

Court of Errors and Appeals.

THE UNITED STATES PIPE LINE CO.,	}	On Appeal from Injunction Order.
HARRY W. BRECKENRIDGE AND		
OTHERS,		
Appellants,		
and		
THE PENNSYLVANIA RAILROAD CO.	}	
AND BEL. DEL. RAILROAD CO.,		
Respondents.		

BRIEF OF HENRY S. HARRIS.

The appellant Breckenridge is the owner in fee, by divers conveyances, of a certain acre of land, well known as "The Landing Place," near the foot of Foul Rift, on the river Delaware, used since 1744 for the transfer of the product of Oxford Furnace to Durham boats navigating that river, the said furnace being situate about four miles east of said acre and connected therewith by a public highway, which still exists. See Deed of Johannes Vennetta to Jonathan Robeson, page 115 of Case. Road returns of 1786, page 111.

The identity of the present road with that relaid in the return of 1786, is shown in the affidavits of Mr. Nathan F. Walker. Page K of Case; John Lommasson, page O; James Depue, page Q; Jabez Cyphers, page S; Solomon Wailey, page I; Samuel A. Depue, pages 66, 67; George

Lommasson, page 65 ; Samuel Vanatta, page 63 ; Margaret Frey, page 61 ; John Frey, page 62.

The railroad of the respondents crosses said acre by an embankment near the eastern boundary, a culvert arching the said highway. The affidavits of said persons show that from a width of four rods the railroad company has narrowed the passage on said road to twelve feet, having filled it by an embankment for fifty-four feet of its four rods width as laid out. See Return of 1786, page 111.

Another public road, laid March 4th, 1799, begins in the first-mentioned road, on the bank of the river Delaware, at a point west of the location of said railroad, and runs up said river about two miles to the bridge over the Pequest at Belvidere Mill.

The agreement between Robeson and Sherrerd was unknown to any one excepting the complainants, until it was produced on the hearing on the order to show cause why an injunction should not issue. See Opinions of Vice Chancellor Bird, page 98, line 34.

Mr. Breckenridge is a *bona fide* purchaser of the said one acre of land without notice of any agreement relating thereto.

The Vice Chancellor's statement, on page 101, that "it is not disputed but that the former company took possession of the parcel of land in question by virtue of this agreement" is not accurate.

It is disputed that the railroad company acted under said agreement.

No one was bound to assume more than that they had builded their embankment and arch over this highway, relying only on the authority given them by their charter, section 10 of which (P. L. of 1836, page 230) made it "the duty of said company to construct and keep in repair good and sufficient bridges or passages over or under the said railroad where any public or other road shall cross the same," is perhaps with the permission of the owner.

The records in the Warren County Clerk's office disclosed no conveyance, no condemnation proceedings, no agreement.

Of what, then, were the grantees of the executor of William P. Robeson and of Anna Maxwell Robeson to take notice?

Surely the answer must be that the railroad company had an easement and nothing more.

The character of the acts of possession under the circumstances alone gave information of the *nature* of the possession and the *extent of the title* proposed to be acquired under it.

The railroad company appeared to be exercising an easement, a right of way, and nothing more.

Every act shown to have been done by the railroad company (except the filling of part of the highway, which was of public concern) was lawful without the company being the owners of the place on which it was done, and therefore could not have effect to assert to the world a claim of right of greater extent than was necessary for their railroad purposes. These were not inconsistent with the ownership of the fee in those under whom appellants claim.

Notice of the *nature and extent of the title being acquired* is essential.

Foulke v. Bond, 12 Vr. 550.

The right of a railroad to cross public highways is justified on the ground of an authority arising by necessary implication, and being so derived, is limited to the necessity out of which it arises.

Under a condemnation of a right to cross, nothing will be acquired but a mere right of way, and the place of crossing will remain in common use of the parties for the exercise of their several franchises.

N. J. Southern R. R. Co. v. Long Branch Com'rs,
10 Vr. 28-33.

To same effect—"a mere right of way."

National Docks, &c., Co. v. United Companies, 24
Vr. 217-221.

In Taylor v. New York and Long Branch R. R., 9 Vr. 30, this court said: "The fee in the land is not

acquired by the company, but a mere easement in such land. The title remains in the owner, the property being made servient to the purposes of the railroad." On page 31 the language of the opinion is: "~~As~~ has been said, the plaintiff was the owner of the land, and it was subject to a single servitude; for all other uses it was still his own. But it must be constantly borne in mind that, in no condition of things, can the railroad company claim a right in the soil or trees, except to make use of them for the special purpose for which it was created."

In *Hoboken Land and Improvement Co. v. Mayor, &c.*, of Hoboken, 7 Vr. 540, the Court, on page 551, said: "The public easement is legally consistent with title to the soil in a private owner."

The Belvidere Delaware Railroad by its charter, section 15, Laws of 1836, page 232, is itself "declared a public highway."

The railroad company acquire no estate or interest in the land itself, but the mere right to the use of the highway or public easement.

Hinchman v. Paterson Horse R. R. Co., 2 C. E. Gr., 80.

The purchaser of this acre of land took it with notice only of a right of way exercised by the railroad company. The fee was in those from whom he purchased, and he acquired it by deed.

For all purposes, other than the special purposes of the railroad and the public highway, the land is his "for all purposes not inconsistent with the public rights."

Dillon on Municipal Corporations, § 524.

In *Starr v. Camden and Atlantic R. R. Co.*, 4 Zab. 592, Justice Haines said: "The easement of a public highway does not comprehend any interest in the soil. Hence the owner of the soil may lay water pipes, gas or other pipes

below the surface; may excavate for a vault or dig for mining purposes, and use it in any other manner that does not interrupt the free passage over it. He retains the full possession of it subject only to the easement."

THE AGREEMENT.

The agreement, page 99, exhumed upon the hearing, is to be carefully considered.

It was made by Wm. P. Robeson, the owner of an undivided interest in the said acre of land, that of his wife, Mrs. Anna Maxwell Robeson, the owner by descent of the remaining interest therein, not being mentioned, and relates to something to be done *in futuro*.

It contains provisions on the part of the railroad company to be performed precedent to anything on the part of Robeson and Sherrerd.

The first of these was to be the payment of the sum of one dollar to each of them by said company.

The language is: "Said Robeson and Sherrerd, for and in consideration of the sum of one dollar, *to be paid* to each of them by said company, and in consideration of the benefits which the Belvidere Delaware railroad, if constructed, will produce to their property, hereby agrees to convey each so much of the land belonging to himself separately and both so much of the land they now hold in common, lying on the route of said railroad anywhere between the farm of William White, &c., as may be sufficient for the construction of said railroad, &c., reserving the timber on said land, also the buildings and the following rights, to wit: The right of passing with teams or *otherwise* across the said railroad on a certain strip of land, &c.; the right of crossing over said railroad with teams or *otherwise* at such points as shall be necessary for full and convenient access to their mills or *other works erected or to be erected*, &c., provided said railroad shall be constructed."

The next clause, at line 13, on page 100, is: "And the said company agree to pay the said sum of money for said

land, and to make *crossings for teams* or *otherwise* at *such places* as shall be *necessary* for the *purposes* of said Robeson and Sherrerd."

The bill admits, page 11, line 30, that the railroad company, without any further conveyance or assurance, did proceed to occupy so much of said one acre lot as was sufficient and required for the purposes of said road.

On page 14, line 35, the bill again admits that no conveyance of said title was ever obtained or *demand*ed by said railroad company from said Robeson or his representatives.

There is no allegation or proof that the sum of money for said land agreed to be paid was ever paid or tendered.

That the said sum was but one dollar each, can in no way alter the legal status.

In the case of *Pierce v. Fuller*, 8 Mass. 223, the Court treating a covenant in consideration of one dollar as the principal question in the case—*Held*, "that consideration having been fixed and adopted by the parties as adequate was sufficient in law."

On page 228 it is said "the consideration of one dollar is in law a valuable consideration."

It is constantly used as efficacious.

In the case of any conveyance under this agreement it was a prerequisite "to be paid to each" by the first clause, and in the second clause it was formally again stated in these words: "And the said company agree to pay the said sum of money for said land."

It was not a consideration for the agreement, but was to be a consideration ^ufor the said land, ^vwhen it should be conveyed.^w

The complainants have not complied with the terms of said agreement, and have therefore no rights under it.

Mr. Breckenridge is a *bona fide* purchaser for value. See affidavit of John H. Daulke, page 79, lines 10 to 40, where

the consideration paid to George M. Robeson, as executor of William P. Robeson and as executor of Mrs. Anna Maxwell Robeson, is shown.

The railroad company appeared to be exercising a right of way and nothing more.

Is it to be assumed that a railroad company crossing land is owner of the fee, or merely of a way over the land?

In this case the crossing was over a highway. Was it to be assumed that the railroad company owned the fee in the highway?

It is submitted that the contrary was to be inferred, namely, that the highway and the railway were both easements to the exercise of which the ownership of the fee was unnecessary.

There was no evidence of any such claim existing.

"The use of the road is in the public. The owner parts with this use only."

Barclay et al. v. Howell's Lessee, 6 Pet. 498, 513.

In *Gidney v. Earle*, 12 Wend. 98, it was held that where a road runs through a man's close *prima facie* the fee of the land over which the road passes belongs to him. The law, said Justice Nelson, will not presume a grant of a greater interest or estate than is essential to the enjoyment of the public easement; the rest is parcel of the close.

This case is cited with approval in *Griffin v. Martin*, 7 Barb. 302.

Can it be contended that the crossing of the public road by the railroad—itself a highway—altered this legal presumption.

The agreement provides for crossings for all purposes.

If any possible effect is to be given to this agreement the right of Robeson or Sherrerd or their representatives, to crossings for teams or otherwise at such places as shall be

necessary for the purposes of said Robeson and Sherrerd is expressly agreed to be reserved or given.

In the first clause it is agreed that in any contemplated conveyance there was to be reserved the right of crossing over said railroad with teams or *otherwise* at such points as shall be necessary for full and convenient access to their mills or other works erected *or to be erected*.

In the next clause it is provided that there shall be "crossings for teams or *otherwise, at such places* as shall be necessary for the *purposes* of said Robeson and Sherrerd."

What more comprehensive words could be used?

We, as the representatives of Wm. P. Robeson, now find a crossing otherwise than by teams necessary for our purposes, and instead of its being accorded we are enjoined.

The rights of representatives of Robeson, under the agreement, are such as would arise from conveyances in pursuance thereof.

The rights to crossings would pass to his grantees.

The stipulations as to crossings would be annexed to the land and the grant of it, and be co-extensive with the estate granted.

The authorities are numerous and decided, that any purchaser would be entitled to the benefit of any stipulation as to crossings.

Winfield v. Jennings, 6 C. E. Gr. 188.

In Woodruff v. Trenton Water Power Co., 2 Stock. 489, the Court said covenants relating to the realty, both the liability to perform them and the right so take advantage of them passed to the assignee of the land.

In that case the right of way as well as landing place was held to be an interest in the thing granted, and to pass as appurtenant to the grantor's farm. Page 505.

On page 507, the assignee of the grantor, although not named, was declared to be entitled to the benefit of the covenant.

The acceptance of the conveyance and the land granted bound the grantors to the performance of the covenants. *Ib.*

The thing to be done or omitted to be done upon the land, was the medium which created the priority of estate between plaintiff and defendant. *Ib.*, page 506.

It is also to be observed that in the said agreement only so much of the land of Roberson or Sherrerd, separately held or held in common, was to be conveyed "as may be sufficient for the construction of said railroad with its ditches and appendages and for procuring materials." Certainly these words were not applicable to the public highway over which the railroad company were bound by their charter to build a good and *sufficient* bridge.

Even by the terms of this suppressed agreement no claim could be made for a conveyance of the land traversed by the public road, because without said land sufficient land for the construction of said railroad, &c., could have been conveyed. No obligation to convey more could have been imposed.

The appellants insist—

I.

That Breckenridge is a *bona fide* purchaser for value, without notice of any right or claim other than a right of way over the land in question. All that he was bound to know was that the railroad company was crossing the same.

Their charter provided that they might do this with nothing more than a mere permission from the owner.

P. L. 1836, page ²²⁹ section —. 7

There was no evidence of any greater right or interest, and by the exercise of an easement no greater estate or interest could be acquired.

II.

The unrecorded and unknown agreement set up is not shown to have been acted upon, and whether the user of the way by the railroad company was with any reference to it does not appear.

III.

The payment of the money by the agreement agreed to be paid for the lands was not paid, nor was any conveyance as contemplated in its terms obtained or demanded. See admission in bill, page 11.

IV.

The land in the highway is not within the scope of agreement, since sufficient land could be conveyed without the highway, and land sufficient for the railroad was all that was embraced. The highway the company was bound to sufficiently bridge. They had no use for the fee in the highway.

V.

The agreement itself provides for crossings for teams or otherwise at such places as may be necessary for the purposes of Robeson or Sherrerd.

J. HEIDINGSFELD, PRINTER, NEW BRUNSWICK, N. J.

New Jersey Court of Errors and Appeals.

BETWEEN

THE UNITED STATES PIPE LINE
COMPANY, et al.,

Appellants,

and

THE PENNSYLVANIA RAILROAD
COMPANY, et al.,

Respondents.

On Appeal from
Order for Pre-
liminary Injunc-
tion.

BRIEF FOR RESPONDENTS.

The appellants admit that William P. Robeson, at the time of making the agreement, in 1851, was entitled in fee to three-fourths of the land through which they seek to lay their pipe line for transportation of oil.

pp 28-30

They claim title under him by deed from his executor made in 1895. *page 163-*

Under said agreement it is undisputed that the respondents successively have, at least from 1855 to the present time, maintained an earthen embankment

twenty feet high upon this lot (and entirely across it except where the highway is carried through it by a stone arch), upon which embankment they have continuously operated a railroad during all that time.

The embankment and arch were erected at great expense and with the acquiescence and approval of Robeson from which an estoppel arises.

It is now too late to raise questions of technical compliance with the agreement.

Sumner v. Seaton, 2 Dick. 103.

Nibert v. Baghurst, 2 Dick. 201.

But there is nothing to show failure on the part of the vendee to comply with any requirement of the contract.

The presumption of compliance after forty years' possession without any claim to the contrary is overwhelming.

The things to be done by the railroad company were only to be done on demand, and no demand for them was ever made.

No necessity ever arose for passing of shafts, etc. for transmission of power. The only mill claimed to have existed was on the river side of the railroad. P. 78 C. 10

No increased expense for construction of canal was ever incurred by reason of interference by the railroad. The canal was never continued so as to cause such interference. pp. 75-76

It does not appear that any buildings were required to be removed which were not removed, nor that any

The provisions for crossings for teams, openings for shafting, by W. removal of buildings & payment of increased expense of construction of Canal, do not apply to this 1-acre lot, which had a public crossing on it, was remote from the canal or mill tract, had no moveable building to be removed & was owned by Robeson in severalty. These provisions must be taken distributively. Defendants whose claim is confined to this single lot cannot complain of non-compliance which affects only the other tracts.

road crossings were necessary, or claimed to be, which were not constructed.

The construction and operation of the railroad was performance of the main inducement for the agreement, for beyond the nominal money consideration it is expressed to be "*in consideration of the benefits which the Belvidere & Delaware Railroad will produce to their property.*" (Page 29, top.)

Undoubtedly the maintenance and operation of the railroad on the embankment constituted possession of the land thereby occupied, and was notice to all purchasers of the rights of the company under this agreement *to the equitable ownership of the land in fee*

The appellants cannot claim as *bona fide* purchasers.

Van Keuren v. Central R. R. Co. 9 Vroom, 165.

Rankin v. Coar, 1 Dick. 566, and cases cited in the opinion below.

2 Stock 419
3 Butch 357

The possession as to the land in the highway (where the appellants seek to lay their pipes) has only been by the overhead structure in connection with the earthen embankment on each side.

It is unsettled in this state whether such a structure, if adversely maintained for twenty years, will give a legal title to land in the highway; and it is also doubtful whether possession under the agreement has been adverse. Hence the respondents have not a clear remedy at law and have properly come into equity.

Their rights in equity are clear.

They are the owners of the equitable title and entitled to a conveyance of the legal title *to the extent of the 3/4 formerly owned*

by W. P. Robeson. Being thus tenants in common with defendants who claim the remaining 1/4 under Mrs. Anna M. Robeson (deceased p. 166) the complainants are entitled to be protected in their possession & in no movement of the park they occupy (being less than their proportion of whole, see Defendants' deap p. 73) as under a parcel partition.

Polhemus v. Empson 12 C. Cl. 190

1 Stew 576

Lloyd v. Gomer 1 Butch 47

3 Stew 405

Even where the title is legal an injunction will be granted to restrain the placing of pipes in the highway against the wish of the owner.

Sterling's Appeal, 111 Pa. St. 35.

Goodson v. Richardson, L. R. 9 Ch. Ap. 221.

It is a continuing trespass and permanent occupation of the land which a court of equity will restrain at the instance of the legal owner—not leaving him to his remedy at law.

As was said in the last case cited, the land owner labors under a peculiar difficulty in that he cannot at will tear up the highway to remove the unlawful obstruction after it has been placed therein.

But where the title as here is merely equitable there can be no doubt of the propriety of an injunction even if it were not ancillary to the relief by specific performance.

Hervey's Smith 22 Beav 299

In this case, however, specific performance is prayed.

Irreparable injury need not be shown where the injunction is sought in aid of some other ground of equitable relief.

2 High Injunctions, § 1605.

3 Pomeroy Eq. Jur. 2nd Edn. § 1339.

ALAN H. STRONG,
Of Counsel with Respondents.

New Jersey Court of Errors & Appeals.

*The United States Pipe Line Company,
Harry W. Breckinridge and others,
Appellants,*

and

*The Pennsylvania Railroad Company
and The Belvidere Delaware Rail-
road Company,*

Respondents.

ON APPEAL.

Brief of Joseph M. Roseberry,

Of Counsel with Appellants.

This appeal is from a decree, upon a preliminary hearing before Vice Chancellor Bird, for an injunction restraining The United States Pipe Line Company, Harry W. Breckinridge and the Township Committee of the township of Oxford, in the county of Warren, from constructing or attempting to construct a line of pipe through, under or across the road bed of the Respondents, at a public road crossing, or from in any manner disturbing the soil of said crossing, and to enjoin Harry W. Breckinridge from setting up any title to the land within the said highway crossing, and

to compel him to convey all his right, title and interest in and to so much of said one acre of land as is occupied by the road bed, ditches and appendages of said railroad, and to compel a specific performance of an agreement made between William P. Robeson and John M. Sherrerd and the Belvidere Delaware Railroad Company, dated June 25th, 1851, see pp. 16 and 17 of printed book. The Vice Chancellor in his opinion upon this preliminary hearing says: "I will advise a decree directing the specific performance of the contract according to the prayer of the bill, with costs," p. 110.

The highway at the overgrade crossing of the railroad is narrowed to a width of twelve feet. Its actual width should be four rods. (See return of surveyors, p. 111.) This road was laid out November 1st, 1786. It entered the eastern end of one acre of land on the Delaware River, called the "landing place," where pig iron was loaded on boats to be taken down the Delaware River to market.

The Respondents acknowledge the legal title in the one acre of land in Harry W. Breckinridge, but deny its location and claim an equitable title from William P. Robeson by virtue of an agreement made between William P. Robeson and John M. Sherrerd and the Belvidere Delaware Railroad Company, dated June 25th, 1851.

The one acre was severed from a larger tract of land on the 3rd day of May, 1744, by John Vannatta, and conveyed to Jonathan Robeson, pp. 115 and 116. Then it passed to Dr. William Shippen, p. 122, &c., and was devised by him to William Shippen and Susan Blair as tenants in common, p. 125, by codicil to his will, dated October 4th, 1795.

On the 18th day of January, 1806, William Shippen and Susan Blair and husband conveyed the surrounding lands, excepting the one acre, to William J. Shippen, p. 132. Samuel Blair and wife to Samuel Blair, Jr., trustee, and Susan S. Roberdeau, *cestui que trust*, conveys one-half of acre, deed dated Sept. 7, 1802.

Susan S. Roberdeau, *cestui que trust*, May 1st, 1809, p. 135, and Samuel Blair, Jr., her trustee, May 2nd, 1809, p. 144, conveyed the one-half of the one acre to Morris Robeson, his heirs and assigns, p. 141 and pp. 144 and 145.

Will of Morris Robeson, with power to his executrix to convey land, pp. 146 and 147, one-half of the one acre conveyed by Tacy Robeson, executrix, p. 151, ll. 29, 30 and 31, April 1st, 1834, to William P. Robeson and John P. B. Maxwell.

March 31st, 1832, William Shippen and wife conveyed one-half of the one acre of land to John P. B. Maxwell and William P. Robeson, recorded in Warren County Clerk's Office, in deed book 9, p. 511, bottom of page. The record of this conveyance was found since the hearing before the Vice Chancellor, and describes the one acre the same as the original deed to Jonathan Robeson.

William P. Robeson and John P. B. Maxwell now owned the whole of the one acre, each owning one-half part.

John P. B. Maxwell died without issue November 14th, 1845, pp. 69 and 70, leaving no will, p. 60, and his only heir-at-law was Anna M. Robeson, wife of William P. Robeson, pp. 69 and 70, who became seized of the one-half part of the one acre of land. Her husband, William P. Robeson, was seized of the other one-half part of the one acre of land.

Will of William P. Robeson, with power to his executor, George M. Robeson, to sell lands, p. 157, &c., bearing date November 28th, 1864.

Will of Anna M. Robeson, with power to sell real estate given her executor, George M. Robeson, bearing date March 3rd, 1884.

Deed of George M. Robeson, executor of William P. Robeson, to William O'Niel, bearing date 27th of June, 1895, pp. 163 and 164.

Also deed of George M. Robeson, as executor of Anna M. Robeson, to William O'Niel, bearing date

27th June, 1895; each conveys the one acre of land, pp. 166 and 167.

Deed of William O'Niel and wife to Marcus Hopler, bearing date August 30, 1895, conveys the one acre.

Deed from Marcus Hopler and wife to Joseph M. Roseberry, bearing date August 30th, 1895, conveys the one acre.

Deed of Joseph M. Roseberry to Harry W. Breckinridge, bearing date August 31st, 1895, conveys the one acre.

Harry W. Breckinridge, one of the Appellants, on August 31st, 1865, acquired title to one-half part of the one acre, by mesue conveyances, from William P. Robeson, and title to the other one-half part of the one acre of land by mesne conveyances from Anna M. Robeson, unless by the death of William P. Robeson Anna M. Robeson became seized in the whole of the one acre.

The Respondents seek by their bill to compel Harry W. Breckinridge to convey under an agreement set out in their bill, the whole of so much of said one acre of land as is covered with their road bed, appendages and ditches. The agreement was not made with Anna M. Robeson, who died many years after the death of William P. Robeson, and from whom Harry W. Breckinridge derived title to one-half part of the one acre of land, if not the whole of the one acre.

The agreement between William P. Robeson and John M. Sherrerd and the Belvidere Delaware Railroad Company could have no bearing whatever on the title of Harry W. Breckinridge to the estate in the one acre derived from Anna M. Robeson.

The Vice Chancellor held in his first opinion, pp. 37, 38 and 39, that the bill could not be maintained unless the agreement was set up; otherwise, a dispute as to title solely was presented to the Court.

A question arises whether William P. Robeson and Anna M. Robeson did not become seized of their estate, pp. 69 and 70, in the one acre during their cov-

erture and held the estate *per tout* and not *per my et per tout*; each is not seized of an undivided moiety, but both are and each is seized of the whole, and therefore of the estate of the husband and wife there can be no severance, and Anna M. Robeson surviving her husband, William P. Robeson, the whole estate remained to her. *Den v. Hardenbergh*, 5 Hals., p. 42, &c.; *Den v. Gardner*, Spencer, p. 559, &c.

The Chief Justice in the case of *Washburn & Campbell v. Burns & McCabe*, 5 Vroom, p. 19, says: "When an estate in land is vested in husband and wife during coverture, as they are one person in law, they will not hold—at least in the absence of express words for that purpose—either as joint tenants or tenants in common; they are each and both seized of the entirety." William P. Robeson could not burden the estate after his death or make any agreement affecting it after his death.

The original deed for the one acre made the 3rd day of May, 1744, by John Vannatta to Jonathan Robeson, pp. 115 and 116, and which is the same description as is contained in the deed to Harry W. Breckinridge, p. 175, makes the area embraced in the boundaries contain one acre of land. It makes the two sides eight perches long and parallel with each other, the second side twenty perches long. Now, if the fourth side is twenty perches in length and it is a right-angled piece it will contain exactly one acre of land. If either angle is less or greater than a right angle the area will not contain one acre. The fourth line says, "thence to the river so as to include the full one-half part of the spring and the said run to the place of beginning." The fourth line then must run from the extremity of the eight perches in the third line to the spring; then it runs down the thread of the spring and runs to the place of beginning, "so as to include the full one-half part of the spring and the said run."

This boundary will include a full acre and perhaps an infinitesimal fraction of an acre over, but hardly appreciable in area over an acre.

The first condition is that it must include one acre of land, and also the fourth line to be drawn so as to include half of the spring and run. The thread of the spring and run is curved so that the fourth line cannot be a straight line, see map on pp. 72 and 73. Its curvature, therefore, is a reason that the acre cannot be traced backward. The location of the acre is clear when we consider that the distance of the three lines must make the angles right angles in order to make an acre of land. The words in the deed describing the fourth line indicates a bulge and the map on pp. 72 and 73, also map on pp. 28 and 29, giving the location of the spring and run show the bulge. The area must contain one acre of land at the least and the little addition so as to include the bending out of the fourth line to take in one-half of the spring and run.

The map on pp. 72 and 73 shows the location of the one acre as surveyed for the ~~Respondents~~ ^{*De Affiant*} by Nathan F. Walker whose affidavit is on pages 71 and 72. The beginning point he has taken where the waters of the run and the river meet on the same level, that is, "The mouth of a run that vents into the Delaware from the spring."

The map shows that the one acre of land included in its area the whole of the land at the crossing of the public highway by the railroad.

The location of the one acre of land as made by Mr. Walker's survey, as is shown on the map, is supported by the affidavit of Margaret Frey, a daughter of George K. Lommasson, and granddaughter of Thomas Lommasson, from whom the Respondents at first attempted to claim title. This affiant is over sixty years of age and had always lived by that highway crossing. She speaks of her own knowledge and what her father and grandfather, Thomas Lommasson, told her. On page 61, line 21, beginning, she says, "that she had often heard her grandfather, Thomas Lommasson, and her father, George K. Lommasson, both say that Judge Robeson, meaning William P. Robeson, had one acre of land lying south of the Shippen spring and that he owned it, and

they said that it ran to a line on its easterly boundary eastward of the present railroad embankment and fence at the said public highway crossing, so that the whole land in said public highway at said crossing was contained in the Robeson acre; that the south line of said acre ran south of said crossing; the eastern line of said acre ran east of said crossing; the north line of said acre ran north of said crossing, and the western line ran west of said crossing.

And she further says, that neither her father nor her grandfather had ever possession of, or claimed title to, the said one acre, p. 61, bottom. She is supported in her testimony by the affidavit of John Frey, who was living there when the railroad was built, and before and afterward; also by the affidavit of Samuel Vannatta, a man past seventy-five years of age, who spent much of his time in and about this one acre, and had special reasons to know its location, pp. 63, 64 and 65.

She is also supported by the testimony of Thomas Lommasson who lived in the vicinity of the crossing many years, pp. 68 and 69. Also by the affidavits of Jabez G. Cyphers and Solomon Daily, two old men who have always lived close by the crossing.

The return of the public road at this crossing is on p. 111, which shows it to be a four-rod-wide road, and that it was laid out in 1786, although used to cart pig iron to the Delaware at an earlier date. The present public road at the crossing of the railroad is the exact location of this ancient laid out public road as shown by the affidavit of Nathan F. Walker on page and on map, pp. 72 and 73. The affidavits of the above named persons, and of Samuel A. Depue, who lived there from 1831 to 1855, pp. 66 and 67, and of George Lommasson, who was born near the crossing and lived there much of his life, pp. 65 and 66, shows this road to have existed, and was worked by the township authorities, beyond the memory of living men, and the testimony of the two last persons and of Margaret Frey, on pp. 76 and 77, show that the Robesons always retained possession of the one acre and that they had possession in 1880 and

afterward, pp. 76, (affidavit of Margaret Frey) and that it lay open from the river Delaware to the eastern side of the railroad at the crossing, and that one Levi Linn, in 1880 occupied the acre with a building, holding under Mrs. Robeson or her executor.

The map on pp. 28 and 27 shows Respondent's location of the one acre. That the location is wrong is clear:

(1) If two sides are twenty perches in length and two sides eight perches in width, it cannot contain one acre of land, ~~because~~ ^{because} it is a right-angled piece of ground. (See map.)

(2) The fourth line runs clear north of the spring and run instead of following the center line of spring and run.

(3) The beginning point is north of the run, instead of at or in the mouth of the run where it vents in the Delaware river.

(4) The two end lines must be eight perches in width. The widening out of these two lines is necessary in swinging around the side lines, in order to retain the same area. That is what was done on this map. The east line is eight perches and four links, instead of eight perches in the deed.

It is clear, therefore, that the survey made by Nathan F. Walker, on pp. 72 and 73, is correct, and that the one acre includes in its area the land in the public highway at the undergrade crossing of the Belvidere Delaware Railroad, where it was proposed to lay the pipes; also that the highway is an ancient highway, existing and used and worked before the railroad was built over it, and that the acre was in possession of the Robesons, at least, until after 1880, and that it lay open from the river bank at and through the crossing and road, and the road was much traveled.

The affidavit of J. M. Roseberry, on page shows that there is no record of any conveyance, devise, or of any transmission of title in any manner, from William J. Shippen, who became seized of the lands surrounding the one acre, in 1806, pp. 130, 131, 132, 133 and 134, to Thomas Lommasson, from whom the Respondents

first claimed that they derived title to the land in question.

If Thomas Lommasson ever owned any land there he must have held it by adverse possession, but the roadway antedated the acquiring of any title by William J. Shippen, and the affidavits show that Thomas Lommasson never occupied the roadway for any purpose, and never claimed title to the land in the road at the crossing, but, on the contrary, disclaimed any possession or title thereto. To obtain title by adverse possession the possession must be exclusive. Exclusive possession, from which title by adverse possession may be derived, cannot exist in a travelled and publicly worked highway. The idea of exclusiveness cannot exist where all people have the common right of passage, and the public authorities of amending and repairing; what is common to all is not exclusive as to one.

Bliss v. Johnson et al., admr., 94 N. Y. Appeals, P. 235, &c.

The charter of The Belvidere Delaware Railroad Co. laws of 1835, p. 229 sec. 8, prescribes the only method of acquiring lands for railroad purposes, viz: (1) by gift, (2) by agreement, (3) by condemnation. The method of acquiring title to land by the Respondents under its Charter by adverse possession is not given.

The 3rd sec. of the Corporation act, Rev. P. 177, says "No Corporation shall possess or exercise any Corporate powers, except such as shall be necessary to the 'exercise of the powers so enumerated and given' to those expressly given in its Charter."

The right to acquire title by adverse possession is not given by the Respondents' Charter expressly, and any power of acquiring title to land except by the method expressly given by its Charter is expressly prohibited by Statute.

If the Respondents had power to acquire title by adverse possession, the presumption is against a larger grant than an easement, in any case, *Washington Cemetery vs. Prospect Park & C. I. R.* 68 N. Y. 591. *Quimby vs. Vermont C. R. R.* 23 vt. 387.

Slote vs. Rives, 5 Ired. L. 237.

New Orleans Pac. R. Co. v. Gey. 32 La. An. 471.

Speaking of the exercise of the right of eminent domain in taking lands for public use, Judge Cooley says, "In any case, however, an easement only would be taken unless the State plainly contemplated and provided for the appropriation of a longer interest, Cooley's Const. Lim. 559. Every statute that takes away the estate of a Citizen is to be construed strictly.

Washington Cemetery v. P. P. & C. I. R. R. Co. 68 N. Y. 694.

If the Respondents could by law acquire any interest by adverse possession in the land, it would be simply an easement, and for all other purposes the land could be used by the owner so as not to interfere with operation of the Railroad.

Taylor vs. New York & Long Branch R. R. Co. 49
v. P. 28.

But the Respondents claim that they entered into possession and held the land upon which is construed their road bed, under a written agreement with William P. Robeson and John M. Sheirerd, for the conveyance of their lands owned together and of each separately. Such holding is permissive and not adverse, and adverse possession will not begin to run until the full and complete performance of the agreement on the part of the Respondents.

Appleby vs. Obert, 1 Harr, P. 344.

Wash. on Real Property, Book 3. Page 162.

Brown vs. King 5 Mete. 173.

Knox vs. Hook 12. Mass 329.

McClannahan v. Barrow, 27 Miss. 664.

Slamper v. Triffin 12 Ga. 450.

Harris v. Richey 56 Penn. St. 395.

McCracken v. Roberts 19 Id. 390.

Cook vs. McClure 10 Gratt. 205.

Doe vs. Roe 32 Alt. Rep. 391.

Jackson v. Comp. 1 Cowen P. 606.

Jackson v. John, 5 Cowen P. 74.

Briggs v. Prosser, 14 Wend. 227.

Boorst vs. Boyd 3 Sand. ch.

Ripley v. Gale 19 Vt. 150.

Great number of cases cited in 1 Ency of law P. 229. note 1.

Smiths loading cases vol. 2. Part 2 P. 721.

Harvey vs. Tyler, 2 Wall, P. 876.

The Respondents paid no money for the property on on the agreement and made no crossing on the strip of land or lane lying between the lands of Abram McMurtrie, Jr., and John Hoff, Jr. And made no crossings for teams or otherwise to the water power canal, mill properties and land, lying between the railroad and the Delaware river, existing and used by Robeson and Sherrerd at the time the railroad was built. The milling properties were in operation at the time the railroad was built. The water power canal was before that time constructed and in use and was used with the grist and saw mill properties. The lands of Robeson and Sherrerd were cut in two parts by the building of the railroad for a distance of between one and two miles, yet there was never built any crossing for teams or otherwise ; nor was there any access across the railroad from the lands on one side of the railroad to the lands on the other side of the railroad. All access to the lands between the railroad and the Delaware river, and the river itself and to the water power, canal and milling buildings, were as effectually cut off by the building of this railroad as though an unfathomable gulf intervened. The affidavits of Solomon Daily, pp. 73 and 74, Jabez G. Cyphers, pp. 74, 75 and 76, John H. Dahlke, pp. 78, 79, 80 and 81, and William B. Titman, pp. 77 and 78, show these facts.

There is no uncertain language in the agreement between Robeson and Sherrerd and the Belvidere Railroad Company, see p. 100, beginning line 13, "And the said company agree to pay the said sum of

money for said land and to make crossings for teams or otherwise at such places as shall be necessary for the purposes of said Robeson and Sherrerd, with good approaches to said crossings." Were not crossings with good approaches necessary for the purposes of Robeson and Sherrerd to their grist mill, saw mill, water power canal, all of them existing and in operation at the time of the building of the railroad? Was not access necessary to the land and timber lying between the railroad and river? The fact of a necessity of a crossing depended upon the condition of things as they were when the railroad was built. There was a grist mill, saw mill, water power canal and the timber on lands between the railroad and the river, as well as the land itself, existing and used by Robeson and Sherrerd when the railroad was built. Were not crossings necessary to give access to them? There has not been and is not to-day any access whatever to them. There they are with all access to them cut off by the railroad, and being so cut off cannot be used.

The Vice Chancellor on page 108, quoting *Erie R. Co. vs. Del. Lack. and Morris & Essex R. R. Co.*, 6 C. E. Green, 289, got the language somewhat twisted, and then put it in quotation marks.

The language is: "Fair dealing and good conscience obviously required the complainants to assert their right at the outset." &c.

The respondents had the right to build their road, but after it was built then upon complying with what was required of them in the agreement, they were entitled to a conveyance. But the trouble is that after the railroad was constructed the respondents ignored the rights of Sherrerd and Robeson and failed to perform the contract which was beneficial to Robeson and Sherrerd, or either of them. Robeson and Sherrerd had the right to say to the respondents (so to remain passive) we will not give you title to the land occupied by you until you perform the agreement. The respondents cannot cry out against what their neglect to perform the agreement has produced.

What would specific performance now result in. There being no crossings of the railroad the owners of the Robeson and Sherrerd lands would never have access to the river, water canal, or lands west of the railroad and between the railroad and river, to put them into a condition by which shafts and openings under the railroad and the additional expense in building a water canal could be demanded of the respondents.

Not only have the complainants not performed their part of the agreement, but they have allowed forty-five years to elapse since the making of the contract and the filing of this amended bill for specific performance. This Court said in the case of *Lawrence vs. Lawrence*, 6 C. E. Green, p. 321, "This suit is in the nature of a suit for specific performance, which requires diligence on the part of the complainant both in performance and in bringing his suit."

In the case of *Johnson et al., vs. The Board of Commissioners of Somerville*, 6 Stew. p. 152, &c., the Court says: "I can find no instance in which one so remarkable for its antiquity has ever before been presented for judicial approval." There it was 63 years. Here it is 45 years.

The Court of Errors and Appeals in the case of *Merritt vs. Brown*, 6 C. E. Green, p. 406, says: "The usual maxim is that a party seeking specific performance must show himself ready, desirous, prompt and eager, to perform the contract; unreasonable delay will, of itself, be often a bar to a suit of this character, when time is not thus either expressly or impliedly of the essence of the contract, if the party seeking a specific performance has been guilty of gross laches, or has been inexcusably negligent in performing the contract on his part, or if there has, in the intermediate period, been a material change of circumstances offsetting the rights, in all such cases Courts of Equity will refuse to decree any specific performance. In the above case there was a delay of two years.

Approved in case of *Haughwout and Pomeroy vs.*

Murphy, in 7 C. E. Gr., p. 549. The delay in this case was 5 years. The Court says: "After this long delay it would be inequitable to enforce specific performance against the defendant." Affirming the same case in 6 C. E. Green, 118.

The Court in the case of *Garris vs. Garris*, 1 C. E. Gr. p. 79, declared that specific performance will not be decreed where the party seeking it has been guilty of laches, or negligent in his application.

In the case of *Van Doren vs. Robinson, et al*, 1 C. E. Green, p. 263, the Court says: "In the language of Lord Cranworth, specific performance is relief which this Court will not give, unless in cases where the parties seeking it come as promptly as the nature of the case will permit." Lapse of time will prevent specific performance where the delay has extended through any extended period. A delay of five months was held fatal. *Mix vs. Baldue*, 78 Ill. 215.

Two years, 18 Fed. Rep. 120. Three years, *Boston &c. R. R. Co., vs. Bartlett*, 10 Grey, (Mass.) 384. *Fuller vs. Hooly*, 2 Allm., (Mass.) 324. Four years, *McCabe vs. Mathews*, 40 Fed. Rep. 338. Five years, *McMiller vs. McMiller*, 7 T. B. Mon. (Ky.) 560. *McWilliams vs. Long*, 32 Barb. (N. Y.) 194. *Chllilheevie Iron Co. vs. Gardner*, 79 Va. 305. *Fitch vs. Wallard*, 73 Ill. 92. Over six years, *Henderson vs. Hicks*, 58 Cal. 364. Eight years, *Ruff's appeal*, 117 Pa. St. 310. Nine to eleven years, *Broods vs. Ward*, 8 Mo. 217. *Pickering vs. Pickering*, 38 N. H. 400. *Strickland vs. Fowler*, 1 Dev. & B. Eq. 629. *Glasscock vs. Nelson*, 26 Texas, 150. *Alexander vs. Hoffman*, 70 Ill. 114. *Hedenburg vs. Jones*, 73 Ill. 149. *Iglehart vs. Vail*, 73 Ill. 63. *McKin vs. Williams*, 48 Texas, 89.

In the case of the *New Barbadoes Toll Bridge Co. vs. Vreeland* 3 Gr. p. 159, the Court decided the case upon the ground that the conveyance was an advancement to the son, and that the son was present at the making of the agreement with the Toll Bridge Company and took part in it and that the Toll Bridge

Company had at once performed all that was required of them by the agreement.

In *Lawrence vs. Lawrence*, 6 C. E. Green, p. 321, the purchasers had paid the whole consideration.

In the present case the money consideration was not paid. The benefits to be derived from the building of the railroad by the building of crossings over or under the railroad and approaches to the crossings to give access to the milling properties, water power canal and to the Delaware river and the lands lying between the railroad and the river, which, at the time of the building of the railroad, were then existing and freely used by Robeson and Sherrerd, were now by the building of the railroad, as effectually cut off and isolated and made as utterly useless to Robeson and Sherrerd as through a Chinese wall had been built in the place of the railroad, with no passages or openings through it. Ruins now mark the condition in which the railroad left these valuable lands and milling properties by throwing around them an impassable barrier and exclusion from all communication with the outside world. The want of crossings produce this result, and crossings would give free access to these properties and the means of enjoying benefits, and they were therefore associated with the money consideration.

If access to these properties were cut off for the want of crossings how could a water power canal or any other condition of things be created which would necessitate openings under the railroad for the passing of shafts, belts or contrivances for the transmission of power, &c? Crossings of the railroad at the time of the building of the railroad were necessary, and since that time have always been necessary. It is part of the consideration and required by the agreement, and to be performed by the respondents. They have not performed the agreement. Will the Court allow the respondents to take these properties, all embraced in one agreement, and compel specific performance of it by parts?

The respondents should have brought all the parties in interest in this contract before the Court. The contract is entire and indivisible.

The case of *VanBlarcom vs. Kip*, 2 Dutch., pp. 351-361, referred to by the Vice Chancellor, was determined upon the question of adverse possession. It has nothing to do with this case.

In this case the agreement was made in 1851. In 1864 William P. Robeson died. Why a deed was not demanded can readily be conjectured; the respondents took a deed of conveyance from every other person along the route.

With the death of Robeson in 1864 and Sherrerd at an earlier date, all knowledge of the agreement and its contents passed away, except to those who had access to the safe of the respondents. For thirty-two years after the death of William P. Robeson those interested in his estate had no knowledge of its provisions, and valuable milling rights and great water power decayed and were unutilized, due to the concealment of this contract by the respondents. If the water power canal, which operated mills at the time of the building of the respondents' railroad, should be now extended it would run directly into the railroad embankment wall, which at its base is washed by the waters of the Delaware river. The extension of the old water power canal would have to be made on the bed of the Delaware river at an enormous expense, and "openings under their railroad for the passage of belts, shafts or other contrivances for the transmission of power" would be very costly to the respondents. If these proceedings had not unearthed this contract who would have known that such an agreement existed?

The Vice Chancellor again cites Fry on Specific Performance, page 426, sec. 738, "where a contract is substantially executed and the complainant is in possession of the property," &c., exactly. But what have the respondents ever done on the property of Robeson and Sherrerd, or either of them, except what

was for the respondents' interest? Is there a single instance in which they have done anything for Robeson and Sherrerd or either of them? What the respondents have done was to hide the agreement away in a safe and never attempt to do anything required of them by the agreement, and by not complying with the agreement have destroyed the value of the Robeson and Sherrerd properties. How could Robeson and Sherrerd, or the successors to them in interest in the property, compel specific performance with the agreement in the custody of the respondents? (There was no record of the agreement.) Surely after the death of Robeson and Sherrerd no one knew its contents, and it must be remembered that Robeson and Sherrerd died soon after the completion of the railroad.

In the case of *Ludlow vs. Buckingham*, 8 Stew. p. 84, the Court says: "The party asking specific performance, to be entitled to relief, must always appear to be honest and just in the transaction, Lord Redesdale in *Harnett vs. Yielding*, 2 Sch. & Lef. 549, decreed that the Court have constantly held that the party who comes into equity for a specific performance must come with perfect propriety of conduct, and Sir William Grant, Master of the rolls, said in *Cadman vs. Harner* 18 ves. 10, that a party seeking specific performance, to entitle himself to relief, must be liable to no imputation in the transaction."

Robeson and Sherrerd by the agreement were to convey land "as may be sufficient for the construction of said railroad with its ditches and appendages." Where the pipes are to be laid in the public highway the land was not necessary for the construction of the railroad. The public highway was crossed by force of their charter by an arch. The land in the road was not necessary for the construction of the road bed, therefore not within the conveying part of the agreement.

The contract must describe the land involved with such accuracy and clearness that it can be identified, its quantity known, and its boundaries determined beyond the possibility of future controversy. *Am. Ency. of Law*, vol. 22, p. 963. The bill of complaint must certainly set it out with accuracy and clearness. In fact the complainants do not set out and description or boundaries at all, nor do their affidavits supply the deficiency. How can this Court decree a conveyance of a piece of land in dispute as to its location? much less can it use its injunction powers in a case where the location of the land is in dispute and the boundaries do not appear.

The Vice Chancellor further says: "The bill not only sets out the contract, but expressly gives the width of the embankment over the premises in question. The complainant also produces in evidence a map on which the route is clearly delineated by

courses and distances." The difficulty here is that that land covered by the road bed and as surveyed and contained on the map of respondents never did belong to Robeson, and that is self-evident from the description of the land in Robeson's deeds and the survey and map of respondents. What deeds to Robeson do the respondents produce to show that their description was Robeson's property? They have none and have offered in this case none. How do they fix the boundary then? What documentary evidence in the case is there that supports their survey? There is none and they have no parol evidence and do not show the loss of Robeson's deeds.

The respondents must put their finger on the piece of land and say this it is and prove it to be so by competent evidence, metes and boundaries. The appellants say it is not so, and they are supported by the conveyances to Robeson.

The respondents must stand or fall on their bill. They cannot identify the property.

If the Court should think that specific performance of an indivisible agreement, applying to a tract of land as one body, could be enforced as to a part of that one body of land, without regard to the burdens placed on the respondents by Robeson, then from the fact that a crossing of the highway on this land by an arched bridge exists, presents the law applicable to such a case.

The one acre of land includes the crossing of the highway by the respondents' railroad. Besides the fact that the charter of the Belvidere Delaware Railroad Company gives them no power to acquire title by adverse possession, yet if they had a right, in the case of a highway, of crossing, still they can not acquire any complete easement in the soil of the highway further than is qualified and limited to the special purpose of crossing with their rails. Rorer on Railroads, vol. 1, p. 500; Bergan, Oldtown & Milford R. R. Co. vs. Smith, 47 Me. 34.

I have stated above that there is no conveyance to Thomas Lommasson of the lands in the public highway or of the lands adjacent to it. Therefore, if he had title at all, he must have held it by adverse possession, but the testimony of Margaret Frey and others, grandchildren of Thomas Lommasson, show that he disclaimed any title to it, or to the one acre, and never had possession of either, but, on the contrary, Margaret Frey says that the lands at the crossing to the river Delaware lay open and unfenced and that the Robesons occupied it by a building in which lived Levi Linn. That was both before and after 1880. The affidavits of George Lommasson and others show that it was a much travelled highway. The necessity of it caused it to be used long before it was laid out in 1786. Not only was this road used to haul pig iron to the "old landing" to be shipped down the Delaware river to market, but also there was located a ferry communicating with public highways on the opposite side of the river, and in 1799 and afterward with the public highway that ran along the Delaware river to Belvidere, N. J. It has been invariably held by the courts that to acquire title in the soil of the highway it must be enclosed and the possession exclusive for a period of twenty years, as stated in Coburn vs. Ames, 52 Cal., 385, "If, therefore, a stranger were to enter upon and enclose a portion of the highway and exercise exclusive acts of ownership upon it for

twenty years or more, he would gain a title to the same."

The idea of exclusive possession is indicated in the above case by the building of the fence and severing the land fenced off from any use by any one, and it must have at the same time beside exclusive possession, a possession that is actual, open, notorious, continuous, peaceable and hostile.

In the case of *Bliss vs. Johnson*, 94 N. Y., (Appeals) p. 241, the Court held that sometimes piling a load of lumber in the road along the fence near his property, and annually mowing and converting the grass growing upon a plot of ground in the road, were insufficient to establish title in a public highway by adverse possession. "While the law authorizes the owner of lands adjoining a highway to use and occupy it in any manner not inconsistent with the rights of passage thereon by the travelling public, yet its permanent occupation by enclosure or cultivation is manifestly inconsistent with such rights of passage." "That the defendant Johnson did not take and hold the actual occupation of the highway in question does not militate against his title, inasmuch as he had all the possession of the property in question of which it was legally susceptible. The settled principles of law require Courts to consider the true owner as constructively in possession of land to which he holds the title."

In the case of *Wheeler vs. Spinola*, 54 N. Y., 387, the Court held "that cutting a few loads of grass upon an otherwise unoccupied and unenclosed lot in each year for the space of twenty years would not constitute a sufficient possession to confer title upon the person performing such acts of possession. In *Miller vs. Downing*, 54 N. Y., 631, it was held that one who was accustomed to have a wood pile upon a vacant lot for thirty years and had buried potatoes on it for six years, had acquired no title to the lot by such a possession.

The taking of land by condemnation or by contract is equally a compulsory process of taking land. The owner has no volition in the matter. If under the circumstances he does not make the best contract possible, he will have it taken from him by condemnation proceedings.

The policy of the Government is to foster and develop manufacturing industries in all its various phases ; also the natural resources of the land, such as the extraction of coal and ores from the ground ; the quarrying and use of limestone and building stone and the making of the soil into brick and its use for other commercial purposes. The interchange of these commodities at the least expense to the people is of the highest value to the State. To effect this beneficial purpose of the State, modern appliances and new inventions and discoveries must be used by the producers and manufacturers as well as the best facilities for marketing their products. The spirit of industrial and commercial expansion is the genius of the common law. It adapts itself to meet the varied wants and improvements of the age. It does not clog and fetter industrial and commercial progress by fastening to it the industrial and commercial habiliments of two or three centuries ago. It was never meant that the building of a railroad in every instance over thousands of miles should determine the use to be made of the severed portions of land through which it passed in going from the Atlantic to the Pacific, or from north to south. If the building of the railroad could limit the use of the crossing and the crossing the use of the several lands, it would be taking private property without just compensation to the owner, because at the time compensation was given it was given according to the condition of things then existing. If it was afterward found necessary to adapt the severed lands to a more beneficial use such use could not be had because of the limit set by the crossing, and that was never intended either by condemnation proceedings or by contract reserving a crossing. The purpose

of the crossing between the severed portions of the land was to give the same continued freedom of communication as existed prior to its being severed. Nothing abridged his right in the crossing before the railroad came ; what should afterward abridge it when it was evidently intended that the crossing should give the same freedom of communication between the severed portions as existed before ? The crossing was retained for the use of the several portions of the land in whatever manner they should thereafter be used. The use of the crossing sets no limit to the use of the land. The absolute dominion which the appellant Breckenridge has in the severed portion of the land gives him every use of it from the surface of the earth downward and upward. The crossing is for the benefit of the land for any use to which the appellant might devote it. Is there any reason in saying that he can lay pipe in the several lands for the conveyance of oil and yet cannot connect the pipe on each side after crossing through the crossing. The crossing is a means of communication ; it was made to be retained as such by Robeson. The oil is the appellant's. He has the right to lay pipe and run the oil through the pipe on the severed portion owned by the appellant, and consequently the right to use the crossing as a communication between his lands.

In the case of the United States Land Co. vs. Great Eastern Railway Co., 17 Equity Cases, 167, Vice Chancellor Malins held that a crossing of a railroad did not create the relation of a dominant and servient tenement. Affirmed in 10 Ch. app., 586.

And the Vice Chancellor further says. "And when he, or the legislature for him, has settled what those communications are to be I apprehend the true view of the case is, that the owner has the most unlimited power of using the land on either side for any purpose to which it may be expedient at any time, however distant, to apply his land."

On appeal the Court said there was no question that a tunnel or bridge under or over the railroad could be used for any purpose to which it may be expedient, at any time, however distant, to apply the land, and they applied the same law to level crossings, but not to interfere with the usual traffic of the railroad, but the principle of law applicable to the case as laid down by the Vice Chancellor was affirmed.

In the case of *Newcomer vs. Caulson*, 5 Chancery Div., p. 138, the same Vice Chancellor said that the grant of a way in an allotment case "is not the case of an easement in any way, but it is the case of a grant of a road, which road is to be used for all purposes."

The Vice Chancellor further says, "Now, I want to know what sort of road it may be, I rely on two decisions on that subject, and the leading case, in my opinion, is that of *Daud vs. Kingscot*. (6 M. & W., 174.) Therefore, the decision in *Daub vs. Kingscot* was that a reservation of a right of way from and to the colliery entitled the man who had the right to adapt it to the improvements of the age, and the improvements of the age required he should have a right to use a locomotive over the land and a railroad was built over the land with cuts and embankments. The grant of the right of way was in 1647 when railroads were not known.

"If there is any other case to refer to I think it is the case of the *United Land Company vs. Great Eastern Railway Company* (supra) which I have decided originally and which was affirmed on appeal. I decided it meant a right of way for all purposes for which the land could be lawfully used in all time, and my decision on that subject was affirmed on appeal."

This case was also affirmed on appeal, 5 Chan. Div., p. 141.

In the case of *Daub vs. Kingscot* a railroad was constructed under the grant of a "way leave."

The same principles of law were affirmed in *Finch vs. Great Western Railroad Co.*, 5 Ex. D., 254, and the Court, on page 263, says; "As to the point that in

Newcomer vs. Caulson (*supra*) the road led to the allotment in its new condition, whereas in this case the cattle pass away from it by the railway it appears to us that it would be impossible to maintain that if people were to have free access by a private way to new houses built on an allotment, they would be bound, as often as they used that way, to return by it, instead of using any other road which might happen to be open." In this case cattle were brought throughout the country and driven over the road to a cattle pen and were then taken from the pen to the railroad station away from the way leading to the pen. The Court held they had a right to do so.

Gale on Easements, 6th Ed., page 321, etc., says that these cases overrule the case of *Allen vs. Gomene*, (1740) 11 A. and E., 759.

In the case of the *United Land Co. vs. Great Eastern R. R. Co.*, 17 Eq. Cases, the Vice Chancellor says: "The law is perfectly settled that if one man has a right of way over the land of another to go to a particular place, he cannot use it for the purpose of going to that place and a place beyond it." He has agreed that it shall be used for a particular purpose, and having so agreed, he is not bound to submit to its being used for any other purpose. But this is not a case of a servient tenement. I cannot look upon the railroad as the servient tenement."

This crossing is not the case of going over land to a particular place, but it is unlimited in its character.

In *Abbett vs. Butler*, 59 N. H., 317, where agricultural lands had been converted into a quarry, after the grant of the way, it was held not to be a nuisance to haul stone therefrom across the servient tenement.

In *Gunson vs. Healy*, 100 Pa. St., 42, Gunson owned a way across Healy's land. He gave leave to one Kelso to land lime at his (Gunson's) wharf and haul it over the way. Healy objected and erected a fence. It was held that the use by Kelso was authorized and that Healy had no right to exclude Kelso.

The case decided by the *United Land Co. vs. Great Eastern Railway Co.*, 17 Eq. Cases, p. 164, is the first decided case applying the law to railroad crossings. The Vice Chancellor says: "A question of very considerable importance, as I think, to the public in general, but at all events to the land owners, is also raised, as to what is the effect of having a communication under, over or across a railway." The decision of the Vice Chancellor was affirmed on appeal and has since been followed by other cases in England and in this country.

The requirements of the age and new wants changed a "way leave" into a railroad with its cuts and embankments as in *Daub vs. Kingscot* (supra). The coal was taken from the colliery by railroad with engines and cars and distributed throughout England for commercial purposes.

Cattle were purchased from a large surrounding country and taken over the "ways" beyond the land over which was the way to the railroad depot and shipped to market as in *Finch vs. Great Western R. Co.*, 5 Ex. D., 254.

And the people occupying houses built upon land of the *United Land Co.* had the right of going over the crossing of the railroad and going where they pleased as in the *United Land Company vs. Great Eastern Railway Company*, 17 Eq. Cases, p. 164, etc., S. C. 10 Chan. app. 586.

And *Gunson* had the right to permit *Kelso* to land lime at his wharf and haul it over the road between the lands of *Healy* and thence to places where he desired to sell it as in *Gunson vs. Healy*, in 100 Pa. St., 42.

The principle laid down in these cases "that the owner has the most unlimited power of using the lands on either side for any purpose to which it may be expedient, at any time, however distant, to apply his land," applies to this case.

The crossing is not restricted in its use. The enjoyment of the land on either side of the crossing is not restricted in its use and the owner having the "most

unlimited power of using the land on either side for any purpose," has also the same unlimited power of communication between his lands through the crossing so that he may fully and freely enjoy the benefits of those uses of his land to which he has devoted them.

William P. Robeson and Anna M. Robeson were seized of an equal estate in the one acre and she became seized during her coverture with William P. Robeson of the estate which her brother John P. B. Maxwell, held in the one acre, an estate equal in extent and duration to that of her husband's. Mrs. Robeson survived her husband and it is our contention that she then became seized of the whole of the one acre, and by the various mesne conveyances from her to Harry W. Breckenridge, he is now seized of her estate, and possession being always shown in the Robesons and their successors in estate to the time of conveyance to Breckenridge as well as his possession since becoming seized.

If the Court is of the opinion that William P. Robeson and Anna M. Robeson, husband and wife, held their equal estate in the one acre of land *per my et per tout* and not *per tout*, and further, if the Court is of the opinion that the respondents are entitled to a conveyance of the estate of William P. Robeson in the one acre, upon their agreement and the pleadings and proofs, still the respondent, The Belvidere Delaware Railroad Company, and the appellant Breckenridge, are tenants in common, each of a moiety.

The respondents are transporting all species of merchandise, and in great quantities, across the *locus in quo*, and they seek to prevent their co-tenant, who is in possession, from enjoying the same privileges, in one particular only, with the respondents. It is not denied by the respondents that the laying of oil pipes for the transportation of petroleum, crude and refined,

results in the cheapening of the commodity to the public and is therefore of vast concern to the people from whose sovereign power the respondents derived their special privileges, yet the respondents, who are the recipients of the people's bounty, seek to deny to them, from pure selfishness and greed, the enjoyment of cheaper oil, and the benefits derived from free competition with the giant monopoly, The Standard Oil Company, who is the Satan, wearing the livery of the respondents, in this case.

The Courts have always been tender in using what was once the weapon of tyrants in the case of tenants in common. In the case of *Tworl vs. Tworl*, 16 Ves., 128, the Chancellor, Lord Eldon, said that his experience did not furnish him with a single instance of an injunction between tenants in common.

In 3 Bro. Ch. Rep., 621, the Chancellor said that he had no idea of an injunction to stay waste where the person applying for it is tenant in common with the person in possession. There are only two grounds upon which courts intervene between tenants in common, and that is where one is out of possession and the application is made because of destruction of the estate, or insolvency. *Obert vs. Obert, et al.*, 1 Halst., 408 and 409.

In *West vs. Walker*, 2 Green, p. 279, &c., "The ancient doctrine of the Court of Chancery was not to interfere by injunction in case of trespass. The practice of the Court is now more liberal, yet in cases of trespass it still expects a strong case of destruction or irreparable mischief to be presented.

"Cutting of the timber from a tract of pine land, valuable only or chiefly for the wood that is upon it, is not such a case of irreparable mischief as will warrant the granting of an injunction.

"Nor will the Court interfere by injunction though the bill charges that the actual trespassers are poor and unable to respond."

The Court of Errors and Appeals in the case of *Citizens Coach Co.*, appellants, and the *Camden Horse*

Railroad Company respondent, 2 Stew., page 299, etc., approves of the language used by Chancellor Williamson the elder, "The Court always to restrain a trespasser expects a strong case of destruction or irreparable mischief to be made, or that the trespass should have continued so long as to become a nuisance, a perseverance in committing acts of trespass is not sufficient."

Atty. Gen. et al. vs. City of Paterson, 1 Stockton, p. 624.

In the case of Stevens vs. The Paterson and Newark Railroad Company, 5 C. E. Green, the Chancellor, on page 137, says: "With regard to the injury, it is in no sense a strong case of danger, imminent and impressive. The only irreparable injury is taking from the complainant a right of property without compensation first made. He has his remedy by action at law as often as loss or damage occurs, were the right clear, the injury not such as would entitle the complainant to the preventive remedy by injunction."

The language of Chancellor Williamson cited in Citizens Coach Company vs. Camden Horse R. R. Co., 2 Stew. Eq., 299, is approved in case of the Central R. R. Co. vs. Standard Oil Company, 6 Stew., p. 131.

(This latter is a case where the Standard Oil Company did not claim any title to the land, but relied only upon the authority given them by the city. Yet the injunction applied for by the receiver of the Central R. R. Co. was to restrain the Standard Oil Company from flowing oil through their pipe, and to restrain the Standard Oil Company from resisting the tearing up of the pipe. Two miles below the crossing in question the Standard Oil Company passed a line of pipe under the highway beneath an arched crossing of the respondents' railroad. The line of pipe has been laid and a continuous stream of oil flowed through it for several years, yet there has been no leakage or damage from fire, or threatened injury of any kind. The respondents have never thought the Standard Oil line a source of danger or of irreparable

mischief and, indeed, they do not base their relief in this case on that ground. It is solely on the ground of title that the respondents seek relief. Their claim of title is disputed by the appellants.)

Morris Canal and Banking Co. vs. Central R. R. Co. et al., 1 C. E. Green, p. 420.

De Veney vs. Gallagher, 5 C. E. Green, p. 33.

Van Winkle vs. Curtis, et al., 2 Green (Ch.) p. 432.

Morris Canal Company vs. Society, etc., 1 Hal. Ch., 203.

(This case comes within the principal case of Leonard vs. Hart, 15 Stew., 416, and not within any of the exceptions laid down in that case. Haggerty vs. Lee, 18 Stew., 256.)

The equity of the complainants is disproved by the answers and affidavits of the defendants.

Quackenbush vs. VanRipen, Saxton, p. 476.

Wooden vs. Wooden, 2 Gr. Ch., p. 429.

Still vs. Hilton et al, 4 Stew., p. 385. (Errors and appeals.)

Keron and Hirt vs. Coon and Platt, 11 C. E. Gr., p. 26.

Moise vs. O'Niel, 8 C. E. Gr., p. 207.

Inhabitants of Winslow vs. Hudson, 6 C. E. Gr., p. 172.

Mitchell vs. Mitchell, 5 C. E. Gr., p. 234.

Eaton vs. Jenkins, et al., 4 C. E. Gr., p. 262.

Morris Canal and Banking Co. vs. Fagan, et al., 3 C. E. Gr., p. 215, etc.

Soffern, et al., vs. Butler, et al., Id. 320.

Van Houten vs. First Reformed Dutch Church, 2 C. E. Gr., p. 127, etc.

Marshman vs. Conklin, et al., Id. 262.

Thorp vs. Pettitt, 1 C. E. Gr., p. 488.

Halsey vs. Rapid Transit Street Railway Company,
2 Dick. p. 387.

Hinchman, et al., vs. Paterson Horse Railway Co.,
26 C. E. Gr., p. 8, bottom of page.

The agreement of Robeson and Sherrerd with the Belvidere Delaware Railroad Company of June 25th, 1851, pp. 28, 29 and 30, also contained in the Vice Chancellor's opinion on pp. 99 and 100, says: "Said Robeson and Sherrerd * * * * hereby agree to convey in fee simple each so much of the land as belongs to himself, separately, and both so much of the land they now hold in common."

On the 25th day of June, 1851, William P. Robeson and Anna M. Robeson together owned the one acre of land; each acquired title to the equal one-half part of it. William P. Robeson by this agreement undertook to convey in fee simple what land belonged to him separately, and also what belonged to him in common with Sherrerd, but he did not undertake by that agreement to convey lands which he owned with Anna M. Robeson. He agreed to convey so much of the land in fee simple which he owned separately between lands of William White and John Hoff, Jr. He was careful to use the word "separately." He does not undertake to convey Anna M. Robeson's one-half interest in the one acre of land, yet he agrees to convey what belongs to him separately, distinct from any part ownership with another, in fee simple, and what belongs to him in common with Sherrerd. He is particular to mention the name of Sherrerd, so that lands which he owned with another would be excluded from the agreement. If he thought that it was necessary for Sherrerd to join with him in the agreement to convey their common land why did he not regard it equally necessary that his wife should also join with him in signing an agreement. His wife's estate or interest is not mentioned in the agreement in any way. He does not undertake to convey. He is careful to say "land belonging to himself separately." There is the distinction, "separately" and "in common,"

but only in common with Sherrerd. If it is urged that it included his interest in the one acre why would it not also include his interest with Sherrerd? Why did he mention Sherrerd's name if "separately" meant any land which he owned with another? *Enumeratio unius est exclusio alterius*. If Robeson had intended to convey the whole interest in that part of the one acre to be covered by the railroad, if such were contemplated at the time, would not the Railroad Company have been careful to mention that fact in the agreement, or to have had Mrs. Robeson sign an agreement? The very silence in the instrument speaks of its intent and purpose. Why buy of Robeson and Sherrerd what they owned together? Perhaps the Railroad Company expected to run entirely clear of the one acre of land and when they built it four or five years afterward they were careless and did not ascertain the boundaries and extent of the acre. We cannot delve in the secrets of the human mind to ascertain the reason of things that are done or omitted. We must read their expressed purpose by what they have given us in writing.

If the respondents have wholly performed their part of the agreement they have held the property by adverse possession, and then it became a matter to be determined by a jury. It was said in *Foulke vs. Bond*, 41 N. J. L., 547, "Actual occupation by residence, cultivation or enclosure of part of the tract, or by other conspicuous acts of ownership by the dis-seissor, may serve to give character to his acts of possession over the residue, but will not relieve him from the obligation of satisfying a jury that his possession has been of such a character as under the circumstances may reasonably be expected to have informed

the true owner of the nature of the possession and the extent of the title proposed to be acquired under it."

The Vice Chancellor in his opinion on p. 101, says: "There is no pretense but what such possession was not taken with the full knowledge of William P. Robeson." This language corresponds with the following statement of the respondents, p. 14, bottom, and p. 15, top, in their bill, "And your orators further show

* * * * that the true location of said lot is uncertain by reason of the fact that although the said spring and run of water referred to in the description, as well as the said river Delaware, remain as visible boundaries, yet the said tract has never, within the memory of living man, been defined on its southerly side by any monument whatever, but has always lain open in common with adjoining lands on that side and vacant and unoccupied. * * * *

That your orators have heretofore supposed and *claimed* that said lot lay wholly to the north of said crossing." It seems that the respondents have not yet ascertained where the acre lay and I cannot see how they could notify Robeson of that which they did not know, or how they can assert the possession of land under an agreement, the location of which they do not know. How could Robeson acquiesce for nine years or any other time in what he did not know, according to the respondents' contention and the Vice Chancellor's statement? And how has his executor knowledge? Did the respondents tell him of their adverse claims? Did he acquiesce in what the respondents themselves have no certain knowledge of?

In *Foulke vs. Bond*, 12 Vroom, p. 545, the Court of Errors and Appeals say that "notoriety of the adverse claim, under which possession is had, is a necessary constituent of title by adverse possession." And again on page 538, the Court says: "It is with respect to those two essential qualities of the possession, on which title by lapse of time is founded, hostility in fact to the title of the true owner and notoriety of the adverse claim."

The animus of the entry on the land must be made known to owner by the occupant. By the respondents' statement in their bill on pp. 14 and 15, they say they did not know the location of the one acre and did not suppose that they were on his land in the crossing.

The point is that the respondents do not claim the title to the land in the crossing from Robeson.

In Jackson vs. Porter, 1 Paine (U. S.) 457, it was said that it is not possession alone, but possession accompanied with the claim of the fee, which by construction of law is deemed *prima facie* evidence of such an estate. (Buswell on Limitations and Adverse Possession.) For the same reason a squatter cannot acquire title unless he has denied the title of the true owner. Socket vs. McDonnell, 8 Biss., (U. S.) 294; Tuttle vs. Jackson, 5 Wend., 213.

The possession must be held *animo clamandi*.

In Jackson vs. Wheat, 18 Johns., (N. Y.) p. 44, the Court says, "The fact of possession and the *quo animo* it was commenced and continued are the only tests."

Grant vs. Fowler, 39 N. H., 101.

Magee vs. Magee, 39 Miss., 132.

Davenport vs. Lebring, 52 Ihwa, 364.

Harvey vs. Tyler, 2 Wall., (U. S.) 323.

Smith vs. Stevens, 82 Ill., 554.

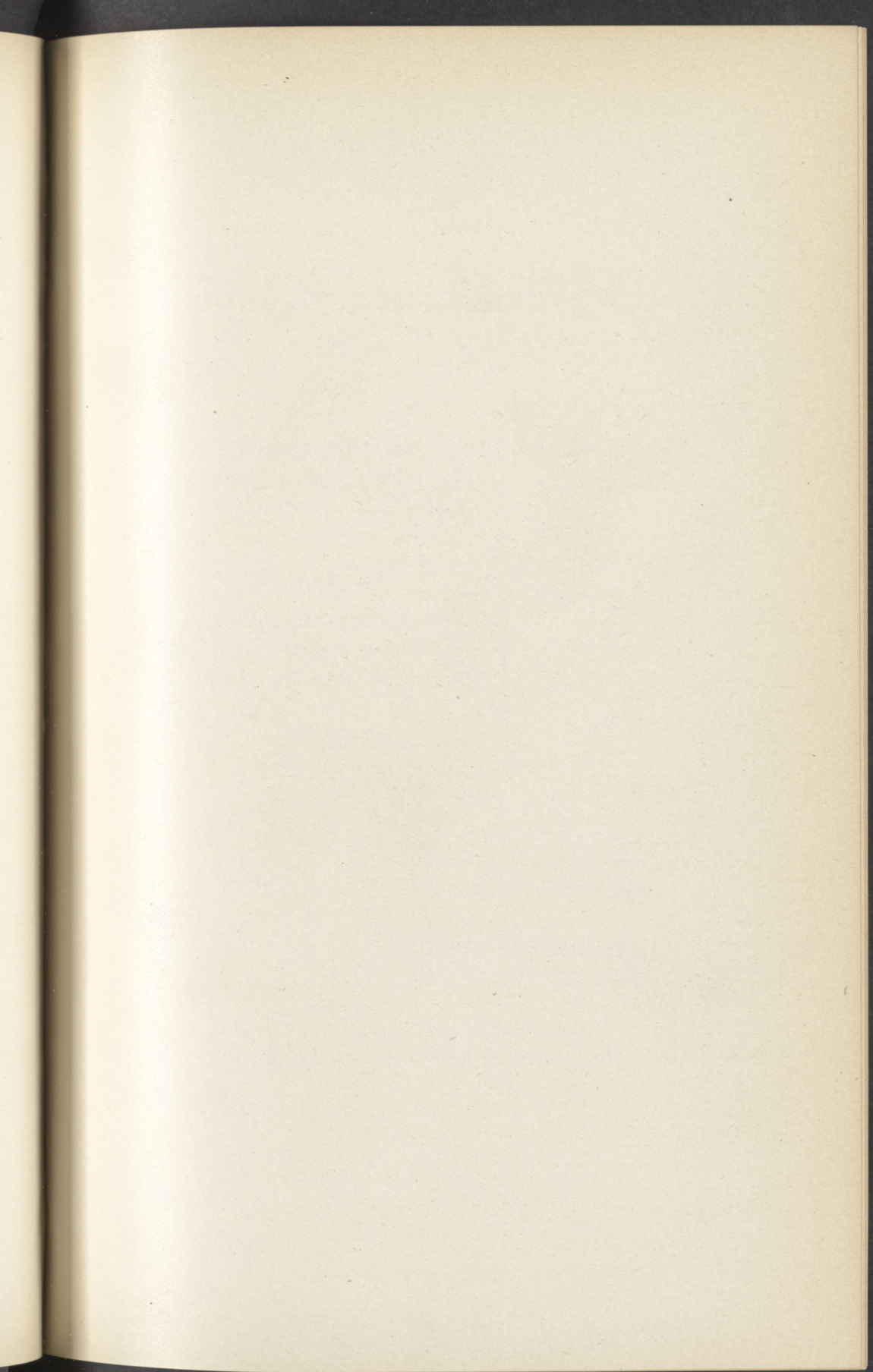
Acquiescence presupposes knowledge, but it does not appear that Robeson had knowledge.

The Vice Chancellor says, on page 104, line 27, &c., "And every person dealing with such property is chargeable with such notice as he might reasonably be expected to obtain upon inquiry of such vendee," in speaking of the position of a bona fide purchaser.

What information would Mr. Breckenridge have gotten from the respondents other than what they state in their bill. They say that they have no title from Robeson in the crossing. They say that they never knew that Robeson had any title to the soil in the crossing. So that, by the respondents' statement, solemnly made in the pleadings in this suit, they would not, at the time Breckenridge purchased his title, have informed him, on inquiry made of them, that they were the equitable owners of the soil in the crossing by virtue of an agreement with Robeson. Their occupancy might have been notice of something else, but not of any equitable or legal title from Robeson, because they expressly now disavow it, and say that his land was not there, and further say that they did not know the location of it, but "that your orators (respondents) have heretofore supposed and *claimed* that said lot lay *wholly to the north of said crossing.*" If Breckenridge is not a bona fide purchaser by the respondents' admission, what is he? I insist that the decree of the lower Court should be reversed with costs.

JOSEPH M. ROSEBERRY,

Of Counsel with Appellants.



NEW JERSEY COURT OF
ERRORS and APPEALS

THE UNITED STATES PIPE
LINE COMPANY, HARRY W.
BRECKENRIDGE, and others,
APPELLANTS.

AND

THE PENNSYLVANIA RAIL-
ROAD COMPANY and BELVI-
DERE DELAWARE RAILROAD
COMPANY.

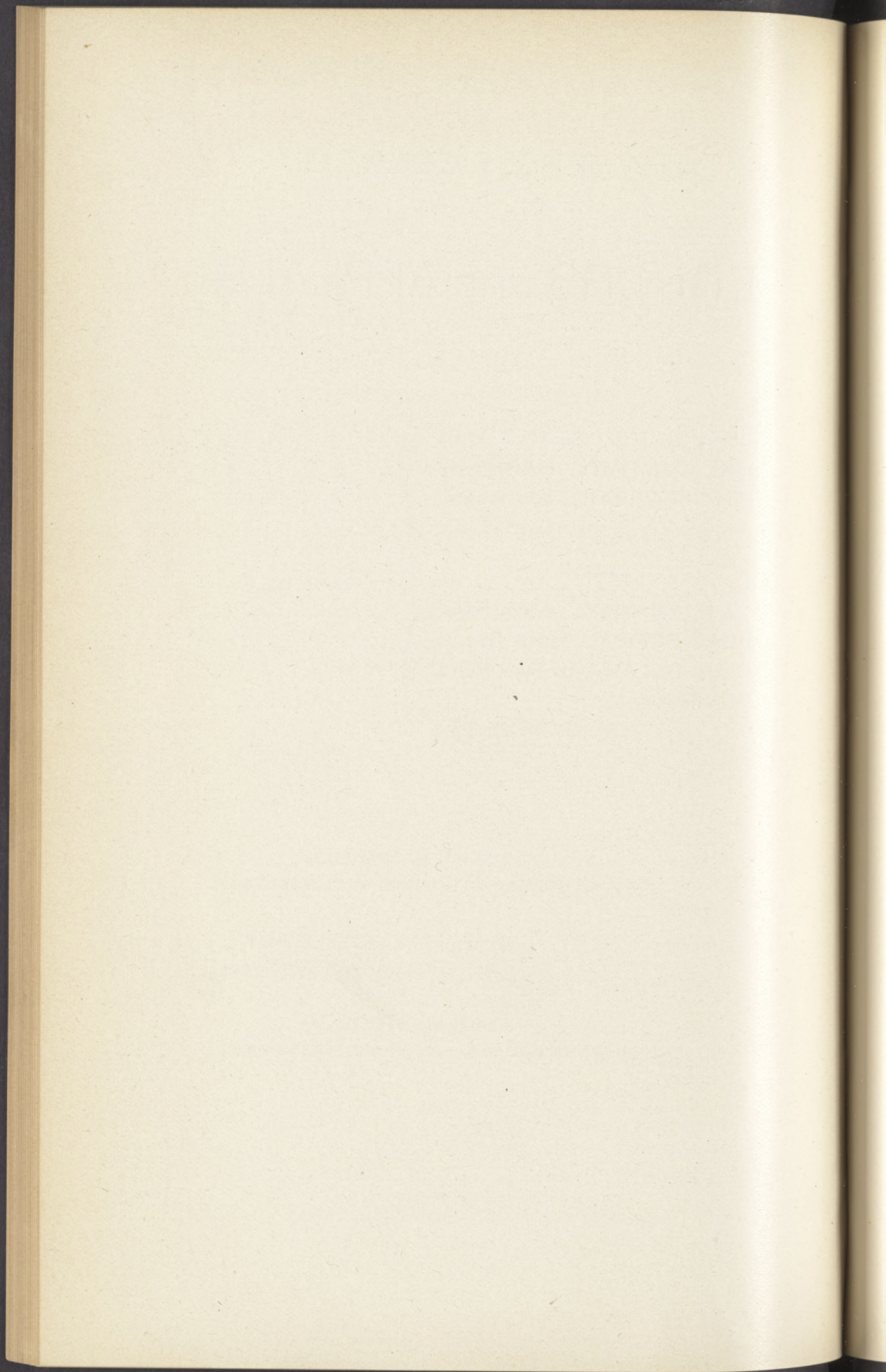
RESPONDENTS.

ON APPEAL.

HENRY S. HARRIS,
Solicitor for and of Counsel with Appellants.

JOSEPH M. ROSEBERRY,
of Counsel with Appellants.

ALAN H. STRONG,
Solicitor for and of Counsel with Respondents.



NOTICE OF APPEAL.

Between

THE PENNSYLVANIA RAILROAD COMPANY
and BELVIDERE DELAWARE RAILROAD
COMPANY, COMPLAINANTS,

10

AND

THE UNITED STATES PIPE LINE COMPANY
AND OTHERS, DEFENDANTS.

The defendants, the United States Pipe Line Company, Harry W. Breckenridge and Elias J. Mackey, William Miller and Samuel Sheridan, township committee, of the township of Oxford, in the county of Warren, hereby appeal from an order made on the fifth day of February, in the year eighteen hundred and ninety-six, by his Honor, Alexander T. McGill, Chancellor of New Jersey, that an injunction do issue restraining the defendants from constructing or attempting to construct a line of pipe through under or across the road bed of the said complainants, and from making any excavation for that purpose in the undergrade highway crossing mentioned in the said bill agreeably to the prayer of the said bill, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort of all causes. 20

Dated April seventh, A. D., eighteen hundred and ninety six. 30

HENRY S. HARRIS,

Solicitor for and of counsel with defendants.

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

HENRY S. HARRIS,

of counsel with defendants.

A true copy.

L. A THOMPSON, Clerk.

PETITION OF APPEAL.

The petition of the United States Pipe Line Company, Harry W. Breckenridge and Elias J. Mackey,
10 William Miller and Samuel Sheridan, township committee of the township of Oxford in the county of Warren, the appellants in the above stated cause, respectfully shows that your petitioners find themselves agrieved by an order made in the Court of Chancery by his Honor Alexander T. McGill, Chancellor of New Jersey, bearing date the fifth day of February, in the year eighteen hundred and ninety-six wherein the said the Pennsylvania Railroad Company and Belvidere Delaware Railroad Company were com-
20 plainants and the said the United States Pipe Line Company, Harry W. Breckenridge and Elias J. Mackey, William Miller and Samuel Sheridan, township committee of the township of Oxford in the county of Warren were defendants in this respect to wit; That the said order directs that an injunction do issue restraining the defendants from constructing or attempting to construct a line of pipe through, under or across the road bed of the said complainants, and from making any excavation for that purpose
30 in the undergrade highway crossing mentioned in the said bill.

And your petitioner humbly appeals from the order of the Chancellor which orders as aforesaid, upon the ground that the same is erroneous, for that it appears by the pleadings and the proofs in said cause that the said order that an injunction do issue as aforesaid ought not to have been made and that the complainants are not entitled upon the pleadings and proofs in said cause to the relief sought and prayed for in said bill of complaint.

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

HENRY S. HARRIS,
Solicitor for and of counsel with appellants.

10

Answer to petition of appeal in usual form.

ORDER FOR INJUNCTION.

20

The order to show cause why an injunction should not issue in this cause having been duly brought to hearing upon the amended bill and answers and depositions upon both sides and having been fully argued by Alan H. Strong of counsel with the complainant and Henry S. Harris and Joseph M. Roseberry of counsel with the defendants. It is on this fifth day of February in the year eighteen hundred and ninety-six ordered that an injunction issue restraining the said defendants from constructing or attempting to construct a line of pipe through, under or across the road bed of the complainants and from making any excavation for that purpose in the undergrade highway crossing mentioned in the said bill agreeably to the prayer of the said bill.

Respectfully advised,

JOHN T. BURD, V. C.

ALEX. T. MCGILL, C.

A true copy.

L. A. THOMPSON, Clerk.

AMENDED BILL.

IN CHANCERY OF NEW JERSEY :

10 To the Honorable Alexander T. McGill, Chancellor
of the State of New Jersey :

Humbly complaining sheweth unto your Honor
your orators The Pennsylvania Railroad Company a
corporation organized under the laws of the State
of Pennsylvania and The Belvidere Delaware Rail-
road Company a corporation of the State of New
Jersey, That by an act of the Legislature of the
State of New Jersey, entitled : "An Act to incorpor-
ate the Belvidere Delaware Railroad Company,"
20 passed March 2, 1836, certain persons therein named
and their associates and successors were constituted a
body politic and corporate by the name of The Belvi-
dere Delaware Railroad Company, and said corpora-
tion was thereby among other things invested with
all the powers necessary and expedient to lay out,
construct and operate a railroad from a point in the
town of Belvidere and thence following the river
Delaware to the head of the feeder of The Delaware
and Raritan Canal, with further power to extend the
30 same to the city of Trenton in the discretion of the
Board of Directors of said company.

That under the authority and in pursuance of said
act and certain supplements thereto the said The
Belvidere Delaware Railroad Company prior to the
year eighteen hundred and seventy-four had duly
constructed and was then operating its said line of
railroads from Belvidere aforesaid to the city of
Trenton and that by an act of the Legislature of this
State approved March 19, 1874, entitled, "An Act to
authorize The Belvidere Delaware Railroad Company

to lease their road and franchises to the United New Jersey Railroad & Canal Company and the assignment of such lease to the Pennsylvania Railroad Company," it was made lawful for the said The Belvidere Delaware Railroad Company with the consent of two-thirds in interest of the stockholders thereof to lease their said railroad with its franchises, appurtenances and appendages for a term and upon such conditions as should be agreed upon to the United New Jersey Railroad and Canal Company, 10 and further that upon the execution and delivery of said lease it should be lawful for the said The United New Jersey Railroad and Canal Company to assign, transfer and set over the same to The Pennsylvania Railroad Company, which said last mentioned railroad company, (one of your orators,) was thereby authorized and empowered to operate said leased road and to exercise the franchises thereunto appertaining, under and in pursuance of which last mentioned act the said The Belvidere Delaware Railroad 20 Company by lease bearing date on or about the fifteenth day of February in the year eighteen hundred and seventy-six, with the consent of its stockholders did demise and lease unto the said The United New Jersey Railroad and Canal Company for a term to end on the thirteenth day of May, A. D., twenty-eight hundred and seventy, the said railroad with its said franchises and appurtenances which said lease was afterward on or about the seventh day of March 30 in the year eighteen hundred and seventy-six duly assigned and transferred as further authorized by said last mentioned statute to your orator the said The Pennsylvania Railroad Company; and that your said orator upon the execution and delivery of said assignment duly entered upon the said railroad and has ever since continued and still continues to operate the same and to exercise the franchises of the said The Belvidere Delaware Railroad Company, so as aforesaid leased, under and by virtue of said lease and the said statutes in that behalf.

That your orators further show that the United States Pipe Line Company claiming to be a corporation of the State of Pennsylvania or of some one of the United States other than the State of New Jersey is now engaged in constructing and laying a line of pipe under ground for the conveyance of oil from some point in the State of Pennsylvania to some point to the east of the railroad of said The Belvidere Delaware Railroad Company so as aforesaid leased
10 to and operated by said The Pennsylvania Railroad Company ; that said pipe line is being constructed and laid from a point east of said railroad track toward the same in a westerly direction and in such manner and direction that the same will necessarily cross the said tracks of said railroad company, and has been so constructed and laid to a point at or near the town of Washington in the county of Warren, at which point the said pipe line meets the railroad of the Delaware, Lackawanna & Western Railroad
20 Company ; that the said The United States Pipe Line Company having succeeded against the wishes and protests of said The Delaware, Lackawanna and Western Railroad Company in laying its line of pipe through a right of way at a private undergrade crossing of said track, resisted the efforts of said last mention railroad company to remove the same ; employing in such resistance a large force of men, so that a serious disturbance of the public peace has resulted.

That your orators believe that it is the purpose
30 and intention of the said The United States Pipe Line Company to resort to like measures to effect and maintain a crossing for their said pipe line over or through the railroad of your orators at some point not definitely known at this time to your orators, and they fear that such design will be carried out by stealth and without warning to your orators and before your orators can prevent the accomplishment thereof ; that judging from the direction in which the said line of pipe is now being constructed it will meet the line of said railroad at a point somewhere

about two miles south of Belvidere and in the immediate neighborhood of a private undergrade crossing on land now or formerly of Mary White Roseberry, through which private undergrade crossing of said railroad a line of pipe was laid with the consent of said Mary White Roseberry in or about the month of June, A. D. eighteen hundred and ninety-four; that your orators shortly after the laying of said pipe through said crossing caused the same to be removed, whereupon an action was brought in the Supreme 10 Court of this State by the said Mary White Roseberry against The Pennsylvania Railroad Company claiming damages for, among other things, the said removal of said pipe, which said action came on to be tried at the September term in said year of the circuit of said Supreme Court held in and for the county of Warren, and on said trial a jury for that purpose empannelled were instructed by his Honor the Justice of said court, holding said circuit, that the said defendant had the right to remove said pipe 20 and that no damages could be recovered against it for such removal, whereupon a verdict was returned for damages for other torts found to have been committed by said defendant, but not for the removal of said pipe, and judgment upon such verdict was entered in the said Supreme Court as by the record thereof appears.

That the only other point in the said neighborhood where a crossing of said railroad can be effected by said the United States Pipe Line Company for its 30 said line of pipe without actually disturbing the road bed of said railroad company is where a public road crosses said railroad track under grade about nine hundred and fifty feet north of the said private crossing.

That on or about the thirty-first day of August last the township committee of the township of Oxford in the county of Warren in which township the said crossing of said highway under your orators said right of way is situate, (said committee being com-

- posed of Elias J. Mackey, William Miller, Jr., and Samuel Sheridan) entered into an agreement with one Henry (or Harry) W. Breckenridge, who is the superintendent of the said the United States Pipe Line Company and has been actively engaged in securing for said company the right of way for its said line of pipe in said neighborhood, by which said agreement the said township committee undertook and assumed to authorize the said Breckenridge to
- 10 remove the pavement in said undergrade crossing and relay the same, and to lay thereunder an iron pipe not less than eight inches in diameter three feet deep for the ostensible purpose of draining the water from said highway, for doing which the said township committee agreed to pay said Breckenridge the sum of \$5, and further in consideration thereof to allow him to lay two lines of oil pipe in the same ditch with said drain pipe, said oil pipe to connect
- 20 side of the culvert with the right of way obtained by him for a line of pipe on land on the east side of said crossing, belonging to J. M. Roseberry, and so to connect with and form a part of the continuous line or lines of pipe now being laid as aforesaid by or in the interest of said the United States Pipe Line Company for the conveyance of oil from some point in the State of Pennsylvania under your orators said road-bed by means of said crossing to some point east of said railroad.
- 30 And your orators show that the said Henry (or Harry) W. Breckenridge claims to have lately acquired title by deed from Joseph M. Roseberry bearing date the said thirty-first day of August in the year eighteen hundred and ninety-five to a certain tract of land situate in the said township of Oxford and county of Warren described as follows: Beginning at and in the mouth of a run that vents into the Delaware river from the spring by the dwelling house (formerly) of John Vanetta, thence down the river eight perches to a post, thence extending from

the river twenty perches to a corner, thence parallel with the Delaware eight perches to a post, thence to the river so as to include the full one-half part of the spring and the said run to the place of beginning, the same to be laid out to contain one acre of land; and that it is further claimed by said Breckenridge that the location of the said one acre of land is such that the said pubic road at the place where it crosses your orators said railroad as aforesaid runs through and over said one acre of land, and that as said acre 10 of land also includes your orators road-bed at that point, the said crossing is wholly included within the boundaries of said lot. That the said title so as aforesaid assumed to be conveyed to said Henry W. Breckenridge by said Joseph M. Roseberry is derived through certain mesne conveyances, from one William P. Robeson whose executor George M. Robeson by deed under color of the authority conferred upon him as such executor by the will of said William P. Robeson, who died in the year eighteen hundred and 20 sixty-four, conveyed or assumed to convey the same to one William O'Neill (under whom said Breckenridge claims title) on or about the twenty-seventh day of June in the year eighteen hundred and ninety-five.

And your orators show that it is true that the said William P. Robeson was in his lifetime and on and prior to the twentieth-fifth day of June in the year eighteen hundred and fifty-one seized in fee of the said one acre of land as above described and also 30 both in severalty and as tenant in common with one John M. Sherrerd was then seized in fee of several other parcels of land through and over which it was then contemplated by your orator the Belvidere Delaware Railroad Company to construct its railroad as the same was in fact constructed within a few years thereafter; and that the said Robeson and Sherrerd being seized as aforesaid and being desirous that the said railroad should be so constructed, and anticipating that great advantages would accrue therefrom to

their said lands did on or about the date last mentioned in order to induce your said orator to construct its said proposed railroad in the place where the same was subsequently constructed and not elsewhere enter into an agreement in writing with your said orator the Belvidere Delaware Railroad Company (by Ashbel Welsh its agent duly authorized to act for your said orator in that behalf) in the language or of the tenor and effect following, that is to say,

- 10 ARTICLES OF AGREEMENT entered into this twenty-fifth day of June Anno Domini, 1851, between William P. Robeson and John M. Sherrerd, Esquires of the town of Belvidere, in the county of Warren and State of New Jersey, and The Belvidere Delaware Railroad Company by Ashbel Welch, an agent duly authorized by the Board of Directors.

- Said Robeson and Sherrerd for and in consideration of the sum of one dollar to be paid to each of them by said company and in consideration of the
20 benefits which The Belvidere Delaware Railroad if constructed will produce to their property, hereby agrees to convey in fee simple each so much of the land as belongs to himself separately and both, so much of the land they now hold in common lying on the route of the said railroad in the Township of Oxford and County of Warren aforesaid, anywhere between the farm of William White, (below Thomas Lomason's farm,) and the land of John Hoff, Jr., (above Abraham McMurtrie's land,) as may be suffi-
30 cient for the construction of said railroad with its ditches and appendages and for procuring materials, reserving the timber on said land also the buildings and the following rights to wit: The right of passing with teams or otherwise across the said railroad on the strip of land or lane lying between the lands of Abraham McMurtrie, Jr., and John Hoff, Jr., the right of crossing over said railroad with teams or otherwise at such points as shall be necessary for full and convenient access to their mills or other works, erected or to be erected, also the right of passing

their shafts, belts or contrivances for transmitting power from water wheels near the river to buildings above said railroad through openings under the same, provided said railroads shall be constructed.

And the said company agree to pay the said sum of money for said land, and to make crossings for teams or otherwise at such places as shall be necessary for the purposes of said Robeson and Sherrerd, with good approaches to said crossings, and to make, when necessary, openings under their railroads for the passage of belts, shafts or other contrivances for the transmission of power, and to pay the increased expense which said Robeson and Sherrerd shall incur in constructing their water power canal over and above what would be the expense if said railroad had not interfered with the location of said water power canal, and to remove all buildings on the route of said railroad through said land to a proper distance.

This agreement shall apply to the lot now owned by Miss Allan Mowry if purchased by any of the parties hereto.

Witness our hands the day and year first above written :

J. M. SHERRERD,

WM. P. ROBESON,

ASHBEL WELCH, Agent, Bel. Del. R. R. Co.

Present : MARTIN CORYELL.

And your orators show that the said one acre of land as above described and claimed as aforesaid by said Breckenridge lies between the points mentioned in said agreement, that is to say, between the farm then of William White and the lands then of John Hoff, Jr., and is among the parcels of land thereby (to the extent necessary for the construction of said railroad, its ditches and appendages.) agreed to be conveyed to your said orator, and that your said orator accordingly did under the said agreement and without any further conveyance or assurance, but with the entire concurrence and approval of the said

William P. Robeson, shortly after said agreement proceed to occupy so much of said one acre lot as was sufficient and required for the purposes of said road-bed, ditches and appendages and constructed said road-bed, ditches and appendages upon and across the easterly end of said one acre lot, said road-bed being at that place elevated above the surrounding land to a height of about twenty feet by means of an embankment in part on said lot and built by
10 your said orator for the purpose of its said road-bed at great expense, of solid earth except for a space of less than twenty feet, just sufficient for the passage of said public highway, where said railroad is carried over the same by a stone arch bridge or culvert built into and forming part of said embankment; and that the said railroad thereupon constructed upon said embankment in or prior to the year eighteen hundred and fifty-five has ever since then until the present time been continuously operated, at first by your
20 orator the said The Belvidere Delaware Railroad Company and subsequently by your orator the said The Pennsylvania Railroad Company, under its lease aforesaid; and that your said orators have successively during all of said period of more than forty years held, occupied, possessed and enjoyed so much of said one acre of land as was required for said embankment and road-bed and appendages, peaceably and quietly and without question or dispute until the effort of said Breckenridge to assert title
30 thereto as aforesaid. That the possession of your orators under said agreement being thus undisturbed and nothing having ever occurred to draw attention to any infirmity or informality in the legal title to the land so held no formal conveyance of said title was ever obtained or demanded by said The Belvidere Delaware Railroad Company from said Robeson or his representatives.

That the said provisions contained in said agreement for crossings for teams or otherwise, and for passage of belts, shafts or contrivances for transmit-

ting power under said railroad and also the mention therein made of the projected water power canal have relation to other parcels of land owned by said Robeson and Sherrerd affected by said agreement, and upon some of the portions of which not required for said railroad it was then their intention to erect mills and works of various kinds for the purpose of utilizing by means of such canal the water power of the falls in the river Delaware adjacent to which some of said parcels of land were located, but that 10 said contemplated works were never built, so that no occasion has ever arisen for the said crossings, (other than the crossing at or near lands of Hoff and McMurtrie which has always been used and enjoyed in compliance with said agreement) or for said passages for belts, shafts or other contrivances for transmitting power, nor has any claim ever arisen or been made for the payment of said increased expense caused by interference with the location of said canal, and all requirements of the said agreement as 20 to the removal of buildings by said company were fully performed to the entire satisfaction of the persons concerned and no controversy, contention or difference of opinion ever arose with respect to said company having complied with all its obligations in the premises, and your orators in fact say that all such requirements and obligations were in fact fully and completely met and carried out except so far as the same were waived in consequence of the abandonment of the said enterprise of said Robeson and 30 Sherrerd in contemplation of which said stipulations were inserted in said agreement.

-And your orators insist that said agreement was made upon good consideration, and that your orator the said The Belvidere Delaware Railroad Company having as aforesaid taken possession of and made large expenditures of money in the construction of its said embankment and road-bed upon said portion of said one acre of land with the acquiescence and express approval of said Robeson and Sherrerd is en-

titled to have the said agreement specifically performed by a conveyance of the legal title, and is in equity the owner thereof; that the possession of said land maintained by said embankment and road-bed and the continual running of trains thereon was notice to all persons of your orator's rights in the premises, and that not only the said Breckenridge but the several persons through whom he claims title to said one acre had each at and prior to the time of
10 the several conveyances to them not only constructive but actual notice of your orators said equitable rights, and that the said Breckenridge was not nor was any of the said mesne grantors a bona fide purchaser of said land, nor did they or any of them pay any valuable consideration therefor. But your orators show that notwithstanding your orators said equitable rights the said Breckenridge insists that your orators have no legal title to said lands, and that the possession aforesaid maintained by them
20 has not extended to the land within the said highway in such manner as to give to your orators or either of them a title by adverse possession, and your orators are advised that the assertion of their title to said land in said highway based upon said agreement and the possession thereunder as aforesaid in the courts of common law will be attended with uncertainty.

And your orators further show that it is only by virtue of his said supposed ownership of the legal
30 title to the said one acre of land that said Henry (or Harry) W. Breckenridge claims to have any right or interest in the land in said public road at said crossing, but that the true location of said lot is uncertain by reason of the fact that although the said spring and run of water referred to in the description as well as the said river Delaware, remain as visible boundaries, yet the said tract has never, within the memory of living men, been defined on its southerly side by any monument whatever, but has always lain open in common with adjoining lands on that side and vacant

and unoccupied, except by the occupants of said adjoining lands. That your orators have heretofore supposed and claimed that said lot lay wholly to the north of said crossing and that said public road at the place of said crossing was within a certain tract of land conveyed to said The Belvidere Delaware Railroad Company by Thomas Lommasson (who was then seized in fee thereof,) and his wife, dated the third day of September in the year eighteen hundred and fifty-three, conveying a tract of land of two and one-half acres, more or less, adjoining the said Robeson acre on three sides, and that if the true location of said crossing is not within said Robeson acre it is within said Lommasson tract, in which case said Breckenridge has no claim or pretense of title thereto, but the soil of said highway subject to the public easement is owned in fee simple by your orator the said The Belvidere Delaware Railroad Company, subject to said lease.

And your orators charge and insist that the afore-
said agreement between said Breckenridge and the
said Township Committee is illegal and void and in
excess of the powers of said committee, and contrary
to public policy and that the said public easement
does not include a right to cross said tract of land
with the said line of pipe ; that any such use of said
highway will impose upon said land a further and
additional servitude ; that if the said The United
States Pipe Line Company should lay its said line of
pipe or attempt so to do through or under the road-
bed of said railroad at any other point than said
crossings or one of them such disturbance of the
said road-bed would be attended with very great
danger by reason of the running of trains over said
track, and that the laying of said pipe line through
or under the tracks of said railroad whether at a
public or private crossing, or at any other point, will
be a permanent appropriation to the use of said pipe
line company of so much of the land as shall be thus
utilized, and being done without compensation to

your orators, or either of them, is contrary to the laws and constitution of this State, and will be greatly to the injury of your orators.

That unless great care is observed in the laying of said pipe there will be a liability to leakage and the oil conveyed thereby being highly inflammable and the operation of said railroad being necessarily attended by the use of fire in case of the escape of oil from said pipe there will be great danger from
10 that source.

In tender consideration whereof and as much as your orators are without remedy in the premises, except in this honorable court, where matters of this nature are properly relievable, to the end therefore that the said The United States Pipe Line Company, Henry (or Harry) W. Breckenridge, and Elias J. Mackey, William Miller, Jr., and Samuel Sheridan, Township Committee, of the township of Oxford, in the county of Warren, defendants, herein may with-
20 out oath, full, true, direct and perfect answer make to all and singular the premises, and that they may be enjoined and restrained from constructing or attempting to construct a line of pipe through, under or across the said road-bed of your orators, operated as aforesaid by The Pennsylvania Railroad Company whether at the said undergrade crossings or either of them or at any other point, and from in any manner disturbing the soil of said road-bed or of said crossings or either of them at any point whatsoever.
30 And that said Henry (or Harry) W. Breckenridge may be enjoined from setting up or claiming any right or title to the land occupied by the road-bed and embankment of said railroad or within the said highway crossing by virtue of his said supposed ownership of said one acre of land, and that he may be decreed by proper conveyance to release unto your orator the said The Belvidere Delaware Railroad Company all right, title and interest in or to so much of said one acre of land as is occupied by the road-bed, ditches and appendages of said railroad

and that said agreement of said Robeson and Sherrerd with your said orator dated June twenty-fifth, A. D. 1851, as to said one acre of land or so much thereof as is required for the purposes aforesaid may be specifically performed, and that your orators may have such other or further relief in the premises as the nature of the case may require and shall be agreeable to equity and good conscience.

May it please your Honor the premises considered to grant unto your orators not only the State's writ 10 of injunction issuing out of this honorable court and under the seal thereof to be directed to the said the United States Pipe Line Company its officers, servants and agents and Elias J. Mackey, William Miller, Jr., and Samuel Sheridan, Township Committee of the township of Oxford in the county of Warren and Henry W. Breckenridge, commanding and enjoining them that they absolutely desist and refrain from constructing or attempting to construct a line of pipe through, under or across the said road-bed 20 of your orators operated as aforesaid by the Pennsylvania Railroad Company, and from in any manner disturbing the soil of said road-bed or of said crossings or either of them at any point whatsoever, and also commanding and enjoining the said Henry or Harry W. Breckenridge that he desist and refrain from setting up or claiming any right or title to the land occupied by the road-bed and embankment of said railroad or within said highway crossing by virtue of his said supposed ownership of said one acre 30 of land, but also the State's writ of subpoena issuing in like manner out of this honorable court and under the seal thereof, to be directed to the said the United States Pipe Line Company, and Elias J. Mackey, William Miller, Jr., and Samuel Sheridan, Township Committee of the township of Oxford in the county of Warren and Henry W. Breckenridge, therein and thereby commanding them on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honor in this honorable

court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience,

And your orators as in duty bound will ever pray
&c.

ALAN H. STRONG,
Solicitor and of counsel with complainants.

NOTICE.

To Henry S. Harris, Esquire, Solicitor of defendants.

Take notice that the annexed are true copies of a 10
certain deed of conveyance from Thomas Lommasson
and wife to the Belvidere Delaware Railroad Com-
pany dated September 3, 1853, and recorded in War-
ren County Clerk's office in book 38 of deeds at page
393, and also of a certain agreement made by William
P. Robeson and John M. Sherrerd with said railroad
company not recorded but the original of which is in
the possession of the complainants and also of cer-
tain affidavits all of which said deed (or a certified
copy thereof) agreement and affidavits will be used 20
upon the hearing of the order to show cause for an
injunction in the above entitled cause and said copies
thereof are herewith served upon you accordingly.

Yours &c.

ALAN H. STRONG,
Solicitor of complainants.

Dated November 29, 1895.

State of New Jersey, }
Mercer County } ss.

30

Joseph P. Wamsley, being by me duly sworn ac-
cording to law, on his oath saith: That he assisted
in making the surveys for the Belvidere Delaware
Railroad Company for the location of its track be-
tween Belvidere and Phillipsburg in the township of
Oxford, Warren county, New Jersey in the year
eighteen hundred and fifty-four, and that the said
railroad track was constructed in accordance with
such surveys and completed in the year eighteen
hundred and fifty-five; that deponent is familiar with

the location of the undergrade crossing where the public road passes under the said track at a point about two miles south of Belvidere, being the undergrade crossing mentioned in the bill of complaint and in the several answers in this cause, that the said railroad track at that point and for some distance on each side of said road is elevated above the level of the ground about twenty feet, and is constructed upon an embankment of about that height formed of
10 earth ; that the said public road was carried through the said embankment and under the said track by a stone arch which was constructed in the year eighteen hundred and fifty-five and has ever since continued without alteration just as it was thus originally constructed ; that the said arch and undergrade crossing were located in the same position that they now remain upon lands then recently acquired by the said Belvidere Delaware Railroad Company by a deed from one Thomas Lommason and said crossing was
20 known as Lommason's culvert ; that deponent's first knowledge of the said neighborhood extends from about the year eighteen hundred and fifty-three, and he remembers that there was then a piece of land used by the Oxford Iron Company for the storage and transportation of pig iron, that said piece of land extended from the Delaware river back to the line of the railroad track or thereabouts, and some portion of said tract of land was required for the embankment of said railroad, and was actually taken and
30 has ever since been occupied for that purpose ; that the said piece of land used as aforesaid by the Oxford Iron Company with which company William P. Robeson was prominently connected lay somewhat north of the said culvert or undergrade crossing, the nearest side of said tract to said crossing or to said public road at said crossing being as deponent now recollects about sixty or seventy feet from the said public road at said crossing.

And deponent saith, that he well remembers at the time of surveying for said railroad and subsequently

a spring of water near the northerly line of the said Oxford Iron Company lot and just west of the public road from which spring a run of water emptied into the Delaware, that there was a fence or remains of a fence running in a direction nearly parallel with said stream of water and at a distance of a very few feet to the north of said spring which fence deponent understood to be the northerly line of the said Iron Company's tract, that the said fence was at that time very ancient and dilapidated and consisted of stakes 10 and riders, that the said spring was in a depression about six or seven feet below the surface of the surrounding land, and the stream running from it for a portion of its distance ran through a ditch of about that depth, said ditch growing shallow as it came to the river, so that when it reached the river it was very slight, that there were trees on each side of said ditch and near to it, and the banks were quite steep and the width from bank to bank some six feet or more. 20

And deponent being shown a paper, purporting to be original articles of agreement, dated June 25th, 1851, between William P. Robeson and John M. Sherrerd of the one part and the Belvidere Delaware Railroad Company by Ashbel Welch, its agent of the other part, says, I was well acquainted with Martin Coryell in his lifetime, he has now been dead many years; I am familiar with his handwriting and signature, the name Martin Coryell appearing on this paper as that of a subscribing witness is in the 30 genuine handwriting and is the proper signature of the said Martin Coryell. I have often seen him write his name.

his
JOSEPH X WAMSLEY,
mark.

Sworn and subscribed before me this 29th day of November, A. D., 1895.

J. M. CROUCH, M. C. C.

State of New Jersey, } ss.
Mercer County. }

John Lommasson, being by me duly sworn according to law on his oath saith: That he is the same person of that name who lately made an affidavit in this cause on behalf of the defendants, that his recollection of the locality referred to in said affidavit, extends back to the year eighteen hundred and
10 thirty-one, that the spring known as the Shippen spring, and the run of water from said spring remains at this time the same as at deponent's first recollection, that there was then a fence extending northerly from the northerly side of the public road opposite to said spring in a direction in line as nearly as may be with the said run of water back to the house, which was at that time on land immediately adjoining said Robeson lot and in which deponent's father then lived, and deponent lived there with him, the
20 side of said house stood back about fifteen or twenty feet north of the line of this old fence, this fence was the northerly line of the Robeson lot and said line ran through the centre of the spring as I have always been told and understood; I cannot tell where the southerly line of the Robeson lot would come, the southerly line was not then and never has been within my recollection defined by any fence or monument; there had formerly been an old building used, I was told, by storage, which stood on the westerly
30 side of the public road, just north of the turn in said road, the foundation of said building can still be seen and was much more distinct in my childhood than it is now, although the building had been removed before my recollection.

The property where my father went to live in eighteen hundred and thirty-one and where I went to live with him at that time, being then about seven years of age, was then owned together by my grandfather Thomas Lommasson, and Alexander White; I lived there with my father for thirteen years, after

which, that is to say, in about the year eighteen hundred and forty-three my father moved away with his family and my uncle George K. Lommasson, entered into possession of said farm and continued to have the possession of it down to about the year eighteen hundred and seventy-five; that the said possession and occupation first of my father and afterwards of my uncle embraced all the land conveyed by Thomas Lommasson in eighteen hundred and fifty-three to the Belvidere Delaware Railroad Company down to 10 the time of such conveyance and also embraced so much of the said Robeson lot as lay to the east of the public road, that portion of the said Robeson lot being always occupied and cultivated indiscriminately with the adjoining land of my grandfather Thomas Lommasson, by which it was surrounded on all sides except the west, that neither the said William P. Robeson nor any person claiming under him either as tenant or otherwise, ever had the use, possession or enjoyment or cultivation within the 20 last sixty-four years of that portion of said Robeson lot which lies east of said public road. The house where I lived with my father from eighteen hundred and thirty-one to eighteen hundred and forty-three was just about where the railroad now is and was removed for the purpose of the railroad. This house was, according to my best judgment and recollection, about and not less than seventy-five yards distant from where the culvert or crossing was then built, and where it still stands; the said culvert or stone 30 arch where the said railroad track is carried over said highway is unchanged and in exactly the same place where it was originally built, and the embankment on both sides of the said public road which was then built for said railroad track has remained ever since and still remains and is used and has been used continuously since the first construction of said railroad for the purpose of said railroad and for no other purpose whatever, it is an embankment of about or nearly twenty feet in height above the level of the

ground and is of solid earth except where said highway passes under it.

JOHN LOMMASSON,

Sworn and subscribed before me this 29th day of November, A. D. 1895. J. M. CROUCH, M. C. C.

State of New Jersey, } ss.
Mercer County.

Jesiah Moser, being by me duly sworn according
10 to law on his oath saith: That he has been in the
employ of the Belvidere Delaware Railroad Company
from its first construction and has known the culvert
referred to in the bill of complaint in this cause as
being upon lands conveyed by Thomas Lommasson
to said railroad company, that said culvert or cross-
ing was always called Lommasson's culvert by reason
of having been built upon land formerly of Lommas-
son, that said stone arch over the public highway at
that point is the same in all respects as when origi-
20 nally built in or about the year eighteen hundred
and fifty-five; that the embankment through which
the said arch was made is also the same as when
originally placed there in said year, or prior thereto,
that it is an earthen embankment about twenty feet
high and fifteen feet more or less in width at the top
and about seventy-five feet in width at the bottom
and is continuous and unbroken for a long distance
except where the said public road passes under it.

JESIAH MOSER,

30 Sworn and subscribed before me this 29th day of
November, A. D., 1895.

J. M. CROUCH, M. C. C.

State of New Jersey, } ss.
Mercer County.

John P. Dickey, being by me duly sworn accord-
ing to law, on his oath saith: That he has been
familiar with the locality of the undergrade crossing
of the public road under the Belvidere Delaware
Railroad mentioned in the bill and answer in this

cause from the time of the construction of said railroad to the present time, and that at the time of the construction of said railroad in the year eighteen hundred and fifty-five there was a fence extending easterly from the public road opposite to the spring known as Shippen's Spring and in a line as nearly as possible with the run of water from said spring which empties into the Delaware; that the said spring and run of water remained without change in their location as they were in eighteen hundred and fifty-five, in which year the railroad was built and completed, but that the said fence has long since been removed; that deponent always understood that the said fence and run of water formed the northerly line of the acre of land said to belong to William P. Robeson, but that deponent never knew or was informed as to the other boundaries of said lot, that there has always been a rough fence maintained along the easterly side of the public road from the place where it passes under said culvert around to and beyond a point opposite said spring so that on the removal of the fence running eastwardly from the spring the said lot was thrown in with the adjoining property of the Lommasson's;

And deponent saith, that the said culvert and embankment remain now precisely as originally constructed in the year eighteen hundred and fifty-five or previously, and that a railroad has been continuously operated upon said embankment first by the Belvidere Delaware Railroad Company and afterwards by the Pennsylvania Railroad Company its lessee from that time until the present.

JOHN P. DICKEY.

Sworn and subscribed before me this 29th day of November. A. D., 1895.

J. M. CROUCH, M. C. C.

State of New Jersey, } ss.
Mercer County.

Albert Dilts, being by me duly sworn according to law, on his oath saith: That he is assistant to Mr. A. W. Preston and he is the assistant engineer of the Belvidere Division of the Pennsylvania Railroad, that deponent is engaged much of the time in surveying and is familiar with that subject practically and theoretically and has been continuously engaged in
10 surveying for the last six years, and being shown a blue print purporting to show the locality of the crossing of the public road under the Belvidere Delaware Railroad on lands shown as having been conveyed by Thomas Lommasson and wife to said railroad company September 3, 1853, and other lands adjoining, deponent says that he made the map from which this blue print was taken plotting the same from the deeds to the said railroad company, or from
20 the records thereof, and that the said plotting has been correctly done and the said blue print correctly represents the descriptions of the lands as given by said deeds; the centre line of said track being located from actual survey and also the line between the said Lommasson land and land formerly of Thomas and Amsley White, which is an old and well defined boundary and fenced; that the said undergrade crossing of the public road mentioned in the bill and answer in this cause through the railroad embankment is located on this blue print from
30 an actual measurement and survey and is correctly located by measurement from the line of said White property, and that it falls within the distance as given in the deed from Thomas Lommasson and wife to the Belvidere Delaware Railroad Company; that the land conveyed by said Lommasson to said railroad company abutts on land of said White as shown on said blue print; and that the location of the spring known as the Shippen spring is also correctly shown on said blue print as is also the run of water flowing from said spring to the Delaware; that taking the

said spring and run of water to be the northerly line of the acre of land said to have belonged formerly to William P. Robeson and measuring southerly from said northerly line so established the distance of eight perches required by the description of said Robeson lot as set forth in the answer of Harry W. Breckenridge in this cause, the said Robeson lot does not include the said crossing or any part of it, but the southerly line of said Robeson lot thus ascertained is about seventy-five feet north of the said 10 crossing as is shown on said blue print; that in confirmation of the location of the Robeson lot as above indicated is the fact that the deed from said Lommasson to said railroad company in describing the land thereby conveyed follows the line of land of William P. Robeson for three courses corresponding very closely with the Robeson lot as located as above which is also shown by the said blue print from all of which deponent is entirely satisfied that the said Robeson lot does not include the said crossing. 20

ALBERT DILTS.

Sworn and subscribed before me this 29th day of November, A. D., 1895.

J. M. CROUCH, M. C. C.

State of New Jersey, } ss.
Mercer County }

Albert W. Preston, being by me duly sworn according to law, on his oath saith: That he is assistant engineer of the Belvidere Division of the Pennsyl- 30 vania Railroad and has held that position for about twelve years past and is a civil engineer by trade; that deponent has personally surveyed and located the line between land formerly of Thomas Lommasson and conveyed by him to the Belvidere Delaware Railroad Company September 3d, 1853, and the land adjoining it on the south formerly of Thomas and Amsley White; that the said line is well established and fenced and as to the location thereof there can be no doubt; that deponent has also measured from

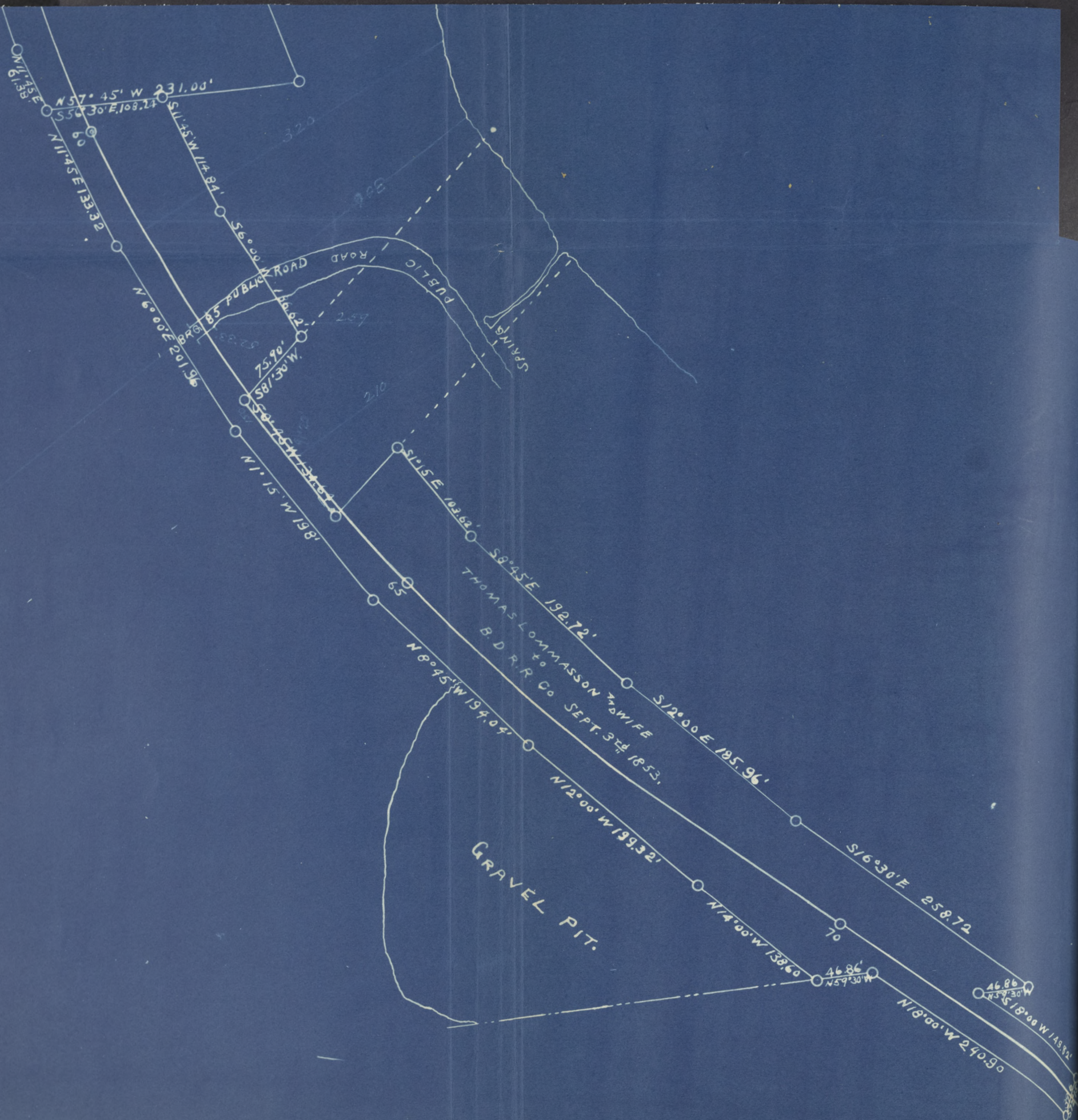
that line along the railroad tract to the culvert or undergrade crossing where the public road passes under said railroad track, that the said undergrade crossing is located in accordance with such measurement upon the blue print now shown to deponent and which is the same blue print referred to by Mr. Albert Dilts in his affidavit of this date. That it is impossible to locate the said undergrade crossing elsewhere than upon the land conveyed by said Lommasson to
10 said railroad company as aforesaid; that taking the northerly line of said Robeson lot as established by said spring and run of water and measuring therefrom the distance of eight perches required by the description of said lot the said Robeson lot cannot possibly include the locality of said crossing, but falls short of it by a distance of about seventy-five feet; that the said location of said Robeson lot is strongly corroborated by the description in the deed from Lommasson to the railroad company above
20 mentioned, which description in three of its courses runs around land of William P. Robeson in the form shown on said blue print and very closely agrees with the Robeson lot as located by reference to said spring and run of water. And that deponent is entirely satisfied that the said Robeson lot does not include the said crossing or any part of it, but that the said Robeson lot is correctly shown on the said blue print, which is hereunto annexed.

ALBERT W. PRESTON.

30 Affirmed and subscribed before me this 29th day of November, A. D. 1895.

J. M. CROUCH, M. C. C.

ARTICLES OF AGREEMENT entered into this twenty-fifth day of June Anno Domini 1851 between William P. Robeson and John M. Sherrerd, Esquires of the town of Belvidere in the county of Warren and State of New Jersey and the Belvidere Delaware Railroad Company by Ashbel Welch an agent duly authorized by the Board of Directors.



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Said Robeson and Sherrerd for and in consideration of the sum of one dollar to be paid to each of them by said company and in consideration of the benefits which the Belvidere Delaware Railroad if constructed will produce to their property, hereby agree to convey in fee simple each so much of the land as belongs to himself separately and both, so much of the land they now held in common lying on the route of the said railroad in the township of Oxford and county of Warren aforesaid anywhere between the farm of William White (below Thomas Lommasson's farm) and the land of John Hoff, Jr., (above Abraham McMurtrie's land) as may be sufficient for the construction of said railroad with its ditches and appendages and for procuring materials, reserving the timber on said land also the buildings and the following rights to wit; the right of passing with teams or otherwise across said railroad on the strip of land or lane lying between the lands of Abraham McMurtrie, Jr., and John Hoff, Jr., the right of crossing over said railroad with teams or otherwise at such points as shall be necessary for full and convenient access to their mills or other works, erected or to be erected, also the right of passing their shafts, belts or contrivances for transmitting power from water wheels near the river to buildings above said railroad through openings under the same, provided said railroad shall be constructed.

And the said company agree to pay the said sum of money for said land, and to make crossings for teams or otherwise at such places as shall be necessary for the purposes of said Robeson and Sherrerd with good approaches to said crossings, and to make when necessary openings under their railroads for the passage of belts, shafts or other contrivances for the transmission of power, and to pay the increased expense which said Robeson and Sherrerd shall incur in constructing their water power canal over and above what would be the expense if said railroad had

not interfered with the location of said water power canal, and to remove all buildings on the route of said railroad through said land to a proper distance.

This agreement shall apply to the lot now owned by Miss Allan Mowry if purchased by any of the parties hereto. Witness our hands the day and year first above written.

10 Present, J. M. SHERRERD,
WM. P. ROBESON,
MARTIN CORYELL. ASHBEL WELSH, Agent
Bel. Del. R. R. Co.

Thomas Lommasson and wife }
to
The Belvidere Del. R. R. Co. }

This indenture made the third day of September, in the year of our Lord eighteen hundred and fifty-three, between Thomas Lommasson and Hannah his wife of the township of Oxford in the county of Warren and State of New Jersey party of the first part, and the Belvidere Delaware Railroad Company party of the second part witnesseth that the said Thomas Lommasson and Hannah his wife, for and in consideration of the sum of one thousand and fifty dollars, the receipt whereof is hereby acknowledged have granted, bargained and sold and by these presents do grant, bargain, sell, alien, enfeoff, release convey and confirm unto the said the Belvidere Delaware Railroad Company their successors and assigns forever, all that certain lot or parcel of land situate in the township of Oxford aforesaid, bounded and described as follows: Beginning at a stone in the boundary line between said Lommasson and Thomas and Amzi White, thence over land of said Lommasson 1, north eleven degrees and three-quarters east two chains and two links; thence 2, north six degrees east three chains and six links; thence 3, north one degree and a quarter west three chains; thence 4, north eight degrees and three-quarters west two

chains and ninety-four links; thence 5, north twelve degrees west, three chains and two links; thence 6, north fourteen degrees west two chains and ten links to the boundary line, claimed by Michael Cyphers, between him and said Lommasson; thence along said boundary line 7, north fifty-nine degrees, and a half west seventy-one links; thence over land of said Lommasson claimed by said Cyphers 8, north eighteen degrees west three chains and sixty-five links; thence along the boundary line claimed by said 10 Lommasson as the line between him and said Cyphers 9, south seventy-two degrees and a (and a) quarter west sixty links; thence again over land claimed both by said Lommasson and said Cyphers 10, south eighteen degrees, west two chains and twenty-seven links to said boundary line, claimed by said Cyphers; thence again along the same 11, north fifty-nine degrees and a half west, seventy-one links to a stone; thence again over land of said Lommasson 12, south sixteen degrees and a half east, three 20 chains and ninety-two links; thence 13, south twelve degrees east two chains and ninety-six links; thence 14, south eight degrees and three quarters east, two chains and ninety-two links; thence 15, south one degree and a quarter east, one chain and fifty-seven links to the south side of a large willow tree marked for a corner in the boundary line between said Lommasson and William P. Robeson, Esquire; thence along the same 16, north eighty-one degrees and a half east, one chain and twenty-seven links; thence 30 along the same 17, south three-quarters of a degree west two chains and four links; thence still along the same 18, south eighty-one degrees and a half west, one chain and fifteen links; thence again over land of said Lommasson 19, south six degrees west, two chains and seven links; thence 20, south eleven degrees and three-quarters west one chain and seventy-four links to the boundary line between said Lommasson and said company, and thence along said company's and said White's first mentioned

boundary line 21, south fifty-six degrees and a half east, one chain and sixty-four links to the place of beginning, containing two acres and a half of land more or less over which the said company are to build their railroad, also the gravel and material, on a lot adjoining the one above described on the east, and extending from the edge of the corn field along Michael Cyphers line fence, down said company's line, about five chains and fifty-eight links, and two
10 chains and a half in perpendicular width from said company's easterly line, containing by estimation, one acre and thirty hundredths more or less, which said gravel shall be removed within two years from the date hereof, said company are to have the privilege of entering upon said last described lot to dig and remove the gravel and material from said lot to their own premises and that they shall as they remove said gravel and material slope up at a
20 regular grade from said company's easterly line to an easterly line of said gravel lot and when said gravel and material shall have been removed said company shall leave said lot sufficiently smooth for being tilled, said Lommasson releases said company from making and maintaining any fence along said premises, and from the inconvenience, and damage incident to the construction and use of said railroad, together except as above excepted, with all the rights, members, privileges, hereditaments and appurtenances and the reversions and remainders, rents,
30 issues and profits thereof, also all the estate, right title, interest, use, property, possession, claim and demand whatsoever, either in law or equity of them the said Thomas Lommasson and Hannah his wife, of, in and to the same, to have and to hold the said lot of land and premises unto the said, the Belvidere Delaware Railroad Company, their successors and assigns to their only proper use, benefit and behoof forever. And the said Thomas Lommasson doth for himself his heirs, executors and administrators, covenant with the said the Belvidere Delaware Rail-

road Company, their successors and assigns that at the sealing and delivery hereof he is the owner in fee simple of the premises granted or intended so to be that the same are free and clear of all charges and incumbrances whatsoever, and that he and they the said premises unto the said The Delaware Railroad Company their successors and assigns against all persons lawfully claiming or to claim the same shall and will warrant and forever defend.

In witness whereof the said party of the first part 10 have hereunto set their hands and seals the day and year first above written.

THOMAS LOMMASSON, [L. S.]

HANNAH LOMMASSON, [L. S.]

Sealed and delivered in the presence of. The words, which said gravel shall be removed within two years from the date hereof interlined and noticed, previous to execution.

DAVID A. DEPUE. 20

State of New Jersey, }
Warren County, } ss.

On this third day of September eighteen hundred and fifty-three personally appeared before me, a Master in Chancery, Thomas Lommasson, and Hannah his wife, known to me to be the grantors of the foregoing deed, and I having made known to them the contents thereof, they acknowledged that they 30 signed, sealed and delivered the same as their voluntary act and deed. And the said Hannah Lommasson on a private examination, separte and apart from her said husband acknowledged that she signed sealed and delivered the same freely and without any fear, threat or compulsion of her said husband.

DAVID A. DEPUE, M. C. C.

Received and recorded }
March 8th., 1854. }

ORDER TO SHOW CAUSE.

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Upon reading and filing the bill of complaint in this cause and the affidavit thereunto annexed, it is hereby ordered, that the said defendant show cause before this Court at the State House in Trenton on Tuesday, the twelfth day of November instant, at ten o'clock in the forenoon why an injunction should not issue agreeably to the prayer of said bill.

And it is further ordered that in the meantime and
20 until order be made by this Court to the contrary hereof, the said defendant refrain from excavating or disturbing the soil of the road-bed of the railroad of the Belvidere Delaware Railroad Company now operated by the Pennsylvania Railroad Company, or of any crossing of or under said road-bed, and from constructing, laying or excavating for any line of pipe through, under or across the said right of way at any point whatsoever.

30 And it is further ordered that copies of the said bill of complaint and affidavit and of this order (all of which may be uncertified,) be served upon the President or any of the directors of said defendant if their names can be ascertained, and they can be found in this State, and if not, then upon any of the agents, servants or employees of said defendant having charge of the work of laying or excavating for the the said pipe line in the county of Warren, or of any part of said work, not later than the sixth day of November instant.

And it is further ordered that the said complainants have leave to take and serve further affidavits, proofs and exhibits in support of said bill if they shall see fit so to do, which shall be served on or before the ninth day of November, instant.

ALEX. T. MCGILL, C.

Respectfully advised,

JOHN T. BIRD, V. C.

ORDER.

Upon reading and filing the affidavits of Curtis Winston and Andrew R. Fillebrown in this cause, it
10 is ordered on the seventh day of November, A. D. 1895, that the complaints have leave to amend their bill of complainant by setting up the making of the agreement stated in the said affidavits of Curtis Winston between the township committee of Oxford township in the county of Warren and Henry W. Breckenridge with proper averments denying the validity and effect of said agreement and also leave
20 to insert as parties defendant in said bill the names of E. J. Mackey, William Miller, Jr., and Samuel Sherridan composing the said township committee, and also the said Henry W. Breckenridge, which bill when amended need not be re-engrossed.

And it is further ordered, that copies of this order and of said affidavits and of said amended bill be served upon all of said defendants on or before the ninth day November instant, and that said defendants and each of them do refrain from excavating or disturbing the soil of the said undergrade crossing
30 of said highway under the railroad of said complainant and from constructing, laying or excavating for any line of pipe through, under or across the right of way of said complainants, and that they show cause before this Court at the State House in Trenton on Tuesday the twelfth day of November instant at ten o'clock in the forenoon why an injunction should not issue agreeably to the prayer of said bill.

Respectfully advised,
JOHN T. BIRD, V. C.

State of New Jersey, }
Mercer County, } ss.

John A. Anderson, being by me duly sworn according to law, on his oath saith that he has been connected with the Belvidere Delaware Railroad Company from a time prior to the construction of said railroad and was superintendent of said company before the lease under which the said railroad is now operated by the Pennsylvania Railroad Company, and for many years before he was such superintendent, deponent was practically assistant superintendent discharging the duties of superintendent under Ashbel Welsh.

That deponent has known the locality referred to in the agreements made by William P. Robeson and John M. Sherrerd with said Belvidere Delaware Railroad Company dated June 25, 1851, ever since the construction of said railroad and previous thereto, and that he never knew or heard of any mills or other works constructed, owned or operated by the said Sherrerd and Robeson, or either of them, or any water power canal constructed by them or either of them, and he believes that no such mills, works or canal ever existed in said neighborhood. That he has no knowledge of any claim ever made by said Robeson or Sherrerd or any person claiming under them, to have openings made under said railroad for the passage of belts, shafts or other contrivances for the transmission of power or to have crossings constructed for teams or otherwise, and that he feels certain that if any such claim had been made it would have come to the knowledge of deponent; that no contention or dispute ever arose with respect to any right under said agreement nor did anything ever occur so far as deponent can now recollect to bring the said agreement particularly to his attention prior to the present litigation with the United States Pipe Line Company, but that said the Belvidere Delaware Railroad Company and its lessee the Pennsylvania Railroad Company, have successively

held possession under said agreement of the lands affected by said agreement from the construction of said railroad in or prior to the year 1855 to the present time without question or dispute.

J. A. ANDERSON.

Sworn and subscribed before me January 3, 1896.

CHAS. E. GUMMERE,

M. C. C.

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State of New Jersey, }
Mercer County, } ss.

Albert W. Preston, being by me duly affirmed according to law, on his solemn affirmation saith that he knows the locality mentioned in the agreement dated June 25, 1851, made between William P. Robeson and John M. Sherrerd and the Belvidere Delaware Railroad Company, referred to in the affidavit of Joseph Wamsley, made November 29, 1895, before
20 J. M. Crouch, Master in Chancery, and used in this cause. That the undergrade crossing in question in this cause and the one acre of land formerly of William P. Robeson and title to which is now claimed by Harry W. Breckenridge in his answer in this cause, lie between the farm formerly of William White (below Thomas Lommasson's farm,) and the land of John Hoff, Jr., (above Abraham McMurtrie's land,) so that said one acre of land or so much thereof
30 railroad with its ditches and appendages is embraced within the said agreement.

That the said Robeson and Sherrerd either severally or in common were the owners of a number of pieces of land lying within the limits specified in said agreement besides the said one acre, and all the rights, privileges in favor of said Robeson and Sherrerd and agreements on the part of the said railroad company set forth in said agreement as far as defendant knows and as he verily believes relate to the said other parcels of land and not to the said one

acre lot now claimed by said Breckenridge. That there is and for many years extending back beyond deponent's earliest knowledge of the neighborhood has been a crossing for teams and otherwise across said railroad in the vicinity of said lands of Hoff and McMurtrie which deponent believes to be the crossing first provided for in said agreement; that as to the crossing or crossings contemplated for access to the mills or other works erected or to be erected of said Robeson and Sherrerd deponent saith that there 10 are no mills now in existence to which the said language can apply, nor have there been such mills in operation or in existence for many years past, nor has deponent any information that such mills ever existed, but on the contrary he believes that they were merely in contemplation at the time of said agreement and were never in fact erected. And in the same way deponent saith that so far as he knows or has any information the right reserved for the passing of shafts, belts or contrivances for transmit- 20 ting power through openings under said railroad has never been exercised or claimed for want of any occasion therefor. That there is no visible trace of the existence within the limits mentioned in said agreement of any water power canal, nor has deponent ever heard that any such was ever constructed in the said neighborhood, but he believes that said canal at the time of said agreement was wholly prospective and that it and the said belts, appliances and contrivances for the transmission of power and said mills as well, 30 were parts of a scheme for utilizing the water power of the falls in the river Delaware at a place from twelve hundred to three thousand feet distant from the said highway undergrade crossing, where the said Robeson and Sherrerd under the name of "The Rifton Company" owned in common a considerable tract of land, which scheme as deponent believes was never put into effective operation and has long been abandoned and generally forgotten; that deponent has never heard of any claim made on the part of

said Robeson and Sherrerd or any person claiming under them or either of them to the exercise of any of the rights reserved in said agreement except the crossing on or near the lands of Hoff and McMurtrie, nor has any dispute or contention ever arisen between the said complainants or either of them and said Robeson and Sherrerd or either of them or any person claiming under them or either of them respecting any right claimed under said agreement.

10

A. W. PRESTON.

Subscribed and affirmed (the deponent alleging himself conscientiously scrupulous against taking an oath) before me this second day of January, 1896.

J. M. CROUCH,

M. C. C.

State of New Jersey, }
Mercer County, } ss.

20 Curtis Winston, being by me duly sworn according to law, on his oath saith, that on or about the first day of November instant, he went to the residence of William Green, who is and then was the township Clerk of the township of Oxford, in the county of Warren, and said Green being then absent from home, deponent inquired of the wife of said Green for the book containing the record of the meetings of the township committee of said township, that said
30 Mrs. Green produced to deponent upon such request a book purporting to be the minutes of the meetings of the said township committee; that the names of the members of said committee are, as nearly as deponent can now recall the same, E. J. Mackey, William Miller, Jr., and Samuel Sheridan, that upon inspecting said book of minutes deponent found among the minutes of a meeting of said committee held according to the recollection of deponent on or about the thirty-first day of August last the record of an agreement stated to have been made by the said township committee with one Henry W. Breckenridge, which

agreement reciting that complaint had been made that water accumulates at the junction of the highways east of the culvert in the neighborhood of lands of said Breckenridge, proceeds to authorize him the said Henry W. Breckenridge, to remove the pavement in the culvert and relay the same, and also to lay an iron pipe not less than eight inches in diameter, three feet deep, so as to drain the water from said highway, for which the said town committee agree to pay to said Henry W. Breckenridge and also ¹⁰ in further consideration for his doing said work to allow him to lay two lines of oil pipe in the same ditch with the said drain pipe, said oil pipe to connect the land owned by Breckenridge on the west side of the culvert with a right of way for pipe line on lands on the east side of the culvert of J. M. Roseberry.

That the culvert referred to in said agreement is well known to deponent and is the undergrade crossing referred to in the bill of complaint in this cause ²⁰ where the public road in said bill referred to passes under a railroad track now operated by the Pennsylvania Railroad Company; that the said Henry W. Breckenridge is the General Superintendent of the United States Pipe Line Company, the defendant in this cause, and has been actively engaged in securing for it a right of way for its said line of pipe in said neighborhood; the grants for such right of way being all made in his name; that the said Breckenridge claims to own an acre of land lying near the foot of ³⁰ Foul Rift on the river Delaware, which is adjacent to the said highway on the west side of said crossing, and he has secured in his name a right of way for said line of pipe over land of said Roseberry adjoining said highway on the east side of said crossing.

And deponent saith that the said the United States Pipe Line Company, in the latter part of the month of October just past effected a crossing for a line of pipe through an undergrade crossing of a certain private farm crossing in the town of Washington

under the railroad of the Delaware, Lackawanna & Western Railroad Company, that the work of digging and laying said pipe through said crossing was accomplished on a Sunday morning between the hours of two o'clock and about eight o'clock and before said railroad company could interfere to prevent the same, that after laying the said lines of pipe the same were guarded by said Pipe Line Company with a force of forty or fifty men to prevent the removal
10 of the same, and upon an effort being made by the said railroad company to remove the same on the following day the said employees of the Pipe Line Company resisted such effort at removal and subsequently secured by the direction or with the approval of the officers of said company a large quantity of fire arms and ammunition for the same, which they caused to be carried to the said crossing for use in repelling the efforts of said railroad company to remove said pipes, but that further conflict between
20 said companies has been avoided as deponent is informed and believes by the restraining order of the Court of Chancery on application of said the United States Pipe Line Company.

CURTIS WINSTON.

Sworn and subscribed before me this seventh day of November, A. D., 1895.

J. M. CROUCH,
M. C. C.

30

State of New Jersey, }
County of Mercer, } ss.

Andrew R. Fillebrown, being by me duly sworn according to law, on his oath saith, that he is Supervisor of the Belvidere Division of the Pennsylvania Railroad Company; that on the fifth day of November instant, he went to the house of William Green, Township Clerk of the township of Oxford, for the purpose of inspecting, if possible, a certain agreement made by the township committee of said township

with one Henry W. Breckenridge, of the existence of which agreement deponent had learned from Curtis Winston. That deponent on going to the house of said Green inquired for him of Mrs. Green, wife of said William Green, who informed deponent that her husband was absent, deponent then asked her to allow him to see the book of minutes of the meetings of the township committee of the township of Oxford which were in the possession of her said husband as clerk of said township; that said Mrs. Green then¹⁰ stated to deponent that she was unable to comply with his request, that she had a few days previously allowed said book to be inspected by another gentleman in the absence of her husband, upon learning which her said husband had been much annoyed, and he had subsequently, in order to prevent any further inspection of said book, locked the same in a trunk, of which he carried the key, and deponent saith that he was unable to see the said book.

ANDREW R. FILLEBROWN. 20

Sworn and subscribed before me this seventh day of November, A. D. 1895.

J. M. CROUCH,
M. C. C.

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OPINION.

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Bird, V. C. This bill was filed showing that the defendants the United States Pipe Line Company and one Brekenridge were about to lay their pipes under the surface of the soil of the complainant's land, at a point where a public road crosses the complainant's land, for the purpose of conducting oil of the defendant company, from Pennsylvania across New Jersey to the sea shore, with a prayer that the defendants might be restrained. The bill as amended shows that the township authorities had entered into an agreement with Breckenridge, the agent of the Pipe Line Company, by which, for a certain consideration the township authorities consented that the highway might be used for the purpose proposed. The bill alleges that the title to the land in question is in the complainant; and that its lessor acquired such title by deed from one Lommas-son in 1853; and that its lessor immediately constructed the road and commenced operating it in 1855, and that it was in possession until 1874 when the complainant took possession by its lease and has continued in possession ever since? The answer admits the construction, possession and operation of the road. It also admits that it intends to lay its pipe for the purpose of conducting its oil as above stated, and the agreement of the township authorities. The defendant then denies that the title to the place in question was in the lessor of the complainant, or that it is now in the complainant, and sets up

the title in Breckenridge one of the defendants and produces affidavits showing that very recently Breckenridge took title to one acre of land in the immediate vicinity of the place in question and claiming that it is so located as actually to embrace it. They claim title from one Vannatta through William P. Robeson and James Sherrerd.

Were these the only facts this court would have nothing to do with the controversy; the rights of the parties could only be determined at law.

But, in answer to this the complainant sets up that its lessors have been in possession over 40 years, and offers testimony to show that over 45 years ago, at least that much longer than the transaction which passed the title to the defendant Breckenridge, the lessor of the complainant purchased this one acre which is claimed by the defendants and entered into an agreement in writing for the conveyance thereof. The complainant therefore insists that if it has not title under the Lommasson deed, it has by virtue of this agreement made with Robeson and Sherrerd by its lessor, and the actual possession of the premises for 40 years, which is sufficient to give them a standing in this court.

This presents the case in an aspect which demands the serious consideration of a court of equity. If the equitable title should turn out to be in the complainant, it may become the duty of this court to sustain such equitable title and compel the defendant Breckenridge who holds the legal title to convey it to the complainant or its lessors, the New Barbadoes Toll Bridge Co. vs. Vreeland 3 Gr. 157. But the allegations of the bill are not sufficiently broad to justify the determination of the question presented under the proofs. For if the complainant's lessors took possession under the agreement and that possession has been continued by the complainant, there is nothing in the bill to show such an equitable interest, the bill shows title under Lommasson, making no reference to the agreement.

However the nature of the defence being such as to require the presentation of the facts upon which this equitable interest depends, and which facts are at the very foundation of the controversy, it is the duty of the court under the constant practise to allow the bill to be amended in order that when the question is decided it may have proper support on the pleadings. The object of the bill is to prevent the laying of the pipe in the highway, the fee of which is claimed by the complainant. The purport of the answer is that the complainant has no right to insist upon this object because the title to the land is not in the complainant but in one of the defendants. Then the complainant, says if I have not the legal title under the Lommasson deed, then I have the equitable title under the Robeson agreement and the continued possession for over 40 years under such agreement. Therefore it would seem that the object aimed at will be the same when the bill shall have been amended to conform to the present aspect of the case. 10 20

I will give the complainants three days from this date December thirtieth, within which to present an order allowing it to amend its bill, and until Saturday the fourth of January proximo to serve a copy of such order and of its bill so amended, together with any additional affidavits or other proof that it may see fit to offer, upon the solicitor of the defendant; and I will extend the time for further hearing of the cause on such amended bill and affidavits and other proof until Tuesday the seventh day of January proximo at 10 o'clock in the forenoon, at the State House in Trenton unless the defendants desire further time. 30

ORDER.

This matter being opened to the court by Alan H. Strong, solicitor and of counsel with the complainants, and good cause therefor appearing, it is on this
10 second day of January, in the year eighteen hundred and ninety-six, ordered that the complainants have leave to amend their bill of complaint in such manner as may be necessary or proper in order to set up the certain agreement in writing mentioned in the affidavits on the part of the complainants presented on the argument of the rule to show cause for an injunction in this cause, made by William P. Robeson and John M. Sherrerd with The Belvidere Delaware Railroad Company in the year eighteen hundred and fifty-one, and to set up the possession of
20 said complainants of the land affected by said agreement, and the equitable rights or title of said complainants or one of them under said agreement with a prayer for the specific performance thereof.

And it is further ordered that a copy of the said bill as so amended (which need not be certified) be served on Henry S. Harris, solicitor and of counsel with the defendants, not later than the fourth day of January instant, together with like copies of this
30 order and of any further proofs which the said complainants may desire to present, and that the further argument of the said rule to show cause for an injunction upon said amended bill and additional proofs and the proofs already adduced, be had before this court at the State House in Trenton on Tuesday, the seventh day of January instant, at ten o'clock in the forenoon unless the said defendants desire further postponement.

Respectfully advised,

JOHN T. BIRD, V. C.

ANSWER.

10

The answer of Harry W. Breckenridge to the bill of complaint of the Pennsylvania Railroad Company and The Belvidere Delaware Railroad Company, complainants.

This defendant answering the bill of complaint or so much thereof as it is necessary and material to make answer to, says :

20

That he admits the incorporation of the Belvidere Delaware Railroad Company by the Legislature of this State as in the bill of complaint stated and set forth, and that it was invested with the powers and privileges in the act of incorporation set forth and none other.

This defendant also admits that the Belvidere Delaware Railroad Company was empowered by legislative enactment to lease its road and franchises as in the bill of complaint stated, and did lease the same to the Pennsylvania Railroad Company, one of the complainants, which is now operating the same.

This defendant further answering denies that the United States Pipe Line Company is now engaged in constructing and laying the line of pipes in said bill of complaint mentioned as being constructed and lain from a point east of said railroad track of said complainants toward the same in a westerly direction, but says that this defendant is lawfully constructing the same.

This defendant further answering says that it is true that he is the superintendent of the United States Pipe Company in the State of Pennsylvania, and that he has been actively engaged in securing the right of way for said line of pipes in said neighborhood but in his own name and for the present for himself, it being his intention to connect his said line of pipes with a line of pipes of the said United States Pipe Line Company at a point on the Delaware river in the State of Pennsylvania near the foot of Foul Rift, which is near the town of Belvidere, in the county of Warren, the said line of pipes of the said company being now laid and in operation from the oil regions of Pennsylvania as far as Wilkesbarre in said State, a distance of two hundred and fifty miles, from which point the same is now being laid toward the Delaware river aforesaid.

And this defendant further answering says that he has been engaged in securing said rights of way and in laying said line of pipes in the county of Warren, in this State with a view and intention to subsequently transfer the same to a corporation to be organized in the State of New Jersey or upon certain contingencies to the said United States Pipe Line Company.

And this defendant further answering expressly denies that it is the intention of either himself or the said United States Pipe Line Company to lay pipes under the said railroad of the complainants at or in the immediate neighborhood of the private undergrade crossing of Mrs. Mary White Roseberry under said railroad, and denies that he was a party to the said action of the said Mary White Roseberry against the Pennsylvania Railroad Company in the bill of complaint mentioned, and further answering says that the said action resulted in a general judgment in favor of the said plaintiff and against said defendant company as by the records of said judgment in the Supreme Court of Judicature of this State reference being thereto had will appear.

And this defendant further answering denies that the complainant The Belvidere Delaware Railroad Company is the owner in fee of the land through which the public road under a certain crossing thereof by said railroad about nine hundred and fifty feet north of the said private crossing of the said Mary White Roseberry runs by virtue of a deed from Thomas Lommasson and wife or from any person whatsoever or that the said complainant in any way acquired ownership thereof. 10

And this defendant further answering denies that the said Thomas Lommasson or his wife were ever seized of an estate of inheritance in the said tract of land in said bill of complaint mentioned, and that he had any right to convey the said tract of land to the said Belvidere Delaware Railroad Company.

And this defendant further answering says that the land where the said public road and said railroad of said complainants cross each other is a part of a certain one acre tract of land which has been known 20 and called the landing place on the river Delaware since the year seventeen hundred and forty-four when Johannes Vanetta being seized in his demesne as of fee of a large tract of land by divers good conveyances which large tract included said one acre, of land by deed dated May third in said last mentioned year conveyed said acre of land to Jonathan Robeson then owner of Oxford Iron Furnace in said county of Warren, and that the said deed is in the possession of this defendant ready to be produced and proved 30 as this honorable court shall direct, and that thenceforth the said landing place continued to be used as the place for lading Durham boats with the products of said Oxford Furnace for transportation down the river Delaware to market.

And this defendant further says that the said public road where said railroad crosses the same is upon the said acre of land known as said landing place at the eastern end thereof and is the same road over which said products of said Oxford Furnance were

for many years hauled to said river Delaware for shipment; that on the first day of November in the year seventeen hundred and eighty-six the said road was viewed and relaid by Joseph Bevors, Mathias Shipman and eight others, surveyors of roads for the counties of Hunterdon and Sussex to be four rods wide, which said return of said surveyors is of record in the office of the Clerk of Sussex county in Book A of Roads on page 144, a duly certified copy whereof
10 is in the possession of this defendant ready to be produced and proved as this honorable court shall direct.

And this defendant further answering says that William P. Robeson late of Belvidere in the county of Warren was by divers good conveyances in his lifetime and at the time of his death seized in his demesne as of fee of, and in an undivided three-fourths part and share in the said one acre of land whereon said railroad crosses said public road situate
20 in the township of Oxford in the county of Warren bounded and described as follows: Beginning at and in the mouth of a run that vents into the Delaware river from the spring by the dwelling house of him the said John Vannetta, thence down the said river eight perches to a post, thence extending from the river twenty perches to a corner, thence parallel with Delaware eight perches to a post, thence to the river so as to include the full one-half part of the spring and the said run to the place of beginning, the
30 same lot to be laid out to contain one acre of land.

That being so thereof seized the said William P. Robeson on the twenty-eighth day of November eighteen hundred and sixty-four made and executed his last will and testament in due form of law to pass real estate and did therein and thereby among other things appoint his son George M. Robeson the executor of his said last will and testament and did therein and thereby fully authorize and empower his said executor to grant, bargain and sell and convey all his lands and real estate, and that the said George

M. Robeson after the death of said William P. Robeson who died on or about the second day of December in the year last aforesaid, and on the twenty-third day of December in said year last aforesaid duly proved the said will in the office of the Surrogate of the county of Warren and was on the same day in due form of law granted letters testamentary thereon as appears of record in said office in Volume 4 of Wills on pages 39 and 40 as by a duly certified copy thereof and the probate proceedings 10 thereon in the possession of this defendant ready to be produced and proved as this honorable court shall direct will appear, and the said George M. Robeson then took upon himself the burthen of the execution thereof.

That the said George M. Robeson executor of the said William P. Robeson by virtue of the power of sale in his said last will and testament by deed dated June twenty-seventh in the year eighteen hundred and ninety-five, conveyed unto William O'Niel of 20 Belvidere in the county of Warren, his heirs and assigns, the said undivided three-fourths part and share in the said one acre of land hereinbefore described whereon said crossing is situated.

That the said William O'Niel being seized by virtue of the said last mentioned conveyance in his demesne as of fee of and in the said undivided three-fourths part and share in the said one acre of land, by deed dated July second eighteen hundred and ninety-five conveyed the said undivided three-fourths part and 30 share in the said one acre of land unto Marcus Hopler his heirs and assigns.

That the said Marcus Hopler being by virtue of the said last mentioned deed seized in his demesne as of fee of and in the said three-fourths part and share of the said one acre of land by deed dated the thirtieth day of August eighteen hundred and ninety-five conveyed the said part and share of the said one acre of land unto Joseph M. Roseberry his heirs and assigns.

That the said Joseph M. Roseberry being by virtue of the said last mentioned conveyance seized in his demesne as of fee of and in the said undivided three-fourths part and share in the said one acre of land by deed dated the thirty-first day of August in the year eighteen hundred and ninety-five, conveyed the said undivided three-fourths part and share in the said one acre of land unto this defendant the said Harry W. Breckenridge, his heirs and assigns forever.

- 10 That the said several deeds of the said George M. Robeson, executor of William P. Robeson, deceased, the said William O'Niel, the said Marcus Hopler and the said Joseph Roseberry, are of record in the Warren County Clerk's office in Volume 156 of Deeds for said county, on pages 30, 33, 35 and 37 respectively, and duly certified copies thereof are in the possession of this defendant ready to be produced and proved as this honorable court shall direct.

- 20 And this defendant further answering says that immediately after receiving his deed for said one acre of land hereinbefore described he went into possession thereof and has ever since held the possession thereof, and that he was a bona fide purchaser of said land and paid the purchase money therefor.

- And this defendant further answering says that Anna M. Robeson, late of the city of Camden and formerly of Belvidere, in this State, by divers good conveyances and as the sole heir at law of her brother John P. B. Maxwell, deceased, was in her lifetime
30 and at the time of her death seized in her demesne as of fee of and in the undivided one-fourth part of said one acre of land whereon the said railroad crosses the said public road hereinbefore mentioned and described. That the said John P. B. Maxwell in his lifetime and at his death on the fourteenth day of November, in the year eighteen hundred and forty-five, was seized in his demesne as of fee of and in the said undivided one-fourth of the said acre of land, having acquired the same and become the owner in fee thereof by virtue of a deed of convey-

ance made by Tacy Robeson, executrix of the last will and testament of Morris Robeson, deceased, bearing date April first, eighteen hundred and thirty-four, of record in the Warren County Clerk's office in Volume Twelve of Deeds, on pages 523, &c.

That the said John P. B. Maxwell died intestate and left his sister the said Anna M. Robeson his sole heir at law.

That she being so seized as aforesaid of the said one-fourth undivided interest and share in said here- 10
inbefore described acre of land on the third day of March in the year eighteen hundred and eighty-four, made and executed her last will and testament in due form of law to pass real estate and did therein and thereby among other things appoint her son George M. Robeson the executor of her said last will and testament and did therein and thereby fully authorize and empower her said executor to grant, bargain and sell and convey all her lands and real estate, and the said Anna M. Robeson subsequently 20
died and after her death and on the eighteenth day of July in the year eighteen hundred and eighty-seven the said George M. Robeson duly proved the said will in the office of the Surrogate of the county of Camden and was on the same day in due form of law granted letters testamentary thereon as appears of record in said office in Volume K of Wills, page 5, &c., as by a duly certified copy thereof and the probate proceedings thereon in the possession of this defendant ready to be produced and proved will 30
appear, and the said George M. Robeson then took upon himself the burthen of the execution thereof.

That the said George M. Robeson, executor of the said Anna M. Robeson, by virtue of the power of sale in her said last will and testament by deed dated June twenty-seventh in the year eighteen hundred and ninety-five, granted and conveyed unto William O'Niel, of Belvidere, in the county of Warren, and his heirs and assigns the said undivided one-fourth part, share and interest in said acre of land which

said deed is of record in the Warren County Clerk's Office in Volume 156, page 32, the said William O'Niel paying therefor the sum of thirty-seven dollars and fifty cents to said George M. Robeson, executor of the said Anna M. Robeson as aforesaid through his agent and attorney John H. Dahlke, Esquire, who delivered the said deed for the said executor to the said William O'Niel.

That the said William O'Niel being seized by
10 virtue of the last mentioned conveyance in his demesne as of fee of and in the said undivided one-fourth part, share and interest in the said one acre of land by deed dated July second eighteen hundred and ninety-five, granted and conveyed the said part, share and interest unto Marcus Hopler and his heirs and assigns, which said deed is of record in the Warren County Clerk's Office in Book of Deeds Volume 156, page 33, &c.

That the said Marcus Hopler being seized by virtue
20 of the said last mentioned deed in his demesne as of fee in the said undivided one-fourth part, share and interest in said one acre of land by deed dated the thirtieth day of August eighteen hundred and ninety-five, granted and conveyed the same unto Joseph M. Roseberry and his heirs and assigns, which deed last mentioned is of record in said Clerk's Office in Volume 156, page 35.

That the said Joseph M. Roseberry being by virtue
30 of the last mentioned conveyance seized in his demense as of fee of and in the said undivided one-fourth part, share and interest of and in the said one acre of land by deed dated August thirty-first eighteen hundred and ninety-five, granted and conveyed the same unto this defendant Harry W. Breckenridge and his heirs and assigns forever, which said deed is of record in said Clerk's Office in Volume 156 of Deeds, page 37, &c.

That duly certified copies of the said records of the said several deeds of the said George M. Robeson, executor of Anna M. Robeson deceased, the said

William O'Niel, the said Marcus Hopler and the said Joseph M. Roseberry respectively are in the possession of this defendant ready to be produced and proved, and to the same this defendant refers.

And this defendant further answering says that he was a bona fide purchaser of the said land and paid the consideration therefor named in said deeds, to wit, the sum of thirty-seven dollars and fifty cents, for the part, share and interest of the said Anna M. Robeson and a like sum for the part, share and 10 interest therein of the said William P. Robeson, deceased.

And this defendant further answering says that immediately after receiving his said deed for the said undivided fourth part, share and interest of the said Anna M. Robeson of and in the said one acre of land he went into possession of the said land and has ever since held possession thereof.

And this defendant further answering says that the said alleged agreement between William P. Robeson 20 and John M. Sherrerd and the Belvidere Delaware Railroad Company by Ashbel Welsh, an agent, was and is wholly inoperative and void and without any binding force or effect whatever either upon the said William P. Robeson, the said Anna M. Robeson, or their respective heirs and assigns.

That the said agreement purports to be purely personal on the part of the said William P. Robeson and is without force or effect upon his heirs or assigns.

30

That the interest and estate of the said Anna M. Robeson in the said one acre of land remained entire to the said Anna M. Robeson and her heirs and assigns after the death of her husband the said William P. Robeson, unaffected by the said alleged agreement or by any act by him in his lifetime.

That the said Belvidere Delaware Railroad Company has never complied with the terms of said agreement on its part to be performed as therein stated and set forth.

That the said company hath not paid the consideration money herein mentioned and agreed to be paid.

That the said company hath not made any crossings for teams or otherwise nor any openings under their railroad for the passage of belts, shafts or other contrivances for the transmission of power.

That from the time of the making of the said alleged agreement the said Belvidere Delaware Railroad Company have kept the said instrument secret
10 and have given no notice thereof to any of the several purchasers of the said one acre of land, nor was there any means whereby they or any of them could learn or know of the existence thereof till after the commencement of this suit, and this defendant says that he is a bona fide purchaser without notice of the said alleged agreement or of any claim based thereon or therefrom arising.

That by the act of incorporation by the legislature
20 of this State of the said Belvidere Delaware Railroad Company power to cross the public highways was expressly given said company, and that as to so much of the said one acre of land as is occupied by said crossing of said railroad over said highway on said acre neither this defendant nor any of his grantors had notice of any crossing thereof in any other right or under any claim or title or ownership of the fee in the said highway by the said William P. Robeson, the said Anna M. Robeson or the
30 grantors of this defendant.

And this defendant further answering says that he denies that the said company by any occupation of part of said one acre under said agreement as in complainants bill alleged at any time held the same adversely to the said William P. Robeson or his representatives, but permissively only.

And this defendant further answering says that the said one acre of land whereon the said public highway and said railroad crossing thereof is located has been continuously in possession of the said William P.

Robeson and the said Anna M. Robeson and of their respective heirs and representatives since the construction of the said railroad.

And this defendant further answering denies that this defendant or the several persons through whom he claims had either actual or constructive notice of any rights of the Belvidere Delaware Railroad Company in the said lands other than to cross the same over the said highway.

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And this defendant further answering alleges that the said Belvidere Delaware Railroad can only acquire land by contract, gift or condemnation, the powers given by their charter, and not by adverse possession.

And this defendant denies that the provisions in said alleged agreement contained for crossings for teams or otherwise and for passage of belts, shafts or contrivances for transmitting power under said railroad have relation only to other parcels of land 20 owned by said Robeson and said Sherrerd and alleges that the provisions relate to any places that should be necessary for the purposes of said Robeson and Sherrerd and to any works erected or to be erected.

And this defendant further answering denies that any crossing on the strip of land between the lands of Abraham McMurtrie, Jr., and John Hoff, Jr., was ever constructed or has ever existed or been used and enjoyed in compliance with the said agreement 30 as in the bill of complaint alleged.

And this defendant further answering denies that the said company ever removed any building whatsoever in pursuance of said agreement.

And this defendant further answering denies that any requirements or obligations on the part of the said company in the said agreement contained were ever waived by the said William P. Robeson or the said John M. Sherrerd or any of their respective heirs or legal representatives.

And this defendant further answering denies that the said Belvidere Delaware Railroad Company is in equity the owner of any part of said acre of land or entitled to a conveyance of the legal title to any part thereof.

And this defendant further answering says that it is true that he has entered into contract with the township committee of Oxford township in said county of Warren to repave the roadway of said crossing and to lay thereunder a drain pipe not less than eight inches in diameter for the purpose of draining the water off the said highway, and that the said work is very necessary for the public use of said highway, and will cost about three hundred dollars, about two hundred and fifty feet of pipe, twelve inches in diameter being necessary and having been by this defendant ordered and ready to be delivered for that purpose, and that the said work is necessary and said contract therefor within the lawful power of said township committee, and that their purpose and that of this defendant is to really and not ostensibly do a beneficial public work.

And this defendant further answering says that the said highway has been by the said railroad embankment being placed therein filled up for a distance of fifty-four feet and narrowed thereby to twelve feet and this without any lawful right or power in the said complainants or either of them whatever so to do; which said illegal structure by its presence in the said highway is a principal cause of the said highway becoming choked with water, ice and snow and much of the time in winter thereby made dangerous and impassable. That the said embankment is over twenty feet high and if removed as it should be from within the limits of the said highway the said difficulty would be greatly lessened if not wholly obviated.

And this deponent further answering says that he contracted to do the said work for a very small consideration partly because of its beneficial effect upon

his other land, part and parcel of the said acre of land whereon said crossing is situated, and also because the said township committee on the thirty-first day of August eighteen hundred and ninety-five granted him permission to lay two pipes for petroleum transportation in said road at said crossing. This defendant further contracting to keep another part of said road in repair as a consideration therefor.

And this defendant says he has good right and lawful power to lay his said pipe under the surface of 10 said highway by reason of his being the owner of the soil, in subordination to the public right of way, but made the said contract and obtained permission of the said township committee in order that it might be made manifest that he did not intend to impair the public easement or the control of the public authorities over the said public highway.

And this defendant further answering says that the said permission to lay said pipes is within the powers of said committee and neither illegal nor void, nor 20 will the land of said complainants be appropriated thereby.

And this defendant further answering says that very great care is intended to be observed in the laying of the said pipes and that by reason of their construction of fifteen hundred pounds to the square inch tested strength and being tightly screwed together and clamped at the joints at said crossing there will not be any liability to leakage whatsoever. That similar pipes have been laid over, under and 30 along many railroads in various States of the United States many hundred times without any reported accident or injury. That the United States Pipe Line itself crosses under railroad tracks over forty times, the majority of them being surface crossings, and therefrom no injury has resulted. That it is safe to say that there are at least two thousand of said crossings, that there are in the Pennsylvania oil field alone twenty-eight thousand producing oil wells each of which has pipes leading from it and very

many of them cross under railroads without being buried in the ground or covered in any way and that no accident or injury has been known to result from any of said crossings.

And this defendant further answering says that it would not be possible to use said pipes for the transportation of oil if there should be a leakage of sixty drops per hour at each joint of said line.

And this defendant further answering says that
10 the said lines of pipe have all been laid and fastened together across said county of Warren except at the said crossing of the said Belvidere Delaware Railroad and with that exception extended from the Delaware river to Junction, where the ground having been purchased therefor large tanks have been constructed.

And this defendant further answering says that the laying and maintenance of the said pipes in the said roadway where the same is crossed by the said railroad will not interfere with, affect, injure, take
20 away or destroy any property or other right of either of said complainants and will not irreparably injure the said complainant or either of them.

And this defendant further denies that the said complainants or either of them have any property in the said public road for which they or either of them are entitled to compensation as charged in their said bill of complaint.

And this defendant further answering denies that the said acre of land has always lain vacant and un-
30 occupied as in the complainants' bill alleged, but alleges the truth to be that in the year eighteen hundred and seventy-six and eighteen hundred and seventy-seven upon an agreement with James M. Robeson, the agent of George M. Robeson, the son of the said William P. Robeson, and his said executor and the agent of the said Anna M. Robeson and in charge of the said acre as well as of all the other lands of said William P. Robeson and Anna M. Robeson, in the county of Warren, one William Fisher entered into said acre of land and erected

thereon a house and lived thereon during the summer of each of said years, and had possession of said spring and of the said landing place, keeping there a number of boats for hire and entertaining fishing parties in said house and on said acre of land the said house being situated about one hundred feet south of the said Shippen spring, that after the occupancy of said William Fisher ended one Levi Linn lived in said house for several years.

And this defendant further answering says that by ¹⁰ the fifteenth section of the charter of the said Belvidere Delaware Railroad Company the said railroad is enacted and declared to be a public highway and this defendant insists that at the said crossing of said public road on said acre of land no other right than that of crossing one highway by another could be acquired or obtained and that by the intercrossing of the said two highways no right or interest as against the true owner of the fee therein was ever acquired by the said Belvidere Delaware Railroad Company. ²⁰

And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY S. HARRIS,

Solicitor for and of Counsel with the Defendant.

State of New Jersey }
Warren County } ss.

Harry W. Breckenridge the above named defendant being duly sworn on his oath says that the ³⁰ matters and things set forth in the above answer, so far as relates to his own acts are true, and so far as relates to the acts of others he believes them to be true.

He further says that he has read the foregoing answer and that it is true as therein stated that he has been engaged in securing rights of way and in constructing and laying the line of pipes in said answer mentioned across the county of Warren to be connected with lines of the United States Pipe Line

Company on the Delaware river in the State of Pennsylvania and that he has been so doing with a view and intent subsequently to transfer the same to a corporation to be organized in the State of New Jersey or upon certain contingencies to the United States Pipe Line Company.

That it is not his intention nor that of the United States Pipe Line Company to lay pipes under the railroad of the complainants at the undergrade crossing of Mrs. Mary White Roseberry in said bill of
10 complaint mentioned and that neither he or the United States Pipe Line Company were parties to the suit between her and the Pennsylvania Railroad Company in the said bill of complaint mentioned and that he has been informed and believes it to be true that she recovered a general judgment for the causes of action in her declaration filed therein mentioned.

He further says that he has been informed and believes it to be true that neither the said Thomas
20 Lommasson nor his wife in the said bill of complaint mentioned was ever seized of an estate of inheritance in the tract of land in said bill of complaint alleged to have been conveyed by him to said Belvidere Delaware Railroad Company.

That the land where the said public road and the said railroad cross each other is a part of a certain tract of land which has been known and called as he is informed and believes to be true, the Landing Place since the year seventeen hundred and forty-
30 four when one Johannes Vanetta who was then seized and possessed of a large tract of land which included said one acre tract, by deed dated May third, in said last mentioned year conveyed said acre of land to Jonathan Robeson then builder and owner of Oxford Furnace in said county of Warren as appears by the said deed in the possession of the affiant, that from said landing place a road-bed to the road leading from Easton, Pennsylvania to Newton, intersecting the same at or near John McVicker's tavern, and over said road to said landing place the

products of said furnace were hauled for many years till some time in the present century the said road as this defendant is informed and believes entered said one acre tract on the eastern end thereof and thence ran across it. That said road was relaid on November first seventeen hundred and eighty-six, to be four rods wide by the surveyors of highways for the counties of Hunterdon and Sussex as appears by a duly certified copy of their return in the possession of the affiant. 10

That he is informed and believes it to be true that William P. Robeson late of Belvidere was the owner of an undivided three-fourths of said one acre of land in fee simple in his lifetime and at his death was then in actual possession thereof. That by his last will and testament duly executed as in said answer set forth he appointed his son George M. Robeson his executor and him invested with power to sell the lands of him the said William P. Robeson.

That the said will having been duly proved and 20 letters testamentary thereon granted by the Surrogate of the county of Warren, the said George M. Robeson by virtue of the power so conferred upon him, conveyed the said undivided three-fourths of the said one acre of land to William O'Niel as in said answer alleged, who conveyed the same to Marcus Hopler, who conveyed the same to Joseph M. Roseberry, who on the thirty-first day of August last conveyed the said one acre of land to this affiant all as in said answer alleged and of the said last will 30 and the said several deeds of conveyance duly certified copies are in the possession of this affiant ready to be produced and proved herewith.

That the affiant is informed and believes it to be true that Anna M. Robeson as the heir at law of John P. B. Maxwell, her brother, became the owner in fee of one undivided one-fourth interest and share in the said one acre of land, and that she survived her husband the said William P. Robeson many years and died in the year eighteen hundred and

eighty-seven without having aliened the said land. That by her last will and testament duly executed as in said answer set forth she appointed her son George M. Robeson her executor and trustee and him invested with power to sell the lands of her the said Anna M. Robeson.

That the said will having been proved and letters testamentary thereon granted by the Surrogate of the county of Camden, the said George M. Robeson
10 by virtue of the power so conferred upon him granted and conveyed all the interest, share and estate of the said Anna M. Robeson in the said one acre of land in consideration of the sum of thirty-seven dollars and fifty cents to William O'Niel as in said answer alleged, who conveyed the same to Marcus Hopler, who conveyed the same to Joseph M. Roseberry, who on the thirty-first day of August last conveyed the said interest in said one acre of land to this affiant,
20 all as in said answer alleged and as appears by duly certified copies of said last mentioned will and said several deeds of conveyance.

That this defendant immediately after receiving his said deed for said one acre of land went into actual possession thereof and has ever since held and now has possession thereof. That he has thereon certain personal property, and that immediately after receiving said deed he went upon the said tract of land and caused the same to be surveyed and the
30 corners marked.

That he was a bona fide purchaser of said land and paid the purchase money therefor.

That the matters in said answer stated concerning the contract of this affiant with the township committee of Oxford township, in said county of Warren, for the laying of a drain pipe for water at said crossing are true in all things as therein stated and set forth both as to the necessity for said work for the benefit of the public use of said highway and as to the same costing about three hundred dollars, and it

is also true that the said drain pipe has been ordered and is about to be delivered.

That the said highway has been filled in with an embankment of said railroad about twenty feet high for fifty four feet of the width of said highway and has been narrowed thereby to twelve feet from a legal width of four rods as shown by the return of the surveyors of highways made November first, A. D., seventeen hundred and eighty-six, as in said answer stated.

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That he contracted to do the said work for the reasons stated in his said answer, and that for the permission given him to lay the said two pipes for the transportation of petroleum he contracted to keep another part of said highway in repair.

That it is true as in said answer alleged that very great care is intended to be observed in the laying of the said pipes and that the same have been subjected to a test of fifteen hundred pounds to the square inch and that the said strain is four times the strain 20 to which they will be subjected in ordinary use and that the joints thereof are so securely screwed and engaged together that there is no liability to any leakage whatever, and that at said crossing the said pipes there laid are to be clamped together in addition to the ordinary connection.

That it is true as in said answer stated that similar pipes have been laid over, under and along many railroads in several of the States many hundred times without any reported accident or injury, that the 30 said United States Pipe Line crosses under railroad tracks over forty times, the majority of them being surface crossings from which no injury has resulted.

That there are at least two thousand of such said crossings in the United States, that in what is known as the Pennsylvania oil field which includes some territory in New York and some in West Virginia, there are twenty-eight thousand producing oil wells, each of which has pipes leading from it, and very many of them cross under railroads more than once

in very many places without being buried in the ground or covered in any way whatever and that this affiant has never heard of any harm or injury to any of said railroads from the leaking of any of said pipes, that it would not be possible to use said pipes for the transportation of petroleum if there should be a leakage at each joint of sixty drops per hour.

That this affiant has had thirteen years experience in the pipe line business, nine of them in construction, and can and does positively aver that the laying and maintenance of the said pipes in the said crossing will not injure, affect or interfere to the least extent with the said railroad or with any of the property of the said complainants.

That the said lines of pipes at said crossing will be laid upon land of this affiant wherein the said public road at said crossing is laid and not upon the land of the said complainants or either of them.

That the said lines of pipes have all been laid, fastened together, and for the most part buried in the ground, across the said county of Warren, and extend from Junction, in the county of Hunterdon, to the Delaware river excepting at the said crossing of the said Belvidere Delaware Railroad over said public road on the said land of this affiant.

HARRY W. BRECKENRIDGE.

Sworn and subscribed before me this 13th day of January, A. D., 1896.

JNO. B. BROOKFIELD,
Notary Public for New Jersey.

State of New Jersey, }
Warren County, } ss.

Margaret Frey, of full age, being duly sworn on her oath, says that she is a daughter of George K. Lommasson, granddaughter of Thomas Lommasson, of Oxford Township, in said County and State. Deponent further says that she is sixty years of age and past; that she moved on the farm near the Shippen spring

in her childhood with her said father, and she thinks it was about the year A. D., 1844. She lived there until she married John Frey, her present husband, and then lived very near by the crossing of the public highway by the Belvidere Delaware Railroad about two miles south of Belvidere and about nine hundred and fifty feet north of an under grade crossing on the Mary White Roseberry farm, and that she lived very near said public road crossing until the year 1876 as nearly as she can tell.

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Deponent further says that said highway at said crossing has been a public highway at said crossing as long as she can remember, and worked by the public authorities before the building of said railroad there, and that said highway has been much narrowed by the construction of said railroad over it at said place; that said public highway when said railroad was built was at least one and one-half rods wide at the crossing but narrowed by building the railroad over it.

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Deponent further says that she often heard her grandfather, Thomas Lommasson, and her father, George K. Lommasson, both say that Judge Robeson, meaning William P. Robeson, had one acre of land lying south of the Shippen spring, and that he owned it, and they said that it ran to a line on its easterly boundary eastward of the present railroad embankment and fence at the said public high crossing so that the whole land in said public highway at said crossing was contained in the Robeson acre that the 30 south line of said acre ran south of said crossing, the eastern line of said acre ran east of said crossing, the north line of said acre ran north of said crossing and the west line of said acre was west of said crossing; and further deponent says that said Thomas Lommasson never lived on said land at said crossing and never had actual adverse possession of said land nor of any part of said one acre, nor did her father have any possession of it; nor did her father or said grandfather claim any title to said Robeson acre in

any way, but she has often heard them say that said William P. Robeson owned it. And she never heard them dispute his title and ownership to said acre of land; and while deponent lived there her said father never did anything on said one acre; part of said acre was a sort of meadow land and was never plowed while deponent lived there. Said highway at said crossing was never in possession of either her father or grandfather, but the public travelled freely over it
 10 and it was much travelled; nor has deponent ever seen her father or grandfather do any act hostile to the ownership of said Robeson in said one acre of land and highway at said crossing.

her

MARGARET X FREY.

mark

Sworn and subscribed before me the 29th day of November, A. D., 1895.

MARCUS HOPLER,

Notary Public for N. J.

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State of New Jersey, }
 Warren County, } ss.

John Frey, of full age, being duly sworn on his oath, says that he has heard the affidavit of Margaret Frey above read to him, and that the same is true; and further that he was present at the building of the Belyidere Delaware Railroad at said public road
 30 crossing in her affidavit mentioned, and that he saw the stakes driven in the ground for the eastern line of their railroad bed, and that in making the railroad embankment there said railroad employees ran the dirt and gravel over said line of stakes each side of said public highway at said crossing on the east side of said embankment from four to six feet and also in part of said highway, and that the superintendent of said railroad embankment construction said to deponent that they covered up land east of their line five or six feet, but they could not help it because the

embankment was very high and the dirt would roll down the embankment.

JOHN FREY.

Sworn and subscribed before me this 29th day of November, A. D., 1895.

MARCUS HOPLER,

Notary Public in and for New Jersey.

State of New Jersey, }
Warren County, } ss.

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Samuel Vanatta, of full age, being duly sworn on his oath, says that he is past seventy-five years of age and is a descendant of the old Vanatta family, and has lived near by the public highway that is crossed by the Belvidere Delaware Railroad, about two miles south of Belvidere, and about nine hundred and fifty feet north of the under grade crossing on the farm now or formerly of Mary White Roseberry. Said public highway is a very old public road running back longer than affiant can remember, and was located as it is now at said crossing from affiant's earliest recollection except that the highway has been narrowed a great deal at said under grade crossing. As long as affiant can remember, and before said railroad was built, said highway was always worked by the public authorities. Affiant in his early days was accustomed to fish for shad just below the Shippen spring, and he then understood that the Oxford furnace, owner or owners, were the owners of one acre of land south of said Shippen spring. Affiant sought information from Michael Cyphers, John Mackey, Philip Mowery and William White who always told affiant that said acre of land lay south of the Shippen spring, run down to the Delaware river away and then extended eastward or southeastward. Affiant was desirous, before said railroad was built, to construct a wing wall running from the Delaware river bank into the river for the purpose of making an eddy; William White, who then claimed to be a part owner of the land adjoining said acre of land, and affiant knows

that at that time he was a half owner in the land on all sides of said acre of land, pointed out to affiant said acre of land, and then said that it belonged to the owner of the Oxford furnace tract, and that said one acre of land belonged to the Oxford Iron Company and not to him and his co-owner. He walked down from the spring along the river southward or southwestward on the river bank and said it runs from said Shippen spring to near said wing wall as
10 it now is; that said wall was built just off of the one acre of land, and then it ran back from the river at right angles so as to make one acre of land. He pointed out the southern line of said one acre running southeastward from the river, and he pointed it out as running south of said public highway, and he said it was a right angle piece of land. The wing wall was put out in the river by permission of said William White, who was then part owner of the land there surrounding on all sides said one acre of land.
20 The north line of the one acre ran at right angles from the spring's mouth in a southeastward or eastward direction; anyway, both lines, the north and south lines of said one acre of land ran at right angles back from the river line of said one acre of land. Affiant at a later period heard that said one acre belonged to William P. Robeson.

Affiant further says that everybody went back and forth over the said acre. That nobody had exclusive possession, claiming it by adverse possession, nor
30 had anybody possession of said acre and of said public highway claiming title to it by adverse possession or otherwise, in opposition to the title of the legal owners, as far as affiant ever knew.

Affiant was on said acre and said crossing a great deal, both before and after said railroad was built over it; he was quite a steady shad fisherman, and was there every other night, and some times every night in shad season fishing for shad, and was there very often in the fall, winter and spring fishing for suckers around said Shippen's spring in the river. He

often heard the old men mentioned who have long since been dead, and died at an old age, speak as aforesaid about said acre of land. Said acre was never claimed as owner by Thomas Lommasson as his property. He never lived upon it or had it in actual possession as far as affiant saw.

SAMUEL VANNATTA.

Sworn and subscribed before me this 27th day of November, A. D., 1895.

MARCUS HOPLER, 10

Notary Public in and for New Jersey.

State of New Jersey, }
Warren County, } ss.

George Lommasson, of full age, being duly sworn on his oath says: That he is a son of Andrew Lommasson and a grandson of Thomas Lommasson, of Oxford township, in said county and State, and that he was born in the year 1833 near the public highway at the undergrade crossing of the Belvidere 20 Delaware Railroad about two miles south of Belvidere in said county, and about nine hundred and fifty feet north of the undergrade crossing of said railroad of the farm now of Mary White Roseberry, and continued to live near said first crossing where he was born until A. D., 1844. Said public road at said crossing was there from affiant's earliest recollection and he often played in it as a child while living there. While living there said public highway at said crossing was from two and one-half to 30 three rods in width, the public road there was much narrowed by the construction of said railroad over it. The said railroad was built after affiant moved away.

Affiant further says that he remembers William P. Robeson coming to the spring called Shippen spring and saying that he owned one acre of land there. He frequently drove down that way and would often stop and get a drink from the Shippen spring. Sometimes he stood in the public road when he said he had an acre of land there. Between the road to

- the east and north of the railroad before it was built there the land was meadow land and was not farmed as long as affiant lived there aforesaid. From the bank of the Delaware river to the east of said railroad in said public highway the land laid open and unfenced. My grandfather Thomas Lommasson, never lived there or occupied the lands or farm as long as I can remember. My father never as I recollect paid my grandfather any rent. And affiant
- 10 further says that he never saw his grandfather have any deed of conveyance for the said land in the public highway at the said railroad crossing. Said public road was always open, and has always been a public highway as long as affiant has known it; it was travelled by the public quite some. Affiant further says that his father and grandfather never claimed any possession or ownership in said public highway or the lands in it, and never saw anyone claiming ownership there by adverse possession.
- 20 Said public road was worked by the township authorities as long as affiant remembers.

GEORGE LOMMASSON.

Sworn and subscribed before me a notary public for the State of New Jersey this 20th day of November, 1895.

A. BLAIR KELSEY,

Notary Public for the State of New Jersey.

State of New Jersey, }
Warren County, } ss.

- 30 Samuel A. Depue, of full age, being duly sworn on his oath, says that he was born about five hundred yards from the present undergrade crossing of the public highway by the Belvidere Delaware Railroad about two miles south of Belvidere and about nine hundred and fifty feet north of the undergrade crossing of the railroad on the Mary White Roseberry farm. He was born there in 1831 and lived there until the year 1852 Affiant has known said public highway all his life and as long as he can remember it was worked by the proper authorities of the town-

ship of Oxford, in said county. That at said crossing the public highway was not less than one and one-half rods in width where travelled. It was so when the said railroad was built across it.

Affiant further says that he heard his father Moses Depue, who was born within three or four hundred yards of the Shippen spring in the year A. D., 1802, say that the Oxford furnace owners hauled iron from their furnace to one acre of land called the landing place south of said Shippen spring. That 10 said public highway ran into and entered the eastern end of said one acre and that in his boyhood days he saw them haul iron there and load them on boats and take it down the Delaware river.

Affiant further says that in his boyhood days he personally knew William P. Robeson, of Belvidere, New Jersey, and that he often saw him on said one acre of land south of Shippen spring. He was then said to be the owner of it. Affiant often saw him at 20 the shad fishing at said spring on the Delaware river and often saw him drive down to said one acre and stop there. Affiant never saw any person in possession of said one acre claiming it adversely to said William P. Robeson, nor has he ever seen Thomas Lommasson live there or in actual possession of said one acre of land or of said public road. Said Thomas Lommasson in early days and as long as affiant can remember never lived on or adjoining lands of the present location of said railroad there or the adjoin- 30 ing farm. The old men living in the vicinity always called said one acre the Robeson acre of land and it was called in earlier times the landing or old landing place, or landing places.

SAMUEL A. DEPUE.

Sworn and subscribed before me this 27th day of November, A. D., 1895.

MARCUS HOPLER,
Notary Public in and for New Jersey.

State of New Jersey, }
Warren County, } ss.

Thomas Lommasson, of full age, being duly sworn on his oath, says that he was born in 1839; that in 1843 he lived within about fifty yards or so of the public road where it is crossed by the Belvidere Delaware Railroad about two miles south of Belvidere and nine hundred and fifty feet north of the crossing
10 under the railroad on the Mary White Roseberry farm; after moving near said crossing, it was the public highway then with no railroad over it. He lived there continuously seventeen years then next following. That said public highway is a very old highway, existing longer than affiant can remember. It was located before said railroad was built over it as it is now, except it was narrowed by said railroad company in building their crossing over it. Said public highway ran there in the eastern end of
20 one acre of land which was said to belong to William P. Robeson, it was said to be the acre where the Oxford furnace company drew their iron and loaded it on boats to be shipped to market down the Delaware river. It was called the landing place and sometimes the Robeson acre. Affiant has seen the said William P. Robeson on said acre of land claiming and saying that he owned said acre of land, and he had possession of said acre during said time. And said one acre, called sometimes the Robeson acre and some-
30 times the landing place, extended across and took in a part of said public highway to the easterly limit of said one acre lot of land. Thomas Lommasson was the great grandfather of affiant. During said seventeen years residence there the said Thomas Lommasson never was in actual possession of said lands on which said railroad is located, nor of the public highway at said railroad crossing, nor of said one acre of land. The said Thomas Lommasson never lived on said lands, and he never claimed possession to said one acre of land or to said highway or any part of it;

nor did any person have actual possession of said highway in the memory of this affiant.

THOMAS LOMMASSON.

Sworn and subscribed before me November 25th,
A. D., 1895, at Belvidere, N. J.

NICHOLAS HARRIS,
Master in Chancery of N. J.

State of New Jersey, }
Warren County, } ss.

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Jane Clark, being duly sworn on her oath, says that she lives in Belvidere, New Jersey, and is the widow of the late Dr. Samuel S. Clark; and further says that affiant's grandmother was a sister of George C. Maxwell, and that the said George C. Maxwell had by his marriage two children only, namely, John P. B. Maxwell and Anna M. Maxwell; and that each of these children of George C. Maxwell lived nearly the whole of their lives in or about Belvidere, New Jersey. That the said Anna M. Maxwell married William P. Robeson, of Belvidere, and a son of this marriage is George M. Robeson, of Trenton, New Jersey, and that the said William P. Robeson died about the year 1864, leaving his said wife, Anna M. Robeson, surviving him, but who died some time after the death of her husband, William P. Robeson.

Affiant further says that said John P. B. Maxwell married Sarah Brown on or about September 11th, A. D., 1834, and who died October 17th, A. D., 1834, without leaving any child or children to the said John P. B. Maxwell, and that the said John P. B. Maxwell was never married to any one except the said Sarah Brown, and he died childless and without any issue him surviving on November 14th, 1845; affiant was then a girl, but she remembers distinctly his death and of her mother going to his funeral. Affiant further says that the said John P. B. Maxwell never had any brother or brothers, and never had any sister or sisters except the said Anna M. Robeson, wife of said William P. Robeson, and that the said Anna M.

Robeson survived her said brother, John P. B. Maxwell, and that all his real estate descended to his said sister, Anna M. Robeson, who died several years ago and long after the death of said John P. B. Maxwell.

Affiant further says that she was and is well conversant with the above facts because of the record of the births and deaths of the family of the said George C. Maxwell, and it was very frequently talked over in her mother's family, who was a first cousin to John
10 P. B. Maxwell and Anna M. Robeson, and whose uncle was said George C. Maxwell. It is also contained in a book containing the birth and death of said Maxwell family with a short biography written by a member of the Maxwell family. The above facts pertaining to William P. Robeson and Anna M. Robeson affiant speaks on her own knowledge.

JANE CLYDE CLARK.

Sworn and subscribed before me at Belvidere, N. J., the 2d day of December, A. D., 1895.

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MARCUS HOPLER,

Notary Public in and for New Jersey.

State of New Jersey, }
Warren County, } ss.

Marcus Hople, being duly sworn on his oath, says that he has to-day searched the indices of the records of wills in the Surrogate's office of the county of Warren in said State in the name of John P. B. Maxwell, who died on or about November 14th, 1845, at
30 Belvidere, New Jersey, and that he has not been able to find the record of any will of the said John P. B. Maxwell or the index of any will of him from his said death to this time and that he has made a careful and thorough search for the same having the assistance in doing so of Joseph M. Roseberry, Esq., in fact affiant thoroughly and carefully searched the indices of said record of wills from 1825 to to-day and could not find any index of any record of the will of said John P. B. Maxwell.

MARCUS HOPLER.

Sworn and subscribed before me at Belvidere, N. J., this second day of December, A. D., 1895.

WILLIAM O'NIEL,
Commissioner of Deeds.

State of New Jersey, }
Warren County, } ss.

Nathan F. Walker, of full age, being duly sworn on his oath, says that he is a civil engineer and surveyor of seventeen years practical experience, and 10 being shown a map purporting to show the locality of the crossing of the Belvidere Delaware Railroad over the public highway near the Shippen spring and of the one acre of land mentioned and described in the deed of Johannes Vanetta to Jonathan Robeson, dated May 3d, A. D., seventeen hundred and forty-four, which said deed affiant has inspected, and of the acre of land near said spring mentioned and described in a deed from Joseph M. Roseberry to Harry W. Breckenridge, dated August thirty-first, A. D., eigh- 20 teen hundred and ninety-five, says that he, the said Nathan F. Walker, made the said map, plotting the same from the deeds of the said Johannes Vanetta and of the said Joseph M. Roseberry aforesaid, which are identical in description and boundaries and that said plotting has been accurately and truly done and that the said map correctly shows the location of the land as given by said deeds, that the crossing of the said railroad over the public road above mentioned is located on the said map from an actual measure- 30 ment and survey made by this affiant and is correctly located by measurement and angles from the westerly line of said one acre lot, the said line being along the bank of the river Delaware and beginning where the waters of said river and the waters of the run from said Shippen spring meet on the same level and running, thence southerly down the said river in a straight line a distance of eight perches.

And the affiant further says that the said Shippen spring and run of water therefrom to the said river

Delaware are correctly shown on said map the angles and distances of said run being accurately shown on said map as correctly surveyed and measured by him.

And affiant says that he hath marked said map with the words: "Map of Robeson acre near Shippen spring, N. F. Walker, 1895."

NATHAN F. WALKER.

Sworn and subscribed before me this 2nd day of December, A. D., 1895.

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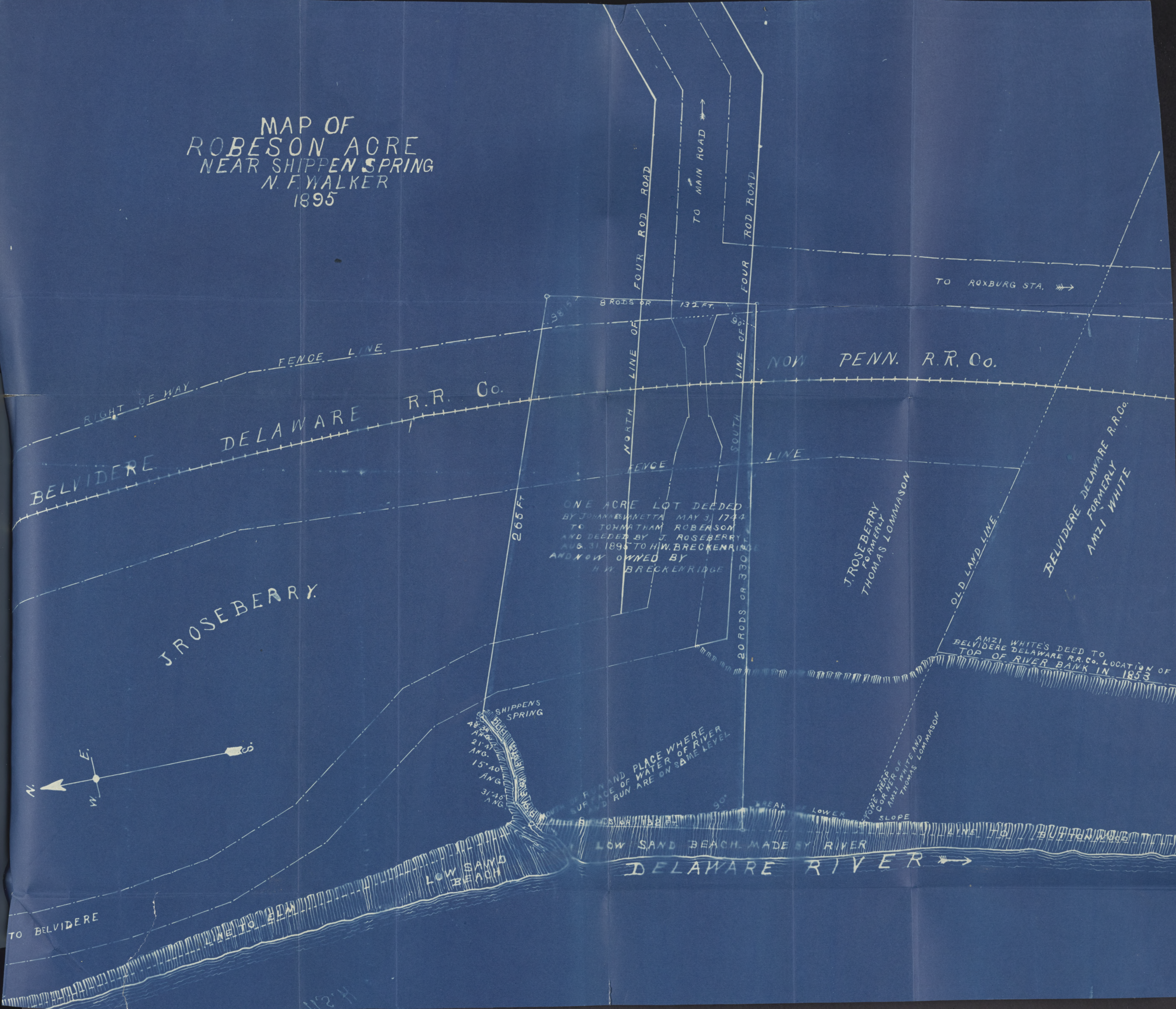
MARCUS HOPLER,

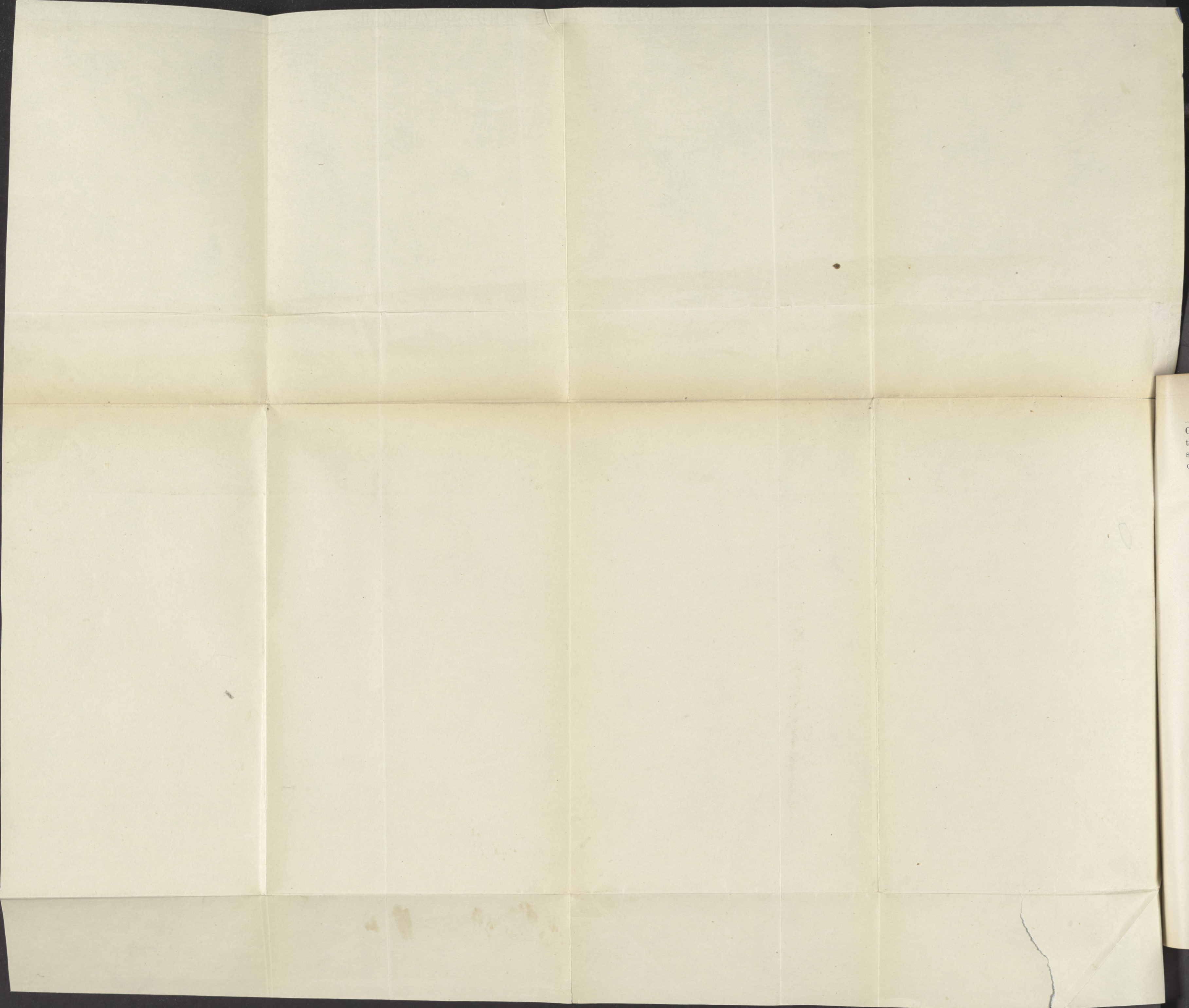
Notary Public in and for New Jersey.

State of New Jersey, }
Warren County, } ss.

William O'Niel, of full age, being duly sworn on his oath, says that he is the grantee in a deed of conveyance made to him by George M. Robeson, executor of the last will and testament of William P. Robeson; said deed bearing date on the 27th day of June, 20 A. D., 1895, conveying one acre of land in said deed described and accompanying the delivery of said deed to affiant was a very ancient deed of conveyance, bearing date May 3d, 1744, from John Vannetta to Jonathan Robeson, containing a description and conveyance of one acre of land from John Vannetta to Jonathan Robeson as is described and conveyed from the said George M. Robeson as executor as aforesaid to affiant as aforesaid; and affiant further says that the one acre of land in said two deeds of con- 30 veyance described is one and the same acre of land, and that the said ancient deed of conveyance came from the custody of said George M. Robeson, and was delivered by him with said first deed of conveyance to affiant as a muniment of title. The said George M. Robeson is the son of William P. Robeson, and the executor of his last will and testament, and is a descendant of said Jonathan Robeson, the grantee in said ancient deed as is said; and affiant further says that he is informed and believes it to be true that the said William P. Robeson in his life time, and his son

MAP OF
ROBESON ACRE
NEAR SHIPPEN SPRING
N. F. WALKER
1895





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Gerge M. Robeson, as heir at law, and also as executor as aforesaid after his death had the actual possession of the one acre of land described in said two deeds, of which said ancient deed is one.

WILLIAM O'NIEL.

Sworn and subscribed before me this 25th day of November, A. D., 1895, at Belvidere, N. J.

NICHOLAS HARRIS,
Master in Chancery of N. J.

10

State of New Jersey, }
Warren County, } ss.

Solomon Daily, of full age, being duly sworn on his oath, says that he is sixty-nine years of age and lives in Oxford township, Warren county, New Jersey, at the Foul Rift, on the river Delaware, and has lived there about forty-five years and near there the rest of his life. Affiant knows the lands of Robeson and Sherrerd separately and in common between lands formerly John Hoff, Jr., and William White, 20 in said township, and knew said lands before the building of the Belvidere Delaware Railroad over said lands; that said lands extended a distance of nearly two miles along said river bank; and affiant further says that said railroad was built a long distance, about one mile, through and across said lands of William P. Robeson and John M. Sherrerd either separately or together. That at the time of the building and construction of said railroad over said land as aforesaid there was a race way or water canal 30 along the bank of the river Delaware over the lands of said Robeson and Sherrerd, also a grist mill was operated by means of said water power. Said water canal was one-quarter of a mile in length and was there before the building of said railroad and on the river side. Affiant further says that there are no crossings of the said railroad from the lands of said Robeson and Sherrerd or either of them from one side to their lands on the other side of said railroad, and there never has been any crossings between said

lands on each side of said railroad except public road crossings, nor has there ever been a crossing for teams or otherwise across said railroad on the strip of land laying between formerly the lands of Abraham McMurtrie, Jr., and John Hoff, Jr. And affiant further says that there were no crossings for teams or otherwise from the building of said railroad at any place for the purposes of said Robeson and Sherrerd and therefore no approaches to any crossing nor have
10 the said the Belvidere Delaware Railroad Company or the Pennsylvania Railroad Company made any openings under their railroad for the passage of belts, shafts or other contrivances for the transmission of power. And affiant says that he has always understood that over the lands of said Robeson and Sherrerd, that the fall of the water of the river Delaware will produce ten thousand horse power, and further that said railroad in part was built over the
20 location of the water power canal of the said Robeson and Sherrerd and rendering the additional expense of constructing said water power canal very great to the owners of said water power. Said grist mill was operated at the time of the building of said railroad but there was no private crossing to it, and the crossing of the public highways are far apart and none of them are on the lands of said Robeson and Sherrerd or either of them except the one passing into the one acre by the Shippen spring.

SOLOMON DAILY.

30 Sworn and subscribed before me January 10th, 1896.

WILLIAM O'NIEL,
Commissioner of Deeds.

State of New Jersey, }
Warren County, } ss.

Jabez G. Cyphers, of full age, being duly sworn on his oath, says that he has lived by the Sherrerd and Robeson lands owned by them together or separately in Oxford township, Warren county, New Jersey,

along the Delaware river for sixty-five years, also close by the track of the Belvidere Delaware Railroad; and affiant knows well the land of said Robeson and Sherrerd along the Delaware river in Oxford township, and that between William White and John Hoff, Jr. lands it ran nearly two miles along the river, and that the said railroad is built over their lands for a distance of at least one-half a mile with their lands on each side of said railroad, and that said railroad company never built any crossing for 10 teams or otherwise at the land or lane between lands of Abraham McMurtie, Jr., and John Hoff, Jr., nor has there ever existed any crossing there at all, and there is not a crossing for teams or otherwise from lands of Robeson and Sherrerd, or either of them, from one side of said railroad to the other side of said railroad, except on the acre of land. And affiant further says that before the building of said railroad there was a water power canal on lands of said Robeson and Sherrerd between said railroad and said 20 river, which used to run a saw mill and grist mill, and that it is at least one-quarter of a mile in length and is still there; and said grist mill was worked at the time of the building of said railroad and a short time afterward, and that the only access to it was over land then and afterward of Philip Mowery, now Margaret Titman, and that there was no crossing across the lands of said Robeson and Sherrerd to it. And affiant further says that if said water power canal should be extended, it would run into the em- 30 bankment wall of the said railroad which on a slope is about fifty feet high, and their slope runs to the water edge of the river, and the canal would have to be built in the river bed. And affiant further says that the said railroad company so built their road bed that it was a great detriment and damage to the lands of said Robeson and Sherrerd owned together or seperately. And affiant further says that there are no openings under said railroad for the passage of belts, shafts or other contrivances for the

transmission of power, and the additional expense of building an extension to said water power canal owing to the location and construction of said railroad would be very great, and that the water power if it could be properly utilized would be about ten thousand horse power, and that the said lands were to be used connectedly.

his
JABEZ G. X CYPHERS.
mark

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Sworn and subscribed before me January 13th, 1896, at Belvidere, New Jersey (witness to mark N. Harris).

NICHOLAS HARRIS,
Master in Chancery of N. J.

State of New Jersey, }
Warren County. } ss.

20 Margaret Frey, being duly sworn on her oath, says that she is coming sixty-one years of age and is a daughter of George K. Lommasson and lived near Shippen's spring, as stated in defendant's other affidavit in this cause, affiant further says that the land on the one acre at the public crossing of the highway by the Belvidere Delaware Railroad from the said railroad crossing to the Delaware river lay unfenced and from the years A. D. eighteen hundred and seventy-seven for five or six years following one Levi Linn occupied permanently a building as a dwelling
30 on said one acre tract of land, and stated that he held as tenant under and by permission of James M. Robeson. Affiant further says that said Levi Linn's occupancy or possession of said one acre tract of land continued until after the year A. D., 1880, and that he claimed possession thereby and occupied the same by permission from the Robesons but not by any right of his own or by authority of any other person than as above stated, and further that the land on said acre from his dwelling place on said acre ran unfenced in an open, clean condition to and through

said public highway crossing of said railroad to the eastern side thereof, and that as long as affiant knew said land for nearly sixty years the land under said railroad at said crossing to the Delaware river which was all in said acre of land always remained open and unfenced and lay open and together in one body of land and not separated by fence or otherwise, said dwelling occupied by Levi Linn stood on said one acre of land and about one hundred feet south of the Shippen spring, in Oxford township, said county and 10 State. Said Linn lived there during said time continuously, and occupied it as his residence and dwelling.

her

MARGARET X FREY.

mark.

Sworn and subscribed before me January 13th, A. D., 1896, at Belvidere, N. J.

WILLIAM O'NIEL,

Commissioner of Deeds. 20

State of New Jersey, }
Warren County, } ss.

William B. Titman, being duly sworn on his oath, says that he is the husband of Margaret R. Titman, who owns the Philip Mowery farm in Oxford township, Warren county, New Jersey, and affiant had made a survey of the boundary line between said farm and the lands of Robeson and Sherrerd owned together or separately by them; said Robeson was 30 William P. Robeson, and said Sherrerd was John M. Sherrerd; and further said lands of Robeson and Sherrerd and Margaret R. Titman adjoined each other for a distance of about one-half of one mile, and affiant further says that the lands of Robeson and Sherrerd, either owned together or separately on the east side of said railroad, are effectually excluded from any access to their water power canal, mill property and land between said Belvidere Delaware Railroad and the Delaware river. The crossing of

- the public highway south of their land is not and was not over their land, and the public highway crossing north of where the railroad cuts their land in two is not and was not on land of said Robeson and Sherrerd, and there are no crossings of the railroad from the land on one side of said railroad to the lands on the other side of said railroad of said Robeson and Sherrerd, owned together or separately, between said two highways crossing of said railroad as aforesaid.
- 10 And affiant further says that the heirs of said Sherrerd, and the executors of said Robeson have no access to said water power canal and milling site except they should pass over land of the said Margaret R. Titman, which they have no right to do, and that there is no access across said railroad by crossing for teams or otherwise, and there is no crossing between lands formerly of Abram McMurtrie, Jr., and John Hoff, Jr. Affiant further says that in the condition of things the Robeson and Sherrerd properties
- 20 could not be used or utilized or operated, because there is not access to the water power canal, milling property, or wood on the west side of said railroad between it and the Delaware river, and no communications whatever with their land on the eastern side of said railroad.

W. B. TITMAN.

Sworn and subscribed before me January 13th, A. D., 1896, at Belvidere, New Jersey.

WILLIAM O'NIEL,
Commissioner of Deeds.

30

State of New Jersey, }
Warren County, } ss.

John H. Dahlke, of full age, being duly sworn on his oath, says that he is an Attorney and Councillor-at-law in this State, and that he has been the agent of George M. Robeson, executor of the last will of William P. Robeson, deceased, since A. D., 1886, and also of George M. Robeson, executor and trustee of the last will of Anna M. Robeson, deceased, since

1887, and looked after and had charge of the lands and real estate of William P. Robeson, deceased, and also of the lands and real estate of Anna M. Robeson since her death, and affiant is well acquainted with the lands and real estate of both William P. Robeson and Anna M. Robeson, deceased, in Oxford township, in said county and State, and knew the one acre of land belonging to them at or near Shippen's spring in said Oxford township; that as such agent of the said George M. Robeson he received two deeds of 10 conveyance of said one acre of land, one made and executed by said George M. Robeson as executor of the will of William P. Robeson, and the other made and executed by him as executor and trustee of the will of said Anna M. Robeson, deceased, with instruction from the said George M. Robeson to deliver both of said deeds of conveyance to William O'Niel upon the payment by him to affiant for said George M. Robeson, as aforesaid, the consideration money therein expressed, namely, thirty-seven dollars and fifty 20 cents, the consideration in each expressed, making together the sum of seventy-five dollars; and affiant further says that the said William O'Niel paid to affiant, as agent as aforesaid, the sum of seventy-five dollars, legal current money of the United States of America, the consideration money expressed in both of said deeds of conveyance; and therefore and upon payment of said money to affiant as aforesaid, this affiant, as such agent as aforesaid, delivered both said 30 deeds of conveyance for said one acre of land to said William O'Niel, the purchaser thereof, and that the payment of said money and delivery of said deeds as aforesaid was done as nearly as affiant can tell on the third day of July, A. D., 1895; and affiant further says that he was active as agent as aforesaid in making said sale of said one acre of land, and that said purchase and sale was bona fide transaction, and for a full valuable consideration, being the price that then could be obtained for said one acre of land, and affiant as such agent as aforesaid paid and accounted

to said George M. Robeson, executor and trustee as aforesaid, said money.

Affiant further says that he knows all of the lands of William P. Robeson and John M. Sherrerd owned separately by either or together as tenants in common lying between the lands formerly of William White and John Hoff, Jr. in said Oxford township, that said lands extended a distance of nearly two miles along the Delaware river, and for a considerable distance
10 the Belvidere Delaware Delaware Railroad ran across said lands separating the lands and leaving a part on each side of the road-bed, and at no place in the knowledge of this affiant has there been any crossing of said railroad from the lands of said Robeson and Sherrerd or either of them on one side to their lands on the other side of said railroad over their lands above which said railroad is constructed except the public road crossing at said one acre of land, and affiant further says that there is now a water power
20 canal or raceway on the said lands of Robeson and Sherrerd and that it has been there as long as affiant can remember and affiant is informed that it was owned both before said railroad was built and afterwards by said Robeson and Sherrerd and in their possession but operated by their tenants for milling purposes, and that there are no crossings from their land on one side of said railroad to their land, water canal or raceway on the other side of said railroad over the land occupied by said railroad as the land of
30 said Robeson and Sherrerd or either of them, and affiant further says that there is no crossing of said railroad at the line or lane lying formerly between the lands of Abram McMurtrie, Jr. and John Hoff, Jr. and that there are no openings under said railroad for the passage of belts, shafts or other contrivances for the transmission of power and that the construction of said railroad was no benefit to the property of said Robeson and Sherrerd or either of them but on the contrary have made by the location of the railroad bed the additional construction of a water

power canal much more expensive than it could have been constructed before the building of said railroad.

Affiant further says that he never knew of the agreement between said Robeson and Sherrerd and said the Belvidere Delaware Railroad Company alleged to exist by the latter, until the proceedings in this suit brought it forth, and affiant further says that said John M. Sherrerd is dead and that his heirs at law own his estate in said lands and that there are several of his said heirs at law living and that the 10 said George M. Robeson is now living.

And affiant further says that the land from the public road crossing by the railroad on the one acre tract of land conveyed and owned by Harry W. Breckenridge to the Delaware river was unfenced, it lay altogether until within the last three or four years when a wire fence was put up but torn down between said road and river on said one acre.

JOHN H. DAHLKE.

Sworn and subscribed before me this 13th day of 20 January, A. D., 1896.

GEO. A. ANGLE,

Master in Chancery of N. J.

State of New Jersey, }
County of Warren, } ss.

Jacob S. Stewart, being duly sworn according to law, on his oath says that he is an attorney-at-law and member of the bar of the county of Northampton, in the State of Pennsylvania, and that he is 30 acquainted with the laws of said State, and being shown a certified copy of the last will and testament of William Shippen, deceased, together with the probate thereof, certified on the eleventh day of January, eighteen hundred and ninety-six by Elias P. Smither, Register of Wills and ex-officio Clerk of the Orphans' Court for the City and County of Philadelphia, in the Commonwealth of Pennsylvania under his seal of office to be a true and accurate copy of the last will and testament and codicils thereto of

William Shippen, deceased, together with the probate thereof as the same remains on file and of record in the office of said Elias P. Smithers, Register of Wills and ex-officio Clerk of the Orphans' Court for the said City and County of Philadelphia in said Commonwealth of Pennsylvania, says that the said certified copy of the said record is admissible in the State of Pennsylvania in any court therein to prove the facts in said record and said certified copy contained, and by the law of said State of Pennsylvania the said copy is adjudged "enacted to be matter of record and good evidence."

JACOB S. STEWART.

Sworn and subscribed before me this 13th day of January, A. D., 1896.

S. C. SMITH,
M. C. C. of N. J.

State of New Jersey, }
Warren County, } ss.

Solomon Daily, of full age being duly sworn on his oath, says that he is now sixty-nine years old, that he knows the crossing of the public road by the Belvidere Delaware Railroad Company now operated by the Pennsylvania Railroad Company, about two miles south of Belvidere, New Jersey, and about nine hundred and fifty feet north of an undergrade crossing of the railroad on the Mary White Roseberry 10 farm; affiant has never lived far away from said public highway and it has been a public highway worked by the public authorities as far back as affiant can remember, and that he has heard both his father Philip Dailey, and Michael Cyphers, both old men when they died, and who have been long since dead, say that said public highway was a public highway as long back as they could remember, and both were old men when they died, and both said that the said public road entered the eastern end of one acre of 20 and which was called the landing place, and pig iron was carted there in early times from Oxford furnace and loaded on boats and shipped down the Delaware river to market, and that said acre of land ran across and extended on both sides of said public highway on the eastern end of the acre, and that said public road entered the eastern end of said one acre of land and extended through it to the Delaware river bank on the western side of the one acre about midway of the one acre a public road joined it running along 30 the Delaware river to Belvidere.

Affiant further says that he was road overseer of the road district which embraced the public highway at said crossing of the said railroad and that great quantities of surface water collected on the eastern side of said railroad and ran through railroad and ran through said crossing over said public highway in times of heavy rains and melting snow, and in winter the water would freeze on the highway under the said crossing making public travel at the crossing

very dangerous, many travellers over the road complained to affiant of the bad condition of the public road at said crossing, and the highway is there narrowed by the railroad construction over it and affiant as such overseer complained to John O'Brien, having charge of the road bed of the said railroad, or a certain portion of it at least, of the railroad encroachment on the highway at the crossing and causing the public highway at certain seasons of the year to
10 become covered with flowing surface water and in winter to become covered with ice dangerous to public travel over it. The only way in the present condition of the crossing is to run the surface water by pipes laid beneath the highway at said crossing to the fence west of it. The crossing is about twelve feet wide; unless widened out by the railroad company no drain or ditches to carry off the water can be made along the sides of the road. The only good and substantial way is to underdrain it through
20 pipes. I regard the public highway at the crossing in winter as extremely dangerous to travel of all kinds and at times is substantially impassable from ice and frozen slush and deep seams worn through the ice in places.

The ferry in old times was south of Shippen's spring.

SOLOMON DAILEY.

Sworn and subscribed before me November 23rd, at Belvidere, Warren county, N. J.

30

NICHOLAS HARRIS,
Master in Chancery of N. J.

State of New Jersey, }
Warren County, } ss.

Nathan F. Walker, being duly sworn according to law, on his oath says that he has been and is a civil engineer and surveyor for seventeen years last past, and has followed that as a business, and that he is well acquainted with the public road crossing the Belvidere Delaware Railroad track undergrade about

nine hundred and fifty feet north from the undergrade crossing on land now or formerly of Mary White Roseberry, about two miles south of Belvidere, New Jersey, being the undergrade crossing of the public road mentioned in complainants bill of complaint; and said deponent being shown a certified copy of a record of a public road dated November 1, 1786, and recorded in road book Vol. A, p. 144, in Sussex county Clerk's office, says that he knows the location of the public road mentioned in said certified copy of said record from having surveyed the lines thereof, and that the public road at the undergrade crossing of the Belvidere Delaware Railroad mentioned above is at said crossing in its entirety a part of said public road described in said copy of said record. 10

And deponent is shown a deed of conveyance from Joseph M. Roseberry to Harry W. Breckenridge bearing date the thirty-first day of August, A. D. 1895, and says I have most carefully and accurately 20 surveyed the one acre of land mentioned and described in said deed of conveyance and also the one acre of land mentioned and described in a deed of conveyance from John Vannetta to Jonathan Robeson bearing date May 3d, A. D. 1744, in said deed referred to and find that the description and boundaries of the one acre tract of land in each deed exactly coincide, and that said one acre of land in each deed of conveyance is one and the same acre of land and that the easterly line of said one acre of land in 30 both of said deeds described is east of the easterly line of the land in said public highway in said undergrade crossing claimed by said complainants the Belvidere Delaware Railroad Company and their lessees the Pennsylvania Railroad Company, by virtue of a deed of conveyance from Thomas Lommasson, and the westerly line of said one acre of land is west of the westerly line of land claimed by said complainants as aforesaid, and the northerly line of said one acre of land is north of the most northerly line of

lands in said public highway at said crossing and the southerly line of said one acre of land is south of the most southerly line of lands of said public highway at said crossing, so that all the land and soil in the public highway in said crossing over said alleged right of way of the complainants is the land and soil of him the said Harry W. Breckenridge in fee simple and not the land and soil of the said complainants, or either of them by virtue of a deed of conveyance
10 from one Thomas Lommasson, and that said complainants or either of them have not any estate or interest in the land or soil in the public highway at said undergrade crossing.

NATHAN F. WALKER.

Sworn and subscribed before me November 25th, A. D. 1895, at Belvidere, N. J.

NICHOLAS HARRIS,
Master in Chancery of N. J.

20 State of New Jersey, }
Warren County, } ss.

Joseph M. Roseberry, of full age, being duly sworn on his oath, says that the lands where said public highway is crossed by the track of the Belvidere Railroad about two miles south of Belvidere and about nine hundred and fifty feet north of an undergrade crossing on farm of Mary White Roseberry, in Oxford township, said county and State, and the lands adjoining, over which said railroad is built, and the
30 lands on each side of it, were a part and parcel of a tract of twelve hundred and fifty acres, besides the usual allowance for highways, which additional number of acres was about six acres to every hundred acres for highways, was surveyed off to William Penn by John Reading, Jr., surveyor, October 10th, 1716. Inspected and approved by the Council of Proprietors of West Jersey on February 21st, 1716, as appears by the certificate therein on the thirtieth day of December, A. D. 1740. John Penn, Richard Penn and Thomas Penn, sons of William Penn, granted by a

deed of conveyance the said lands besides the usual allowance of an additional number of acres for public highways to Jacobus Vannatta in fee simple on the sixth day of June, 1741. Jacobus Vannatta by a deed of conveyance granted two hundred acres of said lands unto John Vannatta in fee simple on the third day of May, A. D. 1744, said John Vannatta granted one acre of said land by deed of conveyance to Jonathan Robeson in fee simple which one acre is now contained in a deed of conveyance to Harry W. 10 Breckenridge.

This affiant further says that he examined the record of transmission of title from Jonathan Robeson down to Harry W. Breckenridge in Sussex county and Warren county Clerks' office and has not found the record of any deed of conveyance from said Jonathan Robeson or any other person of said one acre of land to the Thomas Lommasson mentioned in complainants bill, and affiant has made search, and has had search made by others, in all places and where 20 he thought it would be likely to be or there was any possibility of any such conveyance being found, and affiant has not been able, or any person for him, to discover or find any such deed of conveyance to said Thomas Lommasson.

On the thirteenth day of February, A. D. 1802, William Shippen and Samuel Blair, executors of the last will and codicils of William Shippen, deceased, conveyed to William I. Shippen of that date in fee simple two hundred acres of land, being the land in 30 the deed of Jacobus Vannatta to John Vannatta described, excepting out said one acre of land conveyed by John Vannatta to Jonathan Robeson, as above stated, said one hundred and ninety-nine acres of land adjoined said one acre of land on its three sides, the Delaware river being on the fourth and western side of said one acre, said one acre and the adjoining land, part and parcel of said two hundred acre tract, is the land over which said railroad is constructed at said undergrade crossing of said public

road which railroad way complainants claim was conveyed to the Belvidere Delaware Railroad Company in their said bill of complaint by Thomas Lommasson, said deed to said William I. Shippen is recorded in Book K, p. 234 in Sussex county Clerk's office. That on or about the eighteenth day of January, A. D. 1806, William Shippen and Samuel Blair and Susan his wife, as devisees under the last will and codicil of William Shippen, deceased, granted to
10 William I. Shippen in fee simple said two hundred acres of land described in said first deed to him also excepting out of said conveyance of land said one acre of land conveyed by John Vanpatta to Jonathan Robeson as above stated as appears by the record thereof in Vol. O, 1, page 452 of deeds in said Sussex county Clerk's office. This affiant has made diligent and careful search in the Clerk's office of both Sussex and Warren counties, and has had others do so, and has carefully examined the indices of the records of
20 deeds of conveyance in both clerks' offices, and has had others do so, and cannot find any index of the recording of any deed of conveyance nor any record of any deed of conveyance from said William I. Shippen to said Thomas Lommasson, or to him and another, or the record of the conveyance by any person or persons of any part of said two hundred acres tract of land, or of the land over which said railroad is constructed over said public highway or on either side of it. And this affiant has made
30 and has procured others to make a most careful and exhaustive search in every place where he thought there was a possibility of its being found including the owners of the adjacent farms and has not been able to find any deed of conveyance from said William I. Shippen to said Thomas Lommasson or to Thomas Lommasson and another, or a deed of conveyance or any conveyance of any kind from said William I. Shippen or of any other person or persons of said land and premises to said Thomas Lommasson or to him and another of any of the land in said

location of said railroad at or near said undergrade crossing of said public road or of any part of said tract of two hundred acres of land as conveyed to William I. Shippen as aforesaid, nor can affiant find the record of any will devising said land to the said Thomas Lommasson, nor can affiant find after careful search in the indices of records of deeds in Sussex and Warren counties in the name of said Thomas Lommasson any deed of conveyance to said Thomas Lommasson by any person or persons or for said 10 lands or any part of them, nor could he find any such conveyance to him by any person or persons after careful search as aforesaid.

JOSEPH M. ROSEBERRY.

Sworn and subscribed before me this 25th day of November, A. D. 1895.

WM. M. MACKEY,
Master in Chancery of N. J.

20

State of New Jersey, }
Warren County, } ss.

John Lommasson, of full age, being duly sworn on his oath, says that he is seventy-two years of age and is a grandson of Thomas Lommasson, and that he knows the public road running from the Delaware river in Oxford township in said county to the public road leading to Hope and Newton and to a place formerly called Concord, that said public highway has an overgrade crossing of the Belvidere Delaware 30 Railroad about two miles from Belvidere, New Jersey, and about nine hundred and fifty feet from the undergrade crossing of the road on farm of Mary White Roseberry, mentioned in complainants bill of complaint. Affiant has known said public road to be a public road for sixty-five years and during that time was worked by the public authorities of the township of Oxford. Previous to A. D. 1825, Warren county was a part of Sussex county. Affiant knows the one acre piece of land called the William P.

Robeson acre and formerly called the landing place where pig iron was loaded on boats and shipped down the Delaware, and that said acre of land was south of Shippen spring and ran back from the river some distance, that his father Andrew Lommasson, was a son of Thomas Lommasson, and lived there with affiant for many years during affiant's boyhood near to said acre and crossing, that his father Andrew Lommasson, often told affiant that

10 said William P. Robeson had an acre of land there which was formerly the old landing place, that said acre of land fronted on the Delaware river south of Shippen spring and extended back from the Delaware river taking in both sides of said public highway some distance back, that where the public road running from Belvidere down Delaware river and joining said old road at the place of juncture, stood a long frame building, so affiant was informed by his father, in early times for the storage of pig iron by

20 Oxford furnace people, that the building stood there in the time of my father and was moved up on an adjoining piece of land. The foundation wall stood at the junction of said road in affiant's boyhood days plainly to be seen then. The public road first above mentioned was never in the possession of Thomas Lommasson who never lived there on that farm, nor was it ever in the possession of any one at said over-grade crossing of said railroad. And affiant has known it for about sixty-five years and lived most of

30 his life near there. At the time affiant first lived there he was seven years old and lived thirteen years within a few yards of said crossing, said acre and public highway, and he further says that he often saw William P. Robeson, father of George M. Robeson, on said one acre and that he then had possession, actual possession of it, and had title to it, so he said, he claimed both title in fee simple, and I know that he had actual possession. Affiant saw him there in charge of said acre and he continued in possession of said acre so long as he lived. Said first mentioned

public road entered the eastern end of said one acre of land.

Affiant's grandfather Thomas Lommasson, never lived on the land under the railroad location or land adjoining and never had actual possession of it or of said public road as far as affiant knows and he would have known so if he had. Said Thomas Lommasson never claimed possession to any part of said public highway at any time nor possession of said one acre, and that he never had possession of any kind in 10 either one.

JOHN LOMMASSON.

Sworn and subscribed before me this 23d day of November, A. D. 1895, at Belvidere, N. J.

NICHOLAS HARRIS,
Master in Chancery of N. J.

State of New Jersey, }
Warren County, } ss.

James Depue, of full age, being duly sworn on his 20 oath, says that he now resides in Belvidere, New Jersey, and that he knows the public road at the undergrade crossing of the Belvidere Delaware Railroad about two miles south of Belvidere and about nine hundred and fifty feet north of a crossing on the farm of Mary White Roseberry. Affiant was born near the Delaware river in New Jersey, near the undergrade crossing of said public highway in the year 1834, and lived there for the first eighteen years of his life and the next ten years he lived in Penn- 30 sylvania, just across the Delaware river three or four hundred yards from said public highway where it crosses under said railroad. Affiant has known said public road from its easterly limits to its westerly limits upwards of fifty years last past and more than ten years before the building of said railroad across said public road, and that the said public road was then located as it now is except that it has been narrowed in the building of said railroad across said public highway; and affiant further says that his

father Moses Depue, was born on the banks of the Delaware river within three or four hundred yards of said crossing of said public road in 1802, and lived nearby all his life until his death in 1870, and he often told affiant that said public road existed, located as it now is, from his earliest recollection, that it had been originally used in the carting of pig iron from Oxford furnace to a wharf at this place on the bank of the Delaware river called the "old landing"

10 and the iron was there loaded in boats and shipped down the Delaware river to market, that the old landing place adjoined and was south of the Shippen spring and was one acre in extent, and that said public road entered the eastern end of said one acre tract of land.

And affiant further says that when he was about twelve or thirteen years of age he worked on said public road with others under the direction of the overseer of that road district and that he was paid

20 by the proper public authorities of said township or allowed for said work in his father's tax levy, and that said public road along it and at said undergrade crossing had been worked by the proper public authorities of said township in which it was and is located from affiant's earliest recollection.

Affiant further says that he has often seen great quantities of surface water pass over the highway at said undergrade crossing, that the land from that point eastward of said railroad slopes upward for a

30 considerable distance around on all sides east of the railroad and the water from heavy rains or melting snows finds its only exit to the Delaware river over the highway at said undergrade crossing; it runs at times in great quantities there and in winter or in spring it will often freeze ice deeply and very slippery, the high railroad embankment forces the wind from the west through the crossing checking there the flow of water at night and freezing it, and during the daytime the water will often cut channels in the ice a foot or two in depth making travelling very

dangerous to men and animals ; sometimes it becomes impassable except to foot travel and sharply shod horses ; on account of the narrowness of the highway at the crossing side drains or ditches to carry the water cannot be made and the only way that it can be led off is through some underground passage as through pipes.

And affiant further says that in early times there was a place called Concord at the eastern end of said public road where it ran into the road leading to 10 Hope and Newton, and as far back as affiant can recollect a public road joined the above public road on the banks of the Delaware river on said one acre tract of land at the old landing and ran northerly along the Delaware river to Belvidere.

JAMES DEPUE.

Sworn and subscribed before me at Belvidere,
New Jersey, November 22d, A. D. 1895.

NICHOLAS HARRIS,

Master in Chancery of N. J. 20

State of New Jersey, }
Warren County, } ss.

Jabez G. Cyphers, of full age, being duly sworn on his oath, says that he is sixty-five years old and was born and lived all his life about one quarter of one mile from the public road where it is now crossed by the Belvidere Delaware Railroad about two miles south of Belvidere and about nine hundred and fifty feet north of an undergrade crossing of lands of Mary 30 White Roseberry. My father was Michael Cyphers, who died at the age of eighty-eight years about, in the year 1872, and who always lived within one quarter of one mile of said road and crossing. Affiant has known said public road as long as he can remember, in his boyhood days before said railroad was built over said highway he played with other children in the road at and near said crossing. It has always been a public road and worked by the township authorities as a public road as long as affiant can

remember, at least over fifty years, and before said railroad was built over it ; at the crossing the highway has been much narrowed by the railroad construction, and here is the only exit for surface water collected from quite a distance of land on eastern side of said railroad. It runs in large quantities in times of heavy rains and melting snows over said highway crossing. No drain or ditch to carry water can now be made at the side of the road at said crossing. In
10 winter it becomes a glare of ice at times very dangerous to travel for man and animals and carriage, wagons, &c. Great seams are cut into the ice sometimes by flowing water. It is at certain times an exceedingly dangerous place and many travellers have complained to affiant about its very dangerous condition, and such complaint was very general among travellers over said highway. It is a much travelled highway for all purposes.

Affiant further says that he has heard his father
20 Michael Cyphers, and Andrew Lommasson, the latter died about 1875 a very old man, who lived in his early days nearby said public highway within a few yards of said crossing, so he said, and lived all his life in that vicinity, and who was a son of Thomas Lommasson of Oxford township, formerly of Sussex, now of Warren county, say that the big spring near said crossing was called "Shippen spring" and there was one acre of land lying south of it called the "Landing Place" where they used to load and ship iron
30 down the Delaware river, and said acre extended from said river and took in and embraced the whole of the public road at said undergrade crossing, extending beyond the easterly line of said railroad as it now is and affiant further says that both of said men told and pointed out the southerly line of said one acre and that it was south of said public highway the whole distance along it, and the easterly line of said one acre was east of the easterly line of said railroad fence and line on the east of said railroad embankment, and its northerly line was north of the

north edge of said public highway in said crossing and its westerly line was along the Delaware river west of the westerly line of said crossing and said public highway at said crossing was embraced in said one acre, both of them after told affiant that and pointed what was the old lines and boundaries of said one acre of land. Affiant never saw Thomas Lommasson in possession of said one acre. Never saw him doing anything, showing a disposition to claim possession or title or any right in it, and never saw him do anything to claim the ownership or title in the said highway at any time. Said Thomas Lommasson, as far as affiant knows, never lived on said land under the location of said railroad at or near said crossing or adjacent thereto, or of the farm lying by and adjoining. Affiant further says that he knew William P. Robeson very well. He used to be called Judge Robeson. Affiant has seen him often on said one acre tract of land. He claimed and said that he owned in fee simple said one acre tract, and he had actual possession. Affiant never knew any one to claim title or pretend to claim title by adverse possession to his title. Everybody around here in my time called it the landing place or old landing, and the Robeson acre, meaning said one acre of land before described, said William P. Robeson had actual possession of said acre all his life until his death. George M. Robeson, of Trenton, New Jersey, is his son.

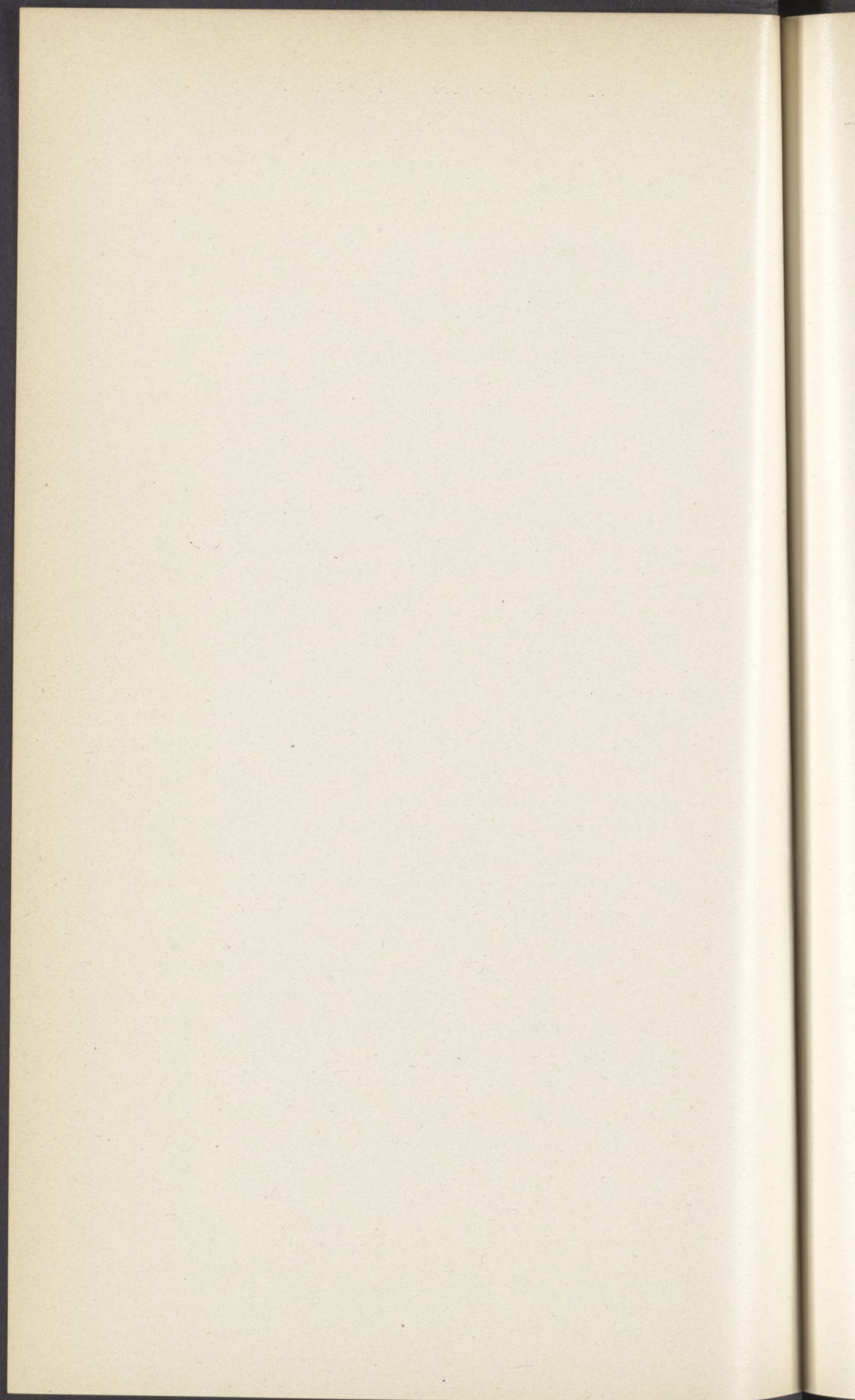
his

30

JABEZ G. (X) CYPHERS.
mark.

Sworn and subscribed before me this 25th day of
November, A. D. 1895.

W. M. MACKEY,
Justice of the Peace.



ANSWER.

10

The answer of the United States Pipe Line Company to the Bill of Complaint of the Pennsylvania Railroad Company and the Belvidere Delaware Railroad Company, complainants.

This defendant answering the bill of complaint of the complainant, or so much thereof as it is necessary and material to make answer to, says : 20

That it admits the incorporation of the Belvidere Delaware Railroad Company by the legislature of the State, as in the bill of complaint stated and set forth, and that it was invested with the powers and privileges in the act of incorporation set forth, and none other.

It further admits that the said Belvidere Delaware Railroad Company was empowered by legislative enactment to lease its road and franchises as in the bill of complaint stated, and did lease the same to the said the Pennsylvania Railroad Company, one of the complainants, which is now operating the same. 30

The said defendant further admits that it is a corporation of the State of Pennsylvania, and is a common carrier only of petroleum with lines extending from the oil regions of Pennsylvania to Wilkesbarre in said State, a distance of over two hundred miles, and that it is now engaged in laying two lines of pipe under ground for the conveyance of petroleum from Wilkesbarre aforesaid to a point on the Dela-

ware river, in the State of Pennsylvania near to the town of Belvidere, in this State. At which point in Pennsylvania aforesaid the defendant Harry W. Breckenridge, purposes to connect the pipe lines now being laid in the county of Warren in this State by him, the said Harry W. Breckenridge, after the said lines of pipes shall have been laid across his lands in the township of Oxford, in said county of Warren, situate near the foot of Foul Rift, and which were
10 conveyed to him by Joseph M. Roseberry by deed dated August 1st, Anno Domino, 1895.

And this defendant further answering, says that it expressly denies that it is now engaged in constructing and laying said line of pipe in said bill of complaint mentioned as being constructed and laid from a point east of said railroad track of said complainants toward the same in a westerly direction, but says that the said Harry W. Breckenridge, defendant as aforesaid, is lawfully constructing and laying the
20 same in his own right.

And this defendant further answering, denies that it is its purpose or intention to effect and maintain a crossing for its pipe line over or through the railroad of the complainants, but admits that it is the purpose of the defendant, Harry W. Breckenridge, to lay his pipe lines consisting of two contiguous pipes of four and five inches in diameter respectively, under the surface of the ground of the public road where the railroad track of the complainants crosses said road
30 on a stone archway near the Shippen spring near the foot of Foul Rift in the township of Oxford in the county of Warren, which said crossing is described in the complainants bill of complaint as being about nine hundred and fifty feet north of the private crossing of one Mary White Roseberry, and that it is his purpose to lay the said pipes with great care and in a manner entirely safe and secure, the same having a tested strength of eighteen hundred pounds to the square inch, which is very far beyond the limits of any possible strain to which they may be subjected.

And this defendant further answering, expressly denies that the complainant, the Belvidere Delaware Railroad Company, is the owner in fee of the land through which the said public road is laid at the said point of crossing.

And this defendant further answering, says that the said public road has existed and been used as such for more than one hundred years, having been relaid November 1st, A. D., 1786, by certain surveyors of roads for the counties of Hunterdon and Sussex as appears of record in the office of the Clerk of Sussex County, in book A, page 144 of the Book of Roads of said county. 10

And this defendant further answering, denies that except for the public right of highway in and over the said land, or so much thereof as is within the limits of said road, the entire estate and interest is vested in the said complainants.

And this defendant further answering admits that on or about the thirty-first day of August last the township committee of the township of Oxford in the county of Warren in which township the said crossing of said highway by the railroad of the complainants is situate, entered into an agreement with the defendant Harry W. Breckenridge, whereby he contracted and agreed to make certain repairs to the highway at and near the said crossing, the said agreement containing, however, no provision concerning the laying of his two lines of pipe for oil, they being the subject of a second agreement made 30 on the same day between him and the said committee and upon a different consideration, namely the keeping by him of the road from his lands to and through said culvert in good and sufficient repair.

And this defendant further answering says that the said agreement in the said complainant's bill of complaint mentioned and also said second agreement are not illegal or void or in excess of the powers of said committee nor are they contrary to public policy, nor would the crossing of said highway with said line

of pipes impose any further or additional servitude upon the land.

And this defendant further answering says that the said Harry W. Breckenridge has been actively engaged in securing rights of way in said neighborhood in his own behalf and name with a view to their subsequent transfer to and acquisition by a corporation to be organized in this State or upon certain contingencies by this defendant.

- 10 And this defendant further answering says that it denies that the laying or attempted laying of the said line of pipes through or under the road bed of the complainants railroad either at the said crossings or elsewhere would be attended with any danger whatsoever by reason of the running of trains over said track; and it further denies that the laying of said pipe line through or under the tracks of said railroad either at a public or private crossing or at any other point will be a permanent appropriation to the
20 use of this defendant of so much of the land as shall be thus utilized nor will it be to the injury of the complainants.

And this defendant further answering says that great care is not necessary to be observed in the laying of said pipes to avoid the liability to leakage, but that great care is intended by the said Harry W. Breckenridge to be observed in so doing in order to obviate even the slightest danger of leakage and consequent loss, and that if by any possibility any oil
30 should escape from said pipes into or upon the ground that it would be impossible to fire the same by sparks from a locomotive.

And this defendant further answering says that at the place where the railroad of the complainants crosses the said public highway neither of said complainants has or at any time had any property whatsoever in the land forming said highway.

And this defendant further answering expressly alleges that the laying and maintenance of the said two pipes beneath the bed of said public road will

not interfere with, affect, injure, take away or destroy any property or other right of the said complainants or either of them and that such laying down and maintenance of said pipes will not and cannot irreparably injure or affect the complainants and this defendant denies that it intends to effect a crossing over or through the railroad of the complainants by stealth as alleged in the said bill of complaint.

And this defendant further answering denies that the said complainants or either of them has any 10 property in the land forming said public road where the said railroad crosses the same for which it is entitled to compensation as charged in the bill of complaint.

And this defendant humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

LEWIS EMERY, JR.,
President.

Attest: E. C. JONES,
Secretary.

20

State of New Jersey, }
Warren County, } ss.

Lewis Emery, Jr., of full age, being duly sworn on his oath, says that he resides at Bradford, in the county of McKean, in the State of Pennsylvania, and is the President of the United States Pipe Line Company, one of the defendants in the above stated cause; that he is an owner of oil wells, and has had 30 practical experience for a number of years with the laying of iron pipes for the purpose of transporting petroleum through the same, and with the practical operation of transporting the same; and that he is familiar with the pipes now being laid across the county of Warren in the State of New Jersey, mentioned in the complainants bill of complaint in the above stated cause; that all of the said pipes are subjected to a tested strength of eighteen hundred pounds to the square inch, which is four and one-

half times beyond the limits of any possible strain to which they can be subjected in use, and are made of such great strength in order to be durable and to prevent leakage and loss thereby as well as any danger therefrom, and that if by any possibility there should be any leakage, that the said pipes being buried in the ground, there would be no danger therefrom, nor would there be any danger of firing the oil by any spark or live coal for the reason that
10 the said substance does not ignite from such means if spread upon the ground, and that even if not spread and a live coal be dropped in a quantity thereof the result would be the extinction of the fire in the coal and not the ignition of the petroleum.

That all experience has shown that there is no danger in the transportation of petroleum through pipes in the manner purposed in contiguity to railroads, that at Hutchinson's Station, about two miles south of the proposed crossing in said com-
20 plainants bill of complaint mentioned, the railroad of the complainants is crossed under the track thereof by the Tidewater Pipe Lines, which have been so laid and in operation under the same for a number of years without accident or harm therefrom ; that said Tidewater Pipe Line is owned by the National Transit Company, which is a part of or branch of the Standard Oil Company, the said Curtis Winston whose affidavit is appended to the complainants bill of complaint being an employee of one or several of
30 said companies.

That the said Tidewater line also crosses the Morris and Essex division of the Delaware, Lackawanna and Western Railroad in said county of Warren, and another branch of said Delaware, Lackawanna and Western Railroad at Changewater in the county of Hunterdon, and has so done at each of said places without accident or harm, for a number of years past.

That petroleum has been transported through pipes in a manner similar to the one proposed through the State of New Jersey for over fifteen years, by the

Standard Oil Company, that its pipes cross the Passaic river on a railroad bridge ; that along the New York, Lake Erie and Western Railroad, parallel with its tracks, petroleum is conducted through similar pipes from the oil regions of Pennsylvania to the City of New York for almost the entire distance ; that the pipes of said Standard Oil Company cross the Hudson river, Central Park, New York City and the East river to Hunter's Point on Long Island ; that a number of such pipes cross Newark Bay in this State, all 10 without danger or harm having resulted therefrom. That a number of similar pipes are laid on railroad bridges in Pennsylvania, the Standard Oil Company's being so at Foxburg in Clarion county in that State, the United States Pipe Line Company's so being at Gillett's Station in Bradford county, Pennsylvania, and the said Tidewater pipes cross the Lehigh Valley Railroad and the Central Railroad of New Jersey above the tracks of each of said last mentioned railroads at or near Glen Onoko in the county of Carbon 20 in said State by a wire suspension bridge.

That the twelve pipe lines now in operation from oil regions to sea board and lake board in the United States all cross the railroads running between, and this affiant has never learned of one accident or injury to any of said railroads therefrom and of the same on account of his business he would have learned had there been any such occurrence.

That in the oil regions of Pennsylvania said pipes run in every direction and are very numerous and 30 make many crossings of the railroads of the said region without having harmed them in the least, and are deemed by said railroad companies and the producers of petroleum and the public generally to be entirely safe, free from danger, and harmless in every respect.

That all railroads themselves in tank cars and barrels carry naphtha and gasoline, very volatile products of petroleum, which are inflammable, explosive and dangerous, while the petroleum conveyed through

these pipes is in its most inert and harmless form, and is absolutely protected and secure.

And this affiant further says that at the under crossing of said highway where it is purposed to lay said pipes many feet beneath said railroad there will be caused not the slightest injury or harm to said railroad, nor will it be touched or interfered with in any way whatsoever, or to any extent whatsoever, either in the laying of said pipes or the use thereof,
10 nor will the use of said railroad be in any way affected or interrupted or interfered with by the laying of said pipes or the use thereof.

And this affiant further says that the said lines of pipes in course of construction across the county of Warren in this State, as in the complainants bill of complaint mentioned, have been all laid across the said county from New Hampton Junction to the river Delaware, except at the place where the railroad of complainants crosses said public road on the lands of
20 Harry W. Breckenridge near the Shippen spring near the foot of Foul Rift in the township of Oxford in the county of Warren aforesaid.

And this affiant further says that the cost of the right of way over the lands of persons owning the same between said Junction and said river has been very great and the expense of laying and putting together the said lines of pipe each eleven miles in length, has likewise been very great, and further that the cost and expense of laying the lines of pipe of
30 the United States Pipe Line Company from Wilkes-barre, Pennsylvania, eastward has likewise been very great, many miles thereof having been laid in that State, and work thereon being now rapidly carried on in an easterly direction toward the river Delaware where it is purposed to establish a connection with the lines of pipe now laid, with the exception aforesaid, across the county of Warren, in this State, as aforesaid.

That the purpose and object of said work is one beneficial to the producers and consumers of the pro-

ducts of petroleum and that the same when in operation will cheapen the price and cost to the consumers of oil for illuminating purposes, the same being in almost universal use and classed as a necessity of life.

That the said United States Pipe Line Company is a common carrier only and receives only a transportation charge and engages and can engage in no merchandizing business whatsoever.

That its lines at present are laid and in operation from the oil regions to Wilkesbarre, in the State of 10 Pennsylvania aforesaid, a distance of two hundred and fifty miles, whence the oil it carries is transported by the Central Railroad of New Jersey to the sea board.

This affiant further says that about five hundred persons directly and indirectly deliver oil to said company in the oil regions of Pennsylvania, and that a very large number of them are the stockholders of said company, so that it is in fact an association of producers, and that said company has no other 20 interest or purpose than the transaction of a legitimate, harmless, beneficial public service and business and especially has it no intent to injure or endanger the Belvidere Delaware Railroad Company either at the said crossing in the said bill of complaint mentioned or at any other place or in any manner or to any extent whatever.

And this affiant further says that he has an extensive knowledge of the business of producing and carrying petroleum and of the persons and corpora- 30 tions who now control the same and judging thereby as well as from the association of the said Curtis Winston hereinbefore referred to, by his affidavit annexed to the bill of complaint in this cause and also by the presence of the Tide Water pipes under said railroad this affiant believes it to be true that the said complainant railroad companies entertain no opposition to the laying of said pipes on their own account, nor any real fear of any injury or danger therefrom but are endeavoring by feigning so to do

to restrain, hinder and delay the said construction at the instance and request of the Standard Oil Company which has at present almost a complete monopoly of the business of supplying petroleum and which regulates the prices thereof at pleasure.

LEWIS EMERY, JR.

Sworn and subscribed before me this 25th day of
November A. D., 1896. *U. M. Mackey*
 10 *Master in Chancery*
of N. Jersey

The separate answer of Elias J. Mackey, William Miller, Jr., and Samuel Sheridan, township committee of the township of Oxford, in the county of Warren and State of New Jersey, defendants to the bill of complaint of the Pennsylvania Railroad Company,
 20 complainants.

These defendants in answer to complainant's bill of complaint or unto so much as they are advised it is necessary or material for them to answer, answering say:

That it is true as stated in complainant's bill that these defendants Elias J. Mackey, William Miller, Jr. and Samuel Sheridan are the township committee of the township of Oxford, in the county of Warren, New Jersey, and were such committee prior to the
 30 thirty-first day of August last past, and are so now.

That by the law of New Jersey these defendants as such committee had then and still have the full supervision, management and control of the making and repairing of all public roads in said township of Oxford and could make or repair the same by contract or hire and that the public road at the undergrade crossing of the Belvidere Delaware Railroad mentioned in complainant's bill is situate in said township of Oxford and is subject to the supervision as aforesaid of these defendants as such committee

by law and that said public road is a very ancient highway, and as these defendants are informed and believe, over one hundred years old, and that prior to the thirty-first day of August last past complaint was made to these defendants that said public highway at said undergrade crossing of the Belvidere Delaware Railroad become impassable for public travel at certain seasons of the year and becomes choked up with ice and water and frozen slush to such an extent that it becomes very dangerous to life 10 and property passing over it as a public highway and greatly impedes and delays public travel upon it by its dangerous, slippery and rough and broken condition by reason of large accumulations of ice, slush and water running from a great distance around and collecting at said crossing.

That said highway at said crossing has been narrowed by the said the Belvidere Delaware Railroad Company in the construction of said railroad from four rods in width to about twelve feet wide, at this 20 point the accumulated water gathering from a great distance on the eastern side of their railroad embankment must pass in its exit to the Delaware river through this undercrossing of the highway. The volume of water passing over the road at this point at certain times and seasons of the year is very great, from six inches to one foot in depth, that in very cold weather following a thaw or melting of snow the water freezes over the surface of the public road at said undercrossing to a considerable depth and becomes 30 very slippery and dangerous to travel over, and at times water passing over said ice will cut deep seams or channels in it to a depth of one and two feet and irregular in their course, and this ice will lay on said public road at said undercrossing for a long time by reason of the sun's rays not reaching it.

These defendants further answering, say that it became necessary to prevent said public highway at said undercrossing becoming dangerous to travel and impassable at certain times of the year, to carry said

- water accumulating on the eastern side of said under crossing in iron pipes underneath the surface of said public highway at said crossing and beyond over said highway to a point where it could empty from said pipes and run into the Delaware river ; and that these defendants, as such committee in due and legal form of law, and by authority of law, make and enter into a contract with Harry W. Breckenridge to lay said pipe for the purposes of carrying said surface water
- 10 through said pipe underneath the surface of said highway at said under crossing and by reason of the railroad structure over said highway it is the only way said surface water can be carried off, so that said highway will be in good and passable condition for travel ; and said Harry W. Breckenridge by said contract was to repair said highway at said under grade crossing, which was then out of repair and to put said highway in said crossing in a more substantial and better condition than it was in before.
- 20 These defendants further answering, say that on the same day, namely, the thirty-first day of August, A. D., eighteen hundred and ninety-five, the said committee made another contract with the said Harry W. Breckenridge by which the said Harry W. Breckenridge, in consideration of the liberty and privilege of laying in said public highway in the same trench with said water pipe and at the same time two contiguous lines of pipes four inches and five inches in diameter respectively, the said Harry W. Brecken-
- 30 ridge agreed to keep in repair and maintain said public highway at said under grade crossing of said public road in good, safe and passable condition, and these defendants insist that the said agreements, or either of them, are not in excess of the powers of said committee, and they are not against public policy and that said water pipe and oil pipe, or either of them, will not impose upon said land a further and additional burden such as requires compensation to the owner of said land in said public road at said crossing ; and these defendants deny that the said the

Belvidere Delaware Railroad Company are the owners in fee of the land in the public road at said under grade crossing ; and they further deny that said railroad company and their lessees, the Pennsylvania Railroad Company, have the entire estate and interest in said land, but say that neither of them have any interest in the soil of said highway.

These defendants further answering, say that said water pipes and oil pipes are to be laid so that they will do no damage to the highway nor to the soil in 10 the highway, nor to public transportation or travel over it, or to the said railroad crossing said highway, and the greatest care these defendants are informed will be exercised and observed by the said Harry W. Breckenridge in the digging of the trench and laying of said pipe for the transportation of oil so that a leakage cannot occur.

These defendants further answering say that said two contracts with Harry W. Breckenridge are separate and distinct contracts as to the subject matter, 20 and they further say that they, the said committee, have the full supervision, management and control of the making and repairing of said public road at said under grade crossing, and said committee can make or repair the same by contract or hire, and that the carrying off the accumulation of surface water by means of iron pipes beneath the surface of said public road as contracted for with said Harry W. Breckenridge is the only way it can be done. The public road at said under grade crossing was and is four 30 rods in width, but the complainant, the Belvidere Delaware Railroad Company has constructed its roadbed over it so that said complainant has narrowed said public road to twelve feet, thereby creating the necessity to carry off said water by means of pipes laid underneath the surface. The surface water must either run over the road, and in times of cold weather freeze deeply with ice and at times cut channels through the ice, slippery, broken and dangerous to travel and at times impassable, or said water must

be carried in pipes underneath the surface of said public road. And these defendants insist that it is not in the mouth of the complainants who created and continues a nuisance in the public highway at said under grade crossing to disclaim against the method of those who are charged by law to keep the public highway safe and always in good condition for public travel.

These defendants, the committee, have honestly
10 and conscientiously discharged their sworn duties as they believe and insist according to the law.

All other matters and things contained in complainants bill of complaint these defendants leave complainant to make proof of as they may deem it material or necessary to do, and humbly prays to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HENRY S. HARRIS,

Solicitor and of counsel with the defendants, Elias J.
20 Mackey, William Miller, Jr., and Samuel Sheridan,
Township Committee of Oxford Township.

OPINION.

10

In case a railroad company enters into an agreement with the owner for the purchase of certain lands, takes possession of such lands, erects an embankment thereon 20 feet high with an arch or culvert over a highway, crossing said lands, lays its tracks and runs its trains over said embankment and culvert with the knowledge and acquiescence of the vendor for 9 years, and his heirs at law and legal personal representatives for over 30 years, such company, having been in open and notorious possession of the premises for at least 40 years, is entitled to a decree of specific performance against one who took title from the executor of the vendor to said company, and is entitled to an injunction against an individual or a private corporation who threaten to open trenches and lay iron pipes in such highway where such highway crosses the land so agreed to be conveyed ; lapse of time in such case is no bar unless the vendor takes steps to make it so ; nor can any one claim to be a bona fide purchaser ; such subsequent purchaser takes with notice and holds the legal title for the first vendee, who is the owner of the equitable title.

Mr. Allan H. Strong and Mr. Chas. Gummere for complainant.

Mr. Henry S. Harris and Mr. Joseph M. Roseberry for the defendants.

Bird, V. C. The Pennsylvania Railroad Company, one of the complainants, is the lessee of all the franchises, rights and interests of the Belvidere Delaware Railroad Company, the other complainant, and is in the undisputed possession of the road constructed by the latter company in the years 1854 and 1855, and from thence until now the road has been in constant operation. The defendant is a corporation under the laws of the State of Pennsylvania, and
10 through the agency or instrumentality of one Breckenridge, who is also a party defendant, is about to lay pipes to conduct its oil from the State of Pennsylvania under the surface of the earth to tide water on the New Jersey coast. In order to complete the connection of its pipes it is about to open a trench in the public highway over which the tracks of the complainant company are laid. The defendants have written consent of the township committee of the township through which the road runs to dig such
20 trench within the line of the road upon certain conditions for the purpose of laying its pipes. The railroad company object to any interference with the premises in question by the pipe line and have filed this bill asking for an injunction prohibiting the defendant from proceeding to effect any such purpose.

The complainant first claimed title in fee simple to the premises in question by virtue of a deed of conveyance from one Thomas Lommasson, subject only to the easement of the public road. The defendants
30 answered and set up title to the said premises in Breckenridge, one of the defendants, by virtue of several deeds of conveyance which passed said title from one William P. Robeson. Upon the hearing on the order to show cause why an injunction should not issue the complainants produced the articles of agreement hereinafter set forth entered into between the said William P. Robeson and one John M. Sherrerd and the Belvidere Delaware Railroad Company by Ashbel Welch, its agent, in and by which the said Robeson and Sherrerd agreed to convey cer-

tain lands amongst which was the lot in question to the Belvidere Delaware Railroad Company. The object of the bill being the restraint of the defendants from interfering with the premises in question by laying their pipe. It was believed that it was within the constant practice of the court to permit such amendments as would make the allegations harmonize with the proofs. The bill was amended accordingly.

The complainants chief reliance is upon the allegation in their amended bill that the equitable ownership of the fee and the right of absolute control of the soil for all purposes except the use of the surface for a public highway is in them. They claim such equitable ownership by virtue of the agreement referred to of which the following is a copy :

Articles of agreement entered into this twenty-fifth day of June, Anno Domini, 1851, between William P. Robeson and John M. Sherrerd, Esquires, 20 of the town of Belvidere in the county of Warren and State of New Jersey, and the Belvidere Delaware Railroad Company by Ashbel Welch, an agent duly authorized by the Board of Directors.

Said Robeson and Sherrerd for and in consideration of the sum of one dollar to be paid to each of them by said company, and in consideration of the benefits which the Belvidere Delaware Railroad if constructed will produce to their property, hereby agrees to convey in fee simple each so much of the 30 land as belonging to himself, separately and both, so much of the land they now hold in common lying on the route of the said railroad in the township of Oxford and county of Warren aforesaid, anywhere between the farm of William White (below Thomas Lommasson's farm) and the land of John Hoff, Jr., (above Abraham McMurtrie's land) as may be sufficient for the construction of said railroad with its ditches and appendages and for procuring materials, reserving the timber on said land, also the buildings and the

following rights, to wit: The right of passing with teams or otherwise across the said railroad on the strip of land or lane lying between lands of Abraham McMurtrie, Jr., and John Hoff, Jr., the right of crossing over said railroad with teams or otherwise at such points as shall be necessary for full and convenient access to their mills or other works erected or to be erected; also the right of passing their shafts, belts or contrivances for transmitting power from
10 water wheels near the river to buildings above said railroad through openings under the same; provided said railroad shall be constructed.

And the said company agree to pay the said sum of money for said land, and to make crossings for teams or otherwise at such places as shall be necessary for the purposes of said Robeson and Sherrerd with good approaches to said crossings, and to make when necessary openings under their railroads for
20 the transmission of power, and to pay the increased expense which said Robeson and Sherrerd shall incur in constructing their water power canal over and above what would be the expense if said railroad had not interfered with the location of said water power canal, and to remove all buildings on the route of said railroad through said land to a proper distance.

This agreement shall apply to the lot now owned by Miss Allan Mowry if purchased by any of the parties hereto.

30 Witness our hands the day and year first above written.

J. M. SHERRERD,
WM. P. ROBESON,
ASHBEL WELCH, Agent }
Bel. Del. R. R. Co. }

Present—MARTIN CORYELL.

As the said agreement was executed in 1851, the Belvidere Delaware Railroad Company, lessors of the complainant completed the construction of its

road in the year 1855, and at once commenced the running of its trains over the route so constructed. This it continued until 1874 when it leased all its rights to the Pennsylvania Railroad Company, which has continued in the possession and actual use of said route until the present time. It is not disputed, but that the former company took possession of the parcel of land in question by virtue of this agreement.

The complainants claiming to have the equitable title under this agreement, they now seek the conveyance of the legal title from said Breckenridge, as well as an injunction protecting them in such title from said Breckenridge who claims the right to lay the pipe in question by virtue of his legal title, and of an agreement entered into between him and the township authorities, who have the supervision of the highways.

It is well settled that when a vendee enters into possession under an agreement for the title, and performs such agreement on his part, he not only has the equitable title, but is entitled to a specific performance of such an agreement whereby he shall have the legal title also.

See the *New Barbadoes Toll Bridge Company v. Vreeland*, 3 Green's, Ch., 157, approved in *Laurence v. Laurence*, 6 C. E. Gr., 321; and many cases cited below. In *Van Blarcum v. Kip*, 2 Dutcher, 351, 361, and cases cited. It plainly appears that protection in many cases will be afforded even at law.

The possession in this case has continued full forty years. There is no pretence but what such possession was not taken with the full knowledge of Wm. P. Robeson, the owner, or at least the owner of the undivided three-fourths parts. He then lived at Belvidere on the line of the railroad and within two miles of the land in question. An embankment about twenty feet high was raised across this parcel to secure the proper grade for the tracks of the railroad; which embankment was about fifty feet wide

at the base and twenty at the top. The public road was spanned by a culvert or passage way twelve feet wide, supported by stone abutments. William P. Robeson died in 1864. Therefore, if he did not openly acknowledge the right of the railroad company to take possession and erect and maintain its structure, he acquiesced therein for at least nine years.

And since his death no one claiming under him
10 has raised any question respecting the title of the company until the year 1895. This being the condition for all these years, under the cases cited a court of equity would support the claim of the complainants, they having performed all the conditions upon their part to be performed as against Wm. P. Robeson or any one claiming under him except a bona fide purchaser.

Has the railroad company so performed its part of the agreement as to justify it in speaking to the con-
20 science of a court of equity? Up to and at the time of entering and taking possession there was but one condition for it to perform, and that was the payment of the one dollar consideration money. There is no evidence of actual payment. Counsel insists that the presumption is that payment was made from the lapse of time. Doubtless an action upon the part of William P. Robeson or his legal representatives would be controlled by the statute of limitations. I
30 think that when the other considerations named in the agreement are taken into the account it will be quite convincing that the naming of the sum of one dollar to be paid was merely nominal and more for the purpose of form than of any valuable significance.

There are other stipulations in the agreement which the railroad company was under obligations to perform. In determining whether or not the company has complied with its undertakings in this behalf so as to protect it in its claim of title, we must first learn whether the conditions have been created by the act of the other parties to the agreement

which requires of the company such action upon its part as is stipulated for. The agreement shows that Robeson and Sherrerd reserved not only the timber and buildings, but also "The right of passing with teams or otherwise across the said railroad on the strip of land or lane lying between the lands of Abraham McMurtrie, Jr. and John Hoff, Jr., the right of crossing over said railroad with teams or otherwise at such points as shall be necessary for full and convenient access to their mills or other works, 10 erected or to be erected, also the right of passing their shafts, belts or contrivances for the transmission of power and to pay the increased expenses which said Robeson and Sherrerd shall incur in constructing their water power canal over and above what would be the expense if said railroad had not interfered with the location of said water power canal, and to remove all buildings on the route of said railroad through said land to a proper distance." These are all important stipulations and show what 20 the real consideration for the engagement upon the part of Robeson and Sherrerd was. The bill alleges performance of all that was required of the railroad company under the agreement. So far there has been no proof to show that any crossing has been required that was not constructed. Nor does it appear that any buildings, mills or other works of any kind have been constructed above the said railroad by either the said Robeson or said Sherrerd or any one claiming under them to operate which it was 30 necessary to construct flumes, canals or other channels or communications by water or otherwise under said railroad, which beyond question the railroad company obligated itself to construct or to pay the additional expense of construction because of the existence of said railroad.

The considerations of this branch of the case brings to us the inducements which moved Robeson and Sherrerd to execute this agreement. They were clearly other than the mere nominal payment of one

dollar to each for them. They were increased opportunities of the development of their joint and several estates. It is clear that they are entitled to the improvements contemplated within any reasonable time when their interests may prompt them to move for their construction after the conveyance. See *Williams v. Hart*, 116 Mass. 513.

These things being so it would certainly be highly inequitable for the court to emasculate the contract
10 of its mutuality, and to say that notwithstanding it is true you have constructed your road at great expense relying upon your agreement, yet as to this one parcel of land you have no right or title other than that of a naked trespasser, and yet you will be obliged to perform all conditions stipulated in that agreement when required so to do. This may be said of every other parcel of land included in this agreement.

But is the defendant, Breckenridge, a bona fide purchaser? The general rule undoubtedly is that
20 where a purchaser by virtue of a written agreement enters into possession with the consent of the vendor, and performs his part of the agreement, and such possession is open, notorious and unqualified, no person can claim title from his vendor in disregard of such possession and enjoy the benefits of a bona fide purchaser; the possession of such vendee is notice to all the world. And every person dealing with such property is chargeable with such notice as he might reasonably be expected to obtain upon inquiry of such
30 vendee. One of the first cases upon this subject in our own State is that of *Diehl v. Page*, Gr. 2 ch. 143, in which it was declared. "A party who purchases from one not in possession of the bargained premises, cannot claim to be a bona fide purchaser without notice; for possession in another is notice sufficient to put the party on enquiry." The same principle was recognized in *McCall v. Yard*, 3 Stock, 58; in *McDavitt v. Pierrepont*, 8 C. E. Gr. 43; and *Johns v. Norris*, 12 C. E. Gr. 487, 488; and in *Wanner v. Sisson*, 2 Stew. 141, it was declared: "Possession by a man

or his tenant is notice of the title, equitable as well as legal, under which he claims the property."

In *Cooke v. Watson*, 3 Stew. 345, it was held that where partners who were the owners of certain real estate agreed to convey such real estate to a company of which the partners were members, and such company went into possession of such real estate and made improvements but took no deed of conveyance, and a judgment was afterwards obtained against one of the partners, it was held that such judgment was 10 not a lien upon the real estate so agreed to be conveyed. See also *Purcell v. Enright*, 4 Stew. 74; 2 *White & Tud. Lead. Ca. Eq.*, 133; *Raritan Water Power Co. v. Veighte*, 6 C. E. Gr. 463, 478; *Williamson v. Brown*, 15 N. Y. 354, 360; *Holmdel Co. v. Conover*, 7 Stew. 364.

Where a purchaser of real estate takes title with a knowledge of such facts as deprive him of the rights of a bona fide purchaser and which show that the equitable title is in another than his vendor, he holds 20 the title for the equitable owner; *Lamont v. Cheshire*, 65 N. Y., 42; *Morrison v. Wilson*, 13 Cal., 494, (73 Am. Dec. 594.) *Hoagland v. Laoturette*, 1 Gr. Ch. 254; *Downing v. Risley*, 2 McCarter, 93; *Houghwout & Pomeroy v. Murphy*, 7 C. E. G. 547. In *Young v. Young*, 18 Stew. 41, Chancellor McGill affirmed this doctrine; *Pomery on Contracts*, Sec. 493.

However technical these principles may be when applied to certain isolated cases like the present, 30 yet they are of such universal application and appear to be so well fortified by both reason and authority that they may well be considered as being as firmly established as any other rules respecting the rights of property. Hence when the character of the possession and use is considered, one is not required to spend time to show that no person could treat respecting title to property in ignorance of such possession and use. It would seem therefore that no person claiming title by, from or under William P. Robeson

is entitled to protection in a court of equity as against the complainants.

Breckenridge having the legal title, if the complainants have the equity which they claim it can only be asserted and maintained in this court; and this court having jurisdiction it is eminently proper in a case like the present that it should take all proper precautionary steps to protect the complainants in their property rights. The trespass which is
10 threatened is a continuing one; it is a permanent appropriation of the property of the complainants to the defendant's own use; and this is increased in importance by the insistment that it is under the protection of the public authorities.

Such application was made of the power of a Court of Equity in *Sterling's Appeal*, III Penn St. 35, (2 Atl. R. 105). The court said that a Gas Company "under its charter has no right to lay its pipes upon the public road traversing the lands of a party
20 objecting to the imposition of such additional servitude on his lands, and may be restrained by injunction from so doing." The court said "we are satisfied that the appellee has no more authority to do the acts complained of than any unincorporated association of individuals would have. It follows, therefore, that appellee is at best a trespasser on the public highway." So much stress was given to the slight additional burden which would be by the mere use of the soil for the laying of the pipes and the transmission of oil, that it seems quite proper that I should
30 use still further the language of the court in the *Sterling* case, *supra*. "As owner of the land traversed by the public road he has a right to use it and the land on which it is located for any purpose that will not impede or interfere with the public travel. By appropriating the land for the specific purpose of a common highway, the public acquires a mere right of passage, with the powers and privileges incident to such right. The fee still remains in the landowner, notwithstanding the public have acquired a

right to the free and uninterrupted use of the road for the purposes of passing and repassing; and he may use the land for his own purposes in any way that is not inconsistent with the public easement. He may, for example, construct underneath the surface passage ways for water and other purposes, or appropriate the subjacent soil and minerals, if any, to any use he pleases, provided he does not interfere with the rights of the public. * * * * Laying and maintaining a pipe line, at the ordinary depth 10 under the surface, necessarily imposes an additional burden on the land, not contemplated either by the owner or by the public authorities when the land was appropriated for the purposes of a public road." These principles were expressed with equal emphasis in the New York Court of Appeals in *Bloomfield v. Calkins*, 61 N. Y., 366, 368.

In *Goodson v. Richardson*, Law Reports, 9 Ch. App., 221, (8 Eng. Reps. by Moak, 835). The court said: "Where water pipes had, without the consent 20 of the owner of the soil, been laid in the soil of a highway, an injunction to restrain the continuance of the pipes was granted; the owner of the soil not being left to his remedy at law, and not being required to establish his right at law.

"The facts that the soil under the highway was of no value to the owner, and that his motive for applying to the court was not connected with the enjoyment of his land, were held not to be reasons against the granting of the injunction." On the question of 30 jurisdiction see also *Broome v. New York and New Jersey Telephone Co.*, 15 Stew., 141, and *High on Inj.*, sec. 697. I do not think that the agreement of the township authorities with the defendant Breckenridge is of the slightest support by way of defence. Whatever control the legislature has given to them over the highways of the State, it certainly has not conferred upon them the right to confer special favors upon strangers as against the owners of the fee in such highways.

Upon the argument it was urged that the lapse of time in this case was such a manifestation of negligence as to bar the complainant from every claim to consideration in a court of equity. In support of which a great multitude of cases was cited. So far as I have been enabled to examine them, I do not find any which bear the slightest analogy to the case in hand, except that of *Lawrence v. Lawrence*, *supra*. which expressly cited and approved the case of *New Barbadoes Toll Bridge Co. v. Vreeland*, *supra*. In a case like the present, it seems to me that the negligence or delay, if anyone be charged therewith, is chargeable to the vendor, and that the longer the delay the greater the equity in favor of the complainant who has gone into possession and at enormous expense constructed a public work of great magnitude.

Nothing would be more inequitable than to allow the vendor to stand by for forty years, witnessing such possession, improvements and expenditure of money, and then to sustain him in an assertion of a claim of property against such vendee. Surely a second vendee in such a case is estopped by every equitable consideration. Nor is equity content with setting up a bar against an aggressor; in such case it will not only repel but will affirmatively declare and maintain the rights of the first vendee. In the language of the Chief Justice in the case of *Erie R. Co. v. Del., Lack. & Western and Morris & Essex R. R. Co.*, 6 C. E. Gr., 289, "Fair dealing and good conscience obviously required Robeson and Sherrerd to assert their rights at the outset if it was designed ever to do so. If they or either of them ever intended to repudiate the agreement or to resist the claims of the railroad company under that agreement, conscience and fair dealing required them to act with promptness." The Chief Justice again observes: "From the conduct of the complainants, the defendants could fairly infer that there was no intention to object to the course they were pursuing, and after action has been based on this fair presumption, and great expense has been

incurred, it is altogether too late for opposition to be tolerated from the party so having acquiesced and encouraged. This is an equitable rule which is applied to a great variety of cases." Fry on Spec. Performance, page 426, Sec. 738, thus states the rule: "Where a contract is substantially executed, and the complainant is in possession of the property and has got the equitable estate so that the object of his suit is only to clothe himself with the legal estate, time either will not run at all as laches to debar the plaintiff from his right or it will be looked at less narrowly by the court; for the plaintiff has not been sleeping on his rights, but relying on his equitable title without thinking it necessary to have his legal title perfected."

In speaking of this rule, Prof. Pomeroy, in his work on contracts, Sec. 403, says: The party who desires to maintain an objection, founded upon the others laches, must show himself, in the language of many judges, to have been "ready, desirous, prompt and eager." In *Laird v. Smith*, 44 N. Y., 618, the Court of Appeals said: "Equity will sometimes refuse specific performance on the ground of laches and great delay; but not when the delay is by common consent and has occasioned no injury to the party complaining." Prof. Pomeroy, in his work on Contracts, Sec. 404, declares the doctrine to be as it is expressed by Fry, and adds that the vendee's right to relief in case he has possession, will not be cut off until the vendor places a limit to the lapse of time by a demand of payment at or before a specific day." This same learned author, Sec. 404, further says: "Where the contract is substantially executed, the purchaser has obtained possession and of course is vested with an equitable title, but the legal title is yet held by the vendor, the vendee's delay in bringing suit to compel a conveyance, having long continued, will not defeat his remedy of a specific performance, unless perhaps the situation of the vendor and his relations to the land have been so altered in the mean time that a specific

execution of the agreement will be inequitable." In *Shepherd v. Walker*, L. R. 20 Eq., 659, a decree for specific performance was made after fourteen years against a lessee who was in possession under an agreement for a lease." In *Williams v. Lewis*, 5 Leigh, 686, a delay from 1774 until 1822 did not bar the vendee's right to enforce a conveyance, he having been in possession during the whole period. See also *Miller v. Bear*, 3 Paige, 466 ; also *Pomeroy on Con-*
10 *tracts*, Sec. 406.

It was said that this bill must fail for uncertainty as to the premises agreed to be conveyed. The agreement is that so much is to be conveyed as will be necessary for the road, its ditches and appendages. If at any time before the construction of the road the rule as to uncertainty could be applied, there is no ground for its application since the road has been constructed and maintained in the presence of the vendor for so many years. The bill not only sets out
20 the contract, but expressly gives the width of the embankment over the premises in question. The complainants also produce in evidence a map on which the route is clearly delineated by courses and distances. With these allegations, and this proof, it would seem that the objection, if it be worth serious consideration, is met by the case of *Carskaddon v. Kennedy*, 13 Stew., 259, which case, on page 278, provides for the settlement of boundaries by a Master.

I conclude that the right is with the complainants,
30 and that they were justified in coming to this court for relief. I will advise a decree directing the specific performance of the contract according to the prayer of the bill with costs.

A true copy.

ALLAN McDERMOTT,
Clerk.

EXHIBITS.

10

Sussex County, ss. November the 1st, A. D., 1786,
Oxford township.

We, the under subscribers, surveyors of roads for
the Countys of Hunterdon & Sussex, being legally
called have met on the petition of John Miller and
William Carr, to relay a road leading from George 20
Hydeler's Ferry at the foot of the foul rift to John
McVicker's Tavern, and having viewed and relayed
the said road as followeth, to be four rods wide.

Beginning at the banks of the river Delaware at
the banks of sd. river at the ferry aforesaid and from
thence South 82 east 26 perches, then North 64 east
6 perches, then North 79 east 32 perches, North 73 E.
16 perches, then North 41 E. 8 perches; which 30
courses & distances runs throu lands of Mr. Shippen
then along a line dividing lands of sundry persons
South 58 E. 232 perches to the main road which leads
from Greenwich to the sd. tavern & so on to Newtown
in sd. County.

Given under our hands the day and year aforesd.
Jos Beavers, Caleb Sweezy, Adam Sliger,
Mathias Shipman, Willm. Hazlett, Wm. Creveling,
Joseph Hidon, Thos. V. Buskirk, Peter Creveling,
Joseph Howey, Wm. Lowry, Richard Leary.

State of New Jersey, }
 County of Sussex, } ss.

I, Ora C. Simpson, Clerk of the County of Sussex, also Clerk of the several courts of record thereof, do hereby certify that the foregoing is a true copy of the return of Surveyors of the Highways of the County of Sussex, as fully as the same remains of record in my said office, in Book A. of Roads, on page 144.

10

In witness whereof, I have hereunto set my hand and affixed the seal of the said courts and county this 7th day of November, 1895.

[SEAL.]

O. C. SIMPSON,
 Clerk.

Whereas, the Inferior Court of Common Pleas for
 20 the County of Sussex, at the term of February last
 past, on application of sundry freeholders of the
 County of Sussex for a publick road. Beginning on
 the bank of the river Delaware in a publick road
 near the foot of the foul rift in the township of Ox-
 ford and thence to run up the said river as direct a
 course as the situation and ground will admit through
 the lands of Doctor Shippen, Philip Murray, Abraham
 McMurtrie, Thomas Paul, and the Belvidere estate so
 as to strike the bridge over the Pequest at Belvidere
 30 mill, the other begining in the road which leads from
 Belvidere to Easton on the line between the Belvi-
 dere estate and Thomas Paul, and then to run along
 said line till it strikes the road above did order that
 the applyers call the surveyors of Greenwich, Oxford
 and Knowlton to meet at the house of John Hender-
 shot in Oxford on the fourth day of March, then next to
 proceed on that business, &c., as may by the minutes
 of the said Court may appear. Now be it known to
 all whom it may concern that we the subscribers sur-
 veyers of the highways of the townships of Green-

wich, Oxford and Knowlton in pursuance of the above order to us directed, having met and viewed the ground and premises and duly considered the same, do lay out a publick two-rod road as follows, viz: Beginning on the brink of the river Delaware in a publick road near the foot of the foul rift leading to Concord in the township of Oxford aforesaid thence 1st, North five degrees West three chains and eighty-two links; thence 2, South eighty-four degrees West three chains and forty-two links; thence 3, North¹⁰ eighty degrees and fifteen minutes West six chains and eighty-two links; thence 4, North twenty-four degrees East three chains and fifty links; thence 5, North forty degrees West two chains and eighty-seven links; thence 6, North twenty-nine degrees West two chains and seventy-five links; thence 7, North five degrees and three-quarters West one chain and fifty links; thence 8, North thirty-four degrees East one chain and seventy-five links; thence 9, North forty-two degrees and a half East one chain²⁰ and twenty-nine links; thence 10, North thirty-nine degrees East four chains and sixty-three links; thence 11, North fifty-one degrees and three-quarters East six chains and sixty-four links; thence 12, North fifty-one degrees East five chains; thence 13, North forty-three degrees and a half East one chain and seventy-six links; thence 14, North seventeen degrees East seven chains and ninety-seven links; thence 15, North twenty-one degrees and a half East five chains and fifty-six links; thence 16, North fifty degrees and³⁰ three-quarters East four chains and twenty-seven links; thence 17, North twenty-two degrees East five chains and thirteen links; thence 18, North twenty-nine degrees and one-quarter East five chains and thirty-two links; thence 19, North thirty-four degrees and a half East two chains and twenty-seven links; thence 20, North sixty-four degrees East eight chains and fifty links; thence 21, North forty-five degrees East four chains and twenty-three links; thence 22, North fifty-eight degrees East thirteen

chains and thirty-five links ; thence 23, North thirty-three degrees and one-quarter East fourteen chains ; thence 24, North thirty-two degrees East thirteen chains and twenty-four links ; thence 25, North twenty-seven degrees East eight chains and forty-three links ; thence 26, North forty-two degrees East eight chains and six links ; thence 27, North seventy-five degrees East five chains and seventy-six links ; thence 28, North nineteen degrees and one-
10 quarter East nineteen chains and twenty-three links to the Belvidere and Thomas Pauls line ; thence North eight degrees and three-quarters East eighteen chains and eighty links to the middle of the southerly side of the bridge over Pequest at the Belvidere mill, the road to be two rods wide ; that is, one rod in width on each side of the above courses ; and also a two rod road beginning in the road which leads from Belvidere to Easton on the line between the Belvidere estate and Thomas Paul ; thence along said line
20 North forty-five degrees and thirty-three minutes West fourteen chains and forty-three links to the middle of the road by us herein before layed out ; this road to be equally layed out on the Belvidere estate and the land of Thomas Paul ; and we hereby order the overseer of the road to open the above described two rods (excepting that part of the first road which leads thro the land of Thomas Paul which is now farmed with winter grain, which shall be opened on or before the first day of August next,) in thirty days from the
30 date hereof.

In witness whereof, we have hereunto set our hands and seals this fourth day of March, Anno Domini, one thousand seven hundred and ninety-nine.

MATTHIAS SHIPMAN, [L. S.]

GARRET VLIET, [L. S.]

YOUNG LENTZ, [L. S.]

WILLIAM TAYLOR, [L. S.]

BENJIN PARKE, [L. S.]

ANTHONY JOHNSON, [L. S.]

Recorded 27th March, 1799.

State of New Jersey, } ss.
 Sussex County, }

-I, John H. Nelden, Clerk of Sussex County, and also Clerk of the several Courts of record thereof, do hereby certify that the above and foregoing is a true, full and correct copy of a return of the surveyors of the highways to lay out two roads in the County of Sussex, and is recorded Sussex County clerk's office March 27, 1799, in Book A of Roads, on page 355, &c., as the same remains on record in this office. 10

In witness whereof, I have hereunto set my hand and affixed my official seal this 23d day of April, A. D., 1886.

JOHN H. NELDEN,
 Clerk.

[SEAL.]

This Indenture made the third day of May in the year of our Lord one thousand seven hundred and forty-four, between John Vannetta of Greenage in Morris county in West New Jersey, of the one part, 20 and Jonathan Robeson of the other part, Witnesseth that the said John Vannetta for and in consideration of the sum of six pounds current money of Jersey aforesaid to him in hand paid by the said Jonathan Robeson the receipt is hereby acknowledged, hath and by these presents doth grant, bargain and sell unto the said Jonathan Robeson a certain lot or piece of land situate, lying and being bounded by the river Delaware. Beginning at and in the mouth of a run that vents into the Delaware from the spring by the 30 dwelling house of him the said John Vannetta, thence down the said river eight perches to a post, thence extending from the river twenty perches to a corner, thence parallel with Delaware eight perches to a post, thence to the river so as to include the full one half part of the spring and the said run to the place of beginning, the said lot to be laid out to contain one acre of land being part of the land whereon the said John Vannetta now dwells. Together also with the uninterrupted passage into and out of the said run,

and the right of a road to be laid out to and from the said lot, and all other the right and appurtenances unto the said land belonging. To have and to hold to him the said Jonathan Robeson, his heirs and assigns forever, and the said John Vannetta doth covenant for himself, his heirs, exers. and admin. that he shall and will upon the payment of the afore-said sum of six pounds current money of New Jersey and within one month after date hereof lawfully and

10 sufficiently grant and convey all the beforesaid mentioned and described tract or lot of land and premises unto the said Johathan Robeson, his exers. and admrs. or assigns by all and every such act and acts, deed and deeds, device and devices in law whatsoever for the further assurance and confirmation of the said lot or piece of land and premises unto the said Jonathan Robeson, his heirs and assigns as by him or them or by his or their counsel learned in the laws shall be reasonably devised, advised or required.

20 In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

JOHANNES VENNETTA, [L. S.]

JONO. ROBESON. [L. S.]

Sealed, signed and delivered in the presence of us.

JAS. DENNIS,

CHARLES RUSSEL,

his

CABUS X VENNETTA.

mark.

30

This indenture made the twenty-first day of May, seventeen hundred and sixty-two between Jonathan Robeson, of Hunterdon county in West Jersey, Esquire, and Elizabeth, his wife, of the one part, and William Shippen of the city of Philadelphia and Province of Pennsylvania, Chemist and Practitioner in Physic, of the other part.

Witnesseth that the said Jonathan Robeson and Elizabeth his wife for and in consideration of the

sum of three hundred and fifty pounds lawful money of the said Province of Pennsylvania to them paid by the said William Shippen, the receipt whereof they do hereby acknowledge, and thereof do acquit and forever discharge the said William Shippen, his heirs and assigns forever. Have granted, bargained, sold, aliened, released & confirmed & by these presents do grant, bargain, sell, alien, release and confirm unto the said William Shippen, his heirs and assigns, All the hereinafter mentioned parts and shares of and ¹⁰ in the following ten tracts or pieces of land hereinafter described that is to say

The one full undivided sixth part of and in two tracts or parcels of land situated in Morris county in West New Jersey aforesaid, one of them on a branch of Delaware called Pohatcunck, Beginning a hickory tree marked for a corner of Fenton's land standing about a quarter of a mile to the northward of said branch or brook thence by the said Fenton's line Southeast thirty chains to a white oak marked for a ²⁰ corner standing in the plain on the south side of sd. brook, thence North thirty degrees east forty chains to a stone for a corner, thence north fifty degrees west forty-three chains to another cornerstone, thence North forty degrees west ninety-one chains to another corner stone, thence south fifty-one degrees west one hundred and seventeen chains to a large chestnut tree marked for a corner, thence south twenty-four degrees east eighty-nine chains to another corner of sd. Fenton's land being a post near a black ³⁰ oak marked, thence by said Fenton's line North sixty-five degrees east one hundred & twenty chains to the place of beginning containing and laid out for thirteen hundred acres of land and usual allowance for highways.

The other of said two tracts beginning at a heap of stones near a tract of land formerly surveyed to Danl. Cox on a branch of Popphannoch about half a mile from John Axford on the south side of said tract, thence South west forty chains to a chestnut

tree marked for a corner, thence South east twenty-seven chains to a corner stone near a black oak marked, thence north east forty chains to a small black oak marked for a corner, thence north west twenty-seven chains to the place of beginning containing and laid out for one hundred & two acres which said two described tracts of land were lately surveyed and located unto Ralph Loftus by virtue of a purchase from Elizabeth Snowden recorded at Burlington in Book E, page 445 &c who by Indenture of the 24th of October, 1743, granted one-third part of sd. two tracts unto the sd. Jonathan Robeson in fee who by Indenture of the 21 September, 1749, granted one equal undivided sixth part of said two tracts of land unto the sd. William Shippen in fee.

Also the one full undivided eighth part of and in a certain tract or parcel of land situate in West New Jersey aforesaid, beginning at a black oak near the side of Pohannuck river, thence north twenty-four
20 degrees east twenty-nine chains to another black oak ;
thence south ninety-six chains to a post ; thence south fifty-eight degrees west thirty-three chains to another post ; thence north one hundred and six chains to the place of beginning, containing two hundred and fifty acres, part of thirty-seven hundred and fifty acres which one Hilbey, of Great Britain, Brewer, granted August 14th and 15th, 1723, to Sarah Stephenson in fee, who by indenture of the fifth and sixth of April, 1725, granted the same to Harman Van Sant in fee,
30 who by indenture November, 1745, granted the same to sd. Jonathan Robeson in fee, who granted one undivided one-fourth part of the same by indenture aforesaid of the 21 September, 1749, to the sd. William Shippen in fee. Also one full undivided eighth part of and in a certain tract of five hundred and seventy-eight acres of land situated in Hunterdon County, in West New Jersey aforesaid, the one full equal or undivided moiety or half part thereof to Joseph Shippen and Mary his wife by indenture of 2d of January, 1745, granted unto the said Jonathan

Robeson in fee, who by indenture of the 21st September, 1749, aforesaid, granted one-fourth part of said tract to William Shippen in fee, the same five hundred and seventy-eight acres of land beginning at a corner tract of land formerly surveyed to the aforesaid Joseph Hilbey, there being a Spanish oak; from thence running southwest forty-seven chains to a corner black oak tree; from thence west twenty-six chains and fifty links to a corner white oak; from thence north one hundred and thirty-five chains to a ¹⁰ white oak for a corner; from thence east forty-three chains to a post for a corner; from thence along the said line south ninety-seven chains to an ash stump and tree, supposed to be the Spanish oak mentioned in the return of the survey or place of beginning; from thence south eighty degrees east sixteen chains to the place of beginning.

And also the one full undivided eighth part of and in the furnace thereon erected for melting of ore and all other buildings on the same five hundred and ²⁰ seventy-eight acres of land or any part thereof also erected.

Also the one undivided eighth part of and in a certain tract of land situate in Morris county aforesaid, in West New Jersey aforesaid, beginning at a black oak tree standing on the south side of and near to Pequest river in a line of land formerly surveyed to the aforesaid Joseph Hilbey; from thence along the said line north seventy-four degrees east twenty-four chains to another corner in the said line; from ³⁰ thence north eighteen chains and fifty links to a black oak corner tree; from thence east seven chains to a corner white oak tree; from thence north twenty chains to a stone corner; from thence twenty-nine chains to another stone corner; from thence south part by land laid out to Messrs. Cox's forty-four chains to the place of beginning, containing one hundred acres besides the usual allowance for highways which was surveyed and laid out unto Jeremiah Fulson in pursuance of his purchase from one Revel

Elton, as by the survey thereof recorded in Burlington in Book A, Folio 373 appears, which said Jeremiah Fulson by indenture of the 20 Feby., 1745-6, granted the same to the said Jonathan Robeson in fee, who by indenture of the 21st Sept., 1749, aforesaid, granted one-fourth of the same to the said William Shippen in fee.

Also the one full undivided eighth part of and in a certain track or parcel of land situate in Morris county
10 aforesaid, beginning at a black oak tree marked for a corner standing about half a mile northward of the said Jeremiah Fulson's house, and running thence northeasterly eighty-one degrees eighty chains to a forked white oak marked for a corner; thence northeasterly ten degrees ninety-seven chains to a black oak marked for a corner standing in the line of a tract of land formerly surveyed to the aforesaid Clo. Cox; thence by his line southwesterly fifty-two degrees twenty-two chains to a white oak corner to said Cox's
20 land; thence by another of his lines northwesterly thirty-eight degrees twenty-seven chains to a black oak for a corner in said Cox's line; thence southwesterly forty-two degrees sixty chains to a white oak marked for a corner; thence northwesterly forty-eight degrees six chains to a black oak marked for a corner; thence southwesterly forty degrees thirteen chains to another black oak marked for a corner; thence southeasterly five degrees sixty-six chains to the beginning corner, containing six hundred and
30 seventy-four acres besides the allowance for highways which was on the 6th of Oct., 1746, surveyed and laid out unto Joseph Shippen aforesaid in part of one thousand acres which Joseph Reeve and Ellen his wife, and Nathan Lawrence by indenture of the 15th of August, 1743, granted unto the said Joseph Shippen in fee, as by the survey thereof recorded in the office in Burlington in Book BB, Folio 125 appears who by indenture of the 24th of October, 1747, granted one full undivided moiety or half part of the said six hundred

seventy-four acres of land last described with the appurtenances unto the said Jonathan Robeson in fee, who by indenture aforesaid granted one-fourth part of the same unto the said William Shippen in fee. Also three full undivided fourth parts of and in a certain tract or parcel of land situate in the Township of Greenwich, in Morris county aforesaid, adjoining to said Axforde Furnace, Beginning at a small hickory tree marked on four sides called the Buckthorn hickory standing 10 on the southeasterly side of Mount No More on a course south forty-one degrees east thirteen chains and seventy-two links from a large chestnut marked for a corner of the large tract, thence from the said Buckthorn hickory running north eighty-two degrees east fifty-nine chains fifty links to the bound line of said large tract, thence by a row of marked trees for the bound line of said large tract north one degree west forty-nine chains and fifty links to a stake standing half a chain east from a large black oak 20 standing on the southerly side Rattlesnake Hill marked and lettered I. C., thence from said stake running south eighty-nine degrees west thirty-six chains to a post, thence south sixty-five degrees west eight chains to two hickory saplings standing on the north side of and near Manasink road, thence south twenty-seven degrees forty-five minutes fifty chains and fifty links to the large chestnut first above mentioned; thence south forty-one degrees east thirteen chains and seventy-two links to the Buckthorn 30 hickory aforesaid beginning, containing two hundred and ninety-two acres and two-tenths of an acre strict measure, which Daniel Cox by Indenture of the 21st day of December granted unto the said Jonathan Robeson in fee, who by deed dated the 10th day of December, 1754, granted one-fourth part of the same unto the said William Shippen in fee.

Also one full undivided eighth part of and in a certain piece or parcel of land situate in the county of Morris adjoining to land of said Robeson and

Shippen, beginning at a Spanish oak tree being a corner to said Robeson and Shippen and also corner to John Axford, runs from thence by said Robeson and Shippen southwest forty-seven chains to a black oak corner, thence still by the same west twenty-six chains and a half to a white oak, thence south forty-eight degrees east thirty-two chains to land surveyed to Ralph Loftus, thence by the same north east forty chains to his corner, then south east nine chains to
10 other lands surveyed to John Cox, then by the same north thirty-two chains to the beginning, containing ninety-eight acres of land which John Cox by Indenture of the fifteenth day of June, 1750, granted to the said Jonathan Robeson and Joseph Shippen in fee and one-fourth part whereof the said Jonathan Robeson by Indenture of December the tenth, 1754, granted to the said William Shippen in fee.

And also three full undivided eighth parts of and in all the right, title, estate, interest and property,
20 claim and demand whatsoever of him the said Jonathan Robeson of, in and to the two following lots, tracts or pieces of land, that is to say one of them contains twenty-five acres and a half bought of John Axford adjoining said furnace tract and the other of them is situate on Delaware containing one acre which Jonathan Robeson by Article of Indenture dated the third day of May, 1744, bought of Johannes Vanetta. Together also with all and singular the tools, implements, utensils, buildings, tenements,
30 negroes, horses, cows, wagons, mines, minerals, metals, ways, woods, waters, water courses, improvements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto the said several tracts or parcels of land, furnace and premises above described hereby granted or intended to be granted belonging or in anywise appertaining and the reversions and remainders, rents, issues and profits thereof.

To have and to hold all and every the aforesaid parts and shares of and in the above described ten tracts, lots, or pieces and parcels of land, furnace and

premises hereby granted or mentioned to be granted with all and every the hereditaments and appurtenances whatsoever thereunto belonging unto him the said William Shippen, his heirs and assigns, to the only use and behoof of him the said William Shippen, his heirs and assigns forever.

And the said Jonathan Robeson for himself, his executors and administrators, doth covenant, promise and grant to and with the said William Shippen, his heirs and assigns, that he the said Jonathan Robeson and his heirs the said several parts and shares 10 of the above described tracts, parcels and pieces of land, hereditaments and premises hereby granted or intended to be granted with their and every of their appurtenances unto him the said William Shippen, his heirs and assigns against him the said Jonathan Robeson and his heirs and against all other persons whatsoever lawfully claiming or to claim by, from or under him, them or any of them, shall and will warrant and forever defend by these presents. 20

And the said Jonathan Robeson for himself his executors and administrators doth covenant and grant to and with the said William Shippen, his heirs and assigns, that he the said Jonathan Robeson, his heirs and assigns, or any other person or persons having or lawfully claiming or that shall or may claim, any estate, right or title of in or to the hereby granted premises or any part or parcel thereof shall and will at all times hereafter, at the reasonable request, costs and charges in the law of him the said William Shippen, 30 his heirs and assigns, make, do execute and acknowledge all and every such further act and acts, deed and deeds, device and devices, in the law whatsoever for the further and better assurance and confirmation of the above described premises hereby granted or mentioned to be granted with their and every of their appurtenances unto the said William Shippen, his heirs and assigns, as by him or them, or by his or their counsel, learned in the law, shall be devised, advised or required.

In witness whereof the said parties to these presents have interchangeably set their hands and seals hereunto dated the day and year first above written.

JONA. ROBESON, [L. S.]

ELIZ. ROBESON, [L. S.]

Sealed and delivered in the presence of us.

JONA. ROBESON, Jur.,

JOHN BUCHEY.

Received the day of the date within written of the
10 within named William Shippen, the sum of three hundred and fifty pounds, being the consideration money within mentioned, I say received by me.

JNA. ROBESON.

Witness present—HUGH HUGHES.

Memorandum: The first day of January, 1763, came before me Samuel Johnson, Esquire, one of his Majesties Justices, &c., came the within Jonathan Robeson and Elizabeth, his wife, and acknowledged
20 the within written indenture to be their deed and desired that the same may be recorded as their deed according to law, the said Elizabeth being of full age, secretly and apart examined thereunto, voluntarily consented the contents of said writing being first made known unto her the day of the date above.

Witness my hand and seal.

SAMUEL JOHNSON, [L. S.]

Brought to this office the 24th day of November, 1802, and recorded the same day.

30

THOMPSON,
Clerk.

State of New Jersey, }
County of Sussex, } ss.

I, Ora C. Simpson, Clerk of the County of Sussex, also Clerk of the several courts of record thereof, do hereby certify that the foregoing is a true copy of a deed from Jonathan Robeson and wife to William Shippen as fully as the same remains of record in my said office, in Book H of Deeds, page 209, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of the said county and courts this 25th day of November, 1895.

[SEAL.]

O. C. SIMPSON,
Clerk.

Codicil to the Will of Dr. Shippen the Elder.

Sussex County, in the State of New Jersey, October the 4th, 1795.

Be it known to all whom it may concern, that, whereas in and by my last will and testament heretofore duly made and executed in Pennsylvania, I did give, devise and bequeath to my son Joseph W. Shippen, all my lands and tenements adjoining or contiguous to Oxford furnace, which I purchased of Jonathan Robeson and my brother Joseph Shippen, together also with several lots of ground and other parts of my estate in the State of Pennsylvania. And whereas, my said son Joseph W. Shippen is now dead and has left no will, but has left his housekeeper, Martha Oxford, and seven children unprovided for, I do now, therefore, will, devise and bequeath all that part of my estate in Philadelphia, as aforesaid, unto my son William Shippen, his heirs and assigns forever, and also all that part of my estate in New Jersey so devised as aforesaid to my son Joseph W. Shippen, which I bought of Jonathan Robeson and my brother Joseph Shippen, I do give and devise to my son William Shippen, and to my daughter Susan Blair, as tenants in common, in equal parts to them and their heirs and assigns forever, they paying a sufficient sum of money to maintain and support the said housekeeper named Martha Oxford, not less than fifty pounds per annum, during the term of her natural life, and also paying to each of the four daughters of my said son Joseph W. Shippen the sum of sixty pounds per annum during the term of their natural lives, to wit. To Maria, Ann, Susan and to Abby, the four daughters of my said son Joseph W. Shippen, the aforesaid sum of sixty pounds each, and also to allot and set apart a small farm or tract of land

not less than one hundred and fifty acres in each for each of the sons of the said Joseph W. Shippen, to wit: William, John and Joseph, where it may be most likely to advantageous and sufficient to them to maintain with proper care and industry to be to them, their heirs and assigns forever, with proper farming utensils and stock.

And with respect to the personal estate which belonged to my said son, Joseph W. Shippen, my will
10 is that it shall be equally divided between his son William and the said housekeeper and his three daughters, Maria, Ann and Susan, and with respect to the rest of my estate, being the residue, reversion or remainder of my estate not heretofore disposed of in my will aforementioned, my will is that the same, wherever it may be found, shall be equally divided between my said son William Shippen and my said daughter Susan Blair, to them, their heirs and assigns forever. And whereas, it appears that in equity
20 there is something due the heirs of Mary Vanleinvining, deceased, which at present I cannot ascertain, therefore I do allow my executors to pay to Mary Johnston, granddaughter to said Mary Vanleinvining, the sum of one hundred pounds in lieu of the same demand; and I do also allow unto William Harrison, of Kensington, boat builder, the sum of thirty pounds; provided the two last aforesaid legacies have not been given to them or allowed to be given to them by my last will aforesaid, for my in-
30 tention is that the said sums shall be only once paid. And I do hereby nominate and appoint as an executor of my last will and testament the Reverend Doctor Samuel Blair, my son-in-law, in the room and place of my said son Joseph W. Shippen, deceased, with full power to see that my last will be fully executed, together with my son William Shippen, in the same manner as if my son Joseph had lived and survived me, and if any difficulty or disagreement should happen between my children about the division of my estate in order to prevent difference, expense or

law suits about the same, it is my desire that the same shall be adjusted and determined absolutely by the advice and direction of my beloved nephew, Edw. Shippen, Esqr., and my much respected cousin, Edward Burd, Esqr. And I do hereby declare this codicil to be a part of my last will and testament aforementioned, which said will, together with a codicil thereto annexed, I do hereby ratify and confirm, except such parts thereof as may be hereby expressly altered or revoked. 10

In testimony whereof I do hereunto set my hand and affix my seal the day and year first herein mentioned.

And it is my intention that that part of my estate in my aforesaid will devised or disposed of as residue, and not particularly specified, shall pass and be disposed of as is directed in the clause in this present codicil respecting the disposal of the residue of my estate, and the clause in the aforesaid will directing the disposal of the residue of my estate is hereby declared to be altered and revoked nota bene, the words "respecting the disposal of the residue of my estate" in the seventeenth line, between the words "codicil" and "and" in this present page, being interlined before signing or sealing this present codicil, as a part of my last will and testament. 20

WM. SHIPPEN, [SEAL.]

Signed, sealed, pronounced, declared and delivered as my last will and testament, in the presence of

ALEXR. W. FOSTER, 30

WM. MOLAND,

WM. N. MOLAN.

Philada., Nov. 10th, 1801. Then personally appeared William N. Molan, one of the witnesses to the foregoing codicil, and on his solemn affirmation did declare and say that he saw and heard Wm. Shippen, the testator, sign, seal, publish and-publish and declare the same as and for a codicil to his last will and testament, and that at the doing thereof he was of sound mind, memory and understanding, to the best

of his knowledge and belief. And that he did see Alexr. W. Foster and Wm. Moland subscribe their names as witnesses to the execution thereof, in the presence and at the request of the testator.

Coram

CHARLES SWIFT,
Register.

Philada., Nov. 10th, 1801. Then personally ap-
10 peared John White, of the City of Philada., and on oath did depose and say that he was well acquainted with Wm. Shippen, the testator, in his life time and with his handwriting, that to the best of this deponent's knowledge and belief the name or signature, Wm. Shippen, subscribed to the foregoing codicil, is of the proper handwriting of the said William Shippen, deceased.

JOHN WHITE.

Sworn and subscribed the day and date above said
20 before

CHARLES SWIFT,
Register.

Doctor Wm. Shippen and the Revd. Doctr. Saml Blair, Exrs. sworn same day.

Commonwealth of Pennsylvania, }
City and County of Philadelphia, } ss.

Register's Office, January 11th, 1896.

30 I, Elias P. Smithers, Register of Wills and ex-officio Clerk of the Orphans' Court for the City and County of Philadelphia, in the Commonwealth of Pennsylvania, do hereby certify the foregoing to be a true and accurate copy of the last will and testament and codicils thereof of Wm. Shippen, deceased, together with the probate thereof upon which letters testamentary were granted unto Doctor William Shippen and Rev'd Doctor Samu'l Blair on the 10th day of November, A. D., 1801, as the same remains on file and of record in this office.

In testimony whereof, I have hereunto set my hand and official seal at Philadelphia the date above.

[SEAL.] ELIAS P. SMITHERS,
Register of Wills and ex-officio Clerk of Orphans'
Court.

State of Pennsylvania, }
Philadelphia County, } ss.

I, William B. Hanna, President Judge of the Orphans' Court of Philadelphia County, do certify that 10 the foregoing certificate and attestation, made by Elias P. Smithers, Esq., Register of Wills and ex-officio Clerk of said Orphans' Court whose name is thereto subscribed and seal of his office affixed, are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand this 11th day of January, in the year of our Lord one thousand eight hundred and ninety-six [1896].

WM. B. HANNA, [S. L.]

President Judge. 20

State of Pennsylvania, }
Philadelphia County, } ss.

I, Elias P. Smithers, Esq., Register of Wills and ex-officio Clerk of the Orphans' Court of Philadelphia County, do certify that the Honorable William B. Hanna, by whom the foregoing attestation was made, and who has thereunto subscribed his name, was, at the time of making thereof, and still is, President Judge of the Orphans' Court of Philadelphia County, 30 duly commissioned and sworn; to all whose acts as such, full faith and credit, are and ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this 11th day of January, in the year of our Lord one thousand eight hundred and ninety-six [1896].

[SEAL.] ELIAS P. SMITHERS,
Register of Wills and ex-officio Clerk of the Orphans'
Court.

State of New Jersey, }
County of Warren. } ss.

Jacob S. Stewart, being duly sworn according to law, on his oath says that he is an attorney at law and a member of the bar of the county of Northampton, in the State of Pennsylvania, and that he is acquainted with the laws of said State, and being shown a certified copy of the last will and testament of William Shippen, deceased, together with the
10 probate thereof, certified on the eleventh day of January, eighteen hundred and ninety-six, by Elias P. Smithers, Register of Wills and ex-officio Clerk of the Orphan's Court for the county and city of Philadelphia, in the Commonwealth of Pennsylvania, under his seal of office, to be a true and accurate copy of the last will and testament and codicils thereto of William Shippen, deceased, together with the probate thereof as the same remains on file and of record in the office of said Elias P. Smithers,
20 Register of Wills and ex-officio Clerk of the Orphans' Court for the said city and county of Philadelphia, in said Commonwealth of Pennsylvania, says that the said certified copy of the said record is admissible in the State of Pennsylvania in any court therein to prove the facts in said record and said certified copy contained, and by the law of said State of Pennsylvania the said copy is adjudged and "enacted to be matter of record and good evidence."

JACOB S. STEWART.

30 Sworn and subscribed before me this thirteenth day of January, A. D. 1896.

S. C. SMITH,
M. C. C. of N. J.

Know all men that whereas by force and virtue of some good conveyance, assurance or assurances in law duly had and executed, William Shippen, the elder, late of Germantown, in the county of Philadelphia and State of Pennsylvania, deceased, was in his lifetime and at the time of his decease seized to

him and to his heirs in fee simple of certain lands situate, lying and being in the township of Oxford, county of Sussex and State of New Jersey, and whereas by a codicil dated on the fourth day of October in the year of our Lord one thousand seven hundred and ninety-five, and annexed to his last will and testament, he the said William Shippen, the elder, being so seized of the said premises (interalia) devise and bequeath unto his son William Shippen, and his daughter Susan Blair, their heirs and assigns 10 in fee simple as tenants in common, All those lands and premises so lying and being in the said county of Sussex and State of New Jersey, directing also that they the said William Shippen and Susan Blair, devisees as aforesaid, should (interalia) allot and set apart a small farm or tract of land for each of the sons of Joseph W. Shippen, deceased, to wit, William, John and Joseph, to contain not less than one hundred and fifty acres of land and sufficient to support them with proper care and industry, to be to 20 them, their heirs and assigns forever as by reference being had to the said will and codicil duly proved and recorded in the Register's office in and for the said city and county of Philadelphia, more fully and at large will appear, and whereas by an instrument of writing bearing date the thirteenth day of February, in the year of our Lord one thousand eight hundred and two and recorded in the office for recording of deeds in and for the said county of Sussex on the thirty-first day of January, 1804, they the said Wil- 30 liam Shippen and Samuel Blair, executors of the said last will and testament of him the said William Shippen, the elder, did allot and set apart for the said William J. Shippen, the eldest son of the said Joseph W. Shippen, decd., that farm or tract of land them in the tenure of him the said William J. Shippen and said to contain two hundred acres with a reservation to them the said Wm. Shippen and Samuel Blair, executors as aforesaid, of one acre of land upon the river Delaware for a landing being a part

of the premises so devised as aforesaid, reference being had to the said instrument will more fully and at large appear.

And whereas from a legal and true constitution of the said last will and testament it appears that the said William Shippen and Samuel Blair as executors therein named, where not empowered nor bound to designate or make the said allotment of land to the said Wm. J. Shippen, John Shippen and Joseph
10 Shippen, sons of the said Joseph W. Shippen, deceased, as aforesaid, but that the said devisees where empowered and bound to allot and set apart the said land for them the said William, John and Joseph as aforesaid.

Now thereof know ye that for the more perfect conveyance and assurance of the said property unto him the said William J. Shippen, eldest son of him the said Joseph W. Shippen, deceased, and in pursuance of the requisition of the said last will and
20 testament we the said William Shippen and Samuel Blair, and Susan, his wife, devisees as aforesaid, have allotted and set apart and by these presents do allot and set apart for him the said William J. Shippen, eldest son of him the said Joseph W. Shippen as aforesaid, All that tract or parcel of land now in the tenure of him the said William Shippen, usually called the River Place, (being part of a large tract which John Penn, Thomas Penn and Richard Penn, esquires, sons and devisees of William Penn, by a
30 deed of indenture dated on or about the thirteenth day of December, in the year one thousand seven hundred and forty, granted and conveyed unto Jacobus Van Etta in fee simple, application thereunto had may more plainly and at large appear. Beginning at the upper corner of the said tract of land containing twelve hundred and fifty acres upon the river Delaware, near to the foot of a bad fall of water being also John Axford's corner originally, from thence along the said Axford's line south fifty-seven degrees east fifty-five chains to a corner of the said

Jacobus Van Etta's land, from thence along his line south thirty-three degrees west fifty-two chains to Thos. Van Etta's lot or tract of land from thence along his line north fifty-seven degrees west thirty-seven chains and an half to a black oak tree marked for a corner standing by the afsd. river side, from thence up the same the courses thereof to the first place of beginning, containing two hundred acres, more or less.

Together with all and singular the ways, woods, 10
water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any way appertaining with the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, claim and demand whatsoever, either in law or equity or otherwise excepted as is hereinafter excepted of them the said William Shippen and Saml. Blair and Sarah his wife, devisees as afd. of, in, too and out of the aforesaid tract or parcel 20
of land containing two hundred acres hereby allotted and set apart or mentioned intended so to be with the appurtenances afd., to have and to hold the afsd. tract or parcel of land said to contain two hundred acres with the appurtenances so allotted and set apart as aforesaid unto the said Wm. J. Shippen, eldest son of the said Joseph Shippen, his heirs and assigns to and for the only proper use and behoof of him the said him the said William J. Shippen, his heirs and assigns forever, reserving nevertheless, and it is here- 30
by reserved, that the afsd. one acre of land containing within the above described boundries (being the premises which Johanna Van Etta by deed of indenture dated the third day of May, one thousand seven hundred and forty-four, granted and conveyed to Jonathan Robeson and which the said Jonathan Robeson and Elizabeth his wife, by a deed of indenture dated the twenty-first day of May, one thousand seven hundred and forty-two, conveyed to the said William Shippen, the elder, in fee simple,

Beginning at and in the mouth of a run that vents into the Delaware from the spring by the dwelling house of him the said Johnna Van Etta, thence down the said river eight perches to a post, thence extending from the river twenty percheases to a corner thence parallel with Delaware eight perches to post, thence to the place of beginning, containing one acre of land.

- 10 Together also with all and singular the rights and privileges granted with the same by the said Johnna Van Etta to the said Jonathan Robeson by the said afsd. conveyance, shall be and remain unto them the said Wm. Shippen and Saml. Blair and Susan his wife, devisees as afsd., anything herein contained to the contrary notwithstanding.

- 20 In witness whereof the William Shippen and Samuel Blair and Susan his wife, devisees as afsd., have hereunto set their hands and seals the eighteenth day of January, Anno Dommini, one thousand eight hundred and six.

WILLIAM SHIPPEN, [L. s.]

SAMUEL BLAIR, [L. s.]

SUSAN BLAIR, [L. s.]

Signed, sealed and delivered in the presence of
ROBERDEAN WILLIAM TAYLOR.

- 30 State of Pennsylvania, } ss.

The twenty-third day of January, A. D. 1806, before me the subscriber, one of the Judges of the Supreme Court in for the said State, personally appeared Wm. Shippen and Samuel Blair and Susan his wife, who respectively acknowledged the above instrument to be their act and deed and desired that the same might be recorded as such. The said Susan Blair, being of full age, separately and apart from her husband by me being examined, signified her voluntary consent and approbation, in witness where-

of I have hereunto set my hand and affixed my seal the day and year aforesaid.

THOMAS SMITH. [L. s.]

Recorded the 25 day of Nov., 1806.

JOHNSON, Clk.

State of New Jersey, }
County of Sussex, } ss.

I, Ora C. Simpson, Clerk of the County of Sussex, and also Clerk of the several courts of record thereof, 10 do hereby certify that the foregoing is a true and correct copy of a deed from William Shippen and Susan Blair and husband to William J. Shippen, as appears of record in my said office in Book O of Deeds, on pages 452 &c.

Given under my hand and seal of office this seventh day of November, A. D. 1895.

[SEAL.]

O. C. SIMPSON,
Clerk.

20

This Indenture made the first day of May in the year of our Lord one thousand eight hundred and nine, between Susan S. Roberdean, the wife of Isaac Roberdean, formerly of Oxford furnace, in the county of Sussex, in the State of New Jersey, of the one part, and Morris Roberson, of the City of Philadelphia, merchant, of the other part. Whereas, William Shippen the elder, late of Germantown, in the county of Philadelphia, the grandfather of her the said Susan S. Roberdean, by virtue of divers good conveyances 30 and assurances in the law duly had and executed, became in his lifetime lawfully seized in his demesne as of fee of and in the Oxford furnace and the lands thereunto belonging, situate in Sussex county aforesaid, and being so seized thereof departed his life, having first made and published his last will and testament in writing, bearing date the first day of September, one thousand seven hundred and eighty-three, and therein did will and devise the same in the words of following, that is to say them, I give, devise

and bequeath unto my son Joseph all my lands in Sussex county, in New Jersey, which I purchased of Jonathan Robeson and my brother Joseph Shippen, called Oxford furnace lands, with all the improvements thereon, containing about five thousand acres of land, more or less. The furnace tract, bought of William Cox, contains 578 acres, Vansant's tract 250 acres with allowance, John Cox and company's tract 1000 acres, Luffte's tract 1300 acres, mine
10 tract 100 acres, Fulsom's tract 100 acres, pine swamp 100 acres, Sam. Smith's tract 205 acres, lime kiln tract 140 acres, Ritchey's place and Durham resurveyed for William Shippen 315 acres, ash swamp tract 674 acres, and one acre on Delaware for a landing, and the said William Shippen in and by a codicil to the aforesaid will bearing date the fourth of October, one thousand seven hundred and ninety-five, did therein reciting that his son Joseph W. Shippen was then dead without leaving
20 any will, but had left his housekeeper, Martha Axford, and seven children unprovided for, he, the said testator, did therefore in and by the said codicil will and devise in the words following :

All that part of my estate in New Jersey so devised to my son Joseph W. Shippen, which I bought of Jonathan Roberson and my brother Joseph Shippen, I do give and devise unto my son William Shippen and to my daughter Susan Blair, as tenants in common in equal parts to them and to their heirs and
30 assigns forever, they paying a sufficient sum of money to maintain and support the said housekeeper named Martha Axford, not less than fifty pounds per annum during the term of her natural life, and also paying to each of the four daughters of my said son Joseph W. Shippen the sum of sixty pounds per annum during the term of their natural lives, to wit : To Maria, Ann, Susan and to Abby, the four daughters of my said son, Joseph W. Shippen, the aforesaid sum of sixty pounds each ; also to allot and set apart a small farm or tract of land not less than one hundred

and fifty acres in each for each of the sons of the said Joseph W. Shippen, to William, John and Joseph, where it may be most likely to be advantageous and sufficient them to maintain with proper care and industry, to be to them, their heirs and assigns forever, with proper farming utensils and stock; and the said William Shippen, soon after making the aforesaid codicil to his last will and testament, died possessed of the aforesaid premises as in his estate aforesaid, without having revoked or altered the same as in and 10 by the said recited last will and testament and codicil thereto remaining filed in the register's office at Philadelphia, relation being thereto had, may more fully show and at large appear; and, whereas, the said Martha Axford has since departed this life, and the said William Shippen and Samuel Blair and Susan, his wife, have set apart and conveyed to each of the said sons of the said Joseph W. Shippen aforesaid, a farm, and complied with other the conditions respecting the sons of the said Joseph W. Shippen 20 mentioned in the codicil of the said testator, William Shippen, deceased. And, whereas, the said Samuel Blair, of Germantown, in the county of Philadelphia, doctor of divinity, and Susan, his wife, in and by a certain indenture bearing date the twenty-seventh of September, one thousand eight hundred and two, recorded in the clerk's office of the county of Sussex, in Book H of Deeds, pages 238, &c., for the consideration therein mentioned, did grant, convey and assure unto Samuel Blair, Junr., of Germantown, aforesaid 30 and to his heirs and assigns one moiety or equal undivided half part of all those lands or pieces of ground aforementioned, situate in the said county of Sussex and devised as aforesaid to the said William Shippen and Susan Blair.

Together with the appurtenances to hold to him the said Samuel Blair, Junr., his heirs and assigns, in trust, among other things that he the said Samuel Blair, Junr., his heirs and assigns should convey and dispose of the hereditaments and premises aforesaid

- and every part thereof with the appurtenances unto such person or persons and for such estate and estates, uses, intents and purposes and in such parts and proportions, manner and form as the, the said Susan S. Roberdean notwithstanding her coverture and whether she were sole or married, by any deed or deeds, writing or writings, under her hand and seal attested by two or more creditable witnesses, should direct, limit or appoint as in any by the said recited
- 10 Indenture relation being thereunto had may more fully and at large appear, and whereas the said Samuel Blair and Susan his wife in and by a certain other Indenture bearing date the thirteenth day June, one thousand eight hundred and five, for the consideration therein mentioned did grant, convey and assure unto the said Samuel Blair, Junr., and to his heirs and assigns one moiety or undivided half part of and in a certain tract or parcel of land lying in the townships of Oxford and Mansfield in the county of Sussex aforesaid, containing five hundred and one acres of land which William Cox by Indenture bearing date the first day of May, one thousand seven hundred and ninety-two, recorded in the Clerk's Office of Sussex county in Book B, fol. 258, &c., released unto Joseph Shippen in fee who died intestate, unmarried and without bearing lawful issue, the same descended unto his brother William Shippen and his sister the said Susan Blair, in fee.

- Together with the appurtenances, To hold to him
- 30 the said Samuel Blair, Jun., his heirs and assigns forever in trust for the same and like uses, intents and purposes as are mentioned and expressed in the last above recited Indenture, relation being thereunto had may more fully and large appear, and whereas, in order to effect a division of the above described premises between the said William Shippen, the owner of the other moiety or half of the sum, and the said Susan S. Roberdean, they the said William Shippen and the said Susan S. Roberdean and her Trustee, the said Samuel Blair, by a certain instrument of

writing bearing date the 3d day of July, one thousand eight hundred and five, recorded in the Clerk's Office of the county of Sussex in Book M of Deeds, pages 552, &c., did authorize and empower John Armstrong, Nathan Saxton and Thomas Gardner, or any two of them, to value and divide the premises aforesaid in pursuance whereof they the said John Armstrong, Nathaniel Saxton and Thomas Gardner did devise the greater part of the same and by an instrument of writing under their hands and seals, 10 bearing date the fifteenth day of September, one thousand eight hundred and seven, recorded in the Clerk's Office of Sussex county in Book A of divisions folios 99, &c., did allot and assign unto the said Samuel Blair in trust for the said Susan S. Roberdean, her heirs and assigns in severally the several farms or lots marked in the plan annexed to the said division Nos. 1, 2, 3, 4, 5, 6, 7 and 8 as in and by the said division relation being thereunto had may more fully and at large appear. And Whereas the said Susan 20 S. Roberdean hath agreed with him the said Morris Robeson for the sale and purchase of the aforesaid farms distinguished in the plan of division aforesaid from No. 1 to 8, inclusive, and also of her undivided half part of the Oxford furnace, and all the lands and appurtenances to the said furnace belonging or therewith deemed taken or reputed to belong remaining yet undivided of which the said William Shippen, her grandfather, or her uncle Joseph Shippen, died seized of or entitled unto in any manner howso- 30 ever in Sussex county aforesaid except such parts thereof as has been conveyed to them the said William, John and Joseph Shippen respectively, the sons of her the said Martha Axford as aforesaid, at and for the price or sum of ten thousand dollars.

Now this Indenture witnesseth that the said Susan S. Roberdean for and in consideration of the aforesaid sum of ten thousand dollars, lawful money of the United States, unto her at or before the sealing and delivery hereof by the said Morris Robeson well and

truly paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, aliened, enfeoffed, released and confirmed and by these presents doth grant, bargain and sell, alien, enfeoff, release and confirm unto the said Morris Robeson and to his heirs and assigns all those the aforesaid farms, lands and premises heretofore and commonly held with and appurtenant to the furnace called Oxford furnace in the county of Sussex, in the State of New Jersey, and in the division and partition aforesaid allotted, assigned and set off to the said Samuel Blair, Junr., in trust for the said Susan S. Roberdean and marked and distinguished in the plan annexed to the said division form No. 7 to 8 inclusive, the said farm or lot No. 1 containing one hundred and twenty-six acres and seven-tenths of an acre, now or late in the occupation of David Morrell, being a tract located by fulsome for one hundred acres with allowance, and one other lot attached thereto as a wood lot, containing forty-four acres and eight-tenths of an acre, being part of a tract containing six hundred and seventy-four acres, commonly called the ash swamp tract, the said lot No. 2 containing three hundred and fifty-six acres, being the tract commonly called Van Sant's tract and part of Hilby's tract originally surveyed, &c., for twelve hundred and fifty acres, the said lot No. 3 containing one hundred and fifty-two acres and nine-tenths of an acre, being part of a tract of land located to David, John and William Cox for two hundred and seventy-six acres and parts of other tracts, the said lot No. 11 containing one hundred and forty-eight acres and thirty-five hundredths of an acre, being part of a tract of land located by Col. Daniel Cox for four hundred and twenty-six acres, commonly called the furnace tract, the said lot No. 5 containing one hundred and sixty-nine acres and forty-six hundredths of an acre, being part of the said tract called the furnace tract, the said lot No. 6 containing one hundred and thirteen acres and a half, being part of two hundred and five acres

conveyed to William Shippen, deceased, by Samuel Smith, and which is part of Linsdale tract, the said lot No. 7 containing two hundred acres, being part of two hundred and five acres, part of Messrs. Cox's one thousand acres, and the said lot No. 8 containing fifty-four acres and one-fifth of an acre, being part of Messrs. Cox's one thousand acres and also part of the furnace tract, and also one full equal and undivided moiety or half part, the whole into two full equal parts to be divided of and in all that the afore- 10
said furnace called Oxford furnace, and all and singular the tract or pieces of land to the said furnace belonging or therewith deemed, taken or reputed to belong as fully and amply as if the same were herein particularly set forth and described and held in common between her the said Susan S. Roberdean or Samuel Blair, Junr., in trust for her and the devisees of the said William Shippen, the sons deceased, and also of and in the aforesaid one acre of land on Delaware ford landing place. Together with all and sin- 20
gular the buildings, improvements, ways, woods, mines, minerals, waters, water courses, mill works, piers, utensils, employment, rights, liberties, privileges, hereditaments and appurtenants and appurtenances whatsoever to the hereby granted premises belonging or in anywise appertaining or therewith held, used and enjoyed, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand 30
whatsoever of her the said Susan S. Roberdean in law, equity or otherwise howsoever of, in and to the same to have and to hold all and singular the premises hereby granted, bargained and sold and meant, mentioned or intended so to be with the respective appurtenances, and every part and parcel thereof with the appurtenances unto the said Morris Robeson, his heirs and assigns, to and for the only proper use and behoof of the said Morris Robeson, his heirs and assigns forever, under and subject nevertheless to the payment of the one moiety or half part of the

annuities, sixty pounds per annum each charged and given by the will of the said William Shippen, deceased, to Maria, Ann, Susan and Abby, the daughters of the said Joseph M. Shippen, deceased, for and during the term of their natural lives, so as the same from and after the date hereof shall grow due and payable, but free and clear of and from all arrearages thereof, and of all taxes, and all proportion of the same respectively to the day of the date hereof; and

10 the said Susan S. Roberdean and heirs all and singular, the premises hereby granted or mentioned and intended so to be with the respective appurtenances unto the said Morris Robeson, his heirs and assigns, against her the said Susan S. Roberdean, and her heirs, and against all and every other person and persons whatsoever lawfully claiming or to claim, shall and will subject as aforesaid, warrant and forever defend by these presents and this Indenture further Witnesseth that the said Susan S.

20 Roberdean for the consideration aforesaid and by virtue and in pursuance of the power and authority given to her in and by the above recited Indenture from the said Samuel Blair and Susan his wife, and of all other rights, powers and authorities in her vested and enabling her in this behalf hath directed, limited and appointed and by this her deed in writing attested by two credible witnesses whose names are hereunto subscribed as witnesses thereto doth direct, limit and appoint unto the said Morris Robe-

30 son and to his heirs and assigns all and singular the messuages, lands, tenements, hereditaments and premises hereinbefore mentioned and described and granted and conveyed or meant and intended to be granted and conveyed by her the said Susan S. Roberdean to him the said Morris Robeson and every part thereof with the respective appurtenances, to have and to hold all and singular the premises hereby limited and appointed unto the said Morris Robeson, his heirs and assigns to his and their only proper use and behoof forever subject as aforesaid and the

said Susan S. Roberdean doth hereby direct, desire and request the said Samuel Blair, Junr. to make and execute a conveyance in fee simple of all and singular the premises aforesaid with the respective appurtenances unto and to the use of him the said Morris Robeson, his heirs and assigns forever, subject as aforesaid.

In witness whereof the said parties have interchangeably set their hands and seals hereunto, dated the day and year first above written. Witness 10

SUSAN S. ROBERDEAN. [L. s.]

Sealed and delivered in the presence of us.

JOHN ROBERSON.

MARY POTTS.

Received the day of the date of the within written Indenture of the within named Morris Robeson the sum of ten thousand dollars being the full consideration money within mentioned. Witness

SUSAN S. ROBERDEAN. 20

Witness, MARY POTTS.

HENRY CLIFFORD.

The 2d day of June, Anno Domini, 1809, before me Richard Peters, Judge of the Pennsylvania District of the United States, came Susan S. Roberdean, the grantor in the within written Indenture named, and in due form of law acknowledged the within written Indenture to be her act and deed and desired the same may be recorded as she the said Susan S. Roberdean, being separate and apart from her said husband Isaac Roberdean, by me examined, did declare and say that she executed the written Indenture voluntarily of her own free will and accord without any fears, threats cautions or compulsions of her said husband or any undue influence whatever, the contents of the said Indenture being first made known to her. 30

Witness my hand and seal the day and year aforesaid.

RICHARD PETERS. [L. s.]

State of New Jersey, }
County of Sussex, } ss.

I, Ora C. Simpson, Clerk of the county of Sussex, also clerk of the several courts of record thereof, do hereby certify that the foregoing is a true copy of a deed from Susan S. Roberdean to Morris Robeson, as fully as the same remains of record in my said office in Book T of Deeds, page 205, &c.

In witness whereof I have hereunto set my hand
10 and affixed the seal of the said courts and county
this 25th day of November, 1895.

[SEAL.]

O. C. SIMPSON,
Clerk.

This Indenture made the second day of May in the year of our Lord, one thousand eight hundred and nine, between Samuel Blair, Junr., of Germantown, in the county of Philadelphia, trustee for Susan S. Roberdean of the one part, and Morris Robeson of
20 the City of Philadelphia, merchant, of the other part.

Witnesseth that the said Samuel Blair, Junr., trustee aforesaid, in compliance with the directions of the said Susan S. Roberdean, contained in the within written Indenture, and in execution and discharge of the trust in him reposed, and for and in consideration of the sum of one dollar, lawful money of the United States, unto him the said Samuel Blair, Junr., at the execution of the said Morris Robeson, well and truly paid, the receipt whereof is hereby acknowledged,
30 hath granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents, doth grant, bargain and sell, alien, enfeoff, release and confirm unto the said Morris Robeson, and to his heirs and assigns, all and singular the messuages, lands, tenements, hereditaments and premises in and by the written Indenture described and conveyed or mentioned and intended to be conveyed therein and thereby to him the said Morris Robeson, together with all and singular the rights, members and appurtenances whatsoever thereunto belonging or in any-

wise appertaining, and the reversions and remainders, rents, issues and profits thereof and all the estate, right title, interest, property, claim and demand whatsoever of him the said Samuel Blair, Junr., in law, equity or otherwise howsoever of, in and to the same, to have and to hold all and singular the premises hereby granted with the appurtenances unto the said Morris Robeson, his heirs and assigns, to and for the only proper use and behoof of the said Morris Robeson, his heirs and assigns forever, subject as 10 mentioned in the within written Indenture; and the said Samuel Blair, Junr., for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said Morris Robeson, his heirs and assigns, by these presents that the said Samuel Blair, Junr., hath not done or committed or willingly or writtenly suffered to be done or committed any act, matter or thing whatsoever whereby or by reason whereof the hereby granted premises, or any part thereof now is or at any time hereafter can or may be 20 impeached, charged or incumbered in title, charge, estate, or otherwise howsoever.

In witness whereof the said parties have interchangeably set their hands and seals hereunto, dated the day and year first above written.

SAML. BLAIR, Junr. [s. l.]

Sealed and delived in the presence of us.

JOHN ROBESON,
MARY POTTS.

Acknowledged to have received of the above named 30 Morris Robeson the full consideration money above mentioned.

SAM. BLAIR, Junr.

Witness—JOHN P. ROBESON,

The 2d day of June, Anno Domini, 1809, before me Richard Peters, Judge of the Pennsylvania District of the United States, came the aboved named Samuel Blair, Junr., and in due form of law acknowledged the above written Indenture to be his act and deed and desired the same may be recorded as such.

Witness my hand and seal the day and year aforesaid.

RICHARD PETERS. [L. S.]

Recorded 16 August, 1809.

State of New Jersey, }
County of Sussex, } ss.

I, Ora C. Simpson, Clerk of the several courts of record of the county, do hereby certify that
10 the foregoing is a true copy of a deed from Samuel Blair, Junr., trustee for Susan S. Roberdean to Morris Robeson, as fully as the same remains of record in my said office in Book T of Deeds, page 211, &c.

In witness whereof I have hereunto set my hand and affixed the seal of the said county and courts this 25th day of November, 1895.

[SEAL.]

O. C. SIMPSON,
Clerk.

Morris Robeson's Will.

20 I, Morris Robeson, of the township of Oxford and county of Sussex, in the State of New Jersey, do make and publish this for my last will and testament—

First, I give and bequeath to my dear wife Tacy Robeson, the one equal sixth part of all my estate both real and personal after all my just debts are paid, and this I give her in lieu of dower out of my estate, and if not accepted as such within forty days after my decease then my will is that the said annuity
30 be void.

Second, I give and bequeath all the residue of my estate both real and personal to my children, to be equally divided amongst them share and share alike in fee simple.

Thirdly, I do hereby appoint my wife Tacy Robeson, to be sole executrix of this my testament and last will, and do hereby authorize and empower her to sell and convey all my land and real estate as well as personal, either at public or private sale, as she may judge best for the interest of the estate, or she

may keep the lands unsold and have it divided, or sell a part and have a part divided as she may judge best for the interest of her children, having the fullest confidence that my dear wife will cause my estate to be made the most of and divided and distributed agreeable to the first and second articles of this my testament and last will, nevertheless if she should think proper to marry before she shall have finally settled and distributed as aforesaid my said estate, then it is my will that my much esteemed brothers-¹⁰ in-law John Paul and Joseph M. Paul, shall be executors of my testament and last will in place of my wife Tacy, and have all the powers to settle and close such unsettled part of all the business relative to my said estate as may then remain unsettled that my wife Tacy had if she had remained unmarried, and also to appoint either of my sons to assist them in the settlement of and fulfillment of this my last will and testament if they should think proper so to do.

X

COURT OF ERRORS AND APPEALS.

CERTIFIED COPY OF DEED.

Samuel Blair and Susan Blair, Isaac Roberdeau and Susan Roberdeau to Samuel Blair, Jr., in trust for Susan S. Roberdeau.

Dated September 27th, 1802.

Recorded in Sussex county Clerk's office in Vol. H of Deeds, p. 238, &c.

¹⁰ Conveys one-half of all land which William Shippen had purchased or got of Jonathan Robeson and Joseph W. Shippen in trust, to be conveyed as requested by Susan S. Roberdeau, wife of Isaac Roberdeau.

Thompson, the other subscribing evidences, were

Witness my hand and seal the day and year aforesaid.

RICHARD PETERS. [L. S.]

Recorded 16 August, 1809.

State of New Jersey, }
County of Sussex, } ss.

I, Ora C. Simpson, Clerk of the several courts of record of the county, do hereby certify that 10 the foregoing is a true copy of a deed from Samuel Blair, Junr., trustee for Susan S. Roberdean to Morris Robeson, as fully as the same remains of record in my said office in Book T of Deeds, page 211, &c.

In witness whereof I have hereunto set my hand and affixed the seal of the said county and courts this 25th day of November, 1895.

[SEAL.]

O. C. SIMPSON,
Clerk.

TO SAY WHATEVER

as personal, either at public or private sale, as she may judge best for the interest of the estate, or she

may keep the lands unsold and have it divided, or sell a part and have a part divided as she may judge best for the interest of her children, having the fullest confidence that my dear wife will cause my estate to be made the most of and divided and distributed agreeable to the first and second articles of this my testament and last will, nevertheless if she should think proper to marry before she shall have finally settled and distributed as aforesaid my said estate, then it is my will that my much esteemed brothers-in-law John Paul and Joseph M. Paul, shall be executors of my testament and last will in place of my wife Tacy, and have all the powers to settle and close such unsettled part of all the business relative to my said estate as may then remain unsettled that my wife Tacy had if she had remained unmarried, and also to appoint either of my sons to assist them in the settlement of and fulfillment of this my last will and testament if they should think proper so to do.

In witness whereof I have hereunto set my hand 20
and affixed my seal the fourth day of May, 1816, the
year of our Lord one thousand eight hundred and
sixteen.

MORRIS ROBESON. [SEAL.]

Signed, sealed, published and declared by Morris Robeson to be his last will in the presence of us.

WM. WORRALL.

WM. THOMPSON.

PETER SMITH.

30

Peter Smith, one of the witnesses to the within will, being duly sworn, did depose and say that he saw Morris Robeson, the testator therein named, sign and seal the same and heard him publish, pronounce and declare the within writing to be his last will and testament and that at the doing thereof the said testator was of sound and disposing mind and memory as far as this deponent knows and as he verily believes, and that Wm. Worrall and Wm. Thompson, the other subscribing evidences, were

present at the same time and signed their names as witnesses to the said will together with this deponent in the presence of the said testator.

PETER SMITH.

Sworn and subscribed before me this 28 Feb. 1823.

WM. T. ANDERSON,

Surrogate.

Tacy Robeson, the sole executrix in the within
10 testament named, being duly affirmed, did depose
and say that the within instrument contains the true
last will and testament of Morris Robeson, the testa-
tor therein named, so far as she knows and as she
verily believes, that she will well and truly perform
the same by paying first the debts of the said
deceased and then the legacies in the said testament
specified so far as the goods, chattels and credits of
the said deceased can thereunto extend and in all
things well and faithfully perform and execute the
20 trust thereby imposed on her according to the true
intent and meaning of the said testament and that she
will file and exhibit into the Surrogate's office of the
county of Sussex a true and perfect inventory of all
and singular the goods, chattels and credits of the
said deceased that have or shall come to her knowl-
edge or possession or to the possession of any other
person or persons for her use and render a just and
true account when thereunto lawfully required.

TACY ROBESON.

30 Affirmed and subscribed before me this 28 of Feb.,
1823.

WM. T. ANDERSON,

Surrogate.

I, William T. Anderson, Surrogate of the county of
Sussex, do certify the annexed to be a true copy of
the last will and testament of Morris Robeson, late
of the county of Sussex, deceased, and that Tacy
Robeson, of the county of Sussex, sole executrix
therein named, proved the same before me, and is

duly authorized to take upon herself the administration of the estate of the said testator agreeably to the said will.

Witness my hand and seal of office the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and twenty-three.

[SEAL.]

WM. T. ANDERSON.

Sussex County, } ss.

I, Samuel Johnson, Surrogate of the county of 10
Sussex, and Clerk of the Orphans' Court thereof, do hereby certify that I have compared the foregoing copy of the last will and testament of Morris Robeson, deceased, with the proof, oath of executrix and letters testamentary granted to Tacy Robeson, the sole executrix therein named, with the original record thereof, now remaining in my office, and have found the same to be a true copy therefrom.

In testimony whereof I have hereunto set my hand and affixed my official seal at Newton, this twenty- 20
third day of November, A. D., eighteen hundred and ninety-five.

[SEAL.]

SAMUEL JOHNSON,
Surrogate.

Tacy Robeson, Executrix of Morris Robeson, to
Wm. P. Robeson and John P. B. Maxwell.

This Indenture made the first day of April in the year of our Lord, one thousand eight hundred and thirty-four, between Tacy Robeson, sole executrix of 30
the last will and testament of Morris Robeson, Esq., late of Oxford furnace, in the county of Sussex, now Warren, deceased, of the first part, and William P. Robeson and John P. B. Maxwell, both of Belvidere, in the county of Warren and State of New Jersey, of the second part: Witnesseth that whereas the said Morris Robeson did and in and by his last will and testament, duly executed to pass real estate, make, constitute and appoint said Tacy Robeson sole executrix of the same, and did therein and thereby

authorize and empower her to sell and convey all his land and real estate as well as personal, either at public or private sale as she might think best for the interest of the estate, as in and by the said will bearing date the fourth of May in the year of our Lord, one thousand eight hundred and sixteen, duly proved and recorded in the surrogate's office of the said county of Sussex, in the State of New Jersey aforesaid, will more fully appear; now the said party of the first
10 part, by virtue of the power and authority aforesaid, and of every other power her therunto enabling, and in consideration of the sum of forty-six thousand dollars, lawful money of the United States of America, to her in hand paid at and before the sealing and delivery of these presents by the said party of the second part, the receipt whereof is hereby acknowledged; and the said party of the first part therewith fully satisfied, contented and paid, hath granted, bargained, sold, aliened, enfeoffed, conveyed and con-
20 firmed, and by these presents doth grant, bargain, sell, alien, enfeof, convey and confirm unto the said William P. Robeson and John P. B. Maxwell, their heirs and assigns, all those certain tracts, lots parcels of land and premises hereinafter more particularly described, situate, lying and being in the townships of Oxford and Mansfield, in the county of Warren and State of New Jersey, viz: Nine several tracts or lots of land sold and conveyed to the said Morris Robeson by deed from Susan S. Robeson,
30 bearing date May 1st, A. D., 1809, and by deed from Samuel Blair, Junr., trustee of the said Susan S. Robeson, dated May 2d, A. D., 1809, both recorded in the clerk's office of Sussex county, in Book T of Deeds, fol. 205, &c., being the tracts or lots which in a division of lands between the said Susan S. Roberdean and William Shippen, since deceased, made by John Armstrong, Nathaniel Sexton and Thomas Gordon, persons appointed by the parties for that purpose, and in the maps and drafts accompanying the same are designated and described as lots 1, 2, 3, 4, 5, 6, 7, 8,

and another small lot attached to lot No. 1 as a wood lot as in and by the said division bearing date September 15th, A. D., 1807, recorded in the said clerk's office in Book of A of Deeds, fol. 99, &c., will more fully appear; lot No. 1 containing one hundred and twenty-six acres and seven-tenths of an acre (being a located tract by Fulsom for 100 acres with allowance), the other small lot attached thereto as a wood lot, containing forty-four acres and eighth-tenths of an acre, being part of a tract commonly 10 called the ash swamp tract; lot No. 2 containing three hundred and fifty-eight acres, being the tract commonly called Van Sant's tract and part of Hyly's tract; lot No. 3 containing one hundred and fifty-two acres and nine-tenths of an acre, being a part of a tract of land located to Samuel, John and William Cox and parts of other tracts; lot No. 4 containing one hundred and forty-eight acres and twenty-five hundredths of an acre, being part of a tract of land located by Col. Daniel Cox commonly called the fur- 20 nace tract; lot No. 5 containing one hundred and sixty-nine acres and forty-six hundredths of an acre, being part of the said furnace tract; lot No. 6 containing one hundred and thirteen acres and a half, being part of Dimesdale's tract; lot No. 7 containing two hundred acres, being part of the Messrs. Cox's 1000 acre tract, and lot No. 8 containing fifty-four acres and one-fifth of an acre, being part of the said Messrs. Cox's tract and part of the said furnace tract; also the undivided one-half of a tract or lot of one acre of land lying on 30 the river Delaware, commonly called and designated as the landing place, conveyed to the said Morris Robeson by the aforesaid deeds; also three other tracts, lots or parcels of land and premises, being part of the tracts mentioned in the aforesaid deed from Susan S. Roberdean as undivided and held in common between her or the said Samuel Blair in trust for he and the devisees of the said William Shippen, deceased, which in a division of certain lands between the said Morris Robeson and William Shippen made

by Thomas Stewart, George Armstrong and John Summers, commissioners appointed for that purpose by the Orphans' Court of the said county of Sussex, were assigned to the said Morris Robeson and which in the report of the said commissioners and in the map and drafts accompanying the same are designated and described as lots 24, 25 and 26 as in and by the said report and maps accompanying the same, bearing date May 20th, A. D., 1812, will more fully
10 appear; lot No. 24 containing seven hundred and seventy-nine acres of land; lot No. 25 containing thirty-nine acres and twenty hundredths of an acre of land and lot No. 26 containing two hundred and forty acres of land, being part of the ash swamp tract; also two other tracts or lots of land conveyed to the said Morris Robeson by the name of David Morris Robeson by Elizabeth Robeson and John Robeson and wife by deed bearing date December 31st, A. D., 1799, recorded in the said clerk's office in Book H 2
20 of Deeds, fol. 25, &c., the one lot containing two hundred and seventy-five acres of land and meadow ground, and the other lot containing sixteen acres of land or meadow as the same is described in the said last mentioned deed; also one other tract or lot of land described in a deed for the same from William Erwin to the said Morris Robeson, bearing date December 3d, 1807, recorded in said clerk's office in Book W of Deeds, pages 1 and 2, containing ninety acres of land, more or less, with allowances for high-
30 ways; also two other lots or tracts of land described in a deed for the same from John Robeson and wife to the said Morris Robeson bearing date July 10th, 1809, recorded in the said clerk's office in Book W of Deeds, fol. 4, 5 and 6, the one lot containing ninety-seven acres and allowances, and the other containing one hundred and fifty-six acres and a half acres of land, be the same more or less; also one other tract or lot of land described in a deed for the same from John D. Cox, William Cox and Daniel W. Cox, executors of William Cox, deceased, dated January 4th,

A. D., 1810, recorded in the said clerk's office in Book W of Deeds, pages 2, 3 and 4, containing six hundred and forty-five acres, be the same more or less; also one other tract or lot of land described in a deed for the same from Abraham Axford and wife to the said Morris Robeson, acknowledged May 15th, 1810, recorded in the said clerk's office in Book W of Deeds, fol. 279, &c., containing sixty-nine acres, more or less; also three tracts, lots or parcels of land described in a deed for the same from Zachariah Flummerfelt and 10 wife to the said Morris Robeson, dated February 14th, A. D., 1812, recorded in the said clerk's office in Book X of Deeds, fol. 532, &c., one of said tracts, lots or parcels of land containing sixty-two acres and a half and thirty-two perches; another being a meadow lot containing near five acres, more or less, and the third being two-ninths of certain lands described as all the undivided land, meadow or pine swamp, supposed to contain eighty-one acres or upwards, be the same more or less; also one other tract or lot of land de- 20 scribed in a deed for the same from Jonathan Axford and wife to the said Morris Robeson, dated June 30th, 1812, recorded in Book Y of Deeds in the said clerk's office, fol. 272, containing sixty-five acres and three-quarters, more or less; also one other tract or lot of land described in a deed for the same from Joseph Shippen to the said Morris Robeson, acknowledged April 10th, 1810, recorded in the said clerk's office in Book W of Deeds, fol. 41, containing one hundred and sixty-nine acres seventeen perches of land, be 30 the same more or less; also one other tract or lot of land described in a deed for the same from Samuel Waite and wife to the said Morris Robeson, dated April 15th, A. D., 1811, recorded in the said clerk's office in Book X of Deeds, fol. 194, &c., containing one hundred and fifty acres of land; also four other tracts, lots or parcels of land described in a deed for the same from Conrod Davis and wife to the said Morris Robeson, dated November 1st, A. D., 1811, recorded in the said clerk's office in Book Y of

Deeds, fol. 125, &c., one of which said lots contains sixty acres and one rod, another contains thirty-eight acres, more or less, the third contains four acres three rods and ten perches, be the same more or less, and the fourth being two-ninths parts of certain undivided lands and pine swamp, supposed to contain eighty acres, more or less; also one other tract or lot of land described in a deed for the same from William Shippen to the said Morris Robeson, dated March 22d, 10 A. D., 1813, recorded in said clerk's office in Book B 2 of Deeds, fol. 82, containing twenty-five acres of land, be the same more or less; also a tract or lot of thirty-one acres of land adjoining Cox's survey, which was surveyed for the said Morris Robeson, September 20th, A. D., 1814, and a return thereof made on the day following by virtue of a warrant, bearing date 29th of March, 1717, and also all other lands, tenements and hereditaments situate, lying and being in the county of Warren, belonging to the 20 said Morris Robeson at the time of his death, or which he was then seized possessed of or in any way entitled to except one tract or lot of land sold and conveyed by the said party of the first part to Jacob Miller by deed bearing date March 13th, A. D., 1832, containing one hundred and seventy-seven acres, more or less (being part of one of the tracts described in the said deed from Elizabeth Robeson and John Robeson and wife, also another tract or lot of land sold and conveyed by the said party of the first part 30 to Elias Vannatta by deed bearing dated March 31st, A. D., 1832, containing one hundred and forty-eight acres and thirty-five hundredths, being one of the tracts described in the said deed from Susan S. Roberdean, and also a small tract or lot of about sixteen acres not included in any of the tracts above enumerated, sold and conveyed by the said party of the first part to William Anderson) together with all and singular the houses, mills, furnaces, buildings, improvements, cinder heaps, mines and minerals, trees, ways, waters, profits, privileges and advanta-

ges on the same being or thereunto belonging or in anywise appertaining, also all the estate, right, title, interest, property, claim and demand whatsoever which the said Morris Robeson had therein or thereunto at the time of his death of which the said Tacy Robeson now has as his executrix or in any other manner, right or capacity whatsoever. To have and to hold all and singular the above granted tracts, lots or parcels of lands or land and premises with the appurtenances to them the said William P. Robeson 10 and John P. B. Maxwell, their heirs and assigns to the only proper use, benefit and behoof of them the said William P. Robeson and John P. B. Maxwell, their heirs and assigns forever, and this indenture further witnesseth that the said parties of the first part for and in consideration of the sum of forty-six thousand dollars so paid as aforesaid, hath also granted, bargained, sold, assigned, transferred and set over and by these presents doth grant; bargain, sell, assign, transfer and set over to the said William 20 P. Robeson and John P. B. Maxwell their heirs, executors and administrators and assigns, all horses, cattle, sheep, farming utensils and all goods, chattels and personal estate of or belonging to the estate of the said Morris Robeson now on the above granted tracts, lots or parcels of land or used or employed thereon; and also a mortgage from John P. Robeson and wife to the said party of the first part bearing date August 6th, A. D., 1823, together with the bonds or obligations therein mentioned; also a mortgage 30 from Jacob Miller and wife to the said party of the first part bearing date March 13th, A. D., 1832, together with the bond or bonds therein mentioned; also a mortgage from Elias Vannatta and wife to the said party of the first part, bearing date March 30th, A. D., 1832, together with the two bonds therein mentioned, also the lease now subsisting between the said party of the first part and William Henry, John Jordan and William Wooley, and also all other mortgages, bonds, judgments, covenants, notes, book

accounts, all outstanding claims, debts and demands whatsoever belonging to the estate of the said Morris Robeson, deceased, subject however to all lawful set-offs which may exist against them and subject also to all conditions, provisos and covenants heretofore made or entered into by the said party of the first part in, by or concerning them or any of them, and the said party of the first part doth for herself, her heirs, executors and administrators, covenant and

10 grant to and with the said party of the second part, their heirs, executors and administrators, will and shall warrant, secure and forever defend them, their heirs and assigns against the lawful claims of all persons claiming or to claim by, from or under her as such executrix as aforesaid, or in any other right, character or capacity whatever, but not from the claims or demands of any other persons or person whatever of, in or to all or any part of the lands or other property hereby conveyed.

20 In witness whereof the said Tacy Robeson, executrix as aforesaid, hath hereunto set her hand and seal the day and year first above written.

TACY ROBESON, [SEAL.]

Executrix, &c.

Signed, sealed and delivered in the presence of

JOHN PAUL,

MARY R. STROUD.

State of Pennsylvania }

30 Be it remembered that on the twentieth day of January, in the year of our Lord one thousand eight hundred and thirty-five, personally appeared before me the subscriber, Commissioner appointed by the Governor of the State of New Jersey, conformable to an act of the Legislature passed the 27th day of December, A. D., 1826, Tacy Robeson, executrix, the grantor named in the within deed of conveyance, who acknowledged that she signed, sealed and delivered the same as her act and deed for the uses and purposes therein mentioned the contents there-

of being first made known unto her and I being satisfied that she is the grantor mentioned therein.

JOSEPH HATKINSON,
Commissioner.

Received and recorded Feb. 5th, 1835.

KENNEDY,
Clerk.

State of New Jersey, }
County of Warren. } ss.

10

I, Charles E. Harris, Clerk of the county of Warren aforesaid, and also Clerk of the Court of Common Pleas in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the record of a certain deed of record in my office as the same appears in Volume Twelve of Deeds for said county, on page five hundred and twenty-three, &c.

In witness whereof I have hereunto set my hand and affixed the official seal of said county and court 20
this twenty-fifth day of November, A. D., 1895.

CHARLES E. HARRIS,
Clerk.

In the name of God, amen, I William P. Robeson, of the town of Belvidere, in the county of Warren and State of New Jersey, being at this time in poor health but of sound mind, memory and understanding, for the due and proper disposal of my property, 30
do make and publish this my last will and testament in manner and form following, that is to say :

First : I give and bequeath all my household goods, furniture and plate to my beloved wife, Anna M. Robeson, her heirs and assigns forever.

Second : I give, devise and bequeath all the rest and residue of my property and estate, both real and personal, wheresoever situated, unto my executor, hereinafter named, his heirs and assigns forever, in trust, nevertheless upon the following trust to wit :

that he, my said executor, as soon as convenient after my decease, shall pay all my just debts and funeral expenses either out of my real or personal estate in such proportion out of cash as he may think best for the interest of my estate, and after paying the same shall distribute and divide, transfer and convey the residue to my said wife, Anna M. Robeson, and to my children, Gerge M. Robeson, Anna M. Robeson, Junior, Emily M. Price, wife of Joseph M. P. Price,
10 and William P. Robeson, Junior, in the same shares, interests and proportions in which they would have been entitled to receive the same respectively had I died intestate, that is to say my personal estate to be divided, according to law, among my said wife and children, and my real estate to be divided among my said children, according to law, subject to the rights of my said wife therein ; my said executor, hereinafter named, retaining his own share of my said real and personal estate, as one of my said children, and distribut-
20 ing and dividing the remainder among the other persons entitled as aforesaid. And I hereby authorize and empower my said executor to make sale or exchange at public or private sale as he may think best of all or such parts, or so much of my said estate, real and personal, as he may deem for the best interest of my estate in paying my debts and in making the division and distribution aforesaid among my said wife and children and for purpose to make all necessary and proper deeds of conveyance and transfer, without re-
30 quiring the purchaser of any part thereof to be responsible in any manner for the proper application of the purchase money.

Third : I will and direct that my executor shall not be required to make any inventory or appraisement of my personal estate, but shall estimate and distribute the same, if distributed in kind, as my said legatees may agree, and failing such agreement then as he may think equitable and just.

Fourth : I hereby nominate, constitute and appoint my eldest son, George M. Robeson, Esquire, of the

City of Camden in this State, executor of this my last will and testament, and I direct that he shall receive the same compensation as executors are by law entitled to, with such extra compensation for extra services as may be equitable and just.

In witness whereof I have hereunto set my hand and seal this twenty-eighth day of November, in the year of our Lord, one thousand eight hundred and sixty-four (1864).

WILLIAM P. ROBESON. [L. s.] 10

Signed, sealed, published and declared as and for his last will and testament by William P. Robeson, the testator, in the presence of us who at his request and in his presence and sight, and in the presence and sight of each other, have signed the same as witnesses. The interliniation on second page first made, and the word same marked out, and the word residue interlined on first page.

SAML. S. CLARK.

CHARLES EDGERTON. 20

Warren County, } ss.

Samuel S. Clark, one of the witnesses to the within will, being duly sworn, did depose and say that he saw William P. Robeson, the testator therein named, sign and seal the same and heard him publish, pronounce and declare the within writing to be his last will and testament; and at the doing thereof the said testator was of sound and disposing mind and memory, as far as this deponent knows, and as he verily 30 believes, and that Charles Edgerton, the other subscribing witness, whose name is thereunto subscribed, was present at the same time, and signed his name as witness to the said will, together with deponent, in the presence of the testator.

SAML. S. CLARK.

Sworn and subscribed at Belvidere before me December 23d, 1864.

WM. L. HOAGLAND,
Surrogate.

Warren County, } ss.

George M. Robeson, executor in the annexed testament named, being duly sworn, did depose and say that the within instrument contains the true last will and testament of William P. Robeson, the testator therein named, so far as he knows, and as he verily believes; that he will well and truly perform the same, by paying first the debts of the said deceased, and then the legacies in the said testament specified,
10 so far as the goods, chattels and credits of the said deceased can thereunto extend; and that he will make and exhibit into the Surrogate's office at Belvidere, in the county of Warren, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased that have or shall come to his knowledge or possession, or to the possession of any other person or persons for his use and render a just and true account when thereunto lawfully required.

GEORGE M. ROBESON.

20

Sworn and subscribed at Belvidere this 23d day of December, 1864, before me.

WM. L. HOAGLAND,
Surrogate.

State of New Jersey, }
Warren County, } ss.

I, Wm. L. Hoagland, Surrogate of the county of Warren, do certify the annexed to be a true copy of
30 the last will and testament of William P. Robeson, late of the county of Warren, deceased, and that George M. Robeson, the executor therein named, proved the same before me and is duly authorized to take upon himself the administration of the estate of the testator, agreeably to said will.

Witness my hand and seal of office, the 23d day of December, in the year of our Lord, one thousand eight hundred and sixty-four.

[L. S.]

WM. L. HOAGLAND,
Surrogate.

State of New Jersey, }
Warren County, } ss.

I, George L. Shillinger, Surrogate of the county of Warren, do hereby certify that I have compared the foregoing copy of the last will of William P. Robeson, deceased, and proof thereof and letters testamentary thereon granted to George M. Robeson, the executor therein named, with the original record thereof now remaining in my office, and have found the same to be a correct transcript therefrom. 10

Witness my hand and official seal this 25th day of November, A. D., eighteen hundred and ninety-five.

[S. L.]

GEORGE L. SHILLINGER,
Surrogate.

Know all men by these presents that I, Anna M. Robeson, widow of William P. Robeson, deceased, now of the city of Camden, county of Camden, and State of New Jersey, being of sound disposing mind, memory and understanding, do make and publish 20 this my last will and testament in manner following, that is to say :

First. I give and bequeath to my daughter Anna, absolutely all my silver, furniture, clothing, books and household goods.

Second. It is my will and I do give, devise and bequeath all the rest and residue of my estate, real, personal and mixed howsoever, and wheresoever situate, unto my son George M. Robeson, his heirs and assigns forever, with full power and authority 30 to sell, lease or otherwise dispose of the same or any part thereof at such times and in such manner and for such consideration either at public or private sale as he may think proper and in all cases to execute good and sufficient deeds, conveyances and assurances therefor without any liability on the part of the purchaser or purchasers thereof as to the application or investment of the purchase or consideration money or any part thereof, and with full power to the said George M. Robeson to place the money

arising by such sale or disposal upon Government or other securities and to invest and reinvest the same in his own name or otherwise and in such manner from time to time as he shall think proper upon this special trust and confidence without security, that is to say :

First. To pay and discharge all my just debts and funeral expenses and expenses incident to the settlement of my estate as well as the necessary expenses
10 to place the family burial lot in proper repair and condition.

Second. To pay each and every year for and during her natural life to my daughter Anna M. Robeson, the just and lawful interest and income which would arise from a principal sum of ten thousand dollars which said sum to be paid to my said daughter in quarterly payment and her sole receipt to be in full discharge thereof.

Third. All the rest, residue and remainder of my
20 estate to go to my son George M. Robeson, his heirs and assigns forever.

Lastly. I nominate and appoint my son George M. Robeson, the sole executor of this my last will and testament hereby revoking all wills heretofore made by me.

In witness whereof I have hereto set my hand and seal this third day of March, in the year of our Lord one thousand and eight hundred and eighty-four.

30

ANNA M. ROBESON. [SEAL.]

Signed, sealed, published and declared by the said Anna M. Robeson, the testatrix, as and for her last will and testament in the presence of us, who have at her request and in her presence and sight and in the presence and sight of each other, signed the same as witnesses thereto.

JAMES E. HAYS,
SARAH MAXWELL.

State of New Jersey, }
County of Camden, } ss.

I, George S. West, Surrogate of the county of Camden, do hereby certify that the foregoing is a true copy of the last will and testament of Anna M. Robeson, deceased, as proved in the Surrogate's office of Camden, N. J., July 18th, A. D., 1887, and letters testamentary were granted unto George M. Robeson, executor named in said will, filed July 18th, 1887, and recorded in the Surrogate's office of the county 10 of Camden in Book K of Wills, page 5, &c.

In testimony whereof I have hereunto set my hand and affixed my official seal at Camden this second day of January, A. D., 1896.

[SEAL.]

GEORGE S. WEST,
Surrogate.

This Indenture, made the twenty-seventh day of June, in the year of our Lord one thousand eight 20 hundred and ninety-five, between George M. Robeson, executor of the last will and testament of William P. Robeson, deceased, of the city of Trenton, in the county of Mercer and State of New Jersey, party of the first part; And William O'Niel, of the town of Belvidere, in the county of Warren and State of New Jersey, party of the second part: Witnesseth, That the said party of the first part, by virtue of the power and authority to him given in and by said last will and testament, and for and in consideration 30 of the sum of thirty-seven dollars and fifty cents lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey to the said party of the second part, and to his heirs and assigns forever, All that tract or parcel of land and premises hereinafter particularly described, situate,

lying and being in the township of Oxford, in the county of Warren and State of New Jersey, bounded and described as follows: Lying and bounded by the river Delaware, beginning at or in the mouth of a run that vents into the Delaware from a spring (formerly by the dwelling house of one John Vannetta,) thence down the said river eight perches to a post; thence extending from the river twenty perches to a corner; thence up the said river parallel with the Delaware eight perches to a post; thence to the river so as to include the full one-half part of the spring and the said run to the place of beginning. The above described tract or lot of land is known as "the old landing" and now adjoins lands of Joseph M. Roseberry, formerly Lommasson's farm, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, and of the said testator, of, in and to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

GEO. M. ROBESON, [SEAL.]

Executor of William P. Robeson, deceased.

The words "up the said river" after the word thence in the third course of the descriptions interlined before execution.

Signed, sealed and delivered in the presence of

CHARLES E. ROBERTS,
M. C. C.

State of New Jersey, }
County of Mercer, } ss.

Be it remembered that on this third day of July, in the year of our Lord one thousand eight hundred and ninety-five, before me, a Commissioner of Deeds 10 in and for said State, personally appeared George M. Robeson, executor of William P. Robeson, deceased, who I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed :

MARCUS HOPLER,
Commissioner of Deeds. 20

Received and recorded November 25, 1895.

CHARLES E. HARRIS,
Clerk.

State of New Jersey, }
County of Warren, } ss.

I, Charles E. Harris, Clerk of the county of Warren, aforesaid and also Clerk of the Court of Common Pleas in and for said county, the same being a 30 court of record, do hereby certify the foregoing to be a true copy of the record of a certain deed as the record in my office as the same appears in Vol. 156 of Deeds for said county on page 30, &c.

In witness whereof I have hereunto set my hand and affixed the official seal of said county and court this 25 day of November, 1895.

[SEAL.]

CHARLES E. HARRIS,
Clerk.

This Indenture, made the twenty-seventh day of June, in the year of our Lord, one thousand eight hundred and ninety-five, between George M. Robeson, executor and trustee of the last will and testament of Anna M. Robeson, deceased, widow of William P. Robeson, of the city of Trenton, in the county of Mercer, and State of New Jersey, party of the first part; and William O'Niel, of the town of Belvidere, in the county of Warren, and State of New Jersey, 10 party of the second part; Witnesseth, that the said party of the first part, by virtue of the power and authority to him given, in and by said last will and testament, and for and in consideration of the sum of thirty-seven dollars and fifty cents, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the enseal- ing and delivery of these presents, the receipt where- of is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, 20 bargain, sell and convey to the said party of the second part, and to his heirs and assigns forever, All that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the township of Oxford, in the county of Warren, and State of New Jersey, bounded and described as follows: Lying and bounded by the river Delaware, beginning at or in the mouth of a run that vents into the Delaware from the spring (formerly by the dwelling house of one John Vannetta), thence down the said river eight 30 perches to a post, thence extending from the river twenty perches to a corner, thence up the said river parallel with the Delaware eight perches to a post, thence to the river so as to include the full one-half part of the spring and the said run to the place of beginning. The above described tract or lot of land is known as "the old landing," and now adjoins lands of Joseph M. Roseberry, formerly Lommasson's farm. The above are the same premises this day conveyed by George M. Robeson, executor of the last will and testament of William P. Robeson, deceased. Togeth-

er with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, and of the said testator, of, in and to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. 10

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written. 20

GEO. M. ROBESON, [SEAL]
Executor of A. M. Robeson, deceased.

Signed, sealed and delivered in the presence of
The words "up the said river" after the words
"thence" in the third course of description interlined
before execution.

CHARLES E. ROBERTS,

State of New Jersey, }
County of Mercer, } ss.

30

Be it remembered, that on this third day of July, in the year of our Lord, one thousand eight hundred and ninety-five, before me, a Commissioner of Deeds, in and for said State, personally appeared George M. Robeson, executor and trustee of Anna M. Robeson, who, I am satisfied, is the grantor in the within deed of conveyance named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same

as his voluntary act and deed, for the uses and purposes therein expressed.

MARCUS HOPLER,
Commissioner of Deeds.

Received and recorded November 25, A. D., 1895.

CHARLES E. HARRIS,
Clerk.

State of New Jersey, }
10 County of Warren, } ss.

I, Charles E. Harris, Clerk of the county of Warren, aforesaid, and also Clerk of the Court of Common Pleas in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the record of a certain deed as the same appears in Book 156 of Deeds for said county on page 32, &c., in my office.

In witness whereof I have hereunto set my hand and affixed the official seal of said county and court
20 this 25th day of November, A. D., 1895.

[SEAL]

CHARLES E. HARRIS,
Clerk.

This Indenture, made the thirtieth day of August in the year of our Lord, one thousand eight hundred and ninety-five, between William O'Niel and Agnes E. O'Niel, his wife, of the town of Belvidere, in the county of Warren, and State of New Jersey, of the first part; and Marcus Hopler of the town of Belvi-
30 dere, in the county of Warren, and State of New Jersey, of the second part; Witnesseth, that the said party of the first part, for and in consideration of the sum of seventy-five dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have granted, bargained, sold, aliened, remised, released, and forever quit-claimed, and by

these presents do grant, bargain and sell, alien, remise, release and forever quit-claim, unto the said party of the second part, and to his heirs and assigns, All that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the township of Oxford, in the county of Warren, and State of New Jersey, bounded and described as in a deed of conveyance bearing date the third day of May, A. D., 1744, made by John Vannetta, of Greenage, in Morris county, in West Jersey, of the one part, 10 and Jonathan Robeson of the other part, as follows : Lying and bounded on one side by the river Delaware, beginning at and in the mouth of a run that vents in the Delaware river from the spring by the dwelling house (A. D., 1744,) of him the said John Vannetta, thence down the said river eight perches to a post, thence extending from the river twenty perches to a corner, thence parallel with the Delaware river eight perches to a post, thence to the river so as to include the full and one-half part of the spring and the said 20 run to the place of beginning, containing one acre of land, being part of the land whereon the said John Vannetta then dwelt ; together also with the right of a road laid out to and from said lot, as fully and completely as described and set forth in said deed or conveyance from John Vannetta to said Jonathan Robeson, being the "old landing," and now adjoins other lands of Joseph M. Roseberry near the Shippen spring at the foot of Foul Rift. Being the same land and premises described and conveyed by a deed from 30 George M. Robeson, executor of William P. Robeson, deceased, to me, William O'Niel, bearing date June 27th, A. D., 1895, and also the same land and premises as described in and conveyed by a deed from George M. Robeson, executor and trustee of Anna M. Robeson, bearing date the same day and year last aforesaid to me the said William O'Niel. Together with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining ; also, all the estate, right,

title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to every part and parcel thereof: To have and to hold, all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns to the proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; And the said party of the first part do for themselves, their heirs, exec-
10 utors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that they the said party of the first part have not done, caused, suffered or procured to be done, any act, matter or thing, whereby the title of the said party of the second part, of, in and to the above granted, bargained and described land and premises, or any part thereof can or may be changed, charged, altered or defeated in any way whatsoever.

In witness whereof, the said party of the first part
20 have hereunto set their hands and seals the day and year first above written.

WILLIAM O'NIEL. [L. s.]

AGNES E. O'NIEL. [L. s.]

Signed, sealed and delivered in the presence of

CHARLES E. HARRIS.

State of New Jersey, }
County of Warren, } ss.

Be it remembered, that on this thirty-first day of
30 August, in the year of our Lord, one thousand eight hundred and ninety-five, before me, a Master in Chancery of New Jersey, personally appeared William O'Niel and Agnes E., his wife, who, I am satisfied, are the assignors in the within deed of conveyance named; and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said Agnes E. O'Niel, being by me privately examined, separate and apart

from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of or from her said husband.

CHARLES E. HARRIS,
M. C. C. of N. J.

Received and recorded November 25, 1895.

CHARLES E. HARRIS,
Clerk.

10

State of New Jersey, }
County of Warren, } ss.

I, Charles E. Harris, Clerk of the county of Warren, aforesaid, and also Clerk of the Court of Common Pleas in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the record of a certain deed of record in my office, as the same appears in Vol. 156 of Deeds for said county on page 33, &c.

In witness whereof I have hereunto set my hand 20
and affixed the official seal of said county and court
this 25th day of November, A. D., 1895.

[SEAL]

CHARLES E. HARRIS,
Clerk.

This Indenture, made the thirtieth day of August, in the year of our Lord one thousand eight hundred and ninety-five, between Marcus Hopler and Annie Hopler his wife, of the town of Belvidere, in the county of Warren and State of New Jersey, 30
of the first part; And Joseph M. Roseberry, of the town of Belvidere, in the county of Warren and State of New Jersey, of the second part: Witnesseth, That the said party of the first part, for and in consideration of the sum of seventy-five dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part there-

with fully satisfied, contented and paid, have granted, bargained, sold, aliened, remised, released and forever quit-claimed, and by these presents do grant, bargain, sell, alien, remise, release and forever quit-claim, unto the said party of the second part, and to his heirs and assigns, All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the township of Oxford, in the county of Warren and State of New Jersey, bounded
10 and described as in deed of conveyance bearing date the third day of May, A. D., 1744, made by John Vannetta, of Greenage, in Morris county, in West Jersey, of the one part, and Jonathan Robeson of the other part as follows: Lying and bounded on one side by river Delaware, beginning at and in the mouth of a run that vents into the Delaware river from the spring by the dwelling house (A. D., 1744) of him the said John Vannetta; thence down the said river eight perches to a post; thence extending
20 from the river twenty perches to a corner; thence parallel with the Delaware river eight perches to a post; thence to the river so as to include the full one-half part of the spring and the said run to the place of beginning, containing one acre of land being part of the land whereon the said John Vannetta then dwelt, together also with the right of a road laid out to and from said lot as fully and completely as described and set forth in said deed or conveyance from John Vannetta to said Jonathan Robeson, being
30 the "old landing" and now adjoins other lands of Joseph M. Roseberry, near the Shippen spring at the foot of Foul Rift, being the same land and premises described in and conveyed by a deed of conveyance from George M. Robeson, executor of William P. Robeson, deceased, to William O'Niel, bearing date June 27th, A. D., 1895, and also the same land and premises as described in and conveyed by a deed from George M. Robeson, executor and trustee of Anna M. Robeson, bearing date the same day and year last aforesaid to William O'Niel and by a deed

of conveyance from William O'Niel and wife conveyed to said Marcus Hopler Aug. 30, 1895, together with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining: Also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part, of, in and to every part and parcel thereof: To have and to hold all and singular the above described tract or lot of land and premises, with the appurtenances, 10 unto the said party of the second part, his heirs and assigns to the proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part do for themselves, their heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that they the said party of the first part have not done, caused, suffered or procured to be done, any act, matter or thing whereby the title of the said 20 party of the second part of, in and to the above granted, bargained and described land and premises, or any part thereof can or may be changed, charged, altered or defeated in any way whatsoever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

MARCUS HOPLER. [SEAL.]

ANNIE HOPLER. [SEAL.]

Signed, sealed and delivered in the presence of 30

CHARLES E. HARRIS.

State of New Jersey, }
County of Warren, } ss.

Be it remembered that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-five, before me, a Master in Chancery of New Jersey, personally appeared Marcus Hopler and Annie Hopler, his wife, who I am satisfied are the assignors in the within deed of convey-

ance named ; and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed ; and the said Annie Hopler, being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats
 10 or compulsion of or from her said husband.

CHARLES E. HARRIS,
 M. C. C. of N. J.

Received and recorded November 25, 1895.

CHARLES E. HARRIS,
 Clerk.

State of New Jersey, }
 County of Warren, } ss.

I, Charles E. Harris, Clerk of the county of Warren, aforesaid and also Clerk of the Court of Common Pleas in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the record of a certain deed of record in my office as the same appears in Vol. 156 of Deeds for said county on page 35, &c.

In witness whereof I have hereunto set my hand and affixed the official seal of said county and court this 25 day of November, 1895.

[SEAL]

CHARLES E. HARRIS,
 Clerk.

30

This Indenture, made the thirty-first day of August in the year of our Lord, one thousand eight hundred and ninety-five, between Joseph M. Roseberry of the town of Belvidere, in the county of Warren, and State of New Jersey, of the first part ; and Harry W. Breckenridge, of Wellsville, in the county of Allegany, and State of New York, of the second part ; Witnesseth, that the said party of the first part, for and in consideration of the sum of seventy-five dollars, lawful

money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have granted, bargained, sold, aliened, remised, released, and forever quit-claimed, and by these presents do grant, bargain, sell, alien, remise, release and forever quit-claim, unto the said party of the second part, and to his heirs and as- 10 signs, All that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the township of Oxford, in the county of Warren, and State of New Jersey, bounded and described as in a deed of conveyance bearing date the third day of May, A. D., 1744, made by John Vannetta, of Greenage, in Morris county, in West Jersey, of the one part, and Jonathan Robeson of the other part, as follows : Lying and bounded on one side by the river Delaware, beginning at and in the mouth of a run that vents into 20 the Delaware river from the spring by the dwelling house (A. D., 1744,) of him the said John Vannetta, thence down the said river eight perches to a post, thence extending from the river twenty perches to a corner, thence parallel with the Delaware river eight perches to a post, thence to the river so as to include the full and one-half part of the spring and the said run to the place of beginning, containing one acre of land, being part of the land whereon the said John Vannetta then dwelt ; together also with the right of 30 a road laid out to and from said lot, as fully and completely as described and set forth in said deed or conveyance from John Vannetta to said Jonathan Robeson, being the "old landing," and now adjoins other lands of Joseph M. Roseberry near the Shippen spring at the foot of Foul Rift. Being the same land and premises described and conveyed by a deed from George M. Robeson, executor of William P. Robeson, deceased, to William O'Niel, bearing date June 27th, A. D., 1895, and also the same land and prem-

- ises described in and conveyed by a deed from George M. Robeson, executor and trustee of Anna M. Robeson, bearing date the same day and year last aforesaid to William O'Niel, and by a deed of conveyance from William O'Niel and wife conveyed to Marcus Hopler August 30th, 1895, and conveyed by deed from Marcus Hopler and wife to Joseph M. Roseberry, the grantor, dated August 30, 1895; Together with all and singular the profits, privileges and
- 10 advantages, with the appurtenances to the same belonging or in anywise appertaining; also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to every part and parcel thereof: To have and to hold, all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns to the proper use, benefit and behoof of the said party of the
- 20 party of the first part does for himself, his heirs, executors and administrators, covenant and grant to and with the said party of the second part, his heirs and assigns, that he the said party of the first part has not done, caused, suffered or procured to be done, any act, matter or thing, whereby the title of the said party of the second part, of, in and to the above granted, bargained and described land and premises, or any part thereof can or may be changed, charged, altered or defeated in any way whatsoever.
- 30 In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOSEPH M. ROSEBERRY. [S. L.]

Signed, sealed and delivered in the presence of
MARCUS HOPLER.

State of New Jersey, }
County of Warren, } ss.

Be it remembered, that on this thirty-first day of August, in the year of our Lord, one thousand eight

hundred and ninety-five, before me, a Commissioner of Deeds in and for said county and State, personally appeared Joseph M. Roseberry, who, I am satisfied, is the assignor in the within deed of conveyance named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

MARCUS HOPLER, 10
Commissioner of Deeds.

State of New Jersey, }
County of Warren, } ss.

I, Charles E. Harris, Clerk of the county of Warren, aforesaid, and also Clerk of the Court of Common Pleas in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the record of a certain deed of record in my office, as the same appears in Vol. 156 of Deeds 20 for said county on page 37, &c.

In witness whereof I have hereunto set my hand and affixed the official seal of said county and court this 25th day of November, A. D., 1895.

[SEAL]

CHARLES E. HARRIS,
Clerk.







