

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

BETWEEN
ROBERT H. MCCARTER,
ATTORNEY GENERAL,
RESPONDENT,
AND
MILLVILLE GAS LIGHT COMPANY,
APPELLANT. } On Information

**BRIEF OF MILLVILLE GAS LIGHT
COMPANY, Appellant.**

The question presently at issue in this cause is, whether or not the Millville Gas Light Company may under its charter lawfully extend its system of mains and pipes in, through and along all of the highways of Landis Township in Cumberland County, for the purpose of supplying gas to public and private consumers; and if it may not use all of the streets, roads and highways of Landis Township for that purpose, whether it may extend its pipes to the hamlet known as Cloverdale in that Township.

The gas company claims the right to extend its mains and pipes in and along all or any of the streets, highways and public places of Landis Township for the purpose aforesaid, under its charter (*P. L. 1857, p. 452.*) The provisions of that act which are in point, read as follows:

“BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That Ferdinand F. Sharp, John McNeal, Edward Tatem, James Loper, Nathaniel Stratton, Lewis Mulford, Furman L. Mulford and Elijah B. Richman, and all and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors, are hereby created a body politic and corporate, in fact, and in law by the

name of 'The Millville Gas Light Company,' and by the said name the said corporation shall have power and authority to manufacture, make and sell gas for the purpose of lighting the streets, buildings, manufactories and other places situated in the *town of Millville and its vicinity*.

AND BE IT ENACTED, That the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues and public grounds of the *town of Millville and its vicinity*, and to do all things necessary to light the said town and the dwellings, stores and other places situated therein; provided, that the public travel shall at no time be affected or impeded by the laying of the said pipes or the erection of the said posts; and the streets, side and cross walks, public grounds, lanes and avenues, shall not be injured, but shall be left in as good and perfect condition as before the laying of the said pipes or the erection of the said posts.

AND BE IT ENACTED, That the said corporation shall possess the general powers, and be subject to the restrictions and liabilities contained in the act entitled "An act concerning corporations," approved the fourteenth day of February, one thousand eight hundred and forty-six, so far as the same are applicable."

Approved March 20, 1857.

At the time of the incorporation of the Millville Gas Light Company, all that territory now comprised within the corporate limits of the City of Millville, the Township of Landis and the Borough of Vineland, in Cumberland County, formed a township known as the Township of Millville.

By the Act P. L. 1864, page 180, Landis Township

was set off from the Township of Millville. By P. L. 1866, page 116, that part of the Township of Millville remaining after Landis Township was set off, was incorporated as the City of Millville. In 1880 a tract of land about one mile square, located approximately in the centre of Landis Township, was erected into a Borough. So that at the time this suit was instituted, the Township of Millville had ceased to exist, and the territory which it formerly comprised is now contained within the corporate limits of the three municipalities named, to wit; the City of Millville, the Township of Landis and the Borough of Vineland.

The contention of the defendant gas company is that its franchise empowering it to extend its system of pipes and mains throughout the streets and highways of the *Town of Millville and its vicinity*, grants the right to lay its mains and pipes in and along any or all of the streets, highways and public places of the *Township of Millville*, as it existed in 1857. But that if the court shall decree that its charter is not co-extensive with the corporate limits of the old Township of Millville, nevertheless the company may extend its pipes and mains to the hamlet of Cloverdale, because Cloverdale is in the *vicinity of the Town of Millville*, howsoever the term *town* or the word "vicinity" may be construed.

POINTS.

I. THE DEFENDANT HAS LOST NONE OF ITS CHARTER RIGHTS BY ABANDONMENT OR BY REPEAL.

II. ITS CHARTER GRANTS THE DEFENDANT THE RIGHT TO USE ALL THE STREETS, HIGHWAYS AND PUBLIC GROUNDS OF LANDIS TOWNSHIP.

III. IF THE COMPANY MAY NOT USE ALL OF THE STREETS, HIGHWAYS AND PUBLIC GROUNDS OF THE TOWNSHIP OF LANDIS, IT MAY GO TO THE HAMLET OF CLOVER-

DALE, BECAUSE THAT PLACE IS IN THE VICINITY OF MILLVILLE, UNDER ANY CONSTRUCTION THAT MAY REASONABLY BE PLACED ON THE DEFENDANT'S CHARTER.

IV. THE CLOVERDALE EXTENSION WAS LAID BEFORE THIS SUIT WAS INSTITUTED, AND THE DECREE TOUCHING THE DELIVERY OF GAS THROUGH THE MAINS OUGHT NOT TO BE AFFIRMED.

A reasonable construction should be placed on the charter, one which will make all parts harmonize.

An unreasonable interpretation in any case is not to be adopted, or one opposed to the general purposes of the grant, unless the court is driven to it by restrictive language which cannot be overlooked or set aside.

4 Thomp. on Corp., Sec. 5660.

It is a general rule of statutory construction that a statute is not to be construed in so large a sense as to silence other clauses, where, without violence to the language, a construction can be given which will make all harmonize; and this rule applies to charters.

4 Thomp. on Corp., Sec. 5665.

I.

THE DEFENDANT COMPANY HAS LOST NONE OF ITS RIGHTS (a) BY ABANDONMENT, OR (b) BY REPEAL THEREOF BY LEGISLATIVE ENACTMENT.

(a) *The defendant company has lost none of its rights by abandonment.*

In West Jersey Traction Co. v. Camden H. R. R., 7 Dick. at page 463, V. C. Pitney, construing the charter of the Camden Horse Railroad Co. referring to its right to extend its tracks beyond the City limits of Camden, said:

“It was further argued, but quite faintly, that this right has been abandoned by non-user for twenty years. No authority was cited in favor of

this proposition, and I know of none. No limit was placed by the act upon the time within which the right should be exercised. The proofs show that the company extended its railway lines from time to time as fast as the public business, growth and spread of population required and warranted; that it had already extended its Federal and Market street line to Merchantville, and was engaged, in good faith, in extending its State street line over the territory here in dispute.

There is nothing in the case tending to show that it neglected this territory and left it without railway service after its population warranted the expense of the necessary plant. The Legislature, in making this grant, must be presumed to have understood that towns and cities grow and spread by degrees, and not *per saltum*, and that proper service for them by street railways should be provided accordingly."

7 *Dick. at page 463.*

On this point the learned Vice Chancellor was sustained by the Court of Errors on appeal.

8 *Dick. 164.*

It appears by the defendant's answering affidavits (page 29 &c. of the book) that after the original installation of the gas plant, the defendant company, from time to time as necessity or demand required, made extensions of its pipes and mains, so that its plant has been enlarged and extended as demanded by the growth of Millville. And (page 30) that the defendant company has extended its gas mains from the central part of Millville along the road known as Main Road or Main Avenue from time to time as houses have been constructed along said highway, and a demand for a gas supply has been created, in the same manner as it has made extensions along any

other highway of Millville. Cloverdale lies along that highway.

Under the rule laid down by Vice Chancellor Pitney, and affirmed by the Court of Errors, there has been no abandonment by the defendant company of any of its franchises. And the rule is a reasonable one, for, if the law were otherwise, nearly every of the old gas companies in the State would be prevented from making any further extensions to their plants.

(b) *None of the charter rights of the defendant company has been repealed by Legislative Enactment.*

It was argued below that the setting off of Landis Township operated as a repeal of the charter privileges in that Township; and that the incorporation of the remaining part of the old Township of Millville as the City of Millville operated so as to confine the gas franchise to the limits of the City of Millville defined in the Act incorporating the City.

There is nothing in the Act incorporating Landis Township or in the Act incorporating the City of Millville suggestive of such repeal. Repeals by implication are not favored.

4 Thomp. on Corp. 5680.

If the charter of the Millville Gas Light Company was repealed as to Landis Township by the Act setting off that territory, few of the charters of gas and water companies in New Jersey are unaffected by the creation of new municipalities, and indeed many of the ancient charters have been entirely destroyed. But there is no reason or authority for the suggestion that the charter is affected by setting off the territory comprised within the limits of Landis Township, or by the Act incorporating the City of Millville.

The charter rights of the company are exactly what was originally granted in 1857, neither more nor less.

II.

THE DEFENDANT COMPANY, BY ITS CHARTER, IS EMPOWERED TO USE ANY OR ALL THE HIGHWAYS AND PUBLIC GROUNDS IN THE TERRITORY INCLUDED WITHIN THE CORPORATE LIMITS OF THE TOWNSHIP OF MILLVILLE AS THAT TOWNSHIP EXISTED IN 1857.

1. By the words "Town of Millville" was meant "Township of Millville."

2. If the court shall hold otherwise, then the appellant maintains that by the words "Town of Millville and its vicinity" was intended all the territory within the corporate limits of Millville Township, as that Township existed in 1857.

I.

By the words "Town of Millville," was meant "Township of Millville."

The import of the word *town* in our legislation is so variable that its signification in any particular enactment must largely depend upon the occasion and purpose of the enactment of the law.

Brown v. Telephone Co., 20 Vr. 624.

Herman v. Guttenberg, 34 Vr. at p. 617.

The terms "plantation," "town" and "township" seem to have been used in the early colonies almost indiscriminately to indicate a cluster or body of persons inhabiting near each other, and when they become designated by name certain powers were conferred upon them by custom and laws, such as to manage their own prudential concerns, elect deputies and the like; which in effect made them municipal corporations, and no formal Acts of incorporation were framed until long afterwards.

Commonwealth v. Roxbury, 75 Mass. 485.

And in our State the boundaries of several of the ancient Townships are not to be found in any statute.

Nixon's Digest. (1868) note 993.

Insert at bottom of page 7.
 Van Riper vs. Parsons, 11 Vr. 1.
 Fell vs. Newark, 11 Vr. 550-5.
 Santa vs. Richards, 13 Vr. 497.
 Browne vs. Telephone Co. 20 Vr. 624.
 Stout vs. Glen Ridge, 30 Vr. 201.
 Brown vs. Town of Union 33 Vr. 142.

Says Mr. Justice Collins, speaking for the Court of Errors in *Herman v. Guttenberg*, 34 Vr. pp. 617, 618:

“In England, prior to the settlement of this country and down to the time of its securing independence, large towns were generally incorporated, either by royal charter or by act of parliament. Local government in other cases was parochial. The colonists in New England limited the word ‘parish’ to church authority and gave the word ‘town’ a new meaning, akin to that denoted by the ancient British Township.

THEY APPLIED it, irrespective of urban or rural characteristics, to a territory *with boundaries in which local government was exercised*. These towns became quasi-corporate political divisions, and to this day form the units of State government. They are nearly pure democracies, the powers of the selectmen being mainly executive. Of course, many of the large towns, using the word in its primitive sense, have particular incorporation. In the provinces of New Jersey, as in other colonies where the more important political division was the county, the *town* sometimes called *township* and sometimes called precinct, became a political division, varying mainly from the New England type in the larger powers vested in the representative township committee to the deprivation of the people, but still leaving much to direct vote at ‘town-meeting,’ a term still persistent in our statutes. Some of these towns had special charters and some were divided into wards, but all were substantially alike. By an Act passed February 21st, 1798 (Pat. L. p. 276), the inhabitants of every township, precinct and ward within the State were constituted a body politic and corporate in law, with a designated

name as a township and with uniform powers and regulations. Such a general township law, enlarged as the growth of the State has demanded, has ever since subsisted and still subsists. As population became more dense many towns, again using the word in its primitive sense, were especially incorporated, and in their Acts of incorporation were variously styled cities, boroughs, villages and towns. In some cases, perhaps generally in cities, they absorbed all municipal powers; in other cases they remained integral parts of townships with localized special powers."

In many of the early enactments in this State the words town, township, tribe, division and precinct seem to have been used indiscriminately; but the word *town* was frequently used to indicate all of such political divisions, and seems to have been the generic term for all of them.

Provision was made at a very early day by the proprietors of West Jersey for the appointment of commissioners "for appointing and setting out fit places for towns and to limit the boundaries thereof." (*Nixon's Digest 1868, note p. 993; Leaming & Spicer, 383.*) In 1692 an Act was passed providing that "each county within the province (East Jersey) shall be subdivided into *townships, tribes or divisions.*" (*L. & S. 320.*) This Act recites: "Whereas several things is to be done by the inhabitants of *towns, hamlets, tribes or divisions* within each county, as chusing of deputies, constables &c., taxing and collecting of several rates for public uses; the making of orders among themselves about swine, fences &c;" and then follows the provision creating the townships, tribes or divisions.

There is no doubt that Mr. Justice Collins is correct when he states in *Herman v. Guttenburg* that the colonists applied the term *town*, irrespective of urban or rural characteristics to a territory *with definite boundaries in which local*

government was exercised. A *township* seems to have been any territory having the characteristics or State of being a town or territory with definite boundaries in which local government was exercised. The affix or termination "*ship*" was thus accorded the meaning ascribed by the books—state or relation of. Webster's Dictionary; Oswald's Etymological Dict. title "affixes to nouns," p. 48.

Instances where the words *town* and *township* are used indiscriminately are found in many enactments.

In the Act entitled, "An Act for running and marking the lines between the several counties and townships of this colony" passed Nov. 28, 1760, (*Allison*, pp. 227. 228), the words *township*, *town*, *precinct* are used indifferently. See the 4th section of this Act, p. 228, which provides: "And be it enacted &c. that some of the trees in every line between the respective counties, *townships* and precincts in this province shall be marked on one side with the first letter of the county, *town* or precinct on that side; and on the other side with the first letter of the county, *town* or precinct on that side."

By the Act setting off Cumberland County from Salem County, (*Allison*, 153) the new county is divided into six *precincts*, to wit, Maurice River, (from which Millville Township was set off in 1801); Fairfield; Deerfield; Greenwich; Hopewell and Stowe Creek.

In the index to *Allison*, printed in 1776, title "townships," these same *precincts* of Cumberland are called "*townships*."

In the Act entitled "An Act explaining the right of voting at *town* meetings and the election of *township* officers," passed June 28, 1866 (*Allison*, p. 287) the Act recites: "for the better ascertaining what persons shall have a right to vote at *town* meetings, and the election of *township* and precinct officers at the *town* meetings to be hereafter held at each respective township and precinct

within this colony;

BE IT ENACTED &c.—

1. That from and after the publication of this Act no person &c. except in towns corporate, shall have the privilege to give his or their voice or vote at any *town* meeting for electing any *town* or precinct officer &c. unless the person offering such vote is a freeholder &c. in such *township* and precinct."

In the Act for choosing representatives in the counties of Morris, Cumberland and Sussex (*Allison, 306, 307.*) passed May 10, 1768, it is provided that the voter must have "been for three months before in some city, *town* or county in this colony."

Sussex County was divided into *precincts* and not townships.

Allison, pp. 195, 196.

It therefore appears that by the word *town*, as used in the New Jersey statutes, townships were usually intended. In 1857 there were few, if any, townships in the State as distinguished from towns corporate. In the Acts regulating and providing for the government of townships, frequently the officers are referred to as *town* officers, and as Mr. Justice Collins remarks in the Guttenberg case the term *town meeting* is still persistent in our statutes. The word *town* as used in the constitutional amendments of 1857, has frequently been interpreted to mean townships as well as cities, and indeed all municipalities having definite boundary lines.

In other parts of the United States the words *town* and *township* have been used indiscriminately.

Webster's Unabridged Dictionary, edition of 1847, defines *town* as follows: "In popular usage in America a township; the whole territory within certain limits."

The term *town* has quite uniformly been defined as a distinct political division having definite boundary lines, as

indicated by Mr. Justice Collins.

“The first use of the word *town* in this country was to define the original or primary civil government in New England.” A town is a civil or political corporation established for municipal purposes.

Milford v. Godfrey, 1 Pick. 98.

Town is a generic term used in this country as embracing all kinds of municipal corporations which have the right to make political rules or regulations controlling all persons and things *within certain specific limits*.

State v. Glennon, 3 R. I. 278.

The word *town* has, by the alteration of the times and language, become a generical term, comprehending under it the several species of cities, boroughs &c.

Comm. v. McGovern, 6 Daly Com. Pl. (N. Y.) 355.

54 N. H., quoting 1 Black. 114.

Blackstone, (book 1, p. 114) says that in his day the word *town* or *ville* by the alteration of the times and language had become a generical term comprehending in it the several species of boroughs or towns. And at page 115 he says that little collections of houses are sometimes under the same administration as the town itself, sometimes governed by separate officers: in which last case they are, to some purposes at law, looked upon as distinct “townships.” See also Winfield’s Words and Phrases, title Town: West. Pub. Co. Words & Phrases Judicially Defined, titles “Towns” and “Townships.”

See also *Herman v. Guttenberg*, 34 Vr. 617, 618;

VanRiper v. Parsons, 11, Vr. 1.

Other legislative enactments where the words *town* and *township* are used indiscriminately passed about the time of the granting of the charter to the defendant company are:—P. L. 1855, p. 179, an Act regulating voting in Millville, Maurice River and Deerfield *townships*, and in which the meetings of the voters are referred to as *town*

meetings, and the *township* committee is called the *town* committee; and so in re Centre Township, P. L. 1855, p. 182, sec. 3 and 4; also in re Bernards Township, P. L. 1855, p. 413 &c. In the supplement to the school Act, approved March 14, 1851, P. L. 267, *Nixon's Digest. 1855*, title "Schools," p. 738, sec. 4, "*Town Superintendents*" of schools are provided for.

All of the foregoing shows that according to common usage of our Legislature the term "town" was frequently applied to a township, and was always applied to a political division less than a county and having certain specific limits. "Town-Plot" means the part of a municipality plotted or laid out into blocks and lots: but when used in statutes without qualifying words "town" always meant an entire municipality of one kind or another having a defined boundary.

Therefore, the defendant gas company contends that the words "*town of Millville*" as used in its charter, meant "*township of Millville*" as that township existed March 20, 1857. And such a construction is in accordance with every of the judicial decisions of this State, because in no reported case has the word *town* been defined to mean merely a collection of inhabited houses, and the word has always been construed to mean a territory with definite boundaries in which local government was exercised.

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III

IF THE COURT SHALL HOLD THAT BY THE WORDS "TOWN OF MILLVILLE" WAS INTENDED ONLY THE COLLECTION OF INHABITED HOUSES KNOWN AS MILLVILLE, THEN THE APPELLANT MAINTAINS THAT BY THE WORDS "TOWN OF MILLVILLE AND ITS VICINITY" WAS INTENDED ALL OF THE TERRITORY COMPRISED WITHIN THE CORPORATE LIMITS OF THE TOWNSHIP OF MILLVILLE AS IT EXISTED IN 1857.

The case before the court is not in all respects like that presented to the Court of Errors in *Madison v. Morristown Gas Light Co.*, 20 Dick. p. 356; but the defendant contends that under the principles laid down in that case its charter extends to the boundary lines of the old Township of Millville. The Morristown Gas Light Company was incorporated by special Act of the Legislature, P. L. of 1855, p. 74, with power and authority to manufacture, make and sell gas &c. in *Morristown and its vicinity*. The question in that case was, whether the Morristown Gas Light Company might enter the *Borough of Madison*.

At the time the charter was granted to the Morristown Gas Light Company, Morristown was quite compactly settled, and was a part of Morris Township in the County of Morris, but was not incorporated. Madison was likewise an unincorporated village situated in the Township of Chatham, in Morris County. *Township incorporated 1866 P. L. 523*

The situation of the Morristown Gas Light Company, therefore, *in its relation to Morris Township*, was originally that of the Millville Gas Light Company, *with reference to the old Township of Millville*; and the situation of Morristown Company at the time of the litigation in *Madison v. Morristown Gas Light Co.*, with reference to Morris Township, was precisely that of the Millville Gas Light Co. toward the Township of Landis, *because Morristown*, by P. L. 1865 p. 1819, *was set off from Morris Township, in the*

same manner that Landis Township was set off from the old Township of Millville. These facts are fully shown in the pleadings and recited in the briefs of counsel in the Morristoryn case on file in the State library (Ct. of Errors Ca. vol. 308).

Now, inasmuch as the power of the Morristoryn Gas Light Co. with respect to its right to use the streets of Morris Township, after Morristoryn was set off from that Township, was precisely the same as the power of the Millville Gas Light Co., to enter Landis Township, the opinion of the Court of Errors shown in *20 Dick. at p. 358* is of the utmost importance in this issue. For, although the Court of Errors held that the Morristoryn Gas Light Co., was not authorized to penetrate *the independent municipality of Madison*, the court in effect did hold that *the right of the Morristoryn Company to extend its pipes and mains throughout the old Township of Morris was undoubted*. The same concession of power was made by counsel for the Borough of Madison in that case. (See his brief in the State library.)

Says Mr. Justice Fort, speaking for the Court of Errors in the Morristoryn case (*20 Dick. 358, 359:*)

“The question here is a very narrow one. Does the right to lay gas pipes in the streets, lanes, avenues, alleys and public grounds of Morristoryn and its vicinity authorize the defendant company to enter and lay gas pipes in the streets of an adjoining, independent municipality? It seems to me that such a construction is doing violence to language. It cannot be that the legislative purpose was to confer upon the defendant company, under its right to lay gas pipes in streets and to supply gas to buildings in the vicinity of Morristoryn, the power to enter adjoining municipalities which had independent governments and of which Morristoryn *was not then*

a part.

Vicinity, as used in the statute, applies only to the streets, avenues, lanes, alleys and public places adjoining the village of Morristown. It does not embrace other places and territory, constituting an independent municipal government, *beyond and outside of* the municipal corporation of which the unincorporated village of Morristown *was a part in 1855.*

The Act of incorporation of the defendant company is not difficult of construction. Its language construes itself. The company is incorporated to supply gas 'for the purpose of lighting the streets, buildings, manufactories and other places situated in Morristown and its vicinity.' Every building or other place in Morristown may be lighted. Buildings in the vicinity of Morristown may also be lighted. The intent was to give the defendant the right to lay gas pipes and light Morristown and the buildings or factories lying in its vicinity—that is, adjoining Morristown.

If this construction is not put upon the act, where will you say 'vicinity' extends? If it takes in the independent municipality of Madison, why not Chatham and Summit? Is it not clear that the Legislature meant to confine the franchise of this company to the place named in the Act and its vicinity, as contradistinguished *from other towns and places?* It seems to me this is clear."

It is to be observed that in the Morristown case the language of the court indicates that the charter must be construed as having some definite boundary; and there is no suggestion that the charter of the Morristown Company was confined to the municipality or Town of Morristown as incorporated by P. L. 1865, p. 1819, and the supplement

P. L. 1866, p. 427. The plain intimation of the court is that the charter *was confined to the boundary lines of the old Township of Morris*, from which the town of Morristown was carved in 1865. The language of the court is significant.

"It cannot be that the legislative purposes was to confer upon the defendant company the power to enter adjoining municipalities which had independent government, *and of which Morristown was not then a part*. *Vicinity* as used in the statute, applies only to the streets, avenues, lanes, alleys and public places adjoining the village of Morristown. It does not embrace other places and territories *beyond and outside of* the municipal corporation of which the unincorporated village of Morristown *was a part in 1855.*"

Nothing can be more clear than that the court meant to say that the legislative purpose was to confer upon the defendant company the power to extend its pipes as far as the boundary line of adjoining municipalities which had independent governments, and of which Morristown was not then a part; and that the term *vicinity* as used in the statute, *did* embrace all that territory *not* beyond and outside of the municipal corporation of which the unincorporated village of Morristown was a part in 1855.

The case of the Morristown Gas Light Co., with reference to its franchise in Morris Township in Morris County, is exactly like that of the Millville Gas Light Company with reference to the streets, highways and public grounds of Landis Township. At the time of the incorporation of the Morristown Gas Light Co., the unincorporated village of Morristown was part of Morris Township. At the time the Millville Gas Light Co. was incorporated the unincorporated village or town of Millville was a part of Millville Township. In 1865 Morristown was incorporated and set off from Morris Township.

In 1864 Landis Township was incorporated and set off from Millville Township. In all respects the powers of the Morristown Gas Light Co., respecting Morris Township are precisely those of the Millville Company in Landis Township. And if the principles laid down by the Court of Errors in the Morristown Gas Light Co. case are applied to the construction of the charter of the Millville Company, its franchises must be held to extend to the boundary line of the old Township of Millville. If that boundary line is not the limit of its charter, where does the franchise end? And as Mr. Justice Fort sensibly queries in the Morristown case, "If this construction is not put upon the Act, where will you say 'vicinity' extends?" In his brief, speaking against the Morristown Gas Light Co. counsel for the Borough of Madison says: "The defendant's charter *as we contend*, merely authorizes them to carry on its operations in Morristown *and the Township of Morris*, of which Morristown was at that time a part, and by which Morristown at that time was surrounded on all sides."

See Mr. Rathburn's brief in the State library, Ct. of Errors Cases, vol. 308.

In the Morristown case there was no doubt in the minds of Counsel or any Judge, that the charter of that company extended throughout Morris Township, and, as above argued, the Court of Errors in effect so held. That principle should be applied in this case and the extent and limit of the defendant's charter fixed at the boundary line of the old Township of Millville. The Morristown case is not merely dicta on the point in controversy. The very issue in that case was; where did the charter of the Morristown Gas Light Company extend. The charter was before the court to be interpreted, and it was necessary for the court to say where the franchise extended—whether it stopped at the boundary line of the incorporated town of

Morristown, or whether that charter extended beyond the boundary line of Morris Township, into the Borough of Madison, or how otherwise it was limited.

III

IF THE COMPANY MAY NOT USE ALL OF THE STEERTS, HIGHWAYS AND PUBLIC PLACES OF THE TOWNSHIP OF LANDIS, NEVERTHELESS IT MAY GO TO THE HAMLET OF CLOVERDALE, BECAUSE THAT PLACE IS IN THE "VICINITY" OF MILLVILLE UNDER ANY CONSTRUCTION WHICH MAY BE PLACED ON THAT WORD.

Cloverdale is a hamlet with about a dozen houses, situated on Main Road or Main Avenue in Landis Township, about one-half mile northwardly of the place where the southerly boundary line of Landis Township intersects Main Road (book p. 31); and the place where the boundary line of Landis Township so intersects Main Road is about one mile from the new gas producing plant of the defendant (book p. 30), and about two miles from the central part of the City of Millville (see the map).

Under any construction that may be placed upon the word "vicinity," it would seem that Cloverdale is in the vicinity of Millville. Webster defines *vicinity* as follows: "the quality or state of being near and not remote; propinquity; approximate; adjoining space or country; neighborhood." Explaining the word *neighborhood*, Webster says: "Neighborhood is Anglo Saxon and *vicinity* is Latin, hence they differ in degree and strength. *Vicinity* does not denote so close a connection as neighborhood, and neighborhood is a more immediate vicinity. The houses immediately adjoining a square are in the *neighborhood* of the square; those which are somewhat further removed are in the *vicinity* of the square." This distinction is approved in *Coyle v. Chicago &c. R. R.* 27 Mo. Ap. 584, and the citation of that case in the Morristown Gas Light Co. case,

20 *Dick. p. 358*, indicates that the Court of Errors likewise approves that definition. As used in the charter of the Millville Gas Light Company the word *vicinity* means adjoining space or country; neighboring country.

In *Timmerman v. Deven*, 52 Mich. at p. 36, the decree appealed from enjoined the defendant from practicing his profession "in the City of Hastings and its vicinity." The Court of Appeals held that this was too indefinite as to the extent of territory to which it applied, and the decree of the Circuit Judge was modified so as to make certain the limits of its operation. Said Sherwood, J. speaking for the Court: "Of course the extent of territory included in the term 'vicinity of the city' must necessarily depend in a great measure upon the size of the city, its location and particular surroundings; and under all circumstances as they appear on this record, I think the territory surrounding the city for the distance of ten miles from its corporate boundaries a reasonable limitation." In which Graves, C. J. concurred (p. 57)

In *Langley v. Barnstead*, 63 N. H. 246, 247, the court said: "*Vicinity* admits of a more indefinite and wider latitude in place than *proximity* or *contiguity*, and as applied to territory may embrace a more extended space than that lying contiguous to the place in question, and as applied to towns and other territorial divisions may embrace those not *adjacent*."

Said the court in re Hancock Street Extension, 18 Pa. St., 26, 31:

"It is very usual to read or speak of *vicinity* and *immediate vicinity* and *near neighborhood*; the latter expression uniformly denoting closer proximity than the former. These words have no fixed standard of meaning, and denote no particular distance; but our ideas of them shift and vary to correspond with the relative position of their objects,

and they have no precise or practical meaning of themselves, but only when applied to something else. We would say that Germantown was in the vicinity of Philadelphia; and Brooklyn of New York; Manchester in the vicinity of Pittsburg, and the moon in the vicinity of the earth. 'Vicinity' when applied to a practical matter, might very readily cause disagreement in honest minds, for vicinity is not a matter of eyesight only, but for the judgment also."

For other cases in which the word *vicinity* is defined, see West. Pub. Co. "Words and Phrases Judicially Defined," title "Vicinity;" 2 Am. & En. Enc. of Law, title "Vicinity."

Cloverdale is only two miles distant from the central part of the City of Millville; the Village of Clayville is distant only about two and one-half miles from the Center of Millville, and the Village of South Vineland is distant about three miles, and the Borough of Vineland is distant only about five miles. There can be no doubt that these places are in the vicinity of the City of Millville or *Town of Millville*. The charter covers the *Town of Millville* beyond question; and it covers more than the Town of Millville beyond question. The words "Town of Millville and its vicinity" are in the charter; the word *vicinity* has some meaning, and it can not be eliminated from the grant. The words are not in a great many of the charters of the various gas companies incorporated in the State. The charter of the Atlantic City Gas Light Co., P. L. 1854, p. 31, granted a franchise for *Atlantic City*; a subsequent charter for the same company, P. L. 1857, p. 393, granted a franchise for *Atlantic City and its vicinity*: and by paragraph 2 the company was authorized to use the streets &c. of "*Atlantic City and vicinity*." The charter of the Bellville Gas Light Co., P. L. 1872, p. 1090, was for the

"Township of Bellville," whereas the charter of the Passaic Gas Light Co. P. L. 1864, p. 520, is for the "Township of Acquackanonk and its vicinity." The charter of the Belvidere Gas Light Co., P. L. 1860, p. 87 is for the "Town of Belvidere in the County of Warren;" and the charter for the Freehold Gas Light Co., P. L. 1857, p. 517, is for the "Town of Freehold and its vicinity." The charter of the Burlington Gas Light Co., P. L. 1852, p. 177, grants a franchise for the "City of Burlington," and the charter of the Camden Gas Light Co., P. L. 1848, p. 55, grants a franchise for the "City of Camden;" while the charter of the Passaic Gas Light Co., P. L. 1857, p. 351, grants a franchise for the "City of Patterson and its vicinity." It appears, therefore, that in many instances franchises were granted for particular municipalities; while in other cases franchises were granted to use the streets in a municipality and *its vicinity*, and when these words are in the grant they must add something to the grant. Cloverdale is undeniably in the vicinity of Millville, and the defendant's charter surely extends that far, and the Cloverdale extension was lawfully made by the company.

IV.

THE CLOVERDALE EXTENSION WAS LAID BEFORE THIS SUIT WAS INSTITUTED, AND THE DECREE TOUCHING THE DELIVERY OF GAS THROUGH THE PIPES AT CLOVERDALE OUGHT TO BE REVERSED.

The work causing the alleged injury was completed at the time of the filing of the information and the court will not interfere inasmuch as no extreme damage will result if the injunction be withheld.

Daniels Ch. Prac., 1641;

Society &c. v. Canal, Sax. 157;

Southard v. Canal Co., Sax. 518;

Attorney General v. R. R., 2 Gr. Ch., 136;

Rogers &c. Works v. Erie Ry. Co. 5 C. E. Gr., 389;
Un. N. J. R. R. v. Stand. Oil Co., 6 Stew. 124;
 16 *Am. and En. Enc.* 2 Ed. p. 362.

The pipes cannot be held to be a public nuisance, as they do not subject or tend to subject the public to any degree of inconvenience or annoyance. 21 *Am. & En. Enc.* 2 Ed. p. 683.

It is true that house connections have not yet been made; but as the making of these will involve no irreparable injury, and are desired by the occupants of every dwelling at Cloverdale, the court ought not to restrain such connections. Indeed, there is no foundation for equitable intervention with respect to the making of house connections and supplying gas.

Brigantine v. Trust Co., 20 *N. J. Law Journal* 214, was a case where a water company had already laid its pipes in the highways; and on demurrer Vice Chancellors Reed and Emory, speaking for the Court of Chancery, held that there was no equitable ground of interference, and the bill was dismissed. A case of the same title, 20 *N. J. L. J.*, p. 215, which was a bill praying a mandatory injunction requiring the removal of electric wires, was dismissed on the same grounds.

The information sets out that the defendant company had been refused by the Township Committee consent to lay its pipes in Landis Township; and that it renewed its application which was yet pending when the pipes were laid. From this the informant agrees that the defendant is stopped from claiming the franchise under its charter. But the truth is, that at the time each of the applications was made, the company, by its agents, openly declared its claim of franchise under its charter, and stated that it waived none of its franchises thereunder notwithstanding

consent was asked of the committee. See Mr. Franklin's affidavit. The company sought to avoid a lawsuit by obtaining the consent of the committee, but carefully reserved all its rights under the charter, as the proofs show.

The decree for a preliminary injunction against the defendant gas company should be reversed, because the company had a right to extend its mains and pipes to Cloverdale as well as in, through and along any of the streets, highways and public grounds of the Township of Millville as it existed March 20, 1857; and because there is no equity in the information, the work having been done before this suit was instituted.

Respectfully submitted,

LOUIS H. MILLER,
GASKILL & GASKILL,

Of counsel with the Millville Gas Light Company.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ROBERT H. McCARTER, Attorney
General, EX REL., &C.,
Complainant and Respondent,
and
THE MILLVILLE GAS LIGHT COM-
PANY,
Defendant and Appellant.

APPEAL FROM
CHANCERY.

BRIEF FOR RESPONDENT.

This appeal brings up an order for a preliminary injunction restraining the defendant from further digging up streets or roads in the township of Landis, from laying or attempting to lay pipes or conduits in such streets or roads and from using or attempting to use or operate or to allow gas to flow into the pipes already laid.

The order is issued upon an information filed by the Attorney General on the relation of the township.

The information and affidavits show that the defendant is operating a gas works under a charter applying to the "town of Millville and its vicinity." Its charter was granted in 1857, but the franchises lay dormant till 1867, when the incorporators were changed and practically a new charter given. In 1857 the territory in question was part of the township of Millville, but was set off as the township of Landis in 1864.

The defendant never claimed any right to lay pipes in Landis township until the present time. It made application in nineteen hundred and six to the Township Committee for consent to lay its pipes in the township. After a hearing the application was refused. It afterwards made another application which has not been acted upon. While the second application was being considered, it started without consent, at midnight on December 31, 1907, the following day being a holiday, to lay a line of pipes along Main road, in Landis township, not connected with its plant and about a half a mile distant from the end of its line.

THE CHARTER IS TO BE CONSTRUED MOST STRONGLY AGAINST THE DEFENDANT.

Ambiguous words in a charter are to be construed most strongly against the corporation.

Camden & A. R. R. & T. Co. vs. Briggs, 2 Zab., 623.

Morris Canal & B. Co. vs. C. R. R., 1 C. E. Gr., 419.
Grey, Atty. Gen., vs. Newark Plank Road Co., 36 Vr., 51-53.

Charters are to be construed strictly, and nothing allowed by implication. That which is not mentioned is withheld.

- Jersey City Gas Light Co. vs. Consumers Gas Co.,*
13 Stew., 427.
D. & R. Canal, &c., vs. C. & A. R. R. Co., 1 C. E.
Gr., 321-372.
P. R. R. Co. vs. National Ry. Co., 8 C. E. Gr., 441.

“TOWN OF MILLVILLE,” AS USED IN APPELLANT’S CHARTER, MEANS THE VILLAGE OR SETTLEMENT OF MILLVILLE AND NOT THE TOWNSHIP OF MILLVILLE.

Our courts have given the word “town” at least three meanings according to the manner in which it is used.

Justice Swayze, in an opinion discussing these various meanings, says: “Where a word is used with such different meanings, its signification in a particular statute must be determined in view of the object of the statute and the context.”

- Millville I. Co. vs. Pitman G. & C. G. Co., Nov.*
Term, 1907.

Many of the townships in this State are large in extent and contain a number of small settlements. These settlements each have a name and a post office, but as a rule no governmental powers. They are usually spoken of as “the town of _____,” or “the village of _____.”

In this Court the word “town,” as it appears in the Road act, was held to be a collection of dwellings and not a township.

- Holmes vs. Jersey City, 1 Beasley, 299-305.*

It has long been the practice, in legislating for these settlements, to refer to them indiscriminately as towns or villages.

In 1851 it was made the duty of the townships wherein certain of these towns and villages are situate to elect one poundkeeper for each of said towns and villages, who shall reside therein.

Laws of 1851, page 282.

Beverly was such a town, in the township of Willingborough. It was incorporated into a borough by describing that portion of the township lying within a radius of half a mile from the center of Broad street, in the "town of Beverly."

Laws of 1850, page 185.

That portion of Mansfield township known as the "town of Fieldsborough" was incorporated into a borough.

Laws of 1850, page 286.

A portion of the township of Elizabeth is referred to as "the new manufacturing town of Elizabethport."

Laws of 1852, page 201.

Mount Holly is in Northampton township. It is called the "town of Mount Holly."

Laws of 1857, pages 231-233.

Bridgeton formerly was in two townships. It was called, however, the "town of Bridgeton."

Laws of 1858, page 258.

Long-a-coming, now known as Berlin, was such a settlement. It was called "the town of Long-a-coming."

Laws of 1858, page 182.

Hackensack was part of the township of New Barbadoes. (Laws of 1856, page 257.) It was called the "town of Hackensack." (Laws of 1858, page 213).

All of this legislation was shortly prior to or about the time of the granting of the charter in question.

As a further guide to the legislative intent in using the words "town of Millville" in this charter, it appears that prior thereto twenty-four charters for gas companies had been granted. These may be classified as follows:

Eleven of these grants were in cites.

For Trenton, Newark, Camden, Burlington and Atlantic City the territory covered by the grant was co-extensive with the city.

In Jersey City, Paterson, Cape Island and New Brunswick the words "and its vicinity" were added.

In the city of Hudson the township of Bergen was added.

In the second company formed in New Brunswick the words "and its vicinity" were omitted.

Two companies were formed in boroughs, viz., Princeton and Bordentown. No rights were given outside the borough limits.

In the township of Orange a company was formed for the entire township. (Laws of 1857, page 10.) This territory, however, was well settled, the entire township three years later being incorporated a town. (Laws of 1860, page 5.) In 1860 it had a population of 8,877.

Laws of 1861, page 630.

Morristown was a part of Morris township.
The grant there is for "Morristown and its vicinity."
Laws of 1855, page 74.

Bridgeton was part of two townships, and sometimes called a town (Laws of 1858, page 258). The grant there was to lay pipes, etc., in Bridgeton.
Laws of 1853, page 409.

Rahway was situate partly in the county of Union and partly in Middlesex (Laws of 1858--123.) The grant there was merely to lay pipes, &c., in Rahway.
Laws of 1853, page 131.

Plainfield was an unincorporated town. The charter there gives the power "to do all things necessary to light the said village of Plainfield, situate partly in the township of Plainfield and partly in the township of Warren."
Laws of 1857, page 185.

In Elizabethtown and Lambertville, the territory granted appears to be within the incorporated town.

There are four of these early charters where the word "town" is used for territory within a township.

One of them is the town of Salem. There the town and township were practically co-extensive, the whole township being shortly afterwards made a city.

Laws of 1858—109.

Laws of 1854—162.

The situation in the town of Paterson was the same.

Laws of 1825, page 102.

Laws of 1851, page 444.

In Mount Holly, which formed the greater part, if not all, of Northampton township, the language of the grant was "in the town of Mount Holly."

Laws of 1853, page 9.

Somerville formed a part of the township of Bridgewater. The grant there was "in the town of Somerville."

Laws of 1853, page 271.

At the same session of the legislature at which the Millville Company's charter was passed, a similar charter was given in Freehold, the grant being, "in the town of Freehold and its vicinity." Freehold was a town forming a small part of the township of Freehold. The township was eight or ten miles long. The limits of the village or town of Freehold for purposes of protection against swine had been recently fixed by the legislature within the circuit of one-half mile of the Court house.

Laws of 1850, page 300.

Later, in 1869, the limits of the town were definitely fixed, a portion of the township being incorporated as a town, but for many purposes the township officers continued to act.

Laws of 1869, page 653.

Middletown Point was a part of the township of Raritan. (Laws of 1855, page 207.) In chartering a gas company there the words used are almost identical with the charter of the appellant. The territory is "the town of Middletown Point and its vicinity."

Laws of 1860, page 281.

The legislature did not intend that "Middletown Point and its vicinity" should include the nearby village of Keyport in the same township, for two years later three of the same incorporators, with two new men, were granted a charter for "The Middletown Point and Keyport Gas Company," and were given the right to lay pipes, &c., "in the towns of Middletown Point and Keyport, or either of them, and their or either of their vicinities and *all other places intermediate.*"

Laws of 1862, page 200.

The town of Keyport was not set off from the township or incorporated till 1870.

Laws of 1870, page 1022.

In all of these charters the effort seems to be to furnish thickly populated communities with a supply of gas. None of them contemplate gas lines along a country road.

It seems quite evident when we consider the prior and contemporary legislation that when the "town of Millville" is mentioned in appellant's charter, what is meant is the settlement or village and not the township.

This view is strengthened by an examination of the act of 1859, page 198. From that it appears that one Thomas H. Paschall, under the direction of the township committee of Millville township, had been at work on a map of the town of Millville called the "Millville town plot," whereon he had marked certain dedicated streets.

Laws of 1859, page 198.

Both the legislature and the township committee recognize a clear distinction between the town of Millville and the township of Millville.

THE WORDS "AND ITS VICINITY" DO NOT GIVE THE RIGHT TO LAY PIPES IN LANDIS TOWNSHIP, ALONG THE MAIN OR HORSE BRIDGE ROAD.

In order to determine the meaning of the word "vicinity," we must look at the conditions as they existed when this charter took effect.

The Court will take judicial notice of the territorial extent and relative position of local municipalities.

Greenleaf on Evidence, page 13, Sec. 6.

The township of Millville was created in 1801. The inhabitants were directed to hold their first meeting at the Union School house, in Millville.

Laws of 1801, page 70.

According to Beers Atlas of New Jersey, published in 1872 (which was shown to the Vice Chancellor), the territory of what was the township of Millville, in 1857, was irregular in shape. Its greatest length from north to south was 17 miles, and its greatest width from east to west, 15 miles. The northernmost point of the town or settlement of Millville was less than 5 miles from the southern extremity of the township.

There are three witnesses who attempt to state the conditions existing in Millville township in 1857. One of them, Marcus Fry, has resided in the township for forty-four years, and has been engaged therein as a surveyor and conveyancer from 1861 to the present time.

Another witness, Thomas F. Mayhew, has resided in Millville for thirty years. Prior to that time he lived in Cumberland county, and says he was familiar "with the settlement of Millville." Where he lived does not appear. He does not claim any knowledge of the township during that time. His familiarity with the settlement of Millville may have come from hearing people talk of it.

The only other witness who attempts to state conditions in 1857 is S. J. Franklin. It does not appear that he was born in 1857. He does not claim to have any personal knowledge. He makes the affidavit on information and belief. From whom he got the information does not appear.

Thomas F. Mayhew, in mentioning the settlements near Millville, names Buena Vista, distance about ten miles (page 41, lines 11 and 12.) This was in Atlantic county. He also names Buckshutem, distant about five miles (page 41, line 9). Buckshutem was in Downe township. With the exception of Buena Vista the places he names are none of them to the northward.

The road in question along which the defendant was laying pipes when restrained is now called Main road or Main avenue (page 17, lone 15, and page 18, lines 4 to 11). It was formerly known as the Horse Bridge road (page 28, lines 18 and 19). The Horse Bridge and the Malaga roads each ran northward (page 41, line 16). They each led to Camden, (Page 21, lines 5 and 6.)

The northern and northeastern part, being more than half of the old township, was set off as the township of Landis in 1864.

Laws of 1864, page 180. Case, page 22, lines 6 to 8.

The distance from the southerly line of Landis township to the town or village of Millville was between one and a half and two miles (page 21, lines 12 to 17). In 1861 and for several years thereafter this was "wild land, uncultivated, without any buildings thereon." (Page 21, lines 14 to 16.)

The territory within the present limits of Landis township in 1861 was "an settled wild tract of land" (page 21, lines 2 and 3; page 40, lines 29 and 30, and page 41, line 1). The only settlement of any kind thereon was a small settlement known as Williw Grove (page 21, lines 9 to 12). Willow Grove was on the Malaga road. There were only six houses on the whole length of the Horse Bridge road. (Page 21, lines 7 and 8.)

The whole township in 1855 had a population of but 2,690.

Law 1856, appendix, page 8.

Middletown Point and Keyport were unincorporated towns in the same township. It was evidently thought that "in the towns of Middleton Point and Keyport, or either of them, and their or either of their vicinities," would not include the territory necessary to cover in piping from one to the other. So the words, "and all other places *intermediate*" were added.

Laws of 1862, page 209.

In the case of *Madison vs. Morristown Gas Light Co.*, Justice Fort, speaking for this Court, construed the words "Morristown and its vicinity." Morristown, like Millville, was unincorporated. Madison was a similar town or villiage about four miles away but in a different township.

The Court seemed to have no difficulty about reaching the conclusion that "vicinity" could not give the company the power to enter an adjoining municipality.

It went further and said: "Every building or other place in Morristown may be lighted. Buildings in the vicinity of Morristown may also be lighted. The intent was to give the defendant the right to lay gas pipes and light Morristown and the buildings or factories lying in its vicinity—that is, adjoining Morristown. * * * Is it not clear that the Legislature meant to confine the franchise of this company to the place named in the act and its vicinity, as contradistinguished from other towns and places? It seems to me this is clear."

Madison vs. Morristown Gas Light Co., 20 Dick. Ch., 356, 359.

Could it have been the intent of the Legislature in our case to have given the defendant the right to lay pipes along the Horse Bridge road, which for nearly two miles from Millville ran through "wild land uncultivated, without any buildings thereon," and which for seven miles beyond that had only six houses?

While the charter provides for laying pipes in and lighting the streets, no mention is made of roads or anything to indicate an intention to go outside the built-up section.

There is also another reason why the power to make this extension could not have been intended.

The franchise given in 1857 did not create the corporation till the grant was accepted by the incorporators.

Clark & Marshall on Corporations, page 120.

This had not been done in 1867, about ten years after the act was passed. In that year the Legislature designated new incorporators and new commissioners to obtain subscriptions and practically granted a new charter.

Laws of 1867, page 8.

In the meantime the township of Landis had been set off. (Laws of 1864, page 180.) Any extension into it would be going into an independent municipality.

THE RIGHT OF THE ATTORNEY GENERAL, TO AN INJUNCTION IN THIS CASE IS CLEAR.

"In Courts of Equity the right of the Attorney-General to interfere, on behalf of the general public, for the protection of the public highways in a proper case, never seems to have been questioned."

Grey vs. Greenville & H. Ry. Co., 14 Dick. Ch., 372-388.

In cases where the real injury is an illegal act on the part of a public company in excess of its powers, through which illegal act the public generally is affected, "the rule is settled by many authorities that the Attorney-General is justified in interfering without evidence of actual injury to the public."

Grey vs. Greenville & H. Ry. Co., 14 Dick. Ch., 372-387.

In this Court it is held that "a lack of power to invade the public right could not be disregarded merely because not much harm would be done."

Greenville & H. Ry. vs. Grey, Atty-Gen., 17 Dick. Ch., 768-772.

AS APPLICATION WAS MADE TO THE TOWNSHIP COMMITTEE FOR CONSENT, IT WAS PROPER TO ENJOIN DEFENDANT FROM LAYING PIPES WITHOUT CONSENT, AT LEAST UNTIL FINAL HEARING.

Application was made by defendant to complainant for its consent to an extension of its mains into Landis township, under Genl. Stat. 1630, par. 30, and the Act of 1906, page 50.

Affidavit of Alfred B. Crossman, pages 19 and 20.

“A preliminary injunction restraining interference pending final hearing is the more equitable in this case, for the reason that hitherto the company has always applied for this consent and has never laid its pipes without obtaining the consent. This practical construction of the law made by the parties while granting and receiving valuable privileges, upon the basis of the right and necessity of the municipal consent, should be continued, I think, until the right is determined on final hearing.”

V. C. Emery in Township of Franklin vs. Nutley Water Co., 8 Dick. Ch., 601-607.

The effort of the defendant to seize the highway without consent on the midnight previous to a holiday, when counsel and Court would be difficult to find, is subject to the comment of the Chancellor in the N. Y. & Phila. Traction Co. case. He says:

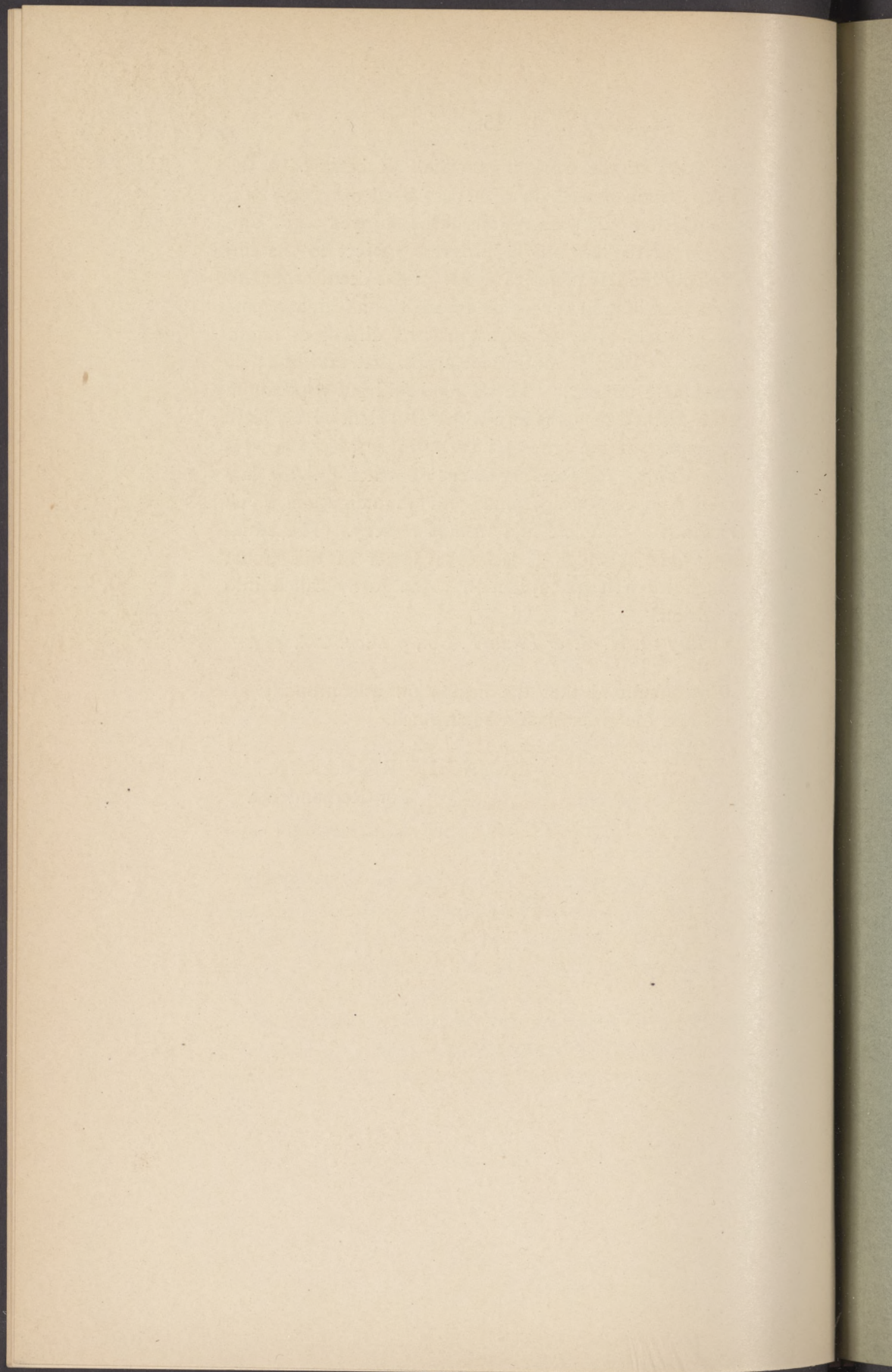
“That seizure was timed and executed in a manner indicative of a purpose to disregard the law, and a disposition to render an appeal to the Courts prior to the

completion of the work impossible. It betrayed a design to obtain possession of a completed operating railway, which would yield profits to be enjoyed while vindication of the law might progress subject to the impediments the defendant company might deem proper to use in retarding it, or while under the advantage possession would give, an adjustment of difficulties might be made." He says he cannot agree that indictment is an adequate remedy. "To do so would put a premium upon a method of procedure which is defiant of the plain requirement of the law, and the exercise of the powers of the Courts, the bare statement of which fills the law abiding and respecting mind with an indigation which commands a complete and instant remedy. The situation is one in which I deem the power of this Court through its writ of injunction to be justly called into requisition."

Grey vs. N. Y. & Phila T. Co., 9 Dick. Ch., 463.

It is submitted that the injunction was properly allowed and the order should be affirmed.

FRENCH & RICHARDS,
For Respondents.



**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

Between

ROBERT H. McCARTER,

Respondent,

and

THE MILLVILLE GAS LIGHT COMPANY

Appellant.

ON INFORMATION &c.
ON APPEAL FROM ORDER FOR PRELIMINARY
INJUNCTION.

STATE OF THE CASE

FRENCH & RICHARDS,
Solicitors for and of Counsel
with Respondent.

LOUIS H. MILLER,
GASKILL & GASKILL,
Solicitors for and of Counsel
with the Appellant.

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NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

ROBERT H. McCARTER,

Respondent,

and

SEABEVILLE GAS LIGHT COMPANY

Appellant.

ON INFORMATION BY
APPEAL FROM ORDER FOR PRELIMINARY
INJUNCTION.

STATE OF THE CASE

FRENCH W. HIGGINS,
Solicitor for and of Counsel
for Respondent.

LOUIS H. MILLER,
GABRIEL B. GENTILE,
Solicitors for and of Counsel
for the Appellant.

THE HISTORY OF THE
CITY OF BOSTON

FROM THE FOUNDATION OF THE COLONY
TO THE PRESENT TIME

BY
JOHN H. COOPER

VOLUME I

NEW YORK: PUBLISHED BY
G. P. PUTNAM'S SONS

1893

100 NASSAU ST. N. Y.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

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Appellant.

ON INFORMATION &c.
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FRENCH & RICHARDS,
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with the Appellant.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
ROBERT H. McCARTER,
Respondent,
and
THE MILLVILLE GAS LIGHT COMPANY,
Appellant.

ON INFORMATION &
ON APPEAL FROM ORDER FOR PRELIMINARY
INJUNCTION.

STATE OF THE CASE

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Solicitors for and of Counsel
with Respondent.

LOUIS H. MILLER,
GASKILL & GASKILL,
Solicitors for and of Counsel
with the Appellant.

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE WILLIAM J. MAGIE:
 CHANCELLOR OF THE STATE OF NEW JERSEY:

Informing shows unto Your Honor your informant, Robert H. McCarter, Attorney General of the State of New Jersey, on behalf of the said State, and on the relation of the Township of Landis, in the County of Cumberland:

1. That the Millville Gas Light Company is a corporation of the State of New Jersey under an act of the Legislature of said State, entitled "An Act to incorporate the Millville Gas Light Company, approved March 20th, 1857" Pamphlet Laws of 1857 page 452.

That by said act of incorporation the Millville Gas Light Company had power and authority to manufacture, make and sell gas for the purpose of lighting the streets, buildings, manufactories and other places situated in the Town of Millville, and its vicinity, and was further empowered to lay down its gas pipes and erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues and public grounds of the Town of Millville and its vicinity and to do all things necessary to light the said Town and the dwellings, stores, and other places situate therein with a proviso that the public travel should not at any time be affected or impeded by the laying of said pipes and the erection of said posts and the street, side and cross walks, public grounds, lanes and avenues should not be injured, but shall be left in as good and perfect condition as before

the laying of said pipes and the erection of said posts.

That the said Millville Gas Light Company did not after the grant of said franchises proceed at once to exercise them, and the said franchises lay dormant until the year eighteen hundred and sixty seven, when by a supplement to said act, approved January twenty-ninth, eighteen hundred and sixty-seven, Pamphlet laws 1867 page 8, the Legislature of the State changed the names of the persons authorized by said Charter to receive subscriptions for the
 10 capital stock, provided that said subscriptions might be paid in legal currency instead of specie specified in the Charter, and also provided that the first Board of Directors should hold their offices until the first Monday in April, eighteen hundred and sixty-seven.

That in the year eighteen hundred and fifty-seven the Town of Millville was a large village situate in the Township of Millville, in the County of Cumberland, with a number of dwellings, stores and manufactories therein; that the Township of Millville was a large territory in extent
 20 and consisted of large tracts of wild and woodland and had within its borders no village of any considerable size except only the Town of Millville.

That the Township Committee of said Township of Millville, at about that time caused to be prepared a town plot of said Town of Millville and the Legislature of the State of New Jersey in the years eighteen hundred and fifty-nine, eighteen hundred and sixty, eighteen hundred and sixty-one and eighteen hundred and sixty-five, legislated with respect to said town plot and to the public streets in said Town of Millville.

And your informant further shows and charges that by said Charter the Millville Gas Light Company acquired only a right to manufacture, make and sell gas for the purpose of lighting the streets, buildings, manufactories and other places situate in the said Town of Millville and the streets, buildings, manufactories and other places adjoining the Town of Millville, and acquired power to lay its gas pipes only in the streets, alleys, lanes, avenues and public grounds of the then Town of Millville, and in the streets, lanes, alleys, avenues and public grounds adjoining the then 10 Town of Millville.

2. Your informant further shows unto Your Honor that before the said Millville Gas Light Company had begun to exercise the franchises granted to it by said State and in the year eighteen hundred and sixty-four, the Legislature of the State of New Jersey by an act entitled "An Act to establish a new Township in the County of Cumberland, to be called the Township of Landis," approved March seventh, eighteen hundred and sixty-four, Pamphlet Laws of 1864 page 180, created out of said Township of 20 Millville a new Township of Landis; that the territory embraced within the new Territory of Landis was more than one-half in area of the original Township of Millville, and was the northeasterly part of said Township; the southwesterly line of said Township of Landis being about two miles distant from the said Town of Millville.

3. Informant further shows that afterwards and before the said Millville Gas Light Company began to exercise the franchises conferred upon it by the said Charter, the Legislature of the State of New Jersey, by an Act en-

titled "An Act to incorporate the City of Millville, approved February twentieth, eighteen hundred and sixty-six, Pamphlet Laws of 1866 page 116, incorporated all of the remaining part of said Township of Millville into a City called the City of Millville.

4. That the Township of Landis aforesaid became settled and populated and from the time of its creation has steadily grown in population; that in the year eighteen hundred and eighty, a portion of said Township of Landis
10 was erected into a Borough known as the Borough of Vineland, having a territory of one mile square.

The said Borough is largely built up, and the Township of Landis has become quite densely populated; that the City of Millville, except that part which constituted the original Town of Millville, and its immediate vicinity, is not densely populated; it is largely farm and woodland.

That between the southwest line of Landis Township and the built-up portion of the City of Millville, along said Main Road or Main Avenue is a distance of about a mile
20 and three quarters; on one side of the said Main Road or Main Avenue is wood and uncultivated land and on the other side are a few farm houses and dwellings.

5. That by an Act of the Legislature of the State of New Jersey, entitled "An Act to incorporate the Vineland Gas Light Company," approved March fifteenth, eighteen hundred and seventy, Pamphlet Laws 1870 page 577, the Vineland Gas Light Company was incorporated with power and authority to manufacture, make and sell gas for the purpose of lighting the streets, buildings, manufactories and other places situate in the Township of Landis in the

County of Cumberland.

That the Vineland Light and Power Company, a corporation organized under the general corporation act of the State of New Jersey, claims to have and is exercising the franchises granted by said Charter of the Vineland Gas Light Company in the Borough of Vineland and in the Township of Landis, and was engaged in laying a line of gas pipes along Main Road or Main Avenue, the principal road leading from the Borough of Vineland to the built up portion of the City of Millville.

10

That the Millville Gas Light Company on the seventeenth day of November, nineteen hundred and six, filed in this court its bill of complaint praying for an injunction to restrain the Vineland Light & Power Company from constructing, operating and maintaining an extension of the gas plant or system controlled by it through and along Main Avenue from Landis Avenue southwardly and from carrying on and conducting, operating and maintaining a gas plant or gas system in, through and along any of the streets, highways and public places in the State of New Jersey in the said Borough of Vineland or Landis Township.

20

That S. J. Franklin, the General Superintendent and Managing Officer of the Millville Gas Light Company in the affidavit attached to said bill, deposed and said that the Millville Gas Light Company on the second day of November, nineteen hundred and six by due corporate action of its Board of Directors resolved to extend its pipes, mains and gas system in, through and along all of the streets, roads, avenues, highways and public places of

Landis Township and particularly in and along Main Road or Main Avenue from the City of Millville to and beyond Park Avenue in Landis Township for the purpose of supplying public and private consumers along said extension with gas. That Park Avenue is the northerly boundary line of the Borough of Vineland.

That the said Millville Gas Light Company applied to the Township Committee of the Township of Landis, in the County of Cumberland, in the year nineteen hundred
10 and six, for permission to extend its pipes to and lay the same in the Township of Landis; that said Township Committee heard said application and refused the same. That the said Millville Gas Light Company subsequently presented a new application for like consent which has not yet been acted upon.

6. And your informant further shows unto Your Honor that in pursuance of a pre conceived plan and with the intent to evade the laws of the State of New Jersey and obtain possession of a part of the streets and roads of
20 the Township of Landis, in the County of Cumberland before legal action could be taken to prevent such seizure and usurpation, the Millville Gas Light Company with a large force of men secretly and without notice to the Township Committee of the Township of Landis, in the County of Cumberland and while said application for consent was pending, at one o'clock in the morning of January first, nineteen hundred and seven, began digging a trench in said Main Road or Main Avenue, about ten feet southwest from the southwest line of Landis Township towards and into Landis Township and laying gas pipes in said

trench from said beginning point towards the Borough of Vineland; that they worked all of the day of January first, nineteen hundred and seven from one o'clock in the morning until evening and all of January second until six P. M. by which time they had laid about three quarters of a mile of pipe to a settlement in the Township of Landis known as Cloverdale.

That at that time the said Millville Gas Light Company had not laid its pipes in the City of Millville, along said Main Avenue up to the Township line. 10

That the Township of Landis, in the County of Cumberland, filed its bill for an injunction against said Millville Gas Light Company to restrain the further digging up of said road, and laying of said pipes in the Township of Landis, and obtained a restraining order.

That thereupon afterwards the said Millville Gas Light Company proceeded to lay its pipes in the City of Millville along said Main Road or Main Avenue to connect with the pipes laid in the Main Road in the Township of Landis, for the purpose of supplying gas to the pipes so 20 laid in the Township of Landis.

That the Millville Gas Light Company is without any power, right or authority to lay its pipes in the streets or roads of the Township of Landis and without any right, power or authority to dig up the streets of the Township of Landis and lay pipes therein.

That said Millville Gas Light Company, its agents, workmen or servants had no right, power or authority to lay the pipes so laid in said Main Avenue within the boundaries of the Township of Landis, in the County of

Cumberland, have no right, power or authority to maintain the said pipes or use or operate the same or to supply gas to the inhabitants of the Township of Landis, in the County of Cumberland.

That the said Millville Gas Light Company in so laying its pipes as aforesaid in said Main Avenue, in the Township of Landis, willfully violated the provisions of the statute of the State of New Jersey requiring consent to be given before a gas company may extend its mains into an
10 adjoining municipality.

And the Attorney General further informs Your Honor that the said The Millville Gas Light Company is now striving to connect its said pipes so laid in the Township of Landis with its pipes along said Main Road or Avenue in the City of Millville leading from its plant at or near the built up portion of the City of Millville in order to supply gas to the inhabitants in the Township of Landis; that the pipes laid in said road in the Township of Landis are a
20 pre-empture and a public nuisance and should be abated and said pipes so laid in said road in the Township of Landis should be removed and the road restored to its original condition and the said Millville Gas Light Company should be decreed so to do.

Informant further shows that The Millville Gas Light Company was not legally organized and did not comply with the terms prescribed in its aforesaid charter in that the commissioners did not advertise the time and place, and did not open books as required by said Charter; ten per cent on each share subscribed was not paid in legal currency to said commissioners or a majority of them;

the amount required to be paid to the commissioners was not paid over to the directors and the said commissioners did not keep the books open until the whole stock subscribed amounted to fifty thousand dollars and until the whole amount subscribed was fully paid and did not convene the stockholders by public notice as required by said Charter to choose the first Board of Directors.

So it is, may it please Your Honor that the said Millville Gas Light Company persists and will persist except so far as it may be restrained by the authority of this court, in continuing to build, lay and maintain, its gas pipes in the said public roads of the Township of Landis in manner aforesaid and to operate the same and supply gas to the inhabitants of Landis Township in the County of Cumberland and contemns the authority of the State of New Jersey and the well defined rights of the citizens thereof to the free and uninterrupted use and enjoyment of said streets and roads and deprives the Township of Landis, in the County of Cumberland, of its rights in and power over said streets and roads delegated to it by the State.

All of which pretences, actings and doings are contrary to equity and good conscience and tend to the public wrong and to the injury of all citizens of the State of New Jersey, using and enjoying the privileges of said roads and streets.

In tender consideration whereof and for as much as your informant is entitled to relief in this Court:

To the end therefore that the said Millville Gas Light Co. may, but without oath, answer under oath being hereby

waived, full, true and perfect answer make to all the singular the premises, as fully and particularly as if the same were here repeated, and it thereto interrogated, paragraph by paragraph, and that it may be decreed that the said The Millville Gas Light Company has no franchise, right, power or authority to lay, maintain or operate gas pipes in the public roads, streets and highways of the Township of Landis, in the County of Cumberland, and no franchise, power, right or authority to supply gas to the inhabitants
10 of the Township of Landis, in the County of Cumberland; and that The Millville Gas Light Company be restrained from digging up any or any part of any of the streets or roads in the Township of Landis, in the County of Cumberland, from laying or attempting to lay any pipes or conduits in any of the streets or roads of the Township of Landis, in the County of Cumberland, from using or attempting to use or operate the pipes already laid on said Main Road or Main Avenue, in the Township of Landis, from allowing gas to flow into or through said pipes so laid;
20 from supplying gas to the inhabitants of the said Township of Landis, in the County of Cumberland or any of them, and from permitting the said pipes so laid by it in said Main Road or Main Avenue, in the Township of Landis, in the County of Cumberland, there to remain, and that Your Honor may grant such other and further relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please Your Honor, the premises considered to grant unto your informant, not only the State's writ of injunction issuing out of and under the seal of this

Honorable Court, to be directed to the said The Millville Gas Light Company, its officers, servants and agents and workmen, restraining them and each of them from digging up any or any part of the streets or roads in the Township of Landis in the County of Cumberland, from laying or attempting to lay any pipes or conduits in any of the streets or roads of the Township of Landis in the County of Cumberland, from using or attempting to use or operate the pipes already laid on said Main Road or Main Avenue in the Township of 10 Landis, from allowing gas to flow into or through said pipes so laid, from supplying gas to the inhabitants of the Township of Landis, in the County of Cumberland, or any of them and from permitting the said pipes so laid by it in the said Main Road or Main Avenue. in the Township of Landis, in the County of Cumberland, there to remain, but also the State's writ of subpoena issued in like manner out of and under the seal of this Honorable Court, to be directed to said The Millville 20 Gas Light Company commanding it by a certain day and under the penalty that may fall thereon in manner and form required by law to be and appear before Your Honor in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such order and decree therein as shall seem meet, and as shall be agreeable to equity and good conscience.

FRENCH & RICHARDS,

Solicitors for and of Counsel
with informant.

STATE OF NEW JERSEY,
COUNTY OF CUMBERLAND, ss.

Joseph H. Dowler of full age being duly sworn on his oath says that he lives in the Borough of Vineland New Jersey and is General Manager of the plant and gas works operation of the Vineland Light and Power Company, has been connected therewith for four years last past and has had knowledge of the operation of said plant and gas works
10 since the year 1870. The said gas plant and works were built by Vineland Gas Light Company in 1870 and have been extended throughout the Borough of Vineland and into the Township of Landis from time to time as the needs of said Township required it. Said Vineland Light and Power Company is now engaged in furnishing and supplying gas to about eight hundred and fifty families in said Borough and Township.

Prior to the present year of 1907 no other company than said Vineland Light and Power Company and its predecessor, Vineland Gas Light Company had ever laid any
20 gas pipes or fixtures in either the Township of Landis or the Borough of Vineland.

By the compendium of censuses issued by the Secretary of State, it appears that Landis Township in 1865 had 3050 inhabitants. In 1875 it had 5431 inhabitants. In 1880 the Borough of Vineland was formed out of a portion of said Township. In 1885 not including the Borough the Township had 3851 inhabitants and the Borough had 3170 inhabitants. In 1895 not including the Borough the Township had 4660 and the Borough had 4126 inhabitants.

In 1905 the Township had 5351 and the Borough 4595 inhabitants.

In a suit in this court in which Millville Gas Light Company is complainant and Vineland Light and Power Company is defendant, attached to the bill of complaint is an affidavit of S. J. Franklin dated the sixteenth day of November, 1906, wherein he swears that he is Superintendent and General Managing Officer of Millville Gas Light Company and that said Millville Gas Light Company on November second, nineteen hundred and six 10
 "by due corporate action of its Board of Directors resolved to extend its pipes, mains and gas system, in, through and along all of the streets, roads, avenues, highways and public places of Landis Township, and particularly in and along Main Road or Main Avenue from the City of Millville to and beyond Park Avenue in Landis Township for the purpose of supplying public and private consumers along each extension with gas."

Sworn and subscribed before me }
 this fifteenth day of January, } Joseph H. Dowler. 20
 A. D., 1907.

CYRUS D. MARTER,
 Attorney at Law,
 of New Jersey.

STATE OF JERSEY,
 COUNTY OF CUMBERLAND, ss.

James Austin, of full age, being duly sworn on his oath

says that on information that the Millville Gas Light Company was laying pipe on Main Road, in Landis Township, Cumberland County, from the Township line towards the Borough of Vineland; deponent went to the place in question and saw a foreman of the Millville Gas Light Company with a gang of men, about thirty-five men, at work on Main Road, in the Township of Landis, digging a trench from the Township line toward Vineland, and laying gas pipe in the trench, they had then dug about six
10 hundred feet of trench and had laid about four hundred feet of pipe in it; this was at eight o'clock in the morning, deponent was informed that they started at mid-night of December 31, 1906; that deponent was at the place again at about ten o'clock in the morning of January second, nineteen hundred and seven; the same foreman of the Millville Gas Light Company was at work with the same sized gang of men, they had dug about three quarters of a mile of trench and the pipe was laid in all the trench dug except about eight hundred feet, toward Vineland.

20 That on the second day of January 1907 said Millville Gas Light Company was at the suit of The Township of Landis, in the County of Cumberland restrained by the Chancellor from further digging up or digging trenches in the streets and roads of the Township of Landis aforesaid and from laying pipes in said roads and streets. At the time said restraining order was made said Millville Gas Light Company had laid a line of pipe extending about three quarters of a mile in Landis Township and about ten feet in the City of Millville. The said line was not connected in anyway with the plant of said company, its

nearest approach to any line of said company along that road being over half a mile. Since the granting of said restraining order said company has been engaged in laying pipe in the space between its plant and Landis Township with the evident intention of connecting with the line so laid in Landis Township.

Sworn and subscribed before me }
 this fifteenth day of January, } James Austin.
 A. D. 1907.

CYRUS D. MARTER,
 Attorney at Law,
 of New Jersey.

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STATE OF NEW JERSEY,
 COUNTY OF CUMBERLAND, ss.

Alfred B. Crossman, being duly sworn, on his oath says, that he is a member of the Township Committee, of the Township of Landis, in the County of Cumberland, 20 and was in the year nineteen hundred and six; that in the year nineteen hundred and six, the Millville Gas Light Company, made application to said Township Committee for permission to lay its pipes in the Township of Landis, that said application was, after a hearing, refused.

That the said Millville Gas Light Company afterward presented a second application, on which has not yet been finally acted upon by the Committee; that on January first said Millville Gas Light Company, without any authority from the Township Committee, began to dig trenches in

the Main Road of the Township of Landis, from the Township line toward the Borough of Vineland.

Sworn and subscribed before me }
 this fifteenth day of January, } Alfred B. Crossman.
 A. D. 1906. }

CYRUS D. MARTER,
 Attorney at Law,
 of New Jersey.

10

IN CHANCERY OF NEW JERSEY.

BETWEEN
 ROBERT H. MCCARTER,
 ATTORNEY GENERAL EX REL &C. }
 COMPLT. } On Bill &c.
 AND } Affidavit.
 MILLVILLE GAS LIGHT COMPANY }
 DEFT. }

20 STATE OF NEW JERSEY,
 COUNTY OF CUMBERLAND, ss.

Marcus Fry, of full age, being duly sworn according to law, on his oath says:-

That he has lived and resided continuously in the Township of Landis or in the Borough of Vineland for about forty-four years last past; and that during this period of time his business has been that of a professional surveyor of land and a conveyancer and that he well knows the condition of the physical territory now known as Landis Town-

ship, in the County of Cumberland, New Jersey, from 1861 to the present time; and that said territory in 1861 consisted of an unsettled wild tract of land covered with timber, woods and brush, through which tract of land in 1861 there were extended two old roads from Millville in said County northwardly, leading to Camden, New Jersey; and by the side of each one of said roads there were but and only six houses, with these exceptions there were, at that time, no other buildings or settlements of any kind whatever upon that tract of land known and described as 10
Landis Township, except a small settlement then and now known as Willow Grove; and that between the southerly boundary line of Landis Township and the Village of Millville, in said County, in the year 1861 and for several years thereafter, there was also a tract of wild land uncultivated without any buildings thereon, for a distance of about one and a half or two miles; and that since the year 1861 up to the present time, a large part of the tracts of wild land lying between the Village of Millville and the northerly boundary line of Landis Township has been 20
gradually built up and settled. The settlement in the territory in Landis Township consists of farms and fruit lands, and in the centre of Landis Township, the Borough of Vineland, comprising a tract of land about one mile square was established and erected in the year 1880; which Borough is thickly settled and built up with dwelling houses, stores and manufacturing establishments.

That in 1864 just before the Township of Landis was created out of the Township of Millville, the Township of Millville was a Township large in territory having only the

Town of Millville in its southwesterly portion and the Town of Vineland in its northeasterly portion, and no other villages of any size. It comprised some farms but was mainly large tracts of uncultivated woodland. That the Town of Vineland was at that time a recent settlement. The Township of Landis was created out of the northeasterly portion of the old Township of Millville and constituted about a little more than one half of the old Township. The remaining portion of the Township of Millville was in 10 66 made the City of Millville.

That at this time the built up portion of the City of Millville is but a small part of the territory known as the City of Millville, the remainder being farm and woodland.

Sworn and subscribed before me }
 this fifteenth day of January, } Marcus Fry.
 A. D. 1907.

CYRUS D. MARTER,
 Attorney at Law,
 20 of New Jersey.

IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT H. MCCARTER,

ATTORNEY GENERAL EX REL THE TOWNSHIP OF LANDIS,

IN THE COUNTY OF CUMBERLAND,

INFORMANT.

AND

THE MILLVILLE GAS LIGHT COMPANY,

DEFENDANT.

INFORMATION.

FRENCH & RICHARDS, Solrs.

Filed January 16, 1907,

E. B. LEAMING,

V. C.

IN CHANCERY OF NEW JERSEY.

BETWEEN ROBERT H. MCCARTER, ATTORNEY GENERAL EX REL THE TOWNSHIP OF LANDIS, IN THE COUNTY OF CUMBERLAND, INFORMANT. AND THE MILLVILLE GASLIGHT COMPANY, DEFENDANT.	}	On Information. Order to show Cause.
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Upon reading and filing the information in this matter and the affidavits thereto attached:

IT IS on this sixteenth day of January, nineteen hundred and seven, ordered that the defendant show cause before the Chancellor at the Chancery Chambers in Camden on Monday the twenty-eighth day of January, nineteen hundred and seven, at ten o'clock in the forenoon, why an injunction should not issue in accordance with the prayer of said information.

20

It is further ordered that in the meantime and until the further order of this court, the defendant and its officers, servants, agents and workmen absolutely desist and refrain from digging up any or any part of any of the streets or roads in the Township or Landis in the County of Cumberland; from laying or attempting to lay any pipes or conduits in any of the streets or roads of the Township of Landis, in the County of Cumberland; from using or attempting to use or operate the pipes already laid on Main Road or Main Avenue, in the Township of Landis; from allowing gas to flow into or through said pipes so laid and from supplying

gas to the inhabitants of the said Township of Landis, in the County of Cumberland or any of them.

It is further ordered that a copy of said information and affidavits and of this order, which copies may be uncertified be served on some director or head officer of defendant, or upon the agent designated to receive process, within five days.

Respectfully }
 advised, } W. J. MAGIE,
 C.
 E. B. LEAMING,
 V. C.

10

20

IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT H. MCCARTER,

ATTORNEY GENERAL EX REL THE TOWNSHIP OF LANDIS,

IN THE COUNTY OF CUMBERLAND,

INFORMANT.

AND

THE MILLVILLE GAS LIGHT COMPANY,

DEFENDANT.

ON INFORMATION
ORDER TO SHOW CAUSE.

FRENCH & RICHARDS, Solrs.

Filed January 16, 1907,

IN CHANCERY OF NEW JERSEY.

BETWEEN	}	On Information. Answering Affidavits.
ROBERT H. MCCARTER, ATTORNEY GENERAL & C, INFORMANT,		
AND THE MILLVILLE GAS LIGHT COMPANY, DEFENDANTS.		

STATE OF NEW JERSEY,
CUMBERLAND COUNTY, ss.

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S. J. Franklin, of full age, being duly sworn according to law, on his oath deposes and says he is the General Manager of the Millville Gas Light Company, the defendant in this suit; that the said defendant is a corporation of the State of New Jersey under special acts of the Legislature authorized to lay pipes in the Town of Millville and its vicinity, as said Town of Millville existed on the twentieth day of March, in the year eighteen hundred and fifty- 20 seven, and for greater certainty deponent prays that the Charter of the defendant Company may be inspected by the Court in this cause.

This deponent further says that on the twentieth day of March, A. D., eighteen hundred and fifty-seven, the Township of Millville, in the County of Cumberland, comprised all the territory now comprehended and included in the three municipalities known at the present time as the City of Millville; the Township of Landis in the County of Cumberland; and the Mayor and Council of the Borough of

Vineland. That in eighteen hundred and fifty-seven within the Township of Millville there was a large collection of houses which was commonly called Millville; and that such collection of houses, as deponent is informed and verily believes, was never commonly known as the *Town of Millville*.

That said collection of houses lay at and around the point where the roads leading from Port Elizabeth to Millville, Cumberland Furnace to Millville, May's Landing to
10 Millville, Lake to Millville, and from Malaga to Millville converge. That the roads last mentioned were then the main highways leading from Millville to points and places beyond. That, as deponent is informed and verily believes, all of the said last named roads were, at and before the year eighteen hundred and fifty-seven, duly laid out public roads.

And deponent says that he is informed that the road now known as Main Road or Main Avenue, and which was formerly known as Horse Bridge Road, has been a duly
20 laid out public road for nearly, if not more than, one hundred years, and that said road existed as a public highway on the twentieth day of March, A. D., eighteen hundred and fifty-seven, and has continued so to exist up to the present time.

And deponent further says that he is informed, and verily believes that the Millville Gas Light Company, after its Charter was granted to it, proceeded to erect a gas works and gas plant in the Township of Millville and that said Company extended its pipes and mains throughout the various streets and highways of the collection of houses

known as Millville, as above described, as soon as conveniently might be after the defendant's Charter was granted to it. That the gas plant of the defendant Company, as originally constructed, was situated at that part of the Township of Millville, in said collection of houses, known as The Furnace; which location approximately in the central part of the Township of Millville as it existed in eighteen hundred and fifty-seven.

That after the original installation of the gas plant of the defendant Company, from time to time as public necessities or demand required, this defendant made extensions of its pipes and mains, so that defendant's plant has been enlarged and extended, as demanded by the growth of Millville. 10

That, to meet the public requirements with respects to demand for a gas supply, the pipes of the company have been laid and extended from the central part of Millville to points at and along each of the main public roads hereinbefore mentioned, at increasingly greater distances from the central part of the City of Millville; that on the said road leading from Millville to Bridgeton, the defendant company has extended its pipes from the central part of what is now the City of Millville; that on the said road leading from Millville to Bridgeton the defendant company has extended its pipes from the central part of what is now the City of Millville, westwardly as far as said City is thickly enough settled to demand a gas supply; and that the same observation is true with respect to the road leading from Millville to Buckshutem, the road leading from Millville to Port Norris, the road leading from Millville to Cumberland, 20

the road leading from Millville to Mays Landing, the road leading from Millville to Lake, now known as Main Road, (formerly known as Horse Bridge Road), and the road leading from Millville to Malaga.

This deponent further says that the defendant company has extended its gas mains from the central part of Millville, along the road now known as Main Avenue or Main Road, from time to time as houses have been constructed along said highway, and a demand for a gas supply
10 has been created, in the manner as it has made extensions along any other highway of Millville.

This deponent further says that he has been informed and verily believes that in the year eighteen hundred and fifty-seven the Township of Millville comprised seven distinct and separate school districts; and that a Township officer or municipal officer, known as a *Town Superintendent of Schools* had jurisdiction over all of the said school districts of the said Township of Millville.

This deponent further says that within the past few
20 years the defendant company has erected an entirely new gas producing plant in the City of Millville, at a point about one-half of a mile north of the railroad station, and at a point distant about one mile from the place where its old gas producing plant is located. That the place where Main Road is intersected by the southerly boundary line of Landis Township is at a distance of about two miles from the old gas producing plant of the defendant company; and is distant about one mile from the new gas producing plant of the defendant company.

That in eighteen hundred and fifty-seven there existed

in the Township of Millville, and in the vicinity of the collection of houses then commonly called Millville, the following villages and hamlets, viz., Menantico, distant about three miles southwardly of Millville; Cumberland, about five miles from Millville; Leaming's Mill, about four miles from Millville; Buena Vista, about ten miles from Millville; Downstown, about twelve miles from Millville; Centre Grove, about four miles from Millville; and Buckshutem, about four and one-half miles from Millville.

This deponent further says that in eighteen hundred 10 and fifty-seven, Main Avenue was one of the chief highways of Cumberland County, and that there was built along or near the same, between Walnut Road and line of the City of Millville, at least four houses, as deponent is informed and verily believes. But deponent says that said part of said road in the vicinity of Millville lying northwardly of Landis Township line, was not sufficiently built up to make it profitable for the defendant company to extend its mains and pipes along the same, until very recently. 20

Deponent further says that about five years ago, the Millville Traction Company extended its line along Main Road from Millville northwardly to Landis Avenue, and that shortly thereafter a small collection of houses, now known as Cloverdale, and which is located about one-half mile northwardly of the place where the southerly boundary line of Landis Township intersects Main Road, began to be built. That there are now at Cloverdale, about a dozen houses; and that between Cloverdale and Millville, within the corporate limit of the City of

Millville, a number of other houses have been recently constructed; so that the defendant company lately resolved that it was desirable to extend its pipes and mains along Main Road to Cloverdale, for the purpose of supplying the territory which has been, and is now being quite rapidly built up as aforesaid.

Deponent says that in pursuance of said resolution of the defendant company, and for the sole purpose of supplying the newly built up territory along Main Road,
10 and for no other reason, except as herein and in a supplemental affidavit stated, the defendant company did, on the first day of January, nineteen hundred and seven, commence laying a line of pipes along Main Road from a point 40 feet southerly of the Landis Township line, northwardly to a point near the Clayville switch, in front of all the houses at Cloverdale, and southwardly thereof on Main Road.

And deponent further says that said work was commenced at about one o'clock in the morning of January
20 first, nineteen hundred and seven, and that the said extension was laid along Main Road to said point at or near the Clayville switch, in the public road or highway known as Main or Horse Bridge Road, and that said work was entirely finished in Landis Township at five o'clock p. m. on the second day of January, nineteen hundred and seven, including the restoration of the said road surface in the proper manner.

And deponent further says that since the second day of January, nineteen hundred and seven, the defendant corporation has been proceeding to lay pipes and mains in

Main Avenue from Millville towards the Landis Township line, in front of the properties within the corporate limits of said City; that as soon as practicable, defendant company, unless restrained by a proper order of some court having jurisdiction, intends to connect the extension on Main Road in Cloverdale with its main pipes, and to supply points at Cloverdale and southwardly thereof, with gas.

Deponent further says that before this suit was instituted, this defendant company had extended its mains and pipes from the Cloverdale extension southwardly to a point 10 within the corporate limits of the City of Millville, and had placed on the ends of said main a proper stop cock or valve.

This deponent further says that applications have been received by him from all of the residents of Cloverdale for a supply of gas for domestic consumption; and that said applications have been made in good faith, and that said company cannot supply said residents with gas because of the supplemental restraining order lately issued by the Court of Chancery in this suit. 20

This deponent further says that the work of laying said Cloverdale extension was not, in any sense, done secretly. That this deponent, as manager of defendant company, had intended for some weeks prior to January first, nineteen hundred and seven, to lay said extension, and that he refrained from commencing work because he was advised by one of the counsel of the defendant company, who, at that time, was holding the office of Township Solicitor of Landis Township; that the work of laying said mains might result in litigation with the Township

authorities, whereby counsel would be embarrassed; that the term of the said Township Solicitor expired on January first; that the Township Committee of the Township of Landis was by law obliged to meet at noon on the first day of January, so that the work in fact, was commenced at a period of time when the Township of Landis, through its governing body, might best protect its interests. That the road along which said Cloverdale extension is made is well built up, and the Millville trolley line runs along the
10 same, and the cars of that company run from five o'clock in the morning until late at night, for which reason it is apparent that the Township authorities would be, as in fact they were, apprised of said work within a few hours after the same was commenced.

Deponent further says that one of the members of the Township Committee, a Mr. Holt, lives at Cloverdale and, as deponent is informed, had almost immediate notice that said work had been commenced by the defendant company.

20 This deponent further says that the corporate limits of the City of Millville do not comprise and include all of the territory that could be construed as in the vicinity of Millville, and that, among other places in the immediate vicinity of Millville, in Landis Township are Cloverdale; Clayville, which is about one and one quarter miles north of the defendant company's works; and that the Village of South Vineland, which is distant about two miles from the defendant's gas works. And that the Borough of Vineland is in fact, distant only about five and one-half miles from the defendant's gas works.

And this deponent prays that the map of George H. Cook, State Geologist, and C. C. Vermule, Topographer, issued by the State in 1890, and known as "Atlas Sheet No. 15 (Southern Interior)," may be considered as part of this affidavit.

Deponent further says that the Village of Clayville is a railway station of the West Jersey and Seashore Railroad Company, a brick and tile manufacturing establishment, and about fourteen or fifteen houses. And deponent says that the Village of South Vineland has a population of about four hundred, with a post office, railway station, two stores and two churches. 10

Deponent further says that the Borough of Vineland and that part of Landis Township immediately surrounding the same is very thickly settled, and contains a population approximately six thousand five hundred; and that the Borough of Vineland alone has a population of more than four thousand five hundred.

And this deponent further says that in eighteen hundred and seventy, a corporation known as the Vineland Gas Light Company was chartered by a special act of the Legislature; that said company, soon after its incorporation, constructed a gas plant at Vineland; that the said company became insolvent in eighteen hundred and eighty-four, and in that year was sold by a receiver appointed by the Court of Chancery of New Jersey, one Washburn to John R. Farnum, of Waltham, Massachusetts. That said Farnum operated the works so sold to him by said receiver, from eighteen hundred and eighty-four until sometime in March, nineteen hundred as an individual, and not in association 20

with any other person or persons. That said Farnum never took any of the proceedings authorized or directed by the act entitled, "An Act concerning the sale of turnpike, bridge, plank road, gas, water, or gas and water companies, and providing for the re-organization thereof after such sale." "Approved February 17th, 1881." (G. S., p. 3694 &c.); nor did said Farnum attempt to do or perform any of the things authorized or permitted by said act, nor did said Farnum attempt to re-organize the Vineland Gas
10 Light Company. And this deponent says that the said deed from Washburn, Receiver, to said Farnum is dated May 10th, 1884, and is recorded in the office of the Clerk of the County of Cumberland, in Book 173 of Deeds, page 418. And for greater particularity this deponent refers thereto.

Deponent further says that he is advised that on the twenty-seventh day of March, nineteen hundred, by deed recorded in the Cumberland County Clerk's Office, in Book 251 of Deeds, page 217 &c. said John R. Farnum and
20 Henrietta M. Farnum, his wife, of Waltham, Massachusetts, pretended to convey to Arthur A. Holbrook, of Wilkesbarre, Pennsylvania, the gas plant which said Farnum had purchased from said receiver, together with the franchise of operating a gas company, &c., as by the said deed will more particularly appear; and that afterwards, and until March 31, 1900, said Holbrook operated said plant as an individual, and on March 31, 1900, said Holbrook, by deed recorded in said Clerk's Office, in Book 251 of Deeds, folio 220 &c., pretended to grant said gas works, but not the franchise aforesaid, in fee to Vineland Light & Power

Company, an alleged corporation of the State of New Jersey, as by said deed, reference being thereto had, will more fully appear; and that on the same date, by paper writing, purporting to be a lease, said Holbrook pretended to lease to said Vineland Light & Power Company a gas franchise for ninety-nine years, which said pretended lease is recorded in said Clerk's Office in Book "A" of Leases, pages 169 &c., and for which for greater particularity deponent refers.

And deponent further says that he is advised that the 10
said Vineland Light & Power Company was incorporated under and by virtue of an act entitled "An Act concerning corporations, (Revision of 1896), and the several supplements thereto and acts amendatory thereof, as by its certificate of incorporation filed in the office of Secretary of State, June 17th, 1904, to which deponent refers, will more fully appear.

And deponent says that there is in Landis Township no other corporation other than the Vineland Light & Power Company claiming to be a gas company. And that 20
he is advised that the Vineland Light & Power Company is not a gas company, and that the said Vineland Light & Power Company is unlawfully doing a gas business in the Township of Landis.

And deponent further says that he is credibly informed and verily believes that the Attorney General of this State has authorized an information in quo warranto proceedings to be instituted for forfeiture of the alleged charter of the Vineland Light & Power Company; and that the said Attorney General has instituted in the Court of Chancery

an injunction suit on information against the Vineland Light & Power Company, in which last named proceeding a restraining order has been allowed, and is now in force, enjoining and restraining the Vineland Light & Power Company from making any extensions of its mains in Landis Township.

Deponent further says that he is informed, and verily believes that the Vineland Light & Power Company has not obtained from any municipal governing body or other
10 municipal authority, any grant, franchise or permission to dig up and excavate any of the highways or public places of the Township of Landis or of the Borough of Vineland, or has obtained from any authority the franchise right, liberty and privilege of doing a gas business and supplying public and private consumers in the said Borough of Vineland or said Township of Landis with illuminating or other gas.

And deponent further says that he is advised that on the fifth day of January, nineteen hundred and seven,
20 some of the smaller stockholders of the Vineland Light & Power Company, in association with other persons, not stockholders in said corporation; filed in the Secretary of State's Office a certificate of organization of the Vineland Gas Company, for the purpose of supplying public and private consumers in the Borough of Vineland, with illuminating and other gas, as by the said certificate of incorporation of said Vineland Gas Company, reference being thereto had will more fully appear; and that said Vineland Gas Company has not sought, nor has it obtained from any municipal authority the franchise, right and privilege

of extending its mains and pipes in any public road or streets in said Borough or other municipality, nor has it erected or commenced to erect, any plant for the manufacture of gas.

Deponent is therefore advised, and therefore avers that there is at the present time no gas company at the Township of Landis, in the County of Cumberland or in the Borough of Vineland, in the County of Cumberland.

And deponent further says that he is advised that the Millville Gas Light Company is engaged in litigation with the Vineland Light & Power Company in an endeavor to restrain the Vineland Light & Power Company from extending its pipes; and he further says that said litigation tends in no wise to aid the defendant corporation in getting its pipes in the Main Road of the Township of Landis, as stated in the seventh paragraph of the complainant's bill; and this deponent says that the suit instituted by the Millville Gas Light Company against the Vineland Light & Power Company was commenced to restrain the act of the said Vineland Light & Power Company in digging up a long section of Main Avenue; in such a manner as to invade the charter rights and franchises of the Millville Gas Light Company, and for no other reason.

Deponent further says that the extreme extension of defendant's gas main at Cloverdale is distant more than four miles from the nearest main or gas pipes of the Vineland Light & Power Company.

And this deponent further says that as Manager of the Millville Gas Light Company, he had charge of the laying of the Cloverdale extension, and that it was his duty to

employ the men and labor for making said extension, and that in addition to other reasons above given for commencing his work in the night time, the said work was begun soon after midnight on January first, nineteen hundred and seven, because that day was a holiday, and he could readily procure men to perform the labor necessary; and also travel on Main Road was less impeded on a holiday.

Deponent further says that a week or more before said work was begun, the gas pipes to be used in said extension were laid along the highway in plain public view; and that in fact there was no precaution or step taken to make the move of the defendant corporation in constructing said extension secret.

Sworn and subscribed before me }
 this day of February, }
 A. D. 1907.

STATE OF NEW JERSEY,
 CUMBERLAND COUNTY, ss.

20

Thomas F. Mayhew, being duly sworn, on his oath says; that he is sixty-eight years of age and has lived all his life in Cumberland County, and he has been familiar with the settlement of Millville ever since he was a small boy; and that for the past thirty years he has resided in Millville.

That Vineland was settled about the year eighteen hundred and sixty-one by Charles K. Landis, and that prior to the year 1861, all that part of Cumberland County now comprised in the Township of Landis was a wild and

unsettled territory.

That in 1857 the largest settlement in the Township of Millville was the collection of houses which has grown into what is commonly known as the City of Millville, and that the same was in 1857 a comparatively small village. That said village was in the centre of the old Township of Millville and the nearest settlements or villages or hamlets to said collection of houses now called the City of Millville were Buckshuten, distant about about five miles; Menantico, distant about four miles, Cumberland distant about six miles; 10 Leaming's Mills, distant about four miles; Buena Vista, distant about ten miles; and the Lake about twelve miles from Millville. The chief highways leading out of Millville in 1857 were, the Buckshutem road, Port Elizabeth road, Cumberland road, Hance's Bridge road, May's Landing road, Main or Horse Bridge road, Malaga road and Bridgeton road. That the Millville Gas Light Company had its pipes and mains in the streets of Millville ever since deponent can recollect.

That the Borough of Vineland and settlement surround- 20 ing the same, South Vineland and Clayville have been built up and populated since Vineland was settled by Landis in 1861.

Deponent further says, that the Main or Horse Bridge road from the Clayville switch to the thickly settled part of Millville, was not, until recent years, very extensively built up; and that in deponent's judgment, the same was not sufficiently settled to demand the extension of gas mains to that locality; but that within the past three years a considerable number of houses have been built at what

is called Cloverdale and along the road southwardly of that place, to such an extent as to warrant gas mains being there laid to supply the consumers there, with a reasonable profit.

That deponent is a business man, and is engaged in the coal, wood, hay and lumber business and has been engaged in that business in Millville for about thirty years.

Sworn to and subscribed before me }
 this day of February, }
 10 A. D. 1907.

STATE OF NEW JERSEY,
 CUMBERLAND COUNTY, ss.

Leon H. Ware, of full age, being duly sworn according to law, on his oath deposes and says: That he is one of the regular agents and employees of the Millville Gas Light Company, the defendant in the above cause. That since the Cloverdale extension of the said gas company has
 20 been constructed this deponent has received from persons residing at Cloverdale, in the Township of Landis, along the line of said Cloverdale extension, applications for putting in gas on the usual terms of said gas company. The said applications are for gas supply for every house at Cloverdale, and that every one of said applications was made by the persons signing the same in good faith, and the same were received by this deponent for the said company also in good faith.

And this deponent further says that the said company has extended its mains so that they connect with the

Cloverdale extension, but that gas is prevented from flowing into the same by a stop cock or valve of proper construction.

And this deponent further says that none of the said applicants for gas at Cloverdale can be supplied by the said company because of the restraining order of the Court of Chancery; and that if said restraint is removed the said inhabitants of Cloverdale will be able to secure from said gas company a supply of gas almost immediately. That the mains laid in constructing said Cloverdale extension in the Township of Landis are all in the ground and the work of constructing said extension is completed; and that the public will not be interfered with at all, in even the least degree, by making house connections on the west side of Main Road along which side of said road the Cloverdale mains are laid; and that in making house connections with properties at Cloverdale on the east side of said road, the same can be dug without inconvenience to the public or injuring the highway. 10

And this deponent further says that the said application for gas supply, (copies of which are annexed hereto, as aforesaid), are in every respect bona fide and that the said applications comprise a request for supplying gas to each and every dwelling on Main Road from the southerly boundary line of the Township of Landis to the extreme end of the gas pipes of the Millville Gas Light Company on said Main Road, including one property adjoining the Clayville switch on the north; and that with the exception of last named dwelling said houses for which a gas supply is requested all front on the Cloverdale extension of said 20

gas company.

Sworn to and subscribed before me }
 this day of February, }
 A. D. 1907. }

STATE OF NEW JERSEY,
 CUMBERLAND COUNTY, ss.

S. J. Franklin, being duly sworn, on his oath says,
 10 that he has been the General Manager of the Millville Gas
 Light Company for more than three years last past; and
 that on the thirteenth day of November, last, representing
 the said company, he appeared before the Township Com-
 mittee of the Township of Landis and made application for
 a franchise for said corporation to extend its pipes and
 mains throughout all or nearly all of the public roads,
 streets, highways and public places of Landis Township.

And deponent says, that before said application was
 presented to said Committee, this deponent publicly stated
 20 to said Committee that said corporation claimed under its
 charter of 1857 the full right, liberty and franchise to do a
 gas business in all of the public roads, streets, avenues,
 highways and public places of Landis Township; but that,
 out of mere policy and consideration of public sentiment in
 such matters, deponent would ask permission of and
 franchise from the Township Committee on behalf of said
 corporation in the premises, so that the officials would not
 be offended by what they might deem an arbitrary exer-
 cise of privilege and power by said corporation; but that,
 no matter what the action of the said Committee might be

in the premises, the said corporation would not waive or relinquish any of its charter rights so claimed; and that deponent presented a petition for said franchise on said thirteenth day of November, last past, with the express and distinct understanding aforesaid first made and presented to said Committee.

And deponent further says, that a subsequent petition of said corporation for a similar franchise, likewise for all or nearly all and every of the roads, streets, highways and public places, was presented on the same understanding, 10 likewise publicly expressed and made known by said corporation to said Committee through counsel of said corporation. And that after said first named petition was presented, on a hearing thereof, the same claim of franchise was clearly expressed by said corporation through its counsel, in deponent's hearing, so that it would be clearly understood that said corporation in nowise waived its franchise or abandoned the same merely because of the presentation of said petitions.

And deponent further says, that before said second 20 petition was in anywise acted upon by said Committee, this deponent, by direction of said corporation, in exercise of the franchise privileges and rights of said corporation as deponents understands the case to be, caused to be constructed the Cloverdale extension running into Landis Township; and that as deponent is informed and believes, one of the reasons, but not the chief reason, said extension made was, so that by exercising its franchise in Landis Township it would be more publicly made known to any person or persons concerned and the public that said cor-

poration had not in anywise waived, relinquished, given up or failed to use its franchise when public demands for gas required an extension in that territory; but that the chief reason for said extension was, that the public in and around Cloverdale demanded a gas supply, and that the same could be supplied by said corporation at a reasonable profit.

Deponent further says, that he has lately received applications for a supply of gas from every house in
 10 Cloverdale fronting on the Cloverdale extension, on the usual terms of said gas company; and that he is likewise receiving many applications for a gas supply from the inhabitants of Millville living on Main Road south of Cloverdale, along the new line of said corporation. And deponent further says that all of said applications have been made and received in good faith.

Sworn to and subscribed before me }
 this day of February, }
 A. D. 1907.

IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT H. MCCARTER,
ATTORNEY GENERAL &C.,
INFORMANT,

AND

THE MILLVILLE GAS LIGHT COMPANY,
DEFENDANT.

ON INFORMATION.
ANSWERING AFFIDAVITS.

E. F. MILLER,
L. H. MILLER,
GASKILL & GASKILL,
Sol'rs.

IN CHANCERY OF NEW JERSEY.

BETWEEN ROBERT H. McCARTER, ATTORNEY GENERAL EX REL THE TOWNSHIP OF LANDIS, IN THE COUNTY OF CUMBERLAND, INFORMANT. AND THE MILLVILLE GAS LIGHT COMPANY, DEFENDANT.	}	On Information. Order for preliminary injunction.
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10

The order to show cause made in this cause on the sixteenth day of January, nineteen hundred and seven coming on to be heard at the Chancery Chambers in Camden, on the eleventh day of February, nineteen hundred and seven in the presence of French & Richards solicitors for and of counsel with the informant and Louis H. Miller and Gaskill & Gaskill solicitors for and of counsel with the defendant and the information and affidavits on the part of the informant and the answering affidavits of the defendant
 20 together with the arguments of counsel thereon heard and considered and it appearing that said order to show cause should be made absolute:

It is on this eleventh day of February, nineteen hundred and seven ORDERED that said order to show cause be made absolute and a preliminary injunction issue restraining the defendant, its officers, servants, agents and workmen and every of them from further digging up any or any part of any of the streets or roads in the Township of Landis in the County of Cumberland; from laying or attempting to lay any pipes or conduits in any of the streets

or roads of the Township of Landis in the County of Cumberland; from using or attempting to use or operate the pipes already laid on Main road or Main avenue in the Township of Landis and from allowing gas to flow into or through said pipes so laid.

Respectfully }
advised } W. J. MAGIE, C.

E. B. LEAMING, V. C.,

A TRUE COPY.

10

Vivian M. Lewis,
Clerk.

20

IN CHANCERY OF NEW JERSEY.

BETWEEN

ROBERT H. MCCARTER,

ATTORNEY GENERAL EX REL THE TOWNSHIP OF LANDIS,

IN THE COUNTY OF CUMBERLAND,

INFORMANT,

AND

THE MILLVILLE GAS LIGHT COMPANY,

DEFENDANT.

ON INFORMATION.
ORDER FOR PRELIMINARY INJUNCTION.

FRENCH & RICHARDS,

Sol'rs.

Received in Office

Feb. 15, 1907.

Filed Feb. 11, 1907.

IN CHANCERY OF NEW JERSEY.

ROBERT H. McCARTER,	}	On Information &c., Notice of Appeal.
ATTORNEY GENERAL,		
INFORMANT,		
AND		
THE MILLVILLE GAS LIGHT COMPANY,	}	
DEFENDANT.		

The defendant the Millville Gas Light Company does hereby appeal from the order or decree made in this court in the above entitled cause, on the Eleventh day of February, Nineteen Hundred and Seven, and from the whole, and each and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes. 10

Dated Mar. 12, 1907.

LOUIS H. MILLER,
Sol'r. of Def'ts.

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

LOUIS H. MILLER, 20
of counsel with def'ts.

A TRUE COPY.

Vivian M. Lewis,
Clerk.

IN CHANCERY OF NEW JERSEY.

BETWEEN
ROBERT H. MCCARTER,

ATTORNEY GENERAL,

INFORMANT,

AND

MILLVILLE GAS LIGHT COMPANY,

DEFENDANT.

NOTICE OF APPEAL.

L. H. MILLER,
Sol'r.

Filed Mar. 12, 1907.

NEW JERSEY COURT OF ERRORS AND APPEALS,
IN THE LAST RESORT IN ALL CAUSES.

<p>BETWEEN ROBERT H. MCCARTER, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, AND THE MILLVILLE GAS LIGHT COMPANY,</p>	}	<p>RESPONDENT, APPELLANT.</p>	<p>On Information &c. Petition of Appeal.</p>
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TO THE HONORABLE, THE COURT OF ERRORS
AND APPEALS IN THE LAST RESORT IN ALL
CAUSES.

The humble petition of the Millville Gas Light Company, the appellant in the above stated cause, respectfully shows that your petitioner finds it is aggrieved by the decree or order for a preliminary injunction made in the Court of Chancery of New Jersey by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date on the eleventh day of February in the year Nineteen 20
Hundred and Seven, wherein the said Robert H. McCarter was informant, and the said Millville Gas Light Company was defendant, in this respect, to wit: that the said order of decree adjudges that an order to show cause why a preliminary injunction should not issue against this appellant theretofore made by said Court of Chancery in said cause should be made absolute; and for that the said order or decree doth order that a preliminary injunction issue restraining the said Millville Gas Light Company, its officers, servants, agents and workmen and every of them from

further digging up any or any part of the streets or roads in the Township of Landis in the County of Cumberland, from laying or attempting to lay any pipes or conduits in any of the streets or roads of the Township of Landis in the County of Cumberland; from using or attempting to use or operate the pipes already laid on Main Road or Main Avenue in the Township of Landis, and from allowing gas to flow into or through said pipes so laid. And your petitioner humbly appeals from that part of the said order
 10 of decree of the Chancellor which orders and decrees as aforesaid, and from the whole and every part of said order or decree upon the ground that the same is erroneous for that the said Court of Chancery should have ordered and decreed that the aforesaid order to show cause be dismissed with costs to the said Millville Gas Light Company, and the said Court of Chancery should have ordered and decreed that the application of the said Robert H. McCarter Attorney General of the State of New Jersey, informant, for the aforesaid preliminary injunction against the Millville
 20 Gas Light Company, should be dismissed.

Your petitioner therefore prays that the said order or decree of the said Chancellor may be reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

LOUIS H. MILLER,
 Solicitor for and of
 counsel with Appellant.

GASKILL & GASKILL,
 Of counsel with Appellant.

NEW JERSEY COURT OF ERRORS & APPEALS,
IN THE LAST RESORT IN ALL CAUSES.

BETWEEN

ROBERT H. McCARTER,

ATTORNEY GENERAL, OF THE STATE OF N. J.,

RESPONDENT,

AND

THE MILLVILLE GAS LIGHT COMPANY,

APPELLANT.

ON INFORMATION, &c.
PETITION OF APPEAL.

L. H. MILLER,

Solicitor of Appellant.

Filed Mar. 19, 1907.

S. D. DICKINSON,

Clerk.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

ROBERT H. MCCARTER,
 ATTORNEY GENERAL EX REL
 THE TOWNSHIP OF LANDIS,
 IN THE COUNTY OF CUMBERLAND,
 INFORMANT.
 APPELLEE.

Answer.

AND
 THE MILLVILLE GAS LIGHT COMPANY,
 DEFENDANT.
 APPELLANT.

10

The answer of the above named appellee to the petition of appeal of the above named appellant.

This appellee, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that an order was on the eleventh day of February last past made and entered in the Court of Chancery in
 20 the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this appellee prays to refer thereto when the same shall be produced. And this appellee is advised and believes that the said order is agreeable to equity and he prays that the same may be affirmed, with costs to be adjudged to this appellee.

FRENCH & RICHARDS,
 Solicitors and of Counsel.

NEW JERSEY COURT OF ERRORS & APPEALS,

BETWEEN

ROBERT H. MCCARTER,

ATTORNEY GENERAL, EX REL THE TOWNSHIP OF LANDIS,

IN THE COUNTY OF CUMBERLAND,

APPELLEE,

AND

MILLVILLE GAS LIGHT COMPANY,

APPELLANT.

ANSWER TO PETITION OF APPEAL.

FRENCH & RICHARDS,

Sol'rs.

P. L. 1857—PAGE 452, CHAPTER 164.

AN ACT TO INCORPORATE THE MILLVILLE GAS
LIGHT COMPANY.

BE IT ENACTED *by the Senate and General Assembly of
the State of New Jersey*, That Ferdinand F. Sharp, John
McNeal, Edward Tatem, James Loper, Nathaniel Stratton,
Lewis Mulford, Furman L. Mulford, and Elijah B. Richman,
and all and every person or persons who may become sub-
10 scribers according to the mode hereinafter prescribed, and
their successors, are hereby created a body politic and cor-
porated in fact, by the name of "The Millville Gas Light
Company," and by the said name the said corporation shall
have power and authority to manufacture, make and sell gas
for the purpose of lighting the streets, buildings, manufac-
tories and other places situated in the town of Millville and
its vicinity.

And be it enacted, That the said corporation shall be
empowered to lay down their gas pipes, and to erect gas
20 posts, burners and reflectors in the streets, alleys, lanes, ave-
nues, and public grounds of the town of Millville and its
vicinity, and to do all things necessary to light the said town
and the dwellings, stores, and other places situated therein;
provided, that the public travel shall at no time be affected
or impeded by the laying of the said pipes or the erection
of the said posts; and the streets, side and cross walks,
public grounds, lanes and avenues shall not be injured, but
shall be left in as good and perfect condition as before the
laying of the said pipes or the erection of the said posts.

And be it enacted, That Ferdinand F. Sharp, John

McNeal, Edward Tatem, James Loper, Nathaniel Stratton, Lewis Mulford, Furman L. Mulford, and Elijah B. Richman, or a majority of them, are hereby appointed commissioners for receiving subscriptions for the sum of fifty thousand dollars, to constitute the capital stock of the said corporation, in shares of fifty dollars each; and the said commissioners, or a majority of them, shall open books for that purpose, at such time and in such place or places, within this state, as they shall designate by public advertisement, to be previously inserted, for at least three weeks, in a public newspaper printed in the county of Cumberland, and shall keep the same open until the said capital stock shall be subscribed, or at their discretion, close the same after they shall have remained open two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid; and the sum of ten per cent. on each share so subscribed shall be paid in specie, or in the bills of banks which redeem their bills with specie, by each subscriber at the time of subscription to the said commissioners, or a majority of them; and each subscriber shall be entitled to receive a certificate for such stock from said commissioners; and the amount so received by the said commissioners at the time of subscription, shall by them, or a majority of them, be paid over to the directors of the said company, to be appointed as hereinafter directed; and all the powers of the said commissioners shall cease and determine on the appointment of such board of directors; and the said board, when so appointed, shall have power, and they are hereby authorized, from time to time, under the foregoing regulations, to open the books for the further subscription of stock, until

the whole stock subscribed amounts to the sum of fifty thousand dollars, and are also authorized to call upon the said subscribers for the payment of further installments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures as they may deem expedient, until the whole amount of said shares so subscribed shall have been fully paid.

And be it enacted, That the management of the concerns of the said company shall be vested in five directors, to be
10 selected from the stockholders, a majority of whom shall be residents of the state of New Jersey; and the said directors shall choose, by a plurality of votes, a president from among themselves; and as soon as conveniently may be, after fifteen thousand dollars shall have been subscribed, the before named commissioners, or a majority of them, shall convene the said stockholders by public notice, to be given as aforesaid, and at such time and place as they shall designate in such notice, to choose the first board of directors,
20 who shall hold their offices until the first Monday in April, eighteen hundred and fifty-eight; and the said directors and president shall hold their offices from the first Monday of April, in every year, for one year, and shall be elected on the first Monday of April, in each year, at such time and place as a majority of the directors shall appoint; and public notice shall be given of the time and place of holding such election, for ten days, in a newspaper published in the county of Cumberland; and any vacancy in the said board of directors may be supplied by appointments, to be made by the board of directors, until the next election; and all elections shall be by ballot of the stockholders, or their

proxies, allowing one vote for each share which they shall have held in his, her, or their name or names at least fourteen days before the time of voting.

And be it enacted, That if at any time an election shall not be held on the day herein appointed, the corporation shall not for that cause be deemed to be dissolved, but an election shall be held at any time within one year, in such manner as may be directed by the by-laws.

And be it enacted, That the directors for the time being shall form a board, and they, or a majority of them, shall 10 be a quorum for transacting business.

And be it enacted, That the stock of the corporation shall be transferable, according to the by-laws and regulations of the corporation, and shall be considered personal property; and the stock and transfer books shall be opened at all times to the inspection of the stockholders.

And be it enacted, That if any person or persons shall wilfully do, or cause to be done, any act or acts whatsoever, with intent thereby to injure any conduit, pipe, cock, machine, or structure whatsoever, or anything appertaining 20 to the works of the said corporation, or whereby the same may be stopped, obstructed, or injured, the person or persons so offending shall be considered guilty of a misdemeanor, and being thereof convicted, shall be punished by fine, not exceeding three hundred dollars, or imprisonment at hard labor, not exceeding two years, or both; *provided,* such criminal prosecution shall not in any wise impair the right of action for damages by a civil suit, hereby authorized to be brought, for any such injury as aforesaid, by and in the name of the said corporation, in any court of this state

having cognizance of the same.

And be it enacted, That the said company shall cause to be kept, at their office, proper books of accounts, in which shall be fairly and truly entered all the transactions of the company, which books shall be at all times open for the inspection of the stockholders.

And be it enacted, That the said corporation shall possess the general powers, and be subject to the restrictions and liabilities contained in the act entitled "an act concerning corporations," approved the fourteenth day of February, 10 one thousand eight hundred and forty-six, so far as the same are applicable.

And be it enacted, That this act shall take effect immediately.

Approved March 20, 1857.

IN CHANCERY OF NEW JERSEY.

BETWEEN ROBERT H. MCCARTER, ATTORNEY GENERAL EX REL THE TOWNSHIP OF LANDIS, ETC., INFORMANT.	}	On Information for injunction.
AND THE MILLVILLE GAS LIGHT COMPANY, DEFENDANT.	}	Memoranda.

LEVERETT NEWCOMB & FRENCH & RICHARDS, E. F. MILLER & GASKILL & GASKILL,	For Informant. For Defendant.	10
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LEAMING, V. C. As this case presents no facts differing materially from the facts upon which the case of the Township of Landis, etc., vs. Millville Gas Light Company was recently decided by me, the order to show cause will be made absolute and a preliminary injunction will issue in accordance with the views expressed in the opinion filed in the latter case. 20

Submitted February 11th, 1907.

Decided " " "

IN CHANCERY OF NEW JERSEY,

ROBERT H. McCARTER,

ATTORNEY GENERAL, EX REL TOWNSHIP OF LANDIS, ETC.

VS.

MILLVILLE GAS LIGHT COMPANY,

MEMORANDA.

Feby. Term A. D. 1907.

LEAMING, V. C.

Filed Mar. 4, 1907.

town of Millville and its vicinity” refers to the village of Millville and its vicinity, and not to the Township of Millville and its vicinity. The view is also therein expressed that without something to show that the expression “Millville and vicinity” was intended to include more territory than would naturally be imported by that expression, the language could not properly be understood to include the entire Township of Millville as it then existed. I still entertain the views expressed in that opinion; and I
 10 find nothing in the record in the present case to indicate a different legislative intent in the use of the language. Upon the record before me I feel obliged to hold that the rights conferred upon defendant company in the act of 1857 related to the territory then comprising the village of Millville and its immediate vicinity. In *Madison vs. Morristown Gas Light Company*, 20 *Dick.* 356, 358, similar language similarly used is commented upon as follows:

“Vicinity, as used in the statute, applies only to the streets, lanes, alleys and public places adjoining the village
 20 of Morristown. * * * The act incorporation of defendant company is not difficult of construction. Its language construes itself. The company is incorporated to supply gas ‘for the purpose of lighting the streets, buildings, manufactories and other places situated in Morristown and its vicinity’. Every building or other place in Morristown may be lighted. Buildings in the vicinity of Morristown may also be lighted. The intent was to give the defendant the right to lay gas pipes and light Morristown and the buildings or factories lying in its vicinity—that is adjoining Morristown.”

The views expressed in the opinion quoted, must, in the absence of distinguishing features, be accepted by this court as an authoritative declaration of the true significance of the language used in the act. It is not necessary to here consider whether the word "vicinity" included all the territory now comprising the City of Millville, as that territory is not in dispute in this cause; but I am entirely clear that this word vicinity, given the import already defined, cannot, in view of the physical conditions disclosed by the record, be reasonably treated as including any 10 territory now embraced within the boundaries of the Township of Landis. In 1857 the territory between the outskirts of the village of Millville and the point where the present boundary line of the Township is located, a distance of one and one-half or two miles, was an outlying country district and unoccupied by any buildings except a few farm houses; and substantially the same conditions appear to have existed in 1864 when the Township of Landis was set off from the Township of Millville. The territory now in dispute, extending from the boundary line north- 20 ward toward the present Borough of Vineland, was of substantially the same character. It would clearly be doing violence to the views expressed by the Court of Errors and Appeals, above quoted, to hold that any part of this territory now in the Township of Landis, was contemplated by the language of the legislative grant in question, in view of the physical conditions then existing as disclosed by the present record. It follows that defendant must, at this time, be treated as without legislative authority to occupy the highways of the Township of

Landis for the purpose of operating its gas plant.

It is also urged, on behalf of defendant, that this court cannot properly forbid the use of the portion of the gas pipe which had already been laid in the Township of Landis when the restraining order in this cause issued. The application for a mendatory writ compelling the removal of the pipe, already in place, will not be entertained before final hearing; but the conclusion already reached to the effect that defendant is without authority to occupy the
10 highway in question with gas pipes, if sound manifestly justifies this court in restraining defendant from taking the pipe into use as a part of its system. At present the pipe merely occupies the highway at a place where the Township is authorized to permit another company to occupy it. Should the pipe be now brought into use as a part of the system of defendant company and operated to supply gas to consumers along the line of the highway, the privilege enjoyed by the Township to treat with or induce another company to occupy the highway for a similar purpose
20 would be materially affected.

Defendant also urges that the record disclosed that the present bill is not filed by the Township in good faith; but that the bill is essentially one at the relation of an opposition company. I am unable to reach this conclusion. The propriety of the resolution authorizing the filing of the present bill is a legislative and not a judicial question, and the exercise of legislative discretion cannot be interfered with by this court in the absence of manifest fraud.

I will advise a preliminary injunction covering the scope of the present restraining order.

MILLVILLE GAS LIGHT CO. v. VINELAND LIGHT
& POWER CO.

(Court of Chancery of New Jersey, Dec. 21, 1906.)

Legislative grants of franchises, whether granted by special charters or under general laws, confer privileges which are exclusive in their nature as against all persons upon whom similar rights have not been conferred. Any attempted exercise of such rights, without legislative sanction, is not only an unwarranted usurpation of power, 10 but operates as a direct invasion of the private property rights of those upon whom the franchises have been so conferred.

A court of equity will enjoin the unlawful invasion of a statute franchise.

The restraining power of a court of equity is exercised for the protection of rights, the existence of which is clearly established, and so far only as may be essential for the protection of those rights.

Public grants are construed strictly, and, in all cases 20 of grants of franchises by the public to a private corporation, the established rule of construction is that any ambiguity in the terms of the contract must operate against the corporation and in favor of the public. The corporation takes nothing that is not clearly given by the act.

The word "town" as used in legislative acts in New Jersey has no fixed significance, and its use must be applied according to the manifest legislative intention as gathered from the occasion and necessity of the act.

Injunction denied because of want of sufficient certain-

ty as to complainant's rights.

(Syllabus by the Court.)

Bill by the Millville Gas Light Company against the Vineland Light & Power Company for injunction. Refused.

Edwin F. Miller and Gaskill & Gaskill, for complainant. Leverett Newcomb and French & Richards, for defendant.

LEAMING, V. C. The bill in this cause is filed by the Millville Gas Light Company to procure an injunction to restrain the Vineland Light & Power Company from
 10 laying gas pipes in certain highways in the Township of Landis, Cumberland County. The cause has been submitted, at the return of an order to show cause for a preliminary injunction, upon the bill and its accompanying affidavits, on the part of complainant, and upon answering affidavits, on the part of defendant. Complainant is a corporation engaged in the business of manufacturing and supplying gas. Its works are located in the City of Millville and its corporate rights are derived from an act of the Legislature of New Jersey entitled, "An act to incorporate
 20 the Millville Gas Light Company," approved March 20, 1857. Defendant is a corporation engaged in a like business, with its gasworks located in the Borough of Vineland. The City of Millville is about six miles distant from the Borough of Vineland. The territory between these two municipalities is the territory now in dispute, and is known as the "Township of Landis." In 1857, the date of the passage of the act incorporating complainant company, Millville Township included all the territory now comprising the present City of Millville, the Borough of Vineland and the Township of Landis. Millville was then an unincor-

porated village. The Township of Landis was set off from Millville Township in the year 1864. The Borough of Vineland was incorporated in the year 1880 and comprises one square mile of territory in the centre of the Township of Landis. The city of Millville now comprises all of the territory of the old Township of Millville which is not included within the boundaries of the township of Landis and the borough of Vineland.

In November last complainant determined to extend its gas mains from the city of Millville through the township 10 of Landis to or toward the borough of Vineland. It is averred by complainant that as soon as active preparations were made for this work defendant hastily began laying its mains through the township of Landis from the borough of Vineland toward Millville, and along the highways which complainant was to occupy, with a view to interfere with complainant's work and to appropriate the territory secured to complainant by its legislative franchise. It is this work of defendant which complainant now seeks to enjoin. 20

It is claimed on behalf of complainant that the act of 20 March 20, 1857 (*P. L. 1857, p. 452, c. 164*), under which complainant is incorporated, granted to complainant a legislative franchise to lay gas pipes and mains in the highways throughout the territory then constituting Millville township, which territory, as stated, includes the present township of Landis and borough of Vineland. It is also claimed on behalf of complainant that defendant company is without right, either by legislative or municipal authorization, to conduct business as a gas company or to occupy any streets or highways for that purpose.

Legislative grants of franchises of the nature claimed by complainant, whether granted by special charters or under general laws, confer privileges which are necessarily exclusive in their nature as against all persons upon whom similar rights have not been conferred, for any attempted exercise of such rights, without legislative sanction; is not only an unwarranted usurpation of power, but operates as a direct invasion of the private property rights of those upon whom the franchises have been so conferred. *Raritan & Del. Bay R. Co. v. Del. & Rar. Canal Co.*, 18 N. J. Eq. 546, 569; *Pennsylvania R. R. Co. v. National Railway Co.*, 23 N. J. Eq. 441, 447; *Jersey City Gas Co. v. Dwight*, 29 N. J. Eq. 242, 250; *Elizabethtown Gas Co. v. Green*, 46 N. J. Eq. 118, 124, 18 Atl. 844; *Pomeroy's Equitable Remedies*, § 584. It follows that, if complainant is at this time entitled to exercise in the disputed territory the privileges set forth in the legislative act referred to, and defendant, as claimed, enjoys no legislative sanction for the conduct sought to be enjoined, complainant will be entitled to the relief prayed for.

Defendant, however, denies the title of complainant to any franchise in the township of Landis, and asserts, on its own behalf, a similar legislative grant covering that disputed territory.

At the hearing I expressed some doubt as to whether this court should entertain jurisdiction for preliminary relief, in view of the fact that complainant is not in the actual enjoyment of the disputed territory and the issues presented include a denial of the title of complainant to the rights sought to be protected. While the violation of franchises

affords frequent instances for the exercise of equity jurisdiction, I am not clear that any entirely satisfactory ground can be found to justify a court of equity in granting injunctive relief in favor of a complainant for the protection of a franchise the title to which is challenged by defendant in a case where complainant is not in the actual enjoyment of the franchise claimed. In *Whitechurch v. Hide*, 2 Atl. 391, the chancellor refused to entertain a bill for the protection of a franchise until complainant should have first established his title at law. In *Moor v. Veazie*, 31 Me. 360, 377, the view is entertained that a legislative grant of a franchise, emanating, as it does, from the people in their sovereign capacity will be regarded as the equivalent of a right established at law, but the franchise there in question was in the actual enjoyment of complainant. In *Delaware & Rar. Canal Co. v. Rar. & Del. Bay R. Co.*, 16 N. J. Eq. 321, 378, the chancellor says: "An injunction is the proper remedy to secure to a party the enjoyment of a statute privilege of which he is in the actual possession, and when his legal title is not put in doubt." Where the basis of a bill is the refusal of defendant to yield to complainant the enjoyment of his legal estate in lands, and the title of complainant is in dispute, it is well settled that equity will not entertain jurisdiction until the title is first established at law. *Hart v. Leonard*, 42 N. J. Eq. 416, 7 Atl. 865; *Outcalt v. Geo. W. Helme Co.*, 42 N. J. Eq. 665, 4 Atl. 669, 9 Atl. 683; *Todd v. Staats*, 60 N. J. Eq. 507, 46 Atl. 645. The prevailing view, however, appears to be that, in the protection of certain intangible property rights, such as arise in actions to enjoin private nuisances, waste, the infringe-

ment of patents, of copyrights, of trade-marks or literary property in manuscript writings, the law affords so inadequate a remedy that equity should extend its preventive writ for protection, even in cases where defendant brings into question the title of complainant to the rights asserted; and the wrongful invasion of a statute franchise is thought to invoke equitable jurisdiction as most nearly embodying to elements of a nuisance.

The primary inquiry, therefore, will be as to the
 10 character and extent of complainant's rights. In this inquiry certain well-settled rules must be recognized. The restraining power of a court of equity is only exercised for the protection of rights, the existence of which is clearly established, and so far only as may be essential for the protection of those rights, and it is also a rule of construction that public grants are to be constructed strictly, and in all cases of grants of franchises by the public to a private corporation, the established rule of construction is that any ambiguity in the terms of the contract must operate
 20 against the corporation and in favor of the public. The corporation takes nothing that is not clearly given by the act. *Del. & Rar. Canal & C. & A. R. & T. Co. v. Rar. & Del. Bay R. Co.*, 16 N. J. Eq. 321; *Penna. Ry. Co. v. National Ry. Co.*, 23 N. J. Eq. 441, 455.

The legislative act under which complainant claims (*P. L. 1857, p. 452 c. 164*) is as follows:

"An act to incorporate the Millville Gas Light Company."

"1. Be it enacted by the Senate and General Assembly of the state of New Jersey, that Ferdinand F. Sharp, John McNeal, Edward Tatem, James Loper,

Nathaniel Stratton, Lewis Mulford, Furman L. Mulford, and Elijah B. Richman, and all and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors are hereby created a body politic and corporate in fact, by the name of 'the Millville Gas Light Company,' and by the said name the said corporation shall have power and authority to manufacture, make and sell gas for the purpose of lighting the streets, buildings, manufactories and other places situated in the town of Millville and its vicinity." 10

"2. And be it enacted, that the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues, and public grounds of the town of Millville and its vicinity, and to do all things necessary to light the said town and the dwellings, stores and other places situated therein: Provided that the public travel shall at no time be affected or impeded by the laying of the said pipes or the erection of the said posts; and the streets, side and cross walks, public grounds, lanes and avenues shall not be injured, but shall 20 be left in as good and perfect condition as before the laying of the said pipes or the erection of the said posts."

The other provisions of the act are not material to the present controversy.

The claim of complainant is that the words, "The town of Millville and its vicinity," as used in the first and second sections of the act, include the territory which comprised the township of Millville as it existed at the date of the passage of the act, whereas the contention on the part of defendant is that the words relate to only the territory

which comprised the village of Millville, as it then existed, and the territory in its immediate vicinity, now defined by the corporate limits of the city of Millville. As already stated, Millville, in the year 1857, was a small unincorporated village, and the township of Millville then embraced, not only the village of Millville, but also the territory now included in the present city of Millville, township of Landis, and the borough of Vineland, respectively.

The significance of the word "town," as used in legislative acts, has been the subject of judicial examination in this state in a number of cases. These cases are all collected in *Brown's Estate v. Town of Union*, 62 N. J. Law, 42, 40 Atl. 632, except the case of *Holmes v. Jersey City* 12 N. J. Eq. 299, which is not there cited. These cases fully determine that the word has no fixed significance in New Jersey. The word, as used in the Constitution and in various statutes, is held to be of such uncertain meaning, standing alone, that the courts have uniformly applied its use according to the manifest intention of the legislation as gathered from the occasion and necessity of the act. By the adoption of this rule of construction in this case the legislative grant to complainant was either for the village of Millville and its vicinity or the township of Millville and its vicinity, according as the legislative intent may be more clearly manifest. To conclude that the latter was intended would seem to conflict with the reasoning adopted by the Court of Appeals in *Madison v. Morristown Gas Light Co.*, 65 N. J. Eq. 356, 54 Atl. 439, where it was held to do violence to the word "vicinity" to assume that the Legislature intended by that word, similarly used, to include

territory of an independent municipality not named. The more apparent legislative intent, in the use of the expression, "the town of Millville and its vicinity," in the act in question, appears clearly to be the equivalent of the expression, "the village of Millville and its vicinity," and that is the meaning which I attribute to the language used. The determination of what territory was intended by the use of the word "vicinity" is more difficult. I am impressed that an accurate determination of the legislative intent in the use of that word, in the act in question, is dependent 10 largely on an intimate knowledge of the physical conditions which existed at that time at the village of Millville and the territory surrounding it. How large a village—territorially—was Millville in 1857? Were there other villages in Millville township—near by or distant—which might then have been reasonably thought to be appropriate territory to receive a supply of gas, either presently or in the near future? Was the entire township, other than Millville, a sparsely settled country district, or were there other municipalities in the township at that time? These and other physical con- 20 ditions, not disclosed by the record, would seem to be almost essential to an intelligent determination of the import of the word "vicinity" as used in the act. But, without something to indicate a legislative intent to include more territory than would naturally be imported by the expression "Millville and vicinity," I am unable to conclude that the language used was intended to include the entire township. It will be noted that the second section of the act empowers complainant "to lay down their [its] gas pipes, and to erect gas posts, burners, and reflectors in the streets,

alleys, lanes, avenues and public grounds of the town of Millville and its vicinity." The absence of a reference to roads, as well as the natural significance of the expression, carries with it a suggestion of some force that an entire township was not within the contemplation of the legislative body. My conclusion is that it does not at this time appear with sufficient certainty that complainant is the owner of a franchise covering the territory in dispute to justify this court in granting a preliminary injunction against
10 defendant.

In refusing an injunction I do not wish to be misunderstood. The injunction is refused because at this time I deem the rights of complainant, as disclosed by the record, to be too uncertain to justify preliminary relief. This must not be deemed to prejudge the case of complainant on final hearing, for, as already indicated, the significance of the word "vicinity" may well be controlled by facts not at this time within the knowledge of the court. Should defendant continue the construction of its works within the ter-
20 ritory in dispute, it will do so at its own risk. The bill may stand as one for mandatory relief at final hearing.

The conclusion I have reached renders unnecessary a discussion of the other questions presented. The order to show cause will be dismissed.



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