

IN CHANCERY OF NEW JERSEY.

Between

THE TOWNSHIP OF GREENWICH, IN THE
COUNTY OF WARREN,

Complainant,

and

THE EASTON AND AMBOY RAILROAD COM-
PANY,

Defendants.

On Bill for
Injunction.

BILL OF COMPLAINT.

[Filed October 21, 1873.]

*To His Honor, Theodore Runyon, Esquire, Chancellor of the
State of New Jersey:*

Humbly complaining, show unto your Honor, your orators,
The Inhabitants of the township of Greenwich, in the
county of Warren, and State of New Jersey, that the
Easton and Amboy Railroad Company, a corporation created
by an act of the legislature of the State of New Jersey,
approved the third day of April, eighteen hundred and 10
seventy-two, entitled, *An Act to consolidate the Bound
Brook and Easton Railroad Company and the Perth Amboy
and Bound Brook Railroad Company, supplementary to the
charters of said companies, that the said act of consolidation
was accepted by the two last named companies on the third
day of April, eighteen hundred and seventy-two, by the
filing of certificates of the acceptance of said act of con-
solidation under the seal of the respective corporations,
attested by the presidents and secretaries of the aforesaid*

consolidated companies, as appears by the certificate of Henry C. Kelsey, Secretary of State, under the seal of the State of New Jersey, bearing date the sixteenth day of April, eighteen hundred and seventy-two, that by a provision in the first section of the said act of consolidation it is enacted that after such consolidation shall be effected, such consolidated companies shall in all respects act and be governed by the laws now [then] in force respecting the said Bound Brook and Easton Railroad Company, so far as
10 the same may be applicable, and the said railroad of the said Perth Amboy and Bound Brook Railroad Company, shall be deemed an extension of said Bound Brook and Easton Railroad Company. That by the sixth section of the act incorporating the Bound Brook and Easton Railroad Company, the said company are authorized and invested with all the rights and powers necessary and expedient to survey and lay out and construct a railroad from a suitable point at or near the village of Bound Brook, in the county of Somerset, to a suitable point on the Delaware river at or
20 within ten miles of Phillipsburg, in the county of Warren, to the said railroad, not to exceed one hundred feet in width, except in such places where, from the depth of the excavation or the height of the embankments, it is necessary to take more land, for the slopes and protection of side banks of said railroad, in which case so much land as will be necessary for the purpose, and no more, shall be taken, with so many sets of tracks and rails as they may deem necessary. That by the tenth section of the act last aforesaid, it is enacted as follows: that it shall be the duty of
30 the said company to construct and keep in repair good and sufficient bridges and passages over or under the said railroad where any public or other railroad shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be imperilled thereby; and also where the said railroad shall intersect any farm or lands of any individual, to provide and keep in repair suitable wagon ways over or under the said road.

And your orators further show, that the said the Easton and Amboy Railroad Company have surveyed, laid out and
40 located the line of their railroad from a point on the Dela-

ware river, in the town of Philipsburg, through the said town of Phillipsburg and the township of Greenwich, in the said county of Warren, and are now by their engineers, contractors, agents and servants, constructing the same. That the line of the said railroad, as it is now being constructed, crosses a certain public road, leading from the village of Still Valley by Springtown, on the Central Railroad of New Jersey, and by certain flouring mills, known as Springtown Station Mills, on the Pohatcong creek, to the village of Springtown, in the township of Greenwich, in 10 the county and state aforesaid, and is designated, described and shown by the map hereto annexed and made a part of this bill of complaint. That near to and southerly of where the said companies' line of railroad crosses the said public road, to wit, within feet, through a deep valley and through low meadow lands, flows the Pohatcong creek, which the said railroad crosses, and is so designated upon the annexed map. That the grade line of the said railroad passes over or above the public road and creek, at an elevation of more than one hundred and thirty feet, necessitating 20 an embankment of the said height that the earth culverts through which the public road and creek can pass. That the bed of the Pohatcong creek is much than the bed of the public road, as will appear by the map hereto annexed; and that while the creek flows through low meadow ground, the public road is constructed on high, solid ground, of a permanent nature, and easily kept in repair, and secure from the periodical overflowing of the said creek, as your orators will hereinafter show and state to your Honor. 30

And your orators further show, that by the third section of a supplemental charter of the Easton and Amboy Railroad Company, approved April the second, eighteen hundred and seventy-three, it is enacted that if the said company shall find it necessary to change the location of any portion of any turnpike or other public road, they are hereby authorized and empowered so to do.

Your orators further show, that the said Pohatcong creek is peculiar for the sudden rise of its waters; the said creek takes its rise in the mountains in the northeastern part of 40

the county of Warren and flows in a southwesterly course through what is known as Jackson valley and the Pohatcong valley, and empties into the Delaware river in the county of Warren, about to the southwest of the point where the defendants' line of railroad crosses it, and about miles from its source. It rises in the township of Independence, and flows through the townships of Mansfield, Washington, Franklin and Greenwich; that in later times the water of said stream overflow its banks much more
10 frequently than formerly; that as the lands about its source and the sources of its tributaries, have been cleared up and cultivated, the water flows off more rapidly, and since the building and enlarging the Morris canal, and the building of the Morris and Essex and Central Railroads through and across the Pohatcong valley, its volume of water has been increased at all times when the said canal is in operation and open to business, the volume of water in the Pohatcong creek is increased; that the said creek receives the leakage and overflow of surplus water from the said canal from the
20 lock at the village of West Odden, to the foot of the plane at the village of Stewartsville, a distance of miles; that the said creek passes under the Morris canal at the foot of plane No. 7, near the town of Washington, and from thence flows almost directly across the valley; and then down the valley in a very tortuous course till it passes the line of the defendants' railroad; that Springtown Station Flouring Mills, are situated on said creek about a quarter of a mile to the east of the defendants' railroad line. Westerly of these lines of road, is the Springtown mills, at the village
30 of Springtown, a distance of about three-quarters of a mile, that in that distance of a mile there is but little fall in the bed of the creek, so little that the waters in the Springtown mill pond flows back a full half-mile in an ordinary height of water, and in time of a freshet the creek overflows its banks and spreads out all over the valley where the defendants' railroad crosses it to the depth of several feet, but it has never been known to overflow the public road as now situated at the point where the defendants' railroad crosses it. The defendants' in the con-
40 struction of their railroad find it necessary to make the passage-ways under the railroad, one to pass the creek

through, and the other for the public road to pass under; and that from the great height of the railroad embankment at this point the expense of constructing such passage-ways is considerable, and in pursuance of their alleged plans—which is to construct two culverts as designated on the annexed map, side by side, each over three hundred feet in length, thirty-three feet in width, and seventeen feet in height, the southerly end of the creek is to flow through, and the northerly end is for the public road for the accommodation of the public travel; that the defendants have 10 constructed the southerly culvert to the spring of the arch, and have already changed the flow of the creek through it, and are now making preparations to construct the second or northerly culvert with the alleged purpose of filling up the old public road and turning the public travel through that culvert, and in furtherance of that design the contractors who are now engaged with a large force of horses and carts, and laborers, in filling the old road bed, and dumping on the main embankment, so that travel is already made dangerous and unsafe on the old public road, and no new 20 road has been provided, and in a short time travel on that road will have to cease if these defendants and their contractors are not enjoined from prosecuting their work in the manner in which they are now doing.

Your orators further show and insist, that the said defendants have no lawful right to change, or alter the location of any public road to suit their convenience, and to lessen the expense in the construction of their railroad to the inconvenience and detriment of the public. The defendants can only alter or change the location of the public road in 30 this state, by the supplemental provision of their charter, where such alteration or change is necessary, as a means of allowing the road to be built, and is necessary for the protection of the public travel, on the public road that is sought to be changed; in this case the change is simply one to effect a saving of a trifling expense to the railroad company, by greatly inconveniencing and endangering the lives of the traveling public, making the passage under the railroad much more dangerous; and at times of freshets the road will be impassable, by reason of its being over. 40

flowed by the creeks; that one of the alleged objects of the railroad company in constructing these two culverts together, is that in time of high water, when the creek above overflows its banks that such overflow can pass down through the public road culverts; that the space between the red lines on the map, show the proposed new road, and there it makes departure from the old road, and returns to the old road again; that approaching the culverts from either direction, the traveler enters it at an angle, and cannot tell
10 what may be approaching from the other end of the culvert; whereas a culvert built on the line of the public road would be on high ground, no danger of overflow, and travelers from either direction could see through the tunnel or culvert long before they would enter it; that the public road in question is a very important road, that all the travel to the Central Railroad from west of that road, and all the travel that will come to any depot of the defendants road that may be established for the accommodation of that public, will have to pass along this road, and through the proposed culvert; that
20 all persons going to and from the Springtown mill, and to the village of Springtown, will have to pass along and through this culvert; that if the defendants shall say they intend to fill up the road-bed in the culvert, that will be a mere pretence, because if the road-bed be filled up so that the water at the time of a freshet cannot pass through, then the stream will be dammed up and will overflow the public road above the culvert, and the culvert would be too low, dark and narrow to be used at all for the public travel.

And your orators further show, that the person composing
30 the lawfully constituted township committee, after they had heard that a change of the public road was contemplated by the defendants, called upon the engineers in charge of the said work, and protested against the proposed alteration in behalf of your orators, and that they, the said defendants, should not cause the said public road to be altered, obstructed or changed in any way, except such necessary passage way made for it to pass under the railroad embankment, that and that only was all the alteration or change that was necessary, that any other alteration or change was not
40 necessary, and therefore would be illegal; and that the said

defendants had not power or authority by their charter or supplement, then to make or change or alter the location of a public road, when such change or alteration was not only not necessary, but greatly detrimental to the public; that the said defendants well knew the character of the freshets on the Pohatcong creek, and that the water overflowed the banks of the very place, and above where the cverts are located, that at least once since the said the contractors who are doing the work for the defendants have been prosecuting the work, they were compelled to move all their stock out 10 of the stables and off the premises, which are located between the old road and the creek above the railroad line, as designated on the map hereto annexed.

But now so it is, may it please your Honor, that the said the Easton and Amboy Railroad Company, combining and confederating to and with divers other persons at present unknown to your orators, whose names, when discovered, your orators pray may be inserted herein, with proper and apt words to charge them as parties herein, how to injure and oppress your orators and obstructing the said public 20 highway or road.

In tender consideration whereof, and forasmuch as your orators have no effectual remedy at law, and can only in this honorable court obtain an injunction against the said corporation, and its officers, engineers, contractors, agents, laborers, and servants, from obstructing a certain public road, leading from the village of Still Valley, by Springtown station, on the Central Railroad of New Jersey, and by certain flouring mills, known as Springtown Station Mills, on the Pohatcong creek, to the village of Springtown, and from 30 changing the location of any portion of said public road.

To the end, therefore, that the said Easton and Amboy Railroad Company and their confederates, when discovered, may, according to law, full, true, direct, and perfect answer make to all and singular the matters and things before stated and set forth, as fully and particularly as if the same were herein again repeated and they thereto particularly interrogated.

And may set forth and state whether they intend to fill up the old public road-bed and change the same down along 40

side of the culvert, through which the waters of the Pohatcong run, flows; how much lower the creek was than the road-bed of the old public road; whether they have not and are not now encumbering the old public road without having at all provided another road-way first; also state at what angle the public road will enter each end of the culvert on the proposed new road; and whether your engineers, or some one of them, have not given out and declared that one
10 culvert, was to provide a way to carry off the surplus water in the time of freshets through the road-way culvert.

May it please your Honor, the premises considered, to grant unto your orators the state's writ of injunction, issuing out of and under the seal of this court, to the said The Easton and Amboy Railroad Company, and their engineers, contractors, agents, laborers, and servants and officers, to be directed, enjoining and restraining them and each and every of them, from in any way obstructing, by hauling in dirt, stones, or gravel or otherwise, the public road leading from
20 the village of Still Valley, by Springtown station, on the Central Railroad of New Jersey, and by certain flouring mills kdown as Springtown Station Mills, on the Pohatcong creek, to the village of Springtown, and particularly at that point in said public road where it intersects and crosses the line of Easton and Amboy Railroad, on land purchased of William Carpenter and others, and from changing the location of any portion of said public road; and also the state's writ of subpœna, directed to the said The Easton and Amboy Railroad Company, therein and thereby commanding
30 it, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to and abide, and perform such decree as to your Excellency shall seem meet, &c.

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

J. M. ROBESON,

Sol. and of counsel with complainant.

New Jersey, to wit.—*Isaac Shipman and Edward H. Bird*, being duly sworn on their several oaths say—that they are two of the township committee of the township of Greenwich ; that Michael Cline, John M. Smith, and William G. Smith, are the other members of the said township committee ; that the said township committeemen were and are all opposed to the alteration in the public road, set forth and described in the foregoing bill of complaint ; and after a general consultation with the inhabitants of the township of Greenwich, and more particularly with those who are necessitated to 10 travel upon the said public road, the unanimous expressed opinion is that there is no necessity for the proposed change ; and that if such change and alteration is allowed to be made, that it will be greatly to the detriment of the travelling public ; that deponents have heard the complainants' bill of complaint read over in their presence, and they depose and say, that the matters and things set forth in the foregoing bill are true ; that to the personal knowledge of both of these deponents, the said defendants, by their engineers, contractors and servants, have made the erections in the bill 20 set forth ; that they have changed the flow of the creek, as shown upon the map hereto annexed, and have greatly and unnecessarily obstructed the public travel on the old public road, by hauling in quantities of dirt and stones, and that they are now dumping large quantities of dirt and stones from a very high embankment, which runs down with great violence into the old public road, thereby greatly endangering the persons and horses and carriages of the public, who are necessitated to travel through and along the said public road ; that the statement of the intention of the said defen- 30 dants, as made in the bill, are made upon information derived from the company's engineers, contractors, and agents, and from the manner in which the work is being done, so far as it has progressed ; that deponents are fully satisfied and convinced that there is no necessity for the alteration or change in the location of the public highway ; that it cannot be better located for the public safety and convenience ; that the said defendants could as well construct a culvert over the highway, as now located, as they can where they propose to make the change to, and the change is simply made as a 40

matter of supposed convenience to the said defendants, and to serve their interest at the expense of a great sacrifice of the public safety; that in times of high freshets in the said Pohatcong creek, it will, in the judgment of these deponents, (and that judgment is founded upon personal observations for more than twenty years), require both culverts to pass the volume of water that will pass down said creek at such times, and then it would be impossible for the public to pass over, through and along to said road; that at this time persons
10 who have children to send to school, are necessitated to keep them from school, because the road-way has become too dangerous, by reason of the dumping of the earth therein, and the rolling down of large rocks and bodies of hard earth; and these deponents further say that they verily believe that the said defendants, their engineers, contractors, and agents, intend to go on and fill up and entirely obstruct the said public roads, and thereby entirely deprive the travelling public from and of the use of it.

E. H. BIRD,
ISAAC SHIPMAN.

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Sworn and subscribed before me, this 17th day of October, 1873,
WM. W. DAVIS, *M. C.*

New Jersey, ss.—*Isaac S. Carpenter*, of full age, being duly sworn, on his oath says—

That he is now sixty-two years of age, and a farmer by occupation; that he has always resided in the township of Greenwich, in the county of Warren; that he now resides within about two hundred yards of the place where the road in the complainants' bill mentioned is situated; that
30 he has resided there for the last fifty-nine years, and is well acquainted with the flow of the waters in the Pohatcong creek at all seasons of the year; that his residence is now located between the line of the Easton and Amboy Railroad and the Springtown Station Mills, and near to the banks of the said creek, and about one hundred and fifty feet from the said creek, as designated on the map to the complainants' bill annexed, as *Isaac S. Carpenter's* residence; that deponent has heard the complainants' bill of complaint

read over in his presence, and from his personal knowledge of the character of the flow of the waters in the said Pohatcong creek, so far as the allegations in the bill of complaint as to the floods in said creek, they are true, and so far as relates to the situation and character of the old public road they are true, and so far as relates to what the said defendants have done and caused to be done, he knows to be true from personal observation ; and so far as the statement therein relates to the objects and intentions of the said defendants' in making the proposed change or alterations in the location of the said public road, he believes them to be true, having derived such information from the engineers, contractors and agents of the said defendants ; that deponent has known the water of the Pohatcong creek to overflow its banks to the height of seven feet at the bridge over the stream near to his, Isaac S. Carpenter's house, as designated on the map annexed to the bill of complaint ; that when there is a rise of three feet or three feet and a-half of water at the said road bridge, then the water at the easterly end of the culvert overflow the low-land designated on the map as lying between the old road and the banks of the creek ; that deponent has known the whole low-lands at the easterly end of the culvert now located and in process of erection, and through which the waters of the creek now flows, to be covered with water to the depth of six and seven feet ; that at all such times the bed of the old road that is sought to be changed was never overflowed, and was always in a good, safe condition to be traveled by all kinds of vehicles of travel ; and deponent further says—that he had a conversation with Robert Sayers, the chief engineer of the Easton and Amboy Railroad Company, in which this deponent said to him that it would never do to have but one culvert of the dimensions of the one now there ; that it was not of sufficient capacity to pass the water in times of freshets in the said creek ; that the said Sayers replied to this deponent that they, meaning the Easton and Amboy Railroad Company, intended to put another culvert alongside of the one through which the said creek was to pass for the public road to pass under the railroad, so that the overflow of waters would pass through that second culvert, and

as a confirmation of such intention the said defendants, by their contractors, are making preparations to erect the second culvert along-side and to the north of the first; that since the construction of the Morris canal there has not been scarcely a single year that the said stream has not overflowed its banks at that point and covers the whole of the low-lands between the old road and the creek, and remain covered some times as long as two days, so that it would be impossible to pass over it if a public road was located
10 upon it.

That when the contractors who are constructing the said railroad at this point commenced their work, they erected their stables and sheds upon the low-lands, and since that time, to wit, the last winter, the said lands were so much overflowed that they were compelled to turn out all their horses and animals to save them from destruction, and ever since the same parties had made preparation to move out again on account of the great run of the water in the said creek; that deponent is well satisfied that the safety of the
20 public who have to travel over and along the said public road require another culvert of sufficient dimensions over the road-bed where the public road is now located.

ISAAC S. CARPENTER.

Sworn and subscribed before me, this 17th day of October, 1873.

CALEB SWAYZE, *M. C.*

New Jersey, ss.—*Thomas Addison*, of full age, being duly sworn, on his oath says—that he is a land surveyor and civil engineer; that he has resided in the county of Warren and
30 state aforesaid eighteen years last past, and practiced his occupation during the greater part of that time; that he was called upon by the township committee of the township of Greenwich, in the county of Warren, and engaged by them to make a correct survey and map of the premises and public road where the line of the railroad of the Easton and Amboy Railroad crosses the said public road and Pohatcong run or creek, in the township of Greenwich, aforesaid; that in accordance with said request and engagement, deponent

did go upon the ground, and with assistants did make all the measurements and took the levels that are designated on the map annexed to the complainant's bill of complaint; that the tracing of distances upon the said map is made upon a scale of one chain to the inch; that the diagram designated cross-section shows the level of the bed of the old road, and the sloping line to the bank of the creek shows the natural condition of the surface of the meadow between the old road and the bank of the Pohatcong creek, a distance (as marked on the cross-section) of three hundred and sixty feet; that at a distance of fifty feet from the centre of the road the surface of the meadow is four feet and twenty-hundredths of a foot below the old road bed, at a distance of one hundred and eighty feet, the surface of the meadow land is six feet; and at a distance of three hundred and sixty feet from the old road, the bank of the run or creek is seven feet and fifty-five hundredths below the old road bed, and the bottom of the stream is ten feet and twenty hundredths below the old road bed level. That it is one hundred and three feet from the south side of the old road bed to the northerly side of the easterly end of the culvert through which the new road is proposed to pass under the railroad, and the ground on which the easterly end of the proposed road culvert is located is about six feet below the level of the old road bed, at a point opposite to that end of the culvert; that the westerly end of the proposed road culvert is located one hundred and forty-two feet on a direct line from the south side of the old road bed, and the natural surface of the meadow land is about seven feet below the old road bed. That the diagram marked longitudinal section from "A" to "B" shows the original condition of the old road bed, and the distance between the points A and B on the map; the red line on the map shows the location of the proposed new road from A to B, through the proposed road culvert. The proposed culvert is not less than three hundred feet in length and twenty-three feet in width, and in height about sixteen feet and a half or seventeen feet. That the diagrams marked barn and stables show substantially the location of the contractors (barns and stables) who are engaged in making that part of the railroad track and

erecting the culverts. That the old road is located on the high ground, and on a side cut near the foot of a hill; and the creek culvert is located on the opposite side of the valley and at the foot of a corresponding hill, the intervening ground between the creek culvert and the old road being the surface over which the river or creek flowed in times of high water and freshets; that deponent intended to make all the measurements and the tracing of the same on the map annexed to complainants' bill of complaint correctly,
10 and believes the same are correct.

THOMAS ADDISON.

Sworn and subscribed before me, the 18th day of October,
A. D. 1873.

JAS. PURNELL TOADVIN, *M. C.*

ORDER.

[Filed October 21, 1873.]

On reading and filing the bill of complaint and the affidavits thereto annexed—

It is ordered by the Chancellor, on motion of James M.
20 Robeson, solicitor for and of counsel with the complainants, on this twentieth day of October, eighteen hundred and seventy-three, that the defendants show cause, if any they have, before the Chancellor, at the State House, in Trenton, on the thirtieth day of October, instant, at ten o'clock, A. M., why an injunction should not issue pursuant to the prayer of the bill.

And it is further ordered, that the defendants and their servants and agents, do refrain, until the further order of this court, from depositing or dumping upon the public
30 highway, in the said bill mentioned, known as the road from Still Valley to Springtown, by Springtown Station Mills, at the place where it is to be crossed by the railway of the defendants, any earth, stones, or filling materials.

And it is further ordered, that a copy of this order, and of said bill and affidavits, be served on the defendants in five days from this date.

THEODORE RUNYON, *C.*

ANSWER.

[Filed October 30, 1873.]

The answer of the Easton and Amboy Railroad Company, defendants, to the bill of complaint of the inhabitants of the township of Greenwich, in the county of Warren, defendants.

These defendants now and at all times hereafter saving and reserving unto themselves all and all manner of advantage of exception to the many errors, uncertainties and insufficiencies in the said complainants bill of complaint contained, and not admitting the right of the complainants to 10 file the same bill for the purpose therein declared, or to prosecute such suit, for answer thereto, or to so much as they are advised is necessary or material for them to make answers unto, these defendants answering say—that they admit that they are a corporation created by the consolidation of the Bound Brook and Easton Railroad Company, a corporation created by an act entitled “An act to incorporate the Bound Brook and Easton Railroad Company,” approved March first, eighteen hundred and seventy-two; and of the Perth Amboy and Bound Brook Railroad Company, a cor- 20 poration created by an act entitled “An act to incorporate the Perth Amboy and Bound Brook Railroad Company,” approved March eleventh, eighteen hundred and fifty-eight. that such consolidation was made pursuant to the act approved April second, eighteen hundred and seventy-two, first referred to in the complainants bill; that by virtue of the charters of said two companies, and the said act of consolidation (being the three acts above stated,) these defendants are authorized and invested with all the rights and powers necessary to survey, lay out, and construct a rail- 30 road from the Delaware river, at or within ten miles of Phillipsburg, in the county of Warren; through or within five miles of the village of Bound Brook, in the county of Somerset, to the city of Perth Amboy, in the county of Middlesex; that in the construction of said railroad, these defendants have found it necessary to pass through the township of Greenwich, in the county of

Warren, and pursuant to the authority of said acts, have located their said railroad through the said township, and are now constructing the same therein, according to such location; that the line of their railroad, as located in said township, crosses a public road therein, leading from Springtown, on the Pochateong creek, to Springtown Station Mills, on the same creek, and thence up said creek to and beyond Stewartville; that the point or place where their railroad, as located, crosses said road, is between Springtown, (which is
10 about one half mile distant therefrom), and Springtown Station Mills, (which is about one-third of a mile distant therefrom).

And these defendants further answering, admit that by virtue of the said act of consolidation, above referred to, it was enacted that after such consolidation, the consolidated company, (being the defendants), should in all respects act and be governed by the laws then in force, respecting the said Bound Brook and Easton Company, so far as the same might be applicable, and that by the tenth section of the act
20 incorporating the Bound Brook and Easton Railroad Company, (being the act first above set out), it was enacted that it should be the duty of the said company to construct and keep in repair, good and sufficient bridges and passages, over or under the said railroad, where any public or other road should cross the same, so that the passage of carriages, horses, and cattle in the said road should not be impeded thereby; that the said tenth section was in force at the time of the passage of the act of consolidation.

And these defendants further answering, admit that by the
30 third section of the supplement to their charter, which is referred to in the complainants' bill, and was approved April second, eighteen hundred and seventy-three, and after the approval and taking effect of the act of consolidation above referred to, these defendants are authorized and empowered to change the location of any portion of any turnpike or other public road, if they shall find it necessary, and they also say that by said section, they are authorized and empowered to occupy such portions of the turnpike or road as they may deem necessary or expedient; and these defendants for greater

certainty, refer themselves to the last mentioned act, and to all of said acts, each and every of them being a public act.

And these defendants insist that it was the intention and object of the said last mentioned section, and of said supplement, to authorize and empower these defendants to make such change of location of road, whenever in the opinion of defendants such change should be necessary, and to take and occupy such portions of the road, to be changed as they might deem necessary or expedient in the construction of their railroad thereon; in order to make such change of location and to refer to these defendants exclusively the right to determine whether the necessity for such change existed, and they deny that the right to change is restricted, as alleged in complainant's bill. 10

And these defendants further answering admit, that their said railroad as located and now being constructed, crosses the Pohatcong creek, southerly of and about one hundred and fifty feet from the line of the said public road; and these defendants say that the said creek at this point, and for a long distance above and below, flows through a valley of considerable depth, and is skirted by low meadow lands; and they say that the grade of their railroad at the points of crossing, is or will be, when finished, about one hundred and seventeen feet above the bed of said road, and about one hundred and twenty-five feet above the said creek; and they admit that the bed of said creek at the place of crossing is lower than the bed of the road at the place of crossing, but they deny that the map annexed to said bill correctly represents the level of the road and the creek at the place of crossing, and say that the said levels are correctly shown by a map hereto annexed marked *Schedule A*, which is hereby referred to. 20 30

And these defendants further answering say, that at the place of crossing these defendants have altered and straightened the course of the said creek, the said change being lawfully made by them upon their own lands.

And these defendants further answering say, that the said creek at the place of crossing, and for a long distance above and below, flows through a valley of considerable depth, and is skirted by low meadow lands: that at the 40

place of crossing, and for about two miles above and below, it is, in its ordinary state, about thirty feet in width; that the said public road follows along or near the course of said creek, both above and below said place of crossing; that it crosses said creek at a distance of eight hundred and fifty feet from the said place of defendants' crossing by a bridge marked on said map; that at several places or localities, at least ten, along said creek, both above and below said railroad crossing, and within a distance of four miles, the road-bed of the said public road where it runs by the side of said creek, is less than three feet above the level of ordinary water in said creek; that in one-half of these places it is not above one foot; that in particular at the easterly entrance to the said road bridge over the creek, the road bridge is only three feet above the said level of the creek, and that at Springtown, one-half mile below said railroad crossing, the road-bed of said road at the side of said creek, is about three feet above the level of the creek; that at several other places, both above and below said two
20 points, the said road where it runs by the side of said creek is no higher than at these two points and in many of them, is much lower; that the ordinary and periodic rise of the said creek is not sufficient to overflow the said creek in such a manner as to make the said road impassable at the easterly side of said bridge; that a rise of five feet in said creek is a very unusual and extraordinary occurrence; that not more than four rises or freshets of more than five feet have occurred within the last forty years; that at said times of extraordinary freshets the said
30 road was entirely impassable at the said road bridge, and at several other points above and below, and especially at the very point where the said railroad crosses the road the water of the creek was a foot or more in depth, and that on such occasions public travel was notoriously impeded all along the said creek.

And these defendants further say, that within the same township, and within less than one mile above the place of crossing of defendant, the same creek and the same road pass under an embankment of the Central Railroad of New
40 Jersey, by contiguous arches in a double culvert, one for the

creek and one for the road, and that in times of extraordinary freshet the water escaped through said road culvert, and that said structure has been standing over ten years.

And these defendants further answering say, that the map hereto annexed marked B, shows the course and location of the said creek and road for a mile and three-quarters above Springtown; that the said map also shows the elevation of said road above and below the water of said creek at various points along the same, as the same were on the twenty-ninth day of October, eighteen hundred and seventy-three, 10 at which day the said water was about six inches above the ordinary level; that at Springtown bridge the road was then two feet and three-tenths above the ordinary level of the creek; at the easterly end of the road bridge first above the railroad crossing of defendants, the road is two feet and seven-tenths above; that at Springtown Station Mills, and for a distance of three hundred feet below and three hundred feet above, the height of said road varies from two feet below the surface of said creek to two feet and seven-tenths above; that at a point on said road, just above the 20 turn to Springtown Station Mills, as indicated on said map, the said road for a distance of six hundred feet varies from one and a-half feet to three and eight-tenths feet above said creek; that at the next crossing above, and for a distance of twenty-three hundred feet beyond and where the road for the whole of the distance runs by the side of the creek, the height of the road varies from four-tenths of a foot to three and eight tenths of a foot above the said creek; that at the arch of the Central Railroad, above the said road and creek, 30 the road is but two feet above the creek.

And these defendants further answering say, that in the construction of their railroad across the valley of the Pohatcong, at the place above referred to, they are erecting an embankment; in the erection of said embankment, they are bound to provide passages for the said creek and said public road; and they say and insist that such passages could be made only by the erection of culverts or arches, through which the same must pass at the base of the embankment; that from their great height, the embankment at its base, where the said creek and road cross, must be over 40

three hundred feet in width ; that arches or culverts of sufficient width and height to pass said road and creek, and to sustain said embankment, can be constructed only at very large expense ; and they further insist, that believing they had under said acts, the right to change the location of a portion of said road, and after due examination and inquiry into the location and character of said stream and road, and after observing the manner in which the Central Railroad had provided for the passage of the same creek and road
10 just above, and the nature of the public travel along said road, above and below their place of crossing ; they did, in good faith and with a due regard to the convenience of the public, determine that in the construction of their railroad, it was necessary to change the location of the said public road, and to change it in such manner as to allow it to pass under said embankment, through an arch contiguous to the arch through which the said creek must pass under the same ; and they further say—that the portion of the said public road which they have found it necessary to change,
20 and the location to which the same is necessary to be changed, as determined upon prior to the filing of complainants' bill, are designated on the map hereto annexed, marked *Schedule A*, and in so far as the map of complainants' bill designates any other change or new location, the same is incorrect and untrue.

And these defendants humbly insist, that having fairly and in good faith found it necessary to make such change of location in said portion of public road, and determined to make the same, the said complainants have no right to require or
30 call upon this honorable court to determine upon the necessity of such change, or to restrain these defendants from making such change of location, for the reason, or alleged reason, that the location to which they propose to remove the same, is less convenient or desirable than the old location, or for any other reason alleged in said bill.

And these defendants, as to the allegations in said bill, respecting the character of the location to which these defendants propose to change said road, and the adaptation of the same to the public travel along said road, and to the superiority or advantage of the present location, answering say—
40 that as directed by their charter, they intend to reconstruct

the said changed portion of said road in as perfect a manner as the original road, and to construct a good and sufficient passage under their railroad, where such road, as changed, shall cross it, so that the passage of carriages, horses and cattle on the said road shall not be impeded thereby; that in particular, they are constructing and intend to build a double culvert, (not two culverts, as alleged in complainants' bill) composed of two contiguous arches, each of which is to be three hundred and twenty-four feet in length, thirty-four feet in width at the springing line of the arch, and 10 seventeen feet in height from said springing line, which, at ordinary water, is four feet above water mark; that each of the two arches are supported by an abutment upon one side, and by a pier at their junction, on which both arches rest; that the location of said double culvert is shown correctly on the map hereto annexed; that the southerly arch is intended for the passage of said creek, as straightened by the defendants, and the northerly arch for the said public road; and these defendants further answering say—that the said pro- 20 posed road will approach the easterly end of said culvert or arch, for a distance of three hundred and sixty feet on a straight line, and at the westerly end at a very slight angle, the said approaches being correctly delineated on said map; and further, that at the easterly end of said proposed road, and at its junction with the old road, it will be five and a half feet above the ordinary water level of the creek, at and through the said arch, it will be made five and a half feet above level of the creek at that place; that its height above the level creek along its routes at other points, are particularly designated on a profile of the same, marked on *Sche- 30 dule A*; that at no point along the said route will the proposed road be less than five and a half feet above the ordinary level of said creek; and these defendants say and insist that under the circumstances of the location and character of said embankment, said creek and said road, the plan of these defendants for the construction of passage ways for said road and creek above set out, is reasonable, prudent, and proper, and that when completed, it will answer the requirements of the case.

And these defendants further answering admit, that if the said creek shall rise beyond the height of five and a half feet at the said culvert, the water will flow through or into the arch constructed for said road, and that in building the said arches contiguous, it was one of the objects of the company to provide for the escape of a portion of the water of the creek through said road arch, in case of a rise to that extent; but these defendants say and insist that a rise of that extent in said creek is a very unusual and extraordinary
10 occurrence; that in case of such a rise, the said road would be impassable both above and below the termination of said proposed road, and particularly at the easterly end of the said road bridge, just above the easterly termination of the proposed road; that the said proposed road will not become impassible or public travel thereon be impeded at any ordinary rise or freshet of said creek, and that it will never become impassable on account of the flow of water through said road arch until after it has become impassable at the easterly end of said road bridge above and at Springtown
20 Mills below, and at Springtown Station Mills above, and at various other points above their crossing; that within the last forty years not more than four or five freshets have occurred in said creek which would have interfered with travel on said proposed road; that those were all of extraordinary character, and at such times the public road was impassable at the very point where the railroad now crosses the same, and at many other points up and down the same.

And these defendants further answering say, that in carrying out the said proposed change, they have already, and
30 had before the complainants' bill was filed, carried out the northerly end of said embankment over the said public road where the railroad crosses it, and for about four weeks past, and about three weeks before the complainants' bill was filed, had occupied with their said embankment and materials for the same all of the said public road within the limits of their right of way on either side of the embankment; and that since that time there has been no public travel over the portion so occupied by the embankment, but they deny the allegation on said bill that in filling up the
40 old road-bed and dumping on the embankment, travel was

ever made dangerous or unsafe on the old public road ; and the further allegation that in a short time travel on that road will have to cease unless these defendants are enjoined from prosecuting their work, and to the contrary these defendants insist and charge to be true, that they have at all times, as fast as a portion of the old road was occupied by their embankment or travel thereon obstructed, provided a new and sufficient passage way around the end of the embankment as it advanced, by which the travelling public have at all times been accommodated; and they insist and charge the truth to be that they intend and will be able to afford such passage until the said culvert for such new road shall be so far completed that the new road can be constructed and made fit for use in the same; and they deny that during the construction of the work public travel has been impeded or made dangerous along said road. 10

And these defendants further answering, say that in carrying out and putting into execution the plan aforesaid, they did in the month of May last, commence excavations for the abutments and piers of the said culverts, which was laid out at one time and is one structure; that the masonry of said culvert was commenced in the early part of June last, and that before the filing of said bill, they had completed the southerly abutment and the middle pier, and about three-fourths of the northerly abutment; that several courses of stone had been laid upon both arches in different portions thereof; that besides the work actually done on said culvert, there is now upon the ground a large quantity of stone dressed especially for this structure; that the cost of the work already done on said culvert, and of the material on hand to be used, is at least seventy thousand dollars; that the estimate cost of the whole structure is one hundred and thirty thousand dollars; that the work on the same has progressed so far that these defendants will be obliged to complete it according to their original design, even if they should be obliged to build another culvert for the said road. 20 30

And these defendants further say, that in the execution of said plan, they have purchased the land upon which to locate the said proposed road at an expense of about twenty-seven hundred dollars. 40

And they further answering say, that the expenses of removing the portion of the embankment necessary to be moved, and of building a culvert for the said public road, at the location where the railroad crosses, would be about sixty thousand dollars.

And these defendants further say, that the said embankment is the largest one proposed to be made upon the whole line of their road ; that with one exception, it is the heaviest and most expensive piece of work upon the road ; that even
10 if these defendants are able to carry out, without any interruption, their design of filling up the said embankment, the said embankment will be the last of the work to be finished ; that the use of their road, and of the whole capital expended and to be expended thereon, which will amount to between six and seven millions of dollars, will depend upon the completion of said embankment ; and they further say—that no mason work could safely be done upon a new arch over the said road at its original location, after the middle of December ; that on account of the difficulty in getting a good
20 foundation at that point, it is doubtful whether any of the masonry could be laid in the same before the coming winter ; that after the middle of December, masonry could not be commenced before the first of March next ; and it would be impossible to complete the said arch, so that the embankment could be laid on it, before the last of July next ; that in the meantime, no progress could be made on the embankment on the northerly side ; that it has been the intention of the company to proceed with the making of the embankment during the winter—and this can be done ; that if the
30 construction of the northerly embankment is arrested at this time, and made to depend upon the completion of an arch over the said public road, at its original location, it would delay the opening and use of the whole road, for a period of nine months at least.

And these defendants further say, that the said embankment is being constructed simultaneously from both the northerly and southerly ends thereof ; and the construction of each end is entirely independent of the other ; that the southerly end is constructed by means of a steam shovel,
40 which loads cars drawn by a locomotive to the end of the

embankment, and there unloaded; that the northerly end has been made by dumping the earth from carts; that at the time of filing said bill, about two hundred men with one hundred carts and horses were employed in making the northerly embankment; and that if the further construction of said northerly embankment is now arrested, they cannot be used in the construction of the southerly end, and that all of said men and stock will be thrown out of employment.

And these defendants further answering say, that the intention of these defendants to change the said public 10 road, and to pass the same under said embankment through an arch by the side of the creek, has been well known in the neighborhood since the commencement of work on the said culvert; that in the month of May, eighteen hundred and seventy-three, Isaac Shipman, one of the town committee of said township, was informed of the intention of the company to change the location of said public road, and to pass the same through an arch or culvert alongside of the creek culverts; that Edward H. Bird, another of said committee, 20 has been in the habit of passing and re-passing along said work during the whole summer; that both of members have frequently seen the said work going on from the time of its commencement, and from the nature and character of the same, and the talk in the neighborhood, could not have been ignorant that such change of road was intended; that until the sixth day of October, eighteen hundred and seventy-three, no member of the said town committee ever protested to any officer or engineer of these defendants against such change of road, or insisted that these defendants had no right to make such change, and these defendants submit 30 that so far as the said committee, or the members of it, have power to act in the premises (which these defendants deny) they have acquiesced so long in the construction of the work and the preparation for the change, that it would be inequitable in them to require the said design to be abandoned.

And these defendants further insist, that the said complainants have no right or authority to call in question the acts of the defendants in the manner set forth in the bill; that even if they had, commencement of such suit has not been duly authorized by a meeting of the inhabitants of 40

said township; that the same has been instituted by the town committee, or some of them, in the name of the township, without authority, and that said bill ought on that account to be dismissed, and these defendants pray the same benefits as if the objection to the standing of complainants had been made on demurrer.

And these defendants deny all and all manner of combination and confederacy charged in said bill, without this, that any other matter or thing in said bill contained, necessary for these defendants to answer, and not herein well
10 and sufficiently answered, confessed and avoided, traversed or denied, is true. All which matters and things these defendants are ready to aver, prove, and maintain, as this Honorable Court shall direct, and they humbly pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

RICHEY & EMERY, *Solicitors, and*

THOMAS N. McCARTER, *Counsel of dfts.*

The above answer is taken under the seal of the Easton
20 and Amboy Railroad Company, attested by the
[L. s.] signature of their secretary, and by him affixed
in my presence, this 13th day of October, 1873.

JOSEPH H. HOUGH, *M. C.*

CHAS. HARTSHORNE, *Sec'y E. & A. R. R. C.*

State of New Jersey, Mercer county, ss.—*Robert H. Sayre*, of Bethlehem, in the State of Pennsylvania, being
duly sworn, on his oath says—that he is now and since the
organization of the company has been chief engineer of the
Easton and Amboy Railroad Company; that he is also a
30 director of said company, and a member of the executive
committee of the board of directors; that he has charge of
the construction of the road of the company; that he is
duly authorized to defend this suit on behalf of the com-
pany, and has been entrusted with said defense; that the
answer of the defendants has been read over to him, and
that the matters and things therein stated are true, accord-
ing to the best of his knowledge, information and belief;
that in particular the allegations therein as to the plans and

intentions of the company in the construction of their road across the valley of the Pohatcong creek at the place mentioned in their answer; and as to the change in the public road referred to, and as to the work already done, and the expenses already incurred in the construction of their road at that point, and as to delay, expense, damage and loss which would be occasioned by arresting at the present time the progress of the northerly end of of the embankment referred to therein, and the reasons given therefor, are true; that this deponent, on the third day of May, eighteen hundred and seventy-three, went to see Isaac S. Carpenter in reference to the proposed embankment and culvert, and for the purpose of purchasing land of him for the change of said creek and road to the place designated on Map A, and on that occasion went with him down to the place where said change was to be made and the culvert built and in that interview told the said Carpenter that the company proposed to change a portion of said public road so as to pass the same through an arch contiguous to the creek culvert; that he was never since that time in company with said Carpenter at said place; and this deponent further says, that none of the members of the town committee of the township of Greenwich ever before the filing of the bill in above suit, complained or protested in any way to this deponent against the said change of road; and deponent further says, that the said company have purchased from said Carter land for the purpose of changing the said creek and road, and have already changed the creek on the said lands; and deponent further says, that he has been for thirty years past a civil engineer, and engaged during that time in the construction of various railroads; that from the character, location and nature of the said creek and road, and the nature of public travel along said creek and road, as set out in said answer, the arrangement for the passage of said road and creek by contiguous arches, of the size and character set out in said answer, is necessary, prudent, and proper; that deponent so advised the board of directors of the road; and that the directors of the road by resolution to that effect determined that that such change of road was necessary and directed the same to be made; that the said decision and

determination of the company was made in good faith and with due regard, as deponent believes, to the public convenience, and without any design or intention to interfere with public travel on said public road.

ROB'T H. SAYRE,

Sworn and subscribed before me, at Trenton, October 30th, 1873.

JOS. H. HOUGH, M. C.

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State of New Jersey, Mercer county, ss.—*Calvin E. Brodhead*, of Bethlehem, in the State of Pennsylvania, being duly sworn, on his oath says—

That he is now, and since the organization of the company has been the principal assistant engineer of the Easton and Amboy Railroad Company, and under the direction of Robert H. Sayre, the chief engineer, has had charge of the location and construction of this railroad; that the company are now constructing their road from Phillipsburg to Perth
 20 Amboy; that this deponent through the whole course of the work, has been and is familiar with the progress and nature of the construction of the said road at the valley of the Pohatcong, and at the crossing referred to in the above answer, and with the locality referred to; that the deponent has heard the answer of the defendants read over; that the map annexed to said answer, marked *Schedule A*, has been prepared under the direction and supervision of this deponent; that the same is correct, and shows the
 30 change of road proposed by the company at the crossing referred to; that the said map correctly shows the plan of the old road to Springtown, of the old channel of the Pohatcong creek, the said creek in its new straightened channel, the location of the proposed road, the double culvert for the passage of said creek and said proposed road, the profile of the proposed road, the centre line of the Easton and Amboy Railroad, their right-of-way line, the road bridge across said creek, and the lands of the respective land-owners, and the buildings thereon; that all of said locations are as respectively marked and designated on said map; and
 40 this deponent further says, that the map hereto annexed

marked *Schedule B*, was prepared under the supervision of this deponent, and that deponent made the survey thereof, took the levels, and prepared the original from which the schedule was traced, and that it is correctly traced; that the said map by the portion marked in blue, shows the course of the Pohatcong creek for a distance of a mile and three-quarters above Springtown, and the location of the public road along the same in that distance, with the directions and turns in said road, these being as respectively marked on the map; and also the crossing of the railroad of defend- 10
ants, and their proposed change of road; that deponent has taken the levels of said creek and road at several localities along said road within that distance, and that at the places where the same have been taken, the respective levels are correctly indicated in feet and tenths of a foot by figures opposite the respective places where they were taken as shown on the map; that the sign plus (+) in front of said figures indicates that the road is higher than the creek; that the sign minus (-) indicates that the level of the road is lower than the level of the creek at the points of making levels; that 20
said levels, (where more than one was taken,) were taken at distances of one hundred feet from each other; that the said map is made on a scale of three hundred feet to the inch; that the said levels were taken on the 28th day of October, 1873, at which time the water of the creek was, in the opinion of deponent, which is derived from the personal knowledge of deponent as to the nature of said stream for the past eighteen months, at least six inches above the ordinary level; that the allegations in the defendants answer as to respective levels of said road and creek at the different points referred 30
to in said answer in the said day, are true.

And deponent further says, that up to the 6th day of October, 1873, no member of the town committee of said township of Greenwich, ever protested in any way to deponent against said proposed change of road; and deponent further says, that he has been a civil engineer for ten years past, and during that time has been engaged in the construction of several railroads; that deponent has heard read the answers of the defendants, and that from the character, situation and nature of said road and creek, at the railroad crossing of 40

defendants, and the nature of the public travel thereon, as set out in said answer, the proposed change of road is, in the opinion of deponent, necessary, prudent, and proper in the construction of the railroad of defendants.

CALVIN E. BRODHEAD.

Sworn and subscribed before me, at Trenton, October 30th, 1873.

JOSÉPH H. HOUGH, *M. C.*

New Jersey, ss.—*John L. Wilson*, being duly sworn according to law, on his oath saith—

- 10 That he is an assistant engineer of the Easton and Amboy Railroad Company, and is the engineer in charge of the First Division of the said road, in the township of Greenwich, in the county of Warren, and State of New Jersey, and which covers the highway mentioned in the bill of complainant, filed by the said the inhabitants of the township of Greenwich against the said company; and deponent further saith, that no member of the said town committee of the said township of Greenwich, in the said county of Warren, has ever made any complaint to the deponent that the
- 20 said company was obstructing the said highway, nor because they were going to change the location of the said highway; and deponent further saith, that public travel has not been interrupted in the said road, or impeded, and that the road is wider now than before; and the deponent further saith, that the old road was filled up and diverted from its former bed the whole width of the embankment, where it crosses, or is about to cross the said highway, before the bill in this cause was filed, and before the fifteenth day of October, A. D. 1873.

30

JNO. L. WILSON.

Sworn and subscribed before me, this 29th day of October, A. D. 1873.

N. B. PICKEL, *M. C.*

Warren county, ss.—*William S. Carpenter*, being duly sworn, on his oath says—

That he is forty-six years of age; that he was born and has resided all his life in the house in the township of Greenwich,

near to the place where the line of the Easton and Amboy Railroad crosses the public road and the Pohatcong creek; that deponent has seen the map prepared for the defendants in the above cause, a copy whereof is to be annexed to the answer to be filed therein, and deponent says that said map correctly represents the position of this deponent's house with reference to said public road and creek, and to the embankment of said railroad company.

And deponent further says, that he has during all his life been acquainted with the flow of said Pohatcong creek and the effect of freshets on said creek and on the public roads in the vicinity of said creek for a long distance up and down the same; that directly opposite and in front of deponent's house is a bridge over which said public road crosses the said Pohatcong creek, and that the location of said bridge with its wing walls is, as this deponent believes correctly shown on said map. 10

And deponent further says, that at the easterly end of said bridge, just east of the connection of the wing walls on that side, is a low place in said road, over which in times of high water the waters of said creek pass before the arches of the bridge are full; that this deponent was formerly the owner of all the lands shown on said map north of the Pohatcong creek except the lots marked as "lands of Mary Butler," and a small lot adjoining, on which is a building marked "dwelling," including the lands now owned by the said railroad company and occupied by their embankment; and that he still is the owner of the lands shown on said map as the property of this deponent; that a rise of three feet in the stream at that bridge will overflow the road at the said low place on the east end of the bridge, and with a rise of five feet at that place the road at that point is impassable. And this deponent has no recollection of ever having seen the water as high as five feet above ordinary water at that place more than four times in his life—it may have been five times, but he is positive it is not oftener than five times; the first of these times which deponent can recollect was the 8th of January, 1839, which was an ice freshet, and was the highest freshet this deponent ever knew in said stream, and is generally reputed to be the 20 30 40

- highest one ever known there. Two others occurred, between 1850 and 1860, the precise dates deponent cannot recollect; and the fourth was in October, 1869, which was the next to the highest freshet ever had on the stream to this deponent's knowledge; and these are all deponent can recollect in which said stream rose above five feet at said bridge, and on each of these occasions the water was knee deep on the public road at the place where the defendants' embankment crosses and now occupies the same, so that
- 10 the road was impassable at that point; and deponent further says that whenever a five-foot freshet has occurred in said stream all the roads in that valley near to said creek are rendered impassable, so that public travel on them is necessarily interrupted until the waters have an opportunity to flow off; that there are low places in said road at various places up and down the valley, which in such cases are always so covered with water as to interrupt the travel on there for a time, but above and below the place where defendants' railroad crosses the creek.
- 20 And deponent further says that he has had explained to him by the engineers of the defendants the proposed change of road at that place; that this deponent sold to said railroad company the land necessary to be acquired by them to make such change; that deponent believes that the change proposed in said road and creek will better accommodate the public travel, and afford a better road than the old arrangement; and deponent says that if said roadway through the culvert shall be built five and a-half feet above the ordinary level of water in the stream at the culvert, the
- 30 said water can never rise over said road in the culvert until it has covered said road at other points so as to render it totally inaccessible at the point where the railroad crosses it, and especially so at the bridge aforesaid. And deponent further says that the old road at the place where the railroad crosses it, was a narrow road along the edge of a bank and only about sixteen feet wide; that said road is now, and has been for about three weeks past, or near, fully covered by said embankment, so that during that time none of the public travel has passed over
- 40 the track of said old road, but as its embankment has ap-

proached and occupied said roadway, the public travel has passed on a new roadway, southerly of the old one, so that the public have always had and will have, now that the old road is fully occupied by travel, free and uninterrupted passage around the end of the track, and can have such passage without difficulty with the said culvert, and will be compelled so as to put the road through it.

And this deponent further says—that early in May last he saw Robert H. Sayre, the chief engineer of the defendants, at the residence of Isaac S. Carpenter, and saw them go together down to the place where the said culvert is now being erected, and on the following day, which was Sunday, the deponent heard said Isaac S. Carpenter tell Isaac Shipman, a member of the township committee of Greenwich township, that the said Easton and Amboy Railroad intended to change the said road at the place in question, by passing it through a culvert along the creek, on the southerly side of the place where said creek then ran, the same as it is now being done.

And deponent further says—that he is a voter in said township of Greenwich, and that there has been no meeting of the inhabitants of said township since the first day of May last, nor have said inhabitants, to the knowledge of the deponent, ever taken any action in regard to the construction of said railroad, or the proposed change of the public road at that place; and deponent further says—that he has daily been in the habit of passing along said road, near said embankment, or else at and on his place so near to said embankment that he could observe the manner of its construction, and deponent has noticed that said work has at all times been carried on with care, so as to interfere as little as possible with the public travel on that point, and deponent believes that said work has been done with as little inconvenience to the public, as the nature of the work would admit of.

WM. S. CARPENTER.

Sworn to and subscribed, the 28th day of October, A. D. 1873, at Phillipsburg, before me,

CHAS. F. FITCH, M. C.

Warren county, ss.—*Bernard McGovern*, of full age, being duly sworn, on his oath says—

That he is the contractor engaged under a contract with the Easton and Amboy Railroad Company to construct the section of the said railroad where it crosses the Pohatcong creek, which section is designated as section 4. of said road; that deponent is engaged in the construction of an embankment across said valley one hundred and twenty-five feet in height, through which it is proposed to pass said Pohatcong
10 creek and the public road by a double culvert as shown on the map marked *Exhibit A*, annexed to the answer in this cause; that on the south side of said creek deponent is constructing an embankment with the use of a steam shovel and a locomotive, and track running to the edge of the bank as it grows; and that he cannot to advantage use any more force of men or teams on that side of said creek; that on the north side of said creek he was employing, when he was stopped by the order of the Court of Chancery, about two hundred men and one hundred carts; that deponent has no
20 other force on said section where he can employ said carts and men, who will be all idle and unemployed by reason of said work having been stopped; and deponent further says, that the bank on the north side of said creek now does, and for about four weeks past has occupied and filled up all the old road track except about fifty feet in the width of said embankment on the east, where the whole of said old road is not yet occupied, but with that exception the travel has by means of said embankment been diverted from said old tract for nearly or quite four weeks; and that as the said
30 embankment has encroached upon and occupied said old road, this deponent has caused a bank to be built out southerly towards said creek on which the public has always had a good, free, and uninterrupted passage along at that place, and deponent has also erected at the foot of said embankment a bank or wall to protect said passage way from being obstructed or disturbed by filling earth or stone cast down said embankment, and has in all respects conducted said work with care so as to cause no hindrance or annoyance to public travel; and that he can and will at all times
40 provide such passage-way at that place until the culvert

shall be completed through which said road when changed is to pass.

And deponent further says, that if said railroad company should now be required to pass said public road under the said embankment at the place where it was formerly located, it would require not only that part of said embankment which for four weeks past has occupied the place of said old road to be removed; and that the construction of a stone culvert through said bank, which would in said case be necessary, would be impossible during the winter months, 10 and the delay caused thereby would retard the completion of said bank on the north side for at least nine months; besides that, it will now be delayed and would also render useless a large amount of the expenditure made on said double culvert, which has made such progress that one abutment is complete, and the remaining abutment is three-fourths complete, and considerable work has been done on each arch; that excavations for such double culvert were commenced in May last, and that the masonry was commenced about the 20th of June last; that during all the time since then 20 the work has been pushed with all the vigor and expedition possible, and of course in an open and notorious manner; that a large portion of the stone for said arches has been brought at great expense, some from Prallsville on the Delaware, and some from the state of Connecticut, dressed at the quarries for arches of said dimensions as are there being erected. And the deponent further says, that he has been on said work nearly all the time since it commenced, and that no member of the township committee from said township has ever complained of said work or notified this de- 30-
ponent that there was any objection to his proceeding therewith; and the deponent is acquainted with Edward H. Bird, one of the members of said town committee; that said Bird has frequently passed said work during its progress, and has on several occasions stopped at the work and talked with this deponent about said work and how it was progressing, but he never made any objection thereto, nor did he ever complain that the work then being done was a hindrance or disturbance to further travel along that point.

BERNARD MCGOVERN.

Sworn to and subscribed, this 28th of October, 1873,
before me at Phillipsburg.

B. PICKEL, M. C.

Warren county, ss.—*Jacob Vaught*, of full age, being duly sworn says—that he resides at Springtown, in Greenwich township in said county, where he keeps a store, and is engaged in the coal business ; that he has been in the habit of travelling for the past twenty-five years on the public road
10 which runs along the Pohatcong creek to Springtown Station Mills, and passing the place where the embankment of the Easton and Amboy Railroad Company crosses said road ; that this deponent believes that by himself and his teamsters engaged in carting coal and merchandise over said road—he makes more use of said road than any other person in said township, and deponent has made such use of said road constantly, while the construction of said railroad has been in progress at that place ; and defendant says—that as the progress of said embankment has approached and occupied
20 said old road, the persons in charge of said work have always kept a good, sufficient and safe passage for teams and vehicles, so that the public travel has not been hindered or retarded more than was necessary by the progress of such a work ; and this deponent, has for all the time first above mentioned been familiar with said stream, and with the effect produced by freshets in said stream in the public road in question, and the other roads in the vicinity ; and deponent has seen the map prepared for the defendants in this case, and marked *Schedule A*, and as had described to him the plan of the proposed change in said road ; and deponent is of opinion that
30 if said road is changed and constructed according to said plan, and built five and a half feet above the creek across the low lands, where it is proposed to locate it through said north culvert, and the road will be easier, better, and more convenient to the public than it has been before, and that if the water should ever rise high enough in said creek to pass over said road in said culvert, that before it has reached such a height it will have overflowed said road at other points, so as to render it impassable, particularly at the east end of
40 the bridge, near Isaac S. Carpenter's house ; and deponent

further says, that the said road and creek are passed under the Central Railroad of New Jersey, at a point about half a mile easterly of the place in question, by a culvert, similar in its mode of construction to the one proposed and now being constructed by the Easton and Amboy Railroad Company, except that the roadway through the Central Railroad Company's culvert is not so much elevated above the bed of the creek in the adjoining culvert as the one now being constructed is proposed to be.

And deponent further says, that from the time the Easton 10 and Amboy Railroad Company commenced the construction of said culvert across the Pohatcong, and the construction of said embankment over said culvert, he has always understood, and believes it was generally understood, that the said company proposed to make the change in said road by passing it through the culvert which is now being made; and deponent is acquainted with Edward H. Bird, and knows that he has been in the habit of travelling said road and passing the place where the railroad crosses it, during all the past summer, while said work has been going on. 20

JACOB VOUGHT.

Sworn and subscribed the 23th of October, A. D. 1873, before me, at Phillipsburg.

B. PICKEL, *M. C.*

Further says, that the said road and creek are passed under the Central Railroad of New Jersey, at a point about half a mile easterly of the place in question, by a culvert similar in its mode of construction to the one proposed and now being constructed by the Easton and Amboy Railroad Company, except that the roadway through the Central Railroad Company's culvert is not so much elevated above the bed of the creek as the adjoining culvert as the one now being constructed is proposed to be.

And deponent further says, that from the time the Easton and Amboy Railroad Company commenced the construction of said culvert across the Potomac, and the construction of said embankment over said culvert, he has always understood, and believes it was generally understood, that the said company proposed to make the change in said road by passing it through the culvert which is now being made; and deponent is acquainted with Edward H. Bird, and knows that he has been in the habit of travelling said road and passing the place where the railroad crosses it, during all the past summer, while said work has been going on.

JACOB VOORHIS.

Given and subscribed the 23rd of October, A. D. 1873, before me at Philadelphia.

H. PIERCE, M. C.

CHAPTER I

The first part of the book is devoted to a general survey of the history of the subject. It begins with a discussion of the early stages of the development of the subject, and then proceeds to a more detailed examination of the various theories and methods which have been proposed. The author's own views are presented in a clear and concise manner, and are supported by a wealth of references to the literature of the subject. The book is well written and is a valuable contribution to the study of the subject.

OPINION.

THE CHANCELLOR. The bill is filed by the corporate authorities of the township of Greenwich, in the county of Warren, to restrain the defendants, The Easton and Amboy Railroad Company, from shutting up with the embankment of their railway, a part of an ancient public highway in the township. The line of the railroad crosses the highway in question and it crosses also, the Pohatcong creek, from the nearer bank whereof, as the creek would run naturally, the highway is distant about thirty feet. The company's plan involves the change of the bed of the creek (removing it about one hundred feet further from the old highway) at the place of crossing; providing for the passage of the water through a culvert of about thirty-five feet, in width, which is to support the embankment on which their track is to be laid; a vacation of about thirteen hundred feet of the highway, and the substitution therefor, of another road of about fifteen hundred feet long, which, leaving the old road, will run diagonally, to the new line of the creek, for about six hundred feet, and will then run alongside of the creek, for over three hundred feet, and then diagonally, about five hundred feet, to the old road. For the width of the base of the embankment over three hundred feet (the embankment is to be one hundred and twenty-three or thereabouts in height,) the proposed road is to run alongside of the creek. The road is to be carried under the embankment, through another culvert. The object of this alteration of the road, is manifestly, if not avowedly, to provide for the relief of the creek culvert, by means of the road culvert in times of freshet. By this arrangement, the creek culvert may be made smaller than it otherwise could be, consistently with a prudent regard to safety at the crossing of the highway, whether in its present location, or as the company propose to alter it, there must be a culvert. By constructing the culverts alongside of each other, the advantages above mentioned, in reference to the waters of the creek, will be gained.

It is insisted, and I think it fully appears, that the proposed new location of the road, would be objectionable, because for almost its whole length, it will be upon the low ground, through which the creek flows, and therefore the road would be more

difficult to maintain in repair, and would also be liable to overflow. The present highway is about seven feet higher than the level of the bank of the creek in its natural location. The land adjacent to the creek, over which the new road is to be made, is low and flat. The creek is subject to sudden rises, and the road must therefore, in view of the liability to inundation, be raised by a causeway above the level of the land. The complainants object to the proposed alteration and substitution, on the ground, that the defendants have no authority to make
10 them, and that, if they had such authority, they have no right to close up the present road, before they shall have provided a proper substitute for it. Such substitute they have not yet provided, although they are proceeding to fill up, with their embankment, the present road, thus rendering it impassable.

The most important questions in this cause are, whether this action can be maintained, by the complainants, and whether the defendants are authorized by their charter to make the proposed alterations in the highway.

As to the first, the defendants insist that the apprehended in-
20 jury is to the general public, who alone, represented by the Attorney-General, have a right to complain of it, and to ask the interdict of this court in the premises. This objection would be valid, if the township had no other interest in the subject than that which they possess in common with the public at large. It is true that the entire community, in whatever part of the state abiding, have an equal right to all the privileges of the public highways, as such, in any township, and have an equal right to complain of any infraction of those privileges. But it is equally true, that in the public highways, within its
30 limits, every township has a special interest arising from the obligation imposed by law upon it, to maintain and repair them at its own expense; a duty, the discharge of which, the law stands ready to enforce by indictment and the penalties consequent upon conviction. By statute, *Nix. Dig.*, p. 842, § 113, the townships of this state are made liable civilly, for damages arising from the insufficiency or want of repair of the public roads in their limits. The county of Warren, however, is with certain other counties, excepted from the provisions of that act. A township sustains, therefore, in the destruction of any of its
40 public highways, a special injury beyond that of the public in

general. In the proposed substitution of a new highway for an old one, it has a special interest beyond that of the community at large, to the extent of the additional burthens, which may thus be thrown upon it; as in the present case, where the location of the road which it is proposed to substitute, will be less advantageous than that of the old one, and the new road will be more difficult to maintain and keep in repair, and therefore more expensive to the township.

This special interest has been recognized by tribunals both of law and equity in other states. In *The Inhabitants of Springfield v. The Connecticut River Railroad Co.*, 4 Cush. 63, it was held that a town might proceed in equity in the Supreme Judicial Court of Massachusetts under the general jurisdiction of that court, in matters of nuisances, in order to ascertain whether a railroad company might, under a general grant of power, lay out and construct their road over and along a public highway of the town, and that it was immaterial in this respect, whether the way in question was a highway, properly so called, or a townway.

In *Town of Troy v. The Cheshire Railroad Company*, 3 Foster 20 83, it was held that towns have a qualified interest in the roadways they have constructed, and may maintain an action on the case, for the destruction and obstruction thereof.

This special interest is sufficient to entitle a township to the consideration and protection of this court, upon the application of its corporate authorities, for relief in all cases of reasonable apprehension of an unwarranted, unjustifiable and injurious interference with its highways, threatening special injury to the township of a character and extent, such as to call for the preventive aid of equity. Upon these authorities the duty of 30 prosecuting and defending the common rights of the township is, by the eleventh and twelfth sections (*Nix. Dig.* 979,) of the act under which the townships, in this state, are organized, devolved.

It is established that a municipality which by its charter, or constituent act, has the control and supervision of the streets and public places in its limits, may, in its corporate name, institute judicial proceedings to prevent or remove obstructions thereon. 2 *Dillon on Mun. Corp.*, § 521. It was so held in *The Hoboken Land and Improvement Co. v. The Mayor, &c.*, 40

of *Hoboken*, decided by the Court of Errors and Appeals, June Term, 1873, and the like view was entertained by the Supreme Court of this state in *Dummer v. Jersey City*, *Spencer* 86, and in *Trustees, &c., v. Council of Hoboken*, 4 *Vroom* 19. In *Trustees of Watertown v. Cowen*, 4 *Paige* 513, Chancellor Walworth held that the corporation of a village was, (though he declined to hold that the legal title was vested in them,) the proper representative of the equitable rights of the inhabitants to the use of a square which had been dedicated to the public
10 use, so as to authorize the filing of a bill in equity by the corporation, to protect those equitable rights against the erection of a nuisance thereon.

The defendants are a corporation formed by the consolidation of the Bound Brook and Easton Railroad Company, and the Perth Amboy and Bound Brook Railroad Company. The act authorizing the consolidation, *Pamph. L.*, 1872, p. 1017, provides that the consolidated company shall in all respects, act, and be governed by the laws then in force, respecting the Bound Brook and Perth Amboy Railroad Company, so far as
20 the same shall be applicable. The tenth section of the charter of the last named company, *Pamph. L.*, 1872, p. 314, provides that it shall be the duty of that company to construct and keep in repair good and sufficient bridges and passages over or under the railroad, where any public or other road shall cross the same, so that the passage of carriages, horses, and cattle, on such road, shall not be impeded thereby.

By the third section of an act termed a supplement to the Easton and Amboy Railroad Company (*Pamphlet L.*, 1873, p. 1324,) it is enacted, that if the company shall find it necessary
30 to change the location of any portion of any turnpike or other public road, they are thereby authorized and empowered so to do, provided that such privilege shall not apply to any street or highway which at the time of the approval of the act should have been graded or paved, in any incorporated city or town of this state, or any road or highway in the township of Raritan or city of Perth Amboy, except those located upon the property of said company, and to occupy such portions of the turnpike or road as they may deem necessary or expedient; and that in such case, they shall cause the changed portion of
40 such turnpike or public road to be reconstructed at their own

expense, in as perfect a manner as the original road or turnpike, and pay all the damages done to real estate by such removal of roads and turnpikes.

The defendants insist, that by the section just quoted they are empowered to alter any public highway which their railroad crosses, if in their opinion it is more convenient or economical for them so to do, although such alteration may not be strictly necessary; provided they comply with the provisions of the section as to substitution.

This construction would, in effect, subject every highway which 10 the railway may cross, from Phillipsburg to Perth Amboy, with the exceptions made in the section under consideration, to alteration at the mere will of the company, not because of the necessities of public travel, whether on the common road or on their railway, demand; not because the protection of the travelling public requires it, but merely because the company find it either to their pecuniary advantage, or to their convenience, to make such alteration.

In this case they seek to justify the location of the portion of the existing road, by a consideration in no wise connected 20 with the highway. The proposed substitution will not relieve them from the necessity of crossing the highway. They must cross it in the new location, and must provide the same means of passage for it, under their embankment. No consideration of public safety or public convenience is advanced. The engineering which provides only a culvert of thirty-five feet in width for the passage of the waters of the creek, must make some supplementary provision for the relief of that culvert, in times of flood. This relief the road culvert is to furnish. Nothing is needed beyond the bare statement of 'this proposition, to 30 make manifest the abuse of corporate power which is contemplated.

It is the duty of this court to give to the provision of the charter under consideration a reasonable construction; to secure to the company all the privileges the legislature intended to bestow upon them; but beyond that it ought not to permit them to go.

The defendants contend that their construction of the section giving them the authority to change the location of roads and turnpikes, is warranted by the language of the Supreme Court, 40 in *State, N. J. R. R. & T. Co. v. Hancock, Collector, C. V. 537,*

in reference to the signification of the word "necessary," when used in connection with the grant of powers to railroad corporations. But in that case the subject under consideration was, the limitations which judicial construction would put upon a general exemption from taxation, contained in the charter of a railroad company, in respect to what property the company in such case would be entitled to the benefit of the exemption: whether it should be only that which is indispensably necessary to effect the purposes of the corporation, or that, also, which, 10 although not indispensable, is appropriate and convenient, to carry into effect the franchise granted. The question was not there, as it is here, upon the construction of the word, as a limitation of a grant of power to a company to do a certain act in derogation of public rights. The latitude and liberality proper in the one case cannot be permissible in the other. A grant of new and extraordinary power to a private corporation, in contravention of the established rights of the public must be construed with a reasonable strictness. In *Warren Railroad Company v. the State*, 5 *Dutcher* 353, Chief Justice Whelpley 20 said, in construing a provision in the charter of that company which gave them the power "to alter and grade any public or other road, which should cross their railroad." "It is claimed that the words, alter and grade the said public or other roads, &c., are of sufficiently large import to include changing the route of the road. No such construction should be given to these words, by unnecessary implication. Public highways ought not to be destroyed, even in part, under pretence of legislative authority, unless it be conferred, either in express terms, or by necessary implication. If the words are ambiguous, 30 the construction ought to be in favor of the common right of highway, not against it. See also, *Morris and Essex R. R. Co. v. The Mayor, &c., of Newark*, 2 *Stockt.* 352, 362, 363. In *Regina v. Wycombe Railway Co.*, 2 *L. R.* 2 *B.* 310, the very question now under consideration was before the court, but under a statute, (the Railway Clauses Consolidation Act, 1874, [8 *Vict. c.* 20,] § 16,) more favorable to the construction contended for, by the defendants in this suit. By that act the company were empowered to divert, or alter, as well temporarily as permanently, streets, or roads, or ways, or sink the 40 level of them, in order the more conveniently to carry the

same over, or under, or by the side of the railway, as they might think proper." Cockburn, C. J., said: "Now if these words stood alone, it might be contended that it was at the option of the railway company to divert a road, provided it was done in the construction of the railway. But I think the legislature never could have intended to invest a company with powers so large, so unlimited, and so entirely discretionary, to interfere either with public or private rights; therefore I am not surprised that both at the beginning and at the end of the section, the language plainly shows that the legislature intended 10 to limit the power by some qualification. The section begins thus: 'Subject to the provisions and restrictions of this and the special act, and any act, incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, to execute any of the following works; and inter alia, to divert roads.' I think that this portion of the section must be read with last paragraph; they may do all other acts *necessary for making*, maintaining, altering, or repairing, and using the railway. Now the construction that I put upon the whole 20 section is, that the power conferred on a railroad company, for the construction of their railroad, is confined to matters which are not only done, in the construction of the railway, but which are necessary to its construction. * * The question is, was the diversion necessary for the formation and construction of the railway? Necessary it was, perhaps, in one sense, looking at the convenience of the company, economically; but by no means necessary in any other point of view. But we are not to look at the convenience of the company alone, but to the accommodation and convenience of those who have rights 30 of property which are interfered with, of those who have immediate access to the road, or persons using it, of necessity, in the ordinary course of their business. It was not necessary for the construction of the railway, that the road should have been permanently diverted; it might have been carried over the railway, or under it; it was merely less expensive to the company to divert the road, as they have done, than to carry it over, or under, as they ought to have done, and as they were required by the act of parliament. I think that this return (the case was before the court on mandamus) is bad. It alleges 40

that it was necessary, for the purpose of constructing the railway, that the road should be diverted, and that by virtue of the powers of the act, and the acts incorporated therewith, they did permanently divert the road. The question whether that is true or not turns entirely upon the construction to be put upon the term 'necessary' in section sixteen. I think the meaning we ought to give to the word is, that it is only necessary for the construction of the railway to permanently divert the road, when the railroad cannot be made without so divert-
10 ing it.

The necessity for diverting the highway may be one of engineering. It is not claimed that any such exists in this case. Again, it may be one arising from the requirements of the public convenience, or safety, considered as well with reference to the use of the one road as the other, the railway as well as the common highway. It is not claimed that there is any such here, but it is insisted that the company have power, under the act, to divert the road, though there be no necessity, strictly speaking, or according to the ordinary meaning of the term,
20 for so doing; that they may exercise the power upon the consideration of the saving of expense alone.

The rights of the public in this matter, are plain. There appears to be no necessity for diverting the highway. The public are therefore entitled to the road as, and where it is. The duty of the company in the premises, is equally plain. It is, to construct and keep in repair, a good and sufficient passage for the highway under their railroad, so that the passage of carriages, horses, and cattle, or the highway shall not be impeded thereby. Nor can they avoid the full discharge of their
30 obligations to the public in this respect, according to the intention and plain requirements of the legislature, by the plea of economy. In a note to *Regina v. Sharpe*, 3 *Eng. R. & C. Cases*, p. 35, Baron Parke is reported to have said that in a case tried before him as to the power a company had to make a road over a public highway, he laid it down, that if possible, the work must be constructed without any inconvenience to the public; but if it could not be done, without some such inconvenience, it must be done with the least possible, according to the provisions mentioned in the act. It is added that this was
40 the case of *Regina v. The London and Southampton Railroad*

Co., tried at the Hant's Summer Assizes, in 1838, in which his lordship held that mere expense was no reason for not making a road over the cutting as convenient as before.

The following language of Chancellor Williamson, in *Morris and Essex Railroad Co. v. The Mayor, &c., of Newark*, is pertinent to the entire subject under consideration: "The legislature of the state has conferred upon certain corporate bodies, the control and supervision of the public highways. These bodies are responsible for the proper maintenance and repair of these ways. They may be arraigned before the criminal tribunals of the land, for a neglect of duty in the execution of the trust committed to them. These provisions for the protection of travel, where railways cross highways, are made for the benefit of the public, and for its protection. The public have rights in the public highways of the state, which can be impaired or interfered with, by nothing short of authority conferred by the sovereign power of the state itself. That authority must be expressly given; or if conferred by *implication*, it must be a *necessary* implication such as will necessarily and naturally flow out of the law, from whence it is derived; not a necessary implication, to be whittled down into a reasonable intendment, and then to become a mere matter of expediency, and then to be resolved into a mere question of dollars and cents."

The view I take of this question, renders it necessary to consider whether if the company have the power to divert the highway, they can lawfully obstruct and destroy the old road, before they shall have provided an equally good and safe new one instead of it. The complainants have a standing in court in this suit. They are authorized to ask the relief they seek. They have been guilty of no laches, nor are they barred of their remedy, or right to relief, by any acquiescence. Their right is not doubtful. The defendants threaten to do an act which is *ultra vires*, one that will be specially injurious to the complainants. It is the duty of this court to interfere, to prevent it. The order to show cause is made absolute.

ORDER.

[Filed December 16th, 1873.]

The rule to show cause why an injunction should not issue heretofore made in this cause, having been heard upon the pleadings, and the affidavits in the cause, and the arguments of the counsel of each of said parties, on the tenth day of November, last past, and the Chancellor having given the matter due consideration, and being of opinion that the complainants are entitled to the injunction prayed for—

- 10 It is, on this seventeenth day of December, eighteen hundred and seventy-three, ordered, adjudged and decreed that a writ of injunction do issue pursuant to the prayer of the bill—except that the said defendants shall not be enjoined from such temporary obstruction of the said old road as may be reasonably and necessarily incident to constructing a suitable culvert over said old road.

THEODORE RUNYON, C.

APPEAL.

[Filed January 9th, 1874.]

- 20 The defendants hereby appeal from the whole and every part of the interlocutory decree or order made in this court in the above stated cause, bearing date on the seventeenth day of December, eighteen hundred and seventy-three, ordering, adjudging and decreeing that a writ of injunction do issue, pursuant to the prayer of the bill, except that the said defendants should not be enjoined from such temporary obstruction of the said old

road, as might be reasonably and necessarily incident to constructing a suitable culvert over said old road.

Dated January 9th, 1874.

RICHEY & EMERY,

Solicitors, and

THOMAS N. McCARTER,

of Counsel with Defendants.

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

THOMAS N. McCARTER,

of Counsel with Defendants. 10

PETITION OF APPEAL.

[Filed January 9th, 1874.]

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

The humble petition of the Easton and Amboy Railroad Company, the appellants in the above stated cause, respectfully shows: That the inhabitants of the township of Greenwich, in the county of Warren, the respondents in said cause, filed their bill of complaint in the Court of Chancery in this state, against the said the Easton and Amboy Railroad Company as defendants, praying, among other things, that the state's writ of injunction be granted, issuing out of and under the seal of the Court of Chancery, to the said the Easton and Amboy Railroad Company and their engineers, contractors, agents, laborers and servants and officers, to be directed, enjoining and restraining them and each and every of them, from in any way obstructing, by hauling in dirt, stones or gravel, or otherwise, the public road leading from the village of Still Valley by Springtown Station, on the Central Railroad of New Jersey, and by certain flouring mills, known as Springtown Station Mill on the Pohatcong creek to the village of Springtown, and particularly at that point in said public road where it inter-

sects and crosses the line of the Easton and Amboy Railroad, on land purchased of William Carpenter and others, and from changing the location of any portion of said public road.

And your petitioners respectfully show that your petitioners are aggrieved by an interlocutory decree or order, made by the Honorable Theodore Runyon, Chancellor of the State of New Jersey, in the Court of Chancery, bearing date on the seventeenth day of December, eighteen hundred and seventy-three, in the said cause therein depending, wherein the said the in-
10 habitants of the township of Greenwich were complainants, and and the said, the Easton and Amboy Railroad Company were defendants, in this respect, to wit: That the said interlocutory decree or order, orders, adjudges and decrees that a writ of injunction do issue pursuant to the prayer of the bill, except that the said the Easton and Amboy Railroad Company shall not be enjoined from such temporary obstruction of the said old road as may be reasonably and necessarily incident to constructing a suitable culvert over said old road.

And your petitioners humbly appeal from all and every part
20 of the said interlocutory decree or order of the said Chancellor, which orders and decrees, as aforesaid, upon the grounds and for the reason that the same is erroneous and wrong— for that the said the Easton and Amboy Railroad Company should not be in any manner or to any extent, enjoined or restrained from obstructing the said road at the point where it intersects and crosses the line of the Easton and Amboy Railroad, on land purchased of William Carpenter and others, or
25 from obstructing a portion of said road, or from changing the location of a portion of said public road; and that a writ of in-
30 junction should not issue as ordered, adjudged and decreed in said interlocutory decree or order, or in any other manner; and for that, the said interlocutory decree or order, and every part thereof is erroneous.

Your petitioners therefore pray that the said interlocutory decree or order of the said Chancellor, may be, in the particulars aforesaid, set aside and for nothing holden.

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

Dated January 19th, 1874.

RICHEY & EMERY,
Solicitors, and
THOMAS N. McCARTER,
of Counsel with Appellants.

APPEAL FROM INTERLOCUTORY DECREE.

[Filed January 19th, 1874.]

The petition of appeal, having been filed in this court, it is ordered that the respondents file their answer to the said petition, within thirty days after a service of a copy thereof, and of this order, and of making the deposit with the clerk in chancery required by the rules of this court. 10

Dated January 19th, 1874.

On motion of
RICHEY & EMERY,
Solicitors of Appellants.

ANSWER TO PETITION OF APPEAL.

[Filed January 30th, 1874.]

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The answer of the inhabitants of the township of Greenwich in the county of Warren.

This respondent, not confessing or acknowledging all or any of the matters or things in the said petition of appeal contained and set forth to be true, for answer thereunto says, that this respondent believes it to be true, that such interlocutory decree as is complained of by the said appellants, was made by the court of chancery, as in the said petition of appeal is set forth; but as

to the date, substance, and contents thereof, this respondent humbly craves leave to refer thereto, when the same shall be produced.

And this respondent is advised and believes that the said decree is not erroneous. That the said Easton and Amboy Railroad Company should be enjoined and restrained from obstructing the said road at the point where it intersects and crosses the line of the Easton and Amboy Railroad, on land purchased of William Carpenter and others; and from obstructing a portion
 10 of said road, and from changing the location of a portion of said public road; and that a writ of injunction should issue as ordered, adjudged, and decreed, in said interlocutory decree, and order as in and by the said decree is decreed, and that the said decree is in all things agreeable to equity and justice; and this respondent humbly prays that the said decree may be in all things affirmed, and that the said petition of appeal may be dismissed by this honorable court with costs to be adjudged to this respondent.

J. W. ROBESON,

Solicitor for and of counsel with respondent.

