

In Chancery of New Jersey.

TO THE HONORABLE THEODORE RUNYON, CHANCELLOR 10
OF THE STATE OF NEW JERSEY:—

Informing shows unto your Honor, Jacob Vanatta, Attorney General of the State of New Jersey, for and on behalf of said State, and at and by the relation of Francis S. Lathrop, Amzi Dodd, Bennington F. Randolph and Thomas McKeen, comprising the Board of Riparian Commissioners, also for and on behalf of the State of New Jersey.

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1. That the State of New Jersey is seized in fee simple and lawfully entitled as owner to certain lands situate in Jersey City, in the County of Hudson, bounded on the North by the line between the cities of Hoboken and Jersey City, on the South by Twelfth street in Jersey City, on the West by the original line of high water, and on the East by the boundary line between the States of New York and New Jersey in the middle of the Hudson River.

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2. That said tract of land was heretofore at high tide, all under water. That in recent years divers tenants of the State have filled in a portion of said land and reclaimed it, while the larger part of said tract of land is still at all times under the tidal waters of the Hudson River, the tides rising in said river many miles above the place where said land is.

3. That the said Commissioners were appointed by the Governor, by and with the advice and consent of the Senate, pursuant to the act entitled: "An Act to 40

ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April 11, 1864, and the several supplements thereto.

4. The third section of the supplement to said act, approved March 31, 1869, prescribes that "without the grant or permission of said Commissioners no person or corporation shall fill in, build upon, or make any
 10 erection on, or reclaim any of the land under the tide waters of this State in New York Bay, Hudson River or Kill von Kull; and in case any person or corporation so offending, shall be guilty of a purpresture, which shall be abated at the cost and expense of such person or corporation, on application to the Attorney General, under decree of the Court of Chancery, or by indictment in the County in which the same may be, or opposite to and adjoining which said purpresture may
 20 be."

And by the 12th section of the same supplement it is further provided that, "the said Commissioners may commence proceedings in the name of the State of New Jersey, by ejectment or otherwise against persons and corporations trespassing upon or occupying the lands of the State under water, or which were heretofore under water, and the Attorney-General of the
 30 State is hereby required to commence and prosecute such actions as may be instituted, or directed by the said Commissioners."

5. That on or about the 28th day of April, 1875, the said Commissioners did let and demise unto The Morris and Essex Railroad Company for certain rents reserved, to be paid to the State by said railroad company, a certain portion of the land first hereinbefore described, extending from the middle of Fifteenth street, in Jersey City, on the South to and North of Twentieth street, on the North, and from the original line of high water on
 40 the West, out into the Hudson River, to the line fixed in

said river by said Commissioners for the exterior line of piers, but said lease was, upon the express condition that if it should happen that the yearly rent reserved in and by the said lease should at any time thereafter be behind and unpaid for the space of sixty days next after the same should become due, it should be lawful without demand for said rent for the State, by its officers or agents, to enter said demised premises, not only to distrain and to make distress for the arrears of rent, but to re-enter into said demised premises, and the same, and every part thereof, to have, possess and enjoy. 10

So that the State of New Jersey still has in the land so demised an annual rent issuing out of said land, and a reversion therein, as by reference to the said lease, leave of reference to which is hereby prayed will more fully and at large appear.

6. That on or about the 22d day of December, 20 eighteen hundred and seventy-one, the said Commissioners, by lease of the date last stated, for certain rents reserved to the State in and by said lease, did let and demise to The Jersey Shore Improvement Company another portion of the land first hereinbefore described, said last mentioned portion, extending from the middle of Fifteenth street on the North, to Twelfth street on the South, and from the original line of high water on the West into the Hudson River, to the exterior line for piers, established in said river by said Commissioners; 30 but this last mentioned lease was and is also upon the express condition, that if the yearly rent reserved in, and said last mentioned lease should at any time thereafter be behind and unpaid for the space of sixty days next after the same should become due, it should be lawful, without demand for said rent for the State, by its officers or agents, to enter said demised premises, not only to distrain and make distress for the arrears of rent, but to re-enter into said demised premises, and the same and every part thereof, to have, possess and enjoy; so 40

that the State of New Jersey still has in the land so demised to The Jersey Shore Improvement Company an annual rent issuing out of said land, and a reversion therein; as by reference to the said last mentioned lease, leave of reference to which is hereby prayed, will more fully and at large appear.

That on or about the month of November, 1874, an
 10 association of persons calling their association "The Hudson Tunnel Railroad Company," and claiming to have been incorporated by that name, under and by virtue of the act entitled, "An Act to authorise the formation of Railroad Corporations and regulate the same," filed in the office of the Secretary of State of the State of New Jersey, a map and plan of a tunnel for railroad purposes proposed to be made by said The Hudson Tunnel Railroad Company, from a point in Fifteenth street in Jersey City, Westerly of the original line of
 20 high water; thence under the surface of the land and under the water of the Hudson River across said river into the City and State of New York. The route of said proposed tunnel from Provost street in Jersey City, bring beneath the surface of the land in the middle of Fifteen street, Easterly to, or near the exterior line for solid filling, and then with a bend or curve to the North, of about five degrees to extend across said river.

Said tunnel is proposed and intended to be made
 30 twenty-six feet wide and twenty-four feet high, inside measurement, and from a point about fifty feet Easterly of Provost street to the middle of the Hudson River, a distance of over one mile, said tunnel is located and is intended to be built and used in the said land of the State of New Jersey.

8. That in or about the month of November, eighteen hundred and seventy-four, the said The Hudson Tunnel Railroad Company on the said route of said tunnel in the
 40 land of the State of New Jersey, about one hundred feet

Westerly of Hudson street, sunk a working shaft about thirty feet in diameter and thirty or forty feet deep, and lined and supported the sides of said shaft with a brick wall, which shaft still remains open, as this Informant and the said Relators are informed, and charge to be true.

That while said shaft was being sunk, the further prosecution of said work was enjoined by an injunction issued from this honorable Court against the said The Hudson Tunnel Railroad Company, at the joint suit of The Morris and Essex Railroad Company and The Delaware, Lackawanna and Western Railroad Company, and that that injunction or another one obtained by the two companies last named, restrained any further work in the prosecution of the making of said tunnel until on or about the seventeenth day of April, 1876, but on the day last named the said The Hudson Tunnel Railroad Company made application in writing to the Honorable David A. Depue, one of the Justices of the Supreme Court of New Jersey, to appoint a time and place when and where he would hear the application of said last named company to appoint three Commissioners to appraise the value of a certain portion of the lands of the State of New Jersey hereinbefore described, proposed to be taken for the construction and use of said tunnel, and to assess the damage and the compensation to the owner or persons interested in the said real estate. That in the said application the said The Hudson Tunnel Railroad Company alleges that the owner of the land proposed to be taken by it, under and by virtue of said application, is The Morris and Essex Railroad Company, and that The Delaware, Lackawanna and Western Railroad Company are lessees of the same land, but the said application does not in any manner make the State of New Jersey or the Riparian Commissioners, or any officer of the State of New Jersey, a party to said condemnation proceedings.

The land proposed to be condemned in these proceed-

ings are on the route for said tunnel hereinbefore described, and extends from the easterly line of Provost street along the middle of Fifteenth street, below the surface of the ground to a point one hundred and eighty feet Westerly from the bulkhead line of the Hudson River as surveyed. Then curving to the left with a radius of eleven hundred and forty-six feet and twenty-eight one-hundredths of a foot a distance of one hundred

10 feet; thence on a course of five degrees Northerly from the course of Fifteenth street a distance of 1,080 feet more or less to the exterior line of piers established by the Board of Riparian Commissioners, and the said Justice has appointed the 28th day of April, 1876, as the time when he will hear the said application, and there is no reason to doubt, if said application is then made, that he will then appoint Commissioners as asked for. Your Informant further states and charges, that similar condemnation proceedings as against The Jersey Shore Improvement Company, at the suit of The Hudson Tunnel Railroad Company, to condemn a portion of the aforesaid

20 lands of the State of New Jersey on and along the said route of said tunnel are now pending before the said Justice of the Supreme Court, and that Commissioners therein are to be appointed by said Justice on the 28th of April, 1876.

10. That the purpose and intent of the said The Hudson Tunnel Railroad Company is, as soon as possible

30 to get Commissioners appointed in said condemnation proceedings, to then get the Commissioners so appointed to make awards or reports of the damages awarded to the Defendants named in the condemnation proceedings, to thereupon at once tender the amounts so awarded to the corporations in whose favor the awards are made and then immediately enter into possession of said land and engage in and prosecute the construction of said tunnel, on, in and through the said lands of the State from original high water mark in Jersey City to the middle

40 of the Hudson River.

That the said The Hudson Tunnel Railroad Company generally, openly and publicly avow their intent and purpose to be, to proceed with the construction of said tunnel and to complete said tunnel as quickly as possible.

11. That said tunnel when constructed and during the course of its construction will be a purpresture and a nuisance in the said lauds of the State of New Jersey, 10 will impair the value of said lands and will endanger and diminish the revenues of this State from said lands.

12. That as your Informant has been informed and as as he charges to be true neither to the Jersey Shore Improvement Company, nor the Morris and Essex Railroad Company, or the Delaware, Lackawanna and Western Railroad Company who are the only tenants of the State or New Jersey occupying any part or parts of the aforesaid lands has authorized or pretended to authorize the said The Hudson Tunnel Railroad Company to 20 enter on any part of said land, or to locate or construct said tunnel in said land or any part thereof, nor has any of the said tenants of the State in any manner consented to the location or construction of said tunnel in said lands, but all and every of them has and have constantly opposed and still oppose the location or construction of said tunnel in said land, but if all and every of them had consented or were to consent that said tunnel should be located and constructed in said land, such consent would not authorize or justify the 30 construction of said tunnel in said lands of the State of New Jersey.

13. That the said The Hudson Tunnel Railroad Company has not and does not pretend to have any power, right or authority to construct and use its said tunnel in the said lands of the State of New Jersey, except the authority and power it claims to have under and by virtue of the said act entitled: "An Act to authorize the formation of railroad corporations and to regulate 40 the same." Approved April 2d, 1873.

That said act confers no such power or authority on the said The Hudson Tunnel Railroad Company, but on the contrary expressly withholds any such power or authority and expressly prohibits its exercise. The 36th section of said act provides and prescribes as follows:—

10 “*Provided*, That corporations formed under this act shall not take any land under water belonging to this State until the consent of the Riparian Commissioners shall first be had and obtained, who are hereby authorized to convey the same on receiving such compensation as they may fix; *Provided further*, That no corporation organized under this act shall be authorized to take, use or occupy by condemnation any lands belonging to the State of New Jersey.”

20 14. The said Informant states, and the said Relators show, that the Board of Riparian Commissioners has not at any time consented that the said The Hudson Tunnel Railroad Company, should or may take or use any of the lands of the State of New Jersey hereinbefore described, nor has the Board of Riparian Commissioners, nor any of the members of said board, at any time bargained, sold, leased, granted or conveyed any of the land of the State of New Jersey, hereinbefore described, to the said The Hudson Tunnel Railroad Company, nor can said Riparian Commissioners or the Board of Riparian Commissioners hereafter lease, sell or in any manner convey any of the
30 lands of the State of New Jersey, hereinbefore described, to the said The Hudson Tunnel Railroad Company, without violating and impairing the obligations of the contracts between the State of New Jersey and the aforesaid tenants of the State contained in the aforesaid leases of portions of the aforesaid lands of the State.

40 15. That the said The Hudson Tunnel Railroad Company has no power, right or authority to take, use or occupy any of the aforesaid lands of the State by condemnation, and therefore said last named company should not be permitted in respect to any portion of said lands

to institute or prosecute any proceedings of condemnation against any person or corporation whatever, as such proceedings must necessarily prejudice and complicate the rights of the State in and to said land, and cloud and injure its title to said land, and therefore the said The Hudson Tunnel Railroad Company should be enjoined from possessing, entering, going or being on said lands of the State of New Jersey, or any part of them, for the purpose of constructing said tunnel therein, and from making said tunnel on or in said land, and from doing any work or act in or on said land, for or towards making said tunnel, or any part thereof, and from condemning said land or any part of it, and from doing any act or thing against any person or corporation whatsoever, in or about or towards, or for the purpose of condemning said land or any part thereof. 10

Your Informant and the said Relators, therefore humbly pray that the said, The Hudson Tunnel Railroad Company may answer this information paragraph by paragraph, fully and particularly, but without oath, answer under oath being waived. That the said The Hudson Tunnel Railroad Company, its officers, agents, workmen, and servants may be perpetually enjoined from possessing, entering upon, going or being upon the said land of the State of New Jersey, or any part of them for the purpose of making said tunnel on or in said land, and from doing any work or act in or on said land for or towards making said tunnel, or any part thereof, and from condemning said land or any part of it, and from doing any act or thing against any person or corporation whatsoever, in, or about, or towards, or for the purpose of condemning said land, or any part thereof. 20 30

And that the said Informant and Relators, may have such other and further relief in the premises as shall be agreeable to equity, and good conscience. May it please your Honor, the premises considered to grant unto your 40

Informant and said Relators, not only the State's writ of injunction, conformable to the foregoing prayer, issuing out of, and under the seal of this Court, but also, the State's writ of subpoena, issuing out of, and under the seal of this Court, to be directed to the said The Hudson Tunnel Railroad Company, commanding it on a certain day, and under a certain penalty, to be, and appear in this Honorable Court, then and there to answer the pre-
 10 mises, and to stand to abide and perform such orders and decrees in the premises as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your Informant as in duty, &c.

JACOB VANATTA,
Attorney General of the State of New Jersey.

20 *State of New Jersey, Morris County, ss. :*

FRANCIS S. LATHROP, of said county, being duly sworn, on his oath, saith, that he is chairman of the Board of Riparian Commissioners of the State of New Jersey, and has been chairman of said board since in the year 1869, and that deponent requested the Attorney General to present to the Court of Chancery an information similar to the foregoing information, on behalf of said board to restrain The Hudson Tunnel Railroad Company from
 30 constructing its tunnel in the lands of the State, described in the foregoing information. Deponent further saith, that said board has never made any grant, conveyance, lease, or license whatsoever to The Hudson Tunnel Railroad Company, to construct its tunnel, or to do any act in or on the land described in the foregoing information.

FRANCIS S. LATHROP.

Sworn and subscribed before me, 27 April, 1876.

AMOS C. RATHBUN,
Justice of the Peace.

State of New York, County and City of New York.: ss.

WILLIAM UNRUH of Morristown, New Jersey, being duly sworn on his oath, saith that he is a civil engineer, and is well acquainted with the lands described in the foregoing information, and is acquainted with the location of the Hudson Tunnel Railroad in said land, and said location is described with substantial accuracy in the foregoing information. That deponent knows that the Hudson Tunnel Railroad Company made the working shaft in 15th street described in the foregoing information, and deponent has for a long time understood that said Company intended to continue the construction of said tunnel as soon as they shall be freed from the injunctions which have heretofore restrained their operations, and that said company has some building materials on said land near said shaft, and a building erected by them for an engine and shaft house.

WILLIAM UNRUH. 20

Sworn to and subscribed before me, this 27th day of
[L. s.] April, 1876.

LUDWIG R. MILLER,
*Commissioner for the State of New Jersey,
in New York.*

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State of New York, County and City of New York.: ss.

SAMUEL SLOAN, of the County and City of New York, being duly sworn on his oath, saith that he is the President of the Morris and Essex Railroad Company and also of the Delaware, Lackawanna & Western Railroad Company, and has held both of said offices for more than five years last past, and that neither one of said companies has ever given any consent that the Hudson Tunnel Railroad 40

Company should or may use or occupy for the construction of its tunnel or for any purpose, any land in Jersey City, New Jersey, east of Provost street, and in or near to Fifteenth street, and whatever said tunnel company has done in or near to said Fifteenth street, has been as trespassers and without the license, authority or consent of either of the companies first above named.

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SAM. SLOAN.

Sworn and subscribed before me, this 27th of April,
[L. s.] 1876, as witness my official seal.

LUDWIG R. MILLER,

*Commissioner for the State of New Jersey
in New York.*

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State of New York, County and City of New York, ss:

MOSES TAYLOR, of said city, being duly sworn on his oath, saith, that he now is and for more than four years has been the President of The Jersey Shore Improvement Company, and that said company has never consented that the Hudson Tunnel Railroad Company could or might occupy or use any land east of Provost street and in or near Fifteenth street, in Jersey City, New Jersey, for the purpose of constructing its tunnel or for any pur-

30 pose, and whatever said company (tunnel company) has done in or on said land has been against the will and wish, and without the license, authority or consent of deponent's said company.

MOSES TAYLOR.

Sworn and subscribed before me, this 27th of April,
[L. s.] 1876, as witness my official seal.

LUDWIG R. MILLER,

*Commissioner for the State of New Jersey
in New York.*

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State of New York, County and City of New York, ss:

JAMES T. HOUGH, of Jersey City, New Jersey, being duly sworn on his oath, saith, that he is acquainted with DeWitt C. Haskin, President of the Hudson Tunnel Railroad Company, and on Monday, 24th of April, 1876, said Haskin had a conversation with deponent, in which said Haskin complained of the delays to which said company had been subjected by injunction in the prosecuting 10 of the work of making the tunnel of said company. Deponent then asked said Haskin whether he now proposed to go on with the work of making said tunnel of said company, and he said they did, and that he was going right on with said work.

J. T. HOUGH.

Sworn and subscribed before me.

R. F. STOCKTON, *M. C. C.*

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On filing this information and the annexed affidavits, let an injunction issue pursuant to the prayer of the information.

Dated April 28, 1876.

THEODORE RUNYON, *C.*

A true copy,

H. S. LITTLE, *Clerk.*

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New Jersey to wit: The State of New Jersey to The Hudson Tunnel Railroad Company, its officers, servants and agents and each and every of them, greeting :
[L. s.]

Whereas, it hath been represented us, in our Court of Chancery, on the part of Jacob Vanatta, Attorney-General of the State of New Jersey, on the relation of Francis S. Lathrop, Amzi Dodd, Bennington F. Ran- 40

dolph and Thomas McKeen, composing the Board of Riparian Commissioners of New Jersey, Informant, that he has lately exhibited his information of complaint against you, the said The Hudson Tunnel Railroad Company, Defendant, to be relieved touching the matters set forth in the said information, in which it is, among other matters set forth, that you, the said Defendant, are combining and confederating with others to injure the State of New Jersey, touching the matters set forth in the said information, and that the actings and doings of you, the said Defendants, are contrary to equity and good conscience.

We, therefore, in consideration of the premises, and of the particular matters set forth in the said bill, do strictly enjoin and command you, the said The Hudson Tunnel Railroad Company, your officers, servants and agents, and all and every, the persons before mentioned, and each and every of you, under the penalty that may fall thereon, that you and every of you do absolutely desist and refrain from entering upon the land of the State of New Jersey, situate in Jersey City, in the County of Hudson and State of New Jersey, bounded on the North by Twentieth street, on the South by Twelfth street, on the West by the original line of high water, near Provost street, and on the East by the boundary line between the States of New York and New Jersey in the middle of the Hudson River, and from going or being upon the said land of the State of New Jersey, or any part thereof for the purpose of making the tunnel of you. The Hudson Tunnel Railroad Company on or in said land and from doing any work or act in or on said land, for or towards making said tunnel, or any part thereof, and from condemning said land, or any part of it, and from doing any act or thing against any person or corporation whatever, in or about or towards or for the purpose of condemning said land or any part of it, until you, the said Defendant, shall have fully answered the said infor-

mation of complaint and our said Court shall make other order to the contrary.

Witness his Honor, THEODORE RUNYON, our Chancellor,
at Trenton, the twenty-eighth day of April, in
the year of our Lord, one thousand eight hun-
dred and seventy-six.

JACOB VANATTA, Att'y Gen'l. 10

H. S. LITTLE, Clerk.

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IN CHANCERY OF NEW JERSEY.

10	BETWEEN	}	<i>On Information Notice.</i>
	JACOB VANATTA, Attorney General, ex rel, THE BOARD OF RIPARIAN COM- MISSIONERS,		
	<i>Informant,</i>		
	AND		
	THE HUDSON TUNNEL RAILROAD COM- PANY,		
	<i>Defendant.</i>		

20 Take notice that I shall apply to the Chancellor of the State of New Jersey, on Monday the fifteenth day of May, instant, at ten o'clock in the forenoon of that day, or as soon thereafter as I can be heard, at his Chambers in the City of Newark, N. J., for an order dissolving the injunction heretofore granted in this cause for want of equity in the bill, or so to modify the injunction as to permit the said Defendants to proceed with the application for condemnation.

30 Dated May 3, 1876.

HENRY S. WHITE, Sol. of Def'ts.

To Hon. JACOB VANATTA, Attorney General.

IN CHANCERY OF NEW JERSEY.

BETWEEN
THE HUDSON TUNNEL RAILROAD COM-
PANY,

Defendant,

AND

JACOB VANATTA, Attorney-General,
ex rel, THE BOARD OF RIPARIAN
COMMISSIONERS,

Informant.

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Sir:—You are hereby notified to produce before the
Chancellor at the hearing of the motion in above stated
cause, notice of which has been given you, the original
lease from the Riparian Commissioners, or a copy of the
same, and all papers relating thereto, and all and every
deed or grant from the Riparian Commissioners to The
Delaware, Lackawanna and Western Railroad Company,
and The Morris and Essex Railroad Company, and The
Jersey Shore Improvement Company, or either of them,
or agreement relating thereto, or copy or copies of the
same.

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Dated May 12, 1876.

Yours respectfully,

HENRY S. WHITE, Sol. of Defdt.

To JACOB VANATTA, Attorney-General.

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IN CHANCERY OF NEW JERSEY.

BETWEEN		}	<i>On Information Decree.</i>	
10	JACOB VANATTA, Attorney General, ex rel, THE BOARD OF RIPARIAN COM- MISSIONERS,			<i>Informant,</i>
AND				
	THE HUDSON TUNNEL RAILROAD COM- PANY,			<i>Defendant.</i>

20 A motion having been made to dissolve the injunction
in this cause for want of equity in the information or to
modify the same, and the matter having been debated
by Messrs. Williamson and White, for the motion, and
Mr. Vanatta, Attorney General, contra. It is ordered
that the said injunction be modified so as to permit the
Defendants to proceed to condemn the said land leased
to The Morris and Essex Railroad Company and to The
Jersey Shore Improvement Company as against the
lessees or their assigns, otherwise, the said injunction to
30 to stand for the protection of the rights of the State.

THEODORE RUNYON,

Chancellor.

Dated May 26, 1876.

A true copy.

H. S. LITTLE, *Clerk.*

JACOB VANATTA, Attorney General,
ex rel. THE BOARD OF RIPARIAN
 COMMISSIONERS,

vs.

THE HUDSON TUNNEL RAILROAD
 COMPANY.

May Term, 1876.
Opinion.

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On motion to dissolve injunction on the information
 and the affidavits annexed.

Mr. B. Williamson and Mr. H. S. White for the 20
 motion.

The Attorney General, contra.

The information is filed by the Attorney General at
 the relation of the Board of Riparian Commissioners for
 an injunction against The Hudson Tunnel Railroad Com-
 pany to restrain them from "possessing, entering upon,
 going or being upon the land of the State mentioned in
 the information or any part thereof, for the purpose of
 making their tunnel on or in that land, and from doing 30
 any work or act in or on that land, for or towards making
 the tunnel or any part thereof, and from condemning the
 land or any part of it, and from doing any act or thing
 against any person or corporation whatsoever in, about or
 towards or for the purpose of condemning that land or
 any part thereof."

The land referred to is described in the information as
 being bounded on the North by the line between the
 cities of Hoboken and Jersey City, on the South by 40

Twelfth street in Jersey City, on the West by the original line of high-water mark, and on the East by the boundary line between the States of New York and New Jersey in the middle of the Hudson river. The information states that the tract was heretofore at high-tide all under water, that in recent years divers tenants of the State have filled in a portion of the land and reclaimed it, while the larger part of it is still at all times under the tidal waters of the Hudson river; that the Riparian Commissioners were appointed pursuant to the Act entitled "An Act to ascertain the rights of the State and of riparian owners in the land lying under the waters of the bay of New York and elsewhere in this State," approved April 11th 1864, and the several supplements thereto; that the third section of the supplement of March 31st, 1869 to that Act, provides that without the grant or permission of the Commissioners, no person or corporation shall fill in or build upon or make any erection on or reclaim any of the land under the tide waters of this State in New York Bay, Hudson River or Kill von Kull; and that any person or corporation so offending, shall be guilty of a purpresture, which shall be abated at the cost and expense of such person or corporation, on application of the Attorney General, under decree of the Court of Chancery, or by indictment in the County in which the same may be, or opposite to and adjoining which the purpresture may be;" that by the twelfth section of the same supplement it is further provided that the Commissioners may commence proceedings in the name of the State of New Jersey, by ejectment or otherwise against persons and corporations trespassing upon or occupying the lands of the State under water, or which were theretofore under water, and the Attorney General is thereby required to commence and prosecute such actions as may be instituted, or directed by the Commissioners; that on or about the 28th day of April, 1875, the said Commissioners let and demised to The Morris and Essex Railroad Company for certain yearly rents reserved, to

be paid by them to the State, a part of the land above described extending from the middle of Fifteenth street, in Jersey City on the South, to and North of Twentieth street, on the North and from the original line of high water, on the West out into the Hudson River to the line fixed in the river by the Commissioners for the exterior line of piers; but the lease was upon the express condition that if it should happen that the yearly rent should at any time be in arrear for sixty days next after the same should become due, it should be lawful for the State without demand for the rent to enter the demised premises, not only to distrain but to re-enter them, to have, possess and enjoy them. 10

The information further states that on or about the the 22nd day of December, 1871, the Commissioners by lease of that date, for certain yearly rents, reserved to the State, let and demised to The Jersey Shore Improvement Company another portion of the land extending from the middle of Fifteenth street on the North to Twelfth street on the South, and from the original line of high water on the West into the Hudson River to the exterior line for piers, upon the like condition as the first mentioned lease; so that the State still has in the lands so demised to those companies an annual rent issuing out of the lands and a reversion therein. 20

The information further states that on or about the month of November, 1874, The Hudson Tunnel Railroad Company, claiming to have been incorporated under the general railroad law, filed in the office of the Secretary of State a map and plan of the tunnel for railroad purposes, which they proposed to construct from a point in Fifteenth street, in Jersey City, Westerly of the original line of high water; thence under the surface of the land and under the water of the Hudson River across the river into the City of New York; the route of the proposed 30 40

tunnel from Provost street in Jersey City being beneath the surface of the land in the middle of Fifteenth street easterly to or near to the exterior line of solid filling, and then with a bend or curve to the North of about five degrees, to extend across the river. The tunnel is to be twenty-six feet wide and twenty-four feet high, inside measurement, and from a point about fifty feet Easterly of Provost street to the middle of the river, a distance

10 of over a mile; it is located and intended to be built and used in the land of this State; that in or about November, 1874, the tunnel company on the route of the tunnel in the land of this State, about one hundred feet westerly of Hudson street, sank a working shaft about thirty feet in diameter and thirty or forty feet deep, and lined and supported the sides of it with a brick wall, which shaft still remains open; that while the shaft was being sunk the further prosecution of the work was stopped by injunction from this Court, issued against the tunnel com-

20 pany at the joint suit of The Morris and Essex Railroad Company and The Delaware, Lackawanna and Western Railroad Company until on about the 17th of April, 1876, and that on that day the tunnel company made application in writing to the Honorable David A. Depue, one of the Justices of the Supreme Court of this State, to appoint a time and place to hear their application for the appointment of commissioners to appraise the value of a certain portion of the above described land of the State proposed to be taken for the tunnel, and to assess the

30 damages and compensation to the owner or persons interested in that land; that in the application the tunnel company allege that the owner of the land proposed to be taken by them under the application is The Morris and Essex Railroad Company, and that The Delaware, Lackawanna and Western Railroad Company are lessees of the same land; that the application does not in any way make the State or the Riparian Commissioners, or any officer of the State, party to the condemnation proceedings; that the land proposed to be condemned in

40 those proceedings is on the route for the tunnel above

described, and extends from the Easterly line of Provost street, along the middle of Fifteenth street, below the surface of the ground, to a point 180 feet Westerly from the bulkhead line of the Hudson river as surveyed; thence curving to the left, with a radius $1,146\frac{21}{100}$ feet, a distance of 100 feet, and thence in a course of five degrees northerly from the course of Fifteenth street, a distance of 1,080 feet, more or less, to the exterior line for piers; that the Justice appointed the 28th day 10 of April, 1876, to hear the application, and that there was no reason to doubt that if the application were then made, he would then appoint commissioners accordingly.

The information further states that similar condemnation proceedings, as against The Jersey Shore Improvement Company, at the suit of the Tunnel Company, to condemn a portion of the lands of the State, leased to the Improvement Company, are pending before the said Justice, and that commissioners therein were to be appointed by him on the 28th of April, 1876; that the avowed purpose and intent of the Tunnel Company are to obtain awards in the proceedings for condemnation as soon as possible, and at once to tender the amounts awarded, and then forthwith to take possession of the land and construct the tunnel therein to the State line; that the tunnel, when constructed, and during the course of its construction, will be a purpresture and a nuisance in the lands of the State; will impair their value, and endanger and diminish the revenues of the State from them; that neither the Improvement Company nor the railroad companies, who are the only tenants of the State occupying any part of the lands, have authorized or pretended to authorize the Tunnel Company to enter on any part of the land or to locate or construct the tunnel therein, or consented to its location or construction there; but that all of them have constantly opposed the location or construction of the work; but the Attorney General insists 40

that if all of them had consented or were to consent, such consent would not authorize or justify the construction of the tunnel in the lands of the State. The information further states that the Tunnel Company have no power, right, or authority to construct or use the tunnel in the lands of the State; that the Board of Riparian Commissioners has not at any time consented that the company may take or use any of the above described lands of the State, and that it has not, nor have any of its members, at any time, bargained, sold, leased, granted, or conveyed any of that land to the Tunnel Company; and that neither the Riparian Commissioners nor the board can hereafter lease, sell, or in any manner convey any of that land to the Tunnel Company without violating and impairing the obligations of the contracts between the State and its tenants contained in the leases for the land; and that the Tunnel Company having no right, power, or authority to take, use, or occupy any of the land of the State by condemnation, should not be permitted to institute or prosecute any proceedings of condemnation against any person or corporation whatever in respect to the land, as such proceedings must necessarily prejudice and complicate the rights of the State in and to the land, and cloud and injure its title thereto.

On the filing of the information an injunction was issued pursuant to the prayer.

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THE CHANCELLOR:

The Defendants move to dissolve the injunction on the ground of want of equity in the information. Part of the land in respect of which the aid of the Court is sought is held by The Delaware, Lackawanna and Western Railroad Company, under the lease from the Riparian Commissioners to The Morris and Essex Railroad Company; another part is held by The Jersey Shore

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Improvement Company, under like lease. Both leases are perpetual. The State has the reversion in fee in those parts, and holds the rest (so much as is between the exterior line of piers and the State line) in fee simple absolute.

It appears by the affidavits of the President of The Delaware, Lackawanna and Western Railroad Company, and the President of The Jersey Shore Improvement Company, attached to the information, that neither of the above mentioned companies has consented to the Defendants taking any part of the premises held by them respectively under lease. It appears also by the affidavit of the Chairman of the Board of Riparian Commissioners that that board has never made any grant, conveyance or lease, or granted any license whatsoever to the Defendants to construct their tunnel, or to do any act on or in the land described in the information, and that the information is filed at the request of the board.

That the Defendants have no right to construct their tunnel in the land of the State without first obtaining consent of the Board of Riparian Commissioners, unless such right was conferred upon them by the Act of March 21st, 1874.

Pamph. L. 1874, p. 1167, by which the time for completing the first mile of their tunnel, and for completing the entire tunnel and railroad is extended, is almost too obvious for remark. The general railroad law under which the tunnel company was formed provides (sec. 37) that corporations formed under that act shall not take any land under water belonging to the State until the consent of the Riparian Commissioners shall first be had and obtained, and those commissioners are thereby authorized to convey the land on such compensation as they themselves may fix. The act further provides that no corporation organized under that act shall be authorized to take by condemnation

any lands belonging to the State. It is clear then that unless the right to occupy the land belonging to the State was, as the Defendants' counsel contends that it was, granted by implication by the act of March 21st, 1874, the Defendants have no right to occupy them. That act recognizes the Defendants as a corporation under the laws of this State, and extends the time for the completion of their work, as above stated, and it does

10 no more. It was argued on the part of the Defendants that because that act was passed subsequently to the general railroad law and recognizes the Defendants as a corporation under the laws of this State and gives them time for the completion of their work; the Legislature may be presumed to have thereby given the consent of the State to their occupation of so much of the land of the State as the Defendants proposed, as the Legislature must have known, to occupy. It will be enough on this point to refer to the decision of the Court of Errors in

20 *Stevens v. Paterson and Newark R. R. Co.*, 5 *Vroom*, 530, 553, in which it was held that a statute giving a railroad company the right to lay their road along a river and to acquire the rights of the shore owners, will not be construed to give by implication the right to take the land of the State lying below high water line. Said the Court "The State is never presumed to have parted with any part of its property in the absence of conclusive proof of an intention so to do." There is no evidence

30 of an intention to grant the land of the State to the Defendants in the Act of March 21st, 1874. On the case made by the information, the Defendants have no right to occupy any part of the lands of the State. Nor can they obtain any by condemnation. The Attorney-General insists that they can obtain none from the Riparian Commissioners; for, according to the information, they are prohibited by existing covenants made between them and their lessees from giving such consent.

The State is entitled to protection against the threat-

40 ened injury to the reversion. That injury consists in

taking possession of part of the property for and adapting it to permanent and exclusive occupation as part of a great work. The grounds on which the injunction on this point rests, are that the Defendants intend, as their president states, when they shall have made condemnation as against the lessees, to proceed at once with the construction of their tunnel. But it is urged, on behalf of the Defendants, that the injunction should be dissolved at least so far as it restrains them from proceeding to con- 10 demn the rights of the lessees in the premises. It is insisted that the State should not be permitted to interfere with the proceedings against its lessees. Were the proceedings against strangers there would be no ground for nor propriety in the interference. But it is urged on the other hand that the proceedings being against the lessees of the State, in respect to the land in which the State has a reversion in fee which may be affected, if not by, yet by means of, or through the proceedings in condemnation, and it appearing by the information that the pro- 20 ceedings must necessarily, in view of the covenant made by the State with the lessees referred to in the information, be fruitless, this Court should, in the interest of all parties, stop the proceedings against the lessees.

This is undoubtedly true if the alleged impossibility exists. If it be assumed that the lessees will not consent to the granting by the Riparian Commissioners to the Defendants of the right of way in the land under water beyond the exterior line of piers, still this Court cannot 30 assume that the right of way cannot be obtained.

The covenant may not be found to present an insuperable barrier to the Defendants' work. It appears to be a covenant based on the provision in that behalf contained in the fourth section of the supplement to the Act "to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State" (*Pamph. L.*, 1869, p. 1017), and to be to the effect that the State will not make 40

or give any grant or license, power or authority affecting lands under water in front of the lands leased to the above mentioned lessees. And here important considerations in this controversy present themselves.

Is this covenant to be held to absolutely deprive the State of all power of disposition over the land in question? Will it not be construed to prohibit only such
 10 grants, licenses, powers and authority as will interfere with the full and complete enjoyment of the leased premises, and as is reasonably to be presumed to have been in the contemplation of the parties to the covenant? Will the grant of right of way to the Defendants far down below the bottom of the river in anywise interfere with the enjoyment of the leased premises?

Besides these considerations, there is also the query suggested in the opinion of the Court of Errors in *State*
 20 *v. Hudson Tunnel Railroad Co.*, decided at the November Term, 1875, whether the lessees may not be deprived by condemnation, of the benefit of the covenant so far as may be necessary for the grant of the right of way to the Defendants. I cannot assume that the Defendants will not be able to acquire the right of way. There is even no ground for assuming that the Riparian Commissioners, if they find themselves free to do so, will not grant it.

30 The injunction should be modified so as to permit the Defendants to proceed to condemn, as against the lessees.

Otherwise it will stand for the protection of the rights of the State. The Defendants have declared their intention to proceed immediately with their work after the conclusion of the proceedings for condemnation against the lessees. They not having acquired the right to do so as against the State, the rights of the latter should be protected.

IN CHANCERY OF NEW JERSEY.

BETWEEN

JACOB VANATTA, Attorney-General, ex
rel, THE BOARD OF RIPARIAN COM-
MISSIONERS, *Informant.*

AND

THE HUDSON TUNNEL RAILROAD COM-
PANY. *Defendant.*

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On information. Appeal.

The Defendants hereby appeal from so much of the
order of the Chancellor, dated the twenty-sixth day of
May, eighteen hundred and seventy-six, as denies the
motion to dissolve the injunction heretofore granted on the
information filed in this cause to the Court of Errors and
Appeals in the last resort in all cases of law.

Dated May 26, 1876.

HENRY S. WHITE,
Sol'r and of Counsel with Defendants.

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

May 26, 1876.

HENRY S. WHITE,
Counsel with Appellant.

COURT OF APPEALS IN THE LAST RESORT
IN ALL CAUSES OF LAW.

10	<p style="text-align: center;">BETWEEN</p> <p style="text-align: center;">THE HUDSON TUNNEL RAILROAD COM- PANY,</p> <p style="text-align: center;"><i>Appellants,</i></p> <p style="text-align: center;">AND</p> <p style="text-align: center;">JACOB VANATTA, Attorney General, ex rel, THE BOARD OF RIPARIAN COM- MISSIONERS,</p> <p style="text-align: center;"><i>Appellee.</i></p>	<p style="font-size: 3em;">}</p> <p style="text-align: center;"><i>On Information Petition of Appeal.</i></p>
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*To the Honorable the Court of Appeals in the last re-
sort in all causes of law:*

The humble petition of the Hudson Tunnel Railroad Company, the Appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by an order made in the above stated cause by His Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-sixth day of May, in the year eighteen hundred and seventy-six, in this respect to wit: That the said order denies the motion to dissolve the injunction granted in the said cause, and your petitioner humbly appeals from so much of the said order of the Chancellor as retains the said injunction, upon the ground that the same is erroneous, for that the said motion to dissolve the said injunction should have been granted. Your petitioner therefore prays that the said decree of the Chancellor may be in the particulars afore-

30 said reversed, set aside, and for nothing holden; and that

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your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

Dated May 26th, 1876.

HENRY S. WHITE,
Sol'r and of Counsel with Appellants.

A true copy.

HENRY C. KELSEY, *Clerk.*

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THE UNIVERSITY OF CHICAGO

STATE OF ILLINOIS

OFFICE OF THE ATTORNEY GENERAL

IN SENATE

REPORT

OF THE

COMMISSIONERS

New Jersey Court of Errors and Appeals.

JACOB VANATTA, Attorney-General, ex
rel, THE BOARD OF RIPARIAN COM-
MISSIONERS,

Informant,

AND

THE HUDSON TUNNEL RAILROAD COM-
PANY,

Defendant.

*Points of
Deft's Counsel.*

STATEMENT.

The Hudson Tunnel Railroad Company has been duly incorporated under and pursuant to the laws of the State of New Jersey.

The legality of its incorporation and its powers were established by this Court in the case of the M. & E. R. R. Co. *vs.* The H. T. R. R. Co. at the last term, and the only question now is as to the exercise of those powers in the condemnation of the land described in the petition.

The motion before the Court now is to dissolve the injunction as modified, restraining the Defendants from taking the land described in their petition for the appointment of Commissioners.

POINTS.

The injunction should be dissolved—

1st. For want of equity in the information.

2d. That the lease from the State to The Morris & Essex Railroad Co. and The Jersey Shore Improvement Co. being perpetual, is equivalent to a grant in fee.

Black *vs.* Del. & Rar. Canal Co., 9
C. E. Green 465.

3d. That the Defendants have the right to condemn so much of the land as is described in their petition for the appointment of Commissioners, and when condemned to take subject to the lease.

4th. That the right of eminent domain is an essential attribute of the State sovereignty, so paramount that it

could not be ceded away, so as to preclude the Legislature in any case from its exercise.

5th. That the Defendants have not applied to condemn any land of the State. The land sought to be condemned and taken is a portion of that described in the leases or grants to The M. & E. R. R. Co., and The Jersey Shore Improvement Co., by which the State has divested itself virtually of all interest therein, except the right of eminent domain.

6th. That the Defendants have the right to construct their road through the lands of the State of New Jersey, under and by virtue of the act of the Legislature of the State of New Jersey, as follows :

“ An Act to extend the time for completion of The Hudson Tunnel Railroad.” Approved March 21, 1874.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey:* That “The Hudson Tunnel Railroad Company,” a corporation duly incorporated under the laws of the State of New Jersey, is hereby allowed two years from the passage of this act in

which to complete its first mile of tunnel ; *provided*, that it shall complete its entire tunnel and railroad within four years from the passage of this act.

2. *And be it enacted*: That this act shall take effect immediately.

Chap. 338, page 1167, Laws of New Jersey, 1874.

Indiana Central R. R. Co. *vs.* State, 3 Indiana, 421.

Cooley Constitutional Limitations, 2d Ed., 523.

Lexington R. R. *vs.* Applegate, 8 Dana (Ky.) 289.

7th. As to the covenant in the lease, that the State will not make any grant or give any authority as to the lands in front of the demised premises, that will constitute an element in its value to be computed by the Commissioners.

8th. That The Morris and Essex Railroad Co. and The Jersey Shore Improvement Company having become

virtual owners of the land sought to be condemned by a perpetual lease, and the State having divested itself of all ownership therein, by said lease, no question can arise in this cause which this Court has not already passed upon in the case of *The Morris and Essex Railroad Company vs. The Hudson Tunnel Railroad Company* decided at the March Term of this Court. This matter is *res adjudicata*.

9th. That all questions involved in this case were decided by the Court of Errors and Appeals in the case of *M. & E. R. R. Co. et al., vs. H. T. R. R. Co.* at the March Term last.

HENRY S. WHITE,

Solicitor and of Counsel with Defendant.







