

New Jersey Court of Errors and Appeals

Between

HARRISON LAND COMPANY,
Complainant-Appellant,
and
CRUCIBLE STEEL COMPANY OF
AMERICA, *et als.,*
Defendants-Respondents.

*On Appeal
from
Chancery.*

BRIEF FOR APPELLANT.

Statement.

The appeal in this case is related to the appeals in the two cases of the *United New Jersey Railroad & Canal Company against Crucible Steel Company of America* and *Booth & Flinn, Limited, against the same*, now pending in this Court. All three involve the construction and enforcement of the contract between the parties of May 17, 1901. Therefore, in respect to some of the facts and to much of the argument reference is made to our brief submitted in the other cases.

This case is an appeal from an order of the Court of Chancery dismissing an order to show cause and denying an injunction *pendente lite*. The case came before his Honor, John R. Emery, Vice-Chancellor, upon the return of an order to show cause (containing an *ad interim* stay), upon the bill of complaint and a supplemental bill and the several affidavits attached thereto, and the respective answers of the two defendants, the Crucible Steel Company of America and the Town of Harrison and the answering affidavits. After a hearing the order to show cause and the restraining order were

discharged by the learned Vice-Chancellor by an order dated October 23, 1913 (p. 61) to which last mentioned order the appeal is directed.

The object of the suit is to enjoin and restrain the Crucible Steel Company of America, in the words of the prayer of the bill (p. 10) :

“From in any wise obstructing said Cumberland street, extending from the easterly line of Fourth street two hundred and thirty-six feet and seventy-two one-hundredths of a foot measured along the center line to the land of the Pennsylvania Railroad Company or from preventing your orator from using the same, to its entire width, freely and without interference or limitation, and from in any wise directly or indirectly prosecuting further its petition, application or proposal for the closing and vacating of said portion of said Cumberland street, and so far as relates thereto from making or tendering payment to the said town of the sum of eight thousand dollars, or any other sum, for the vacation of said streets, and from receiving any deed for said street from said town; and that said Town of Harrison may be enjoined and restrained from passing said ordinance vacating said Cumberland street and from accepting said sum offered to said town upon the vacation of said streets so far as relates to said Cumberland street, and from giving to said Steel Company any deed for said street.”

The papers show that on May 6, 1911, the Crucible Company made application to the Town Council of the Town of Harrison for the vacation of parts of certain streets in said town and, among others, of Cumberland street from Fourth street to the Gilbert-Preston Tract dividing line, that is, Cumberland street from the easterly line of Fourth

street easterly 236 72/100 feet to the westerly boundary of the Preston Tract or Canada Farm or Pennsylvania Railroad Company; and that it offered as a consideration for the vacation of said streets to pay to the town the sum of \$8,000 (pp. 6, 16). It further appears that notice of the vacation of said Cumberland street was given, as required by law (pp. 6, 17); that the appellant, the Harrison Land Company, filed its objections to the said vacation; and that, notwithstanding the said objections, an ordinance for the vacation was given its first and second reading and referred to a third reading and ordered published (p. 22). It also appears (p. 37) that in connection with its application the Crucible Company presented a letter directed "To the Honorable the Council of the Town of Harrison," in which, among other things, it declared as follows:

"It is the purpose of this company to use these parts of these streets, together with other land owned by the company, for the purpose of building additions to our present plant from time to time."

It further appears that ordinances for the vacation of all the streets, except Cumberland street, were subsequently passed and that the consideration of \$8,000 was paid by the Crucible Company and received by the town for the vacation of said streets (p. 35).

The case discloses that the Crucible Company made its application for the vacation of Cumberland street, notwithstanding the fact that on May 17, 1901, a certain agreement (which is set out in full in the bill of complaint, p. 12) had been made and entered into by the United New Jersey Railroad & Canal Company, Crucible Steel Company of America, James H. Young and Mason Young, surviving executors, &c. (predecessors in title of

the complainant) and Ruth Dana Draper, in and by which the parties did covenant and agree to and with each other as follows:

“* * * that a strip of land sixty feet in width an extension of Cumberland street easterly across the said lands of the parties hereto, be and the same is hereby dedicated and appropriated as a road, the strip of lands so dedicated beginning east of Fourth street at the end of Cumberland street as laid out on the Gilbert Map and in the aforesaid dividing line between the Preston Tract and the Gilbert Tract, and running thence easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties hereto to the middle of the said ditch which forms the easterly boundary of the said land of the party of the fourth part. Cumberland street, of which the land above described is an extension, is shown on the map of the Gilbert Tract above referred to and on the official map of the Town of Harrison made by Young & Borrie, Surveyors. It is sixty feet in width and crosses Fourth street at right angles extending easterly to the said boundary line of the Gilbert and Preston Tracts; the northeast corner of Fourth and Cumberland streets is two thousand and twenty feet southerly from New Jersey Railroad avenue. The distance from Fourth street along the northerly line of Cumberland street to the boundary line of the Preston Tract is shown differently on the different maps.”

The relations of the parties to this agreement and of their respective lands to each other are fully set forth in our brief in the case of *United New Jersey Railroad & Canal Company vs. Crucible Steel Company of America*, and need not be here repeated.

The appellant in 1904 succeeded to the title of the Youngs (p. 5).

On the date of the said agreement, and prior thereto, James H. Young and Mason Young, surviving executors, &c., were the owners in fee of a large tract of land situated in the Town of Harrison and located on the Passaic River, access to which was had through certain streets and ways running over and across properties of the United New Jersey Railroad & Canal Company and the Crucible Steel Company, which means of access to the property were, subsequent to the making of the agreement, vacated and destroyed.

It appears in the case that since the agreement and the vacation of the other streets and ways leading to the lands, Cumberland street has been and still continues to be *the sole and only means of access to and from the property of the appellant* (pp. 5, 23).

It further appears that the appellant, at the time of the application of the Crucible Company for the vacation of Cumberland street, was in negotiation with Booth & Flinn, Limited, contractors, for the filling in and grading of its lands and of Cumberland street, as it had a right to do under the agreement (p. 10). There is inadvertently omitted from the printed case other records which disclose that said Booth & Flinn, Limited, intervened in this case and joined as parties complainant, for the reason that they had, subsequent to the filing of the bill, executed a contract with the Harrison Land Company for the filling in of the said lands and said Cumberland street.

The Bill of Complaint charged, *inter alia*, that the appellant would suffer irreparable loss if Cumberland street were vacated, and that the effect of the final passage of the ordinance relating thereto would be to take away the appellant's property

rights for private interests, without due process of law; and that the action of the Crucible Company was a fraud upon the appellant and the other parties to the agreement (p. 8).

The Bill of Complaint also charged that the proceedings for the vacation of Cumberland street were being undertaken, not in the public interest, but for the sole interest of the Crucible Company, and in excess of the municipal power, because of the offer of \$8,000.

Cumberland street, for a distance of approximately 237 feet easterly from Fourth street is a public thoroughfare. This is so charged in the bill of complaint (p. 2). The answer of the Crucible Company admits that said street "is a public street in the Town of Harrison for the distance of two hundred and thirty-six and seventy-two one-hundredths of a foot measuring *south* from Fourth street" (p. 39). And the defendant's principal answering affidavit states:

"That Cumberland street, which has been a public street for the distance of about two hundred and thirty-seven feet extending easterly from Fourth street has never been used as a street."

Of special importance is the answer of the Town of Harrison, filed by its own solicitors and counsel, which states:

"Defendant admits that said street is a public street of the Town of Harrison for a distance of two hundred and thirty-six feet and seventy-two one-hundredths measuring *south* from Fourth street."

ARGUMENT.

I.

IN EQUITABLE PRINCIPLE AND RIGHT THIS CASE DOES NOT DIFFER FROM THE CASE OF *UNITED NEW JERSEY RAILROAD & CANAL COMPANY* against *CRUCIBLE STEEL COMPANY*.

In the case of the *United Company* the Crucible Company placed obstructions upon that same part of Cumberland street which in the proceedings before the Town Council of Harrison involved in the present case the Crucible Company is attempting to have vacated. In that case in construing the effect of the agreement of May 17, 1901, the learned Vice-Chancellor declared:

“This agreement, in my judgment, estops all the parties dedicating the road over their lands as an extension of Cumberland street with the intention of establishing a recognized way to their lands from Fourth street, from denying that Cumberland street east of Fourth street to the bountry line of the tracts and for the whole width thereof is a way to the properties over which the strip was dedicated as an extension.”

(State of Case, *United Co.*, p. 293.)

And the Vice-Chancellor reached the view that the acts of the Crucible Company were violative of its covenants under the agreement, and were illegal, and ordered the injunction asked for in that suit.

Turning now to the case *sub judice* it is respectfully insisted that the vacation if made would be similar in its results to the obstructions which were later placed in the street. If the street were vacated it would return to the abutting owners dis-

charged of the easement and the owners would then be in possession and could as they threatened to do (p. 37) use the street for the purpose of erecting buildings thereon. The purpose and object of the defendant in having the street vacated were the same as they were when they placed obstructions upon it, to take away from the appellant its rights under the agreement and to destroy all access to its property.

Having regard, therefore, only to the private rights of the parties in Cumberland street it is contended that the Crucible Company in seeking to have vacated that part of Cumberland street immediately east of Fourth street was just as much acting in violation of the rights of the appellant as it was in the case of the obstructions, and that it cannot equitably make any difference that in the accomplishment of its illegal purpose it was using the municipality or any other instrument in the accomplishment of its wrongful purpose. To endanger or impair the rights of the appellant in Cumberland street by instigating the vacation proceedings was as violative of the defendant's contract as it was to impair those rights by any other means. If its acts were illegal in the one case they were illegal in the other. In either case it was violating its solemn contract. Therefore, an injunction should have been ordered in this case as it was in the other.

II.

CONSIDERING THE PROPOSED VACATED PART OF CUMBERLAND STREET AS A PUBLIC THOROUGHFARE, THE APPELLANT IS ENTITLED TO RELIEF.

The appellant contends that, as the vacation would destroy *all* access to its property, it is with respect thereto in an entirely different position from the public at large. The destruction of the street will not cause the mere inconvenience usually suffered in such cases by the public, or the property owner who is still left with other means of access to his lands. It will actually destroy the property of the appellant. It will amount to the taking of property, and that without making compensation.

(For further argument and cases on this point see brief in the *United Company case*.)

It is, therefore, that the case of *H. B. Anthony Shoe Company vs. West Jersey R. R. Co.*, 12 Dick., 607, relied on by the learned Vice-Chancellor is not in point, for in that case the appellant was still left with a means of access to his lands.

III.

THE POWER ATTEMPTED TO BE EXERCISED BY THE TOWN COUNCIL WAS NOT LEGISLATIVE OR DISCRETIONARY AND, THEREFORE, A COURT OF EQUITY HAS THE POWER TO INTERFERE THEREWITH.

(a) The transaction was not an ordinary vacation of a street, but a bartering of the public right to a private corporation for money consideration. It was, therefore, *ultra vires* and void.

North Baptist Church vs. Orange, 54 N. J. L., 111.

In State, *Montgomery vs. Trenton*, 36 L. (7 Vr.), 79, 84, the Court, denying the authority of the Common Council to pass an ordinance granting to an individual license to lay a railroad track across the public street for his own use, says:

“Streets and highways are intended for the common and equal use of all citizens, to which end they must be regulated. An appropriation of them to private individual uses, from which the public derive no convenience, benefit or accommodation, is not a regulation, but a perversion of them from their lawful purposes, and cannot be regarded as an execution of the trust imposed in the city authorities.”

See also:

Thompson vs. Ocean City, 60 L. (31 Vr.), 74.

Traphagen vs. Jersey City, 52 L. (23 Vr.), 65.

Chamberlain vs. Elizabethport Steam Cordage Co., 41 E. (14 Stew.), 43.

Swift vs. Delaware L. & W. R. R. Co., 66 E. (21 Dick), 34.

Pew vs. Litchfield, 115 Ill. App., 13.

In *People vs. Atchison, &c., R. Co.*, 217 Ill., 594; 75 N. E., 573, it was HELD that it was settled in Illinois that a municipality holds its streets and alleys in trust for the benefit of the people and cannot lawfully authorize the vacation or obstruction of any of them for the benefit or use of private individuals and corporations. And the action of the City Council in vacating a street for the sole purpose of enabling private individuals to appropriate and enjoy a portion of the street was held *ultra vires* and void *in toto*.

In *Louisville vs. Bannon*, 99 Ky., 74; 35 S. W., 120, held that a mere money consideration to be paid the government, state or municipality is not such a public use as will justify the vacation of a

public street and the transfer of the land to a private individual.

Smith vs. McDowell, 148 Ill., 51.

Horton vs. Williams, 99 Mich., 423; 53 N. W., 369.

Henderson vs. Lexington, 33 Ky., 703; 111 S. W., 318.

(b) The ordinance was not legislative but was ministerial and is within the following cases:

North Jersey, &c., Ev. Co. vs. South Orange, 58 E. (13 Dick.), 83.

Bond vs. Mayor, &c., Newark, 19 E. (4 C. E. Gr.), 376.

Paterson, &c., H. R. Co. vs. City of Paterson, 24 E. (9 C. E. Gr.), 158.

Cape May, &c., R. R. vs. Cape May, 35 E. (8 Stew.), 419.

Asbury Park, &c., R. R. vs. Neptune Township, 73 E. (3 Buch.), 323.

(c) It is settled that courts of equity have the power to control the acts of municipal corporations, or their officers, in the exercise of powers, not legislative or discretionary, if private rights are violated.

Bond vs. Mayor, &c., Newark, 19 E. (4 C. E. Gr.), 376, pp. 384, 385.

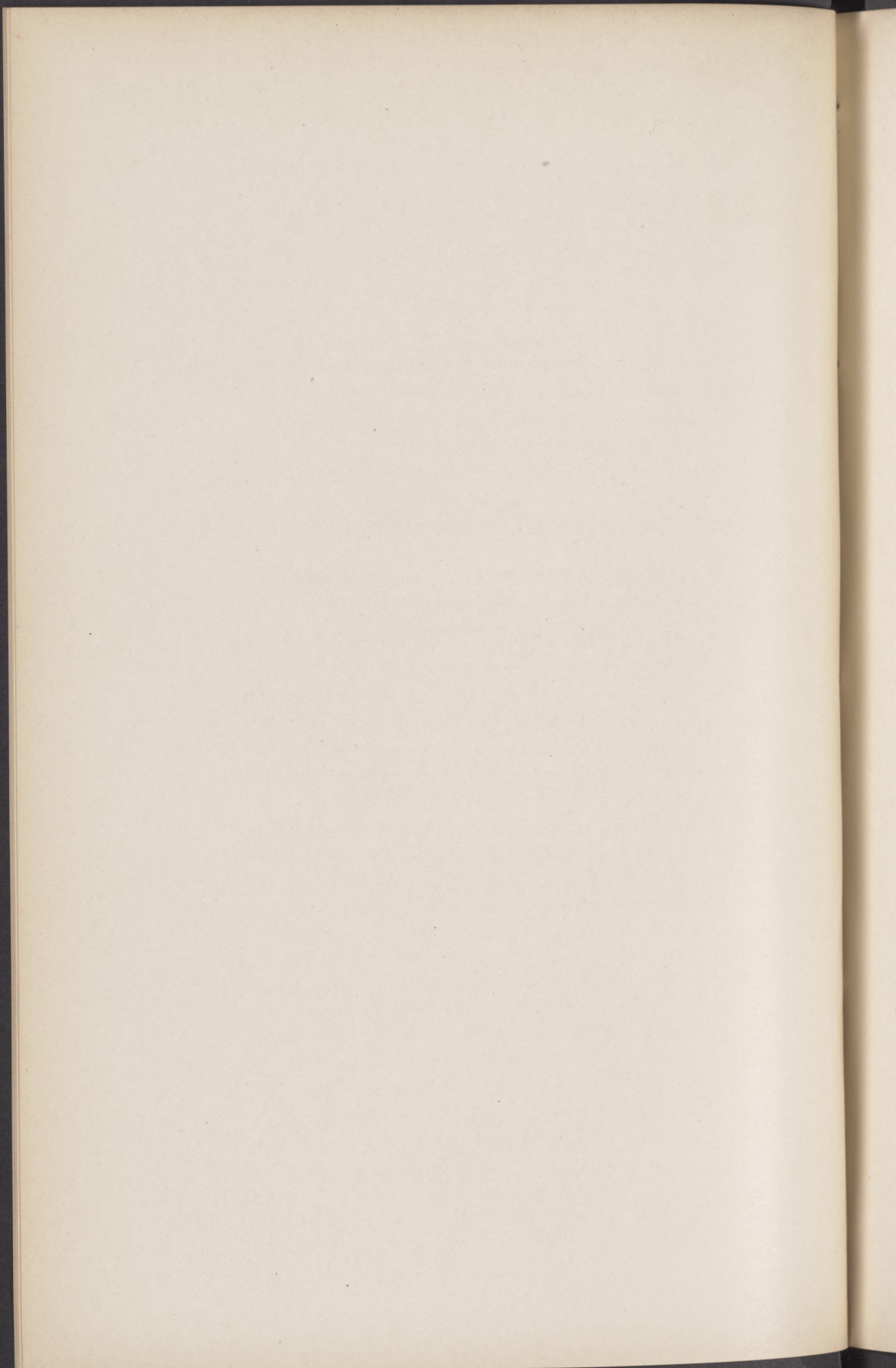
Morris Canal & Banking Co. vs. Mayor, &c., Jersey City, 12 E. (1 Beas.), 252.

Cape May, &c., R. R. Co. vs. City of Cape May, 35 E. (8 Stew.), 419.

It is, therefore, respectfully insisted that the order of the Court of Chancery appealed from should be reversed. Especially is this prayer made because if this decision is left to stand it will be inconsistent with the decision which followed.

EDWARD A. & WILLIAM T. DAY,

Of Counsel with Appellant.



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and

CRUCIBLE STEEL COMPANY OF
AMERICA, *et als*,
Defendants-Respondents.

On Bill.

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BRIEF OF DEFENDANTS-RESPONDENTS.

Crucible Steel Company of America and the Town of Harrison.

This appeal is brought by the Harrison Land Company from an order of the Vice-Chancellor dismissing an order to show cause against the vacation by ordinance by the Town of Harrison and the Crucible Steel Company of America of the so-called Cumberland street in the Town of Harrison, which street extends easterly of Fourth street, 236.72 feet.

THE STATEMENT MADE IN THE BRIEF OF THE APPELLANT THAT THIS CASE AND THE CASES OF THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY AGAINST THE CRUCIBLE STEEL COMPANY OF AMERICA AND BOOTH & FLINN AGAINST THE SAME NOW PENDING IN THIS COURT ARE RELATED, IN THAT IN ALL THREE IS INVOLVED THE CONSTRUCTION AND ENFORCEMENT OF THE CONTRACT BETWEEN THE PARTIES ON MAY 17, 1901, IS NOT A FAIR STATEMENT AND IS NOT A CORRECT STATEMENT, AND IS CALCULATED TO CONFUSE THE MIND OF THE COURT WITH ISSUES THAT ARE DISTINCT AND ABSOLUTELY SEPARATE.

The present case of the Harrison Land Company was brought long before and decided long before the other cases referred to and should not be confused with the cases of United New Jersey Railroad and Canal Company and Booth & Flinn. The present case is a suit to enjoin the Town of Harrison from vacating the said Cumberland street and the Crucible Steel Company of America from acting in that vacation, seeking vacation, or paying any money to the Town of Harrison for the vacation or taking any deed for said street from the Town of Harrison.

THE FACT IS THAT THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY AND BOOTH & FLINN CASES WERE BILLS BROUGHT AGAINST OBSTRUCTING THE SO-CALLED CUMBERLAND STREET THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY CASE ON THE GROUND THAT IT WAS A PRIVATE WAY AND THE BOOTH & FLINN CASE ON THE GROUNDS THAT IT WAS A PRIVATE WAY AND ALSO A PUBLIC WAY.

As a matter of fact, there was no obstruction whatsoever upon Cumberland street when the appellant brought this bill. What was done was that the Crucible Steel Company made application to the Town of Harrison for the vacation of the "Paper Street" and the town sought to grant this vacation by ordinance and the appellant sought to restrain said Town of Harrison and the Crucible Steel Company from effecting this vacation.

THE APPELLANT IS WRONG WHEN IT SAYS THAT A VACATION OF THE STREET IS THE SAME OR SIMILAR IN ITS RESULTS AS AN OBSTRUCTION. THIS IS NOT SO. A vacation is only a quit-claim from a town to the original owners of

the street of the easement which the public enjoyed. A quit-claim does not extinguish any private right which any person may have in the street, either by private contract or as one of the public generally. *It is to be noted, which is very important, in this case, that the ordinance by which the so-called Cumberland street was to be vacated, expressly reserved the right of the parties in the agreement of May 17, 1901, and thus no rights in this agreement would be violated.* (See ordinance of the Town of Harrison, Exhibit E, Case, page 22, line 22).

"Sec. 1. That Cumberland street, extending from the Easterly line of Fourth street, Easterly 236 72/100 feet, measured along a center line, to the lands of the Pennsylvania Railroad, be and the same is hereby vacated, subject to the agreement made on the 17th day of May, 1901, between the Crucible Steel Company of America, the United New Jersey Railroad and Canal Company, James H. Young and Mason Young, surviving Executors of Henry Young, deceased, and Ruth Dana Draper, devisee of William H. Draper, deceased."

See also notice of intention of vacation of Cumberland street by Town of Harrison, where the same reservation was made relative to the rights in the agreement of May 17, 1901. (See Exhibit C., Case, page 17.)

FACTS.

The Crucible Steel Company of America submitted a proposal to the Mayor and Common Council of the Town of Harrison, requesting the vacation of certain streets in the said Town of Harrison, one of which streets was the so-called Cumberland street, which extends from Fourth street easterly 236.72 feet and in consideration of a quit-claim deed of this property, the Crucible Steel Company offered to pay \$8,000.00

to the Treasurer of the Town of Harrison, New Jersey. (See Exhibit B., Case, page 16.)

The Town of Harrison gave public notice of intention to vacate Cumberland street, subject to the agreement of May 17, 1901. (See Exhibit C., Case, page 17.)

Harrison Land Company, the appellant gave a certain notice of objection to the said vacation. (See Exhibit D., Case, page 18.)

An ordinance vacating said Cumberland street, extending from the easterly line of Fourth street, easterly 236.72 feet, measured along a center line to the lands of the Pennsylvania Railroad, was given first and second reading at the regular meeting of the Common Council of the Town of Harrison, July 1, 1913, and was referred to a third reading and ordered published. (See Exhibit E., Case, page 22.)

Harrison Land Company, the appellant, thereupon filed its bill for an injunction against the Town of Harrison and the Crucible Steel Company of America to enjoin the vacation, and further proceedings to carry out the proposal towards the vacation of the so-called Cumberland street.

An order to show cause was obtained by the Harrison Land Company, the appellant, returnable on July 13, 1913, against the Crucible Steel Company of America and the Town of Harrison,

“Why an injunction should not issue against them pursuant to the prayer of said bill, and that in the meanwhile, the said Crucible Steel Company be restrained from further proceedings to carry out its proposal to said town, set forth in said bill, for the vacation of Cumberland street aforesaid, and from making payment or tender to said Town of Harrison for the vacation of said street, and that said Town of Harrison be enjoined and restrained from final passing of the ordinance for the vacation of said Cumberland

street, mentioned in said bill, until the further order of this Court." (See Case, pages 26, 27.)

The defendants, Crucible Steel Company and Town of Harrison filed answers to the said bill of complaint. (See Case, page 39.) (See Case, page 47.)

Upon a hearing of this order *to show cause for preliminary injunction*, the Vice-Chancellor decided that *no preliminary injunction against the vacation of the so-called Cumberland street should be granted*. (See Case, page 52.) An order based upon this opinion of the Vice-Chancellor was made, dismissing the order to show cause (see Case, page 61), from the making of this order of dismissal the Harrison Land Company appeals.

LAW AND ARGUMENT.

Point I.

The Town of Harrison has power to vacate streets.

Laws of New Jersey, Statutes and Charter of Town of Harrison, give authority to the town to vacate streets. Charter of the Town of Harrison, P. L. 1873, p. 265, etc., at page 290:

"Section 56. 1. 'To lay out and open any street, road, highway or alley, public park or square, within said town.; to order and cause any street, road, highway or alley, already laid out, or which shall be hereafter laid out, *to be vacated*, straightened, altered or widened, and to take and appropriate for such purposes any lands and real estate, upon making compensation to the owner or owners thereof as in hereinafter mentioned and provided.'"

Kean vs. Elizabeth, 54 N. J. L., 462; *Aff.*, 55 N. J. L., 337.

Point II.

The vacation of a street does not in the least impair private rights; it is only a surrender or extinction of the public easement.

Kean vs. Elizabeth, 54 N. J. L., 462; affirmed, 55 N. J. L., 337.

United N. J. R. R. Co. vs. Nat. Docks R. R., 57 N. J. L., 523.

In the latter case at page 524 Court said:

“A vacation of a street does not in the least impair private rights; it is only a surrender or extinction of the public easement. *Dodge vs. Pennsylvania R. R.*, 16 Stew., Eq., 351; S. C. on appeal, 18 *Id.*, 366; *Read vs. Camden*, 25 Vroom, 347, 374.”

Point III.

Whether or not any rights are impaired upon a vacation, the Town of Harrison has no right, power or authority to give compensation in this case.

(A) The right of land owners to compensation for damages caused by the vacation of a public street is wholly statutory.

Newark vs. Hatt, 79 N. J. L., 548.

Newark, etc., R. R. vs. Montclair, 85 Atlantic Rep., 1028, 84 N. J. L., 46.

(B) Nothing in the constitution or statutes of New Jersey or in the charter of the Town of Harrison gives this town right or power or authority to expend the town's funds. (See Charter of the Town of Harrison, P. L. 1873, at page 290.) Section 56-1, which is quoted in Point I of this brief, it will be noted that it there says:

“Upon making compensation to the owner or owners thereof as is hereinafter mentioned and provided.”

In Section 59 of the said Charter of the Town of Harrison it should be noted that compensation is provided for whenever the town lays out or opens a street, or makes any sewer or drain, or takes and appropriates for such purposes any lands and real estate. No provision is made in said charter to give compensation in case of a vacation. There is no doubt that such a provision was purposely omitted from Section 59. Where compensation is given, it is only when land is actually taken. In the present case, the appellant, Harrison Land Company, owns no land whatsoever on the so-called Cumberland street, which is sought to be vacated.

See *Newark, etc., R. R. vs. Montclair*, 85 Atlantic Rep., at 1028, 84 N. J. L., 46, where Justice Swayze clearly distinguishes the Hatt case, 79 N. J. L., 548, on the ground that the Newark Charter provided for compensation for vacation and that where there was no statutory provision for such, no compensation could be given. Thus as no compensation is provided for by the Charter of the Town of Harrison when street is vacated, no compensation can be given.

(C) The Town of Harrison had no right whatever to assess damages for vacating a street. The only warrant a town has for appropriating the taxpayers' money for the payment of damages is that imposed by the constitution or that granted by the Legislature.

The constitution imposes no duty to pay damages in case of vacation. The only provision which approaches it is the 16th Section of Vol. I, Compiled Statutes LVIII, paragraph 16, to wit:

“Private property shall not be taken for public use without just compensation, etc.”

It is entirely obvious that the vacation of a street is diametrically the opposite of “taking private property for public use.” It, on the contrary, is the surrender of the public use for which the property has been heretofore taken by the city.

The law is uniform on the question, to wit:

“Another objection is that by vacating R. R. avenue these resolutions take away the right of the prosecutors as abutting owners and enable the National Docks Co. to occupy the property of the prosecutors without making compensation. This, however, rests upon a mistaken view of the effect of the resolutions. *The vacation of a street does not in the least impair private rights.* It is only a surrender or extinction of the public easement.

Dodge vs. Railroad, 43 N. J. Eq., 351, on appeal; 45 N. J. E., 366; *Read vs. City of Camden*, 54 N. J. L., 347. We find no reason for denying the legality of the resolutions and they are affirmed with costs.” *United N. J. & Canal Co. vs. National D. & N. J. C.*, 31 Atl., 981.

“A public road belongs to nobody but the state, and when the government sees proper to vacate it the consequential loss, if any there be, must be borne by those who suffer it, just as they would bear what might result from a refusal to make it in the first place.” *Except in the instances where statutory provision to the contrary exists the law gives no compensation for losses, resulting from valid surrender of public rights.*”

Dodge vs. R. R. Co., 43 N. J. E., 351, at 356; affirmed, 45 N. J. E., 366.

The only reported case in N. J. in which damages have been allowed for the vacation of a public easement is the case of *Newark vs. Hatt*, 79 N. J. L., 548. But the case falls within the exception heretofore pointed out for the damages were awarded “*under a statute requiring the city to pay damages caused by the vacation of any street.*” The Hatt case therefore is a case in which a statute cast upon the city the positive duty of estimating and awarding damages.

The Supreme Court clearly distinguished the Hatt case on this very ground, to wit:

“In *Newark vs. Hatt*, the Court of Errors and Appeals although it evinced anxiety to protect the land owners, expressly recognized the right

of the Legislature to authorize the vacation of streets without compensation. They said. 'The right of the state to destroy public improvements of this class without compensation is not limited to the constitution and *except for the statute, as expressed in the charter of the city this street could have been vacated without the slightest consideration upon any land lying along it or the payment by the city of compensation to any land-owners for damages.'*"

Newark & B. O. Co. vs. Town of Montclair, 85 Atl., 1028, 84 N. J. L., 46.

The Montclair case is on all fours with the case at bar and holds squarely that unless the Legislature require it, damages cannot be awarded for vacating a portion of a street.

Point IV.

It is not necessary that compensation should precede actual appropriation of lands for a public use by the state, or by a municipal corporation by state authority (And "*a fortiori*," if it is not necessary, when lands are taken, it surely is not necessary, when lands are returned).

Lowere vs. Newark, 38 N. J. L., 151.

Glazier vs. N. J. & N. Y. R. R. Co., 60 N. J. L., 353.

Randolph vs. Freeholders of Union, 63 N. J. L., 155, at 162.

Redman vs. Phila., etc., R. Co., 33 N. J. Eq., 165, at 169.

Johnson vs. Ocean City, 74 N. J. L., 187, at 190.

Wheeler vs. Essex, etc., Board, 39 N. J. L., 297.

Leuly vs. West Hoboken, 54 N. J. L., 508, at 510.

Milligan vs. Perth Amboy, 52 N. J. L., 132, at 134.

Point V.

A public corporation is not required to pay compensation before taking and "in this respect there is a distinction between taking by a public municipal corporation and by an individual and private corporation."

N. J. Constitution, Vol. I, Compiled Statutes, p. LVIII, par. 16.

N. J. Constitution, Vol. I, Compiled Statutes, p. LXXVI, par. 8.

Loweree vs. Newark, 38 N. J. L., 151.

Wheeler vs. Essex P. R. Board, 39 N. J. L., 291.

Point VI.

Whatever damages, if any, are caused by the town's action, they may be liable for, but does not in the least affect the town's right to vacate.

Newark vs. Hatt, 70 N. J. L., 548.

Newark St. R. R. vs. Montclair, 85 At., 1028, 84 N. J. L., 46.

Point VII.

The Court of Equity will not enjoin the passage of ordinances which are within the scope of the powers possessed by municipality.

21 Am. & Eng. Encycl., page 951, note 1, and cases there cited.

Cape May, etc., R. R. Co. vs. City of Cape May, 8 Stew. Eq., 419, at 421.

Point VIII.

The appellant does not own the fee of the so-called street that is sought to be vacated, nor does it own any land anywheres near the so-called street. Any injury that the appellant might suffer in this case is that which pertains to it as one of the general public alone and gives it no special equity.

H. B. Anthony Shoe Co. vs. West Jersey R. R. Co., 57 N. J. Eq., 607.

Point IX.

Injunction is not the proper remedy because there are remedies existing at law.

(A) Certiorari.

See *Dodge vs. Penn. R. R. Co.*, 43 N. J. Eq., 351, at 356; *affd.*, 45 N. J. E., 366.

McLachlan vs. Gray, 74 N. W. (Ia.), 773.

Kroeger vs. Walcott, 76 N. W. (Ia.), 841.

Stone vs. Nebraska City, 122 N. W. (Neb.), 63.

United N. J. R. & C. Co. vs. National D. & J. J. Co., 31 Atl. R., 981.

Newark vs. Hatt, 79 N. J. L., 548.

Newark vs. Town of Montclair, 85 Atl., 1028.

Kean vs. City of Elizabeth, 54 N. J. L., 462.

Camden vs. Mulford, 26 N. J. L., 49.

(B) Mandamus.

Mandamus will lie to compel the proper authorities to proceed to determine the damages occasioned by the laying out of a highway or the opening of a street or change of grade, etc.

26 Cyc., p. 298 (d & e).

13 Enc. of Pl. & Pr., p. 695 (d).

Miller vs. Township, 24 N. J. L., 54.

Minhinnah vs. Haines, 29 N. J. L., 388.

Bierman vs. Seymour, 66 N. J. L., 122, at 125.

Roeck vs. Newark, 33 N. J. L., 129.

(C) Information filed in the name of the Attorney-General in behalf of the state.

H. B. Anthony Shoe Co. vs. West Jersey R. R. Co., 57 N. J. Eq., 607, at 617, and cases there cited.

Point X.

Where the Court has allowed injunction it has been in cases where:

(A) The town or board has no power or jurisdiction to vacate.

Moffett vs. Brainard, 60 N. W. (Ia.), 226.

Above case is distinguished in *Dodge vs. Penn. R. R. Co.*, 43 N. J. Eq., 351 affd.

Troy vs. County of Doniphan, 4 Pac. (Kan.), 1009.

Greene vs. Goodwin Sand Co., 129 N. Y. Supp., 709.

(B) An obstruction of road and not a mere vacation.

McQuigg vs. Cullins, 47 N. E. (Ohio), 595.

Hill vs. Hoffman, 58 S. W. (Tenn.), 929.

Hyde vs. Teal, 15 So. (Fa.), 416.

Cemetery Co. vs. McEvers, 53 So. (Ala.), 272.

(C) Where the road has been vacated and the board has tried to re-establish it.

Wagner vs. Mart., 73 Pac., 675.

Point XI.

There is no irreparable injury shown in this case and therefore there should be no injunction on that ground.

(A) The town attempts merely to vacate the public easement and the individual still retains the easement or whatever right he had.

(B) The contract right still exists, irrespective of town's action and, in fact, is specially mentioned and reserved to the individual in the ordinance.

(C) If there is a way of necessity, it still exists and the town does not take or attempt to take it away.

(D) There is no way of necessity, because:

(1) There is no dominant and servient tenement. There never was unity of ownership of complainants' and defendants' land, hence there can be no way of necessity.

"A way of necessity, such as the law recognizes, derives its origin from a grant or reservation, and cannot exist where there never was any unity of ownership of the alleged dominant and servient estates, for no one can have a way of necessity over the land of a stranger."

14 Cyc., p. 1172 (3).

Nichols vs. Luce, 24 Dick., 102.

Ellis vs. Blue Mountain, 41 Atl., 856.

Tooth vs. Byrce, 50 N. J. E., 389.

Taylor vs. Wright, 76 N. J. E., 121.

(2) A way of necessity is based on necessity and not mere convenience, and if there exists a way by water, there is no way of necessity across another's land.

Hildreth vs. Googins, 91 Me., 227.

Warren vs. Blake, 54 Me., 276.

Dolliff vs. B. & M. R. R., 68 Me., 176.

Steven vs. Orr, 69 Me., 324.

Krugly vs. Land Imp. Co., 86 Me., 280.

Point XII.

The fact that the ordinance to vacate the so-called Cumberland street contained the provision that the rights of the parties under the agreement of 1901 are specially reserved would not invalidate the ordinance nor make it *ultra vires*. In truth, the vacation of a street could not, of itself, eliminate any private rights that individual parties might have in the street. The vacation of a street does eliminate the easement, which an individual may have in the street as one of the public generally. But if any individual has any rights superior or greater than as one of the public generally, then those rights are not affected by a vacation of the street, and are always reserved to the individual. What the Town of Harrison attempts to do in the case at bar is to quit-claim all the rights which the town itself, has in the street, that is the public easement, subject to the agreement of 1901. As a matter of fact, the provision reserving the rights under this agreement could very well be left out of the ordinance, or be treated as mere surplusage. It is to be noted by the Court that this provision is not a condition of the proposed vacation. The vacation could be accomplished completely and effectively, with or without this provision.

Point XIII.

The fact that one of the reasons for vacating a portion of the street was to accommodate a person over whose land the vacated portion ran does not invalidate the ordinance.

Kean vs. Elizabeth, 54 N. J. Law, 462.

Affirmed 55 N. J. Law, 337.

IN ANSWERING THE BRIEF OF THE HARRISON LAND COMPANY.

Appellant in this case it is to be noted that the respondents call the attention of the Court to an attempt on the part of appellants to confuse this issue with two distinct and separate cases entitled *United New Jersey Railroad and Canal Company vs. Crucible Steel Company of America* and *Booth & Flinn* against same.

These have not anything to do with the case at bar, and this is an attempt on the part of the appellant to ride into a harbor on another's ship.

These latter cases are involved in the construction and enforcement of the contract between the parties of May 17, 1901, and the said two cases are suits for injunction against the obstruction of Cumberland street. The present suit was decided long before and is not for an obstructing but it is to enjoin the vacation of Cumberland street, which is an entirely separate and distinct question. Court below in the present case refused to grant a preliminary injunction against the vacation of Cumberland street and it is from this refusal the present appeal in this case is taken.

While the agreement of May 17, 1901, was mentioned in the bill of the appellant in this present suit, still, as the respondents claim, it has nothing whatsoever to do with the question of the vacation of Cumberland street. The vacation, as the respondents have set out in their main brief, is a question of the right of the town to release the public easement in a street and has nothing to do with the private agreements of individual parties. If individuals are bound by an agreement before the vacation, they are still bound after the vacation. The vacation only seeks to quit-

claim the public right. If there is any private way existing in the street, it still will continue to exist irrespective of the town's action in vacating said street. As a matter of fact, however, in this case, the town in its ordinance of vacation expressly reserved whatever rights there were in the agreement of May 17, 1901.

The statement in the appellant's brief that "Cumberland street is open and still continues to be the sole and only means of access to and from the property of the appellant" is not correct. It is alleged by the appellant but is denied by both the respondents. (See answer of Crucible Steel Co., Case, page 39.) (See answer to Town of Harrison, Case, page 47.)

Whatever rights Booth & Flinn had in this present controversy is not a part of this case as the same was advertently omitted from the printed case as the appellant has admitted in his brief.

The appellant has not shown wherein it will suffer irreparable loss if said Cumberland street is vacated. The respondents have shown that no loss will be suffered because of the vacation for the reason that whatever rights the appellant has in Cumberland street will still exist after the vacation and further the rights in the agreement of May 17, 1901, have been expressly reserved by the ordinance of vacation.

The charge of the appellant that vacation was being undertaken not in the public interest but for the sole interest of the Crucible Steel Company and in excess of the municipal power because of the offer of \$8,000.00 is not at all sustained, for the simple reason that there are a great number of streets included in the application and for which the \$8,000.00 was to be paid and Cumberland street is the only street involved in this case, besides, the motive of the Town of Harrison in vacating Cumberland street is not a question

for review by the Court as set out in *Kean vs. Elizabeth*, 54 N. J. L., 462, Aff 55 N. J. L., 337, and certainly not by a Court of Equity.

The appellant again attempts in the first point of its argument to confuse the issues in the present case with those of the United New Jersey Railroad and Canal Company. It is *not true* as the appellant alleges that this street if vacated would necessarily revert to the owners for all purposes whatsoever, for whatever private rights the appellant or anyone else may have (and especially those under the agreement of May 17, 1901) would still remain after the vacation and besides the ordinance of vacation expressly reserves the rights under the agreement of May 17, 1901. In fact, no rights of the appellant would be endangered or impaired. Whatever rights the appellant may have under "solemn contract" would exist after as before the vacation.

The answer to Point II. of the appellant's brief is made in this brief of the respondents, Point XI. (D. 1 and 2, brief, page 11) ; Point VIII (brief, page 13).

The appellant endeavors in his brief, Point III. to show that the Court of Equity has jurisdiction and power to interfere with the action of the Common Council in passing an ordinance to vacate streets.

In the first place, the cases cited are not cases at all similar to the case at bar, but are cases concerning the granting of privileges to individuals to lay railways in the public streets, and the Court will readily see that they are not at all in point.

In the second place, the cases cited for the most part are cases decided in the law court on *certiorari*, and are, therefore, not in point to show the power and jurisdiction of the Equity Court. The case of *North Baptist Church vs. Orange*, 54 N. J. Law, 111, decides

just the opposite of what the appellant cites it. In that case it says:

“A promise made by a citizen to pay a part of
“the expense of opening a street is not opposed
“to public policy, and an ordinance passed by the
“Common Council to open such street will not
“upon that ground be set aside.”

This is the case in the Supreme Court on *certiorari*.

In the case of *Montgomery vs. Trenton*, 36 Law, 79, 84, is another case of *certiorari* against the Common Council of Trenton granting an individual license to lay a railroad track across the public street for the individual's own use.

The case of *Thompson vs. Ocean City*, 60 N. J. Law, 74, was another case of *certiorari* against granting the use of the streets as a bed for a railway company.

Traphagen vs. Jersey City, 52 N. J. Law, 65, is still a further case of *certiorari* against the passing of an ordinance “to confer upon a railroad company a
“right to occupy exclusively twelve feet of a fifteen
“foot sidewalk of a street by the erection thereon of
“a freight platform and roof.”

It is quite obvious that these cases are not at all in point.

Chamberlain vs. Elizabethport Steam Cordage Company, 41 N. J. Eq., 43, was a case entirely different from the case at bar, as is shown in syllabus as follows:

“Provision in a municipal charter that the
“Common Council may authorize the laying of
“railroad tracks in the streets of the city, upon
“the consent of the majority of the land owners
“on such street thereto, does not sanction a track
“laid under a city ordinance (but without the
“consent of an abutting land owner) by a manu-
“facturing company through a street to their
“works, to be used as a steam road, the city char-
“ter containing no provision for a condemnation
“of such land for such road.”

In the case of *Swift vs. D., L. & W. Railroad Company*, 66 N. J. Eq., 34, the Court held that permission to a private individual to occupy a public street with a railroad switch to be used for his private business is void. In that case the plaintiff sought to force the railroad to make the switch and the Court held that no injunction should issue, but the parties should be remitted to the remedies in the courts of law. It is clear that this case is in no way in point with the case at bar.

The citation of the appellant of foreign cases are still less in point; in the first place, because they are cases of foreign jurisdiction and are therefore not in point when New Jersey law is settled; and, in the second place the individual cases do not decide the matters as set out by the appellant in his brief.

In the case of *Pew vs. Litchfield*, 115 Ill. App., 13, there was no legal vacation attempted by the municipality. The facts of that case were that the municipality permitted certain individuals to plant trees and flowers in the middle of the street, and the Court decided on a mandamus proceedings that:

“A city may properly make use of its streets
“for some other purposes than for travel, but its
“streets cannot be vacated, except as provided by
“law.”

There is no question in this case but that the municipality could have vacated the streets if they had proceeded by legal method. However, what was attempted was to allow encroachments on the street without legally vacating it. It is clear that this case is not in point and also for additional reasons that the proceedings here were at law namely, those of mandamus.

The case of *People vs. Atchison, etc. R. Co.*, 217 Ill., 594, 75 N. E., 573, it was decided on *purely statutory grounds*. In that case the city streets ran east and west and the railroad transversed the streets northeast by southwest, that is obliquely, and the City Council passed an ordinance *not vacating* the cross streets, but allowing their permanent obstruction. The statute prohibited the vacation of streets without a three-quarter vote of aldermen. The Court held that the permanent obstruction of these streets amounted to a vacation, and since an ordinance to vacate, voted for by three-quarters of the aldermen was not passed, the attempted obstruction was illegal.

“Practically to permanently close up a street is to vacate it, but suppose it to be conceded that that ordinance is not to be construed as one to vacate parts of streets. The question still remains: Has the City Council power, even in the interest of the public safety, to authorize the permanent obstruction and vacation of its public streets and alleys without the requisite three-fourths’ majority of the City Council? We repeat, the power of the City Council to do what is here attempted is not doubted, provided it is done by an ordinance legally passed by three-fourths’ majority vote, but we hold that it can do so only by an ordinance legally passed vacating the streets or parts of streets and alleys sought to be permanently closed up and vacated.”

The case of *Louisville vs. Bannman*, 35 S. W., 120, rested squarely upon the lack of power from the legislature to the municipality, the Court said:

“But whatever power the city has to close streets and alleys must be delegated by the state * * * such grant cannot be drawn by implication, from section 2826 Ky. St. Nor can such a power be safely held to be included in the

“grant of section 1 of the Act for Government of
 “Cities of the First Class. * * * As is said by the
 “Court in the Martin case before referred to *with-*
 “*out some legislative authority the city has no*
 “*power either to attempt or close a street or*
 “*alleys.*”

The case of *Smith vs. McDowell*, 148 Ill., 51; 35 N. E., 141, is not a question of vacation at all, but the question of the right of municipality to grant a license to an individual to use part of the street as an areaway, and the Court said that such use being permanent is inconsistent with the due use of the street by the public. The Court said that the municipality could vacate the street, but could not retain it as street and the same time grant away part of its use to a licensee.

The case of *Horton vs. William*, 99 Mich., 423; 53 N. W., 369, was an injunction against the erecting of a building on an alley, and the question of vacation is only indirectly involved, if at all. Besides, this case is the case in foreign jurisdiction, and has no weight in view of the well-settled law of New Jersey.

The case of *Henderson vs. Lexington*, 33 Ky., 703; 111 S. W., 318, is based entirely upon a statute providing for compensation in case of the vacation of a street. Likewise the other foreign cases quoted. There is nothing whatever in the cases above quoted to warrant the interposition of the Court of Chancery in the case at bar.

In the case of *North Jersey St. Ry. Co. vs. South Orange*, 58 N. J. Eq., 83, it was decided that equity would interfere to restrain the adoption of an ordinance by the township declaring a forfeiture of the franchise of a railway company, because it did not comply with the statute of permission. The Court interfered here because the action of the township was a judicial act and equity always has the right to interfere by injunction with judicial acts of a town-

ship as it would have the right to interfere with the judicial act of a Court of Law.

The case of *Bond vs. Newark*, 19 N. J. Eq., 376, no question of vacation was involved. The suit was a taxpayer's suit "to prevent the city from paying to the defendant the full contract price for paving, "curbing, guttering * * * Union street * * * "on the ground that O'Connor (the defendant), had "not substantially fulfilled his contract."

The bill charged collusion and fraud, and the Court found "legal fraud." See page 385.

In the case of *Paterson, etc., Railroad Co. vs. Paterson*, 24 N. J. Eq., 158, the Court refused an injunction to restrain the City of Paterson from interfering with complainants' railway, and the case has nothing to do with the case at bar.

The case of *Cape May, etc., Railroad Company vs. City of Cape May*, 35 N. J. Eq., 19, was a case in which the city ordinance had authorized complainant to construct a railroad, and the complainants proceeded to construct their road. The city now attempts to pass an ordinance revoking privileges thus given, preventing the construction of the road. The case is based on the broad principle of estoppel. As a matter of fact, the injunction was dismissed with costs. The Court held, page 421, "But on this application the Court had nothing to do with the effect of a proposed ordinance. The question to answer now is: Can the Court interdict its passage? Both principle and authority opposed the exercise of such power by the Court."

And on page 422 "unless the defendants are allowed "to pass the repeal ordinance, the question of whether "it is valid or not can never be raised. *That is a question belonging exclusively to another tribunal; and, "secondly it seems very clear to my mind that this "Court should do nothing which shall prevent either "party from presenting that question to the proper*

"tribunal for determination. Injunction will be refused and complainant's bill dismissed with costs."

The case of *Asbury Park, etc., R. R. vs. Neptune Township*, 73 N. J. Eq., 323, is not in point. An analysis of that case discloses the utter inappropriateness of its citation. The Asbury Park case, together with the cases therein commented upon, rest squarely upon the ground that equity has jurisdiction to enjoin a municipality from passing a *repeal ordinance* which would violate grants theretofore given by the municipality to a railroad company, by virtue of which the company has made large expenditures of money. The true ground of the decision is the estoppel of the municipality to impair its own contract. The Court, after reviewing the above-cited cases, held:

"I apprehend that the true ground is that the relation between the railroad company and the township is one of contract, and that by virtue of the contract and the expenditure of money in pursuance of its terms, the railroad company has obtained a vested right which is co-terminus with the rights given to it by the Legislature by the ordinance (that is the first ordinance sought to be repealed). The Court may in its discretion in a proper case by its injunctive power, prevent any attempt on the part of the municipal corporation to violate its contract."

And again in page 332:

"The argument leads to the conclusion that the ordinance of 1893 is a valid contract between the township and the railroad company, and that the binding force of its provision could not be impaired by either party without the consent of the other. In fact, the relationship between them imposes upon them respectively reciprocal duties. It was not competent, therefore, for the township to violate its part of the contract in the manner proposed. * * *"

In the case of the *Morris Canal and Banking Co. vs. Mayor, etc., of Jersey City*, 12 N. J. Eq., 252, a street had been dedicated by filing of map, and had been abandoned some fifty years. The city then attempted to reopen the street. The case falls within the third exception noted in defendants' brief. Moreover, the Court does specifically distinguish the case on two grounds. To quote the syllabus:

“(Second) Because it comes within the well recognized exception of irreparable damage; “(third) because defendants have waived their right to except to the jurisdiction of this Court “by answering the bill without interposing such “an objection.”

The case affirms the general rule that the Court of Equity has no power to interfere with the ordinance of a municipal corporation.

The above synopsis is a complete analysis of *all* the cases cited by the appellant in its brief.

(I) It endeavors to bring its case within the principles of the case of the *United New Jersey, etc., vs. The Crucible Steel Company and Booth & Flinn* against the same, which we have shown in the other portions of this brief to be an absolutely unfair attempt. See brief, pages 1-2-15.

(II) The appellant endeavors to show that it is in a different position from that of the public generally, and that the proposed vacation is a taking of property without making compensation. The appellant cites no case to support this contention, and the law of New Jersey is well-settled, as set out in detail in this brief.

The appellant has no rights different from any of the public generally, and even if the appellant could prove rights under private agreements, these rights could not interfere with the vacation, as the vacation of the street does not impair the private rights; and

besides, the proposed vacation in this case reserves the private rights under the agreement of 1901. See brief, pages 3 and 13.

(III) The appellant attempts to show the jurisdiction of equity to interfere with the vacation, and in support of that contention cites a list of New Jersey cases in *certiorari* involving the question of allowing individuals to lay railways in the public streets; a few cases in New Jersey Equity, as taxpayers suit, etc., which are obviously not in point with the case at bar and a few cases in foreign jurisdiction, which are not involved in the question of vacation, and, in fact, do depend entirely upon statutory grounds of the peculiar jurisdiction. All these have been analyzed in detail in our brief.

No case is cited by the appellant at all that upholds in any particular any of its contentions.

We contend that the law of New Jersey is well settled as set out in our brief. A municipality can vacate a street and release the public easement, without making compensation, unless the same is provided for in the town charter. Furthermore, the Court of Equity has no power or jurisdiction to restrain the proposed vacation by a municipality.

We contend for the reasons above set out and those set out in the opinion of Court of Chancery that the order of the Vice-Chancellor dismissing the order to show cause was correct and in all things according to equity and that the appeal of the appellant from said order should be dismissed with costs.

Respectfully submitted,

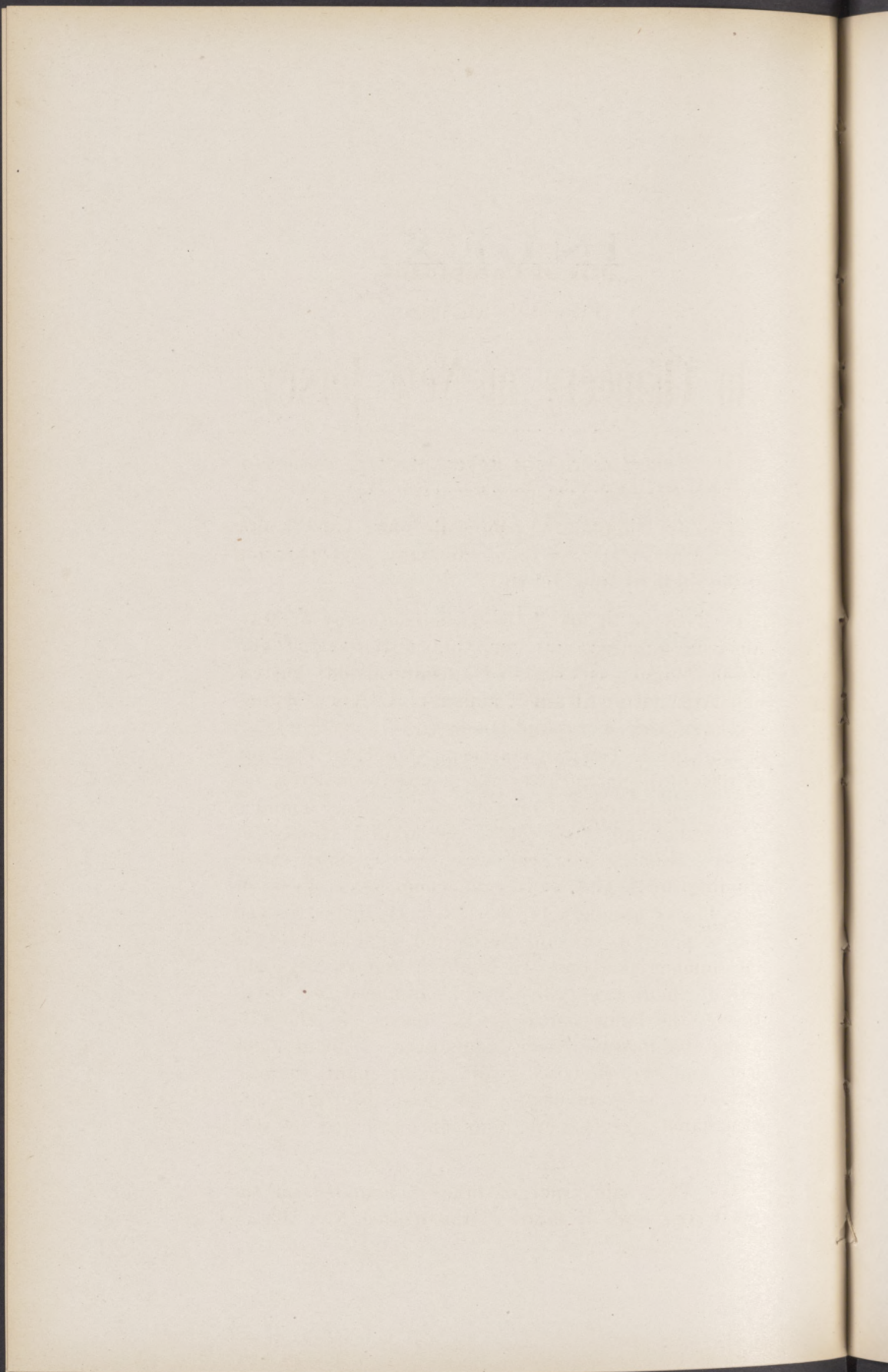
PEIRCE & HOOVER,

Solicitors and Counsel for the Respondents, Crucible Steel Company of America, and Town of Harrison.



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Bill of Complaint.

Filed July 31, 1913.

In Chancery of New Jersey.

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*To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:*

Humbly complaining, shōweth unto your honor
your orator, Harrison Land Company, a corporation
of the State of New Jersey:

1. That on or about the seventeenth day of May,
nineteen hundred and one, James H. Young and
Mason Young, as surviving executors and trustees
under the last will and testament of Henry Young,
deceased, were seized and possessed of a certain tract
of land in the Town of Harrison, County of Hudson,
in this State, comprising about seventeen acres, de-
scribed on the official map of said town as bounded
by Cumberland, Cape May, Salem and Gloucester
streets, running east and west, and Seventh street
running north and south, and comprising blocks or
part blocks numbers 176 to 183, both inclusive, and
lots or part lots on said blocks and on said streets to
the number of about two hundred and twenty-eight
lots of about twenty-five by one hundred feet each;
besides the lands south of said blocks 178 and 179,
along the Passaic River, a distance of about 1,200
feet, and the riparian grant appurtenant thereto;
although, as your orator has been informed, said
designated streets were long since vacated by said
town.

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II. That said tract of land is bounded on the
north and west by lands of the United New Jersey

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Railroad & Canal Company (now the Pennsylvania Railroad Company), known as the Preston tract, or Canada or Kennedy tract, on the south by the Passaic River to the exterior line of said riparian grant, and on the east by lands formerly of William H. Draper, deceased, and is of great value being assessed by the said town at the sum of over forty-one thousand dollars, and is connected with Fourth street, which is
 10 one of the important thoroughfares of said town, by Cumberland street, as hereinafter mentioned.

III. That said Cumberland street is sixty feet wide, and is shown, upon the "Map of lots in East Newark for Hiram Gilbert, Clark & Bacot, surveyors, July 15, 1852," and upon the official map of said town, as extending easterly from and at right angles to said Fourth street, a distance along said center line of about two hundred and thirty-six feet, to the
 20 intersection of the lands of said Hiram Gilbert, shown upon his said map, with the westerly line of said Preston tract, and for said distance (but not from its easterly terminus as extended, as hereinafter set forth), is and is recognized as one of the public streets of said town; that said Cumberland street is further described in the agreement hereinafter mentioned.

That said Fourth street is a wide finely paved street, with a trolley line thereon, and is the main artery, running north and south, connecting the said
 30 Town of Harrison with the City of Newark by means of a costly bridge over the Passaic River, extending from the foot of said Fourth street to the foot of Jackson street in said city.

IV. That prior to said seventeenth day of May, nineteen hundred and one, access to and from the said tract of land of the said Henry Young estate, was over and across the properties of said railroad company, William H. Draper, and Crucible Steel Company of America, a corporation of this State by various
 40 private ways and public streets, running north

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and south and westerly from said tract of land, to said Fourth street and to other parts of said town.

V. That on or about the seventeenth day of May, nineteen hundred and one, a certain agreement, a copy of which is hereto annexed as a part of this bill of complaint, and marked Exhibit A, was made and entered into by said United New Jersey Railroad & Canal Company (and the Pennsylvania Railroad Company) of the first part, Crucible Steel Company of America, of the second part, James H. Young and Mason Young, surviving executors of and trustees under the last will and testament of Henry Young, of the third part, and Ruth Dana Draper, sole devisee and legatee of William H. Draper, deceased of the fourth part; which agreement recited that the said parties thereto owned tracts of land in said town lying south of the main line of the railroad of the party of the first part, and east of the most westerly of the several boundary lines between the Gilbert tract shown upon the above mentioned map, and said Preston tract, or Canada or Kennedy farm, shown on a map of said tract filed in Bergen County July 14, 1837, and extending easterly from said line over two thousand feet to the middle of a ditch forming the easterly line of said Draper tract; that no public streets or highways then existed on said several tracts, that the said parties of the third and fourth part claimed rights of way over property of said railroad company, embraced in said Preston tract; and that it was for the interest of all said parties that some recognized way to and through such properties be established, and that all claims of parties therein to private rights of way over such properties or any of them be extinguished—and thereupon covenanted and agreed each with the others and with each of them, as follows, viz., “that a strip of land sixty feet in width an extension of Cumberland easterly across the said lands of the parties thereto be and the same

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is hereby dedicated and appropriated as a road, the strip of land so dedicated beginning east of Fourth street at the end of Cumberland street as laid out on the Gilbert map and in the aforesaid dividing line between the Preston tract and Gilbert tract, and running thence easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties hereto to the middle of the said ditch which forms the easterly boundary of the said land of the party of the fourth part. Cumberland street, of which the land above described is an extension, is shown on the map of the Gilbert tract above referred to and on the official map of the Town of Harrison made by Young and Borrie, surveyors. It is sixty feet in width and crosses Fourth street at right angles extending easterly to the said boundary line of the Gilbert and Preston tracts; the northeast corner of Fourth and Cumberland streets is two thousand and twenty feet southerly from New Jersey Railroad avenue. The distance from Fourth street along the northerly line of Cumberland street to the boundary line of Preston tract is shown differently on the different maps."

That thereupon, for the consideration set forth in said agreement, the parties of the second, third and fourth parts did release and surrender to the party of the first part all right of way over the Preston tract, or any part of it, arising from any source whatever, which they, or any of them, might have or claim to have; and that it was further agreed that any of the parties might at any time, but without expense to the other, or of any of them, fill in and grade the said road or any part of it; and that said agreement should bind the successors, heirs, executors and assigns of the respective parties.

VI. That said agreement, after execution by the parties above named (including the Pennsylvania Railroad Company), was recorded in the Register's

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Office of Hudson County in Book 794 of Deeds on page 207; to which agreement or the said record thereof your orator prays leave to refer if necessary.

VII. That since the execution of said agreement, and by reason of the vacation of the said town of all other streets running to or through your orator's said tract of land, said Cumberland street has been and still continues to be the sole mode of access to and from said property and Fourth street or any public street of said town, and has become and is a way of necessity. 10

VIII. That on or about the twentieth day of May, nineteen hundred and four, and the seventh day of July in the same year, by deeds duly recorded in said Register's Office in Book 896, pages 155 and 175 of Deeds for said county, the said James H. Young and Mason Young, surviving executors of and trustees under the last will and testament of Henry Young deceased, and all of the beneficiaries under said will and the only *cestuis que trustent* for whose benefit the properties therein described were then held by the said James H. Young and Mason Young, united in a conveyance of said tract of lands, and other lands, and of all rights and interest in any wise relating thereto, to your orator said Harrison Land Company, and that by said deeds your orator became and is still seized and possessed of said tract of land and of the rights and benefits set forth in the agreement aforesaid; to which said deeds or said records thereof your orator prays leave to refer if necessary. 20 30

IX. That on or about the seventh day of March, nineteen hundred and eleven, the said Crucible Steel Company of America made application to the Town Council of said Town of Harrison for the vacation of parts of certain streets in said town, and among others of Cumberland street from Fourth street to the said Hiram Gilbert-Preston tract dividing line; but 40

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that said application was not acted upon by said town.

10 That thereupon, and on or about the sixth day of May, nineteen hundred and thirteen, said Crucible Steel Company of America, again applied to said town council for the vacation of said Cumberland street and other streets, and, in connection with the vacation thereof and the deeding of said streets, which was stated to abut on the property of said company and which your orator avers to be the fact, offered to pay to the town treasurer the sum of eight thousand dollars, said town giving in return a quit-claim deed for said streets; a copy of which proposal is hereto annexed as part hereof and marked Exhibit B.

20 X. That said application was acted upon by said town council on or about the fourteenth day of said May, and was on motion accepted, subject to the agreement aforesaid; and that on further motion the ordinance committee of said council were directed to prepare notices of intention to vacate said streets, pursuant to the charter of said town.

30 XI. That thereupon the Town of Harrison by its town clerk, did cause to be published in the "Kearny Record" sundry notice of intention, and among others that set forth in the copy thereof annexed hereto as a part of this bill, marked Exhibit C., giving notice of intention of said common council of said Town of Harrison to cause said Cumberland street extending from the easterly line of Fourth street easterly two hundred and thirty-six feet and seventy-two one-hundredths of a foot measured along the center line, to the land of the Pennsylvania Railroad Company, to be vacated, subject to the agreement aforesaid, and requiring all persons objecting to said improvement to file their objections in writing with the town clerk on or before the twenty-third day of June last past.

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Bill of Complaint.

XII. That prior to the time limited in said notice and on the twenty-first day of said June, your orator filed with the said town clerk its objections in writing to the proposed vacation of Cumberland street (as did also the Pennsylvania Railroad Company), setting forth the agreement aforesaid and claiming that said Cumberland street was necessary as an outlet and the only outlet from your orator's said tract of land to Fourth street; that such vacation would deprive your orator's said tract of land of access to or from Fourth street or any other established street of said town, and would cause your orator to sustain serious and irreparable loss; that such vacation at the instance of said Crucible Steel Company would constitute a breach of said agreement and be fraudulent and void as against your orator and the other parties thereto; and that such vacation in view of the facts above set forth would be illegal, void and of no effect to the parties to said agreement; all whereof will more fully and at large appear by said objections, to which your orator prays reference, a copy whereof is annexed hereto as a part of this bill and marked Exhibit D.

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XIII. That notwithstanding said protest, and the objections and protest of said Pennsylvania Railroad Company, the said town council at its meeting on July first, instant, at the instance of the Crucible Steel Company of America, introduced, among others, an ordinance, a copy of which is annexed, and marked Exhibit E. for the vacation of said Cumberland street as described above in said notice of intention, subject to the agreement aforesaid; and thereupon did, by a majority vote of five to four, pass said ordinance upon its first and second readings, and did order the same to a third reading and to be published. That said ordinance is now being published in said "Kearny Record," and that said ordinance will be brought to its third and final reading at the meeting of the said

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Bill of Complaint.

town council to be held on the first day of August next. That if said ordinance is passed, said Cumberland street will forthwith become vacated.

10 XIV. And your orator further shows and charges that the object of the agreement aforesaid was that the parties thereto should have access and free ingress and egress to and from Fourth street by way of Cumberland street; that said object will be de-
20 feated if said ordinance be passed upon its third reading and said street become vacated, and your orator's tract of land will become isolated and of little value; that your orator will thus suffer great and irreparable loss for which no adequate remedy exists at law either under the charter of said town or otherwise; and that the effect of the final passage of said ordinance will be to take away your orator's property rights for private interests without due process of law. That the action of said Crucible Steel
30 Company of America in procuring the passage of said ordinance to close said Cumberland street is a fraud upon your orator and the other parties to said agreement, and that said company should be restrained from carrying out its said proposal to said town, and said town should be restrained from the passing of said ordinance and the vacation of said Cumberland street, and from the acceptance of said amount from said Crucible Steel Company of America so far as relates to said Cumberland street, and from giving a quit-claim deed for said street to said Crucible Steel Company of America.

40 XV. Your orator further shows and charges that the right of the town and its legal representatives to pass said ordinance for the vacation of said Cumberland and other streets is not being exercised as aforesaid in the public interests, but for the sole purpose of benefiting said Crucible Steel Company of America, a private party, to the detriment of your orator and other owners of land abutting on said Cumber-

Bill of Complaint.

land street. That said common council is thus exceeding their powers under the charter of said town, being influenced thereunto by the aforesaid offer of eight thousand dollars.

XVI. That while power is given to the common council of said town to cause any street, road, highway or alley already laid out, or which shall hereafter be laid out, to be vacated, straightened, altered or widened and to take and appropriate for such purpose any lands and real estate, such action can only be taken upon making compensation to the owner or owners thereof, and that no provision is made in the charter of said town for the ascertainment, payment and collection of such compensation and that no compensation has been made or tendered to your orator in respect to the proposed vacation of said Cumberland street and the deprivation to your orator of the right of access to and from its property as aforesaid.

XVII. That the effect of the passage of the said ordinance and the vacation of said streets will be to add great value to said steel company's property, far in excess of the said sum of eight thousand dollars, and to give the said company a factory site of large area, prominently located in said town, extending from New Jersey avenue to the Passaic River, unburdened by public highways, without any corresponding advantage to the public. That since the date of the agreement aforesaid, the titles to said Cumberland street easterly of Fourth street to said railroad property, and to the land abutting thereon on the north and south, have been acquired and are now held by said Crucible Steel Company of America or in its behalf, and that said company has partially filled in said street and abutting lands, and has caused a railroad spur to be laid thereon. That said company has made no provision for the opening of said Cumberland street from Fourth street easterly to the said railroad property, or to reserve said stretch of

Bill of Complaint.

land for the use of your orator and the Pennsylvania Railroad Company, and that your orator is informed and believes it to be true, that it is the intention of the said Crucible Steel Company of America to close said street and to occupy the same with buildings or otherwise, and to obstruct and prevent its use by your orator.

10 XVIII. That your orator at the time of the application of said Steel Company for the introduction of said ordinance was in negotiation with contractors for the filling in and grading of said Cumberland street from Fourth street easterly to your orator's tract of land, and also for the filling in of said tract of land and river front in order to develop said land for factory and other purposes. That such development would be of great value to your orator, and also to said town by adding new industries and increasing its population and its taxable values.

20 In consideration whereof, and forasmuch as your orator is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable court, where matters of this nature are properly cognizable and relievable:

30 To the end therefore that the said Crucible Steel Company of America and the Town of Harrison may, but without oath, full true and perfect answer make to all and singular the matters aforesaid, and that the said Crucible Steel Company of America may be enjoined and restrained from in any wise obstructing said Cumberland street, extending from the easterly line of Fourth street two hundred and thirty-six feet and seventy-two one-hundredths of a foot measured along the center line to the land of the Pennsylvania Railroad Company or from preventing your orator from using the same, to its entire width, freely and without interference or limitation, and

40 from in any wise directly or indirectly prosecuting

Bill of Complaint.

further its petition, application or proposal for the closing and vacating of said portion of said Cumberland street, and so far as relates thereto from making or tendering payment to the said town of the sum of eight thousand dollars, or any other sum, for the vacation of said streets, and from receiving any deed for said street from said town; and that said Town of Harrison may be enjoined and restrained from passing said ordinance vacating said Cumberland street, and from accepting said sum offered to said town upon the vacation of said streets so far as relates to said Cumberland street, and from giving to said Steel Company any deed for said street; and that your orator may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience. 10

May it please your honor, the premises considered to grant unto your orator not only the State's writ of injunction issuing out of and under the seal of this honorable court, and to be directed to the said defendants enjoining and restraining them and each of them as herein before prayed, but also the State's writ of subpoena issuing out of and under the seal of this honorable court, to be directed to the Crucible Steel Company of America, and the Town of Harrison commanding them and each of them by a certain day and under a certain penalty therein to be expressed to be and appear before your honor in this honorable court, then and there to answer all and singular the said premises and to stand to, abide by and perform such order and decree therein as to your honor shall seem meet, and shall be agreeable to equity and good conscience. 20 30

And your orator as in duty bound will ever pray,
&c.

EDW. A. & WM. T. DAY,
Solicitors for Complainant.

WILLIAM T. DAY,
Of Counsel.

EXHIBIT A.

10 AGREEMENT, made this seventeenth day of May, in the year one thousand nine hundred and one, between the United New Jersey Railroad and Canal Company, party of the first part, Crucible Steel Company of America, party of the second part, James H. Young and Mason Young, surviving executors of and trustees under the last will and testament of Henry Young, late of Osinning, in the County of Westchester and State of New York, deceased, party of the third part, and Ruth Dana Draper, sole devisee and legatee of William H. Draper, of the City, County and State of New York, deceased, party of the fourth part.

20 WHEREAS, the said parties own tracts of land in the Town of Harrison, County of Hudson and State of New Jersey, lying south of the main line of the railroad of the party of the first part, and east of the most westerly of the several boundary lines between the tract known as the Gilbert tract shown on a map entitled Map of Lots in East Newark for Hiram Gilbert, Clark & Bacot, city surveyors, July 15, 1852, filed in the office of the Register of Hudson County, as Map No. 234, and the tract known as the Preston Tract, or Canada or Kennedy Farm, shown on a map entitled Map of the Preston Tract filed in Bergen County Clerk's Office July 14, 1837, and extending
30 eastwardly from this line a distance of more than two thousand feet to the middle of a ditch which forms the easterly boundary of a tract of land formerly belonging to the estate of Michael Sanford who died in eighteen hundred and five, which was conveyed to said William H. Draper, deceased, by Ellis F. Draper, and Jennie B. Smith and her husband, by deed dated October 27, 1884, and recorded in Book 397 of Deeds for Hudson County, on page 567, and

40 WHEREAS, no public streets, or highways, exist on said several tracts and the parties of the third and

Bill of Complaint—Exhibit A.

fourth parts claim rights of way over property of the first part embraced in the above mentioned Preston Tract, and

WHEREAS, it is for the interest of all the parties hereto that some recognized way to and through such properties be established and that all claims of parties herein to private rights of way over such properties or any of them be extinguished:

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NOW THEREFORE, the said parties, in consideration of the premises and of the sum of one dollar by each to each of the others in hand paid, receipt whereof is hereby acknowledged do hereby covenant and agree, each with the others and with each of them that a strip of land sixty feet in width an extension of Cumberland street easterly across the said lands of the parties hereto, be and the same is hereby dedicated and appropriated as a road, the strip of land so dedicated beginning east of Fourth street at the end of Cumberland street as laid out on the Gilbert map and in the aforesaid dividing line between the Preston Tract and the Gilbert Tract, and running thence easterly between the northerly and southerly lines of Cumberland street produced across lands of the parties hereto to the middle of the said ditch which forms the easterly boundary of the said land of the party of the fourth part. Cumberland street, of which the land above described is an extension, is shown on the map of the Gilbert Tract above referred to and on the official map of the Town of Harrison made by Young and Borrie, surveyors. It is sixty feet in width and crosses Fourth street at right angles extending easterly to the said boundary line of the Gilbert and Preston Tracts; the northeast corner of Fourth and Cumberland streets is two thousand and twenty feet southerly from New Jersey Railroad avenue. The distance from Fourth street along the northerly line of Cumberland street to the boundary line of the

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Bill of Complaint—Exhibit A.

Preston Tract is shown differently on the different maps.

And the said parties of the second, third and fourth parts, for the consideration aforesaid, do hereby release and surrender to said party of the first part all rights of way over the Preston Tract, or any part of it, arising from any source whatever, which they, or any of them may have or claim to have.

10 It is further agreed that any of the parties hereto may at any time, but without expense to the others or to any of them, fill in and grade the said road, or any part of it, and this agreement shall bind the successors, heirs, executors and assigns of the respective parties.

20 IN WITNESS WHEREOF, the said parties have executed these presents, under their respective seals, and the Pennsylvania Railroad Company, lessee of the party of the first part, in token of its assent and approval, hath also executed the same, the day and year first above written.

(L. s.) THE PENNSYLVANIA RAILROAD
COMPANY,

By CHARLES E. PUGH,
Vice-President.

Attest:

LEWIS NEILSON,
Secretary.

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(L. s.) THE UNITED NEW JERSEY RAIL-
ROAD & CANAL COMPANY,

By F. WOLCOTT JACKSON,
President.

Attest:

LEROY H. ANDERSON,
Secretary.

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Bill of Complaint—Exhibit A.

(L. S.) CRUCIBLE STEEL COMPANY OF
AMERICA,

C. E. CLAPP,
Fourth Vice-President.

Attest:

FRANK B. SMITH,
Secretary.

10

JAMES H. YOUNG, (L. S.)
Executor and Trustee.

MASON YOUNG, (L. S.)
Executor and Trustee.

RUTH DANA DRAPER (L. S.)

Recorded Register's Office 5303, November 8, 1901,
9.45 A. M. Hudson County, New Jersey.

794-207.

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Bill of Complaint—Exhibit B.

EXHIBIT B.

HON. MAYOR AND COMMON COUNCIL,
TOWN OF HARRISON.

DEAR SIRs:—

We are herewith submitting proposal in connection
10 with the vacation and deeding of certain streets abut-
ting on our property on South Fourth, Fifth and
Sixth streets of your town as follows:

Hunterdon street, Burlington street, Monmouth
street, Gloucester street between Fourth and Fifth
street, Salem street, Cumberland street, Cape May
street, and Henry Young street and vacated property
at the east. Fifth street south of the Pennsylvania
20 Railroad Company's line at Somerset street to a line
at approximately the center of Salem street; south of
said line street is already vacated.

Fifth street from Fox Island Creek to Middlesex
street.

Burlington street.

Hunterdon street and half of Monmouth street and
Somerset street abutting on our property east of Sixth
street.

The Crucible Steel Company of America hereby
offer \$8,000 payable to the Treasurer of the Town of
Harrison, N. J., and the Common Council of Harri-
30 son to give in return a quit-claim deed on all the
property herein mentioned.

Trusting this will meet with your acceptance, we
are,

CRUCIBLE STEEL COMPANY OF AMERICA,
R. H. ILLINGSWORTH,
Mgr. of Atha Works.

EXHIBIT C.

TOWN OF HARRISON.

Cumberland Street,

NOTICE OF INTENTION.

Public notice is hereby given that it is the intention of the Common Council of the Town of Harrison by virtue of its charter, the supplements thereto and the laws of this state, to cause Cumberland street extending from the easterly line of Fourth street easterly 236 72-100 feet; measured along the center line to the lands of the Pennsylvania Railroad Company, to be vacated, subject to the agreement made the 17th day of May, 1901, between The Crucible Steel Company of America, The United New Jersey Railroad and Canal Co., James H. Young and Mason Young, surviving executors of Henry Young, deceased, and Ruth Dana Draper, devisee of William H. Draper, deceased.

All persons objecting to the above improvement must file their objections in writing with the town clerk on or before the expiration of twenty days from the date of this notice.

PETER J. GOODMAN,
Town Clerk.

Dated Harrison, N. J., June 3, 1913.

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EXHIBIT D.

TOWN OF HARRISON.

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 IN THE MATTER OF THE VACATION
 OF CUMBERLAND STREET.

) *Notice of In-*
tention, &c.,
) *Objections.*

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The Harrison Land Company, a corporation of the State of New Jersey, herewith files its objections, in writing with the clerk of the Town of Harrison, pursuant to the published notice of intention in the above stated matter, and respectfully shows that it objects to the vacation by the Town of Harrison of Cumberland street, extending from the easterly line of Fourth street easterly 236 72-100 feet (72-100ths) feet, measured along the center line, to the lands of the Pennsylvania Railroad, whether such vacation be made as stated in said notice subject to the agreement made the seventeenth day of May, 1901, between the Crucible Steel Company of America, the United New Jersey Railroad & Canal Company, James H. Young and Mason Young, surviving executors of Henry Young, deceased, and Ruth Dana Draper, devisee of William H. Draper, deceased, or otherwise, for the following reasons:

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1. That in and by the said agreement it was covenanted and agreed by the said parties thereto (who were at that time and are still the sole owners of the lands bounded easterly by the Draper line, westerly by Fourth street, southerly by the Passaic river; and northerly by the north line of Cumberland street as then and now existing and as projected to the said easterly line of the Draper tract), that a strip of land sixty (60) feet in width, an extension of Cumberland

Bill of Complaint—Exhibit D.

street easterly from its then and its present terminus across the lands of the said parties, should be dedicated and appropriated as a road, which strip of land so dedicated should begin at said terminus of Cumberland street (as laid out on the Hiram Gilbert map) in the dividing line between the so-called Preston and Gilbert tracts, and should run thence easterly between the northerly and southerly lines of Cumberland street produced, across the said lands of the said parties to the middle of the ditch the easterly boundary of said Draper land. 10

That in consideration of said agreement, the said Crucible Steel Company of America, James H. Young and Mason Young, surviving executors as aforesaid (to whose title the said Harrison Land Company has succeeded, said company having been formed to conserve the title and interest of all of the parties concerned in said Henry Young estate), and the said Ruth Dana Draper did release and surrender to said The United New Jersey Railroad & Canal Company and its successors in interest, the Pennsylvania Railroad Company, its rights of way over the said Preston tract then and still owned by said railroad companies, or any part of it, arising from any source whatever, which they or any of them might have or claim to have. 20

That said agreement further provided that any of the parties thereto might at any time fill in and grade the said road so dedicated and appropriated, or any part of it. 30

In view of which agreement, the Harrison Land Company shows that, in order to utilize and obtain the benefit of the road, to wit, Cumberland street, extended, so dedicated and appropriated as aforesaid, it was at the time of said agreement and is still necessary to obtain an outlet to Fourth street by means of Cumberland street as it now exists, extend-

Bill of Complaint—Exhibit D.

ing easterly from Fourth street to the westerly line of said Preston tract.

10 2. That the vacation and closing of said Cumberland street, as described in said notice of intention, would deprive the Harrison Land Company, and other owners of the land to the east thereof, of any access from their property to Fourth street, or any other street existing in the Town of Harrison, and would also deprive them from gaining access to their said properties from Fourth street, or any other established street in said town.

20 3. That the tract of land owned by the Harrison Land Company lying between the said Draper and Preston tracts comprises upwards of twelve acres of land, and that the same, with its frontage on the Passaic river, is of great value (its assessed value being upwards of \$41,000); and that to deprive said property of its access to and from Fourth street by the vacating and closing of Cumberland street will greatly depreciate the value of said Company's property and cause said Company to sustain a serious and irreparable loss.

30 4. That the vacating and closing of Cumberland street by said town at the instance of the Crucible Steel Company of America, or of any other party to said agreement would constitute a breach of said agreement and be fraudulent and void as against the other parties thereto.

5. That the proposed vacating and closing of said Cumberland street, pursuant to said notice of intention, in view of said agreement and the situation as above set forth, is illegal, and would be void and of no effect as against said Harrison Land Company and other parties to said agreement.

Bill of Complaint—Exhibit D.

WHEREFORE, the said Harrison Land Company respectfully protests against the carrying into effect of the intention mentioned in said notice.

Dated Newark, N. J., June 19th, 1913.

{ Harrison (L. S.) Land Co. N. J. }	HARRISON LAND COMPANY,	
	WALTER KOBBE, JR., <i>Sec'y & Treas.</i> ,	
	<i>Objector.</i>	10
	EDW. A. & WM. T. DAY,	
	<i>Attorneys.</i>	

To

Town of Harrison
or whom it may concern.

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EXHIBIT E.

TOWN OF HARRISON.

Ordinance—Cumberland Street Vacation.

An Ordinance to provide for the vacation of Cumberland street extending from the easterly line of
 10 Fourth street easterly 236 72/100 feet, measured along the center line to the lands of the Pennsylvania Railroad Company, be vacated. Subject to the agreement made the 17th day of May, 1901, between The Crucible Steel Company of America, the United New Jersey Railroad & Canal Company, James H. Young and Mason Young, surviving executors of Henry Young, deceased, and Ruth Dana Draper, devisee of William H. Draper, deceased.

20 Be it ordained by the Common Council of the Town of Harrison as follows:

SEC. 1. That Cumberland street, extending from the easterly line of Fourth street easterly 236 72/100 feet measured along the center line, to the lands of the Pennsylvania Railroad Company, be and the same is hereby vacated. Subject to the agreement made the 17th day of May, 1901, between The Crucible Steel Company of America, the United New Jersey Railroad and Canal Company, James H. Young and Ma-
 30 son Young, surviving executors of Henry Young, deceased, and Ruth Dana Draper, devisee of William H. Draper, deceased.

At a regular meeting of the Common Council of the Town of Harrison, held on Tuesday, July 1, 1913, the above ordinance was given its first and second reading, referred to a third reading, and ordered published.

JOSEPH P. RIORDAN,

Mayor.

PETER J. GOODMAN,

40 *Town Clerk.*

Bill of Complaint—Exhibit E.

STATE OF NEW JERSEY }
 COUNTY OF ESSEX. } ss.

Walter Kobbe, Jr., being duly sworn on his oath deposes and says that he is the secretary and treasurer of the Harrison Land Company, the complainant in the foregoing bill of complaint, and that as such he is familiar with the matters set forth in said bill. That he has read said bill and that the matters set forth therein are true to the best of his knowledge, information and belief. And in particular he says that the Harrison Land Company is seized and possessed of the tract of land described in said bill, and of the rights and benefits granted to James H. Young and Mason Young as surviving executors of and trustees under the last will and testament of Henry Young, deceased, in and by the agreement of May 17, 1901, the purport and object of which are set forth in said bill and a true copy of which is hereto annexed as Exhibit A, and that the said company was formed for the purpose of taking over all of the Henry Young estate interests in this State. That said Cumberland street, as shown on the Hiram Gilbert map referred to in said bill, and as extended by said agreement, affords the only public or private way to and from the said tract of land and Fourth street (which is correctly described in said bill) or any other public street of said Town of Harrison, and that if said street be vacated, and said land company be deprived of access to and from its said property, the value of said land (which is assessed by the town and stated to be worth over \$41,000.00) will be almost wholly destroyed and said company will suffer irreparable loss. That said company is negotiating for the filling up and grading of said Cumberland street and said tract of land so as to develop said lands as in said bill stated, but that said negotiations must be abandoned if said street be closed and the contrac-

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Bill of Complaint—Exhibit E.

tors be unable to use the same. That the proposed vacation by said town of Cumberland street is as stated in said bill, at the request of the Crucible Steel Company of America, one of the parties to said agreement, and for its sole benefit and not for the public in general. That objections were made by said land company in response to the notice of intention of said town to vacate said street, and that Exhibit D. hereto
10 annexed is a true copy of said objections.

And further deponent saith not.

WALTER KOBBE, JR.

Sworn and subscribed to me before
me a Notary Public in and for the
County of Essex and State of New
Jersey, this 30th day of July,
A. D., 1913.

20 MICHAEL N. CHANALIS,
A Notary Public of New Jersey.

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Bill of Complaint—Exhibit E.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. }

Michael N. Chanalis, of full age, being duly sworn on his oath deposes and says that he is a clerk in the employ of Edward A. & William T. Day, the solicitors for the complainant named in the foregoing bill of complaint. That Exhibit B. annexed to said bill is a true copy of the proposal of the Crucible Steel Company of America mentioned in paragraph IX of said bill, on file in the office of the clerk of the Town of Harrison. That said Exhibits C. and E. are true copies of the notice of intention and ordinance mentioned in said bill as published in the Kearny Record, and that deponent was present at the meeting of the common council of said town when said ordinance was on the first day of July instant passed on its first and second readings and ordered to its third and final reading August first next. That Exhibit D. is a true copy of the objections served upon said town clerk June 21st ult. 10 20

And further deponent saith not.

Sworn and subscribed to before me
 this 30th day of July, A. D., 1913.

MICHAEL N. CHANALIS.

ARCHIBALD F. SLINGERLAND,

A Master in Chancery of New Jersey.

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Order to Show Cause.

Order to Show Cause.

Filed

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>HARRISON LAND COMPANY,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>CRUCIBLE STEEL COMPANY OF</p> <p style="text-align: center;">AMERICA, AND TOWN OF HARRISON,</p> <p style="text-align: right;"><i>Defendants.</i></p>	}	<p><i>On Bill for</i></p> <p><i>Injunction.</i></p>
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Upon reading and filing the bill of complaint, affidavits and exhibits in the above stated cause, setting forth that the said Crucible Steel Company of America has made application to the said Town of Harrison for the vacation and for the deeding to it by the Town of Harrison, among other streets, of Cumberland street in said town extending from the easterly line of Fourth street easterly two hundred and thirty-six feet and seventy-two one-hundredths of a foot measured along the center line to the line of the land of the Pennsylvania Railroad Company; that said Cumberland street and its extension by agreement between said Crucible Steel Company of America the surviving executors and trustees of the Henry Young estate (now Harrison Land Company) Ruth Dana Draper and United New Jersey Transportation & Canal Company, and said Pennsylvania Railroad Company, is the sole means of access to and from the property of the complainant described in said bill,

Order to Show Cause.

and Fourth street, or any other street in said town; that the vacation and closing of said Cumberland street will be a taking of the property of said Harrison Land Company, and will cause said company to suffer irreparable loss; that the ordinance for the closing of said Cumberland street was introduced at the instance of the said Crucible Steel Company of America, a private corporation, and that the proceedings for the said vacation of Cumberland street at the instance of the said company will be a breach of the agreement aforesaid and destructive of the rights of the Harrison Land Company thereunder acquired by the transfer of the interests of the said Henry Young estate and a fraud upon said company;

It is on this thirty-first day of July, 1913, on motion of Edward A. & William T. Day, solicitors for the complainant, ordered that the said defendants show cause before the Chancellor at the Chancery Chambers in the City of Newark, on the second day of September next, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why an injunction should not issue against them pursuant to the prayer of said bill, and that in the meanwhile, the said Crucible Steel Company be restrained from further proceedings to carry out its proposal to said town set forth in said bill for the vacation of Cumberland street aforesaid, and from making payment or tender to said Town of Harrison for the vacation of said street, and that said Town of Harrison be enjoined and restrained from final passing of the ordinance for the vacation of said Cumberland street, mentioned in said bill until the further order of this court.

And it is further ordered that a copy of said bill, affidavits and exhibits, and of this order (said copies need not be certified) be served upon the defendants respectively within two days from the date of this order.

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Order to Show Cause.

This restraining order shall not prevent the adjournment by the said Town of Harrison from time to time of proceedings before the Common Council for the vacation of said street until the further order of the court.

10 Leave also is hereby reserved for the said defendants upon five days' notice to apply on any regular motion day to advance the hearing upon this rule to an earlier day.

Respectfully advised,

JOHN R. EMERY,

Vice-Chancellor.

EDWIN R. WALKER,

C.

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Order for Leave to File Supplement.

Order for Leave to File Supplement.

Filed

IN CHANCERY OF NEW JERSEY.

Between

HARRISON LAND COMPANY,
Complainant,

and

CRUCIBLE STEEL COMPANY OF
AMERICA, AND TOWN OF HAR-
RISON,

Defendants.

On Bill, &c.

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Subpoena having issued in the above entitled cause, and the defendants having appeared therein, and the complainant applying for leave to file an addition by way of supplement to the original bill of complaint in this cause;

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It is, on this fifth day of September, nineteen hundred and thirteen, on motion of Edward A. & William T. Day, solicitors for the complainant, ordered that the complainant have leave to file such addition by way of supplement to said original bill and affidavit thereto, and that copies thereof be served upon the defendants.

AND IT IS FURTHER ORDERED that the complainant may thereupon proceed with said cause as if the addition by way of supplement had been made in a supplemental bill, pursuant to the rules of this court.

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IT IS FURTHER ORDERED that this order is made without prejudice to the rights of the respective parties to this suit on the motions now pending to strike out the bill and for an injunction.

Respectfully advised,

J. E. HOWELL,

E. R. WALKER,

V. C.

C.

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Addition to Bill by Way of Supplement.

Addition to Bill by Way of Supplement.

Filed September 6, 1913,

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> HARRISON LAND COMPANY, <i>Complainant,</i> <i>and</i> CRUCIBLE STEEL COMPANY OF AMERICA, AND TOWN OF HARRISON, <i>Defendants.</i></p>	} <i>On Bill, &c.</i>
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20 *To His Honor, Edwin R. Walker,*
Chancellor of the State of New Jersey:

The complainant above named, in addition to the bill of complaint filed herein, by way of supplement thereto respectfully shows:

30 I. That since the filing of the original bill in this cause, and on the fifth day of August last past, the various ordinances introduced in the common council of the said Town of Harrison at the instance of the said Crucible Steel Company of America, for the
vacation of the streets abutting on the property of said company, to wit, Hunterdon and other streets, but omitting Cumberland street, designated in the application made by said company to said common council on or about the sixth day of May last past, as set forth in paragraph IX of said bill of complaint, and annexed thereto as Exhibit B., were passed by said council upon their third and final readings, and that said streets, excepting Cumberland street, there-
40 upon became vacated.

Addition to Bill by Way of Supplement.

II. That at the time of the said final passage of said ordinances, and in consideration thereof, and in modification of its proposition contained in said application, said Crucible Steel Company of America agreed with said common council to pay the sum of eight thousand dollars in said application mentioned, notwithstanding that said Cumberland street had not also been vacated by said council as stipulated in said application. 10

That at the same time the said Crucible Steel Company of America also agreed with said common council to defend the said suit brought by your orator against said company and said town to restrain the vacation of said Cumberland street and to bear the entire expense of defending said suit whether said Cumberland street should or should not become vacated.

III. The complainant further shows in addition to said bill, by way of supplement, that the whole or a major part of the property in said Town of Harrison owned by the said Crucible Steel Company of America and by the Hudson Railroad & Transportation Company, a corporation which, your orator believes and expressly charges, is owned and controlled by said Crucible Steel Company, is described in the deeds to said companies or their predecessors in title, by lot and block numbers with reference to the "Map of Lots in East Newark for Hiram Gilbert, Clark & Bacot, surveyors, July 15, 1852," referred to in paragraph III of said bill of complaint, upon which said Cumberland street, said vacated streets and others are shown and delineated, and that the streets on said map upon which property is located, including said Cumberland street, thereby became dedicated to the public. 20 30

IV. That at the time of the agreement of May 17th, 1901, set forth in said bill and marked Exhibit A., said Cumberland street, between Fourth street 40

Addition to Bill by Way of Supplement.

and the said Preston tract, shown on said Gilbert map, and the blocks abutting thereon, numbered Block 80, Lots 1-18 inclusive, and Block 83, Lots 1-12 inclusive, on said map, were owned by one George L. Blake; and that the same were, in the years 1907 and 1910, conveyed to said Hudson Railroad & Transportation Company and are still owned by it.

- 10 V. That your orator's said land and premises, as taxed by the said Town of Harrison, and exhibiting said Cumberland street from Fourth street, and its extension to the easterly line of your orator's said premises, are shown upon the map annexed hereto as part hereof.

And your orator prays as in said original bill.

EDW. A. & WM. T. DAY,
Solicitors for Complainant.

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Affidavit of Michael N. Chanalis.

Affidavit.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> HARRISON LAND COMPANY, <i>Complainant,</i> <i>and</i> CRUCIBLE STEEL COMPANY OF AMERICA, AND TOWN OF HAR- RISON, <i>Defendants.</i></p>	}	<p>10</p> <p><i>On Bill, &c.</i></p>
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STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

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Michael Nelson Chanalis, the affiant named in the affidavit annexed to the original bill of complaint herein, being further duly sworn on his oath, deposes and says that he has examined the "Map of Lots in East Newark for Hiram Gilbert, Clark & Bacot, surveyors, July 15th, 1852" as the same is on file in the Register's Office in the County of Hudson. That the same was filed January 19th, 1853 as map No. 234. That upon said map are delineated Cumberland street, as described in said bill, and the other streets mentioned in the application of said steel company annexed to said bill as Exhibit B. That Block 80, comprising lots 1 to 18 inclusive, and Block 83, comprising lots 1 to 12 inclusive, abut upon either side of said Cumberland street.

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That deponent has examined the records in said register's office and has ascertained therefrom that on May 17th, 1901, said Cumberland street, and said Blocks 80 and 83, were owned by one George L. Blake, that the same were in the years 1907 and 1910 con-

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Affidavit of Michael N. Chanalis.

veyed to the Hudson Railroad & Transportation Company, and that the deeds to said Blake and to said company described said lands by reference to said Gilbert map.

10 That deponent has also ascertained by an examination of the records in the said register's office that a large part if not the whole of the lands owned by the said Crucible Steel Company and by said Hudson Railroad & Transportation Company were conveyed to said corporations, or to their predecessors in title by reference to said Hiram Gilbert map. That said Hudson Railroad & Transportation Company is also the owner of record of Block 85 on said Gilbert map and of a strip of land along the east side of Fourth street to a depth of one hundred feet extending from Hunterdon street to Salem street.

20 That deponent has inquired of the Secretary of State and has ascertained that said Crucible Steel Company of America was incorporated July 21st, 1900, and said Hudson Railroad & Transportation Company February 2nd, 1907; that the officers of both companies are the same, and that the principal office of said latter company is located at the office of said former company at Harrison, N. J., and that R. H. Illingsworth, who is the manager of said Steel Company, is the agent of said transportation company upon whom process may be served.

30 That the railroad spur to the east of the easterly line of Fourth street on land filled in by said Steel Company, referred to in the bill of complaint, and also a water pipe line from the river to the plant of the said Steel Company, both crossing said Cumberland street, appear to be upon property of both of said companies, but by what authority the same were laid deponent does not know, though he is informed that no authority whatever was given for the laying of said railroad spur southerly of Salem street.

Affidavit of Michael N. Chanalis.

Deponent further says that he has compared Exhibits B., C. and E., annexed to the bill of complaint, with the original application, notice of intention and ordinance on file in the office of the clerk of the Town of Harrison, and that said exhibits are true copies of said originals.

Deponent further says that he has made inquiry of said town clerk and has ascertained from him that the ordinances for the vacation of the streets named in said application, marked Exhibit B., excepting Cumberland street, were passed upon their third and final readings on the fifth day of August last past, and that deponent was present at the meeting of the common council at the time said ordinances were so passed. That he has ascertained from the treasurer of said town that the sum of eight thousand dollars, the consideration money mentioned in said application, marked Exhibit B., was paid by said Crucible Steel Company of America to said town treasurer upon the vacation of said streets. That deponent is informed by the said town clerk that a communication had been received by Michael T. Barrett, Esq., counsel for said Town of Harrison, from said Crucible Steel Company of America agreeing to pay said sum of eight thousand dollars in consideration of the vacation of said streets, even though said Cumberland street should not be vacated, and also agreeing to defend this suit brought by the Harrison Land Company restraining the vacation of said Cumberland street, and to bear the entire expense of such litigation whether said street should or should not be vacated by said town, but that said communication was not on file in his office. That deponent was present at the meeting of the common council of said town on the fifth day of August last past and heard the said Michael T. Barrett state to said council that he had received such communication from said Steel Company and had arranged with said company for

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Affidavit of Michael N. Chanalis.

the payment of said sum of eight thousand dollars upon the vacation of said streets, other than Cumberland street, and the defraying of the entire expense of said litigation by said company.

10 That deponent has examined the application of said Steel Company for the vacation of said streets of March 7, 1911, referred to in the said bill of complaint, filed with said town clerk, and that Exhibit F. annexed hereto is a true copy of said original.

And further deponent saith not.

MICHAEL NELSON CHANALIS.

Subscribed and sworn before me this
fourth day of September, A. D. 1913.

ARCHIBALD F. SLINGERLAND,

Master in Chancery of New Jersey.

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Exhibit F.

EXHIBIT F.

To the Honorable the Council of The Town of Harrison.

Gentlemen :

We desire to present to you briefly the grounds upon which we base our application for the vacation of parts of certain streets in the Town of Harrison. 10

FIRST. It is the purpose of this company to use these parts of these streets, together with other land owned by the company, for the purpose of building additions to our present plant from time to time. Such additions to our plant will furnish employment to an increasingly large number of men and in that way will add to the prosperity of the community. The developments recently made by the Pennsylvania Railroad Company to the east of our plant are of such character that if we are allowed to develop our plant at all we must develop it in a westerly direction. In view of the pleasant relations which have existed between your town officers and our company we should be surprised to find any desire to hamper or interfere with that development. The vacation of these parts of these streets, moreover, will restore just that much land to the ratables of the town. 20

SECOND. Practically these streets are, little, if anything, more than paper streets. They were dedicated by the filing of a map and the dedication was effected without cost to the town. Nor has the town ever paid any money for the working or development of the streets, so that if the application is granted the town will not be giving up anything for which it has paid any value, nor will it be giving up anything which is of any practical public use. 30

THIRD. We state most positively that this application is made solely for the benefit of our company 40

Exhibit F.

10 in the way of developing its business as it is proposed and desired to develop it. Neither the Pennsylvania Railroad Company, nor any other person or corporation has any interest in this matter, and it is not at all contemplated by us that the Pennsylvania Railroad Company shall use this property, or any part thereof, unless such right should be acquired by condemnation against our will, and we are willing to agree that for a period of twenty years the properties thus sought to be released from the dedication will not be in any way used by the Pennsylvania Railroad Company for its railroad purposes unless it be through condemnation proceedings over which we have no control.

Yours very truly,

CRUCIBLE STEEL COMPANY
OF AMERICA,

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By R. H. ILLINGSWORTH,
Mgr.

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Answer of Crucible Steel Company of America.

**Answer of Crucible Steel Company
of America.**

Filed September 9, 1913.

IN CHANCERY OF NEW JERSEY.

HARRISON LAND COMPANY

VS.

CRUCIBLE STEEL COMPANY, *et al.*

} *Answer.*

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The answer of the Crucible Steel Company of America to the bill of complaint filed in the above cause.

FIRST. The defendant has no knowledge as to the contents of paragraph one and leaves complainants to prove same. 20

SECOND. Defendant has no knowledge as to paragraph two and leaves complainants to prove same.

THIRD. Defendant admits Cumberland street is a sixty-foot wide street; has no knowledge as to survey or the map set out in this paragraph. Defendant admits that said street is a public street in the Town of Harrison for the distance of two hundred thirty-six and seventy-two hundredths of a foot (236.72) measuring south from Fourth street. Defendant admits that Fourth street is a paved street. 30

FOURTH. Defendant admits paragraph four.

FIFTH. In reference to paragraph five, defendant admits entering into the agreement set out, but as to the terms of said agreement begs leave to refer thereto in order for certainty.

SIXTH. Defendant admits paragraph six.

SEVENTH. Defendant denies paragraph seven. 40

Answer of Crucible Steel Company of America.

EIGHTH. Defendant has no knowledge as to this, and leaves complainant to prove same.

NINTH. Defendant admits that it applied to the common council of the Town of Harrison to vacate that portion of Cumberland street which was a public street only, excepting any rights which the complainant may have had by virtue of said agreement in the bill of complaint referred to. Defendant admits that it offered to pay the sum of Eight thousand dollars (\$8,000) to the Town of Harrison.

TENTH. Defendant admits that the town council acted upon said application.

ELEVENTH. Defendant admits the publication set out in paragraph eleven.

TWELFTH. Defendant has no knowledge as to the objections being filed as set out in paragraph 12, and leaves complainant to prove same. Defendant denies that the vacation of the street would deprive the complainants of access to or from Fourth street any more than if said street was left open. Defendant denies that the vacation of said street is a breach of the agreement heretofore set out, as any rights that the complainants have are especially reserved. In addition to which, and in further answering, defendants show that Cumberland street at the intersection with Fourth street is very much below the grade of Fourth street, and it would be impossible to drive or even walk from Fourth street to Cumberland street, Cumberland street being a distance of feet below that of the grade of Fourth street. Furthermore, Cumberland street is simply a paper street, and it would be impossible for one to walk or drive on Cumberland street to the complainant's property, it being swamp land, intersected with ditches and in many places over-flooded with water, causing quicksands and altogether a boggy condition.

Answer of Crucible Steel Company of America.

THIRTEENTH. Defendant has no knowledge of the objections and protests of the Pennsylvania Railroad as set out in paragraph 13, but admits that an ordinance was introduced by the town council of Harrison to vacate Cumberland street, and the same was passed upon its first and second readings, and that the same was published in the daily papers.

FOURTEENTH. Defendant denies that the object of the agreement set out will be defeated if the ordinance to vacate Cumberland street be passed, or that the complainants' tract of land would become isolated and of little value, or that they will suffer great or irreparable loss. Defendant denies that the vacation of Cumberland street is a fraud upon the complainant, and denies that defendant should be restrained in any manner as set out in the bill of complaint. And in further answering thereto assert that the right of the complainant will be in no wise affected either by reason of the agreement set out in the bill of complaint, or by reason of any right in addition thereto. And further states and denies that there is any irreparable injury to the complainant, and asserts that any injury or supposed injury which the complainant may have could be fully redressed by an action at law; that the complainant has no standing in the court of chancery. 10
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FIFTEENTH. Defendant denies paragraph fifteen.

SIXTEENTH. Defendant admits paragraph 16 in so far as there is set out the town council have the right to vacate Cumberland street, but denies that said action could only be taken upon compensation to the complainant. Defendant admits no provision is made in the charter of the town for the ascertainment, payment and collection of compensation for vacating streets. Defendant admits no compensation has been tendered to complainant as yet, but asserts that any compensation due to complainants can be secured by an action at law. 30
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Answer of Crucible Steel Company of America.

SEVENTEENTH. Defendant denies that the mere vacation of two hundred thirty-six feet and seventy-two hundredths of a foot (236.72) of Cumberland street will add to the value of defendants' land, but does admit that it is a matter of convenience. Defendant admits that it owns the land as set out in this paragraph. Defendant admits that it made no provision for the opening of Cumberland street, but denies that
10 in any way it has violated the terms of its agreement, as set out in complainant's bill, and denies that it intends in any way to violate said agreement.

EIGHTEENTH. Defendant has no knowledge as to paragraph 18, and leaves complainant to prove the same as best it may.

NINETEENTH. In further answer to the bill of complaint, defendant states that Cumberland street is a street on paper only, as is and was the condition of
20 a large number of streets in the locality set out in the bill of complaint. That the streets in question were laid out over the very extensive swamp land which lies east of the Passaic river, and south of Fourth street; that the land in question is adapted only for manufacturing purposes, and that at the instance of the Pennsylvania Railroad and other corporations many of these streets have been vacated in the past, the Town of Harrison evidently recognizing the fact that said streets were rather a hindrance than a help
30 to the development of this land. That defendants control and operate a large iron plant on the location set out in the bill of complaint, and that the Town of Harrison, recognizing the benefits of such a plant within its corporate borders, no doubt has and will do all it can to make the defendant comfortable in the enjoyment of its land and factories; that there has never been any effort whatever on the part of the complainants to fill in or to use Cumberland street until it came to their notice that the Town of Harrison desired to vacate the small portion of the street
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Answer of Crucible Steel Company of America.

running south from Fourth street; that defendant questioned the good faith on the part of the complainants at this time, and are of the opinion that the bill is filed for the purpose of benefiting others than the Harrison Land Company, as the land of the Harrison Land Company is in such condition that no possible use can be made of it at this time.

In further answering, defendant states that there is adequate remedy at law for the complainant if any rights it has, and denies that there is in any sense irreparable injury shown or can be shown by the complainant. Defendant denies that there is in any way a case made out which would authorize this honorable court to restrain either the Town of Harrison or defendant, as set out in the Bill of Complaint. 10

ONE OF SUPPLEMENT. In further answering the addition by way of supplement to the Bill of Complaint, defendant admits paragraph one of said supplement. 20

TWO OF SUPPLEMENT. Defendant admits this paragraph.

THREE OF SUPPLEMENT. Defendant denies paragraph three.

FOUR OF SUPPLEMENT. Defendant has no knowledge of this, and leaves complainant to prove same.

FIVE OF SUPPLEMENT. Defendant has no knowledge of this, and leaves complainant to prove same. 30

Answer of Crucible Steel Company of America.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

ALFRED J. SODEN, being duly sworn on his oath according to law, deposes and says that he is employed by the Crucible Steel Company of America as a mechanical engineer; that deponent has been employed by the present corporation and its immediate predecessor for twenty-one (21) years, and during all that time has an intimate and actual knowledge of the physical features of the land upon which Cumberland street is located and the meadows thereabout extending over to the land of the Harrison Land Company;

That Cumberland street, which has been a public street from the distance of about two hundred and thirty-seven (237) feet extending easterly from Fourth street, has never been used as a street; that at its intersection with Fourth street there is a drop from the surface grade of Fourth street to what might now be called the surface of Cumberland street, a distance of approximately eight feet; that there is a further drop from the end of Cumberland street to the meadows of an additional distance of approximately twelve feet, so that it is impossible for any one to drive or use either the portion of the street which is dedicated to the public, or the meadows beyond. The meadows extending beyond being in its natural condition, consisting of swamp, pools of water, quicksand, etc., it would be impossible for a person to walk from the end of Cumberland street across the meadows to the land of the Harrison Land Company, owing to the condition of the meadows, and of course, it would be impossible for a vehicle to pass over it. The land of the Harrison Land Company abuts directly upon the Passaic River for a distance of approximately twelve hundred feet; that there has been no work started by the Harrison Land Company, or any other person, to fill in or grade this street; it

Answer of Crucible Steel Company of America.

remains in the same condition as it always has been in; that the distance approximately from the end of Cumberland street to the land of the Harrison Land Company is approximately a quarter of a mile.

ALFRED J. SODEN.

Sworn and subscribed to before me
this 28th day of August, 1913.

W. E. CALVERT, 10
(SEAL) *Notary Public, New Jersey.*

My commission expires Dec. 29, 1913.

STATE OF NEW JERSEY, {
COUNTY OF ESSEX. } ss.

H. P. KREINER, a member of the firm of Borrie & Kreiner, being duly sworn on his oath according to law, deposes and says that the annexed plan is a true and correct survey and measurement of the physical features of the land shown at the location set out upon the annexed plan at Fourth and Cumberland streets and vicinity in the Town of Harrison and state of New Jersey. 20

That said measurement and survey were made by deponent who is a surveyor, who has practiced his profession for twenty-five years last past.

Fourth street at the intersection of Cumberland street is about twelve feet above the surface of meadow land at Cumberland street as shown upon annexed survey and profile map. Fourth street is a graded street, and shows a true and correct grade of said street as now exists in the Town of Harrison; that Cumberland street is an ungraded street, never been used and is only a street on paper. 30

H. P. KREINER.

Sworn and subscribed to before me
this 29th day of August, 1913.

WM. L. BRUNYATE, 40
Attorney at Law of New Jersey.

Answer of Crucible Steel Company of America.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

10 H. P. KREINER, a member of the firm of Borrie & Kreiner, being duly sworn on his oath according to law, deposes and says that the annexed plan is a true and correct survey of Cumberland street in the Town of Harrison, extending from Fourth street to line of Pennsylvania Railroad, formerly Draper estate shown thereon, which plan was copied and compared by deponent.

The plan was made by deponent and his partners, that deponent has been a surveyor for twenty-five years last past, in active practice in his profession and that the firm of which he is a member are the official surveyors and engineers for the Town of Harrison.

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H. P. KREINER.

Sworn and subscribed to before me
 this 29th day of August, 1913.

WM. L. BRUNYATE,
Attorney at Law of New Jersey.

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Answer of The Town of Harrison.

Answer of The Town of Harrison.

Filed September 18, 1913.

IN CHANCERY OF NEW JERSEY.

Between

HARRISON LAND COMPANY,
Complainant,

and

CRUCIBLE STEEL COMPANY OF
AMERICA, AND TOWN OF HAR-
RISON,
Defendants.

On Bill, &c.

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The answer of the Town of Harrison to the bill of complaint filed in the above cause.

First. The defendant has no knowledge as to the contents of paragraph one and leaves complainants to prove same.

Second. Defendant has no knowledge as to paragraph two and leaves complainants to prove same.

Third. Defendant admits Cumberland street is a sixty feet wide street; has no knowledge as to survey or the map set out in this paragraph. Defendant admits that said street is a public street in the Town of Harrison for the distance of two hundred and thirty-six feet and seventy-two-hundredths (236.72) measuring south from Fourth street. Defendant admits that Fourth street is a paved street. 30

Fourth. Defendant has no knowledge of paragraph four and leaves complainants to prove same. 40

Answer of The Town of Harrison.

Fifth. In reference to paragraph five, defendant has no knowledge and leaves complainants to prove same.

Sixth. Defendant admits paragraph six.

Seventh. Defendant denies paragraph seven.

Eighth. Defendant has no knowledge as to this, and leaves complainant to prove same.

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Ninth. Defendant admits the proceedings of the Common Council of the Town of Harrison to vacate that portion of Cumberland street which was a public street only, excepting any rights which the complainant may have had by virtue of said agreement in the bill of complaint referred to. Defendant admits that it was offered the sum of eight thousand dollars (\$8,000).

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Tenth. Defendant admits that the town council acted upon said application.

Eleventh. Defendant admits the publication set out in paragraph eleven.

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Twelfth. Defendant has no knowledge as to the objections being filed as set out in paragraph 12, and leaves complainant to prove same. Defendant denies that the vacation of the street would deprive the complainants of access to or from Fourth street any more than if said street was left open. Defendant denies that the vacation of said street is a breach of the agreement heretofore set out, as any rights that the complainants have are especially reserved. In addition to which, and in further answering, defendants show that Cumberland street at the intersection with Fourth street is very much below the grade of Fourth street, and it would be impossible to drive or even walk from Fourth street to Cumberland street. Cumberland street being a distance of eight to twelve feet below that of the grade of Fourth street. Furthermore,

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Cumberland street is simply a paper street, and it

Answer of The Town of Harrison.

would be impossible for one to walk or drive on Cumberland street to the complainant's property, it being swamp land, intersected with ditches and in many places over-flooded with water, causing quicksands and altogether a boggy condition.

Thirteenth. Defendant has no knowledge of the objections and protests of the Pennsylvania Railroad as set out in paragraph 13, but admits that an ordinance was introduced by the Town Council of Harrison to vacate Cumberland street, and the same was passed upon its first and second readings, and that the same was published in the daily papers. 10

Fourteenth. Defendant denies that the object of the agreement set out will be defeated if the ordinance to vacate Cumberland street be passed, or that the complainants' tract of land would become isolated and of little value, or that they will suffer great or irreparable loss. Defendant denies that the vacation of Cumberland street is a fraud upon the complainant, and denies that defendants should be restrained in any manner as set out in bill of complaint. And in further answering thereto assert that the right of the complainant will be in no wise affected either by reason of the agreement set out in the bill of complaint, or by reason of any right in addition thereto. And further states and denies that there is any irreparable injury to the complainant, and asserts that any injury or supposed injury which the complainant may have could be fully redressed by an action at law; that the complainant has no standing in the Court of Chancery. 20 30

Fifteenth. Defendant denies paragraph fifteen.

Sixteenth. Defendant admits paragraph sixteen in so far as there is set out the town council have the right to vacate Cumberland street, but denies that said action could only be taken upon compensation to the complainant. Defendant admits no provision 40

Answer of The Town of Harrison.

is made in the charter of the town for the ascertainment, payment and collection of compensation for vacating streets. Defendant admits no compensation has been tendered to complainant as yet, but asserts that any compensation due to complainants can be secured by an action at law.

10 Seventeenth. Defendant denies that the mere vacation of two hundred thirty-six feet and seventy-two hundredths of a foot (236.72) of Cumberland street will add to the value of defendants' land, but does admit that it is a matter of convenience. Defendant admits that it made no provision for the opening of Cumberland street.

 Eighteenth. Defendant has no knowledge as to paragraph eighteen, and leaves complainant to prove the same as best it may.

20 Nineteenth. In further answer to the bill of complaint, defendant states that Cumberland street is a street on paper only, as is and was the condition of a large number of streets in the locality set out in the bill of complaint. That the streets in question were laid out over the very extensive swamp land which lies east of the Passaic River, and south of Fourth street; that the land in question is adapted only for manufacturing purposes, and that at the instance of the Pennsylvania Railroad and other corporations many
30 of these streets have been vacated in the past, the Town of Harrison recognizing the fact that said streets were rather a hindrance than a help to the development of this land. That defendants control and operate a large iron plant on the location set out in the bill of complaint, and that the Town of Harrison, recognizes the benefits of such a plant within its corporate borders.

40 In further answering, defendant states that there is adequate remedy at law for the complainant if any rights it has, and denies that there is in any sense

Answer of The Town of Harrison.

irreparable injury shown or can be shown by the complainant. Defendant denies that there is in any way a case made out which would authorize this honorable court to restrain either the Town of Harrison or defendant, as set out in the bill of complaint.

One of Supplement. In further answering the addition by way of supplement to the bill of complaint, defendant admits paragraph one of said supplement.

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Two of Supplement. Defendant admits this paragraph.

Three of Supplement. Defendant denies paragraph three.

Four of Supplement. Defendant has no knowledge of this, and leaves complainant to prove same.

Five of Supplement. Defendant has no knowledge of this, and leaves complainant to prove same.

Lastly, defendant claims full right to vacate said street in the manner adopted and prays to have the bill dismissed with costs and denies it is now being paid anything for vacation of Cumberland street.

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MICHAEL T. & HUGH C. BARRETT,

*Solicitors and of Counsel with defendant,
Town of Harrison.*

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Conclusions of Vice-Chancellor.

Filed October 23, 1913.

IN CHANCERY OF NEW JERSEY.

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">HARRISON LAND COMPANY, <i>et al.</i>,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">CRUCIBLE STEEL COMPANY OF AMERICA, AND TOWN OF HAR- RISON,</p> <p style="text-align: center;"><i>Defendants.</i></p>	} <i>On Bill for Injunction.</i>
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20 Application for preliminary injunction.
 Heard on bill, supplemental bill and affidavits.
 Messrs. Edward A. & William T. Day and Mr.
 Chauncey G. Parker for Harrison Land Co.
 Messrs. Munn & Church for Booth & Flinn, Ltd.
 Messrs. Peirce & Hoover for Crucible Steel Com-
 pany of America.
 Michael T. & Hugh C. Barrett, for Town of Har-
 rison.

(CONCLUSIONS.)

30 EMERY, V. C.

The standing of Harrison Land Company, the sole original complainant in this case, is based on its right to equitable relief by preliminary injunction as necessary to protect its property from being taken by the defendant municipality without compensation on its vacation of a street. The bill prays an injunction against the passage by the common council of an ordinance vacating portion of a street sixty feet wide,
 40 called Cumberland street, lying between Fourth

Conclusions of Vice-Chancellor.

street and lands now or formerly occupied by the Pennsylvania Railroad Company, as the lessee of the United New Jersey Railroad and Canal Co., about 237 feet east from Fourth street, at which point Cumberland street, so far as it is a recognized public street, now terminates. From this location where the public street terminates, the Harrison Land Company by virtue of a written agreement made on May 17, 1901, between the United New Jersey Railroad and Canal Co. of the first part and the Crucible Steel Co. of the second part, and the executors of Henry Young (complainant's predecessors in title), of the third part, and the devisee of William H. Draper, of the fourth part, have a right of way over a strip of land sixty feet in width, an extension of Cumberland street easterly across the lands of all the parties to the agreement. The lands of the United Railroad and Canal Co. immediately adjoined the easterly terminus of Cumberland street as laid out, and the lands of Young's estate (now complainants') adjoined the United Company's lands on the east. This strip of land sixty feet in width, called by the parties in the agreement "an extension of Cumberland street," was by the agreement "dedicated and appropriated as a road." The agreement recited that lands owned by all of the parties were part of a tract known as the Preston tract, that no public streets or highways existed on these tracts owned by the parties, that the Young estate and Draper estate claimed rights of way over the United Company's property in the Preston tract, and that it was for the interest of all the parties "that some recognized way to and through such properties be established and that all claims of the parties to private rights of way over such properties or any of them be extinguished," and, in consideration thereof, the parties covenanted and agreed each with the others and with each, "that a strip of land sixty feet in width, an extension of Cumberland street easterly across the said lands of the parties

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Conclusions of Vice-Chancellor.

hereto, be and the same is hereby dedicated and appropriated as a road, the strip of land so dedicated beginning east of Fourth street, at the end of Cumberland street as laid out on the Gilbert map, and running thence easterly between the northerly and southerly lines of Cumberland street produced across the lands of the parties," &c. The parties of the second, third and fourth parts, it was further stated, 10 "do hereby release and surrender to said party of the first part (The United Companies) all rights of way over the Preston tract or any part of it," and it was further agreed that any of the parties to the agreement might fill in and grade the said road, and that the agreement should be binding upon successors, heirs and assigns. There has been no acceptance by the public of this extension of Cumberland street made by the parties, and the rights of the complainant over the extension of Cumberland street are 20 derived solely under the agreement and by virtue of its express or implied covenants. But since the execution of the agreement, and by reason of the release thereby of any right of way to other public streets, complainant Land Company now has no right of way or access other than through this extension to any public highway or street of the town. Its property, however, has access to a river front on the Passaic River. The Town of Harrison by ordinance now on third and final reading before its common council, 30 proposes to vacate this portion of Cumberland street 237 feet from Fourth street, the vacation, however, to be "subject to the agreement made the seventeenth day of May, 1901," between the parties above stated. Proceedings for the vacation were instituted by the application of The Crucible Steel Company, a party to the agreement, which has purchased and now owns also part of the United Company's land north of the centre line of the extension and also owns or controls the lands covered by the street to be vacated. For the 40

Conclusions of Vice-Chancellor.

vacation of Cumberland and other streets named in their application the Crucible Steel Company offered to pay to the Town of Harrison \$8,000, the town to give in return a quit-claim deed on all the streets vacated. Since filing the original bill, the streets other than Cumberland have been vacated, and the full sum of \$8,000 has been paid to the town by the Crucible Steel Co., which also, in connection with this vacation of the other streets, agreed to defend the present suit and to bear the entire expense of defending it, whether Cumberland street should or should not be vacated. These facts are set up in the supplemental bill. 10

After the filing of the bill Booth & Flinn, Limited, contractors, who had a previous permit from the Pennsylvania Railroad Company to deposit waste material on its lands lying on the southerly side of this extension of Cumberland street, procured from the Harrison Land Company a like permit to fill in their lands and also permitting the contractors as the agent of the Land Company to fill in and grade the street known as Cumberland street or any portion thereof. Booth & Flinn, Ltd., have a contract for the construction of a portion of the sewer for the Passaic Valley Sewerage Commissioners and the securing of space for the deposit of material is a material convenience in this construction. At the time of securing the Pennsylvania permit, May 20, 1913, they were assured that Cumberland street was a public street and might be used by them for access to the lands of the Railroad Company located on its extension. The agreement with the Harrison Land Company, however, was made after the bill was filed. All the lands lying east of Fourth street, including the portion of Cumberland street laid out as a public street, are low lying, marshy lands, wholly unimproved. The filling up and grading provided for by these permits will do something toward preparing them for 20 30 40

Conclusions of Vice-Chancellor.

useful occupation, as well as materially accommodate the contractors. The contractors were allowed to intervene as co-complainants and join in the application for preliminary injunction. Complainants seek injunction against the town from vacating the street and executing a deed therefor to the Crucible Steel Company, and that the Steel Company may be restrained from preventing the use of Cumberland street. So far as the contractors' rights of passage over Cumberland street are the rights of passage over a highway which is common to the public, and the injury to them, in legal contemplation, is not different in character from that which every other citizen sustains; they have no standing for special protection by injunction. *H. B. Anthony Shoe Co. vs. West J. R. R. Co.*, 12 Dick., 607, 617 (Err. & App., 1898; *Young vs. Pa. R. R. Co.*, 43 Vroom, 94 (S. Ct. 1905); *Grey, Atty. Gen'l., vs. Greenville & Hudson R. Co.*, 14 Dick., 372, 377 (N. J. Ch. 1900). They must on this application stand therefore on their rights of access derived from the Harrison Land Company and depend upon its rights to enjoin the passage of the ordinance. As to these I reach the following conclusions:

First. So far as the municipality, the Town of Harrison, is concerned, the complainant's right to a preliminary injunction depends upon the power of the municipality to vacate a portion of Cumberland street without first making compensation to complainant. The charter (P. L. 1873, p. 265, sec. 56) authorizes the common council by ordinance to lay out, alter, widen or straighten and also to vacate any street then or thereafter laid out, "and to take and appropriate for such purpose any lands and real estate, upon making compensation to the owner or owners thereof, as is hereinafter mentioned and provided." The subsequent section of the charter (59) defining the method of ascertaining and making compensation, extends only to the taking and appropriating of lands

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or real estate for "opening or altering, widening or straightening streets," and does not include "vacating." Complainant's land is apparently damaged or injuriously affected by the vacation of the street but its land is neither taken nor appropriated, and therefore does not seem to come within the provision in section 56 for compensation. Unless such provision is expressly directed by statute to be made, streets may under our constitution be vacated without compensation. *Dodge vs. Pa. R. R. Co.*, 43 N. J. Eq., 351, 355 (Van Fleet, V. C., 1887); affirmed on appeal for reasons stated, 45 N. J. Eq., 366 (1889); *Newark vs. Hatt*, 79 N. J. L., 552 (Err. & App., 1910); *Newark & B. R. Co. vs. Montclair*, 85 Atl., 1028 (Sup. Ct., 1913). In the vacation of streets, lands located on the street vacated are not in fact "taken and appropriated" by the municipality, which, on the contrary, only releases a public right or easement over the lands, and therefore it may be well claimed that the provisions of section 59 as to the method of compensation and proceedings for "lands taken" intentionally and properly excluded proceedings for the vacation of streets. And, in my judgment, this omission, construed in connection with section 56 extending the power for compensation only to "lands taken and appropriated," excludes complainant's lands from the protection of the provision.

The above authorities, in my judgment, control this case on this point, and the circumstance strongly urged by complainants, that the vacation of this portion of Cumberland street will cut off their access from any public street, if it be true, does not relieve the case from the operation of the rule affirmed by these decisions in relation to the power of municipalities to vacate public streets without compensation where none is provided by statute. The municipal authorities were not parties to this agreement by which complainant land company and others gave up the private ways from their lands to other streets.

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Conclusions of Vice-Chancellor.

They cannot, therefore, merely for the reason that complainants have now no other access, be subject to any equities as to compensation on the vacation of a street to which complainants had no right of access previous to the agreement, and whose rights of access thereto rest only on the private agreement. The fact that the private ways claimed by the complainants and released by the agreement did lead to other public streets is important in answer to the present claim of a right to compensation for vacation, arising on the special ground of cutting off the sole access. But complainant may not, by the passage of the ordinance in question, be certainly cut off from access to public streets, and for two reasons: *first*: complainant's right of access to the entire width of the portion of Cumberland street proposed to be vacated which adjoins the land dedicated as a road, exists under the agreement set out in the bill, and complainant claims that by virtue of this express agreement, it has, as against all persons bound thereby, a right to have the dedicated road constitute "an extension of Cumberland street" as it then existed. Now, the ordinance of vacation expressly provides that the vacation is made subject to this agreement, and the question fairly arises whether the vacation made with this express limitation does release or destroy the right which the parties under the agreement had, as against each other, to have Cumberland street continue as a public street; and there may also be a question whether a vacating ordinance thus restricted is a proper exercise of the power of vacating streets. But these are questions of legal right, first subject to review in the courts of law, and cannot be decided in this court on this application, which involves purely the right to a preliminary injunction against passing the ordinance as proposed. The power to vacate streets is, in its general nature, a legislative power and the proposed exercise of it in this instance is purely legislative. It is well settled, as a general

Conclusions of Vice-Chancellor.

rule, that a Court of Equity will not enjoin the passage of ordinances which are within the scope of the powers possessed by a municipality. *Cape May, &c., R. R. Co. vs. City of Cape May*, 8 Stew., 419, 421, (Van Fleet, V. C., 1882); 21 *A. & E. Encycl.* 951 (Note 1) citing cases. In the *second* place, the title in fee to a portion of Cumberland street proposed to be vacated is now in the defendant, the Crucible Steel Co., one of the parties to the agreement set out in the bill. Complainant's right as against the Crucible Steel Co. to the access over the lands included within the vacated street for ingress and egress to all parts of this "recognized way" to and through Cumberland street of which the road or way was to be the extension, may remain notwithstanding the vacation. This question will probably come up for adjudication, not as the necessary result of the vacation of the street, but as the result of the obstruction of the complainant's access over the vacated street to the only public street, if the street be vacated and such obstruction made by the Crucible Steel Co.

No preliminary injunction can therefore be granted in this case, and in view of the above decisions, *H. B. Anthony Shoe Co. vs. West Jersey R. R. Co., &c.*, my present view is that in the absence of any special property right of the complainant which would be taken or appropriated by vacation of the street, the passage of the ordinance cannot be enjoined by this court, even at final hearing. The claim that the passage of the ordinance is solely in the private interest and benefit of the Crucible Steel Company and for the purpose of allowing it to occupy and use the street for its private purposes and upon a money consideration paid therefor, is a claim or contention based on the rights of the public to an exercise of the power of vacation in the public interest and not for private interest. After the vacation is made the special interest which the complainants have in the continuance of the public street as owners of lands injuriously af-

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Conclusions of Vice-Chancellor.

fectured thereby may be sufficient to allow them to question the vacation by *certiorari*. *Beecher vs. Newark*, 35 Vroom, 475; affirmed on errors, 36 Vroom, 397 (1900).

10 Under our practice, when the validity of an ordinance, contract or other act, within the power of the municipality is attacked because of fraud or other improper motive, or abuse of legislative discretion, such as being solely for the benefit of private interest, it has always been by *certiorari* removing the complete act which is questioned to the Supreme Court. After the act, and generally not until then, can the question as to the character and operation of the motives for the exercise of admitted powers be fairly at issue or tried, and in all of the New Jersey cases brought to my attention, where no private property was entitled to protection by injunction, the issue of the invalidity of the ordinance upon any of these grounds was raised, tried and decided on *certiorari* proceedings, which either affirmed or set aside entirely the ordinance to all the public. *North Baptist Church vs. Orange*, 54 N. J. L., 111 (Sup. Ct. 20 1891) is an instance where the validity of an ordinance opening a street was questioned after its passage on the ground that it was improperly induced by the promise of a citizen to pay part of the expense, and in many cases the Supreme Court after the adoption of the ordinance or contract, has passed on the question whether it was an honest exercise of their discretionary legislative power. *Ferguson vs. Passaic*, 30 31 Vroom, 404 (1897); *Kraft vs. Board of Education*, 38 Vroom, 512, 514 (1902).

The control in this case of the passage of the ordinance by an injunction dependent on a decision beforehand as to the motives for its passage, would, in my judgment, be an unauthorized interference with the exercise of the legislative power given to the municipal body.

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Order Dismissing Restraining Order.

Order.

Filed October 23, 1913.

IN CHANCERY OF NEW JERSEY.

HARRISON LAND COMPANY, *et al.*,
Complainants,

and

TOWN OF HARRISON, *et al.*,
Defendants.

Order.

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The rule to show cause coming on to be heard why an injunction should not be granted in accordance with the prayer of the bill of complaint,

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And the court having heard the respective counsel and considered the same with the papers filed and being of the opinion that the rule to show cause with the restraining order be dismissed,

It is on this twenty-third day of October, nineteen hundred and thirteen, ordered that the rule to show cause and restraining order be and the same is hereby dismissed with costs in favor of defendants and against complainants.

Respectfully advised,

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JOHN R. EMERY,
Vice Chancellor.

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Notice of Appeal.

Notice of Appeal.

Filed October 23, 1913.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> HARRISON LAND COMPANY, <i>et als.</i>, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>CRUCIBLE STEEL CO. OF AMERICA, <i>et als.</i>, <i>Defendants.</i></p>
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20 The complainant, Harrison Land Company, hereby
appeals from an order made in this court in the
above stated cause, bearing date the twenty-third day
of October, Nineteen hundred and thirteen, and from
the whole and every part thereof, to the Court of
Errors and Appeals in the last resort in all cases.

EDWD. A. & WM. T. DAY,
Solicitors for Complainant.
EDWARD A. DAY,
Of Counsel.

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

EDWARD A. DAY,
Of Counsel with Complainant.

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Notice of Appeal.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

Charles E. Rogers, being duly sworn according to law, upon his oath, says that he is a clerk in the employ of Edward A. & William T. Day, the solicitors for the complainant, Harrison Land Company, in the above entitled cause; that at their request he did, on the twenty-third day of October, 1913, serve upon Messrs. Michael T. & Hugh C. Barrett, solicitors for the defendant, Town of Harrison, a true copy of the within notice by handing the same to the said Hugh C. Barrett at his office, 810 Broad street, Newark, N. J. 10

CHARLES E. ROGERS.

Subscribed and sworn to before me
 this 23d day of October, A. D.,
 1913. 20

ARCHIBALD F. SLINGERLAND,
Master in Chancery of New Jersey.

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Petition of Appeal.

Petition of Appeal.

Filed November 12, 1913.

New Jersey Court of Errors and Appeals

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Between

HARRISON LAND COMPANY, *et als.*,
Complainants-Appellants,

and

CRUCIBLE STEEL COMPANY OF
AMERICA, *et als.*,

Defendants-Respondents.

On Bill, &c.

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*To the Honorable, The Court of Errors and Appeals
in the last resort in all causes:*

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The petition of Harrison Land Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an order made in the Court of Chancery by his honor, Edwin R. Walker, Chancellor of New Jersey, bearing date the twenty-third day of October, nineteen hundred and thirteen, in a certain cause wherein your petitioner was complainant, and the Crucible Steel Company of America and the Town of Harrison were defendants, in this respect, to wit: That the said order adjudging that the order to show cause and restraining order theretofore granted in said cause should be and the same were thereby dismissed, with costs, in favor of the defendants and against the complainants.

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And your petitioner humbly appeals from the whole and every part of the said order of the Chancellor upon the ground that the same is erroneous, for that the order to show cause made in said suit on the thirty-first day of July, nineteen hundred and thirteen,

Petition of Appeal.

should have been made absolute and the injunction or restraining order contained therein should have been continued pending the said suit.

Your petitioner, therefore, prays that the said order of the Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

EDW. A. & WM. T. DAY,
Solicitors of Appellant.
 EDWARD A. DAY,
Of Counsel with Appellant.

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The usual answer in appeal was filed.

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