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N. J. Court of Errors and Appeals.

BETWEEN THE BOROUGH OF MADISON, COUNTY OF MORRIS, Compl't and Appellant. *and* THE MORRISTOWN GAS LIGHT COMPANY, Def't and Respondent.	*On Bill, &c.*

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BRIEF FOR DEFENDANT.

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The complainant filed its bill of complaint in this cause to restrain the defendant from laying its gas mains and pipes, etc., within the territory embraced in its corporate limits, and a rule was thereupon granted requiring the defendant to show cause why an injunction should not issue pursuant to the prayer of said bill.

Upon the hearing of the rule to show cause, Vice-Chancellor Stevens made an order denying an in- 30

junction, from which order the complainant appealed.

The defendant is incorporated under a special act of the Legislature of this State, passed February 19, 1855 (P. L. 1855, p. 74), and a supplement thereto, approved April 14, 1868 (Laws 1868, p. 985), and by its charter was given power and authority to manufacture, make and sell gas to be made of bituminous coal or other materials for the purpose of lighting the streets, buildings, manufactories and other places situated in Morristown *and its vicinity;* and it was further authorized and empowered to lay down gas pipes and erect posts, burners and reflectors in the streets, alley, lanes, avenues and public grounds of Morristown *and its vicinity,* and the dwellings, stores and other places situated therein ; it was also provided that it should possess the general powers and be subject to the restrictions and liabilities of the then existing act entitled "An act concerning corporations," so far as the same were applicable.

Immediately after the incorporation of the defendant, it erected its plant and laid its pipes in Morristown and vicinity, and has from that time until the present been continuously engaged in the manufacture and sale of gas, and from time to time has extended its mains through Morristown and vicinity as occasion required.

At the time of the defendant's incorporation, there was no municipality by the name of Morristown, the municipality being Morris Township. Morristown was created from Morris Township by an act of the Legislature entitled, "A act to incor-"porate Morristown," approved April 6, 1865, (Laws 1865, page 819). The boundaries of the town thus created were enlarged by a supplement to said act approved March 15, 1866 (Laws 1866,

page 427). Neither was there any municipality known as Madison at the time of the defendant's incorporation, but such municipality was created in 1878, out of a portion of the territory of Chatham Township under the provisions of an act entitled "An act for the formation of Borough gov-"ernments," approved April 5, 1878, and the various supplements thereto. At the time of the incorporation of the defendant, the township of Morristown and the town of Chatham were contiguous. Morristown was near the line which divided the township of Morris from Chatham Township, and the present corporate limits of Madison reached to the line which divided the township of Morris from Chatham Township.

It appears by reference to the census of 1850 (appendix pamphlet laws 1852), that Morris Township had a population of forty-nine hundred and ninety-two, and that in 1855 its population was fifty-six hundred and and seventy-six, (Laws 1856), and that Chatham Township in 1850, had a population of twenty-four hundred and sixty-nine increased in 1855 to twenty-six hundred and eighty-two, (Laws 1856).

The defendant claims the right to proceed with its work on two grounds:

I.

Because such right was granted to it by its charter, which authorized it to carry on its business in Morristown and its vicinity.

It is manifest therefore that this point must be determined by the construction put upon the words "in its vicinity" taken in connection with the context and subject matter. The words in question

may be found in a number of similar private incorporations, but they do not seem to have received direct judicial construction.

It is plain however, that the defendant has a right to exercise its franchise to some extent outside of Morristown, it is also plain that it can only exercise it in Morristown and its vicinity ; that is to say, in common parlance in the neighborhood of
10 Morristown. There is no way by which the exact distance embraced in the word vicinity can be determined ; its meaning is in a sense vague, and must be arrived at by reasonable construction, always bearing in mind the subject matter and context. The word is in the charter, and it cannot be ignored or eliminated, it must be construed and its construction must be in harmony with the rest of the act.

20 In the case of Jersey City vs. Hudson, 2 Beasley 420, an act entitled "An act to authorize the con-"struction of works for supplying Jersey City and "places adjacent with pure and wholesome water" approved March 25, 1852, was under consideration. Under this act Hoboken was supplied with water. At that time Hoboken was a small town several miles distant from Jersey City, and yet there is nothing in the case which would indicate that the Court held that the word "adjacent thereto" did
30 not refer to this Town.

In Timmerman vs. Dover 52. Mich. 36, it was held in respect to an agreement between physicians, which provided that one of them would not practice in a specified city or its vicinity, that he was prohibited from practising in all territory within ten miles of the City limits. The Court said "A discussion of the testimony is unnecessary, "and could serve no useful purpose. It is sufficient
40 "to say the equity of the case is clearly shown

"to be with the complainant, and but one thing re-
"quires further notice ; the decree restrains the de-
"fendant from practising his profession 'in the
"city of Hastings and vicinity.' This clause of the
"decree is somewhat indefinite as to the extent of
"territory to which it applies, and may give rise
"to further misunderstanding between the parties.
"For the purpose of obviating any difficulty of
"this kind, the decree made by the circuit judge
"should be so modified as to make certain the 10
"limits of its operation. Of course, the extent of
"territory included in the term 'vicinity of the
"city' must necessarily depend in a great measure
"upon the size of the city, its location and parti-
"cular surroundings : and under all the circum-
"stances, as they appear upon this record, I think
"the territory surrounding the city for the distance
"of ten miles from the corporate boundaries, a
"reasonable limitation, and one which may be
"safely regarded as within the contemplation of 20
"the parties when they made their contract."

In Langley v. Barnstead, 63 N. H. 246, it was held that towns may be "situated in the vicinity" of each other, within the meaning of the phrase as used in the New Hampshire Gen. Laws, Ch. 68 § 10, providing for a division of the expense of highways, although not adjoining. The Court said ; "Etymo-
"logically and by common understanding, the
"phrase 'in the vicinity' means in the neighbor- 30
"hood, and neighborhood, as applies to place,
"signifies nearness as opposed to remoteness,
"whether a place is in the vicinity, or in the neigh-
"borhood of another place *depends upon no arbi-*
"*trary rule of distance or topography.* One village
"may be said to be 'in the vicinity' of another
"village *without being joined or incorporated with*
"*it,* and one house may be said to be near, 'in the
"vicinity' of, or in the neighborhood of, another
"house, and not structurally adjoin it. Vicinity 40

"admits of a more definite and *wider latitude in* "*place* that proximity or contiguity, and, as ap- "plied to territory, may embrace a more extended "space than that lying contiguous to the place in "question, and as *applied to town and other terri-* "*torial divisions, may embrace those not adjacent.*"

In the case of Wood vs. Cochrane, 38 Iowa 484, a statute requiring an appraisement of land at judi-
10 cial sale to be made by two householders of the "neighborhood" was under construction. It was held that one of the householders who resided thirty-five miles from the land was not prima facia of the neighborhood, and that in order to establish his competency to serve the partially settled condition of the country in the vicinity, should be shown affirmatively.

In Crabb's Synonyms neighborhood is said to
20 signify the place which is nigh to one's neighborhood. Vicinity from *vicus*, a village to signify the place which does not exceed in distance the extent of a village.

In 16 Am. and Eng. En. of Law (1 ed) p. 485 it is said a man's neghborhood is not necessarily confirmed to the particular locality in which he resides, but is co-extensive with the extent of territory occupied by those with whom he associates,
30 and frequently comes in contact with; one man's neighborhood may be a small hamlet, while the neighborhood of another may be a county or state.

Under the authorities above cited, Madison is in the vicinity of Morristown, and the defendant under its charter had the right to extend its pipes through the streets, lanes and alleys of that place.

40 The defendant was incorporated to furnish a

community with gas, it was authorized to manufacture and sell gas; the sale of gas implies the presence of persons to whom it may be sold, and of buildings which may be lighted. Morristown is mentioned as the central point or home of the corporation from which it was permitted to ramify through all the vicinity. Not, as we maintain, for the purpose of lighting a few scattered farm-houses, but the nearby towns and villages. The State 10 spoke through this charter and said to one of its creatures, you may do business in Morristown and its vicinity. It did not even limit the territory granted, by the use of the ward adjacent, although as said in Yard v. Ocean Beach Association, 4 Dick. 312, that word is not inconsistent with the idea of something intervening.

As said above, Morristown was to be the nucleus and the village in its vicinity feeders, of these vil- 20 lages Madison was one. Chatham Township in which it was then situated, and of which it was a part, was, at its nearest boundary, about one mile from the limits of Morristown, while Madison itself was not over three miles from Morristown, and was the nearest, or very nearly the nearest, neighboring village. This was the situation when the defendant was incorporated. Morristown itself a small town and a few scattered villages two or three miles or so distant were grouped together by 30 this charter, and constituted into territory in which a gas company might operate. At that time we doubt whether anybody would have thought of questioning that the territorial jurisdiction of this company included Madison a nearby village; if that be so, the question is solved, for what was intended then, is intended now. The territorial limits of this defendant have not been in anywise abridged; whatever power was conferred by its charter it still retains. All that the Legislature 40

has since done has been done through general laws by way of enlargement and increase of capitalization to the end, so it has said, that it and other like corporations might from time to time increase their plants and extend their business. Speaking as definitely as the legislature could speak by general laws, it has said to this corporation over and over again, you may operate to the limit of your grant, whenever you deem it desirable and profit-
10 able so to do.

In construing this act as in construing any act, the matter to be arrived at is the intent of the legislature; this is not the only chatrer in which such language has been used, the cases cited show that the language used is capable of broad construction whenever the context and subject matter are broad. Madison is in the vicinity of Morristown, just as surely as Belville and Rose-
20 ville and Irvington are in the vicinity of Newark. No form of expression is more common or better understood than to speak of smaller towns or villages within two or three or more miles of a larger town or city as in the vicinity of such town or city. Madison at the time the defendant was incorporated, had a *situs* and a name, but that was about all ; it was without any considerable population or wealth, and would have been quite unable of itself to establish and maintain a gas plant, and as
30 said above it was to aid such places as this, as well as Morristown that it was included in the defendant's charter. If the court should so construe this act as to exclude Madison from the operation, its decision would effect many similar gas and water company charters, and many small places grouped with large towns and cities, identically as Madison and other villages similarly located are grouped with Morristown in the Charter under consideration.

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It may be that we have been unnecessarily prolix in the attempt to make plain our right under our charter, since the bill of *complaint does not attack our right to enter Madison, for the purpose of our incorporation, but seeks relief upon two grounds only :* viz

1. That the complainant is authorized to establish, and has established and is operating a lighting plant within its domain, and inferentially 10 that it has a monopoly therein, in the lighting business to the exclusion of the defendant, and :—

2. That the defendant has not obtained the complainant's consent to open the streets of the Borough for the purpose of laying its gas mains etc.

As to the first claim, we are utterly unable to see anything of weight in it, nothing in the nature 20 of a monopoly has been given to the complainant, or to any other municipality, in the matter of lighting the public streets of the State. The legislature has never attempted so far as we are aware, to do any such thing, or used any language which would warrant such a position. The rights of the complainant and the defendant eminate from the same source, have the same weight, and may be exercised side by side ; neither has a monopoly, nor can the defendant's rights be abridged or be held 30 to be repealed because a similar right has been given to the complainant. The defendant's right can only be taken away by express repealer, or by the use of language so utterly inconsistent with its right as to amount in law to a repealer. It seems useless however, to argue this position of the complainant at length, since as said above, there is absolutely nothing in law to warrant the position.

The complainant's second ground of relief is that 40

the defendant has not obtained its consent to open the streets of the Borough for the purpose of laying its gas mains, etc.

This is the only other position taken by the complainant. In answer to it, we say that no such consent was required. The second section of the complainant's charter is as follows :—"And be it enacted that the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues and public grounds of Morristown and its vicinity, and the dwellings, stores and other places situated therein ; *provided* that the public travel shall at no time be affected or impeded by the laying of the said pipes, or erection of the said posts ; and the streets, side and cross walks, public grounds, lanes and avenues shall not be injured, but all be left in as good and perfect condition as before the laying of said pipes, or the erection of the said posts."

It will be seen from the foregoing that the defendant was given absolute power to lay its pipes in the streets ; no municipal consent or franchise was required as a prerequisite to the full exercise of its corporate powers ; by this, we do not mean that a Borough or other municipality may not exercise supervision in the nature of police control over a corporation using its streets; but the general police power of supervision in no sense confers the power upon a municipality to grant license or franchises in the streets. That power rests absolutely in the legislature and nowhere else.

Montgomery v. Trenton, 7 Vr., 79.
Domestic Telegraph Co. v. Newark 20 Vr., 344.

Where the legislature in the grant of franchises

has prescribed the rights and privileges of a company, the city government cannot qualify or abridge the force of the legislative grant.

Allen v. Jersey City, 24 Vr., 528.

The distinction between grants by the State of franchises to use the public streets absolutely and unconditionally, and those where the consent of the municipal authorities is requested, is recognized in many cases in this State. Thus in Mayor of Jersey City v. Jersey City and Bergen Railroad Company, 5 C. E., Gr. 360, a street railway had been authorized by its charter to lay rails in the streets of a city upon first obtaining the consent of the common council. By a supplement it was positively authorized to construct several other tracks without any condition or reference to the consent of the council; and it was held that as to such latter tracks the consent of council was not necessary, and the court refused to imply such condition in the second grant.

See also Paterson & Passaic Railway Co. v. Paterson, 9 C. E., Gr. 158.

It is true that the Borough act of 1897 (Laws of 1897, page 297) which supersedes the Borough act of 1878, authorized a Borough Council to prescribe the manner in which corporations or individuals might exercise any privilege granted to them in the use of the street. This statute, however, authorized regulation only, not prohibition, and the ordinance authorizing the Council to arbitrarily refuse a permit is not valid.

Summit Township v. New York and New Jersey Tel. Co., 12 Dick, 124.

North Hudson Co. v. Hoboken, 12 Vr. 75.

Allen v. Jersey City, 24 Vr. 523.

II.

In further justification of the act complained of the defendant sets up that the road in question is a county road under the jurisdiction of the Board of Chosen Freeholders of the County of Morris, whose consent it has obtained for the laying of the pipes in question.

10 The road or highway through the Borough of Madison under which the Company intended to lay its pipes became a County road by virtue of an act of the legislature entitled "An act to enable "Boards of Chosen Freeholders to acquire, improve "and maintain public roads," approved March 19, 1889, and the several supplements thereto (Law 1889, p. 858).

In April, 1897, a resolution was adopted by the 20 Board of Freeholders permitting the defendant to lay its mains along this public road extending through the Borough of Madison; provided that before laying such main the Company shall make and execute to the Board of Chosen Freeholders a bond in the sum of $5,000 conditioned for the replacing of the road excavated for the purpose of laying mains in as good condition as before such excavation were made; on the 12th day of May of the same year a bond was entered into by the com- 30 pany in the sum of $5,000 conditioned as aforesaid and duly accepted by the Board of Freeholders.

By the act in question the Board of Freeholders obtained full and exclusive control over the road in question (Laws 1889, p. 858, Sec. 1), and the Borough authorities had no right to exercise any control over it.

It will be noticed that the act above referred to, 40 gave the Freeholders power not only to make the

road, but to *maintain* it, and this power of maintenance gave them the right not only to the control of the road bed proper, but to the wings adjoining the same, such control over the wings being necessary to the proper maintenance and protection of the road itself. If this were not so, and the Borough authorities had the right to excavate by the side of the roadbed, or to grant such powers to others, the roadbed itself might be undermined and destroyed without the Freeholders consent. 10 The right to maintain the improvement therefore necessarily includes the right to control excavations adjoining the improvement. To maintain this position it should be observed that it is not necessary to claim that the Freeholders have the right to control the side-walks, and such claimis not made. The proofs show that the excavation was in the wings of the road four feet from the sidewalk (Book p. 43).

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The municipality which by law has the control and supervision of streets is the one to file a bill for their protection.

Greenwich Township v. Easton and Amboy R. R. Co., 9 C. E. Gr. 217, S. C. 10 C. E. Gr. 565.

Jersey City v. Central R. R. Co., 13 Stew. 417, 422.

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III.

It was claimed below, and the claim was considered by the Vice-Chancellor, and rejected, that admitting the defendant by its charter, had the power to use the streets of Madison for its corporate purpose, such power was nevertheless bv a supplement to the general gas act passed March 14, 1879 (Gen. St. p. 1613 Secs. 30, 31) restricted and made to depend upon the consent of the municipality having been obtained prior to such use. 40

The act provided in substance that it should be lawful for any gas company then existing, whether by special charter or by organization under the general law, and which might at any time be actually engaged in manufactoring and supplying gas to any municipality, for the supply of which the company was organized or chartered, to extend its main pipes to any neighboring municipality where no gas company already existed, upon obtaining
10 the consent of such municipality; and it was further provided that when such permission should have been given such gas company should have the same right and privileges of laying gas mains and pipes in such municipality as it had under its original organization in the City, town and village where it was originally located.

We think, however, that the interpretation sought to be placed upon this act by the appellant
20 is clearly erroneous, and contravenes the purpose of the act. The act did not by implication or in express term, take away any powers already granted to such companies, nor did it in any wise restrict the territory in which by its charter any such company was authorized to act, but on the contrary it expressly authorized it to go outside of such territory. The language is clear; any company actually engaged in supplying the territory for which it was chartered, might "extend its main
30 pipes" to any neighboring municipality provided that no gas company already existed there, and that the consent of the governing body of such neighboring municipality should be first obtained.

There is no repealer embodied in the act; powers already conferred by charters are not dwelt with at all; additional powers are conferred, but none is taken away. The act is as the Vice-Chancellor
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says, an enabling act. The two acts can well stand together.

North Hudson Co. Rw. v. Hoboken 12 Vr. 78.

The decree of the Court of Chancery should be affirmed.

WILLARD W. CUTLER,
JOSEPH CROSS. 10

New Jersey Court of Errors and Appeals.

The Borough of Madison :

Appellant :

and :

The Morristown Gas Light Company :

Respondent :

Addenda to Brief of Appellant.

In preparing my brief I had overlooked one important rule of law which seems to me has a very important bearing on this case.

It is this:---"The general rule of statutory construction, that the express mention of one thing is tantamount to an exclusion of all others, applies to the contruction of charters."

Clark on Corporations, page 128 and cases there cited.

See also 7 Am. and Eng. Encyclopaedia of Law, 2nd Ed., page 714, par. 12 and Note 2.

Applying this rule of law to the case at bar I insist that the use of the name "Morristown" in the charter excludes all other towns and restricts the word "vicinity" to merely the country districts immediately surrounding Morristown.

II.

As to the importance of charters being strictly construed I think the language of the Chancellor in Black vs. Delaware and Raritan Canal Company, 6 C. E. Green, 130 at

page 401 is pertinent. He says: "The object is to protect

page 401 is pertinent. He says: "The object is to protect the public against improvident grants, and grants made by implication, without clear intention. And such grant will not be sustained by doubtful words. Ambiguity in such grant vitiates it." And I would also refer to the brief of Mr. Browning in the same case at pages 240 to 246.

New Jersey Court of Errors and Appeals.

The Borough of Madison, Complainant and Appellant, and The Morristown Gas Light Company, Defendant and Respondent.	On Bill &c. Brief for Appellant.

The defendant is a corporation of New Jersey organized by a Special act of the Legislature approved February 19, 1855.

P. L. 1855, page 74.

The act is entitled "An act to incorporate The Morristown Gas Light Company," Section 1 provides that the corporation "shall have power and authority to manufacture, make and sell gas to be made of bituminous coal or other materials for the purpose of lighting the streets, buildings, manufactories and other places situated in *Morristown and its vicinity*.

Section 2 provides that the said corporation "shall be empowered to lay down their gas pipes and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues and public grounds of *Morristown and its vicinity*, and the dwellings, stores and other places situated therein: provided that the public travel shall at no time be affected or impeded by the laying of the said pipes or the erection of the said posts."

Section 10 provides "that the said corporation shall possess the general powers and be subject to the restrictions and liabilities contained in the act entitled "An act concerning corporations" approved the fourteenth day of February, one thousand eight hundred and forty-six, so far as the same are applicable".

Under the provisions of this act the defendant established a gas plant in Morristown and laid its mains in the streets and public places of the town, as recognized in the year 1855, and extended its mains in the streets in the "vicinity" of Morristown.

The company has adopted a more aggressive policy under its new management, and has laid its plans to supply gas in the neighboring Boroughs of Madison and Chatham. Its right to do so having been considered doubtful without the consent of the proper authorities, it applied to the Board of Chosen Freeholders of the County of Morris for permission to lay its mains in the streets running through Madison and Chatham known as Madison Avenue and Main Street, the two streets being a part of the street heretofore known as the Morris and Essex Turnpike. Prior to this time the said Board had improved the said Madison Avenue and Main Street under the act entitled "An Act to enable Boards of Freeholders to acquire, improve and maintain public roads" approved March 19th, 1889 (P. L. 1889, p. 58), (3 G. S. 2896).

The sections of the Act of 1889 which have any bearing on this case provide as follows:

Section one (1) authorizes the Board of Freeholders "to acquire, maintain and assume full and exclusive control of any public road or roads or parts thereof in the County," but only "so far as may be necessary for the purpose of *improving*

and maintaining the same as a road or roads for carriages or other vehicles but for no other purpose," and again in the same section, it is provided "that in order to acquire and assume control in any County *with full power to improve and maintain the same,*" then follows the method by which the Freeholders obtain this limited control, and further provides that said roads "shall thereafter be improved, maintained and kept in a safe and convenient condition for public use as aforesaid exclusively in the manner provided by this act."

Section 2 provides that the roads may be "graded paved with telford, macadamized or otherwise improved by means of stone or gravel for a width of at least twelve feet wide in the centre thereof;" and further directs how such improvements are to be made.

Section 3 provides "that one third of the expense of paving or otherwise improving any County road," "shall be paid by the cities, towns, townships or boroughs in or through which any such pavement or improvement shall be made in amounts in proportion to the cost of any such payment or improvement in each, city town, township or borough" and subjects such municipalities to their proportionate share of the tax raised to pay the other two-thirds.

Pamphlet Laws 1893, page 490 amends Section 5 of the original act and relates principally to the appointment of an inspector and the making of repairs and provides "after such improvement or any part thereof shall have been completed the same shall be kept in repair at the expense of the County."

Section 6 of the Act of 1889 provides that where counties have manifested their intention of taking

control of roads but have not yet improved the same, that such roads shall be kept in condition by the municipality wherein the roads are located.

The Board of Freeholders of Morris County granted the request of the defendant in reference to these streets and in December, 1901, forty-six years after its charter was given, the defendant company commenced laying its gas mains in the said Madison Avenue with in the corporate limits of the Borough of Madison.

For what purpose did the defendant apply to the Board of Freeholders if its charter were comprehensive and explicit enough to allow it to lay its gas mains in Madison?

The Borough of Madison was incorporated in 1889 under the Borough Act of 1878 and is now governed by the General Borough Act of 1897 (P. L. 1897, pages 247, &c.

Section 28 of this act expressly authorizes the Council of the Borough "to pass, enforce, alter or repeal ordinances to take effect within the limits of said Borough for the following purposes" "to prescribe the manner in which corporations or individuals shall exercise any privilege granted to them in the use of any street, road or highway or in digging up the same for any purpose whatever" and again, provides "for the sewerage or drainage of the Borough and for the laying of pipe for the conveyance of water or gas for private or public use in the streets, highways, alleys or beneath the sidewalks of said Borough and to regulate the same."

Acting under the provisions of this Act, the Borough has adopted an ordinance in relation to roads, one section of which, as mentioned in the Bill of Complaint, expressly prohibits the digging up of the roads within the Borough without

the permission of at least two members of the Street Committee.

The work of the defendant was commenced without the consent of any of the Borough officials and without the permission of any member of the Street Committee and this bill of complaint was filed for the purpose of obtaining an injunction, restraing the defendant from proceeding with its work.

1.

The defendant sets up in its answer that it has the right to proceed without the consent of the complainant because of the permission given to it by the Board of Chosen Freeholders of Morris County.

Upon this phase of the question the appellant contends.

I.

The Board of Chosen Freeholders has no power under the Act of 1889 to grant franchises nor does the Act give Boards any power over the roads except that of keeping them in repair.

The words "but for no other purpose" in the first section of the Act of 1889 are full of meaning. They limit the control of the Board of Freeholders to the improving and maintaining of the roadway for the public use. The statute does not pretend to give the Boards of Freeholders any power to compel property owners to pave their gutters or curb the sidewalks or remove trees along the sidewalks. It does not pretend to give the Freeholders the power to grant a franchise to any kind of a corporation. This Act is very unlike that known as the State Aid Road Act, (Pamphlet Laws 1895, page 424), Section 7 of which provides that the repair of State Aid Roads shall devolve upon the

Freeholders as well also "all other powers and duties respecting such roads, except within the limits of any city, shall be imposed upon and vested in the said Board of Chosen Freeholders to the exclusion of township, borough or other municipal officers excepting city officers."

The County Road act of 1889 does not give the Freeholders the power to regulate the use of the streets but merely to improve and maintain them. The right to regulate the use of the streets is reserved to the municipal authorities and in regulating the use of a street the municipal authority has something more to do than merely to see that the road is in repair and that the surface of the road is not disturbed. It has a greater duty than this. It must, among other things, see that whatever is done in the streets does not interfere with the rights of the public; does not unnecessarily inconvenience, annoy or disturb the public, and does not injure the property owners along the highways. The Board of Freeholders had no such interest. The Board is merely obliged to keep the highway in repair.

The Legislature in granting the Freeholders the power to maintain and improve highways within an incorporated municipality never intended to deprive such municipality of any of its privileges but only intended to relieve such municipality of the expense of constructing a macadam road which would be used as a highway not only by the inhabitants of the municipality but generally by all the inhabitants of the County. It is well settled law that the Legislature has the control over highways and a municipality can only exercise such powers over a highway as may be delegated by the Legislature. And while the Legislature has the right to restore those powers to itself and grant them to a County, yet only ex-

press words clearly showing such intention will be sufficient. So far as the Board of Chosen Freeholders of Morris County is concerned, the permission given to the defendant had the effect of merely signifying its willingness to have the macadam disturbed to permit of work being done provided the Borough of Madison were willing.

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If the Gas Company had the right under its charter to lay gas mains in the Borough of Madison without the consent of the municipal authorities it did not need the consent of the Board of Chosen Freeholders. There is nothing in the statutes requiring Gas Companies to obtain the consent of the Board of Chosen Freeholders and therefore the consent was entirely non-effective. The action of the defendant in seeking the consent of the Freeholders tacitly admitted that it had no authority to lay its gas mains in Madison Avenue and Main Street, Madison. This position having been taken by the defendant it should not be permitted to recede from that position. I submit that the consent of the Freeholders cannot aid the defendant but militates against it.

Domestic Telegraph Company vs. Newark, 20 Vroom, 344.

North Hudson Company Railway vs. Hoboken, 12 Vroom, 71.

Dillon on Municipal Corporations, 2nd Edition, Sec. 691.

II.

But the defendant now insists that under its charter it has the right to lay its mains in the Borough of Madison.

The main question involved under the charter is as to the meaning of the term "Morristown and vicinity". At the time (1855) Morristown was quite compactly settled; had its own post office, and while its territorial limits were not definitely laid down, yet it was generally known what was intended. Between Morristown and Madison there were large tracts of vacant land but Madison itself was well known; had its own post office and railroad station and was generally considered three or four miles from Morristown.

Did the Legislature intend to take in Morris town, Madison, Chatham, Summit, Hanover, Rockaway, Mendham, New Vernon, Green Village and all territory lying within the boundaries of this gronp of towns? The question suggests the answer.

The Morristown Gas Light Company had no desire to take in any such section and the Legislature never intended to grant any such franchise. The Legislature never intended that the Morristown Gas Light Company should enter the well known villages or municipalities even though near, else the names of such places would have been given. At the time, Morristown, as then known, was situate within the township of Morris and no part of the Township of Morris except Morristown had a post office.

While Madison four and one half miles from Morristown, and Chatham about seven miles from Morristown, and Summit about ten miles from Morristown, cannot be said to be far from Morristown neither can it be said of them that they are near Morristown. They are not within the vicinity of Morristown. It cannot be said of Morristown that it is within the vicinity of Madison, no more can it be said that Madison is within the vicinity of Morristown.

The word "vicinity" as mentioned in the statute and applied to municipalities refers to the sparsely settled and rural sections lying near the town or municipality.

One of the definitions given of the word "vicinity" in the Encyclopaediac Dictionary is "the district or space immediately surrounding or adjacent to anything." Accepting this as a correct definition and as the one which was in the mind of the Legislature when it granted the defendant its charter, there can be no question that the Legislature never intended to authorize The Morristown Gas Light Company to lay its gas mains within the Borough of Madison. And why should not this meaning be adopted as well as a broader meaning which might permit the company to operate in territory ten or twelve miles distant? It would seem to harmonize with the rule of law that charters of private corporations must be construed strictly. The learned Vice-Chancellor in his opinion argued that "a Legislature speaking from Trenton sixty miles distant, Madison would be understood as being in the vicinity of—near—not remote from—Morristown." But when it is remembered how legislation is obtained the force of this view is quite overthrown. The charter was prepared by Morristown men. The Legislature was appealed to by Morristown men and it is safe to say that the view adopted by the Legislature was that which was suggested to them by those interested in the measure and it is quite improbable that they had in mind the idea of extending their gas mains to Madison through the streets of the farming section lying between Madison and Morristown. Again he argues that "a vicinity which contains streets, buildings and manufactories is not a farming district" but it is within the knowledge of all that not only streets are found in the farming districts but that factories and dwelling houses are found there

also. Many factories can be seen from railroad trains and yet the village which the Vice-Chancellor seems to think must coexist with the factory is not visible anywhere.

It would thus appear that under the charter The Morristown Gas Light Company has received no franchise from the Legislature to lay its gas mains in the Borough of Madison nor within the Borough of Chatham where it proposes to go.

It might be well in this connection to compare the charters of some of the Gas Companies created by special statute.

The Dover Gas Light Company (P. L. 1868-993) Section 1. Company is allowed to operate in the "village of Dover and places adjacent thereto."

The Passaic Gas Light Company (P. L. 1857-351.) City of Paterson and its vicinity.

The Passaic Gas Light Company (P. L. 1864-520) in the Township of Acquackanonk and its vicinity.

Newark Gas Light Company (P. L. 1845-168) confined to the City of Newark but by act of 1859, page 256 extended to Township of Clinton.

Flemington Gas Light Company (P. L. 1859-373) authorized to operate in the village of Flemington and in the Township of Raritan.

Princeton Gas Light Company (P. L. 1849-257) authorized to do business in the Borough of Princeton.

These are cited as illustrative of the Legislation in regard to Gas Companies. It will be noted from these that when the Legislature intended the Company should operate in adjoining places

the statute expressly confers that privilege as Dover and its adjacent townships, and Flemington and the Township of Raritan.

It will also be noted that almost the same language was used in these statutes as in the case of The Morristown Gas Light Company. For instance, the charter of the Flemington Gas Light Company authorizes it to lay mains and sell gas "for the purpose of lighting the streets, buildings, manufactories and other places situated in the village of Flemington and in the Township of Raritan." In view of this language what becomes of the argument of the learned Vice Chancellor wherein he says "It is not to be supposed that the Legislature thought it possible for a Gas Company organized for gain would desire or be able to lay its pipes along the country roads (not mentioned in the act) radiating from Morristown for the mere purpose of supplying isolated farm houses." The defendant's charter, as we contend, merely authorizes them to carry on its operations in Morristown and the Township of Morris of which Morristown at that time was a part and by which Morristown at that time was surrounded on all sides. As I have stated, it is a well settled rule of law that charters of private corporations are to be construed strictly especially when they may affect the rights of the public. This has been so held in a long line of decisions rendered in this State but I wish to direct the attention of the Court especially to the case of Pennsylvania Railroad Company vs. National Railroad Company, 8 C. E. Green at pages 455 to 456 where the Court says:

"No rules of law are better settled than those applicable to legislative grants to private corporations. In the Delaware Bay case (1 C. E. Green, 372) it was said by Chancellor Green: "It is a well settled rule that public grants are to be construed strictly, and in all cases of grants of franchises by

the public to a private corporation, the established rule of construction is, that any ambiguity in the terms of the contract must operate against the corporation and in favor of the public. The corporation takes nothing that is not clearly given by the act."

"The same rule has been repeatedly expressed and enforced by the Courts of this State, by those of other States and by the Supreme Court of the United States."

In Perrine v. Chesapeake & Delaware Canal Company, 9 How., 192, Chief Justice Taney delivering the opinion of the Supreme Court said, "But the rules of construction in cases of this description as recognized by this Court in the case of The Charles River Bridge v. The Warren Bridge, 11 Peters, 420, is this: That any ambiguity in the terms of the grant must operate against the corporation and in favor of the public, and the corporation can claim nothing that is not clearly given by the law. The charter must be fairly examined and considered, and reasonably and justly expounded. But if, upon an examination, there is doubt or ambiguity in its terms, and the power claimed is not clearly given, it cannot be exercised. The rights of the public are never presumed to be surrendered unless the intention to surrender clearly appears in the law."

"In Commonwealth v. The Erie and Northeast Railroad Company, 27 Penn. State R. 339, the Supreme Court of Pennsylvania, expressed the same doctrine as follows:

"An act of incorporation is and always must be interpreted by a rule so simple that no man, whether lawyer or layman, can misunderstand or misapply it. That which a company is authorized to do by its acts of incorooration it may do; beyond that all its acts are illegal, and the power

must be given in plain words or by necessary implication. All powers not given in this direct and unmistakable manner are withheld. It is strange that the Attorney-General or anybody else, should complain against a company that keeps itself within bounds that are always thus clearly made, and equally strange that a company that has happened to transgress them should come before us with the faintest hope of being sustained. In such cases ingenuity has nothing to work with, since nothing can be either proved or disproved by logic or inferential reasoning. If you assert that a corporation has certain privileges, show us the words of the legislation conferring them. Failing in this you must give up your claim for nothing else can possibly avail you. A doubtful charter does not exist because whatever is doubtful is decisively certain against the corporation. The doctrine is maintained by the Supreme Court of the United States, and in many States of the Union. Even in England, the justice and necessity of it are universally acknowledged and acted on. But we do not mean to discuss the subject over again. The lawyer who is not already familiar with the numerous authorities upon it, to be found in every book of reports, will probably never become so; and the citizen who does not believe it to be a most salutary feature in our jurisprudence would hardly be convinced though one rose from the dead."

In view of the opinion of the Court in this case and especially of that part taken with approval from the decision in the Supreme Court of Pennsylvania, it seems almost incredible that the defendant can successfully maintain its claim that the charter empowers it to enter the Borough of Madison.

III.

As I have heretofore stated, it would seem as though the action of the defendant in applying to the Board of Freeholders for permission to lay its gas mains in the streets of Madison was a tacit admission that it had not the power it now claims. It certainly should militate against its present position. If the defendant has seen fit to adopt a strict construction of its charter, and I believe this is the correct view, why should the Court come to its aid and enlarge its powers by a more liberal construction? Is not the action of the company the best interpreter of the intentions of the incorporators when they applied to the Legislature for a charter?

IV.

The defendant has not exercised the powers now claimed for upwards of forty years. The Borough of Madison relying upon its supposed security from competition with a private corporation without its consent first being obtained, established an electric light plant and bonded itself in a large amount, and why should this Court aid the defendant to embarrass the Borough of Madison by placing a liberal construction upon the terms of the defendant's charter? Whatever rights the defendant may have had in eighteen hundred and fifty-five I submit have become forfeited so far as the Borough of Madison is concerned by the non-user of those rights. The Borough of Madison has opened and vacated streets regardless of the alleged rights of the defendant and why should not the Statute of Limitations be invoked in favor of the appellant as against the respondent?

Is not the defendant estopped from setting up its alleged right at this late day?

V.

The complainant further insists that the act of 1879 found in 2 General Statutes, page 1613, sections 30 and 31, controls even though the defendant may successfully establish the fact that the legislature intended to give to it the right to lay its gas mains in the Borough of Madison. That act provides as follows:—

Sec. 1. "That it shall be lawful for any gas company now existing, whether by special charter or by organization under the act to which this is a supplement, or which may hereafter be organized thereunder, and which may be at any time actually engaged in the manufacture and supply of illuminating gas in the city, town or village, for the supply of which the same was organized or chartered, to extend its main pipes to any neighboring city, town or village wherein no gas company already exists, for the purpose of supplying the same with illuminating gas; provided, the common council, township committee or the municipal of such neighboring city, town or village authority shall grant permission for that purpose.

Sec. 2. "That when permission shall be granted, the said gas company shall have the same rights and privileges of laying gas mains and the like to and in such neighboring city, town or village as it has under its original organization in the city, town or village where it was originally located."

When this act was adopted in 1879 the company had not entered the Borough of Madison. A period of twenty-four years had then elapsed. If the defendant had the right it had failed to exercise this right at the time the Act of 1879 was passed. It can at least be said that the legislature considered it doubtful as to what the words "in the

vicinity" might mean and therefore intended to give the defendant and other corporations similarly situated, the privilege of going into adjacent territory upon receiving the consent of the municipal authorities. This consent not having been obtained the defendant has no right to proceed. The policy of the Legislature is indicated in 2 General Statutes, 1610, Section 17, and we insist that the Act of 1879 was to make this policy applicable to specially chartered corporations whose charters did not provide for the consent of municipal authorities.

The act certainly applies to Boroughs.

Stout vs. Glen Ridge, 30 Vroom, 301.
Herman vs. Guttenburgh, 34 Vroom, 616 at p. 630.

In the first section of the act it says "city, town or village" and provides that the consent must be obtained from the Common Council, Township Committee or the municipal authorities, &c. If the legislature intended that the word "town" should be used in the restricted sense of applying to towns *eo nomine* and not in its generic sense, then certainly no mention of the Township Committee would have been made.

VI.

No express words of repeal were necessary in the Act of 1879 to make it apply to the defendant. The Act of 1879 was later, and not only later, but it is inconsistent with the special act of the defendant in so far as defendant's charter may have authorized it to go into other towns without the consent of the municipal authorities.

Mesereau vs. Mesereau Company, 6 Dickinson, 382.
Road Commission vs. Harrington Township. 26 Vroom, 327.

VII.

The Borough ordinance mentioned in the bill of complaint expressly provides against the digging up of the roads within the Borough without permission. This provision of the ordinance is not only within the scope of Section 28 of the Borough Act hereinbefore cited but it is also within the police powers of the Borough. It is certainly against public policy that individuals or corporations should, without leave or license, be permitted to dig trenches in the streets; and even though the statute were silent in regard thereto, the governing body of the Borough would have the power to adopt the said provision of the ordinance under its police powers. Besides this, the first part of Section 28 of the Borough Act also empowers the Council to adopt ordinances "to regulate the use of the roads." The Borough Act was passed subsequent to any permission on the part of the Freeholders to the defendant as well as subsequent to the adoption of the Act incorporating the defendant and therefore any rights which the defendant may have acquired should be controlled by the ordinances passed in pursuance of the Borough Act. Inasmuch as the defendant has not complied with the provisions of the Borough ordinance, its act in digging up the streets is unlawful, unjustifiable and harmful to the interests of the public and therefore should be restrained by injunction.

I am aware of the decisions of the Court of Chancery and the Supreme Court which hold that where a statute does not expressly require a corporation to obtain the consent of municipal authorities no ordinance requiring corporations to obtain such consent is valid. The decisions seem to have been arrived at upon the assumption that in giving or refusing such consent municipal authorities would act arbitrarily. It seems to me

that this is an unwarranted assumption and this Court should set its seal of disapproval upon such fallacious reasoning. Why should an ordinance be declared illegal merely because it requires individuals and corporations to obtain permission to tear up streets? There are times when it would be necessary to close the street entirely, depriving the public of their rights therein, merely because a private corporation in the exercise of its supposed right desires to tear up a street, while this might have been entirely avoided if the consent of the municipal authorities had been necessary. Would the refusal on the part of the municipal authorities at such a time be an arbitrary act? Would it not rather be a reasonable exercise of the police power and the reasonable exercise of its power to regulate the use of streets. Highways have not been laid out for the benefit of private corporations but for the benefit of the public, and municipal authorities are charged with the duty of conserving the rights of the public. Private corporations have been accorded as much latitude as the interests of the public will permit and they should not be enlarged in the least. Besides this, I contend that the act of 1879 authorizes the Council of the Borough of Madison to adopt such an ordinance as the one in question. Perhaps it was unnecessary but certainly it was not illegal. I contend that it was the duty of the defendant to apply to the municipal authorities for their consent before proceeding with the work both under the statute of 1879 and under the Borough ordinance. Until the defendant has applied to the Municipal authorities for permission to lay the gas mains within the Borough of Madison, it cannot raise the question as to the validity of the ordinance because there is no evidence whatever of arbitrary action on the part of the municipal authorities.

VIII.

Besides these legal aspects of the case, the Court should consider the rather unique position of the Borough of Madison. It is a progressive community and has not only macadamized its roads but it has also established a water plant and an electric light plant. Its water mains are laid in most of the streets of Madison including Madison Avenue and Main Street. Its electric light wires traverse the whole Borough and in every public street its poles are erected, wires are strung and lamps attached to provide light at night to the public and light and power to the consumers. To accomplish all this large expenditures have been made and for a part of the cost thus far incurred a large amount of bonds have been issued and also certificates of improvements in lieu of bonds, and within the last three years about forty-thousand dollars were expended in the enlargement and improvement and equipment of the electric light plant. These are public improvements in which all the public are interested. Already the plant is a source of revenue to the Borough and eventually it is the hope of the Borough authorities that not only the plant shall be maintained out of the revenues of the plant but that the improvement certificates and bonds shall be paid and satisfied and that then the revenue derived will be sufficient to very materially lessen the rate of taxation within the Borough limits.

To allow then a private corporation with no public interest in the Borough to enter without any restriction, without any compensation to the Borough for the privilege, seems to be not only inimical to the interests of the public but also against public policy. Certainly the Borough of Madison was justified in coming into the Court of Chancery and asking that the defendant be restrained by injunction from carrying out its present plans and purposes and assailing the

Borough policy of municipal ownership. It may be that at the present time the defendant has no intention of securing consumers of gas within the Borough limits but if it has the right to dig up Madison Avenue and Main Street for the purpose of laying its gas mains, then it has an equal right to dig up not only Madison Avenue and Main Street but also every other street in Madison for the purpose of laying its main and lateral pipes to connect with private dwellings, stores and other places. While this might not be harmful to the interests of the Borough provided the privilege to do so were surrounded by the proper restrictions and regulations, yet until then at least, we submit that the aid of the Court should be extended and the prayer of the complainant be granted.

Finally. The complainant is entitled to preliminary injunction.

Township of Franklin vs. Wutley Water Company, 8 Dickinson, 601.

In Chancery of New Jersey,

~~IN CHANCERY OF NEW JERSEY~~.

Between THE BOROUGH OF MADISON, Complainant, and THE MORRISTOWN GAS LIGHT COMPANY, Defendant.	On Bill, &c.

20

~~Bill filed December 28, 1901.~~

To his Honor, William J. Magie, Chancellor of the State of New Jersey:

30

Complaining shows unto your Honor, your orator, The Borough of Madison, in the County of Morris and State of New Jersey; that it was formerly a part of the Township of Chatham in the said County of Morris and became incorporated as a Borough under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act for the formation of Borough Governments," approved April fifth, Eighteen Hundred and Seventy-Eight, under the corporate name of the Mayor and Council of the Borough of Madison, in the year Eighteen Hundred and

10 Ninety-Nine; that under and by virtue of the provisions of an act of the Legislature entitled "A general Act relating to Boroughs," Revision Eighteen Hundred and Ninety-Seven, approved the twenty-fourth day of April, Eighteen Hundred and Ninety-Seven, the corporate name was changed to the Borough of Madison.

And your orator further shows that by virtue of the said act of Eighteen Hundred and Seventy-Eight and the supplements thereto and amendments thereof, it became a municipality separate and apart from the said Township of Chatham and that it so still continues to exist.

20 And your orator further shows that under and by virtue of the provisions of the said act of Eighteen Hundred and Seventy-Eight and the supplements thereto and amendments thereof and the said act of Eighteen Hundred and Ninety-Seven and the supplements thereto and amendments thereof, it has established an electric light plant for the purpose of supplying said Borough with street lamps and the inhabitants thereof with light and power for use in their dwellings and buildings and for that purpose it has erected a power house with engines, dynamos and necessary machinery and apparatus and has erected in the public 30 streets of the Borough of Madison poles and hung and suspended therefrom wires and cables for carrying and conducting electric current from the said power house through the public streets of Madison and to the dwellings and buildings of the inhabitants of said Borough, and in addition thereto it has purchased a large number of transformers and meters and distributed the same throughout the Borough, all of which are used in connection with the supplying of light and power to the inhabitants of said Borough.

And your orator further shows that in the establishment of said plant and the proper equipment thereof it has spent a large sum of money, to wit:

Eighty-one Thousand and Fifty Dollars and for a large part thereof it issued or caused to be issued from time to time bonds and improvement certificates of said Borough in a very large aggregate amount, to wit: Fifty-five Thousand Dollars, and that said bonds or others issued to refund those which have heretofore matured and improvement certificates are still outstanding and are payable at periods therein stated together with interest.

And your orator further shows that for the purpose of maintaining the said electric plant and keeping it properly equipped and meeting the said bonds and certificates when they mature, it depends upon the sale of electric current to the consumers thereof:

And your orator further shows that among the roads, streets, avenues and highways and public places so lighted by it are Madison Avenue and Main Street, which together run from the Morris Township line at the northwesterly end of the said Borough of Madison, through the said Borough to the boundary of the Borough of Chatham at the southerly end of the Borough of Madison and that along said Madison Avenue and Main Street there have been erected a very large number of poles and there have been suspended and hung from said poles numerous wires and cables for the purpose of carrying and conducting said electric current and on every other of the said poles there has been attached a lamp for the purpose of lighting the said highways.

And your orator further shows that said Madison Avenue and Main Street run through the business portion of the said Borough of Madison and that there are a large number of consumers of electric current living along said avenue and street and that a large revenue is derived by your orator from the sale of electric current to the consumers living along the said avenue and street.

10 And your orator further shows that the said Madison Avenue and Main Street belong to the said Borough and are within its jurisdiction and under the control of its governing body.

And your orator further shows in exercise of its control of said Madison Avenue and Main Street, as well also as other streets, roads and highways of said Borough, it has enacted and ordained and caused to be published, according to the Statute in such case made and provided, an ordinance one section of which forbids the tearing up of any of the roads of the Borough without a permit in writing first had and obtained from the Clerk of the Borough and approved by at least two members of
20 the Street Committee.

And your orator further shows that the said Madison Avenue and Main Street are under the control of your orator and notwithstanding the provisions of the said ordinance and notwithstanding repeated warnings, objections and protests by representatives of your orator to the Morristown Gas Light Company and its agents, representatives and servants; and without the consent of your orator or any of its duly authorized representatives and in wilful disregard of the rights and interests of your orator, said Morristown Gas Light Company and its agents, representatives and servants, have
30 distributed along said Madison Avenue a large number of iron pipes or mains and have dug trenches and made openings in said Madison Avenue, and that along a part of said avenue the said pipes have already been laid and the trenches and openings have been left in a dangerous condition to the public, and that the work already done, as well also as that now being done and that which is intended to be done, has been, is and intended to be without the consent of your orator, in violation of the rights of your orator and in wilful disregard of those rights, and thus far not only without the consent of your orator or any one

authorized to give such consent, but also in the face of repeated warnings, objections and protests as aforesaid, and with a large force of men are still digging trenches and making openings and excavations in and tearing up said Madison Avenue preparatory to laying further pipes or mains, all of which said pipes or mains are intended for the purpose of carrying, conducting and distributing gas from the Gas Works of said Company through said Madison Avenue and Main Street in said Borough of Madison.

And your orator further shows that it has been informed by representatives and agents of said Company that the said Company intends to dig trenches and make openings and lay said gas iron pipes or mains for the purpose of carrying, conducting and distributing gas as aforesaid not only in said Madison Avenue to its terminus at Main Street, but also through Main Street in said Borough of Madison, and that there is no intention on the part of the Company to apply unto your orator or its authorized agents or representatives for permission to lay the said pipes or mains.

And your orator further shows that it has used all peaceable means to induce the said The Morristown Gas Light Company and its agents, representatives, workmen, laborers and servants to desist from the work aforesaid, and had hoped that they would have done so as in equity and justice they ought to have done, but it and they have wholly refused and still do refuse to desist, and do still proceed in prosecuting the work aforesaid, all of which actions and doings on the part of the said The Morristown Gas Light Company, its agents, representatives, workmen, laborers and servants are contrary to equity and good conscience and done to the manifest wrong, injury and oppression of your orator in the premises.

In consideration whereof, and for as much as your orator is without adequate remedy in the

10 premises 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 cognisable and relievable.

To the end therefore, that the said The Morristown Gas Light Company may without oath, answer under oath being hereby waived, to the best of its knowledge, remembrance and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and truly as if the same were here repeated, and it distinctly interrogated thereto.

And that your orator may have such further and other relief in the premises as the nature of the
20 case may require, and as shall be agreeable to equity and good conscience.

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, to be directed to the said The Morristown Gas Light Company, its agents, representatives, workmen, laborers and servants, restraining it and each of them from making any opening or openings in Madison Avenue or Main Street aforesaid, within the Borough of Madison, or digging any trench or trenches therein or making any excavation or excavations
30 whatsoever therein except so far as may be necessary to remove any and all of the iron pipes or mains so laid as aforesaid, in said Madison Avenue without the consent or permission of your orator; and commanding them to remove such pipes or mains already laid by them in Madison Avenue within the Borough of Madison without the consent of your orator, and to restore said Avenue to the same condition it was in before commencing the afore said work, but also the State's writ of subpœna issuing out of and under the seal of this honorable Court, to be directed to the said Morristown Gas Light Company, commanding it upon a certain day

and under a certain penalty therein to be expressed 10
to be and appear before your Honor in this honorable Court then and there to answer all and singular the said premises and 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.

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

CHARLES A. RATHBUN,
Solicitor for and of Counsel
with the Complainant.

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

JAMES P. ALBRIGHT, of full age, being duly sworn, according to law, on his oath, deposes and says that he is Mayor of the Borough of Madison and has been its Mayor since its incorporation in Eighteen Hundred and Eighty nine; that he has read the within bill of complaint, and is acquainted with its contents; he is also familiar with the actions of the Mayor and Council of the Borough since the incorporation of the Borough; that the contents of said bill of complaint are true as he verily believes. Deponent further says that the Morristown Gas Light Company has not received 30
any permission from him nor from the governing body of the Borough nor from any of its authorized agents or representatives, nor has the said Company sought such permission for the doing of the work now being done on Madison Avenue and particularly mentioned in the within bill of complaint. Deponent further says that said Madison Avenue and Main Street lie within the corporate limits of the Borough of Madison and are continuous roads and under the control and jurisdiction of the governing body of the said Borough of Madison. Deponent further says that the Borough

10 of Madison has not vacated said Madison Avenue or Main Street nor either of them and has never surrendered the control of the same to any person or persons, corporation or corporations and has never surrendered any of its rights of, in and to said Madison Avenue and Main Street to any person or persons, corporation or corporations. Deponent further says that the Borough has never granted to any person or persons, corporation or corporations any franchise of any kind whatsoever, except that of the New York and New Jersey Telephone Company to erect telephone poles there on. Deponent further says that he is informed 20 and verily believes, that said Morristown Gas Light Company intend to prosecute the work now being done until they have dug a trench and laid therein iron pipes and mains for furnishing and distributing gas not only in that portion of Madison Avenue where they are now working but also through Madison Avenue to Main Street and thence through Main Street to the Borough of Chatham. Deponent further says that the work now being done is without the permission or consent of the Council or this deponent and in direct violation of the requests, commands and orders of the said Council and this deponent. Deponent further says that representatives of said Company have from time to 30 time intimated to this deponent, as well as to members of the Council, that they intended to lay their mains in Madison Avenue and Main Street through the Borough of Madison but that on every such occasion they have been warned against taking any such action. Deponent further says that the attention of representatives of the said Company has been called to the ordinance of the Borough adopted on December ninth, Nineteen Hundred and One, forbidding the digging of trenches in any of the roads of the Borough but hat said Company has wholly disregarded the same so that the Borough is without adequat

remedy without the aid of the Court of Chancery; 10
that the action of the said Company in open defiance of the rights and action of the Borough of Madison and its representatives in relation to said Madison Avenue is demoralizing in its tendency and the work it has done and is doing is harmful to the interests of the Borough of Madison, that unless the said Company is restrained from prosecuting its said work great and irreparable injury will be done the Borough of Madison.

JAMES P. ALBRIGHT.

Subscribed and sworn to before me, this 28th day of December, A. D., Nineteen Hundred and One. } 20

H. VAN W. MYER,
Notary Public for the State of New Jersey.

13

State of New Jersey
Morris County. } ss.:

HUBERT VAN W. MYER, of full age, being duly sworn, according to law, on his oath, deposes and says that he is Clerk of the Borough of Madison and has been such Clerk for the past five years; 30
that he has read the aforesaid bill and is acquainted with its contents and verily believes the same to be true; that he has examined the records of the said Borough in his possession and finds that the total cost to the Borough for the construction and equipment of the electric plant including the distribution of poles and wires, transformers and meters, is eighty one thousand and fifty dollars, that at the present time there are outstanding bonds and improvement certificates of the Borough to the amount of fifty-five thousand dollars which were issued by said Borough for the payment of said

10 electric plant; that he is acquainted with the territory limits of the Borough of Madison and with the streets therein; that Madison Avenue and Main Street form a continuous roadway between the Morris Township line on the northwesterly end of the Borough of Madison through the Borough to the boundary of the Borough of Chatham at the southerly end of the Borough of Madison; that along said Madison Avenue and Main Street the Borough of Madison has erected poles about one hundred and fifty feet apart and strung thereon wires and cables and attached to every other of the poles a lamp for public lighting: that until this week a part of said Avenue lying within the limits
20 of the Borough was in a safe and good condition and in a good state of repair; that during the present week the Morristown Gas Light Company and its agents, representatives, workmen, laborers, and servants, have been and are still making openings and excavations in said part of said Avenue and have dug into and made trenches in the same; that iron gas pipes and mains have been distributed along said Madison Avenue for the purpose of being laid in said trenches; that in the said trenches have already been laid certain of said gas pipes or mains; that no permit for said work has been issued by this deponent nor has the governing body
30 of said Borough authorized any such permit to be issued nor has any application been made by the said Morristown Gas Light Company or any one in its behalf to this deponent for any such permit; that on the ninth day of December an ordinance was adopted by the said governing body and approved by the Mayor which has been duly published in the Madison Eagle and now in force, one section of which forbids the tearing up of any of the roads of the Borough without a permit in writing first had and obtained from the Clerk of the Borough and approved by at least two members of the Street Committee; that said work has been

done and is being done and is threatened to be done without the permission of the Mayor and Council of the Borough of Madison or of any of its duly authorized representatives and in direct violation of the requests, commands and orders of the said Borough of Madison and its representatives. Deponent further says that he receives all moneys from consumers of electric current and that a large amount of money is received quarterly from those consumers living or doing business on Madison Avenue and Main Street; that the said Morristown Gas Light Company is laying and intending to lay said pipes and mains for the purpose of supplying the residents of Madison living and doing business along Main Street and Madison Avenue with gas without any permission, restrictions or regulations of the Borough of Madison and any such action on the part of said Morristown Gas Light Company will tend to deprive the said Borough of Madison of a large source of revenue and make more burdensome to the tax payers of said Borough the cost and expense of maintaining the said electric plant and will tend to increase the tax rate within the said Borough.

H. VAN W. MYER.

Subscribed and sworn to before me this 28th day of December, A. D., Nineteen hundred and One.

(SEAL) EDWARD L. COOK,
Notary Public.

State of New Jersey, Morris County. } ss.:

B. WARREN BURNET, of full age, being duly sworn, according to law, on his oath, deposes and says that he is a member of the Council of the Borough of Madison and also a member of the Street Committee of said Council; that on Thurs-

10 day, the twenty-sixth day of December, A. D., Nineteen hundred and one, he held a conversation with the President of the Morristown Gas Light Company and directed that the work on Madison Avenue now being done by the said Company be discontinued; that the President of said Company informed deponent that the Company would disregard the instructions and directions and proposed to continue the work through Madison to the Chatham line; that said President made no pretence that he had received any permission from the Mayor and Council of the Borough or any of its authorized representatives or committees nor
20 any member of such committees. Deponent further says that no application has been made to the committee by the said Morristown Gas Light Company nor by any person or persons, corporation or corporations, for a permit to open said Madison Avenue, from Main Street to the point where said work has been begun, or said Main Street in the said Borough of Madison for the purpose of laying iron pipes or mains, and that no such permit has been granted by said committee nor authorized by the Mayor and Council. Deponent further says that he has read the foregoing bill of complaint and is acquainted with its contents and verily be-
30 lieves the same are true. Deponent further says that during the present week the Morristown Gas Light Company and its agents, representatives, workmen, laborers and servants have been and are still making openings and excavations in Madison Avenue within the Borough limits and have dug into and made trenches in the same; that the said roadway has been greatly damaged and greater damage is threatened; that in the said trenches said Company has laid and is intending to lay iron pipes and mains for the purpose of carrying, conveying and distributing gas; that said work has been done and is being done without the permission of the Mayor and Council of the Borough of

Madison and without the permission of the Street Committee or any members of the Street Committee but in direct violation of the requests, commands and orders of the said Borough of Madison and its representatives; and that said action of said Company is harmful to the interests of the Borough and will entail great damage and loss if suffered to be continued. 10

B. W. BURNET.

Subscribed and sworn to before me this 28th day of December, A. D., Nineteen hundred and one.

H. VAN W. MYER,
Notary Public for New Jersey. 20

IN CHANCERY OF NEW JERSEY.

Between The Borough of Madison, Complainant, and The Morristown Gas Light Company, Defendant.	On Bill, &c. Order.

30

Upon reading the bill of complaint in this cause and the affidavits thereto annexed, and on motion of Charles A. Rathbun, of counsel with the complainant,

It is, on this twenty-eighth day of December, Nineteen hundred and one, ordered that the defendant show cause before the Chancellor at the

10 Chancery Chambers in Newark on Tuesday, the thirty-first day of December, Nineteen hundred and one, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue according to the prayer of the said bill and for such further relief as may be just.

And it is further ordered that a copy of the said bill and affidavits and of this order be served forthwith on the said defendant, which copies need not be certified.

Respectfully advised,

FREDERIC W. STEVENS,

20 V. C.

IN CHANCERY OF NEW JERSEY.

Between The Borough of Madison, Complainant, and 30 The Morristown Gas Light Company, Defendant.	On Bill.

The answer of the Morristown Gas Light Company to the bill of complaint of said complainant.

This defendant answering says that said defendant is a corporation of the State of New Jersey, incorporated by virtue of an act of the Legislature of the State of New Jersey, entitled "An act to incorporate the Morristown Gas Light Company"

approved February nineteenth, eighteen hundred and fifty-five, and the supplements thereto entitled "Supplement to an act entitled 'An act to incorporate the Morristown Gas Light Company' approved February nineteenth, eighteen hundred and fifty-five," which said supplement was approved the fourteenth day of April, eighteen hundred and sixty eight. Which said act of incorporation is found in the pamphlet laws of eighteen hundred and fifty-five, on page 74 &c., and said supplement is found in pamphlet laws eighteen hundred and sixty-eight on page 985 &c., and which said acts of the Legislature this defendant offers to produce and prove as this Honorable Court shall direct, and to which for greater certainty it begs leave to refer.

And defendant further answering says that the first section of said act of incorporation among other things provides, that "said corporation shall have power and authority to manufacture, make and sell gas, to be made of bituminous coal or other materials, for the purpose of lighting the streets, buildings, manufacturies, and other places situate in Morristown and its vicinity, and to enter into and execute contracts, agreements or covenants in the relation to the objects of this corporation, and of enforcing the same and be capable of purchasing, taking, and holding any estate, real and personal, necessary to give effect to the specific purpose of this corporation for the accommodation of their business and concerns" &c.

That the second section of said act provides among other things "that the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues and public grounds of Morristown and its vicinity, and the dwellings, stores and other places situated therein, provided that the public travel shall at no time be affected or impeded by the laying of the said pipes or the

10 erection of the said posts and the streets, side and cross walks, public grounds, lanes and avenues shall not be injured, but all be left in as good and perfect condition as before the laying of said pipes or the erection of said posts."

And defendant further answering says that the tenth section of said act provides "that the said corporation shall possess the general powers and be subject to the restrictions and liabilities contained in the act entitled "An act concerning corporations" approved the fourteenth day of February, eighteen hundred and forty-six so far as the same are applicable.

20 And the defendant further answering says that the said corporation was organized in the manner prescribed by said act and proceeded to obtain lands and erect thereon a plant for the manufacture and sale of gas, and laid its pipes and mains through the streets, lanes, alleys and avenues and public grounds of Morristown and its vicinity, and now is and has been for more than forty years engaged in the manufacture and sale of gas for the purpose of lighting the streets and buildings, manufacturies of and other places situate in Morristown and its vicinity.

And defendant further answering says that at the time of the passage of the aforesaid act of Feb-
30 ruary nineteenth, eighteen hundred and fifty-five Morristown was not a separate municipal corporation but was part of the Township of Morris.

And defendant further answering says that afterward to wit, on or about the sixth day of April, eighteen hundred and sixty-five the Legislature of the State of New Jersey by an act entitled "An act to incorporate Morristown" created a separate municipality out of a portion of the Township of Morris to be known as the Town of Morristown, and by a further act of the Legislature entitled "A supplement to an act entitled 'An act to incorporate Morristown' approved April sixth,

eighteen hundred and sixty-five" which supple- 10
ment was approved March fifteenth eighteen hundred and sixty six, the boundaries of the Town of Morristown were extended to its present limits.

And defendant further answering says that by virture of the power and authority granted to it by the aforesaid act of incorporation it has from time to time extended its mains and pipes beyond the present corporate limits of Morristown as fixed and determined by the last mentioned act, into the adjoining Townships and municipalities, for the purpose of supylying the residents of such Townships and municipalities with illuminating gas. 20

And defendant further answering says that acting under the power and authority so granted to it as aforesaid, it extended its mains through and along a certain public road known as Madison Avenue (which avenue extends in a South Easterly direction from the corporate limits of Morristown across the Township of Morris and for a distance of about a mile into the Borough of Madison,) and has been and still is supplying the residents along the line of said main with illuminating gas, and is and has been for more than a year last past supplying illuminating gas for the purpose of lighting a portion of the aforesaid avenue outside the limits of Morristown. 30

And defendant further answering says that it admits that at the time of the passage of the aforesaid act, incorporating this company, Madison was not a separate municipality but was a portion of the Township of Chatham (which Township adjoined Morris Township), and that it afterwards became a separate municipality, but leaves the said complainant to establish the time and manner of its incorporation by such proof as it may deem necessary.

And defendant further answering says it neither admits or denies that under the act of incorpora-

10 tion of said Borough, Madison was empowered to establish an electric light plant for the purpose of supplying said Borough and the inhabitants thereof with light and power for use in their dwellings and buildings, and that for that purpose it has erected a power house, engines, dynamos and necessary machinery and apparatus, and has erected in the public streets of the Borough of Madison poles and hung and suspended thereon wires and cables for carrying and conducting the electric currents from said power house through the public streets of Madison to the dwellings and buildings of the inhabitants of said Borough, and has purchased a large number of transformers,
20 meters and distributed the same throughout the Borough, which are used in connection with supplying light and power to the inhabitants of said Borough.

And defendant further answering says that it neither admits or denies that in the establishment of said plant and the proper equipments of the same the said Borough has spent a large sum of money, to wit, eighty six thousand and fifty dollars, and for a large part thereof has issued or caused to be issued, bonds and improvement certificates of said Borough to the amount of fifty five thousand dollars, and that said bonds or other
30 issues to refund those which have hereto matured and improvement certificates are still outstanding and payable, but leaves the said complainant to establish the same by due and legal proof.

And defendant further answering says that it neither admits or denies that said Borough depends upon the sale of electric current to properly run the said plant and to pay the said bonds and improvement certificates, but leaves the complainant to establish the same by due and legal proof. While at the same time it insists that the establishment of such a plant by the complainant and its operation thereof, the cost of said plant and

the manner in which the same was paid for are immaterial matters and afford no ground of relief to the complainant as against this defendant. 10

And defendant further answering denies that the said Borough of Madison has the exclusive right to supply its citizens with electric light, or to prevent other corporations or individuals from furnishing electric light, gas or any other materials for lighting the said Borough or the buildings or houses of the inhabitants thereof, but charges and insists that this defendant has the right to furnish and supply the said Borough and the inhabitants thereof with illuminating gas if they desire to purchase the same. 20

And defendant further answering says that in the year eighteen hundred and ninety-four the Board of Chosen Freeholders of the County of Morris acquired and assumed full and exclusive control over certain roads in the county by virtue of an act of the Legislature of the State of New Jersey entitled "An act to enable Boards of Chosen Freeholders to acquire improvements and maintain public roads" approved March nineteenth, eighteen hundred and eighty nine, and the several supplements thereto, and among the roads over which the said Board of Chosen Freeholders so obtained control and acquired as county roads is a certain road leading from the Passaic River in Chatham, 30 New Jersey to the dividing line between the counties of Morris and Essex at Stanhope, New Jersey, which said road begins at a point in the centre line of Main Street in Chatham, New Jersey, at the Passaic River, the boundary line between Morris and Passaic County, thence running in a northwesterly direction along said Main Street, its various courses through the Village of Chatham and the Borough of Madison to the boundary line between the Morris and Chatham Townships near Convent Station, thence still northwesterly through Morris Township along said road called at this

10 point Madison Avenue to the corporate limits of Morristown, and thence by various other courses and distances to an ending at a point in said road in the Village of Stanhope, the division line between the Counties of Morris and Sussex.

The defendant further answering says that said road was acquired as a County road by the Freeholders of the County of Morris by a resolution legally passed at a meeting of said Board held on the twelfth day of September, eighteen hundred and ninety four, and that a copy of said resolution together with a map showing the location of this road and the other roads so acquired as county 20 roads was recorded and filed in the Clerk's Office of the County of Morris on the thirtieth day of October, eighteen hundred and ninety four. That by virtue of the provisions of the legislature in such case made and provided, the said Board of Chosen Freeholders thereof obtained full and exclusive control of the aforesaid mentioned road and proceeded to have that portion of the same extending from Morristown in a southeasterly direction through Morris Township and through the Borough of Madison graded and macadamized. That said work was done by the firm of Osborne & Marcellus in the year eighteen hundred and ninety five and 30 eighteen hundred and ninety six, and said road was accepted by the County from said firm on the ninth day of June, eighteen hundred and ninety seven, since which time the aforesaid road so extending from the corporate limits of Morristown in a southeasterly direction to the Passaic River has been under the absolute, full and exclusive control and care of the Board of Chosen Freeholders who have since that time kept it in repair. All of which this defendant offers to produce and prove as this Honorable Court shall direct and to which records this defendant begs leave that reference may be had for greater certainty.

And defendant further answering says it made

application to the Board of Chosen Freeholders of the County of Morris for leave to lay its gas mains in the aforesaid County road through the Borough of Madison to Chatham, and that at the regular meeting of said Board of Freeholders held on the day of April, eighteen hundred and ninety seven the following resolution was unanimously adopted:

"Resolved that the Morristown Gas Light Company be granted the privilege to lay gas mains through the County road from a point beginning at the Passaic River in the Village of Chatham near the grist mill of George T. Parrott, and running thence westerly from the said Village of Chatham in the main thoroughfare through the said Village and now known as Main Street, thence continuing northwesterly still being known as Main Street to the easterly line of the Borough of Madison, thence continuing northwesterly by the main thoroughfare through said Borough still being known as Main Street in said Borough to the crossing of the Morris and Essex Railroad; thence continuing northwesterly along the main thoroughfare formerly known as the Newark and Elizabeth Turnpike and now known as Madison Avenue to a point in front of the residence of J. M. Young; thence leaving the line of said Turnpike and continuing northwesterly along what was once known as the Shun Pike and now known as Madison Avenue to the westerly line of the Borough of Madison at a point where the Townships of Morris and Passaic join in the Borough of Madison line, said point being in front of the residence of formerly Theodore Macknet, said terminal point being marked by a stone monument on the westerly side of the road and opposite the cross road leading southerly from said Madison Avenue, which said cross road is the dividing line between the Townships of Morris and Passaic, provided that before laying such mains the said Company

10 shall make and execute to the Board of Chosen Freeholders of the County of Morris a bond in the sum of five thousand dollars, conditioned for the replacing of the road excavated for the purpose of laying mains in as good condition as before such excavations were made, and provided further that said mains shall be laid parallel to and along the side of the macadam surface. And this the said defendant offers to produce and prove as this Honorable Court shall direct.

And defendant further answering says that on the twelfth day of May of the same year the defendant entered into a bond to the Board of Chosen Freeholders of the County of Morris in the 20 penal sum of five thousand dollars conditioned that the said defendant after laying the said gas mains in the County road as described in the foregoing resolution shall restore and replace the road excavated for the purpose of laying said main in as good a condition as before said excavations were made, which said bond was presented to the Board of Chosen Freeholders on said day and duly accepted and filed by said Board and is now in the possession of said Board.

And defendant further answering says that acting upon the authority granted by its act of incorporation and by the further authority and 30 permission of the aforesaid Board of Chosen Freeholders, the said defendant in the month of December A. D. nineteen hundred and one, proceeded to lay its mains through the aforesaid Main Street in the Borough of Madison, beginning at a point where the existing mains of said defendant ended, and carted pipe to said street, said street being a County road so under the control of the Board of Chosen Freeholders having been acquired as a County road by said Board as aforesaid.

And defendant further answering denies that said road was under the control of the Borough authorities of the Borough of Madison, but on the

contrary says that it was under the full and exclusive control of the Board of Chosen Freeholders of the County of Morris, and that the repairs to said road were not made by the Borough authorities of Madison but were made by the aforesaid Board of Chosen Freeholders under the direction of Thomas Malley, its Inspector of Roads, under whose charge and care the said road has been from the time of its acceptance from the contractors in the month of April, eighteen hundred and ninety seven. 10

And defendant further answering says that said pipe was being laid by it in conformity to said resolution of the Board of Chosen Freeholders and in conformity with its corporate rights and in such a way as not to interfere with the public travel along said County road. In the night time the excavation was not only protected by lights but said defendant also had a watchman to guard said openings from dark till daylight, and such precautions were taken that the public travel was not affected or impeded by such work. 20

And defendant further answering say that it did not cart its pipes to any of the other streets, alleys or lanes of the said Borough of Madison except along the aforesaid County road and that it never authorized any of its employees to say that it intended to lay its pipes through any of the other streets of Madison except the aforesaid County road along and through which it had received permission to lay its pipes from the aforesaid Board of Chosen Freeholders, although it contends and believes it has the right so to do under and by virtue of its act of incorporation. 30

And defendant further answering says that the Borough authorities of the aforesaid Borough of Madison did not at any time make any suggestions to it or to any of its agents in charge of said work that the said work should be done in any different way or manner than that in which the said work was being done, nor did the said authorities at any time

10 suggest that the said work was being done in a careless or improper manner or that said road was being left in a dangerous or impassable condition or that said Borough authorities desired the work done in any other way or manner than that in which the said defendant was causing the same to be done.

And defendant denies that the said Borough of Madison has such control of the aforesaid Main Street as to prevent the said defendant from laying its mains and pipes through the said street for the purpose of furnishing the residents of the said Borough living in the said street with illuminating gas if they so desire to purchase the same, but charges and insists that it is not only authorized by
20 its act of incorporation but also by the Board of Chosen Freeholders of the County of Morris to lay its mains and pipes in the aforesaid mentioned County road, for its corporate purposes.

This defendant therefore prays to be hence dismissed with its reasonable costs and charges in this behalf most unjustly be sustained.

WILLARD M. CUTLER,
Solicitor & of Counsel,
with Deft.

30 State of New Jersey, }
County of Morris. } ss.:

ROBERT D. FOOTE of full age being duly sworn according to law on his oath saith: That he is president of the Morristown Gas Light Company, a corporation of the State of New Jersey. That said Company was organized by virtue of an act of the legislature of the State of New Jersey entitled "An act to incorporate the Morristown Gas Light Company" approved February nineteenth, eighteen hundred and fifty-five (Laws of 1855, page 74). That by said act the said Company was authorized and

empowered to manufacture, make, and sell gas to 10
be made of bituminous coal or other materials for the purpose of lighting the streets, buildings, manufactories and other places situated in Morristown and its vicinity, and was also authorized to lay down its gas pipes, to erect gas posts, burners and reflectors in the streets, alleys, lanes and public grounds in Morristown and its vicinity.

And deponent further saith that afterwards in the year eighteen hundred and ninety-four the Board of Freeholders of the County of Morris acquired and assumed full and exclusive control over certain roads in the County of Morris by virtue of an act of the legislature of the State of New Jersey 20
entitled "An act to enable Boards of Chosen Freeholders to acquire, improve and maintain public roads," approved March nineteenth, eighteen hundred and eighty-nine, and among the roads, of which the said Board of Freeholders acquired such control was a road known as Madison Avenue extending from Morristown through the Township of Morris to the Borough line of the Borough of Madison, thence extending from the Borough of Madison to Main Street, and thence through the Borough of Madison and through the Village of Chatham to the County line. That the said Board of Freeholders of the County of Morris adopted a written resolution particularly describing said 30
road, and did cause a map showing the location of this and other County roads thereon to be filed with the Clerk of the County of Morris and did also cause to be filed a copy of said resolution, a certified copy of which is hereto annexed.

And deponent further saith that the said board of freeholders caused said public road, of which it assumed control to be macadamized, which said work was done and road accepted prior to April eighteen hundred and ninety-seven.

And deponent further saith that said Morristown Gas Light Company at the June meeting of the

10 Board of Freeholders in the year eighteen hundred and ninety-seven, made application for permission to lay its pipes in said road over which the said County had assumed control through Chatham and the Borough of Madison, and that on said day the resolution was adopted by the Board of Freeholders of the said County granting permission to the said Morristown Gas Light Company to lay its pipes and mains through Madison Avenue and Main Street in the Borough of Madison and so on to the Passaic River, being the County line, upon said Company entering into a bond in the sum of five thousand dollars conditioned for the replacing of the road excavated for the purpose of laying mains
20 in as good a condition as before such excavations were made, and provided further that said mains shall be laid parallel to and along the side of the macadamized surface.

And deponent further saith that said Morristown Gas Light Company did on the twelfth day of May in the aforesaid year, enter into bond to the Free-holders of the County of Morris in the sum of five thousand dollars, conditioned that it would restore and replace the roads excavated for the purpose of laying said mains in as good condition as before such excavations were made, and did on the twelfth day of May present the said bond to the Board of
30 Freeholders at their regular meeting, which said bond was accepted and filed with the Clerk of said board and is still in possession of said Board of Freeholders.

And deponent further saith that said road has been and still is under the control of the freeholders of the County of Morris, and that said Board of Freeholders have not relinquished control over said road or any portion of the same, but has since the macadamizing of said road kept the same in repair.

And deponent further saith that the said Morristown Gas Light Company have already extended

its pipes from Morristown through that part of Madison Avenue which passes through the Township of Morris and into the Borough of Madison, and have began to excavate for the purpose of laying its pipes and mains along the side of said County road called Madison Avenue and Main Street in the Borough of Madison, being the same County road mentioned in the permission of the Board of Freeholders. That said work was being done in a proper manner so that the public travel has not at any time been affected or impeded by the laying of said pipe, and that said Company had arranged not to to have such excavations remain open any longer than was actually necessary to lay said pipes therein, and to have such excavations properly refilled and tamped, and the roadway left in as good condition as before such excavations were made and the pipe laid therein.

And deponent further saith that the said Morristown Gas Light Company have not endeavored to lay any pipes in the streets and avenues of the Borough of Madison, over which the said Borough authorities have any authority or control, or on any other street or avenue in Madison save the aforesaid County road, through which said Company has permission to lay its said pipes, although said Company claims the right under its charter, to lay such pipes if it so desired, and that it has not caused to be carted along the side of any road any pipes except along the aforesaid County road.

And deponent further saith that he has read the answer of the said Morristown Gas Light Company and that the matters and things therein contained are true.

ROBERT D. FOOTE.

Sworn and subscribed to before me, this 31st day of January, A.D. 1902.

WM. D. KAY,
Notary Public,
N. J. Co.

10 CHATHAM TO STANHOPE.

Whereas it appears that the Board of Chosen Freeholders has assumed control of and adopted as a "County Road" a certain road leading from the Passaic River in Chatham, N. J. to the dividing line between the Counties of Morris and Sussex at Stanhope, N.J.,as set forth in a resolution adopted at a meeting of this Board held September 12th, 1894, for the purpose of maintaining the same, under the provisions of an act entitled "An act to enable Boards of Chosen Freeholders to acquire, improve and maintain public roads" approved 20 March 19th, 1889, and the several supplements and amendments thereto. Therefore, be it resolved that the following description be adopted as an accurate description of the aforesaid road for the purpose of having the same recorded in the office of the County Clerk as directed and required by the aforesaid act and the supplements and amendments thereto:

Beginning at a point in the centre line of Main Street in Chatham, N. J., at the Passaic River the boundary line between Morris and Passaic Counties; thence running in northwesterly direction along said main street its various courses through the village of Chatham and Borough of Madison to 30 the boundary line between Morris and Chatham townships near Convent Station; thence still northwesterly through Morris Township along said road (called at this point Madison Avenue) to the corporate limits of Morristown; thence westerly along said Madison Avenue in Morristown to where said Madison Avenue intersects South Street thence northwesterly up South Street to the south side of the Public Square in Morristown, thence easterly and northerly to Speedwell Avenue; thence northerly through Speedwell Avenue to the corporate limits of Morristown; thence still northerly through Morris township to the boundary line between

Morris and Hanover townships; thence northerly along said road its several courses through Hanover township, through Morris Plains to the boundary line between Hanover and Rockaway Township near Mount Tabor; thence through Rockaway Township in a northerly, westerly and southerly direction through the village of Denville and Borough of Rockaway in said township to the line dividing the townships of Rockaway and Randolph; thence westerly along said road its several courses through Randolph Township to the corporate limits of Dover; thence westerly along said road (being at this point called Blackwell Street) through the City of Dover to westerly boundary line of said corporate limits; thence still westerly through Randolph Township over Mine Hill to the dividing line between Randolph and Roxbury Townships; thence along said road its various courses and still in a westerly direction through Roxbury Township through the village of Kenvil and Ledewood to the culvert under the Morris Canal; thence still along the said road in a northwesterly direction to the dividing line between the townships of Roxbury and Mount Olive and to a point in said road in the village of Stanhope on the division line between the Counties of Morris and Sussex and there to end. Being the same road as laid down, marked and designated as a County road leading from the Passaic River in Chatham, N. J. to the dividing line between Morris and Sussex Counties at Stanhope on a map made by E. Robinson and entitled "Atlas of Morris County" upon which map certain roads have been marked by W. E. King, C. E. which map so marked was adopted by this Board as the map required under the provisions of the aforesaid act and the supplements thereto. And be it further resolved that a copy of this resolution, certified by the Clerk of the Board, be filed in the Clerk's office of this County.

BOARD OF CHOSEN FREEHOLDERS OF MORRIS COUNTY

10 State of New Jersey }
County of Morris } ss.:

I, JAMES C. HAZEN, Clerk of the Board of Chosen Freeholders of the County of Morris, do certify the foregoing to be a true copy of a resolution adopted by the said Board at a meeting held on the twelfth day of September, eighteen hundred and ninety-four, as fully as the same now appears upon the record minutes of the said Board.

Witness my hand this first day of October, A. D., eighteen hundred and ninety-four.

JAS. C. HAZEN,
20 Clerk.

Received and recorded and filed Oct. 30, 1894.

ELIAS B. MOTT,
Clerk.

State of New Jersey, }
County of Morris, } ss.:

I, DANIEL S. VOORHEES, Clerk of the County of Morris, do hereby certify that the foregoing is a true copy of the record of a County road, running from Chatham to Stanhope, as fully and entirely
30 as the same remains in my office in Book A. of County Roads for said County on pages 40, &c.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said
(L. S.) County, at Morristown, this Thirtieth day of December A. D. Nineteen hundred and one.

D. S. VOORHEES,
Clk.

State of New Jersey, } ss: 10
County of Morris, }

THOMAS MALLEY, of full age, being duly sworn, according to law, on his oath saith; that he resides in the Town of Morristown in the County of Morris and State of New Jersey, and was from the year eighteen hundred and ninety-four to the year eighteen hundred and ninety-six a member of the Board of Freeholders of the County of Morris. That in the year eighteen hundred and ninety four, the Board of Freeholders acquired and assumed full and exclusive control over certain roads in the County of Morris under and by virtue of an act of the Legislature of the State of New Jersey entitled 20 "An act to enable the Board of Chosen Freeholders to acquire, improve and maintain public roads," which act was approved March Nineteenth, eighteen hundred and eighty-nine. That one of said roads began at Chatham and extended in a North Westerly direction through the Borough of Madison, thence through Morristown and so on to Stanhope. That said road is called Main Street in the Borough of Madison and then Madison Avenue, and is more particularly described in a written resolution adopted by said Board, a copy of which is filed with the clerk of the County of Morris.

And deponent further saith that the said Board of Freeholders caused a map to be filed in the office 30 of the clerk of the County of Morris, having this road and other roads designated as county roads delineated thereon.

And deponent further saith that afterwards that portion of the aforesaid mentioned road extending through the Borough of Madison was macadamized by the said Board of Freeholders, said work being done about the year eighteen hundred and ninety-five by the firm of Osborn and Marcellus who were employed by the County of Morris to do the said

10 work, and that said work was done under my immediate supervision, I being at that time Chairman of the Road Committee of the Board of Freeholders.

That said road was accepted by the said County and has been since that time and still is one of the County roads over which the Board of Freeholders of the County of Morris have full and exclusive control.

And deponent further saith that afterwards in May, eighteen hundred and ninety-six, after said road was macadamized he was appointed by the Board of Freeholders of said County, Superintendent of County roads, and that his duty as such
20 road Superintendent was to keep the roads over which the County has control in proper repair, and that the aforesaid road known as Madison Avenue and Main Street, extending through the Borough of Madison are roads over which he has control and roads which he as such road Superintendent has kept in repair, and that on a number of occasions since eighteen hundred and ninety-six he has made repairs to said Main Street and Madison Avenue in the Borough of Madison, and that during all of said time the borough authorities of the Borough of Madison have not exercised any control over said road or made any repairs or altera-
30 tions to the same, but that during all of said time the said roads have been kept in repair by the said County of Morris and are still being kept in repair by said County.

And deponent further saith that he has read the bill of complaint filed by the Borough of Madison against the Morristown Gas Light Company and that the roads mentioned in said bill through which the Morristown Gas Light Company is laying its pipes is the County road over which he has such control and the road mentioned in the resolu-

tion granting the said Gas Company the right to lay its pipes therein. 10

THOMAS MALLEY.

Sworn and subscribed to before me this 31st day of January, A. D., 1902.

JOHN M. MILLS,
Master in Chancery
of New Jersey.

State of New Jersey, County of Morris. } ss.:

GEORGE H. BROWN, of full age being duly sworn, according to law on his oath saith: That he is the Superintendent of the Morristown Gas Light Company and has charge of the laying of its pipes and mains. That the said Company's plant is located in Morristown in the County of Morris and State of New Jersey and that for many years it has had a main extending from its plant through South Street and Madison Avenue in Morristown thence through that portion of said Avenue that passes through Morris township and further through said Avenue a distance of about a mile in the Borough of Madison, the aforesaid Madison Avenue now being a county road. 20

And deponent further saith that said Morristown Gas Light Company is about laying its pipes along Madison Avenue to Main Street and along Main Street through the Borough of Madison. That said Company began work where said present main ended near the property of D. Willis James on Madison Avenue and commenced excavating for the purpose of laying said pipe; that such excavation was made parallel with the macadamized portion of said road and was done in such a way as not to affect or interfere with the traveling public. That said excavation was not left in a dangerous condition but was protected at night by lantern 30

10 and proper lights and by a watchman, the dirt from said excavation was placed in such a way as not to interfere in the slightest degree with the use of said public highway.

And deponent further saith that it was not the intention of the said Morristown Gas Light Company to lay pipes through any other street of said Borough except the aforesaid county road and that he has not had pipe taken or left along any other street except the aforesaid Madison Avenue and Main Street, and that he has not said to any of the officials of the Borough of Madison that it was the intention of said Gas Company to lay its pipes or mains through any of the streets of the Borough of
20 Madison.

And deponent further saith that it was the purpose of said Company to lay said pipe and fill the excavation and properly tamp down the dirt and leave the said road in the same condition as it was before said pipe was laid.

And deponent further saith that he has large experience in laying of gas pipe and fully understands the manner in which the same should be laid so that the said thoroughfare through which it is laid shall be left in the same condition as it was before the excavations were made, and that the said excavations made by the said Morristown Gas
30 Light Company have been done in the proper manner and at no time has the street or road been left in a dangerous condition.

GEORGE H. BROWN.

Sworn and subscribed to before me
this 30th day of December, A. D., 1901.

JOHN M. MILLS,
Master in Chancery,
Of New Jersey.

State of New Jersey, } ss.: 10
County of Morris. }

JEREMIAH C. WHITE, of full age, being duly sworn according to law on his oath saith: That he resides in Morristown, in the County of Morris and State of New Jersey, and is at present Clerk of the Board of Freeholders of the County of Morris, and has been such Clerk since the annual meeting of said Board in the month of May of the present year, and that four or five months prior to that time he was Acting Clerk of said Board. That as such clerk he has in his custody and control the minutes of the Board of Freeholders of the County of Morris. That at the April meeting of the Board 20 of Freeholders of said County in the year eighteen hundred and ninety seven, which was held on the fourteenth day of April of that year the following resolution was passed:

"The Morristown Gas Light Company by its President Henry W. Miller petitioned for the privilege of laying gas mains in the county roads through the Borough of Madison to Chatham, Mr. Vance presented the following resolution which was unanimously adopted:

Resolved, That the Morristown Gas Light Company be granted the privilege to lay gas mains through the county road from a point beginning 30 at the Passaic River in the Village of Chatham near the grist mill of George T. Parrot, and running thence northwesterly from the said Village of Chatham being the main thoroughfare through the said village and now known as Main Street; thence continuing north westerly still being known as Main Street to the easterly line of the Borough of Madison, thence continuing north westerly by the main thoroughfare through the said Borough, still being known as Main Street in said Borough to the crossing of the Morris and Essex Railroad; thence continuing north westerly along the main

10 thoroughfare formerly known as the Newark and Elizabeth Turnpike and now known as Madison Avenue to a point in front of the residence of J.M. Young; thence leaving the line of the said turnpike and continuing north westerly along what was once known as the Shunpike and now known as Madison Avenue to the westerly line of the Borough of Madison at a point where the Townships of Morris and Passaic join in the Borough of Madison line, said point being in front of the residence of formerly Theodore Macknett, said terminal point being marked by a stone monument on the northerly side of the road and opposite the cross road leading southerly from said Madison Avenue, 20 which said cross road is in the dividing line between said Townships of Morris and Passaic, provided that before laying such mains the said Company shall make and execute to the Board of Chosen Freeholders of the County of Morris, a bond in the sum of five thousand dollars, conditioned for the replacing of the road excavated for the purpose of laying the mains in as good condition as before said excavations were made, and provided further that said main shall be laid parallel to and along the side of the macadamized surface."

And deponent further saith, that the records of 30 said meeting show that all the members of said Board were present, which record is found on page 215 of the minutes of the Board of Freeholders of the County of Morris for the year eighteen hundred and ninety-seven.

And deponent further saith that afterwards the Morristown Gas Light Company filed with said Board of Freeholders a bond in the sum of five thousand dollars, in accordance with said resolution, which bond still remains on file with said Board and is in my custody and is in the following words:

"Know all men by these presents that the Morristown Gas Light Company, a corporation of the State of New Jersey, is held and firmly bound unto the Board of Chosen Freeholders of the County of Morris in the said State of New Jersey in the sum of five thousand dollars, lawful money of the United States of America to be paid to the said Board of Chosen Freeholders of the County of Morris or to its certain attorney, successors or assigns, to which payment well and truly to be made the Morristown Gas Light Company binds itself, its successors and assigns firmly by these presents, sealed with the corporate seal of the Morristown Gas Light Company, attested by the hand of Henry W. Miller, its President, and dated the 12th day of May, A. D., Eighteen Hundred and Ninety seven.

The condition of this obligation is such that whereas the said Board of Chosen Freeholders of the County of Morris, upon the petition of the Morristown Gas Light Company, at its regular meeting held on the fourteenth day of April, A. D., eighteen hundred and ninety-seven, granted to the said Morristown Gas Light Company the privilege to lay gas mains through the county road from a point beginning at the Passaic River in the Village of Chatham near the grist mill of George T. Parrot and running thence northwesterly from the said Village of Chatham being the main thoroughfare through the said village and now known as Main Street; thence continuing northwesterly still being known as Main Street to the easterly line of the Borough of Madison; thence continuing northwesterly by the main thoroughfare through said Borough and still being known as Main Street in said Borough to the crossing of the Morris and Essex Railroad; thence continuing northwesterly along the main thoroughfare formerly known as the Newark and Elizabeth Turnpike and now known as Madison Avenue, to a point in front of

10 the residence of J. M. Young; thence leaving the line of the said turnpike and continuing northwesterly along what was once known as the Shun Pike and now known as Madison Avenue to the westerly line of the Borough of Madison at a point where the Townships of Morris and Passaic join in the Borough of Madison line, said point being in front of the residence of Theodore Macknett, said terminal point being marked by a stone monument on the northerly side of the road and opposite the cross road leading southerly from said Madison Avenue; which said cross road is on the dividing line between said Townships of Morris and Passaic; provided that before laying said mains the said
20 company shall make and execute to the said Board of Chosen Freeholders of the County of Morris a bond in the penal sum of five thousand dollars conditioned for the replacing of the roads excavated for the purpose of laying mains in as good a condition as before said excavations were made, provided further that said mains shall be laid parallel to and along the side of the macadamized surface

Now therefore if the said The Morristown Gas Light Company after laying the said gas mains in the County roads as described in the foregoing resolution shall restore and replace the roads excavated for the purpose of laying said mains in as
30 good condition as before such excavations were made, then this obligation shall be void otherwise to remain in full force and virtue.

Attest: HENRY W. MILLER,
JAMES R. VOORHEES, President,
Secretary, (Seal of Company.)"

And deponent further saith that said resolution as passed by the Board of Freeholders granting permission to the Morristown Gas Light Company to lay its pipes as aforesaid, has never been revoked, altered or modified, but is still in full force.

And deponent further saith that it appears from the record of the Board of Freeholders and their minutes of said Board that on the twelfth day of September, eighteen hundred and ninety-four, the Board of Freeholders acquired and assumed full and exclusive control over certain roads in the County of Morristown by virtue of the provisions of an act entitled "An act to enable Boards of Chosen Freeholders to acquire, improve and maintain public roads;" which act was approved March nineteenth, eighteen hundred and eighty-nine, and on the said day adopted certain written resolutions assuming control of said roads, and caused copies of said resolution and also map showing the location of said roads so acquired as county roads to be filed on the 12th day of September, eighteen hundred and ninety-four in the Clerk's office of the County of Morris. That one of said roads extended from Chatham in a north westerly direction through the Borough of Madison, thence through the Township of Morris, through Morristown and so on to Stanhope, and another road commenced at Chatham and extended to the Passaic River, the County line. That that portion of the road extending through Chatham to Stanhope in the Borough of Madison is known as Main Street and Madison Avenue, and that the road described in the resolution granting the Morristown Gas Light Company the right to lay its pipes therein, is one of the county roads, and that portion of the same extending through the Borough of Madison, is a portion of the road described in the resolution acquiring control of the road from Chatham to Stanhope.

And deponent further saith that that portion of the road from Chatham to Stanhope extending through the Borough of Madison was macadamized in the year eighteen hundred and ninety five by the Board of Freeholders of the County of Morris, the work being done by the firm of Osborn & Mar-

10 cellus, and said road was accepted from the firm on the 9th day of June, 1897, since which time the aforesaid road has been under the full and exclusive control and care of the Board of Freeholders of the County of Morris, and the said Board of Freeholders have not relinquished the said road but is now and has been since the macadamizing and grading of the same cared for and kept in repair by the said Board of Chosen Freeholders under the immediate supervision of Thomas Malley, the County Supervisor of Roads.

And deponent further saith that Madison Avenue was not macadamized its full width but that a strip of road was left on either side of the maca-
20 dam, which was graded by the Board of Freeholders of the County of Morris and is cared for by them as well as the macadam in the centre of said road.

And deponent further saith that he has full knowledge of the construction of said road, being clerk of the County Engineer at the time the aforesaid portion of said road through the Borough of Madison was being constructed, and that the copy of the written resolution acquiring said road filed with the Clerk of the County of Morris is a copy of the resolutions as the same appear on the minutes of said Board of Freeholders.

30

JEREMIAH C. WHITE.

Sworn and subscribed to before me }
this 30th day of December, A.D., 1901. }
JOHN W. MILLS,
Master in Chancery
Of New Jersey.

IN CHANCERY OF NEW JERSEY. 10

Between The Borough of Madison, Complainant, and The Morristown Gas Light Company, Defendant.	On Bill, &c. Affidavit.

20

State of New Jersey, } ss.:
Morris County. }

MICHAEL FRENZ, of full age, being duly sworn according to the law, on his oath, deposes and says that he is Street Commissioner of the Borough of Madison and that he has been such official since eighteen hundred and ninety , that he is acquainted with the roads, streets and avenues of the Borough and particularly of Madison Avenue and Main Street throughout their entire course; that the portion of Madison Avenue extending from its injunction with Kings Road to Main Street was macadamized under his supervision by the Borough 30 of Madison, that ever since the remaining portion of Madison Avenue and Main Street were macadamized by the Board of Chosen Freeholders of the County of Morris that he has cared for such portion of said roadways as lies between the sidewalk and the macadam that the said macadam was laid by the said Board in the centre of the roadway a width of from twelve to sixteen feet varying at different points and that the portions thus left unmacadamized deponent herein designates as the wings. Deponent further says that the wings both along Madison Avenue

10 and Main Street have not been cared for by the Board of Chosen Freeholders of the County of Morris but by the Borough of Madison. Deponent further says that the point in Madison Avenue where the defendant has been digging trenches lies within the wing and not within the section macadamized by the Board of Chosen Freeholders.

M. FRENZ.

Subscribed and sworn to before me this day of January, Nineteen Hundred and Two.

H. VAN W. MYER,
20 Notary Public.

IN CHANCERY OF NEW JERSEY.

Between The Borough of Madison, Complainant, and 30 The Morristown Gas Light Company, Defendant.	On Bill, &c. Affidavit.

State of New Jersey, Morris County. } ss.:

S. FRED BURNETT, of full age, being duly sworn according to law, on his oath, deposes and says that he is one of the Marshals of said Borough; that on the thirtieth day of December, Nineteen Hundred and One he visited that portion of Mad ison Avenue near the residence of D. Willis Jame

where the defendant has dug trenches in said Madison Avenue for the purpose of laying its gas mains or pipes; that he found the macadam road way at that point sixteen feet wide; that the trench so dug by the defendant was four feet from the sidewalk and entirely within the wing of said roadway. 10

S. F. BURNETT.

Subscribed and sworn to before me, this day of January, Nineteen Hundred and Two.

H. VAN W. MYER,
Notary Public. 20

IN CHANCERY OF NEW JERSEY.

Between
The Borough of Madison,
Complainant,

and

The Morristown Gas Light Co.,
Defendant. 30

MR. RATHBUN, for complainant.

MR. WILLARD W. CUTLER, and MR. JOSEPH CROSS, for defendant.

STEVENS, V. C.

The bill is filed to enjoin the defendant Company from laying its gas pipes in the streets of the Borough of Madison. The Gas Company claims the right to do so under its charter. Pam. Laws. 1855, pg. 74. The first section of the act provides

10 that the corporation "shall have power to make and sell gas * * for the purpose of lighting the streets, buildings, manufactories and other places situated in Morristown and its vicinity." The second section provides that "the said corporation shall be empowered to lay down their gas pipes and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues and public grounds of Morristown and its vicinity and the dwellings, stores and other places situated therein." The question is whether the Company has, under these two sections, authority to lay its pipes in the streets of Madison.

At the time of the passage of the Act Morristown
20 was unincorporated, as was also Madison. The former lay in Morris Township, and the latter in the adjoining township of Chatham. By reference to the census of 1850, found in the appendix to the Pamphlet Laws of 1852, it appears that Morris Township then had a population of 4,992 and Chatham Township a population of 2,469. Morris Township then, as now, covered a comparatively small area, not much more than six miles in its widest part, and Morristown was not far from its center, but nearer to its eastern boundary line which abutted on Chatham Township. At the present time, if we disregard corporate lines, it
30 may be said that the town reaches out nearly to this boundary. In 1855, it did not reach so far, but the limits of the somewhat spread out village must have approached to within a mile of it. The centre of Madison on the other hand was less than two miles east of the division line between the two townships, and its westerly boundary must have been not more than a mile and a half from the township division line. So that the westerly limits of Chatham could not have been more than two and a half miles from the easterly limits of Morristown. The distance between the two places was less than the distance between Morristown and any other

of the neighboring villages. Now it seems to me 10
that this being the situation, the legislature must have intended to include the "vicinity" a place situated as Madison was. It is true that any ambiguity in the terms of a grant must operate against the corporation and in favor of the public and that the corporation can claim nothing that is not clearly given. (Penn. R. R. Co. v. Nat. R. R. Co., 8 C. E. Cr., 455); but in the grant of power words must receive their ordinary and proper meaning, and if, giving them this meaning the power is in terms conferred, the Court has no right to cut it down.

Giving to the language found in the Act of incorporation, a reasonable interpretation, it seems 20
clear that the Company has authority to lay its pipes in the streets of Madison. The word "vicinity" if we give it any meaning at all, must refer either to the farming district around Morristown or to one or more of the surrounding villages. In terms, it plainly refers to the latter, for it speaks in its first section of the streets, buildings and manufactories in Morristown and in its vicinity. A vicinity which contains streets, buildings and manufactories is not a farming district. So in the second section the same idea is even moreapparent. The Company is authorized to lay down pipes in the streets, alleys, lanes, avenues and public grounds not only of Morristown—that is, of all Morristown 30
—but of the vicinity of Morristown and in the dwellings, stores and other places situated therein. A vicinity containing these things is at least a village. This interpretation of the language used accords not only with the literal meaning of the sentence, but with the probable intention. It is not to be supposed that the legislature thought it possible that a Gas Company organized for gain would desire or be able to lay its pipes along the country roads (not mentioned in the act) radiating from Morristown, for the mere purpose of supplying isolated farm houses.

10 Vicinity is defined by Webster as "that which is near or not remote." Certainly to a legislature speaking from Trenton, sixty miles distant, Madison would be understood as being in the vicinity of —near—not remote from—Morristown. In Jacob's Law Dictionary the terms "Vincinetum" is defined as "*locus quem vicini habitant*," and in Burill's Law Dictionary it is said to have been anciently understood of the same vill or the parts adjacent, but in later law of the same County.

In Crabb's synonyms "neighborhood" is said to signify the place which is nigh, that is nigh to one's habitation; vicinity, from vicus a village, to signify the place which does not exceed in distance 20 the extent of a village. Under any of these definitions Madison is the vicinity of Morristown. When the act itself tells us that this vicinity may contain streets, alleys and lanes, dwellings and stores, it would seem as if all reasonable doubt was removed.

So far as decided cases may be thought to illustrate this subject they indicate the correctness of my conclusion. In Jersey City v. Hudson, 2 Beas, 420, the act which enabled Jersey City to obtain water, authorized the Mayor and Common Council to take and convey unto Jersey City and *places adjacent thereto* such portion of the water of the 30 Passaic as might be needed. Hoboken was supplied and no intimation is found in the case that this action was questioned. Hoboken was then a village separated by an almost impassible marsh from Jersey City. In Timmerman v. Dever, 52 Mich., 36, one physician covenanted with another that he would not practice in the City of Hastings or its vicinity. The Court thought that the word "vicinity" might reasonably be construed as embracing the surrounding territory for a distance of ten miles from the corporate boundaries. In Langley v. Barnstead, 63 N. H., 246, it was held, on the construction of a statute providing for a division

of the expense of highways, that towns might be 10
situated in the vicinity of each other though not adjacent.

I think, therefore, that the charter of the Gas Company, authorizes it to lay its pipes in Madison.

It is argued however, that, if it did so originally, the authority is by implication repealed by the Act of 1879, Gen. Stat. 1613, Sec. 30-Sec. 31. This is an enabling act authorizing Gas Companies to extend their main pipes to any neighboring municipality provided the Common Council thereof grant permission. The act does not conflict with the provisions of the charter and does not contain any repealer. It is settled law that a general 20
statute will not supercede or repeal a statute conferring special privileges unless there be clear language expressive of such an intent. North Hudson Co. Rw. v. Hoboken, 12 Vr., 78. No such intent is discernible here. The two acts can well stand together.

It is further urged that the Borough has passed an ordinance which forbids the tearing up of its roads without a permit in writing approved by two members of the street committee, and that such a permit has not been obtained by the Gas Company. The Borough Act of 1897 authorizes the Borough Council to prescribe the manner in which 30
corporations or individuals may exercise any privilege granted to them in the use of any street. This statute plainly authorizes regulation, not prohibition. Consequently an ordinance authorizing the street committee arbitrarily to refuse a permit is invalid. North Hudson Co. Rw. v. Hoboken, 12 Vr., 75. Allen v. Jersey City, 24 Vr., 523. Summit Township v. N. Y. & N. J. Tel. Co., 12 Dick., 124.

The injunction should be denied.

A true Copy.

E. C. STOKES,
Clerk.

10 IN CHANCERY OF NEW JERSEY.

Between
Borough of Madison,
Complainant,

and

The Morristown Gas Light Company,
Defendant.

20 The rule to show cause why an injunction should not issue pursuant to the prayer of the bill of complaint heretofore granted in the above cause coming on to be heard in the presence of Charles A. Rathbun, Esq., of counsel with the complainant, and Willard W. Cutler, solicitor of the defendant, and the Court having read the bill of complaint and affidavits thereto annexed of the complainant and the answer and affidavits thereto annexed of the defendant, and heard the argument of counsel thereon, and having duly considered the same;

It is on this fourth day of June in the year of our Lord one thousand nine hundred and two, ordered, 30 that the said rule to show cause heretofore granted in this cause be dismissed with costs, and that the interlocutory injunction prayed for be denied.

W. J. MAGIE,
C.

Respectfully advised,

FREDERIC W. STEVENS,
V. C.

A true copy,
E. C. STOKES,
Clerk.

IN CHANCERY OF NEW JERSEY. 10

Between The Borough of Madison, Complainant, and The Morristown Gas Light Company, Defendant.	On Bill, &c. Notice of Appeal.

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The complainant hereby appeals from the order made on the fourth day of June, nineteen hundred and two in the above stated cause, and from the whole and every part thereof, to the Court of Errors and Appeals as a last resort in all causes.

CHARLES A. RATHBUN,
Solicitor for and of Counsel with the Complainant.

Dated June 20, 1902.

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

CHARLES A. RATHBUN,
Of Counsel with Complainant.

10 IN CHANCERY OF NEW JERSEY.

Between The Borough of Madison, Complainant, and The Morristown Gas Light Company, Defendant.	On Bill, &c. Petition.

20

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

The petition of the Borough of Madison, New Jersey, the appellant in the above stated cause, respectfully shows that your petitioner find itself aggrieved by an order made in the Court of Chancery by his Honor, William J. Magie, Chancellor of New Jersey, bearing date the fourth day of June, in the year of our Lord one thousand nine hundred and two, wherein the said The Borough of Madison was complainant and the said The Morristown Gas Light Company was defendant, in this respect, to wit: that the said order orders that the rule to show cause granted in the said cause be dismissed with costs and the interlocutory injunction prayed for be denied. And your petitioner appeals from the said order of the Chancellor which dismisses the said rule to show cause with costs and denies the prayer for an interlocutory injunction as aforesaid, upon the ground that the same is erroneous, for that, the bill of complaint filed in said cause, with the affidavits annexed thereto, disclose sufficient cause for an injunction as prayed for in said bill of complaint, and that

30

the answer and affidavits thereto annexed were an insufficient defense and should not deprive the complainant of the injunction prayed for. And your petitioner therefore prays that the said order of the said Chancellor may be, in the particulars aforesaid, 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.

CHARLES A. RATHBUN,

Solicitor for and of Counsel with
Appellant

NEW JERSEY COURT OF ERRORS AND
10 APPEAL.

Between The Borough of Madison, Appellant, and The Morristown Gas Light Company, Respondent.	On Bill, &c.

20

The answer of the above named respondent to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that an order was, on the fourth day of June last past made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the
30 same shall be produced.

And this respondent is advised and believes that the said order is agreeable to equity and prays the same may be affirmed with costs to be adjudged to this respondent.

W. W. CUTLER,
Atty. of Respondent.