

New Jersey Court of Errors and Appeals

FIRE PROTECTION DEVELOPMENT COMPANY,
Plaintiff-Appellant,

against

AMERICAN DISTRICT TELEGRAPH COMPANY,
Defendant-Appellee.

Action at Law.
On Appeal from
Supreme Court,
Essex County.

BRIEF FOR PLAINTIFF- APPELLANT.

This action was tried at the Essex Circuit before the Hon. FREDERICK ADAMS without a jury, and resulted in a judgment dismissing the plaintiff's complaint. From this judgment the plaintiff has appealed.

Facts.

The plaintiff and the defendant were jointly engaged in the fire alarm business, the plaintiff owning the patents, and the defendant rendering the service over its wires, collecting the revenue, and paying over agreed percentages monthly to the plaintiff.

There are two kinds of fire alarm service, manual and automatic.

The plaintiff (or its predecessors, the Automatic Fire Protection Company and Robert L. McElroy), and the defendant had been engaged in the business of furnishing automatic fire alarm service for some time prior to July 27, 1905, under certain written agreements defining the respective duties and rights of the parties thereto. The original agreement was

between defendant and Robert L. McElroy, who was succeeded by the Automatic Fire Protection Company, which was in turn succeeded by the plaintiff.

Under date of July 27, 1905, the Automatic Fire Protection Company secured a lease from the Special Fire Alarm Electrical Signal Company, which was a corporation engaged in the manual fire alarm business in the City of New York, of all the assets and franchises of the latter company for the term of forty-nine years, and agreed to pay \$5,000 per annum for said period and in addition covenanted:

"to keep said property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature" (p. 80).

The defendant is a party to this agreement, but only as a guarantor of payment of the rental of \$5,000 per year by the Automatic Fire Protection Company (pp. 79, 81).

On October 12, 1905, an agreement was made between the said lessee, the Automatic Fire Protection Company, and the defendant which recites that the purpose of the making of the aforesaid lease of July 27, 1905, was to give the National District Telegraph Company, a subsidiary of the defendant, but not mentioned in the lease itself, fire department connections in the City of New York, which it had not theretofore been able to secure, that the gross rentals derived from the property leased were \$29,000 per annum and were collected by the said National District Telegraph Company "and are received under existing contracts between the parties hereto, by said party of the second part (defendant)," and whereby the parties agree:

"That out of the gross income received by said second party (defendant) from the busi-

ness and contracts aforesaid in the City of New York, for manual signal service, there shall be first paid during the forty-nine years' term of said lease the annual rental of five thousand dollars per annum, payable as aforesaid to the Guardian Trust Company, Trustee, and that the remainder of the gross income which shall be received by said party of the second part, during the forty-nine years' term of said lease, for manual signal service, in the City of New York, up to the aggregate of Twenty-nine thousand (\$29,000.00) Dollars of gross income per annum, remaining after deducting said Five thousand dollars rental shall be divided by and between the parties hereto as follows:

"For the first year from and after July 27th, 1905, fifty per cent. (50%) thereof to each of the parties hereto and for each year after said first year, during the forty-nine years' term of said lease to said party of the first part (Automatic Fire Protection Company) forty-five (45%) per cent. thereof, and to said party of the second part (defendant) fifty-five (55%) per cent. thereof.

* * * * *

"It is further mutually understood and agreed that all income from manual signal service business in the City of New York in excess of the gross income of Twenty-nine thousand (\$29,000) dollars per annum for the term of said lease, shall be retained and enjoyed by said party of the second part (defendant) for its own use and behoof" (pp. 86, 87).

The plaintiff succeeded to the rights of the Automatic Fire Protection Company by an agreement between those two companies dated April 29, 1909 (pp. 88-102).

The defendant operated and maintained the Special Fire Alarm Electrical Signal Company property under this contract and paid all taxes and assessments thereon (Defendant's Reply to Plaintiff's Reply, pp. 113, 114) and made no deductions

therefor from the moneys paid over to the plaintiff monthly or claim for reimbursement by the plaintiff until on May 25th, 1912, over six years later, when it rendered a bill to the plaintiff for commissions for solicitation of service and for devices and apparatus installed in connection with that business from May 1st, 1909 to March 31st, 1912, amounting to \$8,008.95, and deducted this amount in forwarding its check on June 10th, 1912, for the percentage of the preceding months' collections due the plaintiff. The amount collected by the defendant under the contract, less certain credits to which it was entitled, was \$13,525.30 and plaintiff was compelled to bring suit for that amount in July, 1912. The defendant contended in that suit that under its contracts with the plaintiff's predecessors of February 18th, 1904, and March 30th, 1905 (neither of which is directly involved in this controversy, though both are printed in the record, pp. 247, 258) the expense of service contract solicitation and for devices and apparatus was to be borne by the plaintiff. No claim was made at that time that the October 12th, 1905, contract or the July 27, 1905, lease to which it refers, both of which were annexed to the defendant's answer and before the Court, imposed any obligation upon the plaintiff to reimburse the defendant for the expenses of operation and maintenance as is now claimed in this suit.

That suit came on for trial before Judge DUNGAN, who held that the Special Fire Alarm Electrical Signal Company business was governed by the October 12th, 1905, contract taken in connection with the July 27th, 1905, lease, and that under these the defendant had no right to make the deductions as claimed. Judgment was entered on March 29th, 1913, and subsequently paid. (Exhibits P1-P5, pp. 200-301.)

Thereupon (April 9th, 1913) the defendant rendered its first bill for upkeep, repairs, maintenance

and operation of the Special Fire Alarm Electrical Signal Company property and deducted the amount therein stated from the moneys due the plaintiff under said contract and remitted the balance on April 10th, 1913. On May 9th, 1913, and June 9th, 1913, similar bills were rendered by the defendant and the amounts therein stated were deducted on the following days, when the remittances were sent to the plaintiff.

On October 8th, 1913, this action was brought for \$3,834.56, the aggregate of the amounts so deducted for those three months.

The Pleadings.

Complaint.

The complaint contains three causes of action, all similar.

By the first, the plaintiff charges that the defendant prior to April 10, 1913, collected \$13,593.66, as per Schedule A annexed to the complaint, belonging to the plaintiff, paid the plaintiff \$10,806.39, is entitled to a further credit of \$1,380.02, leaving a balance due plaintiff of \$1,407.25.

By the second, the plaintiff charges that the defendant prior to March 10, 1913, collected \$13,565.41, as per Schedule B annexed to the complaint, belonging to the plaintiff, paid the plaintiff \$11,039.75, is entitled to a further credit of \$1,046.71, leave a balance due plaintiff of \$1,478.95.

By the third, the plaintiff charges that the defendant prior to June 10, 1913, collected \$15,963.37 (correctly shown by Schedule C, but incorrectly stated in the complaint as \$15,055.61), belonging to the plaintiff, paid the plaintiff \$14,107.25, is entitled to a further credit of \$907.76, leaving a balance due plaintiff of \$948.38.

The plaintiff's total claim is \$3,834.56 and interest (pp. 11-12).

Answer.

The answer admits the receipt of the moneys in accordance with the schedules annexed to the complaint, but denies that there is anything due the plaintiff.

The defendant counterclaims for the same amounts as the plaintiff sues, reciting the aforesaid lease agreement of July 27, 1905, between Automatic Fire Protection Company, Special Fire Alarm Electrical Signal Company, New York Fire Protection Company, and defendant, and the agreement of October 12, 1905, between Automatic Fire Protection Company and defendant, and the agreement of April 29, 1909, between Automatic Fire Protection Company and plaintiff, and alleging that it has expended sums aggregating the amounts for which suit is brought for the benefit of plaintiff and at its special instance and request to keep the property leased by the Automatic Fire Protection Company under the agreement of July 27, 1905, in good condition and to make necessary repairs thereto and properly maintain and operate said property (pp. 67-77).

Reply.

Plaintiff for its first reply to defendant's counterclaim admits the agreements described in the answer, denies that defendant has performed all the terms and provisions of the agreements of July 27, 1905, and October 12, 1905, and asserts that defendant has failed to perform by neglecting and refusing to pay over the moneys claimed in the complaint.

Plaintiff for its second reply alleges that ever since the making of the agreement of October 12, 1905, and up to June 10, 1912, the defendant made the disbursements in connection with the Special Fire Alarm Electrical Signal Company property without any demand upon plaintiff for reimburse-

ment, that defendant then commenced deducting from plaintiff's share of the collections from manual signal service in New York City, which is the class of business to which the agreement of October 12, 1905, refers, certain amounts for soliciting subscriptions and manufacturing devices and apparatus, that the plaintiff sued the defendant for the recovery of the sums so deducted, that a verdict was directed for the plaintiff, that judgment was entered and satisfied by the defendant, and that in April 1913, for the first time defendant sought to make deductions from the defendant's share of the receipts from manual service business in New York City, which plaintiff claims in this suit, that such payments were not at the request of the plaintiff, but were payments which defendant was legally bound to make and were for its own benefit, and that the defendant by making such payments for a number of years has placed a practical construction upon the agreement of October 12, 1905, which it is estopped to vary.

For the third reply the plaintiff says the judgment recovered on March 29, 1913, was *res adjudicata*, in that it adjudged that the defendant could not, under the agreement of October 12, 1905, make any deductions for expenditures.

Defendant's Reply To Plaintiff's Reply.

Reply to Second Reply to Counterclaim.

Defendant admits the making of the expenditures for taxes, assessments and maintenance without demand for reimbursement from the making of the agreement of October 12, 1905, to June 10, 1912, when it deducted certain sums in remitting to plaintiff under the provisions of the agreement of October 12, 1905, and that judgment was recovered for such deductions and satisfied by the defendant, but refers to the record in said suit for

its nature and particulars and defendant's claim therein.

Further answering, alleges that defendant made its remittances up to that time without deduction through error, that upon discovering the fact that remittances had been made without such deductions, defendant made deductions to which it believed it was entitled under an agreement of February 18, 1904, between one Robert L. McElroy and defendant, that the plaintiff sued for the amount of such deductions and by the judgment recovered it was adjudicated that the agreement of October 12, 1905, taken in connection with the lease of July 27, 1905, constituted a contract separate and distinct from the one of February 18, 1904; that after the payment and satisfaction of said judgment defendant wrote plaintiff reviewing the decision in the former suit and the contract relations of the parties, and stating that it would cease to operate and maintain the property of Special Fire Alarm Electrical Signal Company, but inasmuch as a refusal to continue the present arrangements might result in seriously affecting the rights of subscribers, it was willing to continue temporarily the maintenance and operation of the property, but only as the representative or agent of the plaintiff and at the sole expense of the plaintiff; that payments were made by defendant to plaintiff on or about April 11, 1913, May 12, 1913, and June 11, 1913, and accepted under certain agreements, copies of which are annexed marked "Schedule A," "Schedule B" and "Schedule C," by which such acceptance was not to be an accord and satisfaction and the rights of the parties to contend and deny that such deductions were proper were reserved.

Reply to Third Reply to Counterclaim.

Defendant admits the judgment of March 29, 1913, but denies that it is *res adjudicata*.

The Trial.

The case came on for trial before Hon. FREDERICK ADAMS on December 3, 1914, and, by consent of the parties, proceeded without a jury.

Defendant offered the contracts of July 27, 1905, October 12, 1905, and April 29, 1909, and the letter from defendant to plaintiff of April 1, 1913, and all were received in evidence, the letter over plaintiff's objection (p. 192).

The amounts set forth in Schedules D, E, and F attached to defendant's answer (pp. 103, 104, 105) were admitted to have been expended by the defendant for the purposes set forth in the schedules in connection with the operation and maintenance of the Special Fire Alarm Electrical Signal Co. property.

Plaintiff offered in evidence (pp. 194, 201-277) the summons, complaint, answer and counterclaim, reply, stenographer's minutes and postea in previous suit (pp. 195, 200-301), an agreement between defendant and Automatic Fire Protection Company of April 29, 1907 (pp. 301-307), and two letters of defendant's general superintendent to its superintendent of August 21 and 22, 1905 (pp. 307-310).

Only one witness was called, Forrest J. McLean, an auditor for the defendant, who testified that he had analyzed the accounts between the defendant and Special Fire Alarm Electrical Signal Company in the operations of the plant from 1905 down, and that some time in 1908 he had called attention to the fact that the question of commissions and devices were not being handled under the contract of February 18, 1904 (pp. 196-199).

The Decision.

Judge ADAMS reviews the pleadings and contracts, and concludes:

“The idea which underlies the counterclaim is this: that the plaintiff has by the third contract (April 29, 1909) succeeded to the obligation of the Automatic Fire Protection Company, imposed upon it by the lease (July 27, 1905) to pay maintenance charges, and that upon an accounting in this action the defendant, which has paid certain maintenance charges, may claim reimbursement therefor from the plaintiff.

“The plain language of the contracts leads to this conclusion. I therefore sustain the set-off. This appears to require a general judgment in favor of the defendant” (p. 184).

The trial court, it will be noted, placed the defendant's right to recover, not upon the theory of defendant's answer, that of moneys expended at the special instance and request of the plaintiff, but upon the July 27, 1905, October 12, 1905, and April 29, 1909, contracts

Findings were made in accordance with the decision (pp. 129-131) and judgment was entered dismissing the complaint with costs (p. 132).

The plaintiff requested the Court to make certain findings, all of which were denied and plaintiff's objection noted (pp. 185-188).

The plaintiff appeals from the judgment on the grounds set forth in its notice of appeal (pp. 1-7).

POINT I.

The case is destitute of proof that the amounts for which suit is brought were to be reimbursed to the defendant by the plaintiff.

There was no express or implied contract between the plaintiff or its predecessor and defendant for the reimbursement of the defendant by the plaintiff for moneys expended for the operation and maintenance of the Special Fire Alarm Electrical Signal Company property, and in making the payments in question, the defendant either discharged an obligation that was its own or was a volunteer, and is not entitled to reimbursement.

The trial court held that the contracts of October 12, 1905, and April 29, 1909, imposed on the plaintiff the obligation of reimbursing the defendant for moneys expended by the defendant in discharge of the maintenance charges assumed by plaintiff's predecessor under the July 27, 1905, lease (p. 184), made findings to that effect (pp. 129-131), and refused plaintiff's requests to find the converse (pp. 185-188).

The findings are:

"4. That by virtue of the terms and provisions of certain contracts in writing, to wit, a contract dated July 27, 1905, between Automatic Fire Protection Company, of the first part, Special Fire Alarm Electrical Signaling Company, of the second part, New York Fire Protection Company, of the third part, and defendant, American District Telegraph Company, of the fourth part; a contract dated October 12, 1905, between Automatic Fire Protection Company, of the first part, and de-

fendant, American District Telegraph Company, of the second part; and a contract dated April 29, 1909, between Automatic Fire Protection Company and plaintiff, Fire Protection Development Company, defendant was entitled to deduct and retain to its own use said sum of \$1,407.25 from said sums collected by it as aforesaid prior to April 10, 1913.

"5. That by virtue of the terms and provisions of said contracts mentioned in paragraph 4 hereof, defendant was entitled to deduct and retain to its own use said sum of \$1,478.95 from said sums collected by it as aforesaid prior to May 10, 1913.

"6. That by virtue of the terms and provisions of said contracts mentioned in paragraph 4 hereof, defendant was entitled to deduct and retain to its own use said sum of \$948.36 from said sums collected by it as aforesaid prior to June 10, 1913" (pp. 130-131).

To support these findings we must find in the July 27, 1905, October 12, 1905, and April 29, 1909, contracts an agreement between the plaintiff or its predecessor and the defendant with reference to these charges. An examination of the contracts discloses no such agreement.

(a) The defendant cannot claim reimbursement on an express contract.

By the July 27, 1905, contract, the Automatic Fire Protection Company agrees "to keep the said property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature" (p. 80).

This agreement is with the Special Fire Alarm Electrical Signal Co., and not with the defendant. The covenant does not run to the defendant by the express terms of the contract, and the nature of the contract is such that it cannot by any possibility be construed to run to or to have been inserted for the benefit of the defendant.

The April 29, 1909, contract is an assignment of the assets of the Automatic Fire Protection Company to the plaintiff, and obviously creates no contract between the plaintiff and the defendant. It contains no promise on the part of the plaintiff to reimburse the defendant for any disbursements that may be made by it, and at best, so far as the July 27, 1905, lease is concerned, imposes upon the plaintiff only the obligation of the Automatic Fire Protection Company to the Special Fire Alarm Electrical Signal Co.

This leaves the October 12, 1905, contract, which is between the defendant and the Automatic Fire Protection Company. It provides for the payment of the rental of the \$5,000 per year, the division of the gross receipts from the business, and the payment of certain fixed percentages by the defendant to the Automatic Fire Protection Company.

(b) There was no implied contract for reimbursement of defendant by plaintiff.

As we have already pointed out, there is a variance between the counterclaim and decision—the defendant alleges an implied contract, the Court found an express contract.

The allegations of the counterclaim are that the defendant expended for the benefit of the plaintiff and *at its special instance and request* the moneys withheld, aggregating \$3,843.46 (pp. 75-77). These allegations are denied by the reply (p. 108).

The defendant introduced in evidence the contracts of July 27, 1905, October 12, 1905, and April 29, 1909, and a letter written by the defendant to the plaintiff on April 1, 1913, and called Forrest J. McLean one of its auditors, who testified that he had analyzed the accounts between the defendant and the Special Fire Alarm Electrical Signal Co. and in 1908 reported that the matter of commis-

sions and devices was not being handled in accordance with the contract of February 18, 1904, and rested (pp. 189-199).

There was, therefore, no evidence of a request, and defendant's letter of April 1, 1913 (pp. 116-118), is proof that there had been none, for if there had been plaintiff's liability would have been fixed and there would have been no occasion for defendant's attempt to have the plaintiff assume that obligation.

(c) It follows, then, that in making these payments the defendant discharged its own obligation, as we shall argue under Point II, or was a volunteer.

It is a familiar principle that a voluntary payment of the liabilities of another without his request or subsequent promise to repay will not give an action in favor of him who makes the payment.

Force v. Haines, 2 Harr., 385.

POINT II.

The contract of October 12th, 1905, was an assignment to the defendant of the July 27, 1905, lease and imposed on the defendant the obligations of the original lessor.

The plaintiff does not dispute that the July 27, 1905, lease imposed obligations similar to some of those which the defendant claims to have discharged, but contends that the October 12, 1905, contract transferred those obligations to the defendant.

The October 12, 1905, contract provides for the payment of the rental of \$5,000 per year and then for the division of the balance between the parties;

it makes no provision for payment of the expense of operation nor for the discharge of the other expenses cast upon the Automatic Fire Protection Company by the July 27, 1905, lease. It recites that the purpose of the Automatic Fire Protection Company in making the July 27, 1905, lease was to secure fire department connections for the National District Telegraph Company, a subsidiary company of the defendant, which connections that company had theretofore been unable to secure, but fails to use express words of assignment or indicate the precise manner in which the business and rights thus secured were passed on to the defendant or its subsidiary. It is, therefore, in these respects incomplete and ambiguous, and, as Vice Chancellor BACKES said, in *Van Dyke v. Anderson*, 13 Buch., 568, 570, 571, where it became necessary to determine whether a certain instrument made the defendant a tenant or merely a cropper,

“Whenever a dispute arises as to the meaning of a contract, that construction which the parties themselves place upon it and as to which they deal with each other is, as between them, the one to be adopted and to be given by the courts.”

The lease was made on July 27, 1905. The business was turned over to the defendant about August 1, 1905, as appears by the letters of instruction with respect to the same written by the defendant's general superintendent to its superintendent, August 21, 1905, and August 22, 1905 (Exhibits P-7 and P-8, pp. 307-310). The purpose of the lease was to secure fire department connections for the defendant (p. 85). The rentals were already being received by the defendant when the October 12, 1905, contract was made (p. 85). None of the expenses of operation or maintenance or taxes or assessments were ever paid by plaintiff or its predecessor. From the making of the lease, July 27,

1905, to June, 1912, the property was operated by the defendant and every expense in connection with it was paid by the defendant. The defendant, notwithstanding the fact that it paid over large sums of money to the plaintiff and its predecessor each month, never deducted one cent for such disbursements or made any claim that the obligation it was discharging was other than its own.

In its answer it says that these sums were not deducted on account of the express directions of one of its employees who acted without authority, but it offered no evidence in support of this allegation.

By practical construction, therefore, if not by its express language, the October 12, 1905, contract is an assignment to the defendant of the July 27, 1905, lease, or, at least, it casts upon the defendant the expenses of operation, maintenance and taxes.

It is an elementary principle of the law of contracts that the assignee of a lease is liable by privity of estate upon the covenants in the lease, and the parties having so construed the October 12, 1905, agreement, it imposed the obligation of up-keep and maintenance upon the defendant.

Further evidence that these obligations were imposed upon the defendant is found in the wire rental agreement of April 29, 1907 (Exhibit P-6, pp. 301, 302). The part of this agreement that refers to the Special Fire Alarm Electrical Signal Co. business is found on page 306. The defendant at that time had been in possession and in control of the Special Fire Alarm Electrical Signal Co. property for nearly three years. It refers to this business as "jointly acquired by said District and said Protection Companies on the 1st day of August, 1905," and provides for the payment of one-half of certain wire rental by the Automatic Fire Protection Company, the plaintiff's predecessor. If, as the Trial Court held, the October 12, 1905, contract

imposed these charges upon the Automatic Fire Protection Company, then there was no necessity for this agreement, as the obligation was already on the Automatic Fire Protection Company not only to pay one-half the wire rental but all of it.

On at least two different occasions the subject must have been considered, and no provision was made for the payment of the expenses of operation, maintenance and taxes by the Automatic Fire Protection Company. These expenses had been paid by the defendant for over two months when the October 12, 1905, contract was made and for nearly two years when that of April 29, 1907, was made (Exhibit P-6, pp. 301-307), and had there been any intent that the defendant should be reimbursed or the charges paid by the Automatic Fire Protection Company, the parties would most naturally have made provision for it.

The construction placed upon the three contracts by the Trial Court not only extinguishes the plaintiff's interest in the return from the Special Fire Alarm Electrical Signal Co. business, but imposes on the plaintiff the payment of an additional sum which must necessarily increase as the defendant increases the business for its sole benefit; for the contract provides that the defendant have the entire income over \$29,000 per annum. Under the contract, the largest amount the plaintiff can receive per year is 45 per cent of \$29,000, the annual rental, or \$13,050 — \$1,087.50 per month; whereas the amounts which the Trial Court awarded the defendant are, respectively, for March, \$1,407.25; for April, \$1,478.95, and for May, \$948.36; in other words, for securing valuable fire department connections for the defendant, plaintiff not only receives no return but pays a bonus of \$571.86 for the three months, demonstrating conclusively that the contract as construed by the Trial Court, contrary to the practical construction of the parties, is not their contract.

POINT III.

There was no proof before the Court that any of the disbursements other than those for taxes were made by the defendant in discharge of the obligation of the Automatic Fire Protection Company under the July 27, 1905, lease.

It was not until after the termination of the former suit and the payment of the judgment that the bills representing defendant's claims in this suit were rendered. The defendant's claims in said bills are made up of the following items:

Salaries, Operating and Commercial Departments,

Salaries, Line Department,

Material, Line Department,

Overhead and Miscellaneous,

Taxes. (Schedules D, E, F, pp. 103-105.)

The Trial Court by his decision found the plaintiff liable under the three contracts, July 27, 1905, October 12, 1905, and April 29, 1909, for the obligation assumed by the Automatic Fire Protection Company under the July 27, 1905, lease, to wit:

“to keep the property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature.”

He evidently overlooked the fact that the sums claimed by the defendant included other charges. The first and third items in each bill are clearly outside of the assumed obligation. Nothing in the July 27, 1905, lease required the Automatic Fire Protection Company to operate the property or extend the business, nor required it to pay any overhead or miscellaneous expenses.

Counsel for the defendant admitted on the trial that the first item of each of the bills was for operation of property, and solicitation of new business (pp. 190, 192, 193, 194).

There is absolutely no evidence in the case, except as to the taxes, that any of the moneys expended were so expended in discharge of obligations covered by the July 27, 1905, lease. The only thing in the record is the stipulation of counsel for the plaintiff that they represent sums expended by the defendant upon the Special Fire Alarm Electric Signal Co. property for the purposes stated in the bills in connection with the operation and maintenance of the properties and that the amounts are reasonable (pp. 192, 193).

We have therefore this situation.

The first item, "Salaries, Operating and Commercial Departments," is entirely outside of the obligation imposed by the lease and so far as the charge for soliciting new business is concerned, there is the ruling of Judge DUNGAN that there was no liability on the plaintiff to pay the same.

The second item, "Salaries Line Department" may as well have been for extending lines as repairing old ones. The burden of proof was on the defendant and it offered none. The plaintiff under the October 12, 1905, contract received no benefit from new business, that belonged entirely to the defendant.

The same is true of the third item "Material, Line Department."

As to the fourth item "Overhead and Miscellaneous," there was also no explanation. With only the designation, we submit it is impossible to determine, whether or not this comes with the Automatic Fire Protection Company's covenant and as the burden of proof was on defendant, it failed.

Therefore even under the Court's decision, upon the record before him, the only items as to which the plaintiff was entitled to recover, were the items of taxes aggregating \$92.21, and plaintiff should have been awarded judgment for the balance.

POINT IV.

The judgment of March 29th, 1913, is *res adjudicata* of defendant's claims.

The first suit between the parties also involved the right of the defendant to make deductions from the moneys it had collected. The defendant sought in that suit to deduct certain sums paid for solicitation of new business and for devices and apparatus asserting a right to do so under its contracts of February 18th, 1904, and March 30th, 1905, and contending that these contracts applied to the *manual* fire alarm business, which were the subject of the July 27th, 1905, and October 12th, 1905, agreements, as well as the *automatic* fire alarm business. These four contracts were made part of the defendant's answer in the former suit. Judge DUNGAN on the trial held that the October 12th, 1905, contract taken in connection with the July 27th, 1905, lease constituted the entire contract between the parties with respect to the *manual* fire alarm business and that under these contracts the defendant had no right to make any deductions from the plaintiff's share of the moneys collected.

Counsel for the defendant admitted on the trial that the moneys deducted for which this suit was brought included the expense of soliciting new customers (pp. 190, 193), and on the trial of the former action admitted that under the October 12, 1905, contract the defendant was not entitled to the same (p. 295). The defendant is therefore

seeking to recover the same character of disbursements as in the former suit and which Judge DUNGAN held it could not do under the October 12, 1905, contract.

The March 29, 1913, judgment was *res adjudicata* as to so much of defendant's claims at least as represents soliciting new business if not of the entire claims.

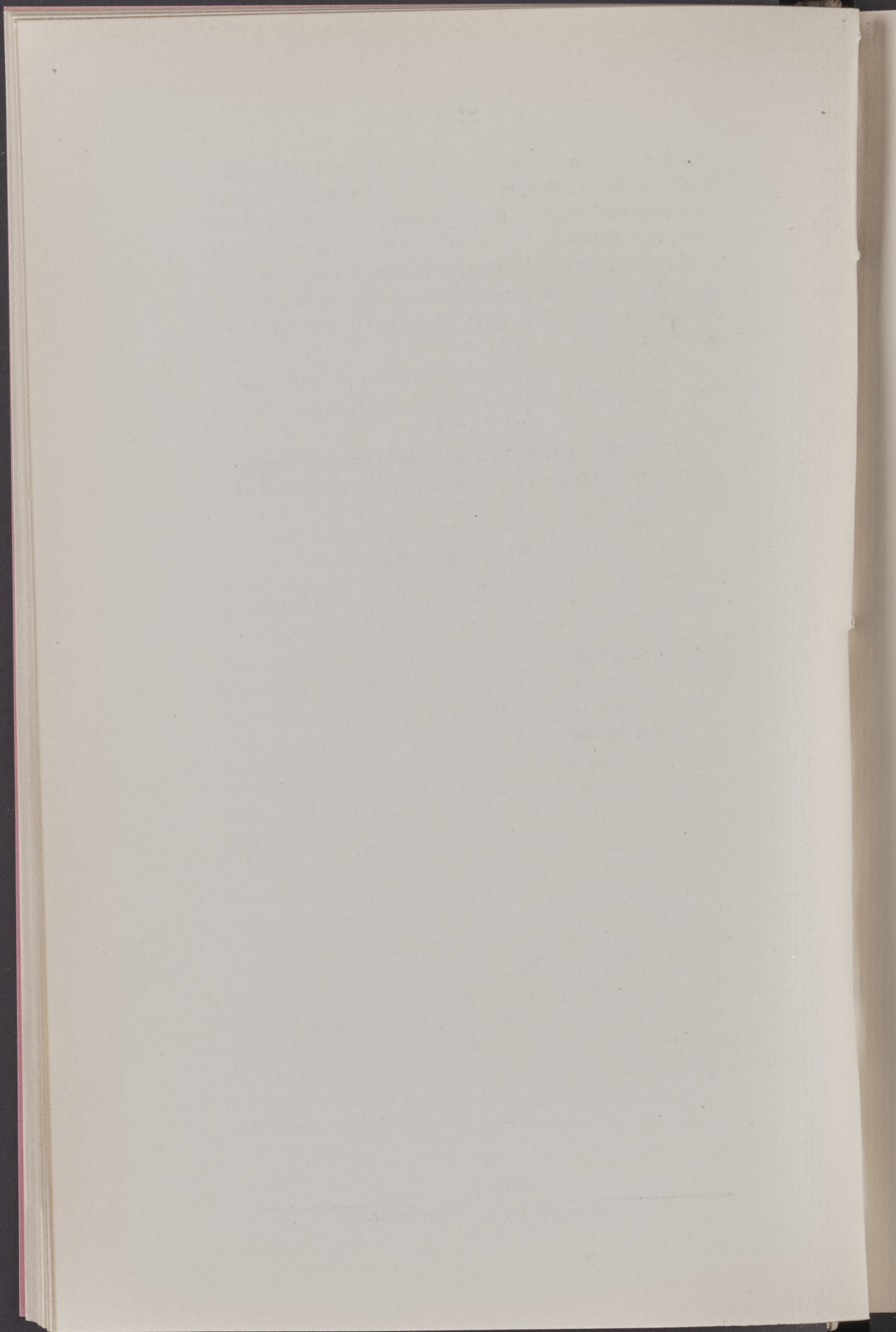
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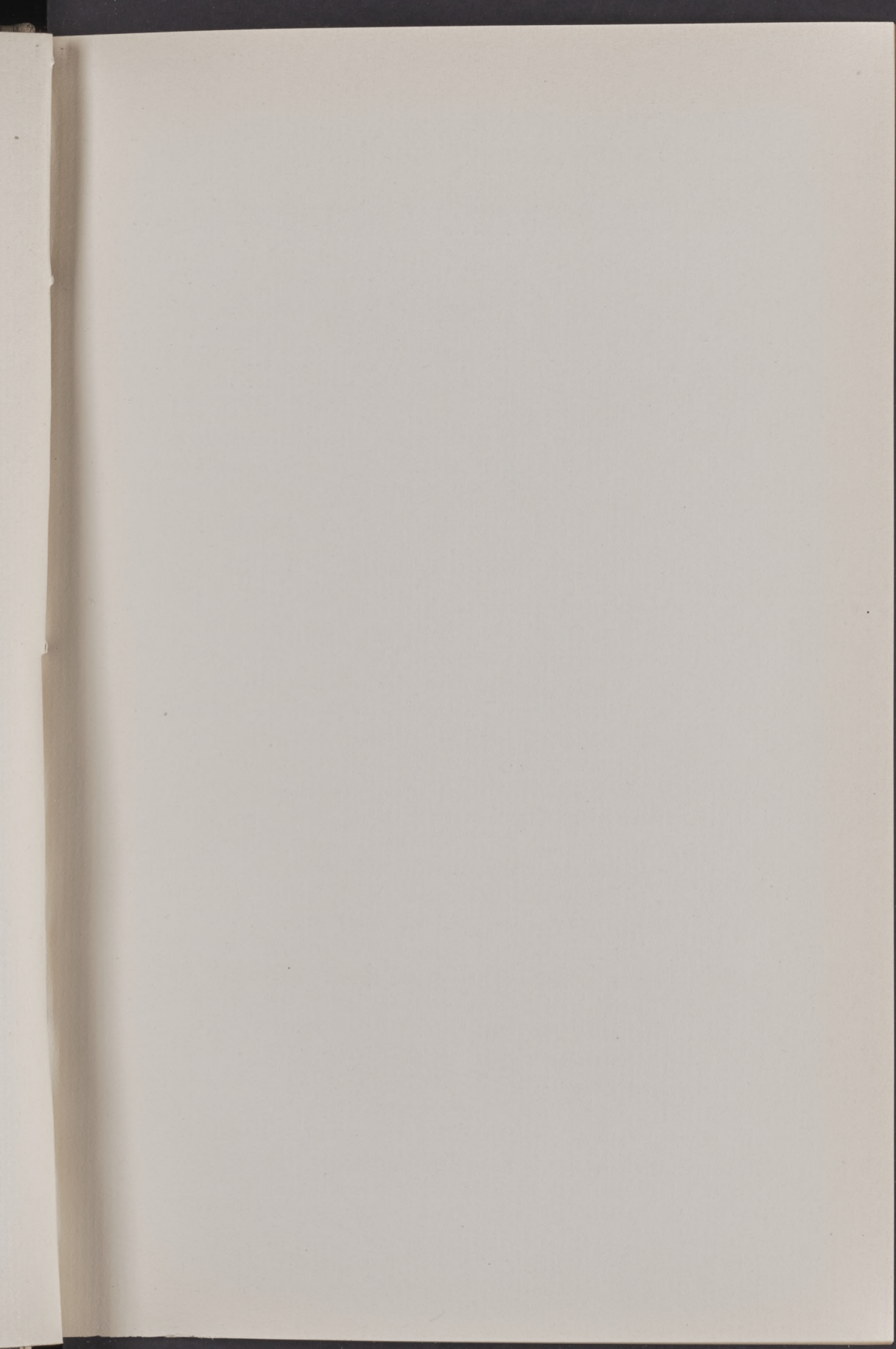
For the foregoing reasons the judgment should be reversed and a new trial ordered.

Respectfully submitted,

MAGOFFIN AND SIGNOR,
Solicitors for Plaintiff-Appellant.

JOHN W. GRIGGS,
MARTIN CONBOY,
(*of the New York Bar*)
of Counsel.







New Jersey Court of Errors and Appeals

FIRE PROTECTION DEVELOPMENT
COMPANY,

Plaintiff,

against

AMERICAN DISTRICT TELEGRAPH
COMPANY,

Defendant.

*On Appeal,
etc.*

Brief of Defendant's Argument.

In order to understand the questions involved in the suit which resulted in the judgment appealed from, it is essential that the issues involved in a previous suit between the same parties should be clearly understood. And to understand what those issues were, it is necessary that there should be a fuller statement of fact than appears in the appellant's brief which contains no statement of three agreements made prior to the lease of July 27, 1905. A condensed statement in chronological sequence, of what we consider to be the material facts, follows:

Robert L. McElroy, being interested in patents or applications for patents for automatic and manual fire alarm and sprinkling valve signaling devices, and being desirous of availing himself of the district telegraph system of American District Telegraph Company, entered into an agreement dated February 18, 1904, with that company, whereby among other things he agreed at his own expense to solicit contracts for service involving the use of the devices above mentioned,

and at his own expense to procure the manufacture thereof, to keep the same free from defects and in repair, and to assign to the company such rights as he might obtain in any city of the United States to construct lines of wire in the streets for the purpose of operating any electrical signaling devices except telephone. The American District Telegraph Company among other things agreed to erect wires from its central office in each city of the United States where it had an office to connect the McElroy devices which were to be served under such service contracts as McElroy might obtain; to maintain and operate said service; to install said devices and wire connections and to keep the same in first class working order. It was also mutually agreed that the parties should not make arrangements with others covering the same service except upon mutual consent; that neither party would invade the field of the other; that the agreement should bind the companies respectively controlled by the parties; that it should continue for the period of at least fifty years, and that the American District Telegraph Company should collect the sums falling due under the service contracts and remit to McElroy 45 per cent. thereof, except during the first year of each such contract when 50 per cent. thereof should be remitted (pp. 247-258).

A manual fire alarm system, as its name indicates, is operated by hand, as distinguished from fire alarm systems operated by electricity or otherwise than by hand (p. 276, lines 26-40; p. 277, lines 1-18).

Under date of March 30, 1905, a supplemental and explanatory agreement was made between McElroy and the American District Telegraph Company, wherein it was among other things

agreed that McElroy should have the right to contract for manual fire alarm service in any building in any city where the American District Telegraph Company, or any company controlled by it, was operating, provided said manual fire alarm service was a part of the automatic fire alarm devices or sprinkler alarm devices owned by McElroy and installed in such building, but that McElroy should not engage in the business of supplying manual fire alarms to any building disconnected from use of such manual fire alarms as a part of the necessary equipment of automatic fire or sprinkler alarm devices aforesaid (pp. 258-261).

By assignment dated April 21, 1905, McElroy's rights under said contracts were assigned to Automatic Fire Protection Company which thereby assumed all of McElroy's obligations thereunder (pp. 261-263).

At the time of the assignment the agreements of February 18, 1904, and March 30, 1905, were not operative in New York City because the American District Telegraph Company had no franchises there (p. 279, lines 3-12). A purely manual fire alarm service was, however, being carried on in that city by a corporation known as Special Fire Alarm Electrical Signal Company (p. 279, lines 14-33), and by an instrument dated July 27, 1905, Automatic Fire Protection Company leased the assets and franchises of Special Fire Alarm Electrical Signal Company for the term of 49 years at an annual rental of \$5,000, to be paid as provided in the lease, the leased business to be transferred as a going concern. The lease contained a covenant by the Automatic Fire Protection Company to keep the property in good condition, to make all necessary repairs and to pay and discharge all taxes

and assessments of every name and nature, and the payment by the Automatic Fire Protection Company of the payments called for by the lease was guaranteed by the American District Telegraph Company which was a party thereto (p. 77, line 18, to p. 84).

On August 21, 1905, instructions were issued by the General Superintendent of the American District Telegraph Company to its Superintendent that the property of the Special Fire Alarm Electrical Signal Company would be handled as provided in the contract of February 18, 1904, and that commencing on that date the National District Telegraph Company (a subsidiary of the American District Telegraph Company, having charge of its operations in New York City) (p. 292, ll. 39-40; p. 293, ll. 1-2; p. 286, ll. 10-15), would be responsible for the management, revenues, etc., of the Special Fire Alarm Electrical Signal Company property (p. 195, lines 36-40; p. 196, lines 1-28; pp. 307-308).

By an agreement dated October 12, 1905, between the Automatic Company and the District Company, reciting the July 27th lease, the fact that gross rentals demised thereunder were collected by the said National District Telegraph Company and received under existing contracts between the parties, and that one of the purposes for the lease was to secure fire department connections for the said National District Company, it was agreed that the gross income received from the business and contracts aforesaid in the City of New York for manual signal service should be disbursed in the manner provided therein, and that all income from manual signal service business in the City of New York in excess of \$29,000 per annum for the term of the lease should be retained by the American District Telegraph Company (pp. 85-87).

Since the Special Fire Alarm Electrical Signal Company was, as above stated, conducting a purely manual fire alarm service, the acquisition of its business and franchises by the Automatic Fire Protection Company would have constituted a breach of the February 18, 1904, agreement as explained and supplemented by the March 30, 1905, agreement, had not the American District Telegraph Company consented to such acquisition by becoming a party to the lease and to the agreement of October 12, 1905.

By agreement dated April 29, 1909, made with the assent of the American District Telegraph Company, Fire Protection Development Company (the plaintiff in the present action) succeeded to the rights and obligations of the Automatic Fire Protection Company under the agreements and lease hereinabove discussed (pp. 88-102; p. 73, lines 26-27).

After the making of the lease the American District Telegraph Company, through the said National District Telegraph Company, operated the leased business, collected the gross income therefrom and remitted a portion thereof to the Automatic Fire Protection Company and later to its successor, the Fire Protection Development Company.

In 1911 a new assistant auditor of the American District Telegraph Company was appointed (p. 197, lines 1-2). In 1908, while a clerk in the accounting department, he had called attention to the fact that in making settlements with the Automatic Fire Protection Company (the appellant's predecessor) the provisions of the February 18, 1904, contract, relative to commissions and devices, were not being followed, although in other respects the accounts between

the American District Telegraph Company and the Automatic Fire Protection Company were stated according to the provisions of that contract (p. 197, ll. 25-40; p. 198, ll. 1-16). Apparently no change was made, however, until June, 1912, when the American District Telegraph Company deducted from its remittance to Fire Protection Development Company \$8,008.95 to cover

“commissions for account solicitation of service to be performed by the Special Fire Alarm Electrical Signal Company, and amounts to cover Devices and Apparatus (boxes) for account installation of these services, this bill being rendered under the terms of the Agreement of February 18, 1904, Sections No. 8 and No. 5 respectively. The period covered by this bill is that from May 1, 1909, to March 31, 1912.” (pp. 264-270).

The Fire Protection Development Company refused to assent to any deductions, and brought suit for the entire amount of its share of the collections. The American District Telegraph Company counterclaimed for the amount of the deductions, and a judgment for the amount claimed by the Fire Protection Development Company, less certain deductions which are not material to the present issue, was entered and subsequently paid by the American District Telegraph Company (p. 300; p. 109, lines 30-32). At or about the time of the payment the American District Telegraph Company wrote the Fire Protection Development Company as follows:

"April 1, 1913.

Fire Protection Development Company,
27 Pine street, New York.

Dear Sirs:

The business of the Special Fire Alarm Electrical Signal Company in New York City has been handled heretofore under the belief upon the part of the American District Telegraph Company that the same came under the general provisions of the contract of February 18, 1904, save as the same are expressly modified by the provisions of the contract of October 12, 1905.

The recent decision in New Jersey has determined that the contract of February 18, 1904, with its modifications does not apply to this situation in New York at all, but that the contract of October 12, 1905, between the Automatic Fire Protection Company and the American District Telegraph Company, taken in connection with the lease of the Special Fire Alarm Electrical Signal Company of July 27, 1905, constitutes a separate and distinct contract.

This conclusion has necessitated a careful re-examination of the contract of October 12, 1905, to ascertain the obligations of the respective parties, and to conform the conduct of the property of the Special Fire Alarm Electrical Signal Company in New York to such obligations. This examination discloses that by the lease of July 27, 1905, the Automatic Fire Protection Company leased the entire property and franchises of the Special Fire Alarm Electrical Signal Company as a going concern for the period of forty-nine years at an annual

rental of five thousand dollars, and that the business of the Special Fire Alarm Electrical Signal Company was transferred as a going concern under this lease to the Automatic Fire Protection Company, which on its part agreed "to keep the property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature." This obligation, by the sixth paragraph of the contract of April 29, 1909, was transferred to the Fire Protection Development Company, which thereby became the lessee of this property and bound to discharge the obligations of the Automatic Fire Protection Company. An examination of the contract of October 12, 1905, discloses that none of these obligations with respect to the property have been in any way transferred to or assumed by the American District Telegraph Company, and they remain, therefore, the direct obligations of the Fire Protection Development Company.

This being so, the American District Telegraph Company hereby advises you that it will cease to operate and maintain the property leased to the Automatic Fire Protection Company by the Special Fire Alarm Electrical Signal Company under the lease of July 27, 1905, but inasmuch as it has been heretofore operating and maintaining this property under the view expressed in the first paragraph of this letter, and inasmuch as a refusal to continue the present arrangement might result in seriously affecting the right of subscribers to the service, it is willing to temporarily continue the maintenance and operation of the property,

but only as the representative or agent of your company for that purpose and at the sole expense of your company.

With respect to the soliciting and obtaining of contracts for service on behalf of the Special Fire Alarm Electrical Signal Company and the furnishing and installation of instruments and devices, this company states that an examination of the contract of October 12, 1905, discloses no obligation whatever upon its part to render such service, and that such service has therefore been discontinued and will no longer be rendered.

This company, however, will continue to perform all the obligations imposed upon it by the contract of October 12, 1905, in collecting the gross income from the business and contracts covered thereby in the City of New York for manual signal service, and to distribute the income as provided in that contract. Kindly advise receipt of this letter.

Very truly yours,

Vice President."

(P, 116, line 4, to p. 118, line 40; p. 127, line 38, to p. 128, line 4.)

After writing said letter of April 1, 1913, the American District Telegraph Company, through its subsidiary National District Telegraph Company, continued as theretofore for the next two months or so to operate the leased business and to collect the gross income therefrom.

The question raised by this appeal is whether the defendant had the right in making remittances to the plaintiff on April 9, May 9, and June 9, 1913, of gross income from the leased

business, to first deduct amounts equal to the defendant's expenditures during the period in which the gross income was earned, made in connection with the operation and maintenance of the leased property and for the payment of taxes thereon.

It is conceded that the sums deducted and not included in the defendant's remittances to the plaintiff on the dates mentioned, were (with the exception of \$194.68 solicitation expenses) the amounts necessarily and reasonably expended by defendant during the period in which the gross income remitted was earned in connection with the operation and maintenance of the property and the payment of taxes (pp. 189-194).

Point I.

The appellant's first contention is that the amounts counterclaimed were paid by the defendant either as a volunteer or to discharge its own obligations.

A careful consideration of the lease discloses the unsoundness of this contention. The leased business was transferred "as a going concern," and the Automatic Company expressly covenanted to keep the property in good condition, to make the necessary repairs and to pay the taxes. The nature of the business (manual signal service) was such that there would have been no expenditures in connection with keeping the property in good condition and repair unless it was being operated. The lease shows on its face, therefore, that the parties intended that the property should be operated and maintained during the forty-nine-year term. Furthermore, the agreement of October 12 related solely to the division of the income to be received from the operation of the leased business during the

forty-nine-year term, and the payment of rent out of such income. That agreement would have been meaningless if it had not been the intention of the parties thereto, as well as of the parties to the lease, that the leased property should be operated during the term of the lease. The property would have produced no revenue unless it had been operated. The October agreement recites that "one of the purposes and considerations" for the lease was to secure fire department connections for the National District Telegraph Company, a subsidiary of the American District Telegraph Company, but such connections would have been of no value had the property not been operated. There can be no doubt, we submit, that the parties intended and agreed not only that the property should be leased as a going concern, but that it should continue to be a going concern during the term of the lease.

It is equally clear that it was the intention of the parties that the expenses of operation and maintenance should be borne by the lessee. It is said by the appellant that the lease contains no express agreement that the lessee should pay these charges. The lease did contain an express covenant that the Automatic Company should keep the property in good condition and repair and pay all taxes and assessments. A more explicit agreement was unnecessary in view of the clear intent that the property was to be operated. If the lessee was not to pay operation and maintenance charges, who was to pay them? Someone must, because the property must be operated. The obligation to pay the expense of doing what the parties intended should be done, was of necessity cast upon the lessee in the absence of a covenant on

the part of any of the other parties to the lease to bear such expenses.

The defendant's counterclaim is based upon the fact that for the period of a little over two months subsequent to the notice contained in its letter of April 1, 1913, it paid maintenance and operation charges and taxes, incurred in connection with the operation of the leased business during that period. It is upon the theory that it was the obligation of the Automatic Company to make these payments, although they were paid in the first instance by the American District Telegraph Company, that the counterclaim alleges that they were made "at the special instance and request of the plaintiff." The payments were made by the defendant for the plaintiff's account in pursuance of the notice of April 1, 1913. Having been made with the knowledge and assent of the plaintiff in the performance of an obligation imposed by the lease upon it and not upon the defendant, the law will imply a promise to pay the defendant the amount so expended. The general rule of law is thus stated in *Beach on Modern Law of Contracts*, Vol. I, p. 785:

"Where there is no relationship between the parties and one accepts and retains the beneficial results of another's services, which he had no reason to suppose were gratuitous, and which he could or not accept at his option, the law will imply a previous request for the services and a promise to pay what they were reasonably worth."

It is admitted that the amount of the defendant's expenditures was reasonable (Case p. 193, ll. 12-20).

The theory of the plaintiff's "Second Reply to Counterclaim" seems to be that an obligation

was imposed on the lessee to maintain and operate the leased property in the first instance, although it is claimed that that obligation devolved upon the defendant later (p. 110).

Point II.

The appellant's second contention is that the Automatic Fire Protection Company's obligation to maintain the leased property was transferred to defendant by the agreement of October 12, 1905, and by the course of conduct of the parties thereto. The point of the plaintiff's contention is that the October agreement was in reality an assignment of the lease to the defendant, and that the fact that during a long period after the date of the lease the defendant maintained the leased property at its own expense and without making claim therefor against the plaintiff or against the Automatic Fire Protection Company, demonstrates that the parties during said period so construed and interpreted the October agreement, and that the construction so placed upon said agreement by the parties is binding upon the court.

The October agreement is not on its face an assignment of the lease, and we submit that the plaintiff's claim that it is such in reality, is unsound for the following reasons:

1. THE PARTIES TO THIS ACTION HAVE NOT GIVEN THE OCTOBER AGREEMENT THE PRACTICAL INTERPRETATION OF AN ASSIGNMENT OF THE LEASE.

Several weeks before the October agreement was entered into, the defendant's General Superintendent sent written instructions to its superintendent in New York that the business of the Special Fire Alarm Electrical Signal Com-

pany, leased to the Automatic Fire Protection Company,

“Will be handled under contract between the Automatic Fire Protection Company and the American District Telegraph Company, as provided for in the contract of February 18, 1904. * * *

Commencing with this date, the National District Telegraph Company is responsible for the management, revenues, etc., of this Company.”

(Case pp. 307-308, p. 195, l. 36, to p. 196, l. 29).

From about the date of the lease until June 10, 1912, the defendant, through its subsidiary National District Telegraph Company, operated the leased property at its own expense, but before remitting the portion of gross income from the leased business, due the plaintiff on June 10, 1912, deducted \$8,008.95 to cover expenditures which the defendant had made between May 1, 1909 (the date upon which the agreement of April 29, 1909, between Automatic Fire Protection Company and Fire Protection Development Company became effective (pp. 88-102),) and March 31, 1912, for solicitation expenses and devices and apparatus, claiming that the obligation to pay said expenditures was, by the terms of the *McElroy agreement* of February 18, 1904, imposed upon and assumed by the plaintiff's predecessor in interest (case pp. 200-274). The trial judge, after hearing a portion of the evidence in the first action, directed a verdict for the plaintiff and said as follows:

“I am not sure that a ruling upon this particular question necessarily involves the main question in the case, but I will state

that I am inclined to hold that *the contract of October 12, 1905 taken in connection with the lease*, are contracts separate and distinct from the contract of February 18, 1904, and March 30, 1905, and since it seems to be admitted by the defendant that they are not entitled to their offset under that ~~to be admitted by the defendant that they~~ holding would practically dispose of the case, and if counsel agrees to this situation this statement may be a part of the record, subject to objection.

view I should
inclined
that it

"Mr. Taggart. That is my view of the situation (p. 298, ll. 5-25)."

At the hearing before the trial judge in the present case the following admission was made by the plaintiff's attorney:

"Mr. Conboy. I think that is incompetent, but in order to shorten this inquiry, I am willing to state upon the record that the plaintiff admits that the defendant at the former trial contended that it had the right to make the deductions that were there sought to be made, on the ground that those deductions were justified by the contract of February 18, *1905. I understand that was the contention made at the former trial.

"Mr. Taggart. That is all I want."
(Case p. 198, l. 32, to p. 199, l. 6).

In the first action, therefore, the court was not required to pass upon, and did not pass upon, the propriety of deducting expenditures made by the defendant to defray operating costs which, *by the lease*, the Automatic Fire Protection Company had agreed to defray. The de-

*The date 1905 is a typographical error. It should be February 18, 1904.

fendant's deductions, the propriety of which was the subject of inquiry in the first action, were made under the February 18, 1904, McElroy contract, and not under the lease, and were to cover solicitation expenses and cost of devices. On April 1, 1913, just after the entry on March 29, 1913, of the judgment in the first action (case p. 300), the defendant wrote the plaintiff the letter quoted in full above.

The situation is, therefore, that until June, 1912, the defendant acted upon the assumption that the February 18, 1904, McElroy agreement, and not the lease, controlled the New York situation as well as the remainder of the country; that in June, 1912, it attempted to recover payments made by it which, if the McElroy agreement was controlling, should have been paid by the plaintiff; that, finding that the McElroy agreement did not control, it at once notified the plaintiff by the April 1 letter what its position would be for the future, and now seeks to retain the sums deducted in accordance with the position taken in that letter. The defendant has never acted in a way which was consistent with giving the October agreement the force and effect of an assignment of the lease. There can be no doubt that until the adjudication in the first suit it believed the McElroy agreement, and not the lease, to be controlling. That was the position taken in its pleadings and at the trial in the first action, and it was upon that theory that written instructions were given in August, 1905, several weeks before the October agreement was made.

It will be observed that in the August, 1905, letter the General Superintendent said:

"Commencing with this date, the National District Telegraph Company is re-

...sponsible for the maintenance, revenues, etc., of this Company."

While it is not altogether clear, it is probable that by these instructions the General Superintendent intended that the New York superintendent should understand that the National District Telegraph Company was to collect the revenue and pay the maintenance and operating expenses of the leased property. At any rate, that course was followed until June, 1912, when deductions equal to the amounts which under the McElroy agreement the Automatic Fire Protection Company would have had to pay were made. The defendant's rights in the present action are not affected, however, by the fact that for a number of years its agents, acting under erroneous instructions, or under an erroneous construction of instructions, paid sums which the defendant was not obligated to pay. Certainly it cannot be successfully urged that the payment of operating costs under instructions given prior to the October agreement amounted to a practical interpretation of that agreement. It might be urged that it amounted to a practical interpretation of the McElroy agreement, *but it could not have amounted to a practical interpretation of an agreement which was not in existence when the instructions were given.* In this action the defendant is not seeking to counterclaim for operating costs paid during the period covered by the first suit, but only during the period after it had been adjudicated that the lease, and not the McElroy agreement, controlled, and after the defendant's position with regard to the future had been stated to the plaintiff in the letter of April 1, 1913.

2. A PRACTICAL CONSTRUCTION OF A WRITTEN CONTRACT BECOMES MATERIAL ONLY WHEN THE WRITING IS AMBIGUOUS.

There is no ambiguity in the lease.

There is none in the October 12, 1905, contract.

In view of the plain and unambiguous terms of the two instruments the conduct of the parties would not have been controlling even if, as we deny, it could properly be considered as an attempt to give a practical interpretation to the October agreement rather than to the February 18, 1904, McElroy agreement. In such event this case would have been ruled by the decisions holding that where agreements are free from ambiguity the intention shown upon their face must be ~~allowed~~, and that this is true even though the intention so disclosed is contrary to the practical interpretation placed upon the contract by the parties, and even if such practical construction has been acquiesced in for a long period of time. *Page on Contracts*, Vol. 2, pp. 1751-1752; 9 *Cyc.* p. 590.

followed

3. THE TERMS OF THE OCTOBER AGREEMENT WERE FAIR. IF THE AGREEMENT HAD BEEN IMPROVIDENT THAT FACT WOULD NOT HAVE JUSTIFIED THE COURT IN ALTERING ITS TERMS.

The plaintiff urges that since the October agreement conferred upon the defendant the benefits to be derived from the operation of the leased business, it must be treated as an assignment of the lease, and points out that the monthly operating costs, made the subject of the counterclaim in the present suit, exceeded in some cases the monthly receipts to which the plaintiff would have been entitled if the leased property earned during the month at the rate

of \$29,000 per annum. The reply to this argument is two fold.

The obligation to maintain and operate the property was cast upon the Automatic Company by the lease. If the expense of maintenance and operation exceeded the share of earnings which the Automatic Company agreed in the October contract to accept, that contract may have been improvident, but as this court said in *Kupfersmith v. Delaware Ins. Co.*, 84 L., 271-275:

“The law will not make a better contract for the parties than they themselves have seen fit to enter into, or alter it for the benefit of one party and to the detriment of the other. The judicial function of a court of law is to enforce a contract as it is written. * * * As was said by Chief Justice Whelpley, speaking for the Supreme Court, in *School Trustees v. Bennett*, 3 Dutcher, 513: ‘No rule of law is more firmly established by a long train of decisions than this, that where a party by his own conduct creates a duty or charge upon himself, he is bound to make it good if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract. The law will not insert, for the benefit of one of the parties, by construction, an exception which the parties have not, either by design or neglect, inserted in their engagement.’ ”

Moreover, since the plaintiff was interested in the income derived from the leased property only to the extent of a share in gross income of \$29,000 after the payment of the rent, it was its privilege, as lessee of the business, to limit

its operations so that the revenue produced from the business would not exceed the amount in which the plaintiff was interested, and so that the maintenance charges would be only such as were fairly necessary for the operation of a property of that size and character. In short, it was the plaintiff's privilege to limit earnings to \$29,000 per year, and in that way to protect itself from an obligation to pay the operating cost of a business of larger magnitude.

Point III.

It is contended by the plaintiff that there was no proof before the court that any of the disbursements, other than those for taxes, were made by the defendant in discharge of the obligation of the Automatic Fire Protection Company under the lease.

It was conceded at the hearing that the amounts counterclaimed (with the exception of \$194.68 solicitation expenses) represented expenditures reasonably and necessarily incurred by the defendant for taxes and in connection with the operation and maintenance of the leased property (pp. 189-194). We have attempted to show that the Automatic Company's obligation was to operate and maintain the property. If this contention is sound, the plaintiff's admission was sufficiently broad to cover all the deductions with the possible exception of the amount paid for solicitation expenses. The appellant cannot now question the propriety of the defendant's deduction of *operation* and *solicitation* charges; a. Because the pleadings did not specify these portions of the deductions as being objectionable. The objection in the pleadings was to the deductions *in toto* (p. 108, lines

8-18). *Comp. Stat.* Vol 3, p. 4089, Sec. 118, provides: "Either party to an action may aver performance of conditions precedent generally, and the opposite party shall not deny such averment generally, but shall specify in his pleading the condition precedent, the performance of which he intends to contest"; b. Because no specific objection to the allowance of such charges was raised before the trial judge. The plaintiff requested the trial judge to find that the deductions were improper *in toto*, and also that "*maintenance charges*" aggregating \$3,834.56 were improper (pp.185-188). It did not, however, raise before the trial judge, or give him a fair opportunity to pass upon, the question as to whether or not the *portion of the total deductions* constituting *solicitation or operation charges* was properly deducted. We reiterate that the only point the trial court was asked to pass upon was the propriety of the deductions as a whole, and not the propriety of the deduction of portions thereof; c. Because the question raised before this court by Point III of the appellant's brief was not included in the grounds of the present appeal (pp. 1-7). See

Tuttle v. Apgar, 96 Atl., 96.

Robertson & Demarest v. Crichfield, 87 L., 708.

Webster v. Freeholders of Hudson, 86 L., 256.

Kargman v. Carlo, 85 L., 632.

Benz v. Central R. R. of N. J., 82 L., 197, affirmed 83 L., 780.

Point IV.

Upon the authority of the cases last cited, we submit that the defense of *res adjudicata*, urged as Point IV. of the appellant's brief, should not be considered by this court. It was not fairly raised in the "Plaintiff's Requests to Find" (pp. 185-188) nor in its Notice of Appeal (pp. 1-7).

Moreover, the issue raised in the first suit has no similarity to the issue in this suit. In the former suit the question was whether the defendant had the right to deduct the cost of devices and apparatus under the fifth clause of the McElroy agreement of February, 1904, which provided as follows:

"Fifth. The said McElroy further agrees to have manufactured at his own cost all the devices and apparatus forming the subject matter of this contract and to furnish and deliver at the warehouse of the District Company as called for such appliances, complete, made of first class material and representing first class workmanship and in good working order without cost or charge to the District Company."

and the cost of solicitation under the eighth clause of said agreement, which provided as follows:

"Eighth. The said McElroy agrees that all soliciting for subscribers under this contract shall be done by him, or through his procurement and at his proper charge and expense."

The defendant urged in the first suit that the effect of the consent of the American District Telegraph Company to the acquisition by the Automatic Company of the manual fire alarm

business in New York City, previously conducted by the Special Fire Alarm Electrical Signal Company, was to modify the February, 1904, agreement so as to bring the New York operations of the Automatic Company within the provisions thereof. The court held otherwise, and ruled that the New York operations were governed solely by the lease and the October, 1905, agreement, and not by the February, 1904, agreement, and that therefore the deductions which were all made on the theory that the 1904 contract controlled must be disallowed.

The issue in the present action is not as to whether the defendant may properly deduct solicitation expenses and manufacturing cost of devices because of the provisions of paragraphs "Fifth" and "Eighth" of the February 18, 1904, agreement, but is as to whether it may properly deduct taxes and maintenance and operating expenses because of the provisions of the lease. The adjudication in the previous suit is, therefore, not a bar to this action.

FOR THE REASONS GIVEN, IT IS RESPECTFULLY
SUBMITTED THAT THE JUDGMENT BELOW SHOULD
BE AFFIRMED WITH COSTS.

Respectfully submitted,

KINSLEY TWINING,

RUSH TAGGART,

(Of the New York bar),

Of Counsel with Defendant.

June term, 1917.

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New Jersey
Court of Errors and Appeals

FIRE PROTECTION DEVELOPMENT
COMPANY,

Plaintiff,

against

AMERICAN DISTRICT TELEGRAPH
COMPANY,

Defendant.

Action at
Law.

Notice of Appeal.

(Filed March 18, 1916.)

To

Lindabury Depue & Faulks, Esqs.,
Attorneys for Defendant.

PLEASE TAKE NOTICE that the plaintiff appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1.—Because the Court found as follows in paragraph 4th of the Court's findings:

That by virtue of the terms and provisions of certain contracts in writing, to wit, a contract dated July 27, 1905, between Automatic Fire Pro-

Notice of Appeal.

10 tection Company of the first part, Special Fire Alarm Electrical Signaling Company of the second part, New York Fire Protection Company of the third part, and defendant, American District Telegraph Company of the fourth part; a contract dated October 12, 1905, between Automatic Fire Protection Company of the first part, and defendant, American District Telegraph Company, of the second part; and a contract dated April 29, 1909, between Automatic Fire Protection Company, and plaintiff, Fire Protection Development Company, defendant was entitled to deduct and retain to its own use said sum of \$1,407.25 from said sums collected by it as aforesaid prior to April 10, 1913.

20

2.—Because the Court found as follows, in paragraph 5th of the Court's findings:

That by virtue of the terms and provisions of said contracts mentioned in paragraph 4 hereof, defendant was entitled to deduct and retain to its own use said sum of \$1,478.95 from said sums collected by it as aforesaid prior to May 10, 1913.

30

3.—Because the Court found as follows, in paragraph 6th of the Court's findings:

That by virtue of the terms and provisions of said contracts mentioned in paragraph 4 hereof, defendant was entitled to deduct and retain to its own use said sum of \$948.36 from said sums collected by it as aforesaid prior to June 10, 1913.

40

Notice of Appeal.

4.—Because the Court found as follows, in paragraph 7th of the Court's findings:

That the defendant's set-off in this action of \$3,834.56 with interest on \$1,407.25 thereof from April 10, 1913, on \$1,478.95 thereof from May 10, 1913, and on \$948.36 thereof from June 10, 1913, against plaintiff's demand herein for a like amount be sustained. 10

5.—Because the court found as follows, in paragraph 8th of the Court's findings:

That the defendant has paid certain maintenance charges amounting in the aggregate to \$3,834.56, as shown in "Schedule D", "Schedule E" and "Schedule F", annexed to its answer and counter-claim herein, for which it is entitled to claim reimbursement against plaintiff upon the accounting between plaintiff and defendant in this action. 20

6.—Because the Court found as follows, in paragraph 9th of the Court's findings:

That plaintiff take nothing by its writ in this action. 30

7.—Because the Court found as follows, in paragraph 10th of the Court's findings:

That defendant recover of plaintiff its costs of this action to be taxed.

Notice of Appeal.

8.—Because the Court refused to find
 lows:

10 That by virtue of the terms and provisions of
 certain contracts in writing, to wit, a contract
 dated July 27, 1905, between Automatic Fire Pro-
 tection Company of the first part, Special Fire
 Alarm Electrical Signaling Company of the sec-
 20 ond part, New York Fire Protection Company of
 the third part, and defendant, American District
 Telegraph Company, of the fourth part; a con-
 tract dated October 12, 1909, between Automatic
 Fire Protection Company of the first part, and
 defendant American District Telegraph Company,
 of the second part; and a contract dated April
 20 29, 1909, between Automatic Fire Protection Com-
 pany and plaintiff, Fire Protection Company, de-
 fendant was not entitled to deduct and retain to
 its own use said sum of \$1,407.25 from said sums
 collected by it as aforesaid prior to April 10, 1913,
 but was required to remit the same to the
 plaintiff.

9.—Because the court refused to find as fol-
 lows:

30 That by virtue of the terms and provisions
 of said contracts defendant was not entitled to
 deduct and retain to its own use said sum of
 \$1,478.95 from said sums collected by it as afore-
 said prior to May 10, 1913, but was required to
 remit the same to the plaintiff.

Notice of Appeal.

10.—Because the Court refused to find as follows:

That by virtue of the terms and provisions of said contracts defendant was not entitled to deduct and retain to its own use said sum of \$948.36 from said sums collected by it as afore-said prior to June 10, 1913, but was required to remit the same to the plaintiff. 10

11.—Because the Court refused to find as follows:

That by virtue of the terms and provisions of said contracts the defendant is not entitled to claim re-imbursement against the plaintiff for the maintenance charges paid by it, amounting in the aggregate to \$3,834.56, as shown in Schedule D, Schedule E and Schedule F, annexed to its answer and counterclaim herein. 20

12.—Because the Court refused to find as follows:

That the payments made by the defendant in the amounts for which the plaintiff has sued the defendant were not made by the defendant at the instance and request of the plaintiff. 30

13.—Because the Court refused to find as follows:

That the obligations imposed upon the plaintiff by the agreement of July 27, 1905, were cast upon the defendant by reason of the transfer to the defendant of the plaintiff's rights in said agree- 40

Notice of Appeal.

ment, such transfer being the effect of the subsequent agreement of October 12, 1905.

14.—Because the Court refused to find as follows:

10

That the plaintiff and the defendant by a practical construction and interpretation of the effect of the aforesaid contracts for a period of eight years after the contracts were signed treated the contract of October 12, 1905, as an assignment of the contract July 27, 1905, and the liabilities originally imposed upon the plaintiff by the contract of July 27, 1905, as devolving upon the defendant.

20

15.—Because the Court refused to find as follows:

That the moneys which the defendant, by virtue of its counterclaim, seeks to obtain from the plaintiff were paid out by the defendant in discharge of the obligations that under the construction of the parties were held to have devolved upon the defendant.

30

16.—Because the Court refused to find as follows:

That the payments made by the defendant to the plaintiff during the period of eight years after the execution of the aforesaid contracts were not made because of any unauthorized direction of an officer of the defendant.

40

Notice of Appeal.

17.—Because the Court refused to find as follows:

That the plaintiff is entitled to recover from the defendant the sum of \$3,834.56, with interest on \$1,407.25 from April 10, 1913, on \$1,478.95 10
from May 10, 1913, and on \$948.36 from June 10, 1913.

18.—Because the Court refused to find as follows:

That the defendant take nothing upon its counterclaim herein.

19.—Because the Court refused to find as follows: 20

That the plaintiff recover of the defendant its costs in this action to be taxed.

20.—Because the Court directed that judgment should be entered herein in favor of the defendant and against the plaintiff.

21.—Because the Court refused to direct the entry of judgment in favor of the plaintiff and 30
against the defendant in the sum of \$3,834.56 with interest on \$1,407.25 from April 10th, 1913, on \$1,478.95 from May 10th, 1913, and on \$948.36 from June 10th, 1913.

Dated, March 10, 1916.

Respectfully yours,

MAGOFFIN & SIGNOR,

Attorneys of Appellant. 40

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

10	FIRE PROTECTION DEVELOPMENT COMPANY against AMERICAN DISTRICT TELEGRAPH COMPANY,	On Postea. Judgment for Defendant. Lindabury, Depue & Faulks, Attorneys.
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JUDGMENT RECORD.

- 20 American District Telegraph Company, the defendant in this cause, was summoned to answer unto Fire Protection Development Company, the plaintiff therein, in an action of law upon the following complaint:

(Summons issued October 8, 1913.)

Complaint.

- 30 Plaintiff, a resident of the State of Maine, says that:

FOR A FIRST CAUSE OF ACTION.

I. The plaintiff is now and at all the times hereinafter mentioned was a corporation duly organized under and existing by virtue of the laws of the State of Maine.

- 40 II. The defendant is now and at all the times hereinafter mentioned was a corporation duly or-

Complaint.

ganized and existing by virtue of the laws of the State of New Jersey.

III. Prior to the 10th day of April, 1913, the defendant collected from the persons, firms, corporations and concerns named in the schedule hereto attached, marked Schedule A, and held for the plaintiff, certain moneys belonging to the plaintiff, which said moneys aggregated the sum of \$13,593.66, which amount the defendant promised to pay to the plaintiff on the said 10th day of April, 1913. Schedule A hereto annexed and hereby made a part hereof, is a statement of the items of said amount received by the defendant for the plaintiff, as rendered by the defendant to the plaintiff.

IV. Defendant has paid on account thereof the sum of \$10,806.39, and is entitled to a credit of the further sum of \$1,380.02, leaving a balance due from the defendant to the plaintiff of \$1,407.25.

V. Although plaintiff has demanded the payment of the aforesaid sum of \$1,407.25, the defendant has refused to pay the same or any part thereof and that the whole of said sum became due from the defendant to the plaintiff on the 10th day of April, 1913.

FOR A SECOND CAUSE OF ACTION.

VI. The plaintiff is now and at all the times hereinafter mentioned was a corporation duly organized under and existing by virtue of the laws of the State of Maine.

Complaint.

VII. The defendant is now and at all the times hereinafter mentioned was a corporation duly organized and existing by virtue of the laws of the State of New Jersey.

10 VIII. Prior to the 10th day of May, 1913, the defendant collected from the persons, firms, corporations and concerns named in the schedule hereto attached, marked Schedule B, and held for the plaintiff certain moneys belonging to the plaintiff, which said moneys aggregated the sum of \$13,565.41, which amount the defendant promised to pay to the plaintiff on the said 10th day of May, 1913. Schedule B hereto annexed and
20 hereby made a part hereof, is a statement of the items of said amount received by the defendant for the plaintiff, as rendered by the defendant to the plaintiff.

IX. Defendant has paid on account thereof the sum of \$11,039.75, and is entitled to a credit of the further sum of \$1,046.71, leaving a balance due from the defendant to the plaintiff of \$1,478.95.

30 X. Although plaintiff has demanded the payment of the aforesaid sum of \$1,478.95, the defendant has refused to pay the same or any part thereof and that the whole of said sum became due from the defendant to the plaintiff on the 10th day of May, 1913.

FOR A THIRD CAUSE OF ACTION.

40 XI. The plaintiff is now and at all the times hereinafter mentioned was a corporation duly or-

Complaint.

ganized under and existing by virtue of the laws of the State of Maine.

XII. The defendant is now and at all the times hereinafter mentioned was a corporation duly organized and existing by virtue of the laws of the State of New Jersey. 10

XIII. Prior to the 10th day of June, 1913, the defendant collected from the persons, firms, corporations and concerns named in the schedule hereto attached, marked Schedule C, and held for the plaintiff, certain moneys belonging to the plaintiff, which said moneys aggregated the sum of \$15,055.61, which amount the defendant promised to pay to the plaintiff on the said 10th day of June, 1913. Schedule C hereto annexed and hereby made a part thereof, is a statement of the items of said amount received by the defendant for the plaintiff, as rendered by the defendant to the plaintiff. 20

XIV. Defendant has paid on account thereof the sum of \$14,107.25, and is entitled to a credit of the further sum of \$907.76, leaving a balance due from the defendant to the plaintiff of \$948.36. 30

XV. Although plaintiff has demanded the payment of the aforesaid sum of \$948.36, the defendant has refused to pay the same or any part thereof and that the whole of said sum became due from the defendant to the plaintiff on the 10th day of June, 1913.

WHEREFORE plaintiff demands judgment against the defendant, in the sum of \$3,834.56, 40

Complaint.

with interest on \$1,407.25 thereof from the 10th day of April, 1913, on \$1,478.95 thereof from the 10th day of May, 1913, and on \$948.36 thereof from the 10th day of June, 1913, and the costs and disbursements of this action.

MAGOFFIN & SIGNOR,
Attorneys for Plaintiff.

Schedule A.

(Annexed to Complaint.)

Money received by American District Telegraph Company for the use and benefit of Fire Prevention Development Company, as per detailed statement furnished by American District Telegraph Company to Fire Protection Development Company on April 10, 1913:

Chanooga, Tenn.		
Wanamaker Co.,	2/1/13—1/31/14,	\$91.25
Chicago, Ill.		
India Furn. Co.,	Year beginning 10/30/12,	146.25
St. Louis, Mo.		
Mititz Shroder,	Jan., 1913,	1.80
New York, N. Y.		
W. K. & Co.,	Jan.,	6.75
New York, N. Y.		
Falo Mattress Co.,	1/1/13—2/1/13 aero,	\$3.75
W. G. & Eisele,	1/1/13—2/1/13 aero,	4.50
N. Adam & Co.,	12/1/12—2/1/13 SS.,	15.00
W. M. Meldrum & And.,	1/1/13—2/1/13,	8.33
W. M. Meldrum Co.,	1/1/13—2/1/13	10.42
W. M. Meldrum Co.,	12/1/12—2/1/13,	12.50
		54.50

Schedule A—Annexed to Complaint.

Chicago, Ill.

Oberndorf Co.,	10/3/12—10/2/13, 25% of \$125,	\$31.25
Tobey Furn. Co.,	6/1/12—5/31/13, 45% of \$72, Cons. A. F. A.,	32.40
The Hub,	8/29/12—8/28/13, 25% of \$52, on acct. \$624 yr.,	13.00
Allen Mfg. Co.,	2/2/13—8/1/13, 45% of \$117.50, \$235 yr.,	52.87

129.5

Cincinnati, Ohio.

Jos. Joseph Co.,	1/7/13—2/7/13,	\$22.13
Julian & Kokenge,	2/19/13—2/19/14,	75.00
		\$97.13

Less your proportion of
refund to Lewis Wald
& Co., acct. svce., 1/4/
13—6/1/13,

4.62

92.5

Cincinnati, Ohio.

Oppenheimer S. Co.,	2/2/13—2/2/14, \$95,	42.5
Columbus, Ohio.		
Lupfer Co.,	1/1/13—3/31/13, 25%,	18.7
Duluth, Minn.		
Gray Co.,	2/6/13—2/6/14,	96.0
New Orleans, La.		
Goldstein & Sons,	1/1/13—3/31/13, 25% of \$56 25	14.0
St. Paul, Minn.		
Noyes Bros.,	2/21/13—2/31/14, 45% of \$336,	151.2
Sioux City, Ia.		
Hicks, Fuller P. Co.,	Year ending 1/24/14, \$225,	56.2
Minneapolis, Minn.		
Nott Co.,	1/15/13—1/15/14, 25%,	84.5

Schedule A—Annexed to Complaint.

San Francisco, Ca.			
Monroe Greenwood,	2/1/13—4/30/13, \$354 yr.,	\$22.13	
Fredericks Co.,	1/1/13—3/31/13, \$438,	27.37	
Moore Watson Co.,	2/7/13—4/30/13, \$408,	23.68	
Moore Watson Co.,	Instal. fees,	50.00	
			123.18
Atlanta, Ga.			
Morrow Transfer Co.,	2/18/13—5/18/13,		18.75
Peabody, Mass.			
Nat'l Calfskin,	1/1/13—1/1/14,	114.00	
Nat'l Calfskin,	10/26/13—1/1/14,	1.65	
			115.65
Cleveland, Ohio.			
Patterson & Sargent,	1/24/13—14,	\$167.00	
Gabriel Cge. Co.,	1/7/13—7/7/13,	33.75	
May Co.,	10/1/13—12/1/14,	5.00	
Kelly Co.,	2/15/13—2/15/14,	56.25	
			262.00
Peabody, Mass.			
Lawrence Lea Co.,	4/23/13—1/1/14,	\$192.20	
Lawrence Lea Co., addl.,	4/23/13—1/1/14,	31.00	
			223.20
St. Paul, Minn.			
Farwell, Ozmun K. Co.,	Jan., 1913, 45% \$5,		2.25
Cincinnati, Ohio.			
J. C. McCollough,	3/1/13—4/1/13, \$15,	\$6.75	
C. B. Fletcher,	3/10/13—6/10/13, \$34.25,	15.41	
Vogeler Drug Co.,	2/26/13—2/26/14, \$192,	48.00	
J. W. & G. Bullock,	3/21/13—3/21/14,	50.00	
			120.16
Louisville, Ky.			
	45%		
Ky. Malt & Gr. Co.,	1/1/13—1/1/14, \$135,	\$60.75	
Marblestone Co.,	1/1/13—1/1/14, \$100,	45.00	
Verhoeff & Co.,	1/20/13—1/20/14, \$125,	56.25	
Straus & Sons,	1/1/13—1/1/14, \$80,	36.00	
Grabfelder Co.,	1/27/13—1/27/14, \$100,	45.00	

Schedule A—Annexed to Complaint.

Grabfelder Co.,	1/1/13—1/1/14, \$24,	10.80	
Robinson N. Co.,	2/1/13—2/1/14, \$225,	101.25	
Zorn & Co.,	2/1/13—2/1/14, \$40,	18.00	
Fulton Conway Co.,	2/1/13—2/1/14, \$60,	27.00	
Brandeis & Son,	2/1/13—2/1/14, \$40,	18.00	
Ky. Pub. Elev. Co.,	2/1/13—2/1/14, \$100,	45.00	
Belknap H. Mfg. Co.,	2/9/13—2/9/14, \$175,	78.75	
Belknap H. Mfg. Co.,	2/1/13—2/1/14, \$95,	42.75	
Robinson Bros. Co.,	2/1/13—2/1/14, \$175,	78.75	
Carter D. G. Co.,	Feb., 1913, \$5,	2.25	
Kaufman Straus Co.,	Feb., 1913, \$5,	2.25	
Lou. Paper Co.,	Dec., 1912, \$18.75,	8.44	
Lou. Paper Co.,	Jan., 1913, \$18.75,	8.44	
Lou. Paper Co.,	Feb., 1913, \$18.75,	8.44	
Falls City L. Co.,	10/1/12—10/1/13, \$20 on acct.,	9.00	
Carter D. G. Co.,	Feb., \$2,	.90	
Rudolph & Bauer,	11/1/12—11/1/13, \$12,	5.40	
Rhodes Burford Co.,	11/28/12—13, \$85,	\$38.25	
Ky. Jeans Clo. Co.,	12/1/12—13, \$80,	36.00	
Lewis & Co.,	On account, \$25, 25%	11.25	
Gutman & Co.,	4/18/12—4/18/13, \$25,	6.25	
Keisker & Son,	10/4/12—10/4/13, \$130,	32.50	
			832.6
New Haven, Conn.			
Sperry & Barnes,	Jan., 1913,		11.2
Worcester, Mass.			
Worcester Slip Co.,	1/3/13—14,	\$62.50	
Denholm & McKay,	Jan., 1913,	8.33	
			70.8
Minneapolis, Minn.			
Deere & Webber,	3/11/13—14, 25%,		187.5
Omaha, Neb.			
Parlin & Orendorf,	2/1/13—1/31/14, 45% of \$400,	\$180.00	

Schedule A—Annexed to Complaint.

Miller Stewart & B.,	2/1/13—1/31/14, 45% of \$225,	101.25	281.25
Baltimore, Md.			
Falconer Co.,	Quarter ending 5/31,		18.75
avenport, Ia.			
Roberts Co.,	Feb., 1913,		7.28
Minneapolis, Minn.			
Winston, Harper F.,	3/15/13—14, 45%,	\$97.20	
Newell & Co.,	2/20/13—14,	84.00	181.20
ashville, Tenn.			
Foster Parkes Co.,	2/1/13—14,		3.00
ew Orleans, La.			
Whitney & S. Co.,	2/1/13—1/31/14, 25% of \$330,		82.50
oux City, Ia.			
Dougherty & Bryant,	1/1/13—14, \$200,	\$50.00	
Tolerton & Warfield,	2/13—8/13/13, 50% \$168 yr.,	42.00	92.00
eadbody, Mass.			
Morrill Lea. Co.,	Jan., 1913, S. S.,	6.00	
Shortell & Sons,	Jan., 1913, aero,	4.17	
C. H. Keefe's,	Jan., 1913, aero,	7.29	17.46
irmingham, Ala.			
Goodall Brown Co.,	7/1/12—13,		100.00
Chicago, Ill.			
Becker Ryan Co.,	2/8/13—14, 25% of \$576,	\$144.00	
Haskell, Fred.,	2/1/13—1/31/14, 25% of \$111.35,	27.83	
Spiegels Furn. Co.,	1/20/13—1/19/14, 45% \$108,	48.60	
Strouss-Eisendrath,	1/1/13—12/31/13 45% of \$100, Cons.,	45.00	

Schedule A—Annexed to Complaint.

Andrews & Co.,	1/14/13—1/13/14, 25% of \$875,	218.75	
J. B. Hobbs,	8/19/12—13, 25% of \$540,	135.00	
Thomas & Hayden,	2/6/13—2/5/14, 25% of \$38.75,	9.68	
August Turner,	2/8/13—5/7/13, 45% of \$131.25, \$525 yr.,	59.05	
R. W. K. Co.,	1/1/13—12/31/13, 50% of \$15, Cons.,	7.50	
Porter Washington,	3/3/13—3/24/14, 45% of \$50,	22.50	
			717.
Pittsburg, Pa.			
McCreery & Co.,	March, 1913,		31.
Cedar Rapids, Iowa.			
Churchill Drug Co.,	Feb., 1913,	\$7.50	
Perfection Bldg. Co.,	Feb.,	2.29	
			9.
Milwaukee, Wis.			
Goll & Frank,	1/1/13—3/1/13,	\$6.46	
McGeogh Bldg.,	1/1/13—2/1/13,	2.00	
Smith, F. G.,	12/1/12—1/1/13,	1.75	
J. Rauschenberger,	1/1/13—2/1/13,	2.38	
Kalamazoo Knit. Co.,	1/1/13—2/1/13,	2.00	
Holeproof Hos. Co.,	2/1/13—3/1/13,	2.00	
Amer. Candy Co.,	1/1/13—2/1/13,	3.65	
Milw. Lace Pap. Co.,	1/10/13—2/10/13,	2.70	
Molitor & Hummel Co.,	10/1/12—11/1/12,	3.15	
Reinhart Mitten Co.,	12/10/12—12/10/13,	37.80	
Gimbel Bros.,	11/15/12—11/15/13,	12.00	
J. E. Friend,	Bal. 9/15/12—13,	.50	
Milw. Lace P. Co.,	Bal. 7/10/12—13,	.50	
			76.8
New Orleans, La.			
Interstate El. Co.,	12/18/12—13, 25% \$276,		69.0

Schedule A—Annexed to Complaint.

Louis, Mo.		
Rice Stix Co.,	Feb. Ludlow A. F. A.,	6.50
Cincinnati, Ohio.		
Adams Express Co.,	3/1/13—4/1/13,	\$7.52
Davis Sons Co.,	3/3/13—3/3/14, \$175,	78.75
Burkhardt Seiter H.,	1/1/13—3/28/13,	7.56
Ault & Wiborg,	3/1/13—6/1/13, \$51,	22.95
Wm. Glenn Estate,	3/5/13—3/5/14, \$50,	22.50
Louis Stix Co.,	3/7/13—3/7/14, \$275,	123.75
Eckert Candy Co.,	3/14/13—3/14/14, \$100,	45.00
Arnolder Co.,	3/1/13—9/1/13, \$95,	42.75
		350.78
Troitt, Mich.		
Cadillac Motor Co.,	1/1/13—7/1/14, $\frac{1}{4}$, \$802	
	yr.,	100.25
Minneapolis, Minn.		
Vyman, Partridge,	3/1/13—3/1/14, 25%,	85.00
Atlanta, Ga.		
Lamar & Rankin,	3/1—5/31/13,	18.75
Troitt, Mich.		
Burnham Stoepel,	1/1/13—7/1/13, $\frac{1}{4}$, \$676	
	yr.,	84.50
Memphis, Tenn.		
Mary M. Coffin,	2/15/13—2/15/14,	60.00
Minneapolis, Minn.		
Loose-Wiles Co.,	3/1/13—3/1/14, 25%,	\$54.00
McDonald Bros.,	3/1/13—3/1/14, 25%	30.00
		84.00
New Orleans, La.		
Ahrens & Co.,	2/10/13—2/9/14, 25% of	
	\$450,	112.50
Joseph, Mo.		
McDonald Mfg. Co.,	3/22/12—3/22/14, 25%	
	of \$240,	60.00
Paul, Minn.		
Arcade Invest. Co.,	2/1/13—14, 45%, \$500,	\$225.00

Schedule A—Annexed to Complaint.

Goodyear Rub. Co.,	3/4/14—3/4/14, 45% \$48 addl.,	21.60	
			246.6
Sioux City, Ia.			
Tribune Co.,	Year ending 2/5/14, \$125,		31.2
Superior, Wis.			
Standard Mlg. Co.,	3/18/13—14,		300.0
Kansas City, Mo.			
Waggener Co.,	2/7/13—14, 25% \$200,	\$50.00	
Maxwell McClure Co.,	1/29/13—14, 45% \$192,	86.40	
Jones D. G. Co.,	Dec., 1912, 45% \$74.59,	33.57	
Jones D. G. Co., Walnut St.,	Dec., 45% \$57,	25.65	
			195.6
Peabody, Mass.			
Morrill Lea. Co.,	Feb., 1913, S. S.,	\$6.00	
C. H. Keefe's,	Feb., 1913, Aero,	7.29	
M. Shortell,	Feb., 1913, Aero,	4.17	
			17.4
Toledo, Ohio.			
Baumgardner & R.,	11/25/12—13, 25% \$124,	\$31.00	
Yesbera Co.,	11/25/12—3/25/13, 25% of \$57.34,	14.34	
Lasalle & Koch,	12/20/12—6/20/13, 25% of \$6,	1.50	
Lasalle & Koch,	11/6/12—5/6/13, 25% of \$30,	7.50	
Lasalle & Koch,	10/4/12—4/4/12, 25% of \$241.50,	60.37	
Thompson Hudson Co.,	11/22/12—13, 25% \$300,	75.00	
			189.7
Chicago, Ill.			
Ginn & Co.,	3/1/13—2/28/14, 25% of \$175,	\$43.75	
Parsons Mfg. Co.,	2/1/13—1/31/14, 45% of \$12.50,	5.62	

Schedule A—Annexed to Complaint.

Eureka Digger,	1/1/13—12/31/13, 25% of \$420,	105.00	
Kling Bros.,	12/20/12—12/19/13, 25% of \$100 on acct. \$450, yr.,	25.00	
Chgo. Theolog. Sem.,	1/1/13—12/31/13, 45% of \$156,	70.20	
Foley Mfg. Co.,	11/1/12—10/31/13, 25% of \$103 on acct. \$412 yr.,	25.75	
Franklin & Co.,	1/1/13—3/31/13, 50% of \$210, \$840 yr ,	105.00	
Gutman & Co.,	2/16/13—2/15/14, 45% of \$197.30,	88.78	
Lyon & Healy,	1/10/12—1/9/13, 45% of \$212,	95.40	
Wander Hat Co.,	1/1/13—12/31/13, 45% of \$25.20,	11.34	
Montgomery Ward	2/18/13—14, 25% of \$2,- 394.70,	598.68	
Siegel Cooper Co.,	3/11/13—3/10/14, 25% of \$200,	50.00	
			1,224.52
Cincinnati, Ohio.			
Wittkamper Woolen	2/10/13—2/10/14, \$50,	\$22.50	
Krohn Feckheimer,	2/13/13—2/13/14, \$275,	123.75	
Reins & Meiss,	3/14/13—3/14/14, \$250,	62.50	
Feder Bldg.,	3/7/13—3/7/14, \$204,	51.00	
Powell Co.,	1/1/13—1/1/14, \$250,	51.70	
Heekin Can Co.,	3/17/13—3/17/14, \$72,	18.00	
		\$329.45	
	Less rebate to Lewis Wald Co., 1/4—6/9/13,	28.76	
			300.69

Schedule A—Annexed to Complaint.

Knoxville, Tenn.				
Claiborne, Tate,	1/15/13—1/15/14,		\$37.50	
Gillespie Shields,	3/9/13—3/9/14,		37.50	
Gowan McClung Co.,	3/1/13—3/1/14,		37.50	
Anderson Dulin V.,	Feb., 1913,		5.44	
				117.
New Orleans, La.				
Crescent F. & T. Co.,	3/3/13—3/2/14, 25% of			
	\$200,		\$50.00,	
Albert Weiblen,	12/1/12—11/30/13, 25%			
	of \$175,		43.75	
				93.
Springfield, Mass.				
Meekins, Packard & W.,	Feb., 1913,			7.
Grand Rapids, Mich.				
Burch Co.,	2/1/13—7/31/13, 25% of			
	of \$72, \$144 yr.,		\$18.00	
Herpolsheimer Co.,	2/6/13—8/5/13, 25% of			
	\$222, \$444 yr.,		55.50	
				73.
Jacksonville, Fla.				
Kohn Furchgott Co.	2/15/13—2/15/14,			62.
(Tanenbaum Co.),				
Los Angeles, Ca.				
Blake, Moffitt & T.,	1/1/13—12/31/13, \$438			
	yr.,			109.
Lynn, Mass.				
Littlefield & M.,	1/1/13—4/1/13,		\$21.00	
McGarry, C. A.,	1/1/13—4/1/13,		12.50	
				33.
St. Louis, Mo.				
Roth Homeyer Co.,	2/14/13—2/14/14, 50%			
	of \$100, Ludlow,		\$50.00	
Schmitz Shroder Co.,	Feb., 1913, 45% of \$4,		1.80	
Stromberg Kraus Co.,	Feb., 1913, 45% of \$4,		1.80	
Milford C. & S. Co.,	Feb., 45% of \$4,		1.80	
				55.

Schedule A—Annexed to Complaint.

Boston, Mass.			
Natl. Fire Ap. Co.,	Quarter end'g 3/31/13,		950.00
Birmingham, Ala.			
Wood Crabbe Co.,	2/1/13—14,		75.00
Baltimore, Md.			
Hockschild Kohn Co.,	Jan., 1913,	\$17.00	
Balto. Bargain Hs.,	Feb., 1913,	26.45	
			43.45
Minneapolis, Minn.			
N. W. Cons. Mldg. Co.,	3/28/13—14, 45%,		48.60
New Orleans, La.			
Schumert & Warfield,	1/21—4/30/13, 25% of		
	\$43.75,		10.94
Boston, Mass.			
Shuman & Co.,	1/1/13—3/1/13,	\$26.10	
Eagle Shoe Co.,	1/1/13—3/1/13,	6.25	
Am. Circ. Loom Co.,	2/1/13—3/1/13,	4.17	
Hathaway Bldg.,	2/1/13—3/1/13,	5.40	
F. L. Young & Kimball,	2/1—3/1/13,	2.99	
			44.91
New Orleans, La.			
Wm. Henderson,	2/25/13—2/24/14, 25%		
	of \$500,		125.00
Abuque, Ia.	25%		
Buettel Bros.,	2/13/13—3/1/13,	\$1.88	
Bell Bros.,	2/1/13—5/1/13, \$36,	9.00	
Glover Co.,	2/1/13—5/1/13, \$30,	7.50	
			18.38
New Orleans, La.			
Natl. Rice Mlg. Co.,	1/7/13—14, 25% \$120,		30.00
Pittsburg, Pa.			
Pittsburg Rub. Co.,	Year commencing 2/6/13,		70.50
San Francisco, Cal.			
Murphy Grant Co.,	12/1/12—2/28/13, \$420 yr.,	\$26.25	
Moore Watson Co.,	1/1/13—3/31/13,	7.54	
Wm. Ede Co.,	3/1/13—5/31/13, \$474 yr.,	29.63	
			63.42

Schedule A—Annexed to Complaint.

St. Paul, Minn.			
Golden Rule Annex,	3/7/13—3/7/14, 25%	\$250,	62.5
Buffalo, N. Y.			
King & Eisele,	2/1/13—3/1/13,	\$4.50	
Buffalo Mattress,	2/1/13—3/1/13,	3.75	
Coplon & Co.,	On acct., 10/18/12,	25.00	
Adam, Meldrum & And.,	2/1/13—3/1/13,	8.33	
			41.5
Omaha, Neb.			
Eggers O'Flynn Co.,	12/1/12—3/31/13,		37.5
Springfield, Mass.			
Forbes & Wallace,	Feb., 1913,		17.0
Chicago, Ill.			
Schultz & Hirsch,	12/1/12 — 2/28/13, 50%		
	of \$68.75, \$275 yr.,	\$34.35	
Chgo. Edison Co.,	3/13/13 — 3/12/14, 45%		
	of \$175,	78.75	
Morris, Mann & R.,	3/1/13—5/31/13, 45% of		
	\$90, \$360 yr.,	40.50	
Auto Elect. Co.,	1/22/13 — 7/21/13, 45%		
	of \$234, \$468 yr.,	105.30	
Gory & Heller,	2/6/13—2/5/14, 25% of		
	\$72,	18.00	
Hartman Furn. Co.,	1/19/13 — 4/30/13, 25%		
	of \$137.05, \$480 yr.,	34.27	
J. B. Mallers,	1/1/13—6/30/13, 45% of		
	\$100, \$200 yr., Cons.		
	A. F. A.,	45.00	
Marshall Field,	3/15/13 — 3/14/14, 45%		
	of \$60, Cons. A. F. A.,	27.00	
Bauer Const. Co.,	2/21/13 — 2/20/14, 25%		
	of \$264,	66.00	
Chas. Emmerick,	1/1/13 — 12/31/13, 45%		
	of \$307,	138.15	
Farwell & Co.,	3/5/13—3/4/14, 25% of		
	\$525,	131.25	

Schedule A—Annexed to Complaint.

Hart Bros.,	3/3/13—3/2/14, 45% of \$250,	112.50	
Devoe & Raynolds,	3/1/13—2/28/14, 45% of \$125,	56.25	
Phillipson & Co.,	1/16/13 — 1/15/14, 25% of \$492,	123.00	
			1,010.32
Pittsburg, Pa.			
Boggs & Buhl,	Mar. thermometer,		4.50
Cincinnati, Ohio.			
Ezekial & Bernheim,	11/1/12—1/1/13, \$33.34,	\$15.00	
F. Eckstein Est.,	2/20/13—14, \$200,	50.00	
Sullivan Prtg. Co.,	3/26/13—14, \$225,	56.25	
C. L. Hills Co.,	1/1/13—2/1/13, \$16.67,	7.50	
Grossman & Hoo. Sad.,	2/1/13—14, \$50,	22.50	
Betts St. Furn. Co.,	3/15/13—14, \$225,	101.25	
John Shillito Co.,	3/26/13—14, \$12,	5.40	
Ross Moyer Co.,	2/1/13—3/1/13, \$12.50,	5.62	
Joseph Bros. Co.,	2/7/13—3/7/13, \$48.17,	22.13	
			285.65
Cashville, Tenn.			
Berry Demoville,	3/23/13—14,		50.00
Detroit, Mich.			
Crowley Bros.,	2/1/13—2/1/14, $\frac{1}{4}$ \$130,	\$32.50	
Crowley Milner Co.,	1/16/13—7/16/13, $\frac{1}{4}$ of \$268, \$536 yr.,	67.00	
			99.50
ynn, Mass.			
Sprague Box Co.,	1/1/13—4/1/13, \$24,		6.00
New Orleans, La.			
Hollander & Co.,	2/10/13—2/9/14, 25% \$250,		62.50
Indianapolis, Ind.			
Money Mueller Co.,	2/25/13—2/25/14, 25%,		50.00
ynn, Mass.			
Campbell Elec Co. (Har-	1/1/13—4/1/13,		17.50
wood Co.),			

Schedule A—Annexed to Complaint.

Nashville, Tenn.			
Harris Solinsky Co.,	3/6/13—14,		25
New Orleans, La.			
Grunewald Co.,	2/16/13 — 2/15/14, 25%		
	\$300,	75.00	
Leon Fellman,	3/1/13—2/28/14, \$225,	56.25	
New York, N. Y.			131
College of Pharm.,	2/1/13—5/1/13,	\$5.62	
Ricca & Son,	12/1/12—2/1/13,	4.65	
Sherman Sq. Hotel,	1/1/13—3/1/13,	15.00	
Gods Prov'd. Hse.,	2/1/13—5/1/13,	5.62	
Wallach's Theacre,	3/1/13—4/1/13,	1.50	
St. Luke's Home,	3/1/13—5/1/13,	7.20	
Louis Ottman,	3/1/13—4/1/13,	1.88	
Santa Margharita,	2/1/13—5/1/13,	5.62	
Peabody Apt.,	2/1/13—5/1/13,	5.62	
Assn. Relief of			
R. A. & I. Eemls,	3/1/13—6/1/13,	5.62	
Frank Miller Co.,	3/1/13—6/1/13,	2.81	
DeLa Salle Inst.,	3/1/13—6/1/13,	5.62	
Harkness Resdnc.,	2/13/13—2/13/14,	27.00	
Victoria Theatre,	3/1/13—4/1/13,	2.70	
Hotel Imperial,	3/1/13—4/1/13,	2.25	
Geo. Ehret,	3/1/13—4/1/13,	2.25	
Lorena House,	2/1/13—4/1/13,	3.75	
Spence School,	3/1/13—6/1/13,	5.62	
Alumni Assn. N. Y. Hos.,	3/1/13—6/1/13,	5.62	
Intl. Handkf. Mfg. Co.,	3/1/13—4/1/13,	1.88	
Hotel Belleclair,	9/25/12—3/25/13,	29.25	
Margaret Louisa Hm.,	3/1/13—4/1/13,	2.70	
Columbus Hosp.,	3/1/13—4/1/13,	2.25	
Five Points Msn,	3/1/13—6/1/13,	5.62	
Sicher & Co.,	3/11/13—3/11/14,	40.50	
Le Marquis Htl. Co.,	1/1/13—4/1/13,	4.50	
Union Theo. Semin.,	2/6/13—3/6/13,	4.50	

Schedule A—Annexed to Complaint.

City Theatre,	2/19/13—3/19/13,	2.25
Proctor's Thea., 158th St.,	3/1/13—4/1/13,	3.60
Hotel Collingwood,	3/1/13—6/1/13,	5.62
Hotel Latham,	5/1/13—11/1/13,	11.25
The Mansfield,	2/1/13—3/1/13,	1.88
Leshner Whitman Co.,	2/11/13—2/11/14,	20.25
Little Theatre,	2/15/13—8/15/13,	11.25
Proctor's Thea., 125th St.,	3/1/13—4/1/13,	2.25
St. German Apts.,	1/1/13—4/1/13,	9.00
Urban Amusement Co.,		
Plaza Music Hall,	2/13/13—3/13/13,	1.88
N. Y. Inst. for Inst. Deaf		
& Dumb,	2/1/13—2/1/14,	45.90
Dominican Convent,	2/1/13—4/1/13,	3.60
St. Francis Hotel,	3/10/12—6/10/12,	5.62
H. B. Harris,		
Harris Theatre,	2/24/13—3/24/13,	.94
Peter Doelger,	3/1/13—4/1/13,	4.05
Hudson Theatre,	3/1/13—4/1/13,	1.88
Soc. Ethical Cult.,	2/1/13—4/1/13,	3.76
Boys' Club,	2/1/13—5/1/13,	3.37
Mt. Sinai Hosp.,	3/1/13—6/1/13,	5.62
Lafayette Hotel,	2/19/13—3/19/13,	1.88
Brevoort Hotel,	3/1/13—4/1/13,	1.50
Hotel Palm,	3/4/13—6/4/13,	7.31
Hotel Savoy,	3/1/13—4/1/13,	2.70
Anderson Bldg.,	3/1/13—4/1/13,	2.25
The Hanover,	3/1/13—6/1/13,	4.50
Medallion Hotel,	3/1/13—6/1/13,	3.94
Constable Bldg.,	2/1/13—2/1/14,	22.50
Hotel Marlborough,		
Cresstown Rlty.,	3/1/13—6/1/13,	14.85
Schaefer Co.,		
Terrace Garden,	3/1/13—4/1/13,	4.05
St. Jos. Asylum,	3/1/13—4/1/13,	1.80
Cooper Union,	3/1/13—6/1/13,	6.75

Schedule A—Annexed to Complaint.

Westchester House,	2/22/13—5/22/13,	4.50
Tr. Cooper Union,		
Abrams Hewitt Hosp.,	2/4/13—4/4/13,	4.50
Presbyterian Hm.,	3/1/13—4/1/13,	2.25
Hotel St. James,	1/1/13—4/1/13,	5.62
Wash. Sq. H. for Friend.		
Girls,	3/1/13—6/1/13,	5.62
Berkeley Theatre, Robert		
Campbell,	3/1/13—4/1/13,	2.25
Empire Theatre,	3/1/13—3/1/14,	15.75
Vantine Bldg., Danl.		
Bacon,	3/2/13—3/2/14,	40.50
Proctor's 23d St.,	3/1/13—4/1/13,	3.60
Hotel Netherland,	3/1/13—4/1/13,	2.70
N. Y. Cath. Prot.,	1/1/13—2/1/13,	2.70
Y. W. C. A.,	3/1/13—4/1/13,	2.25
W. A. D. Stokes Apt.,	2/1/13—5/1/13,	5.62
Krakauer Bros.,	3/1/13—4/1/13,	2.25
Laurel Amst. Co.,	2/28/13—3/31/13,	1.88
Hotel Premier,	9/8/12—1/29/13,	7.37
Asylum St. V. de Paul,	3/1/13—4/1/13,	1.69
Metropolitan Club,	3/1/13—4/1/13,	2.70
H. Koehler,	3/1/13—4/1/13,	3.15
Barnard House,	3/1/13—6/1/13,	5.62
Knickerbocker Thea.,	3/1/13—3/1/14,	22.50
Uncas House,	3/1/13—6/1/13,	5.62
Y. M. H. A.,	3/1/13—4/1/13,	2.82
The Iroquois,	2/1/13—5/1/13,	4.50
Hartford Bldg.,	1/15/13—7/15/13,	11.25
Decker Bldg.,	1/15/13—7/15/13,	11.25
Douglas Bldg.,	1/15/13—7/15/13,	11.25
Summit Hotel,	3/1/13—6/1/13,	3.94
Moore & Munger,	2/1/13—4/1/13,	3.75
Automatic Vaud. Co.,	11/23/12—5/23/13,	11.25
Misericordia Hosp.,	3/1/13—4/1/13,	1.80
Stuyvest. Apts.,	2/1/13—4/1/13,	3.75

Schedule A—Annexed to Complaint.

Cutler School,	2/1/13—5/1/13,	5.62
Hotel Markwell,	2/1/13—5/1/13,	4.50
Hotel Colonial,	2/1/13—5/1/13,	11.25
Globe Theatre,		
C. B. Dillingham,	2/10/13—3/10/13,	1.88
Parke Davis Co.,	2/8/13—3/8/13,	4.88
N. Y. Infant Asylum,	2/1/13—3/1/13,	2.25
The Cayuga,	3/1/13—4/1/13,	1.88
Hammersley Hotel,	8/1/09—11/1/09,	4.50
Laurens Hotel,	2/1/10—5/1/10,	4.50
St. Bartholomews P. H.,	3/1/13—4/1/13,	2.25
Lorraine Hotel,	3/1/13—6/1/13,	6.75
Claffin & Co.,	3/1/13—3/1/14,	67.50
Wadsworth Amst. Co.,	2/6/13—3/6/13,	2.25
Bradhurst Ams. Co.,	1/20/13—1/20/14,	22.50
Miss Chapin's Sch. for Girls,	2/15/13—2/15/14,	27.00
Urban Amst. Co., Am. Theatre,	3/1/13—4/1/13,	1.88
Soc. of Tammany,	3/1/13—4/1/13,	3.60
Carnegie Hall,	1/1/13—4/1/13,	5.62
St. Claire Hotel,	11/1/12—2/1/13,	5.06
Urban Amst. Co., Am. Thea. Roof,	2/19/13—3/19/13,	1.88
Delaney Amst. Co.,	2/23/13—3/23/13,	1.88
Natona Amst. Co.,	1/18/13—2/18/13,	1.88
Astor House,	3/1/13—4/1/13,	2.25
Hse. Good Shepherd,	2/1/13—3/1/13,	1.80
Republic Theatre,	2/1/13—3/1/13,	2.70
Hotel Cumberland,	2/1/13—5/1/13,	5.06
Mark Cross Co.,	3/1/13—4/11/13,	2.56
Brightside Nurs.,	3/8/13—4/8/13,	1.88
Ho. Wellington,	2/1/13—5/1/13,	5.62
Mrs. C. Vanderbilt,	3/1/13—9/1/13,	27.00
North Star Thea. Co. of Phila.,	2/20/13—2/20/14,	27.00

Schedule A—Annexed to Complaint.

Henry Dazian,	2/1/13—2/1/14,	22.50
New England Thea.		
(Academy of Music),	11/19/12—11/19/13,	22.50
Junior League Hse.,	2/20/13—3/20/13,	1.88
Scheffelin & Co.,	2/1/13—4/1/13,	9.00
Schaefer Brg. Co.,	3/1/13—4/1/13,	2.70
Century Theatre,	11/8/11—2/8/12,	18.00
Beard Bldg.,	8/1/12—11/1/12,	5.40
Sinclair Hotel Co.,	1/15/13—4/15/13,	5.62
Travelers Rlty Co.	1/20/13—4/20/13,	6.75
Hotel Majestic,	1/11/13—4/4/13,	4.14
B'way & 165th St.		
Rlty. Co.,	11/23/12—11/23/13,	22.50
N. Y. Inst. for Ed. of		
Blind,	3/1/13—4/1/13,	4.05
Holland House Co.,	2/1/13—3/1/13,	3.15
Waldorf Astoria Co.,	3/1/13—4/1/13,	4.05
Ho. Del Campidoglio,	1/1/13—7/1/13,	11.25
Clinton Pl. Htl.,	3/1/13—6/1/13,	5.62
Empire Hotel,	2/1/13—5/1/13,	2.81
L. F. Dommerich,	1/1/13—2/22/13,	10.51
Standard House,	11/1/12—5/1/13,	5.62
Leonori Hotel Co.,	3/1/13—6/1/13,	5.62
Ricca & Sons,	2/1/13—3/1/13,	2.33
J. J. Campbell, 2234		
Third Ave.,	2/9/13—8/9/13,	5.62
Natona Amius. Co.,	1/18/13—2/18/13,	1.88
		1,092.0
Newark, N. J.		
Am. Home & Bit. Co.,	2/1/13—4/1/13,	7.50
Williams Bak. Co.,	3/1/13—4/1/13,	3.76
Strauss & Co.,	2/11/13—3/11/13,	4.69
Radcliffe & Sons,	3/1/13—4/1/13,	3.75
Baker Prtg. Co.,	2/26/13—3/26/13,	6.30
Baker Prtg. Co., 251		
Market St.,	2/25/13—3/25/13,	4.72

Schedule B—Annexed to Complaint.

Jaborg & Bernhard,	2/16/13—3/16/13,	6.68	
Green & Son,	3/2/13—4/2/13,	3.75	
Progrssv. P. S. Co.,	Bal. to 8/3/13,	45.00	
Dunham & Son,	12/5/12—1/5/13,	6.75	
Industrial Bldg.,	1/13/13—1/13/14,	69.00	
Chester Rlty. Co., Ban-			
burger & Co.,	Instal. fee,	250.00	
			411.90
ersey City, N. J.—			
Wolfson Bros.,	10/16/12—10/16/13,	\$31.50	
Wolfson Bros.,	Installation fee,	12.50	
			44.00
ouisville, Ky.			
J. T. Barbee,	Shortage in Feb., 1913,		
	remittance,		1.45
			\$13,593.66

Schedule B.

Moneys received by America District Telegraph Company for the use and benefit of Fire Protection Development Company, as per detailed statement furnished by American District Telegraph Company to Fire Protection Development Company on May 10, 1913.

Paul, Minn.			
Farwell, Ozmun, Kirk,	Feb., 45% of \$5,		\$2.25
yracuse, N. Y.			
Peck & Co.,	Feb.,		6.75
erre Haute, Ind.			
Levin Bros.,	3/11—4/1/13, 1/4 of		
	\$15.58,		3.90
an Francisco, Cal.			
Cunningham, Curtis,	3/21/13—3/21/14,	\$45.00	

Schedule B—Annexed to Complaint.

Bauer Bros. Co.,	3/1/13—3/31/13,	2.40	
Heller, Klein Co.,	3/1/13—3/31/13,	2.40	
			49.8
Des Moines, Ia.			
Harris Emery,	1/24/13—7/24/13,		37.5
Chicago, Ill.			
Bauer Con. Co.,	1/1/13 — 12/31/13, 25%		
	of \$168,	\$42.00	
S. D. Boynton,	7/13/12 — 7/12/13, 45%		
	of \$40.60, \$300 yr.,	18.27	
Est. E. L. Brand,	3/5/13 — 10/21/13, 50%		
	of 30c, 50c yr.,	.15	
Carter & Holmes,	On acct., 25% of \$102,		
	1/1/13—12/31/13,	25.50	
Mills Novelty Co.,	1/1/13 — 12/31/13, 45%		
	of \$574,	258.30	
E. Larson,	3/25/13 — 3/24/14, 45%		
	of \$149,	67.05	
Creamery Pack. Co.,	March, 1913, 25% of \$32,		
	\$384 yr.,	8.00	
Hartman Furn. Co.,	2/11/13 — 8/18/13, 25%		
	of \$55.30, \$108 yr.,	13.83	
Hartman Furn. Co.,	2/11/13 — 8/18/13, 25%		
	\$49.50, \$96 yr.,	12.38	
		\$445.48	
Sears, Roebuck Co.,	Less 50% of \$52.10 differ-		
	ence betw. \$8.63 and		
	\$12 per box on 43		
	boxes, 3/8—7/26/13,	26.05	
			419.4
Birmingham, Ala.			
Louis Saks,	2/1/13—2/1/14,		66.2
Cincinnati, Ohio.			
L. B. Harrison, Est.,	2/26/13—2/26/14, \$228,	\$57.00	
Haas Bros.,	3/25/13—3/25/14, \$100,	45.00	
			102.0

Schedule B—Annexed to Complaint.

ansas City, Mo.,			
Montgomery Ward Co.,	12/21/12 — 12/20/13,		
	\$991.30 yr.,		247.82
t. Louis, Mo.			
Allan Pfeiffer Co.,	2/1/13—12/10/13,	\$102.25	
Plant Seed Co.,	4/1/13—4/1/14, 50% of		
	\$60, Ludlow,	30.00	
			132.25
ew Orleans, La.			
J. J. Manson,	2/21/13 — 5/20/13, 25%		
	of \$43.75,	\$10.93	
Leon Israel Co.,	2/13/13 — 2/12/14, 45%		
	of \$45,	20.25	
			31.18
incinnati, Ohio.			
Wurlitzer Co.,	2/19/13—2/19/14, \$156,	\$70.20	
Milton Ochs Co.,	3/21/13—3/31/14, \$100,	45.00	
Thos. T. Gaff,	3/25/13—3/25/14, \$250,	62.50	
J. O. McCollough,	4/1/13—5/1/13, \$15,	6.75	
Chr. Bardes Co.,	2/18/13—2/18/14, \$240,	60.00	
Alms. & Doepke Co.,	1/1/13—4/1/13, \$256.25,	115.32	
			359.77
maha, Neb.			
Wm. A. Gordon,	1/1/13 — 12/31/13, 25%		
	of \$298,	\$74.50	
Bennett & Co.,	1/1/13 — 12/31/13, 45%		
	of \$352,	158.40	
			232.90
ittsburgh, Pa.			
Frank McGann,	Year commencing 12/1/12,	\$63.00	
Nixon Theatre,	Year commencing 3/1/13,	50.00	
			113.00
uluth, Minn.			
F. S. Hodges,	3/7/13—3/7/14,	\$29.17	
Panton & White,	3/7/13—3/7/14,	58.33	
			87.50

Schedule A—Annexed to Complaint.

Duluth, Minn.			
Rust, Parker Co.,	3/12/13—3/12/14,		60.
New Haven, Conn.			
Sperry & Barnes,	Feb.,		11.
Worcester, Mass.			
Denholm & McKay,	2/1/13—3/1/13,	\$8.33	
Bickford Sweet Co.,	2/1/13—2/1/14,	61.26	
			69.
Cleveland, Ohio.			
Weidman Co.,	3/1/13—14, \$742,	\$185.50	
Est. Jas. Mincent,	3/5/13—14, \$10,	4.50	
Patterson Sargent,	2/8/13—14, \$48,	12.00	
Bailey Co.,	2/1/13—14, \$800,	200.00	
Halle Bros. Co.,	2/1/13—8/1/13, \$300,	75.00	
Central Gr. El. Co.,	3/17/13—14, \$300,	135.00	
Haserot Co.,	3/19/13—14, \$100,	45.00	
Joseph & Feiss Co.,	3/21/13—14, \$350,	157.50	
Joseph & Feiss Co.,	3/21/13—14, \$125,	56.25	
			\$870.75
Weidman Co.,	Less rebate on auto svce.,		
	3/1—6/11/13,	43.58	
			827.1
Buffalo, N. Y.			
Allen Carpet C. Co.,	1/1/13—2/1/13, aero,	\$4.50	
Coplon & Co.,	Bal. 10/18/12—4/18/13,		
	aero,	30.00	
Meldrum & Co.,	2/1—3/1/13, S. S.,	10.42	
			44.9
Chicago, Ill.			
Loose-Wiles Co.,	3/17/13 — 3/16/14, 25%		
	of \$432,	\$108.00	
Ogden Sheldan Co.,	3/28/13—14, 45% of \$45, :		
	Cons. S. S.,	20.25	
Ogden Sheldan Co.,	3/28/13 — 3/27/14, 45%		
	of \$35, Cons. S. S.,	15.75	

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Western Hos. Co.,	1/2/13—1/1/14, 45% of \$24, Cons. A. B. A.,	10.80	
Devoe & Reynolds,	3/8/13—3/8/14, 45% of \$260,	117.00	
Overbagh & Ayres,	2/1/13—1/31/14, 45% of \$12.50,	5.62	
			277.42
Minneapolis, Minn.			
Roach, Tisdale Co.,	1/1/13—1/1/14, 25%,		60.00
Pittsburg, Pa.			
Boggs & Buhl,	Thermometer, April,	\$4.50	
Allen Kirkpatrick,	Aero, April,	34.00	
			38.50
St. Louis, Mo.			
Gerold Stor. Co.,	1/21/13 — 1/21/14, 25% of \$225,		56.25
Cincinnati, Ohio.			
A. S. Taft,	4/4/13—4/4/14, \$75,	\$33.75	
Levi Ottenheimer,	4/1/13—14, \$140,	63.00	
Burh Pfaff Co.,	4/4—10/4/13, \$87.50,	39.37	
Adams Express Co.,	4/1—5/1/13, \$16.67,	7.50	
Stern Auer & Co.,	4/18/13—14, \$200,	90.00	
Flack Bros.,	4/9/13—14, \$50,	22.50	
			256.12
Baltimore, Md.			
Maase & Kemper,	4/1—9/30/13,		39.00
New Orleans, La.			
D. H. Holmes Co.,	4/1/13—3/31/14, 25% of \$600,		150.00
Pittsburg, Pa.			
McCreery & Co.,	April,		31.25
Detroit, Mich.			
Newton, Annis,	2/13/13—8/13/13, 1/4 of \$360, less N. W. 36	40.50	
Kreege Co.,	3/1/13—3/1/14, 1/2 \$300 yr.,	150.00	
			190.50

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Los Angeles, Cal.		
Western Whlse Co.,	4/1/13—6/30/13,	33.0
Louisville, Ky.		
Schulten Co.,	11/1/12 — 11/1/13, 45% of \$12,	\$5.40
Marcus & Co.,	3/1/13—4/1/14, 45% of \$24,	10.80
J. C. Lewis & Co.,	On acct., 12/1/12—12/1/ 13, 45% of \$25,	11.25
Bickell & Co.,	2/11/13 — 2/11/14, 45% of \$65,	29.25
Wright & Taylor,	3/15/13 — 3/15/14, 45% of \$85,	38.25
Strator Bros.,	2/1/13—2/1/14, 45% of \$40,	18.00
Sutcliffe Co.,	1/1/13—1/1/14, 45% of \$12,	5.40
Ky. Litho. Co.,	3/15/13—3/15/14, 45% \$20,	9.00
Lou. Paper Co.,	March, 45% of \$18.75,	8.44
Gutman & Co.,	On acct. 4/8/13—4/8/14, \$25,	6.25
Ross Chair Co.,	1/1/13—1/1/14, 25% of \$300,	75.00
Keisker Son,	10/4/12 — 10/4/13, bal. \$130,	32.50
		249.54
Memphis, Tenn.		
Benedict, Warren Co.,	2/1/13—2/1/14,	96.00
Milwaukee, Wis.		
McGeogh Bldg.,	2/1/13—3/1/13,	\$2.00
John Schroeder,	2/1/13—3/1/13,	5.50
F. G. Smith,	1/1/13—2/1/13,	1.75
J. Nauschenberger,	2/1/13—3/1/13,	2.38
Allis Chalmers Co.,	1/1/13—3/1/13,	15.00
Kalamazoo Knit. Co.,	2/1/13—3/1/13,	2.00
Hole-Proof Hos. Co.,	3/1/13—4/1/13,	2.00

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American Candy Co.,	2/1/13—3/1/13,	3.65	
Milw. Lace Pap. Co.,	2/10/13—3/10/13,	2.70	
Chas. Abresch,	1/1/13—2/1/13,	4.50	
Chas. Abresch,	1/1/13—2/1/13,	2.25	
Western Grip & Tr.,	8/21/12—2/21/13,	14.25	
Espenhain Dry Gds.,	7/17/13—7/17/13,	48.60	
C. R. Gether,	12/1/12—3/1/13,	10.80	
Meisenheimer Prtg. Co.,	12/1/12—12/1/13,	28.50	
			145.88
Minneapolis, Minn.			
Donaldson Co.,	4/7/13—4/7/14, 45%		102.60
Omaha, Neb.			
U. S. Supply Co.,	3/1/13—2/28/14, 45% of \$215,	\$96.75	
Byrne Hammer Co.,	3/1/13—2/28/14, 45% of 252,	113.40	
Peoples Cloak Co.,	3/1/13—2/28/14, 25% of \$300,	75.00	
			285.15
Pittsburg, Pa.			
Mackintosh Hemphill	Year commencing 4/8/13,		78.50
Coleo, Ohio.			
Brown Eager Co.,	4/1/13—7/1/13, 25% of \$63.75,	\$15.93	
J. N. Mockett Co.,	11/16/12—5/16/13, 25% \$120,	30.00	
			45.93
Minneapolis, Minn.			
Atkinson Co.,	4/1/13—14, 25%,		61.50
New Orleans, La.			
Searcy & Pfaff,	2/23/13—2/22/14, \$125, annual,		35.09
Rockford, Ill.			
Ill. Cabinet Co.,	11/1/12—13,		84.00
Chicago, Ill.			

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Carter & Holmes,	4/1/13—4/30/13, 25% of \$34, \$408 yr.,	\$8.50
K. A. Wells,	1/1/13 — 12/31/13, 45% of \$40 Cons.,	18.00
G. B. Carpenter,	3/30/13 — 3/29/14, 25% of \$492,	123.00
The Hub,	2/1/13—2/21/13, 25% of \$35.80, \$624 yr.,	8.95
Est. E. L. Brand,	3/31/13 — 3/30/14, 45% \$75 Cons.,	33.75
Morris Goldschmidt,	3/22/13 — 3/21/14, 45% of \$592,	266.40
J. B. Mallers,	12/1/12—11/30/13, 25% of \$180.38,	45.10
Florian D. Wallace,	2/24/13 — 2/23/14, 25% of \$150,	37.50
Cluett Peabody Co.,	3/20/13 — 3/19/14, 45% of \$200,	90.00
Silberman & Son,	4/1/13—6/30/13, 25% of \$123, \$492 yr.,	30.75
		661.95
	Less Elmer W. Stout, Trustee Ford & John- son, rebate 45% of \$20.10, 1/8—1/20/13,	9.05
Cincinnati, Ohio.		652.9
John Church Co.,	3/7/13—3/7/14, \$115,	\$28.75
I. V. Sutphin,	4/1/13—14, \$24,	11.25
Lowman & Co.,	3/30/13—14, \$75,	33.75
Ross Moyer Co.,	3/1/13—4/1/13, \$12.50,	5.62
Frank Tea & Spice Co.,	4/22/13—14, \$24,	6.00
St. Paul, Minn.		85.3
Gotzian & V. Co.,	4/1/13—14, 25% of \$432,	108.0

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Duluth, Minn.			
Northern Shoe Co.,	4/21/13—14,		75.00
New Orleans, La.			
Kaufman Co.,	3/14/13 — 3/13/14, 25% of \$450,	112.50	
New Orleans, La.			
Amer. Paint Works,	3/6/13—3/5/14, 25% of \$350,		87.50
Memphis, Tenn.			
Shelton, P. A.,	1/5—5/5/13, \$70 yr.,	5.83	
Harris Solinsky Co.,	1/5—5/5/13, \$30 yr.,	2.50	
			8.33
San Francisco, Cal.			
Kreiss & Sons,	2/1—4/30/13, \$420,	\$26.25	
Levi Strauss Co.,	4/1/13 — 3/31/14, \$492 yr.,	123.00	
Nathan-Dohrman Co.,	3/11/13 — 6/30/13, \$468 yr.,	35.86	
Nathan Dohrman Co.,	Installation fees,	66.25	
			251.36
St. Joseph, Mo.			
Davis Milling Co.,	4/16/13—14,		72.00
Cincinnati, Ohio.			
Kahn, Fellheimer Co.,	3/31/13—14, \$75,	\$33.75	
R. S. Gaff,	4/14/13—14, \$25,	11.25	
G. W. McAlphin Co.,	4/11/13—14, \$350,	150.50	
Rollman & Sons,	3/14/13—14, \$370,	92.50	
Anchor Buggy Co.,	4/15/13—14, \$192,	86.40	
Benj. Hey & Co.,	1/16/13—4/16/13, \$15,	6.75	
			336.15
Dubuque, Iowa.			
Buettell Bros.,	3/1—4/1/13, \$14,	\$3.50	
Glover Co.,	3/15—6/15/13, \$52,	13.00	
Security Bldg. Co.,	3/1—6/1/13, \$45,	11.25	
			27.75

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Minneapolis, Minn.			
Pittsburg Plate Gl. Co.,	4/1—7/1/13, 25%,		16.
Atlanta, Ga.			
Montag Bros.,	4/1/13—14, 25%,		87.
Cedar Rapids, Iowa.			
Witwer Bros.,	3/15/13—3/14/14,	\$48.00	
Cherry Co.,	3/1/13—14,	129.17	
Churchill Drug Co.,	March,	7.50	
			184.
Los Angeles, Cal.			
Crown Columbia P. Co.,	4/1—6/30/13, \$216,	\$13.50	
Ducommon Hdwe. Co.,	4/1—6/30/13, \$372,	23.25	
Newmark & Co.,	4/1—6/30/13, \$316,	19.75	
			56.5
New Orleans, La.			
Kohn Weil Co.,	4/1/13—3/31/14, 25% of \$215,	\$53.75	
Josiah Pearce Sons,	3/16/13 — 3/16/14, 25% of \$250,	62.50	
			116.25
St. Joseph, Mo.			
Tootle Campbell Co.,	4/1/13—14,	125.0	
S. D. Smith,	4/1/13—4/16/14,	45.0	
Baltimore, Md.			
Hochschild, Kohn,	Feb. and March,	34.0	
Pittsburg, Pa.			
A. J. Logan Co.,	Quarter commencing 4/ 1/13,	13.5	
St. Joseph, Mo.			
Brittain D. G. Co.,	4/16/13—14,	246.6	
St. Paul, Minn.			
Finch, Van Slyck,	2/19/13—14, 25% \$325,	81.2	
Springfield, Mass.			
Forbes & Wallace,	March,	17.0	
Pittsburg, Pa.			
Jos. Horne Co.,	Quarter commencing 4/ 1/13,	74.5	

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Boston, Mass.		
Natl. Fire Ap. Co.,	Quarter ending 3/31/13,	78.47
Chicago, Ill.		
Amer. Type F. Co.,	3/23/13 — 3/22/14, 45% \$190 Cons.,	\$85.50
Ortmager & Son,	3/5/13—3/4/14, 45% of \$100 Cons.,	45.00
R. Hall McCormick,	4/1/13—6/30/13, 25% of \$156, \$624 yr.,	39.00
Est. F. R. Otis,	2/22/13 — 3/31/13, 25% of \$68.20, \$624 yr.,	17.05
Tobey Furn. Co.,	1/23/13 — 1/22/14, 25% of \$756,	189.00
Adams & Eltinge,	2/1/13—1/31/14, 50% of of \$150,	75.00
Kling Bros.,	12/20/12—12/19/30, 25% of \$100 on acct. \$450 yr.,	25.00
Mandel Bros.,	1/1/13 — 12/31/13, 50% \$11.60,	5.80
Mandell Bros.,	1/1/13 — 10/30/13, 50% of \$29.90, \$36 yr.,	14.95
Mandel Bros.,	10/31/13—12/31/13, 45% \$6.10, \$36 yr.,	2.75
Fisher & Swawite,	2/6/13—8/5/13, 25% of \$56.25, \$112.50 yr.,	14.06
A. McKay,	4/11/13 — 4/10/14, 45% of \$472,	212.40
Automatic Elect. Co.,	4/1/13—9/30/13, 45% of \$318, \$636 yr.,	143.10
Benj. Moore Co.,	3/9/13—3/8/14, 45% of \$516,	232.20
Smith & Sons,	4/1/13—3/31/14, 45% of \$468,	210.60
Schoole Furn. Co.,	3/27/13 — 5/26/13, 25% of \$8.10, \$48 yr.,	2.03

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Mandel Bros.,	1/1/13 — 12/31/13, 45% of \$2,322,	1,044.90	
		\$2,358.34	
Tobey Furn. Co.,	Less rebate 25% of \$12.80 acct. discontinuance 4 connections at \$48 yr., from 10/17/12—1/22/ 13,	3.20	
			2,355.1
Cincinnati, Ohio.			
Hibbin D. G. Co.,	4/14/13—14, \$350,		157.5
Pittsburg, Pa.			
Murdock Kerr Co.,	Yr. commencing 3/23/13,		
St. Joseph, Mo.			
Chase & Son,	4/17/13—14,		90.0
Davenport, Iowa.			
Roberts Co.,	March,		7.2
St. Louis, Mo.			
C. F. Short Co. (E. St.	2/9/13—8/9/13, 25% of		
Louis),	\$100,		25.0
Buffalo, N. Y.			
Evans Elevator Co.,	7/11/12—7/11/13,	\$112.50	
King & Eisele,	3/1/13—4/1/13,	4.50	
Buffalo Mattress Co.,	3/1—4/1/13,	3.75	
Adam, Meldrum & A. Co.,	3/1—4/1/13,	8.33	
Sweeney Co.,	2/1—4/1/13,	12.50	
			141.5
Detroit, Mich.			
Schroeder P. Co.,	12/1/12—13, 50% \$275,		137.5
Nashville, Tenn.			
Warren Bros. Co.,	3/21/13—14,		52.5
Brockton, Mass.			
Emma F. Nelson,	3/1/13—14, \$18,		4.5
Toledo, Ohio.			
Reliable Laundry,	11/16/12—5/16/13, 25% ½ yearly \$62,	\$15.50	

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Yesbera Mfg. Co.,	3/25/13 — 7/25/13, 25%		
	1/3 yearly \$57.33,	14.34	
			29.84
Leabody, Mass.			
Shortell & Sons,	March, aero,	\$4.17	
C. H. Keefe (Salem),	March, aero,	7.29	
Morrill Lea. Co.,	March, S. S.,	6.00	
			17.46
Pittsburg, Pa.			
Arbuthnot Stephenson,	Quarter commencing		
	4/1/13,		40.50
San Francisco, Cal.			
W. & J. Sloane,	3/11/13—6/30/13,	\$26.66	
W. & J. Sloane,	Installation fees,	62.50	
Heywood & Wakefield,	3/1/13—5/31/13,	30.00	
			119.16
Boston, Mass.			
Dwinell Wright,	4/1—7/1/13,	\$13.95	
A. Shuman & Co.,	3/1—4/1/13,	13.05	
Am. Circ. Loom Co.,	3/1—4/1/13,	4.17	
Eagle Shoe Co.,	3/1—4/1/13,	3.13	
			34.30
New York, N. Y.			
Loew's 7th Ave. Theatre,	3/4/13—4/4/13,	\$1.88	
Hebrew Shel. G. Soc.,	1/23/13—3/23/13,	7.50	
Central Hotel,	4/1/13—7/1/13,	5.62	
Geo. Ehret,	4/1/13—5/1/13,	2.25	
Louis Ottman,	4/1/13—5/1/13,	1.88	
Mechanics Inst.,	3/1/13—6/1/13,	5.62	
St. Jerome's Church,	3/5/13—9/5/13,	11.25	
M. Zimmerman,	4/1/13—7/1/13,	8.44	
Lyons Co. of N. Y., 20			
N. William St.,	4/1/13—7/1/13,	5.62	
Children's Aid Soc., 155			
Worth St.,	1/7/13—1/7/14,	22.50	
Brooks Bros.,	4/1/13—7/1/13,	16.65	

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Weber's Music Hall,	1/12/13—4/12/13,	4.50
Hotel Imperial,	4/1/13—5/1/13,	2.25
Hotel Manhasset,	3/1/13—6/1/13,	5.62
Int. Hdkf. Mfg. Co.,	4/1/13—5/1/13,	1.88
Loew's 5th Ave. Am. Co.,	1/15/13—3/15/13,	5.62
The Beresford,	4/1/13—7/1/13,	8.10
The Chatham,	4/1/13—7/1/13,	3.94
Ch. St. John Baptist,	4/1/13—7/1/13,	5.62
Geo. Ehret,	4/1/13—10/1/13,	15.75
Alliance House,	12/1/12—6/1/13,	11.25
Erstein & Bro.,	9/22/12—9/22/13,	15.75
Union Theo. Seminary,	3/6/13—4/6/13,	4.50
Echo Amuse. Co.,	2/4/13—2/4/14,	22.50
Owl House,	12/1/12—3/1/13,	5.62
5th Ave. Amst. Co.,	2/27/13—2/27/14,	27.00
Proctors Thea., 58th St.,	4/1/13—5/1/13,	3.60
Marg. Louisa Home,	4/1/13—5/1/13,	2.70
Ch. St. Ig. Loyola,	4/1/13—7/1/13,	6.75
Garden Hotel,	4/1/13—7/1/13,	3.94
Proctor's Theatre, 125th St.,	4/1/13—5/1/13,	2.25
St. Cecilia School,	1/1/13—7/1/13,	9.00
Murray Hill Theatre,	4/1/13—7/1/13,	5.62
Brightside Nurs. & Kin- dergarten,	4/8/13—5/8/13,	1.88
Columbus Hospital,	4/1/13—5/1/13,	2.25
Ho. Marie Antoinette,	4/1/13—7/1/13,	5.62
Hse. Good Shepherd,	3/1/13—4/1/13,	1.80
The Cleveland,	4/1/13—7/1/13,	5.62
Republic Theatre,	3/1/13—4/1/13,	2.70
List & Lannon,	3/15/13—9/15/13,	13.95
Ho. Richelieu,	4/1/13—4/1/14,	11.25
Fulton Theatre, H. B. Harris,	3/24/13—4/24/13,	.94
John Cort Theatre,	12/1/13—12/1/13,	27.00
Wallach's Theatre,	4/1/13—5/1/13,	1.50

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Columbia House,	4/1/13—7/1/13,	4.50
Washington House,	4/1/13—7/1/13,	4.50
Manhattan Sq. Hotel,	4/1/13—7/1/13,	5.62
Trinidad Amst. Co.,	3/13/13—4/13/13,	1.88
Tr. Cooper Union,	4/4/13—5/4/13,	2.25
Hotel Van Twiller,	4/1/13—7/1/13,	5.06
Misericordia Hospital,	4/1/13—5/1/13,	1.80
The Oakdale Ft. Amster-		
dam Ry. Co.,	4/1/13—7/1/13,	4.50
Bernard Brunjes,	3/1/13—6/1/13,	4.50
Berkely Theatre,	4/1/13—5/1/13,	2.25
New Circle Theatre,	3/1/13—4/1/13,	1.88
New Grand Hotel,	12/1/12—3/1/13,	14.34
Consolidated Gas Co.,	3/5/13—3/5/14,	13.50
Nemo Theatre,	2/15/13—3/15/13,	1.88
W. T. Keogh Amst. Co.,	2/17/13—3/17/13,	1.88
Greeley Sq. Amst. Co.,	2/18/13—3/18/13,	1.88
St. Bartholomew's P. H.,	4/1/13—5/1/13,	2.25
St. Joseph's Asylum,	4/1/13—5/1/13,	1.80
Anderson Bldg.,	4/1/13—5/1/13,	2.25
N. Y. Foundling Asylum,	2/1/13—5/1/13,	5.40
Soc. for Ethic Cul.,	4/1/13—5/1/13,	1.88
Grace Church Settle.,	2/1/13—5/1/13,	5.62
Delaware Hotel,	4/1/13—7/1/13,	3.94
Home for L. S. of Poor,	10/1/12—4/1/13,	8.10
New Weston Hotel,	3/1/13—6/1/13,	5.62
Park & Tilford,	3/20/13—3/20/14,	29.25
City Theatre,	2/19/13—4/19/13,	2.25
Irvington Const. Co.,	1/3/13—1/3/14,	22.50
N. Y. Cath. Protectory,		
Broome St.,	2/1/13—4/1/13,	5.40
German Hospital,	4/1/13—10/1/13,	12.82
Hudson Hotel,	4/1/13—7/1/13,	3.94
E. A. Darling,	4/1/13—7/1/13,	6.75
Ricca & Son,	3/1/13—4/1/13,	2.33
Lafayette Hotel,	3/19/13—4/19/13,	1.88

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Singer Sew. Mach. Co.,	4/8/13—7/8/13,	30.94
Brevoort Hotel,	4/1/13—5/1/13,	1.50
N. Y. Mfrs. R. E. Co.,	2/1/12—5/1/13,	16.87
Sherman Apt. Htl. Co.,	3/1/13—5/1/13,	15.00
J. J. Shubert, Winter Garden,	2/28/13—5/28/13,	5.62
Peter Doelger,	4/1/13—5/1/13,	4.05
Proctor's 23d St.,	4/1/13—5/1/13,	3.60
Hotel Netherland,	4/1/13—5/1/13,	2.70
Conley Foil Co.,	4/1/13—7/1/13,	5.62
Co-operative Apt.,	4/1/13—7/1/13,	15.97
Bible Teach. Tr. Sch.,	4/1/13—4/1/14,	18.00
Hotel Operat. Assts.,	4/1/13—7/1/13,	5.62
Schwart. & Co.,	3/29/13—3/29/14,	31.50
Terrace Garden,	4/1/13—5/1/13,	4.05
Soc. of Tammany,	4/1/13—5/1/13,	3.60
Hotel Martinique,	1/1/13—4/1/13,	20.25
Presbyterian Home,	4/1/13—5/1/13,	2.25
Sheltering Arms Scy.,	4/1/13—4/1/14,	18.00
National House,	10/1/12—2/1/13,	4.50
Harlem House,	2/1/13—5/1/13,	5.62
Am. Victoria Hotel,	3/20/13—9/20/13,	24.75
Manhattan Theatre,	2/15/13—3/15/13,	1.88
Hotel Rector,	1/25/13—1/25/14,	99.00
Wadsworth Amst. Co.,	3/26/13—4/26/13,	2.25
Park House,	3/1/13—6/1/13,	5.62
Hudson Theatre,	4/1/13—5/1/13,	1.88
New Grand Hotel,	3/1/13—6/1/13,	14.35
Plainfield Hotel,	On acct.,	4.50
Metropolitan Club,	4/1/14—5/1/13,	2.70
The Touraine,	4/1/13—7/1/13,	6.75
Lebanon Hosp. Assn.,	4/1/13—7/1/13,	9.56
Krakauer Bros.,	4/1/13—5/1/13,	2.25
Moore & Munger,	4/1/13—5/1/13,	1.88
Natona Amst. Co.,	3/18/13—4/18/13,	1.88

Schedule B—Annexed to Complaint.

Astor House,	4/1/13—5/1/13,	2.25
Hotel Hartford,	1/1/13—7/1/13,	5.62
Hotel St. Lorenz,	12/8/12—3/8/13,	9.00
Globe Theatre,	3/10/13—4/10/13,	1.88
Parke Davis Co.,	3/8/13—4/10/13,	4.88
A. Strauss & Co.,	3/11/13—4/11/13,	4.69
Schaefer Brew. Co.,	4/1/13—5/1/13,	2.70
H. Koehler,	4/1/13—5/1/13,	3.15
Hotel Savoy,	4/1/13—5/1/13,	2.70
Greek Hotel,	2/1/13—4/1/13,	3.75
The Ashton,	3/1/13—6/1/13,	5.62
The Palermo,	7/20/12—7/20/13,	22.50
Capuchin Fathers,	3/17/13—6/17/13,	5.62
Union Hotel,	3/1/13—6/1/13,	2.81
Gr. Windsor Hotel,	3/1/13—6/1/13,	2.81
Junior League Hse.,	3/20/13—4/20/13,	1.88
Laurel Amst. Co.,	3/31/13—4/30/13,	1.88
N. Y. Inst. for Blind,	4/1/13—5/1/13,	4.05
St. Germaine Apts.,	4/1/13—7/1/13,	9.00
The Gramercy,	3/1/13—6/1/13,	5.62
Beard Bldg.,	11/1/12—2/1/13,	5.40
Manhattan Op. House,	3/1/13—6/1/13,	5.62
N. Y. Labor Temple,	4/1/13—7/1/13,	5.62
N. Y. Labor Temple,	Shortage payment, 1/1/ 12—4/1/12,	.22
Nursery & Ch. Hosp.,	4/1/13—5/12/13,	1.56
L. P. Hollender Co.,	3/16/13—3/16/14,	27.00
N. Y. Infant Asylum,	3/1/13—4/1/13,	2.25
Hse. of Good Shep.,	4/1/13—5/1/13,	1.80
Hotel Belmore,	4/1/13—7/1/13,	5.62
Regent Theatre,	1/28/13—1/28/14,	22.50
Merchants Union Ice,	4/10/13—7/10/13,	11.25
New Circle Theatre,	4/1/13—5/1/13,	1.88
Loew's 7th Ave. Thea.,	4/4/13—5/4/13,	1.88
Phoenix Amst. Co.,	1/18/13—3/18/13,	3.76
Y. W. C. A.,	4/1/13—5/1/13,	2.25

Schedule B—Annexed to Complaint.

A. M. Lacy,	On acct.,	13.50
Republic Theatre,	4/1/13—5/1/13,	2.70
St. James School,	3/1/13—4/1/13,	1.80
Beard Bldg.,	2/1/13—5/1/13,	5.40
Apt. Hotel, Edgar & Bab-		
cock,	3/1/13—6/1/13,	5.62
Hotel Martinique,	4/1/13—5/1/13,	6.75
Hotel Cadillac,	3/1/13—5/1/13,	4.50
Hanover Fire Ins.,	4/1/13—7/1/13,	6.75
Jac. Ruppert,	4/1/13—7/1/13,	8.10
Hotel DuNord,	2/1/13—6/1/13,	5.62
St. Nich. Hyg. Ice Co.,	2/15/13—3/15/13,	5.62
St. Vincent Hosp.,	4/1/13—10/1/13,	11.25
N. Y. Cath. Prot., 415		
Broome St.,	4/1/13—5/1/13,	2.70
The Wollasten,	4/1/13—7/1/13,	5.62
The Magnolia,	4/1/13—7/1/13,	5.62
Hotel Werner,	3/1/13—6/1/13,	5.06
7th Regt. Armory,	4/1/13—10/1/13,	5.62
Hotel Bretton Hall,	3/1/13—3/1/14,	22.50
Holland House Co.,	3/1/13—4/1/13,	3.15
The Gerard,	4/1/13—7/1/13,	6.75
		1,263.8
Newark, N. J.		
Bamberger & Co.,	2/24/13—2/24/14,	\$250.00
Armitage Co.,	3/1/13—5/1/13,	7.15
Schwarz & Son,	2/7/13—2/7/14,	54.00
Jaborg & Bernhard,	3/16/13—4/16/13,	6.68
Williams Bakg. Co.,	4/1/13—5/1/13,	3.75
J. J. Hockinjos,	11/17/12—5/23/13,	41.80
Radcliffe & Sons,	4/1/13—5/1/13,	3.75
Hill Lowenberg & C.,	2/8/13—4/8/13,	9.45
Green & Son,	4/2/13—5/2/13,	3.75
N. J. Button Works,	2/29/13—3/29/13,	8.44
Baker Prntg. Co.,	3/26/13—4/26/13,	6.30

Schedule B—Annexed to Complaint.

Baker Prntg. Co. (251			
Market St.,	3/25/13—4/25/13,	4.72	
Fenniman & Co.,	8/5/11—11/5/11,	12.51	
N. J. Button Works,	3/29/13—4/29/13,	8.44	
ersey City, N. J.			421.09
Hudson Steam Ldry.,	3/25/13—9/25/13,		37.35
Joboken, N. J.			
Hob. Land & Imp. Co.,	3/22/13—3/22/14,	\$225.00	
Hob. Land & Imp. Co.,	Third payment on instal-		
	lation fee,	125.00	
			350.00
			<u>\$13,565.41</u>

Schedule C.

(Annexed to Complaint.)

Money received by American District Telegraph Company for the use and benefit of Fire Protection Development Company, as per detailed statement furnished by American District Telegraph Company to Fire Prevention Development Company on June 10th, 1913.

incinnati, Ohio.			
C. L. Hile Co.,	2/1/13—4/1/13, \$33.34,	\$15.00	
Jos. Joseph & Bro.,	3/7/13—4/7/14, \$49.17	22.13	
Cinti. Fly Ser. Co.,	3/20/13—3/20/14, \$100,	45.00	
			\$82.13
New Orleans, La.			
Levy & Bros.,	2/6/13—2/5/14, 25% of		
	\$275,	\$68.75	

Schedule C—Annexed to Complaint.

Swift & Co.,	4/1/13—3/31/14, 25% of \$325,	81.25	150.0
St. Louis, Mo.			
Stromberg Kraus Co.,	March, 45% of \$4,	\$1.80	
Milford Cloak Co.,	March, 45% of \$4,	1.80	3.6
St. Paul, Minn.			
Farwell, Osmun & Kirk,	March, 45% of \$5,		2.2
Syracuse, N. Y.			
Peck & Co.,	March,		6.7
Toledo, Ohio.			
H. R. T. Radcliffe,	1/1/13—1/1/14, 25% of \$124,		31.0
Columbus, Ohio.			
Geo. B. Lupfer Co.,	4/1/13—6/30/13, 25%,		18.7
Chicago, Ill.			
Chase & Sanborn,	4/18/13—4/17/14, 50% of \$150, A. F. A.,	\$75.00	
Chase & Sanborn,	4/18/13—4/17/14, 45% of \$35, S. S.,	15.75	
Creamery Pcke. Co.,	4/1/13—4/30/13,	8.00	
Cohn Bros. Co.,	1/31/13—1/30/14,	8.80	
Chas. Denneby & Co.,	4/13/13 — 4/12/14, 50% of \$125,	62.50	
Chge. Enen Post Co.,	8/23/12 — 8/22/13, 45% of \$55,	24.75	
Est. E. L. Brand,	2/18/13 — 2/17/14, 25% of \$228,	57.00	
A. Hoenigsberger,	3/19/13 — 3/18/14, 50% of \$19.20,	9.60	
Kahn Bros.,	3/1/13—2/28/14, 20% of \$516,	129.00	
Stewart & Clark,	4/1/13—6/30/13, 25% of \$81, \$324 yr.,	20.25	

Schedule C—Annexed to Complaint.

Lambert Tree,	4/5/13—4/4/14, 45% of \$140, Cons,	63.00	
Cross Press Sign Co.,	2/1/13—1/31/14, 25% of \$324,	81.00	
Amer. Steel & W. Co.,	4/1/13—9/30/13, 45% of \$250, \$500 yr.,	112.50	
Sprague Warner Co.,	4/15/13 — 4/14/14, 25% of \$1,824,	456.00	
			\$1,123.15
Los Angeles, Cal.			
Brownstein-Louis Co.,	4/1/14—6/30/13, \$444 yr.,	\$27.75	
General Electric Co.,	4/1/13—6/30/13, \$250 yr.,	15.62	
			43.37
Minneapolis, Minn.			
Freeman-Patterson Co.,	4/1/13—7/1/13, 450,	\$30.94	
Hudson & Thurber Co.,	4/1/13—10/1/13, 25%,	33.00	
			63.94
New Orleans, La.			
L. Goldstein Sons,	4/1/13—6/30/13, 25% of \$56.25,	\$14.06	
Fairchild Auto Co.,	4/1/13—6/30/13, 25% of \$56.25,	14.06	
			28.12
Sioux City, Iowa.			
Davidson Bros Co.,	Yr. ending 2/19/14, \$84,		21.00
Terre Haute, Ind.			
Levin Bros.,	4/1/13—4/1/14, 1/4 \$276		69.00
Wesleyville, Ohio.			
H. Weber & Son,	March, April and May,		12.50
Baltimore, Md.			
Balto. Bargain House,	March,		26.47
Kansas City, Mo.			
Emery Bird Thayer,	4/4/13—4/3/14, 25% of \$450,		112.50
Omaha, Neb.			
Paxton & Gallagher,	Year ending 2/28/14, 45% of \$600,		270.00

Schedule C—Annexed to Complaint.

St. Louis, Mo.			
Hammer Bros. Co.,	March, Ludlow,		2.5
New Orleans, La.			
Dameron-Pierson Co.,	Bal. for period ending 11/ 21/13, 25% of \$150,		37.5
Portland, Me.			
Loring, Short & Har.,	4/1/13—6/30/13,	\$15.62	
A. F. Cox & Son,	4/1/13—6/30/13,	15.63	
			31.2
Buffalo, N. Y.			
J. N. Adam & Co.,	2/1/13—4/1/13,		15.0
Cincinnati, Ohio.			
Oskamp Nolting Co.,	3/28/13—9/28/13, \$102,	\$25.50	
S. S. Kresge Co.,	4/22/13—4/22/14, \$225,	112.50	
J. C. McCullough,	5/1/13—6/1/13, \$15,	6.75	
Cincinnati, Ohio.			
C. F. Thauwald Co.,	2/1/13—2/1/13, on accr. \$113,	\$50.85	
E. C. Dow,	b/17/13—5/17/14, \$175,	43.75	
			239.3
San Francisco, Cal.			
Haslett Whose. Co.,	3/1/13—5/31/13,		58.50
New Haven, Conn.			
Sperry & Barnes Co.,	March,		11.25
Cleveland, Ohio.			
Gabriel Cge. Co.,	3/21/13—9/21/13,	\$33.75	
Chandler & Rudd,	2/15/13—2/15/14,	75.00	
S. A. Raymond,	3/21/13—14, \$25,	11.25	
Adams & Ford,	2/8/13—14, \$225,	101.25	
Bamberger Reinthal,	2/1/13—8/1/13, \$200,	50.00	
Bailey Co.,	3/11/13—14, \$400,	100.00	
			371.25
Nashville, Tenn.			
O'Bryan Bros.,	4/21/13—14, \$224,		56.25
Omaha, Neb.			
Western Rock Isl. Plow Year	ending 4/15/14,		
Co.,	25% of \$350,		87.50

Schedule C—Annexed to Complaint.

Oklahoma City, Okla.			
Van Zandt B. Drug Co.,	11/14/12—12/17/12,		7.65
Kron, Ohio.			
M. O'Neil Co.,	4/1/13—14, addl.,		3.00
Cincinnati, Ohio.			
Foy Paint & Gl. Co.,	5/1/13—11/1/13, \$100,	\$25.00	
Ezekial & Bernheim,	1/1/13—4/1/13, \$50,	22.52	
			47.52
Louisville, Ky.			
Reed & Co.,	3/1/13—3/1/14, \$115,	\$51.75	
Reed & Co.,	3/1/13—14, \$15,	6.75	
Bacon & Son,	4/1/13—14, \$175,	78.75	
Taylor & Williams,	4/1/13—14, \$85,	38.25	
Taylor & Williams,	4/1/13—14, \$15,	6.75	
Carter D. G. Co.,	March, \$7,	3.15	
Brown & Son,	4/1/13—14, \$30,	13.50	
Lewis & Co.,	On acct., 12/1/13—13,		
	\$25,	11.25	
Lou. Pub. Whse. Co.,	4/1/13—14, \$96,	43.20	
Clark Elec. Co.,	4/1/13—14, \$24,	10.80	
Lou. Public Library,	4/4/13—14, \$250,	112.50	
Falls City Clo. Co.,	4/1/13—14, \$20,	9.00	
Kaufman Straus Co.,	March, \$5,	2.25	
Kaufman Straus Co.,	April, \$5,	2.25	
Hubbuch Bros. Co.,	4/1/13—14, \$50,	22.50	
Hilmer Ehrman Co.,	4/21/13—14, \$20,	9.00	
Weller & Co.,	4/1/14—41, \$100,	45.00	
Robt. Rowell Co.,	On acct. 2/1/13—14, \$15,	6.75	
Sterling Furn. Co.,	3/1/13—14, \$24, 25%	10.80	
Gutman & Co.,	On acct. 4/8/13—14, \$25,	6.25	
Falls City Clo. Co.,	3/1/13—14, \$225,	56.25	
			546.70
Minneapolis, Minn.			
Pillsbury Flr. Mills,	5/1/13—8/1/13, 45%,		423.00
St. Louis, Mo.			
Milford C. & C. Co.,	April, 45% of \$4,		1.80

Schedule C—Annexed to Complaint.

Youngstown, Ohio.

Stambough-Thompson,	4/1/13—14,	78.2
New Orleans, La.		

Importers Coffee Co.,	3/1/13—2/28/14,	52.5
Peoria, Ill.		

Jobst Bethard Co.,	5/1/13—14, \$250,	62.5
St. Joseph, Mo.		

Amer. Sash & D. Co.,	5/1/13—14,	112.5
Chicago, Ill.		

Blatchford, E. W.,	3/6/13—14,	\$132.00
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Hart Schaffner & Marx,	4/16/13—14, \$360 yr.,	
	25%,	90.00

Kuppenheimer Co.,	5/1/13—4/30/14, 25% of	
	\$412,	103.00

Albough Dower Co.,	3/21/13 — 9/20/13, 25%	
	of \$246, \$492 yr.,	61.50

Marshall Field Co.,	4/1/13—3/31/14, 46% of	
	\$7.934,	3,570.30

Marshall Field Co.,	4/1/13—3/31/14, 45% of	
	\$516,	232.00

Est. F. R. Otis (The	8/29/12 — 8/28/13, on	
Hub),	acct. 25% of \$56, \$604,	14.00

Chapin & Gore,	5/1/13—4/30/14, 45% of	
	\$175,	78.75

Lyon & Healy,	3/19/13—3/19/14, 50% of	
	\$200, Local F. A.,	100.00

Chas. G. Stevens,	2/14/13 — 2/13/14, 25%	
	of \$396,	99.00

Est. G. E. Watson,	12/1/12—11/30/13, 25%	
	of \$414.35, \$528 yr.,	103.59

A. Decker & Cohn,	3/7/13—3/6/14, 25% of	
	\$612,	153.00

Florsheim & Co.,	4/11/13—10/10/13, 45%	
	\$60.50, \$121 yr. Cons.,	27.22

Zero Marx,	11/8/12 — 11/7/13, 25%	
	of \$312,	78.00

Schedule C—Annexed to Complaint.

Adler, Kessler & Th.,	11/27/12—11/26/13, 45%		
	\$46 on acct, \$164 yr.,	20.70	
Adler, Kessler & Th.,	11/27/12—11/26/13, 45%		
	\$4 on acct. \$12 yr. Ven-		
	tilator protection,	1.80	
Fine Arts Bldg.,	4/20/13 — 7/19/13, 45%		
	of \$31.75, \$127 yr.,	14.29	
			690.35
Pittsburg, Pa.			
McCreery & Co.,	May,	31.25	
Boggs & Buhl,	May thermometer,	4.50	
St. Louis, Mo.			
Rice Stix D. G. Co.,	March, 50% of \$13,	\$6.50	
Hammer Paint Co.,	April, 50% of \$5,	2.50	
			9.00
Milwaukee, Wis.			
Goll & Frank,	3/1/13—5/1/13,	\$6.46	
McGeogh Bldg.,	3/1/13—4/1/13,	2.00	
John Schroeder,	3/1/13—4/1/13,	2.75	
F. G. Smith,	2/1/13—3/1/13,	1.75	
John Rauschenberger,	3/1/13—4/1/13,	2.38	
Allis Chalmers Co.,	3/1/13—4/1/13,	7.50	
Kalamazoo Knit. Co.,	3/1/13—4/1/13,	2.00	
Holeproof Hos. Co.,	4/1/13—5/1/13,	2.00	
Amer. Candy Co.,	3/1/13—4/1/13,	3.65	
Molitor & Hummel,	1/1/13—3/1/13,	6.30	
Chas. Abresch,	2/1/13—3/1/13,	6.75	
Western Hat Co.,	11/1/12—11/1/13,	65.40	
Adler & Son,	4/7/13—4/7/14,	30.00	
Ed. Schuster,	2/21/13—2/21/14,	33.00	
Ed. Schuster,	4/18/13—4/18/14,	42.00	
Benj. Young,	4/1/13—4/1/14,	43.20	
Chas. Abresch,	3/1/13—4/1/13,	6.75	
			263.89
Minneapolis, Minn.			
Mor. R. I. Plow Co.,	5/1/13—5/11/14, 25%,	108.00	

Schedule C—Annexed to Complaint.

Pittsburg, Pa.			
Heymer & Bros.,	Yr. commencing 5/6/13,	\$88.75	
Equitable Meter Co.,	Yr. commencing 5/14/13,	50.00	
			138.7
Cincinnati, Ohio.			
Steinman & Meyer,	5/8/13—5/18/14, \$300,	\$75.00	
Adams Expr. Co.,	5/1/13—6/1/13, \$16.67,	7.52	
			82.5
Dubuque, Ia.			
Buetell Bros.,	25% 4/1/—5/1/13, \$14,	\$3.50	
McFadden Co.,	4/10—4/10/13, \$36.25,	9.06	
Rider Wallis Co.,	4/1—7/1/13, \$38.75,	9.69	
			22.2
Nashville, Tenn.			
Tulane Hotel,	4/25/13—14,		62.5
Baltimore, Md.			
Balto. Barg. Hse.,	April,		26.4
Davenport, Iowa.			
Roberts Co.,	April,		7.2
Detroit, Mich.			
Hudson Co.,	3/8/13—14, 1/4 \$336,		84.0
St. Paul, Minn.			
Noyes Bros. & Cutler,	5/4/13—14, 45% \$168,		75.6
Columbus, Ohio.			
Billow Lupfer Co.,	1/1/13—6/30/13, 25%,		37.0
Knoxville, Tenn.			
Rockney Co.,	5/1/13—14,	\$37.50	
Anderson Dublin V.,	March and April,	10.88	
Cameron McClung,	3/1—6/1/13,	4.68	
			53.0
Minneapolis, Minn.			
N. W. Knitting Co.,	3/15/13—6/1/13, 25%,		4.37
New Orleans, La.			
Kirby & Co.,	4/24/13—14, 25% \$400,		100.0
San Francisco, Cal.			
Pac. States El. Co.,	4/1/13—6/30/13,	21.00	

Schedule C--Annexed to Complaint.

Pac. States El. Co.,	Installation fees,	62.50	
			83.50
New Orleans, La.			
Wm. Agar & P. Werlein,	4/28/13—14, 25% \$275,	\$68.75	
Mrs. L. S. Eustis,	1/13/13 — 1/12/14, 25%		
	of \$275,	68.75	
			137.50
Chicago, Ill.			
Bosch & Co.,	4/3/13—10/2/13, 45% of \$125, \$250 yr.,	56.25	
S. D. Boynton,	7/13/12 — 7/12/13, 45% \$50 on acct. \$300 yr.,	22.50	
Western Paper Co.,	5/4/13—11/3/13,	17.25	
Western Paper Co.,	5/4/13—11/3/13, 45% of \$37.50, \$75 yr.,	16.87	
Burley & Tyrrell,	3/3/13—3/2/14, 25% of \$462,	115.50	
Burley & Tyrrell,	3/3/13—3/2/14, 50% of \$264,	132.50	
Moloney Bennett Co.,	3/1/13—2/28/14, 45% of \$200 Cons.,	90.00	
Hirsch Strauss Co.,	3/9/13—6/8/13, 50% of \$6 25, \$25 yr.,	3.10	
August Turner,	5/8/13—8/7/13, 45% of \$131.25, \$525 yr.,	59.05	
Baumann Mfg. Co.,	5/10/13—8/9/13, 45% of \$41.25, \$165 yr. Cons.,	18.57	
Cluett Peabody Co.,	4/15/13 — 4/14/14, 50% of \$219,	109.50	
Schultz-Hirsh Co.,	2/1/13—4/30/13, 50% of \$68.75, \$267,	34.35	
Carter & Holmes,	5/1/13—5/31/13, 25% of \$34, \$408 yr.,	8.50	
Kling Bros. Co.,	12/20/12—12/19/13, 25% of \$150 on acct., \$450 yr.,	37.50	

Schedule C—Annexed to Complaint.

Sears, Roebuck Co.,	4/15/13 — 7/26/13, 50%		
	of \$2.44, \$8.63 yr.,	1.22	
J. R. & W. D. Walker,	4/4/13—4/3/14, 45% of		
	\$75,	33.75	
			115.
St. Paul, Minn.			
Farwell, Ozmun & K.,	April, 45% of \$5,		2.
Cincinnati, Ohio.			
J. M. Potter,	3/5/13—3/5/14, \$75,	\$33.75	
Straus Pritz. Co.,	5/24/13—14, \$80,	36.00	
Ross Moyer Mfg. Co.,	4/2—5/2/13, \$12.50,	5.62	
J. F. Dettz, Rec.,			
Schacht M. Co.,	5/11—6/1/13, \$10.76,	2.61	
Keekin Cap Co.,	5/1/13—14, \$360,	90.00	
			167.
Buffalo, N. Y.			
Meldrum Co.,	3/1/13—4/1/13,	\$10.42	
Washburn Crosby Co.,	5/1/13—5/1/14,	168.00	
			178.
Cincinnati, Ohio.			
Saml. Ach Co.,	5/16/13—14, \$150,	\$67.50	
Geiershofer Cl. Co.,	5/19/13—14, \$225,	101.25	
			168.
Grand Rapids, Mich.			
Mueller & Slack,	3/18—6/17/13, \$216,		13.
Pittsburg, Pa.			
Gilmore Co.,	Quarter commencing 5/		
	1/13,		24.
Des Moines, Iowa.			
Yunker Bros.,	2/24/13—14,	\$114.00	
Harris Emery Co.,	7/24/13—14,	37.50	
Warfield Pratt Co.,	4/15—10/15/13,	86.40	
			237.
Nashville, Tenn.			
Harris Davis Co.,	5/5/13,		37.

Schedule C—Annexed to Complaint.

St. Louis, Mo.			
Stromberg K. M. Co.,	April, 45% of \$4,	\$1.80	
Schmitz Shroder Co.,	March and April,	3.60	
			5.40
	45%		
Mattanooga, Tenn.			
	Year ending 4/30/14,		
Davenport Bros.,		37.50	
Knox, Thomas & Sp.,		37.50	
Stagmaier & Co.,		37.50	
Stone Fort Land Co.,		25.00	
			137.50
Nashville, Tenn.			
Lebeck Bros.,	5/8/13—14,	75.00	
Cain Sloan Co.,	5/8/13—14,	68.75	
Gastner Knott Co.,	4/16/13—14,	3.00	
			146.75
St. Paul, Minn.			
St. Paul Pub. Co.,	5/15/13—14, 25% \$191,		47.75
Birmingham, Ala.			
Doster, North D. Co.,	2/1/13—14,		180.00
Atlanta, Ga.			
Morrow Tr. & Stor. Co.,	5/18—8/18/13, 25%,		18.75
Chicago, Ill.			
Creamery Pkge. Co.,	5/1/13—5/31/13, 25% of \$32, \$384,	\$8.00	
Geo. D. Steere,	4/29/13 — 4/28/14, 45% of \$20,	9.00	
Peterson Linotype Co.,	4/29/13—14, 45% of \$22,	9.90	
Metro. Syndicate,	5/1/13—7/23/13, 45% of \$10.40, \$45,	4.70	
Royal Tailors,	4/26/13 — 4/25/14, 45% \$264 on acct. \$528 yr.,		118.80
Jam & Pacyns,	5/1/13—8/31/13, 45% of \$5, \$15 yr.,	2.25	
Kabo Corset Co.,	2/1/13—1/31/14, 25% of \$740,	185.00	

Schedule C—Annexed to Complaint.

Sears Roebuck Co.,	4/17/12 — 7/26/13, 50%		
	of \$11.95, \$43.15,	\$5.95	
W. C. Seipp,	4/28/13 — 4/27/14, 25%		
	of \$552,	138.00	
Traver Paper Co.,	4/9/13—5/21/13, 25% of		
	of \$51.70, \$360,	12.93	
Truax, Greene Co.,	3/8/13—3/7/14, 45% of		
	\$100 on acct. \$245,	45.00	
			539.5
Los Angeles, Cal.			
Brunswick Drug Co.,	3/14/13—12/31/13,	\$86.23	
Brunswick Drug Co.,	Installation fee,	50.00	
			136.2
Indianapolis, Ind.			
C. S. Cones & Co.,	3/1/13—5/31/13, 25% of		
	\$250 yr.,		15.6
Cincinnati, Ohio.			
Joseph & Bros. So.,	4/7/13—5/7/13, \$49.17,	\$22.13	
Wise, Shaw & Feder,	5/26/13—14, \$250,	62.50	
			84.6
Nashville, Tenn.			
Murray Dibrell Co.,	5/8/13—14, \$60,		15.00
Boston, Mass.			
Natl. Fire Appl. Co.,		\$805.74	
Jordan Marsh Co.,			
Old Plant,	1/1/13—4/1/13,	104.93	
New Plant,	1/1/13—4/1/13,	37.71	
Shuman & Co.,	4/1—5/1/13,	13.05	
F. L. Young & Kimball,	3/1—5/1/13,	5.98	
Am. Circ. Loom Co.,	4/1—5/1/13,	4.17	
Hathaway Bldg.,	3/1—4/1/13,	5.40	
			976.98
Brockton, Mass.			
Douglas Shoe Co.,	4/1/13—14,	\$175.00	
Brockton Fcty Assn.,	4/1/13—14,	72.00	
			247.00

Schedule C—Annexed to Complaint.

Hartford, Conn.			60.00
Foster Co.,	5/1/13—14,		
Lynn, Mass.			
Hastings Sons Co.,	4/1—7/1/13,	\$9.38	
Goddard Co.,	4/1—7/1/13,	6.00	
Lynn Realty Co. E. E.			
Strout),	4/1—7/1/13,	12.50	
Littlefield & Moulton,	4/1—7/1/13,	21.00	
Sprague Box Co.,	4/1—7/1/13,	6.00	
			54.88
New York, N. Y.			
Waldorf Astoria,	4/1/13—5/1/13,	\$4.05	
St. Barnabas Home,	4/1/13—7/1/13,	5.62	
The Elberon,	3/1/13—6/1/13,	5.62	
Hahnemann Hosp.,	3/1/13—9/1/13,	5.62	
N. Y. Kindergarten,	3/20/13—3/20/13,	22.50	
Barnard Sch. Girls,	4/2/13—4/2/13,	31.50	
Harlem Y. W. C. A.,	4/1/13—7/1/13,	5.62	
Y. M. H. A.,	4/1/13—5/1/13,	2.82	
Jackson Co.,	4/1/13—7/1/13,	12.37	
The Mansfield,	3/1/13—5/1/13,	3.75	
Montauk Hotel,	2/3/13—5/3/13,	5.62	
Proctor's 58th St. Th.,	5/1—6/1/13,	3.60	
Wallack's Theatre,	5/1/13—6/1/13,	1.50	
Proctor's 125th St. Th.,	5/1—6/1/13,	2.25	
Louis Ottmann,	5/1/13—6/1/13,	1.88	
Harlem Music Hall,	4/1/13—10/1/13,	7.87	
Irvington Hotel,	5/1/13—8/1/13,	3.37	
St. Albans Hotel,	5/1/13—8/1/13,	5.40	
A. Lichenstein,	5/1/13—8/1/13,	5.62	
Germania Hotel,	5/1/13—8/1/13,	3.37	
E. L. Ettinger,	1/15/13—1/15/13,	32.40	
Liberty Theatre,	4/10/13—7/10/13,	4.50	
Int. Hdkf. Mfg. Co.,	5/1/13—6/1/13,	1.88	
Natl. Lodging Hse.,	5/1/13—8/1/13,	4.50	
The Savoy,	5/1/13—8/1/13,	4.50	

Schedule C—Annexed to Complaint.

Micca & Sons,	4/1/13—5/1/13,	2.33
Hotel Imperial,	5/1/13—6/1/13,	2.25
Asylum St. Vincent Paul,	4/1—5/1/13,	1.69
Geo. Ehret,	5/1/13—6/1/13,	2.25
Lorena House,	4/1/13—6/1/13,	3.76
Women's Ldg. Hse.,	5/1/13—8/1/13,	4.50
Chas. T. Wells,	5/1/13—8/1/13,	5.62
Playhouse Co.,	4/15/13—4/14/14,	22.50
American Theatre (Ur-		
ban Amst. Co.,	3/19/13—4/19/13,	1.88
Victoria Theatre,	4/1/13—6/1/13,	5.40
Margaret Louise Home,	5/1/13—6/1/13,	2.70
Hudson Theatre,	5/1/13—6/1/13,	1.88
New Amsterdam Th.,	5/1/13—8/1/13,	4.50
St. Claire Hotel,	2/1/13—5/1/13,	5.06
New York Club,	4/1/13—7/1/13,	5.62
Amer. Thea. R. G. (Ur-		
ban Amst. Co.),	3/9/13—4/9/13,	1.88
Greeley Sq. Amst.,	3/18/13—4/18/13,	1.88
Delancey Amst. Co.,	3/23/13—4/23/13,	1.88
Hotel Martinique,	3/1/13—5/1/13,	6.30
Misericordia Hospital,	5/1/13—6/1/13,	1.80
Hotel Rowland,	5/1/13—8/1/13,	5.62
Plaza Music Hall,	4/13/13—5/13/13,	1.88
Soc. of Tammany,	5/1/13—6/1/13,	3.60
Garrick Theatre,	5/1/13—8/1/13,	3.94
Criterion Theatre,	5/1/13—8/1/13,	3.94
New Lyceum Theatre,	5/1/13—8/1/13,	6.75
N. Y. Mannerchor,	5/1/13—8/1/13,	5.62
Walcott Hotel,	3/1/13—6/1/13,	11.25
San Rafael Apts.,	5/1/13—8/1/13,	2.82
Jesse L. Lasky,	4/24/13—4/24/14,	22.50
Tr. Cooper Union,	5/4/13—6/4/13,	2.25
Abrams Hewitt Co.,		
Eias Brew. Co.,	4/1/13—7/1/13,	7.31
Savoy Theatre,	5/1/13—8/1/13,	3.94

Schedule C—Annexed to Complaint.

Schirmer's Hotel,	5/1/13—8/1/13,	3.34
Hotel Sagamore,	5/1/13—8/1/13,	5.62
Inverness Apt.,	1/4/13—4/4/13,	3.94
Richmond Hill Apt.,	1/4/13—4/4/13,	3.94
Rudel's Hotel,	5/1/13—5/1/14,	15.75
Hampshire Apt.,	1/13/13—4/1/13,	2.82
Portsmouth Apt.,	1/1/13—4/1/13,	6.19
Peter Doelger,	5/1/13—6/1/13,	4.05
Columbus Hosp.,	5/1/13—6/1/13,	2.25
Anderson Bldg.,	5/1/13—6/1/13,	2.25
Soc. Ethic. Culture,	5/1/13—6/1/13,	1.88
Hotel Columbus,	5/1/13—8/1/13,	3.37
Sherman Sq. Hotel,	5/1/13—6/1/13,	7.50
Brightside Nurs. & K.,	5/8/13—6/8/13,	1.88
St. Joseph's Asylum,	5/1/13—6/1/13,	1.80
Dominican Convent,	4/1/13—6/1/13,	3.60
Golden Rule Hall,	11/1/12—5/1/13,	11.25
Arcade House,	2/1/13—5/1/13,	2.82
Cunard House,	2/1/13—5/1/13,	2.82
Stanwix House,	2/1/13—5/1/13,	2.82
So. Fifth Ave. Hotel,	2/1/13—5/1/13,	2.82
The Delavan,	2/1/13—5/1/13,	2.82
Boys' Club,	5/1/13—8/1/13,	3.37
Murray Hill Lyceum.	Your portion of settle- ment. 8/3/09—8/1/13,	4.00
Parke-Davis Co.,	4/8/13—5/8/13,	4.88
Hy. B. Harris,	4/24/13—5/24/13,	.94
N. Y. Throat, Nose & E. H.,	4/23—7/23/13,	5.62
Wadsworth Amst. Co.,	4/26/13—5/26/13,	2.25
Apartment House (H. B. Ashford),	5/1/13—8/1/13,	5.62
Colonial Theatre,	5/1/13—8/1/13,	5.62
St. Agatha,	4/2/13—4/2/14,	22.50
Exch. Court Bldg.,	4/1/13—7/1/13,	5.62
N. Y. Ophthalmic Inst.,	5/1/13—8/1/13,	6.75

Schedule C—Annexed to Complaint.

Keystone House,	11/1/12—5/1/13,	6.75
Lafayette Hotel,	4/19/13—5/19/13,	1.88
Knickerbocker Hotel,	3/1/13—3/1/14,	36.00
Brevoort Hotel,	5/1/13—6/1/13,	1.50
The Soncy (57th St. Realty Co.),	5/13/13—5/13/14,	18.00
Presbyterian Home,	5/1/13—6/1/13,	2.25
Greek Hotel,	4/1/13—5/1/13,	1.88
Baptist Home,	5/5/13—11/5/13,	10.70
Krakauer Bros.,	5/1/13—6/1/13,	2.25
Standard Hotel (H. D. Luhrs Co.),	5/1/13—5/1/14,	11.25
Globe Theatre,	4/10/13—5/10/13,	1.88
St. Bartholomew's Ph.,	5/1/13—6/1/13,	2.25
Dept. of Finance,	1/1/13—4/1/13,	12.15
Eagle Hotel,	5/1/13—8/1/13,	4.50
Am. Fine Arts Soc.,	5/1/13—8/1/13,	7.31
Union Theol. Sem.,	4/6/13—5/6/13,	4.50
Terrace Garden,	5/1/13—6/1/13,	4.05
H. Koehler,	5/1/13—6/1/13,	3.15
Hotel Savoy,	5/1/13—6/1/13,	2.70
Stuyvesant Apts.,	4/1/13—6/1/13,	3.75
Y. M. H. A.,	5/1/13—6/1/13,	2.82
Roosevelt Hosp.,	2/1/13—8/1/13,	8.00
Langham Hotel Co. (Hotel Empire),	4/17/13—10/17/13,	27.45
Asylum St. V. Paul,	5/1/13—6/1/13,	1.69
Met. Club,	5/1/13—6/1/13,	2.70
Hotel Bryant,	4/5/13—7/5/13,	5.62
Murray Hill Hotel,	4/1/13—4/1/14,	11.25
5th Ave. Am. Co.,	3/15/13—5/15/13,	5.62
St. Patrick's Cath.,	3/1/13—6/1/13,	6.75
Bridge Hotel,	5/1/13—8/1/13,	3.37
Hotel Monument,	5/1/13—8/1/13,	5.06
Moore & Munger,	5/1/13—6/1/13,	1.88

297.6

Schedule C—Annexed to Complaint.

N. Y. Infant Asy.,	4/1/13—5/1/13,	2.25
Astor House,	5/1/13—6/1/13,	2.25
Hotel Netherland,	5/1/13—6/1/13,	2.70
Hotel Maryland,	12/22/12—6/22/13,	11.25
Ricca & Sons,	5/1/13—5/17/13,	1.28
U. S. Motor Co.,	2/1/13—3/1/13,	4.50
Bway. & 96th St. Co.,	3/2/13—6/2/13,	5.63
Hotel Traymore,	5/1/13—8/1/13,	5.62
Holland House Co.,	4/1/13—5/1/13,	3.15
Yale Club,	4/15/13—10/15/13,	11.25
Hammersley Hotel,	2/1/13—5/1/13,	4.50
Hammersley Hotel,	11/1/10—2/1/11,	4.50
Lorens Hotel,	2/1/13—5/1/13,	4.50
Lorens Hotel,	5/1/10—8/1/10,	4.50
Schaefer Brewing Co.,	5/1/13—6/1/13,	2.70
Y. M. C. A.,	5/1/13—6/1/13,	2.25
Junior League House,	4/20/13—5/20/13,	1.88
Avenue Amusement Co.,	12/21/13—5/21/13,	9.38
Third Ave. Theatre,	3/1/13—6/1/13,	5.62
Hotel Cadillac,	5/1/13—6/1/13,	2.25
Proctor's 23d St. Th.,	5/1/13—6/1/13,	3.60
St. Luke's Home,	5/1/13—7/1/13,	7.20
Hotel Cumberland,	5/6/13—8/6/13,	5.62
Home for Daughters of Jacob,	4/8/13—4/8/14,	22.50
N. Y. Inst. for Blind,	5/1/13—6/1/13,	4.05
The Dakota,	On account,	9.00
Hotel Astoria,	5/1/13—8/1/13,	5.62
Steck & Co.,	5/1/13—6/1/13,	1.88
Waldorf Astoria,	5/1/13—6/1/13,	4.05
Hotel Hatfield,	5/1/13—5/1/14,	22.50
Princess Theatre,	3/7/13—6/7/13,	6.75
Scheddelin & Co.,	4/1/13—5/1/13,	4.50
N. Y. Hotel,	5/1/13—8/1/13,	5.62
G. W. Folsom,	5/1/13—8/1/13,	6.75

 280.81

Schedule C—Annexed to Complaint.

Eureka House,	3/1/13—6/1/13,	5.62	
Newark, N. J.			945
Wm. T. Vancovious,	3/1/13—6/1/13,	\$19.69	12
J. Colyer & Co.,	2/29/13—3/29/13,	5.91	
J. Colyer & Co.,	3/29/13—4/29/13,	5.32	
Amer. Hame & Bit. Co.,	4/1/13—6/1/13,	7.50	
Buehler, Landmesser & H.,	2/8—8/8/13,	11.25	
Yatman Rubber Co.,	11/24/12—4/24/13,	18.76	
N. J. Button Works,	4/29/13—5/29/13,	8.44	
Williams Bak. Co.,	5/1/13—6/1/13,	3.75	
Jaburg & Bernhard,	4/16/13—5/16/13,	6.68	
Hill, Lowenburg & Co.,	4/8/13—5/8/13,	4.72	
Straus & Co.,	4/11/13—5/11/13,	4.69	96
Green & Son,	5/2/13—6/2/13,	3.75	
Dunham & Son,	1/5/13—4/5/13,	20.25	
Radcliffe & Sons,	5/1/13—6/1/13,	3.75	
Baker Prntg. Co.,	4/22/13—5/22/13,	6.30	
Baker Prntg. Co.,	4/24/13—5/25/13,	4.72	
J. L. Armitage,	5/1/13—6/1/13,	3.75	
Peabody, Mass.			42
C. H. Keefe,	4/1/13—5/1/13,	7.29	
Morrill Lea. Co.,	4/1/13—5/1/13,	6.00	
M. Shortell & Son,	4/1/13—5/1/13,	4.07	
Springfield, Mass.			17
Meekins, Packard & W.,	3/1—4/1/13,	7.25	
Forbes & Wallace,	4/1/13—5/1/13,	17.00	
Worcester, Mass.			24
Mass. Corset Co.,	1/24/13—7/24/13,	\$25.00	
Denholm & McKay,	3/1/13—4/1/13,	8.33	
Howard Bros Co.,	3/1/13—4/1/13,	19.69	

Schedule C—Annexed to Complaint.

Denholm & McKay,	4/1/13—5/1/13,	8.33	
			61.35
orcester, Mass.			
John L. Parker Co.,	45% of dividends receiv-		
	ed on 88c,		.40
oston, Mass.			
Nat. Fire Ap Co.,	Account Whitney Reed		
	Chair Co., which is in		
	hands of Receiver,		.93
			\$15,963.37

(Filed Oct. 20, 1913).

Answer.

Supreme
 NEW JERSEY COURT OF ERRORS AND
~~APPEALS.~~

FIRE PROTECTION DEVELOPMENT
 COMPANY,
 Plaintiff,
 against
 AMERICAN DISTRICT TELEGRAPH
 COMPANY,
 Defendant.

Action at
 Law.
 Answer.

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The defendant American District Telegraph Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, by Messrs. Lindabury, Depue & Faulks, its attorneys, says:

DEFENSE TO FIRST CAUSE OF ACTION.

1. It admits the allegations of paragraphs 1 and 2 of the complaint. 30

2. It admits that prior to April 10, 1913, it collected from the persons, firms, corporations and concerns mentioned in the schedule attached to the complaint, marked Schedule A, \$13,593.66. It denies that it held the whole of said sum for the plaintiff or that whole of said sum belonged to the plaintiff or that it promised to pay the whole of said sum to the plaintiff on April 10, 1913, or at any other time. It admits that Sched- 40

Answer.

10 ule A is a correct statement of the said collections. It denies that said Schedule A is a correct or complete copy of a statement at any time rendered by it to the plaintiff. It denies that it received the whole of said sum of \$13,593.66 for the plaintiff.

3. It admits that it has paid on account of the said sum of \$13,593.66, \$10,806.39 and is entitled to a credit of the further sum of \$1,380.02. It denies that any balance from the said sum of \$13,593.66 is due from it to the plaintiff.

20 4. It denies that \$1,407.25, or any other sum is due from it to the plaintiff from its collections made prior to April 10, 1913.

DEFENSE TO SECOND CAUSE OF ACTION.

5. It admits the allegations of paragraphs 6 and 7 of the complaint.

30 6. It admits that prior to May 10, 1913, it collected from the persons, firms, corporations and concerns named in the schedule attached to the complaint, marked Schedule B the sum of \$13,565.41. It denies that it held the whole of said sum for the plaintiff or that the whole of said sum belonged to the plaintiff, or that it promised to pay the whole of said sum to the plaintiff on May 10, 1913, or at any other time. It admits that said Schedule B is a correct statement of the items of the said collections. It denies that said Schedule B is a correct or complete copy of a statement at any time rendered by it to the plaintiff. It denies that it received the whole of
40 said sum of \$13,565.41 for the plaintiff.

Answer.

7. It admits that it has paid on account of the said sum of \$13,565.41, \$11,039.75, and is entitled to a credit of the further sum of \$1,046.71. It denies that any balance from the said sum of \$13,565.41 is due from it to the plaintiff.

8. It denies that \$1,478.95, or any other sum, is due from it to the plaintiff from its collections made prior to May 10, 1913.

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DEFENSE TO THIRD CAUSE OF ACTION.

9. It admits the allegations of paragraphs 11 and 12 of the complaint.

10. It admits that prior to June 10, 1913, it collected from the persons, firms, corporations and concerns named in the schedule attached to the complaint, marked Schedule C, the sum of \$15,055.61. It denies that it held the whole of said sum for the plaintiff or that the whole of said sum belonged to the plaintiff, or that it promised to pay the whole of said sum to the plaintiff on June 10, 1913, or at any other time. It admits that said Schedule C is a correct statement of the items of the said collections. It denies that said Schedule C is a correct or complete story of a statement at any time rendered by it to the plaintiff. It denies that it received the whole of said sum of \$15,055.61 for the plaintiff.

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11. It admits that it has paid on account said sum of \$15,055.61, \$14,107.25 and is entitled to a credit of the further sum of \$907.76. It denies that any balance from the said sum of \$15,055.61 is due from it to the plaintiff.

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Answer.

12. It denies that \$948.36, or any other sum, is due from it to the plaintiff from its collections made prior to June 10, 1913.

10 13. By way of counterclaim against the plaintiff, the defendant says: That by an agreement in writing, dated July 27, 1905, between Automatic Fire Protection Company, a corporation of the State of Maine, party of the first part, Special Fire Alarm Electrical Signal Company, a corporation of the State of New York, party of the second part, New York Fire Protection Company, a corporation of the State of New York, party of the third part, and this defendant, party of the fourth part, reciting among other things that, 20 whereas the Special Fire Alarm Electrical Signal Company was engaged in supplying special fire alarm service in the City of New York and had certain property rights and franchises which it then enjoyed, and whereas the Automatic Fire Protection Company was desirous of purchasing the capital stock of the said Special Fire Alarm Electrical Signal Company, subject to a mortgage in the said agreement mentioned and of leasing the entire property and franchises of the 30 said Special Fire Alarm Electrical Signal Company as a going concern for the period and at the rental therein expressed, and whereas the New York Protection Company, in consideration of the said lease and the payment of said rental was willing to transfer all of its right, title and interest in and to the stock of the said Special Fire Alarm Electrical Signal Company to the said Automatic Fire Protection Company and 40 whereas the said American District Telegraph Company because of its interest in the said

Answer.

Automatic Fire Protection Company, was willing to guarantee the said lease and the payment of a certain consideration in the said agreement expressed, it was among other things agreed that the said Special Fire Alarm Electrical Signal Company thereby leased to the said Automatic Fire Protection Company all of its assets and franchises of every name and nature for the term therein expressed, the business to be transferred as a going concern, free and clear of indebtedness, and that the said Automatic Fire Protection Company thereby leased the said property and agreed to pay the sums therein expressed and that the said Automatic Fire Protection Company should keep the property therein leased in good condition and make all necessary repairs thereto and pay and discharge all taxes and assessments thereon of every name and nature. And it was further agreed that the said New York Fire Protection Company thereby transferred to the said Automatic Fire Protection Company all of its right, title and interest in and to the said stock of the Special Fire Alarm Electrical Signal Company, and that the said American District Telegraph Company thereby guaranteed the payment by the said Automatic Fire Protection Company of certain payments expressed in the said lease, all of which appears from a true copy of the said agreement hereto annexed and made part hereof and marked Schedule A. Defendant further says that by an agreement in writing, dated October 12, 1905, by and between Automatic Fire Protection Company, party of the first part, and American District Telegraph Company, party of the second part, reciting the said agreement of July 27, 1905, and

Answer.

reciting that whereas the annual gross rentals derived from the contracts and business assets and franchises demised under said lease, amounting at the time of the making thereof to \$29,000 per annum were collected by the National District Telegraph Company of the City of New York, and were received under existing contracts between the parties thereto by the said American District Telegraph Company, and whereas one of the purposes and considerations for the said lease was to secure fire protection connections for the said National District Telegraph Company, a subsidiary company of the said American District Telegraph Company, which it had not theretofore been able to secure, it was among other things agreed that out of the gross income received by the American District Telegraph Company from the business and contracts aforesaid in the City of New York for manual signal service, there should be first paid during the forty-nine years' term of the said lease a rental of \$5,000 to the Guardian Trust Company, trustee, and that the remainder of the gross income which should be received by the said American District Telegraph Company during the forty-nine years' term of the said lease for manual signal service in the City of New York up to the aggregate of \$29,000 of gross income per annum, remaining after deducting said \$5,000 rental, should be divided between the parties to the said agreement as follows: For the first year from and after July 27, 1905, in the proportions therein expressed, and for each year thereafter during the said term to the said Automatic Fire Protection Company 45 per cent. thereof, and to the said American District Telegraph Company 55

Answer.

per cent. thereof. And it was further agreed that each of the parties to said agreement assumed and agreed to pay one-half of said rental of \$5,000, or so much thereof as should be unpaid by the gross rentals derivable from the business and contracts in the City of New York for manual signal service which should be received by the said American District Telegraph Company during the term of said lease. And it was further agreed that all income from manual signal service business in the City of New York in excess of the gross income of \$29,000 per annum for the term of the said lease should be retained and enjoyed by the said American District Telegraph Company for its own use and behoof, all of which appears from a true copy of the said agreement hereto annexed and made a part hereof and marked Schedule B. Defendant further says that by agreement, in writing, dated April 29, 1909, between Automatic Fire Protection Company and Fire Protection Development Company, the Automatic Fire Protection Company, with the assent of the defendant, among other things, sold, assigned and transferred all its right, title and interest in and to all contracts for service with the various customers to the said Fire Protection Development Company; and it was further agreed that the purpose of the said agreement was that the said Fire Protection Development Company should, after May 1, 1909, be empowered to transact any and all business formerly conducted by Automatic Fire Protection Company under and by virtue of its contracts with the defendant and a certain other company in the said agreement mentioned, under the terms and conditions in the said agreement ex-

Answer.

- pressed, and the said Automatic Fire Protection Company covenanted and agreed to make, execute and deliver any additional formal assignments or papers that might be deemed necessary to fully carry out the purpose of the said contract as thereby expressed. And it was further
10 agreed that the said Fire Protection Development Company would during the term of the said contract annually pay any and all taxes, charges, fees and assessments that might become due and payable after May 1, 1909, upon the property or franchises of the Automatic Fire Protection Company, and its subsidiary companies, as and when due; and it was further agreed that the
20 period of the said contract should be nine hundred and ninety-nine years. And the said Fire Protection Development Company also among other things agreed to pay and assume all existing obligations from and after May 1, 1909, and fully carry out any and all existing contracts of the Automatic Fire Protection Company and its subsidiary companies according to the true intent and spirit of the said agreement, as appears by a true copy of the said agreement hereto annexed and made part hereof and marked Schedule C.
- 30 Defendant further says that it has hitherto fully performed all of the terms and provisions of the said agreements of July 27, 1905, and October 12, 1905, on its part to be performed.

Defendant further says that the said agreements of July 27, 1905, October 12, 1905, and April 29, 1909, are and at all times have been the only agreements between the plaintiff and defendant, or to which either the plaintiff or de-
40 fendant were or are parties, which related to or

Answer.

in any wise affected the matters in controversy between the parties hereto, and which were in writing, or of which there was or is any note or memorandum in writing signed by the party to be charged therewith or some other person thereunto by it lawfully authorized.

10

Defendant further says that any agreement upon which this action may be alleged to be brought other than the said agreements of July 27, 1905, October 12, 1905, and April 29, 1909, is an agreement that was not to be performed within one year from the making thereof, and that neither it nor any note or memorandum thereof was or is in writing or signed by the party to be charged therewith or some person by it lawfully authorized, and as to such agreement the defendant prays the benefit of the statute in such case made and provided.

20

Defendant further says that during the period in which the collections mentioned in the said complaint were made, and prior to April 10, 1913, it expended for the benefit of the plaintiff and at its special instance and requests sums aggregating \$1,407.25, as shown upon the schedule hereto annexed and made a part hereof and marked Schedule D, to keep the property leased by the said Automatic Fire Protection Company under and by virtue of the terms of the said agreement of July 27, 1905, in good condition and to make the necessary repairs thereto and properly maintain and operate the said property. On or about April 10, 1913, the defendant demanded of the plaintiff payment of the said \$1,407.25. The plaintiff has not paid the said sum, or any part thereof.

30

40

Answer.

Defendant further says that during the said period in which the collections mentioned in the said complaint were made, and between April 9, 1913, and May 9, 1913, it expended for the benefit of the plaintiff and at its special instance and request \$1,478.95, as shown by the schedule hereto annexed and made a part hereof and marked Schedule E, to keep the said property leased to the said Automatic Fire Protection Company in good condition, to make the necessary repairs thereto and pay and discharge taxes and assessments thereon and to properly maintain and operate the said property. On or about May 10, 1913, the defendant demanded of the plaintiff payment of the said sum of \$1,478.95. The plaintiff has not paid the said sum, or any part thereof.

Defendant further says that during the said period in which collections mentioned in the said complaint were made, and between May 9, 1913, and June 9, 1913, it expended for the benefit of the plaintiff and at its special instance and request \$948.36, as shown by the schedule hereto annexed and made a part hereof, and marked Schedule F, to keep the said property leased to the said Automatic Fire Protection Company in good condition, to make the necessary repairs thereto and to properly maintain and operate the said property. On or about June 10, 1913, the defendant demanded of the plaintiff payment of the said sum of \$948.36. Plaintiff has not paid the same or any part thereof.

Answer.

The defendant counterclaims \$3,843.46, and interest on \$1,407.25 thereof from April 10, 1913; on \$1,478.95 thereof from May 10, 1913; and on \$948.36 thereof from June 10, 1913, besides costs.

LINDABURY, DEPUE & FAULKE, 10
Attorneys of Defendant.

Schedule A.

(Annexed to Answer.)

THE AUTOMATIC FIRE PROTECTION COMPANY, 20
a corporation existing by virtue of the laws of
the State of Maine, party of the first part, THE
SPECIAL FIRE ALARM ELECTRICAL SIGNAL Co., a
corporation organized under the laws of the
State of New York, party of the second part,
THE NEW YORK FIRE PROTECTION COMPANY, a
corporation organized under the laws of the
State of New York, party of the third part, and
THE AMERICAN DISTRICT TELEGRAPH COMPANY,
a corporation organized under the laws of the
State of New Jersey, party of the fourth part; 30
this 27 day of July, 1905, in consideration of the
mutual covenants hereinafter contained have entered
into the following contract:

WHEREAS, the Special Fire Alarm Electrical
Signal Co. is organized under the laws of the
State of New York with an authorized issued
capital stock amounting to Fifty thousand dollars
(\$50,000) divided into five hundred (500)
shares of the par value of One Hundred dollars
(\$100) each, and is engaged in the business of 40

Schedule A—Annexed to Answer.

supplying special fire alarm service in the City of New York, and has certain property, rights and franchises which it now enjoys; and

10 WHEREAS, the New York Fire Protection Company is the holder and owner of the entire capital stock of the said Special Fire Alarm Electrical Signal Co., and

20 WHEREAS, said New York Fire Protection Company has issued One hundred bonds of the par value of One thousand dollars (\$1,000) each, payable in the year 1954, and bearing interest at the rate of four per cent. per annum, payable semi-annually, and for the purpose of securing the principal and interest of said bonds, have issued their mortgage or deed of trust to the Guardian Trust Company, as Trustee, covering their entire income and assets and pledging the capital stock of the said Special Fire Alarm Electrical Signal Co., and

WHEREAS, the Special Fire Alarm Electrical Signal Co. has joined in the execution of said mortgage, pledging its entire assets and income as security for the payment of said bonds; and

30 WHEREAS, the Automatic Fire Protection Company is desirous of purchasing the said capital stock of the Special Fire Alarm Electrical Signal Co. subject to the said mortgage securing the said bonds, and is also desirous of leasing the entire property and franchises of the said Special Fire Alarm Electrical Signal Co. as a going concern for the period of forty-nine years at the annual rental of Five Thousand Dollars (\$5,000) per annum, payable monthly, and

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Schedule A—Annexed to Answer.

WHEREAS, the New York Fire Protection Company in consideration of the making of the said lease and the payment of the said rental to the Guardian Trust Company as Trustee under the said mortgage for the period of forty-nine years, payable as aforesaid, is willing to transfer all of its right, title and interest in and to the said stock of the Special Fire Alarm Electrical Signal Co. to the Automatic Fire Protection Company; and 10

WHEREAS, the American District Telegraph Company, because of its interest in the Automatic Fire Protection Company, is willing to guarantee the said lease and the payment of the consideration hereinafter expressed in paragraph "Second" of the third sheet hereof, 20

NOW, THEREFORE, this agreement witnesseth, as folloys:

FIRST—The Special Fire Alarm Electrical Signal Co. hereby leases to the Automatic Fire Protection Company all of its assets and franchises of every name and nature for the period of forty-nine (49) years. The business shall be transferred as a going concern, free and clear of indebtedness, and an adjustment shall be made on contracts with subscribers as follows: 30

(a) Service that has been earned shall belong to the sellers;

(b) Payments for advance service shall be rebated by the sellers as of the date of transfer; all cash to be retained by the sellers. Property 40

Schedule A—Annexed to Answer.

to be free and clear of debts and claims except such contracts as relate to current service and the maintenance of the Company's business.

- 10 (c) Unexpired rights of subscribers to service shall not be considered as debts or claims, nor any unexpired obligation under any contract with the New York Telephone Company for leased wires, for any period subsequent to the date of the transfer of possession.

20 SECOND—The Automatic Fire Protection Company hereby leases the said property and agrees to pay to the Guardian Trust Company, the Trustee under said mortgage, for the lease of the said property the sum of Five thousand dollars (\$5,000) per annum for the period of forty-nine (49) years from date, payable in equal monthly installments on the 20th day of each and every month during the said period; and further covenants to keep the said property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature.

30 THIRD—The New York Fire Protection Company hereby transfers to the Automatic Fire Protection Company all of its right, title and interest in and to the stock of the said Special Fire Alarm Electrical Signal Co. It is distinctly understood that the trustee under the said mortgage shall permit sufficient of the shares of the said company to stand in the name of such persons as may be chosen by said Automatic Fire Protection Company to enable them to qualify as
40 directors of the said Special Fire Alarm Elec-

Schedule A—Annexed to Answer.

trical Signal Co.; provided, however, said certificates shall be endorsed in blank by the said persons and deposited with the said trustee. It is further understood and agreed that any surplus funds or increment remaining in the hands of said trustee on the termination of this lease after payment of the principal and interest of said bonds, shall be paid to the New York Fire Protection Company. 10

FOURTH—The American District Telegraph Company for a valuable consideration, the receipt whereof is hereby acknowledged, hereby guarantees the payment by the Automatic Fire Protection Company to the Guardian Trust Company of the payments called for by this lease. 20

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed by their proper officers, thereunto duly authorized, and their corporate seals to be hereunto affixed, the day and year first above written. (Acknowledgements.)

AUTOMATIC FIRE PROTECTION CO.,
By Robt. L. McElroy, President. 30

(Seal) Attest:

Azel F. Hatch, Secretary.

NEW YORK FIRE PROTECTION CO.,
By A. Baldwin, Vice-President.

(Seal) Witness:

C. F. Patterson,
M. M. Thorp.

Schedule A—Annexed to Answer.

Attest:

Edward T. Magoffin, Secy.

SPECIAL FIRE ALARM
ELECTRICAL SIGNAL CO.,
By Chas. B. Hale, President.

10

(Seal) Attest:

P. S. Hill, Secy.

AMERICAN DISTRICT TELEGRAPH CO.
OF NEW JERSEY,
By R. C. Clowry, President.

(Seal) Attest:

I. B. Ferguson, Act. Secy.

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Witness:

I. H. Westervel,

H. S. Latimer.

State of New York, }
County of New York, }ss.:

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On the 2nd day of August, in the year 1905,
before me personally came Arthur J. Baldwin,
to me known who being duly sworn, did depose
and say that he resided in East Orange, N. J.,
that he is the Vice-President of the New York
Fire Protection Company, the corporation de-
scribed in and which executed the foregoing in-
strument; that he knew the seal of said corpora-
tion; that the seal affixed to said instrument was
such corporate seal; that it was so affixed by
order of the Board of Directors of said corpora-

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Schedule A—Annexed to Answer.

tion and that he signed his name thereto by like order.

(Signed) EDWARD T. MAGOFFIN,
Notary Public,
New York Co.

10

State of New York, }
County of New York, { ss. :

On the 31st day of July, in the year 1905, before me personally came Robert C. Clowry to me known, who being duly sworn, did depose and say that he resided in the City and State of New York, that he is the President of the American District Telegraph Company, the corporation described in and which executed the following instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors by said corporation and that he signed his name thereto by like order.

20

CHARLOTTE A. VANBRUNT,
Notary Public, Kings County, No. 5,
Certificate filed in New York County,
(Seal) My commission expires March 30, 1906.

30

State of New York, }
County of New York, { ss. :

On the 31st day of July, in the year 1905, before me personally came Robert L. McElroy, to me known, who, being duly sworn, did depose and say that he resided in Chicago, Ill.; that he is the President of the Automatic Fire Protec-

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Schedule A—Annexed to Answer.

tion Company, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the
 10 Board of Directors of said corporation and that he signed his name thereto by like order.

(Signed) CHARLOTTE A. VAN BRUNT,
 Notary Public, Kings County, No. 5,
 Certificate filed in New York County,
 My commission expires Mar. 30, 1906.

State of New York,)
 County of New York,) ss.:

20 On the 21st day of August, in the year 1905, before me personally came C. B. Hale, to me known, who, being duly sworn, did depose and say that he resided in Montclair, N. J.; that he is the President of the Special Fire Alarm Electrical Signal Co., the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of
 30 the Board of Directors of said corporation and that he signed his name thereto by like order.

(Signed) EDWARD T. MAGOFFIN.

Schedule B.

(Annexed to Answer.)

THIS AGREEMENT, made this twelfth day of October, 1905, by and between the Automatic Fire Protection Company, a corporation organized under the laws of the State of Maine, party of the first part, and American District Telegraph Company, a corporation organized under the laws of the State of New Jersey, party of the second part, 10

WITNESSETH, that whereas, by an indenture of lease dated July 27th, 1905, the Special Fire Alarm Electrical Signal Company, a corporation organized under the laws of the State of New York, leased to said Automatic Fire Protection Company, all of its property assets and franchises of every name and nature, for the period of forty-nine (49) years, at and for the annual rental of Five Thousand (\$5,000.00) dollars per annum, payable to the Guardian Trust Company, in equal monthly installments, as in said lease more particularly set forth, reference to which lease is hereby made. 20

AND WHEREAS, the annual gross rentals derived from the contracts and business, assets and franchises demised under said lease, amounting at the time of making said lease to Twenty-nine thousand (\$29,000.00) dollars per annum, are collected by the National District Telegraph Company, of the State of New York, and are received, under existing contracts between the parties hereto, by said party of the second part. 30

AND WHEREAS, one of the purposes and considerations for said lease with said the Special Fire Alarm Electrical Signal Company was to 40

Schedule B—Annexed to Answer.

secure fire department connections for the said National District Telegraph Company, a subsidiary company of said party of the second part, which it had not theretofore been able to secure.

- 10 NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein-after contained, it is hereby mutually understood and agreed by and between the parties hereto, that out of the gross income received by said party of the second part, from the business and contracts aforesaid in the City of New York, for manual signal service, there shall be first paid during the forty-nine years term of said lease the annual rental of Five Thousand dollars per annum, payable as aforesaid to the Guardian
- 20 Trust Company, Trustee, and that the remainder of the gross income which shall be received by the said party of the second part during the forty-nine years term of said lease, for manual signal service, in the City of New York, up to the aggregate of Twenty-nine thousand (\$29,000.00) dollars of gross income per annum, remaining after deducting said Five thousand dollars rental, shall be divided by and between the parties hereto as follows:

- 30 For the first year from and after July 27th, 1905, fifty per cent. (50%) thereof to each of the parties hereto, and for each year after said first year, during the forty-nine years term of said lease, to said party of the first part forty-five (45%) per cent. thereof, and to said party of the second party fifty-five (55%) per cent. thereof.

- It is further mutually understood and agreed that each of the parties hereto, for the considerations aforesaid, hereby assumes, guarantees and
- 40 agrees to pay during the term of said lease one-

Schedule B—Annexed to Answer.

half ($\frac{1}{2}$) of said annual rental of Five thousand (\$5,000) dollars, or so much thereof as shall be unpaid by the gross rentals derivable from the business and contracts in the City of New York, for manual signal service, which shall be received by said party of the second part during the term of said lease. 10

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that all income from manual signal service business in the City of New York in excess of the gross income of Twenty-nine thousand (\$29,000.00) dollars per annum for the term of said lease, shall be retained and enjoyed by said party of the second part, for its own use and behoof. 20

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their proper officers, thereunto duly authorized, and their corporate seals to be hereunto affixed, the day and year first above written.

AUTOMATIC FIRE PROTECTION CO,
By (Signed) Robt. L. McElroy,
(Seal) President. 30

Attest:
(Signed) Axel F. Hatch,
Secretary.

AMERICAN DISTRICT TELEGRAPH
COMPANY,
By (Signed) Geo. H. Fearons,
Vice-President.

Attest:
(Signed) I. B. Ferguson,
Secretary. 40

Schedule C.

(Annexed to Answer.)

10 THE AUTOMATIC FIRE PROTECTION COMPANY, a Maine corporation, and the FIRE PROTECTION DEVELOPMENT COMPANY, a Maine corporation, in consideration of the transfer of property and of the mutual covenants hereinafter contained, have this twenty-ninth day of April, 1909, entered into the following contract:

20 FIRST—The Automatic Fire Protection Company hereby sells, assigns and transfers all of its right, title and interest in and to all contracts for service with various customers, to the said Fire Protection Development Company.

SECOND—The Automatic Fire Protection Company hereby sells, assigns and transfers to the Fire Protection Development Company all of the stocks and securities of its subsidiary companies mentioned and described in Schedule A hereto attached.

30 THIRD—The Automatic Fire Protection Company hereby sells, assigns and transfers to the Fire Protection Company all of its right, title and interest in and to a certain contract dated February 18th, 1904, between Robert L. McElroy and the American District Telegraph Company, a New Jersey corporation, which contract was duly assigned to the Automatic Fire Protection Company under date of April 21st, 1905, and also in and to any and all additional, supplemental and modifying contracts now made or hereafter made
40 with said American District Telegraph Company.

Schedule C—Annexed to Answer.

and all benefits to be derived therefrom on and after May 1st, 1909.

The Automatic Fire Protection Company hereby sells, assigns and transfers to the Fire Protection Development Company all of its right, title and interest in and to a certain contract now existing between the Automatic Fire Protection Company and to the Dominion Messenger & Signal Company, and any and all contracts hereafter made with the Dominion Messenger & Signal Company, together with all benefits to be derived therefrom on and after May 1st, 1909. 10

(Copies of the existing contracts specified in this clause are attached hereto, marked Schedule B.)

FOURTH—The Automatic Fire Protection Company and the Fire Protection Development Company hereby grant to the several other Automatic Fire Protection Companies that have already been organized and the capital stock of which is transferred in accordance with paragraph "Second" above and also to such other corporations as may be organized in accordance with paragraph "Fifth" of this contract, the exclusive right, license and privilege, excepting restrictions of such rights as are shown in contracts attached hereto in Schedule C executed April 29th, 1907, to use any and all devices that are covered by patents that are now owned or hereafter acquired by the Automatic Fire Protection Company and the Fire Protection Development Company, or either of them relating to automatic fire alarms, temperature alarms, sprinkler alarms and sprinkler supervisory or supervision of any form or fire extinguisher. 20 30 40

Schedule C—Annexed to Answer.

10 FIFTH—In case the Fire Protection Development Company desires to extend the business of the Automatic Fire Protection Company into localities, states and territories other than where such business is now conducted, such new business shall be done in the name of one of the said subsidiary companies, or new companies shall be organized at the expense of the Fire Protection Development Company under the name of the Automatic Fire Protection Company to transact such business. The capital stock of any such new company shall be deposited with the Automatic Fire Protection Company as additional security for the performance of this contract.

20 SIXTH—The Automatic Fire Protection Company hereby sells, assigns and transfers to the Fire Protection Development Company all of its right, title and interest in and to the various contracts and leases mentioned and specified in Schedule C hereto attached, and in and to any and all benefits to be derived therefrom, from and after May 1st, 1909.

30 SEVENTH—It is the purpose of this agreement that the Fire Protection Development Company shall, after May 1st, 1909, be empowered to transact any and all business formerly conducted by the Automatic Fire Protection Company under and by virtue of its contracts with the American District Telegraph Company and the Dominion Messenger Signal Company, under the terms and conditions in this contract expressed, and the Automatic Fire Protection Company hereby covenants and agrees to make, execute and deliver any additional formal assignments or papers that may be
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Schedule C—Annexed to Answer.

deemed necessary to fully carry out the purpose of this contract as hereby expressed.

The Fire Protection Development Company hereby covenants and agrees that all business in the nature of automatic fire alarms, temperature alarms, sprinkler alarms and supervision of fire extinguishing systems, apparatus and devices of all descriptions, transacted by it shall be done in the name of the Automatic Fire Protection Company or its subsidiary company or companies as aforesaid, and shall be embraced and comprehended by the terms of this contract. 10

EIGHTH—The Fire Protection Development Company hereby covenants and agrees during the term of this contract to make the following payments, to wit: 20

(a) To annually pay any and all taxes, charges, fees and assessments that may become due and payable after May 1st, 1909, upon the property or franchise of the Automatic Fire Protection Company and its subsidiary companies as aforesaid, as and when due.

(b) To pay the necessary expenses after May 1st, 1909, for maintaining in accordance with the laws, the principal office of the Automatic Fire Protection Company in the State of Maine, including a clerk as required by statute, also the corporate rights of the said subsidiary companies. 30

(c) To pay to such other clerk or employe as the Automatic Fire Protection Company shall designate, after May 1st, 1909, an annual salary 40

Schedule C—Annexed to Answer.

of the sum of Fifteen hundred dollars (\$1,500) in monthly installments.

10 (d) To pay any and all sums of money that may become due under and by virtue of any and all of the contracts specified in Schedules B and C after May 1st, 1909; such payments to be made in accordance with such contracts to the persons therein named.

20 (e) To pay to each and every stockholder of the Automatic Fire Protection Company on the total par value amount of stock held by such stockholder sums of money as follows: On October 1st, 1909, a sum of money equal to one-fourth of one per cent. on each of the following dates: January 1st, April 1st, July 1st and October 1st, of each and every year thereafter a sum of money equal to one-fourth of one per cent., until and including July 1st, 1912; after which last mentioned date a sum of money equal to one-half of one per cent. on October 1st, 1912, and on each January 1st, April 1st, July 1st and October 1st of each and every year thereafter until such time as the gross income derived
30 by the Fire Protection Development Company from the business done under and pursuant to the said contracts with the American District Telegraph Company and the Dominion Messenger Signal Company, or otherwise as contemplated by this contract, shall equal the sum of Forty-seven thousand five hundred dollars (\$47,500) quarter yearly. The gross income, as hereinafter defined above the said sum of Forty-seven thousand five hundred dollars (\$47,500) quarter
40 yearly, shall be divided into two equal yearly

Schedule C—Annexed to Answer.

portions, one portion to be retained by the Empire Protection Development Company and the other portion shall be paid and distributed quarter yearly by way of additional payments as hereinbefore provided, to the said stockholders of the Automatic Fire Protection Company; such income to be determined as of the first day of each quarter of the year as shown on the books of the said Fire Protection Development Company. The payments hereinbefore provided shall continue until such time as the said quarter yearly payments to be made herein to the said stockholders of the Automatic Fire Protection Company shall equal the sum of one and one-fourth per cent. Thereafter all gross income in excess of the amount necessary to produce the said payments of one and one-fourth per cent. quarter yearly to the said stockholders of the Automatic Fire Protection Company shall be retained by the Fire Protection Development Company. Gross income as used in this contract shall be construed to mean that portion of the earnings of the business transacted under the said contracts with the American District Telegraph Company and the Dominion Messenger & Signal Company, or otherwise as contemplated by this contract which shall be received by the said Fire Protection Development Company and not the gross sum as shown by the service contracts with the several customers.

Should the existing contracts with the American District Telegraph Company or the Dominion Messenger & Signal Company be cancelled for any reason, or not removed at their expiration, or should either of them cease to operate the service of the Automatic Fire Protection Company,

Schedule C—Annexed to Answer.

or the Fire Protection Development Company for any reason at any time, and other arrangements are made for the operation and maintenance of said service or should the Fire Protection Development Company make no other arrangements and operate the service for its own account, then and in that event, the term "gross income" shall be construed to mean forty-five per cent. of the income derived from service contracts directly or indirectly, through said subsidiary companies or otherwise, for all forms of automatic fire alarm service, and twenty-five per cent. of the sums derived from the service contracts for sprinkler alarm service or supervision of any form of fire extinguishing systems or devices. The Automatic Fire Protection Company will close its stock transfer books and furnish to the Fire Protection Development Company ten days prior to the time when payments are due to be made to the stockholders of the Automatic Fire Protection Company under this agreement a certified list of its stockholders and the Fire Protection Development Company shall make its payments in accordance with this certified list.

30 NINTH—It is understood and agreed that the properties of the Automatic Fire Protection Company are free and clear of all liens and incumbrances, except as specified in subdivision B immediately following, and the same are so transferred; and that there are now issued and outstanding the following securities only:

(a) Thirty-six thousand shares each of the par value of One hundred dollars of the capital stock
40 of the Automatic Fire Protection Company, on

Schedule C—Annexed to Answer.

which payments shall be made as in paragraph "Eighth" provided; it being understood and agreed between the parties hereto that on the date of execution of this agreement that fifty thousand shares (50,000) of the capital stock of the Automtaic Fire Protection Company have been issued, but that fourteen thousand shares of said stock were retired on April 1st, 1909, and are now in the treasury of the Automatic Fire Protection Company; and it is further agreed that immediately following the execution and en-sealing of this agreement that the Automatic Fire Protection Company will, at its own expense and before October 1st, 1909, reduce the authorized capital stock of the Automatic Fire Protection Company to thirty-six thousand (36,000) shares of the par value of One hundred dollars (\$100) each.

(b) Four hundred first mortgage bonds of the Automatic Fire Protection Company numbered from one (1) to four hundred (400) inclusive, each of the par value of One thousand dollars (\$1,000) dated April 1st, 1909, and payable after five years from their date on or before April 1st, 1929, with interest thereon at the rate of five per cent. per annum, interest payable semi-annually on the first days of October and April in each and every year; the interest is also evidenced by interest coupons, all secured by a trust deed dated April 1st, 1909, wherein Robert L. McElroy is made Trustee, and copy of which trust deed is hereto attached.

TENTH—In addition to the payments in paragraph "Eighth" provided for, the Fire Protection

Schedule C—Annexed to Answer.

Company hereby agrees to pay as when due at the place of payment therein named;

(a) The interest upon the bonds mentioned in paragraph "Ninth" hereof.

10

(b) During the year commencing April 1st, 1914, and during each and every year thereafter, ten bonds of the total par value of ten thousand dollars (\$10,000).

(c) On the first day of April, 1929, bonds not previously paid and retired, in accordance with this paragraph, shall be paid by the said Fire Protection Development Company.

20

IT IS FURTHER UNDERSTOOD AND AGREED that the said Fire Protection Development Company may, should it so elect, at any time after April 1st, 1914, pay and return any or all of the said bonds outstanding prior to their due date, and that the said bonds so provide.

30

The Fire Protection Development Company shall have the right to pay off any of the bonds that may be offered for payment and cancellation, and in case no bonds are offered at less than par, shall have the right to pay off the same seriatim, commencing with the bond having the lowest number then remaining unpaid. It is understood and agreed that all bonds purchased by the Fire Protection Development Company or in its behalf shall be cancelled and not resold.

40

ELEVENTH—It is understood and agreed that all of the properties hereby transferred shall remain with the Automatic Fire Protection Company, or of the Trustees named in the trust deed,

Schedule C—Annexed to Answer.

as aforesaid, as security for the faithful performance of this contract, and that the same are subject to the lien of the bonds above set forth.

TWELFTH—The period of this contract shall be nine hundred and ninety-nine years. The Automatic Fire Protection Company hereby reserves and has the right to cancel this contract and any and all rights granted hereunder under the following conditions: 10

(a) In case the Fire Protection Development Company shall fail to pay when due any of the sums of money agreed to be paid, either as principal of or interest on the bonds or as payments to the stockholders, the Automatic Fire Protection Company may given ten (10) days written notice of its intention to cancel this agreement. 20

(b) In case the Fire Protection Development Company shall fail to pay yhen due any of the other sums of money above agreed to be paid, and not specified in paragraph "a" of this clause the Automatic Fire Protection Company may give sixty (60) days written notice of its intention to cancel this agreement. 30

(c) In case the Fire Protection Development Company does not increase the gross receipts of the Automatic Fire Protection Company, as herein defined, in at least the sum of twenty thousand dollars (\$20,000) a year over each preceding year until such time as the stockholders are receiving a sum of money equal to three per cent. per annum on the par value of their stock and does not thereafter continue to pay to the stock- 40

Schedule C—Annexed to Answer.

holders of the Automatic Fire Protection Company a sum equivalent to three per cent. per annum as aforesaid, the Automatic Fire Protection Company reserves and has the right of cancelling this contract, and shall indicate its intention to so cancel the same by giving a ninety (90) day written notice of its intention to cancel the contract.

Thereupon the Fire Protection Development Company may pay or cause to be paid to the said stockholders a sum of money equal to the amount they would have received had the business been increased in accordance with the terms above specified.

In case the payment or payments so in default as specified in subdivisions "a," "b" and "c" of this clause shall be made by the Fire Protection Development Company within the time specified in the written notice or notices, as aforesaid, then this agreement shall remain in full force and virtue, but in case the payment or payments so in default shall not be made within such time as given in said written notice or notices, then all rights of said Fire Protection Development Company under and by virtue of this contract shall cease and determine, and the said Fire Protection Development Company shall re-assign, convey and quit-claim and deliver to the Automatic Fire Protection Company any and all property received hereunder, together with any additions thereto of property of like character that may have been acquired in the transacting of the said business, and also any and all patents or licenses to use patents which they may own or control, or in which they may have any interest and which in any manner relate to automatic fire alarms, tem-

Schedule C—Annexed to Answer.

perature alarms, sprinkler alarms, or the supervisions of fire extinguishing systems, apparatus or devices.

THIRTEENTH—This contract is made in contemplation of the fact that prior to its termination the existing contracts with the American District Telegraph Company and the Dominion Messenger & Signal Company will expire and it is intended to apply to any renewal contracts or arrangements that may be made for carrying on the business thereunder. 10

FOURTEENTH—The Automatic Fire Protection Company hereby agrees not to create any lien whatever upon the properties hereby conveyed but which remain in the possession of the said Automatic Fire Protection Company except the lien of the trust deed as aforesaid; and the Fire Protection Development Company covenants and agrees that it will not, save in the ordinary course of business, sell, mortgage or dispose of or grant licenses under any patents or licenses under patents which it may acquire relating to the business of fire protection as herein contemplated. 20

The Automatic Fire Protection Company and the Fire Protection Development Company agree to buy no goods, wares or merchandise, or employ labor on the credit of or at the expense of the Automatic Fire Protection Company nor do any other things to create an obligation of said Automatic Fire Protection Company without the written consent of both parties hereto; and the Fire Protection Development Company also agrees and assumes to pay any and all debts and obligations that are incurred in any way by the 30 40

Schedule C—Annexed to Answer.

subsidiary companies of the Automatic Fire Protection Company after May 1st, 1909, in the exercise of any of the rights and privileges acquired by the Fire Protection Development Company under the terms of this contract. The Fire Protection Development Company also agrees to pay and assume all existing obligations from and after May 1st, 1909, and faithfully to carry out any and all existing contracts of the Automatic Fire Protection Company and its subsidiary companies according to the true intent and spirit of this agreement. It being represented and understood that there are now no existing obligations of the Automatic Fire Protection Company or any of its subsidiary companies except as shown in said Schedules D and C.

FIFTEENTH—The Automatic Fire Protection Company hereby represents that the gross income as shown on its books as of May 1st, 1909, is at least equal to the sum of One hundred and ten thousand dollars (\$110,000) per year, and full opportunity shall be given to the Fire Protection Development Company to inspect all contracts and verify the representations hereby made; and such verification shall be made by the Fire Protection Development Company before June 1st, 1909.

SIXTEENTH—It is contemplated that the business of the Automatic Fire Protection Company shall be transferred as a going concern as of May 1st, 1909. All bills rendered or to be rendered for service, which are due and payable under the service contracts before May 1st, 1909, shall be collected by and belong to the Auto-

Schedule C—Annexed to Answer.

matic Fire Protection Company; and all bills due for service thereafter shall be collected by and belong to the Fire Protection Development Company. All bills incurred in the ordinary transaction of the business prior to May 1st, 1909, shall be paid by the Automatic Fire Protection Company, together with such bills as may be incurred by the Fire Protection Development Company in necessary repairs made during the time for which rental shall have been collected by the Automatic Fire Protection Company. All other bills incurred, of every name and nature, relating to the maintenance of the business after May 1st, 1909, shall be borne and paid by the Fire Protection Development Company.

10

SEVENTEENTH—It is understood and agreed by and between the contracting parties that none of the contracts mentioned and described in Schedules B and C hereto attached shall be modified without the written consent of both parties hereto.

20

EIGHTEENTH—The Fire Protection Development Company hereby covenants and agrees to keep accurate books of account showing the business transacted, which books, together with all contracts for service and all papers relating to the business done, shall be open to inspection of any duly authorized representative of the Automatic Fire Protection Company until such time as the payments to the stockholders of the Automatic Fire Protection Company shall amount to a sum equal to a dividend of five per cent. per annum, after which time the right of inspection shall cease unless payments shall fall below said

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Schedule O—Annexed to Answer.

figure. Copies of all service contracts made pursuant to this agreement shall be furnished immediately after they are made to the Automatic Fire Protection Company.

10 IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed the day and year first above written.

AUTOMATIC FIRE PROTECTION
COMPANY,

By Robt. L. McElroy, President.

Attest:

A. M. Crocker,
Secretary.

20

FIRE PROTECTION DEVELOPMENT
COMPANY,

By Henry A. Bishop, President.

Attest:

I. B. Ferguson, Secretary.

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Schedule D.*(Annexed to Answer.)*

New York, N. Y., April 9th, 1913.

Fire Protection Development Company,	
27 Pine Street,	10
New York, N. Y.	

To American District Telegraph Company, Dr.
191 Broadway.

Special Fire Alarm Electrical Signal Company,
March.

Salaries, Operating and Commercial De-		
partments,	\$449.36	20
Salaries Line Department,	684.17	
Material, Line Department,	12.12	
Overhead and miscellaneous,	216.60	
	\$1,407.25	

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Schedule E.*(Annexed to Answer.)*

New York, N. Y., May 9th, 1913.

10 Fire Protection Development Company,
27 Pine Street,
New York, N. Y.

To American District Telegraph Company, Dr.
191 Broadway.

Special Fire Alarm Electrical Signal Company,
April, 1913.

	Salaries, Operating and Commercial De-	
	partments,	\$333.27
20	Salaries, Line Department,	784.31
	Material, Line Department,	4.92
	Overhead and miscellaneous,	263.24
	Personal taxes, R. P. C., line, 16717, as-	
	essment \$3,000.00 tax,	54.30
	Real estate of corporations, line 354,	
	map, ward of lot 221, Manhattan Bor-	
	ough, assessment of real property, \$2,	
	000.00 tax,	36.20
30	Real estate of corporations, line 98, map	
	ward or lot 221, Bronx Borough, as-	
	essment of real property \$150.00 tax,	2.71
		\$1,478.95

Schedule F.*(Annexed to Answer.)*

New York, N. Y., June 9th, 1913.

Fire Protection Development Company,
 27 Pine Street,
 New York, N. Y. 10

To American District Telegraph Company, Dr.
 191 Broadway.

Special Fire Alarm Electrical Signal Company,
 May, 1913.

Salaries, Operating and Commercial De-		
partments,	\$259.95	
Salaries, Line Department,	563.40	20
Material, Line Department,	.80	
Overhead and Miscellaneous,	124.21	
	\$948.36	

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Reply.

Supreme
 NEW JERSEY COURT OF ERRORS AND
 APPEALS.

(10 FIRE PROTECTION DEVELOPMENT
 COMPANY,
 Plaintiff,
 against
 AMERICAN DISTRICT TELEGRAPH
 COMPANY,
 Defendant.

(20 (Filed Nov. 17, 1913.)

FIRST REPLY TO COUNTERCLAIM.

I. Plaintiff admits that an agreement in writing, dated July 27, 1905, was entered into by and between the Automatic Fire Protection Company, a corporation of the State of Maine, party of the first part, Special Fire Alarm Electrical
 (30 Signal Company, a corporation of the State of New York, party of the second part, New York Fire Protection Company, a corporation of the State of New York, party of the third part, and the defendant, party of the fourth part, a copy of which agreement purports to be attached to the answer herein, marked Schedule A, but denies that the terms of said contract are fully and fairly set forth in the answer and counterclaim of the defendant, and begs leave to refer to the
 (40 original of said agreement for the exact nature

Reply.

and particulars thereof and to produce the same upon the trial, if it may be so advised, and plaintiff further denies that the interpretation of said contract given in Paragraph 13th of said answer and counterclaim is correct.

II. Plaintiff admits that a certain agreement in writing, dated October 12th, 1905, was entered into by and between the Automatic Fire Protection Company, party of the first part, and the American District Telegraph Company, party of the second part, a copy of which agreement purports to be attached to the answer, marked Schedule B, but plaintiff denies that the terms and conditions of said contract are fully, fairly or correctly stated in Paragraph 13th of the defendant's answer and counterclaim, and denies that the interpretation of said contract therein set forth is correct, and begs leave to refer directly to said agreement for the exact nature and particulars thereof and to produce the same upon the trial, if it may be so advised.

III. Plaintiff admits that a certain agreement in writing, dated April 29th, 1909, was entered into by and between the Automatic Fire Protection Company and the Fire Protection Development Company, a copy of which agreement purports to be attached to the answer, marked Schedule C, but plaintiff denies that the terms and conditions of said contract are fully, fairly and correctly set forth in Paragraph 13th of the answer and counterclaim of the defendant, and further denies that the interpretation in said Paragraph 13th of said answer and counterclaim is correct, and begs leave to refer to the original of said

Reply.

agreement for the exact nature and particulars thereof and to produce the same upon the trial, if it may be so advised.

10 IV. Plaintiff denies that the defendant has hitherto fully performed all the terms and provisions of said agreement of July 27th, 1905, and October 12th, 1905, on its part to be performed and asserts that the said defendant has failed to perform the terms and provisions of said agreement by neglecting and refusing to pay to the plaintiff the sums of money and each of them which plaintiff seeks to recover in this action.

20 V. Except as hereinbefore specifically admitted, the plaintiff denies each and every allegation contained in Paragraph 13th of the defendant's answer and counterclaim.

SECOND REPLY TO COUNTERCLAIM.

30 VI. By way of avoidance of the counterclaim contained in the answer, the plaintiff says: That on the making of the agreement in writing, dated October 12th, 1905, between the plaintiff, as party of the first part, and the defendant, as party of the second part, a copy of which agreement purports to be attached to the answer herein, marked Schedule B, the defendant paid all amount necessary to keep in good condition the property leased to the plaintiff under the provision of the agreement of July 27th, 1905, a copy of which purports to be attached to the answer herein, marked Schedule A, to make the necessary repairs thereto and to pay and discharge the taxes and assessments thereon and properly to maintain and oper-

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Reply.

ate the said property and continued to pay such amounts continuously from the time of the making of the said agreement, Schedule B, without any demand upon the plaintiff for reimbursement thereof until on or about the 10th day of June, 1912, when the defendant deducted from plaintiff's share of the gross income received by said defendant from the business and contracts in the City of New York for manual signal service, in remitting to the plaintiff its said share thereof under the provisions of the said contract, Schedule B, attached to the answer, certain amounts which the defendant claimed it had expended in soliciting subscriptions for said manual signal service in the City of New York and in manufacturing certain devices and apparatus necessary to be installed in connection with the furnishing and maintenance of such service, whereupon the plaintiff sued the said defendant in this court for the recovery of such sums so deducted, and after the trial of said suit and the direction of a verdict in favor of the plaintiff, judgment was entered in this court on the 29th day of March, A. D. 1913, in favor of the plaintiff and against the defendant for the amount of such deductions with interest. That said judgment was satisfied and discharged by payment of the same in full by the defendant, and in April, A. D. 1913, the defendant then for the first time sought to deduct from the plaintiff's share of the gross income received by the defendant from the business and contracts in the City of New York for manual signal service, under the provisions of the agreement between the plaintiff and the defendant, a copy of which agreement purports to be attached to the answer herein, marked Schedule

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Reply.

B, the amounts which the plaintiff seeks to recover in this suit.

10 That the agreement of October 12th, 1905, by and between the plaintiff and the defendant, a copy of which purports to be attached to the answer herein, marked Schedule B, in view of its express terms and provisions and the benefits accruing therefrom to the defendant, was intended and expected by the parties as imposing upon the defendant the obligations of the lease contained in the agreement of July 27th, 1905, to which plaintiff and defendant were parties, a copy of which purports to be attached to the answer herein, marked Schedule A, to pay the amounts necessary to keep in good condition the property leased
20 to the plaintiff under the provisions of said agreement of July 27th, 1905, Schedule A, to make the necessary repairs to said property, to pay and discharge the taxes and assessments thereon and properly to maintain and operate the said property; that by said agreement of October 12th, 1905, Schedule B, the defendant assumed, in consideration of the provisions of said agreement and of other valuable considerations growing out of said contract, to pay all sums required to be paid under the provisions of the
30 agreement of July 27th, 1905, Schedule A, to discharge all obligations thereunder necessary to keep in good condition the property leased to the plaintiff under the provisions of the said agreement, Schedule A, to make the necessary repairs thereto, to pay and discharge the assessments and taxes thereon and properly maintain and operate the said property; that the defendant did, as hereinbefore alleged, pay and continue to pay
40 said amounts and discharge the obligations, not

Reply.

for the benefit of the plaintiff and at its special instance and request, but for the benefit of the defendant and because the defendant was legally bound so to do, and the parties thereto thereby established a practical construction and interpretation of said agreement, and the defendant by its payment of the aforesaid amounts for keeping the said property in good condition, making the necessary repairs thereto, satisfying and discharging taxes and assessments and for properly maintaining and operating it, without requesting the plaintiff to reimburse it for said expenditures or asserting that the plaintiff was responsible therefor, has admitted its obligation to pay the same and given a practical interpretation and construction of the said agreement of October 12th, 1905, Schedule B, and the defendant, by virtue of the premises, is estopped to deny its obligation to keep the said property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature without requiring the plaintiff to reimburse it for said expenditures.

THIRD REPLY TO COUNTERCLAIM.

VII. By way of avoidance of the counterclaim contained in the answer, the plaintiff says: That on or about the 29th day of March, 1913, judgment was entered in this court in favor of the plaintiff and against the defendant for the sum of \$13,759.19 in an action brought by the plaintiff against the defendant to recover moneys due from the defendant to the plaintiff, in which said action the meaning, scope and construction of the contracts of July 27th, 1905, and October 12th,

Reply.

1905, which are set up in the answer and counterclaim of the defendant in this suit and copies of which are attached to the defendant's said answer and counterclaim as Schedules A and B, were made the subject of contest and judicial determination and that by said judgment a construction was placed upon said contracts contrary to that contended for by the defendant in this action and in favor of that contended for by the plaintiff herein, in that said contracts were so construed that the plaintiff by such construction is not required either to expend sums of money or to reimburse the defendant for sums of money expended by defendant in keeping the property leased by the Automatic Fire Protection Company, under and by virtue of the terms of said agreement of July 27th, 1905, in good condition, in making the necessary repairs thereto, in paying and discharging the taxes and assessments thereon, and in operating said property. That the said construction was placed upon said contract in view of the provisions of the subsequent agreement of October 12th, 1905, a copy of which is attached to the defendant's answer and counterclaim as Schedule B and that such construction placed upon said contracts is *res judicata* and the defendant is estopped by said judgment from setting up the counterclaim contained in Paragraph 13th of its said answer and counterclaim.

MAGOFFIN & SIGNOR,
Attorneys for Plaintiff.

(Filed March 17, 1914.)

REPLY TO SECOND REPLY TO COUNTERCLAIM.

It admits that on the making of the agreement of October 12, 1905, a copy whereof is attached to the defendant's answer and counterclaim as "Schedule B," the defendant paid all amounts necessary to keep in good condition the property leased to the plaintiff under the provisions of the agreement of July 27, 1905, a copy whereof is attached to the defendant's answer and counter-

Defendant's Reply to Plaintiff's Reply.

claim as "Schedule A," to make the necessary repairs thereto and to pay and discharge the taxes and assessments thereon and properly to maintain and operate the said property, and continued to pay such amounts continuously from the time
10 of the making of said agreement, "Schedule B," without any demand upon the plaintiff for reimbursement thereof until on or about June 10, 1912, when it deducted certain sums in remitting to the plaintiff under the provisions of said contract, a copy whereof is annexed to the defendant's answer as "Schedule B." It admits that thereupon the plaintiff sued the defendant in this Court for the recovery of the sums so deducted and that after the trial of said suit and the direction of a verdict for the plaintiff, judgment
20 was entered in this Court on or about March 29, 1913, in favor of the plaintiff and against the defendant for an amount equal to a portion of such deductions with interest, and that said judgment was satisfied and discharged by payment of the same in full to the defendant. It refers to the record and proceedings in said suit now on file with the Clerk of this Court, or a duly authenticated copy thereof, for the exact nature and particulars of said suit and of the defendant's claim
30 therein. Further answering defendant says that for the first year from and after July 27, 1905, it remitted fifty per cent. of all rentals received by it derived from the contracts and business, assets and franchises, demised under said lease of July 27, 1905, a copy whereof is annexed to the defendant's answer and counterclaim as "Schedule B," to the Automatic Fire Protection Company, and thereafter and until on or about June
40 10, 1912, remitted forty-five per cent. of said ren-

Defendant's Reply to Plaintiff's Reply.

tals to said company without making any deductions therefrom; that said remittances were made in full and without any deductions therefrom through error and that no deductions were made because of the express directions of an employee of the defendant acting without authority in that behalf and without the defendant's knowledge, consent or approval. Further answering defendant says that immediately upon discovering the fact that no deductions had been made from any of said remittances the defendant caused to be made the aforesaid deductions from its said remittance of June 10, 1912, upon the belief, of which the plaintiff was duly notified in writing, that the defendant was entitled to make said deductions under the terms and provisions of certain contracts, and particularly a certain contract between Robert McElroy, of the first part, and the defendant, of the second part, dated February 18, 1904. Further answering, defendant says that after the making of said deductions from its said remittance of June 10, 1912, the plaintiff instituted suit against the defendant in this Court for the recovery of the amount thereof and procured the said judgment referred to in the plaintiff's second reply to counterclaim for a portion of said deductions with interest thereon. Further answering, the defendant says that in and by the said judgment it was adjudicated that the said contract of October 12, 1905, taken in connection with the said lease of July 27, 1905, constituted a contract separate and distinct from the said contract of February 18, 1904, and its modifications and wholly independent of and unconnected with the same. Further answering, the defendant says that after the payment and satisfaction by it of said judgment and before making

Defendant's Reply to Plaintiff's Reply.

any of the collections referred to in the plaintiff's complaint herein and on or about April 1, 1913, the defendant wrote the plaintiff as follows:

"April 1st, 1913.

10 Fire Protection Development Company,
 27 Pine Street,
 New York.

20 Dear Sirs:—The business of the Special
 Fire Alarm Electrical Signal Company in
 New York City has been handled heretofore
 under the belief upon the part of the
 American District Telegraph Company
 that the same came under the general provisions
 of the contract of February 18,
 1904, save as the same are expressly modified
 by the provisions of the contract of
 October 12, 1905.

30 The recent decision in New Jersey has
 determined that the contract of February
 18, 1904, with its modifications does not
 apply to this situation in New York at all,
 but that the contract of October 12, 1905,
 between the Automatic Fire Protection
 Company and the American District Telegraph
 Company, taken in connection with
 the lease of the Special Fire Alarm Electrical
 Signal Company of July 27, 1905,
 constitutes a separate and distinct contract.

40 This conclusion has necessitated a careful
 re-examination of the contract of October
 12, 1905, to ascertain the obligations of the
 respective parties, and to conform the conduct
 of the property of the Special Fire Alarm
 Electrical Signal Company in

Defendant's Reply to Plaintiff's Reply.

New York to such obligations. This examination discloses that by the lease of July 27, 1905, the Automatic Fire Protection Company leased the entire property and franchises of the Special Fire Alarm Electrical Signal Company as a going concern for the period of forty-nine years at an annual rental of five thousand dollars, and that the business of the Special Fire Alarm Electrical Signal Company was transferred as a going concern under this lease to the Automatic Fire Protection Company, which on its part agreed 'to keep the property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature.' This obligation, by the sixth paragraph of the contract of April 29, 1909, was transferred to the Fire Protection Development Company, which thereby became the lessee of this property and bound to discharge the obligations of the Automatic Fire Protection Company. An examination of the contract of October 12, 1905, discloses that none of these obligations with respect to the property have been in any way transferred to or assumed by the American District Telegraph Company, and they remain, therefore, the direct obligations of the Fire Protection Development Company.

This being so, the American District Telegraph Company hereby advises you that it will cease to operate and maintain the property leased to the Automatic Fire Protection Company by the Special Fire Alarm Electrical Signal Company under

Defendant's Reply to Plaintiff's Reply.

10 the lease of July 27, 1905, but inasmuch as it has been heretofore operating and maintaining this property under the view expressed in the first paragraph of this letter, and inasmuch as a refusal to continue the present arrangement might result in seriously affecting the rights of subscribers to the service, it is willing to temporarily continue the maintenance and operation of the property, but only as the representative or agent of your company for that purpose and at the sole expense of your company.

20 With respect to the soliciting and obtaining of contracts for service on behalf of the Special Fire Alarm Electrical Signal Company and the furnishing and installation of instruments and devices, this company states that an examination of the contract of October 12, 1905, discloses no obligation whatever upon its part to render such service, and that such service has therefore been discontinued and will no longer be rendered.

30 This company, however, will continue to perform all the obligations imposed upon it by the contract of October 12, 1905, in collecting the gross income from the business and contracts covered thereby in the City of New York for manual signal service, and to distribute the income as provided in that contract.

Kindly advise receipt of this letter.

Very truly yours,

40

Vice-President.

Defendant's Reply to Plaintiff's Reply.

Further answering the defendant says that said letter was duly received by the plaintiff on or about April 1, 1913, and that a copy of the contract of October 12, 1905, referred to therein is annexed to the defendant's answer and counterclaim as "Schedule A," a copy of the lease of July 27, 1905, referred to in said letter is annexed to the defendant's answer and counterclaim as "Schedule B," and that the decision in New Jersey referred to in said letter is the judgment in the said suit by the plaintiff against the defendant in this Court above referred to. Further answering defendant says that after the receipt of said letter by the plaintiff and on or about April 11, 1913, May 12, 1913, and June 11, 1913, certain payments were made by the defendant and accepted by the plaintiff under agreements in writing between the plaintiff and defendant, copies whereof are hereunto annexed and made a part hereof and marked respectively "Schedule A," "Schedule B" and "Schedule C."

REPLY TO THIRD REPLY TO COUNTERCLAIM.

2. It denies the third reply to counterclaim appearing as Paragraph VII of plaintiff's reply heretofore filed herein, except so far as is admitted in the following statement:

It admits that on or about March 29, 1913, judgment was entered in this Court in favor of the plaintiff and against the defendant for the sum of \$13,759.19, but begs leave to refer to the said judgment and to the record and proceedings now on file with the Clerk of this Court in the said suit, or a duly authenticated copy thereof,

Defendant's Reply to Plaintiff's Reply.

for the exact nature and particulars of said suit and the meaning, scope and construction of the said judgment.

LINDABURY, DEPUE & FAULKS,
Attorneys for Defendant.

10

Schedule A.

(Annexed to Defendant's Reply to Plaintiff's Reply.)

WHEREAS, the American District Telegraph Company has forwarded to the Fire Protection
20 Development Company its check or voucher in the sum of \$10,806.39, which said check or voucher has attached to it and as part thereof a statement purporting to show the transactions and indebtedness covered by said check or voucher whereby the said American District Telegraph Company charges itself with the sum of \$13,593.66, moneys due to the said Fire Protection Development Company, and credits itself
30 with \$2,787.27, moneys alleged to be due to it from the said Fire Protection Development Company, leaving the aforesaid balance of \$10,806.39; and

WHEREAS, in the said amount of \$2,787.27, with which the said American District Telegraph Company credits itself as aforesaid, the following item is included, to wit:

4/9/13, New York, N. Y., \$1,407.25

40

Schedule A—Annexed to Defendant's Reply to
Plaintiff's Reply.

and the said Fire Protection Development Company disputes the right of the American District Telegraph Company to deduct the aforesaid sum of \$1,407.25 from moneys due to it from the said American District Telegraph Company; and

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WHEREAS, the said Fire Protection Development Company desires to contest the right of the said American District Telegraph Company to deduct the aforesaid sum of \$1,407.25 without further contesting the right of said Company to deduct the other amounts mentioned in said statement, and the American District Telegraph Company desires to assert its right to have credit for the said sum of \$1,407.25, without insisting that the retention and use of the said check or voucher by the Fire Protection Development Company shall constitute a consent to the said deduction of \$1,407.25, and an accord and satisfaction of the balance due from the American District Telegraph Company to the Fire Protection Development Company for the period covered by the said statement, anything in said voucher or check to the contrary notwithstanding.

20

NOW. THEREFORE, in consideration of the premises and of the sum of one dollar (\$1.00) by each to the other in hand paid, receipt whereof is hereby acknowledged and confessed, the parties hereto do hereby agree:

30

That the retention and use by the said Fire Protection Development Company of the aforesaid check or voucher of the American District Telegraph Company in the aforesaid sum of \$10,-

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Schedule A—Annexed to Defendant's Reply to
Plaintiff's Reply.

806.39 shall not constitute an accord and satisfaction of the transactions contained in said statement but that the rights of both parties, respectively, to contend and deny that said deduction of \$1,407.25 is a proper deduction are retained and survive such retention and use of said check and voucher.

Dated, New York, April 11, 1913.

AMERICAN DISTRICT TELEGRAPH
COMPANY,

By (Signed) W. L. Jacoby, V. P.

FIRE PROTECTION DEVELOPMENT
COIMPANY,

By (Signed) Leonard J. Baldwin, Vice-President.

Approved as to form,
(Signed) Rush Taggart,
General Counsel.

Schedule B.

(Annexed to Defendant's Reply to Plaintiff's Reply.)

WHEREAS, the American District Telegraph Company has forwarded to the Fire Protection Development Company its check or voucher in the sum of \$11,039.75, which said check or voucher has attached to it and as part thereof a statement purporting to show the transactions and indebtedness covered by said check or

Schedule B—Annexed to Defendant's Reply to
Plaintiff's Reply.

voucher whereby the said American District Telegraph Company charges itself with the sum of \$13,565.41, moneys due to the said Fire Protection Development Company and credits itself with \$2,525.66, moneys alleged to be due to it from the said Fire Protection Development Company, leaving the aforesaid balance of \$11,039.75; and

WHEREAS, in the said amount of \$2,525.66, with which the said American District Telegraph Company credits itself as aforesaid, the following item is included, to wit:

5/9/13, New York, N. Y., \$1,487.95
and the said Fire Protection Development Company disputes the right of the American District Telegraph Company to deduct the aforesaid sum of \$1,487.95 from moneys due it from the said American District Telegraph Company; and

WHEREAS, the said Fire Protection Development Company desires to contest the right of the said American District Telegraph Company to deduct the aforesaid sum of \$1,478.95, without further contesting the right of said company to deduct the other amounts mentioned in said statement and the American District Telegraph Company desires to assert its rights to have credit for the said sum of \$1,478.95, without insisting that the retention and use of the said check or voucher by the Fire Prevention Development Company shall constitute a consent to the said deduction of \$1,478.95 and an accord and satisfaction of the balance due from the American District Telegraph Company to the Fire Pro-

Schedule B—Annexed to Defendant's Reply to
Plaintiff's Reply.

tection Development Company for the period covered by the said statement, anything in said voucher or check to the contrary notwithstanding.

10. NOW, THEREFORE, in consideration of the premises and of the sum of one dollar (\$1.00) by each to the other in hand paid, receipt whereof is hereby acknowledged and confessed, the parties hereto do hereby agree:

20. That the retention and use by the said Fire Protection Development Company of the aforesaid check or voucher of the American District Telegraph Company in the aforesaid sum of \$11,039.75 shall not constitute an accord and satisfaction of the transactions contained in said statement, but that the rights of both parties, respectively, to contend and deny that said deduction of \$1,478.95 is a proper deduction are retained and survive such retention and use of said check or voucher.

Dated, New York, May 12, 1913.

30. AMERICAN DISTRICT TELEGRAPH
COMPANY,
By (Signed) W. L. Jacoby, V. P.

FIRE PROTECTION DEVELOPMENT
COMPANY,
By (Signed) L. D. Baldwin, Vice President.

Schedule C.

(Annexed to Defendant's Reply to Plaintiff's Reply.)

WHEREAS, the American District Telegraph Company has forwarded to the Fire Protection Development Company its check or voucher in the sum of \$14,107.25, which said check or voucher has attached to it and as a part thereof a statement purporting to show the transactions and indebtedness covered by said check or voucher whereby the said American District Telegraph Company charges itself with the sum of \$15,963.37, moneys due to the said Fire Protection Development Company, and credits itself with \$1,856.12 moneys alleged to be due to it from the said Fire Protection Development Company, leaving the aforesaid balance of \$14,107.25; and

WHEREAS, in the said amount of \$1,856.12 with which the said American District Telegraph Company credits itself as aforesaid, the following item is included, to wit:

6/9/13, New York, N. Y., \$948.36

and the said Fire Protection Development Company disputes the right of the American District Telegraph Company to deduct the aforesaid sum of \$948.36 from moneys due to it from the said American District Telegraph Company; and

WHEREAS, the said Fire Protection Development Company desires to contest the right of the said American District Telegraph Company to deduct the aforesaid sum of \$948.36 without further contesting the right of said Company to deduct the other amounts mentioned in said

Schedule C—Annexed to Defendant's Reply to
Plaintiff's Reply.

statement, and the American District Telegraph
Company desires to assert its right to have credit
for the said sum of \$948.36 without insisting that
the retention and use of the said check or
10 voucher by the Fire Protection Development
Company shall constitute a consent to the said
deduction of \$948.36 and an accord and satisfac-
tion of the balance due from the American Dis-
trict Telegraph Company to the Fire Protection
Development Company for the period covered by
the said statement, anything in said voucher or
check to the contrary notwithstanding.

20 NOW, THEREFORE, in consideration of the
premises, and of the sum of one dollar (\$1.00)
by each to the other in hand paid, receipt where-
of is hereby acknowledged and confessed, the
parties hereto hereby agree:

That the retention and use by the said Fire
Protection Development Company of the afore-
said check or voucher of the American District
Telegraph Company in the aforesaid sum of
\$14,107.25 shall not constitute an accord and
satisfaction of the transactions contained in such
statement, but that the rights of both parties,
30 respectively, to contend and deny that said de-
duction of \$948.36 is a proper deduction are re-
tained and survive such retention and use of said
check or voucher.

Dated, New York, June 11, 1913.

AMERICAN DISTRICT TELEGRAPH
COMPANY,

By (Signed) W. L. Jacoby, Vice Pt.
FIRE PROTECTION DEVELOPMENT
COMPANY,

40

By (Signed) L. D. Baldwin, V. Prest

**Plaintiff's Reply to Defendant's Reply to
Plaintiff's Reply.**

Supreme
NEW JERSEY ~~COURT OF ERRORS AND~~
APPEALS.

FIRE PROTECTION DEVELOPMENT	10
COMPANY,	Action at
Plaintiff,	Law.
against	Plaintiff's
AMERICAN DISTRICT TELEGRAPH	Reply to Defend-
COMPANY,	ant's Reply
Defendant.	to Plain-
	tiff's Reply.
	20

(Filed Oct. 5, 1914).

Plaintiff says by way of reply to defendant's
reply to plaintiff's reply

REPLY TO REPLY TO SECOND REPLY TO COUNTER-
CLAIM.

1. It denies the allegations contained in the de- 30
fendant's reply to counterclaim, except so far as
such allegations are admitted in the following
statement: It admits that the plaintiff instituted
suit against the defendant in this Court for the
recovery of the amount of certain deductions made
from the remittance of June 10, 1912, by the de-
fendant to the plaintiff, and the procuring of the
judgment referred to in the plaintiff's second re-
ply to counterclaim. It further admits that on
April 1, 1913, the defendant wrote the plaintiff 40

Plaintiff's Reply to Defendant's Reply to Plaintiff's Reply.

10 a letter, a copy of which is set forth in the defendant's reply to the second reply to the counterclaim, and that the said letter was received by plaintiff on or about April 1, 1913. It admits that after the receipt of said letter by the plaintiff and on or about April 11, 1913, May 12, 1913, and June 11, 1913, the times when the payments therein specified were received by the plaintiff from the defendant, the contracts marked, respectively, Schedule A. Schedule B, and Schedule C, and attached to said reply to second reply to counterclaim were made by and between the plaintiff and defendant.

20

MAGOFFIN & SIGNOR,
Attorneys for Plaintiff.

30

40

Findings.*Supreme*
**NEW JERSEY COURT OF ERRORS AND
~~APPEALS~~.**FIRE PROTECTION DEVELOPMENT
COMPANY,

Plaintiff,

against

AMERICAN DISTRICT TELEGRAPH
COMPANY,

Defendant.

Action at
Law.
Findings.

10

(Filed Oct. 20, 1914.)

20

This action was tried before Judge Frederic Adams, to whom it was referred for trial by his Honor Chief Justice Gummere, without a jury, in the Essex Circuit on December 3, 1914.

After hearing the evidence and counsel for plaintiff and defendant, and considering the pleadings, the schedules annexed thereto, and the memoranda filed on behalf of plaintiff and defendant, the Court rendered its decision on November 4, 1915. The Court finds as follows:

30

1. That prior to April 10, 1913, defendant collected certain sums as provided in contracts in writing between it and plaintiff or between it and plaintiff's predecessors in interest, from which sums defendant has deducted and retained to its own use \$1,407.25 and has remitted the entire balance of said sums so collected to plaintiff.

40

Findings.

2. That prior to May 10, 1913, defendant also collected certain other sums as provided in said contracts, from which it has deducted and retained to its own use \$1,478.95 and has remitted the entire balance of said sums so collected to plaintiff.

3. That prior to June 10, 1913, defendant also collected certain other sums as provided in said contracts, from which it has deducted and retained to its own use \$948.36 and has remitted the entire balance of said sums so collected to plaintiff.

4. That by virtue of the terms and provisions of certain contracts in writing, to wit, a contract dated July 27, 1905, between Automatic Fire Protection Company, of the first part, Special Fire Alarm Electrical Signaling Company, of the second part, New York Fire Protection Company, of the third part, and defendant, American District Telegraph Company, of the fourth part; a contract dated October 12, 1905, between Automatic Fire Protection Company, of the first part, and defendant, American District Telegraph Company, of the second part; and a contract dated April 29, 1909, between Automatic Fire Protection Company and plaintiff, Fire Protection Development Company, defendant was entitled to deduct and retain to its own use said sum of \$1,407.25 from said sums collected by it as aforesaid prior to April 10, 1913.

5. That by virtue of the terms and provisions of said contracts mentioned in paragraph 4 hereof, defendant was entitled to deduct and retain to its own use said sum of \$1,478.95 from said

Findings.

sums collected by it as aforesaid prior to May 10, 1913.

6. That by virtue of the terms and provisions of said contracts mentioned in paragraph 4 hereof, defendant was entitled to deduct and retain to its own use said sum of \$948.36 from said sums collected by it as aforesaid prior to June 10, 1913. 10

7. That defendant's set-off in this action of \$3,834.56, with interest on \$1,407.25 thereof from April 10, 1913, on \$1,478.95 thereof from May 10, 1913, and on \$948.36 thereof from June 10, 1913, against plaintiff's demand herein for a like amount be sustained. 20

8. That defendant has paid certain maintenance charges amounting in the aggregate to \$3,834.56, as shown in "Schedule D," "Schedule E" and "Schedule F," annexed to its answer and counterclaim herein, for which it is entitled to claim reimbursement against plaintiff upon the accounting between plaintiff and defendant in this action.

9. That plaintiff take nothing by its writ in this action. 30

10. That defendant recover of plaintiff its costs of this action to be taxed.

Dated, January 11, 1916.
(Filed Jan. 14, 1916.)

Findings.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that the defendant recover of the plaintiff, it costs, which are taxed at Thirty-nine dollars and ten cents.

10

Judgment entered Jan. 14, 1916.
WM. S. GUMMERE, C. J.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

20

In testimony whereof I have set my hand and the seal of said Court at Trenton, this second day of February, A. D. nineteen hundred and sixteen.

WM. C. GEBHARDT,
(Seal) Clerk.

30

40

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

FIRE PROTECTION DEVELOPMENT
COMPANY,

vs.

AMERICAN DISTRICT TELEGRAPH
COMPANY.

10

On Contract.

Decision.

Thursday, November 4, 1915. 20

Tried by the Court without a Jury.

Mr. Martin Conboy, for plaintiff.

Mr. Kinsley Twining, and Mr. Rush Taggart,
of the New York Bar, for defendant.

ADAMS, J.

It may be well at the outset to quote a few
descriptive sentences from the remarks of plain- 30
tiff's counsel in opening another case between
the same parties.

"The Fire Protection Development Com-
pany, the plaintiff in this action, is a con-
cern that does what is a fire-alarm busi-
ness, and the American District Telegraph
Company has messenger service and other
facilities for the transportation of messages
and information. * * * There are two 40

Decision.

10 kinds of fire-alarm service; one of them is the kind that you see on the streets; a handle is contained in a little red box on a post, and when a fire breaks out somebody goes down there and opens the door of this box, pulls the handle, just the same as in a fire-alarm, and the engine starts to the scene of the fire for the purpose of extinguishing it. That is known as the manual fire-alarm system. It is called manual because it is operated by the hand.

20 Apart from the manual fire-alarm system there are other systems of an automatic character. In its relation to factories there is what is known as the sprinkler system, which consists of mere holes which are plugged with metal. When the fire occurs the metal melts and the sprinkler puts out the fire. Along with that sprinkler system there is a supervisor system of an automatic character, so that the action of heat in a building in which a conflagration takes place, when the fire occurs, causes a circuit to open, the same as in a fire-alarm, and a fire-alarm is sent in for the purpose of bringing the fire department to the scene of the fire. This differs from the manual system, and is called automatic system. That in brief is the distinction between the manual and the automatic."

The determination of this case calls for the examination and construction of certain written contracts between the plaintiff and defendant.

40 The complaint does not indicate this. It mentions

Decision.

no written contract. It contains three counts, styled respectively first, second and third causes of action. Each count is for money had and received by the defendant for the use of the plaintiff. Three items of indebtedness are thus separately alleged. They are as follows:

10

In first cause of action, \$1407.25, with interest from April 10, 1913.

In second cause of action, \$1478.95, with interest from May 10, 1913.

In third cause of action, \$948.36, with interest from June 10, 1913.

The principal sum thus claimed is \$3834.56.

It appears from three schedules annexed to and forming part of the complaint, designated respectively as Schedules A, B and C, that each one of the three items just mentioned is claimed to be the net result of a voluminous account between the parties. Schedule A relates to the first cause of action, Schedule B to the second cause of action, Schedule C to the third cause of action.

20

Schedule A is headed thus:

“Money received by American District Telegraph Company for the use and benefit of Fire Protection Development Company, as per detailed statement furnished by American District Telegraph Company to Fire Protection Development Company on April 10, 1913.”

30

Schedule B is headed in the same way, except that the date mentioned is May 10, 1913.

Schedule C is headed in the same way, except that the date mentioned is June 10, 1913.

40

Decision.

Each account runs into high figures, which in each case are reduced by large credits.

	In Schedule A the debit is	\$13,593.66	
	On this the complaint allows the fol-		
10	lowing credits:		
	Paid on account,	\$10,806.39	
	Entitled to further credit,	1,380.02	12,186.41
	Balance claimed on Sched-		
	ule A, besides interest,		1,407.25
	In Schedule B the debit is	\$13,565.41	
	On this the complaint allows		
	the following credits:		
	Paid on account,	\$11,039.75	
20	Entitled to further credit,	1,046.71	12,086.46
	Balance claimed on Sched-		
	ule B, besides interest,		1,478.95
	In Schedule C the debit is	\$15,963.37	
	On this the complaint allows		
	the following credits:		
	Paid on account,	\$14,107.25	
	Entitled to further credit,	907.76	15,015.01
	Balance claimed on Sched-		
30			
	ule C, besides interest,		948.36

The balance claimed in the three schedules respectively are the three items of alleged indebtedness first mentioned, and aggregate the sum of \$3834.56, the amount to recover which the action is brought.

By an evident error the complaint states the aggregate of Schedule C to be \$15,055.61, instead
40 of \$15,963.37.

Decision.

So much for the complaint.

As the complaint throws no further light on the contractual relations which underlie this action, it is necessary to resort for more information to the later pleadings, with their accompanying schedules, to the admissions of the parties, to the testimony, of which there is very little, and to the exhibits. 10

Perhaps there is no better way of presenting the case to the mind and the eye than to make a careful statement of the pleadings. The complaint has been already mentioned.

The later pleadings are:

Answer and counter-claim, with six schedules thereto annexed and made part of the pleadings, marked respectively Schedules A. B. C, D, E and F; 20

Plaintiff's first, second and third reply to the counter-claim;

Defendant's reply to plaintiff's second and third reply to the counter-claim, with three schedules thereto annexed and made part thereof, marked respectively Schedules A, B and C;

Plaintiff's reply to defendant's reply to plaintiff's second reply to counterclaim.

Whatever may be said against common law pleading, this at least should be considered in mitigation, that it afforded convenient and intelligible designations indicating from which party a written allegation proceeded. 30

As already mentioned, the first pleading on behalf of the defendant is the answer and counter-claim, with accompanying schedules.

The answer, as distinguished from the counter-claim, has for its function to make admissions as to certain allegations of the complaint and to 40

Decision.

deny certain other allegations of the complaint.

The defense to the first cause of action is thus stated:

10 2.—The defendant: “admits that prior
to April 10, 1913, it collected from the per-
sons, firms, corporations and concerns men-
tioned in the schedule attached to the com-
plaint, marked Schedule A, \$13,593.66. It
denies that it held the whole of said sum
for the plaintiff or that the whole of said
sum belonged to the plaintiff or that it
promised to pay the whole of said sum to
the plaintiff on April 10, 1913, or at any
other time. It admits that Schedule A is
20 a correct statement of the items of the said
collections. It denies that said Schedule
A is a correct or complete copy of a state-
ment at any time rendered by it to the
plaintiff. It denies that it received the
whole of said sum of \$13,593.66 for the
plaintiff.

30 3.—It admits that it has paid on account
of the said sum of \$13,593.66 the sum of
\$10,806.39, and is entitled to a credit of the
further sum of \$1380.02. It denies that any
balance from the said sum of \$13,593.66 is
due from it to the plaintiff.

4.—It denies that \$1407.25 or any other
sum is due from it to the plaintiff from its
collections made prior to April 10, 1913.

The defense to the second and third causes of
action follow respectively the lines of the defense
40 to the first cause of action. In each case the date

Decision.

is different and the amounts are different, but, *mutatis mutandis*, the three defenses are exactly the same.

The defense to the third cause of action does not notice the erroneous statement of the aggregate of Schedule C, found in the complaint, but adopts as correct the erroneous total, \$15,055.61. The defense to the second cause of action makes an error of its own, and treats the balance claimed as \$1476.95, whereas it is \$1478.95. These errors, which seem due to inadvertence, should be ignored and the true figures adopted. 10

What was said of the complaint may be said of the answer, as distinct from the counter-claim—that it gives no clue to the material facts. If the Court were called on at this point to decide the case without the aid of explanatory proof, judgment would be for the defendant, since the answer exactly cancels the complaint. 20

The gist of the pleadings is to be found in the counter-claim and the schedules attached to the answer and counter-claim and in the subsequent pleadings and schedules.

The counter-claim sets up three contracts in writing, copies of which are annexed, in Schedules A, B and C. The following is a statement of the dates of and parties to these agreements, which for convenience will be referred to respectively as First Contract, Second Contract, Third Contract. 30

First Contract, dated July 27, 1905, Between Automatic Fire Protection Company, of first part; Special Fire Alarm Electrical Signal Company, of second part; New York Fire Protection Company, of third part; American District Telegraph Company, of fourth part. 40

Decision.

Second Contract, dated October 12, 1905, Between Automatic Fire Protection Company, of first part; American District Telegraph Company, of second part.

- 10 *Third Contract*, dated April 29, 1909, Between Automatic Fire Protection Company and Fire Protection Development Company.

As to the First Contract.

- 20 It will be observed that the defendant, the American District Telegraph Company, is the only one of the four parties to this contract which is a party to this action. It appears upon examination of this contract, which is accurately set out in the counter-claim, that its provisions are to the following purport.

It begins with some preliminary recitals, asserting.

- 30 That the New York Fire Protection Company, party of the third part, is the owner and holder of the entire capital stock of Special Fire Alarm Electrical Signal Company, party of the Second part, a New York corporation, engaged in the business of supplying special fire alarm service in the City of New York, said capital stock consisting of 500 shares of the par value of \$100 each; said Special Fire Alarm Electrical Signal Company having also certain property, rights and franchises which it now enjoys;

- 40 That the New York Fire Protection Company, party of the third part, has issued 100 bonds for \$1,000 each, payable in 1954, bearing semi-annual interest at four per cent., and has secured them by a mortgage, or deed of trust, to the Guardian

Decision.

Trust Company as trustee, covering its entire income and assets, and pledging said capital stock of the Special Fire Alarm Electrical Signal Company, party of the second part, in which mortgage the last named company has joined, pledging its entire asset and income as security for the payment of said bonds; 10

That the Automatic Fire Protection Company, party of the first part, desires to purchase said capital stock, subject to said mortgage securing said bonds, and to lease the entire property and franchises of the Special Fire Alarm Electrical Signal Company, party of the second part, as a going concern, for forty-nine years, at \$5,000 rent per annum, payable monthly, and that the New York Fire Protection Company, party of the third part, in consideration of the making of said lease and the payment of said rental to the Guardian Trust Company, as trustee under the mortgage for forty-nine years, is willing to transfer all its right, title and interest in and to said stock of the Special Fire Alarm Electrical Signal Company to the Automatic Fire Protection Company. 20

That the American District Telegraph Company, party of the fourth part, because of its interest in the Automatic Fire Protection Company, party of the first part, is willing to guarantee the lease and the payment of the consideration subsequently expressed in paragraph "Second" following these recitals. 30

In short, the situation recited was this: The party of the third part owned the capital stock of the party of the second part, had issued bonds and had secured them by a mortgage to a trustee, covering its entire income and assets, including the capital stock of the party of the second 40

Decision.

part, in which mortgage the party of the second part had joined, pledging its entire income and assets as security for the payment of the bonds issued by the party of the third part. All this had been already done. Prospectively, the party
10 of the first part desired to buy the capital stock of the party of the second part, owned by the party of the third part, subject to the mortgage securing the bonds of the party of the third part, and to lease the entire property and franchises of the party of the second part as a going concern for forty-nine years, at \$5,000 per annum. The party of the third part, in consideration of the making of the lease by the party of the first part and the payment of the rental to the trustee under the mortgage, was willing to transfer to the
20 party of the first part all its right, title and interest in and to the stock of the party of the second part, and the party of the fourth part, who is the defendant in this action, was willing, because of its interest in the party of the first part, to guarantee the lease and the consideration therefor. Under this scheme the party of the first part would acquire the stock of the party of the second part, and would become lessee of the
30 entire property and franchises of the party of the second part for a term of years, at a specified rent, the rent to be paid to the trustee under the mortgage,—the party of the fourth part, who is the defendant in this action, guaranteeing the lease and its consideration.

The contractual provisions, which follow these recitals, are brief, and read as follows:

40 “First. The Special Fire Alarm Electrical Signal Company hereby leases to

Decision.

the Automatic Fire Protection Company all of its assets and franchises of every name and nature for the period of forty-nine (49) years. The business shall be transferred as a going concern, free and clear of indebtedness, and an adjustment shall be made on contracts with subscribers as follows: 10

(a) Service that has been earned shall belong to the sellers.

(b) Payments for advance service shall be rebated by the sellers as of the date of transfer; all cash to be retained by the sellers. Property to be free and clear of debts and claims except such contracts as relate to current service and the maintenance of the company's business. 20

(c) Unexpired rights of subscribers to service shall not be considered as debts or claims, nor any unexpired obligation under any contract with the New York Telephone Company for leased wires, for any period subsequent to the date of the transfer of possession. 30

Second. The Automatic Fire Protection Company hereby leases the said property and agrees to pay to the Guardian Trust Company, the trustee under said mortgage, for the lease of the said property the sum of five thousand dollars (\$5,000) per annum for the period of forty-nine (49) years from date, payable in equal monthly installments on the 20th day of each and 40

Decision.

every month during the said period; and further covenants to keep the said property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature.

10

20

30

Third. The New York Fire Protection Company hereby transfers to the Automatic Fire Protection Company all of its right, title and interest in and to the stock of the said Special Fire Alarm Electrical Signal Company. It is distinctly understood that the trustee under the said mortgage shall permit sufficient of the shares of the said company to stand in the name of such persons as may be chosen by said Automatic Fire Protection Company, and to enable them to qualify as directors of the said Special Fire Alarm Electrical Signal Company, provided, however, said certificates shall be endorsed in blank by the said persons or deposited with the said trustee. It is further understood and agreed that any surplus funds or increment remaining in the hands of said trustee on the termination of this lease after payment of the principal and interest of said bonds, shall be paid to the said New York Fire Protection Company.

40

Fourth. The American District Telegraph Company for a valuable consideration, the receipt whereof is hereby acknowledged, hereby guarantees the payment by the Automatic Fire Protection Company to the Guardian Trust Company of the payments called for by this lease."

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So much for the first contract.

The second contract is dated October 12, 1905, about two months and a half after the date of the first contract. It was made between Automatic Fire Protection Company, party of the first part, which was the party of the first part in the first contract, and American District Telegraph Company, the defendant in this action, which was party of the fourth part in the first contract. It will be remembered that the first contract disclosed merely as to the relation of first and fourth parties to one another that the fourth party, because of its interest in the first party, was willing to guarantee the lease and the consideration for it. What that interest was the recitals do not explain. It will be observed that the defendant, the American District Telegraph Company, is one of the parties to the second contract. The other party to the second contract is not a party in this case.

The second contract first recites the making of the lease and its terms, and that the annual gross rentals derived from the contracts and business, assets and franchises demised under the lease, amounting when the lease was made to \$29,000 per annum, are collected by the National District Telegraph Company, a company subsidiary to the American District Telegraph Company, and are received, under existing contracts between the parties to the second contract, by the American District Telegraph Company, and that one of the purposes and considerations for said lease with the Special Fire Alarm Electrical Signal Company was to secure fire department connections for the National District Telegraph Company, which said company had not theretofore been able to secure.

Decision.

The parties to the second contract, after these recitals, in consideration of the premises and of the mutual covenants thereafter contained, proceed to agree, in terms which can hardly be abridged:

10

"That out of the gross income received by said party of the second part, from the business and contracts aforesaid in the City of New York, for manual signal service, there shall be first paid during the forty-nine years' term of said lease the annual rental of five thousand dollars per annum, payable as aforesaid to the Guardian Trust Company, trustee, and that the remainder of the gross income which shall be received by the said party of the second part during the forty-nine years' term of said lease, for manual signal service, in the City of New York, up to the aggregate of twenty-nine thousand (\$29,000) dollars of gross income per annum, remaining after deducting said five thousand dollars rental, shall be divided by and between the parties hereto as follows:

20

30

For the first year from and after July 27, 1905, fifty per cent. (50%) thereof to each of the parties hereto, and for each year after said first year, during the forty-nine years' term of said lease, to said party of the first part forty-five (45%) per cent. thereof, and to said party of the second part fifty-five (55%) per cent. thereof.

It is further mutually understood and agreed that each of the parties hereto, for the considerations aforesaid, hereby as-

40

Decision.

sumes, guarantees and agrees to pay during the term of said lease, one-half ($\frac{1}{2}$) of said annual rental of five thousand (\$5,000) dollars, or so much thereof as shall be unpaid by the gross rentals derivable from the business and contracts in the City of New York, for manual signal service, which shall be received by said party of the second part during the term of said lease. 10

It is further mutually understood and agreed that all income from manual signal service business in the City of New York in excess of the gross income of twenty-nine thousand (\$29,000) dollars per annum for the term of said lease, shall be retained and enjoyed by said party of the second part, for its own use and behoof." 20

So much for the second contract.

The third contract is dated April 29, 1909, about three years and a half after the date of the second contract. Here the plaintiff, the Fire Protection Development Company, for the first time appears. The other party to the third contract is not a party in this case. The parties to the third contract are Automatic Fire Protection Company, which was party of the first part in the second contract, and Fire Protection Development Company, the plaintiff in the case now before the Court. Each is a Maine corporation. The third contract consists of eighteen paragraphs and covers fourteen closely typewritten pages. The counterclaim, in setting up this contract, condenses it into about one page of type- 30 40

Decision.

written matter, which I quote as a compendious statement of what the defendant regards as the gist of the third contract. It appears to cover the essential points.

- 10 “Defendant further says that by an
agreement in writing, dated April 29, 1909,
between Automatic Fire Protection Com-
pany and Fire Protection Development
Company, the Automatic Fire Protection
Company with the assent of the defendant,
among other things sold, assigned and
transferred all its right, title and interest
in and to all contracts for service with the
various customers to the said Fire Pro-
tection Development Company; and it was
20 further agreed that the purpose of the said
agreement was that the said Fire Protec-
tion Development Company should, after
May 1, 1909, be empowered to transact
any and all business formerly conducted
by Automatic Fire Protection Company
under and by virtue of its contracts with
the defendant and a certain other company
in the said agreement mentioned, under the
30 terms and conditions in the said agreement
expressed, and the said Automatic Fire
Protection Company covenanted and agreed
to make, execute and deliver any addi-
tional formal assignments or papers that
might be deemed necessary to fully carry
out the purpose of the said contract as
thereby expressed. And it was further
agreed that the said Fire Protection De-
velopment Company would during the
40 term of the said contract annually pay any

Decision.

and all taxes, charges, fees and assessments that might become due and payable after May 1, 1909, upon the property or franchises of the Automatic Fire Protection Company and its subsidiary companies as and when due; and it was further agreed that the period of the said contract should be nine hundred and ninety-nine years. And the said Fire Protection Development Company also among other things agreed to pay and assume all existing obligations from and after May 1, 1909, and fully carry out any and all existing contracts of the Automatic Fire Protection Company and its subsidiary companies according to the true intent and spirit of the said agreement, as appears by a true copy of the said agreement hereto annexed and made part hereof and marked Schedule C."

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The counterclaim goes on to allege performance by the defendant of the terms and provisions of the first and second contracts on its part to be performed, and that the first, second and third contracts are and at all times have been the only written agreements between the plaintiff and defendant, or to which either the plaintiff were or are parties, which concern the matters in controversy, or of which there was or is any note or memorandum in writing signed by the party to be charged therewith or some other party thereunto by it lawfully authorized, and prays the benefit of the Statute of Frauds as to any other alleged agreement.

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Decision.

The counterclaim concludes as follows:

10 “Defendant further says that during the
period in which the collections mentioned
in the said complaint were made, and prior
to April 10, 1913, it expended for the bene-
fit of the plaintiff and at its special in-
stance and request sums aggregating \$1,-
407.25, as shown upon the schedule hereto
annexed and made a part hereof and
marked Schedule D, to keep the property
leased by the said Automatic Fire Protec-
tion Company under and by virtue of the
terms of the said agreement of July 27,
1905, in good condition and to make the
20 necessary repairs thereto and properly
maintain and operate the said property.
On or about April 10, 1913, the defendant
demanded of the plaintiff payment of the
said \$1,407.25. The plaintiff has not been
paid the said sum, or any part thereof.

30 Defendant further says that during the
said period in which the collections men-
tioned in the said complaint were made,
and between April 9, 1913, and May 9,
1913, it expended for the benefit of the
plaintiff and at its special instance and re-
quest \$1,478.95, as shown by the schedule
hereto annexed and made a part hereof
and marked Schedule E, to keep the said
property leased to the said Automatic Fire
Protection Company in good condition, to
make the necessary repairs thereto and
pay and discharge taxes and assessments
thereon, and to properly maintain and
40 operate the said property. On or about

Decision.

May 10, 1913, the defendant demanded of the plaintiff payment of the said sum of \$1,478 95. The plaintiff has not paid the said sum, or any part thereof.

Defendant further says that during the said period in which the collections mentioned in the said complaint were made, and between May 9, 1913, and June 9, 1913, it expended for the benefit of the plaintiff and at its special instance and request \$948.36, as shown by the schedule hereto annexed and made a part hereof, and marked Schedule F, to keep the said property leased to the said Automatic Fire Protection Company in good condition, to make the necessary repairs thereto and to properly maintain and operate the said property. On or about June 10, 1913, the defendant demanded of the plaintiff payment of the said sum of \$948.36. Plaintiff has not paid the same or any part thereof.

The defendant counterclaims \$3,834.56; and interest on \$1,407.25 thereof from April 10, 1913; on \$1,478.95 thereof from May 10, 1913; and on \$948.36 thereof from June 10, 1913, besides costs."

The plaintiff does not deny that the defendant made the payments above mentioned. The controversy is as to the effect of such payments.

It will be observed that the three sums thus counterclaimed are identical in date and amount with the three items of indebtedness to recover which this action is brought. On reference to Schedules D, E and F it appears in what way the defendant arrives at these figures. I quote the schedules in full:

Decision.

SCHEDULE D.

New York, April 9, 1913.

Fire Protection Development Company,
 27 Pine Street,
 10 New York, N. Y.

To American District Telegraph Company, Dr.
 191 Broadway.

Special Fire Alarm Electrical Signal Company,

	March.
Salaries, Operating & Commercial Depts.,	\$449.36
Salaries, Line Department,	684.17
20 Material, Line Department,	12.12
Overhead and Miscellaneous,	261.60
	\$1,407.25

SCHEDULE E.

New York, N. Y., May 9, 1913.

Fire Protection Development Company,
 30 27 Pine Street,
 New York, N. Y.

To American District Telegraph Company, Dr.
 191 Broadway.

Special Fire Alarm Electrical Signal Company,
 April, 1913.

Salaries, Operating & Commercial De-
 40 partments, \$333.27

Decision.

Salaries, Line Department,	784.31	
Material, Line Department,	4.92	
Overhead and Miscellaneous,	263.24	
Personal Taxes, R. P. S. line, 16717,		
Assessment \$3,000 tax,	54.30	
Real Estate of Corporations, line 354,		10
map ward of lot 221, Manhattan Bor-		
ough, assessment on real property		
\$2,000 tax,	36.20	
Real Estate of Corporations, line 98,		
map, ward or lot 221, Bronx Borough,		
assessment of real property \$150 tax,	2.71	
	\$1,478.95	

SCHEDULE F.

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New York, N. Y., June 9, 1913.

Fire Protection Development Company,
27 Pine Street,
New York, N. Y.

To American District Telegraph Company, Dr.
191 Broadway.

Special Fire Alarm Electrical Signal Company, 30

May, 1913.

Salaries, Operating & Commercial De-		
partments,	\$259.95	
Salaries, Line Department,	563.40	
Material, Line Department,	.80	
Overhead and Miscellaneous,	124.21	
	\$948.36"	

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Decision.

The plaintiff makes three replies to the counterclaim, which are as follows:

10 The first reply to the counterclaim admits making of the first, second and third contracts, denies the interpretation put upon them by Paragraph 13 of the defendant's answer and counterclaim, denies performance by the defendant of the first and second contracts, and, except as therein specifically admitted, denies every allegation of said Paragraph 13.

The second reply to the counterclaim is as follows:

20 "VI. By way of avoidance of the counterclaim contained in the answer, the plaintiff says: That on the making of the agreement in writing, dated October 12, 1905, between the plaintiff, as party of the first part, and the defendant as party of the second part, a copy of which agreement purports to be attached to the answer herein, marked Schedule B, the defendant paid all amounts necessary to keep in good condition the property leased to the plaintiff under the provision of the agreement of July 27, 1905, a copy of which purports to be attached to the answer herein, marked Schedule A, to make 30 the necessary repairs thereto and to pay and discharge the taxes and assessments thereon and properly to maintain and operate the said property and continued to pay such amounts continuously from the time of the making of the said agreement, Schedule B, without any demand upon the plaintiff for reimbursement there- 40

Decision.

of until on or about the 10th day of June, 1912, when the defendant deducted from plaintiff's share of the gross income received by said defendant from the business and contracts in the City of New York for manual signal service, in remitting to the plaintiff its said share thereof under the provisions of the said contract, Schedule B, attached to the answer, certain amounts which the defendant claimed it had expended in soliciting subscriptions for said manual signal service in the City of New York and in manufacturing certain devices and apparatus necessary to be installed in connection with the furnishing and maintenance of such service, whereupon the plaintiff sued the said defendant in this court for the recovery of such sums so deducted, and after the trial of said suit, and the direction of a verdict in favor of the plaintiff, judgment was entered in this court on the 29th day of March, A. D. 1913, in favor of the plaintiff and against the defendant for the amount of such deductions with interest. That said judgment was satisfied and discharged by payment of the same in full by the defendant, and in April, A. D. 1913, the defendant then for the first time sought to deduct from the plaintiff's share of the gross income received by the defendant from the business and contracts in the City of New York for manual signal service, under the provisions of the agreement between the plaintiff and the defendant, a copy of which agreement purports

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to be attached to the answer herein, marked Schedule B, the amounts which the plaintiff seeks to recover in this suit.

10 That the agreement of October 12, 1905, by and between the plaintiff and the defendant, a copy of which purports to be attached to the answer herein, marked
20 Schedule B, in view of its express terms and provisions and the benefits accruing therefrom to the defendant, was intended and expected by the parties as imposing upon the defendant the obligations of the lease contained in the agreement of July 27, 1905, to which plaintiff and defendant were parties, a copy of which purports to be attached to the answer herein, marked
30 Schedule A, to pay the amounts necessary to keep in good condition the property leased to the plaintiff under the provisions of said agreement of July 27, 1905, Schedule A, to make the necessary repairs to said property, to pay and discharge the taxes and assessments thereon and properly to maintain and operate the said property; that by said agreement of October 12, 1905, Schedule B, the defendant assumed, in consideration of the provi-
40 tober 12, 1905, Schedule B, the defendant assumed, in consideration of the provisions of said agreement and of other valuable considerations growing out of said contract, to pay all sums required to be paid under the provisions of the agreement of July 27, 1905, Schedule A, to discharge all obligations thereunder necessary to keep in good

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condition the property leased to the plaintiff under the provisions of the said agreement, Schedule A, to make the necessary repairs thereto, to pay and discharge the assessments and taxes thereon and properly maintain and operate the said property; that the defendant did, as hereinbefore alleged, pay and continue to pay said amounts and discharge said obligations, not for the benefit of the plaintiff and at its special instance and request, but for the benefit of the defendant and because the defendant was legally bound so to do, and the parties thereto thereby established a practical construction and interpretation of said agreement, and the defendant by its payment of the aforesaid amounts for keeping the said property in good condition, making the necessary repairs thereto, satisfying and discharging taxes and assessments and for properly maintaining and operating it, without requesting the plaintiff to reimburse it for said expenditures or asserting that the plaintiff was responsible therefor, has admitted its obligation to pay the same and given a practical interpretation and construction of the said agreement of October 12, 1905, Schedule B, and the defendant, by virtue of the premises, is estopped to deny its obligation to keep the said property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature without requiring the plaintiff to reimburse it for said expenditures.'

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The third reply to the counterclaim is as follows:

10 “VII. By way of avoidance of the counterclaim contained in the answer, the plaintiff says: That on or about the 29th day of March, 1913, judgment was entered in this Court in favor of the plaintiff and against the defendant for the sum of \$13,759.19, in an action brought by the plaintiff against the defendant to recover moneys due from the defendant to the plaintiff, in which said action the meaning, scope and construction of the contracts of July 27, 20 1905, and October 12, 1905, which are set up in the answer and counterclaim of the defendant in this suit and copies of which are attached to the defendant's said answer and counterclaim as Schedules A and B, were made the subject of contest and judicial determination and that by said judgment a construction was placed upon said contracts contrary to that contended for by the defendant in this action and in favor of that contended for by the plaintiff herein, in that said contracts were so 30 construed that the plaintiff by such construction is not required either to expend sums of money or to reimburse the defendant for sums of money expended by defendant in keeping the property leased by the Automatic Fire Protection Company, under and by virtue of the terms of said agreement of July 27, 1905, in good condition, in making the necessary repairs thereto, in paying and discharging the 40

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taxes and assessments thereon, and in operating said property. That the said construction was placed upon said contract in view of the provisions of the subsequent agreement of October 12, 1905, a copy of which is attached to the defendant's answer and counterclaim as Schedule B and that such construction placed upon said contracts is *res judicata* and the defendant is estopped by said judgment from setting up the counterclaim contained in Paragraph 13 of its said answer and counterclaim." 10

The defendant thereupon replied separately to the second and third replies of the counterclaim. 20

The defendant's reply to the second reply of the counterclaim is as follows:

"It denies the plaintiff's second reply to counterclaim appearing as Paragraph VI of plaintiff's reply, except so far as is admitted in the following statement:

It admits that on the making of the agreement of October 12, 1905, a copy whereof is attached to the defendant's answer and counterclaim as 'Schedule B,' 30 the defendant paid all amounts necessary to keep in good condition the property leased to the plaintiff under the provisions of the agreement of July 27, 1905, a copy whereof is attached to the defendant's answer and counterclaim as 'Schedule A,' to make the necessary repairs thereto and to pay and discharge the taxes and assessments thereon and properly to 40

Decision.

maintain and operate the said property, and continued to pay such amounts continuously from the time of the making of said agreement, 'Schedule B,' without any demand upon the plaintiff for reimbursement thereof until on or about June 10, 1912, when it deducted certain sums in remitting to the plaintiff under the provisions of said contract, a copy whereof is annexed to the defendant's answer as 'Schedule B.' It admits that thereupon the plaintiff sued the defendant in this court for the recovery of the sums so deducted and that after the trial of said suit and the direction of a verdict for the plaintiff, judgment was entered in this court on or about March 29, 1913, in favor of a plaintiff and against the defendant for an amount equal to the portion of such deductions with interest, and that said judgment was satisfied and discharged by payment of the same in full by the defendant. It refers to the record and proceedings in said suit now on file with the Clerk of the Court, or a duly authenticated copy thereof, for the exact nature and particulars of said suit and of the defendant's claim therein. Further answering defendant says that for the first year from and after July 27, 1905, it remitted fifty per cent. of all rentals received by it derived from the contracts and business, assets and franchises, demised under said lease of July 27, 1905, a copy whereof is annexed to the defendant's answer and counterclaim as 'Schedule B,' to

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the Automatic Fire Protection Company, and thereafter and until on or about June 10, 1912, remitted forty-five per cent. of said rentals to said company without making any deductions therefrom; that said remittances were made in full and without any deductions therefrom through error and that no deductions were made because of the express directions of an employe of the defendant acting without authority in that behalf and without the defendant's knowledge, consent or approval. Further answering defendant says that immediately upon discovering the fact that no deductions had been made from any of said remittances the defendant caused to be made the aforesaid deductions from its said remittance of June 10, 1912, upon the belief, of which the plaintiff was duly notified in writing, that the defendant was entitled to make said deductions under the terms and provisions of certain contracts, and particularly a certain contract between Robert McElroy, of the first part, and the defendant, of the second part, dated February 18, 1904. Further answering the defendant says that after the making of said deductions from its said remittance of June 10, 1912, the plaintiff instituted suit against the defendant in this Court for the recovery of the amount thereof and procured the said judgment referred to in the plaintiff's second reply to counterclaim for a portion of said deductions with interest thereon. Further answering the defendant says that in and by the said judgment it was adju-

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Dear Sirs:

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Decision.

Company and the American District Telegraph Company, taken in connection with the lease of the Special Fire Alarm Electrical Signal Company of July 27, 1905, constitutes a separate and distinct contract.

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This conclusion has necessitated a careful re-examination of the contract of October 12, 1905, to ascertain the obligations of the respective parties, and to conform the conduct of the property of the Special Fire Alarm Electrical Signal Company, in New York to such obligations. This examination discloses that by the lease of July 27, 1905, the Automatic Fire Protection Company leased the entire property and franchises of the Special Fire Alarm Electrical Signal Company as a going concern for the period of forty-nine years at an annual rental of five thousand dollars, and that the business of the Special Fire Alarm Electrical Signal Company was transferred as a going concern under this lease to the Automatic Fire Protection Company, which on its part agreed "to keep the property in good condition, make all necessary repairs and pay and discharge all taxes and assessments of every name and nature." This obligation, by the sixth paragraph of the contract of April 29, 1909, was transferred to the Fire Protection Development Company, which thereby became the lessee of this property and bound to discharge the obligations of the Automatic Fire Protection Company. An examination of the contract

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Decision.

of October 12, 1905, discloses that none of these obligations with respect to the property have been in any way transferred to or assumed by the American District Telegraph Company, and they remain, therefore, the direct obligations of the Fire Protection Development Company.

This being so, the American District Telegraph Company hereby advises you that it will cease to operate and maintain the property leased to the Automatic Fire Protection Company by the Special Fire Alarm Electrical Signal Company under the lease of July 27, 1905, but inasmuch as it has been heretofore operating and maintaining this property under the view expressed in the first paragraph of this letter, and inasmuch as a refusal to continue the present arrangement might result in seriously affecting the rights of subscribers to the service, it is willing to temporarily continue the maintenance and operation of the property, but only as the representative or agent of your company for that purpose and at the sole expense of your company.

With respect to the soliciting and obtaining of contracts for service on behalf of the Special Fire Alarm Electrical Signal Company and the furnishing and installation of instruments and devices, this company states that an examination of the contract of October 12, 1905, discloses no obligation whatever upon its part to render such service, and that such service has therefore been discontinued and will no longer be rendered.

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This company, however, will continue to perform all the obligations imposed upon it by the contract of October 12, 1905, in collecting the gross income from the business and contracts covered thereby in the City of New York for manual signal service, and to distribute the income as provided in that contract. Kindly advise receipt of this letter. 10

Very truly yours,
Vice President.'

Further answering the defendant says that the said letter was duly received by the plaintiff on or about April 1, 1913, and that a copy of the contract of October 12, 1905, referred to therein is annexed to the defendant's answer and counterclaim as 'Schedule A,' a copy of the lease of July 27, 1905, referred to in said letter is annexed to the defendant's answer and counterclaim as 'Schedule B,' and that the decision in New Jersey referred to in said letter is the judgment in the said suit by the plaintiff against the defendant in this court above referred to. Further answering defendant says that after the receipt of said letter by the plaintiff and on or about April 11, 1913, May 12, 1913, and June 11, 1913, certain payments were made by the defendant and accepted by the plaintiff under agreements in writing between the plaintiff and defendant, copies whereof are hereunto annexed and made a part hereof and marked respectively 'Schedule A,' 'Schedule B' and 'Schedule C.' " 20 30 40

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The defendant's reply to the third reply to the counterclaim is as follows:

10 "2. It denies the third reply to counter-
claim appearing as paragraph VII of plain-
tiff's reply heretofore filed herein, except so
far as it is admitted in the following
statement:

 It admits that on or about March 29,
1913, judgment was entered in this Court
in favor of the plaintiff and against the
defendant for the sum of \$13,759.19, but
begs leave to refer to the said judgment
and the record and proceedings now on
file with the Clerk of this Court in the
20 said suit, or a duly authenticated copy
thereof, for the exact nature and partic-
ulars of said suit and the meaning, scope
and construction of the said judgment."

Schedules A, B and C, attached to the defend-
ant's reply to the second and third reply to the
counterclaim, are respectively as follows:

"SCHEDULE A.

30 "Whereas, the American District Tele-
graph Company has forwarded to the Fire
Protection Development Company its
check or voucher in the sum of \$10,806.39,
which said check or voucher has attached
to it and as part thereof a statement pur-
porting to show the transactions and in-
debtedness covered by said check or vouch-
er whereby the said American District
Telegraph Company charges itself with the
40 sum of \$13,593.66, moneys due to the said

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Fire Protection Development Company, and credits itself with \$2,787.27, moneys alleged to be due to it from the said Fire Protection Development Company, leaving the aforesaid balance of \$10,806.39; and

Whereas, in the said amount of \$2,787.27, 10
with which the said American District Telegraph Company credits itself as aforesaid, the following item is included, to wit:

4/9/13. New York, N. Y., \$1,407.25

and the said Fire Protection Development Company disputes the right of the American District Telegraph Company to deduct the aforesaid sum of \$1,407.25 from moneys 20
due to it from the said American District Telegraph Company; and

Whereas, the said Fire Protection Development Company desires to contest the right of the said American District Telegraph Company to deduct the aforesaid sum of \$1,407.25 without further contesting the right of said company to deduct the other amounts mentioned in said statement, and the American District Telegraph 30
Company desires to assert its right to have credit for the said sum of \$1,407.25, without insisting that the retention and use of the said check or voucher by the Fire Protection Development Company shall constitute a consent to the said deduction of \$1,407.25, and an accord and satisfaction of the balance due from the American District Telegraph Company to the Fire Protection Development Company for the pe- 40

Decision.

riod covered by the said statement, anything in said voucher or check to the contrary notwithstanding;

10 Now, therefore, in consideration of the premises and of the sum of one dollar (\$1) by each to the other in hand paid, receipt whereof is hereby acknowledged and confessed, the parties hereto do hereby agree:

20 That the retention and use by the said Fire Protection Development Company of the aforesaid check or voucher of the American District Telegraph Company in the aforesaid sum of \$10,806.39 shall not constitute an accord and satisfaction of the transactions contained in said statement but that the rights of both parties, respectively, to contend and deny that said deduction of \$1,407.25 is a proper deduction are retained and survive such retention and use of said check or voucher.

Dated, New York, April 11, 1913.

30 AMERICAN DISTRICT TELEGRAPH
COMPANY,
By (Signed) W. L. Jacoby, V. P.

FIRE PROTECTION DEVELOP-
MENT COMPANY,
By (Signed) Leonard D. Baldwin,
Vice President.

Approved as to form:
(Signed) Rush Taggart,
40 General Counsel.

Decision.

SCHEDULE B.

Whereas, the American District Telegraph Company has forwarded to the Fire Protection Development Company its check or voucher in the sum of \$11,039.75, which said check or voucher has attached to it and as part thereof a statement purporting to show the transactions and indebtedness covered by said check or voucher whereby the said American District Telegraph Company charges itself with the sum of \$13,565.41, moneys due to the said Fire Protection Development Company and credits itself with \$2,525.66, moneys alleged to be due to it from the said Fire Protection Development Company, leaving the aforesaid balance of \$11,039.75; and

Whereas, in the said amount of \$2,525.66, with which the said American District Telegraph Company credits itself as aforesaid, the following item is included, to wit:

5/9/13. New York, N. Y., \$1,487.95 and the said Fire Protection Development Company disputes the right of the American District Telegraph Company to deduct the aforesaid sum of \$1,478.95 from moneys due to it from the said American District Telegraph Company; and

Whereas, the said Fire Protection Development Company desires to contest the right of the said American District Telegraph Company to deduct the aforesaid sum of \$1,478.95, without further contesting the right of said company to deduct the other amounts men-

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tioned in said statement and the American District Telegraph Company desires to assert its right to have credit for the said sum of \$1,478.95, without insisting that the retention and use of the said check or voucher by the Fire Protection Development Company shall constitute a consent to the said deduction of \$1,478.95 and an accord and satisfaction of the balance due from the American District Telegraph Company to the Fire Protection Development Company for the period covered by the said statement, anything in said voucher or check to the contrary notwithstanding;

Now, therefore, in consideration of the premises and of the sum of one dollar (\$1) by each to the other in hand paid, receipt whereof is hereby acknowledged and confessed, the parties hereto do hereby agree:

That the retention and use by the said Fire Protection Development Company of the aforesaid check or voucher of the American District Telegraph Company in the aforesaid sum of \$11,039.75 shall not constitute an accord and satisfaction of the transactions contained in said statement, but that the rights of both parties, respectively, to contend and deny that said deduction of \$1,478.95 is a proper deduction are retained and survive such retention and use of said check or voucher.

Dated, New York, May 12, 1913.

AMERICAN DISTRICT TELEGRAPH
COMPANY,

By (Signed) W. L. Jacoby, V. P.

Decision.

FIRE PROTECTION DEVELOP-
MENT COMPANY,By (Signed) L. D. Baldwin,
Vice President.

SCHEDULE C.

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Whereas, the American District Telegraph Company has forwarded to the Fire Protection Development Company its check or voucher in the sum of \$14,107.25, which said check or voucher has attached to it and as a part thereof a statement purporting to show the transaction and indebtedness covered by said check or voucher whereby the said American District Telegraph Company charges itself with the sum of \$15,963.37, moneys due to the said Fire Protection Development Company, and credits itself with \$1,856.12, moneys alleged to be due to it from the said Fire Protection Development Company, leaving the aforesaid balance of \$14,107.25; and

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Whereas, in the said amount of \$1,856.12 with which the said American District Telegraph Company credits itself as aforesaid, the following item is included, to wit:

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6/9/13. New York, N. Y., \$948.36
and the said Fire Protection Development Company disputes the right of the American District Telegraph Company to deduct the aforesaid sum of \$948.36 from moneys due to it from the said American District Telegraph Company; and

Whereas, the said Fire Protection Development Company desires to contest the

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Decision.

10 right of the said American District Telegraph Company to deduct the aforesaid sum of \$948.36 without further contesting the right of said company to deduct the other amounts mentioned in said statement, and the American District Telegraph Company desires to assert its right to have credit for the said sum of \$948.36 without insisting that the retention and use of the said check or voucher by the Fire Protection Development Company shall constitute a consent to the said deduction of \$948.36 and an accord and satisfaction of the balance due from the American District Telegraph Company to the Fire Protection Development Company for the period covered by the said statement, anything in said voucher or check to the contrary notwithstanding;

20 Now, therefore, in consideration of the premises, and of the sum of one dollar (\$1) by each to the other in hand paid, receipt whereof is hereby acknowledged and confessed, the parties hereto hereby agree:

30 That the retention and use by the said Fire Protection Development Company of the aforesaid check or voucher of the American District Telegraph Company in the aforesaid sum of \$14,107.25 shall not constitute an accord and satisfaction of the transactions contained in such statement, but that the rights of both parties, respectively, to contend and deny that said deduction of \$948.36 is a proper deduction

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Decision.

are retained and survive such retention and use of said check or voucher.

Dated, New York, June 11, 1913.

AMERICAN DISTRICT TELE-
GRAPH COMPANY, 10
By (Signed) W. L. Jacoby,
Vice Pt.

FIRE PROTECTION DEVELOP-
MENT COMPANY,
By (Signed) L. D. Baldwin,
V. Prest."

The plaintiff's reply to the defendant's reply
to the plaintiff's reply reads as follows: 20

"1. It denies the allegations contained in the defendant's reply to the second reply to counter-claim, except so far as such allegations are admitted in the following statement: It admits that the plaintiff instituted suit against the defendant in this court for the recovery of the amount of certain deductions made from the remittance of June 10, 1912, by the defendant 30
to the plaintiff, and the procuring of the judgment referred to in the plaintiff's second reply to counter-claim. It further admits that on April 1, 1913, the defendant wrote the plaintiff a letter, a copy of which is set forth in the defendant's reply to the second reply to counter-claim, and that the said letter was received by plaintiff on or about April 1, 1913. It admits that 40

Decision.

10 after the receipt of said letter by the plaintiff and on or about April 11, 1913, May 12, 1913., and June 11, 1913, the times when the payments therein specified were received by the plaintiff from the defendant, the contracts marked, respectively, Schedule A, Schedule B, and Schedule C, and attached to said reply to second reply to counter-claim were made by and between the plaintiff and defendant."

This ends the pleadings.

No witness was sworn for the plaintiff. One witness only was sworn for the defendant. His testimony was as follows:

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"FORREST J. McLEAN, sworn in behalf of the defendant.

Direct examination by Mr. Taggart:

Q. Mr. McLean, you are the auditor of the American District Telegraph Company?

A. I am the assistant auditor.

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Q. And how long have you been assistant auditor? A. Since July 1, 1911.

Q. And before that what were you? A. Clerk in the accounting department.

Q. And were you so since 1905? A. Since August, 1905.

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Q. Now, have you analyzed the accounts between the American District Telegraph Company and the Special Fire Alarm Electrical Signal Company, in New York, in the operations of the plant during the years from 1905 down? A. Yes, sir.

Decision.

Q. Do you remember the former suit in this case? A. Yes, sir.

The Court: The former suit between these parties?

Mr. Taggart: Between these same parties, yes, your Honor.

10

Q. How long before that suit was instituted was it that you called attention to to fact that, in stating the accounts relating to operations in New York City, the provisions of the contract of February 18, 1904, had not been followed in making those statements?

Objected to.

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Objection overruled.

The Court: May I ask, called whose attention?

Mr. Taggart: Called the attention of the American District Telegraph Company.

A. In Making the settlements?

Q. Yes. A. In making the settlements with the Automatic Fire Protection Company?

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Q. Yes. Some time in 1908.

Q. Do you remember what parts of the contract of February 18, 1904, or what items, were not followed in stating the accounts? A. Yes, sir.

Q. Well, what were they? A. The question of commissions and devices were not being handled under the contract of February 18, 1904.

40

Decision.

Q. Now, let me ask you, in other respects were the accounts at that time stated according to the provisions of the contract of February 18, 1904? A. Yes.

Q. In other respects? A. Yes, sir.

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The witness was asked another question, which, after objection, was withdrawn.

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It will be remembered that the plaintiff's third reply to the counter-claim, which is set out on pages 21 and 22 of this decision, asserts that the construction of the First and Second Contracts is *res adjudicata*, by force of a judgment entered in this Court in favor of plaintiff against the defendant, in which judgment, it is said, the court adopted a construction of said contracts adverse to the construction contended for by the defendant, and that the defendant is therefore estopped from setting up its counter-claim. It will be remembered also that, as is stated on page 26 of this decision, the defendant denies the third reply to the counter-claim, except to this extent: that it admits the rendition of a judgment in this court in favor of the plaintiff against the defendant of the date and amount named, but refers

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to the judgment and the record and proceedings now on file in said suit for the exact nature and particulars of said suit and the meaning, scope and construction of said judgment. It is not evident to me that this prior judgment controls the inquiry in which this court is now engaged.

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The plaintiff, Fire Protection Development Company, in order to sustain its claim against the defendant, American District Telegraph Company, must show that the defendant is bound by written

Decision.

contract to account to the plaintiff for the sum of \$3834.56, alleged to have been collected by it in the account set out in Schedules A. B and C, attached to the complaint, the items of which account the defendant admits to be correct. This sum of \$3834.56, as before remarked, is made up of three balances of account, shown in said schedules; the balances being struck respectively on April 10, 1913, May 10, 1913, and June 10, 1913. The balances, in the order of date, are \$1407.25, \$1478.95, \$948.36, the sum of which is \$3834.56. This account is an account of collections made by the American District Telegraph Company. The plaintiff claims that the balances claimed were received by the defendant, the American District Telegraph Company, for the use and benefit of the plaintiff, Fire Protection Development Company, and that the defendant must account to the plaintiff for these balances.

It appears from the recitals and contractual provisions of the First Contract that the Automatic Fire Protection Company became the lessee from the Special Fire Alarm Electrical Signal Company of all the assets and franchises of said Signal Company for the period of 49 years, with business was transferred as a going concern, said lessee covenanting to pay for said lease the sum of \$5,000 per annum for said period of 49 years, to keep the property in good conditions, make repairs, and pay taxes and assessments.

It appears from the recitals of the Second Contract that the annual gross rentals derived from the contracts and business, assets and franchises demised under said lease, then amounting to \$29,000 per annum, were collected by the National District Telegraph Company, a company subsidi-

Decision.

ary to the American District Telegraph Company, and, under then existing contracts between the parties to the Second Contract, were received by the American District Telegraph Company, the defendant in this action, and that one of the purposes and considerations for the lease was to
10 secure fire department connections for the National District Telegraph Company. It appears from the contractual provisions of the Second Contract that it was therein agreed that the gross income collected and received under the lease by the American District Telegraph Company from the business and contracts aforesaid in the City of New York should first pay the rental of \$5000.00 per annum for the 49 years of the term of the lease, and that the remainder of said gross in-
20 come so received for manual signal service in the City of New York, up to \$29,000, should be divided as follows: For the first year from July 27, 1905, 50 per cent. to each party.

For each subsequent year, 45 per cent. to the party of the first part, 55 per cent. to the party of the second part. Each party agreed to pay half of the rent, or so much thereof as should be unpaid by the gross rentals derivable from the
30 business and contracts in the City of New York, for manual signal service, which should be received by the party of the second part. It was further agreed that the party of the second part should have for its own use all income from manual signal service in the City of New York in excess of \$29,000 per annum.

The question, as already stated, is whether the American District Telegraph Company was bound to account to the Fire Protection Development
40 Company for the balances in question. The

Decision.

First Contract created no obligation on the part of the American District Telegraph Company to account to the Fire Protection Development Company, for the Fire Protection Development Company was not a party to that contract. The Second Contract created no obligation on the part of the American District Telegraph Company to account to the Fire Protection Development, for the Fire Protection Development Company was not a party to that contract. What the Second Contract did was to create an obligation on the part of the American District Telegraph Company to account, not to the Fire Protection Development Company, but to the Automatic Fire Protection Company. So far, then, it seems that the plaintiff derives no right to an accounting by the defendant either from the First Contract or from the Second Contract.

The Third Contract, to which the American District Telegraph Company is not a party, was made between the Automatic Fire Protection Company, of one part, and the Fire Protection Development Company, which is the plaintiff in this action, of the other part. The period of this contract is 999 years. This is the plaintiff's first appearance as a contracting party.

The substance of the third contract is stated in the counterclaim, in a passage which is quoted on pages 15 and 16 of this decision. By this third contract, which the counterclaim admits was made with the assent of the American District Telegraph Company, which company is therefore bound by it, though not a party to it, the Automatic Fire Protection Company sold, signed and transferred to the Fire Protection Development Company all its right, title and interest in and to

Decision.

all contracts for service with its various customers.

I quote from the sixth, seventh and eighth paragraphs of the third contract the exact language there used:

10

"SIXTH.

The Automatic Fire Protection Company hereby sells, assigns and retransfers to the Fire Protection Development Company all of its right, title and interest in and to the various contracts and leases mentioned and specified in Schedule C hereto attached, and in and to all benefits to be derived therefrom, from and after May 1, 1909."

20

Schedule C is not before me. The original third contract has not been offered, and the counterclaim, which sets out the third contract, does not set out the Schedule C which is referred to in the third contract. I assume that Schedule C specified the second contract.

"SEVENTH.

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It is the purpose of this agreement that the Fire Protection Development Company shall, after May 1, 1909, be empowered to transact any and all business formerly conducted by the Automatic Fire Protection Company under and by virtue of its contracts with the American District Telegraph Company and the Dominion Messenger Signal Company, under the terms and conditions in

40

Decision.

this contract expressed, and the Automatic Fire Protection Company hereby covenants and agrees to make, execute and deliver any additional formal assignments or papers that may be deemed necessary to fully carry out the purposes of this contract as hereby expressed. The Fire Protection Development Company hereby covenants that all business in the nature of automatic fire alarms, temperature alarms, sprinkler alarms and supervision of fire extinguishing systems, apparatus and devices of all descriptions transacted by it shall be done in the name of the Automatic Fire Protection Company or its subsidiary company or companies as aforesaid, and shall be embraced and comprehended by the terms of this contract.

EIGHTH.

The Fire Protection Development Company hereby covenants and agrees during the term of this contract to make the following payments, to wit:

(a) To annually pay any and all taxes, charges, fees and assessments that may become due and payable after May 1, 1909, upon the property or franchise of the Automatic Fire Protection Company and its subsidiary companies, as aforesaid, when due. * * *

(d) To pay any and all sums of money that may become due under and by virtue

Decision.

of any and all of the contracts specified in Schedules B and C after May 1, 1909; such payments to be made in accordance with such contracts to the persons therein named. * * *

10

FOURTEENTH.

The Fire Protection Development Company also agrees to pay and assume all existing obligations from and after May 1, 1909, and faithfully to carry out any and all existing contracts of the Automatic Fire Protection Company and its subsidiary companies according to the true intent and spirit of this agreement. * * *

20

SIXTEENTH.

It is contemplated that the business of the Automatic Fire Protection Company shall be transferred as a going concern as of May 1, 1909. All bills rendered or to be rendered for service, which are due and payable under the service contracts before May 1, 1909, shall be collected by and belong to the Automatic Fire Protection Company; and all bills due for service thereafter shall be collected by and belong to the Fire Protection Development Company. All bills incurred in the ordinary transaction of the business prior to May 1, 1909, shall be paid by the Automatic Fire Protection Company, together with such bills as may be incurred by the Fire Protection Development Company in necessary

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40

Decision.

repairs made during the time from which rental shall have been collected by the Automatic Fire Protection Company. All other bills incurred, of every name and nature, relating to the maintenance of the business after May 1, 1909, shall be borne and paid by the Fire Protection Development Company. 10

SEVENTEENTH.

It is understood and agreed by and between the contracting parties that none of the contracts mentioned and described in Schedules B and C hereto attached shall be modified without the written consent of both parties hereto." 20

The gist of the first contract is that the Automatic Fire Protection Company, the lessee, agrees to keep the property demised in good condition, make all necessary repairs and pay taxes and assessments.

The gist of the second contract is that the American District Telegraph Company, which collected the annual gross rentals derived from the contracts and business assets demised under the lease, was to pay the rent and to keep any excess of the gross income over \$29,000 per annum, and, after the first year, to pay the Automatic Fire Protection Company forty-five per cent. of the remaining gross income, and to keep fifty-five per cent. thereof. 30

The gist of the third contract is to substitute the Fire Protection Development Company for the Automatic Fire Protection Company as a party 40

Decision.

to the second contract. The Development Company merely took the place of the Automatic Company. The terms of the third contract afford no evidence of an intent to alter the terms of the second contract, without the consent of the other
10 party to it, the American District Telegraph Company. Such an intent could not have been legally effectuated, and the third contract expressly disclaims it.

The idea which underlies the counterclaim is this: that the plaintiff has, by the third contract, succeeded to the obligation of the Automatic Fire Protection Company, imposed upon it by the lease, to pay maintenance charges, and that upon
20 an accounting in this action the defendant, which has paid certain maintenance charges, may claim reimbursement therefor from the plaintiff.

The plain language of the contracts leads to this conclusion. I therefore sustain the setoff. This appears to require a general judgment in favor of the defendant. I will give counsel an opportunity to be heard on the settlement of the order for judgment.

30

40

Plaintiff's Requests to Find.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

FIRE PROTECTION DEVELOPMENT
COMPANY,

Plaintiff,

against

AMERICAN DISTRICT TELEGRAPH
COMPANY,

Defendant.

Action at
Law.
Plaintiff's
Requests.

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(Filed January 19, 1916.)

Plaintiff requests the Court to make the following findings:

1.—That by virtue of the terms and provisions of certain contracts in writing, to wit, a contract dated July 27, 1905, between Automatic Fire Protection Company of the first part, Special Fire Alarm Electrical Signaling Company of the second part, New York Fire Protection Company of the third part, and defendant, American District Telegraph Company, of the fourth part; a contract dated October 12, 1909, between Automatic Fire Protection Company of the first part, and defendant American District Telegraph Company, of the second part; and a contract dated April 29, 1909, between Automatic Fire Protection Company and plaintiff, Fire Protection Company, de-

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Plaintiff's Requests to Find.

defendant was not entitled to deduct and retain to its own use said sum of \$1,407.25 from said sums collected by it as aforesaid prior to April 10, 1913, but was required to remit the same to the plaintiff.

- Request denied and plaintiff's objection noted.
10 Frederick Adams, Circuit Court Judge.

2.—That by virtue of the terms and provisions of said contracts defendant was not entitled to deduct and retain to its own use said sum of \$1,478.95 from said sums collected by it as aforesaid prior to May 10, 1913, but was required to remit the same to the plaintiff.

- Request denied and plaintiff's objection noted.
20 Frederick Adams, Circuit Court Judge.

3.—That by virtue of the terms and provisions of said contracts defendant was not entitled to deduct and retain to its own use said sum of \$948.36 from said sums collected by it as aforesaid prior to June 10, 1913, but was required to remit the same to the plaintiff.

- Request denied and plaintiff's objection noted.
30 Frederick Adams, Circuit Court Judge.

4.—That by virtue of the terms and provisions of said contracts the defendant is not entitled to claim reimbursement against the plaintiff for the maintenance charges paid by it, amounting in the aggregate to \$3,834.56, as shown in Schedule D, Schedule E and Schedule F, annexed to its answer and counterclaim herein.

- Request denied and plaintiff's objection noted.
40 Frederick Adams, Circuit Court Judge.

5.—That the payments made by the defendant in the amounts for which the plaintiff has sued the defendant were not made by the defendant at the instance and request of the plaintiff.

Request denied and plaintiff's objection noted. Frederick Adams, Circuit Court Judge.

6.—That the obligations imposed upon the plaintiff by the agreement of July 27, 1905, were cast upon the defendant by reason of the transfer to the defendant of the plaintiff's rights in the agreement, such transfer being the effect of the subsequent agreement of October 12, 1905. 10

Request denied and plaintiff's objection noted. Frederick Adams, Circuit Court Judge.

7.—That the plaintiff and the defendant by a practical construction and interpretation of the effect of the aforesaid contracts for a period of eight years after the contracts were signed treated the contract of October 12, 1905, as an assignment of the contract of July 27, 1905, and the liabilities originally imposed upon the plaintiff by the contract of July 27, 1905, as devolving upon the defendant. 20

Request denied and objection noted. Frederick Adams, Circuit Court Judge.

8.—That the moneys which the defendant, by virtue of its counterclaim, seeks to obtain from the plaintiff were paid out by the defendant in discharge of the obligations that under the construction of the parties were held to have devolved upon the defendant. 30

Request denied and objection noted. Frederick Adams, Circuit Court Judge.

9.—That the payments made by the defendant 40

Plaintiff's Requests to Find.

to the plaintiff during the period of eight years after the execution of the aforesaid contracts were not made because of any unauthorized direction of an officer of the defendant.

- Request denied and plaintiff's objection noted.
 10 Frederick Adams, Circuit Court Judge.
 TWO—Requests to Find

10.—That the plaintiff is entitled to recover from the defendant the sum of \$3,834.56, with interest on \$1,407.25 from April 10, 1913, on \$1,478.95 from May 10, 1913, and on \$948.36 from June 10, 1913.

Request denied and plaintiff's objection noted.
 Frederick Adams, Circuit Court Judge.

- 20 11.—That the defendant take nothing upon its counterclaim herein.

Request denied and plaintiff's objection noted.
 Frederick Adams, Circuit Court Judge.

12.—That the plaintiff recover of the defendant its costs in this action to be taxed.

Request denied and plaintiff's objection noted.
 Frederick Adams, Circuit Court Judge.

- 30 Respectfully submitted,

MAGOFFIN & SIGNOR,
 Attorneys for Plaintiff.

Testimony.

NEW JERSEY SUPREME COURT,

ESSEX CIRCUIT.

Thursday, December 3, 1914.

FIRE PROTECTION DEVELOPMENT COMPANY,

vs.

Action at Law.

AMERICAN DISTRICT TELEGRAPH COMPANY.

10

20

Before—Hon. Frederick Adams, J., without a jury.

For plaintiff appear Messrs. Griggs, Baldwin & Baldwin, by Martin Conboy, Esq.

For defendant appear Messrs. Linabury, Depue & Faulks, by Kinsley Twining, Esq., and Rush Taggart, Esq., of the New York Bar, who is admitted *pro hac vice*.

30

Mr. Conboy opens for plaintiff.

Mr. Twining opens for defendant.

Mr. Taggart: (After discussion.) We are willing to put in these contracts that art attached to our answer, and I understand that it is admitted, or will be admitted, that the items here have been expended by us in connection with the operation and maintenance of the property of the

40

Testimony.

Special Fire Alarm Signal Company, in New York, and the payment of taxes, in the months in question.

Mr. Conboy: I understand your operation and maintenance includes also soliciting expenses?

10 Mr. Taggart: Yes, solicitation of new customers.

Mr. Conboy: Well, that is exactly—

Mr. Taggart: That is a question under the contract.

Mr. Conboy: All right, if it is so stipulated on the record.

Mr. Taggart: It is a question whether we are entitled to charge that or whether it was your duty under the contract to do that work of solicitation, that is all. If that is understood, we will
20 offer these two contracts and rest.

Mr. Conboy: There are three contracts.

The Court: Let us see first what the plaintiff is going to do. Generally under our practice the plaintiff is called upon to take some attitude or to define its position, by way of stipulation or otherwise, on the record.

Mr. Conboy: I say that, under the pleadings, the burden of proving its case is not upon the plaintiff, to bring by any witnesses a statement of
30 the character of its case to the attention of the Court, because it is admitted by the pleadings that this money has been collected and these deductions have been made, and the issue in the case is as to the propriety of the deductions. These deductions are claimed to be proper, under the contention made by the defendant set up in its answer and in its reply to our reply.

The claim of the plaintiff is based upon the fact that the defendant has admittedly collected
40 money belonging to the plaintiff, which the defend-

Testimony.

ant has not remitted to the plaintiff. The defendant claims that these moneys it was entitled to retain and deduct from its remittances to the plaintiff, because it made expenditures which the plaintiff should have made under the contract of July, 1905, as modified by the contract of October, 1905. The plaintiff on its part claims that the contracts of July, 1905, and of October, 1905, give the defendant no right to make such deductions, because, under the contract of 1905, the defendant obtained the business in excess of that which was on the books at the time that it was originally assigned to the plaintiff's predecessor. 10

The Court: Is there any question of controverted fact there?

Mr. Taggart: No. 20

Mr. Conboy: Only those two questions that are raised by the answer as part of the defense.

The Court: You were stating your own position on the record.

Mr. Conboy: Yes.

The Court: Now, on that statement you rest?

Mr. Conboy: Yes, sir.

The Court: If you find that you have rested too soon, I will open your case.

Plaintiff rests. 30

Mr. Taggart: Now, we offer, first, the contract, Schedule A, attached to the answer of the defendant, dated the 27th day of July, 1905, between the Automatic Fire Protection Company and the Special Fire Alarm Electrical Signal Company and the New York Fire Protection Company and the American District Telegraph Company. That describes it sufficiently.

Then we offer the agreement dated the 12th day of October, 1905, between the Automatic Fire Pro- 40

Testimony.

tection Company and the American District Telegraph Company, being Schedule B attached to the answer.

10 Then we offer contract between the Automatic Fire Protection Company and the Fire Protection Development Company, dated the 29th day of April, 1905, which is Schedule C attached to the answer.

Then we also offer letter from the vice-president of the American District Telegraph Company to the Fire Protection Development Company, dated April 1, 1913, which is attached to the reply.

Mr. Conboy: It is part of your reply to our reply.

20 Mr. Taggart: Yes, the reply of the defendant to the reply of the defendant.

Mr. Conboy: To that offer we object on the ground that the defendant could not by writing a letter on the 1st day of April, 1913, change the rights between the parties.

The Court: I will receive it subject to your objection.

Mr. Taggart: There is no question as to the fact of the letter having been written?

30 Mr. Conboy: No, we admit it in our reply to your reply to our reply.

The Court: You say it is a self-serving declaration?

Mr. Conboy: Yes, sir.

The Court: I will consider your objection. In the meantime I will receive it.

Mr. Taggart: In connection therewith I understand that the amounts set forth in Schedule D, E and F, attached to the answer of the defendant, are admitted to have been expended for the purposes set forth in those schedules by the American
40

Testimony.

District Telegraph Company in connection with the operation and maintenance of the Special Fire Alarm Electrical Signal Company's plant, the first item, "Salary of operating department," consisting of amounts expended for solicitation of business in connection with the operation.

10

Mr. Conboy: We admit that they made those expenditures.

Mr. Taggart: One further admission: that they are reasonable amounts for the service that they represent.

Mr. Conboy: I know of no reason for disputing them. I understand that you say further in that connection that those particular items cover solicitation of business?

Mr. Taggart: That particular item, the one designated "Operating and Commercial Departments, Salaries."

20

Mr. Conboy: That is carried in each one of these schedules?

Mr. Taggart: Yes, in each schedule, the first item.

Mr. Conboy: And that covers charges for soliciting new business?

Mr. Taggart: Yes.

Mr. Conboy: In New York City?

30

Mr. Taggart: In New York City, in the maintenance and operation of that plant.

I am informed that I have made my statement too general in regard to that first item; that only a part of that amount is solicitation. I think we can separate the items. I want to correct that statement as to solicitation, my attention being called to it by Mr. Johnson, stating that in the item on Schedule D, \$449.36, of that amount \$194.68 is for solicitation. All the remainder is

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Testimony.

for work of operation of the line, and none of the amount in Schedules E and F is for solicitation. The one item that I have given is the total amount of all this sum that is for solicitation of new business; the rest is for operation.

10 Now, just one thing further. It is admitted that the plant on which these expenditures have been made is the plant leased by the lease of July 27, 1905.

With that, we rest our case.

Defendant rests.

Mr. Conboy: I first offer in evidence the transcript of the judgment in the previous case, which, by consent of the other side, we may put in office copies of.

20 Mr. Taggart: That is, the pleadings and the judgment, you mean?

Mr. Conboy: The pleadings and the judgment, yes.

The Court: Merely the pleadings?

Mr. Conboy: We will put in the entire case, your Honor, the entire judgment, including the pleadings, the testimony and the judgment itself. There is a typewritten copy of that.

The Court: That is the case before Judge Dun-
30 gan?

Mr. Conboy: Yes, sir.

The Court: Have you that here, so that you can offer it and have it marked?

Mr. Conboy: It is not here, your Honor; the complete copy of it is not here.

The Court: We will consider it in and call it P1 for the plaintiff, and when you get it let the stenographer have it and he will mark it. Does
40 that carry with it the documentary evidence referred to in the evidence?

Testimony.

Mr. Conboy: Yes, sir.

The Court: And you have those?

Mr. Conboy: Yes, sir.

Mr. Twining: It carries everything except the agreement of July 27th.

Mr. Conboy: That is in this case. 10

Mr. Twining: That is in this case.

Mr. Conboy: I will offer first the summons and complaint in the former suit.

(Marked Exhibit P1.)

Mr. Conboy: Next is the answer and counter-claim in the former suit.

(Marked Exhibit P2.)

Mr. Conboy: The reply.

(Marked Exhibit P3.)

Mr. Conboy: The stenographer's minutes. 20

(Marked Exhibit P4.)

Mr. Conboy: And the postea.

(Marked Exhibit P5.)

Mr. Conboy: I offer in evidence a contract between the American District Telegraph Company and the Automatic Fire Protection Company, dated April 29, 1907.

Mr. Taggart: Well, I submit that that has no relevancy to any of the issues here, none whatever; it is outside of the issues in this case. 30

The Court: I had probably better receive it, subject to your objection.

Mr. Taggart: Very well. That is what I supposed would be done, but I wanted to save my objection.

(Paper marked Exhibit P6.)

Mr. Conboy: I offer in evidence two letters, one dated August 21, 1905, and the other August 22, 1905, from the general superintendent of the American District Telegraph Company to Mr. E. 40

Forrest J. McLean—Direct.

M. Mulford, superintendent of that company.

Mr. Taggart: We enter our objection to those, because they are no evidence of authority to make the arrangements that are stated in those letters.

10 The Court: Because they do not carry with them evidence of their own authority?

Mr. Taggart: No, sir; and also on the ground that it is on an issue not within the issues of this case in any respect.

The Court: You do not require formal proof of their authenticity?

Mr. Taggart: No.

Mr. Conboy: Do you require proof of the fact that Mr. Patterson was general superintendent of the American District Telegraph Company at
20 this time?

Mr. Taggart: No.

Mr. Conboy: Or that Mr. Mulford was superintendent at this time?

Mr. Taggart: No.

The Court: I will receive them, subject to your objection.

(Papers marked respectively Exhibit P7 and Exhibit P8.)

30 Plaintiff rests.

FORREST J. McLEAN, sworn in behalf of defendant.

Direct examination by Mr. Taggart:

Q. Mr. McLean, you are the auditor of the American District Telegraph Company? A. I am
40 the assistant auditor.

est J. McLean—Direct.

Q. And how long have you been assistant auditor? A. Since July 1, 1911.

Q. And before that what were you? A. Clerk in the accounting department.

Q. And were you so since 1905? A. Since August, 1905.

Q. Now, have you analyzed the accounts between the American District Telegraph Company and the Special Fire Alarm Electrical Signal Company, in New York, in the operations of the plant during the years from 1905 down? A. Yes, sir. 10

Q. Do you remember the former suit in this case? A. Yes, sir.

The Court: The former suit between these parties? 20

Mr. Taggart: Between these same parties, yes, your Honor.

Q. How long before that suit was instituted was it that you called attention to the fact that, in stating the accounts relating to operations in New York City, the provisions of the contract of February 18, 1904, had not been followed in making those statements? 30

Objected to.

Objection overruled.

The Court: May I ask, called whose attention?

Mr. Taggart. Called the attention of the American District Telegraph Company.

A. In making the settlements?

Q. Yes. A. In making the settlements with the Automatic Fire Protection Company? 40

Forrest J. McLean—Direct.

Q. Yes. A. Some time in 1908.

Q. Do you remember what parts of the contract of February 18, 1904, or what items, were not followed in stating the accounts? A. Yes, sir.

10 Q. Well, what were they? A. The question of commissions and devices were not being handled under the contract of February 18, 1904.

Q. Now, let me ask you, in other respects were the accounts at that time stated according to the provisions of the contract of February 18, 1904? A. Yes.

Q. In other respects? A. Yes, sir.

20 Q. Now, do you remember what, if any, instructions you received following your calling of the attention of the American District Telegraph Company to that fact with respect to the statement of accounts?

Objected to.

(After argument, the question is withdrawn.)

30 Q. Mr. McLean, do you know the basis upon which the accounts which were presented in the former suit between these same parties were made up?

Mr. Conboy: I think that is incompetent, but in order to shorten this inquiry, I am willing to state upon the record that the plaintiff admits that the defendant at the former trial contended that it had the right to make the deductions that were there sought to be made, on the ground that those deductions were justified by the contract of February 18, 1905. I understand

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Forrest J. McLean—Direct.

that was the contention made at the former trial.

Mr. Taggart: That is all I want.

Cross examination waived.

Defendant rests.

10

Mr. Taggart sums up for the defendant.

Mr. Conboy sums up for plaintiff.

20

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Exhibit P-1.**(Summons and Complaint in First Suit.)
Summons in First Suit.**

(Copy)

10 The State of New Jersey to American Dis-
 trict Telegraph Company: You are
(Seal) summoned to answer the annexed com-
 plaint of Fire Protection Development
 Company in an action at law in the
 Supreme Court and take notice that
 unless you file an answer to said com-
 plaint with the Clerk of the Supreme
 Court at Trenton within twenty days
20 after service upon you of this writ and
 the annexed complaint, plaintiff may
 proceed in the suit and judgment may
 be entered against you.

 Witness, William S. Gummere, Chief
 Justice of the Supreme Court at Tren-
 ton, this 10th day of July, 1912.

 WM. RIKER, J8.,
 Clerk.

30 Griggs & Harding,
 Attorneys for Plaintiff.

Exhibit P-1.

Complaint in First Suit.

(Copy)

SUPREME COURT OF NEW JERSEY,

ESSEX COUNTY.

10

FIRE PROTECTION DEVELOPMENT
COMPANY,

Plaintiff,

against

AMERICAN DISTRICT TELEGRAPH
COMPANY,

Defendant.

20

Plaintiff, a resident of the State of Maine, says
that

I.—The plaintiff is now and at all the times
hereinafter mentioned was a corporation duly or-
ganized under and existing by virtue of the laws
of the State of Maine.

30

II.—The defendant is now and at all the times
hereinafter mentioned was a corporation of the
State of New Jersey.

III.—Subsequent to May 1, 1912, the defendant
collected from the persons, firms, corporations
and concerns named in the schedule hereto at-

40

Exhibit P-1.

10 tached, marked Exhibit A, and held for plaintiff, certain moneys belonging to the plaintiff, which said moneys in the aggregate amounted on June 10, 1912, to the sum of Fourteen thousand five hundred four and 14/100 (\$14,504.14) Dollars, which amount the defendant promised to pay to the plaintiff on said last mentioned date. Attached hereto, marked Exhibit A and hereby made a part hereof is a statement of the items of said amount, which said statement was rendered by the defendant to the complaint and is a statement of said moneys belonging to the plaintiff, collected as aforesaid by the defendant.

20 IV.—Although the plaintiff has demanded the payment of the aforesaid amount from the said defendant, yet the defendant has refused to pay the same or any part thereof except the sum of Nine hundred seventy-eight and 84/100 dollars (\$978.84), leaving due to the plaintiff from the defendant the sum of Thirteen thousand five hundred twenty-five and 30/100 dollars (\$13,525.30), which said amount became due from the defendant to the plaintiff on the 10th day of June, 1912.

30 Wherefore, plaintiff demands judgment against the defendant in the sum of Thirteen thousand five hundred twenty-five and 30/100 dollars (\$13,525.30) with interest thereon from the 10th day of June, 1912, and the costs and disbursements of this action.

GRIGGS & HARDING,
Attorneys of Plaintiff.

Exhibit P-1.

Exhibit A.**(Annexed to Complaint in First Suit.)**

Moneys received by American District Telegraph Company for the use and benefit of Fire Protection Development Company, as per detailed statement furnished by American District Telegraph Company to Fire Protection Development Company on June 10th, 1912:

Cincinnati, Ohio.

J. W. & G. Bullock,	3/21/12—3/21/13, \$200.00,	\$50.00
Queen City Sup. Co.,	1/10/12—1/10/13, \$100.00,	45.00
J. C. McCullough,	5/1/12—6/1/12, \$15.00,	6.75
H. Mulhauser,	3/1/12—3/1/13, \$275.00,	68.75
Alms & Doepke,	1/1/12—4/1/12, \$256.25,	115.32
Foy Paint & Gl. Co.,	5/1/12—11/1/12, \$100.00,	25.00
McDonald Prntg. Co.,	4/26/12—4/26/13, \$200.00,	50.00

 \$360.8

Grand Rapids, Mich.

Burch Co.,	2/1/12—7/31/12, 25% of \$72, \$144 per annum,	18.0
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Peabody, Mass.

Morrill Lea. Co.,	February, 1912,	6.0
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Salem, Mass.

C. H. Keefe,	March, 1912,	7.2
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 \$392.1

Birmingham, Ala.

Doster Northington,	2/1/12—2/1/13, \$400.00	\$180.00
Wood Crabbe G. Co.,	2/1/12—2/1/13, \$300.00,	75.00
Louis Saks,	2/1/12—2/1/13, \$265.00	66.25

 321.2

Knoxville, Tenn.

Cowan McClung Co.,	3/1/12—3/1/12,	\$37.50
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Exhibit P-1.

Cowan McClung Co.,	3/1/12—6/1/12 (addl.)	4.68	
Anderson, Dulin & V.,	March, 1912,	5.44	
			47.62
Milwaukee, Wis.			
McGeogh Bldg.,	3/1/12—4/1/12,	\$2.00	
Goll & Frank,	3/1/12—4/1/12,	3.23	
Amer. Candy Co.,	3/1/12—4/1/12,	3.65	
Holeproof Hos. Co.,	4/1/12—5/1/12,	2.00	
Kalamazoo Knit. Co.,	3/1/12—4/1/12,	2.00	
J. Rauschenberger,	3/1/12—4/1/12,	2.38	
Schroeder Lbr. Co.,	3/1/12—4/1/12,	2.75	
Moliter & Hummel,	2/1/12—3/1/12,	3.15	
Abresch & Co.,	3/1/12—4/1/12 45%,	4.50	
Abresch & Co.,	3/1/12—4/1/12 50%,	2.25	
B. Young,	4/1/12—4/1/13,	43.20	
Western Hat & M. Co.,	(Supersedes old service with Mayor Boot & Shoe Co.) 11/1/11—11/1/12, 45% old svce. at \$12,	\$5.40	
	50% new serv. at \$120,	60.00	
			65.40
F. G. Smith,	3/1/12—4/1/12,	1.75	
	(Still owes for Feb.)		
			138.26
San Francisco, Cal.			
Goldberg Bowen Co.,	5/1/12 — 7/31/12, \$364		
	per year,	20.25	
Buckingham & Hecht,	5/1/12—2/1/13, \$100 per		
	year,	37.50	
Buckingham & Hecht,	2/1/13—4/30/13. \$100 per		
	year,	11.25	
			69.00
Louisville, Ky.			
	45%		
Robt. Rowell Co.,	2/1/12—3/1/13, \$20.00,	9.00	

Exhibit P-1.

Tabb Leather Co.,	2/1/12—3/1/13, \$90.00,	40.50
		49.50
Reed & Co.,	2/1/12—3/1/13, \$115.00,	51.75
Reed & Co.,	3/14/12—3/14/13, \$15.00,	6.75
Lou. Pub. Whse.,	3/15/12—4/15/13, \$400.00,	180.00
Lou. Paper Co.,	3/25/12—3/25/13, \$100.00,	45.00
Lou. Paper Co.,	3/25/12—3, 25/13, \$15.00,	6.75
Falls City Clo. Co.,	3/1/12—3/1/13, \$20.00,	9.00
Hubbuck Bros.,	4/1/12—4/1/13, \$50.00,	22.50
Taylor & Williams,	4/1/12—4/1/13, \$85.00,	38.25
Taylor & Williams,	4/1/12—4/1/13, \$15.00,	6.75
Brown Co.,	4/1/12—4/1/13, \$30.00,	13.50
Bacon & Son,	4/1/12—4/1/13, \$175.00,	78.75
Lou. Pub. Whse. Co.,	4/1/12—4/1/13, \$96.00,	43.20
Clark Elec. Co.,	4/1/12—4/1/13, \$24.00,	10.80
Carter Dry Goods,	April, 1912, \$5.00,	2.25
Peter Neat Rich,	March, 1912, \$5.00,	2.25
Kaufman Straus Co.,	April, 1912, \$5.00,	2.25
Carter Dry Goods,	April, 1912, \$2.00,	.90
J. C. Lewis Co.,	12/1/11—12/1/12, on acct., \$25.00,	11.25
	25%	
F. W. Keisker,	Bal. for 10/4/11 to 10/4/12, \$160.00,	40.00
Toledo, Ohio.		621.
Baumgarden & Co.,	4/22/12—4/22/13, 25% \$475,	\$118.75
Black Cloak Co.,	4/8/12—4/8/13, 25% \$176,	44.00
Nashville, Tenn.		162.
Harris Davis Co.,	5/5/12—5/5/13, 25% of \$150,	\$37.50

Exhibit P-1.

Murray Dibrell Co.,	5/5/12—5/5/13, 25%		
	of \$60,	15.00	
Cain Sloan Co.,	5/8/12—5/8/13, 25%		
	of \$275,	68.75	
			121.25
Cincinnati, Ohio.			
Wise, Shaw & Feder,	5/26/12—5/26/13, \$250,	\$62.50	
Orville Simpson Co.,	4/1/12—4/1/13, \$150,	37.50	
			100.00
Ezekiel & Bernheim,	2/1/12—5/1/12, \$50,	22.52	
Haydock Carriage Co.,	3/28/12—9/28/12, \$75,	33.75	
Geirschofer Clo. Co.,	5/19/12—5/19/13, \$225,	101.25	
Steinman & Mayer,	5/18/12—5/18/13, \$300,	75.00	
Heekin Can. Co.,	5/1/12—5/1/13, \$360,	90.00	
			422.52
St. Louis, Mo.			
Gerold Mov. & Stor. Co.,	1/21/12 — 1/21/13, 25%		
	of \$225 (E. St. Louis),	56.25	
Memphis, Tenn.			
Lillybeck Drug Co.,	4/1/12—4/1/13,	50.00	
Pittsburg, Pa.			
McCreery & Co.,	May, 1912,	31.25	
Lynn, Mass.			
Goddard Co.,	2/1/12—6/30/12,	10.00	
Pittsburg, Pa.			
Equitable Meter Co.,	Year commencing 5/10/12,	50.00	
Pittsburg, Pa.			
Reymer & Bros.,	Year commencing 5/6/12,	88.75	
Chicago, Ill.			
Amer. Steel & W. Co.,	4/1/12—9/30/12, 45% of		
	\$250, \$500 yr.,	\$112.50	
Florsheim & Co.,	5/1/12—10/10/12, 45% of		
	\$53.86, \$121 per yr.,	24.24	
Birdsey Somers Co.,	2/1/12—1/31/13, 25% of		
	\$36.40,	9.10	

Exhibit P-1.

Chase & Sanborn,	4/18/12—4/17/13, 50% of \$150, A. F. A.,	75.00
Chase & Sanborn,	4/18/12—4/17/13, 45% of \$35 (S. S.),	15.75
		236.59
Chicago, Ill.		
Marshall Field & Co.,	4/1/12—3/31/13, 55% of \$7,898,	3,554.10
Marshall Field & Co.,	4/1/12—11/27/12, 50% of \$23.70, \$36 per yr.,	11.85
Marshall Field & Co.,	11/28/12 — 3/31/13, 55% of \$12.30, \$36 per yr.,	5.53
Marshall Field & Co.,	4/1/12—3/31/13, 55% of \$516,	232.20
Loose-Wiles Bisc. Co.,	3/17/12—3/16/13, 25% of \$432,	108.00
Cluett Peabody Co.,	4/15/12—4/14/13, 50% of \$219 (A. F. A.),	109.50
Sprague Warner Co.,	4/15/12—4/14/13, 25% of \$1,824,	456.00
Eureka Digger Co.,	1/12/12—1/11/13, 25% of \$420,	105.00
Franklin Stor. Co.,	4/21/12 — 12/31/12, \$468 per yr., 25% of \$325 on acct.,	81.25
Kappenheimer Bros.,	5/1/12—4/30/13, 25% of \$400,	100.00
Florian D. Wallace,	2/24/12—2/23/13, 25% of \$150,	37.50
Stewart & Clark,	4/1/12—6/30/12, 25% of \$78, \$312 per yr.,	19.50
Foley Mfg. Co.,	5/1/12—7/31/13, 25% of \$103, \$412 per yr.,	25.75
Hart, Schaffner & M.,	4/16/12—4/15/13, 25% of \$360,	90.00

Exhibit P-1.

Kling Bros.,	12/2/11—12/1/12, 25% of \$150 on acct., \$450 per yr.,	37.50	5,210.27
Nashville, Tenn.			
Lebeck Bros.,	5/8/12—5/8/13, 25% of \$300,	75.00	
Hirshberg Bros.,	5/8/12—5/8/13, 25% of \$110,	27.50	
			102.50
San Francisco, Cal.			
North Am. Mer. Co.,	5/1/12—7/31/12, \$276 per yr.,		17.25
Chattanooga, Tenn.			
Davenport Bros.,	5/1/12—13,	37.50	
Stagmaier & C.,	5/1/12—13,	37.50	
Stone Fort Land Co.,	5/1/12—13,	25.00	
			100.00
Detroit, Mich.			
Ferry & Co.,	5/10/12—5/10/13, 25% of \$872,		218.00
Omaha, Neb.			
Western Rock Island Plow Co.,	Year ending 4/15/13, 25% of \$350,		87.50
St. Joseph, Mo.			
Amer. Sash & D. Co. (Huttig Moss Co.),	5/1/12—5/1/13, 45% of \$250,	\$112.50	
Messanie Realty Co.,	4/1/12—5/1/12, 4% of \$10 per month,	4.50	
			117.00
Toledo, Ohio.			
Empire Theatre,	5/3/12—11/3/12, 25% 1/2 yearly \$68,	\$17.00	
Holmes Snow Flake L. Co.,	2/22/12—2/22/13, 25% of \$244,	61.00	
			78.00

Exhibit P-1.

Kansas City, Mo.

Ryder Shane & Hyman,	5/12/13—13, 25% of \$200,	\$50.00
Pittsburg Plate Glass,	2/16/12—13, 25% of \$275,	68.75
Jones Bros. D. G. Co.,	May, 45% of \$57,	25.65
Jones Bros. D. G. Co., Main St.)	May, 45% of \$74.59,	33.57

177

Cincinnati, Ohio.

I. & S. Bing Co.,	5/23/12—5/23/13, \$75,	\$33.75
Adams Expr. Co.,	5/1/12—6/1/12, \$12.50,	5.63
Adams Expr. Co.,	5/1/12—6/1/12, \$4.17,	1.89
Orpheum Theatre,	9/16/11—9/16/12, \$25 (bal.)	6.25
Lazarus & Co.,	3/1/12—3/1/13, \$185,	46.25

93

Lynn, Mass.

Hastings & Sons,	4/1/12—6/30/13,	
New Orleans, La.		
Fairchild Auto Co.,	1/1/12—6/30/13, 25% of \$112.50,	\$28.13
Kohn, Weil Co.,	4/1/12—3/31/13,	53.75

81

Pittsburg, Pa.

Gilmore Co.,	Quarter commencing 5/1/12,	
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24

St. Louis, Mo.

Wood & Tiernan,	5/1/12—5/1/13, 25% of \$96,	
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24

San Francisco, Cal.

Lincoln Realty Co.,	5/1/12 — 7/31/12, \$1,500 per yr.,	
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93

St. Paul, Minn.

St. Paul Rubber Co.,	5/15/12—5/15/13, 25% of \$191,	
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47

St. Paul, Minn.

Noyes Bros. & Cutler,	5/4/12—5/4/13, 45% of \$168,	
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75

Exhibit P-1.

Chicago, Ill.			
Watson Estate, Geo.,	12/1/10 — 11/30/11, 25% of \$60.97, \$234.63 per yr.,	\$15.24	
Donahue & Co.,	11/14/11—11/13/13, 25% of \$250 on acct. \$876 per yr.,	62.50	
W. C. Seipp,	4/28/12—4/27/13, 25% of \$552,	138.00	
Peter Henry & Chas. Bosch,	1/1/12—12/31/13, 25% of \$396,	99.00	
			314.74
Columbus, Ohio.			
J. H. & F. A. Sells ,	1/1/12—6/30/12, 25%,	\$30.00	
Billow Lupfer Co.,	1/1/12—6/30/12, 25%,	37.00	
			67.00
Cincinnati, Ohio.			
Saml. Ach Co.,	5/16/12—5/16/13, \$150,	\$67.50	
Carpenter Co.,	5/15/12—5/15/13, \$135,	60.75	
			128.25
Toledo, Ohio.			
Milner & Co.,	5/11/12 — 11/11/12, 25% 1/2 yearly \$330,	\$82.50	
Roth & Co.,	5/15/12—5/15/13, 25% of \$150,	37.50	
			120.00
Rochester, N. Y.			
L. P. Ross,	Semi-annual payment of \$162,	40.50	
Omaha, Neb.			
U. S. Supply Co.,	Year ending 2/28/13, 45% of \$215,	96.75	
Buffalo, N. Y.			
King & Eisle,	April, 1912 (aero),	\$5.00	
Buffalo Envelope Co.,	5/1/12—5/1/13 (aero),	70.00	
Allen Carpet Cl. Co.,	March and April, 1912 (aero),	10.00	

Exhibit P-1.

	Buffalo Mattress Co.,	April, 1912 (aero),		
	Adam & Co.,	April, 1912 (S. S.),	7.50	
	Sweeney & Co.,	March, 1912,	6.25	
				102
	Davenport, Ia.			
	U. B. Roberts & Co.,	April, 1912,		7.
	St. Louis, Mo.			
	Mrs. A. Hauptman,	5/21/12—5/21/13, assum-		
		ed from Woodward &		
		Tiernan Co. (25.. \$84),	\$21.00	
	Blackwell Wielandy Co.,	Apr., 1912, 45% of \$4,	1.80	
4.74				22.
	Syracuse, N. Y.			
	Peck & Co.,	May, 1912,		6.
	Minneapolis, Minn.			
7.00	Pillsbury Fl. Mills,	5/1/12—8/1/12, 45%,		423.
	Lynn, Mass.			
	Realty Trust Co. (E.	4/1/12—7/1/12,		12.
	E. Strout),			
8.25	Minneapolis, Minn.			
	Nor. R. I. Plow Co.,	5/11/12—5/11/13, 25%,		108.
	St. Louis, Mo.			
	Schmitz Shroeder Clo.	April, 1912, 45% of \$4,		1.
	Co.,			
	Springfield, Mass.			
0.00	Meekins, Packard &	April, 1912,		7.
	Wheat,			
0.50	St. Paul, Minn.			
	Farwell, Ozum, Kirk &	April, 1912,		2.
	Co.,			
3.75	Chattanooga, Tenn.			
	Knox, Thomas & Spears,	5/1/12—4/30/12,		37.
	Cedar Rapids, Ia.			
	Churchill Drug Co.,	April and May, 1912,		7.
	Columbus, Ohio.			
	Union Cloth Co.,	1/1/12—12/31/12, 25%,		43.

Exhibit P-1.

Grand Rapids, Mich.			
Mueller & Slack,	3/18/12—6/17/12, 25% of \$54, \$216 per yr.,		13.50
Los Angeles, Cal.			
Western Wholesale Drug Co.,	5/14/12 — 6/30/12, \$132 per quarter,	\$17.39	
Western Wholesale Drug Co.,	Proportion installation fee,,	82.50	
			99.89
San Francisco, Cal.			
Kriess & Sons,	5/1/12—7/31/12,	\$26.25	
Heiler, Klein & Co.,	6/1/12—8/31/12,	7.20	
			33.45
Omaha, Neb.			
McCord Brady Co.,	11/1/11—5/15/12, 45% of \$195 (6½ months at \$360 per year),	\$87.75	
McCord Brady Co.,	5/16/12—5/15/13, 45% of \$360 (old), \$162, 50% of \$240 (incr.), \$120,	282.00	
			369.75
Rockford, Ill.			
Skandia Furn. Co.,	2 quarters ending 4/30/12,		88.87
Brockton, Mass.			
Emma F. Nelson,	3/1/12—3/11/13, \$18,		4.50
Chicago, Ill.			
Auto Elec. Co.,	4/1/12—3/31/13, 45% of \$636,	\$286.20	
A. McKay,	4/11/12—4/10/13, 45% of \$460,	207.00	
A. McKay,	4/11/12—2/15/13, 50% of \$10.20, \$12.00 per yr.,	5.10	
A. McKay,	2/16/13—4/10/13, 45% of 45% of \$1.80, \$12 per yr.,	.79	
Kaufman & Bros.,	2/6/12—2/5/13, 25% of \$395,	98.75	
			597.84

Exhibit P-1.

Nashville, Tenn.

Overall Hawes Hat Co., 5/5/12—1/5/13, 25% of
\$40, \$60 per yr.,

10

Toledo, Ohio.

Hull Bros. Co., 4/2/12—7/2/13, 25% $\frac{1}{4}$
yearly, \$81.35,

20

St. Louis, Mo.

Allan Pfeiffer Co., 2/1/12—2/1/13,
New Orleans, La.

119

Dameron Pierson Co., 11/22/11—11/21/12, balance
Boston, Mass.

37

Amer. Circ. Loom Co.,	4/1/12—5/1/12,	\$4.17
Shurman & Co.,	" "	13.05
F. L. Young & Kimball,	" "	2.99
W. T. Cardy & Sons,	3/18/12—3/18/13,	37.50

57

Worcester, Mass.

Bickford & Sweet, 2/1/12—2/1/13,

61

Cincinnati, Ohio.

Jos. Joseph & Bros.,	4/1/12—5/1/12, \$49.17,	\$22.13
C. L. Hills (C. A. Hilker, Rec.),	3/2/12—4/2/12, \$16.67,	7.50
C. L. Hills (C. A. Hilker, Rec.),	2/2/12—3/2/12, \$16.67	7.50
Potter Shoe Co.,	3/5/12—3/5/13, \$75.00,	33.75
Straus Pritz Co.,	5/24/12—5/24/13, \$80.00,	36.00

106

Dayton, Ohio.

Brown & Co., 4/1/12—9/30/12,

18

Des Moines, Ia.

Warfield, Pratt Howell
Company, 4/15/12—10/15/12,

86

Evansville, Ind.

Leich Drug Co., to 5/1/13,

77

Kansas City, Mo.

Exhibit P-1.

Taylor D. G. Co.,	4/27/12—8/16/12, 4 addl connections under old contract at \$12 per yr.,	\$7.31	
Natl. Newspaper Assn. (K. C. Post),)	3/9/12—3/8/13, 25% of \$200,	50.00	
			57.31
Peoria, Ill.			
Jobst Bethard Co.,	5/1/12—5/1/13, 25% of \$250,		62.50
Memphis, Tenn.			
Goldsmith & Sons Co.,	5/26/12—5/26/13,	\$124.00	
Currie-McGraw Co.,	5/7/12—5/7/13,	56.25	
			180.25
St. Louis, Mo.			
Neidringhaus Co.,	4/9/12—4/9/13, \$225 per annum, 50% of \$100 on account (Ludlow A. F. A.),		50.00
Chicago, Ill.			
Delta Star El. Co.,	7/1/11—6/30/13, 25% of \$11 55,	\$2.89	
Dearborn Paper Co.,	6/16/11—6/15/12, 45% of \$9.18 on acct. \$18.36 per yr.,	4.14	
Cross Press & S. Co.,	2/1/12—1/31/13, 25% of \$324,	81.00	
			88.03
Chicago, Ill.			
Albaugh-Dover Co.,	Six months'		61.50
Dubuque, Ia.	25%		
Glover Co.,	6/15/12—9/15/12, \$52,	\$13.00	
Bell Bros. Co.,	5/1/12—8/1/12, \$36,	9.00	
Glover Co.,	5/1/12—8/1/12, \$30,	7.50	
			29.50
Indianapolis, Ind.			
Cones & Son Co.,	3/1/12—5/31/12, 25% of \$62.50,		15.63

Exhibit P-1.

Pittsburg, Pa.

Beggs & Buhl,	Thermometer svce., June,	4
Cleveland, Ohio.		
Higbee Co.,	1/11/12—5/1/12, \$250,	\$62.50
Gabriel Cge. Co.,	3/21/12—9/21/12, \$75,	33.75
Upson Walton Co.,	5/1/12—5/1/13, \$150,	37.50
Widlar Co.,	2/18/12—8/18/12, \$127.50,	57.37
Sherwin Williams Co.,	5/1/12—12/24/12, \$24,	6.00

272.

Pittsburg, Pa.

Rosenbaum Co.,	Year commencing 6/1/12,	100.
	New Haven, Conn.	
Sperry & Barnes Co.,	April, 1912,	11.

N. Y. City. Newark.

N. Y. Infant Asylum,	4/1/12—5/1/12,	\$2.25
Waldorf Astoria,	5/1/12—6/1/12,	4.05
C. N. Folsom,	5/1/12—8/1/12,	6.75
St. Vincent Hosp.,	4/1/12—10/1/12,	11.25
Lyons & Co.,	4/1/12—7/1/12,	5.62
Junior League Hm.,	4/20/12—5/20/12,	1.88
Proctor's (W. 23rd St.),	5/1/12—6/1/12,	3.60
Technolia Piano Co.,	5/1/12—8/1/12,	5.62
Hotel Cadillac,	4/1/12—6/1/12,	4.50
Hanover Fire Ins. Co.,	4/1/12—7/1/12,	6.75
Mad. Sq. Hotel,	2/1/12—5/1/12,	5.62
Iroquois Realty,	5/1/12—8/1/12,	4.50
Chas. T. Wills,	5/1/12—8/1/12,	5.62
Col. of Pharmacy,	5/1/12—8/1/12,	5.62
Soc. of Tammany,	5/1/12—6/1/12,	3.60
Hotel Martinique,	Acct. to 3/1/12,	22.05
Metropolitan Club,	4/1/12—6/1/12,	5.40
Koehler & Co.,	5/1/12—6/1/12,	3.15
Hotel St. James,	4/1/12—7/1/12,	5.62
St. James School,	5/1/12—6/1/12,	1.80
Union Theo. Sem.,	4/6/12—5/6/12,	9.00
Globe Theatre,	2/10/12—4/10/12,	3.75

Exhibit P-1.

Rudels Hotel,	5/1/12—5/1/13,	15.75	
Heb. Shelt. Guard. So.,	4/1/12—6/1/12,	2.70	
The Chatham,	1/1/12—7/1/12,	7.87	
Dept. of Finance,	1/1/12—4/1/12,	12.15	
Colonial Theatre,	5/1/12—8/1/12,	5.62	
Wm. H. Jackson,	4/1/12—7/1/12,	12.37	
Wiener Barnet Co.,	4/28/11—8/28/11,		\$23.75
Higgins & Co.,	11/1/11—6/1/12,		26.27
House of Good Shep.,	4/1/12—5/1/12,	1.80	
Y. W. C. A.,	5/1/12—6/1/12,	2.25	
N. Y. Maenchor Hall,	5/1/12—8/1/12,	5.62	
Dunham & Son,	1/5/12—4/5/12,		15.00
Jacob Ruppert,	4/1/12—7/1/12,	8.10	
Harlem Cent. Htl.,	4/15/12—7/15/12,	5.62	
Hotel Wellington,	5/1/12—8/1/12,	5.62	
Brightside Day Nursery & Kindergarten,	5/8/12—6/8/12,	1.88	
Lebanon Hospital,	4/1/12—7/1/12,	9.57	
Havana Amer. Co. ,	5/1/12—8/1/12,	5.62	
N. Y. Inst. for Blind,	3/1/12—4/1/12,	12.15	
Schaefer Brwg. Co.,	4/1/12—6/1/12,	5.40	
Shelt. Arms of N. Y.,	4/1/12—4/1/13,	18.00	
Aptmt. House,	5/1/12—8/1/12,	5.62	
Hampshire Ap. House,	1/1/12—4/1/12,	2.82	
Portsmouth Ap. House,	1/1/12—4/1/12,	6.19	
L. H. Best,	4/16/12—5/16/12,		6.68
Radcliffe & Son,	4/1/12—5/1/12,		3.75
Garrick Theatre,	5/1/12—8/1/12,	3.94	
Grace Chuch Settle.,	2/1/12—8/1/12,	11.25	
Lenox Library,	5/1/12—6/1/12,	1.50	
St. Clair Hotel,	11/1/11—2/1/12,	5.06	
Hahneman Hospital,	3/1/12—9/1/12,	6.62	
Hotel Columbus,	5/1/12—8/1/12,	3.37	
Singer Sew. Machine,	4/8/12—7/8/12,	30.94	
The Soney,	5/3/12—5/3/13,	18.00	
A. Strauss & Co.,	4/11/12—5/11/12,		4.69

Exhibit P-1.

Baker Printg. Co.,	3/26/12—4/26/12,	7.00
Baker Printg. Co.,	3/25/12—4/25/12,	5.25
Urban Amuse. Co.,	5/1/12—6/1/12,	1.88
Victoria Theatre,	5/1/12—6/1/12,	2.70
Hotel America,	4/1/12—7/1/12,	4.50
St. Joseph Asylum,	4/1/12—6/1/12,	3.60
The Clinton,	4/1/12—6/1/12,	4.50
Sachs Sch. for Boys,	4/1/12—7/1/12,	5.07
Hotel Cumberland,	5/1/12—8/1/12,	5.07
Yorkville Theatre,	5/1/12—8/1/12,	3.37
New Circle Theatre,	4/19/12—5/19/12,	1.88
Krakauer Bros.,	5/1/12—6/1/12,	2.25
Park & Tilford,	4/15/12—4/15/13,	22.50
Urban Am. Co.,	4/9/12—5/9/12,	1.88
Greeley Sq. Am. Co.,	4/18/12—5/18/12,	2.08
Delancy Am. Co.,	3/23/12—5/23/12,	4.17
Green & Son,		3.75
Albany Hotl, Rec.,	3/1/12—4/1/12,	3.60
Hotel Netherland,	5/1/12—6/1/12,	2.70
The Tourraine,	4/1/12—7/1/12,	6.75
Bridge Hotel,	5/1/12—8/1/12,	3.37
Roosevelt Hosp.,	5/1/12—8/1/12,	4.50
Amer. Fine Arts Scy.,	5/1/12—8/1/12,	7.31
Moore & Munger,	3/1/12—6/1/12,	5.63
Hotel Bryant,	4/5/12—7/5/12,	5.62
Little Theatre,	2/15/12—8/15/12,	12.50
Williams Bak. Co.,	5/1/12—6/1/12,	3.75
Holland House,	2/1/12—6/1/12,	12.60
Hotel Van Twiller,	4/1/12—7/1/12,	5.07
Presbyterian Hse.,	5/1/12—6/1/12,	2.25
Exchange Court Bldg.,	4/1/12—6/1/12,	5.62
Arcade House,	2/1/12—5/1/12,	2.82
Cunard House,	2/1/12—5/1/12,	2.82
Stanwix House,	2/1/12—5/1/12,	2.82
S. 5th Ave. Hotel,	2/1/12—5/1/12,	2.82
The Delavan,	2/1/12—5/1/12,	2.82

Exhibit P-1.

Hotel Marlborough,	2/27/12—5/27/12,	14.85	
N. Y. Mfrs. R. E. Co.,	2/1/12—5/1/12,	16.87	
Manhattan Theatre,	4/15/12—5/15/12,	1.88	
City Theatre,	4/19/12—5/19/12,	2.25	
Hudson Theatre,	5/1/12—6/1/12,	1.88	
Greek Hotel,	3/1/12—5/1/12,	3.75	
Hotel Monument,	5/1/12—8/1/12,	5.07	
Harlem House,	2/1/12—5/1/12,	5.62	
N. Y. Ophthalmis Inst.,	5/1/12—8/1/12,	6.75	
Eagle Hotel,	5/1/12—8/1/12,	4.50	
Est. L. David Nugent,	5/1/12—6/1/12,	1.88	
Parke-Davis Co.,	4/8/12—5/8/12,	4.88	
Brightside Nursery,	2/8/12—5/8/12,	6.25	
Williams & Co.,	1/1/12—1/1/13,	50.00	
Am. Hame & Bit Co.,	4/1/12—6/1/12,		7.50
Peter Deelger,	4/1/12—6/1/12,	8.10	
Proctor's Theatre,	5/1/12—6/1/12,	3.60	
Columbus Hospital,	5/1/12—6/1/12,	2.25	
Misericordia Hosp.,	5/1/12—6/1/12,	1.80	
Proctor's Theatre,	5/1/12—6/1/12,	2.25	
Belvidere Hotel,	4/12/12—5/12/12,	1.50	
Women's Lodging,	5/1/12—8/1/12,	4.50	
Manhattan Opera Hs.,	3/1/12—6/1/12,	5.62	
Int. Hdkf. Mfg. Co.,	5/1/12—6/1/12,	1.88	
Lafayette Hotel,	4/19/12—5/19/12,	1.88	
Brevoort Hotel,	5/1/12—6/1/12,	1.50	
N. J. Button Works,	3/29/12—5/29/12,		16.86
Elias Brwg. Co.,	4/1/12—7/1/12,	7.31	
Astor House,	5/1/12—6/1/12,	2.25	
Criterion Theatre,	5/1/12—8/1/12,	3.94	
Anderson Bldg.,	4/1/12—5/1/12,	2.25	
Apt. House,	4/1/12—7/1/12,	5.62	
Indiana Apt. House,	4/1/12—7/1/12,	5.62	
New Amsterdam Theatre,	5/1/12—8/1/12,	4.50	
Ethical Culture Sch.,	4/1/12—5/1/12,	1.88	
Boys' Club,	5/1/12—8/1/12,	3.37	

Exhibit P-1.

Postal Life Ins. Co.,	5/1/12—8/1/12,	6.19	
Stokes Apt. House,	5/1/12—8/1/12,	5.62	
New Lyceum Th.,	5/1/12—8/1/12,	6.75	
De La Salle Inst.,	3/1/12—6/1/12,	5.62	
German Hosp.,	4/1/12—10/1/12,	12.82	
Plaza Music Hall,	4/13/12—5/13/12,	1.88	
Asylum St. V. de Paul,	4/1/12—5/1/12,	1.69	
Dominican Convent,	4/1/12—6/1/12,	3.60	
N. Y. Hotel,	5/1/12—8/1/12,	5.62	
Germania Hotel,	2/1/12—5/1/12,	3.37	
Cutter School,	5/1/12—8/1/12,	5.62	
Rudolph Piano Co.,	4/1/12—6/1/12,	3.76	
Wadsworth Am. Co.,	4/26/12—5/26/12,	2.50	
Hotel Braddock,	4/1/12—5/1/12,	1.12	
Margaret Louise Hme.,	5/1/12—6/1/12,	2.70	
N. Y. Foundling Asyl.,	2/1/12—6/1/12,	7.20	
Hotel Roland,	5/1/12—8/1/12,	5.62	
Merch. Union Ice Co.,	4/10/12—7/10/12,	11.25	
Williams Brk. Co.,	4/1/12—5/1/12,		3.75
Chas. Green,	4/2/12—5/2/12,		3.33
Victoria Theatre,	4/1/12—5/1/12,	2.70	
Church St. Ig. Loyola,	4/1/12—7/1/12,	6.75	
St. Lukes Home,	5/1/12—7/1/12,	7.20	
Louis Ottman,	5/1/12—6/1/12,	1.88	
Sagamore Hotel,	5/1/12—8/1/12,	5.62	
Lichtenstein Bldg.,	5/1/12—8/1/12,	5.62	
L. Ettinger,	1/15/12—1/15/13,	32.40	
Manhattan Sq. Hotel,	4/1/12—7/1/12,	5.62	
The Savoy,	5/1/12—8/1/12,	4.50	
Natl. Lodging Hse.,	5/1/12—8/1/12,	4.50	
Ricca & Son,	1/1/12—4/1/12,	6.98	
Harris Theatre,	4/24/12—5/24/12,	1.04	
Wallach's Theatre,	5/1/12—6/1/12,	1.50	
Hotel Imperial,	5/1/12—6/1/12,	2.25	
Geo. Ehret,	5/1/12—6/1/12,	2.25	
Savoy Theatre,	5/1/12—8/1/12,	3.94	

Exhibit P-1.

The Irvington,	5/1/12—8/1/12,	3.37		
St. Albans Hotel,	5/1/12—8/1/12,	5.40		
Liberty Theatre,	4/10/12—7/10/12,	4.50		
Hudson Hotel,	4/1/12—7/1/12,	3.94		
Globe Theatre,	2/10/12—3/10/12,	1.88		
Playhouse Co.,	4/15/12—4/15/13,	22.50		
			\$944.79	\$131.33
				944.79
				1,076.12
				\$14,504.14

Exhibit P-2.
(Answer and Counterclaim in First Suit.)

NEW JERSEY SUPREME COURT.

FIRE PROTECTION DEVELOPMENT COMPANY, Plaintiff, against AMERICAN DISTRICT TELEGRAPH COMPANY, Defendant.	Action at Law. Answer and Counterclaim.
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1.—The defendant admits the allegations of paragraphs I and II of the plaintiff's complaint.

2.—The defendant admits that subsequent to May 1, 1912, the defendant collected from the persons, firms, corporations and concerns named in the schedule attached to the plaintiff's complaint, marked Schedule A, certain moneys, which said moneys in the aggregate amounted on June 10, 1912, to the sum of \$14,504.14, and that attached to the plaintiff's complaint marked Schedule A is a statement of the items of said amount. The defendant denies that the said Schedule A is a copy of a statement at any time rendered by the defendant to the plaintiff. A true copy of the only statement rendered the plaintiff by the defendant of moneys due and owing to the plaintiff from the defendant on June 10, 1912, is hereto annexed and made a part hereof and marked

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Exhibit P-2.

Schedule A. The defendant denies that it has ever held, or that it now holds, the said sum of \$14,504.14 for the plaintiff, or that on June 10, 1912, or at any other time, it promised to pay the plaintiff the said sum, or that the said sum
10 now belongs, or at any time has belonged, to the plaintiff.

3.—The defendant denies that it has refused to pay to the plaintiff any part of said sum of \$14,504.14 excepting \$978.84. It says that on June 10, 1912, it duly tendered to the plaintiff, and offered to pay to it, \$5,083.19, which it is advised and believes, and therefore charges the fact to be, was the entire amount of its indebtedness to the
20 plaintiff on that date. The defendant further says that the said tender of \$5,083.19 has been kept open to the plaintiff continuously from June 10, 1912, and that the said defendant is now ready and willing to pay the said sum to the said plaintiff in full satisfaction of the said plaintiff's claim aforesaid, but that the said plaintiff has at all times refused and neglected, and still does refuse and neglect, to accept such sum so tendered it by the defendant, or any part thereof.

30 4.—By way of counterclaim the defendant says that by virtue of the terms and provisions of two certain agreements in writing dated February 18, 1904, and March 30, 1915, each by and between Robert L. McElroy, of the first part, and the defendant, American District Telegraph Company, of the second part, the said Robert L. McElroy among other things agreed to have manufactured at his own cost all the devices and apparatus
40 forming the subject-matter of the said contracts,

Exhibit P-2.

and to furnish and deliver at the warehouse of the defendant, American District Telegraph Company, as called for, such appliances complete, made of first class material and representing first class workmanship, and in good working order, without cost or charge to the said American District Telegraph Company, and in and by the said agreements the said Robert L. McElroy further agreed that all soliciting for subscribers under the said contract should be done by him or through his procurement, and at his proper charge and expense; and it was further mutually agreed that the said contracts should be in force from February 18, 1904, for the full period of fifty years, and should continue after the close of the said term for the further term therein mentioned; as appears by a true copy of the said agreements hereto annexed and made a part hereof and marked Schedule B and Schedule C. The defendant further says that by an agreement in writing, dated April 21, 1905, by and between the said Robert L. McElroy, party of the first part, and Automatic Fire Protection Company, party of the second part, the said Robert L. McElroy with the assent of the defendant, granted, bargained, sold, assigned and set over to said Automatic Fire Protection Company all of his right, title, interest, claim and demand, both at law and in equity, in and to said contracts of February 18, 1904, and March 30, 1905, for the full unexpired term thereof, and the said Automatic Fire Protection Company thereby ratified and adopted the terms of the said contracts and thereby assumed and undertook to perform all and singular the covenants and agreements by the said Robert L. McElroy to be performed and thereby

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Exhibit P-2.

acknowledged itself bound in and by the said contracts in all respects as was the said Robert L. McElroy, and thereby undertook and agreed to indemnify and save harmless the said Robert L. McElroy from all and singular the covenants
10 of the said contracts, as appears by a true copy of the said agreement hereto annexed and made a part hereof and marked Schedule D. The defendant further says that by an agreement in writing dated October 12, 1905, by and between Automatic Fire Protection Company, party of the first part, and American District Telegraph Company, party of the second part, reciting that
20 whereas by an indenture of lease, dated July 27, 1905, the Special Fire Alarm Electric Signal Company leased to Automatic Fire Protection Company all of its property, assets and franchises of every name and nature for the period of forty-nine years, at and for an annual rental in the said agreement recited, payable to the Guardian Trust Company, as in the said lease is more particularly set forth, and whereas the annual gross rentals derived from the contracts and business, assets and franchises, demised under said lease,
30 amounting at the time of making said lease to \$29,000 per annum, were collected by the National District Telegraph Company, of the State of New York, and were received under existing contracts between the parties to the said agreement of October 12, 1905, by said American District Telegraph Company, and whereas one of the purposes and considerations for said lease was to secure fire department connections for the said National District Telegraph Company which it had not theretofore been able to secure, therefore
40 it was mutually agreed that out of the gross in-

Exhibit P-2.

come received by the said American District Telegraph Company from the business and contracts aforesaid in the City of New York for manual signal service, there would be first paid during the forty-nine years term of the said lease the annual rental of \$5,000 payable as aforesaid to the Guardian Trust Company, and that the remainder of the gross income which should be received by the said American District Telegraph Company during the forty-nine years term of the said lease for manual signal service in the City of New York up to the aggregate of \$29,000 of gross income per annum remaining after deducting said \$5,000 rental, should be divided by and between the parties to the said agreement as follows: For the first year and after July 27, 1905, fifty per cent. thereof to each of the parties to the said agreement, and for each year after said first year during the forty-nine years term of said lease to the said Automatic Fire Protection Company forty-five per cent. thereof, and to the American District Telegraph Company fifty-five per cent. thereof, as appears from a true copy of the said agreement hereto annexed and made a part hereof and marked Schedule E.

Defendant further says that by an agreement in writing, dated April 29, 1909, between the Automatic Fire Protection Company and Fire Protection Development Company, the Automatic Fire Protection Company, with the assent of the defendant, among other things sold, assigned and transferred all its right, title and interest in and to all contracts for service with various customers of Fire Protection Development Company, and sold, assigned and transferred to Fire Pro-

Exhibit P-2.

tection Development Company all its right, title and interest in and to the said contract dated February 18, 1904, between Robert L. McElroy and the defendant, American District Telegraph Company, and also in and to any and all additional, supplemental and modifying contracts then made or thereafter made with said American District Telegraph Company, and all benefits to be derived therefrom on and after May 1, 1909; and it was further agreed that the purpose of the said agreement was that the said Fire Protection Development Company should after May 1, 1909, be empowered to transact any and all business formerly conducted by Automatic Fire Protection Company under and by virtue of its contracts with the defendant, American District Telegraph Company, and a certain other company in the said agreement mentioned, under the terms and conditions in the said agreement expressed, and the said Automatic Fire Protection Company covenanted and agreed to make, execute and deliver any additional formal assignments or papers that might be deemed necessary to fully carry out the purpose of the said agreement as thereby expressed; and the said Fire Protection Development Company also among other things agreed to pay and assume all existing obligations from and after May 1, 1909, and fully carry out any and all existing contracts of said Automatic Fire Protection Company and its subsidiary companies, according to the true intent and spirit of the said agreement, as appears by a true copy of the said agreement hereto annexed and made a part hereof and marked Schedule F.

The defendant further says that during the period from May 1, 1909, to March 31, 1912, it so-

Exhibit P-2.

licit for subscriptions under the said contracts of February 18, 1904, and March 30, 1905, at its own charge and expense, and caused to be manufactured at its own cost certain devices and apparatus forming the subject-matter of the said contracts, by reason whereof it became entitled to have and receive of the plaintiff on March 31, 1912, and the plaintiff promised to pay it \$8,008.95. Annexed hereto and made a part hereof and marked Schedule G is an itemized statement of the amounts which the defendant became entitled to have and receive from the said plaintiff on March 31, 1912, as aforesaid. On or about May 25, 1912, the defendant demanded of the plaintiff payment of the said sum of \$8,008.95. The plaintiff has not paid said sum or any part thereof.

The defendant further says that during the period between May 1, 1909, and May 25, 1912, it paid fifty per cent. of the gross income received by it from the business and contracts referred to in the said agreement of October 12, 1905, in the City of New York for manual signal service, remaining after the payment of the annual rental in the said agreement mentioned to the plaintiff, by reason whereof on May 25, 1912, the defendant became entitled to have and receive from the plaintiff, and the plaintiff promised to pay the defendant \$433.16. On or about May 25, 1912, the defendant demanded of the plaintiff payment of the said sum of \$433.16. The plaintiff has not paid the said sum of \$433.16 nor any part thereof. The defendant counterclaims \$8,450.62.

LINDABURY, DEPUE & FAULKS,
Attorneys for Defendant.

Exhibit P-2.

Schedule A.

(Annexed to Answer and Counterclaim in First Action.)

June 10th, 1912.

Fire Protection Development Company,
27 Pine Street,
New York, N. Y.

Gentlemen:

Herewith please find check to your order for \$5,083.19 in payment of the following:

Cincinnati, Ohio.

J. W. & G. Bullock	3/21/12—3/21/13, \$200.00	\$50.00
Queen City Sup. Co.	1/10/12—1/10/13, 100.00	45.00
J. C. McCollough	5/1/12—6/1/12, 15.00	6.75
H. Mulhauser	3/1/12—3/1/13, 275.00	68.75
Alms & Doepke	1/1/12—4/1/12, 256.25	115.32
Foy Paint & Gl. Co.	5/1/12—11/1/12, 100.00	25.00
McDonald Prntg. Co.	4/26/12—4/26/13, 200.00	50.00

360.82

Less: Lease National Automatic Fire Alarm Company, for month of May, 1912

250.00

110.82

Grand Rapids, Mich.
Burch Co.

2/1/12—7/31/12, 25% of \$72,
\$144 per annum

18.00

Needham, Mass.

Morrill Lea. Co.

February, 1912

6.00

Worcester, Mass.

C. H. Keefe

March, 1912

7.29

Birmingham, Ala.

Doster Northington

2/1/12—2/1/13, \$400

\$180.00

Wood Crabbe Gr. Co.

2/1/12—2/1/13, 300

75.00

Louis Saks

2/1/12—2/1/13, 265

66.25

321.25

Exhibit P-2.

Knoxville, Tenn.			
Comon McClung Co.	3/1/12—3/1/12	\$37.50	
Comon McClung Co.	3/1/12—6/1/12 (addl)	4.68	
Anderson, Dulin & V.	March, 1912	5.44	
			47.6
Milwaukee, Wis.			
McGeogh Bldg.	3/1/12—4/1/12	\$2.00	
Goll & Frank	3/1/12—4/1/12	3.23	
Amer. Candy Co.	3/1/12—4/1/12	3.65	
Holeproof Hos. Co.	4/1/12—5/1/12	2.00	
Kalamazoo Knit. Co.	3/1/12—4/1/12	2.00	
J. Rauschenberger	3/1/12—4/1/12	2.38	
Schroeder Lbr. Co.	3/1/12—4/1/12	2.75	
Militor & Hummel	2/1/12—3/1/12	3.15	
Abresch & Co.	3/1/12—4/1/12, 45%	4.50	
Abresch & Co.	3/1/12—4/1/12, 50%	2.25	
B. Young	4/1/12—4/1/13	43.20	
Western Hat & M. Co.	11/1/11—11/12, 45% old		
(Supersedes old serv-	svce. at \$12	\$5.40	
ice with Mayer Boot	50% new svce. at		
& Shoe Co.)	\$120	60.00	
			65.40
F. G. Smith	3/1/12—4/1/12	1.75	
	(Still owes for Feb.		138.2
San Francisco, Cal.			
Goldberg Bowen Co.	5/1/12—7/31/12, \$364 per		
	year		\$20.2
Buckingham & Hecht	5/1/12—2/1/13, \$100 per yr.	37.50	
Buckingham & Hecht	2/1/13—4/30/13, \$100 per yr.	11.25	
			69.0
Louisville, Ky.			
	45%		
Robt. Rowell Co.	2/1/12—3/1/13, \$20	\$9.00	
Tabb Leather Co.	2/1/12—3/1/13, 90	40.50	
Reed & Co.	2/1/12—3/1/13, 115	51.75	
Reed & Co.	3/14/12—3/14/13, 15	6.75	
Lou. Pub. Whse.	3/15/12—4/15/13, 400	180.00	

Exhibit P-2.

Lou. Paper Co.	3/25/12—3/25/13, 100	45.00	
Lou. Paper Co.	" " 15	6.75	
Falls City Clo. Co.	3/1/12—3/1/13, 20	9.00	
Hubbuck Bro.	4/1/12—4/1/13, 50	22.50	
Taylor & Williams	" " 85	38.25	
Taylor & Williams	" " 15	6.75	
Brown Co.	" " 30	13.50	
Bacon & Son	" " 175	78.75	
Lou. Pub. Whse. Co.	" " 96	43.20	
Clark Elec. Co.	" " 24	10.80	
Carter Dry Goods	April, 1912, 5	2.25	
Peter Neat Rich	March, 1912, 5	2.25	
Kaufman Straus Co.	April, 1912, 5	2.25	
Carter Dry Goods	April, 1912, 2	.90	
J. C. Lewis Co.	12/1/11—12/1/12 on acct. 25 25%	11.25	
F. W. Keisker	Bal. for 10/4/11 to 10/4/12, 160	40.00	
		\$621.40	
	Less property rental for the month of April, 1912, National Auto- matic Fire Alarm Co.	206.25	
			415.15
Columbo, Ohio.			
Baumgarden & Co.	4/22/12—4/22/13, 25% \$475	118.75	
Black Cloak Co.	4/8/12—4/8/13, 25% \$176	44.00	
			162.75
Memphis, Tenn.			
Harris Davis Co.	5/5/12—5/5/13, 25% of \$150	37.50	
Murran Dibrell Co.	5/5/12—5/5/13, 25% of \$60	15.00	
Cain Sloan Co.	5/8/12—5/8/13, 25% of \$275,	68.75	
			121.25
Cincinnati, Ohio.			
Wise, Shaw & Feder	5/26/13—5/26/13, \$250	62.50	

Exhibit P-2.

Orville Simpson Co. (Succr. to Straub Mchy. Co.	4/1/12—4/1/13, 150	37.50	
Ezekiel & Bernheim	2/1/12—5/1/12, 50	22.52	
Haydock Carriage Co.	3/28/12—9/28/12, 75	33.75	
Geiershofer Clo. Co.	5/19/12—5/19/13, 225	101.25	
Steinman & Meyer	5/18/12—5/18/13, 300	75.00	
Heekin Can Co.	5/1/12—5/1/13, 360	90.00	
			422.5
St. Louis, Mo. Gerold Mov. & Stor. Co.	1/21/12—1/21/13, 25% of \$225 (E. St. Louis)		56.2
Memphis, Tenn. Lillybeck Drug Co.	4/1/12—4/1/13		50.0
Pittsburgh, Pa. McCreery & Co.	May, 1912		31.2
Lynn, Mass. Goddard Co.	2/1/12—6/30/12		10.0
Pittsburgh, Pa. Equitable Meter Co.	Year commencing 5/10/12		50.0
Pittsburgh, Pa. Reymer & Bro.	Year commencing 5/6/12		88.7
Chicago, Ill. Am. Steel & W. Co.	4/1/12—9/30/12, 45% of \$250, \$500 yr.	\$112.50	
Florsheim & Co.	5/1/12—10/10/12, 45% of \$53.86, \$121 per yr.	24.24	
Birdsey Sommers Co.	2/1/12—1/31/13, 25% of \$36.40	9.10	
Chase & Sanborn	4/8/12—4/17/13, 50% of \$150 A. F. A.	75.00	
Chase & Sanborn	4/18/12—4/17/13, 45% of \$35 (SS)	15.75	
Marshall Field & Co.	4/1/12—3/31/13, 55% of of \$7898	3554.10	

Exhibit P-2.

Marshall Field & Co.	4/1/12—11/27/12, 50% of \$23.70, \$36 per year	11.85
Marshall Field & Co.	11/28/12 — 3/31/13, 55% of \$12.30, \$36 per year	5.53
Marshall Field & Co.	4/1/12—3/31/13, 55% of \$516	232.20
Loose-Wiles Bisc. Co.	3/17/12—3/16/13, 25% of \$432	108.00
Cluett Peabody Co.	4/15/12—4/14/13, 50% of \$219 (A F A)	109.50
Sprague Warner Co.	4/15/12—4/14/13, 25% of \$1824	456.00
Eureka Digger Co.	1/12/12—1/11/13, 25% of \$420	105.00
Franklin Storage Co.	4/21/12—12/31/12, 4/21/ 12—12/31/12, \$468 per yr., 25% of \$325 on acct.	81.25
Kappenheimer Bro.	5/1/12—4/30/13, 25% of \$400	100.00
Florian D. Wallace	2/24/12—2/23/13, 25% of \$150	37.50
Stewart & Clark	4/1/12—6/30/12, 25% of \$78, \$312 per yr.	19.50
Foley Mfg. Co.	5/1/12—7/31/13, 25% of \$103, \$412 per yr.	25.75
Hart, Schaffner & M.	4/16/12—4/15/13, 25% of \$360	90.00
Kling Bro.	12/2/11—12/1/12, 25% of \$150 on acct. \$450 per yr.	37.50
		5,210.27
Nashville, Tenn.		
Lebeck Bro.	5/8/12—5/8/13, 25% of \$300	75.00
Hirshberg Bro.	5/8/12—5/8/13, 25% of \$110	27.50

Exhibit P-2.

San Francisco, Cal.			
North Amer. Mer. Co.	5/1/12—7/31/12, \$276 per year,		17.2
Chattanooga, Tenn.			
Davenport Bro.	5/1/12—13	37.50	
Stagmaier & Co.	5/1/12—13	37.50	
Stone Fort Land Co.	5/1/12—13	25.00	100.0
Detroit, Mich.			
Ferry & Co.	5/10/12—5/10/13, 25% of \$872,		218.0
Omaha, Neb.			
Western Rock Island Plow Co.	Year ending 4/15/13, 25% of \$350		87.5
St. Joseph, Mo.			
Amer. Sash & Door Co. (Huttig Moss Co.)	5/1/12 — 5/1/13, 45% of \$250	112.50	
Messanie Realty Co.	4/1/12—5/1/12, 45%, \$10 per month	4.50	117.0
Toledo, Ohio.			
Empire Theatre	5/3/12—11/3/12, 25% 1/2 yearly \$68	17.00	
Holmes Snow Flake L. Co.	2/22/12—2/22/13, 25% of \$244	61.00	78.0
Kansas City, Mo.			
Ryder Shane & Hyman	5/1/12—13, 25% of \$200	50.00	
Pittsburg Plate Glass Co.	2/16/12—13, 25% of \$275	68.75	
Jones Bro. D. G. Co.	May, 45% of \$57	25.65	
Jones Bro. D. G. Co. (Main St.)	May, 45% of \$74.59	33.57	177.9
Cincinnati, Ohio.			
I. & S. Bing Co.	5/23/12—5/23/13	\$75.00	33.75
Adams Expr. Co.	5/1/12—6/1/12	12.50	5.63

Exhibit P-2.

Adams Expr. Co.	5/1/12—6/1/12	4.17	1.89	
Orpheum Theatre	9/16/11—9/16/12	25.00		
	(Balance)		6.25	
Lazarus & Co.	3/1/12—3/1/13	185.00	46.25	
				93.77
Lynn, Mass.				
Fairchild Auto Co.	1/1/12—6/30/13, 25% of			
	\$112.50		\$28.13	
Kohn, Weil Co.	4/1/12—3/31/13		53.75	
				81.88
Pittsburgh, Pa.				
Gilmore Co.	Quarter commencing 5/1/12			24.75
St. Louis, Mo.				
Woodward & Tierman	5/1/12—5/1/13, 25% of			
	\$96,			24.00
San Francisco, Cal.				
Lincoln Realty Co.	5/1/12—7/31/12, \$1500 per yr.			93.75
St. Paul, Minn.				
St. Paul Rubber Co.	5/15/12—5/15/13, 25% of			
	\$191			47.75
Noyes Bro. & Cutler	5/4/12 — 5/4/13, 45% of			
	\$168			75.60
Chicago, Ill.				
Watson Estate, Geo.	12/1/10 — 11/30/11, 25%			
	of \$60.97, \$234.63 per			
	yr.		\$15.24	
Donohue & Co.	11/14/11—11/13/13, 25%			
	of \$250 on acct. \$876			
	per yr.		62.50	
W. C. Seipp	4/28/12—4/27/13, 25% of			
	\$552		138.00	
Peter, Henry & Chas.	1/1/12—12/31/12, 25% of			
Bosch	\$396		99.00	
				314.74

Exhibit P-2.

	Less rebate to Union Special Machine Co., acct. discontinuance of 3 S. S. connections 2/9/12 to 9/30/12	5.79	308.9
Columbus, Ohio.			
J. H. & F. A. Sells	1/1/12—6/30/12, 25%	\$30.00	
Billow Lupfer Co.	1/1/12—6/30/13, 25%	37.00	67.0
Cincinnati, Ohio.			
Saml. Ach Co.	5/16/12—5/16/13, \$150	\$67.50	
Carpenter Co.	5/15/12—5/15/13 \$135	60.75	
		128.25	
	Less: Difference in Kline Bro. Acct., A. D. T. Co. should receive 50% instead of 33 1/3% of revenue	34.00	
	Difference in H. J. Anderson Acct., A. D. T. Co. should receive 50% instead of 33 1/3% revenue	44.00	
		78.00	50.2
Toledo, Ohio.			
Milner & Co.	5/11/12 — 11/11/12, 25% 1/2 yearly \$330	82.50	
R. Roth & Co.	5/15/12—5/15/13, 25% of \$150	37.50	120.0

Exhibit P-2.

Rochester, N. Y.			
L. P. Ross	Semi-annual payment of \$162		40.50
Omaha, Neb.			
U. S. Supply Co.	Year ending 2/28/13, 45% of \$215		96.75
Buffalo, N. Y.			
King & Eisele	April, 1912 (aero)	5.00	
Buffalo Envelope Co.	5/1/12—5/1/13 (aero)	70.00	
Allen Carpet Cl. Co.	March & April, 1912	10.00	
Buffalo Mattress Co.	April, 1912 (aero)	4.17	
Adam & Co.	April, 1912 (S S)	7.50	
Sweeney & Co.	March, 1912	6.25	
			102.92
Davenport, Ia.			
U. N. Roberts & Co.	April, 1912		7.28
St. Louis, Mo.			
Mrs. A. Hauptman	5/21/12—5/21/13, assum- ed from Woodward & Tierman Co. (25% \$84)	21.00	
Blackwell Wielandy Co.	April, 1912, 45% of \$4	1.80	
			22.80
Syracuse, N. Y.			
Peck Co.	May, 1912		6.75
Minneapolis, Minn.			
Pillsbury Fl. Mls. Co.	5/1/12—8/1/12, 45%		423.00
Lynn, Mass.			
Realty Trust Co. (E. E. Strout)	4/1/12—7/1/12		12.50
Minneapolis, Minn.			
Nor. R. I. Plow Co.	5/11/12—5/11/13, 25%		108.00
St. Louis, Mo.			
Schmitz Shorder Clo. Co.	April, 1912, 45% of \$4		1.80
Springfield, Mass.			
Meekins, Packard & Wheat	April, 1912		7.25

Exhibit P-2.

St. Paul, Minn.			
Farwell, Ozum, Kirk & Co.	April, 1912		2
Chattanooga, Tenn.			
Knox, Thomas & Spears	5/1/12—4/30/13, \$150		37
Cedar Rapids, Ia.			
Churchill Drug Co.	April and May, 1912		7
Columbus, Ohio.			
Union Cloth Co.	1/1/12—12/31/12, 25%		43
Grand Rapids, Mich.			
Mueller & Slack	3/18/12—6/17/12, 25% of \$54, \$216 per year		13
Los Angeles, Cal.			
Western Wholesale Drug Co.	5/14/12 — 6/30/12, \$132 per quarter	17.39	
Western Wholesale Drug Co.	Proportion installation fee	82.50	
San Francisco, Cal.			99.
Kriess & Sons	5/1/12—7/31/12	\$26.25	
Heiler, Klein & Co.	6/1/12—8/31/12	7.20	
Omaha, Neb.			33.
McCord Brady Co.	11/1/11—5/15/12, 45% of \$195 (6½ months at \$360 per yr.)	\$87.75	
McCord Brady Co.	5/16/12—5/15/13, 45% of \$360 (old) \$162; 50% of \$240 (incr.) \$120	282.00	
Rockford, Ill.			369.
Skandia Furn. Co.	2 quarters ending 4/30/12		88.
Brockton, Mass.			
Emma F. Nelson	3/1/12—3/1/13, \$18		4.
Chicago, Ill.			
Auto Elect. Co.	4/1/12—3/31/13, 45% of \$636	\$286.20	

Exhibit P-2.

A. McKay	4/11/12—4/10/13, 45% of \$460	207.00	
A. McKay	4/11/12—2/15/13, 50% of \$10.20, \$12 per yr.	5.10	
A. McKay	2/16/13—4/10/13, 45% of \$1.80, \$12 per yr.	.79	
Kaufman & Bro.	2/6/12—2/5/13, 25% of \$395,	98.75	
			597.84
ashville, Tenn.			
Overall Hawes Hat Co.	5/5/12—1/5/13, 25% of \$40.00, \$60 per yr.	10.00	
ledo, Ohio.			
Hull Bro. Co.	4/2/12—7/2/12, 25% 1/4 yearly \$81.25	20.31	
. Louis, Mo.			
Allan Pfeiffer Co.	2/1/12—2/1/13	119.10	
ew Orleans, La.			
Dameron Pierson Co.	11/22/11—11/21/12, balance	37.50	
oston, Mass.			
Amer. Circ. Loom Co.	4/1/12—5/1/12	\$4.17	
Shuman & Co.	4/1/12—5/1/12	13.05	
F. L. Young & Kimball	4/1/12—5/1/12	2.99	
W. T. Cardy & Sons	3/18/12—3/18/13	37.50	
			57.71
orcester, Mass.			
Bickford & Sweet	2/1/12—2/1/13	61.26	
ncinnati, Ohio.			
Jos. Joseph & Bro.	4/1/12—5/1/12, \$49.17	\$22.13	
C. L. Hils			
(C. A. Heilker, Rec.)	3/2/12—4/2/12, \$16.67	7.50	
C. L. Hils			
(C. A. Heilker, Rec.)	2/1/12—3/2/12, \$16.67	7.50	
Potter Shoe Co.	3/5/12—3/5/13, \$75.00	33.75	
Straus Pritz Co.	5/24/12—5/24/13, \$80.00	36.00	
			106.88

Exhibit P-2.

Dayton, Ohio.			
Brown & Co.	4/1/12—9/30/12		18.7
Des Moines, Ia.			
Warfield, Pratt Howell Co.	4/15/12—10/15/12		86.4
Evansville, Ind.			
Leich Drug Co.	To 5/1/13		77.4
Kansas City, Mo.			
Taylor D. G. Co.	4/27/12—8/16/12, 4 addl connections under old contract at \$12 per yr.	\$7.31	
Natl. Newspaper Assn. (K. C. Post)	3/9/12—3/8/13, 25% of \$200	50.00	
			57.3
Peoria, Ill.			
Jobst Bethard Co.	5/1/12—5/1/13, 25% of \$250		62.50
Memphis, Tenn.			
Goldsmith & Sons Co.	5/26/12—5/26/13	\$124.00	
Currie-McGraw Co.	5/7/12—5/7/13	56.25	
			180.25
St. Louis, Mo.			
Neidringhaus Co.	4/9/12—4/9/13, \$225 per annum, 50% of \$100 on account (Ludlow A. F. A.)		50.00
Chicago, Ill.			
Delta Star El. Co.	7/1/11—6/30/13, 25% of \$11.55	\$2.89	
Dearborn Paper Co.	6/16/11—6/15/12, 45% of \$9.18 on acct., \$18.36 per yr.	4.14	
Cross Press & S. Co.	2/1/12—1/31/13, 25% of \$324	81.00	
			88.03
Chicago, Ill.			
Albaugh-Dover Co.	Six months'		61.50

Exhibit P-2.

Dubuque, Ia.	25%		
Glover Co.	6/15/12—9/15/12, \$52	\$13.00	
Bell Bro. Co.	5/1/12—8/1/12, \$36	9.00	
Glover Co.	5/1/12—8/1/12, \$30	7.50	
			29.50
Indianapolis, Ind.			
Cones & Son Co.	3/1/12--5/31/12, 25% of \$62.50		15.63
Pittsburgh, Pa.			
Boggs & Buhl	Thermometer svce., June		4.50
Cleveland, Ohio.			
Higbee Co.	11/1/11—5/1/12, \$250	\$62.50	
Gabriel Cge. Co.	3/21/12—9/21/12, \$75	33.75	
Upton Walton Co.	5/1/12—5/1/13, \$150	37.50	
Widlar Co.	2/18/12—8/18/12, \$127.50	57.37	
Sherwin Williams Co.	5/1/12—12/24/12, \$24.00	6.00	
Chandler & Rudd	2/15/12—2/15/13, \$300.00	75.00	
			272.12
	Less: One-half rental Na- tional Auto. Fire Alarm Co. of Ohio	145.83	
			126.29
Pittsburgh, Pa.			
Rosenbaum Co.	Year commencing 6/1/12		100.00
New Haven, Conn.			
Sperry & Barnes Co.	April, 1912		11.25
		N. Y. City. Newark.	
N. Y. Infant Asylum	4/1/12—5/1/12	\$2.25	
Waldorf Astoria	5/1/12—6/1/12	4.05	
G. N. Folsom	5/1/12—8/1/12	6.75	
St. Vincent Hosp.	4/1/12—10/1/12	11.25	
Lyons & Co.	4/1/12—7/1/12	5.62	
Junior League Hm.	4/20/12—5/20/12	1.88	
Proctor's (W. 23rd St.)	5/1/12—6/1/12	3.60	
Technolia Piano Co.	5/1/12—8/1/12	5.62	

Exhibit P-2.

Hotel Cadillac	4/1/12—6/1/12	4.50	
Hanover Fire Ins. Co.	4/1/12—7/1/12	6.75	
Mad. Sq. Hotel	2/1/12—5/1/12	5.62	
Iroquois Realty	5/1/12—8/1/12	4.50	
Chas. T. Wills	5/1/12—8/1/12	5.62	
Col. of Pharmacy	5/1/12—8/1/12	5.62	
Soc. of Tammany	5/1/12—6/1/12	3.60	
Hotel Martinique	Acct. to 3/1/12	22.05	
Metropolitan Club	4/1/12—6/1/12	5.40	
Koehler & Co.	5/1/12—6/1/12	3.15	
Hotel St. James	4/1/12—7/1/12	5.62	
St. James School	5/1/12—6/1/12	1.80	
Union Theo. Sem.	4/6/12—5/6/12	9.00	
Globe Theatre	2/10/12—4/10/12	3.75	
Rudels Hotel	5/1/12—5/1/13	15.75	
Heb. Shelt. Guard So.	4/1/12—6/1/12	2.70	
The Chatham	1/1/12—7/1/12	7.87	
Dept. of Finance	1/1/12—4/1/12	12.15	
Colonial Theatre	5/1/12—8/1/12	5.62	
Wm. H. Jackson	4/1/12—7/1/12	12.37	
Wiener Barnet Co.	4/28/11—8/28/11		23.75
Higgins & Co.	11/1/11—6/1/12		26.27
House of Good Shep.	4/1/12—5/1/12	1.80	
Y. W. C. A.	5/1/12—6/1/12	2.25	
N. Y. Maenchor Hall	5/1/12—8/1/12	5.62	
Dunham & Son	1/5/12—4/5/12		15.00
Jacob Ruppert	4/1/12—7/1/12	8.10	
Harlem Cent. Htl.	4/15/12—7/15/12	5.62	
Hotel Wellington	5/1/12—8/1/12	5.62	
Brightside Day Nursery & Kindergtn.	5/8/12—6/8/12	1.88	
Lebanon Hospital	4/1/12—7/1/12	9.57	
Havana Amer. Co.	5/1/12—8/1/12	5.62	
N. Y. Inst. for Blind	3/1/12—4/1/12	12.15	
Schaefer Brwg. Co.	4/1/12—6/1/12	5.40	
Shelt. Arms of N. Y.	4/1/12—4/1/13	18.00	

Exhibit P-2.

Apptmt. House	5/1/12—8/1/12	5.62	
Lampshire Ap. Hse.	1/1/12—4/1/12	2.82	
Portsmouth Apt. House	1/1/12—4/1/12	6.19	
W. H. Best	4/16/12—5/16/12		6.68
Radcliffe & Son	4/1/12—5/1/12		3.75
Harrick Theatre	5/1/12—8/1/12	3.94	
Grace Church Settle.	2/1/12—8/1/12	11.25	
Lenox Library	5/1/12—6/1/12	1.50	
St. Clair Hotel	11/1/11—2/1/12	5.06	
Mahneman Hospital	3/1/12—9/1/12	5.62	
Hotel Columbus	5/1/12—8/1/12	3.37	
Winger Sew. Mche.	4/8/12—7/8/12	30.94	
De Soney	5/3/12—5/3/13	18.00	
L. Strauss & Co.	4/11/12—5/11/12		4.69
Baker Prtg. Co.	3/26/12—4/26/12		7.00
Baker Prtg. Co.	3/25/12—4/25/12		5.25
Urban Amuse. Co.	5/1/12—6/1/12	1.88	
Victoria Theatre	5/1/12—6/1/12	2.70	
Hotel America	4/1/12—7/1/12	4.50	
St. Joseph Asylum	4/1/12—6/1/12	3.60	
The Clinton	4/1/12—6/1/12	4.50	
Wachs Sch. for Boys	4/1/12—7/1/12	5.07	
Hotel Cumberland	5/1/12—8/1/12	5.07	
Yorkville Theatre	5/1/12—8/1/12	3.37	
New Circle Theatre	5/1/12—6/1/12	1.88	
Grakauer Bro.	5/1/12—6/1/12	2.25	
Park & Tilford	4/15/12—4/15/13	22.50	
Urban Am. Co.	4/19/12—5/19/12	1.88	
Freeley Sq. Am. Co.	4/18/12—5/18/12	2.08	
Delancy Am. Co.	3/23/12—5/23/12	4.17	
Green & Son			3.75
Albany Hotel, Rec.	3/1/12—4/1/12	3.60	
Hotel Netherland	5/1/12—6/1/12	2.70	
The Tourraine	4/1/12—7/1/12	6.75	
Bridge Hotel	5/1/12—8/1/12	3.37	
Roosevelt Hosp.	5/1/12—8/1/12	4.50	

Exhibit P-2.

Am. Fine Arts Secy.	5/1/12—8/1/12	7.31	
Moore & Munger	3/1/12—6/1/12	5.63	
Hotel Bryant	4/5/12—7/5/12	5.62	
Little Theatre	2/15/12—8/15/12	12.50	
Williams Baking Co.	5/1/12—6/1/12		3.75
Holland House	2/1/12—6/1/12	12.60	
Hotel Van Twiller	4/1/12—7/1/12	5.07	
Presbyterian Hse.	5/1/12—6/1/12	2.25	
Exchange Court Bldg.	4/1/12—7/1/12	5.62	
Arcade House	2/1/12—5/1/12	2.82	
Cunard House	2/1/12—5/1/12	2.82	
Stanwix House	2/1/12—5/1/12	2.82	
S. 5th Ave. Hotel	2/1/12—5/1/12	2.82	
The Delavan	2/1/12—5/1/12	2.82	
Hotel Marlborough	2/27/12—5/27/12	14.85	
N. Y. Mfrs. R. E. Co.	2/1/12—5/1/12	16.87	
Manhattan Theatre	4/15/12—5/15/12	1.88	
City Theatre	4/19/12—5/19/12	2.25	
Hudson Theatre	5/1/12—6/1/12	1.88	
Greek Hotel	3/1/12—5/1/12	3.75	
Hotel Monument	5/1/12—8/1/12	5.07	
Harlem House	2/1/12—5/1/12	5.62	
N. Y. Ophthalmic Inst.	5/1/12—8/1/12	6.75	
Eagle Hotel	5/1/12—8/1/12	4.50	
Est. David Nugent	5/1/12—6/1/12	1.88	
Parke-Davis Co.	4/8/12—5/8/12	4.88	
Brightside Nursery	2/8/12—5/8/12	6.25	
Williams & Co.	1/1/12—1/1/13	50.00	
Am. Hame & Bit Co.	4/1/12—6/1/12		7.50
Peter Doelger	4/1/12—6/1/12	8.10	
Proctor's Theatre	5/1/12—6/1/12	3.60	
Columbus Hospital	5/1/12—6/1/12	2.25	
Misericordia Hosp.	5/1/12—6/1/12	1.80	
Proctor Theatre	5/1/12—6/1/12	2.25	
Belvidere Hotel	4/12/12—5/12/12	1.50	
Woman's Lodging	5/1/12—8/1/12	4.50	

Exhibit P-2.

Manhattan Opera Hs.	3/1/12—6/1/12	5.62	
Int. Hdkf. Mfg. Co.	5/1/12—6/1/12	1.88	
Lafayette Hotel	4/19/12—5/19/12	1.88	
Levevoort Hotel	5/1/12—6/1/12	1.50	
J. Button Works	3/29/12—5/29/12		16.86
Alias Brwg. Co.	4/1/12—7/1/12	7.31	
Stor House	5/1/12—6/1/12	2.25	
Criterion Theatre	5/1/12—8/1/12	3.94	
Anderson Bldg.	4/1/12—5/1/12	2.25	
Opt. House	4/1/12—7/1/12	5.62	
Indiana Apt. House	4/1/12—7/1/12	5.62	
New Amsterdam Th.	5/1/12—8/1/12	4.50	
Orthodox Culture Sch.	4/1/12—5/1/12	1.88	
Boys Club	5/1/12—8/1/12	3.37	
Postal Life Ins. Co.	5/1/12—8/1/12	6.19	
Stokes Apt. Hse.	5/1/12—8/1/12	5.62	
New Lyceum Th.	5/1/12—8/1/12	6.75	
De LaSalle Inst.	3/1/12—6/1/12	5.62	
German Hosp.	4/1/12—10/1/12	12.82	
Opera House Music Hall	4/13/12—5/13/12	1.88	
Asylum St. V. de Paul	4/1/12—5/1/12	1.69	
Dominican Convent	4/1/12—6/1/12	3.60	
N. Y. Hotel	5/1/12—8/1/12	5.62	
Germania Hotel	2/1/12—5/1/12	3.37	
Putt School	5/1/12—8/1/12	5.62	
Rudolph Piano Co.	4/1/12—6/1/12	3.76	
Radsworth Am. Co.	4/26/12—5/26/12	2.50	
Hotel Braddock	4/1/12—5/1/12	1.12	
Margaret Louisa Hme.	5/1/12—6/1/12	2.70	
N. Y. Foundling Asyl.	2/1/12—6/1/12	7.20	
Hotel Roland	5/1/12—8/1/12	5.62	
Perch. Union Ice Co.	4/10/12—7/10/12	11.25	
Williams Bak. Co.	4/1/12—5/1/12		3.75
Has. Green	4/2/12—5/2/12		3.33
Victoria Theatre	4/1/12—5/1/12	2.70	
Church St. Ig. Loyola	4/1/12—7/1/12	6.75	

Exhibit P-2.

St. Lukes Home	5/1/12—7/1/12	7.20
Louis Ottman	5/1/12—6/1/12	1.88
Sagamore Hotel	5/1/12—8/1/12	5.62
Lichtenstein Bldg.	5/1/12—8/1/12	5.62
L. Ettinger	1/15/12—1/15/13	32.40
Manhattan Sq. Hotel	4/1/12—7/1/12	5.62
The Savoy	5/1/12—8/1/12	4.50
Natl. Lodging Hse.	5/1/12—8/1/12	4.50
Ricca & Son	1/1/12—4/1/12	6.98
Harris Theatre	4/24/12—5/24/12	1.04
Wallachs Theatre	5/1/12—6/1/12	1.50
Hotel Imperial	5/1/12—6/1/12	2.25
Geo. Ehret	5/1/12—6/1/12	2.25
Savoy Theatre	5/1/12—8/1/12	3.94
The Irvington	5/1/12—8/1/12	3.37
St. Albans Hotel	5/1/12—8/1/12	5.40
Liberty Theatre	4/10/12—7/10/12	4.50
Hudson Hotel	4/1/12—7/1/12	3.94
Globe Theatre	2/10/12—3/10/12	1.88
Playhouse Co.	4/15/12—4/15/13	22.50

\$944.79

\$131.33

944.79

\$1076.12

Less: New York City

Property rental May, 1912 \$208.33

Wire rental May, 1912 76.13

284.46

791.66

Less the following deductions:

\$13.533.81

New York.—Your proportion of \$10.00 donation to Post Graduate Hospital

4.50

Exhibit P-2.

Knoxville.—Rebate allowed under terms of contract of 7/31/11, with Daniel Briscoe Company, service having become effective 5/1/12	4.01	
Our bill May 25th, 1912	8008.95	
Our bill May 25th, 1912	433.16	
		8,450.62
		\$5,083.19

Yours truly,

WW/EK

Assistant Auditor.

Exhibit P-2.

Schedule B.**(Annexed to Answer and Counterclaim in
First Action.)**

THIS CONTRACT in duplicate, made and entered into the 18th day of February, 1904, by and between ROBERT L. McELROY, of the City of Chicago and State of Illinois, party of the first part, and the AMERICAN DISTRICT TELEGRAPH COMPANY, a corporation of New Jersey, party of the second part, hereinafter known as the District Company, WITNESSETH:

THAT, WHEREAS, the said McElroy has jointly with others, applied for certain patents for certain electrical automatic and manual fire alarm and sprinkling valve signaling devices, and claims to control the issuance of patents upon various devices now pending in the patent office, which said appliances the said McElroy is desirous of operating throughout the United States; and,

WHEREAS, for the proper and successful operation of such appliances and devices, the said McElroy is desirous of availing himself of the established and organized district telegraph system of the party of the second part;

NOW, THEREFORE, in consideration of the mutual covenants of the party hereinafter set forth, they agree as follows:

FIRST.—That said McElroy agrees that the patents, when issued, upon any and all the devices, appliances and improvements now pending

Exhibit P-2.

10 in the patent office at Washington on the application of himself, James C. Nolen, John E. Shepherd and one Hewett, whether any such application is made jointly in the names of two or more of the aforesaid, or by any one of them, shall and will hereafter during the lives of said patents be controlled by him, the said McElroy, insofar as such control may be necessary to carry out his promises and covenants to and with the said party of the second part hereinafter set forth.

The numbers of the applications, and of the patents when and as often as issued, shall be attached to this contract as part hereof for more particular description of the devices above contemplated.

20 SECOND.—The said McElroy further promises and agrees that if or when hereafter he shall transfer to any company or corporation now formed or hereafter to be formed, the control of the above described electrical devices and inventions and the patents issued thereon, or any of them, such company or corporation shall ratify and adopt the terms of this contract and be bound thereby in all respects as is the said McElroy.

30 THIRD.—That said McElroy further agrees that upon the signing of these presents he will at once place competent canvassers in the field to solicit subscribers to the service of all the above mentioned devices in the various cities of the United States at rates for service no less than the minimum rates hereinafter specified; and will forthwith furnish to the said District Company, party of the second part a copy of every contract for service obtained.

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Exhibit P-2.

FOURTH.—The said McElroy, party of the first part, agrees that for any automatic fire alarm equipment he will not accept any service at any rate that will produce less than \$200 a year gross rental where the ceiling area to be covered is sixty thousand square feet, and that any rates to be named by him shall be proportioned on not less than this basis, except, however, that when owing to competition it shall be necessary or desirable to lower the rates the said McElroy shall have the right to do so, provided the District Company assents. In the event the District Company shall not assent to any proposed service contract less than the amount stated, the said McElroy has the right, by installing at his own cost the entire equipment, including that portion of the equipment which the District Company as hereinafter provided would otherwise pay for, to accept any service contract secured, and the District Company agrees that it will perform the service called for by such contracts for the sum of twenty-five per cent. of the gross rentals thereunder, reserving to itself the option, however, at any time within three years from the date of completion of said contract to reimburse the said McElroy for the extra expenditure made by him and bring the particular service within the terms of this contract. For any sprinkler supervision equipment the said McElroy agrees that he will not take any service where the payment of its proportion of two yearly rentals each in advance shall fail to reimburse the District Company for its necessary cost in installing the same as hereinafter provided, and, moreover, give to the District Company in excess of such reimbursement twenty-five per cent. of one years' gross rental.

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Exhibit P-2.

FIFTH.—The said McElroy further agrees to have manufactured at his own cost all the devices and apparatus forming the subject matter of this contract and to furnish and deliver at the warehouse of the District Company as called for such appliances, complete, made of first class material and representing first class workmanship and in good working order, without cost or charge to the District Company.

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SIXTH.—Said McElroy further agrees that all contracts with subscribers for any service contemplated by this contract shall be in the name of the said McElroy, and that the District Company shall in no event and under no circumstances be considered as under any contractual obligations with any such subscriber, but that its sole obligation is and shall be to the said McElroy.

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SEVENTH.—And it is expressly covenanted and agreed by the said McElroy that in no event and under no circumstances shall he at any time claim any damage or liability, either directly or by way of set-off, counterclaim, recoupment, or in any other wise, against the said District Company, party of the first (?) part, for any fault or negligence on the part of the said District Company, or any of its agents or employes, in its operation of any of the electrical devices in this contract specified.

EIGHTH.—The said McElroy agrees that all soliciting for subscribers under this contract shall be done by him, or through his procurement and at his proper charge and expense.

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Exhibit P-2.

NINTH.—The said McElroy further covenants and agrees that any defects in any of the devices or apparatus specified in this contract which use may discover or develop, and any and all improvements which may from time to time be made in any of said devices, shall be remedied and made at the cost of said McElroy. And any patents for future inventions or improvements for electrical fire alarm devices of any kind made by the said McElroy, or controlled by him, or in which he may be interested, shall be governed by the terms of this contract to the extent of the interest of the said McElroy therein. 10

TENTH.—It is further agreed by the said McElroy that all extraordinary repairs to any of the apparatus specified in this contract, which shall involve the removal of such apparatus to a machine shop, shall be made at the cost of the said McElroy; that is to say, such apparatus shall when necessary be removed by the party of the second part and forwarded to the said McElroy as he may direct and at his charge either to be repaired or exchanged for new apparatus; but the carriage charges for such new apparatus shall be paid by the District Company. 20 30

ELEVENTH. — The said McElroy further agrees that any and every franchise, which by contract or by ordinance he may obtain in any city of the United States wherein shall be granted the right to him, or any company or corporation controlled by him, and his or their successors and assigns, to construct lines of wire in the streets of the municipality for the purpose of operating any electrical signalling devices, except 40

Exhibit P-2.

telephone, shall be assigned and transferred forthwith by the said McElroy or any company or corporation controlled by him, to the said District Company, party of the second part.

- 10 TWELFTH.—The District Company, on its part, agrees that, so far as it legally may, it will erect wires from its central office in each city of the United States where it may have an office, to such building or buildings as may be secured by the said McElroy for fire alarm and sprinkler supervision service and to connect its wires with the transmission boxes and thermostats of the said McElroy and to keep and maintain said wires intact and in constant working order, barring only such casual disturbances as may occur
- 20 from time to time.

THIRTEENTH.—The said District Company agrees that should it be unable to continue service in any city where undertaken for want of legal right to maintain its wires in said city, it will reimburse the said McElroy from any rental received, so that the said McElroy shall in any event have full gross rental for one year.

- 30 FOURTEENTH.—The said District Company further agrees to equip its central office in each city where it operates with proper receiving instruments for the receipt of fire and other signals from the said McElroy's apparatus, and will keep and maintain the same in first class working condition, and will, where permitted, connect its central office with the Fire Department, Insurance Patrol and such other place or places as may be required by the Board of Fire Underwriters of

Exhibit P-2.

said City by special wires or telephones, and will transmit to said Fire Department and other places any and all other fire and other signals received from the apparatus employed by the said McElroy.

FIFTEENTH.—The said District Company further agrees to maintain and operate all of the services secured by said McElroy in accordance with the rules and regulations of the National Board of Underwriters, as may from time to time be adopted by them.

SIXTEENTH. — The said District Company further agrees to install at its own cost the electrical signalling devices of the said McElroy in any building or buildings covered by any contract between said McElroy and any of its subscribers, making all necessary wire connections between such apparatus at the central office, including the inside wiring, and at the termination of each service contract to remove the equipment and store the devices until needed for the equipment of some other building.

SEVENTEENTH.—The said District Company further agrees to operate and maintain said apparatus making such ordinary repairs thereto as may be necessary to preserve the same in first class working order.

EIGHTEENTH.—The said District Company further agrees that it will make such changes and alterations in the equipment of any building as may from time to time be made necessary by changes and alterations in the building; provided,

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Exhibit P-2.

however, that there shall be a clause in every agreement entered into by the said McElroy and all of his patrons requiring said patrons to pay to said McElroy the cost of readjusting apparatus made necessary by any alteration in the building
10 itself. And it is mutually agreed and understood by the parties hereto that the sums so collected shall be and become the property of the District Company out of which, however, the said District Company shall pay to the said McElroy the cost to him of any additional apparatus made necessary by such change.

NINETEENTH.—It is further agreed by and between the parties hereto that the said McElroy
20 may make arrangements with any other person, company or corporation in any city where said District Company is not able to operate and perform the services contemplated by these articles of agreement; provided, that the District Company shall have one year from date of written notice in which to cover new territory.

TWENTIETH.—It is further agreed by and between the parties hereto that during the life
30 of this contract neither party, except as herein otherwise expressly provided, shall make any contract or agreement with any other person, company or corporation for the furnishing of similar apparatus or the performance of similar services contemplated by these articles of agreement except written consent be thereunto given by the other party, and except in cases where either party may be legally forced as public servants, or common carriers, or otherwise, to furnish apparatus or perform services for another.
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Exhibit P-2.

TWENTY-FIRST.—It is mutually agreed that there shall be excepted from this agreement services for which the said District Company has already contracted. And it is hereby agreed that such contracts now outstanding and existing shall not be extended or renewed, except upon terms satisfactory to the said party of the first part. 10

TWENTY-SECOND.—It is mutually understood and agreed by and between the parties hereto that during the term of this agreement neither party shall enter the field of the other, and that each shall lend to the other reasonable aid looking toward the upbuilding and growth of the respective interests of the parties.

TWENTY-THIRD.—It is mutually understood and agreed by the parties hereto that this agreement, and all of its covenants, shall extend to and be binding upon all persons and companies now controlled or hereafter to be controlled by them or either of them. 20

TWENTY-FOURTH.—It is further agreed by and between the parties hereto that should any device similar to those herein specified be invented or patented or adopted by any board of underwriters, rating associations or recognized individual raters of fire risks, and a greater allowance in the per centum of rate of fire insurance for such contrivance is made by such underwriters, rating associations, etc., covering any territory and the allowance thereto made for the apparatus and devices of the said McElroy shall be exceeded, then and in that case the District Company, at its election, shall have the right to ter- 30
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Exhibit P-2.

minate this contract, in such territory, so far as it relates to new business upon written notice, provided that such cancellation shall not terminate any service contracts at the time in existence, and provided, further, that the said McElroy shall have one year from the service of such written notice in which to acquire the rights to use the improved and approved devices, the District Company hereby agreeing to render all reasonable aid and assistance in the acquirement of such rights, and in the event that the said McElroy shall, within one year, acquire the rights to use such improved and approved devices, the written notice of cancellation to be thereupon null and void.

20 TWENTY-FIFTH.—It is mutually agreed and understood that the District Company shall collect from the subscribers of the said McElroy all of the rentals, charges and sums of money which the said subscribers under their contracts with the said McElroy have promised and agreed to pay for the use and operation of the electrical devices covered by this contract, and that it will keep just and accurate account of all moneys so collected; and the District Company agrees that 30 it will remit and pay to the said McElroy on the 10th day of each month forty-five per cent. of the gross rentals it shall have collected under this contract for the calendar month next preceding; provided, however, that the gross rentals for the first year of each service contract shall be equally divided between the parties to this contract.

40 TWENTY-SIXTH.—Separate accounts of all service contracts and rentals collected or accru-

Exhibit P-2.

ing thereunder shall be kept by each of the parties thereto, which accounts shall be open at all times to inspection and audit by either of the parties.

TWENTY-SEVENTH.—If and whenever a service contract between the said McElroy and a subscriber for the service contemplated by this contract shall provide for the payment by said subscribers of an amount in addition to the yearly rentals reserved in said contract to cover or partly cover the cost of installation, then and in such case such extra amount or installation fee shall be divided between the parties hereto in the proportion that the cost of the apparatus and devices furnished by the party of the first part shall bear to the cost of the material and labor furnished by the party of the second part; any excess over and above the aggregate cost being equally divided between the parties.

TWENTY-EIGHTH.—It is mutually agreed that this contract shall be in force from the date first above written for the full period of fifty years, and shall continue after the close of said term until the expiration of one year after written notice shall be have been given at the close of said term by either party to the other of an intention to terminate the same; provided, however, that in case such notice be not given by either party at the close of said term, then this agreement shall continue in force for further periods of five years each, subject to termination by either party at the close of any such further five year period on written notice, to be given one year before the close of any such period.

Exhibit P-2.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written; the District Company by the hand of its President, attested by its Secretary, being thereunto authorized by its Executive Committee.

ROBERT L. McELROY (Seal).
AMERICAN DISTRICT TELEGRAPH
COMPANY OF NEW JERSEY,
By Robert O. Clowry, President.

Witness:

Henry D. Estabrook.
C. R. Johnson, Secretary.

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Schedule C.**(Annexed to Answer and Counterclaim in
First Action.)**

THIS MEMORANDUM OF AGREEMENT, made this 30th day of March, 1905, between Robert L. McElroy, party of the first part, and THE AMERICAN DISTRICT TELEGRAPH COMPANY of New Jersey, party of the second part, WITNESSETH:

THAT, WHEREAS, in the written contract heretofore entered into between the parties, dated the 18th day of February, 1904, there have arisen from time to time some uncertainties as to the proper meaning and construction of said contract, particularly as affects matters hereinafter referred to,

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Exhibit P-2.

NOW, THEREFORE, in consideration of the mutual promises in that and this said contract contained, and of the sum of One Dollar in hand paid each to the other, receipt whereof is hereby acknowledged, it is agreed between the parties hereto as follows:

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1.—The said McElroy shall have the right to contract for manual fire alarm service in any building in any city where the American District Telegraph Company (of New Jersey) or company or companies controlled by said American District Telegraph Company are operating and said American District Telegraph Company agrees to operate and maintain said manual fire alarm service under the terms and conditions of the said contract of February 18th, 1904, provided the said manual fire alarm service is a part of Automatic Fire Alarm Devices or Sprinkler Alarm Devices owned by said McElroy and installed in said building, but the said McElroy shall not engage in the business of supplying manual fire alarms to any building disconnected from the use of such manual fire alarms as a part of the necessary equipment of automatic fire or sprinkler alarm devices aforesaid.

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2.—That the said McElroy will sell to the American District Telegraph Company the manual fire apparatus owned and manufactured by the said McElroy for a strictly manual fire alarm service but not in connection with the sprinkler or automatic fire alarm apparatus or service at the following prices: each master-box \$10; each manual pull-box \$1.50.

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Exhibit P-2.

3.—That, where contracts are taken by either party for the equipment of a building with automatic fire alarm and night watch boxes, or sprinkler devices and night watch boxes, as an entire or lump contract, thereby obtaining a larger
10 aggregate rental as well as insurance credits, in each and every case the American District Telegraph Company will accept a rate for night watch service of \$12 per annum a box, to be paid it out of the total rentals under such contract; provided, however, that this price shall obtain upon first installation, but that, where a contract with a patron calls for a lesser amount for any additional connections, such lesser price so agreed upon shall apply to night watch as well as to
20 sprinkler connections.

4.—When it is found necessary or desirable by the officials of both the District and Automatic Companies to contract with the subscriber in the name of one company for the combined business of both companies, it is hereby mutually agreed that such contract may be made—the obligations of both the District and the Automatic Companies, however, to remain as provided for in the
30 aforesaid contract of February 18, 1904.

5.—This contract shall remain in force during the life of the contract of February 18th, 1904, and shall be regarded as part of said contract.

Exhibit P-2.

WITNESS our hands and the corporate seal of the American District Telegraph Company for the day and year first above written.

(Sd.) ROBERT L. McELROY.

AMERICAN DISTRICT TELEGRAPH
COMPANY OF NEW JERSEY,

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By R. C. Clowry, President.

Attest:

C. R. Johnston,
Secretary.

A true copy.

I. B. Ferguson, Secretary.	} Signed.
American District Telegraph	
Co. (of New Jersey)	

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Schedule D.

**(Annexed to Answer and Counterclaim in
First Action.)**

THIS AGREEMENT, made this twenty-first day of April, A. D. 1905, and between Robert L. McElroy, of Chicago, Illinois, party of the first part, and AUTOMATIC FIRE PROTECTION COMPANY, a corporation organized under the laws of Maine, party of the second part, WITNESSETH:

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THAT WHEREAS, said Robert L. McElroy, made and entered into a contract with the American District Telegraph Company, a corporation organized under the laws of New Jersey, dated

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Exhibit P-2.

February 19th, A. D. 1904, and modified by a supplemental agreement between said parties dated March 30th, 1905.

10 NOW, THEREFORE, in consideration of One (\$1.00) Dollar and other good and valuable consideration, in hand paid, receipt of which is hereby acknowledged by said party of the first part, said party of the first part hereby grants, bargains, sells, assigns and sets over to said Automatic Fire Protection Company, party of the second part, all of his right, title, interest, claim and demand, both at law and in equity, in and to said contract as modified as aforesaid, for the full unexpired term thereof.

20 In consideration of said assignment, said Automatic Fire Protection Company hereby ratifies and adopts the terms of said contract, as modified as aforesaid, and hereby assumes and undertakes to perform all and singular the covenants and agreements of said contract as modified as aforesaid by said McElroy to be performed, and hereby acknowledges itself bound in and by said contract as modified as aforesaid, in all respects as is the said McElroy; and in further consideration of
30 the premises said Automatic Fire Protection Company hereby undertakes and agrees to indemnify and save harmless said McElroy from all and singular the covenants of said contract.

Exhibit P-2.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

ROBERT L. McELROY (Seal.)
AUTOMATIC FIRE PROTECTION COMPANY, 10

(Seal) By Robt. L. McElroy, Pres.

Attest:

Azel F. Hatch, Secretary.

Schedule E annexed to answer and counterclaim in first action is the same as Schedule B annexed to answer and counterclaim in second action. 20

Schedule F annexed to answer and counterclaim in first action is the same as Schedule C annexed to answer and counterclaim in second action.

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Exhibit P-2.

Schedule G.**(Annexed to Answer and Counterclaim in First Action.)**

New York, N. Y., May 25th, 1912.

FIRE PROTECTION DEVELOPMENT COMPANY,
To
AMERICAN DISTRICT TELEGRAPH COMPANY, Dr.

To Commissions for account solicitation of service to be performed by the Special Fire Alarm Electrical Signal Company, and amounts to cover DEVICES and APPARATUS (boxes) for account installation of these services, this bill being rendered under the terms of the Agreement of February 18th, 1904, Sections No. 8 and No. 5 respectively. The period covered by this bill is that from May 1, 1909, to March 31, 1912.

Name of Subscriber.	No. Boxes.	Gross Rate.	Commis- sion.	Devices.
Merchants National Bank	3	\$50	\$17.91	\$29.25
Victor & Scholis	4	50	12.91	39.00
Smith & McNells	3	35	12.54	29.25
Wm. Iselin & Company	6	40	14.20	58.50
Wm. Iselin & Company	4	30	10.88	39.00
Hotel Bradford	1	20	7.16	9.75
Plaza Music Hall	1	50	4.17	
Palmer Torah School	1	35	12.53	9.75
House of Lords Hotel	1	30	10.75	9.75
Williamsburg City Fire Ins. Co.	1	35	12.54	9.75
Congress Hall	1	40	14.66	13.45
H. A. Affmordt & Co.	3	45	16.13	40.35
Plymouth Hotel	1	30	10.75	9.75
Lenox Assembly Rooms	1	20	7.16	13.45

Exhibit P-2.

Central Hotel	1	30	10.75	9.7
Criterion Hotel	1	45	16.13	9.7
Jewish Maternity Hospital	2	45	16.12	19.5
Van Renseliar Realty Com- pany	2	50	17.91	19.5
Rutland Apartments	2	35	12.53	19.5
Uncase House	1	25	8.96	9.7
Central Union Hotel	1	25	8.96	9.7
Lancaster Apartments	1	30	10.75	9.7
Grand Winson Hotel	1	25	8.96	9.7
Hotel Somerset	1	25	8.96	9.7
Normandie Hotel Company	1	30	10.75	9.7
Boeneck & Broessel	6	50	17.91	58.5
Hotel Colonial	14	100	85.83	136.5
Lester Whitman	7	45	16.12	68.2
Rosenthal Company	7	50	17.91	68.2
Hotel Albert	11	75	26.88	107.2
Har Moriah Hospital	1	30	10.75	9.7
Hotel Grenoble	4	45	16.12	39.0
J. S. Cortell	3	30	10.75	29.2
Hotel Irving	1	30	10.75	9.7
Monticello Hotel	5	50	17.91	48.7
St. Augustine Apartments	2	35	12.54	19.5
Tuxedo Building	3	45	16.12	29.2
Life Building	3	45	16.13	29.2
Buick Motor Company	5	50	17.91	48.7
Murray Hill Lyceum	1	30	10.75	9.7
New Grand Hotel	17	127.50	45.68	165.7
Parochial School	1	30	10.75	9.7
American Roof Gardenier	1	50	17.91	9.7
Nursery & Childs Hospital	2	30	10.75	19.5
Hotel Richelieu	1	25	8.96	9.7
Westmoreland Apartments	2	40	14.33	19.5
Social Halls Association	1	35	12.53	9.7
Grand Union Vaudeville Co.	1	35	12.53	9.7

Exhibit P-2.

St. Francis Home	1	30	10.75	9.75
Park & Tilford	5	50	17.91	48.75
Hotel Navarre	1	30	10.75	9.75
H. B. Chaplin Company	24	150	53.75	234.00
Buick Motor Company	5	50	17.91	48.75
D. Colaizzi	1	30	10.75	9.75
Colonial Hotel	1	30	10.75	9.75
Lewis B. Preston	1	30	10.75	9.75
German Odd Fellow	1	30	10.75	9.75
Stevens House	1	30	10.75	9.75
Passavant & Company	3	40	14.33	29.25
Passavant & Company	3	45	16.13	29.25
Brocklolst Apartments	2	45	16.12	19.50
L. Shepp Company	3	45	16.12	29.25
N. Y. Mfg. Real Estate Company	21	150	53.25	204.75
Hotel Palm	3	65	23.27	29.25
Hotel Seymon	1	30	10.75	9.75
Stewart & Potter	4	50	17.91	39.00
Hotel St. Lorenz	1	40	14.33	9.75
Lincoln Safe Deposit Com- pany	1 2	50 35	17.91 12.53	9.75 19.50
Poillon Apartments				
Lenox Hill Apartments	1	30	10.75	
St. Mark's Hospital	4	35	12.54	39.00
Gainsborough Studio	1	30	10.75	9.75
Webster Hotel	1	30	10.75	9.75
Rheineland Ct. Apartments	3	45	16.13	29.25
Mutual Milk & Cream Co.	4	25	8.96	39.00
Hetherington Storage Ware- house	1	30	10.75	9.75
Star Dept. Store	5	40	14.33	48.75
Hotel Richmond	1	25	8.95	9.75
L. Einstein	3	35	12.53	29.25
Newport Apartments	2	35	12.54	19.50
Standard Hotel	1	25	8.96	9.75

Exhibit P-2.

.75	Powell Bros. Shoe Co.	4	40	14.33	39.
.75	Hubert Apartment House	2	35	12.54	19.
.75	Kingston Hotel	1	25	8.95	9.
.00	Richmond Hill Apartment				
.75	House	2	35	12.53	19.
.75	Hotel at 19-21 W. 9th St.	1	20	7.16	
.75	C. A. Auffmondt	3	30	10.75	29.
.75	General Men Hospital	1	30	10.75	9.
.75	Iverness Apartment House	2	35	12.54	19.
.75	Manhattan Theatre	1	50	17.91	9.
.25	St. Luke's Hospital	3	30	10.75	29.
.25	Madison Ave Hotel	1	50	17.91	
.50	Holme & Marshall	1	48	17.20	9.
.25	Jno. Stearns & Company	3	20	7.16	
	Wm. Schroeder & Company	3	30	10.75	
.75	Newberger & Company	5	40	14.33	48.
.25	Levi Simison & Company	2	20	7.16	19.
.75	Hamburg American Line	6	75	26.87	58.
.00	Rosenthal Brothers	1	10	3.58	9.
.75	J. Tanenbaum Son. & Co.	23	115	41.20	224.
.75	Great Northern Hotel	1	50	17.91	9.
.50	American Real Estate				
	Company	1	50	17.91	9.
	Luber Hotel	1	25	8.95	9.
.00	Luber Hotel	1	25	8.95	9.
.75	Schwarzerbach Huber Co.	3	30	10.75	29.
.75	Campbell Metzger & Jacob-				
.25	son	3	25	8.95	29.
.00	J. Tanenbaum Sons & Co.	3	30	10.75	29.
	Union Theo. Seminary	5	120	43.00	48.
.75	Talmud Torah School	1	50	1.25	9.
.75	Wm. Ryle & Company	3	40	14.33	29.
.75	Lafayette Baths & Hotel	1	30	10.75	9.
.25	S. Steinfield & Company	8	60	21.50	78.
.50	Hotel Regent	14	140	50.16	136.
.75	Vulcanized Rubber Company	1	10	3.58	9.

Exhibit P-2.

Riggio & Company	1	50	17.92	9.75
cho Amusement Company	1	50	17.91	9.75
otel Princeton	1	35	12.53	9.75
erman American Shooting Assn	1	30	10.75	9.75
merican Female Society	1	25	8.33	9.75
merican Female Society	1	25	9.58	9.75
cultz & Bane	3	35	12.54	29.25
uplin Silk Company	5	50	17.91	48.75
lobe Theatre	1	50	17.91	9.75
ractiona Hosp.	1	10	.83	9.75
onsolidated Gas Company	1	30	10.75	9.75
hefer Schram & Vogel	3	45	16.12	29.25
mpire Theatre	1	35	12.54	9.75
ity Theatre	1	60	21.50	9.75
P. Hollander & Company	5	60	21.50	48.75
udels Hotel	1	35	12.53	9.75
T. Schwarz & Company	8	70	25.08	78.00
ampshire Apartment Hse.	3	25	8.67	29.25
ortsmouth Apartment Hse.	6	55	19.66	58.50
ouse of the Daughters of Jesus	2	50	17.91	19.50
lks Club	9	90	32.25	87.75
ohan & Harris	1	40	14.33	9.75
arke Davis & Company	9	130.20	46.58	87.75
lks Club	4	40	14.33	39.00
otel Martinique	16	160	57.33	156.00
emo Theatre	1	50	17.92	9.75
eshan Elrich & Simon	1	50	17.91	9.75
otel Martinique	2	20	7.16	19.50
oews 7th Av. Theatre	1	50	17.91	9.75
T. T. Kogh Amusement	1	50	17.91	9.75
T. S. Motor Company	8	120	43.00	78.00
reat Eastern Trade Co.	1	50	17.91	9.75
cademy of Music	1	50	17.91	9.75
45th St. Theatre Company	1	50	17.91	9.75

Exhibit P-2.

Clinton St. Theatre	1	50	17.91	9.75
Great Northern Hotel Com- pany	13	130	46.49	126.75
J. Hood Wright Hospital	1	50	17.91	9.75
Washington Theatre	1	50	17.91	9.75
N. Y. Institute for Deaf & Dumb	1	102	4.50	
J. J. Shubert	1	50	17.92	9.75
The Playhouse Company	1	50	17.92	9.75
The Vantare Building	5	90	32.25	48.75
Jesse Lasky Company	1	50	17.91	9.75
S. Gross	1	10	3.58	9.75
Mitral Realty Const. Com- pany	1	50	17.91	9.75
Hebrew Sheltering Guar- dian Society	1	100	17.17	9.75
David Kessler	2	60	21.50	19.50
Smith & McNeil	3	30	10.75	29.25
Transatlantic Hotel	1	50	17.92	9.75
N. Y. Infirmary for Women & Children	1	50	17.92	9.75
86th St. Construction Com- pany	1	50	17.92	9.75
Broadway & 96th St. Realty Co.	1	50	17.92	9.75
McKinley Square Theatre	1	50	17.92	9.75
Automatic Vaudeville Com- pany	1	50	17.92	9.75
A. M. Lacy	1	45	16.12	9.75
Bernard Reich	1	50	17.92	9.75
City & Suburban Homes Company	1	50	17.92	9.75
Greeley Square Amusement Co.	1	50	17.92	9.75
American Opera House	1	50	17.92	9.75

Exhibit P-2.

Vadsworth Amusement				
Company	2	60	21.50	19.50
Young Men's Hebrew Assn.	4	40	3.33	39.00
R. C. Williams & Company	6	100	33.33	
Norman L. Newmo Estate, Inc.	1	50	17.92	9.75
St. Nicholas Hygeia Ice Co.	1	50	17.92	9.72
Bright Side Day Nrsy & Kdrgn	1	50	17.92	9.75
The Little Theatre, Inc.	1	50	17.92	9.75
Delancey Amusement Co.	1	50	17.92	9.75
	531	\$8462.70	\$2978.95	\$5030.00
	Commissions		\$2978.95	
	Devices		5030.00	
		Total	\$8008.95	

Exhibit P-3.
(Reply in First Suit)

NEW JERSEY SUPREME COURT.

FIRE PROTECTION DEVELOPMENT
COMPANY,
Plaintiff,

against

AMERICAN DISTRICT TELEGRAPH
COMPANY,
Defendant.

Reply.

10

20

FIRST REPLICATION.

1.—Plaintiff denies that on June 10, 1912, or at any other time, the defendant duly tendered to the plaintiff the sum of \$5,083.19, or any other tender has been kept open to the plaintiff continuously or otherwise from June 10, 1912, and denies that the plaintiff has at any time refused and neglected or does still refuse and neglect to accept said sum of \$5,083.19 or any part thereof.

30

REPLICATION TO COUNTERCLAIM.

2.—Plaintiff admits that two certain agreements in writing, dated February 19, 1904, and March 30, 1915, respectively, were entered into by and between Robert L. McElroy and the American District Telegraph Company, substantial copies of which agreements purport to be attached

40

Exhibit P-3.

10 to the answer marked "Schedule B" and "Schedule C," but plaintiff begs leave to refer to the originals of said agreements for the exact nature and particulars thereof and to produce the same upon the trial, if it may be so advised; but plaintiff avers that it has no knowledge or information sufficient to form a belief as to the correctness of the interpretation upon said contracts given in Paragraph 4 of the answer, and denies that either of said contracts contemplated or included any of the matters set forth in the complaint and in Exhibit A attached to the complaint.

20 3.—Plaintiff admits that a certain agreement in writing dated April 21, 1905, was entered into by and between Robert L. McElroy and the Automatic Fire Protection Company, a substantial copy of which agreement purports to be attached to the answer marked "Schedule D," but plaintiff begs leave to refer to the original of said agreement for the exact nature and particulars thereof and to produce the same upon the trial if it may be so advised.

30 4.—Plaintiff admits that the agreement dated October 12, 1905, a copy of which is attached to the answer marked "Schedule E," was entered into by and between the Automatic Fire Protection Company and the American District Telegraph Company, but plaintiff begs leave to refer to the original of said agreement for the exact nature and particulars thereof and to produce the same upon the trial if it may be so advised; and plaintiff denies that the defendant has fully, accurately or correctly set forth the terms or proper construction of said agreement in Paragraph 4 of the answer.

40

Exhibit P-3.

5.—Plaintiff admits that an agreement in writing dated April 29, 1909, was entered into by and between the Automatic Fire Protection Company and the Fire Protection Development Company with the assent of the defendant, a copy of which agreement is attached to the answer marked "Schedule F." 10

6.—Plaintiff avers that it has no knowledge or information sufficient to form a belief as to the allegations of the counterclaim to the effect that the defendant during the period from May 1, 1909, to March 31, 1912, solicited subscriptions under the said contracts of February 18, 1904, and March 30, 1905, at its own charge and expense, and cause to be manufactured at its own cost certain devices and apparatus forming the subject matter of the said contracts or of Schedule G attached to the answer, or of the matters and items therein set forth; and the plaintiff further denies that any of the charges and expenses set forth in defendant's counterclaim in the next to the last paragraph of the defendant's answer were for the solicitation of subscriptions under either the said contract of February 18, 1904, or the said contract of March 30, 1905, and that said charges and expenses or any or either of them were or are properly chargeable against the plaintiff; and plaintiff further denies that by reason of any of said matters the defendant became entitled to have and receive from the plaintiff on March 31, 1912, or at any other time, or that the plaintiff promised to pay to the defendant \$8,008.95, or any other sum. 20 30

Exhibit P-3.

7.—Plaintiff avers that it has no knowledge or information sufficient to form a belief as to the allegations contained in the answer to the effect that during the period between May 1, 1909, and May 25, 1912, the defendant paid fifty per cent of the gross income received by it from the business and contract referred to in the said agreement of October 12, 1905, in the City of New York for manual signal service remaining after the payment of the annual rental in the said agreement mentioned, to the plaintiff, and denies that by reason thereof or in any wise on May 25, 1912, or at any other time, the defendant became entitled to have and receive from the plaintiff, or the plaintiff promised to pay to the defendant, the sum of \$433.16, or any other sum.

GRIGGS & HARDING,
Attorneys for Plaintiff,
152 Market Street,
Paterson, N. J.

30

40

Exhibit P-4.

(Stenographer's Minutes on Trial of First Case.)

NEW JERSEY SUPREME COURT.

FIRE PROTECTION DEVELOPMENT COMPANY, Plaintiff, against AMERICAN DISTRICT TELEGRAPH COMPANY, Defendant.	10 At Law. 20
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Transcript of shorthand notes of testimony, and so forth, taken in the above stated cause, upon the trial thereof, at the Court House, Newark, N. J., Monday, March 24, 1913.

Before—Hon. Nelson Y. Dungan, Judge, and a Jury.

Griggs & Harding, Martin Conboy of the New York Bar, of counsel, for plaintiff. 30
Lindabury, Depue & Faulks, by Kinsley Twining, and Rush Taggart of the New York Bar, of counsel, for defendant.

Mr. Conboy opens for the plaintiff, as follows:

Mr. Conboy: As this case will depend largely upon the interpretation that is given the contracts that are in force, binding the parties, and under which the amounts which are claimed by 40

Exhibit P-4.

the plaintiff became due. I am making my opening statement as much to your Honor as I am to the jury, in connection with the character of the issue between the parties here.

10 This case goes back to the 10th June, 1912. It arises out of a series of contracts which will be developed before you, and to which your attention will be called during the progress of this trial. The Fire Protection Development Com-
pany, the plaintiff in this action, is a concern that does what is known as a fire-alarm business, and the American District Telegraph Company, as you undoubtedly already know, is a company that has messenger service and has other facilities for the transportation of messages and in-
20 formation.

The transaction between two parties go back to a time prior to 1905 when a man named McElroy made an arrangement with the American District Telegraph Company. Mr. McElroy had a number of patent devices in connection with fire-alarm service. There are two kinds of fire-alarm service; one of them is the kind that you see out on the streets; a handle is contained in a little red box on a post, and when a fire breaks
30 out somebody goes down there and opens the door of this box, pulls the handle, just the same as in a fire-alarm, and the engine starts to the scene of the fire for the purpose of extinguishing it. That is known as the Manual Fire-Alarm System. It is called "Manual" because it is operated by hand.

Apart from the Manual Fire-Alarm System there are other systems of an automatic character. In its relation to factories there is what is
40 known as the sprinkler system, which consists of

Exhibit P-4.

mere holes, which are plugged up with metal. When a fire occurs the metal melts and the sprinklers put out the fire. Along with that sprinkler there is a supervisor system of an automatic character, so that the action of heat in a building in which a conflagration takes place, when a fire occurs, causes a circuit to open the same as in a fire-alarm, and a fire-alarm is sent in for the purpose of bringing the fire department to the scene of the fire. That differs from the manual system and is called the automatic system. That in brief is the distinction between the manual and the automatic. 10

McElroy was getting the service contracts and was soliciting to people who wanted to have the fire-alarm system installed in their places. He was to put in the original apparatus. The American District Telegraph Company was to furnish the wires by which these alarms went into the central bureau. McElroy was to put in the boxes by which the alarm was sent in. That was his end of the agreement. Pursuant to the terms of the original agreement of February, 1904, the moneys received on account of these contracts were divided in the proportion of fifty per cent. to McElroy and fifty per cent. to the American District Telegraph Company on the first year's receipts. On all subsequent receipts McElroy got forty-five per cent. on what was received and the American District Telegraph Company got fifty-five per cent. on all that was received. 20 30

After this contract had been in existence about a year the parties got together and made a new agreement. The telegraph company said, "Under the contract you made with me last year you got the right not only to do the automatic fire- 40

Exhibit P-4.

alarm business, but you also got the right to do the manual fire-alarm business. We never intended you to do that; we intended to restrict your contract rights to the automatic fire-alarm business; so we will change the contract that we made with you last year, and instead of giving you an arrangement with us whereby you and we will share in all the contracts, whether automatic fire-alarm service or manual fire-alarm service, we will cut out the manual fire-alarm service, so that you will be limited to automatic fire-alarm, and that will be the extent to which we will allow you to use the wire service. But inas-
10 much as wherever the automatic is installed and the sprinkler system is installed the Board of Underwriters require it we will allow you to re-
20 tain that service wherever it is an accessory to the sprinkler system; otherwise, you and we do not stand together in the rendition of that service." So that in 1905, McElroy was furnishing the device for sending the automatic fire-alarms and the American District Telegraph Company was furnishing the wires and the central bureau with which they were sent in, and they were dividing the receipts from the contracts that were
30 being made in the use of that service. But these contracts only covered the use of the automatic fire-alarm systems' devices and manual systems' where they were incidental or accessory to the sprinkler systems.

That brings us down to March 3rd, 1905, when a new agreement was made. One month later than that McElroy assigned his interest to the company called The Fire Protection Development Company, which has the interest in these con-

Exhibit P-4.

tracts, so that they stand in his shoes as the owners of the rights under these two contracts.

These contracts were in force in a great many places, but not in New York City, for this reason: The American District Telegraph Company, a New Jersey corporation, had no franchise rights over there in New York, and has no wires and no means of sending out or carrying the fire-alarms by means of wires. So McElroy came to New York and found that there was a company called the Special Fire Alarm Electrical Signal Company. This company had that operating system over which fire-alarms could be sent. McElroy acquired that Special Fire Alarm Electrical Signal Company, and then made a contract with the American District Telegraph Company, or rather he made a lease for the use of the Special Fire Alarm Electrical Signal Company's service, and under that arrangement there was to be paid every year to the Special Fire Alarm Electrical Signal Company, and for its benefit to retire an issue of its bonds, the sum of \$5,000 a year. McElroy took over the business of the Special Fire Alarm Electrical Signal Company of New York, and the amount of its contracts was \$29,000. McElroy made an arrangement with the franchise rights of the Special Fire Alarm Electrical Signal Company of New York, that had the \$29,000 contracts, which were entirely contracts for manual fire-alarm service, and he made two arrangements with the American District Telegraph Company: First: for the automatic service in New York City, which would come under the arrangement that obtained in every other place. That was the arrangement I spoke of, as of July, 1904, and as modified in March, 1905, under which he

Exhibit P-4.

- was to get fifty per cent. of the first year's business and forty-five per cent. of every subsequent year's business on the contracts. And he made the same kind of an arrangement with respect to the sprinkler and supervisor company in New York that he made everywhere else. In connection with the manual fire-alarm service he couldn't do that anywhere else, so, in turning over the \$29,000 contracts to the A. D. T. Company they said to him in the contract which will be produced here in suit, "We will stop your manual fire-alarm business here in New York sharp with that \$29,000. You have got that, you have given it to us, and we will give you an interest in that \$29,000 but from that point on you have no further interest in the manual fire-alarm business. We will make a contract with you whereby after this first \$5,000, up to the balance of \$29,000, which will be \$34,000, we will let you have fifty per cent. of the first year. Beyond that \$29,000 we will not let you in at all. That is all the interest you shall ever have in the manual fire-alarm business here in New York; beyond the \$29,000 everything else comes to us"; and the contract was made in that fashion.
- 30 We have been getting the money from the American District Telegraph Company the defendant in this suit from time to time, up to June, 1912, I think it is, when, having collected on account of all of the outstanding contracts for the different accounts of fire-alarm service, the sum of \$14,504.14, they deduct from that amount \$978.84, which we allow, as it is proper, but in addition to that they deduct the sum of \$8,000 more, and forward us a check for \$5,000, which they claim is all that is left of the \$14,000 that

Exhibit P-4.

they collected. They attempt to justify the deduction of that \$8,000 by saying that they have paid out that much on account of the soliciting of contracts for manual fire-alarm service over in New York, and the payment for apparatus in connection with these fire-alarm contracts over in New York. Our claim is they have no right to do that because we gave them \$29,000 and all the contracts which they had, and we do not participate in a single dollar from any contract they obtained over that amount, and the contract we made with them related to the \$29,000, so that if they want the business beyond that they must go out and get it and pay for it, and they have no right to deduct it, so there is \$14,000 due us.

10

20

Mr. Twining opens for the defendant as follows:

Mr. Twining: The plaintiff has correctly stated that the issue is not whether we collected and held for this company a sum of money, but is whether we are entitled to an off-set from that sum which we collected for that company. Our contention is that we are, for this reason. The 1904 McElroy contract—you might as well get the name clear, the Fire Protection Development Company, which is the plaintiff—not only obligated us to make certain collections on behalf of Mr. McElroy, but it obligated him to make certain expenditures, and the things he agreed to do he has not done; and because of his failure to do those things he must pay us for so doing. He directed us to use certain box devices; he also obligated himself to solicit at his own cost and expense the service of those boxes. He did not solicit, and we did, and one of the items we are

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Exhibit P-4.

entitled to offset is the cost of that soliciting.

The second item is made up this way: Under 1904 contract, as Mr. McElroy was to receive fifty per cent. of each service contract for each year that that contract ran—

10 The Court: You mean fifty per cent. after the first year?

Mr. Twining: Under the second contract. Under all service contracts we were to permit fifty per cent., and only forty-five thereafter.

The Court: Do I understand your insistment to be, the contract of October 12, 1905, changed the method of distribution under the contract of February, 1904, but that that contract of 1905 only relates to the City of New York?

20 Mr. Twining: It changes the method of distribution as to rentals received in the City of New York.

The Court: Then what question of fact is there for this jury?

Mr. Conboy: I was inclined to say that the only question of fact for the determination of the jury is in the event that your Honor is of the opinion that we are not right in our interpretation as to the reasonableness of the charge that

30 is made.

Recess.

Mr. Conboy: I think under the state of the pleas that it is admitted the amount of money we are suing for has been collected by the defendant.

The Court: The sum of \$14,501.14.

40 Mr. Conboy: And we admit that the sum of \$978.84, which is contained in Schedule A, at-

Exhibit P-4.

tached to the answer, is made up of those amounts, \$250 being the amount of the lease of the National Automatic Fire Alarm Company for the month of May, 1912—that is on page one of Schedule A—and \$206.25, at the bottom of page two, being the property rental for the month of April, 1912, National Automatic Fire Alarm Company. 10

The Court: There is a rebate on page six.

Mr. Conboy: \$5.79 to the Union Special Machine Company on account of the discontinuance of 3 S. S. connections, Springfield Supervisor connections, February 9, 1912, to September 30, 1912, and on the same page, difference in Kline Brother's account A. D. T. Company should receive fifty per cent. instead of $33\frac{1}{2}$ per cent. of revenue, 34. Difference in H. J. Anderson account, A. D. T. Company should receive fifty per cent. instead of $33\frac{1}{2}$ per cent. revenue, 44, "making a total of \$78 on that particular item. On page ten, "one-half rental National Automatic Fire Alarm Company of Ohio, under the head of Cleveland, Ohio, amounting to \$145.83. On page 13, "New York City property, rental, May, 1912, \$208.33 and Wire rental, May, 1912, \$76.13," total of these items, \$284.46, and on the same page 30 "your proportion of \$10 donation to Post Graduate Hospital, \$4.50." On the same page, "Knoxville, rebate allowed under terms of contract of July 31, 1911, with Daniel Briscoe Company, service having become effective May 1, 1912, \$4.01," making a total of deductions which we concede of \$978.84, leaving due on the account a question of \$13,525.30, on which we claim interest to the 10th of June, 1912. We rest upon these provisions of course. 40

Exhibit P-4.

Mr. Twining: I do not exactly understand what the admission was that I was called upon to make. The only admission I know of is the admission contained in paragraph two of the answer.

10 Mr. Conboy: Since a representative of the company is here we can put him on the stand.

Mr. Twining: The thing I am not clear about is not the amount but is as to how this money was collected. If the point is that this money was collected under these various contracts which have been spoken of this morning in Mr. Conboy's opening then I think he should put in these contracts or have them considered in.

Mr. Conboy: I have no objection.

20 Mr. Twining: And the amount which has been quoted in these contracts is admitted?

The Court: Are the contracts all admitted?

Mr. Twining: They are all part of our defense.

Mr. Conboy: We admit that these contracts are in existence between the two corporations.

The Court: You now offer them?

Mr. Conboy: We now offer them.

Mr. Taggart: Let it be considered that they are all offered in evidence; that will cover it.

30 The Court: It is admitted that all of the contracts attached to the answer of the defendant be admitted in evidence and that the marking of them be waived and that the contracts be adopted for the purposes of this case as set forth in the answer.

Plaintiff rests.

40 Mr. Conboy: Counsel inquires what the proof is as to the \$13,000. We admit the receipt of that amount as contained in the answer. We have no objection to the details of these receipts being received from the answer, but the issue be-

Exhibit P-4.

tween us is whether the deductions they make are proper deductions. There is no question but that these amounts have been received.

The Court: I understand that the question in the case is as to the two credits on page 13 attached to the answer, \$8,008.95 and \$433.16. Is it admitted that Schedule A be received as the detail claim of the plaintiff? 10

Mr. Conboy: With respect to the moneys actually received the deductions which I have admitted are proper.

The Court: Not admitting the correctness of the deduction \$8,008.95 and \$433.16?

Mr. Conboy: Neither admitting the correctness or the right to deduct.

Mr. Twining: There is one contract which is not attached to the answer but which is referred to in the October 12, 1905, contract, namely, the lease which has been referred to this morning which I desire to put in evidence. I have the original here. 20

Mr. Conboy: I have no objection.

The Court: It will be admitted.

(Said paper marked Exhibit D-1.)

The Court: This is the lease of—

Mr. Twining: The Automatic Fire Protection Company, party of the first part, the Special Fire Alarm Electrical Signal Company, party of the second part, the New York Fire Protection Company, party of the third part, and the American District Telegraph Company, party of the fourth part, dated July 27, 1905. 30

Exhibit P-4.

JOSEPH MAXWELL, sworn in behalf of defendant.

Direct examination by Mr. Twining:

10 Q. By whom are you employed? A. The National District Telegraph Company.

Q. And what is that company? A. They are the operating company in New York of the American District Telegraph Company of New Jersey.

Q. For how long have you been employed by the National Company? A. Well, since 1906. That is, I was employed by that company some years previous, the company in New York.

20 Q. What are your present duties? A. District superintendent.

Q. Will you explain what that means? A. Well, it is in charge of the operation, construction and maintenance of the service in the Manhattan District.

Q. Do your duties bring you in contact with contracts for manual service in the Borough of Manhattan? A. Yes, sir.

80 Q. Are you familiar with the method by which the National Company solicits that business? A. Yes, sir.

Q. Won't you state what that method is? A. We have a commercial department. A solicitor is employed to solicit the business, call upon the prospective subscribers and explain the merits of the service, and negotiate contracts.

Q. In whose name are contracts for manual service—disconnected with any other kind of service—in the Borough of Manhattan, solicited for your company? A. They are solicited in the name

Exhibit P-4.

of The Special Fire Alarm Electrical Signal Company.

Q. After that business is solicited is a written contract entered into? A. Yes, sir.

Q. What course is taken in reference to that contract? A. That is presented to my office and submitted to our executive officers for approval. 10

Q. Is it signed by anyone after it is approved? A. After it is approved, this original comes in signed by the subscriber, submitted for approval, returned with the signature of the officer approving them.

By the Court:

Q. In duplicate? A. Yes, sir; usually in duplicate. 20

By Mr. Twining:

Q. What is then done with it? A. The installation is made.

Q. Is it ever signed by anybody else except the applicants? A. Yes; it is signed by the Special Fire Alarm Company when it comes back to us.

Q. Is that the course of business which was followed with reference to all of your manual signal service, disconnected from any other kind of service in the Borough of Manhattan during your connection with this company? A. Yes, sir. 30

Q. From 1906 to date? A. Yes, sir.

Q. I notice that on "Schedule G" annexed to the answer, on the counterclaim, there is an item which reads as follows, which is the first item: "Name of subscriber, Merchants' National Bank, number of boxes 3, gross rate, \$50, commission, 40

Exhibit P-4.

\$17.91, devices, \$29.25." I show you a paper on the back of which is written "Merchants' National Bank, New York, 3, S. B. B." and ask you what that is? A. That is a contract with the Merchants' National Bank for three special fire alarm boxes at \$50 per annum.

10 Q. Are you familiar with any of the signatures to that contract? A. I am, one, familiar with Mr. Patterson's signature.

Mr. Twining : I will offer this in evidence.

(Said paper marked Exhibit D2.)

The Court: I assume that the testimony will be similar all through those long five pages following?

20

Mr. Twining: The testimony will be exactly the same with reference to each item.

The Court: Is there any objection?

Mr. Conboy: No.

The Court: It will be admitted.

Q. After the installation of the boxes shown on this contract are they tested at any time? A. Periodically, yes.

30 Q. Is a record kept on these tests? A. Yes, sir.

Q. I hand you a file of papers and ask you if you find a record of the test of the box called for in this contract in that file? A. Yes. This is the top report here (indicating), is that the same one?

Q. Now, won't you state what the course of conduct is with reference to the test A. The inspector makes a manual test of the boxes; that is, turns in signals to the central office at fire headquarters, and this report, such as you have

Exhibit P-4.

in your hand there, he asked the subscriber to sign before he leaves.

Q. Does the inspector sign as well as the subscriber? A. Yes, sir.

Q. Is the inspector's name signed to that? A. Yes, sir.

10

Mr. Twining: I will offer this in evidence.

Mr. Conboy: I think it is immaterial.

The Court: I do not see the materiality.

Mr. Twining: To show that this box was actually installed.

Mr. Conboy: If he says it was actually installed—

Mr. Twining: I don't know whether he can testify to that.

20

Q. Do you know whether the boxes called for in this contract, Exhibit D2, were actually installed? A. Not from my own personal observation.

Q. Who would know that A. The inspector who tested the box and inspected it.

The Court: I will admit it for that purpose.

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Mr. Conboy: We raised no such question as that, that those boxes have not been installed that are attached to your answer. Our contention is that that is not our expense.

Mr. Taggart: Then, if they will admit that, we can shorten that very much.

Mr. Twining: Then, do I understand that it is admitted that all of the boxes

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Exhibit P-4.

mentioned on Schedule G are actually installed by the American District Telegraph Company as mentioned in this schedule?

Mr. Conboy: Yes, sir.

10 Q. Upon what basis, Mr. Maxwell, was this gross rate fixed?

Mr. Conboy: You mean for the service itself?

Mr. Twining: Yes; that is the rate upon which the commission is based.

The Court: Schedule G is headed gross rate.

20 A. Well, we have a standard rate for the service but there were times that the rate was not always upheld.

Q. Is that the rate called for in the contract which you submit to the applicant, the gross rate?

A. The rate depends upon the number of boxes.

Q. I understand; but is the rate specified in each one of these contracts that the subscriber—

A. Oh, yes.

30 Q. Then the word gross rate might be used as the word contract rate, is that so? A. Yes.

Q. I show you Schedule G again, attached to the answer. You will notice that in the second column there are various figures which total \$8,462.70, spoken of as gross rate? Are you able to state whether that would be the contract rate which is charged to these subscribers? A. That would be the contract rate, yes, sir.

40 Q. In the third column there are a number of items under the head of commission. These items aggregate \$2,987.95. Will you state how that

Exhibit P-4.

commission is fixed? A. We paid the solicitor for the contracts four months rental; four months of the year's rental as a commission for securing the contract.

Q. Thirty-three and one-third per cent? A. Yes, sir.

10

Q. Is there anything else added on that commission? A. The contract agent was paid two and one-half per cent. on all contracts secured the same as the solicitor. The contract agent in charge of the contract department. The solicitors worked under him direct.

Q. How do you arrive at that method of figuring commissions? A. Well, I cannot recall. I know that those were the instructions and we had to obey them, that is all.

20

Q. Is that the commission you charge ordinarily or not? A. That is the commission we have always paid for solicitation during the time we were paying on that basis, the commission basis.

Q. Is that the ruling rate in Manhattan for that class of service? A. At that time it was, with us.

Q. What is that? A. It was with our company at that time.

Q. The last claim in Schedule G is headed devices. Will you state what that means? I show you Schedule G. A. Well, that means manual boxes. There is no other device to it.

30

Q. How is that figure arrived at? A. \$9.75 a box.

Q. Do you know what that \$9.75 represents? A. I believe that is the cost of the box.

Q. What has been the nature of your business since 1906 outside of the position you hold?

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Exhibit P-4.

What is the nature of your duties? A. I don't quite understand the question.

Q. Well, prior to 1906, what did you do? A. Well, from August 1, 1905, when I first came to New York, my only duties were in the operation of the special fire-alarm service.

10 Q. Prior to that what did you do? A. Prior to that I was assistant superintendent in charge of the service through New York State with a station at Buffalo.

Q. For how long? A. Well, since 1888.

Q. Has your work brought you into contact with the solicitation of business for various companies? A. Yes, sir.

Q. And in this class of work? A. Yes, sir.

20 Q. What have you to say with reference to the reasonableness of the commissions which appear in this schedule, Schedule G? A. Well, I know that during all of the period of solicitation by paying commissions for solicitation that we couldn't get any men at all to work for us for that period any less. I know it was agitated several times to reduce the commissions, but we never could; we never did.

30 Cross examination by Mr. Conboy:

Q. You are in the employ of the National District Telegraph Company, are you, Mr. Maxwell? A. Yes, sir; now.

Q. And all during the period you have referred to in your direct examination you were in the employ of that company, were you not? A. I know I was from 1906.

40 Q. And the National District Telegraph Company is the New York subsidiary company of the

Exhibit P-4.

American District Telegraph Company, isn't it?

A. That is my understanding of it, yes, sir.

Q. Has the National District Telegraph Company any other kind of fire alarm service except the Special Fire Alarm Electrical Signal Company's service? A. Yes, sir.

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Q. What other kind has it? A. Combination.

Q. What is combination service? A. It is a combination box that furnishes, or that acts as a watchman's check as well as a fire alarm.

Q. Is that more expensive or less expensive than the Special Fire Alarm Electrical Signal Company's service? A. It is more expensive, there is more given.

Q. Then the National District Telegraph Company of which you are manager or superintendent has a combination fire alarm service and it also disposes of this special fire alarm electrical signal service, and the former, you say, is the more expensive of the two, is that right? A. To the subscriber, you mean?

20

Q. To the subscriber. A. Yes, sir.

Q. Are you the man who gives instructions to the solicitors of your company as to what contracts they shall solicit? A. Well, sometimes I do. The contract agent under me has direct supervision of them, but he reports to me.

30

Q. Is it not a fact that your company seeks to secure more subscribers' contracts for the combination service? A. We seek to secure them of course.

Q. And that combination service is something in which the Fire Protection Development Company does not share at all, isn't that true? A. It don't, no.

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Exhibit P-4.

Q. You get the entire revenue from that, isn't it a fact? A. Yes.

Q. Are not instructions given to your solicitors to put in the combination service, if they can, by solicitation to persons already in receipt of the service of the Special Fire Alarm Electrical Signal Company?

Mr. Twining: I object.

A. No, sir.

Mr. Conboy: I want to show the utter unreasonableness of such a construction of the contract. I think I ought to be allowed to do that.

The Court: Is that the crucial contract?

Mr. Conboy: Yes.

The Court: Suppose you read it.

(Mr. Twining reads contract.)

Mr. Twining: You will observe that the contract does not obligate anybody to do anything except that the A. D. T. Company shall pay the Automatic Fire Protection Company for its contracts aforesaid, according to a certain division, and to pay one-half of this rental. That contract says nothing whatever about operating in the City of New York, nor as to what this question is directed to, what this other business may be and as to what the National District Telegraph Company may carry on in New York.

Mr. Taggart: A word or two may clear the situation. The gentleman is endeavoring to cross examine this witness, as we

Exhibit P-4.

claim, with respect to the service of the National District Telegraph Company. That is not comprehended within the terms of any of these contracts and that is our objection.

I agree with him that under this October 12, 1905, contract we are not entitled to claim this commission; we are not entitled to claim for the devices. Their contract of February 18, 1904, is connected up, and a part, and is to be interpreted in connection with that of October 12, 1905, which has just been read in your hearing. But the contract of October 12, 1905, is an entirely separate and distinct contract, in no way tied up with the contract of October 12, 1904. They take the position that the contract of October 12, 1905, is an entirely separate and distinct contract from the contract of February, 1904. That position is an entirely logical and consistent one; but the position which we are making the defendant take in this suit is that the contract of October, 1904, is fundamentally the contract which covers the entire country and required McElroy on the one side to furnish all of the devices which were necessary to carry out these contracts so far as the subscribers were concerned.

The Court: Your contention is that Mr. McElroy must pay for the extension of business in which he is to receive no share?

Mr. Taggart: No. Now, when it came to New York it was, as is shown by the contract. This is a waiver, in effect, of that restriction on McElroy with respect

Exhibit P-4.

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to his coming into the manual fire alarm service in Manhattan because in the 12th of October contract it says, as has been read in your hearing, that the gross rentals received from the business done in New York by the Special Fire Alarm Signal Company, are to be received by the American District Company through the National District Company under existing contracts and we could only pay for the restriction of the March 30th supplement; for that restriction, as to that particular district, as to McElroy engaging in manual fire alarm service, was removed as far as Manhattan is concerned, because otherwise when McElroy went into Manhattan and bought the Special Fire Alarm Electrical Signal Company he was making a breach of his contract of February 18, 1904—otherwise than by its being a waiver he was making a breach of his contract in acquiring the Special Fire Alarm Electrical Signal Company.

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30

The Court: The American District Telegraph Company is party to that lease, is it not?

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Mr. Taggart: Yes; but what is the effect of the consent that he should buy the Fire Alarm Company in Manhattan? Isn't it a modification of the contract with which we governed the whole country? We come back to the contract of 1904. Under the particular covenants in that contract Mr. McElroy or his successor has got to solicit and pay for the soliciting, and furnish the devices, and pay for them if he don't. If

Exhibit P-4.

we can't succeed on that we can't succeed at all.

Mr. Conboy: It is true that in this contract of the 12th of October, 1905, there is contained this recital, read by Mr. Taggart, on which he bases his argument.

10

(Reads.) What was the situation at the time this contract was made? McElroy had got into New York not by reason of any waiver, but by virtue of the provision of a general agreement made with the American District Telegraph Company, the National District Company and the Special Fire Alarm Electrical Signal Company, which was the one that owned this part over in New York, and the New York Fire Protection Company, and the Automatic Fire Protection Company, which was the name under which McElroy's activities were carried on. He had acquired a business which brought him in \$29,000 and he was going ahead with the development of that business, and McElroy would have been willing to do business under that contract, because, then, every time a new contract was secured he would get fifty per cent. of the contract for the first year and forty-five per cent. thereafter. But the American District Telegraph Company said: "You must stop. You got \$29,000 worth of business when you came to New York. You must not get a dollar's worth above that. We must make a new contract with respect to existing business, the business that was obtained thereafter." McElroy was forbidden to extend the business; he was stopped

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Exhibit P-4.

right there. They wiped out the previous contracts under which they had done business up to that time.

10 The Court (after further argument):
I am not sure that a ruling upon this particular question necessarily involves the main question in the case, but I will state that I am inclined to hold that *the contract of October 12, 1905, taken in connection with the lease*, are contracts separate and distinct from the contract of February 18, 1904, and March 30, 1905, and since it seems to be admitted by the defendant that they are not entitled to their offset under that view I should be inclined to think
20 that that holding would practically dispose of the case, and if counsel agrees to this situation this statement may be a part of the record, subject to objection.

Mr. Taggart: That is my view of the situation.

The Court: I have stated this as my present impression. It does not amount to a holding unless counsel desire it to be such.

30 Mr. Taggart: That would cover a part of the case but there is a branch of the case where that ruling would not apply and we want to have that question decided also.

The Court: That, then, would dispose of the item of \$8,008.95, would it?

Mr. Twining: We would be glad to have the case take that course.

40 The Court: My views upon the case have been sufficiently indicated in what I have said with reference to the contract of October 12, 1905, taken in connection with the

Exhibit P-4.

lease, which is Exhibit D 1, to which the parties of this suit are also parties. It is admitted by the defendant that with the holding by this Court that these two contracts are separate and distinct from the contract of February 18, 1904, and March 13, 1905, they are unable to sustain their counterclaim for \$8,008.95. It is admitted by the plaintiffs that the counterclaim of \$433.16 is a proper claim to be deducted from the amount \$14,504.14. The defendants admit that they collected credits which are stated in Schedule A to the amount of \$978.84, and the item of \$433.16, leaving a balance due from the defendants to the plaintiffs of \$13,092.14, to which the plaintiff is entitled. This does not include a credit of \$8,008.95 claimed by the defendant upon this amount of \$13,092.14. The plaintiff is entitled to interest from June 10, 1912, to date. It being under the new practice act you are entitled to enter judgment at once, and are entitled to interest to March 24th, amounting to \$619.67, the total amount of which is \$13,711.81, for which amount I direct the jury to render a verdict. 10 20 30

Mr. Twining: I desire to have an objection noted to the ruling of the Court.

Exhibit P-5.
(Postea in First Case.)

NEW JERSEY SUPREME COURT.

10	FIRE PROTECTION DEVELOPMENT COMPANY, Plaintiff,	On Postea.
	against	
	AMERICAN DISTRICT TELEGRAPH COMPANY, Defendant.	Griggs & Harding, Attorneys.

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	Judgment entered this twenty-
	ninth day of March, A. D. nineteen
\$13,711.81	hundred and thirteen, for the sum of
47.38	thirteen thousand seven hundred
	and eleven dollars and eighty-one
\$13,759.19	cents damages and forty-seven dol-
	lars and thirty-eight cents costs.

30

WM. S. GUMMERE, C. J.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause which said judgment is recorded in the office in Vol. 6 of judgments, page 432.

40

Exhibit P-6.

In testimony whereof I have hereunto set my hand and seal of said Court at Trenton, this second day of April, A. D., one thousand nine hundred and thirteen.

(Seal)

WM. C. GEBHARDT,
Clerk.

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Exhibit P-6.**(Agreement Regarding Wire Rental.)**

THIS AGREEMENT, made and entered into this 29th day of April, 1907, between the American District Telegraph Company, a corporation of New Jersey, hereinafter called the District Company, party of the first part, and the Automatic Fire Protection Company, a corporation of the State of Maine, hereinafter called the Fire Protection Company, party of the second part,

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WITNESSETH :

That the parties hereto for and in consideration of the sum of one (\$1.00) dollar each to the other in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable considerations, do covenant and agree together as follows:

30

Whereas the said Fire Protection Company has purchased from the Consolidated Fire Alarm Company, a corporation of New York, all of the automatic and manual fire alarm and sprinkler supervisory and valve service of said Consolidated Fire Alarm Company and all of its franchises,

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Exhibit P-6.

and good will, rights, business and property of every character and description, situated in the City of Chicago, Cook County, Illinois; and has also purchased from the Boston Automatic Fire Alarm Company, a corporation of Maine, all of the capital stock of the National Fire Appliance Company, a corporation of Massachusetts;

10

And whereas the parties hereto desire to place, maintain and operate the said business as acquired by said Fire Protection Company under the provisions of the contract now existing between them and originally entered into between Robert L. McElroy and said District Company, dated February 18th, 1904, and afterward transferred by said McElroy to said Fire Protection

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Company;

Now, therefore, the said District Company hereby agrees to take into its Central Office, in the City of Chicago, Cook County, Illinois, all of the aforesaid business of the Consolidated Fire Alarm Company, purchased as aforesaid by said Fire Protection Company, and further agrees to operate and maintain the same in the same manner, and to the same extent (except as hereinafter mentioned) as it operates and maintains the similar service now performed in Chicago under said contract of February 18, 1904, herein referred to, a copy of which is hereto annexed and made part hereof as Exhibit "A," for and during the period of five years next ensuing, without charge of any kind or character whatever against said Fire Protection Company for such operation and maintenance service; in consideration for which service the Fire Protection Company hereby sells, assigns, transfers and sets over to the District

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Company an ownership and interest in and to the

Exhibit P-6.

property, business and service purchased from said Consolidated Fire Alarm Company in the City of Chicago, and in and to the property, business and service of said National Fire Appliance Company equal to the ownership and interest which the District Company would have had therein if the property, business and service of said Consolidated Fire Alarm Company in Chicago and of said National Fire Appliance Company, had in the first instance been furnished, installed and placed in operation by the parties hereto, at their joint expense under and in accordance with the provisions of said agreement of February 18th, 1904, between them, it being agreed that said ownership and interest hereby conveyed to the District Company in said Chicago property, business and service shall become vested in the District Company at the end of said five years next ensuing, and in said National Appliance Company immediately.

As an exception to the foregoing provision for the operation and maintenance by the District Company of said purchased business, the said Fire Protection Company agrees that during the period of five years next ensuing, it will collect all rentals and charges due to it of every kind and character whatever from such acquired business in the City of Chicago, Illinois, at its own cost and expense, and that during such period of five years it will report to the City such rentals and charges as to the receipts of its Company, paying to the City such sums as may be levied against such revenue and property as taxes due to such City, and will also pay any taxes on such revenue or such property levied by Cook County, or by the State of Illinois.

Exhibit P-6.

10 It is further agreed by said Fire Protection Company that at the expiration of said five year period next ensuing, it will place said business so acquired from said Consolidated Fire Alarm Company in Chicago, completely and fully within and under the provisions of said agreement of February 18th, 1904, and that then and thereafter until February 18th, 1954, such business shall be operated, maintained, treated, carried on and settled for by and for the account of the parties hereto in exact accordance with the provisions of said agreement of February 18th, 1904, said Fire Protection Company treating the five years free operation and maintenance of such property, as herein provided, as the equivalent of the District Company's obligation as new business under
20 said agreement.

It is mutually agreed and understood by the said District Company and by the said Automatic Fire Protection Company that all of the business of the National Fire Appliance Company, wherever situated, shall be immediately placed under the provisions of the aforesaid contract of February 18th, 1914, and that the provisions of said contract all and singular shall immediately apply
30 to all of said business of said National Fire Appliance Company.

It is further agreed by said Fire Protection Company that it will attach hereto as Exhibit "B" a certified copy of the bills of sale of the Consolidated Fire Alarm Company's business in the City of Chicago and of the property of the National Fire Appliance Company.

It is further agreed by the said Fire Protection Company that it will hold and save the District Company harmless from any claims, demands or
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Exhibit P-6.

indebtedness of any character now existing against either the property of the Consolidated Fire Alarm Company in Chicago, or the property of the National Fire Appliance Company.

It is further mutually agreed between the said District Company and the said Fire Protection Company that they will jointly employ a man named George A. Wall on the date which this agreement becomes effective, and continue him in their joint employment until the 20th day of June, 1910, at an annual salary (payable monthly in equal monthly installments) of Thirty-Six Hundred (\$3,600) Dollars, excepting that in case the net earnings of the National Fire Appliance Company for the year ending June 20th, 1908, shall amount to Twenty-Five Thousand (\$25,000.00) Dollars, then the salary to be paid to the said Wall for the two years next preceding June 20th, 1910, shall be Forty-Five Hundred (\$4,500) Dollars per annum. And it is mutually agreed that the District Company and the Fire Protection Company shall jointly pay in addition to the salary above named, the necessary traveling expenses of said Wall when traveling upon the joint business of the two Companies. And it is further agreed between the District Company and the Fire Protection Company that the services of the said Wall shall be used exclusively until June 20th, 1910, in the exploitation and sale of such automatic fire alarm service or otherwise, as the two companies may jointly agree to sell in cities where Central Offices do not exist, the District and Fire Protection Companies sharing equally in all expenses and all the profits of such exploitation and such business so conducted under the supervision of the said Wall shall not be treated

Exhibit P-6.

as a part of or in any wise relating to the contract of February 18th, 1904.

- In further consideration of the making of this contract on the part of the District Company, the said Fire Protection Company hereby agrees
- 10 that it will pay to said District Company one-half ($\frac{1}{2}$) of all wire rentals said District Company has paid in the City of New York for the wires leased and necessary to the maintenance and operation of the business of the Special Fire Alarm Electrical Signal Company, jointly acquired by said District and said Protection Company on first day of August, 1905, and said Fire Protection Company further agrees that it will
- 20 pay hereafter to said District Company one-half ($\frac{1}{2}$) of all of the wire rentals necessary for the maintenance and operation of such Special Fire Alarm Electrical Signal business so acquired as above related, until February 18th, 1954, provided, always, that said Fire Protection Company shall not be called upon to pay wire rentals for the operation and maintenance of any such business in excess of Twenty-nine Thousand (\$29,000) Dollars gross revenue per annum, nor for more than $50\frac{3}{4}$ miles of circuit; and provided further
- 30 that said Fire Protection Company shall be released from its agreement to pay one-half ($\frac{1}{2}$) of said wire rentals in any year in which the gross income from such business falls below the sum of Twenty-Seven Thousand (\$27,000) Dollars per annum.

Exhibit P-7.

IN WITNESS whereof the said parties have hereto caused these instruments to be executed by their proper officers and have sealed the same under the proper seals of their Companies.

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AMERICAN DISTRICT
TELEGRAPH COMPANY,
(Seal) R. C. Clowry.
AUTOMATIC FIRE
PROTECTION COMPANY,
Per Robert L. McElroy,
President

Exhibit P-7.

20

THE AMERICAN DISTRICT TELEGRAPH
COMPANY.

Robert C. Clowry, President.
C. F. Patterson, Gen'l Supt.

Executive Offices, 195 Broadway.

New York, August 21st, 1905.

30

Mr. E. M. Mulford, Superintendent.

Dear Sir:

This is to advise you that effective as of August 1st the Special Fire Alarm Electrical Signal Company has been leased by the Automatic Fire Protection Company for a period of Forty-nine years, at a rental of \$5,000.00 per year, payable monthly, and that it will be handled under contract between the Automatic Fire Protection Company

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Exhibit P-7.

and the American District Telegraph Company, as provided for in the contract of February 18th, 1904.

10 The arrangements for this lease were effected late in July, the agreement being that it should be effective as of August 1st but that the Signal Company continue to operate the plant until to-day, we paying the expense thereof.

20 The Signal Company have turned over to me their books, records, etc., and have handed me check for \$2,381.88, which is herewith attached, and also a receipted bill for services in operating the plant from August 1st to August 20th, inclusive, amounting to \$593.73, or total of \$2,975.61, being the amount collected by them for rentals subsequent to August 1st, 1905. Of this sum, under the contract with the Automatic Fire Protection Company, that Company is entitled to 50% or \$1,487.80.

I am directed by the Automatic Fire Protection Company to request that you subtract from the amount now due them their proportion of the first month's rental, amounting to \$208.34, and to hand to them a check for the remainder, \$1,279.46.

30 Contracts, records and all other items necessary for the full information of the Manager of the New York office will be transmitted you as rapidly as they can be recorded in my office.

Commencing with this date, the National District Telegraph Company is responsible for the management, revenues, etc., of this Company.

Very respectfully,

C. F. PATTERSON,
General Supt.

Exhibit P-8.**THE AMERICAN DISTRICT TELEGRAPH
COMPANY.**

Robert C. Clowry, President.
C. F. Patterson, Gen'l Supt.

Executive Offices, 195 Broadway.

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New York, August 22nd, 1905.

Mr. E. M. Mulford, Supt., New York City.

Dear Sir:

I beg to hand you herewith copies of contracts for special fire alarm signals, which should be passed through the hands of Manager Hamlin and thence to the Auditor.

20

I am also handing you ledger, cash book and bill book showing sums due, etc., and all necessary information for the conduct and collection of the accounts—trial balance taken from the books of the Special Fire Alarm Electrical Signal Company as of July 31st; statistical statement of July 31st showing amounts outstanding, amounts paid in advance and amounts due, some of which extend back prior to July 31st. The amounts paid in advance of August 1st are covered by special remittance made you yesterday.

30

Am also attaching copy of an agreement entered into, covering amounts due for service prior to July 31st, which I would like to have carried out in good faith.

Also contract with the New York Telephone Company for special wires furnished for this service, which amount is payable monthly, and state-

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Exhibit P-8.

ment of amounts collected since August 1st, these amounts being in the hands of Mr. George Tamlyn, who will pay them over upon application.

It is quite probable that the majority of the amounts due by them for service prior and subsequent to August 1st will for a time at least be paid into the office of Frederick Pearce, which has been customary in the past. An arrangement has been made by them whereby these sums paid in will be transferred to Mr. Hamlin. An arrangement should be effected for settlement between these offices until old accounts are wiped out.

Very respectfully,

C. F. PATTERSON,
General Supt.

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