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## COURT OF ERRORS AND APPEALS.

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<i>The Columbia Delaware Bridge Company,</i>	} <i>Writ of Error</i>
<i>Plaintiffs in Error,</i>	
<i>vs.</i>	
<i>C. H. Geisse and others,</i>	
<i>Defendants in Error.</i>	} <i>to</i>
	} <i>Supreme</i>
	} <i>Court.</i>

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[Filed July 16, 1875.]

New Jersey, ss.—The state of New Jersey to the Justices of  
[L. s.] the Supreme Court of the state of New Jersey,  
greeting:

Because in the record and proceedings, and also in the giving of judgment in a certain judgment which was in our Supreme Court on writ of error, prosecuted by The Columbia Delaware Bridge Company, directed to the Judge of the Circuit Court of the county of Warren, requiring him to certify to the Supreme Court a certain judgment obtained in the said 10 Circuit Court of the county of Warren, by Christian Henry Geisse, Herman Geisse, Matilda Geisse, Emily Geisse, Henrietta Geisse, survivors of Christianna Geisse, deceased, against The Columbia Delaware Bridge Company, as it is said manifest error hath intervened to the great damage of the said The Columbia Delaware Bridge Company, as by their complaint we are informed.

We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon entered, then without delay you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals, to be holden at Trenton, in and for the state of New Jersey, on Tuesday, thirteenth day of July next, together with this writ, that the record and proceedings  
10 aforesaid being inspected, we may further cause to be done therein what of right and according to law ought to be done.

Witness, Theodore Runyon, Esq., our Chancellor, at Trenton, the twenty-fourth day of June, in the year of our Lord eighteen hundred and seventy-five.

HENRY C. KELSEY, *Clerk.*

J. G. SHIPMAN & SON, *Attorneys.*

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

M. BEASLEY, *Ch. J.*

But, because our said Supreme Court are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, to wit, until, &c., to hear the judgment of our said court thereon.

And now, at this day, to wit, the twenty-second day of June, in the year of our Lord one thousand eight hundred and seventy-five, in the Term of June, A. D. eighteen hundred and seventy-five, before the said court, at Trenton, aforesaid, come the  
30 parties aforesaid, by their respective attorneys, aforesaid, whereupon all and singular the premises being seen, and by the court now here, fully understood, and as well the record and proceedings aforesaid, and the judgment in form aforesaid, given as the

matters aforesaid, by the said The Columbia Delaware Bridge Company, above for error assigned, being diligently examined and inspected, and mature deliberation being thereupon had, it appears to our said court now here, that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid.

Therefore, it is considered that the judgment aforesaid, in form aforesaid given, be in all things affirmed, and stand in full force and effect, the said causes and matters above for error assigned, in any wise, notwithstanding. 10

And it is further considered, that the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse and Herman Geisse, do recover against the said The Columbia Delaware Bridge Company, as well their damages aforesaid, as also, the sum of forty dollars and sixty-two cents, for their damages, double costs and charges which they had sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of error, by our said Supreme Court now here, adjudged to the said Christianna Geisse, Henrietta Geisse, Emily Geisse, 20 Matilda Geisse, Christian Henry Geisse and Herman Geisse, and with their assent, according to the form of the statute in such case made and provided, which said damages, costs and charges in the whole amount to two thousand five hundred and thirty-seven dollars and thirty cents.

Judgment signed this twenty-second day of June, A. D. eighteen hundred and seventy-five.

M. BEASLEY, *Ch. J.*

I, Benj. F. Lee, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the 30 judgment in the above cause, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and the [L. S.] seal of said court, at Trenton, this thirteenth day of July, A. D. eighteen hundred and seventy-five.

BENJ. F. LEE, *Clerk.*

*Assignment of Errors.*

Afterwards, that is to say, at a term of the Court of Errors and Appeals in the last resort in all causes, holden at Trenton, in and for the state of New Jersey, on the third Tuesday of June, 1875, comes The Columbia Delaware Bridge Company, by J. G. Shipman & Son, their attorneys, and say that, in the record and proceedings aforesaid, there is manifest error in this, to wit, that judgment was given by the said court for the defendants in error, when, by the law of the land, judgment  
10 should have been given for the plaintiff in error.

1. There is also error in this, that the said court decided that when a cause is tried by the court without a jury, by the consent of the parties, the court is substituted in the place of the jury, and its findings or questions of fact cannot be reviewed by writ of error.

2. There is also error in this, that the said court decided that the legislative grant of a ferry franchise is valid, although the grantee has not title to the landing places which are named as the termini of the ferry.

20 3. There is also error in this, that the said court decided that the grant of a ferry franchise over a river which is the boundary between it and another state is valid, and that it is not necessary to the validity of such a grant that there be concurrent action of both states, nor that the grantees have the right of landing beyond the state by which the grant is made, that his franchise, for that reason, may be less valuable, but it is good so far as his own property rights are concerned, or the jurisdiction of the state making the grant extends.

30 4. There is also error in this, that the said court decided that in an action to recover damages for the injury suffered in the destruction of a ferry by the erection of a bridge, the income derived by the plaintiff from tolls received in preceding years, is competent evidence to show the value of a franchise.

5. There is also error in this, that the said court decided that in such action, the rates of tolls fixed by the Board of Chosen

Freeholders, under the act concerning ferries, (*Nix. Dig.* 337,) certified by the clerk of the board, are competent evidence, although such rates were fixed for the ferry when the plaintiff worked it as such, before he had obtained a legislative grant of the franchise, and that the evidence was competent to show what the public authorities having power to establish the rates of ferriage considered as reasonable tolls for the ferry.

6. There is also error in this, that the said court decided that when a party excepts to the admission of evidence, he is bound to state his objections specifically, and on error he is confined to the objection so taken, and that, in objecting to the certificate in this case, no objection was taken to its admission, because there was no proof that the person certifying was clerk of the board. 10

7. There is also error in this, that the said court decided that agency on a question of fact may be proved by the acts, declarations, or conduct of the principal and agent, although the agent was appointed by power of attorney.

8. There is also error in this, that the said court decided that when the plaintiffs were the owners of a franchise of a ferry over the Delaware river, from the town of Columbia to the opposite Pennsylvania shore, under a grant of the legislature of New Jersey, and one Decker was the owner of the landing on the Pennsylvania shore, and had a grant from the legislature of that state, of the exclusive right of ferriage from that shore, and by an arrangement between the owners of the two franchises, a ferry was run between the two landings, for mutual benefit, and the ferry was made valueless by the erection of the defendants' bridge over the river, in proceedings to recover compensation for the injury to the ferry under the defendants' charter, that the action was properly brought by the plaintiffs without joining the owner of the Pennsylvania franchise; that there was no unity of estate in the several owners of the two franchises, the interest affected was several; and, although the injury to each was due to a common cause, separate actions must be brought. 20 30

There is also manifest error in this, that the said court held that it was lawful for the said appellants to prove by Christian Henry Geisse that he knew that William Heyberger was his father's agent, from conversation between the said Heyberger and the father. 40

There is also error in this, that the said court decided that it was lawful to prove on the said trial, that Mr. Heyberger was acting as agent then ; that he rented his father's ferry, and that the father, before he left them, made Lewis Stumpfel agent there ; that the said witness, Christian Henry Geisse, knew it, because his father had given him a power of attorney ; that he was agent from 1841 to 1852 ; that he had seen his handwriting ; that they had leases ; that George Decker worked the ferry in 1856 ; was the tenant in the business ; that he had  
 10 been there eight years ; that he came there in 1848 ; and that he paid his father's agent, Stumpfel, before his father came to Columbia.

There is also error in this, that the court held that the following question put to and answered by the witness, Christian Henry Geisse, on the trial was legal, to wit, "*Where did you get them ?*"

There is also error in this, that the said court held that a certain paper, purporting to be the rates of fare established by the board of chosen freeholders of Warren county, for the Co-  
 20 lumbia ferry, was legal evidence.

There is also error in this, that the said court decided that the following question asked by the appellants at the trial of said cause, and answered by the witness, was legal, viz. : "From the time Ott came for the last three years, from the 18th of January, 1866, to the 18th of January, 1869, how much revenue did your family get from the ferry—how much in each year ?"

There is also error in this, that the court decided that the following testimony offered by the appellants at the trial at the circuit, was legal, viz. : "There was some ground at the end of  
 30 Columbia street, between it and the water, we had in possession, and which we keep in repair from the water to the street ; I should think it extended fifty feet along the river ; the width was one hundred feet ; we kept the ferry on this land ; sold land on both sides of the road ; we made use of the stones."

There is also error in this, that the said court decided that the ruling of the Chief Justice at the circuit, in the trial of said cause, in allowing the following question to be asked of the appellant's witness, was illegal, viz. : "Tell us how much Ott paid the first year ?"

40 There is also error in this, that the court decided that the

ruling of the court in allowing the following question to be asked and answered by the appellants' witness at the trial of said cause at the circuit, was legal, viz.: "When did the revenues stop?"

There is also error in this, that the court decided that the following evidence offered by the appellants at the trial at the circuit, was legal, viz.: "I knew the income before 1866. Ever since the railroad company opened, the revenues increased."

There is also error in this, that the court decided that the following evidence allowed to be proved by the appellants at the trial, by John Ott, a witness on the part of the appellants, viz.: What he paid the Geisses for the use of the ferry, to wit, that he paid the one-half of what came in on the Jersey side: "I think \$240 or \$50 or \$60; the second year, \$270 or \$280; the third year, over \$300; in the three years it amounted to over \$800. I had a memorandum book, which I took and had by me when we settled." 10

There is also error in this, that the said court decided that the offer of the appellants to read, in evidence upon said trial, a certain paper purporting to be a lease from Henry Geisse to George Decker, dated 26th March, 1836, was legal. 20

There is also error in this, that the said court decided that the following question asked and answered at the trial, was legal, viz.: "Whom did he rent of?" and also the following question: "What did you hear him say?"

There is also error in this, that the following question, asked and answered in the trial of said cause, was decided by said court to be legal, viz.: "Did the revenues increase or diminish?" 30

There is also error in this, that the said court decided that the refusal of the court to charge the jury and find, as matters of law, the following points submitted by the appellants to said court, and upon which they requested him to charge and find as matters of law, was legal, viz.: That a ferry can only exist by positive grant from the legislature, and that as the plaintiffs claim to recover as the the heirs at law of Henry Geisse, their executor, they must show that Henry Geisse had actual seizure of title to the ferry by grant, and that such title descended to them as their heirs-at-law, and that the title derived by grant 40

must be such as to give them a right, and they must show a right not only in the one shore, but also a right to land on the opposite shore, or else they cannot recover for a disturbance of a ferry, and that in the present case the plaintiffs have failed to prove any title to any ferry at all, prior to the act of 1856, and that under that act they have not proved nor attempted to prove any right or privilege to land on the opposite side of the river, but, on the contrary, Christian Henry Geisse, in his testimony in this case, testified that they had nothing whatever to  
10 do with the opposite side of the river ; therefore, as a matter of law, the plaintiffs cannot recover.

2. That a ferry is the right to pass from one bank of a public river to the other bank, with the right to land on the opposite bank ; that a right to start from one bank of the river without showing a right or privilege to land on the opposite side, is not a ferry at all, and no action can be maintained for the disturbance of any such ferry ; and that in this case the evidence produced by the defendant abundantly shows, and the plaintiffs admit that they not only had no landing on the opposite side of  
20 the river, but were expressly excluded from landing there, and therefore the jury must find for the defendants, the bridge company.

3. That in the present case, plaintiffs have shown nothing but a mere naked possession to the Jersey bank of the river, down to the year 1856, and have shown no title in him such as will enable them to recover, upon mere possession alone, in the ancestor, or in their mother, Christianna Geisse.

4. That the right to navigate a public river, transverse or otherwise, is susceptible of exclusive grant, only from the public  
30 to whom it belongs ; and there is no such thing as a ferry by prescriptive right, or presumptive grant of exclusive navigation from length of time, while there must be actual proof of grant.

5. That, while mere naked possession of right to go from bank to bank of a river, might, in some instances, avail, yet it cannot possibly avail the plaintiffs in this case, because the claim, not by virtue of any possession in them, but as heirs-at-law of Henry Geisse, their ancestor.

6. That, if Henry Geisse ever had any right of ferry, prior to the passage of the act of 1856, that act extinguished them en-  
40 tirely, as it established a ferry in New Jersey, on exactly the

same spot where he claimed a right in the New Jersey shore, before that time, and that he could not have two rights in the very same place at the same time existing; and therefore, the act of 1856 entirely extinguished all other rights, if any ever existed, provided Henry Geisse and his heirs accepted the act.

7. As Henry Geisse has no right, except under that act of 1856, he and his heirs must claim under that act; and if they had not accepted the act before the act of the plaintiffs went into effect, the plaintiffs cannot recover.

8. The plaintiffs are bound to show an acceptance of the act, 10 and if they fail to do so, they cannot recover.

9. The jury are to consider the testimony of C. H. Geisse and H. Geisse, and if they are satisfied from their evidence that C. H. Geisse had the act passed and that Henry Geisse never accepted or acted under it, they cannot recover.

10. This act of 1856 authorizes Henry Geisse and his heirs to establish, keep and maintain a ferry at the foot of Columbia street, in the village of Columbia, in the county of Warren, across the river to his landing on the opposite Pennsylvania shore; and that the same might be maintained by him and his heirs; and that this grant contemplated that the said Geisse shall have a right in the opposite shore; and that until the said Geisse and his heirs have a right on the opposite shore, the said act is of no avail to them whatsoever; and as in this case, it distinctly appears by the act of the legislature of the state of Pennsylvania, of 1856, that the exclusive right to the opposite bank of the river, was in George Decker and his heirs and assigns; and as it appears by the evidence of Christian Henry Geisse, that his father and he and his co-plaintiffs, had nothing to do with the opposite bank of the river, this grant is void and 20 they have no rights under it whatever. 30

11. That in order to enjoy the grant, the said Henry Geisse and his heirs are bound to observe its requirements, and before they can claim anything under it, they must prove a strict compliance with its terms. By second section of the act they were entitled to such tolls for transporting persons and property as should be prescribed by the board of chosen freeholders of the county of Warren, and that as they have failed to show that they applied to the board of chosen freeholders to fix the tolls after the passage of the said act, and that the said board never 40

has fixed such rates since the passage of the act, therefore, they can claim for no loss of tolls under the said act.

12. The charter of the Columbia Bridge Company was passed in 1839; that the ferries mentioned in the fourteenth section of the said act referred only to such ferries as were in existence at the time of the passage of their charter.

13. That whenever the said company was organized, it took all rights and privileges vested in it by the act at the time of its passage, and no other burdens or obligations could be  
10 imposed upon it but such as existed at the time of the passage of its charter, and as the plaintiffs had no ferry interest there at the time of the passage of the charter, they can have none now.

14. That our charter was a contract between the company and the two states of New Jersey and Pennsylvania, and they had a right to take that contract just as it was presented to them; and that as there was no limitation to the said act whenever it became organized, it took the contract stripped of every burden, except such as were imposed upon it by the origi-  
20 nal charter; and any attempt in the legislature to impose new burdens upon it by subsequent legislation granted to other persons or corporations, would be infringement upon its chartered rights, and would be in violation of that part of the constitution of the United States which forbids the passage of any law violating the obligations of a contract, and the charter of the said Geisse would, for that reason, be void as against us.

15. That the company show an organization of the said The Columbia Delaware Bridge Company, on the 23d of March, 1843, and they show the stock was taken sufficient to constitute  
30 them a corporation under the same act, and that they then became a corporation on and before the 23d day of March, 1843, and have ever since existed as a corporation, and have been entitled to all the rights and privileges granted by the said charter.

16. That whatever right the plaintiffs have, they obtained since the defendants became a legal corporation, and consequently the plaintiffs cannot claim anything against the defendants under the defendants' charter.

17. The rights of the defendants to erect the bridge is granted  
40 by the two states of New Jersey and Pennsylvania, as is also

the right to charge for the passage of passengers and vehicles over it ; and any attempt to abridge that right and compel the company to pay damages to another person with whom it may come in competition by compelling it to pay for the loss of tolls of such other person, is an infringement upon its vested rights, and is against the constitution of the United States, and void.

18. That the legislature never intended, by the language used in the fourteenth section of the company's act, such damages as loss of tolls ; they truly intended such damages as might arise from the erection of the bridge by placing it on the bank of 10 the river where the plaintiff's landing was, thus preventing the plaintiffs from using their landing.

19. That the income of the ferry for any given time, is no guide in the estimation of damages, because it depends upon adventitious circumstances, as in this case they offer three particular years to show the income of Geisse's ferry, and the defendants show that in these very years, an unusual amount of lumber and wood was taken over more than at any earlier period ; the jury therefore, must deduct all that out.

20. The jury must, in estimating the damages, look at all the 20 surrounding circumstances, and ascertain the true value of the ferry ; and the true value would be the worth of such ferry in the market at the time of the erection of the bridge.

21. The jury should also consider that the plaintiffs are only entitled to charge for one side of the river, and that if they are entitled to any thing to loss of tolls for merely one side of the river, the jury must consider what would be the worth of such a ferry, when they are liable to interruption and are dependent upon the mere caprices and will of the owner of the land on the opposite side of the river, and may, at any time, be deprived of 30 all access to the other side of the river, and their whole right on this side be worthless.

22. That the jury cannot find any damages to the plaintiffs for the one side of the river ; that unless the jury can find that they had a right to both sides, they cannot recover ; and that we have already seen in this case, that they had no right, except to the Jersey side, therefore, the plaintiffs were entitled to no damages, and the verdict must be for the defendants.

23. They have no right at all to the other side of the river, except as they have it in connection with John Ott ; and that 40

they cannot sever, and one come in this court and Ott go into the court of Pennsylvania, and recover for his share. They must both join if they can recover at all ; and as they have not, they cannot recover.

24. The act of 1856, gives a penalty to Geisse for persons crossing the river within the limits prescribed in his act, and he cannot recover nothing else.

There is also error in this, that the court decided that the following charge of the court to the jury, was not contrary to law,  
 10 but was legal, viz. : That the plaintiffs were entitled to recover a reasonable compensation by reason of the loss of custom to their ferry, occasioned by the erection and use of the bridge. That in estimating such loss, the jury must look at all the circumstances of the case.

That the receipts derived from the use of the franchise of the plaintiffs in any particular year, or in any series of years, should not be taken as establishing a fixed measure of compensation. That a fund of money, the interest of which would raise the average receipts, would be excessive charges that there were ex-  
 20 penses in running the ferry, to be taken into account ; that the trouble of supervision over the ferry, and the difficulty and uncertainty of making a new arrangement with the ferry owner on the Pennsylvania shore, should be considered, and also, the fact that the burden of keeping of the ferry at all times, would have rested on the plaintiff. That the plaintiff's claims were limited to the damages to his own franchise ; that the injury done to the owner of the Pennsylvania franchise, was not to be taken into consideration.

There is also manifest error in this, that the court found as  
 30 matters of fact and law, the following points :

That a franchise (such as the plaintiffs' claim,) to keep up and maintain a ferry across the Delaware, and such as will give them a right to damages against the defendants, can be derived only from legislative grant ; that, consequently, the case of the plaintiffs must rest on the act of April, 1856, the finds as matters of fact ; that Henry Geisse accepted this act and established a ferry from shore to shore under it, and kept up and maintained the ferry until it was interfered with by the establishment of the bridge of the defendants.

40 That such ferry was established in this wise, viz. : That said

Geisse was the owner in fee of a ferry landing on the Jersey shore, at Columbia; and that from time to time, he entered into agreements with the owner of the landing and ferry franchise on the Pennsylvania side, (see evidence,) whereby said last mentioned owners agreed to carry on the ferry from landing to landing; and that said agreement was for certain specified terms and powers, and not by means whereof a ferry was uninterruptedly kept up from the passage of said act until the establishment of said bridge.

The court further finds as matters of fact, that the plaintiffs 10 are the heirs-at-law of the said Henry Geisse; and that the said Henry accepted said act and put the ferry in question in operation under it before the defendants accepted its charter or organized under it.

On the facts and other evidence in the case, the court holds that the plaintiffs are the owners of a ferry franchise, by virtue of said act of the legislature, within the meaning of that clause of the defendants' charter, which requires them to make satisfaction for injuries done by them to ferries. The court further holds that the non-joinder in the suit of the owners of the Penn- 20 sylvania ferry franchise, cannot be taken advantage of at this stage of the case. In all this, there is manifest error.

Therefore the said Columbia Delaware Bridge Company prays that the judgment aforesaid by reason of the aforesaid errors, and of the errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that the said The Columbia Delaware Bridge Company may be restored in all things they have lost on occasion of the said judgment, and that the defendants in error may rejoin to the said errors.

*Opinion.*

DEPUE, J. The bridge company was incorporated in 1839, for the purpose of constructing a toll bridge over the Delaware river at the village of Columbia. *Acts 1839, p. 151.*

By the fourteenth section of the charter, provision was made for compensation to the owners of ferries or fisheries that might be injured by the erection of said bridge, for any damage they might sustain thereby; and in case the officers of the company and the owners of such ferries or fisheries could not come to an  
10 agreement on the subject, the damages were to be ascertained by three freeholders appointed in the manner prescribed by the ninth section of the charter.

A bridge was erected by the company in 1869, and the plaintiffs, who are the heirs-at-law of Henry Geisse, deceased, applied for the appointment of freeholders to assess the damages caused by the erection of a bridge to a ferry across the river at Columbia, of which they claimed to be owners. The history of the proceedings antecedent to that now under review, will be found in the reports of the previous litigations between these parties.  
20 *The Columbia Delaware Bridge Co. v. Geisse, 5 Vroom 268; S. C., 6 Vroom 558; Id. Vide, 6 Vroom 474; S. C., 7 Vroom 537.*

An appeal having been taken by the defendants in error from the award of the freeholders, the cause came on for trial at the circuit, before a jury. The trial was begun before the jury, and after the testimony was closed, it was agreed that the question of damages should be submitted to the jury, and the remaining questions, both of law and of fact, should be submitted to and decided by the Chief Justice holding the circuit.

30 The jury having found the amount of the damages, and the other questions of fact having been found by the court, judgment was thereupon entered in the circuit in favor of the appellants for the damages assessed by the jury. Upon this judgment, the respondents sued out this writ of error.

Errors have been assigned, upon the finding of the court, of matters of fact. Such assignment must be disregarded. Where a cause is tried by the court without a jury, the court is substituted in the place of a jury, and its finding on questions of fact cannot be reviewed by writ of error. *Peeletrean v. Jackson*, 7 *Wend.* 471.

The ferry of the defendants in error was between a landing place at the foot of Columbia street, in the village of Columbia, and a landing place on the other shore of the river, at Portland. They claimed to have become the owners of the ferry, as heirs-at-law of Henry Geisse, deceased, to whom the franchise of a ferry at that place was granted by an act of the legislature of this state, passed on the sixth of March, 1856. *Acts* 1856, *p.* 140. The legislative grant to Geisse was of the franchise to establish, keep up, and maintain a ferry from *his landing*, at the foot of Columbus street, in the village of Columbia, in the county of Warren, across the Delaware river, to *his landing* on the opposite Pennsylvania shore; and other persons were prohibited from using the said river for a purpose of a ferry, within the distance of one-half a mile above and below said ferry. 10  
20  
The court below held that the franchise, with respect to which the plaintiffs below were entitled to claim damages, was derived solely from this legislative grant. Upon this holding, the contention was, the ferries mentioned in the fourteenth section of the act incorporating the bridge company were only such as were in existence as franchises conferred by legislative grant made prior to the passage of the defendants' charter. That question was set at rest by the decision of this court, and the Court of Errors in the former litigation between these parties.

In both courts it was held that the ferries mentioned in the defendants' charter were such as were in existence at the time of the erection of the bridge, although not in existence when the act of incorporation was passed. 5 *Vroom* 271; 6 *Vroom* 561. 30

It was further contended that Geisse did not, under the act of 1856, acquire such a right in the ferry as would have entitled him or his heirs to an action for disturbance.

The finding of the court was, that Geisse was the owner in fee of the landing on the New Jersey shore. Before the passage of the act of 1856, a ferry between the two landings was run by tenants, who leased the ferry to Geisse, and used the landing on 40

the Pennsylvania shore, by the sufferance or permission of its owner. As far back as 1834 it was known as Geisse's Ferry, and in the title of the act it is called his ferry.

The expression, "from *his landing*, at the foot of Columbus street, . . . . . to *his landing*, on the opposite Pennsylvania shore," in the act, is merely descriptive of the termini of the ferry, by reference to its prior use, without regard to the title to the lands at each terminus.

10 In the same year of 1856, one George Decker, who was the owner of the Pennsylvania landing, obtained a grant from the legislature of that state, of the exclusive right of ferriage for six hundred yards along the Pennsylvania shore. Thereafter the ferry was kept up and maintained uninterruptedly by the owners of the franchises and landings, in both states, by agreements made from time to time.

Neither the fact that the title to the Pennsylvania landing was in another, nor that the exclusive ferry franchise on that shore existed in another, will operate to defeat the grant made to Geisse by the legislature of this state. The grant was of a  
 20 franchise capable of existence, independent to the title to land. To enable the owner of such a franchise to exercise it, and enjoy its emoluments, he must obtain the right to use the land on both sides of the river for the purpose of receiving and landing passengers, but he need not have any property in the soil. *Peter v. Kendall*, 6 B. & C. 703; *Newton v. Cabitt*, 12 C. B., (N. S.) 32; *S. C. 13 C. B. (N. S.) H. 4*; *Bowman v. Waltham*, 2 McLean 376; *Fay, Petitioner*, 15 Pick. 243. The grant, by one state, of a ferry franchise over a river which is the boundary  
 30 between it and another state, is valid, and it is not necessary to the validity of such a grant, that there be concurrent actions by the legislatures of both states, nor that the grantee have the right of a landing on the other side, or beyond the state by which the grant is made. *Conway v. Taylor*, 1 Black, U. S., 603; *Freeholders v. The State*, 4 Zab. 718; *People v. Babcock*, 11 Wend. 586. That, by reason of hostile legislation in the other state, the grantee may be enabled to exercise his franchises on the other shore, or because of exclusive rights in others under such legislation, his profits may be diminished, will not defeat  
 40 his franchise, as far as his own property rights are concerned, or the jurisdiction of his state extends. The franchise may be less

valuable for that reason, but it will be valid as far as it goes. *Conway v. Taylor*; *People v. Babcock*; *supra*.

Precisely this effect was given by the court to the fact that the title to the landing and the ferry franchises on the Pennsylvania shore were in another. The jury was instructed to take into consideration, in estimating the value of the plaintiffs' franchises, the difficulty and uncertainty of making arrangements with the ferry owner on the Pennsylvania shore, and was expressly directed to limit the damages to be awarded to the value of the plaintiffs' own franchise, excluding entirely the injury done to the owner of the Pennsylvania franchise. 20

Another class of errors assigned, relates to the admission of evidence of the income derived by the plaintiffs from the ferry for several years immediately preceding the erection of the bridge. This testimony was clearly competent.

The jury was required, by the defendants' charter, to compensate the plaintiffs for the damages they sustained by the erection of the bridge.

The injury they suffered was in being deprived of the tolls they might have received from the ferry, in case the bridge had not been built. 20

In no other way would the jury have been able to estimate the extent of the injury, except by proof of the earnings previously realized from the ferry. That method of ascertaining the damages was recognized as the proper and legitimate means of estimating the plaintiffs' loss by the Supreme Court and Court of Errors in the case between the parties, reported in 6 *Vroom* 474, and 7 *Vroom* 537.

The remaining errors assigned, relate to matters of minor importance in the case. 30

Exception was taken to the admission of evidence in relation to the rates of tolls prescribed by the board of chosen freeholders of the county of Warren, to be charged at this ferry. The rates were adopted at a meeting of the board in May, 1855, by a resolution, and were to take effect on the succeeding April. The proof of the establishment of these rates, was by the testimony of a witness who was present when it was done, and by the production of a copy of the resolution, certified by the clerk of the board, under his hand, to be a true copy from the minutes of the board, which certificate is dated on the 4th of September, 1855. 40

The objection made on the argument that there was no sufficient proof; that the person who signed as clerk, was in fact, the clerk of the board, is not tenable. No objection was made at the time on that ground. If that reason had then been given for the rejection of the evidence, the proof could readily have been supplied.

When a party excepts to the admission of testimony, he is bound to state his objection specifically; and on error, he is confined to the objection so taken. *Burton v. Driggs*, 20 Wall. 125; 10 *Morgan v. Green*, 1 Zab. 563.

By the first section of the act concerning ferries, (*Nix. Dig.* 337,) the board of chosen freeholders is empowered and directed to fix the rates to be taken at the several ferries within their respective counties, and to revise, alter or amend them at their discretion. The second section requires the owner of any ferry, to keep a table of such rates set up and so near the landing as to be open and visible to passengers; and by the third section, a stipulated fee is allowed the clerk of the board for a copy of the rates, "certified under his hand." By the eighth section of the 20 act incorporating the chosen freeholders, it is made the duty of the clerk to keep the minutes and enter the orders and proceedings of the board in a book to be kept for that purpose. (*Nix. Dig.* 123.) The clerk being bound to make a record of the proceedings of the board in fixing the rates of this ferry, a copy of the record thereof, duly certified, is the proper evidence thereof. *Greenleaf's Ev.*, § 49.

The table of rates adopted, is a license to the owner of the ferry to charge the rates established, and the statute, in making provision for its authentication, by a copy certified under the 30 hand of the clerk, manifestly designed that the copy so authenticated, should be evidence of the right of the license to review the stipulated sums for the stipulated services. For the purpose of showing the rates of toll allowed to be charged, the paper was competent evidence. That the clerk prefaced the resolution by a recital of other matters in relation to the manner in which the business was brought before the board, will not exclude the entire paper. No objection was made to the admission of a part of the paper on that ground. It was objected to as a whole. That the table of rates produced, was adopted before the legis- 40 lative grant was made to Geisse, is immaterial. The rates once

adopted, continued in force until changed by the board, under the first section of the act. The testimony was, that no alteration was subsequently made in them. The rates fixed applied to the ferry which was worked by Geisse, and was rated to him. They were applicable to it as a ferry, although Geisse converted the ferry which previously existed only by user, into a public franchise under a legislative grant.

But, even if the rates established by the board, before the act of 1856 was passed, are not such a prescribing of tolls as is contemplated by that act, it would make no difference in this 10 action. The suit is not brought for tolls earned, but for the recovery of compensation for the franchise of a ferry. If the board of chosen freeholders had not fixed any rates, the franchise would be in existence and the owner might have had the rates fixed by the freeholders, at any time. The value of the evidence was only in showing what the public authorities, having power from time to time to establish rates of ferriage, considered as reasonable tolls at this ferry.

The admission of the testimony of Christian H. Geisse, that Heyberger and Stompfel were agents of his father in leasing 20 the ferry to prior occupants, was also excepted to. The witness testified to a knowledge of Heyberger's agency, from conversations he heard between Heyberger and the father. It is to be inferred that the conversation occurred in the transaction of the business of the ferry. It was objected to on the ground that such conversations were had in the absence of the defendants.

Agency, as a question of fact, may be proved by the acts, declarations, or conduct of the principal and agent. 2 *Greenleaf's Ev.*, § 60. The proof is not limited to acts or declarations in the presence of the opposite party. The fact of agency 30 may also be proved by such evidence in a collateral proceeding, although the agent was appointed by a power of attorney, in writing. The purpose of the evidence was to show that Lamb and Decker, who operated the ferry, as a matter of fact, recognized the ferry as belonging to Geisse. That fact is sufficiently shown by the production of leases signed by them, made in the name of Geisse, and in which they agreed to pay rent to him.

Furthermore, the agency of both Heyberger and Stompfel was prior to 1852. The decision of the court, that the franchise, with respect to which the action was solely maintainable, could only be derived from the legislative grant, made the testimony in relation to their acts, entirely immaterial. The only bearing the transactions with which they were connected, had in the case, was in identifying the landings referred to in the legislative grant to Geisse. That was so conclusively done by the testimony of George Decker, who worked the ferry from  
10 1848 to 1866, and paid rent to the Geisses after 1852, and by other witnesses, as not to be a disputable question in the cause. If the testimony was illegal, its admission would be no ground of refusal.

The action was properly brought by the plaintiffs, without joining the owner of the franchise on the Pennsylvania shore. There being no unity of estate in the several owners of the two privileges, the interest affected was several, and although the injury to each was due to a common cause, separate actions must be brought. *Brown on Parties* 211; 2 *Saund.* 119,  
20 *Note B.*

Other exceptions appear on the record, which it is not necessary to discuss.

It is sufficient to say that, having examined the entire record, we find no error in the proceedings, and the judgment should be affirmed.

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## NEW JERSEY SUPREME COURT.

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*The Columbia Delaware Bridge  
Company* } *Writ of Error*  
*vs.* } *to*  
*Christian Henry Geisse,* } *Warren County*  
*and others.* } *Circuit Court.*

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[Returnable June Term, 1874.]

New Jersey, ss.—The State of New Jersey to the Judge  
[i. s] of our Circuit Court in and for the county  
of Warren, greeting :

Because in the record and proceedings, and also in the giving of judgment in a certain matter of appeal, which was in our Circuit Court before you, between Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, survivors of Christian Geisse, appellants, and "The Columbia Delaware Bridge Company," 10 appellees, manifest error hath intervened, to the great damage of the said "The Columbia Delaware Bridge Company," as by their complaint we are informed. We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be given thereupon, then you distinctly and openly send under your seal the record of proceedings aforesaid, with all things touching and concerning the same

to our Supreme Court of Judicature, to be held at the State House, in the city of Trenton, on the first Tuesday in June next, together with this writ, that the record and proceedings aforesaid be inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness Mercer Beasley, Chief Justice of our said court, this first day of May, in the year eighteen hundred and seventy-four.

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BENJAMIN F. LEE, *Clerk.*J. G. SHIPMAN, *Attorney.*


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APPEAL FROM THE AWARD OF THREE FREE-  
HOLDERS.

*To the Circuit Court of the county of Warren.*

The petition of Christian Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, Herman Geisse, of the township of Knowlton, in the county of Warren, respectfully showeth, that John L. Smith, George Hiles, and Alfred Kern, three freeholders, appointed by Josiah  
20 Dewit, one of the justices of the peace of the county of Warren, according to the provisions of the ninth and fourteenth sections of the act incorporating the Columbia Delaware Bridge Company, passed March 7th, 1839.

The eighteenth day of January, eighteen hundred and sixty-nine, on the application of the said Christianna Geisse, Henrietta Geisse, Emily Geisse, Matilda Geisse, Christian Henry Geisse, and Herman Geisse, made a certain assessment and award in writing, bearing date the first day of September, eighteen hundred and seventy-one, and returned  
30 the said award to the said justice on the day and year last aforesaid. In and by which said report the said commissioners allege that they had been appointed by the said justice of the peace to ascertain what, if any, damages by petitioners have or may sustain by reason of the erection of the said bridge, receiving of said tolls, and virtual deterior-

ation of the value of your petitioners ferry, and whatever they were by law authorized or required to assess on the premises, as in and by the record of the appointment made of the said three freeholders, will more fully appear. That the said commissioners took and subscribed on oath faithfully and impartially to examine the matters in question, and make a true report according to the best of their skill and understanding, and that your petitioners had ten days notice in writing of the meeting of the said three freeholders and that the said company had like notice to meet at the house of Levi H. Albertson, in the township of Knowlton, in the county of Warren aforesaid, on the twenty-fourth day of August last, at the hour of ten in the forenoon of said day, that the said freeholders having met at the said time and place, viewed and examined the said ferry premises and the bridge of the said Columbia Delaware Bridge Company, which said bridge, that having heard the parties as well, the said Columbia Delaware Bridge Company as your petitioners their allegations and representations, did adjourn the further consideration of the subject matter until the first day of September, eighteen hundred and seventy-one, at the hour of two o'clock in the afternoon, at the house of John L. Smith, in the township and county last aforesaid, and on the day and year last aforesaid, at the time and place last aforesaid, the said freeholders met, and having fully examined and duly considered the said matters to them submitted, did order, adjudge, appraise and assess as a compensation for injury, the damage they, to your petitioners said ferry by reason of the erection of the said company's bridge, and whatever by law they were authorized and required to appraise and assess, at the sum of twelve hundred dollars, as compensation for the injury that had accrued to the said ferry of your petitioners by reason of the erection of the said bridge across the Delaware river, by the said Columbia Delaware Bridge Company, and the taking tolls, and crossing passengers, carriages, wagons, horses, cattle, sheep, and everything else that were accustomed to cross said river in the boats and flats of said ferry, by means whereof your petitioners were and are deprived from receiving the tolls and other compensation that they

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were accustomed to and had a right to receive from their said ferry for carrying persons, their carriages, wagons, horses and stock over said river, and also for depreciation of their ferry, flat, rope and other appurtenances, which were rendered of very little value to them; that said petitioners applied to said corporation, and they, the said freeholders, did award and order the Columbia Delaware Bridge Company to pay to your petitioners the said sum of twelve hundred dollars in full satisfaction for the injury  
10 that accrued to your petitioners' ferry by means of the erection of the said bridge across the river Delaware by the said company, as by reference of the said award returned to the said justice of the peace aforesaid, and to which your petitioners pray leave to refer will more fully and at large appear.

And your petitioners, feeling themselves greatly aggrieved and injured by the said freeholders and their said award, do hereby appeal to this Honorable Court from the said award, and pray that this, their petition of appeal, may  
20 be filed in this court, and that this Honorable Court will award a venire facias in proper form for a jury to come before this Honorable Court, who shall hear and determine the said appeal, appraise and assess the compensation which your petitioners are and may be entitled to for damages which have accrued to their ferry by reason of the erection of the said bridge by the said company; and your petitioners show that more than five days' notice have been given of this appeal to the said the Columbia Delaware Bridge Company; and your petitioners, as in duty bound,  
30 will ever pray, &c.

CHRISTIAN GEISSE,  
HENRIETTA GEISSE,  
EMLY GEISSE,  
MATILDA GEISSE,  
CHRISTIAN HENRY GEISSE,  
HERMAN GEISSE.

*Per* JAMES M. ROBESON,  
*Their Attorney.*

The jury having heard the evidence and argument of counsel and charge of the court, retired in charge of a constable sworn to attend them, and after an absence of some time, returned into court, and being called, appeared; and being asked if they had agreed, say, by the foreman, that they find for appellant and plaintiffs for the sum of twenty-four hundred and seventy-six dollars and eighty cents; and so say all. Therefore, it is considered, that on this twenty-eighth day of April, A. D. 1874, that judgment be entered in favor of the said appellants and plaintiff, and against the said appellees and defendants, for the sum of two thousand four hundred and twenty-six dollars and eighty cents, besides costs of suit to be taxed. Judgment entered October 26th, A. D. 1874, as of the day above set out.

Therefore, the sheriff is commanded that he cause to come before the judges of our Circuit Court, at Belvidere, on the first Tuesday after the fourth Tuesday, to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, &c.; therefore, let the jurors of the jury, whereof mention is made within, also come, who, to speak the truth of the matter within contained, being chosen and sworn, say upon their oaths, that they find the defendants guilty and assess the plaintiffs damages at the sum of two thousand four hundred and twenty-six dollars and eighty cents, damages; thereupon the court doth order judgment in favor of the plaintiff and appellant, and against the defendant and appellees, for the sum of two thousand four hundred and twenty-six dollars and eighty cents, damages, besides costs of suit to be taxed.

Therefore, it is considered that the said plaintiffs and appellants do recover against the said defendants and appellees, the sum of two thousand four hundred and twenty-six dollars and eighty cents, damages, and also, the further sum of sixty-nine dollars and eighty-eight cents, costs and charges by him about his suit in this behalf expended and hereby the court to him adjudged and with his assent; and the defendant in mercy prayeth.

Judgment signed April 28th, 1874.

To the Honorable Justices of the Supreme Court of Judicature of the State of New Jersey :

I, John Simerson, clerk of the county of Warren, in obedience to the command of the within writ to me directed, do hereby certify and send to you, the said justices, the entries, determinations and proceedings with all things touching and concerning the same, as fully as within I am commanded, which appears from the records.

In witness whereof, I have hereunto set my hand and  
10 [L. s.] official seal, at Belvidere, this thirtieth October, A. D. 1874.

JOHN SIMERSON, *Clerk.*

#### BILL OF EXCEPTIONS.

Be it remembered that at a Circuit Court, holden at Belvidere, in and for the county of Warren, at the December term, eighteen hundred and seventy-three, of the said court, being on the first day of January, A. D. 1874, before the Honorable Mercer Beasley, Chief Justice of the  
20 Supreme Court of New Jersey, and judge of the said Circuit Court, and a jury of the county, sworn to try the said appeal present the same. The appellants in support of their said appeal called as a witness—

*Christian Henry Geisse*, who being duly sworn according to law, testified.

I am forty-seven years of age; my father's name was Henry Geisse; he is dead; he died on the 5th day of May, 1860, at Columbia; my mother is dead—she died the 11th day of April last; my father left a will passing real estate; no witnesses to my father's will; my father left five children; my youngest brother died in 1852; my father had  
30 place to carry people over the river; place of landing was at the foot of Columbia street, in Columbia; landing place on the other side was right opposite at Portland; he came by flats and small boats; there was a wire across the river,

wire was used for conveying the flats; I first knew that business in 1840, when I was on a visit to Columbia with my father; he then lived in Germany, and came over with me on a visit; we went to Columbia; this business of crossing teams, &c., was going on then; Mr. William Herbeiger was the agent of my father then; we were at Columbia about two weeks at that time; I went to school in Philadelphia; I don't know whether Herbeiger paid the proceeds to my father or not; Herbeiger is dead; I know Mr. Herbeiger was my father's agent, from conversation 10 between him and my father.

[Counsel for respondent objects to the admission of the above testimony, because it is hearsay, and because it does not prove agency by declarations of the agent himself. The court overrule the objection. Respondents pray an exception to the ruling of the court, and it is allowed and sealed accordingly.]

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

I was in Columbia two or three weeks, in 1840; there was no change in agency there; I was there again in 1841; 20 we were there no longer than a week; Mr. Herbeiger was acting as agent then; he rented my father's ferry and other property; before he left there he made Lewis Stumpf-fel agent there; I know it, because father gave him a power of attorney.

[Respondent objects to admission of this testimony, because it is hearsay, and because the party cannot prove agency by declarations of the agent himself. The court overrule the objection, and respondents pray an exception to the ruling of the court, and it is allowed accordingly and 30 sealed.]

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

Stumpf-fel was one of the oldest settlers there; Stumpf-fel is dead; I don't know what became of the paper; he was agent from 1841 to 1852; I have seen his handwriting; we have leases; in the year 1856 George Decker worked the ferry; was the tenant in this business; he had been there eight years; he came there in 1848; don't know what time

of year; he remained until 1866; he paid my father's agent, Stumpf, before my father came to Columbia; after my father came in 1852, he paid my father; he rented of my father until he died, and afterwards of my mother, until January, 1866; paid her rent.

[Counsel for respondent objects to the admission of the above testimony because it is hearsay, and the court admitted it, and the counsel of the appellees except to this opinion of the court, and prays a bill of exception, and it is allowed  
10 and sealed accordingly.]

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

John Ott worked ferry after Decker left; he paid money to my mother, as rent; he came there in January, 1866; he paid rent until 1869, then he stopped, because the bridge was built and had then got into operation, and no one came to be carried, they all crossed bridge; after the 18th of January he had no business; the people who before the 18th of January crossed by our ferry, afterwards crossed by the bridge; the bridge was opened on the 18th of January;  
20 since that time ferry has done no business; it was in condition to do business after that; was so for month or two after bridge was built; since then no business has been done; before then rates of ferry were kept up.

*Quest.* Where did you get them?

*Ans.* I got them of the board of freeholders.

[Counsel for respondents objects to this question, because it is incompetent and is not the best evidence. The court admit the question and answer, and counsel prays a bill of exception to the ruling of the court, and it is allowed and  
30 sealed accordingly.]

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

I was in Belvidere myself and got them; [being shown paper;] this is the paper I got; we had the rates painted on a board and put up; I got the paper of the rates originally in 1855; it was in May; the Board of Freeholders were in session when I made the application here in Belvidere; it was some time after that I got the rates; but they fixed the rates then while the board was in session; I obtained the

certificate of Colonel Robeson, who was clerk of the board at the time; the board fixed the rates while I was present; [being shown paper;] this is Colonel Robeson's signature; he pretended to be clerk; this paper, since 1855, has been in our possession.

[Paper offered in evidence; respondents object to paper being received in evidence, on the ground that it is a mere copy of the minutes of proceedings of the board, and is not the best evidence; and because it was , and both obtained before the act granting ferry was passed, and because 10 it is irrelevant and immaterial. Court overrule the objection. Counsel for respondents except to ruling of the court, and prays a bill of exceptions, and it is allowed and sealed accordingly.]

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

Paper admitted.

There was no alteration of rates after this paper was made; they continued the same.

From the time Ott came, or for the last three years from January, '66, to the 18th of January, 1869, how much revenue did your family get from the ferry, how much in each year? 20

[This question objected to by respondents, because it is not the true measure of damages in this case, and because it is irrelevant and immaterial, and because he cannot prove any damages in this way; and because the only way to prove the damages was to prove the market value of the ferry at the time of the building of the bridge. The court overrule the objections of counsel, and respondents pray a bill and exception to the ruling of the court, and the same 30 is allowed and sealed accordingly.]

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

Our cash receipts during the three years amounted to \$844 and some cents.

*Quest.* While you was acquainted with the ferry, did the income grow smaller or larger?

[Counsel for respondents objects to the admission of this question, because it is not competent, and is not the true

measure of damages in this case, and for the reason given in the foregoing. The court overrule the objection, and the respondents pray a bill of exceptions to the ruling of the court, and is allowed and sealed accordingly.]

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

Ever since the railroad came in operation the ferry has increased every year; the railroad went into operation somewhere about 1854 or 1855.

[Being shown paper marked No. 1.]

10 I am witness to this lease; I saw the parties sign and seal it.

[Shown paper marked No. 2.]

I was a witness to this paper; I saw the parties sign and seal it; the income of the ferry for the first year, 1866, was \$203 and cents; the second year was \$220 and cents; the third year was \$335 and cents; the amount standing on books now outstanding is \$84 and cents; the book account accrued while Ott was there; Mr. Ott received one-half of the net income; these sums represent the net sums due to  
20 us which we received of Mr. Ott as our share; from gross receipts we deducted expenses.

And being cross-examined, says—

I live one-half a mile from the ferry; we lived at Columbia at the ferry from 1842 to 1869, then moved half a mile away, in the fall of 1869; Mr. Ott lived in Pennsylvania while he drove on the ferry; he had the ferry on the other side of the river; he carried on the business on the Pennsylvania side; he had got of us the right to land on the Jersey side; we owned the ferry from Jersey and he  
30 from Pennsylvania; he conducted both ferries together; these proceeds were of the New Jersey side; we had nothing to do with the Pennsylvania side; we had a written paper with Ott—two leases with him; one of these leases which I have sworn to is one of them; my brother settled with Mr. Ott up to the time the ferry was destroyed; the eighty-four dollars was settled afterwards; my brother would post in the ledger from the day-book, and this is the

way I knew; I did not settle with Mr. Ott—I might have settled a few times.

[The above testimony was overruled so far as relates to settlements by his brother and as to witness' knowledge from hearsay of the receipts and income.]

My father had been in this country before; he came in 1811; remained until 1825; went to Europe on account of his health; I was born in Germany; William Herbeiger lived in Columbia in 1840; he moved away in 1852; he moved out of our house; I think the same spring we came to Columbia; he had been living in our house; I was thirteen years old when I was in Columbia in 1840; I know of my own knowledge Herbeiger was my father's agent; I was present at a conversation between Herbeiger and my father, and I knew of the agency in this way; I can't tell the name of the ferryman who used the boats then; I know nothing about who ferried on the other side at that time; in 1841 was there again; I don't know who used the boats then, or who was ferryman; nor who used on the other side; we had nothing to do with the ferry on the other side; we did not own it; they landed at Columbia street, on the Jersey side, in Columbia; the boats, since I know, there always landed at foot of Columbia street; the street was a public street; never saw boats land below; in the year 1855 Decker occasionally landed with his small boat on Mr. Fair's land; I never saw him land with big boats down below, on Fair's land; the Columbia Delaware bridge does not touch our landing place—does not affect it; the bridge is located about three hundred and fifty feet below Columbia street; Columbia street is a public street; the bridge was built in 1868—the bridge was framed in 1868; it was completed in January, 1869; I paid no attention to when they began construction of it; can't tell whether in June or July; I came to Belvidere for those rates; was here several days; I got certificate of Col. Robeson; did not come after it myself; I sent Lewis Stevens here after it; I did not come; these were the first rates that were put up; I knew the act of 1856 was passed; I know the rates I got were put up there; they were put up on the 1st of April, 1856—I know it of my own personal knowledge—I know it because I was present when they

were put up ; Mr. Abram Ryman put them up ; I think I compared those on board, to see if they were like these on this paper, before they were put up ; I satisfied myself that they were the same rates established by freeholders ; these rates were put on a post called the rate post, in the street ; these rates were all we ever had since 1856 ; the freeholders made change in rates in 1855 ; these all we ever had since 1856 ; since I got them at that time ; of course we made use of the act of 1856 ; we never made use of the prohibitory clause, because it was no use ; I never said my father would'nt accept of it at all ; I swore charter was obtained by my procurement.

*Quest.* Did you not swear on an examination on May 25th, 1869, that the charter—meaning charter of 1856—had never been made use of ?

*Ans.* I said it had never been made use of, but I referred to the prohibitory clause ; I swore my father was opposed to its being in the charter in the beginning ; I never had certified copy of act I so swore ; I did not swear I never had the book that had it in ; I didn't swear I first saw it at Esq. Dewitt's—I borrowed the book of Esq. Dewitt ; I swore I borrowed Esq. Dewitt's book in January or February before.

And being re-examined-in-chief, says—

There was some ground between it and the water at end of Columbia street, which we had in possession, and which we kept in repair ; from water toward the street, I should think it extended fifty feet along the river ; the width was one hundred feet ; we kept ferry on this land ; sold sand on both sides of the road ; we made use of the stones also.

30 [Counsel for respondent objects to the above testimony because no examination or cross-examination, and because not best evidence. Court overruled objections, counsel prays exception to ruling of the court, and it is allowed and sealed.]

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

There was an old stone pier there, we sold them out of that ; nobody exercised control over it except us ; in 1856, we raised the road there, made a good road ; the other part of

Columbia street was worked by the overseer of the highways, to the foot of the hill; it was 56 or 60 feet to water from where the overseer stopped working the roads; the width of Columbia street was 100 feet; I drew the act of 1856; I handed it to Beatty who was in House of Assembly; I advertised for six weeks; Mr. Beatty told me afterwards act was passed; I also saw it in papers; I was acting for my father; my father at first thought it was unnecessary; said he had had a ferry for so many years; there was a provision in the lease with George Decker, concerning the charter.—[And being shown paper]—This is the lease. 10

And being again cross-examined, he said—

There is a hill from Columbia street to the river; the overseer of the highway worked to where the waters of the Delaware come to into moderate freshet, but not to where ordinary high water came; we sold stones out of the old pier, and any stone on land of ours; pier was inside of line of Columbia street.

*Quest.* Were you not examined by your counsel for the very purpose of showing that this act of 1856, was obtained by you, against your father's will, and that you had never used or accepted the act? 20

*Ans.* I never said we had never accepted it; I was examined, for what purpose I don't know; the pier had originally been the pier for a bridge; I have no personal knowledge of when it came there; it was put there before I was born; it stood at the edge of water where we landed; part of the landing was on the pier—[To the court]—Columbia street runs to the pier; I consider the pier the end of Columbia street; the pier was under water in times of high water; out of water in times of ordinary water; from Vankirk's hotel to river, there were sixteen or eighteen houses in Columbia on both sides of the street; people went down to river at the foot of Columbia street to water their horses, cattle, &c.; I correct my statement and say, that Columbia street runs to the bottom of the hill and not to the pier; I have seen maps I think, of Columbia; I saw Stumpfel have a map, made in 1812. 30

*James Bingle*, another witness for the plaintiffs, having been sworn, testified as follows—

I knew Henry Geisse in his lifetime and knew George Decker; that is my name.

[Being shown paper.]

I saw Henry Geisse and George Decker sign their names to that paper; I signed my name as a witness.

*Herman Geisse*, another witness on the part of the plaintiffs, having been sworn, testified as follows—

10 I live at Columbia; I am brother of C. Henry Geisse; I have known the ferry since 1849; I have lived there since 1852; George Decker had the ferry in 1849; he paid no rent that year; he paid rent afterwards to father; after his death he left.

*Quest.* Tell us how much Ott paid the first year?

[Counsel for respondents objected to this question, because it is not the best evidence, and because the amount paid by Ott is not the proper measure of damages in the case, because irrelevant and immaterial to the issue, because the true  
20 measure of damages is the market value of the ferry at the time of constructing of bridge. The court overruled the objections, and the counsel pray exceptions to the ruling of the court, and it is allowed and sealed accordingly.]

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

Mr. Ott paid the first year, over all expenses, \$203; the second year, \$220.86; the third year, \$335.15; at the time the ferry closed there was on book account \$84.49, which was collected at different times; all this had accrued while Ott attended the ferry.

30 *Quest.* When did the revenue stop?

[This question objected to, because the revenue of ferry is not the proper measure of damages, and because question is irrelevant and immaterial. The court overruled the objection, and respondents pray an exception, which was allowed and sealed accordingly.]

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

The revenue stopped when the bridge was opened, on January 19th, 1869—the 18th being Sunday.

[Being shown paper marked No. 2, lease from Mrs. Christianna Geisse to John Ott]—I am subscribing witness; I was witness to the one annexed; it is an extension; I was a witness to paper marked No. 3; I knew the income before 1866; ever since railroad company opened the revenues increased.

[This testimony objected to by counsel for respondents, because hearsay, and because the receipts are no measure 10 of damages. Court overrule the objection, and respondents pray an exception to ruling of the court, and the same is allowed and sealed accordingly.]

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

Being cross-examined, witness says—

Sometimes I settled every two or three weeks with Mr. Ott; most of time at our house; I can't recollect the exact amount every week, except as I refer to the book; I could tell within a few dollars or cents the amount of tolls; I think I did settle with Mr. Ott nearly all the time; these 20 receipts were for New Jersey; we had no interest on the Pennsylvania side at all; the bridge was begun to be built in 1868; it did not make much business then; very little; it made merely what contractors travelled over there; they had small force, and they went out in scows; there was hauling of timber there, &c.; they were hauling ties; somebody had brought ties up there in 1867 or 1868, but not so much as wood that was being hauled there for lime kiln; the tie contract was temporary; the wood contract did not run out; the hauling of wood for lime kiln began in '66 or 30 '67 or '68; we have no books showing receipts of ferry prior to 1866; I don't remember about the winter of 1866-67, whether open winters or not; 1867 and 1868, I think, were pretty hard winters.

And being re-examined, says—

Lime kilns still in operation; they are in Pennsylvania, near Portland.

And being again cross-examined, says—

There are times when they drew wood quite regularly.

*John Ott*, another witness on the part of the plaintiffs, being duly sworn, testified as follows:

I live at Portland now; I took Geisse ferry in 1866; I kept it until the bridge was built; I was down for two months after bridge was up; business fell off altogether.

[Offer to prove what he paid Geisse. The respondent's counsel objects to the evidence, for the reasons given in the  
10 former bill of exceptions. The court overruled the objection, and admitted the evidence, and the counsel for the respondent except, and pray a bill of exceptions, and it is allowed and sealed accordingly.]

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

I paid them one half of what came in on the Jersey side; I could not recollect how much I paid them; I think \$240, or \$50, or \$60; the second year, \$270, or \$280; the third year, over \$300; in the three years it amounted to over \$800; I had a memorandum book, which I took and had by when  
20 we settled.

And being cross examined, says—

I began in the winter of 1866; I quit in 1869; I had it about three years; I had \$240, \$250, or \$260 for the first year; for the second year, \$280; for the third year, \$300; in all, about \$800; these are the amounts I handed over to the Geisses, as near as I can tell without my books; they paid no expenses out of this sum; I paid the expenses out of the whole of the proceeds; they paid nothing; I claimed the ferry on the other side; I bought the land of George  
30 Decker; got a deed for the land and ferry privilege; I am having controversy with company in Pennsylvania; that controversy is now pending in the courts at Easton; in making my ferriage I went according to rates up when I got ferry; I charged according to my own rates; never went above legal rates; always below; in winter we charged as we thought right and proper, according to trouble we had; in ferrying foot passengers when very bad

water, we charged them above legal rates; ferrying bad in winter season; did not charge higher rates than legal except when crossing very bad; then we charged them more; George Lamb, I remember, hauled wood over; Morey engaged with him; don't remember about Labar; think I landed down on Mr. Fair, in extreme high wind; there was a house and lot on the south side of street; Columbus street; I bought that of Decker; the wire was on this lot; I owned them on the Jersey side.

And being re-examined-in-chief, says—

10.

Wire was fastened to two trees that stood on that lot; we seldom charged high rates, except when river was too high—this occurred some years once or twice, some years not at all; took the higher rates and kept them as my hazard; the Geisses got none of these extra charges.

And being again cross-examined—

Kept no account of extra work and charges; never charged extra prices on flats; we owned boats in partnership—we owned half of the boats together.

And being again examined-in-chief—

20

I took the old wire down and put up a new one—it cost \$145; the expense was borne by Giesses and me, equally; a large flat there when I went; I don't know how much it cost; I suppose it was worth \$150; when I went there it was there; the foot boat was worth \$15; I bought ferry when I came there of Decker; he owned the half of it; he owned the half of it—one-half the boats and one-half the wire; the flat-boat sold in August, 1869, after the bridge was in operation; wire sold in 1869.

Again cross-examined, says—

30

Geisses paid one-half the expense of putting up the wire; I bought wire the first year I was there—there had been wire there before; the price of the boats and wire we divided equally between us when they were sold; Geisses were witnesses for me in my suit over in Pennsylvania.

[Plaintiffs offer lease from Henry Geisse to George Decker, 26th March, 1856.]

[Respondents object to the admission of this lease, because irrelevant and immaterial, because appellants cannot show title in the ferry by any act of their own, because it is not binding upon us, because not a measure of damages, and because it shows no right whatever. The court overrules the objection and admits the paper for some of the purposes of the suit; counsel prays a bill of exception to the ruling  
10 of the court and it is allowed and sealed accordingly.]

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

*George Decker*, another witness on the part of the plaintiffs, being sworn, did testify as follows—

I live in Pennsylvania; formerly lived opposite Columbia; Alexander Decker, my father, he lived at Columbia; he had one side of the ferry—the Jersey side; was attending ferry at my earliest recollection.

*Quest.* Whom did he rent of? [This question objected to by counsel of respondent.]

20 [Court overrule the objections and admit the question; counsel prays an exception to the ruling of the court, and it is allowed and sealed accordingly.]

*Ans.* It was called Geisse's ferry at the time my father claimed to rent it; it was also called Columbia ferry; I can recollect when he did attend the ferry, perhaps for ten years; don't know except what I heard him say that he paid rent.

*Quest.* What did you hear him say? [Counsel for respondents objects to this question because it is hearsay evidence, and because irrelevant.]

30 [The court overrule the objection and admit the testimony; counsel prays an exception to the ruling of the court, and it is allowed and sealed accordingly.]

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

I heard him say he paid rent; said he paid it to Geisse's agent; that Lilliendall was an agent, and also Heiberger; I think in 1834 or 1835 my father left the ferry; Jacob Lamb worked the ferry after father went away; my brother, James Decker, worked the ferry in 1847; he built a new

flat boat ; at that time Mr. Stumpfel was their agent—I know that because I rented of him afterwards ; my brother agreed to build boat ; he kept it one year, then took ferry on his agreement ; I took it on April 1st, 1848 ; I staid there until the fall of 1866 ; I worked ferry about 17 years ; John Ott took the ferry after me ; he bought me out ; I quit about 1866 ; during time I was there I rented ; I paid rent each and every year ; paid part of the time to Mr. Stumpfel first seven years ; he claimed to be agent of Geisse's ; in 1852 the Geisse family moved to Columbia ; I paid Stumpfel 10 rent as long as he lived there ; I paid the Geisses ; there was a new lease between the Geisse family and me ; I paid them the last year I was there ; I can't tell exactly what I paid the last year I was there ; the last two or three years it would be safe to say \$150—the last year about that.

*Quest.* Did the revenue increase or diminish ? [Question objected to by counsel for respondents, because the revenues are not the true measure of the damages, and for the reasons shown in former bill of exceptions.]

[Court overrule the objections and admit the testimony. 20  
Counsel pray an exception to the ruling of the court and it is allowed and sealed accordingly]

M. BEASLEY, *Ch. J.* [L. S.]

The traveling increased every year ; the last year I was there, I should think, not much short of \$200, perhaps not so much ; our agreement was to pay them every week ; before 1856, the boats were owned on the Jersey side ; in 1856 or somewhere there along, we got a new boat made in partnership ; the last boat was built two or three years before I left ; it was very good when I left ; I did not keep a 30 very particular account, but think boat cost about \$175.

And being cross-examined, says—

When I sold out to Ott, I sold my interest in both sides of the river in boat's wire ; the first agreement under which I took ferry was not in writing ; the next one was ; I can't tell whether James' agreement was in writing or not ; the railroad went in operation in 1856 ; I think I quit on January 1st, 1866 ; in the fore part of winter I quit ; Labar &

Wire hauled a good many logs, but soon stopped; that increased the revenue at that time; I was very exact in my rates in low water; I seldom overcharged in high water without it was in little boat; I do not know as I did charge higher rates; sometimes we would have to have an extra hand and then charged a little more; Sundays, high water and high wind, I charged above the ordinary price, but I don't think a great deal; in 1861 to 1863 there was an especial amount of travel—lumber trade—King Burns crossed a good deal of lumber to the railroad and other persons; King Burns dealt in lumber and ship timber more or less, and crossed there those years; he loaded timber on the cars; the rent paid in 1849, was \$40; lease from 1851 to 1856, lease run to about \$45; this what I paid for rent; I got the right to land on the Pennsylvania side, of Michael Weller, in the spring of 1848; rented in 1848 the right to use his shores; he owned up and down the river for three-fourths of a mile; I rented right of him for one year, after that I think, of Joshua Hagerman; he got land along where the ferry was; then I bought fifty acres of Joshua Hagerman; my land ran down the river and up the river for four or five hundred yards; I put wire over the river; in 1850 or 1851, I planted wire on my own land in Pennsylvania; I fastened it on bulwark in the street in Columbia, on the Jersey side; after we ferried there two years, the wire broke down; then we moved it into a tree on a lot which belonged to Jacob Beck at that time; I paid him \$1 for two or five years, I don't remember which; fastened it to two trees; I afterwards became owner of Beck property; bought it two years before I moved away; I got an act of incorporation for state of Pennsylvania, somewhere about 1856; somewhere about time railroad went through; I got act of incorporation to protect myself; Geisses wanted to go in partnership with St. John, but after I got my act of incorporation, then they wanted to go in with me; landed frequently on Mr. Fair's land with small boat; landed before I got my wire, on Fair's land often; then the people would drive up to Columbus street; when I first came there I landed more or less on Fair's land; landed heavy teams below; my father had a good deal of trouble with one Smith, on Penn-

sylvania side; they had opposition ferry; Smith landed on what is now Fair's land; can't tell how long he ran opposition; along from 1828 to 1835 somewheres; I often landed above Columbus street before I got my wire; I don't recollect so much about rates when I first came there; when I made lease from 1851 to 1856, Stumpfel requested me to keep the rates up; I sold out to Ott in winter of 1866; I sold out to him in lump at one sale; I sold him my share in the crafts; one big flat-boat and foot-boat; then the whole wire; then I sold him house and lot on Jersey side; don't 10 know size of lot exactly; about fifty feet front and one hundred feet back; I sold him on Pennsylvania side, all my land along the river, one and one-half to two acres; the land on Pennsylvania side, was useful for log landings and useful for drift wood; and the land next to railroad was a very nice lot, which was included in what I sold him; Mr. Ott paid me for all this property, \$1,600, my share of flat-boat worth all it cost me; cost \$175; my share worth \$87.50; my wire was pretty well run; was good for some time yet; worth \$25; I don't recollect exactly, worth of small boat; 20 \$4 or \$5 my share was worth; I would have called Jersey property very cheap at \$200, which I sold to Mr. Ott; independent of ferry landing, put up at public sale, it would bring \$400 or \$500; ropes were worth \$5 year.

And being again examined-in-chief—

Smith did not carry any from Jersey; he ferried from Pennsylvania side; he was crusty, not much liked; I always gave Geisses' their share of extra charges in high water, which came three or four times a year; toward the last they gave me very poor days; but if there was anything 30 made they wanted it; I recollect when Labar and Wire ferried over river; there was not a period of two months when they hauled, that Geisses got nothing; the Jersey side was the best ferry, if anything; there was not a great deal of difference; Jersey side best at certain seasons of the year.

*Josiah Dewitt*, another witness on the part of the plaintiff, testified as follows:

[Acts of 1870, supplement to act incorporating Columbia Delaware Bridge Company, offered, page 493.]

I am a justice of the peace, and was in 1869; that is the award made [being shown paper] by referees appointed by me, on the application of the Geisses; I used to know William Heiberger; I have heard he was dead; I know his handwriting. [Shown signature.] That is his handwriting; I knew Frederick W. Sallade; he is dead; I have seen him write. [Shown paper.] That is his handwriting, beyond a  
10 doubt.

[Lease, Henry Geisse to George Lamb, dated April 1st, 1842.]

[From same to George Decker, dated March 16th, 1849.]  
Plaintiff rests.

The defendant having opened his case to the jury, offered the following testimony:

The acts of 1839, charter of Columbia Delaware Bridge Company, page 430. Also acts of 1838-39. Acts of Pennsylvania, confirming said deed. *Exhibit 1.*

20 Acts of Pennsylvania of 1856, incorporating George Decker's ferry; granting him exclusive ferry rights for some distance up and down the river, and the right to collect tolls, etc. *Exhibit 2.*

*George Decker*, a witness called for defendants, testified as follows:

I am the Decker named in this act; I applied for it; same act I spoke of awhile ago; I acted under it on my side of the river; this ferry didn't come exactly in range; could see up through to their ferry; Jacob Brand's heirs  
30 owned above; St. John married the widow Brand; there were rifts below and above; I had privilege between the rifts.

*George Lamb*, another witness on the part of the defendants, testified as follows:

I live in Portland, Pennsylvania; lived there forty-nine years, except five years; am acquainted with ferrying over the river; in 1865, '66, '67, and '68 was concerned with parties who bought large tract of wood-land; the wood

was cut off and carried over the river; first tract was fifty-two acres; the second tract was twenty-seven acres of land; George Decker on Pennsylvania side, part of one year, and after that John Ott; we got 1,100 cord off of first tract; thirty cents a trip to take it over, according to established rates; 130 cords of bark off of first tract; 1,400 ties off of the first tract; 140,000 feet lumber off of the first tract; we calculate 1,000 feet for three trips or loads; about a cord of bark at a load; we got 75,000 feet off of the second tract, 250 cord of wood, 80 cord of bark, and 5,000 ties; 10 could carry 16 to 18 ties a load; thirty cents a trip; never knew any such thing as that to be done at that ferry before; Jacob Lamb, whose lease was offered in evidence, and who run the ferry, was my father; he landed down below Geisses' present landing, about 150 yards; very frequent thing; on Mr. Fair's land; this our principal landing place; my father had it quite a number of years; I can't tell just the time; we mostly kept passenger boat, with what we called a flat boat; after father quit, James Decker took it; think he landed most of the time on Mr. Fair's land—won't be certain. 20

And being cross-examined, says—

No wire across river then; my father had ferry good many years; he paid rent to Mr. Stumpfel; first paid to Mr. Vankirk; after that to Mr. Stumpfel; don't know whether Stumpfel was Geisse's agent or not; we took last wood over about 1868; were at it about three years; commenced in 1866; finished year before bridge was opened; I quit lumbering same year bridge was opened; there was not a great deal of lumber before that time carried over; King Burns hauled a little; some ship timber; wood taken 30 to Bellis' lime kiln; in neighborhood of four years clearing off these two tracts; I lumbered until the bridge was built.

Being re-examined-in-chief, says—

We began first as George Decker was about to leave; I quit lumbering until the bridge was built.

*Richard Fair*, another witness on the part of defendant, testified as follows—

I live at Columbia; I have lived there since 1844; I own land along by Columbia; my brother and I do together; land runs up to Columbia street; they often landed on our ground; often did so until they put up wire; after that they may have landed sometimes; George Decker asked permission to cut a tree standing on my land, so that he could land better; don't know whether it was before or after wire was put up;

10 I think they landed on me more at low water than at any other time; there was a good place to get out on my land with horses and teams; good place to get up with flat; with small boats they landed where most convenient; have seen them come in and go out, both; below on me to lower side of pier, usual place of landing for small boats; the landing depended on the height of the water; sometimes above and sometimes below; after wire was up they crossed in more direct line; they did land on me sometimes; they had no right to; considered it a privilege.

20 And being cross-examined, says—

My house is three hundred yards from landing; could not see them land unless I went into the garret; have no recollection of Geisses ever telling me not to let tenants land on me, either twenty years ago or ever.

*John J. Vankirk*, another witness for the defendants being sworn, testified as follows—

I live at Columbia; I have lived there since 1828. [Being shown paper]—These are the minutes of a meeting to elect officers of the Columbia Delaware Bridge Company; it was

30 held at my house, in the village of Columbia, to elect officers, 23d of March, 1843; I presume the same date; I was present part of the time.

[Supplement to act to incorporate Columbia Delaware Bridge Company, Laws of 1867, page 287.]

I can't tell who was at that meeting; some gentlemen from Stroudsburg there, but who and how many, I can't begin tell; there were Mr. Hollingshead, from Stroudsburg, a stockholder, and others there; Andrew Smith was also

there; I had a list of stockholders at one time; at the time of this meeting I had it; I don't know what has become of this list of stockholders; I had it for a long time afterwards; it was in pasteboard covers; I had use for the covers, and I just cut it out; I have never seen it since; can't tell where I threw it; among waste papers that were destroyed; that was sometime between 1851 and 1854; it was a book covered with pasteboard, with list of stockholders in it; was made by William Heiberger; he wrote the heading of it; the heading was to take so many shares of stock; I knew 10 some signatures on the list; Charles I. Hollingshead's name was signed; John Boyce, Enos Goble, and one Longs, Andrew Smith, John I. Blair, I. & A. Wildrick; I knew their handwriting, and I knew the names of some of them were signed by them; Maj. Weller was also a signer and a stockholder; George Troxall and John Titman were stockholders; I mean their names were on that list; I don't think Mr. Blair or I. & A. Wildrick were at the meeting; I was subscriber to stock; William Green also on that list; don't know how 20 much stock Green subscribed for; that book and this paper were left at my house that day; they were brought there before the meeting; Stroud J. Hollingshead signed that paper; whole paper in his handwriting, except the name of Andrew J. Smith, which is written by Smith himself; that paper and stock book left at my house after meeting; Peter Pipher was elected treasurer; I understood John I. Blair president of the board; I have had that paper since that meeting; can't say I was there when the result was announced; can't say I was present when any of the directors were elected; I suppose I was. 30

And being cross-examined, says—

In 1868 we made another organization at the same house; stock had been subscribed at the last organization; I was present; it was a stockholders' meeting; officers elected; the first organization was of no use; never did anything as an organization or corporation; it fell through; they never paid stock subscribed under old organization; no old directors alive when we organized, except John I. Blair and myself.

And being again examined-in-chief—

Enos Goble is dead, I don't recollect exactly when he died; Michael Weller left this country ten or twelve years ago, he went to Illinois—it was near twenty years ago, not back since; John Boyce is living, I think he lives at Stroudsburch, Pennsylvania; Andrew Smith is dead, he died ten or fifteen years ago; William Heiberger is also dead—so I am informed; Peter Pipher is also dead, he lived at Slateford, Pennsylvania; John I. Blair and myself are all that are alive.

10 And being again cross-examined—

This meeting was in pursuance of public notice.

Again re-examined.

The list of stockholders I destroyed was that for 1832.

[Offer the “Democrat and Argus” newspaper, date March 2d, 1842.]

*John A. Jones*, a witness on the part of the defendants, testified as follows—

I was formerly editor of the “Democrat and Argus;” it circulated in Northampton county.

20 [Being shown file of newspaper; that is a file of the newspaper.]

[Notice published March 2d, 1843. Notice offered and read in evidence; proceedings of the same. Notice of meeting at Vankirk's Hotel; met at March 23d, 1843, between 12 and 5.]

*John J. Vankirk*, being recalled—

This, or a similar, I had inserted in the “Belvidere Apollo;” I took it to the editor myself; I remember Weis, Labar & Lamb lumbering; never knew so much lumber  
30 tracts as that cut off before—two or three tracts cut up then.

Again cross-examined—

I have lived at Columbia since 1828, except one year; have operated ferry; Decker and I used it from 1825 to 1838; Mr. Heiberger and Mr. Ott operated it after I left.

[Offer papers.]

1. Minutes of the commissioners appointed by charter of 1839, January 20th, 1842.
2. Notice signed by commissioners to receive subscription for stock, January 20th, 1842.
3. Notice of meeting of stockholders as above.
4. Minutes of meeting of stockholders in pursuance of public notice, March 23d, 1843. (*Pro ut* the same.)

Papers admitted and read in evidence.

*Henry B. Armstrong*, another witness on the part of respondents, having been sworn testified as follows—

I live in Portland, Pennsylvania; lived there twenty years; I live within two or three yards of the river; I bought wood of Messrs. Weis, Lamb, Labar, and others in 1866 and 1867; I don't remember exact amount; large amount brought from New Jersey; I never knew such a quantity of lumber and wood, to be taken across the river at that ferry; my business was burning lime.

And being cross-examined, says—

These lime kilns on the Pennsylvania side are still in operation; I am still in business; lime manufactured and shipped off; that business was there when I came there; it has been fifteen or sixteen years since; begun to ship lime from there; since then business increased steadily; there was no wood brought across this ferry before this purchase I speak of; since the bridge has been in operation wood has been brought across to the lime kilns, but not so much as in 1866; I am not a stockholder in the Bridge Company.

And being re-examined, says—

30

Have bought some wood since, but not to the extent we bought on the Weiss, Lamb, and Labar contract; have seen logs come over frequently; don't know where they came from; I suppose they were brought to saw mill; it is a mile and a half from Columbia bridge to Decker's ferry; this ferry is below the bridge—Decker's ferry is above

*Lewis Weller*, another witness on the part of the respondent, says—

I live in Columbia; have lived there twenty years; I recollect when Weis and Labar got lumber and wood on Jersey side; I helped ferry, more ferrying of wood and lumber then carried, than I ever knew before or since; wood and lumber both ferried across that winter.

And being cross-examined, says—

10 Can't give an idea of what amount of wood Mr. Sellinger hauled; know there is such a man; he is hauling now every day; he takes the wood to Armstrong's lime kilns; he has but two teams; then there is a man named Kizer hauls wood across once in a great while; I have seen Kizer pass this year for the first; through the winter and some in the spring, he took to Armstrong's lime kiln; I saw Sellinger haul—he began to haul this winter a year ago for the first.

*George Weiss*, another witness sworn on the part of the respondents, testified as follows—

20 I live in Portland; lived there since 1859; always known the place; was born just above Portland; I am one of the proprietors who carried wood in 1867 and '68; Mr. Armstrong and Mr. Halsted hauled it over the ferry; 1,000 to 1,100 cords of wood, 130 cords of bark, 200,000 feet sawed lumber; don't know about ties, whether we drew them over or ran them over in rafts; it was done in three years; nothing like as much hauled before or since; I hauled some last winter; nothing like as much as then; the main lumbering in 1866 was finished in 1868 by Mr. Armstrong.

30 And being cross-examined—

I have a saw mill, which I established in 1861; have not been getting lumber every year; in 1865 bought a little; in 1866 I bought this heavy lumber tract, and then went on and finished; there are other saw mills in Pennsylvania; after I finished this then not much afterwards; bought some of Barton last winter, a few thousand; we floated some down, perhaps 30 or 40,000.

And being again examined-in-chief—

It seems to me we drew some ties over for the Pennsylvania railroad; other saw mills got lumber and took over this bridge; Morey hauled lumber after me; he finished his job afterwards; Morey was assisted by Lamb; Morey's and my saw mill all there are on Pennsylvania side; Morey began in 1861; the first lumber I bought in Jersey, except a few walnut logs, was last winter, of Barton.

Cross-examined—

I bought of Sellinger supposed to be seventy or eighty 10 acres; we cleared all off.

Again examined-in-chief—

I never knew of any such job as that in my recollection; this man Sellinger began last fall a year, and then last fall again; I can't tell the amount hauled. [The respondents offer in evidence certain parts of the deposition of C. Henry Geisse and Herman Geisse, taken in former examination.]

Respondents rest.

The plaintiffs offer a supplement to complainant's charter in acts of 1867, page 287.

20

*C. Henry Geisse*, being recalled by the plaintiffs, testified—

It measured 183 feet from the road to where I first worked myself.

Both parties rest.

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#### POINTS.

1. That a ferry can only exist by positive grant from the legislature; and that as the plaintiffs claim to recover, as the heirs-at-law of Henry Geisse, their ancestor, they must show that Henry Geisse had actual seizin or title to the ferry by grant; and that such title descended to them as his

30

heirs-at-law; and that the title derived by grant must be such as to give them a right; and they must show a right, not only to this one shore, but also a right to land on the opposite shore, or else they cannot recover for a disturbance of a ferry; and that in the present case, the plaintiffs had failed to prove any title to any ferry at all, prior to the act of 1856; and that under that act, they have not proved or attempted to prove any right or privilege to land on the opposite side of the river; but on the contrary, Christian  
 10 Henry Geisse, in his testimony in this cause, testified that they have nothing whatever to do with the opposite side of the river; therefore, as a matter of law, the plaintiffs cannot recover.

2. We ask the court to charge the jury—that a ferry is the right to pass from one bank of a public river to the other bank, with the right to land on the opposite bank; that a right to start from one bank of the river without showing a right or privilege to land on the opposite side, is not a ferry at all, and no action can be maintained for the  
 20 disturbance of any such ferry; and that in this case, the evidence produced by the defendant abundantly shows and the plaintiffs admit, that they had not only had no landing on the opposite side of the river, but were expressly excluded from landing there; and therefore, the jury must find for the defendant, the Bridge Company.

3. That in the present case, plaintiffs have shown nothing but a mere naked possession to the Jersey bank of the river down to the year 1856, and have shown no title in him, such as will enable them to recover upon mere possession  
 30 alone, in the ancestor or in their mother, Christianna Geisse.

4. That the right to navigate a public river, transverse or otherwise, is susceptible of exclusive grant only from the public to whom it belongs, and there is no such thing as a ferry by prescriptive right or presumptive grant of exclusive navigation from length of time; there must be actual proof of a grant.

5. That while mere naked possession of a right to go from bank to bank of a river might in some instances avail,  
 40 yet it cannot possibly avail the plaintiffs in this case, be-

cause they claim not by virtue of any possession in them, but as heirs-at-law of Henry Geisse, their ancestor.

6. That if Henry Geisse ever had any right of ferry, prior to the passage of the act of 1856, that act extinguished them entirely, as it established a ferry in New Jersey on exactly the same spot when he claimed a right in the New Jersey shore before that time; and that he could not have two rights in the very same place at the same time existing; and therefore, the act of 1856 entirely extinguished all other rights, if any ever existed, provided Henry Geisse accepted that act. 10

7. As Henry Geisse has no rights except under that act of 1856, he and his heirs must claim under that act, and if they had not accepted the act before the act of the plaintiffs went into effect, the plaintiffs cannot recover.

8. The plaintiffs are bound to show an acceptance of the act, and if they fail to do so, they cannot recover.

9. The jury are to consider the testimony of C. H. Geisse and H. Geisse, and if they are satisfied from their evidence that C. H. Geisse had this act passed, and that Henry Geisse never accepted or acted under it, they cannot recover. 20

10. This act of 1856 authorizes Henry Geisse & Son to establish, keep and maintain a ferry at the foot of Columbus street, in the village of Columbia, in the county of Warren, across the river to his landing on the opposite Pennsylvania shore, and that the same might be maintained by him and his heirs, and that this grant contemplated that the said Geisse shall have a right on the opposite shore, and that until the said Geisse and his heirs show a right on the opposite shore, the said act is of no avail to them whatever, and as in this case, it distinctly appears by the act of the legislature of the State of Pennsylvania of 1856, that the exclusive right to the opposite bank of the river was in George Decker and his heirs and assigns; and as it appears by the evidence of Charles Henry Geisse, that his father and he and his co-heirs had nothing to do with the opposite bank of the river, this grant is void, and they have no right under it whatever. 30

11. That in order to enjoy the grant, the said Henry Geisse and his heirs are bound to observe its requirements, 40

and before they can claim anything under it, they must prove a strict compliance with its terms, that by the second section of the act they were entitled to such tolls for transporting persons and property, as should be prescribed by the board of chosen freeholders of the county of Warren, and that as they have failed to show that they applied to the board of chosen freeholders to fix the tolls after the passage of the said act, and that the said board never has fixed said rates since the passage of this act, therefore they can claim

10 for no loss of tolls under the said act.

12. The charter of the Columbia Delaware Bridge Company was passed in 1839; that the ferries mentioned in the 14th section of the said act, referred only to such ferries as were in existence at the time of the passage of their charter.

13. That whenever the said company was organized it took all rights and privileges vested in it by the act at the time of its passage, and no other burdens or obligations could be imposed upon it, but such as existed at the time of the passage of its charter; and as the plaintiffs had no ferry  
20 interest there at the time of the passage of the charter, they can have none now.

14. That our charter was a contract between the company and the two States of New Jersey and Pennsylvania, and they had a right to take that contract just as it was presented to them, and that, as there was no limitation to the said act, whenever it became organized it took the contract stripped of every burden, except such as were imposed upon it by the original charter, and any attempts in the legislature to impose new burdens upon it by subsequent legisla-  
30 tion granted to other persons or corporations, would be an infringement upon its chartered rights and would be in violation of that part of the constitution of the United States which forbids the passage of any law violating the obligation of a contract, and the charter of the said Geisse would for that reason be void as against us.

15. That the company show an organization of the said the Columbia Delaware Bridge Company on the 23d day of March, 1843, and they show that the stock was taken sufficient to constitute them a corporation under the said  
40 act, and that they then became a corporation on or before

the 23d day of March, 1843, and have ever since existed as a corporation and have been entitled to all the rights and privileges granted by the said charter.

14 *a.* That whatever rights the plaintiffs have they obtained since the defendants became a legal corporation, and consequently the plaintiffs cannot claim anything against the defendants under the defendants' charter.

15 *b.* The right of the defendants to erect the bridge is granted by the two States of New Jersey and Pennsylvania, as is also the right to charge for the passage of passengers 10 and vehicles over it, and any attempts to abridge that right, and compel the company to pay damages to another person with whom it may come in competition by compelling it to pay for the loss of tolls of such other person, is an infringement upon its vested rights, and is against the constitution of the United States aforesaid.

16. That the Legislature never intended, by the language used in the fourteenth section of the company's act, such damages as loss of tolls; they only intended such damages as might arise from the erection of the bridge by placing it 20 on the bank of the river where the plaintiffs' landing was, thus preventing the plaintiffs from using their landing.

17. That the income of the ferry for any given time is no guide in the estimation of damages, because it depends upon adventitious circumstances, as in this case they offer three particular years to show the income of Geisse's ferry, and the defendants show that in these very years an unusual amount of lumber and wood was taken over—more than at any earlier period; the jury, therefore, must deduct all that out. 30

18. The jury must, in estimating the damages, look at all the surrounding circumstances—ascertain the true value of the ferry, and the true value would be the worth of such a ferry in the market, at the time of the erection of the bridge.

19. The jury should also consider that the plaintiffs are only entitled to charges for one side of the river, and that if they are entitled to anything, to loss of tolls for merely one side of the river, the jury must consider what would be the worth of such a ferry when they are liable to inter- 40

ruption, and are dependent upon the mere caprice or will of the owner of the land on the opposite side of the river, and may at any time be deprived of all access to the other side of the river, and the whole right on this side be worthless.

20 20. That the jury cannot find any damages to the plaintiffs for the one side of the river; that unless the jury can find that they had a right to both sides they can't recover; and that we have already seen in this case, that they have no right except to the Jersey side, therefore the plaintiffs were entitled to no damages, and the verdict must be for the defendants.

21. They have no rights at all to the other side of the river except as they have it, in connection with John Ott, and that they cannot sever, and one come in this court, and Ott go into the courts in Pennsylvania, and recover for his share; they must both join if they can recover at all, and as they have not, they cannot recover at all.

20 22. The act of 1856 gives a penalty to Geisse to persons crossing the river, within the limits prescribed in his act, and he can recover nothing else.

I ask the court to charge the jury on these several points.

J. G. SHIPMAN, *Attorney.*

January 4th, 1872.

30 After the foregoing requests were made, it was agreed by the counsel of the respective parties, in the presence of the court, that the question as to the damages should be submitted to the jury; and that the remaining questions, both as to the law and fact, should be submitted to and decided by the Chief Justice holding the circuit.

And thereupon the Chief Justice, as to the question of damages (or any other things) charged the jury as follows—

That the plaintiffs were entitled to recover a reasonable compensation, by reason of the loss of custom to their ferry, was proved by the erection and use of the bridge; that in estimating such loss the jury must look at all the circumstances of the case; that the receipts derived from the use of the franchise of the plaintiffs in any particular year, or in any series of years, should not be taken as establishing a

fixed measure of compensation; that a fund of money, the interest on which would raise the average receipts, would be excessive damages; that there were expenses in running the ferry to be taken into account; that the trouble of supervision over the ferry, and the difficulty or uncertainty of making a new arrangement with the ferry owner on the Pennsylvania shore, should be considered; and also the fact that the burthen of keeping up the ferry at all times would have rested on the plaintiffs.

That the plaintiffs' claim were limited to the damages to 10 his own franchise, and that the injury done to the owner of the Pennsylvania franchise was not to be taken into consideration.

To this charge of the Chief Justice to the jury the counsel of the appellees excepted, so far as it did not conform to his before stated requests, to charge on the point of damages, and the appellees pray their bill of exceptions on this point, and it is allowed and sealed accordingly.

M. BEASLEY, *Ch. J.* [L. S.]

With respect to the matters of law and fact submitted to 20 the Chief Justice, the following points were decided:

1. The court holds, that a franchise, (such as the plaintiffs claim,) to keep up and maintain a ferry across the Delaware, and such as will give them a right to damages against the defendants, can be derived only from legislative grant; that, consequently, the case of the plaintiffs must rest in the act of April 6th, 1856.

The court finds, as matters of fact, that Henry Geisse accepted this act, and established a ferry from shore to shore under it, and kept up and maintained the same until it was 30 interfered with by the establishment of the bridge of the defendants.

That such ferry was established in this wise, viz.: That said Geisse was the owner in fee of a ferry landing on the Jersey shore, at Columbia, and that from time to time he entered into agreements with the owner of the landing and ferry franchise on the Pennsylvania side, [see the evidence,] whereby said last mentioned owners agreed to carry on, and did carry on, the ferry from landing to landing; and that

said agreements were for certain specified terms and periods; and that, by means thereof, a ferry was uninterruptedly kept up from the passage of said act until the establishment of said bridge.

The court further finds, as matters of fact, that the plaintiffs are the heirs-at-law of the said Henry Geisse, and that the said Henry accepted said act, and put the ferry in question in operation under it before the defendants accepted its charter, or organized under it.

10 On the facts and the other evidence in the case, the court holds, that the plaintiffs are the owners of a ferry franchise by virtue of said act of the legislature within the meaning of that clause of the defendants' charter, which requires them to make satisfaction for injuries done by them to ferries.

The court further holds, that the non-joinder in this suit of the owner of the Pennsylvania ferry franchise cannot be taken advantage of at this stage of the case.

To these findings and rulings of the Chief Justice, the  
20 counsel of the appellees excepts, so far as the same do not conform to his before-mentioned requests to charge; and the appellees pray their bill of exceptions, and the same is allowed and sealed accordingly.

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

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#### ASSIGNMENT OF ERRORS

30 Afterwards, that is to say, on the first Tuesday of November, in the year of our Lord eighteen hundred and seventy-four, comes the Columbia Delaware Bridge Company, by J. G. Shipman & Son, their attorneys, and say—that in the record and proceedings aforesaid, and also in the matters directed in the said bills of exception, and in the verdict and judgment aforesaid, there is manifest error in this, to wit, that judgment was given for the said defendants in error, when by the law of the land, judgment should have been given for the plaintiffs in error.

2. There is also error in this, that the said Chief Justice in the trial, admitted illegal evidence in this; that he allowed the said appellants to prove by Christian Henry Geisse, that he knew that William Heiberger was his father's agent, from conversation between the said Heiberger and the father.

There is also error in this, in that the said Chief Justice, in the said trial, allowed the said appellants to prove that Mr. Heiberger was acting as agent then; that he rented his father's ferry and others; and that his father, before he left there, made Lewis Stumpfel agent there; that he knew it, because his father gave him a power of attorney; and that he was agent from 1841 to 1852; that he had seen his handwriting; that they had leases; that in the year 1856, George Decker worked the ferry; was the tenant in the business; that he had been there eight years; that he came there in 1848; that he paid his father's agent, Stumpfel, before his father came to Columbia.

There is also error in this, that the court allowed the following question to be put to and answered by the witness, Christian Henry Geisse—"Where did you get them?"

There is also error in this, that the said court allowed the said appellants to offer and read in evidence, a certain paper purporting to be the rates of fare established by the Board of Chosen Freeholders of Warren county, for the Columbia ferry. [*Pro ut* the said paper.]

There is also error in this, that the said court in the trial of the said cause, allowed the appellants to ask and the witness to answer the following question—"From the time Ott came for the last three years, from the 18th January, 1866 to the 18th January, 1869, how much revenue did your family get from the ferry—how much in each year?"

There is also manifest error in this, that the said court allowed the following question to be asked and answered by the witness for the appellants—"While you was acquainted with the ferry, did the income grow smaller or larger?"

There is also manifest error in this, that the court allowed the appellants to offer the following evidence—"There was some ground at the end of Columbia street, between it and the water, which we had in possession and which we

kept in repair; from the water to the street, I should think it extended fifty feet along the river; the width was one hundred feet; we kept the ferry on this land; sold land on both sides of the road; we made use of the stones."

There is also error in this, that the said Chief Justice, on the trial of the said cause, allowed the following question to be asked of the appellant's witness—"Tell us how much Ott paid the first year?"

- 10 There is also error in this, that the court, on the said trial, allowed the following question to be asked and answered by the appellant's witness—"When did the revenues stop?"

There is also error in this, that the court allowed the appellants to give the following evidence—"I knew the income before 1866; ever since the railroad company opened, the revenues increased."

- 20 There is also error in this, that the court allowed the said appellants to prove by John Ott, a witness for appellant, what he paid the Geisses for the use of the ferry, to wit, that he paid the one half of what came in on the Jersey side—"I think \$240, or \$50, or \$60; the second year, \$270, or \$280; the third year over \$300; in the three years it amounted to over \$800; I had a memorandum book which I took and had by me when we settled."

There is also manifest error in this, that the said court allowed the appellants to offer and read in evidence upon the said trial a certain paper, purporting to be a lease from lease from Henry Geisse to George Decker, dated 26th March, 1836. [*Pro ut* the same.]

- 30 There is also error in this, that the court at the said trial allowed the following question to be asked and answered—"Whom did he rent of?" And also the following question—"What did you hear him say?"

There is also error in this, that the court allowed the following question to be asked by appellants and answered in the trial of the said cause—"Did the revenues increase or diminish?"

- 40 There is also error in this, that the said court refused to charge the jury and find as matters of law the following points, submitted by the appellants to the said court, and

upon which they requested him to charge and find as matters of law, viz.—“That a ferry can only exist by positive grant from the legislature, and that as the plaintiffs claim to recover as the heirs-at-law of Henry Geisse, their executor, they must show that Henry Geisse had actual seizin of title to the ferry by grant, and that such title descended to them as heirs-at-law, and that the title derived by grant, must be such, as to give them a right, and they must show a right not only in the one shore, but also a right to land on the opposite shore, or else they cannot recover for a disturbance of a ferry, and that in the present case, the plaintiffs have failed to prove any title to any ferry at all, prior to the act of 1856, and that under that act they have not proved, nor attempted to prove, and right or privilege to land in the opposite side of the river, but on the contrary, Christian Henry Geisse, in his testimony in this case, testified that they had nothing whatever to do with the opposite side of the river; therefore, as a matter of law, the plaintiffs cannot recover. 10

2. That a ferry is the right to pass from one bank of a public river to the other bank, with the right to land on the opposite bank; that a right to start from one bank of the river, without showing a right or privilege to land on the opposite side is not a ferry at all, and no action can be maintained for the disturbance of any such a ferry; and that in this case the evidence produced by the defendant abundantly shows, and the plaintiffs admit that they not only had no landing on the opposite side of the river, but were expressly excluded from landing there, and therefore the jury must find for the defendants, the Bridge company. 20

3. That, in the present case, plaintiffs have shown nothing but a mere naked possession to the Jersey bank of the river down to the year 1856, and have shown no title in him, such as will enable them to recover upon mere possession alone in the ancestor, or in their mother, Christianna Geisse. 30

4. That the right to navigate a public river transverse, or otherwise, is susceptible of exclusive grant only from the public, to whom it belongs, and there is no such thing as a ferry by prescriptive right or presumptive grant of exclusive

navigation from length of time, while there must be actual proof of a grant.

5. That, while mere naked possession of right to go from bank to bank of a river might in some instances avail, yet it cannot possibly avail the plaintiffs in this case, because they claim not by virtue of any possession in them, but as heirs-at-law of Henry Geisse, their ancestor.

10 6. That, if Henry Geisse ever had any right of ferry prior to the passage of the act of 1856, that act extinguished them entirely, as it established a ferry in New Jersey on exactly the same spot where he claimed a right in the New Jersey shore before that time, and that he could not have two rights in the very same place at the same time existing, and therefore the act of 1856 entirely extinguished all other rights, if any ever existed, provided Henry Geisse and his heirs accepted that act.

20 7. As Henry Geisse has no right except under that act of 1856, he and his heirs must claim under that act, and if they had not accepted the act before the act of the plaintiffs went into effect, the plaintiffs cannot recover.

8. The plaintiffs are bound to show an acceptance of the act; and if they fail to do so, they cannot recover.

9. The jury are to consider the testimony of C. H. Geisse and H. Geisse, and if they are satisfied from their evidence that C. H. Geisse had the act passed, and that Henry Geisse never accepted or acted under it, they cannot recover.

30 10. This act of 1856 authorizes Henry Geisse and his heirs to establish, keep, and maintain a ferry at the foot of Columbia street, in the village of Columbia, in the county of Warren, across the river to *his landing* on the opposite Pennsylvania shore, and that the same might be maintained by him and his heirs, and that this grant contemplated that the said Geisse shall have a right in the opposite shore, and that until the said Geisse and his heirs have a right on the opposite shore, the said act is of no avail to them whatsoever; and as in this case it distinctly appears by the act of the legislature of the State of Pennsylvania of 1856, that the exclusive right to the opposite bank of the river was in George Decker and his heirs and assigns, and as it appears 40 by the evidence of Christian Henry Geisse, that his father

and he and his co-plaintiffs had nothing to do with the opposite bank of the river, this grant is void, and they have no rights under it whatever.

11. That, in order to enjoy the grant, the said Henry Geisse and his heirs are bound to observe its requirements; and before they can claim anything under it, they must prove a strict compliance with its terms; by second section of the act they were entitled to such tolls for transporting persons and property, as should be prescribed by the Board of Chosen Freeholders of the county of Warren, and that, as they have failed to show that they applied to the Board of Chosen Freeholders to fix the tolls after the passage of the said act, and that the said board never has fixed such rates *since* the passage of the act, therefore they can claim for no loss of tolls *under the said act*. 10

12. The charter of the Columbia Delaware Bridge Company was passed in 1839; that the ferries mentioned in the 14th section of the said act, referred only to such ferries as were in existence at the time of the passage of their charter.

13. That whenever the said company was organized, it took all rights and privileges vested in it by the act at the time of its passage, and no other burdens or obligations could be imposed upon it but such as existed at the time of the passage of its charter; and as the plaintiffs had no ferry interest there at the time of the passage of the charter, they can have none now. 20

14. That our charter was a contract between the company and the two states of New Jersey and Pennsylvania; and they had a right to take that contract just as it was presented to them; and that as there was no limitation to the said act, whenever it became organized it took the contract stripped of every burden, except such as were imposed upon it by the original charter; and any attempt by the legislature to impose new burdens upon it by subsequent legislation granted to other persons or corporations, would be an infringement upon its chartered rights and would be in violation of that part of the constitution of the United States which forbids the passage of any law violating the obligations of a contract, and the charter of the said Geisse would for that reason be void as against us. 30 40

15. That the company show an organization of the said the Columbia Delaware Bridge Company on the 23d day of March, 1843, and they show the stock was taken sufficient to constitute them a corporation under the said act; and that they then became a corporation on and before the 23d day of March, 1843, and have ever since existed as a corporation, and have been entitled to all the rights and privileges granted by the said charter.

10 16. That whatever right the plaintiffs have, they obtained since the defendants became a legal corporation, and consequently the plaintiffs cannot claim anything against the defendants under the defendants' charter.

17. The rights of the defendants to erect the bridge is granted by the two states of New Jersey and Pennsylvania, as is also the right to charge for the passage of passengers and vehicles over it; and any attempt to abridge that right and compel the company to pay damages to another person with whom it may come in competition, by compelling it to pay for the loss of tolls of such other person, is an infringement upon its vested rights and is against the constitution  
20 of the United States and void.

18. That the legislature never intended, by the language used in the 14th section of the company's act, such damages as loss of tolls; they truly intended such damages as might arise from the erection of the bridge, by placing it on the bank of the river where the plaintiffs' landing was, thus preventing the plaintiffs from using their *landing*.

19. That the income of the ferry for any given time is no guide in the estimation of damages, because it depends upon  
30 adventitious circumstances, as in this case they offer three particular years to show the income of Geisse's ferry, and the defendants show that in these very years, an unusual amount of lumber and wood was taken over more than at any earlier period; the jury therefore, must deduct all that out.

20. The jury must, in estimating the damages, look at all the surrounding circumstances and ascertain the true value of the ferry; and the true value would be the worth of such a ferry in the market, at the time of the erection of  
40 the bridge.

21. The jury should also consider that the plaintiffs are only entitled to charge for one side of the river, and that if they are entitled to anything, to loss of tolls for merely one side of the river, the jury must consider would be the worth of such a ferry when they are liable to interruption, and are dependent upon the mere caprice and will of the owner of the land on the opposite side of the river, and may at any time be deprived of all access to the other side of the river, and their whole right on this side be worthless.

22. That the jury cannot find any damages to the plaintiffs for the one side of the river, that unless the jury can find that they had a right to both sides they cannot recover, and that we have already seen in this case that they had no right except to the Jersey side, therefore, the plaintiffs were entitled to no damages, and the verdict must be for the defendants. 10

23. They have no rights at all to the other side of the river, except as they have it in connection with John Ott, and that they cannot sever, and one come in this court and Ott go into the court in Pennsylvania and recover for his share. They must both join if they can recover at all, and as they have not, they cannot recover. 20

24. The act of 1856 gives a penalty to Geisse for persons crossing the river within the limits prescribed in his act, and he can recover nothing else.

There is also manifest error in this, that the court charged the jury contrary to law in the following language:

That the plaintiffs were entitled to recover a reasonable compensation by reason of the loss of custom to their ferry occasioned by the erection and use of the bridge. That in 30 estimating such loss, the jury must look at all the circumstances of the case.

That the receipts derived from the use of the franchise of the plaintiffs in any particular year or in any series of years should not be taken as establishing a fixed measure of compensation. That a fund of money, the interest of which would raise the average receipts, would be excessive charges, that there were expenses in running the ferry to be taken into account, that the trouble of supervision over the ferry and the difficulty and uncertainty of making a new arrange- 40

ment with the ferry owner on the Pennsylvania shore should be considered, and also the fact that the burden of keeping of the ferry at all times would have rested on the plaintiff.

That the plaintiffs' claims were limited to the damages to his own franchise; that the injury done to the owner of the Pennsylvania franchise was not to be taken into consideration.

There is also manifest error in this, that the court found as matters of fact and law the following points:

- 10 That a franchise, (such as the plaintiffs' claim,) to keep up and maintain a ferry across the Delaware, and such as will give them a right to damages against the defendants, can be derived only from legislative grant; that, consequently, the case of the plaintiffs must rest on the act of April, 1856.

The court finds as matters of fact—

- 2) That Henry Geisse accepted this act and established a ferry from shore to shore under it, and kept up and maintained the ferry until it was interfered with by the establishment of the bridge of the defendants.

- 30 That such ferry was established in this wise, viz.: that said Geisse was the owner in fee of a ferry landing on the Jersey shore, at Columbia, and that from time to time he entered into agreements with the owner of the landing and ferry franchise on the Pennsylvania side, (see the evidence,) whereby said last mentioned owners agreed to carry on the ferry from landing to landing, and that said agreement was for certain specified terms and powers and not by means whereof a ferry was uninterruptedly kept up from the passage of said act until the establishment of said bridge.

The court further finds as matters of fact that the plaintiffs are the heirs at-law of the said Henry Geisse, and that the said Henry accepted said act and put the ferry in question in operation under it before the defendants accepted its charter or organized under it.

On the facts and the other evidence in the case, the court holds that the plaintiffs are the owners of a ferry franchise by virtue of said act of the legislature within the meaning of that clause of the defendants' charter, which requires

them to make satisfaction for injuries done by them to ferries.

The court further holds that the non-joinder in the suit of the owners of the Pennsylvania ferry franchise cannot be taken advantage of at this stage of the case.

In all this there is manifest error.

Therefore the said the Columbia Delaware Bridge Company prays that the judgment aforesaid, by reason of the aforesaid errors, and of the errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and 10 for nothing holden, and that the said the Columbia Delaware Bridge Company may be restored in all things they have lost on occasion of the said judgment, and that the said defendants in error may rejoin to the said errors.

J. G. SHIPMAN,

*Attorney for plaintiffs in error.*

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#### JOINDER IN ERROR.

And therefore the defendants in error, by James M. Robeson, their attorney, come into the said court and say, that there is error either in the record and proceedings 20 aforesaid, or in giving the judgment aforesaid.

And they pray that the said Court of Errors and Appeals may proceed to examine, as well the record and proceedings aforesaid, as the matter above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

J. M. ROBESON, *Attorney.*

APPELLANTS' EXHIBITS.

Supplement to act to incorporate the Columbia Delaware Bridge, passed in 1870. Acts of 1870, page 493.

10 At the annual meeting of the Board of Chosen Freeholders of the county of Warren, commenced on Wednesday, the ninth day of May, A. D. eighteen hundred and fifty-five, at Belvidere, in the county aforesaid, amongst other business brought before said board was a petition of Henry Geisse, of Columbia, in said county, requesting that the "Columbia Ferry" across the Delaware river, of which he claims to be the owner, be rated to him, and in his name, and to take effect from and after the first day of April, A. D. eighteen hundred and fifty-six; whereupon the following resolution was adopted by the said board, to wit:

20 "Resolved, That the rates of ferriage at the ferry known as "The Columbia Ferry," across the Delaware river at the village of Columbia, in the county of Warren, be rated in the name of Henry Geisse, as follows, viz.—

	For every five horse team.....	44	cts.
20	" every four horse team.....	37½	"
	" every two horse team.....	25	"
	" every one horse team.....	12½	"
	" every man and horse.....	12½	"
	" every foot passenger.....	03	"
	" every drove of cattle, per head.....	04	"
	" every drove of sheep, per head.....	01½	"
	" every drove of hogs, per head.....	01½	"
	" every drove of horses or mules, per head.....	04	"

30 "The above rating to take effect on and after the first day of April next."

I, James M. Robeson, clerk of the Board of Chosen

Freeholders of the county of Warren, do certify that the foregoing resolution is a true copy from the minutes of the board.

Witness my hand this 4th day of September, 1855.

J. M. ROBESON, *Clerk.*

LEASE FROM HENRY GEISSE TO GEORGE DECKER.

This indenture, made the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-nine, between Henry Geisse (by his attorney, Lewis Stumpf-  
fel, of Columbia, Warren county, New Jersey,) of the first 10  
part, and George Decker, of the same place, of the second  
part, witnesseth that the said Henry Geisse doth hereby  
demise and grant to the said George Decker the ferry-right  
in the village of Columbia aforesaid, for the term of one  
year from first day of April next ensuing, he paying there-  
for the annual rent of sixty dollars at the expiration of said  
term, together with all taxes that may be assessed upon  
said premises during said term.

Said party of the second part hereby agrees to take good  
care of the crafts belonging to said ferry during said term, 20  
and do all necessary and proper repairs to the same, at his  
own expense, during the term, and also to deliver up the  
same in good repair (unavoidable accidents only excepted),  
together with the possession of said ferry right unto the  
said Henry Geisse, without any further notice, fraud, or  
delay. In witness whereof the parties to these presents  
have set their hand and seals the day and year first above  
written.

HENRY GEISSE,  
by his attorney in fact. 30

LEWIS STUMPFEL, [L. s.]

GEORGE DECKER. [L. s.]

Signed and delivered in presence of—

F. SALADE.

## LEASE FROM HENRY GEISSE TO JACOB LAMB.

This indenture, made the first day of April, eighteen hundred and forty-two, between Henry Geisse (by his attorney in fact, Lewis Stumpfel,) of Columbia, Warren county, and State of New Jersey, of the first part, and Jacob Lamb, of Northampton county, Pennsylvania, of the other part, witnesseth that the said Henry Geisse doth hereby demise and grant unto the said Jacob Lamb the right of ferrying from the New Jersey shore, in the village  
 10 of Columbia aforesaid, to the Pennsylvania shore of the river Delaware, for the term of one year from the first day of April as above, to the first day of April, 1843, paying the yearly rent of twenty-five dollars, half-yearly; that is to say, on the first day of October, 1847, and first day of April, 1843, ensuing, being twelve dollars and a half each payment; and the said Jacob Lamb doth for himself, his heirs, his executors or administrators, covenant with the said Henry Geisse, his heirs and assigns, to pay the said  
 20 yearly rent of twenty-five dollars, at the times appointed as aforesaid; and further, that at the expiration of said term he will yield up quiet and peaceable possession of the said ferry to the said Henry Geisse, his heirs and assigns. In witness whereof, the parties have hereunto set their hands and seals, the day and year first above written.

HENRY GEISSE, [L. S.]

by his attorney in fact.

LEWIS STUMPFEL, [L. S.]

JACOB LAMB. [L. S.]

30 Signed, sealed and delivered in the presence of William Heybenger, on the 20th August, 1842.

## LEASE FROM HENRY GEISSE TO GEORGE DECKER.

By and between Henry Geisse, of Columbia, Warren county, New Jersey, and George Decker, of Upper Mount

Bethel township, Northampton county, Pennsylvania, the following articles have this day been agreed upon and concluded :

*Article 1.* The said Henry Geisse does hereby rent unto the said George Decker, the "Columbia Ferry," which is to be conducted in connection with George Decker's incorporated ferry from the Pennsylvania shore, for the term of three years, namely, from the first of April, 1856, until the first of April, 1859.

*Article 2.* The said George Decker hereby covenants and agrees to pay over to the said Henry Geisse, his heirs and assigns, one-half of *all* the tolls received from the "Columbia Ferry," and to settle every week. 10

*Article 3.* George Decker expressly binds himself to keep the said "Columbia Ferry" in strict conformity with its charter, which prescribes that the said ferry shall be conducted by competent and careful ferrymen, who shall constantly, as occasion may require, attend for the purpose of transporting persons, carriages and other property, with all reasonable diligence and attention; and further, that the said "Columbia Ferry" shall be kept and maintained from Henry Geisse's landing, at the foot of Columbus street, in the village of Columbia, so that George Decker is bound to land, at all times, at the locality designated, and nowhere else; acting contrary to the afore mentioned prescriptions of the charter, on the part of George Decker, shall cause a dissolution of the present agreement. 20

*Article 4.* George Decker agrees to find the ferry-wire, but should the same, during the above said term, break and no longer answer its purpose, then the expenses for procuring another good and substantial wire, shall be defrayed, in equal shares, by the contracting parties, and each of them shall accordingly own one-half of the same. 30

*Article 5.* George Decker agrees to find the fastenings for the wire on the Pennsylvania side, as also to make the landing on the Pennsylvania side, at his own expense; and Henry Geisse agrees to find the post for fastening the wire, as also to make the landing place on the New Jersey side, at his own expense.

*Article 6.* In consideration that the ferry boats be used 40

for both of the above mentioned ferries, the contracting parties agree to contribute, in equal shares, to the procurement of the necessary crafts, and each of them shall accordingly own one-half of the same.

*Article 7.* The families of both the contracting parties shall be ferried free of expense.

*Article 8.* Should a bridge be built and completed before the expiration of this lease, then this lease shall be null and void.

- 10 *Article 9.* Excepting in the case mentioned under Article 3, either of the parties shall give warning to the other of them, six months before the expiration of this agreement, namely, on the first of October, 1858; in such a case, the contracting parties shall endeavor to come to an agreement in reference to the disposition to be made of the ferry boats, and in case they should fail to agree, then the crafts in question shall, within four weeks after the warning has been given as aforesaid, be publicly sold, and the proceeds be distributed, in equal shares, among the contracting parties.
- 20 The same shall be done with the wire, provided that the same has been jointly procured as stated under Article 4. In case no warning is given on the first of October, 1858, as aforesaid, then a new lease shall be made for such a term as the said parties may agree upon, which term shall not, however, be for less than one year.

In witness whereof, the present agreement has been drawn up in two conform copies, which have been signed and sealed by the contracting parties.

- 30 Columbia, Warren county, New Jersey, the twenty-sixth day of March, A. D. 1856.

HENRY GEISSE. [L. s.]

GEORGE DECKER. [L. s.]

Signed, sealed and delivered in presence of—

JAMES M. BRUGLER.

It is further agreed, that the proviso in Article 3, to the effect that George Decker shall be bound to land, at all times, at Henry Geisse's landing, at the foot of Columbus street, and shall not be construed to apply to cases of high

water, wind or accidents, which might render it impossible for George Decker to land at the foot of Columbus street.

HENRY GEISSE. [L. s.]

GEORGE DECKER. [L. s.]

Columbia, Warren county, New Jersey, March 26th, 1856.

Witness: JAMES M. BRUGLER.

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APPELLEES' EXHIBITS.

ELECTION.

Notice is hereby given to the subscribers of the stock for building a bridge across the river Delaware, at Columbia, 10 New Jersey, that a sufficient quantity of the capital stock, for that purpose, is now subscribed to organize said company; and they are hereby notified that an election will be held at the house of John J. Vankirk, in the village of Columbia, on Thursday, the 23d day of March next, between the hours of 12 and 4 o'clock, for the purpose of electing, by ballot or proxy, one President, six Directors, one Treasurer, and such other officers as they shall think necessary, to conduct the business of said company according to an act of the Legislature of New Jew Jersey passed the 28th 20 day of March, A. D. 1839, and approved by the Legislature of the State of Pennsylvania the 24th day of June, A. D. 1839, for that purpose.

JOHN I. BLAIR,

JOHN J. VANKIRK,

ANDREW SMITH,

*Commissioners of New Jersey.*

ENOS GOBLE,

JACOB DIETRICH,

GEO. TROXELL,

*Commissioners of Pennsylvania.*

March 2, 1842.

30

The above notice was published in the *Democrat and Argus*, at Easton, Pennsylvania.

## COLUMBIA BRIDGE NOTICE.

Notice is hereby given, that the subscribers, commissioners appointed by the Legislatures of New Jersey and Pennsylvania, will meet at the house of John J. Vankirk, in Columbia, on Tuesday, the 22d day of February; on Wednesday, the 23d day of February, and Thursday, 24th, at the inn of Stroud Hollingshead, Stroudsburg; Friday, 25th, at the inn of Michael Weller, at Dill's Ferry, at ten o'clock in the forenoon of each day, for the purpose of opening books for subscription to the capital stock of the Columbia Delaware Bridge Company, authorized to be incorporated for the purpose of building a bridge over the Delaware at Columbia; and if the capital stock is not all subscribed on those days, the books will continue open at such times and places as the commissioners may direct.

J. I. BLAIR,  
 JNO. J. VANKIRK,  
 ANDREW SMITH,  
 ENOS GOBLE,  
 GEORGE TROXELL, *Sec'y.*  
 JACOB DIETERICH.

20

Dated January 20, 1842.

At a meeting of the Commissioners of the Columbia Delaware Bridge Company, held at the house of J. J. Vankirk, in the village of Columbia, this 20th day of January, 1842, present from New Jersey, John I. Blair, J. J. Vankirk, and Andrew Smith of New Jersey, and Enos Goble, of Pennsylvania, it being a quorum present, they proceeded to business, whereupon, on a motion of John I. Blair, Andrew Smith was unanimously appointed president, and Jno. J. Vankirk appointed secretary.

1st. *Resolved*, That the commissioners proceed to advertise immediately for opening the books for taking up the stock, in the *Belvidere Apollo* and *Warren Journal*, in New Jersey, the *Monroe Democrat*, in Monroe county, Pa., and the

2d. That the said commissioners meet at the following

places: On Tuesday the 22d February, at J. J. Vankirk's, Columbia, N. J., Wednesday, 23d, and 4th, at Stroud Hollingshead's, Stroudsburg, Monroe county, Pa., Friday, 25th, at Michael Weller's, Dill's Ferry, Pa., and at such other times and places as the commissioners then shall direct.

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Size of the piers in the river Delaware, at Columbia, N. J. Width of pier—16 feet wide, 36 feet long, 125 feet space between each pier; 4 piers; 2 abutments, according to the original plan, 720 feet between the abutments.

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10 shares—	John I. Blair.....	\$500	10
10 “	Doctor Green.....	500	
10 “	Eaos Goble.....	500	
20 “	Michael Weller.....	1,000	
10 “	Andrew Smith and Jacob Beck, 500 each	\$250.	
3 “	John J. Vankirk.....	150	
4 “	Wm. Heiberger.....	200	
3 “	John D. Faunce.....	150	

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At a public meeting of the stockholders of “The Columbia Delaware Bridge Company,” held at the house of John J. Vankirk, in the village of Columbia, on the 23d day of 20 March, A. D. 1843, agreeably to public and lawful notice published in a newspaper printed in the county of Northampton, in the State of Pennsylvania, and also in one printed in the county of Warren, in the State of New Jersey, for the space of thirty days, Andrew Smith was unanimously elected president, and Stroud J. Hollingshead secretary, when, on motion, it was

*Resolved*, 1st, That we now proceed to the election of one president, six directors and one treasurer.

2d. *Resolved*, That E. G. Courson and Henry C. Snyder 30 be appointed tellers, to receive and count the votes; where-

upon, the ballots having all been read, the following persons were duly elected :

President—John I. Blair,  
 Directors—Enos Goble,  
 Michael Weller,  
 John Boys,  
 Andrew Smith,  
 John J. Vankirk,  
 William Heiberger.

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Treasurer—Peter Pipher.

ANDREW SMITH, *President.*S. J. HOLLINGSHEAD, *Secretary,*


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Charter of Columbia Bridge Company, passed in 1839.

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Acts of 1838 and 1839, of the State of Pennsylvania, confirming said act.

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Acts of the State of Pennsylvania, passed in 1856, incorporating George Decker's ferry.

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Depositions of C. Henry Geisse and Herman Geisse, in the Supreme Court.

upon the matters having all been read, and following per-  
sons were duly elected:

- President—John I. Blair,
- Director—Eugene Gobie,
- Michael Weller,
- John Boyd,
- Andrew Smith,
- John J. Vastick,
- William Halberger,
- Treasurer—Peter Fisher,
- Arthur Swann, Secretary.

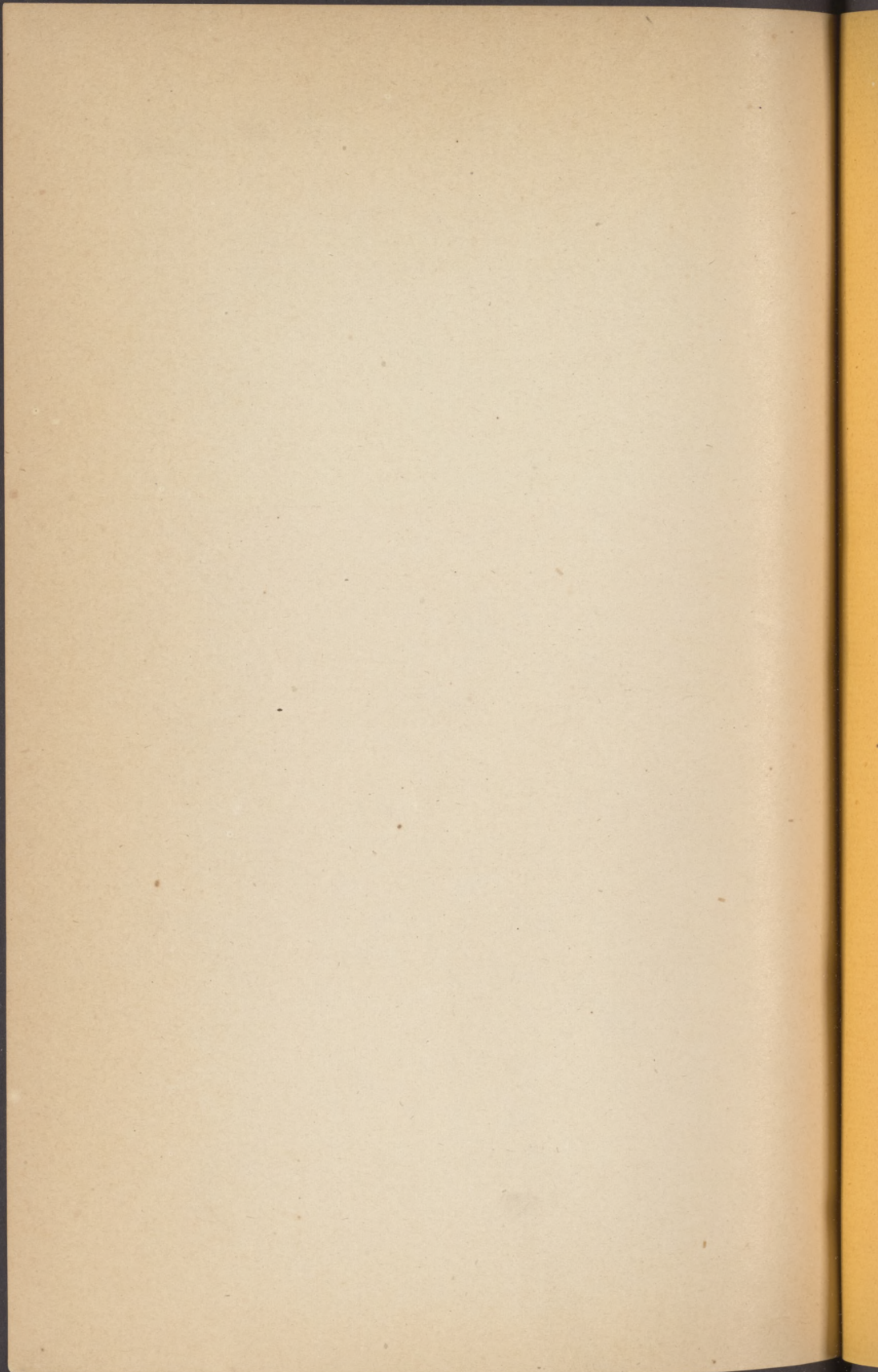
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Charter of Columbia Bridge Company, passed in 1833.

Act of 1835 and 1836 of the State of Pennsylvania, con-  
cerning said act.

Act of the State of Pennsylvania passed in 1836, incor-  
porating George Decker & Co.

Depositions of C. Henry Geiss and Herman Geiss, in  
the Supreme Court.





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