

NEW JERSEY

Court of Errors and Appeals.

EDWARD BETTLE ET AL., THE STATE

BOARD OF ASSESSORS ET AL.,

Plaintiffs in Error,

v.

THE STATE, THE MORRIS AND ESSEX

RAILROAD COMPANY, AND THE DELA-

WARE, LACKAWANNA AND WESTERN

RAILROAD COMPANY, LESSEES,

Defendants in Error.

On Writ of
Error to the Su-
preme Court.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

The Record, page 69, shows that in 1884 the State Board of Assessors imposed the following taxes upon the property and franchise of the prosecutors, to wit—

Upon the tangible personal property, including locomotives, cars, &c., valued at \$2,828,270.97, a tax of	\$14,151 35
Upon real estate (other than main stem, 100 feet wide), used for railroad purposes, valued at \$6,645,492.54, a tax of	\$33,227 37
Upon "the franchise," valued at \$10,450,000, a tax of	\$52,250 00
And a <i>local tax</i> upon real estate (other than main stem) used for railroad purposes, valued, as above, at \$6,645,492.54, a tax of	\$66,323 07
And also upon the main "stem," 100 feet wide, valued at \$10,091,907, a State tax of	\$50,459 54

These taxes are imposed under "An act for the taxation of railroad and canal property," approved April 10, 1884, (*P. L., 1884, page 142.*)

The legislation under which the *present status* of the prosecutors was attained, is as follows:

Morris and Essex Railroad Company.

1835, *P. L., page 25. Sec. 6.* Authorizes railroads to be constructed from Morristown to Elizabeth or

Newark, "not exceeding 66 feet wide;" and section 13 authorizes the purchase of *two acres* of land at *either terminus*.

1835, P. L., page 25. Sec. 10. Authorizes the construction or purchase and the placing on the railroad of machines, engines, wagons, carriages or vehicles, for transportation of passengers or property thereon. (A separate power from Sec. 6.)

Sec. 16. The charter is perpetual unless terminated by the purchase of the road by the State within fifty years from its completion.

1835, P. L., page 25. Sec. 15. Imposes a tax of one-half per cent. per annum on the cost of said road as soon as the net proceeds of said railroad amounted to 7 per cent. upon its cost.

1836, P. L., page 223. Sec. 2. Authorizes the construction of branch railroads from the main road to Boonton, Denville, Rockaway and Dover, with the same powers, and subject to *all the restrictions* of act of 1835.

1838, P. L., page 125. Sec. 4. Authorizes purchase and holding of land not exceeding *five acres*, at *either terminus*, or at *any intermediate point*. The assessment shown on the Record, pages 11 and 12, discloses that

the company holds *terminal lands*, not of 5 acres, but of 22.75 acres in *Hoboken*, and of 99.78 acres in *Jersey City*, together 122.50 acres, being 117.50 acres more than the 5 acres, which were lawfully held in 1865.

1851, *P. L.*, 28. *Sec. 1.* Authorizes extension of railroad from Dover to Belvidere or Water Gap, "6 rods (99 feet) in width," and to *widen* the (then) *present* road, i. e., *road as authorized in 1851 to same width.*

1854, *P. L.*, page 260. *Sec. 1.* Authorizes *widening* of railroad, where it passes *through Essex county*, "to any width not exceeding 6 rods" (99 feet), and to construct same to Passaic river.

1855, *P. L.*, page 177. *Sec. 1.* Authorizes branch to Phillipsburg.

1857, *P. L.*, page 111. *Sec. 1.* Authorizes *extension* of railroad to Hudson river *in Hudson county.*

Sec. 2. Authorizes erection of docks, piers, &c., in Hudson river or New York bay at terminus, and bridges over Hackensack and Passaic rivers.

Sec. 7. For the purposes of this extension, vested with the same powers and subject to same *restrictions* as are contained in original act and supplements.

1860, *P. L.*, page 213. Hoboken Land and Im-

provement Company authorized to construct railroad from Hoboken ferry to Newark, "*not to exceed 100 feet in width.*"

1864, *P. L.*, page 710. *Sec. 1.* Authorizes Morris and Essex to buy railroad of Hoboken Land and Improvement Company between Hoboken and Newark.

1865, *P. L.*, page 555. *Sec. 1.* Authorizes construction of a *branch* from the main railroad at or near Denville, thence by way of Boonton, through the Great Notch in First Mountain, and thence to connect with some point of their main road, east of said mountain.

Sec. 2. "That the tax of one-half per centum, provided by their said original act of incorporation, to be paid by the said company to the State, whenever the net earnings of the said company amount to seven per cent. upon the cost of the road, shall be paid at the expiration of one year from the time when the road of the said company shall be open and in use to Phillipsburg, and annually thereafter, which tax shall be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of this State or any law thereof."

1867, *P. L.*, page 144, *sec. 3.* *Section 3* attempted to relieve the property thus exposed to taxation, under the

contract in section 2 of the Act of 1865, by enacting that *no tax should be imposed upon any property purchased, held or used by said company for the purposes of their charter or any of the supplements thereto, except the tax of one-half of one per centum on the cost of the road; but this section is plainly no contract, and is repealable.*

Section 2 of this act authorizes additional land to be acquired by the company to widen "the road," "eight rods beyond its present or its authorized width;" and this additional strip, 132 feet wide by some 118 miles long, is much larger than the original road, which was only authorized to be 99 feet wide, to wit, an addition of 1,888 acres.

1869, P. L., page 28, sec. 1. Validates and confirms a lease of its roads, property and franchises, by the Morris and Essex Railroad Company to the Delaware, Lackawanna and Western Railroad Company.

1871, P. L., page 588, sec. 1. Authorizes the construction of a branch railroad and tunnel through Bergen Hill, and of a width of way of 200 feet.

1873, P. L., page 1348, sec. 1. To construct any number of branches, none more than 4 miles long, from the Boonton branch to points in Passaic county.

1877, P. L., page 48, sec. 1. Authorizes the acquiring all such lands adjoining the roads as the directors may deem necessary, without limit as to quantity.

1878, P. L., page 179, sec. 1. Authorizes acquiring of lands at the discretion of the directors to shorten the route, or connect points thereon by shorter branches, and to acquire all such lands as are necessary for depots or any lawful purpose of the company, upon such lines.

These acts and the powers given by them have been so availed of by the prosecutors that, as appears from the *depositions in the cause, page 66, lines 9-18*, since *March 23, 1865*, (the date of the passage of the act, held to have been a contract between the State of New Jersey and the Morris and Essex Railroad Company,) the prosecutors have acquired *359 acres of real estate in addition* to the real estate held at the time of the passage of that act, and may acquire 1,800 acres more.

I state it to be a fact, although not

in evidence, that in 1869, the cost

of the railroad in question, was \$10,302,355 29

And that in 1884, it was 24,540,597 59

An increase of \$14,238,242 30

And that in 1869, the cost of rolling

stock was \$2,783,450 64

And in 1884,	\$13,187,444 74
	<hr/>
An increase of	\$10,403,994 10
	<hr/>

And that *the aggregate cost* of the railroad and rolling stock in 1884, was \$37,728,042.33, and by the Record, page 69, that the aggregate valuation by the State Board, of railroad, rolling stock, real estate and franchise, is \$30,015,670.75.

It also appears from the act entitled "An act to validate a certain lease and contract, &c.," passed February 9, 1869, (*P. L., 1869, page 28,*) that the Morris and Essex Railroad Company has leased its *railroads, property and franchises* to the Delaware, Lackawanna and Western Railroad Company, a Pennsylvania corporation, which lease was confirmed by the State.

The *lease is not in evidence*, and it does not appear *what* railroads, properties, and franchises were let and demised, but as the Delaware, Lackawanna and Western Railroad Company are *upon the record* as joint prosecutors, this is an admission by them that they *are in possession under this lease* of the railroads, property and franchise included in the assessment record.

Importance of the Case.

The case is important in that a large amount of annual revenue, present and future, depended upon its determination. But it is vastly more important, for the reason that it is claimed by the defendants in error, that the state has *perpetually* aliened its sovereign power of taxing the property of the Morris and Essex Railroad Company; that it has perpetually aliened its sovereign power of taxing the property of the Delaware, Lackawanna and Western Railroad Company, so long as it is the lessee of the property in question; and that the alleged exemption of taxation covers not only the property or "road" of the Morris and Essex Railroad Company, as it existed at the date of the contract of 1865, but is extended, by necessary implication, to exempt from taxation all property lawfully acquired by the Morris and Essex Railroad Company, or by the Delaware, Lackawanna and Western Railroad Company, in the name of the Morris and Essex Railroad Company, since the date of the contract of 1865.

So that, the question before the court is, Has the State perpetually aliened its power to tax a large portion of the taxable property within its territory and jurisdiction, which property is capable of perpetual expansion both as to its extent and value?

The importance of the case is practically illustrated

by the fact that the property exempted in 1865 cost, say \$13,000,000, whilst the property claimed to be exempted in 1884 cost, say \$37,500,000, and was valued by the State Board at, say \$30,000,000.

So that, in the nineteen years elapsing between 1865 and 1884, at least \$17,000,000 of property was withdrawn from the corpus of taxable property, *in addition* to the \$13,000,000 presently withdrawn in 1865. It needs only to consider the enormous extent of additional property that may be acquired by the defendants under existing laws, to appreciate the extent of the additional withdrawals from the existing corpus of taxable property which will occur during the next nineteen years.

Preliminary Explanation.

1. The record shows that these taxes have been assessed against the property, &c., of *the Morris and Essex Railroad Company*; but it appears that the actual ownership and possession of the property and franchise assessed are in the Delaware, Lackawanna and Western Railroad Company, under the aforesaid lease for an unknown term, and that in 1884 they were held and operated by said lessee.

2. If it be held that the assessment could not be lawfully made against *the reversionary estate of the*

Morris and Essex Railroad Company, by reason of the contract act of 1865, then, clearly, there was a mistake in the assessment; but if the property and franchise in the hands of the *Delaware, Lackawanna and Western company* at the time of the assessment were, in fact, assessable against that company under the act of 1884, then *this court should amend the assessment* pursuant to the act of March 25, 1881. (*P. L., page 194.*)

State v. Montclair, &c., R. R. Co., 14 Vr., 524.

Argument.

In this case, *section 15* of the original charter of the *Morris and Essex Railroad Company*, (*P. L., 1835, page 25, &c.*), *section 3* of the supplement of March 23, 1865, (*P. L. of 1865, page 555, &c.*) and *the preamble and section 1* of the act of February 9, 1869, (*P. L. of 1869, page 28, &c.*) are presented to the court for its construction of the nature, extent and subject matter of the contract of exemption therein embodied or concerned.

It is important to determine the canons which are to govern us in this construction, for as we have seen, such construction is to touch the sovereign and vital power of the State to tax the property in question and its increment, not for a term, but in perpetuity—a perpetual disability of the State pro tanto, and a perpetual and unequal burden upon all other taxable

property, are to be imposed by the construction of the court.

Our own courts and the Federal Supreme Court have settled and formulated these canons of construction, and the State respectfully insists that this court should apply them in their utmost strictness in the construction of the acts in question.

Canons.

Says *Chancellor Green* :

“Public grants are to be construed strictly. Contrary to the rule adopted in the case of private contracts, they are to be taken *most strongly against the grantee and in favor of the public*. This is especially true of all grants which, like the present, *narrow the powers or abridge the functions of government*. *This grant is in derogation of public right*. *It restrains the sovereign power*. It narrows the exercise of the great duty which the sovereign owes the people, of furnishing convenient highways.”

Bridge Co. v. Hoboken L. Impt. Co., 2 Beas., 81, 94.

And if this be the inflexible rule in construing *mere grants of easements*, should it not be applied with even greater strictness to grants which are alleged to have divested the State *forever* of the sovereign power of taxation, and to have disabled it *forever* from perform-

ing its constitutional duty of levying taxes upon property "under general laws and by uniform rules, according to its true value?"

Again, the same learned judge says:

"But if it be admitted that it is not *clear* that this is the true construction of the contract, and that *its import is doubtful*, the construction must still be against the complainants. It is a *well-settled* rule of construction that *public grants are to be construed strictly*; and in all cases of grants of franchises by the public to a private corporation, the established rule of construction is, that *any ambiguity in the terms of the contract must operate against the corporation* and in favor of the public. *The corporation take nothing that is not clearly given by the act.*"

Del. and Rar. Canal, &c., v. Rar. and Del. Bay, &c., Co., 1 C. E. G., 321, 372.

Again, our Supreme Court says, in particular contemplation of an alleged alienation of the taxing power:

"It is a sound rule of construction, that corporate franchises, being restrictive of individual rights, *should not be extended beyond the letter and spirit of the act of incorporation*. The taxing power is of vital importance to the existence of every branch of government. It is an essential attribute of sovereignty inherent in the people, imparted through their legislature to some

municipal corporation, and *not to be abridged in their hands by presumptive, but only by positive legislative enactments, clearly expressed.*"

State v. Newark, 2 Dutch., 519, 521.

And again, our Supreme Court says, in like contemplation of an alleged alienation of the taxing power:

"The eighteenth section of the charter of the prosecutors contains no express provision exempting them from the usual and ordinary taxation for State, county and municipal purposes. But it was argued that the restriction in the last clause of the section, while not in *express* terms applicable to such taxation, *by necessary implication* extends thereto; and while it may not amount to an entire exemption from taxation for general purposes, yet it must be allowed the force of a limitation on the power of the legislature to subject the company to taxation under the general tax laws, which may from time to time be passed by the legislature, beyond the sum of one-half of one per cent. on their capital stock.

The power of taxation is an essential attribute of sovereignty, by reaching to all persons and property belonging to the body politic. It resides in the government as part of itself, and need not be reserved where property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies, and *it will never be presumed to be relinquished*, unless

the intention to do so is declared in clear and unambiguous terms."

State v. Parker, 3 Vr., 426, 434-5.

Again, the Federal Supreme Court says :

"That a corporation is *strictly limited* to the exercise of those powers which are *specifically conferred on it*, will not be denied. The exercise of the corporate franchise, being restrictive of individual rights, *cannot be extended beyond the letter and spirit of the act of incorporation.*"

Beaty v. Knowler, 4 Peters, 152, 168.

Again, the same court says :

"That the taxing power is of vital importance ; that it is essential to the existence of the government ; are truths which it cannot be necessary to re-affirm. They are acknowledged and asserted by all. *It would seem that the relinquishment of such a power is never to be assumed.* We will not say that a State may not relinquish it ; that a consideration sufficiently valuable to induce a partial release of it may not exist ; *but as the whole community is interested in maintaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear.*"

Providence Bk. v. Billings, 4 Peters, 514, 561.

And again, the same court says :

“The rule of construction in this class of cases is, that it shall be most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given in unmistakable terms, or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this court.”

Fertilizing Co. v. Hyde Park, 97 U. S., 659, 666.

Again, the same court says :

“Secondly. But conceding, for the purposes of this opinion, that there is here a contract, as claimed by the plaintiffs in error, then the question arises, what is the contract ; or, in other words, to what does it bind the State ? The rules of interpretation touching such contracts are well settled in this court. In *Tucker v. Ferguson, 22 Wall., 537*, we said : ‘But the contract must be shown to exist. *There is no presumption in its favor. Every reasonable doubt should be resolved against it.* Where it exists it is to be *rigidly scrutinized, and never permitted to extend either in scope or duration beyond what the terms of the concession clearly require.*’ There must have been *a deliberate intention clearly manifested* on the part of the State, to grant

what is claimed. *Such a purpose cannot be inferred from equivocal language.*"

Newton v. Commissioners, 100 U. S., 548, 561.

And again, in its latest ruling upon this subject, the same court says:

"In the leading case of *Providence Bank v. Billings, 4 Pet., 514*, Chief Justice Marshall, speaking of a partial release of the power of taxation by a State in a charter to a corporation, said: 'That the taxing power is of vital importance, that it is essential to the existence of government, are truths which it cannot be necessary to re-affirm.' 'As the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the State to abandon it does not appear.' 'We must look for the exemption *in the language of the instrument*; and if we do not find it there, *it would be going very far to insert it by construction.*' *4 Pet., 561, 563.* In *Phila. & W. R. R. v. Maryland, 10 How., 376*, Chief Justice Taney said: 'This court on several occasions has held that *the taxing power of a State is never presumed to be relinquished, unless the intention to relinquish is declared in clear and unambiguous terms.*' *10 How., 393.* In the subsequent decisions the same rule has been strictly upheld and constantly re-affirmed in every variety of expression. It has been

said that 'neither the right of taxation nor any other power of sovereignty will be held by this court to have been surrendered, *unless such surrender is expressed in terms too plain to be mistaken*;' that 'exemption from taxation should never be assumed *unless the language used is too clear to admit of doubt*;' that '*nothing* can be taken against the State *by presumption or inference*; the surrender, when claimed, must be shown *by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power*; if a doubt arise as to the intent of the legislature, *that doubt must be solved in favor of the State*;' that a State '*cannot by ambiguous language be deprived of this highest attribute of sovereignty*;' that any contract of exemption '*is to be rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require*;' and that such exemptions are regarded '*as in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirement of the grants construed strictissimi juris.*' *Jefferson Branch Bank v. Skelly*, 1 Black, 436, 446; *Gilman v. Sheboygan*, 2 Black, 510, 513; *Delaware Railroad Tax*, 18 Wall., 206, 225, 226; *Hoge v. Railroad Co.*, 99 U. S., 348, 355; *S. West. R. R. v. Wright*, 116 U. S., 231, 236; *S. C.*, 116 U. S., 375, (*See Sup. Ct. Reporter, Vol. 6, No. 10*;) *Erie R'y v. Pennsylvania*, 21 Wall., 492, 499; *Mem-*

phis Gas Light Co. v. Shelby Taxing District, 109 U. S., 398, 401; *S. C.*, 3 *Sup. Ct. Reporter*, 205; *Tucker v. Ferguson*, 22 *Wall.*, 527, 575; *West Wisconsin R'y v. Supervisors*, 93 U. S., 595, 597; *Memphis and L. R. R. v. Railroad Commrs.*, 112 U. S., 609, 617, 618; *S. C.*, 5 *Sup. Ct. Reporter*, 299."

Vicksburg S. and P. R. Co. v. Dennis, *Sup. Court Reporter*, Vol. 6, No. 16, 625, 626-7.

The State does not desire to violate any contract of exemption from taxation, although imposed on it by Federal adjudication overruling the judgments of the State courts. But the State does claim that the quality and scope of such contract shall be defined and measured by the strict application of the foregoing principles and rules of construction, deliberately adjudged both by its own courts and the Federal Court, which, by construction, imposed upon the State the burden of this contract of perpetual exemption from taxation.

It is not denied by us that there is an existing contract between the State and *the Morris and Essex Railroad Company*, but it is denied that under such contract that company is entitled to have the assessment, under review in this cause, set aside in toto. And the State also insists, that the Delaware, Lackawanna and Western Railroad Company, the lessees in possession of the property assessed, is not entitled to any exemption from taxation by virtue of the contract aforesaid.

It may be contended by the defendants, that the Federal Supreme Court have already adjudged not only that there is a contract of partial exemption from taxation, but defined its quality and scope; but we deny, that the court, in any part of its opinion, defined the contract in any other way than to say, that it is the contract *originally agreed upon* in the original charter changed as to the time of commencing payment of taxes by the supplement of 1865; and in support of our contention we merely ask the court to inspect the opinion and particularly the first clause of page 116 of the case cited.

New Jersey v. Yard, 95 U. S., 104.

Inasmuch as the *Delaware, Lackawanna and Western Railroad Company*, as lessee, is in possession of, and is operating the railway property, franchise, &c., which is the subject of the assessment in question, and as that company is liable to this assessment by virtue of sec. 9 of the act of 1884, (*P. L., 1884, p. 146,*) unless it is exempted from such taxation in whole or in part; and inasmuch as the court has clearly the power to correct the assessment by striking out the words "the Morris and Essex Railroad Company," and inserting the words, "the Delaware, Lackawanna and Western Railroad Company," (see *P. L., 1881, p. 194,* and *14 Vr., 524,* before cited,) it will be well to consider, first, whether, admitting the existence of a contract between

the State and the *Morris and Essex* for partial exemption from taxation, such contract exempts the *Delaware, Lackawanna and Western Railroad Company* from assessment under section 9 of the act of 1884. The contention of the last-named company is, that this contract of partial exemption from taxation has been assigned to it by the "Morris and Essex."

Was the Delaware, Lackawanna and Western Railroad Company liable to this assessment in 1884?

1. It is a fundamental principle of the law of corporations, that a private corporation cannot alien its franchises, except by *express* legislative authority.

Hackensack Co. v. De Kay, 9 *Stew.*, 548, 560.

An inspection of the charter clearly demonstrates that it contains no authority to the "Morris and Essex" to alienate any of its franchises, either by way of sale, mortgage or lease; and that the only authority for any alienation of franchises, granted to that company is a strictly specific authority to borrow money and secure the repayment thereof by mortgaging its property and franchises, which power is conferred by the supplement of February 22d, 1838. (*P. L.*, 1838, page 125).

This inability to alienate is applied with the greatest strictness to grants of exemption from taxation.

In *Morgan v. Louisiana*, a railroad company whose capital stock was wholly exempted from taxation and whose road and property were exempted from taxation for ten years after its completion, was authorized to mortgage its property and *franchises*—it did mortgage them, and the mortgagee foreclosed, and bought the property and *franchises*—the road was not completed, when the State levied taxes upon the property.

The Federal Supreme Court say :

“The question presented is, whether under the designation of *franchises*, the *immunity from taxation* upon its property possessed by the railroad company *accompanied the property* in its transfer, or whether the *immunity was a mere personal privilege* of the company, and *therefore not transferable to others*. The Supreme Court of the State took the latter view, and held that the exemption did not attach to the property of the corporation so as to follow it into the hands of third parties. In this view we agree with the State court.

* * * * Much confusion of thought has arisen in this case, and in similar cases, from attaching a vague and undefined meaning to the term ‘*franchises*.’ It is often used as synonymous with rights, privileges and immunities, though of a personal and temporary character ; so that, if any one of these exists, it is loosely termed a ‘*franchise*,’ and is supposed to pass upon a transfer of the *franchises* of the company. But

the term must always be considered in connection with the corporation or property to which it is alleged to appertain. The franchises of a railroad corporation are *rights or privileges which are essential to the operations of the corporation*, and without which its road and work would be of little value; such as the franchise to run cars, to take tolls, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like. They are positive rights or privileges, without the possession of which the road of the company could not be successfully worked. *Immunity from taxation is not one of them.* The former (*i. e.*, the franchises,) may be conveyed to a purchaser of the road as part of the property of the company; *the latter (i. e.*, immunity from taxation,) *is personal, and incapable of transfer without express statutory direction.*"

Morgan v. Louisiana, 93 U. S., 217, 221, 223.

Even, therefore, if the "Morris and Essex" had been expressly authorized by its charter *to lease its franchises*, that power would not have authorized it to let this "*immunity from taxation.*"

But again, two railroad corporations were chartered, and each was exempted from any other taxation than a special tax upon the net income of the road—subsequently the two corporations were *consolidated* under an act which declared that the consolidated corporation should have "all the powers, privileges and im-

munities” possessed by each of the consolidating companies. After the consolidation the State levied a tax upon the consolidated company.

The Federal Supreme Court held, that although the distinct corporate existence of the consolidating corporations had not ceased, so far as their existence might be necessary for the protection of their creditors or mortgagees, or of the new consolidated corporation, yet that the conditions upon which the limitations of taxation was prescribed could be performed only while the companies were distinct corporations, and *their* treasurers kept their accounts, and *their* directors made the annual reports required, and that having *disabled themselves from a compliance with the conditions upon the performance of which* the amount to be paid as a tax to the State could be ascertained, *they must be considered as having waived the exemption dependent upon such performance.* The new company was not charged with the duties which the old were to perform to the State, and by which the State was to be governed in its taxation, nor was the State under any obligation to accept a substituted performance from other parties, and, therefore, the exemption was lost.

Railroad Co. v. Maine, 96 U. S., 499, 508-9.

And again, the same court says:

“It is quite clear that as a contract originally entered into between the State of West Virginia

and the stockholders who organized the Chesapeake and Ohio Railroad Company under the act of March 1, 1866, *it was personal to that corporation* and intended to benefit those who should be induced to subscribe to its stock. * * * The contract was not for the benefit of those who should become creditors of the company, further than the fact that the property of the company was itself exempted from the charge of taxation would enhance its credit by securing to mortgage bondholders a lien which could not be subordinated by the State. It was not made with the creditors of the company, *nor was it conferred as a franchise inhering in the property itself, so as to pass by way of encumbrance or assignment to mortgagees or purchasers.* The language of the clause which contains the exemption is explicit. It is that 'no taxation shall be imposed by the State until the profits of the said company shall amount to ten per cent. on the capital of the company.' *But one company is spoken of, and that is the company to be incorporated under the act. The property to be exempt is the property of that company and of no other, and while it continues to be the property of that company and no longer.* And the exemption is to cease when the profits of *that particular company* have reached the limit designated, and that limit is measured by a ratable proportion fixed with reference to the capital to be subscribed to form that company and no other. *And there are no*

words of assignability, either expressly or by any implication, to this immunity. The reasons for considering such an exemption to be a privilege pertaining to the corporation, and not inhering in the property and passing to an assignee, were fully stated by Mr. Justice Field in delivering the opinion of the court in the case of *Morgan v. Louisiana*, 93 U. S., 217, and have been uniformly applied to similar cases subsequently. *Wilson v. Gaines*, 103 U. S., 417; *Louisville, &c., R. R. Co. v. Palmes*, 109 U. S., 244; *Memphis, &c., R. R. Co. v. R. R. Commissioners*, 112 U. S., 609; *St. Louis, &c., R. R. Co. v. R. R. Commissioners*, 113 U. S., 465. And the circumstances of the case distinguish it from that of *Humphrey v. Pegues*, 16 Wall., 244."

Chesapeake, &c., R. R. Co. v. Miller, 114 U. S.,
176, 182-4.

Upon inspecting the original charter of the "Morris and Essex," (*P. L.*, 1835, page 25, &c.,) it will be perceived that it contains no phrase or word which gives color to the idea that the partial exemption from taxation, granted by the State in *Section 15*, was intended to be assignable; on the contrary, it is clearly apparent that the grant was personal to the "Morris and Essex," from the words of the proviso, to wit, "*Provided*, that no other tax or impost shall be levied or assessed upon the said company." The language is not "upon the property of the said company," but "upon the said

company," and totally excludes the construction that the quality of exemption was intended to be impressed upon "the property" of the company, so as to pass with a demise or other alienation of said property.

An inspection of the act of 1865, (*P. L., 1865, page 555,*) will also clearly show that the contract embodied therein was *wholly personal* with the "Morris and Essex," that company being named as the *sole contractor* with the State, and no word being contained therein which hints at any quality of assignability in the contract.

It is submitted, therefore, that both on principle and authority, the "*Morris and Essex*" could not lawfully assign this contract of partial exemption from taxation to the "*Delaware, Lackawanna and Western Railroad Company,*" excepting by *express* authority from the State.

And that the said companies knew that such authority was necessary, is shown by their having procured the passage of the act of 1869.

The facts are that on *December 10, 1868,* the "*Morris and Essex,*" without authority of law, executed to the "*Delaware, Lackawanna and Western Railroad Company*" the lease set forth in the Printed Book, and at the then ensuing session of the legislature, procured the passage of the act of 1869 *ratifying* the said lease; and it is contended that this act of 1869 vested in the "*Delaware, Lackawanna and Western Railroad Com-*

pany" the exemption from taxation theretofore granted to the "*Morris and Essex*" by the State. We are, therefore, next to examine *critically* the act of 1869 and the lease, bearing in mind that "*any ambiguity in the terms*" of either "*must act against the corporation;*" that "the corporation can take nothing that is not *clearly* given;" that "*every reasonable doubt* is to be resolved adversely;" that "nothing is to be taken as conceded *but what is given in unmistakable terms;*" that "the taxing power of a State is never *presumed* to be relinquished, unless *the intention* to relinquish is *declared in clear and unambiguous terms;*" and "in terms *too clear to be mistaken;*" that "*nothing* can be taken against the State *by presumption or inference;* the surrender, when claimed, must be shown *by clear, unambiguous language*, which will admit of no reasonable construction consistent with the reservation of the power of taxation; and if *a doubt* arise as to *the intent* of the legislature, *that doubt must be solved in favor of the State.*" Tried by these tests, the lease and act of 1869 do not confer any exemption from taxation upon the "Delaware, Lackawanna and Western Railroad Company."

Lease and Act of 1869, (P. L., 1869, page 28). Besides the presumptions of law heretofore cited against this grant, there is *the strongest presumption of fact* against it.

The most reckless of legislatures have rarely stripped

the State of the power of taxation, and when such remarkable grants have been made, they have been induced by an overpowering necessity on the part of the State to secure the construction of lines of internal communications; and it has seemed politic to invite the investment of capital in such lines, even by the desperate expedient of exempting such investment from taxation for a term of years. But in the present case, no such motive existed. When the act of 1869 was passed, the railroad in question was constructed and in operation, and there was no public interest to be promoted by its passage, nor does the act purport to have been induced by any public interest.

It is impossible to suppose that the State intended to bestow this grant of exemption from taxation as a mere gratuity, for the alleged donee, the Delaware and Lackawanna Railroad Company, is *a foreign corporation* in which the State had no interest, and from whose prosperity the State could derive no benefit.

It is incredible, that the State could have intended to deprive itself *perpetually* of the power to tax the property of *this stranger* within its territory, and so unjustly increase the burden of taxation upon its own citizens, to whom it owed, at least, equality of rights with strangers. It is beyond the power of *implication* to impose such an intent upon the State, and nothing short of *the clearest and most express declarations* in the act of 1869, can justify this Court in adjudging that

by that act the State intended to confer upon this foreign corporation a perpetual exemption from such taxation as should by law be imposed upon its own citizens.

It is submitted that the language of the preamble and sections of the act of 1869, read in connection with the lease thereby ratified, not only do not *expressly and in clear, unambiguous language beyond reasonable doubt, confer, or ratify an assignment of* an exemption from taxation, upon or to the Delaware, Lackawanna and Western Railroad, but furnish strong evidence that the State had no intention to confer or ratify such exemption.

Preamble.

It must be remembered, that the *preamble* is a recital of the *representation made by these two railroad corporations* to the State of the scope, effect and object of the unlawful lease executed by these companies, and that *these representations were made for the express purpose of influencing the State* to ratify and make valid the unlawful lease. Now observe:

a. That in making these representations, the companies *did not disclose, but studiously concealed* the fact that it was intended by the act of ratification to vest in this foreign corporation, the Delaware, Lackawanna and Western Railroad Company, a *perpetual exemption*

from taxation. It is submitted that no clause, sentence or word in the *preamble* hints at such intention.

b. On the contrary, the *preamble* expressly declares that *only* "the railroads, property and *franchises*" of the "*Morris and Essex*" had been demised by the lease and contract, and that *the said* lease, demising *only* the railroads, property and "*franchises,*" should be validated and confirmed. That a sale or assignment of "*franchises*" is not a valid sale or assignment of "*an exemption from taxation,*" is abundantly settled by the authorities heretofore cited. And it follows, that a ratification of an assignment of "*franchises*" is not a ratification of an assignment of *exemption from taxation.*

Here, then, in the *preamble*, is a *concealment* by the companies from the State that they were seeking a ratification of an assignment of perpetual exemption from taxation, and *an actual representation* to the State that they were seeking a ratification of an assignment *only* of railroads, property and "*franchises.*"

In the face of such concealment and representation by these companies, it is, upon familiar principles, an active fraud practiced by them upon the State, to claim a perpetual exemption from taxation by virtue of this act.

Sections.

But the companies contend, that although the *preamble* does not disclose any intent on the part of the State to validate an assignment of perpetual exemption from taxation, yet the *preamble* cannot control the subsequent enactment, and section 1 expressly "authorizes and empowers the Delaware, Lackawanna and Western Railroad Company to have, hold, use, enjoy, possess and exercise all and singular the property, things, franchises, *immunities*, rights, powers and privileges, *by said lease and contract granted, leased or demised to them,*" and that as the alienation of the "*immunities*" of the "Morris and Essex" to the lessee is thus expressly ratified by the State, and that as the term "*immunities*" is the apt technical term to express an exemption from taxation, the State has, in fact, expressly ratified the alienation to the Delaware, Lackawanna and Western Railroad Company of a perpetual exemption from taxation.

a. We call attention to the fact that the defendants admit by their own separate use of the words "*franchises*" and "*immunities*" in the lease, and by their contention as to the use of the same separate words by the State in the act of 1869, that the words are not *synonymous*, and that in their use of the word "*franchises*" *only* in the representations recited in the *pre-*

amble, they were fully aware of the difference in meaning between the two terms, and of the effect of their representations upon the minds of the eighty-one members of the legislature.

b. We also call attention to the fact that this bold claim that the State has *perpetually and gratuitously* deprived itself of the power to perform *its constitutional function* of taxing the property of this *foreign corporation* equally with the property of *its own citizens*, rests exclusively upon the single word "*immunities*," being *once, and only once*, used in the act of 1869. There is no pretence that either the *preamble* or *context* of the act of 1869 discloses any such intent; on the contrary, the *preamble* contradicts, and the *context* is silent as to any such intent. The alleged intent of the State is derived wholly, and only, from the technical meaning of the word *immunities* appearing in one line of the act. Such an enormous claim as is set up by the defendants rests upon a most slender foundation, and cannot be sustained unless the surrounding circumstances conclusively demonstrate that the word "*immunities*" was inserted in the act with *the actual and express intent of perpetually exempting this foreign corporation from taxation*.

c. Inasmuch as the act of 1869 expressly declares that its primary and main intent is "that the said

lease and contract, and *all* the provisions, conditions, covenants and agreements therein contained, be and they are hereby validated and confirmed in *all things*," it is obvious that the court must fully consider *all* the *conditions, covenants, &c.*, of the lease in connection with the term "*immunities*," and so construe them that *all* may stand validated and confirmed. No construction can be sound which fixes the State with the intent to give the *fullest and largest validation* to the term "*immunities*," and at *the same time* with the intent to *utterly invalidate and make void* an express covenant of the lease.

Lease.

1. The instrument is before the court, and it does demise the railroads, property, and all "the franchises, *immunities*, rights, powers, and privileges, which have been or may be granted to, or conferred upon, or which may be used, or exercised by" the "Morris and Essex." And it is clear, that there had been granted to the "Morris and Essex," immunity from indictment for crossing and interrupting the public highways of the State; immunity from indictment as a public nuisance in vomiting forth clouds of smoke and cinders, and disturbing the quiet of the public with the thunder and screams of its trains and locomotives through the towns and cities of the State along its

course ; immunity from civil prosecutions by private persons for injuries occasioned by the same nuisances ; immunity from the necessary results of prosecuting an extremely hazardous calling in the midst and throughout the whole extent of crowded cities, &c., &c. All these were continuous and far-reaching *immunities* from the liabilities imposed upon other citizens by law, and immunities which could not be transferred to or enjoyed by the foreign corporation, the Delaware, Lackawanna and Western Railroad Company, except by the express consent of the State. But if the lease had contained an express covenant that the Delaware, Lackawanna and Western Railroad Company *should not* vomit forth smoke or cinders in the city of Hoboken or Jersey City, from its locomotives, it is clear, that the consent of the State to the alienation of "immunities" generally could not be construed to authorize the breach of that express covenant by the lessee.

2. Now, upon turning to *page 2* of the printed lease, it will be found that the Delaware, Lackawanna and Western Railroad Company has expressly covenanted to pay taxes, without limitation or exemption, perpetually to the State, and to its county, State, municipal or other authorities.

a. Observe that the covenant *is not* "to pay the taxes which may be assessed on the demised property pursuant to the provisions of *the charter* of the party of the first part, or *the act of March 23, 1865*;" but *it is an absolute and unqualified* covenant to "pay and discharge all taxes and assessments which are or may be imposed, levied or assessed on *any* of the property (not on *the road* only, but on *equipment, rolling stock and all other property*) hereby granted, leased or demised;" and the legal effect of the covenant is the same as if it had been a specific covenant "to pay *all* taxes which shall be imposed, levied or assessed on *any* of the demised property by an act to be passed by the legislature of New Jersey, on April 10, 1884."

It is submitted that when the State solemnly *validated* and *confirmed* this covenant, it did not *express* its intent to nullify it; nor its intent to perpetually exempt the Delaware, Lackawanna and Western Railroad Company from taxation under the act of 1884.

3. Again, in the same covenant clause, it will be found that the lessee further covenanted to pay any other taxes than those imposed by the charter; to wit, "to pay and discharge all taxes and assessments which are, or may be, levied or assessed *on the business* or *any of the business* done on or with the said property, or *on the income or profits* of the said business; or

on the said party of the first part *as a corporation* ; or *any of its rights, privileges or franchises.*"

It will be observed that these covenants comprehend every possible method of corporate taxation, and that the covenanting parties admit and deal with each other upon the footing that after the lease became effectual *all the demised property*, and *all the demised franchises*, and *all the business and income*, would be subject to taxation.

It is not necessary to speculate upon what would be the effect of these covenants and admissions if the instrument had been a purely private contract between the railroad companies. Its actual character was that of a *representation* to the State of the agreement into which they had entered *in respect to the taxation of the property, franchise and business* demised ; to wit, that thereafter they would be taxable, at the discretion of the State, and that when taxed the lessee would pay and discharge such taxes. The conclusion is irresistible, that this *representation* was made to the State in order to secure its validation and ratification of the *perpetual alienation to a foreign corporation* of the vast property and franchises demised by the lease, and to the *perpetual use, control and exercise* thereof. These corporations well knew that the perpetual exemption from taxation of a property so great and rapidly increasing, in the hands of a foreign corporation, would be an insuperable objection to the validation of the

transfer, and the covenants in question were inserted in order to remove that objection.

Observe also, that the introduction into these covenants of "the business," "the income or profits," "the corporation," and "the franchises," as admitted subjects of future taxation, demonstrates conclusively that neither the companies when entering into the contract, nor the State when validating, could have meant the covenants to have referred to the taxation imposed by the charter and the act of 1865; for under these acts, "the road and appendages" were the only objects taxable. The introduction of the new objects of taxation, comprehending all the possible objects of taxation is plenary evidence of the intent of the companies and the State to void the partial exemption from taxation, and to substitute therefor complete subjection to taxation, thus establishing perfect equality between the newly domiciled foreign corporation and the citizens of the State. And, indeed, this intent is plainly declared by the words of line 2, page 2, of the printed lease, whereby it is covenanted "to pay and discharge all taxes and assessments which *are*" imposed, levied or assessed on any of the demised property or franchises, (to wit, by the charter and act of 1865,) "or *may be* imposed, levied or assessed" thereon, (to wit, by the acts of 1873, 1876 or 1884.)

4. But it may still be contended, that the covenant

merely intended the payment of taxes *lawfully* assessable upon the property and franchises in question, and that no other tax was *lawfully assessable* except that declared by the charter and the act of 1865; and that this is the true construction of the concluding words of the covenant.

The words are, "*by the United States, or any State, county, township, municipal or other authority having legal authority to impose, assess, levy and collect taxes, imposts or duties.*"

It is clear, that the true construction thereof is, that the "taxes" covenanted to be paid should be levied only by *an authority* endowed with the sovereign power of taxation, and that the covenant is, to pay any tax assessed by any authority possessing the *general taxing power*. To support the other contention it would be necessary that the clause in question should read as follows: "By the United States, or any State, county, township, municipal or other authority having legal authority *under existing laws and contracts* to impose, assess, levy and collect taxes, imposts or duties *upon the said property, business, income, profits, corporation, rights, privileges or franchises.*"

It is submitted that such interpolations would be violative of all the canons of interpretation heretofore cited, and could only be the result of a determination to deprive the State perpetually of its power of equally taxing the property and franchises in question.

5. In conclusion as to this point, it is submitted that the matter of this alleged vesting of the Delaware, Lackawanna and Western Railroad Company with a perpetual exemption from taxation by force of the act of 1869, stands thus: The lessor and lessee represented to the legislature of 1869, as follows: "We have executed a lease and contract which is invalid, unless it be validated and confirmed by the State." The lease demises to the Delaware, Lackawanna and Western Railroad Company, "the railroads, property and franchises" of the Morris and Essex Railroad Company, "upon *certain terms, conditions* and rents in said lease and contracts set forth;" (*See Act of 1869, P. L., 1869, pages 28-9;*) it is true that the lease does also demise all the "immunities" of the Morris and Essex Railroad Company, and that one of those immunities is a partial perpetual exemption from taxation, *but* this demise of all immunities is upon the express term and condition that the Delaware, Lackawanna and Western Railroad Company shall hereafter "pay and discharge *all* taxes and assessments which *are* or may be imposed, levied or assessed *on any* of the *property* granted, leased or demised; or *on the business*, or any of the business, done on or with the said property; or *on the income or profits* of the said business; or *on the corporation*; or any of its *rights, privileges or franchises*;" and the Delaware, Lackawanna and Western Railroad Company *has covenanted* to pay *all such taxes* whenever the

State assesses the same. *Will the State now validate the lease and contract, with these terms, conditions and covenants?*

To which the State, by the act of 1869, replied: "Yes; I validate and confirm the lease and contract;" "and *all* the provisions, *conditions, covenants* and agreements therein contained," the said companies "to carry out and perform the said lease according to the terms, conditions and stipulations thereof;" (*See sec. 1 of act of 1869;*) "one of which covenants, stipulations and agreements which I validate and confirm, being the covenant, stipulation and agreement of the Delaware, Lackawanna and Western Railroad Company to pay and discharge all taxes which I may hereafter assess upon any of the demised *property*; or on *the business* done thereon or therewith; or on *the income or profits* thereof; or on *the corporation* or its *franchises.*" (*Printed lease, page 2.*)

This is a fair statement of *the intent* of the State in the act of 1869, and it is clear that the State was induced by the covenant to pay all taxes thereafter assessed by it, to validate the lease, and that the State *had no intention* to perpetually exempt the Delaware, Lackawanna and Western Railroad Company from taxation by the act of 1869.

It is at all events certain, that the act of 1869 cannot be adjudged "to surrender the right of taxation in *terms too plain to be mistaken,*" or "in language too

clear to admit of doubt," or in such "clear and unambiguous language as will *admit of no reasonable construction* consistent with the reservation of the power of taxation." And, upon the authorities heretofore cited, "if a doubt arises as to the intent of the legislature, (to perpetually exempt the Delaware, Lackawanna and Western Railroad Company from taxation) that doubt must be solved in favor of the State."

The assessment therefore should be corrected by striking out the name of the Morris and Essex Railroad Company and inserting the name of the Delaware, Lackawanna and Western Railroad Company, and should be adjudged to be valid and effectual in law.

What is the scope and extent of the contract of exemption from taxation ?

But if, notwithstanding the argument in behalf of the State, the court should be of opinion that the Delaware, Lackawanna and Western Railroad Company is, by the act of 1869, lawfully and perpetually vested with the exemption from taxation granted to the Morris and Essex by the charter and act of 1869, then the duty devolves upon the court of defining the subject-matter and scope of the contract of exemption.

On the part of the defendants in error, it is contended that the exemption from taxation of "the road"

and appendages granted by the charter of 1835, not only exempts the road and appendages authorized by said charter to be constructed from Morristown to Newark, but to all other and further "roads" and properties thereafter authorized to be constructed or acquired by the "Morris and Essex" by any supplement to that charter.

I have already cited the canons of construction which are applied to all claims of a grant of exemption from taxation, and they are to be applied with equal strictness to the construction of *the extent* of such exemption.

In the words of one of the cases cited, any contract of exemption "*is to be rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require;*" and "that such exemptions are regarded as in derogation of the sovereign authority and common right, and therefore not to be extended beyond the exact and express requirements of the grants, construed *strictissimi juris*."

The Vicksburg R. R. v. Dennis, ubi supra.

1. It is certain that the charter of 1835, (*P. L. of 1835, page 25,*) construed by these rules, does not countenance the claim of the defendants in error. The subject-matter then presented to the State was the securing the construction of a line of railway communication between Morristown and Newark, and the

powers, franchises, privileges and exemptions from taxation granted by the State by that charter were granted for that purpose only. It would be an absurd construction of that charter to hold, that in exempting "the road" from Morristown to Newark, or the company authorized to construct it, from taxation, the State *thereby intended* also to exempt all other roads and property of that company which it might thereafter be authorized to construct or acquire. Nothing but the clearest and most express declaration of such intention would warrant the exemption of after-acquired roads or property.

2. An inspection of section 15 of the charter in question, distinctly defines the subject-matter, scope and extent of the exemption from taxation granted to the Morris and Essex Railroad Company, which is, "that as soon as the railroad, with its appendages, shall be finished so as to be used, the president and treasurer of said company shall file, under oath or affirmation, a statement of the amount of the cost of said road, including all expenses, in the office of the secretary of state." The railroad and its appendages, and the said road so specified, are necessarily the railroad authorized to be constructed by section 6 of the charter, to wit, the railroad from the village of Morristown to intersect with the railroad of the New Jersey Railroad and Transportation Company at Newark or

Elizabeth, in the county of Essex, no other road being authorized or mentioned in the charter. And section 15 further declared that "as soon as the net proceeds of *said railroad* shall amount to seven per centum upon its cost, the said corporation shall pay to the treasurer of this state a tax of one-half of one per centum on *the cost of said road*, to be paid annually thereafter on the first Monday in January of each year." Nothing can be clearer than that this limitation of taxation is clearly declared to be in respect to the road, and the cost of the road aforesaid from Morristown to Newark, the only road and the only subject-matter then presented to the attention and consideration of the State. But it may be said that the proviso following was intended by the State to extend the limitation of taxation so as to effect and include all other roads, appendages and property which the Morris and Essex Railroad Company might thereafter be authorized to construct or acquire. The language of the proviso is: "Provided, that no other tax or impost shall be levied or assessed upon the said company." The defendants in error contend that this proviso is to be construed as though its words were as follows: "Provided, that no other tax or impost shall be levied or assessed upon the said company in respect to the aforesaid road with its appendages, or in respect to any other roads with their appendages or any other property which the said company may be hereafter author-

ized to construct or acquire." It is obvious that such construction would, by pure implication, fix the State with an intent to perpetually alienate its power of taxation over an indefinite number of roads, an amount of property not then existing and not then contemplated, either by the State or by the Morris and Essex Railroad Company; it would be necessary, in such construction, to assume that the State, in 1835, contemplated the authorization of the construction by this company of a further road from Morristown to Phillipsburg, and of a further road from Newark to Hoboken, and of a branch road from Denville via Dover, Boonton and Paterson to Hoboken, with the other branches since authorized to be constructed by said company, such an assumption would be a violation of truth and would be a subversion of every canon of construction respecting grants of sovereign prerogatives by the State, and, if adopted by the judiciary, would be a ready means of stripping the State of a great portion of its taxing power. We contend that the exact and express requirement of the grant in this proviso, construed *strictissimi juris*, requires that the proviso, in question should be construed as follows: "Provided, that no other tax or impost shall be levied or assessed upon the said company in respect to the railroad with its appendages, authorized to be constructed by *this act*, or the property authorized to be acquired by *this act*, or the rights, privileges and franchises granted by

"*this act.*" It was that railroad property, appendages and franchises which were then the subject-matter considered by the State, and of the grant of the proviso. No other road, no other property, no other franchise could have been intended by the State, nor is there any limit contained in the charter that at that time the State contemplated the possibility of making farther grants of roads, franchises or power to acquire other property to the Morris and Essex Railroad Company; and it is axiomatic that the parties to a contract, the subject-matter of which is expressed in the contract, are to be considered as contracting in respect only to the declared subject-matter thereof. If then the exemption contract contained in this proviso is to be extended to other roads, property and franchises than those expressed in this charter, the intent of the State to extend the grant must be found in some other enactment.

3. It is certain that there is no express extension of this exemption to be found clearly expressed or necessarily implied in any one of the supplements to the charter of 1835, authorizing the construction of additional roads or branches. The supplement of March 2d, 1836, section 2, (*P. L. of 1836, page 223*), authorizes the construction of a branch railroad or railroads from the main road to Boonton or Powerville, and also branches from Denville, Rockaway and Dover to the main road, and accompanies this

grant of power to construct said roads with the following grant of *franchise*: "And to enable said company to effect the objects before expressed, they are hereby invested with all the rights, powers and privileges given and granted by the aforesaid act entitled 'An act to incorporate the Morris and Essex Railroad Company,' and said company shall be subject to all the restrictions, limitations, conditions and provisions in the said act contained, in the same manner and to the same effect as if the said company had been originally authorized by said act to construct all or any of the before-mentioned roads." Substantially the same clause is contained in the supplement of 1851, (*P. L., 1851, page 28,*) and in the supplement of 1854, (*P. L., 1854, page 260,*) and in the supplement of 1855, (*P. L., 1855, page 177,*) and in the supplement of 1865, (*P. L., 1865, page 555,*) and in the supplement of 1867, (*P. L., 1867, page 145,*) and in the supplement of 1871, (*P. L., 1871, page 588,*) and in the supplement of 1873, (*P. L., 1873, page 1348,*) all which supplements authorize the construction of additional roads or branches by the Morris and Essex Railroad Company, and it is believed that a like clause is contained in every other act, if any there be, which authorizes that company to construct additional roads or branches.

It will be observed that the clause in question expressly declares that the grant of the "rights, powers

and privileges" contained in the original charter is made with the sole intent "to enable said company to effect the objects before expressed," to wit, the construction and operation in each instance of the additional road or branch authorized to be constructed. And it will also be observed that the grant is expressly limited to "*the rights, powers and privileges*" granted by the original charter, and that by such expressions it excludes the "*immunity from taxation.*" The authorities heretofore cited in this brief, and particularly the case of "*The Chesapeake Railroad Company v. Miller,*" (114 U. S., page 176,) expressly decide that an exemption from taxation is not granted by a fresh grant of "*all the benefits, rights, franchises, privileges and property*" conferred upon a corporation by a former charter; and it is submitted that these decisions, and the application of the rule of *strictissimi juris* to the construction of this clause, absolutely determine that the State expressed no intent thereby to extend the exemption from taxation contained in the original charter to the various additional roads authorized to be constructed by the above-mentioned supplements.

It may be contended that by the word *provisions* in the following phrase in the clause—"subject to all the restrictions, limitations, conditions and provisions in the said act contained"—the State intended to include in the word *provisions* the *proviso* of section 15 of the charter, but such contention is without founda-

tion; *first*, because the phrase is, in itself, a limitation of the powers and privileges granted by the clause; and, *second*, because the word *provisions* will never be construed into the word *proviso*, unless such proviso shall be a restriction of some antecedent grant or right conferred by the act. It could not be pretended that the word "provisions," used in this connection, clearly and without doubt, construed *strictissimi juris*, declares an express intent to exempt the newly authorized roads from taxation.

It may be contended, also, that the proviso to section 2 of the supplement of March 6, 1855, (*P. L., 1855, page 117,*) does declare the intent of the State to extend the exemption from taxation contained in section 15 of the original charter to the new roads authorized by that supplement and the antecedent supplements. If the contention were true it would extend only to the branch roads authorized to be constructed by the supplement of 1836, but that the proviso in question cannot be construed to extend the exemption from taxation, is plain upon reading it. The words of the proviso are as follows: "Provided nevertheless, that nothing in this act shall be taken or construed to exempt or release the said Morris and Essex Railroad Company from taxation on their said road, as constructed under the original act to which this is a supplement, or on the continuations of the said road, as constructed under and by virtue of the several supple-

ments to the said original act, or on the branch road permitted to be constructed under and by virtue of this act, according to the true intent and meaning of the said original act and of the several supplements thereto." It is obvious that this proviso was not intended to enlarge the exemption from taxation conferred by the proviso of the original charter. It neither expresses any such intention nor can any such intention be derived from its language by necessary implication; on the contrary, it expressly declares that no such construction shall be placed upon the supplement (which authorizes the construction of a branch road to Phillipsburg) as to exempt or release the Morris and Essex Railroad Company from taxation on the original road, save as expressed in the original charter, and that the newly authorized roads should be taxed according to the true intent and meaning of the several supplements respectively authorizing their construction.

This construction of the proviso in the act of 1855, was, without, doubt the construction placed thereon by both the State and the Morris Essex Railroad Company, for the purpose of exempting the property of that company, including its additional roads and other property which it had been authorized by the supplements theretofore enacted to construct and acquire. That company requested and the State enacted the supplement of March 5th, 1867. (*P. L., 1867, page*

144,) This supplement, by its second section, authorized the company to widen its main line (which originally was authorized to be sixty-six feet in width, and by the supplement of 1854 was widened to ninety-nine feet, as far as the Passaic river,) to the extent of eight rods beyond its present or authorized width, thus authorizing the acquisition of some fifteen hundred additional acres of land, and the third section of the supplement did expressly enact that no tax should be imposed upon any property purchased, held or used by the company, except the tax of one-half of one per centum, which, by the said charter and the supplement thereto of March 23d, 1865, was required to be paid by said company in lieu of all other taxes. This is the only act of the legislature of this State which extended the exemption from taxation granted to the company by section 15 and the proviso thereof in the original charter, and this act did unquestionably so extend that exemption; but this act was a purely gratuitous grant on the part of the State and possesses none of the qualities or characteristics of a contract, and was therefore, by the general act concerning corporations of 1846, alterable, amendable or repealable at the discretion of the legislature. There would have been no necessity for passing this act had there been any force whatever in the contention that either section 15 of the original charter and the proviso therein, or the act of 1855 exempted the additional roads

and property constructed and acquired under the supplements from taxation, and the request for its passage by the company and its passage by the State, are plenary evidence that theretofore no such exemption had been granted. This act of 1867 remained in force until the passage of the acts for the taxation of railroad companies passed in 1873, 1876 and 1884; even this act of 1867 did not exempt from taxation railroads constructed or lands acquired after its passage. But at all events it remained in force only until the passage of the act of 1873, when it was undoubtedly repealed by the general act for the taxation of railroad companies.

Little v. Bowers, 17 Vr., 300.

It will be observed that none of the supplements authorizing the acquiring of land for stations and terminal facilities purport to extend any grant of the original charter to such lands, either by way of eminent domain or of exemption from taxation, or in fact any other power or privilege granted by the original charter excepting the power to acquire or hold lands. The company, by section 4 of the act of 1838, (*P. L., 1838, page 125,*) was authorized "to purchase and hold land not exceeding five acres at either terminus or at any intermediate point," and by an act approved March 6th, 1877, entitled "An act concerning railroad corporations," (*P. L., 1877, page 48,*) any railroad

corporation owning or operating a railroad in this State, was authorized to acquire land without limitation, adjoining their road, as in the judgment of the directors of the company the exigencies of business might demand, for the erection of freight and passenger depots and all other legitimate purposes of said company. But such companies were prohibited from acquiring more than one hundred feet of additional width for the main road. Under these two acts the defendants in error have acquired vast quantities of land along their main track and at their termini, of the value of many millions of dollars, and all of which, it is submitted, are taxable, there being no intimation whatever in either of these acts of any intention on the part of the State to exempt the same from taxation; and it is submitted that there is no more reason for exempting the terminal property of these companies from taxation under the act of 1884 than exists for exempting the like property of the West Shore Railroad Company, the Erie Railroad Company, the Lehigh Valley Railroad Company, the Pennsylvania Railroad Company, or the Central Railroad Company of New Jersey, or the like property of any other railroad company in the State.

4. There remains to be determined what property was intended to be included within the term "*the railroad*," as used in section 15 of the original charter of

1835, upon the cost of which the tax of one-half of one per cent. was to be annually paid. The contention of the defendants in error is, that the State intended thereby only the bare embankment, ties and rails, which constitute strictly the railroad; in other words, they contend that the term is to be construed in the strongest possible manner in their favor and according to its strict technical meaning, so that the grant of exemption from taxation may be widened to its utmost extent, and the State be deprived to the utmost extent of its power of taxation. To place such a construction upon the term would be to violate the canons of construction heretofore cited, and to smother intendment to the utmost extent in favor of the company and against the State. The reverse of this is the duty of the court, and it is submitted that by the term "railroad," as used in the section, the State intended to tax that completed, entirely fitted and used for the transportation of freight and passengers, which, when so completed and used, should be enabled to earn a profit upon its cost through the exercise of the franchise of taking tolls for such transportation. For it is declared in section 15, that *the railroad which earned net proceeds upon its cost*, should be taxed at the rate of one-half of one per cent. as soon as such net proceeds amounted to seven per cent. upon its cost. It is obvious that the bare embankment, ties and rails could earn nothing, and could, therefore, never be tax-

able upon the narrow construction contended for by the defendants in error, and that therefore such construction is wholly inadmissible; it is also obvious that net proceeds out of the tolls from transportation could only be earned by the use of a completed entirety, to wit, embankment, rails, ties, &c., and the equipment, machines, engines, wagons, &c., authorized by section 10 of the charter, to be purchased by the company for the purpose of exercising the franchises of transporting passengers and freight and taking tolls for such transportation. This completed entirety, capable of earning net proceeds, and capable therefrom of paying the taxes imposed, was the object of taxation intended by the State in the enactment of section 15; such a construction gives a meaning to the term which is consonant with the meaning attached thereto, in the common use of the term by the common public—when we speak of the “*Pennsylvania railroad*” we mean, and our hearers understand us to mean the road, as it is daily visible to all in its ordinary and accustomed use, completed with track, engines and cars; if one should tell another that the Reading Railroad Company had bought the “*Central railroad*,” it would be understood that the track, locomotives and cars had been purchased, and no one would understand that the Reading Railroad Company had bought only the tracks of the Central railroad. It is submitted that this common meaning

of the term "railroad" should be given to the term as used in section 15, and such meaning would conform to that line of cases which decide that for the purposes of taxation a railroad, including all its property, its right of way, rails, switches, depots, engine houses and machine shops, &c., is an entirety, and the fair meaning of the section is that the tax imposed thereby was a tax upon this entirety. It will be understood that we are not contending that the equipment of a railroad is included in the term *appendages*, but that it *is* included in the phrase "railroad earning net proceeds," and we do not, therefore, ask this court to overrule those decisions of the Supreme Court of the State which hold that equipment is not included within the term "appendages." What we do contend is that the fair construction of the section will not justify this court, under the established canons of construction, in holding that the State intended, beyond any reasonable doubt, to exempt *the equipment* of the defendant in error from taxation. This is not a small matter, for that equipment now amounts to thirteen million one hundred and eighty-seven thousand four hundred and forty-four dollars (\$13,187,444.) Unless it clearly appears by section 15, construed most strongly *strictissimi juris* and most strongly against the company, that this vast amount of property is expressly exempted from taxation, there is no such exemption and it must be

taxed as part of the railroad of the defendants. If there be any doubt as to the exemption, the decision must be in favor of the State.

5. It may possibly be contended on the part of the defendants in error, that the exemption from taxation granted by section 15 aforesaid of the original act of incorporations was intended to be extended by the contract of March 23d, 1865 (*P. L., 1865, page 555,*) and that the exemption is thereby extended to embrace all railroads authorized to be constructed by antecedent supplements and by the supplement of 1865, but such contention is not maintainable, the act in question neither expresses nor intimates any intent on the part of the State to make any other change in the original contract of exemption than a change in the time when the payment of the tax imposed by the original act should begin. The section in question is section 3 of the act, which enacts as follows: "That the tax of one-half of one per cent., provided by the said original act of incorporation to be paid by the said company to the State whenever the net earnings of the said company amount to seven per cent. on the cost of the road, shall be paid at the expiration of one year from the time when the road of the said company shall be open and in use to Phillipsburg, and annually thereafter; which tax shall be in lieu and satisfaction of all other taxation or imposi-

tion whatsoever, by and under the authority of this State or any law thereof;" and it is quite clear that such was the construction put upon this contract by the Federal Supreme Court which imposed the contract upon the State. Said Justice Miller, in pronouncing the opinion of that court and defining the contract adjudged to have been entered into: "The legislature said if you will consent to pay the one-half of one per cent. tax *as originally agreed*, and commence to do this within one year of the time when the road shall be opened and in use to Phillipsburg, we will authorize an increase of ten millions of your capital stock, and the franchises you seek as to the branch roads, and will agree that the tax shall be fixed at one-half of one per cent. There was a subject of disagreement adjusted, additional rights granted, and tax fixed both as to its rate and the time of commencement." And it is submitted that the court thereby defined the contract which it fixed upon the State to be *the original agreement* set forth in section 15 of the original act of 1835, the legal subject-matter and limit of which was the road and its equipment, which was authorized by said original act of incorporation, to wit, the railroad, including its equipment, extending from Morristown to Newark.

6. As to that portion of the road of the Morris and Essex Railroad Company which extends from Newark

to Hoboken, it was originally constructed by the Hoboken Land and Improvement Company, under authority conferred upon that Company by a supplement to its charter, passed March 8th, 1860. (*P. L., 1860, page 213.*) By the thirteenth section of that supplement this railroad was subjected to an annual tax of one-half of one per centum on the cost of said road, and was subject to no other tax or impost. But, by the fourteenth section of said supplement, the legislature reserved the power to alter, amend or repeal this act at any time. It will be observed that this was an enterprise wholly separate and independent of the railroad scheme of the Morris and Essex Railroad Company, and having no connection therewith. The property composing this railroad, including its franchises, termini, road, equipments and all its other property, although temporarily subjected to an annual tax of one-half per cent. upon its cost, was assessable at the pleasure of the legislature by any general act passed for that purpose, imposing upon it the same equal burden of State and local taxation which should be imposed upon the franchises and property of the other railroad corporations owning and operating railroads in the State. There can be no pretence that there existed any contract between the State and the Hoboken Land and Improvement Company, exempting this railroad from Newark to Hoboken, or its franchises, equipment and other property from taxation. By an

act passed April 12, 1864, (*P. L., 1864, page 710*), the Morris and Essex Railroad Company was authorized to purchase from the Hoboken Land and Improvement Company this railroad and its lands, franchises and property, and to hold and enjoy the same as fully and beneficially as if acquired under the charter of the Morris and Essex Railroad Company or any of the supplements thereto, and subject to no greater limitations or restrictions than are contained in the said charter and supplements, and also as fully as the same were held and enjoyed by the Hoboken Land and Improvement Company. It is obvious that the declared intent of this act was to vest in the Morris and Essex Railroad Company only the franchises and property of the Hoboken Land and Improvement Company pertaining to the railroad in question, and not to grant therewith any exemption of the said property and franchises from equal taxation with the franchises and property of other railroads. There is no word or phrase in the act of 1864 which is apt or sufficient to import a grant of exemption from taxation, but the words of the act, construed according to the settled canons of interpretation, plainly express the intent of the State to retain this large amount of taxable property within the control of the taxing power of the State. No court could venture to adjudge that these franchises and property were, beyond reasonable doubt, exempted from taxation, or that either of the acts of 1860 or 1864

clearly express the intent of the State to grant such exemption. This railroad property of the Hoboken Land and Improvement Company, before its transfer as aforesaid, was assessable only by force of the thirteenth section of the act of 1860. Its assessable character was stamped upon it by that section and section 14, making it amendable or repealable at will ; and after its transfer it did not lose this stamp, nor become assessable under section 15, of the charter of the Morris and Essex Railroad Company. It remained, as to its taxable character, wholly separate from the railroads and other property acquired by the Morris and Essex Railroad Company by its charter and the supplements thereto. Nor can it be pretended that this vast amount of railroad property and this valuable franchise granted to the Hoboken Land and Improvement Company, and subject to the State's power of taxation, was withdrawn therefrom and perpetually exempted from taxation by force of the contract contained in the act of 1865. The subject-matter of the last-named act was the railroad and franchises granted to the Morris and Essex Railroad Company, and authorized to be constructed by that charter. The act of 1865 is to be read in connection only with the charter of 1835. It is apparent that that act and the contract therein contained, was not intended by the State to comprise the separate railroad franchises and property acquired by the Morris and Essex Railroad Company under the authority

of the act of 1864. The railroad from Newark to Hoboken was not an extension or continuation of the Morris and Essex railroad, or acquired by the exercise of any franchise granted to the Morris and Essex company, but was a separate, independent and existing property, acquired by the exercise of the franchises of the Hoboken Land and Improvement Company, from which the State was entitled to derive large annual revenues by taxation in perpetuum, and it would be violative of common sense to impute to the State any intention gratuitously to exempt it from taxation by force of any language contained in the act of 1865. It cannot be adjudged that it is beyond reasonable doubt that such was the intent of the State, and that such intent is clearly expressed in the act of 1865. It is submitted, therefore, that beyond doubt the railroad from Newark to Hoboken, and the franchises and property pertaining thereto, are taxable under the act of 1884, which clearly repealed section 13 of the charter of the Hoboken Land and Improvement Company.

In conclusion, it is submitted: *First*. That the assessment now before the court is valid as against the Delaware, Lackawanna and Western Railroad Company, and that no exemption from taxation in respect thereto was acquired by that company by force of the act of 1869 ; and *Second*, that if such ex-

emption was acquired, its utmost extent, by force of the act of 1865, was to exempt only the railroad authorized to be constructed from Morristown to Newark, or, at the furthest, from Phillipsburg to Newark.

Barker Summere,
Counsel.

New Jersey Court of Errors and Appeals.

JUNE TERM, 1886.

EDWARD BETTLE ET ALS., THE STATE
BOARD OF ASSESSORS, AND EDWARD
J. ANDERSON, COMPTROLLER,
Plaintiffs in Error,

v.

THE STATE, THE MORRIS AND ESSEX
RAILROAD COMPANY AND THE DELA-
WARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY, LESSEES,
Defendants in Error.

On Writ of
Error to the Su-
preme Court.

Brief for Plaintiffs in Error.

The Morris and Essex Railroad Company and the Delaware, Lackawanna and Western Railroad Company, its lessees, in the reasons filed by their attorneys,

Bedle, Muirheid & McGee, pray that the assessment of taxes against the Morris and Essex Railroad Company, purporting to have been made under a provision of an act for the taxation of railroad and canal property, approved April 10th, 1884, and brought up for review under a writ of certiorari, may be set aside and for nothing holden, and assign among other reasons the following :

First. Because the whole assessment aforesaid, and every part thereof, and all the proceedings of the said Board with reference thereto, are unconstitutional, illegal and void, and, especially, because they are in violation of, and contrary to, the contract or contracts with the State of New Jersey under the following acts of the legislature of that State. [Then follows a list embracing twenty acts of the legislature in reference to the Morris and Essex Railroad Company.]

The taxes complained of were imposed under an act for the taxation of railroad and canal property, approved April 10th, 1884.

It is claimed that the Morris and Essex Railroad Company has an irrepealable contract with the State, which exempts that company from all assessments under the act referred to. Mr. Bedle, in his special brief submitted to the Supreme Court, made the point in the following words :

“The charter and the various acts affecting the Morris and Essex railroad were referred to in the

original return to the Board and in the complaint against the assessment on pages 30 and 32 of the return to the writ of certiorari. The contract in particular is contained in the original charter, *Laws of 1835*, page 29, sec. 15, also *Laws of 1865*, page 555, and the assent thereto by the company in the *Laws of 1865*, page 961, and the *Laws of 1867*, page 144. The exemption of the Morris and Essex from the assessment in question is *res adjudicata*. *State v. Yard*, 95 U. S., page 104, and *Little, Receiver, v. Bowers*, 17 Vroom, page 300."

The claim is, therefore, that the whole assessment against the Morris and Essex comes under that decision, and is unconstitutional and illegal.

Justice Miller, in delivering the opinion of the court in *State v. Yard*, said: "The single question, therefore, for our consideration, is whether the act of March 23d, 1865, and its acceptance by the Morris and Essex Railroad Company, constitutes a contract which could not be impaired by any subsequent legislation of the State. The Court of Errors decided that while the act of 1865 was a contract, it must be taken in connection with other legislation of the State on that subject, by which the legislature reserved the right to alter and amend the contract, and that this right entered into and became a part of it; therefore, the exercise of this right did not impair its obligation. The solution of the question here presented must depend, first,

upon the inquiry into the supposed reservation of power, and secondly, into the essential character of the contract of 1865."

It will be noticed that the case relied upon by the counsel for the prosecutors does not *construe* the contract said to be contained in the act of 1865; it simply holds that whatever that contract might have been, the legislature could not alter or repeal it.

Justice Miller, however, describes the contract in another part of the opinion as follows: "The legislature said, if you will consent to pay the one-half of one per cent. tax as originally agreed, and commence to do this within one year from the time the road shall be open and in use to Phillipsburg, we will authorize an increase of ten millions of your capital stock, and the franchises you seek as to the branch roads, and will agree that the tax shall be fixed at one-half of one per cent."

It is submitted—

First.—That the privilege, exemption or immunity from taxation contained in the act of 1865, did not embrace property acquired subsequent to the date of the contract, beyond the limitation contained therein.

Second.—That the immunity from taxation contained in the act of 1865, did not pass to the Delaware, Lackawanna and Western Railroad Company, lessees.

I.

On page 54 of the case will be found a stipulation between the counsel, which provides that the testimony shall not be used for purposes of making any claim on the subject of valuation on either side for any reduction or increase thereof by the court itself, but in case the court should be of opinion that the said Board, on the subject of valuation, (if that becomes a question in the case), made any mistake or error in principle or method in reference thereto, that any correction necessary or proper by reason thereof, shall be referred to the State Board for correction instead of having the court to make any estimate thereon.

Testimony was taken, however, for the purpose of showing approximately the proportion of the property which had been acquired by the company since the lease to the Delaware, Lackawanna and Western Railroad Company in 1869.

It appears by the return made to the Comptroller by the State Board of Assessors, December 1st, 1884, of the assessed valuation of the property of the Morris and Essex Railroad Company, that the valuations were as follows :

Assessed valuation of main stem,	\$10,091,907 24
Assessed valuation of tangible personal property,	2,828,270 97

Assessed valuation of real estate used for railroad purposes, other than main stem,	\$6,645,492 54
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Total valuation of real and per- sonal property,	\$19,565,670 75
Assessed valuation of franchise,	10,450,000 00

Aggregate assessed valuation,	\$30,015,670 75
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On page 14 of the testimony on file in the clerk's office, Edlow W. Harrison says: The amount of property acquired subsequent to the making of the lease is about one-half the property now in their possession.

On page 10 he says: The approximate increase of the real estate of the Morris and Essex railroad between December, 1868, and January 1st, 1884, is

\$7,775,043 27

On page 69 of the Return the tangible personal property which is used by the Lackawanna road, is assessed at

2,828,270 97

Which would make the total value of subsequently acquired property, \$10,303,314 24

Deduct the valuation of franchise from the whole assessment, and we have

the assessment on <i>real estate and tangible property,</i>	\$19,565,670 75
Deduct increase since December, 1868,	10,603,314 24

Assessment on property acquired before the lease,	\$8,962,356 51
So that we have it in evidence that the Delaware and Lackawanna property <i>subsequently acquired</i> is	\$10,603,314 24
The Morris and Essex property is	8,962,356 51

Total assessment without franchise, \$19,565,670 75

So that the approximate summary of the proportion of property acquired by the Delaware, Lackawanna and Western Railroad Company, since leasing the Morris and Essex railroad, made by Mr. Harrison, is below the amount as it really is; and it is beyond question that more than one-half of the property used by the Lackawanna company, in operating the Morris and Essex road, has been acquired by the lessee since the date of the lease.

It will also be observed that all the property acquired subsequent to April, 1869, was properly acquired subsequent to the contract of 1865, and, so far as the assessment exceeded the sum limited in the contract, we insist, was subject to taxation under the act of 1884.

The act validating the lease and contract, which

was passed February 9th, 1869, shows that the Morris and Essex Railroad Company had, before that time, leased its road, property and franchises to the Delaware, Lackawanna and Western railroad, a Pennsylvania corporation, which lease was confirmed by the act referred to.

Justice Miller said that the contract by which a State bargained away her right of taxation must be clear, and cannot be made out by dubious implications.

It has been held in our own State that the legislature cannot divest itself or its successors of its sovereignty, or extinguish the trusts committed to its custody for the public welfare, and contracts which suspend or limit for a time the exercise of that power cannot be construed so as to imply its abandonment.

It is a well-settled rule of construction that public grants are to be construed strictly, and that in all cases of grants of franchises by the public to a private corporation, any ambiguity in the terms of the contract must operate against the corporation in favor of the public; the corporation can take nothing that is not clearly given by the act. *Delaware and Raritan Canal Company and Camden and Amboy Railroad and Transportation Company v. The Delaware Bay Railroad Company*, 1 C. E. Green, 821.

The general principle undoubtedly is that a party claiming an exemption from taxation must show it. It is, therefore, incumbent on the prosecutors to show

what portion, if any, of their property was exempt from the operation of a general tax law applicable to all other corporations. And whatever may be said as to the exemption of the property acquired by the Morris and Essex under its contract, the question remains to be considered whether that contract can be construed to apply to property subsequently acquired, and devoted, perhaps, to new and broader schemes than existed at the time or were contemplated by the parties to the contract.

The act provided that "the tax of one-half of one per cent., provided by the original act of incorporation to be paid by the said company to the State whenever the net earnings of the said company amount to seven per cent., upon the cost of the road, shall be paid at the expiration of one year from the time when the road of the said company shall be open and in use to Phillipsburg, and annually thereafter, which tax shall be in lieu and satisfaction of all other taxation or imposition whatever, by or under the authority of this State or any law thereof." According to its terms, this act was accepted by the company.

The first section of the act authorized the company, in completing their road and adapting it to transportation of coal, &c., to make branch roads. The second section authorized the making of new bridges, and the third required the completion of the road to Phillipsburg, and then, on the road so described, as it were,

by metes and bounds and monuments, in this act and the act to which it was a supplement, they gave an immunity from all taxation, except one-half of one per cent., on the cost of the said road.

The law will not presume that the legislature intended to deprive the State of the power of taxation on any amount of property which might be needed in the future for the necessities arising from new alliances and connections, or the change of business outside of the State, because they agreed with a corporation that when it had completed its road according to the location, not to levy any further tax or imposition on the property thus authorized.

It must be a sound principle of law that that which was *ultra vires* at the time the contract was made cannot be supposed to have been contemplated by the parties making the contract. And if subsequent legislation has authorized new and broader schemes, under which additional property has been acquired, that a new contract must be clearly shown extending the provisions of the original one to the altered condition of affairs, and if new parties are introduced as owners, they must also be parties to the new contract.

The constitutional provision, the statute, and justice all require that if the Morris and Essex company have a right to a specific method of taxation, it should be ascertained precisely what property is covered by that

right, which ascertainment should be by the machinery of the State organized for railroad taxation.

Such questions as these arise :

What is one-half of one per centum on the cost of the road ?

Is it proper that it should be ascertained by the agents of the company under principles of book-keeping which may vary with each company, and with the purpose for which the calculation is made ?

Is it not the duty of the Board to ascertain the cost in this case as they do the value in others ?

And in this view of the case, can the court do anything but send the assessment back to the Board with instructions to fully ascertain the property upon which the tax of one-half of one per cent. is to be levied, and that which, subsequently acquired, is to be taxed under the law of 1884 ?

It is manifest that the claim of the prosecutors that the whole assessment against the Morris and Essex comes under the decision in the case of *The State v. Yard*, and is, therefore, unconstitutional and illegal, is untenable.

In the section of the tax act, under the provisions of which all the proceedings in certiorari are brought, it is provided that no writ of certiorari shall be granted unless the applicant has applied to said Board of Assessors as provided for in this act, to review the assessment, *upon the ground that they have been aggrieved,*

and specifying the grievance. Upon the proceedings in certiorari relief may be had "as well in cases where it is claimed that the amount of tax is excessive or insufficient, as in cases where it is claimed that the principle upon which the assessment is made is erroneous."

Now it does not appear that the case as made by the prosecutors in certiorari brings before this court, either the question of excessive or insufficient valuation or of erroneous principle.

It is not shown that the parties are aggrieved in this case by either one or the other.

The stipulation, to be found on page 54 of the case, provides that the testimony shall not be used on either side for the purpose of making any claim on the subject of valuation for any reduction or increase thereof by the court itself; but that *if that becomes a question in the cause*, and the court should be of opinion that the Board made any mistake or error in principle or method, in reference thereto, that any correction necessary or proper by reason thereof shall be referred to the Board.

So it appears that the valuations made by the Board are in no way disputed by the testimony, nor are the principles on which the assessment was made disputed by the testimony. The claim simply is that the whole assessment against the Morris and Essex, under the decision in *The State v. Yard*, is unconstitutional and illegal. From what has gone before, it cannot be dis-

puted that it would be the duty of the Board to ascertain the cost in this case as they do the value in others, and as it is in evidence that even if the Morris and Essex company have a right to a specific method of taxation, more than one-half of the property returned by them has been acquired since the exemption and is used for purposes not contemplated in the act of 1865, it would undoubtedly be the duty of the Board to assess the subsequently acquired property at its true value. And as the presumption is in favor of the correctness of the assessment, as well as the principles upon which it was made, it would seem to be impossible for the court, as the case comes before it, to do anything but give judgment for the defendants on this certiorari.

II.

The exemption from taxation contained in the act of 1865 did not pass to the Delaware, Lackawanna and Western Railroad Company, lessee.

We insist that the exemption or immunity from taxation granted to the Morris and Essex Railroad Company by the act of 1865 was a personal privilege, and did not pass to the Delaware, Lackawanna and Western Railroad Company by virtue of the transfer

of immunities contained in the lease and ratified by the State.

It is well-settled law that an immunity from taxation cannot, unless expressly authorized by the State, pass by assignment.

There were no express words in the lease conveying the exemption of the Morris and Essex Railroad Company to the Delaware and Lackawanna, but, on the contrary, the terms used were general, and there was added to them a distinct provision that the latter company should, "during the continuance of this lease, pay and discharge all taxes and assessments which are or may be imposed, levied or assessed on any of the property hereby granted, leased or demised; or on the business, or any of the business done, or on the income or profits of the said business; or on the said party of the first part, as a corporation, or on any of its rights, privileges or franchises, by the United States, or any State, county, township, municipal or other authority, *having legal authority* to impose, assess, levy and collect taxes, impost or duties."

It cannot be contended that this clause meant that the Delaware, Lackawanna and Western railroad should only pay such taxes as it was possible for the State to levy against the Morris and Essex railroad under its contract of exemption, because under that contract neither "business," "income," "profit," "rights," "privileges" nor "franchises" of that com-

pany were taxable; and because, further, this clause of the lease, proposed by the company and ratified by the State, held the lessee company bound to pay taxes on these and other forms of property, whenever these taxes should be imposed, levied or assessed by any authority "having legal authority to levy any taxes upon any property."

The lease was made on the 10th of December, 1868, and was validated by an act approved February 9th, 1869.

When the lease was made it was made without authority of law; when it was validated it was so done because of a positive agreement with the State, that the lessee would pay all the taxes which the legislature, or any other legal authority, having power to assess taxes, might assess.

The lease itself was a novation—a complete extinguishment of the existence of the Morris and Essex Railroad Company. It surrendered not only its present existence, but such as it might have "by virtue of all and any renewals thereof that might at any time hereafter be granted or made."

It was held in the case of *Black v. The Delaware and Raritan Canal Company*, 9 C. E. Green, 455, that a lease of the corporeal works and property with the franchises to other corporations for 999 years, is such a novation of the undertaking as will impair the obligation of the contract.

In such a novation any rights prejudicial to those of the State must be specifically granted, and cannot be implied from general terms.

In the case of *Morgan v. Louisiana*, 93 U. S., 217, it was held that, upon a sale of the property and franchises of a railroad corporation under a decree founded upon a mortgage which, in terms, covers the franchises, or upon a process upon a money judgment against the company, immunity from taxation upon the property of the company, provided in the act of incorporation, does not accompany the property in its transfer to the purchaser. The immunity from taxation in such cases is a personal privilege of the company and not transferrable.

Judge Field, in delivering the opinion of the court, citing as authority, *Providence Bank v. Billings*, 4 Pet., 561, and *The Delaware Railroad Tax*, 18 Wall., 206, says: "As has often been said by this court, the whole community is interested in retaining the power of taxation undiminished, and has a right to insist that its abandonment shall not be presumed in any case where the deliberate purpose of the State to abandon it does not appear."

In the case of *Wilson v. Gaines*, 9 Baxter, Tenn. Rep., page 546, the court held as follows:

"The word 'exemption' is not comprehended within the words 'rights and privileges,' as applied to a corporation claiming a right of exemption from taxation

by virtue of a section of its charter conferring upon it the *right and privileges* of a like corporation, which later corporation was by express terms of the charter exempt from taxation.

“Exemptions from taxation are contrary to public policy, and can only be allowed when granted in clear and unmistakable terms. If the language, in which they are claimed to be granted, leaves it doubtful, the benefit of the doubt must be given to the State; the life of which is taxes.

“An exemption from taxation is personal to the corporation or individual possessing it, and is not assignable.”

In the case of *St. Louis, Iron Mountain and Southern Railroad Company v. Berry and others, Railroad Commissioners, 41 Ark., page 516*, it was held, that immunity from taxation granted to a railroad company does not pass to a new company with which it becomes consolidated, unless the statute granting the immunity so clearly provides for its transfer as to leave no room for controversy.

The court said: “The plaintiff can derive no benefit in this suit from the reference in its charter to the charter of the Mississippi Valley company. By the 13th section, above quoted, ‘all the *rights, privileges, immunities and franchises* contained in the charter of the Mississippi Valley railroad, and not restricting or inconsistent with this act,’ are extended to the Cairo

and Fulton company, as fully as if the same had been inserted in its act of incorporation. By a comparison of the exemption clauses in the two charters, it will be seen that the provisions as to the exemption from taxation are fundamentally different. They are, therefore, inconsistent, and the special provisions on this subject in the charter of the Cairo and Fulton company are not enlarged by the reference clause. * * * But every such immunity must receive a strict construction. 'It is manifest that legislation, which, it is claimed, relieves any species of property from its due proportion of the general burdens of government, should be so clear that there can be neither reasonable doubt nor controversy about its terms. * * * If, on any fair construction of the legislation there is a reasonable doubt whether the contract is made out, this doubt must be solved in favor of the State. In other words, the language must be of such a character as, fairly interpreted, leaves no room for controversy. *Bailey v. McGinness*, 22 Wall., page 226.' 'It is never for the interest of the State to surrender the power of taxation, and an intention to do so will not be imputed to it, unless the language employed leaves no other alternative.' *Ib.*"

The case of the *St. Louis, Iron Mountain and Southern Railroad Company*, 41 Ark., quoted from above, was subsequently affirmed by the Supreme Court of the United States. Justice Matthews holding that the con-

clusion was unavoidable that the exemption from taxation declared in the charter of the Cairo and Fulton Railroad Company, did not pass by the act of consolidation to the St. Louis, Iron Mountain and Southern railroad; although the act under which the consolidation was made provided that the consolidated company should have "and be entitled to all the benefits, rights, franchises, lands and tenements, and property of every description belonging to said road or roads so sold or consolidated."

In the *Alexandria Canal, Railroad and Bridge Company v. The District of Columbia*, 1 Mackey's Rep., page 217, it was held that the rights, privileges and powers communicated to the Alexandria Canal Company, were those which the Chesapeake and Ohio company had to make the canal, and that might be exercised quite independently from any exemption from taxation, and that a conveyance of all the "rights, privileges and powers," with the consent of Congress, did not include the immunity from taxation which had been possessed by the Alexandria Canal Company, as exemption from taxation was a privilege of the company, and did not pass to the purchaser of the property and franchise.

In the *Chesapeake and Ohio Railroad Co. v. Miller, Auditor*, 114 U. S., 176, decided at October Term, A. D. 1884, it was held that the provision in the acts of the legislature of West Virginia, incorporating the Covington and Ohio Railroad Company, that no taxation

upon the property of the said company shall be imposed by the State until the profits of the said company shall amount to ten per cent. on the capital, was personal to that company, and did not inhere in the property so as to pass by a transfer of it.

Justice Matthews delivered the opinion of the court, in which he said: "The words used, as it will be observed, 'franchises, rights and privileges as would have been had by the first company but for such sale.' There is no express reference to a grant of any exemption or immunity; *nothing is said in relation to the subject of taxation.* The words actually used do not necessarily embrace a grant of such exemption."

He further said that the reasons for considering such an exemption to be a privilege pertaining to the corporation, and not inhering in the property and passing to an assignee, were fully stated by Mr. Justice Field, in delivering the opinion of the court in the case of *Morgan v. Louisiana*, and have been uniformly applied to similar cases subsequently.

Wilson v. Gaines, 106 U. S., 417 ;

Louisville and Nashville Railroad Co. v. Palmes,
109 U. S., 244 ;

*Memphis and Little Rock Railroad Co. v. Railroad
Commissioners*, 112 U. S., 609 ;

*St. Louis, Iron Mountain and Southern Railway
Co.*, 113 U. S., 465 ;

Shields v. Ohio, 95 U. S., 319 ;

Railroad Co. v. Maine, 96 U. S., 499 ;

Railroad Co. v. Georgia, 98 U. S., 359.

Justice Gray on March 1st, 1886, delivered the opinion of the Supreme Court of the United States in the case of *The Vicksburg, Shreveport and Pacific Railroad Company v. Elias Dennis, Sheriff, &c.*, and thus stated the result of the decisions on this important question: "In subsequent decisions the same rule has been strictly upheld and constantly re-affirmed in every variety of expression. It has been said that 'neither the right of taxation nor any power of sovereignty will be held by this court to have been surrendered, unless such surrender is expressed in terms too plain to be mistaken;' that exemption from taxation 'should never be assumed unless the language used is too clear to admit of doubt;' that 'nothing can be taken against the State by presumption or inference; the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power; if a doubt arises as to the intent of the legislature, that doubt must be solved in favor of the the State;' that a State 'cannot by ambiguous language be deprived of its highest attribute of sovereignty;' that any contract of exemption 'is to be rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of

the concession clearly require;’ and that such exemptions are regarded ‘as in derogation of the sovereign authority and common right, and, therefore, not to be extended beyond the exact and express requirements of the grants, construed *strictissimi juris*.’”

Jefferson Branch Bank v. Skelly, 1 Black, 436, 446 ;

Gilman v. Sheboygan, 2 Black, 510, 513 ;

Delaware Railroad Tax Case, 18 Wall., 206, 225, 226 ;

Hoge v. Railroad Co., 99 U. S., 348, 355 ;

Southwestern Railroad v. Wright, 116 U. S., 231, 236 ;

Erie Railroad v. Pennsylvania, 21 Wall., 492, 499 ;

Memphis Gas Light Co. v. Shelby Taxing District, 109 U. S., 398, 401 ;

Tucker v. Ferguson, 22 Wall., 527, 575 ;

West Wisconsin Railway v. Supervisors, 93 U. S., 595, 597 ;

Memphis and Little Rock Railroad v. Railroad Commissioners, 112 U. S., 609, 617, 618.

The words used in the act validating the lease to the Delaware, Lackawanna and Western railroad are the general words, “all and singular the property, things, franchises, immunities, rights, powers and privileges.” “Immunities” are not necessarily limited to

the subject of taxation. The meaning of the word immunity is very general. It is defined by Worcester to be "Freedom or exemption from serving in an office or performing duties required of others; privilege; prerogative; freedom; exemption." And by Webster as "Freedom from an obligation; exemption from any charge, duty, office, tax or imposition; a particular privilege, as the immunities of the free cities of Germany; the immunities of clergy." In construing the word, the court is not left without "*any other alternative*" than to assume that it necessarily means exemption from taxation. It may well declare that the word refers to the many other privileges with which corporation, and especially railroad corporations, are invested by the laws of this State. The exercise of the right of eminent domain, the special powers given for the collection of freight and fares; the particular method required for the service of process; and the many peculiar rights and privileges attaching to its corporate existence and necessary to the operation of its business, are all immunities, and rendered the use of the word necessary in the validating act. Immunities, privileges and exemptions are almost, in the sense used, synonyms, but unconnected with the word "taxation" they cannot be held to refer to that subject.

The Delaware, Lackawanna and Western Railroad Company has every substantial attribute of ownership.

The property of the Morris and Essex Railroad Company in 1869 was transferred, but not the contract right of exemption from taxation. If that right exists in favor of the Delaware, Lackawanna and Western Railroad Company it has been conferred, not by the Morris and Essex Railroad Company; but by the State.

It is claimed that the State has conferred this contract right by "An act to validate and confirm a certain lease and contract by which the Morris and Essex Railroad Company lease their road to the Delaware, Lackawanna and Western Railroad Company, a corporation of the State of Pennsylvania." *P. L., 1869, page 28.*

Is the act of 1869 a contract between the State and the Delaware, Lackawanna and Western Railroad Company?

1. We contend that the act of 1869 shows no intent on part of the State to make any contract with reference to taxation. If the Morris and Essex Railroad Company assumed to be the agent of the State, and as such made a contract between the State and the Delaware, Lackawanna and Western Railroad Company, and the State ratified it, then the contract became the contract of the State. But it is absurd to say that in the lease the Morris and Essex Railroad Company was acting as agent for the State. Suppose that by the lease there was granted by the Morris and Essex Rail-

road Company, (as perhaps there was), land of the State under water, and public streets and highways. Would anyone contend that this act of 1869 ratified these provisions and granted that land to the Delaware, Lackawanna and Western Railroad Company? Suppose that lease undertook to grant the privilege of bridging the Hudson river, would the act of 1869 confer that privilege? The answer to such claims would be that the act was not meant to grant or create new rights. The act of 1869 is, in fact, a mere validating or enabling act. It enables the Delaware, Lackawanna and Western Railroad Company, a foreign corporation, to hold a grant of railroad property in New Jersey and operate the road under a franchise. It is in no sense a contract with the State or a grant by the State.

The grant to the company of the rights and privileges of another for the purpose of making and using a railroad does not convey immunities from taxation, because it is a privilege not necessary to the construction or repair of the road.

Annapolis and Elk R. R. Co. v. Commissioners of Anne Arundel County, 2 *American and English R. R. cases*, 422 ;

See also 1 *American and English R. R. cases*, page 403.

2. That the act is merely an enabling act and not a contract by the State, further appears from the want of any consideration. There can be no valid contract between a corporation and the State without a consideration.

Tucker v. Ferguson, 22 Wall., 527, 574 ;

West Wisconsin Railway Company v. Board of Supervisors, 3 Otto, 595.

In the last cited case, Swayne, J., said : " The State asked for no promises from the company, and the company gave none."

That consideration must of necessity be expressed in the act, for no authority can act in place of the legislature in forming such a contract, and the legislature can only contract for a tax exemption by statute. Unless the law shows the consideration, no one can say that any consideration is the inducement to the act, and the inevitable presumption is that the legislature is simply passing a law and not making a contract. The intent to make a contract cannot be found in the absence of one of its essential elements. The act assumes that a lease has already been made. It recites that the property has been demised and leased by lease dated December 10th, 1868. It legalizes it, so that neither the parties to it nor strangers can set up its illegality. What consideration is there for the State? There is no value given to the State for its

privilege nor value parted with by the Delaware, Lackawanna and Western Railroad Company. Neither is the act limited to take effect only upon the construction of a railroad or performance of any other condition by the company, and this distinguishes this case from the cases relied upon by the prosecutors.

3. The title of the act does not express the formation of a contract of tax exemption by the State. The title gave the legislators no intimation that they were entering into such a contract, and if such contract is to be found in the act it is void, because outside the expressed object of the act.

Grover v. Trustees, 16 Vr., 399, 402, and cases cited.

Suppose the act of 1869 contained a provision directing \$100,000 paid to the Delaware, Lackawanna and Western Railroad Company out of the public funds, this would clearly be void, as an object not expressed in the title. If the act contains a contract of exemption from taxation, it is a gift to this foreign company of millions. What is there in the title to give warning of a grant so dangerous to the State?

The defendants have been careful in all their proceedings in this certiorari to preserve their title, the Morris and Essex Railroad Company and the Delaware, Lackawanna and Western Railroad Company, *its lessee*.

The lease to the Delaware, Lackawanna and Western Railroad Company simply conveys, in general

words, the franchises, immunities, rights, powers and privileges which have been or may be granted to or vested in the Morris and Essex Railroad Company.

These words do not necessarily embrace a grant of exemption from taxation, but, on the contrary, in that part of the lease, the terms of which the prosecutors claim was made a contract, where the subject of taxation is considered, both the lessor and the lessee contemplate the imposition of additional taxes, and the lessee binds itself to pay all such taxes as may be imposed upon its business, or its profits, or its rights, or its franchises.

Section 16 of the Railroad Tax Act of 1884 authorizes the reduction or increase of any assessment on certiorari as may be just, either by the court or by the Board, under the orders of the court, and provides that no assessment or tax shall be set aside for misnomer of the owner of the property assessed, but the name may be corrected at any time by the Board of Assessors or court. This provision is reinforced by the act passed in 1885, (*P. L., 1885, page 159,*) making it the duty of the court to increase any assessment as may be just, no matter by which party the writ is presented.

The act of March 25th, 1881, provides that no tax, assessment or water rate imposed or levied in this State, shall be set aside or reversed in any court of law or equity, in any action, suit or proceeding, for any irreg-

ularity in assessing, &c., and makes it the duty of the court to make a proper levy, imposition or assessment in all cases where there may lawfully be an assessment, imposition or levy, and such court is thereby given full and ample authority to make a lawful levy, assessment or imposition. In the case of the *State of New Jersey v. Montclair and Greenwood Lake Railway Company*, reported in *14 Vroom 524*, the Supreme Court assessed a tax to the New York and Greenwood Lake Railway Company, a newly organized company, and the successors of the Montclair and Greenwood Lake Company, which tax had, by mistake, been assessed to the latter company.

It may be the duty of the court to transfer the tax to the Delaware, Lackawanna and Western Railroad Company, who are now the owners as well as the operators of the Morris and Essex railroad.

The Railroad Tax Act declares that all property "*used for railroad or canal purposes*" shall be assessed as provided therein. It directs the Board to ascertain the true value of all property "*used for railroad or canal purposes of each railroad and each canal.*" It declares that the term "main stem" of each railroad and each canal company shall include the road-bed not exceeding 100 feet in width, with its rails and sleepers, depot buildings, "*used for passengers connected therewith.*" The tangible personal property to

be taxed is declared to be that "*actually used* in this State," or "run under its control in this State."

The act contemplates assessing the road, including main stem, tangible property and other real estate used for railroad purposes, as an entirety, to and in the name of the company *using and operating the road*, no matter by whom the road has been constructed, or in whom the reversion of the property or any portion of it may be.

In the case of the *N. J. S. R. R. v. Railroad Commissioners, in 12 Vroom, 248*, Judge Depue said: "When the railroad and its equipments and appendages are in the occupancy and use of the corporation which was empowered to construct and operate the railroad, the assessment must be made against it. If such property be in the possession and use of another company, the assessment may be made against either."

The Delaware, Lackawanna and Western Railroad Company *use and operate* the Morris and Essex railroad, with the additions they have made to it, as a part of the Lackawanna system. In connection with the Passaic and Delaware, the Warren Railroad Company, and the Sussex Railroad Company, the Morris and Essex road is treated in the testimony, the returns and the briefs, as a portion of the Lackawanna system. By the terms of the lease the lessor surrendered to the lessee, not only *all its present existence*, but any continuation of life which might at any time thereafter be

conferred upon it by its creator. Under these circumstances the preservation of the name of the Morris and Essex Railroad Company in the assessment was unnecessary. Any proceeding for the collection of the tax must necessarily be against the Delaware, Lackawanna and Western Railroad Company.

In conclusion, it is submitted that the character of the objections to the enforcement and collection of a tax made by the Delaware, Lackawanna and Western Railroad Company, lessees, and the other companies claiming exemptions, are such as to give to the decision in this case an importance far greater than that which is involved in the adjustment of the amount of revenue sought to be collected.

These companies insist that the State has surrendered its sovereignty, and deprived itself of the power of taxation on which its existence depends; that the exemptions contained in some of the earlier charters were not personal privileges and temporary concessions to its own creatures, but were irrevocable contracts for all time, covering an unlimited and indefinite amount of property, transferable by assignment to other corporations, foreign and domestic, and applicable to other and broader schemes.

All of which claims and insistments we expressly deny; and submit to this Honorable Court that New Jersey has not surrendered her power of taxation to any corporation, but has simply contracted not to tax

certain property, used for certain purposes, while in the hands of the parties contracted with.

JOHN P. STOCKTON,
Attorney General.

SUPREME COURT OF THE UNITED STATES.

No. 343.

THE STATE OF NEW JERSEY, THE MORRIS & ESSEX RAILROAD COMPANY, PROSECUTORS, PLAINTIFFS IN ERROR,

vs.

JAMES S. YARD, COMMISSIONER OF RAILROAD TAXATION OF THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS IN AND FOR THE STATE OF NEW JERSEY.

INDEX.

	Original.	Print.
Writ of error to Supreme Court United States.....	1	1
Return of the court of errors and appeals thereto.....	3	2
Citation and proof of service.....	4	2
Bond on appeal.....	6	2
Writ of certiorari out of the supreme court New Jersey.....	8	3
Return of the comptroller and commissioner thereto.....	10	4
Reasons for annulling and setting aside.....	15	7
Writ of error to the supreme court New Jersey.....	16	7
Return of the judges of the supreme court New Jersey, thereto.....	18	8
Judgment of supreme court on certiorari.....	19	8
Assignment of errors in court of errors and appeals.....	21	9
Decree in court of errors and appeals.....	23	9
Opinion in court of errors and appeals.....	25	10
Assignment of errors Supreme Court United States.....	44	15
Certificate of transcript.....	50	17

The answer of the judges of the court of errors and appeals in the last resort in all causes of the State of New Jersey within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

THEODORE RUNYON,

Chancellor, President Judge, C't of Errors & Appeals, &c.

4 THE UNITED STATES OF AMERICA :

To James S. Yard, commissioner of railroad taxation for the State of New Jersey, greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of errors & appeals in the last resort in all causes in the State of New Jersey, wherein the State of New Jersey, (The Morris and Essex Railroad Company, prosecutor) is plaintiff in error, and you, James S. Yard, commissioner of railroad taxation for the State of New Jersey, are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as is in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Theodore Runyon, chancellor, presiding judge of the court of errors & appeals in all causes of the State of New Jersey, this second Monday of October, in the year of our Lord one thousand eight hundred and seventy-four.

THEODORE RUNYON,

Chancellor, Pr siding Judge of the Court of Errors and Appeals in the Last Resort in All Causes of the State of New Jersey.

5 (Indorsed :) Supreme Court of the United States. The State of New Jersey, (The Morris & Essex) plaintiff in error, v. James S. Yard, commissioner of railroad taxation, defendant in error. Citation to defendant in error. Filed October 4, 1875. Henry C. Kelsey, clerk. Served copy Sept. 6, 1875.

On this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and seventy-five, personally appeared before me, the subscriber, a commissioner of the United States for the district of New Jersey, George M. Shipman, and makes oath that he delivered a true copy of the within citation to James S. Yard, within named, on the sixth day of September, A. D. 1875, by leaving the copy at his place of office in the city of Trenton, with a person in charge of the office, & that he has since received a letter from the said James S. Yard acknowledging the service on the sixth day of September, 1875.

GEO. M. SHIPMAN.

Sworn to and subscribed the 29 September, A. D. 1875.

J. G. SHIPMAN,

U. S Com'r.

6 Know all men by these presents that we, Jehiel G. Shipman & Cortland Parker, of the State of New Jersey, are held and firmly bound unto James S. Yard, commissioner of railroad taxation

State of New Jersey, in the full and just sum of one thousand dollars, to be paid to the said James S. Yard, commissioner as aforesaid, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals, and dated this eleventh day of August, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately at a term of the court of errors and appeals in the last resort in all causes in & for the State of New Jersey, in a suit depending in said court between The State of New Jersey, (The Morris & Essex Railroad Company prosecutor,) plaintiff in error, and the said James S. Yard, defendant in error, judgment was rendered against the said The Morris & Essex Railroad Company, the said prosecutor, and the said *the said* The Morris & Essex Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said James S. Yard, the said commissioner as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of October next :

Now, the condition of the above obligation is such, that if the said The Morris & Essex Railroad Company shall prosecute their said writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void ; else to remain in full force and virtue.

J. G. SHIPMAN. [L. s.]
CORTLANDT PARKER. [L. s.]

Sealed and delivered in presence of—
FRANKLIN M. OLDS.

Approved by—

THEODORE RUNYON,

7½ *Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes of New Jersey.*

(Indorsed :) Sup. Ct of the United States. The State of New Jersey, (the Morris & Essex R. R. Co.,) pl'ff in error, v. James S. Yard, com'r def't in error. Bond for supersede's. Filed August 17, 1875. Henry C. Kelsey, clerk.

8 NEW JERSEY, ss :

[L. s.] The State of New Jersey to Albert L. Runyon, comptroller of the treasury of the State of New Jersey, greeting :

We, being willing, for certain reasons to be certified touching a certain statement of and valuation upon certain real property owned by the Morris and Essex Railroad Company, made, certified, and returned to you by James S. Yard, commissioner of railroad taxation, in the year eighteen hundred and seventy-three, and now with you as comptroller as aforesaid, do command you that the statement and valuation aforesaid, as fully and entirely, with all things touching and concerning the same, as they remain with you, by whatever name the same may be called, to our supreme court, to be held at Trenton on the fourth Tuesday of November instant, you certify and send, together with this writ, under your hand and seal, that we may further cause to be done what of right and according to the laws and constitution of this State ought to be done.

9

Five $\frac{5.3}{100}$ acres, exclusive of streets, in East Newark,
equal to 96 city lots, average value \$200

19,200 00

\$36,860 00

Essex County, city of Newark :

Depot at Division street	20,000 00
Freight-house at Spring street	6,000 00
Car-house " "	10,000 00
Two-story frame building, No. 79 Spring st.	1,500 00
" " " " " 74 " "	2,000 00
12 Two-story brick dwelling, No. 30 Division st.	800 00
Land & coal-sheds at M. & E. R. R. ave.	15,000 00
1 $\frac{1}{2}$ -story frame house, No. 70 Spring st.	3,000 00
3 " brick " " 68 " "	4,200 00
2 " frame " " 66 " "	3,200 00
1 $\frac{1}{2}$ " " " " 64 " "	3,300 00
3 " brick " " 446 Broad "	11,000 00
2 " " " " 29 Cross "	3,200 00
2 " frame stable, Ogden st., 185 feet river-front.	17,000 00
2 " " house, No. 398 Ogden st.	2,600 00
Building & ground " 405 " "	3,500 00

\$106,300 00

Warren County, borough of Washington :

Freight-house	\$1,000 00
Passenger-depot & gangway	3,500 00
Turn-table	200 00
Trestle-works, coal-shutes, & switches.	4,000 00
Two switches, north of railroad	5,000 00
Four switches, one and a half miles	30,000 00
Half a mile of double track, connecting M. & E. R. R. with Warren R. R.	35,000 00
Seventy acres of land @ \$200.	14,000 00

\$92,700 00

Washington Township :

About thirty-five (35) acres of land, known as the "Hess property"	2,500 00
About five acres of land, known as the "the Wyckoff lot"	1,000 00
A tract of land, known as "the Mattison lot"	600 00

\$4,100 00

13 Mansfield Township :

Five acres of land	\$2,000 00
Freight-depot	2,000 00
Passenger-depot	400 00
Two water tanks	1,500 00
One cattle-pen	100 00

Eight acres of land on Cregar Hill.....	400 00
Three buildings ("shanties") along the road-bed....	1,000 00
	<hr/>
	\$6,400 00

Borough of Hachettstown :

Passenger-depot, Main street.....	\$2,667 00
Freight-depot	2,667 00
Engine-house	2,667 00
Lot of land 200 ft by 900.....	2,000 00
Small tenant-house.....	134 00
	<hr/>
	\$10,135 00

Morris County, Montville Township :

Fifty acres of land, with two dwelling-houses & one barn.....	\$5,000 00
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Roxbury Township :

Round-house at Port Morris.....	40,000 00
Trestle-work for dumping coal at Morris.....	50,000 00
Boarding-house and lot at	2,000 00
“ “ “ “ “	1,000 00
About 75 acres of land.....	7,000 00
	<hr/>
	\$100,000 00

Chatham Township :

14 Passenger-depot at Chatham Station.....	1,800 00
Freight “ “ “ “	800 00
Blacksmith-shop “ “ “ “	150 00
Vacant lot—over one acre.....	1,500 00
Dwelling-house and lot at Chatham.....	1,000 00
Round-house “ “	4,500 00
Passenger-depot at Madison.....	1,600 00
Freight-depot & store-house at Madison.....	1,200 00
Two acres land at Chatham.....	500 00
Half-acre lot, (bond-lot).....	150 00
	<hr/>
	\$13,200 00

Total, Morris & Essex Railroad..... \$2,089,520 00

STATE OF NEW JERSEY,
OFFICE OF COMPTROLLER OF THE TREASURY,
Trenton, November 14th, 1873.

I certify that the above is a true copy of the report made to this department June 30, 1873, by James S. Yard, commissioner of railroad taxation for the State of New Jersey, of the valuation made by him of the real estate owned, used, or occupied in this State by the Morris and Essex Railroad Company.

A. S. RUNYON,
Comptroller.

15

New Jersey supreme court.

THE STATE (THE MORRIS & ESSEX RAILROAD
Company, prosecutors)

vs.

* JAMES S. YARD, COMMISSIONER OF RAILROAD
taxation.

} On certiorari.

And the said prosecutor, by Jacob Vanatta, its attorney, comes and assigns the following as reasons why the said statement and valuation made by the said commissioner should be set aside, made null and void, and for nothing holden :

1. Because the said commissioner had no right or power to make the said statement and valuation.

2. Because the act of April 2d, 1873, entitled "An act to establish just rules for the taxation of railroad corporations and to induce their acceptance and uniform adoption," does not apply to or include the prosecutor or its charter.

3. Because if the said act does in terms apply to the prosecutor and its charter, it is contrary to and violation of the Constitution of the United States and of the State of New Jersey, and, therefore, null and void.

4. Because the said statement and valuation are without any sufficient legal authority, contrary to law, and violative of the vested rights of the prosecutor, and erroneous in form and substance.

JACOB VANATTA,

Att'y of Prosecutors.

(Indorsed :) New Jersey sup. court. The State (The Morris and Essex Railroad Company, prosecutors,) vs. James S. Yard, commissioner of railroad taxation. On certiorari. Reasons for annulling, &c. J. Vanatta, att'y. Filed Feb'y 17th, 1874. Benj. F. Lee, cl'k.

16 THE STATE OF NEW JERSEY, ss :

[L s] The State of New Jersey to the justices of our supreme court greeting :

Because in the records and proceedings, and also in the giving of judgment in a certain plaint which was in our said supreme court, on writ of certiorari, prosecuted by The Morris and Essex Railroad Company, directed to Albert L. Rumyon, comptroller of the State of New Jersey, requiring him to certify to the said supreme court a certain statement and valuation of certain lands and real estate of the said The Morris and Essex Railroad Company, made in the year eighteen hundred and seventy-three, by James S. Yard, commissioner of railroad taxation, as it is said, manifest error hath intervened to the great damage of the said The Morris and Essex Railroad 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 error and appeals to the next term thereof, on the second Tuesday of March next, at Trenton, together with this writ, that, the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness Theodore Runyon, esq., our chancellor, at Trenton, the third day of December, eighteen hundred and seventy four.

HENRY C. KELSEY, *Clerk.*

JACOB VANATTA, *Atty.*

18 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 the same, we do certify to the court of errors and appeals in a certain schedule to this writ annexed, as within commanded.

[L. S.]

M. BEASLEY,

Ch. Jus.

(Indorsed :) New Jersey cou't of errors and appeals. The State (The Morris and Essex Railroad Company, prosecutors) vs. The Commissioner of Railroad Taxation. Writ of error. Ret'ble 2 Tuesday of March, 1875. Jacob Vanatta, att'y. Filed May 22, 1875. Henry C. Kelsey, cl'k.

19. New Jersey supreme court.

JAMES S. YARD, COMMISSIONER, &C., <i>ads.</i> STATE, (MORRIS & ESSEX RAILROAD COMPANY, pros.)	}	On certiorari. Affirm- ance.
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Jacob Weart, attorney.

As yet of the term of November, A. D. eighteen hundred and seventy-three.

Witness, Mercer Beasley, esq., chief-justice.

BENJ. F. LEE, *Clerk.*

The court having heard the arguments of counsel, and inspected the assessment removed by the writ in the cause, and duly considered the reasons filed, it is ordered said assessment be affirmed.

On motion of—

JACOB WEART, *Att'y.*

20 Therefore, it is considered that the said The Morris & Essex Railroad Company. pros., take nothing by their said writ, and that the said James S. Yard, commissioner, &c., do go thereof without day, &c.; and it is further considered by our said court here that the said James S. Yard, commissioner, &c., do recover against the said the Morris & Essex Railroad Company nineteen dollars and forty-seven cents, for his costs and charges by him about his defence in this behalf laid out and expended, by the court now here adjudged to the said James S. Yard, commissioner, &c., and with his assent, according to the form of the statute in such case made and provided, and that the said James S. Yard, commissioner, &c., have execution thereof, &c.

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

M. BEASLEY,

Ch. Jus.

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

In testimony whereof I have hereto set my hand and seal of said court, at Trenton, this twentieth day of May, A. D. eighteen hundred and seventy-five.

[L. S.]

BENJ. F. LEE, *Clk.*

(Indorsed :) New Jersey supreme court. James S. Yard, commissioner &c., ads. State (Morris & Essex Railroad Company.) On certiorari. Affirmance. Copy of judgment. Jacob Weart, att'y.

21 New Jersey court of errors and appeals.

THE STATE, (THE MORRIS AND ESSEX RAIL- road company, prosecutors,)	}	In error.
<i>vs.</i>		
JAMES S. YARD, COMMISSIONER OF RAILROAD taxation.	}	

Afterwards, that is to say, on the second Tuesday of March, in the year eighteen hundred and seventy-five, in the court of errors and appeals, comes the said the Morris and Essex Railroad Company, by Jacob Vanatta, its attorney, and says that in the record and proceedings aforesaid and in the judgment aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that judgment in the plea aforesaid was given against the said The Morris and Essex Railroad Company, when, by the law of the land,

22 for the reasons assigned in the said supreme court, and for other reasons, judgment in the said plea ought to have been given for the said The Morris and Essex Railroad Company and against the said James S. Yard, commissioner of railroad taxation. Therefore, in this there is manifest error.

Therefore, the said The Morris and Essex Railroad 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 statement and valuation of the real property of the said prosecutors, made by the said commissioner of railroad taxation, and by him returned to the State comptroller, may be adjudged illegal, unwarranted, vacated, set aside, and wholly annulled, and that the said prosecutors may be restored to all things it has lost on occasion of the said judgment; and that said commissioner of railroad taxation may rejoice to said errors.

JACOB VANATTA,
Att'y for Prosecutors.

(Indorsed :) New Jersey court of errors and appeals. The State (The M. & E. R. R. Co., prosecutors) vs. James S. Yard, commissioner, &c. Assignment of errors. Jacob Vanatta, att'y. Filed June 8, 1877. Henry C. Kelsey, clerk.

23 New Jersey court of errors and appeals in the last resort in all causes.

THE STATE (THE MORRIS & ESSEX RAILROAD Company, prosecutors) plaintiffs in error,	}	
<i>vs.</i>		
JAMES S. YARD, COMMISSIONER OF RAILROAD taxation for the State of New Jersey, de- fendant in error.	}	

This cause having been argued at the June term, 1875, of this court

by J. G. Shipman, of counsel with the plaintiff in error, and by Robert Gilchrist, of counsel with the defendant in error, and the court having taken time to consider the matter, and now, on the thirteenth day of July, A. D. 1875, of the term of June, 1875, the court being of opinion (among other things) that the act of April 2d, 1873, under which the valuation or assessment was made, does not impair any contract between the State of New Jersey and the said

24 The Morris and Essex Railroad Company, the prosecutors, and that the act entitled "A further supplement to the act entitled 'An act to incorporate the Morris & Essex Railroad Company,' passed January twenty-ninth, eighteen hundred and thirty-five," which supplement was approved March 23d, 1865, & the acceptance thereof by the said The Morris & Essex Railroad Company did not constitute an irrevocable contract between the State of New Jersey and the said company; and the said court do order that the judgment of the supreme court be in all things affirmed, with costs, and that the record be remitted, &c.

On mot. of def'd't in error, rule entered August 16th, 1875.

25 Court of errors and appeals of N. J., June term, 1875.

THE STATE (THE MORRIS AND ESSEX RAIL- road Company)	}	In error.
<i>vs.</i>		
JAMES S. YARD, COMMISSIONER OF RAILROAD taxation.		

Syllabus.

1. If the prior clauses of a general law apply in express terms to a special corporation, a general repealer necessarily repeals inconsistent provisions in the special charter; but if there is an absence of such express prior reference, there must be a special repealing-clause to make a general law applicable to such particular corporation.

2. The act of 1873 (Laws 1873, p. 112) applies by clear expression to the Morris and Essex Railroad, and therefor', the general repealer extinguishes all the provisions in the charter of said company inconsistent with the act.

3. The tenth section applies only to railroad companies having irrevocable charters.

26 4. As applies to corporations, every grant of franchises is a charter, and, therefore, the sixth section of the general corporation act of 1846 must be considered as incorporated in the act of 1865, (Laws 1865, p. 556,) by which it is made in express terms subject to alteration or repeal.

5. The Morris and Essex Railroad has not an irrevocable contract with the State, and is, therefore, subject to taxation under the act of 1873 without its consent.

27 Court of errors and appeals, N. J.

THE STATE, (THE MORRIS AND ESSEX RAIL road Company,)	}	In error.
<i>vs.</i>		
JAMES S. YARD, COMMISSIONER OF RAILROAD taxation, &c.		

Argued at June term, 1875.

M'r Shipman for pl'tff in error.

M'r Gilchrist for def't.

The opinion of the court was delivered by—

VAN SYCKEL, J. :

In McGavisk vs. The State, 5 Vroom, 509, this court held that the supplement to the charter of the Morris and Essex Railroad, passed March 23, 1865, (p. 556,) repealed the general tax law of 1862 pro tanto, and established the only form of assessment for taxes that could be made against the company.

28 By the third section of the latter act, the company is subjected to the payment of a tax of one-half of one per cent. on the cost of their road in lieu of all other imposition.

An act of the legislature approved April 2, 1873, (p. 112,) provided a new mode for the taxation of railroad companies, under which proceedings were taken to assess said company. These proceedings were affirmed by the supreme court, and are now in this court for review.

The act of 1873 is entitled "An act to establish just rules for the taxation of railroad corporations, and to induce their acceptance and uniform adoption." Its preamble recites that—

"Whereas, for the encouragement of railroad enterprise, laws creating and regulating railways in this State usually provide for the payment by them, in consideration of their chartered privileges, of a fixed rate upon their capital stock, or the cost of their works, in lieu of all other public impositions whatever ;

29 "And whereas it is, nevertheless, contended that the property of such corporations, being largely acquired for or through the growth and extension of their prosperity, should contribute to the charges and expenses essential for municipal and county purposes ;

"And whereas it is desirable, in order to the avoidance of litigation and future dissatisfaction, that such municipal and county taxation shall be authorized, and that the same shall be perm'ently fixed and regulated : Now, therefore,

"1. Be it enacted, That all taxation upon all railroad companies occupying and using railroads in this State, whether as lessees or otherwise, shall hereafter be made as follows :

"First. Such companies shall pay upon the cost, equipment, and appendages of said railroads, respectively, a State tax, after such rate of taxation as may have been heretofore fixed by law upon
30 such companies, or, in default thereof, after the rate of one-half of one per centum upon such cost.

"Second. Upon all the real property by them as aforesaid occupied, used, or owned for the purposes of their road, or otherwise, excepting their main stem or road-bed and track, not exceeding one hundred feet in width, such companies shall pay a county and municipal tax for the benefit of the counties, townships, and cities, respectively, where the same is situate, after the rate of one per centum upon a valuation thereof, and of all improvements thereon, not by way of repairs, now or hereafter to be made, which valuation shall be made as hereinafter stated : Provided, however, That at the termini of their said roads each company may hold a tract of land, not
31 exceeding ten acres, to be in one parcel, which, with the buildings and improvements thereon, shall be free from the payment of county, township, and municipal taxes whatsoever."

The eleventh section of this act declares that all acts and parts of acts inconsistent therewith are repealed.

In the first place, it is insisted on behalf of the company that this sec-

tion does not repeal the third section of the act of 1865, and the following cases are relied upon to sustain that proposition.

State vs. Minton, 3 Zab., 529; State vs. Miller, 1 Vr., 171; Same case, 2 Vr., 529.

In the State vs. Minton it was held that the Morris and Essex Railroad Company was not affected by the general tax-law of 1851, which declared that all lands should be liable to taxation thereby, and repealed all acts and parts of acts inconsistent with its provisions.

The well-settled law in this State is that the provisions of a special charter shall not be altered or repealed except by express words.

32 Therefore, although in the general tax-law of 1851 the words "all lands were used, they were held not to include the lands of this company, because it must be presumed, in the absence of clear expression to the contrary, that the legislature passed the general law with reference only to those to whom the general tax-law before them was applicable, and not for the purpose of affecting corporations that had in their charters a specific provision for taxation. There was nothing in the general tax-law of 1851, thus construed, inconsistent with the charter of the company, which could be operated upon by the general repealer.

But if the general law of 1851 had enacted that all the lands of every railroad corporation in this State, without exception, should be liable to taxation under its provisions, it would have applied necessarily to the Morris and Essex Railroad, and the general
33 repealer would have swept away any inconsistent provision in its charter.

A general repealer in a general tax-law cannot disturb the provisions of a special charter, because they are wholly different; they are not inconsistent; they may both stand independent of each other. They become inconsistent when the general law by clear expression is made to embrace and is applied to the particular corporation, and its inconsistent provisions are then brought within the reach of a general repealer.

There is nothing in the cases in 1 Vroom, 113 and 369, which is not in harmony with this doctrine.

If the prior clauses of a general law apply in express terms to a special corporation, a general repealer would necessarily repeal inconsistent provisions in a special charter, but if there is an absence
34 of such express prior reference, there must be a special repealing clause to make a general law applicable to such particular corporation.

The question is whether the act of 1873 applies in clear language to this corporate body; and, if so, the general repealing clause obliterates any inconsistent provision in the special charter.

The act by its title relates exclusively to railroad companies, and by its first section enacts that "all taxation upon all railroad companies occupying and using railroads in this State, whether as lessees or otherwise, shall be assessed thereunder."

Language cannot be clearer; every railroad in the State is included; and if any road to which the legislature had power to apply this law can claim that it is not within it, every other road can set up the same exemption, and thus render the law wholly inoperative.

35 For the purpose of the case now under discussion, this act must be read as if the legislature had expressly said that the Morris and Essex Railroad shall be taxed as in this act is directed.

A new mode of taxation being thereby provided for this company, in the language of the court, in McGavisk vs. The State: "Two methods of taxation for the same general purpose must certainly be repugnant

Both cannot be used without confusion, oppression, and double taxation; nor can the option to use either be left at the discretion of any public officer. Such extraordinary power could only be conferred by express terms most clearly stated. No such construction can be given to this law by implication. Either the one law or the other must prescribe the only rule for the assessment of taxes against this company; and because of the manifest repugnancy, the latter special law must prevail."

This construction will effectuate the clearly expressed intent of the legislature to prescribe a uniform rule for imposing taxation upon the entire class of tax-payers embraced by its enacting clauses.

It is further argued that the preamble of the tenth section of the act of 1873 excludes from its operation all railroad companies having special provisions in their charters for taxation, whether such provisions are repealable or irrepealable, unless the company shall file its acceptance in writing of this enactment.

The tenth section is in these words:

"And whereas certain railroad corporations owning or occupying railroads in this State claim exemption from all taxation, whether State, county, or municipal, further than is provided by their charters, or by special laws for their benefit now existing, which claims, if legal, subject such corporations to public ill-will, and make it their interest to forego the same and agree to the scheme of taxation

hereby established: Now, therefore, be it enacted that any such railroad corporation may, within six months from the approval of this act, make and execute, under their common seal and signature of their president, and file in the office of the secretary of state a declaration in writing surrendering all claim to exemption from taxation by them heretofore had or made, and accepting the provisions of this act in lieu thereof."

This statute must be interpreted so as to harmonize all its provisions and give effect to every part of it.

The intention expressed in the first section, to subject every railroad to the proposed scheme of taxation, is so clearly declared that there can be no doubt about it. The difficulty presented to the mind of the law-maker was, that there was a class of corporations whose

submission to the legislative will could not be made compulsory by reason of irrepealable contracts in their charters.

With the purpose so clearly avowed to frame the law for all railroads, it must be presumed that the legislature intended, by the 10th section, to remove the obstacle by obtaining the consent of these corporate bodies to the abrogation of their special exempting clauses, and thereby to give the first section full force, and not to render it nugatory by making its efficacy to depend upon the will of those whose assent was not necessary to give it the sanction of a law.

The railroads within the enacting clause of the tenth section are those "that claim exemption from all taxation, whether State, county, or municipal, further than is provided for by their charters, or by special laws for their benefit now existing."

Corporations having repealable charters have never claimed, or even pretended, that they were exempt from all taxation except that specified in their charters. They claim exemption only from all taxation by the general tax-laws; that they have entire immunity from additional burdens until the legislature, by express enactments, shall change the mode in which they are to be assessed.

The claim of exemption from all taxation, further than that provided for by their charters by companies having repealable charters, would in-

volve the inconsistency of denying the repealability of charters which are considered to be repealable.

There are no railroad companies, except those having irrevocable charters, which can claim exemption from all taxation, by either general or special laws, further than is provided by their charters.

To this class of corporations only can the tenth section be applied and provisions therein made for extinguishing these special laws, so that the uniformity which the act has in view may be secured.

40 The judgment below must, therefore, be affirmed, unless the prosecutors can be classified with those corporations that have irrevocable charters.

In their original charter (acts 1835, p. 25) the legislature expressly reserved the power to alter, amend, or repeal at pleasure, and by the supplement of 1836 (p. 223) the same right was preserved.

In 1862, the legislature passed a general tax-law, which, in *The State vs. Miller*, 1 Vr., 368, was held to include the prosecutors by clear expression in its provisions, and thereby to repeal the special mode of taxation to which it was before subject. It is now agreed that the legislature having once exercised its power to repeal has exhausted it. The force of this argument is not apparent.

The right of repeal placed the prosecutors in the same position that all other tax-payers occupied; it was a right to alter, modify, or repeal, not once, but so often as the legislative will is expressed to that end. There is no analogy between the legislative power and powers granted by deed or will. The latter when fully executed became extinguished, while the former is not in the least impaired or diminished by its exercise.

But upon this branch of the case the prosecutors rely mainly upon the supplement of March 23, 1865. (P. 556 & 961.)

The third section of this supplement provides that the tax of one-half of one per cent., to be paid according to the terms of the original act of incorporation, shall be payable at the expiration of one year from the time the road shall be opened and in use to Phillipsburg and annually thereafter, and shall be in lieu of all other taxation; and it was provided that this section should not go into operation without the written consent of the said company.

This consent, which was afterwards duly filed, it is now urged created an irrevocable contract with the State. Irrevocable grants are in derogation of the sovereign power of legislation, and cannot in any case arise by intendment.

It will not be understood that the legislature has relinquished or surrendered any part of its power, unless the intention to do so is expressed in language which leaves it free from doubt.

The act of 1865 conferred a privilege upon the prosecutors, giving them the option of electing which of two specified modes of taxation they would submit to, without containing any expression which can give countenance to the claim that the supplement is to have any higher quality than the repealable charter of which it became a part. There is nothing indicating an intention to make the provision more permanent than that contained in the original grant.

43 No inference of that kind can be drawn from the language that such tax "shall be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of this State, or any law thereof," for the same provision in substance is found in the charter of 1835.

If there could be any doubt that the supplement must partake of the

character of the repealable charter, of which it is a part, I agree, for the reasons stated in the opinion of Justice Depue in the supreme court, that, as applied to corporations, every grant of franchises is a charter, and that the sixth section of the general corporation act of 1846 must be considered as incorporated in the act of 1865, by which it is made in express terms subject to alteration or repeal.

The prosecutors are subject to be taxed by virtue of the first section of the act of 1873, and the judgment of the court below should, therefore, be affirmed.

44

Assignment of errors.

Supreme Court of the United States.

THE STATE, (THE MORRIS & ESSEX RAIL
road Company prosecutors,) plaintiffs in
error,

v.

JAMES S. YARD, COMMISSIONER OF RAILROAD
taxation, for the State of New Jersey,
defendant in error.

Afterwards, that is to say, on the second Monday in October, in the year eighteen hundred & seventy-five, in the Supreme Court of the United States, comes the said The Morris & Essex Railroad Company, by its attorney, & says that in the record & proceedings aforesaid, and in the judgment aforesaid given in the court of errors & appeals in the last resort in all causes in the State of New Jersey, there is a manifest error in this, to wit:

That the said court of errors & appeals in the last resort in all causes of the State of New Jersey decided that the act of the
45 legislature of the State of New Jersey entitled "An act to establish just rules for the taxation of railroad corporations and to induce their acceptance and uniform adoption," approved April 2d, 1873, applied to and repealed all the provisions in the charter of the said The Morris & Essex Railroad Company inconsistent with the provisions of the said act, whereas, in truth and in fact, the said act of the legislature of the State of New Jersey does not apply to and repeal all the provisions in the charter of the said The Morris & Essex Railroad Company inconsistent with the provisions of the said act of 1875.

There is also error in this, that the said court decided that the tenth section of the said act of the legislature of New Jersey only applied to railroad companies having irrepealable charters, whereas, in truth & in fact, the said tenth section does not apply alone to railroad companies having irrepealable charters.

There is also error in this, that the said court of errors & appeals
46 decided that, as applied to corporations, every grant of a franchise is a charter, and that therefore the sixth section of the general corporation act of 1846 of the legislature of the State of New Jersey must be considered as incorporated in the act of 1865 passed by the legislature of the State of New Jersey, entitled "A further supplement to the act entitled 'An act to incorporate the Morris & Essex Railroad Company,' passed January 29th, 1835," which further supplement was approved March 23d, 1865, by which it is made in express terms subject to alteration or repeal, whereas, in truth & in fact, every grant of a franchise to a corporation is not a charter & the supplement to the said

company's charter, viz, the act of 1865, above referred to, is not affected by the general corporation act of 1846 of the State of New Jersey above referred to, and the said general act is not incorporated in & made part of the said act of 1865, and the said supplement of 1865 is not subject to alteration or repeal by the legislature of the State of New Jersey, but is an irrepealable act.

There is also error in this, that the said court of errors and appeals decided that the Morris & Essex Railroad Company, the plaintiffs in error, have not an irrepealable contract with the State of New Jersey, and is therefore subject to taxation under the said act of 1873 without its consent, whereas, in truth & in fact, the said company has an irrepealable contract with the State of New Jersey, and that therefore the act of 1873, under which the said assessment & valuation were made against the said company without its consent, is contrary to & in violation of the Constitution of the United States, and is null & void as against the said company.

There is also error in this, that the said court of errors & appeals decided that the act of 1873 of the legislature of New Jersey, under which the said assessment was made against the said company, was not contrary to the Constitution of the United States, which forbids a State to pass any law impairing the obligation of a contract, and is not void as against the said company, whereas, in truth and in fact, the said act of 1873 of the State of New Jersey under which the said assessment is made, is contrary to the Constitution of the United States & void as against the said company, because it violates the contract made between the State of New Jersey & the said company.

There is also error in this, that the said court decided in effect that the act of 1873, of the State of New Jersey applied to and affected the rights of the said company, whereas, in truth and in fact, the said act does not apply to & affect the rights of the said company.

There is also error in this, that the said court decided that the act of 1873, aforesaid, repealed the further supplement of 1865 of the company's charter, whereas, in truth & in fact, the said act of 1873 did not repeal the further supplement of 1865 of the company's charter.

There is also error in this, that the said court of errors & appeals gave judgment for the said James S. Yard, the said commissioner, whereas it should have given judgment for the said company.

Wherefore, the said The Morris & Essex Railroad Company prays that the judgment aforesaid, by reason of the errors aforesaid, & for other errors appearing in the record & proceedings aforesaid, may be reversed, annulled, & for nothing holden, and that the said statement & valuation of the real property of the said plaintiffs in error made by the said commissioner of railroad taxation, and by him returned to the comptroller of the State of New Jersey, may be adjudged illegal, unwarranted, & may be vacated and set aside and wholly annulled, & that the said prosecutors, the plaintiffs in error, may be restored to all things they have lost on occasion of the said judgement.

J. G. SHIPMAN,

Att'y of Pl'ff in Error.

(Indorsed :) Sup. Court of the United States. Oct. T., 1875. The State, (The Morris & Essex Railroad Co.,) pl'ff in error, v. James S. Bard, railroad com., &c., def. in error. Assignment of errors.

STATE OF NEW JERSEY:

I, Henry C. Kelsey, secretary of state of the State of New Jersey, and ex-officio clerk of the court of errors and appeals in the last resort in all causes, do hereby certify that I have compared the above and foregoing with the original record and proceedings now remaining of record and on file in my office in the above-entitled cause, and that it is a correct transcript therefrom; and also a true copy of the security on the writ of error, and the original citation and service thereof; and also a copy of the opinion of the c't of errors & appeals.

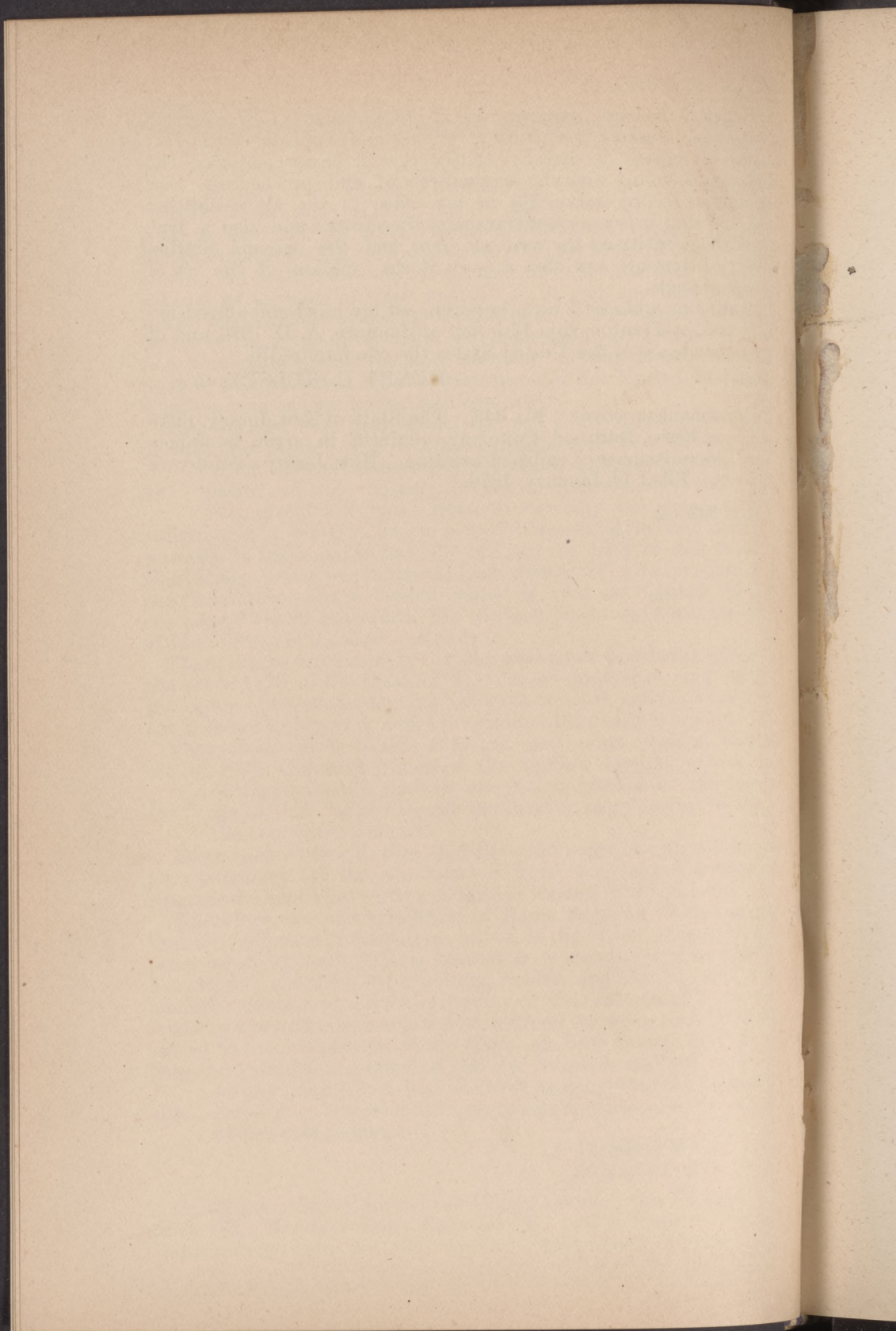
In testimony whereof I have hereunto set my hand and affixed my official seal, at Trenton, this 13th day of January, A. D. 1876, and of the Independence of the United States the one hundredth.

[SEAL.]

HENRY C. KELSEY, *Clk.*

(Indorsement on cover :) No. 343. The State of New Jersey, (The Morris and Essex Railroad Company,) plaintiff in error, vs. James S. Yard, commissioner of railroad taxation. New Jersey c't of errors & appeals. Filed 14 January, 1876.

REC. 343—2



1. An act to incorporate the Morris & Essex Railroad Company, passed January 29, 1835 (Laws 1835, page 29.)
2. A supplement to the charter of the Morris & Essex Railroad Company, passed January 29, 1835, which supplement was passed March 2, 1836 (Laws 1836, page 223.)
3. An act authorizing and empowering the directors of the Morris & Essex Railroad Company to
10 borrow money and for other purposes, passed February 22, 1838 (Laws 1838, page 125.)
4. An act to amend the act entitled, "An act to incorporate the Morris & Essex Railroad Company," passed January 29th, 1835, and which act to amend was passed January 24, 1839 (Laws 1839, page 22.)
5. An act for the relief of the stockholders of the Morris & Essex Railroad Company, passed March 1, 1842 (Laws 1842, page 83.)
6. A further supplement to the original charter,
20 approved February 25, 1846 (Laws 1846, page 57.)
7. A further supplement to the original charter, approved February 19, 1851 (Laws 1851, page 28.)
8. An act to perfect the junction of the Morris & Essex and the New Jersey railroads, approved March 10, 1853 (Laws 1853, page 416.)
9. A further supplement to the original charter, approved March 3, 1854 (Laws 1854, page 260.)
10. A further supplement to the original charter,
30 approved March 6, 1855 (Laws 1855, page 177.)
11. A further supplement to the original charter, approved March 6, 1857 (Laws 1857, page 111.)
12. A further supplement to the original charter, approved March 13, 1861 (Laws 1861, page 314.)
13. A further supplement to the original charter, approved April 12, 1864 (Laws 1864, page 710.)
14. A further supplement to the original charter, approved March 23, 1865 (Laws 1865, page 555), which act was assented to by the Morris & Essex
40 Railroad Company, under its corporate seal, April 17, 1865, and said assent filed in the office of the

Secretary of State April 24, 1865, and which assent was published in the Laws of 1865, pages 961-2.

15. An act to authorize the Morris & Essex Railroad Company to build a bridge across the Delaware river at Phillipsburg, approved April 6, 1865 (Laws 1865, page 855.)

16. A further supplement to the original charter, approved March 5, 1867 (Laws 1867, page 144.)

17. An act to validate and confirm a certain lease and contract by which the Morris & Essex Railroad Company lease their road to the Delaware, Lackawanna & Western Railroad Company, a corporation of the State of Pennsylvania, approved February 9, 1869 (Laws 1869, page 28.)¹⁰

18. A further supplement to the original charter, approved March 14, 1870 (Laws of 1870, page 513.)

19. A further supplement to the original charter, approved March 21, 1871 (Laws 1871, page 588.)

20. A further supplement to the original charter, approved April 5, 1871 (Laws 1871, page 1288.)²⁰

And more particularly under section 15 of the act passed January 29, 1835 (Laws 1835, page 29), and section 3 of the supplement approved March 23, 1865 (Laws 1865, page 555), and the assent thereto of April 17, 1865, filed in the office of the Secretary of State April 24, 1865, and published in the laws of 1865, pages 961 and 2; and also, section 3 of the supplement, approved March 5, 1867 (Laws 1867, page 144); and also, an act to validate and confirm a³⁰ certain lease and contract by which the Morris & Essex Railroad Company lease their road to the Delaware, Lackawanna & Western Railroad Company, a corporation of the State of Pennsylvania, approved February 9, 1869 (Laws 1869, page 28), and reference is also made in the same connection to the lease referred to in the last mentioned act.

2. Because by virtue of the legislation aforesaid⁴⁰ and the acceptance of the act of March 23, 1865, as

aforesaid, the Morris & Essex Railroad Company was and is in every respect, exempt from taxation under the act of April 10, 1884, aforesaid, by the State Board of Assessors.

3. Because the whole assessment aforesaid, made by said Board, and every part thereof, and all proceedings with reference thereto, are unconstitutional and in violation of the contract or contracts existing
10 between the State of New Jersey and the Morris & Essex Railroad Company and The Delaware, Lackawanna & Western Railroad Company, its lessee, and impair the obligation thereof, and are illegal and void.

4. Because the act of April 10, 1884, aforesaid, and every part thereof, is unconstitutional, illegal and void.
20

5. Because the said act of April 10, 1884, has no legal application to the Morris & Essex Railroad Company, and does not in any way repeal or change, and cannot in any way repeal or change the existing acts or supplements aforesaid, or any of them, containing contracts or provisions on the subject of taxation of the Morris & Essex Railroad Company. But if said act of April 10, 1884, has any legal
30 application to the Morris & Essex Railroad Company, which these prosecutors deny, then the assessment aforesaid should be set aside and for nothing holden, in whole or in part.

6. Because the said assessment upon the franchise of the Morris & Essex Railroad Company, valued at \$10,450,000 or any other sum, is unconstitutional and illegal, and not within the power of
40 the legislature to authorize.

7. Because there is no provision, measure or standard in the act of April 10, 1884, under which the Board could lawfully estimate the value of the franchise or tax the same, and also because the principles and method adopted by said board in valuing and assessing the franchise are unconstitutional, illegal and unjust.

8. Because it is unconstitutional and illegal to¹⁰ value and tax the franchise by itself or in any other way.

9. Because the valuation of \$10,450,000 for the franchise, and the tax assessed thereon of \$52,250, are each arbitrary, without any lawful basis of estimate, excessive and unjust, and the franchise has no taxable value under the constitution and laws of the State of New Jersey.

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10. Because it is unconstitutional and illegal for the legislature to commit to the State Board of Assessors the power, as provided in the said act of April 10, 1884, to value the franchise and tax the same.

11. Because the act of April 10, 1884, aforesaid is in violation of paragraph twelve of section seven³⁰ of article four of the Constitution of the State of New Jersey, which provides that "Property shall be assessed for taxes under general laws and by uniform rules, according to its true value."

12. Because there is no provision in the act of April 10, 1884, by which the valuation of any of the railroad property shall be taken into the estimate by the local authorities in fixing the local rate of taxation.

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13. Because the act of April 10, 1884, aforesaid, provides for unequal taxation.

14. Because the valuations by the said board of the real estate (so called) used for railroad purposes of \$6,645,492.54 or as reduced to \$6,624,742.54, or about that sum, are each excessive and should not exceed the valuations returned to the said board by 10 the Morris & Essex Railroad Company.

15. Because the sidings and all structures upon the main stem (besides the main tracks, sleepers and depot buildings used for passengers,) are not taxable either as a part of the main stem or as real estate, or in any other way under the act of April 10, 1884.

16. Because the road bed, (other than main stem,) 20 the sidings, and structures of every kind, including docks, wharves, piers, crib work, and bulkhead outside of the main stem and basins, cannot be valued or taxed by themselves as real estate, or otherwise, or apart from the real estate of which they form part, if taxable at all.

17. Because the valuations by the said board of the real estate (so called) in the various taxing dis- 30 tricts are severally higher relatively than the assessed value of real estate of persons other than railroad or canal corporations therein.

18. Because the valuations by the said board of the real estate, sidings and structures of the Morris & Essex Railroad Company, in the Cities of Hoboken and Jersey City, are excessive and relatively higher than valuations of the board of like character of 40 property of other railroad corporations in said cities respectively as valued by said board.

19. Because the valuation of the franchise of the Morris & Essex Railroad Company is relatively higher than valuations made by the board of the franchises of other railroad corporations terminating in Jersey City and elsewhere in the State, and the discrimination against the Morris & Essex Railroad Company is unjust, unequal and illegal.

20. Because the valuation of the tract in Hoboken of 22,751 acres is excessive as land and the valuation of the sidings thereon is also excessive.

21. Because the area of 99.784 acres in Jersey City of the tract described is too much. From it should be deducted .71 of an acre for main stem. Also 7.25 acres error in calculation of the area. Also 12.4 acres under water between the actual bulkhead and the exterior line for solid filling. Also about four acres included in the basin within said area. ²⁰

22. Because the valuation of the said tract designated as 99.784 acres is excessive as land, and the sidings thereon are also excessively valued.

23. Because the crib work in Jersey City cannot be valued by itself, and the valuation thereof is excessive. ³⁰

24. Because the valuations of the wharves and piers and the buildings thereon and the sidings and also the trestles are each excessive and not assessable by themselves or otherwise.

25. Because the State Board of Assessors refused and failed to grant relief in regard to each and all of the specifications of grievance contained in the 40

written complaint of the prosecutors made to said Board.

26. Because the said board should have granted relief upon each and all of the specifications of grievance contained in said written complaint to said board.

10 27. Because the valuation of all the tangible personal property of the Morris & Essex Railroad Company made by said board is excessive and illegal.

28. Because the said assessment and the act of April 10, 1884, aforesaid, are in diver other respects unconstitutional, illegal, unequal and unjust.

Dated April 8, 1885.

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BEDLE, MUIRHEID & MCGEE,
Attorneys of Prosecutors.

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NEW JERSEY SUPREME COURT.

THE STATE,
THE SUSSEX RAILROAD COMEANY,
Prosecutor,

vs.

EDWARD BETTLE, et als., members of
the State Board of Assessors of
the State of New Jersey, et al.

On certiorari 10
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Reasons.

The prosecutor, the Sussex Railroad Company, by Bedle, Muirheid & McGee, its attorners, prays that the assessment of taxes against it, purporting to have been made under the provisions of "An act for the taxation of railroad and canal property," approved April 10, 1884, and brought up for review under this writ of certiorari may be set aside and for nothing holden, in whole or in part, for the reasons following :

1. Because the whole assessment aforesaid, and every part thereof, and all the proceedings of the said board with reference thereto, are unconstitutional, illegal and void.³⁰

2. Because the act of April 10, 1884, aforesaid, and every part thereof, is unconstitutional, illegal and void.

3. Because the assessment made by said board upon the franchise of the Sussex Railroad Company, valued at \$225,000 or any other sum, is unconstitu-⁴⁰

tional and illegal and not within the power of the legislature to authorize.

4. Because there is no provision, measure or standard in the act of April 10, 1884, under which the board could lawfully estimate the value of the franchise or tax the same, and also because the principles and method adopted by said board in valuing
10 and assessing the franchise are unconstitutional, illegal and unjust.

5. Because it is unconstitutional and illegal to value and tax the franchise by itself or in any other way.

6. Because the valuation of \$225,000 for the franchise, and the tax assessed thereon of \$1125, are
20 each arbitrary, without any lawful basis of estimate, excessive and unjust, and the franchise has no taxable value under the constitution and laws of the State of New Jersey.

7. Because it is unconstitutional and illegal for the legislature to commit to the State Board of Assessors, the power, as provided in the said act of April 10, 1884, to value the franchise and tax the
30 same.

8. Because the act of April 10, 1884, aforesaid, is in violation of paragraph twelve, section seven, of article four, of the Constitution of the State of New Jersey, which provides that, "Property shall be assessed for taxes under general laws and by uniform rules according to its true value."

9. Because there is no provision in the act of April
40 10, 1884, by which the valuation of any of the rail-

road property shall be taken into the estimate by the local authorities in fixing the local rate of taxation.

10. Because the act of April 10, 1884, aforesaid, provides for unequal taxation.

11. Because the valuations by the said Board of the real estate (so called) used for railroad purposes of \$27,420.50, or as reduced to \$25,445.50, or about that sum, are each excessive, and should not exceed the valuation returned to the said board by the Sussex Railroad Company.¹⁰

12. Because the sidings and all structures upon the main stem (besides the main tracks, sleepers and depot buildings used for passengers) are not taxable either as a part of the main stem or as real estate,²⁰ or in any other way under the act of April 10, 1884.

13. Because the road bed (other than main stem) the sidings and structures of every kind cannot be valued or taxed by themselves as real estate or otherwise, or apart from the real estate of which they form part, if taxable at all.

14. Because the valuations by the said Board of the real estate (so called) in the various taxing districts, are severally higher relatively than the assessed value of real estate of persons other than railroad or canal corporations therein.³⁰

15. Because the State Board of Assessors refused and failed to grant relief in regard to each and all of the specifications of grievance contained in the
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written complaint of the prosecutor made to said Board.

16. Because the said Board should have granted relief upon each and all of the specifications of grievance contained in said written complaint to said Board.

10 17. Because the valuation of all the tangible personal property of the Sussex Railroad Company made by said Board is excessive and illegal.

18. Because the valuation of the main stem of \$576,389.70 is excessive and illegal.

19. Because the said assessment and the act of April 10, 1884, aforesaid, are in divers other respects unconstitutional, illegal, unequal and unjust.

20 Dated April 8, 1885.

BEDLE, MUIRHEID & MCGEE,

Attorneys of Prosecutors.

NEW JERSEY SUPREME COURT.

THE STATE,
THE PASSAIC & DELAWARE RAILROAD
COMPANY, and THE DELAWARE, LACK-
AWANNA & WESTERN RAILROAD COM-
PANY, its lessee,

Prosecutors.

vs.

EDWARD BETTLE, et als., Members of
the State Board of Assessors of
the State of New Jersey, et al.

10

On certiorari.

Reasons.

The prosecutors, The Passaic & Delaware Rail-²⁰
road Company, and The Delaware, Lackawanna &
Western Railroad Company, its lessee, by Bedle,
Muirheid & McGee, their attorneys, pray that the
assessment of taxes against The Passaic & Delaware
Railroad Company, purporting to have been made
under the provisions of "An act for the taxation of
railroad and canal property," approved April 10,
1884, and brought up for review under this writ of
certiorari, may be set aside and for nothing holden³⁰
in whole, or in part, for the reasons following :

1. Because the whole assessment aforesaid and
every part thereof, and all the proceedings of the
said board with reference thereto, are unconstitu-
tional, illegal and void.

2. Because the act of April 10, 1884, aforesaid,
and every part thereof, is unconstitutional, illegal
and void.

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3. Because the assessment made by said board, upon the franchise of The Passaic & Delaware Railroad Company, valued at \$7000, or any other sum, is unconstitutional and illegal and not within the power of the legislature to authorize.

4. Because there is no provision, measure or standard in the act of April 10, 1884, under which
10 the board could lawfully estimate the value of the franchise or tax the same; and, also, because the principles and method adopted by said board in valuing and assessing the franchise are unconstitutional, illegal and unjust.

5. Because it is unconstitutional and illegal to value and tax the franchise by itself or in any other way.

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6. Because the valuation of \$7000 for the franchise, and the tax assessed thereon of \$35, are each arbitrary, without any lawful basis of estimate, excessive and unjust, and the franchise has no taxable value under the constitution and laws of the State of New Jersey.

7. Because it is unconstitutional and illegal for
30 the legislature to commit to the State Board of Assessors the power as provided in the said act of April 10, 1884, to value the franchise and tax the same.

8. Because the act of April 10, 1884, aforesaid, is in violation of paragraph twelve, of section seven, of article four of the Constitution of the State of New Jersey, which provides that "Property shall
40 be assessed for taxes under general laws and by uniform rules according to its true value."

9. Because there is no provision in the act of April 10, 1884, by which the valuation of any of the railroad property shall be taken into the estimate by the local authorities in fixing the local rate of taxation.

10. Because the act of April 10, 1884, aforesaid, provides for unequal taxation.

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11. Because the valuations by the said board of the real estate (so-called) used for railroad purposes of \$6338.55, or as reduced to \$6238.55, or about that sum, are each excessive and should not exceed the valuations returned to the said board by the Passaic & Delaware Railroad Company.

12. Because the sidings and all structures upon the main stem (besides the main tracks, sleepers²⁰ and depot buildings used for passengers) are not taxable either as a part of the main stem or as real estate or in any other way under the act of April 10, 1884.

13. Because the road-bed (other than main stem), the sidings and structures of every kind cannot be valued or taxed by themselves as real estate or otherwise or apart from the real estate of which they form part, if taxable at all. ³⁰

14. Because the valuations by the said board of the real estate (so called) in the various taxing districts are severally higher relatively than the assessed value of real estate of persons other than railroad or canal corporations therein.

15. Because the State Board of Assessors refused and failed to grant relief in regard to each and all of ⁴⁰

the specifications of grievance contained in the written complaint of the prosecutor made to said board.

16. Because the said board should have granted relief upon each and all of the specifications of grievance contained in said written complaint to said board.

10 17. Because the valuation of all the tangible personal property of the Passaic & Delaware Railroad Company made by said board is excessive and illegal.

18. Because the valuation of the main stem of \$317,139.75 is excessive and illegal.

19. Because the said assessment and the act of
20 April 10, 1884, aforesaid, are in divers other respects unconstitutional, illegal, unequal and unjust.

Dated April 8, 1885.

BEDLE, MUIRHEID & MCGEE,
Attorneys of Prosecutors.

NEW JERSEY SUPREME COURT.

THE STATE,
THE WARREN RAILROAD COMPANY and
THE DELAWARE LACKAWANNA &
WESTERN RAILROAD COMPANY, its
lessee,

Prosecutors,

vs.

EDWARD BETTLE et als, members of
the State Board of Assessors of the
State of New Jersey et al.

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On certiorari.

Reasons.

The prosecutors, the Warren Railroad Company²⁰
and The Delaware, Lackawanna & Western Railroad
Company, its lessee, by Bedle, Muirheid & McGee,
their attorneys, pray that the assessment of taxes
against the Warren Railroad Company purporting to
have been made under the provisions of "An act for
the taxation of railroad and canal property," ap-
proved April 10, 1884, and brought up for review
under this writ of certiorari, may be set aside, and
for nothing holden in whole or in part, for the³⁰
reasons following :

1. Because the whole assessment aforesaid, and
every part thereof, and all the proceedings of the
said board with reference thereto are unconstitu-
tional, illegal and void.

2. Because the act of April 10, 1884, aforesaid,
and every part thereof, is unconstitutional, illegal⁴⁰
and void.

3. Because the assessment made by said board upon the franchise of the Warren Railroad Company valued at \$1,200,000, or any other sum, is unconstitutional and illegal and not within the power of the legislature to authorize.

4. Because there is no provision, measure or standard in the act of April 10, 1884, under which 10 the board could lawfully estimate the value of the franchise, or tax the same, and also because the principles and method adopted by said board in valuing and assessing the franchise, are unconstitutional, illegal and unjust.

5. Because it is unconstitutional and illegal to value and tax the franchise by itself, or in any other way.

20 6. Because the valuation of \$1,200,000 for the franchise, and the tax assessed thereon of \$6000, are each arbitrary, without any lawful basis of estimate, excessive and unjust, and the franchise has no taxable value under the constitution and laws of the State of New Jersey.

7. Because it is unconstitutional and illegal for 30 the legislature to commit to the State Board of Assessors the power as provided in the said act of April 10, 1884, to value the franchise and tax the same.

8. Because the act of April 10, 1884, aforesaid, is in violation of paragraph twelve of section seven of article four of the Constitution of the State of New Jersey, which provides that "Property shall be assessed for taxes under general laws and by uniform 40 rules, according to its true value."

9. Because there is no provision in the act of April 10, 1884, by which the valuation of any of the railroad property shall be taken into the estimate by the local authorities in fixing the local rate of taxation.

10. Because the act of April 10, 1884, aforesaid, provides for unequal taxation.

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11. Because the valuations by the said board of the real estate (so-called) used for railroad purposes of \$45,239.10, or about that sum, are excessive and should not exceed the valuations returned to the said board by the Warren Railroad Company.

12. Because the sidings and all structures upon the main stem (besides the main tracks, sleepers and depot buildings used for passengers) are not taxable²⁰ either as a part of the main stem or as real estate or in any other way under the act of April 10, 1884.

13. Because the road-bed (other than main stem), the sidings and structures of every kind cannot be valued or taxed by themselves as real estate or otherwise or apart from the real estate of which they form part, if taxable at all.

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14. Because the valuations by the said board of the real estate (so-called) in the various taxing districts are severally higher relatively than the assessed value of real estate of persons other than railroad or canal corporations therein.

15. Because the State Board of Assessors refused and failed to grant relief in regard to each and all of the specifications of grievance contained in the

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written complaint of the prosecutors made to said board.

16. Because the said board should have granted relief upon each and all of the specifications of grievance contained in said written complaint to said board.

10 17. Because the valuations of all the tangible personal property of the Warren Railroad Company made by said board, is excessive and illegal.

18. Because the valuation of the main stem of \$2,033,481.70 is excessive and illegal.

19. Because the said assessment and the act of April 10, 1884, aforesaid, are in divers other respects
20 unconstitutional, illegal, unequal and unjust.

Dated April 8, 1885.

BEDLE, MUIRHEID & MCGEE,
Attorneys of Prosecutors.

NEW JERSEY SUPREME COURT.

In the Matter of Appeal of the MOR-
RIS & ESSEX RAILROAD COMPANY,
from the valuation of its property
by the State Board of Assessors.

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Attorney General STOCKTON gave notice to ex-Governor BEDLE that on April 11th, 1885, before LEVI T. HANNUM, Esq., a Supreme Court Commissioner of the State of New Jersey, at his office in the City of Trenton, he would cross-examine Mr. WILLIAM UNRUH.

At the request of ex-Governor BEDLE the examination was postponed until Tuesday, the 14th day of April.

TUESDAY, April 14th, 1884.

The cross-examination in this matter was again postponed by consent to a day subsequently to be agreed upon.

The taking of testimony in the above stated cause was continued on Monday, the 27th day of April,³⁰ A. D. 1885, at the office of LEVI T. HANNUM, Esq., in the City of Trenton, N. J.

Present—Attorney General STOCKTON and ROBERT F. STOCKTON, Esq., on behalf of the State.
Ex-Governor BEDLE, for the Morris & Essex Railroad Company.

It is agreed between counsel that the original testimony of Mr. Unruh shall be used on the certiorari.⁴⁰

WILLIAM UNRUH, a witness having heretofore been sworn, being produced on notice, on the part of the Morris & Essex Railroad Company and the Delaware, Lackawanna & Western, its lessee, for cross-examination, testified further as follows :

Cross-examination by Mr. ROBERT F. STOCKTON :

10 Q. If you will turn to your examination, sir, about the fifth or sixth question, you were asked: "I call your attention, in the first place, to the valuations in Jersey City. In Jersey City the State Board has given a description of what I call a tract, for present purposes, containing 99.784 acres. Are you familiar with that body of land?" You answered, "Yes, sir."

Q. Have you made a calculation of the exact area within the boundaries mentioned in that description? Answer. I have. Question. What is it? Answer. 92.53 acres.

20 Q. Now, how did you come at that difference; in what way; from a map that you made?

A. Yes, sir.

Q. About when was that map made?

A. It is a map of Jersey City in general use. It is considered the standard map of Jersey City.

Q. Which map is it. What is the title of the map?

A. The data from which the map is made was taken from Mr. Bacot's map of Jersey City.

30 Q. Is it or not a fact, that the line of Hoboken—the line between the city of Jersey City and Hoboken—is that line between them correctly shown or not?

A. I imagine that it is correct.

Q. Do you know it to be correct; that is the proposition?

A. No, sir; I don't know it to be correct.

40 Q. Have you calculated the amount of land assessed against the company in Hoboken?

A. Yes, sir.

Q. Do you make that in your return here, 92.53 acres ?

A. That is for Jersey City.

Q. Does the total area, according to your calculation, agree with this quantity, 99.784. That is the total area in the two cities ?

A. 99.784, I understand to be the area in Jersey City only.

Q. (By Mr. SITES.) What I want to get at is the amount which, by your calculation, you found in¹⁰ Hoboken. Added to the amount of land in Jersey City, don't the total of those two equal our total that we have in Jersey City and Hoboken ?

A. No, sir ; I think not ?

Q. Did you examine to see ?

A. No, sir, I havn't made an examination ; I think not though. With regard to the calculation I made of the land in Jersey City, and the fixing of the line between Jersey City and Hoboken—the line as given on Bacot's map has always been regarded as nearly²⁰ accurate, but I have not regarded it as sufficiently accurate to put it on my own maps, but I got the boundary line from other parties and found that it is very nearly identical with Bacot's line, but not exactly so. I got the information from Speilman's and Brush's map, the data, and it is supposed to be as nearly correct as any one can get that boundary. It is a disputed boundary between surveyors, I imagine. I know there is a great deal of trouble about it.

Q. This 92.53 acres you don't pretend goes in the³⁰ Hoboken ?

A. No, sir ; that is Jersey City.

Q. Have you got your calculations here ?

A. No, sir.

Q. Has not the company got a map showing their property down there ?

MR. BEDLE. There was a map produced here ; I will bring it along the next time.

Q. I would like you to recalculate that with that map, and see if you haven't made an error?

Q. (By Mr. ROBERT F. STOCKTON.) A little further down here we come to a question by Governor Bedle: "How much of that basin or canal is in Jersey City, that is under water, and included in that description." Have you found that?

A. Yes, sir.

10 Q. As a matter of fact, is not all that reclaimed land?

A. All made ground; yes, sir.

Q. A little further on: "Q. Now if you put the basin in, how much will that leave." Mr. Unruh's answer is, "That is adding the basin or deducting the basin; I have deducted the area of the basin and the area outside of the bulkhead—no, I beg your pardon; you want it with the deductions of the main stem outside of the bulkhead and the basin. Q.

20 I want to know what the area of land above the water is," &c. Now what valuation do you put on those bulkheads, and the work upon that basin?

A. I take it all as land, the bulkhead being a part of the land there, and is necessary to hold the land in its place; I have forgotten what my valuation was per acre.

Q. What do you value the bulkhead at?

A. As part of the land.

30 Q. But the bulkheads must have cost something to be put there?

A. Yes, sir; that is true.

Q. Well, what is your valuation?

A. There would be no property there at all without the bulkheads, we could not hold the property.

Q. What did it cost. You say you have been engineer for this road for years; what did it cost to put these bulkheads in there?

A. I don't remember the figures.

Q. Have you got any data?

40 A. I haven't it with me.

Q. Be kind enough to bring it the next time.

A. All right.

Q. How much did you estimate the dredging by the yard, that has been done there ?

Objected to as immaterial.

A. The last dredging we did there we paid 16½ cents per cubic yard ; probably we could get it done now for 14.

Q. Did your own men do it? 10

A. No, sir ; by contract.

Q. Did you include the cost of dredging in the value you put upon the land ?

A. No ; I got the value of the land ; I merely took about what property was worth in that vicinity ; I did not consider any of the structures put upon it, that is, in the way of bulkheads and piles for holding the filling in place.

Q. (By Mr. SITES.) Does that basin, in your opinion, increase the value of your property there, or²⁰ decrease it ?

Objected to as immaterial from this witness ; it is no cross-examination.

Q. (By Mr. STOCKTON.) How many cubic yards do you estimate that you dredged out of that basin ?

A. I haven't got the figures here ; it is so long ago that I don't remember.

Q. You have got this data at home ? 30

A. That I can't say ; I may probably have a great deal of labor in looking it up ; I might give you an approximate estimate sooner than look up the data, because this covers a period of nearly a year, and I may not be able to find it ; it is rather difficult to get at the exact quantity.

Q. If you haven't any data, how did you make your estimate ?

A. I had it at that time, but those notes are probably lost. 40

Q. What data did you make your evidence up from when you answered Governor Bedle's question?

A. Upon what point?

Q. Upon the valuation of this basin here?

Objected to, as counsel for the appellants does not recollect that any valuation of the basin is given, and don't think the witness is examined upon that subject.

10

Q. He said that he had lost the data from which he made up his valuation.

A. No, sir; I don't know that I can find the memoranda or the papers that refer to the first cost of the canal.

Q. The question I want to ask is, did you have those memoranda or those papers before you when you testified on the examination of Governor Bedle?

A. No, not at all.

20

Q. From what source did you derive your answer at that time?

A. From my own opinion of the value of lands, and from information gleaned from various sources as to the value of land in that locality.

Q. A little further on: "Are you familiar with that siding? Answer. Yes, sir. Question. What kind of material is it made out of? Answer. It is mostly out of iron taken up from the main track. That has been worn out on the main track." How long has your road used iron rails on the main tracks?

30

A. Iron or steel?

Q. Iron; that is what you say here: "It is mostly out of iron taken out of the main track."

A. We used iron rails on the main track previous to 1872 or 1873, and there are some iron rails on some of our main tracks at this time.

Q. How much of the siding is of iron?

A. I don't know.

40

Q. Have you any means of finding out?

A. I could by having a survey made of it.

Q. You go on a little further down: "Does that come within the line of your duties, to make estimates with reference to it? Answer. Yes, sir. Question. You may state whether that estimate is correct, in your judgment, or not? Answer. I think it is excessive." What data did you have to make up your mind that that estimate was excessive?

A. The fact that the siding is of second-hand iron; to sell the iron we could not get more for it than¹⁰ the price of old iron, which at the present time is not worth over \$16 or \$18 a ton; the ties are old cheap ties, and it is altogether a very cheap track, not such as we have in use for the main track.

Q. What did you put the iron in at, in your estimate return?

A. I don't remember, probably \$20.

Q. Are you using that siding?

A. Oh, yes; I suppose.

Q. And running heavy coal traffic over it? 20

A. Oh, yes.

Q. Are not your rails standard rails?

A. I don't know whether those are in this particular siding or not, probably they are.

Q. Can you give us an estimate of what it would cost to re-lay that siding?

A. With the same quality of iron?

Q. Yes; what you would have to pay for it now?

A. New iron?

Q. No; valuing the iron as if you had to pay for³⁰ it now?

A. That is, if we bought second-hand iron rails, we would pay \$16 to \$20 a ton for it.

Q. Can you get it for that?

A. That is the quotation.

Q. On the 1st of January, 1884?

A. About \$20; I am not sure what it was, within \$20 or \$22; I suppose we can lay this siding for \$4500 or \$5000 a mile.

Q. What do you value your ties at? 40

A. They are probably worth about 40 cents a piece ; a good many of them are culled.

Q. Do you know what the Lackawanna paid for ties on the 1st of January, 1884?

A. No, sir.

Q. Did you pay for the labor at 70 cents per day for laying that track ?

A. Yes, sir.

10 Q. And delivering the materials ?

A. Yes, sir ; that is the idea.

Q. And ballast ?

A. Everything.

Q. What did you pay for ballast a yard—what is it worth to lay it down per yard ?

A. It don't cost us anything ; we generally ballast with ashes.

Q. It certainly costs something.

A. No, it don't ; we have got to clean the ash-box
20 out.

Q. You have to use your road to carry it there, and your men.

A. Yes, sir ; certainly.

Q. (By Mr. SITES.) At the next meeting will you submit in detail, a statement, stating so much for iron, and so much for ties, and so much for labor, and the cost of ballast, and everything in detail that goes to make up a mile of track?

30 Mr. BEDLE. I am not prepared to answer whether I will subject him to that. I will consult with the Attorney General upon that. What I mean is, that I think when you and I come to talk over this case, a great deal of the testimony that is going may be saved.

The ATTORNEY GENERAL. We don't think your surveyor has been guided by the same principles which have guided our engineer, and we are trying to bring that out. As we
40 are here we had better let the witness go on.

Mr. BEDLE. The witness may say what he thinks about that.

The WITNESS. I have no answer to make to that question.

Mr. BEDLE. I will say that this witness is in the employ of the railroad, and I will advise the witness with reference to it between this and the next meeting.

Q. You speak down here about piers. The question is, "What is the average life—12 years; how are those piers constructed on this shore front? A. They are held up by piles driven in the mud." How long are those piles?

A. They run from 50 to 70 feet in length.

Q. Is it not a fact that you are constantly in the habit of renewing the piles and in keeping the structure in as good condition as necessary?

A. We cannot renew many of the piles to keep it in good condition; we can renew the top timber though.

Q. In what condition are those piles now?

A. I haven't made a personal examination of the piers lately. Some of the piers are in very good condition, and some are partially worn out.

Q. (By Mr. SITES.) Are they not all in very good condition?

A. No, sir; they are not all in very good condition.

Q. Is not all piling underneath there pine piles?

A. Spruce, mostly.

Q. Are you sure of that?

A. Yes, sir; very few pine piles.

Q. I have just had all this examined underneath there and find there are pine piles.

Ex-Governor BEDLE objected to the surveyor asking the witness any questions, and the Attorney General requested Mr. Sites to put his questions through counsel.

Q. (By Mr. ROBERT F. STOCKTON.) How did you value the track as old material?

A. I generally valued it for about what it is worth in my opinion; that is my idea.

Q. Do you value it as track, or as old material?

A. As track, too be sure.

Q. Now on the next page: "What was the actual cost, as you understand it, of the construction of that shed?" Was that shed built by your own men?

10 A. Yes, sir.

Q. Can you state—to go back again to the pier question,—can you state when those piers were constructed, at different times?

A. Giving the data of each different pier?

Q. Yes?

A. No, sir; I cannot.

Q. Will you bring that the next time you come?

A. I doubt if I can get that information for you, sufficiently close.

20 Q. Were those piers constructed before 1865?

A. No, sir, none; unless it was the passenger house pier; that I don't know anything about.

Q. Don't you repair these piers every year?

A. Oh, there are some little repairs made.

Q. Don't you keep them in first-class order to run heavy trains on?

A. Oh, yes, of course; we keep them in good order.

30 Q. You speak a little further down here: "How long has that shed been on pier No. 12?" What did that shed cost, if you know, when you put it up?

A. \$8184.40; I have given that as the cost of it; I took care to get the cost of that pier from the superintendent of buildings. Those are the figures; it was built by the company.

Q. Does that include the labor?

A. Yes, sir; everything.

Q. Do you know how many square feet the shed covers?

40 A. Not exactly, I could get it from my maps.

Q. Do that, if you please. How deep was the mud before you commenced to fill in that bulkhead?

A. I never have made any soundings through the mud at that point.

Q. You can come at it generally; how much mud you did dredge out?

A. We never go to the bottom of the mud in dredging at Hoboken.

Q. What is the average life of the pile?

A. Outside of the bulkhead they last from ten to fifteen years; inside of the bulkhead below high water they last a much longer time.

Q. They speak of crib-work—how much is there of that crib-work?

A. The whole front of the property is cribbed, and then the sides of the canal.

Q. How much crib-work is there, in feet?

A. I can't give it to you exactly; I could give it approximately.

Q. On the side of the canal?

20

A. There is probably 3000 feet along the canal.

Q. How much is there along the bulkhead?

A. Probably 1500 feet.

Mr. BEDLE. Is he speaking of Jersey City alone, or of Jersey City and Hoboken together?

The WITNESS. Jersey City and Hoboken both.

30

Q. Don't you use pier No. 6, you speak of that down here?

A. Yes, sir.

Q. Don't you run very heavy coal trains over that pier?

A. We run the usual coal trains that we have on the road; we run on that pier.

Q. Don't the heavy engines run there?

A. We don't run the engines on any of the piers except No. 5; we have a small pusher.

40

Q. What is the average weight—you said the usual weight of coal trains—what is the usual weight of the coal train?

A. The Jennies weigh about six or eight tons, and the hoppers about twenty tons.

Q. How much do you run on an average?

A. On all piers except No. 5 the cars are run singly or in pairs; on No. 5 they run as many as the engine can handle.

10 Q. What would it cost to repair pier No. 6?

A. Probably about \$90,000 or \$100,000.

Q. What do you value your machinery at on that pier?

A. I don't know what the machinery is worth.

Q. What machinery is there there?

A. A stationary engine for hoisting cars up, that is all.

Q. You say "there is a great deal there?"

A. A great deal machinery?

20 Q. Yes, sir; about \$100,000. "About \$100,000; but I mean the pier complete, the approaches thereto, and all the machinery there; there is a great deal of machinery there."

A. By machinery, of course, I mean to include the engine and the drum and the shed, and all that sort of thing; of course it includes quite a number of pieces; it includes as much machinery as we have on any of those piers.

Q. What is the value of all that machinery?

30 A. That I cannot say, I never made an estimate of the value of the machinery on the piers.

Q. I would be glad if you would do so, sir, at your leisure, and bring it over when you come; can you give an estimate, (I don't suppose you can now,) of each one of those piers?

A. Do I understand by that the price they should have cost, or the first actual cost?

40 Q. What they did cost to put them in the condition they are in at the present moment?

A. Of course that might be got at ; I am not prepared to say whether or not it could.

Q. Can you give me an estimate of what it would cost new ?

A. I can give you an estimate of what the contract price would be.

Q. Can you do it now ?

A. I can give it to you approximately now.

Q. We want each one separately.

A. I don't know whether I can give you each one ;¹⁰
I am not prepared to say that.

Q. You speak of siding : " These sidings spoken of in the valuation, both in Jersey City and Hoboken, in ballast, are these sidings that are regularly constructed there in tracks—regularly built tracks ? Yes, sir. With ties and rails ? Yes, sir." How are they ballasted ?

A. Mostly with cinders.

Q. Are not some of these tracks ties and stringers ?²⁰

A. Ties and stringers ?

Q. Laid on ties and stringers ?

A. None of those that are laid in ballast.

Q. You refer to it here : " And the sidings on the piers are laid how ? Laid on the planking of the pier ; the rails laid on the planking of the pier." Are not some laid on ties and stringers ?

A. No, sir—none on ties and stringers ; it would be strung underneath the planking, and the rails laid directly on the planking.

Q. But the stringers are there ?³⁰

A. Yes, sir, but the planking forms the ties.

Q. Now, on your direct examination you say : " Can you give us any idea of the value of that piece of property outside of the sidings and the trestle—the actual value outside of taxing purposes ? I don't know ; I am not able to say what real estate is worth in that vicinity ; I couldn't tell." Don't you know what it cost the Morris & Essex a foot ?

A. What do you refer to ?

Q. You speak of it on page 173 of the direct ex-⁴⁰

amination; I want to know if you can give the actual price paid for that land by your company per square foot; it was the land bought from the Traphagen estate?

A. I could get it from the deed, but I don't remember what they paid for it now.

Q. Now, on another page: "That coal trestle that is valued at \$6900—what is its condition?" What would it cost to rebuild that coal trestle?

10 A. Utilizing some of the foundations that are there, and that they probably could a few feet under the surface, I suppose it would probably cost eight or ten thousand dollars to rebuild that.

Q. Do you run heavy coal trains over that trestle?

A. We run heavy coal cars over it.

Q. What is the weight per foot?

A. About three tons per foot, single track.

Q. When they are loaded, of course?

A. That is the maximum weight put upon them.

20 Q. A little further down: "I call your attention to the signal house near Henderson street and at the east portal of the tunnel, and the two signal houses at the west portal of the tunnel, and the tool house; please tell us whether they are on the main stem or not? They are. Question. By main stem, what do you understand? I understand a width of 100 feet on the main line of the road. Question. That you treat as the main stem? Yes, sir. Question. And they are upon that? They are upon the 100 feet in
30 width. Question. I call your attention to the signal house at the crossing west of the tunnel; whose land is that on? That is on land owned by the Hudson Connecting Railway Company." Question. Don't your company own that building?

A. I don't know whether we claim the ownership, or whether it is joint property between the two companies; we built it though—the Morris & Essex Railroad Company.

40 Q. That is followed with the question: "There are bridges in this assessment set down at \$18,118,

\$23,194 and \$38,040 in valuation; where are those bridges?" Now in reference to those bridges, were you in charge of the road when they were built?

A. Yes, sir.

Q. Are they abutments, or on piles?

A. Abutments set on pile foundation.

Q. How long are those piles?

A. Those on Henderson street, I think, are about 30 or 35 feet in length.

Q. How closely driven are they? 10

A. Probably three or four feet apart between the center.

Q. They are cut off at low water?

A. I think those were cut off below low water, either about or at low water.

Q. The masonry on these is first-class masonry?

A. Yes, sir; from the foot, or say below the level of streets is first-class masonry. The foundation is rubble masonry.

Q. What did that cost per cubic yard? 20

A. Eight dollars per cubic yard for the first-class masonry. I forgot what the rubble was, probably \$5 or \$6.

Q. They were built for the accommodation of heavy trains that passed over your road?

A. Yes, sir.

Q. Now, the question as to the valuation of the siding in Hoboken: "By the board it is put at \$37,194.36 for 31,790 feet in ballast. Are you familiar with siding there? Yes, sir. Question. Know its quality? Yes, sir. Question. State whether that valuation is excessive or not, in your judgment? I think it is." Will you be kind enough to state why that is excessive, in detail? 30

A. Because it is put in at about the same price that you could get new iron, and lay new tracks for at that time, and most of the track is second-hand iron.

Q. The time I refer to is January 1st, 1884?

A. I should have stated January 1st, 1884; it is 40

at the rate of over \$1 a foot, \$6000 a mile ; at that time you could lay new track for \$6000 a mile ; that track has no piles, not anything but cinders, no gravel or broken stone, nothing but cinders.

Q. Don't cinders make a very good road bed ?

A. Very good for the yard ; and the ties, most of them are culled.

Q. " Can you be right that there are seven acres and odd under water within the boundary of the 10 Hoboken tract ? " Now, don't all your deeds run to solid filling line ?

A. I think the eastern boundary of all that land is an indefinite point ; they are generally described the north, south, and west lines, and of course the right extends into the river as far as such rights are allowed by law.

Q. " Question. What is a float bridge ? It is a bridge for transferring cars from the tracks to the float used for transferring them to New York. " 20 What are float bridges worth, or rather what did that one cost ?

A. I don't know.

Q. I would like to find out what that cost, if you can let me know at the next meeting ; can you make an estimate of what it would cost to rebuild that on the first of January, 1884 ?

A. No, sir ; I could not.

Q. You could make an approximate estimate ?

A. I would not be prepared to make it right 30 here at this present moment.

Q. Oh, no ; I mean the next time you come here ; now on page 177 : " Now I would like to turn to Newark for a few minutes ; I call your attention to the valuation of lots 18, 19 and 20, and ask you whether previous to January 1st, 1884, all these lots were used for railroad purposes or not. I think there was only one used for railroad purposes. " Do you know what purpose they were used for ?

A. There were houses upon them and they were 40 rented out to tenants.

Q. Rented out by the Morris & Essex Railroad Company?

A. Yes, sir.

Q. What use were they put to after the 1st of January, 1884?

A. They were sold and moved off the property, and the property turned over to the use of the railroad, had been turned over to the railroad.

Q. On page 178: "I call your attention to the Boonton Branch." When was that Boonton Branch¹⁰ built?"

A. It was opened in 1870 for traffic.

Q. "Now, I call your attention to the Boonton Branch. The sidings of the Boonton Branch in Jersey City seem to be valued by the board at \$20,535.50 for 17,550 feet. What is your judgment with reference to that valuation?" What would it cost to replace that with new iron on the first of January, 1884?

A. It would have cost about \$6000 a mile, new²⁰ iron and ties, and piles and everything.

Q. What do you estimate stone ballast as worth a yard, in place?

A. We don't use stone ballast on the Morris & Essex?

A. What do you use?

A. We use gravel.

Q. What do you estimate that to be worth?

A. It costs us from 20 to 50 cents a yard, accord-³⁰ing to where we get it from, where it is delivered. The longer the haul, the more it costs.

Q. On another page: "State whether any part of this estimate of siding in North Bergen is upon the main stem? A. I think about 3000 feet, in their estimate, is on the main stem." Have got a map of that?

A. Not here.

JUDGE BEDLE. What map do you refer to?⁴⁰
Mr. STOCKTON. The map of this property.

Judge BEDLE. We have not got a map of that.

Q. Do you know whether they have?

A. I have never produced any for any trial.

Q. Well, have they got any?

A. I think likely we have a map of North Bergen; it is probable we have.

10 Q. Don't you know that you have?

A. Yes, sir; we have one.

Q. Well, be kind enough to produce it at the next meeting. Now at the bottom of page 181: "In the City of Boonton there are sidings assessed 2000 at \$2000 valuation; you may state whether those are excessive or not?" Then on the next page you answer, "They are valued at about twenty cents a foot too much." Will you state for what reason you think this is excessive?

20 A. A greater part of the iron at Boonton is old iron, and light wood; it has been there (some of it) since 1866, and is in pretty bad condition, culled, a great many of them. Very cheap side tracks.

Q. On another page, Roxbury township: "There is about 54,500 sidings in all, including 10,500 feet on trestle, so it is only about 44,000 feet in ballast outside of the main stem." Do you find 10,500 assessed anywhere in the board's assessment, outside of the 54,500?

30 A. Please repeat that?

Q. The question asked you was: "There is about 54,500 feet of sidings in all, including 10,500 feet on trestle, so it is only about 44,000 feet in the ballast outside of the main stem?" My question was whether you found that 10,500 feet assessed against the road outside, except as included in the 54,500?

A. I don't remember about that now.

40 Q. Now, on that same page the Governor asked you about sidings in Roxbury: "These sidings are estimated at one dollar per foot in Roxbury township by the board; you may state whether that is

excessive or not? Excessive to the extent of about twenty cents per foot for those in ballast." What data did you have to come to that conclusion?

A. I did not go into the details; it was estimated from my knowledge of the condition of that track, the cost of the iron, and the value of the iron, and my general opinion as to the value at that time.

Q. On page 185: "There are sidings there in Dover City assessed at \$5743, the estimate appearing to be one dollar per foot; state whether that is excessive?" You answer: "The price is excessive to the extent of about twenty cents, and there are not that many feet of sidings outside of the main stem." How did you make your estimate of that—what data did you have?

A. The same as with regard to the sidings in Roxbury township; I made my estimate from my knowledge of the condition of the sidings and the value of the iron.

Q. On page 186: "Do you know when that was built? I think in 1866." Have you got any data by which you can be certain when that was built?

A. I don't know whether the papers are still in my office or not.

Q. If they are I would like you to produce them. On page 188: "You may state whether the valuation by the board of these plots and pieces of land of which I speak now, outside of the cities, in the smaller towns or villages and localities, is excessive or not?" You answer: "They are generally in excess of what would be considered a fair valuation." Have you ever had any experience in buying land for railroad purposes?

A. Yes, sir.

Q. Could you purchase that land for the values given?

A. In our report?

Q. Yes, sir.

A. No, sir, not in all cases; you might in some, probably.

Q. Is it or not a fact that in purchasing the right of way you have to pay from three to five times the valuation—the actual value of the earth.

A. Sometimes that is the case.

Q. Is it not generally the fact?

A. Not always; it depends altogether upon the necessity of the railroad, and the favor in which it is held by the people on the line.

10 Q. When they cannot agree with the owner, and have to go before Commissioners?

Objected to as illegal.

A. As a general rule right of way costs more for the strip of land than it would to go and buy a farm out and out, probably two or three times as much as the farm would bring, if the whole farm was sold.

Q. Have you got a map of the railroad showing the main stem to Hardyston?

20 Judge BEDLE. You are on the Sussex road now?

A. No, sir.

Q. You have not got that map?

A. No, sir.

Q. Do you know whether there is a map in existence showing that?

A. I think not; I have never seen any.

30 Q. Have you in your possession any map that shows your whole system of roads—that is the Morris & Essex, the Warren, Sussex, Passaic, and the whole four roads?

A. Nothing except published maps on a very small scale.

Q. Have you not got right of way maps.

A. We have for various portions of it; not all on one map.

Q. In making your estimates of this road here—the Morris & Essex Road—did you prepare yourself with any data at all, or was it just your opinion?

40 A. I prepared myself with data for certain parts of it, of course. In regard to certain estimates men-

tioned, the figures given as to quantity of land was prepared from data.

Q. That is all.

By Attorney General STOCKTON :

Q. I would like to ask the witness a question upon just one point, in reference to the very matter Mr. Stockton was asking you about. Did you prepare yourself for this examination, and make an estimate and valuation of the road? 10

A. I gave a great deal of time and attention to it.

Q. For the purpose of being examined as a witness?

A. Oh, not for this specific purpose of being examined as a witness.

Q. I know that you are engineer of the road and generally acquainted with its value, and have been there for many years, as you state. Now, I ask you whether you made an estimate of this property, as to whose value you have been testifying, for the purpose of being examined as a witness in this case. 20

A. No, sir.

Q. How long before you were examined as a witness did you receive notice that you were to be examined as a witness in this case?

A. I don't remember.

Q. About how long; I only want to show that you hadn't a proper opportunity of making a detailed examination; you can approximate. 30

A. I don't think it was over a week or two.

Q. Did you take any other engineers with you when you went to examine the property for this purpose?

A. No, sir.

Q. Did you examine the property for this specific purpose, of giving this testimony?

A. No, sir.

Q. Have you a set of books or any books in your office in which you preserve the prices which you have paid for your right of way? 40

A. I think I have a book that has part of the purchases in on the Boonton Branch ; I never kept up anything of the sort as a system ; I think I have a book of the Boonton Branch that goes as far as 1870, but since that it has not been kept up.

Q. Do you know whether officers of your company keep any books in which are recorded the prices of the land bought by the company ?

A. That I don't know.

10 Q. Is there a real estate department ?

A. There is for land outside of the right of way of the road ; there is a man whose duty it is to look after the real estate, collect the rents, &c., but he has no map or data or any record as to the area or the price paid.

Q. In making your return to the State heretofore, of the cost of your works from what data has that been made up.

A. I never made up reports myself previous to
20 the 1st of January, 1884, and don't know what data was used.

Q. In making an estimate of the cost of the road, it would be necessary, would it not, to know the price paid for the land ?

A. I should not think so, necessarily.

Q. You think they could make a proper return of the cost of the road to the State for the purposes of taxation, without knowing the prices paid for the land ?

30 A. I think so, because a great deal of the land was bought when real estate was much higher in value than it is now.

Q. I don't think you understand my question, and you don't seem to get the force of the word "cost;" I am not asking about the valuation, I am asking now in reference to the old reports ; where the report was made as to the cost of the road—whether in order to make a report of the cost of the road, it
40 would not be necessary to know what the real estate cost ?

Objected to as immaterial, and also for the reason that this witness has nothing to do with that question; it don't come within his province in any way.

A. I think it would be necessary to know, yes, sir.

Q. Do you know whether an account has been kept by your company for that purpose, of the cost of the road? 10

A. I do not know.

Q. Do you know in whose province that would be likely to come?

A. Probably the Secretary or Auditor.

Mr. STOCKTON. Perhaps you can tell us Governor, what officers of the company we can apply to to get the information we desire, as to the cost of the right of way. I have no doubt that this witness states correctly, when²⁰ he says that he does not know, and that he has not the books.

The WITNESS. I have the books in part.

EX-GOVERNOR BEDLE. Is that involved in this case?

Mr. STOCKTON: We think it is. We think it is directly involved, and we are going to ask the company to furnish us with that. That was the object of this question. It was simply to see what this wit-³⁰ness knows, and I will add a request to Mr. Unruh to furnish us with such information as his books afford as to the cost of the right of way.

EX-GOVERNOR BEDLE. He will do on that subject whatever counsel advise. Are you through with the cross-examination?

Mr. STOCKTON. Yes, sir; except in regard to the papers and maps we have asked him to furnish. 40

The further examination was adjourned at this point to a day to be hereafter agreed upon. Counsel for the appellants in the meantime to continue his case.

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NEW JERSEY SUPREME COURT.

THE STATE,
 THE MORRIS & ESSEX RAILROAD COM-
 PANY and THE DELAWARE, LACKA-
 WANNA & WESTERN RAILROAD COM-
 PANY, its lessees,

Prosecutors,

vs.

EDWARD BETLE and others, members
 of the State Board of Assessors of
 the State of New Jersey et. al.,
 Defendants.

On certiorari¹⁰
 to the State
 Board of As-
 sessors, &c.

Taking of testimony, etc., this sixth day of May, A.²⁰
 D. eighteen hundred and eighty-five, before
 GEORGE W. CASSEDY, Esq., a Supreme Court Com-
 missioner, at his office in Jersey City at the hour
 of ten o'clock in the forenoon, on behalf of the
 prosecutors in the above stated writ, upon due
 notice admitted by BARKER GUMMERE, attorney and
 counsel in behalf of the defendants; J. D. BEDLE,
 appearing in behalf of the prosecutors.

Counsel for prosecutors states that this³⁰
 testimony is taken without any waiver of any
 right to question the sufficiency or character
 of the return to the writ of certiorari as al-
 ready made.

The prosecutors offer in evidence the fol-
 lowing acts of the Legislature of the State of
 New Jersey.

(1.) An act to incorporate the Morris &⁴⁰

Essex Railroad Company, passed January 29th, 1835 (Laws 1835, page 29.)

(2.) A supplement to the charter of the Morris & Essex Railroad Company, passed January 29th, 1835, which supplement was passed March 2d, 1836 (Laws 1836, page 223.)

10 (3.) An act authorizing and empowering the directors of the Morris & Essex Railroad Company to borrow money and for other purposes, passed February 22d, 1838 (Laws 1838, page 125.)

(4.) An act to amend the act entitled, "An act to incorporate the Morris & Essex Railroad Company." passed January 29th, 1835, and which act to amend was passed January 24th, 1839 (Laws 1839, page 22.)

20 (5.) An act for the relief of the stockholders of the Morris & Essex Railroad Company, passed March 1st, 1842 (Laws 1842, page 83.)

(6.) A further supplement to the original charter, approved February 25th, 1846 (Laws 1846, page 57.)

(7.) A further supplement to the original charter, approved February 19th, 1851 (Laws 1851, page 28.)

30 (8.) An act to perfect the junction of the Morris & Essex and the New Jersey railroads, approved March 10th, 1853 (Laws 1853, page 416.)

(9.) A further supplement to the original charter, approved March 3d, 1854 (Laws 1854, page 260.)

(10.) A further supplement to the original charter, approved March 6th, 1855 (Laws 1855, page 177.)

(11.) A further supplement to the original charter, approved March 6th, 1857 (Laws 1857, page 111.)

40 (12.) A further supplement to the original

charter approved March 13th, 1861 (Laws 1861, page 314.)

(13.) A further supplement to the original charter, approved April 12th, 1864 (Laws 1864, page 710.)

(14.) A further supplement to the original charter, approved March 23d, 1865 (Laws 1865, page 555), which act was assented to by the Morris & Essex Railroad Company, under its corporate seal, April 17th, 1865, and said assent filed in the office of the Secretary of the Secretary of State, April 24th, 1865, and which assent was published in the Laws of 1865, pages 961 and 962.

(15.) An act to authorize the Morris & Essex Railroad Company to build a bridge across the Delaware river at Phillipsburg, approved April 6th, 1865 (Laws 1865, page 855.)

(16.) A further supplement to the original charter, approved March 5th, 1867 (Laws 1867, page 144.)²⁰

(17.) An act to validate and confirm a certain lease and contract by which the Morris & Essex Railroad Company lease their road to the Delaware, Lackawanna & Western Railroad Company, a corporation of the State of Pennsylvania, approved February 9th, 1869 (Laws of 1869, page 28.)

(18.) A further supplement to the original charter, approved March 14th, 1870 (Laws 1870, page 513.)³⁰

(19.) A further supplement to the original charter, approved March 21st, 1871 (Laws 1871, page 588.)

(20.) A further supplement to the original charter, approved April 5, 1871 (Laws 1871, page 1288.)

(21.) A further supplement to the original⁴⁰

charter, approved April 2d, 1873 (Laws 1873, page 1348.)

10 The prosecutors also offer in evidence certificate of assent of the Morris & Essex Railroad Company to a "Further supplement to the act entitled 'An act to incorporate the Morris & Essex Railroad Company,' passed January twenty-ninth, eighteen hundred and thirty-five," as published in the Laws of 1865, on pages 961 and 962; this publication in the laws to be taken the same as though a certified copy were produced under the hand and seal of the Secretary of State, the same being assented to by counsel for defendants.

20 Counsel for prosecutors offers in evidence the copy of the valuation in detail served by the State Board of Assessors upon the Morris & Essex Railroad Company, the same bearing date December 1, 1884, together with the notification and document therewith addressed to the Morris & Essex Railroad Company and signed by the members of said State Board of Assessors, the signatures of which assessors are admitted, and this whole exhibit being admitted as the actual document so served, and the same is marked Exhibit P. 1, on the part of the prosecutors.

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Whereupon the examination was adjourned to Thursday, May 7, 1885, at 10 o'clock A. M., at the same place.

At which time the examination was further adjourned by consent to May 13, 1885, at 11 o'clock A. M., at the same place.

40

Wednesday, May 13, 1885, the examination was resumed.

Present—JOSEPH D. BEDLE, Esq.
BARKER GUMMERE, Esq.

It is further agreed by counsel on both sides that the date of the filing of the certificate of assent of the Morris & Essex Railroad Company herein before referred to, is April¹⁰ 24, 1865, and the said certificate, as published in the laws aforesaid, is to be treated the same as though the original were produced and proved, the same to be taken in lieu of the original.

Counsel for prosecutors offers in evidence a certificate bearing date February 9, 1885, served upon the Morris & Essex Railroad Company, showing corrections made by the State Board of Assessors after review, it be-²⁰ing admitted that the same is signed by John T. Van Cleef the secretary of said board, and that the same was served as stated; and the same is marked Exhibit P. 2.

Counsel for prosecutors also offers in evidence the whole of the original return to the State Board of Assessors made by the Morris & Essex Railroad Company in the year 1884, subject to the following agreement of counsel: ³⁰ that if the same should be held by the court as a part of the return to be made under the writ of certiorari in this cause, that the same shall be so treated; but if not, that the same then shall be considered as offered in evidence on the part of the prosecutors.

Counsel for defendants objects to same as incompetent and irrelevant.

Counsel for prosecutors also offers in evidence a copy of a written request made to the State Board of Assessors December 15, 1884,⁴⁰

to furnish the basis, data, factors or elements of valuation, &c., upon which the board valued the franchise of the Morris & Essex and other railroad companies, the same being admitted to be a correct copy, and is marked Exhibit P. 3.

10 It is also agreed by counsel that the said board, under the advice of the Attorney General, and counsel for the State afterwards on that day declined to comply with the request.

Counsel for prosecutors also offers in evidence the copy of the certificate and return of the State Board of Assessors to the Comptroller of the State of New Jersey, served by the Comptroller upon the Morris & Essex Railroad Company, and the same is marked Exhibit P. 4.

20 WILLIAM UNRUH, a witness produced on the part of the prosecutors, being duly sworn according to law, on his oath saith :

Examined by Mr. BEDLE :

Q. Where do you reside?

A. Morristown.

Q. What position do you hold in the Delaware, Lackawanna & Western Railroad Company?

30 A. Civil Engineer for the Morris & Essex Division.

Q. Are you the head engineer of that division?

A. Yes, sir.

Q. How long have you been in the employ of the Delaware, Lackawanna & Western Railroad Company on the Morris & Essex Division?

A. I have been in the employ of the Delaware, Lackawanna & Western Railroad Company about sixteen years.

40 Q. And on the Morris & Essex Division since the lease?

A. About fourteen years of that time on the Morris & Essex Division.

Q. Are you familiar with the location of the Morris & Essex Railroad and its branches?

A. Yes, sir.

Q. (Showing witness map.) I show you a small map (marked by the Commissioner Exhibit P. 5) and ask you whether that was made either by you or under your direction?

A. It was made under my supervision. 10

Q. Is it substantially correct?

A. I believe it to be substantially correct.

Q. Is there a scale to it?

A. It is a scale of four miles to the inch.

Q. Have you put down anything further than the mere outlines of the roads?

A. That is all.

Q. Was it intended to be anything more than a mere skeleton map of the road and its branches?

A. It was intended to be a mere outline of the Morris & Essex and the Boonton Branch Railroad. 20

Q. So that you can take in the general scope of the Morris & Essex and its branches at a glance?

A. The idea is to show the general course and location of the Morris & Essex Railroad and the Boonton Branch Railroad.

Counsel for prosecutors offers in evidence the map referred to, the same being marked

Exhibit P. 5. 30

Q. I see that on this map there branch off two rivers from Newark bay. The easterly river, what is that?

A. That is the Hackensack river.

Q. And the westerly is what?

A. That is the Passaic river.

Q. The main line of the Delaware, Lackawanna & Western Railroad Company branches off from the main line of the Morris & Essex Railroad Company at what point? 40

A. At Washington.

Q. And passes over at that point what railroad?

A. It passes over what is known as the Warren Railroad through the State of New Jersey.

Q. Running to the State line of Pennsylvania?

A. I believe the Warren Railroad includes that part of the Delaware, Lackawanna & Western Railroad main system running from the Delaware river above Delaware station, north of Delaware station to Hampton Junction, on the Central Rail-
10 road of New Jersey.

Q. But what is marked on this map as the Warren Railroad is a part of the main line of the Delaware, Lackawanna & Western Railroad Company, is it not?

A. Yes, sir; in the State of New Jersey.

Q. Can you tell us when the Morris & Essex Railroad was constructed to Phillipsburg or completed?

A. I think it was completed sometime in the year
20 1866.

Q. Please tell us when the Boonton Branch was completed?

A. The whole of the Boonton Branch Railroad, what is known as the Boonton Branch Railroad, was first opened for business in September, 1870.

Q. When was its construction commenced?

A. That part of it running from Denville to Boonton was constructed about 1866; then in 1869 construction was commenced on part of the road from a
30 point about two miles east of Dover to the west side of Bergen Hill, and finished in 1870; first opened in 1870.

Q. What do you mean by that, two miles east of Dover?

A. The Boonton Branch Railroad starts at a point about two miles east of Dover and runs over what is known as the Denville cut-off as far as Denville or to a point probably about a mile east of Denville station, and there it follows the line of the Boonton
40 Branch Railroad which was completed in 1866 as far as Boonton.

Q. Well, you speak of some construction two miles east of Dover as a part of the Boonton Branch, is that separate from the part from Denville to Boonton that you have already spoken of?

A. Yes, sir.

Q. In 1866 the road was constructed from Denville to Boonton?

A. That part of the Boonton Branch between Denville and Boonton was constructed in 1866 for a single track. 10

Q. And it was all completed as the Boonton Branch, as you have spoken, afterwards?

A. In 1870.

Q. What is the distance from Denville to Boonton?

A. Four miles and a quarter.

Q. (By Mr. GUMMERE.) The spots indicated on your tracing denote the location of the different villages and the cross-lines denote the location of the more important towns, do they not? 20

A. Yes, sir.

Q. (Mr. BEDLE, resuming.) The tunnel marked on this map is that known as the tunnel through Bergen Hill?

A. Yes, sir.

Q. Previous to the construction of that tunnel did the Morris & Essex Railroad go through the other tunnel, which is known as the Long Dock tunnel?

A. Yes, sir.

Q. This tunnel laid down on the map was the tunnel built by the Morris & Essex Railroad Company, as I understand it? 30

A. Yes, sir.

Q. Phillipsburg is directly opposite Easton, is it not?

A. Yes, sir; on the east side of the Delaware river.

Q. And the Morris & Essex at that point connects by a bridge with what roads?

A. It has connection with the Lehigh Valley 40

Railroad, and also connects with the Lehigh and Susquehanna.

Q. These various towns and places that you have made on this map, are they substantially correct as laid down?

A. Yes, sir.

Q. Is the Morris & Essex Railroad and its branches operated by the Delaware, Lackawanna & Western Railroad Company?

10 A. Yes, sir.

Q. And has been since when?

A. Since the 1st of January, 1869.

At this point the examination was adjourned to Friday, May 15, 1885, at 10.30 A. M.

Pursuant to adjournment the examination was resumed Friday, May 15, 1885, at 10.30 A. M.

20 Present—As before.

30 It is agreed between the counsel of the respective parties in this cause that the testimony of William Unruh, heretofore taken for use before the State Board of Assessors, with the additional cross-examination as already taken on behalf of the State, shall be considered as in evidence in this certiorari case, but not to be used for the purpose of making any claim on the subject of valuations on either side for any reduction or increase thereof by the Court itself; but in case the Court should be of opinion that the said board, on the subject of valuation, if that becomes a question in the cause, made any mistake or error in principle or method in reference thereto, that any correction necessary or proper by reason thereof shall be referred to the said board for correction instead of having the Court make any estimate thereon.

40

It is also agreed that no further testimony on either side on the subject of valuations shall be taken.

It is also further agreed that the terms of this stipulation in every respect shall apply to the certiorari cases now pending to bring up assessments against the Sussex Railroad Company, the Passaic & Delaware Railroad Company and the Warren Railroad Company, so as to include the testimony of William¹⁰ Unruh taken before the State Board in reference to said companies, and each of said cases.

WILLIAM UNRUH, *cross-examined by* Mr. GUMMERE :

Q. In 1865, how far was the Morris & Essex Railroad constructed; what was its terminus—western and eastern? ²⁰

A. I don't know of my own personal knowledge, but from what I have been told, I think, the western terminus was at Hackettstown.

Q. What was that road; a double track or a single track road?

A. A single track.

Q. When was the road made a double track road on its main line?

A. A double track was laid to a point near Morristown previous to 1869, and during the years 1869 and³⁰ '70 the company were engaged in laying a double track between Dover and Phillipsburg; it was probably as late as 1873 or '74 before the double track was completed on the Boonton Branch, thus giving them a continuous double track line by way of Hoboken.

Q. Boonton Branch, extending from Denville to the main track or near Jersey City?

A. Yes, sir.

Q. How much of the Boonton Branch was actually⁴⁰ constructed in 1865?

A. None of it.

Q. When and at what times were the different parts of the Boonton Branch constructed?

A. That part of it between Denville and Boonton was constructed for a single track in 1866; and in 1869 it was reconstructed between Denville and Boonton, the grades changed and the line of it somewhat improved and at the same time the line was constructed from Boonton to the west side of Bergen 10 Hill; also a line from Denville to a point about two miles east of Dover station, known as the Denville cut-off, which is a part of the Boonton Branch.

Q. The original course from Dover to Denville is shown on this map by the loop extending north-erly?

A. By way of Rockaway; yes, sir.

Q. And the Boonton Branch is nearly in a direct line from Denville to the junction of the B. B. R. R. track?

20 A. Yes, sir.

Q. Did the double tracking of this road of the main line require on the part of the company the acquiring of any addition to the right of way?

Q. Yes, sir.

Q. Was that throughout its entire route?

A. No, sir; at points only.

Q. Do you know what the right of way was before it was double tracked?

A. It varied; between Dover and Hackettstown at 30 some places as narrow a width as sixty-six feet was taken and at other places a hundred feet; the usual width taken from Hackettstown to Phillipsburg was ninety-nine feet, except at points where the excavations or embankments required more, and there the additional width was taken.

Q. You mean when the original track was put down?

A. Yes, sir.

40 Q. What is the width of the right of way now between Hackettstown and Phillipsburg?

A. Usually one hundred feet, except where additional width is required for the cuts and slopes in the banks.

Q. And the change was made from the sixty-six feet to one hundred feet usually?

A. No, sir; when the right of way was procured between Hackettstown and Phillipsburg, right of way was procured sufficient for the construction of a double track railroad; it was for some years before right of way was procured, but east of Hackettstown only sufficient right of way was had for a single track. ¹⁰

Q. West of Hackettstown there was sufficient width required for a double track, but east of Hackettstown there had to be additional right of way at additional points in order to accommodate a double track?

A. Yes.

Q. To what extent was that right of way acquired east of Hackettstown—was it appreciable—what proportion—I only want a general statement? ²⁰

A. Not very much except in the vicinity of Waterloo and Stanhope; for a distance of probably four miles we had to procure an additional right of way.

Q. And at other points it was inappreciable?

A. At other points it was inappreciable

Q. Then I understand the Boonton right of way was acquired mainly as it now exists, including Boonton cut-off, was acquired mainly after 1865? ³⁰

A. Yes, sir; all of it was acquired after 1865.

Q. The tunnel as it now exists I think you testified was erected after 1865; it was constructed after 1865, was it not?

A. Yes, sir.

Q. The land outside of main stem, what acquisitions outside of right of way strictly, what additional lands were acquired since 1865 between Phillipsburg and the Hudson river; have you the data there? Can you give that information or will it be necessary? ⁴⁰

for you to look at your records in order to answer the question?

A. In order to answer the question correctly I should have to make a list from the records of deeds, but I am personally-acquainted with most of the property, the greater part of it.

(All this cross-examination is taken subject to objection in whole and in part, as irrelevant and immaterial.)

10 Q. The loop-line at Stanhope, when was that made?

A. That was built in 1869 and '70.

Q. Did the double tracking require considerable change in gradation?

A. It required additional excavation and embankment.

Q. The changes in grade were not much?

20 A. At some points there was considerable change in grade.

Q. How did the Delaware, Lackawanna & Western Railroad Company transport its coal and passengers across the State of New Jersey prior to its taking the lease of the Morris & Essex Railroad Company?

A. They connected with the Central Railroad Company of New Jersey at Hampton Junction.

Q. And all their passengers and freight and coal went across New Jersey by the route of the Warren Railroad and the Central Railroad of New Jersey?

30 A. The greater part, but there was some of the coal transported by the Morris Canal, and I imagine some of it was taken by the Morris & Essex Railroad, as the Morris & Essex Railroad had a connection with them at Washington.

Q. That was probably for local supply?

A. Very likely.

Q. Since the lease how have your passengers, freight and coal transportation been carried across the State of New Jersey?

40 A. By way of the Morris & Essex Railroad.

55
Q. Is any coal of consequence transported over that part of the Morris & Essex line between Washington & Phillipsburg?

A. I think coal is transported across that part of the line for local consumption.

Q. But only for local consumption?

A. I think so.

Q. Freight and passengers, coming by the Delaware, Lackawanna & Western roads, is any of that diverted at Washington to Phillipsburg? 10

A. I think so; there would be some local freight carried on that part of the road, and also some local passengers.

Q. The connection with the Belvidere & Delaware Road in the transportation of freight and passengers—where is that made?

A. That is at Manunkachunck, northwest of Washington.

Q. On the 1st of January, 1884, what was the extent of the system controlled and operated by the Delaware, Lackawanna & Western Railroad? 20

A. In the State of New Jersey only?

Q. No, I mean including the State of New Jersey?

A. They operated the Morris & Essex Railroad and branches, the Passaic & Delaware, Newark & Bloomfield, Chester Railroad, Sussex Railroad and the Warren Railroad, considered a part of the main line of the Delaware, Lackawanna & Western Railroad of New Jersey; then the main line of the Delaware Lackawanna extending through Scranton to Binghampton, the branch from Binghampton to Syracuse and Oswego, also the branch from Binghampton and Utica to Richfield Springs, and the Buffalo extension, extending from Binghampton to Buffalo; a branch extending from Northumberland to Scranton, known as the Bloomsburg Division. 30

Q. Along these various routes, is the transportation from all points outside of the State to these points in the State and to New York and vice versa, and the eastern traffic, by connection with other 40

roads, making a line of through transportation between all these points?

A. Yes, sir.

Q. Is then the Morris & Essex, including the Boonton Branch, a link in the through line of transportation of which you have just spoken?

A. Yes, sir.

Q. What particular part of the Delaware & Lackawanna system in New Jersey have you charge of;
10 all except the Warren Road?

A. All except the Warren Road.

Q. How far in the western direction does the Delaware & Lackawanna Road transport freight, passengers and coal?

A. I don't know.

Q. As far as Buffalo, I suppose, certainly?

A. Certainly as far as Buffalo.

Q. Has the road running arrangements with other lines, distributed through the west?

20 A. I think they have connections with other roads.

Q. How is it eastward, where does coal come from and to New York market?

A. Yes, sir.

Q. And beyond that delivered into sailing vessels at Hoboken?

A. I suppose so; a great deal of coal is shipped in the vessels at Hoboken.

30 Q. Your coal is shipped in eastern vessels is it not?

A. I think so.

Q. What proportion does the local traffic in freight and coal bear to the whole business of the Delaware, Lackawanna & Western Railroad in its use of the Morris & Essex Road?

A. The through freight and coal traffic is highly in excess of the local freight and coal traffic, but, in regard to the local passenger traffic on the Morris & Essex, within thirty miles of New York it is very
40 large; whereas the through passenger traffic is but very small.

Q. What proportion does the local freight and coal traffic bear to the freight bound westward and eastward?

A. I haven't any figures; I can't give any percentage.

Q. Is it a large or small proportion?

A. The through traffic is a large proportion, much larger.

Q. Well, twice as much, or three times?

A. I can't answer that question; I don't know. 10

Q. And these changes, additions, double tracking, has required a large amount of terminal property, hasn't it, since 1865?

A. Yes, sir.

Q. Were these additions required by the local freight and passenger traffic or were they acquired for the purposes of the general business of the D., L. & W. Company?

A. About one-half was acquired for the purposes of the local business. 20

Q. Including terminus do you mean?

A. I mean about one-half of the present terminus was acquired for the local business.

Q. Was the Boonton Branch built for the purposes of the through traffic or the local traffic?

A. Well, the Boonton Branch was built for the purposes of the through traffic as well as the local traffic; that was built in 1869, after the lease was made. 30

Q. Would it have been built if it had not been for the local traffic; how much local traffic do you pick up on the Boonton Branch?

A. At the time that the Boonton Branch was first built there was a very good business done at Boonton; in fact, the business was so good it was thought it was necessary to build the branch from Denville to Boonton for the purpose of doing that business; there was considerable local business done at Paterson, especially coal and freight. 40

Re-examined by Mr. BEDLE :

Q. Hackettstown is west of Schooley's Mountain, is it not, speaking generally?

A. Yes, sir.

Q. And in the County of Warren?

A. Yes, sir.

Q. And Phillipsburg is also in the County of Warren?

A. Yes, sir.

10 Q. And is upon the Delaware river?

A. Yes, sir.

Q. From Morristown to Newark are there very many towns along the line of the Morris & Essex Railroad?

A. It is really almost one continuous town.

Q. The Oranges are how many in number?

A. There are seven stations which are considered Oranges.

20 Q. And about what is the length of the Morris & Essex Railroad through the limits of the City of Newark?

A. About one and eight-tenth miles.

Q. And the Newark & Bloomfield Branch, does that connect with the main line in the City of Newark?

A. Yes, sir; at Roseville station.

Q. The Newark & Bloomfield Branch, is that one of the leased lines of the Morris & Essex?

30 A. Yes, sir.

Q. Which went into the hands of the Delaware & Lackawanna?

A. Yes, sir.

Q. You also spoke of the Passaic & Delaware road; is that a leased line of the Delaware, Lackawanna or the Morris & Essex?

A. I don't know how that was acquired, by the Morris & Essex, or Delaware, Lackawanna, or by which of them; that road was not built until after
40 the lease of the Morris & Essex by the Delaware, Lackawanna.

Q. It is run by the Delaware, Lackawanna?

A. It is operated by the Delaware, Lackawanna Road.

Q. The Sussex Railroad is a railroad local in the State of New Jersey?

A. Yes, sir.

Q. Connecting with the main line of the Morris & Essex?

A. Yes, sir.

Q. And the Chester is also, is it not, to which you¹⁰ have referred,—that is a local road in New Jersey connecting with the Morris and Essex?

A. Yes, sir.

Q. This loop at Stanhope, of which you speak; is that a loop in order to make a double track?

A. That is an east bound track of the Morris & Essex.

Q. Well, it is in order to make a double track.

A. It was built in order to make a double track.

Q. In answer to the following question of Mr.²⁰ Gummere, "Along these various routes in the transportation from all points outside of the State to these points in the State and to New York, and vice versa, and the eastern traffic by connection with other roads, making a line of through transportation between all these points?" you answered, "Yes, sir." Did you mean to say anything more than that, that such traffic as came from points outside, over this road, formed a continuous line of traffic?

A. That's all I meant to convey.

30

Q. Did you mean to convey the idea that from all the points and over all the roads there came traffic to the Morris and Essex?

A. No, sir.

Q. Previous to the construction of the tunnel laid down on this Exhibit P. 5, the Morris & Essex as you have already stated, passed through what is called the Long Dock tunnel; was that Long Dock tunnel a tunnel under the control of the Erie Railway Company, as you understand it?

40

A. Yes, sir.

Q. And did the Morris & Essex go through that tunnel previous to the construction of its own tunnel, by an arrangement with the Erie Railroad Company or the Long Dock Company?

A. Yes, sir.

Taken and sworn to, this 15th day of May, A. D. 1885, at Jersey City, N. J., before me.
10

Whereupon, the examination was adjourned to Friday, May 22, 1885, at 10.30 A. M., at the same place.

Friday, May 22, 1885, at 10.30 A. M. at the same place, the examination was resumed.

Present—As before.

20

WILLIAM UNRUH, *further re-examined by Mr. BEDLE* :

Q. In reading over your testimony, as written out by the stenographer, I see that the following question was put to you : " And the change was made from the sixty-six feet to one hundred feet usually? A. No, sir ; when the right of way was procured between Hackettstown and Phillipsburg right of way was procured sufficient for the construction of a double track railroad." Now in that answer you are further
30 reported as having said as follows : " It was for some years before right of way was procured, but east of Hackettstown only sufficient right of way was had for a single track." I am not able to understand that. Please state whether you are correctly reported, and if not, what we shall understand you as saying?

A. East of Hackettstown only a single track was laid on the right of way procured when the road
40 was built, but my impression is that sufficient right of way was procured at the time the road was built

to accommodate a double track railroad on that right of way ; and the only right of way necessary to be procured for the construction of a double track road was between Waterloo and Stanhope where the second track was not laid parallel to the first track.

Q. The expression, "It was for some years before right of way was procured;" is that an incorrect expression?

A. Yes, sir ; I don't understand it.

Q. Did you intend to be so reported? 10

A. I did not intend to be so reported.

Q. In speaking, in your testimony, of the extension of the Morris & Essex from Hackettstown to Phillipsburg, have you satisfied yourself when the construction of that extension was-commenced?

A. Yes, sir ; construction was first commenced—work was first commenced on that road about 1863 ; some work was done in 1863 ; considerable was done in 1864.

Q. And how about 1865? 20

A. There was more done in 1865, and I believe it was first opened for traffic some time in 1866, but still the work of construction was being perfected in that year also.

Q. Have you satisfied yourself as to when the branch from Denville to Boonton was commenced—I mean so far as the construction is concerned?

A. Some work was done on it in 1865, and the greater part of it I think was done in 1866.

Q. You may state whether the double tracking was completed from the east to Morristown, on the main line, before the lease to the Delaware, Lackawanna & Western Railroad Company? 30

A. Yes, sir.

Q. And you may state also, if you can, whether the double tracking from Hackettstown to Phillipsburg was commenced before the lease also?

A. It was commenced about a year before the lease, and considerable was done on it in 1868. 40

Further cross-examination by Mr. GUMMERE :

Q. Have you collected the data which I asked you to prepare at the last meeting ?

A. Yes, sir.

Q. Will you please to state them ?

Objected to as irrelevant and immaterial.

10 A. With regard to the number of acres of land purchased between the 23d day of March, 1865, and January 1st, 1884, for railroad purposes, I find, as near as I can make up the quantity, on the Boonton Branch and the Morris & Essex there were purchased about 359 acres, 145 on the Boonton Branch and 214 on the Morris & Essex, for railroad purposes ; this does not include the purchase of the right of way however, of the Boonton Branch railroad.

Q. Were these purchases made before or after the lease.

20 A. Both before and after.

Q. What proportion before and what after ?

A. On the Boonton Branch there was none probably before the lease, as the Boonton branch was built after the lease, but on the Morris & Essex there was considerable of this—just what proportion I can't say, not having found out, but there was considerable before the lease for railroad purposes on the Morris & Essex.

30 Q. Did you make inquiry as to the local traffic ?

A. Yes, sir ; as near as I can ascertain from the inquiries I have made, probably about three-fourths of the traffic is through traffic.

Q. In tonnage ?

A. In tonnage.

Q. Does coal traffic come on to your road at Phillipsburgh ?

40 A. Yes, sir : we connect with both the Lehigh Valley Railroad and the Lehigh and Susquehanna Railroad, a branch of the Central Railroad of New Jersey.

Q. Can you give us any idea of the amount of that traffic?

A. No, sir; I don't know what it amounts to.

Q. Destined to what points?

A. Most of it, I imagine, is destined to points west of Hoboken for local consumption along the line of the road.

Q. What was the weight in tons of the locomotives on the Morris & Essex before the lease, about? 10

Objected to as irrelevant and immaterial.

A. I couldn't answer that question accurately; I can only form an opinion; I think there were some locomotives on the Morris & Essex that would probably weigh fifty tons,—forty or fifty tons; they had some very large engines even before the lease.

Q. How many of those were there on the road?

A. Probably twenty-five or thirty large freight engines on the road. 20

Q. These were freight engines?

A. Yes, sir; and then the passenger engines—(Interrupted.)

Q. They were not so large?

A. Twenty or twenty-five tons.

Q. They were probably not so heavy?

A. Probably not so heavy as some of the engines we run now.

Q. What engines do you run now?

A. Probably forty or fifty tons. 30

Q. Have you coal engines no heavier than that?

A. I think not; they probably average about forty-five tons.

Q. Were any changes made in your bridges after the lease?

It is understood that all the testimony in the case on both sides is taken subject to every legal objection.

A. No changes were made in the bridges except 40

to rebuild them whenever worn out, and rebuilding became necessary.

Q. No strengthening was done ?

A. No strengthening was required, no, sir.

Q. Were iron bridges substituted in place of wooden bridges ?

A. To a large extent.

Q. What is the ordinary face surface of the single track road ?

10 A. You mean the width of graded surface ?

Q. Yes ?

A. Fourteen feet.

Q. Of the double ?

A. Twenty-eight to thirty.

Q. Where embankments, filling, took place, what is the additional widening of the base ; I mean you run off of the same grade of slope ?

A. Yes, sir.

Q. No change in the grade of the slope at all ?

20 A. No change in the grade of slope ; the widening of the base would be the same as the widening at the top ; the same for the construction of a double track.

Q. Do you keep the same slope in cuts too ?

A. Yes, sir.

Q. (By Mr. BEDLE.) When you speak of the comparison between the through and local traffic, as I understand you, you did not include passenger travel ?

30 A. No, sir ; I meant to include the freight, the tonnage.

Q. You may state whether the Morris & Essex is one of the railroad arteries to tide water through the State of New Jersey ?

A. Yes, sir.

Q. The Delaware, Lackawanna & Western Railroad goes on through Delaware Water Gap and extends on to Scranton ?

A. Yes, sir.

40 Q. (By Mr. GUMMERE.) Was there any material al-

teration in the grades of the Morris & Essex since the lease?

A. Yes, sir; only at places at Waterloo, that second track.

Q. That is Waterloo and Stanhope?

A. Yes, sir; that is since the lease; that was the principal alteration; there were other places where there were some slight alterations made, but that is the principal one.

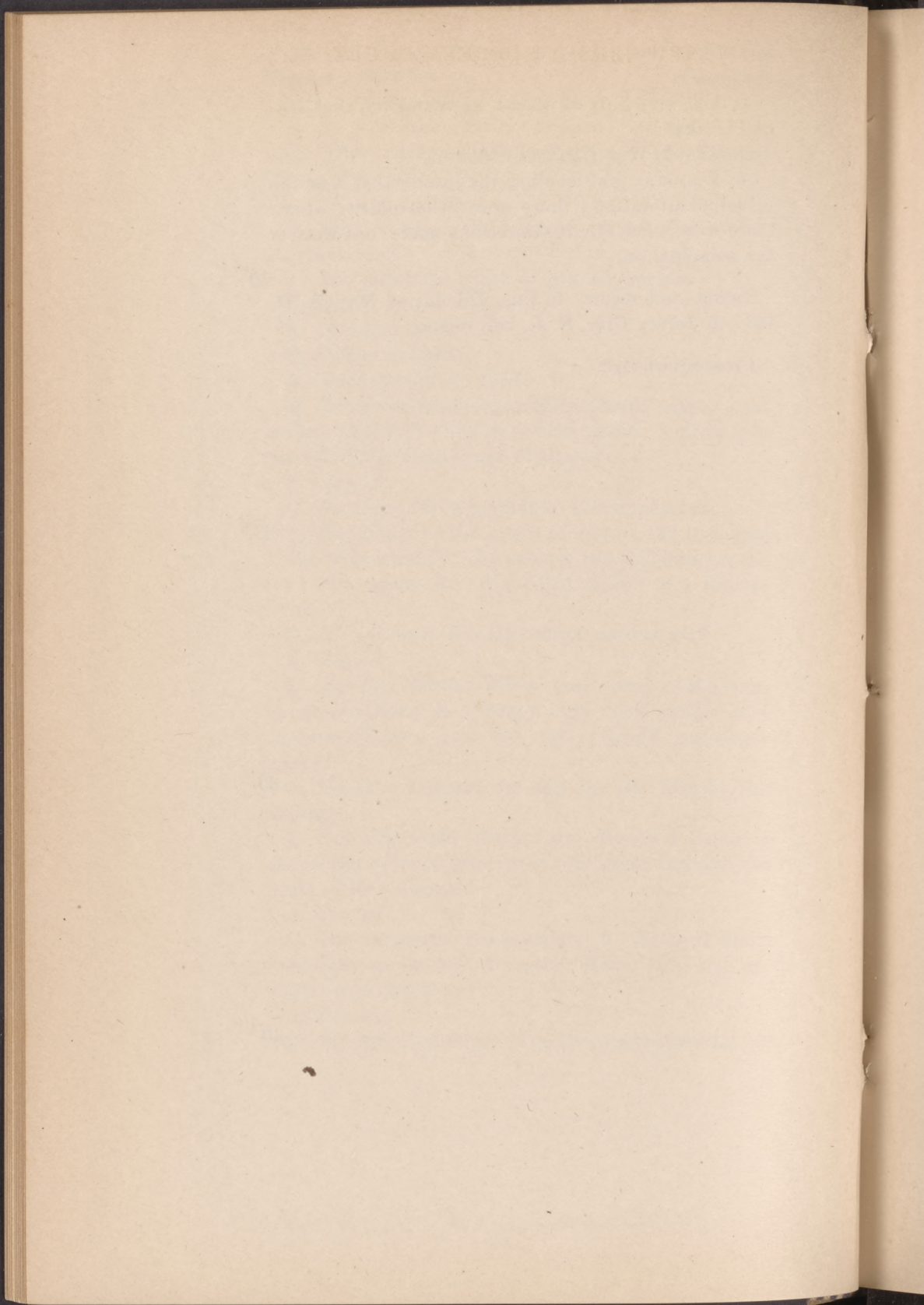
Taken and sworn to this 22d day of May, A. D. 1885, at Jersey City, N. J., before me.

Prosecutors rest.

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NEW JERSEY SUPREME COURT.

THE STATE,
THE PASSAIC & DELAWARE RAILROAD
COMPANY and THE DELAWARE,
LACKAWANNA & WESTERN RAILROAD
COMPANY, its lessee,

Prosecutors,

vs.

EDWARD BETTLE and others, mem-
bers of the State Board of Assess-
ors of the State of New Jersey,
et. al., Defendants.

On certiorari
to the State
Board of As-¹⁰
sessor, &c.

THE STATE,

THE WARRFN RAILROAD COMPANY,
Prosecutors,

vs.

EDWARD BETTLE and others, mem-
bers of the State Board of Assess-
ors of the State of New Jersey,
et. al., Defendants.

20

On certiorari
to the State
Board of As-
sessor, &c.

30

THE STATE,

THE SUSSEX RAILROAD COMPANY,
Prosecutors,

vs.

EDWARD BETTLE and others, mem-
bers of the State Board of Assess-
ors of the State of New Jersey,
et. al., Defendants.

On certiorari
to the State
Board of As-
sessor, &c.

40

Taking of testimony, &c., this fifteenth day of May, A. D. eighteen hundred and eighty-five, before GEORGE W. CASSEDY, Esq., a Supreme Court Commissioner, at his office in Jersey City, at the hour of ten o'clock in the forenoon, on behalf of the prosecutors in the above stated writ, upon due notice admitted by BARKER GUMMERE, attorney and counsel in behalf of the defendants, J. D. BEDLE
10 appearing in behalf of the prosecutors.

WILLIAM UNRUH, a witness produced on the part of the prosecutors, being duly sworn according to law, on his oath saith :

Examined by Mr. BEDLE :

20 It is agreed that the testimony of this witness shall be taken in all three of the above cases, and used in each so far as it is applicable to the same.

Q. Are you engineer-in-chief of the Morris & Essex Division of the Delaware, Lackawanna & Western Railroad Company in the State of New Jersey?

A. I am engineer in charge of the Morris & Essex Division and branches.

Q. And have been in that position for how many
30 years?

A. Ten or more years.

Q. Is the Passaic & Delaware Railroad Company operated by the Delaware, Lackawanna & Western Railroad Company?

A. It is operated by the Delaware, Lackawanna & Western Railroad Company, and has been so operated for several years.

Q. Is the Warren Railroad Company operated by the Delaware, Lackawanna & Western Railroad
40 Company?

A. Yes, sir.

Q. And has been so operated for how long?

A. For a number of years.

Q. Ever since and before you became engineer of the Morris & Essex Division, is that not so?

A. Yes, sir.

Taken and sworn to this 15th day of May, A. D. 1885, at Jersey City, N. J., before me.

The evidence of William Unruh taken for use before the board according to the agreement entered into by counsel is now considered in evidence in each of these cases. 10

Counsel for prosecutors offers in evidence the whole of the original returns to the State Board of Assessors made by the Passaic & Delaware Railroad Company, the Sussex Railroad Company and the Warren Railroad Company, in the year 1884, subject to the following agreement²⁰ of counsel, that if the same should be held by the court as a part of the return to be made under the writ of certiorari in this cause, that the same shall be so treated, but if not, that the same shall then be considered as offered in evidence on the part of the prosecutors.

Counsel for defendants objects to the same as incompetent and irrelevant. 30

Counsel for prosecutors also offers in evidence a copy of a written request made to the State Board of Assessors, December 15, 1884, to furnish the basis, data, factors or elements of valuation, etc., upon which the board valued the franchise of the railroad companies aforesaid, the same being admitted to be a correct copy, and is marked Exhibit P. 3, in the Morris & Essex certiorari case, and to be⁴⁰ considered as so marked in these cases.

It is also admitted by counsel that said board, under the advice of the Attorney-General and counsel for the State, afterwards on that day declined to comply with the request.

It is agreed that the charters and supplements affecting all these companies shall be considered as in evidence.

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It is agreed that the Passaic & Delaware Railroad Company is a reorganization of a part of the old West Line road, and the charter and supplements aforesaid are those that have reference to the Passaic Valley & Pepack Railroad Company, and the West Line Railroad Company.

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It is also agreed that the certificate of reorganization of the Passaic & Delaware Railroad Company filed in the Secretary of State's office shall be considered as in evidence.

Whereupon the examination was adjourned to Friday, May 22, 1885, at 10.30 A. M., at the same place.

Friday, May 22, 1885, at 10.30 A. M., at the same place, the examination was resumed pursuant to adjournment.

Present—As before.

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Counsel for prosecutors offers in evidence three certificates of the State Board of Assessors, signed by John T. Van Cleef, Secretary, showing the action of the board on a review of the assessments in question—one, The Passaic & Delaware Railroad Company, containing corrections, marked Exhibit P. 6;

another, The Sussex Railroad Company, containing corrections, marked Exhibit P. 7; and another, The Warren Railroad Company, confirming the assessment, Exhibit P. 8.

It is admitted that these are the certificates that were served upon the respective companies.

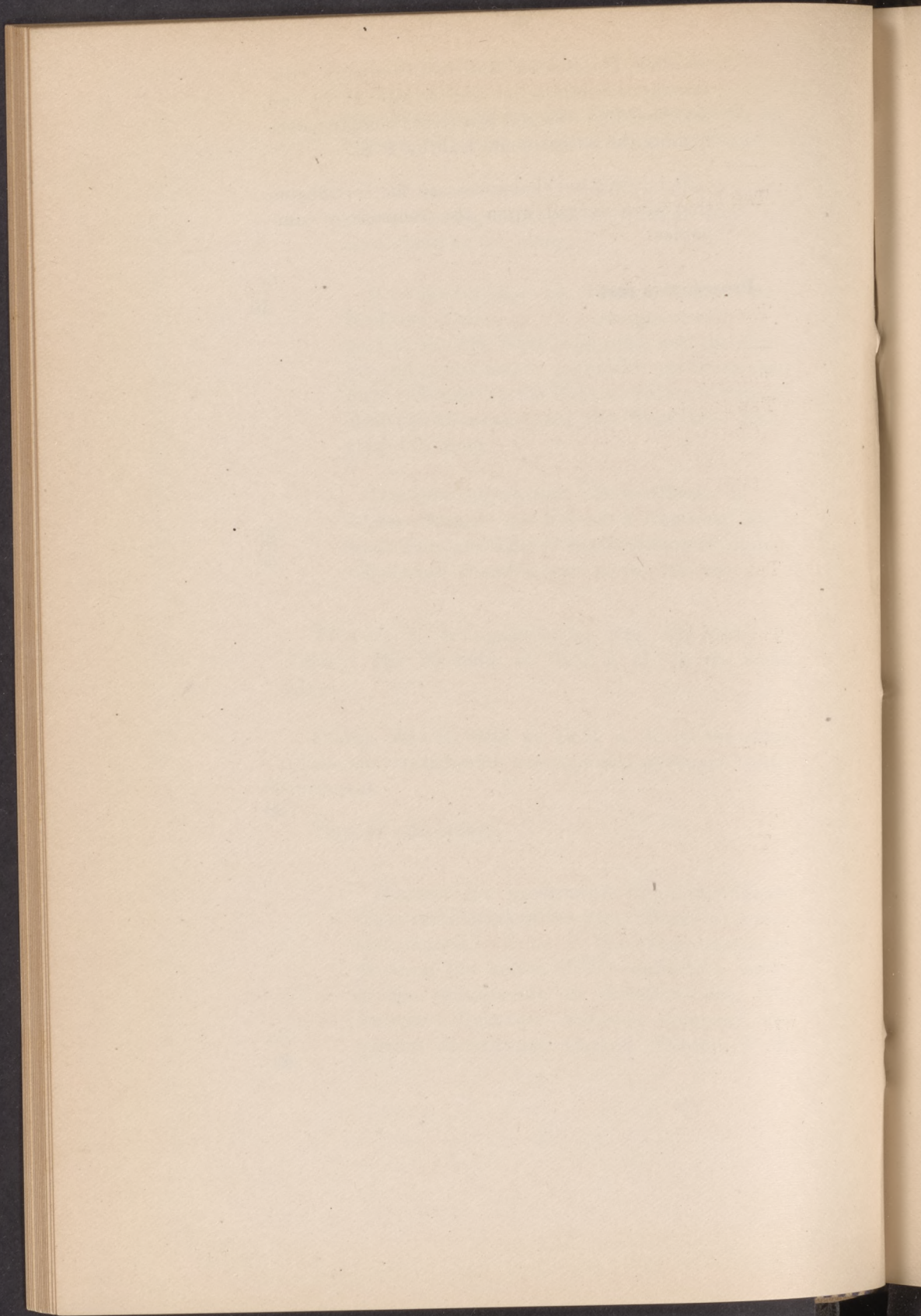
Prosecutors rest.

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NEW JERSEY SUPREME COURT.

THE MORRIS & ESSEX RAILROAD COM-
PANY,
Prosecutor,
vs. 10

THE STATE BOARD OF ASSESSORS et als.

THE STATE,
THE PASSAIC AND DELAWARE RAILROAD
COMPANY and THE DELAWARE, LACK-
AWANNA & WESTERN RAILROAD COM-
PANY,
Prosecutors,
vs. 20

THE STATE BOARD OF ASSESSORS et als.

THE STATE,
THE WARREN RAILROAD COMPANY,
Prosecutor,
vs.
THE STATE BOARD OF ASSESSORS.
30

THE STATE,
THE SUSSEX RAILROAD COMPANY,
Prosecutor,
vs.
THE STATE BOARD OF ASSESSORS.

The examination of witnesses in the above cases
was continued on the 30th day of October, 1885, 40

before LEVI T. HANNUM, Esq., a Supreme Court Commissioner of the State of New Jersey, at his office in the City of Trenton, in the presence of Hon. JOHN P. STOCKTON, and ROBERT F. STOCKTON, Esq., on the part of the State, and EX-GOVERNOR BEDLE, on behalf of the prosecutors.

The notice of the taking of testimony is admitted.

10 EDLOW W. HARRISON, a witness produced on the part of the defendants, being duly sworn, according to law, testified as follows :

Direct examination by Mr. STOCKTON :

Q. Are you a partner of Mr. Sites ?

A. I was, until Mr. Sites' death.

Q. When did Mr. Sites die ?

A. On the 1st of October of this year.

20 Q. What is your business ?

A. Civil engineer.

Q. Have you been employed by the counsel of the defendant in these railroad certiorari cases to value and survey the property ?

A. I have.

Q. You have been engaged in it how long ?

A. I have been engaged on the certiorari cases of 1884 ever since April of this year.

Q. Are you by profession a civil engineer ?

30 A. I am, sir.

Q. What experience have you had ?

A. I have an experience of 12 years as civil engineer ; I have been at various times employed by the railroad companies centering in Jersey City, in surveys and examinations, and other matters connected with their termini ; the acquiring of land for terminal purposes ; the settlement of lines between owners of land—

40 Mr. BEDLE. It is not necessary to go over

that, I would rather you would come right down to the questions.

Q. Very well, leaving further examination on the subject of your duties and experiences as civil engineer, at the suggestion of Governor Bedle, I will ask you whether you were asked to examine the property of the Morris & Essex Railroad, and the Delaware, Lackawanna & Western Railroad Company, its lessee, for the purpose of testifying in this case? 10

A. I was.

Q. Did you make such an examination?

A. I made an examination at the request of Mr. Gummere, in order to determine the approximate amount of property acquired by the Morris and Essex Railroad Company since December 10th, 1868, the date of the lease. I was instructed by him to base the value of that property on the basis of the valuation made by the State Board of Assessors for the year 1884, as set forth in their annual report; I 20 have made such an examination.

Q. What was the result of such examination?

Counsel for the prosecutor objected to the question of valuation, because that is all concluded by the agreement in this case. Counsel objected to the examination of this witness entirely on the ground that the case cannot be opened now at this late day, without necessitating perhaps a delay of the ar-30 gument in the court. This was in addition to the other objections, and counsel stated that he made it because he understood that it was the purpose of the Attorney General to extend the examination as to questions of valuations of the property that he proposed to examine the witness about. I have no objection to his proving the quantity of land as he proposes.

The Attorney General replied that the whole object of the examination is to show that considerable property was acquired after the lease was made, and to show approximately its value, for the purpose of showing that it was property of considerable value. That legal notice had been given of the taking of this testimony.

10

Governor BEDLE. By referring to the agreement you will see that it is agreed that no further testimony on either side, on the subject of valuation, shall be taken.

Attorney General STOCKTON. Is that the wording of the agreement?

Governor BEDLE. Yes, sir, I refer to the agreement, and I object to any testimony on the subject of valuation.

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Attorney General STOCKTON. The object of this evidence is not to show the value of the property, and under the agreement it cannot be used for that purpose, but to show simply its relations to the assessments that had been made by the Board on the whole property, in order to show that some property of value was acquired after the lease, and which character of testimony I am informed by Mr. Gummere, it was expressly agreed, we shall have permission to take.

30

Governor BEDLE. If you mean by that to include valuation I dispute the agreement: there was no such arrangement.

Q. Now, Mr. Harrison, what did you do?

A. In pursuance of the request of Mr. Gummere, I made and caused searches to be made under my direction in the Hudson County Register's office against the Morris and Essex Railroad Company to discover what property they had acquired since that
40 day; I also went over the road; examined the reports made by the Morris and Essex Railroad to the

Comptroller of the State, and used in general all possible methods of finding and obtaining the approximate quantity of property acquired by these roads since the lease, with the following result—

Counsel for the prosecutors objected to this testimony as too general and indefinite.

The WITNESS. In apportioning the property acquired since the lease I have used the basis of valuation as given by the State Board of Assessors in their report for 1884, so that the proportion of this property could be more conveniently obtained; so that the property or the amount in dollars and cents of the property acquired since the lease, valued on the same basis of the State Board of Assessors' valuation would show the true proportion of that property, when compared with the true value placed upon this road January 1st, 1884.

Previous to December 10th, 1868, the date of the lease, the railroad of the Morris and Essex extended from the solid filling line in Hoboken to the tunnel of the Long Dock Company.

Counsel for prosecutors objected to the witness reading from a statement which he held in his hands.

Q. Those notes that you are reading from were made by yourself?

A. Yes, sir, I made this statement to assist in this examination and expedite matters.

Q. Go on?

A. (Continuing reading.) Thence over the line of the Long Dock Company's Railroad to the west end of the tunnel; thence over the line of what is now the Newark and Hudson Railroad, operated by the New York, Lake Erie and Western Railroad Company to a point in the Township of Kearney, about 5500 feet west of the Hackensack river, thence to Phillipsburg.

Counsel for prosecutors objects to the witness reading his testimony from a paper that is in his hands as he is doing. He also objects to the statements therefrom as hearsay, many of which he could not possibly know.

Q. Refresh your memory from the notes before you, and proceed to answer the question that you were answering when you were interrupted.

10 A. The main stem coincides with the main stem as assessed by the State Board of Assessors. This main stem was laid with double tracks to Morristown, and then single track to Phillipsburg, which, valued on the same basis as the main stem valuation of 1884, was worth about \$5,748,328.51. The main stem of the Boonton Branch was not built until after the lease, but the old company leased and operated a single track between Boonton and Denville, five miles in length, and which, valued on the basis of
20 the State Board's valuation of 1884 was worth more than \$100,000.00. The value placed on the main stem of the Morris and Essex Railroad by the State Board of Assessors, 1884, is.....\$10,091,907 24
Valuation as above, for 1868..... 5,848,328 51

Increase (approximately).....\$ 4,243,578 73

Governor BEDLE. All the foregoing testimony was taken subject to objection as illegal, as hearsay and irrelevant, and as read by
30 the witness from the statement he has in his hands.

REAL ESTATE, OTHER THAN MAIN STEM.

The principle additions of this class of property made since the lease, have been in Jersey City and Hoboken, as follows : December 10th, 1868, the company occupied or held for terminal purposes, in Jersey City and Hoboken, exclusive of the main stem
4) 100 feet wide, about 86 acres—about $\frac{1}{3}$ of which or

28.66 acres were filled, and which valued on the same basis adopted by the State Board in 1884, \$40,000.00 per acre was worth... .. \$1,146,400 00
 About $\frac{2}{3}$ of above 86 acres was under water and valued on the same basis, that is 57.34 acres at \$25,000 per acre was worth... .. 1,433,500 00

Total terminal land in 1868... .. \$2,579,900 00
 * Other items of real estate existent December 10th, 1868, viz: piers, wharves, buildings, &c., in Jersey City and Hoboken, valued on basis of assessment of 1884, were worth... .. 173, 350 00

Total property outside main stem in taxing districts of Jersey City and Hoboken... .. \$2,753,250 00
 Valuation of same class of property in same districts in 1884, by State Board, 6,171,633 9020

Approximate increase in Jersey City and Hoboken... .. \$3,418,383 90

Outside of Jersey City and Hoboken there was assessed against the Morris and Essex Railroad Company for property of this class, in 1884... .. 453,108 64
 of which, the sum of \$113,080.64 was for property on the Boonton Branch, and acquired since 1868, and \$340,028.00 for property on the old main line,³⁰ which no evidence to the contrary being obtainable without extended research, not considered necessary at this stage of the case, may be supposed to have been in possession of the company previous to the lease.

The witness has read all the testimony from a printed statement; it contains opinion and hearsay and estimates without basis, and argument in it, and the witness has been allowed to read it off, it being difficult for counsel to understand it as read.⁴⁰ It contains valuations which are contrary to the

Governor BEDLE. All this testimony last taken, as well as that previously taken was taken subject to the same objection as heretofore stated, the whole of it having been read from the printed or type-written statement in the hands of the witness, and the witness being allowed to read it as testimony.

Q. That paper from which you were reading those figures, was it in print? 10

A. It is type-written, and was done in my office, taken from the original copy made by myself.

Q. Did you make those calculations yourself?

A. They were made by myself.

Q. Under whose directions did you make them?

A. At the request of Mr. Gummere.

Q. For what purpose?

A. For the purpose of giving the approximate valuation of the Morris and Essex Railroad December 10th, 1868, and comparing it with its value of January 1st, 1884. 20

Q. Then I understand that the object of this statement is not to show the value of this property, but to show the proportionate difference compared with the valuation of the Board?

A. Yes, sir.

Q. The whole object of this statement, as you were directed by Mr. Gummere, was to show the approximate increase of value since the lease of 1869. 30

A. That is all I have tried to do, and all I was asked to do.

Q. And all these calculations, and all these figures were made by you, and written down by you, and copied in your presence with a type-writer, from your own manuscript?

A. Yes, sir, they were, and I have carefully compared my original manuscript with this type-written copy, which I have used here.

Q. Did you plot this property on a map? 40

A. This property in Jersey City and Hoboken, I

did ; I have had it mapped under my immediate direction by draftsmen in our office, and I have the map here with me.

Q. What does that map show ?

A. The map is entitled "Map showing terminal of the Morris and Essex Railroad, Delaware, Lackawanna & Western Railroad, lessee, in Jersey City and Hoboken, Hudson county, N. J., 1884."

10 The map was offered in evidence, and marked Exhibit D. 1, Oct. 30, 1885, Hannum. Counsel for prosecutor objected to the map

as irrelevant, and not proved.

Q. The map was made by yourself ?

A. Under my direction, I did not actually do the mechanical work upon it.

A. It was done by an assistant of yours in your office.

20 A. Yes, sir.

Q. What does it show ?

A. The terminus of the Morris & Essex Railroad. The portion of that terminus which is colored green was in possession of that road, as shown by the records in the Register's office of Hudson county, December 10th, 1868. The portion colored pink has been acquired since the lease. This map shows everything used for terminal purposes, east of the easterly mouth of the new tunnel of the Delaware, Lackawanna & Western Road. The track upon this map is shown in blue lines ; that track is the condition of the track January 1st, 1884, and is plotted from a map furnished by Mr. Unruh, the Asst. Engineer of the Delaware, Lackawanna & Western Railroad, and purported to be a true map of the arrangement of the track in their terminal yard. The piers are shown on this map as they existed Jany. 1st, 1884 ; on each pier I have also had marked the use to which the pier is placed. These are the uses
40 as given by Mr. Unruh in his testimony given in this

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case. I have examined these piers and from my examination I see no reason to differ from him in the use to which those piers are placed. Of this portion of the terminal yard colored green, only a small portion south, which is shown across that line marking the line between Jersey City and Hoboken, was in actual use as a terminus previous to December 10th, 1868. This I state from my own knowledge, and also, I have taken occasion to verify my memory upon that subject, by examining the maps of the company, and other records.

Counsel for prosecutor objects to this testimony as hearsay.

Q. Without regard to the manuscript from which you were reading and refreshing your memory, what do you think, approximately, is about the proportion of the property which has been acquired by this company since the lease in 1869?

A. I think the figures which I have given approximate very close to that proportion.

Q. What would you state generally to be the total?

A. I should think generally one-half of the real estate. Nothing in my testimony relates to intangible personal property, or rolling stock.

Q. I ask you now without regard to the statement?

A. It is without regard to the statement.

Q. From your recollection, without any manuscript or paper, and without the map, your recollection, derived from the information you have got, and were directed to get by Mr. Gummere, what is about the amount of property acquired, subsequent to the making of the lease?

Objected to as hearsay.

A. About one-half of the property now in their possession.

Q. You give that as your opinion as an expert?

A. Yes, sir; I have been familiar with this land

in Jersey City for about 12 years, and am familiar with all the improvements made by the D. L. & W. in Hudson county.

10 The Attorney General desires to enter on the record that the testimony of Mr. Harrison is not introduced with a view of making any claim on the subject of valuation, either for reduction or increase thereof, nor as further testimony on the subject of valuation, but simply for the purpose of showing that property of considerable amount, in proportion to the whole amount assessed had been acquired since the date of the lease.

Cross-examination by Mr. BEDLE :

Q. Is the new tunnel down on this map which you exhibit here ?

A. No, sir ; that map only shows east of the east
20 portal of the tunnel. The east portal is shown on the map.

Q. That is the new tunnel ?

A. The tunnel of the D. L. & W.—the Morris & Essex tunnel.

Q. Did you make any of the searches of title yourself, as to real estate ?

A. Yes, sir, I did.

Q. What ones ?

A. I made searches of the purchases by the Mor-
30 ris & Essex of the three tracts lying south of 18th street, between 18th and 15th streets. I have searched myself and read carefully the deeds, as on record, of the piece of colored in pink on this map lying in 15th and 12th streets, both in connection with this case, and with other cases in which the Morris & Essex was a party, in which I have been engaged. I have examined the record as to the triangular plot lying adjoining Ferry street, on the south and near the Hoboken Ferry, which was deeded to the com-
40 pany before the lease. I have also examined the

record as to the deeds from Stevens and others to the Newark & Hoboken Railroad, which conveyed the right of way of that old road to the Morris & Essex, and the plot lying east of the east line of Garden street and north of 18th, shown upon this map, on which the engine and freight house was raised. I have verified all the searches made.

Q. Just one moment; I want to shorten this as much as possible, because I don't think the details are of any advantage. My question would justify¹⁰ you in going on, but I want to control that. You personally examined considerable of the terminal property?

A. Yes, sir; I am familiar with that.

Q. Did you make any search of any other real estate on the line of the road, outside of the County of Hudson?

A. No, sir.

Q. Is there some land on this map which is designated as the Morris & Essex land, which was not searched by yourself?²⁰

A. I don't think there is a piece upon that map that I have not seen the record of, on file at the Court House, either in connection with this or some other case.

Q. In answer to the Attorney General, you stated in substance that the property used and acquired by the company since the lease of 1869, so-called, speaking generally, was about half of the real estate. Do³⁰ you estimate the tunnel in that?

A. Yes, sir.

Q. I mean the tunnel of the Morris and Essex, the new tunnel?

A. Yes, sir.

Q. How old are you, Mr. Harrison?

A. I am 34—between 34 and 35.

Q. You have got a pretty good memory to remember what land was used by the Morris and Essex previous to December 10th, 1869?

A. I went over the Hoboken ferry every day twice from 1864 to 1869, on my way to school in New York.

Q. Where did you live?

A. On Jersey City Heights, and instead of taking the cars, I very often, in fact, generally walked up, as I was studying civil engineer, and there was a great deal of practical engineering going on all the time in connection with the improvements made and to be made under the lease, I became very familiar with the property. In 1869—

Q. One moment. Are you through?

A. If that is all you want.

Q. I have got enough. In your statement in giving the route of the Morris and Essex previous to December 10th, 1868, you said in substance that the road from the west end of the tunnel went over the line of what is now the Newark and Hudson Railroad Company operated by the New York, Lake Erie and Western Railroad, to a point in the township of Kearney, about 5500 feet west of the Hackensack river. I suppose that that piece of road is a short section right at the west of the tunnel, which became unnecessary by reason of the construction of the new tunnel. Is that the piece?

A. Yes, sir.

Q. Is it but a little piece, the road there at the west of the tunnel?

A. That is all.

Q. The tunnel of the Morris & Essex through Bergen Hill is right over the Long Dock or Erie tunnel, at its westerly mouth?

A. Yes, sir.

Q. It enters the hill at that point?

A. The westerly entrance is at that point.

Q. I suppose that in your estimate of the value of the real estate acquired since December 10th, 1868, you included the improvements of various kind made upon the terminal property and on the line of the railroad?

A. Everything is included, graduation and track.

Q. You also included any increase in the road by reason of the double track?

A. Yes, sir.

Q. On any part of it?

A. Yes, sir.

Q. Did you include the difference in the quality of rails also?

A. I took the track—

Q. Just answer my question. Did you include¹⁰ the difference in the quality of the rails—between steel and iron rails?

A. No, sir.

Q. Additional tracks that were laid down you included?

A. Yes, sir; the price of track January 1st, 1884.

Q. You have tried to show, I suppose, how the road has been improved in value since December 10th, 1868?

A. No, sir.

20

Q. Increased in value?

A. No, sir; I tried to show the approximate amount of property, and the most convenient way of showing it was to take the State Board of Assessors valuation.

Q. The road has largely increased in value?

A. Yes, sir; certainly.

Q. Do you recall how long that tunnel is through Bergen Hill; I mean the tunnel of the Morris &³⁰ Essex?

A. 4700 feet, about that; I don't exactly recall the figures.

Q. That is cut through trap rock?

A. Yes, sir.

Q. And in the increase of valuation you put in the tunnel?

A. Yes, sir; what it would cost to replace it.

Q. According to your estimate of it.

A. Yes, sir.

Q. Until employed by the State Board of Asses-

40

sors your business was in the County of Hudson exclusively ?

A. I had done work outside. My office was in Hudson county.

Q. You were locally employed there generally ?

A. Yes, sir.

Q. In estimating the increase of terminal property in Hudson county you have put down the tracks ?

A. Put down the tracks.

10 Q. You put down the increase in the wharves.

A. Yes, sir.

Q. Or any increase of value that came to the tracks or filling in ?

A. I have not valued any intangible increase of value.

Q. No, sir ; but the actual filling in you valued that, and put it in ?

A. I have put different values on land filled in, and land unfilled.

20 Q. And you followed the valuation of the State Board of Assessors in order to get the proportion ?

A. Yes, sir.

Q. That piece of the road from Denville to Boonton, you got that from hearsay entirely ?

A. From Poor's Manual, and the reports of the companies made to the State.

Q. A great deal of your estimate is made up from hearsay, and from data that you gathered here and there ?

30 A. I have mentioned facts that I am sure of and the other facts, I have not had time to make sufficient research concerning them. Generally west of Hudson county I have taken the same values placed upon the road after the examination before the State Board of Assessors, only reducing it in a few points, except where a large tract has been added like the whole of the Boonton Branch.

40 Q. How did you get these facts : some from Poor's Manual ?

A. It is a matter of notoriety that the Boonton Branch was built since 1868.

Q. Take the changes, along the main track, the main line, where it has been graduated, and where the work has been done for the purpose of putting down a double track ; how did you get those facts ?

A. I have not included those ; I have been unable to get those, all those small improvements—the details of them—have not been included by me. My estimate is below. 10

Q. One moment ; did I ask that ?

A. No, sir.

Q. Now, I don't want to interfere with you ; if you have got something to say, say it ?

A. My estimate necessarily is below the actual improvements based upon the State Board of Assessors valuation, because I was unable to know of all the little improvements that were made along the line, and it would take a long search to find them out. I don't propose to put myself on record as giving values that I could not get. 20

Objected to as irrelevant.

Q. This that you put down, how did you get that ?

A. From the record.

Q. What record ?

A. Poor's Manual gave me the date of the building of the Boonton Branch.

Q. What record as to the extent of the work ? 30

A. I took the whole of the Boonton Branch.

Q. I speak of the main line ?

A. I took the main line just as assessed by the State Board of Assessors, with the exception that I only allowed one track from Morristown to Phillipsburg, and I reduced the graduation one third for that one track.

Q. Did you understand my question ; I want to know where you got your facts from ?

A. The report of the Morris and Essex Railroad, 40

signed by Theodore Randolph, to the legislature, for 1869, and the reports in Poor's Manual of the Railroads of the United States, which gave the standing of the Morris and Essex, miles of track, sidings, &c., as shown by its balance sheet.

Q. You did not get them from actual surveys made by yourself?

A. No, sir; I was not on the spot. I would like to qualify that answer and say that in Jersey City
10 a great deal of the increase I have made a survey of myself, as an assistant, or in connection with other parties.

Re-direct :

Q. From the examination that you have made can you approximate the increase in the value of this property; the proportionate increase between March, 1865 and 1869?

A. The approximate increase in actual property
20 between those dates is about 20 per cent. of the amount of property the road had on December 10th, 1868, if you keep the same basis which I have used in all my examinations.

Q. Roughly, what would it be?

A. Of the eight millions of dollars of property on that basis, about two millions was acquired between 1865 and 1868. I can point it out.

Q. I don't care anything about the accuracy; I only want to prove there was some.

30

Governor BEDLE :

I wish to state that I make no further cross-examination, nor will I produce any further testimony on this point, by reason of the statement of the Attorney-General of the purpose for which he intends to use this testimony.

I offer in evidence in each of these cases the report of the State Board of Assessors, not including the schedules or any detailed statement, for the purpose of showing that the Board in assessing the franchise acted upon both rules, as stated in the report of each. That is, in any one case the returns as aforesaid of the others will be used for the purposes as above stated.

Adjourned.

Offered in evidence October 31, by the Attorney General, a certified copy from the Comptroller of the report 10 made by the Morris and Essex railroad to the State for the year 1868. Marked *Exhibit E* ex parte defendants.

Also report made in the year 1884. Marked *Exhibit F* ex parte defendants.

Both objected to by Judge Bedle.

Depositions.

Depositions, &c., on the part of the complainants, taken on Saturday, the 20th day of December, A. D. 1884, at eleven o'clock in the forenoon, at the State House, in the city of Trenton. 20

Present—Hon. Joseph D. Bedle, for complainants; Attorney General Stockton, for the Board; William Y. Johnson, Esq., assisting.

William Unruh, a witness produced on the part of the complainant, being duly sworn, on his oath deposes and says:

Examined by Mr. Bedle—

Q. Where do you reside?

A. Morristown.

Q. What position do you hold in the Delaware, Lackawanna and Western Railroad Company?

A. Engineer of the Morris and Essex Division.

Q. Are you the head engineer of that division?

A. Yes, sir.

Q. I call your attention, in the first place, to the valuations in Jersey City; in Jersey City the State Board has given a description of what I will call a tract, for present purposes, containing 99.784 acres; are you familiar with that body of land?

A. Yes, sir.

Q. Have you made a calculation of the exact area within the boundaries mentioned in that description?

A. I have.

Q. What is it?

A. 92.53 acres.

20 Q. Is the difference, then, between that and the 99.784 acres, an error, then, in calculation?

A. I should think so.

Q. Have you any doubt of it?

A. Oh, no; not a particle.

Q. What is the difference in calculation, give it to me?

A. 7.25 acres.

Q. Within those boundaries does the main stem go?

A. The main stem is included within those boundaries.

30 Q. How much of the main stem is included within those boundaries?

A. .71 of an acre.

Q. In the calculation of 99.784 acres, is the main stem deducted or not by the Board?

A. I should think not; from the language of the description there is no exception made to it.

Q. You made a difference in the area of 7.25 acres?

A. 7.25 acres; yes, sir.

40 Q. Now, if you take out the main stem from the de-

scription, how much difference then will it make between the area, as calculated by the Board, and the actual area?

A. 7.96 acres.

Q. In that description, to which I have called your attention, how much of the land therein, between the bulkhead and the line for solid filling, is under water?

A. 12.4 acres.

Q. Is there a bulkhead along the whole of this tract?

A. Yes, sir.

10

Q. Upon this tract is there part of what may be called a basin or canal?

A. Yes, sir.

Q. Does the line between Hoboken and Jersey City cross that basin or canal?

A. Yes, sir.

Q. Does that leave part of it then in Hoboken and part in Jersey City?

A. Yes, sir.

Q. How much of that basin or canal is there in Jersey City that is under water and included in that description?

A. 3.8 acres.

Q. Mr. Unruh, state whether all the land included in this description, to which I have called your attention, is reclaimed land from the tide-water of the Hudson river?

A. Yes, sir; it is all made land.

Q. And this land under water, of 12.4 acres of which you have spoken, between the bulkhead and the line for solid filling, is that land, in its natural state, under tide-water?

A. It is all under water; from ten to twenty feet of water.

Q. How much of actual land, then, is there in that description above the tide-water, leaving out that part of the basin that is in Jersey City?

A. Leaving out the basin also?

Q. Yes.

A. 79.42 acres.

40

Q. Now, if you put the basin in, how much will that leave?

A. That is, adding the basin or deducting the basin; I have deducted the area of the basin and the area outside of the bulkhead—no, I beg your pardon; you want it with the deduction of the main stem outside of the bulkhead and the basin?

Q. I want to know what the area of the land above the water is, leaving out the basin?

10 A. 75.62.

Q. Now, putting in the basin, how much will there be?

A. 79.43.

Q. What is the depth of that basin?

A. It varies from eight to twenty feet at low tide; we endeavor to keep it twenty feet at low tide; it gets filled up and we have to dredge it out every two years.

Q. It is right on tide-water?

A. It is right on tide-water; the tide flows in and out.

20 Q. How much of that basin is in Hoboken, in area?

A. .6 of an acre.

Q. That is estimated from where to where?

A. That is estimated from the Jersey City line to the line for solid filling, on the south side of the canal.

Q. Does that go to the bulkhead, as established, or not?

A. No; it don't go to the bulkhead as established; it goes to the bulkhead as built.

30 Q. How much is there of the basin in Hoboken, from the Jersey City line to the bulkhead line, as established by the Riparian Commissioners?

A. 1.9 acres.

Q. What streets are to the west of this tract, running towards the west?

A. North and south streets?

Q. No; running towards the west?

A. All streets from Twelfth to Twentieth.

Q. Well, name them?

A. Twelfth, Thirteenth, Fourteenth, Fifteenth, Six-

teenth, Seventeenth, Eighteenth, Nineteenth and Twentieth streets.

Q. There is a dispute, as I understand it, between Jersey City and the Morris and Essex Railroad Company in regard to whether those streets run through the tract or not—you are familiar with that fact, are you?

A. I am familiar with the fact that such is the case.

Q. Now, you take those streets, suppose they were extended through the tract, what would be the area of those streets in Jersey City? 10

A. I want to ask how far to extend those streets easterly—whether to the bulkhead line or solid filling?

Q. Well, I am speaking of the description—within the description as the Board has given it of 99.784 acres?

A. 21.22 acres.

Q. Now, if those streets were extended easterly within Jersey City, stopping at the land as filled, how much area would there be in the streets within the tract to which I have made reference?

A. 15.91 acres; I am treating of the canal now as 20 water.

Q. In your first estimate did you treat the canal as water then in the same way—in your first estimate to the bulkhead?

A. I included the streets in that; I took all the streets within the boundaries as given by the assessors—the area of the streets within those boundaries as given by the assessors in the first calculation.

Q. Now, assuming that the street did not run through the canal, what would be the quantity in the streets if 30 extended within the tract in Jersey City to the bulkhead line, as established?

A. 15.91 acres.

Q. I doubt very much whether you understood me; you gave me the area that would be in the streets within the tract in Jersey City if extended to the bulkhead, as established by the Riparian Commissioners, as upwards of twenty acres and a fraction, didn't you?

A. I gave you that as 21.22 acres.

Q. Now, did that area of 21.22 acres include the extension of a street through the canal?

A. Yes, sir.

Q. Suppose you stop at the canal, what would be the area, then, of all the streets, if extended through the tract?

A. 19.01 acres.

Q. You evidently misunderstood my question, then, when you answered fifteen and a fraction acres?

10 A. I did; yes, sir.

Q. You produced a map a few moments ago, which the stenographer can mark A. [The map is marked A.] Does that substantially show how the streets would run this tract if extended?

A. Yes, sir.

Q. This map was not made for present purposes, at all, was it?

A. No, sir.

Q. As I understand it, this map was only made originally to show locations of some railroad tracks; was that so, or not?

A. For that, and to show the different purchases of land at Hoboken.

Q. There are a great many railroad tracks that are not on this map?

A. Yes, sir.

Q. The map was not made to show the railroad track?

A. No, sir.

Q. Or is the canal substantially laid down on this map?

A. Yes, sir.

Q. There are very many railroad tracks down on the ground that are not on this map; is not that so?

A. Yes, sir.

Q. As I understand it, this map was used simply to show the location of certain surveys that were located?

A. That and the different tracts of land owned by the railroad company.

Q. Is the Jersey City line substantially down here?

40 A. Yes, sir.

Q. In the valuation of the Board, it is stated that there are 139,550 feet of siding in ballast, valued at \$163,273.50; what is the meaning of "siding in ballast?"

A. Siding as laid on the ground.

Q. That valuation is at the rate of how much per foot, as the Board have made it?

A. Somewhat over \$1 a foot—about \$1.17, I think.

Q. Are you familiar with that siding?

A. Yes, sir.

Q. What kind of material is it made out of? 10

A. It is made mostly out of iron taken up from the main tracks—that has been worn out on the main tracks.

Q. Are you familiar with the cost of siding, and putting it down?

A. Somewhat.

Q. Does that come within the line of your duties, to make estimates with reference to it?

A. Yes, sir.

Q. You may state whether that estimate is correct, in your judgment, or not? 20

A. I think it is excessive.

Q. How much?

A. Those sidings should not be put down at over seventy cents a foot, those in ballast, considering the age of the iron.

Q. This valuation of \$41,897.70, for sidings on piers and trestles, what is the estimate of the Board for that per foot, the number of feet being, as stated in the valuation, 46,533?

A. Ninety cents a foot. 30

Q. Now you may state whether that is excessive over its true value, in your judgment?

A. Considering the quality of the iron, it is about forty cents a foot too high.

Q. This valuation of \$3,474.90 for 2,970 feet of siding in ballast, you may state whether that is excessive or not?

A. I think it is rather high.

Q. To what extent?

A. It is about fifty cents a foot too high. 40

Q. Are you familiar with the quality of that iron?

A. Yes, sir.

Q. Well, you take that valuation of \$2,230 on bridges and trestles—that is, for 1,895 feet—are you familiar with the quality of that iron?

A. Yes, sir.

Q. You may state whether that is excessive or not?

A. It is about thirty cents a foot too high.

Q. This map, to which I have called your attention, 10 does that substantially show the piers?

A. Yes, sir.

Q. This tract, as described by the Board as containing 99.784 acres, can it be substantially located from this map A?

A. Yes.

Q. I call your attention to Pier No. 5, in Jersey City; please state how much of Pier No. 5 is in Jersey City, if any?

A. 600 square feet.

20 Q. That pier is at the mouth of the basin, as I understand it, or canal?

A. On the south side of the canal.

Q. What is there upon the tract in Jersey City connected with that pier in the shape of an approach or trestle?

A. A long line of trestle.

Q. Is that along the canal?

A. That is along the south side of the canal.

Q. And extends west how far from the Jersey City 30 line?

A. About 1,800 feet.

Q. How is that used?

A. That is used for the storage of cars, for the shifting of cars to the pier, and off of one track for the shipment of coal into boats in the canal.

Q. There are tracks running to all these piers that you have down on that map?

A. Yes, sir.

Q. And various yard tracks besides?

40 A. Yes, sir.

Q. How long has that pier been there—No 5—and the trestle on the approach to it?

A. About seven years; seven or eight years.

Q. All of the approach or trestle, as I understand it, is in Jersey City?

A. All but a very small portion.

Q. Well, what do you mean by that?

A. About 1,600 square feet are in Hoboken, in area, of the approach; we designate the approach as being all that part west of the bulkhead. 10

Q. Do you mean the actual bulkhead?

A. The actual bulkhead; yes, sir.

Q. What is the ordinary life of a pier there?

A. The average life is about twelve years.

Q. How are those piers constructed on this shore front?

A. They are held up by piles driven into the mud.

Q. Those are all pile piers, are they?

A. All pile piers.

Q. Along the whole of the property in Jersey City and 20 Hoboken?

A. Yes, sir.

Q. On some of these piers are sheds, are there not?

A. Yes, sir.

Q. Why is it that these piers do not last longer than twelve years, on an average?

A. On account of the decay of the timber, the hard usage to which they are subjected, and the ravages of the worms in eating the piles.

Q. The railroad tracks extend over on these piers, do 30 they not?

A. Yes, sir.

Q. Take Pier No. 11; there is a shed valued by the Board at \$16,000; how is that shed located upon the pier?

A. It covers about two-thirds in width of the area of that pier and for the whole length of it.

Q. What is that constructed of?

A. It is constructed of timber; an ordinary gravel roof.

Q. Have you any personal knowledge of the cost of that shed?

A. No.

Q. Now, you take the shed on Pier No. 12, which is valued by the Board at \$24,000; how is that constructed; just describe it a little?

A. That is constructed of timber, with a gravel roof, and extends the length of the pier, and almost the total width of the pier, with the exception of about twelve feet 10 in width.

Q. Have you any personal knowledge of the cost of the construction of that shed?

A. Yes, sir.

Q. What is your knowledge on that?

A. I received the information from the superintendent of construction of the road.

Q. At the time it was constructed?

A. No, sir.

Q. Now, what was the actual cost, as you understand 20 it, of the construction of that shed?

A. \$8,184.40.

Q. Take that shed on Pier No. 11; what knowledge have you of the cost of the construction of that, if any?

A. I should estimate that shed could be built for \$6,000.

Q. How long has it been there?

A. It has been there about one year.

Q. And how long has the shed been on Pier No. 12?

A. I think it is about five years since that was built.

30 Q. The crib-work, that is valued by the Board at \$164,325; you may state whether that is actually a part of the tract to which I have called your attention here?

A. I have always considered it a part of the land.

Q. No, I don't ask you as a matter of law; is that crib-work on the tract, this crib-work, valued at \$164,325?

A. It is on the tract of land.

Q. And it is the crib-work of what?

A. Of the bulkhead.

Q. Pier No. 6, how old is that?

40 A. That is about twelve years old.

Q. How soon will that need rebuilding?

A. Very soon.

Q. Well, what do you mean by that?

A. Well, I mean that it should be rebuilt now, or extensive repairs put upon it.

Q. What could a new pier be built for like that—No. 6?

A. A new pier complete, or the rebuilding of No. 6, and use some of the old machinery and materials?

Q. No; I say a new pier? 10

A. Complete?

Q. Yes; as that is?

A. About \$100,000; but I mean the pier complete—the approaches thereto and all the machinery there; there is a great deal of machinery there.

Q. I wanted to confine myself to the pier itself—to this that is estimated as Pier No. 6; that is your answer, is it?

A. Well, I don't exactly understand what they have estimated as the pier; I am not informed as to what they 20 did estimate there.

Q. Well, now, put it all in, everything?

A. The pier, the approaches and the machinery, I should say \$100,000.

Q. Could be built new for that?

A. Could be built new for about \$100,000.

Q. And that would take in about how much for the approach?

A. About \$20,000.

Q. There are sidings on the approach? 30

A. Yes, sir.

Q. And that would take in the equipment and the approach, the machinery and so on, of which you speak?

A. No; the approach would not include the machinery.

Q. No; I speak of the pier in price—I speak of the price, \$100,000?

A. The price of \$100,000 includes the approach and machinery.

Q. Pier No. 7, how old is that? 40

A. About five years.

Q. How old is Pier No. 8?

A. About ten years.

Q. And No. 9?

A. I don't know the ages of those two piers; I am not sure about the ages of those two.

Q. Give us your best judgment?

A. I think No. 9 is probably eleven years old; I am not sure of the age of No. 8; probably seven or eight 10 years old, probably eleven years old; I am not sure of that.

Q. What is Pier No. 8 used for?

A. The shipment of coal.

Q. Pier No. 7?

A. Coal.

Q. Pier No. 6?

A. Coal.

Q. Pier No. 5?

A. Coal.

20 Q. Pier No. 4?

A. Pig iron.

Q. Pier No. 3?

A. Freight and merchandise.

Q. Pier No. 2?

A. Merchandise.

Q. Pier No. 1?

A. Passenger pier.

Q. What is Pier No. 9 used for?

A. Coal.

30 Q. Pier No. 10?

A. Coal.

Q. Pier No. 11?

A. Grain and freight.

Q. Pier No. 12?

A. Freight.

Q. When you speak of freight, you mean general freight, do you?

A. General freight.

Q. I suppose these piers vary in size and in character, 40 do they not?

A. Yes, sir.

Q. They all vary in size and in character?

A. They all vary in size and in character.

Q. How many city lots 25x100 are there to an acre, excluding streets?

A. Twelve.

Q. And including streets, how many?

A. Sixteen.

Q. These sidings spoken of in the valuation, both in Jersey City and in Hoboken, in ballast, are these 10 sidings that are regularly constructed there in tracks—regularly built tracks?

A. Yes, sir.

Q. With ties and rails?

A. Yes, sir.

Q. And the sidings on the piers are laid how?

A. Laid on the planking of the pier; the rails laid on the planking of the pier.

Q. Did you state how old pier No. 5 was?

A. I think Pier No. 5 is about seven years old. 20

Q. I call your attention to Block 262, south of main stem, valued at \$12,500; what is there on that?

A. Some side tracks, and the local coal trestle.

Q. Side tracks, as I understand it, are estimated by themselves in this valuation by the Board; is that the way you understand it?

A. Yes, sir.

Q. Now, as to the coal trestle, what is that?

A. It is a trestle having on it two tracks, about twenty feet in height, with pockets holding coal, to supply to 30 customers in Hoboken and Jersey City.

Q. Now, I see that in another part of this same assessment in Jersey City, is a coal trestle valued at \$6,900, and an office in Henderson street valued at \$200; please state whether that coal trestle valued at \$6,900 is on that No. 262?

A. I imagine that that is the same structure.

Q. Is there any other place to locate that coal trestle but there?

A. No, sir.

Q. Have you any doubt but that it is so?

A. None whatever.

Q. Now, that office on Henderson street, valued at \$200, is that upon the same No. 262?

A. It probably should read on Grove street; there is no office on Henderson street; it is probably intended for the coal office on Grove street, No. 262.

Q. It must be on that block?

A. It must be on that block.

10 Q. Is there anything else on that Block 262, south of main stem, except what you have stated?

A. No, sir.

Q. I see it is estimated by the Board as 59,550 square feet; what part of an acre is that?

A. It is about an acre and a quarter; a little over an acre and a quarter—an acre and a third.

Q. Near what streets is that block?

A. It is between Grove and Erie streets, and Nineteenth and Twentieth streets.

20 Q. That is outside of the tract of which we have been talking—the 99.784 acres as estimated by the Board?

A. It is outside, and west of it.

Q. Do you know of whom that was bought?

A. I think it was purchased of the Traphagen heirs.

Q. Can you give us any idea of the value of that piece of land outside of the sidings and the trestle—the actual value outside of taxing purposes?

A. I don't know; I am not able to say what real estate is worth in that vicinity; I couldn't tell.

30 Q. That coal trestle that is valued at \$6,900, what is its condition?

A. It is very old, and will soon have to be rebuilt.

Q. How soon?

A. It ought to be rebuilt within the next two years.

Q. I call your attention to the signal house near Henderson street and at the east portal of the tunnel, and the two signal houses at the west portal of the tunnel, and the tool house; please tell us whether they are on the main stem or not?

40 A. They are.

Q. By main stem, what do you understand ?

A. I understand a width of 100 feet on the main line of the road.

Q. That you treat as the main stem ?

A. Yes, sir.

Q. And they are upon that ?

A. They are upon that 100 feet in width.

Q. I call your attention to the signal house at the crossing, west of the tunnel ; whose land is that on ?

A. That is on land owned by the Hudson Connecting Railway Company. 10

Q. There are bridges in this assessment set down at \$18,118, \$23,194 and \$38,040 in valuation ; where are those bridges ?

A. They are over Henderson street and Nineteenth street, on lines to the different piers.

Q. Now, I call your attention to Hoboken ; what would be the area of the streets through the track, in Hoboken, if extended easterly to the bulkhead line of the Riparian Commissioners ?

A. Do you mean the Jersey City streets ? 20

Q. Yes ?

A. Seven acres.

Q. That land is also filled up by tide-water ?

A. All made land ; yes, sir.

Q. The valuation of siding in Hoboken by the Board is \$37,194.36 for 31,790 feet in ballast ; are you familiar with that siding there ?

A. Yes, sir.

Q. Know its quality ?

A. Yes, sir. 30

Q. State whether that valuation is excessive or not in your judgment ?

A. I think it is.

Q. Excessive, how much ?

A. Probably fifty cents a foot excessive.

Q. There is also a valuation for 10,120 feet of sidings on piers of \$9,108 ; are you familiar with those sidings ?

A. Yes, sir.

Q. State whether that is excessive in your judgment or not?

A. That is excessive to the extent of about forty or fifty cents a foot also.

Q. Do they form a part of the piers?

A. They do.

Q. And these sidings and ballast are upon what?

A. Upon the land.

10 Q. In this estimate of land in Hoboken, is any part of that under water included in that description? I will read it: "Yard in Hoboken bounded north by Ferry street, east by solid filling line, south by boundary line between Hoboken and Jersey City, and west by Henderson street?"

A. Part of it is under water.

Q. How much?

A. 7.7 acres.

Q. I speak now in Hoboken?

A. Yes, sir.

20 Q. Is that quantity of 7.7 acres included in the estimate of the Board of 22.75 acres, or not?

A. No, sir; it is not included by the Board.

Q. Can you be right that there are seven acres and odd under water within the boundary of the Hoboken tract?

A. I think so.

Q. There are some buildings over that water, are there not?

A. There are some piers.

30 Q. Or in the water, are they not?

A. In the water; the piers are in the water.

Q. In the assessment in Hoboken, there is a shed on Pier No. 2, and float bridges; you may state whether they are a part of the pier or not?

A. The shed and one float bridge is a part of Pier No. 2, and the other float bridge is a part of Pier No. 3, so considered.

Q. What is the float bridge?

A. It is a bridge for transferring cars from the tracks
40 to the float used for conveying them to New York.

Q. Can you give the ages of those piers, 2, 3 and 4?

A. I think they are from five to seven years old; I am only speaking from recollection.

Q. There is an express building there on this tract of 22 acres?

A. Yes, sir.

Q. Is that upon the main stem, or not?

A. Partly so.

Q. How much of it about?

A. About one-half. 10

Q. I see there is an engine house valued with a coal trestle, and I aver, here, that it was probably an old sand house; the valuation is \$1,000 by the Board; do you know of any such engine house there?

A. No, sir.

Q. Was there a sand house there?

A. There was.

Q. An old thing?

A. An old sand house.

Q. What became of it? 20

A. It is probably there yet, or else has been torn down, or will be torn down shortly, if it has not been.

Q. Is it good for anything?

A. No, sir; nothing but old timber.

Q. Now, I would like to turn to Newark for a few moments; I call your attention to the valuation of lots 18, 19 and 20, and ask you whether, previous to January 1st, 1884, all those lots were used for railroad purposes, or not?

A. I think there was only one of them used for railroad purposes. 30

Q. I mean previous to that time?

A. There was but one of them used for railroad purposes previous to that time.

Q. You may state whether the houses have been torn down since then, or not?

A. The houses have since been torn down and the ground cleared ready to be used.

Q. For railroad purposes?

A. Yes, sir. 40

Q. In Newark, there is an assessment there upon the freight house and the tool house; state whether they are upon the main stem or not?

A. They are.

Q. And you may state whether the other structures in Newark assessed, that are not upon the main stem, are upon the lands that have been assessed?

A. Yes.

Q. In Harrison township there are three watch houses 10 assessed; you may state whether they are upon the main stem, or not?

A. Yes, sir; they are.

Q. How is the estimate of siding in Newark—you have examined it, haven't you—in value; whether it is excessive or not, if you know the character of it?

A. It is put in at rather an excessive rate, considering the quality of the iron used in the side tracks.

Q. Now I call your attention to the Boonton Branch; the sidings of the Boonton Branch, in Jersey City, seem 20 to be valued by the Board at \$20,535.50 for 17,550 feet; what is your judgment with reference to that valuation?

A. They are valued at about forty cents a foot in excess of what they are worth, if not more; from forty to fifty cents a foot.

Q. And are those sidings upon the land that has been valued by the Board?

A. Yes, sir.

Q. Take the sidings in North Bergen township, valued at \$19,925.10 for 17,030 feet; from your knowledge of 30 those sidings, state whether that valuation is excessive or not, and if so, how much?

A. About thirty cents a foot too high.

Q. What is the character of the iron?

A. One-half of it is very old, almost worthless iron; the other is second-hand iron, also, but not in such bad condition.

Q. Well, it will have to be reconstructed soon; a part of it; is that so?

A. There will have to be new ties put in soon; the 40 iron don't wear out very soon, because there is scarcely

any running on it at all ; it is mostly used for standing cars on.

Q. The turn-table at Secaucus ; state whether that is on the main stem or not ?

A. Partly so.

Q. How much ?

A. About one-half.

Q. State whether any part of this estimate of sidings in North Bergen is upon the main stem ?

A. I think about 3,000 feet, in their estimate, is on 10 the main stem.

A. Is any part of this siding, in the estimate, in Jersey City, of 17,550 feet, is any part of that on the main stem ?

A. No, sir.

Q. I call your attention to Union township, Boonton Branch ; freight house ; state whether that is on the main stem, or not, at Kingsland ?

A. Yes, sir ; it is built of frame.

Q. How about the water tank ?

20

A. That is on the main stem also.

Q. I mean the water tank, valued at \$1,000, called the double-table water tank ; that is the one you have reference to ?

A. Yes ; that is the one there.

Q. That is on the main stem ?

A. Yes, sir.

Q. How about the tool house ?

A. The tool house is on the main stem also.

Q. I speak of the tool house at Passaic bridge ; is that 30 the one you have reference to ?

A. There is something wrong there at Passaic bridge ; it is the bridge tender's house at Passaic bridge ; that is the one I have reference to ; that is the bridge tender's house that is on the main.

Q. Is there another tool house ?

A. There may be another one at Kingsland ; I don't know whether it is enumerated here or not ; it can't be a very costly structure.

Q. It is on the main stem ?

40

A. Yes.

Q At Acquackanonck township there are sidings in the gravel pit valued at \$1,260; you may state whether those are only temporary or not?

A. They are only temporary sidings.

Q. For use in connection with the gravel pit?

A. For use in connection with the gravel pit, and liable to be taken up at any time.

Q. And how are they valued?

10 A. They are very excessive.

Q. You have examined the estimates of the Board on that subject?

A. Yes, sir.

Q. And they are excessively valued to what extent?

A. I don't remember what their figures are.

Q. I will give them to you—\$2,250 for 4,500 feet in the gravel pit.

A. Well, I won't call those excessively valued, then, at that rate.

20 Q. The tool house; is that on the main stem?

A. Yes, sir.

Q. Now, I call your attention to the city of Paterson; the valuation in the city of Paterson of the sidings, at \$1,800 for 1,800 feet; you may state whether that is excessively valued or not?

A. It is about twenty-five cents per foot in excess.

Q. You are acquainted with the quality of those rails?

A. Yes, sir.

Q. And the character of the sidings?

30 A. Yes, sir.

Q. Now, there is an assessment there of blacksmith shop, two blacksmith shops, freight depot and another shop, and the tool house; you may tell us whether those are on the main stem?

A. Yes, sir; they are.

Q. Is any part of the siding in Paterson on the main stem that is assessed?

A. No; none of the siding assessed on the main stem.

Q. Little Falls township; the sidings assessed there

are 700 feet, and valued at \$700 ; you may state whether they are excessively valued or not, from your knowledge?

A. To the extent of about twenty cents a foot.

Q. There is the tool house there, assessed for a small amount ; but I ask you for the purpose of raising a law question, as I have done before in regard to several of these minor items, is the tool house at Little Falls on the main stem or not ?

A. Yes, sir.

Q. Wayne township ; the sidings are assessed at the 10 rate of \$1 a foot ; you may state whether they are excessive or not ?

A. Probably twenty cents a foot in excess of what they are worth.

Q. In Wayne township there is an assessment against a tool house and a water tank ; you may state whether they are on the main stem or not ?

A. They are.

Q. Rockaway township, Boonton branch ; can you say whether those sidings, 600 feet at \$600, are assessed 20 above their value or not ?

A. Yes, sir.

Q. To what extent ?

A. About twenty cents a foot more than they are worth.

Q. Are any of those sidings on the main stem or not, or don't you know ?

A. I don't know about those ; I don't know where they are.

Q. In the city of Boonton there is a water tank as-30 sessed and a tool house ; state whether those are on the main stem or not ?

A. They are on the main stem.

Q. In the city of Boonton there are sidings assessed, 2,000 feet at \$2,000 valuation ; you may state whether those are excessively valued or not ?

A. They are valued about twenty cents a foot too much ; twenty to twenty-five cents a foot.

Q. In Montville township ; sidings in gravel pit ;

you may state whether those are only temporarily there or not?

A. Only temporary.

Q. The tool house, is that upon the main stem or not?

A. Upon the main stem.

Q. Now, I will go to Phillipsburg, and I call your attention to an engine house valued at \$12,000; you may state whether any part of that is on the main stem or not, at Phillipsburg?

10 A. I think part of it is.

Q. How much of it, about?

A. Probably one-quarter or one-fifth.

Q. There is a repair shop valued at \$3,500 by the Board; you may state whether any part of that is on the main stem?

A. Part of it is.

Q. Do you know how much?

A. Probably about one-seventh of that.

Q. There is a freight house assessed, valued at \$1,000; 20 state whether any part of that is on the main stem?

A. About one-half of that is on the main stem.

Q. The office and the express freight office, state where they are?

A. They are on the main stem.

Q. Now state whether the other structures assessed at Phillipsburg are upon the land that has been assessed?

A. They are.

Q. The sidings at Phillipsburg seem to be estimated at a dollar a foot; you may state whether those are ex- 30 cessive or not?

A. About thirty cents a foot in excess of what they are worth.

Q. At Greenwich township; you may state whether the tool house and the freight depot are on the main stem or not?

A. Yes, sir; they are.

Q. I call your attention to Franklin township; you may state whether the water tank is on the main stem or not?

40 A. It is.

Q. Washington borough; the coal trestle, the telegraph office and the water tank; state whether they are upon the main stem or not?

A. They are.

Q. The sidings at Washington are valued at \$15,143 for 15,143 feet; you may state whether they are excessive or not?

A. They are excessive to the extent of about fifteen to twenty cents a foot.

Q. Are you familiar with them? 10

A. Yes, sir.

Q. Are you familiar with the sidings, as I have been asking you, and the other localities?

A. Yes, sir.

Q. And the rest of the Morris and Essex railroad?

A. Yes, sir.

Q. Mansfield township; there are two water tanks there assessed, and a freight house and a tool house; you may state whether they are upon the main stem or not?

A. They are. 20

Q. Hackettstown city; there is a freight depot assessed, and also a turn-table; you may state whether they are upon the main stem or not?

A. Partly so.

Q. What part of the freight depot is on the main stem?

A. About one-half.

Q. And the turn-table?

A. Probably two-thirds.

Q. There is a scale house and a tool house assessed; 30 state whether they are upon the main stem or not?

A. They are.

Q. Roxbury township; the sidings are estimated at 56,202 feet; is that correct or not?

A. No, sir; does that include sidings in ballast and on trestle, both?

Q. It says, "sidings outside of the main stem?"

A. It is not correct.

Q. What is the error?

A. There is about 54,500 feet of sidings in all, includ- 40

ing 10,500 feet on trestles, so it is only about 44,000 feet in ballast outside of the main stem.

Q. How much of siding is there on the trestles?

A. About 10,500 feet.

Q. There is a water tank assessed; state whether that is on the main stem or not?

A. It is on the main stem.

Q. Water tank assessed at \$1,000; that is on the main stem, is it?

10 A. Yes, sir.

Q. And the office at the tank?

A. That is on the main stem.

Q. Structures not upon the main stem are upon the land assessed, I suppose, are they?

A. Yes, sir.

Q. These sidings are estimated at \$1 a foot in Roxbury township by the Board; you may state whether that is excessive or not?

A. Excessive to the extent of about twenty cents a foot for those in ballast, and thirty-five cents for those on trestle.

Q. Dover city; there is a freight shed assessed, also water tank, oil house, tool house; you may state where they are situated?

A. They are on the main stem.

Q. Are the other structures that are assessed in Dover city on the land that has been assessed?

A. Yes, sir.

Q. There are sidings there in Dover city assessed at 30 \$5,743, the estimate appearing to be \$1 a foot; you may state whether that estimate is excessive?

A. The price is excessive to the extent of about twenty cents a foot, and there are not that many feet of siding outside of the main stem.

Q. Is there any error in that estimate of siding outside the main stem?

A. There is 3,200 feet of siding outside the main stem.

Q. Randolph township; the sidings there are valued at about the same rate, \$1 a foot; what is your judgment 40 about that?

A. That is excessive to the extent of twenty cents a foot.

Q. And what is the fact as to whether there is any error in the number of feet—the number of feet given here by the Board is 22,689 feet in ballast?

A. It is 23,000.

Q. Then they have not got it to the full amount?

A. No, sir.

Q. The water tank, and the sand house, and the pump house; you may state whether they are on the main 10 stem or not?

A. They are.

Q. Rockaway township; are you familiar with what is called the Ketchum's Switch Branch?

A. Yes, sir.

Q. In the estimate of main stem returned by the company, was that Ketchum's Switch Branch returned as part of the main stem?

A. Yes, sir.

A. You may state what that Ketchum's Switch Branch 20 is?

A. It is used as a main line by the local passenger trains between Boonton and Denville.

Q. What is the length of it, about?

A. About a mile and a quarter, or a mile, I forget which; it is given in the return.

Q. It is correctly given in the return?

A. It is correctly given in the return.

Q. Do you know when that was built?

A. I think it was built in 1866.

30

Q. That is long before the lease?

A. Yes, sir.

Q. What is the object of the Ketchum's Switch Branch?

A. It is to bring the local trains from Boonton to Denville up to the Denville depot, the depot being located west of the crossing between the main line of the Boonton Branch and the main line of the Morris and Essex.

Q. There is a Y at Denville, or near there?

A. Yes, sir; west of the station.

Q. So that you can either get on to the main line north or south ?

A. Yes, sir.

Q. In Hanover township there is a tool house assessed, is that on the main stem ?

A. Yes, sir.

Q. I call your attention now to Morris township; the freight house that is assessed there at \$600 state whether that is on the main stem or not ?

10 A. Partly so.

Q. What part ?

A. The greater part, if not all.

Q. The water tank and the coal shed, state whether they are on the main stem or not ?

A. They are on the main stem.

Q. Are the structures that are assessed, that are not upon the main stem, upon the land assessed ?

A. Yes, sir.

Q. These sidings at Morristown, valued at \$1 a foot, 201,100 feet at \$1,100; you may state what your opinion is of that ?

A. They are probably estimated about twenty-five cents a foot too high.

Q. Chatham township; the freight depot at Chatham, and the freight depot at Madison, where are they located ?

A. They are on the main stem.

Q. And the office at Chatham, where is that ?

A. On the main stem.

30 Q. The structures assessed there not upon the main stem, are they upon the land assessed ?

A. Yes, sir.

Q. The sidings at Chatham township are estimated at the rate of a dollar a foot, 1,523 feet; how does that estimate agree with your judgment ?

A. They are about twenty-five cents a foot too high.

Q. Summit township; the engine house that is assessed there at \$2,500, and the turn-table at \$500; you may state where they are situate with reference to the

40 main stem ?

A. About two-thirds on the main stem.

Q. Of each ?

A. Of each.

Q. The freight depot, where is that ?

A. On the main stem.

Q. The water tank, where is that ?

A. On the main stem.

Q. South Orange; the engine house, assessed at \$2,000, and the turn-table, assessed at \$1,000; where are they ?

10

A. About one-third of each on the main stem.

Q. The rest being on the land assessed ?

A. Yes, sir.

Q. City of Orange; the freight depot, and the coal house and the express depot, where are they ?

A. On the main stem.

Q. Are you familiar with the values of lands along the Morris and Essex road, including the Boonton Branch, particularly outside of the cities ?

A. Somewhat.

20

Q. I mean the land, the country particularly; are you ?

A. I have somewhat of an idea of its value; yes, sir.

Q. Have you gone over the valuations made by the Board, as to plots and lots of land at the various depots outside of the cities on the Morris and Essex main line, and what is called the Boonton Branch ?

A. I have gone over and compared them with the return made by the company.

Q. You may state whether the valuation by the Board of these plots and pieces of land, of which I speak now, outside of the cities, in the smaller towns or villages or localities, is excessive or not ?

A. They are generally in excess of what would be considered a fair valuation.

Q. To what per cent., about ?

A. The percentage varies; some cases from 20 per cent. to 80 per cent.

Q. I speak now of the naked land; you so understand me, do you ?

40

A. Yes, sir.

Cross-examined by Mr. Johnson—

Q. How long have you been a practical engineer, Mr. Unruh?

A. Sixteen years.

Q. How long have you been connected with the Delaware, Lackawanna and Western Railroad Company?

A. Very nearly sixteen years.

10 Q. Where have you resided during that sixteen years—what portion of the State?

A. Do you mean the localities?

Q. Where is the general office which you have always been at?

A. Hoboken.

Q. You always attended the office, generally, at Hoboken?

A. Yes, sir.

20 Q. What are your duties under the position that you now hold?

A. Looking after the maintenance of way, building and rebuilding of bridges and structures of similar character and preparing descriptions of land purchased by the company—looking after land matters generally, sometimes negotiating for the purchase of land.

Q. This map that you referred to, when was it drafted?

A. This was made last winter.

Q. Was it drafted from actual surveys made, or copied from other surveys?

30 A. The data is compiled from actual survey; yes.

Q. No, that is not the question; was this map itself made from actual survey?

A. You can answer that both in the affirmative and the negative.

Q. So far as it is in the affirmative, give me an answer in the affirmative; and so far as it is in the negative, give me an answer in the negative?

A. That map was made from data compiled from actual survey; but, in making this special map, the pro-

cess of making this was a reduction from a larger map made from survey.

Q. This map is simply made from another map, made on a smaller scale?

A. This is a reduction of the larger map made from original surveys.

Q. Then this map, in fact, is a copy of another map?

A. No, this is not a copy of another—it is a reduction of another map; it is an original map on that scale.

Q. But you say it was taken from another map, therefore it is not an original in that sense of the word I am using, made from actual survey?

A. I am afraid there is a technical peculiarity here that we do not understand each other on, and it is a small matter either way; I am willing to say that this map is a copy; I don't care anything about it.

Q. Well, certainly you can state the fact; I only want to know how it is made?

A. This is a reduction of the original map on that scale; it is not, in any sense of the word, a copy. 20

Q. It is not an original map, in that sense of the word?

A. No; it is not an original map in that sense of the word.

Q. Who obtained the data for the map from which this is reduced?

A. That was obtained, the greater part of it, by actual surveys made by myself; the rest of it is from data compiled from the official city map of Jersey City.

Q. Then do you know, from your own personal knowledge, a map that represents the actual location of the grounds and streets, and railroads, which you have been testifying about?

A. Yes, sir.

Q. All this property in Jersey City which you have been testifying about, does that belong to the Morris and Essex railroad?

[Objected to, as there is no controversy about that.]

A. Yes, sir.

Q. The streets which the Governor speaks of, which

are in litigation, how far do they actually extend over the lands in question?

A. They don't, any of them, extend within the lands at all.

Q. Either in Jersey City or Hoboken?

A. Either in Jersey City or Hoboken.

Q. How far does the line between Jersey City and Hoboken extend towards Hudson river, in point of fact?

A. How far from what point?

10 Q. How far does it extend into the Hudson river?

A. Oh, I presume it is an indefinite line; I don't know how far the State claims to own; I don't know, as a fact, how far they are allowed to go into the river.

Q. Is this line last spoken of extended on the official map of Jersey City to the exterior pier line?

A. I think so, sir.

Q. The lands, then, over which these streets would run, if extended to the Hudson river, is used by the Morris and Essex for railroad purposes?

20 A. Yes, sir.

Q. Are there other piers any longer than Pier 6?

A. They all have varying characteristics as to length, and no two of them have the same characteristics at all.

Q. Well, how as to width?

A. Piers, 6, 8 and 9 are of the same width.

Q. Could you build any one of those piers for a \$100,000?

A. I think so.

Q. How much larger is Pier No. 4 than Pier No. 6?

30 A. Pier 4 is a merchandise pier, has no trestle on; that pier is 70 feet in width—that is 20 feet wider than Pier No. 6; it isn't so long.

Q. How do you know that these different buildings which you have testified in regard to are upon the main stem, or are partly on and partly off?

A. By observation and measurement.

Q. And how did you make those measurements?

A. With a tape line.

Q. From what point?

40 A. From the centre of our main stem.

Q. That is, from the centre of the road-bed ?

A. From the centre of the railroad.

Q. You speak of these values, in instances, of being excessive ; upon what do you base your judgment ?

A. Upon my acquaintance with values of the structures and land.

Q. How did you ascertain the value of lands outside of cities and in the smaller towns and villages along the line of the Boonton branch ?

A. I considered the ordinary price paid by individuals for land there of a similar character ; I consider that has an influence upon the railroad property.

Q. Do you simply take in the value of the land ?

A. I might consider any factor that might add to the value of the land.

Q. Do you take into consideration the damage done to farms which it crosses ?

A. They didn't come within the estimate of these lands ; these lands are all outlying lands—outside of the main stem ; that element would not enter into the estimate of any of these tracts of land at all ; I have not estimated on the main stem at all ; that element would only enter into the price of land on the main stem.

Q Why wouldn't it apply to the Boonton branch ?

A. Because these tracts, these I have given, are outlying tracts of land ; it is in the same condition as a farm alongside of the railroad.

Q. Did you take into consideration the question of damages there allowed for condemning lands—the element of damages—whether you did or did not ; I simply wanted to ascertain whether you took that into consideration or not ?

A. If that element was present I took it into consideration.

Q. Well, I know ; but you said you didn't think it was present ?

A. It was not as to any of these lands about which I have testified ; there was no such element present as to any of these lands about which I testified this morning.

This Indenture, made the tenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, between the Morris and Essex Railroad Company, a corporation created by the State of New Jersey, party of the first part, and the Delaware, Lackawanna and Western Railroad Company, a corporation created by the State of Pennsylvania, party of the second part. Witnesseth:—That the said party of the first part for and in consideration of the payments hereinafter

10 mentioned to be made to them by the party of the second part, and of the covenants and agreements of the party of the second part hereinafter expressed, have granted, leased and demised, and by these presents, do grant, lease and demise unto the said party of the second part, their successors and assigns, the railroad of the said party of the first part, extending from the Hudson river at Hoboken to the Delaware river at Phillipsburg, in the State of New Jersey; and also all branch and other

20 railroads owned, leased, rented or otherwise controlled by the said party of the first part; together with all the lands, real estate, water fronts, water rights, superstructures, piers, docks, wharves, landings, ferries, ferry rights, rights of way, railroads, railways, tracks, bridges, viaducts, culverts, fences, depots, stations, station houses, water, water pipes, water stations and tanks, turn-tables, shops, buildings, structures, tools, machinery, fixtures, locomotives and other engines, cars, rolling stock and equipment, and also all other property and rights of every kind and character, real, personal and mixed,

40 whatsoever and wheresoever situate, belonging to the said party of the first part, or to which the said party of the first part are wholly or in part in any manner entitled.

Also all and singular the franchises, immunities, rights, powers and privileges, which have been or may be granted to, or conferred upon, or which may be used or exercised by the said party of the first part.

To have, hold, use, enjoy, possess and exercise, all and

singular the property, things, franchises, immunities, rights, powers and privileges hereinbefore granted, leased and demised, with the hereditaments and appurtenances in anywise thereto appertaining, unto the said party of the second part, their successors and assigns, from the thirty-first day of December, eighteen hundred and sixty-eight, for and during the full term of the continuance of the charter of the said party of the first part, and during the full term of the continuance of said charter by virtue of any and all renewals thereof that 10 may at any time hereafter be granted or made, as fully and beneficially to all intents and purposes as the said party of the first part might or could have, hold, use, enjoy, possess or exercise the same, had this indenture not been made. Subject only to the provisions hereinafter contained.

And the said party of the first part for the considerations aforesaid, do hereby grant, assign and convey unto the said party of the second part, their successors and assigns, all contracts, agreements, credits and accounts 20 which have been made by or belong to the said party of the first part.

And the said party of the second part in consideration of the grants, lease, demise, sale and assignments of the said party of the first part, contained in this indenture, do covenant and agree with the said party of the first part, its successors and assigns, to assume, and they do hereby assume and agree to pay, discharge and perform all the bonds, debts, obligations, liabilities and undertakings for which the said party of the first part, on the 30 first day of January, eighteen hundred and sixty-nine, shall be legally or equitably liable.

And the said party of the second part do hereby covenant and agree to indemnify and save harmless the said party of the first and its property from and against the payment of any part or portion of said indebtedness

or liabilities, and from and against the performance of any of the said undertakings.

And that the said party of the second part will, during the continuance of this lease, pay and discharge all taxes and assessments which are or may be imposed, levied or assessed on any of the property hereby granted, leased or demised; or on the business or any of the business done on or with the said property; or on the income or profits of the said business; or on the said
10 party of the first part as a corporation; or any of its rights, privileges or franchises, by the United States, or any State, county, township, municipal or other authority having legal authority to impose, assess, levy and collect taxes, imposts or duties.

And also will pay to the holders of the capital stock of the said party of the first part, interest at the rate of seven (7) per centum per annum upon the par value of said stock, and pay the same semi-annually on the first days of July and January in each year, free and clear of
20 all taxes, assessments and impositions whatsoever.

And if in any year (from December thirty-first to January first,) after the year eighteen hundred and seventy-three, thirty (30) per cent. of the gross earnings of the railroads hereby demised, including the earnings of any branch or other railroads that may hereafter in pursuance of the provisions of this indenture be constructed or used, shall amount to a sum sufficient to pay the interest on all the then existing obligations and liabilities of the party of the first part, and to pay ten
30 (10) per cent. free and clear as aforesaid, on the par value of the entire amount of the capital stock of the party of the first part, which shall then have been issued, that then and in that case the party of the second part shall pay to the holders of said stock, at the end of every such year, an additional interest upon their stock of one (1) per cent. per annum free of taxes as aforesaid. But in no case and at no time shall more

than seven (7) per centum per annum, free and clear as aforesaid, be paid upon or on account of said stock, unless thirty (30) per cent. of the gross earnings are sufficient to pay the interest as aforesaid and ten (10) per cent. free and clear as aforesaid, on all the capital stock then issued.

And the said parties hereto do hereby for the considerations aforesaid, further covenant and agree, each to and with the other, its successors and assigns, as follows:

Article First.

10

That the said party of the first part, notwithstanding this lease, shall continue to maintain their organization as a corporation in the manner prescribed in and by their charter and the several supplements thereto; and that they shall do and perform all acts and things necessary and proper in order to the maintenance of their corporate rights, and that the said party of the first part shall, from time to time, during the continuance of this lease, upon the request of the said party of the second part, make, execute, issue and deliver to the party of the second part, the bonds, other obligations or stock of the said party of the first part, or part bonds, part other obligations and part stock, as the said party of the second part may request, for such amount and to such extent as may be required by the said party of the second part, for the completing of the construction of the second track of said railroad to Phillipsburg, and for the construction of the branch road hereinafter agreed to be constructed from Denville, and for the construction or purchase of locomotives, machinery, cars and other equipments for said railroad, and for the construction of any other railroads which the said party of the second part may, in the exercise of the rights conferred, or that may be conferred by the charter of the party of the first part or the supplement thereto, desire to construct, and for all other things, work or works, which the said party of the second part may desire to do in the exercise of

said rights, the cost of which is properly chargeable to construction account.

And the said party of the second part shall, during the continuance of this lease, do and perform so far as they have the power to, all acts and things which the party of the first part as owners of the property and franchises hereby demised, would be bound by law to do and perform had this indenture not been made. And that the said party of the second part shall at their own
10 cost and expense assert, and by all lawful means enforce and defend, the corporate rights, franchises and property hereby demised.

Article Second.

That the said party of the second part shall complete the double track of said main railway, from where the double track now ends, east of Morristown, to the Delaware river at Phillipsburg, and also construct under the rights and powers that have been or may hereafter be conferred upon the said party of the first part, a branch railroad
20 from the main line of said demised railroad, at or near Denville, in the county of Morris, to some point on said main road east of the Passaic river :

Provided, that the party of the second part shall have the right, instead of constructing said branch road to a connection with the main line east of the Passaic river, as aforesaid,—to connect the same with any other railroad which does or may connect with said main line east of said river:—which said branch road and said double
30 track shall be completed as soon as it reasonably can be done.

Article Third.

That the said party of the second part shall at all times during the continuance of this lease, maintain the road-bed, tracks and property hereby demised, in good substantial order, condition and repair, at the cost and expense of the party of the second part; and whenever

this lease shall be terminated, they shall deliver to the party of the first part, the peaceable possession of all the real property and railroads hereby demised, and that may be constructed in pursuance of this indenture: also all other property which may hereafter be acquired by the party of the second part, with the bonds, obligations or stock issued as aforesaid by the said party of the first part; all of which shall be delivered in at least as good order and condition as the same now is, and the personal property hereby demised shall upon the termination of 10 this indenture, be returned to the party of the first part in as good order as the same now is, or the value thereof, or the difference in the value, if not returned in as good order as it now is, shall be paid by the party of the second part, or property of like value and character with that now on hand shall be returned to the party of the first part. A schedule of which personal property now on hand is to be made and attached to and filed with this lease, and upon the taking effect of this indenture, all of the moneys, bills receivable, bonds executed and 20 not sold, including those which have been pledged as collateral, and all other assets of the said party of the first part, shall be delivered to the party of the second part to be by them used in the payment of the debts and liabilities of the said party of the first part, and to aid in the construction of the work hereinbefore agreed to be done by the said party of the second part.

Article Fourth.

That in case the said party of the second part shall at any time refuse or neglect, for the period of six months, 30 to make any of the payments by them in this indenture agreed to be made, then and in that case the said party of the first part may, at their option, at any time within ninety (90) days thereafter, but not afterwards for that default, treat this lease as at an end, and at once resume and take and hold full possession and control of all the property by these presents leased and demised, free and clear of all rights and control of the party of the second part, the same as if this lease had not been made. Pro-

vided, that the repossession of said property by the said party of the first part, under the option hereinbefore named, shall in no manner vitiate, release or discharge, any legal claim or demand, the party of the first part may have against the party of the second part, by reason of any breach of these presents accruing at or before the time when the said party of the first part shall repossess themselves of such property; and provided also, that the said party of the first part shall, during the period of at
 10 least thirty (30) days, before taking the repossession of said property, publish in two newspapers, printed in the city of New York, a notice to the stockholders of the party of the second part, of such default and intention to resume the possession of said property, and the party of the second part may, at any time before the expiration of the thirty (30) days notice above mentioned, stay all further proceedings by the payment of the amount then due.

Article Fifth.

20 That the said party of the first part shall have the right at any time prior to the first day of January next (1869), to issue to the holders of the capital stock of the said party of the first part, issued and outstanding on the twenty-first day of December, A. D. 1868, a stock dividend of seven (7) per cent. thus thereby increasing their capital stock, issued and outstanding as aforesaid, to the amount and extent at seven (7) per cent. But the said party of the first part shall not after the thirty-first day of the present
 30 month—December—1868, make, execute, or issue, or cause or permit to be made, executed or issued, any bond or obligation of any kind or character whatsoever, nor any stock or certificate of stock, unless requested so to do by the said party of the second part; and all bonds and obligations and certificates of stock for whatever purpose issued, which shall be made or executed by the said party of the first part after said day (December thirty-first, eighteen hundred and sixty-eight,) shall before the same are issued, be countersigned by the president or treasurer of the said party of the second part, and the said

party of the first part shall not after the 31st day of this month—December, 1868—make any bargain, or contract, or enter into any engagement, or do any act or thing whereby or by means whereof the rights or interests of the said party of the second part under this indenture can be in any wise be prejudiced. But they, the said party of the first part, shall and will, from time to time and at all times during the continuance of this lease, do and perform, at the expense of the party of the second part, all such lawful acts and things as they may 10 be requested by the party of the second part to do and perform, in order to preserve their corporate and other rights, and in order to enable the party of the second part to enjoy, use and exercise the property, franchises and rights hereinbefore demised, as fully, to all intents and purposes, as the party of the first part might enjoy, use or exercise the same, had this indenture not been made. And the said party of the second part shall have the right, at their own expense, to use the name of the party of the first part in all cases, where they are ad-20 vised by counsel that it is proper so to do, in connection with any matter or thing arising under this indenture, or in the management of the property hereby demised, or the transaction of the business hereby contemplated, or the exercise of the rights hereby granted.

Article Sixth.

That the said party of the first part shall upon the request of the party of the second part, in addition to the bonds and obligations hereinbefore agreed to be issued, make, issue and deliver to the party of second 30 part, bonds or other obligations, to enable the said party of the second part, to pay and discharge at maturity, the principal of the bonds and other obligations of the party of the first part theretofore issued.

Article Seventh.

That the foregoing covenants, agreements and undertakings are made and entered into by the party of the second part upon and under the understanding and the

representation of the party of the first part, and the said party of the first part covenant and agree, that the amount of their bonds and stock issued and outstanding (including bonds pledged as collateral security) on the first day of January next, shall not exceed, exclusive of accrued interest, the sum of thirteen million eight hundred and ninety-one thousand five hundred and fifty-five (\$13,891,555) dollars, and that the said party of the first part believe that all the other outstanding indebtedness of the party of the first part on the first day of January next, will not exceed the sum of one million four hundred and seventy thousand one hundred and fifty-three dollars and sixty-six cents, including indebtedness for which bonds are pledged as collateral, and the said party of the first part covenant and agree, that if their indebtedness existing, over and above their capital stock and their bonds on the first day of January next, shall exceed the sum of one million seven hundred and twenty thousand one hundred and fifty-three dollars and sixty-six cents, including indebtedness for which bonds are pledged as aforesaid, that then and in that case the said party of the first part, shall upon the request of the said party of the second part, make, issue and deliver to the said party of the second part, the bonds or other obligations or stock, or part bonds, part other obligations and part stock, as the party of the second part may request for such amount as may be required to liquidate and pay any excess of indebtedness over and above the sum last above-named.

30 Provided that the said party of the second part shall, from time to time request the issue of said bonds, obligations or stock, within six months from the time they are required to pay any part of such excess of indebtedness or be forever debarred from all right to have either bonds, obligations or stock issued therefor and the said party of the second part shall have the right to deduct and retain semi-annually from the rent or interest hereinbefore agreed to be paid to the holders of the capital stock of the party of the first part, such sum as the interest upon the bonds, obligations and stock issued as

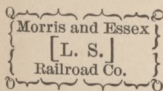
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aforesaid to pay such excess of indebtedness may amount to. And should the amount of bonds and stock issued and outstanding on the first day of January next (1869), exceed the sum heretofore stated, the said party of the second part may in like manner deduct and retain from said rent or interest such sum as the interest on such excess of bonds and stock may amount to. Any indebtedness which may accrue after the thirty-first day of December instant, on any contract which by this lease and agreement is assigned or transferred to the party of 10 the second part, shall not be considered or treated as an indebtedness existing against the party of the first part on the first day of January next.

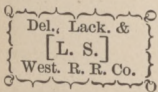
Article Eighth.

That all and singular the covenants and agreements hereinbefore contained, shall inure to the benefit of, and be binding upon the successors and assigns of the said parties hereto respectively.

In witness whereof, the Morris and Essex Railroad Company, have caused their 20 corporate seal to be hereto affixed, and these presents to be signed by Theodore F. Randolph, the president of said company, the same being done by authority of a resolution for that purpose, adopted by the board of directors of said company. And the Delaware, Lackawanna and Western Railroad Company have caused their corporate seal to be hereto affixed, and these pre-30 sents to be signed by Samuel Sloan, their president, the same being done by authority of a resolution for that purpose, adopted by the board of managers of the last named company.



ATTEST:
HENRY W. MILLER, *Secy.*



ATTEST:
CHARLES E. CARRYL, *Secy.*

THEO. F. RANDOLPH,
President of the Morris and Essex R. R. Co.
SAM. SLOAN,
President of the D., L. & W. R. R. Co.

Revenue stamps to the amount of twenty-three hundred and forty-seven (\$2,347.00) dollars affixed.

State of New York, city and county of New York, ss.—
 Be it remembered that on this thirteenth day of January, eighteen hundred and seventy-one, before me, Jacob Vanatta, a master in the Court of Chancery of the State of New Jersey, personally appeared Henry W. Miller, to me personally known, who being by me duly sworn according to law, did depose and swear that at the date
 10 and at the time of the execution of the foregoing lease he was the secretary of the Morris and Essex Railroad Company, the grantors and lessors named in said lease: That the seal affixed to said lease, purporting to be the common seal of the said the Morris and Essex Railroad Company, then was the common seal of said company; that said seal was affixed to said lease in the presence of deponent by the authority and order of the board of directors of said company and of the president of said company, after the contents of said lease had been made
 20 known to said board and president, and the said lease, by authority and order of the said board of directors, was then and there delivered by the said president to the Delaware, Lackawanna and Western Railroad Company as the voluntary act and deed of the said Morris and Essex Railroad Company, for the uses and purposes therein expressed; and at the same time Theodore F. Randolph, the president, and deponent, the secretary of said last-named company, subscribed their names to said lease as witnesses of said execution.

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JACOB VANATTA,
Master in Chancery of New Jersey.

State of New York, city and county of New York, ss.—
 Be it remembered that on this thirtieth day of January, 1871, before me, Jacob Vanatta, a master in the Court of Chancery of New Jersey, personally appeared Charles E. Carryl, of said city, to me personally known, and who being by me duly sworn according to law, did depose and swear that he now is, and at the date and

the time of the execution of the foregoing lease, was the secretary of the Delaware, Lackawanna and Western Railroad Company, the grantee and lessee named in said lease : That the seal annexed to said lease, purporting to be the common seal of the Delaware, Lackawanna and Western Railroad Company, then was and now is the common seal of said company : That said seal was affixed to said lease by deponent in the presence of the president of said company, and by the authority and order of the board of managers, and also of the president of said 10 company, after the contents of said lease had been made known to said board and to said president, and a duplicate copy of said lease, by the same authority and orders, was then and there delivered to the Morris and Essex Railroad Company as the voluntary act and deed of the said the Delaware, Lackawanna and Western Railroad Company, for the uses and purposes in said lease expressed, and, at the same time, Samuel Sloan, as the president, and deponent as the secretary of the last-named 20 company, subscribed their names to the foregoing lease and to the said duplicate copy as attesting witnesses to the execution thereof on the part of the last-named company.

JACOB VANATTA,
Master in Chancery of New Jersey.

EXHIBIT E, EX PARTE DEFENDANTS.

THE MORRIS AND ESSEX RAILROAD COMPANY.

To the Honorable the Legislature of the State of New Jersey :

Statement showing the condition of said company on the first day of January, 1869, and its operations for the 30 year 1868, and list of fatal accidents occurring on said road during the same period :

Capital stock.....		\$4,823,500	00
Funded debt.....		8,500,500	00
Floating debt.....		1,070,208	08
Certificates of indebtedness to stockholders.....		6,167	50
Profit and loss.....		601,638	04
			<hr/>
		\$15,002,013	62
Construction.....	\$9,759,062	01	
10 Real estate, buildings and imp'ts.....	543,293	28	
Locomotive engines.....	\$1,477,289	33	
Cars.....	1,306,161	31	
		<hr/>	
		2,783,450	64
Machinery and tools.....		26,090	80
Railroad iron and materials on hand.....		219,878	41
Premium and discount.....		892,801	81
20 Capital stock of Newark and Bloomfield Railroad Co..		69,000	00
Cash bills and accounts receivable.....		708,436	67
		<hr/>	
		\$15,002,013	62

Receipts.

From passengers, freight, mails, rents and sundries.....	\$1,921,419	16
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Expenses.

30 Operating road, maintenance of way, motive power, contingencies, etc.....	\$1,539,009	75
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Dividends.

One dividend of seven per cent. has been paid during the year in stock and cash, amounting to.....	\$316,526	00
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Number of Passengers Carried.

There has been transported over the road during the year, one million four hundred and forty-four thousand five hundred and forty-nine, exclusive of commuters and those who ride free.

Number of Miles Run.

Passenger trains.....	388,349
Freight and coal trains.....	496,638
Gravel, construction and other trains.....	193,920
	—————
Total miles.....	1,078,907

The above statement is true to the best of my knowledge and belief.

(Signed) A. P. BERTHOUD,
Sup't Morris and Essex Railroad.

Sworn and subscribed before me, this 23d day of February, 1869.

(Signed) AHON PUGET,
Justice of the Peace.

EXHIBIT F, EX PARTE DEFENDANTS. 20

MORRIS AND ESSEX RAILROAD COMPANY.

To the Comptroller of the State of New Jersey :

In obedience to a law of the State of New Jersey, approved March 27th, 1874, (Revision, p. 916,) requiring annual reports to be made to the Legislature and transmitted to the Comptroller, by the railroad companies of the State, the Morris and Essex Railroad Company presents the following report for the year ending December 31st, 1884:

Capital stock paid in.....	\$15,000,000	00
Bonded debt.....	23,373,000	00
Cost of road.....	\$24,540,597	59
Cost of equipments.....	13,187,444	74
	<hr/>	37,728,042 33

The road extends from Hoboken to Phillipsburg, with Boonton Branch additional, a distance of one hundred and eighteen and seventy-two one hundredths miles.

It is leased to the Delaware, Lackawanna and Western
10 Railroad Company, at an annual rental of seven per cent. on its stock and interest on its bonds.

It is equipped and operated by the lessee, and the further information required by law is furnished by that company, and is annexed hereto.

State of New York, New York county, ss.—Fred. F. Chambers, being duly sworn, on his oath says that he is treasurer of the Morris and Essex Railroad Company, and that the foregoing statement is true and correct, to the best of his knowledge and belief.

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FRED. F. CHAMBERS.

Sworn and subscribed before me this 9th day of February, A. D. 1885.

LUDWIG R. MILLER,

*Commissioner for the State of New Jersey in New York.**Receipts and Expenses for 1884.*

Income from passengers.....	\$1,289,962	58
Income from freight.....	2,684,693	99
Income from other sources.....	276,430	04

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\$4,251,086 61

Expenditures during the year for working road, including repairs, maintenance of way, motive power and contingencies....	\$2,744,787	75
Dividends paid during the year 1884, and how paid :		
To stockholders as rental.....	1,050,000	00

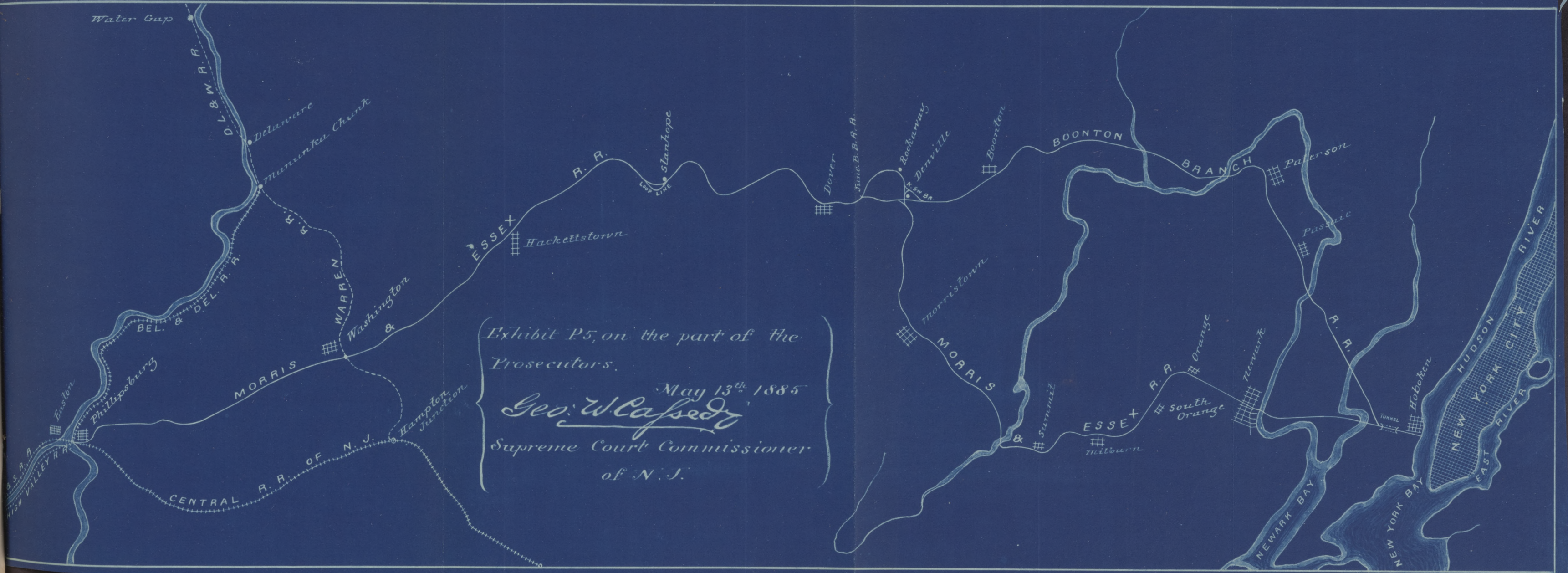
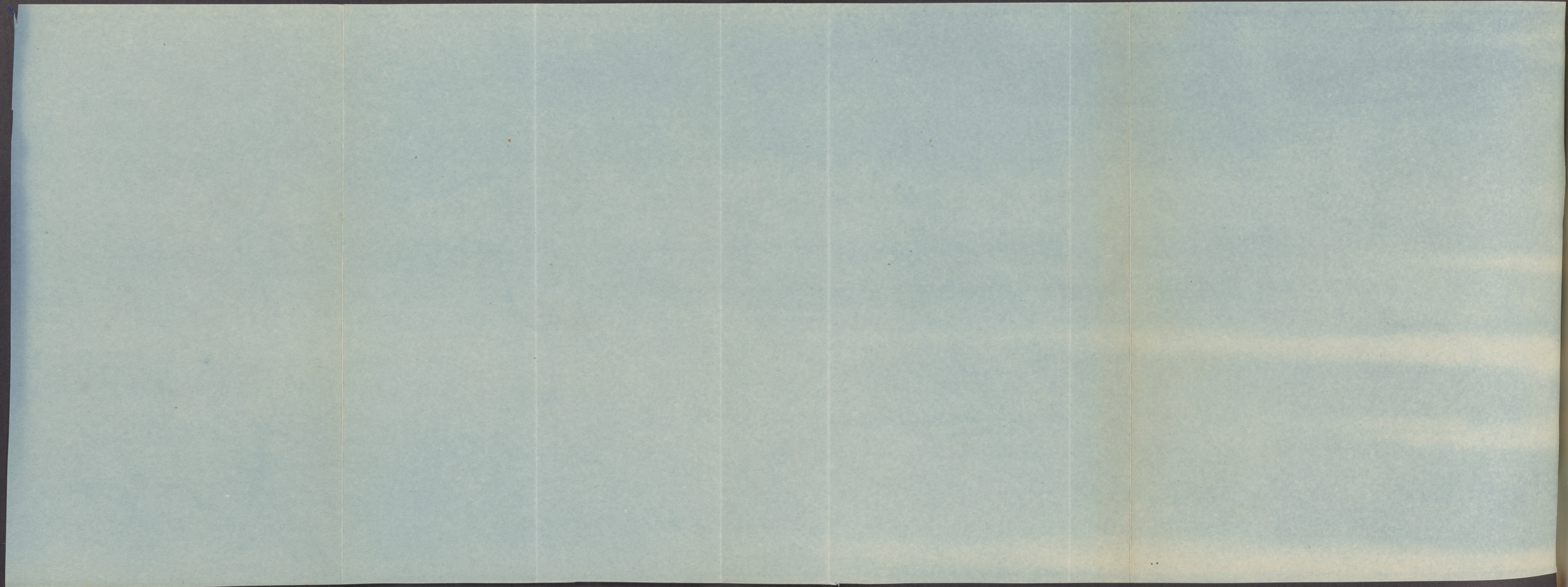


Exhibit P5, on the part of the
 Prosecutors.
 May 13th 1885
Geo. W. Casper
 Supreme Court Commissioner
 of N. J.



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