that in or about the year eighteen hundred and twenty-seven, one Henry McFarlan who has since departed this life, was seized in fee of a large tract of land, lying and being in and adjoining to the village of Dover aforesaid, and that being so thereof seized, the said Henry McFarlan in the year aforesaid, laid off the said lot of land

10 into building lots, and located, fixed and established the lines of streets running through said tract of land to be used as well by the public as by the persons whom he contemplated would purchase the said building lots so laid off; that the situation of said streets, with reference to their relative positions through said tract of land, their courses, and distances, and respective uniform widths, and the respective blocks of building lots bounded by said streets and laid off from said tract of land, were by the said Henry McFarlan, or by

20 his order and direction, plotted and mapped in the year last aforesaid; that part of the streets so laid out, plotted and mapped run through the village of Dover aforesaid from east to west, whilst others of the streets so laid by said McFarlan over said tract of land run from north to south and cross the first named streets at right angles; that one of said streets running from east to west through said village of Dover and laid out by said McFarlan at the time aforesaid, then was and still is known and called by the name of Blackwell street, and is of an uniform width of seventy-five feet, and that another of said streets running from east to west

30 through said village next to said Blackwell street to the south and parallel to said Blackwell street, so laid out by said McFarlan at the time aforesaid, then was and still is known and called by the name of Dickerson street, and is of an uniform width of sixty-six feet; that said Blackwell street and said Dickerson street are crossed at right angles by and the public are enabled to pass from the one of said streets to the other thereof by several streets running from north to south, laid out by said McFarlan at the time aforesaid, and respectively known and called Warren street, Sussex

40 street, Morris street, Essex street and Bergen street, each

of said last named streets being of the uniform width of sixty-six feet, and having been laid out, plotted, mapped and named by said McFarlan in the year aforesaid, by which names they have been known and called from the time of the laying out thereof hitherto.

And the Attorney-General at the relation aforesaid, and your Orators further show, that all the streets hereinbefore named, were by the said Henry McFarlan immediately after the location thereof, in the year aforesaid, thrown open to the public for use, and that all of said streets were in the 10 year aforesaid, dedicated by said McFarlan as common public highways, open and free for the passage of all the citizens of this State, to pass and repass over and through the same, on foot, on horseback, and with and in all sorts and kinds of vehicles, either of burden or pleasure, and with all kinds of beasts of burthen, and that all of said streets, from the time of their said dedication to the use of the public hitherto, (excepting Dickerson street,) have been used by the citizens of this State to pass and repass, by, over, and through the same, at their free will and pleasure, in the 20 prosecution of their lawful business and pleasure without let, hindrance, denial, or molestation of any person or persons whatsoever; and that said Dickerson street was used as a common highway by the public, in the same manner as the other streets herein mentioned and named have been used until the committing of the grievances, and the usurpation of and the interference with and obstruction of that right by the Morris & Essex Rail-Road Company hereinafter named and mentioned.

And the Attorney-General at the relation aforesaid, and 30 your Orators further show, that your orators now are the owners respectively of plots of land, part of the said Henry McFarlan tract so laid off into building lots by said McFarlan as aforesaid; that said plots of land all lie on the north side of said Dickerson street, between the west line of Morris street and a point one hundred and twelve feet west of the west line of Warren street, that your Orators acquired title to said lots of land either direct from the said Henry McFarlan or through his grantees and assigns, and that valuable improvements have been placed upon said lots in the 40

way of dwelling houses, stores, shops and manufactories; that your Orators purchased said lots of land in full faith and confidence that said Dickerson street was a common public highway, open and free for the passage of all persons desirous of travelling the same, and not liable or entitled unlawfully to be encroached upon, narrowed, or in any manner obstructed by any person or persons, or body incorporate whatsoever unless by lawful authority.

10 And the Attorney-General at the relation aforesaid and your Orators further show, the respective lots of land of your Orators front on said Dickerson street, and that said street furnishes the only approach to the dwelling houses, store houses, shops and manufactories of your Orators respectively, situate on said street and is in daily use by your Orators, and all persons having business to transact with the occupants of said dwelling houses, store houses, shops, and manufactories, and is much used and travelled by the citizens of this State in general and the citizens of Dover and its vicinity in particular.

20 And the Attorney-General at the relation aforesaid and your Orators further show, that the Morris & Essex Rail-Road Company in or about the year eighteen hundred and forty-eight, extended the line of their Rail-road from Morristown, in the county of Morris, to the said village of Dover under and by virtue of the provisions of a supplement to their charter for that purpose had and obtained of and from the Legislature of this State; that in making such extension the said the Morris and Essex Rail-Road Company appropriated to the use of said Company for the laying of their

30 track in the village of Dover a parcel of said Dickerson street off the south side thereof of the uniform width of about fourteen feet, and the whole length of said street, and laid their rail-way thereon in such a manner that the northerly side track of said rail-way is laid on said Dickerson street at least fourteen feet from the southerly line thereof, and parallel to said southerly line of Dickerson street the whole length thereof, and thereby the said the Morris & Essex Rail-Road Company greatly narrowed said street and impaired its utility as a public highway by reducing its width

40 from sixty-six feet down to fifty-two feet, and that the said

Company has continued their encroachment and used the part of Dickerson street so as aforesaid appropriated by them for the use of their rail-road from the day and year last aforesaid until the present time, and that all the shops, engine houses, depot buildings, platforms, offices and other buildings of said Company are to the south of the track of said Company so as aforesaid laid.

And the Attorney-General at the relation aforesaid and your Orators show, that very recently the said Company have graded a road-bed for a second or double track for their said rail-road, within the limits of said Dickerson street and north of their original track and farther towards the centre of said street, in front of the premises on said street of Byram Prudden, and in making said road-bed have constructed an embankment in said street in front of said premises of the height of about two feet, and that said Company threaten and intend to extend the said road-bed along the whole length of said street on the said north side of their original track; that in front of some of your orators premises, as your orators have been informed, and believe and 20 charge it to be true, the said Company intend to excavate said Dickerson street to the depth of from one to two feet, and that the laying of said double track will narrow the wagon way of said Dickerson street to about the width of twenty-nine feet; and that the said Company are raising said embankment in said street and are meditating and intending to excavate said street for their said road-bed for their double track without any lawful authority therefor from any person or persons whatsoever, and that the grading of said track bed is an encroachment and obstruction on 30 and to said street and diminishes its value as a public highway.

And the Attorney-General on the relation aforesaid, and your Orators further show, that the laying of said second track as threatened and intended, will have a direct tendency to greatly depreciate the value of your orators' said property, and will cause them great and irreparable injury by reason of the narrowing of said street by means of the said embankment, contemplated excavations and rail-road track, and also by reason of the increased annoyance that will be 40

caused by the running of trains of cars and locomotive engines over said proposed track, and the danger to which your orators buildings will be subjected from their proximity to said track.

And the Attorney-General at the relation aforesaid, and your Orators further show, that very soon after said Company commenced said embankment in front of said Byram Prudden's lot of land, your orators caused to be served a notice in writing, signed by all your orators excepting Mah-  
 10 lon Munson, on one Frederick B. Dalrymple who then was station agent of the said Rail-road Company and resided in Dover aforesaid, of which notice the following is a copy :

To the President, Directors and Company of the Morris & Essex Rail-Road, or to whom it may concern :

You, and each of you, your agents and workmen, are hereby notified to desist from all further encroachments in, along, and upon Dickerson street in the village of Dover, Morris County, New Jersey, by grading and embanking for your road, and by your placing earth, stone and gravel, timber  
 20 and rail-road iron thereon, and that you forthwith remove all obstructions from said street, heretofore placed there by you or you will be held liable as trespassers and dealt with according to law.

Yours, &c.

(Signed,)

W. L. YOUNG,  
 E. A. STICKLE,  
 J. RODERER,  
 B. PRUDDEN.

Dover, October 5th, 1867.

30 And the Attorney-General at the relation aforesaid, and your Orators further show, that since the service of said notice the said Rail-road Company have desisted and refrained from grading their track bed in front of your orators' said premises and from laying their track, but that said Company have commenced grading their track bed for their second track very recently to the west of your orator, Edward A. Stickle's premises, and have graded the same on the north side of their original track and have got the same graded  
 40 ses. nearly opposite to the westerly line of said Stickle's premi-

And the Attorney-General at the relation aforesaid, and your Orators further show, that the said Company have resumed the grading of their track bed in said street to the eastward of said Byram Prudden's premises and on the north side of their original track, and are almost ready to lay the rails of their second track and connect the sections on which said grading is being done by a track running in front of your orators' premises to the north of their original track and over the travelled road bed of said Dickerson street.

And the Attorney-General at the relation aforesaid, and 10  
your Orators further show, that they verily believe said the Morris & Essex Rail-road Company intend in a very short time to lay down their said second track in front of your orators premises, and continuing the whole length of said Dickerson street in such a manner as will thereby permanently narrow said street, and as will greatly impede your orators and the citizens of this State in their use and enjoyment of said street, and your orators in particular in their means of ingress and egress to and from their said premises.

And the said Attorney-General in behalf of the State of 20  
New Jersey, insists and submits that the said the Morris & Essex Rail-Road Company, their directors, agents, workmen and servants, have no right or authority to carry the said plans of said Company into effect, or to excavate from or embank in said Dickerson street, or otherwise prepare the same for the laying of their track, nor have they any right or authority to lay their said rail-road track over said street in manner aforesaid, or in any other manner, which shall in any way interfere with or obstruct the citizens of this State in the free use and enjoyment of said street to its full width 30  
as a common public highway, or in any manner whereby the rights of the public in the uses of said street can or may in any wise be abridged.

And now so it is, may it please your Honor, that the said the Morris & Essex Rail-Road Company and others combining and confederating with them, persist in continuing to grade the track bed for the second track of said Company's railway, over the road bed of Dickerson street aforesaid, and to contemn the authority of the State of New Jersey and the rights of the citizens thereof to the free and uninterrupted 40

use of said street to the entire width thereof; and are regardless of the great, immediate and irreparable damages and injury which your orators will be subjected to and sustain thereby.

And they claim the right so to do, and persist in their determination to grade and lay down their said second track in manner aforesaid, and to continue the work of actually grading their track bed and laying down said track, and pretend and give out that they have authority and are warranted in so doing; the contrary whereof the said Attorney-General at the relation aforesaid, and your Orators charge to be true.

All which actings, doings, and pretences of the said the Morris & Essex Rail-Road Company 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 using said Dickerson street as a public highway, or interested in the use thereof for that purpose.

To the end therefore that the said the Morris & Essex Rail-Road Company and their confederates, may in such manner as is required by law and the practice of this court, full, true and perfect answer make to all and singular the premises aforesaid, as fully as if the same were here again repeated, and they thereto particularly interrogated with all the attendant circumstances, and that it may be decreed that the said the Morris & Essex Rail-Road Company, the defendants herein, have no right, title, or authority, to construct the track bed for their said second track, and to lay down their said second track over the road bed of said Dickerson street, or to make any excavations or embankments in said street for that purpose, or to use any part of said Dickerson street for the uses and purposes of said Company; and that the said the Morris & Essex Rail-Road Company, their agents, contractors, superintendents, engineers, workmen and servants, and each and every of them, may be restrained by the order and decree and writ of injunction issued out of this Court, from grading the bed for the second track of said rail-road and laying such second track over the road bed of said Dickerson street as aforesaid, in the manner

hereinbefore set forth and described, and as they are now proceeding to do and are actually doing; and that your Honor may grant such further and other relief as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto the said Attorney-General and your Orators, a writ or writs of injunction issuing out of and under the seal of this honorable court to be directed to the said the Morris & Essex Rail-Road Company and their confederates when 10 discovered, their agents, superintendents, contractors, engineers, workmen and servants, restraining and enjoining them and each and every of them in manner aforesaid.

And also a writ of subpoena issuing out of and under the seal of this honorable court to be directed to the said defendants, commanding them on a certain day and under a certain penalty therein to be inserted, 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 20 shall seem meet and as shall be agreeable to equity and good conscience.

GEO. M. ROBESON,  
Att'y-Gen'l of New Jersey.

GEO. W. FORSYTH,  
Sol'r and of Counsel with Relators and Complainants.

NEW JERSEY, MORRIS COUNTY, ss,

*Edward A. Stickle* of said County, one of the complainant's in the foregoing bill named, being du'ly sworn accord- 30  
ing to law on his oath, saith: that those facts, matters and things in the said bill mentioned and set forth, which relate to the acts and deed of any other person or persons than the complainant's in the said bill named he verily believes to be true, and that all other facts, matters and things in said bill mentioned and set forth are true.

That deponent has resided in the village of Dover, Morris County, New Jersey, since about the year 1850, and still resides there; that during all the time deponent has contin- 40  
ued to reside there Dickerson street, with the exception

of a strip of the width of about fourteen feet on the southerly side thereof, which then was and still is in the use of the Morris & Essex Rail-road Company, was an open street used by the public at their free will and pleasure for all lawful purposes of business or pleasure ; that deponent now is and has been ever since the year 1856, the owner of a lot of land lying on the southerly side of said Dickerson street, having a frontage on said street of about one hundred and twelve feet, upon which deponent erected and now has valuable im-

10 provements ; that deponent's improvements are reached by and principally valuable on account of their being able to be reached and approached by and through Dickerson street, and that any serious encroachment upon and obstruction of said Dickerson street would have an immediate and direct tendency, not only to greatly depreciate the value of deponent's improvements but also to render them comparatively useless for the purposes for which they were constructed ; that deponent purchased said premises upon the understanding that he would have free and undisturbed access thereto

20 through said street, and that said street had been dedicated to the public and then was a public highway ; deponent further saith, some time in the year eighteen hundred and sixty-seven, the Morris and Essex Rail-road Company commenced grading for a second or double track for their rail-way, and still further encroached upon and narrowed said Dickerson street ; that said second encroachment will leave the wagon way of said street of only about the width of twenty-nine feet, and that the said street will by laying said track become uneven by reason of excavations and embankments al-

30 ready made, and in contemplation by said Company for the bed of said second track ; that such encroachment is made by said company without any warrant and authority for so doing, as deponent verily believes, and has a direct tendency not only to work a great private injury to the property of complainant's situate on said street, by rendering the same less desirable and valuable as places of business, but also has a tendency to work a public injury by depriving the citizens of this State of the free and uninterrupted right of passage over the said street to the full width thereof, as of right they

40 are entitled to, and have been accustomed to use and enjoy

the same; that deponent has been informed and believes from the manner in which the said Company are prosecuting the work of grading the bed for their second track to the eastward and westward of these complainants' lands, that said Company intend to lay the said track along in front of complainants' lands as soon as they can get ready to do so.

And that deponent has been informed and believes that said Company intend to excavate said Dickerson street in front of deponent's premises to a considerable depth for the purpose of laying their said second track. 10

E. A. STICKLE.

Sworn and subscribed before me December 1st, 1868.

AUG'S W. CUTLER,  
M. C. C.

NEW JERSEY, MORRIS COUNTY, ss.

*William L. Young* of said County, being duly sworn on his oath, saith: that he is one of the complainants' in the foregoing bill named, and that those facts, matters and 20 things in the said bill mentioned and set forth, which relate to the acts and deeds of any other person or persons than the complainants in the said bill named, he verily believes to be true, and that all other facts, matters and things in said bill mentioned and set forth are true; that deponent now resides in the village of Dover, Morris County, New Jersey, and has resided there continuously since 1846, and is the owner and occupant of a lot of land on the north side of Dickerson street, part of the said Henry McFarlan tract in said bill of complaint mentioned; that deponent has erected a valuable 30 improvement on his said lot of land, consisting of a bakery and dwelling house and store room, and his improvements are so situate that deponent has no means of access thereto excepting over, through and by said Dickerson street; that deponent has understood and believes said Dickerson street was dedicated to the public by Henry McFarlan about the year 1827, and that it was then laid out and opened to an uniform width of sixty-six feet; that said street was used and traveled by the public to the full width laid out until the year 1848, and building lots were sold off on the line of 40

Dickerson street by said Henry McFarlan, or his heirs or assigns, upon the understanding that said Dickerson street was a public highway free for the use of the public for passage and repassage about all their lawful pursuits of business or pleasure; that about the year 1848, the Morris and Essex Rail-Road Company extended their rail-road from Morristown to Dover and appropriated a strip off said Dickerson street, and on the southerly side thereof of the width of about fourteen feet to the use of said rail-road without  
 10 any lawful warrants or authority for so doing as deponent believes, and laid their track on the part of Dickerson street so appropriated; and that some time in the year 1867, the said Company commenced grading for a second track over the road bed of said Dickerson street, and made a further encroachment on said street of about thirteen feet, and threatened and intend to continue the grading of the bed for said second track the whole length of said Dickerson street, making excavations in some parts of said street, and constructing embankments in other portions thereof; that said second encroachment will reduce the wagon-way of said street to about  
 20 the width of twenty-nine feet, and will leave the residue of said road-bed where said tracks are laid, and contemplated to be laid, broken, irregular and unfit for use except for the purposes of the rail-way, by reason of embankments, excavations, and the projections of rails and ties; that the said width of twenty-nine feet is entirely inadequate and insufficient for the wants and requirements of the public, and for the convenient use of said street by the property owners having improvements thereon, and the encroachments which  
 30 the said Company intend and threaten to make in said street has an immediate and direct tendency to injure deponent's business, and to impair the value of his property by reason of the increased danger to which deponent's customers and the travelling public will be subjected by the running of locomotive engines and trains of cars so near deponent's place of business with a wagon-way so narrow between the track of said rail-way and the side walk; and deponent further saith, that the second encroachments contemplated and in progress of being made by said Company, is as deponent believes, without lawful warrant or authority, and a nuisance,  
 40

and a wanton invasion of the rights of the public, for a long time used and enjoyed by it without disturbance, hindrance or molestation by any person or persons and without the public right or authority so to do being called in question in any manner.

WILLIAM L. YOUNG.

Sworn and subscribed before me, December 1st, 1868.

AUG'S W. CUTLER,  
M. C. C.

NEW JERSEY, MORRIS COUNTY, ss.

*Byram Prudden*, being duly sworn on his oath, saith : that he resides in Dover, New Jersey, and has lived there since the month of December, eighteen hundred and thirty, and is now the owner of part of the Henry McFarlan tract in the bill of complaint mentioned, situate in the north side of Dickerson street in said village ; that when deponent went to Dover, in the year 1830, said Dickerson street was an open public highway used by the public at their free will 20  
and pleasure for all their lawful pursuits of business or pleasure, and deponent understood the same had been dedicated to the public by Henry McFarlan at the time he laid out the building lots in said bill mentioned ; that it continued to be so used without interruption or encroachment until the year 1848, when the Morris & Essex Rail-road Company encroached on the southerly side thereof to the distance of about fourteen feet, the whole length of said street ; and that the said Company are now still further encroaching upon said street by the grading a track bed the length 30  
of said street to the northward of their original track, which will narrow the wagon-way of said street to about the width of twenty-nine feet ; that such encroachment last mentioned will have a tendency seriously to affect the value of said street as a public highway, and will work great damage to the public in diminishing the road-way of said street, and will also work great private damage to deponent and the other property owners on the line of said street who have erected or own valuable improvements, by rendering their said improvements less accessible, more dangerous of access, and 40

less desirable as places of carrying on trades and the business of merchandise ; deponent further saith, that said Dickerson street has always been used by the public since deponent first went to Dover without their right to use the same ever having been called into question by any person or persons, and without ever having been encroached on save by the Morris & Essex Rail-road Company.

BYRAM PRUDDEN.

10 Sworn and subscribed before me, December 1st, 1868.

AUG'S W. CUTLER,

*M. C. C.*

A true copy,

B. GUMMERE, Clerk.



his life time and about the year 1827, was seized in fee of a large tract of land being in and adjoining the village of Dover aforesaid, and these defendants have been informed and they believe it to be true, that said Henry McFarlan did lay off a portion of said land in and about Dover into building lots and streets, but the laying out and marking was mainly if not entirely on paper and not on the land, and several of said paper streets and portions of others of them, have never to this day been opened, worked or used.

- 10 And these defendants admit, that a portion of said paper streets ran from east to west, and the others from north to south ; but these defendants deny that what is called Blackwell street, east of what is now known as Morris street, was ever opened or used prior to the year 1848, nor before the year 1848 was Essex or Bergen street opened, worked, travelled, or in any way used as a street or road.

- And these defendants further say, that what is called Dickerson street in said information, except the short space between Warren and Sussex streets, had no existence on the  
 20 ground or elsewhere than on paper prior to the year 1848 ; that said Dickerson street as laid out on paper by said Henry McFarlan began at the southerly end of Dickerson street and then the northerly line of said Dickerson street extended eastward parallel with the south line of Blackwell street and two hundred and seventy-five feet therefrom, but said northerly line of Dickerson street prior to the year 1847, east of the east line of Morris street was a mere mathematical or ideal line without any fence or monument on the ground to show its location except this, namely, long before  
 30 said Henry McFarlan laid out any streets in Dover on paper, or otherwise, there was a public road going from Dover to Morristown, just below where the southerly end of Sussex street now is, the northerly line of Dickerson street as mapped by said Henry McFarlan was identical with the northerly line of said old public road, and the said two lines continued substantially, identical, until near the place where said Henry McFarlan contemplated having Bergen street, and then the northerly line of said old public road diverged to the southward from the north line of Dickerson street,  
 40 leaving a considerable space between the two lines ; when

these defendants surveyed, located, and made their rail-road to Dover, and long before then, there was a fence standing along the northerly line of said old road from on or about the easterly line of Morris street to the point of the mountain, which fence marked the northerly line of said old public road, while the north line of Dickerson street, after it diverged from the north line of said old road, was inside of the said fence, and there was nothing on the ground to mark or show its locality and it never was located except ideally and upon paper. 10

And these defendants further say, that the said old public road from Sussex street to the point of the mountain always, prior to the year 1848, was worked, maintained and kept in repair at the expense of the said township of Randolph, by the overseers of the highways of said township.

And these defendants in answer further say, that at the time and when their said rail-road was surveyed and located in and through Dover, that part of what is called Dickerson street, which is west of the west line of Warren street, was enclosed with fences and cultivated, and had no street or signs of a street upon it, and a street there had no existence except, perhaps, on paper. 20

And these defendants deny that all the streets named in said information were by the said Henry McFarlan at any time thrown open to the public for use, or dedicated by said McFarlan as common public highways, open and free for the passage of any citizens in any manner; and they also deny that all of said streets have been used by the citizens of this State at their free will and pleasure, or otherwise, and they also deny that said Dickerson street (except so far as said old road and Dickerson street were identical,) was used as a common highway by the public in any manner whatever. 30

And these defendants, as to lands owned by the said relators on the north side of Dickerson street, answer as follows: the said Edward A. Stickle owns a lot on the north-west corner of Warren and Dickerson streets, with a front of one hundred and twelve feet on Dickerson street; it was conveyed to him by Henry McFarlan and Ann his wife (the said Henry McFarlan being a son and heir of the Henry McFarlan, deceased, mentioned in the said information), by deed, 40

dated the first day of August, 1856, which was long after these defendants had purchased of said Henry McFarlan, and were in the possession and use of their right of way in and through Dover; and these defendants respectfully submit that the said Edward A. Stickle can have no other or greater rights as against these defendants in respect of Dickerson street than the said Henry McFarlan had.

10 These defendants further say, that all the buildings on said Stickle's said lot which front on Dickerson street have been erected since these defendants made their said rail-road where it now is.

The said Joseph Roderer owns two lots situate at the north east corner of Warren and Dickerson streets, with a front on Dickerson street of seventy-two feet and six inches; thirty-five feet of this front was conveyed to said Roderer by said Henry McFarlan and Ann his wife, by deed, bearing date August the first, eighteen hundred and fifty-six, and the remaining thirty-seven and one-half feet were conveyed to said Roderer by said Henry McFarlan and Ann his wife,  
 20 by deed, dated May 16th, 1861, both of which were long after these defendants had purchased their right of way for their rail-road through Dover of the said Henry McFarlan; and after these defendants had long been in the possession and use of their said right of way for the purposes of their said rail-road; and these defendants also respectfully submit that said Roderer has not and cannot have any greater rights against these defendants in respect of Dickerson street than said Henry McFarlan had when he made said conveyances to said Roderer.

30 The said William L. Young owns a lot having a front of sixty feet on Dickerson street and extending northward seventy-five feet; this is the westerly part of a lot of one hundred feet on Dickerson street and seventy-five on Sussex street which was conveyed by the trustees of the estate of said Henry McFarlan, deceased, to one Jacob Scott, by deed, dated April first, eighteen hundred and thirty-nine; the lot so conveyed to said Scott was by said Scott and his wife conveyed to said William L. Young, by deed, bearing date April  
 40 the first, eighteen hundred and forty-seven, which was after these defendants surveyed, located and graded their said

rail-road to their Dover station and directly in front of the said lot of said Young ; afterwards, by deed, dated January 10, 1847, the said William L. Young conveyed a portion of said lot, namely, forty feet on Dickerson and seventy-five feet on Sussex street to one Michael Titman. While the track of these defendants was being laid in front of said Young's said premises, he, said Young lived on his said lot, and saw and knew the width of way which these defendants had previously surveyed and taken possession of in front of his said premises, and he also knew that these defendants expected 10 and intended to use said right of way for rail-road purposes and to lay as many tracks thereon as they might desire and require, and that in pursuance of that purpose and intention these defendants were expending large sums of money upon the expectation of being permitted to use their said right of way for the purposes for which they had purchased it ; and yet said Young made no objection to making or completing said rail-road in front of his premises, but he approved and encouraged the doing thereof, and indeed said Young purchased said land because of its nearness to the rail-road 20 and depot of these defendants, and he voluntary placed himself along side of and near to the rail-road of these defendants after it was located fifty feet wide and graded, and with full knowledge thereof ; and these defendants respectfully submit that so long as they do only what their charter authorizes them to do, within the limits of their own land which was conveyed to and is held by them for rail-road purposes, the said William L. Young has not and cannot have any equity against these defendants by reason of the proximity of the rail-road of these defendants to his premises. 30

The said relator Mahlon Munson only owned on said Dickerson street a lot of forty feet front (part of the lot which so as aforesaid was conveyed to said William L. Young,) and which was conveyed to him by \_\_\_\_\_, by deed of conveyance, dated \_\_\_\_\_, 1864 ; and these defendants also submit that so long as they are doing and proposing to do on their own land in front of said Munson's premises, nothing more than the law authorizes and intends them to do in the use of their said rail-road property, the said Mahlon Munson has no equitable ground of complaint against these defendants. 40

And these defendants further show, that all the lands bounding on the north side of said Dickerson street belong to Henry McFarlan, except such as he or the trustees of his father's estate have or has sold, and in every instance where the trustees of the estate of Henry McFarlan, or the now living Henry McFarlan, have conveyed any of said lands the deed of conveyance distinctly and clearly limits and confines the land granted and conveyed to the north side or north line of Dickerson street, thus leaving the title to the  
 10 land contained within the lines of said street in the said trustees or in the said Henry McFarlan, or in these defendants to whom the said trustees conveyed a portion of the land contained within the lines of said street.

And these defendants respectfully submit, that having held and possessed a strip of land through Dover fifty feet wide on the graded surface, by authority of law and by grant and conveyance from the owners of the fee of said land for more than twenty-two years before the said information was filed, being the same strip of land on which they built and on  
 20 which they have maintained their said railroad through Dover, they have by adverse possession and long uses acquired the right in law and equity, as against said relators and each of them, to use their said strip of land for rail-road purposes, and to lay and use thereon as many tracks or sets of rails as they may find and consider to be necessary.

And these defendants assert and insist, that what is called Dickerson street never was, west of Sussex street, a public road or highway; that as to the part of Dickerson street which is between Sussex and Warren street, if there was a right of  
 30 passage over it at all, it was very limited and rested upon individual dedication entirely. It was never accepted or adopted by the public, or any agents or representatives of the public; and now after these defendants have been in possession of their road-way for over twenty-two years under title in fee, they respectfully submit that all rights of way by dedication that may have at any time existed over what is within the way of these defendant's are extinguished and gone and barred.

And these defendants in answer further say, that their  
 40 charter of incorporation and the several supplements thereto

by the Legislature are declared to be and are made public acts; and these defendants without quoting said acts pray leave to refer to the same as occasion may require.

And these defendants further say, that by virtue of their charter and supplements thereto, in the spring of the year eighteen hundred and forty-six, these defendants did survey a route for the extension of their rail-road from Morristown to and through Dover, with a view to subsequently extending the same from Dover to Stanhope, said survey was adopted by the President and Directors of these defendants, and after being so adopted was on the nineteenth day of June, in the year eighteen hundred and forty-six, filed in the office of the Secretary of State of this State, and from the point of the mountain which is more than a half a mile to the east ward of the Dover station of these defendants to and through Dover, their said rail-road was built upon the route so surveyed, adopted and filed, and a particular survey of the route so built upon will hereinafter appear by quotations from the deed made to these defendants by the trustees of the estate of Henry McFarlan, deceased.

20

And these defendants further show, that their said surveyed route crossed the said old public road hereinbefore mentioned, a short distance west of the point of the mountain, and then for some distance continued along the north side of near to and in places including a part of the said old public road, and then gradually crossed the said old public road so that at Morris street westwardly to where the station of these defendants is, said route was on the southerly side of said old road and included a portion thereof.

And these defendants in further answering say, that they 30 graded their said rail-road from the point of the mountain to and past their Dover station in the year 1846, and in the year 1847 rails were laid on that portion of said rail-road, and cars carrying passengers and freight were run upon it, and the track then laid down has been maintained and used in the same place ever since.

And these defendants in further answering say, that before they commenced extending their rail-road from Morristown to Dover they made and had an agreement and understanding with Henry McFarlan of Dover, that if these de-

defendants would extend their rail-road from Morristown to Dover he would procure the right of way for these defendants for such extension without cost to these defendants; at that time and when the said route was surveyed from the point of the mountain to and through Dover, and when the said rail-road was built and when the trustees of Henry McFarlan, dec'd, made to these defendants the deed hereinafter mentioned, all the land from the point of the mountain to more than two hundred feet westerly of the west line of

10 Warren street, included within the surveyed way of these defendants, belonged to and the title thereof was in the trustees of the estate of Henry McFarlan, deceased, except some land on the south side of said route belonging then to William Ford, but which these defendants purchased and had conveyed to them in fee in the year 1848; when the said rail-road from the point of the mountain to and through Dover was located and made, it was understood between these defendants and said Henry McFarlan, that he would procure to be legally vacated the public road along side of

20 and partly covered by the aforesaid part of the rail-road route of these defendants, and that he opened as a public road Blackwell street from Sussex street to the point of the mountain; in pursuance of this understanding at the term of May, 1848, of the Court of Common Pleas of the county of Morris, the said Henry McFarlan and others, ten and more freeholders and residents of the said county of Morris, petitioned the said court according to the statute in such case made and prosecuted for the appointment of surveyors of the highways to lay out the said public road from Sussex

30 street to the point of the mountain, and to vacate the said old public road from Sussex street to the point of the mountain, and upon said petition six surveyors of the highways were duly appointed by said court to lay out said public road and vacate said old road; and said surveyors, on the twenty-sixth day of June, 1848, met according to law and did lay out the said public road and vacate the said old road, and made a return of the laying out of said new public road, and also a separate return of the vacation of the said old road, both returns bearing date the day and year last aforesaid, and with the said returns did also return a map show-

ing the road which they had vacated and the road which they had laid out ; the said returns and map were filed in the office of the clerk of the said Court of Common Pleas on the eighth day of July, 1848, and they were recorded on the 29th day of July, in the same year, and thus became absolute, and the said returns have never been set aside or reversed, and they remain in full force ; and these defendants pray leave to refer to duly certified copies of said returns and map.

And these defendants submit, that the effect of said vaca- 16  
tion was to extinguish, as a public road or street, all of the old public road from Sussex street to the point of the mountain, and to extinguish as a public street or road so much and such portions of Dickerson street as were identical with or included within the said public road, and that such portions of Dickerson street as were not included within the said old public road, were not and was not then, and never had been a public street or road, or part of a public street or road in law or in fact.

And these defendants in further answering say, that in 20  
pursuance and fulfillment of the agreement as to right of way so as aforesaid made between these defendants and the said Henry McFarlan, the trustees of the estate of Henry McFarlan, deceased, to-wit : Stephen Van Rensselear, Daniel Ayers and Henry McFarlan, by deed of conveyance, bearing date Sept. 7th, 1848, for the consideration of one dollar did grant, assign, and convey unto these defendants, their successors and assigns, as follows, namely : “ the right, power and privilege to make, build, construct, maintain, and “ keep up under their charter and the supplement or supple- 30  
“ ments thereto, such part or portion of their rail-road now “ in course of construction, or hereafter to be constructed, as “ may pass on, over, or through the lands and premises of “ the said parties of the first part hereinafter described, fifty “ feet in width at the graded surface hereinafter mentioned, “ that is to say, twenty-five feet in width on each side of “ the following lines of courses so far as the same lines run “ through and over the lands and premises of the said parties of the first part, situate and being in the township of “ Randolph, in the county of Morris, aforesaid, beginning 40

" at a stake standing on a course south ten degrees and fifty  
 " four minutes east one chain and sixteen links from a maple  
 " tree, a corner of lands of the said party of the first part  
 " and now or late of one Dayton C. Freeman, being also  
 " about fifty feet southerly of the line of the north side  
 " of Dickerson : thence from said stake running (1) south  
 " eighty-seven and a half degrees west fifty-two chains and  
 " fifty-two links ; thence (2) north eighty-nine degrees west  
 " one chain ; thence (3) north eight-seven degrees west one  
 10 " chain ; thence (4) north eighty-four degrees west one chain ;  
 " thence (5) north eighty-one and a half degrees west one  
 " chain ; thence (6) north seventy-nine degrees west one  
 " chain ; thence (7) north seventy-six degrees west one  
 " chain ; thence (8) north seventy-three degrees west one  
 " chain ; thence (9) north seventy degrees west one chain ;  
 " thence (10) north sixty-seven and a half degrees west one  
 " chain ; thence (11) north sixty-four and a half degrees west  
 " one chain ; thence (12) north sixty-one and a half degrees  
 " west one chain ; thence (13) north fifty-eight and a half de-  
 20 " grees west one chain ; thence (14) north fifty-five and a  
 " half degrees west one chain ; thence (15) north fifty-three  
 " degrees west one chain ; thence (16) north fifty degrees  
 " west one chain ; thence (17) north forty-eight degrees west one  
 " chain ; thence (18) north forty-six degrees west one chain ;  
 " thence (19) north forty-four degrees west one chain ; thence  
 " (20) north forty-two degrees west one chain ; thence (21)  
 " north forty-one degrees west one chain ; thence (22) north  
 " thirty-nine degrees west one chain ; thence (23) north thir-  
 " ty-two degrees west six chains across the pond to the front  
 30 " of the hill, and to end with the last mentioned line as said  
 " lines of courses are now staked and in part graded, and  
 " according to the map hereto annexed ; the said width of  
 " fifty feet to be at the graded surface of the road, and as  
 " used on embankment as in excavation where the same are  
 " or may be respectively required on the said lines of courses,  
 " as by reference to a duly authenticated copy of said deed,  
 " to which these defendants pray leave to refer, will more ful-  
 " ly and at large appear."

And these defendants further show that the said deed of  
 40 conveyance was duly recorded in the office of the clerk of the  
 county of Morris on the 21st day of December, 1848.

And these defendants further say, that owing to the nature of the country in and about Dover, these defendants could not extend their said railroad from Dover to Stanhope without crossing the Rockaway river at the point where their road now crosses said river, and their said railroad through Dover was located so as to do the least possible injury to private or other property, any other location of said railroad through Dover so as to pass the Rockaway river where said road could be extended to Stanhope, would have caused vastly greater injury and damage to private property than was done by the route which was adopted.

And these defendants further say, that their said railroad was built and has ever since been maintained wholly within and not in any place beyond the limits of the land so as aforesaid conveyed to them, and the double track which these defendants have partly laid down and which they desire to complete through Dover, is and will be entirely on the land so as aforesaid conveyed to them.

And these defendants further say, that the first line of fifty-two chains and fifty-two links terminates on the land of these defendants at a point between Sussex and Warren streets, and their said line begins to curve slightly, and to continue on a curve until it crosses over to the north side of and leaves what is called Dickerson street.

And these defendants respectfully submit, that if Dickerson street were at that place a public road or street, these defendants by their charter have a right to cross the same with their track or tracks, and to cross it on a curve if necessary, and to maintain their tracks on the same.

And these defendants also respectfully submit, that if their railroad from the point of the mountain to and through Dover to the Rockaway river, had been located partly and in places wholly in a public road, the need of adopting that location in order to be able to extend their road to Stanhope, was and is so imperative as to legally justify these defendants under the powers conferred upon them by the Legislature, in appropriating to the use of their railroad so much of the public road as might be taken.

And these defendants admit, that they have during the past year, graded for a second tract both east and west of

their Dover station, and for miles west of said station a double track has been laid, and also for a considerable distance east of said station, except a few yards in front of Byram Prudden's premises, and that said double track through Dover is on the north side of the original track, and for said double track opposite Byram Prudden's premises is as these defendants have made a slight embankment on their own land, between one and two feet high ; but these defendants deny that they intend to excavate any land in front or opposite the  
 10 premises of any of the relators for the purpose of laying the said second track, or for any purpose except excavation sufficient to bed ties.

And these defendants deny that the laying of said second track will narrow the wagon way of Dickerson street, because the ground on which said second track has been and is to be laid, if laid, opposite the relators' premises in over twenty years, has not been used as or for a wagon way,\* but during all that time it has been used by these defendants as a place to deposit wood, lumber, hoop poles, ties and other property,  
 20 ty, and could not be used as a wagon way.

And these defendants further say, that a wagon way of twenty-nine feet opposite the complainants' premises is sufficient for all reasonable and necessary purposes, and that these defendants do not propose or intend to appropriate or use on the north side of their original track, any land beyond the limits of the land conveyed to them by the said trustees of Henry McFarlan, deceased.

And these defendants deny that they have laid down, and they also deny that they intend to lay down any second or  
 30 double track for the doing of which they have not lawful consent and authority.

And these defendants in further answering, deny that the laying of said second track will depreciate the value of the property of the relators, or of any of them, but on the contrary these defendants say that the existence and use of the rail-road of these defendants through Dover where it now is, has made the present value of the property of the relators double what it would have been had the said rail-road not been there.

40 And these defendants in further answering say, that they

know nothing of the notice which in the said information is alleged to have been served on the station agent of these defendants, and these defendants submit that such service was no notice to these defendants.

And these defendants deny all unlawful combination and confederacy in said information charged without that; that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, traversed or devised, is true, to the knowledge or belief of these defendants; all 10 which matters and things these defendants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

In testimony whereof the said defendants have hereto caused their common seal to be affixed.

STATE OF NEW JERSEY, MORRIS COUNTY, ss.

The Answer of the defendants, the Morris and Essex Rail- 20 Road Company, was taken under their common seal before me this fourteenth day of December, eighteen hundred and sixty-eight.

## IN CHANCERY OF NEW JERSEY.

Between		
GEO. M. ROBESON, ESQ. ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY, EX-RELATION OF EDWARD A. STICKLE, ET AL.	}	<i>On Bill.</i>
ALS.,		
	Complainants,	
	<i>and</i>	
THE MORRIS AND ESSEX RAIL-ROAD COMPANY,	}	

MORRIS COUNTY, ss.

10 *Edmund Canfield*, of the township of Randolph, in the said county of Morris, being duly sworn on his oath, saith : that he is a civil engineer and made the copy of the map entitled "map showing the 'sites for water power at Dover, Morris County, N. J., by E. H. Van Winkle, Surveyor,'" which is marked exhibit C, in this cause ; deponent obtained the map from which said copy was made this week at the office of Henry McFarlan, Esq., in Dover, from Guy M. Hinchman who was in charge of said office ; deponent further saith, that Exhibit C is a true copy of said map, and was made as nearly exactly like the original as deponent could with particular care make the same, except the shading of the hills and swamps on said copy ; these deponent put on the copy from the eye as deponent had not sufficient time to copy said shading with strict exactness, but as to the roads, streets, streams and blocks of lots said copy, coloring included, is a strict and accurate copy of the original, and in every respect except the shading of the hills and swamps, said copy is a

true and correct copy of the original, and said shading is as nearly accurate as the same can be made without literally transferring the shading from the original to the copy.

EDMUND CANFIELD.

Sworn and subscribed before me, 12th December, 1868.

AUG. C. CANFIELD,

IN CHANCERY OF NEW JERSEY.

<p>Between          GEORGE M. ROBESON, ESQ., ATTORNEY-          GENERAL OF THE STATE OF NEW JER-          SEY, EX. RELATION OF EDWARD A.          STICKLE, ET. ALS.,</p>	}	<p><i>On Injunction.</i></p>
<p><i>and</i></p>		
<p>THE MORRIS &amp; ESSEX RAIL-ROAD COM-          PANY,</p>	}	<p>Complainants,           Defendants.</p>

MORRIS COUNTY, ss.

*Guy M. Hinchman*, of Dover, in the said county, being duly sworn on his oath, saith : that in the spring of 1835, he began living in Dover, and then went into the office of Henry McFarlan in Dover, and defendant has been in said office and had charge of and assisted in the business of said McFarlan ever since deponent knew Elias H. Van Winkle in his life time ; he was a surveyor prior and up to 1835 ; said Van Winkle was in the employ of said McFarlan, and from paper in the office of said McFarlan, deponent thinks 10 said Van Winkle was in the employ of said McFarland two or three years, but he was not in the employ of said McFar-

Jan after the spring of 1835; and about the spring of 1835 said Van Winkle left Dover and never was about Dover afterwards for any length of time; a good many years ago deponent heard of the death of said Van Winkle, but he cannot fix the time, but he thinks over twenty years ago; deponent is acquainted with the hand-writing of said Van Winkle and the writing on the original map, of which Exhibit C in this cause is a copy, is in the hand-writing of said Van Winkle; deponent first saw said map in the office of Mr. McFarlan and it has always been kept in said office since deponent knew said map; deponent cannot remember when he first — said map, but it was a good many years ago; deponent further saith, that said map is the oldest map of the town plot—Dover—about the office of Mr. McFarlan that deponent knows of or has ever seen; this week by consent of Mr. McFarlan, deponent gave said original map at the request of Jacob Vanatta to Edward Canfield to be copied.

G. M. HINCHMAN,

20 Sworn and subscribed before me, 12th December, 1868.

A. G. P. SEGUR,

*Notary Public for N. J.*

## IN CHANCERY OF NEW JERSEY.

Between THE ATTORNEY-GENERAL OF NEW JERSEY EX. REL., EDWARD A. STICKLE, AND OTHERS, RELATION,	}	<i>On Bill          for Injunction.</i>
Complainants, <i>and</i>		
THE MORRIS & ESSEX RAIL-ROAD COM- PANY,	}	
Defendants.		

MORRIS COUNTY, ss.

*Jacob Hurd*, of the township of Randolph, in said county, being duly sworn on his oath, saith : he was seventy years old on the 19th day of October last ; deponent was born and brought up on the farm where he now lives, about one mile from the village of Dover, in said township and county ; and deponent during his whole life time has lived there, near to the said village ; in the year 1824 or 1825, deponent commenced keeping an inn or tavern in said village ; deponent's inn was then on a lot which is at the north west corner of Warren and Blackwell streets, opposite the large stone building now belonging to Edward A. Stickle ; and deponent kept his inn at that place about three years ; at that time the public road from Berkshire Valley through Dover to Morristown, where it passed deponent's said tavern, was in the same place north of Blackwell street where Warren street north of Blackwell street now is ; on the south side of Blackwell street said public road passed diagonally across the block which now lies between Warren and Sussex streets and the rail-road and Blackwell street, and came on to the

16

20

ground now occupied by the rail-road of the Morris and Essex Rail-Road Company, between Sussex and Morris streets; while deponent was keeping the inn before mentioned, Henry McFarlan, who then owned a large part of the land in and about said village, had a map of said town made, and on said map he laid out streets, among which were Blackwell, Sussex and Dickerson streets, after said map was made the first lot sold by said McFarlan was the lot on which Isaac B. Jolley's hotel now stands fronting on Blackwell

10 street, and by subsequent purchases extending along Sussex street to Dickerson street; this lot was then purchased by this deponent and he continued to own the same until about the year 1849, when deponent sold the same to one John M. Losey; soon after deponent bought said last mentioned lot, he fenced the same along the line of Sussex street, as that street now is from Blackwell street to Dickerson street, and from that time on all the travel to and from Dover on the public road first hereinbefore mentioned came into and went from said road at the junction of Sussex street with said

20 road, and ever since then that portion of said public road which ran diagonally across the block hereinbefore mentioned, and which diagonally across the rear of deponent's said last mentioned lot, has been disused and enclosed, and to a considerable extent covered with buildings; deponent further saith, that he built a tavern house and stables on the lot now owned by said Jolley, about the year 1828 or 1829; that the public road first hereinbefore mentioned was a turnpike road, the Morris and Sussex or Sussex and Morris turnpike; and when deponent purchased the said Jolley lot deponent understood and ever since has understood that said

30 turnpike, by act of the Legislature, through said village was changed so that thereafter it would and should pass through Dover on what is now known as Sussex street, and for that reason deponent purchased for a tavern site the corner lot now occupied by said Jolley; deponent further saith, that after he built the tavern house last mentioned, said Sussex street and the public road from Sussex street to the point of the mountain south of Blackwell street was always repaired, worked, and kept in order, by, and under the direction of overseers

40 of the highways, and that there never has been but one public

road from Sussex street to to the point of the mountain south of where Blackwell street now is ; deponent further saith, that prior to the year 1848 Blackwell street was not made, opened or used east of Morris street, but said Blackwell street from Morris street to the point of the mountain was first made and put in use as a road about the year 1848 or 1849.

JACOB HURD.

Sworn and subscribed before me this 16th day December, 10  
1868.

A. G. P. SEGUR,  
*Notary Public.*

IN CHANCERY OF NEW JERSEY.

Between  
THE ATTORNEY-GENERAL OF NEW JERSEY  
EX. REL., EDWARD A. STICKLE,  
AND OTHERS, RELATIONS,

Complainants,

and

THE MORRIS & ESSEX RAIL-ROAD COM-  
PANY,

Defendants.

*On Bill  
for  
Injunction.*

MORRIS COUNTY, ss.

*John H. Ford*, of Randolph township, in said county, being duly sworn, says : that he will be seventy years old in July next, and deponent has lived in the village of Dover, in said township and county, all the time since the year eighteen hundred and eighteen or eighteen hundred and nineteen ; that deponent's brother William Ford owned the land, about five acres, where the depots of the Morris and Essex Rail-Road Company now are in Dover since and before the year

- 1821, and he continued to own the same until he conveyed it to the said Rail-Road Company; that the house in which said William Ford resided was on said lot and stood directly opposite to the house now belonging to Byram Prudden, and before the rail-road was made, the front of said William's dwelling house was between three and four rods south of the road which ran between the said last mentioned house and Byram Prudden's house, and that said road between said houses was before the rail-road was built, part of the
- 10 public road from Dover to Morristown, and ever after deponent came to Dover in the year 1848, the said road was the only road south of the Rockaway river from Dover to Morristown, and in front of the said Prudden's land, and for some distance below them the said rail-road is now in what used to be the public road before mentioned; that deponent has lived in a stone house on the south side of said public road and east of said William Ford's land ever since July, 1836; deponent's house is a little to the east of the road to Millbrook; and deponent further saith, that in front of the
- 20 premises on which deponent lives, the rail-road is now right where the wagon track of the public road before mentioned, used to be before the rail-road was made; deponent further saith, that his dwelling house, which is claimed by Henry McFarlan, is about twenty-five or thirty rods east of the Millbrook road and about sixty feet south of the rail-road; deponent further saith, that when deponent first knew the public road hereinbefore spoken of, it was part of the turnpike road, but forty years or more ago it was surrendered or abandoned by the Turnpike Company, and after that
- 30 until the rail-road was built the said public road was worked and taken care of by and under the direction of the overseers of the highways from Sussex street to the point of the mountain.

JOHN H. FORD.

Sworn and subscribed before me this 11th day of December, 1868.

A. G. P. SEGUR,  
*Notary Public.*

IN CHANCERY OF NEW JERSEY.

Between	}	<i>On Bill for Injunction.</i>
GEORGE M. ROBESON, ATTORNEY-GENERAL, EX. RELATION OF EDWARD A. STICKLE, ET. ALS.,		
Complainants,		
<i>and</i>		
THE MORRIS & ESSEX RAIL-ROAD COMPANY,	Defendants.	

IN CHANCERY OF NEW JERSEY.

Between	}	<i>On Bill for Injunction.</i>
BYRAM PRUDDEN,		
Complainant,		
<i>and</i>		
THE MORRIS & ESSEX RAIL-ROAD COMPANY,	Defendants.	

MORRIS COUNTY, ss.

*Jedidiah B. Bassinger*, of the township of Rockaway, in the county of Morris, being duly sworn on his oath, saith: that his age is fifty-six years; that by profession he is a civil engineer; that he entered into the service and employment of the Morris and Essex Rail-Road Company as a civil engineer in the spring of 1846, and he continued in the employ of said Company as an engineer until the summer of 1866; during a portion of said period deponent as an assistant engineer, and the other portion thereof, namely, after 1846 he 10 was chief engineer of said Company; deponent was also General Superintendent of said Rail-road Company for a pe-

road of ten years, ending in the summer of 1866; that deponent was the engineer who actually surveyed and laid out the said road of the Morris and Essex Rail-Road Company from the point of the mountain east of Dover to and through the village of Dover, in the said county of Morris; and deponent was the engineer who had charge of the construction of said portion of said road; that said rail-road was surveyed and graded from the point of the mountain to the present Dover station of said rail-road in the year 1846, the rails on the last mentioned part of said rail-road were laid in the year 1847; the track from the station to the canal was laid in 1848 or 1849; when said portion of said rail-road was surveyed the public road from Dover to Morristown went from Blackwell street down Sussex street, at the end of Sussex street it entered a road which was at about right angles to Sussex street, and then continued on in an easterly course to the point of the mountain; from Sussex street down to Morris street said road lay between land of William Ford on the south, and McFarlan's estate and Byram Prudden's on the north, and from Sussex street to the point of the mountain said public road was fenced all the way on the north side thereof; said fence was about the same distance from the travelled track of said road, as is usual with country road, and north of that road fence there was no sign or appearance of a parallel or nearly parallel road until Blackwell street was reached, and that time Blackwell street, as a used road or way, did not extend any further east than Morris street; and on the easterly side of Morris street there was a fence across Blackwell street which prevented, and from appearances always had prevented, that portion of Blackwell street which is now east of Morris street, from being used as a road street or way; when deponent surveyed and laid out said rail-road through Dover, what is now called Dickerson street was not open to the westward of the westerly line of Warren street, but there was then a fence across what is now called Dickerson street, from the westerly line of Warren street to William Ford's land, and the land west of said fence which is now called Dickerson street was enclosed and cultivated, and it had no signs or appearances of having ever been used as or for a street or road; deponent further saith, that when

said portion of said rail-road was being surveyed and constructed, and before that deponent learned and understood from the officers of said Rail-road Company and also from Henry McFarlan, that said Company, had consented and concluded to extend their said rail-road to Dover upon the undertaking and enjoyment of said McFarlan, that he would procure and furnish to said Rail-road Company, without cost to it, the right of way through Dover, and from there to or near Morristown; deponent further saith, that said rail-road from the point of the mountains to and through Dover, 10 was surveyed, laid out, and made where it now is, because with a view to extending said rail-road to Stanhope; it was not practicable to locate it elsewhere, and it was located and made so as to do no unnecessary injury to private or other property, and when the track was laid to and through Dover, and before and after it was laid down, deponent often declared, and made known, and it was known to every person in or about Dover, who took or had any interest in this matter, that the track then laid down was and would be the most southerly track of said rail-road, and that when a second 20 track should be laid down, (and the laying of a second track was then contemplated and talked about as a thing to be afterwards done,) it would be put on the north side of the first laid track; and deponent further saith, that the proper and necessary place for the second track is on the north side of the original track; deponent further saith, that said part of said road as surveyed and made, under the supervision of deponent, crossed the public road hereinbefore mentioned, a little west of the point of the mountain, and from thence to about Bergen street it passed close to and partially upon 30 the said public road, and from thence to Warren street; a considerable portion of the said rail-road was located within the limits of the then used public road, and the said rail-road was so surveyed, located and made, upon the understanding and expectation that said public road should and would be vacated, according to law, so that there should be no highway or rights of highway within the lines surveyed and laid down for said rail-road; and in about the year 1848, deponent was informed and supposed that said public road had been legally vacated by surveyors of the high- 40

ways, and that the right and title of said Rail-road Company to its road way as surveyed through Dover, was complete and unquestionable ; deponent further saith, that from the time said rail-road was made to the Dover station until deponent left the service of said Company, the Company used the land within the limits of their survey north of their track and opposite the block which lies between Sussex and Morris streets, as their own land, for their own purposes, and particularly as a place on which to place wood, timber, and hoop poles, and other property, and in that way their

10 said land was at their free will and pleasure, and during a very considerable portion of the time more effectually prevented from being travelled upon than it will be by having another rail-road track laid and used thereon ; deponent further saith, that said rail-road is built from the point of the mountain, according to the survey on a straight line to a point between Sussex and Warren streets, and it then commences to curve and it continues to curve until it passes across and gets entirely to the northward of what is called

20 Dickerson street ; deponent further saith, that that portion of Dickerson street so called, which lies to the west of the rail-road depot and west of the rail-road track has never, since deponent first known it, been used or had the appearance of being used as a street or road, but on the contrary the principal part of it has always been enclosed and is now enclosed, and a portion of it has long had and now has a tree nursery upon it ; deponent further saith, that he has seen to-day in the possession of Jacob Vanatta, a copy of two returns of surveyors of the highways, one laying out a public

30 road from the point of the mountain to Sussex street, and the other vacated the old road, of which deponent has hereinbefore spoken, and a certified copy of a map accompanying said returns, which returns and maps are fastened together and marked exhibit "A" in these causes ; deponent has examined said certified copy of a map, and deponent thinks and believes said map is erroneous in this respect, that it represents the space between the said old road and the centre line of the rail-road as greater than it was in fact when said rail-road was surveyed and made, nor does said

40 map correctly represent where the curve in said rail-road

commences, and so far as the location of the rail-road and old road are commenced, it has the appearance of having been rather carelessly or unskillfully made, and without any actual survey of the line of the rail-road or of the old road; and deponent further saith, that when said rail-road was located and made through Dover, Byram Prudden and Joseph L. Young both lived where they now do, and they almost every day and often in every day saw said road being surveyed and staked out, or that it had been staked out, and they saw it made and put into use in front of their premises, 16 and they never made any objection to the location or construction of said rail-road, but seemed pleased and satisfied that it was being located and made in the place where it was surveyed and made, and they both understood and knew that it was the purpose of said Rail-road Company to permanently use the land included in their way as surveyed for the uses and purposes of a rail-road, nor did this deponent hear or know of any objection or complaint on the part of any citizen of Dover, to the location and making of said rail-road in the place where it now is; deponent further 20 saith that he has just read the courses and distances contained in the copy of a deed from Stephen Van Rensselaer, Henry McFarlan and Daniel Ayers, Trustees, &c., to the Morris and Essex Rail-road Company, dated the seventh day of September, 1848, and which is marked Exhibit B in these courses; and deponent further saith, that said courses and distances describe the centre line upon and according to which said rail-road was laid out from the point of the mountain to and through Dover; deponent further saith, that when he made said survey there were no visible signs, 30 marks or monuments of Dickerson street to be seen at or about the commencement of the survey described in said deed, and that the language in said description which is in these words, being also about fifty feet southerly of the line of the north side of Dickerson street, means and was intended to mean the north line of Dickerson street, produced easterly from Sussex or Morris street.

J. B. BASSINGER.

Sworn and subscribed before me this 11th day of December, 1868.

AUG. C. CANFIELD,

*Com. of Deeds for Morris County.*

IN CHANCERY OF NEW JERSEY.

Between  
GEORGE M. ROBESON, THE ATTORNEY-GENERAL OF NEW JERSEY, EDWARD  
A. STICKLE, AND OTHERS, RELATIONS,  
Complainants,  
and  
THE MORRIS & ESSEX RAIL-ROAD COMPANY,  
Defendants.

} *On Bill  
for Injunction.*

MORRIS COUNTY, ss.

*Thomas I. Halsey*, of the township of Randolph, in said county, being duly sworn on his oath, saith : that his age is forty-two years, and has been acquainted with the village of Dover as long as he can remember ; at deponent's earliest recollection he used to go through said village entering it at the north-west corner thereof, and then went down Blackwell street to Sussex street or Morris street, and then entered an old public road which ran to the point of the mountain and thence to Morristown ; before 1848, from where  
10 Sussex street now is to the point of the mountain there was a fence on the north side of the said old road, at about the same distance from the centre of said old road as is usual with country roads ; deponent's impression and belief are that said old road was about four rods wide ; deponent knows very well where the northerly line of Dickerson street is said to be from Sussex street to below Essex street ; the northerly line of said old road was substantially identical with the northerly line of Dickerson street from not far below Essex street ; the northerly line of said old road was a

little to the southward of the northerly line of Dickerson street extending eastward and below where Bergen street is said to have been intended to be ; the northerly line of Dickerson street would fall inside or north of said road fence, and there was nothing on the ground to show where Dickerson street was where said street differed from said old road ; on the 19th of April, 1854, deponent went to the Dover station of the Morris and Essex Rail-road Company, as agent of said Company at that station, and deponent continued there in that capacity until September 1866, excepting 10  
 three years, (from the 16th August, 1862), during which deponent was in the army of the United States, and since September, 1866, deponent has been in the employ of said Company and had his quarters at the Dover station ; while deponent was such station agent the said Company used the land on the north side of their track to a width of over fifteen feet from Essex street clear up to Hinchman's line at their free will and pleasure, and a great deal and a very considerable part of the time was used to deposit wood, 20  
 lumber, hoop poles and other materials, and merchandise upon and in that way was prevented from being travelled upon, or used as a road ; deponent understood said Company owned the land so used, and deponent supposed he had a right to use the same in that way ; and deponent never heard his right or the right of said Company to so use said land questioned or disputed ; and deponent further saith, that use of said land was for more of an interference with the use of the said land for road purposes than it will be to put and use a second rail-road track on the same land ; deponent further saith, that he knows the place on which it is 30  
 said Bergen street was intended to be made ; but deponent saith, there was no street then on the ground, and there never has been within the memory of this deponent until within a year, and until very lately the land there has been cultivated and fenced ; deponent further saith, that Essex street north of Blackwell street was not opened or used until within six or seven years last past.

Deponent further saith, that there has been no excavation made to lay the second track of said rail-road through Dover, except such excavations as was or will be necessary 40

to bed the ties for the second track, and no more excavation is intended to be done to lay said second track.

THOMAS J. HALSEY.

Sworn and subscribed before me, December 12th, 1868.

ALFRED MILLS,  
*Master in Chancery.*

IN CHANCERY OF NEW JERSEY.

<p>Between          GEORGE M. ROBESON, ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY, EX. RELATION OF EDWARD A. STICKLE, ET. ALS.,</p>	}	<i>On Injunction.</i>
<p>Complainants,</p>		
<p><i>and</i></p>		
<p>THE MORRIS &amp; ESSEX RAIL-ROAD COMPANY,</p>	}	
<p>Defendants.</p>		

MORRIS COUNTY, ss.

*Frederick A. DeMott*, of said county, being duly sworn on his oath, saith: that he has read the answer of the defendants in this case, and from an examination of the record of deeds of the county of Morris made by deponent; deponent knows the statement, of said answer, as to the times when and the persons from whom the Relators in this cause first acquired title to the lands owned by them, and bounding on the north side of what is called Dickerson street in Dover, 10 in said county, to be true; deponent further saith, that the sworn copy of the deed from Henry McFarlan and Ann his wife to Edward A. Stickle, marked Exhibit "D" in this

cause, shows when and from whom said Stickle first acquired title to land bounding on the north side of Dickerson street; the sworn copies of deeds from Henry McFarlan and Ann his wife to Joseph Roderer marked Exhibits E, F, respectively in this cause, show when and from whom said Roderer obtained title to his land bounding on the north side of said Dickerson street; the sworn copy of deed from Jacob Scott and Mary his wife to William S. Young, marked Exhibit "G" in this cause, shows when and from whom the said William S. Young first acquired title to land bounding on the north side of said Dickerson street; and deponent further saith, that the sworn copy of a deed from John B. Clark and wife to Mahlon Munson, marked Exhibit "H" in this cause, shows when and from whom the said Mahlon Munson acquired title to his land which bounds on north side of said Dickerson street; deponent also saith, that he believes the sworn copy of a deed from William Ford to the Morris & Essex Rail-road Company, which is marked Exhibit I in this cause, shows when and from whom the defendants acquired title to the lands occupied by their station houses, engine house, shops, and other buildings, which defendants use at Dover, in connection with their said road. 10 20

FRED. A. DEMOTT.

Sworn and subscribed before me this 14th day December, 1868.

ALFRED MILLS,  
*Master C. C.*

A true copy,  
B. GUMMERE, Clerk.



- STEPHEN VAN RENSSALEAR, et. als., trustees, } Deed dated  
     &c., to }  
 CHILEON F. DECAMP. } April 1, 1836,  
     Marked by me Exhibit No. 2.
- STEPHEN VAN RENSSALEAR, et. als., trustees, } Deed dated  
     &c., to }  
 CHILEON F. DECAMP. } April 1, 1837.  
     Marked by me Exhibit No. 3.
- HENRY MCFARLAN } Deed dated 10  
     to }  
 CHILEON F. DECAMP. } April 1, 1842.  
     Marked by me Exhibit No. 4.
- CHILEON F. DECAMP and wife } Deed dated  
     to }  
 GUY M. HINCHMAN. } April 1, 1837.  
     Marked by me Exhibit No. 5.
- STEPHEN VAN RENSSALEAR, et. als., trustees, } Deed dated 20  
     to }  
 JACOB SCOTT. } April 1, 1839.  
     Marked by me Exhibit No. 6.
- JACOB SCOTT and wife } Certified copy of  
     to } Deed dated  
 WILLIAM L. YOUNG. } April 1, 1847.  
     Marked by me Exhibit No. 7.
- STEPHEN VAN RENSSALEAR, et. als., trustees, } Deed dated 30  
     &c., to }  
 ELIEZER LAMSON. } April 1, 1837.  
     Marked by me Exhibit No. 8.
- ELIEZER LAMSON and wife } Deed dated  
     to }  
 BYRAM PRUDDEN. } March 26, 1839.  
     Marked by me Exhibit No. 9.
- STEPHEN VAN RENSSALEAR, et. als., trustees, } Deed dated  
     &c., to }  
 BYRAM PRUDDEN. } April 1, 1839. 40  
     Marked by me Exhibit No. 10

Map of Dover, "Surveyed by order of the trustees of Henry McFarlan, deceased, by Edward Carter, civil engineer," 1849.

Marked by me Exhibit No. 11.

Map of Dover, Made by Elias H Van Winkle in 1831.

Marked by me Exhibit No. 12.

*Edward Carter*, a witness, called and sworn on the part of  
10 the complainants, deposes and says: that he is fifty-five  
years old, resides in the city of Newark, New Jersey, and is  
a civil engineer and surveyor by profession, always followed  
that business.

Exhibit No. 11 being shown witness he says—I made that  
map in 1849; I made it from a survey of the premises; I  
think I surveyed the most of the village; I was just think-  
ing whether I another map of the place; It is my impres-  
sion that I had one of the place; I think it was an old one  
and I went over it to verify that map; it is so long ago since  
20 I made this map that it is impossible for me to give the de-  
tails; I intended this map should be correct as far as I went  
with the survey I then made; this map was made from ac-  
tual survey so far as the map extends; Mr. Henry McFar-  
lan employed me to make the map, and I left it with him  
when I had got it done.

Cross-examined.

I don't know for what use or purpose Mr. McFarlan had  
the map made; I commenced the survey the forepart of the  
30 season; think it was in the spring; I took field notes when  
I surveyed in which I entered all the surveys I made; I have  
not those field notes with me; I must have them in my pos-  
session if they have not been lost; I don't think I have seen  
them since I made the survey; I think I surveyed the line  
of the rail-road from the easterly side of the map through  
Dover; will not be certain that I went east of where the  
brook crosses the railroad; I would not say how far the sur-  
vey extended; I cannot tell now the course the railroad then  
was; I have no recollection whether the brook formerly  
40 crossed the route of the rail-road just below Bergen street;

I never saw the brook prior to that time ; I think Mr. McFarlan furnished me an old map of the village ; I won't be certain that I had one ; I do not recollect who made it ; I cannot tell you what I actually surveyed, or how far the old map extended.

Re-direct.

I did not know when I came here this morning what I was to be asked about ; I had no conversation with any one on this subject till I got in the room ; I found a subpoena in my office two days ago.

Exhibit No. 12 shown witness. He says : I could not say whether this is the map I had or not ; if I did have an old map, do not recollect finding any errors in the lines of it.

2d cross-examination.

I do not think I surveyed to test the old map ; it's so long ago I cannot recollect about the details of the survey.

EDWARD CARTER.

Sworn and subscribed before me this 18th day of Decem- 20  
ber, 1868.

EDMUND D. HALSEY,

*Master in Chancery of New Jersey.*

*William L. Young*, a witness, called and sworn on the part of complainants deposes and says ; that he is 66 years old ; resides in Dover, and by occupation is a baker ; I moved to Dover on the 12th day of April, 21 years ago last April ; I moved into the corner house now belonging to Mr. Munson, corner of Dickerson and Sussex streets ; I bought one hundred feet front on Dickerson street from Jacob Scott.— 30  
Exhibit 7 being shown witness he says,—that is the deed of my property ; I sold off part to Michael B. Titman, and that is what Mr. Munson owns now ; one John Clark once owned the corner lot after me ; after I sold the corner lot, I built on the remainder of the lot ; the house now owned by Munson appeared to be an old house when I went there ; I put up an addition the same year that I went there ; I own at the present time in addition to the old lot thirty-seven feet which I have bought since ; I actually own after selling to Titman 97½ feet ; I have a bakery and two dwelling houses 40

on my lot ; on the same block to the west of mine there are two buildings, but one of them contains two stores ; the next west of that are buildings put up by Mr. Edward A. Stickle since I came to Dover ; the corner building is a store, the others are tenant houses, but I could not say how many they are ; when I first went to Dover there was a large stable where these buildings of Mr. Stickles are ; they were in rear of what was then called the Bank House, now the Park House ; it is Warren street next west of me. When I went to

10 Dover think there was no fence across Dickerson street at the corner of Warren street ; Dickerson street was opened as far west as the Bank House stables, I know, I cannot say how far it was opened ; the railroad was not built when I first went to Dover ; I have paid for repairing Dickerson street in front of my own door ; there was rather a low place in front of Munson's which Munson got Segur, who was road master, to repair the present season by throwing some 30 loads of stuff in ; the water from the railroad tank ran in there ; this is the only work I have known the overseer of

20 the road to do, except that Segur gathered a few loads of stones along the general line of the street from Warren to Sussex streets ; this is the first I have ever know the overseer to work on Dickerson street, unless it be where Warren street crosses it, previous to that I never saw any repairs put on it except they made a low trench along the railroad to save the water from overflowing our street ; I have seen great quantities of hoop poles laid down in the street ; it was done frequently in certain seasons of the year ; I have seen men come and put their hoop poles downs there off their wagons, this was chiefly towards the east end, and also

30 towards the west end ; they put some down before my place until I forbade them ; this was at the time William Losey was agent there, which must be 12 or 14 years since ; I told him that if he put hoop poles down there I would complain to the grand jury ; he told me he would forbid them putting any more there. (Mr. Vanatta objects to the declarations of Mr. Losey as evidence.) Since that time there have been no more put down opposite my place ; William Losey was station agent for the M. & E. R. R. Co., I think it was Mr.

40 Halsey who succeeded him as agent ; hoop pole season com-

menced in November, as near as I can say ; that was about the time when they commenced to put them down, it continued till along in the latter end of March ; several other persons have complained of their blockading the streets when there were a great many there. (Mr. Vanatta objects to the latter question as to the complaint of other persons.) There were three railroad tracks that went through—one on the north side of the depot, one on the south side, and one through the depot before the last track was laid ; the last track within a few days ; there used to be two clear tracks through the depot ; 10 one of them has been has been discontinued ; when the railroad first came so Dover they stopped on the track on the north side of the depot in the same place where they stop now ; they had but one train up and the same back, and they went the same way ; I have seen them start trains out of the depot—have gone out in passenger cars myself that way.

*Q.* How is the ground to the south of the Rail-road depot as to being level ? (Objected to.)

*A.* There is a space of it pretty level ; cannot say how 20 many feet ; there is a large place to the east towards the school house ; there was a garden there which they leveled down.

Witness looking at Carter's map. The land between the race running from the mill pond and the rail-road is generally level ; they have carted the stuff off of it.

I know Mr. Berthoud the Superintendent, when I see him ; have had a little conversation with him : cannot say exactly when ; it must be three weeks since I last spoke to him ; that was before I came to Morristown to see Mr. Forsyth, 30 and made my affidavit ; it was in reference to laying the second track that we had a few words. (This conversation objected to by Mr. Vanatta.) He said if I would have the track down it would be so planked that it would be no interruption ; I did not consent ; I said it would throw all the wagon business on our side of the street and keep us in constant confusion ; I saw men laying track in rear of Mr. Hinchman's lot ; I saw them working along ; it may have been from the 25th to the end of November ; I was told that it was a Mr. Babcock that had charge of the work ; I knew 40

the man when I saw him ; Mr. Babcock came to my house ; at the time they had passed Hinchman's and were opposite Mr. Stickle's point with their second track ; I think this was the day before I came to Morristown to make my affidavit.

(The conversation with Mr. Babcock objected to.)

He asked me to go up where they were working, in front of Mr. Stickle's lot ; he said they were going to put in a frog which would bring the cars on the old track in front of my place ; he said they were not to continue the double  
 10 track opposite my place—there was to be but one track there ; the switch or frog was to be on the upper side of Warren street—the west side ; they did not put a switch or frog in there to my knowledge ; there were perhaps 10 or 12 men at work there laying track at the time : it was I think in the fore fore part of the day that Mr. Babcock showed me this ; the next thing that I saw was a great gang of men brought on there ; it may have been 75 or 100 men, and they worked very hard tearing up the street and carting away the stuff ; they went on laying track that day as fast as they  
 20 could, digging down a few inches, the breadth of the track, and putting in ties and laying rails ; they did not stop at dark but went on by lamp light as late, perhaps, as 9 o'clock ; they were at work when I put up my shutters ; I could not say how many men were at work at that time ; I read the injunction to Mr. White the next morning, and when Mr. Babcock came down the road afterwards, I served him with a notice ; when Mr. Babcock told me they were going to put in a frog I told him I had no such room to object as though it was to interrupt my part of the street with the double track ; I told  
 30 him if you had told me so before it might have saved trouble and expense ; I meant by this going to extremes to stop them, and I meant by this going to law ; I do not know where Mr. Edward A. Stickle was at the time Mr. Babcock came to my house ; I could not say whether he had been to Morristown that day to see about that suit ; he went sometime about then to see about it ; I had heard that the Rail-road Company were intending to lay another track along Dickerson street about a half year ; it may be nine months before ; I saw them building a double track the summer before down  
 40 at the point of the mountain to the east ; I had a notice

served on them ; gave it to their agent, Mr. Dalrimple ; they Byram Prudden, I. B. Jolley, (I won't be certain whether Mr. Munson signed it at that time or not,) Mr. Stickle, Mr. Roderer and myself signed that notice ; after serving of the notice they did not lay any more of the double track on what I call Dickerson street ; it stopped to the east of Morris street ; it came from the point of the mountain nearly to Morris street on the north side of the old track ; I never heard before last summer that the Rail-road Company intended to lay another track north of their old track, between Warren street and Morris street there is considerable travel on Dickerson street ; the road from Millbrook comes in about in range with Morris street ; there is a good deal of travel from these—Orchard street has considerable travel too ; it is a laid out street and leads down into Warren street ; there are a good number of houses in the part of the town reached by Orchard street ; it is growing so fast that I cannot tell the number of houses in it ; there may be 10 or 15 houses put up in the last year.

Q. Which is Orchard street on Carter's map?

20

A. It leads from Warren street to Chestnut street. (Pointing with his finger on the map.)

People coming to the depot with wagons and carriages come from both ways in Dickerson street ; while waiting at the depot their carriages stand in Dickerson street between Sussex and Warran streets ; it is not considered as blocking up the street with one track ; there is room enough ; I think the effect of putting another track in Dickerson street would be putting life in great danger ; (Objected to by Vanatta.) Because when a carriage drives up to my door, sometimes women and children left in the wagon or carriage when some one comes in to purchase at my store ; at such times should a train come down on this intended second track, horses would be apt to be frightened with a team so close to them, and turning in fright might so endanger them that are in the wagon ; there would not be room for another wagon to turn between them and the track if there was a wagon standing in front of my store ; there was a high board fence on the rear of Mr. Hinchman's lot before the second track was laid ; that fence was about on a line, 40

as near as I can tell by the eye, with the front of the buildings on the street out to Prudden's: I think it might have come a little further out, a few feet, than Mr. Stickle's buildings; I was given to understand that Dickerson street was 62 feet; I never measured it; the reason was that when I was laying my sidewalk I was told that it was a 62 feet street, and that I could take so much off; there is a curbstone all the way from Warren to Sussex streets, nearly; the sidewalk I think is 12 feet wide, I won't be certain; there is a  
 10 row of trees along the side walk inside of the curbing, Mr. McFarlan put down himself, the part next to Warren street and in front of the last lot I bought; I never measured the width of Dickerson street before the rail-road came there; I could not say what marked the south side of the street then; there was an old fence there when I came there; it appeared to be parallel to the other side of the street; it was a post and rail fence; I could not tell how far it extended; Orchard street was not opened then, and I think it ran on past there; from the stables of the Park House running  
 20 east, Dickerson street was opened to Essex street; you could drive a wagon from one end to the other of it; the Episcopal academy is on the next block east of Mr. Prudden, between Morris and Essex street; it is on the north side of Dickerson street; it was built before I came there; it appeared to have been up some time when I came there; it was a stone building in good repair.

Cross-examined.

I lived in Brooklyn, in New York, before I moved to Dover; when I bought the property of Mr. Scott he was an  
 30 ostler attending to the horses of Mr. Hurd, but his wife lived in the buildings which I bought; there was a part of the rail-road graded below academy—the Episcopal academy—a considerable way below that at the time I bought, but no rails laid; the road was not staked out where it is now at the time I bought the property; I had no certainty that the road was coming up to where it is now at the time I bought; I did not know that it was; I was told that it was in doubt whether the rail-road would be carried through where it is  
 40 now, or be carried along the other side of the river; I could

not say who told me; there was another place I could have bought on the other side of the river, and I preferred where I bought; I did not take it into consideration where the rail-road was to be in Luying; I knew Edward Jackson; did not see him when I was going up to Dover to buy; I came by stage from Newark through Caldwell; I did not see him about the time I was buying; do not know who was the contractor who was grading below the academy; I cannot say when I bought the 37 feet of Mr. McFarlan; it may have been six or seven years ago; it was Henry McFarlan; it 10 fronts on Dickerson street between the original lot I owned and Mr. Roderer; there is one building on this lot, built at my expense, commenced this last summer; it was built for a store and dwelling house; the Bank house property I understood belonged to Mr. McFarlan when I went there; the work done by Mr. Segur on the road was done last summer.

The hoop poles I complained of were as close to the track as they could be laid and extended; I cannot say how far; they had a considerable base; I never measured how far they extended, but so far that I considered them an inter- 20 ruption; could not say whether they came within twenty feet of the side walk; it was fourteen years since anything I consider an interruption has been laid down by the side of the track till now; I mean directly in front of my place, below and above that they have been putting things ever since; I have seen hoop poles, rail-road ties, and wood; I cannot say as to lumber.

The track at the depot and south of the depot passes through and seems to be a clear track, not a siding, it comes out on the main track about at the school house, to the west 30 it strikes off about at Warren street or a very little west of that; west of Warren street and between it and the canal there is a high stone wall part of the way on the south side of the track; it is by Segur's property and opposite it; there is none opposite Hinchman's; the old track is near that stone wall.

Examination adjourned until 2½ o'clock, P. M., same day.

Friday afternoon 2½ o'clock, cross-examination of Mr. Young continued.

Wm. Losey has been de d, I should think, about eight years ; I have no certain recollection of his death ; Mr. Forsyth was in Dover a few days since, last week or the first of this ; do not recollect his being there the week before ; I had the talk with Mr. Babcock about the frog on Wednesday, I think on the second day of the month ; I couldn't say who was by at the time ; I had spoken to Mr. Neighbour ; before then I had employed no lawyer but him ; he had drawn up the writings for all concerned ; it must have been some weeks

10 before when we employed Mr. Neighbour, I had not employed any other lawyer when I saw Mr. Babcock ; did not tell Mr. Babcock that I had employed Mr. Neighbour ; had not talked with Mr. Babcock about a suit before that ; did not tell him then that I was about commencing a suit ; that night they got the track east past my door ; I think not past the mouth of Sussex street ; they got it as far as the middle of Sussex street the next day ; there was a gap I should think of two or three hundred yards in the double track ; have not

20 been up the road to see how far west it is laid ; the last time I saw it there was no double track from the point of the mountain to Sussex street ; this was on Sunday about four weeks ago ; I served Mr. Babcock with an injunction ; think it was half past seven or half past eight when he came down on the train ; am under the impression it was Thursday morning ; think it was the next day after they worked so late ; I wouldn't be sure, think they worked on the double track until they got the notice ; I received the notice from Mr. Stickle between seven and eight o'clock in the evening, guess they were not at work when I got the notice laying the double

30 track ; I think they did not lay any track the night I got the notice ; cannot say whether Babcock was in town when I got the notice ; he came down the next day on the train ; I am sure Mr. Jolley signed the notice I served on Mr. Dalrymple ; I saw him sign it, Isaac B. Jolley ; I can't say that I have heard of their laying a double track on the road more than six months ago ; I mean in front of my house, I heard before that that they were going to lay a double track through to Phillipsburg ; I could not say when I heard that, it is more than a year ago any way ; did not hear of its being

40 talked of ever since the road has been to Dover ; Orchard

street was laid out by surveyors. (Objected to as a matter of record.) Cannot say whether it was nine years ago, though I was present with the surveyors at the time; think it has been wit' in the last ten years; the fence on the south side of Dickerson street; could not have extended any further east than the road crossing from Millbrook; there was not a post and rail fence all that way; part of the way it was a picket fence; there was no fence in front of John Ford's house; there was a garden in front of his house and a fence around the garden; the same fence for what I know that 16 there is now; when I first went to Dover I came and went by Caldwell, by stage to Newark; I sometimes rode to Morristown; when I went to Morristown I went down Blackwell street to the point of the mountain and thence by Mr. Casterline's I could not say whether I did so in 1847; the street between Byram Prudden's house and William Ford's house was wide enough for a street; cannot tell how wide it was.

Re-direct examination.

There never has been a fence in front of the school house 20 in my time; when I heard some year or two ago that they were about to lay a double track through to Easton; I didn't think they would have to lay a double track in front of my house; the track that runs south of the depot becomes all one with the other about where the school house is; I think there is no impediment to laying another track on the south side of the main track opposite Mr. Hinchman's, there is plenty of ground there—there is plenty of room; no stone wall till you get west of Mr. Hinchman's ground; that stone wall commences about two or three feet high and 30 gradually increases in height until it comes to the bridge which is Prospect street; the same night that I made the affidavit I rode up in the cars with Mr. Stickle; I got off at the depot I think myself, Mr. Roderer, Mr. Prudden and Mr. Stickle united to bring a suit against the railroad company and employed Mr. Neighbour, I think, at first; did not know that he had employed Mr. Pitney to help him; I understood when Mr. Neighbour was reading the paper to us, that it was a very important paper and would stop the Railroad Co. from proceeding if served in time upon them; 40 I could not say that Mr. Stickle was beginning anything else

against them at that time ; not till the very last moment, I understood Mr. Stickle began proceedings when they broke ground before him, (objected to); that he thought Mr. Neighbor was too slow in pushing on our suit, that then he was going to take other measures; after my talk with Mr. Losey about obstructions in front of my buildings, I am certain there were no more put down, and those that were there were cleared away ; at the time I went to Dover, Dickerson street was opened westward past the stables, with the exception of  
 10 rubbish laid down in front of those stables, I mean the stables where the present buildings of Mr. Stickle are ; the hoop poles that I saw put down were brought in wagons to go in the cars ; I have seen them throw wood off the cars on the north side of the track opposite Mr. Stickle's place, I never saw anything else put off the cars at any other place I have seen them loading lumber below Sussex street, but whether they threw it off the cars or not, I cannot say.

WILLIAM L. YOUNG.

20 Sworn and subscribed before me, this 18th day of December, 1868.

EDMUND D. HALSEY,  
*Master in Chancery.*

*Edward A. Stickle*, a witness, called and sworn on the part of complainants, being duly sworn, deposes and says,—that he is 53 years of age, resides at Dover and is by occupation a merchant.

I own property in Dover running through from Blackwell to Dickerson street ; that property adjoins that of Mr. Hinchman's ; I went to Dover in the fall of 1850 ; my family moved  
 30 there the next spring ; have lived there ever since ; Dickerson street has been opened as a street ever since I have been in Dover ; I don't think much repairing or working has been done on it except by the people along the street ; it is some years since I have heard that the Rail-road Company were about to put through a double track, but as to where it should be and as to which side of the track ; I heard nothing, only I saw them fixing for a double track to the east of the depot ; I think this was about a year ago this last summer ;  
 40 that was on the north side of the track ; at that time I did

not know it would be on the north side when it got to my place; I saw that it looked like it; I signed a notice to serve on the R. R. Co., also signed another to be responsible for my share of the costs to prevent them from working—laying a double track or another track, on the north side of the present one; I understood that they had employed Mr. Neighbour; I had not heard that he had employed Mr. Pitney; after that notice was served they did not do any work to the track on the north side to the east of the station; I next saw them to work on the last day of November opposite 10 my premises on the north side of the old track; I believe it was on the last day of November when I came to Morristown to see Mr. Pitney, and Mr. Pitney called in Mr. Forsyth to assist; the next day I came down with Mr. Young and Mr. Prudden, and made our affidavits.

*Q.* Did you have any conversation with any of the men engaged in laying the new track opposite Hinchman's and your place, and if so, what was that conversation and where? (Objected to.)

*A.* On that day when I came back from Morristown they were 20 to work at that; this was Monday, the 30th of November; I ordered them to stop work; they said they contemplated only putting in a frog, or something like a switch to join this track to the other, so that when we came to Orchard street there would be but one track; this would be the old track; they said they were going to run the new track into the old one; they were going to make no new track north of the old one east of Orchard street; this conversation was with Mr. Babcock; there were other men there; I think Mr. White was there; Mr. Babcock and Mr. White were rail-road bosses; 30 I told them it did not look much like a frog or a switch the way they were conducting it, by their running the track so far north, so wide; I thought they would have to make a short turn to get into the old track by Orchard street; Mr. Babcock says, you can see we put in long ties there for the switch, and the men had put it all out too far; it would all have to be shoved back towards the other track; I had seen and forbid them before; I think on Saturday; Mr. Young was by when they told me about putting in the switch; think he was not by on Saturday when I forbade them. 40

They did not put any switch in there where they showed they were going to; they went on excavating and laying the ties and track; after telling me that, I thought they would not do anything more for the present; I did not believe they would abandon the matter, but I thought they would delay it; then I was absent two days; on Tuesday they did not do much, and I came to Morristown and made my affidavit; on Wednesday morning I went away and saw a great gang of men getting off the cars as I got on; it was  
 10 a larger gang of laboring men than I had ever seen getting off the cars before; I came home on Thursday evening; I then found a letter there and I opened it and discovered it was a notice to serve on the Company; I then went to Mr. Young's that evening and I gave him the notice to serve when they went to work again, and he served it on Friday morning; the ground opposite my lot and that of Mr. Hinchman's on the south side of the old track is level for quite a space there; there is no difficulty in putting another track on the south side of the old track opposite my lot and Hinch-  
 20 man's; there are no buildings in the way; they generally keep a large pile of wood and lumber on the south side of the track in front of me there.

There is in Dover a north track running north of the platform; a middle track that runs through the depot and one track south of the depot, and one track south of that still, a switch which runs to the turntable; formerly these were two tracks through the depot, but the abandoned one, and these two tracks down by the academy, down as far as Essex street—one of these is the main track and one south  
 30 of the main track—there are beside the new track which they are trying to build which is north of the main track; I have no objection to the Company's building as many tracks as they please south of the main track; from the point of the mountain up to Segur's place there is nothing in the way to prevent the Company from building two tracks south of the main track except their own buildings; the intention is to abandon the old school house; a school meeting has passed resolutions to that effect; immediately south of the depot building there is plenty of room for one or two tracks addi-  
 40 tional; they have several acres; all the old Ford track; the

effect of putting down a second track on Dickerson street north of the old track would spoil the street ; it is not wide enough to admit of it and accommodate the business of the public there ; the rail-road travel comes in on the north side of the rail-road track ; some comes in from Millbrook but they have got to cross over to the north side of the rail-road and come through Dickerson street ; if Dickerson street were blocked up in front of Prudden's they would have to go through Morris street, Blackwell and back through Sussex ; there is considerable travel through Orchard street now, 10 there would come more but they keep the street blockaded with cars and they frequently now have to go around ; most all the new buildings are being put up on the south side of the town ; there are quite a number of new buildings there ; I should judge it was eight years ago ; perhaps longer that I put up my buildings on Dickerson street ; I am not positive ; at the time I did not hear that any extra track was to be laid on Dickerson street ; my buildings are 112 feet long ; the whole front of my property ; the rail-road track has never been fenced in on the north side through 20 Dickerson street ; I have never seen any marks or stakes showing that the Company claimed anything north of the main track ; I have never seen the north side of the track encumbered except that people would bring wood and hoop poles in there in the winter time and throw them there ; the carters would bring them in and lay hoops or wood as near as they could get to the rail-road ; this was a temporary concern, sometimes it used to be all along, until there was a noise made about it ; then it was principally at the east end ; Mr. Young and myself were two that made a noise about 30 it.

Cross-examination by Mr. Vanatta.

When did you make a noise about it ?

A. I went to the carters who ever were unloading ; this was some years ago at different times ; of late years I have not because they have not obstructed it much ; but I go back 12 years ago, that is when they commenced, and I don't know but further.

Re-direct examination.

The reason why I went to the carters and not to the R. R. Co., was because the Company did not give any privilege of putting them there, and the carters put them as near the rail-road as they could, so that they could get them shipped as soon as they could ; I don't know as the R. R. Co., ever gave any one liberty to put any there ; we took the responsibility on ourselves ; I was once employed in the hoop pole business, and employed teams to cart hoops to the Rail-  
10 road.

*Q.* Did you ever understand the Rail-road Company to be responsible for the obstruction to the street by the hoop poles ? (Objected to.)

*A.* No, sir ; they would sometimes find fault ; we got them too close to the track ; I never heard any pretense of the R. R. Co., that they had any rights in the street outside of their own track ; when I first went to Dover, Dickerson street in front of my lot was opened just as it is now, except that I have curbed it around in front of my lot.

20 (This testimony objected to as irrelevant.)

Within a month before the additional track was laid, you could drive a wagon up to near Segur's.

2d cross-examination.

I put my hoop poles along side of the track to get them shipped by the cars.

3d Re-direct.

The main part of the freight which is shipped is put on the south side of the track ; the depot building is a freight  
30 building ; ordinarily we would drive to the south side of the track to load and unload freight from wagons.

*Q.* Was it in the ordinary course of business to place hoop poles on the north side of the track to be loaded ? (Objected to.)

*A.* No, sir ; it was only when they were crowded out.

3d Cross-examination.

I never had charge of the freight station.

## 4th Re-direct.

I have been receiving freight by rail-road in large quantities ever since I have been in Dover; I was engaged in shipping hoop poles for several years; each shipper has to pile his poles in a separate place to keep them from getting mixed.

E. A. STICKLE.

Sworn before me, Dec. 18th, 1868.

EDMUND D. HALSEY, 10

*Master in Chancery of New Jersey.*

*Guy N. Hinchman*, a witness, called and on the part of the complainants, being duly sworn, deposes and says:

Exhibit No. 12 being shown witness. Since I made an affidavit in this case, another map has been found and this is the one; I recollect of having seen it years ago; it was kept in Mr. McFarlan's office in Dover and found there day before yesterday; I think it was; I think the name "Elias H. VanWinkle is in his hand writing; when Mr. Vanatta called 20 upon me I had forgotten about this map; Mr. McFarlan came up from New York day before yesterday, and upon his suggestion I found this in a box with several others; I was not living with Mr. McFarlan in 1831; this clouded line showing the route of the old turnpike through Dover and across Dickerson street corresponds perfectly with my recollection of how it was, and as the bed of the old road shows itself; the streets, with the exception of Blackwell street which is 75 feet wide, were all 66 feet wide; this is the original width of the streets as far as I know, except 30 Dickerson street, from a point of land of Wm. Ford westward of the resident of Wm. Ford; I understood the width of the street to be 60 feet.

This grew out of a difficulty between Wm. Ford and Blackwell and McFarlan, and they laid out the street entirely on their own land, and cut him off from the street, leaving a small strip between it and him. This is what I understand.

Carter's map No. 11 being shown witness. This map has been kept in Mr. McFarlan's office; occasionally he has had it in New York; it shows the situation of my property; I 40

purchased of Chilion F. DeCamp ; I loaned Mr. Pitney my deeds a day or two since ; the dotted lines in pencil mark parallel to the ink rail-road track, were put on last summer, at or just before the meeting of commissioners to condemn a small part of my lot ; I put it there to show the commissioners that the rail-road injured the whole of my lot ; the diagonal pencil marks across the course of my lot were put there at the same time ;

10 Cross-examined.

- I think I do not know of a map made by or for Mr. McFarlan the elder, showing the town plot of Dover ; Mr. McFarlan came to Dover day before yesterday ; he told me that the original map made of the town of Dover he lost in the Hudson River, bringing them from New York to Dover ; that a flaw of wind took them from a basket in which they lay, and carried them into the Hudson River ; they never were recovered ; and then showing me a small parchment map, he remarked that *that* was the oldest map in existence of Dover, and that by which we have made all our sales ; a register is kept of all the sales of all the lots which have been sold in Dover ; I cannot tell when or by whom this map was made—this parchment map, I mean ; it is twenty inches square, I think ; it is folded and accompanies the Register ; the Register is Mr. McFarlan's ; it began with Blackwell and McFarlan, and continues since Mr. McFarlan has had the property ; the roads are not marked very distinctly on that map, they are dotted on it, I think ; the lots are designated on the map ; but I cannot say whether the streets are named ;
- 20 the lots are numbered mostly—no buildings, I think, laid down on it ; I have always seen the map, but never examined it particularly to get a knowledge of the place, because the places were not as fully designated on it as some others ; Mr. McFarlan did not consult it himself in making sales ; Mr. McFarlan has always used, in making sales, a small map not very artistically made by himself, and this is the one I have seen most often ; the present Henry McFarlan commenced business in Dover in 1842 ; I never saw the maps which were said to be drowned in Hudson River.

Re-direct examination.

Mr. McFarlan said the loss of the maps in Hudson River was the cause of his employing Mr. Van Winkle to survey for him ; Mr. McFarlan said he had lost his maps, and that his agent then found that he required some one to aid him, and he employed Mr. Van Winkle as an assistant and surveyor ; Dickerson street, between Prudden's place and Warren street has been opened since 1835 ; and also in front of the Episcopal academy ; the opening to the west came within 112 feet of my place—the width of Mr. Stick'e's property ; there was a fence on the south side of Dickerson street on the line of Mr. Ford's lands—not on the line of street—at least I suppose so ; I understood there was about six feet between Mr. Ford's line and the line of the street—this was the strip that I understood Mr. McFarlan reserved ; the Episcopal academy, between Morris and Essex streets, was built about 1830 ; I think there is a tablet on it which shows ; there was no fence on the north side of Dickerson street in front of the Episcopal academy when I came to Dover, and on the south side there could be none without shutting out the school-house ; the present fence along the line of Dickerson street in front of the academy was erected by Mr. Henry McFarlan, junior, some 28 years ago ; the fence in the rear of my lot which was there last summer, was built, I should think, in 1845 or 1846—it may be later ; it was built by Mr. Chilion F. DeCamp previous to my purchasing the property.

The Episcopal academy property still belongs to Mr. McFarlan.

G. M. HINCHMAN.

30

Sworn and subscribed before me this 18th day of December, 1868.

EDMUND D. HALSEY.

Master C. C.

Examination adjourned until Saturday morning, Dec. 19th, 1868, at 10 o'clock in the morning.

Saturday morning, Dec. 19th, 1868. Examination resumed.

40

*Joseph Roderer*, a witness, called and sworn on part of complainants, deposes and says—I am 46 years old; reside in Dover, and by occupation am a shoe maker; I live in Dickerson street corner of Warren street; I have lived on Dickerson street about 15 years; I rented about three years, and then bought the property; I bought the property in 1856; I own three buildings, two on Dickerson street; it was, I think, not more than six months ago that I heard that the Railroad Company were going to lay a second track in  
 10 Dickerson street; I saw laying a second track at Mr. Hinchman's property, between two and three weeks ago; a gentleman sitting here, (pointing), I understood was bossing the job; I think I have heard him called Babcock; I was out when they were at work by Mr. Hinchman's and Mr. Stickle's only once; I saw Stickle there, and then I went out too; Mr. Young was not there at the same time; Mr. Babcock was there; they had got close to Warren street coming from the west with their second track; I heard Mr. Babcock saying they did not intend to come any further with their second  
 20 track—that they would put their frog in there; before they came into Warren street Mr. Babcock said they did not mean to have a second track further down on the north side of the track, clear through; below Prudden's they were coming in with another track from the east; he said they meant to run in from the double track on to the single track by Warren street where they were, and run out again in to the double track by Prudden's.

*Q.* What did he say about his putting a second track to the north of the old track along in front of your place; and in front of Mr. Young's? (Objected to.)

30 *He* said there would be no double track there.

*Q.* Did you see any preparation made for a switch in front of Mr. Stickle's, or near there at that time?

*A.* Yes, Sir. They worked in for a switch to a point.

*Q.* Did you see any timbers there—any long timbers?

*A.* Yes, sir—a whole car load for the switch.

*Q.* Did they put the switch in there?

*A.* No, sir.

40 *Q.* What did you see next after you heard Mr. Babcock telling this, in the way of work on the second track?

*A.* The next morning, or the morning after that, is the meaning of day after, they came in with a big lot of men to force the track through.

*Q.* Who was there overseeing this big gang of men, if anybody?

*A.* Several bosses.

*Q.* Was Mr. Babcock there?

*A.* I am not sure—I did not go out.

*Q.* When you were there talking with Babcock and Stickle by Stickle's place, did you hear anything about Young's being satisfied on Mr. Babcock's promise that the second track should not go through in front of your block?

*A.* Not at the same time, I didn't; I heard Mr. Young's say he is satisfied if they have the frog above Warren street—the switch, and not come down on our side.

*Q.* Is there room in Dickerson street in front of your place and Young's to accommodate the travelling public, and have a second track? (Objected to.)

*A.* I don't think there is room for two wagons to pass—it is worse in the winter. 20

*Q.* Is there much or little travel in Dickerson street, passing and repassing with wagons, &c.?

*A.* There is a good deal.

#### Cross-examination.

I don't remember the day of the week when I heard the conversation with Mr. Babcock and Mr. Stickle.

*Q.* What did Stickle say about putting in a frog and switch there?

*A.* He wanted them to stop work. 30

*Q.* Did he not object to having any frog or switch there, and say he would not consent to it?

*A.* He said it parts his property—he did not want it there.

*Q.* Was the second track laid to Warren street at that time?

*A.* No, sir.

*Q.* How far from it?

*A.* 150 feet—something over 100 feet from Warren street—from the north side of Warren street. 40

Q. Wasn't the second track down along the greater part of Mr. Stickle's property at that time?

A. Not finished—they put ties in the same day as far as Stickle's property.

JOSEPH RODEKER.

Sworn and subscribed before me this 19th day of December, 1868.

EDMUND D. HALSEY,

Master in Chancery of New Jersey.

- 10 *Alpheus Babcock*, a witness, called and sworn on the part of defendant, deposes and says: I am a track master on the western division of the Morris and Essex Rail-road from Den-ville to Phillipsburgh; between Rockaway and Dover, to the east of Dover, there is about a mile and three-quarters of double track. (Objected to as irrelevant.) The double track is laid to within 400 feet of the Dover station; going east-ward from Warren street the double track extends about 350 feet; the space between the two parts of double track re-  
 20 cently laid is about 200 feet; I should think westward from the Dover station the double track extends to Port Oram about a mile from Dover station; west of Port Oram there may be a quarter of a mile laid. (Objected to as irrelevant.) Between Port Oram and Phillipsburg I should think they had about 9 miles of double track; I saw Mr. Berthoud at Dover talking with Mr. Young and others about the double track; it was about the last of last month; I heard since that the Colonel said to them—the Col. told Mr. Young that if they would let him lay a double track there he would plank it along in front of the depot house, and he would keep the  
 30 snow away from there in the winter so that there would be no trouble in passing; Mr. Young's said he did not know about that—he thought it was taking too much of the street; the Col. told me to see Mr. Jolley when I got ready to put the double track down, and if it was satisfactory to have a double track there, to lay it down, and if not, put in a frog at the west end of the passenger house, and one at the end of the tank ways, and run out and join the second track again; that is all that he said to me then; a week after, perhaps, I saw Mr. Jolley, and he said he could do nothing with them;  
 40 I got Mr. M. Coogan, the foreman, to put in a switch or a

frog at the west end of the depot, about 100 feet from the end of the platform ; Mr. Coogan next went to work there, I believe, and Mr. Stickle and Mr. Young forbid him ; Mr. Coogan told me the next morning that he had been forbidden doing any work there ; I told Mr. Coogan I thought it was all right, only they misunderstood what we intended to do ; I went to Mr. Youngs to see him, if he had any objections, or if he understood about the frog or the switch ; Mr. Youngs went with me, and I showed him within a few feet of where we were going to put the frog ; it was about 100 feet west of the end of the platform ; it was about 65 or 70 feet west of the street which crosses the rail-road by Stickle's ; I did not measure it ; Mr. Youngs said he was satisfied—he had no objections ; I went to see Mr. Stickle then, to see if he understood about putting a frog in there ; he was not at home ; I told Mr. Coogan to go to work until he came ; that I thought there would be no trouble, if he understood that we were going to put a frog in ; when the Dover train came in Mr. Stickle came on it, or the mail train, I won't be sure which—it was in the forenoon I think he came, and ordered us to stop work ; he said he wouldn't have it in there if he could possibly prevent it ; he said it would injure his property ; that he would have to pay so much extra to have it insured against fire ; I told Mr. Coogan to quit and go back on the second track near the draw bridge to work, and I sent word to Mr. Harris the chief engineer, or to Col. Berthoud that they had forbid us doing any thing, putting in the frog, &c.,—that we had stopped work on them.

I think it was the same night ; when I got to Washington, I found a dispatch there from Mr. Berthoud to come to Hoboken the next day ; the next day I went to Hoboken, and he said he had come to the conclusion now to put the second track down, and told me to take my men and lay the track, and have it ready to run on by Saturday, and help Mr. Lord get his track so as to run on at the same time, if I could ; then I told the Col. that I would have to have a gravel train from Stanhope, and men to help ; he gave Mr. Schoch orders to have them there ; I think it was the second of the month, though I won't be sure ; at the time Mr. Stickle stopped us, we had the double track laid within 125 feet of the west end

of the platform ; I should think at the time Stickle stopped him Mr. Coogan was digging out for the long or frog ties ; I think we intended to have put the frog in there if he had not stopped us ; I wont be certain whether I sent a letter or a telegram to Mr. Harris or Col. Berthoud ; when I went to Hoboken I told him, Col. Berthoud, about Mr. Stickle's interfering with us ; I could not say whether it was before or after I had told him this, that the Col. told me to lay the double track ; It was Wednesday, I think, the first day we  
 10 had the gravel train ; we had it there till Friday morning I think, when we were stopped again ; had it there two days ; I guess we did not work the last day at night ; I wasn't there —I live at Washington, and go home nights ; Thursday I went home on the forenoon mail which left Dover at 10:15, I think ; think Mr. Harris was not there on Thursday--he was there Wednesday, I think.

Cross-examined.

I do not know why I was told to call on Mr. Jolley unless  
 20 the Col. had told him to see the men ; I do not know anything about it ; the Col. did not mention the names of any men Mr. Jolley was to see.

*Q* Did you not understand that they were the men who were opposed to laying down the second track north of the old track through Dickerson street. (Objected to.)

*A*. I suppose those were the men ; I did not suppose he would go to see other men who were not opposed to it ; Mr. Jolley reported to me that he couldn't do anything with them ; east of the point of the mountain towards Rockaway,  
 30 the second track was laid on the left hand side going up of the old track ; I suppose it would be called the south side of the old track ; west of Segur's property, in Dover, it was laid on the left hand side going west of the old track.

*Q*. Would or would not that be on the southerly side of the old track ?

*A*. I suppose it is.

I had charge of laying the double track from the draw-  
 bridge to the station along by Hinchman's and Segur's pro-  
 perty ; from the station to the drawbridge it is perhaps a  
 40 1000 feet ; in laying our second track we first dug or graded

for the ties ; in working from the drawbridge to the station we would have from 200 to 10 feet dug before us in laying the double track ; it depended on circumstances ; in laying ties it depended on how many we had, sometimes only laying enough for one rail, sometimes more ; I understood from my men, Mr. Coogan told me, that Mr. Stickle had been there and forbade laying ties before his property ; this was before I had the conversation with Mr. Stickle which I mentioned in my direct examination ; there were a few ties down there, I think, before the west end of Mr. Stickle's property ; 10 Mr. Coogan told me coming down in the train on the same morning that I had the talk with Mr. Stickle about the frog ; he said Mr. Stickle had forbade him the day before ; when I got there on the ground a few ties had been laid before the west end of Mr. Stickle's lot—there might have been 3 or 4 or 5 rails laid before the west end of Mr. Stickle's lot—there were some, I think ; I rather think we had not got half past the lot ; the frog I spoke of would have come right before Stickle's lot ; I did not understand from Mr. Stickle that he was afraid we were going to lay a double track clear past 20 his lot, on the north side of the old track ; I understood from what Mr. Coogan said, that Mr. Stickle was one of the men who were opposed to laying the second track through Dickerson street north of the old track ; when I came to talk with him he said we wasn't going to have any track down there at all if he could prevent it—then I understood it ; I supposed he meant by any track there at all, any second track north of the old one—that is the way I took his meaning ; his objections were that it would bring the trains too near his buildings ; he said nothing about narrowing the street so 30 that people could not pass or repass, as I recollect ; I could not say whether anything was said about laying a second track south of the old one ; he did not object to that as far as I know ; the rail-road platform extends to the edge of Orchard street westward ; there are two sidings south of the main track at the west end of the platform ; one of these went, I should think, 150 feet, and the other, I should think, 225 feet west of the platform ; one runs into the other, (looking at Carter's map) ; the sidings are shown about correct on the west end of the depot ; the siding extends to the east, 40

south of the main track about 1200 feet from the depot; it extends past the school house and the Episcopal Academy—I think there are but two tracks; I think the new second track does not extend as far west as that, if it did there would be three; if we were going to lay several tracks, each track would take eleven feet—about that; a car is about eight feet and a half; they do not allow fourteen feet for a track; from the centre of the old track to the centre of the new track laid by us on the 2d of December north of the main track, is  
 10 about 11 feet and 4 or 5 inches.

#### Re-direct.

The water tank is west of Sussex street, I should think from 75 to 100 feet; the drawbridge is west of Dover station over the Canal; from the Dover station to the drawbridge the second track is on the right hand going west—west of the station, (going west to the left hand,) there is a stone wall; it begins about 250 feet from the station, I should think; it extends about 200 or 250 feet; I should think it  
 20 would average about eleven feet high, where the bridge goes over it is 12 or 14 feet; to the best of my recollection the old track is from 3 to 3½ feet from the side of this wall—it may be four.

#### Cross-examined.

There is not a stone wall on both sides—there is a bridge abutment on one side; I do not exactly know where Mr. Hinchman's line is, but think the wall ends somewhere about his west line; at the point of the mountain towards Rocka-  
 30 way looking westward, the new track is to right of the old one; looking eastward it is to the left of the old one. (Objected to as repetition); when the track comes to be used the ends of the track there will have to be shifted; they are shifted already, so that running from Rockaway to Dover we run part of the way on the new track and part of the way on the old; I believe it is an ordinary thing in building new or additional track to lay it part of the way on one side and part on the other; between Hinchman's property and the bridge we did not use a gravel train and a heavy gang of  
 40 men; Dickerson street in front of Mr. Stickle's and Mr.

Young's is not very rough—we had need of gravel train and heavy gang of men to take care of the dirt, and keep it out of the way of the teams passing and repassing.

A. BABCOCK.

Sworn and subscribed before me, this 19th day of December, 1868.

EDMUND D. HALSEY,

M. C. C.

*John A. Casterline*, a witness, called and sworn on part of defendant, deposes and says—I am 56 years old, reside in 10 Randolph township two miles from Dover, on the old turnpike from Morristown to Dover; I have lived there with the exception of four years, 52 years; I am in the habit of going to Dover frequently from my place; prior to 1848 going to Dover after getting to the point of the mountain, we followed the old turnpike road; the road turned to go into the village at Sussex street and Morris street; where it was not encroached upon the old turnpike was said to be a four rod road; from the point of the mountain to Sussex street on the north side, there was a fence all the way up to where the 20 academy stands, and above the academy a little; on the south side there was one field fenced in which Mr. Hinchman now owns; the fence on the north side stood, perhaps, a rod and a half from the centre of the road; that fence was standing there when the rail-road was located to Dover; I recollect a gate on that turnpike road in Dover—a toll gate; as near as I can place it it stood somewhere about where Mr. Butterworth now owns and lives; I should think that gate disappeared from there about 40 years since—upwards of 40 years I should think—in the years 1829, 1830 and 1831; I worked 30 in Dover at my trade as a carpenter; I he'ped build what is called the Episcopal academy which was built in 1829; in front of that building on the south side of the road there stood at that time John Ford's building and an old school house; the road between the new academy and the old school house at that time was some three rods—between two and three rods—I mean the travelled track; there was no fence in front of the school house; at that time the road from the point of the mountain to Sussex street was worked under the direction of the overseer of the road, by district; 40

at that time Sussex street was opened to about the same width, and in the same place as now from Blackwell street southward ; I don't think the turnpike then extended west of Sussex street ; the street west of Warren street ; Dickerson street was not opened then west of Warren street—that is when I first worked in Dover ; I do not recollect when it was opened west of Warren street ; I think not until Mr. Stickle got the property ; it was used as a yard for cattle ; I knew Wm. Ford's property, his house stood on the north  
 10 corner, that is the south corner formed by the Millbrook road and the turnpike road ; the turnpike on the north and the Millbrook road on the north east. (Being shown exhibit C on part of defendants.) Dickerson street and the turnpike as shown on the map correspond with my recollection of them in 1830 and 1831 ; west of Sussex street between it and Warren, Dickerson street was then opened but not used as a street ; in the four years I was away from my present residence, I was two years and a half in California, 1851 to 1854, and one year and a half in Orange, Essex County.

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Cross-examined.

I recollect when the old turnpike ran diagonally through Dover and was used ; the old tavern house stood opposite Munson's store property, and from there it ran south east to near the centre of Ford's property, I should think, and then not far from Ford's (Wm. Ford's) house, it took a curve around more east, and ran almost directly east ; it ran along directly in front of the academy and John Ford's house, I should think it was forty years ago when the turnpike was disused where it ran across the block between Warren and  
 30 Sussex streets ; I think it was taken up when I was at work there ; we ran straight into Sussex street from the old turnpike. (Carter's map being shown witness, he says)—the dotted lines south of the rail-road are the old turnpike road, I should think ; I never took any measurements when a young man as to the distances of roads, &c. ; I never knew of their having the turnpike indicated along by our house when I was a young man ; I did hear at the time of the turnpike getting an act passed to permit them to throw up their road,  
 40 from here to Dover ; that was about the time the overseers

commenced to work it; I do not know but what the people worked it some on their own account before that; I did not belong in the Dover road district; our road district ran about to the point of the mountain; I never had occasion to work on the turnpike from the point of the mountain to Dover; I knew of its being worked by overseers from the point of the mountain to Dover; it was not worked by overseers between the point of the mountain and Dover until after the act of the Legislature permitting them to throw it up; when Mr. McFarlan opened new streets he went to the expense of opening them, but the inhabitants picked the stone out, the overseers picked the stones out; am under the impression that Mr. McFarlan did the grading, and that the inhabitants by their overseers kept them in repair; do not recollect of the overseers refusing to spend money in the streets; never was in a road district which included Dover until within a few years; I know Elias H. VanWinkle; he lived in Dover—I don't know whether he was always there—think he was there in 1829 and 1830; I believe he was considered a very good surveyor at that time. (Exhibit No. 12 being shown to witness.) The line marked for the old turnpike I should think was very near it; I thought there was a little more of a curve—more of a round corner by Ford's house—the turnpike came down diagonally to Ford's house; Chilion F. DeCamp used to live where Mr. Hinchman does now.

Re-direct.

I think it is between 25 and 30 years ago when the act of the legislature was passed, respecting the turnpike; I think it was called the Union turnpike; the part of the turnpike through Dover was abandoned before the part where I live; there was a curve at Mr. Ford's house, and the part running north-west from there was abandoned before the other part east of Mr. Ford's house.

2d. Cross-examined.

When I was a young man the land east of Ford's to the point of the mountain was said to be owned by McFarlan & Co., afterwards by McFarlan—south of the turnpike from the point of the mountain to Dover—one part of it near the point of the mountain was low and swampy.

JOHN A. CASTERLINE.

Sworn and subscribed before me this 19th day of December, 1868.

EDMUND D. HALSEY,  
Master in Chancery of New Jersey.

*Malton D. Ford*, a witness, called and sworn on part of deft., deposes and says: I am forty-nine years old; reside in Dover; my father's name was Wm. Ford; he owned and lived on the property now occupied by the depot buildings in Dover; I was born there; I left there in 1843, and after that I made a visit there as often as once a year until my father moved away from there; I recollect when the turnpike ran diagonally across the block between Warren and Sussex streets; no part of that turnpike was in my father's land; it faced on the turnpike as far as the north-west corner of the house, and then the turnpike went to the north-west and left the line of my father's property; from my father's property to the point of the mountain, I think it was nearly east; prior to 1848 there was one other road to Morristown by Mill Brook, but it was a round about way—it is the one by Munson's farm; the old turnpike was fenced from the point of the mountain to the academy on the north side; after the academy was built there was a fence built from the corner of the academy to the corner of Essex street—some time after it was built; from the school-house to the point of the mountain the land fenced on the north side of the road was meadows—the eastern part was pasture land mostly; there was a door yard fence between my father's house and the turnpike; I could not tell exactly when the block between Sussex and Warren streets was so closed up that the old turnpike could not be used; I was quite young at the time, probably not more than nine years old; I can recollect it distinctly; after that was closed up they passed from the turnpike to Blackwell street, through Sussex and Morris streets; Sussex street has been fenced on the side as at present, I should think 35 years, though I cannot tell exactly; it must have been longer ago than that; while I lived in Dover, Dickerson street, the street between Sussex and Warren streets, was opened but not worked; it was rough and partly not—people travelled over it—this was before 1843;

I think there was but one house in that street above Sussex until you came to Warren—that was the Scott house—on the corner of Sussex and Dickerson streets; Dickerson street west of Warren street was not opened until the rail-road went through, I think; before the rail-road came to Dover, the road from Sussex street to the point of the mountain I have seen worked by the overseer; but I cannot tell whether it was district work or whether they did it voluntarily; I am under the impression that Jacob Scott built the Scott house on the corner of Dickerson and Sussex streets.

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#### Cross-examined.

The Mill Brook road made a curve originally with the turnpike where it started out. When the street was laid out it was straightened—this was by my father's house; my father's house did not stand in a corner, but on a curve; it stood facing the north-east; it did not face either with Dickerson street as it is now or Morris street as it is now; my father traded with Mr. McFarlan to get a little piece to make it square; that was about the time Morris street was laid out; they wanted to move the stream to make the streets, and they wanted to get some land for the stream, so they moved the stream on my father's land, and he got this strip in the place of it; I have always known Dickerson street by that name since it was laid out in 1830 or 1835; I cannot give the date; I mean by being laid out, surveyed and staked out; this was done I believe under Mr. McFarlan's directions; I cannot say how far it was staked out; it ran into the turnpike; I don't know as it was staked out any further than the Episcopal academy; the travel ran into the turnpike past that, and we had no occasion for a street; it was staked out as far west as the stone stables where Mr. Stickle's property is; I can't say whether it was staked out any further or not, only the fences were not thrown open any further; from Mr. Stickle's property east it was thrown open so that it could be travelled to its full width; it was generally understood by the public that those streets had been laid out and opened by Mr. McFarlan, except west of Warren street; I was not aware that there was a street laid out; I did not know that McFarlan had maps made by the town

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plots ; when I was a boy I suppose that he had ; I had heard ; when a boy, of Morris, and Sussex and Warren streets ; the road from Millbrook used to curve around there where the little strip my father bought of McFarlan was, and cut that corner off, and then the road was moved, and that was fenced in and sold to my father, and my father's house fronted towards the corner in a north-east direction ; the old foundations are there now ; the house has been recently destroyed ; I came back to Dover to live in 1851 ; there was no fence  
 10 along in front of the old school house ; there was no fence on the east side of the Millbrook road along by the old school house.

*Q.* As you come up the turnpike from the old Hurd tavern, diagonally through the block, did the turnpike make any crook before it came to your father's house—I mean before there was any change made in the old lines ?

*A.* If it was, it was very slight until it got to the corner of his house ; I think there was the greatest curve ; if you were going from this turnpike to the Millbrook road you would  
 20 turn a long curve by my father's house, something like an S—not a sharp curve either of them—the one turning into the Millbrook road, that is, the second curve going to the south, was the sharpest curve.

Re-direct.

I can't say that I saw any one staking out Dickerson street.

2d Cross-examination.

30 I saw the stakes when I was a boy.

MAHLON D. FORD.

Sworn and subscribed before me, this 19th day of December, 1868.

EDMUND D. HALSEY,

*Master in Chancery of New Jersey.*

*Thomas J. Halsey*, a witness, called and sworn on the part of the M. & E. R. R. Co., deposes and says—while I was station agent at Dover there were hoop poles placed on the north side of the track in front of William L. Young's ; I  
 40 always used that street from Morris to Warren for the pur-

pose of depositing wood and hoop; the wood mostly west of Warren street and hoops between Morris and Warren, and occasionally would unload lumber off the cars between Warren and Morris without any objections being made; there might have been some winters in which there were no hoops placed directly in front of Mr. Young's; more frequently the hoops were placed just below, and just above, as it was more handy to load; Mr. Young never interfered with my having hoops or wood along there, nor objected to it; I never had any notice that he had objected, nor anything of 10 the sort.

THOS. J. HALSEY.

Sworn and subscribed before me this 19th day of December, A. D., 1868.

EDMUND D. HALSEY.

*Master in Chancery of New Jersey.*

## IN CHANCERY OF NEW JERSEY.

Between	} <i>On Bill.</i>
THE ATTORNEY-GENERAL OF NEW JERSEY EX. REL., STICKLE et. als., Complainants,	
<i>and</i>	} <i>On Bill.</i>
THE MORRIS & ESSEX RAIL-ROAD COM- PANY, Defendants.	

Between	} <i>On Bill.</i>
BYRAM PRUDDEN, Complainant,	
<i>and</i>	} <i>On Bill.</i>
THE MORRIS & ESSEX RAIL-ROAD COM- PANY, Defendants.	

## EXHIBITS

*On the part of Complainants.*

## EXHIBIT I.

STEPHEN VAN RENSSELAER, Jr., HENRY McFARLAN, and DANIEL AYERS, <i>Trustees,</i>	} <i>On Bill.</i>
<i>to</i> CHILION F. DECAMP.	

Deed dated April 1st, 1837. Consideration, \$200. Proved, January 16th, 1838. Recorded, Jan. 29th, 1838, in Morris County Record of Deeds, Liber Q, 3, folios 77, 78, & 79.

*Description.*—"All that track or parcel of land and premises hereinafter particularly described, situate, lying and being in the township of Randolph; in the County of Morris, and State of New Jersey, butted, bounded and described as follows: being a part of the said real estate whereof the said Henry McEarlan died seized, beginning at a stake standing

on the south side of Blackwell street, on a course south eighty-seven degrees, west two hundred and forty feet from the northwest corner of the stone Banking house; thence (1) south three degrees east two hundred and seventy-five feet to the north side of Dickerson street; thence (2) along the north side of said Dickerson street south eighty-seven degrees west thirty feet; thence (3) north three degrees west, two hundred and seventy-five feet to the south side of Blackwell street; thence (4) along the south side of said Blackwell street north eighty-seven degrees east thirty feet to the place of beginning, containing eight thousand two hundred and fifty square feet.

## EXHIBIT 2.

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STEPHEN VAN RENSSELAER Jr., HENRY  
McFARLAN and DANIEL AYERS,  
*Trustees.*

to

CHILEON F. DECAMP.

Deed dated April 1st, 1836 Consideration \$100. Proved,  
Oct. 17th, 1836. Recorded, Jan. 29th, 1838, in Morris  
County Register of Deeds, Liber Q, 3, folios 70, 71, & 72.

*Description.*—“All that tract or parcel of land and premi- 30  
ses hereinafter particularly described, situate, lying and be-  
ing in the township of Randolph, in the County of Morris,  
and State of New Jersey, butted, bounded and described as  
follows: being a part of the said real estate whereof the said  
Henry McFarlan died seized, beginning at a stake standing  
on the north side of Dickerson street on a course south eighty-  
seven degrees west one hundred and seventy-two feet from  
the northwest corner of Warren and Dickerson streets;  
thence (1) along the north side of said Dickerson street south  
eighty-seven degrees west one hundred and twenty feet; 40

thence (2) north three degrees west one hundred and twenty-five feet to the rear of lots formerly sold C. F. DeCamp; thence [3] along said rear line north eighty-seven degrees east one hundred and twenty feet; thence [4] south three degrees east one hundred and twenty-five feet to the place of beginning, containing fifteen thousand square feet.

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## EXHIBIT 3.

STEPHEN VAN RENSSELAER JR., HENRY  
McFARLAN and DANIEL AYERS,  
*Trustees,*  
*to*  
CHILEON F. DECAMP.

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Deed dated April 1st, 1837. Proved, May 23d, 1837. Consideration \$400. Recorded in Morris County Record of Deeds, Liber Q, 3, folios 72, 73, & 74.

*Description.*—All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the township of Randolph, in the County of Morris, and State of New Jersey, butted, bounded and described as follows: being a part of the said real estate whereof the said Henry McFarlan died seized, beginning at a stake standing on the south side of Blackwell street on a course south eighty-seven degrees west sixty feet from the northwest corner of the stone Banking house; thence [1] south three degrees east two hundred and seventy-five feet to the north side of Dickerson street; thence [2] along the north side of said Dickerson street south eighty-seven degrees west sixty feet to a corner of a lot sold Chileon F. DeCamp; thence [3] north three degrees west two hundred and seventy-five feet to the south side of Blackwell street; thence [4] along the south side of said Blackwell street north eighty-seven degrees east sixty feet to the place of beginning, containing sixteen thousand five hundred square feet.

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## EXHIBIT 4.

HENRY McFARLAN }  
                   to  
 C. F. DECAMP. }

Deed dated April 1, 1842. Consideration, \$1000. Acknowledged June 7, 1842. Recorded March 21, 1844, in Morris County Record of Deeds, in book D, 4, pages 333 and 334.

*Description.*—“ All that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and 10 being in the township of Randolph, in the county of Morris, and State of New Jersey, butted and bounded as follows: Situate in the village of Dover, and beginning at a stake standing on the south side of Blackwell street, on a course south eighty-seven degrees, west sixty feet from the north-west corner of the stone Banking house; thence (1) south three degrees, east two hundred and seventy-five feet to the north side of Dickerson street; thence (2) along the north side of said Dickerson street, south eighty-seven degrees, west one hundred and twenty feet; thence (3) north 20 three degrees, west two hundred and seventy-five feet to the south side of Blackwell street; thence (4) along the south side of said Blackwell street, north eighty-seven degrees, east one hundred and twenty feet to the place of beginning, containing thirty-three thousand square feet, more or less.

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## EXHIBIT 5.

CHILEON F. DECAMP and wife, }  
                   to  
 G. M. S. HINCHMAN. }

Warranty deed dated April 1, 1850. Consideration, \$5000. Acknowledged July 11, 1850. Recorded in Morris County record of deeds July 11, 1851, in liber N, 4, fols. 217 40 & 218.

*Description*— All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the township of Randolph, in the county of Morris, and State of New Jersey, situate in the village of Dover, and beginning at a stake standing on the south side of Blackwell street on a course south (87) eighty-seven degrees west sixty feet from the north-west corner of the stone tavern house, being also on the same course one hundred and twelve feet distant from the south-west corner of Blackwell and Warren streets; 10 thence (1) south three degrees, east two hundred and seventy-five feet to the north side of Dickerson street; thence (2) along the north side of said Dickerson street south eighty-seven degrees west two hundred and ten feet to a lot of land conveyed by the trustees of Henry McFarlan, deceased, by deed dated June 1st, 1847, to Anson G. Phelps, and recorded October eleventh, eighteen hundred and forty-seven, B. M. 4, page 80 and 81; thence [3] along the easterly line of said last mentioned lot north three degrees west two hundred and seventy-five feet to the south side of said Black- 20 well street; thence [4] along the south side of said Blackwell street north eighty-seven degrees east two hundred and ten feet to the place of beginning, containing fifty-seven thousand seven hundred and fifty square feet.

The above described lot of land and premises being the several lots conveyed to the said Chileon F. DeCamp by the following deeds, viz :

Aaron Doty and wife to Chileon F. DeCamp, Aug. 25, 1835, recorded K, 3, 75, 76 and 77.

Trustees of Henry McFarlan to Chileon F. DeCamp, April 30 1, 1836, recorded Q, 3, 70, 71, 72.

Trustees of Henry McFarlan to Chileon F. DeCamp, Dec. 2, 1835, recorded Q, 3, 75, 76, 77.

Trustees of Henry McFarlan to Chileon F. DeCamp, April 1, 1837, recorded Q, 3, 72, 73, 74.

Trustees of Henry McFarlan to Chileon F. DeCamp, April 1, 1837, recorded Q, 3, 77, 78, 79.

## EXHIBIT 6.

STEPHEN VAN RENSSALEAR, JR., HENRY  
MCFARLAN and DANIEL AYERS,

Trustees,

to

JACOB SCOTT.

Deed dated April 1, 1839. Consideration \$600. Proved  
June 11, 1839. Recorded in Morris County Record of  
Deeds, in Book A, 4, pages 583 and 584.

*Description*—A 1 that tract or parcel of land and premises  
hereinafter particularly described, situate, lying and being in 10  
the township of Randolph, in the county of Morris, and State  
being a Jersey, butted, bounded and described as follows:  
of New part of the said real estate whereof the said Henry Mc-  
Farlan died seized, situate in the village of Dover, and begin-  
ning at a stake standing on the north-west corner of Dick-  
erson and Sussex street; thence [1] along the north side of  
said Dickerson street south eighty-seven degrees west one  
hundred feet; thence [2] north three degrees west seven  
ty-five feet; thence (3) north eighty-seven degrees east one  
hundred feet to the west side of Sussex street; thence (4) 20  
along the west side of said Sussex street south three de-  
grees east seventy-five feet to the place of beginning, con-  
taining seventy-five hundred square feet.

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## EXHIBIT 7.

JACOB SCOTT and wife

to

WILLIAM L. YOUNG.

Deed dated April 1, 1847. Consideration \$1200. Acknowl-  
edged April 6, 1847. Recorded April 30, 1847, in Morris  
County Record of Deeds, Liber K, 4, pages 564, 565 and  
566.

*Description*—Same as in Exhibit 6.

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## EXHIBIT 8.

STEPHEN VAN RENSSALAER, JR., HENRY  
McFARLAN and DANIEL AYRES,  
Trustees,

to

ELIEZER LAMSON,

Deed dated April 1, 1837. Consideration \$200. Proved  
Jan. 16, 1838. Recorded March 29, 1838, in Morris County  
Record of Deeds Book T, 3, fols. 140 and 141.

*Description*--All that tract or parcel of land and premises  
10 hereinafter particularly described, situate, lying and being in  
the township of Randolph, in the county of Morris, and  
State of New Jersey, butted, bounded and described as fol-  
lows: being a part of the said real estate whereof the said  
Henry McFarlan, died seized, beginning at a stake standing  
on the north-west corner of Dickerson and Morris streets;  
thence (1) along the west side of said Morris street north  
three degrees west seventy-five feet; thence (2) south eighty-  
seven degrees west twenty-five feet; thence (3) south  
three degrees east seventy-five feet to the north side of  
20 Dickerson street; thence [4] along the north side of said  
Dickerson street north eighty-seven degrees east twenty-five  
feet to the place of beginning, containing eighteen hundred  
and seventy-five square feet.

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## EXHIBIT 9.

ELIEZER LAMSON and wife

to

BYRAM PRUDDEN.

Deed dated March 26, 1839. Consideration \$400. Acknowl-  
edged March 26, 1839. Recorded March 28, 1839, in  
Morris County Record of Deeds Book T, 3, fols. 142 and  
143.

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*Description*--Same as in Exhibit 8.

## EXHIBIT 10.

STEPHEN VAN RENSSALEAR, JR., HENRY  
MCFARLAN and DANIEL AYRES,  
*Trustees,*

to

BYRAM PRUDDEN.

Deed dated April 1, 1839. Consideration \$200. Proved  
June 11, 1839. Recorded in Morris County Record of  
deeds, Liber U, 3, fols. 192, 193 and 194.

*Description*—All that tract or parcel of land and premises,  
hereinafter particularly described, situate, lying and being 10  
in the township of Randolph, in the county of Morris, and  
State of New Jersey, butted, bounded and described, as fol-  
lows: being a part of the said real estate whereof the said  
Henry McFarlan died seized, situate in the village of Do-  
ver, and beginning at a stake standing on the north side of  
Dickerson street on a course south eighty-seven degrees  
west twenty-five feet from the north-west corner of Dick-  
erson and Morris streets; thence [1] along the north side of  
said Dickerson street south eighty-seven degrees west sev-  
enty-five feet to the south-east corner of a lot sold Jacob 08  
Hurd by deed bearing date first day of September, eighteen  
hundred and thirty-eight; thence [2] along the east side of  
said lot sold Jacob Hurd north three degrees west seventy-  
five feet; thence [3] north eighty-seven degrees east seven-  
ty-five feet to the west side of lot sold Eliezer Lamson by  
deed bearing date the first day of April, eighteen hundred  
and thirty-seven; thence [4] along the west side of said lot  
sold Eliezer Lamson south three degrees east seventy-five  
feet to the place of beginning, containing fifty-six hundred  
and twenty-five square feet. 09

IN CHANCERY OF NEW JERSEY.

Between	}	<i>On Bill.</i>
GEORGE M. ROBESON, ATTORNEY- GENERAL EX. REL., OF EDWARD A. STICKLE.		
Complainants,	}	
and		
THE MORRIS & ESSEX RAIL-ROAD COM- PANY,	}	
Defendants.		

Between	}	<i>On Bill.</i>
BYRAM PRUDDEN,		
Complainant,	}	
and		
THE MORRIS & ESSEX RAIL-ROAD COM- PANY,	}	
Defendants.		

EXHIBIT 2.

EXHIBITS

*On the part of Dejedants.*

EXHIBIT A.

*Public Road in the Township of Randolph.*

Whereas, the Court of Common Pleas of the County of Morris, at the term of May last of said Court, did order and appoint as follows, to wit:

At a Court of Common Pleas held at Morristown in and for

the County of Morris, on Monday, the twenty-ninth day of May, A. D. eighteen hundred and forty-eight.

Present—Jacob Wilson, Esquire, Judge, &c.

<p>In the matter of the application of Henry McFarlan and others, for a public road in the township of Randolph, and for vacating a road in said township.</p>	}	<p>Appointment of Surveyors.</p>
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Application in writing being made to the Court in open Court by Henry McFarlan and others, ten freeholders and 16 residents of the County of Morris, that they think a public road to be necessary in the township of Randolph in said County, beginning at a stake in a public road leading from Dayton C. Freeman's to the village of Dover in said township, which stake is near the point of the mountain lying easterly of said village, and ending at the intersection of Blackwell and Sussex streets in said village, and applying to the Court to appoint six surveyors of the highways of the said County, to meet at such time and place as the Court should direct, for the purpose of laying out said road; and 20 also for the purpose of vacating the public road now lying between the said points; and due proof being made to the Court that at least ten days previous notice has been duly given of such intended application, and of the day on which said application was intended to be made by advertisements under the hands of said applicants, set up at three of the most public places in the township of Randolph, in which the said road is proposed to be laid out, and the said public road now lying between the said points to be vacated, it is ordered that six surveyors of the highways of said County, 30 namely: Daniel Lamson, surveyor of the township of Randolph, William Gladson and Abraham B. Jacobus, surveyors of the highways of the township of Pequannock, Charles Lum and Lewis M. Browning, surveyors of the highways of the township of Chatham, and Matthias W. Guerin, surveyor of the highways of the township of Morris, be, and they are appointed accordingly, regard having been had to the appointment of the surveyors of the said township of Randolph where the said road is so applied for to be laid out, and the said public road now lying there to be vacated. The Court, 40 thinking that the death of office of Abraham Eagles, elected as

one of the surveyors of the highways of the township of Randolph, has not been taken by him according to law, on which account he is not here appointed ; which said six surveyors here appointed by the Court shall meet at the house of Jacob Hurd, inn-keeper in the township of Randolph afor said, on Monday, the 26th day of June next, at ten o'clock in the forenoon. And it is further ordered that the said surveyors make separate returns as to the laying out the said road applied for, and vacating the aforesaid public road.

- 10 Now we, the undersigned, six of the surveyors of the highways aforesaid, do certify and make this separate return as to the said public road applied for ; that is to say, we do certify and return that the said Daniel Lamson, William Gladson, Abraham B. Jacobus, Charles Lum, Lewis M. Browning and Matthias W. Guerin, met at the time and place in the order specified, and due proof being made to us that the said advertisements of our said meeting had been set up according to law, on which we decided, and we who so met as aforesaid having viewed the premises, we whose names are
- 20 hereto subscribed think and adjudge the said public road so applied for as aforesaid, to be necessary, and do lay the same as appears to us to be most for the public and private convenience, having a regard to the best ground for a road, and the shortest distance in such a manner as to do the least injury to private property ; that is to say, beginning at the said stake in the public road leading from Dayton C. Freeman's to the village of Dover in said township, which stake is near the point of the mountain lying easterly of said village, and running from said stake (1) north fifty-three degrees, west seven chains ; thence (2) south eighty-seven degrees, west
- 30 forty-four chains, running through and along the course of Blackwell street in said village to the said intersection of Blackwell and Sussex streets said village, and to end at such intersection, which said lines are in the middle of the said road which we lay out, and order to be four rods wide, and we have caused the said road to be marked at proper distances in the line of the same, and do herewith return a map or draught of the same with the courses, and distances and reference to the most remarkable places, and the improvements through which it passes, and we do order the
- 40

said road to be opened by the overseers of the highways on the first day of July next. Witness our hands the twenty-sixth day of June, A. D. eighteen hundred and forty-eight.

DANIEL LAMSON,  
 WILLIAM GLADSON,  
 ABRAHAM B. JACOBUS,  
 CHARLES LUM,  
 LEWIS M. BROWNING,  
 MATTHIAS W. GUERIN.

10

Whereas, the Court of Common Pleas of the County of Morris at the term of May last of said Court; did order and appoint as follows, to-wit :

At a Court of Common Pleas held at Morristown in and for the County of Morris, on Monday, the twenty-ninth day of May, A. D. eighteen hundred and forty-eight.

Present :

JACOB WILSON, Esquire, Judge, &c.

IN THE MATTER OF THE APPLICATION OF  
 HENRY MCFARLAN & OTHERS FOR A  
 PUBLIC ROAD IN THE TOWNSHIP OF  
 RANDOLPH, AND FOR VACATING A ROAD  
 IN SAID TOWNSHIP.

Appointment  
 of  
 Surveyors:

20

Application in writing being made to the Court in open Court by Henry McFarlan and others, ten Freeholders and residents of the County of Morris, that they think a public road to be necessary in the Township of Randolph in the said county, beginning at a stake in the public road leading from Dayton C. Freeman's to the village of Dover in said Town- 30  
 ship, which stake is near the point of the mountain lying easterly of said village, and ending at the intersection of Blackwell and Sussex streets in said village, and applying to the Court to appoint six surveyors of the highway of the said County to meet at such time and place as the Court should direct for the purpose of laying out said road, and also for the purpose of vacating the public road now lying between the said points; and due proof being made to the Court that at least ten days previous notice has been duly given of such intended application, and of the day on which said applica- 40

tion was intended to be made, by advertisements under the hands of said applicants set up at three of the most public places in the Township of Randolph in which the said road is proposed to be laid out ; and the said public road now lying between the said points to be vacated, it is ordered that six surveyors of the highways of said County, namely Daniel Lamson, Surveyor of the township of Randolph, William Gladson and Abraham B. Jacobus, Surveyors of the highways of the township of Pequannock, Charles Lum and

10 Lewis M. Browning, Surveyors of the highways of the Township of Chatham, and Matthias W. Guerin, Surveyors of the highways of the township of Morris, be and they are appointed accordingly, regard having been had to the appointment of the surveyors of the said township of Randolph where the said road is so applied for to be laid out ; and the said public road now lying there to be vacated. The Court thinking that the oath of office of Abraham Eagles elected as one of the Surveyors of the highways of the township of Randolph, has not been taken by him according to law, on which ac-

20 count he is not here appointed ; which said six Surveyors here appointed by the Court shall meet at the house of Jacob Hurd, Inn Keeper, in the township of Randolph aforesaid, on Monday, the twenty-sixth day of June next, at ten o'clock in the forenoon ; and it is further ordered, that the said surveyors make separate return as to the laying out the said road applied for, and vacating the aforesaid public road. Now we, the undersigned, six of the surveyors of the highways aforesaid, do certify and make this separate return as to the said public road applied for to be

30 vacated—that is to say, we do certify and return--that the said Daniel Lamson, William Gladson, Abraham B. Jacobus, Charles Lum, Lewis M. Browning and Matthias W. Guerin met at the time and place in the said order specified, and due proof being made to us that the advertisement of our said meeting had been set up according to law on which we decided, and we who so met as aforesaid having viewed the premises, we whose names are hereto subscribed, think and adjudge the said public road so applied for to be vacated, being the most direct public road be-

40 tween the said stake and the said intersection of Blackwell

and Sussex streets to be unnecessary, and do order and adjudge the same to be vacated, and do vacate the same.

Witness our hands this twenty-sixth day of June, A. D., eighteen hundred and forty-eight.

DANIEL LAMSON,  
 WILLIAM GLADSON,  
 ABRAHAM B. JACOBUS,  
 CHARLES LUM,  
 LEWIS M. BROWNING, 10  
 MATTHIAS W. GUERIN.

Received in office July 8th, 1848, and Recorded July 29th,  
 1848. LUDLOW, *Clerk.*

STATE OF NEW JERSEY. MORRIS COUNTY, ss ;

I, Richard Speer, Clerk of the County of Morris, do hereby certify the foregoing to be true copies from the original returns [with map annexed] on file of a public road in the township of Randolph, and a public road vacated in 20 the township of Randolph, as the same remain on file in my office of the date of July 8th, 1848 ; also that the same remain on record in said office in Book C, of Roads, pages 407, and 411, respectively.

In testimony whereof I have hereunto set my hand and affixed the seal of said County, at Morristown, this seventh day of December, A. D., 1868.

RICHARD SPEER, *C'k.*

## EXHIBIT B.

HENRY MCFARLAN, DANIEL AYERS, and  
STEPHEN VAN RENSSELAER.

*Trustees, &c.,*

10

to

THE MORRIS & ESSEX RAIL-ROAD COM-  
PANY.

Deed dated September 7th, 1848    Recorded, December 21,  
1848.

In consideration of one dollar, grants, assigns and conveys  
unto the said party of the second part, their successors and  
assigns, "the right, power and privilege to make, build, con-  
"struct, maintain and keep up, under their charter and the  
20 "supplement or supplements thereto, such part or portion of  
"their rail-road now in course of construction, or hereafter  
"to be constructed, as may pass on, over or through the  
"lands and premises of the said parties of the first part, here-  
"inafter described, fifty feet in width at the graded surface  
"hereinafter mentioned—that is to say, twenty-five feet in  
"width on each side of the following lines of courses so far  
"as the same lines run through and over the lands and prem-  
"ises of the said parties of the first part, situate and being  
in the township of Randolph, in the county of Morris afore-  
said, beginning, &c.

30

\* \* \* \* \*

The said width of fifty feet to be at the graded surface of  
the road, and as well on embankment as in excavation, where  
the same are or may be respectively required on the said  
lines of courses; it being understood that a part of the said  
middle lines of courses does not pass over and the lands  
of the parties of the first part, and also that a part of the  
aforesaid width is not on their lands.

The object of this deed being to grant, or convey to the  
40 said party of the second part and their successors, all the

right, title and interest of the said parties of the first part in and to the said premises above described, as far as they, the said parties of the first part can or may convey the same for the purpose of enabling the said party of the second part and their successors, to build, construct, maintain and keep up under the charter granted to them for the purpose, and said supplement or supplements, such portion of their railroad as may pass in, over and through the said premises above described."

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EXHIBIT C

Is a map.

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EXHIBIT D.

HENRY MCFARLAN and wife

to

EDWARD A. STICKLE. }

Warranty deed dated August 1st, 1856. Recorded 11th September, 1856. Consideration \$6000.

Conveys a lot in Dover known as the Park House, beginning at the south-west corner of Blackwell and Warren streets in said village ; thence running (1) along the south side of said Blackwell street south eighty-seven degrees west one hundred and twelve feet to a line of land now of Guy M. Hinchman ; thence (2) along said line of said Hinchman south three degrees east two hundred and seventy-five feet to the north side of Dickerson street ; thence (3) along the

north side of said Dickerson street north eighty-seven degrees east one hundred and twelve feet to the north-west corner of Dickerson and Warren streets; thence (4) along the west side of said Warren street north three degrees west two hundred and seventy-five feet to the place of beginning, containing thirty thousand eight hundred square feet.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

<p>THE MORRIS AND ESSEX RAIL ROAD CO., Appellants, and GEORGE M. ROBESON, ESQ., ATTORNEY- GENERAL OF THE STATE OF NEW JERSEY AT THE RELATION OF MAH- LON MUNSON, WILLIAM L. YOUNG, JOSEPH RODERER AND EDWARD A. STICKLE, RELATORS, Appellees.</p>	}	<p><i>On Bill for In- junction and Rule to Show Cause.</i></p> <p><i>Petition of Appeal.</i></p>
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To the honorable the Court of Errors and Appeals :

The humble petition of the Morris and Essex Railroad Company, the appellants in the cause above stated, respectfully shows that your petitioners are aggrieved by an interlocutory decree or order, made in the court of chancery by Abraham O. Zabriskie, Esq., chancellor of the state of New Jersey bearing date the twelfth day of January, eighteen hundred and sixty-nine, in a certain cause, depending in said court of chancery, wherein the above named appellees were complainants, and your petitioners were defendants in this respect, to-wit—that the said interlocutory decree or order, orders and decrees, that a writ of injunction under the seal of said court of chancery do issue out of said court of Chancery directed to the said the Morris and Essex Railroad company, enjoining and restraining them from laying a se-

cond railway track in Dickerson street in the village of Dover, north of their present railway track and between Morris and Warren streets, and that the said the Morris and Essex Railroad Company should pay the costs of the appellees on the order to show cause, theretofore obtained in the said cause in chancery.

And your petitioners humbly appeal from all and every part of the said interlocutory decree or order of the said Chancellor which orders and decrees as aforesaid upon the ground and for the reason that the same is erroneous and wrong— 16  
for that the said the Morris and Essex Railroad company should not be enjoined and restrained from laying a second railway track north of their present railway track in Dickerson street in the village of Dover, between Morris and Warren streets, and should not pay to the said appellees their costs on the said order to show cause.

Your petitioners therefor pray that the said<sup>r</sup>interlocutory decree or order of the said chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden.

And that your petitioners may have such relief in the 20  
premises as to this honorable court shall seem meet and proper.

Dated, January, 25th, 1869.

VANATTA & DEMOTT,  
Sol's. of Appellants.

JACOB VANATTA,  
Of Counsel with Appellants,

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NEW JERSEY COURT OF ERRORS AND APPEALS.

THE MORRIS & ESSEX RAILROAD Co.,	}	<i>On Bill, &amp;c.</i>
Appellants,		
and	}	<i>Petition of Appeal.</i>
BYRAM PRUDDEN,		
Appellee.		

To the honorable the Court of Errors and Appeals: 40  
The humble petition of the Morris and Essex Railroad

company, the appellants in the cause above stated, respectfully shows, that your petitioners, are aggrieved by an interlocutory decree or order made in the court of chancery by Abraham O. Zabriskie, Esq., chancellor of the state of New Jersey, bearing date the twelfth day of January, eighteen hundred and sixty-nine, in a certain cause depending in said court of chancery wherein the said Byram Prudden was complainant, and the said the Morris and Essex Railroad company were defendants in this respect, to-wit—that the said  
 10 interlocutory decree or order, orders and decrees that an injunction do issue out of said court of chancery against the said the Morris and Essex Railroad company, restraining them from laying a second railway track, north of their present railway track, in Dickerson street in the village of Dover, between Morris and Warren streets, and that the said the Morris and Essex Railroad company should pay to said complainant, Byram Prudden, his costs of the order to show cause theretofore obtained in said cause in chancery and his costs in and about the said order, dated January twelfth,  
 20 eighteen hundred and sixty-nine.

And your petitioner humbly appeals from all and every part of the said interlocutory decree or order of the said chancellor which orders and decrees as aforesaid upon the ground and for the reason that the same is erroneous and wrong, for that the said the Morris and Essex Railroad company should not be restrained from laying a second railway track north of their present railway track in Dickerson street in the village of Dover, between Morris and Warren streets, and should not pay to the said complainant, Byram Prudden, any costs whatever, either of said order to show cause, or of said  
 30 order or decree dated January twelfth, eighteen hundred and sixty-nine.

Your petitioners therefore pray that the said interlocutory decree or order of the said 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 shall seem meet and proper.

Dated, January, 25th, 1869.

VANATTA & DEMOTT, Sol's. of Appellants.

IN CHANCERY OF NEW JERSEY.

<p>Between                  GEORGE M. ROBESON, Attorney General of                  the State of New Jersey, at the relation                  of Mahlon Munson, William L. Young,                  Joseph Roderer and Edward A. Stickle,                  Relators, and</p> <p style="text-align: center;">Complainants,</p> <p style="text-align: center;">and</p> <p>THE MORRIS AND ESSEX RAIL-ROAD COM-                  PANY,</p> <p style="text-align: center;">Defendants.</p>	}	<p><i>On Bill for</i> 10  <i>Injunction, and</i>  <i>rule to show</i>  <i>cause.</i>  <i>Appeal.</i></p>
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The defendants hereby appeal from the whole and every part of the interlocutory decree or order made in this Court in the above stated cause, bearing date the twelfth day of January, eighteen hundred and sixty-nine, ordering that a writ of injunction do issue out of this Court, enjoining and restraining the defendants from laying a second railway track in Dickerson street in the village of Dover, north of their present railway track, and between Morris and Warren streets, and that the defendants pay the costs of the relators and complainants on the order to show cause obtained in the said cause. 20

Dated, January 15, 1869.

VANATTA & DEMOTT,  
 Sol's of Defendants. 30  
 JACOB VANATTA,  
 Of Counsel.

I conceive that there is good cause for appeal in the within stated cause.

JACOB VANATTA,  
 Of Counsel with Defendants.

## IN CHANCERY OF NEW JERSEY.

10	Between BYRAM PRUDDEN,  and THE MORRIS & ESSEX RAIL-ROAD COM- PANY,	Complainant,  Defendants.	}	<i>On Bill for In-          junction and          Rule to Show          Cause.          Appeal.</i>
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The defendants hereby appeal from the whole and every part of the interlocutory decree or order made in this court in the above stated cause, bearing date the twelfth day of January, eighteen hundred and sixty-nine, ordering that a writ of injunction do issue out of this court restraining the

20 said defendants from laying a second railway track, north of their present railway track in Dickerson street in the village of Dover; between Morris and Warren streets, and that the defendants should pay to the complainant his costs of the order to show cause theretofore obtained in said cause, and his costs in and about the said order, dated January twelfth, 1869, to the court of errors and appeals.

Dated, January 15th, 1869.

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VANATTA & DEMOTT,  
 Sol's. for Defendants.

JACOB VANATTA, of Counsel.

I conceive that there is good cause for appeal in the within stated cause.

JACOB VANATTA,  
 Of Counsel with Defendants.

## IN CHANCERY OF NEW JERSEY.

Between  
BYRAM PRUDDEN,

Complainant,

and

THE MORRIS & ESSEX RAIL-ROAD COM-  
PANY,

Defendants.

*On Bill for In-  
junction and  
Rule to Show  
Cause.*

The order to show cause made in this cause on the 10  
day of November last, having come on to be heard upon the  
pleadings and proofs herein, and having been debated by  
counsel for the respective parties, and the chancellor having  
deliberated thereon, it is on this twelfth day of January, eigh-  
teen hundred and sixty-nine, ordered that an injunction do  
issue out of this court against the defendants restraining  
them from laying a second railway track north of their pre-  
sent railway track in Dickerson street in the village of Dover,  
between Morris and Warren streets, and that the defendants  
pay to the complainant his costs of said order to show cause 20  
and of this order.

A. O. ZABRISKIE, C.

A true copy,

B. GUMMERE, Clerk.

## IN CHANCERY OF NEW JERSEY. 30

Between

GEORGE M. ROBESON, Attorney-General of  
the State of New Jersey, at the relation  
of Mahlon Munson, William L. Young,  
Joseph Roderer and Edward A. Stickle,  
Relators, and

Complainants,

and

THE MORRIS & ESSEX RAIL-ROAD COM-  
PANY,

Defendants.

*On Bill for  
Injunction and  
rule to show  
cause.*

The order to show cause heretofore on the second day of  
December, eighteen hundred and sixty-eight, made in this

case, having come on to be heard upon the pleadings, propositions and exhibits in the cause, and having been debated by counsel for relator, and complainants, and defendants respectively, and the chancellor having deliberated thereon, it is on this twelfth day of January, eighteen hundred and sixty-nine, ordered that a writ of injunction do issue out of and under the seal of this Court, directed to the defendants, enjoining and restraining them from laying a second rail-way track in Dickerson street in the village of Dover, north of  
 10 their present rail-way track, and between Morris and Warren streets; and it is further ordered that the defendants pay the costs of the relators and complainants on said order to show cause, to be taxed by the clerk of this Court.

A. O. ZABRISKIE, C.

A true copy,

B. GUMMERE, Clerk.

## IN CHANCERY OF NEW JERSEY.

February Term, 1869.

THE ATTORNEY-GENERAL EX. REL., STICKLE AND OTHERS	}	<i>On Information and Bill.</i>
<i>vs.</i>		
THE MORRIS AND ESSEX RAIL-ROAD COM- PANY.		

PRUDDEN.	}	<i>On Bill.</i>
<i>vs.</i>		
THE SAME.		

Rules to show cause why an injunction should not issue in the above cases had been granted, and the defendants having filed their answer, leave was given to take depositions to be used at the hearing on the rule, the alleged injury against which relief was asked, being the same in both cases, by arrangement of counsel the two cases were argued together, and same depositions used in both.

Mr. FORSYTH and Mr. PITNEY,  
For Application.  
Mr. VANATTA,

For the Rail-road Company. 10

## THE CHANCELLOR :

The injunction applied for is one to restrain the defendants from laying a second track of their Rail-road in a street in the village of Dover, in the county of Morris, called Dickerson street. The defendants about twenty years ago laid one track of their road in Dickerson street along or near the south side of the street, and are now about to lay another track to the north of that which will extend into Dickerson street, and occupy about eleven feet more of its width. 20

The relators in the information, and the complainant in the Bill, are owners of lots on the north side of Dickerson street opposite the part where the additional track is proposed to be laid, and laying that track would reduce the width of the street in front of their premises for practical use as a street.

The questions raised are, whether Dickerson street has been dedicated to and accepted by the public so as to become a public highway in which the right of the public can be protected by information; and whether if it had become a public highway, the defendants are not authorized by their charter to occupy it by their road; also, whether the land which is occupied by the street was not dedicated to the owners of lots fronting upon it in such way as to give them an easement or right to have it kept open for a way to its  
 10 full width, and whether even if such easement does not exist, the complainant in the Bill does not suffer an injury by narrowing the street in front of his lot and buildings different from that sustained by the public at large, so as to entitle him to relief by a suit in his own name.

About forty years ago the land occupied by Dickerson street and the lots of the complainant and relators, and in fact by the greater part of the village of Dover, was owned by Henry McFarlan; he, about that time, laid it out into a village plot by streets which he had marked out on maps  
 20 made of the village, kept in his office and exhibited to purchasers of lots; these streets, or many of them, were afterwards from time to time opened and staked out upon the ground, as it became necessary or useful for the sale of lots or public travel.

The main street was Blackwell street, which ran nearly east and west and was laid out seventy-five feet; Dickerson street was south of and parallel to Blackwell street at the distance of two hundred and seventy feet from it, was the most southerly street on the plot and was 66 feet wide, except at one  
 30 part where that width would reach lands owned by William Ford, and in front of his tract it was laid out only sixty feet wide so as to leave six feet between his land and the street; Ford's tract is now owned and occupied by the defendants for a depot; McFarlan also laid out and opened cross streets running north and south—the most westerly was Warren street, and then proceeding to the east corner Sussex, Morris, Essex and Bergen streets in succession—Dickerson street had been opened and staked out before 1835, as far west as the west side of Warren street, and the trustees of  
 40 McFarlan's estate, who after his death had been invested

with full power for that purpose by two deeds made in 1837 and 1839, respectively, conveyed to the complainant, Byram Prudden, a lot at the north-west corner of Dickerson and Morris streets, extending 100 feet along Dickerson street and 75 feet on Morris street; these deeds describe the lots as binding on Dickerson street and on Morris street. These streets were at that time laid down and designated by these names on maps then in possession of Mr. McFarlan's trustees, which he had procured to be made, and it is not shown that they had any other origin or existence except being 10 opened on the lands.

Before Mr. McFarlan laid out the town plots there was an old public road running through it, which had once been a turnpike road, but which the turnpike company had abandoned, and which by legislative authority had become a public highway, which the proper public officers were bound to maintain and keep in repair; this road originally crossed the block between Warren and Sussex streets, north of Dickerson street, diagonally, and came into Dickerson street between Sussex and Morris streets, where, taking the direction of Dickerson street, it nearly coincided with it for three or four blocks, and then ran to the south of the range of Dickerson street. In 1848 the defendants constructed their road through Dover—surveyors of the highways who had been appointed for the purpose by a return recorded in July, 1848, vacated the old public road from the corner of Sussex street and Blackwell street, to a point 44 chains easterly of Sussex street; the road had by uses or legislative authority been changed before this, so that instead of crossing the blocks diagonally, it ran along Blackwell street to Sussex street, then southerly down Sussex street to Dickerson street, and then easterly along Dickerson street to Morris street; after this vacation the trustees of the McFarlan estate by deed dated September 9th, 1848, granted to the defendants the right to construct their railroad on a strip of land 50 feet wide, being twenty-five feet on each side of a line run parallel to the north side of Dickerson street, south of and fifty feet distant from it; Dickerson street was laid out entirely on the McFarlan estate, and as 41 feet of the strip upon which the grant to the defendants was made, was within Dickerson street, nine feet of the fifty was upon the Ford 40

lot, which defendants afterwards purchased, for the whole front of that lot, and much of the residue of the nine feet was upon lands of the McFarlan estate south of Dickerson street; as the fee of all this 50 feet within the lines of Dickerson street was vested in the trustees of the McFarlan estate, the grant to the defendants would authorize them to construct their road upon it, unless the public or individuals had acquired rights in it; that would be infringed by such construction. It is conceded that the track, which the defendants propose to build, is upon this strip of 50 feet included in the grant.

The information is based upon the claim that Dickerson street is a public highway, and was such before the grant to the defendants of September 1848, it is shown by the depositions, and is not disputed, that for years prior to 1846, Dickerson street had been opened in front of the premises of the relators and the complainant, from Morris street to the west side of Warren street, and that it was used by the public as a street. It also appears from exhibits in the cause, that before 1848 the trustees of the McFarlan estate had sold to the relators and the complainant, or those under whom they claim, and to others, lots on the north side of Dickerson street, between Warren and Morris street, and described these lots in the conveyances as abutting on Dickerson street. It is now too well settled be ot doubted or discussed, that if the owner of a tract of land lays it out in blocks, lots, street and squares, and sells lots by reference to the map, or in the conveyance abuts them on the street so laid out, that the streets and squares on the map so referred to, or the street on which the lot is so abutted, when the map is not referred to, became thereby dedicated to public use; or the owner of land marks out a street by erecting buildings on each side of it, and then sells or leases these buildings, the space so marked out is thereby dedicated to public use—the purchasers of the lots acquire an easement or right in the lands so laid out as streets, and have a right to pass over them, and to have them taken by the proper authorities for public streets without compensation to the owner; by such dedication the streets do not become public highways, they are not such, until accepted by the proper

public authorities, or until used by the public as highways for twenty years; until then there is no right acquired by the public, but only by the purchasers of lots by whose consent the easements may be surrendered, and the lands freed from all claim by the rest of the public; these principles have been declared as law by the courts of this state, and affirmed by the courts of errors by repeated decisions--Den a Jersey City v. Drummer, Spencer, 106; Holmes vs. Jersey City,

1 Beasley, 299; Jersey City vs. Morris Canal and Banking Co., 1 Beasley, 547. Dickerson street in front of 10 the lots in question, has become a public highway by being used as such by the public for more than twenty years; this was determined as sufficient in Holmes vs. Jersey City; and also in Smith v. the State, 3 Z of 130; also in the court of errors.

It may be that in order to make the township liable for the repairs of this road, some other act of adoption by the proper authorities was necessary, but nothing further is necessary to establish the right of the public to use and travel it as a public highway. In this case, as the land was dedicated to 20 the public by the act of the owner in staking out and opening of a public street over it as well as by selling lots bounded on that street, it did not require uses by the public for twenty years; to acquire the public right, the use for a much shorter time sufficient. This right was acquired by the public in the whole of Dickerson street between Warren and Morris streets for its full width prior to 1848, it was then a public street, and the vacation by surveyors in 1848 of the old public highway which for part of the distance between Morris and Sussex streets ran over and nearly coincided 30 with Dickerson street, cannot be held to have vacated it, or even the part which it so run over, for it did not affect the residue of that street of which this was a necessary part, and purchasers of lots before that year had become invested with the easement or right to have this street kept open as a public street. The grant to the defendants then, was closely subject to those rights in the street which had been previously acquired. The adverse use and possession of the lands to be occupied by the new track can be of no avail. In the first place, depositing hoop poles or other goods to be trans-

part on their rail-road, upon the part of the public road adjoining their track, is no adverse use or possession; and secondly, no adverse possession can effect the right of the public to a street or highway.

An obstruction or nuisance to a public highway is an injury to the public, for which an information in the name of the Attorney-General is the proper remedy.

It cannot be questioned that the occupation of a public road by the track of a rail-way operated by steam, effectually  
 10 prevents the use of the part so occupied by the track, by the public as a highway for ordinary travel, for which these lands were dedicated, and for which ordinary roads are laid out. Such occupation then, unless authorized by law, is a nuisance which this court must restrain.

The defendants claim that they are authorized by their charter to lay their road *along and upon*, as well as across and over public streets. This Court, in the case of the Morris & Essex Rail Road Company vs. Newark, 2 Stockton, 352, declared that this charter did not confer the right to lay  
 20 their track along and upon public streets, unless in a case of necessity, which is not pretended to exist here. The defendants, then, are not authorized by law to lay their track upon this street, and the injunction applied for, by the information filed, must be granted.

The Bill filed by Byram Prudden presents the additional question whether a suit can be maintained by an individual for a nuisance in a public road or street, because it narrows and obstructs the streets in front of his premises. I am inclined to think that there is in such case a special injury to  
 30 the individual different from that to the public at large—the lot of Mr. Prudden is occupied by a shop and dwelling-house. Beside the right of passing along the highway, he has the right of having wagons and vehicles of all kinds stand in the street in front of his premises for a sufficient time to load or unload, and to occupy for that purpose, so much of the street as is necessary—provided it does not obstruct or impede public travel. Every serious encroachment on the width of the street narrows this right, which is an injury only to him and not to the public; such encroachment has been held to be an injury to the individual in several cases.

Corning v. Lowere, 6, J. C. R., 439.

Sparde v. Lond & Bir., R. Co., S. Lem 193.

Sampson v. Smith. Ib 272.

In this case Prudden has also a right, by his purchase before the grant of 1848, to have this street open to the full width; the public have adopted the street as a highway and have not abandoned or vacated the right for the people, and the right of Prudden by the dedication therefore cannot be destroyed—this is a right special to him and not held in common with the public.

10

Whether after an acceptance by the proper authorities or by public use, if the street should be vacated by legal proceedings for that purpose, and thus discharged from the public burden, the owners of lots fronting upon the part so vacated, would retain the easement of a right of way, so far as to have a right of passing from and to the lots purchased is perhaps not settled by direct adjudication. The intimation, in the opinion of Justice Vredenburg, in the State vs. Snedeker, 1 Vroom, 84, and the doctrine maintained by Chancellor Wolmouth, in the trustees of Watertown v. Cow-  
 an, 4, Paige, 510, and by the Supreme Court of New York in re 29th street, 1, Hill, 189, and in Bissell vs. the New York Central R. R. Co., 26, Barb, 632, would seem to point to a conclusion grounded on correct principles, which is, that the purchaser of a lot upon a street so dedicated, acquires a perpetual and indefeasible right of access to his lot over the same, or at least over so much as leads from his lot to the next adjoining public street on each side, whether the same be accepted and adopted by the public as a highway or not, and if after acceptance the same be abandoned by the pub-  
 lic as a public highway. But it is not necessary to decide this question here; the public have not abandoned or vacated the part of this street on which the new track is proposed to be laid.

20

On either ground, Prudden is entitled to maintain a suit in his own name, and to have the injunction applied for in his suit.

## EXHIBIT E.

HENRY McFARLAN and wife  
*to*  
 JOSEPH RODERER.

Warranty deed dated August 1st, 1856. Consideration \$1000.

10 Conveys a lot in the village of Dover, beginning at a stake standing on the northeast corner of Dickerson and Warren streets, thence running (1) along the north side of said Dickerson st., north eighty-seven degrees east thirty-five feet, thence (2) north three degrees, west seventy-four feet, thence (3) south eighty-seven degrees, west thirty-five feet to the east side of Warren street, thence (4) along the east side of said Warren street south three degrees east seventy-five feet to the place of beginning, containing twenty-six hundred and twenty-five square feet.

20

## EXHIBIT F.

HENRY McFARLAN and wife  
*to*  
 JOSEPH RODERER.

Warranty deed, dated May 16th, 1861. Acknowledged May 18th 1861. Consideration \$400. Recorded December 12th 1861.

30 Conveys a lot in Dover beginning at a stake standing on the northerly side of Dickerson street on a course north eighty-seven degrees east thirty-five feet from the northeast corner of Dickerson and Warren streets being also a corner of a lot of land now of said Roderer; thence running (1) along a line of said Roderer north three degrees west seventy-five feet to another corner of said Roderer; thence (2) north eighty-seven degrees east thirty-seven and a half feet; thence (3) south three degrees east seventy-five feet to the northerly side of said Dickerson street; thence (4) along said northerly side south eighty-seven degrees west thirty-seven and a half feet to the place of beginning, containing twenty-eight hundred and twelve and a half square feet.

## EXHIBIT G.

JACOB SCOTT and wife

to

WILLIAM L. YOUNG.

This Indenture, made the first day of April, in the year of our Lord eighteen hundred and forty-seven, between Jacob Scott and Mary his wife, of the township of Randolph, in the county of Morris and state of New Jersey, of the first part, and William L Young of the township of Randolph, in the county of Morris and State of New Jersey, of the second part; witnesseth, that the said parties of the first part, for and in consideration of the sum of twelve hundred dollars, good and lawful money of the United States, to them in hand, well and truly paid by the said party of the second part 10  
 at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part therewith fully satisfied, contented, and paid, have given, granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed; and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, all tract or parcel of land and premises, hereinafter particularly described; situate, lying and being in the township of Randolph, in the county of Morris and state of New Jersey, butted and bounded as follows: 20

Beginning at a stake standing on the northwest corner of Dickerson and Sussex streets; thence (1) along the north side of said Dickerson street, south eighty-seven degrees, west one hundred feet; thence (2) north three degrees, west seventy-five feet; thence (3) north eighty-seven degrees, east one hundred feet to the west side of Sussex street; thence (4) along the west side of said Sussex street, south three degrees, east seventy-five feet to the place of beginning, containing seventy-five hundred square feet; together with all and singular the profits, privileges and advantages, with the appurtenances to the same, belonging or in any wise appurtenant; also, all the estate, right, title, interest, property, claim and demand whatsoever of the said parties of the first part, of, in and to the same, and of, in and to every part and 30

parcel thereof, to have and to hold, all and singular, the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever: and the said Jacob Scott and Mary his wife, doeth for themselves, their heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that they the said parties of the

10 first part, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof; and are now lawfully seized and possessed of the same as a good, perfect and absolute estate of inheritance in fee simple; and that the same land and premises, or any part thereof at the time of the sealing and delivery of these presents, are not incumbered by any mortgage, judgment, dower, recognizance or limitation, or by any incumbrance whatsoever by which the title of the said party of the second part hereby made or intended to be made for

20 the above described land and premises can or may be changed, charged, altered or defeated in any way whatever; and also that the said parties of the first part now have good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid; also, that they will warrant, secure and forever defend the said land and premises unto the said party of the second part, his heirs and assigns forever against the lawful claims and demands of all and every person, and persons freely and clearly freed and discharged of and from all manner of incumbrance whatsoever.

30

In witness whereof, the said Jacob Scott and Mary his wife have hereunto set their lands and seals the day and year first above written.

Signed, sealed and delivered in presence of Jno. M. Losey and Aron Doty.

his

JACOB X SCOTT. [L.S.]

mark

MARY ANN SCOTT. [L.S.]

## EXHIBIT H.

JOHN B. CLARK and JANE his wife

to

MAHLON MUNSON.

Warranty deed dated October 17th, 1864. Acknowledged  
October 17th, 1864. Consideration \$2000. Recorded Oc-  
tober 27, 1864.

Conveys a tract of land in Dover, bounded and described  
as follows : being the same lot described in and conveyed  
by a certain deed from John B. Clark, Sen., father of said 10  
party of the first part, to said party of the first part hereto  
by his then name and description of John B. Clark, Jr., bear-  
ing date the first day of April, 1859, and recorded in the  
Morris County Clerks office, in Book T, 5 of deeds, folios  
70, 71 and 72, and begins at the north-west corner of Dick-  
erson and Sussex streets in Dover, aforesaid, and runs thence  
on the north side of said Dickerson street (1) south  
eighty-seven degrees west twenty feet to the beginning cor-  
ner of the lot next herein described ; thence along the last  
line of the same (2) north three degrees west twenty-four 20  
feet and two inches to a corner ; thence (3) south eighty-  
seven degrees west ten feet ; thence (4) north three degrees  
west fifty-seven feet and nine inches ; thence (5) south eigh-  
ty-seven west thirty feet ; thence (6) north three degrees west  
seven feet and two inches ; thence [7] north eighty seven de-  
grees east forty feet ; thence [8] south three degrees east  
fifty-one feet and four inches ; thence [9] north eighty-sev-  
en degrees east twenty feet to the west side of Sussex street ;  
thence along the same [10] south three degrees east thirty- 30  
seven feet and eight inches to the place of beginning, con-  
taining one thousand six hundred and twelve square feet of  
land, more or less. Also, all that certain lot of land and  
premises, situate in the village of Dover, aforesaid, in the  
township, county and State, aforesaid, and adjoins the above  
described lot on the west, and is the same lot of land that  
was conveyed to the said John B. Clark, by deed, from By-  
ram Prudden, Charles A. Gillen and Samuel Burchell, Com-  
missioners appointed by the Orphans' Court of the county  
of Morris, to divide the lands and real estate of said John  
Clark, dec'd, bearing date the first day of April 1863, and re- 40

- corded in the Morris County Clerks Office in Book , and begins at the second course of the above described lot on the north side of Dickerson street in said village, and runs thence along the same [1] south eighty-seven degrees west twenty feet to corner of William L. Youngs lot ; thence along the same [2] north three degrees west seventy-five feet to his corner ; thence along the same [3] south eighty-seven degrees west nineteen feet and nine inches to corner in said Youngs line ; thence [4] north three degrees west
- 10 seven feet and two inches ; thence [5] north eighty-seven degrees east thirty feet ; thence [6] south three degrees east fifty-seven feet and nine inches : [7] north eighty-seven degrees east ten feet ; [8] south three degrees east twenty-four feet and two inches to the beginning, containing twelve hundred and twenty-five feet—square feet—be the same more or less. Also, all the equal undivided one-fifth part of all that certain lot of land and premises situate in the village, township, county and State, aforesaid, bounded and described as follows : being the same lot that was conveyed to
- 20 John B. Clark, the father of the said party of the first part, by deed from Matthew Tigler and wife bearing date December 19th, 1854, and recorded in the Morris County Clerks Office in Book F, 5, of Deeds for said county, folios 153 and 154, and whereof the said John B. Clark, died seized, leaving Mahlon Clark, Ashbel Clark said party of the first part, Jane E. Lowe (wife of Charles Love,) and Francis and and Francis Wise daughter of Emma Wise, late Emma Clark, dec'd, his children and heirs at law him surviving, and begins at a stake standing on the west side of Sussex street on a course south three degrees east one hundred and
- 30 fifty feet from the south-west corner of Blackwell and Sussex streets in said village ; thence along the west side of said Sussex street [1] south three degrees east thirty feet ; thence [2] south eighty-seven degrees west one hundred feet ; thence [3] north three degrees west thirty feet ; thence [4] north eighty-seven degrees east one hundred feet to the place of beginning, containing three hundred square feet, more or less. The lot last described is conveyed, subject to the life estate of Elizabeth Clark, widow of the said John B.
- 40 Clark, dec'd, which werə set off to be by agreement with

said heirs as, and for her dower, estate in said real estate of the said John B. Clark, dec'd, and that this understood that her possession of the same, is not to be disturbed by virtue of this conveyance. And that the covenants of warranty hereinafter contained, are not to be of any binding effect as against said life estate or anything thereto relating.

10

## EXHIBIT I.

WILLIAM FORD,  
to

THE MORRIS & ESSEX RAILROAD CO. }

20

Warranty deed dated June 5th, 1848. Acknowledged November 4th, 1848. Recorded November 4th 1848. Consideration \$5000.

Conveys a tract of land in Dover, butted and bounded as follows; being in two tracts, the first tract begins at the sixth corner of a tract of seven acres and thirty-nine hundredths of an acre, that Andrew King purchased of Stephen Jackson, by deed bearing date the 11th day of June, A. D., 1767; thence running (1) north seventy-nine degrees, west two chains and (2) south eleven degrees, west two chains and forty-six links, (3) north eighty-one degrees and thirty minutes, west four chains and ninety-three links, (4) north twenty-three degrees, west one chain [5] north thirty-nine degrees, west four chains, (6) north eight degrees west two chains, (7) north eighty-eight degrees, east two chains and twenty-eight links, [8] south five degrees and thirty minutes, west five chains to the place of beginning.

The second tract begins at the eighth corner of the above described lot, and runs thence (1) south eleven degrees east two chains and eighty-three links, -2- south seventy-five de-

grees and thirty minutes, west seventy-four links to the eighth line of the above described land ; thence -3- north four degrees, and thirty minutes, east three chains to the place of beginning. The first above mentioned tract is the same as described in a deed from James Ford junior and wife, to the said William Ford, dated April 3d, 1821, and recorded in Morris county register of deeds Liber L, L, folios 99, 100. The second above described tract is the same that was conveyed by Henry McFarlan and wife, to the said  
10 William Ford, by deed dated December 1st, 1827, and recorded in Morris county register of deeds Liber A, 3, folios 333, 334 the whole two tracts contain five acres more or less.