April Term 1866.

upon the opening of its streets by Complainant, in altering the grades of various streets and avenues crossing as it does at changing grades thirteen paved streets and twelve unpaved streets and also four avenues, which are crossed by Complainant with embankments rendering the passage of said streets difficult and dangerous at all times and at night especially so and in some cases entirely blocking up said street so as to render them entirely impassable, not pursuing a course for any considerable distance along the line of any of the streets of the defendant except a distance of between four and five squares on 3d Avenue but cutting through and greatly injuring many valuable buildings lots of defendant and inflicting a damage which has been variously estimated by impartial and competent witnesses well acquainted with the property of defendant at from $56,000 to $100,000 for the period of seven years.

That if said road had been completed as prayed by defendant to the Baltimore and Susquehanna Railroad Company, it would have been of great advantage to defendant, which was willing to enter into a contract for the purpose with liberal terms on its part, as is shown by the correspondence filed by Complainant that pending said negotiation the Baltimore and Susquehanna Railroad Co became consolidated as stated with Complainant and that Complainant without entering into any contract, and carefully avoiding to commit itself by so doing, as defendant believes took possession of said lot on the Susquehanna Wharf and commenced the construction of said road through the grounds of defendant.

That defendant did not object to Complainants constructing said road and the route adopted was determined on by Complainant with the knowledge and assent of defendant and in the expectation and for the purpose that Complainant would in good faith and with proper diligence proceed to complete said road so as to form a connection with the main road of Complainant in the manner laid down for in the Map Exhibit No 6 by the route marked A B C D and E Complainant for this object was permitted to enter on the lands of the defendant and undertake the construction of said road and also to take possession of said lot on the Susquehanna Wharf, and if Complainant had proceeded in good faith and with proper diligence to complete said road defendant would have been willing and intended to carry out with Complainant the contract which it had intended to make with the Baltimore and Susquehanna Rail Road Company, although no contract was ever entered into between Complainant

April Term 1866

and defendant on the subject.

Defendant insists that whether Complainant took possession of said lot and commenced the construction of said road by virtue of an express contract as Complainant maintains or by the license and permission of defendant, as defendant maintains was the case, the Complainant was gratuitously bound to complete said road so as to form a continuous extension of its Railroad to Lake Water by the route indicated on said Map No 6 but that no work has been done on said road since the issuing of said injunction in October 1857 and no efforts have been made by Complainant to comply with the ordinance 1855, which is notice as aforesaid so as to remove objections on the part of the City authorities and in the year 1858 the rails which had been laid on the road through the grounds of defendant were taken up and removed by Complainant except for the small portion thereof which extends between the Baltimore Philadelphia and Wilmington Rail Road as is shown by Map No 6, and the lot on the Susquehanna Wharf and which Complainant uses and continues to use for its own purposes as a substitute for the road which by permission of defendant it was authorised to construct.

Defendant alleges that 2 years would have been sufficient for the entire completion of said road, and one year was estimated by the letter of the President of the Baltimore and Susquehanna Railroad Company of January 6th 1854 marked Complainants Exhibit No 7 as sufficient for the purpose but that instead of one year more than ten years have elapsed since the first offer of defendant to permit such a road to be made and more than 7 years since said road was commenced by Complainant.

Defendant alleges that on the 19th of March 1859 by its letter of that date a copy of which is filed by Complainant as Exhibit No 11 it gave notice to Complainant to surrender and give up possession of every part of the grounds Wharf and property of the defendant of which Complainant had taken possession for any purpose whatever. Defendant in such notice therein intended to say that though it gave said notice for the purpose of maintaining its legal rights, it was desirous to negotiate with Complainant on equitable principles and therefore invited it to appoint a committee of its Board to confer with a similar committee of defendant, which should be duly appointed and authorized to act in the premises.

No notice whatever was taken of this communication by the Complainant and on or about the 20 of June 1859 the Board of Directors of defendant