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Notice of Appeal.

(Filed, March 3, 1917.)

New Jersey Supreme Court. 10

ALEXANDER S. ROWLAND, LILLIAN
C. ROWLAND and FREDERICK A.
ROWLAND, as Trustees under the
last Will and Testament of
ANDREW L. ROWLAND, deceased
and individually,

*Prosecutors-Appellants,
against*

MERCER COUNTY TRACTION Co.,
Defendant-Respondent.

20

To EDWARD M. HUNT,

Attorney of Mercer County Traction Co., re-
spondent.

TAKE NOTICE, that the prosecutors above named
appeal to the Court of Errors and Appeals in the
Last Resort of all Causes in New Jersey from the
whole judgment, dismissing the writ of certiorari
in the above entitled cause, on the following
grounds: 30

1. The order appointing commissioners in con-
demnation brought up for review by the writ of
certiorari was void, because based on a petition
which failed to state as required by the Condem-
nation Act (P. L. 1900, p. 79) Section 2, the
names and the residences of the persons appear- 40

Notice of Appeal to Court of Errors and Appeals.

ing of record to have an interest in the property to be taken.

2. The Order brought up for review by the writ of certiorari was void because no notice was given as required by Section 3 of said Condemnation Act to persons appearing of record to have an interest in said premises, nor were said
10 persons made parties to said proceeding in any way.

3. The respondent, Mercer County Traction Co. was without power to condemn the lands of prosecutors, because the real purpose of the proceedings was the accomplishment of an object, foreign to the lawful objects of the Traction Company.

4. The alleged new line of railway, for the construction of which the prosecutors land is sought to be taken, is neither a new line of railway, nor
20 an existing line of railway, within the meaning of Section 13 of the Traction Act of 1893 (P. L. 1893, p. 302), and Mercer County Traction Co. has no power of eminent domain in the circumstances.

5. Because there is no necessity for the alleged new line to build which the land of prosecutors is to be taken, so far as the Mercer County Traction Co., or the travelling public is concerned, or
30 otherwise.

6. Any necessity for the alleged new line, results from a plan to rearrange the Campus of Princeton University, to carry out which plan, the Mercer County Traction Company cannot exercise its power of eminent domain without working a fraud upon the statutes conferring such power upon it.

7. The Order brought up for review by the writ of certiorari deprives prosecutors of their
40 property without due process of law, and contrary

to the law of the land, in violation of the Constitution of the United States and the amendments thereto; and especially in violation of the fourteenth amendment of said constitution.

Dated, March 2nd, 1917.

JULIAN C. HARRISON,
Attorney of Prosecutors-Appellants.

Rule Dismissing Writ.

(Entered, March 1, 1917.)

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NEW JERSEY SUPREME COURT.

ALEXANDER S. ROWLAND, LILLIAN
C. ROWLAND and FREDERICK A.
ROWLAND, as trustees, &c. and
individually,

Prosecutors,

vs.

MERCER COUNTY TRACTION Co.,

Defendant.

On
Certiorari.

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The Court having considered the record in the above case, and having heard the arguments of counsel for the prosecutors, and counsel for the defendant, at the November term, 1916, of said Court:

It is, on this first day of March, 1917, Ordered, that the writ of certiorari be dismissed with costs. 30

Entered March 1, 1917.

On motion of

EDWARD M. HUNT,
Attorney for Defendant.

A true copy,
WM. C. GEBHARDT,
Clerk.

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Opinion.

(Filed February 20th, 1917.)

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1916.

ALEXANDER S. ROWLAND, et als.,
Trustees, etc.,

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Prosecutors,

v.

MERCER COUNTY TRACTION COM-
PANY,

Defendant.

Argued November 10, 1916; decided February, 1917.

- 20 1. In a proceeding for the taking of lands under the eminent domain act, the omission as parties of owners of land in whose favor an easement of way exists across the land to be taken will not entitle the general owner to have the order for appointment of commissioners set aside.
2. Under the Street Railway Act of 1893 (C. S. 5021) the necessity for the taking of lands exists when it appears that they are required for a route lawfully filed and otherwise complying with the statute.
- 30 3. The fact that the taking is in pursuance of a general project involving with the creation of a new highways in a municipality the removal of a railroad terminal and trolley terminal so as to connect detached sections of a university campus, does not deprive the improvement of its public character.
4. The change of a trolley terminus to a new site, and its connection with the existing line at a convenient point, involves the building of a new line in a sense covered by Sections 6 and 13 of the Street Railway Act of 1893.

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Opinion.

On Certiorari.

Before Justices GARRISON, PARKER and BERGEN.

For the Prosecutors, Julian C. Harrison.

For the Defendant, Edward M. Hunt.

The opinion of the Court was delivered by PARKER, *J.*

The attack is upon an order of a justice of this Court appointing commissioners under the Eminent Domain Act (C. S. 2181; P. L. 1900, p. 79) to value certain lands in Princeton of which prosecutors hold the fee as trustees under the will of Andrew L. Rowland, deceased. The traction company desires to acquire the lands in question for use as a terminal in lieu of its present terminal which adjoins the tracks of the Pennsylvania Railroad Company some three hundred feet to the eastward.

10

The first point made by prosecutors is that the petition is on its face insufficient in that it fails to state the names and residences of all the persons contemplated by the statute as parties to the proceeding. Section 2 says it "shall set forth the names of the owner and occupant, if any there be, and of the persons appearing of record to have any interest in said property." The petition names certain persons as being "the owners and occupants of and the persons interested in said land and premises." We are unable to see that the difference is more than formal. But if we are in error, then the petition goes farther substantially than the act requires, for persons appearing of record to have an interest may in fact have none, whereas the petition purports to include all having an interest whether the same appear of record or not. This is curable by amendment if necessary, under Section 17, and plainly should not vitiate the proceedings.

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But it is further claimed that in fact the petition

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Opinion.

omits the owners of easements of way over a portion of the premises and that for this reason the order should be set aside. We do not think the fact appears very clearly by the proofs taken, but assuming it established, the objection is not one which affects the prosecutors adversely; for on the face of the proceedings the land is taken as an unincumbered fee and if this be paid for, as it must be, and if the easement holders are entitled to a share of the award and insist on being paid that share, this will not deprive prosecutors of anything to which they themselves are entitled. See *Bright v. Platt*, 32 N. J. Eq., 362. The fact that such easement holders are not now brought in, and in the present state of the record have no opportunity to produce evidence as to the total value of the property, which is all that is now in question (*Kerr v. Board of Education*, 82 N. J. L., 610) is nothing of which prosecutors can legally complain. Indeed, the easement holders might bring their action after the award and irrespective of it; in which case prosecutors would receive the award undiminished by their claim for a share of it. The Company simply proceeds at its peril as to omitted claimants. (*National Railway Co. v. E. & A. Railroad Co.*, 36 N. J. L., 181.) The petitioner might have asked that the award be made subject to the easements, as is often done in similar proceedings when a restricted use is contemplated (*National Docks Co. v. United Companies*, 53 N. J. L., 217, 222, and cases cited.) That it has elected to take the rights of prosecutors as a fee unincumbered by easements cannot injure prosecutors. And if need be, as we have already said, the petition and proceedings can be amended to bring in these omitted parties, and no doubt would be so amended on their application, as they are manifestly entitled to be heard on the gross valuation. But their omission constitutes no valid ground to set aside the proceedings at the instance of the general owners.

Opinion.

The next point is that no public necessity exists for the taking of these lands. The general "necessity" for the taking of lands required for the route of a street railway company incorporated under the act of 1893 (C. S. 5021) has been determined by the legislature which has in effect said that the public necessity exists whenever the land in question is necessary for the construction of any railway built under the provisions of the act, either as an extension of the line of an existing railway or a new line not exceeding sixty feet in width * * * or as may be required for the locating and constructing all necessary works, etc. Section 13. The land desired nowhere exceeds the statutory width; and as it is not denied that the company is lawfully organized with the powers conferred by the statute, it follows that if it be building either an extension or a new line, and the land is necessary for its construction, the legislative policy is satisfied. No bounds appear to have been set by the legislature to the location of such new line or extension, except the requirement that the survey and location shall be filed in a designated public office, and the permission of the municipality shall have been obtained. Granted the legality of the survey and location now under consideration, the necessity of the land to permit construction follows as of course.

Assuming, however, that the public "necessity" of the construction of this new terminus in lieu of the present one is a matter of judicial consideration, as in *Easton & Amboy Railroad v. Greenwich*, 25 N. J. Eq., 565, and that we are to determine this question on the evidence, we proceed to examine it, with the reservation that the phrase "public necessity," if used at all, must be considered as equivalent to "public benefit" or "public use." Passing to the facts, we find that by co-

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Opinion.

operation of the authorities of Princeton University, a great seat of learning which in the principal feature of Princeton; of the municipal government; of the Pennsylvania Railroad Company, whose local terminal property adjoins the present terminal of defendant; and of the defendant company, a general revision of the municipal plan

10 of streets and highways in this section of the town is projected, with the object of connecting the extensive and unbroken college campus, lying east of the present railroad terminal, and which is one of the chief attractions of the university, with the ample grounds of the graduate college, another part of the same university, on the west. At the same time several new streets

20 are to be opened to public use; the new arrangement will remove the railroad and trolley terminal from unnecessary proximity to one of the principal dormitories of the university, facilitate direct communication between the graduate school and college campus without crossing railroad tracks and beautifying a part of the town which heretofore has been more or less unsightly. All this, as appears by the evidence, has been made financially possible by liberal gifts from generous benefactors of the university who no doubt were

30 largely prompted by consideration of its welfare, but whose liberality plainly enures in great measure to the public good. Under the circumstances we think it would be quite unreasonable to hold that the change of terminal of defendant which is an essential part of the scheme, is not a public benefit. On the contrary, we are satisfied that such benefit will necessarily result.

Prosecutors next argue that the proposed change of terminus is not within the letter of

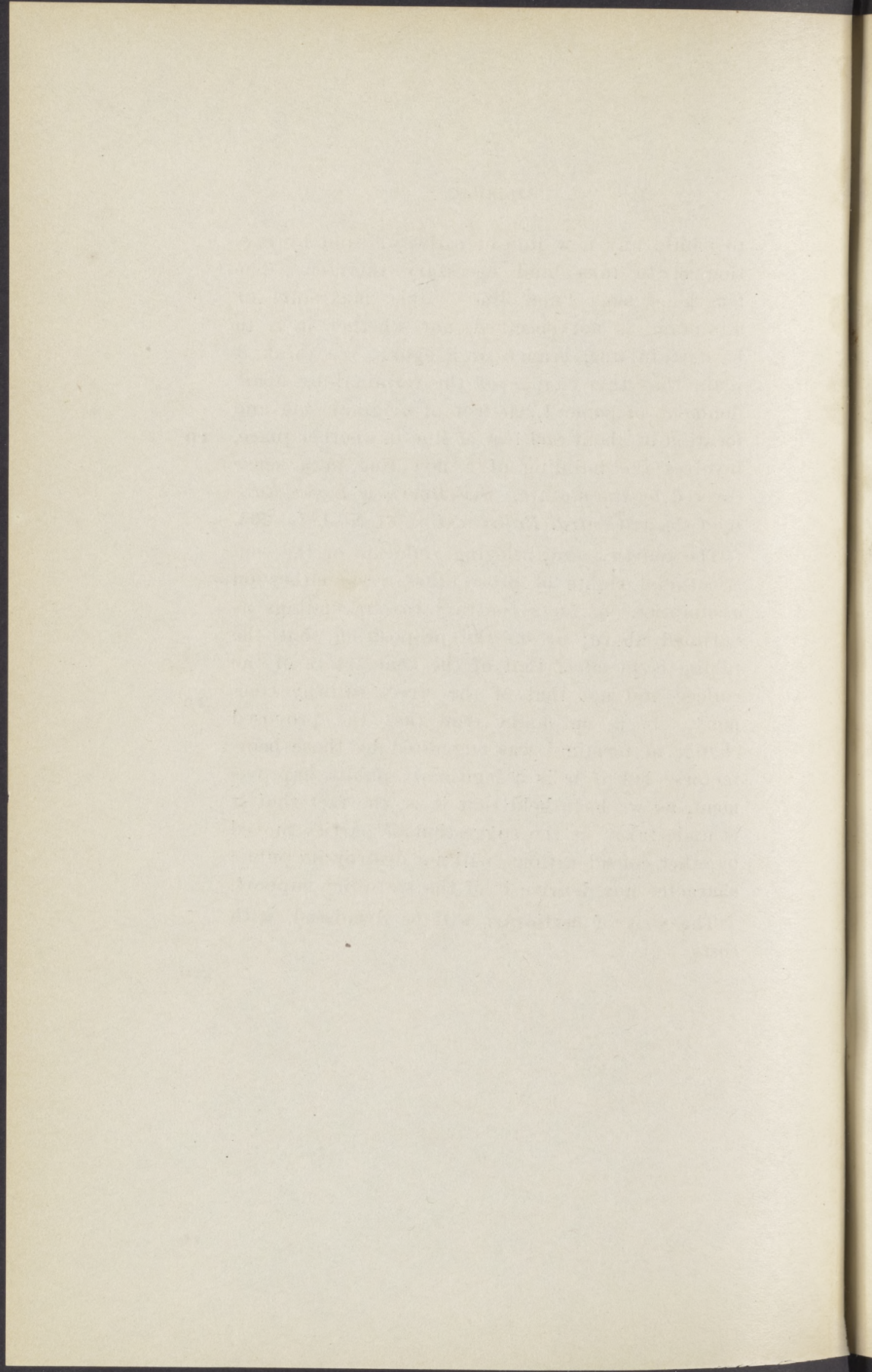
40 the statute. The act, by Section 6, gives power

Opinion.

to "build any new line of railway;" and by Section 6, to take land necessary therefor. The length of such "new line" either maximum or minimum, is not specified, nor whether it is to be a main line, branch or a spur. We think it plain that this change of the terminal by abandonment of some 1,200 feet of original line and location of about 800 feet of line in another place, involves the building of a new line in a sense covered by the statute. See *Morris & Essex Railroad Co. v. Central Railroad Co.*, 31 N. J. L., 205. 10

The fourth point, alleging violation of the constitutional rights of prosecutors, rests either on assumptions of facts contrary to our findings as outlined above; or on the proposition that the taking is in effect that of the benefactors of the college and not that of the street railway company. It is no doubt true that the proposed change of terminal was suggested by those benefactors; but if it is a legitimate public improvement, as we have held that it is, the fact that it is undertaken at the suggestion of parties moved by other considerations, will not destroy its public character nor deprive it of the statutory support. 20

The writ of certiorari will be dismissed, with costs. 30



Writ of Certiorari.

New Jersey, to wit:

State of New Jersey to Hon. Thomas
W. Trenchard, Justice of the Su-
preme Court of New Jersey, Greet-
ing:

(SEAL.)

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We being willing, for certain reasons, to be certified of an order made on the 23rd day of October, 1916, by Hon. Thomas W. Trenchard, Justice of the Supreme Court, appointing Gardner H. Cain, Joseph S. Hoff and W. Meredith Dickinson commissioners to examine and appraise the land and property of Alexander S. Rowland, Lillian C. Rowland and Frederick A. Rowland, as executors of the last will and testament of Andrew L. Rowland, deceased, as shown on a certain map entitled "Mercer County Traction Company, New Line," filed in the office of the Secretary of State of New Jersey, October 3rd, 1916.

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We do command you, that said order so made, together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton, on the 2nd day of November next, you certify and send, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

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Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court, at Trenton, this 23rd day of October, A. D. 1916.

WM. C. GEBHARDT,
Clerk.

Julian C. Harrison,
Attorney.

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Allocatur.

The within writ is allowed. Let it be sealed. October 23, 1916. Not to operate as a stay. Possession of land not to be taken pending the determination of this writ argument to be brought on at next term.

THOMAS W. TRENCHARD,
J. S. C.

10 Affidavit of Alexander S. Rowland.

(Filed Oct. 23, 1916.)

NEW JERSEY SUPREME COURT.

MERCER COUNTY.

20	<p>ALEXANDER S. ROWLAND, LILLIAN C. ROWLAND and FREDERICK A. ROWLAND, as Trustees under the Last Will and Testament of ANDREW L. ROWLAND, deceased, and individually,</p> <p style="text-align: center;"><i>Prosecutors,</i></p> <p style="text-align: center;"><i>against</i></p> <p>MERCER COUNTY TRACTION Co.,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>On Certiorari. Affidavit.</p>
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30 STATE OF NEW JERSEY, }
COUNTY OF MERCER.. } ss.:

ALEXANDER S. ROWLAND, being duly sworn, on his oath, says:

That he is one of the executors named in the last will and testament of Andrew L. Rowland, late of Mercer County, New Jersey, deceased, and resides at No. 66 Pierrepont Street, in the Bor-

Affidavit of Alexander S. Rowland.

ough of Brooklyn, City and State of New York; that his co-executors are Frederick A. Rowland, who resides at Princeton, N. J., and Lillian C. Rowland, who resides at No 2 Dickinson Street, Princeton, N. J.

Such executors, as trustees, hold title to certain lands and premises in the Borough of Princeton, County of Mercer situated on the southerly side of Dickinson Street and the westerly side of University Place, and having a frontage of 110 feet on Dickinson Street and a frontage of approximately 268 feet on University Place. 10

Alexander S. Rowland, Frederick A. Rowland and Lillian C. Rowland, the three children of the testator Andrew L. Rowland, are of full age and have vested remainders in fee in all of said property. 20

Cornelius Terhune Rowland, Virginia Rowland and Garret Stoneman Rowland are all of the grand-children of said testator and are all infants, and said grand-children have contingent remainders in fee in all of said property, Annexed hereto is a true copy of the will of said Andrew L. Rowland.

On the 23rd day of October, 1916, an order was made by Hon. Thomas W. Trenchard, one of the Justices of the Supreme Court of New Jersey, upon the petition of the Mercer County Traction Company, verified October 3, 1916, appointing commissioners to examine and appraise a portion of the premises above described as being necessary for an alleged new line of railway in the Borough of Princeton, County of Mercer, as more particularly set forth in said petition. 30

And deponent further says that he is advised by counsel that said Mercer County Traction Company has not right or power to acquire by con- 40

Affidavit of Alexander S. Rowland.

demnation the said land and premises for the following, among other, reasons:

1. Because the said petition is insufficient in law upon the face thereof.

2. Because the said proceedings are defective for failure to join all the parties interested of record in the said lands and premises.

10 3. Because the petitioner, Mercer County Traction Company, has no power to condemn the said land described in its petition.

4. Because the action of the said Mercer County Traction Company in attempting to locate the route of a new line of railway was unauthorized, null and void.

20 5. Because the said Mercer County Traction Company had no power or authority to file the description of route of its alleged new line in the office of the Secretary of State, as set forth in its petition, and it acquired no rights by reason thereof.

30 6. Because the alleged new line so attempted to be located by the Mercer County Traction Company did not involve any new line of railway, or any extension of any existing railway, but a relocation of an old line already in existence and in operation for many years, which old line was, and is, fully adequate for the needs and convenience of the traveling public using the lines of the said Mercer County Traction Company.

40 7. Because the land and premises of deponent sought to be taken is not necessary for the construction of any railway built under the provisions of the act entitled "An act to authorize the formation of traction companies for the construction and operation of street railways or railways operated as street railways, and to regulate the same," approved March 14th, 1893, and the several supplements thereto, and acts amendatory thereof.

Affidavit of Alexander S. Rowland.

8. Because the land sought to be taken is not necessary for the accomplishment of any of the lawful objects of said Mercer County Traction Company.

9. Because the purpose and intent of the petitioner, Mercer County Traction Company, is not in good faith to build and operate a new line of railroad, but to abandon the operation of its old line and re-locate its tracks over the alleged new line in fraud of the statute under which it asserts the right to take the property of deponent. 10

Deponent further says that he is interested individually in an adjoining parcel of property, and as such owner, in his individual capacity, has an easement and right of way over a portion of the premises sought to be taken in this proceeding, and that other persons not mentioned in the said petition of the said Mercer County Traction Company have similar easements and rights of way, and that said other persons are not mentioned in said petition and have had no notice of this proceeding, as required by statute. 20

Deponent submits herewith the affidavits of Edward V. Maitland, verified October 18, 1916, and Elizabeth H. Rowland, verified October 16, 1916, in support of this application.

Deponent prays that he may have a writ of certiorari allowed him to have the said order, made by Justice Thomas W. Trenchard, October 23rd, 1916, appointing commissioners to appraise certain property in the Borough of Princeton, County of Mercer, in which deponent has an interest, set aside and reversed. 30

ALEXANDER S. ROWLAND.

Subscribed and sworn to before me }
this 23rd day of October, 1916. }

Orville W. Warren,
Commissioner of Deeds.

Affidavit of Elizabeth H. Rowland.

(Filed October 23, 1916).

SUPREME COURT OF THE STATE OF NEW JERSEY

COUNTY OF MERCER.

IN THE MATTER

10

of the

Acquisition of land of ALEXANDER
S. ROWLAND, et als., in which
Frank A. Bamman may claim
some interest, by MERCER COUN-
TY TRACTION COMPANY.

STATE OF NEW JERSEY,)
COUNTY OF MERCER.) ss. :

20

ELIZABETH H. ROWLAND, being duly sworn on her oath says: That she is one of the persons to whom a notice, dated October 5th, 1916, has been directed in the above entitled proceeding.

That the property described in the petition in said proceeding, verified October 3rd, 1916, is a part or portion of a parcel of land owned by Andrew L. Rowland, the husband of deponent, at the time of his death, which occurred on the

30

9th day of June, 1903.

That, as will appear from the last Will and Testament of said Andrew L. Rowland, (a copy of which is hereto annexed), deponent is interested in said property, and is given, by said will, the full and complete possession, use and occupation of the house thereon, for and during the term of her natural life.

That said property, fronting two hundred and sixty-eight (268) feet on University Place (for-

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Affidavit of Elizabeth H. Rowland.

merly Railroad Avenue) and one hundred and ten feet (110) on Dickinson Street, was purchased by deponent's said husband, Andrew L. Rowland, and the present house constructed thereon as a homestead for deponent and her children, in about the year 1874.

That deponent has continuously, since said last mentioned date, resided and now resides in said house. 10

That at the time when deponent first became the occupant of said property, there was but one other house in the immediate neighborhood, all of the nearby lots on Dickinson Street and University Place being vacant.

That deponent is familiar with all of the changes which have been made in the neighborhood, and the construction and location of the present route and terminus of the Mercer County Traction Company. 20

That deponent is familiar with the traffic on the line of the said Mercer County Traction Company, and believes that the present route and terminus are the most suitable that could be obtained in the neighborhood, and so situated as to cause the least possible damage and nuisance to the neighboring inhabitants and their properties.

That the proposed location of the said terminus of the line of the said Mercer County Traction Company on the said property, as shown by the map thereof entitled "Mercer County Traction Co., New Line," filed in the office of the Secretary of State of New Jersey, October 3rd, 1916, will place said terminus in the immediate rear of the said house occupied by deponent and her family as a homestead in such a way as to be noxious, offensive and a nuisance to deponent and her 30 40

Affidavit of Elizabeth H. Rowland.

said family, and to all persons interested in said property and to the said property of said estate.

That said property of the Estate of Andrew L. Rowland consists of a parcel of land extending two hundred and sixty-eight (268) feet in front, on University Place, and measures one hundred and ten (110) feet, more or less, in depth; on the rear of which said property there is a lane or alley-way ten (10) feet in width, over which the owners of properties adjoining said land or alley-way on the north thereof, claim an easement of right of way, by virtue of deeds or instruments of record.

The said property constitutes a block front which is suitable for uniform development, and the use of any portion thereof for a trolley terminus would largely destroy the value of the remaining portion, so that the consequential damage of the proposed taking of the property in this proceeding will be very great.

That Alexander S. Rowland, Lillian C. Rowland and Frederick A. Rowland are the children of deponent and of said Andrew L. Rowland, and the following named persons are grandchildren of deponent and said Andrew L. Rowland, namely:

1. Cornelius Terhune Rowland, son of Frederick A. Rowland, said Cornelius Terhune Rowland being an infant over fourteen years of age, who was born on the day of November, 1899.

2. Virginia Rowland, daughter of said Alexander S. Rowland; said Virginia Rowland being an infant under fourteen years of age, who was born on the 13th day of October, 1904.

3. Garret Stoneman Rowland, son of Alexander S. Rowland; said Garret Stoneman Rowland being an infant under fourteen years of age, who was born on the 6th day of January, 1906.

Affidavit of Elizabeth H. Rowland.

That deponent is seventy-seven years of age, having been born on the 20th day of November in the year 1838, and has resided on the premises sought to be condemned in this proceeding since the year 1874, and desires to continue to reside on said premises; and deponent is sure that the construction of the terminus of the Mercer County Traction Company at the place hereinbefore referred to, will render it difficult, if not impossible, for deponent to continue in the use and occupation of her home, maintained by her for so long a time and that she may be compelled to abandon the same as her place of residence. 10

ELIZABETH H. ROWLAND.

Subscribed and sworn }
to before me this 16th }
day of October, 1916. } 20

W. C. Sinclair,
Notary Public,
New Jersey.

Will of Andrew L. Rowland (attached to foregoing affidavit.)

IN THE NAME OF GOD, AMEN.

I, ANDREW L. ROWLAND, of the Borough of Princeton, County of Mercer and State of New Jersey, knowing that death is always near, do make, publish and declare my last Will and Testament in form and manner following:— 30

FIRST: I hereby revoke and declare to be null, void and of no effect any and all Wills, Codicils to Wills and Papers Testamentary by me at any time heretofore made.

SECOND: I give, devise and bequeath all my property and estate, both real and personal, wheresoever situate, to my three children, Alexander S. Rowland, Lillian C. Rowland and Fred- 40

Affidavit of Elizabeth H. Rowland.

erick A. Rowland, and to their heirs, executors and administrators and assigns forever. In Trust nevertheless to dispose of the same as hereinafter set forth: hereby nominating and appointing said Alexander S. Rowland, Lillian C. Rowland and Frederick A. Rowland, or the survivors or survivor of them as Executors and Trustees of this
 10 my last Will and Testament.

THIRD: I hereby direct, first of all, the payment out of the principal of my estate, of all my just debts, and the erection of a suitable family monument in the Princeton Cemetery.

FOURTH: I hereby further direct that my wife Elizabeth H. Rowland shall, for and during the term of her natural life, have full and complete possession, use and occupation of the house in which I now reside, on the corner of University
 20 Place and Dickinson Street in said Borough of Princeton, together with the land appurtenant thereto, exclusive of the coal-yard in its present limits; and also together with all the furniture contained in said house; to be enjoyed by her without let or hindrance of any person; with right to said Elizabeth H. Rowland to rent the same, from year to year, and apply the income therefrom to her own use and benefit; the same to be free of and from all charges for taxes, assessments, insurance and repairs; which said taxes, assess-
 30 ments, insurance and repairs, I do hereby direct my said Executors and Trustees to pay out of the income of my estate.

FIFTH: As to all the rest, residue and remainder of my said property and estate, both real and personal, and wheresoever situate, I direct my said executors and Trustees, and the survivors or survivor of them, to collect the net income, rents, issues and profits thereof, and each year or
 40 oftener, if convenient, during the life of my said

Affidavit of Elizabeth H. Rowland.

wife Elizabeth H. Rowland, after payments of taxes, assessments, insurance and repairs as aforesaid, to pay one-fourth thereof to the said Elizabeth H. Rowland, another one-fourth thereof to my said son Alexander S. Rowland, another one-fourth thereof to my said daughter Lillian C. Rowland, and the remaining one-fourth thereof to my said son Frederick A. Rowland; Provided, however, that if any of my said children should die before the death of said Elizabeth H. Rowland, that then and in that event, the share of the one so dying shall be paid per stirpes to the descendant or descendants of such deceased child or children, or if there be no such descendant or descendants, then to his, her or their heirs, executors or administrators or assigns. 10

SIXTH: I hereby further direct that, upon the death of my said wife Elizabeth H. Rowland, all of my said estate, both real and personal, shall be forthwith sold, and the proceeds thereof divided equally among my said three children, Alexander S. Rowland, Lillian C. Rowland and Frederick A. Rowland, share and share alike. Provided however, and I do hereby further direct that, if any of my said children should die before the death of said Elizabeth H. Rowland, that, then and in that event, the share of the one so dying shall be paid over per stirpes to the descendant or descendants of such deceased child or children, or if there be no such descendant or descendants, then to his, her or their heirs, executors, or administrators or assigns. 20 30

SEVENTH: I hereby further direct that, during the existence and continuance of said trust, each one of my said children, Alexander S. Rowland, Lillian C. Rowland and Frederick A. Rowland shall be allowed to borrow from my estate an amount or amounts, not exceeding, to each one, 40

Affidavit of Elizabeth H. Rowland.

ten per cent. of the total value of my entire estate, upon giving due and proper receipts therefor, and without further security, and that interest at the rate of five per cent. per annum shall be charged thereon, and shall each year be deducted from the share of the income hereinbefore provided to be paid to the child or children so borrowing; and

10 that said interest shall be considered as a part of the income of my estate in the determination of the total amount of the income hereinbefore directed to be distributed; and I further direct that, as the termination of said trust, the total amount so borrowed by any one of my said children shall not be considered as a debt of such child to my estate, but shall be deducted from the share hereinbefore directed to be paid to such child or to his

20 or her descendants, executors or administrators, in the final distribution of my estate.

EIGHTH: The provisions herein made for my said wife, Elizabeth H. Rowland, are intended to be, and are hereby declared to be in lieu of all dower, dower rights and thirds on her part in my said estate, and in each and every portion of the same.

30 LASTLY: I hereby give to the said Executors and Trustees, of this my last Will and Testament, and to the survivors or survivor of them full and complete power to sell, lease or otherwise dispose of any and all of my said property and estate, real or personal, wheresoever situate, to be exercised by them, in their discretion; and I do hereby give to them power to invest and re-invest any of my said property or the proceeds thereof, as they may deem best for the purposes of said trust and proper to carry out the provisions of this my last Will and Testament; Pro-

40 vided, however, that none of the real property in the said Borough of Princeton, belonging to my

Affidavit of Elizabeth H. Rowland.

estate, shall be sold until after the death of my said wife, Elizabeth H. Rowland; and provided further that none of the real property of my estate shall be, at any time, sold, except upon the express consent of all of said Executors and Trustees or the survivors or survivor of them, but this restriction shall not apply to my personal property, which may be sold or otherwise disposed of upon the direction and consent of two of said Executors and Trustees, or the survivor of them. 10

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 18th day of March, 1903.

ANDREW L. ROWLAND (L.S.)

Witnesses:

C. S. ROBINSON,

H. L. ROBINSON, 20

MARY E. PLATT.

The above-written instrument was signed at the end, sealed, published and declared by the above-named testator, Andrew L. Rowland, as and for his last Will and Testament, in the presence of us and each of us, who at his request, in his presence, and in the presence of one another, have hereunto subscribed our names as witnesses, the day and year last above written. 30

The word "heirs" in two places on 4th page interlined before execution.

C. S. ROBINSON,

Residing at Princeton, N. J.

H. L. ROBINSON,

Residing at Princeton, N. J.

MARY E. PLATT,

Residing at 157 West 21st St., New York City. 40

Affidavit of Edward V. Maitland.

Filed October 23rd, 1916.)

SUPREME COURT OF THE STATE OF NEW JERSEY

COUNTY OF MERCER.

IN THE MATTER

10

of

The Acquisition of Land of Alexander S. Rowland, et als., in which Frank A. Bamman may claim some interest, by MERCER COUNTY TRACTION COMPANY.

STATE OF NEW JERSEY, }
County of Mercer. } ss.:

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EDWARD V. MAITLAND, being duly sworn, on his oath says: That he resides at 41 Glen Avenue, Mount Vernon, New York, and is a civil engineer of thirty-seven years' experience principally in railroad and traction matters; that he was for about sixteen years, at several periods, and in various capacities, with the engineering department of the Pennsylvania Railroad Company, part of the time in the office of the Chief Engineer of Construction in charge of the design of the terminals and other important improvements in most of the larger cities on the system; that he was also for several years with the Electric Traction Company, of Philadelphia, now a component part of the Philadelphia Rapid Transit System, as field engineer in charge of street and car-barn work during the change from horse to electric propulsion; for five and a half years, between 1905 and 1910, he was with the New York, West Ches-

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Affidavit of Edward V. Maitland.

ter and Boston Railway Company, a heavy four-track terminal line for the New Haven System, in full charge of location and construction within the limits of the City of New York; from 1910 to 1912 he was Assistant Chief Engineer of the South Shore Traction Company, a trolley line extending from the Manhattan end of the Queensboro Bridge, in the City of New York, to Patchogue, Long Island, and thereafter with the Canadian Pacific Railway Company, in charge of surveys, until the beginning of 1913; since that time he has been engaged in general consulting practice, and in that connection has acted in an advisory capacity in connection with numerous public service commission cases. 10

Deponent further says that he has examined a blue-print copy of the map entitled "Mercer County Traction Co., New Line, at Princeton, N. J.," dated September, 1916; a copy of the map as examined by deponent is hereto annexed on which the proposed new line as described in the petition is shown in green, the existing line and terminal is shown in red, the property belonging to the estate of Andrew L. Rowland is shown in orange, and the portion of said property belonging to the said estate sought to be taken by said Traction Company, at the southeast corner of said Rowland property is shown in green. Except for the coloring, which is made for explanatory purposes, the attached blue-print is an exact copy of the certified copy of the map which deponent has examined. 20 30

Deponent further says that he has examined the existing line of trolley operated by the Mercer County Traction Company, at Princeton, New Jersey, and the proposed new line, and has familiarized himself with the requirements of the 40

Affidavit of Edward V. Maitland.

traveling public in the Borough of Princeton where the said proposed new line is to be located.

That the description of the said new line as shown upon the said map is inaccurate and inapt, in that the said proposed new line is not a new line at all, but a relocation of an existing line
10 involving a slight change of terminal without serving any new territory or reaching or conveniencing any large portion of the traveling public than is served by the existing line. That he has paced off the distance between the present terminus of the said Mercer County Traction Company and the new proposed terminus, as shown on the said map, and the two are not more than two hundred (200) feet apart, and both the
20 present and proposed terminals are practically the same distance from the center of the town, and equally accessible.

The existing terminus of the line at present in operation is so situated as to be concealed from the street and constitutes no nuisance to the surrounding residents. No public purpose would be served by the location of the terminus in its new proposed location, and the new location would furthermore interfere with, if not entirely
30 destroy, the high residential character of the surrounding dwellings.

In railroad phraseology, what the Mercer County Traction Company proposes to do, in this case, is to relocate its terminal and so much of its line as is necessary to reach it when so relocated. Its plan does not involve the construction of a new line of road, either in the technical sense of that term, nor, if the point of view of the public be considered, in its commonly accepted
40 sense of a line which furnishes new facilities to the public.

From my inspection of the existing terminus and the proposed terminus I am able to say that the present terminus is superior to the proposed terminus in many respects so far as the public is concerned, as well as to the company itself. The present terminus gives ample room for expansion and additional trackage facilities, while the proposed terminus does not.

Sworn to and subscribed before me }
 this 18th day of October, 1916. }
 ORVILLE V. WARREN,
 Commissioner of Deeds of N. J.

10

EDWARD V. MAITLAND.

Return.

(Filed Oct. 26, 1916.)

STATE OF NEW JERSEY, }
 COUNTY OF MERCER. } ss. :

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I, THOMAS W. TRENCHARD, Justice of the Supreme Court of the State of New Jersey, do hereby in the schedule hereto annexed, send to our Justices of the Supreme Court of Judicature of the State of New Jersey, copy of the order appointing commissioners to fix the compensation, and all things touching and concerning the same, as I am within commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court in and for the County of Mercer, this 26th day of October, 1916.

30

THOMAS W. TRENCHARD,
 J. S. C.
 Clerk's seal of the County of Mercer, N. J.

40

Return.

STATE OF NEW JERSEY, }
 Mercer County. } ss.:

MARGARET J. SINES, being duly sworn, says that she is bookkeeper for the Trenton Times (Inc.), a newspaper printed, published and circulated in the City of Trenton, in the County and State aforesaid; and the deponent further states
 10 she has personal knowledge that an advertisement, of which the annexed is a true copy, was published in said paper, in the daily issue thereof, October 6, 7, 9, 10, 11, 12, 13, 1916.

MARGARET J. SINES.

Sworn and subscribed before me }
 this 14th day of Oct. A. D. 1916. }

ANITA S. STEPHAN,

20 Notary Public for N. J.

Notice attached as printed
 Petition in
 Order Trenton Times

STATE OF NEW JERSEY, }
 County of Mercer. } ss.:

EDWARD M. HUNT, of the City of Trenton, County of Mercer and State of New Jersey, of
 30 full age, being duly sworn according to law, on his oath deposes and says:

On the sixth day of October, 1916, I served the annexed notice on Alexander S. Rowland personally, on Lillian C. Rowland personally; on Frederick A. Rowland personally; and on Elizabeth H. Rowland personally; and on the ninth day of October, 1916, I mailed a copy of said annexed notice to said Alexander S. Rowland at his post office address, 66 Pierpont Street Brook-
 40 lyn, New York; and on the ninth day of October,

Notice.

1916, I served the annexed notice upon Fred A. Bauman (misnamed Frank A. Bannan in the petition) personally, to which said copies of notice were attached copies of the petition and order fixing time for the appointment of commissioners in the above matter.

EDWARD M. HUNT

Subscribed and sworn to before me }
 this 18th day of October, A. D. 1916. }
 Richard Stockton 3d,
 Attorney at law of New Jersey.

10

Notice.

In the Matter of the Acquisition
 of Land of Alexander S. Row-
 land, et als., in which Frank A.
 Bamman may claim some inter-
 est, by Mercer County Traction
 Company.

Notice.

20

T0 Alexander S. Rowland,
 Lillian C. Rowland,
 Frederick A. Rowland,
 Elizabeth H. Rowland,
 Frank A. Bamman.

You are hereby notified that Mercer County
 Traction Company has presented a petition to the
 Hon. Thomas W. Trenchard, one of the Justices
 of the Supreme Court of the State of New Jersey,
 a true copy of which is hereto annexed, praying
 for the appointment of three disinterested Free-
 holders, residents of the County of Mercer, Com-
 missioners, to examine and appraise a piece or
 parcel of land owned by you or in which you
 claim or may claim some interest, situate in the
 Borough of Princeton, in the County of Mercer

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Notice.

and State of New Jersey, a particular description of which is contained in the annexed copy of said petition, required for the use of the said Mercer County Traction Company, as in said petition stated, and that the said Justice has, by order, assigned Thursday the nineteenth day of October, nineteen hundred and sixteen, at ten

10 o'clock in the forenoon of that day, at the State House, in the City of Trenton, in the County of Mercer and State of New Jersey, as the time and place for the appointment of said Commissioners, as by reference to a copy of said order, hereto annexed, will appear, at which time and place you or your representative may attend, if you see fit, to make such objections and suggestions relative to said appointment as you may be advised are proper to be made.

20 Dated October 5th, 1916.

MERCER COUNTY TRACTION COMPANY,

By Edward M. Hunt,
Attorney.

To the Honorable Thomas W. Trenchard, one of the Justices of the Supreme Court of the State of New Jersey.

The petition of the Mercer County Traction Company respectfully shows:

30 1. That Mercer County Traction Company was organized and incorporated on the 19th day of June, A. D. 1899, under and by virtue of an Act of the Legislature of the State of New Jersey entitled, "An Act to authorize the formation of Traction Companies for the construction and operation of street railways, or railroads operated as street railways, and to regulate the same," approved March 14th, 1893, and the several supplements thereto and acts amendatory thereof.

40 2. That by virtue of said Act said Mercer County Traction Company is invested with all

Notice.

the necessary power and authority to enable it to acquire and take so much land as may be necessary for the construction of any railway built under the provision of said Act, which power and authority it is exercising in these proceedings.

3. That you petitioner, Mercer County Traction Company, by resolution of its Board of Directors 10
at a meeting held on the 15th day of September, A. D., 1916, (a certified copy of which resolution is hereto attached and hereby made a part hereof) did resolve to build a new line of railway in the Borough of Princeton, in the building, construction and operation of which new line it will be necessary for it to take the land and premises hereinafter more particularly described:

4. That the following is a particular description 20
of said tract of land being sixty (60) feet in width, situate in said Borough of Princeton in County of Mercer and State of New Jersey, viz: Beginning at a point in the westerly line of University Place distant one hundred, seventy-two and fifty-seven hundredths feet (172.57') from the south house line of Dickinson Street and running along the west side of University Place south, twenty-two degrees, twenty-two minutes (22° 22') east, ninety-five feet (90') more 30
or less to the lands now or formerly of Moses Taylor Pyne, thence south seventy-six degrees, fifty-three minutes (76° 53') west, sixty and eight tenths feet (60.8'), thence north twenty-two degrees, twenty-two minutes (22° 22') west, eighty-five and twenty-three hundredths feet (85.23'), thence north sixty-seven degrees, thirty-eight minutes (67° 38') east, sixty feet (60') to the place of beginning, containing one hundred twenty-four thousandths of an acre of land, more 40
or less.

Notice.

5. That on the third day of October, A. D., 1916, your petitioner filed in the Office of the Secretary of State of New Jersey, a description of route of such new line showing the termini of such new line together with a map exhibiting the same with the courses and distances thereof, such description of route being as in the copy of
 10 resolution hereto attached.

6. That Alexander S. Rowland residing at 66 Pierpont St., Brooklyn, New York, Lillian C. Rowland residing at 2 Dickinson Street, Princeton, New Jersey, and Frederick A. Rowland residing at Freehold, New Jersey, as executors and trustees under the will of Andrew L. Rowland, deceased, hold the title to said land and premises in trust during the lifetime of Elizabeth H. Rowland residing at 2 Dickinson Street, Princeton,
 20 New Jersey, widow of said Andrew L. Rowland, deceased, to collect the net income, rents, issues and profits thereof, to pay one-quarter thereof to said Elizabeth H. Rowland; another one-quarter thereof to Alexander S. Rowland; another one-quarter to said Lillian C. Rowland and the remaining one-quarter to said Frederick A. Rowland, and upon the death of Elizabeth H. Rowland, to sell said tract or parcel of land together with the other
 30 real estate of said Andrew L. Rowland and to divide the proceeds thereof equally among said Alexander S. Rowland, Lillian C. Rowland and Frederick A. Rowland, share to share alike, and that said Elizabeth H. Rowland and said Alexander S. Rowland, Lillian C. Rowland and Frederick A. Rowland, individually, and as executors and trustees under the will of said Andrew L. Rowland, and Frank A. Bamman residing at 23
 40 Chambers Street, Princeton, New Jersey, who occupies said land or a part thereof and may claim some interest therein as tenant, are the

Notice.

owners and occupants of and the persons interested in said land and premises.

7. That in and by said will of said Andrew L. Rowland, it was provided that none of the real property in said Borough of Princeton belonging to his estate should be sold until after the death of said Elizabeth H. Rowland, and that said Elizabeth H. Rowland being alive, by such legal incapacity and inability of such of said owners of land to convey valid title, your petitioner can make no agreement with said owners for the acquisition and purchase thereof. **10**

Wherefore, your petitioner prays that your Honor will appoint three disinterested Freeholders, residents of said County of Mercer, Commissioners, to examine and appraise said tract or parcel of land, and to assess the damages upon such notice to the persons interested as your Honorable Board shall direct pursuant to the Act entitled, "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use, (Revision of one thousand nine hundred) approved March 20th, 1900, and Acts amendatory thereof and supplementary thereto. **20**

And your petitioner as in duty bound will ever pray. **30**

MERCER COUNTY TRACTION COMPANY,
By (Signed.) John A. Rigg,
President.

ATTEST. (Seal.)
(Signed.) T. W. Grookett, Jr.,
Secretary.

Notice.

STATE OF NEW JERSEY, }
 County of Mercer. } ss.:

JOHN A. RIGG, being duly sworn according to the law upon his oath, says that he is the President of the Mercer County Traction Company, the petitioner named in the forgoing petition and that the facts, matters and things stated in said
 10 petition are true to the best of his knowledge, information and belief.

(Signed.) JOHN A. RIGG.

Sworn and subscribed to before me }
 this third day of October, 1916. }

(Seal.) Sarah R. Harvey,
 Notary Public for N. J.

RESOLVED, That the Mercer County Traction Company, a corporation created and organized
 20 under and by virtue of an Act of Legislature of the State of New Jersey, entitled, "An Act to authorize the formation of Traction Companies for the construction and operation of Street Railways, or railroads operated as street railways, and to regulate the same", approved March 14th, 1893, build and construct a new line of railway in the Borough of Princeton, in the County of Mercer and State of New Jersey, the route of
 30 such new line with the courses and distances thereof and showing the termini thereof, is described as follows: The center line of such railway beginning, for its southerly terminus, at a point in the present line of Mercer County Traction Company, said point being distant one hundred seventy and fifty-four hundredths feet (170.54') easterly from the building or fence line of the easterly side of Alexander Street and running thence on a curve to the left with a
 40 radius of one hundred sixty-nine and four tenths feet (169.4') a distance of two hundred and twenty-five and ninety-two hundredths feet

Notice.

(225.92') to a point of tangent, thence north ten degrees, forty-five minutes ($10^{\circ}45'$) west, a distance of three hundred twenty-six and six hundredths feet (326.60') to a point of curve, thence on a curve to the left with a radius of three hundred nineteen and sixty-two hundredths feet (319.62') for a distance of seventy-nine and sixty-three hundredths feet (79.63') to a point of tangent, thence north twenty-five degrees five minutes ($25^{\circ}5'$) west, two hundred sixty-six and ninety-two hundredths feet (266.92') to its northerly terminus, and as is also shown and exhibited, with the courses and distances thereof, on the map hereto attached and hereby made a part hereof, and it is

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FURTHER RESOLVED, That the description of route of such new line showing the termini thereof together with a map exhibiting the same, with the courses and distances thereof, be filed in the office of the Secretary of State of New Jersey.

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STATE OF NEW JERSEY, }
County of Camden. } ss.:

I, THOMAS W. GROOKETT, JR., Secretary of the Mercer County Traction Company do hereby certify that the foregoing is a true copy of the resolutions which were passed at a meeting of the Board of Directors of the said Mercer County Traction Company duly called and held on the fifteenth day of September, A. D. 1916, as the same are taken from and compared with the minutes of said Board at which meeting a quorum of said Board was present and voting.

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IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Company this fifteenth day of September A. D. 1916.

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(Signed.) T. W. GROOKETT, JR.,
Secretary.

**Order Fixing Time for Appointment of
Commissioners.**

IN THE MATTER

of

the Acquisition of Land of ALEX-
ANDER S. ROWLAND, et als., in
which FRANK A. BAMMAN may
claim some interest, by MERCER
COUNTY TRACTION COMPANY.

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Application being made to me by Mercer County Traction Company upon a verified petition setting forth that said land particularly described therein, situate in the Borough of Princeton and the County of Mercer and State of New Jersey, owned and occupied by Alexander S. Rowland, Lillian C. Rowland and Frederick A. Rowland, individually and as executors and trustees under the Will of Andrews L. Rowland, deceased, and Elizabeth H. Rowland, in which Frank A. Bamman may claim some interest, is required for the use of the said company, and that the said company could not agree with the persons therein for the use or purchase thereof by reason of the inability of such owners to convey a valid title thereto, and praying for the appointment of three disinterested Freeholders, residents of the County of Mercer, to fix the compensation to be paid for said land.

THEREFORE, I, Thomas W. Trenchard, one of the Justices of the Supreme Court of New Jersey, pursuant to the statute in such case made and provided, do hereby order and assign Thursday, the nineteenth day of October, nineteen hundred and sixteen, at ten o'clock in the forenoon of that day at the State House, in the City of Trenton, County of Mercer and State of New Jersey, as

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Order Fixing Time for Appointment of Com'rs.

the time and place for the appointment, under my hand, of three disinterested Freeholders, residents of the County of Mercer, commissioners, to examine and appraise said land, and to assess the damages to be paid by said Mercer County Traction Company for said land and damages; I do hereby direct the said company to give notice thereof to the said Alexander S. Rowland, Lillian C. Rowland, Frederick A. Rowland, Elizabeth H. Rowland and Frank A. Bamman, by serving the same upon them personally or by leaving the same at their residences at least six days prior to the time so assigned.

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And it appearing that Alexander S. Rowland, an owner and person interested in said lands, resides out of the State of New Jersey; it is further ordered that a copy of said notice be published in the Trenton Evening Times, a newspaper, published in the said City of Trenton, for not less than one week, and mailed to said Alexander S. Rowland at his post-office address.

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Given under my hand at Trenton, New Jersey, this fifth day of October, nineteen hundred and sixteen.

(Signed) THOMAS W. TRENCHARD,
Justice Supreme Court.

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Order Appointing Commissioners.

IN THE MATTER

of

10 the Acquisition of Land of ALEX-
ANDER S. ROWLAND, et als., in
which FRANK A. BAMMAN may
claim some interest, by MERCER
COUNTY TRACTION COMPANY.

STATE OF NEW JERSEY, SS. :

I, Thomas W. Trenchard, one of the Justices of the Supreme Court, in the State of New Jersey to Gardner H. Cain, Joseph S. Hoff and W. Meredith Dickinson of the County of Mercer and State of New Jersey, GREETING :

20 Whereas on the fifth day of October, 1916, Mer-
cer County Traction Company presented a veri-
fied petition to me, the said Thomas W. Trenchard,
one of the Justices of the Supreme Court of the
State of New Jersey, under the oath of John A.
Rigg, president of said company, containing a par-
ticular description of certain land situate on the
easterly side of University Place, in the Borough
of Princeton, County of Mercer and State of
New Jersey, required by it, in the judgment of
30 its Board of Directors, for the construction by
said company of a new line of street railway,
which description is in the following, viz: Begin-
ning at a point in the westerly line of University
Place, distant one hundred, seventy-two and fifty-
seven hundredths feet (172.57 ft.) from the south
house line of Dickinson Street and running along
the west side of University Place south, twenty-
two degrees twenty-two minutes (22 deg. 22 min.) ;
east ninety-five feet (95 ft.) more or less to the
40 lands now or formerly of Moses Taylor Pyne,

Order Appointing Commissioners.

thence south seventy-six degrees fifty-three minutes (76 deg. 53 min.); west sixty and eight-tenths feet (60.8 ft.), thence north twenty-two degrees twenty-two minutes (22 deg. 22 min.); west, eighty-five and twenty-three hundredths feet (85.23 ft.); thence north sixty-seven degrees thirty-eight minutes (67 deg. 38 min.); each sixty feet (60 ft.) to the place of beginning, containing
 one hundred twenty-four thousandths of an acre of
 land, more or less; and for which said company
 could not agree with the persons interested therein
 for the use or purchase thereof on account of the
 legal incapacity and inability of such owners of
 said land to convey a valid title, and made appli-
 cation to me for the appointment of commission-
 ers to examine and appraise the said land and to
 assess the damages to be paid by said company,
 pursuant to an act entitled, "An Act to Regulate
 the Ascertainment and Payment of Compensation
 for Property Condemned or taken for Public
 Use (Revision of 1900)," approved March 20,
 1900, and acts amendatory thereof and supple-
 mental thereto.

Whereupon, I, Thomas W. Trenchard, one of
 the Justices of the Supreme Court aforesaid, by
 order did assign Thursday, the 19th day of Octo-
 ber, 1916, at ten o'clock in the forenoon of that
 day, at the State House, in the City of Trenton,
 County of Mercer and State of New Jersey, at the
 time and place for the appointment, under my
 hand, of three disinterested Freeholders, residents
 of the County of Mercer, commissioners to examine
 and appraise said land, so as aforesaid required
 by Mercer County Traction Company, and to
 assess the damages to be paid by the said company
 for such land and damages as aforesaid, and di-
 rected that the said company should give notice
 thereof to the said Alexander S. Rowland, Lillian

Order Appointing Commissioners.

C. Rowland, Frederick A. Rowland, Elizabeth H. Rowland and Fred A. Bamman, by serving the same upon them personally, or by leaving the same at their residences at least six days prior to the time so assigned; that a copy of said notice be published in the Trenton Evening Times for not less than one week, and mailed to said Alexander

10 S. Rowland at his post-office address.

And whereas, on this 19th day of October, 1916, the day above mentioned and assigned at the State House, evidence satisfactory to me having been filed in the office of the County Clerk of Mercer County, that notice hereof has been served pursuant to the directions of the order above mentioned and as required by the statute in such case made and provided: Now, **THEREFORE**, by virtue of the power and authority of an act entitled, "An Act

20 to Authorize the Formation of Traction Companies for the Construction and Operation of Street Railways, or Railroads Operated as Street Railways, and to Regulate the same," approved March 14, 1893, and acts amendatory thereof and supplemental thereto, and pursuant to the directions to be given by the act first hereinabove referred to, I do hereby appoint said Gardner H. Cain, Joseph S. Hoff and W. Meredith Dickinson, three disinterested Freeholders as aforesaid, commissioners,

30 to examine and appraise the said land and to assess the damages to be paid by the said Mercer County Traction Company for the said land and damages as aforesaid, pursuant to the provisions of the above recited acts.

And I hereby direct that notice of the time and place which you shall appoint for such examination, appraisal and assessment shall be given to the said Alexander S. Rowland, Lilliam C. Rowland, Frederick A. Rowland, Elizabeth H. Rowland and Fred A. Bamman by serving the same

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Order Appointing Commissioners.

upon them personally or by leaving the same at their residences at least six days prior to the time so appointed, and you are directed to file your report in the Clerk's Office of Mercer County on or before the 24th day of November, 1916.

And you are hereby authorized to do and perform all things which in and by said acts, and otherwise by law, to you, as commissioners aforesaid, do appertain and ought by you to be done and performed. **10**

Given under my hand at Trenton, County of Mercer and State of New Jersey, this 23d day of October, 1916.

THOMAS W. TRENCHARD,
Justice Supreme Court.

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Rule to Take Depositions.

(Filed October 23, 1916.)

NEW JERSEY SUPREME COURT.

MERCER COUNTY.

10 ALEXANDER S. ROWLAND, LILLIAN
C. ROWLAND and FREDERICK A.
ROWLAND, as Trustees under the
Last Will and Testament of An-
drew L. Rowland, deceased, and
individually,

Prosecutors,
against

MERCER COUNTY TRACTION COM-
PANY,

Defendant.

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Application being made for leave to take depositions to be used in the argument of the above stated cause, it is, on this 23rd day of October, 1916,

ORDERED, that the said prosecutors and the defendant have leave to take depositions to be used in the said argument.

On motion of Julian C. Harrison, Attorney for the Prosecutors.

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Let the above rule be entered on the minutes.

THOMAS W. TRENCHARD,
Justice.

NEW JERSEY SUPREME COURT.

ALEXANDER S. ROWLAND, et al.,

Prosecutors,

vs.

MERCER COUNTY TRACTION COM-
PANY,*Defendant.*On
Certiorari.

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Depositions.

Depositions taken before Nelson B. Gaskill, Supreme Court Commissioner, at his office in the Broad Street National Bank Building, in the City of Trenton, on Tuesday, October 31st, 1916, commencing at 10.30 o'clock in the forenoon, pursuant to an order to that effect, entered October 23d, 1916.

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A P P E A R A N C E S :

For the Prosecutors, JULIAN C. HARRISON, Esquire.

For the Defendant, EDWARD M. HUNT, Esquire.

In the presence of the Commissioner it was stipulated and agreed between counsel that the depositions of witnesses should be taken stenographically and transcribed in typewriting, and that the signatures of witnesses to their depositions be waived.

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The Commissioner then administered the following oath to Lillian M. Martino, stenographer:

I do solemnly swear that I will carefully, faithfully and impartially take the evidence in the above entitled cause and make a true and correct transcript thereof.

LILLIAN M. MARTINO.

40

Depositions.

Sworn and subscribed before me)
 this 31st day of October, 1916.}

Nelson B. Gaskill,
 Supreme Court Commissioner.

10 Counsel for the defendant desires to have noted upon the record the fact that the rule to take depositions does not specify the character in which Nelson B. Gaskill is to take these depositions, whether as Supreme Court Commissioner or Examiner.

BY MR. HARRISON: I offer in evidence a certified copy of a deed dated, August 12th, 1871, between E. Spencer Miller and Andrew L. Rowland, recorded in the Mercer County Clerk's Office, in Vol. 85 of deeds, page 292.

20 BY THE COMMISSIONER: Which is received in evidence and marked Exhibit P 1.

BY MR. HARRISON: Also a certified copy of a deed from E. Spencer Miller to Charles S. Robinson, dated December 28th, 1869, recorded in the Mercer County Clerk's Office, in Vol. 79 of Deeds, page 523.

BY THE COMMISSIONER: Which is received in evidence and marked Exhibit P 2.

30 BY MR. HARRISON: Also a certified copy of a deed from Charles S. Robinson to Andrew L. Rowland, dated August 21st, 1871, recorded in the Mercer County Clerk's Office, in Vol. 85 of Deeds, page 294.

BY THE COMMISSIONER: Which deed is received in evidence and marked Exhibit P 3.

40 BY MR. HARRISON: Also a certified copy of a deed from E. Spencer Miller, surviving executor, etc., to Anne E. Terhune and Margaret Terhune, dated September 27th, 1872, recorded in the Mercer County Clerk's Office in Vol. 94 of Deeds, page 423.

Depositions.

BY MR. HUNT: I object to this as being incompetent and inadmissible.

BY THE COMMISSIONER: Which deed is received and marked for identification, Exhibit P 4.

BY MR. HARRISON: Also a certified copy of a deed from Margaret Terhune to Enoch Rue, dated April 1st, 1882, recorded in the Mercer County Clerk's Office, in Vol. 131 of Deeds, page 580. 10

BY MR. HUNT: Same objection.

BY THE COMMISSIONER: Deed is received and marked for identification Exhibit P 5.

BY MR. HARRISON: Also a certified copy of the last will and testament of Enoch Rue, proved February 5th, 1891.

BY MR. HUNT: Same objection.

BY THE COMMISSIONER: Received and marked for identification Exhibit P 6. 20

BY MR. HARRISON: Also a certified copy of a deed from E. Spencer Miller, executor, etc., to John F. Hageman, dated May 25th, 1874, recorded in the Mercer County Clerk's Office in Vol. 103 of Deeds, page 382.

BY MR. HUNT: Same objection.

BY THE COMMISSIONER: Received and marked for identification, Exhibit P 7.

BY MR. HARRISON: Also a certified copy of a deed from Samuel Miller to Charlotte M. Zapf, dated April 5th, 1880, and recorded in the Mercer County Clerk's Office, in Vol. 125 of Deeds, page 483. 30

BY MR. HUNT: Same objection.

BY THE COMMISSIONER: Received and marked for identification, Exhibit P 8.

Depositions.

MR. ROYAL H. ROSE, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HUNT:

Q. What is your business? A. Photographer.

10 Q. Have you taken some photographs of the property known as the "Rowland property" and particularly the old coal yard? A. I have.

Q. Can you produce those? A. (Witness produces a number of photographs).

Q. When did you take these? A. Yesterday, October 30th.

Q. I show you photograph, marked Exhibit D 1 for identification. From what point approximately did you take that view? A. It was taken from the northeast corner of Railroad avenue.

20 Q. Isn't "Railroad avenue" an old name? A. Yes, it is an old name.

Q. What is the present name? A. It does not come to me, but I know it. It is the street running down to the depot.

Q. What does that show? A. It shows the coal office, the old coal office, and the stone wall acting as the wall to the roof of the coal shed.

MR. HUNT: I offer this in evidence.

30 MR. HARRISON: I object to the receipt in evidence of the photograph, marked for identification, Exhibit D 1, on the ground that it is incompetent, irrelevant and immaterial.

BY THE COMMISSIONER: Photograph is received and marked for identification, Exhibit D 1.

40 Q. I show you photograph, marked for identification, Exhibit D 2. From what point was that taken? A. It was taken from the southwest, looking towards the railroad tracks.

Depositions.

Q. At what point in relation to University Place? A. University Place was just the other side of this shed.

Q. It is inside of what is known as the old coal yard? A. Yes, sir.

Q. These sheds, where are they located with relation to University Place? A. They back right up against the street. **10**

Q. How far were you from that wall? A. In the neighborhood of 50 feet.

MR. HUNT: I offer this in evidence.

MR. HARRISON: I object on the ground that it is incompetent, irrelevant and immaterial. On the further ground that the defendant cannot introduce in evidence without waiving his objection to the sufficiency of the rule.

BY THE COMMISSIONER: Photograph is received and marked for identification Exhibit D 2. **20**

Q. Mr. Rose, I show you photograph, marked for identification, Exhibit D 3. Was that taken on the Rowland property, known as the "old coal yard"? A. Yes sir, taken right along the street known as University Place, looking nearly south.

Q. How far from University Place were you about in taking that? A. About 20 feet, I should think. **30**

Q. In taking it, was your back to University Place? A. Yes sir.

MR. HUNT: I offer this in evidence.

MR. HARRISON: Same objection.

THE COMMISSIONER: Photograph is received and marked for identification, Exhibit D 3.

Q. I show you this photograph, marked for **40**

Depositions.

identification Exhibit D 4. Was that taken inside the coal yard of the Rowland property? A. Yes sir.

Q. From what position. A. It was taken from the southeast corner, looking towards the University buildings.

10 Q. What is the building shown in the background? A. Mrs. Rowland's residence.

MR. HUNT: I offer this in evidence.

MR. HARRISON: Same objection.

THE COMMISSIONER: Photograph is received and marked for identification, Exhibit D 4.

NO CROSS EXAMINATION.

20 MR. BAYARD HENRY, witness produced on behalf of the prosecutors, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HARRISON:

Q. You are a practicing attorney in Philadelphia? A. Yes sir.

30 Q. Will you state your knowledge of the plans for the construction of the proposed new line of the Mercer County Traction Company, as shown on this map entitled "Mercer County Traction Company New Line at Princeton, N. J., September 1916"? (Produces map). A. For a number of years the Pennsylvania Railroad has been desirous of changing the location of their station. The old station was built about twenty-four or twenty-five years ago, when there were only four or five hundred students in the University, and the business has outgrown the facilities there, as there are now fifteen or sixteen hundred students in the University, and the town has grown. Some
40 years ago the Pennsylvania Railroad expressed

Depositions.

a desire to have a change of station to point down near trolley station, which is immediately below where trolley line comes in from Alexander street, but nothing was accomplished, except that Mr. Pyne had bought several houses along University Place, which he held in the interest of the University and of the general development. Last fall, just a year ago, Mr. Henry C. Frick said he would like to improve the conditions at Princeton and unite the grounds of the old college campus together with the grounds of the graduate school, and he asked me what I thought it would cost. I had had plans prepared before and told him about \$250,000 to buy the properties and to make the changes and to change the line of the trolley as well as the opening of the streets, and he took it up with other college authorities and decided to take it up and put it through. He bought the corner of Alexander and Dickinson streets, as shown on blue print, which Frick held in the interest of the University, and also bought property along University Place. Afterwards, however, he became interested in larger developments and agreed to give \$73,500 if the balance of the \$250,000 was raised. This was done in a measure because of the interest that Mr. Pyne had taken in Princeton and out of honor to him because he had given so much money toward development of the University, and Mr. Frick thought that others ought to push the thing through. We saw Colonel William Cooper Proctor, of Cincinnati, who is also a trustee of Princeton, and Proctor agreed to give \$50,000, and two other gentlemen, not as trustees but alumni, they did not wish to be named I suppose for this reason, they agreed to give \$50,000 each, provided the whole sum was raised. That left \$26,500 to be raised, and that sum has been agreed to be given by Princeton

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Depositions.

Theological Seminary, so that two great institutions, which have made Princeton famous, are deeply interested. When we came to make arrangement for it, however, the Pennsylvania Railroad said it was impossible to build a new station unless some new location was found for the traction company. I met Mr. Rankin Johnson, President of the Mercer County Traction Company, and Colonel Crosby, who also has an interest in the Company, and urged them to agree to accept change of the trolley line, which would allow the trolley line to be opposite where the new station is, as on blue print. Mr. Johnson and Mr. Crosby said that the trolley company was willing to agree to the request of the men interested in Princeton and the Pennsylvania railroad, but that they felt they should be at least as near the centre of Princeton—Nassau street—as now. We tried to arrange to have the trolley go up Alexander street, out to Mercer and then to Nassau street, but found it impossible to secure consents. Then we tried to see if it would be possible to carry up Alexander to Dickinson and across to where the trolley station now is, but found it impossible. There was nothing left but to either locate where this location has been made or to widen University Place from Alexander street, along the new station of the Pennsylvania Railroad to Dickinson street. That would involve the matter of taking the Rowland house and moving it back, or have the Borough pass an ordinance to condemn it. Instead of that, however, Colonel Crosby and Mr. Johnson, the President, said that if the property, which has been called the "old coal yard," was secured, that would be agreeable. On examining the will of A. L. Rowland, we found that the executors and trustees had no power of sale until after the death of Mrs. Rowland; although we

Depositions.

have found out since that there had been a sale made in the Borough of Princeton or rather a long lease until the expiration of Mrs. Rowland's life. We did not feel that Frick should take title under that kind of an agreement, so it became necessary to begin condemnation proceedings, because the executors had no power of sale. It was supposed that the old coal yard, taking only one-half of it, would be the best place for a location for the present anyhow. And if, in the future, University Place was widened at Dickinson and could be brought to Dickinson with a width of not less than 90 feet, then the money could be used in making Pennsylvania station beautiful and in uniting the college campus and opening the grounds of the Seminary. We have bought, in carrying out the plan, together with the buildings which Mr. Pyne has agreed to turn over to the general development, about fourteen properties, and the trolley company agreed that if we would furnish them with a substitute, that they would turn over their right of way to the University, although I do not believe they have a fee to that right of way; also the site of the present trolley station, which is of little or no value. If for any reason the location was not made at this place, it would be necessary to have an ordinance to carry the trolley up University Place to where the terminus of the trolley now is. Everything has gone along entirely satisfactorily and successfully, until we came up against this unfortunate objection, and while we regret to be party to any condemnation proceedings, we believe, in the general development of the railroad and for the sake of the Borough of Princeton and great institutions there, we believe there is nothing else to be done than to go on with the present plan.

Q. When you use the expression "of the interest

Depositions.

of the general development," you refer to the plan of uniting the graduate school and the rest of the campus? A. And making a suitable railroad station and also give handsome approaches from the station to town, in order to make Princeton as beautiful a town as there is in America.

10 Q. In that general development, you stated that the present right of way of the traction Company was to be abandoned. Was that true?
A. Provided the new location is carried through.

Q. The existing right of way of the Pennsylvania Railroad, beyond the point marked "grade crossing" is also to be abandoned? A. That would be turned over to Princeton University.

20 Q. That would not be abandoned in the sense that the traction company right of way would be abandoned? A. That would be turned over to the University on account of the University owning all this land, with the right of way of the traction company to have their tracks there. But the lot where the station is, I think must belong to the traction company in fee. The other is, I think, in easement.

30 MR. HARRISON: I offer in evidence the certified copy of the map marked "Mercer County Traction Company New Line," as filed in the office of the Secretary of State, October 3d, 1916.

THE COMMISSIONER: Received and marked Exhibit P 9.

Q. This map, Exhibit P 9, is the same map to which you have been referring in your testimony?
A. I presume it is a copy of that blue print.

40 Q. On that map are shown certain proposed new streets. I call your attention particularly to the proposed new street lying east of University Place, as shown on the blue print, and ask you if that

Depositions.

proposed new street is not laid out over the land now occupied in part by the tracks of the Pennsylvania Railroad Company and the Mercer County Traction Company? A. Yes, but I might say that the proposed opening should be a lane, not a public street.

Q. Is that true of all these new streets? A. University Place will be widened and dedicated to the Borough of Princeton up to where it now ends and up to Dickinson street. With that exception of University Place, which is 90 feet wide, it is not proposed that they will be public streets open to the public, subject to the same regulations that streets and lanes are on University grounds. 10

Q. None of the proposed new streets have as yet been dedicated? A. No. I might say, deeds are being prepared for dedication of University Place by the Pennsylvania Railroad. 20

Q. Have you made any arrangements as to who is to pay the expenses of acquiring the Rowland property site, to be taken in this proceeding? A. The group of men interested in this thing, represented by Mr. Pyne and myself, are going to pay all expenses.

Q. Including the expenses of acquiring this Rowland property? A. Yes sir.

Q. Do you represent the Pennsylvania Railroad Company in the matter? A. I am a director of the Pennsylvania Railroad and I suppose I represent them in this matter. I have consulted with Mr. Rankin, the president, and Mr. Atterbury, Vice-President as well as Mr. Meyers, another Vice-President, and Mr. E. B. Temple, who has prepared these plans and who is going ahead with the work of preparing specifications and is about ready to give out contracts. 30

Q. Mr. Frick, whom you mentioned in your previous testimony, is also a trustee of the Uni- 40

Depositions.

versity? A. A director of the Pennsylvania Railroad and a trustee of the University.

Q. You are also a trustee? A. I am a trustee of the University.

Q. Did this plan which you have referred to as general development, originate with you? A. I think it originated with Mr. Pyne originally, but
 10 later it originated through Mr. Frick's agreement to finance it. But Mr. Pyne had it in mind for a number of years and then it became more necessary, after the graduate school was located where it was, in order that the grounds of the University as well as the grounds of the railroad should be harmonious, and development should be made for the future benefit of the Borough of Princeton, as well as the University and the Seminary. Mr. Pyne wanted it made clear that he had not
 20 subscribed anything toward this new development, except giving some of the real estate, but he was not a subscriber to the \$250,000 fund, and in fact no one living in Princeton gave anything toward the fund, excepting the Theological Seminary agreed to give \$26,000.

CROSS-EXAMINATION BY MR. HUNT:

Q. You referred to Mr. Rankin Johnson as the president of the Mercer County Traction Company. Isn't Mr. Johnson the president of the
 30 Trenton and Mercer County Traction Corporation, the lessee of the Mercer County Traction Company? A. I presume that is so. I meant Mr. Johnson.

Q. If the trolley were operated as at present and the proposed location of the station was made would there be a grade crossing? A. It would not be possible for the Pennsylvania Railroad to
 40 build their station because of the fact of the grade crossing.

Depositions.

MR. RANKIN JOHNSON, a witness produced on behalf of the prosecutors, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HARRISON:

Q. I show you a map (referring to Exhibit P9) and ask you if that is a true copy of the map filed by the Mercer County Traction Company in the office of the Secretary of State of New Jersey on October 3d, 1916? 10

MR. HUNT: I object to that because the map as certified is the best evidence.

A. As far as I know, it is.

Q. Does that map show the proposed new line of the Mercer County Traction Company, in connection with which the condemnation proceedings have been instituted to take certain property on University Place belonging to the estate of Andrew L. Rowland? A. It does, to the best of my knowledge and belief. 20

Q. Will you point out on the map the existing terminus of the Mercer County Traction Company? A. It is at that point (indicating).

Q. Will you mark it—

MR. HUNT: I object to this map being marked by Mr. Johnson. How are you going to have that both a certified copy of the map as on file, and put a mark on it? 30

MR. HARRISON: I waive the question.

Q. Is the existing terminal now on the piece of property shown east of Dickinson Street and reached by a narrow lane, running east from the easterly line of University Place? A. It is.

Q. Do you know how many feet distant the present terminus is from the proposed terminus, as shown on the map? A. I do not, with any de- 40

Depositions.

gree of accuracy. I could make an estimate.

Q. There appears to be a scale here—one inch to one hundred feet. A. (After measuring on map with rule.) About two hundred and fifty feet.

10 Q. The existing line of the Mercer County Traction Company runs from the existing terminus and parallel with the proposed new line, nearly to the point of junction at about the same distance from the proposed line as the two termini are distant, does it not? That is, the two lines are no where more than two hundred and fifty feet apart. Is that correct?

MR. HUNT: I object to the question as a whole, because it assumes the lines are parallel.

20 A. I should say that at no point is the proposed line more than two hundred and fifty feet away from the existing line. May I just check that statement. (Measuring with rule) I have to correct that. According to the scale on the map, the new line is about three hundred and twenty-five feet distant from the existing line, at the point of maximum distance.

30 Q. Does an arrangement exist by which, upon the completion of the proposed line, the land occupied by the existing line, between its point of junction with the proposed line and the existing terminus, is to be abandoned? A. An arrangement exists by which the existing line is to be abandoned, on completion of the proposed line and terminus. On completion and acceptance, I might say, by the Mercer County Traction Company.

Q. With whom was that arrangement made?

40 A. It was made with the group represented by Mr. Henry and Mr. Pyne.

Depositions.

Q. And that applies to all of the plot of land which is reached through the lane from University Place, does it not? A. Yes—that is, all rights in any of the real estate or line held by the Mercer County Traction Company, beyond the point of junction of the proposed line and the existing line.

Q. All the expenses of the acquisition of the proposed line are to be borne by that same group, to which you refer? A. Through that same group. We have no knowledge whether it is by them, or where the funds will come from. 10

Q. This map, which the Mercer County Traction Company filed, was furnished to you by some one acting for Mr. Henry, was it not? A. This map was provided by Mr. Temple, as stated by Mr. Henry, subject, so far as the location of the proposed traction line is concerned, to the approval of the traction company. 20

Q. Then I understand, Mr. Johnson, that the proposal to locate the proposed new line did not originate with the Mercer County Traction Company?

MR. HUNT: You do not seem to realize, Mr. Harrison, that Mr. Johnson is not president of the Mercer County Traction Company, but of the Trenton and Mercer County Traction Corporation. 30

MR. HARRISON: If he does not know he can say so.

MR. HUNT: Yes.

A. The plans for the general development, referred to by Mr. Henry, originated as he stated. That left to the traction company the carrying out of the plan, which would have left the traction company with a grade crossing and the Pennsylvania Railroad Company in a position which 40

Depositions.

we considered not to the interests of the traction company or the community. Being desirous of improving the terminus of the traction company, as well as not standing in the way of this proposed public improvement, we were desirous of re-locating the line. A number of locations were discussed, as indicated by Mr. Henry. We hoped
10 in the first place to run to Nassau Street with the new terminus. That being found impossible through being unable to secure consents, we adopted the plan, as indicated on this map. Subject to the approval of the people, whom you represent.

CROSS-EXAMINATION BY MR. HUNT:

20 Q. You are president of the Trenton and Mercer County Traction Corporation? A. I am.

Q. Is that the lessee for a long term of years of the Mercer County Traction Company? A. It is.

30 Q. And in these negotiations, to which you have referred, and whenever you referred to the Mercer County Traction Company, you only referred to anything that they have done in so far as you, as president of the Trenton and Mercer County Traction Corporation, the lessee of the Mercer County Traction Company, were acting as the agent for that company? A. Yes.

Q. You also had regard, did you not, to the interests of your company as the operating company, in securing a desirable terminus for the trolley? A. I did.

Q. Do you consider that the proposed terminus on the Rowland land is a more desirable terminus than the present one? A. Much more desirable.

40 Q. In the measurements which you gave, were

they simply scaled upon the map? A. They were.

Q. The present right of way of the traction company is not owned in fee, is it, from the point where the new line begins to the present terminus? A. I believe not.

(That is all.)

I certify that the foregoing depositions were taken by Lillian M. Martino, a stenographer selected by me, and by me duly sworn, faithfully and truly to take stenographically and reproduce in typewriting the testimony given, and that such depositions were taken in my immediate presence and hearing by said stenographer, and sworn as above stated, and I believe that they accurately state the said evidence. 10

And I further certify that the original exhibits produced on behalf of either party, have been marked by me as exhibits in the said cause and are forwarded herewith. 20

NELSON B. GASKILL,
Supreme Court Commissioner.

Exhibit P1.

E. SPENCER MILLER, Surviving acting Exp. of Samuel Miller, D. D., dec'd

To

ANDREW L. ROWLAND,

Stamp \$1.50

This Indenture, made this twelfth day of August, in the year of our Lord one thousand eight hundred and seventy one, between E. Spencer Miller, surviving acting executor of the last Will and Testament of the Rev. Samuel Miller, late of Princeton, in the county of Mercer and State of 30

Exhibit P-I.

New Jersey, deceased of the first part, and Andrew L. Rowland, of the second part. Witnesseth that whereas in a certain amicable suit in the Court of Chancery of the said State of New Jersey, in which the heirs at law and the surviving Executors of said Samuel Miller, deceased

10 things, of ascertaining the power conferred by said Will on said Executor and to give him full authority to sell the real estate of which the said Testator died seized, in the State of New Jersey, the Chancellor of said State did, on the eighth day of March, A. D., eighteen hundred and sixty six, order, adjudge, declare and decree, by virtue of the power and authority of the said Court of Chancery of said State of New Jersey, among

20 other things as follows: "And it is further declared that the said Samuel Miller, deceased, intended in his said Will to authorize the sale of his real estate by his Executors and a division of the proceeds thereof among the legatees, namely, his children and grandchildren so as to increase their several legacies proportionably according to the terms of said Will, in relation to said legacies; yet notwithstanding such intention, it is declared that he did not employ such apt

30 words, to express his intentions as would either devise said real estate or confer on his executors an express power to sell and convey the same, and thereby dispose of all said estate: It is therefore, on the day and year last aforesaid (the eighth day of March aforesaid), further ordered, adjudged, declared and decreed, among other things, that the prayer of the said complainant, in said bill be granted and that the said E. Spencer Miller, as surviving executor of said Samuel

40 Miller, be and hereby is fully empowered and directed to sell all of the real estate of which said Testator died, seized, in the State of New

Exhibit P-1.

Jersey which still remains unsold, either at private or public sale, at his discretion, as will be most advantageous to said estate; and to execute good and sufficient deeds to the purchasers of the same as fully as if he had been expressly ordered by the said Testator in his said Will, to sell the same. And it is further ordered, adjudged and decreed that all of the heirs at law of the said Samuel Miller, deceased, shall join in all such conveyances to the purchaser or purchasers' as by reference to said Decree enrolled in the office of said Court of Chancery will more fully and at large appear; Now this Indenture Witnesseth that the said E. Spencer Miller, surviving Executor of said Samuel Miller, deceased, as aforesaid in pursuance of the authority and power to him given in and by the said Decree; and in pursuance of the intention of the said Testator and any power and authority by him conferred in said Will to this end; and believing that the land and premises hereinafter described and conveyed will be, in this manner sold most advantageously for the said estate; and for and in consideration of the sum of One thousand and Fifty dollars, to him, the said party of the first part paid by the said Andrew L. Rowland, party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents does grant, bargain, and sell unto the said Andrew L. Rowland his heirs and assigns, all that certain parcel or lot of land, situate, lying and being in the Borough of Princeton, in the County of Mercer and State of New Jersey, being a parcel of the land of the Rev. Samuel Miller, deceased aforesaid and of which he died seized—butted and bounded as follows: Beginning at a stake on the southern side of Dickinson Street and corner of Charles S. Robinson's land; thence running Southwest

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Exhibit P.1.

along Dickinson Street sixty feet to a stake for a corner; thence at right angles to Dickinson Street two hundred and fifty-four and a half feet more or less to the land of Ralph Guild; thence in a Northeasterly course, along the land of said Guild fifty and one-half feet more or less to the land of said Robinson; thence along the line of said Rob-

10 inson's lot two hundred and fifty-seven and a half feet more or less to the place of Bebinning. Reserving therefrom, always, nevertheless into the said party of the first part his heirs and assigns, the free and uninterrupted use, liberty and privilege of, and passage in, over and across the rear of said above conveyed lot next to the land of said Ralph Guild, as an alley or way of the width of ten feet, together with free ingress, egress and

20 regress in and for the said party of the first part his heirs and assigns, his and their tenants and occupiers or possessors of any or all of the remaining land of the late Samuel Miller which is contiguous to the land of said Guild west of the lot herein conveyed with a view of securing a way or alley for horses, men and carts and cattle to pass from the rear of said lots of land to and from Railroad Avenue along the line of said Guilds land forever, with the appurtenances; To have and To Hold the said land unto the said

30 party of the second part, his heirs and assigns, to the only proper use of the said party of the second part, his heirs and assigns forever. And the said E. Spencer Miller doth covenant and agree with the said party of the second part, his heirs and assigns, that he, the said E. Spencer Miller, hath not done any act or thing or suffered anything to be done whereby the said premises may be changed or incumbered in Estate,

40 title or otherwise.

In Witness Whereof, the said E. Spencer Mill-

Exhibit P-1.

er, surviving Executor as aforesaid, hath hereto set his hand and seal the day and year first aforesaid. E. Spencer Miller, (Seal) Surviving acting Ex.

Sealed and delivered in the presence of Jno. E. Lanning.

STATE OF NEW JERSEY, MONMOUTH, COUNTY, SS.: 10

Be it Known, that on the twelfth day of August in the year of our Lord one thousand eight hundred and seventy one, before me, a Master in Chancery of the State of New Jersey, personally appeared E. Spencer Miller who is, I am satisfied, the grantor mentioned in the foregoing Deed and the contents thereof being by me first made known unto him he did thereupon acknowledge that he signed, sealed and delivered the same as his vountary act and deed, for the uses and purposes therein expressed. 20

JNO. E. LANNING, M. C. C.

Recorded September 2, 1871.

STATE OF NEW JERSEY, }
County of Mercer. } SS.:

I, GEORGE R. ROBBINS, Clerk of the County of Mercer, and also Clerk of the Circuit Court and Court of Common Pleas, holden therein, DO HEREBY CERTIFY that the foregoing is a true and correct copy of a certain Deed as the same remains of record in my office, in Vol. 85 of Deeds, on page 292, &c. 30

(Clerk's seal of the County of Mercer, N. J.)

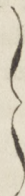
IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office, this twenty-third day of October, A. D., 1916.

(Seal)

GEORGE R. ROBBINS, 40
Clerk.

Exhibit P-2.

Stamp \$1.

 E. SPENCER MILLER, EXT.,
 

to

 CHARLES S. ROBINSON,

10 This Indenture, made this Twenty-eighth day
 of December, in the year of our Lord one thou-
 sand eight hundred and sixty-nine, Between E.
 Spencer Miller, Survg., acting Executor of the
 Last Will and Testament of the Rev. Samuel
 Miller, late of Princeton, in the County of Mercer
 and State of New Jersey, deceased, of the First
 Part, and Charles S. Robinson, of Princeton, in
 the County and State aforesaid of the Second
 Part, witnesseth: That whereas in a certain
 20 amicable suit, in the Court of Chancery of the
 said State of New Jersey, in which the heirs at
 law and the surviving Executor of said Samuel
 Miller, deceased, were parties, brought for the
 purpose among other things of ascertaining the
 power conferred by said Will on said Executor
 and to give him full authority to sell the real
 estate of which the said testator died seized in
 the State of New Jersey, the Chancellor of said
 State, did on the eighth day of March, A. D.,
 eighteen hundred and sixty-six, order, adjudge,
 30 declare and decree by virtue of the power and
 authority of the said Court of Chancery of said
 State of New Jersey, among other things as fol-
 lows: "And it is further declared that the said
 Samuel Miller, deceased, intended in his said Will
 to authorize the sale of his real estate, by his
 Executors, and a division of the proceeds, thereof,
 among the legatees, namely, his children and
 grandchildren so as to increase their several lega-
 40 cies proportionably, according to the terms of

Exhibit P.2.

said Will in relation to said legacies; yet notwithstanding such intention, it is declared that he did not employ such apt words to express his intention as would either devise said real estate, or confer on his Executors an express power to sell and convey the same, and thereby dispose of all of said estate: It is, therefore, on the day and year last aforesaid (the Eighth day of March, 10 aforesaid), further ordered, adjudged, declared and decreed among other things, that the prayer of the said complainant, in said bill, be granted. And, that the said E. Spencer Miller, as surviving Executor of said Samuel Miller, be and hereby is fully empowered and directed to sell all of the real estate of which said testator died seized, in the State of New Jersey, which still remains unsold either at private or public sale, at his discretion, as will be most advantageous to 20 said estate, and to execute good and sufficient deeds to the purchasers of the same, as fully as if he had been expressly ordered by the said testator in his said Will to sell the same. And it is further ordered, adjudged and decreed, that all of the heirs at law of the said Samuel Miller, deceased, shall join in all such conveyances to the purchaser or purchasers;" as by reference to said Decree enrolled in the office of said Court of Chancery, will more fully and at large appear; 30 now this Indenture witnesseth, that the said E. Spencer Miller, surviving Executor of said Samuel Miller, deceased, as aforesaid, in pursuance of the authority and power to him given in and by said decree; and in pursuance of intention of the said testator, and any power and authority by him conferred in said Will, to this end; and believing that the land and premises hereinafter described and conveyed will be, in this manner, sold most advantageously for the said estate, 40 and for and in consideration of the sum of Seven

Exhibit P-2.

- hundred and fifty dollars to him, the said party of the first part paid by the said Charles S. Robinson, party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said Charles S. Robinson, his heirs and assigns. All that certain parcel or lot of land, situate, lying and being in the
- 10** Borough of Princeton, in the County of Mercer and State of New Jersey, being a parcel of the land of the Rev. Samuel Miller, deceased, aforesaid, and of which he died seized, butted and bounded as follows: "Beginning at a stake in the line of Ralph Guild's land and being a corner of Railroad Avenue, as it is proposed to be extended and opened to said Guild's land, thence running
- 20** Northerly along the West side of said Railroad Avenue two hundred and sixty feet more or less to the corner of Dickinson Street, thence West-erly along the Southerly side of Dickinson Street, fifty feet to a stake for a corner; thence South-erly in a line parallel to the first course afore-said, two hundred and fifty-nine and a half feet more or less to the land of the said Ralph Guild; thence Easterly along the land of said Guild to the place of beginning." Being a fifty-foot lot
- 30** on the Southwest corner of Railroad Avenue and Dickinson Street and extending back to the land of Ralph Guild. Reserving thereout always nevertheless, unto the said party of the first part, his heirs and assigns, the free and uninterrupted use, liberty, privilege, of and passage, in, over and across the rear of said above conveyed lot, next to the land of said Ralph Guild, as an alley or way of the width of ten feet, together with free ingress, egress and regress in and for the
- 40** said party of the first part, his heirs and assigns, his and their tenants and occupiers or possessors of any or all of the remaining land of the late

Exhibit P-2.

Samuel Miller, which is contiguous to the land of said Guild, West of the lot herein conveyed with a view of securing a way or alley for horses, men and carts and cattle to pass from the rear of said lots of land to and from Railroad Avenue along the said Guild's land, forever; with the appurtenances; to have and to hold the said land unto the said party of the second part, his heirs and assigns to the only proper use of the said party of the second part, his heirs and assigns forever. And the said E. Spencer Miller doth covenant and agree with the said party of the second part his heirs and assigns, that he the said E. Spencer Miller hath not any act or thing or suffered anything to be done, whereby the said premises may be changed or incumbered in estate, title or otherwise. IN WITNESS WHEREOF the said E. Spencer Miller, surviving Executor, as aforesaid, hath hereto set his hand and seal the day and year first aforesaid. E. Spencer Miller (Seal), Surviving Actg. Exr., sealed and delivered in the presence of Joshua Spering C. Eber Smith.

State of Pennsylvania, Philadelphia County, ss.:

Be it known, that on the Twenty-eighth day of December, in the year of our Lord on thousand eight hundred and sixty-nine, before me a Commissioner for New Jersey, residing in the City of Philadelphia, personally appeared E. Spencer Miller, acting Executor, etc., who is, I am satisfied, the grantor mentioned in foregoing deed, and the contents thereof being by me first made known unto him, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Witness my hand and official seal.

Recorded June 25th, 1870.

JOSHUA SPERING (Seal).

STATE OF NEW JERSEY, }
 County of Mercer. } ss.:

I, GEORGE R. ROBBINS, Clerk of the County of Mercer, and also Clerk of the Circuit Court and Court of Common Pleas, holden therein, DO HEREBY CERTIFY that the foregoing is a true and correct copy of a certain deed, as the same remains of record in my office in Vol. 79 of Deeds, on page 523, etc.

10 IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office, this twenty-third day of October, A. D. 1916.

GEO. R. ROBBINS,
 Clerk.

(Clerk's Seal of the
 County of Mercer, N. J.)

Exhibit P-3.

20 Stamp \$1.00.

CHARLES S. ROBINSON,

to

ANDREW L. ROWLAND.

30 This Indenture, made this Twenty-first day of August in the year of our Lord one thousand eight hundred and seventy-one, between Charles S. Robinson, bachelor, of the Borough of Princeton, County of Mercer and State of New Jersey, party of the first part, and Andrew L. Rowland, of the same place aforesaid, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of Nine hundred and fifty dollars lawful money of the United States to him the said party of the first part in hand well and truly paid by the said

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Exhibit P-3.

party of the second part, before the sealing and
 delivery of these presents, the receipts whereof
 the said party of the first part, doth hereby ac-
 knowledge hath granted, bargained, sold, aliened,
 released, conveyed and confirmed; and by these
 presents doth grant, bargain, sell, alien, release,
 convey and confirm unto the said party of the
 second part, his heirs and assigns, all that cer- **10**
 tain lot or parcel of land, situate, lying and being
 in the Borough of Princeton, in the County of
 Mercer and State of New Jersey. Beginning at
 a stake in the line of Ralph Guild's land and
 being a corner of Railroad Avenue as it is opened
 to said Guild's land; thence running Northerly
 along the West side of Railroad Avenue two hun-
 dred and sixty feet more or less to the corner of
 Dickinson Street; thence Westerly along the
 Southerly side of Dickinson Street fifty feet to **20**
 a stake for a corner; thence Southerly in a line
 parallel to the first course aforesaid, two hundred
 and fifty-nine and a half feet more or less to the
 land of the said Ralph Guild; thence Easterly
 along the land of the said Guild to the place of
 beginning. Being a fifty foot on the Southwest
 corner of Railroad Avenue and Dickinson Streets,
 extending back to the land of Ralph Guild; sub-
 ject always nevertheless, to the free and uninterr- **30**
 rupted use, liberty and privilege of ingress, egress
 and regress, in upon and across the rear of said
 conveyed land, next to the line of said Ralph
 Guild's land as appurtenant to the land next to
 the land of said Guild, as an alley or way of the
 width of ten feet, whoever may be the owners
 or possessors thereof with a view of reserving a
 way or alley for horses, cattle, men and carts to
 pass from the rear of said land and the several
 lots thereof, as they may be laid off to and from
 said Railroad Avenue along the said Guild's land **40**

Exhibit P-3.

forever as fully as the said lot of land is now subject to said alleyway by the deed of E. Spencer Miller, Executor of Rev. Samuel Miller, deceased to said Charles S. Robinson, bearing date the 28th day of December, A. D. 1869, and recorded in Mercer Clerk's office in Vol. 79 of Deeds, fol. 523, by virtue of which said deed the said Robinson claims to have derived his title to said land.

10 Together with all and singular the buildings, improvements, ways, woods, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, use, possession, property, claim and demand whatsoever both in law and equity, of him

20 the said party of the first part, in and to the said premises with the appurtenances: To Have and To Hold the said lot of land hereditaments and premises hereby granted and every part and parcel thereof, with the appurtenances, unto the said party of the second part his heirs and assigns forever. And the said Charles S. Robinson party aforesaid of the first part, for himself his heirs, executors and administrators, do hereby coven-

30 ant, promise and grant to and with the said Andrew L. Rowland, party of the second part, his heirs and assigns, that at the time of the sealing and delivery hereof he the said party of the first part, is seized in his own right of an absolute and indefeasible estate of inheritance in fee simple of and in all and singular the premises hereby granted with the appurtenances and hath good right, full power and sufficient authority in the law to grant, bargain, sell and convey the

40 same unto the said party of the second part, his

Exhibit P-3.

heirs and assigns forever, according to the true intent and meaning of these presents. And also that it shall and may be lawful for the said party of the second part, his heirs, and assigns, at all times forever hereafter peaceably and quietly to have hold, use, occupy, possess and enjoy the said premises with the appurtenances, and every part and parcel thereof without the lawful let, suit, 10
 eviction, interruption or disturbance of the said party of the first part, his heirs and assigns, or any other person or persons whomsoever lawfully claiming or to claim the same: And that the said premises are free and clear and freely and clearly acquitted and discharged of and from all former mortgages, judgments, executions and of and from all other encumbrance whatsoever. And lastly that he the said party of the first part and his heirs, all and singular, the said lot of land, hereditaments and premises hereby granted with the appurtenances, unto the said party of the second part, his heirs and assigns, against them 20
 the said party of the first part, and his heirs and against all and every other persons or persons whomsoever lawfully claiming or to claim the same, shall and will warrant and forever defend. In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written. Charles S. Robinson (Seal). Signed, sealed and delivered in the presence of Jno. F. Hagerman. 30

State of New Jersey, ss.:

Be it known, that on the Twenty-first day of August, in the year of our Lord one thousand eight hundred and seventy-one, before the subscriber, Master in Chancery of the State of New Jersey, personally appeared Charles S. Robinson, who is I am satisfied, the grantor mentioned in the foregoing Deed of Conveyance, and the con- 40

Exhibit P-3.

tents thereof being by me first made known unto him he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

JOHN F. HAGERMAN, M. C. C.

Recorded September 2d, 1871.

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STATE OF NEW JERSEY, }
County of Mercer, } ss.:

I, GEORGE R. ROBBINS, Clerk of the County of Mercer, and also Clerk of the Circuit Court and Court of Common Pleas, holden therein DO HEREBY CERTIFY that the foregoing is a true and correct copy of a certain deed, as the same remains of record in my office, in Vol. 85 of Deeds, on pages 294, etc.

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IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office, this twenty-third day of October, A. D. 1916.

GEO R. ROBBINS,
Clerk.

(Clerk's Seal of the
County of Mercer, N. J.)

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Exhibit P-4.

E. SPENCER MILLER, Surviving
Acting Executor of SAMUEL
MILLER, D. D., deceased,

To

ANN E. TERHUNE, and MARGARET
TERHUNE.

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This Indenture, made this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and seventy-two.

Between E. Spencer Miller, surviving, acting executor of the last will and testament of the Rev. Samuel Miller, late of Princeton, in the County of Mercer and State of New Jersey, deceased, of the first part and Ann E. Terhune and Margaret Terhune, of the second part. Witnesseth, that whereas in a certain amicable suit in the Court of Chancery of the said State of New Jersey, in which the heirs at law and the surviving Executor of said Samuel Miller, deceased, were parties brought for the purpose, among other things of ascertaining the power conferred by said Will on said Executor and to give him full authority to sell the real estate of which the said testator died, seized, in the State of New Jersey, the Chancellor of said State did, on the eighth day of March, A. D., eighteen hundred and sixty-six, order, adjudge, declare and decree by virtue of the power and authority of the said Court of Chancery of said State of New Jersey, among other things as follows: And it is further declared that the said Samuel Miller, deceased intended in his said Will to authorize the sale of his real estate by his executors and a division

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Exhibit P-4.

of the proceeds thereof among the legatees namely, his children and grandchildren so as to increase their several legacies proportionately according to the terms of said Will, in relation to said legacies; yet notwithstanding such intention as it declared that he did not employ such apt words to express his intention as would either devise said

10 real estate, or confer on his executors an express power to sell and convey the same, and thereby dispose of all said estate; it is therefore on the day and year last aforesaid, the eighth day of March aforesaid further ordered adjudged, declared and decreed, among other things that the prayer of the said complainant in said bill be granted. And that the said E. Spencer Miller, as surviving Executor of said Samuel Miller, be and

20 hereby is fully empowered and directed to sell all of the real estate of which said testator died, seized, in the State of New Jersey which still remains unsold, either at private or public sale, at his discretion, as will be most advantageous to said estate; and execute good and sufficient deeds to the purchases of the same, as fully as if he had been expressly ordered by the said testator in his said will to sell the same. And it is further ordered, adjudged and decreed, that all of the

30 heirs at law of the said Samuel Miller, deceased, shall join in all such conveyances to the purchaser or purchasers; as by reference to said decree enrolled in the office of said Court of Chancery will more fully and at large appear. Now this Indenture witnesseth that the said E. Spencer Miller, surviving executor of said Samuel Miller, deceased, as aforesaid in pursuance of the authority and power to him given in and by the said decree and in pursuance of the intention of the

40 said testator and any power and authority by him conferred in said will to this end, and be-

Exhibit P-4.

lieving that the land premises hereinafter described and conveyed will be, in this manner sold most advantageously for said estate; and for and in consideration of the sum of One thousand dollars, to him the said party of the first part, paid by the said Ann E. Terhune and Margaret Terhune, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold and by these presents, doth grant, bargain, sell unto the said Ann E. Terhune and Margaret Terhune, their heirs and assigns. All that certain parcel or lot of land, situate, lying and being in the Borough of Princeton, in the County of Mercer and State of New Jersey, being a part of the land of the Rev. Samuel Miller, deceased, aforesaid and of which he died, seized butted and bounded as follows: Beginning at a stake on the southern side of Dickinson Street, and north west corner of the lands now owned by A. L. Rowland, thence running along said Dickinson Street, south sixty-four degrees, fifteen minutes west forty-four feet more or less to a stake for a corner; thence at right angles to said Dickinson Street south twenty-five degrees, and thirty-five minutes east, two hundred and thirty-eight feet and six inches more or less to a stake on the line of the property now owned by Ralph Guild, thence along said Guild's land, north seventy-six degrees and five minutes east forty-four feet and eleven inches more or less to a stake; being the southwest corner of said A. L. Rowland's land; thence along said Rowland's land north twenty-five degrees thirty-five minutes west, two hundred and forty-seven feet and six inches more or less to the place of beginning. Reserving therefrom always nevertheless unto the said party of the first part, his heirs and assigns, the free and uninterrupted use, liberty and privilege of and passage, in over

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Exhibit P-4.

and across the rear of said above conveyed lot, next to the land of said Ralph Guild as an alley or way of the width of ten feet together with full ingress, egress and regress, in and for the said party of the first part his heirs and assigns, his and their tenants and occupiers or possessors of any or all of the remaining land of the late

10 Samuel Miller which is contiguous to the land of said Guild, west of the lot herein conveyed, with a view of securing a way or alley, for horses, men, carts and cattle to pass from the rear of said lots of land to and from Railroad Avenue, along the line of said Guild forever with the appurtenances; to have and to hold the said land unto the said party of the second part their heirs and assigns, to the only proper use, of the said party of the second part their heirs and assigns forever; and

20 the said E. Spencer Miller doth covenant and agree with the said party of the second part, their heirs and assigns that he the said E. Spencer Miller hath not done any act or thing or suffered anything to be done, whereby the said premises may be changed or incumbered in estate, title or otherwise. IN WITNESS WHEREOF, the said E. Spencer Miller, surviving Executor as aforesaid, hath hereto set his hand, seal the day and year first aforesaid. E. Spencer Miller

30 (Seal.) Sealed and delivered in the presence of Edw. Shippen, Geo. W. Roberts.

State of Pennsylvania, City and County of Philadelphia. Be it remembered that on this twenty-seventh day of September A. D., 1872, before the subscriber a Commissioner for the State of New Jersey for taking the acknowledgments and proof of Deeds, personally appeared the within named E. Spencer Miller, Executor of Rev.

40 Samuel Miller, dec'd who is personally known

Exhibit P-4.

to me to be the grantor in the within conveyance named; and the contents thereof being by me first made known unto him, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified. Given under my hand and official seal at said City, County and State aforesaid this twenty-seventh day of September, One thousand **10**
eight hundred and seventy-two.

Edw. Shippen, A Commr. for New Jersey.

Recorded March 28, 1873.

STATE OF NEW JERSEY, }
County of Mercer, } SS.:

I, GEORGE R. ROBBINS, Clerk of the County of Mercer, and also Clerk of the Circuit Court and Court of Common Pleas, holden therein, DO HERE- **20**
BY CERTIFY, that the foregoing is a true and correct copy of a certain Deed, as the same remains of record in my office, in Vol. 94 of Deeds, on pages 423 &c.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and seal of
office, this 14th day of October,
A. D. 1916.

GEO. R. ROBBINS.

Clerk. **30**

(Clerk's Seal
of the County
of Mercer,
N. J.)

Exhibit P-5.

 MARGARET TERHUNE,

To

 ENOCH RUE.

- 10 THIS INDENTURE, made the first day of April, in
 the year of our Lord one thousand eight hundred
 and eighty-two, Between Margaret Terhune of
 the Township of Hopewell in the County of Mer-
 cer and State of New Jersey party of the first
 part and Enoch Rue of the Township of West
 Windsor in the County of Mercer and State of
 New Jersey party of the second part, Witnesseth,
 that the said party of the first part, in considera-
 20 tion of the sum of Four Thousand Five hundred
 dollars lawful money of the United States to her
 the said party of the first part in hand well and
 truly paid by the said party of the second part
 before the sealing and delivery of these presents
 the receipt whereof the said party of the first
 part does hereby acknowledge, has granted, bar-
 gained, sold, aliened, released, conveyed and con-
 firmed, and by these presents doth grant, bar-
 gain, sell, alien, release, convey and confirm unto
 the said party of the second part, his heirs and
 30 assigns all that certain lot of land situate, lying
 and being in the *Burrough* of Princeton, in the
 County of Mercer and State of New Jersey, butted
 and bounded as follows: Beginning at a stake
 on the southern side of Dickinson Street and north
 west corner of the land now or late owned by A.
 L. Rowland; thence running along said Dickinson
 Street south sixty-four degrees and fifteen minutes
 west forty four feet more or less to a stake for
 a corner; thence at right angles to said Dickinson
 40 Street south twenty-five degrees and thirty-five

Exhibit P-5.

minutes east two hundred and thirty-eight feet and six inches more or less to a stake on the line of the property now owned by Ralph Guild; thence along said Guild's land north seventy-six degrees and five minutes east, *fourty-four* feet and eleven inches more or less to a stake, being the south west corner to the lands now or late said A. L. Rowland, thence along lands now or late said Rowlands north twenty-five degrees and thirty-five minutes west two hundred and forty-seven feet and six inches more or less to the place of beginning, be the same more or less. Reserving therefrom always nevertheless, a right of way reserved by E. Spencer Miller, his heirs and assigns to the free and uninterrupted use liberty and privilege and passage in over and across the rear of the said above conveyed lot, next to the land of Ralph Guild as an alley or way of the width of ten feet, together with free ingress, egress and regress in and for the said party of the first part, his heirs and assigns, his and their tenants and occupiers or possessors of any or all of the remaining land of the late Samuel Miller, which is contiguous to the land of said Guilds west of the lot herein conveyed with a view of securing a way or alley for horses, men, carts and cattle to pass from the rear of said lots of land to and from Railroad Avenue along the line of said Ralph Guild forever. The above described premises being the same parcel of land conveyed by E. Spencer Miller surviving, acting Executor of Samuel Miller, D. D. deceased, to Ann E. Terhune and Margaret Terhune by deed dated the twenty-seventh day of September, eighteen hundred and seventy-two and recorded in the Clerk's Office of Mercer County in Book 94 of Deeds, page 423 &c. and the said Ann E. Terhune having departed

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Exhibit P-5.

this life and in and by her last will and testa-
 ment duly proved before John H. Scudder, Surro-
 gate of the County of Mercer aforesaid did be-
 queath as follows, I give and bequeath to my
 sister Margaret Terhune all my property both
 real and personal wheresoever situate and what-
 ever the same may be for her own proper use and
 benefit and to her heirs and assigns forever. To-
 10 together with all and singular the buildings im-
 provements ways woods water courses rights
 liberties privileges hereditaments and appurten-
 ances to the same belonging or in any wise apper-
 taining and the reversion and reversions remainder
 and remainders rents issues and profits thereof
 and of every part and parcel thereof. And also
 the estate right title interest use possession prop-
 20 erty claim and demand whatsoever both in law and
 equity of her the said party of the first part in
 and to the said premises with the appurtenances.
 To have and to hold the said lot or parcel of
 land hereditaments and premises hereby granted
 and every part and parcel thereof with the ap-
 purtenances unto the said party of the second
 part his heirs and assigns to the only proper use
 benefit and behoof of him the said party of the
 second part, his heirs and assigns forever. And
 30 the said Margaret Terhune party aforesaid of the
 first part for herself her heirs executors and ad-
 ministrators does hereby covenant promise and
 grant to and with the said Enoch Rue party of
 the second part his heirs and assigns—That at
 the time of sealing and delivery hereof she the
 said party of the first part is seized in her own
 right of an absolute and *incasible* estate of in-
 heritance in fee simple of and in all and singular
 the premises hereby granted with the appurten-
 ances and has good right full power and sufficient
 40 authority in the law to grant bargain sell and

Exhibit P-5.

convey the same unto the said party of the second part his heirs and assigns forever according to the true intent and meaning of these presents and also that it shall and may be lawful for the said party of the second part his heirs and assigns at all times forever hereafter peaceably and quietly to have hold use occupy possess and enjoy the said premises with the appurtenances and every part and parcel thereof without the lawful let suit eviction interruption or disturbance of the said party of the first part her heirs or assigns or any other person or persons whomsoever lawfully claiming or to claim the same and that the said premises are free and clear and freely and clearly acquitted and discharged of and from all former mortgages judgments executions and of and from all other encumbrances whatever and lastly that she the said party of the first part and her heirs all and singular the said lot or parcel of land hereditaments and premises hereby granted with the appurtenances unto the said party of the second part his heirs and assigns against her the said party of the first part and her heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend. In Witness Whereof the said party of the first part has hereunto set her hand and seal the day and year first above written. Margaret Terhune (Seal.) Signed, sealed and delivered in the presence of William B. Muirheid.

State of New Jersey, ss. Be it Known, that on this first day of April, in the year of our Lord one thousand eight hundred and eighty-two before the subscriber a Master in Chancery of the State of New Jersey personally appeared Margaret *Tantum* who is I am satisfied the grantor

mentioned in the foregoing Deed of Conveyance and the contents thereof being by me first made known unto her did thereupon acknowledge that she signed sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed. William B. Muirheid, M. C. C.

Recorded April 8th, 1882.

10 STATE OF NEW JERSEY, }
County of Mercer, } ss.:

I, GEO. R. ROBBINS, Clerk of the County of Mercer and also Clerk
(Clerk's Seal of the of the Circuit Court
County of Mercer, N. J.) and Court of Common
Pleas, holden therein,

20 the same being Courts of Record, DO HEREBY CERTIFY, That the foregoing is a true and correct copy of a certain Deed as the same remains of record in my office in Vol. 131 of Deeds, pages 580, etc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, at Trenton, this eighteenth day of October A. D., 1916.

GEO. R. ROBBINS,
Clerk.

Exhibit 6.

30 STATE OF NEW JERSEY, }
Mercer County. } ss.:

I, SAMUEL H. BULLOCK, Surrogate of the County of Mercer, in the State of New Jersey, and ex-officio Clerk of the Orphans' Court of said county and state, do hereby certify that the annexed is a true copy of the last will and testament of ENOCH RUE, deceased, late of the county of Mercer aforesaid, duly proved before the Surrogate of said

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Exhibit P-6.

county on the fifth day of February, A. D. 1891,
as the same remains of record in my office.

IN TESTIMONY WHEREOF, I have here-
(Surrogate's unto set my hand and affixed my
seal of the official seal, this sixteenth day of
County of October, A. D. one thousand nine
Mercer.) hundred and sixteen.

SAM'L H. BULLOCK, 10
Surrogate and ex-Officio Clerk
of the Orphans' Court.

IN THE NAME OF GOD, AMEN. I, ENOCH RUE,
of the township of West Windsor, in the county
of Mercer and State of New Jersey, being of sound
mind, memory and understanding, for which bless-
ing I thank God, do make and publish this my
last will and testament in manner following, that
is to say: 20

FIRST. It is my will and I do order that all my
just debts and funeral expenses be duly paid and
satisfied as soon after my decease as the same
can conveniently be done.

SECOND. I give and devise unto my son John D.
Rue all my lands and real estate lying on the
north side of the Assanpink brook, in the town-
ship of West Windsor, County of Mercer and
state of New Jersey, being about thirty-four acres,
to have and to hold the same to him, his heirs, and 30
assigns forever. I also give and bequeath unto
my said son, his executors, administrators and
assigns, forever, my horse, harness and carriage.

THIRD. I also give and devise unto my said
son John D. Rue all that certain house and lot
owned by me situate in the borough of Princeton,
county of Mercer and State of New Jersey, to
have and to hold the same in trust nevertheless
either to collect and pay the net rents, issues and 40
profits thereof annually to my daughter Rebecca

Exhibit P-6.

VanSyckle, or to permit her to use, occupy and dwell upon said premises with her family, for and during the term of her natural life. I also hereby give my said son John D. Rue, as trustee as aforesaid, the authority and power, from time to time during my said daughter's life, to borrow such sum or sums of money as he may deem necessary, and to secure the payment thereof, with interest, by mortgage to be executed by him, as trustee upon said house and lot; provided, however, that no money shall be borrowed under the power and authority herein given except for the purpose of providing a fund out of which the said trustee may from time to time make such payments as may be necessary for the support and maintenance of my said daughter and any of her children during their minority.

20 FOURTH. I also give and bequeath all my household goods and furniture to my said son John D. Rue, in trust, for the use of my said daughter Rebecca for and during the term of her natural life.

30 FIFTH. At the death of my said daughter Rebecca I give, devise and bequeath the remnant of any fund created by moneys borrowed pursuant to the provisions of the third section above, and the house and lot mentioned in said third section, and the household goods and furniture mentioned in the fourth section (if any shall then remain), unto the children of my said daughter Rebecca, in equal shares or portions, the children of any deceased child, taking his or her share, and do hereby direct my said son John D. Rue, as trustee, to make all necessary conveyances in the law to invest said children with the full title to said property real and personal.

40 SIXTH. All the rest and residue of my estate, real and personal, I give, devise and bequeath

Exhibit P-6.

unto my said son John D. Rue and my said daughter Rebecca VanSyckle, in equal parts, share and share alike to hold to them, their heirs, executors, administrators and assigns forever.

SEVENTH. I hereby nominate and appoint my said son John D. Rue sole executor of this my last will and testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 8th day of February, in the year of our Lord, eighteen hundred and ninety.

ENOCH RUE (L. S.)

Signed, sealed, published and declared by the above named Enoch Rue to be his last will and testament in the presence of us who were present at the same time, and who in the presence of each other and of the testator, and at his request, have hereunto set our names as witnesses this 8th day of February, A. D. eighteen hundred and ninety.

GILBERT D. RUE,
JACOB F. BASTEDO.

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Exhibit 7.

THIS INDENTURE, made this twenty-fifth day of

E. SPENCER MILLER, EXP., &C.,

to

JOHN F. HAGEMAN.

10

May, in the year of our Lord one thousand eight hundred and seventy-four, between E. Spencer Miller, surviving acting executor of the last will and testament of the Rev. Samuel Miller, late of Princeton, in the County of Mercer and State of New Jersey, deceased, of the first part, and John F. Hageman, of Princeton, in the County and State aforesaid, of the second part, Witnesseth that,

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of Chancery of the said State of New Jersey, in which the heirs at law and the surviving executor of said Samuel Miller, deceased, were parties, brought for the purpose, among other things, of ascertaining the power conferred by said will on said executor and to give full authority to sell the real estate of which the said testator died seized in the State of New Jersey, the Chancellor of said state did, on the eighth day of March, A. D. eighteen hundred and sixty-six, order, adjudge,

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and decree by virtue of the power and authority of the said Court of Chancery of said State or New Jersey, among other things, as follows: And it is further declared that the said Samuel Miller, deceased, intended in his said will to authorize the sale of his real estate by his executors and a division of the proceeds thereof among the legatees, namely, his children and grandchildren, so as to increase their several legacies proportionately according to the terms of said will in relation to

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said legacies, yet notwithstanding such intention

Exhibit P-7.

it is declared that he did not employ such apt words to express his intention as would either devise said real estate or confer on his executors and express power to sell and convey the same and thereby dispose of all said estate. It is therefore on the day and year last aforesaid (the eighth day of March aforesaid) further ordered, adjudged, declared and decreed, among other things, **10** that the prayer of the said complainant in said bill be granted. And that the said E. Spencer Miller, as surviving executor of said Samuel Miller, be and hereby is fully empowered and directed to sell all of the real estate of which said testator died seized in the State of New Jersey which still remains unsold either at private or public sale at his discretion, as will be most advantageous to said estate, and to execute good and sufficient **20** deeds to the purchasers of the same as fully as if he had been expressly ordered by the said testator in his said will to sell the same. And it is further ordered, adjudged and decreed that all the heirs at law of the said Samuel Miller, deceased, shall join in all such conveyances to the purchaser or purchasers, as by reference to said decree enrolled in the office of said Court of Chancery will more fully and at large appear. Now this Indenture Witnesseth that the said E. Spencer Miller, surviving executor of said Samuel Miller, deceased, as **30** aforesaid, in pursuance of the authority and power to him given in and by the said decree, and in pursuance of the intention of the said testator and any power and authority by him conferred in said will to this end, and believing that the land and premises hereinafter described and conveyed will be in this manner sold most advantageously for the said estate, and for and in consideration of the sum of Six thousand five hundred and twenty **40** dollars and forty-one cents to him the said party

Exhibit P-7.

of the first part paid by the said John F. Hageman, party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents doth grant, bargain and sell unto the said John F. Hageman, his heirs and assigns all that certain lot of land situate lying and being in the Borough of Princeton, in the County of Mercer and State of New Jersey,

10 being part of the lands of the Rev. Samuel Miller, deceased aforesaid, and of which he died seized, butted and bounded as follows (including lots numbered four and five on a plot of said land filed in the Clerk's office of Mercer County) : Beginning on the southerly side of Dickinson street at the northwest corner of lot numbered three on said plot and running thence (1) by said street, westerly ninety-seven feet and two inches to a corner of lot numbered six on said plot, thence (2) by

20 that lot southerly two hundred and sixteen feet and six inches to land of ————— Guild, thence (3) by his line easterly ninety-nine feet and two inches to the corner of said lot numbered three, and thence (4) by that lot northerly two hundred and thirty-seven feet and six inches to Dickinson street and the place of beginning. Also all that certain lot of land situate in the Borough of Princeton aforesaid (including lots numbered eleven and twelve on the plot aforesaid), bounded

30 as follows, viz.: Beginning on the northerly side of Dickinson street at the southeast corner of lot numbered ten on said plot and running thence (1) by said street easterly one hundred feet to a corner of lot numbered thirteen on said plot, thence (2) northerly one hundred and seventy-nine feet to a corner of lot numbered twenty-nine on said plot, thence (3) westerly one hundred and seventeen feet to a corner of said lot numbered ten, and thence (4) by the line of that lot southerly one

40 hundred and eighty-three feet to Dickinson and the

Exhibit P-7.

place of beginning. Also all that certain lot of land situate in the Borough of Princeton aforesaid (being lot numbered thirty-four on the plot aforesaid) bounded and described as follows, viz.: Beginning on the easterly side of Railroad Avenue at the southwest corner of lot numbered thirty-three on said plot and running thence (1) by said Avenue southerly fifty feet to a corner of lot numbered thirty-five on said plot, thence (2) by that lot easterly one hundred and sixty-three feet six inches to land of the United New Jersey Railroad and Canal Company, thence (3) by said Company's line northwesterly fifty-one feet and six inches to a corner of said lot numbered thirty-three, and thence (4) by that lot westerly one hundred and fifty feet and six inches to Railroad Avenue and the place of beginning. Also all that certain lot of land situate in the Borough of Princeton aforesaid (including lots numbered thirty-six, thirty-seven and thirty-eight on the plot aforesaid), bounded and described as follows, viz.: Beginning on the easterly side of Railroad Avenue at the southwest corner of lot numbered thirty-five on said plot, and running thence (1) by said Avenue southerly one hundred and sixty feet to a corner of lot numbered thirty-nine on said plot, thence (2) by that lot easterly one hundred and thirty-seven feet and ten inches to the line of lot numbered forty-three on said plot, thence (3) by that lot northerly fifty feet to a corner, thence (4) still by said lot easterly sixty-one feet to land of the United New Jersey Railroad and Canal Company, thence (5) by said Company's line northwesterly one hundred and twelve feet and four inches to a corner of said lot numbered thirty-five, and thence (6) by that lot westerly one hundred and seventy-five feet and nine inches to Railroad Avenue and the place of beginning (excepting and reserving the right of an alley or carriage way ten feet wide across the rear of the lot first

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Exhibit P-7.

above described (being lots numbered four and five on said plot) along the line of said Guild for the use and benefit of the owners of the adjacent lands, with the appurtenances). To have and to hold the said land unto the said party of the second part, his heirs and assigns to the only proper use of the said party of the second part, his heirs and assigns forever. And the said E. Spencer Miller doth covenant and agree with the said party of the second part, his heirs and assigns, that he the said E. Spencer Miller hath not done any act or thing or suffered anything to be done whereby the said premises may be charged or incumbered in estate, title or otherwise.

In Witness Whereof, the said E. Spencer Miller, surviving executor as aforesaid, hath hereto set his hand and seal the day and year first aforesaid.

E. SPENCER MILLER, (Seal.)

Sealed and delivered in the
presence of
CALEB S. GREEN.

STATE OF NEW JERSEY,)
County,) ss.:

Be it known that on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy-four, before me, a Master in Chancery of New Jersey, personally appeared E. Spencer Miller, surviving acting executor, &c., who is I am satisfied the grantor mentioned in the foregoing deed, and the contents thereof being by me first made known unto him, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

CALEB S. GREEN,
M. C. C.

Recorded July 28, 1874.

STATE OF NEW JERSEY, }
 County of Mercer. } ss.:

I, GEO. R. ROBBINS, Clerk of the County of Mercer and also Clerk of the Common Pleas and Circuit Court of said County, the same being courts of record holden therein, Do Hereby Certify that the foregoing is a true and correct copy of a certain deed as the same remains of record in my office in Vol. 103 of Deeds, pages 382, etc.

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IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office, at Trenton, this thirtieth day of October, A. D. 1916.

GEO. R. ROBBINS,
 Clerk.

(Clerk's seal of the County
 of Mercer, N. J.)

Exhibit P-8.

20

SAMUEL MILLER,

To

CHARLOTTE M. ZAPF.

THIS INDENTURE, made the fifth day of April, in the year of our Lord one thousand eight hundred and eighty, Between Samuel Miller, minister of the Gospel of Mount Holly, Burlington County, State of New Jersey, of the first part, and Mrs. Charlotte M. Zapf, of the Borough of Princeton, County of Mercer in the same state of the second part, Witnesseth that the said party of the first part for and in consideration of the sum of Fifteen hundred dollars lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part at and before the ensembling

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Exhibit P-8.

and delivery of these presents the receipt whereof is hereby acknowledged hath granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents doth grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, her heirs and assigns All that certain lot of land

10 situate in the Borough of Princeton aforesaid and bounded as follows: Beginning on the southerly side of Dickinson Street at the northwesterly corner of a lot belonging to the Messrs. Zapf and numbered five upon a plan of lots belonging to the estate of the late Rev. Samuel Miller, D. D., of the Borough aforesaid, filed in the Clerk office of the said County of Mercer and running thence

(1) along said street westerly fifty feet to a corner of the lot numbered seven upon said plan and

20 now belonging to Mrs. Mershon; thence (II) by the line of said lot of Mrs. Mershon, southerly two hundred and five feet nine inches to the southeastern corner of the lot last mentioned and to the line of—Guild; thence (III) by Guild's said line easterly fifty one feet to the southwestern corner of lot number five aforesaid; and thence (IV) by the line of the lots last mentioned

30 northerly two hundred and sixteen feet six inches to the place of beginning. Being the lot numbered six upon the plan of lots aforesaid and one of the lots of which the said party of the first part became seized in fee by virtue of a deed of conveyance bearing date of the twenty-fifth day of May, one thousand eight hundred and seventy four duly executed by Elihu Spencer Miller now deceased, surviving acting executor of the last will and testament of the Rev. Samuel Miller, D. D., aforesaid deceased and recorded in Book of

40 Deeds, Vol. 104, pp. 90, &c., in the Clerk's office in the County of Mercer aforesaid. Together with

Exhibit P-8.

all and singular the buildings improvements
woods, ways, rights, liberties, privileges and ap-
purtenances to the same belonging or in anywise
appertaining, and the reversion and reversions,
remainder and remainders, rents, issues and prof-
fits thereof and of every part and parcel thereof.
And also all the estate, right, title, interest, prop-
erty, possession, claim and demand whatsoever both **10**
in law and equity of the said party of the first
part, of in and to the said premises with the
appurtenances. Excepting and reserving the right
of an alley or carriage way ten feet wide across
the rear of the lot above described, &c., along the
line of said Guild for the use and benefit of the
owners of the adjacent lands. To have and to
hold the said premises with all and singular the
appurtenances unto the said party of the second
part, her heirs and assigns, to the only proper **20**
use benefit and behoof of the said party of the
second part, her heirs and assigns forever. And
the said Samuel Miller, party of the first part
for himself, his heirs, executors and administra-
tors doth by these presents covenant grant and
agree to and with the said party of the second
part, her heirs and assigns that he the said party
of the first part, his executors, administrators
and heirs all and singular the hereditaments and
premises herein above described and granted or **30**
mentioned and intended to be so with the appur-
tenances unto the said party of the second part
her heirs and assigns against him the said party
of the first part his executors, administrators and
heirs and against all and every other person or
persons whomsoever lawfully claiming or to claim
the same or any part thereof shall and will war-
rant and forever defend. In Witness whereof
the said party of the first part to these presents,
hath hereunto set their hand and seal. Dated the **40**

Exhibit P-8.

day and year first above written. Samuel Miller,
(Seal).

Signed, sealed and delivered in presence of
John W. Brown.

STATE OF NEW JERSEY, BURLINGTON COUNTY, SS.:

10 Be it remembered that on this fifth day of
April, in the year of our Lord one thousand eight
hundred and eighty before me the subscriber a
Commissioner of Deeds in and for said County
and State personally appeared Samuel Miller of
Mount Holly, Burlington County and State of
New Jersey, who I am satisfied is the grantor
mentioned in the above deed or conveyance and
I having first made known to him the contents
20 and delivered the same as his voluntary act and
deed. All of which is hereby certified by me,
John W. Brown, Commissioner.

Recorded, May 20, 1880.

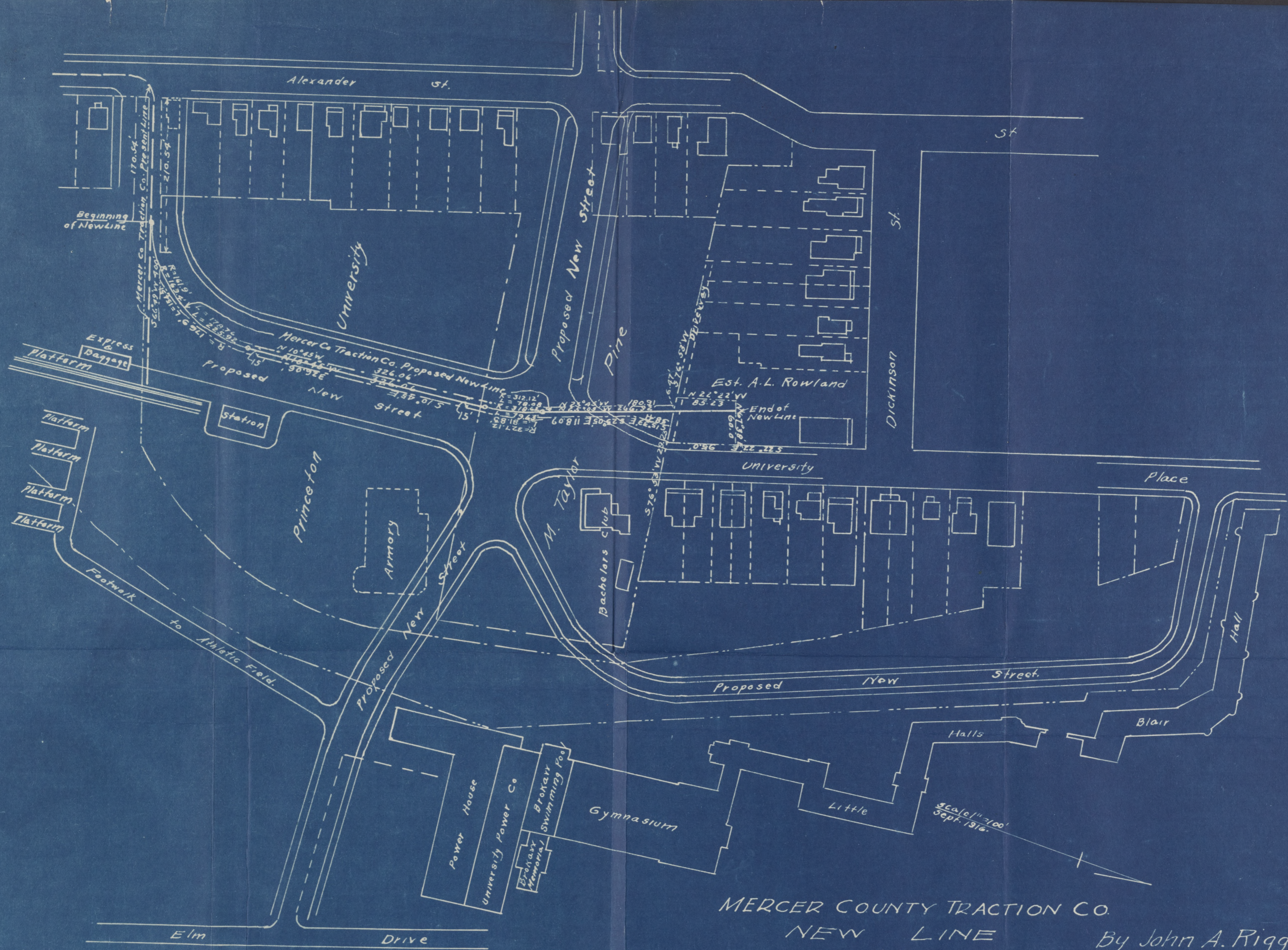
STATE OF NEW JERSEY, }
County of Mercer, } SS.:

30 I, GEORGE R. ROBBINS, Clerk of the County of
Mercer, and also Clerk of the Circuit Court and
Court of Common Pleas, holden therein, DO HERE-
BY CERTIFY that the foregoing is a true and cor-
rect copy of a certain Deed, as the same remains
of record in my office, in Vol. 125 of Deeds, on
pages 483 &c.

IN TESTIMONY WHEREOF, I have hereunto set
my hand and seal of office, this 30th day of Octo-
ber, A. D., 1916.

GEO. R. ROBBINS,
(Clerk's Seal of the County of Mercer.)

Clerk.



MERCER COUNTY TRACTION CO.
 NEW LINE
 AT
 PRINCETON N.J.
 By John A. Rigg
 Attest
 T.W. Gookitt Jr.
 Secretary

Scale 1"=100'
 Sept. 1916.

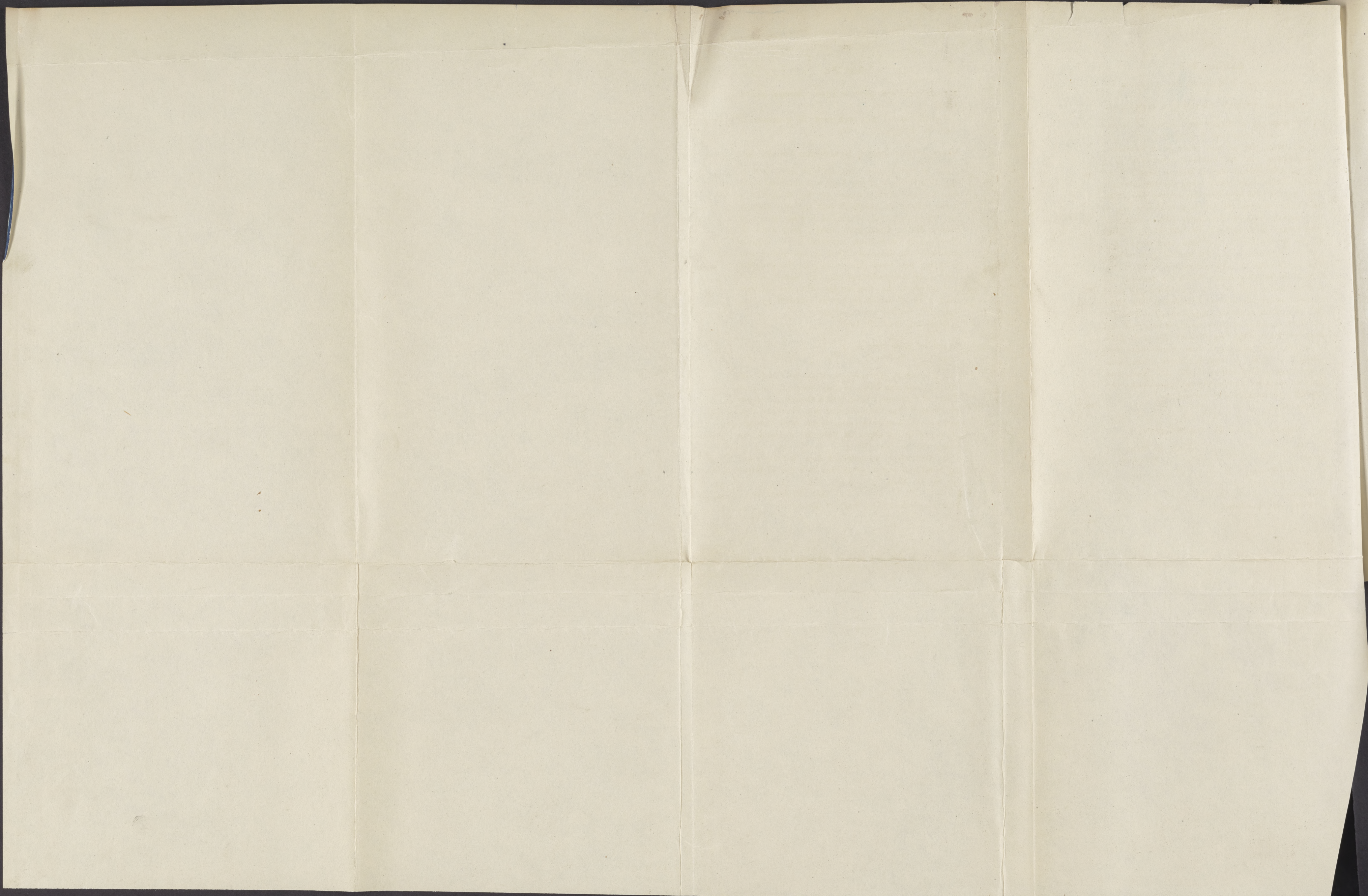


Exhibit P-9.

Description of Route of New Line of

MERCER COUNTY TRACTION COMPANY

in the Borough of Princeton, County of Mercer
and State of New Jersey.

The center line of said route is as follows:

Beginning, for its southerly terminus at a
point in the present line of Mercer County Trac- 10
tion Company, said point being distant one hun-
dred seventy and fifty-four hundredths feet (170.-
54') easterly from the building or fence line of
the easterly side of Alexander Street and run-
ning thence on a curve to the left with a radius
of one hundred sixty-nine and four tenths feet
(169.4') a distance of two hundred and twenty-
five and ninety-two hundredths feet (225.92') to
a point of tangent, thence North ten degrees, for- 20
ty-five minutes ($10^{\circ} 45'$) West, a distance of three
hundred twenty-six and six hundredths feet (326.-
06') to a point of curve, thence on a curve to the
left with a radius of three hundred nineteen and
sixty-two hundredths feet (319.62') for a distance
of seventy-nine and sixty-three hundredths feet
(79.63') to a point of tangent, thence North twen-
ty-five degrees five minutes ($25^{\circ} 5'$) West, two
hundred sixty-six and ninety-two hundredths feet
(266.92') to its northerly terminus.

(Cor. Seal)

30

MERCER COUNTY TRACTION COMPANY,

By JOHN A. RIGG,
Attest: President.
T. W. Grookett, Jr.
Secretary.

ENDORSED:

"Filed and Recorded Oct. 3, 1916.

40

Exhibit P-9.

THOMAS F. MARTIN,
Secretary of State."

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY, that the foregoing is a true copy of Map and Description of Route of New Line of the MERCER COUNTY TRACTION COMPANY, in the Borough of Princeton, County of Mercer and State of New Jersey, as the same is taken from and compared with the original. Filed in my office on the third day of October, A. D., 1916, and now remaining on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Trenton, this Sixteenth day of October, A. D., 1916.

(Seal of the Secretary of State of New Jersey.)

THOMAS F. MARTIN,
Secretary of State.

(Copy of map attached to certification of Secretary of State.)

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Reasons.

(Filed October 30, 1916.)

NEW JERSEY SUPREME COURT.

MERCER COUNTY.

ALEXANDER S. ROWLAND, LILLIAN
C. ROWLAND and FREDERICK A.
ROWLAND, as Trustees under the
Last Will and Testament of An-
drew L. Rowland, deceased, and
individually,

*Prosecutors,**against*

MERCER COUNTY TRACTION COM-
PANY,

Defendant.

On
Certiorari.

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The Prosecutors, by Julian C. Harrison, their attorney, come and pray that the order made by Hon. Thomas W. Trenchard, one of the Justices of the Supreme Court of the State of New Jersey, on the 23rd day of October, 1916, providing for the appointment of three commissioners to examine and appraise the piece or parcel of land owned by the prosecutors, may be set aside and reversed, and for nothing holden for the following:

30

REASONS.

1. Because the said petition is insufficient in law upon the face thereof.
2. Because the said proceedings are defective for failure to join all the parties interested of record in the said lands and premises.
3. Because the petitioner, Mercer County Trac-

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Reasons.

tion Company, has no power to condemn the said land described in its petition.

4. Because the action of the said Mercer County Traction Company in attempting to locate the route of a new line of railway was unauthorized, null and void.

10 5. Because the said Mercer County Traction Company had no power or authority to file the description of route of its alleged new line in the office of the Secretary of State, as set forth in its petition, and it acquired no rights by reason thereof.

20 6. Because the alleged new line so attempted to be located by the Mercer County Traction Company did not involve any new line of railway, or any extension of any existing railway, but a relocation of an old line already in existence and in operation for many years, which old line was, and is, fully adequate for the needs and convenience of the traveling public using the lines of the said Mercer County Traction Company.

30 7. Because the land and premises of deponent sought to be taken is not necessary for the construction of any railway built under the provisions of the act entitled "An Act to authorize the formation of traction companies for the construction and operation of street railways or railways operated as street railways, and to regulate the same," approved March 14, 1893, and the several supplements thereto, and acts amendatory thereof.

8. Because the land sought to be taken is not necessary for the accomplishment of any of the lawful objects of said Mercer County Traction Company.

40 9. Because the purpose and intent of the petitioner Mercer County Traction Company is not in good faith to build and operate a new line of rail-

Reasons.

road, but to abandon the operation of its old line and relocate its tracks over the alleged new line in fraud of the statute under which it asserts the right to take the property of prosecutors.

10. Because the alleged necessity and actual occasion for the alleged new line does not result from any public demand or requirement, but is part of a plan for the rearrangement of the grounds of Princeton University, which is a private and not a public purpose: for the accomplishment of which no power of eminent domain exists. 10

11. Because the defendant Mercer County Traction Company does not require the said alleged new line in the usual and ordinary course of its business, nor in the exercise of its public functions as a common carrier, but to accomplish a purely private enterprise in which it is acting at the request and for the benefit of the Trustees of Princeton University and the Pennsylvania Railroad Company, or the agents and attorneys of one or both of them. 20

12. Because the said order attempts to take private property for private use, contrary to Article 1, Section I of the Constitution of the State of New Jersey, and Article 1, Section XVI of said Constitution.

13. Because the petitioner, Mercer County Traction Company, is not the real party in interest, and your prosecutors are being deprived of their property without due process of law, in violation of Article 5 of the Constitution of the United States. 30

14. Because the said order is in divers other respects illegal, unjust and oppressive, and should be set aside and for nothing holden.

Dated, October 28, 1916.

JULIAN C. HARRISON, 40
Attorney for Prosecutors.

Additional Reason.

(Filed October 31, 1916.)

NEW JERSEY SUPREME COURT.

MERCER COUNTY.

10 ALEXANDER S. ROWLAND, LILLIAN
C. ROWLAND and FREDERICK A.
ROWLAND, as Trustees under the
Last Will and Testament of An-
drew Rowland, deceased,

*Prosecutors,**against*

MERCER COUNTY TRACTION COM-
PANY,

Defendant.

On
Certiorari.

20 The prosecutors, by Julian C. Harrison, their
attorney, come and pray that the order made by
Hon. Thomas W. Trenchard, one of the Justices
of the Supreme Court of the State of New Jersey,
on the 23d day of October, 1916, providing for the
appointment of three commissioners to examine
and appraise the piece or parcel of land owned by
the prosecutors, may be set aside and reversed,
and for nothing holden for the following

REASON :

30 15. Because by these proceedings, your prose-
cutors are being deprived of their property with-
out due process of law, and contrary to the law of
the land, in violation of the Constitution of the
United States and the amendments thereto; and
especially in violation of the fourteenth amend-
ment of said Constitution.

Dated, October 30, 1916.

JULIAN C. HARRISON,
Attorney for Prosecutors.



Exhibit D-1 for Identification.

Exhibit D-1 for Identification



Exhibit D-2 for Identification.

Exhibit 1-1 for Identification



Exhibit D-3 for Identification.

Blank page with faint mirrored text from the reverse side.

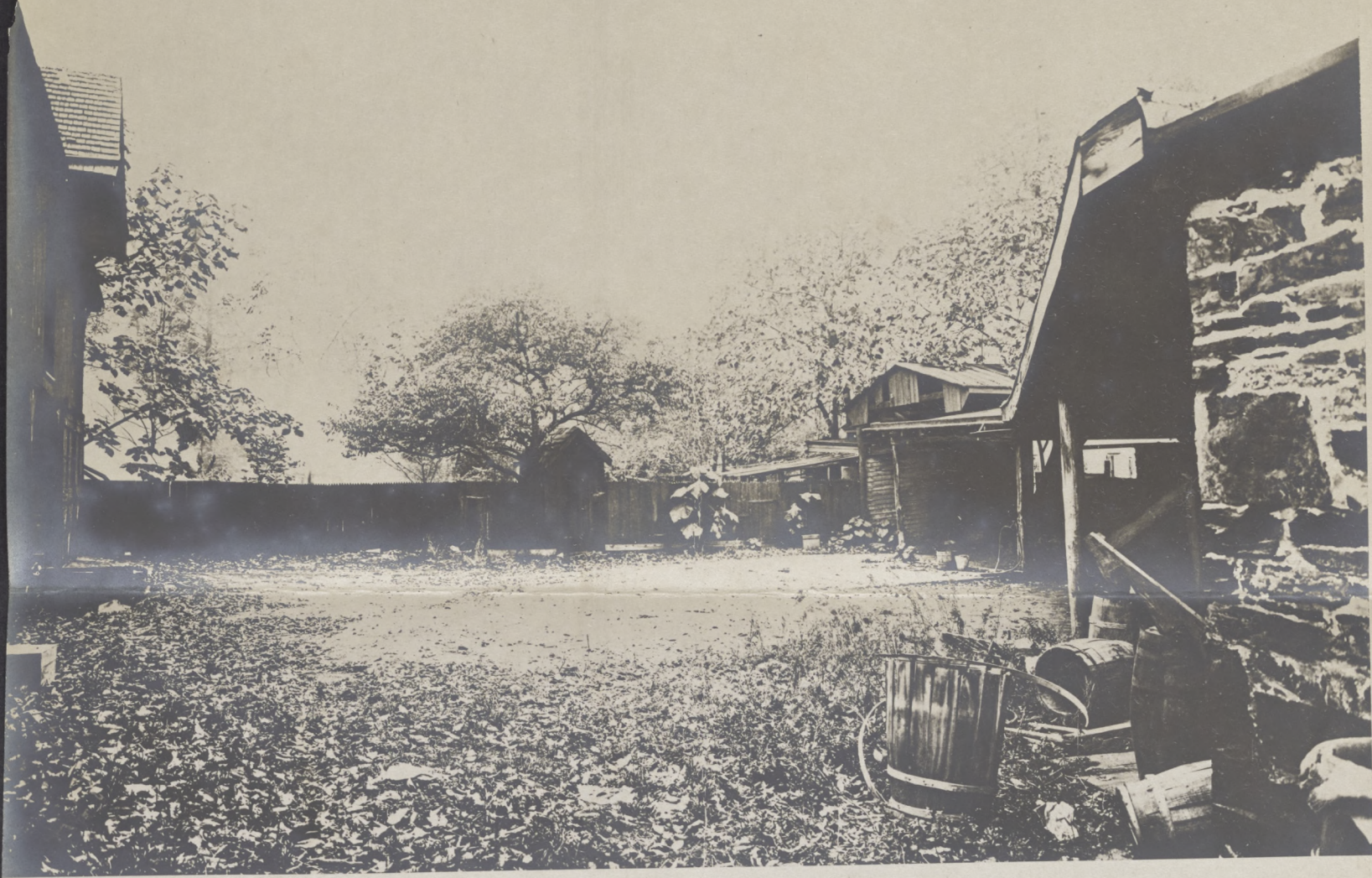
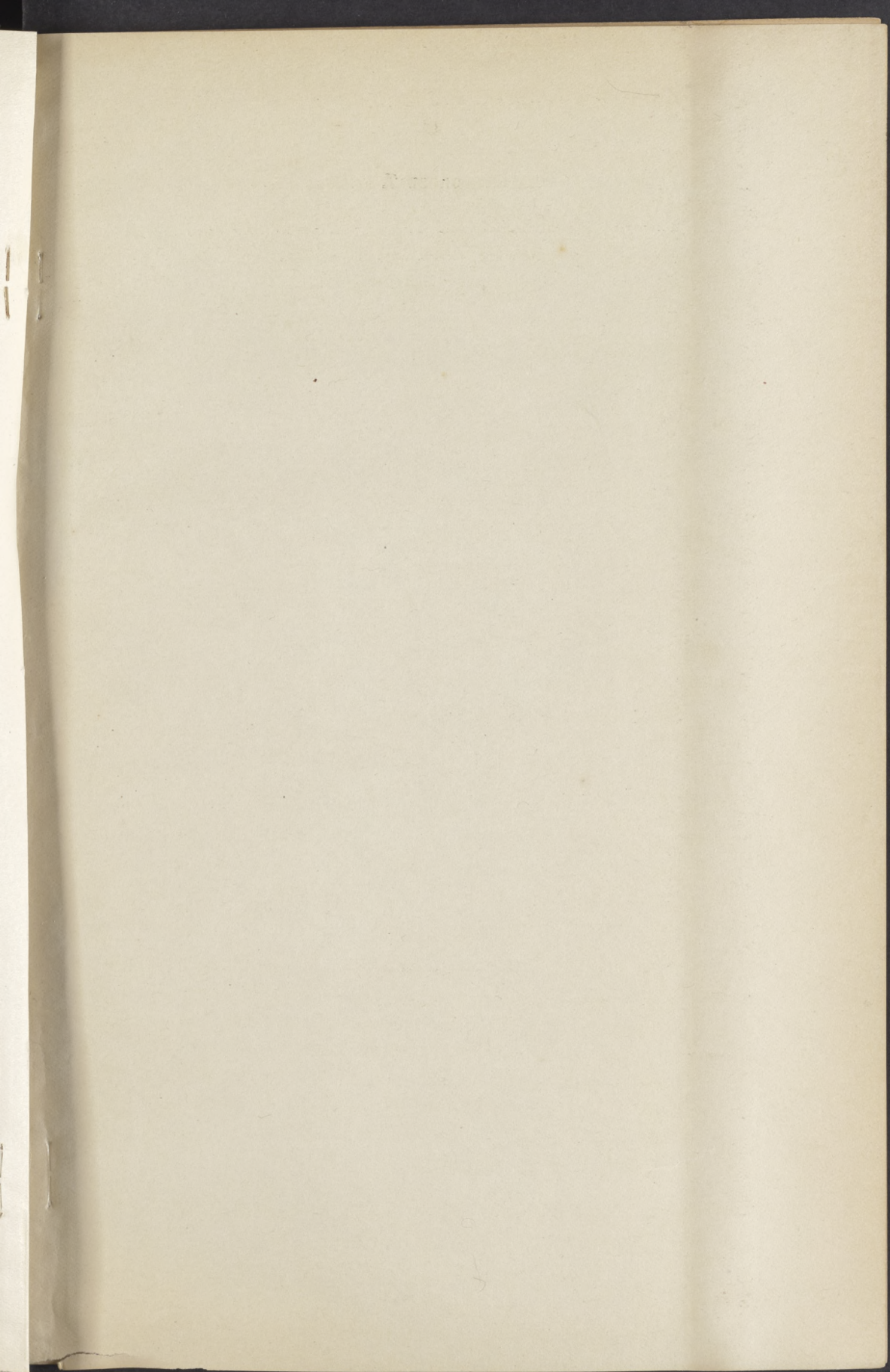


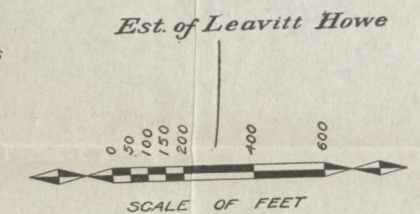
Exhibit D-4 for Identification.

11



Map of the
BOROUGH OF PRINCETON
 MERCER COUNTY
 New Jersey

DRAWN BY
 C. S. SINCERBEAUX, CIVIL ENGINEER
 AND SURVEYOR



PUBLISHED BY
WM. L. ULYAT
 1916

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 BY WM. L. ULYAT.

PRINCETON
COUNTY

Wm. L. UZZAT

Wm. L. UZZAT

Wm. L. UZZAT

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New Jersey Court of Errors and Appeals.

ALEXANDER S. ROWLAND, LILLIAN
C. ROWLAND and FREDERICK
A. ROWLAND, as Trustees, etc.,
and individually,
Prosecutors-Appellants,
against
MERCER COUNTY TRACTION COM-
PANY,
Defendant-Respondent.

BRIEF FOR PROSECUTORS-APPELLANTS.

Statement.

This case comes before the court upon appeal from an order of the Supreme Court dismissing a writ of certiorari granted by Judge Thomas W. Trenchard for the purpose of reviewing an order made by him October 23, 1916, appointing commissioners in condemnation upon petition of Mercer County Traction Company.

The petition seeks condemnation of a parcel of land belonging to appellants in connection with an alleged new line of railway about to be constructed by Mercer County Traction Company in the Borough of Princeton.

The Mercer County Traction Company now operates a line of railway in the Borough of Princeton, with a terminus located east of Dickinson Street and in the rear of the houses located on the easterly

side of University Place (formerly Railroad Avenue). The existing line and the existing terminus are shown in red on the diagram attached to the affidavit of Edward V. Maitland and referred to therein (See diagram opposite page 16; also blue print opposite page 86). The only distinction between the diagram opposite page 16 and the blue print opposite page 86 is that the first diagram is colored so as to show in red the present line, right of way, and terminus of the defendant Mercer County Traction Company; in green, the proposed new line and terminus of the Traction Company; and in blue, the existing right of way and terminus of Pennsylvania Railroad Company.

The proposed new line, as will be seen from an examination of the map, is merely a spur from the existing line, with the terminus of the spur about two hundred and fifty feet distant from the existing terminus. The new line does not serve any new territory, nor is it intended by the Traction Company to increase the facilities now offered to the traveling public by its construction (page 16, lines 10-30).

The trolley company agreed that if Mr. Henry and his associates "would furnish them with a *substitute*, that they would turn over their right of way to the University" (p. 41, lines 22-25).

The so-called new line was located by filing in the Office of the Secretary of State, October 3, 1916, map printed opposite page 86 of the case, together with the description of the line printed at page 84. The total length of this so-called new line is 899.07 feet (See description, pages 24 and 25). The terminal of the proposed new line will be about two hundred and fifty feet westerly from the existing terminal (See testimony of Rankin Johnson, pp. 45 and 46, and diagram opposite page 16). At no point is the so-called new line more than 325 feet from the existing line (Testimony of Rankin John-

son, p. 46, and diagram opposite page 16).

The present condemnation proceedings are a part, though it is submitted not an essential or even appropriate part, of a plan to enlarge the campus of Princeton University and connect the graduate school with the rest of the University. In carrying out the plan, tentative arrangements have already been made, as appears from the testimony of Bayard Henry, to procure the removal of the tracks of the Pennsylvania Railroad from their present location and to locate the new station at the point marked "Station" (Case, page 42, lines 10-25).

The present line from its point of juncture with the new line to the present terminus is to be abandoned by the Traction Company in case these condemnation proceedings are successful and the land now occupied for the terminus is to become a part of the Princeton University campus (page 46, line 30; page 42, line 20).

All the expenses of the acquisition of the alleged new line by the Traction Company, including the property of the prosecutors, is to be borne by certain individuals named in Mr. Henry's testimony (page 43, lines 20-28), and it is at their suggestion that the condemnation proceedings have been instituted by the Traction Company (page 47, lines 10-20).

There has been no co-operation or approval of the "Municipal Government," as suggested in the opinion (p. VIII, line 3); so far as is known to counsel. The record is wholly silent on that point and an examination of the map (p. 16) strongly suggests that the public would best be served by locating the trolley terminal so as not to bring tracks across the proposed new streets.

The prosecutors and appellants own as trustees under the will of Andrew L. Rowland, the plot shown partly in yellow and partly in green, bounded on the north by Dickinson Street, on the east

by University Place, and on the south by land of M. Taylor Pyne (Pine on diagram). The portion of this plot colored in green is the property involved in the present proceeding. It will be noticed that a driveway extends over the southerly end of this green colored portion connecting the lot owners west of the Rowlands on Dickinson Street with University Place, and furnishing them with an outlet and right of way from the rear of their premises to University Place.

The property sought to be condemned consists of about 6,000 square feet of land out of a parcel of 26,000 (see map, p. 16), and the indirect and consequential damages of the condemnation to the prosecutors would be very great (p. 8, lines 3-22).

Rowland's title is evidenced by two deeds. Exhibit P-1 (pp. 49-53) conveys sixty feet frontage on Dickinson Street, the westerly portion of the plot shown in yellow. Exhibit P-3 (pp. 58-62) conveys fifty feet on Dickinson Street with Railroad Avenue (now University Place) as the easterly boundary. The two conveyances give the Rowlands title to a plot with a frontage of one hundred and ten feet on Dickinson Street and about two hundred and sixty feet on Railroad Avenue or University Place. Railroad Avenue is an old name for what is shown on the map as University Place (see testimony of defendant's witness Royal H. Rose, pages 36, lines 10-30). The conditions shown on the map can be better understood by reading "Railroad Avenue" in the deeds as "University Place," and "land of Ralph Guild" as "land of M. Taylor Pyne." In all the deeds offered in evidence a right of way over the driveway in the rear of the Dickinson Street lots adjoining Guild's land (now land of Pine) is expressly reserved. These deeds were offered for the purpose of showing, as they do show, that there are various persons "interested of record" in the property sought to be taken, who are not mentioned in the petition or made parties to the proceeding.

Grounds of Appeal.

The grounds upon which a reversal of the order and the sustaining of the writ are urged, follow :

(1) That the statute gives to the Mercer County Traction Company no power under the circumstances disclosed, to take property of prosecutors-appellants by eminent domain.

(2) That the real purpose of the condemnation proceeding is not a public but a private purpose; that the public necessity which is asserted to exist is merely colorable and that the proceeding is for that reason not warranted by the statute because foreign to its purpose.

(3) That jurisdiction was not conferred upon the judge who made the order appointing the commissioners, because the petition initiating the proceedings failed to set forth the necessary jurisdictional facts, *i. e.*, the names and addresses of all persons appearing of record to have any interest in the premises.

(4) That a construction of the statutes which would permit condemnation under the circumstances disclosed would violate the constitutional rights of appellants by depriving them of their property without due process of law and contrary to the provisions of the Fourteenth Amendment of the United States Constitution.

FIRST POINT.

The statute gives no power under the circumstances disclosed to take by eminent domain.

The statute involved is Section 13 of the Traction Act of 1893, which reads as follows:

“That it shall and may be lawful for any company organized under this act to take so much land or material as may be necessary for the construction of any railway built under the provisions of this act, either as an extension of the line of an existing railway or a new line, not exceeding 60 feet in width, except where a greater amount shall be required for the slopes of cuts and embankments, * * *.”

The proposed line located by defendant is certainly not an extension within the meaning of the statute, which has been judicially defined as a prolongation from either terminus.

Metlar vs. Middlesex, etc., Traction Co., 72 N. J. Eq., 524.

Neither is it under the statute a new line, in the sense that it serves new territory, or a different portion of the community, or has any business of its own.

Akers vs. United N. J. R. Co., 43 N. J. L., 110, 112.

What defendant is really attempting to do is to relocate its old terminal and part of its old line. This it cannot do, its old line having been completely constructed.

Morris vs. Essex R. R. Co. vs. C. R. R. of N. J., 31 N. J. L., 205.

Moorhead vs. Little Miami R. Co., 17 Ohio St., 340.

Blakemore vs. Glamorganshire Canal Co.,
1 My. & Keene, 154.

The following language is used by Judge REED in the Metlar case, 72 N. J. Law, 524, at p. 526:

"The only authority invoked by the corporation is the provisions of section 13 of the act of 1893. Gen. Stat., p. 3239. This section enacts that 'it shall be lawful for any company organized under this act to take so much land or material as may be necessary for the construction of any railway built under the provisions of this act, either as an extension of the line of an existing railroad or a new line, not exceeding sixty feet in width, except where a greater amount shall be required for the slopes of cuts and embankments.'

The query thus presented is whether the strip in question is to be used for the purpose of either extending the line of an existing road or of building a new road.

The rule of construction to be applied in solving this question is entirely settled. The grant of power is to be strictly construed against the grantee. *Vreeland vs. Jersey City*, 25 Vroom, 49; *Loucheim vs. Hemsley*, 30 *Id.*, 149; *New Jersey Zinc and Iron Co. vs. Morris Canal and Banking Co., et al.*, 17 Stew. Eq., 398; affirmed, 2 Dick. Ch. Rep., 598.

The words 'extension of line of an existing railroad' conveys at once to the mind the idea of the prolongation of a road from one of its termini. It is true that 'extension' is sometimes the equivalent of 'expansion,' and when predicated of space, may mean lateral as well as longitudinal enlargement. A man who says he has extended, or intends to extend, the boundaries of his yard, or the limits of his farm, may mean an expansion of the area of these properties in any direction, but when a

man says he is going to extend his lane, or that his neighbors are going to extend a private road, or that the public authorities are going to extend a boulevard, no one would conceive for a moment that he meant that the lane, or road, or boulevard, were to be merely widened.

So, in the present instance, when the legislature spoke of an extension of—not even a right of way, but the line of an existing road—it meant not widening the line of the road, but the protraction thereof. It seems impossible to assign to the word ‘extension,’ used in this connection, a meaning equivalent to lateral expansion without resorting to a forced and unnatural construction of the statutory language in favor of the grantee of the right to condemn.

Nor do I think that it can be said that the strip is to be used for new line. There is one line already existing on the adjoining thirteen-foot strip. The additional line sought to be condemned is to be used as a portion of a single right of way, of which the original strip will be a part. The multiplication of tracks, or switches, or turnouts, can no more make the entire road a new railroad than can the addition of a new portion to an old house transform it into a new structure.

Regarded, therefore, as a line to be used for the purpose of the old road, the land sought to be condemned cannot be said to be necessary for a railroad built as a new line. Nor can we regard the use to which the new line is to be put as one entirely dissociated from the use to which the leased strip is now devoted. If the strip sought to be condemned could be said to be taken for a new line complete in itself, then the statutory limitation respecting the width of the strip taken would become a nullity. The company could as well condemn sixty feet in

addition to the leased thirteen feet as it could condemn forty-seven feet, which, with the thirteen feet, is within the statutory limitation; and then, when this alleged new road shall have been completed, the company can condemn an adjoining strip of sixty feet in width, to be used in conjunction with the completed road, and so this process could be repeated indefinitely.

The sixty-foot restriction, however, is only one of the limitations upon the grant of power to take land under the fifteenth section of the act of 1893. If it was the only one, then it may be that the company could take by repeated purchases or condemnations until its route reached the width of sixty feet; but the strip taken must be not only sixty feet or less in width, but must be for the construction of a road built as an extension, namely, the continuation of an existing road, or a strip to be used for a road built as a new line.

As we think this strip is to be used for neither, there exists no legislative authority to support the attempted exercise of the power to condemn.

The judgment of the Supreme Court shall be reversed."

This case is in all respects an authority against the rights of defendant in the case at bar.

Defendant cannot avail itself of the provisions of P. L. 1908, p. 205:

(1) Because that act applies only to the change of location of the route of "any new line of railway, or any extension of any existing railway"—not to the change of location of an existing railway.

(2) Because that Act (P. L. 1908, p. 205), even if applicable, requires (Section 1) the fil-

ing of an amended map showing such change and alteration of location, which filing is a necessary preliminary to the right to take by eminent domain conferred by Section 2. No such map has been filed.

(3) Because if the procedure attempted here were permitted under the act the provisions of Section 3 providing for reversion to the original owners of the abandoned portion of the old line could be defeated and a greater width than 60 feet acquired.

SECOND POINT.

No necessity exists for the proposed new line.

(a)

The question of necessity must appear to the satisfaction of the court and cannot be determined by the corporation seeking to exercise the right of eminent domain.

There is no doubt that a landowner may question the necessity of the exercise by a corporation of the power of eminent domain which has been conferred by the State.

In *Olmstead vs. Proprietors of the Morris Aqueduct*, 46 N. J. L., 495, the court says (page 500):

“The only remaining question is that which relates to the necessity of taking and diverting under condemnation proceedings the spring and rivulet mentioned in the application and appointment of commissioners. It is urged on the part of the prosecutor that the proprietors of the Morris Aqueduct already have sufficient facilities to supply Morristown with water, and that the present facilities will

furnish an adequate supply for several years. If this be so, the proposed condemnation should not be permitted. The diversion of the waters of a spring or stream from a farm, or a mill-seat, should not be allowed even upon liberal compensation, unless obviously necessary for the public good. The legislature has given power to divert such waters when necessary, but it is not for the corporation interested to determine the necessity. As the question of necessity lies at the foundation of the proceedings to condemn, and as the power sought to be exercised is great, it should be kept in control by the court before which the question arises, and the court should be entirely satisfied of the need."

The court then went into the evidence offered on each side and found in favor of the Aqueduct Proprietors.

(b)

No public necessity exists in the present case.

It is obvious that the convenience of the traveling public will not be any better served by the proposed new line than by the line already existing and in operation.

The termini of the two lines, the existing and the proposed lines, are distant from each other less than 250 feet: the existing line having its terminus on a plot of land lying east of University Place, 135 feet from the easterly line of University Place, and with means of ingress and egress through an alley to University Place, while the proposed terminus would be located on the westerly line of University Place, adjoining the street.

The new line would be objectionable also by reason of the fact that it crosses and traverses certain proposed new streets, thereby interfering with the

vehicular and the passenger traffic along the said streets when the same shall have been opened.

The existence of the terminus close to the residence of Mrs. Rowland, and the congregation at that point of a large number of passengers and idlers, such as are accustomed to make their headquarters at a public place of that character, will render the location of the terminus of the proposed new line upon the property of the Rowland estate a positive nuisance, and will seriously diminish, if it does not entirely destroy, its residential character.

The question of the necessity for the taking of the property of a landlord by a corporation vested with the power of eminent domain, is a judicial question; and neither the landlord nor the court is bound to accept the *ipse dixit* of the corporation in regard to such necessity. *Easton & Amboy Railroad Company vs. Inhabitants of the Township of Greenwich*, 25 New Jersey Equity (10 C. E. Green), 565.

It is the duty of the court to protect a landowner from an abusive exercise of the power of eminent domain, where the necessity asserted by the petitioner is merely colorable. *Lynch vs. Commissioners*, 32 Ch. Div., 72.

It is evident in the present case, from the testimony both of Mr. Henry and of Mr. Johnson, the president of the Trenton and Mercer County Traction Company, lessee of the petitioner, that no necessity exists for two lines of railway 250 feet apart, and that the Traction Company, under the guise of locating a new line, is really attempting to change its old line and the location of its terminus, in other words, that the necessity is merely colorable.

Having no power to change the location of its line after the same has been completely constructed and operated for a number of years (see *Moore-*

head vs. Little Miami R. Co., 17 Ohio, 340, and cases cited under Third Point), the petitioner seeks to condemn upon the pretense that it is taking for a new line.

Whether we regard the word "necessary" as used in Section 13 of the Traction Act as synonymous with convenient or desirable, or whether it be considered as the equivalent of the phrase "reasonably required," it is insisted that the necessity or requirement in order to give the right to condemn must arise out of the business of the Traction Company and not as a result of some collateral matter with which the public functions of the Traction Company are in no wise concerned. The exercise of the power of eminent domain must be limited to the accomplishment of the purposes for which it is granted. It cannot be exerted for the accomplishment of any other object, no matter how laudable that other object may be. To permit the Traction Company, at the instigation of the estimable gentlemen who are engaged in improving the Princeton campus, to re-locate its existing line at will, would establish a most dangerous precedent and result in an abusive exercise of the power of eminent domain for the accomplishment of objects which it was never intended should be realized in such a manner.

That the end to be accomplished by Mr. Henry and his associates is a desirable one does not justify the use of the means employed. The effect is to work a fraud upon the statute.

In *Rensselaer & Saratoga Railroad Company vs. Davis*, 43 N. Y., 137, it is said (page 146) :

"It may, however, be safely asserted that the acquisition of lands for the purpose of speculation or sale, or of private interference by competing lines or methods of transportation, or in any collateral enterprise remotely connected with the running or operating of

the road, although they may increase its revenue in business, are not such purposes as authorized the condemnation of private property."

In that case a railroad company, having one of its termini upon Lake Champlain, applied to condemn lands situated on the shore near the terminus, alleging that a charter had been granted by the government of Canada, for the construction of a ship canal connecting Lake Champlain with the St. Lawrence River, which, when completed, would greatly increase the business of the railroad. Its lands were connected for the construction of slips and docks for the accommodation of vessels carrying freight, and tenements for the employees of the railroad, and to meet the requirements of the anticipated business. But the company already had enough accessible water front and docks which were only partly used and were capable of extension on its own premises; and it did not appear that the work of the ship canal had been commenced or that the capital to construct it had been secured. It was therefore held that the application to condemn should be denied; the Court saying that it was not satisfied from the proof in the case that the lands of the defendant were required by the respondent for the present or prospective business of the corporation.

The case at bar is strictly analagous to *Lynch vs. Commissioners* (*supra*) where the necessity alleged to exist for taking for one purpose was a mere subterfuge to accomplish another purpose for which no power to take existed. Such a taking would constitute a fraud upon the statute.

As was said in *Sisters of Charity vs. Morris R. Co.*, 82 N. J. L., 214, at page 217, where a similar question was involved:

"The right of eminent domain is a sovereign power, and it is elemental law that its exer-

ercise by a corporation under legislative sanction constitutes such corporation the state's agent for the exercise of such sovereign power for the purposes for which such agent was authorized to use it, and for no other purpose. Whenever, therefore, such agent seeks to employ the sovereign right thus granted to it for a purpose other than that for which it was granted, it is acting outside of its agency and in excess of its authority, and for such acts, when they constitute an invasion of private property, the mere fact of incorporation affords no valid support.

“Such acts constitute both a public and a private injury; for the public wrong the remedy is the forfeiture of corporate existence at the suit of the attorney general, but for the private injury the remedy goes no further than to keep the corporation within the bounds of its lawful authority, which is the peculiar and indeed the original function of the writ of certiorari.”

If we regard the substance and not the form of the statute under consideration, it must be evident that the Mercer County Traction Company does not propose to build a new line of railway as contemplated by the Statute.

What is proposed is, to assist in the accomplishment of a very praiseworthy, but nevertheless private, object at the expense of the parties who have so generously interested themselves in its accomplishment. Except as it is incidental to the accomplishment of that object there is no necessity nor occasion for the new line.

It is said that the Pennsylvania Railroad desires the Traction Company to relocate its tracks, but there is not a scintilla of evidence to show that the Traction Company is under any legal compulsion to do so. Nor is it apparent that the

public convenience requires the removal of the tracks of the Pennsylvania Railroad from their present location. The underlying reason for the proposed removal of the Pennsylvania Railroad tracks and the moving of its station, is what Mr. Henry refers to in his testimony as the "general development," the idea of consolidating the campus of Princeton University with the grounds of the graduate school.

THIRD POINT.

The petition having failed to set forth the facts which the statute requires to be stated the judge had no jurisdiction to make the order appointing commissioners.

The practice in condemnation proceedings is now regulated by the provisions of the Condemnation Act, P. L., 1900, page 79, entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use."

The practice provisions of this Act supersede the practice provisions of the Traction Act of 1893 as embodied in the Traction Act of that year.

Traction Co. vs. De Gray, 79 N. J. Law, 59 (56 Atlantic, 250).

The Act of 1900 provides (Section 2) :

"The party exercising the right of taking shall present a petition to one of the justices of the Supreme Court for the appointment of three commissioners to fix the compensation to be paid, which petition shall contain a particular description of the land and property required, and shall set forth the names of the owners and occupant, if any there be, and of

the persons appearing of record to have any interest in said property, and the residences of said owners, occupants and persons, if the same can be ascertained, which petition shall be verified by the oath of the engineer or agent of the petitioner."

Section 3 of the Condemnation Act provides that notice shall be given not only to the owners and the occupants, but also to "the persons interested"; the section providing, furthermore, that such notice given in the manner prescribed by the justice shall be valid and effectual to bind all parties interested in the land or property.

It is quite clear that the statute contemplates a proceeding *quasi in rem*—an omnibus proceeding wherein all parties shall be notified either personally or by publication. These parties are divided into three classes: (1) owners; (2) occupants; (3) persons appearing of record to have an interest.

It is well settled that a petition to condemn land must state all jurisdictional facts, and unless it does so the right of the condemning party to exercise the power of eminent domain does not exist and an order appointing commissioners cannot properly be made.

Wendell vs. Board, 76 N. J., 499 (70 Atlantic, 152);

See State Nat'l. Ry. vs. Eastern & Amboy R. Co., 36 N. J. L., 181;

Butterworth Judson Co. vs. C. R. R. of N. J., 72 Eq., 568.

The Court will not indulge in any presumptions in aid of jurisdiction. Every provision of the statute must be strictly complied with and such compliance must affirmatively appear on the face of the proceedings.

Manda vs. Orange, 75 N. J.L., 251;

Vreeland vs. Jersey City, 25 Vroom, 49;

Hampton vs. Clinton, 36 Vroom, 158;
Louchheim vs. Hemsley, 30 Vroom, 149.

It may be contended that the statute is satisfied by the allegation of the petition (paragraph 6) that certain persons are all the persons interested in the said lands and premises. This is a mere legal conclusion. On the other hand an allegation in the language of the statute that certain parties named "appear of record to have an interest" would be a statement of fact. Since the petition fails to give the names and residences of "the persons appearing of record to have an interest" in the premises the Court is as much without jurisdiction to proceed as if the petitioner had failed to give the names and residences of the owners and occupants.

The evidence shows that the statement required by the statute would have required the naming of all the owners of the lots on Dickinson Street who have a right of way over the property sought to be condemned. (See Deeds in Evidence.)

That the holders of easements are persons appearing of record to have an interest in the property admits of no doubt. They are entitled to compensation for any interference with their use of the lane (*State, New York, etc., R. Co. vs. Capner*, 49 N. J. L. [20 Vroom], 555), and the fact that they have a remedy by action (*Butterworth Judson Co. vs. C. R. R. of N. J.*, 72 N. J. Eq., 568), does not excuse the Traction Company from complying with the terms of the Eminent Domain Act.

FOURTH POINT.

The constitutional rights of the prosecutors would be violated by the proposed taking.

The broad proposition that property cannot be taken under the power of eminent domain, or the taxing power, for private use or benefit without

violating the Fourteenth Article of Amendment to the Constitution of the United States, and the law of the land is well settled.

Cole vs. LaGrange, 113 U. S., 1;
Missouri P. R. Co. vs. Nebraska, ex rel.,
Bd. of Transportation, 164 U. S., 403.

See also:

Coster vs. Tide Water Co., 18 N. J. Eq.,
 54;
Matter of Niagara Falls, etc., R. Co., 108
 N. Y., 375.

It will not be contended for a moment that Mr. Henry or his group of associates has any power of eminent domain or that such power resides in the trustees of Princeton University under the circumstances existing in the present case. What they have not the power to do directly they should not be permitted to accomplish by indirection.

In *Albright vs. Sussex County L. & P. Commission*, 71 New Jersey Law, 303, at page 308, Judge DIXON says:

“The power of eminent domain is one of the extreme powers of government. When employed for the purpose of enabling it to perform its own functions its scope is limited only by the wisdom of the legislature. But when it is exerted with the view of furnishing facilities to private individuals, it so easily runs into the taking of one man’s property to give it to others, in disregard of that right which the Constitution declares to be inalienable—the right of protecting property—that it behooves the courts to take care that constitutional rights are guarded and constitutional limitations observed.”

Furthermore, on the question of necessity, the statute conferring the right of eminent domain upon the traction company must be so construed as to require proof to the satisfaction of this Court of the fact that the proposed line is reasonably necessary in order to render the statute constitutional. To make the traction company the final judge of the necessity for taking the property of the prosecutors would be beyond the power of the legislature.

The courts of Vermont have held that a statute which provided for a hearing upon the question of compensation only by the commissioners in condemnation cases and attempted to forbid the courts from passing upon the necessity for the proposed taking was unconstitutional.

Stearn vs. City of Barre, 50 Atl., 1086
(73 Vt., 281).

In Cooley on Constitutional Limitations, page 779, it is said:

“The moment the appropriation goes beyond the necessity of the case, it ceases to be justified on the principles which underlie the right of eminent domain.”

And again at page 808:

“* * * the right being based on necessity, cannot be any broader than the necessity which supports it.”

In accordance with these principles, the courts of New York have held that a statute authorizing a greater appropriation of private property than was actually required for the public improvement contemplated was unconstitutional and void.

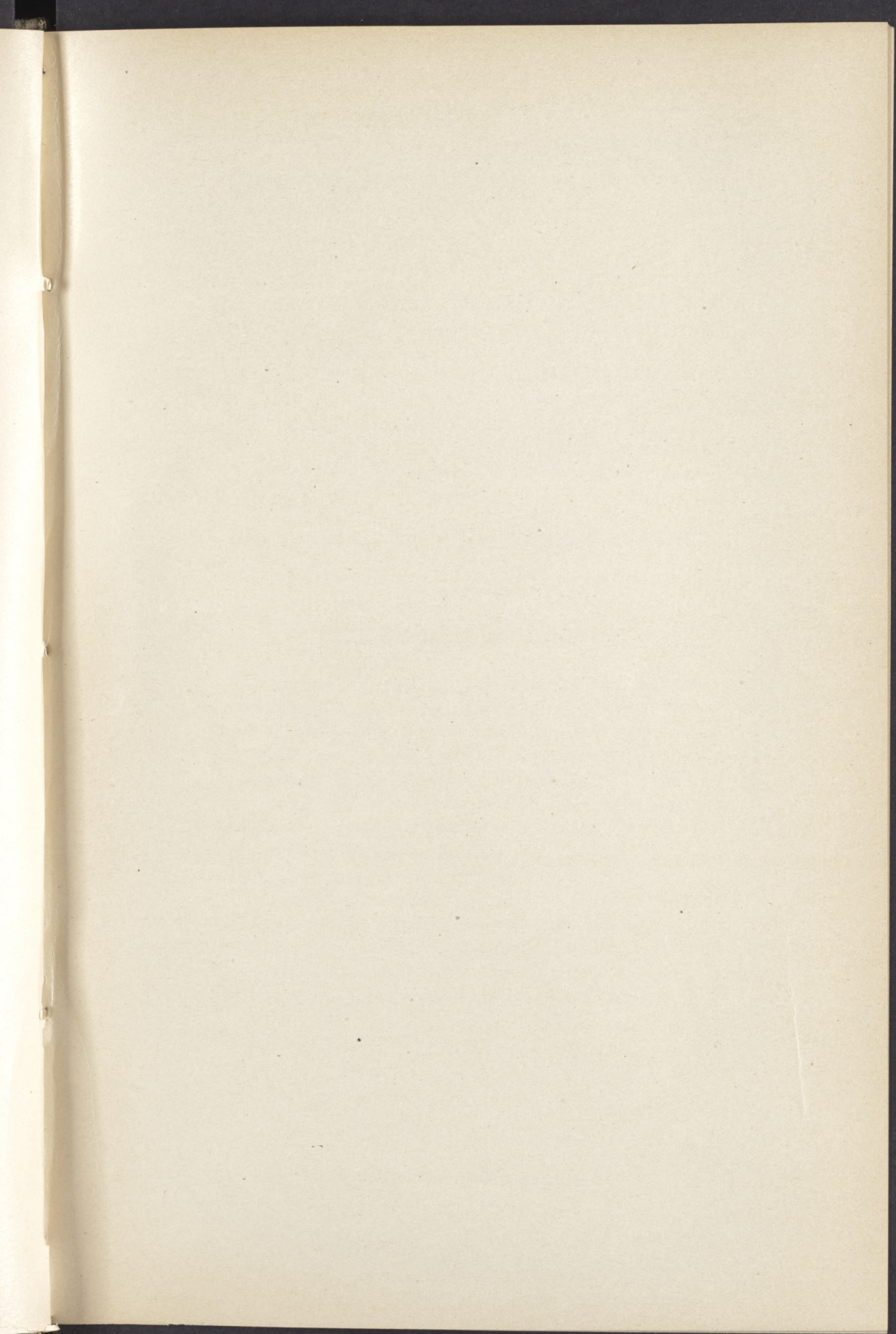
Matter of Albany Street, 11 Wend., 151.

On the question of the necessity of notice to parties having easements over a portion of the premises sought to be taken, it is also fitting to say that unless the condemnation act be construed to require notice to such persons with an opportunity to be heard both upon the question of the necessity of the taking and their right to compensation, the statute itself would be unconstitutional.

Maxwell vs. Goetschius, 11 Vroom, 383.

All of which is respectfully submitted.

JULIAN C. HARRISON,
Attorney for and of Counsel
with Prosecutors.



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**NEW JERSEY COURT OF ERRORS AND
APPEALS**

ALEXANDER S. ROWLAND, LILLIAN C. ROWLAND and
FREDERICK A. ROWLAND, as Trustees, etc., and
individually,

Prosecutors-Appellants,

vs.

MERCER COUNTY TRACTION COMPANY,

Defendant-Respondent.

BRIEF FOR DEFENDANT-RESPONDENT

STATEMENT OF CASE.

This is an appeal from an order of the Supreme Court dismissing a writ of certiorari allowed to review an order of a Justice of that court appointing commissioners in condemnation proceedings under the Eminent Domain Act (C. S. p. 2181, P. L. 1900, p. 79). The defendant-respondent, Mercer County Traction Company, was incorporated under the Traction Act (C. S. p. 5021, P. L. 1893, p. 302), by which powers of condemnation are given.

The traction company owns an operated line of railway running into the borough of Princeton, and by resolution passed September 15, 1916 (Case, p. 24), resolved to build a new line 899.07 feet in length, beginning at a designated point in its present line,

and running through certain lands, and then through a tract of land of the prosecutors and another for a certain distance to a point therein as a terminus. The traction company filed a description of this new line and a map in the office of the secretary of the state of New Jersey on October 3, 1916. For the construction of such a new line, it was necessary to acquire a certain tract of land sixty feet in width and particularly described in the petition of the traction company (Case, p. 21), to the extent that the prosecutors-appellants and one Elizabeth H. Rowland, and another as tenant, were the "owners and occupants of and the persons interested in said land and premises," and as being so interested in said land and premises, the above-indicated persons were made parties.

The prosecutors-appellants claim there are other persons interested in the land and premises who should have been made parties. The most that is claimed is that these parties have a right of ingress and egress to and from other lands over an alley or way of ten feet at one end of such land and premises. The defendant-respondent claims that it has not been proved that any such right of way exists and that if such does exist the rights are not "property required" by the traction company.

The property sought to be condemned is part of an old coal yard which, while adjoining, is distinct from the dwelling house yard and is separated therefrom by a fence. (See photographs, Exhibit D1, D2, D3 and D4, Case, pp. 91 to 94), testimony of Mr. Bayard Henry (Case, p. 40, at line 6), and testimony of Royal H. Rose (Case, p. 37, at line 25). The property sought is at least 75 feet from the rear of the Rowland dwelling house, as appears on the map (Case, p. 84), and, of course, is located a greater dis-

tance from the front of the house which faces on Dickinson Street. The traction company by acquisition of this property would secure a much more desirable terminus in the borough of Princeton than its present one. The old terminus as appears from the maps is not directly located upon a public street, but is reached by a narrow alleyway usable only by persons on foot. The terminus of the new line would give upon University Place a public highway. This would make a most desirable terminus for the trolley from every public standpoint. The building of this new line and the location of its terminus, as proposed, will be in accord with large public improvements which public-spirited gentlemen have suggested. They have offered to contribute a large portion of the costs of these improvements. These contemplated improvements include the construction of a boulevard connecting the campus of Princeton University with the grounds of the Graduate College and of Princeton Seminary and the relocation of the Pennsylvania Railroad station at the head of a proposed new street, which would be a continuation of University Place, and would cross the proposed boulevard.

It is most desirable for the public good that a new passenger station of the steam railroad be built upon a new site. The present station was built twenty-four or twenty-five years ago, when the number of students attending the university did not exceed one-third of the present number, and there are not sufficient grounds around it to permit of the erection of a new station of proper size and with proper track facilities and convenient approaches for conveyances. No desirable location for the station of the Pennsylvania Railroad can be found which would not necessitate a grade crossing of the tracks of the railroad

and the trolley unless a new line of street railway is constructed to a new terminus. A new railroad station could not be located on the proposed site without either such a grade-crossing or the building of a new line by the trolley. The terminus of the new line of the traction company and all these other matters would be of the greatest public use and benefit.

The following particular comments are made in reference to the statement of facts in the brief for the prosecutors-appellants.

Their observation that the opinion of the Supreme Court suggests there has been cooperation or approval of the municipal government is hardly correct. The opinion (p. VII, line 40 and p. VIII), says that by the cooperation of Princeton University, the municipal government, the Pennsylvania Railroad and the traction company, a general revision of the municipal plan of streets and highways is *projected*, and again that several new streets are *to be* opened to public use. The opinion simply refers to what is *proposed* to be done in these respects, and the evidence (Case, pp. 38 to 44, testimony of Mr. Bayard Henry), completely justifies the statements in the opinion.

The statement (p. 2 of brief) that it is not intended by the traction company to increase the facilities now offered to the traveling public by the construction of a new line is completely disapproved by the evidence in the case.

The reference on page 4 of the brief to the right of way claimed to exist by the prosecutors, being shown by the maps in the case, is apparently an attempt to prove the right of way by reference to dotted lines on a map which, it is submitted, is not proof of the existence of a right of way.

ARGUMENT.

FIRST POINT.

The Traction Company Has Full Power and Authority to Condemn.

The Traction Act (Section 6, Comp. Stat., page 5024), provides that any corporation created under that act, whenever it desires to build any new line of railway shall file a description of the route of such new line together with a map thereof, in the office of the secretary of state.

Section 13 (Comp. Stat., page 5028), provides "that it shall and may be lawful for any company organized under this act to take so much land or materials as may be necessary for the construction of any railway, built under the provisions of this act, either as an extension of the line of an existing railway, or a new line, not exceeding 60 feet in width * * * * as may be required for the purpose of locating and constructing all necessary works, buildings, conveniences and equipments, etc."

The procedure is provided for by the "Eminent Domain Act" (Comp. Stat., page 2182). The latter act provides, section 1, that whenever the proper officers of any corporation, public or private, having power to take land or other property for public use, "shall have determined to acquire land or other property," pursuant to authority conferred by law, the compensation shall be ascertained and paid in the manner directed by that act.

The directors of the Mercer County Traction Company resolved to build a new line and complied with the provisions of section 6 of the Traction Act. These

facts were alleged in its petition. The burden was on the prosecutors below to show any lack of power on the part of the company.

The proposed line is a "new line" for which the statute provides. It may be admitted that to be a new line, it must on the one hand be new and on the other hand must be a line of railway as distinguished from simply an additional track or additional tracks upon right of way adjoining the old right of way. We submit that the proposed line has both of these qualities. It is certainly new, and it is an entirely distinct and separate line. It may be admitted that it is not an extension which is a line built from one of the termini of the old line, and a prolongation thereof.

Metlar vs. Middlesex and Somerset County Traction Co., 72 N. J. L. 524:

In this case, the traction company sought condemnation of a strip of land which *adjoined* a right of way acquired by it by purchase and upon which it had constructed and was operating a track. It was held that it could not condemn the land in question because it was not proposed to either build an extension of an existing line or a new line. The point of distinction in this case was that it was not a new line at all that was to be built but simply a new or additional track; that the land sought adjoined the old right of way. Such a track, if built, would simply constitute a part of the old line and hence it could not be a new line. In the present case the traction company has filed an entirely new line, absolutely distinct and separate from the old line. It begins at a certain point in the old line, but it immediately departs, and diverges therefrom. In the decision of this case it was reasoned that if a traction company

could condemn adjoining land, it could by successive condemnations evade the limitations in the statute of a width of 60 feet. This reasoning would have no application to the facts of the present case.

Morris and Essex Railway Company vs. Central Railroad Company, 31 N. J. L. 205:

In this case it was held that the particular wording of a special charter did not authorize the building of a new line, but that a supplement to that charter giving the railroad company the power "to locate new lines," gave it the power to build a branch line.

Subsequent to the decision in the Metlar case, *supra*, a supplement to the Traction Act (Comp. Stat. page 5037, P. L. 1908), was enacted, which provides that a traction company may, *at any time*, change the location of the route of any new line of railway, or any extension of any existing railway shown on the map thereof, filed in the office of the secretary of state * * * * by filing an amended map. If the proposed new line of the traction company, as claimed by the prosecutors-appellants, is a relocation of an existing line, the statute just quoted authorizes such relocation by the building of a new line. In the sense that the words are used in the Traction Act and its supplement, the words "new line" may apply as much to a line already built as to a proposed line.

In answer to the argument of the prosecutors-appellants that this supplement cannot apply to a change of location of an existing railway, it may be pointed out that section 10 of the Traction Act (Comp. Stat., page 5027), provides for the relocation at any time *before* a new line shall have been completely constructed, and that it therefore follows that the supplement must have been intended to give powers of relocation in the case of lines already

built. The filing of the maps in this case could be taken as a filing of an amended map, showing such change and alteration of location, which answers their second criticism of the application of this supplement. In respect to their third criticism it may be said that it does not appear that any of the land along which the existing line runs was acquired by condemnation. Therefore section 3 of the supplement is not shown to have any application and further, if it does apply, the lands will revert to the owners of the adjoining land, Mr. Pyne and Princeton University.

The case of *Akers vs. United N. J. Railway Co.* (43 N. J. L., page 110), cited in the brief of prosecutors-appellants, does not apply to the present case. It was there held that an act authorizing the company to condemn lands "adjoining their road as constructed on their right of way as located" does not apply to lands merely adjoining a side track leading from the railway route to a freight house. Under the limitations of that statute it was held that it only applied to lands adjoining the located right of way and that a side track was not within those limitations.

SECOND POINT.

The Land of the Prosecutors-Appellants is to be Taken for a Public Use.

I.

The Supreme Court having found the facts in respect to the public nature of the use and the necessity, therefore all that the prosecutors-appellants' brief argues under their second point, is not arguable in this court.

The opinion in the case of
Kountze vs. Morris Aqueduct, 58 N. J. Law,
p. 695,
is as follows:

“Per Curiam:

The legal questions involved in this case were, we think, rightly dealt with in the opinion of the Supreme Court. The matters of the fact decided in that court are not subject to review in the Court of Errors.

The judgment below must be affirmed.”

The case below is reported in 58 N. J. L., p. 303, and shows this case to have arisen on a writ of certiorari, bringing up an order of a Justice of the Supreme Court appointing commissioners in condemnation, and the Supreme Court had found as a fact that it was necessary for the condemning company to acquire the rights sought.

The opinion in the present case very distinctly shows that the Supreme Court was satisfied from the evidence and found as a fact that a public benefit will result from the use of the lands of the prosecutors-appellants, for the building of a new line of street railway. Reference is made particularly to the opinion beginning at line 40, p. VII, and the rest of the paragraph on page VIII, and also to the paragraph of the opinion on page IX, at line 14, as well as the whole of the opinion.

Numerous other cases to the effect that findings of fact by the Supreme Court are conclusive, might be cited.

II.

1. *The Taking Is for a Public Use.*

The building of a new line of street railway serves a public use and hence land required for that purpose is taken for a public use.

That a street railway serves a public use and benefit has been fully recognized in this state in the cases which have held that the use of the public streets by a traction company, upon the consent of the municipality, was no additional burden upon the abutting property owners.

Roebing vs. Railway Company, 58 N. J. L. 666;

Ehret vs. Railroad Company, 61 N. J. E. 171;

Hinchman vs. Patterson H. R. R., 17 N. J. Equity, 75;

Citizens' Coach Company vs. Hampden H. R. R., 22 N. J. Equity, 267;

Van Horn vs. Newark Passenger Railway, 48 N. J. Equity, 332;

People vs. Kerr, 27 N. Y. 188.

In the case of *Albright vs. Sussex Co. L. & P. Commission*, 71 N. J. L. 303, the Court of Errors held that the right to fish was not such a public use and purpose as would make valid and constitutional a statute which appointed a commission which might seek condemnation of fishing rights without the acquisition of the land underlying an inland lake.

Justice Dixon, in delivering the opinion of the Court, discussed what is a public use. He used the following language (p. 306):

“I turn then to the consideration of the matter in view of the rules which have been laid down as aids in determining what is a public use within the meaning of this provision of the constitution. A definition of the phrase has not, I think, been judicially attempted, but among the statements of the doctrine to be found in the books, that of Professor Cooley seems most likely to subserve the general welfare for which the constitutional power is delegated, and at the same time to protect private property, which is equally a ward of our constitution. He says (Const. Lim. 553): ‘The reason of the case and the settled practice of free governments must be our guides in determining what is or is not to be regarded as a public use, and that only can be considered such where the government is supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare, which on account of their peculiar character, and the difficulty of making provision for them otherwise, it is alike proper, useful and needful for the government to provide.’ ”

2. *There Is a Presumption in Favor of the Public Character of a Traction Line.*

Mull vs. Indiana Traction Company, 169 Ind. 214.

The prosecutors have proved nothing which defeats this presumption of a public use. In fact, by the evidence of their witness, Mr. Bayard Henry, it is shown that this particular line will not only serve the public use, as is usual with a street railway, but is in accord with and permits proposed improvements which will be of the greatest public benefit.

3. *Incidental Benefit to Private Individuals Make It None the Less a Public Benefit and Use.*

As is said in Nichols on The Power of Eminent Domain (Section 255):

“If the use for which land is taken is public, as defined in the preceding pages, the taking is not invalid merely because private individuals may derive incidental benefit from it.”

Rothschild vs. Chicago, 227 Ill. 205:

Where a connection from an elevated railway station to a department store is held to be a public use of the street.

Moore vs. Sanford, 151 Mass. 285;

Atty. Gen. vs. Williams, 174 Mass. 476;

In re Niagara Falls Railway Company, 108 N. Y. L. 375.

Held that where a street railway was proposed along the gorge of the Niagara River with termini which could only be reached by passing over state or private lands; which could be operated only during the summer; and along proposed line of which no habitation could be erected, and which would have no traffic or business except visitors, there was not such a public use as to permit it to condemn lands.

Nichols, in the Power of Eminent Domain, sec. 219, says, in reference to this case, “The decision seems to be too narrow and inconsistent with the cases holding that land may be taken for parks and pleasure drives, and would probably not be generally followed.”

But the prosecutors in this case did not even show any incidental benefit to private individuals. At most, they showed only an incidental benefit to

other public or quasi-public corporations. This simply makes the proposed new line of all the more public benefit.

Mr. Bayard Henry was called as a witness by the prosecutors and he testified, briefly summarizing his testimony, as follows:

That the old Pennsylvania Railroad Station was built about twenty-four years ago, when there were only four or five hundred students in Princeton University and that business had outgrown the facilities, as there are now fifteen or sixteen hundred students. That the population of the town has also grown. That Mr. M. Taylor Pyne, had bought several houses along University Place which he held in the interest of the university, and the general development. That about a year ago, Mr. Henry C. Frick said he would like to improve the conditions at Princeton and unite the grounds of the college campus with the grounds of the graduate school. That Mr. Henry had plans prepared, and it was estimated that the cost would be about \$250,000. That Mr. Frick agreed to give \$73,500 if the balance was raised. That Col. Proctor, of Cincinnati, who is also a trustee of Princeton, agreed to give \$50,000 and two other gentlemen agreed to give \$50,000, and that Princeton Theological Seminary agreed to give the balance of \$26,500. That the building of a new railroad station necessitated the building of a new trolley line. That he saw the official of the company which operates the lines of the Mercer County Traction Company, that several routes were discussed, and it was said by the traction company officers, that, if the old coal yard was secured, ~~that~~ it would be agreeable. That, in carrying out the plan, over 14 properties have been bought. That it is all in the interest of the general

development, uniting the graduate school and the rest of the campus, making a suitable railroad station, and giving a handsome approach to the town.

Mr. Rankin Johnson, a witness produced on behalf of the prosecutors and the president of the company which is lessee of the Mercer County Traction Company and operates its lines, testified that the terminus of the new line would be much more desirable than the present one, and that upon the completion of the new line, and its acceptance by the company, only its rights in the old right of way would be turned over.

It is submitted that the prosecutors, by these witnesses, have shown that the terminus of the new line, and the new line itself, will be for the public benefit, and that the incidental benefits will also be of a public nature and that the traction company in good faith seeks to build a new line over the land in question.

Under their second point the opposing brief quotes from the case of *Olmstead vs. Morris Aqueduct*, (46 N. J. L. 495). In that case the powers of the company depended entirely on special acts and a general law which gave powers of condemnation to the company to such an extent as might be necessary to carry out the purposes of its incorporation and to take lands and divert streams that should be necessary for that purpose. The powers granted by the terms of those statutes were much more restricted than is the case with the Traction Act. However, the Court upheld the power of the company to condemn and this case was affirmed by the Court of Errors, the case being reported in 47 N. J. Law, page 311. At page 328 of that opinion, the language of Chief Justice Marshall, in criticising the term "necessary" is quoted. At page 333,

that case held that the fact that the company might carry on a private manufacturing business under powers granted by the legislature and might use part of its water supply for that purpose should not be considered in connection with the powers of condemnation. The opposing brief cites the case of *Easton &c. Company vs. Greenwich*, (25 N. J. E. 565). This was a case where a railroad claimed powers to change a public highway and it was held that this power could not be arbitrarily used but that it must be shown that it was necessary to use it. There was involved the question whether a power springing from the public could be used so as to interfere with a public highway, without the agency which was so using that sovereign power showing there was a necessity for its exercise. In the present case no public rights are invaded.

It is submitted that the apparent idea of the counsel for the prosecutors-appellants that a "necessity" must be shown to exist for the proposed new line, is a misconception of the law applying to this case. The legislature has provided that when a traction company resolves to build a new line it may do so upon complying with the formalities provided in the statutes. The legislature has determined the necessity for the construction of new lines of street railway within the state and has considered that the private individual is fully protected from an unjust exercise of the power granted, by the fact that railways of necessity serve a public use and that if the land is not to be used for street railway purposes by the petitioner the Courts will protect the land owner.

The use of the word "necessary" in the 13th section of the Traction Act, refers to the width of the land that is needed for the physical construc-

tion of the railway and there is nothing, it is submitted, in any law which requires that a necessity for the new line must be shown by the company. It is alleged in the petition (Case, page 21) that "in the building, construction and operation of which new line it will be necessary" for the petitioner to take the land and premises thereafter more particularly described.

The limitation in section 13, that the land so taken must not exceed 60 feet in width, except where a greater amount shall be required for the slopes of cuts and embankments, only fixes a maximum width. The word "necessary" was used so that a land owner might show, for example, that a company in the actual construction of its line needed only to take a less amount than 60 feet. There has not been any attempt made in this case to show that the company does not need the full width of 60 feet and the allegations of the petition have never been questioned. There is nothing, therefore, in the use of the word "necessary" in the statute which would support the apparent contention of the other side, that the defendant should have shown the necessity for a new line as such. A new line is presumed to be for the public use and benefit but the question of what width of land it might be necessary to take, might, from the use of that word in the statute, be raised, it is conceivable, in an appropriate case and upon proof that a less width than 60 feet was all that was "necessary" for the construction, the Court might limit the width to be taken, but even then would not deny to the company the power to take such width as was necessary.

We do not contend that it may not be shown in a particular case that the land in question in that case is not being taken for a public use by the peti-

tioner therein. As an example of an instance, where the facts might be such as to defeat the rights of a company seeking to condemn, we call attention to the case of *Sisters of Charity vs. Morris R. Co.*, 82 N. J. L. p. 214. (This case is referred to on p. 14 of opponent's brief.) In that case, there was a motion by the defendant to strike out certain reasons filed by the prosecutors in a certiorari of an order in condemnation. For the purposes of decision, it was assumed that it could be shown that the defendants, a railroad company, were attempting to condemn the land in question for the benefit of and use by a trolley company. We think it goes without saying that this would be a misuse of, if not a fraud upon, any statute permitting condemnation. It is submitted that there is a wide distinction between the case of an attempt to take lands which it can be shown are not to be used for the purposes for which the petitioner is incorporated, under the powers given to it as an agent of the state to exercise the state's sovereign right of eminent domain, and the case in which there is not and cannot be even a suggestion of absence of legitimate use by the company. It cannot be shown that the defendant company is not to use the land in building a new line to serve the public. All that the prosecutors-appellants have shown in the present case is that, in addition to the usual public benefits from the building of a new line, there will flow out of such a taking extraordinary and unusual public benefits. We are at a loss to see how this can be claimed in any way to be a misuse of the statute. The testimony taken under the rule to take depositions, we submit, only shows a just and commendable use of the powers of condemnation delegated to a public servant by the state. As is shown by the testimony of the president

of the operating company, (Case, pp. 47 and 48), there existed highly sufficient grounds which would appeal to the traction company in causing them to resolve to build this new line, in order to serve the public as a common carrier, and for reasons absolutely distinct from cooperating in other public benefits which, no matter how strong in confirmation of public use and benefit, may perhaps be looked upon as incidental to the business and objects of the traction company.

THIRD POINT.

The Petition Set Forth All the Facts Which the Law Requires and the Justice of the Supreme Court Had Jurisdiction to Make the Order Appointing Commissioners.

I.

The Petition is Sufficient in Law.

It shows the incorporation of Mercer County Traction Company and its power, under that act, to take the necessary land; the resolution of its board of directors to build the new line, and the necessity of taking the land of the prosecutors; a description of the land, and the filing of description and map of its new line in the office of the secretary of state; the prosecutors, individually, and as executors and trustees, and one Elizabeth H. Rowland, and one who might claim to be a tenant, as the owners and occupants of and the persons interested in the property required by the traction company, and prays the ap-

pointment of commissioners under the Eminent Domain Act, revision of 1900.

“Condemnation proceedings are not rendered irregular by the omission to state in the petition and proofs presented to the justice, matters which this act does not require to be set forth.”

Ferry Company vs. Railroad Company, 73 N. J. L. 86.

The case of *Wendell vs. Board*, 76 N. J. L. 499, has no application to this case. There it appeared that the board of education was not authorized to even treat with the owners for the acquisition of the land until certain requisites had been complied with, which had not been complied with, and hence as they did not have the power to purchase, they had not the power to condemn.

II.

All Necessary Persons Were Made Parties to the Petition for Condemnation.

1. It does not appear in the record that there are any parties necessary, other than those who have been made parties.

The prosecutors offered certain deeds in evidence under the rule granted, on the application of the prosecutors, to take testimony. The admission of these deeds in evidence was objected to by the defendant. They are from and to parties other than the prosecutors, and it does not appear that they constitute deeds in the chain of title of prosecutors, or create any rights in respect to any lands of prosecutors or relate to the land in question, hence they should not have been admitted in evidence. These

deeds contain covenants in reference to rights of ingress and egress by means of an alley ten feet wide. Certain other deeds which the prosecutors put in evidence recite that the conveyances are subject to a right of way in a ten foot alley across the rear of the conveyed land. Some of these deeds are to Andrew L. Rowland, as grantee, but it is not shown how the prosecutors, if that is the case, have acquired title through such deeds. If there are any such rights of ingress and egress, they might have merged.

It is submitted that it does not appear in this case that there are any parties other than the prosecutors and the life tenant which should have been made parties.

2. The traction company only seeks to condemn the rights of the prosecutors, and a life tenant, and to foreclose a tenant against any claims against the traction company, if and after it acquires the rights of the prosecutors and life tenant.

The defendant only seeks to condemn what they might acquire by purchase from the prosecutors, if they were able and willing to make a sale.

In *Herr vs. Board of Education* (82 N. J. L. 610, 611) quotation is made from the opinion in *Bright vs. Platt*, (5 Stew. Eq. 362), speaking of the commissioners, "their simple duty is to ascertain what sum of money is an equivalent for the rights which the railroad company seeks to acquire and the injuries it is to inflict by the construction and operation of its road." Quotation is also made from *Crane vs. Elizabeth*, (9 Stew. Eq. 339) as to the proceeding being one *in rem* and this sentence follows: "When by the appraisalment of the commissioners the price of the thing is fixed, that price stands instead of the thing appropriated and represents all interests acquired."

The *rem* in this case is the tract of land as owned by the parties named in the petition just as it might be only a right of easement that was required in another case.

The Traction Act (Comp. Stat. vol. 4, page 5028) section 13, provides that it shall be lawful for any company organized under that act to take so much land and materials as may be necessary for the construction of any railway built as a new line and the Eminent Domain Act (Sec. 1., Comp. Stat., vol. 2, page 2182), provides that when any corporation having power to take land or other property for public use "shall have *determined* to acquire land or other property" condemnation may be had, and section two provides that the petition shall contain a particular description of the land and property "*required*," and shall set forth the names of the owners and occupant, if any there be, and of the persons appearing of record to have any interest in said property.

Therefore, it is only such property as is *required* that is involved in a condemnation proceeding, and any rights which are not sought to be acquired are not involved. No holders of such rights need be made parties.

As was said in *Bright vs. Platt*, 32 N. J. Equity, 362, 371, in speaking of the duty of the commissioners in making their award, "Their simple duty is to ascertain what sum of money is an equivalent for the rights which the railway company seeks to acquire, and the injury it is to inflict by the construction and operation of its road." In this case mortgagees were not made parties, and it was held that the mortgagees could participate in the sum which had been awarded, and it was pointed out that mortgagees need not be made parties. This language is quoted in *Herr vs. Board of Education*, 82 N. J. L. 610, 611.

3. Admitting for the sake of argument that there may be parties entitled to ingress and egress in an alley crossing the rear of the premises in question, the traction company does not wish to interfere with such rights, and can certainly take the rights of the prosecutors without at the same time seeking to take such other rights of other parties.

4. It has not been shown that there is any alley or part of the premises in which others may have rights of ingress and egress which will in any wise be affected by the taking covered by the petition, or that such taking of the land and premises by the construction of the road will in any way impair such rights. No rule should be adopted which would compel a corporation having the power of eminent domain to take rights, and extinguish easements which it did not think needful to take. If there is a right of way shown to exist in this case across the land, the company should not be compelled to acquire it, if they will not impair in any way such right.

The case of *Herr vs. Board of Education*, 82 N. J. L. 610, held that (Syllabus):

“The owner of a tract not taken by condemnation proceedings cannot be allowed for damages caused by the condemnation of land of another owner that is restricted by covenants for the benefit of the tract not taken.”

5. The prosecutors cannot object to the proceedings because other parties are not joined. If such was the case, it does not injure the prosecutors. As was said in *National Railway Company vs. Easton & Amboy Railroad Co.*, 36 N. J. Law, 181, 184:

“The proceeding for condemnation is strictly between the company and the persons who are

made parties to it. The omission of the owner of any estate in the land, or any part owner of the fee or of the holder of any lien or incumbrance thereon whose estate or interest is essential to a perfect and indefeasible title, will not invalidate the proceedings as against such persons as are made parties. The consequence will be merely that as against such omitted persons the condemnation will be nugatory. To this extent, the company proceeds at its peril."

"If, when the petition was presented to the justice, the prosecutors were the owners of any legal estate in the property or if they had then an interest therein which was not represented in the person of Crane, their remedy would not be by writ of certiorari. Having given notice of their rights to avoid equities they might safely rest and suffer the condemnation to go on, as proceedings by which—not being parties—they would be in no way affected."

Ross vs. E. & S. R. R. Co., 1 Green's Ch. 422.

In the case of *Herr vs. Board of Education*, 82 N. J. Law, 610, referred to above, the petitioner had made parties to the proceedings, owners of land in the vicinity of the tract sought to be condemned, and set forth that they might have a claim against the property by reason of restrictive covenants.

It was held in this case that having been made parties, and having appeared before the commissioners, such parties had a right of appeal. The decision refers to the case of *Bright vs. Platt*, 5 Stew. Equity, 362, and to *Crane vs. Elizabeth*, 9 Stew. Equity, 339, and discusses generally the procedure in making the award and on appeal. It does not cover the point,

whether the owners of easements or servitudes or liens are necessary parties in a condemnation proceeding, but the reasoning of the decision would indicate that they are not. If the prosecutors, or any of them, in an individual capacity claim any easement in the land, they are made parties and would be fully compensated for such rights.

The case of *Butterworth-Jones Company vs. Central Railroad Company*, 66 Atl. Rep. 198, was a suit in chancery by the holders of a right of way to enjoin a steam railroad company from the operation of its railroad. The railroad company had purchased the land, but subject to the right of way. The steam railroad, by reason of its raised rails, and its use of steam locomotives thereon would, of course, impair the rights of owners of the right of way. Injunction was not granted, but the matter was held to permit the railroad company to commence condemnation proceedings. This was not a condemnation proceeding, but a suit in equity for interference with and taking of an easement.

FOURTH POINT.

The Proceedings for Condemnation in no Respect Violate any Provisions of the Constitutions of New Jersey or of the United States.

The prosecutors did not show that private property is not being taken for a public use, nor that due process of law has not been observed in the proceedings.

It does not seem necessary to discuss these constitutional questions further than they have been determined by the findings of fact by the Supreme

Court. This point depends upon and falls or stands with the other reasons.

FIFTH POINT.

In conclusion, it may be said that the opinion in the Supreme Court so thoroughly disposes of all the arguments of the prosecutors-appellants, that it almost seems presumptuous on the part of counsel to present a brief in this court. The opinion discusses fully all the points raised by the other side in this court. The opposing brief contains substantially no new argument why the ~~right~~ ^{writ} of certiorari should not have been dismissed.

Respectfully submitted,

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