Holbrooks' Steam Printery, 11 Mechanic St, Newark, N. J.

New Jersey Court of Errors and Appeals.

Between THE NEW YORK & GREENWOOD LAKE RAILROAD CO. *Appellant.* AND STANLEY AND OTHER HEIRS OF HENRY STANLEY, *Respondents.*	*On Appeal, &c.*

BRIEF FOR APPELLANT.

The appellants are a Railway Company organized October 30, 1878, upon foreclosure of the Montclair & Greenwood Lake Railroad Co., which was in like manner organized October 2d, 1875, upon the foreclosure of the Montclair Railway. By filing their certificates the new company became a corporation under the name specified, with all powers, rights, privileges and franchises of the former company, and hold and enjoy the same *free and clear* of all debts, claims and demands of creditors, mortgagees and stockholders (Revision, page 918, sec. 59.)

As such the appellant took possession of the railway about December, 1878, and undertook its construction and operation, (it was not fully completed) with full powers to enter, &c., condemn lands, &c., like any other new corporation.

Shortly afterwards the respondents came to them claiming to own 2½ acres of mountain land, part of the right of way. They produced an agreement made in 1870, whereby they had agreed to make a deed of the land to the Montclair Railway, which *deed* was to contain certain conditions as to a station, &c. *They admitted that no such deed had been executed or tendered*, giving as excuse that the company *had not* fulfilled the conditions that *were to be* inserted in the deed. They brought an ejectment for the lands.

The company as trustees of a public right of way, filed their bill asserting that if the owners were willing now to accept the station, &c., from them, they would give them. But if not, as a new corporation unbound by any contracts of the Montclair Railway, and especially one which the other party refused to have performed, they asserted their position as a servant of the State in charge of a public work, and asked the aid of the Court of Chancery to prevent interference with such public work, and offered to pay for such lands their value as now taken by themselves, with interest from the time that they came into possession.

The Chancellor orders that they shall pay the value of the lands at the time they were taken by the Montclair Railway, in the year 1870, with interest from that time.

From this decree and on this point appeal is taken.

The reasoning of the Chancellor is, in our judgment, erroneous, in that he assumes that the new company rely on rights obtained from the Montclair Railway under their contract; whereas such contract is disclaimed and decreed of no force, and is not binding on the appellants; who enter and ask relief not under any rights of the old company, but as a new company under the power of eminent domain to them confided.

The question is of importance. The lands are open farming lands and were in 1870 laid out as building lots with the most fanciful ideas of their value and under contract that a station would be placed there. The owners in effect insist that they suffered damage by reason of the failure of the Montclair Railway to put the station there, and that the new company shall pay such damage.

The values put upon the lands in 1870 were perhaps, ten times their present values. These values the owners claim, that is that the present company shall pay the damages sustained by reason of trespasses of former companies their taking the lands, their negotiations, contracts, and failure to perform the same.

POINTS.

First. The appellant is a new corporation endowed by the Legislature with power to enter, survey, take and use lands for public use on their own behalf, and they therefor claim the right so to enter and take this land, and to pay the damages sustained by the owners thereby.

Second. Such right depends solely upon their present existence as a corporation for public purposes, endowed with power of eminent domain. They make no claim to the lands by reason of the possession of the Montclair Railway, nor under its contract for gift of the lands by the owners.

As part of the history of the case the appellants allege this contract (p. 2); they state that when they came into possession of the road they learned of this contract (p. 3). They submit the question to the Court whether the contract has been forfeited (p. 4, line 15,); they say that they are a public work (p. 4, line 40 to p. 5, line 10,) which cannot be stopped without damage, and that if the contract is forfeited as against the Montclair Railway Co., then that they are willing to take the lands and pay damages (p. 5).

The defendants in their answer (p. 12) refuse to allow any specific performance of the contract (p. 12, line 20.) Their agent swears that he did not demand the station mentioned in the contract, but *$24,000 damages* (p. 20, line 12.) This for mountain pasture!

Thus neither the appellants nor the respondents base their claims upon any existing contract between the parties.

There was a contract with the Montclair Railway Co., but this new corporation is not bound thereby, and the respondents say that it is forfeited, and that they are not bound thereby, and the Chancellor states himself that no specific performance of this contract is to be decreed (p. 23, line 32.)

The right of the new company is then independent of any contract or agreement, and is simply that as a public work they should be allowed to take and pay for lands required therefor.

The appellants are as entirely a new corporation as if a new company had been incorporated by act of the Legislature, with full powers of condemnation. The property of the old company had been conveyed to them, but such conveyance could not affect this land at all if the contract is forfeited, for the land had never been condemned. Obviously in such case such new corporation will condemn the lands as if they had entered them for the first time after their incorporation.

Third. Under these circumstances the errors of the Chancellor's opinion are evident.

The Chancellor says that the appellants have no more right than was possessed by the Montclair Railway Company, but they claim no right under that company. He infers that therefore they must pay damages by reason of the former company's breach of contract. In fact they are a new company, free from any former contract.

They claim under the power to acquire for public use.

As the son is free from his father's debts and from all claims against him, inheriting nevertheless the living energy which enables man to acquire property, manage it and reduce it to possession, so with this company.

Fourth. The Chancellor's decree is wrong in that it orders the new corporation to pay the respondent's damages which they sustained by the acts and failures of former railroad companies. Such damages can only be assessed upon one or two theories. They are either damages sustained by the owners because the Montclair Railway Company took and held their lands in 1870, that is, damages by way of trespass; or else they are damages sustained because the Montclair Railway Company failed to carry out their contract, to wit: damages for breach of contract.

From all such damages the new railroad company are free. This is not only the law but good policy. The Montclair Railway Company and the Montclair and Greenwood Lake Railway Company failed to carry out the public trust committed to them that they should by acquiring and condemning lands and other

property and operating a public railroad as common carriers for the benefit of the State. They became so involved in debt that it was absolutely impossible for them to perform their duties. Their property came to be sold.

Under these circumstances and in order that this public trust shall not fail, the State commits it to a new person free from all debts, claims, demands or damages. Unless this were so this trust never could be fulfilled. No corporation would ever be organized to undertake the running of a railroad if it was thereby to assume the debts, obligations or damages due by the bankrupt corporations that previously held it.

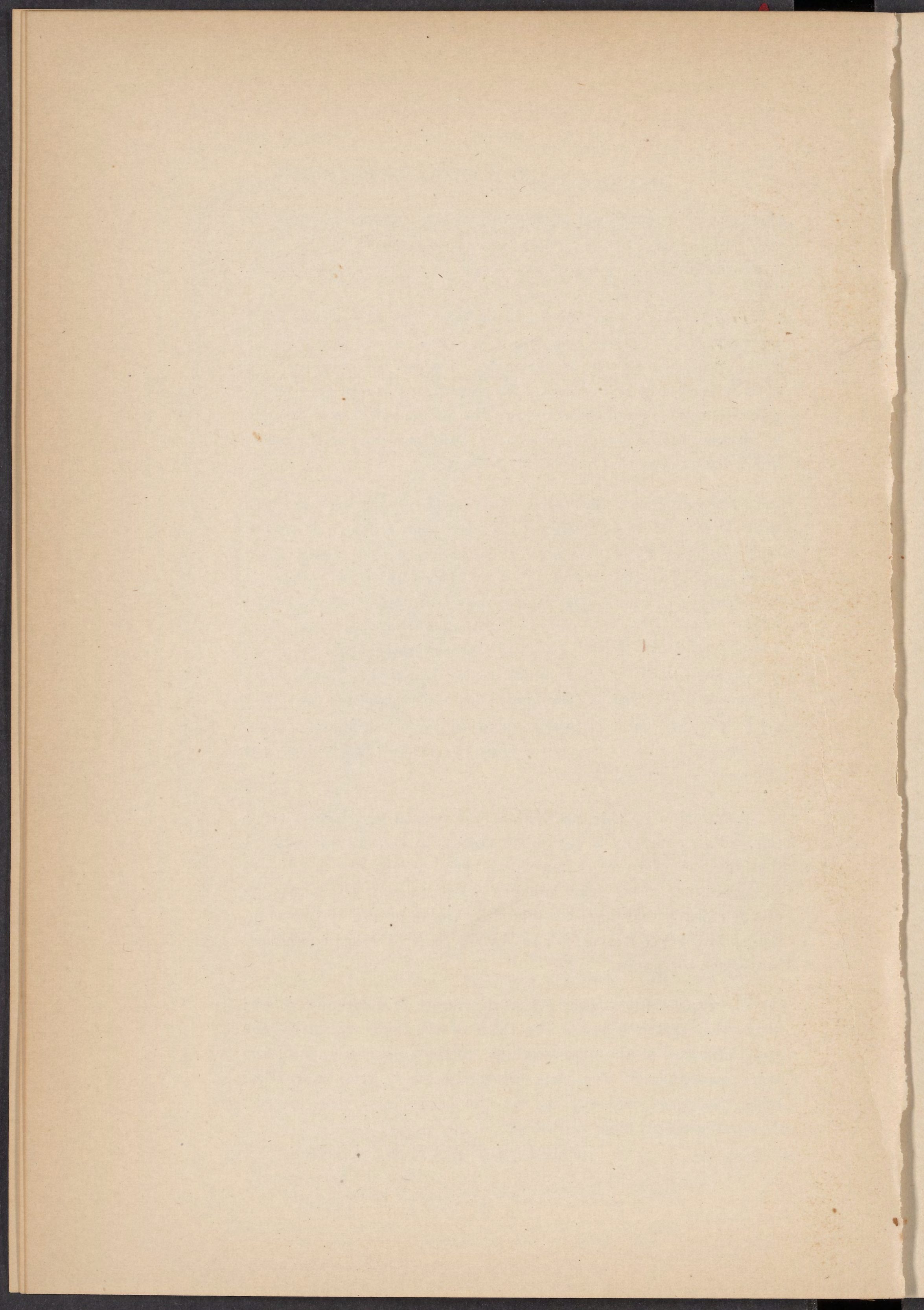
Fifth. Nor have the respondents equity. During the eight years from 1870 to 1878 they slept upon their rights. It was in their power at any time to ask possession of their lands or to insist upon payment therefor. They failed so to do. For any failure of the former corporations they had their action against them. With these failures and damages the appellants have nothing to do. They claim no rights under their contract with these owners. They submit to the decree that the contract of the former Railway Company has been forfeited, but they claim the right as a company incorporated for public purposes now to enter upon, use and occupy these lands and to pay the damages occasioned thereby.

Sixth. Nor in this particular case would anything else be fair. This company is not incorporated to acquire property at the fabulous prices which may have been charged in years before the panic, nor to pay the damages which persons along the line of the railway may have sustained by the failure of former companies in their contracts, nor to pay for the trespasses committed by former companies.

We respectfully submit that the order of reference should direct the master to assess the value of the lands taken by the appellants and of the damages done to the adjacent lands of the same owner as of the time when the said lands were first taken, possessed and enjoyed by the appellants with interest thereon from that time to the date of his report.

RICHARD WAYNE PARKER,

Of Counsel with Appellants.



Clerks Table

CHARLES S. HAMILTON & Co., Printers, 61 Cedar St., N. Y.

New Jersey Court of Errors and Appeals.

Between

THE NEW YORK AND GREENWOOD LAKE RAILWAY COMPANY,

Appellant,

and

The HEIRS of Henry Stanley,

Respondents.

Points for Respondents.

STATEMENT.

The appeal in this case is from an order of reference made by the Chancellor in an injunction suit, whereby the appellant sought to restrain the respondents from enforcing their legal title to certain lands. The facts, as established by the bills and testimony, are as follows: On the 22d day of February, in the year 1870, by a written contract fully set forth in the printed case, the heirs of Stanley agreed that the Montclair Railway Company might begin the construction of its road over their said lands, and that upon its performing certain conditions which, together with certain promises on its

part, formed the consideration for their agreement, they would convey to the said company the lands in question. The conditions were that the company should build a certain depot and begin and complete their road within certain specified times, and the promises were that the company would make and maintain a certain fence, would stop at the said depot a certain number of trains daily, and that, if the above conditions were not fulfilled, the company should be held to all damages.

On the 25th of September, 1875, all the property of the said Montclair Railway was sold under the foreclosure of a mortgage given after the execution of the above contract, and in the next month the purchasers thereof associated themselves as the Montclair and Greenwood Lake Railway Company, which, in turn, gave a mortgage on its property including the premises in question. On October 5th, 1878, all said property was sold under a foreclosure of the last mentioned mortgage, to Cyrus Field, Esq., and others, who, three weeks later, associated themselves as the New York and Greenwood Lake Railway Company, the appellant in this suit. Within a few weeks after the execution of the above-mentioned contract, the Montclair Railway Company took possession of the said lands and began to construct its road thereover. The said company and its successors have ever since possessed and used the lands, but have not performed the conditions or promises contained in said contract, though requested so to do.

After waiting several years for the Montclair Railway Company to build the said fence and after requesting it so to do, the heirs of Stanley were obliged to make and maintain it at their own expense, for which expense they have never been reimbursed.

The respondents are chargeable with no default, waiver or estoppel.

On these facts the said order directed that on ob-

taining the relief sought by the injunction suit, the appellant should pay the respondents the value of their lands taken, the damages done to their adjacent lands, and the cost of making and maintaining the above mentioned fence.

Thus far, it would seem, the order is admitted to be correct, but it is claimed to be erroneous,

(1.) In directing said value, damages and cost of fence to be assessed as of the times respectively when the lands were taken and the fence made, instead of directing them to be assessed as of the time when the lands were first possessed by the appellant; and

(2.) In allowing interest on said value, damages and cost of fence from the times first aforesaid respectively, instead of from the time when the lands were first possessed by The New York and Greenwood Lake Railway Company.

In behalf of the respondents, it is submitted that in both respects the order appealed from is correct.

POINTS.

I.

The direction as to the times to be regarded in making the various valuations was proper.

(*a.*) At the first glance it might seem improper that the amount to be paid respondents should be based upon the value of their lands at all. It might plausibly be said that having agreed to part with them on the performance of certain conditions and in return for certain promises, their compensation for the breach of such conditions and promises should be measured not by the value of the lands

but by the damages caused them by such breach. To this suggestion, however, there would be several conclusive answers: As (1.) That by the contract of 1870 all damages caused respondents by the taking of their lands as well as by the injuring of their adjacent lands became, on the non-performance of the said conditions, a part of the contract price. (2.) That even if this were not true, yet, as the railway companies were in default as regards the said conditions and promises, and as the time had passed when a performance of them would have yielded the benefits contemplated, it would have been within the power of a Court of Equity, as a condition of granting its relief, to substitute for a duty expressly imposed, such duties as should *ex aequo et bono* be assumed. And (3.) That, even if neither of the above answers were conclusive, yet, as the appellant in its bill professes itself "desirous of paying to the defendants a fair compensation for their lands," and as, up to this stage in the suit it has been assumed by both sides that such payment was to be made and question made only as to the mode of determining its amount, it would now be too late to bring into the case any new basis of compensation.

The same considerations establish the propriety of compelling the appellant to pay for the damage done to the adjacent lands, while the cost of the fence as it was finally made by the repondents is the best evidence of the amount of damages that should be awarded them for the railway company's breach of contract in not making it itself. The present appeal may therefore be discussed as if the contract of 1870 provided in express words that the Montclair Railway Co., as the price of the lands taken by it, should pay respondents the value of such lands, the amount of the damages done to the adjacent lands, and the cost of making and maintaining the above mentioned fence.

(*b*.) In view of the foregoing explanation it can hardly be doubted that if the Montclair Railway Company had remained till the present time in possession of the said lands, and this controversy were between it and the respondents, the direction given by the Chancellor would have been correct. To hold otherwise would be to disregard the well-known principle, that in estimating damages for a wrong done, or a contract broken, with respect to property, regard should be had to the value of the property at the time when the legal injury is done.

This principle is so agreeable to reason and so approved by authority that a mere statement of it is the best argument in its behalf. One or two instances of its application however, may not be amiss.

In the case of the Indiana Central R. R. Co. *vs.* Hunter (8 Ind., 74), an action was brought to recover damages from a railway company for having constructed its road over the land of the plaintiff. The defendant proposed to show by way of set off that the building of its road had made the land more valuable, and to this end offered evidence of its market-price at the time of trial. This evidence was excluded, and on an appeal to the highest court of the State the ruling was sustained, on the ground that the value of the land, if referred to at all, should be estimated as of the time when the road was built.

In the opinion of the Court it is said that "the plaintiff, in seeking compensation, was limited to the value of the land *when taken;*" and that the rule laid down "had the merits of simplicity and equity, and as high a degree of certainty as the subject was capable of."

In the case of Parks *vs.* The City of Boston (15 Pick., 198), the plaintiff sought damages from the city for taking certain land of his for the purpose of widening a street. Though other methods of assessment were contended for, it was held by the

Supreme Court of the State of Massachusetts that plaintiff's damages should be estimated according to the value of his land *at the time when it was taken.* "The advantage of this rule," said Shaw, *C. J.*, "is that it is certain and practical, and tends to prevent litigation, being a rule which parties may apply for themselves, and which, in most cases, will be the nearest approximation to doing particular justice."

See also Vanblaricum *vs.* The State, 7 Blackf. (Ind.), 209.
Van Resselaer *vs.* Jewett, 2 N. Y., 135.

(*c.*) If then the Chancellor's direction as to the mode of valuation would have been correct, as against The Montclair Railway Company, it becomes proper to inquire whether the rule should be changed in favor of the appellant.

In the consideration of this question, the crucial fact is that the obligations to the respondents, which it has become the duty of The New York and Greenwood Lake Railway Company to discharge, as a condition precedent to obtaining the relief sought by this injunction suit, are not new ones, created by itself at the time of its first possession and enjoyment of respondents' lands, but the same old ones that were created by The Montclair Railway Company.

At the time of such possession and enjoyment the present appellant violated no right of contract and committed no tort. It simply took the first step toward a position where the liabilities of others might be enforced against itself. And while it did not fully reach that position till it sought to restrain the defendants from exercising the legal rights to their lands, yet, when it did reach it, it found awaiting it precisely the same obligations as The Montclair Company had left behind.

The heirs of Stanley base their claims against the appellant, not on its possession and enjoyment of their land, but on the fact that it is enforcing rights thereto, which it claims under a con tract of which the promises have not been kept and the conditions have not been performed. They claim that, had it not been for that contract, they might have prevented any of the railway companies from entering upon their land till compensation therefor had been paid or secured ; that the appellant would be a mere trespasser upon the property having no rights thereto that would be respected either by a Court of Equity or a Court of Law ; that they consented to the entry and occupation and thus barred themselves from bringing an action of trespass, because they relied on the promises of The Montclair Railway Company, and the performance by it of its contract obligations ; and that the appellant, having elected to vest its rights upon the contract and to make to itself whatever advantage it might yield, must be held to have accepted its burdens as well as its benefits.

(*d.*) If the damages are estimated as against the appellant differently from the way in which they would have been estimated as against the Montclair or The Montclair and Greenwood Lake Companies, it must be because, by some unexplained process, one party to a non-negotiable contract, without the other party's consent, can transfer to a third person rights, under such contract, greater than his own; a view so startling and so anomalous that it would seem unwise to adopt it except for reasons of peculiar force.

If we look for such reasons in the circumstances of the appellant's purchase of this contract, we find that at the time when it was made, as well as now, the legal title to the land was in the respondents, which, of itself, was ample notice to the appellant

of their rights, and are met by the maxim that there can be no innocent purchaser from him who has no title. If we look for them in the character of the purchase we find that, like that made by its immediate predecessor, The Montclair and Greenwood Lake Railway Company, it was made at a sale in a foreclosure suit to which respondents were not made parties, and which, as against them, could therefore transfer no rights greater than those of the mortgagor. And if we look for them in the attitude of the appellant before the Court, we find that it is asking equitable aid for the enforcement of a contract which, by reason of its own and its predecessors default, could not be enforced at law.

The following cases may be cited in support of the foregoing views:

In Lewton *vs.* The D. X. & B. R. R. Co. (20 Ohio St., 401), the circumstances were as follows: About the year 1853 the plaintiff agreed in writing with the said railroad company, to release to it "the right of way, and the right to enter upon and construct its road through his lands;" in consideration whereof the said company agreed to pay a certain sum of money, and to construct certain cattle-guards and road-crossings. Soon after the execution of this agreement the company took possession of plaintiff's lands and constructed its road thereover. In the year 1855, the said company executed a mortgage on its property and in the year 1866, under a foreclosure of said mortgage, the said lands were sold and bought in by the Little Miami and the Columbus & Xenia Rail-road Companies. About the year 1858 the plaintiff had recovered judgments against the D. X. & B. R. R. Co. for the unpaid purchase money, and for the damages caused it by the failure of said company to construct its road in the way required by the agreement between them, and in the year 1866 he brought suit against all these companies and ob-

tained a decree for the payment of said judgments, and, in default thereof, for the sale of said railroad, with its franchises, for the purpose of satisfying them.

On an appeal to the Supreme Court of the State of Ohio the decree was affirmed. Following are a few extracts from the opinion delivered in which all the justices concurred:

" A purchaser of realty ought not to enjoy the estate purchased without paying for it; therefore, in equity the vendor has a lien upon the property sold for the payment of the purchase money. It may be that this equity of the defendant in error is not what is commonly called a vendor's lien, inasmuch as the legal title has not been conveyed by him to the purchaser. It is, however, at least, as strong a hold upon the property sold as the lien of a vendor after title conveyed; for here is not only an equity retained by the vendor in the property sold to the extent of the unpaid purchase money, but the legal title is also retained by him as additional security. * * * The defence by the Little Miami and Columbus & Xenia Railroad Companies, that they are innocent purchasers for a valuable consideration, and without notice of the right of the defendant in error, cannot avail them. The fact that the defendant in error retained the legal title to the right of way sold was sufficient to put them upon inquiry. They and each of them had constructive notice of the condition of the legal title * * * * * The defendant in error was in no wise affected by the sale under the mortgage. He was not a party to that suit."

In the case of Gilman *vs.* The Sheboygan and Fond-du-Lac R. R. Co. (37 Wisc., 317), the complaint alleged that the plaintiff had obtained a judgment against the Sheboygan and Mississippi R. R. Co. for having appropriated his lands to its own use; and that subsequently, default having been made

in the payment of a mortgage given by said company, its property, under a power of sale contained in said mortgage, was sold to certain persons who, thereafter, became associated as the defendant in the suit. The action was upon the judgment and a demurrer to the complaint was sustained. On an appeal to the Supreme Court the judgment was affirmed on the ground that the plaintiff had mistaken the nature of his remedy. The Court said:

"The fact that defendant is now operating its road across the lands of the plaintiff does not alter the case, so far as this question of liability upon the judgment is concerned. The plaintiff may have a remedy in another form of action to compel the company to make compensation for his property or stop running its cars over it. Such a remedy, we are inclined to hold, a Court of Equity would afford in a case where it appeared the new company elected to adopt the original taking, and continued to use and occupy the land for the purposes of its road. * * * * * But the ground of liability of the new company is not upon the judgment against the old corporation, but is founded upon the principle that it has seen fit to adopt and ratify the original taking and therefore is bound to to make compensation. The maxim, *Qui sentit commodum sentire debet et onus*, applies.

Similar authorities are:

> White *vs.* Nashville & N. W. R. R. Co., 7 Tenn., 518.
> Aiken *vs.* Albany, Vt. and Canada R. R., 26 Barb., 289.

II.

The direction as to the times from which interest should run was proper.

(*a.*) This point is virtually settled by the considerations already advanced, for, if they be sound, the obligations which it has now become the duty of the appellant to discharge, were respectively complete and definite at the times from which it was ordered that interest should be computed.

(*b.*) That, as against the Montclair Railway Co., interest began to run from the times directed, necessarily follows even from the appellant's theory of the case, for, by its assignment of errors, the possession and enjoyment of the property is made the starting point at which the running of interest should begin.

If any authorities on this point are necessary they may be found among the cases already cited. In Van Rensselaer *vs.* Jewett (*supra*) the New York Court of Appeals says:

" Whenever a debtor is in default for not paying money, delivering property or rendering services in pursuance of his contract, justice requires that he should indemnify the creditor for the wrong which has been done him and a just indemnity, though it may sometimes be more can never be less than the specified amount of property or the value of the property or services at the time they should have been paid or rendered, *with interest from the time of the default until the obligation is discharged.*

In the case of Parks *vs.* The City of Boston, the facts of which are set forth above, the Court says :

" The true rule would be, as in the case of other purchases, that the price is due and ought to be paid at the moment the purchase is made, when credit is not specially agreed on. And if a pie-powder court could be called on the instant and on the spot, the true rule of justice for the public would be, to pay the compensation with one hand whilst

they apply the axe with the other ; and this rule is departed from only because some time is necessary by the forms of law to conduct the inquiry, and this delay must be compensated by interest. But in other respects the damages must be appraised upon the same rule as they would have been on the day of taking."

(c.) If the above views are correct, certain interest had accrued against the Montclair Railway Co. before it parted with its rights under the contract, and for similar reasons certain interest must have accrued against the Montclair & Greenwood Lake Co. at the time when its rights passed to the appellant. If in each case the interest that had already accrued did not pass with the obligations that have now been assumed by the appellant, then, at each transfer of the contract, such interest must either have dropped out of existence altogether or have become a mere personal claim against the the retiring corporation.

To accept the first of these alternatives is to say that a mere assignment can vary the obligations existing between the parties to a non-negotiable contract ; to accept the second is to say that a mere incident, such as interest, may be separated from its principal; and to accept either is to say that the value of a vendor's lien may be altered by every transfer of the purchase contract.

III.

The position taken by the appellant is analogous to that of an administrator who, on being sued for a breach of contract on the part of his intestate, should insist that in assessing the damages and computing the interest thereon, regard should

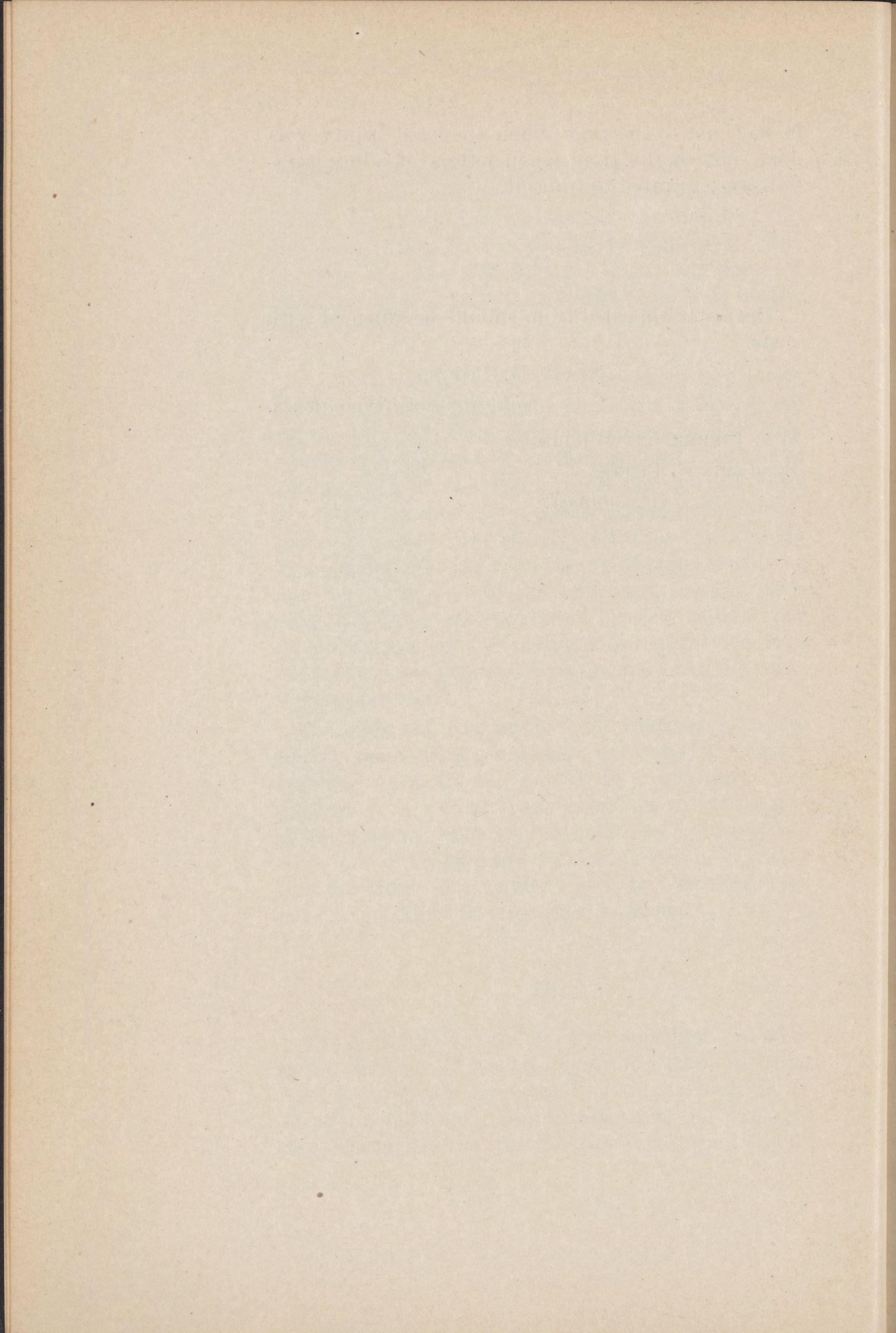
be had, not to the time when the legal injury was done, but to the time when letters of administration were granted to himself.

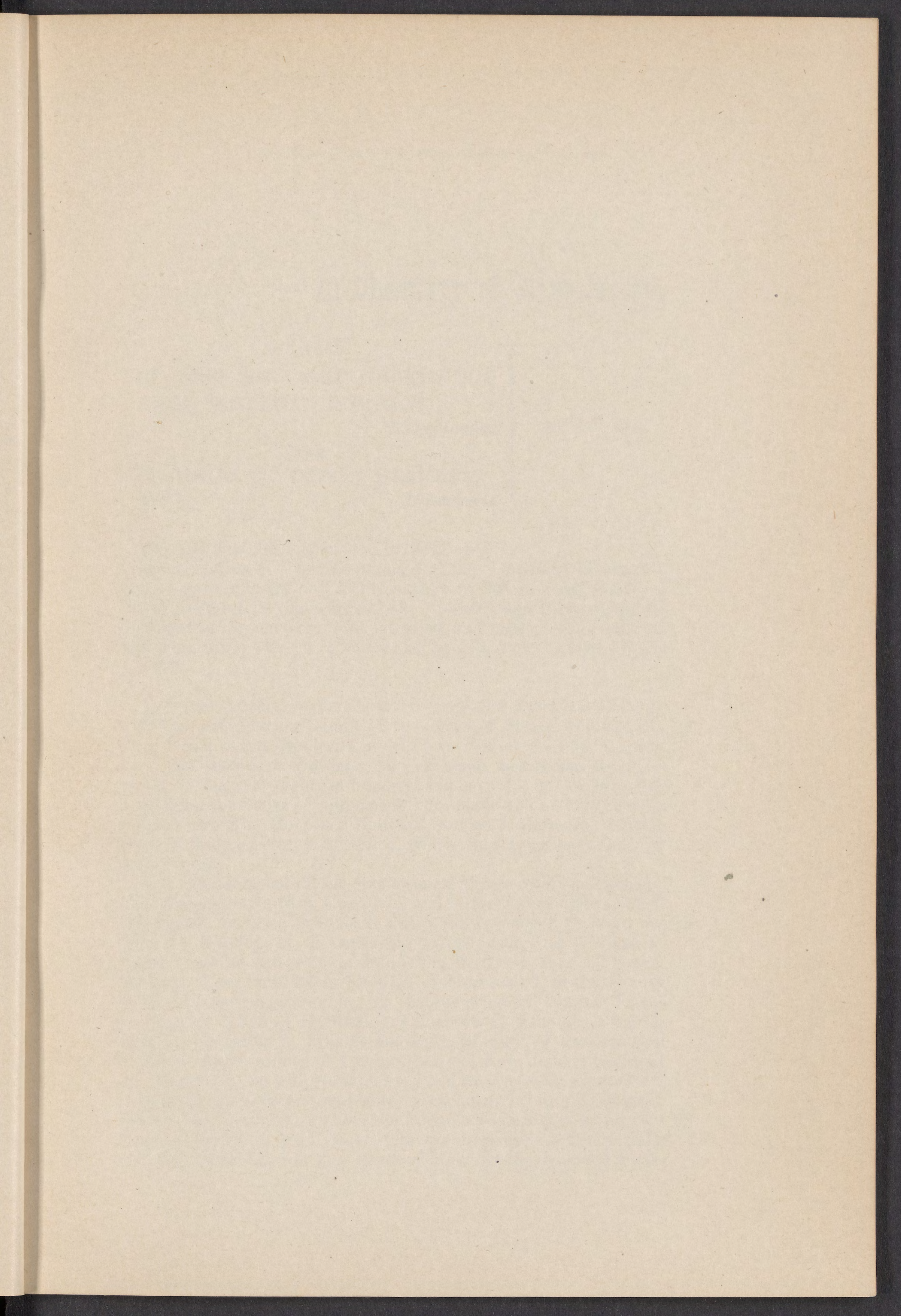
IV.

The order appealed from should be affirmed with costs.

STACY G. POTTS,
Solicitor for Respondents.

WM. PIERREPONT WILLIAMS,
BENJAMIN C. POTTS,
Of Counsel.





HOLBROOKS' STEAM PRINTERY, 11 Mechanic St., Newark, N. J.

In Chancery of New Jersey.

BETWEEN
THE NEW YORK AND GREENWOOD LAKE RAILROAD COMPANY,
Complainants.
AND
THE HEIRS OF HENRY STANLEY, DEC'D,
Defendants.

On Bill, &c.

The bill filed December 5th, 1879, alleged

Incorporation of The Montclair Railway Company March 18, 1867 :—power to lay out, locate, construct the railroad, condemn lands, (reciting in the words of the statute), and to mortgage its property and franchises; that the road was constructed, and first mortgage made thereon to Ward and Hewitt, trustees, dated Sept. 1, 1870.

And your orators further show that said The Montclair Railway was laid out over the lands of the heirs of Henry Stanley, de- 10 ceased, and it was the desire of said owners that the said Railway Company should erect a depot on said lands, and thereupon afterwards, in the year eighteen hundred and seventy, or the following year, certain articles of agreement were made and entered into by and between The Montclair Railroad Company aforesaid, and the heirs of Henry Stanley, deceased, which said agreement is as fol lows, to wit:

" In consideration of the sum of one dollar to us in hand paid by The Montclair Railway Company, and in further consideration of the benefit to us of the location of a railway depot thereon, we, 20 John G. Stanley, of the township of Caldwell, and William B. Stanley, of the township of Belleville, in the county of Essex, Richard Speer, and Ellen his wife, of Morristown, in the county of Morris, Austin L. Stanley, of the township of Wayne, James C. Stanley, Thomas B. Stanley, Elizabeth C. Stanley, John H. Stanley, Cornelius N. Stanley and Julia Stanley, of the township of Little Falls, county of Passaic, State of New Jersey, covenant and agree that we will grant, convey and release to said Company, by a good and sufficient warrantee deed, upon being paid therefor the sum of one dollar, and for the foregoing consideration, all that 30 tract or parcel of land situated in the township of Little Falls and county of Passaic and State of New Jersey, bounded north-

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east by lands of Edward Francisco, southwest by lands of Joseph S. Bowden, northwest and southeast by lines parallel to and distant fifty feet at right angles from the located centre line of the railway of said Company, containing two and one-half acres of land, also, an additional width of fifty feet on each side of said land extending northwestwardly to lands of Edward Francisco and lands of John H. and Cornelius N. Stanley, from a highway to be laid out across our lands and land of said Francisco from the Peckman River to the Bridge Road. Said Company to make a lawful fence on each side of said land and maintain the same. Said deed to be upon the condition that the said Company shall establish a depot within two hundred feet from said highway to be opened by us, as soon as said railway shall be in operation to the Hudson River, or to any railway connecting with the Hudson River, and shall maintain the same for ten years thereafter.

And upon the further conditions that said railway shall be begun within two months from this date, and completed so as to be in operation within two years thereafter; all wood and timber on said lands to be cut and reserved by us, and said Company shall stop not less than four passenger trains daily each way, except Sundays, at said depot provided that so many are run over said railway for way passengers; and we further agree that said Company may enter upon our said lands, and commence the work of construction before the formal conveyance may be executed, they doing no unnecessary damage; and it is further agreed that if the above conditions are not complied with by the said Railway Company, that this agreement holds said Company to all damages if not complied with as above specified."

Which said agreement was duly signed and sealed in proper form by the parties thereto, about the day of A. D. eighteen hundred and

And your orators show that afterwards the said Company entered into possession of said 100 feet right of way for the purpose of constructing their railroad, but that no avenue was laid out on said land by said heirs, nor was any depot built, the railroad being hardly open or running at all at the time of the foreclosure herein next mentioned, nor was any possession taken of the additional land in said agreement mentioned.

The bill further alleges:

Bill to foreclose the railroad filed by Ward and Hewitt Nov. 17th, 1873.

Final decree thereon for sale 19 June, 1875, for $2,081,404.50 interest and costs.

Sale thereunder September 25, 1875, of the railroad and franchises to Ward and Hewitt, trustees.

Association of the purchasers as the Montclair and Greenwood Lake Railway Company, October 2, 1875, filed in the office of the Secretary of State.

Mortgage by them to George Walker and Amzi Dodd, 1 December, 1875.

Bill to foreclose same filed 28 December, 1877.
Decree of sale, 24 May, 1878, $756,000.77, &c.
Sale of road by Master, 5 October, 1878, to Field and others.
Organization of Complainants, 30th October, 1878.
Deed by purchasers to complainants recorded in Passaic County, Book B 6, p. 624.

And your orators show that since said agreement said lands have been constantly in the possession of said Railway Companies or receivers thereof appointed by this Court, but your orators had 10 not information that they had not been regularly obtained by purchase until they were called to account by said heirs or their agent and attorney for not having built a depot on said lands, and for not stopping four trains there daily each way.

And your orators show that said lands are in an unfrequented spot on a steep grade, and they charge that no avenue has been there opened to the public so as to be convenient for a depot. And your orators' president to whose notice said demand was brought therefor, was unwilling to accede to the same.

And your orators show that thereupon said heirs began suit in 20 ejectment for said lands in the Supreme Court.

And your orators show that their information of said contract is derived from a copy thereof furnished them by said heirs. And they show that upon obtaining fuller information of the same and the circumstances, they have concluded that the same can fairly be carried out, and that said contract by its terms does not justify the complaints of your orators made by said heirs as aforesaid. And especially they show that as soon as said heirs should reasonably and properly open to public travel an avenue as mentioned in said contract, and notify your orators thereof, they would be 30 willing to erect a depot as mentioned in said contract, and maintain the same for the use of the public as therein mentioned. And they show and charge that until said avenue be so opened as to be useful as a highway, such depot is neither contemplated by said contract nor useful to the traveling public. And they show that the circumstances of the case have extended over so many years and been so unforeseen, that they are fairly in doubt as to some points of the construction of said contract; but they show and charge that if any delay has taken place in carrying out said agreement, by said railroad or roads, it is the result of unforeseen 40 circumstances, and especially that the railroad was not running trains to the Hudson River until about the time that a receiver was appointed, and that your orators were new to the concerns of said Railway, which were in many ways in great confusion, and they could not at first learn all the facts, and that said heirs were themselves in default or waived the conditions of said contract, and especially that said heirs have never made or tendered any deeds of said lands as they were bound to, and by reason of infancy of some owners or otherwise have never been able so to do.

And your orators show that four way trains daily do not now 50

run each way on said railroad, but they are willing to stop all the trains run by them where required by said contract.

And they show that they and their Board of Directors being trustees of stockholders and creditors, are anxious in carrying on the business of said railroad to do all that is their duty as such trustees, and especially to carry out said alleged contract as the Court shall determine its meaning, whether by establishment of a depot, stoppage of trains or otherwise. And they show that during all these years said Stanley heirs have ratified their pos-
10 session under said contract, and that they have either cut the wood as therein provided, or exercised their rights over said wood. * * * * Your orators tendering themselves willing to carry out said contract in all respects as the same may be settled in this Court, or that if it be decreed that your orators are not entitled to said contract, or that a forfeiture thereof has taken place from which this Court cannot relieve them, then that said conveyance may be decreed to be made by said defendants.

And your orators further show that the heirs of the said Henry
20 Stanley have commenced a suit in ejectment in the Supreme Court of this State by issuing summons in order to eject your orators from the right of way, one hundred feet wide, described in the said contract, and to deprive them of the possession of the same upon which your orators have constructed their said railway and over which they are now running their trains.

And your orators show that said heirs, plaintiffs in said ejectment, are as follows: James Stanley and Jennie Stanley, his wife; Austin L. Stanley and Elizabeth Stanley, his wife; Elizabeth C. Gow, widow of Robert Gow, deceased; William B. Stan-
30 ley and Elizabeth, his wife; Ellen Speer, wife of Richard Speer, Mary Philip, wife of Alexander Philip, children of Henry Stanley, deceased; John H. Stanley and Cornelius M. Stanley, children of Charles Stanley, deceased, and grand-children of said Henry Stanley, deceased; Joseph Bowden, guardian of Mary Stanley, only child of John G. Stanley, deceased, son of said Henry Stanley and the said Mary Stanley; Ada Stanley, widow of Thomas B. Stanley, deceased, son of said Henry, for herself and as guardian for Robert Stanley and the said Robert Stanley, heirs at law of Henry Stanley, deceased.

40 And your orators further show that as they have been put to a large amount of trouble and expense in building their said railway over and upon the property before mentioned and that if they were ejected from this portion of the road the whole of the business of the said road would have to be stopped, which would be greatly to the detriment of the said Railway Company and of the public by breaking up their whole business and taking away the profits and emoluments thereof and by many other palpable inconveniences incident thereto; and it would be most unjust to the inhabitants of this and other States using said railroad in the pursuit of busi-
50 ness or pleasure, many of whom have been led to make their res-

idences in this State to the manifest advantage of this State, by the inducements of transit to and from their places of business by the advantages offered and furnished by your orators' said railroad, and that this road is now a public highway extensively used by the traveling public, and that while it would be most unjust to them to interfere with the operations of the said railway, it would also be most inequitable to your orators because they came into possession of the lands in controversy by the consent of the plaintiffs in the aforesaid suit in the Supreme Court, the heirs of said Stanley, deceased, the defendants in this suit. 10

And your orators further show that they are now and for a long time past have been desirous of paying to these defendants a fair compensation for the property above mentioned, now occupied by your orators, if they are not entitled to claim fulfillment of said contract as aforesaid, and that it has not been and is not now the intention of your orators to fraudulently keep possession of the property in question or not to carry out said contract or fully pay and compensate the defendants in this suit for all damages arising from their occupancy of the premises and have many times offered the defendants, on compromise of said dispute, a full and just sum 20 in payment of their claims ; and that your orators have drawn up and presented to these defendants one or more agreements whereby it was to be left to arbitrators to be determined the compensation to be made for the taking of said land as in their act of incorporation was provided for as hereinbefore set forth and whereby your orators were to bind themselves to fully satisfy the sum so decided upon, but these defendants refused to sign any such agreement or to appoint arbitrators to settle the value of the lands in question, or to receive a fair compensation for the same and to give a warranty deed for the same as in the agreement asked, and still do 30 refuse so to do and have commenced a suit in ejectment as hereinbefore mentioned.

And your orators show that the said plaintiffs in ejectment wrongfully set up and claim that your orators are in default under said contract, that your orators should pay not only the reasonable value of said lands in the natural state and the value of the use and occupation of the same since your orators have had possession thereof, but also compensation for the use of said ground by your orators' predecessors, the Montclair Railway and the Montclair and Greenwood Lake Railway Company, whereas your orators 40 show and charge that any claim of damages arising out of the occupancy of said lands by the Montclair Railroad Company and the Montclair and Greenwood Lake Railway Company are against the last railroad companies and are of no validity as against your orators, for that the aforesaid companies that formerly had control of the road have now no connection with it whatsoever and by the several suits of foreclosure and decrees of sale made by this Honorable Court have been totally debarred from any right, title or interest in the said railroad now in your orators' possession, and that your orators did not assume any of the debts or liabilities of 50

the said defunct railroad corporations, but entered into the possession of the said railroad with a clear and unrestricted title thereto, as far as any claim of damages of these defendants is concerned, and that said claim, however lawful and equitable it may be against the Montclair Railroad Company, is against them alone and is totally without foundation in law as well as in equity as against your orators, and that your orators are not liable for any claim against either of the companies having possession of your orators' railroad property before your orators became seized thereof.

10 And your orators well hoped that the said plaintiff in said ejectment, the defendants in this suit would have complied with such reasonable requests of your orators, as in equity and good conscience they ought to have done.

But now, so it is, may it please your Honor, that the said defendants in this suit, James Stanley and Jennie Stanley, his wife; Austin L. Stanley and Elizabeth Stanley, his wife; Elizabeth C. Gow, widow of Robert Gow, deceased; William B. Stanley and Elizabeth, his wife; Ellen Speer, wife of Richard Speer, Mary Philip, wife of Alexander Philip, children of Henry Stanley, de-
20 ceased; John H. Stanley and Cornelius M. Stanley, children of Charles Stanley, deceased, and grandchildren of said Henry Stanley, deceased; Joseph Bowden, guardian of Mary Stanley, only child of John G. Stanley, deceased, son of said Henry Stanley and the said Mary Stanley; Ada Stanley, widow of Thomas B. Stanley, deceased, son of said Henry Stanley, for herself and as guardian for Robert Stanley, and the said Robert Stanley, heirs at law of Henry Stanley, deceased, combining and confederating together and with divers persons at present unknown to your orators, but whose names, when discovered, your orators pray they
30 may be at liberty to insert herein, with apt words to charge them as parties defendants hereto, and contriving how to injure and aggrieve your orators in the premises, absolutely refuse to comply with such reasonable requests, and at times pretend that your orators are not in lawful possession of the said premises and should be ejected therefrom; whereas your orators charge the contrary thereof to be the truth, and that the said original company having been originally placed in lawful possession of said lands for the purpose of carrying on a public work; and having for that purpose expended thereon and in said work large sums of money, and the
40 said plaintiffs in ejectment having suffered such possession without objection during a long course of years, they cannot now destroy such public work by ejecting your orators from said lands, but must in equity accept such compensation therefor as this Court shall determine to be equitably due to them.

All of which actions, doings and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orators in the premises.

In tender consideration whereof, and forasmuch as your orators
50 are without adequate remedy in the premises, at and by the strict

rules of common law and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable, and to the end that the said defendants may answer the premises as fully and particularly as if the same were here again repeated, and they thereto particularly interrogated, and that the said defendants may be decreed by this Honorable Court to convey said lands required for said railway to your orators. Your orators tendering themselves willing to carry out said contract in all respects as the same may be settled by this Honorable Court; or that if it be decided that your orators are not entitled to said contract 10 and that a forfeiture thereof has taken place from which this Court cannot relieve them, that said conveyance may be made by said defendants, on being paid such sum as this Court shall decide that they are entitled to for the value of said right of way and the use thereof since your orators took possession of the same; which your orators tender themselves ready to do if it be equitable and necessary, and that the said defendants may be enjoined and restrained meanwhile from further prosecuting their said action of ejectment, and that your orators may have such further or other relief in the premises as the nature of the case may require, and 20 as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orators not only the State's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said defendants respectively, restraining them and each of them from prosecuting their said suit of ejectment in the Supreme Court of this State; but also the State's writ of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said defendants respectively, commanding them and each of them by a certain day and date and under a certain penalty therein 30 to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as your Honor shall seem meet, and shall be agreeable to equity and good conscience.

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

CORTLANDT & R. WAYNE PARKER,

Solrs.

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The joint and several answer of James C. Stanley and Jennie, his wife; Austin L. Stanley and Elizabeth, his wife; Elizabeth C. Gow, widow of Robert Gow; William B. Stanley and Elizabeth, his wife; Ellen Speer, wife of Richard Speer, Mary Philip, wife of Alexander Philip; children of Henry Stanley, deceased, and their wives; John H. Stanley and Cornelius M. Stanley, children of Charles Stanley, deceased, and grandchildren of said 50

Henry Stanley, deceased; Joseph Bowden, guardian of Mary Stanley, only child of John S. Stanley, deceased, son of said Henry Stanley and the said Mary Stanley; Ada Stanley, widow of Thomas B. Stanley, deceased, son of said Henry Stanley, for herself and as guardian of Robert Stanley and the said Robert Stanley heirs at law to the said Henry Stanley, to the Bill of Complaint of the New York and Greenwood Lake Railway Company, complainant

These defendants, respectively, now and at all times hereafter, 10 saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said Bill of Complaint contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, severally answering say,

That as to the act of incorporation or charters of the Montclair Railway Company, or the Montclair and Greenwood Lake Railway Company, or of the New York and Greenwood Lake Railway Company or as to the rights, privileges, franchises or powers, or 20 the limitations of such rights, privileges, franchises or powers conferred or limited upon said Companies by their said acts of incorporation, or by their several charters, or as to the various foreclosure suits brought in this Court by divers persons upon the mortgages given by the said Montclair Railway Company, or by the said Montclair and Greenwood Lake Railway Company, or the different sales that may have taken place from time to time under such foreclosure suits; or as to any organization of new companies under different names, or the amount of the bonded debt of such new companies, all which matters and things are set forth 30 at length in the complainant's said bill, these defendants have no knowledge, but leave the complainant to make such proof thereof as it shall be able to produce.

And these defendants admit that in the year 1870, and on the 22d day of February in that year, the said Montclair Railway Company made and entered into a certain agreement with these defendants, which agreement is set forth verbatim in the complainant's said bill, except the date thereof, which is the day and year last above mentioned, and these defendants charge that the said agreement contained a stipulation that the land and premises set 40 forth and described therein should be conveyed to the said Montclair Railway Company by a good and sufficient warranty deed, upon the condition and with the express proviso that the said Company should establish and maintain a depot within 200 feet of a certain highway to be built by these defendants across their lands and land of Edward Francisco from the Peckman River to the Bridge Road, and these defendants aver that very soon after the execution of said agreement the said Montclair Railway Company entered into possession of said tract of land so agreed to be conveyed to it by the said agreement, and constructed the 50 main line of its railroad through and across the land of the

said defendants on the line of land so agreed to be conveyed to it; and claimed to have acquired and these defendants admit that it did thereby acquire an equitable estate in the said lands subject, however, either to the performance of the conditions on which said land was to be conveyed to it or to the payment of the damages which these defendants would sustain by reason of the non performance of said conditions; and these defendants say that their object in entering into said agreement to convey said land to said company for a nominal consideration on the conditions and covenants therein stated was to make available for speedy sale at 10 the high prices which then prevailed for real estate the remaining lands of these defendants adjacent thereto, and for the same purpose they laid out and constructed the said highway described in said agreement, that the said object and purpose was well known to the directors and managers of said Railway Company when the said agreement was made; and these defendants believe that if the said conditions of said contract had been performed, that is to say, if said depot had been established at the time and within the period provided for in said agreement and had been maintained for ten years with four passenger trains each way stopped there daily, 20 these defendants would have realized much more for their said lands than if the value of said lands taken by the Railroad Company and the damages done to the remaining lands of these defendants had been, at the time said land was taken, assessed and ascertained in the manner provided for and pointed out by the charter of said Company and paid by the said Company to these defendants, even at the high prices which then prevailed; but these defendants aver that by reason of the failure and refusal of said Company on its part to perform said agreement the whole plan of these defendants for the improvement and sale of their 30 said lands has failed and they have totally lost all the special benefits which they expected to derive from entering into said contract; and these defendants say that when the said first mortgage executed by the said Montclair Railway Company to said Abram S. Hewitt and Marcus L. Ward, trustees, was made and executed, the said Montclair Railway Company was in possession of said land, with its railroad constructed thereon, and that whatever title to or interest in said land was then possessed by said Campany, passed by the said successive mortgage foreclosures and sales to the present complainant in precisely the same conditions and sub- 40 ject to precisely the same lien and equity in favor of these defendants which attached to said land under said contract in the hands of the said Montclair Railway Company, and that said complainant has acquired said land with full knowledge of said contract.

And these defendants charge and insist that in pursuance of said agreement on their part and in reliance upon the representations of said Montclair Railway Company, they did proceed to build the highway, in the said agreement mentioned, at great expense and trouble to themselves, but that after the completion of the said highway the said Montclair Railway Company absolutely 50

refused to erect a depot at said point or to stop their trains there, as in the said agreement stipulated, by reason of which refusal the said highway has been rendered entirely useless, and the expenses to which these defendants were put in the construction thereof have become a total loss.

And these defendants in further answering say that said agreement contained a further stipulation that the said Montclair Railway Company should make and maintain a lawful fence on either side of the one hundred feet right of way mentioned in said agree-
10 ment, but these defendants charge that said Company never did build or maintain any fence upon said land in pursuance of their said agreement, although often requested so to do by these defendants, by reason of which neglect and refusal of said Company these defendants suffered great damage to their lands lying adjacent to said right of way; and these defendants further charge, that in order to protect their said lands from further damage by reason of the want of proper fence, they were obliged to erect and maintain such fences at their own expense, for which said expense they never have been reimbursed or received any remuneration
20 whatever; and these defendants charge, that by reason of the failure and refusal of the said Montclair Railway Company to perform its part of said agreement, no deed of said one hundred feet right of way was ever given to said Company, although these defendants stood ready at all times to execute and deliver such deed at any time when said Company should see fit to perform its covenants and agreement before mentioned, and when and so long as the specific performance of said agreement would have been beneficial to them

And these defendants in further answering say, that they are
30 informed and believe and so charge the truth to be, that the complainant in this suit The New York and Greenwood Lake Railway Company, is desirous of retaining possession of the land and premises mentioned and described in said agreement, without paying to these defendants their just and reasonable damage for the taking of said land, and that the said complainant has heretofore evaded and still does evade and refuse to pay the said damages to these defendants, on the ground that the said agreement was made with the said Montclair Railway Company, and that said Company by virtue of certain foreclosure proceedings heretofore had in this
40 Court, has now ceased to exist, and that the claims of these defendants are of no validity against the said complainant; but these defendants charge and insist that the said agreement with the Montclair Railway Company contained an express stipulation that in case said agreement was not carried out on the part of said Company, that all claims arising out of the occupation of said land would be insisted upon; and these defendants charge and insist that their claim for damages has been and still remains an equitable lien upon said land, and that all purchasers of said land at any foreclosure or other sales purchased the same subject to
50 the lien or encumbrance of the claim of these defendants for their damages as hereinbefore set forth.

These defendants in further answering, charge that they have at various times submitted to the said complainants agreements in writing, by which the entire matter was to be submitted to an arbitration, taking into account the value of the land at the time of the occupation by the said Montclair Railway Company, and reasonable damages for the want of proper fences, for the expense of these defendants in making and maintaining such fences, for the damage to the adjacent lands, and for the cost of making the said avenue; but these defendants charge that the said complainant absolutely refused to submit the matter to an arbitration upon 10 such a basis, claiming that no damages should be considered, but only the value of the land at the time when the said complainant entered upon and took possession thereof; but these defendants have declined to submit the matter to an arbitration upon the basis proposed by the complainant, believing that a decision of arbitrators made under such a restriction could only afford them a meagre and inadequate compensation, and would be manifestly contrary to equity and good conscience.

These defendants in further answering admit that upon the refusal of the complainant to regard their just claim, they com- 20 menced a suit in ejectment in the Supreme Court of this State to recover possession of their said land, which suit has been stayed pending the decision of this Honorable Court upon the matters in controversy herein set forth.

And these defendants in further answering deny that they ever consented that the present complainant should take possession of said land, or that their consent thereto was ever asked by said complainant, and they aver that the only right to the possession thereof which said complainant ever acquired or claimed to have thereto, was by the purchase of the equitable estate of the Mont- 30 clair Railway Company under said contract; and they further charge that they have, since the making of said contract, many times demanded of the said Montclair Railway Company (and of its successors, The Montclair and Greenwood Lake Railway Company), and the present complainant, and the receivers that have at various times had control of said railroad, that said corporations or receivers should carry out the performance of said contract or compensate these defendants for their damages according to the stipulations thereof; and they further charge, that the present complainant assumed possession of the said road having full notice 40 of the claims of these defendants and of all the circumstances under which it had possession of said land.

And these defendants further charge that the said contract contained a further express stipulation in terms and to the effect that the work of constructing the said road over the said lands should be commenced within two months from the date of said contract, and the said railroad should be so completed as to be in full operation to the Hudson River or to some other railroad connecting with the Hudson River, within two years from the date of said contract; and these defendants charge that the said stipulation was 50

expressly made a condition precedent to the vesting of the full title in said Company and that it was the intention of these defendants thereby to limit the time within which said contract was to be performed; and they further charge and insist that said railway was not completed so as to be in operation to said Hudson River within the time stipulated in said contract, nor for a considerable time thereafter.

These defendants in further answering say that as the said Montclair Railway or its successors have never performed any of 10 the conditions in the aforesaid agreement contained, but have heretofore altogether neglected and refused to perform the same, and as the location of other stations upon the line of said railway have been within very short distances of the spot on which a depot was to have been erected under the terms of said contract, and as the location of said stations preclude the probability of a depot on the lands of these defendants ever becoming a point of any importance, and as the time during which the said depot was to be maintained has nearly expired and all the benefits which these defendants expected to derive therefrom have been irretrievably lost, it would 20 be most inequitable and unjust now to enforce the specific performance of said contract, but these defendants aver themselves ready at this time to convey said land to the complainant upon being paid their reasonable damages upon the principles and at the rate herein above set forth.

And these defendants deny all and all manner of unlawful combination and confederation wherewith they are by the said Bill of Complaint charged without that any other matter or thing in said Bill of Complaint contained, material or necessary for these defendants to make answer unto and not herein and hereby well 30 and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge and belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be thence dismissed with their reasonable costs and charges in this behalf sustained.

STACY G. POTTS, *Sol'r.*
HENRY S. WHITE, *of Counsel.*

Affidavits of Wm. B. Stanley and wife, Mary Philip, Joseph 40 S. Bowden, Elizabeth C. Gow, James C. Stanley and wife, Austin L. Stanley and wife, John H. Stanley, Richard Speer and wife.

Examination of witnesses, &c., in this cause, taken before me at my office in the City of Newark, on Friday, the 28th day of 50 May, 1880, in the presence of R. W. Parker, of counsel with com-

plainant, and Stacy G. Potts, of counsel with defendants, on the part of the complainant, on notice to and agreement of said counsel of defendants.

WILLIAM PATERSON,
Master and Examiner.

Counsel for complainant offers in evidence an argument between the Stanley heirs and The Montclair Railway Company, dated 22d February, 1870, which is marked as Exhibit C 1, on their part. 10

Also, the Act of Incorporation of the Montclair Railway Company, approved 18 March, 1867. Pamphlet Laws, page —.

Also, the files and proceedings in the Court of Chancery, wherein Marcus L. Ward and Abram Hewitt were complainants, and said Montclair Railway Company and others were defendants.

Also, the mortgage executed by the said Railway Company to said trustees, dated 1 September, 1870, recorded in Book of Mortgages for County of Essex, on pages —

Also the deed made by William Paterson to said trustees on 27th September, 1875, recorded in Book P, 18—, of Deeds for 20 County of Essex, on pages 424, &c.

Also, a copy of the organization of The Montclair and Greenwood Lake Railway Company, marked Exhibit C 2, on their part.

Also, a deed from Ward and Hewitt, trustees, to the Montclair and Greenwood Lake Railway.

Also, a mortgage from The Montclair and Greenwood Lake Railway Company, to George Walker and Amzi Dodd, trustees, dated 1 December, 1875, recorded on 11 February, 1876, in Book D 7, on page 284, marked Exhibit C 3, on their part.

Also, the files and proceedings in the Court of Chancery, wherein 30 Walker and Dodd, trustees, were complainants, and The Montclair and Greenwood Lake Railway Company, et als.; defendants.

Also, copy of a deed from said Master to Abram S. Hewitt and others, trustees, dated 5 October, 1878, recorded in Book X 19, of Deeds for the County of Essex, on pages 449 to 456, marked as Exhibit C 4, for complainant.

Also, a copy of the organization of The New York and Greenwood Lake Railway Company, dated 30th October, 1878, filed in office of Secretary of State on 2d November, 1878, marked Exhibit C 5. 40

Also, a copy of a deed from Abram S. Hewitt and others, trustees, to The New York and Greenwood Lake Railway Company, dated 5th November, 1878, and recorded in Book — of Deeds for the County of Essex, on pages —, marked Exhibit C 6, on their part.

New Jersey, ss: Richard Speer, being sworn for complainant, says: I am connected with the Stanley family by marriage. I married Ellen Stanley. I know the lands in question in this suit. They belonged to the estate of Henry Stanley. When he 50

died he lived at Saulsbury, Orange County, N. Y. I never knew him personally, and testify from knowledge derived from the family. I understand that formerly he had lived at Cedar Grove. I cannot say how long ago he died; it is over thirty years ago. My wife was one of his children. He did not leave a will. He left other children: Charles, Mary Phillip, wife of Alex. Phillip; John G. Stanley, Wm. B. Stanley, Ellen Speer, my wife; Elizabeth Gow, wife of Robert Gow; Thomas B. Stanley, James C. Stanley and Austin L. Stanley, nine in all.

10 The first, Charles Stanley, died at Little Falls, N. J., sometime before the war. He left no will. He left a widow who has died since, and two children, both living now at Little Falls: John H. and Cornelius M. Stanley. These are married, now, but were not when these proceedings were begun.

Mary Phillip, the second child, is living at North Belleville.

John G. Stanley, the third, died about three years ago. He left no will, and one child, Mary Stanley, living at Little Falls, and no widow. She is under age, over 18, or in that neighborhood.

The fourth, William B. Stanley, is living at Avondale, in Essex

20 County.

The fifth, Ellen Speer, is living at Brooklyn, N. Y.

The sixth, Elizabeth Gow is living at Little Falls.

The seventh, Thomas B. Stanley, is dead. He died about two years ago, leaving no will, a widow, Ada, and one child, Robert, a minor, about three years old. The widow is living.

The eighth, James C. Stanley, lives at Little Falls. His wife is living.

The ninth, Austin L. Stanley, lives at Singack The name of his wife is Elizabeth.

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Sworn and subscribed this 28th day of May, 1880, before me } RICHARD SPEER.

WILLIAM PATERSON,
Master C. C.

Examination adjourned by agreement to Thursday, 3d June, 1880, at same time and place; no more done.

WM. PATERSON,
Master and Examiner.

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Taking of depositions and marking of exhibits in the above stated cause, before me, Henry J. Mills, Master and Examiner, at the office of C. & R. W. Parker, in the City of Newark, on this seventh day of July, A. D. eighteen hundred and eighty, upon notice given on the part of complainant, service of which is acknowledged.

Present: Mr. PARKER, for compl't.
Mr. POTTS, for def'ts.

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William O. McDowell, a witness produced on the part of the complainant, being duly sworn according to law, deposeth and saith :

I was Secretary of the Trustees of the Montclair Railroad bonds who took possession of the road soon after the failure of the original company, and of the reorganized company of The Montclair and Greenwood Lake Railroad until sixty days of its failure. During my connection with the company I knew of negotiations with the Stanleys with reference to their lands. Each different party in power, first the Trustees operating the road, J. F. Randolph being President, and then which Myneer Jones was President, each were approached by the representatives of the estate and an attempt made to induce them to remove the depot from the Great Notch to the Stanley road crossing. I understood from these applications that they claimed there was an agreement by which they claimed to have a right to have the depot there. 10

Jacob F. Randolph became president on the 25th day of October, 1875 The Trustees had been in possession for about a year before that. Mr. J. Myrean Jones besame president, I think, in the spring of 1876. He was president for about six months, then Mr. Remington Burnam was president till the May election of the following year, when Cyrus W. Field was made president. 20

I had no possession of the agreement mentioned with the Stanleys. I never saw it. The Montclair and Greenwood Railroad did not have a through route to the Hudson while I was secretary. They were not completed to the present terminus at the other end when I became secretary. They completed it while I was secretary. They had not made any connections with any line running to the Hudson River. They had connected with the Hudson Connecting Railroad, and it connected with the Pennsylvania Railroad. They run their engines down half way across the Hudson Connecting Road, and then the engines of the New Jersey Midland was attached to their engines. 30

In the Winter time, one train each way over the Stanley crossing. In the Summer time two ran each way. I mean passenger trains.

During the time I was in as Secretary the Company were pretty flush with bonds, but they were always borrowing money.

Being cross-examined : 40

I became Secretary of the Trustees about the Fall of 1874. I became Secretary of the Company at the organization on the 25th of October, 1875. I had no connection with the Montclair Railroad Company, whatever.

I don't know that I ever heard the requests testified by me, but I heard them discussed at the meetings of the Board.

They were made in the first place of E. P. Hatch, who represented the trustees in the operation of the road. After that of the various Presidents. No action was taken by the Board. The depot was never moved. I estimate that the depot is about a mile 50

from the Stanley crossing. The next station beyond the Stanley crossing is about a mile from the Stanley crossing. I never heard any of the Stanley heirs make a demand for a station of their own at the crossing without moving the other. Nor did I ever hear of their doing so. I do not know that the stations at Cedar Grove and Great Notch were put there under any contract. The Board of Directors took no action upon these requests of the heirs. They simply allowed them to remain unattended to. The second Company only knew of these claims except so far as my evidence
10 states. As each new man came on, he was informed of their demand. The Company did not have any searches made as to the title of their lands to my knowledge.

Sworn and subscribed before me, this 7th day of July, A.D. 1880. } WM. O. McDOWELL.

HENRY J. MILLS,
Master and Ex. in Chancery.

ABRAM S. HEWITT, a witness produced on the part of com-
20 plainant, being duly sworn according to law, saith:

I am the President of the New York and Greenwood Lake Railway Company. I have been such from its organization. I did not hear of the Stanley right of way until I became President, although I had possession of the road as Receiver during the latter part of 1873, 1874, and the latter part of 1875. I delivered up possession in the latter part of 1875. I never heard of it during that time. Sometime within the year past, a gentleman unknown to me, who said his name was Stanley, came into my office and said his name was Stanley, and said he represented the heirs
30 of Henry Stanley, who had made an agreement with the old Montclair Railway Company regarding the right of way at Great Notch. I asked him to explain the nature of the agreement. He did so, briefly. I told him I would look up the original document if I could find it. He said he had a copy and would send it to me. I never found the original, and he did send me a copy. He asked that the new Company should fulfill the agreement for the erection of a depot, the stoppage of the trains, and something was said about a road. I have forgotten what that was. I told him I would refer the matter to the counsel of the Company for his
40 opinion as to whether we were bound by the agreement or not, and let him know the decision. I think the first copy of the agreement he sent me was mislaid. I wrote to him, and he sent me another copy. My recollection is, that I put the matter in your hands; that I referred him to you, and I don't think I saw him a second time. I recollect asking him what they would charge for the right of way in case the agreement should not be binding. He replied $7,000. It frightened me. I have seen the land in passing. Went over it once with Mr. Douglass, the Superintendent, and it is a rough piece of land. It would be well sold at $100
50 per acre. It had no value to cultivate.

Being cross-examined:

I was elected a member of the original company but did not serve. I attended one meeting for the purpose of declining. I never was a shareholder. I have got a recollection of three men coming to my office about this Stanley business, but the matter did not proceed far enough to be a negotiation. Something was said which touched their sensibilities or theirs, and the interview came to an end. I have forgotten what passed. I may have told them to go to the counsel. I don't think that I entered into any negotiation with these gentlemen. I think they said what their price was. 10

Being shown paper.

That is my handwriting I think that paper must have been written at the time these gentlemen were there. There was an explosion, and I sat down and wrote that paper saying what I would do.

Said paper offered in evidence, and marked as Exhibit D 1 for defendants.

Upon recollection there must have been two interviews with these gentlemen, at one of which I gave them this paper. I really don't know why that memorandum was not carried out. I once met your father and spoke about it. He said he was going to make arrangements to carry it out. 20

Sworn and subscribed before me this 7th day of July, A. D. 1880. } ABRAM S. HEWITT.

HENRY J. MILLS,
Master and Ex. in Chancery.

I certify the above to be the depositions taken before me in the above stated cause. 30

EXHIBIT D 1.

To arbitrate the value of the land taken by the R. R. from the Stanley Heirs, and the damages caused by the construction of the road, and the amount to be allowed for making and maintaining the fences. The arbitration to be upon the basis of the legal rights of the parties before any contract was made with the old company.

40

Taking of depositions and marking of Exhibits in the above stated cause, before me, Henry J. Mills, Master and Examiner in Chancery, at my office, No. 740 Broad Street, in the City of Newark, on this eighteenth day of September, A. D. eighteen hundred and eighty, in pursuance of notice given on the part of defendants, due service of which is acknowledged.

Present: MR. POTTS, for Def'ts.
Mr. PARKER, for Compl't.

50

James C. Stanley, a witness produced on the part of defendants, being duly sworn according to law, deposeth and saith:

I am one of the defendants in this case. I reside at Little Falls, Essex County. I am familiar with the contract made between the complainant and the defendants. I don't remember exactly the date of it. I can't remember the year. I think I drew it myself. Mr. Spaulding came to me with a contract which I refused to sign and I drew one. The Railroad Company took possession of the land immediately after making the contract.
10 They commenced work upon the land within a few days after it. They filled and cut on the land and laid down their track. They never made any other improvements there than was necessary for them in laying down their track—making their road bed. The companies which have since had the control of the road have made no other improvements there. They never built the fence which the contract provides for. My impression is, if my memory serves me right, it runs in my head that they told me to go on and build it and they would pay for it. I did build the fence. They never paid me for it.

20 Q. Mr Stanley, that contract was dated February 22, 1870; can you swear that the Railroad Company was in possession and their track laid down before the first day of September, of that year?

A. I cannot swear that they had the track laid. I can swear that they had possession of the land. My impression is that they had the road bed graded. The highway was built in the spring of the same year. I remember having the surveyors there when the snow was upon the ground. It seems to me it was that spring, I am not certain. It was before the cars ran. That road
30 was graded and worked after it was laid. That road was 66 feet wide, and about a half a mile long—more than a quarter. I should judge that there was about four acres of the lands of the defendants used in that road. That road was dedicated to the public in that spring, my impression is. Up to the time of the dedication to the public cost me seventy odd dollars for surveying and laying out. There were other expenses—fences on each side of it; part of the fences were built, and part were never built. The township graded and worked the road. The county built the bridge.

40 The heirs have demanded of the Company and the Receivers of the Railroad the fulfillment of this contract. We began to demand that the contract be carried out soon after the road was in operation. The time I don't remember. Those demands were frequently made. I think, yes, those demands were made from time to time of all the Companies and Receivers who have had charge of the road. I think I was the first one to make the request. Mr. Gow made request. I think my brother was with him on the occasion. Richard Speer made one request. I was there several times I made the first request of Spaulding. I
50 made the request of Burnam and Mr. Hewitt. I made the last

demand on the Company in the summer of 1879, I think. My requests were never acceded to. The Company have never performed any part of the contract. Not even made the fences.

At the time of making this contract farms were selling at $500 per acre, *bona fide* sales. In one case $18,000 was paid on a sale. Mr. Cisco sold 50 acres for $500 per acre, and got $18,000 down. I don't know that I had any offer, but I had a proposition from Mr. Spaulding who had been buying considerable land of this kind. 'Will you take $40,000 for your farm?"

The above proposition of Mr. Spaulding objected to. 10

Land there is not worth much if anything there now. It is hard telling the intrinsic value of land there now.

Q. Had this contract been carried out, how much did you expect to realize upon that farm?

Question objected to by complainant's counsel.

A. We expected that if the agreement had been carried out we would have realized as much as Mr. Spaulding spoke of—$40,000. It was the intention of the heirs to make the property saleable. 20

Objected to.

The stations on either side of the proposed station are about a half of a mile distant on either side. The stations proposed were one on the land bought of Mr. Cisco by John Linn and others, and the proposed station on our land. They would have been about a mile apart. I don't think the present stations at the Notch and at Cedar Grove were made by any contract with the land holders. I don't know.

30

Being cross-examined:

[Being shown map]—This is a rough sketch of our lands as near as I can make it.

Sketch offered in evidence, and marked X for complainants.

The land or farm is about 40 chains deep and 300 yards across. It is considerably higher in the rear, and runs up towards the Ridge. About one-ninth of it in the rear is wooded. About one-ninth of the farm is wood. We took the wood off where the railroad crosses. I cut it. The Company bought it, and never paid 40 for it. The surveyors allowed the heirs $75 for the land taken. The new road runs through Francisco to the Ridge Road. The front of the farm has been farmed. Some of it is farmed, and some has not been farmed for three or four years. We never made a deed to the Company. We never signed one. We never tendered one. The land by the road is about three-fourths of a mile from Little Falls. I don't know. It is about half a mile by the Peckham River road. When I went to Mr. Hewitt, I asked him, I think, what he meant to do about the depot and the settlement about the right of way. At the time Hobart was in possession, 50

we were trying to get the depot established there. It is rather a late day to ask for the depot. We have asked for a settlement since that.

Being examined re-direct:

Q. At the time you had the interview with Mr. Hewitt, did you demand that the station should be built, or damages, or both? A. Damages. I never had but one interview with Mr. Hewitt. He wanted to know what we wanted. He was very gruff. I gave 10 him the amount, and he wheeled upon his chair and said that if that was all we wanted he had nothing to do about it. It seems to me that I demanded $24,000. The amount was figured up. I did not demand a station at that time because the decline of the value of the property and the building of the other stations made the thing useless.

Q. Have the heirs ever been asked or given their consent to the acceptance of the land by either of the complainants since the first taking? A. Not to my knowledge.

Sworn and subscribed before me this 20 18th day of September, A.D. 1880. } JAMES C. STANLEY

HENRY J. MILLS,
Master in Chancery of N. J.

The respective counsel here stated their testimony to be closed.

I hereby certify the above to be the depositions taken by me in the above-stated cause. HENRY J. MILLS,
Sept. 18, 1880. *M. C. C.*

THE CHANCELLOR'S OPINION.

Filed June 1, 1881.

Bill for relief. On final hearing on pleadings and proof.

Mr. R. Wayne Parker for complainants.
Mr. Stacy G. Potts for defendants. 10

The Chancellor:

On the twenty-second of February, 1870, the following agreement was entered into by and between the Montclair Railway Company, then a corporation of this State, and the heirs of Henry Stanley, deceased:

"In consideration of the sum of one dollar to us in hand paid by the Montclair Railway Company, and in further consideration of the benefit to us of the location of a railway depot thereon, we (the heirs of Stanley), covenant and agree that we will grant, 20 convey and release to said company, by a good and sufficient warrantee deed, upon being paid therefor the sum of one dollar, and for the foregoing consideration, all that tract or parcel of land situated in the township of Little Falls and county of Passaic and State of New Jersey, bounded northeast by lands of Edward Francisco, southwest by lands of Joseph S. Bowden, northwest and southeast by lines parallel to and distant fifty feet at right angles from the located centre line of the railway of said company, containing two and one-half acres of land, also, an additional width of fifty feet on each side of said land, extending 30 northwestwardly to lands of Edward Francisco and lands of John H. and Cornelius N. Stanley, from a highway to be laid out across our lands and land of said Francisco from the Teckman river to the Bridge road; said company to make a lawful fence on each side of said lands and maintain the same. Said deed to be upon the condition that the said company shall establish a depot within two hundred feet from said highway to be opened by us, as soon as said railway shall be in operation to the Hudson river, or to any railway connecting with the Hudson river, and shall maintain the same for ten years thereafter. 40

"And upon the further conditions that said railway shall be begun within two months from this date, and completed so as to be in operation within two years thereafter; all wood and timber on said lands to be cut and reserved by us, and said company shall stop not less than four passenger trains daily each way, except Sundays, at said depot, provided that so many are run over said railway for way passengers; and we further agree that said company may enter upon our said lands, and commence the work of construction before the formal conveyance may be ex-
10 ecuted, they doing no unnecessary damage; and it is further agreed that if the above conditions are not complied with by the said railway company, that this agreement holds said company to all damages if not complied with as above specified."

Under the agreement the company at once entered into possession of the right of way over the strip of 100 feet and constructed its railroad upon it; and it and the corporations which have succeeded to its franchises and property have ever since had it in possession, and have made use of it as part of their railroad.

20 None of them has performed any of the conditions of the agreement, except, perhaps, that which required that the construction of the road be begun within two months from the date of the agreement.

In November, 1873, a foreclosure of a mortgage given by the Montclair Railway Company in 1870 on its property and franchises, was commenced in this court, and the mortgaged premises were sold under it, September 25th, 1875.

The association of the purchasers was incorporated on the second of October, 1875, as the Montclair & Greenwood Lake
30 Railway Company.

Under a foreclosure of a mortgage given by that company the franchises and property were again sold in October, 1878, and the purchasers were incorporated by the name of the New York & Greenwood Lake Railroad Company. That company is the complainant in this suit.

The heirs of Stanley, subsequently to the last mentioned incorporation, began an action of ejectment in the Supreme Court to recover possession of the property, and the complainant thereupon filed this bill praying an injunction to restrain them from
40 prosecuting that suit, and that they may be decreed to convey to

the complainant the land required for the railroad; the complainant tendering itself willing to carry out the contract, in all respects as it may be settled by this Court; or if it be decided that it is not entitled to the contract and that there has been a forfeiture thereof, on its part, from which this Court cannot relieve it, then that it may be decreed that the defendants convey on being paid such sum as this Court shall decide that they are entitled to, for the value of the right of way, and the use thereof by the complainant, since it took possession. The defendants have answered. They allege that the conditions mentioned in 10 the agreement have not been performed, and protest against a decree for specific performance, but declare their willingness to convey on receiving compensation for their land and damages assessed as of the date when the Montclair Railway Company went into possession, with interest from that time.

The question between the parties is whether the estimate of the value of the land and the assessment of damages should be made as of the time when the Montclair Railway Company took possession or the time when the complainant entered into possession. There has never been any conveyance of the land to any 20 of the companies, and none of them has ever had any legal title to it. They have all had possession as the complainant now has, but they have all held it subject to the right of the heirs to their damages. Not only was the right to a conveyance expressly subject by the agreement to and dependent on the performance of the conditions but the company thereby expressly agreed that it would pay the heirs their damages in case it should not perform the conditions. There is no allegation that there has been a waiver on the part of the defendants, nor is it claimed that they are estopped by their conduct and there is no 30 ground for a claim of either waiver or estoppel.

The circumstances would not warrant a decree of specific performance, and such a decree would be undesirable to the complainant as well as unjust to the defendants. The defendants plainly would have a legal right to recover the possession of their land against the Montclair Railway Company, and the complainant has no right superior to those which that company would have.

Whatever right in the premises the Montclair Railway Company and its immediate successer had passed to their mortgagees, 40

but those mortgagees obtained no right beyond that which the first named company had. The judicial sales under the foreclosure conferred no title to the defendants' land and the purchasers took possession of that land subject to the rights of the defendants. The defendants then stand before the Court with all their legal rights, and its aid is invoked to compel them to desist from the assertion of those rights on according to them—their full equitable rights instead thereof.

The fact that the public have an interest in the maintenance 10 of the railroad will not affect the question as to what are those equitable rights.

The public are not to be benefited or accommodated at the expense of the defendants; their land cannot be taken without their consent, for public use without just compensation.

If then the complainant occupies no better position than that which the party in whose place it stands would have occupied, it is plain that equity demands that the value of the land in question and the damages to the rest of the defendants' property by reason of the taking of the land, must be estimated as of the 20 time when the Montclair Railway Company entered into possession. The complainant has a right to equitable protection against the assertion of the defendants' legal right, to the same extent and on the same terms that the Montclair Railway Company would have been entitled to it but to no greater extent, and on no better terms.

The complainant must, in addition to the value of the land and the damages caused by the taking of it, pay also for making and maintaining the fence which under the agreement the Montclair Railway Company was bound to make and maintain, and 30 which was subsequently made by the defendants at the request of that company and on its promise to pay them for it; and it must pay the costs at law and of this suit.

In Chancery of New Jersey.

BETWEEN THE NEW YORK & GREENWOOD LAKE RAILROAD CO., *Complainant.* *and* THE HEIRS OF HENRY STANLEY, *Defendants.*	*On Bill, etc. Order of reference.*

10

This cause coming on to be heard at a regular term of this Court, upon pleadings and proofs, and the Chancellor being of opinion that the value of the land in question and the damages to the rest of the defendants' property by reason of the taking of the land must be estimated as of the time when the Montclair 20 Railway Company entered into possession; that the complainant has a right to equitable protection against the assertion of the defendants' legal rights to the same extent and on the same terms that the Montclair Railway Company would have been entitled to it, but to no greater extent and on no better terms. And the Chancellor being further of opinion that the complainant must, in addition to the value of the land and the damages caused by the taking of it, pay also for the making and maintaining of the fence which, under the agreement, the Montclair Railway Company was bound to make and maintain, and which was subse- 30 quently made by the defendants at the request of that company and on its promise to pay them for it.

It is now on this eleventh day of July, A. D. 1881, on motion of Stacy G. Potts, solicitor for said defendants, ordered that the matter be referred to John Hopper, Esq., one of the Masters of this Court, to take testimony, ascertain and report to the Court as to the following matters: The value of the land taken for its right of way and the damage done to the adjacent lands, and also the cost of making and maintaining the said fences; and the said Master is hereby directed to assess the above items of 40

value of land and damages as of the time when the land was taken by the Montclair Railway Company, and of cost of fence as of the time when the fence was made, and allow interest at the legal rate thereon from the times respectively to the date of his report; and that he return with his said report all depositions and other evidence taken before him in pursuance of this order.

THEODORE RUNYON,
Chancellor.

10

NOTICE OF APPEAL.

Filed Sept. 29, 1881.

The complainants hereby appeal from so much of the order of reference made in this cause, dated the eleventh day of July, eighteen hundred and eighty-one, as declares—

First—That the Master is thereby directed to assess the value of the lands taken as mentioned in said bill, and the damages done to the adjacent lands as of the time when the land was taken by the Montclair Railway Company, and of cost of fence as of
20 the time when the fence was made.

Second—That said Master shall allow interest at the legal rate thereon from those times respectively to the date of his report.

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

CORTLANDT & R. WAYNE PARKER,
Solicitors for said Complainants.
RICHARD WAYNE PARKER,
Of Counsel.

Dated September 23d, 1881.

30

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

RICHARD WAYNE PARKER,
Of Counsel.

PETITION OF APPEAL.

Filed Sept. 29, 1881.

The humble petition of the New York & Greenwood Lake Railway Company, the appellants in the above stated cause,
40 respectfully shows that your petitioners find themselves aggrieved

by an order of reference made in the Court of Chancery by His Honor Theodore Runyon, Chancellor of New Jersey, bearing date the eleventh day of July, eighteen hundred and eighty-one, in a cause wherein the said the New York & Greenwood Lake Railway Company were complainants and the said the heirs of Henry Stanley were defendants, in this respect, to wit: that the said order decrees—

First—That the Master is thereby directed to assess the value of the lands taken as mentioned in said bill and the damages done to the adjacent lands as of the time when the lands were taken by the Montclair Railway Company, and of cost of fence as of the time when the fence was made. 10

Second—That said Master shall allow interest at the legal rate thereon from those times respectively to the date of his report.

And your petitioners humbly appeal from that part of the said order of reference as orders as aforesaid, upon the ground that the same is erroneous for that the said Master should have been directed to assess the value of the lands taken, as mentioned in said bill, and of damages done to adjacent lands as of the time when said lands were first taken, possessed and enjoyed by the said the New York & Greenwood Lake Railway Company, and not when taken by the said the Montclair Railway Company, and of cost of fence as of the time when the said the New York & Greenwood Lake Railway Company actually entered into possession of the railway of said the Montclair Railway Company and lands of said heirs of Henry Stanley. 20

Second—That said Master should have been directed to allow interest at the legal rate thereon from the times last aforesaid respectively to the date of his report and not as directed in said order. 30

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

CORTLANDT & R. WAYNE PARKER,
Solicitors for Appellants.

RICHARD WAYNE PARKER,
Of Counsel. 40

Copy of Certificate of Organization.

To all whom these presents shall come:

Whereas the Legislature of the State of New Jersey by an act approved the eighteenth day of March, one thousand eight hundred and sixty-seven, did incorporate and constitute a corporation by the name of "The Montclair Railway Company," and by said act and certain other acts supplementary thereto, did authorize said corporation, among other things, to survey, lay out and construct a certain railway from the village of Montclair, in the township of Bloomfield, in the county of Essex, to the Hudson river at the Pavonia ferry, or at the Hoboken ferry, or between the said ferries, and to construct a branch thereof in said township, and to extend the said railway into the townships of Caldwell and Wayne, and also into the township of West Milford, said townships of Wayne and West Milford being in the county of Passaic, the latter extending to the boundary line of the State of New York; and said corporation was further empowered to make its bonds, and for the purpose of securing their payment, to mortgage its real estate and personal property, railway or railways, and all the appurtenances, franchises, powers, and privileges and rights belonging thereto which it might possess under its act of incorporation, and to sell or negotiate the same, and it was thereby enacted that the said bonds and mortgages so sold or negotiated shall be valid, and binding in law and equity, and that the purchaser or purchasers, under a decree in equity or foreclosure founded upon any such bonds or mortgages, should be invested with all the estate, rights, franchises, powers and privileges, which were, or might be conferred upon or possessed by said corporation, under or by virtue of its act of incorporation, and any supplements thereto, subject nevertheless to all restrictions, conditions and limitations contained therein.

And whereas the said corporation under and by virture of said powers, and in part execution thereof, did afterwards lay out and construct or enter upon the construction of a certain line of railway known as "The Montclair Railway," from the line of the State of New York, at or near Greenwood Lake, to the Hudson river, and also certain branches thereof, to wit, a branch called The Paterson Branch, extending from a point near the Hackensack river to a point in said railway in the township of Wayne, near Mead's Basin, and a branch called the Caldwell Branch of said Railway, extending from Montclair into the township of Caldwell.

And whereas the said corporation in further execution of its said powers, did, in order to raise means for the construction and maintenance of said Railway and branches, make its bonds, and make and execute a certain indenture of mortgage for the purpose of securing their payments, bearing date the first day of

September, one thousand eight hundred and seventy, said bonds being payable to bearer, and said mortgages to the said Abram S. Hewitt and Marcus L. Ward as Trustees, and thereby did mortgage the said line of Railway known and to be known as The Montclair Railway, as the same was then being and shall be constructed from the line of the State of New York, at or near Greenwood Lake, to the Hudson River, and also the branches thereof, to wit: The Paterson Branch, extending from a point near the Hackensack River to a point on said Railway in the township of Wayne, near Mead's 10 Basin, and the Caldwell Branch of said Railway, extending from Montclair into the township of Caldwell, including all the Railway ways, rights of way, depot grounds or other lands, all tracks, bridges, viaducts, culverts, fences and other structures, depots, station houses, engine houses, car houses, freight houses, wood houses, water stations and other buildings, and all machine shops, and all real or personal property held and acquired, or hereafter to be held or acquired by the said Company, its successors or assigns, for use in connection with the aforesaid Railway or branches, or with any part thereof in which the business 20 of the same, including all the locomotives, tenders, cars and other rolling stock or equipments, and all machinery, tools, implements, fuel and materials for operating, constructing, repairing and replacing the aforesaid Railway, and said branches or any part thereof, or of any of the equipments or appurtenances of the aforesaid Railway and branches, or any part thereof, and all machinery of all kinds, and all and singular the other personal property of any nature, kind and description whatever belonging to the said corporation, wheresoever the same might be situated, all of which personal chattels were thereby declared and agreed 30 to be fixtures and appurtenances of the said Railway and branches, and were to be used and sold therewith, and not separate therefrom, and were to be taken as part thereof, and all tolls, incomes, issues and profits to be had or derived from the same or any part or portion thereof, and all right to receive or recover the same, and also all franchises connected with or relating to the aforesaid Railway and said branches, or to the construction, maintenance and use of the same.

And whereas afterwards and on or about the seventeenth day of November, one thousand eight hundred and seventy-three, the 40 said Abram S. Hewitt and Marcus L. Ward as Trustees, exhibited their Bill of Complaint in the Court of Chancery of New Jersey against the said The Montclair Railway Company, Elias N. Miller, Conrad N. Jordan and Mason Lewis, Receivers thereof, and others as defendants, and suit proceedings were therefrom afterwards had in said suit; that the said Court of Chancery, on or about the nineteenth day of June, in the year one thousand eight hundred and seventy-five, among other things did decree that the said Railway premises and property, real and personal, together with the franchises, rights and privileges 50

aforesaid, by the terms and description above contained and set forth, should be sold together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also the estate, right, title, interest, use, property, claim and demand of the defendants in said said suit of into and act of the same, raise, pay and satisfy unto the said complainants, the sum of two million eighty-one thousand four hundred and four dollars and fifty cents,
10 in gold, due for principal and interest on the bonds and coupons issued after said mortgage, together with lawful interest thereon, to be computed from the twenty-fifth day of April, eighteen hundred and seventy-five, until the same should be paid and satisfied, and also the costs of the said complainants, and that for that purpose a writ of fieri facias should issue, directed to William Paterson, Esq., one of the Masters of this Court, commanding him to make sale as aforesaid, as by the record of said decree will more fully appear.

And whereas afterwards on the twenty-fifth day of September,
20 in the year one thousand eight hundred and seventy-five, a writ of fieri facias as aforesaid having theretofore been duly issued upon said decree, and delivered to said William Paterson, Master, as aforesaid, and sale thereunder having been by him duly advertised according to take place at Taylor's Hotel, in Jersey City, he, the said Master, duly sold the said property, real and personal, railway branches premises and franchises, with the appurtenances, unto the said Abram S. Hewitt and Marcus L. Ward, Trustees, and afterward, on the twenty-seventh day of said September, he, the said Master, by a
30 certain indenture of conveyance of that date, did convey, assure and assign unto the said Abram S. Hewitt and Marcus L. Ward, Trustees, their heirs and assigns, all and singular tbe property, real and personal, railways, branches, premises and franchises aforesaid, as by reference to said indenture, the same being actually delivered on the second day of October, one thousand eight hundred and seventy-five, will more fully appear.

And whereas afterwards on said second day of October, one thousand eight hundred and seventy-five, they, the said purchasers, Abram S. Hewitt and Marcus L. Ward, did by a cer-
40 tain written instrument of that date, and for the purpose of forming a new corporation, associate with themselves in such purchase the persons following, viz: Jacob F. Randolph, Stephen W. Cary, Smith Ely, Jr., William H. Power, John E. DeWitt, Uri Gilbert, Conrad N. Jordan, Elisha A. Packer, William B. Leonard, Jacob de Neufville, J. Wyman Jones, James Yereance, Michael A. Myers, Charles L. Perkins and Richard B. Ferris, being persons for and on whose account such railroad and property were purchased and designated for such association by divers other persons for and on whose account such railroad was
50 purchased.

And whereas by means of the premises, and by force of the statutes in such case made and provided, the persons for and on whose account such purchase was made, became and were thereby constituted a body politic and corporate, and were vested with all the right, title, interest, property, possession, claim and demand in law and equity of, in and to said Railroad, with its appurtenances, with all the rights, powers, immunities, privileges and franchises of the said The Montclair Railway Company, which have been conferred or granted by statutes in force at the time of such sale and conveyance. 10

And whereas, thereupon, in conformity with the statutes in such case made and provided, on the eleventh day of October, one thousand eight hundred and seventy-five, public notice was given of a meeting of the persons, for or on whose account the said railroad was purchased, on the twenty-fifth day of October, one thousand eight hundred and seventy-five, at three o'clock P. M., being within thirty days after said conveyance was delivered by said Master, under and by virtue of said process and decree, at the office of Parker & Keasbey, at number 750 Broad street, in the city of Newark, which is and was the County town of the 20 County of Essex, one of the counties through which the said Railroad runs, for the purpose of organizing said new corporation, by electing a President and Board of six Directors, to continue in office until the first Monday of May, A. D. 1876, to adopt a corporate name and seal, determine the amount of capital stock thereof, and otherwise to conform to the provisions of the statutes regulating such organization, which said notice was given by publication at least once a week for two weeks prior to the time therein mentioned in at least one newspaper published in each of the counties in and through which said Railroad runs, to 30 wit, in the Newark Daily Courier, a newspaper published in the County of Essex ; in the Paterson Daily Press, a newspaper published at Paterson, in the County of Passaic ; in the Evening Journal, a newspaper published of Jersey City, in the County of Hudson ; in the Morris Republican, a newspaper published at Morristown, in the County of Morris ; in the New Jersey Republican, a newspaper published at Hackensack, in the County of Bergen.

And thereupon a meeting of the persons aforesaid was convened on the day and at the time and place mentioned in said notice, 40 to wit, the twenty-fifth day of October, 1875, at 3 o'clock P. M., at the office of Parker & Keasbey, 750 Broad street, Newark, Essex County, New Jersey, as follows : The meeting was called to order by the said Abram S. Hewitt, one of the said Trustees. On motion, William B. Leonard was chosen Chairman, and Richard B. Ferris appointed Secretary of said meeting. It was thereupon resolved that the meeting proceed to organize such corporation aforesaid by the election of a President and Board of Directors, to continue in office until the first Monday of May, one thousand eight hundred and seventy-six ; that such 50

election be by ballot, and that Willard Richards and William O. McDowell be appointed to receive and count the ballots on such election.

Thereupon an election was so held, and said William O. McDowell and Willard Richards having duly counted the ballots voted, reported that ten ballots had been cast for Directors, as follows :

For Richard B. Ferris, ten ; For J. Wyman Jones, ten ;
For Jacob De Neufville, ten ; For Smith Ely, Jr., ten ;
For Charles L. Perkins, ten ; For Michael A. Myers, ten ;

and that said votes represented the interest of all persons for whom and for whose account said railway was purchased. And thereupon the following persons, to wit, Jacob De Neufville, Michael A. Myers, Richard B. Ferris, Charles L. Perkins, J. Wyman Jones Smith Ely, Jr., were declared duly elected Directors as aforesaid, having each received a majority of the ballots cast at such election. Said William O. McDowell and Willard Richards also reported that there had been cast for President ten ballots, of which Jacob F. Randolph had received ten, being a majority, whereupon said Jacob F. Randolph was declared duly elected President as aforesaid. It was thereupon resolved that the following be adopted as the corporate name of said corporation, to wit : "The Montclair and Greenwood Lake Railway Company."

A seal being presented—was thereupon resolved that the same be adopted as the corporate seal of said corporation, being as follows, that is to say,

THE MONTCLAIR & GREENWOOD LAKE RAILWAY CO.
Picture of a Locomotive in the centre.
1875.

It was thereupon resolved that the amount of capital stock of said corporation, "The Montclair and Greenwood Lake Railway Company," shall be three millions, five hundred thousand dollars, divided into seventy thousand shares of fifty dollars each, and that certificates therefor be made and issued according to law to the persons for and for whose account the purchase of said railway property and franchises was made, to the amount of their respective interests.

It was further resolved that this corporation will issue mortgage bonds, to be called first mortgage construction bonds, secured by a lien upon the entire property of the company for seven hundred thousand dollars, bearing seven per cent. interest, with half yearly coupons, the proceeds of which shall be ap-

plied to complete the railroad to Greenwood Lake and Caldwell, equip it, and pay for right of way, and for such other purposes as the directors may find for the interests of the said new company; but no more of these bonds to be issued than absolutely necessary.

It was further resolved, That this corporation will issue mortgage bonds for one million, eight hundred thousand dollars, bearing seven per cent. interest, with half yearly coupons to the present first mortgage bondholders; coupons for the first five years, to be payable in scrip or bonds at the discretion of the 10 directors, and not in cash, unless the road earns sufficient profits above expenses, and as a collateral protection for said bonds, will issue part of said capital stock, to wit: eighteen hundred thousand dollars, to be held by the trustees of said bonds in trust for the present first mortgaged bondholders; upon which each of said bondholders shall be entitled to vote at all elections for said new company in proportion to his then ownership of bonds; an executive committee of five, duly chosen by the Board of Directors from their own number, shall cast the vote for all said bondholders who shall neglect to vote at any such election The 20 holders of said stock shall have no other force or effect than as collateral to said bonds, except as aforesaid; that is to say, to draw no dividends; the remainder of said stock to be preferred in that regard.

It was further resolved, That from the remainder of said capital stock resolved upon, shall be issued stock for all the past due, and maturing coupons of the present first mortgage bonds to the date of foreclosure sale, that is to say, the twenty-fifth day of September last, and for the principal of the present second mortgage bonds to the holders of said coupons and bonds 30 respectively.

It was further resolved, That no bonds or stocks be actually issued to any of the said first mortgage bondholders, until payment by them of such lawful assessment as has been made by the trustees upon them respectively, such payment to entitle the party making the same to an interest in first mortgage construction bonds aforesaid, to its amount.

The proofs of due publication of the notices of this meeting required by the statutes were laid before the meeting, and ordered to be filed. 40

Counsel presented a certificate of the organization, which being read was approved, and order made that the President sign the same, affix the corporate seal thereto, and file it without delay, according to law.

And thereupon said meeting adjourned.

Now therefore be it known to all persons whom it may concern, that in pursuance of the statutes in such case made and provided, the said corporation so as aforesaid organized, doth hereby certify under its common seal, attested by the signature of its President. 50

I. That the date of its organization is this twenty-fifth day of October, one thousand, eight hundred and seventy-five.

II. That the name of said corporation adopted by it is " The Montclair and Greenwood Lake Railway Company."

III. That the amount of its capital stock is three millions, five hundred thousand dollars, divided into shares of fifty dollars each.

IV. That the name of its President is Jacob F. Randolph.and the names of its Directors are respectively as follows, to wit :
10 Jacob De Neufville, Michael A. Myers, Richard B. Ferris, Charles L. Perkins, J. Wyman Jones, Smith Ely, Jr.

In witness whereof the said " The Montclair and Greenwood Lake Railway Company " hath hereto set its common seal, which is hereby attested by the signature of its President, the twenty-fifth day of October, one thousand, eight hundred and seventy-five.

[Attest] JACOB F. RANDOLPH,

|SEAL.| *President.*

New York and Greenwood Lake Railway Company.

To all to whom these presents shall come:

Whereas, heretofore, to wit, on the twenty-fifth day of October, one thousand eight hundred and seventy-five, by and under the laws of the State of New Jersey, a certain corporation was organized, bearing the corporate name of "The Montclair and Greenwood Lake Railway Company," having all the power and authority belonging to a corporation theretofore subsisting and known as "The Montclair Railway Company," and created by an act of the Legislature of New Jersey, approved the eighteenth day of March, one thousand eight hundred and sixty-seven, to make, construct and operate a certain line of railway and branches in said act and certain acts supplementary thereto described, as in and by the certificate of organization of said "The Montclair and Greenwood Lake Railway Company," bearing date the said twenty-fifth day of October, one thousand eight hundred and seventy-five, and filed in the office of the Secretary of State of New Jersey, will fully and at large appear.

And whereas, the said The Montclair and Greenwood Lake Railway Company, in execution of its powers, did, in order to raise money to complete the railroad of said company to Greenwood Lake and Caldwell, equip it, and pay for right of way, and for such other purposes as the directors of said corporation might find for the interests of the said new company, make its bonds to the amount, in all, of seven hundred thousand dollars, and did make and execute a certain indenture of mortgage, for the purpose of securing their payment,

bearing date the first day of December, one thousand eight hundred and seventy-five, said bonds being payable to bearer and said mortgage to Amzi Dodd and George Walker, as trustees, and thereby did mortgage all the franchises, privileges and property formerly of the Montclair Railway Company, and then of the Montclair and Greenwood Lake Railway Company, and all franchises, privileges and property of said last named company, whether or not derived from said Montclair Railway Company, including all lands, tenements, hereditaments, ways and other easements, leases, goods, chattels and choses in action, and all property, real and personal, legal and equitable, in possession, and in action, franchises and privileges now vested in or held by the said company, or thereafter to be acquired by them wheresoever and whatsoever, and especially all that certain the line of railway known theretofore as the Montclair Railway, as the same was then being and should be constructed, from the line of the State of New York, at or near Greenwood Lake, to the Hudson river, and also the branches thereof, to wit, the Paterson branch, extending from a point near the Hackensack river to a point on the said railway, in the township of Wayne, near Mead's basin, and the Caldwell branch of said railway, extending from Montclair into the township of Caldwell, including all the railway, ways, rights of way, depot grounds or other lands, all tracks, bridges, viaducts, culverts, fences and other structures, depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, water stations and other buildings, and all machine shops, and all real or personal property held and acquired, or hereafter to be held or acquired, by the said company, its successors or assigns, for use in connection with the aforesaid railway and branches, or with any part thereof, in which the business of the same, including all the locomotives, tenders, cars and other rolling stock or equipments, and all machinery, tools, implements, fuel and materials for operating, constructing, repairing and replacing the aforesaid railway and said branches, or any part thereof, or of any of the equipments or appurtenances of the aforesaid railway and branches, or

any part thereof, and all machinery of all kinds, and all and singular the other personal property, of any nature, kind and description whatever, belonging to the said corporation, wheresoever the same might be situate, all of which personal chattels were thereby declared and agreed to be fixtures and appurtenances of the said railway and branches, and were to be used and sold therewith, and not separate therefrom, and were to be taken as part thereof, and all tolls, incomes, issues and profits to be had or derived from the same, or any part or portion thereof, and all right to receive or recover the same, and also all franchises connected with or relating to the aforesaid railway and said branches; or to the construction, maintenance and use of the same.

And whereas, afterwards, and on or about the twenty-eighth day of December, one thousand eight hundred and seventy-seven, the said Amzi Dodd and George Walker, as trustees, exhibited their bill of complaint in the Court of Chancery of New Jersey, against the said the Montclair and Greenwood Lake Railway Company, Garret A. Hobart, receiver thereof, J. Wyman Jones, trustee, Michael A. Myers, trustee, Robert Beattie, Robert Beattie, Jr., William Beattie and others, as defendants, and such proceedings were thereupon had afterwards in said suit, that the said Court of Chancery, on or about the twenty-fourth day of May, in the year one thousand eight hundred and seventy-eight, among other things, did decree that the said railway premises and property, real and personal, together with the franchises, rights and privileges aforesaid, by the terms and description above contained and set forth, should be sold, together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also the estate, right, title, interest, use, property, claim and demand of the defendants in said suit of, into and out of the same, to raise, pay and satisfy certain sums of money due to the complainants and defendants, to wit: in the first place, the sum of eighteen thousand three hundred and fifty-six dollars eighty-one cents, due on the claims for labor mentioned in the

master's report in said cause, with interest; and in the second place, such amount as should be due at the time of sale on receivers' certificates and notes issued under orders in said cause; and in the third place, to raise and pay into the court the sum of eight thousand dollars, to be used in paying the complainant's trustees their reasonable costs and expenses, including counsel fees, and also the sum of seven hundred and fifty-six thousand dollars and seventy-seven cents, due on bonds secured by the mortgage of the complainants, with interest thereon from the eighth day of May, eighteen hundred and seventy-eight; and in the fourth place, to raise and pay unto William B. Leonard, George B. Vanderpoel, and Gardner P. Lloyd, trustees, the sum of one million nine hundred and thirty-four thousand five hundred and ten dollars and thirty-two cents due and accrued on bonds secured by the second mortgage given by said company, with interest.

And whereas, afterwards, on the fifth day of June, one thousand eight hundred and seventy-eight, a writ of *fieri facias*, as aforesaid having theretofore been duly issued upon said decree and delivered to said William Paterson, master as aforesaid, and sale thereunder having been by him duly advertised according to law to take place on that day, at the hour of two o'clock in the afternoon, at Taylor's Hotel, in Jersey City, he, the said master, duly sold the said property, real and personal, railway, branches, premises and franchises with the appurtenances, unto Abram S. Hewitt, Cyrus W. Field and John B. Dumont, and afterwards, on the ninth day of October, one thousand eight hundred and seventy-eight, he, the said master, by a certain indenture of conveyance, did convey, assure and assign unto said Abram S. Hewitt, Cyrus W. Field and John B. Dumont, in trust, as joint tenants and not as tenants in common, their heirs and assigns, all and singular the property, real and personal, railway, branches, premises and franchises aforesaid, as by reference to said indenture, the same being dated the fifth day of October, one thousand eight hundred and seventy-eight, but being actually delivered on said ninth day of October, will more fully appear. And whereas, afterwards, on said ninth day of October, one

thousand eight hundred and seventy-eight, they the said purchasers, the said Abram S. Hewitt, Cyrus W. Field and John B. Dumont, did by a certain written instrument of that date and for the purpose of forming a new corporation, associate with themselves in such purchase the persons following, viz.: Cortlandt Parker, R. Wayne Parker, Charles L. Perkins, Edward Livingston, Henry A. V. Post, Smith Ely, Jr., Edward Cooper, James Hall, Charles Hewitt, William C. Sheldon, Daniel A. Lindley, Edward K. Goodenow, Frederick J. Stone, Edmund H. Miller, George J. Rice—being persons for and on whose account such railroad and property real and personal, and designated for such association by divers other persons for and on whose account such railroad was purchased.

And whereas, by means of the premises and by force of the statutes in such case made and provided, the persons for and whose account such purchase was made became and were thereby constituted a body politic and corporate, and were vested with all the right, title, interest, property and possession, claim and demand in law and equity of, in and to said railroad with its appurtenances, with all the rights, powers, immunities, privileges and franchises of the said, The Montclair and Greenwood Lake Railway Company, which have been conferred or granted by statutes in force at the time of such sale and conveyance.

And whereas, thereupon, in conformity with the statutes in such case made and provided, on the sixteenth day of October, one thousand eight hundred and seventy-eight, public notice was given of a meeting of the persons for or on whose account the said railroad was purchased, on the thirtieth day of October, one thousand eight hundred and seventy-eight, at two o'clock P. M., being within thirty days after said conveyance was delivered by said master, under and by virtue of said process and decree, at Taylor's Hotel, in the city of Jersey City, in the county of Hudson, which is and was the county town of one of the counties through which the said railroad runs, for the purpose of organizing said new corporation, by electing a president and board of nine direc-

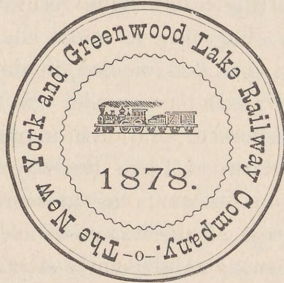
tors, to continue in office until the first Monday in May, succeeding such meeting, to adopt a corporate name and seal, determine the amount of capital stock thereof, and otherwise to conform to the provisions of the statutes regulating such organization, which said notice was given by publication at least once a week, for two weeks prior to the time therein mentioned, in at least one newspaper published in each of the counties in and through which said railroad runs, to wit, in the Newark Daily Advertiser, a newspaper published in the county of Essex; in the Paterson Daily Press, a newspaper published at Paterson, in the county of Passaic; in the Evening Journal, a newspaper published at Jersey City, in the county of Hudson; in the Morristown Jerseyman, a newspaper published at Morristown, in the county of Morris, as to the parties so convened fully appears. And thereupon a meeting of the persons aforesaid was convened on the day and at the time and place mentioned in said notice, to wit, the thirtieth day of October, one thousand eight hundred and seventy-eight, at two o'clock P. M., at Taylor's Hotel, in Jersey City, and proceedings were thereupon had as follows: The meeting was called to order by Cyrus W. Field, one of the said purchasers. On motion, Smith Ely, Jr., was chosen chairman, and William L. Raymond appointed secretary of said meeting. It was thereupon resolved that the meeting proceed to organize such corporation aforesaid, by the election of a president and board of directors, to continue in office until the first Monday of May, one thousand eight hundred and seventy-nine; that such election be held by ballot, and that Daniel A. Lindley and R. Wayne Parker be appointed to receive and count the ballots on such election.

Thereupon, an election was so held, and said Daniel A. Lindley and R. Wayne Parker having duly counted the ballots voted, reported that ballots had been cast for directors as follows:

For Abram S. Hewitt, thirteen; for Samuel J. Tilden, thirteen; for Cyrus W. Field, thirteen; for Hugh J. Jewett, thirteen; for Smith, Ely, Jr., thirteen; for Bird W. Spencer, thirteen; for George J. Rice, thirteen; for Cortlandt Parker,

thirteen; for Edwin D. Morgan, thirteen; and that no ballots were cast for any other person; and that said votes represented the interest of all persons for whom and for whose account said railway was purchased. And thereupon the following persons, to wit, Abram S. Hewitt, Cyrus W. Field, Smith Ely, Jr., George J. Rice, Samuel J. Tilden, Hugh J. Jewett, Bird W. Spencer, Cortlandt Parker, and Edwin D. Morgan, were declared duly elected directors as aforesaid, having each received a majority of the ballots cast at such election. Said Daniel A. Lindley and R. Wayne Parker also reported that there had been cast for president, thirteen ballots, of which Abram S. Hewitt had received thirteen, being a majority, whereupon said Abram S. Hewitt was declared duly elected president as aforesaid. It was thereupon resolved that the following be adopted as the name of said corporation, to wit, "The New York and Greenwood Lake Railway Company."

A seal being presented, it was thereupon resolved that the same be adopted as the corporate seal of said corporation, being as follows, that is to say:



It was thereupon resolved that the amount of capital stock of said corporation shall be one million of dollars, divided into twenty thousand shares, of fifty dollars each, and that certificates therefor be made and issued, according to law, to the persons for whom and for whose account the purchase of said railway property and franchises was made, to the amount of their respective interests.

It was further resolved, as a condition of the organization thereof, that bonds shall be issued by said corporation, to

such amount as shall, in all, be equal to the principal and interest due upon the existing first mortgage bonds issued by the Montclair and Greenwood Lake Railway Company, and of the amount of cash paid under the assessment authorized and agreed upon by the purchasing bondholders, according to the "Plan of Re-organization" of said company—a copy whereof is hereto annexed, and forms part hereof—that is to say, five per cent. on the principal amount of bonds, whether first or second mortgage, belonging to holders who assented to such plan, and which were deposited with the purchasing committee. Such bonds shall be conditioned to pay the principal thereof in thirty years after their date and interest thereon at six per centum half-yearly, on the first days of October and April, out of the earnings of said road: but with the proviso, nevertheless, that no more interest shall be paid by virtue thereof than shall be certified by a vote of a majority of the board of directors for the time being to have been by said corporation earned over and above expenses, including necessary repairs, during the six months ending one month before such time fixed for such half-yearly payments, or shall theretofore have accumulated during the current year, so as altogether to make enough to pay at the rate of six per cent. per annum, and, in default of such certificate, no interest shall be payable. Said bonds shall be issued to the depositors of said first mortgage bonds of the Montclair and Greenwood Lake Railway Company, and to the parties paying assessments as aforesaid, and shall be secured by a mortgage of the franchises and all the property of said company then or subsequently acquired. It shall be incorporated in said bond or mortgage, or both, that the holders thereof shall have and exercise the right of voting at all meetings of stockholders of said corporation, either for election or other purposes, such voting to be either in person or by proxy, and such persons to cast as many votes in right of their said bonds as they would be entitled to cast if holders of stock of par value equal to the amount thereof; and the production of their bonds shall be evidence of their right. And it shall further therein be provided, that if at

any such meeting any holder of any such bond shall not in person or by proxy cast any vote, the board of directors for the time being, or a committee thereof for that purpose by them previously appointed, shall be regarded as being by virtue hereof and thereof constituted his proxy, and shall cast his vote. Said bonds shall be called "First Mortgage Bonds," and said mortgage the first mortgage of said company.

It was further resolved, as a condition of the organization of said company, that bonds to the amount of eighteen hundred thousand dollars shall be issued by said corporation as a second class of securities; such bonds shall be also payable in thirty years, and shall be respectively conditioned in like manner as the class last above named—that is to say, to pay such interest if as aforesaid certified to have been earned and to remain after paying all said expenses, including six per cent. interest, in any one year, on the "First Mortgage Bonds," but the holder of said bonds, in this resolution provided for, shall not possess any right of voting as aforesaid. Said last mentioned bonds constituting as aforesaid the "second class" of securities, shall be issued to parties holding the present second mortgage bonds of the Montclair and Greenwood Lake Railway Company, and shall be secured by mortgages of said franchises and property, but subject to the aforesaid "First Mortgage" and the bonds thereby secured; and said last mentioned bonds shall be called "Second Mortgage Bonds," and the mortgage to secure the same the "Second Mortgage" of said company. Provided always, and it was further resolved, declared and agreed, that as said first mortgage bonds are respectively issued, the stock, to an equal amount held by the parties who shall receive said bonds, shall be surrendered, canceled and annulled. Provision shall also be made in such "First Mortgage," securing to the majority in interest of the second mortgage bondholders the right, by vote, to determine and to pay off and discharge the "First Mortgage Bonds" at any time before maturity, or at their option to take an assignment thereof at the rate of one hundred and five per

cent. and interest, such payment or assignment to be of all said first mortgage bonds at the same time.

It was further resolved that the bonds secured by said first and second mortgages, and the certificates of stock to be given and issued, shall each contain provisions by means whereof the holders thereof shall assent to the rights secured said first mortgage bondholders as hereinbefore set forth.

It was further resolved that should the directors for the time being of said new company at any time deem it expedient that the same should promote the construction of an extension of their railroad beyond either of its present termini by some corporation or corporations, now or hereafter existing, and that it should lease the franchises and railroad of such other corporation, or lease its own franchises and road to such corporation, or in any other manner cause the consolidation of such other corporation with said company, it shall be lawful for said directors, first obtaining the consent, in writing, of a majority in interest of the then holders of the said first mortgage bonds, and not otherwise, by guarantee of mortgage bonds issued by said other corporation, or in such other manner as counsel may suggest and advise to aid in and promote such construction.

It was further resolved that the rights of such holders of the existing first mortgage bonds of the Montclair and Greenwood Lake Railway Company as have declined or neglected to deposit their bonds to pay the assessment aforesaid hereinbefore mentioned, shall enure *pro ratâ* to the first mortgage bondholders who have assented to said plan of re-organization, and shall elect to avail themselves of the privilege, after notice thereof from said company by letter addressed to them through the post-office at their last place of residence, or personally to them delivered; and that the rights of such holders of the existing second mortgage bonds of said Montclair and Greenwood Lake Railway Company as have declined or neglected to deposit their bonds and pay the said assessment, shall enure *pro ratâ* to the second mortgage bondholders who assent to this plan, and who may elect to avail themselves of

the privilege, after notice thereof given as aforesaid. After such notice the rights of such bondholders as shall have so declined and neglected, in default of any election as aforesaid, shall enure to such person or persons as the board of directors of said company shall designate.

The proofs of due publication of the notices of this meeting required by the statutes were laid before the meeting and ordered to be filed.

Counsel presented a certificate of the organization, which, being read, was approved, and order made that the president sign the same, affix the corporate seal thereto and file it without delay, according to law.

Order was likewise made that this certificate shall be signed by all the stockholders for the time being of such corporation, that is to say, by the persons hereinbefore named.

And thereupon said meeting adjourned.

Now therefore be it known unto all persons whom it may concern, that in pursuance of the statutes in such case made and provided, the said corporation so as aforesaid organized, doth hereby certify under its common seal, attested by the signature of its president:

I. That the date of its organization is this thirtieth day of October, one thousand eight hundred and seventy-eight.

II. That the name of said corporation adopted by it is, "The New York and Montclair Railway Company."

III. That the amount of its capital stock is one million of dollars, divided into shares of fifty dollars each.

IV. That the name of its president is Abram S. Hewitt, and the names of its directors are as follows: Abram S. Hewitt, Cyrus W. Field, Smith Ely, Jr., George J. Rice, Samuel J. Tilden, Hugh J. Jewett, Bird W. Spencer, Cortlandt Parker, Edwin D. Morgan.

In witness whereof the said "The New York and Greenwood Lake Railway Company" hath hereto set its common seal, which is hereby attested by the signature of its president, and likewise by all the stockholders of said corporation

for the time being, this thirteenth day of October, in the year one thousand eight hundred and seventy-eight.

[L. S.] ABRAM S. HEWITT,
President.

SMITH ELY, Jr.,
CYRUS W. FIELD,
D. A. LINDLEY,
WM. C. SHELDON,
H. A. V. POST,
J. B. DUMONT,
E. LIVINGSTON,
FREDERICK J. STONE,
JAS. HALL,
EDMUND H. MILLER,
RICHARD WAYNE PARKER,
ABRAM S. HEWITT,
CORTLANDT PARKER,
E. K. GOODNOW,
GEO. J. RICE,
EDWARD COOPER,
CH. PERKINS,
CHAS. HEWITT,
Stockholders.

Plan of Reorganization of the Montclair and Greenwood Lake Railway Company.

ADOPTED AND RECOMMENDED BY THE JOINT COMMITTEES REPRESENTING THE FIRST AND SECOND MORTGAGE BONDHOLDERS, APPOINTED JULY 17TH, 1878, AT THEIR ADJOURNED MEETING, HELD THIS 22D DAY OF AUGUST, 1878.

First.—The sale advertised for August seventeenth, one thousand eight hundred and seventy-eight, and adjourned to August twenty-fourth, one thousand eight hundred and seventy-eight, under the proceedings to foreclose the first mortgage, to take place at that time or as soon thereafter as may be practicable, and the property of the said railway company to be purchased in behalf of such first and second mortgage bondholders as shall assent to this plan, by a purchasing committee to consist of Cyrus W. Field, Abram S. Hewitt, John B. Dumont,

unless in the judgment of said committee the sum bid by other parties shall exceed the fair value of the property; in which case said committee shall be authorized to allow the purchase by said other parties, and this agreement with second mortgage bondholders shall be void and of no effect, and the assessments paid by virtue hereof shall be returned.

Second.—In order to provide the means required to make the purchase, to defray the expenses of the foreclosure, to discharge the receiver's certificates, and to remove all liens on the road prior to the first mortgage, the bondholders, whether first or second mortgage, who assent hereto, shall sign their said assent, shall deposit their bonds with the purchasing committee, and shall pay an assessment in cash of five per cent. on the principal amount thereof on or before the *tenth day of September, one thousand eight hundred and seventy-eight.*

And no bondholder shall have the right to share in such purchase who shall not sign such assent and make such payment before said time.

Third.—Upon the purchase of the said property by said purchasing committee they shall immediately proceed to organize a new corporation according to the laws of New Jersey, with a capital stock not to exceed one million dollars, to be apportioned among the parties depositing bonds, and others, after the following manner, that is to say: Such persons as deposit first mortgage bonds of the Montclair and Greenwood Lake Railway Company, or acquire the rights of holders not depositing their bonds in manner hereafter provided, to receive stock whose par value shall be equal to the amount of principal and interest due thereon. The remainder of said stock to be distributed and issued to the present stockholders after the rate of ten dollars to each one hundred dollars by them holden.

Fourth.—As soon as such company is organized (and it shall be a condition of the organization thereof,) two classes of mortgages and bonds shall be made and issued, viz.:

1. Bonds to such amount as shall in all be equal to the principal and interest due upon the existing first mortgage bonds and of the amount of cash paid under the assessment hereby authorized and agreed upon. Such bonds shall be conditioned to pay the principal thereof in thirty years after their date, and interest thereon at six per cent. per annum half yearly, on the first days of October and April, out of the earnings of said road; but with the proviso, nevertheless, that no more interest shall be payable by virtue thereof, than shall be certified by a vote of a majority of the board of directors for the time being, to have been by said corporation earned over and above expenses, including necessary repairs, during the six months ending one month before such time fixed for such half yearly payments, or shall theretofore have accumulated during the current year, so as altogether to make enough to pay at the rate of six per cent. per annum, and in default of such certificate, no interest shall be payable. Said

bonds shall be issued to the depositors of said first mortgage bonds of the Montclair and Greenwood Lake Railway Company, and to the parties paying assessments as aforesaid, and shall be secured by a mortgage of the franchises, and all the property of said company then or subsequently acquired. It shall be incorporated in said bonds, or mortgage constituting said first-class of securities, or both, that the holders thereof shall have and exercise the right of voting at all meetings of stockholders of said corporation, either for election or other purposes, such voting to be either in person or by proxy; and such persons to cast as many votes in right of their said bonds as they would be entitled to cast if holders of stock of par value, equal to the amount thereof; and the production of their bonds shall be evidence of their right. And it shall further therein be provided that if, at any such meeting, any holder of any such bond shall not, in person or by proxy, cast any vote, the board of directors for the time being, or a committee thereof for that purpose, by them previously appointed, shall be regarded as being, by virtue hereof and thereof, constituted his proxy, and shall cast his vote. Said bonds shall be called "first mortgage bonds," and said mortgage, the "first mortgage" of said company.

2. Bonds to the amount of eighteen hundred thousand dollars; such bonds shall be also payable in thirty years, and shall be respectively conditioned in like manner as the class last above named, that is to say, to pay such interest if as aforesaid certified to have been earned, and to remain after paying all said expenses, including six per cent. interest in any one year, on the "first mortgage bonds," but the holders of said bonds in this paragraph provided for, shall not possess any right of voting as aforesaid. Said last-mentioned bonds shall be issued to parties holding the present second mortgage bonds of the Montclair and Greenwood Lake Railway Company, and shall be secured by mortgage of said franchises and property, but subject to the aforesaid "first mortgage," and the bonds thereby secured; and said last-mentioned bonds shall be called "second mortgage bonds,"

and the mortgage to secure the same, the "second mortgage" of said company.

Provided always, and it is hereby declared and agreed that, as said first mortgage bonds are respectively issued, the stock, to an equal amount held by the parties purchasing who shall receive said bonds, shall be surrendered, canceled, and annulled. Provision shall also be made in such "first mortgage," securing to the "second mortgage" bondholders the right to pay off and discharge the first mortgage bonds at any time before maturity, at the rate of one hundred and five per cent. and interest, or, at their option, to take an assignment thereof.

It is further provided that the bonds secured by said first and second mortgages, and the certificates of stock to be given and issued as aforesaid to present stockholders, shall each contain provisions by means whereof the holders thereof shall assent to the rights secured said first mortgage bondholders, as hereinbefore set forth.

Fifth.—Should the directors for time being of said new company, at any time deem it expedient that the same should promote the construction of an extension of their railroad, beyond either of its present termini, by some corporation or corporations now or hereafter existing, and that it should lease the franchises and railroad of such other corporation, or lease its own franchises and road to such corporation, or in any other manner cause the consolidation of such other corporation with said new company, it shall be lawful for said directors—first obtaining the consent in writing thereto, of a majority in interest of the then holders of said first mortgage bonds, and not otherwise, by guarantee of mortgage bonds issued by said other corporation, or in such other manner as counsel may suggest and advise—to aid in and promote such construction.

Sixth.—In case any holders of the existing first mortgage bonds shall decline or neglect to deposit their bonds or pay the assessment, as hereinbefore provided, the rights of such holders shall enure *pro ratâ* to the first mortgage bondhold-

ers who assent to this plan, and who may elect to avail themselves of the privilege, after notice thereof, from the purchasing committee, by letter, addressed to them through the post-office, at their last place of residence, or personally to them delivered.

Seventh.—In case any holders of the existing second mortgage bonds shall decline or neglect to deposit their bonds and pay the assessment as hereinbefore provided, the rights of such holders shall enure *pro ratâ* to the second mortgage bondholders who assent to this plan, and who may elect to avail themselves of the privilege, after notice thereof, from the purchasing committee, given as aforesaid.

After such notice of the purchasing committee, the rights of such bondholders as shall have declined or neglected to deposit their bonds and pay the assessment, shall enure to such person or persons as the said committee shall designate.

Eighth.—Each person assenting to and depositing bonds under this agreement shall receive from the purchasing committee a certificate of such deposit, and a receipt for the assessment paid.

Ninth.—In case any portion of this plan shall be found to be impracticable under the laws of New Jersey, the purchasing committee shall make such changes as may be necessary, but not to interfere with the equities of the several classes of bondholders as herein defined.

NOTE.—For convenience it is arranged that the bonds above mentioned may be deposited with Messrs. Jesup, Paton & Co., 52 William Street, New York, to whom also the five per cent. assessment will be paid.

We, the undersigned bondholders of the Montclair and Greenwood Lake Railway Company, hereby agree to the foregoing plan of reorganization of said company, and authorize and empower the said purchasing committee for us, and in our name and names to do, execute and perform all and every act and thing requisite and necessary for the purchase of said railway property, and the reorganization of said railway company, in accordance with the foregoing plan.