

N. J. Court of Errors and Appeals.

<p style="text-align: center;"><i>Between</i></p> <p>THE AMERICAN DOCK AND IMPROVEMENT COMPANY, <i>et al.</i>,</p> <p style="text-align: right;"><i>Appellants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>WILLIAM Z. LARNED, RECEIVER, &C.</p> <p style="text-align: right;"><i>Respondent</i></p>	}	<p><i>On Appeal</i> 10</p> <p><i>from Order</i></p> <p><i>modifying</i></p> <p><i>Order for</i></p> <p><i>Feigned</i></p> <p><i>Issue.</i></p>
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BRIEF FOR APPELLANTS.

PRELIMINARY STATEMENT.

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1. The order appealed from is one of a series made in a suit commenced by the appellants against the respondent and others in the Court of Chancery, to quiet the title to certain lands, pursuant to the statute, (Revision, p. 1189,) the fifth section of which provides—

“That upon application of either party an *issue at law* shall be directed to try the validity of such claim, [*i. e.*, of ‘any estate or interest in or incumbrance on said lands, or any part thereof,'] or to settle the facts or any specified portion of the facts, upon which the same depends; and the Court of Chancery shall be bound by the result of such issue, but *may, for sufficient reasons, order a new trial thereof*, according to the practice in such cases; * * * and shall *upon the finding of such issue, * * ** finally settle and adjudge whether the defendant has any estate,” &c.

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2. The first of the series of orders refused was made August 3d, 1882, on application of the respondent, not

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for an "issue at law," but for "leave to bring one or more actions of ejectment in the Supreme Court of New Jersey, against the Receiver of the Central Railroad Company of New Jersey, or any other person or persons, parties to the above stated suit, or otherwise," &c. (*Case*, p. 1.)

3. The second of said series of orders was made September 18th, 1882, on the application of the appellants for an "*issue at law*," pursuant to the section quoted, which provides "that upon application of either party, *an issue at law shall be directed.*" (*Case*, p. 5.)

4. The third order (from which this appeal was taken) was made February 20th, 1883, (*Case*, p. 10.) on application of the respondent, whereby order number 2, (of September 18th, 1882,) was modified so as to convert the same essentially into another order for an action of ejectment.

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POINTS.

I.

The appellants having applied for "an issue at law," they were entitled to it by the statute, and as the order appealed from virtually revoked the order for an issue made on that application, and substantially denied the application, it was clearly erroneous.

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II.

Directing an action at law is not a compliance with an application for an issue at law.

1. An "issue at law" is mentioned without the alternative of an action at law.

2. It is "upon the *finding of such issue*," or upon its own determination, when an issue is not asked, and not

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upon a judgment or verdict in an action at law, that the Court of Chancery may "finally settle and adjudge whether the defendant has any estate," etc.

3. The proceeding contemplated in a court of law is one in respect to which the Chancellor may "*order a new trial * * according to the practice in such cases.*" But can the Court of Chancery grant, or is it "according to the practice in such cases" to grant, a new trial of an "action at law," although directed instead of an issue at law? 10

(1.) "Where the Court of Chancery directs a *suit at law* to be brought, the application for a new trial must be made to the *Court in which such action is pending*. But when an *issue* is directed to be tried in a court of law, the application for a new trial should be made to the Court which ordered the issue."

2 *Dan. Chy. Pr. (5th ed.)* 1135; note 10 and cases cited.

(2.) "Wherever the foundation of the claim is a legal demand, and *the question whether a new trial should or should not be had, can be discussed with more satisfaction in a court of law than in a court of equity*, this Court will direct an *action at law*." 20

1 *Barbour Chy. Pr. (2d Ed.,)* 465.

(3.) "If this Court thinks proper to consider the case upon the record as fit to be governed by the result of a trial, the *review or propriety of which belongs to a court of law*, the opinion of a court of law is sought *in such a form that it is regarded as conclusive*, whether the judgment is obtained upon a verdict or in any other shape; 30 but, *upon an issue directed*, this Court reserves to itself the review of all that passes at law; and one principle on which the motion for a new trial is made here, and not to the court of law, is, that this Court regards the judge's report with a view to determine whether the information collected before the jury, together with that which appears upon the record in this Court, is sufficient to enable it to proceed satisfactorily."

Per Lord Eldon, *Booth vs. Blundell*, 19 Ves., 500.

See also *Pemberton vs. Pemberton*, 13 Ves., 298. 40

(4.) "The principles upon which this Court directs a new trial of a feigned issue, are somewhat different from those which govern courts of law in granting new trials. Where this Court directs an action, although accompanied by particular directions, the parties, in other respects, are left to their legal rights. *The application for a new trial is, in that case, to be made to the court in which the action is brought, and is subject to the rules which govern the proceedings of that court in other cases.*

10 But, if an issue is directed, it is to inform the conscience of the Chancellor, and the application for a new trial must be made here." Chancellor Walworth in

Apthorpe v. Comstock, 2 Paige 487.

See *Hope v. Hope*, 10 Beav., 581.

(5) "If the party against whom the verdict is found is dissatisfied with it, and wishes for a new trial, the application for one must be made, *if the verdict was found in an action brought by the direction of this Court, to that court in which the action is brought*; if it was found on an
20 issue, to this Court."

1 *Newland's Chy. Pr.* p. 353.

(6.) "The constant and uniform practice of this Court has been, whenever an action has been directed by it, even with all the benefits of such discovery by the oath of the party, as this Court can obtain—I mean by directing the parties themselves to be examined on such trial—that the application for a new trial should be made to the Court of law which has tried the
30 action, till that Court is satisfied with the verdict; though it is otherwise with an issue, in which case the motion for a new trial is to be made in the Court of Chancery."

Per Lord Eldon, Exparte, Kensington, Cooper, 96.

See also *Castairs vs. Stein*, 4 M. & S., 192, 195.

Lowe vs. Waller, 2 Doug., 735.


4. If an action of ejectment should be brought in a Court of law, by the direction of the Chancellor, it would be subject to the regulations prescribed by law ; and would be triable only "in the county where the lands, tenements or hereditaments in question are situate * * * unless the *Supreme Court*, upon motion on behalf of the State, if the State be interested, or upon motion of either party in the action. shall think proper to order the trial to be at the bar of the Supreme Court."

Revision, p. 883, § 229.

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Where the cause of action is *local*, the Supreme Court cannot change the venue.

Deacon vs. Shreve, 3 Zab., 204.

 *The act of March 23d, 1883, (P. L., Ch. 173,) does not apply to actions at law.*

5. As the Chancellor could, "according to the practice in such cases," neither grant a new trial, nor prescribe or change the venue in the action, the complainants would lose the benefit of the *condition* on which the order directing an action was made, as well as the right to have the verdict of the jury subject to the equitable control of the Chancellor, as in case of an issue.

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III.

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Merely *calling* an action at law a "*feigned issue*," (as in the order appealed from (*Case*, p. 10, ll. 39-40,)) does not make it such.

1. The declaration is a declaration in an action of ejectment, and has nothing to hint that it is anything else, except the parenthetical and superfluous recital between line 20, p. 11, and line 7, p. 12, which changes neither its substance nor its aspect.

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2. The plea is the ordinary one prescribed in an action of ejectment, and the defendants therein are made to say that they "appear and defend *this action*."

IV.

Even if by reason of its connection with the Chancery
10 suit, it might be deemed a *quasi* issue at law, yet embarrassment will be likely to arise hereafter from its ambiguous character.

V.

The order in question is appealable, whether considered as directing an action or a feigned issue.

20 That an order for an issue is appealable is *res adjudicata* by this Court

Newark & N. Y. R. Co. vs. Mayor, &c., of Newark, 8 C. E. Gr., 515.

See also *Nicol vs. Vaughan*, 2 D. & C., 420; S. C., 5 Bligh (N. S.), 505.

(See form of the decree for reversal, 5 Bligh, 546; and S. C. on *Remittitur, sub. nom. Winchelsea vs. Garetty*, 1 M. & K., 254.)

Smyth vs Nangle, 7 Cl. & F. 405.

30 *Williams vs. Guest*, and R. 10 Ch. App., 467.

Parker vs. Morrell, 2 Phil. 453.

(In this case there was an appeal from an order directing issues, after trial of them, which appeal raised the question as to the *form* of the issues.)

Wynne vs. Styan, 2 Phil. 303.

(In this case it was, *inter alia*, insisted by the appellants that the issues were unnecessarily numerous, and that they were prejudiced by the direction that they should be plaintiffs on the trial of them. The Lord Chancellor
40 thought the issues too numerous and reformed them.)

Butlin vs. Masters, 2 Phil., 290.

(In this case, the Court criticised the mode of directing the issues.)

Elderton vs. Luck, 2 Phil., 680.

(Question as to form of issue was raised in this case.)

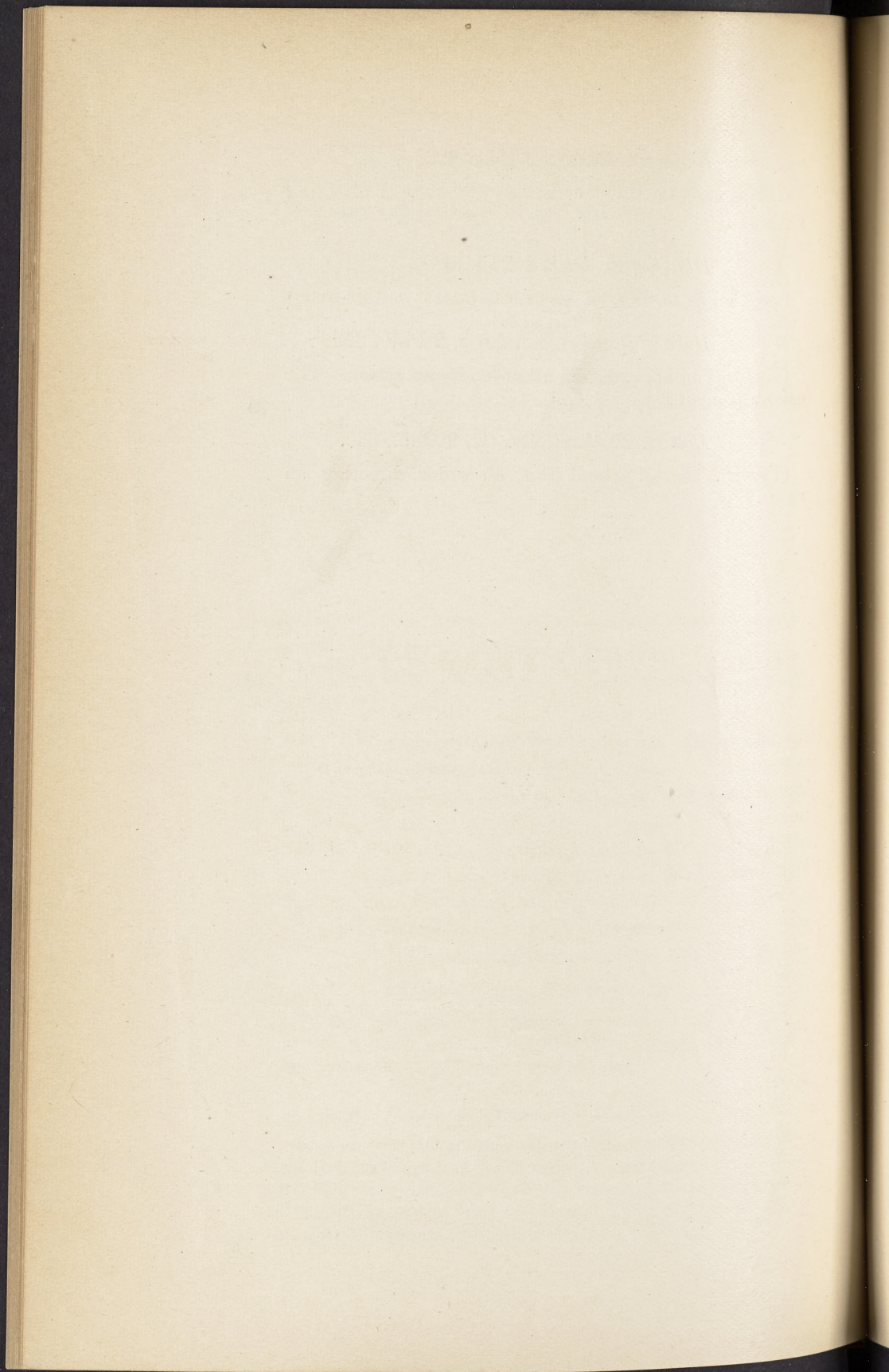
Duke of Beaufort vs. Morris, 2 Phil., 683.

(This was an appeal from an order for an action. The order was modified.)

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Mott vs. Blackwell Ry. Co., 2 Phil., 632.

(This was also an appeal from an order directing an action.)



N. J. Court of Errors and Appeals.

THE AMERICAN DOCK COMPANY, *and al.*

Appellants,

and

LARNED, RECEIVER WEST LINE CO.,
and al.,

Respondents.

*Points and
Brief for Re-
spondent.*

*On appeal from
order of Feb.
20, 1883.*

History of Order Appealed From.

On August 3d, 1882, the Chancellor ordered *actions* of ejectment by the Receiver of West Line Co., which were to be under the control of that Court, "as if they were issues framed by this Court to determine the question of title." 9 Stew., 16.

From this order there has been no appeal, and it has long been too late to appeal from it.

On Sept. 18, 1882, the Chancellor, on the urgent *solicitation* of the *appellants*, ordered a feigned issue *also*, and stayed the actions of ejectment.

On Feb'y 20, 1883, the order appealed from was made.

The Chancellor, on March 31st, '83, denied a motion to stay proceedings pending appeal.

This Court, on April 19, 1883, ordered a stay, pending appeal.

This appeal is now up for hearing.

The order of Feb'y 29, appealed from recites that application for it was made on due notice, and was debated by counsel, and—

(1st). Orders that the order of Sept. 18, 1882,—which directed the feigned issue, in *addition* to the actions of ejectment,—be modified; and that the issue shall be in the

form set forth at length in the order appealed from, *i. e.* of February 20th.

The *form* adopted by the Court below consists of a declaration, which states that "Larned, Receiver, &c., the plaintiff, in this suit, by McCarter, Williamson & McCarter, his attorneys, in pursuance of the order of Sept. 18, 1882, in this cause"—reciting that *that* ordered that the parties in the Chancery suit should proceed to a trial at law in the Supreme Court, at the Circuit to be held in Essex County, on the issue "whether the New Jersey West Line Railroad Company at and after the date of the delivery of the deed from the State of New Jersey to said company referred to in the pleadings in this cause, had the legal title and right of possession to all or *any part* of the land described in, and purporting to be conveyed by the said deed; and if only to a part, *what part?*" and ordered that the plaintiff in said *issue* should be Larned, and the defendants the complainants—"demands * * the possession of the" premises in question,—&c., as in an ordinary declaration in ejectment as prescribed by the statute.

The form of declaration adopted is signed "McCarter, Williamson & McCarter, attorneys of the plaintiff," in the issue.

The *form* adopted, also consists of a plea,—the general issue in ejectment as prescribed by statute in an ordinary ejectment. It is signed "Fred'k T. Frelinghusen, attorney of the defendant," in the issue.

(2d). The order proceeds to give leave to the Receiver of the West Line Co. to file in the Supreme Court, *nunc pro tunc*, a copy of that declaration and a copy of that plea "as the declaration and plea in said feigned issue" and orders "that the said *feigned issue* may be noticed for trial at the next April Term of the Essex Circuit, and be tried on such day in said term as shall be fixed by the Circuit Court."

(3d). It provides that when the Receiver corrects a mistake in the *action* brought under the order of August 3d, against the Van Hornes for a part of the West Line grant, the Van Hornes shall plead to that action, and file

the stipulation required by the order of September 18.

To this 3d clause of the order appealed from, no objection can now be made, though the whole order is appealed from.

The Van Horne's counsel (Mr. Taylor), has, (March 26, 1883) since the date of the order appealed from, appeared to a new summons in ejectment, against the Van Hornes.

A new declaration and plea and the required stipulation, have been filed in that *action*; and that part of the order has been carried out, without amending the old writ or declaration; any manner of accomplishing the objects being authorized by the order appealed from.

The order appealed from, therefore, now consists:

1st.—Of a mere order adopting a *form* of declaration and plea, “as the declaration and plea in said feigned issue.”

The whole order was scarcely (if at all), objected to, when moved for and granted on February 20, 1883.

But whether this were so or not;—that there should be a *feigned* issue, and the *substance* of the issue, and the questions to be thereby determined, had been settled by the Chancellor's order of September 18, 1882; from which there has been no appeal, and it has long been too late to appeal from it.

2nd.—The order appealed from consists of an order which has been *carried out*; the Receiver having (March 24, 1883) filed a copy of the declaration and plea in the Supreme Court.

The Supreme Court has by order made the 17th day of March, A. D. 1883, directed a transcript to be sent to Essex—the cause to be tried there and a jury to be struck.

The feigned issue was noticed for trial for April Term, 1883, of the Essex Circuit.

The transcript of the feigned issue has been sent to Essex, and has been filed there, and the Circuit Court was on 13th April last, to fix a day in that term for the trial, and in the meantime the jury was struck.

However viewed, the only question on appeal from

this order, that there *can be*, must be one as to the *form* of declaration and plea, in a *feigned* issue, ordered by the Court of Chancery.

The form of the feigned issue adopted by the Court by this order, is the form of a declaration and plea prescribed by statute for an *action* of ejectment.

Point 1.

The order appealed from does not create a *real* as distinguished from a feigned issue, nor virtually order a second set of *actions* of ejectment to be brought at law.

But it is said that this *form* of declaration and plea does not make a *feigned* issue, but a *real* issue.

This was the only objection we have ever heard to the order of February 20, 1883, and even that was not made at the time the order was applied for, and not until the time (March 29) of the motion to stay the trial pending the appeal—which motion was, as before stated, denied by the Chancellor.

The issue adopted is not a *real* issue, as distinguished from a feigned issue.

There is a definition of a feigned issue to be found in Lee's Dictionary of Practice, Vol. II., p. 728, under Feigned issue.

This is the definition :

“By an act of parliament” (as in cases of inclosure of a common) “by a Court of law” (as in numerous cases in our own books) “or of equity; a disputed question of fact may be directed to be tried; and the parties *procure such trial to be had* without writ or other process, than a declaration and subsequent pleadings; in the framing of which, such question is stated *in conformity with the act of parliament or with the direction of the Court*; and *such* pleadings are called a *feigned* issue.”

The latest English Law Dictionary —(Sweets)—just re-published here by F. D. Linn & Co., says: “Feigned issue,—a fictitious issue or *rather* a *true* issue raised by means of a fiction.”

The answer to this here, will be: there is no fiction here, and the issue is still a real issue for want of a *fiction*; but as Lee says, the fiction consists in want of *writ or process* other than a declaration and plea.

The want of writ or process is present here, and so the definitions of Sweet and Lee are applicable to the issue adopted, as a *feigned* issue.

Is, then, the feigned issue adopted by the Court by the order of February 20, 1883, a *real* and not a feigned issue?

Is not the issue adopted one in which,—Lee says, in defining such—one where there is *no writ or process* other than a declaration and plea?

Is there any writ or process in existence under the order of February 20, 1883? None.

The order of August 3d, 1882, which allowed the Receiver to bring *actions* of ejectment, was made on an application of the Receiver of the West Line R. R. Co. for leave to do so, or to have a feigned issue made up and tried; *actions* of ejectment being preferred by the Receiver, because the present appellants had been so long in possession, that before the feigned issue could be determined or the final decree of the Court of Chancery made in the cause, the title of the Receiver of the West Line might be barred by lapse of time; time, running against the State, as well as against any private party. Revision 597, Sec. 20).

The Chancellor gave his reasons for making the order of August 3d, 1882, for *actions* of ejectment, instead of a feigned issue, in 9 Stewart, 18 and 19, which were two fold.

1st.—That the *actions* would stop the running of the statute of limitations, which he thought it was proper and necessary to do.

2nd.—That such *actions* would answer all the purposes of *feigned* issues, and were ordinary methods of

informing the Court, and would be just as much under the control of the Court of Chancery as a feigned issue.

The order of August 3d, permitted the *actions* to be brought, but declared that this order was made on "condition, however, that said action or actions of ejectment shall be under the control of this Court, as to the venue in said action or actions, and in all other respects in the same manner and to the same extent, in all things, as if the same were an issue framed by this Court in the usual form, to determine the question of title to the said land."

This order of August 3d, required the present appellants "within five days, to furnish a written statement, showing by whom the actual possession was held, and by what right, whether as owners or tenants; to the end, that the said actions of ejectment might be brought against the proper parties, and without unnecessary delay."

This order was *submitted* to, and the written statement given, as required by the order, within due time.

The *actions* were brought and are now pending, but are stayed by the order of September 18.

There are two actions—one against the corporate appellants for the *whole*, and one against the Van Hornes for a *part*. In this latter action a mistake was made in the description of the part sued for, but it has been corrected since February 20.

The appellants were dissatisfied with the order of August 3d, yet have never appealed from it. But they applied to the Court of Chancery for a *feigned issue* and a stay of the *actions* of ejectment.

On the appellant's application, the Court of Chancery made the order of September 18, 1882, but with the consent of the Receiver of the West Line Company.

This order provided for a *feigned issue*, and stayed the *actions* of ejectment, on condition that the appellants would appear and plead thereto and file stipulations that they would not set up the running (after the date of the bringing of the suit in Chancery) of the statute of limitations.

This order of September 18, 1882, has, likewise, been

submitted to by the appellants; and they on the day of A. D. 1882, pleaded to the action of ejectment against the corporate appellants, directed by the order of August 3d; and filed in the Supreme Court the stipulation required by the order of September 18, 1882, ordering the feigned issue and staying the ejectment; and since the 20th of February 1882, the mistake made in the *Van Horne*, the other action of ejectment—authorized by the order of August 3d—has been corrected and a plea and stipulation filed in the Supreme Court by these appellants.

There is no appeal from *that* order of Sept. 18, 1882.

The counsel of the Receiver of the West Line Co. found embarrassment in framing a declaration on a wager, which would raise such a feigned issue, as would settle the *double* question which the order of Sept. 18, stated thus: "Whether the New Jersey West Line Railroad Company at, and, after the date of the delivery of the deed from the State of New Jersey, to said Company referred to in the pleadings in this cause (which was on or about the 19th day of March, A. D. 1872), had the legal title and right of possession to all or any part of the land described in and purporting to be conveyed by the said deed; and if only to a part, *what part*."

This difficulty arose from that portion of the double question which provides for the determination of *what part* the company had title to, if it had title, to only a part.

There may be a doubt whether a *portion* of the shore had not been filled in, in 1872.

The same difficulty has often been experienced in framing feigned issues by means of a wager—where a part of the question is "how much," or "what part."

In some cases the length, breadth and direction of a right of way are necessary to be determined by means of an issue, and this has sometimes been provided for by directions to endorse the particulars on the *postea* (2 Seton on Decrees, late Eng. Edu., p. 988-983—and *Gardiner v. Rowe*, 4 *Madd.*, 235) or, if a boundary line is in controversy, to draw it out on the *jury process* and

not on the *postea* (as in *Lethieuller v. Lord Castlemaine*, 1 Dickens, 46) and in such cases Lord Brougham in *Godfrey v. Littel*, 2 Russ., and Mylne, 636-7, said a commission of experts could better investigate it than a jury could do in the hurry and inaccuracy necessarily incident to a trial at *nisi prins*. See a Commission, ordered in 4 K. and J., 295. This course was substantially adopted in Newark and New York *R. R. v. Newark*, 8 C. E. Green, 525, where Chancellor's order for an issue was reversed by this Court, and the right of a Court of Error to pass upon the propriety of an issue at all was established. This case will be referred to again.

Judge Kennedy in *Rife v. Galbreath*, 3 Penna. Rep. (Penrose & Watts, not Penna. State R.), p. 207, says: "A feigned issue—to ascertain *how much*, an Executor received—which states a wager, that he received \$10,000—is not formed, so as to meet the design."

"It puts in issue the single fact, did the Executor receive \$10,000. If he did, then according to his promise, he is bound to pay \$5; but if he did not receive the *whole*, he stood acquitted."

For this reason feigned issues are often formed in another form of action.

In one of the most celebrated cases known, that of *Perrin v. Blake* (Wm. Bl., 672)—a *feigned* issue took the form of an action of *trespass*.

The land lay in the Island of Jamaica. A *real* (not a fictitious) action of trespass would have been *local*; so a feigned issue was made up, and the venue laid in the Island of Jamaica "*videlicet* in a parish in Middlesex;" just as is done in the form of the declaration in the feigned issue in ejectment in the order appealed from—that of February 20, 1883.

A full history of the Jamaica case is given in Hargrave's Law Tracts, p. 492, note, (same book in which Hale's Treatise is).

Chief J. Black (in *Coleman v. Rowland*, 2 Am. Law Register, old series, 511; S. C. 1 Pittsburgh Reports, 126) says:

"The feigned issue is made by *pleadings*. Though

generally a wager, it is not necessary it should be so, where the nature of the subject makes another form *more convenient*."

So entirely immaterial is it—what the form of action for the feigned issue is, that Grier, J., in the Circuit Court U. S., for New Jersey, 1 Wallace, Jr., 342—many years ago—before any statute or rule on the subject—dispensed with even the form of any action at all,—called a jury on the common law side of the Court—swore them to truly answer the questions on which the equity side of the Court desired information, and took their verdict—saying pleadings were unnecessary and that as to a wager, it was absurd. Same practice, Brockett *v. B.*, 3 How. U. S. Rep., 692.

This is now the method in England and in New York.

Formerly, in New York, all feigned issues were in names of *feigned* parties—as Doe *v* Roe—but this practice does not seem to have prevailed elsewhere. 6 Cow., 55; 1 John's Cases, 402; 5 Hill, 376.

In Philadelphia, Germantown & Morristown R. R. *v.* Smith, 2 Wharton, 275, the Court say: "The form of the feigned issue is *necessarily* a matter within the *discretion* of the Court directing it. It would be hard to devise a *more convenient form* than the declaration in *trespass*."

"Compensation for Pennsylvania claimants whose title is divested by the State in favor of Connecticut claimants, was usually tried in action for *money had and received*."

The statute of 8 and 9 Victoria, C. 109, sec. 18, declares *all* contracts by way of gaining or wagering, shall be well and void, and that no suit shall be brought in a Court of law or equity on a wager. The 19th section, recites that, whereas, many important questions are now tried in the form of *feigned* issues, by stating that a *wager* was laid between two persons interested in respective maintaining the affirmative and the negative of certain propositions, but such questions may be as satisfactorily settled without such *form*; and enacts that it shall be lawful to direct a summons to the party who ought to be

defendant, and to state the question *in the form* given in a schedule with such alterations as the Court shall think proper. The statutory form is given *Luard v. Butcher*, 2 Manning, Granger and Scott, 859.

The party, however, proceeded by a feigned issue *in the form of a wager*, and it was insisted that *that* was illegal, since the statute, and the verdict void.

Court said "The issue is merely directed for the purpose of trying a *pretended* contract. Say it is void, if you please; the Judge has taken the opinion of a jury *upon a disputed fact*; and there is an end of it."

"There is really nothing in the objection."

The Court in the principal case had ordered *actions* of ejectment. They have been brought.

The present appellants insisted on a feigned issue, *also*—in addition.

The "title" statute (*Rev.* 1189) is peculiar. It does not speak of *feigned* issue at all, but it speaks of an issue.

The Chancellor (on August 3d) ordered *actions*. The counsel of the West Line Receiver were satisfied; but the other side delayed. We could not get service on all of the defendants in the *actions*. We were willing there should be a feigned issue, *also*, and a stay of the *actions*. We assented to the order of Sept. 18 for a *feigned* issue, especially as it provided for the defendants appearing and pleading to the *actions*, and relieved us to that extent. We could not get up a feigned issue on a wager, which (as Judge Kennedy says *supra*) would meet the design. We then, in February, 1882, drew a transcript containing a declaration in a *feigned* action of ejectment, in which no writ or process existed; served it on the other side, and no progress being made we applied to the Court to adopt this, as the *form of the feigned issue*. The Court adopted that *form*, by the order of February 20, 1883.

We have now, the two *actions* of ejectment—commenced by writ,—pending in the Supreme Court, in which issue has been joined; and the running of the statute of limitations has been stopped; but on the application of the appellants these actions commenced by writ were stayed by the order of Sept. 18, until the feigned issue should be tried.

Smith in his Chancery practice, Vol. II., p. 80, says :
 "In feigned issues the *plaintiff* makes up the issue at once without *delivering* a declaration or *requiring* the defendant to plead."

In other words, the pleadings have no other authentication than the action of the plaintiffs' attorney—provided the order of the Court, as to the form of the *feigned action* is pursued, and the issues presented raise the questions on which the Court desires information.

This practice, as laid down by Smith, is what is provided for by the order of Feb'y 20, 1883, with this difference,—that copies of the proposed declaration and plea were first served on the appellants.

Undoubtedly, there *are* writs and process in the two *actions* of ejection brought under the order of August 3d, 1882; and pleas in each.

There is also a stipulation in each, not to set up the statute of limitations as run or running, after the bill filed. But there is neither writ nor process, in the feigned issue, as now made up; a transcript of which is on file in Essex Circuit, and the original copy of declaration and plea on file in the Supreme Court. There are *pleadings*—a declaration and plea; and these according to Lee's definition, make the *feigned issue*—*if* there is neither writ or process, other than the declaration and plea.

Point II.

The pleadings adopted by the order appealed from are those best adapted to determine the questions for which issue was directed;—and the order is not appealable though orders for feigned issues often are, and appeal should be dismissed, or order, being right, should be affirmed.

But what inconvenience will be suffered by any one—*if* the issue adopted by the Court *is* a *real* issue and not a feigned issue.

The issue adopted by the order of Feb. 20, is perfectly adapted to the questions which the Court declares are the

issues—whether the West Line had title to the premises in question on a certain day, and if only to a part, to *what* part. No wager, as Judge Kennedy says, will be adapted to the question as to the *part*.

The West Line Co.'s title may possibly fail as to a portion of that part of the premises in question nearest to high water line; for the Van Hornes claim, there was a reclamation, to some extent, between high and low water marks, prior to the act of 1869. If this is so, there may be a failure of title to so much as was filled in. We deny that any part was filled in, between high and low water marks, but we may be mistaken as to small portion.

For this reason, this feigned issue, in the *form* of an action of ejectment—every feigned issue being until of late years in the form of some action, but without any writ or process in such form of action—is an appropriate feigned issue, because it will *compel* the jury to fix the *boundary line* of the title we establish by proof, and will inform the Court of Chancery what *part* we are entitled to and what not—if we are not entitled to the whole.

If there may be a feigned issue in trespass, in assumpsit for a wager or in assumpsit, for money had and received, or, as the Courts say, in *any form* of action to meet the inquiry of the Court of Chancery, there may be and is, a feigned issue in the *form*, the Court has adopted by the order of February 20.

The whole question involved in the appeal is a question of *form*, or rather the *form of a form*.

No suggestion is made of any inconvenience that will attend the trial of the issue in the form it is *now*.

It will be a novelty indeed, for a Court of Appeals to set aside the *form* of a feigned issue. Of course what is mere form and what is not is the question.

A Court of Appeal may properly alter the *substance* of the issue.

It is *not* denied by us, that an order *for a feigned issue* is an appealable order. *That* was settled in this State, in Newark and N. Y. R. R. *v.* Newark, 8 C. E. Green, 525. But the order for the feigned issue in the principal case, is that of Sept. 18, 1882, from which there has

been no appeal. The order of July 20, 1883, is a mere order adopting the *form* of the declaration and plea in the feigned issue.

It is denied by us that the order of Feb., 1883, which merely adopts a *form* of declaration and plea for a feigned issue *previously* ordered, is appealable.

The grounds on which we deny this are: 1st.—That such an order is necessarily a matter in the *discretion* of the Court below. (*See Phila. and Germantown v. Smith*, 2 *Wharton*, 275, *supra*). 2d.—A Court of Appeal, as a general rule, does not interfere with the exercise of *discretion*. (*See Hunt v. Chambers. A. D.* 1882, 20 *Ch. Div.*, 369); 3d.—A Court of Appeal *never* interferes with exercise of *discretion*, unless for *strong, substantial* reasons. (*Wallingford v. Mutual. A. D.* 1880, 5 *Appeal Case*, 685, 694–5).

And 4th.—A matter of *form* on which appeal may rest, must not only be founded on strong, substantial reasons, but the *form* must be *substantially* erroneous, as imposing the *burden of proof* on the wrong party, which is only loosely, called error in *form*, it really being a matter of substance. (*Brown v. McClintock*, 6 *House of Lords (Eng. and Irish Appeals)* 456, 463, 466).

There are two cases which have been cited to show that the Court of Appeal would reverse on the *form* of the issue.

This is a mistake. The word *form* in these cases relates to the *terms* in *which* the *questions*, which are the subject of the issue should be stated, which are always substantial matters. In the principal case the *questions* were settled by the order of Sept. 18, 1882, from which no appeal has been taken, and no objection is or can be made on the propriety of these questions, on this appeal, which is as to the form of declaration and pleas.

Parker v. Morrell, A. D. 1847, 2 *Phillips*, Ch. R., 453, was cited against us. It was a case where five questions were stated (*p.* 457). No. 1 was whether the bond was obtained by *fraudulent* or *unfair* representation. 2d, By *untrue* representation. 3d, By any *fraudulent* or *unfair* concealment or suppression. 4th, *Unfairly* obtained.

Lord Ch., said p. 489, "The fourth is objectionable as introducing the word 'unfairly.' It is not easy to see the utility of this. If the preceeding issues be found for the plaintiff there is unfairness and something more. If not, and by the word unfairness be meant something different from fraud in the legal sense, what does it mean? It is easy to say morally what is unfairness, but not legally." Again, p. 461, "The question before me is whether the issues ought to have been sent in some other *form*," i. e., in other *terms*.

Again, p. 467-8, "I think the *issue* should be whether the bond was *fraudulently* obtained, by means of any false representation or improper concealment."

Butler *v.* Masters, A. D. 1847, 2 Phillipps, 290, is also cited against us as a case of appeal on questions of *form*; but the issues were 1st, whether, &., &c. "The other "issue was in the same *form*, only pointing particularly "to the houses," &c.

Counsel for appellant, p. 292, said: "The ground of appeal is *not* the *form* of the issues, but the absence of any evidence to warrant them."

The Court held, not that the *form* of the feigned issues was erroneous, but that an *action* should be ordered to be brought and not an issue; and it was so ordered.

We preferred this course, in the principal case, but the appellants *insisted* on a feigned issue and we consented. This was done by the order of Sept. 18, '82.

The order appealed from merely settles the *form* of *declaration* and plea for the feigned issue previously insisted on, ordered and consented to by us.

There is no objection to it but this, that the *form* adopted makes the issue a *real* issue and not a *feigned* issue—a point in no wise borne out by the authorities; a question of *form*, and at the best mere *words*; a question which ought not to be entertained by the Court of Appeals.

If there were any objection as to the *substance* of the issue, we ought to have heard it, when the order of Sept. 18, '82, was made, and that order should have been appealed from, or it should have been suggested, on the application

for the order of Feb. 20, '83, and the notice and petition of appeal should set *it* forth. But there *was* no such objection or suggestion made, and none is set forth in the appeal.

As to that part of the petition of appeal which states that the order of Feb. 20, '83, "virtually orders an "*action* of ejection *at law*, notwithstanding the *pendency* of prior actions of ejection in respect to the "same land, brought by order in the same cause, and referred to in the order of Sept. 18—"—this is to be said:

Whatever the order of Feb. 20, '83, does, depends upon the meaning of its terms. If the *form* it adopts (for that is all it does, so far as it is not already carried out), *reconstitutes* the proceeding, *without writ* or process, so as to make it an *action* at law (which *cannot* be commenced *without writ or process*), instead of an issue out of the Court of Chancery—then it may virtually order two sets of ejections at law.

But all this depends on what is a feigned issue, and what an action at law, which is before discussed.

We submit that the Chancellor's order ought to be affirmed by this Court.

Our own New Jersey books are full of cases on the subject of feigned issues, both out of Court of law and out of Court of Chancery.

Out of Court of law, see cases cited in

7 Halsted, 277, 282.

* 6 Halsted, 121.

1 Harr, 138.

2 Vroom, 371, 374.

Out of Court of Chancery:

Saxton, 433.

1 Green's Chy., 154, 161-2, 492.

2 Green's Chy., 417, 449, 450.

1 Stockton, 457.

2 Beasley, 479, 482.

Dickinson's Forms, 310.

The case in 2d Beasley, *Black v. Shreve*, is very instructive, and holds, p. 479, 482, that feigned issues are creatures of Court by which they are ordered—that statutes do not apply to them unless express words are used (p. 469). Courts of law in which issues are ordered to be tried, cannot refuse to try them.

2 Daniels, Ch. Pr., 1115.

Woodley v. Johnson, 1 Molloy, 394.

Bell v. Woodward, 47 N. H., 542.

2 Beasley, 456.

The New Jersey cases are very full on all questions of practice also.

See also Tidd's Practice, 986.

Courts of law in assisting Court of Equity to try issues presented by that Court, are amplifying their *own* jurisdiction, and not cutting it short, and assisting the *prevalence* of, and *obedience* to, the *common law*—instead of lessening their own power or lessening the force of the common law. From time immemorial they have always heartily co-operated with the Court of Equity to uphold in this manner, the principles of the common law. Therefore, there ought to be no jealousy. On the contrary, there has generally been the greatest facility given to all the orders of the Court of Equity in respect of the conduct of the trials of such issues; and this has been done with cheerfulness as well as with dignity.

In Chancery of New Jersey.

<p style="text-align: center;"><i>Between</i></p> <p>THE AMERICAN DOCK AND IMPROVEMENT COMPANY, AND OTHERS,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>THE TRUSTEES FOR THE SUPPORT OF PUBLIC SCHOOLS, AND OTHERS,</p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<p>10</p> <p><i>On Bill, &c.</i></p> <p><i>Order.</i></p>
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Application being made to the Court in behalf of William Z. Larned, as Receiver of The New Jersey West Line Railroad Company, one of the defendants in the above cause, for leave to bring an action of ejectment against Henry S. Little, Esq., Receiver of The Central Railroad Company of New Jersey, to try the title to and recover the possession of the premises described particularly in the bill of complaint in the above stated cause, and known as the West Line Grant, or failing in that, for an issue at law for the same purpose; and the said matter coming on to be heard before the Chancellor at the State House in Trenton, on the third day of July last, in the presence of Thomas N. McCarter and Robert Gilchrist, in support of said application, and of Barker Gummere and Benjamin Williamson, in opposition thereto, and the arguments of counsel having been heard and time having been taken to consider thereon,

It is, on this third day of August, in the year eighteen hundred and eighty-two, on motion of McCarter, Williamson & McCarter, solicitors of said William Z. Larned, ordered by the Chancellor that William Z. Larned, as

Receiver of The New Jersey West Line Railroad Company, have leave to bring, for the last said company, one or more actions of ejectment in the Supreme Court of New Jersey, against the Receiver of The Central Railroad Company of New Jersey, or any other person or persons, parties to the above stated suit or otherwise, who may be in possession of the said premises known as the West Line Grant, and the same in controversy in the above stated cause, in such manner as he may be

10 advised is necessary or proper to try the title to and recover the possession of the whole of said premises so in controversy ; on condition, however, that said action or actions of ejectment shall be under the control of this Court, as to the venue in said action or actions, and in all other respects in the same manner and to the same extent in all things as if the same were an issue framed by this Court in the usual form, to determine the question of title to the said land. And it is further ordered,

20 that the complainant's solicitor do, within five days after service on him of a copy of this order, furnish to the solicitors of the said William Z. Larned a statement in writing, showing by whom the actual possession of said premises, or any part thereof, is held, and by what right, whether as owners or tenants, to the end that the said action or actions of ejectment may be brought against the proper parties, and without unnecessary delay.

THEODORE RUNYON, *C.*

In Chancery of New Jersey.

MAY TERM, 1882.

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THE AMERICAN DOCK AND IMPROVEMENT COMPANY, *et al.*,

vs.

THE TRUSTEES FOR THE SUPPORT OF THE PUBLIC SCHOOLS, *et al.*

Bill for Relief.

Opinion.

On motion for leave to bring action at law, &c.

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Mr. T. N. McCARTER and Mr. R. GILCHRIST for the motion.

Mr. B. WILLIAMSON and Mr. B. GUMMERE, *contra.*

THE CHANCELLOR:

The Receiver for the creditors and stockholders of The New Jersey West Line Railroad Company applies for leave to bring an action of ejectment to try the title to the land in question in this suit, or failing that, for an issue at law for the purpose. The form which the issue at law, where one is ordered in this Court, shall take, whether it be a feigned issue, or whether an action at law shall be instituted, is entirely within the discretion of the Court, and such form will be adopted as will best conduce to the purposes of justice. In *Gibbs vs. Holmes*, 10 Rich. Eq., 484, the Court ordered that the question whether a bond was presumed to be paid, be tried by an action at law, to be instituted as of the date of the beginning of the suit in equity. While the act "to compel the determination of claims to real estate in

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certain cases, and to quiet the title to the same," (Rev., pp. 1189, 1190,) provides that on the application of either party to a suit brought under it, this Court shall order an issue at law to try the title, the form of the issue is, as in other cases in the discretion of this Court, which will so mould it as best to effectuate the ends of justice. Where, as in this case, the defendant apprehends that he may be prejudiced or embarrassed, if not defeated by the operation of the statute of limitations, if the ordinary
10 practice be adhered to and the bill should ultimately be dismissed for want of jurisdiction, or if there be any other substantial reason for doing so, another form, one that will protect him, will be adopted.

In the case in hand the Receiver will be permitted to bring an action of ejectment, which, however, will be under the control of this Court as to the venue, and in all other respects, in the same manner and to the same extent in all things that the issue would be if in the usual form.
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In Chancery of New Jersey.

<i>Between</i>		
THE AMERICAN DOCK AND IMPROVEMENT COMPANY, <i>et al.</i> ,	}	10
<i>Complainants,</i>		
<i>and</i>		
THE TRUSTEES FOR THE SUPPORT OF PUBLIC SCHOOLS, THE NEW JERSEY WEST LINE RAILROAD COMPANY, AND OTHERS,	}	<i>On Bill, &c.</i>
<i>Defendants.</i>		

The corporate complainants and Henry S. Little, the present Receiver of The Central Railroad Company of New Jersey, one of said complainants, having applied to the Court to modify the order made by this Court in the above stated cause, on the third day of August last, so as to stay the actions of ejectment thereby permitted to be brought, and also having applied for a feigned issue at law, as hereinafter directed ;

And it appearing to the Court that John C. VanHorne, one of the original complainants in this suit, died intestate on or about the twenty-eighth day of June last, leaving Garret VanHorne, Cornelius VanHorne, Anna Maria Demott, wife of John Henry Demott, Mary Elizabeth Berdan, (a widow,) Julia Gertrude Brooks, wife of Franklin Brooks, him surviving, his only heirs at law, and Gertrude A. VanHorne, his widow ;

And it further appearing that since the commencement of this suit Francis S. Lathrop, formerly Receiver of The Central Railroad Company of New Jersey, and an original complainant in this suit, has departed this life, and that Henry S. Little has been duly appointed Receiver of said

last mentioned company in place of the said Francis S. Lathrop, and that said Henry S. Little has been substituted as complainant herein, instead of said Francis S. Lathrop ;

Now, it is on this eighteenth day of September, 1882, ordered by the Court, on motion of the counsel of the said complainants, and by and with the consent of the said defendants, The New Jersey West Line Railroad Company, and William Z. Larned, Receiver,

10 That upon the corporate complainants causing this suit to be revived by or in behalf of, or against the said widow and heirs of John C. VanHorne, deceased, and the husbands of the said married daughters of the said John C. VanHorne,

And upon the said complainants causing proper appearances to be entered by one or more attorneys for all of the defendants in the two actions of ejectment brought under said order of August 3d, 1882, by said William Z. Larned, Receiver—one against said corporate complainants and Henry S. Little, Receiver, for the lands described
 20 in the West Line Grant, so called, and in controversy in this suit, and the other against the said Garrett VanHorne, Cornelius VanHorne, Anna Maria Demott and John Henry Demott, her husband, Mary Elizabeth Berdan, Julia Gertrude Brooks and Franklin Brooks, her husband, Gertrude A. VanHorne, and one William Ketcham, for part of said lands, the summonses in which have been prepared and are tested on the twenty-ninth
 30 day of August, 1882, and returnable on the fifteenth day of October, 1882; the said first suit being brought to include in its demand of possession the same lands demanded in the second suit, at the request of said corporate complainants and said Henry S. Little, Receiver, because they claim to have some interest therein which they desire to defend in a Court of law; and after the filing of the declarations and pleas of not guilty therein, and after the attorneys of the defendants therein shall have signed and filed stipulations in the said ejectment suits respectively, to the effect that the plaintiffs
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therein shall not be non-prossed or prejudiced in anywise, for failing to proceed in either of said ejectment suits, until this Court shall permit the said ejectment suits to be further prosecuted ; and further, that the said defendants will not in any suit or proceeding take advantage of the statute of limitations or otherwise, of the lapse of time that has or shall have run since the filing of the complainants' bill in this cause ;

Then the parties are to proceed to a trial at law in the Supreme Court of this State, at the Circuit of said Supreme Court to be held in and for the county of Essex, on the first Tuesday of December next, on the following issue, viz.: whether The New Jersey West Line Railroad Company, at and after the date of the delivery of the deed from the State of New Jersey to said company referred to in the pleadings in this cause, which was on or about the nineteenth day of March, A.D. 1872, had the legal title and right of possession to all or any part of the land described in and purporting to be conveyed by the said deed, and if only to a part, to what part.

And it is further ordered, that the plaintiff in said issue shall be the said William Z. Larned, Receiver, and the defendants therein the corporate complainants in this suit, and the said Henry S. Little, Receiver, and the said widow and heirs of John C. VanHorne, and the husbands of such of the daughters of said John C. Van Horne as are married, in case this suit shall be revived as to them as herein directed ; that the declaration in said issue shall be in the usual form adopted in feigned issues out of this Court ; and the defendants in said issue shall within ten days after notice of the filing of the declaration in said feigned issue, plead thereto that the said The New Jersey West Line Railroad Company had not at and after the date of the delivery of the deed from the State of New Jersey to said company, which was about the nineteenth day of March, A.D. 1872, the legal title or right of possession to all or any part of the lands described in, and purporting to be conveyed in and by the said deed.

And it is further ordered, that either of the parties to said issue shall be at liberty to take from the files of this Court, and produce for such use as may be lawful on the trial of said issue, all or any pleadings, affidavits, exhibits, documents, maps or diagrams which were annexed to or filed with the pleadings in this cause.

And it is further ordered, that on the compliance with the terms of this order by the said corporate complainants, and the said Little, Receiver, and the said widow
 10 and heirs of John C. VanHorne, the said actions of ejectment shall be stayed and no further prosecuted until the further order of this Court, or until said complainants' bill in this cause shall be dismissed by this Court, for any cause whatever.

And in case the said corporate complainants and Henry S. Little, Receiver, shall not appear to the said ejectment suit against them and file the stipulation therein, herein-
 20 above provided for, within ten days after the date of this order, or shall not plead as above directed to the declaration in said issue within ten days after notice of filing a declaration therein, then the said William Z. Larned, Receiver, shall be at liberty to proceed with his said actions of ejectment against them on the terms and conditions of the said order of the third day of August last; and in case this suit shall not be revived as to the said widow and heirs of John C. VanHorne as above directed, within ten days after the date of this order, or
 30 being so revived, if said widow and heirs of John C. VanHorne, and the husbands of his said married daughters shall not within ten days after such revival appear to the said ejectment suit against them, file the stipulation above directed, or shall not plead as above directed to the said issue within ten days after notice to them or their attorneys of filing a declaration therein, then said William Z. Larned may proceed with the prosecution of the said actions of ejectment brought against them and said Ketcham, without being bound by any of the conditions of the said order of August 3d, 1882, or the provisions contained
 40 in this order for a stay of said last named ejectment suit.

And it is further ordered, that either of the parties may notice the feigned issue out of this Court for trial, and that said issue shall be tried by a special jury; and that either of the parties shall be at liberty to apply to this Court before the trial or during the same for directions therein or in respect thereto.

THEODORE RUNYON, *C.*

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 { *L. S.* } I, GEORGE S. DURYEE, Clerk of the Court
 * ~ * of Chancery of the State of New Jersey, the 10
 same being a Court of record, do hereby certify that the foregoing is a true copy of the order for an issue, &c., in the cause wherein The American Dock and Improvement Company, and others, are complainants, and The Trustees for the Support of Public Schools, and others, are defendants, now on the files of my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court, at Trenton, this twenty-seventh day of September, A.D. eighteen hundred and 20
 eighty-two.

G. S. DURYEE, *Clerk.*

In Chancery of New Jersey.

	<p style="text-align: center;"><i>Between</i></p>	
10	<p>THE AMERICAN DOCK AND IMPROVEMENT COMPANY, HENRY S. LITTLE, RECEIVER OF THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, <i>et al.</i>,</p>	<p><i>Complainants,</i></p>
	<p><i>and</i></p>	
20	<p>WILLIAM Z. LARNED, RECEIVER OF THE NEW JERSEY WEST LINE RAILROAD COMPANY, <i>et al.</i>,</p>	<p><i>Defendants.</i></p>

*On Bill,
&c.*

Application being made to the Court on behalf of William Z. Larned, said Receiver, on due notice to the complainants, and the matter coming on to be heard before the Court at Trenton on Tuesday, the twelfth day of February, in the year eighteen hundred and eighty-three, in the presence of Thomas N. McCarter and Robert Gilchrist, of counsel on behalf of said Larned, and of John W. Taylor and Benjamin Williamson, counsel on behalf of the complainants, and being debated by the counsel respectively of said parties,

It is, on the said twentieth day of February, in the year eighteen hundred and eighty-three, ordered by the Chancellor that the former order in this cause, bearing date on or about the eighteenth day of September, in the year eighteen hundred and eighty-two, as to the feigned issue therein mentioned, be modified, and that the feigned issue, provided for in the said order last mentioned, shall

be in the form contained in a paper prepared by the counsel of the said William Z. Larned, Receiver as aforesaid, and submitted by the said counsel of said William Z. Larned to the counsel of the said complainants, on or about the first day of February instant, purporting to be a transcript of a feigned issue, which paper so prepared and submitted is in the words following, that is to say :

NEW JERSEY SUPREME COURT.

Pleas before the Justices of the Supreme Court of the State of New Jersey, of the term of November, in the year eighteen hundred and eighty-two. 10

Witness : MERCER BEASLEY, Esq.,
Chief Justice.

BENJ. F. LEE, Esq., *Clerk.*

ESSEX COUNTY, *to wit:*

William Z. Larned, Receiver of the New Jersey West Line Railroad Company, plaintiff in this suit, by McCarter, Williamson & McCarter, his attorneys, in pursuance of an order made by the Court of Chancery of the State of New Jersey, in a certain cause depending therein between The American Dock and Improvement Company, The Central Railroad Company of New Jersey, Henry S. Little, Receiver of the Central Railroad Company of New Jersey, Garret VanHorne, Cornelius VanHorne, Anna Maria Demott and John Henry Demott, her husband, Mary Elizabeth Berdan, Julia Gertrude Brooks and Franklin Brooks, her husband, and Gertrude A. VanHorne, complainants, and the Trustees for the Support of Public Schools, The New Jersey West Line Railroad Company, William Z. Larned, Receiver of the last said company, and others, defendants, which bears date the eighteenth day of September, in the year eighteen hundred and eighty-two, whereby it was, among other things, ordered that the said parties to said Chancery suit should proceed to a trial at law in the Supreme Court of this State, at the Circuit of said Supreme Court to be held in and for the county of Essex, on the issue whether the New Jersey West Line Railroad Company on and after the 40

nineteenth day of March, eighteen hundred and seventy-two, had the legal title and right of possession to all or any part of the land hereinafter described and demanded, and if only to a part, to what part, and that the plaintiff in said issue should be the said plaintiff herein, and the defendants in said issue should be the complainants in said Chancery suit, demands of the said The American Dock and Improvement Company, The Central Railroad Company of New Jersey, Henry S. Little, Receiver of

10 The Central Railroad Company of New Jersey, Garret VanHorne, Cornelius VanHorne, Anna Maria Demott, and John Henry Demott, her husband, Mary Elizabeth Berdan, Julia Gertrude Brooks and Franklin Brooks, her husband, and Gertrude A. VanHorne, the defendants herein, the possession of the tract of land with the appurtenances, situated in the city of Jersey City, in the county of Hudson, to wit, at Newark, in the county of Essex, in the State of New Jersey, described as follows:

20 Commencing at a point in the east line of Warren street, extended southerly at the southwesterly corner of the lands granted to The Morris Canal and Banking Company by act in eighteen hundred and sixty-seven; and from thence running westerly and parallel with Grand street, in Jersey City, twenty-eight hundred feet; thence northerly at right angles with Grand street five hundred feet; thence westerly and parallel with Grand street, to the original high water mark on the west side of Communipaw bay or cove; thence returning to the place of

30 beginning, and running easterly and parallel with Grand street four hundred and forty feet along one of the southerly lines of the grant made to The Morris Canal and Banking Company, as aforesaid, to the centre line of Washington street extended southerly; thence southerly along said centre line of Washington street extended southerly, which is one of the westerly lines of said grant to The Morris Canal and Banking Company, and at right angles with Grand street, five hundred and thirteen feet; thence westerly and parallel with Grand street

40 about thirty-six hundred and fifty feet, more or less, to a point in line with the centre line of Jersey avenue in

Jersey City, if the same were extended southerly to said point; thence southerly in line with the said centre line of Jersey avenue, one hundred and sixty-five feet; thence westerly and parallel with Grand street in Jersey City, about five hundred feet, more or less, to the original high water mark on the west side of Communipaw bay or cove; thence northeasterly along said original high water mark of Communipaw bay or cove, to the mouth of Mill creek; thence crossing said creek in a straight line and continuing northeasterly along said original high 10 water mark until it intersects the end of the third course of this tract, being the same premises usually known and described as the West Line Grant, described in a deed executed to the said The New Jersey West Line Railroad Company by the State of New Jersey, bearing date the nineteenth day of March, in the year eighteen hundred and seventy-two. And the plaintiff says that the right of The New Jersey West Line Railroad Company to the possession of the same accrued on the nineteenth day of March, in the year eighteen hundred and seventy- 20 two; and that the said plaintiff was duly appointed Receiver of the last said company on the sixteenth day of February, eighteen hundred and seventy-four; and that the defendants hereto wrongfully deprive him, the said plaintiff, as the Receiver of The New Jersey West Line Railroad Company, of the possession thereof, to his damage four thousand dollars.

McCARTER, WILLIAMSON & McCARTER,
Att'ys of Pl'ff.

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And the said defendants, by Frederick T. Frelinghuysen, their attorney, appear and defend this action, and say that they are not, nor is either of them, guilty of the injury whereof the said plaintiff has complained in his declaration, nor of any part thereof; and of this they put themselves upon the country, and the said plaintiff doth the like.

FRED'K T. FRELINGHUYSEN,
Att'y of Def'ts.

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The foregoing is a true transcript of the declaration and pleadings in the case remaining of record in the Clerk's office of the Supreme Court of the State of New Jersey.

In witness whereof, I hereunto set my hand and cause the seal of the said Court to be hereunto affixed, at Trenton, this day of , eighteen hundred and eighty-two.

And it is further ordered, that the said William Z. Larned, Receiver, have leave to file in the Supreme Court of this State, *nunc pro tunc*, a copy of the declaration and a copy of the plea in said submitted transcript set forth, which transcript is hereinbefore recited, as the declaration and plea in said feigned issue.

And it is further ordered, that the said feigned issue may be noticed for trial at the next April term of the Essex Circuit, and be tried on such day in said term as shall be fixed by said Circuit Court.

And it is further ordered, that when the said William Z. Larned, Receiver, shall, in such manner as he shall be advised, correct an error made by mistake in the suit against the heirs at law of John VanHorne, deceased, and their husbands, mentioned in the order of this Court, bearing date on or about the eighteenth day of September, A.D. 1882, so that an ejectment suit or suits shall be pending in said Supreme Court against said heirs and their husbands, and the widow of said John C. VanHorne, deceased, and any tenants in possession, and a declaration filed for all the land within the West Line Grant, so called, west of the centre line of Jersey avenue, and south of a line which is the north line of a tract purported to be conveyed to Jane VanHorne by the said corporate complainants, by deed dated May 31st, 1872, the said heirs at law and their husbands, and said widow and said tenants in possession, shall forthwith plead thereto and make the stipulation on said order of September 18th, 1882, required

THEODORE RUNYON, *C.*

A true copy :

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G. S. DURYEE, *Clerk.*

In Chancery of New Jersey.

<p style="text-align: center;"><i>Between</i></p> <p>THE AMERICAN DOCK AND IMPROVEMENT COMPANY, <i>et al.</i>, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>THE TRUSTEES FOR THE SUPPORT OF PUBLIC SCHOOLS, WILLIAM Z. LARNED, RECEIVER, &C., <i>et al.</i>, <i>Defendants.</i></p>	}	<p><i>On Bill,</i></p> <p style="text-align: center;"><i>&c.</i></p>	10
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The complainants hereby appeal to the Court of Errors and Appeals, from the whole and every part of an order made in this cause, bearing date the twentieth day of February, eighteen hundred and eighty-three, and pur-
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 porting to be an order modifying a former order in said cause, for a feigned issue.

FRED'K T. FRELINGHUYSEN,
Sol. and of Counsel with Compl'ts.

Dated March 19, 1883.

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

JOHN W. TAYLOR, 30
Of Counsel with Compl'ts.

that is to say, in the form of a declaration and plea in ejectment, as in an action of ejectment at law, thereby converting the said feigned issue into an action at law.

And your petitioners humbly appeal from the whole and every part of the said first mentioned order, on the ground that the same is erroneous; for that the same virtually and in effect orders an action of ejectment at law, and notwithstanding the pendency of prior actions of ejectment brought by the respondent, William Z. Larned, Receiver, &c., against the appellants, in respect to the same lands, by order of the said Court of Chancery made in said cause, and referred to in the said order so modified as aforesaid. 10

Your petitioners, therefore, pray that the said order hereby appealed from may be reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

FRED'K T. FRELINGHUYSEN, 20
Sol'r and of Counsel for Appellants.

JOHN W. TAYLOR,
Of Counsel.

N. J. Court of Errors and Appeals.

	<i>Between</i>	
10	THE AMERICAN DOCK AND IMPROVEMENT COMPANY, <i>et al.</i> , <i>Appellants,</i>	}
	<i>and</i>	
	WILLIAM Z. LARNED, RECEIVER, &C., <i>et al.</i> ,	<i>On Appeal from Chancery.</i>
	<i>Respondents.</i>	<i>Answer in Appeal.</i>

20 The answer of William Z. Larned, Receiver of The New Jersey West Line Railroad, one of the respondents to the petition of appeal of the above named appellants.

30 This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, says and admits that an order was on the twentieth day of February, eighteen hundred and eighty-three, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto, when the same shall be produced; and this respondent is advised and believes that the said order is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

McCARTER, WILLIAMSON & McCARTER,
Solr's and of Counsel with Respondent.



