

New Jersey Supreme Court.

The Columbia Delaware Bridge Co. }

vs.

Christianna Geisse et al. }

CERTIORARI.

New Jersey, ss.—The State of New Jersey to Josiah De-
[L. s.] Witt, Esquire, one of the Justices of the Peace
of the county of Warren :

We being willing for certain reasons to be certified of a certain affidavit, taken by George Hiles, Alfred Kern, and John L. Smith, three freeholders appointed by you to assess damages to Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilida Geisse, Christian Henry Geisse, and Herman Geisse against the "The Columbia Delaware Bridge Company," on account of the loss of a certain ferry, together with the appraisement of damages made by the said John L. Smith, Alfred Kern, and George Hiles, the said freeholders, in favor of the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, against the said "The Columbia Delaware

Bridge Company," bearing date on or about the 1st day of September, A. D. 1871, for damages to the ferry of the said Geisse, do command you that the affidavit taken by the said John L. Smith, George Hiles, and Alfred Kern, before you as aforesaid, together with the appraisement of damages made by the said John L. Smith, George Hiles, and Alfred Kern, in favor of the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, against the said The Columbia Delaware Bridge Company, for injury done to the ferry of the said Christianna Geisse and others at Columbia, together with all things touching and concerning the same, by whatever names the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, and the said The Columbia Delaware Bridge Company may be called therein, you certify and send to our Justices of our Supreme Court of the State of New Jersey, to be holden at the State House in the city of Trenton, on the fourth Tuesday in February next; you certify and send, that therein may be done what of right and according to the constitution and laws of the State ought to be done.

Witness Mercer Beasley, Esquire, Chief Justice of our said Supreme Court, at Trenton, the 28th day of November, 1871.

CHARLES P. SMITH, Clerk.

J. G. SHIPMAN, Attorney.

New Jersey, ss—I do herewith return to the Justices of the Supreme Court of New Jersey, the affidavit of the said commissioners, their award, together with all things touching or concerning the same as within I am commanded, as by the papers to this writ and my transcript, under my hand and seal will more fully appear.

Witness my hand and seal, this 24th day of January, A. D. 1872.

JOSIAH DEWITT,
Justice of the Peace.

State of New Jersey, Warren Co., ss.—Before me, Josiah DeWitt, a Justice of the Peace in and for said County, on the twenty-eighth day of August, in the year one thousand eight hundred and sixty-nine, personally appeared Christianna Geisse, widow, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, and presented their petition in writing, verified by their oaths, attached to the same petition, setting out that they are the widow and only heirs-at-law of Henry Geisse, late of Columbia, in said county, deceased, is that said Henry Geisse, deceased, in his life-time became the owner, and was seized and possessed of a certain ancient ferry across the river Delaware at Columbia, in said county, from the New Jersey shore of said river to the Pennsylvania shore of the same, from the year of our Lord one thousand eight hundred and twenty-one until his death, which occurred in the year of our Lord one thousand eight hundred and sixty; that since eighteen hundred and twenty-seven the rates of tolls to be taken at said ferry, were established and fixed by the Board of Chosen Freeholders of the said county of Warren; that upon the death of the said Henry Geisse, the said petitioners, as his widow and only heirs-at-law, became seized and possessed of the said ferry, with all its immunities, profits and privileges, and have continued in the undisturbed possession of the same, agreeably to the laws of the state of New Jersey, in such cases made and provided; that the Columbia Delaware Bridge Company, a corporation created by the act of the Legislature of the state of New Jersey, dated March the 7th, 1839, have erected a bridge across said river, at the said village of Columbia, and commenced, on the 18th of January last, A. D. 1869, taking tolls, and crossing passengers, carriages, wagons, horses, cattle, sheep, and everything else that were used and accustomed to cross said river in the boats and flats of said ferry, and thereby superseding and destroying said ferry, and depriving said petitioners of their ancient and established

rights of ferry across said river at said place, and receiving compensation therefor; that said petitioners, as owners of said ferry, are injured by the erection of said bridge, by depriving them from receiving the tolls and other compensation that they were accustomed to and had a right to receive from their said ferry as aforesaid, for the crossing of persons, their carriages, wagons, and stock, over said river, and that their boats, flats, iron, rope, and other appurtenances, were rendered of very little value; that said petitioners applied to said corporation, on the 10th day of August, A. D. 1869, to compromise and settle for any and all damages that had or might arise to their interests, privilege, and property aforesaid, from the erection of said bridge, but that the said company refused, by giving an evasive and unsatisfactory answer, when they proposed to said company to leave all the matters in difference between them to men to settle, which was absolutely refused; that said petitioners, at the same time, gave said company due and legal notice to meet them at the house of Andrew R. Teel, innkeeper at Columbia aforesaid, on the 17th of August, 1869, at ten o'clock A. M., for the purpose of compromising said damages, and if they could not do so, then to choose three disinterested freeholders of the neighborhood to ascertain, upon oath or affirmation, said damages; and in case said company refused or neglected to join in said choice, that they would apply to me, as a Justice in and for the said county, on this day, at 10 o'clock A. M., to appoint said appraisers; that said petitioners attended at the time and place mentioned in said notice, and continued there two hours, but that no one appeared on the part of said corporation; they, therefore, on this day, applied to me to make the appointment of appraisers as aforesaid, of which notice the attendance of petitioners, at the time and place aforesaid, and not appearing of the said corporation, satisfactory evidence was this day produced to me, by the deposition of Herman Geisse; and now, on this 28th day of

August, 1869, the said petitioners, in person and by counsel, and the said corporation, by their President, and Jehiel G. Shipman, their counsel, having appeared before me, at my office, in said county, and the counsel of said corporation admitting the service of said notice, and the truth of said deposition, but denying that I have any jurisdiction in the matter; that said petitioners have not sustained any damage, nor proved any ownership of said ferry, and because the act of the Legislature establishing said ferry, in 1856, contained no provision authorizing the appointments of said appraisers; whereupon, after duly considering all the said matters presented to me by said parties, my judgment is that said petitioners have fully all the matters set forth in their petition, and that I am fully authorized, by the said act of the Legislature erecting said corporation, to appoint said appraisers; I, therefore, appoint John L. Smith, George Hiles, and Alfred Kern, three disinterested freeholders of the neighborhood, to ascertain, upon oath or affirmation, what damage, if any, said petitioners have or may sustain by reason of the erection of said bridge, receiving of said tolls, and veritable destruction of their ferry as aforesaid; that said freeholders meet at the house of Levi H. Albertson, innkeeper, in said county, on the sixth day of October, 1869, at ten o'clock A. M., and afterwards, if necessary, on their own adjournment, and that petitioners give fifteen days notice of said first meeting of said appraisers.

Given under my hand and seal, the date first above written.

JOSIAH DEWITT. [L. S.]

Guisse v. the Columbia Delaware Bridge Company.
On Appointment of Commissioners to Assess Damages.

Warren County, ss.—Be it remembered, that on this 8th day of August, 1871, before me, a Justice of the Peace, in and for the county of Warren, personally appeared John L. Smith, George Hiles, and Alfred Kern,

the commissioners named in the foregoing appointment, and each of said commissioners being by me duly sworn according to law, did depose and swear that he will faithfully perform the duty enjoined upon him, by the act entitled "An Act to Incorporate the Columbia Delaware Bridge Company," passed March the 7th, 1839, and will, according to the best of his skill and judgment, ascertain and estimate the injury and damage that has been and will be sustained by the owners of the said ferry, by means and reason of the erection and use of the said bridge; and will faithfully and fairly hear and examine the cause in question, and make a just and true report, according to the best of his skill and understanding.

JOHN L. SMITH,
 GEORGE HILES,
 ALFRED KERN.

Sworn and subscribed before me, this 8th day of August, 1871.

JOSIAH DEWITT, Justice of the Peace.

August the 29th, 1871. The above named commissioners met, agreeable to notice, at the house of Levi H. Albertson, at Kill Mills, and due proof being made that the parties had been lawfully noticed to attend, at the time and place appointed, they proceeded to Columbia, and viewed said ferry, and returned back to the house of Levi H. Albertson, at Kill Mills, to hear the argument of counsel; after which, they adjourned to meet at the house of John L. Smith, one of the commissioners, on the 1st day of September, 1871.

September the 1st, 1871. The commissioners met, agreeable to adjournment, and James M. Robeson, for complainant, and Jehiel G. Shipman, for the Columbia Delaware Bridge Company. After mature deliberation, the said commissioners brought in the following award

of damages for said Bridge Company, to pay to said complainants.

Know all men by these presents, that we, John L. Smith, George Hiles, and Alfred Kern, all of the township of Knowlton, in the county of Warren, and State of New Jersey, the commissioners named in the foregoing commission, having met at the house of Levi H. Albertson, in the township and county aforesaid, on the 29th day of August, A. D. 1871, at ten o'clock in the forenoon of that day, pursuant to notice given, and proof having been made to us, and of the service of said notice, in conformity with the directions of the said commissioners, to us directed, a copy of which said notice and affidavit of the service thereof, we have caused to be appended hereto; and having first taken and subscribed an oath, before Josiah DeWitt, Esquire, a person duly authorized to take and administer the same, faithfully and impartially to examine the matter in question, and make a true report, according to the best of our skill and understanding, a copy of which said oath is hereunto annexed; and Francis Hagerman, President, and J. G. Shipman, counsel of the Columbia Delaware Bridge Company, appeared on the part and behalf of the said company; and James M. Robeson, appearing on the part and behalf of Christiana Geisse, widow, Henrietta Geisse, Emily Geisse, Emily and Matilda, Christian, Henry and Herman Geisse, heirs-at-law of Henry Geisse, deceased, late of the village of Columbia, in the township, county and State aforesaid.

The applicants mentioned, and said commissioners, we thereupon, in the presence of the said Francis Hagerman and J. G. Shipman, and the said James M. Robeson, proceeded to view and examine the said ferry, across the said river Delaware, at the village of Columbia, mentioned in the said commission, and to make a just and equitable appraisement of the value of the same, and assessment of

damages to be paid by the Columbia Delaware Bridge Company, for and as a compensation for the damages, of which the said Christiana Geisse, widow, and Henrietta, Emily, Matilda, Christian, Henry and Herman Geisse, have sustained, by reason of the erection of the bridge across the river Delaware, at Columbia, by the Columbia Delaware Bridge Company; and having first viewed and examined the premises, and heard the allegations and representations of the parties, by their respective counsels, and duly considered the same; and having adjourned the further consideration of the matter until the 1st day of September, A. D. 1871, at two o'clock in the afternoon, at the house of John L. Smith, Esquire, one of the said commissioners, of which notice was given to the respective parties; and now, at the time and place, having met, in pursuance of said adjournment, and being attended by the counsels, we do report, that the sum of \$1,200, for the damages aforesaid, be paid by the said Columbia Delaware Bridge Company, to the said Christiana Geisse, widow, Henrietta, Emily, Matilda, Christian, Henry and Herman Geisse, for the damages aforesaid.

In testimony whereof, we have hereunto set our hands and seals, this 1st day of September, 1871.

JOHN L. SMITH,
 GEORGE HILES,
 ALFRED KERN.

I do herewith send to the Supreme Court of the State of New Jersey, the appointment of the commissioners, the affidavits taken by the commissioners, and the award of damages assessed by them against the Columbia Delaware Bridge Company, in favor of the Geisses, as wherein I am commanded, as by transcript, under my hand and seal, hereunto annexed, more fully appears.

Given under my hand and seal, this 21st day of December, 1871.

JOSIAH DEWITT, [L. S.]
 Justice of the Peace.

REASONS FOR REVERSAL.

[Filed June 4, 1872.]

1. Because the affidavit taken by the said appraisers was illegal and insufficient.

2. Because the said appraisers or commissioners admitted evidence on the hearing of the said cause before them which influenced their decision in the *appraisal of damages*.

3. Because the said appraisers or commissioners admitted illegal evidence upon the hearing of the said matter before them, to wit: the said Geisse's book, and sundry leases, which influenced them in making up their assessment.

4. Because the said assessment is illegal and defective.

5. Because the said appraisers had no right to make an assessment of damages against the said company, because there was no ferry then belonging to said Geisses.

6. Because the said award is defective, in form and substance, and is contrary to law.

7. Because the said proceedings are in divers other respects illegal and defective, and ought to be set aside.

J. G. SHIPMAN,

Attorney of Plaintiff in Certiorari.

DEPOSITIONS ON PART OF PLAINTIFFS IN CERTIORARI.

Depositions taken on the part of the plaintiffs in *certiorari*, on this 3d day of June, A. D. 1872, before the subscriber, one of the Commissioners of said court, at my office in Belvidere, in the presence of J. G. Shipman,

Esquire, of counsel for plaintiffs, and J. M. Robeson, Esquire, of counsel for defendants, service of notice being acknowledged by Jacob Vanatta, attorney of defendants in *certiorari*.

John L. Smith, a witness produced on the part of the plaintiff in *certiorari*, being duly sworn, according to law, on his oath saith—

I was one of the appraisers appointed in this case by Josiah DeWitt; I signed the award of damages that was awarded against the company, and returned it to Josiah DeWitt; Alfred Kern and George Hiles were the other appraisers; we made out the award in my house at Polkville, in the township of Knowlton; we were at the house of Levi Albertson, in the township of Knowlton, when the case was heard; we adjourned from there to my own house, after a few days; the Geisses were at the hotel when the case was heard; I think they were.

Quest. Did they, on that occasion, affect in evidence before you, a certain book containing the receipts derived from the ferry in question?

Ans. There was some books laid before us on the table; book or books purporting to be the receipts of the ferry, which, on the day the case was heard, were objected to by the counsel of the defendants as not being proper evidence; I mean the counsel of the bridge company; them books were thrown before us by the Mr. Geisses, at the place of hearing the case, and at the adjournment of the hearing to my own house, they were packed up with some leases and handed to me by one of the Mr. Geisses, and requested me to take care of them—that is, Geisses, as they might be of service to us as we came to make up our verdict.

Quest. Did the commissioners act upon the evidence furnished by that book in reference to the annual income of the ferry in making up their estimate of damages?

Ans. The books were looked over by the commission-

ers, but the amount of revenue that the Geisses had received from the ferry was not the amount the commissioners decided the Geisses should have from the bridge company; the award was not corresponding, I should say, to the amount they had received by the books, because the books we did not consider as fully competent evidence; I think there was more than one book.

Quest. Did the receipts contained in that book or in those books, if there were more than one book, influence to any extent the judgment of the commissioners in making up their award of damages?

Ans. Well, as for myself, I can't say that it did; the commissioners, it is true, got the amount the Geisses had received from these books, but did not make up their award to correspond with the amount they had received by those books for the last few years.

Quest. If those books did not influence you in making up your judgment, you and the other commissioners of the damages, what did influence your judgment in making your estimate of the damages?

[All this examination, particularly the last, objected to by counsel for the defendants].

Ans. Well, we commissioners were placed in rather a singular position; we made up—as we had no evidence in the matter—we made up our award as near as we considered right between the parties, and we considered the parties had a right to appeal, if they were not satisfied with our action; we knew that and spoke of that; we had the books before us when the commissioners were considering of their award; yes, sir, the books were there, and Mr. Kern examined them as we were making up our award.

Quest. Did you examine the book or books when you were sitting together as commissioners to make up your award, to ascertain from them the annual receipts or income of the ferry?

Ans. Mr. Kern had the books, and looked over them what the annual income had been, and spoke of it; the books were looked over, but I can't say to what extent they influenced the commissioners in their judgment to make up their award; but I was, for my part, a good deal below the revenue derived according to them books.

Quest. Did the books influence you or either of the other commissioners any at all in your judgment, in making up the award of damages.

Ans. As for myself, I can't say that they did—I can't say by what motive the other commissioners were influenced.

Quest. Were not the receipts from the ferry as derived from those books used as an argument by one or more of the commissioners in making up their award of damages? [Objected to.]

Ans. Yes, sir, it was spoken of by one the commissioners.

Quest. By which one?

Ans. By Mr. Keen.

Quest. Was or not those receipts as derived from that book or those books, discussed by the commissioners in making up their award of damages?

Ans. It was; it was also spoken of that they were not legal evidence, as the books had not been sworn to.

Quest. Who said that—that the books had not been sworn to—that they were not legal evidence—which of the commissioners?

Ans. I believe I said myself, that commissioners, that courts were not in the habit of recovering books in evidence that were not sworn to, and the others admitted that to be the fact.

Quest. Please to state whether Mr. Hiles and Mr. Alfred Kern, did not base their opinion as to the amount of damages which should be assessed, almost entirely or altogether, on the receipts of tolls furnished by those books? [Objected to.]

Ans. Well, they said if those books was evidence of the

amount of tolls, which Mr. Geisse received from the ferry, why that the award ought to be something above what it was; until I, myself, under the circumstances in which we were placed, was opposed to giving Mr. Geisse any award, because we had no evidence, knowing they would have a redress at other courts to which they might appeal, and have evidence or supposed they had, and they advocated an award, and for the sake of agreeing, I agreed with them to have the award, as the award was \$1200—I believe the award was.

Quest. Did they come down from the amount of the award, which they wanted to find from the evidence furnished by the books, for the sake of agreeing with you? [Objected to.]

Ans. I suppose that my opinion had a little influence on theirs, for we finally agreed upon a lower sum than they spoke of in the first place.

Quest. And the sum they spoke of in the first place, as I understand you, was the sum they derived from the examination of the books? [Objected to.]

Ans. They kept saying, in our discussion of the matter, that if the books had anything to do with it, they ought to have such and such figures.

Quest. Did they offer in evidence, also, certain leases connected with that ferry in Columbia?

Ans. There were some leases packed up by Mr. Geisse with the books, and they were there before the commissioners.

The elder Mr. Geisse, Christian Henry.

Quest. Did the counsel of the Bridge Company object to those leases being received by the commissioners, or considered by them in making up their award?

Ans. The counsel of the Bridge Company objected to having any testimony offered in the matter, and read a decision to that effect; that near the day of the hearing, and then, we adjourned to my own house, and at the evening of the hearing, Mr. Geisse packed up the books

and papers, and handed them to me, and said they might perhaps be of use to us in making up our judgment; the leases were among those papers he handed me.

Quest. Had you commissioners those leases before you when you made up your award?

Ans. Yes, sir, they were there.

Quest. Please to state whether those leases influenced the judgment or opinion of the commissioners, or any of them, in deciding upon the question whether Mr. Geisse had any ferry there or not? [Objected to.]

Ans. I think that the commissioners agreed that if the leases were any evidence, they were evidence that they owned a ferry there.

[The counsel for the defendants protests against the examination, because it is so intolerably leading.]

Question repeated.

Ans. Well, that question was answered before, and I don't know that I can make it any better, according to my understanding.

Quest. Please to state, then, whether you did take those leases as furnishing sufficient evidence to show that Geisse had the title to the ferry, or as furnishing some evidence of it? [Objected to.]

Ans. Well, as for my own part, I took that as a fact that Mr. Geisse had a ferry there, and Mr. Kern went over the leases to see what they had received from the ferry by those leases as far back as they had run, and I am not able to tell how far back they did run, and said Mr. Geisse had had a ferry there for some length of time according to the length of these leases; I am not able now to tell how far they dated back; I can't recollect all that was said at that time.

Quest. Did the counsel of the company deny before the commissioners that the Geisses had any ferry there? [Objected to].

Ans. I think he did.

Quest. When you were making off your award, Squire, at your house, was any body present, or at any time when you were deliberating upon it? if so, who?

Ans. No one but us commissioners; we were in a room by ourselves.

Quest. From the time that you adjourned after the hearing was closed until you finished your award, did the Geisses, or either of them speak to you about it, or any body else in their behalf?

Ans. No, sir.

Quest. Did anybody put in your hands, and did you have before you when you made up your award a printed book of evidence between the company and the Geisses?

Ans. No, sir.

And being cross-examined by James M. Robeson, Esq., of counsel with defendant, saith—

Quest. Did Mr. Shipman and Mr. Robeson on the hearing, both use and read from a printed case of this suit that had been used in the Court of Errors and Appeals?

Ans. Well, I think that there was a pamphlet of the decision of the Court of Errors read on that day—my opinion is that that pamphlet of the opinion or decision were packed up in the papers—I speak of a printed pamphlet—am not certain of what court it was; it was a printed opinion and not a written one.

Quest. Was there not also a certified copy in writing, of the last opinion of the Court of Errors read before you, and used by both counsel?

Ans. I am of the opinion there was.

I know Josiah DeWitt; he is a justice of the peace of the county of Warren; he was present at the hearing at Knowlton Mills; he took the affidavit of Beck with regard to the service of some papers in the case—Constable Beck.

Quest. Was he not there also for the purpose of swear-

ing such witnesses as the parties might desire to have sworn to give testimony before you touching the assessment of damages? [Objected to by Mr. Shipman as leading, irrelevant, and not a cross-examination].

Ans. I am not able to say for what purpose he was there other than what service I see him perform.

Quest. Did not the counsel of Messrs. Geisse offer to prove the leases and the books of account of tolls, and did not Mr. Shipman object and say that the commissioners had no power or authority in the law to cause or allow any person to be sworn to testify before them in the matter then under consideration? [Objected to].

Ans. Yes, sir, the counsel of Messrs. Geisse offered the books of account and leases as evidence and Mr. Shipman objected to them.

Question repeated.

Ans. Yes, sir, that was the case.

Quest. In Mr. Shipman's argument before you commissioners did he not urge and insist that you ought not to allow the Geisses more than the sum of six hundred dollars as a full and fair equivalent for the loss of their ferry, because he said that it appeared in the printed case that they had never rented it for more than forty or forty-two dollars per year? [Objected to].

Ans. Well, Mr. Shipman in his argument figured it down pretty low, but I have no recollection whether he mentioned anything about the printed case or no; I recollect he said something about the six hundred dollars in his address to the commissioners; he said they ought not to be allowed over six hundred dollars, that was the manner.

Quest. When Mr. Shipman asserted that they should not be allowed more than six hundred dollars did not Mr. Robeson ask him where he found the evidence upon which to fix that sum, and did he not then refer to the leases? [Objected to].

Ans. I am of the opinion that he did, and yet I am not certain; I cannot recollect the argument there at this time.

Quest. Was it not the books that Mr. Shipman most objected to being given in evidence, and not the leases that had specific sums named as the yearly rent? [Objected to.]

Ans. Mr. Shipman objected to the commissioners having any power to take any evidence at all in the matter.

Quest. Did not Mr. Robeson appeal to Mr. Shipman for information as to how the commissioners could possibly make an award in this case, that would at all be just, without some idea of the yearly rental value of the ferry, and did not Mr. Shipman reply that the commissioners could take the leases where there was specific sums mentioned in them, or words to that effect? [Objected to.]

Ans. I can't remember the whole of the argument there, but I know that Mr. Shipman objected to having any evidence taken on the matter, and I think as Mr. Robeson said he could not see how the commissioners could make any kind of a just award without having some knowledge of the yearly incomes of the ferry.

Quest. Didn't he, Mr. Shipman, say this, that their own leases would show that they never got more than forty-two dollars a year? [Objected to.]

Ans. Well it is likely he did; I most think it may be he did.

Quest. Mr. Smith, do you pretend to say that the Geisses offered as evidence before you the leases and their books, or did their counsel simply say after Mr. Shipman had objected to the swearing of witnesses in the cause, these, gentlemen, are the leases and the books, which are a part of the leases which we were notified to produce before you by the counsel of the bridge company, do what you like with them—we have produced them pursuant to notice, or words to that effect? [Objected to.]

Ans. I think the counsel for the Geisses did use such language; the commissioners went down to the ferry at Columbia and viewed the old ferry premises.

Quest. Did not Mr. Shipman declare on the day of the hearing before you commissioners that if you allowed the swearing of witnesses or received testimony under oath, he would for that cause take up the proceedings of the commissioners by *certiorari* to the Supreme Court, and there set the proceedings aside? [Objected to.]

Ans. I think he did.

Quest. Did not Mr. Shipman say, when asked what you, the commissioners, could base your finding upon, did he not answer your own observations as to the ferry, and that the parties by themselves or their counsels could make such statements before the commissioners as they deemed proper, and from those sources the commissioners could obtain the intelligence upon which to base their finding, or words to that effect? [Objected to.]

Ans. I think when Mr. Shipman was asked that question by Mr. Robeson, that Mr. Shipman then read a part of an act by which the commissioners were appointed, setting forth the duties of the commissioners in such cases.

Quest. Did the counsel of Messrs. Geisse offer the leases and books in evidence after Mr. Shipman objected to the swearing of witnesses and duly offered them to him under the notice given by him to produce the leases on the hearing? [Objected to.]

Ans. I think that after Mr. Shipman objected to their giving in evidence, Mr. Robeson said, here, gentlemen, are the leases, (and I am not certain about the books); I have produced them according to your notice, do as you please with them.

Quest. You say that Hiles and Kern, your co-commissioners, had agreed upon a larger sum as damages, or

words to that effect, what damages had they agreed upon?

Ans. Some of the commissioners were, in the outset, as high as \$2,000, and from that on down to \$1,000, and some under the circumstances, thought it was best to make no award, as there was evidence in the matter, and let them appeal to where they could have evidence.

And being re-examined by counsel of the plaintiffs in *certiorari*, witness saith—

Quest. Who produced those books containing those entries of tolls, and laid them upon the tables before you commissioners for your examination?

Ans. I am not able to say who brought the books into the court.

Quest. Did the Geisses or their counsel produce them and offer them before you?

Ans. Well I should think they did, but was objected to by Mr. Shipman.

Quest. Did not the company's counsel object to your receiving those books at all, and say that if you could not receive them under oath, it was much more objectionable for you to take and consider them without any evidence as to their correctness?

Ans. Counsel for the bridge company objected to the books going before the commissioners as evidence as to their having any evidence at all in the matter—he also might have said they were more objectionable for not being sworn to, perhaps he did; I am not certain whether he did or not.

Quest. Did not the company's counsel object to your taking those books away with you at all, or to your looking at them?

Ans. I have no recollection of that.

Quest. When the leases were produced by Giesse's counsel there, did not the company's counsel object to

the commissioners taking them at all, or receiving them as evidence in the cause?

Ans. I think he did.

Quest. Were not all the remarks which the company's counsel used about six hundred dollars, if he used any such at all, used after those leases had been produced and thrown on the table before the commissioners, and after they had been objected to by the company's counsel, and the commissioners had decided to receive them? [Objected to.]

Ans. The remarks about the six hundred dollars was made after the counsel for the Geisses said he had produced the leases according to notice, but the commissioners had not examined the leases at that time nor made any decision to receive them.

Quest. When were you sworn as a commissioner?

Ans. I am not posted as to the day of the month; Esquire DeWitt and Mr. Kern, and Mr. Hiles, come to my house and were all sworn together a few days before the trial.

JOHN L. SMITH.

Subscribed and sworn, this 3d day of June, A. D. 1872,
before me.

WM. H. MORROW,
Sup. Ct. Com.

Wm. S. SHARP, Printer, 23 East State Street, Trenton, N. J.

Court of Errors and Appeals.

THE COLUMBIA DELAWARE BRIDGE CO.

vs.

CHRISTIANNA GEISSE ET AL.

WRIT OF ERROR.

[Filed March 11, 1873.]

New Jersey, ss.—The State of New Jersey to our Justices [L. s.] of our Supreme Court of Judicature, greeting :

Because in the record and proceedings, and also in the giving of judgment in a certain matter of the affidavit taken by George Hiles, Alfred Kern and John L. Smith, three freeholders appointed by Josiah Dewitt, Esquire, one of the Justices of the Peace of the county of Warren, to assess damages to Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse and Herman Geisse, against "The Columbia Delaware Bridge Company," on account of the loss of a certain ferry, together with the appraisement of damages made by the said John L. Smith, Alfred Kern and George Hiles, the said freeholders, in favor of the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse and Herman Geisse, against the said "The Columbia Delaware Bridge Com-

pany," bearing date in, on or about the first day of September, A. D. eighteen hundred and seventy-one, for damages to the ferry of the said Geisses, manifest error hath intervened, as is said, to the great damage of the said "The Columbia Delaware Bridge Company," as by this complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be given thereupon, then you distinctly and
 10 openly send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in all causes, to be held at the State House in the city of Trenton, on the third Tuesday of November next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness, Abraham O. Zabriskie, Chancellor and President Judge of our said Court, this twenty-eighth day of August,
 20 in the year of our Lord one thousand eight hundred and seventy-two.

J. G. SHIPMAN, *Att'y.*

H. C. KELSEY, *Clk.*

The answer of the Justices of the Supreme Court of New Jersey, within named: The record and proceedings whereof mention is within made, with all things touching or concerning the same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within
 30 commanded.

M. BEASLEY, *C. J.* [L. s.]

DISMISSAL.

As yet of the Term of February, A. D. eighteen hundred and seventy-two.

Witness, MERCER BEASLEY, *Esq., C. J.*
 CHARLES P. SMITH, *l'k.*

New Jersey, ss.—The parties to this proceeding having been heard by counsel, and the court having duly considered the matters presented, it is ordered that said *certiorari* be dismissed with costs.

Entered June 5th, 1872.

On motion of JACOB VANATTA, *All'y.*

Therefore it is considered that the said "The Columbia Delaware Bridge Company" take nothing by their said writ of *certiorari*, and that the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse 10 and Herman Geisse do go without day, &c. And it is further considered by our said court here that the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse and Herman Geisse do recover against the said "The Columbia Delaware Bridge Company," the sum of dollars cents for their costs and charges, by the court now here adjudged to the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse and Herman Geisse, and with their assent, and that they have execution 20 thereof, &c.

Judgment signed June fifth, A. D. eighteen hundred and seventy-two.

MERCER BEASLEY, *C. J.*

I, Benj. F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment in the above stated cause, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and the [L. s.] seal of said court at Trenton, this tenth day of March, 30 A. D. eighteen hundred and seventy-three.

BENJ. F. LEE, *Clk.*

OPINION.

[Filed June 24, 1872.]

Argued at June Term, 1872, before Justices Dalrimple, Depue and Van Syckel.

MR. SHIPMAN for plaintiff.

MR. VANATTA for defendants.

VAN SYCKEL, J. By the writ in this case, the proceedings of three freeholders, appointed under an act passed March 7th, 1839, to appraise the damages sustained by the defendants on account of the loss of their ferry, are certified to this court for review.

The first reason relied upon for reversal is that the oath taken by the appraisers was not in conformity with the act under which they were appointed.

The alleged infirmity in the affidavit is that it required an assessment to be made of the damages, not only that had been, but of those that would be sustained by the owners of the ferry. Section fourteenth of the act declares that the owners of any ferry injured by the erection of the bridge shall be compensated for any damages they may thereby sustain, and forbids the taking of tolls by such ferry owners after the completion of the bridge.

The act provides for a perpetual extinguishment of the ferry rights, and a total subtraction of future revenue therefrom, and contemplates an entire compensation at once, and not by repeated assessments.

The words "damages sustained by the owner" were held in *Van Schoick vs. The Del. and Rar. Canal Company*, Spencer 249, to comprehend prospective as well as past damages.

The second objection to the validity of the proceedings below is, that evidence was received by the appraisers. The evidence produced consisted of certain leases and books of account showing the receipts of the ferry. *Van Wickle vs.*

Railroad Company, 2 Green 162, is relied upon by the prosecutor, but the later case of *Coster vs. New Jersey Railroad*, 3 Zab. 227, and the same case in 4 Zab. 734, recognizes the right of the Commissioners to seek such information as will enable them to form a correct judgment in the premises. If they were absolutely restricted to such knowledge as they could acquire from their own unaided view of the locality, their estimate would necessarily be based upon a very imperfect knowledge of facts.

How could the appraisers in this case have computed the 10 value of the ferry, without ascertaining, in some way other than by their own observation, the business it had been doing?

It does not appear that any erroneous principle governed the assessment, and the plaintiff has therefore mistaken his remedy; he must resort to the appeal given by the act of 1870, p. 493.

The *certiorari* should be dismissed with costs.

Justices Dalrimple and Depue concur.

J. G. SHIPMAN
ASSIGNMENT OF ERRORS.

20

[Filed December 17, 1872.]

New Jersey Court of Errors and Appeals in the last resort in all causes, of the third Tuesday of November, in the year of our Lord one thousand eight hundred and seventy-two.

Between The Columbia Delaware Bridge Company, plaintiff in error, and Christianna Geisse and others, defendants in error.

Afterwards, that is to say, on the third Tuesday of November, A. D. 1872, before the Court of Errors and Appeals in the last resort in all causes, come the said The Columbia Delaware Bridge Company, the plaintiffs in error, by J. G.

Shipman, their attorney, and say, that in the judgment and proceedings in the Supreme Court there is error is this, that the said Supreme Court decided that the said writ of *certiorari* should be dismissed with costs, whereas the said writ should not have been dismissed with costs.

There is also error in this, that the said Supreme Court decided that the affidavit taken by the said appraisers was legal and sufficient, whereas the said affidavit was illegal and insufficient.

- 10 There is also error in this, that the said Supreme Court decided that the said appraisers did right in receiving evidence before them, to wit, certain leases and books of account, purporting to show the receipts of the ferry, whereas the said appraisers did not do right in receiving the said papers and books.

There is also error in this, that the said Supreme Court decided that the said report of the appraisers was right, whereas the said report was not right.

- 20 And the plaintiffs in error pray that the judgment aforesaid for the errors aforesaid, and for other errors in the said proceedings and record, may be reversed, annulled and for nothing holden, and that they may be restored to all things which they have lost by reason of said judgment.

J. G. SHIPMAN,

Attorney for plaintiffs in error.

JOINDER IN ERROR.

[Filed December 28, 1872.]

- 30 And thereupon afterwards, to wit, on the twenty-third day of December, in the year eighteen hundred and seventy-two, before the Court of Errors and Appeals in the last resort in all causes, come the said defendants in error, by Jacob Vanatta, their attorney, and say, that there is no error in the record and proceedings aforesaid as assigned, or in the giving of the judgment aforesaid; and said defendants

pray that the Court of Errors and Appeals in the last resort in all causes, before the Judges thereof now here, may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

JACOB VANATTA,
Attorney of the defendants.