NEW JERSEY

Court of Errors and Appeals.

BETWEEN ROBERT H. MCCARTER, ATTORNEY-GENERAL OF NEW JERSEY, Informant-Respondent. and LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, AND LEHIGH VALLEY RAILROAD COMPANY ET AL., Defendants-Appellants.	*On Appeal from Chancery.*

BRIEF FOR APPELLANTS.

Statement of the Case.

On December 31, 1824 (P. L., p. 158), the Morris Canal & Banking Company was incorporated with power to "construct, make and execute a canal or artificial navigation to connect the waters of the Delaware River, near Easton, with the tide waters of the Passaic River, and passing through the County of Morris, with all the locks, works, devices, wharves, toll houses and offices, necessary for the use of said canal," and to charge and collect tolls thereon; it was not authorized to itself operate boats. Section 26 of the charter reads as follows:

"26. And be it enacted, That at the end of ninety nine years from the passing of this act,

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it shall and may be lawful for this State, to take to itself, and on its own account the said canal and its appurtenances, paying to the said company the fair value thereof, to be estimated and fixed upon by ten commissioners or a majority of them, to be mutually chosen by this State and the said company; or in case that shall not be done at that time, or within one year thereafter, this charter shall continue so far as respects its canal operations and privileges for the further term of fifty years, when it shall cease, and the said canal with its appurtenances become the sole property of this State."

On January 26, 1828 (P. L., p. 34), the extension of the canal to the Hudson River was authorized "and for that purpose, said company shall have all the rights, powers, and privileges given and granted by the said act, and shall be subject to all the restrictions, limitations, conditions and provisions in the said act contained, in the same manner, and to the same effect, as if the said company had been originally authorized by said act, to construct a canal or artificial navigation to connect the waters of the Delaware River, near Easton, with the waters of the Hudson, at or near the City of Jersey."

The canal was constructed and extended, and in 1836 was put in operation to the Hudson River at Jersey City. The maps in evidence show the route of the canal through Jersey City, and a terminal basin, under tide water, acquired by deed from the Associates of the Jersey Company, which Company under its charter had the State's rights to land under water.

It is common knowledge that the relative rights of the State and of riparian owners in New Jer-

sey were long in an unsettled condition. They so remained until 1870, when by the decision of *Stevens v. Paterson & Newark R. Co.*, *5 Vr.*, *532*, the absolute ownership of the State of all lands below high water mark on navigable waters was vindicated by this Court. In the meantime there had been some construction, by claimants, of bulkheads partially enclosing land under water to the south of the Morris Canal terminal, and there had been controversy with respect to rival claims. Details of this controversy are unimportant, and the matter is now mentioned chiefly as explanatory of some of the references in the supplement of 1867 to the Morris Canal charter, hereinafter to be mentioned. The Morris Canal & Banking Company was in possession of the land which is the subject of this suit, and used it as a basin in enlargement of its canal facilities. In 1866, the Legislature undertook to grant the land to another company, but Governor Ward vetoed the bill passed for that purpose (Vol. 2, p. 630 of the printed case).

In 1864 (P. L., p. 681), "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in the State," had been enacted, and commissioners, therein authorized, had on February 1, 1865, made their report to the Legisture.

In this situation and on March 14, 1867 (P. L., p. 251), there was approved a supplement to the charter of the Morris Canal & Banking Company. This supplement is set forth in full in Volume 1, p. 4 *et seq.* of the printed case on this appeal. By Section 1 the State granted to the Morris Canal & Banking Company the land then under water that is the subject of the present litigation. The prem-

ises so granted were styled by the informant in this case the "Basin of 1867," and for convenience that designation of "Basin" will be found running through the case. Such designation, however, is inept, as all that was required of the grantee in reclamation and use of the premises (which had a maximum width of 960 feet) was the following condition:

> "On condition that for the purpose of preserving a water basin to the west of the present westerly bulkhead on said premises, and of leaving open on the premises hereby granted a public navigation for all vessels to and from the Hudson River, and all parts of the waters west of said westerly bulkhead; the said company shall forever keep open the present gaps in the easterly and westerly bulkheads, each of one hundred and fifty feet in width, and like gaps of like width in any structure to be erected on said premises hereby granted, so that the public may with all vessels freely navigate to and from the channel of the Hudson River and all places east and west of said westerly bulkheads without the payment of tolls or charges, provided, that the said opening shall be kept in such condition that the owners and occupants of shore property, lying north and west of the above described property, may at all times have free access to as well as through the same."

To avoid confusion it should be stated that in the expression, "the said company shall forever keep open the present gaps in the easterly and westerly bulkheads, each of one hundred and fifty feet in width," etc., the reference to an easterly bulkhead is one that had been constructed about on the cen-

ter line of Washington Street, and not a bulkhead along the extreme easterly front of the premises—for there had been no bulkhead erected there at that time. Of course under the grant, one could be erected there subject only to leaving a 150 foot opening therein.

It may be noted in passing that the water basin to the west of the "present westerly bulkhead on said premises" contemplated in the grant was afterwards defined and established by Chapter 596 of the Laws of 1872.

Recurring to the supplement of 1867 to the Canal Company's Charter, it provided that the company should pay into the Treasury of the State $25,000 a year during the continuance of the charter, and so long as the said company, their successors or assigns, should continue to hold or occupy the same, and might commute the annual payment into one payment in full of $357,142.

The supplement concludes as follows:

> "The Morris Canal & Banking Company may, under the provisions of their charter, construct piers, wharves, docks, basins, warehouses, and other structures within the limits above described, and make reasonable rules and regulations for the use thereof, to enable them to carry on a transportation business in and over their canal and elsewhere, which they are hereby empowered to do and also to afford facilities for commerce; provided, that the exemption of said company in its original charter from taxation, assessments or other legal impositions, shall not extend to the property or privileges hereby granted.
>
> "This act shall take effect immediately and be in force during the continuance of the char-

> ter of the said Morris Canal and Banking Company, and at the expiration of that time the lands hereby granted, with the improvements thereon, shall revert to the State, on the same terms and conditions provided in the original charter of the said company, respecting the transfer of the property thereof to the State."

The company accepted the grant and took possession of the property making annual payments until December 20, 1889, when its lessee made the payment provided for in commutation as aforesaid.

On March 31, 1869 (P. L. p. 1017) by a supplement to the Riparian Act the Legislature adopted the bulkhead and pier lines reported by the commissioners appointed under the original Act, as shown on the maps accompanying their report filed in the office of the Secretary of State, "except said lines drawn on said map over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company, by act approved March fourteenth, eighteen hundred and sixty-seven."

By this supplement the Riparian Commissioners, with the Governor and the Attorney General, were authorized to make leases and grants of land under water. The provisions to this end are quoted in full in the opinion of the learned Vice-Chancellor (Vol. 2, p. 688 *et seq.*) and appellants claim that a supplement of 1874 (P. L., p. 103) may also be availed of in support of their title.

By a further supplement to its charter, approved March 14, 1871 (P. L., p. 444) the Morris Canal and Banking Company was authorized to lease perpetually or for a shorter time its canal or any part thereof with all, or any of its boats, property, works, ap-

purtenances and franchises to any person or person or corporation.

On May 4, 1871, the Morris Canal and Banking Company did lease in perpetuity to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, all its property and franchises. The lease will be found in full in Volume 1, pages 50 *et seq* of the printed case. That lease has been upheld by this Court. *Stewart v. Lehigh Valley R. Co., 9 Vr., 505.* The lessee took posession of the demised premises and still retains possession of the canal property—the premises granted by the supplement of 1867 being now vested through mesne conveyances in the Lehigh Valley Railroad Company of New Jersey, which company has made extensive improvements therein and uses the same for a railroad terminal.

After the lease of 1871 by reason of the invention of the Bessemer process, whereby steel rails could be manufactured cheaply and quickly, the carrying of coal, which was the chief commodity transported over the Morris Canal, passed almost wholly to railroads, and the canal rapidly fell into desuetude. The Lehigh Valley Railroad Company, organized the Easton & Amboy Railroad Company which constructed a railroad to tidewater, and afterwards acquired the West Line Grant adjoining on the south the grant of 1867 to the Morris Canal and Banking Company. The grant of 1867 having become useless for canal purposes, but of value for a railroad terminus, the Lehigh Railroad Company on February 4, 1888, made application to the Riparian Commission for a grant of the State's reversion in the property (Vol. I., p. 56 of printed case). After many month's consideration by a commission whose personnel was of the highest character, it received such a grant—as will be next stated.

For this grant they paid $48,000, being at the statutory rate of $50 per front foot measuring on the bulkhead line—being the rate fixed in Section 4 of the Riparian Act of 1869.

By deed dated July 12, 1889, but executed December 20, 1889, the Riparian Commissioners, with the Governor and Attorney-General, reciting the authority of the Riparian Act of 1869, and in consideration of said $48,000 which was paid to the State, granted to the Lehigh Valley Railroad Company in fee simple the premises described in the grant of March 14, 1867, to the Morris Canal and Banking Company. The deedis set forth in full in Volume 1, pages 16 *et seq.* of the printed case.

On April 12, 1907 (P. L., p. 96) there was approved "An Act to compel the determination of titles to riparian lands and lands under water in which the State claims an estate in remainder or reversion and to quiet the title to the same "

Under this statute, on October 8, 1907, the then Attorney-General filed an information against the Lehigh Valley Railroad Company of New Jersey, the Lehigh Valley Railroad Company and Central Trust Company of New York (as mortgagee) calling upon the defendants to set forth their title, and praying that the rights of the parties might be settled by decree of the Court of Chancery, so that the State should on equitable terms take and hold the estate purported to be granted to Lehigh Valley Railroad Company by the Riparian Commissioners, with the Governor and Attorney-General, by the deed of 1889, free and clear of any cloud or uncertainty cast upon the title of the State by such deed.

The appellants answered claiming title and setting forth the sources thereof and issue was joined. The cause was referred to Vice-Chancellor Stevens, who

advised the decree made May 18, 1911, to be found in Volume 2, page 707 of the printed case. By this decree it was adjudged that, upon payment or tender to the Lehigh Valley Railroad Company of $48,000 (the consideration for the deed of 1889), with interest from December 20, 1889, and a refund of part of the taxes paid since 1889 on the property by the Lehigh Valley Railroad Company, if application should be made therefor on the ground that the taxes had been assessed on a wrong basis if the deed of 1889 was void, said deed of 1889 should be held to be null and void, and that the title of the State to a reversionary interest and estate in the lands described in the Act of 1867 is free and clear of any right, estate, interest, claim or demand of the defendants and each and every of them growing out of said deed, and of any cloud or uncertainty cast upon the title of the State by said deed. It was provided in the decree that the right of the Lehigh Valley Railroad Company to continue in the possession and enjoyment of the lands until December 31, 1974, should not in any way be impaired by the decree. The informant was allowed costs.

From this decree an appeal was duly taken, and petition of appeal filed in this Court June 8, 1911 (Vol. 2, p. 718). Answer was filed by the Attorney-General. The cause has ever since been continued from term to term by consent of parties, it being hoped and expected that an adjustment incident to the proposed abandonment of the Morris Canal might render its decision unnecessary. This was contemplated by the decree itself (p. 713). It being apparent that further delay will be useless to either party, the appeal is now brought on for hearing.

The Question Involved.

The only question involved raised by this appeal, besides the incidental one of costs, is the propriety of the decree of the Court of Chancery adjudging that upon repayment of the consideration therefor and possibly some part of the taxes paid by the grantee, the deed of 1889 above recited made by the Riparian Commissioners with the Governor and Attorney-General to the appellant Lehigh Valley Railroad Company (Vol. 1, p. 16) should be held void—the appellants contending that said deed is valid and the title conveyed thereby, now held by the Lehigh Valley Railroad Company of New Jersey, is complete and perfect.

Specification of Grounds of Appeal.

The grounds, more elaborately set forth in the petition of appeal (Vol. 2, p. 718), are (1 and 2) that the decree adjudges that the deed of 1889 above referred to should on certain terms be declared to have been ultra vires, null and void; and incidentally the question of the constitutionality of the Act of 1907; and (3) that the decree adjudges costs to the informant.

Brief of the Argument.

In discussing the grant by the Riparian Commission adjudged to have been *ultra vires* and void, it is well to consider its antecedents.

It is not disputed that the title to the land involved in the case was formerly in the State, nor that the State has granted some estate therein, but the controversy relates solely to the extent of that estate. Four grants are relied upon by the present owner, namely, (1) a grant by Act of 1867 to the Morris Canal and Banking Company (Case, p. 520);

(2) a sale and grant by the Canal Company under the powers given by its charter of 1824 (p. 491); (3) an authorization of the Morris Canal lease to the Lehigh Valley Railroad Company by Act of 1871, and the lease made thereunder (pp. 526, 534); and (4) a grant by the Riparian Commissioners to the Lehigh Valley Railroad Company in 1889 (case, p. 201).

I.

The Grant by Act of 1867.

This Act in terms "grants to the Morris Canal and Banking Company, all the right, title and interest of the State" in the premises in question (case, p. 520, l. 20). The grantee may erect piers, wharves, docks, basins, warehouses and other structures on the land at will, keeping open, however, "the present gaps in the easterly and westerly bulkhead, each 150 feet wide" (p. 521, l. 20; p. 522, l. 13). The granting words do not define the duration of the estate, but the last section provides that at the expiration of the Morris Canal charter the lands granted "shall revert to the State" (p. 522, l. 30). Turning to the original charter, we find that the charter will cease in the year 1974, when the "Canal and its appurtenances shall become the sole property of this State" (p. 509, l. 20). There is a right of the State to purchase the canal in 1924, but that will not put an end to the charter, which confers sundry powers which may be exercised without a canal, such as the right to carry on a transportation business elsewhere than on the canal (p. 522, l. 20, Supplt. of 1867).

The grant made by the Act of 1867 is thus a grant for a term of years, from 1867 to 1974, with a reversion in fee to the grantor, namely, the State. There are two estates in the lands, namely, a term of years in the Canal Company and an

estate in fee in reversion in the State. If at the end of the term some other party than the State were to take, it would be a vested remainder in fee, but since the State is the grantor it is properly called a reversion, which in legal effect is the same as a vested remainder in fee. A reversion is the returning of the land to the grantor, or his heirs, after the grant is over. *Coke*, cited in 4 Zab., 693.

It is true that the Canal Company covenants to pay to the State $25,000 per year, or, in lieu thereof, a gross sum of $357,142, but the grant is not made conditional on this payment, nor is there any right of re-entry on default, nor is the payment called rent, but it is a mere unsecured covenant to pay. Such a covenant gives to the grantor no estate in the land, and, indeed, even a right to re-enter for non-payment would give the grantor no estate.

Hudson Tunnel Co. vs. Atty.-Gen., 12 C. E. G., 573, 578.

The effect of the grant was to leave the estate in fee in the State, subject to an unconditional grant for 97 years, terminating in 1974.

The right of the Canal Company in the use of the land during the term seems to be unrestricted except by the provision to keep open the gap and passage way. The privilege to make improvements and solid filling is given up to the river line, which is thereby authorized to be made a bulk-head line, and was, in fact, so made.

II.

Grant by the Morris Canal Company and its lessee under the powers given by the Charter of 1824.

The act of 1867 (p. 520), which granted this tract

to the canal company did not prescribe that it should be used for canal purposes, and contains no restraint on its alienation. In the same act the company, which had previously merely operated the canal as a highway for tolls, was authorized to carry on a transportation business with boats of its own. It is probable that the directors thought that basins, wharves and warehouses on this tract would be needed for that business. But in a few years it became apparent that the canal business was doomed to decay, and the Canal Company could not use the tract to advantage. The Morris Canal charter (Sec. 27), forbade the alienation of land

> "taken or required for the use of said canal "as aforesaid, or any part thereof, to any per- "son or persons whomsoever (*excepting only* "such lands as may be received by them by "donation or acquired by them by private con- "tract)." (pp. 509, 510).

In the Act of 1867, the State, as an ordinary land proprietor, sold land under water to the Canal Company for the contract price of $357,142, the grant to take effect on the filing by the Canal Company of its covenant to pay the price, and the lands were thus acquired by private contract, and for a use not requiring any franchise, and their alienation not forbidden. The only ways whereby the Canal Company could acquire land were by donation, private grant, or condemnation, and it was only land acquired by condemnation which they were forbidden to alien.

An alienation of the tract in question could not impair the right of the State to purchase in 1924, because that right is limited to the canal and its appurtenances, to be appraised, and therefore does not include land not a necessary part of the canal

p. 503, l. 10). The right to purchase in 1924 was not reserved to the State as to the tract in question by the Act of 1867, and the exercise of that right would not terminate the existence of the canal company, nor would a sale by the Canal Company of the tract in question, which was never used for canal purposes, impair the canal and appurtenances.

It follows that the permission of the State was never necessary to the validity of the perpetual lease made in 1871 by the Canal Company to the Lehigh Valley Railroad Company, of its estate for years in the land in question, though it was no doubt necessary for the disposal of the franchise and of other canal property necessary for the franchise. After the date of the perpetual lease made in 1871 to the Lehigh Valley Railroad Company, there was no estate left in the Canal Company, but they retained a right of re-entry in case the condition to pay the semi-annual rental should be broken (p.457). The lease contained a provision that the lessee might sell any real estate not necessary for the performance of the public duties under the canal franchise, applying the proceeds to the payment of the canal obligations (pp. 544, 545).

After the Riparian Grant in 1889 to the Lehigh Valley Railroad Company, that company granted the tract in question in fee to the Jersey City Terminal Railway Company in 1890 (p. 590) and, at the same time, the Canal Company also granted and released in fee the same tract to the Jersey City Terminal Railway Company for $500,000, by deed reciting the facts and setting forth

> "said premises are not necessary for the per-
> "formance of said public duties" (p.595).

The five hundred thousand dollars was at once

paid to the Terminal Company and applied to satisfy and cancel bonds to that amount of the Canal Company (p. 601).

In 1891 this Jersey City Terminal Railway Company was combined with other railway companies to form the Lehigh Valley Terminal Company of New Jersey (p. 602) and in 1903 a new merger created the Lehigh Valley Railroad Company of New Jersey, which merger was authorized by special act (p. 604, P. L. 1903, p. 189).

So far, therefore, as the estate for years is concerned, which was vested in the Canal Company by the Act of 1867, it has passed by lawful sale under the Morris Canal charter powers, and it is not necessary forus, in order to sustain the title to that estate for years, to look either to the Act of 1871, and lease thereunder, or to the Riparian Acts of 1869 and 1874 and the riparian grants thereunder.

III.

Act of 1871 and Lease to Lehigh Valley Railroad Company.

This Act of March 14, 1871, authorized the Canal Company to lease the canal and any, or all, the property of the company, "either *perpetually*, or for such shorter time" as may be agreed. "And it shall be lawful for the lessee to use and enjoy the said property and franchises so demised, for a term in said lease mentioned" (p. 526). This act contains a general repealer of inconsistent acts (p. 528). It will be observed that this act does not require the term given by the lease to be limited to the term of the Morris Canal charter.

On May 3rd, 1871, the Pennsylvania Legislature passed an act empowering railroad companies of that State to take leases of canals out of that State (p. 29.) On the 4th day of May, 1871, the

Canal Company did, "let and demise unto the party of the second part, its successors, the entire canal and navigation works;" also all the land now belonging to the party of the first part; also all its franchises, "to have and to hold unto the party of the second part its successors and assigns, *perpetually* hereafter" (p. 535). A semi-annual rental is fixed, with a provision for re-entry in case of default (p. 547). The annual payment of $25,000 to the State provided for in the Act of 1867 is assumed by the lessee (p. 542).

The authority to lease *perpetually* applies not only to the canal proper and franchises, but to all property of the Company. The lease was recognized, and the Lehigh Valley R. R. Co. was impliedly recognized as a lessee competent to take under the Act of 1871, by a further supplement to the Morris Canal charter, passed in 1873 (p. 529).

What is the effect on the title in question of this Act of 1871 and the lease under it?

No doubt can exist that if the Canal Company had the power to lease the premises and the canal for a longer term than 1974, they exercised that power; in clear terms they leased all their real property perpetually, and in so doing named property which they owned for a term of years only. If the lease is valid as a perpetual lease, it is so because the State by the Act of 1871 has authorized it and thereby parted with its reversion in favor of the lessee.

That act in clear terms, not only empowered the Canal Company to lease the canal property and franchises perpetually, but expressly provides that it shall be lawful for the lessee to "enjoy the said property and franchises so demised *for the term of said lease mentioned*" (p. 526). How can this term be cut down by the

Court from a term in perpetuity to a term ending in 1974? It must be observed that the act deals with the specific land of the Morris Canal Company. It is a supplement to the charter. It is not a general act where general terms might be qualified to fit the special cases of companies holding property perpetually as well as of those holding for terms. All the property used for canal purposes and franchises, and, in addition the tract in question, were held for a term of years, with reversion or remainder in fee to the State. What then does it mean when the State says that the Canal Company may lease and the lessee take the property in perpetuity? What can it mean, except that the State confers upon the Canal Company the power to lease the reversion as well as the estate for years in the lessee? Unless it means that, it has no meaning at all, and it is a controlling rule of interpretation that the construction must be such, if possible, as to give a meaning to all the words of the statute, and that a construction which deprives of meaning some of the words is to be rejected. "A statute ought, upon the whole, to be so construed that if it can be prevented, no clause, sentence or record shall be superfluous, void or insignificant." *Den vs. Dubois*, 1 Harr., 285. See also opinion of Justices, 22 Pick., 573; *Browne vs. Turner*, 174 Mass., 160; 26 Am. and Eng. Encycl. (2nd Ed.), 618. The lessee dealing with the lessor was entitled to rely on the power conferred by the Act of 1871, which provides that the lessee may "enjoy the said property and franchises so demised for the term in said lease mentioned" (p. 526). To illustrate, suppose a landlord, or other reversioner, has a tenant who holds for ten years, and is forbidden to assign without the landlord's consent. Suppose the landlord gives to the tenant written authority, under seal, not merely to assign his term,

but to let and demise the premises for twenty years or perpetually, there can be no doubt that the exercise of that authority would cut down the reversion in favor of the new lessee. The tenant would be the landlord's agent to grant the reversion.

It is true that the act of 1871 was necessary, in order to permit the Canal Company to make any lease at all of its franchise and of the property required for its exercise; and if the Act had merely authorized such lease, the lessee could take only such title as the lessor had. But here the State was the owner of the reversion of the canal and franchise and land under water, and the Canal Company had no canal or franchise or land under water in perpetual title, and when the State, being the owner of the reversion, declares that the lessee shall take not merely what the lessor owns but a perpetual title to the canal and property, it gives to the lessee what the lessor did not own, but what the State did own, and the gift can only take effect out of the State's reversion.

We claim perpetual title therefore against the State to the land in question, by force of the Act of 1871 and the lease made pursuant to that act. If we are asked why the Lehigh Valley R. R. Co. afterwards purchased a perpetual title from the Riparian Commissioners to the tract in question if they had it already under the Act of 1871, the answer is that the Lehigh Valley Railroad Company had assumed to pay $357,142 due to the State from the Canal Company under the Act of 1867, and could well afford to pay $48,000 more to obtain a deed under the seal of the State for a tract of such vital importance to the whole railroad system, together with the benefit of the Riparian Act, which prevented the State from blocking the river front by an exterior grant. One of the avowed purposes

of the fourth section of the Riparian Act of 1869, which section authorizes grants to statutory licensees is to enable such licensees to obtain the State's covenant not to grant lands in their front (p. 229, l. 16). It was worth while to pay $48,000 for protection against a neighbor so aggressive as the Central R. R. Co. of New Jersey.

If we are wrong in our interpretation of the Act of Lease of 1871, then the reversion remained with the State until 1889 and was acquired by the Lehigh Valley R. R. Co. by the Riparian Grant of 1889, which we proceed to discuss.

IV.

The Riparian Commissioners' Grant of 1889.

This grant, by its terms, conveys the tract in question in fee simple to the Lehigh Valley Railroad Company (p. 208, l. 20). The Act of 1867 is referred to in order to identify the land (p. 208, l. 10), and the condition to keep open gaps is preserved and repeated (p. 208, l. 36), but the limitation imposed by that act on the duration of the estate is omitted, and the fee i given instead. If it was within the power of the Riparian Commissioners to grant the fee, they granted it. The deeds made by Riparian Commissioners are interpreted in the same manner as private deeds. *Morris & Essex R. R. Co. vs. Jersey City*, 18 Dick., 45, 54; aff'd 1 Buch., 308.

We find the power to make such grant given to the Riparian Commissioners in each of two supplements to the Riparian Act. One is the Act of 1869 (p. 226) and the other the Act of 1874 (p. 297).

The 4th Section of the Act of 1869 relates to "land in the proviso to the third section mention-

ed," and we must therefore look to that proviso to learn the scope of the 4th Section. That proviso is to the effect that the Act shall not repeal any one of several classes of grants, viz. (a) "any grant of land under water, or right to reclaim made directly by legislative grant;" or (b) "grant or license, power or authority so made or given to purchase, fill up, occupy, possess and enjoy lands covered with water fronting and adjoining lands owned or authorized to be owned by the corporation, or grantee or licensee in the legislative act mentioned, its grantee or assigns;" or (c) "any grant or license to build docks, wharves or piers opposite and adjoining lands owned as aforesaid" in (b) (p. 230). Here are noted three familiar classes of land under water, namely (a) land described and directly granted by some act (b) land which the riparian owner has been licensed by some act to fill up in his front, and (c) land which the riparian owner has been licensed to improve in his front by docks, wharves and piers. In cases arising under class (a) it does not matter whether or not the grantee is a riparian owner, and the grant of 1867 is one of that class, as well as of the other two classes. Now, the 4th Section provides that if any one, "who by any legislative act is a grantee or licensee or has such power or authority," desires a conveyance of the land in the proviso mentioned, whether under water or not, and a covenant that the State will not make any obstructive grant in front of the land, he may apply to the Riparian Commissioners, who shall give him a lease in perpetuity or a conveyance in fee on payment of $50 per front foot, "measuring on the bulkhead line" (pp. 229, 230).

From the benefits of this section is excluded any corporation to which the State has made a

grant by legislative act in which provision was made for payment to the State Treasury "for each and every foot of the shore embraced in the act" (p. 230, l, 15; but this does not apply to the tract in question, since the Act of 1867 embraced no shore, and does not make provision for payment "for each and every foot of shore," but simply fixes a lump sum for land under water not adjoining the shore. The Pamphlet Laws disclose that this exception applies only to the American Dock & Improvement Co. (p. 565, Sec. 11).

Not only did the tract in question come within class (a), but it came within classes (b) and (c) also. The Act of 1867, after a direct legislative grant, proceeds to authorize the construction on the land of warehouses, wharves, etc., at will (521); and the evidence shows that the Morris Canal and Banking Company was the riparian owner of the land on the north opposite to and adjoining the tract, and the Riparian Commissioners so recited in their deed (p. 206, l. 4). This recital amounts to an adjudication by a competent tribunal and no attempt has been made to disprove it; and the deeds in evidence fully establish it (pp. 549 to 562; Exhibits D 25 to D 36).

The only ground suggested for disputing the right of the Riparian Commissioners to make the grant under the Act of 1869 is that their official bulkhead or pier lines were not adopted in Section One of that Act "within the boundaries of the grant made to the Morris Canal and Banking Company," by the Act of 1867 (p. 226). But the power to make grants conferred by the Act of 1869 was not limited to the places where a bulkhead line had been adopted by the act, and the Commissioners were not forbidden from recognizing other bulkhead lines. The grant by Act of

1867 gave full power to the Canal Company to build out to the exterior line of the tract described, and they actually did place their bulkhead there, and the Riparian Commissioners fixed their price by it.

SUPPLEMENT OF 1874.

We have shown that the character of this grant of 1867 was such as to bring it under the power to sell conferred on the Riparian Commissioners by Section 4 of the Supplement of 1869. But if there was any lack of power under that act it was supplied by the Supplement of 1874 (p 297).

This Act gives to the Commissioners the power to fix the price to any applicant at their discretion, without regard to the length of the bulkhead line. It also opens the door to all applicants, including those having statutory grants, to apply for the sale af any lands.

The 8th Section of the Act of 1869 had authorzed the sale of those lands which had not been improved under grants protected by the Act of 1869, namely, legislative grants, and left the price to the Commissioners' discretion (p. 231). But the Act of 1874 empowers any person to apply for a grant of any land, whether improved or not, and authorizes the Commissioners to make it. Although the Riparian Commissioners treated the application as one made under the 4th Section of the Act of 1869, we are entitled in support of our deed to the benefit of all the powers they held under the Act of 1874.

The informant asks the Court to read a limitation into the granting power of the Riparian Commissioners. He asks the Court to say that reservations of title made by the State in special grants

could not be defeated by riparian grants under a general power. But the force of this argument is destroyed by the fact that the Riparian Act deals expressly with the subject of special legislative grants. They are described in the act with discrimination. They were for the most part titles where the right to enjoy had been given conditionally; the grantee might take, provided he actually reclaimed, and usually they were without consideration to the State. At any time the State could revoke its licenses and take the immediate possession and hold in fee the lands not actually filled in. This right, and all other rights, the State offered to give up for the price of $50 per foot. To say that the State intended, for that price, to give up land which it could take in fee and sell at once and did not intend to give up land which it could not take for 100 years, is absurd. The State's policy evidently was to put an end to the annual solicitation of special statutory grants, and to turn over the making of new grants to a State Commission who would act by rule for the future, and, in addition, to bring the old special grants into a harmonious system by inducing the old grantees and licensees to apply under the general law. Nearly all of the old licensees and grantees had an imperfect title; they rested on mere oral proof of actual reclaiming. All the new titles are to be recorded titles in fee simple, and subject to the restraints of the Riparian Act.

No argument can be made to deny the applicability of the 4th Section of the Act of 1869 to the tract in question, which will not be equally cogent to deny it to all the other legislative grants of land under water. We can no more deny a grant of the fee where the special legislative grant was

for a term of years, then we can where it was a mere revocable license. The same argument that would in the one case limit the new Riparian grant to a term of years, would in the other case limit it to a revocable license.

The Hoboken Land & Improvement Company had one of these revocable licenses, given by legislative grant which took effect as a grant only on reclamation. See discussion of this title in *New York, Lake Erie & West. R. Co. vs. Yard*, 14 Vr., 634, 636, by Depue, J., who says that the State's grantee "has a mere license, revocable by the Legislature at any time before it shall be executed" (p. 636). Other legislative grants of like nature may be found, such as that to the Jersey Shore Improvement Co. in 1854, and grants in sundry railroad charters; but it is needless to cite them. All struggles to escape the bonds of grants by the Riparian Commissioners under the Act of 1869 are vain, since the decision in *Hoboken vs. Penn. R. R. Co.*, 124 U. S., 656, where, as stated by Dixon, J., in *Elizabeth vs. Central R. R.*, 24 Vr., 491, 494, it was decided that such grants transfer to the grantees, or extinguish "every previous right of the State, whether proprietary or sovereign."

The interpretation placed upon the statute by the Riparian Commissioners and Governor and Attorney General, who made the grant in question, is itself more than the equivalent of a weighty precedent in its support.

In *Morris & Essex R. R. vs. Jersey City*, 18 Dick., 45, 54 (Affd. 1 Buch., 308), Pitney, V. C., said:

> "It is not surprising that the courts have given these grants great value. They are made with great care and caution by trusted

public servants after a full moneyed consideration paid by the State. They are signed by the Governor and by the Attorney General under the great seal of the State, and in addition thereto have the signatures of the Riparian Commissioners."

This was quoted with approval in *Atty. Gen. vs. Cent. R. Co.*, 2 Robb., 226 (Affd. 4 Robb., 797).

The Riparian Board was made by the State the judge of its own power to convey the land in question in fee. The decision made by them, when acted upon as it has been by all parties, is an adjudication which ought to be treated as final and conclusive. If it was ever assailable, the remedy was by certiorari, but no court would grant a certiorari at this late day, and the same considerations that control the discretion of the Court at Law are at least equally effective in a Court of Equity.

The argument before the learned Vice-Chancellor in the Court below proceeded to this point substantially in the foregoing tenor, and is here reproduced from the brief then handed in. The Vice-Chancellor suggested that the argument presented would have justified a grant by the Riparian Commissioner of the original terminal basin of the canal. A further brief was requested and submitted, which we now reproduce. The Vice-Chancellor in his opinion makes no reference to the original basin; but proceeds to discuss the case as if the grant of 1867 was of a "basin" of the same character, i. e., one devoted to public uses, namely, annexed to the canal. In this he was plainly wrong, as will be hereinafter shown; but, if he were right, the positions taken in the two briefs were not, as he thinks, inconsistent.

The one is a complemen tof the other, or, it may be said, presents the case from a different angle.

It was suggdsted as against the power of the Riparian Commissioners to grant the land in question, that the grant releases the Canal Company and its lessee from the performance of public duties imposed by the Canal Charter in the use of the land; that if the power of the Commissioners to convey existed as to the land acquired by the statutory grant of 1867, it also existed as to the land in the original terminal basin of the canal which had been obtained from the State under the statutory grant to the Associates of the Jersey Company in 1804 (P. L., p. 367); that such a grant of that basin could not have been intended to be authorized, since it would take part of the canal and close access to the Hudson River; and that to escape these consequences we must infer that the power of the Riparian Commissioners is limited to the conveyance of land not devoted to public uses.

It will be seen that this argument rests on the public duties imposed by the Morris Canal Charter and supplements.

V.

The power of the Riparian Commissioners to grant the land in question is not curtailed by the Morris Canal Charter duties.

We think that in the argument we are to refute there is a confusion of ideas; there is a failure to distinguish between the powers of the Commission to convey and the powers of the grantee over the property after it has been conveyed. The power to convey is given by the Riparian Acts, to be exercised under certain conditions; but the power of the grantee to use or dispose of the property is not made unlimited by conferring a title in fee simple.

The grantor reserves no title, but the charter and public duties of the grantee may control the use. If the grantee has devoted the land to purposes that make it essential to be used in the performance of public duties, that devotion attaches after the riparian grant, not by reason of any lack of power in the Riparian Commissioners to grant the fee, but by reason of the charter limitations on the power of the grantee in the use of its lands. The Commission could not refuse a grant to a company having a public duty to perform out of any suspicion that the company meant to refuse to perform the duty. As to the original terminal basin, we have no doubt that the Canal Company or its lessee and assign was entitled to a grant under the Act of 1869. By force of the lease of 1871, the franchise and property passed to the Lehigh Valley Railroad and with them the obligations to serve the public were imposed on the lessee.

The Associates of the Jersey Company had acquired by improvements made under its statutory license and by laying out streets, all the land covered by the terminal basin. The "premises" referred to in the second section of the Associates Charter of 1804 include land under water as well as upland, and the grant as interpreted by the Court of Errors and Appeals has a broader scope than appears from a casual reading (case, p. 549; *Associates vs. Jersey City*, 4 Hals. Ch., 715, 720). This land the Associates conveyed to the Canal Company in fee together with the adjacent uplands (pp. 551, 557, 560); and the Canal Company and its lessees as assigns became entitled to a grant from the Riparian Commissioners under the Act of 1869, to so much of the terminal basin as was originally under tidewater. They never applied for it, because they had already protected themselves against an obstructive state grant in front of it by the costly purchase of

1867, made in part for that very object after the Legislature had passed a hostile grant (vetoed by the Governor), so that they did not need to pay for a covenant against obstruction. A purchase by the Canal Company or the Lehigh Valley Railroad Company of the terminal basin from the Riparian Commissioners would not alter the title in any material respect. Much of the right of way of the Canal was purchased in fee simple from the owners by the Canal Company, but the Company can not for that reason refuse to operate the Canal over it and a fee from the Riparian Commissioners stands on the same footing as a fee obtained from any other proprietor. A cemetery company is usually disabled by its charter from using its land for any purpose except burial. If, however, such a cemetery company is a riparian owner, it may have a grant in fee from the Commissioners, only it must devote the land when filled up to burial purposes. If a railroad company locates its route on land under water and acquires the upland, it may have a riparian grant unqualified in terms, but will not be released thereby from the charter duty of maintaining the railroad over it. There are, we think, a number of statutory licenses to railroad companies not included in the list of grants offered by the informant (p. 269). Among them is the Long Dock grant, on which is part of the Erie main line and yard (P. L., 1856, p. 67, Sec. 7). Such statutory licensees cannot be denied a grant from the Commissioners merely because they have located a route over the land acquired, and the grant does not release the Company from its public duty, but on the contrary, may aid in its performance.

The argument *ab inconvenienti*, fails because it is not correct to say that a riparian grant of the Canal Company's terminal basin or any other canal

and in fee would cut off the canal or destroy its public use.

If the tract in question (the grant of 1867) was not used for canal purposes in which the public has an interest, there is no basis for the argument; if it was so used, there is nothing in the fact of the grant to relieve the grantee from any public duty imposed by its charter. If such public duty required the use of this particular land, then it must be so used; if the duty could be and was performed without the use of this land, then no restraint on its use or alienation would exist.

The inquiry to which the Vice-Chancellor calls our attention suggests another not raised clearly by the information. The counsel for the informant states definitely that the only issue in the case is whether the deed of 1889 is a valid conveyance. The further inquiry is whether the land in question can be devoted to other than canal purposes, and whether the Canal Company and its lessee could alien it, as they have done. We have no reason to avoid the discussion, and our proposition is that the tract in question was not an essential part of the canal devoted to public use and inalienable, and was not land required to be turned over at the expiration of the charter to the State as a part of the canal.

A striking characteristic of the Morris Canal Charter is that the performance of the public duties of the company is not tied up to any particular land. In this respect it is unlike a railroad company, which must use a particular route forever after having once located and built upon it. But Section 11 of the Morris Canal Charter permits the company "to alter at any time any part of the route of the canal" (p. 501). The public duty is of course charged upon

the company controlling the franchise, but in performing that duty the company may use such land as it finds convenient, even changing its route and may alien any land if it performs its public duty on other land.

VI.

The tract in question was alienable by the Canal Company and its lessee.

So far as the legal title in reversion reserved by the State in the grant of 1867 is concerned, it passed by the Riparian grant of 1889 to the Lehigh Valley Railroad Company, as shown above. But this leaves open for discussion the question of the use to which the grantee may apply the land, and whether it is an essential part of the canal, which the State is entitled to take at the expiration of the charter, not by mere expiration of the term for which originally granted, but by force of the charter duty to maintain and operate the canal as a public highway until 1974, when it is to become the property of the State. Such a duty no doubt existed prior to the permanent lease as to many parcels of land held in fee by the Canal Company, and the fact that the fee here comes from the State through a riparian grant we treat as a fact of no special significance. (We are waiving for the purpose of this discussion our contention that the permanent lease to the Lehigh Valley Railroad cuts off the State's right to take the canal.) The first section of the Morris Canal Charter confers upon the company not only power to purchase, but also power to "grant, alien and sell all such lands" waters, etc., "as may be necessary to carry into effect any of the provisions of this act, and under the restrictions and limitations therein mentioned" (p. 492).

A route is to be located and a survey thereof filed with the Secretary of State before entry (p. 496, l. 1), and lands may be condemned, and the title so acquired "shall be vested in the company to be by them held so long as they shall be used for the purposes of said canal" (p. 498).

Now, let us consider what are the restraints on alienation, express or implied.

The express restraint is found in Section 27 (p. 509). It begins by limiting the power to appropriate lands to

> "such only as are actually necessary for the erection and use of said canal for the purposes of navigation only and its necessary towing paths and works, as specified in the fifth section of this act; and that the said corporation shall not be authorized to demise, grant, alien or sell any such lands, waters or stream taken or pretended to be taken or required for the use of said canal as aforesaid or any part thereof to any person or persons whomsoever (excepting only such lands as may be received by them by donation or acquired by them by private contracts)."

Turning now to the fifth section to which we are referred, we find that the company is authorized to construct a canal "with all the locks, works, devices, wharves, toll houses and offices necessary for the use of said canal" (p. 495).

There is no mention here of any tide-water basin and no power to condemn for it; in that respect the Canal Company is left in the same position as railroad companies with reference to yards, who were unable to acquire any land for yards outside of the right of way, except by purchase, until after the revision of 1903.

And on the other hand, there is no restraint on the power to alien land thus acquired by purchase in fee for a basin, just as there is no restraint on the alienation by a railroad company of its yard land, not within its right of way.

The implied restraints on alienation are found in the provision of the charter authorizing the Canal Company "to continue the Morris Canal to the waters of the Hudson" (p. 551), and in the provision that the canal shall be a public highway free for the transportation of goods on payment of the tolls (p. 508); and in the general principle that a corporation charged with a public duty must not disable itself from performing it. So long as the continuity of the canal is preserved, and the land acquired by condemnation, the residue of the land and all the accessories and adjuncts of the canal not necessary for the performance of its public duties may be aliened just as a railroad company may alien similar lands.

Primarily the directors must decide whether any particular parcel of land is essential to enable them to perform the public duties, and their decision can not be overruled unless there is a clear abuse. The question is one of fact, and the lands once necessary, or appearing to be so, may later prove to be no longer useful. Changes in the mode of operation as well as in the amount or character of the traffic alter the situation.

Applying these principles to the lands, even in the original terminal basin itself, we think all of those lands are alienable except the mere water way to reach the Hudson. A basin is no more essential to the present traffic on the Hudson than on the Passaic or Hackensack.

It by no means follows, however, that if the Ri-

parian Act of 1869 would not have authorized a grant of the original terminal basin of the canal, because it was devoted to public uses, it would not authorize a grant of the tract of land in question; for that tract was not by the grant of 1867 devoted to public uses. It was never necessary for canal navigation, nor does it appear that it was ever intended for any necessary canal use. The act of 1867 authorized the building of piers, wharves, docks, basins, warehouses, etc., by the Canal Company on the land in question "to enable them to carry on a transportation business in and over the canal *and elsewhere*, and also to afford facilities for commerce" (p. 522). The property is not made a part of the canal, nor is it even required to be used in connection with it; its use is to be for a new business which the Canal Company is authorized by the same act to enter upon, namely, a transportation business, not limited to canal traffic, and such other business as comes under the head of "affording facilities for commerce," which includes warehousing and ocean shipping. It no more makes the land a part of the canal than did the banking privilege formerly held by the company make the banking house a part of the canal. Any of this new business, transportation or other, can be carried on without using this tract and could be carried on by an individual without any franchise at all, or by a corporation formed under the general Corporation Act, without any interest in the canal. It is apart from the duty to maintain a public highway for tolls. The land in question forms no part of the public highway. And further, the evidence shows that the land in question is not needed for any of the business of canal transportation, and never has been. Its alienation in no wise hampers the power of the Canal Company to perform its public duties.

The learned Vice-Chancellor fell into the error, fostered by the inept phrase of the information "Basin of 1867," of considering the grant of 1867 as a grant of a "basin," and a canal basin at that. He says (Vol. II., p. 694):

> "The legislature, when it gave this property to the Canal Company, only authorized it to construct therein piers, wharves, docks, basins and similar structures to enable it to carry on a transportation business. It did not authorize it to fill it up. It was to be used *as a basin*, in which might be built structures appropriate to its use as such."

He omits the important word "warehouses" probably through inadvertence, for he includes it in a previous quotation (p. 684, l. 3). He fails to observe that the grant, so far from being one of a basin with structures therein, is one of a tract of land for the construction of designated structures with *basins* (the form is plural) in connection therewith. Appellants contend that under the grant the entire tract could be reclaimed except a 150 foot waterway. Of course, effective use would require more water space than that; but that was a matter for the determination of the grantee. The learned Vice-Chancellor emphasizes the provision (p. 684, l. 28) that the Morris Canal and Banking Company might, "*under the provisions of their charter* construct piers, wharves, docks, basins, warehouses and other structures within the limits above described," etc.; but there is no significance in the italicized words. They only mean that the charter was extended to the new powers granted by the supplement, not that the new powers would be limited to canal uses, for the contrary expressly appears in the grant itself.

Our argument destroys the supposed obstacle to an efficacious grant of the Riparian Commission under the Act of 1869, arising from the fact, several times referred to by the Vice-Chancellor by italicized words, that a grantee under that act might appropriate the land granted "to exclusive private uses" which it is assumed are not appropriate to land already devoted to public uses. There is no diference whatever in the grant of 1867 to the Morris Canal and Banking Company and a like grant to any private warehousing company of tide water property. The fact that the grantee operated a canal with a terminus adjoining the granted land was an immaterial circumstance. The uses to which the land granted might be devoted were essentially private uses, subject only to the restriction that the land would revert to the State in 1974. The 150 foot waterway which was required to be kept open afforded no element of public use *as to the lands granted.* That was to be kept open in order to reach the interior tide water basin in which the Canal Company was in no way interested.

VII.

What land will become the property of the State?

As we have shown, not all the land owned by the Canal Company, even if used for canal purposes, need be held without alienation, since the State has expressly given to the Canal Company power to alien lands. What passes to the State is described as "the said canal with its appurtenances" (p. 509), and immediately follows a strict and narrow definition of what lands and waters may be appropriated and forbidding their alienation, coupled with the exception from the prohibition of lands obtained by donation or private contract. The meaning of the term "appurte-

nances" is explained in the fifth section above quoted (p. 495). The word "appurtenances" covers rights belonging to the principal tract, but does not carry with it other tracts.

Hoboken Land & Impvt. Co. vs. Kerrigan, 2 Vr., 13, 16.

Harris vs. Elliott, 35 U. S., 25, 54.

Washburn on Real Property, 5th Ed., Vol. 3, p. 418, and cases cited.

Here the canal is the principal property, and whatever water rights and wharves may be the appurtenances, the tract in question is not among them. In order to pass that tract with the canal it would be necessary to add to the words "the canal with its appurtenances," the further words "and all lands purchased by the company, available to be used for the accommodation of goods or vessels transported over the canal or elsewhere." The rights of the State cannot be so stretched without violating the terms of the contract which the charter and its acceptance created between the company and the State. No private contractor would venture to present any such claims.

While it is probably not material, we may note that there is no solid ground to say that the State contemplated the continuance of the canal as a going concern after the expiration of the charter. It is not like a common highway, which can be used to some extent as a right of way, though neglected. The canal requires incessant human intervention. The locks must be worked, the power operated at the inclined planes, and the feeder gates kept higher or lower according to the flow. Under present legislation the use of the canal would cease at once on the passing of the

canal to the State. The interest of the State may be and probably will be best served by restoring to the streams the water diverted, and to the land owners the land appropriated, so long as used for a canal, and to the stockholders the land purchased in fee with their money and forming no part of the canal and its appurtenances.

VIII.

The State by its laches has precluded its right to relief in a Court of Equity.

It is well settled that lapse of time is sufficient to defeat the right to injunctive relief where it is not excused on the part of the complainant by peculiar facts and circumstances which rendered it impossible for him to exhibit a bill before.

Such lapse of time, where the acts sought to be enjoined have been open and notorious, amounts to laches, if not to acquiescence.

Scudder v. Trenton Delaware Falls Co., 1 N. J. Eq., 694.

Carlisle v. Cooper, 18 N. J. Eq., 241, 247.

Where the act sought to be enjoined is the prosecution or construction of a public improvement of great benefit to the people of the State, the Court will be slow to grant an injunction, unless the greatest diligence is used and every effort made to prevent such construction before large sums of money have been expended thereon.

Attorney General vs. N. Y. & Long Branch R. R. Co., 24 N. J. Eq., 49.

It has long been settled in this State that laches is a defense to a suit in equity brought by the

State, or by the Attorney General representing the public at large, as well as to a suit by an individual.

In *Attorney General vs. New York & Long Branch R. R. Co.*, 24 N. J. Eq., 49, the Attorney General attempted to restrain the construction of a bridge across the Raritan River, on the ground that the same had been built in a manner unauthorized by the Legislature and constituted a nuisance. The defendants had proceeded with the work for many months, and had expended a sum claimed to be $200,000 thereon. The Court (Chancellor Runyon), refused to grant an injunction partly on the ground of the laches of the State, and said (p. 58):

> "The public, as represented by the Attorney "General, stand in no better position than "the relators, and are bound by the like rules. "Though a stronger case of delay is required "to effect those who assert a public right, "than were a private right alone, is in dispute, "delay, even in such cases, is not without "effect."

So, in *Attorney General v. Brown*, 24 N. J. Eq., 89, the Chancellor refused to enjoin the erection of buildings which encroached upon a public highway, although suit was brought by the Attorney General at the relation of the city, because of laches in bringing the suit. The laches in this case consisted of waiting seventeen days during which the building was being erected.

In *Attorney General vs Delaware & Bound Brook R. R. Co.*, 27 N. J. Eq., 1, the defendant was building a bridge over the Delaware River, and the Attorney General on behalf of the State sought to enjoin the construction thereof on the ground that

it constituted a purpresture; $2,000,000 had been expended by defendant upon this bridge, and the Attorney General had waited until a year after the construction was commenced before bringing suit, and no excnse was given for the delay. Chancellor Runyon held that the State was concluded from equitable relief by its laches in bringing suit, and said: "Under such circumstances equity will refuse its aid even to the State, leaving it to its remedy at law." Affirmed by Court of E. and A. on other grounds 27 N. J. Eq., 631.

In *Attorney General vs. Central R. R. Co.*, 68 N. J. Eq., 198, the same principle was affirmed by Vice-Chancellor Emery (p. 226), who said:

> "The equitable rules relating to the effect "of laches and acquiescence are enforced "against the State when it is a suitor for "equitable relief, as well as against private "suitors. Citing *Attorney General vs. Del. &* "*Bound Brook R. R. Co., supra.*
>
> Affirmed on the Opinion of V. Ch. by the Court of E. and A., 70 N. J. Eq., 797.

Here the State seeks, in a Court of Equity, to avoid its own deed, signed by the Governor, and sealed by the State seal. The grounds, if available now, were available in 1889, and in every year since. The original grantee sold the property to the Jersey City Terminal Ry. Co., which paid $500,000 for it in 1890. Since then, that Company, and its successors, the Lehigh Valley R. R. Co. of New Jersey, have spent immense sums in its improvement, and in the improvement of other land dependent on it for access. It has become an essential part of an important railroad terminal. Railroad bonds and

shares have been issued on the faith of its ownership, and are held by many investors. The State has enjoyed in its School Fund the large sum paid for the land for many years, and now the Attorney General cannot plead any authority to offer its return. It is entirely too late to repudiate the grant of the Riparian Commissioners, or the State's deed.

The law is stated in *Atty. Gen. vs. Central R. R. Co.*, 2 Robb., 198, 226, by Emery, V. C., as follows:

> "The equitable rules relating to the effect "of laches and acquiescence are enforced "against the State, when it is a suitor for "equitable relief, as against private suitors."

Affirmed, 4 Robb., 797. See also *Atty. Gen. vs. Del. & Bound Brook R.*, 12 C. E. G., 1, 25, 27.

What standing would a private suitor have in a Court of Equity on such a record?

Suppose a corporation land owner, having much land to sell, creates an agency board to sell its land, and refers every applicant to that board. Suppose that agency board, in a large transaction, oversteps the limits of the agency, acting in good faith, misled, we will say, by an ambiguous power of attorney, and sells a valuable tract for a fair price, and the President of the corporation, without any vote of directors, executes and delivers a deed in the customary form, and the price, which is a large sum of money, is paid to the Treasurer, and invested by him as part of a fund, the income of which is applied annually for corporate purposes, and the transaction is not only open and notorious, but is reported explicitly to the directors, both by the Board and by the Treasurer, and that from year

to year reports are made to the directors of the existence and origin of the fund and of the use of the income, and suppose from time to time the directors pass by-laws regulating the management of the fund, of which the price is part, and that this goes on for 18 years. In addition, suppose that the purchaser adds the tract to other lands, and devotes the whole to a use requiring the whole, and expends millions of dollars in its permanent improvement, and that this improvement is carried on in the most open manner for 18 years. And suppose that the property is sold to another purchaser, and stock holders and bondholders acquire interests. What, on such a state of facts, would a Court of Equity say to directors who should apply to declare the original sale void, on the ground that it was not within the powers of the agency board or President? It would say that no such repudiation could be tolerated, and the same condemnation must be passed upon the attempt made in the name of the State in this case. If there was ever ground to question the conveyance, the delay and acquiescence of the Legislature amounts to ratification.

IX.

The Act of April 12, 1907, violates the Federal Constitution.

The contract of the State contained in the legislative grant of 1867, and the Riparian grant of 1889 included by implication appropriate remedies for the protection of the contract right, and the State cannot change those remedies materially to the prejudice of its grantee. A vested contract right includes the remedies necessary to its protection.

The Act of 1907 takes property without due pro-

cess, because the last section changes the law and practice of the State adversely to this class of owners and puts them at a disadvantage not encountered in due course by other litigants; and so denies to them the equal protection of the laws.

X.

The terms imposed by the Court of Chancery should not have been limited to the consideration of the deed and possible refund of taxes, but should have included the amount expended on the property.

The Act of 1907 (P. L., p. 96) expressly provides that the setting aside of any grant or conveyance within its purview shall be "upon equitable terms." The learned Vice-Chancellor is of opinion that the expenditure was not made on the faith of the deed of the Riparian Commission, but would have been made in any case in order to derive benefit from the lease. This is a *non sequitur*. The improvements are permanent in character and must have been made on the assumption that they were supported by a fee simple title. It may not be equitable to compel the State to presently refund the cost of the improvements, but inasmuch as, if the riparian grant is void, they will inure to the benefit of the fee, which the State can take over in 1974, unless our contention that its right to do so was destroyed by the Act of 1871, the decree should provide, if the informant is entitled to any decree, that the cost of the improvements should be ascertained and be charged against the State in 1974 without interest (the Railroad Company enjoying the usufruct in the meantime), provided that improvements of that value shall then exist on the property, subject of course to reduction down to

the amount of the actual value of improvements thereon then existing.

XI.

The decree should not have awarded costs.

The Lehigh Valley Railroad Company took the riparian deed of 1889 in perfect good faith. Except for the Act of 1907, the Court of Chancery would have had no jurisdiction at this time to entertain the Attorney General's information. That act recognizes equitable terms for the setting aside of such a deed as that of 1889, and the Court of Chancery has imposed a repayment of the consideration. To that extent the defendants have succeeded. Why then should they be mulcted in costs?

The decree appealed from should be reversed with costs, with one or other of the following results:

(1). The information should be ordered dismissed with costs; or if not,

(2). There should be a saving of the rights of the appellants under their claim that their title is good under the Act of 1871 without resort to the riparian deed; and

(3). In any case no costs should be awarded against them.

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NEW JERSEY
Court of Errors and Appeals

BETWEEN
ROBERT H. MCCARTER, ATTORNEY-GENERAL OF NEW JERSEY,
Informant-Respondent,
AND
LEHIGH VALLEY RAILROAD COMPANY ET AL.,
Defendants-Appellants.

On Appeal from Chancery.

Supplemental Brief for Respondent, Filed by Leave of the Court.

The information was filed in this cause for the purpose of having the grant or deed of July 12, 1889, made by the Riparian Commissioners of the State to the Lehigh Valley Railroad Company, so far as it purported to pass title to the premises described in the information, and known as the "Basin of 1867," decreed to be void and of no effect, and to be a cloud upon the title of the lands under water, included in said deed, and the prayer of the information was that the rights of the parties to the cause, under the said grant or conveyance of 1889 in fee, might be fixed and settled by the decree of the Court, so that the State of New Jersey, by the said decree, might and should take,

have and hold the estate purported to be granted to the Lehigh Valley Railroad Company in and by said deed of July 12, 1889, free and clear of any cloud or uncertainty cast upon the title of the State by reason of such deed, upon such equitable terms as the Court should establish.

The Court of Chancery (Case, Vol. II, pp. 711-12) decreed that said deed of July 12, 1889, purporting to convey the said lands and premises, was executed and delivered without any legal warrant or authority; that it is *ultra vires* and should be set aside and declared void and of no effect, and the title of the State to the reversionary interest and estate in the said lands and premises shall be free and clear, and freely and clearly acquitted and discharged of and from all right, title and interest, claim and demand of the defendants, and each of them, arising or growing out of said deed of July 12, 1889, and free and clear of any cloud or uncertainty cast upon the title of the State by the said deed, upon the terms and conditions thereinafter in said decree set forth.

The question then before this Court is whether this decree should be affirmed; whether the deed of July 12, 1889, is *ultra vires* and void, as declared in said decree, and should be set aside, upon the terms and conditions in said decree specified.

The contention of the respondent is that the decree should be affirmed; that the deed of 1889 *is invalid,* and was properly so declared by the Chancellor; and this for two reasons: first, it was *ultra vires;* second, it was obtained by the Lehigh Valley Railroad Company from the Riparian Commissioners by *false suggestion,* amounting to legal fraud.

By reason of the extraordinary claims set up by appellant (claims never heard of until its answer was filed), it becomes necessary to discuss the effect of several legislative acts, not otherwise pertinent to the

real issue in this cause, *the validity of the Riparian Commissioners' deed of 1889.*

These acts are:

The supplement of 1867 to the Canal Charter, known as "the grant of 1867" (Vol. II, p. 520).

The further supplement of 1871, authorizing the lease of the canal (Vol. II, p. 526), and with this the lease executed thereunder to Lehigh Valley Railroad Company (Vol. I, p. 177).

The appellants claim that this act of 1867 granted these "basin" lands (the same lands granted by the riparian deed of 1889) to the Canal Company *as private lands* and not to *public use,* or *in anywise connected with* or as an *adjunct to the canal;* and that, by virtue of the supplement of 1871, and the lease made thereunder to the Lehigh Valley Railroad Company, that company acquired and now holds both these lands *and the canal in perpetuity.*

They *deny* that the State has still the right to take over either these lands, *or the canal,* in 1924, upon payment of the appraised value, or that in 1974 either these lands or the canal will revert to the State.

As to these "basin" lands, they assert *absolute private ownership, in fee,* to sell or to devote to any purpose they see fit; and this irrespective of the riparian deed of 1889. *As to the canal itself,* they assert that the charter is now perpetual, and that this railroad company *holds the canal* absolutely and forever.

It will at once be seen of what vital and far-reaching importance to the State and to the public are the questions thus raised. It is no longer only a question of the ultimate ownership of these "basin" lands, important as is that ownership to the public and to the future development of the commerce and industries of a great State; it now involves, it seems, as well the ultimate ownership and final disposition of the canal, this one hundred miles of artificial navigation, which the public, fondly relying upon the express terms of

their own deed, had always understood would, in 1974, be theirs absolutely. For many years this very corporation and its counsel, in the Legislature and out, have been agitating the canal question, urging the settlement of the canal question, when, as they now contend, ever since 1871, there has been no canal question to settle. Special commissions of ex-Governors, and of other most eminent citizens, have again and again been appointed to consider this question, when, as we are now to understand, there was no question to consider. For never in all the discussions has it even been suggested, certainly not in public, that the State had granted away its absolute reversion of the canal in 1974. What has always been discussed and understood to have been provided for by the many bills proposed or introduced has been the equitable terms upon which the State might anticipate its rights accruing in 1924 or in 1974. What would be a fair consideration for the voluntary surrender of the lease, the canal and the charter, before the arrival of the period limited by the charter?

The State is thus forced to contend not only for its just rights in these "basin" lands, but, as well, for its just rights in the canal itself. Although the proper determination of the real question in this cause (the validity of the riparian deed of 1889) does not necessarily depend upon the effect of the act of 1871, and the lease thereunder upon the State's rights in these "basin" lands as reserved by the granting act of 1867, or upon the State's rights in the canal itself, as reserved by the original charter, yet the State has no desire to evade the issue thus injected, nor can it permit this most extraordinary denial of its undoubted and *hitherto unquestioned* rights to go unchallenged.

Appellants' first claim that the granting act of 1867 granted these "basin" lands to the Canal Company to private use, "to do with it absolutely as it pleased" (to quote their own language), for the period limited in

that grant, if it be sound, kills their whole case, destroys the riparian deed of 1889, and *absolutely justifies the decree.* For, if these lands were granted to *private use,* not to *canal use or for canal purposes,* then the leasing act of 1871 gave no authority to lease these lands perpetually; that act only authorized the lease of the canal and canal property. The act (Vol. II, p. 526) authorizes the Canal Company to lease the *canal of said company,* or any part thereof, with all or any of its boats, property, works, appurtenances and franchises, either perpetually or for such shorter time as may be agreed upon. It is claimed that the word *property* includes also all property other than canal property. But the collocation of the words refutes this argument. It is the canal boats, canal property, canal works, as well as canal appurtenances and franchises, that may be leased perpetually. Not some other property held from the State for a limited term for private uses during that term. If these lands are private, not canal property, there is no authority to lease. If they had the power to lease, irrespective of this act, it could only be for the time limited by the act of 1867, certainly not perpetually. The lease itself (Vol. I, p. 177) does not specifically demise these lands. It in express terms demises only the canal property, and no estate, even for years, in these lands passed to the Railroad Company by the lease. These lands passed as canal property or not at all. The Railroad Company was not the assign of the Canal Company of these lands, within the purview of the riparian act of 1869, and was not entitled to the deed from the Riparian Commissioners if they were not canal property. These basin lands are still in the Canal Company under the grant of 1867, and subject to its conditions.

The Canal Charter of 1824.

The Morris Canal and Banking Company was incorporated December 31, 1824 (Charter, Vol. II, p. 491), to construct a canal or artificial navigation to connect the Delaware River with the tide waters of the Passaic (sec. 5, p. 495); to maintain said canal and to charge and collect tolls and rates for the passage of boats, goods, passengers, etc., upon the canal, or, upon its banks (sec. 9, p. 499). Section 25 (p. 508) provided that the canal, when completed, should, *forever thereafter, be esteemed a public highway,* free for the transportation of any goods, commodities or produce whatsoever, upon payment of the tolls.

By section 26 (p. 509), the State reserved the right, at the end of ninety-nine years from the passage of the act, *to take to itself, and on its own account, the said canal and its appurtenances,* paying to the company the fair value thereof, to be estimated as provided for in said act; or, in case that should not be done at that time, or within one year thereafter, *the charter should continue, so far as respects its canal operations and privileges, for the further term of fifty years, "when it shall cease, and the said canal with its appurtenances become the sole property of this State."*

By an act passed in 1828 (p. 511), the company was authorized to extend the canal to the Hudson, at or near the City of Jersey, subject to all the restrictions, limitations, conditions and provisions in the original charter contained.

The Canal Company, under the powers conferred by its charter, constructed this canal or artificial navigation for the passage of boats, connecting the Delaware with the Hudson, and for many years maintained and operated the same.

In 1866, as appears by the proofs, the canal business was exceedingly prosperous, and largely used by the public for its boats. The tonnage passing over the

canal that year was 889,220 tons, and the income from tolls and other sources, $616,350.36.

These "basin" lands in question had been for several years, prior to 1866, in the possession, under claim of title, of the Canal Company. It had made improvements thereon; had built the easterly and westerly bulkheads spoken of in the 1867 act, leaving gaps or openings therein. It had enclosed these lands for its purposes—canal purposes—(see Defendants' opening, Vol. II, p. 278, at line 20). And at the time of the passage of this granting act of 1867, they were, undoubtedly, in use for canal purposes. They constituted "the terminus depot of the canal, a valuable public improvement, being a canal across the State more than one hundred miles long, which they had enjoyed for several years, and upon which they had expended considerable sums of money." (Veto Message of Governor Ward, Vol. II, p. 631.) In 1866, the Legislature passed an act "to incorporate the Hudson River Wet Basin and Warehouse Company, and to contract for a lease to said company of lands of the State on New York Bay." This act provided for the leasing of these "basin" lands to this company, formed, under this act, regardless of any right, or claim of right, of the canal company therein, or of its then use thereof, and Governor Ward, for these and other reasons, stated in his message, vetoed the bill.

It is apparent, from Governor Ward's message, and the evidence in the case, that additional terminal facilities on the Hudson River were needed to take care of this growing business of the company, and to meet the needs, not only of the canal, but, also, of the public, rightfully using the canal with their boats.

In 1867, the Legislature, *unquestionably*, with these conditions, this prior use for canal purposes, and these growing needs for terminal canal facilities, *in mind*, passed this act of 1867, known and referred to as the "Grant of 1867."

The Grant of 1867 and the Effect Thereof.

The act of 1867 was an amendment to the original Charter of 1824. It is printed in full in Vol. I, on pages 4, 5 and 6. By this act the State of New Jersey granted to the Morris Canal and Banking Company all the right, title and interest of the State in and to the land and lands under water within the following boundaries (describing the identical "basin" lands in controversy in this suit by metes and bounds), on condition that, "for the purpose of preserving a water basin to the west of the present westerly bulkhead on said premises, and of leaving open on the premises hereby granted a public navigation for all vessels to and from the Hudson River, and on parts of the waters west of the said westerly bulkhead, the company shall forever keep open the present gaps in the easterly and westerly bulkheads, each of one hundred and fifty feet in width, and like gaps of like width in any structure to be erected on said premises hereby granted, so that the public may, with all vessels, freely navigate to and from the channel of the Hudson River and all places east and west of said westerly bulkheads without the payment of tolls or charges; * * * and provided, further, that the said company shall, within ninety days after the passage of this act, execute and deliver to the Governor of the State their promise and undertaking under seal, unconditionally to pay into the Treasury of the State, yearly, the sum of twenty-five thousand dollars per year, on or before the first Tuesday in January of each year, during the continuance of their charter, and so long as the said company, their successors or assigns, shall continue to hold or occupy the same; * * * it shall be lawful for the said company, instead of the said annual payment of twenty-five thousand dollars, to pay into the Treasury of the State at any time the sum of $357,142.00." The act further provided that the Morris Canal and Banking Company might, under the provisions of their

charter, construct piers, wharves, docks, basins, warehouses and other structures within the limits above described, and make reasonable rules and regulations for the use thereof, to enable them to carry on a *transportation business in and over their canal and elsewhere,* "which they are hereby empowered to do, and also to afford facilities for commerce." The last clause of the act provided as follows: "This act shall take effect immediately, *and be in force during the continuance of the charter of the said Morris Canal and Banking Company,* and at the expiration of that time the lands hereby granted, with the improvements thereon, shall revert to the State, on the same terms and conditions provided in the original charter of the said company, respecting the transfer of the property thereof to the State."

After the passage of this act, the Morris Canal and Banking Company delivered to the Governor the promise and undertaking provided for therein, thereby accepting the said grant under the terms and conditions thereof, and surrendering any title or claim they might have had in the lands in controversy prior to said grant. (Acceptance of the Morris Canal and Banking Company, Vol. II, p. 523.)

The lands thus granted by the act of 1867 were granted for a strictly public use, as an adjunct of and appurtenant to the canal.

This is apparent from the language of the grant itself. The Canal Company were to preserve and keep open, over the lands thus granted, a waterway one hundred and fifty feet wide, for public use. As has already been shown, the lands *were,* when granted, in the occupation of the Canal Company, and had been used for some years for canal purposes. (Governor Ward expressly states this as a fact, in his veto message, above referred to, and Mr. Corbin so states in his opening for defendants.) The lands were needed for an eastern Hudson River terminal of the canal. The granting act was a

supplement to the original charter, and the lands were granted and the right to use them given *under the conditions of this original charter.* The condition of the charter was that the company should construct and maintain a canal or artificial navigation connecting the Delaware with the Hudson, and that the canal, when completed, *should forever thereafter be esteemed a public highway,* free for the transportation of any goods, commodities or produce whatsoever, on payment of tolls.

This grant was limited to the continuance of the charter of the company, and at the expiration of the charter, the lands thus granted, with the improvements thereon, reverted to the State, the same as provided in the original charter.

The very powers granted the company in the act of 1867, for the use of the lands granted therein, confirm the nature of the grant, and demonstrate that they were granted for public and canal purposes. The company was authorized to construct piers, wharves, docks, basins, warehouses and other structures within the limits of the lands granted, and make *reasonable rules and regulations for the use thereof,* to enable it to carry on a transportation business *in and over their canal* and elsewhere, and to afford facilities for commerce. It was authorized to erect these structures, to enable it to carry on a transportation business in and over its canal; it was authorized to make reasonable rules and regulations for the use of these structures, when erected. For the use of them, by whom? Evidently the public, in and about the use of the canal with its boats. The act gave the company power to carry on a transportation business in and over its canal and elsewhere; but the plain meaning of these words is that this transportation business was to be carried on not independently of the canal, but in and over its canal and elsewhere without its canal. That is, the transportation business carried on elsewhere, was to be in connection

with its canal, and the facilities for commerce to be afforded by these structures to be erected was for commerce, unquestionably, *in connection with its canal*—the commerce of the public, with its boats, as well as the commerce of the company. Again, the land was not granted for *private purposes,* because the grantee was to keep open, forever, a waterway one hundred and fifty feet wide throughout the whole length of the lands granted. Certainly this devoted the grant to a public use. It is also to be noted that the structures to be erected, the docks, wharves, piers, basins, etc., are all structures *only usable in connection with water transportation,* and all suitable to and necessary for terminal facilities in connection with this "artificial navigation" between the Hudson and Delaware, over which 889,220 tons (probably 17,784 boats, allowing fifty tons to the boat) had passed the year preceding this grant. The only exception, "warehouses," being also usable with water transportation, and these warehouses might be built upon the wharves and docks, and used directly in connection with the canal business, by the public as well as the Canal Company.

The use of these lands was tied to the canal use, not only by the fact that the lands granted and the structures to be erected thereon were to be used *under the provisions of their charter, and to enable them to carry on a transportation business* in and over their canal, but also by the further fact that the *very use and occupation* of these lands and these structures, and rights therein, was limited to the continuance of the canal charter. *When the canal reverted, these lands and the structures thereupon reverted also.* By the original charter, the canal and its appurtenances was to revert, in 1974, without compensation, and the charter to cease; so by this supplement to the original charter, these lands, with their appurtenances *and improvements,* were to revert, at the same time, without compensation.

The only argument advanced in support of the con-

tention of appellants, that these lands, by this act of 1867, were granted to private use, is this: that, by that act, they were authorized to carry on a transportation business in and over the canal and elsewhere, and to afford facilities for commerce; that this language authorized the company to establish and carry on a transportation business absolutely independent of and outside of the canal, of any kind or sort, land or water, and to establish facilities for commerce, independent of the canal. But the language does not bear this interpretation. It is a forced construction. The power thus granted is limited and controlled by the words "in and over their canal." It is also limited by the words "under the provisions of their charter," and by the fact that they were authorized to make reasonable rules and regulations for the use of these structures to be erected on the land granted, structures necessarily connected with water transportation and properly useful and needful for canal purposes, and as adjuncts to the canal.

But more. The one hundred and fifty feet of water channel were to be kept open for public use without tolls, and this public use was to be acquired "immediately and be in force during the continuance of the charter of the said Morris Canal and Banking Company." Language could not be more explicit and commanding.

It is impossible to avoid the conclusion that the Legislature, by this act of 1867, intended to grant, and did grant, these lands for public uses, for uses connected with the canal, and that the grant was intended as an adjunct to their canal, to facilitate the canal business and the use of the canal by the public.

THE ACT OF 1871; THE LEASE TO LEHIGH VALLEY RAILROAD COMPANY, AND THE EFFECT OF THIS LEASE UPON THE RIGHTS OF THE STATE RESERVED IN AND BY THE GRANTING ACT OF 1867.

This act, passed March 14, 1871, is a supplement to the original charter of 1824 (Vol. II, p. 526). It made

it lawful for the Morris Canal and Banking Company, by and with the consent of the majority in interest of the stockholders of said company, * * * "to lease the canal of said company, or any part thereof, with all or any of its boats, property, works, appurtenances and franchises, to any person or persons, or corporation, either perpetually or for such shorter time, and upon such rents and agreements as may be agreed upon between said contracting parties; and it shall be lawful for the lessee or lessees in said lease to use and enjoy the said property and franchises so demised for the term in said lease mentioned."

May 4, 1871, the Morris Canal and Banking Company leased its canal and canal property *perpetually* to the Lehigh Valley Railroad Company (Vol. I, p. 177). The Lehigh Valley Railroad Company and its successor or lessee, the Lehigh Valley Railroad Company of New Jersey, claim the "basin" lands in controversy and the right to the deed by the Riparian Commissioners of 1889, by virtue of this act and this lease made thereunder.

The appellants claim that this act of 1871 authorized the lease of the canal, its charter and franchises, and of these "basin" lands in perpetuity; that the Canal Company so leased to it in perpetuity, and that by virtue thereof the appellant now holds the canal and these lands forever, absolutely freed of and from the reversionary rights of the State in 1974, and the optional right to take over in 1924.

There is no indication in this act, outside of the single word "perpetually," that the Legislature intended to give either the Canal Company or the Railroad Company any property or franchise they did not have before; and yet the contention is *that by the use of that word alone* the Legislature intended to give up not only its reversionary interest in these "basin" lands and in the canal property as well, but also to extend the canal charter and franchises *in perpetuity* in favor of the

Lehigh Valley Railroad Company, although by its very terms the charter and franchises were absolutely to cease and determine in 1974. The only authority to lease the "basin" lands is found in the authority to lease the property, works and appurtenances of the canal. The "basin" lands are not especially mentioned; the canal is, and any authority to lease the "basin" lands applies still more obviously to the canal. It is little short of absurd to suppose that the Legislature intended, by the use of this word, to confer, first, a perpetual franchise, and then to surrender the valuable rights that it had on two previous occasions been so careful to preserve. And to surrender these valuable rights, hitherto so carefully preserved, *without any consideration* (for no consideration whatever was given to the State for this surrender and lease, if such surrender was effected), and by such an indirect method, by the use of a single word. It is easy to construe the language used so as to conform to the evident intent of the Legislature. What the Canal Company *possessed, that it might lease,* perpetually, in so far as it had the absolute title, and for a shorter period in so far as its title was circumscribed. What the statute authorized was a lease of the Canal Company's property, not the State's. "The case," says Vice-Chancellor Stevens, "seems to be a very obvious application of the rule *reddendo singula singulis.*"

This is the reasoning of the Vice-Chancellor upon this point, and it is conclusive (Opinion, Vol. II, p. 700, at line 10).

The State is not to be presumed to have parted with any part of its property, in the absence of conclusive proof of an intention to do so. *Stevens* v. *Pat. & Newark R. R. Co.*, 5 *Vroom* 532, 533; *Polhemus* v. *Bateman*, 31 *Vroom*, 163; *Martin* v. *Waddell*, 16 *Pet.* 411.

Any ambiguity must operate against the grantee and in favor of the grantor. The grant cannot be supported

by doubtful or ambiguous language. *U. S.* v. *Michigan,* 190 *U. S.* 401; *Thomas* v. *West Jersey,* 101 *U. S.* 401; *Jersey City* v. *City of Hudson,* 2 *Beas.* 426; *Black* v. *Del. & Rar. Canal,* 9 *C. E. Gr.* 455; *American Dock & Imp.* v. *Trustees,* 12 *Stew.* 427.

The language of the act is, "It shall and may be lawful for the Morris Canal and Banking Company * * * to lease the canal of said company, or any part thereof, * * * either perpetually or for such shorter time * * * as may be agreed upon between the contracting parties." But the reversion retained in the State by the grant of 1867 was not the property of the company to lease. It was the property of the State. No power is given by the act in express terms to lease this valuable reversion, this property of the State. It is not a question of the construction of an express grant, if grant there be, it is only inferential, depending absolutely upon this single word. Then, the company may lease the canal, *or any part thereof,* perpetually. What does this mean? How does this language affect the State's reversionary rights? Might the company *have leased a part* of the canal *perpetually and not the whole,* and thereby have destroyed the State's reversion in that part, and have retained by leasing for a shorter term, the remainder of the canal, thereby preserving the State's rights in such remainder? Could the Canal Company have granted these "basin" lands in perpetuity, thereby depriving the State of its reversion, while, by a lease for a shorter term of the canal itself, the State's rights therein would be preserved?

The Canal Company was not authorized to lease "in perpetuity," or even to make a perpetual lease, but to lease perpetually. The difference in meaning of these words is pronounced. Perpetuity is endless duration, the adjective "perpetual," although its primary meaning is *never ceasing,* yet its secondary and equally used sense is that of uninterrupted, continued without intermission, as a perpetual screw, perpetual motion. "Per-

petually" has not even primarily the meaning of endless. It is never *rightly* so used. Webster defines it thus: "*Perpetually;* constantly; continually; applied to things that proceed without intermission. A perennial spring flows *perpetually;* the weather varies *perpetually.*" The heart and the arteries beat *perpetually.*

"The Bible and Common Prayer Book, in the vulgar tongue, being *perpetually* read in the churches, have proved a kind of standard for the language."—*Swift.*

Dean Swift did not mean to say that the Bible and Prayer Book would be *forever* read in the churches; that Parliament or Convocation neither would or could ever change this order, but that these books, being *regularly, continuously* read, tend to standardize the language. The word "perpetually," as used in the lease and in the act, meant for the entire term which the company had, and not forever. The company were authorized to lease the canal *perpetually or continuously;* that is, for the full term it had, or for a less term.

It is admitted that the Canal Company had no power to lease the canal or canal property without legislative permission.

If this single word "perpetually" has the effect contended for, then the Legislature granted the company the right at its mere option, by the use of a single adverb, to extend its charter from a charter limited in time to a perpetual charter. It gave the company the right, by *its* lease and at its option, to grant away the reversionary right of the State in the canal and in this land in question. Never was adverb more potent. This clause did not grant to the Canal Company *itself* the reversionary rights of the State in its property, nor did it extend the charter and franchises of the company, *if retained by it,* but only in the event of the company choosing to lease perpetually were the reversionary rights of the State to be granted. It was not a grant to the Lehigh Valley Railroad Company, or to any specified company, but to any *person* or *corporation* to

whom the Canal Company might lease. We have, then, this curious situation: if the Canal Company chose to make a lease for any less term than perpetually, the reversionary right of the State is not taken away, but, at the most, only deferred if the time of the lease is longer than 1924 or 1974, and so the charter and franchises of the Canal Company would not, in that event, be extended. If the lease of the company was made for fifty years from 1871, then, according to this theory, neither the right of the State to take over in 1924 nor the reversion in 1974 would be affected. If the lease were for one hundred years from 1871, then the right of the State to take over in 1924 would be gone, but the reversion in 1974 would still exist. Should the lease be for a greater term than one hundred years from 1871, *but not perpetually*, then the reversionary right of the State might be deferred, but the charter and franchises would not be made perpetual. In other words, the contention of the appellants is that by this language the Legislature granted to the Canal Company the right, by its lease and at its option, to grant away the State's rights and interest in the canal and in these lands, without consideration to the State, and to grant to its lessee a perpetual extension of the charter and franchises, or to defer the *time* when the State's right of reversion would accrue, to extend the time limit fixed by the granting act of 1867, by leasing for a time longer than in 1974, but not perpetually. Can it be that the Legislature, by the mere use of the word "perpetually," intended to give this right to the Canal Company?

This construction put upon this leasing act of 1871 would render the act unconstitutional, and the lease made thereunder void.

There is no grant by this act to the Canal Company, but the theory is that the company's lease operated as a grant to the lessee. The Legislature, then, by this act, in effect, and in fact, said to this private corporation,

"You may, if you wish, at any time hereafter, and by your own deed, grant away the State's reversionary estate in these lands and in this canal." This reversion was vested in the State. This act did not pretend to divest the State of its title, nor to vest that title in the Canal Company or in anyone. After the act is approved, after it becomes operative, the title is still in the State. It may, yet, never pass from the State. It only passes when, and if, the Canal Company acts. And by *that act* and by *that act alone,* the State's title passes to the person or corporation selected by the Canal Company. We look to the act as the source of the power, but we look to the lease as the source of title in the lessee. The title of the State does not pass from the lessor or grantor, for it never vested in it even for an instant; it passes from the State to the lessee or grantee. The Canal Company, then, it must be conceded, acted by power delegated to it. What is this, then, but a delegation, or attempted delegation, of legislative power? Such power cannot be delegated to a citizen, individual or corporation, to exercise at pleasure and for personal gain.

If this act is to be thus interpreted, we must believe the Legislature and the Governor deliberately clothed, or attempted to clothe, this private corporation with power to grant away a most valuable public domain, for profit to itself, and without consideration to the State. Grants of the public domain are always made for a consideration. If not a monetary one, at least service to be rendered to the public; but what possible consideration could there have been for this indirect grant to the Lehigh Valley Railroad? The mere transfer of the lease from the Canal Company could be of no advantage. It was not a grant from which increased service to the public could flow. The canal and these "basin" lands must still be devoted to canal uses. No additional facilities were to be afforded the public in return for the grant of these great and vastly valuable reversions.

The canal might exact better terms could it lease perpetually, but the State freely gave and received nothing.

The canal, its property and appurtenances, remained in the lessee devoted to charter uses, and these "basin" lands, as they were appurtenant to the canal and granted *primarily* for canal purposes, also remained subject to charter uses. The railroad could not legally divert them to railroad uses, and such use was a charter violation and illegal.

The word has a further meaning and effect as used in the act and in the lease.

The act gave to the Canal Company, by the use of the word "perpetually," not only the right to lease all the right and interest the Canal Company then had, but also any rights and franchises it might afterwards acquire. Should the Canal Company afterwards acquire, by grant from the State, a further extension of its charter, or the fee to the lands in question; by the use of the word "perpetually" in the act and in the lease, such acquisitions would inure to the benefit of the lessee. So it put the lessee in the position where it might apply to the State, during the life of the lease, for an extension of the charter, and to purchase the State's reversionary rights for its own benefit without further action by the Canal Company, and this word was probably placed in the act and in the lease for that very reason.

THE RIPARIAN COMMISSIONERS' DEED OF 1889.

This deed, dated July 12, 1889, was actually executed and transmitted by the Governor and the consideration of $48.000 paid, December 20, 1889. (See Deed, Vol. I, p. 16; and Governor's letter, Vol. II, p. 569.) It grants to the Lehigh Valley Railroad Company, in consideration of $48,000, the said tract of land as granted to the Morris Canal and Banking Company, together with all and singular the right and privilege of *excluding the tidewater from said land by filling in or other-*

wise improving the same, and to *appropriate to private uses*. It was a grant in fee and to exclusive private use of these "basin" lands. It wiped out all the rights of the State therein and conveyed these immensely valuable rights to the Railroad Company for a paltry $48,000. These lands, expressly devoted by special legislative enactment to a special, public use, were by this deed made private lands, the public use discharged and the legislative policy as to these State lands pronounced in and by the act of 1867, destroyed.

The State, in granting these lands to the Canal Company in 1867, followed a comprehensive and farseeing policy. The lands were then extremely valuable. Fronting on one of the then great ports of the world and destined soon to become the greatest, their future value no human intelligence could estimate. The State, in a past era of extravagance and blind folly, had granted away its most valuable lands on this harbor. The canal was using and needed these lands to improve its terminal facilities on this harbor. It was then a most important artery of commerce and highway open to all boats by whomsoever owned. The State was willing to assist in developing the usefulness of this highway. It granted these lands for a limited term, sufficiently long to justify their development, and upon an adequate rental, reserving, for the future generations, the great values surely to be created. These lands are now worth millions; who will venture to foretell the value in 1974?

The riparian act of 1869 did not give power to the Riparian Commissioners to grant these "basin" lands.

The deed refers to the riparian acts of 1864 and 1869, for its power to make this grant, and the application of the Railroad Company for the deed expressly states that the lands are held by it within the purview of the third and fourth sections of the riparian act of 1869, and that it is the representative and assign of the Canal Company (Vol. II, p. 565).

The act of 1869, by its third section, repealed the

Wharf Act of 1851, as to the Hudson River and other waters named, enacted that no person or corporation, without the grant or permission of the commissioners, should fill in, build upon or reclaim any of the tide-waters under the Hudson River, and provided that neither that section, nor any provision of the act, should repeal or impair any grant of land under water or right to reclaim made directly by legislative act, or grant. (Vol. II, p. 227.)

The fourth section provided that if any person or corporation who, by any legislative act, is a grantee, or any of his, her or their assigns, or representatives, should desire a paper capable of being recorded, made by and in the name of the State, *conveying the land in the proviso to the third section mentioned*, and the benefit of an express covenant that the State will not make or give any grant or license affecting lands under water in front of said lands, such person or corporation, representatives or assigns, *shall be entitled* to said paper granting the title and benefits aforesaid; and the commissioners and the Governor and Attorney-General *shall and may* execute and deliver a lease in perpetuity upon paying an annual rental fixed in the section, or a conveyance in fee upon paying the gross sum fixed therein (Vol. I, p. 228).

A. To entitle to a lease or conveyance, the applicant must be, by a legislative grant, a grantee of, or the representative or assign of a grantee of, *lands* in the *proviso* to the third section mentioned; that is, the grantee must hold a direct legislative grant of lands under water or right to reclaim. The claim made by appellants, in applying for and obtaining the deed is, as appears from the application, that the grant of 1867 of these basin lands was a direct legislative grant, within the meaning of the third section of the act of 1869, and that it was the representative or assign of the Canal Company, and, as such, entitled to the paper mentioned and described in the fourth section of the act.

This Court must, therefore, find that the grant of 1867 was a grant and the Railroad Company the assignee of that grant, within the purview of the third and fourth sections of the act, or, hold the deed to be invalid.

The meaning of these sections, read together, is plain. The Wharf Act was repealed as to these waters, but any supposed usage, right, custom, etc., was not to be restored; filling in or reclaiming of any land was prohibited without permission or grant of the commissioners, and made a purpresture; *and in order that rights already acquired might not be affected,* the proviso was added. It did not grant any new rights or enlarge existing rights. It gave no power to the commissioners as to the rights mentioned in the proviso. Its only purpose was to protect existing rights, to prevent their repeal or impairment. It could only relate to lands then held in private use, and the fourth section applies only to such lands. The purpose of the proviso being to preserve existing rights, it could hardly be the purpose of the fourth section, relating back, as it does, to the third section, to confer power upon the commissioners to enlarge those rights. The object of the fourth section is to enable the holder, coming within the provisio, to secure a record title, a paper that may be recorded confirming his grant, and the benefit of the express covenant provided for in the fourth section. It is for this express covenant the consideration is paid. The deed is a deed of confirmation of the existing title, not a deed enlarging it. These sections cannot be intended to apply to a limited grant and to confer power to enlarge that into an unlimited fee.

B. If the grant of 1867 was a direct legislative grant within the purview of the act of 1869, the Canal Company was the grantee, and immediately upon the passage of the act became entitled to a deed in fee of these lands. The act of 1867, a special act, granted these lands for a limited term, and to public uses for that term. To bring this grant of 1867 within these sections, we must

conclude that the Legislature, after having adopted this farseeing policy as to these very lands, after having, by this special act, provided for their reversion to the State at the expiration of a fixed period, after having granted these lands for the period limited for a special public use to be performed by the grantee under his limited charter, intended to, and did, two years thereafter, by a general act, give to this grantee *the right to demand* from the commissioners the conveyance of these lands in fee to their own private use. That this act was intended to give the Canal Company the right, *at its option,* to acquire this valuable reversion so carefully guarded by the grant of 1867, and to turn this public use into a private use without consideration to the State; for the consideration fixed by the act is, as has been said, for the express covenant. The applicant *has a right* to the deed in fee, or lease in perpetuity, if he comes within the purview of section three. Section four so expressly declares, "shall be entitled to;" the commissioners, with the Governor and Attorney-General, "shall and may execute and deliver."

The law is well settled that a general affirmative statute does not repeal a prior particular one, unless the inconsistency between them is so irreconcilable as to indicate an intention to repeal. *Sedgewick, Stat. & Const. Lim.* 98; *State* v. *Mills,* 34 *N. J. L.* 180; *State* v. *Minton,* 23 *N. J. L.* 529. As the Vice-Chancellor says: "Here so far from there being any indication in this act of an intent to authorize the commissioners to release the public use imposed by the granting act of 1867, the contrary is strongly indicated by the refusal of the Legislature to adopt the bulkhead line, as to these lands recommended by the commissioners, thus preventing them from fixing a price."

These lands were not only granted for a limited term, but also to a particular use. To sell and convey these lands, the commissioners must have had power not only to convey the State's fee therein, but as well to release

the public use therein established by the granting act of 1867. Admitting, for the argument, that these sections of the act of 1869 conferred power to convey the State's rights or fee thus specially retained, where is any language from which the power to release the public use can even be inferred? And yet this use is gone, if the deed be valid, for the grantee by the conveyance acquires the right to fill to the exterior bulkhead line, and to appropriate the land conveyed to exclusive private use. This language in the latter part of the fourth section of the act cannot, however, be construed as conveying power to extinguish the public use; it only indicates and states the effect of a conveyance within the power of the commissioners to make.

If the Legislature had devoted lands under water to the use of a public park, for a limited period, could the commissioners have released the use and conveyed the lands because the ultimate fee had continued in the State? If not, upon what principle could they release these "basin" lands from this public use?

C. The grant of these lands *to private use,* with the right to fill in and reclaim out to the bulkhead line is utterly inconsistent with the maintenance of the public navigation from the Hudson and all parts west of the westerly bulkhead on these lands, and of the waterway forever to be kept open for free passage of vessels between the channel of the Hudson and all places east and west of this westerly bulkhead, provided for by the second clause of the act of 1867. If this deed was a valid exercise of power, then the commissioners must have had the power to extinguish this general public easement thus reserved, for the fourth section expressly states that the deed shall convey the right to fill up and reclaim the lands to the exterior bulkhead line (not part of the lands but the lands), a right that, exercised, would destroy this public navigation and free waterway forever to be maintained.

The commissioners attempted to preserve this by the

condition in the deed, but it was necessarily ineffective (unless, possibly, as a restriction voluntarily accepted by the grantee), for the commissioners cannot limit the scope and effect given to the deed by the legislative will.

D. The Railroad Company was neither a direct grantee nor the representative or assign of the grantee, and, therefore, was not entitled to the deed by the very terms of the 1869 act. The grant was to the Canal Company of an estate for years. It only had an estate for years, and could only demise that which it had; the fee was in the State, and passed, if it passed at all, from the State to the Railroad Company. It could not pass from the Canal Company, because the fee was never in that company, but always in the State until the very instant of the execution of the lease. The Railroad Company was, therefore, not the representative or assign of the Canal Company. It was, as to the Canal Company, only the lessee of the unexpired estate for years. Nor did it hold from the State the fee by *direct legislative grant*. There was no direct grant by the State to the Railroad Company. The leasing act of 1871 was not a grant to the railroad; it only authorized the Canal Company to make a lease to any person or corporation. If the fee passed, it passed to the railroad by virtue of the lease, and only upon execution of the lease. It did not, therefore, pass by a *direct legislative grant*.

E. If the grant of 1867 granted the lands to private uses, then, as we have demonstrated, the Railroad Company, by its lease, never acquired any interest or estate in these lands. The estate for years is in the Canal Company, and the fee in the State.

F. A deed could not be claimed or executed until the establishment of a bulkhead line.

1. The consideration to be paid for the deed, in fee, is to be fifty dollars for each and every lineal foot measuring on the bulkhead line in front of the premises. If no bulkhead line is established, the consideration

cannot be determined. It is not to be estimated, it is to be exactly measured and calculated, and the consideration is to be paid before the deed is delivered. In the absence of the bulkhead line, how can the consideration be determined or paid, or the deed delivered?

2. The establishment of the bulkhead line is necessary to determine the extent of the grant under the deed. Section two of the act of 1869 makes it unlawful to fill it beyond the bulkhead line or lines of solid filling by that act adopted and laid down on the maps accompanying the reports. Section four, as already stated, provides that the deed shall pass the right to exclude the tidewater to the *exterior bulkhead line* by filling in, and to appropriate the land to exclusive private use. The land thus to be filled in becomes private land, as well as the land actually granted, and until the bulkhead line is adopted the rights of the grantee must remain uncertain and undetermined, and no improvements can be undertaken. This, taken with the requirement that the consideration shall be fixed by the lineal foot measuring on the bulkhead line in front of the premises, clearly indicates the legislative intent that the line shall have been established when the deed is given.

No bulkhead line had been adopted in front of these premises.

The commissioners appointed by the riparian act of 1864 (Vol. I, p. 222) had reported a bulkhead line, and this was adopted by the first section of the act of 1869, "except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company by act approved March 14, 1867," the act granted these lands to the Canal Company. The Legislature adopted all of the exterior bulkhead line except that in front of these very premises, thereby *expressly refusing* to adopt a bulkhead in front of or as to these premises.

The appellants claim, in their answer, that the grant of 1867 fixed and established a bulkhead line which

was the last course described therein (the line of the river front). The act of 1867 nowhere refers to an exterior bulkhead line, and it is absurd to say that it established one. It had not in contemplation such legislation. The act of 1869 expressly forbids filling in beyond the bulkhead line established by the act, and while the commissioners are not expressly forbidden to recognize bulkhead lines, they are nowhere authorized to establish bulkhead lines in these waters. Surely, appellants' counsel do not argue that public commissioners have all powers not expressly forbidden. True, the commissioners calculated the consideration on the lineal feet of the water frontage (960 feet at $50.00= $48,000), but this was not a bulkhead line up to which the grantee might fill, for by the very condition of their deed, 150 feet of this line was not to be an exterior bulkhead line, but an open waterway for the passage of vessels.

Bulkhead line has a definite and fixed meaning. It is the line of solid filling established and fixed by proper authority, beyond which all solid filling is prohibited. This is the meaning expressly given it in the act of 1869, and in all our riparian legislation. This is the bulkhead line laid down and exhibited on the commissioners' maps, and adopted by the first section of the act of 1869. No such line of exterior filling was ever adopted as to these lands, but the Legislature expressly refused to adopt the same, when reported by the commissioners.

The exception of the bulkhead line in front of these premises by the Legislature was not without intent. It manifested a deliberate legislative intent to except those lands which they had only two years before granted for a limited term, and to a special public use, from the jurisdiction of the commissioners and from the scope and effect of the act.

The deed of 1889 was obtained upon misrepresentation of the facts, they were fraudulent in law, false

suggestions, and the deed should, for that reason, be set aside.

The Lehigh Valley Railroad Company, in its application for the deed, set forth as true the three facts necessary to give the commissioners jurisdiction to execute and deliver the deed.

1st, That the grant of 1867 to the Morris Canal and Banking Company was within the purview of the third and fourth sections of the act of 1869;

2d, That the Railroad Company, by the lease of May, 1871, became the representative or assign of the Canal Company of this grant of 1867;

3d, That the Railroad Company was entitled to a conveyance in fee under section four of the act of 1869.

That these statements were, in fact and in law, untrue, has been clearly demonstrated. That they were calculated to, and did, deceive the State officers as to their powers, and as to the rights of the Railroad Company, cannot be denied. These officials, it must be presumed, acted in ignorance of the facts and would not have so acted had they understood the circumstances. By the false statements of the Railroad Company, they were induced to act and to grant away a most valuable property of the State. The Railroad Company profited to an incalculable extent by these false suggestions. Whether it knew them to be false, whether it intended to deceive, is immaterial. The statements *were false*, they *deceived the State officials*, and by their means the State suffered enormous loss and the Railroad Company gained a most unconscionable bargain.

The commissioners made the grant upon these representations by the Railroad Company, and, if not true, the State has the option to repudiate, as it now does, upon equitable terms.

That the State received no consideration for these so vastly valuable rights, or an utterly inadequate one, cannot be denied.

The $48,000, as has been shown, was for the cove-

nant, or if any part of it was for the grant, how absolutely inadequate, how utterly trivial, as compared with the value received by the Railroad Company. The $357,142 paid by the Railroad Company at the time of the grant was not a consideration for the grant and for the rights obtained thereby. It was a payment under the grant of 1867, a commutation of the annual rental of $25,000 reserved by that grant and for which the Railroad Company was liable, whether or not it obtained the grant of 1889; it had covenanted with the Canal Company by the lease to pay this rental. This sum was not a consideration for these valuable rights.

The railroad's purpose in obtaining this grant is frankly stated in their answer (Vol. I, p. 73, par. 24). Had it have been as frankly stated to the commissioners, we cannot but believe it would have influenced their action. It states that its purpose in obtaining the grant was to use it for the construction of a terminal for its system of railroads. It held these lands to a particular public use, it sought to obtain them as private lands, for a different use, and only public so long as it chose to so devote them, and without consideration. It carefully concealed its purpose and obtained them by inducing the State officials to believe it had a right to them and to the deed. The Railroad Company states the commissioners and the Governor and Attorney-General well knew this. There is no proof or attempted proof of such knowledge, nor can it be believed on mere assertion. They state (p. 75, par. 32), that the costly railroad improvements were sufficiently completed in the latter part of 1889 to be put in use for railroad purposes.

As the deed was not transmitted by the Governor, executed, to the commissioners until December 20, 1889, it must have commenced to divert these lands from canal to railroad purposes, and to have expended large sums while the lands were yet devoted to the special canal use and without waiting for the Riparian Deed.

The application of the act of 1874, and the claim that the commissioners had power to make the deed by that act is fully answered by our original brief, filed at the argument (p. 21, bottom, and 22) and by the learned Vice-Chancellor in disposing of that point. (Opinion, Vol. II, pp. 701, line 25, to 703, line 28.)

The remaining questions raised in this cause are fully and completely answered in the tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth points in our main brief, and in the opinion of the Vice-Chancellor, and need not be here further discussed or considered.

As to the eleventh and last point in appellants' brief, that costs should not have been awarded against them, no reason is given why the State should not have its costs. It was successful in its suit, the defendant unsuccessful. The State was compelled to institute the suit to protect its rights, and to clear its title of this cloud, created largely by the act of defendant in claiming its right to the invalid deed. The appellants' claim that it partially succeeded because the deed was set aside upon equitable terms is absurd.

The complainant came into court with clean hands; it offered, as well as sought, equity; and because the court decreed the equity of this particular case is no reason why complainant should not have its costs. The appellants forced it to come in.

The decree of the Court of Chancery should, in all things, be affirmed.

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MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

BETWEEN THE LEHIGH VALLEY RAILROAD COMPANY ET AL., *Appellants,* AND ROBERT H. MCCARTER, ATTORNEY-GENERAL, *Respondent.*	On Appeal.

Brief for Respondent.

FIRST.

The question involved in this case.

1. The only issue in this case is whether the deed to the Lehigh Valley Railroad Company, dated July 12, 1889, for the "Basin of 1867" is a valid conveyance, and if not, upon what terms it may be set aside by the decree of this Court.

We admit that the grant of the said Basin to the Morris Canal Company, approved March 14, 1867, is a valid grant, but subject by the third section of that grant to be vacated at the option of the State in 1924, by paying to the Canal Company its fair value, and if the State does not exercise such option in 1925, the

Basin shall revert to the State in 1974, without any payment therefor by the State.

Morris Canal Charter, sec. 26. Case, p. 509.

The right of the Morris Canal to retain and hold the said Basin until the expiration of the lease is not now questioned, and cannot be questioned under the information in this case.

Nor is the right of the Morris Canal to lease the Canal to the Lehigh Valley Railroad Company for such term as it possessed under its charter an issue in this case, and is not denied.

While there is no attempt on the part of the State, and no power under this information to interfere with the Lehigh Valley Railroad Company in its possession of the Basin as against the Canal Company, we deny, that as against the State, the Lehigh Valley was, in 1889, or at any other time, the representative, or assign of the Canal Company within the meaning of the fourth section of the Riparian Act of 1869 (*Gen'l Stat., p. 2787*).

This case must therefore be considered as if the Lehigh Valley shall continue in possession of the said Basin until the expiration of its lease from the Canal Company.

SECOND.

2. The information filed in this case (Case, p. 47) prays that the grant made by the Riparian Commissioners to the Lehigh Valley Railroad Company of the State's reversionary interest in the "Basin of 1867," by deed dated July 12, 1889, may be declared to have been obtained by false suggestion, and to have been, for that and other reasons, *ultra vires*, and void.

The charter of the Morris Canal, passed December 1, 1824 (*P. L. 1824, p. 158; Case, Vol. II, p. 491*), in its 25th section provides: "That the said Canal when completed shall forever thereafter be esteemed a public highway, free for the transportation of any goods, commodities, or produce whatsoever, on pay-

ment of the tolls, and conforming to the regulations made or authorized by this act."

In its 26th section the charter provides as follows:

"Be it enacted that at the end of ninety-nine years from the passing of this act, it shall and may be lawful for this State to take to itself, and on its own account, the said Canal and its appurtenances, paying to said Company the fair value thereof, to be estimated and fixed upon by ten commissioners, or a majority of them, to be mutually chosen by this State and the said Company; or in case that shall not be done at that time, or within one year thereafter, this charter shall continue, so far as respects its canal operations and privileges, for the further term of fifty years, when it shall cease, and the said Canal with its appurtenances become the sole property of this State."

In 1867 the Legislature granted to the Morris Canal Company a basin adjacent to the terminus of its Canal in the Hudson River by a supplement to its charter approved March 14, 1867.

This basin is known as the "Basin of 1867," and is described in the act of March 14, 1867 (*Pamphlet Laws*, 251; *Printed Case, p.* 239), by metes and bounds.

The said grant is made "on condition that for the purpose of preserving a water basin to the west of the present westerly bulkhead on said premises, and of leaving open on the premises hereby granted a public navigation for all vessels to and from the Hudson River, and all parts of the waters west of said westerly bulkhead, the said Company shall forever keep open the present gaps in the easterly and westerly bulkheads, each of 150 feet in width, and like gaps of like width in any structures to be erected on said premises hereby granted, so that the public may, with all vessels, freely navigate to and from the channel of the Hudson River, and all places east and west of said westerly bulkhead, without the payment of tolls or charges; provided, that the said opening shall be kept in such condition that

the owners and occupants of shore property, lying north and west of the above described property, may at all times have free access to, as well as through, the same."

"And provided further, that the said Company shall, within ninety days after the passage of this act, execute and deliver to the Governor of this State their promise and undertaking under seal, unconditionally to pay into the treasury of this State, yearly, the sum of twenty-five thousand dollars per year, on or before the first Tuesday of January in each year, during the continuance of their charter, and so long as the said Company, their successors or assigns, shall continue to hold or occupy the same, the first payment of a ratable portion of which shall fall due on the first Tuesday of January, eighteen hundred and sixty-eight; it shall be lawful for the said Company, instead of the annual payment of twenty-five thousand dollars, to pay into the treasury of this State at any time the sum of three hundred and fifty-seven thousand one hundred and forty-two dollars."

The second section of the act enacts: "That the Morris Canal and Banking Company may, under the provisions of their charter, construct piers, wharves, docks, basins, warehouses and other structures within the limits above described, and make reasonable rules and regulations for the use thereof, to enable them to carry on a transportation business in and over their Canal and elsewhere, which they are hereby empowered to do, and also to afford facilities for commerce."

The third section enacts: "That this act shall be in force during the continuance of the charter of the said Morris Canal and Banking Company, and at the expiration of that time, the lands hereby granted, with the improvements thereon, shall revert to the State on the same terms and conditions provided in the original charter of the said Company respecting the transfer of the property thereof to the State."

This act of March 14, 1867, is entitled "A further

supplement to the charter of the Morris Canal and Banking Company."

In 1871 (*Pamphlet Laws, p.* 444—Printed Case, p. 242), the Legislature passed an act authorizing the Morris Canal Company "by and with the consent of a majority in interest of the stockholders of the said company, expressed in writing, and duly authenticated by affidavit, and filed in the office of the Secretary of State, to lease the canal of said Company or any part thereof, with all or any of its boats, property, works, appurtenances and franchises, to any person or persons, or corporation, either perpetually, or for such shorter time, and upon such rents and agreements as may be agreed upon between the said contracting parties, and it shall be lawful for the lessee or lessees in said lease to use and enjoy the said property, and franchises so demised, for the term in said lease mentioned."

A lease purporting to be executed in pursuance of said act of 1871 was executed May 4, 1871, by the Morris Canal and Banking Company to the Lehigh Valley Railroad Company (Case, p. 177).

This lease is comprehensive, and purports to lease the entire canal and navigation works, and all lands, basins, franchises and property, real and personal, of the Canal Company.

After the final decision of *Bell v. Gough*, 3 *Zab.* 624, the Wharf act of 1851 was passed, and continued to be the only general act on the subject until 1864.

In the year 1864, the Legislature passed an act entitled "An act to ascertain the rights of the State, and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State." (3 *Gen. Stat., p.* 2785).

This act provided for the appointment of a commission charged with the duty of procuring surveys and examinations, to be made by competent surveyors, of the lands lying under the Bay of New York, the Hudson River and other waters, and of ascertaining

the rights of the State in the same and their value; and in the language of the act, "to fix and establish an exterior line in the said bays and rivers, beyond which no pier, wharf, bulkhead, erection or permanent obstruction of any kind shall be permitted to be made, and to report to the next Legislature." Further sale or lease of these lands was forbidden until report was made. These commissioners did not make their report until 1865.

THIRD.

THE ACT UNDER WHICH THE DEED IN QUESTION WAS MADE, AND ITS TRUE CONSTRUCTION.

In 1869 the act was passed under which the grant of the "Basin of 1867" to the Lehigh Valley Railroad Company, dated July 12, 1889, purports to be made. (3 *Gen. Stat., p.* 2786.)

The first section of this act adopted the exterior bulkhead and pier lines fixed by the commissioners, and shown on their maps so far as the Hudson River and New York Bay were concerned, but with this express and all important reservation:

"Except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company by the act approved March 14, 1867."

Section two makes it unlawful to fill in with earth, or other material *beyond the bulkhead line* or *lines of solid filling adopted by this act.*

Section three repeals the Wharf act as to the tide waters of the Hudson River, New York Bay and Kill Von Kull, and further provides as follows:

> "Neither this section, nor any provision in this act contained shall in any wise repeal or impair any grant of land under water, or right to reclaim made directly by legislative grant, or grant or license, power or authority so made or

given, to purchase, fill up, occupy, possess and enjoy lands covered with water fronting, and adjoining lands owned or authorized to be owned by the corporation, grantee, licensee in the legislative act mentioned, its, his or their representatives, grantee or assigns, or to repeal or impair any grant or license, power or authority to erect, or build docks, wharves and piers opposite and adjoining lands owned, or authorized to be owned, by the corporation or grantee in the legislative act mentioned."

Section four provides for grants to those mentioned in section three, namely, those who already have a grant of lands under water, or a license to reclaim or build docks given by prior legislative act.

Section eight provides for persons who have no such grant or license as that mentioned in section three.

The fourth section provides, "that if the holder of the legislative grant, or his representatives or assigns, shall desire a paper capable of being recorded, made in the name of the State, conveying the land in the proviso to the third section mentioned, whether under water or not, and the benefit of an express covenant that the State will not make any grant or license, power or authority affecting lands under water in front of said lands, then the Commissioners appointed under said act, with the Governor and Attorney-General, should make to the holder of such legislative grant, or his assigns, a lease in perpetuity, with the express covenant aforesaid, on his paying annually three dollars for every lineal foot measuring on the bulkhead line, or a conveyance in fee on the payment of fifty dollars for each lineal foot on the *bulkhead* line, which would produce at six per centum the annual sum of three dollars per foot."

It is obvious that in the absence of the conveyance under section four the State could make a grant of the lands under water in front of the grantee mentioned

in the proviso of section three, and the purpose of section four was to give the holders of such legislative grants, under section three, the benefit of the covenant in section four, which would prevent any grant of land in front of them.

That this is the proper construction of the act of 1869, and that the bulkhead line mentioned in section four must be a bulkhead line established by the Commission, and approved by the Legislature, appears also in the proviso in section four, which is as follows:

> "And provided, further, that the said Commissioners shall, in no case, grant lands under water beyond the *exterior line hereby established, or that may hereafter be established,* but that the said conveyance shall be construed to extend to any bulkhead, or pier line further out on said river or bay that may hereafter be established by legislative authority; in case any person or corporation, taking a lease under this section, shall desire afterwards a conveyance of all or any part of the land so leased, the same shall be upon payment of the said sum of fifty dollars for every such lineal foot, as aforesaid, of the land so desired to be conveyed (evidently, as the State insists, referring by the words "for every such lineal foot as aforesaid" to the *bulkhead line established* by the Commissioners), the conveyance or lease of the Commissioners, under this or any other section of the act, shall not merely pass the title to the land therein described, but the right of a grantee or his assigns to exclude to the exterior bulkhead line the tidewater by filling in, or otherwise improving the same, and to appropriate the land to *exclusive private uses."*

The deed of 1889 *to the Lehigh Valley Railroad was made under this provision in section four of the act of* 1869, *and expressly grants the right to appropriate the land conveyed to exclusive private uses.*

There is no other clause in this or any other act which authorizes such a grant to be made for fifty dollars per lineal foot.

In grants under the eighth section of the act, the price to be paid by the grantee is not fixed by the act, but is left to be determined by the Riparian Commissioners.

The question to be solved is whether the grant of the "Basin of 1867" to the Morris Canal was such a prior legislative grant as was contemplated by the terms of sections 3 and 4 of the act of 1869.

The case of *Stevens* v. *Paterson and Newark Railroad*, 5 *Vr.* 532, was decided in 1870, after the passage of the act of 1869, and is still the law of this State. That case holds that the State is the absolute owner of the lands under the navigable waters of the State, and such lands can be granted to anyone by the State without compensation to the shore owner, unless rights have been required under the Wharf act.

That the rights conferred by the Wharf act are revocable before execution.

The Wharf act, as to the Basin of 1867, was repealed in 1869.

No right to the Basin of 1867 under the Wharf act, either in the Canal or Railroad Company, has been shown.

In considering the right of a riparian owner in this case, no regard must be paid to local custom, or the Wharf act.

The deed of 1889 does not purport to be made to the Lehigh Valley Railroad under any claim that it is a riparian owner, and if it had any right as against the State to a deed of the Basin as a riparian owner, no grant has been made to it in virtue of that right, and such right cannot now be set up to support the deed of 1889.

If any such right ever inhered in the Morris Canal, or Lehigh Valley Railroad Company, that right was

surrendered, and extinguished, by the acceptance by the Morris Canal of the grant of the "Basin of 1867" made by the act of March 14, 1867.

Message of Governor Ward.

In support of this proposition, I refer, in the first place, to the message of Governor Ward, in 1866 (Case, Vol. II, p. 630), offered in evidence by the defendant. The message shows that, in 1866, the Morris Canal made a claim before the Legislature that it had some right, as a riparian owner, to the Basin in controversy, and that the State denied the existence of such right.

In that posture of affairs, the Morris Canal, in 1867, obtained from the Legislature the grant of the said Basin by the act of March 14, 1867 (Case, p. 239).

By the third section of that act it was expressly provided that the Basin should revert to the State on the same terms and conditions provided in the original charter of the Canal Company, respecting the transfer thereof to the State.

The grant was made by the State, and accepted by the Canal Company on that express condition.

That condition is fully set forth in the 26th section of the original Canal charter hereinbefore recited.

The Basin of 1867 was to become the sole property of the State in 1974, without compensation to the Canal Company, and it is obvious that it could not become the sole property of the State if the State was under any obligation to give the Canal the right to acquire title to the Basin before it could convey to anyone else.

If, after the grant of March 14, 1867, the Canal Company retained any right, as riparian owner, or otherwise, to a conveyance of the State's right in the Basin, the State would not be the sole owner.

This position is incontestable, and deprives the Canal

Company, and anyone who claims under it, from setting up any such claim, because the act of March 14, 1867, is a public act, and was notice to all who took any title from the Canal Company; the charter of the Canal is a public act.

I, therefore, dismiss any further discussion of the maps and deeds, and all other testimony of the defendant to establish any right, as riparian owner, to the "Basin of 1867."

I will now consider the real issue in this case, which is whether the Lehigh Valley Company acquired any legal title by the deed of 1889 to the reversionary interest of the State in the "Basin of 1867."

I call the attention of the Court to three important differences between section 4 and section 8 of the act of 1869.

(a) The first relates to the character and qualifications of the applicant.

Under section 4, he must have had a prior legislative grant of the lands, in respect to which he desires "a paper capable of being acknowledged and recorded," or a legislative license to reclaim and occupy them.

Under section 8, he may be without any prior interest in them.

(b) The second difference is as to the mode of determining the price.

Under section 4, the price or rental is a specified sum, fixed by the act itself. Under section 8 it is left to the Commissioners to fix the price.

In cases under section 4, the Legislature had previously granted that which it did not elect to take away, or could not recall, and therefore the conveyance would be a deed of confirmation. For such a title and for the covenant that the State would not make a grant of land in front of the lands, the act of 1869, in section 4, fixed the rental at three dollars, or fifty dollars, purchase price for each lineal foot *measured on the bulkhead line.*

(c) The third difference is that the person within the provision of section 4 is entitled to demand the conveyance as a matter of right; while in cases under section 8 it is discretionary with the State officers whether the grant shall be made.

Under section 4, the conveyance passes not only the legal title to the land therein described, but also the right of the grantee or licensee to exclude to the exterior bulkhead line the tide water, by filling in or otherwise improving the same, *and to appropriate the land to exclusive private uses.*

Under section 8, the grant is that "the grantee may reclaim, improve and appropriate to his or their own use the lands contained and described in the said certificate."

The power to make grants under section 8 is also subject to the provision requiring the Commissioners to establish exterior lines.

Fitzgerald v. *Faunce,* 17 *Vr.* 594.

These are the only provisions under the act of 1869 authorizing a conveyance by the Commissioners, and they are exclusive of any other way, unless provided by subsequent legislation.

The 13th section of the act of 1869 was designed to extinguish any rights which a riparian owner might have acquired, by providing compensation to him, in cases where a grant is made by the Riparian Commissioners to a person other than a riparian owner, or a person who had previously acquired some rights in the land under water.

The right of the riparian owner to compensation in such case is made to depend upon whether he had such an interest, or right, in the land under water as would make compensation to him necessary, in order to enable the State to make a valid grant to some other person.

FOURTH.

The Lehigh Valley Railroad, in 1889, made application to the Riparian Commission for the said conveyance in fee, and by petition in writing (Case, Vol. II, p. 564), represented to the Commission:

1. That the grant of the Basin of 1867 to the Morris Canal was within the purview of the third and fourth sections of the supplement of 1869 to the act of April 11, 1864.

2. That by the lease of May 4, 1871, by the Morris Canal to the Lehigh Valley Railroad Company, the said Railroad Company became the representative, or assign, of the Morris Canal of said granted land and privileges, and was entitled to a conveyance under section 4 of the act of 1869.

3. That the Lehigh Valley Railroad desired a conveyance in fee on payment of fifty dollars for each and every lineal foot on the bulkhead line, which would amount to forty-eight thousand dollars.

4. And the deed of the State of 1889 avers (Case, p. 17–), that the act of March 31, 1869 (3 *Gen. Stat., p.* 2786), adopted the exterior line reported by the Commissioners in 1865.

To sustain the title of the Railroad under the deed of 1889 the following propositions must be established:

(a) That there was a direct legislative grant, within the meaning of the act of 1869, not only to the Canal Company of the "Basin of 1867," but that the grant was to the canal, its representatives, and assigns.

(b) That there was a bulkhead line established by the Commission, and approved by the Legislature, by the act of 1869, from Enyard's Dock to the New York State line, so as to bring the grant within the third and fourth sections of the act of 1869.

(c) That the Lehigh Valley Railroad was the assign of the Canal Company within the meaning of the act

of 1869, and that it was entitled to a conveyance under section four of that act.

(d) That the Railroad Company was entitled to the deed in fee upon the payment of forty-eight thousand dollars.

If there is a failure to establish all, or any one, of these propositions, the title of the Railroad Company must fail for two reasons:

1st. If the conditions, as represented by the petition of the Railroad Company, did not, in fact, exist, the grant by the Riparian Commission, whether obtained by fraud or not, was *ultra vires* and void.

2d. That the representations so made by the Railroad Company were fraudulent in law; as termed in some of our cases, they were false suggestions, and upon them no valid title can be founded.

The Commissioners made the grant upon these representations by the Railroad Company, and if they are not true, the State has the option to repudiate the conveyance, as it now does, and set it aside upon such terms as may be deemed equitable.

We do not intend to intimate that the officers of the State who approved this conveyance were guilty of any intentional wrong, but we do say that it is clear that they were misled as to the essential facts, and as to the law, upon which alone authority to make the deed can be rested.

The Riparian Commissioners have no power to examine into, and decide upon, the applicant's title to a grant, and cannot bar the State by making a grant to one not entitled to it.

Ocean City Association v. *Shriver*, 35 *Vr.* 565.

Whether, under any other state of facts, by virtue of any other legislation, the Railroad Company might legally have acquired a conveyance of the reversionary interest of the State in the said Basin, is a question not presented by this case.

The railroad must stand exclusively for its title upon the fourth section of the act of 1869.

FIFTH.

WE SUBMIT THAT NEITHER OF THE REPRESENTATIONS ESSENTIAL TO THE VALIDITY OF THE DEED OF 1889 EXISTED AT THE TIME OF ITS EXECUTION OR AT ANY OTHER TIME.

(1) There was no direct legislative grant to the Canal Company within the meaning of the act of 1869.

The Legislature had by the act of March 14, 1867, made a disposition of the "Basin of 1867," and devoted it to a public use, for use as a canal, which the 25th section of the Morris Canal charter declared should forever thereafter be esteemed a public highway, free for the transportation of merchandise on payment of tolls.

The Basin act of March 14, 1867, is a supplement to the Canal charter, and it expressly provides in section two that the grant is for the purpose of enabling the Canal to carry on a transportation business on their canal, and to afford facilities of commerce, and section three provides that the Basin shall revert to the State in 1974, without any compensation to the Canal Company.

The Basin act of 1867 is not only a supplement to the charter of the Canal, but it incorporates the Basin in the Canal, and makes it an inseparable part of the Canal.

The Morris Canal was the only artificial waterway across the State from the Delaware to the Hudson River. In 1867, it was a most valuable and productive means of transportation across the State, valuable both to the Company and to the public, as appears by the consideration paid by the Lehigh Valley for the lease from the Canal Company.

In that situation in 1869, after the Canal Company, by its acceptance of the grant of March 14, 1867, had surrendered to the State the claim it had set up in 1866

as a riparian owner as appears by reference to the message of Governor Ward hereinbefore referred to, the Legislature, with full knowledge of the facts which had been so much and so recently agitated, passed the Riparian act of 1869, with the exception in section one hereinbefore set forth, and the defendants now claim, as they must to support the deed of 1889, that the Riparian Commission, by the fourth section of that act, was authorized to make an absolute grant of the Basin in fee to the Canal or its assigns, for the exclusive private uses of the grantee, thereby not only depriving the public of a most essential part of a valuable waterway across the State, but also depriving the State of its reversionary interest in the Basin of 1867, and rendering the Canal of far less value when it should fall to the State in 1974.

If that contention can prevail, then it must be conceded that as soon as the act of 1869 took effect, the Canal Company, or its assign, could have demanded and was entitled to a conveyance in fee of the Basin of 1867 "for the *immediate exclusive private use* of the grantee."

If the Canal Company had not such right in 1869, the Lehigh Valley Railroad was without such right in 1889.

The Canal Company could not assign to the Lehigh Valley a greater right in the Basin than the Canal Company had.

The Lehigh Valley asserted in its application for the deed of the Basin of 1889 that it was entitled to that deed for its exclusive private uses, under section four of the Act of 1869, as the assign of the Morris Canal.

By the Act of March 14, 1867, leasing the Basin to the Morris Canal until 1974, the Canal Company is required to pay for said lease an annual rental of $25,000 until 1974, or in lieu thereof to pay a principal sum of $357,142, and also to keep open the gaps in the Basin for the use of the public.

If, therefore, the Canal Company, by the Act of 1869, was entitled to a conveyance in fee of the Basin of 1867, for its exclusive private uses, the Canal Company, by paying fifty dollars per lineal foot, measuring on the bulkhead line, as required by section four of the Act of 1869, could have acquired a deed in fee of that Basin in 1869. Such deed in fee would have relieved the Canal Company of the duty of paying the annual rental of $25,000 until 1974, or the lump sum of $357,142 instead thereof, and also would have authorized the Canal Company to close up the gaps in the Basin.

It is true that before the execution of the deed of 1889, the Lehigh Valley paid the State the lump sum of $357,142 in lieu of the annual rental of $25,000, and also that the deed of 1889 provided that the gaps in the Basin should be kept open, but that provision as well as the payment of the said principal sum was voluntary on the part of the Lehigh Valley. The payment of the said principal sum in no respect enlarged the right of the Lehigh Valley in the Basin, it was simply a satisfaction of the rental until 1974.

If, by the fourth section of the act of 1869, the Lehigh Valley was entitled, as it alleged, to the deed of 1889, the State could not have required the payment of the annual rental, or the principal sum, and the maintenance of the gaps as a condition of giving the deed. The Lehigh Valley would have been entitled to the deed by paying fifty dollars per lineal foot, as before stated, without paying the rental of $25,000, and without keeping open the gaps, as required by the act of March 14, 1867.

If the Canal, in 1869, had a right to assign the grant as the Lehigh Valley now claims, it could have been assigned to a person who intended to use it for strictly private purposes.

It cannot reasonably be conceived that the Legislature intended that the Basin should be severed from the

Canal, and the grantee be permitted to appropriate it to his exclusive private uses.

The Canal is a unit, its property is a unit, it is all incorporated into one whole. It could not be disintegrated by the act of 1869, unless by express provision in that act.

The Basin grant of 1867 became as much a part of the Canal as any part of its waterway; it was absorbed by the Canal charter, and cannot be classed with the legislative grants mentioned in the proviso to section three of the act of 1869.

(2) The statement that there was a bulkhead line established by the Commission, and approved by the Legislature, was essential to the validity of the deed, but it was untrue.

The deed recites that such bulkhead line was established by the Commissioners, and approved by the Legislature. (Case, p. 17.)

There was a bulkhead line recommended and reported for the Basin property by the Commissioners in 1865, but the Legislature by the first section of the act of 1869 (3 *Gen. Stat.* 2786) established and adopted all those lines, *"except said lines drawn on said maps over or upon the lands within the boundaries of the grant made to the Morris Canal and Banking Company, by the act approved March fourteenth, eighteen hundred and sixty-seven."*

The Basin of 1867 was excepted from the operation of the act of 1869 for two reasons:

(1) To prevent the Basin from being severed from the Canal, and from being devoted to other exclusive private uses by the grantee.

(2) Because the Canal, of which the Basin was a most valuable part, was to fall to the State in 1974, with all improvements put upon it during the life of the lease for years, without any compensation by the State.

It is not necessary to look further for a most forcible reason for the exception.

SIXTH.

In its answer the Lehigh Valley says that the Basin act of March 14, 1867, fixed and established a bulkhead line, which was the last course described in that grant, and that that bulkhead line brings the Basin within the operation of the act of 1869, notwithstanding the exception in section one of that act.

The argument is that by rejecting the bulkhead line reported by the Commission, the Legislature adopted the last line in the Basin grant, but that is a *non sequitur*. If such had been the intention, it would have been, and must have been, expressed.

The Legislature rejected the one, but did not adopt the other.

The exterior line in the Basin grant of 1867 is nowhere styled, and is not, a bulkhead line. The bulkhead line is the line of solid filling beyond which the upland cannot be extended.

In the grant of March 14, 1867, the Legislature did not authorize such solid filling; the property granted was to be used as a Basin, in which structures suitable for its use as a Basin might be made.

As a clear indication that the act of 1869 was not intended to apply to the Morris Canal grant of 1867, it will be observed, that no provision was made by the draftsman of the act, either to require the grantee in fee, under section four of the act of 1869, to maintain the openings of one hundred and fifty feet in width in the Basin of 1867 as required, or to continue to pay the rental of twenty-five thousand dollars annually until 1974, which would have amounted, with interest, to over two and a half millions of dollars, and in two years to more than the consideration in the deed of 1889 for the fee of the Basin.

The proviso of section four of the act of 1869 expressly refers to a bulkhead line established by the

Commissioners and adopted by the Legislature in that act.

The Lehigh Valley Railroad Company in its petition claimed that it was the assignee of a prior legislative grant within the meaning of the fourth section of the act of 1869, and as such assignee was entitled to a conveyance in fee, for the statutory price of fifty dollars per lineal foot, measuring on the bulkhead line, and the deed was made upon that assumption.

But as there was no legally established bulkhead line, there was nothing by which the Commissioners could fix a price, and the Basin grant was therefore not within the fourth section.

It is equally clear that it was not within the eighth section, because that section applied to lands which were neither improved, or authorized to be improved, and in respect to such lands the price was to be fixed by the Commissioners, which they did not pretend to do in this case.

In addition to what has been before said to show that the statements in the petition of the Lehigh Valley Company for the deed of 1889 were not true, we refer to the declarations of our Courts upon this subject.

In *Fitzgerald* v. *Faunce*, 17 *Vr.* 593, Justice Depue in this Court said:

> "The fourth section of the act of 1869 gave the Commissioners authority to give any person or corporation, who by legislative act was a grantee or licensee of lands under water, or had power or authority to acquire lands, a paper in the name of the State of New Jersey conveying such lands, capable of being acknowledged and recorded, with a provision that the Commissioners should in no case grant lands under water beyond the exterior lines by said act established, or thereafter to be established by legislative authority."

In *Elizabeth* v. *Central Railroad*, 24 *Vr.* 495, the Court said:

> "The defendant cannot claim directly under the act of 1869, because it did not authorize grants of land under water in Arthur's Kill, but subsequent legislation enacted before the grant to the defendant, in effect extended the provisions of that act to all the tidewaters of the State in which exterior lines of solid fillings had been or should be established by the Riparian Commissioners."

These are express declarations that these bulkhead lines to bring lands under water within the fourth section of the act of 1869, must be lines established by the Riparian Commission.

The sales under section eight of the act of 1869 are subject to the same requirements.

No bulkhead line was established for the Basin of 1867 by the act of 1869, or by any subsequent legislation.

Every riparian act, passed since 1869, required a bulkhead line to be established by the Commissioners prior to making a deed.

Act of April 4, 1872 (Case, p. 236), expressly requires bulkhead lines to be fixed and established (*P. Laws, page* 99).

If we are correct as to either of the positions we have taken, there is nothing in the act of 1869 to authorize the deed of July 12, 1889, and it is *ultra vires,* and void, unless other authority can be shown.

The defendants contend that the act of 1874 (*Gen. Stat.* 2791) will support their deed.

This act provides that from and after its passage, "it shall be lawful for the Riparian Commissioners or any three of them therein concurring, together with the Governor of this State, to fix and determine, within the limits prescribed by law, the price or purchase money or annual rental to be paid by any applicant

for so much of the land below high water mark, or lands formerly under the tidewater belonging to this State, as may be described in any application therefor, duly made according to law."

For lands so applied for, the Commissioners, with the Governor's approval, may make a lease or grant.

There are two sufficient answers to this contention:

First. The act of 1874 does not authorize the sale of of any lands, where a bulkhead line has not been established by legislative authority.

Second. The application for the deed was not made under the act of 1874, but under the act of 1869, and the price was not fixed as required by the act of 1874.

In *Fitzgerald* v. *Faunce,* 17 *Vr.* 593, the Court held that the act of March 31, 1871, authorized a grant to a riparian owner only, and that if a grant under that act was made to one not a riparian owner, it would be *ultra vires* and void. The Court did not deem it necessary to consider whether the grant could have been made under some other act.

In *Elizabeth* v. *Central Railroad,* 24 *Vr.* 497, the plaintiff urged that the deed on its face purported to be under the act of March 31, 1871, and that as the grantee was not the sole owner of the ripa, the grant must fail *pro tanto.*

The Court in reply said, that although the act of March 31, 1871, alone is mentioned in the deed, it is not referred to as the only source of authority for the grant.

Manifestly, if it had been referred to as the only source for the grant, the conveyance would have been declared to have been *ultra vires.*

In *Polhemus* v. *Bateman,* 31 *Vr.* 163, this Court expressly held, that a conveyance under the act of 1871 to one not a riparian owner is *ultra vires* and void.

It distinguishes the case in 24 *Vr.* 497, because in that case the grant was without reference to any particular statute as the sole foundation of the grant.

It also held that a false suggestion not only would render a conveyance void, but if it appeared on the face of the grant, the grant could be avoided, even in a collateral proceeding.

Lastly, it held that the question was not what might have been granted by the State, but what was the grant, applying the rule of strict construction in favor of the State.

Manifestly, if it had been referred to as the only source for the grant, the conveyance in that case also would have been declared void.

In the case in hand, the fourth section of the act of 1869 is referred to as the only authority for the deed, and the existence of the requisites to a conveyance under that section are asserted in detail.

All the matters so set out are false suggestions, and their infirmity appearing on the face of the statute they are statement of facts.

State v. *Riordan,* 46 *Vr.* 16

All persons who derive title to the Basin through the Lehigh Valley are chargeable with notice of the defective title.

SEVENTH.

Rights granted by, and held under, the provisions of the special charter of the Morris Canal cannot be affected, or impaired by the general act of 1869.

It was not the purpose of the act of 1869 to change the perfect and perpetual use to which the Basin of 1867 had been devoted, as part and parcel of the Canal.

No canon of construction is more firmly established than that a general statute will not supersede, modify or repeal a special statute securing rights of property, unless there be clear language expressive of such intent.

State v. *Mills,* 5 *Vr.* 180.

The Mechanics Bank v. *Bridges,* 1 *Vr.* 113.

State v. *Minton,* 3 *Zab.* 529.

State v. *Com'rs of R. R. Taxation,* 9 *Vr.* 474.

It would require the most explicit language to justify the conclusion that the third and fourth sections of the general act of 1869 can supersede or apply to the special charter of the Morris Canal, of which the act of March 14, 1867, is part.

A construction of the act of 1869 which leads to such a result will not be adopted if it can be avoided. The exception in the first section of the act was intended to forbid such a construction.

A legislative grant of the State's property must be most strongly construed against the grantee. The grant cannot be supported by doubtful or ambiguous language.

U. S. v. *Michigan*, 190 *U. S.* 401.
Thomas v. *West Jersey*, 101 *U. S.* 401.
Jersey City v. *City of Hudson*, 2 *Beas.* 426.
Black v. *Del. & Rar. Canal*, 9 *C. E. Gr.* 455.
American Dock & Imp. v. *Trustees*, 12 *Stew.* 427.

EIGHTH.

In the oral argument of this case in the Court of Chancery, the defendants' counsel insisted that by the first section of the act of March 14, 1871 (recited in this brief on page 4), authorizing the Morris Canal Company to lease its canal property, the Morris Canal was empowered to convey, and did convey, to the Lehigh Valley Railroad Company all its canal property, including the "Basin of 1867," absolutely and forever, for its exclusive personal uses, free and clear of the reversionary right and interest to which the State, before that lease was executed to the Lehigh Valley, was entitled, and divested it of all public use.

After the oral argument, the defendants' counsel, in a supplemental brief, argued that the lease to the Lehigh Valley, in pursuance of the act of 1871, conveyed the

bare legal title, subject to the use that had been impressed upon it.

In this supplemental brief defendants' counsel said:

> "I think that in the argument I am to refute there is a confusion of ideas; there is a failure to distinguish between the powers of the Commissioners to convey and the powers of the grantee over the property after it has been conveyed. The power to convey is given by the Riparian acts, to be exercised under certain conditions; but the power of the grantee to use or dispose of the property is not made unlimited by conferring a title in fee simple. The grantor reserves no title, but the charter and public duties of the grantee may control the use."

To this supplemental brief the State replied as follows:

"Mr. Corbin's brief has taken a wide range, which necessitates an extended reply.

"1. If the grant of the 'Basin of 1867' was one of the grants mentioned in the proviso of the third section of the act of 1869, so as to authorize a deed in fee under section four of that act, then immediately upon the passage of that act the Canal and its assign was entitled to a deed in fee of the said Basin for exclusive private uses, which would at once have released and discharged the grantee from the performance of any duty to the public in respect to the Basin, and would have excluded the public from the entire property within the Basin grant.

"A deed in fee, under sections three and four of the act of 1869, would expressly extinguish the right of the State to require the Basin to be used for any public purpose after the deed granting the fee was made, else it would not be a grant in fee for the exclusive private uses of the grantee.

"That grantee, if the assign of the Canal was en-

titled to it under section four of the act of 1869, could have demanded and enforced a grant in fee of the 'Basin of 1869,' as we have before shown, as soon after the act of 1869 was passed as he became a grantee, and if not then, he could not in 1889; and the Canal Company could in 1869 have assigned the said Basin grant to John Smith, who had no control over, or right in, the balance of the Canal. This would have severed the Basin from the Canal, and the public would have been deprived of the benefit of it, not only during the term of the lease, but forever thereafter.

"By the express terms of the grant of the Basin of 1867 the State reserved the right to take it in 1974, with all the improvements made on it, without compensation to the Canal Company, and that right would also have been lost.

"The Basin was granted by an act which was a supplement to the charter of the Morris Canal, and the supplement provided that it was to be used for the purposes of transportation on the Canal.

"The Canal had no other means of transportation, it was manifestly a highly important and essential part of the Canal in the re-shipment of the great volume of freight which it carried to tidewater.

"Its importance to the State was emphasized by the express provision in the act of 1867, that it should revert to the State in 1974, which was inserted out of abundant caution.

"The Legislature, at the time the Canal charter was passed, and also in 1869, and long afterwards, could not have failed to contemplate that when the lease of the Canal fell in, and the State became its sole owner, it would prove to be a source of great revenue to the State by the renewal of the lease or grant to some other corporation.

"The argument of the defendants' counsel is an attempt to convince the Court that the State offered a great inducement to the projectors of the Canal to

construct it, carefully reserving the right to take it in 1974 without compensation, and that with all this careful reservation the State, by the act of 1869, and by the act of 1871, authorizing the Canal Company to lease the Canal, manifested the purpose and intention of abandoning its title to this great property without any consideration whatever.

"Not only that, but that in 1867 the State made the grant of the Basin to the Canal for the purpose of increasing the facilities of transportation on the Canal, with like express reservation by the State, and in 1869, only two years thereafter, voluntarily provided a way, by the act of 1869, by which the Canal could be dismembered, and the reversionary interest of the State surrendered.

"Any rights which might have been acquired by the Canal under the act of 1804, or under any other legislation, prior to the Basin grant of 1867, were relinquished and extinguished by the express provision of the latter act, which surrendered the Basin to the sole ownership of the State in 1974.

"It is true that the Canal had the right, under its charter, to change the location of parts of the Canal, but in that event, the State in all such changes would, in 1974, take the substituted route, instead of the original route of the Canal; it did not in any other way affect the express reservations to the State.

"The statement in defendants' brief, that where land granted is charged with a public duty by legislation, the grantee is bound to perform that public duty, cannot be refuted, but it has no application to this case. The fourth section of the act of 1869 does not charge any public duty upon a grant under it, on the contrary, it discharges it from any public duty, or use which previously attached to it; that could not be more emphatically expressed in our language.

The State, of course, could have authorized the Riparian Commissioners to make the conveyance of

1889, but as we have shown in the oral argument, authority to do so much clearly appear, and any doubt must be resolved in favor of the State. There is an entire absence of such authority in this case.

"It will be a sad day for the State when its rights are not shielded from spoliation by this most wise, and universally acknowledged, rule of law.

"But the defendants' counsel still insists that the Basin grant is not a part of the Canal, and was not land required to be turned over at the expiration of the charter of the Canal *as part of the Canal,* notwithstanding the express declaration that it was to be used for facilities of transportation on the Canal, and they further insist that the Basin is in the same position as lands which a railroad acquired as yards outside of its right of way.

"The distinction is too obvious to require argument to refute the latter insistment. As to land acquired for yards, there is no provision that it shall be so used, nor is there any provision that the railroad and the yard shall revert to the State at a future time.

"Again the defendants insist that 'what passes to the State is described as the said Canal and its appurtenances,' and that 'in order to pass that tract (meaning the Basin) it would be necessary to add the further words,' and all lands purchased by the company available to be used for the accommodation of goods, or vessels transported over the Canal, or elsewhere."

In the absence of the reservation of the reversion in the lease of the Basin of 1867 to the Canal, that might be so, unless the Basin was part of the Canal, as it is in this case.

If it would be necessary to use the words, "all lands of the Canal" in the reservation to the State, in order to pass the Basin to the State in 1974, it was equally necessary in the act of 1871, authorizing the lease of the Canal to the Lehigh Valley, to use the words "all lands of the Canal," in order to authorize the lease of

the Basin by the Canal to the railroad; those words were not used in that act.

The Canal could not lease more than it was authorized to lease by the act of 1871.

If the Basin is not part of the Canal, the Railroad is not the assign of the Canal as to the Basin, and if it is part of the Canal, it is equally clear that the Railroad is not the assign of the Canal as to the Basin, within the meaning of the act of 1869. If the Basin is not part of the Canal, the Lehigh Valley did not acquire any legal right to use it even until 1974; it has occupied it without any legal title hitherto, and merely by sufferance of the Canal Company.

The act of 1871 authorizes a lease of the Canal property, which is part of the Canal, and nothing more. It did not contain the words "lands of the Canal," or any words which give legal expression to that language.

The lease by the Canal to the Railroad does purport to lease its lands, but if the defendants' counsel are right in their law, the lease of the Basin by the Canal to the Railroad was not authorized by the act of 1871; it was unauthorized and passed no title.

While this insistment of the defendants is fatal to the defense, and is an admission of our case that the Lehigh Valley was not, within the meaning of the act of 1869, an assign of the Basin of 1867, and was not entitled, as such assign, to the deed of 1889, yet, in the presence of the explicit language of the Basin act of 1867, we cannot argue, with any hope of success, that the Basin is not part and parcel of the Canal.

The argument of the defendants assumes, and must assume, to have any force, that the Legislature did not charge the Basin grant with the duty of using it for the benefit of the public, as part of the Canal, for purposes of transportation on the Canal.

It could not have been within the contemplation of the Legislature, that in contravention of the Basin grant of 1867 that grant was to be included with the grants

mentioned in the proviso of section three of the act of 1869, and by section four subject to be stripped of the public duties so carefully impressed upon it, and of the right of the State to take it in 1974.

It was not strange that the Commissioners, who executed the deed of 1889, misapprehended the true situation, and accepted the representations in the application of the Lehigh Valley Railroad for the deed, that it was the assign of the Canal, and entitled to the deed under section four.

The personnel of the Commission which made the report of 1865 had entirely changed in 1889; a quarter of a century had elapsed, and with the lapse of time the facts within the personal knowledge of the original Commissioners, and the true situation, had been forgotten.

Your Honor's examination of this case will convince you that the true interpretation and significance of the act of 1869 could have been grasped by the Commissioners in 1889, only by delving into the vaults of the State House, and by an exhaustive study of maps, and of the very complex riparian legislation, which is still the subject of controversy.

The brief of the defendants still further insists that the lease by the Canal to the Railroad was forever, to which a brief reply will suffice.

Did the lease by the Morris Canal to the Lehigh Valley deprive the State of the right to take the Canal and Basin in 1974 without compensation?

It must at all times be kept in mind that the payment of the principal sum of $357,142 did not extend the lease to the Canal for one hour, and did not add any force to the lease. It was optional with the Canal to pay the said principal sum, or to pay $25,000 annually until 1974.

The act of 1871 provides that the Morris Canal may lease the Canal or any part thereof to any person or corporation, either perpetually, or for such shorter

time, and *upon such rents and agreements as may be agreed upon between the said contracting parties.*

This clearly applied to the leasing of such title as the Morris Canal had in the Canal and Basin, which by express provision ended in 1974; the title of the Canal was not enlarged.

It was immaterial to the State what terms as to the Canal's title were made between the Canal and the Railroad; the State would still hold its right to the reversion of the Canal and Basin.

The word "perpetually" meant for the entire term, which the Canal had, without interruption, and not forever.

We speak of the perpetual beating of the heart, which continues only during life, and not forever.

If it empowered the Morris Canal to lease forever all right which the State had to the reversion, upon such rents and agreements as the Canal might elect to make, then the Canal Company could not only have given away the State's reversionary interest, but it could have reduced, at will, the annual rental it had agreed to pay the State; there was no consideration whatever given to the State for the extension of the lease beyond 1974.

A construction of the act of 1871, which will deprive the State of the exceedingly valuable reversionary interest in this property so carefully secured by legislative enactment, is scarcely worthy of serious consideration.

This reply, which we made in the Court below, we are confident will be sufficient to support the decree in favor of the State.

NINTH.

We now call the attention of the Court to the case of *Stewart* v. *Lehigh Valley*, 9 *Vr.* 505, which related to the validity and enforcement of a contract between

Stewart and the Morris Canal, made before the lease of the Canal to the Lehigh Valley, under which Stewart organized a freight line for the transportation of merchandise on the Canal.

It had no relation whatever to the State's right to the Basin.

One of the questions involved in the suit was whether by the lease of the Canal to the Lehigh Valley, the Railroad, as to the contract between the Canal and Stewart, stood in the place of the Canal, so that the Railroad could maintain the suit on the contract against Stewart.

The solution of that question turned solely upon the question whether the words "any corporation" in the lease act of March 14, 1871, included a Pennsylvania corporation.

This Court held that it did, and said that the lease was not yet ended.

Nothing was said as to the meaning and effect of the word "perpetually" in the act of 1871.

TENTH.

Assuming that the deed of July 12, 1889, was made without legal authority, that it is *ultra vires*, is the State now entitled to have it set aside upon equitable terms?

It is wholly immaterial whether the consideration paid by the Lehigh Valley for the deed was a full and adequate consideration. Want of consideration is not set up in avoidance of the deed, and need not be considered in this discussion.

If the Lehigh Valley was entitled to a deed under section four, the act of 1869 fixes the consideration, and its inadequacy is of no importance; if section four does not authorize the deed, there was no authority for it, regardless of the consideration. It is no answer to the prayer of the State to say that the wrongdoer paid a sufficient price for the property.

In the various cases in our reports, in which riparian grants have been repudiated by the State, the question whether the grantee has paid the full value of the property granted has not even been considered.

The only question has been whether authority to make the grant existed; in the absence of such authority the right of the State to reclaim its property has not been denied.

This is supported by the following cases:

Fitzgerald v. *Faunce*, 17 *Vr.* 593;
Elizabeth v. *Central Railroad*, 24 *Vr.* 497;
American Dock v. *Trustees*, 12 *Stew.* 409;
Attorney-General v. *Central*, 16 *Dick.* 260;
Attorney-General v. *Central*, 2 *Robbins* 198;
Attorney-General v. *Morris & Cummings Co.*, 19 *Dick.* 555, affirmed, 3 *Robbins* 828.

In all of these cases it was conceded that the conveyance would be void, if it was obtained by false suggestion, or by suppression of material facts, without any reference to the consideration paid.

In dealing with a conveyance by the Riparian Commission, the fundamental and controlling question is whether they had authority to execute it, while as to the deed of an individual for his own property the question of power is not at all involved.

The distinction is too obvious to require discussion.

ELEVENTH.

It was not necessary to make a tender in the information filed in this case.

We deny that there is any absolute, ironclad rule, that tender must be made, or that the informant must so place the sum tendered that it is subject to the control of the defendant if he elects to accept it.

In all cases, where the interposition of a court of equity is sought, the Court, in granting relief, will impose such terms as it deems equitable, and if the

complainant refuses to comply with such terms his bill will be dismissed.

Neither the State nor the Attorney-General had the means of ascertaining what sum should be tendered, and if a tender was necessary, and there had been a failure to tender a sufficient sum, the tender would have been futile.

The Legislature in 1906 imperatively directed the Attorney-General to prosecute this suit, and by an act passed in 1907 (*Pamphlet Laws, p.* 96), provided that tender need not be made, but that a decree should be asked upon equitable terms, and that the State should take the reversionary estate free from the effect of the deed of 1889, upon such equitable terms as the Court should decree. That was a sufficient tender by the State.

In *Attorney-General* v. *Central Railroad,* 16 *Dick.* 268, it was contended that the bill was defective, because no offer was made to refund the money paid by the grantee. That defense was overruled by the Chancellor, who said that it could not appear what part of the consideration should be returned until the facts were disclosed. This case on appeal was disposed of on the merits. 2 *Robbins* 226.

In *Attorney-General* v. *Morris & Cummings Co.,* 19 *Dick.* 555, the information was filed to set aside a grant alleged to have been obtained by the suppression of facts.

The grant was made in 1881, and $78,000 had been paid to the State before the information was filed in 1903.

No tender, or offer to return any part of the money received by the State was made.

Vice Chancellor Emery heard the case, and said—"If the method or proceedings selected by the State to carry into effect its right of avoiding the lease, is a bill in equity to annul the lease, the State may, under this method, be subject to the application of equitable rules

applicable to private suitors, as to the terms upon which relief will be granted, including repayment of rental, or other disbursements, but these equities, if they exist, are matters for adjustment by final decree, and do not touch the question of jurisdiction."

This case was affirmed on appeal, this Court concurring in the views expressed by the Vice Chancellor. 3 *Robbins* 829.

TWELFTH.

Although this suit can be maintained without the support of the act of 1907, p. 96, that act is not unconstitutional.

It is similar in its provisions to the act to quiet title, upheld in *Haley* v. *Goodheart,* 13 *Dick.* 368; 2 *Buch.* 953.

It is a general law applying to all who deal with the State. It deprives the defendants of no right which is protected by constitutional provision. It leaves the court free to make an equitable decree, and to deny relief sought unless the terms imposed by the court are accepted and complied with.

It does not in any wise impair the obligation of the contract of 1889; if there is a valid contract it will be sustained by the court, it is mere procedure to ascertain whether any valid contract exists.

If the act of 1907 had declared that in this case the tender must be made in the information, it would be an unconstitutional act, because, as before stated, it would be impossible to anticipate what sum must be tendered, and, therefore, the State would have been deprived of a remedy to which it was entitled; however great the fraud, no suit could have been successfully maintained by the State.

THIRTEENTH.

The fourteenth amendment of the Federal Constitution.

This proceeding is not within the inhibition of the fourteenth amendment.

The property which the defendants claim cannot be taken from them without the judgment of this Court, after they have had full opportunity to be heard in defense.

This is mere procedure in the State courts, to which the fourteenth amendment has no relation.

The act of 1907 is a general act applying to an entire class, no discrimination being made against corporations.

All persons are not entitled to the same procedure in their attempts to establish or defend their rights.

Kentucky Railroad Case, 116 *U. S.* 321;
Missouri v. *Lewis,* 101 *U. S.* 22;
Pittsburg Railroad v. *Backes,* 154 *U. S.* 421;
Twining v. *New Jersey,* 211 *U. S.* 78;
Weyerhouser v. *Minnesota,* 176 *U. S.* 550;
Winona Lead Co. v. *Minnesota,* 159 *U. S.* 526;
Central R. R. v. *State Board,* 67 *Atl.* 675.

FOURTEENTH.

As to the defense of laches and estoppel:

If the State owns any property of such strictly private character, that in disposing of it the State is subject to the rules of law which apply to individual owners, the riparian lands of the State are certainly not of that character.

The proceeds of sales of riparian lands, prior to 1889, and afterwards, were devoted to the support of the public schools, one of the most important functions of the State government.

Act of 1871, *Revision, page* 1081.

We will therefore discuss only the legal principles which apply to the State in the exercise of its powers of government.

In *U. S.* v. *Kirkpatrick,* 9 *Wheaton* 720, Justice Story said:

> "Laches is not imputable to the government, this maxim is founded not in the notion of extraordinary prerogative, but upon a great public policy. The government can transact its business only through its agents, and its fiscal operations are so various, and its agencies so numerous, and scattered, that the utmost vigilance would not save the public from most serious loss, if the doctrine of laches be applied to its transactions."

U. S. v. *Dalles Military Road,* 140 *U. S.* 601;
U. S. v. *Michigan,* 190 *U. S.* 405;
Gibson v. *Chonteau,* 13 *Wall.* 99;
Gansen v. *U. S.,* 97 *U. S.* 584.

In *Attorney-General* v. *Del. and Bound Brook Railroad, 27 N. J. Eq.* 1, the Chancellor said that the Railroad had been permitted to expend large sums of money without interference, and therefore equity would leave the State to its remedy at law. In that case the removal of the structure would have been the destruction of a very valuable property, and there was no offer to compensate defendant for the loss.

The Bound Brook case was affirmed in this Court, but not on the ground of laches. 24 *N. J. Equity* 631.

In *Attorney-General* v. *Central Railroad,* 16 *Dick.* 268, the grant was made in 1874, and the information was filed in 1891, and there the defense of laches was set up, but was not successful.

The defendants charge that the State is guilty of laches, and chargeable with neglect in not discovering that the railroad was expending large sums upon the Basin grant, but they lose sight of the fact that the State's officers knew that the railroad lease had nearly

a hundred years to run, and that the expenditures and improvements, so far as appeared, were appropriate to the enjoyment of the leasehold estate.

A further and full answer to the defense of laches is, that assuming that the State had notice of the improvements being made upon the Basin property, after the delivery of the deed of 1889, those improvements were projected, and expensive work upon them done long before the delivery of the deed; the improvements, and expenditures, were appropriate to the enjoyment of the term of the lease, which had eighty-six years to run; the Lehigh Valley had expended $628,000 on them before the deed of 1889 was delivered; the improvements were of such a character that they may not outlast the term, and there is nothing in the case to show, or to charge the State with notice, that the Railroad Company would not have made the improvements in order to have the full and beneficial enjoyment of the lease.

See testimony of Hocke (Case, Vol. II, p. 340 and 477).

As to estoppel:

The doctrine of estoppel does not apply to the sovereign in this case.

The State cannot be estopped by long acquiescence if in the original instance the Riparian Commission did not have power to act.

Attorney-General v. *Marr*, 55 *Mich.* 445;
State ex rel. Lott, 64 *Ala.*;
11 *Eng. & Am. Ency.* 393, *cases cited*;
Bigelow Estoppel, page 349;
Oliver v. *Jersey City*, 34 *Vr.* 97;
American Dock v. *Trustees*, 8 *Stew.* 183.

This rule necessarily results from the established doctrine that laches cannot be set up against the State.

But so far as this case is concerned, it is immaterial whether laches and estoppel can successfully be set up or not.

Admitting that they can, the State is entitled to the decree it has prayed for.

In *American Dock* v. *Trustees,* 8 *Stew.* 183, this Court, in the opinion delivered by Chief Justice Depue, said:

> "The equity of a party who relies on an equitable estoppel to give validity to an inefficient contract is not to have his contract made binding, but to put his adversary to an election between the performance of the contract and the repudiation of it on equitable terms."

We have elected to repudiate the deed of 1889 on equitable terms, and we submit that the State is entitled to do so.

FIFTEENTH.

What will be equitable?

The only payment to which the Railroad will be entitled on the setting aside of the deed of 1889 is the refunding of the consideration paid with interest from the date of payment to the State until the deed is set aside. If it could be shown that any additional value will be imparted to the Basin, when the State takes it in 1974, by any expenditures made upon it since 1889, and before this suit was instituted, of which there is no evidence in this case, then if the railroad is entitled to take such increased value into account, which we deny, allowance can be made only for such expenditures as would not have been made if the deed of 1889 had not been obtained, and which were inappropriate to the enjoyment of the leasehold. Improvements appropriate to the use of the lease under the act of March 14, 1867, are, by the express terms of that act, to become the property of the State in 1974, without any allowance therefor to the lessee.

All the improvements, as before shown, were commenced and large sums of money expended upon them

by the Lehigh Valley before the deed of 1889 was given. See evidence of Hocke (Case, p. 340).

That deed having been obtained by misrepresentations made by the said defendant, it is left without any equitable claim on account of any expenditures upon the Basin, especially so as there is no evidence whatever to show that the outlay by the Lehigh Valley will be of any value to the State when the lease falls in.

Under the evidence in this case the Lehigh Valley is entitled to nothing more than the sum of forty-eight thousand dollars, with interest as aforesaid.

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Attorney-General.

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Information.

(Filed October 8, 1907.)

In Chancery of New Jersey.

Between

ROBERT H. MCCARTER, Attorney General of New Jersey,

Informant,

and

LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, LEHIGH VALLEY RAILROAD COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

} Information

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

INFORMING, shows unto your honor, your informant, Robert H. McCarter, Attorney General of the State of New Jersey, on behalf of the said State:

1. That by an act of the Legislature of the said State, passed on the thirty-first day of December, eighteen hundred and twenty-four entitled: "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers," Jacob S. Thompson of Sussex County, John Dow of Essex County, and Charles Board of Bergen County, and all and every other person or persons who might become subscribers accord-

ing to the mode in said act prescribed, their successors and assigns, were created a body corporate, by the name of Morris Canal and Banking Company, for the purpose, among other purposes, of constructing a canal to unite the river Delaware near Easton, in the State of Pennsylvania, with the tide waters of the Passaic River, and for that purpose were authorized any time after the passage of said act to purchase, receive, possess, enjoy, retain, demise, grant, alien and sell all such lands, tenements hereditaments waters, streams and water privileges, rights, goods, chattels, and effects, of every description whatsoever, as might be necessary for carrying into effect any of the provisions of said act and under the restrictions and limitations therein mentioned.

That among the restrictions and limitations therein mentioned, it was by the 26th section of said act provided that at the end of ninety-nine years from the passing of the said act it should be lawful for the said State to take to itself and on its own account the said canal and its appurtenances, paying to the said company the fair value thereof, to be estimated and fixed upon by ten commissioners, or a majority of them, to be mutually chosen by the said State and the said company, or in case this should not be done, at the end of said ninety-nine years that the charter granted by said act should continue so far as said charter respected the canal operations and privileges of said company, for the further term of fifty years when it should cease and the said canal, with its appurtenances, become the sole property of the State.

2. That by an act of the Legislature of the State of New Jersey, passed on the twenty-sixth day of January, eighteen hundred and twenty-eight, entitled "An act to authorize the Morris

Canal and Banking Company to extend the Morris Canal to the waters of the Hudson," authority was given to said Company to continue its canal to the waters of the Hudson River at or near Jersey City, upon the following conditions in said act set out:

It shall and may be lawful for the Morris Canal and Banking Company, incorporated by an act entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers," passed December thirty-first, eighteen hundred and twenty-four, to continue the Morris Canal to the waters of the Hudson at or near the city of Jersey City, and for that purpose said company shall have all the rights, powers and privileges, given and granted by the said act, and shall be subject to all the restrictions, limitations, conditions and provisions in said act contained, in the same manner and to the same effect as if the said company had originally been authorized by said act to construct a canal or artificial navigation to connect the waters of the Delaware River near Easton with the waters of the Hudson at or near the City of Jersey City."

3. That during the years eighteen hundred and twenty-seven to eighteen hundred and thirty-one (1827-1831) inclusive, the said canal was constructed by said company and put into operation from the Delaware River near Easton to the Passaic River at the City of Newark, and was in the year eighteen hundred and thirty-six (1836) continued to the Hudson River at the City of Jersey City and put into operation.

4. And your informant further says that by an act entitled "A further supplement to 'An Act to incorporate a company to form an artificial navi-

gation between the Passaic and Delaware Rivers,' passed December thirty-first, eighteen hundred and twenty-four," which supplement was approved March fourteenth, eighteen hundred and sixty-seven, the State of New Jersey, through its Legislature, did, in terms grant to the Morris Canal and Banking Company rights or interests in certain lands under the waters of the Hudson River, now known as the "Basin of 1867," in the manner and upon the terms and conditions following, in said act set out.

"The State of New Jersey hereby grants to the Morris Canal and Banking Company all the right, title and interest of the State in and to the land and lands under water within the following boundaries: Beginning at a point in the Hudson River in the southerly line of South Street extended seven hundred and sixty-five feet from the easterly line of Hudson Street and running thence (1) Westerly along the said southerly line of South Street to the centre line of Washington Street extended; thence (2) southerly along said centre line two hundred and sixty feet; thence (3) westerly on a line parallel with South Street, as laid down on Mangin's map, to the easterly line of Warren Street extended; thence (4) southerly and along the easterly line of Warren Street extended to a point distant four hundred and sixty feet at right angles from the southerly line of South Street; thence (5) parallel with South Street easterly to a point in the centre line of Washington Street extended and distant four hundred and sixty feet from the southerly line of South Street; thence (6) southerly along said centre line of Washington Street extended five hundred feet to the northerly line of the property occupied by the Central Railroad Company of New Jersey; thence (7) easterly along said line seventeen hundred and thirty-five feet; and thence (8) northerly to the place of beginning.

Information.

"On condition that for the purpose of preserving a water basin to the west of the present westerly bulkhead on said premises, and of leaving open on the premises hereby granted a public navigation for all vessels to and from the Hudson River, and all parts of the waters west of said westerly bulkhead; the said company shall forever keep open the present gaps in the easterly and westerly bulkheads, each of one hundred and fifty feet in width, and like gaps of like width in any structure to be erected on said premises hereby granted, so that the public may with all vessels freely navigate to and from the channel of the Hudson River and all places east and west of said westerly bulkheads without the payment of tolls or charges, provided, that the said opening shall be kept in such condition that the owners and occupants of shore property, lying north and west of the above described property, may at all times have free access to as well as through the same."

"And provided further that the said company shall, within ninety days after the passage of this act, execute and deliver to the Governor of this State their promise and undertaking, under seal, unconditionally to pay into the treasury of this State yearly the sum of twenty-five thousand dollars per year, on or before the first Tuesday in January of each year, during the continuance of their charter and so long as the said company, their successors or assigns, shall continue to hold or occupy the same, the first payment of a ratable portion of which shall fall due on the first Tuesday of January, eighteen hundred and sixty-eight; it shall be lawful for the said company, instead of the said annual payment of twenty-five thousand dollars, to pay into the Treasury of this State at any time the sum of three hundred and fifty-seven thousand, one hundred and forty-two dollars.

"The Morris Canal and Banking Company may under the provisions of their charter

construct piers, wharves, docks, basins, warehouses, and other structures within the limits above described, and make reasonable rules and regulations for the use thereof, to enable them to carry on a transportation business in and over their canal and elsewhere, which they are hereby empowered to do and also to afford facilities for commerce; provided, that the exemption of said company in its original charter from taxation, assessments or other legal impositions, shall not extend to the property or privileges hereby granted.

"This act shall take effect immediately and be in force during the continuance of the charter of the said Morris Canal and Banking Company, and at the expiration of that time the lands hereby granted, with the improvements thereon, shall revert to the State, on the same terms and conditions provided in the original charter of the said company, respecting the transfer of the property thereof to the State."

5. And your informant further shows that by an act of the Legislature of this State, entitled, "A further supplement to an act entitled 'An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers,' passed December thirty-first, one thousand eight hundred and twenty-four," approved March fourteenth, eighteen hundred and seventy-one, authority was given to the Morris Canal and Banking Company, with the consent of a majority in interest of the stockholders of said company, expressed in writing and authenticated by affidavit filed in the office of the Secretary of State, to lease the canal of said company, or any part thereof, with all or any of its boats, property, works, appurtenances and franchises, to any person or persons, or corporation, either in perpetuity or for such shorter term and upon such agreements and conditions as might be agreed upon between the contracting parties.

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6. That pursuant to the authority contained in said act, the said Morris Canal and Banking Company executed to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, a certain indenture of lease, dated the fourth day of May, eighteen hundred and seventy-one, whereby, and for a consideration therein named, the said Morris Canal and Banking Company leased to the said Lehigh Valley Railroad Company, "its entire canal and navigation works, with all the branches and extensions thereof, made and to be made, and also all the lands and water rights, privileges and easements, dams, basins, reservoirs, pools, feeders, locks, cuts, gates, machinery, fixtures, railroads, tracks, wharves, docks, piers, landings, water rents, ground rents, lands, tenements, hereditaments, with the appurtenances, reversions, remainders, rents, issues and profits thereof, now belonging or in any wise appertaining to the party of the first part, the said Morris Canal and Banking Company, or which for any purpose incident to or connected with the business which the Lehigh Valley Railroad Company, its successors or assigns, might as lessees of the said Canal Company, lawfully carry on or which might hereafter be acquired by the said Canal Company, together with all the corporate franchises, rights and privileges other than that of being a corporation, now held or hereafter to be acquired by the said Canal Company. To have and to hold the premises thus leased and demised as aforesaid to the said Lehigh Valley Railroad Company, its successors and assigns perpetually thereafter."

That the said lease further provided for a transfer to the said railroad company of the movable property of every kind and description to which the said Canal Company was then in any manner

or way entitled, excepting only the furniture of the principal office of the Canal Company at Jersey City, its corporate seal and its entire business books, papers and records.

That the said lease further provided for the payment by the Lehigh Valley Railroad Company of all certain miscellaneous debts of the said Canal Company, set forth in a schedule thereto annexed and amounting to the sum of one hundred and sixty-six thousand, six hundred and eighty-six dollars and seventy cents ($166,686.70), and for the payment of interest on the bonds of the said Canal Company then outstanding, and upon a certain deed of trust known as the "Boat Loan," and upon obligations of the said Canal Company known as "Preferred Dividend Scrip." And that the said Lehigh Valley Railroad Company should from time to time provide for the payment, extension or renewal of the principal of said series of obligations.

That the said Lehigh Valley Railroad Company should pay semi-annually the sum of seventy-nine thousand, two hundred and fifty dollars ($79,250) as dividends to the stockholders of the said Canal Company at the following rates:

Upon the eleven thousand, seven hundred and fifty (11,750) shares of preferred stock, semi-annually a dividend of five per cent.

Upon the ten thousand, two hundred and fifty shares (10,250) of the common stock, semi-annually, a dividend of two per cent.

That the said Lehigh Valley Railroad Company further agreed to pay all taxes, charges and assessments, including the obligations of the said Canal Company to pay to the State of New Jersey the sum of twenty-five thousand dollars ($25,000) annually, and to indemnify said Canal Company from any loss or damage resulting from any

failure or neglect of the said Railroad Company to comply with the said covenants, stipulations and conditions in said lease contained.

And your informant further shows that pursuant to said lease the said Lehigh Valley Railroad Company in the year eighteen hundred and seventy-one, took possession of the said canal property and of such property and rights and of the franchises of the Morris Canal and Banking Company, and except as hereinbelow set out still holds possession thereof, and did also take possession of the said basin known as the "Basin of 1867."

That said lease will expire by virtue of the act creating the Morris Canal and Banking Company at the option of the State of New Jersey, upon its paying to the said Morris Canal and Banking Company the fair value of its property at that time, upon the thirty-first day of December, nineteen hundred and twenty-four, or in default of the said State exercising its option, then in the year nineteen hundred and seventy-four, when said property shall become the sole property of the State of New Jersey.

Your informant further shows that the said lease from the Morris Canal and Banking Company to the Lehigh Valley Railroad Company, was held by the Court of Errors and Appeals in the case of *Stewart vs. Lehigh Valley R. R. Co.*, 9 Vr., 505, to be a valid agreement between the parties thereto, and that said Lehigh Valley Railroad Company was capable under its charter, and under the aforesaid act of the Legislature, approved March fourteenth, eighteen hundred and seventy-one, of receiving said lease from said Canal Company, to be a valid agreement between the parties thereto as to the canal proper.

7. And your informant further shows that by

an act of the Legislature, entitled "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April eleventh, eighteen hundred and sixty-four, it was provided that a Board of Commissioners be nominated by the Governor and confirmed by the Senate, whose duty it should be to cause the necessary surveys and examinations to be made of lands lying under the waters of the Bay of New York and of the Hudson River, and of the lands adjacent thereto, the Kill Von Kull, Newark Bay, Arthur's Kill, Raritan Bay, and lands lying under the waters of the Delaware River, opposite to the county of Philadelphia, THE RIGHT TO RECLAIM WHICH HAS NOT BEEN GRANTED BY THE STATE, and to obtain all the needful information from other sources in order to ascertain the present rights of the State in the same, and the value of said rights, and to fix and establish an exterior line in said bays and rivers beyond which no pier, wharf, bulkhead, erection or permanent construction of any kind should be permitted to be made and to report to the next Legislature on or before the first day of February next the results of the information thus obtained, and the value of said rights, together with all the information and evidence upon which the same was founded.

And whose further duty it should be to recommend to the Legislature such plans and provisions for the improvement, use, renting and leasing of the said lands under water as they should deem necessary for and most conducive to the interests of the State, and to have prepared and submit with their report maps of such lands, exhibiting the exterior line fixed and established by them in said bays and rivers and the lines to exterior

piers, wharves and bulkheads, and also showing any grants of lands under the waters of the said bays and rivers which had not been occupied, and also the original shore line so far as the same can be ascertained, together with such full notes, measurements and elucidations as they should deem necessary to a full exposition and understanding of the subject.

That the said Board of Commissioners so required to be nominated and appointed by the Governor were nominated and appointed by the Governor and confirmed by the Senate, and entered upon the duties of their office and duly reported to the next Legislature on or about February first, eighteen hundred and sixty-five, as required by the said act.

And your informant further shows that by an act of the Legislature, entitled "A supplement to an act entitled 'An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," which supplement was approved March thirty-first, eighteen hundred and sixty-nine, it was enacted that the bulkhead line or lines of solid filling, and the pier lines in the tidewaters of the Hudson River New York Bay and Kill von Kull lying between Enyard's dock and the New York State line, so far as they have been extended and reported to the Legislature by the Commissioners appointed under the act to which said act was supplementary, by report bearing date February first, eighteen hundred and sixty-five, be adopted and declared to be fixed and established as the exterior bulkhead and pier lines between said points, as such exterior and bulkhead lines appear upon certain manuscript maps accompanying said re-

port and filed in the office of the Secretary of State, EXCEPT SAID LINES DRAWN ON SAID MAPS OVER OR UPON THE LANDS WITHIN THE BOUNDARIES OF THE GRANT MADE TO THE MORRIS CANAL AND BANKING COMPANY BY ACT APPROVED MARCH FOURTEENTH EIGHTEEN HUNDRED AND SIXTY-SEVEN.

And your informant further shows that by said act it was declared to be unlawful to fill in with earth, stones or other solid material in the tide waters of the Hudson River, New York Bay and Kill von Kull, beyond the bulkhead line or lines of solid filling adopted by said act, or to erect any structure of any kind beyond said bulkhead line or lines of solid filling except piers, which should not in any case exceed one hundred feet in width and which should in no case extend beyond the line indicated for piers on said map; and that no piers should be constructed with less intervals between them than seventy-five feet, except at places used for ferries, or in any manner except on piles, on piers, or on blocks and bridges, so as to permit a free flow or passage of water under and through them without any other interruption or obstruction than the piles or blocks necessary to support said piers.

And your informant further shows that by the third section of said act it was declared to be unlawful for any person to fill in any of the land under water or riparian lands without a grant from the Commissioners established by the act to which said act was a supplement, providing that said section should not in any wise repeal or impair any grant of land under water, or right to reclaim made directly by the Legislative Act or grant, or license, power or authority so made or given to purchase, fill up, occupy, possess and enjoy lands covered with water, fronting and adjoining lands owned or authorized to be owned by the

corporation or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees or assigns.

That by the fourth section of said supplementary act it was provided that in case any person or corporation who by any legislative act was a grantee or licensee, or had such power or authority, or any of his or their representatives or assigns, should desire a paper capable of being acknowledged or recorded, made by and in the name of the State of New Jersey, conveying land mentioned in the third section of said act, whether then under water or not, and the benefit of an express covenant that the State would not make or give any grantee or licensee any power or authority, affecting the lands under water in front of said lands, then and in either of such cases such person or corporation, grantee or licensee, having power or authority, his or their representatives or assigns, on producing a duly certified copy of such legislative act to said Commissioners, and in case of a representative or assign, also satisfactory evidence of his or their being such representative or assign, and requesting such grant or benefits as in such section mentioned, should be entitled to said paper so capable of being acknowledged and recorded and granting the title and benefits aforesaid on payment of the consideration therein mentioned.

And the Commissioners, or any two of them, with the Governor and the Attorney General for the time being, to be shown by the Governor signing the grant and the Attorney General attesting it, should and might execute, acknowledge and deliver, in the name of and in behalf of the State, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such

grantee or licensee, or to the successors or assigns of such corporation, upon his or their securing to be paid to the State an annual rental of three dollars for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee, or to the successors or assigns of such corporation, IN FEE, upon his or their paying to the State fifty dollars for each and every lineal foot measuring on the bulkhead line in front of the land included in said conveyance. And it was by the said act expressly provided, that such conveyance or lease should not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his or their heirs and assigns, to exclude to the exterior bulkhead line the tidewater, by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses.

8. And your informant further states that the Morris Canal and Banking Company did, within ninety days after the passage of the said act of March fourteenth, eighteen hundred and sixty-seven, execute and deliver to the Governor of this State, its promise and undertaking, under seal, unconditionally to pay into the Treasury of the State the yearly sum of twenty-five thousand dollars ($25,000) per year, on or before the first Tuesday in July of each year, during the continuance of its charter and so long as the said company, its company, its successors or assigns, should continue to hold or occupy the same.

That the said Morris Canal and Banking Company in accordance with the provisions of its undertaking, paid or caused to be paid the said yearly sum of twenty-five thousand dollars ($25,000) to the Treasurer of the State of New Jersey until July twelfth, eighteen hundred and eighty-nine, and that on said twelfth day of July, eigh-

teen hundred and eighty-nine, the said Morris Canal and Banking Company, or its Lessee, the Lehigh Valley Railroad Company, paid to the Treasurer of the State of New Jersey the sum of three hundred and fifty-seven thousand, one hundred and forty-two dollars ($357,142), in discharge of the said obligation and in accordance with the provisions of the said act of March fourteenth, eighteen hundred and sixty-seven, which provides that it shall be lawful for said company, instead of said annual payment of twenty-five thousand dollars ($25,000) to pay into the treasury of the State of New Jersey, at any time, the sum of three hundred and fifty-seven thousand, one hundred and forty-two dollars ($357,142).

9. And your informant further states that prior to the said twelfth day of July, eighteen hundred and eighty-nine, the Lehigh Valley Railroad Company produced before the Riparian Commissioners a duly certified copy of the said Legislative Act, entitled "A further supplement to an act entitled 'An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers,' passed December thirty-first, eighteen hundred and twenty-four," which supplement was approved March fourteenth, eighteen hundred and seventy-one; and also a certified copy of the lease made by the Morris Canal and Banking Company to the Lehigh Valley Railroad Company above set out, claiming that it thereby became and was the assignee of the said Morris Canal and Banking Company and demanding a grant or conveyance, in accordance with the provisions of the act entitled "A supplement to an act entitled 'An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in

this State,' approved April eleventh, eighteen hundred and sixty-four," which supplement was approved March thirty-first, eighteen hundred and sixty-nine.

10. And your informant further shows that in compliance with said demand, Bennington F. Randolph, Miles Ross, Richard B. Reading and Richard M. Herring, Riparian Commissioners of this State, with Robert S. Green, the then Governor of the State, and John P. Stockton, then Attorney General, executed and delivered to the Lehigh Valley Railroad Company a paper writing purporting to be a grant to the said company of lands under water, particularly described in the act of March fourteenth, eighteen hundred and sixty-seven above set out, which said paper writing was in words and figures following:

DEED.

Deed Dated July 12, 1889.

State of New Jersey to Lehigh Valley Railroad Co.

TO ALL TO WHOM THESE PRESENTS SHALL COME OR WHO MAY BE CONCERNED the State of New Jersey sendeth greeting:

WHEREAS, under and by virtue of a certain act of the Legislature of the State of New Jersey, approved April 11th, 1864, entitled "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," certain persons were duly appointed and constituted Commissioners to execute and discharge the duties in said act set forth and upon them imposed, and among other things to fix and establish an exterior line in certain Bays and Rivers in said act mentioned, beyond which no pier or permanent construction of any kind should be permitted to be made:

Information.

AND WHEREAS, afterwards said Commissioners having paid such exterior line in the tide water of certain of said water bays and rivers, to wit, the Hudson River, New York Bay and Kill von Kull, lying between Enyard's Dock on the Kill von Kull and the New York State line; the same was by another act of the Legislature, approved Mch. 31st, 1869, supplementary to said first mentioned act, adopted and declared to be fixed and established as the exterior bulkhead and pier line between the points above named as by the first section of the last mentioned act will more fully appear;

AND WHEREAS, by the sixth section of said supplemental act it was enacted that four commissioners should be appointed by the Governor, with the advice and consent of the Senate, to complete as much of the details of the work assigned to them by such original act by surveys and otherwise on the Hudson River, New York Bay and Kill von Kull, as in their judgment the interests of the State required.

AND WHEREAS, Bennington F. Randolph, Miles Ross, Richard, B. Reading and Richard N. Herring, have been duly appointed and are now acting as commissioners under said several acts.

AND WHEREAS, by the third section of said supplementary act it was enacted among other things that neither that section nor any provision in said supplementary act contained, should in any wise repeal or impair any grant of land under water, or right to reclaim, made directly by legislative act, or grant or license power or authority so made or given to purchase, fill up, occupy, possess and enjoy lands covered with water, fronting and adjoining lands owned or authorized to be owned by the corporation or grantee or licensee in the legislative acts mentioned, its, his or their repre-

sentatives, grantees or assigns or to repeal or impair any grant or license power or authority to erect or build docks, wharves and piers opposite and adjoining lands owned or authorized to be owned by the corporation or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees, or assigns, heretofore made or given directly by legislative act, whether said acts are or are not repealable.

AND WHEREAS, by the fourth section of said legislative act it was enacted among other things that in case any person or corporation, who, by the legislative act was a grantee or licensee or had such power or authority, or any of his or their representatives or assigns, should desire a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey conveying the land in the proviso to the third section of said supplementary act mentioned, whether under water or not, and the benefit of an express covenant that the State would not make or give any grant or license power or authority affecting lands under water in front of said lands, then and in either of such cases such person or corporation, grantee, or licensee having such grant or license power or authority, his or their representatives or assigns, on producing a duly certified copy of such legislative act to said commissioners, and in the case of a representative or assignee also producing satisfactory evidence of his or their being such representative or assignee, and requesting such grant and benefits as in that section mentioned, should be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid on payment of the consideration therein mentioned, and the Commissioners or any two of them, with the Governor or Attorney

General for the time being, to be shown by the Governor signing the grant and the Attorney General attesting it, should and might execute and deliver and acknowledge in the name and in behalf of the State a lease in perpetuity in such grantee or licensee or corporation having such grant, license power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his or their securing to be paid to the State an annual rental of three dollars for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee, or corporation having such grant, license power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, in fee, upon his or their paying to the State fifty dollars for each and every lineal foot measuring on the bulkhead line in front of the land included in such conveyance.

AND WHEREAS, by the first section of an act entitled "An Act of the Legislature of the State of New Jersey entitled 'A further supplement to an act entitled 'An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers, passed December thirty-first eighteen hundred and twenty-four,' " which supplement was approved on the fourteenth day of March, eighteen hundred and sixty-seven, the State of New Jersey did grant to the Morris Canal and Banking Company, all the right, title and interest of the State in and to the land and lands under water within the following boundaries:

BEGINNING at a point in the Hudson River in the southerly line of South Street extended seven hundred and sixty-five feet from the easterly line of Hudson Street and running thence (1) West-

erly along the said southerly line of South Street to the center line of Washington Street, extended; thence (2) southerly along said center line two hundred and sixty feet; thence (3) Westerly on a line parallel with South Street as laid down on Mangin's Map to the Easterly line of Warren Street extended; thence (4) Southerly and along the said easterly line of Warren Street extended to a point distant four hundred and sixty feet at right angles from the southerly line of South Street; thence (5) parallel with South Street easterly to a point in the center line of Washington Street extended and distant four hundred and sixty feet from the southerly line of South Street; thence (6) Southerly along said centre line of Washington Street extended five hundred feet to the Northerly line of property occupied by the Central Railroad of New Jersey; thence (7) Easterly along said line seventeen hundred and thirty-five feet, and thence (8) Northerly to the place of beginning, on condition that gaps each of one hundred and fifty feet in width should forever be kept open in the bulkheads and in any structure to be erected on said premises so that the public might with all vessels freely navigate to and from the channel of the Hudson River and all places east and west of the Westerly bulkheads on said premises, without the payment of tolls or charges provided that the said opening should be kept in such condition that the owners and occupants of shore property lying North and West of the above described property might at all times have free access to as well as through the same.

AND FURTHER PROVIDED, that the said company should within ninety days after the passage of said act execute and deliver to the Governor of this State their promise and undertaking, under seal, unconditionally to pay into the Treasury of

this State yearly, the sum of twenty-five thousand dollars per year, on or before the First Tuesday of January of each year, during the continuance of their charter and so long as the said company, their successors or assigns should continue to hold or occupy the same, the first payment of a ratable portion of which should fall due on the First Tuesday of January, eighteen hundred and sixty-eight; the said act further providing that it should be lawful for the said company instead of the said annual payment of Twenty-five thousand dollars to pay into the Treasury of this State at any time the sum of Three hundred and fifty-seven thousand, one hundred and forty-two dollars.

AND WHEREAS, the said company did, within ninety days execute and deliver the said undertaking as above required.

AND WHEREAS, said lands front and adjoin lands owned by the Morris Canal and Banking Company and its grantee or licensee, the Lehigh Valley Railroad Company.

AND WHEREAS, by the second section of the same act it was enacted that the said Morris canal and Banking Company might, under the provisions of their charter, construct piers, wharves, docks, basins, warehouses and other structures within the limits above described as by said act reference being thereto had will more fully appear.

AND WHEREAS, the said Morris Canal and Banking Company did, in pursuance of legislative authority, make, execute and deliver unto the Lehigh Valley Railroad Company a certain indenture of lease bearing date the fourth day of May in the year eighteen hundred and seventy-one, whereby the said Morris Canal and Banking Company did demise and lease unto the said Lehigh Valley Railroad Company, in perpetuity (among other

things) the lands so granted to it by the State of New Jersey:

AND WHEREAS, the said Lehigh Valley Railroad Company, being assignee as aforesaid of the tract of land so as aforesaid granted by the State of New Jersey to the said Morris Canal and Banking Company, adjoining the Hudson River as aforesaid and hereby conveyed, has produced to said commissioners a duly certified copy of the said legislative act entitled "A further supplement to an act entitled 'An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers,' passed December thirty-first, eighteen hundred and twenty-four," and also a certified copy of the lease aforesaid, executed by the Morris Canal and Banking Company to said Lehigh Valley Railroad Company, which affords satisfactory evidence to the said Commissioners that it is the assignee of the said Morris Canal and Banking Company, and of its rights acquired in the supplement last mentioned, and has made application in writing requesting such grant and benefits as are mentioned in said fourth section of said supplement to the act entitled "An act to ascertain the rights of the State and of riparian owners in the lands lying within the waters of the Bay of New York and elsewhere in this State, and agreeing to pay therefor the consideration mentioned in the said fourth section of said supplemental act."

AND WHEREAS, the said Morris Canal and Banking Company and the said Lehigh Valley Railroad Company, have heretofore duly paid into the Treasury of this State yearly the said sum of Twenty-five thousand dollars, and the said Lehigh Valley Railroad Comapny has this day paid into the Treasury of this State the sum of three hundred and fifty-seven thousand, one hundred and

forty two dollars in discharge of the promise and undertaking above recited:

AND WHEREAS, it has appeared to the said commissioners that the said Lehigh Valley Railroad Company has by virtue of the aforesaid grant from the State of New Jersey and of the lease from the Morris Canal and Banking Company and the performance of said conditions, such grant and license, power and authority, as is in the said fourth section mentioned, and is entitled to a paper capable of being acknowledged and recorded, and granting the title and benefits aforesaid, upon payment of such consideration as aforesaid;

AND WHEREAS, such consideration, to wit the sum of forty-eight thousand dollars, being fifty dollars for each lineal foot, to wit, nine hundred and sixty feet, measuring on the bulkhead line in front of the land included in this conveyance, has been paid by the said Lehigh Valley Railroad Company to the Treasurer of this State;

NOW THEREFORE KNOW YE, that the said State of New Jersey by Bennington F. Randolph, Miles Ross, Richard B. Reading and Richard N. Herring, with the said Governor and Attorney General for the time being; in consideration of the said sum of Forty-eight thousand dollars, to the Treasurer of the State for the State duly paid, hath granted, conveyed and confirmed unto the said Lehigh Valley Railroad Company, the said tract of land as granted to the Morris Canal and Banking Company, and hereinbefore described, together with all the right and privilege of excluding the tide water from said land by filling in or otherwise improving the same, and to appropriate the same to exclusive private uses as fully to all intents and purposes as the said commissioners have power or authority to grant and convey the same, subject however to the conditions hereinafter stated;

Information.

TO HAVE AND TO HOLD the lands above described, with the appurtenances and all the rights and privileges hereby granted unto the said Lehigh Valley Railroad Company, its successors and assigns forever.

AND the said State of New Jersey doth further hereby covenant expressly with the said Lehigh Valley Railroad Company, its successors and assigns, that the said State of New Jersey will not make or give any grant or license power or authority affecting lands under water in front of the lands hereby conveyed, and the said Lehigh Valley Railroad Company, its successors and assigns may appropriate and reclaim to its own use the said lands under water above described, subject, however, to the regulations and provisions of the various clauses of said supplemental riparian act herein recited, so far as the same are applicable to the lands hereby conveyed; subject also to the condition imposed by said act approved March 14th, 1867, granting the said lands to the said The Morris Canal and Banking Company, to keep open gaps in said lands of not less than one hundred and fifty feet in width, so that the public may with all vessels freely navigate to and from the Channel of the Hudson River and all places east and west of the bulkheads on said premises without the payment of toll or charges, and that the said opening shall be kept in such condition that the owners and occupiers of shore property lying North and West of said property may at all times have free access to as well as through the same.

IN WITNESS WHEREOF, the said Commissioners appointed under said supplemental act have respectively set their hands and seals and these presents have been signed by the Honorable Robert S. Green, our Governor, and attested by the

Information.

Honorable John P. Stockton, our Attorney General, and the great seal of the State has been affixed as by the provisions of said supplemental act is required.

DONE and dated at Trenton, this Twelfth day of July in the year of our Lord one thousand eight hundred and eighty-nine.

BENNINGTON F. RANDOLPH,
(Seal.)

MILES ROSS
(Seal.)

RICHARD B. READING,
(Seal.)

(State Seal)

RICHARD N. HERRING,
(Seal.)

ROBERT S. GREEN,
Governor.

Attest:

JOHN P. STOCKTON.

Witness:

R. C. BACOT.

IT being certified to me by the Comptroller of the State that the Lehigh Valley Railroad Company has this day paid into the Treasury of the State the sums of three hundred and fifty-seven thousand, one hundred and forty-two dollars and forty-eight thousand dollars referred to, I have executed this grant this twentieth day of December, eighteen hundred and eighty-nine.

ROBERT S. GREEN,
Governor.

Attest:

JOHN P. STOCKTON,
Attorney General.

Information.

NEW JERSEY
Hudson County. } ss.:

BE IT REMEMBERED, that on this twelfth day of July, A. D. eighteen hundred and eighty-nine, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Bennington F. Randolph, Miles Ross, Richard B. Reading and Richard N. Herring, Commissioners, who, I am satisfied are Riparian Commissioners, under the laws of New Jersey, in the foregoing deed of conveyance named, and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same in the name and in behalf and as and for the voluntary act and deed of the State of New Jersey, for the uses and purposes therein expressed.

JAMES B. VREDENBURGH,
M. C. of N. J.

NEW JERSEY
Hudson County. } ss.:

BE IT REMEMBERED, that on this twelfth day of July, A. D., eighteen hundred and eighty-nine, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Robert C. Bacot, who, being duly sworn, on his oath deposeth and saith that he saw the within named Bennington F. Randolph, Miles Ross, Richard B. Reading and Richard N. Herring Commissioners sign their names respectively to the within instrument; that he knows them to be Riparian Commissioners under the Laws of the State of New Jersey, and that the several Commissioners did severally acknowledge that they signed the foregoing instrument for and on behalf of the State of New Jersey as their act and deed for the uses and purposes

therein expressed, he, this deponent subscribing his name thereto at the same time as an attesting witness.

JAMES B. VREDENBURGH,
M. C. of N. J.

Rec'd in the office and Recr'd Dec. 9, 1890, at 2 P. M.

No. 5323.

That said paper writing purporting to be a grant was delivered to the Lehigh Valley Railroad Company; that the consideration therein mentioned, namely, forty-eight thousand dollars was paid by the Lehigh Valley Railroad Company to the Treasurer of the State of New Jersey, and the said paper writing purporting to be a grant was thereupon recorded in the Register's office of the County of Hudson in this State.

11. And your informant shows that said recitals in said paper writing purporting to be a grant are in many essentials in fact untrue, and in particular it is not true that the Riparian Commissioners established any exterior bulkhead and pier lines in front of or across the lands described in said paper writing, and it is not true that any exterior bulkhead or pier line was adopted and declared to be fixed under the act of March thirty-first, eighteen hundred and sixty-nine referred to. And it is not true that the lands mentioned in said paper writing purporting to be a grant, front and adjoin lands owned by the Morris Canal and Banking Company and its grantee or assign, the Lehigh Valley Railroad Company. It is true, however, that said lands adjoin lands occupied by the Morris Canal and Banking Company under its charter, the reversion of which said lands is in the State of New Jersey.

It is not true that the lands purporting to be

conveyed by said paper writing were ever granted to the Morris Canal and Banking Company by the State of New Jersey, but it is true that they were leased to the Morris Canal and Banking Company and for canal purposes, the fee to these lands remaining in the State of New Jersey and the possession thereof reverting to the State of New Jersey, as has been hereinabove set out.

It is not true that the Morris Canal and Banking Company leased to the Lehigh Valley Railroad Company the said lands in perpetuity; said lease, with respect to the lands in question, conveyed to the Lehigh Valley Railroad Company the right to use said lands for a term of years only and until the reversion of said lands to the State of New Jersey as provided for in the act of March fourteenth, eighteen hundred and sixty-seven; and it is not true that the Lehigh Valley Railroad Company ever became the assignee of the Morris Canal and Banking Company so as to become entitled to a grant in fee of said lands; and it is not true that it was entitled to a paper capable of being acknowledged and recorded and granting title to said lands.

And this informant charges and insists that it was unknown to the officers who executed said deed on behalf of the State of New Jersey at the time said deed was executed that the said Morris Canal and Banking Company had not leased to the said Lehigh Valley Railroad Company the said lands in perpetuity and that the only right in said lands conveyed to the said Lehigh Valley Railroad Company by said lease of 1871 made to it by the Morris Canal and Banking Company, was the right to use said lands for a term of years only and until the reversion of said lands to the State of New Jersey, as provided for in the Act of March 14, 1867; and that it was unknown to said

officers that the Lehigh Valley Railroad Company never become the assignee of the Morris Canal and Banking Company so as to become entitled to a grant in fee of said lands, and that the said Lehigh Valley Railroad Company was not entitled to a paper capable of being acknowledged and recorded and granting title to said lands.

And this informant further charges and insists that the allegations contained in said deed, whereby it was stated that the said Morris Canal and Banking Company had leased said lands in perpetuity to the Lehigh Valley Railroad Company and that said Lehigh Valley Railroad Company was the assignee of the said Morris Canal and Banking Company and as such, entitled to a grant in fee of said lands and to a paper capable of being acknowledged and recorded and granting title to said lands, and the other recitals in said deed hereinabove alleged to be false were false and in law fraudulent and deceived the said officers who executed said deed and induced them to execute the said paper writing claimed to be a grant hereinabove set forth; and that the said officers of the State would not have executed said paper writing claimed to be a grant had they been informed as to the true facts and had they not been misled by such recitals.

12. And this informant further shows that said paper writing purporting to be a grant and to be made by virtue of the Act of the Legislature passed March thirty-first, eighteen hundred and sixty-nine, was not effective in law to vest any right or title to the lands in question in the Lehigh Valley Railroad Company.

First, because the paper writing in question was made under the supposed authority of an Act entitled "A supplement to an Act entitled 'An Act to ascertain the rights of the State and of the

riparian owners in lands lying under the waters of the Bay of New York and elsewhere in this State,' approved April 11, 1864," which supplement was approved March 31, 1869.

That under said title no valid Act could be passed authorizing the conveyance of the lands in question or authorizing the conveyance of the reversionary right of the State of New Jersey in said lands, or authorizing the execution of the paper writing, purporting to be a grant, above set out by the Riparian Commissioners.

And because the Act of the Legislature of March 31st, 1869, above set out, is unconstitutional and void, being in violation of Article 4, Section 7, Paragraph 4, of the Constitution of the State of New Jersey.

Second, because the Lehigh Valley Railroad Company was not authorized by law and was not competent to receive or take the paper writing in question, purporting to be a grant, or any right, title or interest in said land.

That the Lehigh Valley Railroad Company is a foreign corporation, incorporated under the laws of the State of Pennsylvania, and under the laws of said State and under its charter was not authorized to accept such grant, and if it had been so authorized by the laws of the State of Pennsylvania it was not so authorized under any law of the State of New Jersey.

That the only laws of the State of Pennsylvania authorizing the said Lehigh Valley Railroad Company to lease railroads or canals operated by another company are the "Laws of Pennsylvania of 1870, page 31," and the "Laws of Pennsylvania, 1871, page 248," which acts are respectively in words following:

Information.

ACT OF 1870.

"An Act to authorize railroad companies to lease or become lessees, and to make contracts with other railroad companies, corporations and parties."

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in general assembly met and it is hereby enacted by the authority of the same,

That it shall and may be lawful for any railroad company or companies, created by or existing under the laws of this commonwealth, from time to time to lease or become the lessees, by assignment or otherwise, of any railroad or railroads, or enter into any other contract with any other railroad company or companies, individuals or corporations, on such terms and conditions as may be agreed upon, whether the road or roads embraced in such lease, assignment or contract may be within the limits of this State, or created by or existing under the laws of any other state or states, and any railroad company or companies of this commonwealth may agree to guarantee in whole or in part, the payments and covenants of any such lease, assigned lease or contract, PROVIDED HOWEVER, that such road or roads so embraced in any such lease, assignment, contract or guarantee, shall be connected either directly or by means of intervening line, with the railroad or railroads of said company or companies of this commonwealth so entering into such lease, assignment, contract or guarantee, and thus forming a continuous route or routes for the transportation of persons and property, PROVIDED FURTHER, that the provisions of this Act shall in no wise or by no construction whatever apply to the Pittsburg and Connellsville Railroad Company.

Approved February seventeenth, A. D. one thousand eight hundred and seventy.

Information.

ACT OF 1871.

"An Act relating to leases and contracts for the use of canals or other navigation works by railroad companies."

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same,

That the authority conferred upon Railroad Companies by the Act approved the seventeenth day of February, Anno Domini, one thousand eight hundred and seventy, entitled "An Act to authorize railroad companies to lease or become lessees, and to make contracts with other railroad companies, corporations and parties, shall extend to and embrace leases, assignments of lease, or other contracts relating to canal and other navigation works, situated either in this or any other State, PROVIDED, that neither the provisions of the said Act approved the seventeenth day of February, one thousand eight hundred and seventy, nor of this Act shall authorize the leasing or merging of, or entering into contracts with the Susquehanna Canal Company, or the purchase in whole or in part, of the said canal, its capital stock, loans or securities, by any railroad company.

Approved the third day of May, Anno Domini, one thousand eight hundred and seventy-one.

That by neither of said Acts was the said Lehigh Valley Railroad Company authorized to receive said purported grant of a fee in said premises.

And because if the said Act of March 31, 1869, had been constitutional and if the Lehigh Valley Railroad Company had been competent to receive such a grant or conveyance by virtue of such Act it was otherwise incompetent to receive such

grant for such lands, because it was not a grantee or licensee within the meaning of the said Act, and was not a representative of any grantee or licensee and because the fee of said lands remained in the State of New Jersey, the State of New Jersey having the reversionary interest in said lands and the right to immediate possession thereof upon the expiration of the charter right of the Morris Canal and Banking Company to operate said canal and to use said lands mentioned in said supposed grant at the time fixed and determined by the said charter of the Morris Canal and Banking Company.

And because the consideration named in said purported grant, namely, "the sum of forty-eight thousand dollars, being fifty dollars for each lineal foot, to wit, nine hundred and sixty feet measuring on the bulkhead line in front of the land included in this conveyance," was not in conformity with the requirements of said Act of March 31st, 1869 but was a sum arbitrarily determined, inasmuch as there was not at that time, nor has there been at any subsequent time, established a bulkhead line or line of solid filling in front of or across said lands whereby the consideration to be paid in accordance with the provisions of said Act could be determined.

And because the said Lehigh Valley Railroad Company could not, nor could any other person or corporation obtain any right, title or interest in or to said lands under and by virtue of the Act of March 31st, 1869, above referred to, or by virtue of any other Act of the Legislature of this State; and because the provisions of the said Act of March 31st, 1869, did not vest in the Riparian Commissioners any authority whatever to make the supposed grant of said lands.

And because the said Act of March 31st, 1869,

applied only to lands under water within the bulkhead lines, established by the Riparian Commissioners, and the Riparian Commissioners had not at that time, nor had they power at any time, nor did they at any time establish bulkhead lines or lines of solid filling in front of or across said lands.

That the land in question was a basin and under the policy of the State as established by its Legislature, it could not be filled in, and under the Act of March 31st, 1869, in question, the Riparian Commissioners could make no deed which did not vest in the grantee the right to exclude to the exterior bulkhead line the tide waters by filling in or otherwise improving the same and to appropriate the land to exclusive private uses.

And because the lands in question were granted to the Morris Canal and Banking Company under the Act of March 14th, 1867, under the express trust and dedication that they should be used for canal purposes and for purposes of commerce and in connection with the said canal, and that said basin used for such purposes should forever be open for navigation to all persons who might desire to use the same; and the said lands were granted to the Morris Canal and Banking Company "on condition that for the purpose of preserving the water basin to the west of the present westerly bulkhead line on said premises, and of leaving open on the premises granted a public navigation for all vessels to and from the Hudson River and all parts of the waters west of the said westerly bulkhead, and by the express terms of said Act the said company was required forever to keep open gaps in the easterly and westerly bulkheads, each of one hundred and fifty feet in width, and like gaps of like width in any structure to be erected upon said premises, so that the public

might with all vessels freely navigate to and from the channel of the Hudson River and all places east and west of the said westerly bulkheads without the payment of toll for charges."

And it was further expressly provided that said opening should be kept in such condition that the owners and occupants of shore property lying north and west of the above described property might at all times have free access to as well as through the same.

And because the lands in question were not riparian lands but were lands under water in the Hudson River, not connected with or adjacent to any lands in the State of New Jersey, and were not lands which could legally be granted to any person or corporation by the Riparian Commissioners under any valid Act of the Legislature.

And because in the year 1872 and before the pretended grant to the Lehigh Valley Railroad Company of the lands in question, the Riparian Commissioners created and established a basin lying to the west of the lands hereinbefore described, which said basin is known as the "Tide Water Basin," in which said basin the public has rights and which connects with the said basin granted to the Morris Canal and Banking Company by the Act of March 14th, 1867; and did further grant rights upon and in connection with the said "Tide Water Basin" which forever prevented the Riparian Commissioners of the State of New Jersey from granting to any person or corporation the right to fill in to any bulkhead line then established along the Hudson River, the lands under water described in said Act of March fourteenth, eighteen hundred and sixty-seven.

13. And this informant further shows that on or about the twenty-fifth day of June, eighteen hundred and ninety, the said Lehigh Valley Rail-

road Company, a corporation of the State of Pennsylvania, granted and conveyed to the Jersey City Terminal Company, a corporation organized under the laws of the State of New Jersey, all its right, title and interest in the lands in question which it, the said Lehigh Valley Railroad Company, derived from the grant made by the Riparian Commissioners of the State of New Jersey to it, dated July twelfth, eighteen hundred and eighty-nine, which said grant is hereinabove, in paragraph ten of this information, set out.

And this informant shows that in said grant or conveyance made by the said Lehigh Valley Railroad Company to the Jersey City Terminal Railway Company, special reference is made to the Act of the Legislature of this State, approved March fourteenth, eighteen hundred and sixty-seven, hereinbefore set out, and that said grant or conveyance was made subject to the provisions contained in said Act.

That said conveyance, dated the twenty-fifth day of June, eighteen hundred and ninety, executed and proved, was recorded in the Office of the Register of Deeds and Mortgages for Hudson County, in this State, on the ninth day of December, eighteen hundred and ninety, in Book 520 of Deeds for said County, on pages 64 &c., to which said deed and to the record thereof this informant prays leave to refer for greater certainty.

And this informant shows that on or about the twenty-sixth day of June, eighteen hundred and ninety, the said Morris Canal and Banking Company, and the said Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, did grant and convey to the Jersey City Terminal Railway Company all the right, title and interest of the Morris Canal and Banking Company and of the Lehigh Valley Railroad Company, a corpora-

tion of the State of Pennsylvania, in said lands received or held under or by virtue of the Legislative grant of the State of New Jersey to the Morris Canal and Banking Company, under the Act of March fourteenth, eighteen hundred and sixty-seven, above set out, and under or by virtue of the lease made by the Morris Canal and Banking Company to the said Lehigh Valley Railroad Company, dated May fourth, eighteen hundred and seventy-one, above set out.

That said conveyance executed and proved was recorded in the Register's office of Hudson County, on the ninth day of December, eighteen hundred and ninety, in Book 520 of Deeds for said County, on pages 67 &c., to which deed and the record thereof this informant prays leave to refer for greater certainty.

And your informant further shows that the said Jersey City Terminal Railway Company did, on the twenty-eighth day of August, eighteen hundred and ninety-one, file in the office of the Secretary of State of the State of New Jersey, a certificate of merger wherein and whereby the said Jersey City Terminal Railway Company was merged into the Lehigh Valley Terminal Railway Company, a corporation of the State of New Jersey, and all its property rights and franchises became vested thereby in the said Lehigh Valley Terminal Railway Company, to which certificate and the record thereof this informant prays leave to refer for greater certainty.

That the said Lehigh Valley Terminal Railway Company did, on the twenty-ninth day of July, nineteen hundred and three, file in the office of the Secretary of State of this State, a certificate of merger, wherein and whereby the said Lehigh Valley Terminal Railway Company was merged into the Lehigh Valley Railroad Company of New

Jersey and all its property, rights and franchises became vested thereby in the said Lehigh Valley Railroad Company of New Jersey, to which certificate of merger and the record thereof this informant prays leave to refer for greater certainty.

And your informant shows that the said Lehigh Valley Railroad Company of New Jersey claims and insists that by virtue of the aforesaid grants and conveyance and certificates of merger, there was vested in it title in fee to the lands in question particularly described in the grant of the Riparian Commissioners of this State to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, which said grant is in full set out in paragraph ten of this information.

But this informant shows and insists that the said conveyance and certificates of merger were ineffective for such purpose and that the Lehigh Valley Railroad Company, of New Jersey has not thereby become the owner of the fee in said lands, and in particular has not become the owner of the reversionary rights of the State of New Jersey in said lands, and that the State of New Jersey is still the owner of said reversionary rights and is the owner of all the rights reserved to it in the Act of the Legislature of this State entitled "A further supplement to an Act entitled 'An act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers,' " passed December 31, 1824, which supplement was approved March fourteenth, eighteen hundred and sixty-seven.

And this informant further shows that the said Lehigh Valley Terminal Railway Company did, on or about the first day of October, eighteen hundred and ninety-one, execute and deliver to the Central Trust Company of New York a certain indenture of mortgage or deed of trust, by which it

purported to grant and convey to the Central Trust Company of New York the premises in question, hereinbefore in this information particularly described and known as the "Basin of 1867," to secure the payment of the sum of ten millions of dollars ($10,000,000) with interest thereon at the rate of five per cent. per annum. That said deed of trust or mortgage executed and proved was on the twenty-eighth day of October, eighteen hundred and ninety-one, recorded in the office of the Register of Deeds and Mortgages for Hudson County, in Book 270, of Mortgages for said County, on pages 160 &c., to which said mortgage and the record thereof this informant begs leave to refer for greater certainty.

And this informant further shows that by virtue of said deed of trust or mortgage so recorded, the Central Trust Company of New York claims to have a lien upon or some interest in said lands and in or upon the reversionary interest of the State of New Jersey in said lands.

And this informant shows and insists that although by the said mortgage the said Lehigh Valley Terminal Railway Company did purport to grant to the Central Trust Company of New York among other things, the said lands and premises, to secure the payment of the said sum of ten millions of dollars ($10,000,000), together with interest thereon, yet the said deed of trust or mortgage was ineffectual to convey to the said Central Trust Company of New York any interest in the reversionary right of the State of New Jersey in said lands and premises or to create by way of mortgage or otherwise any lien thereon.

14. And this informant further shows that the said paper writing purporting to be a grant in fee of said premises by the Riparian Commissioners of the State of New Jersey to the Lehigh Valley

Railroad Company, a corporation of the State of Pennsylvania, and the conveyance made by the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania to the Jersey City Terminal Railway Company, and the said conveyance by the said Morris Canal and Banking Company and the said Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania to the said Jersey City Terminal Railway Company, and the said two certificates of merger filed in the office of the Secretary of State of this State on the twenty-eighth day of August, eighteen hundred and ninety-one, and on the twenty-ninth day of July, nineteen hundred and three, respectively, and the said deed of trust or mortgage made by the Lehigh Valley Terminal Railway Company of New Jersey to the Central Trust Company of New York, so far as they purport to grant, convey or mortgage the reversionary interest of the State of New Jersey in the premises in question, known as the "Basin of 1867," are without validity or effect as against the State of New Jersey and are clouds upon the title of the State of New Jersey to its reversionary interest in the said premises and prevent the State of New Jersey from disposing of a valuable interest in said premises.

15. And this informant further shows that the paper writing or grant set out in paragraph ten of this information made by the Riparian Commissioners of this State to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, dated July twelfth, eighteen hundred and eighty-nine, is in form a grant or conveyance in fee of riparian lands or lands under water, or both, and that prior to the grant or conveyance made by the Morris Canal and Banking Company and the Lehigh Valley Railroad Com-

pany, a corporation of the State of Pennsylvania, to the said Jersey City Terminal Railway Company, dated the twenty-sixth day of June, eighteen hundred and ninety, the said Lehigh Valley Railroad Company was in possession of said lands under the lease made by the Morris Canal and Banking Company to the said Lehigh Valley Railroad Company, dated May fifth, eighteen hundred and seventy-one, hereinabove set out. That by said grant of June twenty-sixth, eighteen hundred and ninety, the said Lehigh Valley Railroad Company and the soid Morris Canal and Banking Company did grant to the said Jersey City Terminal Railway Company all the right, title and interest of the said Morris Canal and Banking Company and the said Lehigh Valley Railroad Company in said lands under the Legislative grant of March fourteenth, eighteen hundred and sixty-seven, and under the lease of May fourth, eighteen hundred and seventy-one, above set out. And that subsequent to the said grant of June twenty-sixth, eighteen hundred and ninety, the said Jersey City Terminal Railway Company and its successors, the Lehigh Valley Terminal Railway Company and the Lehigh Valley Railroad Company of New Jersey, have held, and the Lehigh Valley Railroad Company of New Jersey now holds, said premises known as the "Basin of 1867," under the provisions of the Legislative grant of March fourteenth, eighteen hundred and sixty-seven, and under the provisions of said lease of May fourth, eighteen hundred and seventy-one.

And this informant shows that the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, owns and controls the Lehigh Valley Railroad Company of New Jersey, through the ownership of all, or a majority of and a controlling interest in the capital stock of the said

last mentioned company; and that the said Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, claims that under the said grant or conveyance, dated the twelfth day of July, eighteen hundred and eighty-nine made by the Riparian Commissioners of the State of New Jersey, to it as above set out; it became the owner in fee of said lands, and that by its grant to the Jersey City Terminal Railway Company, made on the twenty-fifth day of June, eighteen hundred and ninety, title in fee to said lands passed to the Jersey City Terminal Railway Company and that by the mergers hereinbefore set out, title in fee passed to and vested in the Lehigh Valley Railroad Company of New Jersey; and that the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, through its ownership of a controlling interest in the capital stock of the Lehigh Valley Railroad Company of New Jersey, and by virtue of the grant of the Riparian Commissioners of the State of New Jersey to it, and by virtue of its grant to the Jersey City Terminal Railway Company, has rights or interests in said lands which entitles it to be made a party to this information and to be heard in this litigation.

And this informant shows that the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, now claims rights or interests in said lands by virtue of the grants, conveyances and mergers hereinbefore set out.

16. And your informant further shows that the term created by the said lease of the Morris Canal and Banking Company to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, dated the fourth day of May, eighteen hundred and seventy-one, has not yet expired and that the estate for years therein and thereby

created, has not terminated and that the said term is now vested in the Lehigh Valley Railroad Company of New Jersey and that the State of New Jersey denies the validity of the grant or conveyance purporting to be in fee made by the Riparian Commissioners of this State to the said Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, dated July twelfth, eighteen hundred and eighty-nine and desires to contest the said grant or conveyance. That the land so granted or conveyed to the Lehigh Valley Railroad Company and the grant or conveyance of which in fee the State of New Jersey desires to contest, are hereinbefore particularly described and are described with reasonable certainty in the said paper writing and pretended grant hereinbefore in paragraph ten set out in full.

That the State of New Jersey denies that the fee in said lands passed by said grant or conveyance to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, or passed to its grantee, the Jersey City Terminal Railway Company or to its successors the Lehigh Valley Terminal Railway Company and the Lehigh Valley Railroad Company of New Jersey.

And this informant shows that the Lehigh Valley Railroad Company of New Jersey now claims under said grant or conveyance to own the fee in said lands under said grant or conveyance dated July Twelfth, eighteen hundred and eighty-nine, and the conveyances and certificates of merger hereinbefore set out, and that the Central Trust Company of New York claims interest in the fee of said lands by virtue of its deed of trust or mortgage hereinabove set out.

17. And this informant further shows that the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, as lessee of the Mor-

ris Canal and Banking Company, was in lawful possession of the lands in question under the aforesaid lease dated May fourth, eighteen hundred and seventy-one, held to be valid by the decision of the Court of Errors and Appeals of this State, reported in 9th Vroom, page 505; and the said Lehigh Valley Railroad Company of New Jersey is now in lawful possession of said lands as successor in title under said lease and by virtue of deeds or conveyances and the certificates of merger hereinbefore recited.

And this informant further shows that the said Lehigh Valley Railroad Company of New Jersey, so being in possession of said lands under the provisions of the said lease of May fourth, eighteen hundred and seventy-one, an action of ejectment at the suit of this State will not lie against it or against any other corporation holding the said lands by virtue of said lease and that there is no other legal remedy by which the question herein involved can be determined and that this court is the only court in which the questions raised by this informant are cognizable and can be legally determined; that this Honorable Court has full and complete jurisdiction to pass upon the rights of the Lehigh Valley Railroad Company of New Jersey, of the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, of the Central Trust Company of New York, and of any other corporation or person claiming rights in said premises independent of the Act of the Legislature of New Jersey entitled "An Act to compel the determination of titles to riparian lands or lands under water in which the State claims an estate in remainder or reversion and to quiet title to the same." Approved April 12th, 1907.

And further, that under said Act the Court of

Chancery has full power and authority and it is its duty to entertain and determine such questions.

And this informant, the Attorney General of the State of New Jersey, shows that it is not his duty and that he is not authorized or empowered on behalf of the State of New Jersey to make or offer to make any tender or payment into court on or before the filing of this information; that it is not practicable or possible to determine until the decree of this Honorable Court the equitable terms upon which said grant or conveyance purporting to be a grant or conveyance in fee shall be set aside and declared void and of no effect, and that if any sum of money were tendered or paid into court or any terms were stated by your informant on behalf of the State of New Jersey with which the State was willing to comply, such tender or offer and such terms so stated would be futile and this information would be ineffective and fail of its purpose in case the tender made and the terms offered were not the terms which this court should determine and decree to be equitable terms upon which the said grant or conveyance purporting to be a grant and conveyance in fee should be set aside.

And this informant charges and insists that the said grant of July twelfth, eighteen hundred and eighty-nine by the Riparian Commissioners of the State of New Jersey to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, and the said grant of June twenty-fifth, eighteen hundred and ninety by the Lehigh Valley Railroad Company to the Jersey City Terminal Railway Company, and the said grant of June twenty-sixth, eighteen hundred and ninety, by the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, a corpora-

tion of the State of New Jersey, to the Jersey City Terminal Railway Company, and the said certificates of merger of August twenty-eighth, eighteen hundred and ninety-one, and of July twenty-ninth, nineteen hundred and three, and the said deed of trust or mortgage by the Lehigh Valley Railway Terminal Company to the Central Trust Company of New York, so far as they or any of them purport to pass title to or mortgage the fee in said premises hereinabove described and known as the "Basin of 1867," are void and of no effect, and are merely clouds upon the title of the lands under water included in the said grant of July twelfth, eighteen hundred and eighty-nine, and that the same should be so declared by this court and said clouds removed from said land and the title thereto by the decree of this court.

Wherefore this informant prays on behalf of the State of New Jersey:

1. That the Lehigh Valley Railroad Company of New Jersey, the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania and the Central Trust Company of New York, may without oath, (an answer or answers under oath being hereby waived), answer this information fully and particularly, and that the said Lehigh Valley Railroad Company of New Jersey, The Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania and the Central Trust Company of New York, may in manner aforesaid set forth and specify the title claimed and encumbrance of them the said Lehigh Valley Railroad Company of New Jersey, the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania and the Central Trust Company of New York, upon the said premises, and how and by what instruments or authority the same is derived.

2. That the rights of the parties to the said suit under the said conveyance in fee may be fixed and settled by the decree of this court, so that the State of New Jersey by the said decree, may and shall take, have and hold the estate purported to be granted to the Lehigh Valley Railroad Company, a corporation of Pennsylvania, in and by said conveyance in fee, dated July twelfth, eighteen hundred and eighty-nine, free and clear of any cloud or uncertainty cast upon the title of the State upon such equitable terms as this court shall establish by its said decree.

3. That this informant may have his costs in this suit awarded, and that he may have such other relief as the nature of the case demands and as shall be agreeable to equity.

May it please your Honor to grant unto this informant the State's writ of subpoena to be directed to The Lehigh Valley Railroad Company of New Jersey and to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania and the Central Trust Company of New York, commanding them and each of them to appear in court to answer the premises and abide by such decree as shall be made against them or either of them.

ROBERT H. MCCARTER,
Attorney General of New Jersey.

B. VAN SYCKEL,
CHANDLER W. RIKER,
Of Counsel with Informant.

A true copy.

VIVIAN M. LEWIS,
Clerk.

Answer of Lehigh Valley Railroad Company of New Jersey and Lehigh Valley Railroad Company.

(Filed February 13, 1908, as in time by consent.)

In Chancery of New Jersey.

Between

ROBERT H. MCCARTER, Attorney General of New Jersey,

Informant,

and

LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, LEHIGH VALLEY RAILROAD COMPANY, and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

On Information.

ANSWER OF LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY AND LEHIGH VALLEY RAILROAD COMPANY, DEFENDANTS, TO THE INFORMATION OF ROBERT H. MCCARTER, ATTORNEY GENERAL OF NEW JERSEY.

These defendants, answering, say:

1. They ADMIT that by an Act of the Legislature of New Jersey, passed on the 31st day of December, 1824, as recited in the information certain persons therein named, with their successors and assigns, were created a body corporate by the name of Morris Canal and Banking Company, for the purposes among others stated in the information; they also admit that the rights and privileges granted by said act were subject to certain restrictions and limitations therein contained, and

they pray a reference to said act for a full and correct ascertainment of the true meaning and effect thereof.

2. These defendants ADMIT that by an Act of the Legislature of New Jersey passed on the 26th day of January, 1828, authority was given to continue the Morris Canal to the waters of the Hudson River, at or near Jersey City, and that the terms of the grant of power so to do are stated in the second paragraph of the information with substantial accuracy. They say, however, that said terms are not annexed to the grant as conditions, and they refer to said act for a correct ascertainment of its provisions.

3. These defendants ADMIT that during the years 1827 to 1831, inclusive, the said canal was construced by said company and put into operation from the Delaware River, near Easton, to the Passaic River at Newark, and that in the year 1836 it was continued to the Hudson River at Jersey City and thence put into operation.

4. These defendants ADMIT the passage in the year 1867 of the further supplement to the charter of said Canal and Banking Company, mentioned in the 4th paragraph of said information, whereby lands commonly known as the Basin of 1867 were granted to the Canal Company, the terms of said supplement being substantially as set forth in the 4th paragraph of the information. For greater certainty, however, these defendants beg leave to refer to said supplement.

5. These defendants ADMIT that by a further supplement to said charter, approved March 14th, 1871, authority was given to the Morris Canal and Banking Company to lease the canal of said company, or any part thereof, with all or any of its boats, property, works, appurtenances, and franchises, to any person or persons, or corpora-

tion, either in perpetuity, or for such shorter time, and upon such rents and agreements, and as might be agreed upon between the contracting parties; but, these defendants pray leave to refer to the said supplement itself for accuracy and completeness, the same not being either fully or accurately set forth in said information.

6. These defendants ADMIT that pursuant to the authority contained in the last mentioned act, the Morris Canal and Banking Company executed to the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, a certain indenture of lease, dated the 4th day of May, Anno Domini 1871, as mentioned in the Sixth paragraph of said information; but, these defendants say that the terms of said lease are not fully or accurately set forth in said paragraph, and they beg leave to refer to the original lease now in the possesson of this defendant, Lehigh Valley Railroad Company, for certainty and accuracy.

As to the allegation that the said lease provided for transfer to the Railroad Company of the movable property of every kind and description to which the Canal Company was entitled, these defendants say that the provisions of the lease in that regard are in the following words, to wit:

> "This indenture, made this Fourth day of May, Anno Domini, eighteen hundred and seventy-one, by and between the Morris Canal and Banking Company, a corporation created by, and existing under, the laws of the State of New Jersey, of the first part, and the Lehigh Valley Railroad Company, a corporation created by, and existing under, the laws of the State of Pennsylvania, of the second part,
>
> "Witnesseth: That for and in consideration of the covenants and agreements hereinafter contained, by the party of the second part to

be kept and performed, and of the sum of One dollar in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, (1), the party of the first part doth hereby let and demise unto the party of the second part, its successors and assigns, the entire canal and navigation works of the party of the first part, as the same are now located and constructed, from the river Delaware, at Phillipsburg, in the County of Warren, in the State of New Jersey, to the River Hudson, at Jersey City, in the County of Hudson, in the same State, or as the same may hereafter be constructed, in pursuance of any and every lawful authority now existing, or which may hereafter exist, with all the branches and extensions thereof, made and to be made; also all the land and water-rights, privileges and easements, dams, basins, pools, reservoirs, feeders, locks, gates, machinery, fixtures, railroads, tracks, wharves, docks, piers, landings, water-rents, ground-rents, lands, tenements and hereditaments, with the appurtenances, reversions, remainders, rents, issues and profits thereof, now belonging, or in anywise appertaining, to the party of the first part, or which, for any purpose incident to, or connected with, the business which the party of the second part, its successors or assigns, may, as lessee of the party of the first part, lawfully carry on, may hereafter be acquired by the party of the first part; and, also, all the corporate franchises, rights and privileges, other than that of being a corporation, now held, or hereafter to be acquired, of the party of the first part: To have and to hold the premises thus leased and demised as aforesaid, or intended so to be, unto the party of the second part, its successors and assigns, perpetually hereafter. And (2) the party of the first part doth hereby grant, bargain and sell, assign, transfer and set over, unto the party of the second part, all cars, trucks, boats, tugs, scows, dredging-machines, tools, imple-

10 20 30 40

ments, apparatus, furniture mules, horses, cattle, harness, supplies, stores and movable property of every kind and description; and also all the right, title, interest, claim, property and demand whatsoever of the party of the first part in and to all leases, bills of sale, or contracts relating to boats or vessels heretofore leased, hired or sold by it; all bonds, stocks, claims, demands, beneficial interests in contracts, choses-in-action, maps, plans, surveys and generally, all personal property whatever, of every kind and description, whether hereinbefore specially referred to or not, to which the party of the first part is now, in any manner or way, entitled, excepting only the furniture of the principal office of the party of the first part at Jersey City, its corporate seal, and its business books, papers and records: To have and to hold the same unto the said party of the second part, its successors and assigns, to and for its and their only proper use and behoof forever."

These defendants ADMIT that the lease further provided for the payment by the Lehigh Valley Railroad Company of certain debts of the Canal Company, set forth in a schedule thereto annexed; and also, for the payment by the said Railroad Company of all taxes, charges and assessments, but, they beg to refer to the terms of the lease for certainty.

They ADMIT that in the year 1871 Lehigh Valley Railroad Company took possession of the canal property and also the basin of 1867, and still retains possession of the Canal; and they say that the basin of 1867 afterwards became vested in this defendant Lehigh Valley Railroad Company of New Jersey as hereinafter set forth.

They DENY that said lease will expire, by virtue of the act creating the Morris Canal and Banking Company, upon the 31st day of December, 1924, at the option of the State of New Jersey, upon the

latter paying to the Morris Canal and Banking Company the fair value of its property at that time, or, that in default of the State then exercising said option, said lease will expire in the year 1974, and they further DENY that said property will become the sole property of the State of New Jersey, in the year 1974.

They ADMIT that the said lease from the Morris Canal and Banking Company to the Lehigh Valley Railroad Company was held, by the Court of Errors and Appeals of this State, to be a valid agreement between the parties thereto, and that the Lehigh Valley Railroad Company was capable, under its charter and under the laws of New Jersey, of receiving said lease from the Canal Company.

7. These defendants ADMIT the passage, on April 11th, 1864, of the act entitled: "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," but, as to the contents of said Act, they beg leave to refer to the Act itself for certainty.

They ADMIT that a Board of Commissioners was appointed, as in said act provided, and that said Commissioners entered upon their duties and reported to the Legislature on or about February 1st, 1865, as required by the said act; but, as to the contents of their report, these defendants beg leave to refer to the same, and to the maps accompanying the same, for certainty.

These defendants ADMIT the passage of the supplement to the said Riparian Act, approved March 31st, 1869, and ADMIT that it contained an enactment respecting bulkhead lines, but they say that the said enactment is not correctly set forth in the information, but that the same as contained in the Laws of 1869, p. 1017, §1, is in the following words:

"1. That the bulkhead line or lines of solid filling, and the pier lines in the tide-waters of the Hudson River, New York Bay, and Kill von Kull, lying between Enyard's dock, on the Kill von Kull and the New York State line, so far as they have been recommended and reported to the Legislature by the commissioners appointed under the original act of which this is a supplement by report bearing date February rst eighteen hundred and sixty-five are hereby adopted and declared to be fixed and established, as the exterior bulkhead and pier lines between the points above named, as such exterior bulkhead and pier lines, so fixed, established, and adopted, are shown upon the manuscript maps, accompanying said report, and filed in the office of the Secretary of State, except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company, by act approved March fourteenth, eighteen hundred and sixty-seven."

And these defendants say that while the said supplement of March 31st, 1869, to said Riparian Act contained further provisions of the general character mentioned in paragraph 7 of the information, they are not therein accurately set forth or pleaded accurately with respect to their legal effect, and these defendants beg leave to refer to the original act, and, particularly, to the second, third and fourth sections thereof, for certainty and accuracy.

And these defendants ADMIT that the Commissioners appointed under said act, or any two of them, with the Governor and the Attorney General for the time being, to be shown by the Governor signing the grant and the Attorney General attesting it, should and might execute, acknowledge and deliver, in the name of and in behalf of the State, a lease in perpetuity to such grantee or li-

censee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors or assigns of such corporation, upon his or their securing to be paid to the State an annual rental of three dollars for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee, or to the successors or assigns of such corpration, IN FEE, upon his or their paying to the State fifty dollars for each and every lineal foot measuring on the bulkhead line in front of the land included in said conveyance. And that it was by the said act expressly provided, that such conveyance or lease should not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his or their heirs and assigns, to exclude to the exterior bulkhead line the tide water, by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses.

8. These defendants ADMIT that the Morris Canal and Banking Company did, within ninety days after the passage of the said act of Mch. 14th, 1867, execute and deliver to the Governor of New Jersey, its promise and undertaking, under seal, unconditionally to pay into the Treasury of the State the yearly sum of $25,000 per year, on or before the first Tuesday of January in each year, and they beg leave to refer to the original undertaking for certainty.

And these defendants ADMIT that the Morris Canal and Banking Company (and Lehigh Valley Railroad Company its lessee after the date of the lease) did, in accordance with the provisions of said undertaking, pay to the Treasurer of the State, $25,000.00 per year until July 12th, 1889, and that the Lehigh Valley Railroad Company

paid to the Treasurer of the State of New Jersey $357,142.00, in discharge of the obligation and in accordance with the provisions of the said act of March 14th, 1867, which provided for the payment of that capital sum, such payment being made on the twentieth day of December, 1889.

9. These defendants ADMIT that prior to July 12th, 1889, this defendant, Lehigh Valley Railroad Company, produced before the Riparian Commissioners a duly certified copy of the said legislative act of March 14th, 1867, being the supplement to the Morris Canal and Banking Company, authorizing the lease of the canal, and also a certified copy of the lease made by the Morris Canal and Banking Company to the Lehigh Valley Railroad Company, above set forth, and demanded a grant or conveyance in accordance with the supplement to the Riparian Act approved March 31st, 1869, and they say that the application of this defendant, Lehigh Valley Railroad Company, for said grant was in writing and was dated February 3d, 1888, and was presented to the Board of Riparian Commissioners on February 4th, 1888, and is in the following words, to wit:

"TO THE BOARD OF RIPARIAN COMMISSIONERS OF THE STATE OF NEW JERSEY:

"The Lehigh Valley Railroad Company respectfully represents, that on the fourteenth day of March, 1867, the Legislature of the State of New Jersey granted to the Morris Canal and Banking Company, by an Act entitled, 'A further supplement to the Act entitled "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers, passed December 31st, eighteen hundred and twenty-four"' which further supplement was approved on the fourteenth day of March aforesaid), a certain tract of land under water, in the said

act particularly described, and fronting on other lands owned by said Morris Canal and Banking Company, with power to construct piers, wharves, docks, basins, warehouses and other structures within the limits therein described, which grant is within the purview of the third and fourth sections of the Act of the Legislature of New Jersey entitled, 'A Supplement to an Act entitled "An Act to ascertain the rights of the State and riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State,"' approved April 11th, eighteen hundred and sixty-four.

"And that by a lease dated May 4th in the year 1871, said Morris Canal and Banking Company did demise and lease to the said Lehigh Valley Railroad Company the said lands and privileges in such manner that said last-named company became the representative or assignee of the Morris Canal and Banking Company of said granted land and privileges.

"And the said Lehigh Valley Railroad Company, as such representative or assignee, desires a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, conveying the land in said grant mentioned to said Lehigh Valley Railroad Company in fee, together with the benefit of an express covenant that the State will not make or give any grant or license, power or authority, affecting lands under water in front of said lands.

"And the said Lehigh Valley Railroad Company produces herewith a duly certified copy of the above mentioned legislative act containing such grant to the Morris Canal and Banking Company, and a certified copy of the lease aforesaid, and hereby tenders and offers itself ready and willing to pay to the State of New Jersey, the sum of fifty dollars for each and every lineal foot, measuring on the bulkhead line in front of the land so granted,

and does hereby request that you, together with the Governor and Attorney-General, will execute, acknowledge and deliver in the manner pointed out in the fourth section of said supplemental riparian act, in the name and on behalf of the State of New Jersey, a conveyance in fee to said Lehigh Valley Railroad Company for the lands described in said legislative grant, containing a covenant as above set forth, on the payment by said Lehigh Valley Railroad Company of the consideration for such conveyance as above set forth.

"In Witness Whereof, said Lehigh Valley Railroad Company has caused its corporate seal to be hereto affixed, and this request to be signed by its Vice-President and attested by its Secretary, the Third day of February, 1888.

"LEHIGH VALLEY RAILROAD COMPANY.
(Corporate Seal.)
"By CHAS. HARTSHORNE,
Vice-Prest.
"JNO. R. FANSHAWE,
Secty."

10. These defendants further answering, ADMIT that the Riparian Commissioners, with the Governor and Attorney-General, executed and delivered to the Lehigh Valley Railroad Company, the grant dated July 12th, 1889, set forth in the tenth paragraph of the information, but these defendants beg leave to refer to the original now in their possession for greater certainty.

11. These defendants DENY that the recitals in said grant or paper writing of July 12th, 1889, are in many essentials, in fact, untrue, or that they are in any essentials untrue, and particularly DENY the statement that it is not true that the Riparian Commissioners established an exterior bulkhead and pier lines in front of or across the lands described in the aforementioned grant or paper writing; but, they ADMIT that the said

Riparian Act of March 31st, 1869, did not adopt and declare any exterior bulkhead or pier line across or in front of the said Morris Canal Basin of 1867, but expressly excepted the same in the first section of the said Act of 1869, in the following words:

> "Except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company, by act approved March fourteenth, eighteen hundred and sixty-seven."

And these defendants say that such exception was because said lines had been, in effect, already established by said legislative grant of 1867 to the Morris Canal and Banking Company. They deny the statement that it not true that the lands mentioned in said Riparian grant, front and adjoin lands owned by the Morris Canal and Banking Company, and its lessee, Lehigh Valley Railroad Company, but say that they do in fact front and adjoin such lands, and they DENY that there is any reversion in the State of New Jersey of the lands so adjoined.

Further answering the allegations of said paragraph 11 of the information, these defendants say that the said lands described in the grant of 1889 were granted to the Morris Canal and Banking Company by the State of New Jersey, in fact and in terms by the aforementioned act of 1867. That by the provisions of said act the fee passed to and vested in the Morris Canal and Banking Company, subject to the proviso in the third section to the effect that "the lands hereby granted, with the im-"provements thereon, shall revert to the State, on "the same terms and conditions provided in the orig-"inal charter of the said Company respecting the "transfer of the property thereof to the State." And these defendants insist that it is true that the

Morris Canal and Banking Company leased to the Lehigh Valley Railroad Company the said lands in perpetuity, as by the terms of the lease will appear and as by the act authorizing the lease, it might lawfully do.

These defendants DENY that the lease with respect to these lands conveyed the right to use the said lands for a term of years only, and until the reversion thereof to the State of New Jersey. They say that the Lehigh Valley Railroad Company did in fact become the assignee of the Morris Canal and Banking Company so as to become entitled to a grant in fee of said lands, and that it was entitled to a paper capable of being acknowledged and recorded, and granting title to said lands.

These defendants DENY the statement contained in the said information to the effect that it was unknown to the officers who executed said deed on behalf of the State of New Jersey, at the time the same was executed, that the Morris Canal and Banking Company had not leased to the Lehigh Valley Railroad Company the said lands in perpetuity. On the contrary, defendants say that said officers were fully informed and advised as to the facts by certified copies of the acts of the Legislature, and of the lease of the Morris Canal and Banking Company to the Lehigh Valey Railroad Company, which were duly laid before the Riparian Commissioners on February 6th, 1888, and filed in their office.

These defendants also DENY that the construction put upon the said lease, in paragraph 11 of the information, is the correct construction thereof.

They DENY that the Riparian Commissioners and the Governor and the Attorney-General, or any of them, in the making of said grant, acted

under any misinformation as to the facts or the law, as the same existed at the time the grant was made, and they DENY that any of the recitals in said deed or grant were false or fraudulent, or that the said officers, or any of them, were deceived, or were, by any false or fraudulent representation, induced to execute the said paper writing or grant.

12. These defendants DENY the assertion that the said paper writing or grant was ineffectual in law to vest title to the lands in question in the Lehigh Valley Railroad Company for the reasons mentioned in paragraph 12 of the information, or for any other reasons. They say, that in fact and in law said grant did vest the fee simple of said lands in said Company, according to the form and terms thereof. They deny that said grant was made under the sole authority of the Act of March 31, 1869, in said paragraph referred to, and deny that said act is unconstitutional and void.

They ADMIT that the Lehigh Valley Railroad Company is a foreign corporation, incorporated under the laws of Pennsylvania, but insist that it was in fact and in law authorized to accept the said grant; and they further say, that the State of New Jersey, as a proprietor of lands executing said grant and receiving consideration therefor, is estopped from denying, in equity or at law, any supposed incapacity of the Lehigh Valley Railroad Company to accept and enjoy said grant, and that it is contrary to equity and good conscience for the State of New Jersey, as the proprietor and grantor of lands, to attempt to avoid its own grant on such grounds.

These defendants FURTHER SAY, that the capacity of the Lehigh Valley Railroad Company, to hold the legal title to lands in the State of New Jersey, and to receive and hold the said grant of

1889 is a matter to be determined by the law of New Jersey where the land lies, and not by the laws of Pennsylvania, and that the laws of the State of New Jersey authorize it to hold the same.

These defendants DENY that the fee of said lands remained in the State of New Jersey after the grant of 1867; on the contrary, they say, that the fee was vested in the Morris Canal and Banking Company by said grant, subject only to be divested and to revert upon the happening of the contingencies therein mentioned.

These defendants DENY that the sum of $48,000.00, being $50.00 for each lineal foot of 960 feet on the bulkhead line in front of said land, was fixed without conformity to the requirements of the Act of March 31, 1869, or was arbitrarily determined, and they insist that there was then an established bulkhead line or line of solid filling in front of or across said lands, whereby the said consideration could be and was in fact determined.

Amendment by order of March 23, 1909.

And these defendants say that the legislature of New Jersey by the said Act of March 14th, 1867, wherein it granted the said premises to the Morris Canal & Banking Company, did in fact and in effect fix the exterior line for solid filling, and the exterior line for piers, and bulkhead, which were one and the same line—in front of said premises—said line being the last course of the description in said grant, and being of a length of 960 feet running northwardly and southwardly parallel with the course of the Hudson River and parallel with the center line of Washington Street and 1735 feet easterly therefrom; and they say that upon the said lands and all of the same, except the part therein reserved for the entrance to a water basin, the Morris Canal & Banking Company was authorized by said grant

to construct piers, wharves, docks, warehouses and other structures.

And these defendants further say that by the First Section of the Riparian Act of March 31st, 1869, in and by which the bulkhead and pier lines shown on the maps filed by the Riparian Commissioners in 1865 were fixed, established and adopted, the pier and bulkhead lines drawn on said maps over and upon lands within the boundaries of the grant made to the Morris Canal & Banking Company by Act approved March 14th, 1867, were excepted, because that grant superseded the action of the Riparian Commissioners and made their recommendation impossible—the grant itself fixing and establishing the lines therein described.

And these defendants say that the reference, in the 8th paragraph of the Information to "the "purpose of preserving a water basin to the west "of the present westerly bulkhead on said prem- "ises" was a reference to a tide water basin which it was then contemplated would be, but which had not yet been defined and established, and which was subsequently defined and established by Chapter 596 of the Laws of 1872, approved April 4th, 1872, entitled, "An Act to cede to The Mayor and Common Council of Jersey City certain lands of the State now and heretofore under the tide waters of Communipaw Bay, and to establish a tide water basin adjacent thereto." By said Act, the said basin was created with a width of 500 feet, and a length from east to west of 2,800 feet; and it was by that Act provided that the Riparian Commissioners should reduce to writing, and file a map and description thereof in the office of the Secretary of State, and duplicates in the office of the Clerk of the County of Hudson; and afterwards, they did, accordingly, on Decem-

ber 12th, 1872, file such duplicate in the office of the Clerk of the County of Hudson, and on December 13th, 1872, file the original in the office of the Secretary of State, at Trenton.

These defendants DENY the statement that the Lehigh Valley Railroad Company could not obtain any right, title or interest in or to said lands by virtue of the Act of March 31, 1869, or by any other act of the Legislature, but say that in fact and in law, they did obtain such title by the grant above mentioned, and that the Riparian Commissioners had authority to make such grant.

These defendants DENY that the land in question was a basin, and under the policy of this State could not be filled in, but, on the contrary say, that by the express grant of 1867, the policy of the State was declared, and the grantee, the Morris Canal and Banking Company, was authorized to fill in, reclaim and use said property, with the exception of the part required to be left open, for a way of approach to the Basin to the west thereof, as therein expressed and defined.

These defendants DENY that said grant of 1867 was under the express trust and dedication that the same should be used for canal purposes, or purposes of commerce, and in connection with the canal, and they deny that the same was to be forever open to navigation by all persons, except that they admit this so far as the gap is concerned, which, by the terms of said grant, is required to be kept open to the width of 150 feet. And these defendants say that the said gap has been kept open to such navigation continuously from the time of such grant to the present time, and is freely and continuously used by the public as in the grant required and provided. And these defendants say even though by the Act of 1867 the property thus granted could be only used for canal

purposes and for commerce in connection with the canal, that the reserved right in the State was subject to the control of the Legislature, and coud be granted when authorized by the Legislature, and such authority was given by the Act of 1869 and subsequent legislation.

These defendants DENY that the said lands in question were not riparian lands, and were not lands which could be legally granted by the Riparian Commissioners under any valid act of the Legislature, but say that they were originally lands under the tide waters of the South Cove, so-called, belonging to the State of New Jersey and subject to be granted by the State.

These defendants ADMIT the establishment of the tide water basin west of Washington Street, and say that the same in fact was defined and established by Act of the Legislature passed April 4, 1872, and a description thereof was made and filed as aforesaid by the Riparian Commissioners on December 12, 1872, and that the public has a right to navigation of the same, and to pass vessels to and from the Hudson River across the grant of 1867 for the purpose of reaching the same, for which purpose the said gap of 150 feet was provided by the grant of 1867, and has been ever since maintained. And these defendants deny that by the establishment of said basin the Riparian Commissioners were prevented from making the grant of 1889 to the Lehigh Valley Railroad Company, or that their power in that respect was in anywise limited or affected by the provision for said basin by said act of 1872.

13. These defendants ADMIT that on or about the 25th day of June, 1890, this defendant, Lehigh Valley Railroad Company, granted and conveyed to the Jersey City Terminal Railway Company, a corporation of New Jersey, all its right, title and

interest in the lands in question, which it had derived from the grant by the Riparian Commissioners in 1889, and they pray to refer to the said grant and conveyance, or the record thereof, for greater certainty. They say that by said grant the Jersey City Terminal Railroad Company obtained the same title, rights and privileges that this defendant, Lehigh Valley Railroad Company, had in the said lands before the conveyance.

These defendants ADMIT that on or about June 26th, 1890, the Morris Canal and Banking Company, and this defendant Lehigh Valley Railroad Company, did grant and convey to the Jersey City Terminal Railway Company, all the right, title and interest of the Morris Canal and Banking Company and Lehigh Valley Railroad Company in the said lands described in the grant of 1867 and that the conveyance thereof was recorded, and they beg leave to refer to the conveyance, or the record thereof, for certainty as to the terms of the same.

These defendants ADMIT that Jersey City Terminal Railway Company did, on the 28th day of August, 1891, file in the office of the Secretary of State at Trenton, certificates of merger, as set forth in the 13th paragraph of the information, whereby the property, rights and franchises of the Jersey City Terminal Railway Company became vested in Lehigh Valley Terminal Railway Company, and they beg leave to refer to the said certificates of merger, or the record thereof, for greater certainty.

These defendants ADMIT that this defendant, Lehigh Valley Railroad Company of New Jersey, claims and insists that by virtue of the grant, conveyance and certificates of merger set forth in the information, there was vested in it the title in fee to the lands in question particularly de-

scribed in the grant of the Riparian Commissioners made to the Lehigh Valley Railroad Company in 1889. And this defendant, Lehigh Valley Railroad Company of New Jersey, claims that it has become the owner of the reversionary rights of the State of New Jersey in the lands described in said grant of 1867, subject to the terms and requirements thereof with respect to the keeping open of the gap for navigation, and freed from any reversion thereof, or any other reversionary right of the State of New Jersey under the charter of the Morris Canal and Banking Company, or its charter, or under the granting act of 1867.

These defendants ADMIT the making by the Lehigh Valley Terminal Railway Company, on October 1st, 1891, of the mortgage to the Central Trust Company of New York, as set forth in the 13th paragraph of the information, to which mortgage or the record thereof, they beg leave to refer for greater certainty, and say that the said mortgage was effectual to convey to the Central Trust Company of New York, all the right and title in said lands, including the reversionary rights which the State of New Jersey had reserved in the grant of 1867, which rights had been released by the Riparian Commissioners' grant of 1889.

14. These defendants DENY that the Riparian Commissioners' grant of 1889, and the said conveyance to the Jersey City Terminal Railway Company, and the conveyance by the Morris Canal and Banking Company & Lehigh Valley Railroad Company to the Jersey City Terminal Railway Company, and said certificates of merger, and the said mortgage to the Central Trust Company of New York, are without validity, and clouds upon the title of the State of New Jersey to its reversionary interest, but, on the contrary, they say, that the same are valid in law and effectual, and that the State

of New Jersey has no reversionary interest in the said premises described in the said Riparian Commissioners' grant of 1889.

15. These defendants ADMIT, as alleged in Paragraph 15 of the information, that Lehigh Valley Railroad Company, a corporation of Pennsylvania, owns a controlling interest in the capital stock of the Lehigh Valley Railroad Company of New Jersey.

16. These defendants ADMIT that the term created by the lease of the Morris Canal and Banking Company to the Lehigh Valley Railroad Company, made May 4th, 1871, has not yet expired, and deny that said term is now vested in the Lehigh Valley Railroad Company of New Jersey.

These defendants say that the fee of the lands described in the grant of 1889 did pass to the Lehigh Valley Railroad Company, and was afterwards transmitted to this defendant, Lehigh Valley Railroad Company of New Jersey, in whom the said lands are now vested, as herein elsewhere set forth.

17. These defendants ADMIT that the Lehigh Valley Railroad Company, a corporation of Pennsylvania, as lessee of the Morris Canal and Banking Company, was in lawful possession of the lands in question in this suit under said lease of May 4th, 1871, and that this defendant Lehigh Valley Railroad Company of New Jersey is now in lawful possession of said lands, as successor in title; and they say that the present title is derived under the said legislative grant of 1867, the said Riparian Commissioners' Grant of 1889, and the several deeds, and the merger of corporations set forth in the information.

18. And these defendants further answering the said information, do specify and set forth their

estate and interest in the lands described in the information, and the manner in which and the sources from which such title and interest are held and derived, as follows:

That prior to the year 1867, the State of New Jersey was the proprietor and owner of the lands in question in this suit, being lands then under tide water of the South Cove or Hudson River, and lying near the shore thereof; that the Morris Canal and Banking Company was a public corporation, owning and operating the Morris Canal as a public highway for the transportation of persons and property on payment of tolls, pursuant to its aforementioned charter. That its business had grown from time to time until the year 1866, which was the year of its greatest prosperity, it having then earned more money and carried more tons of freight than in any other year, and the said Canal Company, anticipating that such increase of business would continue, applied to the Legislature of New Jersey for a grant of the lands described in the said act of 1867, for the better accommodation of the business of the Canal, and the said grant of 1867 was made accordingly; that the business of said Canal Company did not continue to increase as had been expected, but declined from and after the year 1866; that the decline in tonnage upon and earnings of said Canal is shown by the following figures, to wit:

DECLINE IN TONNAGE AND EARNINGS OF MORRIS CANAL.

Year.	Tons of Freight carried.	Amounts earned in dollars.	Price earned per ton carried in cents
1866	889,220	$616,350	.693
1867	822,741	449,652	.546
1868	744,412	423,767	.569
1869	650,200	431,245	.663
1870	707,572	391,549	.553
1875	451,045	270,216	.599
1880	503,486	215,677	.424
1885	364,554	101,487	.278
1886	380,462	87,166	.229
1887	378,567	109,364	.290
1888	372,049	101,476	.273

19. The lands so granted to the Canal Company in 1867 for a Basin proved not to be necessary for its business, and were never improved or employed therefor, except to a small extent; the business of said Canal was chiefly the tranportation of coal, iron ore and lumber; the invention and use of steel rails and the opening of new railroads through New Jersey, between 1866 and 1880, resulted in better, swifter and cheaper transportation being offered by rail, so that the Canal could no longer obtain the freights which it formerly received, nor successfully compete with rail transportation, and it became obsolete, and its business declined accordingly; in the year 1871, the Canal was leased to the Lehigh Valley Railroad Company, as stated in the information, which Company thereafter for many years diverted a large part of its coal traffic to the Canal, thereby considerably increasing the tonnage upon the Canal, but the business from other sources fell off, so that the Canal Company had little else to carry except the coal so diverted to it to give it occupation; for at least fifteen years prior to the

grant of 1889, it was notorious that the Canal's business had greatly declined, and that it had no need of the Basin of 1867 for the conducting of its business, and the Basin, for the most part, remained idle and useless and unimproved. This defendant, Lehigh Valley Railroad Company, had, in the meantime, acquired control of the Easton & Amboy Railroad, extending from Phillipsburgh to Perth Amboy, and was operating said road, and had determined to construct another line of railroad from South Plainfield, through the Counties of Union, Essex and Hudson, to Jersey City, to form a terminal on the Hudson River as part of its through line of interstate railroad which was to extend from Buffalo to Jersey City.

20. Lying to the west of the Morris Canal Basin of 1867 was a strip of land, formerly wholly under water, containing about 60 acres, and being for the most part 500 feet wide, extending from Washington street westwardly for about 4,000 feet, and commonly known as the New Jersey West Line Grant, which had, on March 9th, 1872, been conveyed by the Board of Riparian Commissioners to the New Jersey West Line Railroad Company, under authority of Chapter 107 of the Laws of 1872, Section 9. The last named Company had given a purchase money mortgage for the entire purchase price of $125,000 to the Trustees for the support of Public Schools. Default had been made on said mortgage, and a bill in Chancery to foreclose the same had been filed and final decree had been entered for sale of said property under foreclosure, dated October 22d, 1875, on which final decree execution was issued June 1st, 1887, directed to Thomas Anderson, Master in Chancery, commanding him to make sale of the said grant for the satisfaction of said mortgage.

21. Meantime, the Central Railroad Company of New Jersey, by virtue of the grant made to it by the Riparian Commissioners, dated November 12th, 1874, for several tracts of land under water, and by virtue of other pretensions, set up a claim to the said West Line Grant, or a portion thereof, and the American Dock & Improvement Company, by virtue of its grants and by virtue of other pretensions, also set up a claim to the said New Jersey West Line Grant, or a portion thereof, and the title to the same was in litigation and dispute.

22. This defendant, Lehigh Valley Railroad Company, determined to acquire, if practicable, the said New Jersey West Line Grant, to use as a part of its proposed terminal in Jersey City, and to apply also to the State and to acquire the said Basin of 1867 adjoining the same on the east, and to use the two tracts together for its said terminal.

23. By four deeds made to Easton & Amboy Railroad Company, that Company acquired the rights of the Central Railroad Company of New Jersey, and the American Dock & Improvement Company, in the West Line Grant, which deeds are the following:

1. Deed of the Central Railroad Company of New Jersey, dated May 9th, 1887; recorded in Book 436 of Deeds for Hudson County, p. 445.

2. Deed, American Dock & Improvement Company, dated May 16th, 1887, recorded in said Book 436 of Deeds for Hudson County, p. 442.

3. Deed from Central Railroad Company of New Jersey and American Dock & Improvement Company, dated May 31, 1887; recorded in Book 439 of Deeds for Hudson County, p. 269.

4. Deed from Central Railroad Company of New Jersey, dated May 9th, 1888; recorded in Book 457 of Deeds for Hudson County, p. 388.

The sale under the said foreclosure of the mortgage to the Trustees for the support of Public Schools, took place on the 5th day of August, 1887, and the said parcel of land known as New Jersey West Line Grant was thereupon struck off and sold by the Master to Thomas N. McCarter, for $250,000, and conveyed to him by deed from said Master in Chancery, dated August 9th, 1887, recorded in Book 444 of Deeds for Hudson County, p. 35, and thereupon said Thomas N. McCarter, on the same day, by his deed dated August 9th, 1887, conveyed the same to the Easton & Amboy Railroad Company, which deed was recorded in Book 444 of Deeds, p. 40. By virtue of the several aforementioned deeds, Easton & Amboy Railroad Company became the owner in fee simple of the said tract known as New Jersey West Line Grant.

24. Having previous to February 3d, 1888, substantialy perfected the title to the West Line Grant in the Easton & Amboy Railroad Company, which the Lehigh Valley Railroad Company owned or controlled, this defendant, said Lehigh Valley Railroad Company, on February 3d, 1888, made its application above set forth in paragraph 9 to the Riparian Commissioners for the grant of the Morris Canal Basin of 1867, for the purpose of using said two tracts together for the construction of a terminal for its system of railroads, which purpose was well-known to the Board of Riparian Commissioners, to the Governor, and to the Attorney General who acted for the State in considering the said application, and in selling and conveying the State's reversionary interest in said Basin of 1867.

25. Said Board received said application on February 4th, 1888, and they and the said officers acted with great deliberation and circumspection in considering the same, in inquiring into the facts, and in giving the grant. The matter was held under advisement by the Governor for several months, and the grant was, after consideration, redrawn, and, after repeated hearings the grant was finally dated and executed as of July 12th, 1889, and the consideration moneys, to wit, the principal sum of $357,152.00, and the further sum of $48,000,000, were on December 20th, 1889, paid to the State of New Jersey, and the grant delivered.

26. For the purpose of taking over several properties which were to constitute the terminal yards in Jersey City, the Jersey City Terminal Railway Company was formed under the General Railroad Law of New Jersey, on July 23, 1888.

27. On June 25th, 1890, this defendant, Lehigh Valley Railroad Company, by deed dated on that day, conveyed to said Jersey City Terminal Railway Company, all its right, title and interest in and to the said Basin of 1867, which is in controversy in this suit, which deed was recorded in Book 520 of Deeds for Hudson County, p. 64.

28. By deed dated June 26th, 1890, Morris Canal and Banking Company, of the first part, and the Lehigh Valley Railroad Company, of the second part, in consideration of $500,000.00, executed a deed to the Jersey City Terminal Railway Company, of the third part, wherein, after reciting the said legislative grant of 1867, and the lease of the Morris Canal, made May 4th, 1871, and the recitals in said lease respecting sale of portions of the property of the Canal Company, and after reciting that said premises were not necessary for the performance of the public duties

and obligations of the Canal Company, and after reciting that the State, by its grant of July 12th, 1889, had sold and conveyed the premises in fee to Lehigh Valley Railroad Company, subject to the aforesaid grant of March 14th, 1867, and after reciting the deed from Lehigh Valley Railroad Company to Jersey City Terminal Railway Company, dated June 25th, last above set forth, they did convey to the Jersey City Terminal Railway Company, all the right, title and interest of Morris Canal and Banking Company and of the Lehigh Valley Railroad Company, as lessee, under said lease of May 4th, 1871, in and to the premises in controversy in this suit.

29. The said sum of $500,000, which was the consideration of the last above mentioned deed, was actually paid by the grantee to the Morris Canal and Banking Company, and applied to the retirement of its outstanding mortgage debt to that extent.

30. Easton & Amboy Railroad Company, by its deed dated December 6th, 1890, recorded in Book 520 of Deeds of Hudson County, p. 73, &c., conveyed to said Jersey City Terminal Railway Company, all the said New Jersey West Line Grant, and divers other properties.

31. By virtue of the aforementioned deeds, Jersey City Terminal Railway Company became the owner in fee simple of the terminal properties in Jersey City, including the said West Line Grant and the said Morris Canal Basin of 1867.

32. Upon receipt of the said several deeds, Easton & Amboy Railroad Company and the Lehigh Valley Railroad Company, and afterwards the Jersey City Terminal Railway Company, went into possession of the lands in question in this suit, and filled up the same, and diligently proceeded to construct thereon their costly docks, piers, wharves,

buildings and tracks, for the purposes of their railroad terminal, and the same were sufficiently completed so as to be put in use for railroad purposes in the latter part of 1889, a very large sum of money havng been expended thereon for the purpose, and for several years thereafter said improvements continued by the respective successive Companies holding said lands, and finally, by this defendant, Lehigh Valey Railroad Company of New Jersey, which has become the owner thereof, and several millions of dollars have been expended, in good faith, upon said grants for the purposes aforesaid; that either of said grants alone is of little value for a railroad terminal without the other, the two together being essential to the construction of a proper railroad terminal; that said terminal lands are a necessary part of the public railroad system of these defendants.

33. On August 28, 1891, said Jersey City Terminal Railway Company and the Roselle and South Plainfield Railway Company, the Newark and Roselle Railway Company, the Newark Railway Company, the Jersey City Newark and Western Railway Company, the Newark and Passaic Railway Company, and the Edgewater Railway Company were merged and consolidated into a new corporation known as Lehigh Valley Terminal Railway Company and all the property, rights and franchises of said constituent Companies became vested in said Lehigh Valley Terminal Railway Company, as by reference to the record of the consolidation on file in the office of the Secretary of State will more fully appear.

34. That the development of the property by these defendants has been open and notorious, and the State and its representatives have been well advised thereof from 1889 to the present time, and the State, by a special act of the Legislature, ap-

proved April 8th, 1903, known as Chapter 110 of the Laws of 1903, gave its consent to the Lehigh Valley Terminal Railway Company, being the Company which then owned the said Morris Canal Grant of 1867, and had built and was operating its terminal thereon, Easton & Amboy Railroad Company, Greenville & Hudson Railway Company, and other Companies associated with these defendants, to unite and consolidate their stock, property, franchises and roads with those of this defendant, Lehigh Valley Railroad Company, upon such terms and conditions as might be agreed upon between said Companies, the said union and consolidation to be effected either by a direct contract between said corporations of this State and Lehigh Valley Railroad Company, or by first consolidating the said corporations of this State into one corporation of this State, and then by contracting to unite and consolidate that corporation with Lehigh Valley Railroad Company; and the said several corporations of New Jersey, mentioned in said Act, did accordingly, on the 29th day of July, 1903, consolidate into one corporation of New Jersey, which is this defendant, Lehigh Valley Railroad Company of New Jersey; but that Company has never been consolidated with this defendant, Lehigh Valley Railroad Company of Pennsylvania, and all the railroad lines and corporations of New Jersey so consolidated have ever since been in the possession of and operated by this defendant Lehigh Valley Railroad Company of New Jersey.

By virtue of the premises and of said consolidation this defendant, Lehigh Valley Railroad Company of New Jersey, became invested with an estate in fee simple absolute in the lands described and brought in question in the information.

35. The State of New Jersey in granting said

lands to the Morris Canal and Banking Company, and afterwards in granting, through its Riparian Commissioners, the reversionary interest therein to Lehigh Valley Railroad Company, was acting in the capacity of a proprietor of lands, dealing with the grantees, who accepted the grants and paid therefor in good faith, and took the same under the terms of a fair bargain and contract, and paid a just price therefor, and that the conveyance thereof made by the State in the year 1889 was made in pursuance of law, and that the State of New Jersey, by reason of the facts and circumstances above set forth, is estopped at law and in equity from denying that title passed to Lehigh Valley Railroad Company by its grant of 1889, in accordance with the terms of that grant; that it would be unconscionable and inequitable to allow the State to deny and avoid its grant after having made the same under the circumstances aforesaid, and permitted the grantee, and their successors in title, to expend money on the faith of their grant in improving the same; that from the time of the making of said grant to the time of the filing of the information in this suit, eighteen years and three months elapsed, during all of which time no objection or question was raised by the State as to the validity of its grant, and the grantee, and its successors, on the faith of the grant, proceeded to improve the lands as aforesaid, and in good faith to mortgage the same and raise the money wherewith to make improvements, and otherwise to develop their railroad property.

36. And these defendants say that the State of New Jersey and the informant are guilty of great laches in setting up and asserting the pretensions set up and asserted in this suit, and ought, therefore, to be denied any relief under the information filed herein.

37. And these defendants say that said grant of 1889, was also made under and by authority of the act of the Legislature of April 6th, 1871, entitled: "An Act relative to the Riparian Commission," and under the general authority of this state to convey away the lands of which it is the proprietor, and that the said grant of 1889, in terms, conveys the property "as fully to all intents and purposes as the said Commissioners have power or authority to grant and convey the same."

38. And, as to the allegation of the information that the said Riparian Act of March 31st, 1869, is unconstitutional, because of defective title, these defendants say the title thereof is not defective but sufficient and that said act has been recognized as valid by the courts of the State of New Jersey and the courts of the United States, and administered and enforced for nearly 39 years, and, in its administration, the State has made several hundred grants, and received several millions of dollars, and the State cannot now question the validity of said act for any supposed defect in its title.

39. And these defendants say that the prayer of the information should be denied, because while demanding equitable relief against these defendants by the avoidance of the State's grant, and while acknowledging that the State has received the consideration for said grant, yet, neither the informant nor the State offers to pay back the money paid therefor and expended on the faith thereof, or otherwise to do equity to these defendants, and the act of the Legislature, under color of which said information is filed, being the Act of April 12th, 1907, makes no tender of equity, or any offer to restore the money paid, to these defendants, nor does the said act make any provision whereby said moneys could be paid by the

State; and the said information, and the act authorizing the same, are in fact framed to enforce remedies against these defendants without making any provision to do equity to them; nor is there any law whereby the Court of Chancery could compel the State of New Jersey to take any action which would do equity to these defendants, either by the payment of money, or otherwise. Wherefore, the prayer of the information ought to be denied.

40. The said Act of the Legislature of New Jersey, approved April 12th, 1907, entitled: "An Act to compel determination of titles to riparian lands and lands under water in which the State claims an estate in remainder or reversion and quiet the title to the same," impairs the obligation of the contract made by the said grant, dated July 12, 1889, set forth in the Tenth Paragraph of the information, contrary to the Constitution of the United States, and deprives these defendants of their property without due process of law, and denies to them the equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States, and is therefore void.

WHEREFORE, because the said grant of 1867 and the said grant of 1889, with the deeds following the same set out in the information, vest a good, legal, indefeasible title in and to the lands in question in this defendant, Lehigh Valley Railroad Company of New Jersey, and because the State of New Jersey and the informant are in law and equity estopped from demanding from these defendants the relief demanded in the information, and because it would be inequitable and unconscionable to grant such relief in this case, and because the State of New Jersey and the informant are guilty of great laches in bringing their said

information, and because the said information and the act under which it is brought deprive these defendants of their property without due process the laws, and because said act impairs the obliga- the aws, and because said act impairs the obligation of the contract made by said grant, dated July 12, 1889, these defendants pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

All of which is respectfully submitted.

COLLINS & CORBIN,
Solicitors for and of Counsel with Defendants, Lehigh Valley Railroad Company and Lehigh Valley Railroad Company of New Jersey.

R. V. LINDABURY,
Of Counsel.

Answer of Central Trust Company of New York.

(Filed April 9, 1908.)

In Chancery of New Jersey.

Between

ROBERT H. McCARTER, Attorney General of New Jersey,

Informant,

and

LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, LEHIGH VALLEY RAILROAD COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

On Information.

Answer of Central Trust Company of New York to the information of Robert H. McCarter, Attorney General of New Jersey.

1. This defendant admits the making, execution, delivery and acceptance of the several deeds, conveyances and grants in the said information referred to, but prays that reference may be had to the originals thereof for a correct ascertainment of their true meaning and effect.

2. This defendant further admits that on or about the first day of October, 1891, Lehigh Valley Railroad Terminal Company in said information mentioned, executed and delivered to this defendant a certain indenture of mortgage or deed of trust, by which it purported to grant and convey to this defendant the premises in said information referred to and generally described and known as the "Basin of 1867," to secure the pay-

ment of the sum of ten million dollars ($10,000,000), with interest thereon at the rate of five per cent. per annum, and that said deed of trust or mortgage was executed, proved and recorded as in said information set forth.

3. This defendant further admits that by virtue of said deed of trust or mortgage it claims to have a lien upon or some interest in the lands described in said mortgage and referred to in said information, and in or upon the so-called reversionary interest of the State of New Jersey in said lands, and it denies that the said deed of trust or mortgage was ineffectual to convey to it any interest in the reversionary right of the State of New Jersey in said lands and premises or to create, by way of mortgage or otherwise, any lien thereon, and it further denies that the State of New Jersey has any reversionary right or interest in the said lands and premises or any right or title thereto.

4. This defendant further denies that the grant made by the Riparian Commissioners of the State of New Jersey to Lehigh Valley Railroad Company, bearing date July 12, 1889, and in said information referred to, was ineffective in law to vest any right or title to the lands in said information referred to in the Lehigh Valley Railroad Company. On the contrary, this defendant insists that said grant was effective for all purposes and completely invested said Lehigh Valley Railroad Company with all the right, title and interest of the State of New Jersey in and to the lands and premises therein described and in and to every part thereof.

5. This defendant in particular denies that the recitals or any of them contained in said grant are untrue or that they were false and fraudulent in law or in fact or that the said grant would not

have been executed had the said Riparian Commissioners been truly informed as to the facts in said grant referred to. This defendant also denies that the act of the Legislature of March 21, 1869, referred to in the twelfth paragraph of said information, is unconstitutional and void or that the said grant was made without legal warrant or justification. It also denies that Lehigh Valley Railroad Company was incapacitated from taking and accepting said grant. It further insists that in making said grant said Commissioners acted as the agents and representatives of the State as a proprietor; that the State accepted the consideration paid for the grant by Lehigh Valley Railroad Company and acquiesced in and ratified said act of its agents not only by accepting the consideration paid by Lehigh Valley Railroad Company, but also by permitting Lehigh Valley Railroad Company, and its successors in the information named, to enter into possession under said grant and without objection or notice of any infirmity therein or of any want of authority on the part of the said agents to spend millions of dollars in the improvement and development of the said property; that in fact a large part of the money secured by the said mortgage to this defendant was borrowed for the purpose of improving and developing the said property and was actually used for that purpose with the knowledge and acquiescence of the State of New Jersey and without objection therefrom until the filing of this information, and that under these circumstances and after this lapse of time it is inequitable and contrary to good conscience for the State to now attempt to avoid its grant upon the ground set out in said information or upon any other ground.

6. This defendant insists that at the time of the making of the said mortgage to it Lehigh Val-

ley Railroad Terminal Company, the mortgagor, was seized in fee of the premises described in said mortgage; that it had then, through the various conveyances and acts or merger mentioned in said information and the circumstances hereinbefore referred to, become the owner of the reversionary rights of the State of New Jersey in the said lands and of all right, title and interest of any sort whatsoever of the State therein, and that by the said mortgage said Lehigh Valley Railway Terminal Company granted and conveyed to this defendant the free and absolute title to said premises subject only to the right of redemption in the said mortgage contained, and it denies that the said mortgage, so far as it purports to grant, convey or mortgage the reversionary interest of the State of New Jersey in the premises therein described, is without validity or effect as against the State of New Jersey or that there is a cloud upon the title of the State of New Jersey to the reversionary interest in said premises.

7. This defendant further answering says that it took the said mortgage from Lehigh Valley Railway Terminal Company and certified and issued the bonds therein referred to and attempted to be secured thereby, in good faith without notice of any of the claims or equities set up in said information in favor of the State of New Jersey; that said bonds were sold in the market to the investing public who purchased the same in good faith and without knowledge of the said claims or equities now pleaded on behalf of the State, and it insists that no relief should be granted to the State in the premises as against this defendant except upon the terms that the money secured to it by the said mortgage be first paid to it on behalf of the holders of the bonds secured thereby.

And this defendant prays that it may be hence dismissed.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel with Defendant, Central Trust Company of New York.

SHERRERD DEPUE,
Of Counsel.

(Formal replication filed.)

Testimony.

In Chancery of New Jersey.

Between

ROBERT H. McCARTER, Attorney General of the State of New Jersey,

Informant,

and

LEHIGH VALLEY RAILROAD COMPANY, LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

} First Day.

Before HIS HONOR VICE CHANCELLOR STEVENS.

EDMUND WILSON, Esq., Attorney General; BENNETT VAN SYCKEL, Esq., CHANDLER W. RIKER, Esq., and JOSEPH CHOATE, Esq., for Informant.

WILLIAM H. CORBIN, Esq., GILBERT COLLINS, Esq., RICHARD V. LINDABURY, Esq., and JOHN G. JOHNSON, Esq., of the Philadelphia Bar, for Defendants.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Monday, December 28th, 1908, at the Chancery Chambers, Newark, New Jersey.

Counsel for the Informant read the information paragraph by paragraph.

Counsel for the Defendants read the answer paragraph by paragraph so as to inform the Court what charges in the information were denied and what admitted, or the answer to such paragraphs otherwise.

Mr. Lindabury read the answer of the Central Trust Company.

MR. VAN SYCKEL: We ask leave to file a formal replication to that, if it has not been done.

MR. LINDABURY: Did you file a replication to the answer of the Lehigh Valley Railroad Company?

MR. VAN SYCKEL: Yes, that was done. We now ask leave to file a replication to the answer of the Central Trust Company, if it has not been done.

MR. RIKER: We now offer in evidence the Acts—

MR. LINDABURY: Don't you think you ought to give us an opening?

MR. VAN SYCKEL: The Information sets out the ground upon which we stand. I do not think it is necessary to go over those matters; your Honor asked some questions which disclosed our position. I will state one more, as I think it is due to the other side. We deny—admitting the Act of 1869 to be constitutional—that the title is good, as has been decided by the Court of last resort, and which is binding in this Court, and that question cannot be raised here, but

we shall insist—admitting that that Act is constitutional—that this case is not within the Fourth section, and we stand upon this proviso, in the Fourth section: "Provided that no corporation to whom any such grant, license, power or authority was given by a legislative act, as aforesaid, in which provision was made for the payment of money to the Treasurer of the State for each and every foot of the shore embraced and contained in the Act; nor the assigns of such corporation shall be entitled to the benefits of this section." We shall insist that the basin grant to the Morris Canal Company is excepted by this proviso from the operation of this fourth section; that being so, the grant of the Lehigh Valley Railroad was made without any authority under the Act of 1869. The other questions your Honor submitted to me, and I answered them. They are set out fully in the Information.

MR. COLLINS: Well, that proviso refers back to grants or licenses that were referred to in the third section, and then it says that they shall not come within it if they provide for the payment of money for each and every foot of the shore embraced.

MR. VAN SYCKEL: Well, that is not to be discussed now. I simply give you notice that that is the position we will take on the argument of this case.

MR. RIKER: We now offer in evidence all of the Acts of the Legislature of New Jersey referred to in the Information, and in particular we offer the Act to incorporate a company to form an artificial navigation between Passaic and Delaware rivers.

THE COURT: Well, I suppose there will be no objection to your making the offer in the general form. All you have to do is to refer to the title of the Act and then it can be considered in evidence. Most of them are general acts.

MR. LINDABURY: I think all of those are admitted by the Answer.

THE COURT: Yes, I think all of that is admitted by the Answer.

MR. RIKER: But they do not admit that they are accurately stated, so I assumed we would have to put them in evidence.

MR. LINDABURY: No, we have a right to refer to them, I take it.

MR. VAN SYCKEL: All of those acts were supplements of the Morris Canal charter.

MR. LINDABURY: I think they are all public acts.

Defendants consent, as requested by the Attorney General, that the laws, whether public or private, may be offered by using the published pamphlet laws printed by the State, without producing certified copies of any of them, and that this understanding applies to all laws, offered by either party, or all laws or acts referred to by any of the pleadings.

MR. RIKER: Now I think there is an Act to which we have not referred in the pleadings, which we want in. It is the Act of March 9, 1855, at page 215.

MR. LINDABURY: But I think we should have those supplements that you want to refer to; you better tell us so that we can look at them and see whether they appear to have any bearing.

MR. RIKER: We refer especially to the Act of 1824, page 158; 1828, page 34.

MR. LINDABURY: That is a supplement.

MR. RIKER: That is the extension. Act of 1867, page 251. Act of 1868, page 1121. Act of 1871, page 444.

Now Mr. Corbin has promised to produce the Pennsylvania charter of the Lehigh Valley Railroad Company.

MR. CORBIN: There is no such document really. The Lehigh Valley charter in Pennsylvania, as I understand it, is found in an old law passed some sixty or seventy years ago to incorporate the Schuylkill, Susquehanna & Western Railroad, together with some other charters, which were finally consolidated by agreement and legislation, the whole constituting quite a large volume, and the general solicitor of the Company said he would bring that with him, but he is not able to come here today, and will be here to-morrow, so that you may consider that in.

MR. RIKER: We offer in evidence the Pennsylvania Act.

THE COURT: You have referred particularly in the pleadings to the act of verification, and consequently you have a right to use the act, if it differs from the statement.

MR. VAN SYCKEL: We offer copies of those Pennsylvania statutes, to be received with the right to further offer the Pennsylvania statutes to verify them. We put those in with leave to the other side to refer to the Pennsylvania statutes for their accuracy; that is, the act of 1870 and 1871.

MR. LINDABURY: I think we admit those exactly as you stated them.

MR. VAN SYCKEL: Well, we will put them in now.

Charter marked Exhibit C-1.

Act of 1870 marked Exhibit C-2.

Act of 1871 marked Exhibit C-3.

MR. RIKER: Now we offer the lease from the Morris Canal & Banking Company to the Lehigh Valley Railroad Company, dated May 4, 1871.

Marked Exhibit C-4.

MR. RIKER: We also offer in evidence the deed or grant of the Riparian Commissioners of the State of New Jersey to the Lehigh Valley Railroad Company, dated July 12, 1889, being the grant to the Lehigh Valley Railroad Company of the basin, in 1867.

Marked Exhibit C-5.

MR. RIKER: Now we want to offer in evidence the report of the Riparian Commissioners of February 1, 1865, with the maps; with special reference to the Report, so far as relates to section No. 6 and section No. 7. Section No. 6 appears on pages 28 and 29 and 30, and the report on section No. 7, beginning on page 30.

Marked Exhibit C-6.

MR. CORBIN: Is the original filed here?

MR. RIKER: The original is not on fie.

MR. CORBIN: I would like to understand what the offer is. Appended to this report is the report of the engineer, Mr. Robert C. Bacot, and a large number of other documents. Are you offering the whole thing?

MR. RIKER: Yes.

MR. CORBIN: That is the State published pamphlet of this year. You say you offer the maps which accompany this. Have you the originals of those here?

MR. RIKER: Yes, No. 6. No. 7 you know has been lost.

MR. CORBIN: I think that should be noted. These maps are not numbered. They are called section 1, section 2, section 6, and section 7. They are very large maps and I would like to ask counsel whether he produces the original or such of those as are on file.

MR. RIKER: We produce what we believe to be the original of section 6, so stated by the Secretary of State.

MR. CORBIN: Have you section 7?

MR RIKER: Section 7 has been lost. We have had a search made for it, and we have what we believe to be a correct copy of it made by Mr. Payne, secretary of the Riparian Commission.

MR. CORBIN: These maps are of the very greatest importance in the case, as will be seen.

MR. RIKER: We offer in evidence the map accompanying the report of the Riparian Commissioners, known as section No. 6.

Marked Exhibit C-7.

MR. RIKER: This map is endorsed "Section No. 6, map showing the survey of lands lying under the waters of the Hudson river and Bay of New York, and of lands adjacent thereto, to accompany the report of the Commissioners to the Legislature of the State of New Jersey, 1865. Drawn on a scale of 400 feet per inch. R. C. Bacot, C. E. and Superintendent. F. J. Mallory, W. W. Miller, surveyors, Jersey City. P. M. Dowd, draftsman, J. C. Soundings taken at mean high water."

MR. CORBIN: I would like to have it noted that this appears to be a manuscript map, drawn upon white paper and bound with blue ribbon.

MR. RIKER: Do you admit the maps? I have the Secretary of State here.

MR. CORBIN: Well, let him testify.

FRANK TRANSUE, sworn.

DIRECT EXAMINATION BY MR. RIKER:

Q. You are employed in the office of the Secretary of State of this State? A. I am.

Q. What is your office? A. Chief Clerk.

Q. I have asked you to produce the report of the Riparian Commissioners of February 1, 1865, and all of the papers connected therewith. Have you done so? A. I have; yes, sir.

Q. I show you a book containing such report and papers, and ask you whether that is filed in your office as the report of the Commissioners? A. No, sir, this is taken from the files of the State Librarian.

Q. Well, where is the original report? A. The original report is not on file.

Q. Have you looked for it? A. I have looked for it; yes, sir.

Q. What report have you in your office of the Riparian Commissioners? A. We have a record of seven or nine maps, I have forgotten which, which is referred to in this report.

BY MR. LINDABURY:

Q. Sectional maps? A. Sectional maps, referred to in this report.

Q. This report that you have I suppose is not signed by the Commissioners, is it? A. No, this is just a copy of the original report.

Q. A printed copy of what is supposed to be their report? A. Yes, sir.

FURTHER DIRECT EXAMINATION BY MR. RIKER:

Q. Have you looked for the original report? A. Yes, sir; I have looked for the original report.

Q. When did you make a search for the original report? A. Saturday afternoon, last week.

Q. Didn't you make an earlier search than that? A. I made a search, I think, about two weeks ago, when Mr. Payne was at the office. If I might suggest, the act does not require the original report to be filed in the Secretary of State's office.

Q. Does it provide for filing it somewhere? A. It simply provides that the report should be made to the Governor and the legislature, like all other legislative reports; after they are once made, why we know nothing about them; they are not filed in the office.

CROSS EXAMINATION BY MR. CORBIN:

Q. Is there any entry in any index or other book showing the filing of such report? A. Not the filing of the report, nothing but the maps.

Q. Is that entered? A. Yes, sir.

Q. Where is that entered? A. On an index of maps, and it is indicated on the margin by the words: "Report of Riparian Commission, 1865."

BY THE COURT:

Q. Well, where are the reports made to the legislature filed? A. At the present time they are filed with us, under the Act of 1898. As far as the law provides for it, everything goes either to the Secretary of State or to the State Librarian. All rejected bills, for instance, go to the State Librarian, and I think all other documents, so far as there is any provision for filing, go to the Secretary of State.

FURTHER CROSS EXAMINATION BY MR. CORBIN:

Q. When does your entry show those maps were filed in the office of the Secretary of State? A. It shows they were filed in 1878; as near as I recall it, in 1878.

MR. COLLINS: I notice that the Act of 1869, which is a great act, says: "The bulkhead line or lines of solid filling and the pier lines in the tide waters of the Hudson river, New York bay, and Kill Von Kull, lying between Enyard's dock, on the Kill Von Kill, and the New York state line, so far as they have been recommended and reported to the legislature by the commissioners appointed under the original act, of which this is a supplement, by report bearing date February 1, 1865, are hereby adopted and declared to be fixed and established, as the exterior bulkhead and pier lines between the points above named, as such exterior bulkhead and pier lines, so fixed, established, and adopted, are shown upon the manuscript maps, accompanying said report, and filed in the office of the Secretary of State." This recites that in 1869 they have been filed in the office of the Secretary of State. Now witness says that those were filed, and that in 1878 an index was made of all the maps on file in the office, and the date of the filing or depositing of these maps is given in 1878.

BY THE COURT:

Q. You mean that they were then, for the first time, marked filed? A. It so appears in the index.

Q. Well, you do not mean to say that they have

not been in the office before that time? A. I infer from the index that they were filed in 1878 because we have other papers there that were filed in 1850 and 1825, and I took it for granted that they were filed as of the date given in the index.

Q. Where would they have been in the meantime? A. I would not be able to tell you.

MR. LINDABURY: They might have remained in the office of the Riparian Commission.

FURTHER CROSS EXAMINATION BY MR. CORBIN:

Q. Are all the eight or nine sectional maps in the custody of the Secretary of State, except the one, section 7, which is missing? A. All except section 7.

Q. Any other missing? A. No, sir, section 7 is all.

Q. That is the only one that is missing? A. Yes.

MR. VAN SYCKEL: What does section 7 cover?

MR. RIKER: Section 7 begins at the southeast corner of the Central Railroad Company's property. Section 6 covers everything.

MR. LINDABURY: How do you know that section 7 does not run over here?

MR. RIKER: The report just offered says section 6 is from Castle Point, near Hoboken, to the southeasterly corner of the bulkhead of the Central Railroad Company of New Jersey; this embraces the river front of the cities of Hoboken and Jersey City, and is in length four miles.

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. You say you have searched for the original report and have not been able to find it? A. Yes, sir.

Q. Have you also searched for section 7, referred to in the report? A. I have, yes, sir.

Q. And you have not been able to find that? A. Unable to find it.

RE-CROSS EXAMINATION BY MR. COLLINS:

Q. But that is indexed in your index? A. Section 7 is indexed, yes, sir.

MR. RIKER: My offer in regard to this book is confined to the report of 1865; I see it is a book printed in 1873, and there is other matter in it, and the report ends on page 38.

MR. CORBIN: That report goes, by rights, down to page 74.

MR. RIKER: Well, that seems to be later than the report. The report is January 25, 1865.

MR. CORBIN: The report you have got is a general summary of the Riparian situation.

MR. RIKER: What I want is the report of the Commissioners and the accompanying sectional maps that were filed in the Secretary of State's office.

MR. CORBIN: I object, unless the whole document goes in. The document consists of the report of the Commissioners, the report of their engineer which is referred to repeatedly in it, and also has five appendices which are explanatory of the matter in the report, all of which were filed with the legislature together, and I think the

whole pamphlet should go in, if any part of it goes in.

THE COURT: Well, that is the rule, of course.

MR. COLLINS: We want the whole thing in, because the report refers to the engineer's report and would be unintelligible without that.

THE COURT: Well, you may put that in.

MR. RIKER: Report of Commissioners appointed to ascertain the rights of the State and of riparian owners to lands lying under water, printed in 1865, and being the report of the commissioners appointed under the act, entitled an act to ascertain the rights of the State and of the riparian owners in lands lying under the waters of the Bay of New York, and elsewhere in the State; approved April 11, 1864.

BY MR. CORBIN:

Q. The report which you produce in pamphlet form is a book which you got from the State Librarian? A. Yes.

Q. In the office of the Secretary of State you haven't any copy of it? A. No, sir.

Q. And you find no reference to the date of its filing? A. None whatever.

MR. RIKER: Nevertheless there is no objection to the introduction of this as the report?

MR. CORBIN: Oh, no.

Q. That is all.

JOHN C. PAYNE, sworn.

DIRECT EXAMINATION BY MR. RIKER:

Q. What is your position in the State government? A. I am the secretary and engineer of the State Board of Riparian Commission.

Q. How long have you been connected with that Board? A. About thirty-two years; ten years, the last ten or eleven years, as the secretary and engineer, and previous to that as assistant engineer and secretary.

Q. Who was the chief in the engineer's department when you were first connected with the Riparian Commission? A. Mr. Robert C. Bacot.

Q. And he retired at what time? A. About eleven years ago.

Q. Did you make a copy of section 7, which accompanies the report of the Riparian Commission of February 1, 1865? A. Yes, sir.

BY MR. COLLINS:

Q. When did you make it? A. My recollection is, about 1879.

Q. You were in the office long before you succeeded Mr. Bacot? A. Yes, sir.

FURTHER DIRECT EXAMINATION:

Q. For what purpose did you make the copy that you have presented? A. I made it in connection with some work I was doing in the suit between the Central Railroad Company, I think, and the Trustees of the School Fund, in about the year 1879.

Q. Is it an accurate reproduction of the original map? A. I believe it to be so, sir, yes, sir.

Q. Is it a copy of the map which has been recognized by the Riparian Commission as section

7, accompanying that report? A. Yes, sir; it has been so used in the office since 1879.

THE COURT: Why not ask this witness, as he is in the office and has been almost from the beginning, whether he has made a search for section 7. I take it, that if the law does not provide any place for such a report it would naturally remain in the office of the Riparian Commission, would it not?

MR. CORBIN: I suppose it would.

THE COURT: Well, now, this witness is familiar with the documents in the office, why not prove the loss of section 7 by him?

Q. Do you know where the original of section 7 is? A. I do not, sir.

Q. Have you searched for it? A. Yes, sir.

Q. Have you searched for it in the Riparian Commission's office? A. Yes, sir.

Q. Have you also searched for it at Trenton? A. Yes, sir.

Q. How recently have you searched for it at Trenton? A. Within the last two weeks.

Q. Did you make a thorough search there? A. With the assistance of the clerk in charge of the office I made a thorough search in the places that were pointed out and that I saw it was likely for such a map to be deposited, and I was unable to find it.

Q. In what office did you refer to? A. In the map vault of the Secretary of State's office.

Q. When did you make a search in your own office for it? A. At different times, perhaps not more than two or three in the course of the years intervening between 1879 and the present time.

Q. When did you make a search for it last? A. About two years ago, I think.

Q. And were your searches thorough? A. Yes, sir.

Q. In the work of the office what map has been used for section 7? A. The tracing that I now present.

By Mr. Collins:

Q. Where was the map you copied that from, when you copied it? A. My recollection is that it was in the office of the Riparian Commission at the time, and was obtained from the office of the Secretary of State, for that purpose.

The Court: Well, your title rests upon it; if the State should bring an ejectment you would have to defend under these documents.

Mr. Lindabury: Not on that map.

The Court: Well, under these various documents that are being relied upon here.

Mr. Lindabury: But we haven't questioned at all the accuracy of that copy.

The Court: Then this copy is admitted in evidence as a copy of the original.

Further Direct Examination by Mr. Riker:

Q. Will you look at that map and see whether you can locate for us the basin of 1867? A. I recognize the territory covered by the map, and can point out pretty closely the location of the basin of 1867, from my knowledge of the bounds of that basin.

Mr. Collins: Is there any reason why you are using section 7 instead of section 6?

Mr. Riker: Not especially.

Mr. Collins: Because section 6 is the one that the report says covered it.

THE COURT: Well, I suppose counsel wants to have the witness identify the basin on this map; he don't necessarily tie himself to this map particularly.

MR. COLLINS: I was wondering if there was any reason why he wanted section 7, instead of section 6.

THE COURT: Well, if there is any difference between them it can be pointed out.

MR. COLLINS: Well, is there any difference between the two?

MR. RIKER: No, no substantial difference.

Q. Can you indicate the basin of 1867, with words, so that we can, by referring to the map, locate it ourselves? A. On section 7, before me, the basin of 1867, speaking from recollection, begins in about the south line of South street, and in the inner red line about four hundred feet east of Hudson street, and runs westerly along the south line on South street, I think, to the center line of Washington street extended, and then southerly along the line of Washington street about three hundred feet, or a little less, to a point, and thence westerly parallel with South street to about the line of Warren street, I think the easterly line of Warren street, and then southerly along the easterly line of Warren street extended about two hundred feet, exactly, I think, thence easterly parallel with South street again, along a dotted red line, I think perhaps would represent that I am not sure that that dotted line—

MR. COLLINS: This map was made before the Morris Canal grant was made, two years before, so that it could not show it.

A. (Continuing)—and to the center line of

Washington street extended, and thence southerly along the center line of Washington street extended, as it is shown on section 7, about five hundred feet to the northerly—to a red line which is along the northerly line of a space ten hundred and fourteen feet in width, which is known as the Central Railroad Company terminus; thence easterly parallel with South street again, a certain distance, which I think would be represented by the easterly terminus of the red line, at the northeasterly corner of the Central Railroad Company improvement.

Q. That does not show in the map? A. The words "Central Railroad Improvement" do not show on the map, no, sir, but the red line stops there and turns at right angles to the south; from this last mentioned point my recollection is it runs across the front of the basin to the line across the front of the basin to the place of beginning. That describes the location of the basin of 1867, as I have it in my mind by reference to existing marks on section 7.

Q. That gives the general location of the basin? A. Yes, as I recall it.

Q. Your distances are only from memory and may or may not be accurate? A. Yes, sir.

Q. I notice on this map, running up to the basin of 1867, from the north, are two lines, one a dotted line in red and one a solid line in red; what do they indicate?

THE COURT: The dotted line being on the extreme easterly side.

MR. COLLINS: I object to the question because it is misleading, and will surely create confusion. It does not run up to the basin of 1867, because that was not in existence; and furthermore, the report of Mr. Bacot, the engineer, annexed to the

report, expressly defines and tells what these lines are. It is not for a witness to tell what they are, we have better evidence.

MR. VAN SYCKEL: Well, he was simply describing generally what the—

MR. COLLINS: Mr. Riker is asking him to tell what certain lines on the map are, and he says they run up to a basin.

Q. Run up to where you have described the basin to be?

MR. COLLINS: I don't want the witness's characterization of the lines when we have something much better.

MR. RIKER: I think we have a right to have this witness describe these lines and state what they mean.

THE COURT: I suppose what Mr. Riker wants to do is to identify these lines with some statement made in the report, and this witness, I take it, is not competent, so far as appears now, to tell what the lines on the map mean; the report will tell that.

Q. Well, referring to the report, what is indicated by the lines to which I have called your attention? Can you refer to that? A. The printed report does not refer to these lines in describing section 7. In describing section 6 these lines are referred to, but not in section 7. Section 7 begins at the southeast corner of the Central Railroad Company.

Q. Now referring to the report in connection with section 6, and with section 6 before you and also section 7 before you, can you tell me what the red line that I have referred to on section 7 indicated? A. The lines shown on section 6 are described in the report under the description of

section 6, the solid or inner line as being the line for solid filling, and the dotted line as being the line for piers.

Q. Exterior line? A. Exterior line for piers, yes, sir.

Q. Does there appear on this map, section 7, any lines running across what has been since known as the basin of 1867? A. No, sir, there are no such lines running entirely across the basin.

MR. RIKER: We offer the map in evidence.

MR. LINDABURY: Which map?

MR. RIKER: The one produced by Mr. Payne.

MR. LINDABURY: But not No. 6.

MR. RIKER: We have already offered that.

CROSS EXAMINATION BY MR. CORBIN:

Q. Section 6 is the map intended to show the premises in question, is it not? That is where the Morris Canal grant now is? A. I judge it to be so.

Q. I refer you to Bacot's report as engineer, pages 28 and 29, report of 1865. A. Yes, sir, that is the map that is referred to there.

Q. And those pages 28, 29 and 30 of Bacot's report of February 1, 1865, show, do they not, what section 6 is intended to show? A. Yes, sir.

Q. They describe the map? A. Yes, sir.

Q. And describe his plan of wet basins which was delineated there? A. Yes.

Q. Those lines to which your attention has been called are, for the most part, imaginery lines laid down in conformity to his report, suggesting a plan of wet basins, are they not, at least some of those lines? A. Yes, sir.

Q. His scheme as developed then, and adopted by the Commissioners, provided for two wet basins, did it not? A. Yes.

Q. One to the east, substantially what is now the Morris Canal grant, and another to the west thereof, which is substantially what is now the tide water basin, is that it? A. Generally speaking, yes.

Q. The lines of neither the Morris Canal grant nor the lines of the present tide water basin agree exactly with the plan that he then laid out? A. No, sir.

Q. His two basins are both shown on section 6 as proposed by him at that time, are they not? A. Yes, sir.

Q. And he proposed two wet basins, an easterly and westerly one. The small or easterly wet basin now lies in what is now within the basin of 1867 of the Morris Canal? A. Yes.

Q. And his large or westerly basin is substantially in the same shape and place where the tide water basin established by the legislature April 4, 1872, is now located, is that so? A. A part of it is.

Q. The tide water basin of 1872 lies a little further south, or north, which is it? A. South.

Q. And is only five hundred feet wide, the tide water basin as it now exists is five hundred feet wide? A. Yes, sir.

Q. Bacot proposed a wider one there? A. Yes.

Q. How wide? A. About seven hundred feet—seven hundred and seventy-three feet.

Q. And those proposals were the proposals of Bacot and the Riparian Commission in 1865, were they not? A. Yes.

Q. And both dealt with by subsequent acts of the legislature, that is, the Morris Canal basin of

1867 and the legislative general basin of 1872, is that it? A. Yes, sir.

Q. At that time, Mr. Payne—

MR. RIKER: What time?

Q. February 1, 1865, what was there in the way of actual filling or improvement of what is now the basin of 1867 grant? A. I can only speak from my study and intimate knowledge of the maps. I was not familiar personally with the locality in 1865.

Q. Well, those who were are all dead? A. Yes, but I have made maps and I feel competent to speak.

MR. RIKER: I think this ought not to be introduced on cross-examination; it is a matter I have not gone into.

MR. COLLINS: We have a right to show what is shown on this map.

MR. RIKER: Yes, but not what the condition was in 1865.

MR. CORBIN: All I meant to ask about was what was on the map.

Q. Is Mr. Bacot, the engineer, still alive? A. No, sir.

Q. Are any of those five commissioners who signed that report still alive, J. R. Wortendyke? A. No, sir.

Q. F. S. Lathrop? A. No, sir.

Q. John N. L. Stratton? A. No, sir.

Q. John Lane? A. No, sir.

Q. James T. Crowell? A. No, sir.

Q. James B. Dayton? A. No, sir.

Q. Is there anybody alive who has personal knowledge of what went on in that basin, at an earlier date than you? A. I think Mr. Levi W. Post is alive, but I am not sure that he is physic-

ally able to testify; the last time I heard of him his eyesight was gone, and I do not know that he is in possession of all his faculties.

Q. He was the surveyor who made surveys there, under other surveyors? A. Under Mr. Bacot; he made surveys for Mr. Bacot.

Q. You have been in the Riparian office since 1879? A. Yes, sir,—1876.

Q. And you have made a study of these matters, both the history of them as well as the present condition? A. Yes. Mr. Harrison, I think, was connected with Mr. Post, but whether as early as that I am not sure.

Q. Did you make a study one time of the order in which fillings and improvements and dockings were made in the South Cove? A. Yes, I made a very exhaustive study and compilation and map.

Q. How long ago? A. In 1879.

Q. And from your study of the history and record of the subject do you know what was there at that time?

MR. RIKER: I object.

MR. COLLINS: He would be competent to tell us what on the map showed actual construction.

THE COURT: Well, I presume that the map speaks for itself, but then an expert can sometimes point out on the map what would not be apparent to the casual observer—to the inexpert observer.

MR. COLLINS: He said for the most part imaginery line; I thought he could tell us what the map showed actually.

MR. CORBIN: Some of these projections or docks shown here are actual, and some are mere designs made at that time by Mr. Bacot, and this man, from the history of it,

says he knows, but he cannot say that he knows from being there because it is too early. It seems to me he ought to be able to tell us.

THE COURT: If there is no objection I presume his information would be useful, but in the face of objection the evidence is plainly secondary evidence.

MR. CORBIN: But I understand, your Honor, that when witnesses are dead tradition is admissable.

THE COURT: Well, no, I do not think you can bring tradition into this.

Q. In this large or westerly wet basin I see delineated what appears to be 1, 2, 3, 4,—5 piers, have they ever been built? A. No, sir.

THE COURT: The witness is competent to speak as to the condition of things in 1876; what he saw in 1876.

Q. Further to the east, in this small wet basin, appear to be a large pier projecting from the northerly side into the middle of it; was that ever built? A. I believe it was, yes, sir, that was built.

Q. Is it there now, or gone? A. I haven't been down there very lately; it was there up to a few years ago.

THE COURT: Well, you say you have copies of this map?

MR. RIKER: No, that is the only one that I know of; I think perhaps Mr. Corbin may have one.

MR. CORBIN: There are printed copies of it in existence.

THE COURT: This can go back to Trenton.

MR. CORBIN: But as to the accuracy of

the copies, I won't vouch for that, until they are compared.

THE COURT: Well, it seems to me that the case is of sufficient importance to make a tracing, if you want an exact copy. This ought not to remain here but ought to go back to Trenton.

MR. RIKER: Well, the Attorney General says he will have the necessary tracings printed.

THE COURT: Before these maps go I might state that as far as I can see, I have not examined it critically, they delineate precisely the same situation around the exterior basin; if there is any difference between the two I would like to have it pointed out.

MR. RIKER: I do not think there is any.

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. Is there any difference between these two maps with reference to this basin? A. No, sir, I don't see any difference excepting that section 6 has the lettering "Exterior line for solid filling, and exterior line for piers" where on section 7 these designations do not appear.

RE-CROSS EXAMINATION BY MR. COLLINS:

Q. And the word "passage-way" is also there and does not appear here? A. Yes, sir, there is another difference; and there are figures. On section 6, on the north side of the westerly or large basin apears the words "Exterior line for solid filling" and also on the upper edge of the projected piers appears the words "Eexterior line for piers." This lettering does not appear on section 7, but the lines do. On the southerly line of the large basin appears "Exterior line for solid filling" which does not appear on section 7.

Q. And the word "passage-way"? A. Appears on section 6 and does not appear on section 7.

By The Court:

Q. But the two are drawn on the same scale and the lines on the two around this basin, or around both basins are identical? A. Appear to be identical, yes, sir.

Mr. Lindabury: If there be a difference I presume the one that relates to the section on which this land is would probably be the controlling one.

The Court: Well, that would be a matter of argument.

Mr. Corbin: I ask, with the Court's permission, to insert in the record a statement made by Mr. Bacot in describing this map; I refer first to page 26 of the report of February, 1865, "The lines recommended and drawn on the maps, as exterior lines for solid filling and for piers will be taken up and described in the order of the sections as laid down thereon." Then he describes sections 1, 2, 3, 4, 5. Then he says "Section No. 6, from Castle Point, near Hoboken, to the southeasterly corner of the bulkhead of the Central Railroad Company of New Jersey. This section embraces the river front of the cities of Hoboken and Jersey City and is in length four miles."

The Court: Now the witness might point out what that bulkhead is.

Mr. Corbin: The line of Jersey City at that time was quite different than it is now.

The Court: Well, that does not make any difference; he says from Castle Point to the bulkhead line of the Central Railroad. Now I say the witness can point out what the bulkhead is on the map.

WITNESS: The map shows Castle Point, on section 6, to the southeasterly corner of the bulkhead of the Central Railroad Company, shown on section 6, as being—it is at a point twenty-four hundred feet east of an angle point in the exterior line for solid filling, and it is in line with the southerly line of the section, about five hundred feet south of what is marked as the Central R. R. of N. J., and is at the southerly end of a distance of ten hundred and fourteen feet, as noted on the map, section 6.

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. And also referred to as near the Jersey City line? A. This also appears to be in what would be the prolongation of what is marked on section 6 as "Boundary line of Jersey City."

RE-CROSS EXAMINATION BY MR. CORBIN:

Q. It is practically at the point where the old southerly boundary line of Jersey City strikes the Hudson river water front, is it not? A. It appears to be so; yes, sir.

Q. I will read what is stated on page 30 of the Engineer's report, respecting section 7. "Section No. 7, from the bulkhead of the Central Railroad Company of New Jersey to Enyards Dock on the river Kill Von Kull. This section includes Great Bay on the southerly side of Jersey City known as Communipaw Cove, divided into two parts by the projecting land of Cavans' Point." A. Enyards dock is not shown on section 6 and is shown on section 7, and is a point about midway between Constables Hook of the Kill Von Kull and Bergen Point.

MR. RIKER: Judge Van Syckel thinks that the Vice Chancellor may have mis-

understood the testimony as stating that the bulkhead line ran across the front of the basin instead of running around.

THE COURT: Oh, no, I didn't so understand.

MR. COLLINS: But the witness does want to make a correction, I think. He said there are some lines on No. 6 that are not on No. 7.

MR. LINDABURY: Yes, I think you did make the statement that the lines were identical on the two.

WITNESS: Generally so I said.

BY MR. LINDABURY:

Q. Now they want you to state the fact that the red lines run around the basin on the one and not on the other. A. Well, if you will call attention to the point that you want the comparison made at.

Q. As I understand, this bulkheead line is continued all around on No. 6, while on No. 7, it is not.

BY MR. VAN SYCKEL:

Q. Where do you say that bulkhead line runs, on No. 6? A. The impression in my mind is that the bulkhead line on section 6 runs down to the south line of South street.

Q. Trace it. A. Do you want me to show you?

Q. Show the Vice Chancellor where you say that runs. A. It runs down here and stops there (witness indicated on map).

Q. What is the other red line that runs all around here? A. I can only say that my impression would be that that enclosed the basin described in the report of 1865.

BY MR. LINDABURY:

Q. It is marked as bulkhead around here, is it not? A. Not on the small basin that you are referring to.

Q. But it is on the upper basin, is it not? Is that red line marked anywhere else on that map except as a line indicating the bulkheads—anywhere on that map? A. Yes, sir. The line that you are referring to as ending at the south line of South street has written on it "Exterior line for solid filling."

Q. Well, that is the same thing, is it not? A. Yes, sir.

Q. Is that red line used to indicate anything but the lien for bulkheads and solid filling? A. I cannot say.

Q. Is not it repeated again around the basin or one of those basins? A. I cannot say as to that.

THE COURT: Here is a red line running along the canal.

MR. LINDABURY: But that is another map, your Honor.

WITNESS: From an examination of the map I cannot say that that red line indicates bulkhead line alone.

Q. What else do they indicate? A. They indicate in another case survey lines.

Q. What case is that? A. That is the case of section 7, which shows the survey line.

Q. I didn't ask you about No. 7, I ask you about No. 6. Show me where the red lines indicate anything on section 6, except bulkhead and lines for solid filling? A. Well, I can only say what my judgment of the map shows.

Q. I call your attention to a red line marked "Exterior line for solid filling" on the southerly

side of the basin; is that continuous? A. The line certainly is continuous.

Q. Does not that connect with one of the lines you referred to, which is said to be the line for solid filing? A. I don't think I have referred to any other line that that line connects with.

Q. Does it or not—whether you refer to it or not—connect with any line on the shore marked "line for solid filling"? A. I don't think your question—any line on the shore? What do you mean?

Q. Any line running parallel with the shore or water front? A. On section 6, the line which you have referred to, and on which those letters are printed, runs down to another red line, running to the south at nearly right angles.

Q. What does that line indicate? A. That line must speak for itself, there is nothing on the map that describes it.

Q. You testified a while ago that that line indicated on the other map, the line for solid filling; why don't you think it indicates that on this map? A. I think you are mistaken in the statement you make.

Q. Don't that line indicate the line for solid filling, to your mind? A. It does to my mind, yes.

Q. And does not that line connect with the red line on our property? A. Well, your questions are so confused that I cannot answer intelligently.

Q. I ask you whether that same red line we are talking about, and which is indicated as the line for solid filling, does not connect with a red line on our property. I don't think there is any want of clearness in that question? A. Then I must attribute it to my lack of conception, because I cannot understand your question.

Q. If I should point to the line and you should

follow it with your finger, could you answer? A. Yes.

Q. Look down this way. A. Yes.

Q. Does it connect or doesn't it? A. I will say that the line you were talking about previously was on the south side of the large basin, and you now point to the north.

Q. Does the line on the south side connect with the line on the north side by a continuous circle, or square? A. There is a continuous red line around.

Q. Well, if you continue that red line does it connect with the red line on our property?

MR. VAN SYCKEL: Which red line do you mean?

Q. If you continue that red line to our property does it connect with the red line on our property? A. I am answering largely at random because your questions are so confused. I don't think I can answer it.

THE COURT: Well, is not that a matter of observation.

MS. COLLINS: What I want to get at is that Mr. Dunham wanted to point out to Mr. Payne that there was no line on No. 6, that there was not on No. 7.

MR. LINDABURY: Why there is a red line on No. 6, on our property, that Mr. Payne does not see.

MR. COLLINS: I just simply wanted the Vice Chancellor not to get the impression that they are identical, that is all.

THE COURT: Well, I think we have gone into it sufficiently.

BY MR. COLLINS:

Q. There are some lines on No. 6 that are not on

No. 7? A. Yes, I think there is a red line on the westerly side of what appears to be a narow bulkhead, in line with the original bulkhead of the Morris Canal & Banking Company, on section No. 6, that does not appear on section 7. That is one of the differences.

Q. That is also across the westerly end of the large basin? A. Yes. On section No. 6 there is a red line across the westerly end of the large basin that does not appear on section 7.

Q. That is all.

Adjourned until Wednesday, December 30, 1908, at the Chancery Chambers, Newark, New Jersey.

In Chancery of New Jersey.

Between:

ROBERT H. MCCARTER, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Informant,

and

LEHIGH VALLEY RAILROAD COMPANY, LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY AND CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

Second Day.

Before HIS HONOR VICE CHANCELLOR STEVENS.

Edmund Wilson, Esq., Attorney General; Bennett Van Syckel, Esq., Chandler W. Riker, Esq., and Joseph Choate, Esq., for Informant;

William H. Corbin, Esq., Gilbert Collins, Esq., Richard V. Lindabury, Esq., and John Johnson, Esq., of the Philadelphia Bar, for Defendants.

Transcript of shorthand report of the evidence given upon the trial of the above-stated cause, on Wednesday, December 30th, 1908, at the Chancery Chambers, Newark, New Jersey.

MR. RIKER: If your Honor please I will ask for an adjournment, so that if your Honor has other cases here I thought I would tell you now before you had disposed of them.

The situation is that I am in the case of the State of New York against the State of New Jersey, and the Attorney General of the United States has just filed a petition asking to intervene in that case. Mr. Coult, who has been bearing the brunt of that case with me, was working late last night, and I must come in and help him. I do not see any other way out of it. The motion is down for the fourth of January, the answer to the petition and the necessary papers must be prepared, and I am perhaps more familiar with the case than any one, and Mr. Coult I think is pretty well worn out, so that I must do it, and if the Court and counsel on the other side, recognizing the importance of that case, will consent, I would like to have this case go over to some time to meet your Honor's convenience, after the fourth of January, probably the middle of January.

THE COURT: Well, there are other counsel in the case.

MR. VAN SYCKEL: I do not feel like going on with the case without the assistance

of Mr. Riker; with all the counsel on the other side it is a good deal of labor, and I think I ought to have Mr. Riker's assistance in the case.

THE COURT: Well, I suppose the Attorney General has hardly been able to prepare himself with this case.

MR. WILSON: (Attorney General): My connection, if your Honor please, is rather a perfunctory one. Your Honor sees that the legislature has made a special appropriation for the employment of special counsel, and these gentlemen have had the matter in hand for something like two years, but my knowledge of the situation is a very casual one at best, and it could not well be otherwise, under the circumstances. Mr. Riker is embarrassed by the circumstances that in this sewage matter the Attorney General of the United States has served a notice two days ago of a motion to the Supreme Court of the United States, by which he hopes to be permitted to intervene in that matter, and it is necessary for Mr. Riker and his associate, Mr. Coult, before the first of January to prepare the answer to the original bill of complaint already filed by the State of New York, and upon the fourth day of January this motion of the Attorney General of the United States is made returnable before the Supreme Court of the United States, and this is a contingency that none of the gentlemen contemplated, and Mr. Riker feels that the situation is one which requires his immediate attention, and I suppose it is upon that ground that this application for a postponement is made. Certainly we are not

open to the suggestion that this matter may be presented fully and without prejudice to the State by reason of the presence of two other counsel, because my connection with it, as I say, is merely a nominal one, and Judge Van Syckel had not undertaken to marshall the facts and to be ready to present them; his function is largely that of counsel in the case.

THE COURT: But as I understand, the case of the State is in.

MR. COLLINS: Yes, they said they did not want over five minutes more.

THE COURT: Why cannot we go on today. The witnesses are here and counsel are here. I don't know what counsel on the other side desire.

MR. CORBIN: We are ready to go on all day but we should suppose at least that the other side ought to close; we are ready to immediately go on with our case. Of course I recognize the importance of what the other side has said.

MR. COLLINS: Yes, I think they ought to close their case. They said on Monday night that five or ten minutes would close it, and it was suggested to stay and do it then only Judge Van Syckel had to get his train.

MR. LINDABURY: Well, if there is anything about this case that Judge Van Syckel does not know I am mightily mistaken.

MR. VAN SYCKEL: Well, of course we are a great deal in the fog as to what your case is; you are in a position to know about things that we cannot, and that is the difficulty in this case. Now I know upon what

we rely, and I am quite familiar with that but they are in the possession of facts that the State may not know, and therefore I feel that I must have the assistance of counsel to meet the case as it is presented by the other side.

THE COURT: Well, suppose we go on today, and when the case of the Informant is in take an adjournment in order to give you an opportunity, if there are any engineering facts in the case or other facts which require time to meet them, for examination.

MR. VAN SYCKEL: We are willing to go on today; it will take but a little while to put in the balance of the evidence we are now prepared with, but I will say to counsel that during the hearing of this case, and from what we have heard said by the other side, there is some evidence that possibly we may wish to put in before we close. With the right to put that in—it has been suggested to us during this hearing—we are willing to close our testimony today.

MR. LINDABURY: Is it rebuttal?

MR. VAN SYCKEL: It would be evidence that ought to be offered in opening the case.

MR. LINDABURY: Then I think you should offer it now.

MR. VAN SYCKEL: We haven't it, that is the trouble.

MR. CORBIN: Communicate to us what it is.

MR. RIKER: This question of the Attorney General's intervention—of the United States intervening in this other case, is a very important question which raises the question of the jurisdiction between the War Department and the Department of Justice

of the United States. It is a matter that requires very careful and immediate attention, and I would not like to stay here, even this morning, if I can be excused.

MR. COLLINS: It can only take a very few minutes to put in the State's case; then the motion might be made, if there is something he wants to put in that he is not prepared to put in now, and will indicate what it is.

THE COURT: If they want to reserve anything they must indicate it, undoubtedly.

I recognize the difficulty of Mr. Riker's position, but if I once assent to the proposition that the enforced absence of any one counsel in this case will be sufficient ground for postponing it, I do not believe we will ever get through, because counsel here are gentlemen of such eminence that their services are so much in demand that there will always be one counsel, at least, who will find it very difficult to attend, and that is the difficulty that I will have.

Now if I thought that the case of the State would not be properly cared for by counsel, why that would be one thing, but I know that Justice Van Syckel is abundantly able to look out for the interests of the State.

Why not adopt this course—put in your evidence as far as you have it, and then we will find out what this other evidence is, and perhaps make some arrangement that will be agreeable to counsel on the other side. If this case goes over I do not think I can take it up until March; it will have to go to the bottom of my calendar.

MR. VAN SYCKEL: Well, the case will keep, and we can have an arrangement

made that will suit all the counsel; we will consent to anything that will suit all the counsel.

MR. COLLINS: Well, I think their case ought to be closed so that we will know what we have to meet.

MR. VAN SYCKEL: We will go on as far as we can today; we are willing to do that.

JOHN C. PAYNE recalled.

FURTHER DIRECT EXAMINATION BY MR. VAN SYCKEL:

MR. VAN SYCKEL: We desire to put in evidence the Act of 1906, passed by the legislature, directing this suit to be brought.

MR. LINDABURY: We object to the Act as irrelevant, unconstitutional and void.

Q. I show you this map of section 6, and ask you what is the distance of that line, that is the northeast line along the basin of 1867—isn't it? A. You are indicating by your fingers, Judge, about the line—the northeast line of the basin of 1867.

Q. Now how long is that line?

MR. CORBIN: What do you mean by the basin of 1867?

MR. VAN SYCKEL: That is what I mean.

MR. COLLINS: The grant of 1867?

MR. VAN SYCKEL: Yes, or the basin of 1867.

MR. COLLINS: It is not a basin at all.

MR. VAN SYCKEL: It is the basin of 1867, we have called it that all through. I mean the grant of the 14th of March, 1867; that is what I am talking about.

Q. Will you give us that distance? A. That scale is four hundred feet to the inch.

Q. Is it on the map? A. The scale is four hundred feet to the inch.

Q. Well, since you have the scale you can give it to us? A. Between what points are you asking?

Q. Along the whole length of that basin. A. The distance from the outer end of the pier, westward to where a red line strikes a construction—a dock of some kind—is sixteen hundred feet.

Q. Now, what is the length of this line?

THE COURT: The south line of the interior basin.

Q. Exterior line for solid filling, what is the length of that? A. From the northeasterly corner of the Central Railroad improvement west to a point where the line turns at right angles to the north is four thousand four hundred feet, by scale.

BY MR. LINDABURY:

Q. That is the line along the Central Railroad, is it not? A. Yes, along the northeasterly line of the Central Railroad improvement.

FURTHER DIRECT EXAMINATION BY MR. VAN SYCKEL:

Q. What is the length of that line along Water street, marked "Exterior line of solid filling"?

MR. LINDABURY: That is the northerly line of the inner basin.

MR. VAN SYCKEL: Northeasterly.

A. Thirty-four hundred feet by scale.

Q. Now does that cover the whole basin of 1867, or does it run on to this—

THE COURT: Well the word "that" has no significance on the notes.

Q. Can you tell, from your knowledge of the situation, where the grant of March 14, 1867, to the Morris Canal extends, on this map? A. Yes.

Q. Now do that. A. It extends practically from the end of the—

Q. Will you run a pencil around it? A. Practically from the easterly end of the most southerly pier, north of the two small basins mentioned in the Report of 1865, extends from that point westerly to the center line of Washington street, and then turns at right angles to the south, about two hundred and sixty feet; then runs westerly about four hundred feet to the line of Warren street, and then southerly in the line of Warren street two hundred feet; thence easterly again and parallel, about four hundred feet to the center of Washington street extended, and then southerly at right angles about five hundred feet to the northeasterly line of the Central Railroad improvement, and then easterly at right angles or parallel with South street to the northeasterly corner of the line of this Central Railroad improvement.

BY MR. RIKER:

Q. Can you give the length of that line—seventeen hundred and thirty-five feet? A. Seventeen hundred and sixty-five feet, as I recall.

BY MR. VAN SYCKEL:

Q. That is the westerly line of the basin? A. That is the southerly line.

Q. Well, southwesterly. A. Yes, the southerly line.

Q. That is all.

MR. RIKER: Well, I should like to examine the witness on another line.

MR. CORBIN: Shall I cross-examine him on this now?

MR. RIKER: All right.

CROSS EXAMINATION BY MR. CORBIN:

Q. Mr. Payne, the map which is before you is section 6, accompanying the Riparian Commissioners report, filed February 1, 1865, is it not? A. Yes.

Q. The basin of 1867, of which counsel has spoken to you, as you understand is the basin or grant created by the act of legislature of 1867, two years later? A. Yes, sir.

Q. The outlines of the grant of 1867 to the Morris Canal & Banking Company are then not indicated at all on this map, are they? A. No, sir.

Q. They do not, in fact, agree with any lines laid down here, do they, except for part of the way they agree with the northerly line of the Central Railroad improvement? A. That is true, sir.

Q. So that there is nothing on this map, without putting new lines on it, to indicate the grant of 1867, is there? A. No, sir.

Q. Are you familiar with the report of the commissioners and of their chief engineer, Mr. Robert C. Bacot, that was filed February 1, 1865? A. Yes.

Q. You have examined Mr. Bacot's report? A. Yes.

Q. And this map which you have before you is the map which he described, and sets forth the plan which he describes in that report, does it not? A. Yes.

Q. For the creation of basins in the South Cove? A. Yes.

Q. And those basins were never adopted by anybody that you know of, afterwards, were they, in that form? A. No, sir.

Q. Neither the tide water basin established in 1872 nor the grant to the Morris Canal & Banking Company in 1867 conformed to this map, did they? A. No, sir.

Q. But those two grants taken together did measurably cover the same ground which those proposed basins cover? A. Yes, sir.

Q. But not accurately? A. Not exactly.

MR. VAN SYCKEL: Mr. Corbin, you are very leading.

MR. CORBIN: That is my intention; I am cross-examining the witness.

Q. The West Line grant made by the State in March, 1872, to which reference was made, that also in part occupies this proposed basin of 1865, does it not? A. Yes, sir.

Q. Mr. Payne, taking the grant of 1867, to the Morris Canal & Banking Company, the grant of March, 1872, to the New Jersey West Line Railroad Company, and the basin of 1872 as established by legislative act—those three legislative grants, together, cover all the ground which is indicated here by these two basins on the map of 1865, do they not? A. Yes, sir.

Q. Mr. Payne, I read you from Bacot's report, accompanying the Commissioners report of February 1, 1865, beginning on page 29, his description of the proposed two wet basins, and will ask you to indicate them on the map, or to state whether they are indicated on the map, as I read—after I have read. "The plan proposes the formation of the two wet basins on the southerly side of Jersey City, and north of the line of solid filling marked out 'for the Central Railroad Company's improvements.' The smaller basin will be formed on its easterly and westerly sides by the bulkheads and then by the Morris Canal Company and now exist-

ing between points sixty feet east of Hudson street and seventy-five feet east of Washington street, and on its northerly and southerly sides by the southerly line of South street and a bulkhead to be put down three hundred feet northerly of and parallel with the line of solid filling shown for the improvements to be made by said company." Is that basin indicated on the map? A. Yes, sir.

Q. "It will be necessary that portions of the easterly and westerly bulkheads should be removed for the purpose of securing a passage-way (intended to be three hundred feet in width) for facilities to the larger basin on the west; this basin will contain a water space of about thirteen acres. The larger basin will be bounded on its northeasterly side by the line of solid filling, drawn three hundred feet southerly of and parallel with the northerly line of South street; on its westerly side by the same line drawn one hundred and fifty feet easterly of and parallel with Varick street; on its southerly side by the line of solid filling marked 'for improvements of the Central Railroad Company of New Jersey'; and on its easterly side by the westerly bulkhead line of the smaller basin or passage-way of three hundred feet in width as above described. This basin will contain a water space of about fifty-three acres." Is that basin indicated on the map? A. Yes, sir.

Q. How is it called? A. The word "basin" is printed on it.

Q. How about the smaller basin? A. The word "basin" is printed in the center of that also.

Q. "Piers projecting three hundred feet into this basin are shown at the terminus of Washington, Van Vorst, Warren, Henderson and Grove streets, Jersey City, which are designed to be connected by Washington, Van Vorst and Grove streets by means of bridges (having draws of fifty

feet in width) with the lands to be formed on the southerly side, adjoining the Central Railroad Company of New Jersey, and the waters of Mill Creek will flow into the basin at its westerly terminus." Are these piers indicated? A. Yes.

Q. Is Mill Creek indicated? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. You have stated that you are the secretary of the Riparian Commissioners? A. Yes, sir.

Q. Have you made an examination of the minutes, beginning with the earliest minutes of the Board and running down and including 1889, for the purpose of ascertaining whether the Board ever established any bulkhead line across what we call the basin of 1867? A. I have made such an examination of the minutes, and I do not find that any such line has been established by the Commissioners.

MR. LINDABURY: Well, we ought to have those minutes. There is a report on file, made by the Commissioners, I think, establishing the bulkhead line.

Q. Did the board ever establish any line of solid filling across the basin of 1867, by the minutes? A. No, sir.

Q. You stated yesterday that you were familiar with the construction of the piers on the north side of the basin of 1867, as I remember? A. Yes, sir.

Q. I call your attention to what is marked on this map as the "Morris Canal Pier" I think—no, not that one, the main pier, Morris Canal Dock, that extends from Washington street in an easterly direction to a point four hundred feet distant easterly of the point where the line of solid filling or bulkhead line, as shown on this map, ends?

MR. CORBIN: The red line?

MR. RIKER: Yes, it is the red line on this map.

MR. LINDABURY: Solid red line.

Q. Is that right? A. Yes, sir.

Q. That pier is still there, is it not—that portion of the pier? A. Yes, sir.

Q. About how wide is that pier at its extreme easterly end? A. I should judge about thirty feet.

Q. Have you been over it recently? A. Yes, sir.

BY THE COURT:

Q. Does it extend beyond the red line to this dotted line? A. Yes, sir, four hundred feet east of that.

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. The pier extends four hundred feet to the east of the point which I have indicated, which is the point where the line of solid filling, coming down from the north, ends, that is the actual pier? A. Yes.

Q. Now you say you remember that pier since what time? A. I remember that pier as early as 1875 or 1876.

Q. Was it an old pier at that time? A. It was a pier in use at that time; how old it was I cannot say.

Q. And in use by whom? A. By the Morris Canal company, or the company operating the canal for storage of coal and products.

Q. Now that pier, as you have stated, extends from Washington street. Won't you describe the pier leading out into the Hudson as it was when you first remember it, beginning at Washington street or near Washington street? A. As I remember it first it was a pier commencing at Washington street and intervening between the basin,

which was at the terminus of the Morris Canal, the basin out into which the canal boats were locked, through Washington street and the larger waters of the Bay; it was a pier about a hundred or a hundred and fifty feet in width, irregular, and extended continuously to about Hudson street, and there it narrowed down to a pier about thirty feet in width, which was not connected except by a foot bridge, or a small draw bridge, as I recall it, and there that narrow pier, some thirty feet in width, began and extended, as you have described it, about four hundred feet east of the southern terminus of the full red line on section 6.

Q. Now, what was that pier or dock then used for? A. It was used for the reception and storage of coal, my recollection is, almost entirely; I recall great heaps of coal being stored there.

Q. And was it used in connection with the Morris Canal & Banking Company? A. Yes, sir, with the Morris Canal Company.

Q. The canal boats were there? A. Yes.

Q. Now, what was the construction to the east of Washington street, between what is marked here—between Water street and South street? A. There was a piled dock—piled, capped and covered plank, for a distance of a hundred and fifty feet about, east of Washington street.

Q. And that was in front of the Sugar House property, was it? A. Yes, sir.

Q. Now, as you first remember the construction which is at right angles to the pier, which we have been speaking of—

MR. CORBIN: This pier you have been speaking of, you will notice, is in continuation of South street, and is by everybody spoken of as the South street pier, and if we all learn to speak of it as that it will be

much easier to find it; it is substantially in the line of South street, and has always been spoken of as the South street pier.

MR. RIKER: I have no objection to it being spoken of in that way, and I will use that term.

Q. Was there a pier nearly opposite Hudson street, perhaps sixty or seventy feet to the east of Hudson street, extending southerly? A. Yes, sir.

Q. Is that pier there now? A. No, sir.

BY THE COURT:

Q. Is it correctly represented on the map? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. At the time of your earliest memory how far did that extend into the basin? A. About, as shown on section No. 6, about five hundred feet.

Q. Can you give the date when that was removed? A. I cannot.

BY MR. VAN SYCKEL:

Q. You say that is removed now? A. Yes, sir.

BY THE COURT:

Q. Well, the pier called Morris Canal Co.? A. Yes, sir.

Q. When do you say that was removed? A. I don't know, sir.

Q. Well, can you say whether recently or long ago? A. No, sir, I cannot; I think not very recently.

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. There is a line on the map before you about, we will say, seven hundred feet southerly from

what has been spoken of as the South street pier, and I ask you whether that was ever there, to your knowledge? A. Not to my knowledge.

MR. CORBIN: I will tell you what we have. We have the actual original survey made before this map, in 1864, showing the actual surveys in South Bay; if you want it you may use it, and it will save lots of time. It was made by the Morris Canal & Banking Company just about the time this map was made, or one year before.

MR. RIKER: It will show the lines referred to by Mr. Bacot?

MR. CORBIN: Yes, it will throw a lot of light on it.

Q. You have said that the basin of 1872 occupied to some extent, at least, what is here shown as the larger of the two basins delineated on the Bacot map of 1865? A. Yes, sir.

Q. Could you locate a little more accurately where the basin of 1872 actually is? A. My impression from looking at the map is that the basin of 1872 is the southerly line of it, is about coincident with what is marked on the map section 6 "Exterior line for piers" and extended five hundred feet north of that line.

Q. So it would extend two hundred feet to the north of the south line of Water street as shown on this map? A. Two hundred feet to the south of Water street and three hundred feet to the north.

Q. So that the basin of 1872 would extend two hundred feet north of the line shown as the southerly line of Water street on this map, two or three hundred feet?

MR. CORBIN: Mr. Riker, there is no such street as Water street.

MR. RIKER: I refer to the map now.

A. Two or three hundred feet, I am not sure, without making the location on the map.

Q. And it would extend how far westerly of Washington street, if you can tell? A. About twenty-eight hundred feet, I think, possibly not more than twenty-four hundred feet—yes, maybe more than twenty-eight hundred feet west of Washington street, and possibly it might be thirty-two hundred feet.

Q. And the basin—you are familiar with the basin of 1867 as established by the legislative act? A. Yes, sir.

Q. And you are familiar with the grant made by the State to the Lehigh Valley Railroad Company in 1889? A. Yes, sir.

Q. Can you tell us how nearly coincident the northerly line of the basin of 1867 is with what we have called the South street pier? A. Yes, the northerly line of the basin of 1867 or lease of 1867 is very nearly coincident with the southerly line of the outer or easterly end of the South street pier.

BY MR. CORBIN:

Q. That is the south side of South street, is it not? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. Now describe it as it runs in toward Washington street? A. As the line runs west passing Hudson street, the Morris Canal dock which has been spoken of as the coal dock, trends off to the north, leaving a space of perhaps thirty feet or perhaps sixty feet rather, between the northeasterly line of the basin of 1867 and the southerly line of the South street pier.

Q. And the smaller basin on the Bacot map of 1865 seems to end one hundred and thirty-one feet from Washington street? A. East of Washington street, that is the figure on the map of 1865.

Q. What is true as to the lease of the Commissioners to the Lehigh Valley Railroad Company, with reference to that line?

MR. COLLINS: I object; it is not a lease, it is a grant.

MR. RIKER: Well, I will call it grant; it won't change it whether we call it lease or grant.

Q. What is true as to the grant of the Commissioners to the Lehigh Valley Railroad Company, with reference to that line?

MR. CORBIN: Objected to as obscure.

MR. RIKER: Well, we will call it the grant of 1889.

Q. What is true as to the grant of 1889 of the Commissioners to the Lehigh Valley Railroad Company, with reference to that line. Does it extend further to the west than the northerly line of the smaller basin, as shown on the Bacot map? A. Yes, sir.

Q. It extends how far? A. About one hundred and seventy-five feet to the west.

Q. And that would be to the center of Washington street? A. To the center of Washington street, yes, sir.

MR. LINDABURY: Is not that line coincident with the grant of 1867?

MR. VAN SYCKEL: The same description as I understood.

MR. COLLINS: The two grants are set out in the Information in haec verba.

MR. RIKER: I thought some confusion had been raised in regard to the location of the grant of 1889, with reference to the Bacot map.

MR. COLLINS: It was not intended to.

MR. CORBIN: They do not follow the Bacot map, neither the grant nor the—

MR. LINDABURY: I thought the lines of the grant of 1867 and those of 1889 were exactly the same; now the easiest and simplest way is to have the witness say so.

MR. VAN SYCKEL: I think the grant of 1889 follows the description.

MR. RIKER: It does, but they succeeded in getting Mr. Payne to say that the Bacot map did not show the location of the grant of 1889, and now I want him to show on this map where the grant of 1889 really is located, with reference to the Bacot map.

MR. LINDABURY: It does not show the grant of 1867, we said.

MR. CORBIN: All these descriptions in the grant of 1867 and 1889 and any others that may be there, are all made with reference to streets, on this map, and if they are just referred to they can be located with ease; they are located with reference to South street, Warren street, Washington street, Grand street and the Central Railroad location, and those are all defined on every map here, but none of them follow this map.

MR. VAN SYCKEL: In the act of 1867 some distances are given.

MR. CORBIN: But they are perfectly easy of location by anybody.

MR. COLLINS: Take the ordinary City map, nobody could fail to locate it, right on that.

Q. Does the northerly line of the smaller basin, as shown on the Bacot map extended to the center of Washington street, substantially coincide with the northerly line of the grant of the Commissioners of 1889? A. Yes, sir.

By Mr. Lindabury:

Q. And that is the south line of South street extended, is it not? A. Yes, sir.

Cross Examination by Mr. Corbin:

Q. You have said that the Riparian Commissioners have at no time, so far as you can find, established any exterior line for bulkheads or solid filling across the grant of 1867. Did they at one time establish an exterior line for piers?

Mr. Riker: Well, I don't think that is material at all to this issue.

A. Yes, sir, they did.

Q. And that was in what year? A. 1882.

Mr. Riker: We object to the testimony on the ground that it is irrelevant and immaterial.

The Court: Well, it will have to go in now, subject to the objection.

Q. I call your attention to a copy that appears to be certified by yourself, of the minutes of the Riparian Commissioners, and refresh your memory by that, and tell us the exact date and the book and page of the minutes of the Commission where the record may be found, and read us the action, if you have it? A. The action of the Board is found in Minute Book 4, page 6, under date of September 26, 1882, and the Minute reads: "The Engineer presented map showing extension of the exterior line for piers between the Hoboken ferry

at Hoboken and the present exterior line for piers, at the southeasterly coal pier of the Central Railroad in the Hudson river, which was approved and adopted and ordered filed in the office of the Secretary of State."

Q. Was that map filed? A. Yes, sir.

Q. Have we any copy of it here that shows that line? A. Yes, sir, I have a blue print copy that I made from the map on file.

Q. Can you produce it? A. Yes, sir (witness produces map).

Q. This blue print which you have in your hand you say was made by you from the original on file in Trenton? A. Yes, sir, made under my direction.

Q. And I see the outer line laid down here is indicated as "Present exterior line for piers, adopted September 26, 1882." Is that the line which you have referred to as being adopted by the Riparian Commissioners that day? A. Yes, sir.

Q. And what is the other line drawn across the front of the grant of 1867, the other dotted line a little further in shore?

MR. LINDABURY: Established line.

Q. Former exterior line for piers, established 1865. What is that line?

MR. COLLINS: What does it say on it?

MR. CORBIN: It says "Former exterior line for piers, established 1865."

Q. What is that line, explain what that is? A. That line, as far as the South street pier—

Q. From the north? A. From the north as far as the South street pier is the pier head line established by the Report of 1865, but as to the part south of the South street pier and across the basin, I cannot give that a designation.

Q. Mr. Payne, is it not a fact that after the report of February 1, 1865, was filed there was put in circulation printed maps purporting to be copies of section 6, or section 7, which did erroneously show the exterior line for piers running across the Morris Canal grant? A. I think there are printed maps in the reports; I haven't them in my mind.

Q. But was there ever a line established there, so far as you know, by the Riparian Commissioners or attempted to be so established? A. None, excepting the map that you are now referring to, the map of 1882.

Q. Then that inner line, so far as it goes across the basin or the grant of 1867, is an error? A. I should say it was.

Q. This exterior line established by your Board in 1882— A. I would like to go a little further with my answer. It is an error in calling it the pier line of 1865.

By Mr. Riker:

Q. Or calling it a pier line at all, as it crosses the basin? A. Yes, sir.

Re-Cross Examination by Mr. Corbin:

Q. This line which your Board established in September, 1882, did it follow any line that the government authorities had established or indicated? A. No, sir.

Mr. Van Syckel: Line for piers you are speaking of?

Mr. Corbin: Yes.

Mr. Van Syckel: Well, that is objected to.

Q. I ask you whether the exterior line which the Riparian Board adopted in September, 1882, fol-

lowed the United States government line? A. No, sir, the government lines come later.

Q. Has the United States government still later established —

MR. RIKER: I object.

MR. CORBIN: I withdraw the question.

Q. The South street pier which you have been describing as the irregular shape and so on, was the pier on the south side of the Morris Canal basin, commonly known as the little basin, was it not? A. Yes, sir.

Q. And from Washington street out as far as the little draw-bridge that you have mentioned it was solidly filled with stone and earth and timber, was it not, as long ago as you can remember? A. I think it pretty generally was, yes, sir.

Q. Was it in use as well for stables for the horses and mules that drew the boats on the Morris Canal, as well as for coal? A. Yes.

Q. And is yet so used, is it not? A. Its use now is pretty general, and I cannot say as to the details there.

Q. This little basin which it incloses or forms the southerly side of, is the old Morris Canal basin, is it not? A. Yes.

Q. To the easterly terminus of the Morris Canal? A. Yes.

Q. And the boats are locked down from the higher level into tide water at that point? A. At Washington street, yes, sir.

Q. And the southerly line of that occupation by the Morris Canal, by the construction of that basin and its piers, is substantially the south line of South street, is it not? A. Yes, sir.

MR. CORBIN: I ask that that map which we have been using—the blue print—be marked "A for identification."

Said blue print marked A for identification.

Q. I show you the report of the Riparian Commissioners of February 1, 1865, offered by the State yesterday—

MR. RIKER: We didn't offer that book, we offered Mr. Payne's copy of the report of 1865, by itself. That is a publication in 1872.

THE COURT: That was first produced and the pamphlet was produced afterwards, but it was the pamphlet that was put in.

MR. CORBIN: Well, if it is complete it should have this map on, because that is part of it.

Q. I show you the copy of the report of the Commissioners, February 1, 1865, being the pamphlet copy, and the map annexed to it, without title, but purporting to show the Hudson river and Bay of New York in front of Hudson County—

MR. RIKER: That should appear as the publication of 1873 or 1872.

Q. This printed map did accompany one of the reports of the Riparian Commissioners? A. Yes, sir.

Q. Of what year? A. I cannot recall, I think 1873.

Q. I read you this legend from the grant: "R. C. Bacot, Engineer, Riparian Commissioners of New Jersey, January, 1873." A. Yes.

Q. Then it must have been the 1873 report? A. Yes.

Q. Now look at that map and say whether on that map there has not been drawn right across the front of the Morris Canal grant of 1867 the

heavy line indicating solid filling or bulkhead line —heavy line indicating something? A. There is a full black line extending across the front of the Morris Canal basin, on which is printed at the north end of the map the words: "Exterior line for solid filling."

Q. And there is a still further exterior dotted line, what is that? A. There is an exterior dotted line across the front of the same basin, and on which is printed at the extreme right hand side of the map "Exterior line for piers."

Q. You see the same legend at the south end of the map? A. Yes, sir.

Q. These lines extend continuously, substantially, from the north end of the county to Kill Von Kull? A. Yes, sir.

Q. Now, Mr. Payne, is not that map the beginning of the error which has been made, which resulted in the idea that lines had been drawn across the front of this grant—is not this the first map of which you know of?

MR. RIKER: I object to any testimony of that kind.

Q. Is not this the first map you know of, on which any indication of that sort was made?

THE COURT: Well, is this the original map that accompanied the Commissioners report, or is it a copy of the map which accompanied the Commissioners report: we better know that first.

MR. LINDABURY: I think that already appears, because it is in evidence that it was presented by Mr. Bacot under date of 1873.

MR. RIKER: I think the original map, if there is such a map, showing this error, should appear?

THE COURT: Well, we all know that the

printers make mistakes in this way, and if this is a copy of the original which is in existence, I think the original should be produced.

MR. LINDABURY: I think this evidence is possibly misunderstood. We produce this as a map acompanying the report of the Commissioners for that year, 1873.

MR. COLLINS: Yes, but the Vice Chancellor says that it is only a copy of that report, and there must be the original somewhere, but, as shown in theirs of 1865, you cannot find those; they don't preserve them.

THE COURT: But you were willing to accept that map as an original or a correct copy, whereas in this case they are not willing to do so. They make the objection and I have got to rule upon the objection.

MR. CORBIN: I am not offering this map. map.

MR. COLLINS: We are not claiming anything under it.

THE COURT: You are apparently attaching some importance to the lines drawn on this map. Now if those lines as thus drawn are important why it may or may not be that they are the original of which this is a copy. We all know that printers make mistakes and particularly mistakes of this sort, and I would not be at all sure, from merely looking at this that those lines were on the original in exactly the same way.

MR. LINDABURY: It doesn't make any difference whether they were on the original or not, the original was never published; this is what was printed and published to the world, and we are explaining how the world was misled, and how the error arose.

MR. VAN SYCKEL: Well, you must show an error first before you explain it.

MR. LINDABURY: You have already shown by your own proof that those lines did not extend across, and now say that the popular impression on the subject has been created by this publication.

MR. CORBIN: Well, we will hunt for the original, if it is of any importance.

MR. CORBIN: I ask that this map, accompanying the report of 1873, be marked "B for identification."

Said map marked "B for identification."

RE-DIRECT EXAMINATION BY MR. RIKER:

Q. Well, perhaps it would be just as well, if you can, Mr. Payne, to tell us how near the exterior pier line of 1865 coincided with the exterior northeast corner of the grant of 1889? A. The northeast corner of the grant of 1889 is about forty feet inside of the pier line, shown on the map of 1865.

Q. And how near does the south line of the grant of 1889 at its southeast corner correspond with the exterior pier line of 1865? A. About thirty-five feet—thirty or thirty-five feet east of the outside of the pier line of 1865. That figure is from the scale.

Q. I will ask you now to state the location of the lands described in a deed from the Sugar Refining Company to the Lehigh Valley Railroad Company, dated May 13, 1887, in the certified copy of a deed which I now hand you? A. On what map, Mr. Riker, shall I indicate the location of this description?

Q. I want you to describe it with reference to the Bacot map, which you have before you? A. The land described in this deed, Sugar Refining Company to Lehigh Valley Railroad Company,

May 13, 1887, begins in the easterly line of Washington street and the northerly line of South street, and runs northerly along the easterly line of Washington street one hundred feet; then easterly parallel with South street seventy-five feet, and southerly and parallel with Washington street one hundred feet to the northerly line of Mason or South street, and then westerly along the northerly line of Mason or South street seventy-five feet to the place of beginning.

Q. Now will you just place your pencil on the point where that land is, so that the Vice Chancellor may see it? A. It is a block of land seventy-five feet by one hundred feet, shown on this map, section 6, of 1865, beginning near the letter "M" in Morris Canal Dock, and running east along the south side of the South street pier seventy-five feet, and then north one hundred feet.

Q. Substantially to the old basin of the canal? A. Substantially to the old basin, and then west seventy-five feet to Washington street, and then south again to the north line of South street. The letter "M" in the wording "Morris Canal Dock" occupies about the center of the lot described.

Re-Cross Examination by Mr. Corbin:

Q. You are familiar with the old tract of seventy five feet by one hundred feet which you have just described? A. Yes.

Q. That was a part of the old Jersey City market place? A. Yes.

Q. With the title in dispute for half a century? A. I believe that is true of it.

Q. And the Sugar House finally conveyed their interest to the Lehigh Valley? A. That is the general impression I have of it.

Q. That is all.

THEODORE J. BADGELEY, sworn.

DIRECT EXAMINATION BY MR. RIKER:

Q. You are an attorney and counsellor at law, of this State? A. I am, sir.

Q. And you are connected with the firm of Riker & Riker? A. I am.

Q. Have you, at my request, made an examination of the records of Hudson County for the purpose of finding what, if any, land the Lehigh Valley Railroad Company acquired in the vicinity of the basin of 1867? A. I have.

Q. What grants did you find? A. I only found one grant recorded in 1889, in Book 520 of Deeds for Hudson County, on page 56.

Q. That is the grant from the Riparian Commissioners to the Lehigh Valley Railroad Company? A. Yes, sir.

Q. And it is Exhibit C-5? A. Yes, this is the same.

Q. Did you find any deed to the Lehigh Valley Railroad Company? A. I did.

Q. Will you describe it? A. I found a deed recorded in Book 446, page 526, to the Lehigh Valley Railroad Company in 1887.

BY MR. CORBIN:

Q. From whom? A. From F. O. Mathewson and Weichers Sugar Refining Company to the Lehigh Valley Railroad Company.

MR. RIKER: I will offer this deed in evidence.

Marked Exhibit C-9.

FURTHER DIRECT EXAMINATION BY MR. RIKER:

Q. Did you find also the two deeds referred to in the last deed I showed you? A. I did.

MR. CORBIN: What are those?

WITNESS: In book 367, page 80, and book 367, page 90.

MR. RIKER: The first is the deed of the Mayor & Alderman of Jersey City to F. O. Mathewson and others.

WITNESS: Yes, sir, this is book 367, page 80, and it is dated April 4, 1882.

MR. RIKER: I offer that deed in evidence.

Marked Exhibit C-10.

Q. I show you another deed. A. This is the other deed, book 367, page 90, made by the Associates of the Jersey City Company to F. O. Mathewson and Weicher Sugar Refining Company, dated April 15, 1882.

MR. RIKER: I also offer that deed in evidence.

Marked Exhibit C-11.

Q. Did you find any other deed or grant to the Lehigh Valley Railroad Company of property on the north side of the basin of 1867? A. During what time?

Q. How far did you go back? A. I went back to the beginning of the indices in Hudson County, in grantees, and I searched down through 1905 I think it was.

Q. And those indices included the indices of Bergen County? A. Yes, sir, transcribed deeds from Bergen County.

Q. And with the exception of those two instruments did you find anything affecting property either on the north or west of the basin of 1867? A. Yes, sir, I found a deed made by the Central Railroad Company to the Lehigh Valley Railroad Company, straightening the lines running from Washington street west to Jersey avenue.

Q. And when was that? A. That was a recent deed, I don't remember the date; I have my notes that I can refer to, made at the time.

Q. Have you them here? A. Yes, I can give you the book in which that is recorded. That is recorded in book 1015, page 423.

Q. What is the date? A. I haven't the date; it is very recent.

Q. The last year or two? A. Yes, it would be about 1907 or 1908.

Q. And that relates to the property between the Central Railroad of New Jersey and the Lehigh Valley Railroad Company, straightening the line? A. Yes, sir.

CROSS EXAMINATION BY MR. CORBIN:

Q. What office did you search in? A. In the office of the Register of Hudson County.

Q. You didn't find the grant from the State of New Jersey to the Morris Canal and Banking Company of 1867? A. No, sir.

Q. You only searched in the name of the Lehigh Valley Railroad Company? A. Yes.

Q. Did you find a deed for a tract of land west of Jersey City's grant upon the shore about opposite—well up toward Jersey avenue? A. No, sir.

Q. You didn't find any? A. No, sir.

Q. Didn't take out deeds of the Lehigh Valley Railroad Company of New Jersey? A. I took out deeds of the Lehigh Valley Railroad Company.

Q. Only? A. Only.

MR. RIKER: We have in our Information a reference to certain deeds and certain mergers; they have been admitted and I wish to reserve the right to put in the papers later if it becomes important.

MR. CORBIN: Do you mean those figures that you offered yesterday?

MR. RIKER: The mergers that are referred to in the Information and are admitted.

MR. CORBIN: Just state them.

MR. COLLINS: We admit them in the Answer.

MR. RIKER: I only want to have the right to introduce them, if they become important.

THE COURT: Well, they are in the case.

MR. LINDABURY: I suppose with regard to all the documents referred to in either the Information or Answer, either side should have the right at any stage—argument or any other—to produce the originals or certified copies for accuracy and certainty and fullness.

MR. RIKER: The only other thing that occurs to me that we have not gone into fully. and I don't think it is perhaps necessary that we get into it now, is this: I have found that there is a difference between the old pier line—South street pier line—and the basin of 1867, amounting in distance to about sixty feet at Washington street running to nothing toward the end of the pier, and I have thought perhaps that might become material in the case. I have the deeds, I think, covering it, but I have not had an opportunity to go over them with Mr. Payne.

MR. CORBIN: I will just state that we will show that the Morris Canal title, according to the deeds, ran to the south line of South street clear through; the actual structure on the ground, as all the maps show, did not agree with them, and the grant of

1867 runs up to them, the two matched exactly in the paper title, and we shall of course develope that title.

MR. RIKER: If it becomes necessary for me to introduce evidence on that line I would like to have the right to do it—evidence to show the title adjoining the north line of the grant of 1889.

MR. LINDABURY: Well, you will have a chance to show that in rebuttal, because we are going to put it in.

MR. COLLINS: We are going to put it in, and if we don't get it right you can meet it.

MR. LINDABURY: Is that the only reservation that you had in mind when you spoke of making a reservation?

MR. RIKER: That is all I had in mind. I don't know about the Attorney General or Judge Van Syckel.

THE COURT: Well, does the informant rest?

MR. RIKER: Yes, sir.

INFORMANT RESTS.

THE COURT: Now what is your wish with respect to proceeding?

MR. COLLINS: We are ready.

THE COURT: As I stated yesterday, at the request of the Chancellor I substituted, with consent of counsel, this case for another case, and I stipulated to give only this week, or as much of this week as I could. You are out of your proper place, and I do not think it would be fair to go on and displace the cases that I have set down for next week and the following weeks. If the

case goes over it will go over until March, and at that time you will have the right to go on until the case is finished, however long it may take. Now it does seem to me almost self-evident that it is going to take a long time to try this case, and there are an immense number of details to be considered. Is it worth while to take this case up on the part of the defendant, to give a day and a half to it, and then let it go over until March and get through with it? Now Mr. Riker is very anxious to get away, and I would like to oblige him, but I really do not think that with the other counsel here, familiar with the case, that would be, of itself, a sufficient reason for postponing it, but inasmuch as we would have to resume the threads of this very complicated case after an interval of over two months, would not it be better to present it as a whole in March?

MR. VAN SYCKEL: That would be entirely satisfactory to us, on the part of the State.

MR. LINDABURY: Mr. Thomas has come here—the president of the road—at some inconvenience, and we thought it would be better at least if the case were opened on our side and explained to your Honor, and we think an opening would be serviceable now, so that your Honor understood our views from the beginning and had them in mind as the evidence went in, and we do not think you would forget them, but anyhow, we would like to examine Mr. Thomas because of the inconvenience of getting him at the later day.

THE COURT: Will his testimony be long?

MR. LINDABURY: I don't know whether we would get it in today or not, I hope we would, but anyhow we would today and part of tomorrow, and perhaps we would today; it wouldn't be very long.

MR. VAN SYCKEL: Do you propose to go on today and tomorrow both?

THE COURT: I would rather not have an opening until we take up the case again; it would be impossible for me to carry it in my mind.

MR. VAN SYCKEL: I think it would be better to have it altogether, so that we would have it in our mind.

THE COURT: I suppose really it will take, as Mr. Lindabury has suggested to me, anywhere from one to three weeks to put in the defense, and when I take it up I will go on with it to the end, without break.

MR. CORBIN: I have prepared all the documentary evidence, and if we could offer all those documents between now and then we could have those exhibits printed and have them in shape.

THE COURT: I wish it could be printed.

MR. VAN SYCKEL: What do you propose to prove?

THE COURT: Well, I could not very well overrule any document that might be offered in the course of the trial; I would have to allow it in subject to the objection.

MR. VAN SYCKEL: Do you propose to put in some details of what money you expended?

MR. CORBIN: Oh, no.

THE COURT: Why cannot you print all those documents that you propose to offer in evidence and send them to the other side?

MR. LINDABURY: We can print them beforehand; they don't want them.

THE COURT: Why don't they want them?

MR. VAN SYCKEL: We didn't say that; we didn't want the mere opening, and we didn't want to go on with the evidence.

THE COURT: I think if this case is to be argued at the close of the testimony why it would be only fair that the State should have the printed documents.

MR. CORBIN: Now if after I have offered them in their chronological order, I find that in doing that I have offered something that the other side have offered, of course there is no use of printing them in the case twice, and in getting this up, if your Honor thinks well, I presume—

THE COURT: Well, I presume the State will print all that you have now seen.

MR. LINDABURY: Go ahead and print the evidence as you have it now.

THE COURT: In the Water case it was printed as we went along, and it was a very nice way of doing it. The State can print their case as far as it has gone, and give copies to the defendants, and then the defendants will print all their documents, and they will give copies to the other side.

MR. LINDABURY: Well, we don't promise to, but will see if we cannot do that.

MR. CORBIN: I merely want an understanding as to what we both offer; if you print them I will not print them, that is all.

MR. RIKER: Are you going to print these deeds?

MR. CORBIN: Not in full, probably an extract from them. I will show you the extract.

MR. RIKER: Now in regard to your work and moneys expended there, are you going to give them to us in detail. I think it will be necessary to do so, and then we ought to be in a position to check it up. I do not see how we can meet this question of expenditure.

MR. VAN SYCKEL: Your expenditures you will have to prove legally that they apply to this case. We will not accept any general statements.

MR. RIKER: We want to be in a position also to do the necessary checking.

MR. CORBIN: Mr. Attorney General McCarter three months ago suggested that I make up a statement in detail of the amount expended on these two grants, which has been done.

MR. VAN SYCKEL: Well, we won't accept that as evidence.

MR. CORBIN: He said he would, but he had different views of the trial of the case than you have.

MR. LINDABURY: Besides the present Attorney General reiterated that remark to me yesterday morning, but we accept the notice. It was said, when they were trying to get a day fixed before the Chancellor, that they would consent to the schedules we put in, and the case would only take a day or so.

THE COURT: Well, I will put the case down for the twenty-third of March, and go on from day to day from that time on.

INFORMANT'S EXHIBITS.

Exhibit C-1.

(No. 422.)

AN ACT

To authorize the governor to incorporate the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That James M. Porter, A. H. Reeder, D. D. Wagener, Samuel Yohe, Jacob Abel, Abraham Miller, Peter Michler, Jacob Wolle and Henry Guetter, of Northampton County, Peter Mickley, Casper Kleekner, Benjamin Ludwig, Christian Pretz, Peter Huber, William Edelman, Henry King and George Probst, of Lehigh County, Asa Packer, Stephen Balliet, John D. Bowman and Thomas Craig, of Carbon County, and F. W. Hughes, William Mortimer and Benjamin Heilner of Schuylkill County, or any two of them, be and they are hereby appointed commissioners to do and perform the several things hereinafter mentioned; that is to say, they shall on or before the first day of November next, procure three books, one of which shall be opened at Mrs. White's hotel, in Easton, and one at the Pennsylvania Hall, in Pottsville, Schuylkill County, and one at the house now kept by George Haberacker in Allentown, Lehigh County, in each of which they shall enter as follows:

> "We whose names are hereunto subscribed, do promise to pay to the president and managers of the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company, the sum of fifty dollars for every share of stock set opposite to our respective names, in such manner

and proportions, and at such times as shall be determined by the president and managers of the said company, in pursuance of an act of the general assembly of this commonwealth entitled 'An Act to authorize the governor to incorporate the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company' Witness our hands the day of one thousand eight hundred and forty ;"

And shall thereupon give notice in one newspaper printed in the borough of Easton, in one newspaper printed in the borough of Pottsville, and in one newspaper printed in the borough of Allentown, two weeks at least, of the times and places when and where the said books shall be kept open to receive subscriptions for the stock of the said company, at which respective times and places one or more of the commissioners shall attend, and permit all persons of lawful age, who shall offer to subscribe in said books in their own names, or in the names of any other person who shall authorize the same, for shares in the said stock; and the said books shall be kept open respectively for the said purpose, at least six hours in every judicial day, for the space of three days, or until there shall have been subscribed thirty thousand shares; and if at the expiration of three days, the books aforesaid shall not have the number of shares aforesaid therein subscribed, the said commissioners may adjourn from time to time and transfer the book or books elsewhere, until the whole number of thirty thousand shares shall be subscribed, of which adjournment and transfer the commissioners aforesaid shall give such public notice as the occasion may require; and when the whole number of shares shall be subscribed, then the books shall be closed: Provided, That no subscription shall be valid, unless the person so subscribing shall pay the said commissioners at the time of making the

same, the sum of five dollars on each and every share, for the use of the company.

Section 2. That when five thousand shares or more of the said stock shall be subscribed, and the sum of five dollars paid on each and every share as aforesaid, the commissioners or a majority of them, shall certify to the governor under oath or affirmation, the names of the subscribers, and the number of shares subscribed by each and the sum of five dollars on each share, paid at the time of subscribing, whereupon the governor shall, by letters patent, under his hand and the seal of the commonwealth, create and erect the subscribers, and if the subscription be not full at the time, then also those who shall thereafter subscribe to the number of shares aforesaid, into a body politic and corporate in deed and in law, by the name, style and title of "The Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company," and by the same name the subscribers shall have perpetual succession, with all the privileges, franchises and immunities incident to a corporation, and be able to sue and be sued, plead and be impleaded, in all courts of record and elsewhere, and to purchase, receive, have, hold and enjoy to them and their successors, lands, tenements and hereditaments, goods, chattels and all estate, real, personal or mixed of what kind or quality soever, and the same from time to time to sell, exchange, mortgage, grant, alien or otherwise dispose of, and to make dividends of such portions of the profits as they may deem proper; and also to make and have a common seal, and the same to alter and renew at pleasure; and also to ordain, establish and put in execution such by-laws, ordinances and regulations as shall appear necessary and convenient for the government of said corporation, not being contrary to the Constitution and laws of the

United States, or of this Commonwealth, and generally to do all and singular the matters and things which to them it shall lawfully appertain to do, for the well being of the said corporation, and the due management and ordering the affairs of the same: Provided, That nothing herein contained shall be considered as in any way giving to the said corporation any banking privileges whatsoever, or any other liberties, privileges or franchises but such as may be necessary or incident to the making and maintaining of the said railroad, and the conveyance of passengers and the transportation of the mail, and of goods, merchandise and commodities therreon, and storage thereof.

Section 3. That the said named persons or a majority of them shall, as soon as conveniently may be after the said letters patent shall be obtained give at least twenty days previous notice in the newspapers hereinbefore mentioned, of the time and place by them appointed for the subscribers to meet in order to organize the said company, to choose by a majority of the votes of the said subscribers by ballot, to be given in person or by proxy, which proxy shall have been obtained and bear date within three months previously to the election at which such proxy shall be presented duly authorized one president, and six managers, a treasurer, secretary and such other officers as shall be deemed necessary; that the president and managers aforesaid shall conduct the business of said company until the second Monday in January then next, and until like officers shall be chosen, and may make such by-laws, rules, orders and regulations as are not inconsistent with the Constitution and laws of the United States, or of this State, and that may be necessary for the well governing the affairs of said company: Provided, That no person but a stockholder shall be eligible to the office of President or Manager.

Exhibit C-1.

Section 4. That the stockholders shall meet on the second Monday of January, in every year, at such places as may be fixed upon by the by-laws, of which notice shall be given at least twenty days previous by the Secretary in the newspapers before mentioned, and choose by a majority of the votes present, officers for the ensuing year as mentioned in the third section of this act, who shall continue in office for one year, and until others are chosen, and at such other time as they may be summoned by the managers, in such manner and form as shall be prescribed by the by-laws, at which annual or special meeting they shall have full power and authority to make, alter or repeal by a majority of the votes in the manner aforesaid all such by-laws, rules, orders and regulations as aforesaid, and to do and perform every other corporate act, and the number of votes to which each stockholder shall be entitled shall be according to the number of shares he or she shall hold in the proportions following: For every share not exceeding two shares, one vote; for every two shares above two, and not exceeding ten shares, one vote; and for every four shares above ten, one vote; but no share shall confer a right of suffrage, which shall not have been holden three calendar months prior to the day of the election, nor unless it be holden by the person in whose name it appears absolutely and bona fide, in his own right or in that of his wife, or for his or her sole use and benefit, or as executor or administrator, trustee or guardian, or in the right and for the use and benefit of some co-partnership, corporation or society, of which he or she may be a member, and not in trust for, and to the use and benefit of any other person: Provided, That no shares held by transfer, shall be entitled to vote, unless the same shall have been transferred at least three months before the election; and all

votes by proxy, shall be on such terms and condition as are prescribed by the act passed on the twenty-eighth day of March, one thousand eight hundred and twenty, entitled "An Act to regulate proxies;" And Provided Also, That no share shall be entitled to a vote at any election or at any general or special meeting of said company, on which any instalment or arrearages may have been due and payable more than thirty days previously to said election or meeting.

Section 5. That the election of officers provided for in the third section of this act, shall be conducted in the following manner, that is to say: The managers for the time being shall appoint three of the stockholders not being managers, to be judges of the said election and to conduct the same, after having severally taken and subscribed an oath or affirmation before an alderman or justice of the peace, well and truly and according to law, to conduct such election to the best of their knowledge and abilities; and the said judges or a majority of them, shall decide upon the qualifications of voters and when the election is closed shall count the votes and declare who has been elected; and if it shall at any time happen, that an election of president, managers, treasurer, secretary, or other officers shall not be made, the corporation shall not for that cause be dissolved, but it shall be lawful to hold and make such election of president, managers, secretary, treasurer or other officers on any day thereafter by giving at least ten days notice, signed by the president or secretary, in the newspapers before mentioned, of the time and place of holding such election, and the president, managers, treasurer, secretary and other officers of the preceding year, shall in that case continue to act and be invested with all the powers belonging to their respective stations, until an election shall take

place. In the case of death or resignation of the president, managers, treasurer or secretary, his place may be filled by the board of managers until the next annual meeting.

Section 6. That the said president and managers shall meet at such times and places as shall be found most convenient for the transacting of their business, and when met, four shall be a quorum, who in the absence of the president, may choose a chairman, and shall keep minutes of their transactions fairly entered in a book; and a quorum being formed, they shall be empowered and have authority to appoint all such surveyors, engineers, superintendents and other artists and officers as they shall deem necessary, to carry on the intended work and to fix their salaries and wages; to ascertain the times, manners and proportions in which the said stockholders shall pay the moneys due on their respective shares; to draw orders on the treasurer for moneys, which shall be signed by the president or in his absence, by a majority of the managers present, and countersigned by the secretary; and generally to do all such other acts, matters and things as by this act and by the by-laws and regulations of the company, they are hereby authorized to do.

Section 7. That the said president and managers first chosen, shall procure certificates or evidence of stock, for all the shares of the said company, and shall deliver one or more certificates, signed by the president and countersigned by the treasurer, and sealed with the common seal of the said corporation, to each person for the number of shares by him or her subscribed or held; which certificates, or evidence of stock, shall be transferable at his or her pleasure, in person or by attorney duly authorized, in the presence of the president or treasurer, one of whom shall keep a book for that

purpose, subject, however, to all payments due or to become due thereon, and the assignee holding any certificate, having first caused the assignment to be entered in a book of the company, to be kept for the transfer of stock, shall be a member of the said corporation, and for every certificate assigned to him as aforesaid, shall be entitled to the number of shares therein mentioned, of the capital stock of all the estates and emoluments of the company incident to said shares, and to vote as aforesaid at the meetings thereof, and subject to all penalties and forfeitures, and to be sued for all the balance and penalty due or to become due on each share, as the original subscriber would have been.

Section 8. That if after thiry days' notice in the public papers aforesaid, of the time and place appointed for the payment of any proportion or instalment of the said capital stock in order to carry on the work, any stockholder shall neglect to pay such proportion or instalment at the place appointed, for the space of thirty days after the time so appointed, every stockholder or his assignee, shall in addition to the instalment so called for pay at the rate of one per centum per month, for the delay of such payment; and if the same and additional penalty shall remain unpaid for such a space of time as that the accumulated penalty shall become equal to the sums before paid in part and on account of such shares, the same shall be forfeited to the said company, and may be sold to any person or persons willing to purchase, for such price as can be obtained for the same, or in default of payment by any stockholder of any such instalment as aforesaid; the president and managers may at their election cause suit to be brought before an alderman or justice of the peace, or in any court having competent jurisdiction, for the recovery of

the same, together with the penalty aforesaid; provided that no stockholder, whether original subscriber or assignee, shall be entitled to vote at any election, or any general or special meetings of the said company, on whose share or shares any instalment or arrearages may be due and unpaid more than thirty days previously to the said election or meeting.

Section 9. That the president and managers of the said company shall demand and require of and from the treasurer, and may demand and require of and from all and every other, the officers and other persons by them employed, bond in sufficient penalties and such securities as the said company shall by their rules, orders and regulations require, for a faithful discharge of the several duties and trusts to them respectively committed.

Section 10. That dividends of so much of the profits of the company as shall appear advisable to the managers, shall be declared at least twice a year in every year, and paid to the stockholders on demand, at any time after the expiration of ten days therefrom, but they shall in no case exceed the amount of the net profits actually acquired by the company, so that the capital stock shall never be impaired thereby; if the said managers shall make any dividend which shall impair the capital stock of said company, the managers consenting thereto, shall be liable in their individual capacities to the said company, for the amount of the stock so divided; and each manager present when such dividend shall be declared, shall be adjudged to be consenting thereto, unless he forthwith enter his protest on the minutes of the board, and give public notice to the stockholders of the declaring such dividend: Provided, When such dividend shall exceed eight per cent. per annum, then one-half of such excess shall be paid into the state

treasury, and placed to the credit of the education fund.

Section 11. That the president and managers of the said railroad company shall have power to survey, lay down, ascertain, mark and fix such route as they shall deem expedient for a railroad with as many sets of tracks as they may deem necessary, beginning at the Delaware river, at or near the borough of Easton, and thence extending by the best route from said borough of Easton, up to the valley of the Lehigh, or near said river, to or near the borough of Allentown; thence up the valley of said Lehigh, or near said river to some point in the county of Carbon, above the Lehigh water gap; thence by the best route to some point on the railroad of the Little Schuylkill navigation, railroad and coal company, or to Tamaqua, in the county of Schuylkill, whichever may be deemed most expedient; and also to extend a branch railroad from the aforesaid point, where the main line hereby authorized shall diverge from the Lehigh towards Tamaqua, up the valley of said river, to the place where the railroad of the Beaver Meadow company terminates on said river, with power to connect with said last mentioned railroad; Provided, That the said railroad shall not, except in deep cuts and fillings, or at points selected for depots or engine and water stations, exceed four rods in width, and that it shall not pass through any burying ground or place of public worship, or any dwelling house, without the consent of the owner or owners thereof; And Provided Further, That no connection with any branch road shall be made until the main line is completed and ready for use; And Provided Also, That no part of the said railroad shall approach within ten feet of the works of the Lehigh Coal and Navigation Company, along the valley of the Le-

high, except in crossing the canal of said company with bridge ways, which in all cases shall be constructed of a height at least equal to that of the bridges constructed by the said company; that the work upon that part of the said railroad along the valley of the river Lehigh, shall not be commenced until the ground shall have been examined by two competent engineers, who shall be named by the canal commissioners and the said engineers shall have given their opinion, in writing, that a railroad constructed upon the said route will not injure the canal of the said Lehigh Coal and Navigation Company, or the works necessarily appertaining thereto, or obstruct the navigation on the said canal: Provided Also, That said company shall keep in perfect order and repair such parts of all public and private roads as may be injured or obstructed in the location and construction of said railroad, by the construction of causeways and bridges, and such other devices as shall maintain said road at all times in said condition of perfect order and repair.

Section 12. That the said president and managers shall have power and authority, by themselves or their superintendents, engineers, artists and workmen, to enter in and upon and occupy all land on which the said railroad or its depots and warehouses may be located, or which may be necessary for the erection of its engine and water stations, weigh-scales, or any other purpose necessary or useful in its construction and repairs of the said railroad, and therein to dig and embank, make and construct the same: Provided, The said company shall first make compensation to the owner or owners of the ground and materials and property so taken and occupied as aforesaid, or give adequate security therefor; but if the parties cannot agree upon the compensation to be made to

such owner or owners, it shall and may be lawful for the parties to appoint five suitable, judicious and disinterested persons, who shall be under oath or affirmation, and who shall reside within the counties of Northampton, Lehigh, Carbon and Schuylkill; and if they cannot agree upon such persons, then either of the parties, after giving twenty days' notice to the other, may apply to the Court of Common Pleas of the county in which the land may lie, and the Court shall award a venire directed to the sheriff, to summon a jury of five judicious and disinterested persons from the said counties, in order to ascertain and report to the said Court what damages, if any, have been sustained by the owner or owners of the said ground, by reason of the construction of the said railroad through the same; which said jury of valuers, being duly sworn or affirmed, and having viewed the premises, shall proceed to estimate the quantity and quality of the land occupied by the said railroad, and all other inconveniences which may be likely to result therefrom to the said land, and under the influence of these considerations, and a just regard to the advantages which may seem likely to result to the owner or owners of the said land, from the opening of the said railroad through the same, to make their assessment and report to the Court; which report, being confirmed by the said Court, judgment shall be entered thereon, and execution may issue, in case of non-payment, for the sum awarded; and the expenses incurred by the appraisers or jury shall be defrayed by the said railroad company: Provided, That either party may appeal to the Court within thirty days after such a report may have been filed in the prothonotary's office of the proper county, in the same manner as appeals are allowed in other cases: And Provided Also, That if any person or

persons owning land or any other property which shall be affected by this act, be feme coverts, under age, non compose mentis, or out of the state, then and in either of said cases, the president and managers of the company, and at the cost and charges of the said corporation shall, within one year after the construction of the railroad through the said land, represent the same to the Court of Common Pleas of the county where the lands lie, as the case may be, who shall proceed thereon in the same manner and to the same effect as directed by this act in other cases.

Section 13. That the president and managers, by and with their superintendents, engineers, artists, workmen and laborers, with their tools, instruments, carts, wagons and other carriages and beasts of draught and burden, may enter upon the lands contiguous and near the said railroad, first giving notice to the owners or occupiers thereof; and from thence to take and carry away timber, stone or gravel, sand or earth, doing as little damage thereto as possible, and repairing any breaches they may make in the enclosures thereof, and making amends for any damages that may be done thereon; the amount whereof, if the parties do not agree, shall be assessed as hereinbefore mentioned in this act.

Section 14. That the company shall not prevent any person or persons being the owner or owners of land bordering on the said railroad, or in the vicinity thereof, or adjacent thereto, from making such lateral railroads, and to connect them with the said railroad, from their said lands, as the said person or persons may wish, for the purpose of transporting their coal or produce on said railroad: Provided, That all such connections of lateral roads are to made at the expense of the persons so wishing to connect, and according to

the direction and approval of the engineer of said railroad company, so as not to obstruct or endanger the free travel on the main road: And Provided Also, That any person or persons owning such coal or produce shall have the privilege of transporting the same on said railroad in their own cars, subject to the rules and regulations of said company.

Section 15. That the said railroad shall be so constructed as not to impede or obstruct the free use or passage of any public road or roads which may cross or enter the same, or along which the same may be extended. In all cases where the said railway may cross, or in any manner interfere with any existing public road, canal or slack water navigation, the said company shall make or cause to be made, as soon as conveniently may be, a good and sufficient causeway or causeways, to enable all persons passing or travelling such public roads, canal or slack-water navigation, to cross or pass over said railroad; and if the company shall neglect or refuse to keep such way or causeways in good repair, they shall be liable to a penalty of five dollars for every day the same shall be so neglected or refused to be repaired, after proper notice to repair shall have been given, to be recovered by the supervisors of the township, with costs, for the use of the township, as debt of like amount are by law recoverable; and shall moreover be liable to all actions at the suit of any person who may be aggrieved thereby.

Section 16. That for the accommodation of all persons owning or possessing land through which the said railroad may pass, it shall be the duty of the said company to make, or cause to be made, a good and sufficient causeway or causeways wherever the same may be necessary, to enable the occu-

pant or occupants of said lands to cross or pass over the same with wagons, carts and implements or husbandry as occasion may require; and the said causeway or causeways, when made, shall be maintained and kept in good repair by said company, and if the said company shall neglect or refuse, on request, to make such causeway or causeways, or when made, to keep the same in good order, the said company shall be liable to pay any person aggrieved thereby, all damages sustained by such person in consequence of such neglect or refusal, to be sued for and recovered before any magistrate or Court having cognizance thereof: Provided, That the said company shall in no case be required to make, or cause to be made, more than one causeway through each plantation or lot of land, for the accommodation of any one person owning or possessing land through which the said railroad may pass; and where any public road shall cross said railroad, the person owning or possessing land through which said public road shall pass, shall not be entitled to require the company to erect or keep in repair any causeway or bridge for the accommodation of the occupant of said land: Provided Further, That in the event of any private bridge or causeway being converted to public use, so as to be made to accommodate a public road laid out subsequent to the passage of this act, then and in such case the company shall be forever thereafter exonerated from the duty of keeping the said bridge or causeway in repair.

Section 17. That no suit or action shall be prosecuted by any person or persons, for any penalties incurred under this act, unless such suit or action shall be commenced within two years next after the offence committed, or the cause of action accrued; and the defendants in any such suit or action, may plead the general issue, and

give this act and the special matter in evidence, and that the same was done in pursuance and by authority of this act.

Section 18. That in all suits or actions brought against the said company, the service of process on any manager, toll-gatherer or other officer of the company, shall be as good and available in law, as if made on the president thereof.

Section 19. That if any person or persons shall wilfully or knowingly break, injure or destroy the railroad hereby authorized or any part thereof, or any work, edifice or device, or any part thereof, to be erected by the said company in pursuance of this act, he, she or they shall forfeit and pay to the said company three times the actual damages so sustained, to be sued for and recovered with full costs, before any tribunal having cognizance thereof, by action in the name and for the use of the said company.

Section 20. That if any person or persons shall wilfully or maliciously remove or destroy any of the company's constructions, or place designedly, and with evil intent, any obstruction on the line of the railroad, so as to jeopard the safety and endanger the lives of persons traveling the same, such person or persons so offending, shall be deemed guilty of misdemeanor, and shall be adjudged, on conviction, to be imprisoned in the Eastern Penitentiary of Pennsylvania, for a term not more than two years: Provided, That nothing herein contained, shall prevent the company from pursuing any other appropriate remedy at law, in such cases.

Section 21. That it shall and may be lawful for the president and managers, from time to time, to ordain and establish rules and regulations for the due ordering of all travelling and transporta-

tion on the said road, and for its preservation, with power to alter, repeal, enlarge or amend the said rules and regulations as they may deem expedient; and that they shall have full power and authority to prescribe the kinds and description of cars, carriages or wagons, to be used on the said road, for the conveyance of passengers and the transportation of the mail, or of goods, wares, merchandise and minerals, and to regulate the speed at which they shall travel and to adopt and enforce such rules and regulations in relation to the transit thereof as they may deem expedient, and the said company are hereby authorized and empowered that as soon as any portion of the said railroad is perfected, to place thereon cars, carriages or wagons, constructed a sthey may deem best adapted for the transportation of mails, passengers and commodities to the advantage of the public, and shall permit individuals to place such cars, carriages or wagons thereon, of such construction, and under such limitations and restrictions as they may deem proper; and the said company is hereby authorized to charge and take toil for freight and transportation of passengers, goods, wares, merchandise and minerals, at rates as follows: to wit, on goods, wares, merchandise, property or minerals, transported on said railroad, or any finished part thereof, any sum not exceeding one and a half cents per ton per mile for toll, and one and a half cents per ton per mile for transportation, and for toll and for transportation of passengers, not exceeding three and one half cents per mile for each passenger.

Section 22. That in declaring the semi-annual dividends, as provided for in the tenth section of this act, of the net profits arising from the resources of said company, after deducting the cur-

rent contingent expenses, it shall be found that said net profits exceed ten per cent. per annum on the capital expended, then the toll shall be so reduced as to keep the percentage below that amount.

Section 23. That at each annual meeting of the stockholders the president and managers of the preceding year shall exhibit to them a complete statement of the affairs and proceeding of the company for such year, and that special meetings of the stockholders may be called by order of the president and managers, or by the president at the request of the stockholders holding one-fourth of the amount of the capital stock, giving like notice as that required for annual meetings, specifying moreover the object of the meeting; but no business shall be transacted at such meetings, except that for which it shall have been called, nor unless a majority, in value, of the stockholders shall attend in person or by proxy.

Section 24. That if the president, five managers and company, shall not proceed to carry on the said work within three years from the passage of this act, and shall not complete the same within seven years thereafter, according to the true intent and meaning of this act, or if after the completion of the said road, the said company shall suffer the same to go to decay, and be impassible for the term of two years, then this charter, so far as regards any part or portion of said railroad not completed, or suffered to go to decay as aforesaid, shall become null and void, except so far as the same compels the said company to make reparation for damages.

Section 25. That if any increase of the capital stock shall be deemed necessary by the stockholders, to improve or complete the said road, it may be

lawful for the said president, managers and company, at a stated or a special meeting convened for the purpose, to increase the number of shares so that the capital of the said company shall not exceed three million dollars, and to receive and demand the moneys for shares so subscribed in like manner, and under like penalties as are hereinbefore provided for the original subscription, or as shall be provided for by their by-laws.

Section 26. That at the end of the third year after the charter shall be obtained, and at the end of every year thereafter, there shall be furnished to the legislature an abstract of the account of the company, showing the amount of capital paid in, and the debts of the said company, the amount received for toll and transportation and rates charged, and the amounts or dividends declared, which abstract shall be verified by the oath or affirmation of the president or treasurer of said company.

Section 27. That if the said company shall misuse or abuse any of the privileges hereby granted, the legislature may resume all and singular the rights and privileges hereby granted to the said corporation.

FINDLEY PATTERSON,
Speaker of the House of Representatives.

DANIEL L. SHERWOOD,
Speaker of the Senate.

Approved the twenty-first day of April, one thousand eight hundred and forty-six.

FRS. R. SHUNK.

A further supplement to an act entitled "An Act to Incorporate the Delaware, Lehigh, Schuylkill, and Susquehanna Railroad Company," passed the twenty-first day of April, one thousand eight hundred and forty-six.

Approved 7th January, 1853. (P. L. 1.)

Section 1. That the name, style and title of the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company be, and the same is hereby changed to, and the said corporation shall hereafter be known by the name of the Lehigh Valley Railroad Company, with all the rights, privileges and immunities, and subject to all the provisions and penalties provided for and enjoined by the said act to which this is a supplement.

Exhibit C-2.

An act to authorize railroad companies to lease or become lessees, and to make contracts with other railroad companies, corporations and parties.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That it shall and may be lawful for any railroad company or companies, created by or existing under the laws of this commonwealth, from time to time to lease or become the lessees, by assignment or otherwise, of any railroad or railroads, or enter into any other contract with any other railroad company or companies, individuals or corporations, on such terms and conditions as may be agreed upon, whether the road or roads embraced in such lease, assignment or contract, may be within the limits of this state, or created by or existing under the laws of any other state or states; and any railroad company or companies of this commonwealth may agree to guarantee, in whole or in part, the payments and covenants of any such lease, assigned lease or contract: Provided, however, That such road or roads, so embraced in any such lease, assignment, contract or guarantee, shall be connected either directly, or by means of

intervening line, with the railroad or railroads of said company or companies of this commonwealth so entering into such lease, assignment, contract or guarantee, and thus forming a continuous route or routes for the transportation of persons and property: Provided further, That the provisions of this act shall in no wise, nor by any construction whatever, apply to the Pittsburg and Connellsville Railroad Company.

BUTLER B. STRANG,
Speaker of the House of Representatives.

CHARLES H. STINSON,
Speaker of the Senate.

Approved—The seventeenth day of February, Anno Domini one thousand eight hundred and seventy.

JNO W. GEARY.

Exhibit C-3.

An act relating to leases or contracts for the use of canals or other navigation works by railroad companies.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the authority conferred upon railroad companies by the act approved the seventeenth day of February, Anno Domini one thousand eight hundred and seventy, entitled "An act to authorize railroad "companies to lease or become lessees, and to make "contracts with other railroad companies, corpora- "tions and parties," shall extend to and embrace leases, assignments of lease, or other contracts relating to canal and other navigation works, situated either in this or any other state: Provided, That neither the provisions of the said act, approved the seventeenth day of February, one thousand eight hundred and seventy-one, nor of this act, shall authorize the leasing or merging of, or entering into contracts with the Susquehanna canal company, or the purchase in whole or in part, of the said canal, its capital stock, loans or securities, by any railroad company.

JAMES H. WEBB,
Speaker of the House of Representatives.

WILLIAM A. WALLACE,
Speaker of the Senate.

Approved—The third day of May, Anno Domini one thousand eight hundred and seventy-one.

JNO W. GEARY.

Exhibit C-4.

CERTIFIED COPY

of lease between MORRIS CANAL AND BANKING COMPANY, and LEHIGH VALLEY RAILROAD COMPANY.

THIS INDENTURE made, this Fourth day of May, Anno Domini eighteen hundred and Seventy-one by and between the Morris Canal and Banking Company, a corporation created by and existing under the laws of the State of New Jersey, of the first part, and the Lehigh Valley Railroad Company, a corporation created by, and existing under the laws of the State of Pennsylvania, of the second part WITNESSETH: That for and in consideration of the covenants and agreements hereinafter contained, by the party of the second part to be kept and performed, and of the sum of one dollar in hand paid by the party of the second part, the receipt whereof is hereby acknowledged. (1) The party of the first part doth hereby let and demise unto the party of the second part, its successors and assigns, the entire canal and navigation works of the party of the first part, as the same are now located and constructed from the river Delaware, at Phillipsburg, in the County of Warren, in the State of New Jersey, to the river Hudson, at Jersey City, in the County of Hudson, in the same State, or as the same may hereafter be constructed, in pursuance of any and very lawful authority now existing, or which may hereafter exist, with all the branches and extensions thereof, made and to be made; also, all the land and water-rights, privileges and easements, dams, basins, pools, reservoirs, feeders, locks, gates, machinery, pictures, railroads, tracks, wharves, docks, piers, landings, water-rents, ground rent lands, tenements and hereditaments, with the appurtenances, reversions, remainders, rents, issues and profits thereof,

now belonging or in any wise appertaining, to the party of the first part, or which for any purpose incident to, or connected with, the business which the party of the second part, its successors or assigns, may, as lessees of the party of the first part, lawfully carry on, may hereafter be acquired by the party of the first part; and also, all the corporate franchises, rights and privileges, other than that of being a corporation, now held, or hereafter to be acquired, of the party of the first part. To have and to hold the premises thus leased and demised as aforesaid, or intended so to be, unto the party of the second part, its successors and assigns, perpetually hereafter. And (2) the party of the first part doth hereby grant, bargain and sell, assign, transfer and set over unto the party of the second part, all cars, trucks, boats, tugs, scows, dredging-machines, tools, implements, apparatus, furniture, mules, horses, cattle, harness, supplies, stores, and movable property of every kind and description; and also, all the right, title, interest, claim, property and demand whatsoever of the party of the first part in and to all leases, bills of sale, or contracts relating to boats or vessels heretofore leased, hired or sold by it; all bonds, stocks, claims, demands, beneficial interests in contracts, choses in action, maps, plans, surveys, and generally, all personal property whatever, of every kind and description, whether hereinbefore specially referred to or not, to which the party of the first part is now in any manner or way, entitled, excepting only the furniture of the principal office of the party of the first part at Jersey City, its corporate seal, and its business books, papers and records: To have and to hold the same unto the said party of the second part, its successors and assigns, to and for its and their only proper use and behoof forever. And in consideration of the premises, the

parties hereto have mutually covenanted and agreed, and do hereby, for themselves, their successors and assigns, covenant and agree, to and with each other as follows:

FIRST. That the party of the second part shall advance to the party of the first part a sum sufficient to pay off and discharge the debts and liabilities of the party of the first part enumerated in the schedule marked A. hereunto annexed, and identified by the signatures thereto of the presidents of the respective parties, or shall itself pay off, satisfy and discharge the said debts.

SECOND. That the party of the second part shall pay the interest when and as the same shall hereafter become due and payable, on the debt secured or evidenced by the following series of obligations of the party of the first part, or by any obligations that may be given in extension, renewal or substitution of or for the same, viz:—

1. The bonds of the said party of the first part amounting to the sum of five hundred thousand dollars ($500,000) secured, or intended to be secured, by the mortgage bearing date the first day of October A. D. 1855, executed by the party of the first part to Jacob D. Vermilye; the interest on the said bonds being payable at the rate of six per cent. per annum, semi-annually, on the first day of October and April, and the principal thereof being payable on the first day of April A. D. 1876.

2. The bonds of the party of the first part, amounting to the sum of two hundred and eighty-five thousand dollars ($285,000) secured, or intended to be secured by the mortgage bearing date the thirteenth day of June A. D. 1830, executed by the party of the first part to Jacob D. Vermilye; the interest on the said bonds being payable at the rate of six per cent. per annum, semi-annually, on the first day of October and April, and the princi-

pal thereof being payable on the first day of April A. D. 1876.

3. The obligations of the party of the first part, amounting to the sum of two hundred and thirty-six thousand nine hundred and sixty-five dollars ($236,965), known as the "boat loan," and secured or intended to be secured, by a deed of trust of the boats of the party of the first part, dated January 1st, 1866, to William H. Talcott, John D. Ward, and John Rodgers as trustees; the interest on the certificates of the said loan being payable at the rate of seven per cent. per annum semi-annually, on the first day of October and April, and the principal thereof on the first day of October A. D. 1885.

4. The obligations of the party of the first part known as the preferred dividend scrip, amounting in the aggregate to the sum of one hundred and three thousand one hundred and sixty-four dollars and fifty cents ($103,164.50); the interest on the said scrip certificates being payable at the rate of seven per cent. per annum, semi-annually, on the first Tuesday of August and February, and the principal thereof on the first day of February, 1889.

THIRD. That the party of the second part shall provide for the payment or extension, or renewal, from time to time; of the principal of the aforesaid series of obligations—namely, first mortgage bonds, amounting to five hundred thousand dollars ($500,000), second mortgage bonds, amounting to two hundred and eighty-five thousand dollars ($285,000) boat loan, amounting to the sum of two hundred and thirty-six thousand nine hundred and sixty-five dollars ($236,956) and preferred dividend scrip, amounting to the sum of one hundred and three thousand one hundred and sixty-four dollars and fifty cents ($103,164.50); the party of the first part hereby agreeing to execute and deliver to the

party of the second part, or its appointees,—but at the expense of the party of the second part, such bonds, obligations, certificates, agreements, mortgages, or other securities as it may lawfully execute and deliver, as may be required by the party of the second part for from time to time extending, renewing, replacing or providing means for paying the debt or any part thereof, secured or evidenced by the four above mentioned series of obligations, it being understood and expressly agreed, however, that the party of the first part shall not be required to execute and deliver obligations, representing a debt of a greater amount than that now existing under and by virtue of the above mentioned four series of obligations; that contemporaneously with the issue by the party of the second part of any new obligations, executed as aforesaid by the party of the first part, or as soon as practicable thereafter, the party of the second part shall retire, cancel and surrender to the party of the first part outstanding obligations of the party of the first part to an equal amount; that any money realized by the party of the second part, by the issue to purchasers or subscribers of such new obligations of the party of the first part as shall not have been directly exchanged for then outstanding obligations of the party of the first part, shall be held in trust, and be appropriated by the party of the second part for and to the purchase of payment cancellation and surrender as aforesaid of such outstanding obligations; and that the liability of the party of the second part to pay the interest and provide as hereinbefore stated for renewing, extending or paying the principal of the four series of obligations hereinbefore specifically mentioned, shall extend and apply to the interest and principal of the debt evidenced or created by the aforesaid new obligations of the party of the first part, as the same

shall from time to time be issued by the party of the second part.

FOURTH. That if the party of the second part shall pay off, and finally discharge and satisfy, either in whole or part, the principal of any obligation of the party of the first part, for the payment, renewal or extension of which the party of the second part has herein agreed to provide, the liability of the party of the second part for the payment of interest on the principal sum thus paid off discharged and satisfied shall cease and determine; but if the party of the second part shall prefer to purchase, and shall purchase, any such obligation, or if unable to purchase, shall pay off the same and then elect to succeed and be subrogated to all the rights and securities resulting therefrom or incident thereto before and at the time of the said purchase, or payment the said party of the second part shall, as to the said obligation, stand in the same position as any other holder thereof would, and the interest thereon payable as hereinbefore provided, shall be detained by the party of the second part while and so long as the said obligation shall be held by the party of the second part: Provided, however, That such subrogation or succession shall not be allowed as to any obligation which, under the terms of the preceding article of this agreement, should be cancelled and surrendered to the party of the first part.

FIFTH. That the party of the second part shall pay the sum of seventy-nine thousand two hundred and fifty dollars ($79,250) like lawful money of the United States of America, on the first Tuesday of the months of August and February hereafter, as follows, viz: the first payment of seventy-nine thousand two hundred and fifty dollars ($79,250) —viz. that falling due on the first Tuesday of

August A. D. 1871 to be made directly to the party of the first part; and each successive payment of seventy-nine thousand two hundred and fifty dollars ($79,250) thereafter to be distributed by the party of the second part in paying a semi-annual dividend of five per cent. on the eleven thousand seven hundred and fifty (11,750) shares of preferred stock and a semi-annual dividend of two per cent. on the ten thousand two hundred and fifty (10,250) shares of common or so-called consolidate stock now constituting the entire capital stock of the party of the first part; the said dividends to be payable to the holders of the said shares of stock as they stand registered on the books of the party of the first part, on the fifteenth day of the month preceding the said first Tuesday of February and August, respectively; the said party of the first part hereby agreeing to furnish the party of the second part, at least ten days before the said first Tuesday of February or August, as the case may be, with a correct list or schedule of the holders of the said shares of stock as they stand thus registered.

SIXTH. That so much of the sum of seventy-nine thousand two hundred and fifty dollars ($79,250) hereinbefore agreed to be paid semi-annually by the party of the first part as shall be apportionable, by way of dividend, to any shares of the preferred or common stock of the party of the first part owned by the party of the second part, shall be deducted from the said sum of seventy-nine thousand two hundred and fifty dollars ($79,250) and be retained by the party of the second part; Provided, however, That no such deduction shall be made from the sum of seventy-nine thousand two hundred and fifty dollars ($79,250) to be paid directly, as hereinbefore provided to the party of the first part on the first Tuesday of August, 1871;

but any dividend from that sum to which the party of the second part may be entitled, as owier of of the second part may be entitled, as owner of be paid to the party of the second part by the party of the first part.

SEVENTH. That the party of the second part shall punctually and faithfully pay all taxes, charges and assessments of any and every kind which shall hereafter be lawfully assessed or imposed upon the premises hereby demised or any part thereof, or on the business, or any of the business done thereon or therewith, or on the receipts, gross or net, of the said business, or on the present capital stock of the party of the first part, or on any corporate right, franchise or privilege of the party of the first part hereinbefore granted and demised to the party of the second part; but nothing herein contained shall be construed as rendering the party of the second part liable for any tax, charge or assessment which may be assessed or become in any way chargeable, on the sums hereinbefore agreed to be paid by the party of the second part to the party of the first part, its creditors or stockholders, or for any tax, charge or assessment chargeable against, or collectable from the party of the first part, its creditors or stockholders, for on account of the payment to or receipt by them of the said sums, or any part thereof.

EIGHTH. That the obligation of the party of the first part to pay the State of New Jersey the sum of twenty-five thousand dollars ($25,000) yearly, and all other conditions and obligations imposed upon, or assumed by, the party of the first part under or by virtue of the first section of the act of the Legislature of the State of New Jersey, approved the 14th of March, A. D. 1876, entitled "A further Supplement to the act entitled 'An

Exhibit C-4.

"Act to incorporate a company to form an artifi-
"cial navigation between the Passaic and Delaware
"rivers,' passed December thirty-first, eighteen
"hundred and twenty-four and 'the promise and
"undertaking' " of the party of the first part made
under and in pursuance of the said action shall be
kept, performed and discharged by the party of the
second part.

NINTH. That the party of the second part shall from time to time, and at all times, save harmless and indemnify the party of the first part from and against all loss or damage resulting from or occasioned by, any failure or neglect of the party of the second part to comply with the covenants, stipulations and conditions herein contained, on the part of the party of the second part to be kept and performed, or from any failure of the party of the second part to do or omit whatever it may lawfully be required to do or omit in the use, management and control of the demised premises.

TENTH. That the party of the second part shall and may avail itself of every franchise, right and privilege in regard to the use, maintenance, extension, improvement or alteration of the canal, navigation works and other property herein demised, conferred and granted by any present or future law; the party of the first part hereby agreeing, that nothing in this indenture contained shall restrict or impair the right of the party of the second part to do or omit anything in the premises which it might otherwise lawfully do or omit.

ELEVENTH. That the party of the first part shall and will maintain its corporate existence and organization, and shall and will from time to time, and at all times, when requested by the party of the second part, its successors, or assigns, put in force and exercise each and every corporate power,

and do each and every corporate act, which the party of the first part might now, or may at any time hereafter lawfully put in force and exercise, to enable the party of the second part, its successors or assigns to enjoy and exercise every right, franchise and privilege which may lawfully be enjoyed or exercised in respect to the use, maintenance, management, renewal, extension, alteration or improvement of the premises hereby demised, or intended so to be, or the business thereon or therewith to be carried on; the party of the second part hereby agreeing to pay to the said party of the first part the yearly sum of fifteen hundred dollars ($1,500) in lawful money of the United States of America, in equal semi-annual payments for the purpose of defraying the expense of maintaining the corporate organization of the party of the first part; the first payment to be made on the first day of September next, and semi-annually thereafter; and the party of the second part further agreeing to indemnify and save harmless the party of the first part against all expense, loss, damage or liability resulting from, or occasioned by, any exercise of corporate powers, or performance of corporate acts, by the party of the first part, when exercised or performed at the request of the party of the second part.

TWELFTH. That the party of the first part shall and will from time to time at the request of the party of the second part, issue to the party of the second part shares of the capital stock of the party of the first part, of the same par value, and entitled to the same rate of dividend, and to the same priority over the common stock, as the present preferred shares of capital stock of the party of the first part, to an amount equal, at the par value thereof, to the sums expended from time to time by the party of the second part in the construction of

permanent improvements and additions to the premises hereby demised; on which shares of stock, when so issued, the party of the second part shall be liable to pay and shall pay, a semi-annual dividend of five per cent., in the same manner and at the same time as the said dividend is payable, as hereinbefore provided, on the present outstanding shares of the preferred stock of the party of the first part; and the said party of the second part shall also pay all expenses, whether in the shape of increased taxation, or otherwise howsoever, to which the party of the first part may be subjected, for or by reason of the issue of the said additional shares of stock, Provided, however, And it is hereby understood and expressly agreed, that nothing herein contained shall be construed as requiring the party of the first part to issue any shares of stock which it may not at the time be legally authorized to issue, and that the obligation of the party of the first part to issue such shares is thus qualified and conditioned.

THIRTEENTH. That the party of the second part shall be, and it is, hereby authorized and empowered to sell from time to time either at public or private sale, and upon such terms as it may deem expedient, any real estate herein demised, or intended so to be, possession of which may not be necessary for the performance of the public duties and obligations resulting from, or incident to, the occupancy by the party of the second part of the canal and navigation works hereby demised and the enjoyment of the franchises therewith connected, and to convey the property thus sold to the purchaser or purchasers in fee simple, or for any less estate, without any liability on the part of the said purchaser or purchasers to see to the application of the purchase money; it being understood and expressly agreed, however, that the purchase money

of any portion of the demised premises thus sold shall be held in trust by the party of the second part to be applied, and shall be by it applied, either to the purchase, at or below par, of any of the then outstanding obligations of the party of the first part, for the payment of the principal or interest of which the party of the second part may under the terms and conditions of this indenture be liable, or, at the option of the party of the second part to the payment of any of the said obligations then matured or thereafter maturing; the said obligations thus purchased or paid to be cancelled, and neither of the parties hereto to be subject to any further liabilities in regard to the same.

FOURTEENTH. That the said party of the second part, its successors and assigns, keeping and performing the covenants herein contained, on its and their part to be kept and performed, shall and may from time to time, and at all times, peaceably and quietly, have, hold, use and enjoy the demised premises, and every part and parcel thereof with the appurtenances, without any manner of let, suit, trouble or hindrance from the party of the first part its successors or assigns; and that the said party of the first part shall, and will at any time hereafter execute and deliver, at the expense of the party of the second part, such other and further deeds, assurances and instruments of writing as may be reasonably required for fully effecuating and carrying out the objects and purposes of this agreement, and the more fully granting, securing and assuring unto the party of the second part the estates, franchises, rights and privileges hereinbefore granted, leased or demised or intended so to be.

FIFTEENTH. That it shall be lawful for the said party of the second part to use the name of the

party of the first part in all suits or actions and in all proceedings, whether at law or in equity or otherwise instituted or taken by the party of the second part to assert, maintain or defend the estate, franchises, rights, liberties and privileges hereby demised, or intended so to be, whenever the party of the second part shall be advised by counsel that the use of the said name will be either necessary or convenient for the purpose in view. And the party of the first part does hereby constitute and appoint the president, for the time being, of the party of the second part, its true and lawful attorney, for it, the party of the first part, and in its name, but for the use and benefit of the party of the second part, to do and perform whatever act, and to sign, seal, acknowledge and deliver whatever deed, instrument, or assurance may be required, to fully perform and carry out each and all of the covenants and agreements hereinbefore contained, on the part of the party of the first part to be performed and carried out, according to their true intent and meaning.

SIXTEENTH. That the party of the first part hereby covenants that the premises hereby demised are absolutely free and clear from any and every charge, lien or incumbrance whatever excepting the mortgages and deed of trust securing the boat loan hereinbefore mentioned.

SEVENTEENTH. That in case the said party of the second part shall at any time refuse or neglect for the period of six months, to make any of the payments by them in this indenture agreed to be made, then, and in that case, the said party of the first part may, at its option, at any time within ninety days thereafter, but not afterwards, for that default, treat this lease as at an end, and at once resume, and take and hold full possession and control of, all the property by these presents leased

and demised, free and clear of all right and control of the party of the second part, the same as if this lease had not been made; Provided, That the repossession of said property by the said party of the first part, under the option hereinbefore named, shall in no manners vitiate or discharge any legal claim or demand the party of the first part may have against the party of the second part by reason of any breach of these presents occurring at or before the time when the said party of the first part shall repossess themselves of said property; And Provided Also, That the party of the first part shall, during the period of at least thirty days before taking repossession of said property, publish in two newspapers, printed in each of the cities of New York and Philadelphia, a notice to the stockholders of the party of the second part of such default, and intention to resume possession of said property; and the party of the second part may, at any time before the expiration of the thirty days' notice, above mentioned, stay all further proceedings by the payment of the amount then due.

EIGHTEENTH. That in the event of the party of the first part resuming possession of the demised premises as hereinbefore provided the party of the second part shall make good to the party of the first part any depreciation in the then aggregate value of the demised premises from their present value, and shall immediately deliver to the party of the first part personal property of the same character, and of equal value, as that hereby assigned and transferred to the party of the second part, or in default thereof, shall pay to the party of the first part a full equivalent therefor in cash; and that, for the better securing to the party of the first part the full performance of this covenant an inventory of the personal property hereby assigned and transferred shall be forthwith made;

and the said personal property shall be appraised at its fair market value by three appraisers, one to be selected by each of the parties hereto, and the third by the two thus selected; and the said inventory and appraisement shall be identified, for future reference, by the respective signatures of the presidents of the parties hereto.

IN WITNESS WHEREOF, The parties hereto have caused to be hereunto affixed their corporate seals, duly attested by the signatures of their respective president and secretary, this the day and year first above written.

JACOB F. RANDOLPH,
President The Morris Canal &
(L. S.) Banking Co.

Attest:

JNO. R. BURNETT,
Secretary.

ASA PACKER,
President of the Lehigh Valley Railroad
(L. S.) Co.

Attest:

JNO. R. FANSHAWE,
Secretary.

Sealed and delivered in the presence of us, as to the execution by Asa Packer, President, and Jno. R. Fanshawe, Secretary.

EDW. ARMSTRONG,
WM. W. LONGSTRETH.

As to the execution of Jacob F. Randolph, President, and John R. Burnett, Secretary.

OSCAR KEEN,
ELWOOD C. HARRIS.

Exhibit C-4.

STATE OF NEW JERSEY }
County of Essex. } SS.:

BE IT REMEMBERED, That on this Sixth day of May, Eighteen hundred and Seventy-one, before me, Thomas N. McCarter, a Master in Chancery of the State of New Jersey, personally appeared John R. Burnett to me personally known who being by me duly sworn according to law, did depose and swear, that, at the date and at the time of the execution of the foregoing lease, he was the Secretary of the Morris Canal and Banking Company, the grantor and lessor in said lease named, that the seal affixed to said lease purporting to be the common seal of the said Morris Canal and Banking Company there was the common seal of said company; that said seal was affixed to said lease in the presence of this deponent, by the authority and order of the Board of Directors of said Company and of the president of said Company after the contents of said lease had been made known to said Board and President; and the said lease by authority and order of the said Board of Directors, was then and there delivered by the said President to the Lehigh Valley Railroad Company, as the voluntary act and deed of the said The Morris Canal and Banking Company, for the uses and purposes therein expressed; and at the same time, Jacob F. Randolph, the President and deponent, the Secretary of said last named company, subscribed their names to said lease as witnesses of said execution.

THOMAS N. MCCARTER,
Master in Chancery of New Jersey.

Exhibit C-4.

CITY OF PHILADELPHIA, }
STATE OF PENNSYLVANIA. } SS.:

BE IT REMEMBERED, That on this 4th day of May, in the year one thousand eight hundred and seventy-one (1871) before me, the subscriber, a commissioner resident in the City of Philadelphia, duly commissioned and qualified by the executive authority and under the laws of the State of New Jersey to take the acknowledgement of deeds, &c., to be used or recorded therein, personally came and appeared Asa Packer, Esquire, President of the foregoing named corporation, the Lehigh Valley Railroad Company, who, being duly sworn according to law deposes and says, that he was personally present at the execution of the foregoing indenture, and did affix the common or corporate seal of the said corporation thereto, and that the seal so affixed is the common or corporate seal of the said company; and that the foregoing indenture was duly sealed and delivered as and for the act and deed of the said the Lehigh Valley Railroad Company, and that the signature of this deponent to the said Indenture, as President of the said corporation, is of this deponent's own proper handwriting.

ASA PACKER,
President.

Sworn and subscribed before me *be* In Witness Whereof I have hereunto set my hand and affixed my official Seal as such commissioner, this the day and year above written.

(L' S.)

EDW. ARMSTRONG,
New Jersey Commissioner.

Exhibit C-4.

CITY OF PHILADELPHIA, }
STATE OF PENNSYLVANIA. } SS.:

BE IT REMEMBERED, That on this Fourth day of May, in the year one thousand eight hundred and seventy-one (1871) before me, the subscriber, a commissioner resident in the City of Philadelphia, duly commissioned and qualified by the executive authority, and under the laws of the State of New Jersey, to take the acknowledgment of deeds, &c., to be used or recorded therein, personally came and appeared John R. Fanshawe, Esquire, Secretary of the foregoing named corporation, The Lehigh Valley Railroad Company, who being duly affirmed according to law, deposes and says that he was personally present at the execution of the foregoing indenture, and saw Asa Packer, Esquire, President of said corporation, affix the seal of the said company to the said indenture, and deliver the same as the act and deed of the said company; and that the name of this deponent subscribed to the said indenture, as Secretary of the said corporation, in attestation of the due execution and delivery of the said indenture, is of this deponent's own proper handwriting.

JNO R. FANSHAWE,
Secretary.

Affirmed and subscribed before me, In Witness Whereof I have hereunto set my hand and affixed my official Seal as such Commissioner, this the day and year above written.

(L. S.) EDW. ARMSTRONG,
New Jersey Commissioner.

SCHEDULE A.

Enumerating the debts and liabilities of the Morris Canal and Banking Company, referred to in the first stipulation of the annexed lease between the said The Morris Canal and Banking Company

and the Lehigh Valley Railroad Company, bearing date A. D. 1871, and which debts and liabilities are, under said stipulations, to be paid by the Lehigh Valley Railroad Company.

BOOK ACCOUNTS PRIOR TO MARCH 1, 1871.

Miscellaneous accounts payable.....	$292.61	
William Hixson.....	2.40	
Union Foundry Company.....	27.46	10
Joseph Helmel.....	17.50	
Cyrus Currier.....	468.42	
Henry R. Shabwell..Deposit.....	4,741.99	
Ebr. B. Woodruff.... do	4,325.45	
D. Ripley & Sons.....	64.15	
Jacob F. Randolph..Deposit.....	4,832.08	
John Lewis.....	1.72	
William Mains.....	12.47	
1871		
Jan. 31		
Feb. 28 Union Foundry Co.	349.17	20
Mch. 31 Potter & Schermerhorn	77.50	
Mch. 17 Powelton Coal and Iron Co. ..	788.00	
Feb. Cyrus Currier	156.43	
" 10 Crowell & Co.	76.84	
Mch. 9		
" 1 D. Ripley & Sons	23.16	
" 31 VanKenren & Batty	64.05	
Apl. John Segraves	94.52	
" 1 John W. Harrison	137.50	
Jan. 27 Dodge & Co.	798.90	
1870		30
Sep. 10 Wm. Talcott	55	
1871		
Feb. 24 Newark Lime & Cement Mf'g Co.	95	
" 22 Vance & Stiles	2	
1870		
Dec. 29 Steele & Condict	65.93	
1871		
Jan. 1 Barman & Ramsey	2.75	
" 17 Richard Speer	3.07	
" 18		
Feb. 1 & 3 Wetmore & Co.	43.29	
Mch. 1 Theo. Smith & Bro.	13.64	40

Exhibit C-4.

1870				
Dec.	1	Herves & Phillips		256.92
Nov.	23	City of Newark		164.90
1871				
Feb.	6	Bills Payable 2d. Nat B'k. J. C.	4 Mos.	50,000.00
"	10	Bills Payable 1st Nat. B'k. J. C.	4 Mos.	20,000.00
		Sundry Counsel & Attorney fees		2,000.00
		2 Gold premiums & interest		6,000.00
1871				
Apl.	2	Hazard Mf'g Co.		1,536.47
Mch.	31	B. F. Woolsey & Co.		104.84
Jan.	20	.....		
Mch.	2, 3 & 29	Chs. Pratt		210.90
Apl.	11	D. F. Wright & Co.		1,623.21
"	7	Cooper Bros.		120.00
Mch.	24	L. J. Lyons & Co.		109.78
Apl.	1	Thomas Kelly		381.70
Mch.	28	David Ayres		172.10
"	4	Richard Dudgeon		127.50
"	29	.....		
Apl.	18	John A. Roeblings & Sons		4,279.50
Mch.	1	Nat. Newark Bank'g Co.,	4 Mos.	20,000.00
"	6	William Sweeney	4 "	3,129.37
"	8	A. Bachman & Sons	3 "	1,000.00
"	17	George Sperr	3 "	800.00
Mch.	13	Merrill & Hopper	4 "	859.04
"	14	Hdsn. Co. Nat. Bk. J. C.	4 "	10,000.00
"	29	A. Bachman & Sons	3 "	1,000.00
	"	George Sperr	3 "	1,000.00
Apl.	5	Dela., Lacka. & W. R. R. Co.	2 "	3,337.66
Mch.	1	D. Ripley & Sons		265.10
"	31	Union Foundry Co.		299.52
Apl.	1	Cyrus Currier		284.19
		Line Expenses for Mch., 1871		20,000.00
				$166,686.70

Received in the office of the Secretary of State of the State of New Jersey, on the Twenty-ninth day of March, A. D., one thousand eight hundred and eighty, and recorded the same day.

Exhibit C-4.

STATE OF NEW JERSEY.

DEPARTMENT OF STATE.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of Lease between the Morris Canal and Banking Company, and Lehigh Valley Railroad Company, as the same is taken from and compared with the original, recorded in Lease Book E. on pages 550, etc., and now remaining on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Nineteenth day of July, A. D., 1907.

(L. S.)

S. D. DICKINSON,
Secretary of State.

Exhibit C-5.

REGISTER'S OFFICE,

HUDSON COUNTY, N. J.

Certified Copy of Deed, State of New Jersey, by Comr's, to Lehigh Valley R. R. Co.

FEES $

BLK No. 859

STATE OF NEW JERSEY — DEED

TO — DATED

LEHIGH VALLEY RAILROAD CO. — JULY 12, 1889

TO ALL TO WHOM THESE PRESENTS SHALL COME OR WHO SHALL BE CONCERNED the State of New Jersey sendeth greeting:

WHEREAS under and by virtue of a certain act of the Legislature of the State of New Jersey approved April 11th, 1864, entitled, "An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State certain persons were duly appointed and constituted commissioners to execute and discharge the duties in said act set forth and upon them imposed and among other things to fix and establish an exterior line in certain Bays and Rivers in said act mentioned beyond which no pier or permanent obstruction of any kind should be permitted to be made

AND WHEREAS afterwards said commissioners having paid such exterior line in the tide water of certain of said waters, bays and rivers, to wit, the Hudson River, New York Bay and Kill Von Kull lying between Enyards dock and the Kill Von Kull and the New York State line the same was by another act of the Legislature approved March 31st, 1869, supplementary to said first men-

tioned act adopted and declared to be fixed and established as the exterior bulkhead and pier line between the points above named as by the first section of the last mentioned act will more fully appear

And Whereas by the sixth section of said supplemental act it was enacted that four commissioners should be appointed by the Governor with the advice and consent of the Senate to complete —as much of the details of the work assigned to them by such original act by surveys and otherwise on the Hudson River, New York Bay and Kill Von Kull as in their judgment the interest of the State required.

And Whereas Bennington F. Randolph, Miles Ross, Richard B. Reading and Richard N. Herring have been duly appointed and are now acting as Commissioners under said several acts And Whereas by the third section of said supplementary act it was enacted among other things that neither that section nor any provision in said supplementary act contained should in any wise repeal or impair any grant of land under water or right to reclaim made directly by legislative act or grant or license power or authority so made or given to purchase, fill up, occupy, possess and enjoy lands covered with water fronting and adjoining lands owned or authorized to be owned by the corporation or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees or assigns or to repeal or impair any grant or license power or authority to erect or build docks, wharves and piers opposite and adjoining lands owned or authorized to be owned by the corporation or grantee or licensee in the legislative act mentioned its, his or their representatives, grantees or assigns heretofore made or

given directly by legislative act whether said acts are or are not repealable.

And Whereas by the fourth section of said legislative act it was enacted among other things that in case any person or corporation who by the Legislative act was a grantee or licensee or had such power or authority or any of his or their representatives or assigns should desire a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey conveying the land in the proviso to the third section of said Supplementary act mentioned whether under water or not and the benefit, and express covenant that the State would not make or give any grant or license power or authority affecting lands under water in front of said lands then and in either of such cases such person or corporation, grantee or licensee having such grant or license power or authority, his or their representatives or assigns on producing a duly certified copy of such legislative act to said commissioners and in case of a representative or assignee also satisfactory evidence of his or their being such representative or assignee and requesting such grant and benefits as in that section mentioned should be entitled to said paper so capable of being acknowledged and recorded and granting the title and benefits aforesaid on payment of the consideration therein mentioned and the commissioners or any two of them with the Governor and Attorney General for the time being to be shown by the Governor signing the grant and the Attorney General attesting it should and might execute and deliver and acknowledge in the name and in behalf of the State a lease in perpetuity in such grantee or licensee or corporation having such grant, license, power or authority and to

the heirs and assigns of such grantee or licensee or to the successors and assigns of such corporation upon his or their securing to be paid to the State an annual rental of three dollars for each and every lineal foot measuring on the bulkhead line or a conveyance to such grantee or licensee or corporation having such grant, license, power or authority and to the heirs and assigns of such grantee or licensee or to the successors and assigns of such corporation in fee upon his, her or their paying to the State fifty dollars for each and every lineal foot measuring on the bulkhead line in front of the land included in such conveyance.

AND WHEREAS by the first section of an act of the Legislature of the State of New Jersey entitled "a further supplement to the act entitled, 'An act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers passed December thirty-first, eighteen hundred and twenty-four," which supplement was approved on the fourteenth day of March, eighteen hundred and sixty seven, the State of New Jersey did grant to the Morris Canal and Banking Company all the right, title and interest of the State in and to the land and lands under water within the following boundaries:

BEGINNING at a point in the Hudson River in the Southerly line of South Street extended seven hundred and sixty-five feet from the Easterly line of Hudson Street and running thence (1) Westerly along the said Southerly line of South Street to the center line of Washington Street extended thence (2) Southerly along said center line two hundred and sixty feet thence (β) Westerly on a line parallel with South Street as laid down on Mangin's Map to the Easterly line of Warren

Street extended thence (4) Southerly and along the said Easterly line of Warren Street extended to a point distant four hundred and sixty feet at right angles from the Southerly line of South Street thence (5) parallel with South Street easterly to a point in the center line of Washington Street extended and distant four hundred and sixty feet from the Southerly line of South Street thence (6) Southerly along said center line of Washington Street extended five hundred feet to the Northerly line of property occupied by the Central Railroad Company of New Jersey thence (7) Easterly along said line seventeen hundred and thirty-five feet and thence (8) Northerly to the place of beginning on condition that gaps each of one hundred and fifty feet in width should forever be kept open in the bulkheads and in any structure to be erected on said premises so that the public might with all vessels freely navigate to and from the channel of the Hudson River and all places East and West of the Westerly Bulkheads on said premises without the payment of tolls or charges, provided that the said opening should be kept in such condition that the owners and occupants of Shore property lying North and West of the above described property might at all times have free access to as well as through the same.

AND PROVIDED FURTHER that the said Company should within ninety days after the passage of said act execute and deliver to the Governor of this State their promise and undertaking under seal unconditionally to pay into the Treasury of this State yearly the sum of Twenty-five thousand dollars per year on or before the first Tuesday of January in each year during the continuance of their charter and so long as the said Company, their successors or assigns should continue to hold

or occupy the same the first payment of a ratable portion of which should fall due on the first Tuesday of January, eighteen hundred and sixty-eight, the said act further providing that it should be lawful for the said Company instead of the said annual payment of twenty-five thousand dollars to pay into the Treasury of this State at any time the sum of three hundred and fifty-seven thousand one hundred and forty-two dollars.

AND WHEREAS the said Company did within said ninety days execute and deliver the said undertaking as above required

AND WHEREAS said lands front and adjoin lands owned by the Morris Canal and Banking Company and its grantee or assignee the Lehigh Valley Railroad Company

AND WHEREAS by the second section of the same act it was enacted that the said Morris Canal and Banking Company might under the provisions of their charter construct piers, wharves, docks, basins, warehouses and other structures within the limits above described as by said act reference thereto being had will more fully appear

AND WHEREAS the said Morris Canal and Banking Company did in pursuance of legislative authority make, execute and deliver unto the Lehigh Valley Railroad Company a certain indenture of Lease bearing date on the fourth day of May in the year eighteen hundred and seventy-one, whereby the said Morris Canal and Banking Company did demise and lease unto the said Lehigh Valley Railroad Company in perpetuity (among other things) the lands so granted to it by the State of New Jersey

AND WHEREAS the said Lehigh Valley Railroad Company being assignee as aforesaid of the tract of land so as aforesaid granted by the State of

New Jersey to the said Morris Canal and Banking Company adjoining the Hudson River as aforesaid and thereby conveyed has produced to said Commissioners a duly certified copy of the said Legislative act entitled, A further Supplement to the Act entitled, An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers, passed December thirty-first, eighteen hundred and twenty-four and also a certified copy of the lease aforesaid executed by the Morris Canal and Banking Company to said Lehigh Valley Railroad Company which affords satisfactory evidence to the said Commissioners that it is assignee of the said Morris Canal and Banking Company of its rights required by the Supplement last mentioned and has made application in writing requesting such grant and benefits as are mentioned in said fourth section of said supplement to the act entitled, An act to ascertain the rights of the State and of riparian owners in the lands lying within the waters of the Bay of New York and elsewhere in this State and agreeing to pay therefor the consideration mentioned in the said fourth section of said supplemental act

AND WHEREAS the said Morris Canal and Banking Company and the said Lehigh Valley Railroad Company have heretofore duly paid into the treasury of this State yearly the said sum of twenty-five thousand dollars and the said Lehigh Valley Railroad Company has this day paid into the treasury of this State the sum of three hundred and fifty-seven thousand one hundred and forty-two dollars in discharge of the promise and undertaking above recited

AND WHEREAS it appears to the said commissioners that the said Lehigh Valley Railroad Com-

pany has by virtue of the aforesaid grant from the State of New Jersey and of the lease from the Morris Canal and Banking Company and the performance of said conditions such grant and license power and authority as is in the said fourth section mentioned and is entitled to a paper capable of being acknowledged and recorded and granting the title, and benefits aforesaid upon payment of such consideration as aforesaid

And Whereas such consideration, to wit, the sum of forty-eight thousand dollars being fifty dollars for each lineal foot, to wit, nine hundred and sixty feet measuring on the bulkhead line in front of the land included in this conveyance has been paid by the said Lehigh Valley Railroad Company to the Treasurer of this State

Now Therefore Know Ye that the said State of New Jersey by Bennington F. Randolph, Miles Ross, Richard B. Reading and Richard N. Herring with the said Governor and Attorney General for the time being in consideration of the said sum of forty-eight thousand dollars to the Treasurer of the State for the State duly paid hath granted and conveyed and confirmed unto the said Lehigh Valley Railroad Company the said tract of land as granted to the Morris Canal and Banking Company and hereinbefore described together with all the right and privilege of excluding the tide water from said land by filling in or otherwise improving the same and to appropriate the same to exclusive private uses as fully to all intents and purposes as the said Commissioners have power or authority to grant and convey the same subject, however, to the conditions hereinafter stated.

To Have and to Told the lands above described with the appurtenances and all the rights and

privileges hereby granted unto the said Lehigh Valley Railroad Company, its successors and assigns forever. AND the said State of New Jersey doth further hereby covenant expressly with the said Lehigh Valley Railroad Company, its successors and assigns that the said State of New Jersey will not make or give any grant or license power or authority effecting lands under water in front of the lands hereby conveyed and the said Lehigh Valley Railroad Company, its successors and assigns may reclaim and appropriate to its own use the said lands under water above described subject, however, to the regulations and provisions of the various clauses of said supplemental riparian act herein recited so far as the same are applicable to the lands hereby conveyed subject also to the condition imposed by the said act approved March 14th, 1867, granting said lands to the said the Morris Canal and Banking Company to keep open gaps in said lands of not less than one hundred and fifty feet in width so that the public may with all vessels freely navigate to and from the Channel of the Hudson River and all places East and West of the bulkheads on said premises without the payment of toll or charges and that the said opening shall be kept in such condition that the owners and occupiers of shore property lying North and West of said property may at all times have free access to as well as through the same.

IN WITNESS WHEREOF the said Commissioners appointed under said supplemental act have respectively set their hands and seals and these presents have been signed by the Honorable Robert S. Green, our Governor and attested by the Honorable John P. Stockton, our Attorney General and the great seal of the State has been

affixed as by the provisions of said supplemental act is required.

DONE and dated at Trenton this twelfth day of July in the year of our Lord one thousand eight hundred and eighty-nine.

BENNINGTON F. RANDOLPH, (Seal)
MILES ROSS, (Seal)
(State Seal) RICHARD B. READING, (Seal)
RICHARD N. HERRING, (Seal)
ROBERT S. GREEN,
Governor.

Attest

JOHN P. STOCKTON,
Witness—R. C. BACOT.

It being certified to me by the controller of the State that the Lehigh Valey Railroad Company has this day paid into the Treasurer of the State the sums of Three hundred and fifty-seven thousand one hundred and forty-two dollars and forty-eight thousand dollars referred to I have executed this grant this twentieth day of December, eighteen hundred and eighty-nine.

ROBERT S. GREEN,
Governor.

Attest,

JOHN P. STOCKTON,
Attorney General.

Exhibit C-5.

NEW JERSEY, }
Hudson County, } ss.:

BE IT REMEMBERED that on this twelfth day of July, A. D., eighteen hundred and eighty-nine, before me the subscriber, a Master in Chancery of New Jersey personally appeared Bennington F. Randolph, Miles Ross, Richard B. Reading and Richard N. Herring, commissioners who I am satisfied are Riparian Commissioners under the laws of New Jersey in the foregoing deed of conveyance named and I having first made known to them the contents thereof they did severally acknowledge that they signed, sealed and delivered the same in the name and in behalf and as and for the voluntary act and deed of the State of New Jersey for the uses and purposes therein expressed.

JAMES B. VREDENBURGH,
M. C. of N. J.

Register's Office: Hudson County, N.J.
Liber No. 520 of Deeds; Page 56 &c.

208 A.

MAP PER MANGINS

SCALE 1" = 20b'

WARREN ST.

EASTERN LINE WARREN ST EXTENDED

460

CENTER LINE OF WASHINGTON ST. EXTENDED

500 460 260

WASHINGTON ST.

SOUTH ST AS

GREENE ST

HUDSON ST.

1735'

765 SOUTH LINE SOUTH ST EXTENDED

BEGINNING

PRESENT PIER LINE EST'D SEP. 26TH 1882

PRESENT PIER LINE EST'D SEP 26TH 1882

Hudson River

Exhibit C-5.

NEW JERSEY, }
Hudson County, } ss.:

BE IT REMEMBERED that on this twelfth day of July, A. D., eighteen hundred and eighty-nine before me the subscriber, a Master in Chancery of New Jersey, personally appeared Robert C. Bacot, who being duly sworn on his oath deposeth and saith that he saw the within named Bennington F. Randolph, Miles Ross, Richard B. Reading and Richard N. Herring, Commissioners sign their names respectively to the within instrument that he knows them to be riparian Commissioners under the laws of the State of New Jersey and that the said Commissioners did severally acknowledge that they signed the foregoing instrument for and on behalf of the State of New Jersey as their act and deed for the uses and purposes therein expressed, he, this deponent subscribing his name thereto at the same time as an attesting witness.

JAMES B. VREDENBURGH,
M. C. C. of N. J.

Received in the office and Recorded Dec. 9, 1890, at 2 P. M.
No. 5323.

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

I, JAMES C. CLARK, Register of the County of Hudson, do hereby certify that the foregoing is a true and correct copy of a certain deed as the same is on record in my office on Liber 520 of Deeds, on page 56, etc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 18th day of April, A. D., 1906.

JAMES C. CLARK,
Register.

(L. S.)

Exhibit C-6.

Report of Commissioners Appointed to Ascertain the Rights of the State and of Riparian Owners to the Lands Lying Under Water.

Commissioner's Report.

To the Senate and General Assembly of the State of New Jersey.

The Commissioners appointed under the act entitled, "An act to ascertain the rights of the state and of the riparian owners in lands lying under the waters of the Bay of New York, and elsewhere in the state," approved April 11th, 1864, respectfully present the following report:

* * * * *

The Commissioners instructed Robert C. Bacot, Esq., who had been appointed by them to direct and superintend the surveys in the easterly part of the state, to confine his operations during the season to those sections which extend from the Rockland County line on the Hudson down along said river and New York Bay into Kill von Kull as far as Enyard's Dock, a short distance west of Constable's Hook.

* * * * *

The reports of Mr. Bacot and Mr. Saunders are hereto annexed, marked respectively, appendix A and appendix B. We wish to make a special reference to these reports as containing a detailed description of the exterior lines adopted by us, beyond which no obstructions of any kind should hereafter be permitted, and many valuable observations upon other matters pertinent to the present investigation. We shall not repeat the minute descriptions of lines, improvements and designs

furnished by these reports and the maps accompanying them inasmuch as it would be needless repetition.

* * * * *

Nine maps accompany the report of Mr. Bacot; all of them have reference to the district assigned to him for exploration and survey. Two of these maps (lettered A and B) are intended to furnish a general view of the whole ground. The one reaches from the state line to Castle Point, Hoboken, a distance of about eighteen miles and a half, and is protracted by a scale of 1,300 feet to the inch. The other extends from Castle Point to Enyard's Dock in the Kill von Kull, a distance of over fourteen miles, and is made upon a scale of one thousand feet to the inch. An interesting feature of the two maps, and especially of the last mentioned, is that the diverging lines of travel and transportation, centering at Jersey City and Hoboken, are shown, tending to illustrate the present and prospective value of the tide waters upon which they terminate and suggesting the importance of keeping in view the largest accommodations for shipping and warehouses at our shores.

The other seven maps are sections of the former two and are protracted by a scale of 400 feet to the inch. These afford a more distinct view of the shore and of the improvements and grants heretofore made and a correct location of the docks, wharves and piers on the New York side of the river as they exist at the present time.

Upon these maps will be found the precise position of the exterior lines adopted by us for improvements, the descriptions of which will be found accurately noted in Mr. Bacot's report.

Open piers may in most cases be thrown out

beyond the bulkhead line. We have, therefore, adopted double lines—the inside one nearer the shore, as the limit for solid filling or bulkhead, and the outer one for the heads or outer extremities of piers to be constructed from the bulkhead into the river on piles, or in such other manner as will allow a free flow of the water under them. The consent by the board to this system of pier head lines as adopted by us, is based especially upon the condition that the water currents should not be materially interrupted in their natural direction outside of the line of solid filling. But for this condition we would have been constrained to locate the lines very much further back, especially at the more contracted parts of the river.

* * * * *

All of which is respectfully submitted.

J. R. WORTENDYKE,
F. S. LATHROP,
JOHN L. N. STRATTON,
JOHN LINN,
JAMES T. CROWELL,
JAMES B. DAYTON

February 1st, 1865.

Appendix A.

To the Honorable the Board of Commissioners appointed to ascertain the rights of the state and of riparian owners to the lands lying under the waters of the Hudson River and the Bay of New York and the lands adjacent thereto.

GENTLEMEN: The undersigned, charged with the duty of superintending the surveys and examinations of that part of the State of New Jersey lying upon the Hudson River and the Bay of New York and of recommending exterior lines, beyond which no encroachments should be permitted, would respectfully submit the following reports of the progress of the survey and a description of the exterior lines which are submitted for your adoption:

* * * * *

Upon the sectional maps are shown the positions of the bulkheads, piers and other structures on the water front, existing at the present time, with their dimensions; also the original shore lines as far as could be determined from authentic data, together with the reputed ownership of waterfront and the grants which have been made by the state, or by boards of freeholders, under the wharf act of 1851.

The lines recommended and drawn on the maps as exterior lines for solid filling and for piers, will be taken up and described in the order of the sections, as laid down thereon.

* * * * *

Section No. 6. From Castle Point, near Hoboken, to the southeasterly corner of the bulkhead of the Central Railroad Company of New Jersey.

This section embraces the river front of the cities of Hoboken and Jersey City and is in length four miles.

Immediately below Castle Point the river commences to increase in width and so continues until at the Pavonia ferry it becomes five thousand, two hundred feet wide; at the Central Railroad Company's ferry it is five thousand feet wide.

South of the City of Hoboken, Harsimus Cove, the second deep indentation of the shore as it formerly existed, has been in a great measure obliterated in the filling up of the flats by the Long Dock and Erie Railway Companies, and by individuals.

A bulkhead of stone and timber has been extended along the easterly line of Hudson Street from Pavonia Avenue to the City of Hoboken, and the intervening space west of the same, is now being rapidly reclaimed and converted into building sites for railroad depots, warehouses and commercial purposes.

South of Pavonia Avenue as far as South Seventh Street, the cove still preserves its original boundaries with one or two unimportant reclamations of land under water on its western margin.

The narrow projection of land, formerly known as North Point, on the southern side of the cove, with the contiguous lands under water, has, within the last five or six years, been filled up by enclosing the space south of the center of South Seventh Street and west of Hudson Street with a bulkhead and reclaiming the lands, principally with the mud dredged from the bed of the river.

The shore front east of Hudson Street, between Wayne Street and the Morris Canal basin, has been extended to an average distance of about three hundred and twenty-five feet, into the river.

The only remaining reclamation of lands under water to be noticed is that commenced by the Central Railroad Company of New Jersey on the

southerly side of Jersey City, within the last two years, and which is now progressing on either side of the route of the road, as shown on the map.

The center line of the road is about one thousand, four hundred and fourteen feet southerly of and parallel with South Street, Jersey City. The inclosure made since the year 1862 by the Morris Canal Company, by bulkheads forming a basin containing about thirty-three acres, lies south of South Street, Jersey City, between Hudson Street and a point seventy-five feet easterly of Washington Street. It is understood that the southerly portion of this basin is now occupied by the Central Railroad Company of New Jersey, in pursuance on an agreement between these companies.

The line of solid filling recommended for this section commences thirty feet easterly of the stone wall at Castle Point, and curving meets the straight line drawn to the head of the pier at the foot of Second Street, in the City of Hoboken; thence to the intersection of the northerly line of North Fifth Street, in Jersey City, produced three hundred and fifty feet easterly of the bulkhead at Hudson Street (as said street is laid down on the map of Pavonia, eighteen hundred and four), thence it continues in a straight line to a point four hundred feet easterly of Hudson Street (as said street is laid down on Map of the Associates of the Jersey Company), in the southerly line of South Street produced.

The easterly side of the bulkhead of the Central Railroad Company of New Jersey, is indicated as the line of solid filling in front of their improvements, being three hundred feet easterly of and parallel with the line of Hudson Street.

The pier head commences two hundred feet easterly of the line of solid filling at Castle Point,

and curving, meets the straight line drawn to a point four hundred feet easterly of the end of the pier at Second Street, Hoboken; thence to a point five hundred and seventy-five feet easterly of the line of solid filling at North Fifth Street, Jersey City; thence continues in a straight line to a point four hundred and five feet easterly of the line of solid filling at South Street produced.

Opposite the bulkhead of the Central Railroad Company of New Jersey, the pierhead line is extended four hundred feet easterly of and parallel with the line of solid filling.

On the south side of Jersey City, the extension of the Central Railroad into the bay, will, unless provision be made for a tidewater basin in the intermediate space, entirely cut off riparian owners, west of the westerly bulkhead of the Morris Canal Company, from access to tidewater and will also deprive the inhabitants of Jersey City of the commercial advantages naturally to be expected from the ownership or possession of said right.

To avoid an evil which must prove so detrimental to public and private rights, a plan of basins for shipping and warehousing purposes is presented, which will, it is believed, obviate this difficulty, and prove, should this plan in your judgment seem feasible and consistent with the rights of others—highly advantageous both to the shore owners and to the public generally.

The plan proposes the formation of two wet basins on the southerly side of Jersey City and north of the line of solid filling marked out for the Central Railroad Company's improvements. The smaller basin will be formed, on its easterly and westerly sides, by the bulkheads put down by the Morris Canal Company, and now existing between points sixty feet east of Hudson and sev-

enty-five feet east of Washington Streets, and on its northerly and southerly sides by the southerly line of South Street, and a bulkhead to be put down three hundred feet northerly of and parallel with the line of solid filling shown for the improvements to be made by said company. It will be necessary that portions of the easterly and westerly bulkheads should be removed for the purpose of securing a passageway (intended to be three hundred feet in width) for vessels to the larger basin on the west. This basin will contain a water space of about thirteen acres.

The larger basin will be bounded on its northeasterly side by the line of solid filling drawn three hundred feet southerly of and parallel with the northerly line of South Street; on the westerly side by the same line drawn one hundred feet easterly of and parallel with Varick Street; on the southerly side by the line of solid filling marked for the improvements of the Central Railroad Company of New Jersey and on its easterly side by the westerly bulkhead of the smaller basin, with the passageway of three hundred feet in width as above described. This basin will contain a water space of about fifty-three acres.

Piers projecting three hundred feet into this basin are shown at the terminations of Washington, VanVorst, Warren, Henderson and Grove Streets, Jersey City, which are designed to be connected at Washington, Van Vorst and Grove Streets by means of bridges (having draws of fifty feet in width) with the lands to be formed on the southerly side, adjoining the Central Railroad of New Jersey.

The waters of Mill creek will flow into the basin at its westerly termination.

Section No. 7. From the bulkhead of the Cen-

tral Railroad of New Jersey to Enyard's dock, on the river Kill Von Kull.

This section includes the great bay on the southerly side of Jersey City known as Communipaw Cove, divided into two parts by the projecting headland of Cavan Point. The length of the northerly portion of the cove between the improvement of the Central Railroad Company and Cavan Point is two miles measured along the shore lines and its greatest indentation six thousand eight hundred feet from Bedloe's Island. The shore line of the southerly portion, between Cavan and Constable's points is five and one-eighth miles in length—its greatest indentation twelve thousand five hundred feet west of Robbins Reef Light.

* * * * *

R. C. BACOT,

C. Eng'r. and Superintendent of Survey.

Jersey City, Jan. 25, 1865.

Exhibit C-9.

Certified Copy of Deed Recorded Liber 446, page 526, Deeds Hudson County, Cons. $15,756.

Date May 13, 1887, Proved May 20, 1887, Recorded Nov. 12, 1887.

GRANTORS—F. O. Matthiessen and Wiechers Sugar Refining Company, a corporation ot the State of New Jersey.

GRANTEES—Lehigh Valley Railroad, a corporation of the State of Pennsylvania.

Premises in the City of Jersey City, Hudson Co., N. J.

Beg at a pt frmd by the intersection of the Ely line of Washington St. with the Nly line of Mason (fmly South) Street & fr th rung Nly & alg the Ely side of Washington St 100 ft th Ely & par with Mason St 75 ft th Sly & par with Washington St 100 ft to the Nly line of Mason St & fr th rung Wly & alg the Nly side of Mason St 75 ft to the pt or pl of beg. Being part of the same prems convyd to the sd F. O. Matthiessen and Wiechers Sugar Refining Company by 2 deeds one by the Mayor and Alderman of Jersey City dated April 4th 1882 & recd in the Registers office of Hudson Co. in liber 367 of Deeds page 80 &c and the other by the Associates of the Jersey Company dated April 15, 1882 & recd in the Registers office of Hudson Co. in liber 367 of deeds page 90 &c.

After habendum clause recites "Subject to the exception and reservation of the right of ferry as the same is excepted and reserved in the deed from the sd the Associates of the Jersey Company to the said F. O. Matthiessen and Wiechers Sugar Refining Company dated April 15, 1882 and recorded in the Registers office of the County of Hudson in liber 367 of deeds pages 90 &c."

Exhibit C-10.

Certified Copy of Deed Recorded Liber 367, page 80. Deeds Hudson County Cons. $43,360.

Date Apr. 4, 1882, Proved Apr. 4, 1882, Recorded Apr. 19, 1882.

GRANTORS—Mayor and Aldermen of Jersey City, a body corporate of the State of New Jersey.

GRANTEES—F. O. Matthiessen and Wiechers Sugar Refining Company.

Recites that the prems hereinafter des were heretofore dedicated to public uses other than for streets and parks and that sd prop has for several years past been in the possession and used by the authorities of Jersey City for hospital purposes; that sd prems has been in the control of the Board of Police Commissioners of Jersey City and in the judgment of said Board the location where said prop is situated has become unfit for the uses to which the same has been and now is being used viz hospital purposes, as appears by resolution of sd Board past Aug. 1, 1881, which resolution sets forth that sd prems are unfit for the purposes which same is being used and that the same be sold at public auction to the highest bidder on two weeks advertisment, which resolution was approved by his Honor the Mayor on Aug. 11 in sd year.

Recites due advertisement & sale of same in ten parcels of 25 ft in width by 75 ft in depth each at public vendue on Sept. 12, 1881, to the sd party of the 2d part in the total sum of $43,360, which sd prems are des as fols:

Being two tracts. Second Tract—Beg at a pt frmd by the intersection of the Ely line of Washington St. with the Nly line of Mason (fmly South) St & fr th rung Nly & alg the Ely side of Washington St 100 ft the Ely & par with Mason

St 75 ft th Sly & par with Washington St 100 ft to the Nly line of Mason St & fr th rung Wly & alg the Nly side of Mason St 75 ft the pt or pl of beg. Habendum in fee; covenants for further assurance.

Exhibit C-11.

Certified Copy of Deed Recorded Liber 367, page 90. Deeds Hudson County Cons. $1.00.

Date Apr. 15, 1882, Proved Apr. 15, 1882, Recorded Apr. 19, 1882.

GRANTORS—Associates of the Jersey Company.

GRANTEES—F. O. Matthiessen and Wiechers Sugar Refining Company.

Premises in the city of Jersey City, Hudson Co., N. J. Two tracts.

The Second Tract—Beg at a pt frmd by the intersection of the Ely line of Washington St with the Nly line of Mason (fmly South St & fr th rung Nly & alg the Ely side of Washington St 100 ft th Ely & par with Mason St 75 ft th Sly & par with Washington St 100 ft to the Nly line of Mason St th Wly & alg the Nly line of Mason St 75 ft to the pt or pl of beg. Recites following exception to wit: "excepting and reserving to the said parties of the first part their successors and assigns forever the exclusive right of ferry from the whole of said tracts or parcels of land and from the Town of Jersey as mapped in the year eighteen hundred and four (1804) by Joseph F. Mangin for the parties of the first part and every dock or wharf erected or to be erected therein or adjoining the same to the City of New York and elsewhere which right of ferry the said party of the second part do hereby for themselves, their successors and assigns agree shall exclusively belong as aforesaid to the said parties of the first part, their successors and assigns forever."

Statutes of New Jersey.

Chapter CCCXCI.

An Act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in the state.

Whereas, it is represented to the legislature of the state that grants of rights to occupy land under the waters of the bay of New York and the Hudson River, and elsewhere within the state have been made and are liable to be made, without sufficient information of the rights of the state and of the riparian owners in the same, therefore, with the view of obtaining the proper information to enable the legislature to protect the rights of the state,

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That a board of commissioners be nominated by the governor and confirmed by the senate, to consist of six citizens of this state, who shall have power and whose duty it shall be to cause the necessary surveys and examinations to be made by competent surveyors of the lands lying under the waters of the bay of New York and of the Hudson River, and of the lands adjacent thereto, the Kill Von Kull, Newark Bay, Arthur's Kill, the Raritan Bay, and the lands lying under the water of the Delaware River, opposite to the county of Philadelphia, the right to reclaim which has not been granted by the State, and to obtain all needful information from other sources, in order to ascertain the present rights of the state in the same and the value of said rights; and to fix and establish an exterior line in the said bays and rivers, beyond which no pier, wharf, bulkhead,

erection or permanent obstruction of any kind shall be permitted to be made, and to report to the next legislature, on or before the first day of February next, the result of the information thus obtained, and the value of the said rights, together with the evidence upon which the same is founded; and second, that they shall recommend to the legislature such plans and provisions for the improvement, use, renting or leasing of the said lands under water as they shall deem necessary for and most conducive to the interest of the state, and to have prepared, and submit with their report, maps of said land exhibiting the exterior line fixed and established by them in said bays and rivers, and the lines of the existing piers, wharves and bulkheads, and also showing any grants of lands under the waters of said bays and rivers which have not been occupied, and also the original shore line as far as the same can be ascertained, accompanied with such field notes, measurements and elucidations as they shall deem necessary to a full exposition and understanding on the subject.

2. And be it enacted, That until such report is made no further grant, lease or sale of any of said lands shall be made, and the said commissioners may apply to the chancellor for an order to restrain and stay all proceedings, erections and obstructions until the further direction of the legislature; and if any permanent erection in or obstruction of the said waters, within the said exterior line to be fixed or established by them, be commenced or continued after such order, the said chancellor may cause the said order to be enforced, and disobedience thereof to be punished by the court of chancery, in the same manner and to the same extent as in cases of injunction issued out of said court; and any permanent erection or

obstruction, made contrary to any such written order, may be removed and abated by the order of the chancellor; provided, however, that the said commissioners or the chancellor shall not interfere with any rights already granted, or which have been or may be granted at the present session of the legislature.

3. And be it enacted, That the said commissioners shall take and file in the office of the secretary of state an oath well, truly and faithfully to perform the duties of their appointment, before entering upon said duties, and they shall not be or become interested, directly or indirectly, in any water rights or rights to occupy lands under water in the said bays or rivers, nor in any real estate that can in any way be benefited or affected by the establishment of such exterior lines, or by any measures that they may recommend; and upon proof being made to the governor of any one of said commissioners being so interested, and upon a hearing of a party so charged, he may be removed from office by the governor.

4. And be it enacted, That any vacancies in the board of commissioners, caused by removal, resignation, refusal to serve or otherwise, shall be filled by appointment by the governor, of a citizen of this state not interested as aforesaid.

5. And be it enacted, That the said commissioners may appoint surveyors, agents, and others necessary for the discharge of these duties, and they and their agents may enter upon any land for the purpose of surveying or obtaining any information on the subject of their appointment.

6. And be it enacted, That each commissioner shall receive five dollars for every day actually employed by him in the duties of his said appointment, and his actual travelling expenses, when absent from his residence.

7. And be it enacted, That the said commissioner shall give public notice of the time and place of their first meeting by advertisement published for ten days in each of the papers printed in the counties in which the commissioners shall make their investigation, and all subsequent meetings of the commissioners shall be publicly adjourned to some particular time and place.

8. And be it enacted, That this act shall be deemed a public act, and shall take effect immediately.

Approved April 11, 1864.

Chapter CCCLXXXIII.

Supplement to an act entitled, "An Act to ascertain the rights of the state and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this state," approved April eleventh, eighteen hundred and sixty-four.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the bulkhead line or lines of solid filling and the pier lines in the tide-waters of the Hudson River, New York Bay, and Kill Von Kull, lying between Enyard's dock, on the Kill Von Kull and the New York state line, so far as they have been recommended and reported to the legislature by the commissioners appointed under the original act, of which this is a supplement, by report bearing date February first, eighteen hundred and sixty-five, are hereby adopted and declared to be fixed and established, as the exterior bulkhead and pier lines between the points above named, as such exterior bulkhead and pier lines, so fixed, established, and adopted, are shown upon the

manuscript maps, accompanying said report, and filed in the office of the secretary of state except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company, by act approved March fourteenth, eighteen hundred and sixty-seven.

2. And be it enacted, That it shall not be lawful to fill in with earth, stones or other solid material, in the tidewaters of the Hudson River, New York Bay and Kill Von Kull, beyond the bulkhead line or lines of solid filling by this act adopted, fixed and established, laid down and exhibited on the aforesaid maps; and that it shall not be lawful to erect or maintain any pier or other structure exterior to the said bulkhead line or lines of solid filling in any place or places where no exterior line for piers is reported or indicated by said maps on the Hudson River, New York Bay and Kill Von Kull; and that when an exterior line for piers is recommended and shown by said report and maps, no erection or structure of any kind shall hereafter be erected, allowed or maintained beyond or exterior to the aforesaid bulkhead line or lines of solid filling, except piers which shall not exceed one hundred feet in width respectively, and which shall in no case extend beyond the line indicated for piers on said maps accompanying said report; and no piers shall hereafter be constructed in said tidewaters, when such exterior pier lines are adopted, fixed and established, as less intervals between such piers than seventy-five feet, except at places occupied and used for ferries, or to be so occupied or used, when the spaces between the piers may be less; nor shall any such pier be constructed in any other manner than on piles or on blocks and bridges; and if on blocks and bridges, such blocks

and bridges shall not occupy more than one-half of the length of the pier, and they shall be so constructed as to permit a free flow or passage of water under and through them, without any other interruption or obstruction than the pile or blocks necessary to support said piers.

3. And be it enacted, That the act entitled, "An Act to authorize the owners of lands upon tidewaters to build wharves in front of the same," approved March eighteenth, eighteen hundred and fifty-one, be and the same is hereby repealed, as to the tidewaters of the Hudson River, New York Bay and Kill Von Kull, below the line of mean high tide; but said repeal shall not be construed to restore any supposed usage, right custom, or local common law, founded upon the tacit consent of the state, or otherwise to fill in any land under water below mean high tide; and without the grant or permission of said commissioners, no person or corporation shall fill in, build upon, or make any erection on, or reclaim any of the land under the tidewaters of this state in New York Bay, Hudson River, or Kill Von Kull; and in case any person or corporation so offending, shall be guilty of a purpresture, which shall be abated at the costs and expense of such person or corporation, on application of the attorney-general, under decree of the court of chancery, or by indictment in the county in which the same may be, or opposite to and adjoining which said purpresture may be; provided, however, that neither this section, nor any provision in this act contained, shall in any wise repeal or impair any grant of land under water or right to reclaim made directly by legislative act, or grant or license power or authority, so made or given, to purchase, fill up, occupy, possess and enjoy lands covered with

water fronting and adjoining lands owned, or authorized to be owned, by the corporation, or grantee or licensee, in the legislative act mentioned, its, his or their representatives, grantee or assigns, or to repeal or impair any grant, or license, power or authority to erect or build docks, wharves and piers opposite and adjoining lands owned, or authorized to be owned, by the corporation, or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees or assigns heretofore made, or given directly by legislative act, whether said acts are or are not repealable, and as to any revocable license given by the board of chosen freeholders of a county to build docks, wharves, or piers, or to fill in or reclaim any lands under water in the said New York Bay, Hudson River, or Kill Von Kull, the same shall be irrevocable, so far as the land under water has been reclaimed or built upon under such license, at the time that this act takes effect; but as to the future, such revocable license is hereby revoked, and no occupation or reclamation of land under water, without such legislative act, or revocable license, shall divert the title of the state, or confer any rights upon the party who has reclaimed, or who is in possession of the same.

4. And be it enacted, That in case any person or corporation who by any legislative act, is a grantee or licensee, or has such power or authority, or any of his, her or their representatives or assigns shall desire a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, conveying the land in the proviso to the third section mentioned whether under water now or not, and the benefit of an express covenant, that the state will not make or give any grant or license power, or au-

thority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant and license, power or authority, his, her, or their representatives or assigns on producing a duly certified copy of such legislative act to said commissioners, and in case of a representative or assignee also satisfactory evidence of his, her or their being such representative or assignee, and requesting such grant and benefits as in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned; and the said commissioners or any two of them, with the governor and attorney-general for the time being, to be shown by the governor signing the grant, and the attorney-general attesting it, shall and may execute and deliver and acknowledge in the name and on behalf of the state, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her or their securing to be paid to the state an annual to the state fifty dollars for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation in fee, upon his, her or their paying to the state fifty dollars of each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance; provided, that no corporation to whom any such grant, license, power or authority was given by legisla-

tive act as aforesaid, in which provision was made for the payment of money to the treasurer of the state for each and every foot of the shore embraced and contained in the act; nor the assigns of such corporation shall be entitled to the benefits of this section; and provided further, that the said commissioners shall in no case grant lands under water beyond the exterior lines hereby established, or that may be hereafter established, but the said conveyance shall be construed to extend to any bulkhead or pier line further out on said river and bay that may hereafter be established by legislative authority; in case any person or corporation taking a lease under this section, shall desire afterwards a conveyance of all or any part of the land so leased, the same shall be made upon payment of the said sum of fifty dollars for every such lineal foot, as aforesaid, of the land so desired to be conveyed, the conveyance or lease of the commissioners under this or any other section of this act, shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns, to exclude to the exterior bulkhead line, the tide-water by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses, and so far as the upland from time to time made shall adjoin the navigable water, the said conveyance or lease shall vest in the grantee or licensee, individual or corporation, and their heirs and assigns, the rights to the perquisites of wharfage, and other like profits, tolls and charges.

5. And be it enacted, That no grant hereafter made, extending beyond the line of high-water mark, shall be in force or operation as to so much thereof as extends below said line of high-water

mark, until the grantee or grantees shall have paid into the treasury of the state such compensation or rentals, or secured to the state such payment or rentals for the estate in the lands lying below the said line of mean high water mark, contained in and conveyed by such grant or lease as is hereinafter provided.

6. And be it enacted, That four commissioners shall be appointed by the governor, by and with the advice and consent of the senate, who are hereby required and empowered to complete as much of the details of the work assigned to them by such original act, by surveys and otherwise, on the Hudson River, New York Bay, and Kill Von Kull, as in their judgment the interest of the state requires.

7. And be it enacted, That all the powers and duties of the said commissioners, contained in the act to which this is a supplement, be and the same are hereby continued in force, except so far as the same are superseded or modified by any of the provisions of this act.

8. And be it enacted, That if any person or persons, corporation or corporations, or associations, shall desire to obtain a grant for lands under water which have not been improved, and are not authorized to be improved under any grant or license protected by the provisions of this act, it shall be lawful for any two of the said commissioners concurring, together with the governor and attorney-general of the state, upon application to them, to designate what lands under water for which a grant is desired lie within the exterior lines, and to fix such price, reasonable compensation, or annual rentals for so much of said lands as lie below high water mark, as are to be included in the grant or lease for which such appli-

cation shall be made, and to certify the boundaries, and the price, compensation, or annual rentals to be paid for the same, under their hands, which shall be filed in the office of the secretary of state; and upon the payment of such price or compensation or annual rentals, or securing the same to be paid to the treasurer of this state, by such applicant, it shall be lawful for such applicant to apply to the commissioners for a conveyance, assuring to the grantee, his or her heirs and assigns, if to an individual, or to its successors and assigns, if to a corporation, the land under water so described in said certificate; and the said commissioners shall, in the name of the state, and under the great seal of the state, grant the said lands in manner last aforesaid, and said conveyance shall be subscribed by the governor and attested by the attorney-general and secretary of state, and shall be prepared under the direction of the attorney-general, to whom the grantee shall pay the expense of such preparation, and upon the delivery of such conveyance, the grantee may reclaim, improve and appropriate to his and their own use, the lands contained and described in the said certificate; subject, however, to the regulations and provisions of the first and second sections of this act, and such lands shall thereupon vest in said applicant; provided, that no grant or license shall be granted to any other than a riparian proprietor, until six calendar months after the riparian proprietors shall have been personally notified in writing by the applicant for such grant or license, and shall have neglected to apply for the grant or license, and neglected to pay, or secured to be paid, the price that said commission shall have fixed; the notice in the case of a minor shall be given to the guardian; and in case of a corporation to any officer doing

the duties incumbent upon president, secretary, treasurer or director, and in case of a non-resident, the notice may be by publication for four weeks successively in a daily newspaper published in Hudson County, and in a daily newspaper published in New York City.

9. And be it enacted, That the same compensation for the time and personal expenses of said commissioners shall be allowed and paid as heretofore, and all other expenditures to be incurred by the said commissioners in the prosecution and completion of their works contemplated by the original act and this supplement, shall not exceed the sum of five thousand dollars annually, which sum is hereby appropriated out of any money in the treasury not otherwise appropriated, to be subject to the draft of said commissioners, and shall be paid upon the warrant of the comptroller, upon satisfactory vouchers being produced of such expenditures made or incurred.

10. And be it enacted, That the moneys so received from the sales and rentals of the said lands under water shall be first appropriated to the payment of such appropriation as the legislature may authorize from time to time, then to the payment and liquidation of the state debt, and afterwards the same shall be invested according to law, and the interest thereof be annually paid over to the trustees of the school fund, to be appropriated by them towards the maintenance of free schools.

11. And be it enacted, That the said commissioners shall take and file in the office of the secretary of state, an oath, well, truly and faithfully to perform the duties of their appointment before entering upon their said duties.

12. And be it enacted, That the said commissioners may commence proceedings in the name of

the State of New Jersey, by ejectment or otherwise, against persons and corporations trespassing upon or occupying the lands of the state under water, or which were heretofore under water, and the attorney general of the state is hereby required to commence and prosecute such actions as may be instituted or directed by the said commissioners; and his expenses and disbursements, and the expenses and disbursements of such assistants as may be appointed by the governor, and their reasonable charges and counsel fees shall be taxed by the chief justice and paid by the treasurer, on presentation of the bill so taxed.

13. And be it enacted, That in any case where a grant of the lands of the state under water is made by the commissioners, to any person other than the riparian owner that the state's grantee shall not fill up or improve said lands under water until the rights and interest of the riparian owner in said lands under water (if any he has) shall be extinguished, as follows: the said commissioners shall fix the amount to be paid to said riparian owner for his rights and interest therein (if any he has), and said riparian owner shall have the right, within twenty days after he has been notified of said amount, to accept said sum in full extinguishment of all his rights, or if he is dissatisfied with said award he may apply to the Supreme Court at the next term thereafter for a struck jury to try the question in such place as may be designated by said court, and said jury may increase or diminish the amount to be paid the said riparian owner, and their verdict shall be final as to said amount, and on the payment or tender by the state's grantee to the riparian owner of the amount fixed by said jury all the rights and interest of said riparian owner in the lands of the state under water in front of his

land shall be extinguished; that the costs of the trial shall be paid as follows: if the verdict of the jury is greater than the award of the commissioners then the state shall pay the costs of the trial, if the verdict is the same as the award or less than the award of the commissioners then the riparian owner shall pay the costs.

14. And be it enacted, That this act shall take effect immediately.

Approved March 31, 1869.

Chapter CCLVI.

A Further Supplement to an act entitled, "An Act to ascertain the rights of the State and riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April eleventh, one thousand eight hundred and sixty-four.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That any riparian owner on tidewaters in this State who is desirous to obtain a lease, grant or conveyance from the State of New Jersey of any lands under water in front of his lands, may apply to the commissioners appointed under the act to which this is a supplement and the supplements thereto, who may make such lease, grant or conveyance with due regard to the interests of navigation, upon such compensation therefor, to be paid to the State of New Jersey, as shall be determined by said commissioners, which lease, conveyance or grant shall be executed as directed in the act to which this is a supplement and the supplements thereto, and shall vest all the rights of the State in said lands in said lessee or grantee.

2. And be it enacted, That this act shall not

interfere with the original act or its supplements as to the waters of the Hudson River, New York Bay or Kill Von Kull, easterly of Enyard's dock.

3. And be it enacted, That this act shall be a public act, and shall take effect immediately.

Approved March 21, 1871.

CHAPTER DXLVIII.

Supplement to "An Act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in the State," approved April 11, 1864.

Whereas, the riparian commissioners recommend some change in the line for solid filling in the Bay of New York and Hudson River, and to enable them to make the changes proposed, and to provide additional wet basins in the same.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the riparian commissioners may change, fix and establish any other lines than those now fixed and established for pier lines, or lines for solid filling in the waters of the Bay of New York or the Hudson River, or make any changes in any basin now fixed and established, or lay out and fix and establish any new basin or basins in the waters of the Bay of New York or the Hudson River, and when so fixed and established, the said riparian commissioners shall file a map and surveys in the office of the secretary of state, showing what lines have been fixed and established by them for the exterior lines for solid filling and pier lines, as well as for any changes in basins or new basins fixed, laid out and established by them under this act.

2. And be it enacted, That from and after the filing of said map and surveys in the office of the secretary of state, no encroachment of any kind shall be permitted to be made beyond said lines so fixed and established for solid filling or pier lines, or in or upon any basin or basins so laid out and established.

3. And be it enacted, That the said riparian commissioners may make, for a satisfactory consideration, any lease or sale to the owners of the lands fronting on the said basin, of the right to have the exclusive use of the said basin or basins, for the purpose of wharfage and docking, and to charge a reasonable sum for the use of the same on the line of bulkhead owned by them respectively; and that from and after the filing of said map and survey, the same shall remain as a public basin or basins, and they are hereby dedicated for that purpose.

4. And be it enacted, That this act shall be deemed a public act and take effect immediately.

Approved April 4, 1872.

An act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers, passed December 31, 1824, P. L. 1824, page 158.
(Charter of the Morris Canal & Banking Company.)

An act to authorize the Morris Canal & Banking Company to extend the Morris Canal to the waters of the Hudson.
Passed January 26, 1828, P. L. 1828, page 34.

CHAPTER XCIII.

A further supplement to the act entitled, "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers."

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Morris Canal and Banking Company are hereby authorized and empowered to construct a railway, with one or more tracks, connecting their canal with the road of the Lehigh Valley Railroad Company, and also with the road of the Central Railroad Company of New Jersey, at or near Phillipsburgh, and also to construct another railway, with one or more tracks, connecting their canal with the road of the Warren Railroad Company; provided nevertheless, that neither of the said railroads shall be more than one mile in length, and shall not, in any manner, interfere with or incommode either of the railroads with which a connection is as aforesaid authorized.

2. And be it enacted, That the Morris Canal and Banking Company are hereby authorized and empowered to obtain the right of way for the construction of the said railroads, respectively, in the same manner as is provided for the Central Railroad Company of New Jersey to obtain the right of way for their road.

3. And be it enacted, That this act shall go into effect immediately after its passage.

Approved March 9, 1855.

CHAPTER CXXXIII.

A further supplement to the act entitled, "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers," passed December thirty-first, eighteen hundred and twenty-four."

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the State of New Jersey hereby grants to the Morris Canal and Banking Company all the right, title, and interest of the state in and to the land and lands under water within the following boundaries: beginning at a point in Hudson River in the southerly line of South Street extended seven hundred and sixty-five feet from the easterly line of Hudson Street, and running thence (1) westerly along the said southerly line of South Street to the centre line of Washington Street extended, thence (2) southerly along said centre line two hundred and sixty feet, thence (3) westerly on a line parallel with South Street as laid down on Mangin's map to the easterly line of Warren Street extended, thence (4) southerly and along the said easterly line of Warren Street extended, to a point distant four hundred and sixty feet at right angles from the southerly line of South Street, thence (5) parallel with South Street, easterly to a point in the centre line of Washington Street extended and distant four hundred and sixty feet from the southerly line of South Street, thence (6) southerly along said centre line of Washington Street extended, five hundred feet to the northerly line of the property occupied by the Central Railroad Company of New Jersey, thence (7) easterly along said line seventeen hundred and thirty-five feet, and thence (8) northerly to the place of beginning; on condition that

for the purpose of preserving a water basin to the west of the present westerly bulkhead on said premises and of leaving open on the premises hereby granted, a public navigation for all vessels to and from the Hudson River, and all parts of the waters west of said westerly bulkhead; the said company shall forever keep open the present gaps in the easterly and westerly bulkheads, each of one hundred and fifty feet in width, and like gaps of like width in any structure to be erected on said premises hereby granted, so that the public may with all vessels freely navigate to and from the channel of the Hudson River and all places east and west of said westerly bulkheads without the payment of tolls or charges; provided, that the said opening shall be kept in such condition that the owners and occupants of shore property lying north and west of the above described property may at all times, have free access to as well as through the same; and provided, further, that the said company shall, within ninety days after the passage of this act, execute and deliver to the governor of this state their promise and undertaking, under seal, unconditionally to pay into the treasury of this state, yearly, the sum of twenty-five thousand dollars per year, on or before the first Tuesday of January in each year, during the continuance of their charter, and so long as the said company, their successors or assigns, shall continue to hold or occupy the same, the first payment of a ratable portion of which shall fall due on the first Tuesday of January, eighteen hundred and sixty-eight; it shall be lawful for the said company instead of the said annual payment of twenty-five thousand dollars, to pay into the treasury of this state at any time the sum of three hundred and fifty-seven thousand one hundred and forty-two dollars.

2. And be it enacted, That the Morris Canal and Banking Company, may, under the provisions of their charter, construct piers, wharves, docks, basins, warehouses and other structures within the limits above described, and make reasonable rules and regulations for the use thereof, to enable them to carry on a transportation business in and over their canal and elsewhere, which they are hereby empowered to do, and also to afford facilities for commerce; provided, that the exemption of said company in its original charter from taxation, assessments or other legal impositions shall not extend to the property or privileges hereby granted.

3. And be it enacted, That this act shall take effect immediately, and be in force during the continuance of the charter of the said Morris Canal and Banking Company, and, at the expiration of that time, the lands hereby granted, with the improvements thereon, shall revert to the state on the same terms and conditions provided in the original charter of the said company, respecting the transfer of the property thereof to the state.

Approved, March 14, 1867.

Chapter DX.

A Further Supplement to the act entitled, "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers," passed December thirty-first, eighteen hundred and twenty-four.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Morris Canal and Banking Company are hereby authorized and empowered to construct railways in this state, except in the counties of Hudson

and Essex, with one or more tracks, connecting their canal with such railroads in this state, except in Hudson or Essex County, as now are or may hereafter be built, and to work and operate the same in aid of their business; provided, that neither of the said connecting railways shall be more than two miles in length from the Morris Canal, and shall not cross the track of the Morris and Essex Railroad Company at any point without the permission of said company.

2. And be it enacted, That the Morris Canal and Banking Company are hereby authorized and empowered to obtain the right of way for the construction of the said connecting railways, respectively, in the same manner as is provided for obtaining the right of way in the act to which this is a supplement.

3. And be it enacted, That this act shall take effect immediately.

Approved April 17, 1868.

Chapter CLIII.

A Further Supplement to "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers," passed December thirty-first, one thousand eight hundred and twenty-four.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for the Morris Canal and Banking Company, by and with the consent of a majority in interest of the stockholders of the said company, expressed in writing and duly authenticated by affidavit, and filed in the office of the secretary of state, to lease the canal of said company, or any part thereof, with all or any of its boats, property, works, appurtenances and

franchises, to any person or persons, or corporation, either perpetually or for such shorter time, and upon such rents and agreements, as may be agreed upon between the said contracting parties, and it shall be lawful for the lessee or lessees in said lease to use and enjoy the said property and franchises so demised, for the term in said lease mentioned.

2. And be it enacted, That if any stockholder or stockholders, being such at the time of making such lease, shall be dissatisfied with the same, the said contracting parties, or one of them, shall pay to such dissatisfied stockholder or stockholders the full value of his, her or their stock immediately, prior to such lease, to be assessed by three disinterested commissioners, appointed for that purpose by the chancellor or chief justice of the Supreme Court of this State on the application of either party, made upon twenty days' notice, but said contracting parties shall not be compelled to pay for the stock of any such dissatisfied stockholder or stockholders, unless he or they shall give written notice of such dissatisfaction to the president or secretary of the said Morris Canal and Banking Company, before or within three months after such lease shall have been made and consented to by the requisite number of stockholders; and said lease shall not be valid as against such dissenting stockholder or stockholders until his or her stock shall have been paid for as provided in this act; provided, that no such lease shall have the effect, or be construed to release or discharge the said Morris Canal and Banking Company from the payment of any taxes, annuities, revenues or debts, which the said company may be subject or liable to, either to the State or to any other person or persons; provided

further, that if the said company shall pay to any dissatisfied stockholder or stockholders the value of his, her or their stock so assessed, such stock shall not be thereby cancelled or retired, except at the option of said company, but the said stock may be sold or re-issued by such company at such price as the directors may deem expedient, and if said stock shall be paid for by any other contracting party to said lease such stock shall become the property of the party paying therefor.

3. And be it enacted, That it shall be lawful for the said company, or its lessee or lessees, to use the surplus water of the canal of said company, or any of its feeders, not needed for the purposes of navigation, in furnishing and supplying the inhabitants of any city, town or village along the line of said canal, or in the vicinity thereof, with a sufficient quantity of pure and wholesome water for manufacturing or domestic and other uses; and to make contracts with the corporate authorities of any such city, town or village, or with individuals, for such supply of water, for such compensation as may be mutually agreed upon, and to erect such works and make such alterations in the said canal as may be necessary or proper to enable said company, or its lessee or lessees, to furnish such supply of water from the said canal; provided, that nothing herein contained shall be held to authorize the diversion of the said canal from the purposes of navigation; provided further, that nothing in this act contained shall be construed to authorize the said company to use as much of the water of the Musconetcong creek as to deprive the owners of mills or manufactories on said creek, below the dam at Saxon's Falls, of sufficient water to run one wheel, as at present used to drive two run of millstones, with the necessary fixtures for the same, during

eight weeks of the year, and at least two wheels, each of the same power, during the residue of the year, without the consent of the owners; and provided further, that nothing herein contained shall be held to authorize the said company, or its lessee or lessees, to do any act affecting the existing rights of the society for establishing useful manufactories.

4. And be it enacted, That this act shall take effect immediately, and be deemed a public act; and the said consent of stockholders herein and hereby required to be authenticated and filed in the secretary's office, when so authenticated and filed, together with the fact of the amount of stock held by each, the same being also authenticated by affidavit, shall be sufficient proof in all courts and places where the same may come in question, unless the contrary be made to appear, by the original affidavit so filed, or by a duly certified copy thereof made by the secretary of state.

5. And be it enacted, That all acts and parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed.

Approved, March 14, 1871.

Trenton, New Jersey, March 13th, 1906.

Hon. Robert H. McCarter,
Attorney General, State of New Jersey.

Dear Sir:

The following Resolution, introduced by Mr. Elvins, under date of March 13th, 1906, has been adopted by the House of Assembly:

Whereas, the Lehigh Valley Railroad Company claims that its title to the "Tide Water Basin of 1867" is absolute; and

Whereas, the last section of the law of 1867 referring to the "Tide Water Basin" reads as follows: "And be it enacted that this act shall take effect immediately, and be in force during the continuance of the charter of the said Morris Canal and Banking Company, and, at the expiration of that time, the lands hereby granted, with the improvements thereon, shall revert to the state on the same terms and conditions provided in the original charter of the said company, respecting the transfer of the property thereof to the state;" and

Whereas, In a decision handed down yesterday, March 12, by the Supreme Court of the United States, it is stated that "It (a corporation) can make no contract not authorized by its charter;" and

Whereas, the Lehigh Valley Railroad Company is not authorized by its charter to conduct a canal business; therefore,

Be it resolved, That the Attorney-General is hereby requested forthwith to institute proceedings to ascertain—(1) whether or not the State of New Jersey has an equity in the "Tide Water Basin of 1867;" and (2) by what authority the Lehigh Railroad Company operates the Morris Canal.

Very respectfully,
(signed) JAMES PARKER,
Clerk of the House of Assembly.

JOINT RESOLUTION, No. 6.

(Pamphlet Laws, 1906, p. 739.)

Joint Resolution directing the Attorney-General to institute proceedings against the Morris Canal and Banking Company and the Lehigh Valley Railroad Company to ascertain the interests of the State of New Jersey, if any, in the tide water basin of one thousand eight hundred and sixty-seven, so called and to ascertain what right, if any, the said Lehigh Valley Railroad Company has to operate the Morris Canal and to provide assistant counsel therefor and provide for the expenses thereof.

Be it resolved by the Senate and General Assembly of the State of New Jersey:

1. That the Attorney-General of New Jersey is hereby directed to forthwith institute proceedings in Chancery, or other proper court of this State, against the Morris Canal and Banking Company and the Lehigh Valley Railroad Company to ascertain what interest, if any, the State of New Jersey has in the tide water basin of one thousand eight hundred and sixty-seven, so called, and to ascertain what right, if any, the said Lehigh Valley Railroad Company has to operate the Morris Canal, and to carry on the said proceedings with all possible diligence; and that he shall have power to call to his aid such counsel learned in the law as he may select, in the prosecution of such suits, or of other litigation incident thereto, which may be necessary, and to defray the expenses thereof the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated.

2. That this resolution shall take effect immediately.

Approved, April 9th, 1906.

Further Testimony for Informant.

In Chancery of New Jersey.

Between:

ROBERT H. MCCARTER, Attorney General,

Informant,

and

LEHIGH VALLEY RAILROAD COMPANY, et als.,

Defendants.

On Information.

Hearing resumed on Tuesday, March 23rd, 1909, at the Chancery Chambers, Newark, N. J.

MR. VAN SYCKEL: I wish to make a correction in the testimony. In the first day's testimony, if the Court will remember, I said, "We desire to put in evidence "the Act of 1906 passed by the Legislature "directing this suit to be brought. Mr. "Lindabury: 'We object to the Act as "'irrelevant, unconstitutional and void.' Now, Mr. Lindabury supposed that I was referring to the supplement of the Act to quiet title of 1907. Of course, I did not offer that. It is in the Answer and a bad Act. I knew that the Attorney General had been instructed to bring this suit but I had forgotten in what form it was, and that is what I wished to offer. Now, I wish that page corrected, and what I desire to put in is printed by us you will find, one was a direction by the House of

Assembly, served upon the Attorney General, on page 157, an imperative direction to bring this suit. I had forgotten the form in which it came, but I knew he was instructed; and the other is a joint resolution printed in the Act of 1906. I wish that correction made because Mr. Lindabury certainly would not say it was unconstitutional.

MR. LINDABURY: No. I understood the offer. I misunderstood the way Judge Van Syckel put it.

MR. VAN SYCKEL: Yes; I was astonished to hear you say it was unconstitutional, but I supposed you did not know what I meant.

MR. LINDABURY: I don't know whether I ought to withdraw that objection to this new offer or not, but I don't know of any way of supporting it.

MR. VAN SYCKEL: You can put it in, if you wish. I wish also to put in these maps, some of them I think were offered, they are all from the Secretary of State's office. I now offer in evidence the Map of September 17, 1874.

MR. LINDABURY: Can you give us further information about it?

MR. VAN SYCKEL: It simply shows the exterior lines and pier lines that appear on these maps.

MR. LINDABURY: Who is it made by and what did it accompany, if anything?

MR. VAN SYCKEL: Accompanies the reports of the Commissioners, as I understand it. That shows where the bulkhead line was drawn on the Central Railroad I think.

MR. LINDABURY: It strikes me that we ought to object to that; I do not see how that would bind us or be relevant; I do not know what it shows.

MR. VAN SYCKEL: It simply shows what the Riparian Commissioners had done in laying down bulkhead lines.

MR. CORBIN: I will read the legend on the map: "Alteration exterior pier line in "front of lands under water, occupied by "the Central Railroad Company of New "Jersey as shown on this map, adopted by "the Board of Riparian Commissioners of "the State of New Jersey, September 17, "1874, and ordered to be filed in the office "of the Secretary of State at Trenton. At-"tested, R. C. Bacot, Secretary and En-"gineer, R. C., of New Jersey."

MR. LINDABURY: I think we better object to it as irrelevant, it does not run in front of our property. I suppose it was made under the Act of 1872; we gave them authority to change the lines, as I recall it now, in the neighborhood of the basin, and they apparently made some change in front of lands granted by the Central Railroad Company but not in front of the locus in quo. I have no objection at all to its going in if our rights are reserved. I do not say that it is relevant, and yet I don't think we ought to bind ourselves by letting it go in by consent as relevant.

MR. VAN SYCKEL: Subject to any objection you may make.

MR. LINDABURY: So far as I see now it has no relevancy.

MR. VAN SYCKEL: Well, we think it rele-

vant, and if the Vice Chancellor desires any discussion about it, we are prepared.

THE COURT: I think it ought to go in subject to the objection.

MR. LINDABURY: All I want is to save any right we may have to object after a closer study.

MR. VAN SYCKEL: I propose to put in those different maps subject to your right to make any objection to them you wish.

MR. LINDABURY: I think we need not make objections as we go along if our right to object to the relevancy of them or on any other ground, is reserved, so that we are not prejudiced by having something go in as if by consent and without objection. There is no time now to study them closely enough to be sure of our rights.

THE COURT: I suppose that would apply to both sides.

MR. LINDABURY: It would be fair that it should; yes.

Said Map marked Exhibit C-12.

MR. VAN SYCKEL: I now offer in evidence the map of September 26, 1882 entitled: "Exterior line for piers on the Hudson "River at Jersey City, established by the "Riparian Commission of the State of N. "J., September 26, 1882," signed by all the Commissioners and the Engineer. "Filed October 17, 1882, Henry C. Kelsey, Secre- "tary of State."

Said Map marked Exhibit C-13.

MR. VAN SYCKEL: I now offer in evidence the Map of October 17, 1882.

MR. LINDABURY: What does that show?

MR. VAN SYCKEL: Exterior lines for piers and inside exterior line for piers, established in 1865.

Colloquy.

MR. LINDABURY: Exterior line for piers on the Hudson River at Jersey City, established by the Riparian Commissioners of The State of New Jersey, September 26, 1882.

Marked Exhibit C-14.

MR. VAN SYCKEL: I offer in evidence Map of October 27, 1883.

Marked Exhibit C-15.

MR. VAN SYCKEL: I now offer in evidence Map of December 13, 1872, recorded under the Act of 1872, page 1356.

MR. LINDABURY: It is a map attested December 7, 1872, filed December 13, 1872, showing the tide water basin established by Act of the Legislature of New Jersey, approved April 4, 1872.

Marked Exhibit C-16.

INFORMANT RESTS.

On leave of Court, Informant opened his case and put in further testimony April 2, 1909, at Newark, as follows:

FRANCIS H. MAGGIE, sworn for the Informant:

DIRECT EXAMINATION BY MR. VAN SYCKEL:

Q. Are you engaged in the office of the Attorney General in this State? A. Yes.

Q. How long have you been there? A. Seven years.

Q. Have you recently made a search of the records in the State House to find a bill which was introduced in the Legislature in, I think, in 1905, or thereabouts? A. Yes, sir.

Q. When did you make the search? A. Yesterday.

Q. Have you that bill? A. Yes, sir.

Q. Will you produce it? A. I have here the bill as it passed the assembly, and the bill as it was originally introduced, the printed copy that is filed.

Q. Have you the bill as it was originally introduced? A. The printed copy of the bill as it was originally introduced.

Q. What is that printed copy in? A. It is in the bound assembly bills as filed in the State Library.

MR. VAN SYCKEL: We offer that in evidence.

MR. CORBIN: I object to it.

MR. VAN SYCKEL: On what ground? You introduced the same thing yesterday.

MR. CORBIN: I am not objecting to the form of proof. I object to the competency and relevancy and pertinency of the evidence.

THE COURT: I will rule upon the question after the proof is in.

Q. Now, you have the bill as it was sent by the House to the Assembly? A. Yes, sir; and also the official copy.

Q. It was passed by the House? A. Yes, sir.

Q. And sent in the form you have it there to the Senate? A. Yes.

Q. When was that, what year? A. In 1905.

Q. Is that the bill that was sent by the House to the Senate? A. Yes.

Q. And not passed by the Senate? A. Yes, sir.

Q. Where did you get that from? A. From the original files in the State Library.

MR. VAN SYCKEL: We offer that bill.

MR. CORBIN: Same objection.

MR. LINDABURY: The point I mean to make is that that bill might become evidence if other facts were proven, but if nothing else is proven—

MR. VAN SYCKEL: Oh, of course, if nothing else is proven, it will amount to nothing. Now, what I want to know is whether there is any objection to the form of proof.

MR. CORBIN: Oh, no, not the form of proof.

MR. VAN SYCKEL: I understand it is admitted that that bill, in that form, was passed by the House.

MR. CORBIN: We do not admit anything at all.

MR. VAN SYCKEL: Well, you don't object to the form of proof, and if you don't object to the form of proof, you must admit it.

THE COURT: I assume the bill itself shows it was passed by the House, it is certified to by the Speaker of the House.

MR. VAN SYCKEL: Yes, and these minutes show the fact. I offer the minutes to show that fact.

BY THE COURT:

Q. That bill is certified to by the Speaker of the House? A. Yes.

CROSS EXAMINATION BY MR. CORBIN:

Q. The engrossed bill, certified by the Speaker, is what you have referred to as the official bill or official copy? A. I referred to that as the one that went from the Assembly to the Senate.

Q. That is the official record of the bill as passed the House? A. Yes.

Q. That is filed April 4, 1905? A. Yes, in the State Library.

Q. You produce folded inside of it the usual printed bill which is headed "official copy reprint"? A. Yes.

Q. Committee substitute for Assembly 239? A. Yes.

Q. The printed one on bond paper, which is the official bill, has not that same heading? A. No, sir.

Q. It is called Assembly 239? A. Yes.

Q. And yet the two are the same? A. I presume they are; that is the customary way of sending a bill to the Senate after it has passed.

Q. The customary way of passing through the House, in sending from one House to the other is to send an engrossed bill certified with another one printed with it, stamped by the Clerk of the House which has that same heading at the top, showing the history of the bill? A. Yes.

Q. So that the two are alike except the heading as you suppose? A. I suppose so.

Q. That is all.

ROBERT H. MCCARTER, sworn for Informant:

DIRECT EXAMINATION BY MR. VAN SYCKEL:

Q. This bill is produced from the State records. Do you remember the fact that such a bill was before the Legislature in 1905, while you were attorney general? A. Well, I, of course, have not read this bill, but I remember there was a so-called Morris Canal Abandonment Bill before the Legislature about this time, and I assume this is the bill.

Q. Now, Mr. McCarter, will you tell the Court whether Mr. William H. Corbin was before the Legislature when that bill was pending, advocating its passage?

MR. LINDABURY: I object unless you designate the House.

THE COURT: Well, the question calls for the conclusion of the witness; it calls for his judgment in determining whether Mr. Corbin advocated the passage of the bill. Of course, the proper question would be what Mr. Corbin said.

Q. Tell what Mr. Corbin's connection with the bill was; I shall produce other evidence to show his connection with the Company.

MR. LINDABURY: I object. The only proper question would be what Mr. Corbin said and where he said it, and when he said it.

Q. Tell us generally, to the best of your recollection, what Mr. Corbin said about that bill.

MR. LINDABURY: I object.

MR. VAN SYCKEL: I am trying to show by Mr. McCarter—. I cannot, of course, tell what he knows; he will tell the Court

what he knows about it, and if it is not relevant that is another question.

MR. LINDABURY: I object to any question as to what Mr. Corbin may have said.

THE COURT: Well, Mr. McCarter will have to state in the first place that Mr. Corbin appeared before some committee, if Mr. McCarter knows that fact.

WITNESS: I cannot say I know that fact; I would be very glad to say all I do know about it if it is desired that I should, which is not a great deal.

Q. Let us hear what you know and then we can tell whether it is competent.

MR. LINDABURY: I object to that.

MR. VAN SYCKEL: We offer to prove by the Attorney General, who had charge of the interests of the State in this bill which has been offered, that William H. Corbin, the attorney of the Lehigh Valley Railroad Company, during the winter of 1905, when this bill was pending, requested him to assist or aid in the passage of this bill; and we offer to prove further, that William H. Corbin at that time was the attorney of the Lehigh Valley Railroad Company, and acting under the instructions of that Company. That is the offer. What I desire to show is that this bill, with all its provisions, was a bill which was pressed to passage by the Lehigh Valley Railroad Company, through their attorney, William H. Corbin.

THE COURT: I overrule the offer of any conversation with the Attorney General.

MR. VAN SYCKEL: Now, I offer to prove that William H. Corbin, the attorney for

the Lehigh Valley Railroad Company appeared, while that bill was pending before the Legislature, in the House of Assembly and advocated the passage of the bill.

THE COURT: I will let you prove that for the present. I will let that evidence go in subject to a ruling that I may find necessary to make hereafter.

Q. I ask you whether William H. Corbin appeared during the pendency of that bill in the Legislature, before the House of Assembly in 1905, and advocated its passage? A. My recollection is that there was some meeting in the House of Assembly whether it was a meeting of the Legislature itself or of a committee—I think it was a committee, which I attended and which Mr. Corbin attended, and that on that occasion Mr. Corbin made a speech in advocacy of the bill which was then pending, which I assume is this bill. Now, whether it was the Legislature or a committee, I am not sure. The reason I am not sure is that the room was very full and I think every member was in his chair, although it may have been a committee meeting—I think it was.

CROSS EXAMINATION BY MR. LINDABURY:

Q. Did Mr. Corbin speak in favor of the bill as it passed the Assembly or of the bill as it was introduced into the Assembly? A. I haven't the slightest idea about that.

Q. You are not prepared to say that Mr. Corbin ever spoke in advocacy of the bill as it finally passed the House of Assembly and went to the Senate, are you? A. The details of the bill and its charges and amendments have entirely escaped me.

Q. You know the bill was amended in the House

of Assembly? A. Oh, yes; changed very much.

Q. And what I mean to ask is whether or not your recollection is clear as to whether or not the bill Mr. Corbin spoke of was the bill as amended or as introduced? A. I cannot say about that.

Q. Wasn't the burden of Mr. Corbin's argument in favor of the bill to allow the canal to be abandoned, rather than any of the details that were in the bill, that is, wasn't it generally in favor of abandonment? A. Oh, yes; that is what I understood he was favoring, and making a speech addressed to the general propriety and advantage of having the canal abandoned. The details I do not remember at all, and what the condition of the bill was, I do not know.

Q. That is all.

WILLIAM H. CORBIN, sworn for Informant:

DIRECT EXAMINATION BY MR. VAN SYCKEL:

Q. Were you the attorney of the Lehigh Valley Railroad Company in 1905? A. In various matters; yes.

Q. Did you appear before the Legislature in their behalf in reference to that bill that has been offered here in evidence? A. You mean this bill which passed the Assembly?

Q. Yes. A. Previous to the passage of that bill, I appeared for the Lehigh Valley Railroad Company before a committee of the House of Assembly. In discussing the report which had been made by the committee of the three governors and the consequent action to be taken by the Assembly, I appeared in advocacy of liberty to abandon the canal, and not in advocacy of any particular form of bill, although the bill that was then pending before them was, I think, Bill 239, as first introduced.

Q. Have you finished your answer? A. Well, I say, the bill that was then in existence and pending before them, as I recall, was Bill 239, as it had been introduced into the House. This bill that you have in your hand is the committee substitute for that bill.

Q. Will you now look at the first section of this bill; you know what it is? A. I have read this first section.

Q. Did you not, Mr. Corbin, appear before the Legislature or some committee of the Legislature on behalf of the Lehigh Valley Railroad Company and advocate the passage of a bill with that section in it, or substantially that section in it? A. Give me the bill as originally introduced.

Q. (Same produced.) A. Bill 239 as originally introduced by Mr. Duffield, February 28, 1905, was undoubtedly before the Committee of the House when I made my argument before them, and the first section as it is there printed, appears to be substantially the same as in the bill finally passed. I have not exactly verified it, it was undoubtedly in the bill. My advocacy there was not with reference to the details of this bill but rather in favor of the passage of a bill to allow the Morris Canal to be abandoned on reasonable terms, but I did not, as I recall, address my argument to the promotion of any of those special details. I recollect distinctly taking the position that the bill as proposed by the governors and as proposed to the Legislature, was a very hard proposition for the Canal Company, but we did advocate the abandonment on terms. I think I suggested changes that ought to be made.

Q. My question to you is whether you did not advocate the bill with that provision in it, which I called your attention to, whether you did not say to the Legislature there to that Committee,

that the Lehigh Valley Railroad Company was willing to accept the bill with that provision in? A. I am sure that I didn't say that, because I know we were in doubt whether they would ever accept the bill, and I was so informed and instructed.

Q. Didn't you say, as the representative of the Lehigh Valley Railroad Company, that you would consent to the passage of the bill with that clause in it? A. I don't think it possible I could have said so, for my instructions were to be guarded on that point and not to commit ourselves whether we would accept it or not, and the bill itself, in two or three places, left that option to us. I cannot conceive it possible that I said so.

By Mr. Lindabury:

Q. It gave the Lehigh Valley Railroad Company three months in which to accept it or not? A. Three months on certain things and an indefinite time on others.

Q. But it was a bill generally to become effective only on the formal consent of the Lehigh Valley Railroad Company? A. Yes.

By Mr. Van Syckel:

Q. Did you have anything to do with the drawing of the bill with that section in it? A. You are asking me about things that happened a good many years ago. I think not, sir.

Q. Do you say so positively? A. I am trying to refresh my memory. Let me compare this with the other.

Q. Certainly. Take all the time you want. A. Did I have anything to do with the preparation of a bill with that section in?

Q. Whether you had anything to do with the preparation of the bill in that form? A. With

this bill of Mr. Duffield's I don't think I had anything to do.

Q. No, but in that section?

MR. LINDABURY: Some other bill, now I object to that.

MR. VAN SYCKEL: I am not asking him about some other bill.

Q. Did you have anything to do with the preparation of a bill with that first section in it, in that substantial form?

MR. LINDABURY: I object to that.

Objection sustained.

MR. VAN SYCKEL: Well, I wish my offer to appear.

MR. LINDABURY: You have asked the question and it is overruled; what better could you have in the way of an offer.

Q. Did you on that occasion, or on any occasion while that bill was pending, say to the Legislature, or to any Committee of the Legislature, that you thought that bill, in your opinion, should be passed?

Objected to. Objection sustained.

Q. Did you not say that on behalf and as representative of the Lehigh Valley Railroad Company?

Objected to. Question allowed.

A. The bill as pending before the Legislature?

Q. That bill with that section in?

MR. LINDABURY: I object. Now, it is one thing to ask whether Mr. Corbin said that with regard to a bill which was never passed and never reported and which is not before the Court, and it is another thing to

ask whether he made such a statement with regard to the bill now produced and offered.

MR. VAN SYCKEL: That is what I am asking.

MR. LINDABURY: The question didn't mention that. Now, if he asks that question I have no objection.

MR. VAN SYCKEL: I am asking him with reference to this bill that is before him.

MR. RIKER: The paper presented to Mr. Corbin, and with regard to which he has been testifying, is the bill introduced in the House, and he has it before him in the bills; that is what he has been examining.

WITNESS: What I have before me is the bound volume of Assembly bills for 1905, and the printed bills in this, I think Mr. McCarter stated, was the bill as originally introduced; I mean printed copy of the bill as originally introduced.

MR. VAN SYCKEL: Now, I will call Mr. MacGee back to prove that this is the original bill introduced.

FRANCIS MAGGIE, recalled for Informant:

FURTHER DIRECT EXAMINATION BY MR. VAN SYCKEL:

Q. Look at this (showing witness paper). A. Yes.

Q. Will you tell the Court whether that is the bill as originally introduced?

MR. LINDABURY: Objected to; it is not the best evidence, the bill as originally introduced is in existence and can be introduced.

MR. VAN SYCKEL: I will prove the loss of it if you will give me an opportunity.

Q. Have you searched for the original bill? A. Yes.

Q. Could you find it? A. No, sir.

Q. Now, will you tell me where that book is from? A. From the State Library.

Q. Is that a copy of the bill as originally introduced?

MR. LINDABURY: I object.

THE COURT: The witness can say yes or no and then you can cross examine and find out how he knows it.

WITNESS: How I know what?

BY THE COURT:

Q. The question is how do you know that that is a copy of the bill that was originally introduced into the House? A. I know that the practice, as provided by law, is that the original draft of the bill as printed shall be filed in the State Library, and that this is the draft filed and bound in the State Library, according to general practice.

By Mr. Lindabury:

Q. The law does require them to be filed, doesn't it? A. Yes.

Q. What law is there that requires them to be bound up in this way, or that authenticates this volume? A. I don't know; I didn't say that.

Mr. Van Syckel: These are public journals which are evidence in the absence of the original papers, and have been introduced all through this case by the other side.

The Court: I will let it go for the time being.

Q. Do you say that there is any law which requires every bill introduced to be filed in the office of the Librarian, no matter what becomes of it? A. Yes, sir.

Q. Will you be kind enough to refer us to that law? A. I would have to hunt it up, I never seen it; I simply know that that is the reason why it is done.

Q. Do you say that every bill that is introduced is filed there and every substitute and every amendment? A. Every bill that is introduced is filed there; I think that every bill is filed there, I am not sure.

Q. Well, are you sure that every bill that is introduced is filed there no matter what its history may be? A. Well; unless somebody fails to do it by accident in some way.

Q. That is all.

WILLIAM H. CORBIN, recalled for Informant:

FURTHER DIRECT EXAMINATION BY MR. VAN SYCKEL:

Q. Now, Mr. Corbin, if that is the bill as originally introduced in the Assembly, if it is, that is the question we must prove, but assuming that to be so, did you appear before the Legislature or a Committee of the Legislature in the Session of 1905, and advocate the passage of that bill?

MR. LINDABURY: I object to that. While it may be competent to prove that this witness appeared and advocated the passage of a bill that was passed by the House of Assembly, it is irrelevant and incompetent to prove that he appeared before the House and advocated the passage of some other bill, which was never passed.

THE COURT: I will allow this evidence to go in for the present.

WITNESS: The fact is this—this Bill 239 as originally introduced, was pending before a Committee of the House of Assembly; that Committee met to consider it, and I, with other counsel for the Lehigh Valley Railroad Company, and the Morris Canal and Banking Company, appeared before the Committee, and I advocated, and those associated with me advocated, the passage of a bill to allow the abandonment of the Morris Canal on fair terms. I did not advocate this bill exactly as drawn, nor urge its passage in that shape. Amendments were discussed and proposed on both sides. That I did advocate the passage of a bill substantially as the Commissioners had reported is no doubt true, but I never

advocated the passage of that bill exactly as introduced by Mr. Duffield. In fact, my advocacy was not much in the direction of the details which should be in the bill, but the advocacy of a proposition to allow the abandonment of the canal on reasonable terms.

Q. That does not quite answer my question. A. Well, I meant to answer it.

Q. I will ask it in a little different form, so that we will have a direct answer to it. Did you advocate the passage of that bill which was then before the Legislature? Now, that I think can have a direct answer yes or no. A. Categorically no; but substantially, yes.

Q. Well, substantially is what I want. Substantially yes is what will satisfy me. A. But not without amendment.

MR. LINDABURY: Is this all there is on this subject?

MR. VAN SYCKEL: Yes.

MR. LINDABURY: I move to strike it out as irrelevant and incompetent.

THE COURT: I think it is plainly incompetent.

MR. VAN SYCKEL: We except to your Honor overruling this evidence.

MR. RIKER: We want to show the date at which the Jersey City Terminal Railroad was put into actual operation, and Mr. Corbin has kindly offered to give us the date and will give it to us in writing, so that we may put it in in that form.

MR. CORBIN: As I understand it, the operation of the Railroad across the Morris Canal grant?

MR. RIKER: Yes.

MR. CORBIN: We will furnish that.

MR. RIKER: And the use of the piers.

MR. CORBIN: Yes.

MR. VAN SYCKEL: How can these be marked so that it will show that we produced them, and also that book showing the original bill I wish it noted upon the record that the following has been produced: Assembly Bills 1905, 1 to 403 inclusive, and the book is produced from the State Librarian. Official copy reprint of a substitute for Assembly Bill 239 introduced February 28, 1905, by Mr. Duffield, enclosed in Assembly Bill 239 as passed by the House of Assembly and the Senate, filed in the State Library, April 4, 1905.

MR. RIKER: At the last session, counsel for the defendants introduced a large number of deeds which we have not been able to examine, and their importance, of course, we are not able to estimate at this time. I do not believe that it will be necessary to introduce any testimony to meet that testimony, but we would like to reserve our right to do so if we find it necessary.

THE COURT: I think that permission ought to be granted.

MR. LINDABURY: Except that we ought not, when we come to argue the case, to have to deal with some new evidence.

THE COURT: Oh, no, if counsel desire to offer in evidence any rebuttal of this they ought to make up their minds about it some time before the argument.

MR. RIKER: Oh, surely.

Counsel for defendant agreed to furnish counsel for complainant a list of the deeds last offered in a few days. Then inform-

ant's counsel stated that they might desire to take further proof after seeing the deeds, and asked to have until May first for that purpose. The Court stated that if the deeds were furnished in three days that counsel might have until the week ending Saturday, April 24th, and it was understood between counsel that any further testimony desired to be offered between now and the argument should be taken before Mr. Knight as a Master.

ADJOURNED.

Counsel for informant offers in evidence the following legislative acts:

Act, November 10, 1804, page 367, Grant to Associates of Jersey Company.

Act, November 8, 1837, page 13, Grant to Nathaniel Budo.

Act, November 8, 1837, page 64, Grant to Aaron Ogden.

Act, February 21, 1838, page 92, Grant to Hoboken Land & Improvement Company.

Act, February 24, 1848, page 75, Grant to Stephen Vreeland.

Act, February 22, 1849, page 85, Grant to Samuel D. Ingham.

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Defendants' Opening.

(March 23, 1909.)

MR. CORBIN: The prayer of the Information filed by the Attorney General is, first that the rights of the parties to the suit under the conveyance in fee, made by the State to the Lehigh Valley Railroad Company be fixed and settled and that the State may take and hold the land so granted free and clear of any cloud or uncertainty cast upon the title of the State, upon such equitable terms as the Court shall establish by its decree. The prayer seems to assume title in the Company and to assert a right to defeat that title. Aside from the prayer for further relief, that is all the prayer of the Information—that the rights of the parties under the conveyance of July 12, 1889 may be fixed and settled by the Court so that the State of New Jersey may take back and have and hold the estate granted to the Lehigh Valley Railroad Company, free and clear of any cloud or uncertainty cast upon the title of the State by its own deed.

Looking at the Information further it seems impossible to suppose that the State is asking anything more than that the title which it somehow supposes will revert or in some way become vested in the State in 1974, shall then be a title free of any claim of the Lehigh Valley Railroad Company. Surely this prayer does not mean what it seems to say—that this title shall be declared to be now in the State.

The State's own grant is a grant of the title in perpetuity. The State by Legis-

lative grant in 1867 had ceded a defeasible fee in that land to the Morris Canal & Banking Company in terms, and the State again, by its Riparian Commissioners, in 1888, for a further consideration, ceded an indefeasible fee in terms to the Lehigh Valley Railroad Company.

MR. VAN SYCKEL: For what further consideration?

MR. CORBIN: Well, $48,000 was one of the considerations.

MR. RIKER: You are referring to the grant of 1889.

MR. CORBIN: Yes. The grant of 1867 was a grant in consideration that among other things, the Morris Canal & Banking Company should pay $25,000 a year rental, which they might at any time convert into the capital sum of $357,142. The grant of 1889 was on payment of the sum of $357,142 and the additional sum of Fifty dollars a front foot or $48,000 and both sums were then paid to the State, the $357,142 capital sum named in the original grant, and the additional sum of $48,000 mentioned in the second grant.

This suit is altogether unique. Who ever heard before of a suit to settle what the title of lands shall be seventy years hence. Of course, it finds no support in the law except in this special Act of the Legislature directing the Attorney General to attack this Company. It is a kind of law that I think has never been passed before in New Jersey; it is a growth of the times in which we are living. It is the flower of this new growth of agitation and assault upon vested

rights to which we have lately become accustomed. I hope it is the final flower in New Jersey of this sort of thing.

The situation as developed already, and as we shall try further to develop it to your Honor by the evidence, I will briefly enter into.

The Morris Canal & Banking Company, chartered in 1824, was authorized in 1828 to extend its canal from the Passaic River to the Hudson River, and in 1836 actually did complete its canal through to the Hudson River, and not long after had it in operation, in the same situation in which it is to-day. We shall show by the evidence of living witnesses that a canal basin was made by the fillings to the south of it in South Street as early as 1854 and remains in the same condition to-day. The bulkhead and filling to the north of it, piers to the northeast of it, solid filling known as Packers Dock to the south of it; a little draw-bridge therefrom over to the South Street pier, and the South Street pier on the south were all in existence as early as 1854.

The evidence already offered by the State shows that as early as 1865 that was so, for the report which they offer in evidence of the Riparian Commissioners, made February 1, 1865, accurately describes these existing structures and fillings as they are now, as being then in existence. The Morris Canal basin as it is shown on their map agrees with it as it is on the ground to-day, and as it has been for more than a half a century, probably nearer three-quarters of a century. The canal boats were

locked to tide water under Washington Street, where the lock still is, and this was the terminus of the canal.

The business on the canal—small at first, and ending in failure in 1845, was reorganized, increased slightly but gradually and steadily until the time of the civil war when it became quite prosperous for a period of a few years and reached its apex in 1866. Its tonnage then aggregated eight hundred and eighty-six thousand tons out of the million tons which it was designed to carry. The Canal Company in constructing its line in Jersey City occupied the territory represented on the map by the basin, by virtue of its charter and by virtue of purchases of land. One of the provisions in the extension Act of 1828 was that the Canal might occupy streets lengthwise in Jersey City and Newark, and it did occupy a portion of Dudley Street. The land was under water.

This map which I am about to exhibit is the map of that part of the Town of Jersey City commonly called Powles' Hook, laid out by the Associates of the Jersey Company in 1804 when they were chartered, and when they bought from Cornelius Van Vorst this part of Jersey City.

Your Honor will observe that in 1804 they laid out Bergen Street, now called Dudley Street, and laid out South Street as the extreme south line of their proposed filling and development; they laid out a series of docks and piers along the Hudson River front where they now are. Your Honor will see indicated upon that con-

siderably inland the high water mark as it then was. When the Morris Canal Company came in 1836 they laid the Canal down Bergen Street, and as may be seen by the other map, they filled to the north of it, and they filled to the south of it as far as South Street, reclaiming a large part of South Street and in places the whole width of it, and there established their canal terminus. The owner of all this part of Jersey City, except certain portions which had been sold, was the corporation known as "The Associates of the Jersey Company", a land company chartered by the Legislature with very broad powers in 1804 for this very purpose, and the proprietors of which were Varick, Dey, Robert Fulton and others. After the canal came in it began to take land of the Associates of the Jersey Company who had general powers to dock out under their charter, which your Honor will undoubtedly examine more at length later on. They bought first Block No. 1, the extreme southeast corner of Jersey City; half of Block 2 and portions of the other half; Block 14 containing twenty-six lots running up towards Washington Street and other lots. At first they bought qualified titles, but they continued to buy from the Associates of the Jersey Company, buying in 1836, 1845, and finally in 1864 for an added consideration of $4,000 they bought an absolute title of all that they had before bought from the Associates of the Jersey Company, with all the rights of the Associates to dock and fill out into the Hudson River and the South Bay, and with all the riparian

rights of any sort in the broadest terms that the Associates might have or claim. They became, as early as 1864, the absolute owners in fee simple, not only of the land itself which they long before bought, but of all the water rights of any sort to the east and to the south of those three blocks of land. They were, therefore, whatever significance it may have, the riparian owners of the up-land from Washington Street down around the shore to Hudson and along Hudson as far north certainly as Essex Street; as early as 1864 as to all, and earlier than that as to much of it.

Previous to 1865, the Morris Canal & Banking Company had already, in addition to its basin which I have spoken of, extended from South Street or Packers' dock a bulkhead out near Hudson Street, into the Bay, and again, near Washington Street far out in the Bay, both those bulkheads going out to the south line of Jersey City, which was a diagonal line drawn from the Bergen Church southeasterly into the Hudson River and it enclosed all that land for its purposes, leaving gaps in the bulkhead on the east and the bulkhead on the west. That probably is shown on many maps, but it is well shown on the Bacot Tax Map of 1861; Mr. Bacot was the City Surveyor as well as Riparian Surveyor.

The rights and claims of the Morris Canal and Banking Company, in the South Bay, whatever they were, were not acquiesced in by other property owners or by the State. They had built the bulkhead in the Bay, I suppose, a little previous to 1861.

In 1863, the New Jersey Central Railroad Company having been chartered to extend its line to the New York Bay without any grant at all or any further right than possibly some Riparian rights and some general clauses in its charter, started a pier here back on the Communipaw shore and ran a line of piles for railroad tracks straight out for six thousand feet into the New York Bay and Hudson River cutting through this bulkhead that the Morris Canal had built there, and cutting off the south part of it. Litigation arose between those two companies which ended in settlement between them about 1863, and the Central Railroad Company finished its track across there. It, too, got into trouble with the State, which was settled and solved by the numerous grants and adjustments which followed.

The inquiry which was set on foot by the Legislature in the Riparian Act of 1864, was the first general action taken by the State, and resulted in the report, which is already in evidence, by the Commissioners, February 1, 1865, taking up comprehensively this whole subject from Bergen County down to Bergen Point and elsewhere in the State, and with their report on the Hudson River they submitted nine maps called Section 1, Section 2, etc. Section 6 is the one which particularly delineates the property we now have in question and is a map covering this part of the Hudson River front.

The Commissioners described in their report exactly what they found at that time,

and their engineer, Mr. Bacot, enlarged upon that, and not only reported what he found, but laid out what he suggested for the future; and elaborately treated it in his report, saying that if the Central Railroad Company was to be allowed to continue there, it would cut off the owners of titles along the shore in Jersey City from access to the sea unless there should be provided north of the Central Railroad, and along through the Morris Canal enclosure, basins and channels, and he suggested a series of basins, and devised a proposition to create two; first, the smaller one as he calls it—which is practically what is now the grant we are contesting— and west of it, another wide basin or tide water basin which has also since been established in a somewhat different form and size from what he then proposed; but this proposition to have an easterly basin and a westerly basin has been, at the end of these forty odd years, worked out in the way it now exists and measurably upon the lines which he suggested.

There also followed in 1872 a grant of what is called the Jersey City basin, which still exists, making three basins in all. The Jersey City basin has never been improved or used to any considerable extent, Jersey City having delayed the improvement of it.

This inquiry by the State resulted, as I have said, in the report of 1865; it was not followed by any immediate legislation; indeed, no legislation seems to have followed until two years later, during which time trouble and litigation with the Mor-

ris Canal Company and others were proceeding, but it resulted in a settlement in 1867 with the Morris Canal Company and a grant was then made by legislative Act to the Morris Canal & Banking Company of this very piece of land which we are now considering. The State then granted it to the Morris Canal & Banking Company, not for the purpose of developing the canal business, but for the purpose of allowing the Canal Company to go into the business of commerce. In that Act the Canal Company was, for the first time, authorized to build wharves, docks and enter into shipping business and the transportation of goods; its Charter before that authorized what was in effect only a toll road. The Company was advised that it had not power to own boats for transportation purposes. The boats of others could freely navigate on paying tolls. It was a public highway open to anybody who would use it by paying a given toll.

The changed conditions of business had indeed for a few years previous to that time, particularly during the Civil War, led the Company to venture upon buying certain boats and then selling them to the Captains to be paid for in annual payments until the Company should divest itself of the property. But in the Act of 1867 the Company was given power to enter upon transportation business, ware-house business and commerce generally, and for that purpose this land was granted to them; the purpose is not essential for the canal, and the traffic which came over it before that

was well attended to. Very likely the Canal Company was anxious to go into that business because they had enclosed the bulkheads without clear authority of law. The State denied any right of that sort, and the result was negotiations leading to the 1867 grant—there was, of course, an acceptance of it by the Morris Canal which was filed and appears in the case—an acquiescence by the Canal Company and by the State.

That grant was a defeasible grant. The terms were: Be it enacted, "the State of New Jersey hereby grants to the Morris Canal & Banking Company, all the right, title and interest of the State, in and to the land and lands under water, within the following boundaries"—describing it—"on condition that for the purpose of preserving the water basin to the west of the present bulkhead on said premises and of leaving open on the premises hereby granted, a public navigation for all vessels to and from the Hudson River and all parts of the waters west of said westerly bulkhead; said Company shall forever keep open present gaps in the easterly and westerly bulkheads each one hundred and fifty feet in width."

See how history grows. These are exactly the bulkheads they had built in their previous encroachments upon the bay. That is where the hundred and fifty feet gap came from that we find all through the history of these titles and basins.

And there was a further provision for the keeping of the gap open and the pay-

ment of $25,000 per year which might be capitalized into $357,142 at any time. The Company might under the provisions of their Charter—and, observe, this grant is a supplement to the Morris Canal & Banking Company's charter of 1824—construct piers, wharves, docks, basins, warehouses and other structures within the limits above described and make reasonable rules and regulations for the use thereof to enable them to carry on transportation business in and over their canal and elsewhere, which they are hereby empowered to do and to afford facilities for commerce. There the Company was, for the first time, authorized to do a warehousing business, transportation business on the River and to give the necessary facilities for transportation which they before had no power in their charter to do, but only to afford a water-way.

Then follows the proviso that the exemption of said Company in its original charter from taxation assessments and other legal processes shall not extend to the property or privileges hereby granted.

Then the last section—this Act shall take effect immediately and be in force during the continuance of the charter of the said Morris Canal & Banking Company, and at the expiration of that time the lands hereby granted, with the improvements thereon, shall revert to the State on the same terms and conditions provided in the original charter of the Company respecting the transfer of the property to the State. The grant has a frontage of only

960 feet on the Hudson River and of the 960 feet 150 were required to be left open perpetually for common navigation, leaving only 810 feet of clear frontage and for those 810 front feet a charge of $440. per foot was made.

The State drove a pretty hard bargain with the Canal Company because of their purprestures in the cove. They not only put upon that piece of land a rental and a capital price far in excess of any other grant that the State had ever made (or I guess has ever yet made) but they added in that last section the clause "this too shall revert."

It was a time of great agitation and irritation over the State's rights under water, somewhat like our present times. The Central Railroad was strongly entrenched, and a few years later obtained for Three hundred thousand dollars a grant of more than two and a half miles of the water front of New York Bay, with many many thousands of acres.

Take the other grants which followed—Harsimus Cove, a piece of land more valuable then and more valuable now than this, granted to the United Railroads of New Jersey in 1869 by legislative grant at a rate only a small fraction of the Morris Canal price.

Take the American Dock & Improvement Company's grant just to the south, fifty seven hundred feet of water front at twenty five dollars a front foot.

I think there is no parallel for the Morris Canal Grant in the history of the State in

dealing with riparian lands. The State exacted a price out of all proportion to any other price that was ever obtained for riparian grants in this State. I present this consideration as one proper for a Court of Equity to consider in this litigation.

I have said that the year 1866 was the apex of the business of the Morris Canal & Banking Company. In 1867 it was about the same, and then it began to fall off rapidly. Your Honor will remember that 1868 was about the time of the beginning of the laying of steel rails. Sir Henry Bessemer's process had been perfected and it became possible to displace iron rail for steel having twenty times their capacity for endurance. The railroads promptly availed themselves of this, and the result was cheaper freights, so that the business of the canal soon passed into the hands of the railroads. The great Erie Canal suffered in like manner, so that it now carries five million tons as against nearly fifteen million tons carried at that time. The business of the Morris Canal declined with the opening of the Central Railroad and other railroads which paralleled it from Phillipsburg to Jersey City. The Boonton Branch of the Lackawanna and the Lehigh Valley were built within a few years after the grant of 1867. So far as any supposed need of this grant to provide for the business of the Morris Canal is concerned, there was little need even at that time and, as the business diminished, the grant was soon far beyond any of its needs. The business had grown, in 1865, 1866 and 1867. The directors, in accepting

the grant (which they did with much hesitation and reluctance) probably contemplated a continuing expansion of the Morris Canal in the future which would justify the purchase of the property, for the uses of the canal, but nothing of the sort was realized and the canal grant remained taxed at a rental of $25,000 a year, unimproved and untouched for more than twenty years. A mud flat covered with shallow water, a waste place. The Central Railroad Company in the meantime had developed its property, as you see, and made a magnificant terminal there.

In 1869 the Legislature took up the matter of riparian rights generally and passed the Riparian Act of 1869 which is our present Riparian Act, and adopted those maps which Mr. Bacot had made in 1865 leaving in these lines here and leaving the basin, which two years before they had granted to the Canal Company. And here let me observe that a study of the grant to the Canal Company and the condition therein requiring the 150 feet gap and strip to be left open to the public and the surroundings as displayed on the Bacot map of 1865 adopted in 1869 will lead to the conclusion that that grant was an absolute grant to the Canal Company to be docked or filled out solid to the exterior line of the grant, at the pleasure of the grantee, provided only that a strip a hundred and fifty feet wide should forever be dredged and kept open and in a condition for navigation.

That grant fixed the exterior lines for piers and for filling and everything else at one

and the same line and gave the land absolutely to the Morris Canal & Banking Company to do as it would with it, provided always that a channel was kept open for shipping to go to the west of it. The Legislature by contract really had divested itself of the power to do anything further with that piece of land before 1869, when the Riparian Act was passed. So they properly excepted that parcel out of the lines which they established in 1869.

By the Riparian Act of 1869 the Legislature provided that four Commissioners together with the Attorney General and the Governor might make grants by their deed with the Great Seal of the State. They were the Department of the Government of the State, created to sell and deal with the land of the State under water or bordering the sea and to dispose of it. It was the Executive Department of the Government charged explicitely with that matter, as much so as the Land Office of the Interior Department of the United States is charged under law with the sale of Federal Government lands. And a solemn board it was. It could not act without the executive of the State. His hand must go upon every grant, and the Great Seal of the State must be upon it. Further than that, the approval of the Attorney General, signified by his witnessing it must accompany every grant or it was not valid. Probably no land grant act ever provided greater sanctions and restrictions than that. They took charge

and mapped and began to make their annual reports and began to cede lands. That was in 1869. The question of these basins which Mr. Bacot had laid out was still unsolved, except so far as solved in 1867 by leaving an open strip a hundred and fifty feet in width wherein vessels might ply, but the question was postponed, and in 1872 the matter came up for action in the Legislature and several acts were passed, three I think, but two particularly. They established the tide water basin five hundred feet wide and thirty eight hundred feet long. On the same day the Legislature passed another act ceeding to Jersey City a piece of land eight hundred feet by one thousand feet, which is here called the Jersey City basin grant of 1872, which abuts on the northerly side of the tide water basin, the two together making one basin. The City was allowed to occupy only a certain portion of it, I think two-fifths, with solid fillings, the rest to be kept in docks and wharves. I think that was in Mayor O'Neill's time, but he soon went out of office and those who followed did not see the importance of it. The grant was conditioned on the Riparian Commissioners fixing a price and Jersey City issuing and delivering its bonds to the State for the price. The City did nothing for some twelve years. In the meantime the Central Railroad, under the grant which it had obtained in 1874 from the Riparian Commissioners of the whole South Cove, with certain exceptions, disregarding the State's grant to the City, filled in through the

tide water basin and the City's grant. Jersey City's interests were not taken up until Mayor Collins, in 1883 or 1884, took them in hand. He brought the matter to the attention of the Riparian Commissioners and they fixed a Thousand dollars as the amount to be paid for the City grant, and the City then issued a bond for $1,000 and delivered it to the State and took the grant. The validity of the City's grant was affirmed by the Supreme Court of the United States and that basin is now vested in Jersey City without question, but disfigured and abused and half destroyed with purprestures, as may be seen by the map, but doubtless it will some day be open again. The Central Railroad grant which made so much trouble was made in November 1874. On September 17, 1874, the Riparian Commissioners had attempted to change and move to the south two hundred feet the north line of the Tide Water Basin which had been established by legislative act in 1872, in effect narrowing the basin to three hundred feet.

The West Line Grant I ought to speak of. The New Jersey West Line Railroad is the new name for the old specially chartered road known as the Passaic Valley and Peapack Railroad, chartered by the Legislature in 1865. Its charter was altered and changed giving among other things the right to extend to the Hudson River and in 1870 the Legislature passed a law changing its name to the New Jersey West Line Railroad. That Company obtained from the State in 1872 an Act— only a few days before the above two acts

were passed—authorizing an extension of its road to the Hudson River and authorizing the Riparian Commissioners to lay out and define a grant for them in this locality, pretty well indicated in the act, in fact, and fix a price on it. The act itself indicates quite closely where the grant was to be, and the Riparian Commissioners were to fix a price, and they fixed a price of $125,000. upon that grant entirely under water. It is five hundred feet wide for the most part. The West Line Railroad paid into the State treasury part of that sum and gave a purchase money mortgage for the residue of eighty-two thousand dollars to the Trustees for the Support of Public Schools of the State of New Jersey. The West Line Grant Act is Chapter 107 of the Laws of 1872, passed February 29, 1872. The Central Railroad, nevertheless, disregarded the grant and went on filling up the land. All sorts of litigation followed, the upshot of which was that when the New Jersey West Line Railroad was finally sold out by the receiver in 1887, under the foreclosure of the State's mortgage, the piece of land known as the West Line Grant was bought for $250,000 by Thomas N. McCarter, one of the directors of the Easton & Amboy Railroad Company, and the deed was made to him, and he deeded it over the next day to the Easton & Amboy Railroad Company, one of the constituent companies of the Lehigh Valley Railroad Company of New Jersey, party to this suit. That was in 1887. Meantime, as we know, in 1871,

The Lehigh Valley Railroad Company, the Pennsylvania Corporation, had become the lessee of the Morris Canal, and had been operating it ever since that time.

In 1888, the next year after the West Line Grant was acquired by the Lehigh Valley Railroad Company, the Lehigh Valley Railroad Company settled its quarrels with the Central Railroad Company by the giving and taking of deeds, which will appear in the evidence which we shall offer, and the Easton & Amboy Railroad became the absolute owners of the New Jersey West Line Grant. It was a waste except as the Central Railroad Company had put in fillings in its encroachments upon it. The Lehigh Valley Railroad Company's project, as you see, was to obtain a terminal on the Hudson River for its trunk line from Buffalo. The trunk line consisted of a line from the Hudson River out across the meadows to Bound Brook, there striking the Easton & Amboy Railroad and following that to Phillipsburg and there joining the main line of the Lehigh Valley Railroad, and following that up, the Lehigh and Susquehanna Rivers to Sayre, on the New York State line, and there connecting with the Lehigh Valley Railroad Company of New York, which extends from Sayre to Buffalo, the railroads in the three states together constituting the Lehigh Valley Railroad System.

So these deeds from the Central and the American Dock Improvement Company and others were obtained by the Lehigh Valley Company in 1888, and at the same time

they made application to the Riparian Commissioners of New Jersey for an absolute grant of the Morris Canal Basin of 1867 to be added to the West Line Grant, so that with the two combined they might make up their terminal on tide water. That application was heard by the Riparian Commissioners and very deliberately considered. They first made a grant, signed it, and the Attorney General approved it, and it then went to the Governor for his signature. He, for some reason, declined to sign it unless certain changes were made. I am not sure but that happened twice. From the time they put in their application in February 1888, until they finally got their grant, more than eighteen months had passed. The grant is dated July, 1889, but it was not delivered until about the first day of December, 1889, and was recorded on December 9, 1889. It received the consideration of counsel, to whom the Commissioners repeatedly referred it; special reports were made upon it, and the Commissioners acted with a circumspection and care and deliberation quite unusual, and final action was taken by the Riparian Commissioners, the Governor and the Attorney General after the most pains-taking investigation. As finally made, it fixed as the price of this grant $357,142 capitalization, and $48,000 added, which is $50 per front foot, the price fixed in the statute, total price over $422 per front foot for the entire 960 feet, or $500 per front foot for the 810 feet net front available.

Now, we say that the Act of 1869, the Riparian Act, in the second and third sections

provides for exactly this sort of grant. Personally, I believe that that portion of the Act was drawn with this particular case in mind. That the Act made provision in the same sections for the case of American Dock & Improvement Company, no one will doubt when he reads the charter of that Company. It was provided, in those sections, for the making of a grant at $25 per foot where a line had been theretofore run and the price fixed per front foot by the State officials; that had been done in the case of the American Dock & Improvement Company at $25 a foot, and it had been done in no other case (Pamp. Laws, 18 , p.). The Riparian Act was drawn with the greatest care to fit the various situations which had arisen in the history of the Riparian lands, and the part of it which refers to the obtaining of absolute grants, where qualified grants had been obtained before, appears to have been drawn with a view to fit the very situation that existed in the South Cove. Provision was also made for meeting other exigencies which existed elsewhere, where grants had been by special acts of the Legislature or by Freeholders' licenses or by user—provisions for all those conditions whereby owners might on equitable terms obtain from the State absolute grants of the ripa in front of their property; and the Riparian Commissioners after all the care that I have mentioned, finally did give this grant in perpetuity absolutely to the Lehigh Valley Railroad Company for its terminus. This grant, with the purchase

of the West Line property gave them a tract which was capable of development as a railroad terminus. The State received the $357,000 in cash; it received the $48,000, making $505,000; the highest price ever paid to the State. The Morris Canal & Banking Company forthwith deeded whatever right it had in it to the Lehigh Valley Railroad Company for the consideration of $500,000 which sum was applied upon the Canal Company's mortgage bonds, and so the Lehigh Valley Railroad Company took possession and in the year 1888 began vigorously to develop its terminal upon the two tracts together; afterwards buying and adding thereto a great amount of land to the west and south.

We contend that the State, in dealing with the land in the South Cove and particularly this grant, was dealing as a landed proprietor, selling and disposing of its lands. It was not merely passing laws for the government of people, it was selling and disposing of its land, just as the United States Government is a landed proprietor when it deals with the prairies, and conveys to a purchaser a section of land which he may thereafter occupy and fully enjoy, as he may upon receiving it by deed from an individual who has title; and that capacity in which the State of New Jersey was acting has a bearing upon the construction to be given to its acts. The same rules of good faith, the same rules of estoppel and the same rules of construction apply to a grant made by the State that apply to a deed made by an individual. The same equitable considerations come in-

to play, the State must stand by its bargains as others must.

Now, I understand the position of the State to be that the grant of 1867, while valid, because made by legislative act, and accepted according to its terms, yet gave a grant defeasible in 1974; and that the Act of 1869 and the other Riparian Acts which were passed to enable the Riparian Commissioners to deal with all the State lands under water were of a general character and for some reason did not authorize the Riparian Commissioners to deal with this particular piece of land. That the State having by its legislative grant of 1867 said that this particular land should revert in 1974, and having by the general law of 1869 put into the hands of the Executive and Commissioners powers to dispose of any and all the State rights under water, it did in some way except reversionary rights which the State had in this particular piece of land from the operation of those laws, and did not give to the Riparian Commissioners powers to deal with this particular piece of land, which it had with respect to all other lands under water on the coast or New Jersey.

Perhaps I do not fully comprehend the argument. The Legislature has been very plain in dealing with the subject and in intimating that this matter of the disposition of riparian lands is no longer a matter for special legislation, but a matter wholly brought within the powers of the Riparian Commissioners In other words, wholly given over to the

executive department of the government and no longer kept within legislative bargaining. I don't think they have attempted to give a special grant in this State for any land under water since 1869. I don't know of any, unless the grant to Jersey City in 1872 be called a private grant; with that exception, I believe the Legislature has not for forty years given a grant to anybody for any State lands or any rights in them by special act, but has left it all to the executive department of the State in the way we have seen. That purpose of the Legislature was confirmed by the later supplements to the Riparian Act. For example, in 1871 they passed a supplement to the effect that any Riparian owner on tide waters in this State desiring to obtain a lease, grant or conveyance from the State of New Jersey of any lands under water in front of his lands, might apply to the Riparian Commissioners, who might make such lease, grant or conveyance with due regard to the interests of navigation, upon such compensation therefor, to be paid to the State of New Jersey, as should be determined by said Commissioners, which lease, conveyance or grant, should be executed as directed in the riparian act and the supplements thereto, and should vest all the rights of the State in said lands in said lessee or grantee.

Observe that this provides for a grant of land in front of the lands of the grantee.

In 1874 they passed another supplement. Observe that this was on March 27, 1874, and that the tide water basin was attempted

to be changed in September, 1874, and that the grant to the Central Railroad, by far the greatest grant ever made in this State, in value and extent, followed this Act in November 1874. The grant to the Central Railroad was a grant following this supplement and made in view of the complicated situation then existing—claims by the City, claims by owners who had grants from the Freeholders, claims by the Morris Canal, claims by the Central Railroad and in view of the existing purprestures in the South Cove in Jersey City, at Elizabeth Avenue in Elizabeth, at Bayonne, and at Cavan's Point, all of which were covered by the grant which followed this Act, extending all the way from Jersey City to Elizabethport.

The Act reads thus: "From and after "the passage of this act, it shall be lawful "for the Riparian Commissioners, or any "three of them therein concurring, together "with the Governor of this State, to fix and "determine, within the limits prescribed "by law, the price or purchase, or annual "rental to be paid by any applicant for so "much of lands below high water mark, "or lands formerly under tide water be-"longing to this State as may be described "in any application therefore duly made ac-"cording to law; and the said Commis-"sioners, or any three of them therein "acting and concurring, with the approval "of the Governor, shall in the name and "under the Great Seal of the State, grant "or lease said lands to such applicant "accordingly; and all such conveyances or

"leases shall be prepared by the said Com-
"missioners or their agents at the cost and
"expense of the grantee or lessee therein,
"and shall be subscribed by the Governor
"and at least three of said Commissioners,
"and attested by the Secretary of State."

These acts plainly indicate the before expressed purpose of the State to delegate the disposition of the lands which the State retained under water, which ought to be sold, and the leasing of them or any interest in them, to this Executive Board consisting of the Governor, the Attorney General and the Riparian Commissioners. If the thing can be done by general legislation it would be difficult to make broader or more effectual provision for such disposal and we claim that the general acts—the acts which I have read, abundantly authorize the Riparian Commissioners to make the grant which they did make. That these acts are effective to cut off the reversionary rights of the State in this property, and that there is no cloud upon the title except what the Legislature has raised by the act or joint resolution authorizing the present suit.

In the Hoboken case, which went to the Supreme Court of the United States, that Court held that the Riparian Commissioners had the right to convey any interest which the State had or claimed in any of the riparian lands, and there I think it concluded even the State's right in an ancient public street.

On the law of the case we think it is clear that we have a valid and effective grant to hold this land in fee simple.

On the equitable side of it we shall have something to say.

THE COURT: Before you leave, that is the only question in controversy between you on what you call the legal side of the dispute, whether or not by the term "lands" in the Act is comprehended the residuum or interest that remains after a base fee has been given?

MR. VAN SYCKEL: The word "lands" in what act, in what place?

THE COURT: As I understand, that is the point in dispute between you and Mr. Corbin. I do not know whether I am right or not, but as I understand Mr. Corbin's statement, that seems to be the point in dispute.

MR. LINDABURY: That is one of the points distinctly made in the Information and we assume that is one of their reliances; that is one of the points in question.

THE COURT: Is there any other point, except what Mr. Corbin is coming to, the equitable side of the case?

MR. VAN SYCKEL: There are a good many other points.

MR. CORBIN: Without knowing their theory further than developed by the Information (the State having made no opening) I assume of course, that the claim is, lack of power in the Riparian Commissioners.

MR. VAN SYCKEL: We shall insist that their act was *ultra vires* and void.

THE COURT: The residuum or interest

that might be left after a base fee was granted, that was included within the terms of that act, then of course, the Commissioners would not have power to make any grant in respect to it.

MR. LINDABURY: One of the claims was that the Commissioners were deceived, but as they offered no proof and rested, I assume they have abandoned that.

MR. VAN SYCKEL: No, not at all. We insist and will show that the Commissioners were deceived, and will show it on the record that the representations of the Lehigh Valley Railroad were absolutely false. That is our ground.

MR. CORBIN: Point out what exhibits you claim show that.

MR. VAN SYCKEL: All of them. We insist that we will show absolutely that every representation they made in that application was a false one.

MR. RIKER: May I ask you now, do you rely for the support of this grant either on the Act of 1871 or the Act of 1874?

MR. CORBIN: I suppose I would have to answer as the Judge does—we rely on the whole Act and every section of it.

MR. VAN SYCKEL: I think we better let the case go on.

MR. CORBIN: It is well to remember that this is an action in equity, and particularly as we are dealing with the State as a landed proprietor. Even though it be also a sovereignty. Eighteen and a half years are allowed to pass until the property is fully developed and the money all spent

before the State complains. The property is taxed from 1884 down to the present time by the State and the revenue is taken from it; it is surveyed and reported on again and again and it is recognized by the State as railroad property. The Attorney General and the State's officials again and again have their attention called to the physical situation by their actual examination of it, and their examination and approval of the Company's charters and by a special act of the Legislature in 1903, explicitly authorizing all owners of these properties to consolidate into one railroad. After all that, the State attacks and attempts to cut off the terminus of this great railroad. The expenditures which have been made on the faith of that grant of 1888 are not merely the expenditures which have been made upon that piece of land nine hundred and sixty feet by eighteen hundred feet, they are expenditures which have been made on the State's other grant to it—the West Line Grant, immediately adjoining, and the expenditures made throughout Jersey City, which will be useless, many of them, but for access through the terminus to the deep water of the Hudson River. Now, as to this back land, some of the evidence already in shows that the Commissioners spoke of three feet of water; the three foot line is spoken of in the report of the Riparian Commissioners, which the State has offered. We might dredge on this West Line Grant and on all our other property until our charter was expired, but could not get to the Hudson River without

this land in the Basin of 1867. The State has seen us take that, and with the two grants together, make a sea-way there for ships where before were mud flats, and develop them into one of the choicest of the smaller terminals in this country, created with consummate skill by engineers of the highest character. They have seen us build it up to what it is; have taxed it for twenty years, as a railroad terminal, authorized us by special act duly advertised and deliberately considered, to consolidate it with our other railroads, and all the while with the grant in our pocket, sealed with the Great Seal of the State, assuring us that it is to be ours in perpetuity; and now they come and cloud our title after all that.

If equitable principles have weight here the State cannot urge its claim as just or right or as demanding favorable consideration from a Court of conscience.

They tender us nothing to get this land back. They say they will offer nothing, because it is not necessary; because they do not know how much to tender; they simply want to blacken our title now so that everybody for the next sixty-five years shall know it is black, and they say they will do it all on equitable terms.

What equity is there in undoing a grantee who has taken and paid for your solemn deed and paid the price and gone into possession and spent his money on the granted land? What is there but inequity and hardship and oppression in the very suggestion? What can you offer him

which will reimburse his expenditures, pay for his thwarted plans, ruined undertakings and disappointed hopes; what can you do in the name of equity to offset such inequitable conduct?

We shall insist that equity will not suffer the State at this time and under conditions now existing to revoke the grant of 1888 on any conditions.

MR. LINDABURY: We want to amend on page 15, beginning at line 26, with the words: "they say the fact is"—

Strike out from there to the end of the second paragraph on page 16, which ends at line 30, and substitute therefore the following: "And these defendants say that "the Legislature of New Jersey by the said "Act of March 14th, 1867, wherein it grant-"ed the said premises to the Morris Canal "& Banking Company, did in fact and in "effect, fix the exterior line for solid filling, "and the exterior line for piers, and bulk-"head, which were one and the same line— "in front of said premises—said line be-"ing the last course of the description in "said grant, and being of a length of 960 "feet running Northwardly and Southward-"ly parallel with the course of the Hudson "River and parallel with the centre line "of Washington Street and 1735 feet east-"erly therefrom; and they say that upon the "said lands and all of the same, except "the part therein reserved for the entrance "to a water basin, the Morris Canal & "Banking Company was authorized by said "grant to construct piers, wharves, docks, "warehouses and other structures."

"And these defendants further say that "by the First Section of the Riparian Act "of March 31st, 1869, in and by which the "bulkhead and pier lines shown on the "maps filed by the Riparian Commission- "ers in 1865 were fixed, established and "adopted, the pier and bulkhead lines "drawn on said maps over and upon lands "within the boundaries of the grant made "to the Morris Canal & Banking Company "by Act approved March 14th, 1867, were "excepted, because that grant superseded "the action of the Riparian Commissioners "and made their recommendation impos- "sible—the grant itself fixing and establish- "ing the lines therein described."

Now, I shall read the rest of it: "On "motion of the defendants Lehigh Valley "Railroad Company of New Jersey, and "Lehigh Valley Railroad Company, and on "due notice to the solicitors of the com- "plainant, and the other defendant,

"It is on this day of "Nineteen Hundred and Nine, Ordered that "the answer filed by the two Railroad Com- "panies in the above stated cause be and "the same is hereby amended by striking "out of Paragraph 12 thereof from and in- "cluding the words: 'They say the fact "'is' on page 15, line 26, to and includ- "ing the words 'as ordinarily laid out "'along the shore' on page 16, line 30, "and by substituting in lieu thereof the "following" which I have read. Have you any objection to such an order?

Mr. Van Syckel: We object to it.

Mr. Lindabury: Why?

MR. VAN SYCKEL: Well, I have not had time to deliberate. We object on general principles.

MR. WILSON: We have no objection to the informality of it, but simply to whether you have a right, at this stage of the case, to change your position, after we close our case.

MR. LINDABURY: Well; we mentioned the matter of the proposed amendments at the last hearing. We strike out that and put in the allegation in lieu thereof that the grant of 1867 operated itself to establish the bulkhead line; that is the whole of it.

MR. VAN SYCKEL: We understand that is your position, which, of course, we deny. If that is all there is in it we have no objection to it.

THE COURT: Then the order will be made. Is there any objection to my signing this order?

MR. VAN SYCKEL: Not as we understand it, there is no objection.

THE COURT: Then I will sign the order.

MR. VAN SYCKEL: This paragraph on page 8, line 30, of the Information, reads: "Your informant further shows that the "said lease from the Morris Canal & Bank-"ing Company to the Lehigh Valley Rail-"road Company was held by the Court of "Errors & Appeals, in the case of *Stewart "vs. Lehigh Valley Railroad Company,* 9 "Vroom, to be a valid agreement between "the parties thereto, and that the said Le-"high Valley Railroad Company was capa-"ble under its charter and under the afore-"said act of the Legislature, approved

"March 14, 1871, of receiving said lease "from said Canal Company."

Now, we wish to add these words: "To "be a valid agreement between the parties "thereto as to the Canal proper" because that was all that was involved in that litigation. We omitted those words "the "canal proper", leaving out the basin of 1867. Of course, we could not by what the Court has decided change the decision, and the only question involved was whether the Lehigh Railroad Company stood in the place of the Morris Canal & Banking Company to enforce an agreement which had been made for running boats on the canal prior to that time. While I think it would not substantially make any difference, yet I think it is practical to give the other side notice of what we shall claim—that the lease of the basin was not authorized by the Act.

MR. CORBIN: That the lease of the basin of 1867 was not authorized?

MR. VAN SYCKEL: Was not authorized by the Act. That is one of our positions which we take.

THE COURT: Have you got your amendment?

MR. VAN SYCKEL: We will draw it.

THE COURT: It ought to be on file of course.

MR. VAN SYCKEL: Certainly; we will draw it and hand it up.

MR. CORBIN: Under the suggestion of your Honor, I had printed a list of sixty-eight exhibits that we desire to offer, and printed those, or parts of those which we think useful to print, and I will offer these one by one so that there will be an opportunity to object if desired.

I first offer in evidence the Charter of the Morris Canal & Banking Company, passed December 31, 1824.

Marked Exhibit D. 1.

I next offer in evidence Supplement of the same date, December 31, 1824.

Marked Exhibit D. 2.

I next offer in evidence the supplement of 1828 to extend the Morris Canal to the waters of the Hudson.

Marked Exhibit D. 3.

I next offer in evidence an Act to authorize the Morris Canal & Banking Company to borrow money, and for other purposes. Passed February 23, 1829.

Marked Exhibit D. 4.

I next offer in evidence Amendment to the Charter, passed January 28, 1830.

Marked Exhibit D. 5.

I next offer in evidence An Act for the better protection of the Morris Canal, its works and appendages, passed March 10, 1832.

Marked Exhibit D. 6.

I next offer in evidence a further Supplement to the Charter, passed January 19th, 1835.

Marked Exhibit D. 7.

I next offer in evidence a further Supplement to the Charter, passed March 5, 1836.

Marked Exhibit D. 8.

I next offer in evidence an Act relative to bridges over the Morris Canal, approved March 19, 1845.

Marked Exhibit D. 9.

I have not printed them but I have given the title and I think it would be well to put in the entire Charter with reference to the Morris Canal.

MR. VAN SYCKEL: We do not see how it affects the case. We don't want to make any argument about it because it cannot affect the case at all, as I understand it, it lumbers it up too much.

THE COURT: They are put in as a matter of precaution, as I understand it.

MR. CORBIN: Some of them refer to capital stock, etc., I think it might possibly have a bearing. It may also have a bearing on the question of the care of the canal property as a public highway, etc.

I next offer in evidence a further supplement to the Act entitled "An Act to in-"corporate a Company to form an arti-"ficial navigation between the Passaic and "Delaware Rivers" approved February 9, 1849, which I have printed in full.

Marked Exhibit D. 10.

I next offer in evidence the supplement of 1855, which was printed, authorizing the Canal Company to construct a railway, with one or more tracks, connecting their canal with the road of the Lehigh Valley Rail-

road Company, and also with the road of the Central Railroad of New Jersey, at or near Phillipsburg, and also to connect it with the Warren Railroad Company.

Marked Exhibit D. 11.

I next offer in evidence the Act of the Legislature of the State of New York of 1855, authorizing condemnation in the State of New York.

Marked Exhibit D. 12.

I next offer in evidence an Act to authorize James F. Van Doren to contract with the Morris Canal & Banking Company for the use of certain feed waters, approved March 7, 1865.

Marked Exhibit D. 13.

I next offer in evidence a further supplement to the Act entitled "An Act to "incorporate a Company to form an arti- "ficial navigation between the Passiac and "Delaware Rivers" passed December 31, 1824, approved March 14, 1867, which I have printed in full.

Marked Exhibit D. 14.

I next offer in evidence Acceptance of Grant of 1867.

Marked Exhibit D. 15.

I next offer in evidence the Supplement 1868 to the Charter empowering the Company to lay tracks, etc., to connect with the Morris & Essex Railroad.

Marked Exhibit D. 16.

I next offer in evidence the Supplement of 1871, authorizing the lease.

Marked Exhibit D. 17.

I next offer in evidence Supplement of 1873, authorizing the Morris Canal & Banking Company and its lessee the Lehigh Valley Railroad Company to construct, operate and maintain a branch canal with all necessary locks and planes, from a point in the main canal at or near Centerville, in Passaic County, to the Passaic River at Dundee Lake, above the dam of the Dundee Water Power & Land Company. I printed that. It is a legislative recognization of the fact that the lease existed at that time.

Marked Exhibit D. 18.

I next offer in evidence an Act in relation to bridges across the Morris Canal, approved March 14, 1879.

Marked Exhibit D. 19.

I next offer in evidence an Act of the Commonwealth of Pennsylvania, passed 1846, authorizing the incorporation of the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company, which is the Lehigh Valley Railroad Company.

Marked Exhibit D. 20.

I next offer in evidence the supplement to it, passed in 1849, whereby the Company is authorized to erect a railroad at Easton.

Marked Exhibit D. 21.

I next offer in evidence the Act of 1850, of the State of Pennsylvania, authorizing the Company to build a railroad bridge at Easton, across the Delaware River.

Marked Exhibit D. 22.

I next offer in evidence a supplement to

the Act, 1853, authorizing the Delaware, Lehigh, Schuylkill & Susquehanna Railroad Company to change its name to the Lehigh Valley Railroad Company.

Marked Exhibit D. 23.

I next offer in evidence the Lease to the Lehigh Valley Railroad Company of 1871, which I printed in full.

Marked Exhibit D. 24.

I have not printed the schedules appended, but I see the State has printed them, so that if they are of any importance they are in the case.

I next offer in evidence the Act of New Jersey of 1804, being the Charter of the Associates of the Jersey Company, the significant parts whereof I have printed.

Marked Exhibit D. 25.

I next offer in evidence deed from Richard Varick and wife, Jacob Radcliff and wife and Anthony Dey and Wife, to Associates of the Jersey Company, dated February 1, 1805, recorded August 5, 1805, in Liber A of Deeds for Bergen County, page 74 &c., quoting the description to some other parts.

Marked Exhibit D. 26.

MR. RIKER: Does that run to South Street?

MR. CORBIN: Yes; it runs to the south line of Jersey City, from the steeple of the Bergen Church on the hill, it runs down to that line to which the Morris Canal extended its bulkheads at that time.

I next offer in evidence Map of that part of the Town of Jersey commonly call-

ed Powles Hook, Surveyed New York, April 15, 1804. Joseph F. Mangin, City Surveyor.

Marked Exhibit D. 27.

That map is the famous map; there are several lithograph copies of it in existence. I will have it marked if thought necessary.

MR. RIKER: Does Exhibit D. 27 embrace that whole territory and nothing more?

MR. CORBIN: This map does not show that line down there. This is a map that the Associates had made after buying of Cornelius Van Vorst. It shows what he possessed on shore.

I next offer in evidence a Warranty Deed by Associates of the Jersey Company to Robert Fulton and Cadwalder D. Colden, dated November 30, 1812. Recorded October 3, 1829, Book B of Deeds for Jersey, page 594. Conveys numerous parcels; among others Block 14, containing 26 lots, Block 15, containing 32 lots on map of Powles Hook.

Marked Exhibit D. 28.

I next offer in evidence Deed dated November 1, 1833, Cadwalder D. Colden and wife to John V. B. Varick and Archibald McIntyre. Conveys the 26 water lots in Block 14 and other property, on map of Powles Hook, being an assignment for the benefit of creditors. Recorded January 18, 1834; Book L 3, p. 127, Bergen County.

Marked Exhibit D. 29.

MR. CORBIN: Now, if the Court please,

the originals of those deeds are filed with the County Clerk, because they were recorded more than ten years after date. We have certified copies of them of course, if the parties want them.

I next offer in evidence Deed dated July 17, 1834; John V. B. Varick and Archibald W. McIntyre, Trustees, to Morris Canal & Banking Company, Recorded June 29, 1835, in Book C, p. 496. Conveys all of Block 14, on map of Powles Hook.

Marked Exhibit D. 30.

MR. RIKER: It conveys subject to shipping regulations.

MR. CORBIN: No, ferry. They reserve themselves all the ferry rights from Jersey City. Every deed made from 1804 to the present time reserves all ferry privileges.

MR. RIKER: You don't claim to have obtained these rights.

MR. CORBIN: Ferry rights? Those particular deeds haven't that reservation, they gave us deeds without that, but we have not established a ferry.

I next offer in evidence Deed, dated March 19, 1835; Associates of the Jersey Company to the Morris Canal & Banking Company. Conveys all of Block 1, on map of Powles Hook. Recorded, August 29, 1905, Book 912, p. 433.

Marked Exhibit D. 31.

I next offer in evidence Deed, dated March 19, 1835; Associates of the Jersey Company to the Morris Canal & Banking Company. Conveys Lots 9, 10, 11, and

12 Hudson Street and 2, 4, 6, 8, 10 and 12 Bergen Street, being the southwest corner of Block 2 on Map of Powles Hook. Recorded and filed August 29, 1905, Book 912, p. 431.

Marked Exhibit D. 32.

I next offer in evidence Deed dated May 26, 1835, Associates of the Jersey Company to the Morris Canal & Banking Company. Recorded and filed August 29, 1905, Book 912, p. 434. Conveys all water rights of the first party in front of the easterly side of Block No. 1; in front of lots numbers 9, 10, 11 and 12 in Block No. 2, Hudson Street; also all the water right on the south side in front of Block No. 1 on Map of Powles Hook, "so long as the same shall "be used by the said parties of the second "part, their successors or assigns, for a "canal basin or as an approach to a canal "basin, or for any other necessary uses or "purposes of the said parties of the sec-"ond part, in connection with the canal "which they are now constructing and which "is to terminate at or near the said prem-"ises hereinabove described."

Marked Exhibit D. 33.

I next offer in evidence Deed, dated January 2, 1845, ten years later, Associates of the Jersey Company to Morris Canal & Banking Company, for a consideration of $4,000, in front of certain blocks &c., describing all to the east and all to the south, converting, as your Honor will see, that defeasible fee into a fee simple absolutely.

Marked Exhibit D. 34.

I next offer in evidence Deed dated Sep-

tember 13, 1845; Associates of the Jersey Company to Morris Canal & Banking Company. Recorded March 2, 1847, Book 9, page 432, which recites all previous deeds they had made, and recites that for a more perfect conveyance and a more effective conveyance, they convey all the lands under water. Page 66, line 28.

Marked Exhibit D. 35.

I next offer in evidence Deed, Associates of the Jersey Company to Morris Canal & Banking Company, dated April 21, 1864. Recorded Book 111, p. 75.

Marked Exhibit D. 36.

I next offer in evidence an Act to incorporate the American Dock & Improvement Company, formed April 11, 1864. Your Honor will observe that that act to incorporate the American Dock & Improvement Company was passed simultaneously with the first Riparian Act, appointing Riparian Commissioners to investigate, and provided for the drawing of a line by Commissioners here on the shore in front of the property which the American Dock & Improvement Company had acquired from the shore owners. They had acquired a strip three feet wide, in some cases seven feet wide right on the shore, and Commissioners were appointed to fix that line, and to determine its length and the State was to receive Twenty-five dollars per front foot for the ripa in front of that, and the State gave that grant, being, of course, one of the Central enterprises of the American Dock & Improvement Company.

Marked Exhibit D. 37.

THE COURT: I thought the American Dock & Improvement Company's land was that which is now occupied by the Pennsylvania.

MR. CORBIN: No, sir; the Jersey Central. That is just to the south of the Jersey Central terminal yard. The Jersey Central does not occupy very much of it as yet.

THE COURT: Is not the rear part of it——

MR. CORBIN: No; that is the American Dock & Improvement Company; it is one of the enterprises of the Jersey Central. It is for a large water front property still largely unoccupied, just south of the Central Railroad terminus, a mile in extent. There is the first instance of fixing a price per front foot in 1864, giving a grant in anticipation, and the price of Twenty-five dollars a front foot was fixed in the legislative grant; afterwards the price for certain grants was fixed at Fifty dollars a front foot, being the price which we ultimately paid in addition to our original price.

I next offer in evidence the Application of the Lehigh Valley Railroad Company for a grant. That was filed February 3, 1888— and resulted in a grant delivered December 1889.

Marked Exhibit D. 38.

I next offer in evidence the Minutes of the Board of Riparian Commission of New Jersey.

Marked Exhibit D. 39.

JOHN C. PAYNE, recalled for Defendant:—

DIRECT EXAMINATION BY MR. CORBIN:—

Q. Have you taken out from the minutes of your Board so much as refers to the application of the Lehigh Valley Railroad Company, February 3, 1888, so far as your record shows it? A. Yes, sir.

Q. Look at this copy, it appears to be certified by yourself, beginning February 6, 1888, and see whether that includes a copy of everything that touches the subject that is in your records? A. Yes, sir; it does.

Q. That is correctly transcribed? A. Yes.

Q. In this same certified copy I call your attention to a Minutes of September 26, 1882, Minute Book 4, page 6, which I have offered as Exhibit D. 39, relative to the fixing of exterior lines. Is that a correct record of that subject from your Board minutes? A. Yes.

Q. Is that all the Board record? A. Yes.

Q. Kindly read that so that it may be copied into the record. A. "September 26, 1882, Minute "Book 4, page 6. The Engineer presented map "showing extension of the Exterior Line for piers "between the Hoboken Ferry at Hoboken and the "present exterior line for piers at the southeast-"erly Coal Pier of the Central Railroad in the "Hudson River—which was approved and adopted "and ordered filed in the office of the Secretary of "State."

MR. RIKER: I think all this ought to go in, subject to our right to examine later.

THE COURT: Oh, yes.

MR. CORBIN: I offer in evidence Map filed by Riparian Commissioners, referred

to in their Minute Book 4, page 6, September 26th, 1882, showing extension of pier lines from Hoboken Ferry to Central Railroad Company, adopted September 26th 1882.

Marked Exhibit D. 40.

I also offer in evidence the Minutes of the Riparian Commission relative to grant to Lehigh Valley Railroad Company, February 4, 1888, Minute Book 4, page 182, and ending with the minutes, I think, of January 31, 1890, Minute Book 5, page 29.

Marked Exhibit D. 41.

I next offer in evidence the opinion of James B. Vredenburgh, counsel of the Riparian Commissioners, July 12, 1889.

Q. Is that in your minutes? A. Yes, sir.

I offer that opinion in evidence.

Marked Exhibit D. 42.

Q. Is that correctly extracted from your minutes? A. Yes, sir.

Mr. Corbin: I next offer in evidence Grant by the State of New Jersey to the Lehigh Valley Railroad Company, dated July 12th, 1889. Actually delivered December, 1889. Recorded December 9th, 1890, which is set forth in full in the Information on page 15.

Marked Exhibit D. 43.

Q. Mr. Payne, did you know Bennington F. Randolph? A. Yes, sir.

Q. Do you know James B. Vredenburgh? A. Yes.

Q. Do you know Gilbert Collins? A. Yes.

Q. At the time of those minutes, 1888 and 1889, were they lawyers practicing in Jersey City? A. Yes, sir.

MR. CORBIN: I offer in evidence Act of the Commonwealth of Pennsylvania of 1870, authorizing railroad companies to lease or become lessees &c., P. L. Penn. 1870, p. 31, set forth in full in the Information, p. 28.

Marked Exhibit D. 44.

I next offer in evidence Act of the Commonwealth of Pennsylvania of 1871, set forth in full in the Information, p. 28.

Marked Exhibit D. 45.

I next offer in evidence an Act to charter the Passaic Valley and Peapack Railroad Company, 1865, Pamphlet Laws of New Jersey, p. 610.

Marked Exhibit D. 46.

I next offer in evidence an Act of New Jersey to authorize the Passaic Valley and Peapack Railroad Company to build a bridge across the Delaware. Pamphlet Laws of 1869, p. 699.

Marked Exhibit D. 47.

I next offer in evidence an Act to change the name of the Passaic Valley & Peapack Railroad Company, Pamphlet Laws of 1870, p. 160, changing the name to New Jersey West Line Railroad Company.

Marked Exhibit D. 48.

I next offer in evidence the Act of New Jersey, on February 29, 1872, being the Act to authorize the West Line Grant.

Marked Exhibit D. 49.

I next offer in evidence the New Jersey West Line Grant by the Governor, Riparian Commissioners and Attorney General, dated March 19, 1872.

Marked Exhibit D. 50.

I next offer in evidence a mortgage given by the New Jersey West Line Railroad Company to the Trustees, for the support of public schools of New Jersey, dated March 19, 1872, to secure $82,000, covering the West Line Grant, Book 93 of Mortgages for Hudson County, page 431.

Marked Exhibit D. 51.

I next offer in evidence Master's Deed by Thomas Anderson, Master in Chancery, to Thomas N. McCarter, consideration $250,000. Dated August 9, 1887, conveying the West Line Grant, recorded in Book 444 of Mortgages, page 35.

Marked Exhibit D. 52.

I next offer in evidence Deed by Thomas N. McCarter to Easton & Amboy Railroad Company. Dated August 9th, 1887. Recorded in Book 444 of Deeds, pages 40 &c. Consideration, $1.00.

Marked Exhibit D. 53.

I next offer in evidence Deed by the Central Railroad Company of New Jersey to Easton & Amboy Railroad Company, dated May 9th, 1887. Recorded in Book 436 of Deeds, pages 445 &c. This deed conveys the West Line Grant, being the same property described in D. 50.

Marked Exhibit D. 54.

I next offer in evidence Deed by the American Dock & Improvement Company to

Easton & Amboy Railroad Company, dated May 16th, 1887. Recorded in Book 436 of Deeds, pages 442 &c. This deed conveys the West Line Grant, being the same property described in D. 50.

Marked Exhibit D. 55.

I next offer in evidence Deed from the Central Railroad Company of New Jersey and the American Dock & Improvement Company to the Easton & Amboy Railroad Company, dated May 31st, 1887. Recorded June 7th, 1887, in Book 439 of Deeds, page 269, conveying the undivided half part of a strip of land lying on the west side of the West Line Grant three feet in width.

Marked Exhibit D. 56.

I next offer in evidence Deed by the Central Railroad Company of New Jersey to Easton & Amboy Railroad Company, dated May 9th, 1888, recorded in Book 457 of Deeds, pages 388 &c. Conveying firstly, the West Line Grant, and secondly, the undivided half of a strip of land three feet in width above mentioned.

Marked Exhibit D. 57.

MR. RIKER: What is the use in our going through with this reading. I assume that you are going to have each one of those explained by Mr. Harrison or some one, later.

MR. CORBIN: My purpose was to give you an opportunity to object, if you desired.

MR. RIKER: We are simply letting these go in subject to later objections; but I confess I do not understand the purpose of these deeds, and unless they are going to be

explained some time, I think I ought to object now, so that I can get the explanation of them.

MR. CORBIN: In my opening, I mentioned all these deeds—I mentioned them in lump, to be sure—I said it was by those deeds at the time mentioned whereby we got the West Line Grant, and together with the other, on the faith of the State's action, went on and spent our money.

MR. RIKER: That three foot strip, I would like to understand what it is.

THE COURT: If you want a more particular statement of any particular deed which is now offered in evidence, this would be a proper time to ask for it, and Mr. Corbin can give it to you. I will stop now, it is after one o'clock, and then you can consult in regard to that matter. We do not want to go over a vast mass of matter that is of no value.

MR. RIKER: This strip of three feet seems to me to be a matter of very considerable importance.

THE COURT: Well, you may have the surveyor explain that, if you desire.

RECESS.

MR. CORBIN: I now offer in evidence deed dated December 6, 1890, from the Easton & Amboy Railroad Company to the Jersey City Terminal Railway Company, conveying tracts in Jersey City.

Marked Exhibit D. 58.

I next offer in evidence deed dated June

25, 1890, from the Lehigh Valley Railroad Company, a corporation of Pennsylvania to the Jersey City Terminal Railway Company, conveying the grant in question.

Marked Exhibit D. 59.

I next offer in evidence deed dated June 26, 1890, from the Morris Canal & Banking Company to the Lehigh Valley Railroad Company, a corporation of Pennsylvania, consideration $500,000, granting their interests in the grant of 1867.

Marked Exhibit D. 60.

I next offer in evidence Articles of Consolidation of the Roselle & South Plainfield Railway Company, the Jersey City, Newark & Western Railway Company, Edgewater Railway Company, the Jersey City Terminal Railway and others filed in the office of the Secretary of State, August 28, 1891.

Marked Exhibit D. 61.

I next offer in evidence the special Act of the Legislature, of April 8, 1903, pamphlet Laws, page 189, authorizing the merger of the various Lehigh Valley Railroad Company lines.

Marked Exhibit D. 62.

MR. RIKER: Was the merger actually under that Act or was it under the General Merger Act?

MR. CORBIN: There is no occasion for a special act of the Legislature for merger except for a merger with a railway of another state. The roads of this State have the right to merge without any special legislation. That Act provided that the

several Lehigh Valley Railroad Company lines in New Jersey might either, after previous consolidation among themselves or without it, merge into the Lehigh Valley Railroad Company of Pennsylvania. What they did, soon after the passage of that Act was to merge under the general merger laws of New Jersey into the Lehigh Valley Railroad Company of New Jersey. They never have merged into the Pennsylvania corporation, and there never has been any union between the two as contemplated in this present Act.

THE COURT: Why do you offer that Act in evidence?

MR. CORBIN: For the purpose of showing recognition of these companies by the State by its special act.

MR. VAN SYCKEL: What Act do you refer to?

MR. CORBIN: 1903. They are all recognized by name and authorized to consolidate, and authorized to merge into the Pennsylvania corporation by name.

MR. RIKER: I understand these offers and our failure to object don't in any way commit us in regard to the relevancy of them.

THE COURT: It was understood before recess that exhibits offered by one side and not specially objected to could be objected to after.

MR. CORBIN: I next offer in evidence Joint Agreement of the Consolidation, made July 9, 1903, of the Lehigh Valley Terminal Railway Company, the Greenville & Hud-

son Railway Company, Easton & Amboy Railroad Company and others, into the Lehigh Valley Railroad Company of New Jersey.

Marked Exhibit D. 63.

I next offer in evidence the Change in Location of the Tide Water Basin, September 17, 1874; this is the certificate of that date, signed and filed by the Riparian Commissioners.

Marked Exhibit D. 64.

MR. RIKER: What is that?

MR. CORBIN: It is the very Act of Vacation of the Tide Water Basin. They signed an article and certified and filed it in Trenton.

MR. RIKER: What did they vacate?

MR. CORBIN: They vacated the northerly three hundred feet of the Tide Water Basin and attempted to shove it three hundred feet to the south, and take three hundred feet out of the West Line Grant.

MR. RIKER: And you claim that under the decisions that was abortive?

MR. CORBIN: It was abortive as far as having possession of the West Line Grant is concerned, and we say it was wholly abortive, because in 1872 when the Legislature passed the Law authorizing the Riparian Commissioners to change the location of basins by another Act passed the same day it established that particular basin on exactly those particular lines, and we say that the power given to the Riparian Commissioners could not have included that particular basin because the Legislature

the same day itself acted upon it. That is the position that the Lehigh Valley Railroad Company takes.

I now offer in evidence grant by the Riparian Commissioners to the Central Railroad Company, dated November 12, 1874; that is the large grant, in consideration of $300,000, conveying a very large number of parcels of water front property or land under water.

MR. RIKER: What relevancy has that grant?

MR. CORBIN: There are several comments to be made on it. I think we ought to put it in in tracing our title. It is a part of the history of the dealings with this South Cove, by the State of New Jersey as landed proprietors. They counted the whole thing up and conveyed every foot of it except the tide water basins to different corporations, but Mr. Lindabury suggests a better answer. We deduce part of our title through them.

MR. RIKER: Just what part of your title?

MR. CORBIN: The three foot ripa of the West Line Grant. The Central Railroad Company claimed a portion of the West Line Grant, or all of it, and was actually in possession of a portion of it, had filled out into it, and it was, with its docks and derricks, filling it up and claiming under it. They gave a release and conveyance of all the right, title and interest in it to us, whatever their rights may have been, and so did the American Dock & Improvement Company, and they both in like man-

ner conveyed the ripa which they undoubtedly owned, by deeds.

MR. RIKER: From the Van Horne deed?

MR. CORBIN: From the Van Hornes and others; the Central Railroad Company and the American Dock & Improvement Company had a ripa three feet wide for miles.

MR. VAN SYCKEL: Running on two sides of the basin plant?

MR. CORBIN: I don't concede that. They don't go as far as that, they stop about here; they didn't go to the edge or to various places there. The Central Railroad Company began by buying from John Van Horne a strip of land three feet wide along the front of his farm. Just south of him was Jane Van Horne, widow, an aged lady, and she, with her son, gave a similar deed there, and the American Dock & Improvement Company from there on southward took a similar strip of ripa from Vreeland and others all the way down to Cavan Point. All those conveyances together embraced a strip reaching around to about the line of Jersey Avenue. The Central Railroad Company made contracts with Mrs. Brooks and Benjamin Edge and others who owned their parcels and the Central Railroad Company agreed to fill that for them, for a deed from them of what rights they might have under water in front of it, and that is about the way that title grew up; and the Central Railroad Company ultimately got from the State the grant of November 1874 which we have just offered.

Now, I will offer in evidence the grant of the State of New Jersey, by its Riparian

Commissioners to F. O. Matthiessen & Weichers Sugar Refining Company, dated January 6, 1872.

Marked Exhibit D. 66.

I next offer in evidence legislative grant to Jersey City in 1872, of the tide water basin, being Pamphlet Laws, page 1356. It reads this way, after recitals: "The State "doth hereby grant to the Mayor and Alder-"men of Jersey City, in fee simple, so much "and such parts of the lands which are now "under tide water, or were heretofore under "tide water of said Communipaw Bay, com-"mencing, &c.,"

Marked Exhibit D. 67.

MR. VAN SYCKEL: That includes no part of the basin of 1867?

MR. CORBIN: Oh, no.

I next offer in evidence an Act authorizing the Riparian Commissioners to change the lines of basins, Laws of 1872, page 99. That is all of the list which I have printed.

Marked Exhibit D. 68.

MR. RIKER: May I ask the relevancy of that Act?

MR. CORBIN: It is the same Act you put in. Perhaps I might ask you that question. I may say generally—although there are other bearings which they have—that I considered all the legislative grants in the South Cove, and all the riparian grants, whereby the State divested itself of its title to the land in South Cove below the line of the hard fast land, as having a bearing in showing the intention of the State of New Jersey as proprietors

of those lands, to part with them and to give them over to commerce, transportation and other uses—they throw light on that, I think.

MR. VAN SYCKEL: Do you claim that affects the right of the State to the basin of 1867, after 1974?

MR. CORBIN: I claim it is one of the circumstances which is legitimate for me to comment upon in my argument, and which has a bearing in a suit in equity like this, and I shall try to show, in the argument, that it has a bearing upon the questions which are here. I do not think that the questions which will arise on the Grant of 1867 are so narrow that the evidence need be confined to the things that immediately concern that tract of land, but extend also to those things which bear upon the lands immediately surrounding it, and the general circumstances. The history is a complicated history. The grants and basins and deeds all fit one into the other; they refer to each other, scarcely one but recognizes by name the Morris Canal Grant, and I think they all throw light upon the case, where they have not, indeed, a direct bearing.

MR. RIKER: I do not want to be troublesome, but you introduced a number of deeds this morning, and I was not able to follow them closely. Is there any deed or grant from the State of the Morris Canal Basin proper—the small basin; have you any grant of that at all?

MR. CORBIN: The grants of the land which is now occupied by the Morris Canal

Basin, so far as the State's acquittance of them is concerned, I take it are in the Charter of the Associates of the Jersey Company of 1804 and in the Charter and Supplements of the Morris Canal & Banking Company; they have a direct bearing on the State's interest in that particular land.

WILLIAM P. DOUGLASS, sworn for Defendants.

DIRECT EXAMINATION BY MR. CORBIN:—

Q. You reside in Jersey City? A. I do, sir.

Q. How long have you resided there? A. Since April, 1854, until five years ago.

Q. You still are there? A. With the exception of about one year.

Q. You still are there, are you? A. I am living now in the City of Passaic.

Q. But you are in your business there? A. I am employed there, yes.

Q. When you first came to Jersey City in 1854, where did you first live? A. We first lived on York Street, near Barrow. That is not shown on that map, it is one block further north.

Q. And then? A. We moved around until finally in 1864 we moved into this block which is not numbered here, on Grand Street, between Grove and Henderson.

Q. That is, the lots which back up against the Morris Canal? A. Yes, sir.

Q. How long, from 1854, did you continue to live in this vicinity, this part of Jersey City? A. I lived in the old part of Jersey City, under the hill, until 1877.

Q. Were you, in those earlier days, familiar with the conditions on the Morris Canal and the Morris Canal Basin and the Bay to the south of it? A. Quite familiar; yes.

Q. What occasion had you to be familiar with it? A. I used to go out rowing in the Bay a great deal, and was a member at one time of a boat club there.

Q. Were you familiar with the Morris Canal Basin which is there marked on the map, here on that basin? A. Quite familiar with it; I have been there frequently.

Q. When were you last there to look at it? A. Yesterday afternoon.

Q. Did you look it over critically to see what changes, if any, had occurred? A. I did.

Q. State how it differs, if in any way, to the north of the basin and to the south of it, as to the solid filling and the docks, and so on, from what it was in 1854. A. Well, I won't say that I remember it quite as far back as 1854, it was probably 1856 or 1857 before I became familiar with it; there is no difference.

Q. Is the filling to the north of it and the bulkheading now as it was then? A. Precisely; yes.

Q. Along the line of South Street, which is now Packers Dock, how is that? A. The same as it was then, except there may be some buildings there that were not there in those earlier days.

Q. And this part that is indicated as Packers Dock in the line of old South Street, how is it in fact? A. Solid filling.

Q. And on each side of it, the north and south, how is it? A. Solid filling, on the south

side by a heavy old stone retaining wall.

Q. Was it so when you first saw it in the fifties? A. Yes.

Q. As you go eastward, as far as Hudson Street, is the structure which is called here the South Street Pier—is that solid filling or otherwise? A. That is a pile structure.

Q. What is the communication from the Packers Dock to the South Street Pier? A. A small draw bridge.

Q. How was that in the fifties? A. The first time I ever saw the place that draw-bridge was there, and it has been there ever since.

Q. Take the entire Morris Canal Basin, is there any change in the matter of filling or docking? A. No material change that I can discover.

THE COURT: There are so many maps in this case that unless that is marked and identified we won't know what it is that witness is referring to.

MR. CORBIN: The map that I have been referring to in asking the questions is the map showing the development of the property of the Lehigh Valley Railroad Company of New Jersey, Jersey City Terminal condition January, 1909, which I ask to be marked for identification.

Said map marked of identification D. 69.

Q. Look at that map. Does that represent the situation around the basin, practically, as you know it and remember it, as far as the filling and outline is concerned? A. Yes, with the exception that the opening here seems to me to be a little bit wider; it seems to me that was encroached on somewhat when I was familiar with it, the south side, right adjoining Washington Street.

Q. I think you really have not understood what I meant to ask. I mean now simply with regard to the banks and shores of the Morris Canal Basin does this indicate it as you remember it and saw it? A. As I remember it.

MR. RIKER: You refer to the old basin?

MR. CORBIN: The old basin, yes.

Q. Are you familiar with the City map, known as the Bacot Map of Jersey City, 1861? A. I am.

Q. How long have you known that? A. Ever since it was printed.

Q. You were corporation attorney of Jersey City for some years? A. At one time, yes, sir.

Q. Was that the official map of Jersey City? A. Of that part of it under the hill.

Q. I produce the map, which is a printed map, and ask you to look at the Morris Canal Basin, which is entitled "Map of Jersey City, Hudson County, New Jersey, 1861, R. C. Bacot, City Surveyor, Mills Lithograph, 142 Broadway, N. Y., scale 150 feet to the inch."

MR. CORBIN: I offer this map in evidence.

Marked Exhibit D. 70.

Q. On this map you observe a pier to the south of the pier near the foot of Hudson Street, a larger pier; do you remember when that was built? A. I do not—I remember this about it—a number of us organized a boat club in 1865, I think it was, and I know that in rowing out through the upper gap, the one close to Washington Street, we had to run to the south somewhat to get to the end of that pier.

Q. Have you frequently rowed through and by that pier? A. Hundreds and hundreds of times.

Q. The gap in the west bulkhead was nearer to South Street than the one in the easterly bulkhead? A. The one we passed through was nearer.

Q. Do you remember this cribbing that the Morris Canal put out to the south side of Jersey City, which was shown here on a smaller scale? A. I do. I don't know who put it there.

Q. You remember the cribbing that was put on, to the south of the Morris Canal Basin. Can you say about when that was built? A. It was put there before 1865.

Q. Can you say whether the gaps in that were, as shown on this map? A. I think in 1865 larger openings had been made on the east and west side of them.

Q. Have you rowed through the openings that were there? A. Frequently in the summer time, almost every afternoon for years.

Q. Do you remember the coming of the Central Railroad and their driving piles and building their railroad? A. I do.

Q. Where did they come, as related to this enclosure of bulkheads? A. It cut across the lower part of it, the south part of it.

Q. Were tracks laid? A. I beg pardon.

Q. Were tracks laid upon that? A. Well, I don't know much about that. I remember the building, or the driving of the piles and the laying of the two sets of tracks down toward the shore.

Q. Where were they, as compared with the present Central Railroad passenger terminus? A. Just about where they are now, as near as I can judge.

Q. So that this bulkhead that ran out into

the Bay went down as far as the present Central Railroad terminal passenger station, did it? A. Yes. There were two roads run out there, there was a railroad and a plank road as well.

Q. That is what is now Johnston Avenue? A. Johnston Avenue. I rowed under them lots of times.

Q. In the fifties and sixties, what was to the north of the Morris Canal Basin, between Washington Street and Hudson, in the way of buildings, I mean? A. Well, at the corner of Hudson and the basin was William J. B. Smith's coal yard for a great many years; just exactly how far back that ran to the west I don't recall, and I don't remember the other buildings particularly.

Q. Were there buildings? A. There were buildings there.

Q. What are there there now? A. It is all built up.

Q. Brick structures? A. I think they are. You say between the fifties and sixties?

Q. I said from Washington Street down to Hudson, those two blocks. A. On the block between Green and Washington, when I first remember it, there were some small houses at the Green Street end, and at the Washington Street end, well, the major part of the block was occupied by what is known as the Thached cottage garden.

Q. What was that? A. It was an old house with a thatched roof, used some times as a sort of a place of entertainment and amusement.

Q. What was on the next block to the east, between Green and Hudson? A. That was pretty well built up, and I don't now recall just exactly how it was occupied. You mean back in 1857?

Q. In the fifties and sixties, I am not exact about that. Where were the landings of the canal boats, where did they discharge their cargoes? A. There were several coal yards along the canal there and they discharged at all of them apparently. The stables for the horses that drew the boats were on that solid filling, between Washington Street and Hudson, on the south side of the Cove.

Q. That is what is called South Street? A. And there was an office there too; they had an office there. I used to go there occasionally to see an acquaintance of mine. That office building was somewhere along here (indicating on map), South Street, half way between Green and Hudson.

By Mr. Lindabury:—

Q. About opposite the centre of Block 32? A. Yes, about.

By Mr. Corbin:—

Q. What was there to the east of Hudson Street, and on the north side of the basin? A. Well, as I say, Mr. Smith's coal yard was somewheres around there; I think they used that for piling coal on; I am not quite sure about that, though, now. East of Hudson Street.

Cross Examination by Mr. Riker:—

Q. How old were you in 1857, Mr. Douglass? A. I was born on the 7th of August, 1844.

Q. Were you rowing around in that Cove in 1857? A. Was I rowing in 1857? No, I commenced about 1860.

Q. How long did you continue to row there? A. I think the last time I was out in a boat on the Cove was on the 21st day of October, 1871.

Q. When you first remember the Cove was the cribbing which is indicated on this sub-scale map, which surrounds the words: "South canal basin of the Morris Canal Company", was that there? A. I didn't quite catch the first of your question.

Q. When you first remember the Cove, was the cribbing which is indicated on this sub-scale map, which surrounds the words: "South canal basin of the Morris Canal Company", was that there? A. I cannot say whether it was or was not; my attention was first called to it when I first commenced to row around there.

Q. Is it not true that it was put in in the year 1863? A. No, sir; it was put in before that.

Q. Cannot you recall that it was during what was known as the contest between the Central Railroad and the Morris Canal and Banking Company, for the possession of the Cove? A. My recollection is that the Central Railroad Company did not come into that territory at all until after—about or after 1863.

Q. Wasn't it just as they were coming in that the cribbing was put in? A. I think not, I think some of it was torn out about that time.

Q. I want to know whether you cannot recall, from reference to that contest between the two companies, when, in fact, this cribbing was put in? A. Well, I don't know that I now recall when the contest between the two companies was. If you could give me some date.

Q. Well, it was about 1860 or 1862 or 1863, along there. A. My impression is that it was later than that, but I am subject to correction in that respect.

Q. I think that is when it began? A. An anticipatory conflict.

Q. Well, they were both trying to capture it, perhaps? A. Possibly.

Q. Do you remember when the Central put its first track through the basin? A. Unless I am very much mistaken the first track was built across the Cove after I came down to live on Grand Street, which was the first of May, 1864.

Q. Now, tell me how long before 1864 you can distinctly remember the basin that we are referring to? A. The outside basin?

Q. Yes, the large basin, the basin of 1867? A. When this map was made, the Bacot map of 1861, I saw it, and my recollection is now that that basin existed at that time. I base that upon the date of the map.

Q. Well, how could it exist if the Central Railroad was not there to make a southerly boundary for it ? A. The Central Railroad?

Q. Yes. A. It was there long before the Central Railroad ever came through there.

Q. What was the southerly boundary of the basin then? A. I presume the southerly crib, the crib on the south.

Q. Where is there any crib on the south? A. I refer to south of the small reduced scale map.

Q. Where was the opening on the west side of this basin to which we are now referring, with reference to South Street, how far from it, can you tell? A. Well, in 1865, when we began to row through there, an opening had been made near South Street, an opening in the neighborhood of two hundred feet wide; the crib had been torn away and an opening made there.

Q. Is that where the present opening is? A. That is where the present opening is now, yes.

Q. How far to the east of Washington Street

was that opening? A. It was almost in the line of Washington Street.

Q. Then it was not in the line of the crib work which is shown on this map in the block between Green Street and Washington Street? A. It was very near it, almost in the line, and what I mean by that is this—the Central Railroad Company filled in on the other side of Washington Street from that crib quite some distance to the west, and extended Washington Street over the land they had built—they had made there; I cannot say just exactly how many feet east of Washington Street it was, but it was a trifle east of Washington Street.

Q. By a trifle you mean more than—— A. Oh, it might be a hundred feet, it might be fifty, and it might be twenty-five. I never noted it particularly.

Q. There seems to be a dock line extending southward from what is marked on this map as the Morris Canal Company pier; is that there now? A. No, sir.

Q. When was it taken away? A. I don't know, I know it used to be there when we rowed through down there, and when I went down there yesterday it was not there.

Q. Was it there the last time you rowed there? A. Yes, I am pretty sure it was. I don't remember any change in the situation between 1864 and 1871.

Q. But some time between 1871 and the present time that has been removed? A. It must have been removed since that time.

Q. Do you remember the Morris Canal before it crossed Washington Street? A. Yes, sir.

Q. I mean any time now when it did not have

an extension beyond Washington Street? A. Well, it has always had an extension beyond Washington Street. The lock was there at Washington Street.

Q. When you first remember it? A. Oh, yes.

Q. Does your memory go back beyond the time when there was a lock at Washington Street? A. No. I imagine the lock has been there ever since the canal has been there.

JULIUS G. HOCKE, sworn for the Defendant.

DIRECT EXAMINATION BY MR. CORBIN:—

Q. Where do you live? A. Bayonne.

Q. What is your profession? A. Civil engineer and contractor.

Q. Were you in the employ of the Lehigh Valley Railroad Company during the development of its terminal in the South Cove? A. Yes.

Q. In what capacity? A. As assistant to the engineer in charge.

Q. For how long were you there as assistant? A. About sixteen years.

Q. Covering what period? A. From 1888 to 1905.

Q. Who was the engineer in charge at that time? A. Walter G. Berg.

Q. Is he living? A. No, sir.

Q. And next to him, you had charge of the work? A. Yes, sir.

Q. You were actually on the ground, with your work? A. Yes, sir.

Q. Where were you located? A. At Washington Street.

Q. On the south side of the gap? A. On the south side of the gap.

Q. How long did you have your office right there on the ground? A. About sixteen years.

Q. Were you the man in immediate charge of the construction? A. Yes, sir; not only the construction but the design and estimating and contracting and rendering estimates for the contractors.

Q. Was that your sole business for those sixteen years? A. Yes, sir.

Q. Have you prepared a map to show the condition of affairs as they were there when you went upon the ground in 1888? A. Yes.

Q. Will you produce that? A. (Same produced.)

Q. Was this map made by you or under your direction? A. Under my direction.

Q. Have you checked it up to see if it is correct? A. Yes.

Q. Is it correct as things were in 1888? A. Yes.

Q. I see in your legend you have black ink and red ink and green ink, and the black ink says "shows condition in January, 1888" shown by black lines. A. Yes.

Q. Development during 1888 shown in red? A. Yes, sir.

Q. Development in 1889 shown in green? A. Yes.

Q. What time in 1888 did you go there? A. In January.

Q. In 1888, did that board pier or dock marked here "L dock" to the south of South Street in the water, exist on the ground? A. Yes.

Julius G. Hocke—Direct.

Q. How far did it extend at that time, when you went there? A. It over-lapped——

Q. Well, just scale it. A. About five hundred feet.

Q. What was that dock at that time? A. That was a solid filled dock with masonry walls around it.

Q. Ancient dock or new docks? A. Very ancient.

Q. What had it been used for, if you know? A. For piling coal, they had coal on it then.

Q. The Morris Canal? A. Yes, they had a number of derricks by which they loaded coal into boats from these piles.

Q. What did you do to that dock, in the year 1888, if anything? A. We dredged it out.

Q. Removed it, did you? A. Removed it.

Q. The whole or part of it? A. Only part of it, to a line about two hundred feet south of the South Street pier.

Q. When you went there that year, what was the depth of water in this Morris Canal Grant, east of Washington Street? A. Well, it was very shallow in most places, but there was a channel running to the south of the L dock, and into what we call the gap, a crooked channel.

Q. What depth had that? A. I should say—well; I don't recall, but it wasn't deep enough for large vessels.

Q. Could you state approximately? A. Not over twenty feet, I should say.

Q. How about the shallow portions of the grant, how were they? A. Well, there was a great deal of it uncovered at low water, that is, it was very shallow.

Q. What did you do to that grant in the year

1888 and 1889, in the way of dredging? A. In 1888 and 1889?

Q. Yes. A. Well, we dredged first for a channel to make a deep channel, twenty-four feet in depth, right to the gap, from the twenty-four contour line in the Hudson River.

By Mr. Van Syckel:—

Q. Is that on the canal basin? A. Right through the 1867 grant, we took away the L dock so as to be able to build Pier 4.

Further Direct Examination:—

Q. You dredged that deep channel back how for from the Hudson River front? A. From the Washington Street gap.

Q. How wide? A. The channel we dredged nearly fifty feet wide.

Q. What did you do in the way of construction before the end of 1889 or during 1888 and 1889? A. We built a number of tracks connecting with the Central Railroad, and then a number of tracks coming on the West Line.

Q. Are those the tracks you have shown in red, on this map? A. Yes, in 1888, and about half way between the—upon the West Line Grant we started to develop a yard, and we developed more until we got to Pier 4, and that we had constructed and in operation at the end of 1888.

Q. The pier 4? A. Yes; those tracks shown in red.

Mr. Riker: I do not suppose that anything is relevant in the way of expenditure prior to the date of the grant, and I suppose it is of very little materiality, if any, as to what was done before that date.

MR. CORBIN: This particular grant was applied for February 3, 1888. The first grant was passed and signed by the Commissioners and Engineer soon after. It laid in the hands of the Governor for, I think, months, if not a year, and was ultimately not signed, but at the time it was rejected he directed changes to be made and an alteration made. The grant was ultimately, as has been shown, not dated until July, 1889; in view of the history of the West Line Grant and of the whole situation—the charter of the road—I think all those facts are material; just what bearing they will have is another thing. Whether the expenditures made previous to the actual date of that grant will be relevant in any different way than the expenditures afterwards, may be a question for the determination of the Court, but it seems to me they have relevancy. If I am showing things that we have no right to charge for, why, I am showing evidence in your favor.

MR. RIKER: We will dispute any right of anything before the date of the grant.

Q. The tracks that were laid in 1888 and the one dock built in 1888 are both indicated here in red? A. Yes.

Q. In 1889, did you lay other tracks indicated in green? A. Yes.

Q. What did you do in the way of docking, in 1889? A. We built what we call Pier 1, Piers 2, 3, and 5; and we also completed the bulkhead to retain the filling. This bulkhead, indicated in red lines, was built in 1888.

Q. The green work was done in 1889? A. Yes, sir.

Q. Did you do anything more in the way of deepening channels or deepening the grant? A. We continued to dredge these slips between the piers and transfer bridges, and also started to improve west of Washington Street.

Q. To what depth did you dredge the piers? A. Twenty-four feet at mean low water.

Q. Can you state when these piers 2, 3 and 5 were completed, and put in use? A. They were—well, I cannot tell the exact date, but they were all put in use in 1889.

Q. Did you continue work throughout that year? A. Yes, sir.

Q. This shows the situation then December 31st of that year? A. Yes, I believe there is a record there of the completion of all of those piers; we have a record of that.

Q. Did you continue your work in 1890, and have you a map to show that? A. Yes, sir.

Q. Let us see it. A. (Same produced.)

Q. This covers a period of how many years' work? A. Three years.

Q. And what three years? A. In 1890, 1891, and 1892.

Q. What did you do in 1890? A. Everything that is shown in red, buildings, tracks, piers, stock yards, and located the freight terminal.

Q. Pacific Avenue terminal? A. Yes.

Q. That is the Jersey City local freight terminal is it, it was built that year? A. Yes, sir.

Q. What does the green on this map indicate, what year? A. That indicates the work done in 1891.

Q. What was the work you did in 1891? A. We laid some local delivery tracks, and we laid two tracks on Pier 2, another track on Pier 1, and we also laid some—we built a bulkhead from about three hundred feet west of Washington Street.

Q. That is on the West Line tract? A. West yes, sir.

Q. Did you build the new pier that year? A. We built Pier 8, that year.

Q. At the west end of the West Line Grant, what? A. Laid a number of tracks, built new stock yards and storage house and tracks adjacent.

Q. The next year, shown in yellow, the year 1892, what did you do that year? A. That year we re-built the two old transfer bridges, and put in two additional ones.

Q. That is on the Hudson River front? A. Yes; and we revised the track laid out to this bridge, and built some minor buildings east of Washington Street; we built Pier 9.

Q. That is on the West Line Grant? A. Yes; we extended the stock yards, made them about twice as large, and we laid some new tracks in the west yards and built the Grand Street coal pockets.

Q. What did you do in the way of dredging and deepening the waters in the years 1890, 1891 and 1892? A. Well, in connection with these other improvements we deepened the water about twenty-four feet in the channel, and in the slip.

Q. In reaching the West Line Grant, did you deepen your channel across Washington Street? A. Yes.

Q. And in the westerly spur of the grant of 1867? A. Yes.

Q. To what depth? A. We deepened it to about twenty-four feet, wherever we could. There were places where we could not get quite as much depth on account of the rocks.

Q. To what width did you construct that channel from the Hudson River back to the West Line Grant? A. Two hundred and fifty feet wide.

Q. From the West Line Grant back into the tide water basin, as far as the Jersey City grant, how wide did you make the deep channel? A. We improved that about a hundred feet wide, because on account of encroachments on the northerly side we could not make it any wider.

Q. What kind of encroachment? A. Wrecks and dry docks.

Q. You mean wrecks and dry docks within the two hundred feet southerly of the width of the tide water basin? A. Yes.

Q. At the northerly side of this two hundred feet strip of the tide water basin, what was there in the way of structures? A. An old crib.

Q. Is that still there? A. Yes, sir.

Q. That was what is called one of the Central Railroad cribs? A. So we always understood.

Q. Have you a map showing still further progress of this work after the year 1892? A. (Same produced.)

Q. What years does this map show? A. That shows work during 1893, 1894 and 1895.

Q. 1893 shown in red? A. Yes.

Q. What did you do that year, speaking generally? A. Well, there was a little done. We

built a few minor buildings. We built a small building near Washington Street and we extended a cement house at Jersey Avenue.

Q. And did you do anything in the way of dredging and deepening that year? A. I believe not.

Q. The next year, 1894, shown in green, what did you do that year? A. We built two new transfer bridges in addition to the four already existing.

Q. On the Hudson River front? A. Yes, and we laid tracks to reach them, and we built the United States Express Company's freight house; we built a water tank, and we laid a lot of water pipe lines.

Q. That was on the grant of 1867? A. Yes, sir.

Q. Now, on the West Line grant what? A. We laid a large water main and placed a few tracks, and built an extension to an icing station, and built a hay house and some coal pockets west of Jersey Avenue.

Q. This hay house and icing station at the west end of the tide water basin, were they for shipping to water or only land? A. To water entirely.

Q. Had you deepened the channel that far? A. Yes.

Q. When? A. We did that in that year; in the year we built the hay house we dredged this whole territory in order to provide for future improvements.

Q. When you say this whole territory, what do you mean? A. That means the territory between—on the West Line grant west of Pier 8, and the channel about a hundred feet wide to the north.

Q. To the north into the tide water basin? A. Into the tide water basin.

Q. That carried your dredging of channels to the extreme of the west end of the tide water basin? A. Yes.

Q. What depth did you secure? A. West of Washington Street we dredged to about eighteen feet.

Q. What was the depth of water there before you commenced to dredge? A. It was very shallow.

Q. What do you mean? A. Well, it was practically impossible to expect a channel to reach either shore.

Q. When you speak of a channel, that is the old channel of the mill creek which emptied there? A. Yes.

Q. Take the next year, what did you do in 1895, shown in yellow on this map? A. We just laid a few tracks.

Q. On which grant? A. On the West Line grant.

Q. Have you a map showing the further progress of the work after 1895? A. (Producing same.)

Q. For what years does this show the development of the property? A. 1896, 1897, and 1898.

Q. What did you do in 1896, shown in red? A. The only thing we did on the Morris Canal grant was to lay a water line down Pier D.

Q. What on the West line Grant? A. We didn't do anything on the West Line grant that year, but the hay house was destroyed by fire that year.

Q. I observe that to the west of the old ripa,

west of the West Line grant you have developed a yard here, did you do anything on that, immediately adjoining? A. Yes, we made a change in the connection—theretofore we had a connection only with the Central Railroad, and we then built—developed a connection with the main line to Buffalo.

Q. I observe that the improvements you have been mentioning are partly on what is called Morris Canal grant of 1867, partly on the West Line grant, and partly on property to the west of that, back as far as the National Dock Railroad; did the Company acquire this back property? A. Yes.

Q. It is a part of the same development? A. Yes.

Q. Is it all developed through the same period of years? A. Yes; all developed through the same period of years, and called Jersey City Terminal.

Q. Where is the freight terminal for Jersey City, by which I mean, for the delivery of freight to Jersey City? A. Pacific Avenue.

Q. Why is it not down here on the river front to the Morris Canal grant, for example? A. It wouldn't be so convenient.

Q. No streets running there? A. From Jersey City it would be necessary to come around by way of Jersey Avenue.

Q. There is no street from the business part of Jersey City direct to your railroad? A. No, sir.

Q. You must go back, as far at least, as Jersey Avenue to get down? A. Yes.

Q. Your freight delivery then is on what streets in Jersey City? A. Corner of Pacific Avenue and Grand Street.

Q. That is indicated on the map? A. Yes.

Q. What did you do in 1897, shown in green? A. There was nothing done on the Morris Canal Grant, and there were a few tracks laid on the West Line Grant. The only work done in 1897 was on the West Line grant, and consisted of a few tracks, track changes.

Q. And the year 1898, shown in yellow, what did you do that year? A. Nothing on the Morris Canal Grant, or West Line Grant, but we laid a few pipes west of Johnston Avenue.

Q. What did you do in the way of dredging and deepening channels in those three years, 1896, 1897, and 1898? A. Nothing practically.

Q. Have you another map showing further development? A. (Same produced.)

Q. What years does this show? A. 1899, 1900 and 1901.

Q. What did you do in 1899, shown in red? A. In 1899, on the Morris Canal Grant, we built a new freight office and a local delivery yard at Johnston Avenues—oh, first on the West Line Grant we built another track.

Q. And then west of that, on Johnston Avenue, what? A. Local delivery yard and a freight office, and we laid tracks across Communipaw Avenue to connect with that new line to Buffalo.

Q. What in 1900? A. We built Pier I.

Q. Where is that? A. Washington Street Pier on the West Line Grant, and made some track changes and extended the bulkhead on the West Line Grant. In 1900 we also built a great repairing yard on the West Line Grant partly and partly on what we call the Van Horne property to the west of it.

Q. What in 1901, shown in yellow, did you do? A. On the Morris Canal Grant we laid some water pipes, and on the West Line Grant also some water pipes, and that is the extent of the work.

Q. During those three years, 1899, 1900 and 1901, what did you do in the way of dredging and deepening channels? A. There was nothing done except to dredge, make deeper water where we built Pier I.

Q. On the West Line Grant? A. Yes.

Q. Have you another map showing the further progress of the work? A. (Same produced.)

Q. The work of what years is displayed on this map? A. 1902, 1903 and 1904.

Q. What did you do in 1902, shown in red on the map? A. Nothing on the Morris Canal Grant, and on the West Line grant we built a transfer platform; that was the extent of the work in that year.

Q. And in 1903, shown in green? A. We built a new engineer's office, west of Washington Street on the West Line Grant, we rebuilt a Washington Pier in place of Pier G destroyed by fire, and nothing else.

Q. And in 1904, shown in yellow? A. We laid an additional track on Pier C, and built a salt water pumping station on the West Line Grant, and Pier L on the West Line Grant.

Q. What did you do in the way of dredging and deepening in those three years? A. We deepened the water around Pier L.

Q. Pier L is well back towards the West end of the West Line Grant, is it? A. Yes.

Q. What depth of water did you get back to that pier? A. About eighteen feet.

Q. And along side of it, each side? A. Yes.

Q. Have you the developments of the years following, by another map, and if so, produce it? A. Yes. (Producing same.)

Q. The work of what years is displayed on this map? A. 1905, 1906, and 1907.

Q. What did you do in 1905, shown in red? A. We built on the Morris Canal Grant, Pier E.

Q. Where is that? A. That is just east of Washington Street.

Q. And what else? A. We built new stock yards west of Jersey Avenue, partly on the West Line Grant and partly on the Van Horne tract.

Q. And tracks? A. Well, there were a few minor changes in tracks.

Q. 1906, shown in green, what did you do in that year? A. In 1906, I left the service of the Company in 1905, and what was done in 1906 I have taken from the records. During that time they laid some salt water fire protection system, on the Morris Canal Grant.

By Mr. Riker:—

Q. How do you know that, only from the records? A. From the records.

Q. You haven't made any examination yourself? A. I have.

Further Direct Examination:—

Q. Who was the engineer in charge of that actual department, do you know? A. I don't know whether Mr. Ackerman would know.

Q. Have you examined the property since then as to what is on it? A. Yes.

Q. Speak, so far as you can, from your examination of it? A. I examined it, and went

over this entire territory in order to verify the maps.

Q. Verify it as far as you can, as to the things being there? A. Well, I can say that what appears here in green and yellow was done during my—since I left the service of the Company, they consisted in some changes of the transfer bridges.

Q. That is in yellow, in 1907? A. Yes.

MR. RIKER: He cannot say that.

Q. That was done since 1905? A. Yes, and is in existence to-day.

Q. How do you classify them as 1906 and 1907, from what data did you get that? A. from the records.

Q. Go on, and describe it then, with the permission of the Court. A. The green lines on here is what I obtained from the records of 1906 as being the work done during that year; it shows salt water fire lines on the Morris Canal Grant, and a marine repair shop and an oil house on the West Line Grant and also a salt water fire protection system on the West Line grant. That is 1906 I am speaking of now.

Q. Now 1907, shown in yellow? A. 1907, the yellow indicates what was done during 1907 and consisted in rebuilding three transfer bridges and laying some tracks.

Q. On the Morris Canal Grant? A. On the Morris Canal Grant, and nothing else.

Q. You have spoken of this yard up near Grand Street and Pacific Avenue as being the Jersey local yard; for what then are all those great piers and this great development of tracks on the West Line and Morris Canal Grants; what are they for? A. They are for shipment by water.

Q. What? A. Shipment to New York by water, you know.

Q. Where does the greater part of freight, that is received over the Lehigh Valley Railroad Company in Jersey City go, to the Jersey City local yard or to the water transportation? A. Water, to New York.

Q. That is your principal transportation? A. Yes.

Q. New York and beyond, I suppose? A. Oh, yes.

Q. For instance, those floats—float docks at the end which you have spoken of as being built and enlarged—— A. Float bridges.

Q. Float bridges; what are they used for? A. They are used for transferring cars on to transfer floats.

Q. Where do they go? A. They are towed to New York or vicinity.

Q. Do they have one landing place in New York or many? A. Several.

Q. Do any of them go on wheels again, as for instance, over the New Haven road and so on? A. Yes.

Q. Where are the points they go to, on floats? A. On floats.

Q. Yes. A. Well, to Piers 2 and 3 in New York on the Hudson River and to Pier 56 on the Hudson River, and there are several other stations in New York that have been established since I left the road, and I am not familiar with them now.

Q. And in Brooklyn are there some? A. Yes, sir so I understand.

MR. RIKER: You don't want to testify except from your own knowledge.

Q. That freight is taken in bulk, cargo and all, across the River, is it—it is not trans-shipped to Jersey City, it is not broken in bulk to Jersey City? A. It is not broken in bulk, no, sir; it is transferred in the cars as they come to Jersey City.

Q. If the car is discharged in the New York Harbor it is discharged after its water journey? A. Yes.

Q. These other piers on the Morris Canal grant, Piers A, B, C, D and E, what are they used for? A. They are used for freight purposes.

Q. How is the freight handled from the cars, on those piers, is it discharged all in bulk? A. It is discharged in lighters to cars, or from cars to lighters.

Q. Where does that go? A. That goes either to New York or West Point; it goes to New York by water and West Point by cars.

Q. Take on the West Line grant, those Piers, G, I and L; what is done with them? A. The same; they are used in the same way.

Q. You spoke of one of them as being Washington Street pier, which is it? A. There are two Washington Street piers, G and I, they are used solely for flour.

Q. On those piers then they handle from the car to the boat or from the boat to a car? A. Yes, sir.

MR. CORBIN: I offer in evidence these eight maps showing the development of the property, and all having the same title except as to the years, the title being "Map showing development of property of Lehigh Valley Railroad Company of New Jersey, Jersey City Terminal, Julius G.

Hocke," and I ask that they be marked as exhibits.

Maps No. from 1 to 7 inclusive, marked Exhibits D. 71 to D. 77 inclusive.

Map No. 8 which was already offered for identification and marked for identification D. 69, offered in evidence and marked Exhibit D. 69.

Q. While this work of improvement was going on, who had the keeping account of the expenditures made and checking up the vouchers for payment? A. I.

Q. Have you assisted in making up since a statement of the expenditures made during these years on these properties, for this betterment you have mentioned; I mean recent statements. Look at the statement I have here and see if you recognize it. A. No, I didn't make that up.

Q. Did you assist in making it up? A. No, I made the original reports on which I believe that statement is based.

Q. Do your reports classify the work so as to show on which grant it was expended? A. No, sir; but it shows the expenditures on the various pieces of work.

Q. Can it be separated and classified? A. Yes.

MR. LINDABURY: This statement here shows costs divided up, enough for the purpose of this case, on two or three sheets.

THE COURT: We want a general idea, and if it comes to a matter of figures it will have to go to a Master. Why cannot you submit that to the other side at the adjournment, and let them look at it, and if they want to make any inquiries about it to-morrow morning, in a general way, they may do so.

MR. LINDABURY: I have assumed that they would not want to concede anything about this, but would allow us to make proof in this general way, cross examining little or none at all, holding themselves free to contradict it in future if they desire to.

MR. VAN SYCKEL: We won't require you to prove it in detail if it is not necessary. For the main case we want to show generally the amount of the expenditures as well as the time and the manner in which they were made. That is all we concede to be important for the main case.

THE COURT: Why not submit that statement to the other side this afternoon, and they can look it over and see what they require you to prove.

MR. VAN SYCKEL: As the Attorney General suggests—they may put upon the record that they claim to have spent such an amount of money upon the basin and these other grants during this time, which we do not admit, but they claim it.

MR. LINDABURY: No, we are going to prove that we did.

MR. VAN SYCKEL: Then, if you are going into proof on one side we cannot admit that.

MR. LINDABURY: We are going to prove it generally. We are not going to simply say we claim it, because neither in this Court or the Court of Errors would that be taken in evidence. For the purposes of the main case we want to show that we have expended approximately that amount of money at that time on this property.

Now, if the State can controvert that, of course, let them do it, that is all, but we want to reserve the right to support that with detailed evidence, if an accounting became necessary. We can prove it legally, in other words, in this general way, we haven't any difficulty about that, we have the proof here and we are going to put it in as proof, and not as a statement of claims. If there should be an accounting we would want to supply details.

MR. VAN SYCKEL: Then that puts us to the necessity of cross examination.

MR. LINDABURY: Do so, if you want to.

MR. CORBIN: Here is the detailed statement of each year's work made up before this suit was ever dreamed of, showing every detail of this work from 1888 to the present time, and classifying it, and if you wish to go further than that does, simply take the vouchers themselves on file in the Treasurer's office to show they were paid.

THE COURT: Why cannot you let Judge Van Syckel see that statement this afternoon, and he can make up his mind as to the course that he desires to pursue in regard to it.

MR. LINDABURY: Yes, but we are not going to make any bargain. We are not going to put in this case by a statement that we claim so and so, and haven't proved it. We are going to prove it and they may cross examine on it or do anything they please about it.

THE COURT: Yes, I understand. I won't

let the State be prejudiced by the fact that there is not a full cross examination at this time.

MR. LINDABURY: Of course, we would agree to your Honor reserving the right to them to cross examine on that hereafter if an accounting be necessary.

MR. VAN SYCKEL: Then you have the benefit of it on the equitable view of the case.

MR. LINDABURY: That is what I mean to have.

MR. VAN SYCKEL: Then you will have to go on legally.

MR. LINDABURY: We are not going to ask it any other way.

THE COURT: Well, Judge Van Syckel cannot cross examine on that statement to-morrow, unless he sees it to-night.

Said paper handed to Judge Van Syckel.

Adjourned until Wednesday, March 24, 1909, at the Chancery Chambers, Newark N. J.

Hearing resumed Wednesday, March 24th, 1909, at the Chancery Chambers, Newark, N. J.

JULIUS G. HOCKE, recalled for defendants for cross-examination.

MR. VAN SYCKEL: If your Honor please, we will endeavor to shorten this examination on this branch of the case, so far as we can, without prejudice to either side. I think I can make it quite brief.

MR. LINDABURY: I will state to counsel and Court now that this paper which was given to counsel last evening shows the total cost of this development from the beginning down to 1908, distributed not according to years but according to the different tracts. Now the gentleman who made it up—it was made up from our full sheets that were produced here in court—last evening went to work, and he distributed these items to a very large extent, and he tells me now that by tomorrow morning he can complete the distribution according to years, following the maps that we had, and he thinks within that time he can segregate the parts of the expenditures that were on the basin proper. I told him that there seems to be no occasion to——.

MR. VAN SYCKEL: Why is it material for you now to go into the years. I do not see the necessity of it for your purpose —I am only trying to see if we can shorten this.

MR. LINDABURY: Certainly you can shorten it by any course you please. We have all this pile of data here which will

be put in the case, and then we have the accountant's work based on that, which may be examined as much or as little as they please, and we will put those in.

MR. VAN SYCKEL: It seems to me the only point now, until the main question is settled is what sum they show they have expended on this property. Now it is immaterial, it seems to me, in what years it was spent, because the only object of it is to show the equity on their side.

THE COURT: Of course you ought to know in what years those expenditures were made, if it is a question of granting this relief on equitable terms then it will be of the essence of the controversy; but just now it seems to me it is perfectly immaterial. I say this without knowing much about it, in deference to the view of counsel.

MR. VAN SYCKEL: Well, it would take very little evidence to put that in—when they began.

MR. LINDABURY: That evidence is already in, but there was well on to a million dollars spent before the date of the grant. Now then how much of it was spent on this property may be of account. It is easy to separate it according to years, but if we stop there, as just now suggested, why we cannot know whether any of that, for instance, in the first year, was on the basin, or whether it was all back on the West Line grant. Well, we will see what we can get out and present it tomorrow morning.

CROSS EXAMINATION BY MR. VAN SYCKEL:

Q. You were the civil engineer of the Lehigh Valley Railroad Company, up to 1905, as I remember it? A. Yes, sir.

MR. LINDABURY: I want to say that there are some errors in that, discovered last night, and I can give you a correction of those. There is the item of dredging that turns out to be $123,743; there are some errors and we were not going to put that in until it was revised and made up tomorrow morning. Of course this witness has not testified to that you know.

THE COURT: You cannot cross examine on that paper. When they put in the paper you will have an opportunity to cross examine upon it. As I understand the examination was limited to this series of maps.

MR. LINDABURY: This witness is not acquainted with and did not make up the paper. I don't know that he ever saw it. The accountant was here and we sent him back to make up the further schedules, and he will be here tomorrow and go upon the stand to prove it.

MR. VAN SYCKEL: Well, I will ask a few questions now.

Q. The expenditures that were made upon this property, up to 1905, were made under your supervision as civil engineer so far as your duties required you to do that? A. Yes, sir.

Q. There was a very considerable amount of money expended upon this basin, was there not? A. Yes, sir.

Q. And those expenditures I suppose you considered necessary for the beneficial enjoyment of

the basin by the Lehigh Valley Railroad Company?

MR. LINDABURY: I object to that question because there is nothing to indicate that this witness had anything to do with determining what expenditures should be made. He was in charge as engineer, and did, I suppose, what he was told.

THE COURT: He cannot tell what the company's judgment was, but he can tell what his own view is.

Q. Whether in your opinion those improvements were necessary for the beneficial enjoyment of the basin? A. Yes, in my opinion.

Q. Now there is an item, I see, for dredging of $153,259. Do you know of your own personal knowledge where that dredging was done? A. I know where dredging was done, but I do not know that that amount covers it.

Q. I didn't ask you that. Do you know where the dredging was done? A. Yes.

Q. Was it done in the keeping open of the hundred and fifty foot gaps? A. In part, yes.

Q. Can you tell, as an engineer, from your memory, what percentage of that expenditure for dredging was put upon the keeping open of those gaps? A. I could not, without making an estimate of it—going back to the original figures.

Q. Was it a considerable amount or an insignificant amount? A. It was a considerable amount.

Q. Removing obstructions is an item here of $2,500. Was that removing of obstructions to keep open those gaps, or other work? A. No, sir, it was in order to enable us to build the piers principally west of Washington Street.

Q. Had no connection with the keeping open of the gaps? A. No, sir.

Q. Grading; did that have any relation to the keeping open of the gaps? A. No, sir.

Q. The bulkhead charge for bulkheads? A. No, sir.

Q. Mooring stakes? A. No, sir.

Q. Water and steam supply I see here; was any part of that for the purpose of keeping open the gaps? A. No, sir.

Q. Engineering inspection and incidentals; I suppose that would include some of them? A. In part, yes.

Q. You also were the engineer in these improvements made on the West Line grant? A. Yes.

Q. I will ask you the same question, as to whether in your judgment it was necessary to make these improvements for the beneficial enjoyment of that West Line grant? A. Yes.

Q. And with regard to Brooks and Van Horn tracts; do you make the same answer? A. Yes, sir.

Q. With regard to Pacific Avenue and Grand Street tracts, north of the canal; do you make the same answer in regard to that? A. I think so.

Q. I understand from your counsel that you do not know the aggregate cost of all these improvements on these various properties up to October 8, 1907, when the bill was filed; you cannot separate that, of your own knowledge? A. I could do so, yes, sir—no, I could not include anything after 1905, not of my own knowledge.

Q. So you did not know what took place after October 8, 1907? A. Of my own knowledge.

Q. Now please tell me just what your duty

there was, with reference to these various properties, in making these improvements of course. A. My duties were in charge of the entire thing, under Mr. Walter G. Berg who was principal assistant engineer in general charge.

Q. When—that is as to date—were these improvements, these various improvements embraced in this bill, projected by the company; when were they determined upon by the company? A. Mainly in——.

Q. When were you instructed—what was the earliest date at which you were instructed to commence these improvements? A. In the beginning of 1888, to project them.

Q. What improvements were you informed then were to be made upon this property?

MR. LINDABURY: I object.

THE COURT: Well, I suppose that if there was a plan which was submitted to him he can state whether the plan included a comprehensive system of development, or whether it merely related to similar portions of it.

MR. VAN SYCKEL: Oh yes, work from day to day.

A. I was instructed to make a plan showing a comprehensive improvement of the entire property from the water front to the Van Horn tract, including the Van Horn tract.

Q. Was that in the first part of 1888? A. Yes, sir.

Q. Now state specifically what you knew as to the cost of the work which was done under your supervision, and what you did, so far as keeping the accounts is concerned? A. Well, I carried

out all the construction work, and I knew the expenditures of every piece of work that was done there.

Q. How did you know? A. Well, I had supervision of the expenditures, the making of estimates of quantities put in by the contractors, and of making monthly estimates for payment of the contractors.

Q. What I want to know is just how you know what was expended? A. Well, I simply know this—that the contractors were working under certain contracts, and they were perfectly satisfied with the amounts of money they must have gotten.

Q. Well, they may all be, but how can you verify, from your own knowledge, a single expenditure that is set out in this schedule?

MR. LINDABURY: I object, because this witness has not produced that, and does not pretend to know anything about it and does not pretend to be able to verify it.

MR. VAN SYCKEL: If you will admit that, that is all I want.

THE COURT: The difficulty is that the schedule has not been put in evidence, and it is not conceded that it is the work of this witness.

Q. Well, any of the work that was done.

THE COURT: I presume this witness can say whether he certified to the contractors' bills, or things of that sort.

WITNESS: I did.

Q. I ask you with reference to any work that was done under your supervision as civil engineer, how you can tell now what the amount of that ex-

penditure was—whether you can tell at all? A. I did certify to the expenditures.

Q. What did you do with that certification? A. It was turned in to my superior.

BY THE COURT:

Q. It is on file, I suppose. A. Yes, no doubt.

FURTHER CROSS EXAMINATION:

Q. Of course you have no memory now of it except the fact that you did turn them in—you cannot remember the amounts? A. Not from memory, no, sir.

Q. And you of course cannot separate, from any memoranda you have, the various purposes for which those expenditures were made? A. No, sir.

Q. Where are those plans that were projected in 1888? A. They should be on file in the records of the company.

MR. VAN SYCKEL: Well, we give the Company notice now to produce them, if they have them.

MR. CORBIN: You mean the studies that were made of this thing?

MR. VAN SYCKEL: I mean plans projected in 1888 for carrying out a series of expensive improvements. He says they had plans and those plans were on file, and we have a right to them.

MR. CORBIN: The chief engineer was undoubtedly directed to make studies and sketches of them, and he says he was directed to begin them in the year 1888, and the work on them has been a work of twenty years.

MR. VAN SYCKEL: Those projected plans

for this very great improvement that you have shown here are on file, and they ought to be produced as the best evidence.

WITNESS: I believe they could be produced.

Q. Can you answer this question—whether those plans which were made under your supervision and filed with the company, were the plans subsequently carried out in improving this property? A. Not entirely.

Q. Well, in what respect did they vary, if you can tell?

MR. LINDABURY: I object. It is all right for counsel to tell us how to try our case, and state to the Court and to ourselves that we have to produce those plans. We haven't gone very far with our case, and if it seems to us necessary to produce them we will do so, and if they ask for them we will do so. Now we ought not to have cross examination upon those plans and the variations and departures from them, until we have them.

THE COURT: It seems to me the objection is well taken.

MR. VAN SYCKEL: If they want to delay their case; but if they want to accelerate this case we might get along. All I wish is an opportunity to cross-examine this witness, and I may do so legally.

MR. LINDABURY: I think I have heard you remark that a cross-examination ought to be on the direct examination.

MR. VAN SYCKEL: But I supposed we were trying to accelerate this case, but it don't seem to me we are should we have to postpone the case.

MR. LINDABURY: You never can accelerate a case by going beyond the direct examination with the cross-examination.

MR. VAN SYCKEL: Well, I thought you might in this case. I do not want to waste any time. I assume, strictly, the question is not proper, and I ask to have an opportunity to call this witness again. I wish to reserve the right to cross-examine this witness at a later day, and I now object to all of the testimony which has been offered as to other tracts than the basin of 1867, as to expenditures upon other tracts, and I move to strike out all the testimony which they have offered in that respect.

THE COURT: Well, that is a motion of course that will be passed upon hereafter.

MR. VAN SYCKEL: Certainly, that can be passed upon at the argument, but I wish to have my objection noted so that I may have the benefit of it.

MR. LINDABURY: It seems to come rather late.

MR. RIKER: I don't think the record makes it clear as to the date of the delivery of this grant. I understand it was delivered in December, 1889?

MR. CORBIN: The date of the payment of the money is, I suppose, the date of the delivery of the deed.

MR. VAN SYCKEL: The deed was dated the 12th of July, 1889.

MR. CORBIN: I have here the original receipt from the Treasurer of the State of

New Jersey, countersigned by the Comptroller of the State.

December 20th, 1889, Received from the Lehigh Valley Railroad Company, lessee, the sum of $23,767.12, being the proportion due to this date of payment for the current year, of the annual sum of $25,000 payment by the Morris Canal and Banking Company, under the provisions of an Act of the Legislature, approved March 14, 1867.

Same date. Receipt similarly signed. for $357,142, being the amount which under provisions of the Act of the Legislature of New Jersey, approved March 14, 1867, it is provided may be paid into the treasury of the State of New Jersey by the Morris Canal and Banking Company instead of the annual payment of $25,000., in said Act named. This receipt runs to the Lehigh Valley Railroad Company, lessee.

Same date. Receipt for $48,000 received from Lehigh Valley Railroad Company the sum of $48,000 being the consideration for a grant of lands under water, made by Riparian Commissioners of New Jersey, dated July 12, 1889, to the said Lehigh Valley Railroad Company. Signed by John J. Toffey, Treasurer. Countersigned E. J. Anderson, Comptroller, December 20, 1889. Those receipts are attached to the original.

MR. VAN SYCKEL: When do you say the deed was delivered?

MR. LINDABURY: You said in your information when it was delivered, and we admitted it in our answer.

MR. VAN SYCKEL: What did I say?

MR. LINDABURY: The 12th of July.

MR. VAN SYCKEL: We don't show it to be otherwise.

MR. CORBIN: Here is a letter from the Comptroller of the State of New Jersey, "Comptroller's Department, State of New "Jersey. December 31, 1889. Charles "Hartshorn. Dear Sir: I herewith hand "you receipts for payment of the 20th inst. "The delay in getting them signed has been "due to the continued illness of the Treas-"urer. Very respectfully, E. J. Anderson, "Comptroller."

MR. CORBIN: The instrument was proven and acknowledged before James B. Vredenburgh, Master in Chancery on the 12th of July, 1889—that is, the grant—being acknowledged by Bennington F. Randolph, Miles Ross, Richard B. Redding and Richard B. Herring, the four commissioners, and also Robert C. Bacot, the Treasurer having proved their signatures. As to the great seal of the State, I judge that proves itself. Signed by Robert S. Green, Governor, and attested and acknowledged. The payment was doubtless December 20, 1889. There cannot be much doubt about that.

I now offer in evidence these three receipts from the Treasurer of the State of New Jersey, all dated December 20, 1889, and all countersigned by the Comptroller of New Jersey, all running to the Lehigh Valley Railroad Company, the first for $23,767.12, the second for $357,142, and the third for $48,000, and I ask that they be marked.

Said receipts marked Exhibit D. 78, Exhibit D. 79 and Exhibit D. 80.

MR. VAN SYCKEL: On page 23, line 18, "It being certified to me by the Comp-"troller of the State that the Lehigh "Valley Railroad Company this day paid "into the Treasury of the State, the sum "of $357,142 and $48,000 referred to, I have "executed this grant this 20th day of De-"cember, 1889. (Signed) Robert S. Green, "Governor."

MR. CORBIN: I also offer in evidence as exhibit D. 81 the letter from the Comptroller of the State to Charles Hartshorn, Esq., dated December 31, 1889. I may state that Mr. Hartshorn was Vice-President of the Lehigh Valley Railroad Company at that time.

Marked Exhibit D. 81.

JOHN C. PAYNE, recalled.

FURTHER DIRECT EXAMINATION BY MR. CORBIN:

Q. The Riparian Commissioners make reports to the Legislature how often? A. Every year, October 31st.

Q. And have they done so ever since their creation in 1869? A. Yes, sir.

Q. Their reports have been printed, haven't they? A. Yes.

Q. Annual reports, printed by the State? A. Yes.

Q. Has it been their custom, Mr. Payne, to enumerate in their annual reports, or some of them, all grants theretofore made by the State? A. It was up to the year 1903, and then they discontinued making a complete list of the convey-

ances by the State, and reported only those made during the past year.

Q. Have you got one of their reports from 1903 or some year near that? A. I haven't it with me, sir.

Q. I show you a printed report entitled: "Annual report of the Riparian Commissioners of the State of New Jersey, for the year 1883," with accompanying documents, printed at Paterson, Carlton M. Heck, printer. Look at that and see whether that is one of their official reports?

MR. VAN SYCKEL: In what form were those official reports presented. In writing?

MR. CORBIN: I judge so for they are all in print.

MR. VAN SYCKEL: Did they print them in that form?

MR. CORBIN: No the State printed them.

MR. VAN SYCKEL: Then you must produce the original report that is in evidence.

MR. CORBIN: You put in the first five or six of them.

MR. VAN SYCKEL: What we put in are here; we don't have to offer them again, and what you propose to offer now we can object to.

Q. Mr. Payne, how do the Commissioners present their report to the Legislature, is it in manuscript or in print? A. It is in manuscript and is sent to the Governor.

Q. When? A. Soon after October 31st; after October 31st and before the convening of the Legislature it is sent to the Governor, and from the Governor it is sent to the State Printer, who prints the report from it and sends it, the original, with the copy, with the printed copy for verifi-

cation by the office, and it is returned to the State Printer and not seen thereafter by the Riparian Commissioners—the manuscript is not. The next we know of it it comes to us in the shape of a printed report.

Q. You do not preserve the original report in your office, then? A. No, sir.

Q. Do you know what the printer does with it, or what becomes of it? A. The printer takes it apart and uses it in setting up the type, and sends it piece-meal with the copy to the office in that separated condition, and it is sent back to him after comparison with the printed copy.

Q. Who compares it with the printed copy? A. The Secretary of the Riparian Commissioners, with the office assistants.

Q. You read the proof, do you? A. Yes, sir, I have read the proofs, with the office assistants.

Q. What printer prints it? A. Different printers. The contract for printing State Reports is let out.

Q. Is it the public printer, so-called? A. Yes.

Q. You have been Secretary of the Board, I think you have said, a good many years? A. Yes.

Q. You read the proof, do you? A. Yes.

Q. You don't see the original again? A. Not again, after sending it back to the State Printer.

Q. Did the same practice prevail in the days when Mr. Bacot was Secretary of the Board? A. As long as I remember; I remember a good many years back reading for Mr. Bacot—comparing the copy of the printed report.

Q. When did you first go in the Riparian office? A. 1876.

Q. Have you been there continuously since? A. Yes.

Q. Have you read the proofs continuously since? A. I cannot testify as to that, I cannot remember; I think perhaps for the past twenty or twenty-five years I have done that work.

Q. Personally? A. Yes, but it is so much a matter of the office routine that I cannot testify back further than perhaps ten or twelve years, when I became the Secretary and engineer.

Q. But it was done by you or the Secretary or employees there? A. I was assistant engineer for a great many years before I became the Secretary.

BY THE COURT:

Q. When the book is printed what becomes of it; when the printer prints it what does he do with it? A. The manuscript do you mean?

Q. No, the book itself. A. Some five hundred or a thousand copies of the book are sent to the Riparian Commissioners' office for distribution; a number are retained in the State House for the State library, and a great number are retained for the Legislature and distributed.

BY MR. LINDABURY:

Q. Is this done by virtue of a legislative act? A. I believe so, yes; I cannot refer to the act, but I believe so.

Q. Is there an anuual resolution for printing it or is it printed? A. No, sir, the printing is done at Trenton, under the contract required for State printing.

Q. No, but does the Riparian Act require this printing and distribution, or is there a special act or joint resolution each year? A. In each year, I cannot refer to the Act though, under which the Riparian Commissioners make this report, but I believe it is provided in the original act that they shall make reports to the governor.

Q. And that they shall be printed? A. I cannot say as to that.

Q. I know the report is made that way, but I am looking now for the statute.

THE COURT: I do not see how the printer can take it upon himself, after he has printed from the original document, to destroy it.

Q. I presume the original document is signed by the commissioners? A. Yes, sir.

MR. CORBIN: The Act of 1864, section 1, provides that Commissioners shall be appointed and report to the next Legislature on or before the first day of February next. They did report on February 1, 1865. That seems to refer to the first report only.

THE COURT: Well the word "report" does not necessarily mean writing, they could report verbally, and it could be reported in various forms.

Q. Do you remember where the provision for the annual report is, Mr. Payne? A. No, sir, I do not.

MR. CORBIN: The four Commissioners were by the Act of 1869 required and empowered to complete as much of the details of the work assigned to them by the original Act, by surveys and otherwise, on the Hudson River, as in their judgment the State might require. That possibly might be held to report as well as the former Act required them to report. "All the powers and duties of the Commissioners contained in the Act to which this is a supplement, be and hereby are continued in force, except

as the same are superseded or modified by the provisions of this Act." That requires them to report to the Legislature, I think.

THE COURT: I do not quite understand what it is that you want to prove.

MR. CORBIN: I want to prove the grants made in the New York Bay, and the prices of them.

MR. VAN SYCKEL: That is what we object to.

THE COURT: That is a different question altogether. I have not expressed myself on that point. At first blush it would seem as if these reports were not competent for the purpose of showing prices.

MR. CORBIN: That is practically all they do show, the names and prices and locations. The maps will show the exact location and area.

THE COURT: Well, is the report competent for the purpose of showing the price of an individual transaction?

MR. CORBIN: They are all individual transactions. There are very few of them. The State has granted all the Hudson River water front in Hudson County, a number of parcels, practically everything in this neighborhood, there are not many of them, a half a dozen perhaps, and I propose to show each of those grants, its area, its frontage and its price, made at these same periods, practically the same period of time; as bearing upon the very question which is raised in the bill and so strenuously raised by counsel, to the effect that we had made false representations of everything, all the representations in the application are false;

that the State has been defrauded, and that this grant should be set aside on the ground of fraud. We will rebut that only to show that in the first place the deliberation that has been shown, and in the next place to show a full and ample price was received by the State.

THE COURT: If the fraud consisted in representing to the State that this property was of smaller value than they knew it was, why that would be one thing, but if the fraud alleged—I confess I do not quite grasp what the fraud is.

MR. VAN SYCKEL: There is no pretense or charge in the bill that the price was represented to be less than it really was, no intimation of the kind. That is not the fraud charge. The fraud charge is that they put themselves within the Act of 1869 by averments that were false.

THE COURT: I do not see how the price of other properties in the neighborhood can be relevant, unless there was some fraud with respect to the representation of the price here in this particular case. For instance, suppose that property A and property B and property C had been selling for $1,000. a front foot, and then the Lehigh Valley Railroad Company came along and represented that those properties had been selling for $100. a front foot, why that would be a fraud, I take it. Suppose that the representation was that these other properties were properties fronting on deep water, and therefore, the price was a fair criterion of what the price would be for a property which fronted on deep water,

whereas in point of fact the properties were fronting on shallow water and therefore not worth as much. Suppose that were the character of the representation, why then I can understand that this evidence might be of some relevancy, but if the fraud alleged had no reference to the price of those other lands why is the price of the land relevant?

MR. CORBIN: Entirely outside of the question of fraud, whether we paid the full value of these lands or not is a circumstance the court of equity ought to know, when you are fixing equitable terms upon us; if you are going to set aside our grant, if your Honor should think this grant was ultra vires and the grant is not to be declared to be valid, this information prays you shall fix equitable terms.

THE COURT: Is not that a matter so far in the future that it ought to be dealt with separately? Now you say the grant is a perfectly valid grant and ought to be upheld. Are you not anticipating matters when you say—well, if it is not upheld why then the terms—the equitable terms which the Court ought to impose upon us is so and so.

MR. CORBIN: But this is the view I had of it—the whole color of this bill is that we have defrauded and deceived and misled the State, and counsel said yesterday: "I allege that every statement made in your application is false, everything is false." We are brought in as cheats who defraud the State. We want to leave on the mind of your Honor the impression of the truth

which we assert to be that in good faith and fairness and generosity and without the least guile we obtained this grant which was so deliberately given by the State, that the State was amply paid for it, and it does seem to me that in a court of equity every circumstance surrounding it should be displayed.

THE COURT: Does that require us to go into the consideration of the intrinsic value of every tract?

MR. LINDABURY: Let me make a suggestion on this point, if the Court please, I will be very brief. A charge of fraud is made here. It is charged that these Commissioners were misled by representations that we made in the petition and out of it, and of course unless they were misled and did what they would not have done but for those misrepresentations, the charge goes for nothing, and therefore the other side not only claimed that we made misrepresentations, but that they were acted upon by the Commissioners. The Commissioners died before the State made this allegation, so we cannot call them to show what, if any, reliance they made upon these particular representations.

Now that is one of the questions here, and if we can show that this property was granted to us at its full value, that these Commissioners charged us every cent that they ever charged anybody else for similar property, does not that tend to meet the suggestion that they would not have made the grant to us had they known we had only a limited right. If they had known any

of the circumstances with respect to which it is said that we misled them—in other words, if they made a grant to us charging the price and the highest price that they ever charged anybody for a full unlimited fee, what right is there to argue after that that in making the award to us they acted otherwise than upon the idea that we had a complete and full right.

MR. VAN SYCKEL: Counsel totally misapprehends the situation. Now there is no charge in the information—no intimation in the information that there was an inadequate price. We do not put it upon that ground. I do not care if they paid three prices. The question is as we present it in our information—did the Commissioners have the power, under that Act of 1869, to make the deed. It is a question of power and not a question whether they would have granted it for a price more than adequate. They had no right to grant it. That is our position; and they ignore the force of this objection entirely when they say, why the Commissioners, although they were mistaken as to their power, if they were satisfied with the price, might have made it. That is their position. That is not the position we take. It is immaterial in this case.

THE COURT: In what do you say the fraud consists?

MR. VAN SYCKEL: The fraud consists in representing certain facts existed which gave them the power to make a deed. Those facts, we say, did not exist.

THE COURT: What facts?

MR. VAN SYCKEL: Let me refer to the Act itself. They made a petition to the Riparian Commissioners for a deed, setting out that they were within the Act of 1869. Now that fourth Section of the Act of 1869 is as follows—that is, the authority under which this deed must be justified, if it can be justified. "Be it enacted, That in case any person or corporation who by any Legislative act, is a grantee or licensee, or has such power or authority, or any of his, her or their representatives or assigns shall desire a paper capable of being acknowledged and recorded, made by him and in the name of the State of New Jersey, conveying the land in the provision to the third section mentioned whether under water now or not, and the benefit of an express covenant, that the State will not make or give any grant or license power, or authority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant and license, power or authority, his, her or their representatives or assigns on producing a duly certified copy of such legislative act to said Commissioners, and in case of a representative or assignee also satisfactory evidence of his, her or their being such representative or assignee, and requesting such grant and benefits as in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned, and the

said Commissioners or any two of them, with the Governor and Attorney General for the time being, to be shown by the Governor signing the grant, and the Attorney General attesting it, shall and may execute and deliver and acknowledge in the name and on behalf of the State, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her or their securing to be paid to the State an annual rental of three dollars for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee or corporation, having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation in fee, upon his, her or their paying to the State fifty dollars for each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance."

Now we say in our information that they were not the representatives of the Morris Canal and Banking Company, so as to entitle them, under the fourth section, to a deed. We say further that there was no exterior bulkhead line established by that Act of 1869, by virtue of which these Commissioners might make a deed under that fourth section. On the contrary, we say that the exterior line for bulkheads reported by the Commission of 1865 was expressly excluded by the Act of 1869, and that that Morris Canal basin was put outside of the

Act of 1869 by the rejection of the report of the Commissioners as to the exterior line of that tract. That is our position. Now if that is so why the Commissioners were entirely without authority; they could not make a deed because it was not in the Act. It makes no difference what price they paid; if they offered $200,000. they could not do it.

MR. LINDABURY: Is that your total claim of fraud?

MR. VAN SYCKEL: No.

MR. LINDABURY: If your only allegation of fraud is what you have just stated—

MR. VAN SYCKEL: My allegation of fraud is that the facts represented by the Lehigh Valley Railroad Company, and the facts stated in the deed, without any reference to the consideration, rendered that deed invalid and nugatory. That is the fact. We don't say anything about the price.

MR. CORBIN: That is a question of law merely.

MR. VAN SYCKEL: But the question which we intend to submit to your Honor is that the Commissioners acted without authority.

THE COURT: Then I will assume that so far as the price is concerned they offered a fair price.

MR. VAN SYCKEL: We make no objection to the price.

THE COURT: Therefore the assumption will be that they offered a fair price for it. What is the use of going into evidence

on the part of the defendant in showing that they offered a fair price when it is conceded that they offered a fair price, or when it is not denied that they did.

MR. RIKER: We do not think it is in issue. The price was absolutely inadequate, in my judgment.

THE COURT: As long as you do not make any allegation that the price was inadequate, it seems to me that I must assume that it was a fair price. It was a price approved by the commissioners and by the Governor, and I must assume, in the absence of evidence to the contrary, that it was a fair price, and that being so it seems to me that it is entirely wide of the mark to prove, by reference to other property sold, that the price is a fair price. When you get through have you made any advance at all? You have simply shown what was not necessary to show, that the price is a fair price.

MR. VAN SYCKEL: We offered no evidence in chief that the price was not fair.

THE COURT: I can see there may be one fact that you have represented to the State, that there was a line there which did not exist. Now that, I take it, is a representation of fact, but when they represented that the statute of 1867 or any other statute gave them the right to accept the grant, why that is a question of law.

MR. VAN SYCKEL: May it please your Honor, I do not think so.

THE COURT: Well, that would be my present impression.

MR. VAN SYCKEL: I think your Honor

will come to a different conclusion upon consideration. Now there are certain matters set out in that fourth section of the Act that will entitle the Commissioners to make a deed. Now it is a question of fact whether those things existed—whether those facts existed.

THE COURT: If they represented that certain facts, which are necessarily antecedent to the giving of this grant—certain facts were otherwise than they are, why that would be a representation of fact. If they merely said, on the construction of the Act they were entitled to a deed, that is a question of law.

MR. VAN SYCKEL: Certainly. We say the facts did not exist.

THE COURT: So far as this question is concerned, it does seem to me very plain that at present, at least, it is unnecessary for the defendant to go into the question of price. You may make your offer and I will overrule it, and if I find hereafter that the question of price does become in any wise relevant I will call for evidence on that point.

MR. CORBIN: Our offer is to prove that the price which we paid the State, to wit, $357,000, plus the $48,000, making in all $405,000 for the fee simple grant, in the year 1889, was a full and ample value for the property; not only a fair, but a copious price for the property conveyed. That is what we offer to prove.

THE COURT: I will overrule that offer for the present.

MR. LINDABURY: Would your Honor mind stating your reasons on the record. Of course if it is on the idea suggested a while ago that it is conceded that the price was a fair one, that makes a lot of difference.

THE COURT: I have overruled the offer upon the ground that the State has not attempted to show that the offer was an inadequate offer, and therefore I shall assume that it was an adequate price, and until there is evidence to the contrary such will be my ruling.

Q. Mr. Payne, were you engaged in making surveys and maps at the time of the litigation before Judge Depue, in 1884 over the title of the West Line grant? A. Yes, sir.

Q. Did you make the map which was exhibited before Judge Depue in that case, known as map P? A. Yes, sir.

Q. Is this the map which I show you? A. Yes.

Q. Is that the original? A. That is the original map made for Judge Depue.

Q. That shows the South Cove and these various grants, does it not? A. It shows one or two of the grants.

Q. Well, the Morris Canal grant and the West Line grant? A. Yes.

Q. As of what date was that intended to show the conditions in South Cove? A. That was intended to show the conditions up to 1879.

Q. As they existed in 1879? A. As they existed in 1879.

Q. Was that a correct showing of them? A. Yes.

Q. Did you make that yourself? A. Yes.

Q. How did you know what the condition was there? A. I made surveys and examinations to ascertain it.

Q. Is the physical situation of the Morris Canal grant and the structures there correctly shown, as they were in 1879? A. Yes, sir.

Q. Did you survey it? A. Yes, sir, actual survey on the ground.

By Mr. Riker:

Q. In 1879? A. Yes, sir.

Mr. Corbin: I offer that map in evidence, and ask that it be marked.

Marked Exhibit D. 82.

Mr. Riker: Do you propose to put in with this map all that is written on the map?

Mr. Corbin: I offer the map, but what is pertinent to the issues of course is all I will make any reference to. I have nothing in my mind at the present moment except that.

Mr. Van Syckel: You don't claim he can make proof by writing things on it?

Q. Is the Central Railroad Company's location correctly shown on that map? A. Yes.

Q. Is the West Line or the outline of the West Line grant correctly indicated on that map? A. Yes.

Q. Is the filling in the West Line grant, and in the City's grant—what became the of City's grant to the north of it—correctly shown as existed in 1879? A. It is.

Q. You have indicated there on the Central Railroad property by different colors and by legends, dates of the filling of the separate parts.

Were they correctly laid down, Mr. Payne? A. Yes.

Q. And the old Morris Canal basin to the north of South Street, is that shown as it existed in 1879? A. Yes, sir.

CROSS EXAMINATION BY MR. VAN SYCKEL:

Q. Do all these colored pieces denote filling? A. Yes, sir.

Q. And at the dates named on them? A. Yes, sir.

BY MR. LINDABURY:

Q. Did you know about that personally, the time of filling, or where did you get that information? A. That map was built up from the surveys and maps of the men who made the surveys at the time, and was authenticated by the affidavits of the men; some of them were living at that time, Mr. Levi W. Post and Mr. Miller of Mallory and Miller, and Mr. Frank Earle, and that map was made up previous to the time I made the survey in 1879.

BY MR. VAN SYCKEL:

Q. At the time you made this survey you saw what was filled? A. Yes.

Q. Did you see these fillings at that time? A. Yes.

Q. You found these fillings in what year? A. 1879.

Q. When you made this map? A. Yes.

BY MR. LINDABURY:

Q. Was it 1879 you made the map? A. Yes.

BY MR. CORBIN:

Q. In 1879, when you made the map, you did actually make a survey of the whole thing? A. Yes, surveyed the whole entire territory.

Q. Did your survey justify these fillings, did you find them there? A. Yes.

Q. Of course your survey cannot show just when the fillings were made? A. No, sir.

Q. Your information as to when each particular piece was filled was taken from the surveys of these other engineers? A. Yes, sir.

Q. That is all.

GEORGE N. WILSON, sworn.

DIRECT EXAMINATION BY MR. CORBIN:

Q. Where do you reside? A. Philadelphia.

Q. What is your occupation? A. General Auditor of the Lehigh Valley Railroad Company.

Q. How long have you been associated with that company, in the financial office? A. Six years about.

Q. Mr. Wilson, have you made a computation to show what the value will be in December, 1973, of $48,000 paid in December, 1889, compounded annually at various rates of interest? A. I have.

Q. That is a period of eighty-four years, is it not? A. It is.

Q. What is the value in December, 1973, of $48,000 paid in December, 1889, compounded annually at four per cent. interest? A. $1,294,320.24.

Q. What is it if compounded annually at five per cent. interest? A. $2,891,627.57.

Q. If compounded annually at six per cent., how much? A. $6,411,120.

MR. VAN SYCKEL: We object to the compound interest computation as not being pertinent to this case.

THE COURT: I will let it go in, subject to the objection.

Q. Has the Lehigh Valley Railroad Company, the Pennsylvania corporation, which is the lessee of the Morris Canal and Banking Company, its old records and accounts so far as preserved? A. Yes, so far as preserved.

Q. I desire to show you from what is known as the Blue Book, being the statement laid before the legislative commission considering the abandonment of the Morris Canal in 1903, the statement of earnings and the statement of tonnage on the Morris Canal, statements of income, etc., which are contained in that book on pages 123 to 128. From what were these made up? A. From the books of the company, and from the annual reports in the records where some of the books were not available.

Q. You refer to the annual reports of the Morris Canal and Banking Company? A. Yes.

MR. CORBIN: I offer in evidence those statements. I called attention of Mr. Riker yesterday afternoon to my desire to use the statements. They are verified by the annual reports made and filed by the Morris Canal and Banking Company, which are printed annually. To verify those figures to the last detail from books for a period of so many years is work of enormous difficulty of course, and I therefore asked Mr. Riker if he would permit me to use these tables.

Of course the question of relevancy is entirely outside of it, using the annual reports of the Board of Directors.

MR. VAN SYCKEL: Are those figures showing the loss of business on the annual——

MR. CORBIN: They show the gain and the general course of earnings and of tonnage from 1845 to 1902.

MR. VAN SYCKEL: It shows a great falling off.

MR. CORBIN: It shows an increase almost continuous, not entirely so, until 1866; earnings and falling off in tonnage, and a much greater falling off in earnings on down to 1902.

MR. RIKER: I have no objection to using the book. This is the book that was reported by three Governors. Of course the competency and relevancy is another question.

MR. CORBIN: The exhibit which I offer is pages 123 to 128 inclusive, being statement of income from tolls on the Morris Canal; statement of aggregate tonnage; statement of coal received and carried; statement of trade and tonnage for the years 1845 to 1902.

MR. RIKER: We do not admit that any of it is relevant.

MR. CORBIN: Pages 123 to 128 inclusive of the statement of facts presented by the Morris Canal and Banking Company, by request of the Commissioners before the State Commission, consisting of Governors Werts, Griggs and Voorhees, June, 1903.

Marked Exhibit D. 83.

Not Cross Examined.

JOHN GORDON, sworn.

DIRECT EXAMINATION BY MR. CORBIN:

Q. Where do you reside? A. New York City.

Q. What is your occupation? A. Agent Lehigh Valley Railroad Company, New York Harbor.

Q. Agent for what? A. Agent for New York Harbor, Lehigh Valley Railroad Company.

Q. Well, freight agent or pier agent or what? A. Pier agent, sir.

Q. You have charge of the freight arriving on these various piers at Jersey City? A. Yes, sir.

Q. Freight arriving or loaded on piers A, B, C, D, G, I and L, being those diagonal piers, how does that freight come to the piers from the water? A. It comes to the piers west-bound on lighters.

Q. In going from the piers how does it go? A. Also on lighters.

Q. That is, it changes from boats to cars or cars to boats, on those piers? A. Yes, sir, through the houses.

Q. All that passes over the piers? A. All that passes over the piers; some of it does not go through the house, it goes through the bulkhead.

Q. Does the company operate boats for that purpose? A. Yes.

Q. How many? A. About a hundred and five lighters of various kinds.

Q. And tugs? A. Nine tugs.

Q. How much ordinarily, per day, how many car loads of freight per day are discharged from the cars there? A. Well, it depends on the volume of business. The freight for the year, I should say, would be about 175 per day.

Q. What is discharged from the terminal on to

these floats, on the Hudson River front? A. The cars are run down to the floats there.

Q. How does the volume of that business compare with what you trans-ship by boats? A. It is very much greater.

Q. How many times greater? A. I should say five or six times greater, I should say.

MR. VAN SYCKEL: What is the object of this? I don't want to object to anything that is relevant.

MR. CORBIN: To show the uses of this terminal, and the importance of it, I think it has a bearing on the equitable side of the case.

MR. VAN SYCKEL: I don't see how it has.

MR. CORBIN: It seems to me, in a court of equity, if you are going to take away that piece of property from the terminus it is worth while for the Court to consider what its effect would be on this railroad, which reaches from Buffalo to Jersey City. The point is this—this is a terminal on a great trunk line of railroad which starts, so far as rails is concerned, at Buffalo; so far as the boat transportation is concerned also at Chicago and Duluth. It is the point where the freight reaches the tide water and is trans-shipped to ocean-going vessels, the City of New York, various parts of the Harbor and to New England. It is the key of the eastern situation for the railroad company. The State, we hope, will grant that. It has been built up for that purpose, and in that shape. All those facts, notorious for twenty years, are what the Court has to take into consideration, when

considering the revocation of our grant and cutting off the railroad. It seems to me it cannot be other than pertinent. Suppose it was an individual that was trying to revoke his deed. Would you hesitate a moment to show what the grantee had been doing, on the faith of that deed? After you sit by for eighteen years and three months before you file your bill to set aside your deed the Court will look at the fact of what has been going on.

THE COURT: I think the evidence is illustrative of the character of the improvement. Of course I do not suppose Mr. Corbin intends to go into it at any detail.

MR. CORBIN: I don't.

MR. VAN SYCKEL: Well, we wish to have our objection noted.

Q. Where do those floats go to, with the cars? A. The New Haven road, New York Central, the Long Island Railroad, our New York piers and Brooklyn piers.

Q. Have you a map showing your New York piers and Brooklyn piers to which you transport these cars? A. Yes.

Q. Is this one of the publications of the company? A. Well, it is gotten up by the company.

Q. It shows the location of your terminals in New York and vicinity, does it? A. Yes.

Q. Do the floats go to all those terminals here shown? A. Yes.

Q. You have landing places at the—— A. We have yards and float bridges at the different places, and at other places we have piers.

Q. You say your floats also go at times to the other railroads? A. Yes.

Q. Those would not be shown, I suppose, here? A. No, none of the other roads are shown.

Q. You have shown simply your own terminus? A. Yes.

Q. How many other places are there to which your floats go to trans-ship your cars to other railroads or tracks? A. New York, New Haven and Hartford Railroad, they take them away in their own floats, the New Haven does; the New York Central sometimes, the West Shore, the Delaware & Lackawanna.

Q. Does the Erie or Pennsylvania take any? A. No.

Q. How about Staten Island? A. Well, we have floats to Staten Island, to public docks there; not for track connection.

MR. CORBIN: I offer this map in evidence, entitled: "Lehigh Valley R. R. map of New York Harbor."

MR. VAN SYCKEL: Where did that map come from?

MR. CORBIN: He says it is one of the maps that the company publishes, showing the freight terminal in the New York Harbor.

THE COURT: It is merely illustrative of what he has stated verbally.

Marked Exhibit D. 84.

Q. Where do the barges go that take the freight from these diagonal piers in Jersey City? A. To various steamship lines, and the docks of the various consignees to which they order them.

Q. You mean the ocean-going steamers? A. Yes, both in the North and East River and Brooklyn shore.

Q. Does your company do that service—carrying them alongside of the ocean steamers? A. Yes.

Q. And embark for foreign ports, I suppose? A. Yes.

Q. Do they go to the coastwise trade? A. Yes, on the North River.

Q. And the Sound? A. And the Sound, yes.

Q. Any to the coastwise steamers? A. Any steamers in port, you will find our lighters delivering everywhere.

Q. You deliver to any point in the harbor that is desired that has a track or has a dock? A. That has a track or dock or anything else of the kind.

Q. How far do your billings reach to the West, or from the West? A. I wouldn't be able to give you definite information in that respect, except generally.

Q. Where do your own railroad track lines reach to? A. Buffalo and Suspension Bridge.

Q. Have you steamers connecting with those going West on the Lakes? A. Yes.

Q. The Railroad Company has? A. Yes.

Q. To what points do they run? A. Chicago, Milwaukee.

Q. Do you run to Duluth? A. We have a connection with the line to Duluth; our own steamers don't go to Duluth.

Q. You bill, by your own lines, to any point in the New York Harbor, and as far as Chicago and Duluth? A. Yes, and further West where we connect with——

Q. I am speaking of your own lines which you yourself own and control. A. Yes, sir.

Q. Do you know what per cent. of the flour

that comes from the West to the New York Harbor your company handles? A. About twenty-four per cent. of the grain and flour business coming to New York Harbor.

Q. Do you handle any of the live stock business? A. Quite a volume of it.

Q. Dressed beef business? A. Dressed beef and other packing house products.

Q. How largely? A. I don't know the percentage, but a large quantity; it is quite a percentage.

Q. Do you handle the iron business? A. Yes, sir.

Q. Machinery? A. Machinery, merchandise of all kinds, sir, from all points West.

Q. That is all.

MR. CORBIN: I offer in evidence the annual reports of the State Board of Assessors, showing—I think beginning with 1888, I am not quite sure whether it will be 1888 or 1889—showing the listing and assessment of a strip one hundred feet wide of the West Line grant and the Morris Canal grant out to the east end of the Morris Canal grant, as main stem railroad, since 1889; and the listing of all the rest of it, as what is called second class railroad property, being land used for railroad purposes other than main stem, under the general Railroad Tax Act of 1884, revised in 1888.

MR. VAN SYCKEL: In what name was all that property taxed?

MR. CORBIN: Lehigh Valley Railroad system, I think they call it, it was for awhile I think assessed Easton and Amboy,

but it is at the present time assessed—I have the report of 1905—it is assessed Lehigh Valley Railroad Company of New Jersey. I refer now, for example, to the report of 1905, page 571.

MR. VAN SYCKEL: We object to any offer as to any property taxed, except the basin.

MR. CORBIN: It is that only that I am proposing to offer—well, I offer it as to this whole terminal—What I offer particularly in this report of 1905 is page 571, assessment of Lehigh Valley Railroad Company of New Jersey, main line extends from centre of Delaware River at Phillipsburgh, Warren County, to the exterior line for piers on the Hudson River, at Jersey City, Hudson County, length 75.159 miles. That is simply the main line. This date that I have is 1905, but I think it begins in 1889; I will have to verify that by referring to the reports.

I refer also to page 592 under head of Taxing District of Jersey City, County of Hudson, description of property.

MR. VAN SYCKEL: Those are not the State tax, but the local tax.

MR. CORBIN: The State tax. Land outside main stem, north and south of main stem, from centre line of Washington Street, extended, to exterior line for solid filling, including value of the lands under water in front thereof, 14.71 acres, $603,110. And here is another item: Land outside main stem, portion of old Morris Canal basin, north of pier line, extending to exterior line for solid filling, and includ-

ing value of the land under water in front thereof, 12.09 acres, $302,250.

Then follow a large number of improvements which cannot be entirely classified, like sidings outside main stem in ballast, 96,322 feet, $96,322. Sidings outside main stem on piers and trestles, $13,330. Then a number of buildings. Then the piers. Pier A, open pier, building thereon,

	$35,000.00
Pier B, covered,	$50,000.00
Pier C, covered,	$50,000.00
Pier D, open,	$40,000.00
Pier E, covered,	$55,000.00
Pier G, covered,	$165,000.00
Pier I, covered,	$125,000.00
Pier L, open,	$70,000.00

Then a lot of buildings which I think I am unable to say just where they are located. Transfer bridges, Nos. 1, 4, 5, 6, $49,400. Pier No. 1, $20,000.00.

MR. RIKER: Where is Pier No. 1?

MR. CORBIN: I think it is alongside of the float bridges.

I offer this also: Land outside main stem, and north and south of main stem, between the center line of Washington Street, extended, and a point one hundred and sixty feet west of west line of Van Vorst Street, extended, 10.10 acres. East end of the West Line grant, $414,100.00.

MR. RIKER: That is land to the west of Washington Street.

MR. CORBIN: Yes, it is, but it takes in some of the Morris Canal grant and some of the West Line grant.

MR. RIKER: Does it take in any of the Basin grant?

MR. CORBIN: I will read it again. Land outside main stem, north and south of main stem, between centre line of Washington Street, extended, and a point one hundred and sixty feet west of Van Vorst Street, extended. Now the Morris Canal grant extends as far west as Warren Street; it does not stop at Washington Street, and I suppose, of necessity, it must take it in. We own that just the same as we own anything else, subject only to the right of keeping a hundred and fifty feet of it open for the public. It of necessity covers it. Also land outside main stem, north and south of main stem from a point one hundred and sixty feet west of the west line of Van Vorst Street, extended, to the centre line of Jersey Avenue, extended, 25.551 acres, $306,612. That is a part of the yard.

MR. RIKER: Part of the West Line grant, and part of the Van Vorst property.

MR. CORBIN: No, the West Line grant. Land outside main stem, south of main stem from the centre line of Jersey Avenue, extended, to the National Docks Railway, four acres, $24,000.00.

Land outside main stem, north of main stem, and south of Morris Canal, on centre line of Jersey Avenue, exclusive of main stem Edgewater branch, thirteen and one-half acres, $81,900.

MR. RIKER: That is to the west of the West Line grant?

MR. CORBIN: Yes. Land outside main stem freight yard north of Morris Canal

at Pacific Avenue and Grand Street, 4.56 acres, $36,480. Your Honor will understand that these lands are all assessed merely as the lands, the structures are all assessed separately, and the two last that I have read cover the same properties, first with land and then with buildings. The total value for that year, 1905, of this item of second class property at this terminal is $2,719,934, that excludes the main stem of the Lehigh Valley Railroad Company, and the main stem of the Edgewater branch.

MR. RIKER: I don't suppose you concede these values are the true values?

MR. CORBIN: According to the Assessors. For the last two or three years they have been assessed very much higher than before.

I have simply taken up this book of 1905, because it was the one at hand, but I will ask the permission of the Court to tabulate the values for all the years and put the table in as showing the result of all the years from the date when the State Board of Assessors first began to assess it as railroad property down to the present time.

Do you want me to prove that those taxes are paid or will you admit that?

MR. RIKER: I don't see just the relevancy. We have no objection, if you think it ought to be done, of proving it in this way, subject to our objection.

MR. CORBIN: Well, I can bring the treasurer, of course, and I can bring our vouchers.

MR. VAN SYCKEL: I don't see what difference it makes whether you have paid

them or not. If you have not paid them they will make you pay them.

MR. CORBIN: We think it has a bearing on our case. They are paid, in fact.

MR. VAN SYCKEL: Well, I don't see what difference it makes whether you paid them or not, but if you think it makes any difference you may prove it.

MR. CORBIN: The taxes of 1908, a portion of it was in litigation; my impression is that a small part of those are unpaid; we have to pay a certain amount to get our writ of certiorari to review them.

MR. VAN SYCKEL: We have a right to assume they have been paid; if they haven't been paid they will have to be.

EDLOW W. HARRISON, sworn.

DIRECT EXAMINATION BY MR. LINDABURY:

Q. Mr. Harrison, you are an engineer by profession? A. Yes, sir.

Q. Been practicing your profession in Hudson County? A. Ever since about 1869 or 1870, nearly forty years.

Q. Are you familiar with the basin of 1867? A. I am.

Q. In what way have you become familiar with it; how long have you known it? A. I have known that property from about 1869. In 1870 and 1872 I made some surveys of it, and from then on, for some years, was familiar with it, during the West Line grant case and the tide water basin case. I will say that the surveys made in 1869 and 1872 were made for the Riparian

Commissioners. I was engaged in the office of Baker, Post & Camp. Mr. Baker was then the engineer of the Riparian Commissioners. In 1884 I became the engineer of the State Tax Board, the State Board of Railroad Taxation, and remained their engineer until about 1896. I made a survey of all the property, made estimates of its value, kept in touch with those properties—as well as others along the shore, all those years. I have also been engaged in doing considerable work for the Sugar House, the American Sugar Refining Company, and also engaged in the contest over assessments in the Morris Canal Basin, the Morris Canal property, the Central Railroad and Lehigh Valley properties there from time to time.

Q. When was that property first assessed as railroad terminal property? A. What is that?

Q. In what year was that property first assessed, if you remember, as railroad property—I am speaking of the basin now? A. About 1889.

Q. To what use was that property adaptable before 1889, before the railroad terminal was begun? A. It could be used for the storage of boats, laying up the boats in the winter, for dry-dock purposes, and a variety of purposes similar to those in which the Cove at Hoboken up to within very recent years had been used. I would say the dry dock and ship repairs would be probably most feasible use for that property, because there has been quite a demand for that along that shore. This property, in here, between Grand Street and Essex Street I refer to, is almost exclusively used for repairs of shipping, and when I first remember this cove, or this Morris Canal basin it was used a great deal for the storage of vessels and small inland crafts; canal boats not

only of the Morris Canal, but the boats of the Erie Canal, and they have all been driven to Brooklyn.

Q. Was the building of a railroad terminal on that property in 1889, or afterwards, necessary to its beneficial enjoyment? A. Oh, no. It was necessary, probably very useful for the Lehigh Valley Railroad Company; it made a very fair terminal, or very many other uses to which it was put by them.

Q. Have you any estimate of the costs of the improvements as they exist to-day on the basin, made since 1889? Could you give us approximately the value of the improvements made since 1889 on this basin, for the purpose of adapting it to railroad terminal purposes? A. I can give it to you approximately.

Q. Now, including the dredging and whatever was necessary to adapting it to railroad terminal purposes? A. Well, my estimate would be that it would be very close to a million dollars upon that property, just to adapt it to railroad purposes, including dredging, bulkheading or piers, and not taking into consideration the track.

Q. Did that include the floats on the front? A. Yes. Of course that may be ten or fifteen per cent. one way or the other, say between eight hundred thousand to a million dollars.

Q. You have had a good deal to do with the construction and adaptation of railroad terminal property in Hudson County, have you not? A. Yes.

Q. More or less, you have had to do with the layout or changes in all the terminal properties there, haven't you? A. I had a good deal to do with them, and have gone over their estimates, checked up their estimates and reported on the

estimates as to how much they really did spend, in regard to the comparative values of the property for use.

Q. Can you tell us how important or necessary to the Lehigh Valley Railroad Company system this part of the terminal on the Morris Canal basin is? A. Well, the Lehigh Valley Railroad system is a very peculiar one, that is, they are the only system of a trunk line coming into the water front, but confined to a very narrow frontage, that is, originally confined. When this property was taken up by Mr. Packer, our ideas in regard to railroad terminals, where they had to be on the Jersey City shore, was that they had to be between the Central Railroad and Hoboken. When we got into Hoboken we were afraid of the tunnels, and we were afraid of the deep rock dropping right off in the deep water of the Hudson and deep mud; and when we were south of the Central the fear of the enormous expenditure for dredging and filling, which was helped out by the unfortunate experience of the National Dock Company who bought a piece of property without finding out what they had below it, and would plunge into a very large expenditure for rock excavation. So this was about the time when Mr. Packer came in. This was about all he could get, the West Line grant, and their frontage in there, or by the Morris Canal basin, and so we saw at that time, and since that time, with the better knowledge we have of railroading and the advance in the improvements of dredging and so on, this piece is not as important to them as it was originally. Take the National Dock and their property in Bayonne and other properties, and they can make the property a good deal less than this cost them to do it. This was rather an expensive piece to im-

prove, but the idea was for many years, and up to to-day, practically, we will say the last few years, the Lehigh Valley Railroad Company handled a through business from this terminal, which is a very small one, compared with the others, equal to practically, in competition with the Central, Reading and Erie and the Lackawanna, and they handled it because this is one of the best laid out yards on the Hudson River, that is, for utilizing a very small space in a very advantageous manner.

Q. Are piers shown on the canal basin in use? A. Yes, they are all in use now, and have been since the road was built.

Q. Is there any other place on their terminal where they may be put? A. These piers?

Q. Is there any other room on their terminal? A. There is room enough up there, with some dredging and changes, to put in more piers of this same class above there. We might have got three more piers in there outside of that Morris Canal grant.

Q. Mr. Harrison, are you able to locate, on any of these maps, the deeds from the Associates that were put in evidence yesterday? A. Yes, sir; I have got a map here which I can produce.

RECESS.

Q. I was asking you at the adjournment to indicate to us the location of the several conveyances put in evidence yesterday, beginning with No. 26. A. Exhibit D. 26 is a deed from Richard Varick and wife, Jacob Radcliff and wife, and Anthony Dey and wife, to the Associates, February 1, 1805, and covers the property shown on the map of that property commonly called Powles Hook, and which is in the Map D. 27.

Q. The title of it is what? A. It covers the whole property.

Q. What is the title of the map? A. The title of this map is a Map of that part of the Town of Jersey commonly called Powles Hook.

Q. Is there a date on it? A. It is usually called the Mangin Map, dated April 15, 1804.

Q. And this Varick deed covers all that property shown on that map, does it? A. That is the deed for all that, as shown in that map, and recorded in Liber of Deeds for Bergen County, page 74. Exhibit D. 27 is this map which has already been presented. Exhibit D. 28 is a warranty deed by the Associates of the Jersey Company to Robert Fulton and Cadwalder D. Colden, dated November 30, 1812. Do you want me to read the whole of the description of this deed?

Q. No, I want you to point out the location of it. That deed conveys Block 14 of the Mangin Map, which is now the property of the Morris Canal and Banking Company, being all the land in Washington Street, Essex Street, Bergen Street and Grand Street, that time partly under water.

By Mr. Riker:

Q. Did I understand you to say not the property of the Morris Canal? A. It also conveys Block 14, twenty-six lots. Block 14 is a portion

of the Morris Canal property and lies between South Street, Bergen Street, what was then laid out for Market Place, near Washington Street and Green Street. That is the westerly line, being 75 feet east of the easterly line of Washington Street; that is now a portion of the Morris Canal holdings.

By Mr. Lindabury:

Q. Is that noted on here? A. Well, not that particular deed. D. 29, the next exhibit, is from Cadwalder D. Colden and wife to John V. B. Varick and Archibald McIntyre, conveys the twenty-six water lots in Block 14; they are the twenty-six lots I just alluded to and described, and are now a part of the Morris Canal holdings.

By Mr. Riker:

Q. Tell me where the twenty-six lots are; do they occupy the whole block? A. They occupy the whole block as laid out on the Mangin map, not the whole block as exists to-day at Jersey City, because the market place has been sold off, part of it to the Morris Canal and part to the Sugar House.

By Mr. Lindabury:

Q. How near to Washington Street did that block come? A. Seventy-five feet east.

Q. It conveys the whole block as it now appears except seventy-five feet east of Washington Street? A. Yes, and that block covers the portion of what is known as the Packer pier on this, and what is known as the Packer dock on the large map in evidence, and also a portion of the inner basin of the Morris Canal, small basin.

Q. The large map that you have referred to is one that was put in yesterday and marked "Con-

dition, January, 1909," is it not? A. Yes, sir. D. 30 is a deed dated July 17, 1834. It is a deed from John V. B. Varick and Archibald McIntyre to the Morris Canal and Banking Company, and conveys this same Block 14, and is noted upon the map I have before me, Block 14 is in red letters, Varick and McIntyre to the Morris Canal and Banking Company, July 17, 1834.

Q. What is the map that you have last alluded to as being before you? A. This is a map of the—the ground work of which is a survey made in 1863, and early in 1864, by the engineers of the Morris Canal and Banking Company, W. A. Talcott and L. B. Ward, and was in the archives of the Morris Canal and Banking Company. This is a copy from that map—the map itself, upon which map I have put these several conveyances and grants so as to be able to locate them with reference to the improvements upon the map. That map of Talcott and Ward shows the exact condition of the Morris Canal and Banking Company, and further development, which was not later than April 1, 1864, and a few years before the original grant to the Morris Canal and Banking Company, by the act of the Legislature, grant of 1867.

Q. Before proceeding further, let me ask you a few questions about this map. What do the broad green lines indicate? A. The broad green line on that map indicates the boundary of the grants of the Central Railroad Company of New Jersey, November 12, 1874, where it impinges upon this property in question.

Q. What do the violet lines indicate? A. The violet lines upon this map indicate the exterior line for solid filling proposed in 1865, and as shown upon Section 6 of the Riparian maps filed

in the Secretary of State's office, and also described by Mr. Bacot in the report to the Legislature—in his report to the Commission contained in their report to the Legislature of 1865. That is the red line shown upon Section 6, as filed in Trenton.

Q. That is as it appears there in red? A. Yes, and with the words on it, "Exterior line for solid filling" on the front, and is described by Mr. Bacot very fully in his report. The red tinted plot is the second exception in the grant of the Central Railroad Company, and represents the easterly end of the West Line grant—the grant of the State to the West Line Railroad Company of March 15, 1872. To the north of that, bounded between the two red lines, is the first exception of the Central Railroad Company's grant, which is the tide water basin as it is now laid out, two hundred feet wide, the difference being the grant to the Morris Canal and Banking Company, of March 14, 1867. The grant in question in this case is tinted in red.

Q. Where? A. The different deeds to the Morris Canal and Banking Company from the Associates and others are shown upon the map in red strips, and to that I am referring, while reading from this exhibit.

Q. What is that that you say is tinted in red, which grant? A. The grant of March 14, 1867, the legislative grant to the Morris Canal and Banking Company, and it covered of course the grant of the Lehigh Valley Railroad Company of July 12, 1889, from the Commission.

BY THE COURT:

Q. Was there any reason for making the red here, near the upper portion of this map darker

than this? You call this red; it looks to me like yellow or buff. A. I would say that the grant I just referred to is tinted in a light brownish red and the dark red tint covers the West Line grant. That will explain it better.

By Mr. Lindabury:

Q. They are, of course, different grants, and are intended to be distinguished from each other. A. They are different entirely, different grants at different times.

By Mr. Riker:

Q. Is that the defined by metes and bounds in the deed? A. Yes, as far as the deeds referred to on the Associates map, they are accurately located; there is no trouble about locating them. D. 31, the next exhibit, is a deed dated March 19, 1835, Associates of the Jersey Company to the Morris Canal and Banking Company, conveys all of Lot 1 on map of the Powles Hook.

Q. Where is that map? Can we put it up here somewhere, so that it will be a little bit easier? A. Lot 1 is bounded on the west by Grand Street, on the north by Bergen Street, east by Hudson Street and the south by South Street, all as shown on the Associates map, and all as they would be in the City of Jersey City to-day.

By Mr. Lindabury:

Q. Point that out on the January, 1909, map. A. Block 1 covers the Morris Canal basin on that map. The small basin of the Morris Canal, between Grand and Hudson Street, and the northerly part of Packers dock between Grand and Hudson Street, north of the station of the north line of South Street. South Street, Grand Street, Hudson Street and Bergen Street have never been built or improved across these properties.

Q. Well, the lines on South Street, on the 1909 map, I take it, are indicated by the tracings from Washington Street? A. Well——

Q. The width of it is indicated there? A. The width of it is indicated, but I don't think it ran to Washington Street; I think that that piece of South Street has been vacated by the city, this westerly portion, one hundred feet wide South Street was, and there is no South Street practically east of Washington Street in existence. That is South Street on the corner.

By Mr. Riker:

Q. Well, there is a South Street in Jersey City now, is there not? A. Not in this location. There is a South Street in Jersey City, but it is about five miles from here, on the hill. There is a South Street upon the map, upon the Assessors' map. Part of the South Street west of Washington Street has been vacated by ordinances. Part of the South Street east of Washington Street lies in the basin and underneath the Packer wharf; that is, it has never been used as a street.

Q. Is there a Bergen Street? A. Bergen Street is practically in the same condition. Bergen Street is the route of the Morris Canal west of Washington Street, taken up and used as the route of the Morris Canal, and east of Washington Street. Bergen Street as it would be, if it was laid there, would be under water, in the small back canal basin. The Morris Canal existed before those streets were graded or improved at all.

By the Court:

Q. Well, there is a street here that is called Dudley Street? A. Yes.

Q. Does that correspond with Bergen Street on the Mangin map? A. That was the first street north of South Street.

Q. I say Bergen Street on the map of 1909 corresponds with Dudley Street? A. Bergen Street is on the Mangin map.

By Mr. Lindabury:

Q. Dudley Street, as shown on the map of 1909, occupies some of the same territory as the Bergen Street on the Mangin map? A. Yes, sir.

Q. How much of it? A. Well, the two lines of Bergen Street, as shown upon the map of 1909, with the Morris Canal running through the south side of it. There is a strip on the north side that is open.

Q. Where does Dudley Street end, easterly? A. It ends easterly at Washington Street. There is a line drawn east of Washington Street opening the block which is really the north line of Bergen Street.

By Mr. Riker:

Q. And that line would be the extension of the line of Dudley Street? A. Yes, Bergen or Dudley; it is Dudley now.

The Court: The same street under a different name, as I understand it.

Mr. Lindabury: Yes, so far as Washington Street, down to Washington Street.

Witness: I have given Lot No. 1. I will describe where Block 1 is to-day.

D. 32 is a deed dated March 19, 1835, Associates of the Jersey Company to the Morris Canal and Banking Company, and conveys Lots 9, 10, 11 and 12, Hudson Street, and Lots 2, 4, 6, 8, 10 and 12, Bergen Street, a plot consisting of ten lots in the southeasterly corner of Block 2, on the map of Powles Hook. That plot is in that block bounded

by what is Dudley Street, the north line of Dudley, Grand and Hudson Streets upon the map in evidence, of January, 1909.

By Mr. Lindabury:

Q. I don't think you are right about that. You said Dudley Street stopped up here.

The Court: He called it Dudley Street. You see there (indicating on map) is the line of Dudley Street.

A. Extended; I should say Dudley Street, extended.

Q. That is in part under the canal basin, is it? A. That is part of the Morris Canal property, and——

Q. But I say is it under the basin? A. It is off the basin; none of it in the basin; it is a plot one hundred feet from the basin, running one hundred feet half a block, and then running two hundred and fifty feet west from Hudson Street.

D. 33 is a deed dated May 26, 1835, Associates of the Jersey Company to the Morris Canal and Banking Company. Now before I leave that deed I want to note the fact that the piece I am now giving vested in the Morris Canal Company Block 1, Block 14, and 100 feet fronting on Hudson Street of Block 2, and described them by the lots and boundaries. Now this deed of May 26, 1835, being Exhibit D. 33, conveyed all water rights of the first party in front of the easterly side of Block No. 1, in front of the lots Nos. 9, 10, 11 and 12, Block No. 2, Hudson Street, that is, it conveys the water rights 100 feet wide in front of the four lots on Block 2, and the water rights for 200 feet wide in front of the eight lots, total frontage of Block 1.

Q. Mr. Harrison, do the blocks and streets and street lines on the map of 1909 conform entirely to the blocks and street lines on the Mangin map? A. Do you mean the north side of the basin?

Q. Everywhere. A. Yes, that is, the Mangin map laid out lots 400 x 200; some of the blocks practically measure now 402 or 401 or a little less, but it conforms exactly.

By the Court:

Q. In other words, the municipality has never changed the lines of the street in that locality? A. No, sir; it has never been changed.

By Mr. Riker:

Q. Mr. Harrison, was Block 1 and Block 14 on the Mangin map, as shown there, upland or was it under water? A. In 1804, it was under water.

Q. What about Block No. 2? A. Block No. 2, about three-quarters of it in 1804 under water.

Q. And of the lots conveyed to the Morris Canal and Banking Company, how many of them were under water at that time, in Block No. 2? A. The ten lots conveyed were under water, according to the Mangin map—well, I don't know, at that time they were originally in the water, in 1835, when that deed was made; I cannot tell whether they were all under water or not.

Q. What is your best knowledge on that subject? A. The lots were partially above water in 1841.

Q. Which one of them was partially above? A. That is, they went to make a filling in here before 1841.

Q. I see you have a map here which you have already referred to as a map prepared by Talcott; that shows a high water line by the Mangin map

of 1804? A. That is the high water line of this Powles Hook.

Q. You haven't anything to show where it was in 1840? A. I can tell about where it was in 1841.

Q. You say that the deed, Exhibit D. 33, conveyed the water rights in the Hudson River, and to the east of Blocks 1 and 2? A. All of Block No. 1, and the south half of Block No. 2.

Q. But the water rights—didn't you say that the water rights were conveyed two hundred feet out into the Hudson River? A. No, I don't say how far.

BY MR. LINDABURY: All the water rights in front of this two hundred feet and all the water rights in front of that one hundred feet.

WITNESS: Exhibit D. 34 is a release quit claim from the Associates of the Jersey Company to the Morris Canal and Banking Company of all the water rights of the parties of the first part in front of certain blocks, situated, lying and being in the Township of Jersey City, County of Hudson and State of New Jersey, known by the name of Jersey City, formerly called Powles Hook, and which on the Mangin map, all the water which is distinguished as herein stated, that is to say, all the water rights of the parties of the first part which has not been heretofore granted by the said parties of the first part to the parties of the second part, lying east of Hudson Street and south of a continuation of the southerly line of Essex Street into the Hudson River, and comprising all the water rights of the said parties of the first part in the Hudson River, lying east of Hudson Street, and south of the said continued line

of the southerly line of Essex Street; and also all the water right of the said party of the first part in Communipaw Bay or York Bay, lying south of South Street, and extending to the westerly boundary line of the said parties of the first part. Now this is Essex Street (indicating on map), and that covers, or purports to cover all the water rights in front of Hudson Street from Essex Street, which is one hundred feet north of where the Morris Canal Company purchased, covering over the streets, I take it, to the southerly as far as Hudson Street runs, and also all the rights of the Associates in Communipaw Bay South of the south line of South Street, and extending to the west line of the property, which was the line of the Henderson railroad track.

THE COURT: Of course there was, as the Court subsequently found, a right to block out, and a right to fill out below the water mark; that is ascertained by the subsequent examination of the Court. That was decided by the Chancellor, but of course they cannot give any right, except so far as was pertinent to riparian land, I take it that is plain enough.

MR. LINDABURY: I am not sure about it, but they could perhaps deprive themselves of the right to dock out afterwards, if they interfered with the enjoyment of this grant. Perhaps the effect might have been to release it.

THE COURT: It might attempt to prevent them from going out, but that is the only effect it could have.

MR. LINDABURY: I suspect that is so, but I am not quite ready to assent to it.

WITNESS: Exhibit D. 35, September 13, 1845, recites a deed of the second day of January, 1845, the last one given, which covers everything.

MR. LINDABURY: I don't know about that. It describes exactly the same water rights as the last deed, but it adds now that they are conveying any title they have by virtue—making the deed by virtue, and to convey any title they have or by virtue of any act or acts of the Legislature of the State of New Jersey touching and concerning the same. Now there may have been some act passed.

MR. CORBIN: I think they may refer to their own charter of 1804, which gave them some powers.

MR. LINDABURY: It would look as if there might have been something passed by the Legislature that acted between January 2, 1845, and September 13, 1845.

THE COURT: It might have been a predecessor to the Wharf Act of 1851.

MR. LINDABURY: It may be. I imagine there must have been something like that, because there is specific reference to the act of the Legislature.

MR. RIKER: What page and what line?

MR. LINDABURY: The middle of page 67.

WITNESS: You will notice that that other deed did not convey everything south of South Street—everything east of Hudson. Now there may be a piece in there that might not be covered.

Q. I thought the descriptions were practically identical? A. Yes, but it says anything that is not—anything that may be left that is not covered

by that deed. Practically that is a deed of the water front east of Hudson Street and south of South Street, everything the Associates needs and claims they have any right in in the Morris Canal.

Q. It ends up: "It is agreed by and between the parties to these presents that this deed shall not be construed as guaranty or covenant of assurance of title to the land under water, water rights and property hereby intended to be conveyed." Now take D. 36. A. Exhibit D. 36 is a deed given April 21, 1864, from the Associates of the Jersey Company to the Morris Canal and Banking Company. Now in all these other deeds there has been nothing said about the south half of South Street. This deed vested in the Associates the Morris Canal and Banking Company, the south half of South Street; they were the owners of the lots on the north half, and I suppose the title went to the middle of the street.

Q. Yes, but former deeds had not yet vested the fee to the south half of South Street? A. From boundary ditch, which is the westerly boundary of their property fifty feet in width, to the easterly line of Hudson Street. This deed conveyed the south half of South Street from the westerly boundary to the westerly line of Lot 14, and the whole of South Street from the westerly line of Lot 14 to the easterly line of Hudson Street.

THE COURT: How could they convey what they had dedicated as a street?

MR. LINDABURY: The fee in it.

THE COURT: And in the second place, how could they convey land under water. Of course, it is one of the facts in the case, so far as the legal effect is concerned it is subject to those two observations. The

only people who could convey the street would be the Municipality, and the only people who could give a title to land under water was the State.

MR. LINDABURY: Well, they could convey the fee. The fee would not be in the State, even though it had been dedicated.

THE COURT: But they did not have a fee, according to the decision of the Court; the Associates of the Jersey Company did not have the fee, in the first place, if it was a street, why it vested in the Municipality, and they could not convey it away.

MR. CORBIN: But the State could.

THE COURT: If the State validated the conveyance afterwards.

MR. CORBIN: The State by enactment in 1828 authorized them expressly to occupy that street with the canal.

THE COURT: Then you have reference to the canal bed?

MR. CORBIN: Bergen Street is what we are talking about.

MR. RIKER: South Street is where the dock is, the old dock.

THE COURT: Here is Dudley Street (indicating on map).

MR. LINDABURY: But here is South Street (indicating). I take it that is the pier that was built by the Canal Company in connection with the canal from the earliest time.

THE COURT: You see they were all granting in those earlier times without any light thrown upon the subject by the de-

cisions of the Court; they naturally assumed to have all that was possible to assume, but when the courts came to decide the matter afterwards, why, that put a different aspect on the affair. You call attention to this particular deed as being important. I cannot quite see what its legal importance is, in view of the decisions.

MR. CORBIN: The Act of 1828 had this in it: "That it shall and may be lawful for the said company to make and construct the said canal through, upon, or along any street, road, or public highway; but if the said canal shall be made or constructed through, upon, or along any street or streets in the Town of Newark and Jersey City, or either of them, in such case the said land occupied by the said canal and for its towing path shall not exceed a space of thirty-two feet." Under this the Canal Company took the southerly portion of Bergen Street, leaving the northerly portion of it open as it is to-day.

THE COURT: That is the way I understand it. Mr. Lindabury suggested that South Street and the canal were coincident. I was merely asking if that was so. I understood differently.

MR. CORBIN: No, South Street is the dock and the fillings and cribbing.

MR. LINDABURY: Some of the canal is on South Street.

THE COURT: There is a little piece of the canal basin that would be within the lines of South Street.

MR. CORBIN: That is right.

MR. LINDABURY: I am not sure but when some of those grants were made it was a fact that the filling in had been completed, there was solid land and a new ripa perhaps.

THE COURT: Oh, yes, that is of course possible.

MR. LINDABURY: And besides, what is the situation? I don't know that the riparian owner had the common law right to dock out, before the Wharf Act. If he granted or attempted to grant that to another, and the grantee did dock out and fill out and reclaim and connect with the upland, I should be inclined to think then that perhaps he did by one of some other ways get title. The fact that I mean to call attention to, and which probably will develop some importance, is that this deed conveyed the half of South Street—purported to convey half of South Street from the westerly boundary of the Associates.

WITNESS: Yes, sir.

MR. LINDABURY: Down to Washington Street.

WITNESS: Down to the westerly lot of Block 14, seventy-five feet east of Washington Street.

MR. LINDABURY: And from there to Hudson Street had purported to convey the whole street.

THE COURT: Yes, I understand so.

MR. CORBIN: This map made by the Associates of the Jersey Company in 1804 may have been a tender or dedication of all these streets to the public. I do not think

that so far as South Street is concerned Jersey City ever accepted the tender in this deed, so that South Street, so far as occupied by the Morris Canal, has never, I think, become a public street, either by user or acceptance by the public. That, I think, is the present legal situation of it.

Q. The last deed now? A. I described that.

Q. That is the one we have just had? A. Yes. Now these deeds that I have read cover everything on the Associates' map along the water front—from the ditch, which is their westerly line, to the southerly side of Essex Street, on the Hudson River.

Q. This deed that conveys South Street is the deed of 1864, is it? A. Yes.

Q. Do you know whether or not in 1864 South Street had been connected up with the main land of the old ripa? A. Oh, it was filled right out to it, and everything in 1864 was just as it is to-day, and in parts they had gone beyond South Street.

Q. I want to know whether or not the land under water, between South Street and the ancient upland had all been filled in, and South Street connected with the old ripa in 1864—long before, or had it not? A. Long before that.

THE COURT: I suppose his answer is that so far as the map indicates, such is the case. That was Mr. Douglass' testimony.

MR. LINDABURY: Well, I suppose that is true.

WITNESS: It was connected with the Packer dock.

By Mr. Corbin:

Q. Where was the old Jersey City Hospital located? A. The Jersey City Hospital was lying between South Street and Dudley Street, and what is now Washington Street.

Q. When was that built? A. It was there before that time, before 1864, and it was destroyed, and the property sold about 1883 to the Sugar House.

By Mr. Riker:

Q. Returning to D. 36, Mr. Corbin has called my attention to a certain clause in it, in regard to the ferry rights. Now, is not that the only difference between the two deeds to which you have referred, D. 35 and D. 36?

Objected to.

The Court: The deeds speak for themselves.

Mr. Riker: He is trying to locate the properties under the two deeds.

The Court: I understand. I think you have called attention to that fact, and that is sufficient.

Mr. Riker: It is on page 66, line 30.

By Mr. Lindabury:

Q. I show you a map entitled "Map of the eastern division of the Morris Canal, with the Pompton feeder and Long Pond reservoir, drawn by James F. S. Smith." Are you familiar with that map? A. I cannot say I know it, I know what it is—right-of-way map of the Morris Canal Company.

Q. Plate 16 of this shows the *locus in quo*, or purports to, does it not? A. Sheet 16.

Objected to.

MR. LINDABURY: Here is the certificate of 1882, on the letter head of the State Geological Surveyor, New Brunswick, N. J., April 15, 1882:

"Mr. Pierson. Dear Sir: After careful examination of the maps of the Morris Canal, of which I took tracings in your office, I find that the scales are correct, the only error noted is in numbering the scale foot. The zero should be one division to the right. Yours respectfully, C. C. Vermule, Topographical Engineer for the Geological Survey."

MR. LINDABURY: "In Chancery of New Jersey. Between William W. Willink, complainant and The Morris Canal and Banking Company, defendants. Exhibit No. 20 on the part of the State of Indiana."

MR. CORBIN: Yes. The State of Indiana had a second mortgage on the property.

THE COURT: That is the case of Willink against the Morris Canal?

MR. CORBIN: Yes. The bill was filed in 1844, and the property went to sale in 1848 or 1849.

MR. LINDABURY: So far then we have a recognition of its authenticity from a reliable source—from the fact that it was once admitted in evidence in the Court of Chancery.

GEORGE ELLENBERGER, sworn.

DIRECT EXAMINATION BY MR. CORBIN:

Q. Where do you live? A. Brooklyn.

Q. What is your occupation? A. Title clerk Lehigh Valley Railroad Company.

Q. Where? A. New York City.

Q. Look at this map, appearing to be an original drawing, consisting of sheets and with an endorsement: "Map of the Morris Canal, eastern division." Do you recognize that map? A. Yes.

Q. What is it? A. That is a map showing the right of way of property adjoining the Morris Canal from Jersey City to Phillipsburgh.

Q. This other volume, with the same title, "Eastern Division"—is that part of the same survey? A. The two together constitute the entire right of way.

Q. Did you bring them here? A. Yes.

Q. Where did you get them? A. From our office, New York City.

Q. Have they been in your custody? A. They have been in my custody since, and my predecessor, since my first going with the company, July, 1894.

Q. You have known them since 1894? A. Yes.

Q. Were they among the company's files at that time? A. Yes.

BY MR. LINDABURY:

Q. Do they constitute the sole right of way maps? A. They are the first right of way maps of the Morris Canal; there are succeeding maps of the canal also.

Q. And these are recognized as the early maps? A. As the earliest maps of the Morris Canal in existence. Mr. Powers knows more than I do about it; he is very familiar with the maps.

EDLOW W. HARRISON, recalled.

FURTHER DIRECT EXAMINATION BY MR. LINDABURY:

Q. Have you examined the Jersey City Assessment maps to know how early the property in the neighborhood of South Street was assessed?

MR. RIKER: I object. I do not think that he ought to get from Mr. Harrison that information; he is not connected with this office in any way. He would be no better to give it than the rest of us.

Q. Have you examined the Jersey City Assessment maps for the purpose of ascertaining how early the property on what is known as South Street, east of Washington Street, was assessed? A. Not for the purpose of finding out how it was assessed.

Q. Well, when it was assessed? A. It was assessed in——

MR. RIKER: One moment.

THE COURT: So far, Mr. Harrison has not qualified himself.

MR. LINDABURY: He says he did not make the examination for that purpose.

MR. RIKER: I think we ought to have just what was assessed on there, if it was.

MR. LINDABURY: We have a sketch here, copies. We can prove our record without producing it.

Q. Did you examine the record of assessments in the office of the Tax Assessor for 1846? A. I examined this note made by Mr. Dunham, and it was reported to me.

Q. You did not make it yourself? A. He made it.

Q. Do the examinations that you made indicate how early the Packer dock was assessed to the Morris Canal by Jersey City—how early it was assessed? A. I find by the record that I have——

MR. RIKER: Yes or no to that question.

WITNESS: Yes, I have looked it up. Mr. Dunham has looked that up.

Q. Who is Mr. Dunham—your partner? A. Yes.

Q. What do you find?

Objected to.

Q. Here is a map of 1863. Are you acquainted with that, called the Talcott map? A. Well, that map was drawn about the same time as the map I have here.

Q. Are you acquainted with this map? A. Yes, I have seen that map and know it for some time.

Q. Is it a recognized map of the locality? A. Well, it is in the archives as being a correct delineation of the fact that they existed at the time.

Q. Recognized where and by whom? A. Made by L. B. Ward.

Q. Where is that recognized? A. I have seen a copy of this map several times in the last 25 years.

Q. Is it in use—in public use in Jersey City and recognized among surveyors and engineers as an accurate map? A. Well, it is recognized as—I will say it is recognized among the surveyors and engineers, but hadn't anything to do with the question, recently, of the Morris Canal and that basin, but it is a map that has been used for general purposes; it applies to that property.

Q. What does this show, if anything, in addi-

tion to the other maps you have exhibited, Mr. Harrison? What does it show in addition to this one on which you put the conveyance? A. Well, it shows that in—it does not show quite as much in detail as the map which I have been using. That map which I have been using was made by the same party about a year afterwards, and was also for the archives of the Morris Canal Company, and also is contained among the archives of the Riparian Commission. This map, made by the same party, by the same engineers, some time afterwards, shows a larger scale and more in detail, but it covers the same ground.

MR. CORBIN: I offer in evidence map known as the Talcott map, which has this legend upon it: "This map was drawn for the Morris Canal and Banking Company, August, 1863, by L. B. Ward, under direction of W. H. Talcott."

Said map marked Exhibit D. 85.

Q. I show you a map entitled "Map of Jersey City, Hoboken and suburbs, made by John D. Ward, A. L. Van Buskirk, D. S. Gregory, Edwin A. Stevens, Edward Coles, March 14, 1851"; are you familiar with that map? A. Yes.

Q. Is that a recognized map of the locality about the *locus in quo?* A. Yes, sir; that map is made by resolution on the Commissioners, and made by actual survey by Clark and Baker, who were then the best engineers and surveyors in that vicinity, and is the foundation of the whole water supply of Jersey City.

Q. What have you to say as to its accuracy? A. I have known of its use. It was used in the case of the Hoboken streets, the United States Supreme Court case, Hoboken Land Improvement

Company against the City. I used it then on the shore line there. It had been used in several Erie litigations for the shore line and the position of the old pier. It was used in the case of Jersey City against the Lackawanna Railroad in the matter of the streets of the Lackawanna yard, and it is recognized as being an excellent map and very correct map of the situation in Jersey City at that time. I have been able to check it by other maps.

By Mr. Van Syckel:

Q. What do those dark lines indicate? A. Where the blocks have been shaded, they represent blocks which contained buildings, and where the shading goes all around the block the block is practically built up, and this map has been made for the purpose of bringing water to the city, it shows the portion of the city where pipes would have to be laid—extended. This locality down in the neighborhood of the *locus in quo* is the most solidly built up of Jersey City, at that time.

By Mr. Riker:

Q. You do not mean to say that those places that show no houses were the built up portion of Jersey City, do you? A. I mean wherever the shaded tints on this map—the shaded block, show the built-up portions; that is what they were made for.

Q. But every place that is built up is shown on it? A. Every place that is built up.

Q. Shows the buildings? A. Shows it is built up. It don't show any building here (indicating on map), but it shows buildings all around here.

Q. You don't remember any such thing as that, do you? A. Anybody that knows Jersey City

knows that those flats were practically built up as early as the fifties. This portion of the city.

Q. Well, you don't know it from personal knowledge.

MR. RIKER: I move to strike this all out.

MR. LINDABURY: I offer this map in evidence.

Marked Exhibit D. 86.

Adjourned until Thursday, March 25, 1909, at Chancery Chambers, Newark, New Jersey.

Hearing resumed Thursday, March 25th, 1909, at the Chancery Chambers, Newark, N. J.

EDLOW W. HARRISON, recalled.

FURTHER DIRECT EXAMINATION BY MR. LINDABURY:

Q. Mr. Harrison, I asked you to produce certain other ancient maps of the locus in quo, what have you brought this morning? A. I have a map here —this map is a well known map of the city.

Q. What is its date, identify it. A. The title of the map: "Map of Jersey City, Hudson County, New Jersey, by A. Clerk and R. C. Bacot, city surveyors, 1848." The copy I have here has been used as an index, and applies to the maps in the division of the property of George W. Gregory, and has colored plates upon it indicating those lots, but the ground work of the map is the lithograph city map made by Clerk and Bacot, and has been accepted as being a true delineation of Jersey City at that time.

Q. What recognition has it had in practice and use in Jersey City? A. Oh, up to 1861, when the other second Bacot map was made, it was the recognized map of the old Jersey City, the old portion. We have always used it and it has been used by other surveyors of the city, as indicating the true water line of the Cove and the front, and the condition of affairs of the water front.

Q. Does it show the locus in quo, or basin? A. Yes, it shows the Morris Canal small basin, and also shows the water line on the south side of the small basin, the northerly water line of the Packers dock, but does not show that southerly block line of Packers dock. This map indicates by the northerly water line that there was filling south of it; it shows a basin. There cannot be a basin unless there are two sides.

By Mr. Riker:

Q. I suppose it shows what it shows. A. It shows what it shows, that is it.

Mr. Lindabury: I offer it in evidence.

Marked Exhibit D.87.

By Mr. Lindabury:

Q. Have you produced another map? A. I have here the reproduction made by Mr. A. Parker, of the Douglass map of Hudson County. This is one of the best known maps in the county, and the state. It was made in 1841 by Douglass and has been used over and over again. It indicates lot lines, boundary lines, shore lines and the condition of affairs in Hudson County at that time, 1841.

Q. Does it show the locus in quo? A. On this original Douglass map is indicated in dotted lines the state of affairs in 1872 and 1873, at the time

when it was made, so as to enable a searcher or one interested in the map to locate the old position of the Douglass map with reference to this present set of streets and lines. I did intend to have the original copy of the Douglass map here. I can produce the original of it.

MR. LINDABURY: This we offer in evidence, but we will give you a copy of it.

MR. VAN SYCKEL: We object to it going in evidence.

Q. Do you know of your own knowledge that this is a correct reproduction? A. Oh, yes; checked it over and over again. We always used this reproduction.

Q. When was this reproduced? A. 1876 it was lithographed. Mr. Ryle who prepared the original prepared this.

Q. Has this been used and recognized since as a correct reproduction? A. It is a correct reproduction of the original with the addition of the outlines to indicate to anybody the location of streets.

MR. LINDABURY: I wish to offer this one in evidence, and will promise to produce the other.

MR. VAN SYCKEL: I object to it.

MR. LINDABURY: I ask the Court to accept it with leave to strike it out if we do not produce the original.

THE COURT: Yes, it will be accepted in that way.

MR. LINDABURY: If it can be; somebody said there were only three copies in existence, but Mr. Corbin says they have one.

MR. VAN SYCKEL: I will state to your

Honor that the man who made this map was not in the employ of the State or the Riparian Commissioners, and how can he make a map that will bind us here?

MR. LINDABURY: I don't suppose that any of the old maps that were put in evidence by either side were made by the Riparian Commissioners.

MR. VAN SYCKEL: Certainly the maps I offered here were all out of the secretary of state's office, maps reported by the Riparian Commissioners and signed by them.

THE COURT: The maps are hearsay evidence, but they are the sort of hearsay evidence that is sometimes admitted, and if they are ancient maps—if the man who made them is dead, but if they have been recognized by experts as being correct, and used by experts, they are evidence, I take it, of certain things. I do not know that they are evidence of everything.

MR. VAN SYCKEL: We wish to have our objection noted.

THE COURT: I think that this is only a copy. Now it is a copy, and there have been additions to it so that we do not know what is on the original and what is on the copy, and it seems to me that while this may be used for the purpose of convenience where it agrees with the original, it certainly cannot take the place of the original.

MR. CORBIN: I may say that all the new matter that is on it is described by the legend, but we will have the original here.

Q. Does the legend on the map make it easy to

ascertain what has been put on? A. What is that?

Q. Can you, from this legend, ascertain what has been added to the copy in reproducing it? A. Yes, sir.

THE COURT: Well, I do not think that this map in itself is evidence; I think that the original is evidence of certain things.

MR. LINDABURY: Of course we should and will produce the other, but it seems to me, if the Court please, that if we prove that this is a correct copy of the original—

MR. VAN SYCKEL: I object to it.

THE COURT: If you can prove the loss of the original, then you can resort to the copy, but unfortunately you have the original.

MR. LINDABURY: We have sent for it, and it will be here presently.

Q. Now, Mr. Harrison, what further investigation with regard to the taxation of this canal basin have you made since last evening? A. Mr. Dunham left here to get up the taxes, and when I left the office this morning he had that about ready, and he will be out here this morning with the table showing it—that is, the taxation of the elevation on the Packers dock.

Q. I mean on the Packers dock. A. He is also getting up the taxation on the main basin or grant, and he will be out here with it.

MR. LINDABURY: If the Court please, we desire to offer in evidence memorandum of the Morris Canal and Banking Company, to the gentlemen of the House of Assembly and State of New Jersey, dated March 19, 1866, as showing the claim with regard to

the ownership of the ripa, and the situation existing with regard to the canal proper property at that time. The Canal Company's claim to the legislature was put in by way of protest against a bill that was then pending. The record shows that notwithstanding a protest the legislature passed the bill and the governor vetoed it, filing a memorandum, the report shows, and the Secretary of State also presented it to the legislature. The Bill was vetoed on the ground that that bill provided for giving this basin to somebody else besides the Canal Company, the governor vetoed the bill, and then the grant of 1867 was made. Now, it seems to us that these circumstances furnish basis for a claim that the Canal Company was then recognized and dealt with as a riparian owner in the grant of 1867, recognized by the legislature and the Governor, and dealt with on that basis.

It has claimed for more than sixty years to be the riparian owner of this basin, the riparian owner of the lands. It has been in possession of those lands for sixty years, under that claim. That claim was made in this solemn manner to the legislature itself in the way that I have mentioned—recognized by the veto measure of the governor, and then followed this grant of 1867 upon that basis. It seems to me that those are circumstances which may be of account, and are worthy of consideration, and are evidential in fact in this case. We haven't any jury here, and if upon more mature consideration the Court should think that no account is to be given to the circumstances, why no harm is done. I didn't

see this until last evening, but during the evening I did read it with much care and interest.

MR. VAN SYCKEL: Where is it found?

MR. LINDABURY: It is in a compilation of the Canal Company's charter papers here. Of course I assume it is on file there and we will produce it, and we will produce a record of it from the files of the State House. What we now have is a print of it in the Canal Company's papers.

THE COURT: Do you object to it upon the ground that it is not properly proven, that the original should be here, or do you object to it upon the ground that it is not evidence, if the original were here, or on both grounds?

MR. VAN SYCKEL: We think we better object on both grounds.

THE COURT: If you object upon both I can easily dispose of the matter now. The original is not here and of course this is not evidence.

Might it not bear upon your allegation of fraud?

MR. VAN SYCKEL: I don't see how it could.

THE COURT: Well, I don't know whether it could or not.

MR. VAN SYCKEL: Because it is entirely anterior to the time that occurred. You see that grant of 1867 passed afterwards, and that is a supplement of everything. They cannot claim anything in controvention of that grant which gave the property back to the State in 1974. I do not see how that can have any bearing upon the case.

THE COURT: Well, it is not before me now, and there is nothing for me to rule upon.

MR. LINDABURY: This petition explains why we got the deed of 1864 for South Street, in fact it explains the getting of those successive grants of the water rights. Now, we asked counsel this morning whether they would agree that at the time of this grant in 1888 the Lehigh Valley Railroad Company was the sole stockholder of the Easton and Amboy Railroad Company. What do you say to that gentlemen?

MR. RIKER: My answer to you is we will not agree to it.

MR. LINDABURY: We will prove that. In view of the fact, if the Court please, that we have to go to Trenton to get some of these other proofs, and that the auditor has not been able to get up those schedules yet, we feel obliged to ask your Honor to continue the case to another day.

THE COURT: Cannot it be put in at the argument, if you furnish the other side with what you propose to put in?

MR. LINDABURY: Well, the difficulty about the thing is, your Honor, that in briefing the case and getting ready for the argument, it might be of some account to know whether some of those things are in or not. That is all.

WILLIAM I. POWERS, sworn.

DIRECT EXAMINATION BY MR. LINDABURY:

Q. Where do you live? A. Boonton, New Jersey.

Q. How old are you? A. 64, I was born in May, 1844.

Q. Are you connected with the Canal Company? A. I am.

Q. In what capacity? A. Superintendent.

Q. How long have you been connected with the Company? A. Forty-five years.

Q. How long have you been superintendent? A. Twenty years, or twenty-one years, about.

Q. And before that time what was your business? A. Supervisor.

Q. For how long? A. Well, from 1879 to 1888.

Q. And before that? A. I was employed as a foreman and engineer on the dredging machine.

Q. For how long? A. From 1867 to 1879.

Q. Do you know whether the company has on its files any map of its canal property? A. I do.

Q. Do you know what the earliest one is, in date? A. 1840.

Q. Look at one section of it, No. 24, which I show you now; are you familiar with that? A. Yes, sir; I have referred to it frequently.

Q. It shows on sheet No. 16 the canal basin, I believe? A. It does, sir.

Q. How long have you known this map? A. For thirty years or more.

Q. Has it been in use all that time? A. It has.

Q. By the Canal Company? A. It has been in the possession of the Real Estate Department, as I understand.

Q. You don't know when it was made, I suppose? A. No, I do not.

Q. Before your time? A. Before my time.

Q. You found it in use by the Company when you first became acquainted with the subject? A. Yes.

MR. LINDABURY: I offer it in evidence.

MR. VAN SYCKEL: We object to it.

MR. LINDABURY: Let me ask another question or two before your Honor rules on that.

Q. How long do you remember the canal basin? A. Since 1868.

Q. Can you tell me whether or not this map correctly indicates the situation there, at the time you first knew the property? A. There was more of it, it was extended; the docks were extended out further when I first knew it.

Q. In which direction? A. Out into the river. This is, I understand, Packers dock.

Q. The Packers dock extended further into the river when you first knew it? A. Well, the South Street pier extended out from that, what is known as the L dock.

Q. The L dock that has been talked about here? A. Yes.

Q. But that is not a part of the Packer dock or pier, is it? A. No, sir.

Q. Does what is shown on this map correspond with your recollection of the property at that time? A. This part was there at that time (indicating) and used for storing coal.

Q. What do you mean by "this part"? The part shown on this map? A. Yes, sir; marked Morris Canal and Banking Company.

Q. But you say the L dock was there when you first knew it and that is not shown here? A. That was there in 1868.

MR. LINDABURY: Now I renew the offer.

MR. VAN SYCKEL: We still object.

THE COURT: I confess, I do not think it is evidence. It does not strike me that this map is brought within any one of the exceptions to the rule regulating the introduction of hearsay evidence.

MR. LINDABURY: Well, we offer it. Does your Honor reject the evidence?

THE COURT: Yes. If you insist upon a ruling at this time I will reject the evidence.

MR. VAN SYCKEL: I ask for a ruling.

THE COURT: I confess that I am so clear about it now in my own mind that it does not come within that class of evidence which a vice chancellor admits subject to objection.

MR. VAN SYCKEL: We insist upon our objection, and ask that it be disposed of so that we know where we are.

MR. LINDABURY: That is all, Mr. Powers.

THE COURT: I thought you only had a little evidence to offer. I can give you another day if you want it, I can give you Thursday and Friday.

MR. LINDABURY: It will not take us very long; but counsel have asked us to agree that these schedules that we produce shall be in for one purpose and not for another, and we are unable to do that.

THE COURT: Judge Depue used to say that if evidence was put in, and lawfully

put in, for one purpose it might be used for any legal purpose. If it goes in it is in. Now, whether it can be used for one purpose or two purposes is a matter of argument, but if it can be used for any purpose it goes in.

MR. LINDABURY: What I was about to say is that the fact that we cannot agree to what they ask us to agree to may lead to a cross examination that will be prolonged. I don't know.

THE COURT: I was merely acting on your suggestion that they might agree to it for one purpose and not for another. If they agree to it for any purpose it is in. The use they make of it is a matter of argument.

MR. LINDABURY: They ask us to stipulate that in case the Court should find in their favor on what I will call the main question, that then that evidence should not be used thereafter on the question of ascertaining equitable terms, but that we should take it all over again.

MR. VAN SYCKEL: That is the offer, that they may use it without any objection as to the manner of putting it in, for the purpose of showing that we have no equitable right at all, and after that question is decided, if in our favor, why then they must take the evidence in a legal form, or such form as we can agree upon.

Now, the trouble is just here—if we permit this evidence to go in without that agreement, as prima facie evidence, why then they would say—why we have made a prime facie case and the burden is

thrown upon you to disprove it. Now they have made a prima facie case by putting in evidence which is not in a strictly legal form, and we do not want to be placed in that position. That is our objection.

THE COURT: I do not wish to make any suggestion on the subject, of course. I will put the case down for Thursday and Friday of next week.

MR. LINDABURY: Counsel understand very well we are not proposing to put in any evidence that is not in strictly legal form; we told them that yesterday.

MR. RIKER: It is undertsood that Mr. Hocke will be here for cross examination.

THE COURT: Well, I will adjourn this case until Thursday, April 1st, 1909, at the Chancery Chambers, Newark, N. J.

Hearing resumed on Thursday, the first day of April, 1909, at the Chancery Chambers, Newark, N. J.

LOUIS FOCHT, sworn.

DIRECT EXAMINATION BY MR. CORBIN:

Q. Mr. Focht, you are the engineer of the State Board of Assessors of New Jersey? A. I am.

Q. How long have you been in the employ of that Board? A. About ten years.

Q. I show you a blue print entitled: "Schedule of assessed values and amount of taxes", taken from the printed reports of the State Board of Assessors for the years 1889 to 1907, inclusive, of the Morris Canal grant of 1867; have you checked up this schedule? A. I have.

Q. I see the schedule has on it also, "West Line grant of 1872;" have you checked up the assessments on that? A. I have.

Q. This, I see, shows value of lands and value of improvements in two separate columns? A. It does.

Q. What does the value of land include? A. It includes the land outside of the main stem covered by the different tracts.

Q. Does it cover the bulkheading and filling? A. It covers the land in the condition in which it stood at the time the assessment was made.

Q. If any dredging, bulkheading and filling had been made before the date of your assessment, that was included in the value of land, was it? A. In the value of the land.

Q. And what is included in the value of improvements? A. The physical structures on the ground—on the tract.

Q. That is above the established grade? A. Above the surface.

Q. If the basin had been dredged out to a great depth to make it navigable, how would that improvement appear, under the value of land or of improvements? A. Land.

Q. Now the main stem of the Lehigh Valley Railroad Company of New Jersey runs lengthwise across both these grants, does it not? A. It does.

Q. From west to east? A. From west to east.

Q. How wide is it? A. One hundred feet.

Q. In what is the assessment of that included? A. That is included with the main stem and franchise of the Lehigh Valley Railroad Company, or the different companies which were in existence at the time the assessment was made.

Q. I see at the bottom of your table a note as follows: "The above valuation and tax is on real estate other than main stem, assessed valuation of the Lehigh Valley Railroad Company of New Jersey, for main stem and franchise, 1907, $14,294,900." A. Yes.

Q. Length of main line and franchise 123.675 miles. Length of main stem 100 feet wide, through Morris Canal grant 0.250, through West Line grant 0.8. Does that correctly indicate the length of the main stem through these grants? A. It does.

Q. What is the main stem covered with? A. Tracks and a few structures, there may be a few signals and switches.

Q. Is the value of the main stem in these two grants included in that item of $14,294,000? A. It is.

MR. CORBIN: I offer this tabulation in evidence and ask that it be marked.

Marked Exhibit D-88.

Q. Are you able to say how much of that $14,294,000 valuation is composed of the value of this strip one hundred feet wide of main stem, through those two grades? A. I could not, the main stem is assessed as a unit; we put in the main line from Phillipsburgh to Jersey City and all the franchises.

Q. And the franchise is included in that? A. Included in that.

Q. That is not separated on any record, or in any way you can show? A. It is not separated; no, sir.

Q. That is all.

MR. VAN SYCKEL: We do not object to

the mode of proof of this; all we wish is to have our objection as to the relevancy and competency of each part of it; that is all.

MR. LINDABURY: We offer the Minutes of the Board of Directors of the Morris Canal and Banking Company, of a meeting held on the 19th of March, 1866, adopting a memorial to the Legislature. Mr. Corbin and I have personally examined the files at Trenton, and are unable to find that on file. It is probably there, but the files of that date are difficult to discover and trace; we were not able to get it, and therefore we are obliged to offer it as a resolution of the Board of Directors. It appears in the minutes as such, and its declarations, it seems to me, are evidential in this case for this reason,—it goes on to describe the situation, to declare the ownership of the locus in quo and the ripa, in the Canal Company and represents as the Canal Company understood it, the situation to the Legislature. It is a solemn and full assertion by the directors of that company of the title to the locus in quo. They were memorializing the Assembly against the passage of a bill which had passed the Senate granting to Mattheissen & Wiechers the locus in quo out to the Canal at a rent of $15,000; and the point of the memorial was that the Canal Company owned the ripa on the north, South Street and beyond there, and that therefore it would be unconstitutional or if not unconstitutional, inequitable to grant all the locus in quo to a stranger, and it was also stated in the resolution that they had reclaimed one part of

the locus in quo by the building of the structures that you are familiar with. Now the Lehigh Valley Railroad Company obtained a lease of the property referred to in 1871 from the Morris Canal, and with it all the franchises, books and papers, etc., and this book of minutes and this resolution accompanying the muniments of title. When the Lehigh Valley Railroad Company lately made to the Commissioners in the application for the title the very representation that was made to it by its predecessor in title, in this solemn way, it is alleged by the State now that it committed a fraud. Now, on the question, therefore, of good faith in making the alleged representations to the Riparian Commissioners that they were the owners of this ripa, on the question of good faith; it seems to me it is competent to show that that fact was represented to the Lehigh Valley Railroad Company by its predecessor in title in this solemn way, and that representation made a matter of record on the minutes which came to the Lehigh Valley Railroad Company; therefore as such we concede we are entitled to have it go in evidence. We are not able to show by any living witness or by any record that it went to the Legislature. I suppose it did, there is no reason to doubt that it did, but we are not able to get, as we thought we would, the evidence of that fact, and therefore we offer it as the declaration made by our predecessors in title coming to us in the way that I have mentioned, and tending to justify our good faith in repeating it to the Riparian Commissioners.

MR. VAN SYCKEL: This is certainly the most extraordinary evidence to establish title in 1889 that I have ever heard persented to any court. Now, here is an offer of something made in the office of the Lehigh Valley Railroad Company, or in the Morris Canal Company, in 1866, which so far as appears has never been communicated to this day to the State of New Jersey and if it had been what difference would it make. Why they can make any representation and say, because we made that representation in 1866, we made it in good faith, I don't think that follows at all. Now how can they set up such a communication as that made in 1866 to establish a title under the deed of 1889. I cannot conceive of any legal principle upon which such a representation made ex parte, without the knowledge of the grantor from whom it received the deed to establish title, and therefore we object to it.

THE COURT: Well, it seems to me that I should admit the paper if it was followed up by proof that the resolution had come to the Legislature, but if there is going to be no proof of that sort it seems to me that it is plainly irrelevant.

MR. LINDABURY: Your Honor has not quite met the thought that I had. If an owner of property has made a representation upon the sale of it, if you please, or in dealing with it, that is alleged to be fraudulent, it is competent for him to show in defense of that charge that the very representation which he made was made to him by his predecessor in title; and what I was addressing myself to was

the effect of this as a representation made to us, coming to us with the minute book which we got from the Canal Company with the lease, a representation by our predecessor in title as to the existence of a fact occurring during its ownership. It seems to me that we come within that principle. We were entitled to show, in support of our claim of good faith that what we stated with regard to a fact occurring not during our ownership, but during the ownership of our predecessor in title had been represented to us by that predecessor in title, when we got title.

MR. VAN SYCKEL: If your Honor please, one word. Now, all this idea about fraud they talk about, it is not fraud in 1866, we don't care whether they were in good faith or not. The fraud we set up and the only fraud that has to be considered in this case is the fact that they made representations in that petition for the deed of 1889 which were false, and those representations, as we have repeatedly said here, are that they were not the assignee or representative of the Morris Canal, and that there was no exterior line of solid filling established by the State which could fix a price of a grant under the Act of 1869. Now those are the misrepresentations which we complain of, and they have nothing to do with the idea of good faith in those deeds. We don't set up any fraud on their part in those deeds, and how, therefore, can they introduce before the Court a statement made in the office of the Lehigh Valley Railroad Company and never communicated to the State, that they acted in

good faith in making that representation. Admitting they did, what has that to do with the grounds of fraud on which we rest our right to repudiate the deed of 1889?

THE COURT: It seems to me that I must overrule this offer on the ground that I first stated, even in this latter aspect of it.

MR. LINDABURY: We offer in evidence Legislative Documents of New Jersey of 1867, particularly the message of the Governor to the Legislature at the opening of the Session, at page 25, the part entitled: "Wet Basin Bill" and the appendix to that message transmitted to the Legislature therewith entitled, "Objections of Governor Ward to the Wet Basin Bill," page 27½, et seq.

Marked Exhibit D-89.

MR. VAN SYCKEL: We object to it.

MR. CORBIN: I also offer the original objections above described, filed by Governor Ward with the Secretary of State, April 14, 1866.

Marked Exhibit D-90.

MR. LINDABURY: We offer in evidence Senate Bill No. 259, being the bill referred to in the Governor's message and found in the Senate Bills of 1866, produced by the State librarian, being entitled "Act to Incorporate Hudson River Wet Basin and Warehouse Company, and to contract for lease to said Company of lands of the State in New York Bay."

MR. VAN SYCKEL: We won't object to the legality of the proof, but simply put in our objection to its relevancy.

MR. LINDABURY: Now if I may suspend here the offering of documents and senate minutes I would like to do so, to allow Mr. Corbin to call a witness who has come here from the Central Railroad Company

MR. VAN SYCKEL: We agreed about that. We don't object to the mode of proof, simply put in the deeds.

MR. CORBIN: Mr. Douty, Real Estate Agent of Central R. R. Co. has brought these original files from the Central Railroad Company's office, and the other side consents that we put them in without keeping him here as a witness.

MR. VAN SYCKEL: Well, yes; we simply object to their relevancy.

MR. LINDABURY: Then I may go on.

We offer Senate Journal 1867, page 16, reading as follows: "Mr. Winfield asked and obtained leave to introduce Senate Bill No. 1, entitled: An Act to Incorporate the Hudson River Wet Basin and Warehouse Company, and to contract for a lease to said Company of lands of the State in New York Bay, which was read for the first time by its title, ordered to have a second reading and referred to the Committee on Corporations."

I will next offer in evidence the following from the Minutes of the House of Assembly, 1867: "Mr. Falkenbury, on leave, introduced a bill entitled: "A further supplement to the Act entitled An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware River, passed December 31st, 1824."

Both of these Bills were introduced on

January 9, 1867, the first day of the session. The latter is the bill that was passed after amendment.

MR. VAN SYCKEL: We want the laws.

MR. CORBIN: I will give you the date of passage. It was passed and approved March 14, 1867, found in the pamphlet laws of 1867, page 251, also printed in full in the information.

MR. LINDABURY: Now I offer Senate Journal 1867, page 66, reading as follows: "January 24, 1867. Mr. Winfield offered the following resolution: Resolved that the Governor is hereby respectfully requested to lay before the Senate for its information, a copy of the written offer made to him by the Morris Canal and Banking Company, to rent certain lands under water in the Hudson River and referred to in his veto message of Senate Bill No. 259, of last session, and his annual message, which was adopted.

I next offer in evidence page 81, being a message by the Governor in response to the resolution received. January 29, 1867: "To the Honorable the Senate of the State of New Jersey: Gentlemen: A resolution of the Senate has been communicated to me, requesting me to lay before the Senate, for its information, a copy of the offer made to me, by the Morris Canal and Banking Company, to rent certain lands under water in the Hudson River. I herewith transmit two letters, one dated April 7th, 1866, and signed by John D. Ward, vice president of the Morris Canal and Banking Company, which contains the offer referred

to; the other dated January 2nd, 1867, signed by W. H. Talcott, President of the Morris Canal and Banking Company, in which the offer made by John D. Ward, vice president, &c., on April 7th, 1866 is ratified and confirmed. Respectfully, Marcus L. Ward."

Attached is the following: "Office of the Morris Canal and Banking Company, Jersey City, N. J., April 7th, 1866. To his Excellency, Marcus L. Ward, Governor Sir: The Morris Canal and Banking Company claims the title to the most of the premises described in the Bill entitled "An Act to incorporate the Hudson River Wet Basin and Warehouse Company, and to contract for a lease to said Company of lands of the State in New York Bay.

"While that Bill was under consideration in the House of Assembly, an amendment was proposed on behalf of the Morris Canal and Banking Company, to the effect that the State should give the pre-emptive right to the said premises to the riparian owners at an annual rent of $20,000, such proposed amendment was not adopted. The Morris Canal & Banking Company without waiving such title as they had in the premises in the said bill mentioned, that they may be enabled to carry out the purposes of their incorporation without molestation, will pay to the State of New Jersey $20,000 per year, for such part of the premises in the said bill described, as they claim title to (being less in quantity than the amount therein set forth). Said rent shall commence immediately upon the passage of an act by the Legislature of New Jersey securing to

the said Company the right of the State in such premises; and such rent shall be payable without any other qualification than this, that the State of New Jersey shall secure to the said Company the right and interest of the said State in said premises during the period the said rent shall be paid.

"The said Company hereby stipulate that if they fail to accept a grant from the State of New Jersey for the said premises (so by them claimed as aforesaid) upon the terms aforesaid, they will concur in any grant of the said premises that the State may think proper to make to others, and in the peaceable possession of such grantees of the State.

"On behalf of the Morris Canal and Banking Company, John D. Ward, Vice President."

"Office of the Morris Canal and Banking Company, Jersey City, January 2, 1867. To his Excellency, Marcus L. Ward. Dear Sir: During my absence in the spring of 1866, while you as governor of the State held under advisement the Bill which had passed both Houses of the Legislature, entitled: 'An Act to incorporate the Hudson River Wet Basin and Warehouse Company, and to contract for a lease to said Company of lands of the State in New York Bay' (which lands were purchased by this Company of the Jersey Associates in 1845, and whereon costly and extensive improvements had been made by them in pursuance of the plan adopted for the establishment of

a suitable depot at the terminus of their Canal), Mr John D. Ward, Vice President of this Company, made a proposal to you under date of April 7, 1866.

"This offer was made in good faith, and the Company will, without waiving any of their rights, abide by it, notwithstanding they had always been advised and believed that their title to the lands under water and the piles and basins covered by the proposed enactment, was complete.

"Very respectfully your obedient servant,
W. N. Talcott, President."

Now we offer in evidence, page 75, dated January 24, 1867. "A message was received from the House of Assembly by the hands of their Clerk, announcing that the House of Assembly had passed the following concurrent resolution: Whereas, many of the members from West Jersey have never had an opportunity to view the premises proposed to be leased by the State, therefore Resolved, This House adjourn on Thursday, February seventh, for the purpose of visiting the premises, in a body, proposed to be leased by the State to the Morris Canal and Banking Company, or the Sugar House Company."

Now page 95, under date of January 29th 1867. "The President appointed on the Committee to make arrangements for the Legislature to visit Jersey City and inspect the property proposed to be leased to the Morris Canal and Banking Company or Sugar House Company, Messrs. Winfield and Ledlam."

Now, page 133, under date of February 4, 1867, Senate Journal.

"The President laid before the Senate the following preamble and resolution for the Common Council of Jersey City: Whereas, There is pending before the Legislature of the State of New Jersey, now in session at Trenton, two bills: one known as the Wet Basin Bill, and the other as the Morris Canal Company Bill; and whereas, the grants of land now asked for by both bills is of vast importance to the interests, welfare and prosperity of our city, present and future, and if either of said bills pass the Legislature, it will close up our streets and public highways to tide water; and whereas, the members of the Senate and General Assembly have, by concurrent resolutions, agreed to visit our city on the 7th day of February next, to examine into and look at the lands and territory asked for by both parties, before they decide who shall get it from the State; therefore, Resolved, that this Common Council, in behalf of the people of this City, appoint a committee, consisting of the President of this Board and one Alderman from each ward, to lay before them the claims of our city and citizens, and request the members of the Senate and General Assembly not to grant the lands asked for to either of the parties, but, if the State has the power to grant the lands now under water, that they make said grant to the Mayor and Common Council of Jersey City; and that this Common Council tender to the Legislature the Council Chamber for their use during their stay in the City.

Resolved, That the City Clerk send a copy of this preamble and resolutions, under the seal of the city, to the President of the Senate and the Speaker of Assembly, and request them to have them read before their respective houses."

On March 6, 1867 the bill was before the Senate for amendment, and page 375 shows the following: "Mr. Cobb moved to amend in the second line by striking out the word "grants" and inserting the word "leases." Upon agreeing to which motion the yeas and nays were ordered and taken with the following result: Yeas 9, nays 11."

The Bill, as introduced, provided for an annual payment of $20,000. It was amended in the Senate, increasing it to $25,000. I won't bother to put in the minute. And the tax imposing clause which you find in the second section of the Act was also put in by an amendment in the Senate.

Now, if the Court please, in view of the evidence which has been put in, the Governor's message and these minutes, we desire to renew the offer of the minute adopting the Memorial of the Canal Company which was first offered this morning, and the offer of which was overruled then because there was not then any indication that this claim had been made known to the State.

THE COURT: I will have to make the same ruling.

MR. LINDABURY: May we have the benefit of some identification, for whatever it may be worth, therefore, of that memorial, I have here now a copy of it, and may not that be marked for identification?

THE COURT: Yes.

MR. LINDABURY: This is a certificate under the seal of the Company. Now I offer a certified copy of that Minute, the title being: "Extract from the Minutes of Special Meeting of the Board of Directors of the Morris Canal and Banking Company, held at Jersey City, March 19, 1866, and the copy being certified the 27th of March, 1909, under the hand of the secretary of the Morris Canal and Banking Company," and having the seal of the Company.

MR. CORBIN: We have also the original minute book here which we offer.

MR. VAN SYCKEL: We do not object to the form of the proof at all. You say that is a copy, and that is enough, we do not object to the form of the proof.

MR. LINDABURY: Here we have the original minute book, and by consent and for the purpose of identification, what I now produce and offer is the certified copy so that it may be marked for identification and rejected as evidence.

Marked for identification D.91.

THOMAS K. HALSTEAD, sworn.

DIRECT EXAMINATION BY MR. CORBIN:

Q. Where do you live? A. Jersey City.

Q. Are you connected with the Jersey City Government, and if so, in what capacity? A. City Clerk's office, Jersey City.

Q. How long have you been employed in the city clerk's office? A. Forty-three years.

Q. Has that office the custody of the old tax books of Jersey City? A. It has.

Q. Have you the assessment books for Jersey City, for the portion near the Morris Canal, for the years 1839 and some following years? A. Yes.

Q. What years have you? A. 1839 to 1850, excepting one year, 1841.

Q. Have you the assessment there for 1839? A. Yes.

Q. What book is that? A. That is the Assessor's book, tax assessor's.

Q. Do you find the assessment for 1839 to the Morris Canal and Banking Company? A. Yes.

Q. Read just what you find in the book. A. Hudson Street, Block No. 1, canal, wharf and basin, assessed to owners, Morris Canal and Banking Company, assessed at $5,000, and personal estate $4,000, amount of tax paid collector $15.75.

Block No. 2, sixteen lots, water, Morris Canal and Banking Company, $2500, $4.38.

Block No. 14, twenty-four lots, wharf and canal, Morris Canal and Banking Company, $3750. $3,000, personal tax, $11.81.

Block No. 49, fourteen lots wharf and canal, Morris Canal and Banking Company, $2,000, personal $3,000 tax $8.75.

MR. VAN SYCKEL: All this is taken subject to objection of course. The objection is that it cannot affect the title of those lands as against the State. The City of Jersey City cannot take away the State's title by taxing property in somebody else's name. That is the substance of the objection.

WITNESS: Block No. 27, twenty lots, coal yard, assessed Morris Canal and Banking Company, $15,000.

Q. What map would those block numbers refer to, if you know? A. The Mangin map at that time, that is the only map we had at that time.

Q. Have you the tax book for 1840? A. Yes, sir.

Q. Refer to the assessments for the Morris Canal and Banking Company, and read what you find. A. Hudson Street, block No. 1, sixteen improved lots on South Street, Morris Canal and Banking Company, $8,000. Block No. 1, sixteen lots, water lots, Berger Street, Morris Canal and Banking Company, $1,600.

Block No. 2, sixteen water lots, Bergen Street, Morris Canal and Banking Company, $1,600. Altogether $12,000 is the valuation, and amount of tax, $46.40.

Q. Does the book show whether the taxes were paid or not? A. Yes.

Q. Were they paid? A. They are checked off here, amount return by collector, $46.40.

Q. Is there any entry to show whether they were actually paid? A. No, sir; not here; the others were and were marked paid.

BY THE COURT:

Q. Well, there are some entries there that are

marked paid, and others that are not, I notice, in this book. A. Yes, sir; some are marked paid.

Q. The Morris Canal and Banking Company entries are not marked paid? A. No, sir.

By Mr. Corbin:

Q. None of them marked paid in book 1839? A. They are not marked paid.

Q. Go on. A. Block 14, South Street, thirteen up-land lots, Morris Canal and Banking Company, $6500. Taxes $13.00.

Q. Any more for that year? A. Block 49, South Street, lot seven, Morris Canal and Banking Company, $3500, taxes $7.00.

The Court: It seems to me that if these books have any value at all their value consists in the fact that they are evidence that the Morris Canal and Banking Company paid the taxes; the mere fact that Jersey City imposed the taxes does not prove anything against the State, but if the Morris Canal and Banking Company paid the taxes why then that is evidence that they claimed to own these lands, and that they were willing to pay taxes for them. That is the way it strikes me now.

Mr. Van Syckel: We shall insist that it has no effect at all.

The Court: I know that is your insistment, but taking the insistment of the other side it seems to me their value is in the fact that those items were marked paid.

Mr. Corbin: May they not also have some evidential value as to the condition of the lots at those times where the assessor discriminates between them, some up-land lots and some water lots. These lots on

South Street he is assessing as up-land lots.

THE COURT: Well, the books are in evidence, and you have a right to introduce them.

Q. Block 49. A. Yes, I read that.

Q. Are these of 1840 marked paid, any of them? A. No; not marked paid. Then here is Block 27, lot, 56, 57, 59, 61, 63, 65, 67, 69, 71 and 73, Morris Canal and Banking Company, $7500, taxes $15.

Q. What have you for 1841? A. Book 1841 wasn't handy, we couldn't find it.

Q. 1842? A. Block No. 1, on South Street, on the north side of the street, sixteen vacant lots, value of real estate, $3200. value of real estate $8,000, amount of city tax $14.40. Amount of County tax, $1.50, State tax 64 cents. Total amount of taxes, $16.64.

Block No. 1, on the South side of the Street, sixteen lots, $800, $1600, $2.88, 40 cents, 16 cents, $3.44 under water, that second one, sixteen lots on the south side of the street.

Q. What street is that? A. South Street.

Q. Have you finished that year? A. Yes.

MR. VAN SYCKEL: What do you propose to put in?

MR. CORBIN: A certified copy from the book containing everything in that book, touching these properties and in addition to that, a certified copy from Collector's book, showing the payment of the taxes, if they do show it, and the sales.

MR. VAN SYCKEL: Of course we object on the ground of its relevancy, but as to the mode of proof we do not object.

MR. CORBIN: We offer this also for the

year 1840, we know the property was sold for taxes and bought in by somebody else, and we want to put in that sale.

MR. VAN SYCKEL: Yes, we will agree that the certified copy shall have the same probative force as if the books were put in, but we object to the relevancy and competency of it.

MR. LINDABURY: We wish to put in a copy certified by the custodian of the books, whoever it is at the present time.

MR. VAN SYCKEL: Yes.

MR. RIKER: It is suggested that a blue print can be made of this so that we can each have a copy of it, giving the lines as they are here.

Q. I show you an atlas entitled "Assessor's map of Jersey City" with the inscription, "Presented to the Common Council and approved August 6, 1847, P. C. Dummer, Mayor, J. B. Wakeman, clerk, Jersey City, July 26, 1847, Robert C. Bacot, Andrew Clerk, City surveyors;" is that one of the files of the city clerk's office? A. Yes.

Q. Is that the tax map of those deeds? A. Yes, sir; the assessor's map.

Q. It shows the blocks filled in? A. Yes.

MR. CORBIN: I offer that in evidence.

MR. VAN SYCKEL: Is that offered for any purpose except to show what was taxed?

MR. LINDABURY: Yes. To show the up-land.

MR. VAN SYCKEL: Well, we insist a map cannot show what is up-land and what is not, because there is nothing on it to show. We object to it for that reason.

Said map marked Exhibit D.92.

EDLOW W. HARRISON, recalled.

FURTHER DIRECT EXAMINATION BY MR. CORBIN:

Q. I show you a map entitled Map of property belonging to Cornelius Van Vorst, situated in Bergen County, New Jersey. Who was that map by, if you know about it? A. That is the Bridges map, a lithograph map of the Bridges map of 1835.

Q. Is that what is commonly called the farm of Cornelius Van Vorst? A. Yes.

Q. How long have you known that map? A. I have known it ever since 1869, ever since I had anything to do with engineering in Jersey City.

Q. How is it regarded by engineers? A. It is the standard map for that section of the city.

MR. VAN SYCKEL: He is not competent to prove that.

Q. Is it used in surveying and locating lines? A. Yes. Almost all the descriptions of property sold in Jersey City since that time refer to this map.

Q. Where is this property as related to the Powles Hook property of the Associates, does it adjoin it or where is it? A. This map shows the property adjoining on the west; it is just west of the ditch which forms the westerly boundary of the Associates map.

Q. Did the Associates farm, which they bought of Cornelius Van Vorst, adjoin this? A. All the property on this map, down to the Hudson River, and Cornelius Van Vorst in 1804 sold off the little island known as Powles Hook to the Associates.

MR. VAN SYCKEL: We object to this. It depends upon how it does affect it whether it is competent.

Map offered in evidence and marked Exhibit D.93.

MR. CORBIN: I now offer in evidence the deeds which Mr. Douty, the real estate agent of the Central Railroad Company left here in the custody of Mr. Harrison.

If your Honor will permit me, as those are all numbered in the railroad records, I will refer to the Central Railroad Company's numbers as well as giving them our own Exhibit numbers. These deeds were made, nearly all of them, to the Central Railroad Company of New Jersey, and they contain, for the most part, a strip generally three feet wide on and around this shore, and the Central Railroad Company, after getting them, made a deed to us; a deed to us, as against them, to keep the whole of this Morris Canal grant, we, on our part, consenting that they occupy the property which they now occupy.

MR. RIKER: Are those absolute or conditional deeds?

MR. CORBIN: For instance, the Jane Van Horne parcel came through two contracts and two deeds, the result of all which was to give absolute title of the property to the Central Railroad Company of New Jersey.

MR. VAN SYCKEL: If you give us a resume of them and refer to the deed so that we will have a right to examine them I think that will be the better way.

MR. CORBIN: Very well.

MR. VAN SYCKEL: We can call on you if we want to see them, I suppose.

MR. CORBIN: Certainly. With regard to some of these deeds I haven't the origi-

nal, but have certified copies from the county clerk's office.

MR. VAN SYCKEL: That is all right.

MR. CORBIN: These continue all of the way around the cove down to the Hudson River, in fact taking in the Mattheissen and Wiechers and Central Railroad Company deeds to us down to the Hudson River.

RECESS.

DAVID G. BAIRD, sworn.

DIRECT EXAMINATION BY MR. CORBIN:

Q. Where do you live? A. Beverly, N. J.

Q. Are you secretary of the Lehigh Valley Railroad Company? A. Yes.

Q. How long have you been secretary? A. Six years.

Q. Were you in their office before you were secretary? A. Yes.

Q. For how long? A. Thirty years before I was secretary.

Q. In what office? A. In the office of assistant secretary, secretary of sundry of our subsidiary lines, quite a number of them.

Q. Do you hold any office in the Morris Canal and Banking Company? A. I am secretary of that company.

Q. Did you hold any office in the Easton and Amboy Railroad Company before its merger? A. I did.

Q. What? A. Secretary.

Q. For how long? A. I cannot recall just now.

Q. A brief time or many years? A. I should think it would be a brief time.

Q. And the Jersey City Terminal Railroad Co.? A. I was secretary of that from its inception.

Q. The Lehigh Terminal Railway Company? A. Yes.

Q. Do you hold any office in the Lehigh Valley Railroad Company of New Jersey? A. I do.

Q. What? A. Secretary.

Q. Since when? A. Since its inception.

Q. Are you familiar and have you been familiar with the ownerships of stocks of these subsidiary companies? A. I have.

Q. In 1889 when this grant by the State was made to the Lehigh Valley Railroad Company, did it own any shares, and if so, how many shares of the Easton and Amboy Railroad Company?

MR. VAN SYCKEL: We want to simply have an objection to the relevancy of this.

A. In 1889 the Lehigh Valley Railroad Company, the Pennsylvania corporation owned 59,970 shares of the Easton and Amboy Railroad Company's stock.

Q. Out of how many? A. Out of sixty thousand total issue.

Q. Who owned the remaining thirty shares? A. Thomas N. McCarter owned twenty shares, and E. M. Paterson ten shares.

Q. Mr. McCarter was one of the directors? A. Yes.

Q. And Mr. Paterson? A. He was one of the original builders and promoters of the line.

Q. Did the Lehigh Valley Railroad Company ever acquire those thirty shares? A. They did afterwards.

Q. Do they own them now? A. They own them now.

Q. The shares of the Lehigh Valley Terminal Railway Company by whom were they owned? A. By the Lehigh Valley Railroad Company.

Q. At all times during its existence? A. At all times.

Q. The Jersey City Terminal Railway Company, who owned those? A. As well; the Lehigh Valley Railroad Company.

Q. At all times? A. At all times.

By Mr. Van Syckel:

Q. That is the Lehigh Valley Railroad Company of Pennsylvania? A. Yes.

By Mr. Corbin:

Q. The Lehigh Valley Railroad Company of New Jersey, which is the merged Company? A. Yes.

Q. Who owned the shares of that? A. The Lehigh Valley Railroad Company.

Q. The Pennsylvania Corporation? A. The Pennsylvania Corporation.

Q. Have they owned all the shares all the time since its formation? A. Yes.

Q. I suppose some of the shares in each of those companies stood in the name of the directors? A. In my answer I have included those qualifying shares as being the company's ownership.

Q. They had a beneficial ownership in them, did they? A. Yes, sir.

No Cross Examination.

MR. CORBIN: I offer in evidence one of the original prints of the Douglass map of 1841 of Hudson county, being the map that we had under discussion the other day, the copy being excluded.

Its title is "Topographical map of Jersey City, Hoboken and the adjacent county, describing minutely the course of rivers and brooks of Township, and original patent lines railways, turnpike, carriage and bridle roads, the present farm boundaries with the names of their proprietors, a correct plan of public grounds and gentlemen's country seats, the position of farm houses, forests, swamps and marshes, showing a complete view of the face of the country from the actual survey by L. F. Douglass, engineer, Jersey City, 1841, published by the author."

EDLOW W. HARRISON, recalled.

DIRECT EXAMINATION BY MR. CORBIN:

Q. Are you familiar with the Douglass map of 1841? A. Yes, sir.

Q. How long have you known that map? A. Ever since I have been in business, nearly forty years.

Q. How is that map regarded and received by engineers and land owners?

Objected to.

A. It is regarded by engineers as a correct delineation of the county, of the part of the county which is shown in 1841; it is used in numerous cases, it has been used for fixing land lines, governed, of course, by its scale which is very small; the shore line as shown upon that map is taken to be a correct delineation of the shore line at the time the map was made. I have never heard the map disputed, and in all my experience I never yet found a case where the map was wrong.

Q. In what repute is it held for accuracy?

Objected to.

A. A very accurate map.

CROSS EXAMINATION:

Q. Did Mr. Douglass at that time occupy any official position, and what? A. I think not.

MR. VAN SYCKEL: We wish to object to the relevancy of this map.

Q. That is all.

FREDERICK DUNHAM, sworn.

DIRECT EXAMINATION BY MR. CORBIN:

Q. You are a civil engineer? A. Yes.

Q. Practicing your profession where and how long? A. Jersey City since 1882.

Q. Are you familiar with the Douglass map? A. I am.

Q. How long have you known it? A. Well, I have known it since 1882.

Q. What is its repute for accuracy?

MR. VAN SYCKEL: We object also to that question.

A. Well, as showing the geographical features, it has been found and I have always found it to be very accurate.

Q. Have you made any investigation with reference to it, and with reference to the position of Mr. Douglass, whose name is upon it? A. In reading through the old minutes of the Common Council of Jersey City I find that Mr. Douglass was appointed City engineer along in the forties.

BY MR. VAN SYCKEL: Was that the time when he made that map?

WITNESS: Yes, about that time. I read the minutes through from 1835 up to 1850 about, and I know along just about in that time that he was the engineer; I ran across his name several times as the engineer of Jersey City and city surveyor.

Q. That is the only official position that you have heard of his keeping with reference to this map, I suppose? A. That is the only one that I know of, yes; I don't know of that only from having read it.

MR. VAN SYCKEL: We object to the map.

BY MR. LINDABURY:

Q. Is there a copy of this filed in the county clerk's office, do you know? A. Yes.

Q. How long has that been there? A. As long as my memory goes back.

Q. Do you know whether it has been in constant use or not, in the city? A. Oh, yes.

Q. By whom? A. It is very frequently referred to in searching land titles; we have an original copy in our office.

Q. There has been a re-issue of this, has there not? A. I think there has been, but we have one of the old copies which was in the possession of Mr. Levi Post, who was one of the old surveyors.

THE COURT: Yes; I think the map is undoubtedly admissible in evidence, but of what it is evidence is a different question.

MR. VAN SYCKEL: Yes, but its probative force is what we dispute. We object to it.

Marked Exhibit D. 94.

MR. CORBIN: I now offer in evidence copy certified this day by the Register of Hudson County, New Jersey, of "A map of that part of the Town of Jersey commonly called Powles Hook," as the same is on record in his office, in Liber E of Deeds of Jersey, page 1.

Marked Exhibit D.95.

MR. CORBIN: In the matter of the deeds tracing the title from the Associates of the Jersey Company, those that I offered in evidence began with exhibit D.26, I think, dated February 1, 1805 from Richard Varick, Jacob Radcliff and Anthony Dey

to the Associates of the Jersey Company, recorded Book A, page 74, and followed by other deeds; the legislative act, I think, and other documents in the case refer to this purchase by the Associates of the Jersey Company as being from Cornelius Van Vorst. I omitted to put in the other day the deeds from Cornelius Van Vorst to those three merchants, Varick, Radcliff and Dey, and for the sake of completeness of the title I ask leave to offer the two instruments, I haven't them here now, from Cornelius Van Vorst to Varick, Radcliff and Dey in 1804 or 1805, and with your Honor's permission I will insert in the record the accurate description of them; they are deeds that are recorded.

I offer in evidence a deed from Cornelius Van Horn and wife to the Easton and Amboy Railroad Company, dated November 1, 1887, recorded Hudson County's register office, November 5, 1887, book 447, page 227.

Marked Exhibit D.96.

MR. CORBIN: Also a deed from Garret Van Horn and wife, Annie M. DeMott and husband, Mary E. Berdam and Julia G. Brooks and husband, being the Van Horn heirs, to Easton and Amboy Railroad Company, dated July 6, 1887, recorded book 446, page 130.

Marked Exhibit D.97.

MR. VAN SYCKEL: They go in subject to objection.

MR. CORBIN: Also a deed from Franklin Brooks and wife, to Easton and Amboy Railroad Company, dated August 28, 1888, recorded in book 465 of deeds for Hudson

County, page 94, land in the same vicinity.

Marked Exhibit D.98.

MR. CORBIN: In the early part of the case there were one or two instruments mentioned, marked for identification. I am not able to lay my hand on them at this moment, and I think there is only one left now that has not been admitted, but if there is anything left I would like to offer it in evidence now and your Honor can pass upon it at the argument.

MR. VAN SYCKEL: We don't object to that.

MR. CORBIN: I offer in evidence all the documents which on our part have been marked for identification, with the exception of course of the one marked this morning which your Honor definitely excluded; that was the Canal Company's memorial of 1866.

MR. VAN SYCKEL: Yes, subject to objection.

MR. CORBIN: I now offer a copy of the Hill and Townsend map for the purpose of assisting in the identification of the deeds I have already put in. The Hill and Townsend layout was on a map which they made in 1849. They, after buying from Van Vorst, laid out a map at the northwest corner of this cove, and I offer in evidence their map entitled, "Map of property belonging to Sela Hill, Samuel P. Townsend and others, situated in Van Vorst Township Hudson County, New Jersey, three-quarters of a mile from Jersey City ferry, compiled by A. Clerk and R. C. Bacot, city surveyors June 14, 1849," filed Hudson County clerk's office July 26, 1849, and now in the register's office.

Marked Exhibit D.99.

JULIUS G. HOCKE, recalled.

FURTHER DIRECT EXAMINATION BY MR. CORBIN:

Q. Have you continued your efforts to classify the expenditures made on the Morris Canal grant and the West Line grant by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. Have you put them in chart form? A. Yes, sir.

Q. I show you a chart entitled "Cost of construction of improvements of Jersey City Terminal, Lehigh Valley Railroad Company of New Jersey, fiscal year ending November 30, 1888;" you have displayed it by months there for that year? A. Yes, sir.

Q. Is it correctly classified, the various parcels? A. Yes, sir.

Q. How much was the total spent in that fiscal year, ending November 30, 1888, on the Morris Canal grant? A. $385,808.

Q. Now, for the years which followed down to 1897, have you got the fiscal years—have you got the classification on another sheet? A. Yes, sir.

Q. Is this by years or months? A. By years.

Q. What was the amount spent in 1888, the fiscal year, ending November 30, 1888? A. $385,808 in 1888.

Q. Now, 1889. A. $262,456.22.

Q. 1890? A. $28,310.24. 1891, $19,691.06. 1892, $109,618.58. 1893, $800.75. 1894, $13,399.30. 1895, $55,995.29. 1896, $26.31. 1897, $2,832.65, making a total in the years 1888 to 1897, inclusive of $878,898.40.

MR. RIKER: Do you mean the fiscal years ending?

WITNESS: Yes.

BY MR. LINDABURY:

Q. Does the fiscal year end in each case on the 30th of November? A. Yes.

Q. It stopped in 1897? A. Yes.

BY MR. CORBIN:

Q. Have you on these same schedules the tabulation of the expenditures on the West Line grant and the rest of the yard to the west? A. Yes.

Q. State them by years and how far, first, how far back these expenditures extend, whether to the West Line grant or to the Van Horn property west of it? A. They extend to and include the Van Horn property and also the property at Pacific Avenue and Grand Street.

Q. That is the Jersey City local terminal next to the north of the Van Horn tract? A. Yes.

Q. Now give the amount for the fiscal year ending 1888 and so on. A. The fiscal year ending 1888, November 30th, $83,115.84.

MR. VAN SYCKEL: What is that on—not on the basin?

A. On the balance of the Jersey City Terminal in the fiscal year 1889, $109,329.42. 1890, $150,719.54. 1891, $376,442.74. 1892, $194,839.83. 1893, $7,812.41. 1894, $49,531.29. 1895, $9,143.63. 1896, $979.67. In 1897 there was a credit of $7.78, that is to make up the total. The total amounts expended on the property west, on the balance of the property outside of the Morris Canal grant was $981,906.59, making a grand total for the basin and the balance of the property of $1,860,804.99.

Q. Now have you in gross here the figures that have since November, 1897, been expended upon the Morris Canal grant? A. Yes, sir.

Q. How much is it down to the year 1908? A. From November 30, 1897 to June 30, 1908, the amount is $163,155.96.

Q. And how much on the West Line grant and the rest of the yard to the west thereof, in the same period? A. It is not here.

MR. CORBIN: I offer in evidence those monthly tabulations of expenditures for the fiscal year ending November 30th, 1888 on Morris Canal basin grant.

Marked Exhibit D.100.

MR. VAN SYCKEL: All this is subject to our objection.

MR. CORBIN: I offer in evidence the annual tabulation covering the fiscal years ending 1888 and down to 1897.

Marked Exhibit D.101.

Q. Did you make the distribution of the items on to these different heads? A. Yes.

Q. Are they correctly made according as the expenditures were made? A. Yes.

Q. Can you make up a similar tabulation from these rough figures you have of the expenditures made on the basin grant from 1897 to 1908? A. Yes.

Q. Will you send that in to counsel? A. Yes.

MR. CORBIN: I ask permission, when he sends this tabulation in for the years down to 1908, to mark it as Exhibit D.102.

Q. Have you any tabulation or any figures here for that part of the yard west of the basin grant since 1897, or have you the total? A. I haven't got it here.

Q. Can you make up from the data you have a tabulation of that? A. It is in course of preparation.

Q. Will you please complete that and send it in. A. Yes.

MR. CORBIN: I will ask permission of the Court to mark that Exhibit D.103.

Q. Will you please verify it with your signature? A. Yes, sir.

Q. Have you made or are you making a monthly tabulation of expenditures on the canal grant for the fiscal year ending November, 1889? A. Yes.

Q. Will you please verify that with your signature? A. Yes, sir.

MR. CORBIN: With the permission of the Court I will ask to mark that Exhibit D.104.

MR. VAN SYCKEL: We object to the relevancy and admissibility of all this testimony.

CROSS EXAMINATION:

Q. You say you have separated these different items correctly, do you mean to say you did it from your own knowledge of the expenditures that were made upon each piece of property or from the books? A. From my knowledge, verified by the books.

Q. What knowledge have you, outside of the books? A. A personal knowledge.

Q. Well, of what, of how much of all this that you have been testifying to, as to this separation; did you not take the books and find from the books the distribution you have made, is not that it? A. The distribution was made some years ago by me, and I simply verified my former work.

Q. Well, do you know that this particular work which you distributed, say to the basin, was done

for that particular basin; do you say so now? A. I am morally certain of it.

Q. And all this statement you make from your memory and not from the books themselves? A. No, sir; I use the books.

Q. Well, you use the books, you find it there upon the books? A. Yes.

Q. As you have testified here? A. Yes, sir.

Q. But without referring to the books could you testify to it? A. Not the exact figures.

Q. Could you say, without referring to the books, from your memory, that any part of this cost that you distributed to the basin was done upon the basin. What I want to know is whether you have simply taken the books which says that this work was done upon the basin, whether you rely upon that or whether you rely upon your memory about it? A. I rely upon the books.

Q. I am not disputing that these notes appear upon the books; you say they do. As I understand these distributions appear upon the books of the Company? A. Yes.

Q. Do you know that from your own memory or do you not? A. I know it is a fact.

Q. Well, I don't know what you call facts. I ask you whether you remember that or whether you find these upon the books, as you have stated. I am not disputing it is upon the books this way, if you say so, nor do I require you to bring the books here if you testify that those distributions appear upon the books, and that you rely upon the books to show what the distribution is. That is all I want to know. A. I rely partly on the books and partly on my memory.

By Mr. Riker:

Q. Now, Mr. Hocke, referring to the first sched-

ule which you put in, and which I think is marked D.100, I see that you have divided all expenses between west of basin and basin, beginning with dredging and then following as follows: removing obstructions, grading, bulkheads, mooring stakes, tracks, piers, etc., etc. Where did you get that distribution from? A. I got that from the books.

Q. Do you say that that distribution appears upon the books of the Company? A. Yes, sir.

Q. As it appears on those monthly schedules? A. Yes, sir; not in the exact form.

Q. Well, I don't mean the form, I mean the figures. A. The majority of items appear on the books, distributed as they are here, but there are some bills that are rendered at the end of the year which had to be distributed in proportion to the bulk of the other expenditures.

Q. A pro-rata distribution? A. Yes.

Q. Which are they? A. Tracks, lumber and iron account, engineering inspection and incidentals.

Q. How much does the bill for engineering, incidentals and expenses amount to? A. The total?

Q. Yes. A. $15,131.23.

Q. Now, coming to your next sheet which is D.101, I notice there is no distribution on the sheet after the items dredging and removing obstructions and grading? A. As to basin?

Q. As to the basin and west of basin. A. That is an error on this sheet; we expected to put that on, but it was left out in error. The distribution we can put on.

By Mr. Corbin:

Q. Have you the data from which you can fill it out? A. Yes.

Q. Well, in making the new prints you better do so. A. I can put it on now.

By Mr. Riker:

Q. Well, now, just wait; what items on this sheet were distributed on the basis of pro rata, expenses? A. None at all.

Q. Are there then books of the Company in your office which show the distribution exactly as they appear upon this sheet? A. Yes.

Q. I notice that this includes the same distribution that you made for 1888 except that it is not by months, and you say in your monthly sheet there was distribution pro rata, and in this sheet there isn't any such distribution pro rata, and yet they come to exactly the same figures; now how do you account for that? A. Because this statement gives it by the year, for the year 1888.

Q. But in making up the year 1888 you had to divide at least three large items on a pro-rata basis? A. No, sir; they were taken in lump.

Q. Well, in lump, that is the expenditure as you had it on your books represented the expenditure for both basins, in connection with both basins? A. Yes.

Q. And you divided it? A. Yes.

Q. Now how do such items appear on this sheet? A. In case of the engineering inspection and incidental charge we did distribute them pro-rata.

Q. During all these years? A. Yes, sir.

Q. Now, will you produce your sectional map for 1889, which you have already had before you. A. (Produced.)

Q. When you state on this map that the development during the year 1888 is in red, do you mean down to November 30, 1888? A. Substantially to the end of the year 1888.

Q. So that your map does not agree as to time with your sheets? A. Substantially so.

Q. Well, one runs to November 30th, in each year, and your other runs to December 31st, in each year, is that right? A. Yes, sir.

Q. Now you have in green upon this map, and in black everything completed up to the end of the fiscal year 1889, or up to the date of the grant? A. Yes, sir.

Q. Up to December 20, 1889, I am taking. Pier 2 was completed? A. Yes.

Q. Pier 3 was completed? A. Yes.

Q. Pier 4 was completed? A. Yes, sir.

Q. Pier 5 was completed? A. Yes, sir.

Q. How were those piers constructed? A. Of timber.

Q. Altogether of timber? A. And iron, iron fasteners.

Q. And their foundations were what? A. Creosoted pine.

Q. Are those piers there now? A. No, sir; not all of them.

Q. Which ones are not? A. The one marked Pier 3 has been burned recently, destroyed by fire.

Q. But with that exception they are there to this day? A. Yes, sir; with some alterations.

Q. Now have the piles lasted during all this time, or have you been obliged to replace them? A. We have been obliged to make repairs from time to time.

Q. How long does the piling last, what is its life? A. I should say indefinitely, creosoted pine.

Q. Would they last fifty years? A. Yes, sir.

Q. Have you ever known any to last fifty years? A. Yes, sir.

Q. Would they last seventy years? A. I should think so.

Q. Have you ever known any to last seventy years? A. No, sir.

By The Court:

Q. In the statements that you have made of the different years do you include repairs and renewals? A. No, sir.

Q. You only include additional work? A. Yes.

Q. You have a repairs account and a capital account? A. Yes.

Q. What does the repairs account include? A. Simply the current repairs.

Q. Suppose you put in new piling, would that be current repairs or capital? A. It would be repairs.

By Mr. Riker:

Q. Now, would all those piers which we have referred to, Pier 2, 3, 4, and 5, laid out as they were upon the plans which you first saw for the proposed construction of this terminus? A. Yes, sir.

Q. When did you see that proposed plan for the construction of the terminal? A. In the early part of 1888.

Q. And that plan was carried out into actual construction as shown on this map? A. Substantially so.

Q. The only pier that was built after the end of the fiscal way of 1889 was a small projection to the west of Pier 5? A. Yes, sir; triangular pier projecting from Washington Street east.

Q. Was that shown on the plan of 1888 which you first saw? A. No, sir.

Q. That was subsequently developed? A. Yes.

MR. CORBIN: I think you omitted the float pier.

WITNESS: There have been a number of changes.

Q. Now the filling that shows within the Morris Canal grant of 1867 as it is marked here was substantially completed before the Fall of 1889? A. Yes, sir.

Q. That is solid filling? A. Yes.

Q. And that is there to-day as it was? A. Yes.

Q. That was shown on your map of 1889, showing the work to be done? A. Yes.

Q. I refer to the part that is marked roadway, and which appears to be the hundred foot right of way, as near as I could estimate it; was that all there before 1889? A. Yes, sir.

Q. All as it is now? A. Yes, sir.

BY THE COURT:

Q. Have you ever dredged the basin, does it tend to fill up? A. Yes, sir.

Q. So that you have to be constantly redredging it? A. Yes, sir.

Q. In order to contain the same depth of water? A. Yes.

Q. When you redredge do you call that capital or current? A. Current.

Q. None of that enters into these tables? A. No, sir.

BY MR. VAN SYCKEL:

Q. You didn't keep the books yourself, you had nothing to do with keeping the books on which these figures are found? A. I had charge of the books.

Q. I ask you whether you made the figures or kept the books yourself? A. No, sir.

Q. You simply told the book-keeper what you knew about the transaction, and it was his duty to transcribe it if he thought it necessary; is that the fact? A. Yes, sir.

By Mr. Lindabury:

Q. Didn't you make the sheets that were here the other day, from which those accounts were made up? A. Yes.

Q. You made the original sheets from which the books were made up, showing the distribution? A. I understand Judge Van Syckel means the bill books.

Q. Well, didn't you make the original sheets from which the accounts in the books were made up? A. No, sir.

Q. You had some here the other day in your hand writing; what were they? A. They were annual reports made from the books.

Q. Annual reports made up from the books? A. Yes.

Q. The books were not made from them? A. No, sir.

By The Court:

Q. I understand this witness to have said the last time he was examined that the contractors bills came under his personal observation and he approved them; I suppose, of course, after his approval the treasurer or financial officer would pay the bills and then they would be entered in the books, is that right? A. Yes, sir.

By Mr. Corbin:

Q. Is not the classification right on the back of the contractors' bills? A. Yes, sir.

By Mr. Collins:

Q. Made by you? A. Ordered made by me.

BY MR. CORBIN:

Q. Is it made by you when you classify the bill? A. Yes.

Q. You have spoken of some of the land where the tracks are, as being filled previous to 1889, was it not filled before you took possession in 1888 and if so, how far was it filled; I am speaking of the southerly portion of the Morris Canal grant? A. A very small proportion that is from the center of Washington Street to about two hundred feet east.

Q. Well, from there down to the Hudson River front, along side of the Central Railroad property had it not been filled? A. No, sir; there was very little filling; there was a small crib in here (indicating on map).

Q. Where was the bulkhead which extended out towards the Hudson River from Washington Street? A. Along this line (indicating).

Q. That is the line between the Morris Canal and the Central Railroad? A. Yes, sir.

MR. CORBIN: I offer in evidence the following deeds and papers; many of them are from the files of the Central Railroad Company of New Jersey, which they have produced here upon my summons, and for convenience in identifying them I will state the Railroad Company's file number. I ask that the exhibits be marked from D.105 to D.141.

Admitted.

(For list see Exhibits printed elsewhere.)

MR. CORBIN: Unless we have inadvertently omitted some document which we

would like to have the chance to put in later, if we discover that there is any such thing, we are ready to close our testimony.

Adjourned until Friday, April 2, 1909, at Chancery Chambers, Newark, N. J.

(N. B.—On April 2, 1909, Informant took testimony, see page 253, et seq., supra of Informant's case, whereupon the testimony was closed.)

In Chancery of New Jersey.

Between ROBERT H. McCARTER, ATTORNEY GENERAL OF NEW JERSEY, *Informant,* *and* LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, LEHIGH VALLEY RAILROAD COMPANY (of Pennsylvania) and CENTRAL TRUST COMPANY OF NEW YORK, *Defendants.*	On Information. (Filed Oct. 8, 1907.)

DEFENDANTS' EXHIBITS.

D. 1.

Charter of The Morris Canal and Banking Company.

AN ACT to Incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers.

(Passed 31st December, 1824, P. L. 158.)

Whereas, the construction of a Canal, to unite the river Delaware, near Easton, with the tide waters of the Passaic, will be of great public benefit and advantage to the people of New Jersey; *now, therefore*, in order to secure to the state the results of this public work, and also as an induce-

New Jersey State Library

ment to a company to engage in this important undertaking, and in consideration of the risks and expenditures which they may encounter in its execution and operations; *Therefore,*—

1. *Be it enacted by the Council and General Assembly of this State, and it is hereby enacted, by the authority of the same.* That Jacob S. Thompson, of Sussex; Silas Cook, of Morris; John Dow, of Essex; Charles Board, of Bergen, and all and every other person or persons, who may become subscribers, according to the mode hereinafter prescribed, their successors and assigns, shall be, and are hereby incorporated by the name of the "MORRIS CANAL AND BANKING COMPANY," for the purposes and with the privileges and immunities hereinafter described, defined and granted; and by that name shall be a body corporate and politic in law, and shall and may sue and be sued, implead and be impleaded, in courts of justice, or in any other place whatsoever; and the said Company shall have power and authority, at any time after the passage of this act, to purchase, receive in donation, possess, enjoy and retain, demise, grant, alien, and sell, all such lands, tenements, hereditaments, water streams, and water privileges, rights, goods, chattels and effects of every description whatsoever, as may be necessary for carrying into effect any of the provisions of this act, and under the restrictions and limitations therein mentioned; and that the said company shall have perpetual succession, and power to make and use a common seal, and the same to renew and change at pleasure; and also to adopt, establish, and carry into execution, such by-laws, ordinances and regulations, as shall by its president and directors be judged necessary or convenient for the said corporation, in respect to its canal and banking operations hereinafter mentioned, and the same to change, alter, repeal, an-

nul, and re-enact; *Provided,* the same be not contrary to the constitution or laws of the United States or the State of New Jersey.

2. *And be it enacted,* That George P. M'Culloch and John Scott, of the county of Morris; Israel Crane, of the county of Essex, and Joseph G. Swift, Henry Eckford and David B. Ogden of the city of New York, be and they are hereby appointed commissioners for receiving subscriptions for the sum of one million of dollars to constitute the capital stock for the canal aforesaid, in shares of one hundred dollars, each; and that the said commissioners, or a majority of them, shall and do open books for that purpose, at such time and in such place or places within this state, as they shall designate by public advertisements to be previously inserted for at least three weeks in a public newspaper printed in Morristown, Newark, and the city of New York respectively; and shall continue the same open until the said capital stock shall be subscribed, or at their discretion close the same, after they shall have remained opened two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid. And the sum of ten per cent. upon each share so subscribed shall be paid in specie, or in bills of banks which redeem their bills with specie, by each subscriber, at the time of subscription, to the said commissioners, or a majority of them; and the amount so received at the time of subscription shall by the said commissioners or a majority of them, be deposited in such bank or banks, as the said commissioners or a majority of them, may elect in their joint names, there to remain until the same shall be by them paid over to the directors of the said company, to be appointed as hereinafter directed; that the said directors, when so appointed, shall have power, and they are hereby authorized, to call upon said subscribers for the

payment of further installments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures, as they may deem expedient, until the whole amount of the said shares so subscribed shall have been fully paid.

3. *And be it enacted,* That the management of the concern of the said company shall be and the same is hereby vested in fifteen directors, to be selected from the stockholders; and that the said directors shall choose, by plurality of votes, a President from among themselves; and as soon as conveniently may be, after the said stock of one million of dollars shall have been subscribed, the before named commissioners, or a majority of them, shall convene the said stockholders by public notice to be given as aforesaid, and at such time and place as they shall designate in said notice, to choose the first board of directors, who shall hold their offices until the first Monday of April, eighteen hundred and twenty-six. And if, for any cause whatsoever, an election of directors should not be made on the day whereon in pursuance of this act it ought to be made, the said corporation shall not for that cause be deemed dissolved, but it may be lawful at any other time to hold such election, public notice of the time and place being previously given as aforesaid; and until such election be made, the president and directors for the time being, shall continue in office: *Provided* such election be held before the first day of January next ensuing the stated day of election. And in case of the death, resignation, incapacity, or removal of the president, or one or more of the directors, the vacancy thereby occasioned may be supplied by appointments to be made by the board of directors; and at all elections of directors, each stockholder shall be entitled to one vote for every share of stock by him or her held.

4. *And be it enacted,* That no state, county, township, or other public assessments, taxes or charges whatsoever, shall at any time be laid or imposed upon the said Canal Company, or upon the stocks and estates which may become vested in them under this act; but this exemption shall not extend to any other estate or property of the company, than such as is possessed, occupied and used by the said company for the actual and necessary purposes of said canal navigation under this act, according to the true intent and meaning thereof; and no tax shall be imposed upon any property of said company, or of other persons transported or used upon or about said canal, of greater amount, according to the value of the article taxed, than shall at the same time be imposed upon the property of the same or similar kinds in the state of New Jersey.

5. *And be it enacted,* That it shall be lawful for the said company to construct, make and execute a canal, or artificial navigation, to connect the waters of the Delaware river, near Easton, with the tide waters of the Passaic river, and passing through the county of Morris, with all the locks, works, devices, wharves, toll-houses, and offices necessary for the use of said canal. And it shall and may be lawful for the said company, by its president and directors, and by any agent, engineer, superintendent, or contractor, or any other person or persons employed in the service of said company, to enter from time to time, and at all times, and upon all lands, whether covered with water or not, for the purposes of exploring or surveying the route or routes for said canal, and locating the several works above specified, doing thereunto no unnecessary damage. And when the said route or routes shall have been fixed upon, and its several works located by the president and directors, or a majority of them, and a

survey thereof deposited in the office of the Secretary of State, then it shall be lawful for them, and for any agent, superintendent, engineer, contractor, or any person or persons employed in the service of said corporation, at any time to enter upon, take possession of, and use, all and singular such lands, water, and streams, subject to such compensation to be made therefor as is hereafter directed.

6. *And be it enacted,* That where lands, waters, and streams, that may be useful for said canal, shall not be made a free gift by their owner or owners to the said company, then the company shall pay to the owner or owners such compensation as shall be mutually agreed upon. And in case of disagreement in relation to the value of such lands, waters and streams, or in case the owner or owners thereof be *feme covert,* under age, *non compos mentis,* or reside out of the state, then it shall be lawful to and for the aforesaid president and directors, from time to time, and at all times, to cause a survey or surveys, and a map or maps, to be made, of any of the lands, waters and streams, in their estimation requisite, and not given as aforesaid, and which they are authorized by this act to take for the uses aforesaid; in the field book of which a map and survey, or maps and surveys, shall be distinguished the land or waters of each of the several owners and occupants appropriated, or intended to be appropriated, as aforesaid, and the quantity thereof, and shall exhibit the same to one of the justices of the Supreme Court in this State, not being a stockholder (having given at least ten days' previous notice in writing to the parties concerned, if resident in the state, and by publication in at least two gazettes, published in the counties to be traversed by the canal, of the time and place of such exhibition), such book and map being accompanied by the oath or affirmation of one of the engineers employed by

said company, that the premises therein described are required to be occupied by the company for the purpose of carrying into effect the object set forth by this act, and are not more than is requisite for the said uses; and thereupon it shall be the duty of said justice to certify such map and book under his hand and seal, and to cause the same to be filed in the office of the clerk of the county where such water or stream may be situated, there to remain a public record. And it shall also be the duty of the said justice, at the time and place aforesaid, by a writing under his hand and seal, to appoint three discreet and disinterested freeholders, chosen from some county or counties not interested by the canal, as appraisers, who shall, before they enter upon the duties of their appointments, severally take and subscribe an oath or affirmation, before some person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act, and shall receive such compensation, to be paid by said company, as the justice by whom they are appointed shall determine. And it shall be the duty of said appraisers, or a majority of them, if requested so to do by the owner or owners, or by the company, to make a just and equitable estimate and appraisal of the value of the lands, and damages to the several owners, proprietors, or parties interested in the premises so required for the purposes aforesaid—the said appraisers having given ten days' previous notice of the time and place of meeting, to make such appraisements to the owner or owners resident in this state. And the appraisers or a majority of them, shall make regular entries of their determination and appraisal, in a book or books, to be by them kept for that purpose, and shall certify the same under their hands and seals, acknowledging the same before some person authorized to take the acknowledgments of deeds, and shall cause such book or books to be

filed in the office of the clerk of the county in which the lands may be situated, there to remain a public record. And the company shall pay, or tender the damages so assessed to the person or persons entitled thereto; or in case such owner or owners shall be *feme covert,* under age, *non compos mentis,* or reside out of the state of New Jersey, the said company shall pay the same into the Court of Chancery of this state, to be disposed of under the order of the Chancellor, according to the laws of this state; and immediately thereupon, the estate, right, property and interest, in and to the premises so appropriated, described and appraised, shall be vested in the company, to be by them held so long as they shall be used for the purposes of said canal.

7. *And be it enacted,* That it shall be lawful for the president and directors of said company, and their superintendents, engineers, workmen, and laborers, with carts, wagons, and other carriages, and with their beasts of draught and burden, and all necessary materials, tools and implements, to enter upon all lands contiguous to or near to the route or tract of the canal, doing as little damage thereto as possible, and repairing any breaches they may make in the enclosures thereof, and to take and carry away any stone, gravel, clay, sand, or earth, there being most conveniently situated, and being most suitable for making or repairing said canal, the locks and other devices before mentioned, thereto belonging —the said owners or occupants being entitled to a fair compensation or remuneration for the materials taken, or damages done, if claimed within twelve months from the time of such damage sustained, or material taken away. And in case of disagreement as to the amount of such damage, then it shall be lawful for the clerk of common pleas of the county, upon the application of the

company, to appoint three judicious disinterested freeholders as appraisers, who, having given at least fifteen days' notice to the owners, occupants or persons having charge of such lands, and having been previously sworn fairly and impartially to inquire into, and report the amount of the said damages, shall deliver to each party, or deposit in the clerk's office of the county for their use, a copy of their appraisal, under their hands and seals; which appraisal shall be conclusive evidence of the amount of damages in any suit to be brought therefor, deducting therefrom, on such suit, all costs and charges of the appraisement, if the amount so appraised shall not exceed one dollar, nor be less than what the company offered to pay before the appointment of appraisers.

8. *And be it enacted*, That the president and directors or a majority of them, shall have power to elect all engineers, treasurers, collectors, cashiers, tollmen, clerks, agents, artificers, workmen, laborers, servants and officers whatsoever, necessary in their judgment, for conducting the affairs of the company, and to dismiss and elect others at their pleasure; and also shall have power to charge and collect tolls and rates for the passage of all boats, goods, draught cattle, wares, passengers, produce, and merchandise whatsoever, upon the canal, or upon its banks, and to make, enact, and at pleasure change and re-enact, such tolls and rates, and also regulations and rules for the collection and levying of the same, as to them may seem proper: *Provided* the company shall at no time charge more than three cents per ton per mile, on the passage of coal, lime, gypsum, iron, iron ore, and stone, and a proportional charge upon other articles, contemplating their bulk, weight and value, and a card thereof to be put up in a conspicuous place at every lock or other point on said canal where toll shall be required to

be paid. And if at any time hereafter, the said president and directors shall deem it expedient to increase their capital stock for the canal aforesaid, it shall be lawful for them so to do, and to obtain subscriptions for the same, and to manage and to direct the same agreeably to the provisions, true intent, and meaning of this act; and all stockholders of such additional shares, and their assigns, shall be thenceforward incorporated into the same company. *Provided always,* that a preference of subscription shall always be given to actual stockholders, in proportion to the shares they shall respectively hold, and that such additional stock shall not exceed five hundred thousand dollars.

9. *And be it enacted,* That at the general meetings of the stockholders, to be held annually, agreeably to the second section of this act, a general statement of the affairs of the company shall be made out, and exhibited by the president and directors; and the president and directors, or a majority of them, shall at that meeting, or as often as to them may appear expedient, declare such dividends of the net profits of the Company as they may think proper.

10. *And be it enacted,* That the capital stock of said Company shall be deemed personal property; and that all shares of the capital stock at any time owned by any stockholder, shall be transferable on the books of the company in such manner as the by-laws shall ordain; but all debts due or payable to the company, and also all outstanding engagements with it, shall be satisfied previously out of said stock, before such transfer can be made, and before any dividend or dividends shall be paid upon such shares, unless by the consent of the president and directors.

11. *And be it enacted,* That under the powers and conditions stipulated in the foregoing enactments, it shall be lawful for the company to alter at any time, any part or parts of the route of the canal, making compensation for damages to owners as herein before directed; and that it shall not be lawful for any person or persons, or any body politic or corporate whatsoever, to construct any canal within ten miles of any point of the main trunk of the Morris canal, without the consent of the said company, expressed in writing, under their common seal; but this prohibition shall not extend to the construction of any canal of less than ten miles in length, and which does not approach within two miles of the canal to be constructed under this charter, and saving to any person or persons, or body corporate, any of their just and legal rights already vested, to the contrary of such prohibition. And it shall be the duty of the Chancellor of this State, upon application made therefor by the solicitor of the company in due form, to issue his injunction to stay and prevent the construction of any such canal; and also, it shall be lawful for the said company to raise the waters in the Green Pond, and Lake Hopatcong commonly called the Great Pond, by damming the same, and to use the surplus waters thus saved, and so much water of said ponds as shall be necessary for said canal, to take and convey said waters into said canal, all loss and damages to the owners of said ponds, and the lands flowed or otherwise used in obtaining water for the same as aforesaid, being paid for agreeably to the previous provisions of this act.

12. *And be it enacted,* That when the said canal shall cross any public road or farm, it shall be the duty of said company at their proper expense, to make good and sufficient bridges across said canal, and to keep the same in repair, so as to prevent

any inconvenience in the usage of the said road, or farm, by reason of the said canal crossing the same.

13. *And be it enacted,* That if any person or persons, shall in any manner, wilfully or maliciously destroy, injure, or obstruct said canal, or any of its parts, or works therewith connected, or unnecessarily and maliciously open any gates thereon, or otherwise let off and waste water to the detriment of said company, he, she, or they, shall be considered guilty of a misdemeanor, and being thereof convicted, shall be punished by fine or imprisonment, or both, at the discretion of the Court in which such conviction shall take place: *Provided,* such fine shall not exceed the sum of twenty-five dollars, nor the imprisonment the term of two years; and such criminal prosecution shall in no wise impair the right of action for damages by a civil suit to be brought by the company.

14. *And be it enacted,* That for the encouragement of so great an undertaking as the erection of said canal, and in some measure to induce capitalists and others to subscribe to the same, it shall be lawful for the said company to increase the capital stock of said company for the purpose of banking operations, but under the following conditions, limitations, and restrictions, namely: that as soon as the said company shall have actually paid, laid out, and expended, the sum of two hundred thousand dollars in the purchase of lands, waters, and water privileges, necessary for the construction and uses of said canal, and in constructing, making, and building the same, it shall and may be lawful for the president and directors aforesaid to call from the stockholders respectively of said canal company, for the time being, in proportion to their respective shares, the sum of two hundred thousand dollars, or any less sum, in the discretion of said president and directors,

toward a capital, for banking purposes as aforesaid, and so often thereafter as the said company shall have paid, laid out, and expended, other like sums of two hundred thousand dollars in the purchase of lands, as aforesaid, and in constructing, making and building the said canal as aforesaid, it shall be lawful for the president and directors aforesaid, to increase the capital stock of said company, for banking purposes, to such further amount of two hundred thousand dollars: *Provided,* that the said increased capital of the company for banking purposes shall not exceed in the whole, one million of dollars; and the president and directors shall and may upon any increase of the capital of said company, for banking purposes as aforesaid, call for the same from the stockholders respectively, at such times, and in such installments in proportion to their respective shares, and upon such notice, and under such forfeitures, as they shall prescribe: *Provided always,* that no such increase of stock for banking purposes as aforesaid, shall at any time be made, by reason of an alleged expenditure of any of the respective sums of two hundred thousand dollars as aforesaid, until the president and directors aforesaid shall have first caused to be exhibited to the Governor, or person administering the government of this state, a just and full statement and account, showing that such expenditure of two hundred thousand dollars hath actually been made in and about the purchases necessary for the construction of, and in the various works as aforesaid of said canal; and the president and cashier, or person keeping the accounts of said company, shall severally certify the said account of expenditures to be just and true, and subscribe their names thereto, and, moreover, make, subscribe, and annex to the same their respective oath or affirmation, taken before one of the justices of the Supreme Court of this state, that the said account is just and true to the

best of their knowledge and belief; and shall otherwise, if required by the said Governor, or person administering the government, prove to his satisfaction that the same is true, and further obtain from said Governor, or person administering the government, a certificate under his hand, and the seal of the state, certifying that it hath appeared to him that the said sum of two hundred thousand dollars has been actually expended upon and towards the said canal, according to the provisions of this act, and that the said company is entitled to increase its capital stock for banking purposes, to that amount; which certificate the said Governor, or person administering the government, upon his being satisfied of the truth and fairness of said account, is hereby authorized and required to grant. And the said president and directors, before any increase of the said capital for banking purposes, to such additional amount of two hundred thousand dollars as aforesaid, shall cause the account and statement exhibited and sworn to as aforesaid, to be filed in the office of the Secretary of State, and the certificate of the Governor, or person administering the government as aforesaid, to be recorded in the same office; a certified copy of which certificate and account, by the Secretary of State under the great seal of the state, shall be received in all courts in this state as evidence that such expenditures of two hundred thousand dollars was made on or towards the said canal, at the exhibition of the account aforesaid.

15. *And be it enacted,* That if the person acting as president, and the person acting as cashier or accountant of the said company, and who shall have made or exhibited any such accounts as aforesaid, or either of them, shall wilfully and knowingly make a false oath to the same, such person shall be deemed guilty of perjury, and on conviction of the same, shall be subject to the pains and penalties of wilful and corrupt perjury.

16. *And be it enacted,* That within one year after the first increase of the capital stock of the said company for banking purposes as aforesaid shall have been made, and so annually thereafter, until the said canal shall have been completed, the said company shall cause to be made out of a just and true account of their expenditures upon said canal, within each of the said years respectively, which account shall be certified and sworn to by the acting president and cashier, or accountant, in manner as directed in the fourteenth section of this act; and the said account shall be filed within such year in the secretary's office of this state. And whensoever it shall appear, by such annual account in any year, that the said company have not actually expended on said canal at least the sum of one hundred thousand dollars within such year, or if the said company shall neglect to file said account in manner aforesaid in any year, then and in either case, the said company shall wholly cease from and discontinue all banking discounts and operations upon their said increased capital for banking purposes, and shall not resume the same until the said account shall have been proved and filed as aforesaid, and showing such annual expenditure.

17. *And be it enacted,* That if the said acting president and cashier, or accountant, or either of them, shall wilfully make a false oath to any such account as is mentioned in the foregoing section, such person shall be deemed guilty of perjury, and on conviction of the same, be subject to the pains and penalties of wilful and corrupt perjury.

18. *And be it enacted,* That the banking house of the said company shall be situated, and their banking operations be conducted, in the city of Jersey, in the county of Bergen; and it shall be the duty of the president and cashier of the said cor-

poration, for the time being, once in two years, to make a full return to the Secretary of State, under oath, of the stock of said company, used in banking operations, where the same is employed, how much specie is in the vault or vaults of their banking house or banking houses, what amount of notes of said company are in circulation, and the amount of debts due from and owing to said company; and in case the said president and cashier shall neglect or refuse so to do for the space of ninety days, the legislature may, at any time thereafter, in their discretion, suspend said banking operations.

19. *And be it enacted,* That the funds of the said company shall never be employed in any other operations, nor for any other purposes, than those provided for in this act.

20. *And be it enacted,* That nothing in this act shall be taken to impair the right of any person to an action against the said company, for damages to his or her water rights, lands, tenements, or hereditaments, by the erection of said canal, where such person hath not been agreed with by the said company, or his or her damages, right, and estate satisfied, and vested in the said company, under the previous provisions of this act.

21. *And be it enacted,* That in eleven years after the passing of this act, and annually thereafter, the president and directors of said company shall be, and they are hereby required to pay or cause to be paid into the treasury of this state, the one-half of one per cent. on the whole amount of such capital actually subscribed and paid in, and which shall thereafter be paid in to such company for banking purposes as aforesaid; and upon neglect or refusal so to do by said president and directors, the said tax shall and may be recovered in such manner as is directed in an act entitled "An act to tax bank stock," passed November second, one

thousand eight hundred and ten, or any other act or acts of the Legislature for the time being, for the recovery of tax on bank stock; and the said tax, when collected, shall be appropriated as other bank tax is, or shall by law be directed to be appropriated.

22. *And be it enacted*, That so much of this act as relates to banking rights and privileges upon the increased capital of the company for banking purposes as aforesaid, shall continue and be in force for and during the term of thirty-one years from the passage of this act.

23. *And be it enacted*, That unless one million of dollars shall be subscribed as aforesaid, on or before the first day of November next, and also, unless the said canal shall be completed and opened for the passage of boats within fifteen years from the passage of this act, then the same shall be, and is hereby declared to be null and void.

24. *And be it enacted*, That the said company shall and may be, and are hereby made capable of using any part of their capital which shall be paid in for banking purposes, as aforesaid, for the following additional purposes, that is to say, in buying and selling bills of exchange, or the stock of any body or bodies corporate and politic, and in loans upon bonds and mortgages; and they may bind themselves by contract not under seal, and receive and take by deed or devise any effects and property, both real and personal, which may be left or conveyed to said company, in trust, and to assume, perform, and execute any trust which has been or may be created by any deed, bequest, or devise, as aforesaid. And the said company is hereby authorized and empowered to receive, take, possess and stand seized of, and to execute any and all such trust or trusts in their corporate capacity

and name, in the same manner and to the same extent as any private trustee or trustees might or could lawfully do, and no further; but it is hereby expressly declared, that the privileges hereby granted to the said company for receiving and executing trusts are solely for the purpose of the protection of property so conveyed to them, and not for the purpose of aiding or promoting any traffic in any kind of stocks, or in any kind of goods, wares and merchandise; and in case any kind of goods, wares or merchandises, shall be so conveyed or bequeathed in trust as aforesaid, the said company shall dispose of the same as soon as it conveniently can be done, and the avails thereof shall be invested in stocks, or in bonds and mortgages, or other permanent securities, for the sole use of the person or persons beneficially interested therein; and the said privileges shall not be so construed, as legally to empower the said company to take any other kind of trusts than such as are usual with other trustees: *Provided always*, that this act shall not extend to create any entailment, trust, or perpetuity; contrary to any existing provision of law.

25. *And be it enacted*, That the said canal when completed shall forever thereafter be esteemed a public highway, free for the transportation of any goods, commodities, or produce whatsoever, on payment of the tolls, and conforming to the regulations made or authorized by this act. And it shall be lawful for the legislature of this state at any time hereafter to appoint three commissioners, for the purpose of fixing and regulating the tolls to be taken on said canal, which shall be done by the said commissioners in conjunction with two commissioners to be appointed by the company, unless the said company should refuse or neglect, upon due notice, to appoint any commissioners on their part, in which case the said com-

missioners, on the part of the state, or a majority of them, shall fix and regulate the tolls, with due regard to the interests of the company and of the citizens of this state: *Provided always,* that they shall not have power to reduce said tolls lower than one-half the greatest amount allowed by the ninth section of this act, without the consent of the president and directors of the said company.

26. *And be it enacted,* That at the end of ninety-nine years from the passing of this act, it shall and may be lawful for this state to take to itself and on its own account, the said canal and its appurtenances, paying to the said company the fair value thereof, to be estimated and fixed upon by ten commissioners, or a majority of them, to be mutually chosen by this state and the said company; or, in case that shall not be done at that time, or within one year thereafter, this charter shall continue, so far as respects its canal operations and privileges, for the further term of fifty years, when it shall cease and the said canal with its appurtenances become the sole property of this state.

27. *And be it enacted,* That the first, fifth, sixth, and eleventh sections, and every other part of this act, shall be so construed, as that the said corporation shall not be authorized to take or appropriate to the use of said canal, or under color or pretence that the same are necessary therefor, any lands, waters, or streams of water, but such only as are actually necessary for the erection and use of said canal, for the purposes of navigation only and its necessary towing paths and works, as specified in the fifth section of this act; and that the said corporation shall not be authorized to demise, grant, alien, or sell any such lands, waters, or streams taken, or pretended to be taken, or required, for the use of said canal as aforesaid, or any part thereof, to any person or persons

whomsoever (excepting only such lands as may be received by them by donation, or acquired by them by private contract), and that the said corporation, or any other person, shall not be authorized to use or appropriate any part of said waters for mills, or any other purpose than the mere navigation of said canal; and all waters not used for that purpose, shall be permitted, without unnecessary interruption, to flow into their ancient and natural courses and channels; and that the twentieth section of this act shall be so construed, as to extend to damages sustained not only by the erection of the said canal in the first instance, but also by the subsequent operations of the said company, from time to time, as the same may arise; anything in this act before contained to the contrary notwithstanding.

28. *And be it enacted*, That this shall be a public act, and shall be judicially referred to by all judges, justices and others, without being specially pleaded.

D. 2.

A SUPPLEMENT to the Act entitled "An Act to Incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers."

(Passed December 31, 1824, P. L. 157.)

1. *Be it enacted, by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same*, That at any time after one million of dollars shall be subscribed towards the capital stock of said company, and ten per cent. thereon paid in to the commissioners and directors appointed as mentioned in said act, it shall be lawful for the said company to call in from the stockholders respectively the sum of one

hundred thousand dollars, to be used for banking purposes, as directed in said act, but they shall not call in any more money for said purposes, except in conformity to the provisions of said act. And if the said company shall omit, for the space of one year after the passing of this supplement, to expend the sum of one hundred thousand dollars on said canal, and file an account thereof, agreeably to the sixteenth section of said act, the banking privileges hereby given shall cease.

D. 3.

AN ACT to authorize the Morris Canal and Banking Company, to extend the Morris Canal to the Waters of the Hudson.

(Passed January 26, 1828, P. L. 34.)

Sec. 1. *Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That it shall and may be lawful for the Morris Canal and Banking Company, incorporated by an act entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," passed December thirty-first, one thousand eight hundred and twenty-four, to continue the Morris Canal to the waters of the Hudson, at or near the city of Jersey; and for that purpose, said company shall have all the rights, powers and privileges given and granted by the said act, and shall be subject to all the restrictions, limitations, conditions, and provisions in the said act contained, in the same manner, and to the same effect, as if the said company had been originally authorized by said act, to construct a canal or artificial navigation to connect the waters of the Delaware river, near Easton, with the waters of the Hudson, at or near the city of Jersey: *Provided*, that the

canal shall be connected with the Passaic river at the village of Newark, so that the boats used on the said canal, can at all proper times pass from the same into the river, and from the said river into the canal: *Provided also,* that nothing herein or in the act of incorporation hereinbefore mentioned, contained, shall be taken or construed to hinder or prevent the legislature from authorizing a deep cut or canal, for sloop navigation between the Newark and New York bays. *And provided further,* that the said company, unless it be with the consent of the owner or owners, shall not take any lands for extending the said Morris Canal, pursuant to the provisions of this act, until the said lands shall have been surveyed and appraised, pursuant to the sixth section of the said act of incorporation, and until the said company shall have first paid, or tendered to the person entitled thereto, the amount of such appraisement; or in case such person shall be *feme covert,* under age, *non compos mentis,* or out of the state, the said company shall pay the same into the court of Chancery of this state, and in all other respects the provision of the said act of incorporation shall be taken as applicable to lands to be taken for the purpose of extending the said canal, pursuant to the provision of this act, in the same manner as they apply to lands which may be taken pursuant to the said original act of incorporation.

Sec. 2. *And be it enacted,* That it shall and may be lawful for the said company to make and construct the said canal through, upon or along any street, road or public highway; but if the said canal shall be made or constructed through, upon, or along any street or streets in the town of Newark and Jersey City, or either of them, in such case, the land occupied by said canal, and for its towing path, shall not exceed a space of thirty-two feet.

Sec. 3. *And be it enacted,* That it shall be the duty of the said company, at their proper expense, to make good and sufficient bridges, and to keep the same in repair, across any part of the said canal which may be extended, pursuant to this act, so that it shall be convenient to the inhabitants at all times to pass to and from their lands and meadows, and to the waters and landing places of the said bays and rivers.

D. 4.

AN ACT to authorize the Morris Canal and Banking Company to borrow money, and for other purposes.

(Passed February 23, 1829, P. L., 86.)

(Authorizes Company to borrow five hundred thousand dollars, and to issue therefor their post notes, bearing interest of six per cent. per annum, and to mortgage the canal and the Company's chartered rights and privileges.)

D. 5.

Amendment to the Charter.

(Passed January 28, 1830, P. L., 17.)

(Provides that where any freeholder who may have been, or hereafter may be appointed, as an appraiser, pursuant to the sixth section of the act, shall die, remove from the state, refuse to act, or his place or office otherwise become vacant, any justice of the Supreme Court may appoint some other discreet freeholder, as appraiser, to fill such vacancy. Gives further power to borrow, and mortgage the property and chartered rights of the Company.)

D. 6.

AN ACT for the better protection of the Morris Canal, its works and appendages.

(Passed March 10, 1832, P. L. 146.)

(Provides penalties for interfering with the canal.-)

D. 7.

A Further Supplement to the Charter.

(Passed January 19th, 1835, P. L. 17.)

(Authorizes increase of capital stock for completing the canal, 10,000 shares.)

D. 8.

A Further Amendment to the Charter.

(Passed March 5, 1836, P. L., 262.)

(Authorizes tolls on feeders, the letting to use of waters, the increase of capital stock, and increases the number of directors to twenty-three.)

D. 9.

AN ACT relative to Bridges over the Morris Canal.

(Approved March 19, 1845, P. L., 104.)

(Regulates the construction and maintenance of bridges over the canal.)

D. 10.

A further supplement to the act entitled "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers."

(Approved February 9, 1849, P. L., 33.)

WHEREAS, the Morris Canal and Banking Company, as now constituted, under the sale made in accordance with the decree of the Court of Chancery, dated 10th day of July, eighteen hundred and forty-four, of the canal, works, waters, privileges, appendages, appurtenances, and chartered rights of the company incorporated under the act to which this is a further supplement, have a nominal capital stock consisting of forty-one thousand shares of the par value of one hundred dollars each, making the apparent capital of the said company so constituted, four millions one hundred thousand dollars, which amount of capital far exceeds the value of the property owned by the said company; AND WHEREAS, the said company are desirous of reducing the number of shares of their stock, and of issuing a preferred stock, and of connecting the navigation of their canal with that of the State of Pennsylvania; and for the more convenient exercise of the chartered rights with which, under the said sale, they are invested, are desirous of reducing the number of directors necessary to the transaction of business; therefore,

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the said company are hereby authorized and empowered to reduce the number of shares of their capital stock to ten thousand two hundred and fifty shares, which shares shall have the same nominal value as heretofore.

2. *And be it enacted,* That it shall be lawful for the said company to issue eleven thousand seven hundred and fifty shares of new stock, to be issued as preferred stock, and to bear such rates of dividends as the Board of Directors may prescribe, to enable said company to perfect their canal.

3. *And be it enacted,* That the Board of Directors shall open books of subscription for the additional stock authorized by this act, and said books shall be kept open from time to time until the whole amount required shall have been subscribed; ten days' previous notice of the time and place of opening said books having been given in three newspapers published in this State; one at the city of Trenton, one at the city of Newark, and one at Morristown; and in three newspapers published in the city of New York, and three newspapers published in the city of Philadelphia.

4. *And be it enacted,* That the transfer books of said company shall be closed five days prior to the opening of said books of subscription; and the stockholders of the said company, whose names shall then be standing on the stock books of said company, shall have the exclusive right of subscribing for such additional stock during the first three days from the opening of said books; and if more shall be subscribed for, by such stockholders, than the sum hereby authorized, the same may be apportioned among the stockholders so subscribing according to the amount of stock then standing in the names of the said subscribers on the stock books of the company; and if the whole amount of such additional stock should not be subscribed by the stockholders of the company, the Board of Directors shall then be authorized to receive additional subscriptions from time to time from stockholders, or any other persons, until the whole amount of such additional stock shall be taken up.

5. *And be it enacted,* That the Board of Directors shall prescribe and announce, with the proposal of such subscription, the time and manner in which the payments for such additional stock shall be made.

6. *And be it enacted,* That the foregoing provisions of this act shall take effect when, and not until the same shall have been accepted by the stockholders of the said company; and for the purpose of obtaining such acceptance, the Board of Directors of the said company shall call a meeting of the stockholders of the said company, and shall cause notice of the time, place and object of said meeting to be given for twenty days, by advertising the same in the manner specified in section three of this act; that the transfer books of the said company shall be closed five days previous to the time of meeting so advertised; at which meeting the said stockholders shall be entitled to vote, either in person or by proxy, according to the number of shares standing in their names, respectively on the stock books, each share of stock being entitled to one vote; and if the holders of two-thirds of the stock represented in such voting, accept of the foregoing enactments of this bill, then the same shall take effect, otherwise the same shall be inoperative: *provided nevertheless,* that if at any time within one year from the passage hereof, such vote shall be obtained in the manner herein prescribed, the said foregoing provisions shall take effect, and that the certificate of a majority of the Board of Directors, signed and sworn to by them, and filed in the office of the Secretary of State, setting forth such acceptance of the stockholders, at a meeting which they certify was held according to the requirements of this act, or a certified copy of such certificate, shall at all times be good evidence of the acceptance herein mentioned of the said stockholders: *and provided also,* that the fore-

going sections shall not take effect until the Board of Directors of the Morris Canal and Banking Company shall, by writing duly executed under the common seal of said company, and filed in the office of the Secretary of State of this State, surrender all the banking powers and privileges granted by the original charter, and the several supplements thereto.

7. *And be it enacted,* That seven of the Board of Directors of the said company shall hereafter constitute a quorum for the transaction of the business of said company.

8. *And be it enacted,* That for the purpose of connecting the navigation of the canal of this company with the canal navigation of the State of Pennsylvania, the said company are hereby empowered to erect and construct either a bridge or aqueduct, as to the said company may seem most convenient, across the river Delaware, at or near the western termination of the said canal; *provided always,* that the said bridge or aqueduct shall be constructed in such manner as that the same shall not unnecessarily interfere with the navigation or fisheries of the said river; *and provided,* That the provisions of this section shall not take effect until a similar power is conferred upon the said company by the State of Pennsylvania.

D. 11.

A further supplement to the Act entitled "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers."

(Approved March 9, 1855, P. L., 215.)

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That the Morris Canal and Banking Company are hereby

authorized and empowered to construct a railway, with one or more tracks, connecting their canal with the road of the Lehigh Valley Railroad Company, and also with the road of the Central Railroad of New Jersey, at or near Phillipsburgh, and also to construct another railway, with one or more tracks, connecting their canal with the road of the Warren Railroad Company; *provided nevertheless*, That neither of the said railroads shall be more than one mile in length, and shall not, in any manner, interfere with or incommode either of the railroads with which a connection is as aforesaid authorized.

2. *And be it enacted*, That the Morris Canal and Banking Company are hereby authorized and empowered to obtain the right of way for the construction of the said railroads, respectively, in the same manner as is provided for the Central Railroad Company of New Jersey to obtain the right of way for their road.

3. *And be it enacted*, That this act shall go into effect immediately after its passage.

D. 12.

By The Legislature of the State of New York.

AN ACT to Authorize the appraisement of the damages of the owners of land in this State required by the Morris Canal and Banking Company for the purpose of a reservoir for their Canal.

(Passed April 11th, 1855, "Three-fifths being present." P. L., 506.)

(Gives condemnation powers, etc., at Greenwood Lake, Orange County, N. Y.)

D. 13.

AN ACT to authorize James F. Van Doren to contract with the Morris Canal and Banking Company for the use of certain feed waters.

(Approved 7th March, 1865, P. L., 264).

(Gives James F. Van Doren, of the township of Washington, in the County of Warren, authority to contract with the Canal Company for the use of a portion of the feed waters of the Morris Canal along plane No. 7 in township of Washington, to supply his flour mill near said plane.)

D. 14.

A further supplement to the Act entitled "An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers" passed December thirty-first, Eighteen hundred and twenty-four.

(Approved March 14, 1867, P. L. 251.)

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That the State of New Jersey hereby grants to the Morris Canal and Banking Company all the right, title, and interest of the State in and to the land and lands under the water within the following boundaries: Beginning at a point in Hudson river in the southerly line of South Street extended seven hundred and sixty-five feet from the easterly line of Hudson Street, and running thence (1) westerly along the said southerly line of South Street to the centre line of Washington Street extended, thence (2) southerly along said centre line two hundred and sixty feet, thence (3) westerly on a line parallel with South Street as laid down on Mangin's map to the easterly line of Warren Street extended, thence (4) southerly and along the said easterly

line of Warren Street extended, to a point distant four hundred and sixty feet at right angles from the southerly line of South Street, thence (5) parallel with South Street, easterly to a point in the centre line of Washington Street extended and distant four hundred and sixty feet from the southerly line of South Street, thence (6) southerly along said centre line of Washington Street extended, five hundred feet to the northerly line of the property occupied by the Central Railroad Company of New Jersey, thence (7) easterly along said line seventeen hundred and thirty-five feet, and thence (8) northerly to the place of beginning; on condition that for the purpose of preserving a water basin to the west of the present westerly bulkhead on said premises and of leaving open on the premises hereby granted, a public navigation for all veseels to and from the Hudson river, and all parts of the waters west of said westerly bulkhead; the said company shall forever keep open the present gaps in the easterly and westerly bulkheads, each of one hundred and fifty feet in width, and like gaps of like width in any structure to be erected on said premises hereby granted, so that the public may with all vessels freely navigate to and from the channel of the Hudson river and all places east and west of said westerly bulkheads without the payment of tolls or charges; *provided,* that the said opening shall be kept in such condition that the owners and occupants of shore property lying north and west of the above described property, may at all times have free access to as well as though the same; *And provided,* further, that the said company shall, within ninety days after the passage of this act, execute and deliver to the governor of this State their promise and undertaking, under seal, unconditionally to pay into the treasury of this State, yearly, the sum of twenty-five thousand dollars per year, on or before the first Tuesday of January in each year, during the

continuance of their charter, and so long as the said company, their successors or assigns, shall continue to hold or occupy the same, the first payment of a ratable portion of which shall fall due on the first Tuesday of January, eighteen hundred and Sixty eight; it shall be lawful for the said company instead of the said annual payment of twenty-five thousand dollars, to pay into the treasury of this State at any time the sum of three hundred and fifty-seven thousand one hundred and forty-two dollars.

2. *And be it enacted*, That the Morris Canal and Banking Company may, under the provisions of their charter, construct piers, wharves, docks, basins, warehouses and other structures within the limits above described, and make reasonable rules and regulations for the use thereof, to enable them to carry on a transportation business in and over their canal and elsewhere, which they are hereby empowered to do, and also to afford facilities for commerce; *provided*, that the exemption of said company in its original charter from taxation, assessments or other legal impositions shall not extend to the property or privileges hereby granted.

3. *And it be enacted*, That this act shall take effect immediately, and be in force during the continuance of the charter of the said Morris Canal and Banking Company, and, at the expiration of that time, the lands hereby granted, with the improvements thereon, shall revert to the State on the same terms and conditions provided in the original charter of the said company, respecting the transfer of the property thereof to the State.

D. 15.

Acceptance of Grant of 1867.

TO THE GOVERNOR OF THE STATE OF NEW JERSEY:

WHEREAS, the Legislature of the State of New Jersey passed an act entitled "A further Supplement to the Act entitled an Act to incorporate a company to form an artificial navigation between the Passiac and Delaware Rivers, passed December thirty-first, eighteen hundred and twenty-four", which said supplement was approved March fourteenth, eighteen hundred and sixty-seven, by which said supplement, the State of New Jersey did grant to the Morris Canal and Banking Company, all the right, title and interest of the State in and to the land and lands under water within the following boundaries: BEGINNING at a point in Hudson River in the southerly line of South Street extended, seven hundred and sixty-five feet from the easterly line of Hudson Street, and running thence (1) westerly along the said southerly line of South Street to the centre line of Washington Street extended; thence (2) southerly along said centre line two hundred and sixty feet, thence (3) westerly on a line parallel with South Street as laid down on Mangin's Map to the easterly line of Warren Street, extended; thence (4) southerly and along the said easterly line of Warren Street extended to a point distant four hundred and sixty feet at right angles from the southerly line of South Street; thence (5) parallel with South Street easterly to a point in the centre line of Washington Street extended and distant four hundred and sixty feet from the southerly line of South Street; thence (6) southerly along said centre line of Washington Street extended five hundred feet to the northerly line of the property occupied by the Central Railroad Company of New Jersey;

thence (7) easterly along said line seventeen hundred and thirty-five feet, and thence (8) northerly to the place of beginning. SUBJECT to the conditions and provisions in said act set forth, as by reference to said act will appear —

NOW, THEREFORE, BE IT KNOWN, That the Morris Canal and Banking Company do accept the said supplement and do promise and undertake unconditionally to pay into the Treasury of the State of New Jersey, yearly, the sum of Twenty-five thousand Dollars per year, on or before the first Tuesday of January in each year during the continuance of their charter and so long as the said Company, their successors or assigns, shall continue to hold or occupy the said lands and lands under water, the first payment of a ratable portion of which shall fall due on the first Tuesday of January eighteen hundred and sixty-eight, reserving the right under the said supplement instead of the said annual payment of twenty-five thousand dollars to pay into the Treasury of the State of New Jersey at any time the sum of three hundred and fifty seven thousand one hundred and forty-two dollars.

IN WITNESS WHEREOF, the said The Morris Canal and Banking Company have on this Tenth day of June, eighteen hundred and sixty-seven, hereunto set their corporate seal and caused these presents to be signed by their President.

THE MORRIS CANAL AND BANKING CO.,
By W. H. TALCOTT,
President.

Sealed and delivered
in the presence of
Jno. Rodgers,
Secretary.
(Corporate Seal.)

(ENDORSED.)

"Recd. the within agreement from the Morris Canal and Banking Company, June 11th, A. D. 1867.

MARCUS L. WARD,
Governor.

Trenton, N. J.
June 11', 1867.
Filed June 11th, 1867.
N. H. Conger".

Recorded in Liber A, of Certificates of Incorporations, Folio 324 & 325."

D. 16.

A further supplement to the Act entitled "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers" passed December Thirty-first, Eighteen hundred and Twenty-four.

(Approved April 17, 1868, P. L. 1121.)

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That the Morris Canal and Banking Company are hereby authorized and empowered to construct railways in this State, except in the Counties of Hudson and Essex, with one or more tracks, connecting their canal with such railroads in this State, except in Hudson or Essex County, as now are or may hereafter be built, and to work and operate the same in aid of their business; provided, that neither of the said connecting railways shall be more than two miles in length from the Morris canal, and shall not cross the track of the Morris and Essex Railway Company at any point without the permission of said company.

2. *And be it enacted,* That The Morris Canal and Banking Company are hereby authorized and empowered to obtain the right of way for the construction of the said connecting railways, respectively, in the same manner as is provided for obtaining the right of way in the act to which this is a supplement.

3. *And be it enacted,* This act shall take effect immediately.

D. 17.

A further supplement to "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers" passed December Thirty-first, One thousand eight hundred and Twenty-four.

(Approved March 14, 1871, P. L. 444.)

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That it shall and may be lawful for the Morris Canal and Banking Company, by and with the consent of a majority in interest of the stockholders of the said company, expressed in writing and duly authenticated by affidavit, and filed in the office of the secretary of state, to lease the canal of said company, or any part thereof, with all or any of its boats, property, works, appurtenances and franchises, to any person or persons, or corporation, either perpetually or for such shorter time, and upon such rents and agreements, as may be agreed upon between the said contracting parties, and it shall be lawful for the lessee or lessees in said lease to use and enjoy the said property and franchises so demised, for the term in said lease mentioned.

2. *And be it enacted,* That if any stockholder or stockholders, being such at the time of making such lease, shall be dissatisfied with the same, the said contracting parties or one of them, shall pay to such dissatisfied stockholder or stockholders the full value of his, her or their stock immediately prior to such lease, to be assessed by three disinterested commissioners, appointed for that purpose by the chancellor or chief justice of the Supreme Court of this State, on the application of either party, made upon twenty days' notice, but said contracting parties shall not be compelled to pay for the stock of any such dissatisfied stockholder or stockholders, unless he or they shall give written notice of such dissatisfaction to the president or secretary of the said Morris Canal and Banking Company, before or within three months after such lease shall have been made and consented to by the requisite number of stockholders; and said lease shall not be valid as against such dissenting stockholder or stockholders until his or her stock shall have been paid for as provided in this act; *provided, that* no such lease shall have the effect, or be construed to release or discharge the said Morris Canal and Banking Company from the payment of any taxes, annuities, revenues or debts, which the said company may be subject or liable to, either to the State or to any other person or persons; *provided further,* that if the said company shall pay to any dissatisfied stockholder or stockholders the value of his, her or their stock so assessed, such stock shall not be thereby cancelled or retired, except at the option of said company, but the said stock may be sold or re-issued by such company at such price as the directors may deem expedient, and if said stock shall be paid for by any other contracting party to said lease, such stock shall become the property of the party paying therefor.

3. *And be it enacted,* That it shall be lawful for the said company, or its lessee or lessees, to use the surplus water of the canal of said company, or any of its feeders, not needed for the purposes of navigation, in furnishing and supplying the inhabitants of any city, town or village along the line of said canal, or in the vicinity thereof, with a sufficient quantity of pure and wholesome water for manufacturing or domestic and other uses; and to make contracts with the corporate authorities of any such city, town or village, or with individuals, for such supply of water, for such compensation as may be mutually agreed upon, and to erect such works, and make such alterations in the said canal as may be necessary or proper to enable said company, or its lessee or lessees, to furnish such supply of water from the said canal; *provided,* that nothing herein contained shall be held to authorize the diversion of the said canal from the purposes of navigation; *provided, further,* that nothing in this act contained shall be construed to authorize the said company to use as much of the water of the Musconetcong creek as to deprive the owners of mills or manufactories on said creek, below the dam at Saxon's Falls, of sufficient water to run one wheel, as at present used to drive two run of mill-stones, with the necessary fixtures for the same, during eight weeks of the year, and at least two wheels, each of the same power, during the residue of the year, without the consent of the owners; and *provided further,* that nothing herein contained shall be held to authorize the said company, or its lessee or lessees to do any act affecting the existing rights of the Society for Establishing Useful Manufactories.

4. *And be it enacted, That* this act shall take effect immediately, and be deemed a public act; and the said consent of stock-

holders herein and hereby required to be authenticated and filed in the secretary's office, when so authenticated and filed, together with the fact of the amount of stock held by each, the same being also authenticated by affidavit shall be sufficient proof in all Courts and places where the same may come in question, unless the contrary be made to appear, by the original affidavit so filed, or by a duly certified copy thereof made by the Secretary of State.

5. *And be it enacted, That* all acts and parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed.

D. 18.

Supplement to an Act entitled "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers" passed Thirty-first of December, One thousand eight hundred and Twenty-four.

(Approved April 2, 1873. P. L. 1347.)

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey, That* the Morris Canal and Banking Company, or their lessees, the Lehigh Valley Railroad Company, are hereby authorized and empowered to construct, operate, and maintain a branch canal with all necessary locks and planes, from a point in the main canal at or near Centerville, in Passaic County, to the Passaic river at Dundee Lake, above the dam of the Dundee Water Power and Land Company.

2. *And be it enacted,* That the Morris Canal and Banking Company, or their lessees, the Lehigh Valley Railroad Company, are hereby authorized and empowered to obtain the right of way for the construction of said canal, locks and planes,

respectively, in the same manner as provided for the Dundee Water Power and Land Company to obtain the right of way for their branch road, as provided in an act entitled "A further supplement to the act entitled 'An act to incorporate the Dundee Manufacturing Company,'" approved March twentieth, one thousand eight hundred and seventy-two.

D. 19.

An Act in Relation to Bridges across the Morris Canal.

(Approved March 14, 1879, P. L., 321).

(Provides that bridges over the canal shall have a clearance of ten feet, etc.)

D. 20.

Commonwealth of Pennsylvania.

AN ACT to authorize the Governor to incorporate the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company.

Approved April 21st, 1846; Pamphlet Laws, p.).

Authorizes James M. Porter, A. H. Reeder, Asa Packer, and others, to open subscriptions in Easton to the capital stock of the Company, and provides that when five thousand shares, or more, shall be subscribed, and Five Dollars paid on each share, the Commissioners will certify the names and subscriptions to the Governor, who shall, by "letters patent, under his hand and the seal of "the Commonwealth, create and erect the sub-"scribers, and if the subscriptions be not full at "the time, then also those who shall thereafter "subscribe to the number of shares aforesaid, into "a body politic and corporate in deed and in law,

"by the name, style and title of 'The Delaware, "Lehigh, Schuylkill and Susquehanna Railroad "Company,' and by the same name the subscribers "shall have perpetual succession, with all the "privileges, franchises and immunities incident to "a corporation."

Provides that the stockholders shall meet annually, on the second Monday of January, and choose officers and managers.

Section 11. "That the president and managers of the said railroad company shall have power to survey, lay down, ascertain, mark and fix such route as they shall deem expedient for a railroad with as many sets of tracks as they may deem necessary, beginning at the Delaware river, at or near the Borough of Easton, and thence extending by the best route from said Borough of Easton, up the valley of the Lehigh, or near said river, to or near the Borough of Allentown; thence up the valley of said Lehigh, or near said river, to some point in the County of Carbon, above the Lehigh water gap; thence by the best route to some point on the railroad of the Little Schuylkill navigation, railroad and coal company, or to Tamaqua, in the County of Schuylkill, whichever may be deemed most expedient; and also to extend a branch railroad from the aforesaid point, where the main line hereby authorized shall diverge from the Lehigh towards Tamaqua, up the valley of said river, to the place where the railroad of the Beaver Meadow Company terminates on said river, with power to connect with the last mentioned railroad."

D. 21.

A SUPPLEMENT

To an Act, entitled "An Act to authorize the Governor to incorporate the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company.

(Approved March 20, 1849. P. L., p. 203.)

Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the time limited by the twenty-fourth section of the act, entitled "An Act to authorize the "Governor to incorporate the Delaware, Lehigh, "Schuylkill and Susquehanna Railroad Company," passed April twenty-first, one thousand eight hundred and forty-six, be and the same is hereby extended for the further period of two years for commencing the said work, and the further period of two years for completing the same, beyond the time specified in the said act.

Section 2. That the said company shall be authorized to erect a railroad bridge across the river Delaware at or near Easton, to be used for railroad purposes only; *Provided,* That in so doing, the navigation of the river Delaware shall not be injured; and that before erecting the same, a concurrent law shall be passed by the legislature of New Jersey.

D. 22.

AN ACT to authorize the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company to build a railroad bridge across the Delaware River, at or near Easton.

(Approved March 11, 1850. Pamphlet Laws, p. 313.)

WHEREAS, by an act of the legislature of the State of Pennsylvania, passed at its regular session in the year one thousand eight hundred and forty-nine, entitled: "A supplement to an act entitled, an act to authorize the Governor to incorporate the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company", it was enacted that the said company should be authorized to erect a railroad bridge across the river Delaware, at or near Easton, to be used for railroad purposes only; provided, that in so doing the navigation of the river Delaware shall not be injured, and that before erecting the same, a concurrent law shall be passed by the legislature of New Jersey—therefore,

Be it Enacted by the Senate and General Assembly of the State of New Jersey, That it shall be lawful for the said Dalaware, Lehigh, Schuylkill and Susquehanna Railroad Company to erect a railroad bridge across the river Delaware, at or near Easton, to be used for railroad purposes only; provided, that in so doing the navigation of the river Delaware shall not be injured.

D. 23.

A FURTHER SUPPLEMENT to an Act entitled "An Act to incorporate the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company," passed the twenty-first day of April, One thousand Eight hundred and Forty-six.

(Approved, January 7th, 1853; Pamphlet Laws, p. .)

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that the name, style and title of the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company be, and the same is hereby changed to, and the said corporation shall hereafter be known by the name of the Lehigh Valley Railroad Company, with all the rights, privileges and immunities, subject to all the provisions and penalties provided for and enjoined by the said act to which this is a supplement.

D. 24.

Lease to Lehigh Valley Railroad Company.

THIS INDENTURE, made this Fourth day of May, Anno Domini, eighteen hundred and seventy-one, by and between the Morris Canal and Banking Company, a corporation created by, and existing under, the laws of the State of New Jersey, of the first part, and the Lehigh Valley Railroad Company, a corporation created by, and existing under, the laws of the State of Pennsylvania, of the second part,

WITNESSETH: That for and in consideration of the covenants and agreements hereinafter con-

tained, by the party of the second part to be kept and performed, and of the sum of One dollar in hand paid by the party of the second part, the receipt whereof is hereby acknowledged (1), the party of the first part doth hereby let and demise unto the party of the second part, its successors and assigns, the entire canal and navigation works of the party of the first part, as the same are now located and constructed, from the river Delaware at Phillipsburg, in the County of Warren, in the State of New Jersey, to the river Hudson, at Jersey City, in the County of Hudson, in the same State, or as the same may hereafter be constructed, in pursuance of any and every lawful authority now existing, or which may hereafter exist, with all the branches and extensions thereof, made and to be made; also all the land and water-rights, privileges and easements, dams, basins, pools, reservoirs, feeders, locks, gates, machinery, fixtures, railroads, tracks, wharves, docks, piers, landings, water-rents, ground-rents, lands, tenements and hereditaments, with the appurtenances, reversions, remainders, rents, issues and profits thereof, now belonging, or in any wise appertaining, to the party of the first part, or which, for any purpose incident to, or connected with, the business which the party of the second part, its successors or assigns, may, as lessee of the party of the first part, lawfully carry on, may hereafter be acquired by the party of the first part; and, also, all the corporate franchises, rights and privileges, other than that of being a corporation, now held, or hereafter to be acquired, of the party of the first part: To have and to hold the premises thus leased and demised as aforesaid, or intended so to be, unto the party of the second part, its successors and assigns, perpetually hereafter. And (2) the party of the first part doth hereby grant, bargain and sell, assign, transfer and set over unto the party

of the second part, all cars, trucks, boats, tugs, scows, dredging machines, tools, implements, apparatus, furniture, mules, horses, cattle, harness, supplies, stores, and movable property of every kind and description; and, also, all the right, title, interest, claim, property and demand whatsoever of the party of the first part in and to all leases, bills of sale or contracts relating to boats or vessels heretofore leased, hired or sold by it; all bonds, stocks, claims, demands, beneficial interests in contracts, choses in action, maps, plans, surveys, and generally, all personal property whatever, of every kind and description, whether hereinbefore specially referred to or not, to which the party of the first part is now, in any manner or way, entitled, excepting only the furniture of the principal office of the party of the first part at Jersey City, its corporate seal, and its business books, papers and records: To have and to hold the same unto the said party of the second part, its successors and assigns, to and for its and their only proper use and behoof forever. And in consideration of the premises, the parties hereto have mutually covenanted and agreed, and do hereby, for themselves, their successors and assigns, covenant and agree, to and with each other as follows:

First. That the party of the second part shall advance to the party of the first part a sum sufficient to pay off and discharge the debts and liabilities of the party of the first part, enumerated in the schedule marked A, hereto annexed, and identified by the signatures thereto of the presidents of the respective parties, or shall itself pay off, satisfy and discharge the said debts.

Second. That the party of the second part shall pay the interest, when and as the same shall hereafter become due and payable, on the debt secured or evidenced by the following series of obligations

of the party of the first part, or by any obligations that may be given in extension, renewal or substitution of or for the same, viz:

1. The bonds of the said party of the first part, amounting to the sum of five hundred thousand dollars ($500,000), secured, or intended to be secured, by the mortgage bearing the date the first day of October, A. D., 1855, executed by the party of the first part to Jacob D. Vermile; the interest on the said bonds being payable at the rate of six per cent, per annum semi-annually, on the first day of October and April, and the principal thereof being payable on the first day of April, A. D., 1876.

2. The bonds of the party of the first part, amounting to the sum of two hundred and eighty-five thousand dollars ($285,000), secured, or intended to be secured, by the mortgage bearing date the thirtieth day of June, A. D., 1860, executed by the party of the first part to Jacob D. Vermile; the interest on the said bonds being payable at the rate of six per cent, per annum, semi-annually, on the first day of October and April, and the principal thereof being payable on the first day of April, A. D., 1876.

3. The obligations of the party of the first part, amounting to the sum of two hundred and thirty-six thousand nine hundred and sixty-five dollars ($236,965), known as the "boat loan", and secured or intended to be secured, by a deed of trust of the boats of the party of the first part. dated January 1st, 1866, to William H. Talcott, John D. Ward and John Rodgers, as trustees; the interest on the certificates of the said loan being payable at the rate of seven per cent. per annum, semi-annually, on the first day of October and April, and the principal thereof on the first day of October, A. D., 1885.

4. The obligations of the party of the first part, known as the preferred dividend scrip, amounting in the aggregate to the sum of one hundred and three thousand one hundred and sixty-four dollars and fifty cents ($103,164.50); the interest on the said scrip certificates being payable at the rate of seven per cent, per annum, semi-annually, on the first Tuesday of August and February, and the principal thereof on the first day of February, 1889.

Third. That the party of the second part shall provide for the payment, or extension, or renewal, from time to time, of the principal of the aforesaid series of obligations,—namely, first mortgage bonds, amounting to five hundred thousand dollars ($500,000), second mortgage bonds, amounting to two hundred and eighty-five thousand dollars ($285,000), boat loan, amounting to the sum of two hundred and thirty-six thousand nine hundred and sixty-five dollars ($236,965), and preferred dividend scrip, amounting to the sum of one hundred and three thousand one hundred and sixty-four dollars and fifty cents ($103,164.50); the party of the first part hereby agreeing to execute and deliver to the party of the second part, or its appointees,—but at the expense of the party of the second part—such bonds, obligations, certificates, agreements, mortgages or other securities as it may lawfully execute and deliver, as may be required by the party of the second part for from time to time extending, renewing, replacing or providing means for paying the debt, or any part thereof, secured or evidenced by the four above-mentioned series of obligations; it being understood and expressly agreed, however, that the party of the first part shall not be required to execute and deliver obligations representing a debt of a greater amount than that now existing under and by virtue of the above-mentioned four series of obligations; that, con-

temporaneously with the issue by the party of the second part of any new obligations, executed as aforesaid by the party of the first part, or as soon as practicable thereafter, the party of the second part shall retire, cancel and surrender to the party of the first part outstanding obligations of the party of the first part to an equal amount; that any money realized by the party of the second part, by the issue to purchasers or subscribers of such new obligations of the party of the first part as shall not have been directly exchanged for then outstanding obligations, of the party of the first part, shall be held in trust, and be appropriated by the party of the second part for and to the purchase or payment, cancellation and surrender as aforesaid of such outstanding obligations; and that the liability of the party of the second part to pay the interest and provide as hereinbefore stated for renewing, extending or paying the principal of the four series of obligations hereinbefore specifically mentioned, shall extend and apply to the interest and principal of the debt evidenced or created by the aforesaid new obligations of the party of the first part, as the same shall from time to time be issued by the party of the second part.

Fourth. That if the party of the second part shall pay off and finally discharge and satisfy, either in whole or in part, the principal of any obligation of the party of the first part, for the payment, renewal or extension of which the party of the second part has herein agreed to provide, the liability of the party of the second part for the payment of interest on the principal sum thus paid off, discharged and satisfied shall cease and determine; but if the party of the second part shall prefer to purchase, and shall purchase, any such obligation, or, if unable to purchase, shall pay off the same, and then elect to succeed and

be subrogated to all the rights and securities resulting therefrom or incident thereto before and at the time of the said purchase or payment the said party of the second part shall, as to the said obligation, stand in the same position as any other holder thereof would, and the interest thereon, payable as hereinbefore provided, shall be retained by the party of the second part while and so long as the said obligation shall be held by the party of the second part: Provided, however, that such subrogation or succession shall not be allowed as to any obligation which, under the terms of the preceding article of this agreement, should be cancelled and surrendered to the party of the first part.

Fifth. That the party of the second part shall pay the sum of Seventy-nine thousand two hundred and fifty dollars ($79,250), like lawful money of the United States of America, on the first Tuesday of the months of August and February hereafter, as follows, viz.: the first payment of Seventy-nine thousand two hundred and fifty dollars ($79,250), viz., that falling due on the first Tuesday of August, A. D. 1871, to be made directly to the party of the first part; and each successive payment of Seventy-nine thousand two hundred and fifty dollars ($79,250) thereafter, to be distributed by the party of the second part in paying a semi-annual dividend of five per cent. on the eleven thousand seven hundred and fifty (11,750) shares of preferred stock, and a semi-annual dividend of two per cent. on the ten thousand two hundred and fifty (10,250) shares of common or so-called consolidated stock now constituting the entire capital stock of the party of the first part, the said dividends to be payable to the holders of the said shares of stock as they stand registered on the books of the party of the first part, on the fifteenth day of the month preceding the said first Tuesday of February and August, respectively; the said party of the first

part hereby agreeing to furnish the party of the second part, at least ten days before the said first Tuesday of February or August, as the case may be, with a correct list or schedule of the holders of the said shares of stock as they stand thus registered.

Sixth. That so much of the sum of Seventy-nine thousand two hundred and fifty dollars ($79,250) hereinbefore agreed to be paid semi-annually by the party of the first part as shall be apportionable, by way of dividend, to any shares of the preferred or common stock of the party of the first part owned by the party of the second part, shall be deducted from the said sum of Seventy-nine thousand two hundred and fifty dollars ($79,250) and be retained by the party of the second part: Provided, however, That no such deduction shall be made from the sum of Seventy-nine thousand two hundred and fifty dollars ($79,250) to be paid directly, as hereinbefore provided, to the party of the first part on the first Tuesday of August, 1871; but any dividend from that sum to which the party of the second part may be entitled as owner of the shares of stock of the party of the first part shall be paid to the party of the second part by the party of the first part.

Seventh. That the party of the second part shall punctually and faithfully pay all taxes, charges and assessments of any and every kind which shall hereafter be lawfully assessed or imposed upon the premises hereby demised, or any part thereof, or on the business, or any of the business done thereon or therewith, or on the receipts, gross or net, of the said business, or on the present capital stock of the party of the first part, or on any corporate right, franchise or privilege of the party of the first part hereinbefore granted and demised to the party of the second part; but nothing herein contained shall be construed as rendering the party of the second part liable for any tax, charge or assessment which may be assessed, or become in any

way chargeable, on the sums hereinbefore agreed to be paid by the party of the second part to the party of the first part, its creditors or stockholders, or for any tax, charge or assessment chargeable against, or collectible from, the said party of the first part, its creditors or stockholders, for or on account of the payment to, or receipt by, them of the said sums, or any part thereof.

Eighth. That the obligation of the party of the first part to pay the State of New Jersey the sum of Twenty-five thousand dollars ($25,000) yearly, and all other conditions and obligations imposed upon, or assumed by, the party of the first part, under or by virtue of the first section of the Act of the Legislature of the State of New Jersey, approved the 14th of March, A. D. 1867, entitled "A further supplement to the Act entitled 'An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers,'" passed December thirty-first, eighteen hundred and twenty-four, and "the promise and undertaking" of the party of the first part, made under and in pursuance of the said section, shall be kept, performed and discharged by the party of the second part.

Ninth. That the party of the second part shall from time to time, and all times, save harmless and indemnify the party of the first part from and against all loss and damage resulting from, or occasioned by, any failure or neglect of the party of the second part to comply with the covenants, stipulations and conditions herein contained, on the part of the party of the second part to be kept and performed, or from any failure of the party of the second part to do or omit whatever it may lawfully be required to do or omit in the use, management and control of the demised premises.

Tenth. That the party of the second part shall and may avail itself of every franchise, right and privilege in regard to the use, maintenance, exten-

sion, improvement or alteration of the canal, navigation works and other property herein demised, conferred and granted by any present or future law; the party of the first part hereby agreeing, that nothing in this indenture contained shall restrict or impair the right of the party of the second part to do or omit anything in the premises which it might otherwise lawfully do or omit.

Eleventh. That the party of the first part shall and will maintain its corporate existence and organization, and shall and will, from time to time, and at all times, when requested by the party of the second part, its successors or assigns, put in force and exercise each and every corporate power, and do each and every corporate act which the party of the first part might now, or may at any time hereafter, lawfully put in force and exercised, to enable the party of the second part, its successors or assigns, to enjoy and exercise every right, franchise and privilege which may lawfully be enjoyed or exercised in respect to the use, maintenance, management, renewal, extension, alteration or improvement of the premises hereby demised, or intended so to be, or the business thereon or therewith to be carried on; the party of the second part hereby agreeing to pay to the said party of the first part the yearly sum of fifteen hundred dollars ($1,500), in lawful money of the United States of America, in equal semi-annual payments, for the purpose of defraying the expense of maintaining the corporate organization of the party of the first part; the first payment to be made on the first day of September next, and semi-annually thereafter; and the party of the second part further agreeing to indemnify and save harmless the party of the first part against all expense, loss, damage or liability resulting from, or occasioned by, any exercise of corporate powers, or performance of corporate acts, by the party of

the first part, when exercised or performed at the request of the party of the second part.

Twelfth. That the party of the first part shall and will from time to time at the request of the party of the second part, issue to the party of the second part shares of the capital stock of the party of the first part, of the same par value, and entitled to the same rate of dividend, and to the same priority over the common stock, as the present preferred shares of capital stock of the party of the first part, to an amount equal, at the par value thereof, to the sums expended from time to time by the party of the second part in the construction of permanent improvements and additions to the premises hereby demised; on which shares of stock, when so issued, the party of the second part shall be liable to pay, and shall pay, a semi-annual dividend of five per cent., in the same manner and at the same time as the said dividend is payable, as hereinbefore provided, on the present outstanding shares of the preferred stock of the party of the first part; and the said party of the second part shall also pay all expenses, whether in the shape of increased taxation, or otherwise howsoever, to which the party of the first part may be subjected, for or by reason of the issue of the said additional shares of stock: *Provided, however,* and it is hereby understood and expressly agreed, that nothing herein contained shall be construed as requiring the party of the first part to issue any shares of stock which it may not at the time be legally authorized to issue, and that the obligation of the party of the first part to issue such shares is thus qualified and conditioned.

Thirteenth. That the party of the second part shall be, and it is, hereby authorized and empowered to sell from time to time, either at public or private sale, and upon such terms as it

may deem expedient, any real estate herein demised, or intended so to be, possession of which may not be necessary for the performance of the public duties and obligations resulting from, or incident to, the occupancy by the party of the second part of the canal and navigation works hereby demised, and the enjoyment of the franchises therewith connected, and to convey the property thus sold to the purchaser or purchasers in fee simple, or for any less estate, without any liability on the part of the said purchaser or purchasers to see to the application of the purchase money; it being understood and expressly agreed, however, that the purchase-money of any portion of the demised premises thus sold shall be held in trust by the party of the second part, to be applied, and shall be by it applied to the purchase, at or below par, of any of the then outstanding obligations of the party of the first part, for the payment of the principal or interest of which the party of the second part may, under the terms and conditions of this indenture, be liable, or, at the option of the party of the second part, to the payment of any of the said obligations then matured, or thereafter maturing; the said obligations thus purchased or paid to be cancelled, and neither of the parties hereto to be subject to any further liabilities in regard to the same.

Fourteenth. That the said party of the second part, its successors and assigns, keeping and performing the covenants herein contained, on its and their part to be kept and performed, shall and may from time to time, and at all times, peaceably and quietly have, hold, use and enjoy the demised premises, and every part and parcel thereof, with the appurtenances, without any manner of let, suit, trouble or hindrance from the party of the first part, its successors or assigns; and that the said party of the first part shall and

will at any time hereafter execute and deliver, at the expense of the party of the second part, such other and further deeds, assurances and instruments of writing as may be reasonably required for fully effectuating and carrying out the objects and purposes of this agreement, and the more fully granting, securing and assuring unto the party of the second part the estates, franchises, rights and privileges hereinbefore granted, leased or demised, or intended so to be.

Fifteenth. That it shall be lawful for the said party of the second part to use the name of the party of the first part in all suits or actions and in all proceedings, whether at law, in equity or otherwise, instituted or taken by the party of the second part to assert, maintain or defend the estate, franchises, rights, liberties and privileges hereby demised, or intended so to be, whenever the party of the second part shall be advised by counsel that the use of the said name will be either necessary or convenient for the purposes in view. And the party of the first part does hereby constitute and appoint the president, for the time being, of the party of the second part, its true and lawful attorney, for it, the party of the first part, and in its name, but for the use and benefit of the party of the second part, to do and perform whatever act, and to sign, seal, acknowledge and deliver whatever deed, instrument or assurance may be required, to fully perform and carry out each and all of the covenants and agreements hereinbefore contained, on the part of the party of the first part to be performed and carried out, according to their true intent and meaning.

Sixteenth. That the party of the first part hereby covenants that the premises hereby demised are absolutely free and clear from any and every charge, lien or incumbrance whatever, excepting the mortgages and deed of trust securing the boat loan hereinbefore mentioned.

Seventeenth. That in case the said party of the second part shall at any time refuse or neglect, for the period of six months, to make any of the payments by them in this indenture agreed to be made, then, and in that case the said party of the first part, may, at its option, at any time within ninety days thereafter, but not afterwards, for that default, treat this lease as at an end, and at once resume, and take, and hold full possession and control of, all the property by these presents leased and demised, free and clear of all right and control of the party of the second part, the same as if this lease had not been made: PROVIDED, That the repossession of said property by the said party of the first part, under the option hereinbefore named, shall in no manner vitiate or discharge any legal claim or demand the party of the first part may have against the party of the second part by reason of any breach of these presents occurring at or before the time when the said party of the first part shall repossess themselves of said property: AND PROVIDED ALSO, That the party of the first part shall, during the period of at least thirty days before taking the possession of said property, publish in two newspapers, printed in each of the cities of New York and Philadelphia, a notice to the stockholders of the party of the second part of such default, and intention to resume possession of said property; and the party of the second part may, at any time before the expiration of the thirty days' notice above mentioned, stay all further proceedings by the payment of the amount then due.

Eighteenth. That in the event of the party of the first part resuming possession of the demised premises as hereinbefore provided, the party of the second part shall make good to the party of the first part any depreciation in the then aggregate value of the demised premises from their present value, and shall immediately deliver to the party of the

first part, personal property of the same character, and of equal value, as that hereby assigned and transferred to the party of the second part, or, in default thereof, shall pay to the party of the first part a full equivalent therefor in cash; and that, for the better securing to the party of the first part the full performance of this covenant, an inventory of the personal property hereby assigned and transferred shall be forthwith made; and the said personal property shall be appraised at its fair market value by three appraisers; one to be selected by each of the parties hereto, and the third by the two thus selected; and the said inventory and appraisement shall be identified, for future reference, by the respective signatures of the presidents of the parties hereto.

In Witness Whereof, the parties hereto have caused to be hereunto affixed their corporate seals, duly attested by the signatures of their respective president and secretary, this the day and year first above written.

JACOB F. RANDOLPH, President.
THE MORRIS CANAL & BANKING CO.

Attest:

JNO R. BURNETT, Secretary (SEAL).

ASA PACKER, Prest. of
the LEHIGH VALLEY RAILROAD CO.

Attest:

JNO. R. FANSHAWE, Secretary (SEAL).

Sealed and delivered in the presence of }

As to the execution by Asa Packer, Presi-

dent, and Jno. R. Fanshawe, Secretary,
EDW. ARMSTRONG,
WM. W. LONGSTRETH.

As to the execution by Jacob F. Randolph, President, and Jno. R. Burnett, Secretary,
OSCAR KEEN,
ELWOOD C. HARRIS.

(A schedule of miscellaneous debts of the Morris Canal & Banking Company amounting to $166,686.70 is appended to the lease.)

D. 25.

AN ACT of the Legislature of the State of New Jersey entitled "An Act to incorporate the Associates of the Jersey Company", passed November 10th, 1804.

(P. L. 1804, p. 367.)

WHEREAS it is represented to this Legislature, that Richard Varick, Jacob Radcliff, and Anthony Dey, have become the proprietors by purchase from Cornelius Van Vorst, of all that certain tract or parcel of land and meadow, situate, lying and being in the Township of Bergen, County of Bergen, and State of New Jersey, commonly called Powles Hook, bounded on the East by Hudson's River, on the North by said river, or the bay commonly Horsimus Bay, on the South by said river, or the bay commonly called Communipau Bay, and on the West by a line drawn from a stake, standing on the West side of the small creek on the Southwest side of the said tract, (from which stake, the flag-staff on Ellis's Island, bears

South one degree twenty minutes east, and from which the chimney of the house of Stephen Vreeland, on Kaywan, bears South, fifty-six degrees ten minutes West, and from which the steeple of the Bergen church bears north fifty degrees twenty-five minutes west) North twenty-six degrees thirty minutes East to Horsimus Bay aforesaid: Together with the right of ferry from the said tract or parcel of land, across Hudson's River and elsewhere, and the right and title of said Cornelius Van Vorst, under the water of the Hudson River, and the bays aforesaid, opposite the said premises as far as the right of the said Cornelius Van Vorst extends. And whereas it is represented, that the said Richard Varick, Jacob Radcliff, and Anthony Dey, have divided all the said premises into one thousand original shares, and have by certain articles of agreement associated and become associates in interest with divers other persons in the said shares, and the said associates having presented a petition to the Legislature, praying to be incorporated for the purposes hereinafter contained and such prayer appearing reasonable:

Sec. 1. BE IT THEREFORE ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the said Richard Varick, Jacob Radcliff, and Anthony Dey, and the said other persons interested with them in the said premises as aforesaid, shall be and hereby are constituted a body corporate, by the name and style of "The Associates of the Jersey Company," and by that name shall be known in law, and have power to sue and be sued, and to defend and be defended in all courts of law and equity, and in all actions and matters whatsoever, and may have a common seal, and renew and alter the same at their pleasure, and by the same name shall be and hereby are made cap-

able in law to have, hold, purchase and enjoy to them and their successors lands, tenements, and hereditaments, goods, chattels, and effects of what nature or kind soever, and the same to grant, demise, alien or dispose of at pleasure. * * * * * * * * * * * * * *

2. BE IT FURTHER ENACTED, That the said associates and their successors shall have power to make and lay out all streets and squares upon all and every part of the said premises, and to establish such as have already been laid out, and from time to time to regulate the same. * * * * * * * * * * * * * *

3. AND BE IT FURTHER ENACTED, That the said associates shall have the privilege of erecting or building any docks, wharves and piers, opposite to and adjoining the said premises in Hudson's River and the bays thereof, as far as they may deem it necessary for the improvement of the said premises, or the benefit of commerce, and to appropriate the same to their own use. * * * * * * * * * * * * * *

4. BE IT THEREFORE FURTHER ENACTED, That it shall be lawful for the said Richard Varick, Jacob Radcliff, and Anthony Dey, their heirs and assigns to grant and convey all and singular the said premises, with the privileges and appurtenances thereto belonging, to the said corporation and their successors and assigns. * * * * * * * * * * * * * *

D. 26.

Deed, Richard Varick and wife, Jacob Radcliff and wife, and Anthony Dey and wife, to Associates of the Jersey Company. Dated, Feb. 1st, 1805, Recorded Aug. 5, 1805, in Liber A. of Deeds for Bergen County, page 74, &c.

GRANTS, BARGAINS, SELLS AND CONVEYS, in fee simple,

"ALL that certain tract or parcel of land and meadow which in a certain deed or conveyance thereof made by Cornelius Van Vorst of the Township of Bergen in the County of Bergen and State of New Jersey to the said Anthony Dey, bearing date the twenty-sixth day of March last past, is described as follows, to wit:—ALL that certain tract or parcel of land and meadow, situate, lying and being in the Township of Bergen, County of Bergen and State of New Jersey, commonly called Powles Hook. BOUNDED on the east by Hudson's River; on the north by the said River or the Bay commonly called Harsimus Bay; on the South by said River or the Bay commonly called Communipaw Bay, and on the west by a line drawn from a stake standing on the west side of the small creek on the southwest side of the said tract (from which stake the Flag Staff on Ellis Island bears south one degree twenty minutes east and from which the chimney of the house of Stephen Vreeland on Kaywan bears South fifty-six degrees ten minutes west, and from which the steeple of the Bergen Church bears north fifty degrees twenty-five minutes west) North twenty-six degrees thirty minutes east to Harsimus Bay aforesaid.

"TOGETHER with the right of ferry from the said tract or parcel of land across Hudson's River and elsewhere and the right and title of the said parties of the first part under the water of the said Hudson's River and the Bays aforesaid opposite the said premises so far as their right to the same extends."

Habendum in fee. Covenant against encumbrances, grantors' acts, and of further assurance.

Acknowledged May 15th, 1805, before James Kent, Chief Justice of the Supreme Court of New York.

D. 27.

Map of that part of the Town of Jersey commonly called Powles Hook. Surveyed, New York, April 15th, 1804. Joseph F. Mangin, City Surveyor.

D. 28.

Warranty deed by Associates of the Jersey Company to Robert Fulton and Cadwalder D. Colden, dated November 30, 1812. Recorded October 3, 1829, Book B of Deeds for Jersey, p. 594. Conveys numerous parcels; among others Block 14, containing 26 lots, Block 15, containing 32 lots on map of Powles Hook.

D. 29.

Deed dated November 1, 1833; Cadwalader D. Colden and wife to John V. B. Varick and Archibald McIntyre. Conveys the 26 water lots in Block 14 and other property, on map of Powles Hook, being an assignment for the benefit of creditors. Recorded Jan. 18, 1834; Book L. 3, p. 127, Bergen County.

D. 30.

Deed dated July 17, 1834; John V. B. Varick, and Archibald W. McIntyre, Trustees, to Morris Canal and Banking Company. Recorded June 29, 1835, in Book C, p. 496. Conveys all of Block 14, on map of Powles Hook.

D. 31.

Deed, dated March 19, 1835; Associates of the Jersey Company to the Morris Canal and Banking Company. Conveys all of Block 1 on map of Powles Hook. Recorded, August 29, 1905, Book 912, p. 433.

D. 32.

Deed, dated March 19, 1835; Associates of the Jersey Company to the Morris Canal and Banking Company. Conveys Lots 9, 10, 11 and 12 Hudson Street and 2, 4, 6, 8, 10 and 12 Bergen Street, being the southwest corner of Block 2 on Map of Powles Hook. Recorded and filed August 29, 1905, Book 912, p. 431.

D. 33.

Deed, dated May 26, 1835; Associates of the Jersey Company to the Morris Canal and Banking Company. Recorded and filed August 29, 1905, Book 912, p. 434. Conveys all water rights of the first party in front of the easterly side of Block No. 1; in front of lots numbers 9, 10, 11 and 12 in Block No. 2, Hudson Street; also all the water right on the south side in front of Block No. 1 on Map of Powles Hook, "so long as the same shall be used by the said parties of the second part, their successors or assigns, for a canal basin or as an approach to a canal basin, or for any other necessary uses or purposes of the said parties of the second part, in connection with the canal which they are now constructing and which is to terminate at or near the said premises herein above described."

D. 34.

Deed, dated January 2, 1845; Associates of the Jersey Company to Morris Canal and Banking Company. Recorded March 2, 1847, Book 9, p. 429; Consideration $4,000. "do remise, release and forever quitclaim unto the said parties of the second part, their successors and assigns, all and singular the water right of the parties of the first part, in front of certain blocks, situate, lying and being in the township of Jersey City, in the Coun-

ty of Hudson and State of New Jersey, and known by the name of Jersey City, formerly called Powles' Hook, and which on a map of the said tract made by Joseph F. Mangin, for the said parties of the first part, are distinguished as herein stated, that is to say: all the water right of the parties of the first part, which has not been heretofore granted by the said parties of the first part to the parties of the second part, lying east of Hudson Street, and south of a continuation of the southerly line of Essex Street into the Hudson River, and comprising all the water right of the said parties of the first part in the Hudson River, lying east of Hudson Street, and south of the said continued line of the southerly line of Essex Street; and also all the water right of the said parties of the first part, in Communipau Bay or York Bay, lying south of South Street, and extending to the westerly boundary line of the said parties of the first part; together with all and singular the rights, members, hereditaments and appurtenances to the same belonging, or in anywise appertaining." Habendum in fee.

D. 35.

Deed, dated September 13, 1845; Associates of the Jersey Company to Morris Canal and Banking Company. Recorded March 2, 1847, Book 9, p. 432.

"WHEREAS by a deed bearing date the second day of January, A. D. Eighteen Hundred and Forty-five, between the party of the first part and the party of the second part hereinafter mentioned, the said party of the first part, conveyed, or intended to convey to the party of the second part, the property hereinafter described; and, whereas, it has been deemed advisable to give a more perfect deed for the land hereinafter men-

tioned; now, therefore, this indenture made this thirteenth day of September, A. D. Eighteen Hundred and Forty-Five, between the Associates of the Jersey Company, a body corporate of the State of New Jersey, party of the first part, and the Morris Canal and Banking Company, also, a body corporate of said State, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of four thousand dollars, lawful money of the United States, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, being the consideration named in the deed referred to in the preamble to this deed, made between the parties to these presents, have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm, unto the said party of the second part, their successors and assigns, all and singular the lands under water and the water rights of the party of the first part, which said lands under water and water rights, are situate, lying and being in the township of Jersey City, in the County of Hudson and State of New Jersey, and more particularly described as follows: All the lands under water and water rights of the party of the first part which have not been heretofore conveyed by the said party of the first part to the party of the second part, except by the deed mentioned and referred to in the preamble to this conveyance, lying east of Hudson Street, and south of a continuation of the southerly line of Essex Street, into the Hudson River, and comprising all the lands under water, and the water rights of the said party of the first part, in the Hudson River, lying east of Hudson Street and south of the said continued line of the southerly line of Essex Street;

and, also, all the lands under water, and water rights of the said party of the first part, in Communipaw Bay or York Bay, lying south of South Street, and extending to the westerly boundary line of the said party of the first part, which said streets are particularly marked out and delineated on Mangin's map of Jersey City, made for the said party of the first part; together with all and singular the rights, members, hereditaments and appurtenances to the same belonging, or in anywise appertaining, and all the power and authority which the said parties of the first part now have over the lands under water, and the water rights above described by virtue of any title of the said parties of the first part to the same, or by virtue of any act or acts of the Legislature of the State of New Jersey, touching and concerning the same, hereby authorizing and empowering the said party of the second part, to do all such acts and things, relative to the said lands under water, and the said water rights, as they, the said party of the first part, can or may do under and by virtue of the power and authority conferred upon the said parties of the first part, by virtue of any act or acts of the Legislature of the State of New Jersey. * * * To have and to hold the said tracts or parcels of land and premises, lands under water and water rights above described and conveyed to the said party of the second part, their successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, their successors and assigns, excepting the reservation before mentioned: And it is agreed by and between the parties to these presents, that this deed shall not be construed as guaranty or covenant of assurance of title to the land under water, water rights and property hereby intended to be conveyed."

D. 36.

Deed. Associates of the Jersey Company to Morris Canal and Banking Company, dated April 21, 1864. Recorded Book 111, p. 75.

"This indenture, made this twenty-first day of April, in the year of our Lord, One Thousand Eight Hundred and Sixty-four, between the Associates of the Jersey Company, a body corporate of the State of New Jersey, party of the first part, and the Morris Canal and Banking Company, a body corporate of said State, of the second part, witnesseth:"

(Recites above deed of March 19th, 1835, being Exhibit "D—32"; also above deed of same date, being Exhibit "D—31"; also deed of April 17th, 1834, from Varick and McIntyre to Colden, being Exhibit "D—30"; also the deed of May 26th, 1835, conveying "all the water right in front easterly of block number one as laid down on Mangin's map aforesaid, and also all the water right in front of Lots numbered nine, ten, eleven and twelve, in said Block numbered two, and also all the water right on the south side, in front of said Block numbered one"; also deed of January 2nd, 1845, being Exhibit "D—34" conveying water rights, also deed of September 13th, 1845, conveying rights, being Exhibit "D—35.")

"And whereas, the party of the first part are desirous of carrying out fully the intention of the foregoing deeds and vesting in the party of the second part, the title thereby conveyed or intended to be conveyed and also of reserving to themselves the party of the first part, the right of ferry therefrom, the whole tract of land embraced in the limits set forth and referred to in the act incorporating the party of the part.

"And whereas, the said lands under water are principally situated south of South Street, as said

street is laid down on Mangin's map aforesaid. Now, therefore, in consideration of the premises and the sum of one dollar, paid by the party of the second part to the party of the first part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and their successors and assigns forever, all the south half of South Street, as South Street is laid down and delineated on Mangin's map of Jersey City, made for the party of the first part. Said South half of South Street, hereby conveyed, extending form the boundary ditch of the party of the first part, as shown on said map, on the west and running from thence easterly to a line extended across the same at right angles, which said line runs parallel with and along the westerly side of block numbered fourteen on said map, said south half of South Street, being fifty feet in width, and all of South Street being of the width of one hundred feet from the line last mentioned, eight hundred and fifty-five feet eastwardly to the eastwardly line of Hudson Street, subject to any easement or right of way there may be in and over the same; together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part of in and to the above described premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular, the above mentioned and described premises,

together with the appurtenances unto the said party of the second part, their successors and assigns forever, excepting and reserving to the said party of the first part, their successors and assigns forever, the exclusive right of ferry from the whole of the said tract of land called Powles' Hook, and every dock or wharf erected or to be erected thereon, or adjoining the same to the City of New York or elsewhere; which right of ferry the said party of the second part do hereby for themselves, their successors and assigns, agree to and with the said party of the first part, shall exclusively belong as aforesaid to the said party of the first part, their successors and assigns forever.

"In Witness Whereof, the said party of the first part have caused their corporate seal to be hereunto affixed, and these presents to be signed by their President the day and year first above written.

D. S. GREGORY, President. (Seal of the Associates of J. C.)

Signed, sealed and delivered in presence of,
H. J. SOUTHMAID.

E. MARSH, President M. C. & B. Co. (Seal of the Morris Canal and B. Co.)

Attest, L. N. Condit,
Sec'y Morris Canal and Banking Co.

(Int. Rev. 5 cents.)

D. 37.

AN ACT to incorporate The American Dock and improvement Company.

Approved April 11, 1864 (P. L. 1864, p. 683).

WHEREAS, It is represented that John S. Gilbert, Preston H. Hodges, James Hoy, Henry L. Gilbert and Moses B. Bramhall, and others their associates, now own certain tracts of land, situate in the townships of Bergen and Greenville, in the County of Hudson, and desire to acquire from the state other tracts of land contiguous thereto, covered by water, which they desire to fill in and reclaim from the water, and to divide into suitable building and other lots, and to sell and dispose of the same for the benefit of the association, with the object of erecting a town, with docks, wharves and bulkheads so as to afford facilities to secure to this state a portion of the commerce and shipping of the city of New York; and whereas, it is necessary for the success of their undertaking that they should be able to convey the said premises from time to time, to such persons as may be desirous to purchase, notwithstanding death or other cause affecting the individuals owning or who may own the said land, and in order to give greater efficiency and concentration to their efforts for the improvement of the said land— now therefore,

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,* That John S. Gilbert, Preston H. Hodges, James Hoy, Henry L. Gilbert and Moses B. Bramhall, and such other persons as they may associate with them, and their successors, shall be and they are hereby incorporated and made a body politic and corporate, in fact and in law, by the name of "The

American Dock and Improvement Company," and that the capital stock of the said company shall be three million dollars, divided into shares of one hundred dollars each, which shall be subscribed and paid in at such times, upon such notice and in such manner and installments as the directors of said company by their by-laws or otherwise may direct; that such payment shall be made either in money or in land situate in said townships of Bergen and Greenville, in the county of Hudson; and in case of payment in land, the directors may issue in payment therefor the stock of said company upon such terms as may be deemed best for its interests. * * * *

* * * * * * * *

5. *And be it enacted,* That as soon as the said company shall be organized, it shall be authorized to receive conveyances for the lands now owned as aforesaid between the south line of the lands of "The Central Railroad Company of New Jersey," where it intersects the New York Bay and Kavan Point, and to hold and execute all instruments and conveyances necessary for the purchasing, leasing or selling of such property; and the said company are hereby authorized to purchase and hold any lands adjoining or near the above mentioned tracts, which they may deem necessary for improving and enlarging said property, and to pay for all lands with the shares of its capital stock, at such price as the company may deem best for its interest; *provided,* they shall not hold at any time over two hundred acres above the present high water mark, in addition to the tracts mentioned in this section.

6. *And be it enacted,* That the said company shall be, and hereby are authorized to improve all and every portion of the said lands under water held or purchased by them as aforesaid by erect-

ing buildings, and laying out said lands into lots, streets, squares, docks, lanes, alleys, or other divisions, and by levelling, grading, raising or tunnelling the said lands, streets, lanes and alleys; and they shall have liberty to fill up, raise, occupy, possess and enjoy as their own property, all lands covered with water which they may hold or purchase, or which may lie in front of any lands which they may hold or purchase, and may build, enlarge or improve, (or sell and convey to others to improve) all and any land or lands under water, wharf or wharves, bulkhead or bulkheads, piers, slips and other structures which they may deem necessary for commercial, shipping or other purposes; *provided,* that in carrying out the provisions of this act they shall not injure the navigation of the Hudson River, nor interfere with the legal rights of others, nor build out beyond the easterly line of Hudson Street, in Jersey City, extended southerly, or such other exterior line as may be fixed by law, and that the southerly line of the said improvement into the bay, shall be on a line commencing on the southerly side of Kavan Point, at the boundary line of lands of late belonging to Stephen B. Vreeland, and at the point where said boundary line strikes the shore of New York bay, and from thence running south forty-six degrees and thirty-nine minutes east to the channel of the Hudson River; * * * * * * * * * * * * * * * *

11. *And be it enacted,* That the said company shall pay to the treasurer of this state, on or before the first day of July, Anno Domini eighteen hundred and eighty-five, the sum of twenty-five dollars for each and every foot of the shore embraced and contained in this bill, the amount of the same to be ascertained by a commission to be appointed by the governor, and the extent of the shore front is to be ascertained and measured as

follows, commencing at a point on the southerly side of Kavan Point at the boundary line of the lands of late belonging to Stephen B. Vreeland, and at the point where said boundary line strikes the shore of the New York bay, and thence northerly in a straight line to the south line of the lands of the Central Railroad Company of New Jersey, where it intersects the New York bay, and upon the aggregate amount so ascertained as aforesaid, the said company shall pay to the state interest from the first day of July, eighteen hundred and sixty-five, at the rate of six per centum per annum, payable semi-annually; and the said aggregate amount so ascertained as aforesaid shall be and remain a lien upon said lands until the payment of the same, with the interest thereon; and a certificate of the said commissioners, signed by them and the president of said company, of the measurement of the shore line made as aforesaid, shall be filed in the office of the secretary of state.

* * * * * * * * *

D. 38.

Application of Lehigh Valley Railroad Company for a grant, February 3, 1888.

To The Board of Riparian Commissioners of The State of New Jersey:

The Lehigh Valley Railroad Company respectfully represents, that on the fourteenth day of March, 1867, the Legislature of the State of New Jersey granted to the Morris Canal and Banking Company, by an Act entitled "A further supplement to the Act entitled 'An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers, passed December 31st, eighteen hundred and twenty-four.'" (which further supplement was approved on the fourteenth day of March aforesaid), a

certain tract of land under water in the said act particularly described, and fronting on other lands owned by said Morris Canal and Banking Company, with power to construct piers, wharves, docks, basins, warehouses and other structures within the limits therein described, which grant is within the purview of the third and fourth sections of the Act of the Legislature of New Jersey, entitled "A supplement to an Act entitled 'An Act to ascertain the rights of the State and riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State.'" approved April 11th, eighteen hundred and sixty-four.

And that by a lease dated May 4th, in the year 1871, said Morris Canal and Banking Company did demise and lease to the said Lehigh Valley Railroad Company the said land and privileges in such manner that said last-named company became the representative or assignee of the Morris Canal and Banking Company of said granted land and privileges.

And the said Lehigh Valley Railroad Company, as such representative or assignee, desires a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, conveying the land in said grant mentioned to said Lehigh Valley Railroad Company in fee, together with the benefit of an express covenant that the State will not make or give any grant or license, power or authority, affecting lands under water in front of said lands.

And the said Lehigh Valley Railroad Company produces herewith a duly certified copy of the above mentioned legislative act containing such grant to the Morris Canal and Banking Company, and a certified copy of the lease aforesaid, and hereby tenders and offers itself ready and willing to pay to the State of New Jersey, the

sum of fifty dollars for each and every lineal foot measuring on the bulkhead line in front of the land so granted, and does hereby request that you, together with the Governor and Attorney-General, will execute, acknowledge, and deliver in the manner pointed out in the fourth section of said supplemental riparian act, in the name and on behalf of the State of New Jersey, a conveyance in fee to said Lehigh Valley Railroad Company for the lands described in said legislative grant, containing a covenant as above set forth, on the payment by said Lehigh Valley Railroad Company of the consideration for such conveyance as above set forth.

IN WITNESS WHEREOF, said Lehigh Valley Railroad Company has caused its corporate seal to be hereto affixed, and this request to be signed by its Vice President and attested by its Secretary, the Third day of February, 1888.

LEHIGH VALLEY RAILROAD COMPANY (Corporate seal.)

by

CHAS. HARTSHORN,
Vice Prest.

JNO R. FANSHAW,
Secty.

D. 39.

Minutes of the Board of Riparian Commission of New Jersey.

Sept. 26th, 1882.

(Minute Book 4, page 6.) The Engineer presented map showing extension of the Exterior line for piers between the Hoboken Ferry at Hoboken and the present exterior line for Piers at the Southeasterly Coal Pier of the Central Railroad in the Hudson River—which was approved and adopted and ordered filed in the office of the Secretary of State.

D. 40.

Map filed by Riparian Commissioners, referred to in their Minute Book 4, p. 6, September 26th, 1882, showing extension of pier lines from Hoboken Ferry to Central Railroad Company, adopted Sept. 26th, 1882.

D. 41.

Minutes of Riparian Commission relative to Grant to Lehigh Valley Railroad Company.

February 4th, 1888.

(Minute Book 4, page 182.)

Applications for lands under water were presented and acted upon as follows:

* * * * * *

From the Lehigh Valley Railroad Company assignee of the Morris Canal and Banking Company for a grant of lands under water in the Hudson River at Jersey City, described in the lease to the Morris Canal and Banking Company by the Act of the Legislature approved March 14, 1867.

Peter Bentley, Esq., attorney for the applicant having been heard upon the merits of the application and the same being favorably considered by the Commissioners present, the matter was laid over to a meeting to be held on Monday 6th instant, when certified documents required by the Statutes are to be presented and the grant then executed by the Commissioners.

February 6th, 1888

(Minute Book 4, page 183.)

Certified copies of the following papers were presented, accepted and ordered filed, viz:

A further Supplement to the Act entitled "An Act to incorporate a Company to form an arti-

ficial navigation between the Passaic and Delaware Rivers" passed Dec'r 31, 1824.

Certified Copy of Lease "The Morris Canal and Banking Company to the Lehigh Valley Railroad Company" May 4, 1871.

The Grant to the Lehigh Valley Railroad Co. as applied for was taken up and executed by Commissioners Randolph and Ross.

February 7th, 1888.

(Minute Book 4, page 184.)

The Grant to the Lehigh Valley Railroad Company for lands under water in the Hudson River, having been previously signed by Commissioner Connolly, was duly approved and acknowledged by Peter Bentley, Master in Chancery of New Jersey, and the Secretary was directed to transmit the same to Governor Green for his consideration and signature if approved, with the attestation of the Attorney General.

June 29th, 1889.

(Minute Book 5, page 9.)

A Grant to the Lehigh Valley Railroad Company for lands under water in the Hudson River at Jersey City and a Lease to Thomas P. Fowler in the Hudson River—were signed by the Commissioners and directed to be laid before the Governor.

July 12, 1889.

(Minute Book 5, page 10.)

A new Grant for lands under water in the Hudson River at Jersey City (Morris Canal Basin) to the Lehigh Valley Railroad Company—and a grant to George C. Flaacke—were

signed by the Commissioners and ordered to be laid before the Governor for his consideration.

August 1st, 1889.

(Minute Book 5, page 11.)

The Secretary presented * * * also a communication from the Governor returning grant executed by the Commissioners June 29th, 1889 to the Lehigh Valley Railroad Company for lands under water in the Hudson River at Jersey City (Morris Canal Basin) with his objections to signing the same.

Communication * * * received, read and ordered filed.

December 27th, 1889.

(Minute Book 5, pp. 23A, 23B, 24, 25, 26 and 27.)

"The following communication was received from his Excellency Robert S. Green, Governor, with the accompanying papers and having been read were ordered to be entered in full in the minutes:

"STATE OF NEW JERSEY,

EXECUTIVE DEPARTMENT.

Trenton, Dec. 20th, 1889

Robert C. Bacot, Esq.

Dear Sir

The Comptroller having certified to me that the Lehigh Valley Railroad Company as assignee of the Morris Canal and Bkg. Co. had to-day paid

(6)

$357,142. under chap. 133 laws of 1887
$ 48 000 consideration named &
$ 23 767 12 rental to date, I have executed grant
100 dated July 12, 1889.

I send you to file and record in connection with the grant

Certificate of Comptroller, Dec. 20, 1889

Statement & opinion of Judge B. F. Randolph July 12/89

Concurrence in same by Jas. B. Vredenburgh Oct 9/89

Opinion of Gilbert Collins Esq Oct. 2/89.

I desire these papers recorded as explaining the case

Yours Truly

ROBT. S. GREEN."

(Minute Book 5, p. 23B.)

"COMPTROLLERS DEPARTMENT.

STATE OF NEW JERSEY.

Trenton, Dec. 20th, 1889.

Gov. Robert S. Green,

Sir:

The Lehigh Valley Railroad Company as lessee of the Morris Canal and Banking Company, has this day paid into the State Treasury, the sum of Three hundred and fifty-seven thousand, one hundred and forty-two dollars ($357,142.00) being the principal sum named in Chapter 133 of the Laws of N. J. of 1867, making a grant of lands under water to said Morris Canal and Banking Company, and the further sum of Forty-eight Thousand Dollars ($48,000.00) being the consideration named in a grant made by the Riparian Commissioners of this State to the said Lehigh Valley Railroad Company, under date of July 12th, 1889—and also the sum of Twenty-three thousand, seven hundred and sixty-seven 12/100 Dollars, ($23,767.12) being the due proportion of the annual payment of Twenty-five Thousand dollars ($25,000.00) required to be made under the above mentioned act.

Very respectfully,

E. J. ANDERSON,
Comptroller."

(Minute Book 5, p. 24.)

RIPARIAN COMMISSION
of the
STATE OF NEW JERSEY.
FULLER BUILDING,
No. 1 Montgomery Street.
BENNINGTON F. RANDOLPH,
Chairman.

MILES ROSS,
RICHARD D. READING,
RICHARD N. HERRING,
(*Commissioners.*)

R. C. BACOT,
Secretary & Engineer.

Jersey City, N. J., July 12, 1889.

His Ex'y Robert S. Green.

Dear Governor:

When the interlineation in the Lehigh Valley Deed was written I was aware that the City had not laid out or extended Washington Street, south of the Gap. Pavement has been laid there, by the City, but this was done since the State by act of Mar. 14, 1867, L. p. 251, made the grant to the Morris Canal & Bankg Co. The part of Washington Street north of the Gap extending from South Street, south to the Gap, it was my impression when the interlineation was made, had been laid out, and paved before the grant to the Canal Co.

I was mistaken as to that. When the grant was made to the Canal Co. all south of South Street was tide water. Before the grant to the Co'y the southern limit of Washington Street by dedication by the Mangins Map of 1804 was South Street. As I now view the matter it seems to me it would be wise and proper to take the

same description the act of 1867 gives, as the description in our deed making no other reference to the streets than as made in the act. The deed signed to-day follows that description word for word.

I am Most Respectfully
and Truly yours,
BENNINGTON F. RANDOLPH,
Chairman of the
Riparian Commission
of New Jersey.

(Minute Book 5, p. 25.)

I concur in the recital of facts & views above expressed.

JAMES B. VREDENBURGH.

The above endorsement of Judge Randolphs statement and opinion was made by Mr. Vredenburgh, Oct. 9th, 1889.

ROBT. S. GREEN."

"Jersey City, N. J., October 2, 1889.

Henry S. Drinker, Esq.,
Gen'l Sol'r of the L. V. R. R. Co.

Dear Sir:—

You inform me that the Riparian Commission being about to give to the L. V. R. R. Co. (as lessee in perpetuity of the Morris Canal & Banking Co) a conveyance under the 4th Section of the Riparian Act of March 1st, 1869 (Rev. p. 983) of the lands under water granted to the Morris C. & B. Co. March 14th, 1867 by Act of the Legislature (P. L. p. 251)—Mr. Vredenburgh raised the question whether "Washington Street" extended across these lands, should not be excepted from the proposed conveyance—and you ask me whether I think such an exception ought to be made. I do not think so.

I suppose the doubt arises from the fact that the Legislature in Sec. 64 of the Jersey City Charter of 1871 (P. L. p. 1125) enacted that the board of Public Works of Jersey City "may also at any time in their discretion extend Washington Street, Van Vorst and Henderson Streets, or any street west of Henderson Street." This seems to me only a grant of municipal power and that it was so considered by the City authorities is apparent from the fact that when they so extended Washington Street, they made awards for the lands taken as in ordinary cases, with the exception of the land under the water way of 150 feet in width required to be kept open by the grant of 1867. The Chancellor held that even as to that, there should have been an award and enjoined the building of Piers for a bridge. (11th C. E. Green 294). If these proceedings were valid, the city had the street and no exception is necessary; if invalid the grant of power in the charter is not in any way affected by the proposed conveyance. It seems to me the company has a right in applying the act of 1869 (passed before the City Charter) to have the description of the lands conveyed thereunder follow exactly the description in the grant of 1867, which is its authority for demanding the conveyance.

The State by this course follows with precision the direction of the law and if anything passed from the State to Jersey City by the Charter of 1871, it cannot possibly be affected by the proposed conveyance, unless what so passed was subject to the right of the Morris C & B Co. to have a conveyance at any time under the act of 1869. If so subject, there is all the more reason for following the original description exactly, for in that case the Company is entitled to it.

Of course the conveyance will only pass the present right title and interest of the State in

the premises described and that surely the Company is entitled to. The State not being called on to covenant anything assumes no risk whatever that I can see.

Yours Truly
Gilbert Collins."

P. 27.

The Secretary reported having received from H. S. Drinker Esq. Counsel of the Lehigh Valley Railroad Company, the Grant to the said Company dated July 12th '89 for record in the books of the Commission and that the same had been recorded with the communications received from Governor Green, and that said grant had then been returned to Mr. Drinker for delivery to the said Lehigh Valley Railroad Company.

January 31, 1890.

(Minute Book 5, pages 29 &c.)

The following was offered by Commissioner Randolph and on motion was ordered to be spread upon the minutes—

It appearing that a concise history should be entered in the minutes of the grant made to the Lehigh Valley Railroad Company, and referred to in the minutes of December 27th, last, this minute is adopted.

An application dated February 3d, 1888, (under the provisions of the third and fourth sections of the Act approved March 31st, 1869) and presented to this board February 4th, 1888, by the Lehigh Valley Railroad Company, Assignee of The Morris Canal and Banking Company desiring a grant in fee of the lands under water in the Hudson River at Jersey City described in the lease made to the Morris Canal and Banking Company by the Act of the Legislature of New Jersey

approved March 14th, 1867, and also desiring (in accordance with the provisions of said third and fourth sections of the act of March 31st, 1869) the benefit of an express covenant that the State would not make or give any grant &c., affecting lands under water in front of said lands.

This application having been favorably considered a Grant dated February 6th, 1888, in accordance therewith was executed by Commissioners Randolph, Ross, Connolly and transmitted to the Governor.

This grant was in the following form:

(Here follows form of grant dated Feb. 6th, 1888).

The above form of grant was, after consideration, not approved by the Governor and Attorney General, and a new form of said grant was executed by Commissioners Randolph, Ross, Reading and Herring, who were then the Commissioners constituting the Board, on June 29th, 1889, of which the following is a copy.

(Here follows copy of Grant of June 29th, 1889.)

P. 49 &c. This form was, however, not approved by the Governor and was returned to the Commissioner with his letter of July 2nd, 1889, in which he expressed the view as to the words in said grant "and subject to any easement now in the public, if any, in and to Washington Street North of the Gap," that this provision should not be confined to so much of Washington Street as lay north of the Gap, but the conveyance should be subject to any easement now in the public, if any, in and to Washington Street.

The Commission was also notified by the Lehigh Valley Railroad Company, the grantee, that said Company was unwilling to accept a form of grant containing any reservation or exception as to Washington Street, and that said Company claim-

ed the right to a grant in fee of the lands described in the application.

They were accordingly heard on this point and on July 12th, 1889, the Commissioners executed a grant of said lands to said Company in the form last above recited but omitting the words "and subject to any easement now in the public, if any, in and to Washington Street North of the Gap."

Said grant was transmitted to the Governor with a statement dated July 12th, 1889, prepared and signed by Commissioner Randolph, giving the reasons for the omission of the above words.

The concurrence of James B. Vredenburgh, Esq., Counsel of the Commission, was endorsed on said statement October 9th, 1889.

And at the meeting of the Commissioners, held December 27th, 1889, a communication dated December 20th, 1889, was received and read from the Governor, stating that he had signed the above grant dated July 12th, 1889 and desiring that the following papers should be filed and recorded in connection therewith as explaining the case:

Certificate of the Comptroller, December 20th, 1889.

Statement and opinion of Judge B. F. Randolph, July 12th, 1889.

Concurrence in same by James B. Vredenburgh, October 9th, 1889.

Opinion of Gilbert Collins, Esq., October 2nd, 1889.

The above papers will be found recorded in the minutes of December 27th, 1889.

The forms of grant above referred to dated Feb. 6th, 1888, and June 29th, 1889, were and are cancelled, and the grant dated July 12th, 1889, having been duly signed by the Governor and At-

torney General was recorded in the books of the Commission, and delivered to the grantee, the Lehigh Valley Railroad Company.

The Secretary called attention to a clerical error in the minutes of August 1st, 1889, which read as follows:

The Secretary presented "a communication from the Governor returning grant executed by the Commissioners July 12th, 1889, to the Lehigh Valley Railroad Company for lands under water in the Hudson River, Jersey City (Morris Canal Basin) with his objections to signing the same."

The date of the grant returned by the Governor with his said communication (dated July 2d, 1889) being June 29th, 1889, not July 12th, 1889; the Secretary was authorized to correct the minutes to read June 29th, 1889.

D. 42.

Opinion of James B. Vreedenburgh, Counsel to Riparian Commissioners.

Jersey City, N. J., July 12, 1889.

To the Riparian Commissioners
of the State of New Jersey.

Gentlemen:— This will certify that I have examined the title of the Lehigh Valley Railroad Company to the lands described in the statute approved March 14, 1867, P. L., p. 251, of the year 1867—leasing the land in question to the Morris Canal & Banking Company situated at Jersey City in the County of Hudson and State of New Jersey, fronting on the tide waters of the Hudson River and New York Bay, and report that they are seized of a leasehold estate in said lands, by virtue of said statute. That these lands are now encumbered by mortgage and are occupied by tenants and that Washington Street has been opened

graded and paved since said statute by the municipal authorities of Jersey City—that part of said street is on the said lands.

JAMES B. VREDENBURGH, Atty.

D. 43.

Grant by State of New Jersey to Lehigh Valley Railroad Company, dated July 12th, 1889. Actually delivered December, 1889. Recorded Dec. 9th, 1890.

Set forth in full in the Information, p. 15, et seq.

D. 44.

ACT of the Commonwealth of Pennsylvania of 1870, authorizing Railroad Companies to lease or become lessees, &c. (P. L. Penna. 1870, p. 31.)

Set forth in full in the Information, p. 28.

D. 45.

ACT of the Commonwealth of Pennsylvania of 1871 (P. L. 1871, p. 248), **relating to leases and contracts for the use of Canals, &c.**

Set forth in full in the Information, p. 28.

D. 46.

AN ACT to charter the Passaic Valley and Peapack Railroad Company. (P. L. 1865, p. 610.)

Approved March 29th, 1865. Incorporated a railroad company to construct and operate a railroad "from some point in the County of Union, or the County of Essex, passing through the township of Springfield into the township of New Providence, near the village of New Providence, so up Passaic Valley, at or near Basking Ridge, and so

on to the village of Peapack, in the County of Somerset."

D. 47.

AN ACT to authorize the Passaic Valley and Peapack Railroad Company to build a bridge across the Delaware River at their termini. (P. L. 1869, p. 699.)

Passed March 31st, 1869.

"It shall be lawful for the Passaic Valley and Peapack Railroad Company, and they are hereby authorized, by and with the consent of the State of Pennsylvania, or in conjunction with any company, that has obtained or that may obtain the consent of said State, to construct a railroad bridge or viaduct across the Delaware River, at or near Milford * * * and to connect with any Pennsylvania railroad which may be authorized to form a connection with them."

D. 48.

ACT to change name of Passaic Valley and Peapack Railroad Company. (P. L. 1870, p. 160.)

"The name of the Passaic Valley and Peapack Railroad Company * * * shall be and is hereby changed to, and the said corporation shall hereafter be known by the name of the New Jersey West Line Railroad Company."

D. 49.

ACT authorizing the West Line Grant.

A Supplement to an act entitled "An Act to charter the Passaic Valley and Peapack Railroad Company." passed February Twenty-ninth, Eighteen Hundred and Seventy-two. (P. L., 1872, p. 309)

"1. BE IT ENACTED by the Senate and General

Assembly of the State of New Jersey, that the New Jersey West Line Railroad Company are hereby authorized and empowered to extend their railroad from its proposed terminus in Essex County, as now authorized, to some point in line with the most easterly exterior line for solid filling established in the Hudson River by the act of eighteen hundred and sixty-nine, commonly known as the Riparian Commission Act."

2. Authorizes the construction of branch lines.

"3. AND BE IT ENACTED, that the said railroad company may have and hold such real estate at any points along the line of said road where the directors may think proper to establish depots, and at or near either termini of their railroad as the said directors may think proper or necessary for the purposes therein mentioned; and may erect and build thereon houses, warehouses, machine shops, wharves, piers, slips, and such other buildings and improvements as they may deem expedient for the transhipment of coal, the handling and storing of freight, the convenience of passengers, the construction, manufacture or maintenance of locomotives, cars and other articles used in the operation and maintenance of their road; and also to have and hold whatever wharves, docks, piers, lands or lots, steamboats, sailing vessels, and such other facilities in the City of New York, or elsewhere, as may be necessary for their business, and to take and receive all rents, profits and emoluments thereof.

"4. AND BE IT ENACTED that it shall be lawful for the said company to erect, build and maintain over such rivers, creeks and streams as the said road, or its branches may cross, such piers, bridges, and other structures as they may deem necessary for the full enjoyment of the privileges and powers conferred by this act; * * *

PROVIDED, that nothing in this act contained shall be construed to authorize said company to execute any of the works hereby authorized at any point east of a line, starting from the south side of Morris Street, and extending indefinitely to the south, in line with Warren Street, in Jersey City, north of a line in line with the south line of the tongue of land contained in the grant made by the State by act in eighteen hundred and sixty-seven to the Morris Canal and Banking Company, or to interfere with the gap in the easterly bulkhead on said grant, in said act mentioned, or a passageway thereto, without providing a gap of like width therein, at as eligible a place in said easterly bulkhead as the said gap, and as convenient a passageway thereto and therethrough as to and through said gap first mentioned; * * *

* * * * * * *

"9. AND BE IT ENACTED, That any lands of the State under tide-water, or that have heretofore been under tide-water, which shall happen to come within the location of the route or of the depots, stations, or other works of the company, or shall be needed therefor, shall be paid for by the company to the trustees of the school fund of this State; and the boundaries and price thereof shall be fixed by the riparian commissioners on application for that purpose to them, and shall be paid as aforesaid, prior to any filling or improvement thereon herein authorized; and on such payment thereof the title to such land shall vest in said company in fee simple, and a deed therefor may be made by said commissioners, governor and attorney-general, in the name and under the great seal of the State."

D. 50.

The New Jersey West Line Grant.

The State of New Jersey, by the Governor, Attorney General and Riparian Commissioners to The New Jersey West Line Railroad Company. Deed, dated March 19, 1872.

THIS INDENTURE, made the Nineteenth day of March, in the year eighteen hundred and seventy-two, between the State of New Jersey by Joel Parker, Governor of said State, Robert Gilchrist, the Attorney General thereof, and Francis S. Lathrop, Charles S. Olden, Peter Vreedenburgh and Bennington F. Randolph, Riparian Commissioners of said State, party of the first part, and The New Jersey West Line Railroad Company, a corporation of said State, party of the second part,

WHEREAS, the land of the State hereinafter granted and conveyed be in part under tide-water and in part heretofore lay under tide-water and happened to come within the location of the route of the depot stations and other works of said Company and are needed therefor and whereas the said Commissioners pursuant to the ninth Section of an act of the Legislature of the State entitled a Supplement to an Act entitled an Act to Charter the Passaic Valley and Peapack Railroad Company, approved February the twenty-ninth, Eighteen hundred and Seventy-two, and on application of said Company have fixed the boundaries as they are hereinafter described and the price of such lands at the sum of one hundred and twenty-five thousand dollars, and whereas said Company have pursuant to the directions of said Act paid to the Trustees of the School Fund of the State the said sum of one hundred and twenty-five thousand dollars,

Now, this indenture witnesseth that the said State in consideration of the premises and of the said sum of one hundred and twenty-five thousand dollars paid to the Trustees of the School fund, the receipt whereof is hereby acknowledged, and the said party of the Second part forever released and discharged from the same doth, and the said Governor, Attorney General and Commissioners, pursuant to such Ninth Section of said Act do in the name of the said State hereby grant, bargain, sell and convey to said New Jersey West Line Railroad Company and to its successors and assigns forever,

ALL that certain tract of land in part under tide-water and in part heretofore under tide-water in Jersey City in the County of Hudson and State of New Jersey, described as follows:

Commencing at a point in the east line of Warren Street extended southerly at the southwesterly corner of the land granted to the Morris Canal and Banking Company by act in eighteen hundred and sixty-seven and from thence running westerly and parallel with Grand Street in Jersey City twenty eight hundred feet, thence northerly at right angles with Grand Street five hundred feet, thence westerly and parallel with Grand Street to the original high-water mark on the west side of Communipaw Bay or Cove, thence returning to the place of beginning and running easterly and parallel with Grand Street four hundred and forty feet along one of the southerly lines of the grant made to the Morris Canal and Banking Company as aforesaid to the centre line of Washington Street extended southerly thence southerly along said centre line of Washington Street extended southerly which is one of the westerly lines of said grant to the Morris

Canal and Banking Company and at right angles with Grand Street five hundred and thirteen feet, thence westerly and parallel with Grand Street about thirty six hundred and fifty feet more or less to a point in line with the centre line of Jersey Avenue in Jersey City if the same was extended southerly to said point, thence southwesterly in a line with said centre line of Jersey Avenue one hundred and sixty-five feet thence westerly and parallel with Grand Street in Jersey City about five hundred feet more or less to the original high-water mark on the west side of Communipaw Bay or Cove, thence northeasterly along said original high-water mark of Communipaw Bay or Cove to the mouth of Mill Creek, thence crossing said Creek in a straight line and continuing northeasterly along said original high-water mark until it intersects the end of the third course of this tract.

Together with all and singular the tenaments and appurtenances thereunto belonging and also all the estate, right, title, interest, possession, claim and demand whatsoever as well at law as in equity of the said State of in and to the same with the appurtenances and the remainder and remainders, reversion and reversions, rents, issues and profits thereof and also the rights, liberties, privileges and franchises to improve and otherwise use, appropriate and control the said premises mentioned and created in and by any part of the said act of the Legislature.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the said State hath caused the Great Seal of the said State to be hereunto affixed and these presents to be subscribed by

the said Governor, Attorney General and Commissioners the day and year aforesaid.

JOEL PARKER, Governor.
ROBT. GILCHRIST, Atty. Gen'l.
(State Seal.) FRANCIS S. LATHROP.
BENNINGTON F. RANDOLPH.
CHS. S. OLDEN.
PETER VREEDENBURGH.

By the Governor,
HENRY C. KELSEY,
Secretary of State.

Witness to Signature of Francis S. Lathrop, Bennington F. Randolph, Chas. S. Olden, Peter Vreedenburgh, Rip. Commissioners,

ROB C. BACOT.

State of New Jersey, ss: Be it remembered that on this twentieth day of May, A. D. Eighteen hundred and seventy-two, before me personally appeared Robert C. Bacot, who, being duly sworn according to law, on his oath saith that he saw Francis S. Lathrop, Bennington F. Randolph, Charles S. Olden and Peter Vredenburgh, Riparian Commissioners within named, sign and deliver the within indenture as their voluntary act and deed and that he, the said Robert C. Bacot, subscribed his name to the same as an attesting witness.

ROB. C. BACOT.

ALEX T. MCGILL,
Master in Chancery of New Jersey.

Received in the office and recorded May 27th, 1872 at 3:30 o'clock P. M.

D. 51.

Mortgage New Jersey West Line Railroad Company to the Trustees for the Support of Public Schools of New Jersey, dated March 19th, 1872, to secure $82,000.00 with interest. Recorded Book 93 of Mortgages, page 431.

This mortgage covers the West Line grant, being the same property described in D. 50.

D. 52.

Master's Deed, Thomas Anderson, M. C. C., to Thomas M. McCarter, consideration $250,000.00. Dated August 9, 1887. Given under execution issued in foreclosure of above mortgage. Recorded Book 444 of Mortgages, page 35, etc.

This Deed conveys the West Line grant, being the same property descibed in D. 51.

D. 53.

Deed Thomas N. McCarter to Easton & Amboy Railroad Company. Dated August 9th, 1887. Recorded in Book 444 of Deeds, pages 40 etc. Consideration $1.00.

This deed conveys the West Line grant, being the same property described in D. 50.

D. 54.

Deed by Central Railroad Company of New Jersey to Easton and Amboy Railroad Company, dated May 9th, 1887. Recorded in Book 436 of Deeds, pages 445, etc.

This deed conveys the West Line grant, being the same property described in D. 50.

D. 55.

Deed by American Dock & Improvement Company to Easton & Amboy Railroad Company,

Dated May 16th, 1887. Recorded in Book 436 of Deeds, pages 442, etc.

This deed conveys the Wset Line grant, being the same property described in D. 50.

D. 56.

Deed from Central Railroad Company of New Jersey and the American Dock & Improvement Company to the Easton & Amboy Railroad Company, dated May 31st, 1887. Recorded June 7th, 1887, in Book 439 of Deeds, page 269.

Conveys in fee all the right, title and interest "being the undivided one-half part of that strip of land lying on the west side of the West Line grant, three feet in width, and the title to which was decreed to belong to the parties of the first part by a decree of the Court of Chancery of the State of New Jersey of the Fifteenth day of May, 1883, in a suit in which the parties of the first part were complainants and Cornelius VanHorne and others were defendants". Being the same undivided one-half of a strip of land three feet wide conveyed to the Central Railroad Company of New Jersey by Jane Van Horne by deed dated May 27th, 1863, and recorded June 1st, 1863, in Book 99 of Deeds at page 560. Habendum in fee.

D. 57.

Deed by Central Railroad Company of New Jersey to Easton and Amboy Railroad Company, dated May 9th, 1888, recorded in Book 457 of Deeds, pages 388, etc.

Conveys two tracts of land "the first tract is commonly known as the West Line Grant, and is the same which was conveyed to the party of the second part by the party of the first part by deed dated May 9th, 1887, and therein particularly described. The second tract is the undivided half

of a strip of land three feet in width lying immediately west of and adjoining the said West Line grant, and was conveyed by the party of the first part to the party of the second part by deed dated May 31st, 1887, and therein described. It being the object of this conveyance to express fully the intention of the party of the first part to release and discharge the lands and premises described in said deeds from all right or claim on the part of the party of the first part to lay tracks over said lands, or to acquire said lands or any part thereof for the purpose of building any branches thereon in pursuance of any route or routes, survey or surveys, heretofore filed by said party of the first part over said lands."

Release is not to affect agreement between the party of the first part and the Lehigh Valley Railroad Company dated April 27th, 1887. Habendum in fee. Recorded May 16th, 1888, Book 547, page 388.

D. 58.

THIS INDENTURE, made this sixth day of December, A. D. One thousand eight hundred and ninety (1890) Between the Easton and Amboy Railroad Company, a corporation created by the laws of the State of New Jersey, party of the first part, and the Jersey City Terminal Railway Company, also a corporation of the said State of New Jersey, party of the second part; WITNESSETH, That the said party of the first part, in consideration of the sum of One Dollar, lawful money of the United States of America, to it the said party of the first part in hand well and truly paid by the said party of the second part before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents

doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, its successors and assigns, the following described lands and premises, to wit:

NUMBER ONE: All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson, State of New Jersey, Beginning at a point in the southerly side of the lands of the Morris Canal and Banking Company, where the same is intersected by the west shore of Mill Creek so-called; thence southerly and southeasterly along the west shore line of said Mill Creek, eleven hundred and seventy-five feet, more or less, to the westerly line of the West Line Grant, so called, as the same is defined in a grant from the State of New Jersey to The New Jersey West Line Railroad Company, dated March 19th, 1872; thence southeasterly along the original high-water mark on the west side of Communipaw Bay or Cove and western boundary of said grant, the several courses and distances of said original high-water mark, one thousand feet, be the distance, more or less, to a point in the middle line of Johnston Avenue, so-called, two hundred and ninety feet northerly at right angles from the center line of the Central Railroad of New Jersey, as filed in the office of the Secretary of State; thence northwesterly in the middle line of said Johnston Avenue, about three hundred feet, be the distance more or less, to the easterly boundary line of the National Docks Railway Company; thence northerly along said boundary line, seventeen hundred and eighty-five feet, be the distance, more or less, to the southerly boundary of the Morris Canal and Banking Company; thence easterly along the boundary of the Morris Canal and Banking Company, four hundred and sixty feet be the distance, more or less, to the west shore of

Mill Creek and place of beginning. Bounded on the north by lands of the Morris Canal and Banking Company; on the east by the west shore of Mill Creek, and the westerly boundary of lands described in the grant from the State of New Jersey to the New Jersey West Line Railroad Company; on the south by the centre line of Johnston Avenue, and on the west by lands of The National Docks Railway Company; Also all the right, title and interest of the party of the first part, in and to all the land in Mill Creek adjoining the above described tract.

(Here follows detailed description of the West Line Grant as in Exhibit D. 50, and also description of property on Johnston Avenue and near the National Docks Railway.)

Habendum in fee simple. Covenant against encumbrances. Recorded Dec. 9, 1890, in Book 520 of Deeds for and in Hudson County, on page 73; indexed under County Block Nos. 655, 859 and 657.

D. 59.

THIS INDENTURE, made the twenty-fifth day of June, A. D., One thousand eight hundred and ninety (1890), Between the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, of the first part, and the Jersey City Terminal Railway Company, a corporation of the State of New Jersey, of the second part;

WHEREAS, the State of New Jersey, by act of its Senate and General Assembly, approved the Fourteenth day of March, Eighteen hundred and sixty-seven, granted to the Morris Canal and Banking Company the premises hereinafter described during the continuance of the Charter of the said Morris Canal and Banking Company; and

WHEREAS, the State of New Jersey by Indenture dated the twelfth day of July, Eighteen hundred and eighty-nine, sold and conveyed the premises hereinafter described, to the said party of the first part, subject to the aforesaid grant dated March Fourteenth, Eighteen hundred and sixty-seven, by the State to the Morris Canal and Banking Company, and subject also to the regulations and provisions of the various clauses of the Act of Legislature of the State of New Jersey, approved March Thirty-first, Eighteen hundred and sixty-nine, supplementary to an Act of the Legislature of the said State of New Jersey, entitled "An Act to ascertain the rights of the State and the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State" approved April eleventh, Eighteen hundred and sixty-four; as in said Indenture recited, so far as the same are applicable to the said lands;

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar ($1.00), lawful money of the United States of America, to it in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, Hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents, Doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to its successors and assigns forever, All the right, ttile and interest of the party of the first part derived from the State of New Jersey under the above recited Indenture dated the Twelfth day of June, Eighteen hundred and eighty-nine, in and to the land and lands under water situate in the City of Jersey City, County of Hudson, and State of New Jersey, within the following boundaries:

Beginning at a point in Hudson River in the southerly line of South Street extended seven hundred and sixty-five feet from the easterly line of Hudson Street, and running thence (1) westerly along the said southerly line of South Street to the centre line of Washington Street extended, thence (2) southerly along said centre line two hundred and sixty feet, thence (3) westerly on a line parallel with South Street as laid down on Mangin's map to the easterly line of Warren Street extended, thence (4) southerly and along the said easterly line of Warren Street extended, to a point distant four hundred and sixty feet at right angles from the southerly line of South Street, thence (5) parallel with South Street easterly to a point in the centre line of Washington Street extended and distant four hundred and sixty feet from the southerly line of South Street; thence (6) southerly along said centre line of Washington Street extended, five hundred feet to the northerly line of the property occupied by the Central Railroad Company of New Jersey, thence (7) easterly along said line seventeen hundred and thirty-five feet, and thence (8) northerly to the place of beginning.

TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, And Also, all the estate, right, title, interest. property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part as aforesaid, of, in, or to the above described premises, and every party and parcel thereof.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, its successors and assigns forever, subject as aforesaid.

AND the said party of the first part doth for itself, its successors and assigns, covenant and grant to and with the said party of the second part, its successors and assigns, that it, the said party of the first part, hath not done, caused, suffered or procured to be done, any act, matter or thing, whereby the title of the said party of the second part, of, in and to the above granted, bargained and described land and premises, or any part thereof can or may be charged, changed, altered or defeated in any way whatsoever.

IN WITNESS WHEREOF, the said party of the first part has caused its corporate seal, duly attested, to be hereunto affixed, the day and year first above written.

LEHIGH VALLEY RAILROAD COMPANY,
By
Chas. Hartshorne,
Vice President.

Sealed and delivered in
the presence of
D. G. Baird.
J. F. Schaperkotter.

Attest—
Jno. R. Fanshawe,
Secretary.

(Seal of Lehigh Valley
Railroad Company.)

Proved as to Lehigh Valley Railroad Company by John R. Fanshawe on June 25th, 1890, before Wm. C. Alderson, A commissioner of deeds for the State of New Jersey, in Pennsylvania. Received in the office of the Register of the County of Hudson, N. J., at 2:10 o'clock, Dec. 9, 1890, P. M., and recorded in Book 520 of Deeds for said County on Page 64, Geo. B. Fielder, Register, and indexed under County Block No. 859.

D. 60.

THIS INDENTURE, made the twenty-sixth day of June, A. D. One thousand eight hundred and nienty (1890), between the Morris Canal and Banking Company, a corporation of the State of New Jersey, of the first part; the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, of the second part; and the Jersey City Terminal Railway Company, a corporation of the State of New Jersey, of the third part.

WHEREAS, The State of New Jersey by Act of its Senate and General Assembly, approved the Fourteenth day of March, One thousand eight hundred and sixty-seven (1867), granted to the party of the first part the premises hereinafter described during the continuance of the Charter of the Morris Canal and Banking Company; and

WHEREAS, the party of the first part by Indenture of Lease dated the fourth day of May, A. D. One thousand eight hundred and seventy-one (1871), let and demised perpetually unto the party of the second part, its entire canal and navigation works as then or thereafter located and constructed, and all its lands, water rights, tenements, hereditaments and appurtenances whatsoever then or thereafter acquired; and

WHEREAS, in and by said Indenture of Lease it was, inter alia, provided as follows, to wit:—

"THIRTEENTH: That the party of the second "part shall be and it is hereby authorized and "empowered to sell from time to time, either "at public or private sale, and upon such terms "as it may deem expedient, any real estate "herein demised, or intended so to be, possession "of which may not be necessary for the per- "formance of the public duties and obligations "resulting from, or incident to, the occupancy "by the party of the second part of the canal

"and navigation works hereby demised, and the "enjoyment of the franchises therewith connect- "ed, and to convey the property thus sold to "the purchaser or purchasers in fee simple, or "for any less estate, without any liability on "the part of said purchaser or purchasers; to "see to the application of the purchase money; "it being understood and expressly agreed, how- "ever, that the purchase money of any portion "of the demised premises thus sold shall be held "in trust by the party of the second part, to be "applied, and shall be by it applied, either to "the purchase, at or below par, of any of the "then outstanding obligations of the party of the "first part, for the payment of the principal "or interest of which the party of the second "part may, under the terms and conditions of "this indenture be liable or at the option of the "party of the second part, to the payment of "any of the said obligations then matured or "thereafter maturing; the said obligation thus "purchased or paid to be cancelled, and neither "of the parties hereto to be subject to any fur- "ther liabilities in regard to the same." And

WHEREAS said premises are not necessary for the performance of the said public duties and obligations; and

WHEREAS, The State of New Jersey by Indenture dated the twelfth day of July, One thousand eight hundred and eighty-nine (1889), sold and conveyed said premises in fee to the party of the second part, subject to the aforesaid grant dated March Fourteenth, One thousand eight hundred and sixty-seven (1867), by the State to the party of the first part; and said party of the second part by Indenture dated the Twenty-fifth day of June, One thousand eight hundred and ninety (1890), and intended to be forthwith recorded, granted, bargained and sold unto the said party of the third

part, all the right, title and interest of said party of the second part derived from the State of New Jersey under the above recited Indenture dated the Twelfth day of July, One thousand eight hundred and eighty-nine (1889) :—

NOW THIS INDENTURE WITNESSETH:

That the said parties of the first and second parts for and in consideration of the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.) lawful money of the United States of America, well and truly paid by the said party of the third part to the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof (IN TRUST as in the above recited clause of the aforesaid Lease set forth), is hereby acknowledged, HAVE granted, bargained, sold, aliened, enfeoffed, released, conveyed, confirmed, assigned, transferred and set over, and by these presents DO grant, bargain, sell, alien, enfeoff, release, convey, confirm, assign, transfer and set over unto the said party of the third part, its successors and assigns:—

ALL the right, title and interest of the party of the first part, and all the right, title and interest of the party of the second part as Lessee of said party of the first part, under the aforesaid recited Indenture of Lease, dated the Fourth day of May, One thousand eight hundred and seventy-one (1871), in and to the land and lands under water Situate in the CITY OF JERSEY CITY, COUNTY OF HUDSON, and STATE OF NEW JERSEY, within the following boundaries: Beginning at a point in Hudson River in the southerly line of South Street extended seven hundred and sixty-five feet from the easterly line of Hudson Street, and running thence (1) westerly along the said southerly line of South Street to the centre line of Washington Street extended, thence (2) southerly along said cen-

tre line two hundred and sixty feet thence (3) westerly on a line parallel with South Street as laid down on Mangin's map to the easterly line of Warren Street extended, thence (4) southerly and along the said easterly line of Warren Street, extended, to a point distant four hundred and sixty feet at right angles from the southerly line of South Street, thence (5) parallel with South Street easterly to a point in the centre line of Washington Street extended and distant four hundred and sixty feet from the southerly line of South Street, thence (6) southerly along said centre line of Washington Street extended, five hundred feet to the northerly line of the property occupied by the Central Railroad Company of New Jersey; thence (7) easterly along said line seventeen hundred and thirty-five feet, and thence (8) northerly to the place of beginning.

TOGETHER with all and singular the buildings, improvements, docks, wharves, piers, landing places, waters, water courses, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said parties of the first and second parts, of, in, and to the said premises, with the appurtenances.

TO HAVE AND TO HOLD, the said premises with all and singular the appurtenances, unto the said party of the third part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the third part, its successors and assigns forever:

UNDER AND SUBJECT NEVERTHELESS, to all the conditions, provisions and obligations, (so far as

the same are not already performed), that were imposed on the grantee of said basin by said Act approved March Fourteenth, One thousand eight hundred and sixty-seven (1867), which the party of the third part hereby agrees to keep, observe and perform.

IN WITNESS WHEREOF, the said parties hereto have caused their respective corporate seals, duly attested, to be hereunto affixed, the day and year first above written.

Sealed and delivered in the presence of }

MORRIS CANAL AND BANKING COMPANY,
(Sgd) J. F. Schaperkotter By—
(Sgd) Jacob F. Randolph
President.

(SEAL) Attest—
(Sgd) Jno. R. Fanshawe
Secretary.

LEHIGH VALLEY RAILROAD COMPANY,
by—
(Sgd) Chas. Hartshorne,
Vice-President.

(SEAL) Attest—
(Sgd) Israel W. Morris
Assistant Secretary.

JERSEY CITY TERMINAL RAILWAY COMPANY,
by—
(Sgd) John Hood
President.

(SEAL) Attest—
(Sgd) D. G. Baird
Secretary.

RECEIVED, the day of the date of the above or foregoing Indenture of the within named JERSEY CITY TERMINAL RAILWAY COMPANY, the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000)

being the full consideration money therein mentioned.

LEHIGH VALLEY RAILROAD COMPANY,
By
(sgd.) Chas. Hartshorne,
Vice President.

Witnesses present.
(sgd.) J. F. Schaperkotter.

Received, June Twenty-sixth, 1890, of the Lehigh Valley Railroad Company, cancelled bonds of the par value of Five hundred thousand Dollars ($500,000) of the Morris Canal and Banking Company, secured by mortgage of the said Morris Canal and Banking Company, dated the second day of August, A. D. One thousand eight hundred and seventy-six (1876).

MORRIS CANAL AND BANKING COMPANY,
By
(sgd. Jacob F. Randolph,
President.

Witnesses present.
(sgd.) J. F. Schaperkoter.

Proved as to the Morris Canal and Banking Company by Jno. R. Fanshawe, Secretary, June 26th, 1890, as to the Lehigh Valley Railroad Company by Israel W. Morris, Assistant Secretary, June 26th, 1890, and as to the Jersey City Terminal Railway Company by David G. Baird, Secretary, June 26th, 1890; all before W. C. Alderson, Commissioner of Deeds for New Jersey in Pennsylvania.

Recorded in the office of the Register of Hudson County, New Jersey in Book 520 of Deeds on page 67, on December 9th, 1890.

D. 61.

Consolidation of Several Companies into Jersey City Terminal Railway Company.

ARTICLES OF AGREEMENT AND CONSOLIDATION, made and entered into this seventh day of August, A. D., One thousand eight hundred and ninety-one (1891), by and between the Roselle and South Plainfield Railway Company, of the State of New Jersey, of the first part, the Newark and Roselle Railway Company, of the same State, of the second part, the Newark Railway Company, of the same State, of the third part, the Jersey City, Newark and Western Railway Company, of the same State, of the fourth part, the Newark and Passaic Railway Company, of the same State, of the fifth part, the Edgewater Railway Company, of the same State, of the sixth part, and the Jersey City Terminal Railway Company, of the same State, of the seventh part;

WHEREAS, said companies are railroad corporations organized under an Act of the Legislature of the State of New Jersey, entitled "An Act to authorize the formation of railroad corporations and regulate the same," approved April 2nd, 1873, and the several amendments thereof and supplements thereto, whose railroads form connecting or continuous lines, either directly or by means of intervening line or lines of railroad, and it is desired to merge and consolidate their capital stock, franchises and other property under and in pursuance of the laws of said State, authorizing such merger and consolidation:

AND WHEREAS, the said parties have agreed upon the terms and conditions hereinafter set forth as the terms and conditions of such consolidation;

NOW THEREFORE, in consideration of the mutual agreements, covenants, provisions and grants here-

in contained and of One Dollar to each party by the other paid, the said parties hereto do agree to, and by these presents do, merge, combine and consolidate their respective capital stock, franchises and all other property of every name and nature into one Company, to be called and known by the corporate name and style of the Lehigh Valley Terminal Company.

And the said parties hereto have agreed upon and by these presents do agree upon and prescribe the following as the terms and conditions of such consolidation; which terms and conditions the said parties hereto do mutually covenant, promise and agree to observe, keep and perform, namely:

ARTICLE I.

The corporate name of the said consolidated company shall be

LEHIGH VALLEY TERMINAL RAILWAY COMPANY.

ARTICLE II.

The number of Directors of the said consolidated company shall be thirteen, and the number of officers shall be for the first year four (4), namely, a President, a Vice President, a Treasurer and a Secretary.

(Here follow Articles III to VIII giving names of officers and directors, capital stock, etc.)

Filed in the office of the New Jersey Secretary of State, August 28, 1891.

D. 62.

Merging Act of New Jersey passed April 8, 1903, Chapter 110, authorizing merger of Lehigh Valley Lines. (Pamp. Laws, 1903, p. 189.)

D. 63.

Consolidation of Several Companies into Lehigh Valley Railroad Company of New Jersey.

THIS JOINT AGREEMENT OF CONSOLIDATION, made and entered into this 9th day of July, A. D., Nineteen hundred and three (1903) by and between the LEHIGH VALLEY TERMINAL RAILWAY COMPANY, a corporation of New Jersey, party of the first part, the GREENVILLE AND HUDSON RAILWAY COMPANY, a corporation of New Jersey, party of the second part, the MIDDLESEX RAILWAY COMPANY, a corporation of New Jersey, party of the third part, the PERTH AMBOY AND RARITAN RAILWAY COMPANY, a corporation of New Jersey, party of the fourth part, the PITTSTOWN BRANCH RAILWAY COMPANY, a corporation of New Jersey, party of the fifth part, and the EASTON AND AMBOY RAILROAD COMPANY, a corporation of New Jersey, party of the sixth part; the said parties acting by their respective Boards of Directors;

WHEREAS the said six parties are railroad corporations of the State of New Jersey, all organized under an Act of the Legislature of said State entitled "An Act to authorize the formation of railroad corporations and regulate the same" approved April 2nd, 1873, and the several amendments thereof and supplements thereto, except the Easton and Amboy Railroad Company, which was chartered by Act of the Legislature of the State of New Jersey, approved April 2nd, 1872, and has the powers recited in said Act and in the amendments thereof and supplements thereto and in the Acts incorporating the companies which were by said Act of April 2nd, 1872, consolidated; and

WHEREAS, the railroads of said six parties form connecting and continuous lines, the main lines whereof extend from Phillipsburg to Perth Amboy and from South Plainfield to Jersey City, the other

railroads being spurs or branches connecting with said main lines; and it is desired to unite and consolidate the stock, property, franchises and roads of said parties under and in pursuance of the laws of the State of New Jersey authorizing such union and consolidation; and

WHEREAS the said parties have agreed upon the terms and conditions hereinafter set forth, as the terms and conditions of such union and consolidation,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the mutual agreements, covenants, provisions and grants herein contained the said parties of the first, second, third, fourth and fifth parts by these presents hereby do unite and consolidate their respective capital stocks, property, franchises and roads with and into those of the said Easton and Amboy Railroad Company, which Company hereby agrees to and accepts said union and consolidation. And the said parties hereto have agreed upon, and by these presents do agree upon and prescribe the following as the terms and conditions of such union and consolidation, which the said parties hereto do mutually promise and agree to observe, keep and perform, namely:

ARTICLE I.

The corporate name of the said united and consolidated Company shall be "LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY."

ARTICLE II.

The number of directors of the said consolidated company shall be nine, and the officers for the first year shall be the following: a President, one or more Vice-Presidents, a Treasurer and a Secretary.

(Here follow Articles III to VIII giving names of officers, amount of capital, location of office, etc.)

Filed in office of the New Jersey Secretary of State July 29, 1903.

D. 64.

Change in location of Tide-Water Basin September 17, 1874.

WHEREAS, in conformity with an act entitled "An Act to cede to the Mayor and Common Council of Jersey City certain lands of the State now and heretofore under the waters of Communipaw Bay, and to establish a tide water basin adjacent thereto"; approved April 4th, 1872. The Board of Riparian Commissioners did reduce to writing a description of so much and such parts of said lands as were designated in said act for the purposes therein mentioned, and file a map and description thereof in the Office of the Secretary of State, and duplicates of said map, and description in the Office of the Clerk of the County of Hudson, and did fix and determine a certain sum of money and terms of payment as a proper, equitable compensation to be paid by said City to the State for said cession; and,

WHEREAS, the said City, its Mayor and Aldermen, have on their part failed to comply with the terms and conditions so fixed and determined, and with the requirements of said act; and

WHEREAS, the interests and convenience of the State, and of the riparian owners, under a change in such tide-water basin desirable.

THEREFORE: We the Commissioners, apointed under the Act approved March 31st, 1869, entitled "Supplement to an act entitled 'An Act to ascertain the rights of the State and of the riparian owners

in the lands under the waters of the Bay of New York and elsewhere in this State, approved April eleventh, eighteen hundred and sixty-four," do hereby in conformity with a further supplement to said Act, approved April 4th, 1872, make the following changes in the Jersey City Tide-Water Basin as heretofore fixed and established and filed in the Clerk's office of the County of Hudson on the 12th day of December, 1827, to wit:

WE DO FIX AND ESTABLISH the line of solid filling for the northerly boundary of said tide-water basin, to be a line beginning at a point in the southerly prolongation of the easterly line of Warren Street, sixteen hundred feet southerly from the southerly side of Grand Street, and running thence westerly along a bulkhead, parallel with Grand Street, twenty-eight hundred (2800) feet to the westerly boundary line of said Tide-water basin, as filed in the Office of the Secretary of State; and

WE DO VACATE all such parts of the tide-water basin as lie northerly of the northerly boundary line as hereinbefore laid out, fixed and established; and

WE DO VACATE all that part of the tract of land under water ceded for the purpose of a basin to the Mayor and Common Council of Jersey City by the said Act first above cited; Commencing at a point in the centre of Van Vorst Street, if extended southerly and distant thirteen hundred feet southerly from the southerly side of Grand Street, Jersey City, and from thence running westerly and parallel with Grand Street, one thousand and ninety feet; thence northerly at right angles with Grand Street, eight hundred and ten feet to the centre of Morris Street if extended westerly; thence easterly and parallel with Grand Street to the present high water mark on the southwesterly side of the Morris Canal;

thence southeasterly along said high water mark to the center of Van Vorst Street; thence southerly through the center of Van Vorst Street if extended southerly, to the place of beginning.

Trenton, N. J.,
September 17, 1874.

F. L. LATHROP,
Chs. S. Olden, Commissioners.
Bennington F. Randolph,
Thos. M. Keen,

Witness
Robt Bacot,
Secy. & Engr.

D. 65.

Grant by the Riparian Commissioners to the Central Railroad Company of New Jersey, November 12, 1874.

The State of New Jersey to all to whom these presents shall come or may concern, Greeting:

WHEREAS, Pursuant to an Act of the Legislature of said State approved March 21, 1871, entitled "A further supplement to an act entitled 'An Act to ascertain the rights of the State and of riparian owners of the lands lying under the waters of the Bay of New York and elsewhere in this State,'" approved April eleventh, one thousand eight hundred and sixty-four.

The Central Railroad Company of New Jersey, being the owners of lands in the Counties of Hudson, Essex, Union and Middlesex, in the State of New Jersey, fronting on waters where the tide ebbs and flows, and so are riparian owners in the tide-waters of the State, and are also, by the written consent and contracts in writing of other riparian owners, invested with the rights of riparian owners as to their lands on tide-water,

and are desirous of obtaining a grant from the said State of the lands under water hereinafter mentioned, which lie in front of said lands, and did apply to the Riparian Commissioners, to wit, Francis S. Lathrop, Charles S. Olden, Bennington F. Randolph and Thomas McKean, for a grant of the lands hereinafter conveyed.

And Whereas the said Commissioners, having due regard to the interest of navigation, have agreed to grant the lands hereinafter mentioned, and determined that three hundred thousand dollars is a proper compensation to be paid to the State of New Jersey for the lands hereinafter conveyed.

Now, therefore, the said State of New Jersey by the said Francis S. Lathrop, Charles S. Olden, Bennington F. Randolph and Thomas McKean, Commissioners aforesaid, in consideration of the premises aforesaid, and of the said sum of three hundred thousand dollars, duly paid by the said The Central Railroad Company of New Jersey to the said State, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto the said the Central Railroad Company of New Jersey and to their successors and assigns forever:

All those certain tracts of land hereinafter set forth and described as follows, to-wit:

FIRST: All that tract of land in Jersey City, in the County of Hudson and State of New Jersey, part of which was formerly under, but is now above the tide-waters of the Bay of New York or Communipaw Cove, and part of which is still under the waters of the said Bay or cove, described as follows: Beginning at a point in the ordinary high-water mark of the Bay of New York or Communipaw Cove, as the same existed in 1804, at a point two hundred and twenty-five feet westerly at right angles from the westerly side of Washing-

ton Street; and from thence running westerly along the southerly side of the embankment or sea-wall of the Morris Canal, and northwesterly and southwesterly in said high-water mark, its several courses and distances, to the mouth of Mill Creek; thence crossing Mill Creek in a straight line to a point in the said high-water mark on the southerly side of said creek; thence southerly in said high-water mark, its several courses and distances, to the northerly line of the original grant made by the State of New Jersey to the American Dock and Improvement Company at the northerly end of the four thousand five hundred and eighty-nine feet measured by the Commissioners thereto, thence easterly along the northerly line of the grant made to the American Dock and Improvement Company as aforesaid, in a course south forty-six degrees thirty-nine minutes east, to the exterior line for solid filling, as shown on sectional map number seven, made by the Commissioners appointed under the authority of an act entitled "An Act to ascertain the rights of the State and of the riparian owners to the lands lying under the waters of the Bay of New York and elsewhere in this State," approved April 11th, 1864; thence northerly along the exterior line for solid filling as laid down on said map to a point distant two thousand four hundred feet westerly from the southwesterly corner of the bulkhead put down by the Central Railroad Company of New Jersey, said point being in a line drawn parallel with the centre line of said Central Railroad of New Jersey; thence easterly and parallel with centre line of said railroad two thousand four hundred feet to the southeasterly corner of the bulkhead put down by said Railroad Company; thence northerly along the easterly side of the said bulkhead to one of the southerly lines of the grant made by the State of New Jersey to the Morris Canal and Banking Company in eighteen

hundred and sixty-seven; thence westerly along the southerly line of the grant aforesaid to the centre line of Washington Street, produced southerly; thence northerly along the centre line of Washington Street five hundred and thirteen feet; thence westerly and parallel with Grand Street in Jersey City four hundred and forty feet; thence northerly along the easterly line of Warren Street, Jersey City, produced southerly, two hundred feet to the northwesterly corner of the grant made to the Morris Canal & Banking Company aforesaid; thence easterly and parallel with Grand Street, Jersey City, one hundred and seventy-five feet to a point two hundred and twenty-five feet westerly, and at right angles with Washington Street, Jersey City, being the southwesterly corner of the grant made by the Riparian Commissioners to Matthiessen & Weichers; thence northerly along the westerly line of said grant and parallel with and distant two hundred and twenty-five feet westerly from the westerly line of Washington Street, Jersey City, to the place of beginning.

And also all and singular the lands under water lying between the above mentioned exterior line for solid filling and the exterior line for piers fixed by the Commissioners appointed under said act, approved April 11, 1864, and shown an a map made by the Commissioners, dated October 1, A. D. 1874, and to be filed in the office of the Secretary of the State of New Jersey, showing the changes made in the exterior line for piers between the southeasterly pier of the Central Railroad of New Jersey and the northerly line of the grant to the American Dock and Improvement Company, which said new exterior line is described as follows:

(Here follows description of the exterior line for piers.)

EXCEPTING OUT OF THE SAME

FIRST: All that tract of land under tide-water of the Bay, etc.

(Here follows description of part of tide-water basin.)

SECOND: Excepting whatever premises and privileges may have been granted to the said New Jersey West Line Railroad Company by the act of the Legislature entitled "A supplement to an Act entitled 'An act to charter the Passaic Valley and Peapack Railroad Company,'" approved March twenty-ninth, eighteen hundred and sixty-five, approved February 20, 1872, and the grant made by the Riparian Commissioners in pursuance thereof, in which said grant the land and privileges therein granted were described as follows, all that tract of land, &c.:

(Here follows description of West Line grant, as in Exhibit D. 50, supra.)

(Here follow descriptions of several other parcels granted in Hudson and Union Counties.)

Together with all and singular the hereditaments and appurtenances thereunto belonging, and all the rights of the said State in said lands, to have and to hold all and singular the above granted and described land and premises unto the said the Central Railroad Company of New Jersey and to their successors and assigns forever; and as to the premises included in the said grant to the New Jersey West Line Railroad Company, it is agreed as follows: That in case the said State had not the right and power to vest the title in the said New Jersey West Line Railroad Company, which is in and by the ninth section of the act approved February 29, 1872, entitled "A supplement to an Act entitled 'An Act to charter the Passaic Valley and Peapack Railroad Company,'" approved March twenty-ninth, eighteen

hundred and sixty-five, and in and by the aforesaid grant in pursuance thereof, provided to be vested in that Company, which right and power the said State claims to have had, and the Central Railroad Company of New Jersey claims that the said State did not have, then and in such case the said State shall for the consideration of one dollar, and for no other or further consideration, to be paid to the State, therefor, release to the Central Railroad Company of New Jersey, free from any encumbrance thereon by mortgage given to the State, all its rights, title and interest in the said premises mentioned and described in said ninth section of said act, and in said grant to said New Jersey West Line Railroad Company.

In witness whereof the said State has caused these presents to be sealed with the great seal of the said State, and to be subscribed by Joel Parker, the Governor of said State, and by the said Commissioners, and to be attested by Henry C. Kelsey, the Secretary of State thereof, this twelfth day of November, A. D. one thousand eight hundred and seventy-four.

JOEL PARKER, Governor.
FRANCIS S. LATHROP.
(L. S.) CHAS. S. OLDEN.
BENNINGTON F. RANDOLPH.
THOS. McKEAN.

Attest: HENRY C. KELSEY, Secretary of State.
Witness: ROBT. C. BACOT.
(Recorded September 27th, 1875.)

D. 66.

Grant of the State of New Jersey by Riparian Commissioners to F. O. Matthiessen & Weichers Sugar Refining Co., dated January 6, 1872. Consideration, $1,000. Conveys in fee a tract bounded north by the high-water mark of Communipaw Bay as it was in 1804; west by a line parallel with Washington Street (or neraly so), and distant 225 feet westerly therefrom; southerly by the Morris Canal grant, and easterly for the most part by Washington Street.

Habendum in fee, "subject to the regulations im-"posed by law on the exercise of the said rights of "property hereby granted, and to such as shall "hereafter lawfully be made. And the said State "doth hereby expressly covenant and agree to and "with the said party of the second part, its suc-"cessors and assigns, that the said State will not "make or give to any other person or corpora-"tion than the said party of the second part, its "successors and assigns, any grant or license, "power or authority, affecting any lands under "water in front of said lands hereby granted north "of that part of the southerly line of the land "which lies toward the south of the lands hereby "granted, and directly in front thereof, and which "the Legislature by the Act of 1867 granted, sub-"ject to certain easements, to the said 'The Morris "'Canal and Banking Company.'"

Proved October 26, 1878.

D. 67.

Legislative Grant to Jersey City, 1872.

(Laws of N. J. 1872, Chapter DXCVI. Page 1356.)

An Act to cede to the Mayor and Common Council of Jersey City certain lands of the State now and heretofore under the tide waters of Communipaw Bay, and to establish a tide water basin adjacent thereto.

WHEREAS, the riparian commissioners of the State of New Jersey, in their reports for the years eighteen hundred and seventy-one and seventy-two, have called the attention of the legislature to the fact that Jersey City is without public docks, and have recommended that a part of the large basin, laid out by the commissioners in eighteen hundred and sixty-four, be conveyed to the mayor and aldermen of Jersey City for public uses; therefore,

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, that the said State doth hereby grant, to the mayor and aldermen of Jersey City, in fee simple, so much and such parts of the lands which are now under tide-water, or were heretofore under tide-water of said Communipaw Bay, commencing at a point in the centre of Van Vorst Street, if extended southerly, and distant thirteen hundred feet southerly from the southerly line of Grand Street, Jersey City and from thence running westerly and parallel with Grand Street, one thousand and ninety feet; thence northerly, at right angles with Grand Street, eight hundred and ten feet to the centre of Morris Street, if extended westerly; thence easterly and parallel with Grand Street, to the present high water mark, on the southwesterly side of the Morris Canal; thence southeasterly along said high water mark to the centre of Van Vorst Street, thence southerly through the centre

of Van Vorst Street, if extended southerly, to the place of beginning.

2. AND BE IT ENACTED, that the said mayor and aldermen, by their appropriate board, shall have full control and regulation of the basin and wharves and land conveyed to them; and they shall be and are hereby required to improve the same with all convenient dispatch in such manner that, at least, one third of the area of said lands shall be flowed by the tide water and made navigable for such vessels as the citizens or inhabitants of said city, or persons doing business therein, may, under the control and regulation of said board, desire to use said basin.

3. AND BE IT ENACTED, That for the title hereby conveyed the said city shall pay into the treasury of the state, or give to this state, a bond for such sum of money, and on such terms as to payment and interest as the board of riparian commissioners shall, under all the circumstances of the case, and taking into consideration the public purposes to which said lands are to be applied, fix and determine as a proper and equitable compensation to the state for such title, and until the giving of such bond, or the payment of such money, said city shall not enter on said lands; provided, nothing in this act contained shall prejudice or impair the rights of the shore owners to said lands.

4. AND BE IT ENACTED, That the said city may fill up, reclaim and make wharves, of not exceeding two thirds of the area of said lands, and may charge dockage and wharfage for the use of said basin and wharves; provided, said charges are reasonable, or they may lease the whole or any part of the said lands for a term of years, to be improved in the manner prescribed in this section.

5. And be it enacted, That there shall be established adjacent to the lands hereinbefore described and granted a tide water basin, embracing all that tract of land under water described as follows: commencing at a point on the easterly line of Warren street if produced southerly, distant eighteen hundred feet southerly from the southerly line of Grand Street, Jersey City, which point is at the southwesterly corner of the grant made to the Morris Canal and Banking Company; and from thence running westerly and parallel with Grand Street twenty-eight hundred feet; thence northerly at right angles with Grand Street, five hundred feet; thence easterly and parallel with Grand Street twenty-eight hundred feet, to the easterly line of Warren Street; thence southerly along said easterly line of Warren Street extended southerly five hundred feet to the place of beginning; that the above tide-water basin in this act described shall be and remain and the same is hereby dedicated as and for a tide-water basin; and owners of any land which shall adjoin the said tide-water basin, their successors, heirs and assigns, may charge wharfage, dockage and other charges incident to the use of wharves; and it is hereby declared that this provision shall have the effect of a contract, so that the said tide-water basin shall be and remain such forever; but so that the said tide-water basin shall be dredged and kept in order without expense to the state.

6. And be it enacted, That the board of riparian commissioners shall reduce to writing a description of so much and such parts of said lands as aforesaid, and file a map and description in the office of the secretary of state of this state, and duplicates of said map and description in the office of the clerk of the county of Hudson, authenticating the same in such case by their signatures,

and reciting such parts of the act as shall indicate their authority and the purpose and object of said map and description, and said map and description or duly certified copies thereof shall be full and plenary evidence of the title under this act of the city to the lands so described and granted, to the mayor and aldermen of Jersey City, by the first section of this act.

7. AND BE IT ENACTED, That this act shall take effect immediately.

Approved April 4, 1872.

D. 68.

ACT authorizing Riparian Commissioners to Change the Lines of Basins.

(Laws of N. J. 1872. Chapter DXLVIII, Page 99.)

Supplement to "An Act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in the State," approved April 11, 1864.

WHEREAS, the riparian commissioners recommend some changes in the line for solid filling in the bay of New York and Hudson river, and to enable them to make the changes proposed, and to provide additional wet basins in the same.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That the riparian commissioners may change, fix and establish any other lines than those now fixed and established for pier lines, or lines for solid filling in the waters of the bay of New York or the Hudson river, or make any changes in any basin now fixed and established, or lay out and fix and establish any new basin or basins in the waters of the bay of New York or the Hudson river, and when so fixed and established, the said riparian

commissioners shall file a map and surveys in the office of the Secretary of State showing what lines had been fixed and established by them for the exterior lines for solid filling and pier lines, as well as for any changes in basins or new basins fixed, laid out and established by them under this act.

2. AND BE IT ENACTED, That from and after the filing of said map and surveys in the office of the secretary of state, no encroachment of any kind shall be permitted to be made beyond said lines so fixed and established for solid filling or pier lines, or in or upon any basin or basins so laid out and established.

3. AND BE IT ENACTED, That the said riparian commissioners may make, for a satisfactory consideration, any lease or sale to the owners of the lands fronting on the said basin, of the right to have the exclusive use of the said basin or basins, for the purpose of wharfage and docking, and to charge a reasonable sum for the use of the same on the line of bulkhead owned by them respectively; and that from and after the filing of said map and survey, the same shall remain as a public basin or basins, and they are hereby dedicated for that purpose.

4. AND BE IT ENACTED, That this act shall be deemed a public act and take effect immediately.

Approved, April 4, 1872.

D. 69.

Map showing the development of the property of the Lehigh Valley Railroad Company of New Jersey, Jersey City Terminal, condition January, 1909.

D. 70.

Printed Map entitled "Map of Jersey City, Hudson County, New Jersey, 1861. R. C. Bacot, City Surveyor, Mills Lithograph, 142 Broadway, N. Y. Scale, 150 feet to the inch."

D. 71 to D. 77.

Seven Maps Nos. 1 to 7 entitled "Maps Showing Development of Property of Lehigh Valley Railroad Company of New Jersey, Jersey City Terminal. Julius G. Hocke." (1888 to 1907.)

D. 78.

"December 20th, 1889. Received from the Lehigh Valley Railroad Company, lessee, the sum of $23,767.12, being the proportion due to this date of payment, for the current year, of the annual sum of $25,000 payment by the Morris Canal and Banking Company, under the provisions of an act of the Legislature, approved March 14, 1867.

(Signed) John J. Toffey, Treasurer,

(Countersigned) E. J. Anderson, Comptroller."

D. 79.

"December 20, 1889. Received from the Lehigh Valley Railroad Company, Trustee, $357,142, being the amount which under provisions of the act of the Legislature of New Jersey, approved March 14, 1867, it is provided may be paid into the Treasury of the State of New Jersey by the Morris Canal and Banking Company, instead of the annual payment of $25,000 in said act named. This receipt runs to the Lehigh Valley Railroad Company, lessee."

(Signed) John J. Toffey,
Treasurer,

(Countersigned) E. J. Anderson,
Comptroller."

D. 80.

"December 20, 1889. Received from Lehigh Valley Railroad Company the sum of $48,000, being the consideration for a grant of lands under water, made by the Riparian Commissioners of New Jersey, dated July 12, 1889, to the said Lehigh Valley Railroad Company.

(Signed) John J. Toffey,
Treasurer,

(Countersigned) E. J. Anderson,
Comptroller."

D. 81.

"Comptroller's Department, State of New Jersey, December 31, 1889. Charles Hartshorne, Esq.—Dear Sir: I herewith hand you receipts for payments of the 20th inst. The delay in getting them signed has been due to the continued illness of the Treasurer. Very respectfully, E. J. Anderson, Comptroller."

D. 82.

John C. Payne's Map "P," made in 1884, showing condition of Morris Canal Grant, etc., in 1879.

D. 83.

Morris Canal "Blue Book," pp. 123 to 128. Before State Commission, June, 1903.

STATEMENT

Of Income from Tolls and Other Sources, in each of the Following Years:

1845	$18,997 45
1846	51,212 39
1847	67,687 09
1848	65,531 75
1849	90,220 48
1850	98,224 25
1851	110,730 56
1852	140,202 28
1853	187,449 71
1854	245,431 54
1855	272,125 23
1856	313,026 15
1857	286,668 61
1858	275,019 44
1859	305,537 93
1860	350,710 63
1861	291,846 37
1862	303,154 39
1863	374,601 76
1864	590,393 26
1865	600,584 30
1866	616,350 36

1867	449,652 46
1868	423,767 30
1869	431,245 80
1870	391,549 76
1871	283,725 34
1872	397,181 72
1873	323,631 51
1874	271,436 17
1875	270,216 62
1876	217,982 59
1877	170,855 11
1878	156,156 46
1879	137,553 11
1880	215,677 21
1881	221,016 59
1882	193,789 25
1883	158,167 49
1884	148,602 01
1885	101,487 41
1886	87,166 61
1887	109,364 98
1888	101,476 20
1889	134,608 66
1890	120,283 00
1891	315,200 49
1892	247,724 31
1893	196,052 53
1894	228,564 76
1895	208,557 71
1896	167,254 74
1897	167,411 70
1898	136,924 01
1899	137,626 21
1900	111,072 10
1901	105,502 66
1902	52,076 31

STATEMENT

Of Aggregate Tonnage on the Morris Canal for the Years 1845 *to* 1902, *inclusive.*

Year.	Tonnage.
1845	58,259
1846	109,505
1847	155,559
1848	204,682
1849	234,305
1850	239,682
1851	281,707
1852	358,797
1853	467,288
1854	543,269
1855	553,204
1856	563,413
1857	536,362
1858	554,034
1859	638,019
1860	707,631
1861	619,369
1862	612,018
1863	718,519
1864	723,927
1865	716,587
1866	889,220
1867	822,741
1868	744,412
1869	650,200
1870	707,572
1871	629,044
1872	685,191
1873	634,710
1874	491,816
1875	451,045
1876	399,613
1877	417,819
1878	363,348

1879	408,046
1880	503,486
1881	534,743
1882	459,846
1883	423,495
1884	414,097
1885	364,554
1886	389,462
1887	378,567
1888	372,049
1889	413,073
1890	394,432
1891	370,109
1892	288,011
1893	259,282
1894	300,092
1895	270,931
1896	235,168
1897	231,870
1898	191,287
1899	173,555
1900	125,829
1901	122,786
1902	27,392

COAL TONNAGE.

Statement of Coal Received upon the Morris Canal from Connecting Lines, from the Lehigh and Lackawanna Regions:

Year.	Lehigh Coal at Port Delaware			Scranton Coal at Port Washington	Total Coal Tonnage.
	Canal	Railroad	Total		
	Tons	Tons	Tons	Tons	Tons
1845	12,567	.....	12,567	.....	12,567
1846	41,142	.....	41,142	.....	41,142
1847	61,951	.....	61,951	.....	61,951
1848	82,159	.....	82,159	.....	82,159
1849	103,482	.....	103,482	.....	103,482
1850	98,100	.....	98,100	.....	98,100
1851	137,237	.....	137,237	.....	137,237
1852	180,189	.....	180,189	.....	180,189
1853	222,582	.....	222,582	.....	222,582
1854	267,864	.....	267,864	.....	267,864
1855	290,730	.....	290,730	.....	290,730
1856	284,828	808	285,636	17,764	303,400
1857	227,652	13,047	240,699	43,599	284,298
1858	281,949	5,350	287,299	55,426	342,725
1859	255,405	5,780	261,185	89,146	350,331
1860	276,947	.....	276,947	127,517	404,464
1861	272,616	1,401	274,017	140,922	414,939
1862	106,431	45,738	152,169	172,128	324,297
1863	208,397	48,234	256,631	145,815	402,446
1864	187,540	44,520	232,060	150,803	382,863
1865	217,933	74,052	291,985	124,204	416,189
1866	205,351	112,790	318,141	141,034	459,175
1867	171,266	107,206	278,472	146,359	424,831
1868	161,828	107,387	269,215	80,977	350,192
1869	78,787	134,570	213,357	68,269	281,626
1870	69,990	205,636	275,626	84,514	360,140
1871	.....	.....	.....	.....	339,581
1872	.....	.....	.....	.....	356,156
1873	.....	.....	.....	.....	299,214
1874	.....	.....	.....	.....	269,454
1875	.....	.....	.....	.....	250,047
1876	.....	.....	.....	.....	290,587
1877	.....	.....	.....	.....	305,896
1878	.....	.....	.....	.....	233,570
1879	.....	.....	.....	.....	255,464
1880	.....	.....	.....	.....	280,642
1881	.....	.....	.....	.....	323,366
1882	.....	.....	.....	.....	304,459
1883	.....	.....	.....	.....	323,478
1884	.....	.....	.....	.....	326,915
1885	.....	.....	.....	.....	301,655
1886	.....	.....	.....	.....	315,187
1887	.....	.....	.....	.....	366,276
1888	.....	.....	.....	.....	307,848
1889	.....	.....	.....	.....	300,340
1890	.....	.....	.....	.....	297,418
1891	.....	.....	.....	.....	322,969
1892	.....	.....	.....	.....	252,569
1893	.....	.....	.....	.....	236,511
1894	.....	.....	.....	.....	287,309
1895	.....	.....	.....	.....	259,788
1896	.....	.....	.....	.....	211,955
1897	.....	.....	.....	.....	208,480
1898	.....	.....	.....	.....	166,674
1899	.....	.....	.....	.....	159,486
1900	.....	.....	.....	.....	119,479
1901	.....	.....	.....	.....	115,391
1902	.....	.....	.....	.....	20,411

TABLE

Of Trade and Tonnage on the Morris Canal, from the Year 1845 to 1857, inclusive.

Articles	1845.	1846.	1847.	1848.	1849.	1850.	1851.	1852.	1853.	1854.	1855.	1856.	1857.
Bar and Pig Iron	5,795	11,356	16,940	16,566	25,978	23,787	23,003	29,201	31,973	18,978	32,291	36,375	32,847
Blooms and Billets	1,243	1,686	1,720	1,697	1,638	1,567	793	946	1,082	348	609	270	269
Brick	759	1,429	2,122	3,775	1,987	1,069	690	1,884	2,187	7,056	3,224	2,856	3,681
Castings and Machinery	74	126	230	195	107	296	389	577	469	825	572	265	1,790
Charcoal	512	1,022	473	1,167	1,167	840	1,435	1,851	2,214	1,081	838	1,174	619
Clay, Earth, Sand, Stone &c.	2,466	5,127	6,621	4,825	2,329	6,365	10,117	12,373	39,553	65,842	49,278	25,699	29,165
Dry Goods; Groceries, &c.	580	1,279	2,585	2,314	3,813	5,411	4,503	2,980	3,062	2,079	1,200	1,909	1,307
Flour, Meal, Feed, &c.	1,635	3,420	2,419	4,319	5,189	5,508	3,533	3,278	4,170	2,263	2,614	2,945	1,287
Hoop Poles and Rails	.....	.....	.....	.....	957	1,331	1,062	536	777	437	1,353	995	1,214
Iron Rails	39	.....	5,020	7,377	47	102	139	4,427	1,208	1,047	2,222	195	60
Lime and Cement	583	1,804	1,764	2,528	2,163	1,944	2,965	2,627	3,356	4,243	3,546	3,519	3,372
Lime Stone	1,510	2,450	1,810	5,480	3,397	3,560	1,066	4,652	3,473	3,157	5,664	3,062	2,635
Lumber and Logs	1,516	2,850	3,364	5,450	5,938	6,761	5,546	6,765	11,022	12,002	12,834	11,614	12,085
Mineral Coal	28,291	47,947	67,068	89,879	114,017	104,323	148,262	190,277	235,805	284,606	299,682	311,932	298,011
Nails, Spikes, &c.	206	442	807	401	305	2,223	2,960	4,613	5,876	5,591	6,209	6,115	5,933
Ore and Forge Cinders	5,802	17,073	28,314	46,922	53,722	60,055	62,690	77,132	104,151	117,191	113,291	133,845	125,805
Plaster	715	1,784	738	2,102	1,823	1,441	568	741	1,759	932	1,056	1,663	1,229
Timber and R. R. Ties	1,315	1,944	3,424	1,913	2,406	2,122	1,066	2,836	3,629	3,986	2,240	2,606	2,562
Wood, Bark, &c.	5,003	6,766	6,010	6,605	5,325	9,449	9,918	9,503	8,042	9,816	13,139	14,303	10,810
Sundries	215	994	4,130	1,167	1,997	1,478	1,002	1,598	3,400	1,789	1,339	2,071	1,651
Total	58,259	109,505	155,559	204,682	233,305	239,682	281,707	358,797	467,288	543,269	553,204	563,413	536,362

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TABLE

Of Trade and Tonnage on the Morris Canal from the Year 1858 to 1870, inclusive.

Articles	1858.	1859.	1860.	1861.	1862.	1863.	1864.	1865.	1866.	1867.	1868.	1869.	1870.
Bar and Pig Iron	20,115	20,136	15,815	11,970	22,203	28,949	23,402	18,407	13,334	12,984	17,064	12,612	15,473
Blooms and Billets	357	487	481	347	440	897	1,271	481	325	112	10	.....	.....
Brick	4,648	4,628	7,484	5,884	2,590	4,101	5,496	6,171	8,679	7,269	9,791	19,500	26,031
Castings and Machinery	1,044	765	579	338	4,768	3,045	1,353	1,108	1,078	1,079	3,135	.....	.....
Charcoal	484	1,069	1,236	814	471	1,035	632	978	580	332	268	.....	.....
Clay, Earth, Sand, Stone, &c.	9,382	15,909	7,303	6,843	5,129	10,437	9,812	11,729	13,784	11,221	17,541	17,898	16,313
Dry Goods, Groceries, &c.	2,989	3,121	3,415	4,088	3,905	3,203	2,655	1,988	2,487	3,838	2,468	2,333	1,991
Flour, Meal, Feed, &c.	3,156	3,229	4,630	6,058	7,219	5,018	4,122	4,677	5,316	1,484	7,516	5,705	6,032
Hoop Poles and Rails	900	656	792	1,005	1,162	1,184	748	1,477	959	181	2,173	1,731	1,448
Iron Rails	.....	1,113	6	617	7	266	1,051	1,467	384	5,145	.....	2,137	608
Lime and Cement	3,702	4,285	5,545	5,376	5,839	4,532	2,899	3,019	4,682	9,019	4,828	5,092	4,459
Lime Stone	6,941	7,920	3,946	6,833	4,179	4,245	4,526	6,163	13,378	232	10,004	2,345	4,090
Lumber and Logs	8,243	13,750	13,809	6,948	10,107	12,519	11,055	12,953	13,209	12,748	9,760	9,631	6,692
Mineral Coal	356,207	365,861	422,552	426,080	335,660	413,452	393,030	428,180	473,028	437,088	359,097	304,365	371,579
Nails, Spikes, &c.	6,228	7,387	7,334	6,092	7,002	7,343	6,936	6,910	8,193	869	4,486	6,416	7,973
Ore and Forge Cinders	108,684	155,467	186,064	103,163	169,108	191,667	223,924	174,838	290,165	289,550	269,672	227,696	220,079
Plaster	1,655	3,075	2,165	2,639	2,260	2,636	1,565	1,439	2,013	2,214	486	2,267	617
Timber and R. R. Ties	2,345	6,066	5,476	3,737	4,660	4,085	4,469	8,110	5,555	3,798	4,380	5,166	3,929
Wood, Bark, &c.	15,863	20,400	15,147	17,952	21,898	15,985	20,058	21,108	25,833	16,606	16,993	16,835	11,386
Sundries	1,011	2,695	3,852	2,585	3,411	3,920	4,925	5,384	6,238	4,972	4,740	8,471	8,872
Total	554,034	638,019	707,631	619,369	612,018	718,519	723,927	716,587	889,220	822,741	744,412	650,200	707,572

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TABLE

Of Trade and Tonnage on the Morris Canal, from the Year 1871 *to* 1902, *inclusive.*

	1871	1872	1873	1874	1875	1876	1877	1878	1879	1880	1881
Coal ..	329,584.02	356,157.10	299,214.	413,918.05	250,047.18	290,588.13	305,897.18	233,560.	323,924.	427,606.	323,366.
Ores .	185,482.03	191,597.16	213,447.	14,802.18	99,607.04	67,447.03	58,736.18	85,705.	56,123.	44,897.	134,871.
Misc's	113,978.01	137,435.14	112,049.	63,095.09	101,390.08	41,577.11	53,184.04	44,083.	27,999.	30,893.	75,506.
Total	629,044.06	685,191.00	634,710.	491,816.12	451,045.10	399,613.07	417,819.00	363,348.	408,046.	503,486.	534,743.00

	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892
Coal ..	304,458.15	323,477.17	307,847.14	301,654.19	315,187.12	266,276.06	307,847.14	300,340.13	297,417.17	312,968.15	252,568.19
Ores .	82,478.10	35,885.07	29,372.02	21,803.17	36,576.15	65,584.08	29,372.02	67,988.10	54,889.	21,978.13	5,213.10
Misc's	72,909.09	64,132.03	34,829.11	41,095.18	37,698.01	46,706.08	34,829.11	44,744.05	42,125.18	35,161.17	30,229.05
Total	459,846.14	423,495.07	372,049.27	364,554.14	389,462.08	378,567.02	372,049.07	413,073.08	394,432.15	370,109.05	288,011.14

	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902
Coal	236,510.19	287,309.07	259,778.01	211,954.18	208,480.02	166,673.12	159,456.	119,479.01	115,391.	20,411.00
Ores	.....	1,987.05	.....	.....	.....	.....	.....	.....	.....	.....
Misc's	22,771.18	10,796.04	11,153.03	23,213.17	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	23,390.16	24,613.11	14,099.10	6,350.	7,395.	6,981.
Total	259,282.17	300,092.16	270,931.04	235,168.15	231,870.18	191,287.03	173,555.10	125,829.01	122,786.	27,392.00

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D. 84.

Map "Lehigh Valley R. R., Map of New York Harbor," showing Lighterage Limits, Docks and places to which Lehigh Valley cars go, etc.

D. 85.

The so-called "Talcott Map," with legend as follows: "This map was drawn for Morris Canal and Banking Company August, 1863, by L. B. Ward, under direction of W. H. Talcott."

D. 86.

Map entitled "Map of Jersey City, Hoboken and Suburbs, made by John D. Ward, A. L. Van Buskirk, D. T. Gregory, Edwin A. Stevens, Edward Coles March 14, 1851."

D. 87.

"Map of Jersey City Hudson County, New Jersey, by A. Clerk and R. C. Bacot, City Surveyors, 1848."

D. 88.

SCHEDULE

Of Assessed Values and Amount of Tax taken from the Printed Reports of the State Board of Assessors for Years 1889 to 1907, Incl.

On MORRIS CANAL GRANT of 1867.

To whom assessed	year	Value of land	Value of imp'mts	Total	Am't of tax
Jersey City Terminal Railway Co.	1889	$588,400	$108,500	$696,900	$10,453.50
" "	1890	605,200	135,000	740,200	11,103.00
" "	1891	994,250	220,000	1,214,250	18,213.75
Lehigh Valley Terminal Railway Co.	1892	994,250	290,000	1,284,250	19,263.75
" "	1893	890,650	300,000	1,190,650	17,859.75
" "	1894	890,650	300,000	1,190,650	17,859.75
" "	1895	890,650	300,000	1,190,650	17,859.75
" "	1896	890,650	280,000	1,170,650	17,559.75
" "	1897	890,650	280,000	1,170,650	17,559.75
" "	1898	890,650	280,000	1,170,650	17,559.75
" "	1899	890,650	280,000	1,170,650	17,559.75
" "	1900	890,650	280,000	1,170,650	17,559.75
" "	1901	890,650	280,000	1,170,650	17,559.75
" "	1902	905,360	280,000	1,185,360	17,780.40
" "	1903	905,360	280,000	1,185,360	17,780.40
Lehigh Valley R.R. Co. of N. J.	1904	905,360	280,000	1,185,360	17,780.40
" "	1905	905,360	335,000	1,240,360	33,861.83
" "	1906	1,222,900	400,000	1,622,900	40,410.21
" "	1907	1,222,900	400,000	1,622,900	26,258.52
				Total	371,843.51

On WEST LINE GRANT of 1872.

Jersey City Terminal Railway Co.	1889	365,040	25,000	390,040	5,350.60
" "	1890	684,880	96,000	780,880	11,713.20
" "	1891	691,280	100,000	791,280	11,869.20
Lehigh Valley Terminal Railway Co.	1892	691,280	160,000	851,280	12,769.20
" "	1893	667,980	195,000	862,980	12,944.70
" "	1894	667,980	195,000	862,980	12,944.70
" "	1895	667,980	195,000	862,980	12,944.70
" "	1896	641,660	160,000	801,660	12,024.90
" "	1897	641,660	135,000	776,660	11,649.90
" "	1898	641,660	135,000	776,660	11,649.90
" "	1899	641,660	135,000	776,660	11,649.90
" "	1900	641,660	260,000	901,660	13,524.90
" "	1901	655,308	320,000	975,308	14,629.62
" "	1902	804,712	255,000	1,059,712	15,895.68
" "	1903	804,712	330,000	1,134,712	17,020.68
Lehigh Valley R.R. Co. of N. J.	1904	804,712	395,000	1,199,712	17,995.68
" "	1905	804,712	465,000	1,269,712	34,663.14
" "	1906	901,112	588,000	1,489,112	37,078.89
" "	1907	901,112	588,000	1,489,112	24,093.83
				Total	302,413.32

NOTE: The above valuation and tax is on real estate other than main stem.

Assessed valuation of the Lehigh Valley Railroad of New Jersey for main stem and franchise—1907, $14,294,900

Length of main line and branches, 123.675 miles.

Length of main stem 100 ft. wide

Through Morris Canal Grant, 0.250 "

Through West Line Grant, 0.800 "

D. 89.

Legislative Documents of New Jersey of 1867, particularly the Message of the Governor to the Legislature at the opening of the session, page 25; the part entitled "Wet Basin Bill" and the appendix to that Message, transmitted to the Legislature therewith, entitled "Objections of Governor Ward to the Wet Basin Bill," page 27½ *et seq.*

D. 90.

Original Objections of Governor Ward to Wet Basin Bill, filed with Secretary of State, April 14, 1866.

SENATE JOURNAL of 1867, pages 16, 66, 75, 81, 95, 133, 375. (See extracts printed in testimony.)

MINUTES OF ASSEMBLY, 1867. Also Jan. 9—March 14 (New Laws of 1867, §251). (See extracts printed in testimony.)

GOVERNOR WARD'S OBJECTIONS.

State of New Jersey,
Executive Department,
Trenton, April 11th, 1866.

Senate Bill No. 259, entitled "An Act to incorporate the Hudson River Wet Basin and Ware House Company and to contract for a lease to said Company of lands of the State on New York Bay," after having been discussed before the Committees of the Legislature and before the Legislature itself for several weeks, was presented to me at so late a period in the session that although I improved all *the* of the hours at my command in considering its provisions, I was still unable before the adjournment of the Legislature to come to the conclusion either to approve the Bill or to return it with my objections.

I have since given the subject involved and the

provisions of the Bill a careful examination. Under the Constitution of the State, the Bill cannot now become a law by the *lape* of five days and by my omission in that time to sign the same, but only by my certificate that I approve its object and details. With the views I entertain of this Bill both in its general scope and its specific provisions I cannot give it such approval but am constrained to withhold from it my signature and for the following reasons:

1. The Bill is a contract on the part of the State to lease to the persons named in it as corporators certain premises in Jersey City adjoining or near to the shore of the Hudson River. Part of the premises so to be leased are now and for several years past have been in the possession, under claim of title, of the Morris Canal Company, a corporation of this State. They constitute the terminus depot of a valuable public improvement, being a canal across the State more than a hundred miles long; which they have enjoyed for several years and upon which they have expended considerable sums of money. This Bill proposes, without compensation to the Company, without the intervention of a legal investigation, *immediately* to dispossess the Company of such terminus depot. No grounds are alleged in the Bill invalidating the Company's claim. It does not seem to me that the Legislature should adjudicate in this way against a possession so open and continued and on which interests so important depend.

2. The Morris Canal Company claim to be possessed of what is known as the shore or riparian right to the premises in question. The nature and extent of this right and whether it arises from local custom, from adjudications of the Courts or from Statutes, are questions which it is not my province to determine. It may be that it is an

incomplete right or a mere right of pre-emption, but whatever it may be, it appears to me that the owner of lands adjacent to tide waters has a better right to those waters for certain purposes, than other citizens of the nation. It would create consternation among the owners of such lands through the State to learn that no respect whatever was to be paid to the advantages derived from their adjacency to tide water. But while not disregarding the right of the riparian owner, whatever it may be, I am satisfied that the shore owner has no right to extend improvements beyond low water mark without the consent of the State, and that for this consent the State is entitled to receive compensation and now has it in its power to realize therefrom a valuable revenue. I am convinced that a greater revenue can be derived from the premises in question than this Bill proposes without doing violence to the riparian rights. This Bill proposes to give to those having no claim as shore owners a lease for the possible rent of Fifteen thousand dollars per year, while the Canal Company have placed in my hands a written offer to pay for the State's right the sum of twenty thousand dollars per year, making a difference in favor of the State in the proposed term of sixty years, without calculating interest, of three hundred thousand dollars. If it be suggested that the offer made to me by the Canal Company is only intended to have its influence in preventing this Bill from becoming a law, the obvious reply is that the premises will be as saleable at the next session of the Legislature as now, and should the Canal Company repudiate this offer they could not object to a grant of the premises being made by the State, and in fact the Company have given me their written stipulation that should they refuse to rent said premises at the rent of twenty thousand dollars per year,

if this State should refuse to make such grant, they will concur in a grant to be made by the State to others and in the peaceable possession of such premises by the grantees of the State. It need hardly be said that the title which in this event would be given by the consent of the Company, being freed from disputes and litigation, would command a better rent than a grant subject to the litigation which this Bill in terms contemplates. The extent of the Canal Company's property and the character of its credit are a sufficient guaranty for the payment of the rent.

3. In addition to and independent of the objections to the Bill already named there are others which should not be overlooked. They are such as the following: The rent is to be fifteen thousand dollars per year. There is of course no individual security for its payment and the whole amount of the capital required to be paid in is five per cent. or twelve thousand five hundred dollars.

Again: The rent itself, while possibly amounting to the sum also named, may in fact be much less, the Company being bound to pay only an amount proportioned to such extent of the premises leased as may come into their actual possession.

Again: There is to be in such lease no provision that in case said premises do not belong exclusively to the State, the lease shall be void, but the State undertakes to lease the premises and by such undertaking makes an implied warranty of its title.

And, lastly, the fact that all excepting the corporators may be excluded from participation in the enterprise; the uncertainty as to the period when the term of sixty years begins to run; the question as to when the State might be called upon to make compensation for improvements; the

prohibition as to locating streets or other improvements on or over the premises; and the fact that the State may be called upon, after permitting a public corporation which it has hitherto fostered, to enjoy and improve the premises in question, to put the grantees in possession of those premises without the adjudication and process of the law, in breach of good faith, are certainly questionable and objectionable provisions of the Bill.

The reasons above stated and others, not mentioned, have constrained me to withhold my signature from this Bill.

MARCUS L. WARD.

Endorsed:

"Filed April 14, 1866.
H. N. Congar,
Secy. of State."

STATE OF NEW JERSEY.

Department of State.

I, S. D. DICKINSON, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of Objections of the Governor to Senate Bill No. 259, entitled "An Act to incorporate the Hudson River Wet Basin and Ware House Company and to contract for a lease to said Company of lands of the State on New York Bay," and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Fourteenth day of April, A. D. 1866, and now remaining on file therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Trenton, this Second day of April, A. D. 1909.

(Seal)

S. D. DICKINSON,
Secretary of State.

D. 91.

Minutes of Morris Canal Co., March 19, 1866. Marked for Identification, but offer as evidence overruled.

D. 92.

Assessors' Map of Jersey City, inscribed, "Presented to the Common Council and Approved August 6, 1847. P. C. Dummer, Mayor; J. B. Wakeman, Clerk; Jersey City, July 26, 1847. R. C. Bacot, Andrew Clerk, City Surveyors."

D. 93.

"Map of Property belonging to Cornelius Van Vorst, situated in Bergen County, New Jersey." L. F. Bridges, Surveyor, 1835.

D. 94.

Map entitled "Topographical Map of Jersey City, Hoboken and the adjacent County, describing minutely the course of rivers and brooks of Township, and original patent lines railways, turnpike, carriage and bridle roads, the present farm boundaries with the names of their proprietors, a correct plantof public grounds and gentlemen's country seats, the position of farm houses, forests, swamps and marshes, showing a complete view of the face of the country from the actual survey by L. F. Douglass, engineer, Jersey City, 1841, published by the author."

D. 95.

Certified copy of map entitled "A Map of that part of the Town of Jersey commonly called Powles Hook, recorded in office of Register of Hudson County in Book E of Deeds for Jersey, page 1.

D. 96.

Deed from Cornelius Van Horn and wife to the Easton and Amboy Railroad Company, dated Nov. 1, 1887, recorded in the office of the Register of Hudson County on November 5, 1887, in Book 447 on page 227.

Deed, from Cornelius Van Horne and wife to Easton & Amboy Railroad Company, dated Nov. 1, 1887, and recorded on November 5, 1887, in Book 447 of Deeds, p. 227. Cons., $8,000.

Conveys in fee, a small tract of land, bounded on the north by lands of the Morris Canal and Banking Company; on the east by the west shore of Mill Creek; on the south by the center line of Johnston Ave.; on the west by the lands of the National Docks Railroad Company.

Also, all right, title and interest of the parties of the first part, in and to all land in Mill Creek adjoining the above described tract. Also, all the right, title and interest of the parties of the first part in and to that tract of land known as the West Line Grant, and described in said Grant from the State of New Jersey to the New Jersey West Line Railroad Company, dated March 19th, 1872, as follows:

(Here follows description of West Line Grant.)

D. 97.

Deed from Garret Van Horn and wife, Annie M. De Mott and husband, Mary E. Berdan and Julia G. Brooks and husband, being the Van Horn heirs, to Easton and Amboy Railroad Company, dated July 6, 1887, recorded in Book 446 on page 130.

Deed, from Garret Van Horne and wife and others, to Easton & Amboy Railroad Company, dated July 6, 1887, and recorded in Book 446, p. 130. Cons., $195,000.

Conveys identically the same property as that described in last above deed from Cornelius Van Horne and wife.

D. 98.

Deed from Franklin Brooks and wife to Easton and Amboy Railroad Company, dated August 28, 1888, recorded in Book 465 of Deeds for Hudson County on page 94.

Deed, from Franklin Brooks and wife, to Easton & Amboy Railroad Company, dated August 28, 1888, and recorded in Book 465, on page 94. Cons., $27,000.

Conveys two tracts of land in Jersey City, situate on the north side of Johnston Avenue and to the eastward of the National Docks Railroad, and bounded also on Central Railroad.

D. 99.

Map entitled "Map of Property belonging to Sela Hill, Samuel P. Townsend and others, situated in Van Vorst Township, Hudson County, New Jersey, three-quarters of a mile from Jersey City Ferry, compiled by A. Clerk and R. C. Bacot, City Surveyors, June 14, 1849," filed in Hudson County Clerk's Office, July 26, 1849.

D. 100.

Chart entitled "Cost of construction of improvements of Jersey City Terminal, Lehigh Valley Railroad Company of New Jersey, fiscal year ending November 30, 1888," showing monthly tabulation of expenditures for the fiscal year ending November 30th, 1888, on Morris Canal Basin grant and West Line grant.

D. 101.

Tabulation of annual expenditures on Morris Canal Basin grant and West Line grant from 1888 to 1897.

D. 102.

Tabulation of annual expenditures on Morris Canal Basin Grant, etc., from 1897 to 1908.

D. 103.

Tabulation of annual expenditures on yard west of Morris Canal Basin grant since 1897.

D. 104.

Tabulation showing monthly expenditures on Morris Canal grant, etc., for fiscal year ending November, 1889.

D. 105.

(C. R. R. File No. 34.)

Deed, by Jane Van Horne to Central Railroad Company of New Jersey, dated May 27th, 1863, recorded in Hudson County Deeds, Book 88, p. 498. Cons. $25,000.

CONVEYS in fee simple, first, a strip three feet wide along the shore from center line of Central Railroad southerly to land of Sisson; second, "a strip three feet wide at all points along the entire shore front of the said party of the first part along the New York Bay, Communipaw Cove, or Hudson's River, from the center line of the Central Railroad northerly to the mouth of Mill Creek; also, the undivided one-half right, title and interest of the party of the first part in the lands under the waters of said Communipaw Cove, New York Bay, or Hudson's River, in front of, or incident, or appurtenant to the above described tract of land, so far out as the middle of Hudson's River, with the right to fill up, improve, and use the same."

Full covenants and warranty.

D. 106.

(C. R. R. File No. 35.)

Agreement, dated May 27th, 1863, between Jane Van Horne, Widow, and Central Railroad Company of New Jersey. Recorded Book 99 of Deeds for Hudson, p. 500, &c.,

RECITES that the parties are tenants in common of a strip of land three (3) feet wide, extending from the Central Railroad northerly to Mill Creek along the shore, "and also of, in and to the lands under the waters of Communipaw Cove, New York Bay, or Hudson River, in front of the above described strip of land, so far as the said right extends, or the same may be allotted to the said parties hereto as shore owners."

"And whereas, the said parties, or one of them, may desire to fill up, reclaim and improve their, or her share in the said lands under water, or some part thereof,"

Agrees than Jane Van Horne may have the right and privilege, at her own expense, to fill up, reclaim and improve so much of the said lands under water as are situate west of a line drawn through the centre of Henderson Street in Jersey City, and extended southerly across the whole of the said lands under water held in common by the parties hereto, and that the Railroad Company may have the right, at their own cost and expense, to fill up, reclaim and improve so much of said lands under water as are situate east of the said line drawn through the centre of Henderson Street in Jersey City, and extended southerly; and that as soon as either party shall so fill up, reclaim and improve any portion of the said lands under water, within the said bounds, either party will execute a deed of release to the other party, for their or her undivided interest in the part reclaimed. The Railroad Company, however, to retain their title to the undivided one-half interest in a strip of land three feet wide along the front of any lands said Van Horne may fill up in the portion of the lands under water hereinbefore apportioned to her.

Further provisions protecting Railroad Company's right of way and title, &c.

D. 107.

(C. R. R. File No. 105.)

Agreement, dated Oct. 24th, 1865, between Jane Van Horne and Central Railroad of New Jersey. Recorded, Book 127 of Deeds for Hudson, p. 451.

RECITES that the parties are tenants in common, in fee, of "a strip three feet wide at all points along the entire shore front of the lands lately held in severalty by the said Jane Van Horne, on the said Cove, Bay or River, and an undivided half of which said strip of land was conveyed by

the said Jane Van Horne to the said Company by the above mentioned deed; and also, of, in and to the lands under the waters of the said Communipaw Cove, New York Bay, or Hudson River, in front of the above described strip of land, so far as the said right extends, or the same may be allotted to the said parties hereto as shore owners."

RECITES Agreement of May 27th, 1863.

RECITES that the Company have since constructed their railroad across the waters of said Communipaw Cove to a front on Hudson River on the right of way one hundred feet wide also granted them by the above mentioned agreement, and established a station and terminus on the said river south of Jersey City; and recites that the Company proposes, at their own cost, to construct a road or street eighty feet wide across the said Bay or Cove, north of and parallel to their said railroad, the centre line of which shall be 290 feet distant from the centre line of the said railroad, by first extending the trestle-bridge already commenced by them on the line of the said road from their said terminus on the river to the main land of the same width and general construction as the part already built, as rapidly as feasible, by filling up the said street to its full width of 80 feet, and to the height established for the Company's bulkheads on the Bay.

RECITES that it has been agreed that in consideration thereof, and other considerations, a larger portion of the land under water should be allotted to the Company,

THEREFORE, Jane Van Horne agrees that the Company shall have the right to reclaim so much of the lands under water before allotted to her "as lie east of a line that would be the centre line of Jersey Avenue as opened in Jersey City from

Newark Avenue to Grand Street, if the same were extended southerly across the whole of the said lands under water held in common by the said parties hereto; and also, so much of the lands under water before allotted to the party of the first part as lie south of the centre line of the proposed road as well those which may lie south of the railroad as those that may lie between the railroad and the proposed road."

The Company agrees to proceed with construction of the road, and within one year to grade Walnut St. across the lands of Jane Van Horne, and pave it; also to dump the surplus earth from Walnut St. upon her land, as directed. The Company agrees not to ask for the opening of any other street across Jane Van Horne's property, without her consent. The division line to be said line of Jersey Avenue, and to apply to the division of lands between the parties as if it had been inserted in the original agreement instead of the centre line of Henderson Street.

D. 108.

(C. R. R. File No. 149.)

Deed, Jane Van Horne, Widow, to Central Railroad Company of New Jersey. Dated, May 31st, 1872, Recorded in Book 244 of Deeds for Hudson County, p. 130.

Conveys in fee, the undivided one-half part of a tract in Jersey City, bounded on the south by the southerly line of the right of way of the Central Railroad; on the west by the dividing line between Jane Van Horne and the land east thereof formerly held by the parties hereto in common, from the Central Railroad northerly to the centre of Central Avenue; thence easterly along the centre of Central Ave., to the centre line of Jersey

Avenue; bounded on the west by Jersey Avenue, from the centre line of Central Avenue for 765 feet to the northern boundary line of the land heretofore held in common by the parties; bounded on the north by said northerly line for a distance of 5500 feet to the channel of the Hudson River; bounded on the east by the channel of the said River for 1200 feet more or less; on the south by the southerly boundary line of the lands heretofore held in common by the parties hereto for a distance of 5500 feet, more or less.

"Being the undivided half or moiety of the land allotted to the said parties of the second part by deed of agreement between Jane Van Horne, Widow, and the said Central Railroad Company of New Jersey, dated May 27th, 1863, Recorded * * * ; and also by deed of agreement supplementary thereto, between the same parties, dated the 24th day of October, 1865."

Covenant against grantor's acts.

D. 109.

(C. R. R. File No. 54.)

Deed, Clara Durgin, Executrix of Sebastian Jaclard, deceased, and Stephen Durgin, her husband, to Central Railroad Company of New Jersey. Dated, July 22d, 1863, Recorded in Book 102 of Deeds for Hudson, p. 407.

CONVEYS, in fee, twenty-seven (27) lots of land, and land under the water of New York Bay, in Jersey City, on the Hill & Townsend Map, 1849, known as Lots 465 466, 467, 468, 471, 472, 473, 474, 476, in Block 17; Lots 571, 572, 573, 574, 579, 580, in Block 20; Lots 645, 646, 651, 652, 653, 654, Block 23; Lots 751, 752, 753, 754, 759, 760, in Block 26. And also, all rights of said testator and of the party of the first part as riparian owners on New York Bay, opposite to or adjoining said premises.

D. 110.

(C. R. R. File No. 55.)

Deed, from Clara Durgin, Executrix of Sebastian Jaclard, deceased, and Stephen Durgin, her husband, to Central Railroad Company of New Jersey. Dated, July 22d, 1863, Recorded in Book 102, p. 409.

CONVEYS in fee, Lots 277 and 278, in Block 11; also Lots 375, 377, 379, 380, 382, 388, and 390, in Block 14; also parts of Lots 466 and 468, in Block 17.

D. 111.

(C. R. R. File No. 96.)

Deed, from Charles G. Sisson and wife, to Central Railroad Company of New Jersey. Dated, March 23, 1865. Recorded in Book 119, p. 268.

CONVEYS in fee, Lot on the Hill & Townsend Map, known as 381, Block 14.

D. 112.

(C. R. R. File. No. 66.)

Deed, dated January 27th, 1863, from Charles G. Sisson and wife to Central Railroad Company of New Jersey. Recorded in Book 103, p. 69.

CONVEYS 21 parcels of land, the last whereof consists of land and land under water, situate, lying and being in Jersey City, which on the Hill & Townsend Map is designated as Blocks 10, 12, 13, 15, 16, 18, 19, 21, 22, 24 and 25.

D. 113.

(C. R. R. File No. 87.)

Deed, from Joseph W. Savage and wife, to Central Railroad Company of New Jersey, dated May 3d, 1864. Recorded in Book 111, p. 94.

CONVEYS in fee, Lots on the Hill & Townsend Map known as 275 and 276, in Block 11; 385 & 386, in Block 14, and 464, in Block 17.

D. 114.

(C. R. R. File No. 83.)

Deed, dated March 24th, 1864, from Stephen S. Southard and wife to Central Railroad Company of New Jersey, Recorded in Book 107 of Deeds for Hudson, p. 423.

CONVEYS in fee, lots on the Hill & Townsend Map, known as 293, 294, 295, 296, 358, 360, 362. Warrantee Deed.

D. 115.

(C. R. R. File No. 84.)

Deed, dated March 24th, 1864, from Stephen S. Southard and wife to Central Railroad Company of New Jersey, Recorded in Book 107 of Deeds for Hudson, p. 426.

CONVEYS lots on Hill & Townsend Map, known as Nos. 359, 361, 488, 490, 487, 489, 558, 556, 557, 555, 668, 670, 667, 669, 733, 736, 737, 735.

D. 116.

(C. R. R. File No. 85.)

Deed, dated March 30th, 1864, from Morris K. Jessup and wife to Central Railroad Company of

New Jersey, recorded in Book 107 of Deeds, p. 427.

CONVEYS in fee, Lots on the Hill & Townsend Map, known as Nos. 267, 283, 284, 357, 363, 365, 376, 492, 475, 665.

Covenant against grantor's acts.

D. 117.

(C. R. R. File No. 94.)

Deed, dated March 2d, 1865, from Peter H. Zabriskie and wife, to Central Railroad Company of New Jersey. Recorded in Book 117, p. 555.

CONVEYS in fee, lots on the Hill & Townsend Map, known as Nos. 460, 462, 469, 461, 459, 586, 585, 584, 583, 578, 576, 577, 575, 640, 642, 639, 641, 648, 650, 647, 649, 766, 764, 765, 763, 758, 756, 757, 755.

D. 118.

(C. R. R. File No. 120.)

Deed, dated April 7th, 1866, from Edward Evans and wife, to Central Railroad Company of New Jersey. Recorded in Book 132, p. 309.

CONVEYS, on the Hill & Townsend Map, Lots 269, 271, 272, 273, 274, 371, 373; also 479, 480, 481, 482, 563, 564, 565, 566, 659, 665, 661, 662, 743, 744, 745, 746, 367, 369.

D. 119.

(C. R. R. File No. 65.)

Deed, dated July 1st, 1863, from Annie M. Corwin and others, to Central Railroad Company of New Jersey, Recorded in Book 103, p. 15.

CONVEYS to Kingsland & Smith, parties of the

second part, on the Van Vorst Farm Map of 1835, the westerly one-half of Blocks 46, 47, 48 and 49, as joint tenants, in trust; that as soon as the same shall have been filled in and reclaimed so that they shall be above the level of ordinary high water at a line drawn through the centre of Bergen Street, they shall stand seized of so much of said land as lies south of said centre line of Bergen Street to the use of the Central Railroad Company, in fee simple, and shall convey the same to them, and shall stand seized of all that part of said land, shore and land under water that lies north of said centre line of Bergen Street, to the use and benefit of Annie M. Corwin, in fee simple, and shall convey the same to her. "It being the object and only object of this Indenture that the said party of the first part shall convey and secure all her right to the shore and land under water in Communipaw Cove or New York Bay south of the centre line of Bergen Street as the same is laid out on said map to the use and benefit of the said party of the third part, their successors and assigns; and this conveyance to the said party of the second part is in trust only to effect that object."

Further provisions with reference to same.

D. 120.

(C. R. R. File No. 62.)

Deed, dated July 1st, 1863, Recorded in Book 103 of Deeds, p. 55, by Benjamin O. Edge, of the first part, Kingsland & Smith, of the second part, and Central Railroad Company of New Jersey, of the third part.

The first party conveys to the second party, all those lots on the Van Vorst Map of 1835, known as the easterly half of Blocks 46, 47, 48 & 49.

(Same form as last above deed.)

"It being the object and only object of this Indenture that the said party of the first part shall convey and secure all his right to the shore and land under water in Communipaw Cove or New York Bay south of the centre line of Bergen Street, as the same is laid down on said map, to the use and benefit of the said party of the third part, their successors and assigns; and this conveyance to the said party of the second part is in trust only to effect that object."

Further provisions with regard to same.

D. 121.

(C. R. R. File No. 63.)

Deed, dated July 1st, 1863, by George W. Edge, et als., of the first part; Kingsland & Smith, of the second part, and Central Railroad Company of New Jersey, of the third part. Recorded in Book 103, p. 58 &c.

The first party conveys to the second party, "ALL those certain blocks of salt meadow and land under water" which on a map of the farm of Cornelius Van Vorst, 1835, are known and distinguished as Blocks numbered 31, 30, 29 and 28, conveyed to second party in trust, by deed similar to the foregoing two deeds.

"It being the object and only object of this Indenture that the said party of the first part shall convey and secure all their right to the shore and lands under water in Communipaw Cove or New York Bay south of the centre line of Bergen Street, as the same is laid down on said map, to the use and benefit of the said party of the third part, their successors and assigns, and this conveyance to the said party of the second part is in trust only to effect that object."

Further provisions on same subject.

D. 122.

(C. R. R. File No. 61.)

Deed, dated October 19th, 1863, Recorded in Book 102, p. 739, from The Adirondack Steel Manufacturing Co., of the first part; Kingsland & Smith, of the second part, and Central Railroad Company, of the third part.

CONVEYS to the second party, parcel "BEGINNING at a point where the easterly line of the lot known as Lot number 40 in Block No. 49, and fronting on South Street, as laid down on the Map of Powles Hook made for the Associates of the Jersey Company, by Joseph F. Mangin, extended into Communipaw Cove intersects the line of ordinary high water mark in Communipaw Cove, and running thence northerly along the easterly side of said Lot No. 40, extended as aforesaid, 2 ft.; thence running westerly on a course distant 2 ft. northerly from and parallel with said line of ordinary high water mark to the centre line of Warren St., and thence southerly along the centre line of Warren St., to said line of ordinary high water mark, and thence easterly along the line of ordinary high water mark 205 feet to the place of beginning. And all the shore and water rights and right to lands under water in front of said strip of land in Communipaw Bay or Cove."

Conveyed to the second party in trust, similar to the trusts in the foregoing deeds.

"It being the object and only object of this Indenture that the said party of the first part shall convey and secure all their right to the shore and lands under water in Communipaw Cove or New York Bay south of the centre line of South Street, as the same is laid down on the map aforesaid, to the use and benefit of the said party

of the third part, their successors and assigns, and this conveyance to said party of the second part is in trust only to effect that object."

D. 123.

(C. R. R. File No. 56.)

Deed, dated Sept. 2, 1863, Recorded in Book 102, p. 413, from The Mayor and Common Council of Jersey City to Central Railroad Company of New Jersey. Cons. $7,500.

"Have bargained and sold, remised, released and quit-claimed, and by these presents do remise, release, and quit-claim" in fee simple, ALL the right, title and interest and estate of the parties of the first part of, in and to a strip of land in the First Ward of Jersey City, in the County of Hudson, and State of New Jersey, one foot wide measured from north to south, in front and on the shore of the property known on a map entitled Map of that part of the Town of Jersey commonly called Powles Hook, made by Joseph F. Mangin for the Associates of the Jersey Company as the "Market Ground," and now in the possession and occupation of the said parties of the first part as an Alms House, situate between a point seventy-five feet west of the westerly line of Washington Street and another point seventy-five feet east of the easterly side of Washington Street; said strip being 230 feet in length from east to west."

"And the Central Railroad Company of New Jersey for themselves, their successors and assigns, do hereby in consideration of the premises, covenant and agree, to and with the said The Mayor and Common Council of Jersey City, their successors and assigns, that they, the said Company, as soon as South Street opposite to and adjoining said Market Ground shall be reclaimed

from the tide waters of the North River or Communipaw Cove, to re-convey the said one foot of land or shore (hereby conveyed) to the said parties of the first part, together with the property in the north half of South Street."

"It being understood and agreed that said reconveyance shall not affect the interest or estate hereby conveyed to the said parties of the second part to the lands under water south of the middle line of South Street; and it being further understood and agreed that the said parties of the first part reserve the right to open or improve the streets heretofore laid down on said Mangin's Map over and upon said lands under water at any time after the same shall be reclaimed from tide water."

"It being the intention of this deed to cause to be conveyed to Central Railroad Company the interest and estate as Riparian or shore owners or otherwise of the parties of the first part hereto to the lands under water in Communipaw Cove or New York Bay south of the middle of South Street opposite and adjoining the strip above described, subject to such easements as may be projected on any part of said land under water when reclaimed."

D. 124.

(C. R. R. File No. 108.)

Agreement and deed, dated Nov. 19th, 1863, between Central Railroad Company of New Jersey and Morris Canal and Banking Company, as follows:

MEMORANDUM OF AGREEMENT between the Central Railroad Company of New Jersey and the Morris Canal

and Banking Company made this Nineteenth day of November, eighteen hundred and sixty-three.

Whereas a controversy has arisen between the said Companies as to the ownership and occupation of land under water in Communipaw Cove, south of Jersey City, and a suit between them is now pending in relation thereto, Now, therefore, in settlement of the said controversy and suit it is agreed between the said companies as follows:

First—The said Canal Company is to retain that part of the shipping basin which is located north of a line parallel with the centre line of the said railroad as located across said basin, which line is four hundred and fifty feet north of said centre line, and is to retain the lands easterly and in front of the said northerly portion of said basin—and the said Railroad Company is to possess and hold the residue of said basin, being the part south of said parallel line, and is to possess and hold the lands easterly and in front of said southerly portion of said basin, and such other lands to them herein, or hereby to be, granted by said Canal Company.

5¢ U. S. Inter. Revenue stamp.

Second—The Canal Company is to have and hold a strip two hundred feet wide extending from the west side of said basin to the mouth of Mill Creek, the north side of which strip is to be Two hundred and Sixty feet south of the south side of South Street as laid

down on Mangin's map of Powles Hook and extended westerly, and if said strip does not meet the mouth of Mill Creek, then it shall be so varied where it meets the course of Mill Creek as to meet the mouth of Mill Creek. On each side of said strip there is to be a street Sixty feet wide. The Canal Company are to construct the street on the south side of said strip as soon as the Railroad Company fill up south of and adjoining said contemplated street as high as ordinary high water.

And the Railroad Company are to construct the street on the north side of said strip as soon as the Canal Company make said street on the south side of said strip, and one hundred feet of the north side of said strip is to be a canal, which the Canal Company are to dig or dredge out so as to give a depth equal to that required for usual Canal purposes; the Railroad Company are to have by the canal free access to the northern street or bulkhead—such right, however, is not to be used so as to obstruct the use of the Canal except so far as necessary for such access and for boats laying alongside the north bulkhead or street a necessary and reasonable time for loading and unloading, and said right is to be used subject to the regulations of the Canal Company for the navigation of their canal—but to be free of tolls—the strip opposite to what is known as the Sugar House property is to be a canal one hundred and fifty feet in width and so to the basin.

5¢ U. S. Inter. Revenue stamp.

Third—The Railroad Company is to grant and confirm, as far as is in their power, the right and title to the said northerly portion of said basin and to the said strip to and in the said Canal Company, and where the Railroad Company have not the title requisite to make such grant and confirmation to the said Canal Company (if any such deficiency of title in the Railroad Company exists) the Railroad Company will acquire such requisite title, if it can be obtained by any reasonable expenditure. The Canal Company will grant and release to the Railroad Company all the right and title of the Canal Company to what are known as the Southmayd and Gregory purchases made by the Railroad Company, and to all lands in Communipaw Cove or in front thereof excepting the said strip, the northerly portion of the said basin and the lands in front of said northerly portion, such grant or release not to affect the right of the said Canal Company to its present canal or embankments or to any land north of it.

Fourth—For the purpose of effecting a settlement with the owners of what is known as the Sugar House property, the Railroad Company are to give the said property access to the said Canal in front of said property, at which locality the Canal is to be one hundred and fifty feet wide, and the Canal Company is to give the owners of said property access by the said Canal and

across the northerly portion of said basin to the channel—such access being had under such stipulation as may be agreed upon between the owners of the said Sugar House property and the Canal Company.

5¢ U. S. Inter. Revenue stamp

Fifth—The Canal Company are not to resist the extension to the southerly boundary of Jersey City of Washington Street and of each alternate street, west thereof, and are not to resist the construction of suitable bridges for said streets across both or either of the canals which it may be required to cross, said bridges across the Canal on the said strip to be constructed with suitable draws with openings of not less than fifty feet, and this stipulation not to be a waiver of the right of the Canal Company to such damages as they may be entitled by law to receive on opening such streets or building such bridges, and nothing in this agreement is to be considered a waiver of the right of the Railroad Company to call on the municipal authorities of Jersey City to extend Hudson Street southerly under the charter of Jersey City.

5¢ U. S. Inter. Revenue stamp.

Sixth—Each party agrees at any time hereafer to execute and deliver to the other at the cost and upon the request of the other party all deeds and conveyances necessary or proper to carry out and effect the foregoing agreement or any part thereof.

In Witness Whereof the parties hereto have hereunto on the day and year first above written

caused their respective Presidents to sign the same.

CENTRAL R. R. COMPANY OF NEW JERSEY,
per John Taylor Johnston,
Prest.

THE MORRIS CANAL AND BANKING COMPANY,
By E. Marsh, Prest.

THE MORRIS CANAL AND BANKING COMPANY,
By W. H. Talcott,
President.

Attest
(Seal) SAM KNOX,
Sey.

(Seal)
Attest
W. F. Holwill,
Secretary.

D. 125.

(C. R. R. File No. 110.)

Agreement and deed, dated Nov. 19th, 1863, between Central Railroad Company of New Jersey and Morris Canal and Banking Company, and Franz O. Matthiessen and William Alfred Wiechers, as follows:

MEMORANDUM of an agreement made this nineteenth day of November in the year Eighteen hundred and sixty-three, Between The Central Rail Road Company of New Jersey, of the first part, The Morris Canal and Banking Company, of the second part, and Franz O. Matthiessen and William Alfred Wiechers of Jersey City, of the third part.

Whereas, the party of the first part are about to construct a railroad on the route by them lo-

cated across the Canal basin in Communipaw Cove; and whereas the party of the second part desire that all controversy and suits between them and the party of the third part shall be adjusted and quieted;

Now, therefore, it is agreed between the parties hereto as follows:

First—The parties of the first and second parts will and hereby do respectively convey to the parties of the third part, their heirs and assigns, all the right, title and interest of the parties of the first and second parts respectively in and to the block one hundred and fifty feet in length from east to west and two hundred feet wide from north to south in front of what is known as the Sugar House property of the parties of the third part at Jersey City; said block being bounded on the north by South Street, and on the south by the Canal hereinafter mentioned, and on the east and west by the east and west lines of said Sugar House property extended to the south.

Second—That the party of the second part agree to and do hereby grant to the parties of the third part, their heirs and assigns, proprietors and occupiers of the said Sugar House property and the said block, a passageway for the navigation of vessels doing business in connection therewith to and from the said block and the channel of the Hudson River by a Canal one hundred and fifty feet wide along and from the south side of said block to the said basin and a convenient passageway across the same to the said channel, and the party of the first part assents to the said grant.

Third—That the party of the second part shall make the said passage through the said basin by making the requisite opening in their pier before the said party of the first part shall close up

the passage for vessels to the west of said basin, and shall keep the depth of water in said passageway as great as the same now is; and shall before the first day of July next dredge the said passageway to the depth of five and a half feet of water at ordinary low tide and forever thereafter keep and maintain the same at the said last mentioned depth.

Fourth—The party of the first part shall construct a bulkhead along and upon the southerly front of said block next to the said Canal when requested by parties of the third part.

Fifth—The parties of the third part, their heirs and assigns, shall have the right to lay and maintain a pipe not to exceed fifteen inches in diameter in the bottom of said Canal and shipping basin from their said property and the said block to the deep water of the Hudson River for the purpose of obtaining cold water for the uses of their factory, also the right to discharge their sewer into said Canal as they have theretofore done into said Cove—provided the said pipe shall not interfere with the convenient use of said Canal and basin, and such discharge shall not be a nuisance.

Sixth—The party of the first part agree to pay the party of the third part twenty-three hundred dollars ($2300) and the taxed costs of the two Chancery suits with the party of the second part.

Seventh—The parties of the third part hereby remise and release to the party of the second part all their right, title and interest of, in and to that portion of their present shipping basin which lies north of a line parallel with the centre line of the Railroad as located across said present basin, which line is four hundred and fifty feet north of said centre line, and of, in and to the lands easterly and in front of said northerly portion

of said basin, and to the strip of two hundred feet wide extending from the westerly line of said basin to the mouth of Mill Creek—the northerly line of which strip is two hundred and sixty feet south of the southerly line of South Street—subject, however, to the right of passage in and through the said Canal and basin and to the other rights and privileges hereinbefore secured to the said parties of the third part, their heirs and assigns.

And the said parties of the third part hereby remise and release to the party of the first part all their right, title and interest to any and all lands in Communipaw Cove and in front thereof other than their right, title and interest in the said block and of, in and to the premises released as aforesaid to the party of the second part—subject to the said right of passage in and through the said canal and basin and to the said other rights and privileges hereinbefore secured to the said parties of the third part, their heirs and assigns.

Eighth—The party of the third part shall use the said Canal and basin to and from said block, subject to such reasonable regulations of the party of the second part as shall not interfere with the substantial enjoyments of the rights and privileges hereinbefore secured to the parties of the third part, their heirs and assigns. And free from all tolls and charges whatsoever, it being the intention of this agreement that the said rights and privileges shall be enjoyed by the parties of the third part, their heirs and assigns, and that the party of the second part shall use the said Canal and basin for the purpose of their trade.

Ninth. Each party agrees at any time hereafter to execute and deliver to the other party all covenants, deeds and conveyances necessary or proper

to carry out, and effect the foregoing agreement or any part thereof.

Tenth.—The party of the second part releases all actions for anything complained of in said Chancery suits.

In Witness Whereof, the Presidents of said Companies have hereto set their hands, and the said parties of the third part their hands.

CENTRAL R. R. COMPANY OF N. JERSEY,
per John Taylor Johnston, Pres.

MORRIS CANAL & BANKING CO.,
By E. Marsh, Prest.

W. A. WIECHERS.
F. O. MATTHIESSEN,
By W. A. Wiechers.

D. 126.

Certified copy of deed from James W. McDermott, et als., to Central Railroad of New Jersey, dated July 18, 1863. Recorded in Book 103, p. 443, being Auditors' deed in attachment against Horace Southmayd, et als. Cons. $28,260.

CONVEYS in fee, Lots 100, 102, 104, 106 Bergen Street; Lots 59, 60, 61, 62 South Street, on Block 39, Mangin's Map. Also, "ALL that tract of land * * * bounded on the north by Morris Canal, on the west by middle of Beach Street, on the east by middle of Henderson Street, and on the south by Bay or shore. Containing one acre, more or less. TOGETHER with the right, title and interest of the said Horace Southmayd, Stephen C. Southmayd and Albert Southmayd, and each of them, in and to the land under water in front of the above described tracts."

D. 127.

Certified copy of deed, dated May 1, 1868. Recorded in Book 169 of Deeds for Hudson, p. 480, from Horace Southmayd and wife to The Central Railroad Company.

CONVEYS and confirms unto the party of the second part, the same property as last above deed.

D. 128.

Certified copy of Release of Dower from Adele De Wint to The Central Railroad Company of New Jersey, dated August 20th, 1868. Recorded in Book 177, p. 578.

RELEASES all dower in same premises conveyed by above two deeds.

D. 129.

Certified copy of deed from Dudley S. Gregory and wife, George W. Gregory, Daniel G. Elliott and wife, to Central Railroad Company. Dated Nov. 1, 1863, Recorded in Book 106, p. 199. Cons. $9,000.

CONVEYS in fee, all the right, title and interest of the parties of the first part, being nine undivided twelfths of land in Jersey City "south of the canal of the Morris Canal and Banking Company, as the same is located west of the centre line of Van Vorst Street extended across said canal and east of the centre line of Henderson Street extended across said canal; bounded on the north by the Morris Canal aforesaid; on the east by the lands of the parties of the second part purchased at the Southmayd sale and conveyed to them by the creditors; on the south by Communipaw Bay, and on the west by other lands of the

parties of the second part also purchased at the said Southmayd sale. Together with all the right, title and interest of the parties of the first part, of, in and to the lands under the waters of Communipaw Bay in front of the said premises."

D. 130.

Certified copy of deed from Executors of Margaret Gregory, deceased, to Central Railroad Company of New Jersey. Dated January 9th, 1864. Recorded in Book 107, p. 62.

CONVEYS in fee, one undivided twelfth part of same premises described in last above deed.

D. 131.

Certified copy of deed by Special Guardian of David Henderson, to Central Railroad Company of New Jersey. Dated, January 14th, 1864. Recorded in Book 107, p. 65.

Recites proceedings in Chancery, and CONVEYS in fee, two undivided twelfth parts of same premises described in last above deed.

D. 132.

Certified copy of deed from Abby Elizabeth Henderson to Central Railroad Company of New Jersey. Dated, January 9th, 1864, Recorded Book 107, p. 68.

QUIT CLAIMS in fee, same property described in last above deeds.

D. 133.

Certified copy of deed by Josiah H. Gautier and wife, and others, to Central Railroad Company of New Jersey. Dated, August 25th, 1863. Recorded in Book 103, p. 61. Cons. $8,606.40.

CONVEYS in fee, that parcel of land and land under water situate in the First Ward of Jersey City, BEGINNING at a point where the westerly line of the lot known as lot number fifty-eight, on block number thirty-nine, and fronting on South Street, as laid down on the map of Powles Hook made for the Associates of the Jersey Company, by Joseph F. Mangin, intersects the line of ordinary high water mark in Communipaw Cove, and running thence northerly along the westerly side of said lot No. 58 two feet, and thence running easterly on a course distant two feet northerly from and parallel with said line of ordinary high water mark to the centre line of Warren Street, and thence southerly along the centre of Warren Street to said ordinary high water mark, and thence westerly along said line of ordinary high water mark to the place of beginning; and all the shore and water right, and right to lands under water in front of said strip of land in Communipaw Bay or Cove.

Conveyed to Kingsland & Smith, who are the second party to the deed, in trust, as soon as said lands shall have been filled in and reclaimed to stand seized of so much of the said land as lies south of said centre line of South Street to the use of the said Railroad Company, in fee simple, and to convey the same to them, and to stand seized of so much of said land and land under water as lies north of said centre line of South Street, to the use and benefit of the first party, in fee simple, and to convey the same to them.

"It being the object and the only object of this Indenture that the said party of the first part shall convey and secure all their right to the shore and lands under water on Communipaw Bay, Cove, or New York Bay south of the centre line of South Street, as the same is laid down on the map aforesaid, to the use and benefit of the said party of the third part, and in trust only to effect that object."

Further provisions relative to same.

D. 134.

Certified copy of deed from Solomon Alofsen to William A. Wiechers and Franz O. Matthiessen. Dated October 31st, 1862, Recorded in Book 206, p. 652.

CONVEYS in fee, parcel in Jersey City, BEGINNING at a point distant seventy-five feet in a westerly direction from Washington Street, measured at right angles with Washington Street, and distant 175 feet in a southerly direction from Bergen Street, measured at right angles with Bergen Street; thence westerly parallel with Bergen Street, 150 feet; thence southerly parallel with Washington Street, 82 ft. 1 in. to the waters of New York Bay or Communipaw Bay, being the outer side of the sea wall; thence easterly along the said waters 122 ft. 1 in. to the projecting pier; thence along the said waters southerly a distance of 85 ft. 8 in. to the southwest end of the pier and the said waters; thence easterly along the waters aforesaid 28 ft. to the southeasterly end of the pier and the waters aforesaid; thence still along the water aforesaid and along the lands of the City occupied by the Alms House 166 ft. 3 in. to the place of beginning. Also, all the right, title and interest of the party of the first part, of, in

and to the lands under water south of in front of the above described land and premises, and all his water right, these and all the appurtenances to the above described land belonging, and the franchise or right to reclaim lands in front of the above described land and premises, and all power, liberty and privilege to reclaim such land under water.

D. 135.

Certified copy of deed from Charles Alofsen to William Wiechers and Franz O. Matthiessen. Dated, October 31st, 1862. Recorded in Book 97, p. 231. Cons. $30,000.

CONVEYS a parcel in Jersey City, BEGINNING at a point in the southerly side of Bergen Street distant 75 ft. westerly from the westerly side of Washington Street 200 ft. to South Street; thence westerly along South St. 150 ft.; thence southerly and again parallel with Washington St. 200 ft. to the southerly side of Bergen St., and thence easterly along the southerly side of Bergen St., 150 ft. to the place of beginning; being known on a map entitled a Map of that certain part of the Town of Jersey commonly called Paulus Hook, made by Joseph F. Mangin, City Surveyor, as Lots Nos. 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 58 and 60, in Block No. 49, as laid down on said map; and also all that other tract or parcel of land adjoining the tract above described, and bounded as follows: BEGINNING at a point or corner of the westerly line of Washington St. with the southerly line of Bergen St., and running thence southerly along the westerly line of Washington St. 100 ft.; thence westerly parallel with the southerly line of Bergen St., 75 ft.; thence northerly parallel to Washington St. 100

feet to Bergen St., and thence easterly along the southerly line of Bergen St., 75 ft. to the place of beginning.

Full covenants and warranty.

D. 136.

Certified copy of deed from Solomon Alofsen to William A. Wiechers and Franz O. Matthiessen. Dated Oct. 31st, 1862. Recorded in Book 97, p. 234. Cons. $3,750.

CONVEYS in fee, all the water right and lands under water lying south of all that tract or parcel of land in Jersey City aforesaid, bounded and described as follows:

(Same parcel as last above deed, embracing Lots 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 58 & 60, in Block 49, Mangin's Map.)

"And all right, power, privilege and franchise to reclaim land south of said tract appertaining thereto or which may be vested in the owner of said tract."

D. 137.

Certified copy of deed from Franz O. Matthiessen and wife, and William A. Wiechers and wife, to F. O. Matthiessen & Wiechers Sugar Refining Company, a corporation created by an Act of the Legislature approved March 20th, 1867, and named as above by a supplement to said act approved Feb. 8th, 1870. Dated, May 14th, 1870. Recorded in Book 210, p. 472. Cons. $185,939.08.

CONVEYS in fee, a tract in Jersey City, BEGINNING at a point or corner formed by the intersection of the westerly line of Washington St. with the southerly line of Bergen St., and running thence (1) westerly along the southerly line of

Bergen St. 225 ft.; thence (2) southerly in a line parallel with the westerly line of Washington St. 200 ft. to the northerly line of South St. as the same is shown on a certain map entitled "Map of Jersey City, Hudson County, New Jersey, 1861, R. C. Bacot, City Surveyor"; thence (3) easterly along said northerly line of South St. 150 ft.; thence (4) northerly in a line parallel with the westerly line of Washington St. 100 ft.; thence (5) easterly in a line parallel with the southerly line of Bergen St. 75 ft. to the westerly line of Washington St.; thence (6) northerly along the westerly line of Washington St. 100 ft. to the point or place of beginning.

D. 138.

Certified copy of deed from Franz O. Matthiessen and wife, and William A. Wiechers and wife, to Matthiessen & Wiechers Sugar Refining Company. Dated, May 14th, 1870. Recorded in Book 210, p. 467. Cons. $71,888.25.

CONVEYS in fee, a tract in Jersey City, BEGINNING at the southwest corner of the tract of land this day conveyed by the parties of the first part to the party of the second part, and from thence running (1) easterly along the southerly side of said tract, 150 ft.; thence (2) southerly in a line at right angles with said last mentioned line 303 ft. more or less to the tide waters of the Hudson River; thence (3) westerly along the said tide waters, 150 ft. more or less to the tide waters aforesaid; thence (4) northerly along the tide waters last mentioned 303 ft. more or less to the point or place of beginning.

Together with all the right, power, franchise and privilege or easement of the parties of the first part, of or over any lands under waters in

front or on either side thereof, and all right to build docks, wharves or piers adjoining said premises, or on said premises first described, and all the lands under water in front or on either side of the above described tract to which the parties of the first part have any claim or title of any kind, and all the water right and other rights of the parties of the first part in said lands under water and on the waters adjoining.

D. 139.

Certified copy of deed from The Central Railroad Company of New Jersey to F. O. Matthiessen and Wiechers Sugar Refining Company. Dated, May 19th, 1871. Recorded in Book 228, p. 197. Cons. $10,400.

CONVEYS in fee, a tract of land in Jersey City, BEGINNING at a point where the centre line of Washington St. extended southerly intersects the centre line of South St.; thence westerly along the centre line of South St. 115 ft. to the boundary line of ground known as the Sugar House lot; thence southerly along the line of said lot and parallel to the centre line of Washington St. extended, 260 ft. to a canal or basin of water claimed by the Morris Canal and Banking Company; thence easterly along the line of said canal or basin 115 ft. to the centre line of Washington St. extended; thence northerly along the centre line of Washington St. extended 260 ft. to the place of beginning. BEING a portion of the premises conveyed to the parties of the first part by The Mayor and Common Council of Jersey City, by deed bearing date Sept. 2d, A. D. 1863, and Recorded in the Office of the Clerk of Hudson County, in Liber 102, pages 413, &c., Sept. 19th,

1863; subject to the right of way of the parties of the first part and of the public for public uses and as a public street over the portion of Washington St. extended lying within the boundaries of this conveyance.

Covenants of warranty, &c.

D. 140.

Deed from Cornelius Van Vorst to Anthony Dey, dated March 26, 1804, and recorded March 28, 1804, Liber T-2, page 254:

"Witnesseth that the said Cornelius Van "Vorst for and in consideration of the sum of "$1. to him in hand paid by the said Anthony "Dey but more especially for and in considera- "tion of the annuity of $6,000 agreed to be "secured to the said Cornelius Van Vorst, his "heirs, executors, administrators and assigns "by a Mortgage of the premises hereinafter "mentioned and to be paid yearly and every "year in quarterly payments to commence from "and after the 1st day of May in the year 1805 "according to a certain Agreement made by and "between the said parties bearing date the 22nd "day of February 1804 reference being thereto "had will fully appear, except as to the boundaries of the premises which have been altered and "agreed to as hereinafter particularly described, "have granted, bargained and sold, aliened, re- "leased, enfeoffed and conveyed and by these "presents doth grant, bargain, sell, alien, release, "enfeoff and convey, unto he said Anthony Dey, "his heirs and assigns,

"All that certain tract or parcel of land and "meadow, situate, lying and being in the Town- "ship of Bergen in the County of Bergen and "State of New Jersey commonly called Powles

"Hook, bounded on the east *on* Hudson River, "on the North by said River on the Bay com- "monly called Harsimus Bay, on the South by "said River on the Bay commonly called Com- "munipaw Bay and on the west from a line "drawn from a stake standing on the west side "of the small Creek on the southwest side of "said track, from which stake the Flagg Staff "on Ellis Island bears south one degree twenty "minutes east and from which the Chimney of "the house of Stephen Vreeland on *Kayman* "bears south fifty-six degrees ten minutes west "and from which the Steeple of the Bergen "Church bears north fifty degrees twenty-five "minutes west, north twenty-six degrees thirty "minutes east to Harsimus Bay aforesaid.

"TOGETHER with the right of Ferry from the "said tract or parcel of land across Hudson "River and elsewhere and the right and title "of the said Cornelius Van Vorst under the "waters of the Hudson's River and the Bays "aforesaid opposite the said premises as far as "his right to the same extends and

"SUBJECT however to the incumbrance of a "lease of the said premises made by the said "Cornelius Van Vorst to David Hunt which will "expire on the said first day of May in the year "1805 and the rent and reservations due and "to grow due on which lease are to be paid to "and received by the said Cornelius Van Vorst, "his heirs and assigns.

"TO HAVE AND TO HOLD all and singular the "said land and premises with the hereditaments "and appurtenances aforesaid, subject to the "said lease made to the said David Hunt as "aforesaid unto the said Anthony Day, his heirs "and assigns to his and their only use and "behoof forever.

"COVENANTS of seizin, right to convey, against "encumbrances, peaceable possession, further "assurance (incumbrance of lease to Hunt ex- "cepted.)

"AND it is further agreed and understood by "and between the parties to these presents that "no guarantee or covenant of insurance of title "to any lands now usually covered with water "or to any guarantee of right of ferriage as a "right independent of or separate from the soil "on which the ferry is established.

"SIGNED, sealed and acknowledged March 26, "1804 before Daniel Van Reipen one of the "Judges of the Inferior Court of Common Pleas "of Bergen County, N. J."

D. 141.

Agreement between Cornelius Van Vorst, party of the first part and Richard Varick, Jacob Radcliff and Anthony Dey, parties of the second part, dated October 20, 1804 and recorded May 21, 1824. Liber 6 of Transcribed Deeds for Hudson County, page 462:

"DOTH for himself, his heirs, executors and "administrators and assigns, covenant and agree "to and with the said parties of the second part, "thier *successors* and assigns as follows, to "wit:— That upon any sale or sales made to or "to be made by the said parties of the second "part, their heirs, successors or assigns of any "lot or lots of land in the tract or parcel of land "commonly called Powles Hook as heretofore "conveyed by the said party of the first part "to the said Anthony Dey and as the same hath "been laid out into lots according to a map "thereof made by Joseph F. Mangin of the City "of New York, Surveyor, which shall be sub-

"ject to the payment *payment* or reservation
"of rent or rents reserved or to be reserved
"by the said parties of the second part, their
"heirs, successors or assigns specified on the
"said map and upon the person or persons who
"may have purchased or shall hold any such lot
"or lots, his, her or their heirs and assigns
"actually improving the same or some part
"thereof at the rate or in the proportion of Five
"Hundred Dollars of like lawful money for each
"lot, then he, the said party of the first part
"his heirs and assigns, shall and will accept
"and receive from the person or persons who
"may have purchased or shall hold any such
"lot or lots, his, her or their heirs and assigns
"the said rent or rents so reserved upon such
"lots or lot or of so many of them as shall be
"entitled thereto in proportion to the value of
"the said improvements as aforesaid annually
"on or before the first day of May in every year
"towards the sum of $6000. which shall become
"due to the said party of the first part, his heirs
"or assigns in quarterly payments the ensuing
"year on account of the annuity secured to him
"and them by a Mortgage of the whole of the said
"tract heretofore executed by the said Anthony
"Dey and Catharine, his wife to the said party
"of the first part and upon such payment of the
"said rent or rents then such lot or lots of
"such person or persons who may have pur-
"chased or shall hold the same his, her or their
"heirs and assigns shall be exonerated and dis-
"charged from the payment of the residue of the
"said annuity for such year and the operation of
"the said mortgage in respect to such residue
"for that year, and the said party of the first
"part his heirs and assigns shall and will make
"and execute to such person or persons, his,

"her or their heirs and assigns or endorse on "the deed or conveyance from the said parties "of the second part, their heirs, successors and "assigns to such person or persons, his, her or "their heirs and assigns, an agreement or "covenant to that effect.

"PROVIDED, however that such person or per- "sons, his, her or their heirs or assigns shall at "the time of making or indorsing such agree- "ment or covenant as aforesaid or previous "thereto, pay to the said party of the first part "his heirs or assigns the sum of $6. for each lot "as a compensation or acknowledgment for "making or endorsing the same and provided "also that such person or persons, his, her or "their heirs and assigns shall make application "for the same to the said party of the first "part, his heirs or assigns within two years "after the deed or conveyance from the said par- "ties of the first part their heirs, successors or "assigns for such lot or lots shall be executed "and delivered to him or them.

"IN WITNESS WHEREOF the said parties to "these presents have hereunto interchangeably "set their hands and seals the day and year "first above written.

"Sealed and delivered in the
"presence of CORNELIUS VAN VORST (S)
"the word *or* on the first page
"being first written on arazure

"John Van Vorst
"Alexr. C. McWhorter.

"ACKOWLEDGED May 27, 1805 before Daniel "Van Reipen one of the Judges of the Inferior "Court of Common Pleas of Bergen County."

D. 142.

(Same as Exhibit D. 26.)

Deed from Richard Varick and Marie Varick, his wife, Jacob Radcliff and Julia Radcliff, his wife, and Anthony Dey and Catherine Dey, his wife, to Associates of the Jersey Company, dated February 1, 1805, and recorded August 5, 1805, in Book A of Deeds for Bergen County, on page 74.

Do grant, bargain and sell, alien, release, convey and confirm unto the said parties of the second part in their actual possession now being and to their successors and assigns forever,

"All that certain tract or parcel of land and "meadow which in a certain deed or conveyance "thereof made by Cornelius Van Vorst of the "Township of Bergen, in the County of Bergen "and State of New Jersey, to the said Anthony "Dey, bearing date the twenty-sixth day of "March last past, is described as follows, to wit: "All that certain tract or parcel of land and "meadow situate, lying and being in the Town- "ship of Bergen, County of Bergen and State of "New Jersey, commonly called Powles Hook. "Bounded on the east by Hudson's River, on the "north by the said River or the Bay commonly "called Harsimus Bay, on the south by said "River or the Bay commonly called Communi- "paw Bay, and on the west by a line drawn from "a stake standing on the west side of the small "creek on the southwest side of the said tract "(from which stake the flag staff on Ellis "Island bears south one degree twenty minutes "east and from which the chimney of the house "of Stephen Vreeland on Kaywan bears south "fifty-six degrees ten minutes west, and from

"which the steeple of the Bergen Church bears "north fifty degrees twenty-five minutes west), "north twenty-six degrees thirty minutes east "to Harsimus Bay aforesaid. Together with the "right of ferry from the said tract or parcel of "land across Hudson's River and elsewhere and "the right and title of the said parties of the "first part under the water of the said Hudson's "River and the Bays aforesaid opposite the said "premises as far as their right to the same "extends.

"Subject, nevertheless, to the incumbrance of "a certain Indenture of Mortgage made and "executed by the said Anthony Dey and Cathar- "ine his wife to the said Cornelius Van Vorst "bearing date the said twenty-sixth day of "March last past, for securing to the said Cor- "nelius Van Vorst, his heirs and assigns forever, "the payment of the annuity or annual sum of "Six Thousand Spanish Milled Silver Dollars "annually in quarter yearly payments, from and "after the first day of May next, the first quar- "terly payment thereof or sum of fifteen hun- "dred Spanish milled silver dollars as aforesaid "to be made on the first day of August next, "and the like sum quarter yearly thereafter, as "by reference to the said Indenture of Mortgage "being had may more fully appear.

"And subject also to a certain contract or "agreement under seal made and executed by "and between the said Anthony Dey and Corne- "lius Van Vorst, bearing date the said twenty- "sixth day of March last past touching the said "premises and the several other matters therein "contained which by reference being thereto "had may fully appear. And subject also to a "certain other Contract or Agreement under "seal made and executed by and between the

"said Anthony Dey and David Hunt, bearing "date the sixteenth day of April last past touch- "ing the surrender of the lease of the said prem- "ises held by the said David Hunt and the "several other matters therein contained, which "by reference thereto had may also fully ap- "pear.

"And subject also to a lease of the said "premises made by the said Cornelius Van Vorst "to the said David Hunt which will expire on "the first day of May next and the rents and "reservations due and to grow due on which "lease are to be paid to and received by the said "Cornelius Van Vorst, his heirs or assigns, and "subject also to the several contracts or agree- "ments for the sale of the several lots in the "said tract or specified in the schedule hereunto "annexed marked A, and as heretofore made by "the said parties of the first part with the "several persons also named in the said schedule, "and which contracts are assumed by the said "parties of the second part, but the rents and "reservations on which are hereby conveyed by "the parties of the first part to the parties of "the second part.

"To HAVE and to hold all and singular the "said land and premises with the hereditaments "and appurtenances thereto belonging.

"Subject to the incumbrance of the said In- "denture of Mortgage and of the said lease to "the said David Hunt and the several contracts "or agreements made with the said Cornelius "Van Vorst and David Hunt respectively and to "the said contracts or agreements for the sale "of the said lots as aforesaid unto the said "parties of the second part, their successors and "assigns to the only proper use and behoof of

"the said parties of the second part, their suc-
"cessors and assigns forever."

COVENANT against encumbrances except as aforesaid, against grantor's acts, further assurance.

ACKNOWLEDGED May 15, 1805, before James Kent, Chief Justice of the Supreme Court of New York.

To the foregoing instrument of writing the following Schedule is annexed as referred to in the said instrument and attached to the same by tape and wax, viz.:—

A.

Schedule of the lots of ground contracted to be sold by Richard Varick, Jacob Radcliff and Anthony Dey in that part of the Town of Jersey usually called Powles Hook:

1804.	Purchaser's Name.	No. of Lots & Streets.	Consid. Money.	Rent. Charge.
May 15	John B. Coles	34 & 36 Morris St.	$450	each $12
May 16	Philip D. Kebettas	25 Morris Street	$230	$12
May 16	James Aberl	48 Montgomery St.	$200	$12
June	Abram Hurd	40 Morris St.	$250	$12
"	Joseph Lyon	42 Morris St.	$250	$12
" 14	Robert Allison & James Morton	30 Montgomery St.	$200	$12

RICHARD VARICK,
JACOB RADCLIFF,
ANTHONY DEY.

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Received in the office to be recorded 5 August, 1805.

PHILIP WILLIAMS,
Clerk.

10 20 30 40

D 143.

Statement of Assessments on property of Morris Canal & Banking Co. by Jersey City, and Taxes Paid thereon.

Description of real estater		Owners	Valuation of real estate	Vaulation of personal estate	Amount of tax	Amount collected by Collector
	TAXES OF 1839.					
Hudson St.	Block 1—Canal wharf & Basin	Morris Canal & Banking Co.	5,000	4,000	15.75	15.75 Paid
"	2—16 lots water	" " " " "	2,500		4.37 1/2	4.38 "
"	14—24 lots wharf & Canal	" " " " "	3,750	3,000	11.81	11.81 "
"	49—14 lots wharf & canal	" " " " "	2,000	3,000	8.75	8.75 "
"	27—20 lots coal yard	" " " " "	15,000	4,000	33.25	33.25 "
	1840.					
Hudson St.	Block 1—16 improved lots on South St.	Morris Canal & Banking Co.	8,000			
"	1—16 water lots, Bergen St.	" " " " "	1,600			
"	2—16 water lots	" " " " "	1,600	12,000	46.40	46.40
South St	" 14—13 upland lots	" " " " "	6,500		13.00	13.00
"	49—7	" " " " "	3,500		7.00	7.00
"	27—Lots 56, 57, 59, 61, 63, 65 67, 69, 71 73	" " " " "	7,500		15.00	15.00
"	27—Lots 53, 55, 57, 59, 61, 63, 65, 67, 69, 71	" " " " "	10,000		20.00	20.00
	1842.			Value Real Estate		
South St.	Block 1—16 lots	Morris Canal & Banking Co.	3,200	8,000	16.64	
"	1—16 lots	" " " " "	800	1,600	3.44	Under water
"	14—13 lots	" " " " "	2,600	6.500	13.52	
"	14—13 lots	" " " " "	650	1,300	2.80	Under water
"	49—16 lots	" " " " "	1,600	8,000	15.52	No. 39-40 not paid for
Bergen St.	8 lots	" " " " "	1,600	6,400	12.64	
	16 lots	" " " " "	800	1,600	3.44	Under water
Essex St.	8 lots	" " " " "	1,600	8,000	15.52	10 and 12 not paid for
	1843					
South St.	Block 1—16 lots	David Selden	3,200	8,000	21.92	21.92
"	1—16 lots	" "	800	1,600	4.48	4.48
"	14—32 lots entire	" "	3,250	7,800	21.45	21.45
"	49—14 lots	" "	1,400	7,000	18.34	18.34
"	27— 7 lots	" "	1,400	5,600	14.84	14.80
"	2— 8 lots	" "	400	800	2.24	2.24
"	2— 7 lots	" "	1,400	7,000	18.34	18.34
	1844.					
South St.	Block 1—16 lots	David Selden	3,200	8,000		24.20
"	1—16 lots	" "	800	1,600		5.00
"	14—26 lots	" "	3,250	8,100		24.50
"	49—14 lots	" "	1,400	7,000		19.77
"	27— 7 lots	" "	1,400	5,600		16.10
"	27— 7 lots	" "	1,400			.75
"	2— 6 lots	" "	400	800		2.50
	1845.					
South St.	Block 49— 7 lots	B. Williamson	1,400	2,800		9.79
"	49— 7 lots	" "	1,400	2,800		9.80
"	27— 7 lots	" "	2,100	4,200		14.70
"	2— 6 lots	" "	300	600		2.10
"	27— 7 lots	" "	3,500	7,000		24.51
	1846.					
	Block 1—12 lots	F. T. Frelinghuysen	3,000	6,000		
"	14—13 lots	" " "	3,250	6,500		
"	1—12 lots	" " "				
"	14—13 lots	" " "				
"	27— 7 lots	" " "	70	3,500		
"	2— 6 lots	Morris Canal & Banking Co.		1,200		
"	27— 7 lots	F. T. Frelinghuysen	70	7,000		
	1847.					
	Block 1—16 lots	Asa Whitney and others		8,800		35.20
"	14—13 lots	" " " "		7,150		28.60
"	2— 4 lots	David Selden		1,000		4.00
"	2— 6 lots	Asa Whitney and others		1,200		4.80
	1848.					
	Block 1—16 lots	Morris Canal Co. or others	10,000			
"	14—13 lots	" " " " "	8,000			
"	2— 4 lots	" " " " "	1,200			
"	2— 6 lots	" " " " "	1,200			
	1849.					
	Block 1—32 lots	Morris Canal Co. or others	10,000			
"	14—26 lots	" " " " "	8,000			
"	2— 4 lots	" " " " "	1,200			
"	2— 6 lots	" " " " "	1,200			
	1850.					
	Block 1—32 lots	Morris Canal Co. or others	10,000			
"	14—26 lots	" " " " "	8,000			
"	2— 4 lots	" " " " "	1,200			
"	2— 6 lots	" " " " "	1,200			

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Ass'm't on Property of Canal Co. and Taxes Paid.

June 2, 1847. Lots 1 to 12, Block 32, South St., assessed to F. T. Frelinghuysen; sold to Morris Canal Co., for 100 years, for $29.77. Taxes 1846.

June 2, 1847. Lots 1 to 8, Hudson St., assessed to F. T. Frelinghuysen; sold to Morris Canal Co., for 15 years, for $9.22. Taxes 1846.

June 2, 1847. Lots 2 to 12, alt., Bergen St., Block 33, assessed to Benj. Williamson; sold to Morris Canal Co., for 500 years, for $3.31. Taxes 1845.

June 2, 1847. Lots 13 to 25, South St., Block 64; assessed to F. T. Frelinghuysen; sold to Morris Canal Co., for 100 years, for $32.00, for taxes 1846.

April 7, 1846. Lots 40 to 46, South St., and 62 to 74, alt., Bergen St., assessed to D. Selden; sold to Benj. Williamson, for 500 years, for $25.64. Taxes 1844.

June 2, 1847. Lots 40 to 46, South St., Block 96, assessed to Benj. Williamson; sold to Phineas Dummer, for 40 years, for $12.67, for taxes 1845.

June 2, 1847. Lots 62 to 74, alt., Bergen St., Block 96; assessed to Benj. Williamson; sold to Phineas Dummer, for 40 years, for $12.68, for taxes 1845.

Oct. 27, 1842. Lots 55, 57, 59 Bergen St., and 53, 55, 57 Essex St., Block 97, assessed to Morris Canal Co., sold to Luke Heminway, for 1000 years, for $17.89, for taxes 1840 and 1841.

June 2, 1847. Lots 61 to 73, alt., Bergen St., Block 97, assessed to Benj. Williamson; sold to F. T. Frelinghuysen, for 500 years, for $18.00, for taxes 1845.

June 2, 1847. Lots 59 to 71, alt., Essex St., Block 97, assessed to Benjamin Williamson; sold to F. T. Frelinghuysen, for 49 years, for $28.68, for taxes 1845.

I, MICHAEL I. FAGEN, City Clerk of Jersey City, DO HEREBY CERTIFY, that annexed hereto is a correct statement of the assessments levied by The Mayor and Aldermen of Jersey City against the properties therein stated, and the taxes thereon for the years therein mentioned, together with a correct statement of the sales of said properties for taxes, as the same appear on the books now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and Seal of said City, this twenty-eighth day of December, 1909.

MICHAEL I. FAGAN,
City Clerk.

(L.S.)

Per
Thos. K. Halstead.

Opinion.

(Filed February 21, 1911.)

In Chancery of New Jersey.

Between

ROBERT H. MCCARTER, Atty. Gen.,

Informant,

and

LEHIGH VALLEY RAILROAD CO., et al.,

Defendants.

Mr. Bennet Van Syckel and the Attorney General, for Informant;

Mr. William H. Corbin, Mr. Charles L. Corbin and Mr. Richard V. Lindabury, for Defendants.

STEVENS, V. C.:

This is on information filed on behalf of the State, praying that a grant by the Riparian Commissioners to the Lehigh Valley Railroad Company of the State's interest in the "Basin of 1867" may be declared to have been obtained by false suggestion and to have been, for that and other reasons, *ultra vires* and void. This Court is asked to set aside the conveyance on equitable terms.

In 1867 the Legislature granted to the Morris Canal & Banking Company a basin adjacent to the terminus of its canal in the Hudson River. This basin is described by metes and bounds as lands under water, beginning at a point *in the river* in the southerly line of South Street extended 765 feet from the easterly line of Hudson

Street, in Jersey City. Speaking generally, its front on Hudson River is about 960 feet and its depth 1735 feet with a small additional parallelogram in the rear. The grant is made "on condition that for the purpose of preserving a water basin to the west of the present westerly bulkhead on said premises and of leaving open on the premises hereby granted a public navigation for all vessels to and from the Hudson River and all parts of the waters west of said westerly bulkhead, the said Company shall forever keep open, the present gaps in the easterly and westerly bulkheads, each of 150 feet in width and like gaps of like width in any structure to be erected on said premises hereby granted, so that the public may with all vessels freely navigate to and from the channel of the Hudson River, and all places east and west of said westerly bulkhead *without the payment of tolls or charges;* provided that the said opening shall be kept in such condition that the owners and occupants of shore property lying north and west of the above described property may at all times have free access to, as well as through, the same."

The second section of the act enacts that "the Morris Canal & Banking Company may, *under the provisions of their charter,* construct piers, wharves, docks, basins, warehouses and other structures within the limits above described, and make reasonable rules and regulations for the use thereof, to enable them to carry on a transportation business in and over their canal and elsewhere, which they are hereby empowered to do and also to afford facilities for commerce."

The third section enacts that this act shall "be in force during the continuance of the charter of the said Morris Canal & Banking Company and, at the expiration of that time, the lands hereby

granted, with the improvements thereon, shall revert to the State on the same terms and conditions provided in the original charter of the said Company respecting the transfer of the property thereof to the State." P. L., 1867, p. 251.

The charter of the Company passed on December 31, 1824, in its twenty-fifth section provides "that the said canal when completed *shall forever thereafter be esteemed a public highway free* for the transportation of any goods, commodities or produce whatsoever, on payment of the tolls and conforming to the regulations made or authorized by this act."

In its twenty-sixth section the charter provides as follows: "Be it enacted that the end of 99 years from the passing of this act, it shall and may be lawful for this State to take to itself and on its own account, the said canal and its appurtenances, paying to the said Company the fair value thereof to be estimated and fixed upon by ten commissioners or a majority of them, to be mutually chosen by this State and the said Company; or in case that shall not be done at that time or within one year thereafter, *this charter shall continue,* so far as respects its canal operations and privileges, for the further term of fifty years, when it shall cease and the said canal with its appurtenances become the sole property of this State."

In the leading case of *Gough v. Bell,* 2 Zab., 441; 3 Zab., 624, it was held that at common law the right of the owner of lands along the shore of navigable waters in which the tide ebbs and flows extended only to ordinary high water mark, but that, in New Jersey, by force of a local common law here prevailing, such an owner may extend his improvements, by wharves or filling up over the shore in front of his lands to low water

mark unless prevented by the State from so doing.

The question whether the owner of lands fronting on tide water had such right of adjacency to the water, that the State could not, without making compensation, deprive him of it, by granting the lands under water in front of his lands and authorizing the improvement thereof, was left open. In *Stevens v. Paterson & Newark Railroad Co.,* 5 Vr., 532, it was finally decided that he had no such right; that the State could grant such lands to anyone without compensation made to the shore owner.

Gough v. Bell was decided at the July Term, 1850. In 1851 the Legislature passed an act entitled "An Act to authorize the owner of lands upon tide water to build wharves in front of the same." By this act statutory form was given to the local custom and "the right of the shore owner was dealt with by the legislature, not as an incident of property already vested, but as a privilege which required the element of public acquiescence and the performance of a prerequisite on the side of the proprietor to be converted into a legal right" (5 Vr., on page 547).

This continued to be the only general act on the subject until the year 1864. In that year the legislature passed an act entitled "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the State." This act provided for the appointment of a Board of Commissioners entrusted with the duty of causing the necessary surveys and examinations to be made by competent surveyors, of the lands lying under the bay of New York, the Hudson River and other waters and of ascertaining the present rights of the State in the same, and their value, and, in the lan-

guage of the act, "to fix and establish an exterior line in the said bays and rivers, beyond which no pier, wharf, bulkhead, erection or permanent obstruction of any kind shall be permitted to be made and to report to the next legislature." The commissioners were appointed and reported, but the legislature did not act on their report until 1869. Then they passed the act on which the grant under attack was founded.

Its first section adopted the exterior bulkhead and pier lines fixed by the commissioners and shown on their maps so far as the Hudson River and New York Bay were concerned but with this very important reservation: "except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal & Banking Company by act approved March 14, 1867."

Section 2 enacts that "it shall not be lawful to fill in with earth, stones or other solid material, in the tide water of the Hudson River, New York Bay and Kill Von Kull beyond the bulkhead line or lines of solid filling by this act adopted, fixed and established" * * *.

Section 3 repeals the wharf act as to the tide waters of Hudson River, New York Bay and Kill Von Kull and then goes on to provide as follows:

"Neither this section nor any provision in this act contained shall in anywise repeal or impair any grant of land under water or right to reclaim made directly by legislative grant, or grant or license, uower or authority so made or given, to purchase, fill up, occupy, possess and enjoy lands covered with water fronting and adjoining lands owned or authorized to be owned by the corporation, grantee, licensee in the legislative acts mentioned, its, his or their representatives, grantee or assigns or to repeal or impair any grant or license, power or au-

thority to erect or build docks, wharves and piers opposite and adjoining lands owned or authorized to be owned by the corporation or grantee in the legislative act mentioned * * *."

Sections 4 and 8 provide for grants to two different classes of persons; Section 4 for the class mentioned in Section 3, viz.: those who already have a grant of lands under water or a license to reclaim or build docks, &c., given by prior legislative act, and Section 8 for the class of persons who has no such grant or license.

Section 4 reads as follows:—"In case any person or corporation who by any legislative act is a grantee or licensee or has such power or authority or any of his, her or their representatives or assigns shall desire a paper capable of being acknowledged and recorded made by and in the name of the State of New Jersey conveying the land in the proviso to the third section mentioned whether under water now or not, and the benefit of an express covenant that the State will not make or give any grant or license, power or authority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant or license, power or authority his, her or their representatives or assigns, on producing a certified copy of such legislative act to said commissioners and, in case of a representative or assignee, also satisfactory evidence of his, her or their being such representative or assignee and requesting such grants and benefits as in this section mentioned, *shall be entitled* to said paper so capable of being ackuowledged and recorded and granting the title and benefits aforesaid on payment of the consideration hereinafter mentioned; and the said commissioners or any two of them with the governor and attorney general for the time being, to be shown by the

governor signing the grant and the attorney general attesting it, shall and may execute and deliver and acknowledge in the name and on behalf of the State, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee or the successors and assigns of such corporation upon his, her or their securing to be paid to the State, an annual rental of three dollars for each and every lineal foot measuring on the bulkhead line, or a conveyance * * * in fee, upon his, her or their paying to the State fifty dollars for each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance * * *. In case any person or corporation taking a lease under this section shall desire afterwards a conveyance of all or any part of the land so leased, the same shall be made upon payment of the said sum of fifty dollars for every such lineal foot as aforesaid of the land so desired to be conveyed; the conveyance or lease of the commissioners under this or any other section of this act shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns, *to exclude to the exterior bulkhead line the tide water by filling in or otherwise improving the same and to appropriate the land to exclusive private uses,* and so far as the upland from time to time made, shall adjoin the navigable water, the said conveyance or lease shall vest in the grantee or licensee, individual or corporation and their heirs and assigns, the rights to the prerequisite of wharfage and other like profits, tolls and charges."

Section 8 enacts "that if any person or persons, corporation or corporations or associations shall desire to obtain a grant for lands under *water which*

have not been improved and are not authorized to be improved under any grant or license protected by the provisions of this act, it shall be lawful for any two of the commissioners concurring, together with the Governor and Attorney General of the State, upon application to them, to designate what lands under water for which a grant is desired lie within the exterior lines and to fix such price, reasonable compensation or annual rentals for so much of said lands as lie below high water mark as are to be included in the grant or lease for which such application shall be made and to certify the boundaries and the price, compensation or annual rentals to be paid for the same under their hands; which shall be filed in the office of the Secretary of State and upon the payment of such price, or compensation or annual rentals or securing the same to be paid to the treasurer of this State by such applicant, to apply to the commissioners for a conveyance assuring to the grantee, his or her heirs and assigns, if to an individual, or to its successors or assigns, if to a corporation, the land under water so described on said certificate * * * and upon delivery of such conveyance, the grantee may reclaim, improve and appropriate to his or their own use the lands contained and described in the said certificate, subject however to the regulations and provisions of the first and second sections of this act and such land shall thereupon vest in said applicant."

There is a proviso in this section that no grant or license shall be made to any other than a riparian proprietor until six calendar months after such proprietor shall have been notified and shall have neglected to apply for a grant or license himself.

There are marked differences between section 4 and section 8, and as the solution of the present

controversy depends to some extent upon these differences, it will be necessary to consider them.

Three of the differences are fundamental. The first involves the character and qualifications of the applicant. Under section 4 he must have had a prior legislative grant of the lands, in respect of which he desires "a paper capable of being acknowledged and recorded," or a legislative license to reclaim and occupy them. Under section 8 he may be an entire stranger to the land.

The second difference consists in the mode of ascertaining the price. Under section 4 the price or rental is a specified sum, fixed in advance by the legislature itself; under section 8 it is left to the judgment of the commissioners. The reason is apparent. In cases coming under section 4, the legislature had already granted that which they either could not or did not wish to take away. Consequently the conveyance would operate as a deed of confirmation. For this confirmatory title, and for the covenant that the State would not make a grant in front of the lands, the legislature itself fixed the sum of three dollars (rent) or fifty dollars (purchase money) for each lineal foot measured on the bulkhead line.

The third difference is, that the person showing himself to be a prior statutory grantee or licensee under section 4 is entitled to demand the conveyance as a matter of right—not of favor; while in the class of cases coming under section 8 it is altogether discretionary with the state officers to give or withhold it.

The title to be vested under the conveyance appears to be the same in both cases, although the statutory language is more emphatic where it vests under section 4 than where it vests under section 8. Under section 4 the conveyance passes "note

merely the title to the land therein described" (*i. e.,* the bare legal fee) "but the right of the grantee or licensee * * * *to exclude to the exterior bulkhead line* the tidewater by filling in or otherwise improving the same and to *appropriate the land to exclusive private uses.*" Under section 8 the effect of the grant is that "the grantee may reclaim, improve and appropriate to his and their own use, the lands contained and described in the said certificate."

In the case in hand, the Lehigh Valley R. R. Co., on February 3, 1888, made a written application under section 4. It sets forth that on March 14, 1867, the legislature granted to the Canal Co., a certain tract of land under water (designating the basin of 1867), which grant, it alleged, was within the purview of the third and fourth sections of the act of 1869—the act whose provisions I have stated. It stated that it was the assignee of the Canal Company; that it desired a paper capable of being acknowledged and recorded conveying the land in the grant mentioned, in fee, with the benefit of an express covenant that the State would not make any grant affecting lands under water in front of said land; It tendered itself ready to pay to the State the sum of fifty dollars for each and every foot measuring on the bulkhead line in front of the land so granted and it requested a conveyance.

It thus appears that the Railroad Company claimed, in its character of assignee of a prior legislative grant, to be entitled as a matter of right to a conveyance in fee, for the statutory price of $50 per lineal foot, measured on the bulkhead line. The commissioners so treated the application in their deed of conveyance they recite the matters therein stated and then they say:

"And whereas it appears to the said commis-

sioners that the said Lehigh Valley Railroad Company has by virtue of the aforesaid grant from the State of New Jersey and of the lease from the Morris Canal & Banking Company and the performance of said conditions, such grant and license, power and authority as is in the said fourth section mentioned, *and is entitled to a paper* capable of being acknowledged and recorded and granting the title and benefits aforesaid" * * * * The conveyance grants, conveys and confirms "the said tract of land * * * together with all the right and privilege of excluding the tide water from said land *by filling in or otherwise improving the same and to appropriate the same to exclusive private use as fully to all intents* and purposes as the commissioners have power and authority to grant," &c., thus following the phraseology of the fourth and not of the eighth section of the act of 1869.

The question is whether the grant of the basin of 1867 was such a prior legislative grant as was contemplated by the terms of sections 3 and 4 of the act of 1869. It must be conceded that the legislature had, itself, already made a disposition of this particular tract and had devoted it to a public use. Had the Commissioners power to release this use? I do not think they had. The legislative purpose was I think to authorize the Commissioners to cure and fortify a defective grant; not to change a perfect use.

Under the prior act of 1864, the commissioners prepared maps showing the bulkhead and pier lines in the Hudson River, and other localities whose adoption they recommended. These lines crossed the basin in question. But the legislature in adopting these maps and lines expressly excepted "said lins drawn on said maps over or

upon lands within the boundaries of the grant made to the Morris Canal & Banking Company" by the act of March 14, 1867. It left the basin without bulkhead lines in front of it and there was consequently, nothing by reference to which the commissioners could fix the price. The basin was not within the fourth section, because there was no way in which the price could be ascertained under that section, and it was not within the eighth section, because the eighth section applied, in terms, to lands which were neither improved nor authorized to be improved. Counsel for the defendants was, therefore, compelled to take the position that the exterior line of the basin of 1867 was itself a bulkhead line on which the commissioners could calculate the price. It is nowhere so designated and it is not a bulkhead line in fact. In the various riporian acts the expression "bulkhead line" is used synonymous with "line of solid filling." It is the line beyond which the upland cannot be extended; the ultimate boundary between land and water. But the exterior line of the basin of 1867 is no such line. The legislature, when it gave this property to the Canal Company, only authorized it to construct therein piers, wharves, docks, basins and similar structures, to enable it to carry on a transportation business. It did not authorize it to fill it up. It was to be used as a basin, in which might be built structures appropriate to its use as such. There were, at the time the grant was made, an interior basin, not granted, and two bulkheads considerably to the west of the exterior line of what was granted. In these bulkheads were gaps, and the legislature direction was that the gaps should be forever open, one hundred and fifty feet in width, so that the public might, with all vessels, freely navigate to and from the Hudson River and all

places east and west of said westerly bulkhead, without the payment of tolls and charges. The scheme, therefore, contemplated a water-way; a place where vessels might lie at anchor or be docked, loaded and unloaded; where they might pass from the river into an interior basin; and not an improvement bounded by an exterior line of solid filling. This shows why, when the legislature, in the act of 1869, adopted every other bulkhead line recommended by the commissioners, they excepted the lines drawn "within the boundaries of the grant made" to the Canal Company. As the price was an arbitrary price, fixed in advance by the legislature, to be calculated only on a bulkhead line, it necessarily follows that where that line was wanting, the calculation could not be made.

It is easy to see why the legislature should have wished to except the basin from the commissioners' power to grant. The business of the Canal Company was then in a prosperous condition. It, no doubt, wanted better terminal facilities and so in 1867 it applied for and obtained a legislative grant. And by its charter it would cease to exist in 1974, and as its canal property would become the property of the State, without compensation, it was enacted that the basin property, with *its* improvements should, at the time, become the property of the State "on the same terms and conditions provided in the original charter of the said company, respecting the transfer of the property thereof to the State." In other words, the canal, with its appurtenances, was to come to the State as a canal and the basin "with the improvements thereon" as a basin. Is it likely that the legislature in 1824 when it granted the charter, and in 1867 when it gave the basin, contemplated that immediately upon their acquisi-

tion or resumption by the State, the State would throw away the improvement and devote the property to other uses for which it was not fitted? In 1824 railroads were unknown. In 1867 they had not attained their present importance. Section 25 of the charter, enacts that the canal, when completed, "shall *forever* thereafter be esteemed a public highway free for the transportation of goods on payment of tolls and conforming to the regulations of this act." As the basin was made an adjunct to the canal to revert "with its improvements" when the canal reverted, it seems to me that in the absence of any legislature provision to the contrary, we must assume that the use for which alone these properties were adopted would continue, until the legislature saw fit to make some other disposition of them. This being so, why should we impute to the legislature a design to confer upon the commissioners a power to dispose of that which the legislature itself had already devoted, indefinitely, to the important public use of a basin, and when it had, in express terms, disabled the commissioners from fixing a price, in the only way in which they were authorized to fix a price for property thus circumstanced.

If the commissioners had power to convey, their conveyance must have operated in one of two ways. It either gave it to the Lehigh Valley Railroad Company absolutely, divested of *all* public use, or it conveyed to it the bare legal title, subject to the use that had been impressed upon it. I understand that counsel for the Company, in his original brief, inclined to the former view, and in his reply brief to the latter. In this latter brief, he says, "I think that in the argument that I am to refute there is a confusion of ideas; there is a failure to distinguish between the powers of the commission to convey and the powers of the

grantee over the property, after it has been conveyed. The power to convey is given by the Riparian acts to be exercised under certain conditions; but the power of the grantee to use or dispose of the property is not made unlimited by conferring a title in fee simple. The grantor reserves no title, but the charter and public duties of the grantee may control the use." Counsel does not make it very plain whether by "grantee" he means the "Canal Company" or the "Railroad Company." It will hardly be contended that their use are identical. If by "grantee" he means the Railroad Company, then his claim is that the commissioners could divest the use, so far as it was a canal or basin use, and grant it for a railrood use; but this necessarily means a complete power of disposition. If, on the other hand, by "grantee" he means the Canal Company, then his insistment is that the use to which the legislature had devoted the property continued and the railroad company took nothing but the bare legal title, subject to the use. This latter view is entirely indefensible. If nothing but the bare legal fee passed, then the use continued, and will continue indefinitely, and at the expriation of the term the grantee will hold in trust for the State or for the public—a singular and anomalous situation, not at all likely to have been intended. This view is, moreover, quite at variance with the act of 1869. Section 4 provides that the conveyance "shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns to exclude to the exterior bulkhead line, the tide water by filling in or otherwise improving the same and to appropriate the land to *exclusive private uses.*" If the legislature had anticipated such a contention and had sought to exclude it they could not have done so by lan-

guage more emphatic. If this language means anything, it means that the grantee shall, by the grant, acquire or be confirmed in a present right to fill in up to the bulkhead line and a present right immediately to appropriate the land to any use he may see proper. It was of this unambiguous language that the Supreme Court of the United States, in *Hoboken v. Penn. R. R. Co.*, 124 U. S., 656, and this Court in *M. & E. R. R. Co. v. Jersey City,* 18 Dick., 46; 1 Buch., 308, held that the easement of a highway, over lands originally under water granted by the commissioners, had been extinguished.

The question then comes back to this. Did the legislature intend to give to the commissioners power to sell riparian lands already devoted to a public use? If the legislature had devoted land under water to the purposes of a public park, could the commissioners have released the use because the legal fee continued in the State? If not, on what principle could they release the basin from its use?

The law is well settled that a general affirmative statute does not repeal a prior particular one, unless there is such an irreconcilable inconsistency between them as indicates an intention to repeal. *Sedgwick on Stat. Con.,* TR; *State v. Mills,* 5 Vr., 180; *State v. Minton,* 3 Lab., 529. Here, so far from there being any indication in the Act of 1896 of an intention to authorize the commissioners to release the property from the use imposed by the Act of 1867, there is a strong indication to the contrary in the refusal of the legislature to adopt the bulkhead line recommended by the commissioners, thus disabling them from fixing a price.

I will now notice the particular grounds upon which counsel place themselves in contending for the validity of the grant.

It is first insisted that the charter of the Canal Company authorized a lease of the basin to the Railroad Company. It is plain that if the Canal Company had thereunder the power to lease or to assign its term, such lease or assignment would not extend beyond the year 1974. As by the Act of 1871, the legislature undoubtedly gave it the power to lease, it will answer no useful purpose to inquire whether its charter gave it the power.

It is next insisted that the Act of 1871 gave the Canal Company the power to lease *"perpetually"* and that having so leased, the right of the Railroad Company does not rest upon the commissioners' grant alone. This act (P. L., 1871, p. 444) provides that it shall be lawful for the Canal Company, with the consent of a majority in interest of its stockholders, "to lease the canal of said Company or any part thereof, with all or any of its boats, property, works, appurtenances and franchises to any person or persons, or corporation, either *perpetually* or for such shorter time and upon such rent and agreement as may be agreed upon between the said contracting parties, and it shall be lawful for the lessee or lessees in said lease to use and enjoy the said property and franchises so demised for the term in said lease mentioned."

That I may not misstate the argument of defendants on this point, I will quote the following extract from their printed brief: Counsel says—"no doubt can exist that if the Canal Company had the power to lease the premises and the canal for a longer term than 1974, they exercised that power; in clear terms, they leased all their real property perpetually and in so doing named property which they owned for a term of years only. If the lease is valid as a perpetual lease, it is so because the State by the Act of 1871 has author-

ized it and thereby parted with its reversion in favor of the lessee. That act in clear terms not only empowered the Canal Company to lease the canal property and franchises perpetually but expressly provides that it shall be lawful for the lessee to enjoy the said property and franchises so demised for the term of said lessee mentioned."

There is no indication in the Act of 1871 outside of the single word "perpetually," that the legislature intended to give either the Canal Company or the Railroad Company any property or franchise that they did not have before; and yet the contention is that by the use of that word alone, the legislature intended to give up not only its reversionary interest in the basin but in the canal property as well; and not only this, but to extend the franchises of the Morris Canal in favor of the Lehigh Valley Railroad perpetually, although by the terms of its charter those franchises were to come to an end in 1974. The only authority to lease the basin is found in the authority to lease the property, works and appurtenances of the canal. The basin is not specially mentioned; the canal is, and therefore any authority to lease the basin applies still more obviously to the canal. It is little short of absurd to suppose that the legislature intended, by the use of the word under consideration, to confer, first, a perpetual franchise and, then, to surrender the valuable rights that it had on two previous occasions been so careful to preserve. It is easy to construe the language used so as to conform to the evident intent of the legislaure. What the Canal Company possessed, that it might lease, perpetually, insofar as it had the absolute title and for a shorter period, insofar as its title was circumscribed. What the statute authorized was a lease of the Canal Company's property—not the States. The case seems to me to be a very obvious application of the rule *reddeni singula, singulis.*

Nothing is better settled than that the State is not presumed to have parted with any part of its property, in the absence of conclusive proof of an intention to do so. *Stevens v. Paterson & Newark R. R. Co.*, 5 Vr., 532, 533; *Martin v. Waddell*, 16 Pet., 411; *Polhemus v. Bateman*, 31 Vr., 163. "Any ambiguity must operate against the grantee and in favor of the public." *U. S. v. Michigan*, 190 U. S., 401.

If the contention had been that the statute gave a power to lease for the benefit of the Canal Company up to 1974 and thereafter for the benefit of the State, it would have been more plausible; but had such been the intention we would have expected to find some provision guarding the State's interests in the matter of rents to be reserved. Counsel, however, does not contend for such a construction of the act and in point of fact, no attempt was made by either company, in the lease as executed, to guard the interests of the State in this or any way. It would have been open to the same objections, though in less glaring form, that the other construction was open to.

Counsel's next insistment is that if the Act of 1869 did not give the Riparian Commissioners power to convey the basin property, the Act of 1874 did. Gen'l Stat. 2791. This act provides that from and after its passage "it shall be lawful for the Riparian Commissioners or any three of them therein concurring, together with the Governor of this State to fix and determine, within the limits prescribed by law the price or purchase money, or annual rental to be paid by any applicant for so much of the lands below high water mark, or lands formerly under tide water belonging to this State, as may be described in any application therefor duly made according to law." For lands so applied for, the Commission-

ers, with the Governor's approval, may make a grant or lease.

It has been already shown that the act of 1869 provides for two distinct classes of cases. First, the class in which there had been a prior legislative grant or a prior legislative license to reclaim —that in which the legislature had itself fixed the price or rental to be paid. Second, the class in which there had been neither improvement of the State's land nor authorization to improve. This latter was the class in which the legislature had authorized the Commissioners to fix the price or rental. Whether the act of 1874 applies to lands of the first class may be doubtful. The act says the Commissioners may fix the price "within the limits prescribed by law." Does this mean that they may fix it, except in cases where the legislature has already fixed it? It is not, and in the present case could not be, suggested that the act of 1874 had altogether superseded the fourth section of the act of 1869; and so if the two methods of ascertaining the price co-exist, the practical result would be that in cases where the applicant thought he could secure a grant for less than the statutory price, he would apply under the act of 1874; and where he thought he could not, he would apply under the act of 1869.

I do not feel called upon to decide this question, for assuming that the Railroad Company could have secured a grant under the act of 1874, it did not apply under that act but under the act of 1869. The defendant, however, relies upon what was said by Justice DIXON in *Elizabeth v. Central R. R. Co.*, 24 Vr., 491, viz.: "Although the act of March 21, 1871, alone is mentioned in the deed, it is not referred to as the only source of authority for the grant. On the contrary, the grant is made in absolute terms, independent of any ri-

parian title and without reference to any particular statute; consequently it must be deemed as comprehensive as the law permitted." This decision is not applicable. It had to deal only with Legislative acts which gave the Commissioners power to fix the price; acts therefore in *pari materia*. There, the act of 1871 was not referred to as the *only* source of authority; here, section 4 of the act of 1869 is so referred to. The deed recites that the Railroad Company "has made application in writing requesting such grant and benefit as are *mentioned in said fourth section*"; that it has, by virtue of the grant of the basin to the Canal Company and of the lease of the basin from that Company to it, "such grant and license, power and authority *as in the said fourth section mentioned*" and that the consideration is the sum of forty-eight thousand dollars, being fifty dollars for each lineal foot, *measuring on the bulkhead line.*" No such recitals are applicable or proper in the case of a grant made under the act of 1874. Moreover, the Attorney General joins in the grant to the Railroad Company, as he is required to do by the act of 1869, but not by the act of 1874.

The claim as made was that the Railroad Company was, *as a matter of right*, entitled to have a conveyance of this very valuable water front for the price of $50 per lineal foot; and to this the Commissioners acceded. It is hardly probable that if they had supposed that they had any discretion as to price, they would have made a conveyance for so small a sum. But if it could be said that the deed in question was not made with reference to any particular statute, still as it seems to me the prior grant to the Morris Canal and its devotion indefinitely to the public use of a basin took it out of the class of property to which the act of 1874 refers. The lands "belonging to

the State" were those not already devoted to some public use. This phase of the matter has already been considered.

I now come to the question of laches and an estoppel. The argument is that since 1889, the State has stood by and allowed the Lehigh Valley Railroad to make various improvements in the basin without objection. These improvements consist mainly of wharves or piers, suitable to a basin property; and such as were authorized by the lease made by the Morris Canal Company. It does not appear that these wooden strcutures are likely to last beyond that time, unless renewed.

On this branch of the case it is important to remember that the question is one of *legal* title. The information is filed under the act of 1907 (P. L., 1907, p. 96), entitled "An Act to compel the determination of title to riparian lands and lands under water in which the State claims an estate in remainder or reversion and to quiet the title to the same." It is quite similar in its provisions and object to the act entitled "An act to compel the determination of claims to estates in remainder in certain cases and to quiet the title to the same;" considered and upheld in *Haley v. Goodheart,* 13 Dick., 368; 2 Buch., 953. Its rationale is that, ordinarily, this Court has no jurisdiction to pass upon legal titles, but that where the case is so circumstanced that no immediate relief can be given by action at law, it is within the competence of the Legislature to give a remedy in this Court. The Legislature has, by the act of 1907, given such a remedy in the class of cases in which the present case is included. What this Court is called upon to do, therefore, is to determine a legal question according to the legal rules that would be applied in the Supreme Court, in case the term of years

given to the Canal Company had come to an end and an action of ejectment had been brought. If this Court had to pass upon a question of equitable relief to which informant claimed to be entitled—such a question as was presented in *Attorney General v. Central R. R. Co.*, 2 Robb., 198, then the equitable rules governing such relief and referred to by EMERY, V. C., in his opinion, might be invoked. But the State stands on its legal rights. It is the defendants who resort to equity as a defence. The question is, have they been able to show such an equity as will prevail over the legal title? The burden of proof is on them. The State has not been in laches in bringing this action, for not being entitled to the possession until 1974 it could not have brought an action to test the legal title in the law courts, and it could not have brought such an action in this Court until it was authorized to do so by the act of 1907. It is said that it has stood by and has seen the Lehigh Valley R. R. Co. make improvements without any assertion of its rights, but there is little or nothing to show that the Company would not have made the same improvements had it had nothing more than its lease. The improvements themselves may not outlast the term. It appears from the evidence of Mr. Hocke, the engineer in charge of the work, that he made a plan of the improvement in the basin and on the adjoining property in the early part of 1888. Work was extensively prosecuted in that year and the next. The grant was applied for on February 3, 1888. The deed of conveyance bears date on July 12, 1889, but did not receive the Governor's approval until December 20, 1889, and the price ($48,000) was not paid until the approval was given. In 1888 there was expended $385,808; in 1889, $262,456.22. The total cost of

the improvement was $878,898.40. It thus appears that $658,000, or nearly three-quarters of the entire amount, was spent while the Railroad Company had no other title than its lease from the Canal Company, made in 1871. It is impossible for the Company, therefore, to assert that the improvement was made in reliance upon the Commissioners' title. It is more obviously referable to its lease, which had still, in 1888, eighty-six years to run. The general rule is that the Government is not barred by the laches of its officers, *U. S. v. Kirkpatrick,* 9 Wh. (U. S.), 720; *U. S. v. Beebe,* 180 U. S., 342; *U. S. v. Michigan,* 190 U. S., 405, but recourse to this rule is hardly necessary, for it is not shown that the same improvements would not have been made in the same way under the leasehold title.

Furthermore, to quote the words of DEPUE, C. J., in *American Dock Co. v. Trustee,* 8 Stew., 183, "the equity of a party who relies on an equitable estoppel to give validity to an inefficient contract is not to have his contract made binding, but to put his adversary to an election between the performance of the contract and the repudiation of it on equitable terms." Here the State tenders itself ready to submit to such terms as the Court shall establish by its decree. It should refund the purchase money with interest. If the fee has been taxed on any different basis from that on which the term would be taxed, it should refund the difference. I do not find in the evidence any warrant for compelling the State to pay for any part of the improvement, as it is an improvement similar to that contemplated by the act of 1867 and as it does not appear that it would not have been made under the lease. The railroad has the benefit of it until 1974.

A true copy.

Final Decree.

(Dated, May 18, 1911.)

In Chancery of New Jersey.

Between:

ROBERT M. MCCARTER, Attorney General,

Informant,

and

LEHIGH VALLEY RAILROAD COMPANY, LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

On Information. Decree. (May 18, 1911.)

This cause coming on to be heard at the present term of the Court of Chancery held at the State House, in the City of Trenton, in the presence of Bennet Van Syckel, Esq., Chandler W. Riker, Esq., and Edmund Wilson, Attorney General, of counsel with the Informant, and William H. Corbin, Esq., Charles L. Corbin, Esq., and Richard V. Lindabury, Esq., of counsel with the defendants, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and arguments;

And it appearing to this court that on the twentieth day of December, eighteen hundred and eighty-nine, Benjamin F. Randolph, Miles Ross, Richard B. Reading and Richard N. Herring, then acting and being Riparian

Commissioners of the State of New Jersey, and Robert S. Green, then Governor of the State of New Jersey, and John P. Stockton, then Attorney General of the State of New Jersey, in consideration of the sum of forty-eight thousand dollars ($48,000), paid to the treasurer of said state, having executed, in the name of the State of New Jersey, under the respective hands and seals of said Riparian Commissioners and under the hand of the said Governor, attested by said Attorney General and sealed with the great seal of the State of New Jersey, *did deliver* unto the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, one of the defendants herein, a deed bearing date July twelfth, eighteen hundred and eighty-nine, wherein and whereby the State of New Jersey purported to grant, convey and confirm unto the said Lehigh Valley Railroad Company the tract of land granted to the Morris Canal and Banking Company in and by the Act hereinafter recited, To Have and to Hold the same, with the appurtenances and all the rights and privileges by said deed granted, unto the said Lehigh Valley Railroad Company, its successors and assigns forever, together with all the right and privilege of excluding the tide-water from said land by filling in or otherwise improving the same and of appropriating the same to exclusive private uses as fully to all intents and purposes as the said commissioners had power or authority to grant and convey the same, subject, however, to the conditions in said deed stated, the said land being located in Jersey City, and described in said Act which is a supplement to the charter of the Morris

Canal and Banking Company approved March fourteenth, eighteen hundred and sixty-seven (Pamphlet Laws of 1867, p. 251) as follows:

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that the State of New Jersey hereby grants to the Morris Canal and Banking Company all the right, title, and interest of the state in and to the land and lands under water within the following boundaries: beginning at a point in Hudson River in the southerly line of South street extended seven hundred and sixty-five feet from the easterly line of Hudson street, and running thence (1) westerly along the said southerly line of South street to the centre line of Washington street extended, thence (2) southerly along said centre line two hundred and sixty feet, thence (3) westerly on a line paralled with South street as laid down on Mangin's map to the easterly line of Warren street extended, thence (4) southerly and along the said easterly line of Warren street extended, to a point distant four hundred and sixty feet at right angles from the southerly line of South street, thence (5) parallel with South street, easterly to a point in the centre line of Washington street extended and distant four hundred and sixty feet from the southerly line of South street, thence (6) southerly along said centre line of Washington street extended, five hundred feet to the northerly line of the property occupied by the Central Railroad Company of New Jersey, thence (7) easterly along said line seventeen hundred and thirty-five feet, and thence (8) northerly to the place of beginning on condition that for the purpose of preserving a water

basin to the west of the present westerly bulkhead on said premises and of leaving open on the premises hereby granted, a public navigation for all vessels to and from the Hudson river, and all parts of the waters west of said westerly bulkhead; the said company shall forever keep open the present gaps in the easterly and westerly bulkheads, each of one hundred and fifty feet in width, and like gaps of like width in any structure to be erected on said premises hereby granted, so that the public may with all vessels freely navigate to and from the channel of the Hudson river and all places east and west of said westerly bulkheads without the payment of tolls or charges; provided, that the said opening shall be kept in such condition that the owners and occupants of shore property lying north and west of the above described property, may at all times, have free access to as well as through the same; And provided, further, that the said company shall, within ninety days after the passage of this act, execute and deliver to the governor of this state their promise and undertaking, under seal, unconditionally to pay into the treasury of this state, yearly, the sum of twenty-five thousand dollars per year, on or before the first Tuesday of January in each year, during the continuance of their charter and so long as the said company, their successors or assigns shall continue to hold or occupy the same, the first payment of a ratable portion of which shall fall due on the first Tuesday of January, eighteen hundred and sixty-eight; it shall be lawful for the said company instead of the said annual payment of twenty-five thousand dollars, to pay

into the treasury of this state at any time the sum of three hundred and fifty-seven thousand one hundred and forty-two dollars.

"2. And be it enacted, That the Morris Canal and Banking Company, may, under the provisions of their charter, construct piers, wharves, docks, basins, warehouses and other structures within the limits above described, and make reasonable rules and regulations for the use thereof, to enable them to carry on a transportation business in and over their canal and elsewhere, which they are hereby empowered to do, and also to afford facilities for commerce; provided, that the exemption of said company in its original charter from taxation, assessments or other legal impositions shall not extend to the property or privileges hereby granted.

"3. And be it enacted, That this act shall take effect immediately, and be in force during the continuance of the charter of the said Morris Canal and Banking Company, and, at the expiration of that time, the lands hereby granted, with the improvements thereon, shall revert to the state on the same terms and conditions provided in the original charter of the said company, respecting the transfer of the property thereof to the State."

And the Attorney General having filed the information in this case to vacate and set aside the said deed as *ultra vires* and void:

It is on this eighteenth day of May, nineteen hundred and eleven, ordered, adjudged and decreed that the said deed of July twelfth, eighteen hundred and eighty-nine, purporting to convey the above described lands and premises, was executed and delivered without any legal

warrant or authority; that it is *ultra vires* and shall be set aside and declared void and of no effect, and the title of the state to the reversionary interest and estate in the said lands and premises shall be free and clear and freely and clearly acquitted and discharged of and from all right, title, and interest, claim and demand of the said several defendants and each of them, arising or growing out of said deed of July twelfth, eighteen hundred and eighty-nine, and free and clear of any cloud, or uncertainty cast upon the title of the stateby the said deed, upon the terms and conditions hereinafter set forth, which terms and conditions are hereby declared to be conditions precedent to the taking effect of this decree, and are as follows:

The state shall pay, or cause to be paid, to the treasurer of the Lehigh Valley Railroad Company for said company, on or before the first Tuesday of July, nineteen hundred and thirteen, or within such further time as shall hereafter be allowed by the decree of this court for making such payment, the sum of forty-eight thousand dollars, with interest from December twentieth, eighteen hundred and eighty-nine, and such further sum (if any) as shall be decreed by this court to be paid to said company, if it shall hereafter be found by this court that the taxes levied upon said lands, since December twentieth, eighteen hundred and eighty-nine, have been assessed on any different basis, or for any greater amount than that on which the assessment should have been made if said deed of July 12, 1889 had not been executed and delivered to said company.

And whereas, as appears by statements of coun-

sel of the respective parties in open court, proceedings are now pending between the state and the Lehigh Valley Railroad Company for the purpose of effecting amicable adjustment of the controversy in this case, it is further ordered, adjudged and decreed that the said company may at any time before the first Tuesday of July, nineteen hundred and thirteen, apply to this court to adjudge and determine whether the state shall pay to said company any sum of money, and if so, what sum, in addition to said sum of forty-eight thousand dollars, with interest as aforesaid, on account of taxes paid by said company since December twentieth, eighteen hundred and eighty-nine, on said lands; both parties to have the right to take testimony to be used on the argument of such application.

And it is further ordered, adjudged and decreed, that the informant may on or at any time before, the first Tuesday of July, nineteen hundred and thirteen, apply to this court for further time within which to make such payment or payments or tender thereof to the treasurer of the said Lehigh Valley Railroad Company, and that the said company may within the time last aforesaid, also apply to this court for further time to bring on the argument as to its claim for an allowance by the state for taxes paid as aforesaid.

And it is further ordered, adjudged and decreed, that upon payment or tender of payment by the state to the treasurer of said company and only upon such payment or tender of the said sum of forty-eight thousand dollars, with interest from December twentieth, eighteen hundred and eighty-nine, and also the payment of the sum of money (if any) which may be required to be made, by the decree of this court, to said company on account of its said claim for taxes paid on said lands within the time aforesaid, or within the further time

which may be granted by the decree of this court to the state to make such payment or payments, the said deed of July twelfth, eighteen hundred and eighty-nine shall be declared null and void, and of no effect, and the title of the state to the said reversionary interest and estate in the said lands described in the said Act of 1867, which the said deed of July twelfth, eighteen hundred and eighty-nine, purported to convey to the Lehigh Valley Railroad Company, shall be free and clear, and freely and clearly acquitted and discharged of and from all right, title and interest, claim and demand of the said several defendants named in the said information, and each and every of them, arising or growing out of said deed of July twelfth, eighteen hundred and eighty-nine, and free and clear of any cloud or uncertainty cast upon the title of the state by said deed.

And if said sums so tendered are not accepted by the Lehigh Valley Railroad Company, they shall be paid into this court.

And it is further ordered, adjudged and decreed that the Lehigh Valley Railroad Company shall pay the costs of this suit to be taxed.

And it is further ordered, adjudged and decreed that the right claimed by the defendant, the Lehigh Valley Railroad Company, to continue in the possession and enjoyment of the said lands until December thirty-first, nineteen hundred and seventy-four, is not made a subject of controversy by the information filed in this case, and that such right shall not in any wise be impaired by this decree.

And it is further ordered, adjudged and decreed that the informant may also upon due notice apply to this court at any time before

July first, 1913, to bring on a hearing of such application of the said company in respect to an allowance for taxes.

And it is further ordered, adjudged and decreed that the informant make report to this court under oath of the payment or tender of payment to the treasurer of the Lehigh Valley Railroad Company of the amount which the decree of this court shall require the state to pay to said company.

MAHLON PITNEY,
C.

Respectfully advised,
FREDERIC W. STEVENS,
V. C.

Notice of Appeal.

(Filed June 8, 1911.)

In Chancery of New Jersey.

Between

ROBERT H. MCCARTER, Attorney-General,

Informant,

and

LEHIGH VALLEY RAILROAD COMPANY, LEHIGH RAILROAD COMPANY OF NEW JERSEY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

On Information. Appeal from final Decree.

The defendants, Lehigh Valley Railroad Company and Lehigh Valley Railroad Company of New Jersey, *hereby appeal* from the Decree of this Court made in the above-stated cause on the Eighteen day of May, Nineteen Hundred and Eleven, to the Court of Errors and Appeals in the Last Resort in All Causes. The parts of the Decree which are complained of as erroneous, and from which appeal is taken, are the following:—

1. That part of said decree which adjudges that the deed made July 12, 1889, purporting to convey lands in Jersey City therein described, executed in the name of the State of New Jersey by the Riparian Commissioners and the Governor and the Attorney General, under the Great Seal of the State, to the Lehigh Valley Railroad Company is *ultra vires* and shall be set aside and declared void and of no effect.

2. That part of the decree which adjudges that upon tender, or payment, by the State to the

Lehigh Valley Railroad Company of the sum of FORTY-EIGHT THOUSAND DOLLARS, with interest and upon the payment of the sum of money, if any, which may be required to be made by the decree of this Court on account of taxes on lands described in the aforementioned deed, the title of the state to the reversionary interest and estate in the said lands and premises shall be free and clear, and freely and clearly acquitted and discharged of and from all right, title and interest, claim and demand of the defendants named in the Information, arising or growing out of said deed of July 12, 1889.

3. That part of the decree which adjudges that the Lehigh Valley Railroad Company shall pay the costs of this suit, to be taxed.

Dated, May 20, 1911.

COLLINS & CORBIN,
Solicitors of Defendants,
LEHIGH VALLEY RAILROAD COMPANY and
LEHIGH VALLEY RAILRO(D COMPANY OF
NEW JERSEY.

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

WILLIAM H. CORBIN,
Of Counsel with Defendant.

Endorsed:

"Service of a copy of the within Appeal acknowledged this 20th day of May, 1911.

EDMUND WILSON,
Attorney General."

Petition of Appeal.

(Filed June 8, 1911.)

New Jersey Court of Errors and Appeals.

Between ROBERT H. McCARTER, Attorney-General, *Complainant-Respondent,* *and* LEHIGH VALLEY RAILROAD COMPANY, LEHIGH RAILROAD COMPANY OF NEW JERSEY and CENTRAL TRUST COMPANY OF NEW YORK, *Defendants-Appellants.*	On Appeal from Decree in Chancery. Petition of Appeal.

TO THE HONORABLE JUDGES OF THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

The petition of the LEHIGH VALLEY RAILROAD COMPANY and the LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, appellants in above-stated cause, respectively *shows*:

That your petitioners find themselves aggrieved by a decree made in the Court of Chancery by his Honor, Mahlon Pitney, Chancellor of the State of New Jersey, bearing date the 18th day of May, Nineteen hundred and eleven, in a cause wherein Robert H. McCarter, Attorney General, was Informant, and your petitioners LEHIGH VALLEY RAILROAD COMPANY and LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY were, together with CENTRAL TRUST COMPANY OF NEW YORK, Respondents:

1. Because said decree adjudges that the deed

dated July 12, 1889, given in the name of the State of New Jersey to the Lehigh Valley Railroad Company, and executed by the Riparian Commissioners of said State and by the Governor and Attorney General, and sealed with the Great Seal of the State, and delivered to said Company, was without any legal warrant or authority; that it is *ultra vires*, and should be set aside and declared void and of no effect, and the title of the State to the reversionary interest and estate in the said lands and premises shall be free and clear, and freely and clearly acquitted and discharged of and from all right, title and interest, claim and demand of the several defendants, and each of them, arising or growing out of said deed of July 12, 1889; whereas it should have adjudged that the said deed was lawful and valid, and effectual to vest the said lands therein described in the grantee, the LEHIGH VALLEY RAILROAD COMPANY.

2. Because said decree adjudges that upon payment, or tender of payment, to the said LEHIGH VALLEY RAILROAD COMPANY of the sum of FORTY-EIGHT THOUSAND DOLLARS, with interest, and of the sum of money, if any, which may be required to be made by the decree of said Court of Chancery to the said Company on account of its claim for taxes paid on the lands mentioned in said deed, the said deed of July 12, 1889, shall be declared null and void, and of no effect, and the title of the State to the said reversionary interest and estate in the lands described in the Act of 1867, which the said deed of July 12, 1889, purported to convey to the Lehigh Valley Railroad Company, shall be free and clear, and freely and clearly acquitted and discharged of and from all right, title and interest, claim and demand of the several defendants, and each and every of them, arising or growing out of said deed of July 12, 1889, and free and clear

of any cloud or uncertainty cast upon the title of the State by said deed, whereas the decree should have adjudged that the said deed of July 12, 1889, was valid and effectual, and that the title of the Lehigh Valley Railroad Company thereby purporting to be conveyed was, in fact, effectually conveyed to said Company, and that the said title derived thereby and thereunder was valid and effectually conveyed the reversionary interest of the State in said lands.

3. Because said decree adjudges that the Lehigh Valley Railroad Company shall pay the costs of the said suit in Chancery, to be taxed; whereas no such adjudication should have been made, and it should have been adjudged that the Information be dismissed.

Your petitioner therefore *prays* that the said decree may be reversed and wholly set aside, and for nothing holden, and that your petitioners shall have such other and further relief in the premises as to this Honorable Court shall seem meet.

COLLINS & CORBIN,
Solicitors of Appellants,
LEHIGH VALLEY RAILROAD COMPANY and
LEHIGH VALLEY RAILROAD COMPANY OF
NEW JERSEY.

Dated, May 20, 1911.

Endorsed:

"Service of a copy of the within Petition of Appeal acknowledged this 20th day of May, 1911,

EDMUND WILSON,
Attorney-General."

Answer to Petition of Appeal.

(Filed as in time by consent July 17, 1911.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between LEHIGH VALLEY RAILROAD COMPANY and LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY, *Appellants,* *and* ROBERT H. MCCARTER, Attorney General, *Respondent.*	On Appeal from Chancery.

The answer of the above-named respondent to the petition of appeal of the above-named appellants.

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 a decree was, on the nineteenth day of May, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

EDMUND WILSON,
Attorney General,
Solicitor and Counsel for Respondent.