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(Filed July 5, 1910.)

# In Chancery of New Jersey.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

On Bill, etc.
Petition.

## Petition of Charles J. Fury, Receiver.

To the Honorable Mahlon Pitney, Chancellor of the State of New Jersey:

The petition of Charles J. Fury, Receiver of the Trenton White City Company, respectfully shows:

That by an order made in this cause, on the fourteenth day of August, nineteen hundred and nine, he was appointed Receiver of the said Trenton White City Company, defendant above named. That he has qualified as such Receiver and taken upon himself the discharge of the duties of his said office. That as such Receiver he has collected all of the assets of the said company, except moneys due upon the capital stock hereinafter mentioned. That the assets so collected being the

amount of money which he now has in his hands as such Receiver, is the sum of seventeen hundred sixty-seven dollars eighty-four cents, and no more. That the said defendant company has no other asset except the moneys due upon the capital stock hereinafter mentioned.

That an order was made in this cause on the twenty-fourth day of August, nineteen hundred and nine, wherein it was ordered that the creditors of the said defendant company present their claims to the said Receiver, and prove before him, under oath or affirmation, or otherwise, as the said Receiver shall direct, to the satisfaction of the said Receiver, within two months from the date of said order, or that they be excluded from the benefits of such dividends as may thereafter be made and declared by this Court, upon the proceeds of the effects of said corporation. That notice of said order was duly published as required by law, and directed by the said order. That pursuant to the directions of the said order, the creditors of the defendant company presented to your petitioner, as such Receiver, their claims against the said defendant company, in writing, under oath, which claims have been allowed by your petitioner as such Receiver as just and valid claims, to the amount, in the aggregate, of the sum of forty thousand four hundred and ninety-seven dollars and twenty-one cents. That the total amount of the debts of the defendant company is the said sum of forty thousand four hundred and ninety-seven dollars and twenty-one cents.

That on the twenty-sixth day of March, nineteen hundred and seven, Christian H. Oberheide, Walter Meredith Dickinson and John M. Dickinson caused to be recorded in the Clerk's office of the County of Mercer, in Book "G" of Incorporations, on pages 579, 581, and on the twenty-

sixth day of March, nineteen hundred and seven, caused the same to be filed in the office of the Secretary of State of this State their certain certificate of incorporation, bearing date the twenty-sixth day of March, A. D. nineteen hundred and seven, signed and duly executed by them, which execution was first acknowledged by them on the twenty-sixth day of March, nineteen hundred and seven, before Nelson L. Petty, one of the Masters of this Court, who certified the said acknowledgment upon the said certificate of incorporation, as by law required, in and by which certificate they, the said incorporators, in order to form the defendant company as a corporation for the business and purposes and with the powers hereinafter set out under and pursuant to the provisions of the act of the Legislature of the State of New Jersey, entitled "An act concerning corporations" (Revision 1896), and the acts amendatory thereof and supplemental thereto, certified, among other things, as follows:

That the name of the corporation is Trenton "White City" Company. That the location of the principal office in this State shall be at the foot of Harrison Avenue, in Hamilton township, in the County of Mercer, at what is commonly called Broad Street Park, and the name of the statutory agent therein, and in charge thereof, upon whom process against the said corporation may be served is W. Meredith Dickinson. That the objects and purposes for which the said corporation was formed were to acquire, construct and operate grounds, parks or places of amusement in and near the City of Trenton, in the State of New Jersey, or elsewhere, and to equip the same with all necessary appliances and paraphernalia for operating and conducting games and amusements of all kinds whatever, and such other purposes as

in and by the said certificate are set forth. That the total authorized capital stock of the said corporation was one hundred and fifty thousand dollars, divided into fifteen thousand shares of the par value of ten dollars each. Of such total authorized capital stock seven thousand five hundred shares, amounting to seventy-five thousand dollars, was to be preferred stock, and seven thousand five hundred shares, amounting to seventy-five thousand dollars, was to be common stock. That the holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus or net earnings of the corporation yearly, non-cumulative dividends at the rate of seven per centum per annum, and no more, payable annually on dates to be fixed by the by-laws. That the dividend on the preferred stock shall be payable before any dividend on the common stock shall be paid or set apart. That in the event of any liquidation or dissolution, or winding up of the corporation, the holders of the preferred stock shall be entitled to be paid in full the par value of their shares before any amount shall be paid to the holders of the common stock, and after the payment to the holders of the preferred stock of its par value, the remaining assets and funds shall be divided and paid to the holders of the common stock, according to their respective shares. That the duration of the said corporation shall be perpetual. That the names and post office addresses of the incorporators, and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital with which the company will commence business, were as follows:

| Name. | Post Office Address | No. of Shares. |
|---|---|---|
| C. H. Oberheide. | Trenton, N. J. | 33 |
| W. M. Dickinson. | Trenton, N. J. | 34 |
| John M. Dickinson. | Trenton, N. J. | 33 |

That upon the execution, acknowledgment, recording and filing of which said certificate the said Trenton White City Company, the defendant corporation, became and was, and now is a body politic and corporate under the laws of the State of New Jersey, pursuant to the provisions of the said act of the Legislature of the State of New Jersey, entitled "An act concerning corporations" (Revision of 1896), and the acts amendatory thereof and supplemental thereto.

That the said incorporators, stockholders of the said defendant company, duly elected a Board of Directors of the defendant company, who thereafter and until the appointment of your petitioner managed the business and affairs of the said defendant company. That the said Board of Directors elected a President, Vice-President, Secretary and Treasurer of the said defendant company, who took upon themselves the discharge of the duties of their respective offices.

That on the day of the date hereinafter set opposite their respective names, the persons hereinafter named, respectively, in consideration that the said defendant company would then forthwith issue and deliver to them, respectively, a certificate of the defendant company, that they, respectively, were the holders of the number of shares of the common stock of the authorized capital stock of the defendant company as hereinafter set opposite their respective names, respectively undertook and promised to pay to the said defendant company, when thereafter lawfully requested so to do, ten dollars for each and every share of the said common stock of the authorized capital stock so certified. That thereupon, on the said day of the date set opposite their respective names, the defendant company, in consideration thereof, issued and delivered to the said persons, respectively, and the said persons, respectively,

accepted the same, its certain certificate bearing the date and number as hereinafter set opposite their respective names, wherein the said defendant company certified that the said persons, respectively, were the owners of the number of shares of the common stock of the authorized capital stock of the said defendant company as set opposite their names, respectively. That thereupon on the said dates, respectively, the said persons became and were and now are the holders and owners of the number of shares of the common stock of the said authorized capital stock of the defendant company as set opposite their respective names, and then became and now are bound to pay to the said defendant company the sum of ten dollars for each and every share so issued to them, respectively, which said persons, and the number and date of their respective certificates, and the number of shares so held by them, respectively, by virtue of the said certificates, and the amount which they agreed to pay as aforesaid, are as follows:

| No. | Date. | Stockholder. | Shares. | Amount. |
|---|---|---|---|---|
| 3 | June 22, 1907 | Henry W. Green, | 100 | $1,000 00 |
| 4 | June 15, 1907 | Rollin H. Blakeley, | 50 | 500 00 |
| 5 | June 24, 1907 | Herbert Sinclair, | 50 | 500 00 |
| 7 | June 15, 1907 | Harry Haveson, | 25 | 250 00 |
| 8 | June 18, 1907 | Isaac F. Richey, | 50 | 500 00 |
| 9 | June 24, 1907 | Edward C. Stokes, | 50 | 500 00 |
| 11 | July 15, 1907 | Robert C. Kolb, | 50 | 500 00 |
| 13 | May 16, 1907 | Barker Gummere, Jr., | 50 | 500 00 |
| 13 | May 21, 1907 | William S. Hancock, | 50 | 500 00 |
| 14 | July 1, 1907 | W. Meredith Dickinson, | 50 | 500 00 |
| 15 | June 15, 1907 | Edmund D. Cook, | 50 | 500 00 |
| 16 | July 16, 1907 | Hugh H. Hamill, | 50 | 500 00 |
| 17 | June 15, 1907 | (Cancelled) | | |
| 18 | Aug. 26, 1907 | Alexander C. Yard, | 50 | 500 00 |
| 19 | July 1, 1907 | W. Holt Apgar, | 50 | 500 00 |
| 21 | June 15, 1907 | Watson H. Linburg, | 50 | 500 00 |
| 22 | June 15, 1907 | Levi B. Risdon, | 25 | 250 00 |
| 24 | May 15, 1907 | Thomas N. Adams, | 25 | 250 00 |
| 25 | June 15, 1907 | William P. Endebrock, | 25 | 250 00 |

| No. | Date. | Stockholder. | Shares. | Amount. |
|---|---|---|---|---|
| 26 | June 15, 1907 | Henry R. Swartz, | 25 | 250 00 |
| 29 | June 15, 1907 | Leroy C. Thompson, | 25 | 250 00 |
| 30 | June 20, 1907 | Charles H. Holcombe, | 25 | 250 00 |
| 32 | April 1, 1907 | Horace E. Case, | 5 | 50 00 |
| 33 | June 24, 1907 | Alexander Klinkowstein, | 25 | 250 00 |
| 34 | June 24, 1907 | Henry Wirtschafter, | 5 | 50 00 |
| 35 | June 15, 1907 | Frederick Winkhaus, | 100 | 1,000 00 |
| 26 | June 20, 1907 | John Winkhaus, | 100 | 1,000 00 |
| 27 | June 18, 1907 | Frederick E. Donaldson, | 25 | 250 00 |
| 38 | June 15, 1907 | Robert J. Garrett, | 25 | 250 00 |
| 39 | June 15, 1907 | Margaret H. Risdon, | 15 | 150 00 |
| 40 | June 15, 1907 | Katherine C. Fay, | 10 | 100 00 |
| 41 | June 15, 1907 | Thomas Beaver Brown, | 50 | 500 00 |
| 42 | June 20, 1907 | Frank G. Hagemeyer, | 50 | 500 00 |
| 45 | June 15, 1907 | Seigfried Roebling, | 50 | 500 00 |
| 46 | June 15, 1907 | Paul Roebling, | 50 | 500 00 |
| 48 | April 1, 1907 | John S. Broughton, | 1,000 | 10,000 00 |
| 50 | April 1, 1907 | Wilbur F. Sadler, Jr., | 500 | 5,000 00 |
| 52 | April 1, 1907 | Christian H. Oberheide, | 1,500 | 15,000 00 |
| 53 | June 15, 1907 | Samuel W. Prior, | 25 | 250 00 |
| 54 | June 15, 1907 | John L. Brock, | 25 | 250 00 |
| 55 | June 15, 1907 | John V. B. Wicoff, | 25 | 250 00 |
| 56 | June 15, 1907 | Ferdinand W. Roebling, Jr., | 25 | 250 00 |
| 57 | June 15, 1907 | Karl G. Roebling, | 25 | 250 00 |
| 58 | Nov. 18, 1907 | W. O. Wheeler, | 7 | 70 00 |
| 59 | Nov. 18, 1907 | H. Y. Haden, | 18 | 180 00 |
| 60 | March 18, 1908 | John S. Broughton, | 26 | 260 00 |
| 61 | March 18, 1908 | Peter E. Hurley, | 100 | 1,000 00 |
| 63 | March 18, 1908 | Barker G. Hamill, | 967 | 9,670 00 |
| 65 | March 18, 1908 | W. Meredith Dickinson, | 967 | 9,670 00 |
| 66 | Sept. 5, 1908 | Walter F. Smith, | 10 | 100 00 |
| 2 | | Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., Christian H. Oberheide, | 5,000 | 50,000 00 |

That of the shares issued to Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and Christian H. Oberheide, by certificate No. 2, as hereinbefore set forth, they, the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and Christian H. Oberheide, returned to the treasury of the defendant company three thousand six

hundred and eighty-one shares, and that they are now holders by virtue of the said certificate of one thousand three hundred and nineteen shares of the common stock of the authorized capital stock of the defendant company.

That Edmund D. Cook died on the nineteenth day of April, nineteen hundred and nine, intestate, and by letters issued by John W. Cornell, then the Surrogate of the County of Mercer, Margaret P. Cook and George R. Cook, were appointed Administrators of the goods and chattels rights, credits and effects which were of the said Edmund D. Cook, deceased, and the said Margaret P. Cook and George R. Cook have taken upon themselves the duties of administering the estate of the said Edmund D. Cook, deceased.

That Hugh H. Hamill died on the fourteenth day of May, nineteen hundred and nine, leaving a last will and testament, and by letters issued by the said John W. Cornell, then the Surrogate of the County of Mercer, appointed Elizabeth G. Hamill, Executrix of the last will and testament of the said Hugh H. Hamill, deceased, and that the said Elizabeth G. Hamill has taken upon herself the duties of Executrix of the estate of the said Hugh H. Hamill, deceased.

That Frederick Winkhaus, John Winkhaus, Frederick E. Donaldson, Thomas Beaver Brown, Frank G. Hagemeyer, Christian H. Oberheide and H. Y. Haden, all reside outside of the State of New Jersey, and process cannot be served upon them to bring them within the jurisdiction of the Courts of this State.

That Siegfried Roebling and Paul Roebling are infants under the age of one and twenty years.

That your petitioner has demanded of each of the persons aforementioned to pay the amount of

money owing by them, respectively, for the said shares of the common stock of the authorized capital stock as aforementioned, and that they, and each of them, have refused to pay the said sums or any portion thereof. That no part of the said moneys owing by the said persons, respectively, to the said defendant company, upon their stockholdings in the said defendant company, have been paid to the said defendant company or to your petitioner as its Receiver.

That the said Horace E. Case and the said Christian H. Oberheide are insolvent, and that the moneys owing by them as aforementioned are uncollectible.

That in order that your petitioner, as such Receiver, be in funds to pay the debts of the defendant company, and to liquidate its affairs, according to law, it is necessary that your petitioner have and receive from the persons aforementioned, stockholders of the defendant company, the amount so due and owing by them, respectively, by reason of their stockholdings.

Your petitioner therefore prays that it may be ordered that an assessment be levied against the persons aforementioned, respectively, for the full amount of the said common stock of the authorized capital stock of the defendant company so issued to them, respectively, as aforementioned, or for such other sum of money as may be sufficient to enable your petitioner, as such Receiver, to pay the debts of the defendant company, and to liquidate its affairs, and to that end it may be ordered that the said persons, respectively, pay to your petitioner as such Receiver the amount of such assessment to be levied, at such time and place as may be fixed in the said order, or that your petitioner as such Receiver may be directed to levy such assessment in such amount as shall

be fixed in the said order, to be paid at such time and place to be fixed by the said Receiver.

And your petitioner will ever pray, &c.

CHAS. J. FURY,
Receiver,
Petitioner.

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

Charles J. Fury, being duly sworn according to law, upon his oath says, that he is the petitioner named in the foregoing petition; that he has read the foregoing petition, and that all of the matters and things therein set forth are true to the best of his knowledge, information and belief.

CHAS. J. FURY.

Sworn and subscribed before me }
this 5th day of July, 1910. }

Stella Emmons (Homan),
Notary Public of
New Jersey.

## Order to Show Cause.

(Filed July 5, 1910.)

IN CHANCERY OF NEW JERSEY.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

On Bill, etc.

A petition having been filed by Charles J. Fury, Receiver of the defendant company, from which it appears that the debts of the defendant company amount to forty thousand, four hundred and ninety-seven dollars and twenty-one cents, and that the assets of the said company, available for the payments of the debts of the said company and the liquidation of its affairs, amount to the sum of seventeen hundred and sixty-seven dollars and eighty-four cents and no more, except the moneys due from the stockholders of the defendant company, as hereinafter mentioned, and that the persons hereinafter named are holders of the authorized capital stock of the said defendant company, of the amounts set forth in the said petition, aggregating the sum of seventy-five thousand dollars; that the said persons have not, nor have any of them, paid to the said defendant company, or the said Receiver, the amount of their said stockholdings, or any part thereof; that it is necessary in order to pay the said debts, and liquidate the affairs of the defendant company, an

assessment be levied against the said persons for the moneys owing by them respectively upon their said stockholdings respectively and in and by which said petition, the said Receiver prays that such an assessment be levied:

It is thereupon, on this fifth day of July, nineteen hundred and ten, on motion of John H. Backes, of counsel with the said Receiver, ordered that Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., Christian H. Oberheide, Henry W. Green, Rollin H. Blakeley, Herbert Sinclair, Harry Haveson, Isaac F. Richey, Edward C. Stokes, Robert C. Kolb, Barker Gummere, Jr., William S. Hancock, Margaret P. Cook, and George R. Cook, Administrators of the estate of Edmund D. Cook, deceased, Elizabeth G. Hamill, Executrix of the estate of Hugh H. Hamill, deceased, Alexander C. Yard, W. Holt Apgar, Watson H. Lindburg, Levi B. Risdon, Thomas N. Adams, William P. Endebrock, Henry R. Swartz, Leroy C. Thompson, Charles H. Holcombe, Horace E. Case, Alexander Llinkowstein, Henry Wirtschafter, Frederick Winkhaus, John Winkhaus, Frederick E. Donaldson, Robert J. Garrett, Margaret H. Risdon, Katherine C. Fay, Thomas Beaver Brown, Frank G. Hagemeyer, Seigfried Roebling, Paul Reobling, John L. Brock, Samuel W. Prior, H. Y. Haden, John V. B. Wicoff, Ferdinand W. Roebling, Jr., Karl G. Roebling, W. O. Wheeler, Peter E. Hurley and Walter F. Smith, being the shareholders named in the said petition, and each and every of them, show cause before the Chancellor, sitting at the State House in the City of Trenton, New Jersey, on Tuesday, the ninth day of August, nineteen hundred and ten, at the hour of ten o'clock in the forenoon, why it should not be ordered that an assessment be levied against the persons aforemen-

tioned respectively, for the full amount of the said common stock of the authorized capital stock of the defendant company, issued to them respectively, or for such other sum of money as may be sufficient to enable the petitioner, as such Receiver, to pay the debts of the defendant company, and to liquidate its affairs, to the end that it may be ordered that the said persons respectively, pay to the said petitioner as such Receiver, the amount of such assessment to be levied, at such time and place as may be fixed in the said order, or, that the said petitioner as such Receiver may be directed to levy such assessment in such amount as shall be fixed in the said order, to be paid at such time and place to be fixed by the said Receiver, according to the prayer of the said petition.

And it is further ordered, that a copy of the said petition, and of this order (the same need not be certified), be served, within fifteen days from the date thereof upon the said persons aforementioned, personally, or by leaving the same at their usual place of abode, with a member of their family over the age of fourteen years.

Respectfully advised,

MAHLON PITNEY,
Chancellor.

E. R. Walker,
Vice-Chancellor.

## Plea.

(Filed Sept. 16, 1910.)

IN CHANCERY OF NEW JERSEY.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

On Petition of Receiver for Assessment.

The joint and several plea of William S. Hancock, Ferdinand W. Roebling, Jr., Karl G. Roebling, Edward C. Stokes, Barker Gummere, Herbert Sinclair, Watson H. Linburg, Levi B. Risdon, Katharine C. Fay, Alexander C. Yard, Henry Wirtschafter, John V. B. Wicoff, Elizabeth G. Hamill, Rollin H. Blakely, Robert C. Kolb and Isaac F. Richey, respondents, to the petition of Charles J. Fury, Receiver of Trenton White City Company, for an assessment on common stock.

These respondent by protestation not confessing or acknowledging the matters and things in and by said petition set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to said petition say that the common stock of the Trenton White City Company certified to them respectively was stock originally issued to Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and Christian H. Oberheide, as full paid and non-assessable, and by them assigned to said company under a trust agreement, a copy whereof is hereto annexed and made a part hereof. And these respondents in fact say that they respectively received the certificates set out

in said petition, under said agreement, as subscribers to the preferred stock of said company, for which they paid in full its par value, and that their respective certificates, and those for which they were in transfer, recite that the stock evidenced thereby is full paid and non-assessable; and these respondents submit that they are respectively purchasers for value of such stock without notice that the same was not full paid or was or is subject to assessment, if such be the case, and that they cannot be held liable to said Receiver for any assessment thereon. All which matters and things these respondents do aver to be true, and they plead the same in bar to said petition, and pray the judgment of this Honorable Court whether they should be compelled to make any other or further answer to the said petition, and pray to be hence dismissed, with their costs and charges in that behalf most wrongfully sustained.

VROOM, DICKINSON & SCAMMELL,
Solicitors of Respondents.

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

William S. Hancock, being duly sworn, according to law, on his oath says, that he is one of the agents of the within named respondents, and that the foregoing plea is not interposed for delay, but in good faith, for the causes therein set forth.

WILLIAM S. HANCOCK.

Sworn to and subscribed before me this }
16th day of September, A. D., 1910. }

Howard F. Tomlinson,
Notary Public.

I certify that I have perused the petitioner's petition in the above-stated cause, and that the above plea is well founded in point of law.

J. M. DICKINSON.
Of Counsel with Respondents.

## Answer.

(Filed Sept. 16, 1910.)

IN CHANCERY OF NEW JERSEY.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

On Bill, etc.

On Petition, etc.

The joint and several answer of Barker G. Hamill, John S. Broughton, W. Meredith Dickinson and Wilbur F. Sadler, Jr., to the petition of Charles J. Fury, Receiver of the Trenton White City Company, for an assessment on common stock:

These respondents, answering, say that:

1. They admit that on or about the fourteenth day of August, nineteen hundred and nine, the petitioner was appointed Receiver of the Trenton White City Company, but as to whether the said petitioner, as such Receiver, has collected all of the assets of said company, as therein set out, these respondents leave the said petitioner to make such proof thereof as he may be advised; but on information and belief they allege that said Receiver has disposed of the property of said company at a great and unwarrantable sacrifice.

2. They are informed and believe it to be true, and therefore admit, that on August twenty-fourth, ninteen hundered and nine, an order was made di-

recting the creditors of said Trenton White City Company to present their claims to the said petitioner, as Receiver, within two months from the date of said order, and that pursuant thereto certain persons, claiming to be creditors of said defendant company, presented claims to said petitioner, but as to the character of said claims and the respective amounts thereof, these respondents leave the said petitioner to make such proof thereof as he may be advised.

3. They admit that on March twenty-sixth, nineteen hundred and seven, Christian H. Oberheide, Walter M. Dickinson, and John M. Dickinson caused a certificate of incorporation of the Trenton White City Company, of the purport and effect set out in said petition, to be filed in the office of the Secretary of State of this State.

4. They admit that said incorporators, being the stockholders of said defendant company, duly elected a Board of Directors thereof, who managed the business and affairs of said defendant company, and that said Board of Directors elected a President, Vice-Presient, Secretary and Treasurer of said defendant company, who thereupon took upon themselves the discharge of the duties of their respective offices.

5. They admit that certificates of the common capital stock of the said Trenton White City Company were issued to them in the amounts and on the dates set out in the said petition, except Certificate No. 2 for five thousand shares, which was cancelled and never issued, but they deny that in consideration of the issue thereof they respectively undertook and promised to pay to the said defendant company, when thereunto lawfully requested so to do, ten dollars for each and every share of said common stock so issued to them, and

they deny that they then became and now are bound to pay to said company the sum of ten dollars for each and every share of stock so issued to them, as in said petition is set out.

6. They deny that of the shares of capital stock issued by Certificate No. 2, as set out in said petition, 3681 shares thereof were returned to the treasury of said company, but these respondents aver the fact to be that the entire common capital stock of said company, amounting to seventy-five thousand dollars, was issued to them and one Christian H. Oberheide, or intended to be issued, as hereinafter more fully set out, and that of said common capital stock these respondents and said Oberheide assigned in trust to said company 2500 shares of said stock of the par value of twenty-five thousand dollars.

7. They are informed and believe it to be true, and therefore admit the fact to be, that Edmund D. Cook and Hugh H. Hamill, named in said petition, died as therein set out.

8. They have no knowledge, save as set out in petitioner's petition, whether or not Frederick Winkhaus, John Winkhaus, Frederick E. Donaldson, Thomas Beaver Brown, Frank G. Hagemeyer, Christian H. Oberheide and H. Y. Hayden can be brought within the jurisdiction of the Courts of this State, or whether or not Siegfried Roebling and Paul Roebling are infants, or whether or not the said Horace E. Case and the said Christian H. Oberheide are insolvent, but leave the said petitioner to make such proof thereof as he may be advised.

9. They deny that any part of the consideration of the issue to them of certificates of the common capital stock as aforesaid has not been paid, but on the contrary these respondents allege and

say that the certificates of stock issued to them by said company have been fully paid for, and that the said stock now held and owned by them is full paid stock and not liable to any assessment thereon.

And these respondents, further answering, say, that at the time of the incorporation of said Trenton White City Company, these respondents, together with one Christian H. Oberheide, owned and controlled a certain leasehold in and to a large tract of land in the township of Hamilton, in the County of Mercer, in which lease there was an unexpired term of four years, and an option for an additional term of six years, and which lease also contained an option to purchase said property for the sum of thirty-five thousand dollars, and in addition thereto these respondents had entered into various contracts and negotiations with certain persons for the construction of various devices which would be useful and necessary in the operation and conduct of the business of the said Trenton White City Company; thereupon these respondents and said Oberheide, then owning said leasehold interest in said lands, together with an adoption to purchase the same, and controlling certain contract rights hereinbefore mentioned, entered into negotiations with the said Trenton White City Company, to sell and assign to it all their right, title and interests in and to said leasehold of said lands and the option to purchase the same, and the contract rights controlled by them, in consideration of the issue of common capital stock of said company to the amount of seventy-five thousand dollars, and in further consideration of the sum of four thousand dollars in cash. That as a result of said negotiations a resolution was passed by the incorporators of said company at a

meeting held on March 26, 1907, whereby it was resolved that the Board of Directors of said company be authorized, in their discretion, to purchase said property, leasehold interest and contract rights from these respondents and said Oberheide, for the consideration aforesaid, and to issue said common capital stock in payment therefor; all of which will more fully appear from a copy of the resolution of the incorporators of said company, as contained in the minutes of said meeting, which is hereto annexed, marked Schedule A, and made a part hereof.

That at a meeting of the Board of Directors of said Trenton White City Company, held on March 26, 1907, it was unanimously resolved by said Directors that the company accept the offer of these respondents and the said Christian H. Oberheide to sell and assign to said company the property rights, leasehold interests and contract rights hereinbefore referred to, and that said Board of Directors did, in and by said resolution, adjudge and declare that said property rights and interests were of the fair value of seventy-nine thousand dollars, and the President and Secretary of said company were by said resolution authorized to execute all agreements for the acquisition of said property and to issue to these respondents and the said Christian H. Oberheide, or their assigns, certificates of full paid common capital stock of said company to the amount of seventy-five thousand dollars, par value, and to pay them in cash, in addition thereto, the sum of four thousand dollars, all of which will more fully appear from a copy of the resolution of said Board of Directors, as contained in the minutes of said meeting, which is hereto annexed, marked Schedule B, and hereby made a part hereof.

That pursuant to the resolution of the incorpor-

ators of said Trenton White City Company and the resolution of the Board of Directors thereof, authorizing the purchase of the right, title and interest of these respondents in said property and contract rights, an agreement was entered into April 1, 1907, between these respondents and the said Christian H. Oberheide, of the first part, and the said Trenton White City Company, of the second part, whereby the parties of the first part, in consideration of the issue to them of the common capital stock of said company of the par value of seventy-five thousand dollars, and the payment to them in cash of four thousand dollars, transferred and set over unto the said company all their right, title and interest in and to said property and contract rights, all of which will more fully appear from a copy of said agreement, hereto annexed, marked Schedule C, and hereby made a part hereof, and to which these respondents beg leave to refer. That these respondents and said Oberheide, being the owners of the common capital stock of said company, and being desirous of providing said company with the means of obtaining working capital, and of enhancing the value of the stock held by them, entered into an agreement with the said company in the month of June, 1907, whereby they assigned and set over to said company 2500 full paid shares of said common capital stock, upon certain trusts set out in said agreement, which said assignment and transfer of stock was accepted by said company, to be held and disposed of by it for the purpose stated in said agreement, all of which will more fully appear from a copy of said agreement, hereto annexed, marked Schedule D, and hereby made a part hereof, and to which these respondents beg leave to refer

These respondents, further answering, say that the common capital stock of said company to the amount of seventy-five thousand dollars was issued

New Jersey State Library

to them and said Oberheide in part payment for the property purchased by said company from them, and that the stock so issued to them is full paid stock, and not liable to any further call or further assessment thereon, in accordance with the statute in such case made and provided. All of which facts, matters and things these respondent are ready and willing to aver, maintain and prove, when and where this Honorable Court may direct.

And these respondents submit to this Honorable Court that said petitioner has not made or stated such a case in his said petition as entitles him in a court of equity to the relief prayed for therein, and these respondents pray the same benefit of this defence as if they had demurred to the said petitioner's petition.

And these respondents humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfuly sustained.

VROOM, DICKINSON & SCAMMELL,
Solicitors for and of Counsel
With Respondents.

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

Barker G. Hamill, John S. Broughton, W. Meredith Dickinson and Wilbur F. Sadler, Jr., the above-named respondents, being severally sworn, on their respective oaths, say that the matters and things set forth in the above answer, so far as relate to their own acts, are true, and so far as relate to the acts of others, they believe them to be true.

JOHN S. BROUGHTON,
W. M. DICKINSON,
BARKER G. HAMILL,
WILBUR F. SADLER, JR.

Sworn to and subscribed before me this }
13th day of September, A. D. 1910. }

Sackett M. Dickinson,
Attorney-at-Law of
New Jersey.

## Schedule A.

### RESOLUTION OF INCORPORATORS.

Upon motion duly made and seconded and by the affirmative vote of all present, the following preamble and resolution were adopted

Whereas Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide own and control a certain leasehold in and to a certain large tract of land and premises in the Township of Hamilton and County of Mercer, commonly known as Broad Street Park, in which lease there is an unexpired term of four years; and whereas said persons above-named also control an option upon said property to lease the same for an additional period of six years from the time of the expiration of the term of their present lease aforesaid; and whereas said persons have entered into various contracts with certain persons, firms and corporations for the construction and erection of various devices which would be useful and necessary in the operation and conduct of the business of this company; and whereas it appears to the stockholders that such property rights and interests would be of great value to this company, and that their acquisition is indispensable to the successful operation of this company, and the conduct of its business, and that no other property rights and interests of a similar nature and character can be acquired by this company which would be of equal value to it; and whereas the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide have offered to sell said property interests and contract rights to this company for the sum of four thousand dollars in cash and in consideration

of the issue of the common capital stock of this company to them to the amount of seventy-five thousand dollars, par value;

NOW, THEREFORE, BE IT RESOLVED, that the board of directors of this company be and they are hereby authorized in their discretion to purchase the property, leasehold interests and contract rights above mentioned, for the price aforesaid, and to issue said stock in payment therefore.

## Schedule B.

### RESOLUTION OF BOARD OF DIRECTORS.

Upon motion duly made and seconded, it was resolved that the Secretary be authorized to procure the necessary corporate books.

On motion duly made and seconded, it was unanimously resolved that this company accept the offer of Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide, to sell and assign to this company the property described in the resolution of the stockholders passed at the first meeting of the corporation, consisting of property rights, leasehold interests, and contract rights in said resolution mentioned, authorizing the purchase, and the board of directors do hereby adjudge and declare that said property rights and interests are of the fair value of seventy-nine thousand dollars, and that the same are necessary and indispensable for the conduct of the business of this company;

And be it further resolved that the president and secretary of the company be and they are hereby authorized to execute any and all agreements on behalf of this company, for the acquisition of said property rights, leasehold interests and contracts, and to issue to the said Barker G.

Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide or their assigns, certificates of full paid common capital stock of this company to the amount of seventy-five thousand dollars, par value, and to pay to them in cash, in addition thereto, the sum of four thousand dollars.

## Schedule C.

Agreement made this first day of April, nineteen hundred and seven, by and between Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., C. H. Oberheide, of the City of Trenton, in the County of Mercer and State of New Jersey, hereinafter called the vendors, of the first part, and The Trenton White City Company, a corporation organized under the laws of the State of New Jersey, hereinafter called The COMPANY, of the second part.

WHEREAS, the vendors own and control a certain leasehold in and to a large tract of land and premises in the Township of Hamilton, in the County of Mercer, commonly known as Broad Street Park, in which lease there is an unexpired term of four years; and whereas said vendors also control an option upon said property to lease the same for an additional period of six years from the time of the expiration of the term of their present lease aforesaid; and whereas said vendors control various contracts with persons, firms and corporations for the construction and erection of various devices, useful and necessary in the operation and conduct of the business of the company, and whereas The Company deems their acquisition indispensable to the successful operation and conduct of its business; and whereas The Board of Directors of The Company have ascertained, adjudged and declared that said property rights and

interests of The Vendors are of the fair value of seventy-nine thousand dollars, and that the acquisition of said property rights is necessary to carry out the objects of the company;

NOW, THEREFORE, this agreement witnesseth, that The Vendors, for and in consideration of seventy-nine thousand dollars, paid to them as hereinafter provided, have granted, bargained, sold, assigned, transferred and set over, and do hereby grant, bargain, sell, assign, transfer and set over unto The Company, its successors and assigns, all their right, title and interest, in and to a certain lease which they now hold and control in and to a tract of land and premises in the Township of Hamilton, in the County of Mercer and State of New Jersey, commonly known as Broad Street Park, and the unexpired term of four years evidenced by said lease, together with any option or options which they now own and control to lease said property for an additional term of six years from the expiration of the term of the present lease aforesaid; also all their right, title and interest in and to all and every contract or contracts with any persons whatever, for the construction and erection of various devices useful and necessary in the operation and conduct of the business of The Company.

The Company hereby agrees in consideration of said sale and assignment of said property rights and interests, to pay to The Vendors seventy-nine thousand dollars, consisting of four thousand dollars in cash, and to issue to said vendors common capital stock of The Company to the amount of seventy-five thousand dollars. Said shares shall be deemed to be, and are hereby declared to be, full paid shares and not liable to any further call or demand thereon.

The Vendors hereby covenant and agree with The Company, upon request, and at the cost

of The Company, to execute and do, all other assurances and things as shall reasonably be required by The Company for vesting in it the property and rights hereby agreed to be sold, and giving to it the full benefit of this agreement.

Witness the hands and seals of The Vendors, and the corporate seal of The Company, attested by the signatures of its officers thereunto duly authorized the day and year first above written.

TRENTON WHITE CITY COMPANY.
By
W. M. Dickinson,
President.

Attest:
J. M. Dickinson,
Secretary.

In the presence of

Barker G. Hamill, [SEAL.]
John S. Broughton, "
W. M. Dickinson, "
W. F. Sadler, Jr., "
C. H. Oberheide, "

## Schedule D.

AGREEMENT made this day of June, nineteen hundred and seven, by and between Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide, parties of the first part, and the Trenton White City Company, a corporation, party of the second part.

WHEREAS, the parties of the first part are the owners of certain full paid shares of the common capital stock of the Trenton White City Company, and whereas the parties of the first part are desirous of providing said company

with the means of obtaining working capital and enabling said company to carry out certain agreements made by its organizors with certain subscribers to the preferred capital stock of said company, and are desirous of enhancing in value the other shares held by the party of the first part.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the premises and the sum of one dollar, in hand paid by the party of the second part to the parties of the first part, the receipt whereof is hereby acknowledged, the parties of the first part hereby sell, assign, transfer and set over to the said party of the second part twenty-five hundred full paid shares of the common capital stock of said company, in trust, upon the following terms and conditions:

(1) The party of the second part shall transfer to each and every subscriber to the preferred capital stock of said Trenton White City Company the common capital stock so assigned to it in trust, so far as the same will extend, and in the order of priority of the subscriptions to said preferred capital stock, in the proportion of one share of said common stock to every two shares of said preferred stock so purchased by said subscribers.

(2) The said party of the second part hereby accepts the assignment and transfer of said twenty-five hundred shares of the common capital stock of this company, to be held and disposed of by it for the purposes above stated.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals, and the party of the second part has caused this agreement to be signed by its president and at-

tested by its secretary, and affixed hereto its corporate seal.

TRENTON WHITE CITY COMPANY,
By
W. M. Dickinson,
President.

Attest:

Secretary.

Signed, sealed and delivered
in the presence of

Barker G. Hamill. [SEAL.]
John S. Broughton. [SEAL.]
W. M. Dickinson. [SEAL.]
W. F. Sadler, Jr. [SEAL.]
C. H. Oberheide. [SEAL.]

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## Replication to Plea.

(Filed Oct. 4, 1910. )

The petitioner, Receiver of the defendant company, joins issue on the plea of the respondents William S. Hancock, Ferdinand W. Roebling, Jr., Karl G. Roebling, Edward C. Stokes, Barker Gummere, Herbert Sinclair, Watson H. Linburg, Levi B. Risdon, Katherine C. Fay, Alexander C. Yard, Henry Wirtschafter, John V. B. Wicoff, Elizabeth G. Hamill, Rollin H. Blakely, Robert C. Kolb and Isaac F. Richey.

JOHN H. BACKES,
Solicitor of Petitioner.

## Replication to Answer.

(Filed Oct. 4, 1910.)

The petitioner, Receiver of the defendant company, joins issue on the answer of the respondents John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and Barker G. Hamill.

Dated October 3, 1910.

JOHN H. BACKES,
Solicitor of Petitioner.

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## Order Levying Assessment Upon Stockholders.

(Filed October 9th, 1912.)

IN CHANCERY OF NEW JERSEY.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

On Bill, etc.

This matter coming on to be heard in the presence of John H. Backes, of counsel with the petitioner, Charles J. Fury, Receiver of the defendant, Trenton White City Company, and Vroom, Dickinson & Scammell and Malcolm G. Buchanan, of counsel with the answering respondents, upon petition, pleas, answers, replications and proofs, and the pleadings having been read

and the proofs having been heard, and the same and the arguments of counsel having been duly considered, from all of which it appears to the satisfaction of the Chancellor that by a certificate bearing date on the twenty-sixth day of March, nineteen hundred and seven, executed, acknowledged and recorded as by law required, and on that day filed in the office of the Secretary of State, the defendant company became and was a body politic and corporate, by virtue of the acts of the Legislature of this State entitled "An act concerning corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, with an authorized capital stock of one hundred and fifty thousand dollars ($150,000), divided into fifteen thousand (15,000) shares of the par value of ten dollars ($10) each, and of which authorized capital stock seven thousand five hundred (7,500) shares, amounting to seventy-five thousand dollars ($75,000), were to be preferred stock, and seven thousand five hundred (7,500) shares, amounting to seventy-five thousand dollars ($75,000 )were to be common stock; and

That by a decree made in this cause on the fourteenth day of August, nineteen hundred and nine, Trenton White City Company, the defendant above named, was adjudged and decreed to be insolvent, and therein and thereby Charles J. Fury was appointed Receiver of the said defendant company. That the assets which have come to the hands of the said Receiver are the sum of seventeen hundred and sixty-seven dollars and eighty-four cents ($1767.84) and no more, and that the defendant company has no other assets except the money due upon the capital stock hereinafter mentioned; and

That pursuant to the direction of an order made

in this cause on the twenty-fourth day of August, nineteen hundred and nine, the creditors of the defendant company presented to the Receiver their claims against the said defendant company, in writing, under oath, as by said order required, which claims have been allowed by the said Receiver as just and valid claims, and which claims in the aggregate amount to the sum of forty thousand four hundred and ninety-seven dollars and twenty-one cents ($40,497.21), with the accumulated interest thereon from the fourteenth day of August, nineteen hundred and nine, and that the total amount of debts of the said defendant company is the said sum of forty thousand four hundred and ninety-seven dollars and twenty-one cents ($40,497.21) with the interest as aforementioned; and

That on the day of the date hereinafter set opposite their respective names, the defendant company issued and delivered to the persons hereinafter named, respectively, and the said persons respectively accepted the same, its certain certificate bearing date and number as hereinafter set opposite their respective names, wherein the said defendant company certified that the said persons respectively were the owners of the number of shares of the common stock of the said authorized capital stock of the defendant company, as set opposite their names, respectively, and that thereupon, on the said dates the said persons, respectively, became and were the holders and owners of the number of shares of the common stock of the said authorized capital stock of the defendant company, as set opposite their respective names, which said persons and the number and date of their respective certificates and the number of shares and the aggregate par value thereof so held by them respectively, by virtue of the said certificate, are as follows:

| No. | Date. | Stockholder. | Shares. | Amount. |
|---|---|---|---|---|
| 3 | June 22, 1907 | Henry W. Green, | 100 | $1,000 00 |
| 4 | June 15, 1907 | Rollin H. Blakeley, | 50 | 500 00 |
| 5 | June 24, 1907 | Herbert Sinclair, | 50 | 500 00 |
| 7 | June 15, 1907 | Harry Haveson, | 25 | 250 00 |
| 8 | June 18, 1907 | Isaac F. Richey, | 50 | 500 00 |
| 9 | June 24, 1907 | Edward C. Stokes, | 50 | 500 00 |
| 11 | July 15, 1907 | Robert C. Kolb, | 50 | 500 00 |
| 13 | May 16, 1907 | Barker Gummere, Jr., | 50 | 500 00 |
| 13 | May 21, 1907 | William S. Hancock, | 50 | 500 00 |
| 14 | July 1, 1907 | W. Meredith Dickinson, | 50 | 500 00 |
| 15 | June 15, 1907 | Edmund D. Cook, | 50 | 500 00 |
| 16 | July 16, 1907 | Hugh H. Hamill, | | |
| 17 | June 15, 1907 | (Cancelled) | | |
| 18 | Aug. 26, 1907 | Alexander C. Yard, | 50 | 500 00 |
| 19 | July 1, 1907 | W. Holt Apgar, | 50 | 500 00 |
| 21 | June 15, 1907 | Watson H. Linburg, | 50 | 500 00 |
| 22 | June 15, 1907 | Levi B. Risdon, | 25 | 250 00 |
| 24 | May 15, 1907 | Thomas N. Adams, | 25 | 250 00 |
| 25 | June 15, 1907 | William P. Endebrock, | 25 | 250 00 |
| 26 | June 15, 1907 | Henry R. Swartz, | 25 | 250 00 |
| 29 | June 15, 1907 | Leroy C. Thompson, | 25 | 250 00 |
| 30 | June 20, 1907 | Charles H. Holcombe, | 25 | 250 00 |
| 32 | April 1, 1907 | Horace E. Case, | 5 | 50 00 |
| 33 | June 24, 1907 | Alexander Klinkowstein, | 25 | 250 00 |
| 34 | June 24, 1907 | Henry Wirtschafter, | 5 | 50 00 |
| 35 | June 15, 1907 | Frederick Winkhaus, | 100 | 1,000 00 |
| 26 | June 20, 1907 | John Winkhaus, | 100 | 1,000 00 |
| 27 | June 18, 1907 | Frederick E. Donaldson, | 25 | 250 00 |
| 38 | June 15, 1907 | Robert J. Garrett, | 25 | 250 00 |
| 39 | June 15, 1907 | Margaret H. Risdon, | 15 | 150 00 |
| 40 | June 15, 1907 | Katherine C. Fay, | 10 | 100 00 |
| 41 | June 15, 1907 | Thomas Beaver Brown, | 50 | 500 00 |
| 42 | June 20, 1907 | Frank G. Hagemeyer, | 50 | 500 00 |
| 45 | June 15, 1907 | Seigfried Roebling, | 50 | 500 00 |
| 46 | June 15, 1907 | Paul Roebling, | 50 | 500 00 |
| 48 | April 1, 1907 | John S. Broughton, | 1,000 | 10,000 00 |
| 50 | April 1, 1907 | Wilbur F. Sadler, Jr., | 500 | 5,000 00 |
| 52 | April 1, 1907 | Christian H. Oberheide, | 1,500 | 15,000 00 |
| 53 | June 15, 1907 | Samuel W. Prior, | 25 | 250 00 |
| 54 | June 15, 1907 | John L. Brock, | 25 | 250 00 |
| 55 | June 15, 1907 | John V. B. Wicoff, | 25 | 250 00 |
| 56 | June 15, 1907 | Ferdinand W. Roebling, Jr., | 25 | 250 00 |
| 57 | June 15, 1907 | Karl G. Roebling, | 25 | 250 00 |
| 58 | Nov. 18, 1907 | W. O. Wheeler, | 7 | 70 00 |
| 59 | Nov. 18, 1907 | H. Y. Haden, | 18 | 180 00 |
| 60 | March 18, 1908 | John S. Broughton, | 26 | 260 00 |
| 61 | March 18, 1908 | Peter E. Hurley, | 100 | 1,000 00 |
| 63 | March 18, 1908 | Barker G. Hamill, | 967 | 9,670 00 |
| 65 | March 18, 1908 | W. Meredith Dickinson, | 967 | 9,670 00 |
| 66 | Sept. 5, 1908 | Walter F. Smith, | 10 | 100 00 |
| 2 | | Barker G. Hamill,<br>John S. Broughton,<br>W. Meredith Dickinson,<br>Wilbur F. Sadler, Jr.,<br>Christian H. Oberheide, | 5,000 | 50,000 00 |

And that of the shares issued to the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and Christian H. Oberheide, by certificate No. 2, as hereinbefore set forth, they returned to the treasury of the defendant company four thousand one hundred and fifty-five (4,155) shares; and

That the persons hereinbefore named, at the time the defendant company was decreed to be insolvent, as aforementioned, were the holders and owners of the common stock of the said authorized capital stock of the said defendant company, to the amount hereinbefore set forth, except as to Edmund D Cook, who then was deceased, and whose stock was held and owned by Margaret P. Cook and George R. Cook, Administrators of the goods, chattels, rights, credits and effects which were of the said Edmund D. Cook, deceased; and except as to Hugh H. Hamill, who then was deceased, and whose stock was held and owned by Elizabeth G. Hamill, Executrix of the last will and testament of the said Hugh H. Hamill, deceased; and

That the order made in this cause on the fifth day of July, nineteen hundred and ten, that the said holders of the capital stock of the defendant company, as hereinbefore mentioned, show cause before the Chancellor sitting at the State House, in Trenton, on Tuesday, the ninth day of August, nineteen hundred and ten, at the hour of ten o'clock in the forenoon, why it should not be ordered that an assessment be levied against them for the full amount of the said common stock of the said authorized capital stock of the defendant company, issued to them respectively, or for such other sum of money as may be sufficient to pay the debts of the defendant company, and to liquidate its affairs, together with the petition in the said order mentioned, was duly served, as by said order directed,

upon all of the holders of the said capital stock, as aforementioned, with the exception of John Winkhaus, Frederick E. Donaldson, Christian H. Oberheide and H. Y. Haden, who were beyond the jurisdiction of this Court; and

That Seigfried Roebling and Paul Roebling are infants under the age of one and twenty years; and

That the said Horace E. Case and Christian H. Oberheide are insolvent; and

That the holders of the said stock, to whom the said certificates of stock were issued by the defendant company, in manner aforementioned, at the time of the issuing of the same, undertook and promised to pay to the defendant company, when thereafter lawfully requested so to do, ten dollars ($10) for each and every share of the common stock of the authorized capital stock so certified to them respectively, and collectively, the sum of seventy-five thousand dollars ($75,000), and that they have each paid proportionately of the aggregate of said amount of seventy-five thousand dollars ($75,000) the sum of twenty-six thousand six hundred and sixty-five dollars and sixty-two cents ($26,665.62), and that there remains unpaid, of the said stock so issued and outstanding as aforementioned, the sum of forty-eight thousand three hundred and thirty-four dollars and thirty-eight cents ($48,334.38), which sum is owing by the holders aforementioed of the said capital stock proportionately, as their respective holdings bear to the entire issue of the said capital stock of seventy-five thousand dollars ($75,000), which sum, together with the moneys in the hands of the Receiver, as aforementioned, is necessary and required to enable the Receiver to pay the debts of the defendant company, and to liquidate its affairs; and

That the prayer of the Receiver's said petition for an order that an assessment be levied against the holders of the said stock, for such sum of money as may be sufficient to enable the said Receiver to pay the debts of the defendant company and to liquidate its affairs, should be granted:

It is on this eighth day of October, nineteen hundred and twelve, ordered that an assessment of six dollars and forty-four cents ($6.44) be, and the same is hereby levied upon the holders and owners of the said capital stock of the Trenton White City Company, parties respondent to these proceedings, whose names are hereinafter mentioned, for each share of said stock held by them respectively, as aforementioned, and that they pay the same to the said Charles J. Fury, Receiver of the defendant company, at its office, corner of State and Chancery Street, in the City of Trenton, New Jersey, on the fifteenth day of November, nineteen hundred and twelve.

And it is further ordered that the said Charles J. Fury, Receiver as aforesaid, do recover from, and the said holders and owners of the said capital stock, parties respondent hereto, do pay to the said Receiver, at the time and place aforementioned, the following amounts of money set opposite their names respectively, that is to say:

| | |
|---|---|
| The said Henry W. Green, the sum of.... | $644 00 |
| " " Rollin H. Blakeley, the sum of.. | 322 00 |
| " " Herbert Sinclair, the sum of.. | 322 00 |
| " " Harry Haveson, the sum of.... | 161 00 |
| " " Isaac F. Richey, the sum of... | 322 00 |
| " " Edward C. Stokes, the sum of.. | 322 00 |
| " " Robert C. Kolb, the sum of.. | 322 00 |
| " " Barker Gummere, Jr., the sum of ..... | 322 00 |
| " " William S. Hancock, the sum of | 322 00 |
| " " W. Meredith Dickinson, the sum of ..... | 322 00 |

| | | | |
|---|---|---|---|
| The said | Margaret P. Cook and George R. Cook, Administrators, etc., of Edmund D. Cook, deceased | 322 00 | |
| " " | Elizabeth G. Hamill, Executrix of the last will and testament of Hugh H. Hamill, deceased | 322 00 | |
| " " | Alexander C. Yard, the sum of | 322 00 | |
| " " | W. Holt Apgar, the sum of... | 322 00 | |
| " " | Watson H. Limburg, the sum of | 322 00 | 10 |
| " " | Levi B. Risdon, the sum of.... | 161 00 | |
| " " | Thomas N. Adams, the sum of | 161 00 | |
| " " | William P. Endebrock, the sum of ..... | 161 00 | |
| " " | Henry R. Swartz, the sum of.. | 161 00 | |
| " " | Leroy C. Thompson, the sum of | 161 00 | |
| " " | Charles H. Holcombe, the sum of ..... | 161 00 | |
| " " | Horace E. Case, the sum of... | 32 20 | 20 |
| " " | Alexander Klinkowstein, the sum of ..... | 161 00 | |
| " " | Henry Wirtschafter, the sum of | 32 00 | |
| " " | Frederick Winkhaus, the sum of | 644 00 | |
| " " | Robert J. Garrett, the sum of. | 161 00 | |
| " " | Margaret H. Risdon, the sum of | 96 60 | |
| " " | Katherine C. Fay, the sum of.. | 64 40 | |
| " " | Thomas Beaver Brown, the sum of ..... | 322 00 | 30 |
| " " | Frank G. Hagemeyer, the sum of | 322 00 | |
| " " | John S. Broughton, the sum of | 6,440 00 | |
| " " | Wilbur F. Sadler, Jr., the sum of ..... | 3,220 00 | |
| " " | Samuel W. Prior, the sum of.. | 161 00 | |
| " " | John L. Brock, the sum of.... | 161 00 | |
| " " | John V. B. Wicoff, the sum of | 161 00 | |
| " " | Ferdinand W. Roebling, Jr., the sum of ..... | 161 00 | 40 |
| " " | Karl G. Roebling, the sum of.. | 161 00 | |
| " " | W. O. Wheeler, the sum of.... | 45 08 | |

| | | |
|---|---|---|
| The said John S. Broughton, the sum of | 167 | 44 |
| " " Peter E. Hurley, the sum of.. | 644 | 00 |
| " " Barker G. Hamill, the sum of.. | 6,227 | 48 |
| " " W. Meredith Dickinson, the sum of ..... | 6,227 | 48 |
| " " Walter F. Smith, the sum of.. | 64 | 40 |
| " " Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., the sum of, ..... | 5,441 | 80 |
| | 37,074.88 | |

And it is further ordered that a copy of this order (the same need not be certified) be served within six (6) days from the date hereof, upon the said persons last herein named, personally, or by leaving the same at their respective places of abode, with a member of their family over the age of fourteen years.

E. R. WALKER,
C.

## Notice of Appeal of Broughton, Hamill, Dickinson and Sadler, Jr.

(Filed Oct. 17, 1912.)

IN CHANCERY OF NEW JERSEY.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

On Bill, &c.

The defendants, John S. Broughton, Barker G. Hamill, W. Meredith Dickinson and Wilbur F. Sadler, Jr., hereby appeal from the order heretofore made in the above-stated cause, bearing date the eighth day of October, nineteen hundred and twelve, and from the whole and every part thereof, to the Court of Errors and Appeals, the last resort in all causes.

Dated, October 17th 1912.

J. M. DICKINSON,
Solicitor for and of Counsel
with Defendants

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

J. M. DICKINSON,
Of Counsel with Defendants.

## Notice of Appeal of Charles J. Fury, Receiver.

(Filed Oct. 17, 1912.)

IN CHANCERY OF NEW JERSEY.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

} On Bill, &c.

Charles J. Fury, Receiver of the defendant, Trenton White City Company, hereby appeals from so much of the order heretofore made in the above-stated cause, bearing date the eighth day of October, nineteen hundred and twelve, as adjudges that the holders of the stock of the defendant company, to whom the certificates of stock of the said company were issued, as in the said order recited, to the amount of seventy-five thousand dollars ($75,000), each paid proportionately of the aggregate of said amount of seventy-five thousand dollars ($75,000), the sum of twenty-six thousand, six hundred and sixty-five dollars and sixty-two cents ($26,665.62), and that there remains upaid of the said stock so issued and outstanding as aforementioned, only the sum of forty-eight thousand, three hundred and thirty-four dollars and thirty-eight cents ($48,334.38), which sum is owing by the holders aforementioned of the said capital stock, proportionately as their respective holdings bear to the entire

issue of the capital stock of seventy-five thousand dollars ($75,000); and from so much thereof as orders that an assessment of six dollars and forty-four cents ($6.44) only be levied upon the holders and owners of the capital stock of the defendant company, parties respondent to these proceedings, whose names are in the said order set forth, for each share of said stock held by them respectively, as in the said order mentioned, and from so much thereof as orders that the said Charles J. Fury, Receiver as aforesaid, recover from, and the said holders and owners of the said capital stock, parties respondent hereto, do pay to the said Receiver at the time and place in the said order mentioned, the amounts of money only set opposite their names respectively, as in the said order set forth, to the Court of Errors and Appeals, the last resort in all causes.

Dated October 17, 1912.

JOHN H. BACKES,
Solicitor of Receiver.

I concede there is good cause for appeal in the above-stated cause.

JOHN H. BACKES,
Of Counsel with the Receiver.

## Petition of Appeal of Broughton, Hamill, Dickinson and Sadler, Jr.

(Filed Nov. 6, 1912.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants-Appellants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant-Respondent.

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

The petition of John S. Broughton, Barker G. Hamill, W. Meredith Dickinson and Wilbur F. Sadler, Jr., the appellants in the above stated cause, respectfully shows: That your petitioners find themselves aggrieved by a final order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the eighth day of October, nineteen hundred and twelve, in a cause wherein Alfred G. Holcombe, *et al.*, were complainants and Trenton White City Company was defendant, in this respect, to wit, that the said order adjudges that an assessment of $6.44 be levied upon the holders and owners of the common capital stock of the Trenton White City Company, for each and every share of said common stock held by them respectively, and that they pay the same to Charles J. Fury, Receiver of the Tren-

ton White City Company, on the fifteenth day of November, nineteen hundred and twelve; and in this respect, to wit, that said order adjudges that said Receiver do recover from and said holders and owners of said common capital stock do pay to said Receiver at the time above mentioned, the following sums of money: the said W. Meredith Dickinson the sum of $322.00; the said John S. Broughton, the sum of 6,440; the said Wilbur F. Sadler, Jr., the sum of $3,220; the said John S. Broughton, the sum of $167.44; the said Barker G. Hamill, the sum of $6,227.48; the said W. Meredith Dickinson, the sum of $6,227.48; and the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson and Wilbur F. Sadler, Jr., collectively, the sum of $5,441.80.

And your petitioners humbly appeal from the whole and every part of said order of the Chancellor, upon the ground that the same is erroneous, for that: (1) said stock so assessed is full paid and non-assessable and not liable to an assessment in the hands of the holders thereof; (2) said stock was issued for property purchased the value of which property equalled the par value of said stock; (3) the judgment of the Board of Directors of said Trenton White City Company declaring that the value of the property turned over in payment for said stock was equal to the par value of said stock, in the absence of fraud, was conclusive; (4) the Chancellor, in determining the value of the property turned over to said company and paid for in said stock, declined to determine the fee value of the land embraced in a certain lease assigned and turned over in part payment of the original subscription to the stock of the Trenton White City Company, and refused and declined to consider the value of a certain option to purchase said land contained in said lease, which option was assigned therewith; (5) said appellants are assessed and are

held jointly liable for $5,441.80, as holders and owners of eight hundred and forty-five shares of the common capital stock of said Trenton White City Company, which stock was originally issued to them, and which they immediately assigned to the treasury of said company, and which stock said company held as treasury stock and said appellants are not the owners or holders of said shares; (6) *bona fide* transferees of said stock issued to the original subscribers are not liable to assessment on said stock to pay the claims of creditors; (7) said order is in other respects erroneous.

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

J. M. DICKINSON,
Solicitor of Appellants.

## Petition of Appeal of Charles J. Fury, Receiver.

(Filed November 6th, 1912.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

| | |
|---|---|
| Between<br>ALFRED G. HOLCOMBE, *et al.*,<br>Complainants,<br>*and*<br>TRENTON WHITE CITY COMPANY,<br>**Defendant.** | On Bill, &c.<br>Petition of Appeal. |

To the Honorable, the Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Charles J. Fury, Receiver of the Trenton White City Company, the appellant in the above stated cause, respectfully shows:

(1) That your petitioner finds himself aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the eighth day of October, nineteen hundred and twelve, in a cause wherein Alfred G. Holcombe, *et al.*, are complainants and Trenton White City Company is defendant in this respect, to wit:

That the said decree adjudges that the holders of the stock of the defendant company, to whom the certificates of stock of the said company were issued, as in the said order recited, to the amount of seventy-five thousand dollars ($75,000), each paid proportionately of the aggregate of the said amount

of seventy-five thousand dollars ($75,000) the sum of twenty-six thousand six hundred and sixty-five dollars and sixty-two cents ($26,665.62), and that there remains unpaid of the said stock so issued and outstanding, as aforementioned, only the sum of forty-eight thousand three hundred and thirty-four dollars and thirty-eight cents ($48,334.38), which sum is owing by the holders aforementioned of the said capital stock, proportionately as their respective holdings bear to the entire issue of the capital stock of seventy-five thousand dollars ($75,000), and in this respect that it is thereby ordered that an assessment of six dollars and forty-four cents ($6.44) only be levied upon the holders and owners of the capital stock of the defendant company, parties respondent to the said proceedings, whose names are in the said order set forth, for each share of said stock held by them respectively, as in the said order mentioned, and that this appellant, as Receiver, as aforesaid, recover from, and the said holders and owners of the said capital stock, parties respondent to the said proceedings, do pay to this appellant, as Receiver, at the time and place in the said order mentioned, the amounts of money only as set opposite their names respectively, as in the said order set forth.

And your petitioner humbly appeals from that part of the said order of the Chancellor which orders as aforesaid, upon the grounds that the same is erroneous, for that:

(1) The holders of the said stock did not pay proportionately of the aggregate of their holdings $26,665.62;

(2) The Chancellor erroneously adjudged that a certain lease of land turned over to the said company by the said stockholders in payment of said stock was property and was of the value of $13,903.67;

(3) The Chancellor erroneously adjudged that the lighting contract embraced in the said lease, turned over to the said company by the said stockholders in payment of said stock was property and was of the value of $11,261.95;

(4) The Chancellor erroneously adjudged that the services of the stockholders who promoted the said company were for the benefit of the company, and that the said stockholders were entitled to compensation therefor to the amount of $1,500;

(5) The Chancellor erroneously adjudged and allowed to the said stockholders the sum of $26,655.62 in part payment of the said stock;

(6) The stock so issued and outstanding is wholly unpaid;

(7) The order should have levied an assessment of the full face value of each share of stock of $10 each;

(8) It should have been ordered that this appellant, as Receiver as aforesaid, recover from, and the holders and owners of the said capital stock, parties respondents to the said proceedings, do pay to this appellant, as Receiver, at the time and place in the said order mentioned, the sum of $10 for each share of the capital stock of the said company held by them respectively, as in the said order recited, or some other large sum of money sufficient to pay the debts of the defendant company and to liquidate its affairs;

(9) It should have been ordered that an assessment of the face value of each share of stock, amounting to $10 each, or some other large sum of money sufficient to pay the debts of the defendant company and to liquidate its affairs, should have been levied against Barker G. Hamill, John S.

Broughton, W. Meredith Dickinson and Wilbur F. Sadler, Jr., the original subscribers and holders of the said capital stock of seventy-five thousand dollars ($75,000);

(10) The said order is in other respects erroneous.

Your petitioner, therefore, prays that the said order of the said Chancellor may in the particulars aforementioned, be reversed, to the end that it may be ordered that an assessment of the face value of each share of said stock of $10 each, or some other large sum of money sufficient to pay the debts of the defendant company and to liquidate its affairs, be levied upon said stock and against the holders thereof, in the said order mentioned, or upon the original subscribers and holders of the said stock aforementioned, and that they pay the moneys so assessed to this appellant, Receiver as aforesaid, at a time and place to be fixed in such order.

And that your petitioner may have such other relief in the premises as to this Honorable Court shall seem meet.

JOHN H. BACKES,
Solicitor and of Counsel with Appellant.

## Answer to Petition of Appeal of Charles J. Fury, Receiver.

(Filed November 23, 1912.)

The answer of Charles J. Fury, Receiver of the Trenton White City Company, to petition of appeal of John S. Broughton, Barker G. Hamill, W. Meredith Dickinson and Wilbur F. Sadler, Jr., appellants.

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

And this respondent is advised and believes that the said order is agreeable to equity, except to such portions thereof from which this respondent has appealed, and he prays that the same, except so much thereof from which this respondent has appealed, may be affirmed with costs to be adjudged to this respondent.

JOHN H. BACKES,
Solicitor for Charles J. Fury,
Receiver and Respondent.

## Answer to Petition of Appeal of Hamill, Broughton, Dickinson and Sadler, Jr.

(Filed Nov. 23, 1912.)

The answer of Barker G. Hamill, John S. Broughton, W. Meredith Dickinson and Wilbur F. Sadler, Jr., respondents, to the petition of appeal of Charles J. Fury, Receiver of the Trenton White City Company, appellant in the above-stated cause.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say and admit that an order was on the eighth day of October last past made and entered in the Court of Chancery in the cause for that purpose mentioned in the said order, as therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said order is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

J. M. DICKINSON,
Solicitor for Respondents.

## Opinion.

(Filed Feb. 23, 1912.)

IN CHANCERY OF NEW JERSEY.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

31-524
On Bill, &c.

1. When a corporation is insolvent the holders of its capital stock not paid for, are obligated to pay so much of what is unpaid on the stock as will satisfy the claims of corporate creditors and meet the expenses of winding up its affairs.

2. The proper tribunal to ascertain the amount necessary for these purposes is a court of equity, as the courts of law have no procedure adapted to such a calculation; and the ascertainment may be made on a petition filed by the Receiver against stockholders in the suit wherein the corporation was adjudged to be insolvent, for a stockholder is an integral part of the corporation.

3. When in such a proceeding an assessment on the stock has been ordered by the Court of Chancery to meet corporate liabilities, and an action is brought against a stockholder to collect his quota he cannot in the action at law question the propriety of the assessment.

4. In the absence of all of the Directors of a corporation a quorum of the Board has no power

to do corporate acts, unless notice of the time, place and object of the meeting was given to each and every member, including the absentees, or unless there be a standing rule fixing times for stated meetings, which operates as constructive notice and is sufficient; or unless, further, a waiver of notice be signed by the absentees before the meeting. The reason is this: Each member of a corporate body has the right of consultation with the other members and has the right to be heard upon all questions considered, and it is presumed that if the absent members had been present they might have dissented and their arguments might have convinced the majority of the unwisdom of their proposed action, and thus have produced a different result. If, however, they had notice and failed to attend they waived their rights: likewise, if they signed a waiver of notice prior to the meeting; but consent given subsequent to the meeting looking to ratification of what was done, is without force to validate the action taken.

5. Where, however, capital stock of a corporation is issued under a resolution of the Board of Directors, which is invalid because passed at a meeting at which there were absentees who had no notice, nevertheless, acceptance of certificates of stock by the shareholders validates the action of the Directors in that regard; and this is not dependent upon the doctrine of ratification, which, in turn, depends upon knowledge of all material facts, but upon the mere acceptance of the certificates of stock without paying for them; and such acceptance renders the holders liable without any formal subscription on their part.

6. Where solicitors for a corporation offered one share of common stock as a bonus with every two

shares of preferred stock for which the public would subscribe, without any representation as to how the stock was to be issued, and such bonus shares were actually issued by and from the corporation and accepted by subscribers for preferred stock, such certificates constitute an original issue of corporate stock notwithstanding the shares were first issued to promoters, as for property purchased, and by them turned back to the company for the purpose of being issued to such subscribers And the holders of stock issued as a bonus are always required to pay for their shares to satisfy the claims of creditors.

7. Even the solemnly expressed judgment of the Board of Directors of a corporation cannot impart value to property which has no value; and neither bookkeeping nor mere recitative language in resolutions creating values can be accepted as the equivalent of proof of *bona fide* value required by the statute where stock is issued for property purchased.

8. A corporation may issue stock to the amount of the value of the property, but the value of the property must at least equal the face value of the stock.

9. The judgment of Directors who are by law entrusted with the power to issue stock to the amount of the value of the property, and on whom, therefore, is placed the first duty of valuing, must be accorded considerable weight; but their judgment is not conclusive when subject to judicial scrutiny; nor is it necessary that conscious overvaluation or any other form of fraudulent conduct on the part of the Directors should be shown to justify judicial interposition; their honest judgment, if reached without due consideration into the elements of value, or if based in part upon an

estimate of matters which really are not property or if warped by self-interest, may lead to a violation of the rule for valuing as surely as would corrupt motive.

10. In a suit between stockholders it seems that after the stock has once been issued the holder shall not be liable for any further payment in the absence of actual fraud in the transaction; but this does not operate as against creditors, for when the rights of the creditors of an insolvent corporation intervene a different rule prevails.

11. Corporate stock issued, outstanding and unpaid for, is a trust fund for the benefit of creditors; and this doctrine is a hard and fast rule, which is never relaxed. In this State, however, the stockholder's liability to creditors no longer depends alone upon the trust fund theory, but is held to be statutory. And while an issue of bonus stock was formerly good as between the company and its stockholders under an agreement therefor, yet it is now held that these contracts are void, but it is also held that stockholders remain liable to a Receiver for the benefit of creditors.

12. The provision in No. 49 of the corporation act that in the absence of actual fraud in the transaction the judgment of the Directors as to the value of property purchased shall be conclusive, introduced no novelty into the law but was merely a declarative enactment of what was and had been the settled law and policy in this State.

13. The original issue of corporate stock is a special function, in the exercise of which the Legislature has fixed a standard to be observed and it is the duty of the Courts, so far as their jurisdiction extends, to see that this standard is not violated either intentionally or unintentionally.

14. Neither stockholders nor Directors have any right to make a present capitalization of prospective future profits of a corporation; and, consequently, they cannot issue capital stock therefor, as for property purchased.

15. In cases where stock is issued for property purchased our statute contemplates an actual appraisement of such property by the Board of Directors.

16. In an issue of corporate stock for property purchased, and property taken over at a grossly excessive value, the stockholders are, nevertheless, entitled to have credited to the payment for stock, the just and fair value of the property conveyed to, and service rendered for, the company, and for which stock was issued, just as surely as they must be charged for the stock where value is absent.

17. Where a corporation takes over a lease by assignment the value of that lease to the corporation is its rental value for the outstanding, unexpired term, plus any other things of value to be received by the lessee under the lease.

18. Where Directors of a corporation take over an unexpired lease but fail to appraise it according to its rental value, and give it a value in excess of what it actually has, their judgment will be reviewed by this court, which will exercise its judgment now as of the time when they should have acted, in substitution for a judment they should have formed; and the credit to be given the stockholders will be limited to the then fair value of the lease; that is, to its value as of the date and time when it should have been valued originally; ntither subsequent success nor failure being permitted to operate in the forming of a nunc pro tune judgment, for, while neither the hope and expectation of success can create property of that which is not

property, equally the failure of those hopes and expectations cannot operate to destroy that which was and is property.

19. The stockholders of an insolvent corporation have an absolute right to the protection of whatever there was fairly, reasonably and honestly of value in the property at the time it was acquired, and any extremely low price brought by the property at the receiver's sale is no criterion of its value.

20. The true method of calculating the value of an unexpired lease is not by ascertaining the yearly rental value, and then multiplying the figures by the number of years the lease has to run, but by calculating its value by the annuity tables; that is, by multiplying the annual value by the value of one dollar per year for the number of years in the unexpired term.

21. While formerly subscriptions to capital stock could only be paid in money, stock is now issued for work and labor as well as for the purchase of property; but the cases in which such transactions are upheld are only those where the services rendered or property purchased are equal in value to the stock issued therefor.

22. Property is something to which the owner can have title. Title may be evidenced by an appropriate instrument. No instrument for the conveyance of things which are not property is known to the law, and none can be contrived.

23. Promoters of a corporation are obliged to select competent persons as directors—men who would act wholly in the interest of future stockholders, and who would not be biased or influenced by the persuasions of proposed vendors or by friendship for them—and to make to those directors a dis-

closure of all material facts; but where, however, the promoters are themselves directors and constitute a majority of the Board, it is their duty to act as an independent Board of Directors with full knowledge, would have acted, namely, to make a careful inventory and appraisement of all property to be purchased with stock or for cash, and to either issue stock or pay in cash, measure for measure—value for value.

24. In making an assessment against stockholders of an insolvent corporation it is the practice of this Court, first, to ascertain the whole amount of the unpaid debts; second, in case of unpaid stock subscriptions or stock issued without payment, to determine the names of such stockholders and the amount due from each; and third, to make an assessment against those stockholders, which, in case an action at law is brought, based upon that assessment, is conclusive against the stockholders. In order to ascertain the whole amount of money necessary to be raised the Receiver must compute the amount due on the several claims allowed by him and approved by this Court by adding interest on each claim. To the sum of those must be added the cost of the solicitors for the creditors in the proceeding to wind up the corporation and a reasonable counsel fee to complainant, to be fixed by the Court on motion for that purpose; also, a round sum to cover the Receiver's compensation and any further expenses which he may incur in the enforcement of the decree against the defendants held liable thereby. This last sum will be liable to reduction, according to the conduct of the defendants in resisting the enforcement of the decree.

25. This Court has the power to continue a hearing and permit further and other proof to be taken, and that power ought to be exercised where it does

not appear that injustice will be done, but where, on the contrary, justice requires it.

26. Promoters of an amusement company secured a lease for ten years upon a park, which lease contained a covenant on the part of the lessors that they would furnish certain arc lights for lighting the park during the term of the lease and that they would sell to the lessee at any time during the term for a certain price. The promoters also negotiated with the builders of amusement devices for the erection and installation in the park of certain such devices securing considerable reductions from the asking price therefor. They negotiated also with others for appliances and things requirable to equip the park as a going concern. They formed a corporation which took over the lease, installed the amusement devices (through purchases made of the manufacturers thereof), and utilized various other appliances and things negotiated for by the promoters. On the organization of the company the promoters were both stockholders and Directors and, as such, passed omnibus resolutions reciting that the lease, devices and other things just mentioned were of the value of $79,000.00 to the company, and the company resolved to purchase the same from the promoters for $4,000.00 in cash and $75,000.00 in common capital stock. The company commenced business and prosecuted it for some time and then failed. A Receiver was appointed by this Court and he brought this suit to have an assessment made against the stockholders for such sums as will satisfy the claims of creditors—the assets coming to his hands being insufficient for the purpose. The stockholders defended and claimed that the things turned over to the company by the promoters, and for which stock was issued as for property purchased, were worth a greater sum than the cash and par of the stock given therefor. They

adduced testimony tending to show that the leased premises were of a value largely in excess of the price for which the company could have purchased the premises in fee under the lease; also that the lighting contract contained in the lease was of very great value; also that large sums had been saved to the company through the negotiations of the promoters in securing reductions from the price of devices which were installed in the park: Held, that the lease, including the lighting contract therein contained, was property turned over to the corporation, but that the basis of ascertaining the value of the lease was erroneous; that its true value is not the difference between what the company would have to give for the property, if it gave it, and the value of the property which it would get, if it got it (assuming there was such difference, great or small), but that its true value consisted of rental value, including the value of the lighting contract; that the sums said to have been saved to the company through the negotiations of the promoters in securing reductions from the asking price for devices to be installed in the park, were not property at all, and, therefore, could not form the basis for an issue of stock as for property purchased under the statute; that for their services and expenses in promoting the company, securing its organization and starting it upon its career as a going concern, the promoters were entitled to reasonable compensation together with their expenses, and that payment therefor could be made in stock instead of cash: Held, further, as there is no proof before the Court of the rental value of the leased premises (there being, however, evidence as to the value of the arc lighting contract), and no evidence as to the reasonable value of the promoters' services, that, while an assessment will have to be made upon the stock issued as for property purchased, to satisfy the claims of creditors, the stockholders are,

nevertheless, entitled to have credited on their shares the rental value of the leasehold, including lighting contract, and reasonable compensation for the services of the promoters, together with their expenses. The ascertainment of these values requiring further testimony, and the Court having power to open the proofs and take testimony for such purpose, the proofs will be opened.

On Application of Receiver for Assessment on Capital Stock for Benefit of Creditors.

Mr. JOHN H. BACKES, for Receiver.
Mr. JOHN M. DICKINSON and Mr. GILBERT COLLINS, for Stockholders.

WALKER, V. C.:

Upon bill filed the defendant company was declared insolvent, and Mr. Charles J. Fury was appointed its Receiver. An order limiting creditors was made and filed and in due course claims were presented to the Receiver amounting to eight hundred and six dollars and twenty-eight cents, preferred, and thirty-eight thousand eight hundred and seventeen dollars and six cents, unpreferred, total thirty-nine thousand six hundred and twenty-three dollars and thirty-four cents.

In pursuance of an order the Receiver exposed for sale at public venue the property of the defendant corporation consisting of the following:

> "The lease of the lands and premises known as Capital City Park, consisting of 120 acres. (The rent on this lease is fully paid.)
>
> Carousel, shute the shutes, concert hall, dancing pavilion, down and out, crystal maze, moving pictures, theatres, boating and numerous other amusement devices, including the buildings upon which the same are

erected, together with all other personal property, as fully as the same is described in an inventory filed by the said Receiver in the office of the Clerk of Chancery, in a suit wherein Alfred G. Holcombe, *et al.*, are complainants and the Trenton White City Company is defendant."

In his report of sale the Receiver stated that in addition to the usual notice required by law he caused to be posted in the City of Trenton and Township of Hamilton (wherein the property was located) at least fifty other like notices; that in all one hundred posters were printed, and that those that were not posted were mailed to persons who were likely to be interested in property such as the Receiver was about to sell, and also advertised the sale in the Cincinnati Bill Board, New York Dramatic Mirror, New York Clipper, New York Sunday Telegraph, Trenton Sunday Advertiser and Trenton Evening Times; that the first four papers are of extensive circulation in the theatrical profession and among amusement purveyors, such as the defendant company; that in the notice was published that the Receiver asked for private bids, but received none such, and only received one inquiry concerning the sale as a result of the advertisements; that when the property was offered there was one bid for one hundred dollars and a second bid for five hundred dollars, and, there being no contending bidders, he publicly adjourned the sale for one week, at which time there were two rival bidders, and that two thousand seventy-five dollars was the highest bid offered, and for that much the property was struck off, and the sale afterwards confirmed, on notice to the creditors and stockholders.

After the sale the Receiver filed a petition

setting forth, among other things, that the defendant company was organized under our corporation act (Revision of 1896) for the purpose of acquiring, constructing and operating grounds, parks or paces of amusement and to equip the same with all necessary appliances and paraphernalia for operating and conducting games and amusements of all kinds whatever; and that the total authorized capital stock of the corporation was one hundred and fifty thousand dollars, divided into fifteen thousand shares of the par value of ten dollars each, of which seven thousand five hundred shares, amounting to seventy-five thousand dollars was to be preferred stock, and seven thousand five hundred shares, amounting to seventy-five thousand dollars was to be common stock; that the holders of the preferred stock should be entitled to receive a certain dividend before any dividend on the common stock should be paid, and that in the event of liquidation or dissolution the holders of the preferred stock should be paid at par before any amount should be paid to the holders of the common stock; that certain persons, naming them, subscribed for certain shares of the common stock of the corporation, whereby they became liable to pay for the same, at par, but have not done so, notwithstanding demands by the Receiver, and he prayed that an assessment be levied against the persons so subscribing, respectively, for the full amount of the common stock so issued to them, or for such other sum as might be sufficient to enable him to pay the debts of the defendant corporation and liquidate its affairs.

Upon the filing of this petition an order was made requiring the persons shown to be stockholders to show cause on a certain day why the prayer of the petition should not be granted, and

afterwards a trial was had in this court upon the question presented by the petition.

This proceeding instituted by the Receiver is in accordance with the practice which was established in Cumberland Lumber Co. *v.* Clinton Hill Lumber Mfg. Co., 57 N. J. Eq. (12 Dick.), 627, wherein the Court of Errors and Appeals, speaking by Mr. Justice Dixon, at p. 629, said:

> "When the business of a corporation has been abandoned and the corporation is insolvent, subscribers for or holders of its stock, not paid for, have no further obligation with respect thereto than to pay so much of what is unpaid on the stock as will satisfy the claims of corporate creditors and meet the expenses of winding up its affairs. Scovill *v.* Mayer, 105 U. S., 143, 456; Wetherbee *v.* Baker, 8 Stew. Eq., 501, 506; Hood *v.* McNaughton, 25 Vr., 425, 427; Gen. Stat., p. 910, §5; P. L. of 1896, p, 284, §21.
>
> The proper tribunal to ascertain the amount necessary for these purposes is a court of equity, since courts of law have no procedure adapted to the marshalling of assets and liabilities requisite in such a calculation. The ascertainment may be made on a petition filed by the Receiver against the stockholders in the suit wherein the corporation was adjudged to be insolvent, for it seems to be settled that a stockholder is so far an integral part of the corporation that, in the view of the law, he is to that extent privy to those proceedings; and when in such a suit an assessment on the stock has been ordered by the Court to meet corporate liabilities, and an action is brought against a stockholder to collect his quota, he cannot there question the propriety of

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the assessment. *Hawkins* v. *Glenn*, 105 U. S., 319; *Hood* v. *McNaughton*, 25 Vr., 425."

Preferred stock was issued and paid for in cash at par. All of the common stock was issued to the promoters, Messrs. W. Meredith Dickinson, John S. Broughton, Barker G. Hamill, Wilbur F. Sadler, Jr., and Christian H. Oberheide, and was by them returned to the treasury of the company to be used and distributed as a *bonus* to the subscribers for the preferred stock in the ratio of one share of common stock for every two shares of preferred stock. The common stock was accordingly issued, and now those stockholders in virtue of their possession of the certificates, unpaid for, are asked to respond.

At the corporation's organization meeting Messrs. W. Meredith Dickinson, John S. Broughton, Barker G. Hamill, John M. Dickinson, Wilbur F. Sadler, Jr., and F. W. Roebling, Jr., were elected Directors. Action was then taken with reference to the issuance of stock, as shown by the minutes as follows:

"Whereas Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide own and control a certain leasehold in and to a certain large tract of land and premises in the Township of Hamilton and County of Mercer, commonly known as Broad Street Park, in which lease there is an unexpired term of four years; and whereas said persons above named also control an option upon said property to lease the same for an additional period of six years from the time of the expiration of the term of their present lease aforesaid; and whereas said persons have entered into various contracts with certain persons, firms and corporations for the con-

struction and erection of various devices which would be useful and necessary in the operation and conduct of the business of this company; and whereas it appears to the stockholders that such property rights and interest would be of great value to this company, and that their acquisition is indispensable to the successful operation of this company, and the conduct of its business, and that no other property rights and interests of a similar nature and character can be acquired by this company which would be of equal value to it; and whereas the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide have offered to sell said property interests and contract rights to this company for the sum of four thousand dollars in cash and in consideration of the issue of the common stock of this company to them to the amount of seventy-five thousand dollars, par value;

Now, therefore, be it resolved, that the Board of Directors of this company be and they are hereby authorized in their discretion to purchase the property, leasehold interests and contract rights above mentioned, for the price aforesaid, and to issue said stock in payment therefor.

Upon motion duly made and seconded, and by the affirmative vote of all present, the following preamble and resolution was unanimously adopted:

Whereas, it has been agreed between each of the incorporators and Barker G. Hamill, John S. Brouhton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide that the stock to be issued in payment for the property authorized to be purchased by

the resolution above set forth shall include the stock subscribed by the incorporators, as evidenced by the certificate of incorporation.

Now, therefore, be it resolved, that the Board of Directors be and they are hereby authorized and directed to accept said property as full payment for the subscription for stock of the incorporators, and to issue full paid stock to the incorporators or their assigns to the amount of their respective subscriptions."

A meeting of the Board of Directors was held on the adjournment of the stockholders' meeting. There were present Messrs. John S. Broughton, Barker G. Hamill, John M. Dickinson, W. Meredith Dickinson and C. H. Oberheide. Messrs. Sadler and Roebling were absent. In the minute book, at the end of the minutes of the Directors' meeting, is a waiver of notice of the time and place of, and of the business to be transacted at the meeting. This is signed by all of the Directors, including the absentees, and bears date the day of the meeting, namely, March 26, 1907. It appears, however, that the absent Directors had no notice of the meeting, and that they appended their signatures to the waiver afterwards. At this meeting the following action was taken:

"On motion duly made and seconded, it was unanimously resolved that this company accept the offer of Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide, to sell and assign to this company the property described in the resolution of the stockholders passed at the first meeting of the corporation consisting of property rights, leasehold interests, and contract rights, said

Board of Directors do hereby adjudge and declare that said property rights and interests are of the fair value of seventy-nine thousand dollars, and that the same are necessary and indispensable for the conduct of the business of this company;

"And be it further resolved that the President and Secretary of the company be and they are hereby authorized to execute any and all agreements on behalf of this company for the acquisition of said property rights, leasehold interests and contracts, and to issue to the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr. and C. H. Oberheide, or their assigns, certificates of full paid common capital stock of this company to the amount of seventy-five thousand dollars, par value, and to pay to them in cash, in addition thereto, the sum of four thousand dollars.

"On motion it was ordered that an assessment of one hundred per cent. be issued upon the shares of stock subscribed by the incorporators, as evidenced by the certificates of incorporation.

"On motion, it was further resolved that in compliance with the resolution of the stockholders passed at the first meeting of the corporation, the company accept in payment of said subscriptions and assessments the property agreed to be sold to the company, as set forth in the preceding resolution."

The first contention made on behalf of the Receiver is that in the absence of all of the Directors a quorum of the Board of the White City Company had no power to pass the resolution just recited unless notice of the time, place and object of the meeting was given to each and every member, in-

cluding the absentees; or unless the waiver of notice was signed by the absentees at or before the meeting, and that the resolution passed at the meeting held is inefficacious to protect the defendants as holders of stock issued for property purchased. To this I agree.

The Supreme Court in State *v.* Ferguson, 31 N. J. L. (2 Vr.), 107, 124, held:

> "All the members must be summoned. And in this case the fifth man was not present nor was he notified of the meeting. The rule that all the members of the corporate body, or of a branch of a corporate body who discharge special functions for the society, who have the right to consult and to vote, must be notified in some form to attend the meetings of the body to which they belong, is too familiar to require much reference to authorities in its support.
>
> See Grant on Corp., 156-7-8."

And in Metropolitan Telephone Co. *v.* Domestic Telegraph Co., 44 N. J. Eq. (17 Stew.), 568, Mr. Justice Magie (afterwards Chancellor) said at p. 573:

> "When power is given to be exercised, in the absence of a rule requiring the concurrence of a definite number, a majority of a quorum duly convened may act. Wells *v.* Rahway W. R. Co., 4 C. E. Gr., 402; Cadmus *v.* Farr, 18 Vr., 208; Barnet *v.* Paterson, 19 Vr., 395. But since each is entitled to take part in the exercise of the power, each is entitled to notice. Notice may be given by the adoption of rules fixing times for stated meetings; constructive notice will be sufficient if some rule, legally prescribed, declares it sufficient; but for special meetings, in the absence of a

rule for constructive notice, actual notice must be given. In the absence of such notice, a special meeting will not be legally convened. These rules apply to the corporators of incorporated companies, the Directors and any Committee thereof. Green's Brice's Ultra Vires, 438 and notes; Angell & Ames Corp., §492; Reeves *v.* Ferguson, 2 Vr., 107."

This Court in Schum *v.* Seymour, 24 N. J. Eq. (6 C. E. Gr.), 143, held:

"The affairs of a corporate body can be transacted only at a corporate meeting. Its legislative and discretionary powers can be exercised only by the coming together of the members who compose it; and its purposes or will can be expressed only by a vote embodied in some distinct and definite form. Their only existence is as a board, and they can do no valid act except as a board, and such act must by ordinance or resolution, or something equivalent thereto."

See also Dey *v.* The Mayor, &c., 19 N. J. Eq. (4 C. E. Gr.), 412; Johnston *v.* Jones, 23 N. J. Eq. (8 C. E. Gr.), 216; Holcomb's Executors *v.* Managers, 9, N. J. Eq. (1 Stock.), 457.

In Whitehead *v.* Hamilton Rubber Co., 52 N. J. Eq. (7 Dick.), 78, this Court held:

"The presumption that an instrument to which the seal of a corporation is duly attached was first authorized by the corporation, is overcome by proof that the authority for the execution of such instrument was given at a special meeting of the Directors, at which all were not present, there being no proof that the absent ones had any notice of such meeting; nor will the neces-

> sity of such notice be dispensed with by showing that the meeting was an adjourned meeting, the previous one having been a special meeting, without also showing that there was notice of such first special meeting, and that the object of it was made known in the notice, or that the Directors, absent at the adjourned meeting, were present at the time of the adjournment, and that the question to be determined at such adjourned meeting was made known as the object of such adjournment."

The reason and principle underlying these decisions is this: Each member of a corporate body has the right of consultation with the others and has the right to be heard upon all questions considered, and it is presumed that if the absent members had been present they might have dissented and their arguments might have convinced the majority of the unwisdom of their proposed action, and thus have produced a different result. If, however, they had notice and failed to attend they waived their rights: likewise if they signed a waiver of notice prior to the meeting; but consent given subsequent to the meeting looking to ratification of what was done, is without force to validate the action taken.

I am, therefore, required to decide that the action of the Board of Directors of the defendant company, in ordering the issuance of the common stock, was null and void. Nevertheless, the stock issued is not invalid, because that issue was validated by the stockholders. This the stockholders had a right to do, at least so far forth as to render the stock an asset for the benefit of creditors in case of insolvency.

Invalid action by a corporation in reference to third parties may be validated by the acts of those parties. This, in reference to stock issues does not

depend upon the doctrine of ratification, which, in turn, depends upon knowledge of all material facts, but upon acceptance of the certificates of stock. This is familiar doctrine. Suppose stock were authorized to be issued and sold at par for cash by the resolution of a Board of Directors which was void, if the stock were actually issued by the officers of the company and paid for by the subscribers to whom certificates were delivered, of course that would amount to a validation by the stockholders, and the company would be estopped from denying the validity of the shares on the ground of its invalid action in issuing them. A corporation, like an individual, cannot receive the benefit of a transaction and repudiate its obligation under it. And it has been held heretofore that an issue of bonus or unpaid for stock was good as between the company and its stockholders in accordance with their agreement (Hebberd *v.* Southwestern Land & Cattle Co., 55 N. J. Eq. (10 Dick.), 18, 31; yet it has since been decided that these contracts are not only voidable but void, and cannot be laid hold of by either party, company or stockholders, as a ground of action or defense. Eastern National Bank *v.* American Brick Co., 70 N. J. Eq. (4 Robb.), 722, 728. Notwithstanding this, the stockholders still remain liable to a Receiver for the benefit of creditors, as was expressly declared by the Court of Errors and Appeals in the very case (Eastern Nat. Bank *v.* American Brick Co., *supra*) which held the contract void as between the company and the stockholders.

In Clevenger *v.* Moore, 71 N. J. L. (42 Vr.), 148, 151, it was held, that a person might become liable as a stockholder without a formal subscription, or where it is irregular, and this even where the certificates were attested by the Secretary instead of by the Treasurer as the law re-

quires, and that irregularity does not relieve the defendant's responsibility as a shareholder.

Mere acceptance of a certificate of stock without paying for it renders the holder liable without any formal subscription on his part. See *v.* Heppenheimer, 69 N. J. Eq. (3 Robb.), 36, bottom of page 57 and top of page 58.

As above remarked, holders of bonus stock are always required to pay for their shares to satisfy the claims of creditors. Chancellor McGill in Hebberd *v.* Southwestern Land & Cattle Co., 55 N. J. Eq. (10 Dick.), 18, at p. 31, speaking to the subject said:

> "As to the bonus stock, the contract between the purchaser of bonds and the company was that he should not be called upon to pay for the stock. Such a contract is binding upon the company and its shareholders, but as the capital stock constitutes a trust fund for the payment of debts, it cannot be given away from the demands of creditors, and hence the holders of bonus stock may be required to pay for it in satisfaction of the demands of creditors, after the exhaustion of all other assets, upon the ground that its issuance to them was a fraud in law upon the creditors. Richardson *v.* Green, 133 U. S., 30; Handley *v.* Stutz, 139 U. S., 417."

The stock under consideration, being valid at the suit of the Receiver in behalf of creditors, against the persons who received the shares, notwithstanding irregularity in the issue, makes necessary the decision of another and more important question involved in this case, namely, whether or not the shareholders, on the facts present before me, are liable to pay for their

shares, in whole or in part, to satisfy the claims of the creditors of the insolvent corporation.

It will be remembered that the total claims presented to and allowed by the Receiver amount to the sum of thirty-nine thousand six hundred twenty-three dollars and thirty-four cents, practically forty thousand dollars, and that the total, par value, of the common stock issued and outstanding in the names and possession of the various stockholders amounts to the sum of twenty-five thousand dollars.

Our corporation act provides in §48:

> "Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this act, except as hereinafter provided in case of the purchase of property."

And in §49:

> "Any corporation * * * may purchase * * * property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the Directors as to the value of the property purchased shall be conclusive."

It must be apparent, however, even to the casual observer, that a solemnly expressed judgment of the Board of Directors of a corporation cannot impart value to property which has no value. This has been decided so many times as to have become axiomatic. An apt illustration by the Court of Errors and Appeals is to be found

in Knickerbocker Imp. Co. *v.* Board of Assessors, 74 N. J. L. (45 Vr.), 583, 588, wherein it was remarked by Judge Dill, as follows:

> "Neither bookkeeping nor mere recitative language in resolutions of a Board of Directors creating values can be accepted as the equivalent of the proof of *bona fide* value required by our statute where stock is issued for property purchased."

As already shown, the stockholders and Directors by formal resolutions authorized the purchase of property at a valuation of seventy-five thousand dollars in the common stock of the company. The Directors in the resolution declared that the

> "property rights, leasehold interest, and contract rights, said Board of Directors do hereby adjudge and declare that said property rights and interest are of the fair value of $79,000, and that the same are necessary and indispensable for the conduct of the business of this company."

This language is very like that which was reprobated by the Court of Errors and Appeals in Knickerbocker Imp. Co. *v.* Board of Assessors, *supra,* at p. 587, where Judge Dill further said:

> "The property is described as 'the rights and everything' of the Cazanove Champagne Company. There is no other description of the property or competent proof of its tangibility or value.
>
> "The allegations of assumption of liability by the prosecutor are not evidence and are of no assistance in determining the actual value received, because there is no proof as to the extent or substantiability of the liability."

Speaking of §48 and §49 of the Coroporation Act the Court of Errors and Appeals in Donald *v.* American Smelting and Refining Co., 62 N. J. Eq. (17 Dick.), 729, 731, said:

"The meaning of Section 48 is not questionable. The money must equal the face value of the stock. The language of Section 49 is even more explicit. The corporation may issue stock to the amount of the value of the property. The value of the property in one case, just as the value of the money in the other, must at least equal the face value of the stock. Such was the view expressed for this Court by Mr. Justice Depue in Wetherbee *v.* Baker, 8 Stew. Eq., 501, and supported by abundance of authority.

The distinction between the contemplated issue of corporate stock for property and its issue for money lies, not in the rule for valuation, but in the fact that different estimates may be formed of the value of property. When such differences are brought before judicial tribunals, the judgment of those who are by law entrusted with the power of issuing stock 'to the amount of the value of the property,' and on whom, therefore, is placed the first duty of valuing property, must be accorded considerable weight. But it cannot be deemed conclusive when duly subjected to judicial scrutiny. Nor is it necessary that conscious over-valuation or any other form of fraudulent conduct on the part of these primary valuers should be shown to justify judicial interposition. Their honest judgment, if reached without due examination into the elements of value, or if based in

part upon an estimate of matters which really are not property, or if plainly warped by self-interest, may lead to a violation of this statutory rule as surely as would corrupt motive.

When corporate stock has once been issued for property purchased then the Legislature has directed the application of a different rule. In the words of the same Section 49, 'the stock so issued shall be full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment under the provisions of this act; and in the absence of actual fraud in the transaction the judgment of the Directors as to the value of the property purchased shall be conclusive.'

Under these provisions, after the property has been purchased and the stock issued therefor, nothing short of actual fraud in the transaction can impair the right of the holder to hold his stock as full-paid stock free from further call. The cases of Bickley *v.* Schlag, 1 Dick. Ch. Rep., 533, and Rural Homestead Co. *v.* Wildes, 9 Dick. Ch. Rep., 668, indicate that the completed transaction was equally secure even before the statute received its present decisive form.

By the rule above stated, the matter in hand must be judged."

Donald *v.* American Smelting & Refining Co., *supra,* was a suit between stockholders, and, therefore, one in which the observation of Mr. Justice Dixon to the effect that after the stock has once been issued the holder shall not be liable for any further payment in the absence of actual fraud in the transaction, cannot have the effect of overruling as against creditors, what he had just said about

the value of property purchased equalling the face value of the stock, his language being "the value of the property in the one case, just as the value of the money in the other, must at least equal the face value of the stock." As we have already seen an issue of bonus stock was formerly good as against the company. Hebberd *v.* S. L. & C. Co., *ubi supra.* But even then where the rights of creditors intervened a different rule prevailed.

Commenting upon Mr. Justice Dixon's assertion that after the stock has issued (in a suit between stockholders), a different rule prevails, V. C. Pitney in See *v.* Heppenheimer, *supra*, at p. 56, remarks as follows:

> "The learned judge, however, in Donald *v.* American Smelting Co., *supra,* after using the language above quoted, proceeds to express some thoughts, which, so far as I can perceive, are not necessary to the decision, of the cause, and so necessarily in the nature, at best of *obiter dicta*, and therefore, not binding upon me.
>
> I venture to suggest that their object was to show the effect of stock once issued coming into the hands of a *bona fide* purchaser. They certainly have no application to the present case in which creditors are suing.
>
> They are, however, relied upon by the defendants and are as follows:
>
> 'When corporate stock has once been issued for property purchased, then the Legislature has directed the application of a different rule. In the words of the same Section 49, the stock so issued shall be full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment under the provisions of this act; and in the absence of actual fraud

in the transaction the judgment of the Directors as to the value of the property purchased shall be conclusive.' (This last clause is not found in the act governing the transaction here in question.)

'Under these provisions, after the property has been purchased and the stock issued therefor, nothing short of actual fraud in the transaction can impair the right of the holder to hold his stock as full-paid stock, free from further call.'

As applied to the case then before the Court of Errors and Appeals, I understand that language as holding that if the stock, the issue of which was sought to be restrained, should be issued with the words, 'issued for property purchased,' printed on the certificate, it would not be competent for the company to deny the validity of the stock and the rights of the holders of the certificates on the ground that the property had been overvalued, unless there was fraud practiced by the vendor on the vendee.

He did not have in mind the case of creditors. (And see the languge of Mr. Justice Brown in Handley *v.* Stutz, 139 U. S., 417, at p. 426.)

Morover, the construction of that language claimed by defendants would result in a practical nullification of the section of the act first above quoted, which declares the liability to creditors of stockholders, who have not paid in the amount of their stock, or have paid for it in property at an overvaluation since it is entirely practicable to purchase the property and issue the stock in a single transaction and before any creditors exist or any judicial interference can be made. In

short, the construction claimed would run directly counter to the carefully prepared opinion of Justice Depue, in Wetherbee *v.* Baker, 35 N. J. Eq. (8 Stew.), 501 (at p. 511 *et seq.*), relied on by the learned judge in his opinion here in question."

But, after all, the observation of Mr. Justice Dixon in Donald *v.* American Smelting & Refining Co., just adverted to, was predicated upon the cases of Bickley *v.* Schlag, 1 Dick., 533, and Rural Homestead Co. *v.* Wildes, 9 Dick., 668, which he cited in support of his assertion or dictum. Bickley *v.* Schlag, upon inspection, will be found to be a case in which the property purchased by stock bore a very considerable resemblance in value to the face of the stock. It was a creditors' suit and stock was issued of the value of seventy-five thousand dollars for property worth sixty-four thousand dollars, leaving a balance of only eleven thousand dollars unpaid for. Rural Homestead Co. *v.* Wildes, was not a creditors' suit but was one between stockholders, just as Donald *v.* American Smelting Co. was, and did not at all involve the question here under discussion; and this case makes it apparent that in that class of suits, namely, those between stockholders of going concerns, a different rule prevails than in cases of insolvent corporations where the rights of creditors intervene.

The doctrine that corporate stock issue, outstanding and unpaid for is a trust fund for the benefit of creditors, is a hard and fast rule imbeded in the decisions of the courts of this and other States, and is never relaxed. In this State, however, the stockholder's liability to creditors no longer depends alone upon the trust fund theory, but is held to be statutory. Easton Nat. Bank *v.* American Brick Co., 70 N. J. Eq. (1 Rob.), 732, 729.

I must agree with the proposition of counsel for the Receiver that the provision in the Corporation Act, revision of 1896, §49, which provides that "in the absence of actual fraud in the transaction, the judgment of the Directors as to the value of the property purchased shall be conclusive," introduced no novelty into the law, but is simpy declaratory of the law.

The case of Donald *v.* American Smelting & Refining Co., *supra*, was decided in this Court by Vice-Chancellor Stevens, who at p. 461, adverted to the fact that the provisions that in the absence of actual fraud the judgment of the Directors as to value should be conclusive, appears for the first time in the act of 1896, and was omitted from the act of 1875, and he observes at p. 463, that it is quite apparent that the intention of the revisors of the act of 1896 was to put in statutory form the result (in this regard) of prior adjudications. One of the cases cited by him in support of this view is Bickley *v.* Schlag, 46 N. J. Eq. (1 Dick.), 534 (Court of Errors and Appeals, 1890), wherein Chief Justice Beasley said at p. 536 (quoting from Coit *v.* The Gold Amalgamating Co., 119 U. S., 345):

> "Where full paid stock is issued for property received, there must be actual fraud in the transaction to enable creditors of the corporation to call the stockholders to account."

And as was remarked by V. C. Bergen in Easton Nat. Bank *v.* American Brick and Tile Co., 69 N. J. Eq. (3 Rob.), 326, at p. 329:

> "It will be observed that this differs from the law of 1896, in that the latter act * * * makes the judgment of the Directors conclusive as to value in the absence of actual

> fraud. * * * This change has no other effect than expressing what our courts had already determined in construing the earlier legisation."

Thus it appears that that provision in the revision of 1896 is merely a declarative enactment of what was and had been the settled law and policy of this State.

But, after all, the case under consideration is controlled absolutely by the decision in See *v.* Heppenheimer, *supra,* rendered in 1905. In that case the defendants were adjudged to be responsible in favor of creditors, in enormous sums for stock issued as for property purchased and given as a bonus, and the learned judge who wrote the opinion so clearly showed that he was simpy enforcing the settled law of the State that the defendants apparently did not think it worth their while to appeal, and no appeal was taken. That case governs this Court and is binding upon me.

Although it has not passed under review in the Court of Errors and Appeals (because not carried up, as stated), See *v.* Heppenheimer, has, nevertheless, been cited with approval repeatedly by this Court, the Court of Errors and Appeals and the Supreme Court. See Easton Nat. Bank *v.* American Brick Co., 70 N. J. Eq. (4 Robb.), 722, 727 (Court of Errors and Appeals, 1905); Bigelow *v.* Old Dominion Copper Co., 74 N. J. Eq. (4 Buch.), 457, 496 (Court of Chancery, 1908); Johnson *v.* Tennessee Oil Co., 75 N. J. Eq. (5 Buch.), 314, 318 (Court of Chancery, 1909); Jackson *v.* Hooper, 76 N. J. Eq. (6 Buch.), 592, 604 (Court of Errors and Appeals, 1909); Stricklen *v.* Nat. Salt Co., 77 N. J. Eq. (7 Buch.), 328, 335 (Court of Chancery, 1910); Gilson *v.* Appleby, 77 Atl. Rep., 1084, 1085 (Supreme Court, 1910).

I said that the case before me was governed by

See *v.* Heppenheimer; but before proceeding to draw the parallel I desire to say that I acquit the gentlemen who composed the Board of Directors of the White City Company, and who were its promoters, of any charge of actual wrongdoing or fraud. They did not conceive a scheme to filch the public. Far from it. They promoted and organized a company which they believed would be a highly successful enterprise and one profitable to everybody interested in it.

In thus absolving them I am but following the precedent set by eminent English judges; for *In re* Eddystone Marine Ins. Co., 1893, 3 Ch. Div., 9, Mr. Justice Wright made the following observation: "Before dealing with those questions (concerning liability for shares of bonus stock), I desire to say that I think the conduct of Messrs. Greenway and all of the other gentlemen concerned is entirely free from any shadow of blame or impropriety. They acted with perfect honesty and they took every means in their power to prevent creditors or persons dealing with the company from being in any way misled," and in this he was very pointedly endorsed by Lord Justice James, on appeal, at p. 17, who said: "This case is in some respects a hard one on these gentlemen, because I quite agree with Mr. Justice Wright that everything that has been done in this case has been done openly and honestly and *bona fide*. There is no attempt to conceal or to take anybody in or anything of the kind. But the question is whether what has been done is authorized by the Acts of Parliament which relate to limited companies."

It may be asked then, why are stockholders held liable in these cases? The answer is that their liability is a legal one, imbedded in the acts of the Legislature and the uniform decisions of the Courts.

In See *v.* Henppenheimer, *supra,* the defendant stockholders set up that it did not appear that the

creditors, or any of them, relied upon the fact that the amount of capital stock had been paid in, but V. C. Pitney, at p. 84, brushed all this aside, saying:

> "I am unable to see the least force in this defense. It has not the least foundation in our statute nor in the decision or dictum of any court in this State.
>
> The scheme of our legislative policy in that respect is that all creditors shall stand on an even footing. * * *
>
> These records (certificate of organization, &c., in Secretary of State's office), are public records and are made so for the benefit of the public, and particularly for the information of creditors.
>
> The true rule, in my judgment, is, that in the absence of any proof on the subject, which is the case here, the creditors are presumed to have acted upon the information of these records."

Here is an intimation that the creditors might be excluded from relief against the stockholders if it does not appear that they relied on the payment of the capital stock in extending credit, upon the theory that the liability of the stockholders rested upon the company's having held out the capital stock as a source from which payment might be expected by creditors. But the Court of Errors and Appeals in Easton Nat. Bank *v.* American Brick Co., 70 N. J. Eq. (4 Robb.), 732, goes a step further than does V. C. Pitney, and holds at p. 739:

> "But in this State the stockholder's liability to creditors does not depend alone or chiefly upon the theory of 'holding out.' It depends upon the stockholder's voluntary acceptance, for consideration touching his own interest, of a statutory scheme to

> which watered stock, under whatever device issued, is absolutely alien, and which requires stock subscriptions to be made good for the benefit of creditors of insolvent companies, without distinction between prior and subsequent creditors, or between creditors who had notice and those who had none."

The Directors of the White City Company in their zeal and enthusiasm, mistaking the law and misjudging the facts, resolved upon the issuing of bonus stock, as for property purchased, believing that what they assumed to take over had a value which they could capitalize. How far they were right and how far wrong, will hereafter be made to appear.

Other conduct besides that of deliberate fraud on the part of the Directors will render stockholders liable for holdings of unpaid stock. Said Mr. Justice Dixon in Donald *v.* American Smelting Co., *supra*, at pp. 731, 732:

> "Their (Directors') honest judgment, if reached without due examination into the elements of value, or if based in part upon an estimate of matters which really are not property, * * * may lead to a violation of the statutory rule as surely as would corrupt motive. * * *
>
> "But the original issue of corporate stock is a special function, in the exercise of which the Legislature has fixed a standard to be observed, and it is the duty of the Courts, so far as their jurisdiction extends, to see that this standard is not violated either intentionally or unintentionally."

At this juncture it may be opportune to notice a contention made on behalf of the stockholders. It was that they did not stand upon the footing

of original subscribers, but that they were assigneees of the promoters to whom the stock was first issued. This position is misconceived.

True, stock was first issued to the promoters, but it was by them turned back to the company, and the shares of those now sought to be held liable were issued directly to them from the company without the intervention of any certificates issued to stockholders who assigned to them, and by them turned in for new certificates. Besides, there was no bargain and sale to them of shares by existing stockholders, but instead, a representation was made to them by solicitors for the company that they would receive one share of common stock as a bonus with every two shares of preferred stock for which they would subscribe, without any representation having been made as to how the stock was to be issued.

Now, as to the proceeding of the stockholders and Directors in issuing the stock.

In See *v.* Heppenheimer, at p. 66, V. C. Pitney said:

> "This proprosition (of the promoters) was immediately considered of the stockholders' meeting and accepted by a series of resolutions which had already been prepared by Mr. Samuel Untermeyer, who was present and directed the whole proceeding. * * *
>
> "In point of fact, it is not disputed that the stockholders and Directors (the same persons) acted upon the strength of the reliability and truthfulness of the rose-colored prospectus previously prepared by Mr. Untermeyer, by which he showed that the mills, by the establishment of a monopoly, would be able to earn six per cent. interest on their mortgage debt, one per

> cent. additionanl for a sinking fund, eight per cent. on the preferred stock and at least fifteen per cent. on their common stock.
>
> "In short, the principal item in the valuation of the property consisted in a present capitalization of the prospective profits due to a monopoly of the wrapping paper trade."

Just so in the case under consideration, the proposition for the sale of what was called property and the acceptance of common capital stock in payment therefore was embodied in resolutions adopted by the stockholders and Directors, which had already beeen prepared; and, as in See *v.* Heppenheimer, the principal item in the valuation of the property must have consisted in the then present capitalization of the prospective or future profits of the company. But this did not constitute property, as we shall presently see.

In See *v.* Heppenheimer, at p. 43, V. C. Pitney said:

> "There the word 'property' must evidently be construed by its context which refers to something visible and tangible and necessary for the business, and the amount of stock to be issued therefor is limited to the value thereof, that is, to the value of that property.
>
> If the question above put be the true one it seems to me that it answers itself, and adversely to the contention of counsel of defendants.
>
> But the defendants attempt to sustain their valuation in question on two grounds:
>
> First. That the valuation was made in perfectly good faith and without any fraud-

ulent intent; and that fraud is, by the rule to be applied here, a necessary ingredient of over-valuation; and

Second. That the increased valuation in this case may be justified by, and attributed to, the item of 'good will.'

The reply of counsel for complainant to the point of good faith and absence of fraud is twofold.

First. That these elements have no place in a transaction of this kind where the thing valued is not, properly speaking, property; and.

Second. That the good faith and absence of fraud set up by the defendants will not stand the test of close scrutiny, and, further, that the circumstances of the case, given with great detail in the evidence, show that there was no actual appraisement of the property by a competent Board of Directors such as is contemplated by the statute."

And at p. 46:

"The present case is a painful illustration of the utter impossibility of giving the word 'property' the construction claimed for it.

The rose-colored future (presently to be stated at length), for this enterprise, created with so much confidence by its promoters, failed entirely in the face of actual experience."

And at p. 37:

"Now, all these elements enter into the usual uncertainties and contingencies of business which should have been anticipated

by the promoters in the estimate of the prospective profits of this enterprise, even if it were at all lawful to consider those profits."

In the case in hand there was no actual appraisement of the property by the Board of Directors as contemplated by the statute. The property taken over, as certified in the resolution, was:

"a certain leasehold in and to a certain large tract of land and premises * * * in which lease there was an unexpired term of four years; * * * various contracts with certain persons, firms and corporations for the construction and erection of various devices which would be useful and necessary in the operation and conduct of the business of this company."

In an issue of corporate stock for property purchased, and property taken over at a grossly excessive valuation, the stockholders are, nevertheless, entitled to have credited to the payment of stock, the just and fair value of the property conveyed to, and services rendered for, the company, and for which stock was issued. See See *v.* Heppenheimer, *supra*, at p. 76; Easton Nat. Bank *v.* American Brick Co., 70 N. J. Eq. (3 Rob.), 722, at p. 730.

In Pell's case, L. R. (8 Eq.), 222, the Master of the Rolls decided that Pell was liable to be put on the list of contributories for shares of the capital stock of a company which was wound up, and which shares had been issued to him as fully paid for his interest in the good will and stock in trade of a business which he handed over to the company, but for which shares he paid no money; and it was held that he was liable as a contributory, but was entitled to be allowed the value of any property handed over by him to the company,

and to an inquiry as to what was the value of that property. See the comment of Mr. Justice Depue on this case, and its subsequent history, in Wetherbee *v.* Baker, 35 N. J. Eq. (8 Stew.), 501, at p. 513.

It therefore becomes not only pertinent, but necessary, to inquire into the value of any property turned over by the promoters to the corporation, because the stockholders are entitled to credit for any property that was received by the company, just as surely as they must be charged for lack of value where property or value is absent.

First, as to the lease. At the time the company was in a formative state the amusement park was under written lease to Peter E. Hurley, who held by assignment from Peter Wurflein, the original lessee. It had four years to run and Mr. Hurley agreed to cancel it for four thousand dollars, to the end that a lease might be granted to the promotors. As the result of negotiations Mr. Hurley was paid four thousand dollars by the promoters, and the owner of the land agreed to give to the promoters, or a company to be organized by them, a lease of the premises for ten years, including the four years of extension to which Hurley was entitled. At the request of the promoters the lease was made directly to the White City Company by the Trenton Street Railway Company and its Trustee, for the consideration of one dollar, and the lessor therein and thereby granted, demised and let unto the lessee:

> "all that large lot of land and premises in the township of Hamilton, County of Mercer and State of New Jersey, commonly called Broad Street Park, consisting of about one hundred and twenty (120) acres of land, together with a lake thereon, covering about twenty-two (22) acres of land, com-

monly called Spring Lake, and also eighty-two (82) lots of land on the northerly side of said tract of land aforesaid, said lots being bounded by Randall Avenue, McClellan Avenue, Buchanan Avenue and Sewell Avenue, as shown on a map of the Broad Street Land Association, made in 1892, all of which demised premises are more fully and accurately described in a deed bearing date February 16, 1895 and made by Lewis Perrine, Jr., and Addie Slack Perrine, his wife, to John L. Kuser and Robert S. Woodruff, Trustees of the Trenton Passenger Railway Company, Consolidated, and recorded in the Clerk's Office of the County of Mercer in Book 201 of Deeds, pages 94, &c., on April 15, 1895, and also described in a certain other confirmatory deed dated April 27, 1907, made by the said Lewis Perrine, Jr., and Addie Slack Perrine, his wife to The Real Estate Title Insurance and Trust Company of Philadelphia, Trustee for the Trenton Street Railway Company, and about to be recorded, with the appurtenances, for the term of ten years, from the first day of April, nineteen hundred and seven to the first day of April nineteen hundred and seventeen. And the said lessor in consideration of the premises does hereby covenant and agree, as follows: (a) That lessee shall and may peaceably have, hold and enjoy the said demised premises for the term aforesaid. (b) That they will furnish power for seventy arc lights of three watts each or their equivalent, and keep said lights lighted during the periods when said park is open during the term of this lease. (c) That they will sell said demised premises and lessee hereby has the

option to purchase the same at any time during the term of this lease for the sum of thirty-five thousand dollars ($35,000). (d) That at the end of the term aforesaid said lessee may remove from said demised premises all buildings erected thereon exclusively by lessee during the term of this lease, or acquired by it by purchase or otherwise, excepting as specified in covenants of lessee herein."

Counsel for the Receiver argues that the promoters at the time the company was formed had no agreements in writing with the owners of the premises above mentioned which would bind them to make a lease, and that, therefore, there was no tangible property which would afford a basis for valuation and which could be considered property.

The defendant company was organized on March 26, 1907. The organization meeting was held on that day, the resolution was passed reciting that the promoters owned and controlled the leasehold, which was thereby formally taken over by the company, and this too by the action of the promoters who would have taken the lease to themselves and made formal transfer of it, which was unnecessary, and which would have been a mere work of supererogation. That this lease was a thing of value cannot be gainside. Because the railway company was willing to make the lease for one dollar and agreed to furnish seventy arc lights and keep them lighted during the periods when the park would be open throughout the term of the lease, which was shown to be about three months of each year, for the reason that the expected business to be done at the park would be beneficial to it, the railway company, in trolley fares, without charging an annual rental, which anybody but

the railway company owning the property undoubtedly would have done, cannot take away from the lease its element of rental value to the company. In other words, if an individual had owned the park it is to be assumed that he would have leased it only for a fair yearly rental, and if the promoters could induce him as an act of friendship or for some motive for his benefit, to forego that rental to them, they certainly could assign the lease to the company and themselves receive that rental; that is to say, if they could obtain the lease of the park for a nominal rental they could assign it for an actual rental; that is to say further, as they had possession and control of the property they could rent it.

The Wurfflein lease assigned to Hurley was dated May 1, 1906, and ran for one year with the privilege of a renewal for four additional years, upon the same terms and conditions, namely, the sum of one dollar, with a covenant on the part of the lessor to place and maintain twenty electric arc lights and furnish and maintain incandescent lamps then on the premises. The lease to the White City Company was made on the expiration of the Wurfflein-Hurley lease, and as already shown, was for one dollar, with a covenant that the lessors would furnish power for seventy arc lights of three watts each or their equivalent, and keep them lighted during the periods when the park would be open during the term of ten years.

Prior to Hurley taking an assignment of the lease Wurfflein had run the park, but became involved in debt, and Hurley, who had backed him, assumed the debts and took over the lease, which he sold to the promoters for four thousand dollars. The exact amount of Wufflein's indebtedness to Hurley does not appear, nor is it important; the promoters had nothing to do with that; they dealt at arm's length

with Hurley and gave him for the lease what was agreed upon by all parties.

In speaking of the value of this lease counsel for the stockholders urged that the property was worth sixty-five thousand four hundred dollars above the option price of thirty-five thousand dollars, while the Receiver's counsel contended that it was only worth twenty-one thousand dollars, which was fourteen thousand dollars less than the option price. They addressed themselves to the fee simple title. Each side called one witness as to the value of the land comprising the park proper. The witness called by the stockholders was an old resident in the neighborhood who had bought and sold property there. The witness called by the Receiver was a man who came to Trenton about the time the defendant company was formed and bought and developed another tract for building lot purposes. It would seem that the stockholders' witness valued the property too high, and the Receiver's witness too low. But the value of the land is not to be determined in this proceeding because it is irrelevant to the issue. The value of the leasehold interest in it is quite another thing, and will be treated of presently.

It is too plain for argument that the option to purchase certain property at a certain price does not invest the optionee with newly made wealth in the sum of the difference between what he would have to give for the property, if he gave it, and the value of the property which he would get, if he got it, assuming there was such difference, great or small. If property could be acquired or money made in that way there would be little other business done by anybody.

The value of this lease will have to be determined upon rental value, plus the other things of value to be received by the lessee, if any, under the terms of the lease.

Now, it must be remembered that this lease is in existence; it passed to the Receiver and from him to the purchaser at his sale, and that its present owner is in possession of the property with the right to retain it and have the lights, supplied for the full period granted, without the payment of a cent. That the company failed no more destroys the value of the lease than failure destroys the lease itself.

The promoters and the company had every reason to believe that the latter was launched upon a successful and profitable career, and, while the hope and expectation of success and profits could not create property out of that which was not property, equally the failure of those hopes and expectations cannot operate to destroy that which was and is property. The property exists to-day, and although its value may be depressed by the failure, its value is not to be ascertained as of the date of failure, but as of the date when the enterprise was inaugurated and the terms made.

If the Directors had inventoried this lease and appraised it according to its rental value, but in doing so had given it a value in excess of that which it actually had, their judgment, in that regard would not be reviewed by this Court unless the over-valuation was so great as to shock the conscience. But as the Directors did not do that, and as it now devolves upon the Court to perform the duty which they neglected, the Court will have to exercise its judgment now as of the time when they should have acted, in substitution for the judgment that they should have formed; and under this view the credit to be given to the stockholders by reason of the transfer of the lease to the company must be limited to the then fair value of the lease. Easton Nat. Bank *v.* American Brick Co., *supra,* at p. 730.

Speaking to this question, Mr. Justice Pitney (now Chancellor) in that case said:

> "Whether for this purpose we shoud accept the value of these (patents) as subsequently demonstrated (which is practically nil), or rather such value as might reasonably have been assigned to them at the time, need not be determined, for the reason that will presently appear." *Ibid.*

The question here mooted arises squarely in the case before me, and I unhesitatingly decide that the value of the property transferred should be determined as of the date and time when it should have been valued originally.

In Rubino *v.* Pressed Steel Car Co., 53 Atl. Rep., p. 1050, which was a suit for an injunction by certain stockholders of a corporation, a certain question arose and V. C. Stevenson remarked at p. 1053:

> "If this enterprise is successful, the question will never be raised. I cannot see that the possibility of the failure of the enterprise justified the stockholder in going into court and asking for a preliminary injunction."

Clearly neither subsequent success nor failure should be permitted to operate in the forming of a *nunc pro tunc* judgment.

The stockholders of the defendant company have an absolute right to the protection of whatever there was, fairly, reasonably and honestly of value in the property at the time it was acquired, and the extremely low price brought by the company's property at the Receiver's sale is no criterion whatever of its value.

In Martinett v. Maczkewicz, 59 N. J. L. (30 Vr.), 11, the question of the value of certain chattels arose and evidence was offered of the price brought by them at a previous sheriff's sale,

and the offer was overruled upon the ground that such a sale had no tendency to show the real value of the property. Said Chief Justice Beasley at p. 14:

> "In our own State we have no pertinent decision. It is deemed, however, that the practice of our courts has been to exclude testimony of the kind in question. In inquiries of this nature it has been customary to show the market value of the property if it has a fixed rate of that kind, and, if it has no such estimation, to prove its value by the opinion of experts and by an exposition of the state and condition of the things sold. In such an inquisition the price obtained at a sheriff's sale would seem to be wholly valueless. When a willing seller and a willing buyer agree and fix the price of an article, it is obvious that it is reasonable to infer that such estimation approximates closely to the real value of such article; but in an official sale by auction the owner has no voice in the affiair, and each bidder is striving to obtain the thing sold not at its actual worth, but at a bargain. It is vain to deny, for all experience attests the fact, that as a general thing, the attendants at a public auction of personal property are there with the expectation of acquiring the articles purchased much below their cost in the market. It is deemed that, as *criteria* of real value, such transactions can have no effect except to mislead."

The true method of calculating the value of an unexpired lease is not by ascertaining the yearly rental value and then multiplying the figures by

the number of years the lease has to run; but by calculating its value by the annuity tables; that is, by multiplying the annual value by the value of one dollar per year for the number of years in the unexpired term. This was expressly decided in West Jersey Railroad Co. *v.* Thomas, 23 N. J. Eq. (8 C. E. Gr.), 431, 434.

Now, as to the arc lights which were to be furnished by the lessor under the terms of the lease, namely, seventy during the three months of each year when the park would be in operation.

It was stated that there was an agreement for ten lights for police protection for the entire year during the term of the lease, but no agreement for these extra ten lights was produced. The only agreement concerning the lessor furnishing lights is to be found in the lease. The stockholders are entitled to an allowance of whatever was the worth of having the seventy arc lights lighted for the full term of ten years.

The next item for which the stockholders claimed a credit was the saving made on the contract with Doak & Company for the construction of buildings at the park. Prior to the incorporation of the defendant company several of the promoters negotiated with Doak & Company for the erection of certain buildings, and which Doak & Company agreed to construct for a commission of 10% of the cost of the buildings and take their commission in preferred stock of the defendant company to be issued. The exact cost of the work supervised by Doak & Company does not appear, but it was between twenty-five thousand dollars and twenty-seven thousand dollars, and counsel for the stockholders claimed that there should be an allowance of two thousand six hundred dollars on that account; and this, apparently, upon the theory that the defendant company was thereby saved two

thousand six hundred dollars. True, the White City Company did not pay Doak & Company their percentage in cash, but nevertheless they paid it or obligated themselves to pay it in preferred stock of a company which the corporators believed would be a success and not a failure. They, therefore, settled with Doak & Company for their commissions in the way and manner in which Doak & Company agreed to receive payment. That they made an advantageous bargain with Doak & Company may be true, but that they saved the White City Company two thousand six hundred dollars cannot for a moment be admitted. Let me illustrate. If a corporation entered into an agreement with a contractor to erect a building and he agreed to take pay in preferred stock of the company, for the building which he was to construct, supplying the material and labor, could the company thereupon resolve that it had saved itself the entire amount of the contract price because it had paid the contractor with preferred stock instead of cash, and therefore issue, as for property purchased, an equal amount of common stock? The question answers itself. There can be no pretence that by any such transaction property could be erected for which capital stock might be issued.

Another item of property for which the stockholders claim a credit is an arrangement or agreement with a man named Dentzel to build a carousel at the White City. Dentzel's regular or list price for the machine was ten thousand dollars and through the efforts of Mr. Oberheide, principally, he agreed to sell one to a corporation to be formed for eight thousand dollars, which the promoters claim made a saving of two thousand dollars, and which it is also claimed was property which was conveyed to the White City Company. This cannot

be so. Oberheide told one or more of the Directors that the printed list or selling price of carousels was way in excess of what they were worth.

It is notorious that staple articles of personal property are sold at a discount off the list price. The promoters perhaps made a good bargain for the White City Company with Dentzel, but by what they did they certainly did not create property worth two thousand dollars which they turned over to the company, and the two thousand dollars in that behalf claimed cannot be admitted as a credit in this cause. Suppose the promoters had done nothing looking toward the acquisition of a carousel by the company, which, after its organization and by its officers, had purchased one from Dentzel through the same negotiation and on the same terms as the promoters had obtained the offer of one, could the company, having paid eight thousand dollars for the carousel, by any system of bookkeeping give itself a credit of two thousand dollars in the transaction, and could it issue two thousand dollars worth of stock for property purchased? Where would be the property—the two thousand dollars? It would not be in the company's treasury, nor would it be in Dentzel's pocket. In fact, it would have no existence. It never would have been created.

However, the promoters in negotiating for the purchase of this carousel at a discount of two thousand dollars, performed some service for the company to be organized, and for that service they were entitled to reasonable compensation. See *v.* Heppenheimer, *supra,* at p. 76.

While formerly subscriptions to capital stock could only be paid in money, the doctrine has been relaxed and stock is now issued for work and labor as well as for the purchase of property, but the cases in which such transactions have been upheld were only those where the services rendered or prop-

erty purchased were equal in value to the stock issued therefor. See Wetherbee *v.* Baker, 35 N. J. Eq. (8 Stew.), 501, 512. See also Rubino *v.* Pressed Steel Car Co., 53 Atl. Rep., 1050.

It seems to me that the promoters in this transaction are entitled to compensation for services in negotiating the advantageous purchase of the carousel.

Compensation for promoters' services it sometimes called "promoters' profits." Bigelow *v.* Old Dominion Copper Co., 74 N. J. Eq. (4 Buch.), 457, 501. And said Chancellor Pitney in that case at p. 503:

> "Where a promoter's profit is taken in the form of shares that represent no investment in money or in property, and exceed the reasonable services and legitimate expenses of the promoter, the shares are not deemed fully paid within the meaning of a statute that requires money or money's worth equivalent to the par value of the shares to be contributed by subscribers."

A credit of ten thousand dollars, as for property purchased, is asked by the stockholders because of an arrangement or agreement whereby the Public Service Corporation ran a feed wire from its plant in Trenton to the park for the purpose of supplying light. This has reference to the incandescent lights and is not connected with the arc lights which was to be provided by the Street Railway Company. The line of feed wire was run through the streets of Trenton to the gate of the White City Park and cost the Public Service Corporation ten thousand dollars. This was a special feedwire and was laid at the instance and request of the promoters and without it the White City Company could not have lighted its park with incandescent electric lights

for prior to its installation there was no feedwire in the park. This concession from the Public Service Corporation was not had for the mere asking, but was the result of considerable work and labor on the part of the promoters. It was a thing of value to the White City Company but that it constituted ten thousand dollars' worth of property conveyed to that company cannot seriously be considered. Title to the feedwire did not pass to the White City Company but still remains in the Public Service Corporation who owns the wire. It was not the promoter's ten thousand dollars that paid for this wire and the cost of laying it. It continues to be an asset of the Public Service Corporation and will be useful to them in supplying light to the White City Company's successor or successors if they operate the park. Unlike the covenant in the lease to light the arc lights for nothing, the Public Service Corporation charged the White City Company for electricity for lighting and will be entitled to so charge its successors. The only thing that the promoters can lawfully claim with reference to this transaction is fair compensation for their services.

Counsel for the Receiver urges that the arrangements with the Public Service Corporation were made by the White City Company after it was formed and refers to a minute of the Board of Directors of April 18, 1907, wherein it was resolved that Messrs. Oberheide and Sadler wait upon Mr. Lupke, Superintendent of the Public Service Corporation, and arrange with him for the laying of a cable to the White City and secure the best rate possible from him. But the proofs show that the laying of the cable was negotiated by the promoters and the installation of the wire was actually begun in the previous month of March. This resolution undoubtedly refers to the making of terms for the furnishing

of light to the company after it should have been opened to the public for the amusement season of 1907, commencing May 30th, Memorial Day. It was like the resolution of April 29th, appointing Messrs. Broughton, Hamill and Sadler a committee to notify Mr. Riggs (President of the Street Railway Company) concerning the ten years' lease of the property to the defendant company. That company was already in possession of the property under the Wurfflein lease assigned to Hurley, and by Hurley to the promoters who owned and controlled it, and who permitted the White City Company to take the renewal, or rather the new lease, directly from the Street Railway Company and its Trustee, to itself (the White City Company) instead of themselves (the promoters) taking the new lease and assigning it to the company.

An amount of one thousand four hundred dollars is claimed as a credit because the White City Company had the use of roller skates owned by Messrs. Dickinson and Hamill, which they had previously used in a roller skating ring which they ran in Trenton. There was a roller skating rink built at the White City, and Messrs. Dickinson and Hamill agreed to allow the company to use the skates for 5% of the net receipts of the business done at the rink. I fail to see how there is even the pretence of property passing to the White City Company in this transaction. The company did not buy the skates. They remained the property of Messrs. Dickinson and Hamill, who were in reality the lessors. The skates were simply rented by the White City Company, and whether or not the rent was paid makes no difference as to the title of the property. If the skates were worth one thousand four hundred dollars, that was so much of assets owned by Messrs. Dickinson and Hamill, and they never parted with their prop-

erty. The skates did not pass to the White City Company and did not come to the hands of the Receiver, were not inventoried as any part of the company's assets, and consequently were not sold by the Receiver, and did not pass to the purchaser of the park and its property. The claim that a lessee is enriched by the amount of the value of the leased property while in his possession and even after the expiration of the term, as here contended for, needs no answer.

Another item of alleged property passing to the White City Company by and through the endeavors of the promoters is a saving of three thousand dollars on the price of a Figure Eight amusement device, which was constructed for the White City Company by the Bruenig Construction Company. In this matter the promoters dealt with the latter concern and got them to reduce their original estimate of the cost of the device some three thousand dollars. This stands exactly in the same situation as the carousel and the remarks concerning that device apply to this one. There was not a dollar of property in this transaction which passed to the White City Company. In this case, as in the other, the promoters are entitled to reasonable compensation for their services and no more.

Counsel for the stockholders, in their brief of argument, claim that the things of value which were acquired by the White City Company were the real estate under the lease and the lighting agreement contained therein; the contract with the Public Service Corporation for the feed wire; with Doak & Company for supervising the construction of the buildings; the agreement with Dentzel for the carousel; the arrangement with reference to skates and the contract with the Bruenig Construction Company. The total valuation placed by coun-

sel upon these properties is one hundred and thirteen thousand nine hundred dollars.

There were other things, said to be "property rights * * * and contract rights," which were claimed to be of value and to have been taken over by the company from the promoters in this case. They were of the same description, generally, as the amusement devices already referred to, and were not seriously contended for upon the argument.

Pursuing the subject they contend that the only dispute as to value is of and concerning the real estate. That is true in one sense, and in one sense only. Counsel for the Receiver asserts that the lease was the only tangible property conveyed and claims that the other items were not property possessed by the promoters, and that they could not be, and consequently were not, turned over to the White City Company. In this it is apparent that he is absolutely correct; and so it would have been idle to dispute the alleged value of things as property which had no value because they had no such existence. He claims further that the lease was turned over at cost price. In this I disagree with him as above outlined."

Title is the means whereby a man hath the just possession of his property. 2 Bl. Com., 195. Deeds and other instruments of conveyance are the muniments or evidence of title. The White City Company got the possession of the park and got a lease for it. They never got possession of those various sums of two thousand dollars, three thousand dollars, one thousand four hundred dollars, &c., nor did they receive any conveyance for the same, for the very good reason that they were not property and, consequently, were utterly incapable of being conveyed. The lease was an asset; most of the other so-called properties were liabilities; that is, they were things for which the White City Company

had to pay, as in the case of the carousel. For other things it did not have to pay a cent, as in the case of the Public Service Corporation's feedwire. Yet all are claimed to be assets. Impossible.

Some of the things taken over were assets, some liabilities, and others—nothing. As was said by Chancellor Pitney, in Bigelow *v.* Old Dominion Copper Co., *supra*, speaking of an inflated stock issue, at p. 514, "Of the entire authorized capital * * * $1,000,000 is 'water' * * * and $1,250,000 represents nothing more substantial than 'wind.'" And so, if one were to pursue the phantom properties above adverted to, with the idea of possessing them, he would find that they were as evanescent as water and as inconstant as the wind.

Let us again resort to V. C. Pitney's opinion in See *v.* Heppenheimer, *supra*, and paraphrase what he says at p. 55, as follows: After all the true test is this: if the White City Company had to its credit in the bank the sum of seventy-five thousand dollars would it have been willing to pay that price in cash for the property in question; would it be worth that sum in cash to the company? If confronted with that proposition the gentlemen who composed the Board of Directors of the White City Company, all of them business men, would have taken each item into deliberate and careful consideration. They would have been asked to say how much a ten years' lease of the property was worth and they would have said that it was worth to them whatever was a fair rental value because it was turned over to them rent free, and they could have sublet or assigned the lease and thus made a rental to themselves.

Suppose Mr. Oberheide had said to them, "I want you to give me two thousand dollars because I induced Dentzel, a carousel maker, to sell you a carousel for eight thousand dollars

for which his asking price was ten thousand dollars and which, by the way, is far in excess of what the machine is worth." I venture to say that not one of the Directors would have made a motion that Oberheide be paid two thousand dollars, let alone vote for such motion if made. What they doubtless would have been willing to do was this: If Oberheide had conceived the idea exploiting an amusement park and secured the very lease in question and had secured the tentative propositions for the installation of amusement devices and other things that were actually secured and conceded to the White City Company in this case, and had taken the proposition to the gentlemen who were the Directors of the White City Company, they would doubtless, if they concluded to take it over, have given him such a sum in cash or the stock of the company as his services in the promotion of the scheme were reasonably worth. And that measure of compensation is what the promoters of this company are entitled to under the law, and that will be given to them by the decree of this court.

If as in most of the cases the promoters of the White City Company had not been themselves a majority of its directors it would have been necessary for them to have selected competent persons for the directorate—men who would act wholly in the interest of future stockholders, and who would not be biased or influenced by the persuasions of the proposed vendors or by friendship for either of them—and to have made to those directors a disclosure of all material facts. In this case, however, the promoters were themselves directors, and constituted a majority of the Board; and this being so it was their duty to have acted as an independent Board of Directors, with full knowledge, would have acted, namely, to have made a careful inven-

tory and appraisement of all property to be purchased with stock or for cash, and to have either issued stock or paid cash, measure for measure—value for value. This they neglected to do, with the result that those whom they sought to protect are not protected, themselves included.

Several of the stockholders who are liable to an assessment are also creditors of the company, and their claims have been allowed by the Receiver, but they are not entitled as creditors to setoff those claims against their liability as stockholders. Setoff is never permitted to stockholders. Williams *v.* Traphagen, 38 N. J. Eq. (11 Stew.), 57; Hebberd *v.* Southwestern Land & Cattle Co., *supra;* See *v.* Heppenheimer, *supra;* Stone *v.* N. J. & Hudson River Ry. Co., 75 N. J. L. (46 Vr.), 172, 174. They will be obliged to pay the amount of their assessments when ascertained, and will be entitled to share in the dividend when declared.

"It has always been the practice of this Court," said V. C. Pitney in See *v.* Heppenheimer, *supra,* at p. 80:

> "First, to ascertain the whole amount of the unpaid debts; second, in case the unpaid stock subscriptions or stock issued without payment, to determine the names of such stockholders and the amount due from each; and third, to make an assessment against those stockholders, which, in case an action at law is brought, based upon that assessment, is conclusive against the stockholders."

And at p. 88:

> "In order to ascertain the whole amount of money necessary to be raised, the Receiver will compute the amount due on the several claims allowed by him and approved by this Court by adding interest on each

claim. To the sum of those will be added, first, the cost of the solicitors for the creditors, both in the proceeding to wind up the corporation and in this Court, and to that will be added a reasonable counsel fee to complainant, to be fixed by the Court on motion for that purpose; next, a round sum to cover the Receiver's compensation and any further expenses which he may incur in the enforcement of this decree against the defendants held liable thereby.

This last sum, of course, will be liable to a reduction, according to the conduct of the defendants in resisting its enforcement."

Furthermore, on the strength of See *v.* Heppenheimer, *supra*, at p. 83, the burden must be borne by the stockholders who are solvent and within the jurisdiction, and I may add, who are *sui juris*. Those against whom the decree goes have the right, however, to be protected against the others by way of contribution. See *v.* Heppenheimer, *supra*, at p. 84.

While the amount of the stock here issued is nearly double that of the debts, nevertheless it is asserted by the Receiver that, owing to the non-residence, insolvency and infancy of some of the stockholders, an assessment of the full face value of the stock against the resident, solvent and adult stockholders is necessary. But while the stockholders in this case will be obliged to respond, their liability as to amount can be ascertained only after allowing them credit for the value of the lease of the park, the covenant for arc lights and the services of the promoters. There is no evidence before the Court of the value of these things (save the arc lights, concerning which there is such evidence), the case having been tried on an entirely different theory.

However, this Court has the power to continue

a hearing and permit further and other proof to be taken, and that power ought to be exercised where it does not appear that injustice will be done, and where, on the contrary, justice seems to require it. Whitehead *v.* Hamilton Rubber Co., 53 N. J. Eq. (8 Dick.), 454.

This case, in my judgment, falls within this rule, and I will set a day on application of the stockholders on notice to the Receiver for the taking of proofs on the questions just mentioned. Mason *v.* Ross, 75 N. J. Eq. (5 Buch.), 136, 149.

And now, finally, the settled law of this State enforces upon me the duty of pronouncing the only decree possible in this case, namely, one holding the stockholders liable to assessments to the extent above indicated, and in an amount to be ascertained upon further hearing.

A true copy.

SAM'L K. ROBBINS,
Clerk.

## Testimony.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>ALFRED G. HOLCOMBE, *et al.*,<br>Complainants,<br>*and*<br>TRENTON WHITE CITY COMPANY,<br>Defendant. | On Bill, etc. |

Transcript of testimony taken before Hon. Edwin Robert Walker, Vice-Chancellor, at the Chancery Chambers, State House, Trenton, New Jersey, on Wednesday, October 5th, nineteen hundred and ten.

APPEARANCES:

JOHN H. BACKES, Esq., for the Complainant.

JAMES and MALCOLM G. BUCHANAN, Esqs., by MALCOLM G. BUCHANAN, Esq., appeared for John A. Roebling, Guardian *ad litem* of Siegfred and Paul Roebling.

JOHN M. DICKINSON, Esq., appeared for the Trenton White City Company.

After argument by Mr. Dickinson and Mr. Backes.

The Court: My view is this, that it may be quite essential, and it may be necessary for you to plead fraud in this case; I don't know; it may be, and I ask you to consider whether or not your case does not require that sort of a pleading, and if it does,

I will permit you to file an amendment. You need not file it today. I reserve the question and will decide it on the whole case.

Now, Mr. Dickinson, you shall have another day in Court to examine your witnesses; I will protect you.

Mr. Buchanan: I wish to say at this time, that our firm appears for John A. Roebling, Guardian *ad litem* of Siegfred and Paul Roebling, infants.

CHARLES J. FURY, sworn in behalf of the complainants, testified as follows:

Direct examination by Mr. Backes:

Q. You are the Receiver of the Trenton White City Company? A. Yes, sir.

Q. As Receiver of that company, did you take possession of its properties? A. Yes, sir.

Q. What property did you take possession of? A. There were various pieces of property located at the White City Park.

Q. What has been done by you with the property that came into your hands as Receiver? A. It has since been sold at public auction.

Q. For cash? A. Yes, sir.

Q. Cash paid over to you? A. Yes, sir.

Q. Did you dispose of all of the property except the cash of the Trenton White City Company? A. All that has come to my hands or knowledge.

Q. Have you a record of your receipts and disbursements as Receiver? A. Yes, sir.

Q. By the way, where do you keep your receiver's account? A. In the Trenton Trust and Safe Deposit Company, in the name of the Receiver.

Q. I am showing you a book marked "A Cash Book," which I will have marked "Exhibit P1 for identification;" was this book kept by you or under your direction? A. Under my direction, by Mrs. Homan.

Q. She is a clerk in my office? A. Yes, sir.

Q. Does the book contain a record of all the moneys you received from the property of the White City, and all the disbursements? A. Yes, sir.

Q. And shows a balance of how much? A. $1,858.49.

Q. And that amount you have actually in hand, have you? A. Excepting two items which I enter as cash, which I can get; they are charged up against myself; one for rebate on insurance, and one for an article sold, $50.00; I charged myself with it.

Q. Did the creditors of the White City Company present claims to you in writing, and under oath? A. Yes, sir.

Q. Did they do that after an order was made in this cause, dated the 24th of August, 1909, limiting the crelitors? A. Yes, sir.

By the Court:

Q. Have you taken an order barring creditors?

Mr. Backes: No, sir.

Q. Are these the bills—the claims that were presented by the creditors under oath?

Mr. Dickinson: By name, please.

The Court: Suppose Mr. Fury testifies from the statement which Mr. Backes says he has got.

The Witness: I have already taken an affidavit to that statement, I think.

Mr. Backes: I presume the request of counsel to have it placed upon the record, is not wholly disassociated from their desire to know whether their clients are included in the—

Mr. Dickinson: I just want to see there is on the record a list of the creditors.

The Court: It is going in now.

Q. I am showing you what purports to be the original claims, arranged in alphabetical order; are they the claims that were presented? A. They are.

Q. Will you please give the names of the creditors and the amounts of their claims, as presented by you, will you? A. Yes, sir.

Q. I will read them, and you look to see that I read them correctly: The preferred creditors amount to $806.28, besides interest; and the common creditors amount to $38,817.06, making a total of $39,623.34? A. Yes, sir.

Q. Is this the list of the creditors? A. It is; yes, sir.

Mr. Backes: I offer this in evidence, and it can be copied in the record.

The Court: Copy it in the record.

Mr. Backes: Will your Honor mark it, "Filed" to-day?

We offer this list and ask that it be spread upon the minutes; and I am also offering in evidence the original claims. I will give you a copy, Mr. Stenographer, later on.

**"Schedule A."**

| | |
|---|---|
| John K. Ashton | $45.00 |
| A. L. Barker | 16.00 |
| Edith Belue | 10.00 |
| Coleman Connors | 20.00 |
| James Cartwright | 30.00 |
| J. A. Cubberly | 14.29 |
| Mrs. Robert Hagenbuch | 7.50 |
| Mary A. Higgins | 14.00 |
| John E. Malone | 30.00 |
| Mary Mott | 21.00 |
| Peter Parra | 30.00 |

| | |
|---|---|
| Edna Nelson | 1.90 |
| Leon Russo | 18.28 |
| Mrs. A. L. Tienken | 3.00 |
| A. Lester Tienken | 20.00 |
| Charles A. Wheeler | 42.00 |
| Austin S. Wolverton | 45.00 |
| John C. Watson | 26.08 |
| J. C. Wholley | 30.00 |
| Mrs. J. C. Wholley | 7.00 |
| Henry J. West (State of New Jersey tax) | 243.35 |
| Township of Hamilton (taxes) | 131.88 |
| | $806.28 |

## "Schedule B."

| | |
|---|---|
| Joseph Ashton, Jr. | $ 3.77 |
| Adams Electric Company | 775.80 |
| W. Holt Apgar | 500.00 |
| William F. Ash | 29.00 |
| Advertiser Publishing Company | 219.77 |
| Atlas Booking Circuit | 89.75 |
| Ralph Brandt | 4.50 |
| Howard Blizard | 80.97 |
| R. H. Blakely & Company | 8.40 |
| Blakely & Davis | 36.83 |
| J. B. Blackwell & Son Co. | 22.56 |
| D. J. Bechtel | 20.00 |
| John S. Broughton | 7,328.50 |
| Convery & Walker | 11.75 |
| Stephan Cazzulo | 155.04 |
| Capital Stationary Company | 1.65 |
| Charles W. Carll | 728.27 |
| Consumers' Ice and Coal Co. | 656.65 |
| L. N. Clayton | 9.45 |
| Joseph T. Casey | 23.50 |
| Consolidated Electric Lamp Co. | 248.00 |
| S. P. Dunham & Co. | 46.21 |
| W. Meredith Dickinson | 4,261.72 |

| | |
|---|---|
| Enterprise Cigar Co. | 21.35 |
| Evans and Bright | 856.98 |
| Reuben Forker | 4.00 |
| D. P. Forst & Co. | 21.00 |
| Edwin Fitzgeorge | 211.08 |
| Jos. H. Gee | 41.00 |
| J. W. Hardiman | 291.51 |
| James B. Hunt Mfg. Co. | 49.67 |
| E. F. Hooper & Co. | 610.50 |
| Barker G. Hamill | 7,729.14 |
| S. B. Hirschfield | 22.00 |
| Hildebrecht Catering Co. | 117.50 |
| Inter-State Telephone and Telegraph Co. | 169.90 |
| L. H. Johnson | 62.60 |
| S. E. Kaufman | 15.61 |
| F. S. Katzenbach & Co. | 649.27 |
| Robert W. Kennedy Co. | 2,272.26 |
| U. G. King | 203.78 |
| Lime Kiln Bank | 81.50 |
| Harry J. Lambiase | 485.00 |
| Merchants' Express Co. | 73.09 |
| Mountford & Co. | 21.00 |
| Duncan Mackenzie's Sons Co. | 82.71 |
| Marks & Meyers | 284.90 |
| R. C. Maxwell Co. | 46.64 |
| John McCormick | 17.70 |
| | $29,673.78 |
| Brought Forward | $29.673.78 |
| A. V. Mannings's Sons Co. | 148.79 |
| J. D. Margerum & Co. | 326.89 |
| William S. Mills | 3.12 |
| Thomas J. McGovern | 124.19 |
| Frank Nelson | 15.12 |
| New Jersey School and Church Furniture Co. | 386.03 |
| Ogenden-Bailey Company | 26.75 |

| | | |
|---|---|---|
| | Christian H. Oberheide | 1,446.33 |
| | Penn Printing Co. | 171.15 |
| | Philadelphia Bargain Store | 60.64 |
| | Park Floral Company | 47.03 |
| | Public Service Corporation of N. J. | 251.50 |
| | Phillips & Godshalk | 198.80 |
| | Dr. Clinton H. Read | 100.00 |
| | Race and Savidge | 6.00 |
| 10 | John A. Roebling's Sons Co. | 10.64 |
| | Standard Engraving Co. | 19.90 |
| | John R. Satterthwaite | 25.65 |
| | Harry J. Stout | 71.46 |
| | Standard Oil Company | 26.95 |
| | Ernest G. Sthal | 20.00 |
| | Abram Swan | 113.97 |
| | State Gazette Pub. Co. | 291.88 |
| | Wilbur F. Sadler, Jr. | 2,800.00 |
| 20 | Stoll Blank Book & Stationery Co. | 173.67 |
| | Stoll Blank Book & Stationery Co | 10.00 |
| | Trent Press | 20.75 |
| | Trenton Bill Posting Co. | 289.86 |
| | Clayton L. Traver | 26.25 |
| | Trenton Trust & Safe Deposit Co. | 15.75 |
| | Trenton Water Works | 63.00 |
| | Trenton Evening Times | 219.19 |
| | Traveling Bill Board Company | 51.00 |
| 30 | A. L. Tuske, Son & Co. | 100.52 |
| | Union Hardware Co. | 17.96 |
| | Vroom, Dickinson & Scammell | 437.00 |
| | Mrs. A. F. Williams | 82.90 |
| | Samuel Winslow Skate Co. | 95.48 |
| | Wilson & Stokes Lumber Co. | 290.74 |
| | Wilson & Stokes | 83.61 |
| | Western Unioin Telegraph Co. | 23.21 |
| | Woven Steel Hose & Rubber Co. | 36.00 |
| 40 | Robert T. Willitts | 250.00 |
| | Earl M. Watson | 20.56 |
| | E. S. Willey & Bros. | 70.41 |
| | West Disinfectant Co. | 72.63 |
| | | $38,817.06 |

Q. What other books have you, Mr. Fury, that came to you as Receiver for the White City Company? A. Stock book and minute book and check books.

Q. I want the books that came to you as Receiver, after you were appointed Receiver—

Mr. Backes: I offer the minute book.

Marked "Exhibit P3."

Q. Is this the common stock book? A. Book of certificates of the preferred stock.

Marked "Exhibit P4."

Mr. Dickinson: Objected to, I cannot see why the preferred stock book should be marked in evidence.

Mr. Backes: It is part of the history of the case.

The Witness: This the common stock book.

Marked "Exhibit P5."

The Witness: This is the first preferred stock book as distinguished from the preferred.

Marked "Exhibit P6."

Q. Is this the cash book? A. Yes, sir.

Marked "Exhibit P7."

The Witness: This is another cash book.

Marked "Exhibit P8."

The Witness: This is "Bills payable."

Marked "Exhibit P9."

The Witness: This is the ledger.

Marked "Exhibit P10."

The Witness: This is Ledger No. 3.

Marked "Exhibit P11."

The Witness: This is the journal.

Marked "Exhibit P12."

The Witness: This is the cash book.

Marked "Exhibit P13."
The Witness: This is the ledger.
Marked "Exhibit P14."
The Witness: This is a cash book.
Marked "Exhibit P15."

Cross examination by Mr. Dickinson:

Q. Did you take charge of the park property, of the White City, after your appointment? A. Yes, sir.

Q. You were entirely familiar with this property before your appointment as Receiver, were you not? A. I was down there a great deal; I was connected with it the year previous.

Q. You had a restaurant privilege in the park, the year previous? A. Yes, sir.

Q. You were more or less aware of the various buildings on the park? A. Yes, sir.

Q. And in the grounds? A. Yes, sir.

Q. And also aware of the cost of those buildings, more or less? A. I did not know anything about the cost of them.

Q. You knew about the cost of the restaurant building that you occupied, didn't you? A. I heard some talk about it—nothing positive.

Q. You knew it cost a considerable sum of money, didn't you? A. I would presume so.

Q. You were familiar with the skating rink on the park property? A. Yes, sir.

Q. Did you have any idea what that cost? A. No, sir, not actually; I have heard some talk about it.

Q. What do you think it cost? A. Well, that would not be fair for me to answer, I don't know.

Mr. Dickinson: If your Honor please, in our answer we set up what Mr. Backes objected to, that the Receiver had sold this property at a sacrifice; now, we did not do

that for the reasons stated by Mr. Backes, namely, to reflect on the character of the Receiver, at all; we simply wanted to bring the matter in issue, so that we could make arguments from it, as we thought would be to the benefit of our case.

The Court: If the property could have been sold for a sum sufficient to have paid the debts in full, of course, this case would not have arisen; the Receiver is a party, and I suppose he is open to cross examination on the whole matter; I will permit the question.

Q. (Question read.)

The Court: I do not suppose that is admissible; I think I will have to revise that ruling and overrule that question.

Q. Do you know as a fact, what the buildings on the White City Park cost the company? A. No, sir.

Q. Did you ever hear it stated? A. In a general way, yes; and I remember reading over the books; but I did not burden my mind with it.

Q. From what you have heard and from your reading of the books will you state what the buildings in the park cost?

Mr. Backes: Objected to as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

A. My impression is, that the cost was about $60.000.

Q. What did you do with the park after you were appointed Receiver? A. I ran it for two or three weeks, I don't just recall.

Q. What did you do in respect to selling the

property and finding a purchaser for it? A. I wrote personal letters.

Q. To whom? A. I don't just recall now; I do recall one in particular; I wrote to Judge Noonan of Hudson County, who, a year before, seemed to think he had a purchaser for the park, but I did not get any favorable answer from him; I talked the matter over with various people, and finally advertised in the various theatrical newspapers—several theatrical newspapers or amusement newspapers, through Walter Edge, who runs an advertising agency.

Q. What else did you do? A. Well, we advertised the sale two or three times in the local papers, and I think in out-of-town papers, and by posters, and by notice to the stockholders and creditors.

Q. Did you interview any people interested in amusement parks of this character in other cities? A. The only response I got were from men who would like to operate the park under our management; no actual purchaser appeared.

Q. Did you have any personal interviews with these people? A. Yes, sir, two, I think, came to Philadelphia.

Q. Did you go to New York or Philaelphia to talk to park people? A. No, sir, but I advertised there.

Q. Did you try to ascertain, aside from advertising, what persons round the country were interested in parks of this character? A. Yes, sir.

Q. How did you endeavor to ascertain? A. By talking to various people. I found that about 95 per cent. of the parks in the country were in the hands of Receivers, and there were no prospective purchasers.

Q. You found many people interested in amusement parks throughout the country, though, didn't you? A. Yes, sir.

Q. What was this park sold for by you as Receiver? A. $2,075.00.

Q. Now, just tell me what that sale included? A. It included everything belonging to the White City in the park, which is in our inventory, except one motor boat which I had sold and had not been taken off the park yet.

Q. Included the unexpired term of the lease of the park property? A. I think the notice of sale read that way: "All our right, title and interest" there, and the buildings erected thereon, for the period of the lease.

By the Court:

Q. Were any of them subject to mechanics' liens? A. Not to my knowledge.

Q. All free and clear? A. So far as I know.

Further cross:

Q. This lease had some seven or eight years to run yet, hadn't it? A. Practically seven years.

Q. That was a valuable asset, wasn't it? A. If I could get anyone to think the same as I did when I went there.

Q. You thought it was worth a large amount of money when you went there? A. Yes, sir.

Q. In your opinion, was it worth as much as the buildings? A. No, sir.

Q. You thought the unexpired term in that lease was a very valuable asset to the Receiver, when you first took charge? A. Yes, sir.

Q. You say it had about seven or eight years to run? A. A few months lacking seven years.

Q. Have you any opinion as to what that unexpired term of the lease would be worth, had you been able to get anyone to take the park? A. I have no means of judging that.

Q. It was a very large tract of land, wasn't it—

beautifully situated for park purposes? A. Yes, sir; without the mosquitoes.

Q. I mean to say, wasn't it, as a matter of fact, an ideal tract of land? A. I always had a very high opinion of it.

Q. And you don't know of any other tract of land, do you, that would be as advantageous for a park of this kind as that tract? A. Not around here.

Q. Just give some description of the tract of land. A. Insofar as the natural beauty is concerned?

Q. Yes, and the situation, etc.? A. I would say the park is heavily wooded, beautifully located, and it has a large lake; I would say it is the prettiest place that could be picked out around here for the purpose, and the buildings added to it made it, to my notion, a very desirable place for an amusement park.

Q. What do you say in reference to the accessibility by transportation from Trenton? A. Not very good.

Q. Do you refer— A. It was two blocks away from the trolley car; that made it inaccessible and dusty.

Q. As a matter of fact, the Trenton Street Railway Company, and the Camden and Trenton Railway ran one within two blocks, and the other company within one block of the property? A. Yes, sir.

Q. Was this property near the city limits? A. Yes, sir.

Q. Was it within or without the city limits? A. Without the city limits.

Q. How far out? A. I would say from one-half to three-quarters of a mile without the city.

Q. Do you know what the fare by trolley was from Trenton to this park? A. Five cents.

Q. Do you know, Mr. Fury, the value of this land simply as real estate, without being used as a park property? A. I know the value placed on it by the lessor; the lease carries with it an option to purchase any time within ten years for $35,000.

Q. This property is owned by the Trenton Street Railway Company, isn't it? A. It was carried in the name of Robert S. Woodruff and J. L. Kuser, as Trustees, I think; I am not sure about that.

Q. Do you know anything else about the value placed upon it by the lessors, except the reference in the lease to an option to purchase? A. None whatever.

Q. You don't know whether the value of $35,000, placed upon it by the lessors, in their lease, was a value recently put on it, do you? A. It is four years since the lease was made; that was in the original lease.

Q. You have identified a list of claims presented by you, and have made a report as Receiver of those claims; those claims were allowed by you, were they not, as appear on that list? A. Yes, sir; insofar as I know.

By the Court:

Q. You have not disputed and disallowed any? A. None that have been presented yet.

Further cross:

Q. You say that you believe the buildings on this property to have cost about $60,000— A. From the books—

Q. That is your understanding, from all the information you have received? A. No, sir.

Q. Do you think, bearing that in mind—that you made an advantageous sale of this property as Receiver when you sold it for about $2,000? A. I got the best price I could.

The Court: The sale was confirmed, I suppose, on the theory that the property brought the highest and best price that could be obtained for it at the time of the sale. What was the object of the question? What is the object of attempting to show that the property was sold for less than its value?

Mr. Dickinson: It appears to me that no one had any reason to believe that this property which was only capitalized at $150,000 and part of which capital consisted of real money, spent on these buildings, $61,000, no one would ever believe under those circumstances, that the property only brought at a sale, $2,000, which would have permitted an assessment to have been levied against these stockholders for the balance. Lots of people believe that these promoters and organizers were guilty of fraud, and foisted upon their friends and the public an enterprise said to be worth $150,000, which only sold for $2,000; and much has been made of that by the newspapers and other persons interested in this proceeding, and we want to show that that is not the case.

Redirect examination by Mr. Backes:

Q. Who bought the property? A. Charles L. Patterson.

Q. Was it run as a pleasure park this summer? A. I suppose so.

Q. By whom? A. I have not been there this summer and I don't know.

Q. Whom did Charles L. Patterson represent? A. Mr. John S. Broughton, I believe.

Q. Do you know of your own knowledge? A. Yes, sir. Mr. Broughton got him to buy the property for him.

Q. Who else did Mr. Patterson represent? A. I don't know.

Q. When you say Mr. Broughton, you mean one of the respondents? A. Yes, sir.

Mr. Backes: I offer the Receiver's report of the sale of this property, filed April 27, 1910, by which it appears that they advertised the property in the "Cincinnati Bill Board," the "New York Dramatic Mirror," the "New York Sunday Telegram," the "Trenton Sunday Advertiser," and the "Trenton Evening Times," and otherwise by posters as required by law.

The Court: Very well, it will be received.

Mr. Backes: And the order to show cause made by your Honor, directing the stockholders and creditors to show cause before your Honor on the 10th of May why the sale should not be confirmed, which order contains directions to the Receiver to send to each of the stockholders and creditors a copy of the report of the Receiver's sale, and a copy of this order.

The Court: It will be received.

Mr. Backes: I have the proof made by me as the solicitor of the Receiver, and by my clerk, who represented me and did the actual work, with a copy of the Receiver's report of sale, and the copy of the order to which I have just referred, and served upon each and every creditor and each and every stockholder, including the respondents who are now protesting.

Also an order continuing the hearing made on the 10th of May—an order continuing the order dated the 10th of May, 1910, to the 24th day of the same month, which contained directions that the Receiver communicate by

letter to the stockholders and creditors of the defendant company, by mailing the same to the last known post office address, informing them of the postponement of the hearing and such other matters as the Receiver might deem advisable, as shall bring to their notice the apparent inadequacy of the bid offered for the property, the loss which may be sutained in the event of the said sale being confirmed.

Also proof of mailing to each one of the respondents here, together with their associate stockholders, and to each of the creditors; a notice of which was sent to each stockholder and creditor, reading as follows:

"IN CHANCERY OF NEW JERSEY.

Between

ALFRED G. HOLCOMBE, *et al.*,
Complainants,

and

TRENTON WHITE CITY COMPANY,
Defendant.

On Bill.

To the Stockholders and Creditors of the White City Company.

Dear Sirs:

on the 23rd day of April, A. D., 1910, the Receiver of the Trenton White City Company offered at public sale all the personal property of the defendant company, at its park, near Trenton, N. J. The highest bid obtained was $2,075, from one Charles L. Patterson. The property was struck off to him, subject to the Chancellor's con-

firmation. The Receiver reported the sale to the Chancellor, and an order was made that you appear before the Chancellor, at the State House, in Trenton, N. J., on this day, at ten o'clock in the forenoon, to show cause why the sale should not be confirmed. Only one of you responded. The Receiver's counsel, in opening the matter to the Court, stated that the price bid was inconsequential in comparison with the cost to the defendant of the property sold; that he did not ask for a confirmation, but that the Receiver regarded it as his duty to report the sale to the Chancellor and to be further advised. Counsel further requested that because of the absence of the stockholders and creditors from the hearing, and their apparent indifference of the consequences, an adjournment be taken for two weeks in order that the stockholders and creditors may have further time to consider the matter, with a view to protecting their interests. The hearing on the order to show cause will again come before the Chancellor, at the State House, in Trenton, N. J., on the twenty-fourth day of May, instant, at ten o'clock in the forenoon. It is the Receiver's advice to you that you, in the meantime, organize and combine your interests, to the end that you submit to the Receiver, on or before the adjourn day, a bid for the said property, substantially in excess of the amount offered, accompanied by a certified check for twenty per cent. of the amount of the bid, as a good faith, to avert a confirmation of the sale now before the Court. The bid of $2,075 is only a fractional part of the cost to the Trenton White City Company of the property which is offered for sale, and unless you awaken to the situation and adopt measures to protect your claims, the inevitable is that you will lose your investments. The Receiver's desire is that you appear before

the Chancellor on the adjourn day, so that you may be fully heard. You need not appear by counsel. The Chancellor will gladly hear what you have to say in person. This letter is written to you by direction of the Chancellor.

Very truly yours,
CHARLES J. FURY,
Receiver of Trenton White City Company.

Trenton, N. J., May 10th, 1910."

Mr. Backes (continuing): And further offering the order confirming the sale, bearing date May 24, 1910, advised by your Honor.

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WALTER MEREDITH DICKINSON, sworn in behalf of the complainants, testified as follows:

Direct examination by Mr. Backes:

Q. What is your name and address? A. Walter Meredith Dickinson, 841 Edgewood Avenue, Trenton, New Jersey.

Q. You are one of the respondents in these proceedings? A. Yes, sir.

Q. What relation did you bear to the White City Company before the appointment of the Receiver? A. I was President of it.

Q. Were you President of it during its existence? A. Yes, sir.

Q. Who conducted its books? A. Mr. John Ashton.

Q. All of them? A. As far as I know.

Q. Did you conduct any of them at all? A. No, sir.

Q. There were stockholders of the company outside of the original organizers? A. Oh, yes.

Q. Was actual stock certificates issued? A. Yes, sir.

Q. Have you the record of the stockholders of the White City as of the day of the appointment of the Receiver? A. No, sir; not in my own possession.

Q. Did you have such a record up to and immediately before the appointment of a Receiver? A. No, sir.

By the Court:

Q. The stock certificate book would show it, wouldn't it? A. I did not have it in my possession—the company had the book.

Further direct:

Q. Did you have a stock ledger too? A. I presume we had a full set of books.

Q. Don't you know whether you had a stock ledger? A. We had.

Q. Were you familiar with it? A. No, sir.

Q. Do you know who the stockholders of the White City Company were, at the time of the appointment of the Receiver? A. I do know, yes, sir.

Q. All of them? A. With one or two exceptions.

Q. Give me, by reference to the books, inform me of the names of the stockholders—the dates of the issuing of the stock to them, and the amounts. A. I will try—it has been a long while.

Q. What is this book which has been shown to me? A. It is a stock ledger.

The Court: That is the stock ledger?

Mr. Backes: Yes, sir.

Q. You have said this is the stock ledger book? A. It is so marked.

Q. It is one of the books of the company? A. As far as I know.

Q. Don't you know? A. Yes, sir; it is so marked.

Q. Don't you know that was one of the books in use by that company while you were President? A. I don't know that I ever saw this book before.

Q. Whose handwriting is that kept in? A. I cannot tell you that, sir.

Q. You have no idea at all? A. No, sir.

Q. Do you recognize your own handwriting? A. I would if I saw it.

Q. Is there any handwriting in there, your handwriting, Mr. Dickinson? A. No, sir.

Q. Just look through carefully. A. There may be.

Q. You say you never saw the book before? A. Not to my knowledge.

Q. I am showing you a stock certificate book; you recognize that? A. Yes, sir.

Q. You used that while you were President? A. Yes, sir.

Q. Now, tell me who the holders of the common capital stock of the company were at the time the corporation became insolvent. A. I can tell you the names as they appear in this book.

Q. That is what I want to know.

Mr. Dickinson: I object to it; the witness may read the names of certain stockholders that appear on there, and as a matter of fact, some of that stock may have been transferred—and it was transferred.

The Court: You could show that on cross examination.

Q. Name the stockholders and the certificates held by them; I want the number, the date, the name, and the number of shares. A. Certificate No. 3, 100 shares to Henry W. Green, issued June 22, 1907.

Certificate No. 4, for 50 shares, issued to Rollin H. Blakeley, June 15, 1907.

Certificate No. 5, for 50 shares, issued to Herbert Sinclair, June 24, 1907; I can tell as far as this book itself shows.

Certificate No. 7, 25 shares, Harry Haveson, June 15, 1907.

Certificate No. 8, 50 shares, Isaac F. Richey, Jr., June 18, 1907.

Certificate No. 9, 50 shares, issued to Edward C. Stokes, June 24, 1907.

Certificate No. 11, 50 shares, issued to Robert C. Kolb, July 15, 1907.

Certificate No. 12, 50 shares, Barker Gummere, Jr., May 16, 1907.

Certificate No. 13, 50 shares, to William S. Hancock, May 21, 1907.

Certificate No. 14, 50 shares, issued to W. M. Dickinson, July 1, 1907; that is myself.

Certificate No. 15, 50 shares, issued to E. D. Cook, June 15, 1907.

Certificate No. 16, for 50 shares, to Hugh H. Hamill, June 16, 1907.

Certificate No. 18, for 50 shares, Alexander C. Yard, August 26, 1907.

Certificate No. 19, 50 shares, issued to W. Holt Apgar, July 1, 1907.

Certificate No. 21, 50 shares, to W. H. Linburg, June 15 1907.

Certificate No. 22, for 25 shares, to L. B. Risdon, June 15 1907.

Certificate No. 23,—here is a certificate appears in the book, but it has never been delivered; it is transferred in blank.

Certificate No. 24, 25 shares, Thomas N. Adams, June 15, 1907.

Certificate No. 25, 25 shares, William B. Endebrock, June 15, 1907.

Certificate No. 26, 25 shares, to Henry R. Swartz, June 15, 1907.

Certificate No. 29, 25 shares, issued to Leroy C. Thompson, it is not dated.

Mr. Backes: June 15, 1907.

The Witness (continuing): Certificate No. 30, 25 shares, to Charles H. Holcombe, June 20, 1907.

There is a certificate appears issued to Horace E. Case, No. 32, for five shares, and my recollection is that he never paid anything for that.

Q. He is insolvent, isn't he? A. As far as I know; I don't believe the certificates were ever delivered to him.

Q. Do you know his circumstances? A. No, sir, I know at the time he subscribed $1,000 towards the orgaization of our park, and that he came to us afterwards and said he could not take up his subscription.

Certificate No. 33, for 25 shares, issued to Alexander C. Klinkowstein, June 24, 1907.

Certificate No. 34, for 5 shares, to Henry Wirtschafter, June 24, 1907.

Certificate No. 35, 100 shares, to Frederick Winkhaus, June 15, 1907.

Certificate No. 36, 100 shares, to John Winkhaus, June 20, 1907.

Certificate No. 37, 25 shares, to Frederick E. Donaldson, June 18, 1907.

Certificate No. 38, for 25 shares, to R. J. Garrett, June 15, 1907.

Certificate No. 39, 15 shares, Margaret H. Risdon, June 15, 1907.

Certificate No. 40, 10 shares, to Katherine C. Fay, June 15, 1907.

Certificate No. 41, for 50 shares, Thomas B. Browne, June 15, 1907.

Certificate No. 42, for 50 shares, to Frank J. Hagemayer, June 20, 1907.

Certificate No. 45, 50 shares, to Sigfried Roebling, June 15, 1907.

Certificate No. 46, 50 shares, to Paul Roebling, June 15, 1907.

Certificate No. 48, 1,000 shares, issued to John S. Broughton, April 1, 1907.

Also Certificate No. 50, for 500 shares, issued to Wilbur F. Sadler, Jr., April 1, 1907.

Certificate No. 52, for 1500 shares, to Christian H. Oberheide, April 1, 1907.

Certificate No. 53, 25 shares to Samuel W. Prior, June 15, 1907.

Certificate No. 54, 25 shares, to John L. Brock, June 15, 1907.

Certificate No. 55, 25 shares, to John V. D. Wicoff, June 15, 1907.

This certificate says "See No. 28, cancelled for change of name;" no, that is all right, just as it stands.

Certificate No. 56, 25 shares, issued to F. W. Roebling, Jr., June 15, 1907.

Certificate No. 57, for 25 shares, issued to Karl G. Roebling, June 15, 1907.

Certificate No. 58, 7 shares, issued to W. O. Wheeler, November 18, 1907, that is a transfer from H. Y. Haden, it is 7 shares out of an original 25 held by Mr. Haden.

Certificate No. 59, 18 shares to H. Y. Haden, June 24, 1907; that took care of the balance of his stock.

Certificate No. 60, 26 shares, issued to John S. Broughton, March 18, 1908; I don't know what that certificate was for.

Certificate No. 61, 100 shares to Peter Hurley, March 18, 1908.

Certificate No. 63, 967 shares, to Barker G. Hamill, March 18, 1908.

Certificate No. 65, 967 shares, to W. M. Dickinson, meaning myself, March 18, 1908.

Certificate No. 66, for 10 shares, issued to Walter F. Smith, September 5, transferred from Irving W. Rogers; he originally held 10 shares, and he transferred 10 shares.

Q. To whom was share No. 1 issued, and for what amount, and the date? A. The certificate was originally drawn for 2500 shares to Barker G. Hamill, John S. Broughton, W. M. Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide, and it is not dated, and it is marked "Cancelled" in red ink.

Q. Returned for new issues—Certificate No. 2? A. That is 5,000 shares, issued to Barker G. Hamill, John S. Broughton, C. H. Oberheide, W. F. Sadler, Jr. and W. M. Dickinson, not dated—and marked "Cancelled" in red ink.

Q. Without date? A. Yes, sir.

Q. It has been reissued since? A. I don't recollect.

Q. There are 845 shares left as holdings in the name of the five people to whom it was originally issued? A. Yes, sir, it seems that this might have been the stock that we turned back to the White City Company, I don't know.

Q. What was the form of the stock certificate that was outstanding, please read it? A. Incorporated under the laws of New Jersey, and gave certificate number and then umber of shares, "Trenton White City Company, Common Stock, $75,000."

"This certifies that .....is the owner of.....shares of Ten dollars each of the Common Capital Stock of the Trenton White City Company, transferrable only on the books of the company, in person or by attorney, on surrender of this certificate.

"IN WITNESS WHEREOF, said company has caused the certificate to be signed by its President and Secretary, and to be sealed with the seal of the Company this.....day of....."

A line for "Treasurer," and a line for "President."

Q. And the certificates of the stockholders—the names being those you have given, and the amounts, were all signed by you as President? A. I had to sign all stock certificates as President of the company.

Q. Now, after having gone over that list, are you able to tell me whether these people, whose names you have mentioned, were shareholders in the White City Company, of the amounts you have mentioned? A. As far as I can recollect at this time, that is true.

Q. I am showing you the minutes of the Trenton White City Company as of the 17th day of March, 1909, in which is set out a list of the stockholders of the company and signed by you? A. Yes, sir.

Q. Do you remember making up that list? A. The list was not made by me; it was made in Mr. Hamill's office, and certified as correct, as I remember it, by him.

Q. You have no doubt about its being correct? A. I had no doubt about it then, and I have no doubt now, but that he copied the records.

Q. Is Edmund D. Cook living or dead? A. He is dead.

Q. Do you know who his administrators are? A. I think Mr. George R. Cook has something to do with the administration of the state.

Q. Mr. Hugh H. Hamill is dead? A. Yes, sir.

Q. And Elizabeth Hamill is his Executrix? A. Yes, sir.

Q. Did you know Frederick Winkhaus? A. Yes, sir.

Q. And John Winkhaus? A. Yes, sir.

Q. And Frederick Donaldson? A. No, sir.

Q. Where does Frederick Winkhaus live? A. In New York City.

Q. And where does John Winkhaus live? A. New York City.

Q. Do you know where Frederick E. Donaldson lives? A. New York City, I think.

Q. And Thomas B. Brown? A. He lives in Philadelphia.

Q. And Frank E. Hagemayer? A. He is out of the State.

Q. And Christain H. Oberheide? A. He lives in Chicago.

Q. And H. Y. Haden? A. He lives in Europe.

Q. From your knowledge of Horace E. Case's circumstances, can you say whether a claim for unpaid subscription, is or is not collectible? A. No, sir, I cannot.

Q. Were you one of the promoters of this company? A. I was one of the people that helped get the company up.

Q. Who were your associates? A. John S. Broughton, Barker G. Hamill, Wilbur F. Sadler, Jr., and C. H. Oberheide.

Q. When was the project first taken up by you and your associates? A. To the best of my recollection, it was in the Summer or the early Fall of 1906.

Q. How did it come about at that time? A. C. H. Oberheide came to Trenton, and how he found me I don't know; I wish he had not; I forget that part of it; and he said that he was an amusement man and that he thought that an amusement park in Trenton would be a very profitable venture, and we looked Mr. Oberheide up the best we could at that time, and Mr. John Cullen, who worked for the Trenton Watch Company, knew him, and gave

him a good recommendation; and the reports we had about him were very good, and we decided that an amusement park in Trenton would be a very profitable venture; and we proceeded to interest capital, and make contracts, and look around for a place to conduct the park.

Q. When did you first conclude that this enterprise might be a profitable one? A. Why, to the best of my recollection, in the Fall of 1906.

Q. When did you first proceed to interest capital? A. During the Fall of 1906.

Q. Whom did you first visit? A. I don't recollect.

Q. You don't know who the first one was? A. No, sir, I do not.

Q. You say that, "we proceeded to interest capital;" when you speak of "we," do you speak of you and your associates? A. Yes, sir.

Q. What particular function did you discharge? A. I went around among people that I knew and told them that we thought an amusement park would be a large paying investment, and got their subscriptions.

Q. That was in the Fall of 1906? A. Yes, sir, and the Winter of 1907.

Q. I have here some subscriptions that bear the name of a very prominent gentleman—I am showing you a form of subscription that bears the signature in the first place, of Henry W. Green; and I am also calling attention to the fact that that is dated January, 1907; was Mr. Green one of your first subscribers? A. Yes, sir, that is true, but there was a lot of preliminary work done previous to the actual getting of the names on paper.

Q. You mean preliminary work done with these people whose signatures you afterwards secured? A. Yes, sir, the signatures were not secured at the minute we walked in and said, "Here is a good pay-

ing proposition;" these gentlemen who came into it, came into it also with the idea that the park would be a very profitable, paying park, and we did not have to knock them down—

The Court: Strike out what the witness said in reference to knocking down.

Q. What did you have to do in the way of preliminary work? A. We made calculations of the probable number of people that would attend the park if such a park was built.

Q. I had reference to the preliminary work that you had to do with these subscribers? A. It was necessary to go around and see them and put the proposition to them in a way to interest them.

Q. Then, as a fact, you did not get any subscribers in writing until the month of January, or thereafter, 1907? A. Not that I remember.

Q. Have you any recollection that you got any before that? A. No, sir, I have not; I do not remember exactly when we did get them.

Q. Do you remember how many you got in all? A. No, sir, I do not.

Q. They were subscribers to the preferred shares, were they not? A. Yes, sir, they were subscribers to stock of the Trenton White City Company, and whether or not you would say that their subscriptions took in both common and preferred stock, I do not know.

Q. I will read to you the subscription itself— A. I forget what the subscription says.

Q. The written subscriptions were for preferred stock? A. Yes, sir.

Q. Now, assuming that there was no written subscription obtained until the 31st day of January, 1907, when was it that you first talked with any of these subscribers to the preferred stock, by way of inducing them to take stock? A. I cannot recol-

lect; it was during the Fall of 1906, and the Winter of 1907, that we got up the organization of this company; that is the best I remember.

Q. What inducement did you hold out to them? A. None whatever, except what we thought our opinion was.

Q. What was said to these subscribers? A. The best I can recollect is, that the figures were made up by Mr. Oberheide, who was a practical park man, and we took his estimates as the proper estimates, inasmuch as he claimed he had conducted a White City in Chicago and other parks.

Q. What was said to these subscribers to the preferred stock, and the stockholders of the preferred stock, with reference to their getting some of the common stock; what was that agreement with them? A. I don't recollect exactly whether or not we told them that they were to share in it or not, but the idea was at the time that each holder of one share, of two shares, of preferred stock, was to have one share of common stock.

Q. That was the understanding? A. Yes, sir.

Q. Was that the understanding between you and your associates? A. Yes, sir.

Q. At or about the time that you solicited these subscribers to the preferred stock? A. Yes, sir.

Q. And prior to that time? A. Well, it was in its infancy prior to that time.

Q. In a state of incubation? A. As it were, yes, sir.

Q. During that period, and when you saw these people, soliciting their subscriptions, do you remember what inducement in that line you held out to them—you said you understood that to be the scheme? A. Only that the idea of all such arrangements is—and I presume the idea of this one too, was that a man would draw a certain percentage of interest on his preferred stock, and would

participate in the other profits of the company through his hold in the common stock.

Q. You did not understand me; what representations were made to the subscribers to the preferred stock?

Mr. Dickinson: If you don't know, say so.

A. (No answer.)

Q. You told me that it was the arrangement of you promoters to give to each subscriber of two shares of the preferred stock, one share of the common stock? A. Yes, sir.

Q. And that was at the time when you were soliciting these subscribers; and also during the time that you were obtaining their signatures? A. Yes, sir.

Q. That was the preliminary arrangement and bargain between you promoters, or men who started this concern? A. Yes, sir; that is true.

Q. I want to know whether you communicated that to these people, told them your plans? A. I did; yes, sir.

Q. And that was that you informed them that for every two shares of preferred stock that they would take, that they would subscribe to, that they would get one share of the common stock? A. Yes, sir.

Q. Did you tell them where the share of the common stock was to come from? A. No, sir.

Mr. Backes: I am offering for identification three subscription agreements.

Marked "Exhibit P17½."

Q. Do you recognize these subscription agreements as forming a plan of this undertaking that you and your associates had at the time? A. Yes, sir; those are the subscription agreements.

Q. You used these in securing the subscribers? A. Yes, sir.

Q. Did you get all the subscribers? A. A large majority of them.

Mr. Backes: I offer these in evidence now.

Marked "Exhibit P17½."

Q. Now, I want to know your explanation of this fact, that the subscribers, who are on the same paper with Henry W. Green, namely, Henry W. Green, Rollin H. Blakeley, Herbert Sinclair, Samuel W. Prior, John L. Brock, Harry Haveson, Isaac F. Richey, E. C. Stokes, John S. Broughton, Robert C. Kolb, Barker Gummere, W. S. Hancock, W. M. Dickinson, E. D. Cook, Hugh H. Hamill, F. W. Roebling, Alexander C. Yard, W. H. Apgar, W. A. Roebling, W. H. Linburg and Thomas B. Browne, all subscribed for an amount double the issue of stock, double of the issue of the stock to them; can you explain it? A. I have been reading from the common stock book.

Q. You and your brother John, who is counsel in this case, and Mr. Oberheide, were the incorporators of this company? A. As I recollect it, we were.

Q. Take the minute book and verify—

Mr. Dickinson: We will admit that.

Mr. Backes: No, I want the witness to state it.

A. Yes, sir; that is correct.

Q. The minutes further disclose, and you have them before you, that the first meeting of the stockholders was held on the 26th of March, at which meeting you elected as Directors—the promoters and Mr. John M. Dickinson, and Mr. Ferdinand W. Roebling, Jr.? A. Do you mean this (indicating)?

Q. You ought to know—the first meeting of the stockholders—the record shows that Messrs. W. Meredith Dickinson, John M. Dickinson and Mr. Oberheide, being the organizers, and John S. Broughton, Barker G. Hamill, Wilbur F. Sadler and F. W. Roebling, Jr., were nominated and elected Directors; is that right? A. Yes, sir.

Q. They were not stockholders that day, were they? A. I don't recollect whether they were or not.

Q. On the 26th day of March, 1907, your certificate of incorporation was filed in the office of the Secretary of State, and on that day you held your first meeting and elected these gentlemen, other than the organizers, Directors; do you mean to say you don't know whether, up until the time of that election, no stock had been issued to that amount outside the organizers? A. I don't recollect when the stock was issued, except as it appears in the stock book.

Q. Well, but the corporation— A. The stock would be issued; it don't seem to me it makes any difference—it was merely a matter of bookkeeping—

Q. They were only subscribers to the organizers, and not subscribers to the corporation—is that right—were they shareholders? A. Yes, sir.

By the Court:

Q. Were they subscribers to the corporation for stock? A. Yes, sir.

Further direct:

Q. These three stock subscriptions are the only subscriptions that were in existence—is that right? A. I don't recollect that; some of the people who subscribed stock—the stock was subscribed for in other people's names; for instance,

Mr. F. W. Roebling subscribed a thousand dollars, and as I understand it—

Q. I am only asking you about the holdings in this company, on the day that you organized, and at the time that you performed your first function of stockholders, whether the men, other than the organizers, were stockholders or shareholders or subscribers to the company? A. In order to make that plain to you, you wil have to go back to, for instance, as I was going to tell you, when Mr. F. W. Roebling put down his name for one thousand, he said "I will put my name down for one thousand, and I will take five hundred of that for my son, Ferdie, and five hundred for Karl."

Q. But Mr. Dickinson, that was not a subscription to the corporation, was it; this was a bargain made with you? A. Yes, sir.

Q. The bargain reads—

The Court: We will take a recess unto two o'clock at this point.

After Recess.

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W. MEREDITH DICKINSON resumes the witness stand.

Direct examination (continued) by Mr. Backes:

Q. The bargain reads, "Subscription agreement to stock of the Trenton Amusement Company.

"Whereas the organization is contemplated of a corporation under an act of the Legislature of the State of New Jersey, entitled 'An Act concerning corporations (Revision of 1896),' to be known as the Trenton Amusement Company or such other name as may be selected, with a capital stock of not less than one hundred and fifty thousand dollars, to be divided into seventy-five hun-

dred shares of preferred stock of the par value of ten dollars a share, to bear interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July of each year; and seventy-five thousand dollars of common stock, divided into seventy-five hundred shares at the par value of ten dollars a share, to bear interest at such rate, and payable at such times as the Board of Directors of said company may declare.

"And whereas, said company is to be incorporated for the purpose of building and operating an amusement resort in or near the City of Trenton, and to lease the necessary grounds and buildings for the operation thereof; and, whereas, it is desired by the undersigned to become shareholders in said corporation:

"Now, therefore, we, the undersigned, do hereby severally promise and agree, but not jointly, to and with W. Meredith Dickinson, of the City of Trenton, hereinafter called the 'organizer,' in consideration of the promises of the organizer, hereinafter stated, that we will pay to the said organizer, or to any person or corporation to whom he may assign this agreement, on demand, the sums set opposite our respective names, being the subscription price of the number of shares set opposite our respective names, of the preferred capital stock of said corporation hereinafter to be organized; ten per cent. of said subscription price to be paid on the signing of this agreement, and the balance of said subscriptions at such times and in such amounts as may be called for. The stock paid for to be delivered at the earliest possible moment after the organization of the company, and meanwhile proper receipts or script to be issued to the undersigned.

"This agreement is condition upon the procuring by the said organizers of other *bona fide* sub-

scriptions to the capital stock of the said corporation, aggregating in all not less than thirty-five thousand dollars.

"The said organizer, on his part, in consideration of the foregoing, promises to use his best endeavors to obtain such amount of subscriptions, and his best efforts to perfect the organization of said corporation.

"Witness our hands and seals this twelfth day of March, nineteen hundred and seven.

| Name. | Amount. | Number of Shares |
|---|---|---|
| Frederick Winkhaus | $2,000 | 200 |
| John F. Winkhaus, | $2,000 | 200" |

Then follows a duplicate of the same bearing the following signatures:

| "Name. | Amount. | Number of Shares. |
|---|---|---|
| Margaret H. Risdon, | $300 | |
| K. J. Garrett, | 500 | |
| L. B. Risdon, | 500 | |
| H. G. Haden, per B. G. Hamill, Atty., | 500 | |
| T. H. Adams, | 500 | |
| Wm. P. Endebrock, | 500 | |
| H. R. Swarz | 500 | |
| Irvin W. Rogers, | 200 | |
| John V. B. Wicoff, | 500 | |
| LeRoy C. Thompson, | 500 | |
| Chas. H. Holcombe, | 500 | |
| Horace E. Case, | 1,000 | |
| Alex. Klinkowstein, | 500 | |
| Henry Wirtschafter, | 100 | |
| Katherine C. Day, c/o Risdon, | 200" | |

And a third duplicate of the same in identical language, bearing the following signatures:

| "Name. | Amount. | Number of Shares. |
|---|---|---|
| Henry W. Green, | $2,000 | |
| Rollin H. Blakeley, | 1,000 | |
| Herbert Sinclair, | 1,000 | |
| Prior & Brock, | 1,000 | |
| Harry Haveson, | 1,000 | |
| Isaac F. Richey, | 1,000 | |
| E. C. Stokes, | 1,000 | |
| John S. Broughton, | 1,000 | |
| Robert C. Kolb, | 1,000 | |
| Barker Gummere, Jr., | 1,000 | |
| W. S. Hancock, | 1,000 | |
| W. M. Dickinson, | 1,000 | |
| E. D. Cook, | 1,000 | |
| H. H. Hamill, | 1,000 | |
| F. W. Roebling, | 1,000 | |
| Alexander C. Yard, | 1,000 | |
| W. Holt Apgar, | 1,000 | |
| W. A. Roebling, | 2,000 | |
| W. H. Linburg, | 1,000 | |
| Thos. Beaver Browne, per B. G. Hamill, | 1,000 | |
| | 83,280" | |

Q. Were these subscriptions in "Exhibit 17½" ever transferred to the company? A. Oh, yes.

Q. How? A. I think checks were drawn by the subscribers right direct to the Trenton White City Company.

Q. Is that the only way that you as the organizer, transferred these subscriptions to the company? A. That is the only way that I remember of.

Q. You don't know of any other? A. No, sir.

Mr. Dickinson: Objected to as irrelevant and immaterial.

Mr. Backes: My purpose is, that this organizer, who is one of the persons who transferred, in consideration of $75,000 worth of stock, something that he was to get for these people, by that means to establish that there was no consideration for the transfer.

The Court: It is admissible, undoubtedly.

Q. At the meeting of the incorporators of the company, you, your brother John and Mr. Oberheide, held on March 26, 1907, after reporting the filing of the certificates—the first business was, after adopting the by-laws, to elect a Board of Directors; now, I am asking you whether, at the time that you elected John S. Broughton, he was a stockholder?

Mr. Dickinson: Objected to; he is asking this witness something which transpired three or four years ago, and the minutes and stock book are here in evidence.

The Court: The question is clearly admissible; he is asked for his recollection as to what was the fact at that time.

A. To the best of my recollection and belief, he was.

Q. In what way? A. He was a subscriber to the stock of the White City Company, and he also had his name, on these two certificates of stock, No. 1, and No. 2, one for 2500 shares, and one for 5,000 shares, he had his name in as a part stockholder of that certificate.

Q. At the time that you held this stockholders' meeting at which you elected the Board of Directors, did he hold any certificate of stock, or was there any record in your book showing that he was a stockholder; I mean, at that time? A. I

cannot answer when this certificate of stock was made it is not dated.

Q. Did you have that certificate of stock both printed and in existence, at the time you held the first meeting of stockholders? A. Yes, sir, I think that everything—my recollection is, that everything was ready.

Q. Don't you know as a fact, that your stock book was not printed and in existence until the month of June, 1907? A. No, sir, I don't remember.

Q. What is your best recollection as to that? A. I don't recollect at all; I would not say one way or the other.

Q. At the first meeting of the stockholders you adopted a seal, didn't you a corporate seal?

Mr. Dickinson: Objected to.

A. If the minutes say that we did, we did; I do not recollect.

Q. The minutes say that you did; now, bearing that in mind, do you say you had an actual, physical, corporate seal, on the day that you held your first meeting of stockholders to elect a Board of Directors? A. I don't presume that we could have.

Mr. Dickinson: I object to that; the minutes also speak for themselves.

The Court: The objection is overruled.

Q. I am calling your attention to Certificate No. 1, which bears the corporate seal of the company; now, having that in mind, what can you tell me as to the actual physical existence of this stock certificate book on the 26th of March, 1907, at the time you elected Mr. Broughton a Director? A. I cannot say any more than I have; the corporate seal might possibly have been put on later; the certifi-

cate might have been issued in this shape that it is, and the corporate seal put on later.

Q. You signed Certificate No. 1 as President? A. Yes, sir.

Q. At the time the stockholders meeting was held, and you elected a Board of Directors, you were not President? A. I don't think so.

Q. You were elected President by the Board of Directors? A. Yes, sir.

Q. So then, your name to this Certificate No. 1, at the time that Mr. Broughton was elected a Director, could not have been there rightly; what do you say is the fact? A. It don't seem that it could have been.

Q. And your answer as to Mr. Broughton being a stockholder at that time, applies with equal force to Wilbur F. Salder and F. W. Roebling, Jr.? A. My answer is, as to these gentlemen being stockholders, that they were subscribers to the stock of the Trenton White City Company, and whether or not certificates had actually been issued to them, or whether or not a certificate book was in force or not, don't seem to me to cut any figure.

The Court: Don't argue.

Q. (Question read.) A. Yes, sir. I should say it did.

Q. The subscriptions to which you refer, if they were made by these three gentlemen, or any one of them, are the subscriptions such as is contained in "Exhibit P17½," to the organizer? A. Yes, sir, unless there were some verbal subscriptions made; for instance, I don't know what Mr. Sadler put in.

Q. You don't know of Mr. Sadler having subscribed at all, do you? A. No, sir.

Q. To what extent did persons subscribe for the preferred stock and who in turn got the common stock, as bonus; give me their names.

Mr. Dickinson: If you will pardon me one minute; I will give you a memorandum which may facilitate the inquiry.

Mr. Backes: May I suggest a course that will facilitate matters by the witness saying "the following gentlemen subscribed for the preferred stock in the following amounts, Henry W. Green, 200 shares"—

Mr. Dickinson: One moment, Mr. Backes, the book does not give all the information—I do not believe it does. Here is a list which was taken off by the witness and other people and verified by them.

Mr. Backes: I object; I ask that the statement of the counsel be struck off, and that the stenographer read my question to the witness.

The Court: Yes.

Q. Are these the names on this paper? A. If this has been taken off the books, I presume it is correct.

The Court: Why not say, "to the best of my knowledge the following persons and amounts," and then hand it to the stenographer and let him transcribe them?

A. Then that will be my answer.

Paper marked "Exhibit P20½" which reads as follows:

| | "Preferred. |
|---|---|
| Henry W. Green, | 200 |
| R. H. Blakely, | 100 |
| H. Sinclair, | 100 |
| Harry Haveson, | 50 |
| I. F. Richey, | 100 |
| E. C. Stokes, | 100 |
| John S. Broughton, | 100 |

| | | |
|---|---|---|
| R. C. Kolb, | 100 | |
| Barker Gummere, Jr., | 100 | |
| W. S. Hancock, | 100 | |
| E. D. Cook, | 100 | |
| H. H. Hamill, | 100 | |
| F. W. Roebling, Jr., | 50 | |
| A. C. Yard, | 100 | |
| W. H. Apgar, | 100 | |
| W. H. Linburg, | 100 | 10 |
| L. B. Risdon, | 50 | |
| H. G. Haden, | 35 | |
| Thomas N. Adams, | 50 | |
| W. P. Enderbrock, | 50 | |
| H. A. Swartz, | 50 | |
| John V. B. Wicoff, | 50 | |
| L. C. Thompson, | 50 | |
| C. H. Holcomb, | 50 | |
| A. C. Klinkowstein, | 50 | 20 |
| H. E. Case, | 10 | |
| H. Wirtschafter, | 10 | |
| F. Winkhaus, | 200 | |
| John Winkhaus, | 200 | |
| F. E. Donaldson, | 50 | |
| R. J. Garrett, | 50 | |
| M. H. Risdon, | 30 | |
| K. C. Fay, | 20 | |
| Thomas Beaver Browne, | 100 | 30 |
| F. G. Hagemeyer, | 100 | |
| I. W. Rogers, | 10 | |
| K. G. Roebling, | 50 | |
| Seigfred Roebling | 100 | |
| Paul Roebling, | 100 | |
| Garetta M. Dickinson, | 100 | |
| Wm. T. Temple, L. E. Norcross and John E. Eardley, | 50 | |
| S. W. Prior, | 50 | 40 |
| J. L. Brock, | 50 | |
| B. G. Hamill, Trustee, | 25 | |

| | |
|---|---|
| W. O. Wheeler, | 15 |
| W. F. Smith, | 10 |
| R. W. Kennedy & Co., | 70 |
| James G. Doak & Co., | 237 |
| N. J. Roofing & Cons. Co., | 20 |
| P. E. Wurfflein, | 10 |
| Eisenweir & Boorse, | 15 |
| | 37,170" |

Q. Did each of these persons receive their quota of the common stock under the plan or scheme that the promoters had? A. As far as I know, they did; they should have received it.

Q. The holders of the common stock, whose names, and the amounts, you gave me this morning, who are also holders of the preferred stock, whose names you have just given me, received their common stock as a result of the plan that the promoters had evolved, and which you explained to us this morning; is that right? A. As far as I know, they did.

Q. Mr. Peter E. Hurley is the owner of 100 shares of the common stock of the company, and is not a holder of any preferred shares; how did he come to get his? A. To the best of my recollection in regard to that, is that we—either Mr. Hamill or myself, or Mr. Broughton, or the three of us jointly, gave, voluntarily, to Mr. Hurley a part of our common stock, when Mr. Hurley was made a Director of the company.

Q. At this meeting of the incorporators—the stockholders' meeting—being the first one—by the books it appears that this resolution is passed, and I am asking you as a fact whether it was: "Whereas, Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wibur F. Sadler, Jr., and C. H. Oberheide own and control a certain leasehold in and to a certain large tract of land

and premises in the township of Hamilton and County of Mercer, commonly known as Broad Street Park, in which lease there is an unexpired term of four years; And whereas, said persons above named also control an option upon said property to lease the same for an additional period of six years from the time of the expiration of the term of their present lease aforesaid; And whereas, said persons have entered into various contracts with certain persons, firms and corporations for the construction and erection of various devices which would be useful and necessary in the operation and conduct of the business of this company; And whereas, it appears to the stockholders that such property rights and interests would be of great value to this company, and that their acquisition is indispensable to the successful operation of this company and the conduct of its business, and that no other property rights and interests of a similar nature and character can be acquired by this company which would be of equal value to it; And whereas, the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide have offered to sell said property interests and contract rights to this company for the sum of four thousand dollars in cash; and in consideration of the issue of the common capital stock of this company to them to the amount of seventy-five thousand dollars par value.

Now, therefore, be it resolved, that the Board of Directors of this company be and they are hereby authorized in their discretion to purchase the property, leasehold interests and contract rights above mentioned, for the price aforesaid, and to issue said stock in payment therefor.

Upon motion, duly made and seconded, and by the affirmative vote of all present, the following

preamble and resolution were unanimously adopted:

Whereas, it has been agreed between each of the incorporators and Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F Sadler, Jr., and C. H. Oberheide, that the stock to be issued in payment for the property authorized to be purchased by the resolution above set forth, shall include the stock subscribed by the incorporators, as evidenced by the certificate of incorporation.

Now, therefore, be it resolved, that the Board of Directors be and they are hereby authorized and directed to accept said property as full payment for the subscriptions for stock of the incorporators, and to issue full paid stock to the incorporators or their assigns to their respective subscriptions."

What is your answer? A. Yes, sir; it was passed.

Q. Tell me this: Are those gentlemen, Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide, from whom the incorporators were to buy this property, the same gentlemen whom the incorporators had at the same meeting, elected Directors? A. They are the same gentlemen if their names are the same.

Q. They are the identical persons? A. Yes, sir; they are the identical persons.

Q. In other words, you and your brother and Mr. Oberheide, as incorporators, authorized the Directors, who were the owners of this property, to buy from themselves, for themselves, representing the corporation; is that right? A. My head is not very good to-day; I would not certify whether it is or not.

Q. The minutes show that the first meeting of the stockholders was held on the 26th of March, 1907; and further, that the first meeting of the

Board of Directors was held on the same day; is that a fact? A. I think so; yes, sir.

Q. And the minutes disclose, that at the meeting the following Directors were present: John S. Broughton, Barker G. Hamill, John M. Dickinson, W. Meredith Dickinson and C. H. Oberheide, "constituting a quorum of the Board," and at that meeting a resolution was passed, as appears by the minutes:

"Upon motion, duly made and seconded, it was unanimously resolved that this company accept the offer of Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, W. F. Sadler, Jr., and C. H. Oberheide, to sell and assign to this company the property described in the resolution of the stockholders passed at the first meeting of the corporation, consisting of property rights, leasehold interests and contract rights in said resolution mentioned, authorizing the purchase, and the Board of Directors do hereby adjudge and declare that said property, rights and interests are of the fair value of seventy-nine thousand dollars, and that the same are necessary and indispensable for the conduct of the business of this company.

And be it further resolved that the President and Secretary of the company be and they are hereby authorized to execute any and all agreements on behalf of this company for the acquisition of said property rights, leasehold interests and contracts, and to issue to the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide, or their assigns, certificates of full paid common capital stock of this company to the amount of seventy-five thousand dollars, par value, and to pay to them in cash in addition thereto, the sum of four thousands dollars." Was that resolution passed? A. Yes, sir, as far as I know.

Q. Did you, at that time, appreciate, realize, that

John S. Broughton, Barker G. Hamill, yourself, W. F. Sadler, Jr., and C. H. Oberheide, as Directors of the company, were buying from yourselves and your associates, this property?

Mr. Dickinson: Objected to.

Mr. Backes: It goes to the mental frame of mind of these people.

The Court: They could have bought from themselves, I suppose.

Mr. Backes: Stewart *v.* The Delaware & Lackawanna Railroad Company, shows that they cannot.

The Court: It may be voidable; I am inclined to think that is not admissible, the question is overruled.

Q. Did the company, in fact, issue the stock pursuant to the resolution of the stockholders and the resolution of the Board of Directors? A. I believe so.

Q. Don't you know? A. I don't recollect.

Q. Well, these resolutions— A. I presume they did.

Q. I say, these resolutions authorized the issuing of $75,000 worth of stock; now, I ask you whether, as a fact, that $75,000 worth of stock was issued to these supposed vendors?

Mr. Dickinson: Objected to.

The Court: I think the witness has already answered that the stock was so issued; from the bare facts that are before the Court, that is to be inferred.

Mr. Backes: These minutes are not, for all purposes evidence in this case, at all, not as against these stockholders, who are outside, at least; it may be evidence as against the Board of Directors, whose minutes they are.

The Court: They are prima facie evidence

of corporate acts, I presume. Every stockholder is a corporator; the corporators are the stockholders.

Mr. Backes: The authorities hold that he is not bound by the minutes; that is what I am endeavoring to supply; otherwise, I could take these minutes as they are.

The Court: I think you have a right to investigate and find out whether the minutes truly record what took place. Now, Mr. Dickinson, you are not harmed by the admission of the testimony.

Q. Certificate No. 1, for 2,500 shares, and Certificate No. 12, for 5,000 shares, were issued in compliance with this resolution? A. Yes, sir.

Q. Tell me what the company got for them? A. The company got, in the first place, a property at a very small sum of money.

Q. I have not asked you to argue with me; tell me what the company got? A. The company got the leasehold and the contracts that we had made, and the place where the White City is now located.

The Court: That is what the company got.

Q. What evidence was there of the lease? A. We have a copy of an old lease that we bought in for the sum of $4,000.

Q. Please let me see it. A. My brother has it.

Mr. Dickinson: The counsel produces it.

Mr. Backes: Upon call, counsel for the respondent hands me this paper, which I am offering in evidence.

Marked "Exhibit P21½."

Q. Is this the lease for four years that you have spoken of? A. Yes, sir, that is the lease that we took up that was already on the property.

Q. You have looked at it carefully, have you? A

I have not looked at it recently, but I know that is the lease.

Q. Did you have any other evidence at that time; I mean at the time you turned over lease and options to the company other than this—for the park? A. Those details were attended to by Mr. Oberheide, at that time.

Q. Answer my question, won't you, if you can, better? A. I don't know.

Q. Do you know of any other lease than "Exhibit P21½," just handed to me by your counsel? A. I don't know of any other lease except verbal agreements.

Q. Verbal agreements from whom, with whom? A. That Mr. Oberheide had made with Mr. Hurley.

Q. Who is Mr. Hurley? A. He is manager of the Trenton Street Railway Company.

Q. Agreements of some indefinite character—do you know what they were? A. Agreements as to how the property of the Spring Lake property could be taken over, and what periods of time it could be taken over, and for how much money, and what procedure would have to be taken to get it. I know what was done in regard to that.

Q. Let me take up this first item for which the company paid $79,000; a certain leasehold in which lease there is an unexpired term of four years; and that you say is represented by "Exhibit P21½?" A. Yes, sir.

The Court: Something was said about a lease having some four years to run, in which there was an option to renew it for an additional period of five years.

Mr. Backes: I will read this agreement of lease: "This agreement of lease made by and between John L. Kuser, surviving Trustee, &c., of the City of Trenton, County of Mercer, and State of New Jersey, as the first

party, and Peter Wurfflein, trading as the American Amusement Company of Trenton, New Jersey, second party; witnesseth:

That for and in consideration of the sum of $1.00 by the second party paid to the first party, the receipt whereof is hereby acknowledged, the first party has hereunto leased and set over unto the second party for the term of one year, from the first day of April, A. D. nineteen hundred and six, and until the first day of April A. D. nineteen hundred and seven, all of those grounds with the buildings thereon, and lake connected therewith, known as Spring Lake, situate in the township of Hamilton, County of Mercer and State of New Jersey, the said first party further agreeing that it will place and maintain twenty electric arc lights, to be located as shall be agreed upon by the managers of the respective parties; and will furnish and maintain incandescent lamps now on the demised premises, or such additional lamps as in the judgment of the party of the first part shall deem necessary; that the first party also replace in proper condition for proper use the pavilion and stage therein, extending said stage so that it will be at least thirty feet in length and will provide seats for the floor space covered by said pavilion.

The said second party in consideration of the above, agrees to charge no admission whatever to whomsoever may desire to visit the said Park, reserving the right to charge admission only to the pavilion and other amusement concessions which the second party may permit to come therein;

And further agrees that the rate of admis-

sion to the vaudeville performances to be given in the Pavilion shall be ten cents for each individual, with the right to charge fifteen cents for all seats in the first ten rows.

The second party further agrees at the expiration of this lease, on the seventh day of April, A. D. nineteen hundred and seven; that he will yield up peaceable possession of the said premises to the said first party, and will quit and surrender the premises hereby demised, in as good state and condition as reasonable wear and use will permit, damage by the elements excepted; and

The said second party further agrees that should he violate any of the conditions of the above agreement, that thereupon the said first party may enter, and take possession, and the second party consents to be ousted from possession of said premises; and

It is further agreed between the parties named, that, at the expiration of this agreement, the said second party may have a renewal of this lease for a period of four years additional, upon the same terms and conditions as hereinabove stated, provided that notice of said renewal is given to the first party, on or before March the first, A. D. nineteen hundred and seven.

It is also further agreed by and between the parties that, in case of foreclosure of the mortgage now upon the said premises, this lease shall terminate, and the party of the second part will make no claim regarding the premises hereby demised, but will at once cease to claim under this lease, and will vacate said premises.

It is also further agreed that whatever per-

formance, entertainment, or show may be booked, or shall be performing upon said premises, the first party shall have the right to determine whether any or all of the same are objectionable or not; and, if in the judgment of the said first party, or its manager, any performance, entertainment, shows of vaudeville shall be deemed objectionable, such performance, entertainment, shows or vaudeville shall at once cease, and shall give no further performance whatever upon the premises hereby leased.

In witness whereof, the said parties have hereunto set their hands and seals, on this first day of May, A. D. nineteen hundred and six.

Executed in duplicate.

John L. Kuser [SEAL.]
Peter Wurfflein [SEAL.]

Signed, sealed and delivered in the presence of as to the signature of Peter Wurfflein,
Geo. W. Macpherson.
As to John L. Kuser,
Peter E. Hurley.

Prepared by W. Holt Apgar,
Approved as to terms, P. E. Hurley,
Approved as to form, Geo. W. Macpherson."

Q. The property purchases, according to the resolution, consisted as follows: First, "a leasehold in and to a certain large tract of land and premises in the township of Hamilton and County of Mercer, commonly known as the Broad Street Park, in which lease there is an unexpired term of four years;" where is that lease? A. I don't know.

Q. Is this "Exhibit P21½" the lease? A. I don't know.

Q. Who was the lease made by that had four years to run? A. I don't know.

Q. Did you ever see it? A. Not that I recollect.

Q. Do you remember from whom you, as a member of the Board of Directors, were to get this lease? A. Yes, sir, we were to get it through Mr. Peter E. Hurley.

Q. But your resolution says you are to get a leasehold then in existence which had four years to run; who was that lease made by, and to whom? A. I don't know.

Q. Did you ever hear who it was made to? A. I may have, but I don't recollect.

Q. What valuation did your Board of Directors place on that leasehold at four years? A. I don't recollect that; I know what we valued the—

Q. Answer my question: did your Board of Directors place a valuation upon that leasehold of four years; did they value it as a separate item? A. Yes, sir.

Q. How much? A. I don't remember.

Q. Have you any recollection at all of the amount that you valued that at, separately from the other property? A. I have not.

Q. Is there anything at all in the books of the corporation that will enable you to enlighten us as to from whom this lease passed and to whom it was made? A. I don't think so, because the arrangements were made by Mr. Oberheide and Mr. Hurley together; what writing Mr. Oberheide had I don't know.

Q. Did you know then? A. I may have known then, but I don't know now.

Q. Did you place a valuation on it? A. I don't know.

Q. To the best of your recollection; isn't it your

best recollection that you did not? A. I have no recollection on that subject.

By the Court:

Q. You said you valued the four years' leasehold interest as a separate item? A. We had to get rid of the Wurfflein lease in order to get hold of the place at all, as I understand it, at that time.

Further direct:

Q. Your Board of Directors says: "Do hereby adjudge and declare that said property rights and interests are of the fair value of seventy-nine thousand dollars," and those property rights that the Board adjudged at that time as of that value, consisted in part, or supposed to consist, of this four years' lease; now, you cannot tell me by whom the lease was made, or to whom it was made, or where it was made; I want to know whether you now say that there was a separate valuation placed upon it? A. As far as I can recollect, we were promised by Mr. Hurley a certain lease, or else it was an option in writing that Mr. Hurley had given Mr. Oberheide; I don't know about that; however, the negotiations were, that for the sum of $4,000 we would be able to get possession of a lease then in force on the Broad Street Park property, which is the Wurfflein lease that you have in your hand, and we would also be given a lease on that property for a period, as I recollect it, of four years, with an extension of six years—get a ten years' lease with the privilege of also buying the property for the sum of $35,000, and we got all of that for the sum of $4,000 in cash; $4,000 was put up by Mr. Broughton and Mr. Hamill.

Q. Now, this verbal promise by Mr. Hurley for this park, upon the terms that you have stated, was

in existence at the time that you passed these resolutions, wasn't it? A. Yes, sir.

Q. It was then only verbal, wasn't it? A. As far as I know, Mr. Oberheide—

Q. Do I understand, Mr. Dickinson, that this recital in the resolution, that,—we will call them the promoters, owned and controlled a certain leasehold for the, period of four years on the park, is false? A. We did, we bought for four years.

Q. What did you buy? A. We bought for $4,000, we had put up actual coin for $4,000, we put that up for a ten years' lease on the White City Company, and we put the money up before the incorporation of the company, and bought the property in ourselves.

Q. Tell me this you see your Board of Directors passed judgment upon a four years' lease, and the value of that, and I want to know what that four years' lease was— A. I cannot tell you.

Q. Other than the Wurfflein lease? A. I cannot tell you.

Q. You were one of the Directors and you were passing judgment? A. I understood exactly what we were going to get for our money too.

Q. When you say "we," whom do you mean? A. I mean when we put up $4,000, Mr. Broughton and Mr. Hamill put it up, and when they put it up we knew exactly what we were going to get for the $4,000.

Q. I am more interested in the judgment the Board passed on the property the company was to get from you promoters, and I am very much interested in that four years' lease; I ask you whether there was, upon that property, any lease, other than the Wurfflein lease of one year, and the option for a continuance of four? A. I cannot testify to it, as I don't know; I do not recollect at this time.

Q. The second item is, "And whereas, the said persons above named also control an option upon said property to lease the same for an additional period of six years from the expiration of the term of the present lease aforesaid;" by whom was that option? A. I think it was given by Mr. Hurley.

Q. Verbally? A. Either verbally or in writing, I don't recollect.

Q. What value did you place on that? A. I don't know what specific value, I don't remember.

Q. Have you any record of it? A. No, sir.

By the Court:

Q. Do I understand from that answer, that on this option you placed a specific value disassociated from the entire value of $79,000? A. No, sir, I can explain to you what we thought was worth $79,000.

Further direct:

Q. You lumped it all at $79,000 without a valuation being placed upon each separate item so as to aggregate the full sum? A. I believe that to be true, yes, sir.

Q. Do you know of any evidence at all in writing existing at this time, that declared any option that you promoters had for this park? A. My impression is, that there was a written option given at the time; Mr. Hurley might enlighten you as to that, or Mr. Oberheide might do so.

By the Court:

Q. You say you don't know whether the option was in writing or verbal? A. I do not.

Q. You do know that a verbal option for the sale of land is not worth anything, don't you? A. Yes, sir, I know that. Mr. Oberheide transacted this transaction, and that is the difficulty with my testimony.

Further direct:

Q. I am trying to see whether your judgment was properly founded; now, the next item which went into this grand sum of $79,000, appears in the park restaurant, "And, whereas, the said persons (meaning the promoters) have entered into various contracts with certain persons, firms and corporations for the construction and erection of various devices which would be useful and necessary in the operation"—what were they; give me the names of the contractors? A. The Public Service Corporation, James G. Doak and Company; S. R. Cook, I think his name was; G. A. Dentzel; Roller Skating contract; miniature railway contract; restaurant contract (Fury); Cook and Atchley contract; Japanese Bazaar; Figure 8; circle swing; laughing gallery; photograph gallery; penny arcade; shooting gallery; boat contract.

Q. Were contracts with the persons named, or for the subjects you have mentioned, made before the 26th day of March, 1907? A. To the best of my recollection and belief they were; yes, sir.

Q. What did the Public Service contract for? A. Light.

Q. When did you make that contract? A. I think it was in January or March, or February, I mean of 1907.

Q. Who made that contract? A. I think Mr. Hamill worked it through, his father being a Director of the Public Service Corporation; it was necessary to run a special line of cables to the park, in order to light it; there were no cables to light it, and it cost the Public Service Corporation $10,000, and it was a tedious and long job, and before we could have it as a park, we had to know whether we could light it.

Q. And, of course, after the Public Service Cor-

poration put the cables in at their own expense, they were also to furnish the light free of charge? A. They were to charge us for the light.

Q. Did you regard the fact that the Public Service Corporation was going to charge you for the light you were going to burn, as an asset to be sold? A. That through our influence we were able to get the Public Service to spend that much money—we regarded our influence to get the Public Service to spend that much money as an asset.

Q. What was James G. Doak to do for you? A. To build the park.

Q. Was the contract in writing? A. I don't remember—I think so.

Q. Made by whom; the promoters who sold to the White City Company, or by the White City Company? A. The written contract was probably made by the White City Company with James G. Doak, but the previous arrangement as to the inexpensive way in which we were to build the park were made by ourselves.

Q. By whom do you mean? A. By the promoters.

Q. The promoters had not entered into any bargain with Doak up to the time of the incorporation of the company, had they? A. Yes, sir.

Q. Written? A. No, sir.

Q. Terms specified? A. Yes, sir; but not written.

Q. I am showing you a contract made on the 6th of April, 1907, between the Trenton White City Company and James G. Doak; is that the contract which you say that you sold to the White City Company for a price in March of 1907? A. Yes, sir.

Q. That is it, eh? A. Yes, sir; that is the

agreement which we had with Doak & Company, that the White City Company took over from us.

Q. Doak had not bound himself in any legal manner prior to the making of this legal document, had he? A. He probably had not, but he would have if we had asked him to.

Mr. Backes: I offer that.

Marked "Exhibit P 22½."

Q. What value did you place upon this bargain, or whatever it may have been, that you promoters had with James G. Doak which eventuated in this agreement "Exhibit P 22½"? A. We put no specific sum on.

Q. What did S. R. Cook offer to do for you? A. He was to build the Figure 8.

Q. And you had not any contract, you, the promoters, had no contract with him, had you? A. Nothing, except the same as we had with Doak.

Q. And the White City Company afterwards entered into a written agreement with Mr. Cook for the building of Figure 8? A. That is right.

Q. Now, there are some other people you have forgotten—Evans and Bright, the architects? A. They were to build the White City for a consideration.

Q. I thought Cook was to build the White City? A. Evans and Bright were to build it on paper; they were the architects.

Q. They were not promoters? A. No, sir; they were architects.

Q. What do you mean—they were to build it on paper? A. To design the buildings.

Q. You say you never had any bargain with them; that the White City had it with them; is that right? A. As far as I know, we had only had talks with Evans and Bright.

Q. You had no understanding with them such

as you had with Doak? A. Not that would be of any particular benefit to the White City Company.

Q. Doak's contract had not assumed any situation such as to make it of binding force between the promoters and Doak before the incorporation of the company and the signing of the written agreement here? A. I don't suppose we could have held Doak legally.

Q. Now, Bright & Company, as I understand it, came on the situation after the corporation was formed? A. At or about that time; I think we had plans from Evans and Bright previous to that.

Q. Bearing that in mind, Evans and Bright were the designers, were they not? A. Yes, sir.

Q. And necessarily Doak & Company would have to follow the designs? A. Yes, sir.

Q. Then, if Bright & Company did not come on the scene until after the corporation was formed for the purpose of building, what tangible arrangement had you with Doak, if you did not know what he was to build? A. We made an arrangement with James G. Doak & Company, that they would supply the labor for building the park at the regular cost that they paid their men per day; that they would make no extra charges for their foremen above the prices that their foremen always got, and that they would build the White City Park for ten per cent. of the cost of the labor and the materials used; the White City to furnish the materials, and that they would take that ten per cent. in stock of the White City Company; in other words, we got it billed at ten per cent. less.

Q. Now, George A. Dentzel contract which you say formed a part of this $79,000 consideration; what was that? A. Mr. Oberheide had made ar-

rangements, as I remember it, to place quite a large number of carousels for Mr. George A. Dentzel, and in consideration of the selling of carousels, Mr. Dentzel was willing to deliver us a carousel for less money than he otherwise would.

Q. Was there any agreement in writing between Mr. Dentzel and Mr. Oberheide up until the time you placed this $79,000 valuation on the property? A. Not that I know of; there may have been.

Q. You don't know of any? A. Between Mr. Dentzel and Mr. Oberheide?

Q. Did you know whether there was any when you passed this $79,000 judgment? A. I knew what we could buy a carousel for, and was told at that time what we were citing on—

Q. Whatever existed between Mr. Dentzel and Mr. Oberheide, or you promoters, was not of any binding force, so far as you then understood it? A. Just an arrangement made whereby we were to get at a cheaper sum than ordinarily.

Q. How much did you pay for this device? A. My recollection is, that we paid $8,000 for it.

Q. How much did you save? A. I don't know.

Q. What did you value this arrangement at—that arrangement between Mr. Dentzel and the promoters, which the promoters passed into the company? A. I don't know now.

Q. What is this roller skating contract? A. There was a roller skating rink built at the White City, and Mr. Hamill and I had been conducting a roller skating rink in this city, and we agreed to allow the White City Company to use the skates that we had, I think, at 5% of the net receipts of the skating rink; we had some 500 pairs of skates, which cost at wholesale $2.80 a pair.

Q. That is, Hamill and Dickinson had those skates? A. Yes, sir.

Q. And you generously divided with your as-

sociate promoters in putting that privilege to the company, in getting at this $79,000 worth of vauation? A. Yes, sir.

Q. Now, the roller skates you and Mr. Hamill had used in carrying on a roller skating business in the Arcade in Trenton? A. Yes, sir.

Q. And the bottom had fallen out of the roller skating business in the Arcade, hadn't it? A. I think the bottom fell out in the Winter of 1908.

Q. Not the Winter of 1907? A. I am not sure.

Q. The business of roller skating was only carried on in the Winter in the Arcade? A. Yes, sir.

Q. And the business of the defendant was only carried on in the Summer months? A. Yes, sir.

Q. And you and Mr. Hamil rented these skates for 5%— A. Which we never got.

Q. And that you regarded as an element of value to the Trenton White City Company, which justified you in voting at a total valuation of $79,000, this property? A. It saved them the purchase of $1,400 worth of skates.

Q. You were making money on them at that —5%—

Mr. Dickinson: Objected to.

The Court: Objection sustained.

Q. Was there any agreement between you and Mr. Hamill on the one side, and the promoters on the other, of this proposed contract? A. Nothing but a verbal agreement that we would do it.

Q. At what value did you place that promise, or estimate that promise of Dickinson and Hamill to furnish these skates at 5%? A. I don't think we put any money value on them at the time, although it is the zero figure.

Q. This man Dentzel, after the incorporation, entered into a written contract with the corporation concerning the building of the carousel? A. Yes, sir.

Q. The Public Service subsequently also entered into a written contract with the White City Company, didn't they? A. Yes, sir.

Q. Now, the next item you have given us is the miniature railway; that was the B. & M., it was called, wasn't it? A. I don't know; all the contracts were exactly the same anyway.

Q. The miniature railway was built by whom? A. I think it was built by T. J. McGovern.

Q. For whom? A. For Mahoney and Bruthers.

Q. Now, was there any arrangement at all with either Mahoney or Mr. Bruthers, before the incorporation? A. Yes, sir, Mr. Oberheide knew of a miniature railway which could be bought at a very small sum by his going round the country—

Q. Answer the question; was there any arrangement between the promoters and either Mr. Mahoney or Mr. Bruthers, concerning the miniature railway? A. Yes, sir, I think there was an arrangement between them.

Q. Isn't it a fact that Bruthers and Mahoney did not enter into any bargain at all until after the formation of the company, and then only with the company? A. That may be true.

Q. Then, when your statement is, that whatever arrangements there were between the promoters—that there was some arrangement between the promoters and somebody for the miniature railway, you did not mean to include them, did you? A. I am only testifying the best I can recollect.

Q. You have stated that the contract for the building of the miniature railway formed, and was a part of the consideration of $79,000? A. Yes, sir, I will state this as a fact, that through Mr. Oberheide knowing where a miniature railway and engine and cars could be purchased at a small sum of money, and owing to the fact that, in order to start our park at all concessions had to be secured of

every kind; and it was through traveling around the country by Mr. Oberheide that these things were discovered.

Q. Now, as a result of that, what? A. As a result of that we were enabled to make concessions with all kinds of amusement people for amusements in our parks, which concessions were turned over to the White City Company when the White City was formed.

Q. You mean to say you made concessions to any of these people before the White City Company was formed? A. Not binding.

Q. Now, here is the restaurant contract with Mr. Fury, the present Receiver; that, as a fact, was made, wasn't it, long after the corporation was formed? A. Yes, sir, I think it was.

Q. Then, when you included that as one of the items of value, you were in error, were you? A. Yes, sir, if that is true; it is my recollection—

Q. Don't volunteer, please. The next item is Cook and Atchley; that was a concession by the White City Company? A. Yes, sir.

Q. For the selling of candies and cigars, and cigarettes, and ice cream, and soda water? A. Yes, sir.

Q. That was made with the White City Company, wasn't it? A. The actual contract was, yes, sir.

Q. Was there any concession? A. Mr. Hamill made the arrangement with them.

Q. Was it before or after the incorporation? A. I think it was before.

Q. Do you know what value you placed on that as one entering into the $79,000 figure? A. No, sir, I do not.

Q. The Japanese Bazaar; what was that? A. That was a bazaar aranged for by Mr. Oberheide.

Q. With whom? A. I don't know the Japanese now; it was early in the Spring of 1907.

Q. It was early in the Spring of 1907? A. Yes, sir.

Q. What was the Japanese to do? A. To come down there and operate a Japanese Bazaar and roller ball game.

Q. How much did you value that at? A. I don't know how much money.

Q. Now, the circle swing? A. There was also a contract made By Mr. Oberheide with them; a valuable agreement with them, to come down there and put in a circle swing, and operate it on a percentage basis.

Q. There was no contract, was there? A. Mr. Oberheide had a verbal agreement with me, that he would come down and operate a circle swing; we had a promise from him that he would.

Q. But you, as the promoters, had made no promise with him that he should come, had you? A. I believe Mr. Oberheide did say to him, as far as I understand it, in securing these concessions for the park, "We will get the White City Company to take you on if you will come down under certain arrangements."

Q. But Mr. Oberheide at that time, had no power to bind the White City Company, had he? A. No, sir.

Q. He had no power to bind his associates either, had he? A. No, sir.

Q. What did you put that promise in for? A. No specific sum.

Q. Did you regard that as property, a man's promise to come down later on? A. We regarded the securing as concessions.

Q. But the law says you can only give stock for property; now, I ask you, did you regard this Jap's promise to Mr. Oberheide that he would come down, and Mr. Oberheide's promise back to him that the White City would take care of him—as property? A. I don't see how I could have.

Q. Now, here is the Figure 8, is that the same way as the Jap's? A. Yes, sir.

Q. And the circular swing, the same way? A. Yes, sir.

Q. And the laughing gallery the same way? A. Yes, sir.

Q. And the photograph gallery? A. Yes, sir.

Q. And the Penny Arcade, are all those the same way as the Jap's? A. Yes, sir.

Q. And the shooting gallery the same way? A. Yes, sir.

Q. And the boat contract the same? A. Yes, sir.

Q. All made binding contracts between the parties operating them and the White City Company, after the formation of the White City Company, and no legal binding contract between Mr. Oberheide and these parties prior to the formation of the White City Company? A. That is quite right, as far as I know.

Q. Which did you, as a member of the Board, regard as of greater value to the corporation—these intangible and loosely spoken arrangements between Mr. Oberheide and the promoters, and these people; or this ten year lease which contained an option, in fixing the value at $79,000?

Mr. Dickinson: Objected to; I don't see that that has any bearing upon this; the resolution says, that this property was turned over for the value of $79,000, and that the Directors adjudged all this property specified in the resolution, to be worth $79,000; now, I don't see that it is pertinent to ask this witness which he thinks is the most valuable element.

The Court: I do, in an inquiry in which that which was given as of a certain value, is in question, and being scrutinized, I think

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every Director that passed judgment on that value may be examined as to what he thought the various items were.

Mr. Dickinson: I object also on the ground that even if it should transpire that there was no—taking this argument, that there was no formal valuation placed upon these properties, or having it actually adjudged by the Board of Directors as to these specific items—if we can prove and do prove here, that this property which was turned over was worth the sum of $79,000 it does not make any difference what the actual—

The Court: I suppose not, but that is another question; that would not make inadmissible a question to a Director when his mind is being searched; the question is admissible.

Q. (Question read.) A. I regarded the lease that we had for ten years on the White City property, or the promise that we would have the White City for ten years, as the most valuable.

Q. How much did you value that at? A. I do not think we valued it at any specific sum at that time.

Q. How much more valuable then did you regard it than the other intangible property? A. I regarded the lease as very valuable.

Q. How much—in comparison? A. I am not prepared to state now; we did not divide it up in any way.

Q. Now, tell me how you did do it, tell me this—how you made $4,000 grow into $79,000, over night practically over night?

Mr. Dickinson: I object.

The Court: The objection is sustained.

Mr. Dickinson: And I ask that it be stricken out.

Q. You have testified that for all of that which went into the company, the promoters, or some of them, paid $4,000, and that the promoters sold it to the company of which they were Directors, for $79,000; tell me how you were able to form a judgment that the property, as between you as purchaser was only worth $4,000 and yet was worth $79,000 to the corporation?

Mr. Dickinson: Objected to.

The Court: He has not testified that they turned over property which they had paid $4,000 for for $79,000. I shall sustain the objection. Your question is not predicated on the facts that he has testified to; if you are of opinion however, that these other properties that were put in were of no value at all, that is one thing, that is an argument.

Mr. Backes: I had in mind Vice-Chancellor Pitney's opinion as to "good will." The substance I think I have a right to present to your Honor, and I will go at it in another way.

Q How much did the promoters pay in cash for that which they turned over to this corporation on the 26th of March, 1907, at $79,000? A. Paid $4,000 in cash, and months of time.

Q. Tell me now, when was the cash turned over? A. I cannot answer that question, I don't know.

Q. When, with reference to the formation of the corporation, was the cash turned over? A. It might have been a week or two or three weeks before the incorporation.

Q. Whom was it turned over to? A. Cash was turned over—given to Mr. Oberheide, and turned over to Mr. Hurley.

Q. What did Mr. Hurley, in turn, give? A. He

gave up this lease that you have here of the American Amusement Company that Peter Wurfflein was in; he got a withdrawal of that; I mean, and got what he promised to get all along, namely, a lease for ten years from the railway company to the White City Company.

Q. Did Mr. Hurley give anything in writing to evidence that? A. No, sir; not that I recollect; the deal was done with Mr. Oberheide.

Q. For whom did Mr. Broughton and Mr. Hamill turn this money over? A. For the promoters.

Q. Have you no recollection at all of any writing coming back from Mr. Hurley, that would evidence the arrangement? A. If there was such a writing it is with Mr. Oberheide.

Q. Did you ever see it? A. Not that I recollect.

Q. At the time that you were valuing this as one of the elements of the $79,000 valuation, you may have had some knowledge of what the bargain was? A. I knew we were to get Broad Street Park for a period of ten years, with an option to purchase at any time within the ten years for a sum of $35,000.

Q. You regarded that option as valuable? A. We certainly did.

Q. Did you take that into consideration at the time you adjudged this property the promoters were to turn over to the company; did you, in adjudging this property which you were turning over at $79,000, give some value to this option to buy at $35,000? A. We certainly did.

Q. Now, let me read your resolution: "Whereas, Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide own and control a certain leasehold in and to a certain large tract of land and

premises in the Township of Hamilton and County of Mercer, commonly known as Broad Street Park, in which lease there is an unexpired term of four years; and whereas, said persons above named also control an option upon said property to lease the same for an additional period of six years from the time of the expiration of the term of their present lease aforesaid; and whereas, said persons have entered into various contracts with certain persons, firms and corporations for the construction and erection of various devices which would be useful and necessary in the operation and conduct of the business of this company; and whereas, it appears to the stockholders that such property rights and interests would be of great value to this company, and that their acquisition is indispensable to the successful operation of this company, and the conduct of its business, and that no other property rights and interests of a similar nature and character can be acquired by this company which would be of equal value to it; and whereas, the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide have offered to sell said property interests and contract rights to this company for the sum of four thousand dollars." I have read that to you; do you find there at all that your Board adjudged any value to the $35,000 option? A. That was in the lease that Mr. Hurley was to deliver to us.

Q. But the judgment of the Board of Directors is that the property which was then being turned over, was valued at $79,000; I ask you whether you adjudged that property at $79,000, regardless of the $35,000 option? A. The $35,000 option was part of the value of the $79,000.

Q. It does not appear in your resolution, does it? A. I do not know.

Q. Well, read it.

Witness reads the minutes.

Q. You don't find that the Board of Directors adjudged this option to purchase at $35,000, in forming their judgment of the $79,000? A. (Witness reading): "Whereas, Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide own and control a certain leasehold in and to a certain large tract of land and premises in the Township of Hamilton and County of Mercer, commonly known as Broad Street Park, in which there is an unexpired term of four years."

Q. I am showing you this lease which represents the leasehold— A. That is not the leasehold.

Q. The first time that the option was involved, was the promise made by Mr. Hurley that you should have a lease for ten years, with the option to buy at $35,000? A. Yes, sir; I cannot tell you any more than I have told you, that we paid over to Mr. Hurley the sum of $4,000; we turned over to Mr. Hurley the sum of $4,000, and in consideration of that $4,000 the promoters were to take a lease on the Broad Street Park property for ten years, with an option to buy at $35,000, and we considered that a very valuable estate.

Q. Point to any part of the resolutions, either of the stockholders or of the Directors, that indicate that in passing the judgment of the Board of Directors in valuing this property at $79,000, they considered this option at $35,000?

The Court: He has answered that by reading from the minutes in the resolution the reference to the lease; that is his answer.

Q. I am showing you a certified copy of a lease made by the Real Estate Title Company to the White City Company, dated May 27, 1907? A. Yes, sir.

Q. Do you see that? A. Yes, sir.

Q. Now, that is long after the formation of the company, and long after the time you turned this supposed property over for $79,000? A. We know perfectly well that that is true.

Q. Then, do you insist that there was another lease on these premises at the time you turned the property over, than "Exhibit P21½?" A. There was an agreement made by Mr. Oberheide and Mr. Hurley that we would get the same things as are mentioned in the lease made May 26, 1907, or whatever the date is; such an arrangement was made with Mr. Hurley, and the resolution showed that we did get the lease.

Q. And is that what is meant by this statement of the rsolution: "Whereas, Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr. and C. H. Oberheide own and control a certain leasehold in and to a certain large tract of land and premises in the Township of Hamilton and County of Mercer, commonly known as Broad Street Park, in which there is an unexpired term of four years;" is it this Hurley matter that is referred to in that recital? A. It is the Hurley matter, and in order to consummate the deal to give up that Amusement Company's lease that you have there; that is all I know about it; that is all the explanation I can give you; Mr. Hurley can give that explanation to you.

Q. In the passing of this resolution by both the stockholders and the Board of Directors, didn't they designedly and consciously withhold passing over to the company the option of $35,000?

Mr. Dickinson: I object to that; I say that the minutes speak for themselves.

The Court That objection is not tenable; I suppose he is entitled to ask him leading questions, because he may regard him as a hostile witness. Now, then, you see this witness has testified that the $35,000 option was part and parcel of the things of value which were turned over to the company by the promoters for $79,000; now, this question goes as to the correctness of that answer. Now, I suppose that that is an admissible question.

Mr. Dickinson: I object to this question and I object to the whole line of examination upon the ground that no foundation has been laid for it.

A. There was nothing witheld, so far as I ever remember; it was included.

Mr. Backes: I am very tired, and should like to adjourn at this point.

Adjourned to Monday, the 31st of October, and Friday, the 4th of November.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>ALFRED G. HOLCOMBE, *et al.*,<br>Complainants,<br>*and*<br>TRENTON WHITE CITY COMPANY,<br>Defendant. | On Bill, etc.,<br>Testimony. |

SECOND DAY.

Transcript of testimony taken in the above entitled cause, before Hon. Edwin Robert Walker, one of the Vice-Chancellors of this State, on the fourth day of November, nineteen hundred and ten, at the State House, Trenton, New Jersey.

APPEARANCES:

JOHN H. BACKES, Esq., for the Complainant.

JAMES and MALCOLM G. BUCHANAN, Esqs., by MALCOLM G. BUCHANAN, for John A. Roebling, Guardian *ad litem* of Siegfred and Paul Roebling.

JOHN M. DICKINSON, Esq., for the Trenton White City Company.

BARKER G. HAMILL, sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Backes

Q. You are one of the stockholders of the Trenton White City Company? A. Yes, sir.

Q. And you were and are now a Director? A. I was.

Q. During what period? A. I was a Director from the time the company was organized up until the time it went into the hands of a Receiver.

Q. And you were also Treasurer of the company? A. Yes, sir.

Q. And during the same period? A. Yes, sir, I think so.

Q. Were you also one of the promoters of the company? A. I was.

Q. When, with reference to the time that the corporation was formed, in fact, was it contemplaplated by you and your associates to build an amusement park and to form this company? A. It was in the Fall of 1906, I think; I am not sure whether that was—

Q. Who were you associates in promoting the corporation? A. Mr. Broughton, Mr. Dickinson, Mr. Sadler and Mr. Oberheide.

Q. When did you and your associates first come together, if you recall, for the purpose of promoting this company? A. In the Fall of 1906.

Q. Can you come any nearer to it than that? A. No, sir.

Q. You cannot tell me what month? A. No, sir.

Q. Do you know where it was? A. No, sir.

Q. What was the understanding, at that time, between you and your promoters as to the capitalization of the company?

Mr. Dickinson: Objected to.

The Court: How is that a pertinent inquiry?

Mr. Backes: It will be.

The Court: How; you may show, of course, what it was capitalized at; that appears, of course, but what their understanding was, I fail to see how that can be material.

Mr. Backes: I prefer not to say it in the

presence of the witness, as it may destroy the effect of my testimony altogether.

The Court: I am against the view that it is relevant testimony, but if counsel wish to come in the back room, I will hear what you have to say.

Court and counsel retire.

The Court: I shall adhere to the ruling I have made, and the question will be overruled.

Q. What arrangement was there between the promoters, before the incorporation of the association, as to the capital stock?

Mr. Dickinson: Objected to.

The Court: That question, I think, may be asked.

Mr. Dickinson: That seems to me it would open a way to hold these people liable as promoters.

The Court: Oh, no; that is not the issue, and, therefore, that could not be the decree; the allegation is, that property was purchased for stock issued far below the value of the stock issued for the property. Now, the steps leading up to the issue of the stock may be inquired into, and this is but one step in that inquiry. Of course, that arrangement, if there were any, was entirely inefficacious, unless afterwards ratified by the Board of Directors. It has a bearing, remote, perhaps, and I think the question is admissible, and I will admit it; you will have your objection, Mr. Dickinson.

A. We were to get some of the stock of the company, but just how much, now, I cannot recall.

Q. When was it first determined to capitalize the corporation for $150,000, $75,000 of common and $75,000 of preferred stock? A. Shortly before the organization of the company.

Q. How shortly? A. I don't know.

Q. A month—two months—three months? A. I would say, possibly a month, or two months.

Q. Was it arranged at that time, between you, as to how the common stock was to be distributed between the promoters?

Mr. Dickinson: Objected to.

The Court: Objection overruled.

A. It was.

Q. How? A. I don't know how; I don't know how much each person was to get, but it was arranged between the promoters that each was to get a certain amount of stock.

Q. Amounting in the aggregate to the entire $75,000 of the capital stock? A. No, sir.

Q. It would appear from the minutes of the Board of Directors of the Trenton White City Company, that you were present at the first meeting of the company, held on Tuesday, March 26, 1907, at which the Directors accepted the offer of Barker G. Hamill and others named, to sell to the company the property described in the resolution of the stockholders, also recorded in the minutes, for $79,000. You, according to the minutes, were one of the vendors at that time of this property; now, tell me what property passed to the company of this $79,000?

Mr. Dickinson: Objected to; the minutes speak for themselves.

The Court: The question will be admitted.

A. A lease on a property in Hamilton Township; contracts, and an option.

Q. By whom was the lease made? A. Some trust company in Philadelphia.

Q. For how long a period? A. Ten years.

Q. If there was a lease by the company for ten years, what was the option that you refer to? A. An option to purchase the property at any time within ten years.

Q. The proposition made by the promoters to the Directors was made at a meeting dated March 26, 1907, and it was accepted by the Board of Directors, of which you were one, and which meeting you attended, on the same day. Now, do you say that that lease was in existence, that is, the lease for a period of ten years, made by a trust company or a title company, at that time—A. I don't know whether the lease was in existence or not, but we had assurances that were just as valuable as a lease would have been; the lease may have been in existence; I don't know.

Q. Do you know the name of the company that made the lease? A. I do not.

Mr. Dickinson: The lease will speak for itself.

Mr. Backes: The question is perfectly proper.

Q. Was it the Real Estate Title Insurance and Trust Company of Philadelphia that made the lease to which you have referred? A. I don't know.

Q. I am showing you a certified copy of a lease made by that company to the Trenton White City Company, and I am asking you whether the original of that is the one that you referred to? A. It is.

Q. The date of that appears to be May 27, 1907; whereas the meeting at which the promoters turned over to the company, or were supposed to have turned over to the company, property

over $75,000, was the 26th of March, 1907; now, was there any other lease in existence? A. We purchased a $4,000 lease from Mr. Hurley, which was in existence.

Q. Who was that lease made by? A. I don't know.

Q. What do you mean—that you purchased a $4,000 lease from Mr. Hurley? A. That is exactly what I mean.

Q. Do you mean that was the consideration of a lease which was made by Mr. Hurley? A. I believe that was the consideration of a transfer of a lease from Hurley to somebody; I don't know who it was transferred to.

Q. Who arranged the matter with Mr. Hurley? A. Mr. Oberheiede and myself; I think that Mr. Broughton had something to do with it.

Q. Did you bargain with Mr. Hurley; did you, personally, bargain with Mr. Hurley? A. I did.

Q. Did Mr. Hurley, at that time, represent himself with reference to this leasehold? A. I don't know.

Q. What happened between you and Mr. Hurley, what was said? A. Mr. Hurley agreed to turn that lease over to myself and others for a consideration.

Q. Of how much? A. $4,000.

Q. Do you know when that lease was made—the one that you now have in mind? A. No, sir.

Q. Do you know for what period of time it was to run? A. I think you will find that in the minute book; I don't know.

Q. The minute book refers to a lease which has an unexpired term of four years; is that the lease that you have reference to now? A. I believe that is the lease that I am speaking of.

Q. Did you pay $4,000 for that lease of four years? A. We paid $4,000 for that lease with

the verbal agreement from the officers of the Interstate Railway Company for a lease for ten years with an option.

Q. I wish you would give me, as well as you can, your own explanation of the bargaining by the promoters, with the owners of controllers of the land afterwards known as the White City Park, of and concerning the acquisition by the promoters of a leasehold. Now, do it in your own way, as well as you can. A. Mr. Oberheide first went to Mr. Hurley and had dealings with Hurley with regard to puruchasing a lease which the Trenton Street Railway Company, or somebody for the Trenton Street Railway Company, had entered into with one Peter Wurfflein; Mr. Hurley had some control of that lease, whether by actual ownership or not, I don't know. But we understood Mr. Hurley was the man to deal with, and Mr. Oberheide dealt with him. Subsequent to that, I went to Mr. Hurley, and I had several interviews with him, the details of which I have nearly forgotten. Mr. Broughton was with me once, I think; Mr. Dickinson once or twice. The outcome of it was—

Q. Won't you detail as much of the conversation as you had with Mr. Hurley, as you possibly can?

A. I could not commence to tell you the conversation; the outcome of it was, that Mr. Hurley agreed to sell us the lease that he had in his possession, for $4,000, but in the meantime, I had been to Philadelphia on two occasions, once with Oberheide, and once with Broughton, and we had been told by John A. Rigg, that if we purchased the Hurley lease, that the Trenton Street Railway Company, or somebody for them, would enter into a lease with us for one dollar, for ten years, with an option to buy at $35,000. I also had one or two interviews with F. W. Roebling

with regard to it, and secured his permission, as Mr. Rigg had told me that without Mr. Roebling's consent he did not want to go into the matter, and he consented. After securing the consent of the President of the company and Mr. Roebling, we then went back to Mr. Hurley and purchased his lease.

Q. When was it that you made the purchase? A. That is as near as I can remember the details; I may be at fault slightly, but not very much.

Q. When was it that the lease was purchased from Mr. Hurley? A. I don't know.

Q. When was it that the money was paid to Mr. Hurley? A. I don't know.

Q. When, with reference to the incorporation of the Trenton White City, was it that the lease was purchased from Mr. Hurley? A. Previous to the organization of the company.

Q. How long? A. I don't know; I can give you an approximate estimate.

Q. Give me the best you can. A. I suppose from one to three months, I don't know.

Q. When was the money paid to Mr. Hurley? A. Previous to the organization of the company.

Q. How long before? A. I don't know.

Q. How was it paid to him? A. I cannot recall.

Q. Cash? A. Real money.

Q. Was it cash or check? A. I don't remember.

Q. Who paid it? A. Mr. Broughton and myself.

Q. Where? A. I don't remember.

Q. To whom did you pay it? A. Mr. Hurley, I think.

Q. If you don't remember where it was, how can you remember that you paid it to Mr. Hurley? A. Well, he was to get the money.

By the Court:

Q. And he got it? A. Yes, sir, and he got it.

Q. Do you recall whether it was your check or Mr. Broughton's check? A. I cannot recall.

Q. If it were your check, have you the return voucher for it? A. I presume so.

Q. Will you look it up? A. I will.

Mr. Backes: That will fix a day for us.

Q. Did you, before purchasing the lease from Mr. Hurley, see the lease? A. I did, yes, sir.

Q. I am showing you "Exhibit P21½," and I ask you to look at that carefully and tell me whether that is the lease that you purchased? A. It is, yes, sir.

Q. There is no doubt about that, is there? A. Absolutely no doubt about it; that is one of the leases that we purchased.

Q. Was there another? A. There was a promise of another, but there was no actual lease in writing.

Q. What was the promise of the other? A. The promise of John A. Rigg and Ferdinand W. Roebling, that if we did purchase this, the street railway company would give us a lease on the property for ten years, with an option to purchase at $35,000.

Q. This lease, "Exhibit P21½," made by John L. Kuser, surviving-Trustee, to Peter Wurfflein, for a term of one year from the first day of April, 1906 to the first day of April, 1907, and contains an option of a renewal for a period of four years additional, upon giving notice on or before the first day of March, 1907; did you, at that time, that is, when you made your bargain with Mr. Hurley, understand that John L. Kuser, surviving-Trustee, was the owner of the park property? A. At that time I did not know who was the owner of the park property, except in a general way that the Interstate Railway Com-

pany, and the Trenton Stret Railway Company, controlled it, and that it was necessary for us to purchase this lease from Mr. Hurley before they would give us the lease that we sought.

Q. Now, who was John A. Rigg, what relation did he bear to any of the companies that you have named? A. He was President of the Interstate Railway Company.

Q. Who was Ferdinand W. Roebling? A. A Director.

Q. In what way did you understand that either of these companies had control of the park? A. Mr. Hurley told me they had.

Q. You subsequently learned that the Real Estate Title Insurance and Trust Company was the Trustee, didn't you? A. I subsequently learned that, yes, sir.

Q. When did you learn that, with reference to the formation of the company, before or after? A. When I saw the lease.

Q. Was there anything in writing either from the owners of this land, that is, the park property, or the Trustees, or any of the companies, who, you thought, had some control over it, on the 26th day of March, 1907, assuring the promoters of this term of six years following the expiration of the Wurfflein lease? A. I had, previous to the formation of the company, numerous letters from Mr. John A. Rigg, and a correspondence back and forth between myself and him; I spent twenty-four hours nearly, in trying to find those letters, and could not; they were out at the White City and were destroyed; possibly Mr. Rigg would have copies in his office.

Q. You say there were contracts that were sold to the company by the promoters for this $79,000; what were those contracts? A. They were contracts, for numerous devices which were to be placed—

Q. Give me one. A. The carousel.

Q. Had the promoters made any contract with any carousel owner for a supply of carousels at the time they sold the property to the company? A. Yes, sir.

Q. Who were the parties? A. Mr. Broughton, Mr. Dickinson and myself. I think Mr. Sadler entered into a written guarantee to pay these carousel people by the name of Dentzel, $8,000, if the company failed to do it, and it was on our written guarantee that he sold that carousel to us, that was previous to the formation of the company; how long, I don't know.

Q. Have you got a copy of that? A. We have not; all of those records seem to be lost; but I think Mr. Dentzel would have it. He, himself, is dead, but his son is running the business now.

Q. What was his first name? A. I don't know.

Q. Where was he located? A. Philadelphia.

Q. Where? A. I don't know.

Q. Did you ever see him? A. Frequently.

Q. Was there a contract entered into between you promoters and Mr. Dentzel prior to the formation of the company? A. Yes, sir.

Q. Have you got a copy of that? A. It was a verbal contract, and a guarantee.

Q. Was the guarantee in writing? A. Yes, sir.

Q. Was the guarantee in writing made at the time of the verbal contract? A. It was.

Q. What was the nature of that verbal contract? A. That Mr. Dentzel would sell to a company which we were going to form, a carousel, at a certain fixed price.

Q. At how much? A. I believe it was $8,000.

Q. Was that verbal promise ever put into writing? A. I think not; all our interviews with Mr. Dentzel were personal. .

Q. What do you mean by that? \. We were present in person—personal interviews.

Q. Why was it that his promise was not taken in writing at the time that you gave to him a written guarantee? A. We did not consider it necessary.

Q. What was the nature of your written guarantee? A. That Hamill and others—if the White City failed to pay,—a company they were going to organize called the White City Company, if it failed to pay him the $8,000, that we would.

Y. Now, when was that made with reference to the formation of the company? A. I would say, approximately, a month or two before.

Q. As a fact, did Mr. Dentzel furnish the carousel? A. He did.

Q. Did the White City Company pay for it? A. I don't know.

Q. You were the Treasurer, Mr. Hamill? A. I was, yes, sir.

Q. Don't you know, as Treasurer, whether the White City paid for the stock? A. I don't know how much it paid; it paid something for it.

Q. Did it relieve your guarantors? A. I suppose it did.

Q. Now, how? A. Well, part of it was paid for in cash, and we had a great deal of difficulty, and we had all kinds of trouble; at any rate, the guarantors were relieved somehow.

Q. Part of it was paid in cash by the Trenton White City Company? A. Yes, sir.

Q. And that part that was paid in cash was paid by the White City Company? A. Yes, sir.

Q. Who was the other paid by? A. The carousel was sold, I believe, to some other party, and Mr. Dentzel was satisfied.

Q. How much was the carousel sold for? A. I don't know.

Q. You kept Treasurer's book, didn't you? A. No, sir, I did not.

Q. Did you keep no books as Treasurer? A. I kept no books myself.

Q. Did you keep no books as Treasurer? A. The company had the treasury books.

Q. You had a Treasurer's account, I presume? A. Yes, sir, it was kept by Mr. Ashton.

Q. Kept under your supervision? A. Yes, sir.

Q. Can you give me the information from the books; I mean, can you? A. I could give you the information from the books; I believe the books to be correct.

Q. Assuming the books to be correct, I want the information, that is all. A. $4,000 in all we paid to Mr. Dentzel.

Q. The price was $8,000? A. Yes, sir.

Q. How was that paid, the other $4,000? A. It was not paid in cash by the company, but we arranged through Mr. Oberheide, and with the consent of Mr. Dentzel, to turn the carousel over to a third party, and he assumed the balance of the debt with Mr. Dentzel, which was satisfactory to Mr. Dentzel and to the White City Company.

Q. And returned into the White City Company a consideration as well? A. I believe he did.

Q. How much? A. I believe it was $3,500.

By the Court:

Q. The book will show, I suppose, what it was? A. Yes, sir.

Mr. Backes: Those figures are correct.

Q. What was the next contract? A. I could not tell you in rotation how they came.

Q. What other contract was there? A. Another contract was with the circle swing people; that was a verbal contract with them, that should a company be formed that they would place a circle

swing in the park and operate it under an agreement, which, at the present time, I cannot recall. Mr. Oberheide had most of the dealings with the circle swing people.

Q. With whom was that made? A. The Travers' Circle Swing Company.

Q. Of where? A. I believe in New York City.

Q. Do you know where? A. No, sir.

Q. Mr. Oberheide made all the arrangements with that company, did he? A. Practically all of them, yes, sir.

Q. On your behalf? A. On the behalf of the so-called promoters.

Q. Do you know personally what the arrangement was with the Circle Swing Company? A Not now.

Q. Did you then? A. Yes, sir.

Q. From the Circle Swing Company? A. From Mr. Oberheide.

Q. But the promise was only as far as you have already stated, the promise by the Circle Swing Company was only to the extent that you have already stated? A. Yes, sir.

Q. There was no promise upon the part of the White City Company, or you promoters, to purchase a circle swing, was there? A. An agreement on the part of the promoters, through Mr. Oberheide, that we would build a park, which was to cost a certain amount of money.

Q. Now, you are giving this as you got it from Mr. Oberheiede? A. Yes, sir.

Q. Did you promoters give to this Circle Swing Company any assurances? A. Only through Mr. Oberheide.

Q. Any written assurances? A. None, so far as I know.

Q. With a verbal assurance, as far as you understood it, to this company, so that they could

have some concessions for their circle swing in this park; was that the idea? A. That is the idea, only our agreement was fuller than that.

Q. Was there an agreement? A. Oh, yes, there was an agreement by them—

Q. An agreement? A. Yes; to come to us and by us to do certain things to get them to come to us.

Q. Did you have anything in writing from the Circle Swing Company, by which they bound themselves to come? A. I never saw anything.

Q. Now, then, the next, give me some other contract? A. The skating.

Q. What do you mean by that? A. Roller skating.

Q. What was there about it? A. Mr. Dickinson and myself were operating at that time a skating rink—Walter Meredith Dickinson, I mean, and we agreed with the promoters, knowing that a park was to be built, and how much it was going to cost, that we would take the roller skating privilege. The roller skating privilege was considered so valuable by the other—

Q. Please do not argue it—tell me what there was about it. A. The roller skating privilege they would not give to Mr. Dickinson and myself, because they wanted it for the park, but they did agree that they would take our skates and give us a percentage of their gain for our skates, which agreement we went into verbally with the promoters of the White City Company.

Q. With whom of the promoters did you and Mr. Dickinson enter into such a verbal agreement? A. With Mr. Broughton and Mr. Oberheide.

Q. Not with the corporation itself, not with the Board of Directors? A. There was no corporation at the time.

Q. I mean subsequent—after the formation of

the company—you made no such bargain with the corporation afterwards? A. No, sir.

Q. Was any of your promise, that is, yours and Mr. Dickinson's, or any of the undertakings of the promoters, with reference to the skating rink privilege, in writing? A. None.

Q. What is the next contract that you have in mind? A. A contract made by Mr. Oberheide to purchase glass for the laughing gallery.

Q. From whom? A. I don't remember.

Q. How much? A. I don't remember.

Q. In large amounts or small amounts? A. I don't know; I should say around $1,000.

Q. Was the contract in writing? A. No, sir.

Q. How far had any arrangement been made between Mr. Oberheide and this concern, for the glass, before the formation of the company? A. The arrangement had actually been made that they were to sell at a price, and we were to purchase.

Q. Sell to whom? A. Sell to the White City Company, after we formed it.

Q. The same arrangement that was made with Dentzel, that he was to furnish a carousel to the White City Company after it was formed— A. Yes, sir; the same arrangement practically.

Q. Give me the next contract. A. The railroad and engine.

Q. The B. & M., is that what you mean? A. Yes, sir.

Q. What was that? A. I don't remember the details of that, as I practically had nothing to do with that, I believe Mr. Oberheide had the whole transaction in charge.

Q. Have you no information as to it, that you can give us? A. None whatever, Mr. Backes.

Q. That was one of the contracts, was it, that was entered into; that was sold for this $79,000,

and entered into the consideration? A. That was one of them.

Q. Now, don't you know as a fact, Mr. Hamill, that the Mahoney and Bruther's arrangement for this railway was not entered into, and was not discussed, between anyone representing the White City Company or the promoters and anyone representing Mahoney and Bruthers, or Bruthers and Mahoney; this is only after the formation of the company? A. I do not.

Q. If that should develop as a fact, would you still insist that the arrangement entered into between the two, that is, the promoters and Mahoney and Bruthers, was still a part of that $79,000? A. No, sir; I would not, if you could establish the fact—

Q. Do you iterate as a fact that there was some arrangement between the promoters or representatives of the promters, and Bruthers and Mahoney, for the operation of a railway? A. That was my recollection, but you are calling on me for things that happened in 1906, and I may be mistaken.

Q. I am asking you to give me what you know as to the consideration only. A. My recollection is, that it was discussed and entered into before the formation of the company.

Q. What was the arrangement as to this railroad? A. I have forgotten the details.

Q. Well, generally, as you understood it? A. That these people were to operate a railroad there, and we were to get a certain percentage of their returns.

Q. But you said—you were speaking of it as one of the contracts referred to in the resolution? A. I was, yes, sir.

Q. I am asking you what that contract was, if it was a contract; I am asking you what that contract was, if it was a contract. A. It was a con-

tract on the part of Bruthers and Mahoney to operate a railroad in the White City Park.

Q. When? A. They were to operate it every day during the—

Q. I say, when was the so-called contract entered into, and by whom, representing the promoters? A. My recollection is, that it was entered into before the formation of the company and by Mr. Oberheide.

Q. Was there anything in writing? A. I don't know.

Q. Give me the next one. A. The casino.

Q. What is there about that? A. We had agreements with two or three parties who were anxious to get that concession.

Q. Who were the two or three parties you mention? A. Mr. Harry Stout and Mr. Charles F. Hildebrecht, and Mr. Charles J. Fury.

Q. Was there any arrangement or agreement between the promoters and Mr. Stout concerning the casino? A. Nothing more than this—that Mr. Stout appeared to want to get a place down there, and we did have some business with him with regard to it, but we finally turned him down.

Q. That you did not turn over to the company in part payment of this $79,000? A. No, sir.

Q. Now, was there any arrangement or agreement with Hildebrecht? A. Mr. Hildebrecht would have taken a lease on the casino also, but we did not enter into the final agreement with him, and, therefore, we did not turn it over to the company as part.

Q. Eventually you had some arrangement with Mr. Fury? A. Yes, sir.

Q. Did the promoters have an arrangement with Mr. Fury? A. My recollection is that we did.

Q. And was that one of the arrangements that you turned over to the company for the $79,000? A. Yes, sir, if I recollect correctly.

Q. What arrangement had the promoters with Mr. Fury? A. That he would operate a dining room and ice cream saloon at the White City Park, and in return we were to receive a certain compensation.

Q. Who was? A. The White City Company.

Q. Was there anything in writing to that effect? anything to bind Mr. Fury, or binding the promoters, one to the other? A. Mr. Fury that he would take the place, and we agreed that he should have it.

Q. And that was all, as you recall, before the formation of the company? A. Yes, sir, that was before the formation of the company.

Q. And I am asking you whether there was anything in writing binding the promoters to Mr. Fury, or binding Mr. Fury to the promoters, to the effect that you have stated? A. Nothing in writing that I know of.

Q. Don't you know as a fact, that there was no bargain, and no arrangement, and no discussion with Mr. Fury, until after the formation of the company? A. I do not.

Q. The Mr. Fury that you speak of, is the Receiver of the White City Company? A. Yes, sir.

Q. I show you a paper which is marked "Exhibit P50;" I will call your attention to the name of John M. Dickinson as Secretary, with a corporate seal; do you recognize the signature? A. Yes, sir.

Q. And also the corporate seal? A. Yes, sir.

Q. That is the agreement, a copy of the agreement entered into by the White City Company and Mr. Fury for the casino privilege, isn't it? A. Yes sir.

Q. That bears date in May, the blank day of May, 1907, long after the formation of the company; now, with that before you, do you still say

that there was any tangible understanding between the promoters of the company and Mr. Fury, prior to the formation of the company, that Mr. Fury should have the privileges that are embodied in this agreement? A. I certainly do.

Q. By whom was any arrangement made with Mr. Fury on the part of the promoters? A. With Mr. Sadler and myself.

Q. Can you tell me when? A. Previous to the formation of the company.

Q. Can you tell me when? A. No, sir.

Q. Have you any record at all to guide you as to when any of these agreements were entered into? A. No, sir.

Q. What is the next one? A. I don't know that there were any others; if there were, my mind would have been refreshed about them.

Q. You do not recall any others at all, do you? A. My impression is that there were others, but I cannot recall them now.

Q. Well, if there were any others, there were no binding agreements between the promoters and the parties with whom you had discussions? A. I considered that all our agreements were absolutely binding.

Q. I ask you whether they were any more binding than the arrangement that you had with Mr. Fury or with Mahoney and Bruthers, or the Circle Swing People, or the carousel people? A. Precisely on the same basis.

Q. And to this effect, that if a corporation was formed and an amusement park built, that they would have privileges and that they would enter into contracts with a corporation then to be formed for those privileges? A. More than that.

Q. What more? A. On our part we agreed that we would build a park, and in some instances guaranteed that a certain amount of money would

be spent; we had to do that in order to attract these people.

Q. To whom did you promise to build a park? A. To all.

Q. You personally? A. In some cases.

Q. Whom did you promise? A. Mr. Fury, for one.

Q. But Mr. Fury was not to have any privilege unless you did build a park, was he? A. No, sir.

Q. Did you, to Mr. Fury, make a promise whether a sufficient subscription was collected or not, from the stockholders, or whether there was sufficient stock subscribed?

Mr. Dickinson: Objected to, I do not see what that has to do with the entering into a contract with certain people, before the park—

The Court: I shall overrule the question.

Q. When was it you made the promise to Mr. Fury? A. I don't know.

Q. To what other person or corporation did you make a promise? A. I cannot remember.

Q. Now, these are all the contracts so far as you can recall, that you turned into the company for the $79,000, is that right? A. So far as I can recall, that is right.

Q. The resolution provides as compensation for the lease and the contract, $79,000, $4,000 in cash and $75,000 of the common stock; what does the $4,000 represent? A. It represents the money which we paid to Mr. Hurley to get rid of a lease that was on the property.

Q. The same money that you and Mr. Broughton turned over to Mr. Hurley? A. Yes, sir, the same.

Q. Was the $4,000 of the company turned over

to you and Mr. Broughton? A. I don't understand the question.

Q. Was the $4,000 of the $79,000 turned over to you and Mr. Broughton by the company? A. I think so.

Q. Don't you know? A. It was turned back to us.

Q. Was it turned over to Mr. Hurley— A. I don't understand you.

Q. There was, in addition to the common stock which was paid to the promoters for the lease and the contracts, $4,000 in cash; do you say that $4,000, representing the same $4,000 paid by you and Mr. Broughton to Mr. Hurley—I am asking you whether the White City Company actually paid this $4,000 to you and to Mr. Broughton, you having advanced it? A. Yes, sir, they did, as I remember.

Q. Now, I ask you whether they paid it to you; whether the White City Company paid it to you or paid it direct to Mr. Hurley? A. They paid it to us.

Q. Do you recall what occurred at the first meeting of the Board of Directors of the company at which you adopted the resolution of the stockholders?

Mr. Dickinson: Objected to.

The Court: Now, of course, a Director or a stockholder may be examined as to what takes place at meetings of the Directors or stockholders, that are not recorded in the minutes; but I suppose, in the first place, there must be some showing that the examination is to show that something recorded does not properly express what was done, or does not express all that was done. I think you will have to be more specific in your questions.

Mr. Backes: I asked him whether he recalled what happened.

The Court: He may answer that question.

Q. Do you? A. I do, some of the things at any rate.

Q. The minutes say that Mr. Broughton, Mr. Hurley, Mr. John M. Dickinson, Walter M. Dickinson and Mr. Oberheide, were present at that meeting; were there any other Directors present? A. There were not.

Q. Mr. Sadler and Mr. F. W. Roebling, Jr. were Directors, as the minutes disclose—were they there, at that meeting? A. They were not.

Q. Had the resolution of the Directors' meeting, accepting the offer of the promoters, been prepared before that meeting? A. Yes, sir, it had.

Q. By whom? A. I don't know.

Q. Who offered the resolution of the Directors' meeting, accepting the offer of the promoters? A. I don't remember.

Q. I am showing you the minute book referring you to page 19, upon which is recorded the resolution to which I have referred, and I am asking you whether there was any separate paper at that meeting offered as the resolution, or was that paper itself offered? A. I don't remember that.

Q. Just read the minutes up to the minutes of the resolution accepting the promoters' offer, and tell me whether anything else was done at that meeting prior to the offering of that resolution? A. Not that I remember.

Q. At that meeting and up to the time that this resolution was offered, was there any discussion between the members of the Board as to the value

of the property which the promoters were about to turn over to the company for $79,000? A. Frequently, but not at that meeting.

Q. I am speaking of that meeting. A. No, sir.

Q. There was no Board of Directors prior to that meeting? A. It was not discussed at that meeting.

Q. The stockholders' meeting was held on the same day, wasn't it? A. I don't remember.

Q. It is recorded in the minutes that "the first meeting of the corporation was held on the 26th day of March, 1907, at the office of the company, pursuant to a written waiver of notice, signed by all of the incorporators, fixing said time." Does that enable you to recall whether the meeting of the stockholders was held on the same day that the meeting of the Directors was? A. Only to this extent, that I believe that the record is correct in all its parts.

Q. Where was the first meeting of the stockholders held? A. I don't know.

Q. The record says at the office of the company; where was the office of the company? A. Out at Broad Street Park, I think, was the office of the company

Q. Now, do you recall whether the first meeting, that is, the meeting at which you elected a Board of Directors, was held at Broad Street Park? A. I cannot recollect.

Q. You cannot remember that? A. Let me say this; that my recollection is, that our meeting was not there, that it was in the Trenton Club, but I cannot be sure.

Q. You were present? A. Yes, sir, I was present.

Q. At the stockholders' meeting? A. At the Directors' meeting.

Q. The minutes disclose that the following in-

corporators were present: W. Meredith Dickinson, C. H. Oberheide and John M. Dickinson; with that before you, can you say whether you attended the stockholders' meeting? A. I cannot.

Q. Now, your best recollection is, that it was at the Trenton Club that the first meeting of the Directors was held? A. Yes, sir.

Q. And at that meeting the officers were elected; do you recall that? A. I don't recall; the minutes will speak.

Q. When, with reference to the time that the stockholders' meeting was held on the 26th of March, 1906, was the Directors' meeting held on the same day? A. I don't know.

Q. You cannot tell me whether one immediately followed the other? A. I cannot tell you.

Q. Do you recall who presided at the Directors' meeting? A. No, sir.

Q. Do you recall anything about it? A. I remember being there and subscribing to the minutes as they are at the present time.

Q. What do you mean—actually writing a subscription to the minutes? A. No, sir—actually hearing the resolutions and voting on them.

Q. Who else voted on the adoption of the resolutions, accepting the offer of the promoters, besides yourself? A. All the Directors present.

Q. At that meeting was there any statement in detail as to what the promoters were passing over to the company for the $79,000? A. There was not, no, sir.

Q. At that meeting, and at the time of the adoption of that resolution, and immediately before it, was there any inventory and appraisement of the property, which the promoters were turning over to the company for $79,000? A. Not at the meeting.

Q. Was there any before? A. Yes, sir.

Q. Where is it? A. The appraisement?

Q. Yes. A. We all made estimates as to the value, and I have got mine in my head.

Q. I think you understood very plainly my question. You said there was one—an inventory and appraisement? A. Not an inventory—an appraisement was made; frequent appraisements were made of the property previous to this meeting.

Q. That is, by the promoters? A. Yes, sir.

Q. But was there an inventory? A. No, sir, no inventory.

Q. The appraisement was by the individual promoters, I suppose? A. Yes, sir, each one made an appraisement.

Q. Expressed in writing at any time? A. Figured on paper, but the papers were not kept.

Q. Just memoranda? A. Yes, sir.

Q. When did you figure with anyone else? A. I figured with Mr. Sadler numerous times.

Q. You and Mr. Sadler alone? A. Yes, sir.

Q. Now, with whom else? A. I never actually figured out with Mr. Broughton, but we used to discuss it as to its real estate value.

Q. In the absence of Mr. Sadler? A. Yes, sir.

Q. With whom else? A. With Mr. Walter Meredith Dickinson; in the absence of Mr. Sadler, and I think with Mr. Sadler also.

Q. But in the presence of Mr. Broughton? A. Yes, sir, and also with Mr. Broughton; we used to discuss it continually.

Q. But you never discussed it as a Board of Directors? A. Not at that meeting.

Q. Whenever you discussed it with anyone or more of your associate promoters, you expressed your views to him, did you? A. Yes, sir.

Q. Do you recall now what they were, as to values? A. Yes, sir.

Q. Explain to me how you valued it up to $79,000? A. The value of the property first from a real estate standpoint.

Q. How you yourself did, I mean. A. I considered the option of a great deal of value; the option to purchase the property, I mean; I considered the location of that park for park purposes the most valuable location that I had seen in the State of New Jersey, and at that time I had gone around to all the parks in the State, and I thought that the location with respect to the trolley roads besides for park purposes, made that a particularly valuable situation; I also thought that what the railroad companies were willing to do for us was one of our most valuable assets. I thought that the valuable contracts which we entered into with concessionaires, especially some made by Mr. Oberheide, were valuable; and I believe that some of them were quite valuable, owing to the fact that Mr. Oberheide was able to get people that most people would not have been able to get; I considered the promise of Mr. Rigg to give us a certain amount of light very valuable; I considered the Public Service Corporation putting a $10,000 line of wire down there, a very valuable consideration for us, because we could not have operated without it; and I question very much if anybody could have gotten that wire down there. I considered the promise of the Trenton Street Railway Company to give us a thousand dollars was valuable—which they gave us; and things of that sort. So that I thought that all of those things had considerable value.

Q. Have you given me everything that you now recall upon which you placed a value? A. Everything that I now recall; yes, sir.

Q. The $4,000 in cash mentioned in this resolution did not enter into your valuation, did it? A. Not particularly.

Q. That was simply one hand washing the other? A. Yes, sir; we had to buy that lease in order to get the lease from the railroad.

Q. The $4,000 paid in cash by the corporation to the promoters did not enter into the values, did it? That simply was repaying you and Mr. Broughton for what you had paid out? A. Yes, sir.

Q. So, in the estimate of values that was eliminated? A. So far as my estate was concerned, it was.

Q. Now, you say you went around all over the State looking at other places to locate a park? A. No, sir; not with the idea of locating a park, with a view of getting some knowledge of the business of a park.

Q. And in going to other places you found none located so favorably as the White City Park? A. No, sir.

Q. You say you regarded the option to purchase —the one that is expressed in the lease of May 27, 1909, as very valuable; is that right? A. Yes, sir.

Q. How valuable did you regard it? A. I put an appraisement on that property.

Q. Answer my question. (Question read.) A. I am unable to estimate without considerably more thought.

Q. That was included, was it, by you, in your valuation of the entire property included in the option? A. Yes, sir.

Q. In other words, you did not value the option separately? A. Yes, sir, I valued the option separately.

Q. That is what I am seeking. A. I valued it separately; the option was for $35,000; I believed the property to be worth $58,000 at that time; but that option was an option that covered a period

of ten years and the increase in values down there I believed then, would be large, and have since proved to have been large.

Mr. Backes: I ask to have stricken out what they have since proved to be.

The Witness: I estimated on a basis of ten years.

The Court: I will let it stand.

Q. Now, you said you regarded the option as of very great value; I am asking you at what figure, if any, you placed that option, as a promoter of the company? A. $58,000.

Q. In addition to the $35,000 purchase? A. The difference.

Q. At that time you say is when— A. Previous to the formation of the company.

Q. How long? A. One or two or three months.

Q. Was that option to you in writing, or to the promoters, in writing? A. No, sir.

Q. What did you value these promises by the concessionaires? A. I never put any actual value on them in dollars and cents.

Q. Not on anything? A. No, sir.

Q. But they were an element that was employed by you in arriving at the figure of $79,000? A. They were, yes, sir.

Q. But you, if you did not put any figure on them, how did they in dollars and cents, form a part of the aggregate? A. In this way, that never could have been anything.

Q. You placed or estimated no value separately for the arrangement as to the carousel, the circle swing, skating, the glass for the laughing gallery, the railroad and the casino, being the concessions that you say that you recall? A. I made no separate appraisement of those.

Q. And you made none in the aggregate, did you? A. No, sir.

Q. Did any of your associate promoters, to your knowedge? A. Not to my knowledge, no, sir.

Q. Did you put any value or any appraisement upon this four year lease that you and Mr. Broughton paid for to Mr. Hurley? A. No, sir, I never made any appraisement of that lease.

Q. Was that an element of value that went up to make the aggregate value of $79,000? A. To a certain extent, yes, sir.

Q. Was it an element that went to make a value $75,000, the $4,000 having been paid back to you? A. No, sir.

Q. Was the additional option to lease for the period of six years an element in making up the aggregate of $75,000, you having already paid back the $4,000 which you and Mr. Broughton paid to Mr. Hurley? A. Undoubtedly that was an element of value though.

Q. Did it form an element in making up the $79,000? A. Yes, sir.

Q. You say that the four year lease did not, because you got the $4,000 back; is that right? A. The four year lease; I never considered that of any value except that it led up to an opportunity to get the ten year' lease.

Q. What value did you place, if any, upon the option of a renewal for six years, following the four years? A. No specific figure was put on it.

Q. What, in dollars and cents, did it form of it, $75,000 being the amount of the capital stock? A. I could not give you an estimate.

Q. You did not form any then, and you cannot form any now? A. I believed it to be valuable, but never put any actual money value on it.

Q. You now injected a promise by Mr. Rigg as an element of value—forming a part of the $79,000

purchase price—how was that promise expressed? A. Verbally, and in writing.

Q. Where is the writing? A. I have lost it, but I believe Mr. Rigg has copies of his letters, and also probably of my original letters.

Q. What was the promise in writing, so far as you can recall it? A. I cannot remember whether it was in writing or verbal, but there was some written and some verbal; the promise, however, was that the Trenton Street Railway Company would give us a lease first for ten years; an option for $35,000; a thousand dollars in cash; that they would maintain a certain kind of service; that they would give us a certain amount of light; that they would keep in repair, or use their influence to keep in repair a roadway which went from the gate of the park down Harrison Avenue to the White City Hotel.

Q. All of these things were to be given to the company? A. Yes, sir, when the promoters did certain things for the railroad company.

Q. What were those certain things that the promoters were to do for the railroad company? A. We were bound to build a park and spend a certain amount of money before the railroad company, in turn, was willing to give us these concessions.

Q. That is, upon the White City corporation having been formed and a park put into operation, then the Trenton Street Railway Company would do the things that you have stated? A. Yes, sir, they agreed on their part that they would do that, and we agreed, on our part, that we would build the park and spend so much money.

Q. The promoters agreed that there should be a corporation formed to operate a park, and in consideration of the formation of the company, and the operation of the park, the railroad company,

was to do as you have told us? A. Yes, sir, and also we had to spend $35,000 on the property.

Q. That is, the corporation had? A. Yes, sir.

Q. Now, at what value did you place all of these promises by Mr. Rigg? A. I never put them at any especial value, but considered them of tremendous value to the company.

Q. At the time the corporation was formed, the corporation represented by Mr. Rigg, had done none of those things which he had promised the company he would do; had he? A. Before the company was formed, no, sir, all after the company was formed.

Q. And you regarded Mr. Rigg's promise to do these things after the company was formed, of value to the promoters? A. Most certainly.

Q. You put that in as one of the most valuable assets? A. Yes, sir.

Q. How much? A. I never put any specific figure on it.

Q. When did the Public Service Corporation put this line down to furnish light, with reference to the formation of the company? A. Before the formation of the company.

Q. How long before? A. I don't know.

Q. How many years? A. It was a few months before.

Q. At what valuation did you place that operation of the Public Service Corporation to the White City Company? A. At no specific money value, but it was going to save us risking about $35,000 to build our own plant.

Q. The fact that you saved about $30,000, did you regard it as a property which you turned into the White City Company for its capital stock? A. With other things of the utmost value to that company.

Q. I am asking you whether you regarded that,

you, as a promoter, whether you regarded that as property which you turned over to the White City Company, of which you were a Director, and for which you got common stock— A. I don't know what you mean by "property."

Q. You are a Director of this company, and buying property and issuing stock for it; do you mean to say you don't know what is meant by "property?" A. I don't know that that could be called "property." I believed that was a valuable asset to the company.

Q. When you say that you don't know that that could be called "property;" do you mean also, that you never regarded it as property? A. I never had given it any consideration until just now.

Q. I am going to give you the opportunity, Mr. Hamill, to explain if you can, and in your own way, how you, one of the promoters, fixed at $79,000 the value of property and contracts and things that the promoters turned over to the company for $75,000, its capital stock, its common stock, and $4,000 in cash?

The Court: Do you regard it as necessary that Mr. Hamill should go all over that again; I don't see any necessity for that.

Mr. Backes: I thought I would give him a better opportunity; I want to be eminently fair with this witness, that is all.

The Court: If his counsel thinks he needs an opportunity to explain anything, he will probably put him in a position to do it. This question, in almost identical words, has been asked and answered. Right at the beginning of his examination you

asked him to explain how he made up the $79,000 of value, and he went on and gave it.

Mr. Backes: I did not so regard it, and my question was in the nature of a resume of all I had gone into in the past, and to give this witness every opportunity.

The Court: I regard it as entirely unnecessary.

Q. When was it that you concluded that the property, contracts and things, that were turned over by the promoters for $79,000, was of that value? A. Previous to the first meeting of the Directors, a few months prior to that.

Q. Had all of the concessions and contracts been made prior to a few months before the formation of the company? A. Nearly all of them were made a month or so before the formation of the company.

Q. Did you just conclude to turn it over, to turn over these properties and contracts, concessions and other things, for $79,000, $4,000 in cash, and $75,000 in the common capital stock? A. Yes, sir.

Q. That was two months before the formation of the company? A. It was a month or so, possibly three months; I cannot give you the exact time.

Q. Did you obtain subscriptions from various stockholders to the capital stock of the company? A. I did, yes, sir.

Q. I am showing you "Exhibit P17½," being three straight subscription agreements; I ask you to tell me which of the subscribers you obtained?

Mr. Dickinson: I object to this. I do not see the point of the inquiry.

The Court: Objection overruled.

A. Isaac F. Richey.

Q. What did you say to Mr. Richey? A. I told him the details.

Q. What did you say to him, please? A. I said to him that I wanted to sell him stock in the White City Company.

Q. Proceed. A. And that it was so much a share, and he would have to pay par for it; in addition to the amount of preferred stock that he would purchase, for the money put down, he would get 50% of common stock, and he purchased on that basis.

Q. You were selling preferred stock? A. I was selling preferred and common stock.

Q. What did you say, if anything, concerning the preferred and the common, other than what you have told us? A. I don't know that I said anything to him further than that, except that I wanted him to subscribe, and he agreed to do so.

Q. He subscribed for how many shares? A. I don't know.

Mr. Dickinson: It seems to me this testimony is entirely irrelevant. Now, Mr. Richey knows whether he was an innocent purchaser.

The Court: Mr. Richey is a part of this proceeding; therefore, it is competent for this witness to say what conversation he had with him at the time he made his purchase.

Q. Now, won't you look? A. He subscribed for 100 shares.

Q. That is all preferred stock? A. Yes, sir.

Q. And the par value of that was $1,000? A. Yes, sir.

Q. And how much did Mr. Richey pay? A. $1,000.

Q. Was anything else said to Mr. Richey, that you recall, as to the common stock? A. Only that he would receive, upon payment of $1,000, $1,000 par of preferred stock and $500 par of common stock.

Q. Was any inquiry made from what source the $500 of common stock was to be obtained? A. No inquiry made at all.

Q. Did you inform him? A. No, sir, I did not.

Q. Did you give him any information at all? A. Not as to the method of organization, etc. I gave him a great deal of information about the general idea, but not—

Q. He got $1,000 worth of preferred stock, and he was getting $500 worth of common stock on the side; now, I ask you whether he or you referred to that as to the source from which it was to come? A. Neither one of us.

Q. Have you, so far as the stock is concerned, and the stock transaction, given us all that you recall of the conversation? A. Yes, sir.

Q. Give me the next one, will you, please, the next person whose subscription you obtained? A. Barker Gummere, Jr., 100 shares of preferred stock, $500 of common stock.

Q. What was said to him by you? A. Practically the same thing as my conversation with Mr. Richey; my conversations with these different men would not vary very much; they were substantially the same.

Q. Those that you have already mentioned, and those that you have not already mentioned, did you state to any of them what source the common capital stock was to come from? A. As I remember, none of them inquired.

Q. Did you impart any information to them as to that? A. I don't remember doing so

Q. Now, we will take up the names. A. (No answer.)

By the Court (interrupting):

Q. You say that Mr. Gummere subscribed for $1,000 of preferred stock and $500 of common stock; is there a subscription there of his for $500 of common stock? A. No, sir, not the way it reads, there is no subscription of common stock.

The Court: That is what you said, you said that in reference to Mr. Gummere.

Further direct:

Q. Did you mean that Mr. Gummere subscribed for any of the common stock? A. Undoubtedly, they all subscribed for 50% of common stock.

Q. Did they make any written subscriptions for common stock? A. No, sir.

Q. Give me the names of the persons that you procured as subscribers? A. William S. Hancock, 100 Edmund D. Cook, 100; H. H. Hamill, 100 shares.

Q. That is your father? A. Yes, sir.

Q. He is dead? A. Yes, sir.

Q. Your mother's name is what? A. Elizabeth G. Hamill.

Q. And she is the Executrix of your father's estate? A. Yes, sir.

Q. Proceed. A. Alexander C. Yard, 100; W. A. Roebling, 200.

Q. Is that Colonel Washington Roebling? A. Yes, sir.

Q. Proceed. A. Thomas Beaver Brown, 100; Margaret H. Risdon, 30 shares; R. J. Garret, 50 shares; L. B. Risdon, 50 shares; H. Y. Haden, 50 shares; Thomas N. Adams, 50 shares; H. R. shares; L. B. Risdon, 50 shares; H. Y. Haden,

Henry Wurtschafter, 10 shares; that is all that I procured.

Q. I will go over these names and ask you if you have slipped any, and if there are any names that you did slip, stop me. Henry W. Green? A. I had some interviews with him, but it was not directly through me that he subscribed.

Q. What did you say to him? A. Substantially what I have stated I said to Mr. Richey and others.

Q. Roland H. Blakely? A. I had nothing to do with him.

Q. Who procured him? A. I don't know.

Q. Herbert Sinclair? A. I don't know anything about him.

Q. Harry Haveson? A. I procured him.

Q. Edward C. Stokes? A. Mr. Broughton procured him.

Q. Robert C. Kolb? A. I don't know who procured him.

Q. W. Holt Apgar? A. I don't know who got him.

Q. Watson H. Linburg? A. Mr. Broughton procured him.

Q. William Endebrock? A. Walter M. Dickinson procured him.

Q. Charles H. Holcombe? A. Leroy C. Thompson.

Q. Did you have any conversation with him? A. No, sir.

Q. Horace Case? A. I don't know.

Q. Do you know him? A. Yes, sir.

Q. Do you know his financial condition? A. I know he is a bankrupt—I presume he is.

Q. You are a banker, are you not? A. Yes, sir.

Q. Are you connected withe the Trenton Trust and Safe Deposit Company? A. Yes, sir.

Q. As its Treasurer? A. Yes, sir.

Q. Alexander Klenkenstein? A. I did not get him.

Q. Did you have any conversation with him? A. I think I did.

Q. What did you have to say to him? A. Substantially the same as I said to the others.

Q. Who obtained Frederick Winkhaus? A. Walter M. Dickinson. Q. Where does he live? A. In New York or Brooklyn.

Q. Who obtained John Winkhaus? A. W. Meredith Dickinson.

Q. Where does he live? A. Same place as his brother.

Q. Who obtained Mr. Donaldson? A. W. Meredith Dickinson.

Q. Mr. Donaldson is dead? A. I don't know.

Q. Where does Robert J. Garret live? A. Trenton.

Q. Is he employed in the bank? A. Yes, sir.

Q. Who obtained Katherine C. Fay? A. Mr. Risdon.

Q. Who obtained Frank G. Hagemeyer? A. W. Meredith Dickinson.

Q. Who is he? A. A broker of New York.

Q. Siegfred Roebling is a holder of 50 shares of the common stock—do you know who he is? A. Yes, sir.

Q. Who is he? A. He is Colonel Washington A. Roebling's grandson.

Q. How old is he? A. I don't know.

Q. Is he a minor? A. Yes, sir.

Q. Who is Paul Roebling? A. Brother of Siegfred.

Q. A minor also? A. Yes, sir.

Q. Where is Mr. Oberheide now? A. I believe him to be in Chicago.

Q. Have you communicated with him lately? A. I have not.

Q. He is not a resident of this State? A. No, sir.

Q. Was he solvent or insolvent the last time you heard of him? A. Very, very insolvent.

Q. Samuel W. Prior and John L. Brock? A. I secured those two.

Q. What did you have to say to them? A. Substantially the same as I said to the others.

Q. John V. D. Wicoff, a subscriber to 50 shares? A. I interviewed him.

Q. What did you say to him? A. I said substantially the same to him as I said to the others.

Q. Ferdinand W. Roebling, Jr., subscribed to 50 shares; who procured Mr. Ferdinand W. Roebling, Jr.? A. That stock was given to him by his father.

Q. The common stock? A. Both the preferred and the common.

Q. Was Ferdinand W. Roebling a subscriber to any of these subscriptions? A. Yes, sir.

Q. Who procured him? A. I did.

Q. That is Ferdinand W. Roebling, Sr.? A. Yes, sir.

Q. For how many shares? A. 100 shares at first, and subsequently—well, that is all he bought of this stock, 100 shares.

Q. What conversation did you have with him? A. Substantially the same as with the others.

Q. Is he still the owner of his shares? A. No, sir.

Q. To whom has he conveyed them? A. To Ferdinand W. Roebling, Jr., and Karl G. Roebling.

Q. Each of whom, according to the books, hold 25 shares of the common stock? A. I believe that is correct.

Q. Now, the common stock which they hold; from what source did they get it? A. They got it from their father.

Q. And the common stock that the father held and assigned to the sons, was that which accompanied the subscription of the preferred stock? A. Yes, sir; precisely.

Q. Your conversaton with Ferdinand W. Roebling, Sr., was of the same character as that with Mr. Richey? A. Yes, sir.

Q. Who is W. O. Wheeler? A. I don't know.

Q. The owner of seven shares of the common stock? A. I don't know.

Q. Peter E. Hurley is the holder of 100 shares of the common stock of the company, and not a holder of the preferred stock; do you know how he procured it? A. It was transferred from myself and Mr. Dickinson and Mr. Broughton, as I recall it.

Q. What for?

Mr. Dickinson: Objected to.

The Court: State the reason for your objection.

Mr. Dickinson: Is Mr. Hurley sought to be assessed?

Mr. Backes: He is one of the parties to the suit.

The Court: I do not see how this inquiry can be avoided. The objection is overruled.

A. In order to get Mr. Hurley interested in our company.

Q. Why? A. Principally owing to his connection with the Trenton Street Railway Company and his ability to handle a park proposition.

Q. Who contributed the stock that was handed to Mr. Hurley,—his 100 shares? A. I believe Mr. W. Meredith Dickinson, Mr. Broughton and myself.

Q. I am showing you stock book "Exhibit P5," and refer you to Stub No. 61, and from that I am asking you whether you can tell me when it was that you appreciated Mr. Hurley's ability to help along the company for which you gave him the stock?

Mr. Dickinson: Objected to; the inquiry is entirely irrelevant; it is irrelevant to inquire what consideration Mr. Hurley paid these gentlemen who transferred it to him.

Q. Can you tell me when it was that Mr. Hurley got his stock? A. He received his stock —the stock was issued to him March 18, 1908.

Recess to 2 P. M.

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Same witness resumes the witness stand.

Further direct examination by Mr. Backes:

Q. What were the circumstances under which you three issued or caused the company to issue to Mr. Hurley the shares to the amount of 100 of the common stock?

Mr. Dickinson: Objected to on the ground that it is an immaterial inquiry.

The Court: The inquiry first is, whether it was lawfully issued to them, and if not, then, whether Mr. Hurley, when he took it, paid full value for it without notice of that fact. I am constrained by the decision of Vice-Chancellor Bergen to admit this testimony. The objection is overruled.

A. We were anxious to have Mr. Hurley a stockholder and director in the company. In

order to have him a Director, it was necessary for him to have stock to qualify him; we thought he would be a valuable asset to the company on account of his previous knowledge of the operation of parks and his influence with the trolley road; therefore, the stock was transferred to Mr. Hurley.

Q. Without consideration? A. Yes, sir; without consideration.

The Court: Except so far as that may have been a consideration.

By the Court:

Q. There was no cash paid by him for that stock, was there? A. No, sir.

Further direct:

Q. Was there anything else actually paid over to you three or either of you? A. No, sir.

Q. At that time Mr. Hurley was occupying what position? A. He was Manager of the Trenton Street Railway Company.

Q. Who arranged with Mr. Hurley that he should become a holder to the extent of 100 shares? A. I don't remember.

Q. Did you? A. I think not; I am not clear on that.

Q. Irving W. Rogers was a subscriber to some of the preferred stock—who secured him? A. I don't know.

Q. He transferred ten shares of his stock to Walter F. Smith—who arranged that? A. I don't know.

Cross examination by Mr. Dickinson:

Q. In the minutes of the first meeting of the Directors, of the White City Company a resolution was passed that the company accept from

you and the other promoters, the property described in the resolution of the stockholders passed at the first meeting of the corporation, consisting of property rights, leasehold interests —what does that term in the minutes "leasehold interests" refer to?

Mr. Backes: I object. The resolution refers to that which explains,—namely, the resolution adopted by the stockholders.

The Court: Well, we have had the resolution offered by the stockholders; that is the same language, isn't it?

Mr. Dickinson: If I may explain, the resolution of the Directors refers to a resolution adopted by the incorporators, and they are not exactly in the same language. However, I will withdraw the question.

Q. Mr. Hamill, in the first meeting of the incorporators, the minutes say that whereas you and others own and control a certain leasehold in and to a large tract of land and premises in the Township of Hamilton, and in the first meeting of the Directors the minutes say that it was unanimously resolved that this company accepted the offer of you and the others to sell and assign to this company the property described in the resolution of the stockholder, passed at the first meeting of the corporation; tell me to what leasehold the minutes of the incorporators refer? A. They refer to a promised lease which I presumed at that time was to be given by the Interstate Railway Company, and to a certain interest that we had in the lease which we had purchased from Mr. Hurley.

Q. When you first contemplated the formation of this company, what did you do towards pro-

curing a tract of land whereon to place the company? A. After numerous interviews with Mr. Hurley, Mr. John A. Rigg, and Mr. Ferdinand W. Roebling, we were able, after paying Mr. Hurley $4,000, to get a lease which then existed, out of the way; we were able to get a ten years' lease from the Trenton Street Railway Company.

Q. How did you find out that these gentlemen, whom you have just mentioned, had anything to do with this particular property which was afterwards developed into a park property; how did you happen to find this piece of property, or know anything about the ownership of it? A. We found that out by going direct to Hurley.

Q. What did you say to him? A. We said we wanted to lease that property, and he said he thought he could arrange it, but before he could arrange it there was a lease existing on the property.

Q. Did he tell you that that was controlled by the Trenton Street Railway Company; did Mr. Hurley tell you that the property which you were negotiating for, was owned or controlled by the Trenton Street Railway Company? A. He did; yes, sir.

Q. Then you say he told you—

Mr. Backes: I object; this is not cross examination. Your Honor, in a measure, excluded us from going into the subject of their dealings in the first instance.

The Court: In any event, the testimony elicited on your examination went into the matter of the four years' lease which was purchased for some $4,000, and that, in my judgment, opens the door for cross examination broadly, upon the whole subject. I shall admit the question.

Q. Then you say he told you that this property was owned or controlled by the Trenton Street Railway Company? A. Yes, sir.

Q. Then what did you say to Mr. Hurley? A. I said, "We want to get a ten years' lease from the Trenton Street Railway Company," and he said, "I can procure you such a lease."

Q. Did he mention anything at that time about another lease already upon the property? A. He did; yes, sir.

Q. What did he say about that? A. He said there was a lease which was vested in Peter Wurfflein, but which he controlled, and before we could get a ten years' lease from the company, we would have to get rid of the Wurfflein lease.

Q. Did he say that he could get rid of the Wurfflein lease? A. Yes, sir.

Q. And upon what terms? A. $4,000.

Q. What next was done in reference to procuring this ten years' lease which he promised you? A. The next step that we took, I went down to see Mr. Roebling because I knew from Mr. Hurley that he could get ten thousand dollars for the lease we bought for four, unless I could bring some pressure on him. The lease was going to be bought by Mr. Mahlon Margerum and others; I went down and saw Mr. Roebling about it, and he told me he would do what he could to persuade Mr. Hurley to turn that lease over to us for $4,000.

Q. Why did you see Mr. Roebling in reference to it? A. Because he was the managing director of the company in Trenton, the Trenton Street Railway Company.

Q. What next did you do? A. I next went down to Mr. Rigg and had two or three interviews with him, and got his pledge, as President of the company, that he would give us a lease for ten years with an option in it to purchase.

Q. You say "give a lease to us," to whom do you refer? A. Give a lease to the so-called promoters, or to the company; it makes no difference to him.

Q. To be formed by the promoters? A. Yes, sir.

Q. Did you finally enter into such an agreement with Mr. Rigg? A. Yes, sir.

Q. Was there anything in writing between you or between any of your associates, and Mr. Rigg, ratifying such an agreement? A. I think so.

Q. When did these negotiations with Mr. Rigg, Mr. Roebling and Mr. Hurley take place? A. In the three months previous to the organization of the company.

Q. No actual lease was made to you and your associates by the railroad company or anyone else? A. No, sir.

Q. You say you had, however, entered into a verbal arrangement to consummate such a lease? A. Yes, sir.

Q. Explain how such a lease was consummated, if at all. A. After the verbal arrangement with Mr. Rigg, sanctioned by Mr. Roebling, nothing further was done with them until after the formation of the company, and we then asked them to make good their word, which they did, by giving a lease by some Trustee to the Trenton White City Company.

By Mr. Backes:

Q. Which is the lease already offered in evidence? A. Yes, sir; which is the lease offered in evidence.

Further cross:

Q. Do you know who the lessors named in this lease are, or what relation they bear to the railroad company? A. I do not.

Q. You understood, however, that this lease was

made in pursuance of the arrangement that you had with Mr. Rigg and others? A. Undoubtedly.

Q. Now, in reference to this Wurfflein lease, when you had your negotiations with Mr. Hurley, what was said in reference to that by you and by Mr. Hurley? A. We found ourselves in a position where this Wurfflein lease—

Mr. Backes: I object to this part of the answer, which is not responsive to the question.

The Court: You cannot object on the ground of irresponsiveness; you may object that it does not apply to the issue. Now, Mr. Hamill, just answer the questions asked without volunteering a preliminary statement.

Question read.

A. Mr. Hurley said, that before we could get a ten years' lease from the company, that the Wurfflein lease, which he controlled, would have to be purchased, and I said that we would purchase it.

Q. And did you purchase it? A. And we did purchase it.

Q. The leasehold interest then referred to in the minutes of the incorporators, which was ratified by the minutes of the Directors, was the leasehold interest that you acquired from this Trust Company in Philadelphia, wasn't it? A. Undoubtedly.

Q. You and your fellow-promoters or associates considered, didn't you, at the time of the passage of this resolution, that you had a well-defined agreement in reference to this lease with the railroad people? A. We did.

Q. And that agreement was subsequently carried out by this written lease, which is substantially the verbal agreement which you had with

them prior to the formation of the company? A. Yes, sir.

Q. You testified on your direct examination, that at the meeting at which this resolution of the Directors was passed, adjudging this leasehold and other properties to be a certain value. that no estimate was passed at that meeting by you and the others upon the value of that property. Did not, however, this resolution embody the conclusions which you had come to in reference to the value of this property prior to this meeting? A. It did.

Q. You say, then, that you, did some time prior to this meeting, place upon these various items of property turned over to the company, a value? A. We did.

Q. And you considered the value of those properties which were turned over by this resolution, and this resolution embodied your determination as to those values? A. Undoubtedly.

Q. You have testified in respect to various contracts which were entered into by you and your associates, with various persons concerning amusement devices in connection with the park; what contracts, if any, did you enter into with Doak & Company for the construction of the park? A. We entered into a contract with Doak & Company to build the park for us.

Q. You testified you had no recollection of any contracts other than those of which you spoke; does the mention of this contract refresh your memory? A. It does.

Q. What was this contract?

Mr. Backes: I object; the contract was in writing.

Q. Was the contract in writing? A. I am sure the contract was in writing.

The Court: Very well, then; you will have to confine yourself to that, if it can be produced. Have you got it, Mr. Backes?

Mr. Backes: I am under the impression that I have a copy of the original.

The Court: If it is in writing you will have no difficulty in supplying it either now or hereafter.

Mr. Backes: I think I have the original.

The Court: Was that offered on the occasion of Mr. Dickinson testifying?

Mr. Dickinson: It is marked "Exhibit P22½."

The Court: It was spoken of here the other day.

Q. I show you "Exhibit P22½," and ask you if that was one of the contracts or agreements which was turned over by the promoters to the company in consideration of the issuing of the $75,000 capital stock? A. It was; yes, sir.

Q. Did you consider that contract of any value, or any part of the value that went up to make up the $75,000 par value of stock, which you and your associates received? A. I did.

Q. Can you state whether you considered it of little or great value? A. I considered it of considerable value, but I never placed any specific estimate on it.

By the Court:

Q. How was that of value to the company; that was a liability of the company for erecting buildings down there—a contract by which the company obligated itself to pay for certain erections, etc., now, how is that a thing of value to the company? A. In the first place, we had spent hours in time and labor and money out of our own pockets, going back and forth to Philadel-

phia in order to make this contract, and we were able to drive what I considered a very excellent bargain, which we were going to turn over to the White City Company.

Q. You claim you made a contract with Doak & Company for the erection and work down there at a less price than ordinarily could have been obtained? A. Yes, sir; and in the contract a very important part of it was that there was no cash to be paid, but that they would be willing to take stock for their work.

Further cross:

Q. You spoke of a contract with the railroad company for running a feed wire down there; state what negotiations you had, if any, with the lighting company? A. We went to Mr. Charles G. Cook, of the Public Service Corporation here in Trenton, and requested that he put a wire down there, and Mr. Cook said it would have to be taken up with the higher officials of the company, and he questioned very much whether they would do it.

Q. Why? A. It was going to cost them from eight to ten thousand dollars, they figured, and they did not know that it was going to pay them to run that wire down there, so negotiations were then made through my father, who was, at that time, a Director in the Public Service Corporation, with Mr. A. R. Kuser and some others, and it was finally brought about that the Public Service Corporation were willing to put down a $10,000 feed wire to the gates of our park.

Q. This arrangement, then, with the Public Service Corporation, leading up to their placing the feed wire, was brought about by you and your associates before the formation of this company? A. Undoubtedly.

Q. You had, in effect a contract with the Public Service Corporation to put that feed wire down there? A. Yes, sir.

Q. And subsequently, that contract was ratified and performed, wasn't it, with the White City Company? A. Yes, sir.

Q. Did you, as a promoter, have any negotiations concerning what is commony called a Figure 8 device? A. I did.

Q. This was not one of the contracts that you referred to in your direct examination? A. It is not; no, sir.

Q. State what negotiations you had in reference to this Figure 8? A. We had numerous negotiations with numerous parties, but finally entered into a contract with the Brenig Construction Company to build—

Mr. Backes: I object.

The Court: I do not see anything objectionable.

Q. Was the contract in writing? A. Yes, sir.

Q. Were these negotiations entered into by you and your associates, with the Brenig Construction Company, prior to the formation of the White City Company? A. Yes, sir.

Q. Were those negotiations in writing or not? A. I think so, but I am not sure.

Q. Did they result in a written contract? A. They did.

Q. I show you an agreement dated April 27, 1907, between the Brenig Construction Company and the White City Company, and ask you if that is the contract you refer to? A. Yes, sir; it is.

Marked "Exhibit D1½."

Q. Was that one of the contracts which you and your associates turned over to the company

in return for the stock which you received? A. Yes, sir.

Q. Did you estimate that contract of any value when you determined the value of the property turned over for the stock? A. We did.

Q. Why? A. Well, if the figures—well, I think we were able to get the Brenig Construction Company to come down about $3,000 from their original estimate, which Mr. Oberheide, who was an expert in that sort of thing, told us was a reasonable price, and we were able to take advantage of the situation at that time, in order to get that particularly cheap, owing to the financial condition which the Brenig Construction Company were in.

Q. You mean to say, then, that you believed that the White City Company, by taking advantage of this contract, which your negotiations had led up to, was saved $3,000, or profited to the extent of $3,000? A. Possibly.

Q. Do you say, that in your opinion the White City Company profited to any extent by this? A. They certainly did profit.

Q. What, in your opinion, was this park property worth at the time it was turned over by you to the company? A. From a real estate standpoint I have placed figures on it previous to the time that we turned it over to the company, at $50,000, at that time, in the year 1906.

Q. Did you consider the value of the property in respect to whether or not it was liable to rise in value or fall in value? A. Yes, sir; I considered at the end of ten years that that property would be worth maybe $100,000.

Q. From the point of view of the property's adaptability for the purpose of an amusement park, what would you say as to its value? A. In my opinion, it was the best spot for an amusement

park that I saw in New Jersey, after going around and seeing some parks in the State.

Q. Did you consider the acquisition of this property by the White City Company from merely its adaptability for park purposes, an element of value which you were turning over for the stock you received? A. Yes, sir; of considerable value.

Q. Did you ever have any conversation or discussion with your associates as to the value of this park property, which you turned over, and these contracts which you turned over for the stock you received? A. Frequently.

Q. Was it your opinion and the opinion of your associates, as far as you know, that the sum total of value which you turned over by way of property and contract rights, was worth $79,000? A. Yes, sir.

Q. State whether or not the negotiations which were entered into by you and your associates, and concerning which you have testified here, finally resulted in contracts with the White City Company, by the persons with whim you negotiated? A. They did; yes, sir.

Q. In other words, all negotiations which you had with amusement people and others in respect to what was to be done for the park, were carried out as they said they would be, is that so? A. Yes, sir; that is so.

Q. In reference to the contract with Dentzel for the carousel, can you state whether or not that was in writing, the negotiations between you and your associates with Mr. Dentzel? A. There was a guarantee by Mr. Broughton and myself, Mr. Dickinson and General Sadler, for the payment of $8,000 for a carousel, in writing. The contract made between Mr. Dentzel and ourselves, I think, was verbal, but we were com-

pelled to give a written guarantee that the money would be paid.

Q. This was one of the contracts or agreements which you turned over to the White City Company in return for the stock? A. Yes, sir.

Q. Did you consider that an element of value when you turned it over for the stock? A. Yes, sir; I did.

Q. Why? A. Because the negotiations were made largely through Mr. Oberheide, who was, in the first place, a personal friend of Mr. Dentzel, and who, in the second place, had purchased a number of carousels from him, owing to which circumstance we believed that Mr. Oberheide purchased that carousel for less money, probably, than we could have done without him.

Q. Can you give any idea as to the advantage in cost which you think you derived by that contract? A. Mr. Oberheide claimed that we were saving $1,000.

Mr. Backes: I object.

The Court: I will let that stand.

Q. Did you receive any information which would lead you to believe that you were saving more than $1,000? A. The figures with regard to that are hazy in my mind.

Q. The White City Company subsequently got the benefit of any such arrangement which you made with Mr. Dentzel, as a promoter? A. Undoubtedly.

Redirect examination by Mr. Backes:

Q. You spoke of a contract with the Public Service Corporation; do you mean a contract in writing? A. I think so.

Q. Made with whom—on behalf of either the White City Company or the promoters? A. I don't remember.

Q. What makes you think so, if you don't remember? A. I think there was a contract, but I don't remember who it was made with, but I presume it was made with the White City Company.

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FERDINAND W. ROEBLING, Jr., sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Backes:

Q. Where is your residence and what is your occupation? A. I reside at 216 West State Street, this city, and I am employed by the John A. Roebling's Sons Company.

Q. You are one of the respondents in the present application of the Receiver, are you? A. Yes, sir.

Q. It is recorded in his petition that one Ferdinand W. Roebling, Jr. holds 25 shares of the common capital stock of the company; are you the Mr. Ferdinand W. Roebling, Jr.? A. Yes, sir.

Q. Do you own any other shares of that company? A. 50 shares of preferred and 50 shares of first preferred.

Q. From whom did you get it? A. From my father.

Q. From whom did you get the capital stock, preferred and common? A. From my father.

Q. When? A. The stock was issued on June 15, 1907.

Q. About that time did you get it from your father? A. About that time, yes; I do not recall exactly—

Q. You were not a subscriber to the preferred stock? A. No, sir.

Q. Were you a Director of the company? A. Yes, sir.

Q. Did you attend any of the meetings? A. Some.

Q. When did you first become interested in the White City Company? A. Do you mean as a Director?

Q. Were you a promoter? A. No, sir.

Q. Then your first interest in it was as a Director? A. Yes, sir.

Q. The first meeting of the company was held on the 26th day of March, 1906—the first meeting of the stockholders was held,—at which you were elected a Director; did you know before you were elected a Director that that was to happen? A. I don't know. I was asked if I would serve on the Board of Directors, but I do not recall whether that was before or after that meeting.

Q. Who asked you? A. Mr. Hamill.

Q. The first meeting of the stockholders, as well as the first meeting of the Board of Directors, was held on the 26th of March, 1906, and you were elected at the first meeting of the stockholders; does that fact help you at all in refreshing your memory as to when it was that you were requested to act as a Director? A. In 1906?

Q. Yes. A. The first meeting was in 1907—it does not; it was about that time, but I don't recall.

Q. Was that the first interest that you took in the White City Park when you were asked at that time? A. Yes, sir.

Q. And that was within how long a period, if it was before the formation of the company, before the formation? A. I could not say.

Q. Within a day or two before it was formed? A. I could not say.

Q. Within a week? A. I don't remember now;

I should say within ten days, something like that.

Q. When were you informed that you had been elected a Director, with reference to March 26, 1907? A. I think it was a little after; I could not say, now.

Q. About how long after? A. I should say within a week.

Q. Are you quite sure it was not the same day? A. It might have been; I cannot say, now; I do not recall, now.

Q. Did any other person solicit you to become a Director, except Mr. Hamill? A. I don't think so; not that I recall now.

Q. Did you, prior to becoming a Director, discuss with Mr. Hamill the values of the properties that the promoters were about to turn over to the White City Company? A. No, sir.

Q. At no time? A. No, sir.

Q. Did you with any of the promoters? A. No, sir.

Q. Did you with any of the Directors? A. No, sir; not that I can recall at all.

Q. Did you, at any time prior to March 26, 1907, or on that day, know that the corporation was on that day to be formed; that it was to be formed on that day? A. No, sir; I did not.

Q. Did you know that on that day, or before that day did you know there was to be a meeting of the Board of Directors? A. No, sir.

Q. I am showing you a minute book and referring you to page 21 of the minute book, and I ask you whether your name appears written on that page in your handwriting? A. Yes, sir; it does.

Q. It is a waiver of the notice of the first meeting of the Directors; now, in view of your statement that prior to that day, or on that day,

you did not know of this meeting, when was it that you signed this paper? A. I don't know when I signed that paper.

Q. It was after the 26th of March? A. I think it was, I don't recall the date.

Q. You are quite sure? A. No, sir.

Q. Mr. Roebling, in view of your statement that inclusive of the 26th of March, 1907, you had no knowledge that this corporation was to be formed, or that a Board of Directors was to be elected, what do you say as to when it was that you signed that waiver of notice? A. I cannot recall, because I don't know when I signed this.

Q. It must have been after. A. I don't know, I could not say; I have no recollection of it.

Q. You had no knowledge, including the 26th day of March, that this corporation was to be formed on that day? A. No, sir.

Q. You had no knowledge that a meeting of Directors was to be held on that day? A. No, sir.

Q. I call your attention to this notice; do you understand that notice, do you understand the English of it? A. Yes, sir.

Q. Then, with your statements that you have just made, do you say that this was after the 26th of March that you signed?

Mr. Dickinson: I object to that; he has asked him once before exactly the same thing, and he says he does not remember.

The Court: The question will be allowed to be asked over again; I will permit it this once.

A. I don't recall when this was signed.

Q. I have not asked you that; I ask you whether you can say you signed after the 26th

of March? A. I presume it was, I cannot state positively.

By the Court:

Q. When you were just asked whether you had any present recollection up to and including the 26th of March, 1907, that the company was to be formed that day and a Board of Directors was to be elected that day, and you said "No," what did you mean? A. I don't know whether I knew on that date; of course, I heard of that meeting at some time, but just when it was, I cannot say.

Further direct:

Q. This stock that you got from your father, was it given to you as a gift? A. Yes, sir.

Cross examination by Mr. Dickinson:

Q. You don't mean to say that you did not know that the White City Company was going to be incorporated, do you? A. Well, I knew that such a company was going to be formed.

Q. You had been asked to become a Director, hadn't you? A. Yes, sir, but I do not remember the date of that.

Q. You were not very active in promoting the company, were you? A. I had nothing to do with the promoting of the company.

Q. You don't remember, as a matter of fact, when you signed that waiver of notice? A. No, sir.

Q. You may have been present at that meeting of the Board of Directors, may you not—this first meeting of this Board of Directors; you might have been present then, might you not? You won't state positively that you were not present at this meeting of the Board of Directors?

Mr. Backes: The minutes show that he was not.

A. The minutes will show whether I was or not.

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KARL G. ROEBLING, sworn in behalf of the complainants, testified as follows:

Direct examination by Mr. Backes:

Q. You live where? A. 211 West State Street.

Q. Are you the same Karl G. Roebling who is a respondent in the present proceedings? A. Yes, sir.

Q. Do you own shares of stock, both preferred and common, in the Trenton White City Company? A. Yes, sir.

Q. It is recorded in this petition that you own Certificate No. 57 for 25 shares of the common stock, is that right? A. Yes, sir.

Q. From whom did you get that common stock? A. From my father.

Q. How? A. He gave it to me.

Q. As a present? A. Yes, sir.

Cross examination by Mr. Dickinson:

Q. You did not know anything about how this stock was acquired by your father, or how it was issued by the company, did you? A. No, sir.

Redirect examination by Mr. Backes:

Q. You made no inquiry, did you? A. Yes, sir; I asked.

Q. What did he say? A. He said that he had subscribed to some stock and simply turned it over to me.

Q. Did he tell you how much he had subscribed? A. No, sir.

Q. Do you mean he simply turned over the subscription to you? A. No, sir; he turned the certificate over to me.

Q. Certificate for what did he turn over to you? A. The preferred stock and the common stock.

Q. Did he tell you where he got the common stock from? A. No, sir.

Q. Did he tell you that he had subscribed to the common stock? A. No, sir; I did not ask him.

Q. Did you know that he had not? A. No, sir; I did not.

Q. Did you know that he had subscribed to the preferred stock? A. No, sir; I did not ask him any of the details in the matter.

Q. Well, aside from what your father told you, did you know that the common stock of the White City Company was given away as a bonus to the subscribers of the preferred stock? A. Only as a matter of hearsay.

Q. And knowing by way of hearsay, you made no inquiry of your father whether this common stock was bonus stock given to him with the preferred stock? A. No, sir; I did not.

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PETER E. HURLEY, sworn in behalf of the complainants, testified as follows:

Direct examination by Mr. Backes:

Q. Where is your residence, Mr. Hurley? A. 1237 Greenwood Avenue.

Q. What is your occupation? A. General Manager of the Trenton Street Railway Company.

Q. How long have you been the General Manager? A. About fifteen years, I think.

Q. The line of that railway extends through

the old Chambersburg district down towards White City Park? A. Yes, sir.

Q. And runs within what distance of White City Park? A. About two or three blocks; I don't know just the distance.

Q. It is down on the old Crosswick's Turnpike—the White Horse Turnpike? A. Yes, sir.

Q. Which parallels the front gate of the Trenton White City? A. Yes, sir.

Q. And the Trenton White City Company Park sets back about three blocks? A. Yes, sir.

Q. Did you, either for your company or some other of the companies that you represented in 1907 or in 1906, have any transactions with the promoters of the White City Company of and concerning the park? A. Yes, sir.

Q. With whom? A. With Mr. Oberheide and Mr. Hamill, and I think Mr. Walter M. Dickinson.

Q. Whom were you representing at that time? A. Myself.

Q. Anyone else? A. No, sir.

Q. Had you, at that time, any interest in Broad Street Park, afterwards known as the White City? A. I held a lease that had not expired, for one year, with the privilege of four years more.

Q. Was that this Wurfflein lease, marked "Exhibit P21½" in this case, which I am now showing you? A. Yes, sir, I think that is it; I have not got my glasses, but I am quite sure that is it.

Q. When was it that negotiations were opened with you concerning anything connected with the park? A. It was in the Winter of 1906, I think.

Q. 1906-07? A. 1906 or 1907.

Q. I mean the Winter of 1906-07? A. Yes, sir, I imagine that is right.

Q. What interest had you in this Wurfflein lease —I mean as to ownership? A. They failed in the park business.

Q. Who? A. Peter Wurfflein; he had a lease and he failed with considerable debt, and I had agreed with my company that in case there was any trouble, that if they would let him have the lease, that I would stand good for the lease until it expired. They started the park up on the 30th of May, and I think, on the 28th of June they practically failed; they owed between two and three thousand dollars and had not paid anything at all, and they had charged quite some bills to the Trenton Street Railroad Company. They did that unintentionally, thinking they did it this way—

Q. Peter Wurfflein, do you mean? A. Yes, sir, he and another man; they did it thinking, I suppose, they could buy material cheaper because of the Trenton Company's name, and I was in quite a fix with it. I was in a hospital in Philadelphia, and I got notice that they were going to be sued, and that the Trenton Street Railroad Company was going to be sued, and I sent for them and they assigned it to me, the lease; I don't know whether I have it, I may have it.

Q. There was a written assignment of it? A. Yes, sir; Judge Macpherson did the business; I took the park and assumed all the debts. That was on the 28th of June, I think, of the same year.

Q. You ran it during that Summer? A. I had one of my men run it.

Q. You mean one of the Trenton Street Railway Company's men ran it for you? A. Yes, sir.

Q. The Trenton Street Railway Company had nothing to do with it? A. None whatever.

Q. Was that the situation when you were approached by Messrs. Hamill and Dickinson? A. Yes, sir. Mr. Oberheide came to my office and wanted me to guarantee to make a five cent fare to a place near Trenton Junction where they were going to start a park, which I refused to do. He

also wanted me to agree to run cars under such headway as he wanted, and that I refused to do; I told him to build his park and then I would see what we could do. Either the first or second time he came, I made a proposition to him about selling him the Wurfflein lease; he then went to Mr. Rigg, in Philadelphia, and told him—

Q. Were you there? A. No, sir, not at that interview.

Q. He returned to you afterwards? A. Yes, sir, he returned to me, and I finally agreed to take $4,000 for the lease and everything in connection with it.

Q. That is for the Wurfflein lease? A. Yes, sir, provided he paid me $250 for the option, to take effect the 15th day of February of that year.

Q. I don't understand you. A. I told him I would take $4,000 for the lease, providing they paid me $250 for the option, the next day.

Q. For the option at $4,000? A. Yes, sir, the next day, to take effect the 15th day of February.

Q. To expire on that day? A. Yes, sir.

Q. What then? A. They paid the money the next day, I think.

Q. Who did? A. I think Mr. Hamill did, but I am not sure about that.

Q. Then what? A. The 15th came, when another company was after the lease; the other party said they would give me the same money or more, and they came and wanted an extension of time, and I refused it.

Q. Who are "they?" A. I think it was Mr. Oberheide, and I refused the extension of time, because I was going South in a few days, I wanted to go away, so they came to my house that night about ten o'clock at night.

Q. Who did? A. I did not know; I was in bed and I would not get up, so they told my wife—

Q. Did you hear it? A. Yes, sir, I was listening to it.

Q. Well, who told her? A. I don't know who it was, but I think Mr. Oberheide did the talking—that they would be at my office the next morning with the $4,000 to take over that lease on the 16th of February, and wanted to know if I would hold it and accept it at that time; and I said, "Yes," and they were there on time with the $4,000 less the $250 already advanced.

Q. Was that $4,000 received by you for your personal use? A. Yes, sir, for my personal use.

Q. Have you told us all the negotiations up to that time? A. Well, I would not say that I have told all the conversations.

Q. Now, you say that they paid you $4,000; what did they pay you that for? A. That lease.

Q. Just the Wurfflein lease? A. Yes, sir, and I know that belonged to me there under the lease.

Q. What happened after that? A. That is about all of it.

Q. Was anything said about a further extension? A. Yes, sir.

Q. I mean at the time that you bargained with them to give them an option upon the payment of $250, or at any time after up until the time that you finally concluded the negotiation? A. Yes, sir, I took the matter up with John A. Rigg, who was boss of the park and everything else, and I told him about these gentlemen wanting to buy the park, and they were going to build a park, and, of course, he felt very good about it, and so did we all; and I asked him about an extension of time, that we had this four years' lease which I would sell to them for $4,000; and he asked me how long they wanted, and I said they wanted a ten years' lease; he said, "We

will give them a ten years' lease and as much longer as they want it, if they run the right kind of a park."

Q. When was that? A. That was the time of the selling of the lease to them.

Q. Before the final payment? A. Oh, yes.

Q. You communicated that to anyone? A. To all of them; I told them all there was no question about their getting a lease; I would practically guarantee they would get a lease for that length of time.

Q. What was said as to the price, the purchase price? A. Of the ten years' lease?

Q. No. A. $35,000.

Q. Up until the time of the final payment of $4,000, was anything said about an option to purchase? A. Yes, sir.

Q. How was that broached to you? A. I don't just remember; somebody else was trying to buy the park at that time.

Q. Who? A. Some people from New Brunswick, I don't know who they were.

Q. Was there a price fixed on it by your company, or the owners of it, to these New Brunswick people? A. I could not say about that.

Q. Now, who was it that approached you on behalf of these promoters as to the price? A. I am sure I cannot say.

Q. Do you know what was done about it? A. We gave them the option for $35,000.

Q. Were there negotiations about it? A. Only verbal; Mr. Rigg and I agreed that that would be the price, that we give an option for $35,000.

Q. Who fixed that price? A. Probably I did.

Q. You regarded it as a fair price at that time? A. Well, I thought it was a price that it would bring at the time.

Q. You regarded it then as a fair price? A. Yes, sir.

Q. Who owned the property at that time? A. The Trenton Street Railway Company.

Q. And you were one of its employees? A. Yes, sir.

Q. Looking after the interests of your master? A. Yes, sir.

Q. Cannot you tell me to whom you submitted the price on behalf of the promoters? A. I think to Mr. Dickinson, Mr. Hamill and Mr. Oberheide; they were all talking to me about the matter.

Q. Was there any dickering between you and any of the promoters concerning the purchase price? A. Yes, sir, I think there was—especially about the lease—

Q. I mean as to the purchase price? A. I think the price first was $50,000; that is what we asked the New Brunswick people for it.

Q. What brought it down to $35,000? A. I don't know; we wanted a park there.

Q. Was it the result of dickering on the party of the promoters? A. I would not swear to that, but I think it was; I might have asked for more, I don't remember.

Q. Now, had the Trenton Street Railway Company the title to the park? A. No, sir.

Q. Who had the title? A. John L. Kuser and Robert S. Woodruff as Trustees.

Q. Robert S. Woodruff was dead at that time? A. Yes, sir, but it had never been changed until that time.

Q. A lease has been offered in evidence dated in May, 1907, by the Real Estate Insurance and Trust Company of Philadelphia, Trustee; when did they succeed Messrs. Kuser and Woodruff? A. Some time after the lease was given to Peter Wurfflein, I don't remember the date.

Q. Was it before you had assigned or bargained to assign to the promoters of the White City? A. I think so.

Q. This Realty Company is simply a holding company of the Trenton Street Railway Company's real estate? A. Yes, sir.

Q. John A. Rigg was the president of which company? A. All the companies.

Q. When you speak of "all the companies," what do you mean? A. All the railroad companies connected with the Trenton Street Railway Company; no, I guess that is wrong—I guess some of the outlying companies some of the other people are presidents of them.

Q. But the Trenton Street Railway Company, which was the beneficial owner of the White City Park, was one of the companies of which he was president, anyhow? A. Yes, sir.

Q. Do you know whether, before you made sale to the promoters of your lease, the matter of an extension of six years more, or a lease of ten years in all, from the Trenton Street Railway Company's Trustee to the White City Company, was submitted to the Board of Directors of the Trenton Street Railway Company? A. It was not, no, sir.

Q. Simply the word of Mr. Rigg? A. Yes, sir.

Q. And your word? A. Yes, sir.

Q. And at that time did you hold any position with the Trenton Street Railway Company other than that of General Manager? A. General Manager and Director, that is all.

Q. This lease to Peter Wurfflein does not provide for the payment of any rent? A. No, sir, he did not pay any rent.

Q. To the lessor? A. He did not pay any rent at all.

Q. Nor does it provide for his doing anything in favor of the lessor—the lease to the White City Company does not provide for the payment of any

rent or the doing of anything; I am asking you whether there are any other contemporaneous agreements providing for rental? A. There was not, no, sir.

Q. Do you, at the present time, own 100 shares of the common stock? A. No, sir.

Q. You were elected a Director of the Trenton White City Company, were you not? A. Yes, sir.

Q. Do you remember when? A. No, sir, I don't remember when; it was after things were in pretty bad shape.

Q. The minutes disclose that you were elected a Director at the meeting held March 18, 1908, which is the same day as the date of the certificate of stock was issued to you as appears by the books? A. Yes, sir.

Q. Do you remember attending that meeting? A. When I was made a Director?

Q. Yes. A. No, sir.

Q. You attended meetings regularly after that? A. Yes, sir.

Q. You took an active part in the management of the business of the company after you became a Director? A. Yes, sir, in operating the park.

Q. You knew that to be a Director you had to be a stockholder? A. I imagine I did, yes, sir.

Q. And you knew that 100 shares of stock of the company—the common stock of the company, had been issued? A. No, sir, but I will explain that. They asked me to be a Director of the White City, and I said "No," that I would have nothing to do with it; that they were in bad shape; and they said if I would be a Director they would give me some stock, and I said I didn't want any stock; and they finally said they did elect me a Director, against my will, and they wanted me to attend one meeting; and I agreed with Mr. Broughton to do that. In the meantime, I was sent for by one of our Directors, and he said he wanted me to be a Director in

the White City Park to protect their interests and to help run the park, and to run it successfully, to help our business; and I finally agreed then to act, and I was sent 100 shares of stock, and I found the stock lying on my desk some weeks after, being put there by Mr. Willets, the manager of the park; he told me he put it there; I stuck it in a pigeon-hole of the desk, and I thought no more about it, as I knew it was worth nothing. Some time later, when I found there was some music in the air, I sent it back to Mr. Hamill again, thinking he might need it.

Q. When did you hear there was "music in the air;" about how long ago? A. Three or four months ago.

Q. After the filing of the petition by the Receiver in these present proceedings? A. I am not sure about that; I thought he had better have it back anyway.

Q. Now, the minutes show a special meeting held March 23, at which it says that among others, Peter E. Hurley, of the Board of Directors was present; were you, in fact, present? A. I don't remember the dates.

Q. Do you remember whether you were appointed as one of the committee to consider the name of Mr. Willets or Mr. Young as manager of the White City Park? A. I think I was.

Q. You acted on that committee, didn't you? A. I think I did.

Q. Do you remember being appointed one of a committee concerning the matter of turning the skating rink into a vaudeville house, and running vaudeville during the season of 1908? A. I think so; yes, sir.

Q. You acted upon that committee, didn't you? A. I think so.

Q. Do you remember attending a meeting of the Board of Directors on May 21, 1908? A. I don't remember the dates.

Q. Do you remember making a motion that Mr. Dickinson and Mr. Willets be appointed a committee to take up the matter of the Interstate Telephone with their manager, in reference to reducing future bills; do you remember making such a motion?

The Court: What light does that throw on the subject of our inquiry here?

Mr. Backes: Your Honor, whether a man is a stockholder does not depend on whether he holds certificates of stock, or whether he subscribes; it may be inferred from his conduct towards the company, and his conduct with the company. It has been intimated by this witness that the stock he did not get—the stock he did not want, I mean, and the stock he sent back; now, if it appears on the books that he was the holder of 100 shares, and it further appears that he acted as a Director of the company and took an active part in its management, from that it may be inferred that he is a stockholder, and liable.

The Court: Because he cannot be a *bona fide* Director without being a *bona fide* stockholder. It is not objected to, so it will be admitted. The testimony will be admitted for the present.

Q. Do you recall at a meeting of July 8, 1908, that you offered this resolution for the Board of Directors:

"That the company" issue a child's ticket the same as 1907, for the season of 1908, at 25 cents.?" A. I remember of the transaction.

Q. Do you remember making that motion? A. I cannot remember these things, but I remember the transaction; I know we passed a resolution to that effect.

Q. Do you remember at the same meeting offering this resolution or motion: "That all Directors give an order for tickets when going to vaudeville or riding on any amusement in the park, and that the manager give strict orders to all ticket sellers and supply them with pads for the signatures to this effect, and only Directors and their parties to go free?" A. I know that was done; I know I was at the meeting where it was done.

Q. How long did you continue to act as a Director? A. I think I continued until the Receiver was appointed.

Q. Did you attend the annual meeting of the company, of the stockholders of the company, on March 24, 1909? A. I could not say.

Q. Don't you remember being there at the election? A. I don't remember no, sir; whether I was or whether I was not, but I imagine I was.

Q. What is your best recollection as to that? A. I imagine I was; it was during my time.

Q. Did you vote at that meeting for the election of Directors? A. If I was there.

Q. Do you say you were not there? A. I would not be positive.

Q. If you were, you voted as a stockholder? A. I could not say.

Q. You voted, didn't you? A. I could not say.

Q. You were, at that meeting, elected a Director of the company, were you not? A. Well, now, what is the date of that?

Q. March 24, 1909, a year ago last March. A. I cannot remember any dates of any meetings that I was at; I attended most of the meetings when I was in town, but whether I was there or not

I cannot say.

Q. Probably this will refresh your memory; I show you a waiver of a notice of a meeting of the Board of Directors to be held on the 24th of March at 3:15 o'clock; your name appears as "Peter E. Hurley," that is March 24th, 1909? A. Yes, sir.

Q. Does that refresh your memory as to whether you were present at the meeting on the 24th of March, 1909? A. I must have been there, or I could not have signed that name.

Q. Now, with that before you and the fact that you were elected a Director, can you tell me how many shares of stock you voted at that meeting? A. I cannot tell you.

Q. Did you vote any?

Mr. Dickinson: I object.

The Court: Objection overruled.

Q. The minutes read: "A certified list of the stockholders with the number of shares of stock respectively held by each on March 24, 1909, was laid before the meeting, as well as the stock ledger:" do you remember that to be so? A. No, sir.

Q. I am showing you a list of the stockholders of the company as of the date last mentioned, and ask you whether that was before you at that meeting? A. No, sir, I never saw it before, not to my knowledge.

Q. The name of Peter E. Hurley appears upon this certificate also referred to in the minutes to which I had just referred you, as holding 100 shares; it is checked off on the side with a lead pencil check; do you know what that means; does that mean that you were present? A. I don't know.

Q. Now, none of this that appears in this book, except your signature there, refreshes your memory as to your being present? A. No, sir; I don't doubt but what I was there, but I don't remember anything about it.

Q. Do you remember who the tellers were at that election? A. No, sir.

Q. That was the last election before the receivership? A. I have no recollection of it.

Cross examination by Mr. Dickinson:

Q. Mr. Hurley, can you tell me how the figures $35,000 for that option were arrived at? A. No, sir; I cannot tell you now, it is too long ago.

Q. Those figures have something to do with the original cost of the park to the railroad company? A. Well, I think that is about what it cost us.

Q. When did the railroad company acquire this property? A. Oh, a good many years ago; I cannot tell you.

Q. About how many years ago? A. Maybe twenty years ago.

Q. Do you know what they paid for it at that time? A. They paid $25,000 for it; I don't remember the time; I said twenty years ago, but I am only guessing at that.

Q. Did the Trenton Street Railway Company ever spend any other money on that? A. Yes, sir.

Q. What, how much? A. Oh, probably—oh, I could not say.

Q. Isn't it a fact that this $35,000 mentioned in the option, had reference, not so much to the then present value of the land, as it did to the amount that the property had cost the railroad company? A. That is about what it cost them.

Q. You don't mean to say that the railroad com-

pany thought this property was only worth $35,000? A. I don't know what they thought.

Q. You testified when you spoke of the lease of the property to these promoters, that Mr. Rigg felt good about it; what did you mean by that? A. He thought they were going to build a park there that would mean a large amount of travel, that they were going to spend—they said they were—$50,000 or $75,000, which would make a big thing for the railroad company; we were all anxious to get them down there.

Q. The real consideration for the lease was because the railroad company thought it would get a large return from the fares of the patrons of the park? A. Exactly so, yes, sir.

Q. Did you know anything about this stock that was given you, or attempted to be given to you? A. What do you mean?

Q. Did you know it had been issued to the promoters, or how it had been issued? A. Not a word, not a thing, no, sir.

Redirect examination by Mr. Backes:

Q. You understood that the railroad company was ready to sell this tract to the White City Company at any time within ten years for $35,000? A. Yes, sir.

Q. And was the railroad company particular as to whether it was the White City Company's money or any other purchaser's? A. They wanted it operated as a park.

Recross examination by Mr. Dickinson:

Q. The officers of the railroad company were influenced in making these terms because of the personality of the people with whom the company was dealing?

Mr. Backes: Objected to.
The Court: Objection overruled.

A. They were influenced more because they were going to spend a big lot of money out there in the park, and the company would get a lot of money out of it.

By the Court:

Q. Then they were more sordid than sentimental? A. Yes, sir.

Adjourned to Saturday, December 3, 1910, at 10 A. M.

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## Testimony.

IN CHANCERY OF NEW JERSEY.

Between

ALFRED C. HOLCOMBE, *et al.*,
Complainants,

*and*

TRENTON WHITE CITY COMPANY,
Defendant.

} On Bill, etc.

Transcript of testimony taken in the above entitled cause, before the Hon. Edwin Robert Walker, one of the Vice-Chancellors of this State, on Saturday, January 7th, 1911, at the State House, Trenton, New Jersey.

APPEARANCES:

JOHN H. BACKES, Esq., for the Complainants.

JOHN M. DICKINSON, Esq., for the Defendant.

WALTER MEREDITH DICKINSON, resumes the witness stand.

Direct examination (continued) by Mr. Backes:

Q. Had the promoters of the White City Company erected any buildings or made any improvements upon the White City Park up to the time of the incorporation of the company? A. No, sir; not to my knowledge.

Q. Will you briefly tell me what was the condition of the White City Park as to structures, I mean superstructures, at the time of the incorporation of the White City Company? A. There was a small building, I don't know what it was used for previous to the time the White City took it, but it stands to the west of the Mansion House, and is now known as the "Women's Building." It is plenty good enough; afterwards the White City Company repaired it and made a very presentable building out of it; there is also the old Mansion House, which is a large building in a good state of repair, which we spent some five thousand dollars on afterwards. Also a building that was used as a carousel building and—had been used as a carousel building—which had to be enlarged because we put in a larger and better carousel; also a theatre building with a large stage attached.

Q. Which you subsequently enlarged? A. We tore out the auditorium part of the theatre and kept the entire stage, part of it, and turned the stage part of it into what we called the "laughing gallery." We spent about $800 on that building, and moved it over further east, and turned it into a laughing gallery. There was also a frame stable on the property, which I believe we tore down; that is all I remember.

Q. Do you know William P. Endebrock, one of the stockholders of the Trenton White City Company? A. Yes, sir.

Q. Did you procure his subscription? A. Yes, sir.

Q. What did you say to him to procure it, when you got it? A. I cannot remember what I said particularly.

Q. Generally what reports did you make to him? A. As far as I can remember now, we made the same statement to him that we made to any other person who subscribed to stock.

Q. I have not had the pleasure of hearing what representations you made; other witnesses have already told us—

Mr. John M. Dickinson: Oh, yes, you did.

Mr. Backes (turning to the testimony): Mr. Hamill went into that.

Q. Tell me generally what it was that you said to him? A. I am going to tell you what we figured out.

Q. What did you tell him? A. I don't remember what I told Mr. Enderbrock.

Q. Not even generally what you told him? A. I told Mr. Endebrock just what we told every other stockholder.

Q. That was what? A. Just what I was going to tell you, that we figured out that Trenton had a drawing population for the theatres of about 125,000 people, with the City of Trenton and the surrounding territory.

Q. I was more particularly interested in his subscription to either 12½ or 50 shares of the stock, and the giving to him of 25 shares of the bonus stock; what do you recall that you said as to that? A. I think we told the stockholders that when the company was formed, if we were able to get up one,

if we had enough subscriptions to do it, that we would arrange it; I don't remember exactly how it was; anyhow, I think he was told that he was to have a portion of the common stock, and that he was to get it in the ratio of one share of common to two of preferred.

Q. Was he informed as to from what source the common stock was to be procured? A. No, sir, not that I know of.

Q. His subscription was for 50 shares of the preferred stock? A. Yes, sir.

Q. Do you recall informing him at all of the source from which the common stock was to be obtained? A. No, sir, I don't think there was any talk about that.

Q. Do you know Mr. Frederick Winkhaus? A. Yes, sir.

Q. Did you procure his subscription? A. Yes, sir.

Q. Where is he located? A. To the best of my knowledge and belief, he is in New York City.

Q. Do you know his address there? A. No, sir, but I can find it from the New York telephone book, his home address.

Q. Do you know Mr. John Winkhaus? A. Yes, sir.

Q. Did you procure his subscription to the capital stock? A. Yes, sir.

Q. What is his address? A. It is the same as Fred's.

Q. Do you know Mr. Frederick E. Donaldson? A. No, sir.

Q. Who procured his subscription? A. Either Fred or John Winkhaus.

Q. Do you know Mr. Frank G. Hagemeyer? A. Yes, sir.

Q. Did you procure his subscription? A. Yes, sir.

Q. Where does he live? A. He has an office in New York City.

Q. Do you know his address? A. It used to be, and may be yet, "The Produce Exchange Annex Building."

Q And to Mr Frederick Winkhaus and John Winkhaus and Mr. Hagemeyer you made the same representations as you did to Mr. Endebrock? A. I simply wrote to each of them a letter, and told them that we were going to organize a White City Company, and we thought it would be a good paying proposition, and we wanted to know if they would like to subscribe, and told them in very few words why we thought it was a good proposition, and they simply sent the money in.

Q. What was said to them with reference to the common stock? A. I am not at all certain that anything was said about the common stock.

Cross examination by Mr. Dickinson:

Q. You did not tell any of these subsribers from whom you got subscriptions, how this common stock was to be obtained by them? A. No, sir, not any of them.

Q. You did not tell them what consideration, if any, was to be paid for the common stock? A. No, sir.

Q. In other words, they did not know anything about the common stock transaction other than that they were to receive a certain proportion of the common stock? A. That is all.

Q. When you and your associates, formed the scheme of getting up the White City Company you had in mind, didn't you, to make something out of it for yourselves, by way of holding stock in the company that you formed? A. Yes, sir, personally I worked for months getting these subscriptions.

Q. Now, the work that you and your associates did in forming this company, was done by you and your associates for your own personal benefit and the benefit of your associates, and not for the benefit of the White City Company to be formed? A. That is right.

Q. In other words, these options and agreements and arrangements which you entered into, you and your associates entered into, you considered to be property and arrangements which belong to you and your associates at the time they were made, and not to the White City Company? A. We certainly did; we obtained those subscriptions in an entirely personal manner.

Q. In reference to the lease for ten years upon the White City property, and the option obtained therein, did you and your associates negotiate for this to be your personal property? A. Yes, sir, and bought it in with our own money.

Q. And the lease that was subsequently made by the Trenton Street Railway Company, or the Trustees therefor, to the White City Company, embodied, didn't it, substantially the arrangement and options which you had obtained, you and your associates, before the formation of the White City Company? A. Yes, sir.

Mr. Backes: Objected to; the lease must speak for itself.

The Court: The objection is sustained; strike out the answer.

Q. The minutes of the meeting of the Board of Directors contains a resolution that the White City Company shall purchase certain property from certain persons, for the purpose of the park; will you state whether or not that resolution was embodied in any writing carrying out the resolution? A. I don't quite understand—a written agreement with whom?

Q. Strike that out. I show you a paper, signed by Barker G. Hamill, John S. Broughton, W. M. Dickinson, W. F. Sadler, Jr., C. H. Oberheide of the one part, and The Trenton White City Company, by you as its President, and ask you to state what it is.

Mr. Backes: Objected to; the paper must disclose what it is.

Q. I show you a certain paper

The Court: I notice there is no subscribing witness to the individual signatures, so he can prove them.

Q. I show you a paper dated April 1, 1907, between Barker G. Hamill and others, of the first part, and the Trenton White City Company, of the second part, and ask you to look at the signatures to that paper, and state whether or not they are the signatures of the persons purporting to have signed it. A. I know all the signatures of the persons purporting to have signed this paper, and I will state that they are the signatures of those persons.

Q. Was that paper executed by you as President of the Trenton White City Company? A. It was.

Mr. Dickinson: I offer that in evidence.

By the Court:

Q. It bears the seal of the White City Company, does it? A. Yes, sir.

The Court: It is offered for identification at this time.

Marked "Exhibit D. A. B. 1 for identification."

Q. I show you a paper dated the blank day of June, 1907, between Barker G. Hamill and others,

of the first part, and the Trenton White City Company, of the second part; there is no date of the month; and I ask you if the signatures attached to that paper are the signatures of the persons purporting to have signed it? A. Yes, sir; they are.

Mr. Dickinson: I offer this for identification.

Marked "Exhibit D. A. B. 2 for identification."

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Mr. JOHN S. BROUGHTON was then called, but did not respond.

Mr. Dickinson: Mr. Broughton is not here; he called me up this morning and I told him that you had closed your case and that I did not want him, and he said he would be on call. Do I understand that counsel has not closed his case?

Mr. Backes: That is true. Will your Honor open the case for the purpose of putting in the testimony of Mr. Leroy C. Thompson?

The Court: I will permit the case to be re-opened.

LEROY C. THOMPSON, sworn in behalf of the complainants, testified as follows:

Direct examination by Mr. Backes:

Q. Do you know Charles H. Holcombe, one of the subscribers to the capital stock of the White City Company? A. Yes, sir.

Q. Did you procure his subscription? A. After a preliminary talk with Mr. Hamill and Mr. Oberheide that Dr. Holcombe had previously had, he signed the subscription blank which I hold.

Q. What representations did you make to Dr. Holcombe? A. Not any.

Q. Was any statement made to him as to the commmon stock of the company that he was to procure? A. Not any.

Q. Was any made by anyone in your presence? A. That I do not recall.

Complainants Rest.

FRANK G. STEWART, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Dickinson:

Q. Where do you live? A. Philadelphia.

Q. What is your business? A. General contracting business.

Q. What is the name of your firm. A. James G. Doak and Company.

Q. Did you or your firm have anything to do with the construction of any buildings at the Trenton White City Park? A. We acted as Superintendent for the Trenton White City Company.

Q. Did you have any negotiations in reference to work to be done at the park property, with any persons connected with this park enterprise? A. Yes, sir, I did; I had the matter up with Mr. Oberheide, who, I think, was afterwards manager, and Mr. Dickinson, Mr. Broughton, Mr. Sadler, I think; and Mr. Hamill.

Q. Can you state when those negotiations took place? A. I have not any remembrance as to the exact date, with the exception that the matter was first taken up by Mr. Oberheide, in our office in Philadelphia; and afterwards I had two conversations with the gentlemen that I just mentioned as to the proposition, and then we made a written proposition to Mr. Oberheide on March 19, 1907.

Q. Will you state generally, what the arrangement was that you made with these gentlemen? A. The arrangement is clearly stated in the letter here as to what he stated, but Mr. Oberheide took the matter up with us for the purpose of erecting the Trenton White City, and for our park, or to go in on the proposition and put some money into it originally.

By Mr. Backes:

Q. Did you take it up with him personally? A. Yes, sir.

Further direct:

Q. Without referring to the letter, can you just state in general terms what the arrangement was that you made? A. That we were to act as the agents for the owner and to make such special contracts as were necessary for the construction of the work, and to do the necessary carpenter work—

By Mr. Backes:

Q. Pardon me a moment: was the matter reduced to writing, your arrangement? A. Yes, sir.

Q. Was it also reduced to a writing which was signed by both parties? A. Reduced to a contract made with the Trenton White City Company at some date afterwards, but the date of the contract I don't know; I suppose that is in evidence.

Mr. Backes: I submit this evidence is incompetent. The witness on my cross examination states that whatever arrangements were made were reduced to writing.

By the Court:

Q. Was that made with the promoters of the White City Company? A. The proposition as to the method of doing the work was made, I suppose, to the promoters, through Mr. Oberheide.

Q. With whom did you make the contract? A. With the White City Company.

Q. The corporation? A. Yes, sir.

The Court: You may complete your answer now.

A. And furnish the labor which was necessary

to complete the work, and to charge for acting as agents the sum of 10%, which we were to take in stock of the company.

Further direct:

Q. 10% of what? A. 10% of the cost of the entire work.

Q. Will you state the amount which you received, or were to receive, in stock, based upon the compensation under this agreement? A. I am not sure as to the exact amount, but it ran between $24,000 and $26,000, somewheres thereabouts; and our compensation would be 10% of that.

Q. You say that the proposition which you made with the promoters was embodied in a letter dated March 19? A. Yes, sir.

Q. Have you a copy of that letter? A. I have a copy in front of me.

Q. Did you write that letter personally? A. I dictated the letter and signed it.

Q. What is that book? A. That is our copy book.

Mr. Dickinson: I would like to offer that letter in evidence; I don't want to keep the book here.

The Court: If there is no objection, it will be received.

Mr. Backes: I do not intend to interpose an objection simply because it is a copy. But I think counsel ought to bring it home to the promoters.

Mr. Dickinson: We have no papers that had anything to do with this; they have all been lost or destroyed.

The Court: If strict proof is insisted upon, you will first have to show that the letter was received, and that it has been lost,

stolen or strayed, and in order to make this copy evidence you would have to show that that copy was actually made.

Mr. Backes: I do not insist on strict proof.

The Court: The letter will be received in evidence tentatively, and to be made evidence hereafter, if it be proved that it was actually received by the promoters.

Witness reads letter as follows:

"Mr. C. H. Oberheide,
Hotel Sterling,
Trenton, N. J.

Dear Sir:—

In reference to the conversation our Mr. F. Stewart had with you to-day, while at the office of Evans and Bright, architects, in reference to the erection of the buildings, etc., at Trenton, New Jersey, we beg to offer you the following proposition: In accordance with such plans, specifications, information and directions furnished by Evans and Bright, Architects, we will represent your company as contractors, performing all the duties devolving upon us in that capacity, obtaining all necessary permits, employing all labor, obtaining such facts in regard to the work and materials as may be necessary, and inviting and receiving competitive estimates for all work and details; make contracts for each branch of the work with contractors in the respective lines, or material men, whom you may delect for such work; we to superintend the construction, see that all contracts are fulfilled, see that all work is completed in a satisfactory manner, and will give such

personal superintendence to the work as may be required, for the percentage of ten per cent. of the total cost of the completed work—agreeing to take this percentage in preferred stock of your corporation, under the same terms and conditions as other cash buyers receive. If the foregoing proposition is acceptable to you, we will be pleased to enter into a form of contract covering the above, satisfactory in all details and agreements to all concerned.

Yours truly,
James G. Doak & Company."

Q. What is the date of that letter? A. March 19, 1907.

Cross examination by Mr. Backes:

Q. I am showing you what purports to be an agreement dated April 6, 1907, purporting to have been made between the Trenton White City Company and James G. Doak & Company, and I am asking you whether that agreement was made pursuant to that letter—whether that is the agreement? A. Looking at it casually, the signatures are the signatures of the members of our firm.

Q. Don't you know this is the agreement which was made after the invitation contained in that letter? A. Yes, sir.

Q. Did you get any reply to that letter? A. I don't remember that we did; after this letter, I think, if my memory serves me right, I was requested to come to Trenton and take it up with the other gentlemen interested; there were two such meetings.

Q. Have you any idea when that was—how long after the 19th of March it was? A. I do not—

Q. Was it after the formation of the company on the 26th of March? A. The letter was sent,

and just how long afterwards it was before I came up here and went to Mr. Hamill's office in the bank, and met the gentlemen who were interested—how long that was before—I don't think it was before the formation of the company but of that I am not sure.

Q. Then you continued to bargain, did you? A. No, sir; we did not have any bargain—after this we made this proposition, and then we had a meeting and they made a proposition; they said that they did not want to pay this much money in commissions; but afterwards they changed their minds and we had another meeting; and I am not sure now whether there was another meeting or whether Mr. Oberheide came to the office and said they would accept it and get up a form of contract.

Q. How soon did you either come to Trenton a second time after the first meeting, or did Mr. Oberheide come to your place after that first meeting? A. Well, the whole transaction, after this letter, was done in a very short time.

Q. Bearing in mind that the form of agreement, which afterwards was the agreement, bears date the 6th of April, 1907, can you tell me when it was, with reference to that date, that the contents of the letter which you have read here, were accepted? A. I cannot tell you that; I know they were going to form a company to be called "The White City Company."

Q. You refer to that in your letter, and that you would be very glad to enter into a contract with the company; now, bearing in mind that the agreement which was actually made between you and the Trenton White City Company bears date the 6th of April, 1907, can you tell me when it was that the proposition, as made in the book, or as amended, was accepted? A. I could not tell you, sir.

Q. Who got up what you call the form of the agreement? A. Mr. Dickinson, the attorney; and then, I think, it was submitted to us and we referred it to our attorney, and I think there were certain corrections made.

Redirect examination by Mr. Dickinson:

Q. This letter of March 19th was written by you, wasn't it, pursuant to negotiations with these persons, covering a considerable period of time? A. Yes, sir.

Q. This letter embodied, didn't it, the results of those interviews and negotiations? A. Yes, sir.

Recross examination by Mr. Backes:

Q. Over what period of time does that book take you? A. There is only one letter in here referring to a proposition to Mr. Oberheide or to the Trenton White City Company or anyone else connected with this case.

Q. Give me the dates, over what period of time this book carries you; what is the date of the first letter in that book, and the date of the last letter? A. February 11, 1907 to June 30, 1908.

Q. Do you keep all your letters? A. Yes, sir, but we don't keep them all in this book; this is what we call our "estimation book."

Q. Have you any other letters addressed to the Trenton White City Company or to any of the promoters, or to any of the Directors, other than the one which you have read? A. I will see, sir.

Mr. Backes looks through the book himself, together with the witness.

Q. You have referred me to a letter under date of April 18, 1907, on page 28 of this copy book, addressed to Mr. C. H. Oberheide, Manager, and

signed "James G. Doak and Company;" now, with that letter before you, can you tell me when it was that the proposition contained in the former letter of March 19 was accepted? A. If you will just let me read this, sir (witness reads in the book, to himself).

Mr. Backes: No, it would not, I am confused in my dates; I withdraw that question.

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WILBUR F. SADLER, Jr., sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Dickinson:

Q. Were you a promoter of the Trenton White City Company? A. I was not interested in the Trenton White City Company, financially, until some time after it was formed.

Q. Did you have anything to do with getting up the Trenton White City Company? A. The incorporating?

Q. Yes; did you do any work preliminary to incorporating the Trenton White City Company? A. No, sir.

Q. Were you a Director of the Trenton White City Company? A. Yes, sir.

Q. I show you the minutes of the first meeting of the Board of Directors of the Trenton White City Company, and ask you if you signed those minutes? A. No, sir, I signed a waiver of the notice.

Q. I direct your attention to a resolution on page 19 of the minute book, in reference to purchasing certain property of the White City Company from certain persons, and ask you whether or not you were present when that resolution passed? A. I was not.

Q. Were you one of the persons who turned over certain property to the Trenton White City Company, pursuant to this resolution of the Directors?

Mr. Backes: I object to that.

The Court: There is no question about the general identity.

Q. Are you familiar with the property which was turned over by you and your associates to the Trenton White City Company, pursuant to that resolution? A. Fairly so.

Q. Can you state of what that property consisted? A. Of a leasehold on a certain tract of land just outside the city limits of Trenton, and a number of agreements.

Q. Can you mention what special agreements you refer to? A. I remember the agreement of Mr. Rigg, the President of the street railway company, to pay $500 to provide 75 lights at their expense; and an agreement in regard to the construction of a carousel, if I am not mistaken.

Q. Now, go back to the lights which were to be furnished under this Rigg's agreement; what, more particularly, was the agreement, in reference to Mr. Rigg furnishing you with these lights? A. As I remember it, Mr. Rigg was to furnish 75 arc lights during the three months that the park was supposed to be in operation, and 10 arc lights for police protection for the entire year, for the period of ten years.

Q. Are you familiar with the electric light business? A. Just generally.

Q. Did you, at the time this property was turned over by you to the company, make any estimate of what this agreement was worth to the company? A. I did.

Q. What, in your opinion, was this agreement,

in reference to furnishing light by Mr. Rigg, worth per year to the company? A. I would have to figure that (witness figures for a while, and then continues); about $3,150 a year.

Q. Who was Mr. Rigg? A. He is President of the Interstate Railway Company which controlled the Trenton Street Railway Company.

Q. What was the nature of the arrangement which you had with the street railway company in reference to this contract of land, and this agreement which you just spoke of, before the formation of the park?

Mr. Backes: I understood the witness to say he was not connected with it before the formation of the park.

A. I am very unfamiliar with that; I know very little about it.

Q. Did you have any conversations with Mr. Hamill or Mr. Oberheide and Mr. Dickinson, or all of them, before the formation of the park, in reference to the value of the property turned over in return for the stock—before the formation of the company? A. Generally, I did—more after this meeting was held than I did before.

Q. More after what— A. After the meeting that you showed me—the Directors' meeting.

Q. Did you have any conversation at the time of this meeting? A. No, sir, I was not at that meeting.

Q. When did you have any conversation with him in reference to the value? A. Between that time and the time that I accepted a directorate in the company.

Q. When did you accept a directorate in the company? A. I think it was about April 10.

Q. You were elected a Director previous to that time, were you not? A. Yes, sir.

Q. When was this when you accepted? A. April 10.

Q. How was it that your acceptance was delayed until April 10? A. I was in the hospital in New York and had an operation for appendicitis, and I did not get back until after the first of April.

Q. Now, on April 10, when you accepted your election as a Director, did you, at that time, or any subsequent time, have a conversation or conversations with the other Directors of, and promoters, as to the value of this property which was turned over in return for the stock? A. I did, and with you as the attorney.

Q. Did you at any of those meetings, discuss the value of this arc light agreement which you have just testified to, made with Mr. Rigg? A. I did.

Q. Did you, at that time, arrive at the value of that contract or agreement, arrive at the same value of that contract or agreement as you have testified to here to-day?

Mr. Backes: Objected to as leading, and irrelevant and immaterial to the issue.

The Court: It is leading. A discussion of the value as of that date might have some relevancy, and I think the testimony ought to be admitted. However, the question is leading in form, and that objection is valid.

Question withdrawn.

Q. When you took up the matter of valuations with the Directors, after you accepted a directorship of the company, what value did you place, if any, upon this arc light agreement that you had with Mr. Rigg?

Mr. Backes: Objected to as irrelevant and immaterial.

The Court: Objection overruled.

A. $31,500.

Q. That was for the whole ten year lease? A. Yes, sir.

Q. Did you, at or about the time you accepted a directorship in the company, discuss with the promoters or other Directors, the value of any other agreement which the promoters controlled, before the formation of the company?

Mr. Backes: Objected to for the same reason.

The Court: Objection overruled.

A. I did.

Q. The value of what did you discuss?

Mr. Backes: Same objection.

The Court: Objection overruled; you may have a general objection to the line of testimony without making specific objections to each question.

A. As I remember it, there was a contract for a carousel which was worth about—in which there was about $2,000 profit, which was turned over to the company.

Q. What other thing of value did you discuss? A. Generally, the value of the location—because it was the only property—

Mr. Backes: Objected to.

Q. What was the nature of the discussion which you had in reference to the location of the property? A. A number of sites were talked of and compared with the present one, to see whether they could have been used by the company for the purpose of conducting a park.

Q. Did you, at that time, or any other time, exercise any judgment as to the value of this land?

Mr. Backes: Objected to.

The Court: The objection is overruled; that is one of the issues here. If the testimony ends here, in his assertion that he could not exercise his judgment without it being shown that it was coupled with the judgment of others, it may have no other evidential force, in the last analysis, but the testimony can only come in step by step, and I think this is pertinent and relevant and I will admit it.

A. I did.

Q. Can you state in respect to the value, what was the result of the judgment which you exercised?

Mr. Backes: Objected to.

Q. When did you form your judgment as to the value? A. Before I accepted the directorate.

Q. Was that on or about the date which you have fixed as your acceptance? A. It was between the 5th of April and the 10th of April.

Q. And at what did you arrive as, in your judgment, was the value of the land? A. Between $55,000 and $60,000, at that time.

Q. Did you, as a Director, exercise your judgment as to the value of any other contracts or agreements, turned over by the promoters to the company? A. I am very hazy in regard to—

Q. Are you familiar with the contract or agreement with the Public Service Corporation in respect to a feed wire? A. Yes, sir; I remember that.

Q. What was that agreement? A. It was in regard to a line of feed wires to the White City, and I valued that —

Q. Go into that more particularly as to what the arrangement— A. It was impossible to get a line to the White City unless the Public Service

Company could be induced to run its wires to the White City, and they figured it would cost $10,000 to run those wires there, and I figured it was worth $5,000 to the company to get those wires there.

Q. You mean $5,000 for what time? A. Of course, for the length of the contract.

Q. The entire lease? A. I figured it would cost them quite a good deal to get it down there, and it was worth at least $5,000 to get the wires there.

Q. Did the value that you placed upon the park land include the value of any of the buildings thereon? A. Yes, sir.

Q. The minutes of the first meeting of the Board of Directors on page 19 of the minute book state, among other things, that the "Board of Directors do hereby adjudge and decare that said property rights and interests are of the fair value of $79,000;" did you, as one of the Directors of the company, exercise your judgment to the end stated in the minutes? A. I was not at that meeting, but I did exercise my judgment in regard to it before I accepted a directorate. I went to you and asked you if the legal matters were all right—

Mr. Backes: Objected to.

Q. Did you, at any time, exercise your judgment, as stated in the minutes of the Directors on page 19? A. I did, before accepting a directorate.

By Mr. Backes:

Q. That is between the 5th and the 9th of April? A. Yes, sir.

Further direct:

Q. General, are you familiar with all the property that was turned over by the promoters to

the Trenton White City Company, pursuant to this resolution? A. I was, at the time.

Q. What, in your judgment, was that property worth at the time it was turned over?

Mr. Backes: Objected to—at what time?

The Court: I do not think he can divorce his directorship from his individual self, at all; and whatever his judgment was, I think he may give in evidence. You see, the *bona fide* of his judgment is attacked, and he has a right to state what that judgment was.

Mr. Backes: The *bona fide* of this witness's judgment as a Director is not attacked, because this witness was not one of the members of the Board of Directors acting for this corporation when the property was turned over.

The Court: If his judgment as to the value of the property turned over is relevant at all for any purpose, it is certainly attacked in this suit. He formed this value as a Director of this company and he does not have to have expert knowledge to form the sort of judgment that he was required to form and did form in this case, and, therefore, this testimony is legal and receivable.

Q. (Question read.) A. It was worth more than $75,000 to the company.

Cross examination by Mr. Backes:

Q. Do you say you had no financial interest in the company prior to this—I mean in the company's property, or that property which afterwards became the company's, prior to the formation of the company? A. Yes, sir.

Q. What interest had you in the property which became the property of the White City Company —prior to the formation—any? A. No, sir; I had talked two or three times to Mr. Hamill and Mr. Dickinson, but I had no financial interest prior to that.

Q. What connection had you if any, with the promoters, prior to the formation of the company? A. I had chatted with them about it.

Q. Collectively or individually? A. Both.

Q. When did you, collectively, chat with them? A. It seems to me, that the only time that Mr. Hamill and Mr. Dickinson and Mr. Oberheide and Mr. Broughton were present, when I was there, was a day or two before I went to the hospital.

Q. When was that, General? A. That was about the first of March or the last part of February.

Q. Then, who was present? A. I think Mr. Broughton, Mr. Oberheide and Mr. Dickinson and myself. It was in Mr. Broughton's house one evening, as I remember it.

Q. Which Mr. Dickinson? A. Mr. W. M. Dickinson.

Q. John M. Dickinson was not present? A. My best recollection is that he was not there.

Q. At that time you did not discuss the value of the property about to be turned over to the White City Company, did you? A. I don't remember whether it was discussed that evening or not; I remember I was very ill at the meeting. I tried to—

Q. With you, I say, it was not discussed? A. I am not positive about it; I had to lie down on the sofa.

Q. Can you recall whether the value of this carousel which you put at a profit of $2,000 was

spoken of? A. I think that was spoken of before that time, I may be mistaken about that.

Q. Can you tell us whether the contract or the proposition made by Doak & Company was discussed that evening? A. I would not be positive about that.

Q. You say that proposition, as written, was not made until the 19th of March, so that that must have been after the time that you last had a conference with these associates? A. Yes, sir.

Q. Were you in anywise associated with the four gentlemen, or five gentlemen, that you have named, in the promotion of this corporation? A. Only in the way in which I have stated.

Q. That is, only chatting with them? A. That is right; I had no financial responsibility.

Q. You had no money interest in the Rigg contract, the carousel contract, the leasehold, the Public Service, the Doak contract, or any of them? A. Not financially.

Q. What do you mean? A. I talked it over with all of them, but I had not put up any money in any way.

Q. Were the other men whom you have named, these men who were at Mr. Broughton's house, were they interested financially differently from what you were? A. Yes, sir, I think they had put some money in.

Q. Can you tell me how it was that the resolution includes you as being one of the persons selling to the White City Company this property at a valuation of $79,000? A. Because they expected me to go with them and do the work, and we had been in some other things together, and they took me in in this.

Q. Did you know at the time of this meeting, or prior to that meeting that they were to take you in? A. Yes, sir; generally.

Q. Did you know that you were to be one of the vendors to the White City Company of this property at $79,000? A. I don't remember that the price was fixed at that time.

Q. You mean the meeting at Mr. Broughton's house? A. Yes, sir.

Q. After that, you had no conversation with these vendors to the White City until after you returned? A. No, sir; and I went to the hospital two or three days afterwards.

Q. The waiver of notice which has been shown to you, and which appears on page 21 of this book, signed by you, I recognize your signature, was signed by you when? A. I think that was signed by me some time after I returned from the hospital.

Q. After you accepted the directorate? A. Yes, sir, I think it was; it was signed somewheres between the first and the tenth; it was signed after the meeting was held.

Q. Which hospital were you at? A. At a private hospital in New York, Dr. Bull's.

Q. Were you there from the latter part of April, until the 5th of April? A. Until a little after the first of April.

Q. You were not in Trenton from the latter part of February, 1907, until what time in April? A. The 2nd or 3rd of April, I should say.

Q. Are you the owner of real estate in Trenton? A. Yes, sir.

Q. Have you bought and sold real estate in Trenton considerably? A. Not considerably; I have purchased several pieces.

Q. Where? A. One at No. 9 West State Street.

Q. How many? A. Only two or three.

Q. You are not generally familiar with the values of land in Trenton, are you? A. Fairly so; within the last two or three years I have become quite familiar with them.

Q. Within what number of years? A. Well, within the last two years.

Q. And prior to the last two years you had no special knowledge of the value of realty? A. Not unless I looked it up.

Mr. Dickinson: I object; we did not ask this witness to qualify as an expert as to the value of this real estate.

The Court: The objection is overruled.

Q. Looked it up in what way? A. Made inquiries about it from people in that locality and from real estate operators.

Q. Did you make inquiries of any person relative to the value of the land at White City prior to the formation of the company? A. Yes, sir.

Q. Of whom? A. I think of some people who ran— it was in 1907—it was some people who ran a lumber yard, named Willey—of Mr. Gibbs, and of one or two others in the town; I have forgotten; I remember looking into it fairly and carefully.

Q. You don't know what knowledge Mr. Willey has of the real estate values in that locality? A. Only what I would suppose.

Q. Mr. Gibbs was not a real estate man, was he? A. Yes, sir, I think he had the charge of the sale of that tract at one time.

Q. I ask you whether Mr. Gibbs was, at that time, a man engaged in the real estate business? A. I think so.

Q. Outside of the sale of this tract? A. I don't know about that.

Q. And you don't know now whether Mr. Gibbs has any knowledge of the value of the land in the neighborhood of the park? A. Yes, sir, he sold the thing off for General Rusling, I think he sold those lots for General Rusling.

Q. What lots? A. In the front of the park, and in the park; it was divided into lots, and I think the general supervision and the general sale of that property was under Mr. Gibbs.

Q. From what other sources did you glean information as to values? A. I am not positive, but I know I did go to some others.

Q. And the valuation that you got from Mr. Willey and Mr. Gibbs was as to the fee of the land, not of leasehold estate? A. Yes, sir, but you know the option carried the right to buy.

Mr. Backes: We will argue that after a while.

Q. Now, upon what do you base your valuation of $31,500 of the Rigg arc light promise? A. I figured that the arc lights were worth $120 a year in that section.

Q. Apiece? A. Yes, sir.

Q. Have you ever had any experience? A. Well, some.

Q. Outside of your own household? A. Yes, sir, I have been interested in two or three corporations that furnished arc lights to cities.

Q. At or about the year 1907? A. Yes, sir, at or about that year we were furnishing lights.

What was the nature of this so-called Rigg contract? A. He, as I remember it, agreed to furnish 75 arc lights of, I forget the candle power, for a period of ten years.

Q. At how much? A. Free, the 75 were to burn for the three months' period, and the ten were to burn for the rest of the year for police protection.

Q. How was that promise or that understanding certified? A. Either in an agreement or a letter which bound Mr. Rigg.

Q. Did you ever see the agreement or ever see the letter? A. I think I did.

Q. Are you sure? A. Yes, sir.

Q. Do you know where it is? A. No, sir, I severed my connection with the company five months after it was formed.

Q. Who was the letter to? A. It was to one of those who was interested in the company.

Q. What did it say, if you remember? A. For and in consideration of the men taking over this property and building a park there and putting up buildings to cost a certain amount of money—I have forgotten what the amount of money was—$15,000 or $20,000, for and in consideration of that, they would turn that ground over to them without any charge, and give them an option for ten years to purchase at any time for $35,000, give them $500 in cash, and to do one or two other little things—generally that is as I remember it.

Q. That letter, if it was a letter, was in the nature of a stipulation, wasn't it? A. Yes, sir, it would have bound the street railway.

Q. Where did you last see that paper? A. I saw that about the day that I accepted the directorate.

Q. Can you recall anything more as to the contents of the letter? A. No, sir, I cannot, it is very indistinctly in my mind.

Q. Was there a counterpart binding the party to whom the letter was addressed, to do certain things? A. Yes, sir, they were to erect buildings up to a certain amount.

Q. Was there anything said in the letter as to how long they were to continue this bargain? A. I don't remember that.

Q. Mr. Rigg was the President of a trolley line sometimes called the Interstate Company, but commonly known as the Trenton Street Railroad Company, which operated a line of roads near this park? A. Yes, sir.

Q. And that company was interested in having a

park operated, run, in order to invite travel on the trolley line? A. Yes, sir.

Q. Now, was there any stipulation in this writing, binding the Receiver or parties to whom it was intended to be conveyed, as to time; and at the time when they were to run this park? A. I do not remember it now.

Q. On your direct examination, when you were asked as to the value of this Rigg contract, you took your paper and pencil and began figuring; now, did you then figure out to your present satisfaction that that value was $31,500 for ten years? A. Yes, sir.

Q. You had not figured that out before then, had you? A. Yes, sir.

Q. And when you were asked the question this morning you had forgotten the sum total? A. No, sir, I had figured it out on this envelope what ten years was worth—I thought that I had made a mistake, so I recalculated it before I made the statement.

Q. What was this carousel contract, as you understood it, in which you say there was a profit of $2,000? A. A man named Oberheide had gone into a contract with someone in Philadelphia; I am not sure whether that was verbal or written, but he satisfied me that the contract would be carried out; and because he was buying the number of these machines, or had been doing so, that he could get it at a reduction of $2,000.

Q. You took his word for all this? A. Yes, sir; I did.

Q. I mean you placed the valuation of $2,000 absolutely upon Mr. Oberheide's word? A. Yes, sir; he showed me some printed data as to what carousels cost, which was way in excess of what he said they were worth.

Mr. Backes: Do I understand counsel to

say, that by the question propounded to this witness, namely: "What, in your judgment, is the value of this property;" and he puts it at $75,000, do I understand that he does it simply as expressing his opinion as a Director of the company or as an expert?

Mr. Dickinson: I refuse to answer that unless your Honor instructs me to do so.

The Court: You cannot be compelled to answer that. I have a very decided view of it; my view is, that the witness is giving his opinion of that property, not, strictly speaking, as an expert, but as a Director of this company, and that he has disclosed to us here the sources of his information and knowledge of the value of this property, and that he is expert or non-expert just as the matter may be determined hereafter; that is a matter for argument; that is my view of it at the present time.

Mr. Backes: Very well.

Q. You are not a builder of carousels, you never had any experience in that line? A. I never built any.

Q. And you are not a builder of amusement devices? A. No, sir.

Q. You are not a builder of amusement devices such as the Trenton White City Company had in its park? A. No, sir.

Q. You never had any experience in that line? A. No, sir, not in building them.

Q. Nor in the buying of them? A. No, sir, not in the buying of them; I have, in the various street railways that I was in, seen them erected in the parks in which I was directly or indirectly connected.

Q. In the placing of this valuation at over $75,000, what did you include? A. This carousel con-

tract; the value of the land; the $500 that Mr. Rigg was to pay; the $4,000 that Mr. Broughton, Mr. Dickinson and Mr. Hamill were to pay; the contract with the Public Service Corporation to take its wires to the park, and the contract of the Street Railroad to furnish light to the park; and the general value of the location of the park in that vicinity.

Q. Now, is that all? A. That is all I can remember just now.

Q. Were not contracts or tentative contracts considered by you? A. They may have been, for small amounts.

Q. How about the Doak contract? A. I don't remember the Doak contract at all; I don't remember anything about it.

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JOHN S. BROUGHTON, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Collins:

Q. You are one of the individuals that acquired certain rights which were sold to the Trenton White City Company for stock, you being a Director of the company? A. Yes, sir.

Q. It appears you were present at the first meeting of the Board of Directors on the 26th of March, at which the resolution for the purchase of property for the issue of stock and part cash, was authorized, were you? A. Yes, sir.

Q. Now, did you at that meeting exercise a judgment as to the value of the property rights that were being purchased? A. I did; and before that meeting also.

Q. Before the meeting, and at the meeting acted on that judgment? A. Yes, sir.

Q. What, in your judgment, was the value of the property and rights purchased? A. My judg-

ment, at that time, was that it was worth fully the amount decided upon—$79,000—and I am convinced of that from the further fact that at that meeting I remarked that we should be very careful and not put an overvaluation on it; but I felt that we really had more value than $79,000 there, and that we could put a larger value upon it; but it was my judgment that we should not overvalue it. I remember it very distinctly.

Q. And the question of value was discussed between the Directors present at that meeting? A. Not only at that meeting, but prior to that meeting, several times; I objected to overvaluation particularly.

Q. Did the other gentlemen present discuss the subject too? A. Yes, sir.

Mr. Backes: I object to the leading character of the question.

The Court: Objection overruled.

Cross examination by Mr. Backus:

Q. Who was present at the meeting? A. Mr. Hamill, I think, Mr. W. M. Dickinson, Mr. Oberheide, I think, I am not sure—do you mean of the Directors?

Q. Yes. Was Mr. John Dickinson present? A. I am not sure whether he was present or not.

Q. He acted as counsel, didn't he? A. I don't think he was a Director; I think Mr. Hamill, Mr. Dickinson and Mr. Oberheide were present, and myself.

Q. How about John Dickinson? A. He was not a Director; I don't think he was.

Q. You are quite sure of that, are you? A. I am not sure whether he was a Director or not.

Q. You had a greater money interest than any of your associates, didn't you? A. I don't think so.

Q. As large? A. At what time?

Q. At the time of the formation of the company; at the time of the first meeting of the Board of Directors? A. I think equal.

Q. With whom? A. Mr. Hamill and Mr. Dickinson.

Q. And having that monied interest equal with the other two gentlemen, do you mean to say that you cannot now recall whether Mr. John Dickinson was a Director, and if a Director, whether he was present at the first meeting? A. I am not positive whether he was or was not.

Q. Who acted as chairman of that meeting—I mean the first meeting of the Directors? A. I think Mr. Dickinson.

Q. Which Mr. Dickinson? A. Mr. W. M. Dickinson.

Q. Who acted as the Secretary? A. I don't remember.

Q. Where was the meeting held? A. I think in the Directors' room of the Trenton Trust and Safe Deposit Company.

Q. Did you have counsel present? A. I think so, yes, sir.

Q. Who? A. Mr. John M. Dickinson.

Q. Who offered the resolution, the one that appears on page 19? A. I cannot remember that.

Q. You know the resolution I have reference to, the resolution to purchase the property? A. Yes.

Q. Do you know who seconded it? A. No, sir.

Q. Do you know who spoke upon it, if anybody? A. No, sir.

Q. Do you know of anyone speaking to the resolution other than yourself? A. We all discussed it.

Q. (question read):

Q. Who? A. As I recall, Mr. Dickinson and Mr. Hamill discussed it.

Q. Anyone else? A. Perhaps Mr. Oberheide did.

Q. You don't know as to that? A. We had discussed it frequently.

Q. I am speaking now of the proceedings at the meeting; do you say that there they discussed it frequently? A. At several times we had discussed it previously to this meeting.

Q. I am now speaking of the meeting of the Board of Directors held on the 26th of March, which was the first meeting, at which meeting this resolution to purchase the property from the promoters was passed; I ask you whether, at that meeting, you spoke to the resolution? A. I think so; I do not remember exactly.

Q. Do you know whether anyone else did? A. I don't remember.

Q. Is not this a fact, that all that was done was that the resolution was offered, read and passed without discussion? A. No, sir, I think we discussed it generally at that meeting.

Q. Was there, at that meeting, and I am confining you exclusively to that now, any discussion of the values of these properties, separately, I mean the leasehold estate, and the advantages to be derived by the company from the extension of the electric lighting system; the advantages to be derived from the promise of Mr. Rigg of the Trenton Street Railway Company; and the tentative agreements entered into with various builders of amusement devices? A. My recollection is, that we talked over all those matters at that meeting, as to the valuation being a fair one, that we were placing upon the proposition.

Q. Do you recall what valuation you placed upon the leasehold you, the Board of Directors? A. Yes, sir.

Q. I mean at that time and at that meeting? A. We thought that the leasehold was worth all the value we were putting onto it, aside from the park proposition; we thought it was valuable as a building lot proposition, whether we made a success of the park or not.

Q. But you had then just bought this same leasehold estate for $4,000, hadn't you?

Mr. Collins: Objected to, that is not the fact.

A. Some time before that meeting.

Q. How long before? A. I don't remember; not just at that time.

Q. But within two or three weeks of the date of the formation of this company, is not that so? A. I am not sure.

Q. Did you bargain with the lessor; did you personally bargain with the lessor for that leasehold estate? A. Did I?

Q. Yes. A. No, sir.

Q. Did you personally bargain with anyone representing the lessor of that estate? A. For what?

Q. For the leasehold estate? A. No, sir, I had not much to do with that.

Q. Did you at all? A. No, sir.

Q. Well, you, before you arranged for that leasehold estate, you had examined into the values of the park property, hadn't you? A. Oh, yes.

Q. Didn't you deal or bargain with Mr. Peter Hurley, representing the lessors? A. No, sir, I was not in that part of it at all.

Q. Who represented you, Mr. Hamill and Mr. Dickinson, in that part? A. No one represented me at all; I had nothing to do with it at that time.

Q. Do you mean to say you had nothing to do with the promotion of the park at the time this lease-

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hold was secured from the lessors? A. Not during the Hurley part of it to which you refer.

Q. Do you mean to say you were not interested in the park proposition at that time—that you came into it afterwards? A. I came into it after the negotiation with Mr. Hurley.

Q. From whom did you learn that they had secured this leasehold estate? A. From Mr. W. Meredith Dickinson and Mr. Hamill.

Q. You protested to them that the price paid was too high, didn't you? A. No, sir.

Q. Did not you protest to Mr. W. Meredith Dickinson that the price was too high, $4,000? A. No, sir, I don't remember doing anything of the kind.

Q. You, at that time, thought it was a high price, didn't you? A. I don't remember thinking so.

Q. Now, what valuation did you put on other property at that meeting? A. We considered the various amusement devices for which we had arranged—

Q. Well, now, which amusement devices? A. Well, there were a dozen or so; the carousel has already been mentioned—

Q. There was nothing binding at that time between the parties who tendered this, to furnish the amusement devices and the promoters, was there —anything binding on the part of the promoters? A. Yes, sir, I signed an agreement with the carousel builder that bound me to the carousel builder, which bound me to the extent of $2,000 to pay for this $8,000 carousel.

Q. When was that signed by you? A. I think it was—

Q. You say you "think"—are you quite sure? A. I prefer to answer it that way.

Q. Which way?

The Court: That he "thinks."

Q. What was the name of the carousel builder? A. Something like Dentzel.

Mr. Backes: You have the Dentzel contract there, Mr. Dickinson, will you let me have it?

Q. Was that paper signed prior to the execution of an agreement between the Trenton White City Company and Dentzel for the construction of this carousel? A. It was an agreement; we had to sign an agreement, four of us, in order to get this carousel through in time; it would not have been of any value to the park if we had not signed this agreement; and also to get the advantage of this difference in price, some $1,500 or $2,000; and we signed a temporary agreement.

Q. You do not recall the amount now? A. It was a $10,000 carousel, and we got it for $8,000; we considered we were making a saving of $2,000.

Q. You were induced to that belief by what was represented to you by Mr. Oberheide? A. Not entirely.

Q. Had you anything else to indicate to your mind that you were saving $2,000? A. Well, it was the regular $10,000 listed carousel sold by Mr. Dentzel, of which I have seen one similar in Atlantic City, which I understood was sold for $10,000.

Q. You don't know whether they got a discount? A. No, sir.

Q. You did not know then and don't know now, whether they sold at list price 20% off, do you; the question is whether you knew then and know now that the same carousel was selling at list for $10,000, 20% off, in the market, to everybody? A. No, sir, I cannot say about that.

Q. Now, what other property did you consider in the valuation of $79,000? A. I considered that

to lease a park like the White City Park would at least be worth $5,000 at that time of the year; I did not suppose you could lease a park for less than that.

Q. Can you tell us why you were able to get this lease for $4,000, when you now say, in your judgment it was worth $5,000 a year?

Mr. Collins: Objected to; it is not within the range of probing the witness; it assumes that they paid $4,000 for a lease that would run for ten years without paying anything for it; whereas, that is not the fact at all.

The Court: Counsel on cross examination is entitled to a strictly responsive answer; I will permit the question to be answered; you can protect the witness by re-examination, of course, Judge Collins, if he does not protect himself in his answer.

A. I meant the bargain that we had made with the lessor—the new company; we were obliged to get that $4,000 lease out of the way.

Q. The purchase price under the resolution, as appears on page 19, is for $79,000, $75,000 in the common stock and $4,000 in cash; why was the $4,000 in cash added to that part of the consideration, namely, the common stock, of $75,000, which made all of the common stock; can you explain that? A. Except that we thought there was value there to represent it.

Q. The $4,000 represented this leasehold estate, didn't it; it represented the same moneys which Messrs. Hamill and Dickinson paid to Peter E. Hurley, didn't it? A. I don't know what they paid to Peter E. Hurley; I was not in that part of it.

Q. You mean to say, that at no time up to this

moment, have you learned how much Mr. Hamill and Mr. Dickinson paid to Peter E. Hurley? A. Only from rumor.

Q. Do you mean to say that, as co-Directors they have not informed you; do you mean to say you have not heard it in Court? A. I say I was not in that part of the deal, and I do not know of my own knowledge.

Q. You placed a $5,000 a year valuation, that would make it $50,000 on the leasehold estate; did that enter into the valuation of $79,000 that the Board of Directors placed upon the properties turned over by the promoters to the corporation? A. That was discussed, that feature of it was discussed and talked about.

Q. Was there an inventory made, or was there an inventory present at this first meeting, showing how the $79,000 was made up—a written inventory? A. I did not see it.

Q. Was there an appraisement of that inventory property made up at that meeting, showing how the $79,000 was made up? A. It was, I think, only generally talked about; it had been threshed out so much before, that I don't know that it was necessary.

Q. Did the promoters, at any time prior to this meeting, have an inventory and appraisement of the properties which the promoters turned over to this company, and which the Directors—promoters of the company—valued at $79,000? A. It had been most thoroughly appraised; we had often figured it over and discussed it and talked about it, showing a $79,000 valuation; it was thought at one time we might make it $100,000.

Q. Who had figured it up? A. In the discussions with Mr. Hamill and Mr. Dickinson and myself, and Mr. Oberheide.

Q. Collectively or individually? A. Both.

Q. Do you recall at any time, and do you recall the occasion when you collectively figured up the valuation of these properties to an amount of $79,000, or in excess of that sum? A. There were several occasions.

Q. Do you remember what was contained in any one of the inventories? A. Yes, sir.

Q. You valued the land at how much, in this inventory? A. I cannot give you exact figures, but what we considered the value was the land, the leasehold—

Q. I did not ask you that; what I want to know is, what was contained in this inventory as you recall it— A. What do you refer to as the inventory?

Q. The property, or what you incorporators regarded as property, and the valuations placed on those properties, showing an aggregate sum equal to the total amount of the common capital stock of this company, namely, the $79,000, and $4,000 in cash? A. We considered the lease—this was not a written inventory—

Q. Then I am mistaken; I certainly so understood you; did you, at any time, when you men were together, have a written inventory and appraisement of the property, or what you gentlemen regarded as property, and which you turned into the corporation for $79,000?

The Court: We will stop here.

Q. Did you gentlemen, who were promoters of this company, or you gentlemen who were the Directors of the company, at any time have an inventory in writing of the properties which you turned into the company for $79,000, and that property appraised in the inventory? A. No, sir.

Recess to 2 P. M.

After Recess.

JOHN S. BROUGHTON resumes the witness stand.

Further cross examination by Mr. Backes:

Q. Was each item picked out before the meeting of the Board of Directors, and was each item and the aggregate of those items before the Board of Directors? A. Yes, sir.

Q. In what form? A. Not in a written form, except that we had made estimates and put a value on these various items.

Q. Cannot you give me those estimates? A. It would only be my personal idea of what some of them might be worth.

Q. Have you a recollection of what value you placed on the leasehold estate; you said this morning you regarded it as worth $5,000 a year? A. Yes.

Q. Was that the valuation that was placed upon it by the Board of Directors? A. I don't know whether the rest of them agreed with me on that or not.

Q. What agreement did you come to as to the valuation upon that particular item? A. I don't think we agreed on any particular amount.

Q. And you do not believe that you agreed upon any particular amount as to any particular item, is that right? A. Oh, yes, we thought we were well within the valuation.

Q. You say that you placed a valuation and expresssed yourselves in the resolution, that it was the opinion that the property was worth $79,000? A. Yes, sir.

Q. Now, I would like to have you tell me how that was made up? A. I cannot itemize it.

Q. Not even partly? A. No, sir.

Q. Do you mean to say your memory fails you, or that it was never made up as a sum total? A.

Yes, I think we had certain ideas of the value of the land, what it would cost us to run in that feed wire, that was a very expensive operation, we felt that that would be pretty expensive getting that feed wire down there—

Q. But that did not cost you anything, putting the feed wire down there by the Public Service Corporation— did you regard that as property turned into the company—did you regard that as property? A. I thought it was of great value to the corporation.

Q. You regarded that as property which you turned into the corporation? A. I don't know whether you would call it property; we performed months and months of services.

Q. Did you, or you and your associates, regard the running of that wire—that service, down by the Public Service Corporation, as property?

Mr. Dickinson: Objected to.

The Court: I think the question is a proper and pertinent one.

A. Well, I think we considered the agreement which we made with the Public Service Corporation, which was in writing, we would consider that as property—I think we did.

Q. Did you regard that as property? A. Yes, sir.

Q. When was that agreement made with the Public Service Corporation? A. It was made in the first place through a personal interview, followed up with a letter signed by the agent of the corporation in Trenton.

Q. The agent of the Public Service Corporation? A. Yes, sir, Charles G. Cook, I think his name is.

Q. To what effect? A. I think to the effect that they would run that feed wire to the park without

cost to the White City Company, if we would do certain things.

Q. That was imposing an obligation on the White City Company to do certain things? A. We were going to build the park.

Q. To whom was the letter directed? A. I don't remember that.

Q. Was it before or after the formation of the company— was the letter written before or after the formation of the company? A. I should say it was in advance; it must have been.

Q. Was there any agreement made by the promoters with the Public Service Corporation, prior to the formation of the company? A. Yes, sir, we would not have gone ahead otherwise.

Q. How did it appear? A. We had personal interviews, and we had a letter or more from, I think, Judge Cook, the agent of the corporation.

Q. That if you built a park, they would run the service line out? A. Yes, sir.

Q. Now, that agreement, or the promise by the Public Service Corporation, whether verbal or in writing, you turned that into the corporation as part and parcel of the $79,000 consideration which the corporation paid to you promoters; now, is that right? A. That was considered as part of our assets.

Q. At how much was that estimated? A. I don't know, it was very valuable.

Q. Did you ever know at what sum that was turned in, being part and parcel of the sum of $79,000? A. No, sir.

Q. The same applies to the leasehold, I suppose, —that you do not recall? A. I think an estimate of the value of that land was made up at that time of what it was considered worth then, and what it would be considered worth in ten years, but I don't know what amount it was now.

Q. Now, the next item of property, the carousel that was turned in at $2,000, is that right? A. I did not say it was turned in at $2,000.

Q. I understood you had said so; do you say that was not so? A. I did not put it that way.

The Court: The witness said it was turned into the company at $2,000 less than it would otherwise have been purchased for.

The Witness: That is the idea.

Q. So $2,000 of the $79,000 of the consideration price was made up of this carousel bargain? A. That was a part of the property turned over.

Q. Can you answer my question? A. If that is what you refer to—

By the Court:

Q. The question is, whether or not this particular $2,000 of profit was the item with reference to the carousel that was turned over—whether it was specifically $2,000 or not? A. No, sir.

Further cross:

Q. In endeavoring to make up the $79,000 this morning, you spoke of the carousel, that there was $2,000 saved by the intercession of Mr. Oberheide, who, you said was an experienced man in that line; now, I am asking you whether the $2,000 thus saved was part and parcel of this $79,000 consideration price paid by the company? A. I don't think it was considered as an amount of $2,000, but I think it was considered as being a part of the property considered in that $79,000.

Q. But you passed judgment—your resolution implied that you passed judgment on these various items of property—upon the property turned in, and you say this is one of the items; did your Board of Directors pass judgment upon the values

of these profitable contract—did your Board of Directors pass judgment upon the value of this profitable contract with the carousel people? A. We considered it as a part.

Q. And how much? A. It was one of the items.

Q. Was there any amount attributed of the $79,000, attributed to this bargain, and appended to this bargain with the Dentzel people, the builders of the carousel? A. It was not expressed in dollars and cents, if that is what you mean.

Q. Tell me what other item went to make up the $79,000, and give me the amount. A. I am not prepared to give any amounts; the only items we considered of any amount were the value of the land at the time, I think, and also the lease of the trolley company, the ten years' lease, including a very valuable concession there for ten years, in the use of these 75 arc lights, without any cost to this corporation, to this White City Company, for the period of ten years.

Q. So long as you ran the park? A. No, sir; we have the use of them yet.

Q. Now, you say only as to those two was an amount fixed? A. And other considerations; you see, Mr. Rigg, the President of the trolley company, wrote to us three very explicit letters guaranteeing what they would do.

Q. I see. A. Including this light business—

Q. What I am getting at is that you say that these two items, namely, the value of the land and the lease, were the only two items that were specified in amounts, which went to make up the $79,000—

Mr. Collins: I object to the recital of the evidence; that is not what the witness said.

The Court: I think you are right, Judge Collins.

Q. What valuation, if you can tell us, was placed upon the land; you say that was one of the items that was chiefly considered?

The Court: That has been asked and answered several times.

Mr. Backes: I assumed from the question preceding the one which is objected to, that the witness intended to convey the idea that as to two items the amounts were given.

The Court: He certainly has been interrogated repeatedly as to what the value of the land was put in at.

Q. Have you any records or any memoranda disclosing an inventory made by you or your associates who were fellow-Directors in this company, showing the items of property or alleged property, conveyed by the promoters, the vendors, to the company, for the $79,000, and the amount at which each one was valued, aggregating $79,000? A. I have made a search; I cannot find any.

Redirect examination by Mr. Collins:

Q. Mr. Broughton, you were about to say something when counsel interrupted you, about some knowledge you had with regard to the carousels; you were interrupted, and then he asked you if you knew whether or not the $10,000 carousel could be had on the open market, you began to state something, I don't know what it was, I thought I would like to know. A. My attention was called to a large carousel when I was in Atlantic City, and I was asking somebody the price of it, what they were worth, and my recollection is, that it was $10,000. It was to be the same carousel that we were to get in Trenton at $8,000.

Mr. Backes: I ask to have that stricken out.

The Court: Strike out the hearsay testimony.

Q. Did you say that Mr. John M. Dickinson was present at the meeting of March 26th, in the capacity of counsel, but you don't remember whether he was a Director or not? A. I don't remember.

Q. Do you recall whether it was he that prepared the resolution? A. Yes, sir.

Q. Was he instructed to do so after you Directors had had a full discussion on the subject? A. Yes, sir.

Q. Then he was told to put it in formal shape? A. Yes, sir.

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BARKER G. HAMILL, recalled in behalf of the defendant, testified as follows:

Direct examination by Mr. Collins:

Q. You are one of the persons who had acquired certain leasehold and other rights, which you offered at the meeting of the stockholders to sell to the White City Company, and which afterwards were purchased at the meeting of the Directors of March 26th, from you and your associates? A. Yes, sir.

Q. Did you form a judgment as to the value of the property you were purchasing? A. I did.

Q. At the meeting was the subject discussed? A. Just very casually.

Q. Had you gentlemen, the Directors, previously discussed it between yourselves? A. Very frequentely.

Q. What was the judgment that you formed, and acted upon at the meeting of March 26, 1907, as to the value of that property? A. My judgment was, that the company was getting value received.

Q. At what valuation? A. At $79,000.

Q. Why was the discussion at the meeting only casual? A. For the reason that it had been discussed so many times that the meeting was more or less formal, as meetings of that kind are apt to be.

Cross examination by Mr. Backes:

Q. In your previous examination, you stated that there was no discussion whatever of the resolution to purchase this property; how do you reconcile that with your statement made now? A. The only way I can reconcile my statements, which seem to be adverse to each other, is, that my memory is rather lax on the whole matter, but I have been refreshed from hearing the testimony, and it brings things back to me.

Q. Did the Doak contract form in part a basis of your judgment as to the value of the property turned over to the company? A. It did.

Q. Did the Doak contract form part of the basis of your judgment which you had at the first meeting of the Directors, of the value of the property turned into the company for $79,000? A. It did; yes, sir.

Q. You say you had discussed the value which was fixed by the resolution at $79,000, frequently, with your associates; with whom had you, collectively, discussed that? A. With Mr. Broughton, Mr. W. M. Dickinson, Mr. Wilbur F. Sadler, Jr.—

Q. You mean these three gentleemn and yourself together, at any one time, discussed it? A Yes, sir, I think so.

Q. Mr. John M. Dickinson never took part in your discussion—I mean with you four? A. Yes, sir, and Mr. John Dickinson also.

Q. When, with reference to the formation of the company was it that you five, Walter Meredith Dickinson, John M. Dickinson, Mr. Brough-

ton, Mr. Sadler and Mr. Oberheide, estimated the value of the property as a whole, prior to the formation of the company? A. Prior to the formation of the company we never discussed them all together, but several of us at a time. With Mr. John M. Dickinson the matter was discussed just before the formation of the company, and I recall now that at the time of the meeting, Mr. Dickinson wanted us to be sure whether that was the amount that we had fixed upon.

Q. Whether $79,000 was the amount fixed upon? A. Yes, sir, but Mr. John M. Dickinson never fixed values himself, he used our values.

Q. But what I mean is, did you five, the two Dickinsons, Mr. Sadler, Mr. Oberheide and yourself, participate in any discussion wherein you fixed the values of the properties separately or the property as a whole? A. Yes, sir.

Q. When? A. Previous to the meeting.

Q. With Mr. Sadler? A. Yes, sir, with Mr. Sadler, notwithstanding that Mr. Sadler's testimony differs.

Q. Where? A. In my office, in Mr. Dickinson's office and Mr. Sadler's office.

Q. Before Mr. Sadler went to the hospital? A. Yes, sir.

Q. He went to the hospital in February? A. Yes, sir.

Q. Now, you have told us that the Doak contract was an element in forming the values to the amount of $79,000? A. Yes, sir.

Q. Don't you know that the Doak proposition, and that is all it was, was not submitted until the 19th of March, long after Mr. Sadler had gone to the hospital? A. I know that that letter was submitted at that time, but we had come to an agreement with Mr. Stewart, of Doak and Company, before Mr. Sadler went to the hospital.

Q. Notwithstanding Mr. Sadler's testimony to the contrary? A. Notwithstanding Mr. Sadler's testimony to the contrary.

Redirect examination by Mr. Colllins:

Q. Do you recall at the meeting of March 26, 1907, that it was suggested that the value was even greater than the $79,000, and some discussion was had about that? A. At that meeting and previous.

Q. What was it? A. We thought that the property was worth consideraby more than $79,000, but never, so far as I know, was any regular inventory made of all of the prices.

Recross examination by Mr. Backes:

Q. If the property was worth more than $79,000, can you explain why the promoters were so generous with this company? A. I can.

Q. Can you? A. Yes.

Q. At what figure did you value the property? A. I never put any specific value on the whole property; I specified values on some, but not on the whole property, but I always considered it worth more than $79,000.

Q. What value did the other men put on it, to your knowledge? A. We generally agreed on the value, that it was worth more than $79,000.

Q. You agreed upon an amount equal to a sum to exhaust the common stock of the company, is that right? A. That was one of the reasons why that particular price happened to be in that resolution, but we considered the property worth that and more.

Q. My question was, whether it was not the price made to fit the amount of the common stock? A. Undoubtedly.

Q. Now, Mr. Hamill, before the formation of this company, you regarded this property worth in excess of $79,000? A. Yes, sir.

Q. I mean before the formation of the company? A. Yes, sir.

Q. Why was it that the common stock was not, in the certificate of stock, certified as to an amount equal to the actual value of the property that you were going to turn in—why was that? A. Because it was agreed upon that the capital stock should be as it was.

Q. When was that agreed upon? A. I don't know.

Q. When, with reference to the formation of the company? A. Before the formation of the company; that is all I can say about that.

Redirect examination by Mr. Collins:

Q. You were asked by Mr. Backes, if you could tell why, if the property was worth more than $79,000, the promoters were so generous as to fix it at that sum, and you replied: "I can;" he asked you nothing further; I will ask you now to state what? A. In the first place, it was thought that we had better be conservative, especially in the light of the fact that we had to establish an earning capacity, and we did not want to have too much stock issued, and not be able to pay dividends, so, that we decided on a specific sum in the hopes that it was going to be a large dividend-paying security.

Recross examination by Mr. Backes:

Q. Was it a dividend-paying security? A. It was not.

Q. How long did the company actively run the park? A. I think three years, 1907, '08 and '09.

Q. And always as a loser? A. Yes, sir.

JOHN M. DICKINSON, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Collins:

Q. It has been testified that you were the counsel employed to draw up the papers, and that you also were a Director of the company and present at the meeting, and acted as Secretary of the meeting of March 26, 1907; what can you say as to the occurrences at that meeting?

Mr. Backes: Objected to; the minutes must speak.

Mr. Collins: They don't tell everything that occurred.

Mr. Backes: The question also embraced that which is in the minutes.

The Court: You may show, of course, that something took place that is not recorded in the minutes, but your question, you see, would elicit an answer which includes all that is in the minutes, and, perhaps, something more.

Q. At this meeting, prior to the offer of the resolution for the purchase of the property from the individuals who owned it, that had been authorized to be purchased by the stockholders, was there any informal discussion of the subject of the purchase? A. There was, as I recollect it, some informal discussion at that time but most of the discussion took place previous to that meeting, in reference to the various matters which were embodied in those resolutions.

Q. What have you to say as to the value that was fixed upon the property purchased?

Mr. Backes: Objected to.

Q. What was said at that meeting as to the

value of the property purchased? A. I cannot say anything more than I did in answer to the former question; that the discussion at that meeting was rather informal; I simply presented the resolution which I had been instructed to draw to conform to the opinion and judgment of the Board of Directors which had taken place prior to that meeting.

Q. Instructed by whom and when? A. At various times prior to this meeting these Directors had discussed the value of the property which was subsequently turned over to the White City Company, and some of them considered that the property was worth more than $79,000; in fact, I think Mr. Broughton, for one, mentioned $100,000, and they asked me how this stock was to be issued to them, and how they were to return stock to the company which was to be issued as a bonus with the preferred stock; so I formulated the plan which was afterwards carried out, and which is set out in the minutes, and in the stock trust agreement, which was marked for identification, and in the bill of sale from these people to the company; and I said to them, "If you think it is worth more than $79,000, it is not necessary to fix a greater value than $79,000, which will exhaust the consideration of the common capital stock, which you are to take over;" and I remember distinctly, suggesting that there be put in the minutes these concessions and contracts, as well as the leasehold interest which they were to turn over to go as part of the consideration for the transfer of this capital stock; and they agreed with me; and either at that meeting or a previous meeting, the value of these various contracts, concessions and agreements was considered; and they thought that it was a good suggestion, and should go in.

Q. Did you form, yourself, a judgment as to the value of the property that was being pur-

chased? A. I cannot say that I did, other than that I ratified the judgment, acquiesced in the judgment that had been formed by the other Directors; I was not a very active Director, and simply aided them in forming the company.

Q. How much stock did you have? A. I think I had 35 shares as an incorporator; I was credited with that stock, but I never actually got it.

Q. Were you or not, satisfied with their judgment of values? A. I was; I never thought it could be assailed; I thought that the company was organized on a very conservative basis, and I think so yet.

Cross examination by Mr. Backes:

Q. The resolution which was passed at the first meeting of the Board of Directors, held on the 26th day of March, was prepared by you prior to that meeting, wasn't it? A. Yes, sir, I assume so—either on the day of the meeting or prior to the meeting.

Q. Not prepared at the meeting? A. No, sir, not actually typewritten at the meeting.

Q. Was the same resolution as to paper and writing, which was passed on that day, the one that is now pasted on page 19 of the minute book? A. I think that subsequently it was written out in the present form in which you see it here, and afterwards pasted in this book; I don't remember whether I had pencil notes of the resolution, or whether this was actually presented at the meeting at the time; I do not recollect.

Q. Tell me this: in fact, was there a written resolution before that Board of Directors? A. There certainly was.

Q. In the language that that one appears in

pasted on page 19 of the minutes? A. Exactly the same.

Q. Now, I ask you whether such a resolution was actually all written out at the time that the resolution was offered for approval by the Board? A. I canot positively swear that it was, but I think such a resolution was in writing; I cannot tell whether it was before the resolution was passed, or whether this embodied the resolution that was passed.

Q. But the direction to draw a resolution conveying to the company for $79,000—$75,000 in capital stock and $4,000 in money, the property of the promoters—was given to you by these various promoters before the organization of the company; there is no doubt about that, is there? A. Before this meeting.

Q. The first of those meetings was held on the 26th of March, on the same day that the corporation was formed; now, with that in mind, can you answer my question more specifically? A. Of course, all the details of the formation of the company were arrived at before or on the 26th day of March; this was not all done without previous consideration, certainly not.

Q. I want to know whether the directions to prepare a resolution were given to you by the promoters; that resolution being, that for the property which the promoters were to turn over to the company, the company was to give to the promoters $75,000 in common stock, and $4,000 in money? A. I think such a resolution was prepared.

Q. Given to you before the date of the formation of the company? A. My best recollection is that they were.

Q. Do you know by whom? A. No special

one—by everybody; it was a mutual understanding by the promoters and the Directors.

Q. The promoters were the Directors; now, by which of the Directors, which one of them, or by how many of them? A. It was all left to me.

Q. Was the valuation all left to you? A. No, sir, but the embodying of the plan was left to me.

Q. Who gave you the direction as to the $79,000 consideration price? A. It was the concensus of opinion of all the promoters and Directors.

Q. Do you know whether any one of them gave it to you? A. I don't know.

Q. Do you know whether all of them collectively gave it to you? A. No, sir, I don't know.

Q. Did you ever know? A. I don't know.

Q. Did Mr. Broughton, Mr. Walter M. Dickinson, Mr. Sadler, Mr. Barker G. Hamill, Mr. Oberheide and Mr. Roebling, Jr., together, ever instruct you to draft a resolution that the company purchase from the promoters the property of the promoters at $79,000, $75,000 in stock and $4,000 in cash? A. I don't know.

Q. You don't know? A. No, sir.

Q. Did they individually? A. I don't know.

By the Court:

Q. Where did you get the sum of $79,000 from? A. I testified it was the concensus of opinion that it was worth $75,000 and $4,000 in cash; counsel asks me whether they collectivelly told me, or whether they told me individually, and I say I cannot say.

Q. If the $79,000 was the concensus of opinion as to the value of the property taken over by the White City Company, and you drew a resolution to that effect, you must have gotten your information

from somebody. A. I got it either collectively or individually from the members of these promoters, or the Directors; whether I got it exclusively, collectively or exclusively individually, I don't know; the best answer I can say is,that it was the concensus of opinion of these gentlemen that it was worth that amount, and I so embodied that concensus of opinion.

Q. Do you know where this meeting was held? A. This meeting, I think, was held in the Trenton Club, the old Trenton Club, the front room of the old Trenton Club.

Q. Mr. Broughton said it was the Directors' room of the Trenton Trust Company and still another witness said he thought it was out at the Broad Street Park? A. I don't blame them, as they were held in different places.

Q. I am now speaking of the first meeting of the stockholders and the first meeting of the Board of Directors; they were each held on the same day, March 26th, now who was present at that time? A. I think all the Directors were, as I recollect; I cannot tell you.

Q. Was Ferdinand Roebling, Jr. there? A. I cannot state positively; he was not as active as the others.

Q. Mr. Sadler was not there, was he? A. I don't recollect.

Q. Do you mean to say you do not recall that Mr. Sadler was not there? A. I do not.

Q. On page 21 of the Directors' book, there is a waiver of a notice of the first meeting of Directors, apparently signed by all the Directors; do you know whether F. W. Roebling signed that waiver? A. No, sir.

Q. Don't you recall that he signed it after the meeting? A. I do not.

Q. Who fixed the time for the meeting, which of the stockholders? A. I don't know.

Q. Mr. Dickinson, you, your brother and Mr. Oberheide were the incorporators and the only incorporators of this concern? A. Yes, sir.

Q. And you were as well the counsel of the concern? A. Yes, sir.

Q. Don't you know that you fixed the 26th of March, at 24 East State Street as the time for the meeting of the stockholders and Directors? A. I assume, if I drew the resolution, I had something to do with the date, although I don't know that I fixed it.

Q. Do you recall notifying Ferdinand W. Roebling, Jr., of the first meeting of Directors? A. I do not.

Q. Mr. Ferdinand W. Roebling, Jr., on the day of the holding of the first meeting, was not a stockholder of the company, was he? A. I think that is a matter of law.

Q. Well was he in fact? A. I don't know.

Q. Now, you cannot recall that Mr. Wilbur F. Sadler was or was not at this meeting; how is it that you can recall that there was an informal discussion of the resolution to purchase the property? A. Because there was a number of the Directors there, and I remember discussing this very resolution, and seeing that in addition to the leasehold interest which was to be turned over in return for the stock, I had inserted contracts and contract rights, which these vendors had acquired prior to the formation of the company, which was to be included in the sale of the property in return for the stock.

Q. You had not been given directions as to that election of value by these promoters up to the time that you called their attention to the fact that you had incorporated that property in the resolution?

A. I don't remember whether that was ever discussed as part of the property that was to be turned over, but I took it upon myself to state that in my opinion it should be among the assets.

Q. You then having initiated that feature of the resolution, it is true then, isn't it, that the promoters did not, prior to the formation of the company, include in the valuation of $79,000 the benefits of the various tentative contracts, or actual contracts, which had been entered into by the promoters with various parties? A. If they did not do it prior thereto they did it at that meeting.

Q. Did they do it at that meeting? A. They certainly did.

Q. Were valuations placed on the various contracts at that meeting? A. They were discussed.

Q. Were they all individually discussed, separately discussed? A. I cannot answer your question yes, or no.

Q. The subject matter of the question is plain enough. When you brought up the matter of these contracts, did you lay before them all of the contracts which the promoters had under consideration? A. I cannot remember, but they were discussed, some of them at least.

Q. Was any appraisement made of the value of these contracts on that day, which were to be turned over by the promoters to the company? A. I don't think so, other than to acquiesce in my suggestion that they were valuable, and that they should be taken over as part of the property.

Q. Now, did that cover the entire formal or informal discussion? A. I don't know, because I was not present at all the meetings.

Q. I am referring to your statement in which you said that there was an informal discussion? A. I have no further recollection than what I have already stated.

Q. Then, it is your best recollection that there was no other or further discussion of the propriety of passing this resolution, than the subject which you introduced, namely, the interpolation into this resolution of these various contracts, is that right? A. No, sir, I won't say so.

Q. Will you say there were any others? A. I won't say so.

Q. You won't say so because you don't recall? A. I won't say so because you are putting something in your question which, if I said "yes" to, would be an admission of something which is not true.

Q. Is it your best recollection that there was no discussion formally or informally as to the propriety of this resolution, except that relating to the interpolation into this resolution of passing to the company the agreements fixed on tentatively made by the promoters with the various parties? A. I have no recollection that that was the only discussion.

Q. Upon this resolution? A. Um!

Q. Have you a recollection of there being a discussion of any other subject relating to the resolution? A. I have no other recollection.

Q. I understood you to say you never passed judgment upon the value of these properties? A. I never did, any more than I acquiesced at this meeting with what was done in my capacity as a Director.

Q. Prior to the formation of the company, were you ever at the White City Park? A. Yes, sir; many a time.

Q. I mean after the promoters took hold? A. Before the company was formed, between those two dates I was at the White City Park a number of times.

Redirect examination by Mr. Collins:

Q. Did your judgment agree with that of the others as to the value? A. I don't know that I ever concerned myself very much about the value, except that I knew this park was a valuable piece of land, and that we had a lease on it for ten years, with an option to purchase for $35,000, and my idea was that the park property and the lease were worth far in excess of anything that has been testified to here. My judgment, if I had any, was that it was worth far more than the amount stated here.

Q. Mr. Backes' questions have all been directed to the resolution before the Board of Directors; if I understand right, the meeting of the stockholders immediately preceded that of the Board of Directors at the same time and place? A. It so states, I assume it did.

Q. Where is Mr. Oberheide now? A. He is at present in Chicago; we tried to get him here today, and for that purpose I wrote to him some days ago, and asked him to come here and testify, and he said he would. He telegraphed us to send $25.00 expense money, and he said he would be in Philadelphia this morning. I received a telegram from him saying that unforeseen circumstances kept him away and that he would return to Mr. Barker Hamill the $25.00.

Q. He is not a resident of New Jersey? A. No, sir; I believe he is in Chicago.

Recross examination by Mr. Backes:

Q. You said that because the corporation owned a ten years' lease and an option to buy, you regarded the park property of a value far in excess of the $75,000; do I understand you correctly? A. I thought that the value being turned over by the promoters in return for the stock, that there was a full consideration for it.

Q. That you limited to the leasehold of ten years and the option to buy? A. No, sir; because I put in this resolution with respect to the concessions.

Q. If you regarded the park proper, held by the promoters under their lease and the option to buy, of a value over $75,000, or far in excess, as you put it, of the $79,000, what was the reason for including the other things which you regarded as of value? A. Simply to be on the safe side—to add more value.

Q. Will you please tell me how you, if you ever did, estimated the park property, held by the incorporators under the lease and the option, at more than $79,000? A. Well, it was my own personal judgment more than anything else; I went with Mr. Dickinson and Mr. Hamill originally to Mr. Hurley and negotiated with him for this lease, which was afterwards acquired, so that I was perfectly familiar with the property that they were getting, and the terms on which they were getting it.

Q. So the contracts were simply put in as full measure? A. Yes, sir.

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LEROY C. THOMPSON recalled in behalf of the defendant, testified as follows:

Direct examination by Mr. Dickinson:

Q. What is your business? A. Real estate.

Q. Where are you conducting your business? A. In the City of Trenton and County of Mercer.

Q. How long have you been in the real estate business? A. Six years.

Q. Do you know the property known as the White City Park? A. I do.

Q. Have you been in the real estate business in Trenton for six years? A. I have.

Q. Describe to us generally where the White City Park property is. A. It includes the lake and the surroundings of what used to be Broad Street Park.

Q. How big a place is it? A. There are possibly 130 acres of land.

Q. Is it all lowland or highland? A. There are possibly 110 acres of lowland and lake.

Q. And of upland how much? A. Possibly 15 to 25 acres.

Mr. Dickinson: I have a copy here which has not been prepared by a surveyor, it is the Rusling map of the Broad Street Park, illustrative of the property.

The Court: You may use it if it is not objected to.

Mr. Dickinson: Do you object to the use of this map, Mr. Backes?

Mr. Backes (examining it): I have no objection to its being used for the purpose of illustration.

Q. I show you a map entitled "Broad Street Park," and ask you whether that shows, with reasonable accuracy the property now held by the Trenton White City Company? A. It does.

The Court: Late of the White City Company.

Q. Please indicate, Mr. Thompson, on the map, that part of the property lately held by the Trenton White City Company. A. The White City's holdings are bounded by a red line on the map.

Q. State by streets how the property is bounded.

A. From Sewell Avenue to Buchanan Avenue, through McClellan south to Overlook Avenue, and including the lake and the low ground, through to the railroad.

Q. Have you estimated the value of that part of the property which you call lowland, in the year 1907? A. I have never heard but one price on the lake land and the lake, which was $25,000.

Mr. Backes: Objected to.

The Court: Objection sustained; strike out the answer.

Question read.

A. Personally, no.

Q. Have you arrived to your own satisfaction at the value of the property which you called the lowand, in 1907?

Mr. Backes: Objected to.

The Court: Objection sustained.

Q. Have you any opinion as to the value of the so-called lowland in 1907? A. I know the asking price—

Mr. Backes: I object.

Q. (Question read.) A. I have.

Q. How did you arrive at the opinion as to the value of that land? A. From the ground that is there and the possibilities of factories locating along the railroad.

Q. Anything else? A. And the value of the lake.

Q. Have you any personal knowledge as to sales of land in that locality, or the asking price of land in that locality in 1907? A. I have never sold vacant land in that location, but I have sold dwellings in that location.

Q. Have you, from your experience as a real estate man, gained any knowledge of the value of property in that location in 1907? A. I think so.

Q. Please state what, in your opinion, was the value of the so-called lowland in 1907.

Mr. Backes: I object.

Mr. Collins: It seems to me that a real estate dealer who is familiar with the community and the wants of the City of Trenton, and who has made himself familiar with values and knows asking prices, is competent to give an opinion different from a person not in that business.

The Court: Is the asking price for land necessarily a criterion for its value? My judgment is, that one cannot qualify himself to speak as to the value of land in a given locality, even though he be a dealer, unless he either has made sales, or knows of sales in the community within a reasonably approximate time. This witness says he sold houses in the locality; he has not shown how near to this particular tract the houses were; whether it was on the upland or the lowland portion; or given us any other facts which go to show that he acquired the peculiar knowledge called "expert" knowledge, concerning these rather peculiar and somewhat exotic values.

Q. In respect to the upland part of this property, have you ever sold lots, near the upland part of this property? A. I have sold two dwelling houses and lots within one block of the White City line.

Q. When? A. Possibly in 1906.

Q. State with respect to that part of the White City property on McClellan Avenue where these houses and lots were that you sold in 1906? A. On Schiller Avenue.

Q. Is that within one block of lots on McClellan Avenue, lately owned by the White City Company? A. I think it is.

Q. What, in your opinion, are the lots on McClellan Avenue, lately owned by the White City Company, what, in your opinion, were they worth in 1907?

Mr. Backes: Objected to.

The Court: Of course, his testimony is to be taken only for what it is worth, only considering the extent of his knowledge—

Mr. Collins: The question of the weight of it.

The Court: Yes.

Mr. Backes: I pray leave to cross examine the witness so as to clarify my objection.

Cross examination by Mr. Backes:

Q. The two houses that you sold were upon adjoining lots? A. No, sir.

Q. Were they twin houses? A. No, sir.

Q. Were they sold at the same time? A. No, sir.

Q. When was the first sold? A. What do you mean by that?

Q. What was the date of your first sale, of one of the two? A. I don't know whether it was 1906 or 1907; the sales were made within six months of each other.

Q. The first one was either 1906 or 1907? A. Yes, sir.

Q. What time of the year? A. I think in the Spring.

Q. Then the second sale must have been in the Fall? A. I have no knowledge whatever.

By the Court:

Q. A little while ago you said the sales were about six months apart? A. I have no knowledge of just what date the properties were sold; I recall selling the properties; they formerly belonged to the Building Loan; I made these sales for the Building Loan; I cannot tell the dates without looking up those records, but they were not within a month or two of each other; they were on Schiller Avenue, that is the next block from McClellan Avenue.

Q. Were they new houses? A. No, sir.

Q. What did you get for them? A. I don't know.

Q. You don't remember what you got for either one of them? A. No, sir.

Q. What were the superstructures on these lots worth? A. They were attached dwellings, and I should say would cost around $2,400 or $2,500 apiece to build when they were built.

Further direct examination by Mr. Dickinson:

Q. If you don't remmber the price of the house and the lot together, do you recollect at what the lot was valued? A. I do know the asking price of lots in that vicinity.

Q. Do you remember what price the lots were put in at at these two sales, disassociated from the houses that were on them? A. There was no price set.

Q. Did you make any estimate in selling those houses of what the lot was worth and what the house was worth to make the selling price? A. Yes, sir.

Q. What were the estimates as to the value of the lots? A. Those lots I put in at $400 or $450 on Schiller Avenue.

Mr. Collins: Now, I think we are entitled to ask the question.

Mr. Backes: I repeat my objection.

By the Court:

Q. How did you come to place this valuation of $400 on it? A. On the asking price of various lots in the vicinity.

Q. How long before you made those sales did you inquire as to what prices were asked for lots in that vicinity? A. I could not say.

Q. Was it soon before, or remotely before? A. I could not say that.

Q. Did you have some information as to the asking price? A. I did, and I have now.

Q. From whom did you get that information, not mentioning names? A. From people who had lots for sale.

Q. Did you hear the asking price for more than one lot? A. Yes, sir; for several.

Q. For how many? A. There are at least fifty of them for sale down there now.

Q. How many had you heard of being for sale? A. I could not say.

Q. You had heard of more than one? A. Yes, sir.

Q. Did what you heard as the asking price for lots in that vicinity, operate on your mind as to what you would put them in at in these sales?

A. As a rule, Chancellor, when you are selling suburban property you have a standard price for your lots, which you must figure on first.

Q. The question is, whether or not what you had heard about the asking price of the lots in that vicinity operated on your mind to fix the

value of the lots you sold? A. Absolutely; yes, sir.

Further cross examination by Mr. Backes:

Q. From whom did you, in 1906 or 1907, seek information and obtain it as to the value of the lots in the neighborhood of those now under discussion? A. I could not tell you now, Counsellor.

Q. Well, where were the people? A. I could not say that.

Q. Were they residents in the neighborhood? A. They were owners in the neighborhood.

Q. Owners of what? A. Of lots in Broad Street Park—commonly known as Broad Street Park.

Q. Were they occupants of those lots? A. No, sir; vacant lots.

Q. Where did the people live who gave you those values? A. I suppose by going to the office I could get a list of them,

Q. Were they people who lived down town? A. Some were owned by people who lived at Broad Street Park and some were owned by people who lived downtown.

Q. Now, you have given us a value, as you placed it, on the houses and the lots that you sold, but you cannot tell us what you sold them for, can you? A. No, sir, I do not recall.

Q. Did they equal, respectively, the values that you placed upon the lots and houses; did you sell them for the prices which you put upon the lots and houses, respectively; you said you valued the lots at $450 and the houses at about $2500? A. They did not sell for what they should.

The Court: It is evident that we cannot get through today, so we will adjourn at this point to Friday, January 27, 1911, at 10:30 A. M.

## Testimony.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>ALFRED G. HOLCOMBE, *et al.*,<br>Complainants,<br>*and*<br>TRENTON WHITE CITY COMPANY,<br>Defendant. | On Bill, etc. |

Transcript of testimony taken in the above-entitled cause, before Hon. Edwin Robert Walker, Vice-Chancellor, at the State House, Trenton, New Jersey, on Friday, January 27th, 1911.

Appearances as before noted.

Mr. Dickinson: I will withdraw Mr. Thompson, the last witness; he did not seem to qualify, and as we have another witness who, I am confident, will qualify, I will withdraw him.

Mr. Backes: I move to strike out all of Mr. Thompson's testimony.

The Court: That will be so ordered.

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WESLEY GIBBS, sworn in behalf of the defendant, testified as follows:

Direct examination By Mr. Dickinson:

Q. Where do you live? A. Broad Street Park.

Q. Where is Broad Street Park? A. In Hamilton Towship, just outside the city limits here.

Q. How long have you lived there? A. Twelve years last October.

Q. In what part of Broad Street Park do you now reside? A. On Broad Street.

Q. What is the number of the house? A. 1651.

Q. How long have you lived there? A. About five years.

Q. Where did you live previous to that time? A. Schiller Avenue in Broad Street Park.

Q. How long did you live there? A. About three years, as near as I can tell you.

Q. Where did you live previous to that? A. At Lafayette Avenue, Broad Street Park.

Q. How long did you live there? A. About 18 months, I should guess.

Q. Where did you live previous to that time? A. In a hotel.

Q. Where is that? A. On the corner of Board and Harrison, Broad Street Park.

Q. Where did you live previous to that? A. In the City of Trenton.

Q. How long did you live in the hotel? A. I moved there in October and fixed the place up and sold it the first of the coming year.

Q. Do you know the property commonly called the "White City Park?" A. I do.

Q. How far is that property from the house that you now live in? About three blocks.

Mr. Backes: Has that map been offered?

Mr. Dickinson: No.

Mr. Backes: Do you know whether it is a copy of the Board Street Park map?

Mr. Dickinson: Yes, it is; it is got up by the Rusling Estate for the purpose of selling lots.

Mr. Backes: If Mr. Thompson's evidence goes out, the map goes out also.

Q. How did this map come to be prepared,—do you know? A. From the regular map.

Q. What regular map? A. Broad Street Land Association.

Q. Who got up this map? A. The Ruslings.

Q. Did they formerly own this property? A. Yes, sir.

Mr. Backes: I consent that it be offered in evidence.

Mr. Dickinson: I offer the map in evidence.

Mr. Backes: I consent to its being offered.

Marked "Exhibit D. A. 1½."

Mr. Backes: Within the red lines on the map is "White City Park."

Mr. Dickinson: I don't object to that.

Q. Indicate, Mr. Gibbs, on this map, the places of your residence at Broad Street Park during the twelve years you have lived there? A. On the corner, at the left there, that is the hotel, and here, above Buchanan Avenue, is my residence at the present time, where I lived five years.

Q. How far is that from the property within White City Park? A. Three blocks, I call it; then I lived here on Lafayette Avenue, just about four lots from Buchanan Avenue.

Q. How far was that from White City Park? A. Two blocks.

Q. Where else? A. Then I lived at Schiller Avenue about three years.

Q. What is your business? A. Contractor and builder.

Q. Do you deal in real estate? A. Yes, sir.

Q. Have you ever bought or sold any lots in Broad Street Park? A. Yes, sir.

Q. How many? A. Well, I suppose I have handled 300 lots on the DeCou tract in all.

Q. How many lots have you handled that are

shown on this map? A. I owned 41 right around the White City and out of the 41 I sold 24; I still own 17.

Q. When did you sell those lots? A. I sold about 12, about 18 months ago, I should judge.

Q. When did you sell any of the other lots, that you recollect? A. I sold them later on; I did not make any memorandum of them.

Q. Did you ever sell any lots on or about March, 1907? A. Yes, sir; sure I have.

Q. Do you remember to whom you sold any lots? A. I sold them to Mr. Hamer about that year.

Q. Indicate on this map some of the lots that you sold outside or on McClellan Avenue? A. On McClellan Avenue I sold 14 lots there, that is, between Sewell and Harrison, on McClellan.

Q. To whom did you sell the 14? A. Two to William Tindall, and the 12 I sold to the Rissos, Italian builders.

Q. Now, indicate them on this map by number. A. 479, 480, 481—

Q. To whom did you sell those? A. To a man named Segers—sold about 18 months or two years ago.

Q. Then you sold what lots? A. No. 475 and 476 to the same party, at the same time, then I sold 605 to the same party, that is on Sewell Avenue, right direct back of the park.

Q. Have you sold any lots between Randall and Overlook Avenue? A. Yes, sir; I had two lots on Randall, No. 547, next to the corner lot; then I had No. 618, right there (indicating).

Q. When did you sell those? A. About the same time, I should judge; now, at the present time I own eight lots here on Overlook Avenue, I own at the present time eight lots, I had ten,

I sold two of those lots to a party, No. 642 and 643 I sold.

Q. What is the extent of the property in White City Park? A. There are 82 lots there, and there is a piece of land in the rear running back to the railroad, 102 acres; I am the man that sold it.

Q. When did you sell it? A. 14 or 15 years ago this coming April.

Q. Is any part of this property belonging to the White City Park, which is not now laid out in lots, susceptible of being laid out in lots? A. Along that bluff there on Overlook Avenue, towards the lake, that could be all laid out in desirable building lots for bungalows, overlooking the lake—more valuable than these lots.

Q. How many lots? A. About 29 to 30 lots.

Q. Of what dimensions? A. 25 feet.

Q. 100 feet deep? A. Some would be a little shy of that. The 82 lots are here—designated on the map—indicated on the map between Randall and McClellan Avenues.

Q. Then you say how many lots could be laid out? A. 29 to 30 other lots could be laid out on the bluff.

Q. Now, Mr. Gibbs, what, in your opinion, is the value of the lots shown on this map, belonging to the White City Park, on McClellan Avenue, between Buchanan and Sewell Avenues? A. My value on them would be $250.00 a lot, excepting Harrison Avenue, and I would value them at $400 a lot.

Q. The question is not what you would individually value them at, but what is, in your opinion, their market value? A. That is my opinion.

Q. What do you say is the market value of the Harrison lots? A. I put them at $400.00; we have been getting $800.

Q. Indicate on the map which numbers they are. A. Those four and those four.

Q. 502 to 505 and 498 to 501, inclusive? A. Yes, sir.

Q. What, in your opinion, is the market value of the lots belonging to the White City and shown on this map, facing on Randall Avenue, between Buchanan Avenue and Sewell Avenue?

Mr. Backes: Where was the other location; I have probably got confused there—at $250 a lot?

Mr. Dickinson: There (showing Mr. Backes).

Q. (Question read.) A. $250.00 a lot

Q. What, in your opinion, is the market value of the property on the bluff facing Overlook Avenue, if laid out in lots? A. I would consider them worth $300 a lot.

Q. What is the nature of the balance of the property known as the White City Park, shown on this map? A. There are 20 acres from the lake on to the railroad; now, that has 900 feet frontage on the railroad and the canal, and there is a station right there, Rusling Station; and this land here is given the name of "Meadows," but they cut off the grass by a mowing machine and cart it off by horses and wagons.

Q. It is a meadow then, is it? A. They call it the "Meadow"; but some parts of it could be cultivated.

Q. It is not swampy land, is it? A. The majority of it is good hard land.

Q. Is it fit for the erection of factories? A. Yes, sir; that is principally what it is for.

Q. What, in your opinion, Mr. Gibbs, is the market value of the land belonging to the White City Park between the lake and the railroad, per acre? A. Well, per acre I would consider that

land there from Overlook Avenue to the railroad, to be cheap enough for anyone speculating, for $35,000, for manufacturing purposes.

Q. That is, irrespective of the land on the bluff? A. Yes, sir.

Q. And is that your opinion of its value? A. Yes, sir; if it belonged to me I would get more for it.

By the Court:

Q. How do these values that you have given us now, compare with the values of this same property, as those values existed in March, 1907? A. When this land was sold, I was authorized to sell it from Overlook Avenue to the railroad for $25,000; that is, I think 15 years this coming April. The Ruslings—that is the price they wanted for the meadow land—and finally they wanted some upland—

Q. My question was—how did these values that you have given us compare with the values of the same land three years ago last March? A. Chancellor, before that ground was sold to the White City, there were several lots sold off of it—

Q. Resolve all these things in your own mind, but tell me what your present opinion of the value of that same land was three years ago last March? A. It is worth all I ask for it now.

Q. It was worth as much three years ago last March as it is to-day, in your opinion? A. Yes, sir.

Further direct:

Q. Mr. Gibbs, what can you say about the increase of population in the Broad Street Park section in the last five years? A. It is increasing very fast; I put a rate on a valuation of a property—

Mr. Backes: Objected to.

The Court: Objection sustained.

Q. What, in your opinion, will the value of this White City Park increase or decrease in the next seven years? A. Increase some.

Mr. Backes: Objected to; it is not the subject of expert knowledge; it is wholly speculation.

The Court: The objection is overruled; it has, perhaps, some value; I suppose we could all give similar testimony.

Mr. Backes: That very fact excludes it.

The Court: It is admitted; go ahead.

Q. Mr. Gibbs, what, in your opinion, is the total market value of the entire property shown within the red lines on this map, and belonging to the Trenton White City? A. I would consider it worth $75,000.

Cross examination by Mr. Backes:

Q. You own how many lots at the Broad Street Park at the present time? A. 22 or 23.

Q. And you are holding them for sale? A. Yes, sir.

Q. And interested in maintaining the price, of course? A. Yes, sir.

Q. Ready to buy other lots there for the purpose of selling? A. Yes, sir.

Q. And buy them as low as you can and sell them at as high a price as you can? A. Yes, sir.

Q. How many acres are there in what is known as the upland? A. Well, now, I don't know about the acres in that, but there are 82 lots into it.

Q. 82, plus the 69 lots which are also upland? A. They are on the bluff—

Q. Listen to this question: the bungalow lots are what are known as upland? A. Yes, sir.

Q. What is the depression—what is the extent of the depression between the upland and the lowland?

The Court: He means the distance down from the bank.

By Mr. Backes:

Q. Is it 50 feet? A. 18 to 20 feet, maybe not that much; I never measured it.

Q. What is the distance between the bluff and the bottom of the hill? A. That is something I could not answer, for I never measured it; I should judge it was 18 to 20 feet; it might run a little more than that.

Q. All the lowland is between 18 and 20 feet lower than the highland? A. Yes, sir, that is right.

Q. What acreage is it you allow? A. 80 acres of the land, and 22 acres of lake, according to the map—that would make it 102 acres.

Q. Then the entire tract is how much? A. That I could not answer how many acres are in the lots—

Q. The main and highway at Broad Street Park is the old White Horse Road, isn't it? A. Yes, sir.

Q. Lots are more valuable there than they are back from that highway, are they not? A. Yes, sir.

Q. Lots are more valuable on the streets paralleling Broad Street than those that run at right angles? A. I have got more for the back lots than I have for those—

Q. Answer my question (Question read). A. For certain purposes I would judge they would be more valuable.

Q. Which? A. The lots nearest to Broad Street.

By the Court:

Q. Parallel to Broad? A. Yes, sir.

Further cross:

Q. The first street west of Broad is Lafayette Avenue; those lots, in your judgment, are worth more than the lots on Schiller Avenue; is that so? A. No, sir.

Q. The lots on Broad Street are worth more than those on Lafayette Avenue? A. Yes, sir.

Q. Are not the lots on Lafayette Avenue worth more than those on Randall Avenue? A. Yes, sir.

Q. And Worth more than those on McClellan Avenue? A. Yes, sir.

Q. And worth more than those on Schiller Avenue? A. No, sir.

Q. Why do you stop there? A. We laid them all the same rate on those two avenues, Schiller and Lafayette—we sold them that way.

Q. But Lafayette Avenue is but 200 feet from Broad Street, which is the main artery; while Schiller Avenue is 460 feet away? A. 445 feet.

Q. The additional distance, in your judgment, made no difference as to values? A. No, sir.

Q. What is the length of Lafayette Avenue? A. The length of Lafayette Avenue?

Q. Yes. A. I could not tell you that.

Q. Between what points do Lafayette Avenue, Schiller Avenue McClellan Avenue and Randall Avenue run—bound on the north by what? A. They run north and south.

Q. On the north they are bound by what; is there an outlet to them on the north—on these four avenues that I gave? A. There is no outlet to either one of them; they stop when they get to Park Avenue on the south; they begin on Cedar Lane, and that is cut off too.

Q. So, in order to get in to any of these back

streets like McClellan Avenue or Randall Avenue, it is necessary to either go up Sewell Avenue, Harrison Avenue, Buchanan Avenue or Rowan Avenue—streets that are laid out on this particular tract; is that the idea? A. Yes, sir.

Q. Of course, that would apply to all lots that are west of Randall Avenue? A. Yes, sir.

Q. Have you sold any lots on McClellan Avenue for $250 apiece? A. Yes, sir.

Q. Cash? A. Some cash.

Q. Have you ever sold a lot on McClellan or Randall Avenue for $250 in cash? A. Yes, sir.

Q. When? A. Well, I cannot exactly tell you the date; in the neighborhood of two years ago.

Q. To whom? A. I sold one to a man named Tindall.

Q. Did he build a house on it? A. No, sir.

Q. What number was that? A. I don't remember.

Q. Which side of McClellan Avenue was it on? A. On the side opposite to the park.

Q. Now, what others did you sell at that price? A. I sold those twelve (indicating); my price was $300, but I accepted the $250 offered and took back mortgages for them.

Q. For the full purchase price? A. No, sir; and they built 18 houses on them.

Q. What was the lowest price that lots have sold for in Broad Street Park?

Mr. Dickinson: Objected to.

Q. What is the very lowest?

Mr. Dickinson: I do not think that is competent—what is the lowest price.

The Court: Yes, it is, on cross examination.

A. I have bought them lower; I have bought them for $125.

Q. Did you buy at $125? A. Yes, sir.

Q. How many? A. Maybe half a dozen.

Q. Where were they located? A. At Schiller and at Lafayette Avenues.

Q. What was the lowest price you paid for the 24 you still own? A. Well, if that is a proper question for me to answer, I took them off the estate, and the estate favored me on 20 lots—

Q. What did you pay for them—for any one of the 24 lots? A. I bought them for $50.

Q. Whose estate do you speak of? A. William H. Rusling's.

Q. How many did you buy from the estate? A. Twenty, some.

Q. When did you buy them? A. I bought them about eighteen months or two years ago, right after his death.

Q. For cash? A. Yes, sir.

Q. Now, what was the next lowest price you paid for any of the 24 lots? A. I bought some for $100.

Q. How many did you buy for $100 apiece? A. I think I bought seven or eight.

Q. From whom? A. Different parties.

Q. Parties who did not have to sell, but were willing to sell? A. They had to sell.

Q. You did not have to buy, but you were ready to buy? A. Yes, sir.

Q. You paid $100 for eight? A. For seven or eight.

Q. About how long ago? A. That has been three or four years ago, four years ago.

Q. About where on McClellan Avenue were they? A. They were below Buchanan.

Q. And north of Rowan, of course? A. Yes, sir.

Q. Now, what other lot did you buy? A. Well, I bought them on Broad Street; I bought two on Randall Avenue.

Q. When did you buy them? A. Oh, I should judge maybe two years or more ago.

Q. How much did you give for those? A. $125 apiece for those, I think.

Q. Now, tell me some more of your purchases. A. I bought them on Lafayette and on Schiller and on Broad.

Q What did you give for those on Schiller? A. The owest I bought was $125.

Q. What did you give for those on Lafayette? A. $125 was the lowest I ever paid for them there.

Q. You think the lowland, which includes the lake, is a good subject of speculation, do you, and cheap at $35,000 for speculative purposes? A. Yes, sir.

Q. That is, you could lay it out in building lots on paper, and if the purchasers did not object, you might be able to sell land on paper at fair prices? A. The time has gone by for that business.

Q. Next, none of the lots known as the lowland is valuable for building lot purposes, is it? A. No sir.

Q. The 82 acres between the lake and the railroad is available for what kind of manufacturing? A. Any kind of manufacturing which has use for shipping purposes.

Q. It is pretty wet land back there, isn't it—low and wet? A. No, sir.

Q. You cannot go through from the lake to the railroad without the aid, in some places, of high rubber boots, and in some instances, of a boat? A. Yes, sir, you could go through with slippers on.

Q. Without your feet getting wet? A. Yes, sir.

Q. If the 88 acres were occupied by manufactories, do you still say, that, in your judgment, the so-called bluff lots would be available for

bungalow purposes? A. To a certain extent; it would be that price anyhow.

Q. You place a valuation of $300 on the bungalow lots? A. Yes, sir.

Q. That contemplates the natural beauties of Spring Lake and the eighty acres as it now exists? A. The lake is what I have reference to.

Q. But the putting of manufacturing plants on these 80 acres would, in a measure, mar the beauty down there, and impair to some extent the so-called bungalow lots? A. It would depend on what kind of manufactories you put there.

Q. What kind would you suggest could be put there without impairing the so-called bungalow lots for bungalow purposes? A. (No answer.)

Q. You are a little bit high when you fix $75,000 as the value of this property. A. I don't think if I had it that I would sell it for it.

Q. You knew it has been held by the Ruslings and by the Interstate Railroad Company, the Trenton trolley line associates, for $35,000, don't you? A. Well, I have heard some talk of it.

Q. You know they have offered time and again to sell it for $35,000? A. No, sir.

Q. You have heard of it? A. Yes, sir.

Q. Is there any reason why you should not make inquiry to find out if that was true? A. It was not necessary for me to do that if I had plenty of other business.

Q. If you knew it to be a fact that the present owner was, in 1907, in the months of January and February of that year, ready to sell this entire tract for $35,000, would that in any manner, disturb your present judgment as to the value of that land at that time? A. No, sir.

Q. You still insist it was worth $75,000, notwithstanding the owner was ready to sell for $35,000? A. Yes, sir, and if I had the money I

would have bought it; I could not have made any money any faster.

Q. There have not been many houses built on Broad Street Park, recently? A. Yes, sir; there have.

Q. Within the last two years? A. They are building there all the time now.

Q. How far is Broad Street Park proper away from the city line of the City of Trenton? A. The city line is to Lalor Street.

By the Court:

Q. How far below Lalor Street is the city line? A. (No answer).

Further cross:

Q. Give the distance from Lalor Street down to Broad Street Park? A. I suppose it would be two city blocks.

Q. Well, now, between the improved portion of the extreme part of Trenton and Broad Street Park, what is the distance? A. The same; it commences right there—about two blocks.

Q. Do you say buildings are on Broad Street right up to Lalor Street? A. No, sir; up to Wrights'.

Q. You mean the buildings are on the Broad Street Park tract? A. Yes, sir.

Q. Then, as you proceed northerly, the first tract is a farm of about 25 acres fronting on Broad Street? A. Yes, sir.

Q. And then, as you proceed further north— A. That is pretty well built up on the Brearley plot; they are building that up very fast.

Q. It begins at Liberty Street and runs southerly to Lalor? A. Yes, sir.

Q. Now, I ask you whether the Brearley tract does not extend on that side of Broad Street from Liberty, south to Lalor? A. Yes, sir.

Q. Four years ago the Brearley tract was a farm, wasn't it? A. I think it was.

Q. It has not been cut up into building lots until about two years ago? A. Something like that, I should judge.

Q. Do you know who promoted that? A. John Sutphin and Harry Taylor.

Q. The pork man? A. Yes, sir.

Q. Now, what comes next going south up the Lalor tract before you reach the Broad Street Park? A. That is that piece of land belonging to Nathan Wright.

Q. Then what comes? A. Then Broad Street Park.

Q. What is opposite Broad Street Park between Rowan Avenue and Cedar Lane, on the east? A. The Isaac DeCou plot.

Q. That was laid out how many years ago? A. Before Broad Street Park.

Q. Has that been improved? A. Yes, sir.

Q. Many buildings on it? A. Yes, sir.

Q. And then, on that side of Broad Street coming towards town, what is the nature of the improvements, if any, or the nature of the land, next to Cedar Lane, as you come north? A. That is the Hamilton Terrace—

Q. That is Wright's too, isn't it? A. Yes, sir.

Q. That has all been built up? A. Pretty much built up.

Q. The lots on the Brearley tract were worth more than those on the Spring Lake tract, were they not, in your judgment? A. No, sir; I would not think so.

Q. They are nearer to town? A. Yes, sir.

Q. The nearer to Trenton the greater the value in this instance? A. No, sir; not in my judgment.

Q. You mean lots on Broad Street on the Brearley tract are worth no more than lots on

Broad Street at the White City Park? A. That is what I mean.

Q. Does that apply to the lots that are located near Liberty Street on Broad? A. It applies to any of them.

Q. And Liberty Street is a mile nearer to town? A. Not exactly a mile.

Q. Than Cedar Lane, isn't it? A. Not exactly a mile—it would be a short mile.

By the Court:

Q. Nearer to town, do you say? A. Yes, sir.

Q. It is in Trenton, isn't it? A. Yes, sir.

Further cross:

Q. But it is nearer to the center of the City of Trenton? A. It is not a mile nearer; it would be a short mile nearer.

Q. And that fact, in your judgment, makes no difference as to the value of property? A. No, sir; it does not.

Q. Do you know what the lots sold for on the Brearley tract? A. I have heard.

Q. You never bought any? A. No, sir.

Q. The Lalor tract has recently been exploited, hasn't it? A. Yes, sir.

Q. Did you buy any lots there? A. No, sir.

Q. Do you know the value of any lots there? A. No, sir.

Q. If you knew what lots were selling for on the Brearley tract and on the Lalor tract, would that, in any manner, affect your judgment as to the value of the lots of the White City Company? A. Not a bit, sir.

Q. No matter what they sold for on either of those tracts, it would not at all disturb your judgment as you have now expressed it, of the White City tract? A. That is right.

Redirect examination by Mr. Dickinson:

Q. How large a tract is the Lalor tract? A. The farm, do you mean?

Q. Yes. A. I understand 150 acres.

Q. Does a part of that tract join the White City property? A. It comes in there on the edge.

Q. Towards the river? A. No, sir, Deutzville goes round in there; I think some of the lowland comes around in there somewheres—

Q. Do you know of any negotiations lately had for the purchase of the Lalor tract? A. I only know what I heard.

Q. How did you hear it? A. I heard it through real estate people.

Q. Was it negotiations to purchase that you heard about? A. Trying to purchase it.

Q. Did you hear who was trying to purchase it? A. Yes, sir.

Q. Did you hear at what price? A. $150,000 for 150 acres.

Q. How recent was that? A. Just before the parties bought down at Kinkora.

Q. Is that Lalor tract about like the land comprising the White City? A. Some of it is not quite as good, and some of it is.

Q. Now, these lots that you say that you bought for $50 in Broad Street Park, were the owners forced to sell those lots? A. No, sir.

Q. Explain how you got them so much less. A. Yes, sir.

Q. Well, explain it. A. I represented Mr. William Henry Rusling for ten years, in the Broad Street Park business, and the will he left they thought was not sufficient to pay me what I ought to be paid, so they let me have those lots at that price.

Q. Then the price you bought those lots for was simply a nominal price?

Mr. Backes: Objected to.

The Court: The objection is sustained.

By the Court:

Q. An element of compensation to you for past services entered into the deal then? A. Yes, sir.

Q. I think you said that at Schuyler and Buchanan Avenues, the lowest price you paid for land was $125; what was the highest price you paid there? A. $250.

Further redirect:

Q. Now, as to lots which you have sold nearer Broad Street, what is the highest price that you have sold any lots on Broad Street for? A. I sold one for $1,000 on the corner of Buchanan and Liberty Streets.

Q. Is that on the Broad Street Land Association? A. Yes, sir.

Q. That was on the Broad Street Park tract, wasn't it? A. Yes, sir.

Q. What was the highest price that you sold any lot for on Lafayette Avenue? A. $250.

Q. What is the highest price that you sold any lot on Harrison Avenue, between Schiller and and Broad Streets? A. I sold them for $400.

Q. What is the highest price that you sold any lot on Harrison Avenue, between Schiller and McClellan Avenue?

Mr. Backes: Objected to as part of his direct testimony.

The Court: I will admit it.

A. $400.

Recross examination by Mr. Backes:

Q. Where was the lot that you paid $250 for? A. At Schiller Avenue.

Q. When did you buy that? A. I bought that about four years ago, I should judge.

Q. Whom did you buy it from? A. William Henry Rusling.

Q. Did you buy it for the purpose of being sold to somebody? A. No, sir; I built on it.

Q. The offer of $150,000 for the Lalor tract, which you say you heard of, that was the offer made by the Roeblings for the purpose of putting part of their plant on? A. Yes, sir.

Q. You did not know that they offered that sum? A. No, sir.

Q. Now, the Lalor tract does not face on Broad Street? A. It faces on Lalor Street.

Q. Which is a street running partly, in a measure, at right angles to Liberty Street? A. Runs on an angle down to the river, runs westerly from Broad.

Q. And the land of the Lalors is on the south side of Lalor Street? A. Yes, sir; they had it on both sides.

Q. But this tract is on the south side of Lalor Street? A. Yes, sir.

Q. How far west of Broad is the next point? A. Well, I would judge, it commences down to McClellan Avenue; I think that tract of land starts right there at Cedar Lane and McClellan Avenue, starts at the end of the Wright's farm.

Q. Do you re-affirm that some part of the Lalor tract is not as good as the lowland of the White City tract? A. Yes, sir, some of it; they have some low meadow land there that would not be as good.

Q. How much low meadow land have they? A. That I could not answer.

Q. Do you know of a sale of two lots facing on

Broad Street next to the White City Hotel, which was sold to the White City Hotel people for $600 each? A. Only what I heard.

By the Court:

Q. Did you hear it? A. I heard it from Mr. Fury.

Further recross:

Q. Whom did you hear sold the lot? A. James F. Rusling, I think, was the owner.

Q. Were you instrumental in effecting the sale? A. No, sir.

By the Court:

Q. How big was the lot? A. 25 by 125.

Further recross:

Q. Then, Mr. James F. Rusling owns many other lots on this tract at the present time, dosen't he? A. Yes, sir.

Q. And you would regard his valuation which he placed on lots at the time when he made sale of the lots, as a fair estimate of the value of the lots? A. Sometimes he would be—

Q. You never knew James F. Rusling to give anything away, did you? A. Not much; he never gave me nothing.

Mr. Dickinson: I want to offer in evidence the various papers that were marked here for identification; two of them were agreements—one made between the White City Company and the so-called promoters, whereby the stock was given for the property—the other was a trust agreement executed by the so-called promoters for the others who got the common stock, back to the company, whereby they agreed to turn back so much

stock to be given out as bonus; there were two such agreements.

The Court: There were other documents identified and offered.

Mr. Dickinson: I think they were all marked for identification by Mr. Backes.

Mr. Backes: Whatever I marked were offered in evidence.

The Court: They will be received in evidence.

Mr. Dickinson: I offer all papers which I had marked.

Mr. Backes: My memory does not now serve me, and I object to that offer.

The Court: If objection is made, you will be driven to specify every paper that you propose to offer in evidence; if there is any embarrassment about it, I would let you look through the record, and you may offer them next Tuesday.

Mr. Backes: Counsel may drop me a note as to what he wants to offer.

The Court: If there is anything omitted, bring it to the attention of Mr. Backes, and if he does not object it can go in, and if he does object, you can thresh it out before me.

Defendant Rests.

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## Rebuttal.

WALTER M. DICKINSON, recalled in rebuttal, testified as follows:

Direct examination by Mr. Backes:

Q. As President of the Trenton White City Company, did you ever execute any agreement on behalf of that company with the Interstate Railway Com-

pany, or the Trenton Street Railway Company, or any of the companies operating the line of railway known as "The Trenton Street Railway," for the supplying by that company of electric lighting and electric lights to the Trenton White City Company? A. I don't remember.

Q. You have no recollection at all as to that? A. I have a recollection of what the Railway Company promised us at that time, prior to the incorporation.

Q. I am limiting the question exclusively to after the White City came into existence, and I ask you whether you have any recollection at all of making such an agreement on behalf of the White City Company, binding the railroad and the White City Company?

Mr. Dickinson: Objected to as not relevant to the issue, what he did, what sort of a contract he made with the railroad company after the White City was formed. The issue is: what was the value of this property before it was turned over to the White City.

The Court: Yes, and included in the value of the property, probably, was the availability of the property to the company. It is proper; the objection is overruled.

A. I can only tell you in reference to that—we had such an arrangement with the railroad company, whether it was written or verbal, or in the letter from Mr. Rigg to some one of the promoters I don't know, but I do remember that the railroad company promised us a certain amount of light free of charge.

Q. Was there any formal agreement on the part of the railroad company to execute it to the corporation, namely, the White City Company? A. I don't remember whether there was or not—there

either was or else there was a letter from Mr. Rigg stating as President of that company that they would do it.

Q. Such a letter is said to have existed between Mr. Rigg and the promoters; you don't know of any that was written after the formation of the company, do you? A. I don't know.

Q. Then, this is the fact, that your best recollection is that no such contract in writing was executed between the two corporations? A. I would not say whether there was or not; I was not on that part of the committee which attended to the lighting part.

Q. But you were the President of the corporation? A. Yes, sir.

Q. As such President, you have no recollection of signing, upon behalf of your company with the railroad company, such a contract? A. I might have, but I don't remember.

Q. When the present Receiver was appointed, and after he qualified, what papers did you turn over to him, you representing the White City Company, at that time, as its President? A. I remember Mr. Fury coming to my office and asking me what papers I had that might be of interest to him, and we had quite a bundle of papers in an elastic, in a drawer in the office, and we turned over those papers and handed him everything that he said he had any need for.

Q. You turned over all of the contracts? A. A lot of the contracts were destroyed, original contracts.

Q. You turned over to Mr. Fury all the contracts you then had? A. Yes, sir.

Q. You turned over to Mr. Fury a lease, didn't you? A. The lease was on file in the County Clerk's office.

Q. Didn't you turn that over to Mr. Fury at

the time? A. I might have, but I don't think I had it.

Q. And the contracts with the various concessionaires you turned over to him? A. Whatever we could find; whatever I thought that Mr. Fury wanted from me I gave to him.

Q. Who was in charge of the electric lighting at Broad Street Park, employed by you? A. There were several different ones at different times. One man was unsatisfactory and we discharged him, I don't remember his name.

Q. Do you know what sources of supply of electricity the White City Company had? A. Just in a general way I know.

Q. Have you no specific knowledge? A. I know that the Public Service Corporation ran a separate line to the White City Company, and that the Trenton Street Railway Company supplied us with electric current.

Q. Were their cables underground? A. I don't think so; I think they were run on poles.

Q. Do you know whether the distributing point of electricity in the park, from both of these sources, was at the same place? A. I suppose that the distributing point of the Public Service Corporation was right outside of the gate of the White City; I think they had a transformer there.

Q. Where was the distributing point of the light furnished by the railroad company? A. I don't know.

Q. Do you know to what lamps the electricity of the railroad company was conveyed? A. Only from what I am told; I would not know by looking at them which current it was.

Q. Told by whom? A. I don't remember, Mr. Hurley, I think, or somebody connected with the company—all the lights around the lake.

Q. They were not more than twenty, were they? A. I don't know, Mr. Backes.

Q. Well, the power for lighting furnished by the Railway Company was to lights that surrounded the lake only? A. I believe the power from the Railroad Company also ran the merry-go-round.

Q. I said the power for lights were for lamps that were around the lake? A. There were several other lamps, maybe three or four, in different parts of the park; I think back of the merry-go-round there was a lamp in a dark spot.

The Court: What is the object of this?

Mr. Backes: I am rebutting Mr. Sadler's testimony, that the contract made, as he claims it was made, which was testified to, between the Railroad Company and the Trenton White City Company, was worth $3100 a year, or for the ten years, $31,600, and he based his calculation upon 75 lamps furnished by this company during the season, and 15 lamps all the year round, and upon that based his calculation. Now, my information is, that there were not more than 20 lamps.

Mr. Dickinson: There is an expert witness here called by Mr. Backes.

The Court: I cannot deal with that, Mr. Dickinson. Proceed.

Q. You don't know the number of lights around the lake? A. No, sir.

Q. Do you know who put the lights—do you know who built your lighting system? A. Adams Electric Company, I believe; also, I think, the Public Service helped us very materially.

Q. Were there any more lights around the lake, other than those put up by the Adams Electric Company? A. I think there were lights there at the time we took the park over.

Q. Around the lake? A. Yes, sir.

Q. Arc lights? A. I think so; as I remember it, the Trenton Street Railway Company lit it up and charged an admission for people to skate there in the Winter time, and for that purpose it was necessary to light it.

Q. You said that the Railway Company also furnished the power to what contrivance? A. To run the merry-go-round, for awhile, anyway.

Q. What horse power capacity had the motor? A. I did know, at one time.

Q. Was it ten horse power? A. I don't know.

Q. Do you know of anyone who does know? A. I presume Mr. Adams, of the Adams Electric Company, might know, and Mr. Dentzell, who furnished the merry-go-round, might know.

Cross examination by Mr. Dickinson:

Q. Do you know Mr. Luptke of the Public Service Corporation? A. Yes, sir.

Q. Have you had any talk with him in reference to the lighting system laid by that company to the park, and the cost of installation, etc.? A. Yes, sir.

Q. Has he shown you any calculations corresponding, and other data, in reference thereto? A. Yes, sir.

Q. Do you remember what the total cost of installation of that plant was, as exhibited to you by Mr. Luptke?

Mr. Backes: Objected to, that is not a cross examination.

The Court: I will admit it.

Mr. Backes: I also object to it as hearsay.

The Court: Objection overruled. Here was the President of a company dealing with a man who represented the lighting company that made an installation there; I think he is entitled to state what figures were given him.

Q. Were these figures you say today submitted at the time the plant was installed? A. I believe they were; Mr. Luptke had gone into the matter most thoroughly with this park and other parks, for his own purposes.

Q. State now what was the total estimate of that calculation, as shown to you by Mr. Luptke.

Mr. Backes: When?

Mr. Dickinson: This morning.

Mr. Backes: Objected to.

The Court: That objection is valid.

Q. Do you recollect whether or not any estimate was shown you or told you, or communicated to you, at or about the time of the formation of the White City Park? A. I do.

Q. Do you remember what the cost or estimate of the installation of that plant as then made to you, was? A. I was told it would cost the Public Service Corporation from ten to twelve thousand dollars.

Redirect examination by Mr. Backes:

Q. You spoke of a plant, what had you reference to? A. The feed wires that were necessary to be run from the power station of the Public Service Corporation direct to the White City Company, in order to supply light and power. It was a very expensive operation.

Mr. Backes: I ask that that be stricken out.

The Court: His assertion that it would be very expensive will be struck out.

MR. PAUL LUPTKE, sworn in rebuttal, testified as follows:

Direct examination by Mr. Backes:

Q. Where are you employed? A. Germany.

Q. I ask you where you are employed? A. With the Public Service Electric Company.

Q. How long have you been employed by that company? A. Since its organization.

Q. Can you hear me? A. Yes, sir.

Q. In what capacity are you employed by the company? A. As Superintendent of the Southern Division.

Q. Are you located at Trenton for your company? A. I live at Trenton; our main office is at Camden.

Q. Has the company a plant in Trenton? A. Yes, sir.

Q. Where is that located? A. 19 Chauncey Street.

Q. Did the company in 1907 build a feed wire from this plant down to White City? A. It did.

Q. What did that consist of; what did that operation consist of? A. It consisted of erecting a line of 2/20 copper wires.

Q. Birmingham gauge, I suppose? A. No, sir, Brown and Sharp.

Q. What course did you take from your plant to the White City? A. On leaving the plant, through the alley to Broad Street, all the way down to the White City.

Q. Where did it end at White City? A. Right at the gate of the White City Park.

Q. Is that line now in use? A. It is.

Q. For what purpose? A. For furnishing light.

Q. Where? A. Well, I don't know; I think there is light furnished at the White City Park

at the present time, and to various customers in the neighborhood.

Q. Is there any light supplied from that line to customers living outside of White City Park? A. It does at present.

Q. It has been tapped all along, hasn't it? A. No, sir.

Q. How many taps have been put in from the point of the factory down to White City? A. I could not say.

Q. Before you put this line from the factory down to White City, was Broad Street Park illuminated by electricity by the Public Service Corporation? A. No, sir.

Q. What was the nearest point illuminated by electricity by the Public Service Corporation? A. I could not say that.

Q. You have no idea at all? A. Well, I think it was somewheres beyond the city limits, just the exact point I cannot tell you now.

Q. I mean the point that you last referred to; was that furnished by cables that went out of the plant—that ran from the plant? A. I don't understand your question.

Q. Probably I don't make it very clear to you. I say, was that point illuminated—at a point in the neighborhood of Broad Street Park, outside of the city line? A. Yes, sir.

Q. Was that furnished by direct wires from the plant for that purpose? A. Certainly; it could not be obtained in any other way.

Q. For that purpose only, I say, for the lighting in that immediate vicinity to which you have reference? A. Every set of wires running out of the plant takes in a certain definite territory—

Q. Where is the territory nearest to White City that was lighted by electricity, furnished by the Public Service Corporation in January, February

and March, of 1907? A. There was a feeder from the station to a certain territory on South Broad Street, which took in this particular part nearest to the White City.

Q. But the territory that was covered by Broad Street Park was not lighted by the Public Service Corporation at that time? A. No, sir.

Q. And this feed wire that you extended in March or thereabouts, of 1907, was intended to supply the territory covered by Broad Street Park? A. No, sir; it was not.

Q. It was usable, however, for that purpose, wasn't it? A. Yes, sir.

Q. And it has since been used for that purpose, hasn't it? A. Partly, yes, sir.

Q. Have you any other feed wires furnishing light to the territory covered by Broad Street Park? A. No, sir; when I say "no," I mean not for commercial lighting. The street lighting furnished at Broad Street Park from another feeder —that is, in the Broad Street Park section of Hamilton Township.

Q. You distinguished your lighting by calling some "commercial lighting," and what do you call others? A. Street lighting.

Q. Well, in March, 1907, had you feed wires to furnish municipal lighting in the Broad Street Park territory of Hamilton Township? A. I think we had at the time, yes, sir.

Q. Is the cable from the supply line that you put in in March or thereabouts, of 1907, now being used for commercial or municipal lighting? A. It is used for commercial lighting.

Q. And when that was put down in March, or thereabout, of 1907, it was well known to you that it could be at any time used for commercial lighting at any part along the line or along the highway in which it was located; is not that so?

A. The wire, if it be not required for the White City any more, it certainly would be used for something else in preference to running additional wires.

Cross examination by Mr. Dickinson:

Q. Mr. Luptke, in March, 1907, when the White City Company requested your company to furnish it with light, you could not furnish it with light with the cables and appliances you then had, could you? A. We certainly could not for the amount required at the White City.

Q. Then you built this special cable or feed wire to the White City for the express purpose of furnishing light requested by the White City, didn't you? A. Yes, sir.

Q. Then, the cost incurred in March, 1907, for extending your plant, was incurred exclusively, wasn't it, at the instance of the White City people? A. It was, at that time, yes, sir.

Q. Do you know how much that extension cost? A. About $10,000.

By the Court:

Q. Mr. Luptke, this feed wire that you ran down there to Broad Street Park, carried a certain number to supply and feed a certain amount of lights, I presume. A. Yes, sir.

Q. Not an indefinite number? A. No, sir; not by any means.

Q. Was it laid with reference to size and carrying power for what lights were to be supplied to the White City Park? A. There were considerable negotiations as to the amount of light required at the White City, and after the amount had been determined upon, the size of the feed wire was figured out according to the amount required.

Redirect examination by Mr. Backes:

Q. What is the usual size of feed wires?

Mr. Dickinson: Objected to.

A. It depends entirely on the amount of light required at the end of it and the distance from the power station to that place.

Q. What is the maximum that 2/0 wire will carry, 2/0 copper? A. I cannot answer that question until you tell me how far it is to be carried and at what loss.

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CHARLES G. COOK, sworn in rebuttal, testitfied as follows.

Direct examination by Mr. Backes:

Q. You are employed by the Public Service Corporation of Trenton? A. Yes, sir.

Q. In what capacity? A. As their agent or legal representative here.

Q. Did the Public Service Corporation in 1907-1908-1909, furnish electricity to the defendant in this case at its park? A. It did.

Q. To how many lamps, do you know? A. I think they furnished energy for both lamps and power in an equivalent of 5,000 or thereabouts, 16 candle power lamps.

Q. Arcs? A. No, sir; I am speaking now of 16 candle power carbon filament.

Q. Any arc lamps? A. Not to my knowledge.

Q. Did they have a contract with the company? A. Yes, sir.

Q. Have you it with you? A. I have either it or a copy of it; I am not sure whether it is the original or not; I see it is stamped "a copy."

Mr. Dickinson: What is the date of that paper?

Mr. Backes: The 30th of April, 1907.

Q. Did you understand my question whether you furnished energy for use in arc lamps? A. I did understand your question, but I am unable to say whether we did or not.

By the Court:

Q. Would it make any difference whether the light was shown in arc lamps or other lamps? A. There is what we call an arc circle, and the commercial lighting circle, and the arc circle is more like the street lamps, while the commercial circle is for incandescent lights.

Q. Would one kind or other require a different sort of feed wire running from the plant? A. I am not able to answer that question; I am not sufficiently practical.

Q. It certainly would require some different appliances right at the light, I suppose. A. Yes.

Further direct:

Q. Can you tell me what amount of energy an arc lamp will use per hour? A. I cannot, sir; that will depend upon its kind or size, etc.

No Cross Examination.

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AUSTIN WOLVERTON, sworn in rebuttal, testified as follows:

Direct examination by Mr. Backes:

Q. Were you employed by the White City Company? A. Yes, sir.

Q. During 1907? A. No, sir.

Q. During 1908? A. Yes, sir.

Q. What did you do for the White City? A. I was the company's electrician.

Q. What did you do as the electrician? A. I took care of all their electric work, that is, their

arc lamps, and any necessary wiring that had to be done from time to time.

Q. Now, tell me when you were employed, if, in fact, you were employed by the company, in that capacity? A. When I commenced work for them?

Q. Yes. A. Two weeks after the park opened the second season.

Q. And you worked there the second season? A. Yes, sir.

Q. How about the third season? A. And all of the third season until the Receiver took hold, and then one week for him.

Q. Do you know from what sources the electricity was furnished? A. Yes, sir.

Q. By whom was it furnished? A. The Public Service and the Trenton Street Railway Company.

Q. Do you know how many lamps were supplied by the Public Service? A. Yes, sir.

Q. Do you know how many lamps were supplied by the Trenton Street Railway Company? A. Yes, sir.

Q. Tell me how many lamps were furnished by the Trenton Street Railway Company? A. Twenty —they were located around the lake—they were arc lamps.

Q. From what facts are you able now to say that they furnished but the twenty? A. Because I renewed the carbons in them so often.

Q. Who had the lighting and turning off the lights at night? A. I did.

Q. Where was the distributing point for the lights and for the electricity furnished by the railroad company—where was that located? A. At the park entrance.

Q. And where was the distributing point for

the power furnished by the Public Service? A. At the park entrance.

Q. Was there any communication at all between the wires of the Public Service and those of the Railroad Company after they reached the White City Park, in furnishing the lights to each different lamp, or were they separate? A. They were separate.

Q. What method did you pursue in lighting the twenty lamps around the park, how did you do that? A. One switch.

Q. Did one switch light the twenty? A. Yes, sir.

Q. Do you know as a fact that that was electricity furnished by the trolley line? A. Yes, sir.

Q. Do you know whether the electricity furnished by the trolley line went to any other point except to those twenty lamps? A. Yes, sir—to the circle swing.

Q. What did it furnish at the circle swing? A. Power for a 10 horse power motor.

Q. Was there any electricity for lighting? A. No, sir.

Q. That motor operated the circle swing, did it? A. Yes, sir.

Q. How many lights were supplied by electricity furnished by the Public Service? A. Arc lights?

Q. Yes. A. 21.

Q. How about the other lights? A. Incandescent lights?

Q. Yes. A. Well, there was not any number that I could set a real number of—they were changed from time to time in decorating the place, and there was different candle power, from four up to thirty-two's; I could give you an approximate amount—in the neighborhood of 3,500 in-

candescent lamps, of these various powers between four and thirty-two.

Q. Do you recall being at the White City Park during the year 1907? A. Yes, sir.

Q. Did you see there was any change in the supply of light by arc lights, between 1907 and 1908, in number? A. No change of arcs.

Q. No change in number? A. No, sir.

Q. Either those furnished by the railroad company or those furnished by the Public Service? A. No, sir; there was a place left for some but they were never used.

Q. Where was that? A. Running up the hill from the lake, running north—there were places left for arc lamps on the trolley company's line, but they were never put up.

Q. How much in space? A. The pole line ran up that way for the space of possibly 300 feet, to accommodate five lamps, but they were never used.

Q. What time of night was it your custom to turn on the arc light? A. At dusk, about eight o'clock.

Q. And they were continued for how long? A. Until eleven o'clock.

Q. The 20 lights around the lake? A. Yes, sir.

Q. And beginning at what season of the year? A. On Decoration Day, when the park opened.

Q. And terminated when? A. When the park closed on Labor Day.

Q. Do you know what kind of arc lights these were that were around the lake, the electricity for which was furnished by the railroad company? A. Yes, sir.

Q. Do you know what electricity they consumed per hour? A. No, sir.

Q. Have you studied electricity? A. Yes, sir.

Q. Are there no standards by which the consumption is fixed per hour? A. There is a standard that I cannot just tell you now, on the 500 voltage, that is the trolley company's line.

Q. You don't know how many watts they consume per hour, eh? A. No, sir.

Q. Is there any way that you can ascertain that for me; is there any way that you can calculate it for me? A. I could find out.

The Court: Is it essential?

Mr. Backes: Yes, your Honor, it is. I can get an electrician to give me the figures.

Q. Don't you know that one of those lamps consumed 660 watts per hour?

Mr. Dickinson: Objected to.

The Court: Objection sustained.

Q. Have you any means of finding out? A. Yes, sir.

Q. How? A. From my book at home.

Q. Have you forgotten? A. Yes, sir, I have read it, but I have forgotten.

Q. If figures were given to you could you recall? A. No, sir, I don't believe that I could, not in that instance; I know the voltage of each and every lamp there, and the amperes, but how much it would consume in an hour I could not tell.

Q. Will you get that for us and have it here at two o'clock? A. Yes, sir.

Q. Do you know what quantity of current a 10 horse power motor consumes per hour? A. That is practically the same thing, Mr. Backes.

Q. Is not that more? A. It would use more

current than the lamp, but it is figured practically the same way.

Mr. Backes: Then I will postpone my examination of this witness further on that subject until two o'clock.

Cross examination by Mr. Dickinson:

Q. You say that you turned on these arc lights at eight o'clock and turned them off at eleven o'clock? A. Yes, sir.

Q. That was on Decoration Day, wasn't it, about Decoration Day when the park opened? A. Yes, sir.

Q. As a matter of fact, you turned on the lights much earlier than eight o'clock towards the latter part of July and August, didn't you? A. No, sir.

Q. Don't you know that the days are much shorter in the latter part of July and August than they are in May? A. Yes; I gave that as an average; when they were longer I turned them on later, possibly at 8:30.

Q. Don't you know that there were many lights on the circle swing, the power for which was furnished by the street railway company? A. I know that there were many lights on there where power was not furnished by the street railway company.

Q. Are you sure about that? A. I am positive.

Q. How are you sure? A. Because there was a switchboard with two separate lines on—the incandescent line furnished by the Public Service Corporation, and a line furnished by the Trenton Street Railway Company.

Q. Did you ever trace these feed wires from the switchboard to the circle swing? A. Yes, sir.

Q. Do you know that the merry-go-round was run by a current supplied by the trolley com-

pany for a time? A. Not in my time—not in the two last seasons that I was there.

Q. Were the feed wires and appliances of the street railway company, in the park, sufficient to furnish the park with 75 arc lights? A. I think it would be—without the motor—

Q. What do you mean by that? A. Without the motor at the circle swing.

By the Court:

Q. You mean to say that if they did not have that 10 horse power motor there to draw that much current, enough current would have been sent in to the park, on the feed wires, to have supplied 75 arc lights? A. Yes, sir.

Q. How many lights could have been lighted from the feed wire if the circle swing was in operation and drawing sufficient current to generate 10 horse power? A. Possibly 40.

Further cross:

Q. It could have been arranged to use power to turn the motor from the current supplied by the Public Service Corporation, couldn't it? A. The circle swing—

Q. Yes. A. Yes, sir.

Q. Do you know whether the casino was lighted at any time by the Street Railway Company? A. The casino had ten night lights into it, furnished by the railroad company.

Q. Did they burn all night? A. Yes, sir, from eleven o'clock until daybreak.

Q. Those were in addition to the twenty lights? A. They were not arc lights—they were small incandescent lights, five in—

By the Court:

Q. I do not see the object of burning them all

night. A. For protection to the building; they had a night watchman and he had to go round to these various places.

Q. Were not there other arc lights than those you have mentioned, scattered about the park, which were supplied with current by the railroad company? A. No, sir.

Q. Do you know what current operated the chute-the-chute device? A. Yes, sir, the Public Service.

Redirect examination by Mr. Backes:

Q. Was there any meter that measured the electricity that was furnished at the circle swing for lighting? A. There was no meter on the light.

Q. You said that it was a feed wire of the Public Service Corporation that lighted the circle swing; now, I ask you whether there was any meter to measure the elecricity furnished to those lights? A. No, sir, the park people sold the light to the concessionaire that owned the circle swing, but it was not measured by a meter.

Q. How was the current measured that went into the White City from the Public Service? A. By a meter.

Q. Was the current that was furnished for lighting the circle swing measured directly or indirectly in any manner? A. It was measured so much per lamp.

Q. To the White City by the Public Service? A. No, sir,—the Public Service sold the entire amount of current from one meter to the White City Company.

Q. It was measured in bulk before distribution? A. Yes, sir.

Q. You get me those figures by two o'clock. A. Yes, sir.

BENJAMIN N. B. MILLER, sworn in rebuttal, testified as follows:

Direct examination by Mr. Backes:

Q. What is your business? A. Land developer.

Q. Have you developed land in Trenton? A. Three tracts.

Q. Over what period of time? A. Four years.

Q. Where are they located? A. Hamilton Avenue beyond Olden,—another on Chambers Street beyond Hamilton Avenue, extending over to Liberty, back of St. Francis Hospital; the third of them known as "Lalor Park tract," located or bounded by Grand and Liberty,—Lalor and the rear of Beatty.

Q. That is right close to the tract of land known as the White City Park tract? A. Not exactly,—directly opposite the tract known as Lalor Park tract is the tract of land owned now by the Trenton Realty Company, and also the Lalor farm; then the White City Park comes beyond that.

Q. Of what acreage is the Lalor tract that you have developed? A. About 26 acres.

Q. And when was that developed by you? A. Last year.

Q. What was the acreage of the tract which you developed on Chambers Street? A. About 40 acres.

Q. When was that developed by you? A. The year before last.

Q. And the other tract? A. The other tract was developed the year before that.

Q. And that was located where—the first one? A. Hamilton Avenue, the other side of Olden.

Q. How far is that away from the White City Park tract? A. That is quite a distance away; that is located directly out on Hamilton Avenue.

Q. How far is White City Park from the City Hall? A. That lies off in another direction; it is about the same distance from the City Hall.

Q. The Lalor tract lies in the same direction? A. Yes, sir.

Q. Do you know where the DeCou tract is? A. Directly opposite the Broad Street Park.

Q. Your business is the buying up of tracts close to city lines, and dividing them into building lots and selling them? A. Entirely so.

Q. Are you acquainted with a tract which was formerly the property of the White City Company? A. Yes, sir.

Q. How long have you known that? A. For four years.

Q. Is that tract available for building lot purposes? A. A small portion of it is.

Q. Which portion? A. The portion fronting on McClellan Avenue.

Q. Did you go over to visit the tract lately? A. Yes, sir.

Q. At whose request? A. At your request.

Q. I am showing you now a map of Broad Street Park, which, within the red lines, includes the property of the Trenton White City Company; now, you may tell me, looking at that map, which of these lots are available for building purposes? A. This entire front here is available.

Q. Between the red lines? A. Yes, sir, bounded by Sewell and Buchanan Avenues—this part in here is low, meaning the lots on the west side of McClellan Avenue, Buchanan and Sewell Avenues, and running about 400 feet easterly; then it levels up, and the building lots here would be classed as very fair.

Q. That is, those further east down to Buchanan Avenue? A. Yes, sir.

Q. Now, what do you say as to the lots on

Randall Avenue? A. Those would be fair down within 400 feet of Sewell Avenue.

Q. Well, any other land that is available for building purposes? A. There is what might be called a bluff, what is called Randall Avenue, which would make a very pretty spot for bungalows.

Q. Have you overlooked Overlook Avenue? A. The line comes down here 214 feet to Randall Avenue, running down Buchanan Avenue, and you go in here and strike this—let me see—here is a little line runs out here—

Q. You will have to indicate. A. Runs down here 160 feet.

Q. Runs down Randall Avenue, the north side of Randall Avenue? A. Yes, sir.

Q. How many feet? A. 160 feet.

Q. Now, at that point, what? A. At that point there is a hollow comes in, then the ground extends out by what I should judge had been a band-stand; then for 483 feet there is a very pretty bluff, which I should judge was 40 feet above the water. That, in my mind, would be a very pretty spot for bungalows.

Q. And the land could be cut up in building lots for bungalo purposes A. I would consider a bungalow lot a 50 foot lot.

Q. Now, there are some lowlands there—did you also go on that? A. I went over this lowland where it was possible to get.

Q. Was any of the lowland available for building purposes? A. I should not judge so from its present condition and from what I have known of it.

Q. What is its condition, and what has been its condition, as you have known it for the last four years? A. It would be classed low meadow land—too low for building purposes, and it would have

a questionable value for farming purposes; parts of it overflow in the early spring at high water.

Q. Overflow from where? A. The effect of water backing up on to it from the creek that backs up there.

By the Court:

Q. You have seen water on it in the Spring of the year? A. I have been through there; two years ago I went through there and it was then very wet and there was evidence of water being on there.

Q. What time did you go? A. In the early Spring.

Further direct:

Q. How much lower is that lowland than the upland? A. Between 37 and 40 feet depression.

Q. Do you know the value of land in that neighborhood? A. I know what they ask for land.

Mr. Dickinson: Before the witness testifies, I want an opportunity to cross examine him.

The Court: If he is asked any specific question concerning value, you may cross examine him.

A. I know what they ask for land there.

Q. Do you know what lots are selling for? A. Yes, sir.

Q. And how did you gather that knowledge? A. From inquiry.

Q. In the carrying on of your business? A. Yes, sir, general knowledge.

Q. And you have had that knowledge for how long? A. Four years.

Q. Did you sell all of the lots on the Lalor tract? A. Yes, sir, 480 lots sold by me.

Q. Do you know the prices realized there? A. Yes, sir, I know the value of every lot.

Q. And so with the lots on the other tracts? A. Yes, sir.

Q. How many lots within those tracts? A. 480 on the Lalor Park tract, and 620 on the Chambers Street Park tract, as I recollect it, and the third, 237.

Q. And the prices received for all of those you know, do you? A. Yes, sir.

Q. Was there any cost involved in exploiting farm lands and cutting them up into building lots and selling them? A. Yes, sir.

Q. What percentage is it; what percentage is calculated as the cost of developing tracts in this neighborhood? A. The Hamilton Avenue tract, I think the percentage was 23%.

Q. Of what? A. For developing and selling it.

Q. 23% of what? A. Of the gross receipts—on the Lalor Park, 21%; on the Chambers Street Park tract, I do not think I had better quote, because I am not certain about that.

Q. How was the money expended? A. For the laying of sidewalks, making of streets, cleaning up the land, filling up holes, etc., then the advertising and selling them.

Q. Where is your office located? A. 203 East State Street.

Q. How long has it been there? A. For three years.

Q. Where was it before? A. Broad Street Bank Building.

Q. In what name do you— A. New England Land Company.

Q. What relation do you bear to that company? A. Vice-President and General Manager.

Mr. Backes: I am now ready to ask the question of values.

The Court: Ask yuur question and don't answer it until I rule on it.

Q. Have you formed an opinion, and have you an opinion of the value of the tract of land formerly belonging to the White City Company, as shown upon this map? A. You mean of the entire tract?

Q. Yes. A. Yes, sir.

Q. Have you formed an opinion of the value of these lands separating them into building lots, and the lowlands? A. Not the lowlands; I have formed an opinion as to the value of the highlands, cut into building lots.

Q. Have you formed an opinion as to the value of the lowlands? A. Yes, sir.

Q. What, in your opinion, was the value of the lands known as the uplands, in the early part of the year 1907, the value of the remaining lands at the same time?

Mr. Dickinson: Objected to.

The Court: We will argue the objection at two o'clock.

Recess to 2 P. M.

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After Recess.

BENJAMIN N. B. MILLER resumes the witness stand.

Cross examination by Mr. Dickinson:

Q. With whom are you associated in business? A. Edgar C. Lynn, of Hartford, Connecticut.

Q. How long have you been associated with him in business? A. He has had money invested for me for eight years, in which time I have been interested in the properties that he has been purchasing and cutting up for development purposes, and I have been working directly with him for the last three years.

Q. But you testified you had been engaged in the real estate business here in Trenton for four years, didn't you? A. No, sir—my money was interested in the Hamilton Avenue tract; the properties which Mr. Lynn bought I had a money interest in.

Q. You never took an active part in either developing or selling those lands? A. Not on Hamilton Avenue.

Q. How long have you actually been engaged in the business of managing real estate in the City of Trenton? A. Two years.

Q. Prior to that time you had no special knowledge as a real estate man of the value of land in Trenton, did you? A. My knowledge was acquired as one who had been interested in real estate for a number of years.

Q. In other words, you put the money in these things that Mr. Lynn was interested in? A. Yes, sir.

Q. But you had no active management? A. That is right; my knowledge was that of looking at tracts and finding the value of them and deciding whether I wanted to go in or not.

Q. Then you just took up active management of Mr. Lynn's developments in this City about two years ago? A. Yes, sir.

Q. Had you any experience before that time which would qualify you in obtaining a knowledge of land in Trenton? A. In 1907 I came here to look after some interests of Mr. Lynn; he thought at that time some things were going wrong, and I came here and was here a good deal of the Summer of 1907, and I looked up properties at that time, and I met you about a year later.

Q. What tracts have you been actively engaged in developing for Mr. Lynn in the last two years? A. The Chambers Street Park tract and the Lalor Park tract.

Q. Would the value of lots in the Chambers Street tract furnish you with any information or opinion as to the value of lots in this Broad Street Park tract? A. Only in the business you become familiar with the value of lots wherever lots are selling.

Q. When was the Lalor Street tract built? A. Opened a year ago last August.

Q. How many lots have you sold on the Lalor Street tract? A. 480.

Q. Are you now connected with Mr. Lynn in business; haven't you had some dispute with him as to the sale of those lots on the Lalor Street tract? A I have.

Q. Haven't you lately suspended the sale of lots on that tract? A. No, sir, the lots have all been sold. We have what they call "come-backs" —that is, people who have abandoned their contracts.

Q. What is the scheme by which you sold lots in the Lalor Street tract? A. We sold by private sale and auction both.

Q. Did you sell on the installment plan? A. Yes, sir, and for cash.

Q. Can you say that the value of a lot of land sold on the instalment plan will give you an increase on the value of a lot sold outright for cash? A. We make a discount of 5% for cash; buying by instalments they pay 6% interest on their contracts.

Q. You testified it cost from 21% to 23% of the gross value of a tract of land, to improve it?

Mr. Backes: Objected to.

The Court: Objection sustained.

Q. Did you make money on the development of that Lalor Street tract? A. Yes, sir.

Q. Isn't it true that the price you paid for the Lalor Street tract was greater than the price you got back for the lots as sold by you?

Mr Backes: Objected to as not cross examination, incompetent, irrelevant and immaterial to whatever issue may be here.

The Court: I think not, because this gentleman asserts a knowledge of real estate values by reason of operations here, and now, if operations were not successful financially, that certainly would go to his knowledge generally, to the value of his knowledge; I will admit the question.

Q. (Question read.) A. No, sir, we received a great deal more money than we paid for them.

Q. Including the cost of improvement and selling? A. Yes, sir.

Q. Isn't it true that you paid for the Lalor Street tract at the average price of $169.00 a lot, and sold those lots for the average price of $139.00? A. Not one particle of that statement is true.

Q. What was your occupation before you took up the active management of real estate? A. For one Summer I came here and acted as a salesman under Henry J. Miller, to find out the discrepancies of the company; prior to that I was President of the Noppel Pump Company, of Hartford, Connecticut.

Q. You have not formed any opinion, have you, of the value of the lowland owned by the White City? A. I have formed an opinion of the value of it.

Q. Have you known of any land similar to that, which has been bought and sold in Trenton? A. No, sir, I have not.

Q. Then the only experience which you have

had upon which you can base your opinion as to the value of these lots, is derived from your two years' experience with the Chambers Street tract and the Lalor Street tract? A. I think I might qualify that by saying that we not only sell in Trenton, but we sell in various sections of the United States, and are selling and buying all the time, so that my experience would not be governed alone by the tract here at Trenton.

The Court: But your experience in other places outside of Trenton would not be of value to us here in this case.

The Witness: My interest in real estate has given me a general idea of values.

Q. Your interest in the Chambers Street tract and the Lalor Street tract naturally makes you a rival in business to the Broad Street Park tract, doesn't it? A. Not by any means.

Q. To whom have you sold any lots on the Lalor Street tract? A. They are mostly Polish and Hungarian and Slavish people, and as to their names, it is almost impossible for me to pronounce them; I could give you a list of those names if you care to have them.

Q. You say you sold almost exclusively to Polish people? A. A great many Hebrew people.

Q. The development then, that you are interested in, with the Lalor Street tract, is a very low class of development, isn't it? A. No, sir, the value of the land is, I should consider, high, because of its close proximity to the factory life.

Q. It is a low class of development, isn't it? A. The better class of Polish people could not be considered a low class of people.

Q. It is a much cheaper development, isn't it, than the Broad Street Park class? A. I would not consider it so.

Q. The character of the houses is much cheaper? A. No, sir, I would not consider it so.

Q. Do you mean to say that the Lalor Street tract, if developed almost exclusively for Polish people, would be as high class a development as the broad Street Park tract? A. If I can qualify the statement so as to make that clearer; the houses built at the Lalor Park are built under the restrictions of the City Building Commission; at Broad Street Park they are beyond the pale of the City, therefore, they build as they please, and the class of houses I do not consider equal to those built under the building code.

Q. What is the size of the lots sold on the Lalor Street tract? A. 20 feet.

Q. That is smaller than the size of the lots on the Broad Street Park tract, isn't it? A. 25 feet on the Broad Street Park.

Q. What is the depth of the lots on the Lalor Street tract? A. 100 feet.

Mr. Dickinson: If your Honor please, I do not think that this witness is competent to express an opinion as to the value of this land. In the first place, he has only been actively engaged in the sale and management of real estate in the City of Trenton for two years. His business before that time was not the real estate business, and it does not seem to me that a man who has only been in Trenton, for two years, and developed two tracts of land, and admits that he has no way of forming an opinion as to this lowland, is competent to express an opinion. I think it is clear that he is not able to express an opinion as to the lowland here; he admits that.

The Court: I will hear you, Mr. Backes.

Mr. Backes argues.

The Court: The fact that Mr. Miller has operated only two years here would not, in and of itself, disqualify him. He might gain sufficient knowledge to testify as an expert witness after operating here for only a year, or, perhaps, a shorter time, if his operations during that time had been such as to impart to him a knowledge of the value of the particular property being inquired of. This witness has not shown that he has bought or sold any lots on this particluar tract, but, of course, after all, the locality does not exist in a particular tract around which imaginary lines are drawn, and sales more nearly to the very tract being inquired of are of greater value by way of showing what their real value is than operations involving the purchase and sale of tracts more remote. I confess myself, upon the whole matter, to be in a considerable state of dubiety as to whether or not this gentleman is competent to testify as an expert witness as to the value of this particular land. He is a very intelligent man, of course, and the knowledge that he has gained he well remembers, and if he had been an operator on this particular tract he would have been abundantly qualified to testify to its value. I am in doubt as to whether or not he is qualified to speak as an expert as to values there, and so I will follow the rule adopted on these trials, and that is, to receive the testimony, subject to the objection, and consider the objection afterwards when I come to consider the whole case. I may then entirely cast

aside the testimony, or I may, on the contrary, hold that it should stay in and be given such weight as the particular knowledge that the witness has acquired may bear relation to the values at this particular point. So the evidence will be received subject to objection, and considered hereafter.

Further direct examination by Mr. Backes:

Q. The previous question which the Court is now admitting, is this, Mr. Miller: What, in your opinion, was the value of the upland of the White City Company, as shown within the red lines on the map before you, as of the months of January, February and March of 1907, and the value of the lowland as of the same time? A. I should place the average value of the land between Sewell Avenue and Buchanan Avenue, facing upon McClellan Avenue, and also facing upon Randall Avenue, which would be the land cut up into 25 foot lots, to be about $100 apiece; there are about 97 of these lots; then there are what I should call the bungalow lots on the bluff. Those lots, there are eleven of them, they would cut eleven, they would be worth about $300 apiece.

Q. And the lowland? A. I should place the value of that at about $100 an acre.

Q. These figures are your opinion of the value of the land as of the time that I have stated? A. Yes, sir.

Cross examination by Mr. Dickinson

Q. Have you sold any lots on the Lalor Street tract for $100 a piece? A. No, sir.

Q. Do you mean to say you consider the value of these lots less than the lots on the Lalor Street tract? A. Yes, sir.

Q. Notwithstanding the fact that they are 25 foot lot and the Lalor Street lots are only 20 feet? A. Yes, sir.

By the Court:

Q. You said you had not sold any Lalor Street lots for $100—have you sold them for more than that? A. $200 is the low price.

Further cross.

Q. What special reasons do you assign for the discrepancy in the value of those lots in these respective tracts? A. Lalor Park is located within ten minutes' walk of where 10,000 people are employed; there are schools, churches and everything —water, gas and everything, right in that section.

Q. How far is the Lalor Street tract developed by you, from this tract? A. I should judge three-quarters of a mile.

Q. Do you mean to say that because Broad Street Park is three-quarters of a mile further away from the center of population that the lots are worth only half as much? A. I do, yes, sir.

Q. How many acres are you taking into consideration in the lowland, when you say it is worth about $100 an acre? A. There are 82 acres, I think, in that lowland.

By the Court:

Q. Which tract is furthest away from the center of the town proper, say from the City Hall? A. White City.

Q. How much? A. Three-quarters of a mile.

Q. Three-quarters of a mile further from the City Hall than the Lalor tract? A. Yes, sir.

Q. Where is this center of population which you speak about, where there are schools and churches and water and gas within ten minutes' walk of where 10,000 people are employed? A. Well, the Buckthorn plant is possibly only two minutes' walk from the Lalor Street Park tract.

Q. Which locality is the most built up? A. The Lalor tract; they are built up densely there, almost every inter-space is covered, all that section through there.

Further cross:

Q. What would you say was the total valuation of the entire Broad Street tract, including the low-land and the highland? A. It would be practically impossible for me to give that, including the lake, because I have no idea of the value of the lake.

Q. Leave out the lake; you ought to know? A. About $20,000.

Q. Your calculation based on the total units of value amounts to $21,200; bearing in mind, what do you say is the total valuation? A. I should judge that would be about right.

Q. Do you know of any lands similar to the White City lowland, that has been sold for $100 an acre? A. No, sir, I do not—not about here.

Q. Do you know of any lots in the White City Park that have sold for $100 apiece? A. I did not understand that any land had been sold in the Trenton White City Park tract.

Q. Do you know of any lots that have been sold directly opposite the land in the White City Park tract for $100? A. I saw some lots yesterday at

Schiller Avenue that could be purchased for $125, and the gentleman thought $100 a lot.

Q. From whom did you get this information? A. From Mr. Lanning, a contractor and builder.

Q. You went out there for the purpose of finding some cheap lots, didn't you? A. No, sir.

Q. You did go out there, however, at the instance of Mr. Backes to look over this land? A. I went out at his request, without any knowledge as to what it was to be used for.

Q. Do you mean to say you had no knowledge or instruction as to the value that you would place upon those lots? A. Had I known what the information was to be used for, I should have refused to have gone; I had no information at all.

Q. Then, I understand you are an unwilling witness? A. I am placed in a position that I don't care to be placed in; I am not desirous of being a witness in a case.

Q. You were never called upon before to express an opinion as to the value of any lots in Broad Street Park, were you? A. No, sir.

Q. You never, before yesterday, considered any of the elements of value of any of that land? A. Yes, sir, as an investor buying tracts I have gone all over that section there, getting the price and the value of lands in there with the idea of developing it.

Q. Did you ever inquire before as to the value of any of the lots in Broad Street Park? A. Yes, sir, I have, from Mr. Rusling.

Q. When? A. Last year.

Q. What were the prices he gave to you? A. He did not give me a price, except he said, "If you go out there and look it over I can make you prices that will be of value to you to develop.

Q. Didn't he intimate what prices he placed upon them? A. He did not tell me what prices he would make.

Q. What did you gather from the conversation— A. I gathered from the conversation, that I could get them for less than $100 a lot.

Q. Were you not in this Court room here the last day of this trial, when Mr. Thompson was giving testimony? A. No, sir.

By the Court:

Q. You have been here before? A. No, sir, the only time I have been in this court room was during the trial of a cause concerning some land in Cranbury, which was tried in this court room.

Further cross.

Q. You were not here when Mr. Gibbs testified? A. Yes, sir, I was summoned to appear at 10:30 and I have been here ever since.

Q. Do you know of any offer that was lately made for the Lalor tract, for the entire tract? A. It was reported to me by a number of people, that the Roeblings had offered $150,000; I immediately put it up to Mr. Lalor, and he said the Roebling Company had never made an offer, nor had they made an offer to the Roebling Company.

Q. Did anyone else, to your knowledge, make an offer to the Lalors of that or any other sum? A. No, sir, not to my knowledge; we have carried in mind the fact that we would develop the other part of the property—nothing definite had been settled.

Q. Had you and Mr. Lalor discussed a price at which he would sell that land? A. No, sir.

Q. Do you mean to say, that in conversation with Mr. Lalor in respect to this Roebling offer and developing the land, that you never discussed with Mr. Lalor the price which he would take for that land? A. That is correct; I never discussed the price with him.

Q. Have you ever had any conversation with

any of the Lalors from which you derived any knowledge of what they would take for the land? A. I never pinned them down to a definite price

Q. Did you ever receive any intimation from them on that point? A. They wanted me to have it, but we were not ready.

Q. Do you know the price at which the Lalors held their property? A. No, sir, I know it must be exorbitant, because they have a high value of things.

Q. Do you know of any other tracts of land near the White City that are in the market? A. There is a tract of land that abuts the Pitman property, that I understand 40 acres can be bought for $3,200—less than $100 an acre.

Q. What is the matter with that property? A. If I can get hold of it, I will own it.

Q. Where is that located with respect to the Lalor tract? A. That is nearly a mile, I should judge further from the city.

By Mr. Backes:

Q. How near to the Broad Street Park? A. I should judge one-quarter of a mile.

Q. On the White Horse Road? A. It stands back a little from the road.

Q. On the White Horse Road? A. It stands a little from the road.

By the Court:

Q. Who is the owner? A. Some New York parties, Mr. Cliternon told me about it; I shall get the names from him.

By Mr. Backes:

Q. The White Horse Road is known as Broad Street now? A. Yes, sir, but this stands back a little ways from Broad Street, as I understand it.

AUSTIN WOLVERTON, resumes the witness stand.

Direct examination (continued) by Mr. Backes:

Q. Can you tell me now what quantity of watts are used by an arc lamp per hour? A. A commercial arc, such as was used by the White City Park, uses 660 watts per hour of 60 minutes.

Q. 20 lamps would consume then, 13,200 watts per hour at 60 minutes to the hour? A. Yes, sir.

Q. That is equal to what—13 1/5 kilo-watts? A. Yes, sir.

Q. And you say they burned three hours a night, from eight o'clock to eleven o'clock? A. Yes, sir.

Q. That would be 39 3/5 kilo-watts per night? A. Yes, sir.

Q. And how many nights of the month would you burn around the lake? A. Every night.

Q. Including Sundays? A. No, sir, not including Sundays.

Q. That is 111 kilo-watts per month; is that right?

Mr. Dickinson: Objected to as leading.

The Court: It may be verified, Mr. Dickinson, and it will save time; you can calculate it in your brief.

Q. Now, what quantity in watts does a 10 horse power motor consume? A. The quantity of watts per hour?

Q. Yes. A. 858 watts per horse power per hour of 60 minutes.

Q. Tell me how long was that operated; how long a day was that operated? A. Why, the swing was seldom operated in the afternoon.

Q. And at night? A. He did very little business on the swing, and at night I should imagine it would operate about two and a half hours; they

would average about two and a half hours a day.

Q. Including the afternoon and night? A. Yes, sir; that is all he used the circle swing.

Q. Did that run on Sunday? A. No, sir.

Q. That is also the subject of calculation? A. (No answer.)

By the Court:

Q. What is a "watt?" A. A thousand watts is a kilowatt; a kilowatt is an electrical hour.

Q. How many minutes is that? A. You cannot figure that by a minute on the clock.

Q. How many watts make a kilowatt? A. 1,000.

Q. What is a "watt?" A. It is an electrical measurement.

Mr. Backes: It is a measure of a horse power.

The Court: It is a measure of the power of electrical current.

Q. Can anyone describe this unit? A. They can be found, yes; but it is never used any further than that.

Q. Where can the authority be found? A. In the Public Library, they furnish books that would give it, Ohm's "Resistance" will tell you.

Cross examination by Mr. Dickinson:

Q. Have you calculated, Mr. Wolverton, what would be the cost of maintaining such an arc light at the White City Park for the length of time which you say one of those lights was burning, in the year? A. The cost of one arc light in the season that they used it at the park?

Q. Yes. A. (No answer.)

Q. Cannot you tell us? A. (witness figures it out and replies): One lamp would consume about $30 a year, that is $30 a season, from May to September, from Decoration Day to Labor Day.

Q. You are now only referring to the lights that burned from eight to eleven o'clock, are you not? A. Yes, sir, to the arc lights that were used every night down there.

Q. From eight to eleven o'clock? A. Yes, sir.

Q. Didn't I understand you to testify that there were some arc lights burned all night down there? A. No, sir.

Q. Were there not some incandescent lights, the power for which was furnished by the railroad company, that burned all night? A. The night lights.

Q. How many? A. 45 lamps, 16 candle power lamps.

Q. Can you calculate what the cost would be on the same basis, running them all night for a part year? A. Yes, sir.

Q. Will you please calculate it? A. $545.50, the season from Decoration Day to Labor Day, that is, for 45 incandescent lights burning every night from eleven o'clock to daybreak.

Redirect examination by Mr. Backes:

Q. Have you finished your answer? A. That is figuring on a basis of 5 cents a kilowatt hour.

Q. You have been speaking of kilowatts, 660 watts being consumed in one hour—20 lamps would make 132 watts, which would be equal to 13 1/5 kilo-watts? A. Yes, sir.

PETER E. HURLEY, recalled in rebuttal, testified as follows:

Direct examination by Mr. Backes:

Q. Did you ever see or know of a contract in writing, made between the Interstate Railway Company, or the Trenton Street Railroad Company, or any of the railways which operate the Trenton Street Railway line, and the corporation known as the White City Company, for the supplying of electricity at White City Park? A. Only the lease.

Q. Any others? A. Not that I know of.

Q. You never heard of any? A. If I have, I have forgotten it.

Q. Who conducted all of these proceedings, so far as your company was concerned, with the promoters of the White City Company? A. Well, I had something to do with it; I advised some things with our President, Mr. Rigg, in the matter, but so far as the drawing of the leases is concerned, Mr. Rigg and the White City Promoters did that; with that I had nothing to do.

Q. You never saw any such contracts as I have referred to? A. No, sir; not that I remember of.

Q. What do you know about the furnishing of power by the railroad company with which you were connected, from the Interstate Railway Company, for the motor to the circle swing? A. I did not know anything about that until I found they were using it.

Q. Did you know of any provision having been made between the railroad company and the White City Company, for the use of your power to operate this circle swing? A. Not that I remember of.

Q. When was it that you first learned they were using power to operate this motor for the

circle swing? A. Something happened to the power so that the lights went out on the circle swing, and they appealed to me for help, and I went there and saw the condition, and saw that they were losing money, and I had it repaired for them.

Q. When, with reference to the first opening of the White City Park, was it, that you first learned that they were using power to operate the circle swing from your company? A. I have no idea.

Q. When was it you first learned that they were using power from your railroad to furnish these 20 lamps around the lake? A. We knew that all the time.

Q. But you did not know that they were using power for the circle swing until long after? A. I don't remember now.

By the Court:

Q. Was that part of your undertaking with the White City to furnish the electricity for lights around the lake? A. We were to furnish them 75 arc lamps or power equivalent for any place that they should locate the lamps on the White City property.

Q. Were those 20 lamps part and parcel of the 75? A. They were included in the 75.

The Court: Mr. Backes, when the railroad company dealt with the promoters of the White City Park for furnishing electricity down there, they knew perfectly well that the matter was not to end in a day or two, or a month or two, but that it was proposed to open and run a park there in and at which light would be used; and they afterwards furnished light.

Mr. Backes argues.

Further direct:

Q. I want to know this, Mr. Hurley—was there any contract between your company and the White City corporation, that is, with these men, after the corporation was formed, or was your arrangement with the men who afterwards became the incorporators? A. What we called the promoters are the only people we did business with.

Q. Do you know whether there was ever anything in writing between your company and the promoters? A. Nothing that I know of; I don't remember of anything only the lease, that is the only thing that I know of.

Q. Were not you the one that was bargaining on behalf of the railroad company with the promoters? A. Well, yes, and for myself, both; I owned the lease, it had four years to run.

Q. Is it a fact that your bargaining for yourself, or bargaining on behalf of the railroad company, whatever extent that may have been, was before the formation of the corporation? A. Yes, sir.

Q. Did you understand that the promoters were to be succeeded by a company who would take over whatever the rights were, that you bargained with the promoters— A. I knew nothing about that.

Mr. Backes: I offer an agreement made between the Public Service Corporation and the Trenton White City Company, dated April 30th, 1907, for the furnishing of light, for the purpose of showing at what price per kilowatt hour the light was furnished by the Public Service Corporation, so as to show further the market price per light, which is about the same as testified to by Mr. Wolverton.

Also, I want to offer in evidence the record in this cause, beginning from the application made to the Chancellor by the Receiver—the sale of the realty—the order to show cause made on that—the proof of service—the order for sale—the orders to show cause why the sale should not be confirmed, and the proofs of service of those orders upon the respondents in this application, and the order confirming the sale; in fact, all the record beginning with the Receiver's petition for leave to sell, up to the order confirming the sale, and the proofs of the service of the various papers, various orders and petitions made in this cause, service of which was made upon the respondents to the present petition.

The Court: I suppose they are all usable without really offering them.

Mr. Backes: This is a collateral proceeding.

The Court: They will be admitted; I apprehend, though, that they could be used anyhow.

Mr. Backes: Now, if there is anything at all that has not even been marked or offered for marking, but is material to the issue, and counsel has omitted it, I will consent to its going in, and he need not even make a formal application.

The Court: Then you are abundantly protected, Mr. Dickinson.

Both Sides Rest.

Adjourned to Monday, March 27, 1910, at 10:30 A. M.

## Testimony.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br><br>ALFRED G. HOLCOMBE, *et al.*,<br>Complainants,<br><br>*and*<br><br>TRENTON WHITE CITY COMPANY,<br>Defendant. | On Bill, etc. |

Transcript of testimony taken in the above entitled cause, before Hon. Edwin Robert Walker, Chancellor, at the State House, Trenton, New Jersey, on the fifteenth day of April, nineteen hundred and twelve.

Same appearances as before noted.

Mr. Dickinson: As I understand, in the opinion give by the Court, you are giving us an opportunity to prove three things: First, the leasehold value of the property; second, the value of the arc light covenant in the lease; and third, the services of the promoters.

The Court: There were three things concerning which I held that the stockholders were entitled to credit on their subscriptions in one of which only was there any evidence give before the Court on the other hearing.

Mr. Dickinson: I was going to advert to the arc light testimony. It seems that we tried the case on a different theory from that upon which your Honor decided this

case. We tried the case upon the theory that we were entitled to credit for the differences between the option, $35,000, in the lease, and the face value, if it was greater than the option, and the burden of our testimony was directed to that issue. Now, your Honor finds we are not entitled to that as a credit, and we want to introduce more testimony on the question of the arc light covenant, because that was only gone into by General Sadler, who knows, to be sure, the value of arc lights, and by one other witness by the name of Wolverton. Now, we can introduce testimony of a witness here, who is perfectly competent to testify as to the value, and we think that we ought to be permitted to do that, not only for your Honor's enlightenment, but also to give us the benefit of his testimony. Of course, that becomes a very important consideration, and we did not before lay very much stress upon it, because the burden was to lay the fee value.

Mr. Backes: I regarded the testimony that was offered by General Sadler as in vindication of the Directors' resolution that they took over the property of the promoters, and in which resolution they set forth, that in their judgment the entire property was worth $75,000; and regarding General Sadler's testimony in that light only, it was not at that time objected to as testimony which could be given in support of the value of these lights. It appears, as I now examine the testimony, and I find in one part of the record where I objected to General Sadler giving testimony unless he qualified; no evidence in General Sadler's testi-

mony qualified him to give an opinion as to the value of the arc lights; and, in fact, General Sadler's testimony does not go to a valuation of the covenant contained in the lease by which the railway company agreed to furnish the power for 70 lights during the period of ten years. His testimony relates entirely to an agreement that he was instrumental, or claimed to be instrumental, in getting from the President of the Trenton Street Railway Company. He said, as he recalled it, it was for 75 arc lights, with a candle power which he had then forgotten. (Argument continued).

The Court: Very well, testimony will be admitted on that issue.

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PAUL LUPKE recalled, testified as follows:

Direct examination by Mr. Strong:

Q. Mr. Lupke, you are connected with what company? A. The Public Service Electric Company.

Q. And what duties have you in connection with that company; what are your duties? A. Superintendent of the Southern Division.

Q. Is it part of your duty to arrange for contracts for lighting by arc lights? A. It is not.

Q. Are you familiar with the expense of lighting by means of arc lights? A. I am, yes, sir.

Q. Are you capable of estimating upon such matters, upon the expense and cost of arc lighting? A. Yes, sir.

Q. How much experience have you had in that line? A. I have been in the business for the last 28 years.

Q. What would be a reasonable charge for furnishing the power for 70 arc lights of 3 watts each,

or their equivalent, and keeping the same lighted during the period from the first of June until the first Monday in September, for ten years, and during the hours, the evening hours, between 8 and 11 o'clock; do you understand it?

Mr. Backes: It is a fact that the park closed at 12 o'clock; that is testified to by Mr. Wolverton.

The Court: I do not know that the stockholders are bound by that testimony on this issue; they might show they were entitled to keep it open until 12 o'clock.

Mr. Backes: (Reading testimony from the record about the hours the lights were burning).

Mr. Strong: I will ask him first from 8 to 11.

Q. Just figure on the hours from 8 o'clock till 11 o'clock, first. A. Three hours a night; it is a mistake about three watts.

Q. How are the ordinary arc lights described? A. They are generally described at wattage and other characteristics.

Q. Well, what is the wattage of the ordinary arc lights such as are used in public places? A. It varies from 350 to 600 watts.

By the Court:

Q. What would be an appropriate wattage for an arc light in a public park? A. 500 watts.

Further direct:

Q. Then, an arc light of three watts must be a mistake, you say? A. Yes, sir, it must be a mistake.

The Court: This witness now says an appropriate arc light would call for 500 wattage.

Q. Base your answer on an arc light of 500 watts, then. A. (Witness figuring).

Mr. Backes: Do you mean wattage, 500 watts per hour?

The Court: That will have to be developed.

Mr. Backes: It is the unit of measurment of electric energy; the ampere is the unit of flow, and the voltage is the unit of pressure; multiplying the two produces the watts—the measure of electric energy; amperage and voltage multiplied produces the watts.

The Witness: I figure on 70 lamps of 500 watts, three hours per night, 100 nights for the season would be consumption of 105 kilowatt hours per night, or 10, 500 kilowatt hours per season; at 15 cents per kilowatt hour would be, $1575.00 per season, or $15,750 for ten years.

Q. Suppose the number of hours were increased—possibly the lighting would be from 7 till 12; how would that add to the cost? A. It would add to the cost corresponding consumption with the kilowatt hours.

Q. It would simply be in proportion to the time, at the same rate? A. Yes, sir.

Cross examination by Mr. Backes:

Q. When you speak of 500 watts, by that you mean the consumption of electric energy? A. Yes, sir.

Q. Is 500 watts per hour of 60 minutes— A. 500 watts would be the capacity of the lamp; the lamp burns one hour; it would consume 100 watt hours.

Q. What you have called watts—it would be 500 watts consumed in an hour? A. If it burns two hours it consumes 1,000 watt hours.

Q. Did you include in your calculation the furnishing by the Service Company of the globe and other appliances? A. I did.

Q. At how much did you figure those in your calculation? A. I did not make a separate calculation of that; I figured on the consumption entirely, including all expenses of furnishing the light.

Q. Can you estimate now the cost of furnishing the globes and the utensils; the lamp and the appliances for 70 lamps— A. Carbons for trimming the lamps?

Q. No; I would not say that—the cost of furnishing 70 lamps for a period of ten years, not including those parts which are necessary for the running of the lights, for the burning of the lights, nightly? A. I don't quite understand your question, Mr. Backes.

Q. Can you estimate the cost of furnishing 70 arc lights for a period of ten years, not including the carbon; I mean, just the article itself? A. From your question it is not clear to me what I should deduct from the entire cost; the cost I have given includes everything necessary to furnish the light.

Q. I want the cost of furnishing the arc light, appliances for 70 arc lights such as you have desribed or made your calculations upon, for a period of ten years? A. You mean the cost of the lamp itself?

Q. If you call the entire appliance, a lamp, yes. A. Yes; the original cost of that kind of a lamp alone would be about $20.00.

Q. What is the oridnary life of a lamp of that kind? A. Well, that would vary according to the make and type, from five to ten years.

Q. The better of the types you now have in mind—the life of the better of the types that you now have in mind would be ten years? A. Yes, sir.

By the Court:

Q. What is usual in the supplying of electric lighting in arc lamps, so far as furnishing the equipment is concerned' who furnishes it? A. If I take, for instance, the Public Service Corporation Electric Company, all standard arc lamps, are furnished and maintained by the company—special arc lamps, such as flaming arc lamps, with special elaborate construction, are furnished by the customer.

Q. Who furnishes such arc lamps as are burned in public parks? A. The company.

Q. That is the custom, is it? A. Yes, sir.

Q. Is that universally so? A. Yes, sir.

Q. Have individuals the opportunity, and can they purchase and acquire these arc lamps, or are they controlled and supplied only by the lighting company? A. No, sir, they can be purchased in the open market.

Redirect examination by Mr. Strong:

Q. If the customer were to supply the lamps, how much deduction, if any, would there be made from the figures that you have given? A. About ten per cent.

Recross examination by Mr. Backes:

Q. To what other parks have lamps been—have arc lamps been furnished, in which you were directly or indirectly interested; you were speaking of the practice and custom that prevailed when arc lights were furnished to public parks, and said that when the light was furnished by the Public Service Corporation, the Public Service Corporation usually furnished the lights? A. Yes, sir.

Q. Now, I want to know to what parks the Public Service Corporation furnished arc lights in

which you were directly or indirectly interested? A. I personally know that the company has furnished lamps to, I think two parks in Camden City—that is, parks of a similar nature to the White City Park.

Q. Did you know of the agreement or arrangement that existed between the Public Service Corporation and either or both of these parks? A. I do not know the details of the agreement, but I know that the company furnished the lamps.

Q. Do you know whether the agreement between the Park Company and the Public Service Company, provided for the Public Service Corporation furnishing the lamps? A. Yes, sir, I do know that.

By the Court:

Q. Has the company furnished any electric lights for Cadwalader Park, or any of the squares or the city parks in this City? A. No, sir, there are no arc lamps in the city parks.

Q. Any in Cadwalader Park? A. Yes, sir.

Q. Do you know these arc lights down at the White City Park; have you seen the arc lights down at the White City Park? A. Furnished by the railway company?

Q. Yes. A. Not recently.

Q. You did see them some time ago? A. Yes, sir.

Q. Are they similar to those that light the public streets of Trenton? A. They are, as far as appearance is concerned, but they are arranged suitably for the conditions that exist on a railroad circuit—

Further recross:

Q. What other knowledge have you as to customs prevailing between parks and public service corporations with reference to the furnishing

of the lamps, when the Public Service Corporation furnishes the light? A. I cannot give you any other specific case, but I do know that it is the general practice.

Q. But the two that you have given me in the contracts existing between the parties, is a requirement upon the part of the Public Service Corporation to furnish lamps—you do not mean to say that that makes the custom; does that make the custom that you are speaking of? A. I know that it is a general custom from my contact with other concerns and from the general interchange of information—

Q. That custom, however, that you speak of, having derived in the manner in which you say, is based upon agreements between the Public Service Corporation and the user, to furnish the lamps, is not that so? A. In the two specific cases that I mentioned in Camden.

Q. But as to other cases, and in all other cases that you have any knowledge of, it is always provided? A. I have no intimate knowledge of specific agreements.

Q. And you do not know, then, in the other cases to which you have adverted; you don't know whether in those instances there was a covenant or an agreement or stipulation that the Public Service Corporation was to furnish the lamps when they furnished the light, do you? A. In those two particular cases that I cited in Camden, I do know, yes, sir.

Q. All of the other instances to which you have generally referred to, you don't know whether there is a covenant between the parties or not? A. Outside companies do not submit their agreements to me.

Q. You do not know whether this so-called custom that you have been speaking of, is based upon

an actual stipulation between the Public Service Corporation and the user of the electric light, that the Public Service Corporation should furnish the lamps, do you? A. I can only tell you that I know in those two particular cases—

Redirect examination by Mr. Strong:

Q. Do lighting companies furnish power for lighting where they do not furnish the lamps and appliances? A. Standard arc lamps are, as a general custom, furnished by the company; for instance, they are furnished to the city for street lighting; the exceptions are with the Public Service Electric Company where the lights are a set type.

Q. Suppose I should come to your company and propose that the company should furnish power for 500 watt arc lights to be used in a park—the common type of such lamps—would the company give me a contract for furnishing the power—not including the lamps?

Mr. Backes: Objected to.

The Court: The objection is sustained.

Mr. Dickinson: We have two foreign witnesses to testify as to the value of the lease of the park, and I would like to put them on now, although we may want afterwards to give some testimony as to the length of time the lights burn.

The Court: All right, you may do it.

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MR. CHARLES J. KRAUSE, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Dickinson:

Q. Where do you live? A. Philadelphia, Pennsylvania.

Q. What is your business? A. Theatrical booking agent.

Q. How long have you been in that business? A. Seven years.

Q. Have you had any experience in connection with amusement parks? A. I had in 1908 and 1909, at Reading, Pennsylvania, Pandora Park; I was the manager of the same park for two seasons, and also owned numerous concessions in the park.

Q. Have you had any experience in any other parks? A. Yes, sir.

Q. What other parks throughout the country? A. Manila Park, Tomaque, Pennsylvania.

Q. Any others? A. That is all.

Q. Do you know the property called the White City Park, near the City of Trenton, New Jersey? A. Yes, sir.

Q. When did you see the White City Park property? A. The last time I was at the White City Park was about four weeks ago; I was through it then; I had seen the park on several occasions while the park was open, during the season.

Q. Will you state what, in your opinion, is the reasonable rental value of that park property for ten years, from 1907 until 1917, for the usual length of a park season in each year?

Mr. Backes: Objected to.

The Court: I suppose you will have to show that he knows the extent of this park, and what devices there are there, and also that he is familiar with the rental value of parks; he has not yet told us that he was.

Mr. Dickinson: But, as I understand it, we are concerned with the reasonable rental of this park at the time it was turned over by the promoters, which did not in-

clude the concessions that were on it and the buildings that are now on it.

The Court: I did not hold, in so many words, nor do I now intend to hold, that you are entitled to the rental value of the park without the devices and amusement schemes that you put there; you had them all in contemplation; I did not intend to intimate that you were confined to the rental value of the bare land down there.

Mr. Dickinson: That is so much more favorable to us.

The Court: Of course, I said that the value of the park must be ascertained as of the time that it was turned over, but I contemplated a park turned over ready to be run as an amusement park.

Mr. Backes: That would not, of course, include the cost of these amusement devices.

The Court: That is not it at all; rental value is one thing, cost is another; I would modify my opinion, if necessary, to express that.

Mr. Backes: May I ask your Honor, in order that I may be better informed—now, after the incorporation, the promoters turned over, not then an amusement park, as it afterwards became, but practically bare land; they subsequently spent about $35,000; is it your Honor's understanding that the rental value is to include $35,000?

The Court: Yes; they were turning over an amusement park.

Mr. Backes: The White City stockholders thereafter spent $35,000, so the promoters were not to get the benefit of a $35,000 in-

vestment made by a corporation just then formed.

The Court: What was there on this ground at the time this lease—

Mr. Backes: The old mansion house, which was afterwards renovated, and a large portion added to it; a small tenement house adjoining, which is also improved; a carousel house, or a carousel building which was torn town; a theatre building, an open theatre building, open on three sides, seating about 1,200 people; that is what was on the place. Somebody said the other day that there was an old barn there.

The Court: It had been run as an amusement park, and this company made some improvements afterwards, of course.

Mr. Backes: They tore down the large theatre; they tore down the carousel.

Mr. Dickinson: No, we added to it.

The Court: I have always had in mind that the rental value was to be based on the park as a going concern. The question in this case is, does the decree clearly show what of value there was on the land at the time the lease was made; and what of value there was put on it afterwards? I am afraid it does not; now, if we open the door for that, we shall be taking testimony for days.

Mr. Backes: I could put Peter Wurfflein on to testify to that.

Q. Mr. Krause, assuming that this park land covered about 120 acres altogether, and that there was a lake thereon about 22 acres in extent; that this land had built upon it an open theatre building which would hold about 1,200 people;

a house called a mansion house; a carousel building; a stairway leading from the bluff to the lake, and a dock on the lake; and assuming that this park was situated just beyond the limits of the City of Trenton; that it was passed by two car lines carrying passengers for five cent fares; and assuming that in 1907, when this park was leased, the population of the City of Trenton was about 95,000 people; and that this park was to be run as a pay park, that is, to take gate receipts for entry; what, in your opinion, would you say was the reasonable rental value of this park for a lease of ten years, from April, 1907, to April, 1917, for the purposes of an amusement park?

Mr. Backes: Objected to; there are a good many important elements contained there that are omitted and a good many glossed over; he speaks of a mansion house; he speaks of a theatre there; a carousel building, and so forth. I further object to it because the witness is not a qualified witness for the purpose for which he is called; that his first experience in the actual management of a park was at Reading, Pennsylvania, in 1908 and 1909, and prior to that time and since that time, he simply knows of the booking; he is the man who hires people, I suppose, to come and exhibit themselves and their various arts for the delectation of people who visit parks of this kind. I do not know that he has shown any other qualification.

By the Court:

Q. Well, now, have you seen this mansion house at this park? A. Yes, sir.

Q. Have you seen the other buildings mentioned by Mr. Dickinson? A. Yes, sir.

Q. You have seen them? A. Yes, sir.

Q. And gone into them? A. Yes, sir.

The Court: They were improved, were they not?

Mr. Dickinson: Yes.

The Court: The mansion house was there, of course; I used to go there 25 years ago myself to visit a farmer that used to live there.

By the Court:

Q. When did you see these buildings? A. Several Summers ago.

Q. Now, you say you were the manager of this park at Reading? A. Yes, sir.

Q. Did you have to do with the renting of it? A. Well, my knowledge of the renting, of course, is that I have made several propositions to different parks in regard to the valuation of the ground, taking in the surroundings and railroad facilities, etc., and have been called upon to set a price for selling purposes, for selling and renting purposes.

Q. Now, you say you operated this park at Reading? A. Yes, sir.

Q. For whom? A. Mr. Arrowsmith, of Reading, Pennsylvania.

Q. Did he own or rent it? A. He was the President of the company that controlled it.

Q. They did not rent it? A. No, sir.

Q. Did they ever, to your knowledge, rent it? A. No, sir.

Q. You have not had anything to do with renting it? A. No, sir.

Q. Did you ever rent a park anywhere? A. No, sir.

Q. Either as lessee or as lessor? A. No, sir.

The Court: Very well; then the witness is not qualified to speak of rental value. It seems to me you must at least produce some witness who has had something to do with the renting of a park.

Mr. Strong: Suppose he can say he is familiar with rentals paid, without actually having negotiated a lease?

Q. Are you familiar with rentals paid for parks at any points? A. Yes, sir.

Q. Where? A. Reading, Pennsylvania.

Q. What park? A. Pandora Park.

Q. Was that actually rented after your company gave up the operation of it? A. Yes, sir.

Q. It was rented? A. Yes, sir.

Q. Do you know the rent that was given for it? A. Yes, sir.

Q. How big a park was it? A. Ten acres.

Q. What was its general character? A. Amusements of various kinds, such as carousels; a skating rink; they had a lake with chute-the-chutes in it, and they also had a house of mystery, and a mirror maze—

Q. How far from the City of Reading was it? A. Twelve minutes' trolley ride.

Q. How big a city is Reading? A. I should judge it is about 58,000 or 48,000, I cannot just remember.

Further direct:

Q. Are you familiar with Steeplechase Park in Atlantic City? A. I have often been through it, yes, sir.

By the Court:

Q. Do you know anything about the renting of that? A. No. sir.

The Court: What do you say? Do you still object?

Mr. Backes: Yes.

The Court: I feel inclined to admit this testimony now for what it will be worth.

Mr. Backes: The witness may be able to testify as to what this park rented for, for a park improved as the Reading Park is, with all of these various devices in it; and in doing that, he necessarily takes into consideration the amount of money spent by the Reading people in putting the devices into the place.

The Court: Well, after all, I suppose I can take it on the testimony of my own senses, that there is a good deal of sameness about all these parks; they are all instituted for the same purpose, and I suppose, probably, from this testimony, with, possibly, other testimony, I shall have some basis upon which to draw an inference as to what was the fair and reasonable rental value of this park.

By the Court:

Q. When was this park rented up in Reading?
A. The season of 1910.

Q. Will you tell me now what the rent was?
A. $5,000 for the season, that is, with all the equipment.

Q. What, if any, if you know, was the difference in conditions as to favorableness or unfavorableness with reference to the operating of a publice park in the season of 1910, compared to 1907?
A. Conditions were very unfavorable in regard to this particular park I am speaking about, because the management had let the park run down during 1908 and 1909. They had taken out different

attractions, which kept the people from coming in, and, therefore, in my mind, the park was worth less money in 1910 than in 1909.

Mr. Backes: I object; it is not responsive to the question, and I ask to have it struck out.

The Court: I cannot say it is not responsive; he has not confined himself to a very short answer, but has answered the question and given reasons for his answer; I will let it stand.

Cross examination by Mr. Backes:

Q. How near to any other city or settlement is this park at Reading located? A. Why, they have a drawing population of about 30,000 from the surrounding towns.

Q. 30,000 outside of Reading? A. Yes, sir.

Q. What means of conveyance from these drawing centers are there to the park? A. Trolley cars.

Q. How many lines? A. Four different lines.

Q. Running from Reading to the park? A. From various towns—they stop in front of the park from the various towns.

Q. How many run from Reading that stop in front of the park? A. They all run through Reading to get to the park.

Q. When was this amusement park created? A. In 1908.

Q. What devices had it? A. They had a chute-the-chutes.

Q. What size? A. Double track chute, an incline of 60 or 70 feet; I would not want to be quoted on the measurement, because I don't know.

Q. What is the length of the chute? A. You mean the boats?

Q. No, the length of the chute—it shot into a

lake? A. Yes, sir; the lake was in the center of the park.

Q. How large a lake is it? A. The lake is about 250 feet across.

Q. And how long? A. It is a round lake; the lake is in the center of the park; the diameter is 250 feet.

Q. What is the length of it? A. It is a round lake.

Q. Is it a natural body of water? A. No, sir; it is artificial.

Q. The chute was about 90 feet long from where they started? A. I said about 60 or 70 feet, but I don't know the measurement, therefore, I would not want to be quoted.

Q. But approximately, you say 60 feet? A. Maybe 100 feet, for all I know.

Q. Do you know its cost of construction? A. No, sir.

Q. Do you know approximately what it would cost to install it?

Mr. Dickinson: Objected to.

The Court: I do not see how it is relevant.

Mr. Backes: My notion of the admissibility of the question is this: that the witness has testified that a fully equipped park worth $5,000 rental, that is sought to be employed as establishing some criterion for valuing the Trenton White City Park, which had not the equipment in it; now, it impresses me, that if we ascertain the cost of this equipment upon which this witness based, in a measure, the rental value of the park as a going park, and make deductions on a per annum interest bearing basis, we may have some guide as to

the value of the Trenton White City Park in its condition when it was not established and finished as a park.

The Court: Do you contend that the value of the thing itself is an aid in ascertaining the rental value of the thing?

Mr. Backes: I only acquired that thought when your Honor permitted this witness to testify as to the value of a fully equipped park; I am inclined to think that that may be some way by which we can get at a fair figure of the value of this park.

The Court: I shall sustain the objection.

Q. The merry-go-round building was a part of that which was rented for the $5,000? A. No, sir; the merry-go-round was put there by a party from Philadelphia on a percentage—the park to get 25% of the gross receipts.

Q. During the year that this was leased, the lessee got the percentage of the merry-go-round building, did he? A. He got 75%; yes, sir; the merry-go-round got 75% and the park got 25%.

Q. Was there a merry-go-round? A. Yes, sir.

Q. What sized merry-go-round; how many horses? A. Three abreast.

Q. Well, what circumference was the merry-go-round? A. I don't know.

Q. How many animals? A. I could give you the valuation of the merry-go-round—what it was valued at.

Q. Whose make was it? A. William H. Denzil.

Q. Do you know where that merry-go-round came from? A. Broad and Erie Avenue, Philadelphia.

Q. Denzil has a schedule of prices? A. Yes, sir.

Q. Is that $8,000 net; is it one of the $10,000 catalogued merry-go-rounds? A. I could tell you what it was offered for at a sale.

Q. I did not ask you that. (Question read.) A. I don't know.

Q. Do you know what its diameter was? A. No, sir.

Q. Approximately? A. No, sir.

Q. 40 feet across? A. I could not tell you.

Q. How often did you see it? A. Three times a day for two seasons.

Q. Then you can tell us about what the diameter was? A. Yes, sir; about.

Q. That is all I want. A. About 45 feet, I should think

Q. And the seating capacity, one person upon each animal, how much? A. I could not tell you that.

Q. You managed it, didn't you? A. I did not manage the merry-go-round alone; I can tell you what the merry-go-round took in.

Q. What else? A. Skating rink.

Q. How large is the skating rink? A. About 100 feet.

Q. 100 feet long? A. Yes, sir.

Q. 100 feet wide? A. No, sir; 48 feet wide.

Q. Was the skating rink in one building? A. All in one building.

Q. The skating rink was? A. Yes, sir.

Q. One story high? A. Yes, sir.

Q. How high? A. 17 to 18 feet, I judge.

Q. Next? A. Mirror-maze.

Q. What is that? A. All glasses, crystal-maze.

Q. How many mirrors? A. About 24 mirrors.

Q. In how large a building? A. It is a room.

Q. How large a room? A. About 20 feet square.

Q. A room in which building? A. The house of mystery.

Q. And the house of mystery was what? A. You walk in there, and there is a blowing machine at one point, and you go to another place that scares you, and it is very amusing to the women and children.

Q. Now, that was in another room, how large? A. This building has a 40 foot front, a depth of about 60 feet.

Q. The building in which the mirror-maze and the house of mystery are located in? A. Yes, sir; and also a penny arcade.

Q. And what else? A. Adjoining to that is a shooting gallery, all under the same roof.

Q. What else? A. A vaudeville theatre, with a seating capacity of about 200.

Q. Proceeed. A. Also a little moving picture parlor with a seating capacity of 114.

Q. In the vaudeville building? A. All under this one building; these were all rooms adjoining one another.

Q. In the room that is 40 feet by 60? A. No, sir; this building is all in one and it is partitioned off in these various concessions.

Q. What else? A. Popcorn stands and ice cream cone stands; they are scattered around the grounds; and the band-shell for the orchestra band.

Q. How many? A. One band-shell.

Q. Is this park one in which an entrance fee was charged? A. Yes, sir; 10 cents.

Q. Have you an idea of what it cost to equip the park?

Mr. Strong: Objected to on the same ground.

The Court: Objection sustained.

Q. Who was it that made the agreement to pay the $5,000 rental for the year, that you have stated? A. A party named A. W. Arrowsmith and Mr. Harry Sweeney.

Q. The circus man? A. No, sir; he was one of the stockholders.

Q. How many years did he rent it? A. I could not tell you; I left it that season.

Q. You don't know who ran it in 1911, or whether it was run? A. The park burned down in 1910.

Q. During the period of that lease? A. Yes, sir.

Mr. Dickinson: Mr. Strong and I seem to have a different recollection as to what the witness said in reference to the rental value of the park down here.

The Court: He has not testified to that.

Mr. Dickinson: I thought he testified in answer to my question; you said he might answer.

Redirect examination by Mr. Dickinson:

Q. What, in your opinion, is the reasonable rental value of the Trenton White City Park for ten years, from April, 1907, to April, 1917?

Mr. Backes: Objected to on the ground that the question must be: "What was the reasonable rental in March, 1907, for the then ten years to ensue, of this park, in the condition that it then was?"

The Court: That, I think, is so.

The following question was then read:

Q. Mr. Krause, assuming that this park land covered about 120 acres all together, and that there was a lake thereon about 22 acres in extent;

that this land had built upon it an open theatre building which would hold about 1,200 people; a house called a mansion house; a carousel building; a stairway leading from the bluff to the lake, and a dock on the lake; assuming that this park was situated just beyond the limits of the City of Trenton; that it was passed by two car lines carrying passengers for five cent fares, and assuming that in 1907, when this park was leased, the population of the City of Trenton was about 95,000 people; and that this park was to be run as a pay park, that is, to take gate receipts for entry; what, in your opinion, would you say was the reasonable rental value of this park for a lease of ten years, from April, 1907, to April, 1917, for the purposes of an amusement park?

The Court: Now, as to the other question, namely, that the elements constituting the physical property are not sufficiently described—if it stopped there it might be well said that they were not, but the witness says he has seen them—saw them several summers ago, when, it may be assumed, they were practically in the condition they were when the park started, but whether so or not, testimony may yet be given as to their exact condition; I will admit the question. You may answer the question.

A. As a park proposition, in my mind, and if I were to come to Trenton and to rent a plot of ground to operate a park of 120 acres, I would think it reasonably worth $3,000 a season, that is, without considering buildings.

By the Court:

Q. Without considering buildings? A. That is,

if the ground was in shape to put buildings up—not have to dig holes and refill, and stuff of that kind.

Further redirect:

Q. Does the answer to the question apply to this particular 120 acres? A. No, sir; I am taking it from the facilities that we have in Trenton of getting to this park.

Q. The question was, what was the fair and reasonable rental value of that particular park for the ten years from March, 1907? A. I am answering that question.

Q. I mean that particular tract of land? A. Known as the Trenton White City Park; I have been there several times.

Recross examination by Mr. Backes:

Q. When were you first in the park? A. The summer of 1910 I was over here.

Q. And how long did you remain here in the park? A. I remained in Trenton then and came out one of the evenings and went through the park, and went through all the buildings in the park, because, being interested in parks, I always had an interest to see what was going on in the different buildings.

Q. When did you next visit the park? A. I believe it was the latter part of the Summer, in the same season.

Q. In the evening? A. Yes, sir.

Q. After dark? A. Yes, sir; the lights were burning.

Q. And when next did you visit the park? A. About four weeks ago.

Q. Now, upon the two occasions in 1910, it was after dark, the time that you visited the park? A. Yes, sir.

Q. Did you go around by the lake? A. I did not go down to the lake.

Q. You could only see as far as the lights then burning would permit you to see? A. I don't suppose I could see any further; no, sir.

Q. Four weeks ago you went to the park, in company with whom? A. Several friends from Trenton here.

Q. Who? A. One of the gentlemen was Mr. Dickinson.

Q. Mr. Dickinson, the counsel? A. The chauffeur was Sackett Dickinson.

Q. You went there purposely to place a valuation upon this property? A. I went there with the intention of taking another good look at the park.

Q. Did you see more when you went there the last time than you did on the other previous occasions? A. Yes, sir.

Q. Do you mean to say, that the valuation you placed upon this park, or rental value, was the valuation that you would have placed upon it in March, 1907; in other words, would you, five years ago, have placed the same valuation on it? A. I certainly would; yes, sir.

Q. Does the fact that there is 120 acres in the park, influence you in fixing the $3,000 as the rental value? A. Yes, sir.

Q. Do you know how much ground of the 120 acres is available for park purposes? A. I judge about 25 or 30 acres.

Q. The upland? A. Yes, sir.

Q. Is your judgment based upon the rental value of the upland only? A. No, sir; the park in general; that lake that is there; the possibilities of this ground, as a park promoter, is good and that is where I base my valuation on.

Q. You saw the lake there? A. Yes, sir.

Q. Did the lands, the rental value of the lands

surrounding the lake, influence you at all in fixing this $3,000? A. Everything in general; if I was to run a park, and was looking for a piece of ground, I would take that particular park at that price.

Q. You think that the 25 acres of upland, and the lake proper, would be worth $3,000 rental annually? A. Yes, sir.

Q. Regardless of the other land? A. What other land?

Q. Why, there is 120 acres in this tract, known as the White City Park, upon which you said you based your opinion as to its rental value, and you also told me, that because of the size of it, you placed these figures; now, I am asking you whether the upland of 25 acres, as you call it— A. What do you call the upland?

Q. Up the bluff—25 above the lake? A. That is where the amusement buildings are?

Q. Yes. A. That is what I based my valuation on.

Q. Regardless of the lake? A. Well, with the lake; I am just telling you that the possibilities are there for a man who is promoting parks to take advantage of; it would be worth that much money to a park manager; it is as a park proposition that I am speaking.

Q. Do you calculate the number of acres in the upland, or where the concessions are? A. Yes, sir, I have taken in the size of the ground there and the possibilities of erecting buildings.

Q. Just answer my question. What do you say, that you calculated the acreage of the upland at? A. The amount of acres?

Q. Yes. A. I judge about 20 acres.

Q. Do you know there are not more than ten? A. I don't know.

Q. If the acreage was ten instead of 20, would

that modify your opinion? A. No, sir.

Q. And you said that it would be worth $3,000, if there was to be no grading or removing of trees or things of that kind? A. If the park was in condition, without any buildings, as it is to-day, to go in and erect buildings, and do business—I am taking it from that.

Q. If there were to be no grading? A. That is right.

Q. Now, if there was to be grading, would that modify your opinion as to the rental value? A. Certainly it would.

Q. Suppose there is to be considerable grading done, how much would that modify your opinion as to the rental value? A. I could not answer that.

Q. Suppose that there should be $1,000 worth of grading to be done, to what extent would that modify your opinion? A. It would not modify it any.

Q. Suppose there was $10,000 worth of grading to be done? A. That would modify my opinion—you take three years' rental—

Q. In fixing this rental of $3,000 a year, did you take into consideration the gate receipt charge? A. Yes, sir.

Q. At what rate? A. Five cents; if I was promoting a park—

Q. Did you also take into consideration the number of attendances that you would hope for during a season? A. Yes, sir.

Q. And the $3,000 is based entirely upon a contemplation that the park will be a money-making enterprise? A. Yes, sir.

Q. You did not contemplate a failure and fix a figure of $3,000 a year rental, did you?

Mr. Dickinson: Objected to.

The Court: Objection sustained.

Q. Did you, in forming your opinion, take into consideration the possibility of a failure of the enterprise?

Mr. Dickinson: Objected to.

The Court: In my opinion I said that they were to have the ground for the reasonable rental value of these premises, irrespective of any failure, and adhering to that, I think, I will sustain the objection I do not think the question of failure enters into it.

Mr. Backes argues.

The Court: It must have been on the assumption of success. I will adhere to my ruling.

Q. In the carrying on of enterprises such as this, it is well known that some seasons are poor and some are good seasons? A. Yes, sir.

Q. Some are prosperous and some are failures? A. But the conditions are the cause of that; some seasons are more prosperous than others.

Q. And some seasons are greater failures than others? A. Yes, sir.

Q. Now, in fixing the rental value at $3,000 a year, did you take that into consideration, the possibility of poor seasons? A. That is a chance that park promoters must take.

Q. (Question read.) A. Yes, sir, I did take it into consideration in forming this estimate of value.

Q. Did you, in forming the estimate, take into consideration the uses to which the lowlands surrounding the lake could be put to? A. I did, yes, sir.

Q. All of the lowland surrounding the lake, included in the 120 acres? A. Yes, sir.

Q. What valuation did you place upon that? A. Upon what?

Q. Upon the lowland of the 120 acres surrounding the lake? A. I did not place any valuation upon that particular part of the park.

Q. What proportion of the rental value is fairly accredited to the lowland surrounding the lake, of 120 acres? A. I could not answer that question.

Q. Would you say one-half? A. I could not answer the question.

Q. Would you say one-quarter? A. No, sir, I would not think so.

Q. One-fifth? A. About one-fifth, yes, sir.

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MAHLON R. HELLER, sworn in behalf of the defendant, testified as follows:

Q. Where do you live? A. Philadelphia.

Q. What is your business? A. Booking of vaudeville attractions, theatrical attractions for parks and ocean piers.

Q. How long have you been in that business? A. Since 1894.

Q. Do you book attractions for amusement parks through the country? A. Yes, sir.

Q. For what parks have you booked attractions? A. Spring Lake Park, Trenton, New Jersey; Allentown, Easton, Pottstown, Harrisburg, Tomaqua, Hersha, Lewistown, Bridgton, Quakertown, Perkesil, Williamstown. Piers at Steeplechase, Atlantic City, Ocean City, Seal Isle City, Wildwood, Sewell's Point at Cape May.

Q. Have you ever made a lease of an entire amusement park? A. Not of the park; I have of a similar proposition to what Spring Lake Park was before it became the White City.

Q. Did you know Spring Lake here, before it was known as the White City Park? A. Yes, sir.

Q. How long had you seen it? A. I booked that park.

Mr. Backes: Objected to.

Q. Just how often had you seen the park itself? A. 150 times, probably.

Q. You speak now of a similar enterprise to that park when it was commenced as Spring Lake Park; where was that? A. The pier at Ocean City, New Jersey.

Q. How was it similar to this? A. In that it ran a vaudeville theatre at practically the same price, and it also had a merry-go-round, but the merry-go-round was independent from the pier; the merry-go-round was just across the boardwalk, and the pier was on the ocean side, so that the proposition was very similar, with the exception that it did not include the merry-go-round; it was similar as to the character of the amusements.

Q. Did you see White City Park in the Fall of 1906, or the year 1906? A. There was one year I did not see the park, that was during Mr. Oberheide's administration.

Q. Did you see it just previous to his administration? A. Every season since, probably, 1898 or 1897.

Q. Do you know Mr. Wurfflein? A. Yes, sir.

Q. Did you see it during the time he had the park? A. I booked it for him.

Q. Are you familiar with the rental value of any parks similar to this park throughout the country, other than the pier proposition you speak of? A. What they rent for a year?

Q. Yes. A. I don't know of any parks that are being rented outside of the White City Park.

Q. How are they usually conducted? A. Conducted by the railroad companies.

Q. You know the character of the buildings that were on Spring Lake Park at the time Mr. Wurfflein had it? A. Yes, sir.

Q. You were frequently in the buildings and frequently saw them? A. Yes, sir.

Q. Can you recollect what buildings were there? A. During the Wurfflein—

Q. Yes, and just previous to Oberheide's regime? A. There was the pavilion with a stage scenery, there was a merry-go-round; and the mansion—I think it was run as a boarding-house; and the lake, which had a boat—about the only amusement I saw on that lake was the boat.

Q. Was there a boat down the lake on the bluff? A. Yes, sir.

Q. And a dock at the bottom? A. Yes, sir.

Q. The carousel was on the high ground? A. Yes, sir.

Q. Mr. Heller, assuming this park property, the Trenton White City, to have been in the same condition that it was when Mr. Wurfflein had it just previous to Mr. Oberheide's regime, assuming it to be in the same condition as it then was; assuming this park to be just beyond the city limits of the City of Trenton—

The Court: He need not assume that.

Mr. Backes: They have not moved the park.

Q. (continued): The park being beyond the city limits; assuming that the park is passed by two street railways to conduct passengers for 5 cent fares; assuming the population of the City of Trenton in the year 1907 was about 95,000 people; assuming that this park was to be conducted, as a pay-as-you-enter park, with gate receipt park, and assuming all that, what, in your opinion, would be the reasonable rental value of this Trenton White City Park property, as of

April, 1907, for a lease from April, 1907 for ten years, to April 1, 1917, for the purposes of an amusement park?

Mr. Backes: Objected to.

The Court: That objection will have to be sustained. It seems to me that anyone who went down there and observed the physical condition and the attractiveness, and had in mind the population that could be drawn upon for amusement purposes, the gate receipts, and all that sort of thing that anybody could with these facts in mind, speak as well to the rental value as this witness. He seems not to be able to qualify as an expert on rental values.

Mr. Dickinson: I think this witness would know more than an ordinary witness.

The Court: He must have peculiar knowledge of the rental value of such properties to testify to such rental value as an expert.

Q. If you knew the gate receipts of a park similar to this, near the City of Trenton, for one year, and the gross receipts of a similar park for one year, could you give any opinion as to the reasonable rental value of the park from such receipts? A. I feel that I could, yes, sir.

Q. Is there any percentage of gross receipts of a park which a manager or a renter of a park would charge off for rental? A. (No answer.)

Q. Assume that the gate receipts of this park were $17,000 a year, and that the gross receipts of this park were $47,000 a year for the first year could you give any intelligent estimate of what the rental value of that park would be from those figures?

The Court: Answer yes or no to that question.

By the Court:

Q. If you were informed that the receipts, gate receipts and gross receipts, were such as Mr. Dickinson has suggested to you, the question is, could you form an intelligent estimate of the rental value of that park? A. With a proviso, I could answer that, provided I knew what the investment was on the park.

Further direct:

Q. Well, assuming the investment to have been what was necessary to make the park as it stood at the time you booked it for Mr. Wurfflein, combined with the other data that I gave you, could you tell?

Mr. Backes: Objected to.

A. Yes, sir, I could.

Q. Could you state what was the investment represented in that park property by way of buildings, at the time Mr. Wurfflein had it? A. Approximately, only.

Q. Do you know the general value of buildings and other devices used in amusement parks? A. Approximately.

Q. Can you state the value of the buildings and other devices at Spring Lake Park at the time Mr. Wurfflein had it? A. Approximately, yes, sir.

Q. What would you state, approximately, would be the value?

The Court: I do not see how you can make that the basis of testimony; I do not see how you can make that the basis of ascertaining rental value—if you can call anybody with knowledge of these facts to testify—I have always understood that is

just exactly what the rental value was not —a hard and fast percentage of the value of the land and the buildings, or whatever it was that is leased; I understand that is not the rule; show me a case; if the rule is as you state, then show it to me in the text books; as it stands now, it is not admissible.

Q. Do you know anything about the renting of the Steeplechase Park at Atlantic City? A. Not at Atlantic City; I mentioned Ocean City.

Q. Do you know what rent is asked or received for that? A. I do, I negotiated the deal.

Q. What were the details, without telling the amount of rent; what was the length of this lease that you negotiated? A. It was a Summer lease —a Summer lease of about the same kind as the old Spring Lake Park would have been, and the business was about the same; it was run on the same lines.

By the Court: What was the season of the old Spring Lake Park?

The Witness: Prior to 1907—Wurfflein had it in the season of 1906.

By the Court:

Q. When did the park open in the Summer, and when did it close? A. It opened on Decoration Day and closed around Labor Day.

Q. And you say this proposition at Ocean City was about similar to that? A. Yes, sir.

Q. You said that the season was about the same there; meaning, that it was open about the same length of time? A. Yes, sir, and the business was the same.

Q. What do you mean? A. The revenue derived.

Q. You mean there were gate receipts? A. Yes, sir.

Q. What amusements had they there? A. Vaudeville—about the same amusements as they had at the Spring Lake Park, about the same idea was followed out, but the merry-go-round was separate, that was the only thing.

Q. This was on a pier? A. Yes, sir.

Q. Large or small? A. Medium pier.

Q. Not as large at Atlantic City? A. No, sir.

Q. Ocean City is how big a place? A. It is probably one-eighth of Trenton, New Jersey.

The Court; How do you propose, by showing the rental value of a pier at Ocean City, a place only one-eighth the size of Trenton, to elucidate the question of the rental value of an amusement park in a populous City like Trenton. I appreciate your difficulty it is a very difficult thing; how he could go further and testify as to the rental value of this, based on a knowledge of the rental value of that, I do not see.

Mr. Strong: Your Honor will remember the witness said, that the gate receipts were approximately the same as from this White City Park; now, I suppose that may assimilate the two propositions—the productiveness of revenue and the general nature of the attractions, it seems to me, might assimilate the two things; whereas, on the face of them, they would appear to be different, otherwise. The rental must be, I suppose, to a very large extent, based upon what is taken in in the way of revenue.

Mr. Dickinson: I can only ask him again the hypothetical question that I asked before; otherwise, I shall have to abandon him.

Q. (Hypothetical question read again.)

Mr. Backes: Objected to.

The Court: I think now, regard being had to the testimony that he has given subsequent to the first asking of this hypothetical question, that he may answer it; if I am wrong, there is a court above me to correct my error. You may answer the question.

Mr. Backes: May I cross examine for the purpose of disqualifying him?

The Court: Yes, you have that right.

Recess to 2 p. m.

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After Recess.

MAHLON R. HELLER resumes the witness Cross examination by Mr. Backes:

Q. What is the business of booking? A. To funish the amusement attractions.

Q. To places of amusement, to proprietors and managers of amusement parks? A. Yes, sir.

Q. And there is where the work is ended, simply in the furnishing of them? A. Not always—in a great measure it depends on the man who furnishes the attractions to make a success of the park.

Q. These amusement attractions are usually furnished by a letter of communication, are they not? A. By contract, in a good many cases.

Q. Regardless of where the attractions are to be exhibited, so far as you are concerned,—if a man wants a certain attraction, you send him the attraction, and he pays you for doing the brokerage work for him? A. We have an understanding as to where they are to appear, and what facilities they are to put in, and as to what class of audience there will be; whether they are grown persons or all children.

Q. And you accommodate your labor to the situation as it may then arise in furnishing the attractions or the vaudeville artists? A. Yes, sir.

Q. There is where your work, so far as that is concerned, ends; is not that so? A. A. Well, and fighting probable opposition.

Q. How does that concern you, when you are called upon by some one of your customers to furnish the attraction that he wants? A. When I assume the booking of a park or a pier, I consider that I am practically one of the firm, or rather, I work as though I were one of the firm, and that it is to my interest to increase that business for the next season's contract.

Q. It does not then, add to your consideration; you do not participate in the profits? A. In some cases I do.

Q. That is, where you furnish the artists upon percentage basis? A. In some cases, at Sewell's Point, Cape May, for instance; I was interested in a park there, but I am not now.

Q. Now this pier at Ocean City is located where? A. Right in the city proper; I think it is Ninth Avenue and the boardwalk.

Q. At the end of a terminus of a railroad? A. No, sir, the boardwalk.

Q. Does it extend from the boardwalk out into the ocean? A. Yes, sir.

Q. To what extent; how far? A. Probably the whole pier, probably eight or nine hundred feet.

Q. When you speak of the old pier, is that the one you had in mind when you were giving your direct examination? A. Yes, sir.

Q. Ocean City is a seaside resort? A. Yes, sir.

Q. Resorted to by people in the Summer time? A. Yes, sir.

Q. Its normal winter population is about one-ninth or the one-fifth part of Trenton? A. I mean its summer population is just about one-eighth of the winter population of Trenton.

Q. It is an excursion place, isn't it? A. Yes, sir.

Q. Excursions from Philadelphia and New York? A. Yes, sir,—I very seldom heard of any excursions from New York, though.

Q. Do excursions run daily during the Summer season from Philadelphia to Ocean City? A. Yes, a daily excursion.

Q. Which carries, approximately, how many people? A. I cannot answer that.

Q. And the people usually assemble upon this pier that you have spoken of? A. Yes, sir.

Q. That is the only pleasure resort there is in Ocean City for excursionists, isn't it? A. No, sir.

Q. What other place was there in 1907? A. There have always been two places there; I don't just say in 1907, but prior to that.

Q. But this pier to which you have referred, is the principal pleasure resort for excursionists in the place, isn't it? A. One of them.

Q. And a place where amusements are given such as you have spoken of, are frequented oftener by transients, by excursionists, than they would be in an inland community, where the draft is upon the residents of the town? A. Not patronized at all by excursionists.

Q. Would you say that the excursionists are not permitted— A. They are permitted in there, yes, sir; but it is not patronized at all by excursionists.

Q. Do you mean the only draft the amusement has is upon the actual residents of the town? A. The cottagers; the excursionists usually get down in the evening.

Q. This lease that you negotiated for during the years that you have mentioned, is that only for one year? A. That was for one season.

Q. And for no longer? A. It could not be had for the next season.

Q. Had it been rented the year before? A. Yes, sir.

Q. Do you know what it had been rented for the year before? A. I do know, but I do not remember the figures.

Q. Had it been rented the second year before? A. Yes, sir.

Q. Do you know what the figures were? A. I do, but I cannot remember them now; I have not any data.

Q. What was the character of the buildings and the amusements in the place during the year to which you have referred; I think you said 1908 and 1909? A. 1910, I said; there was a pier, a frontage there for rockers, which was charged for, but who were admitted to the theatre, which seated probably 1200 people or less; there were four acts of vaudeville and moving pictures given at a price of 10 cents.

Q. What else? A. No other attraction.

Q. A merry-go-round? A. The merry-go-round was separate; it was a different contract—it was across the boardwalk.

Q. Not a part of the lease consideration? A. The previous year that was all one—the previous seasons.

Q. Did it have any other building on except this show pavilion? A. The pier property, that is all.

Q. When you were asked to base your opinion on the rental value of White City upon what you knew of the rental of the pier, were you then considering anything exterior of the pier? A. Nothing at all, just the pier proper.

Q. Well, what other amusements had they on the pier besides this moving picture show and the concert hall? A. Nothing, they may have had some

penny-slot-machines in there, which did not amount to anything.

Q. Did bathing privileges go with it? A. That belonged to the proprietor.

Q. Was that a part of the leasing—the year of 1910? A. Yes, sir; I am not sure that they were all there; I never saw them.

Q. They have bathing privileges attached to the pier? A. No, sir.

Q. Did they have bathing privileges that go with the pier? A. No, sir.

Q. Where were they located? A. Other concerns had them.

Q. You don't mean to say that the rental value, or the amount for which a certain attraction was hired out or leased for one year, is a criterion of its value for ten years to come, do you? A. Yes, sir, I do.

Q. Regardless of whether the weather is favorable or whether the financial condition of the country is favorable?

Mr. Dickinson: I object to that; it imports something into the question which I do not think it is fair to consider.

The Court: I will permit it to be answered.

A. That is chance that has to be taken, and I base my figures just the same—

By the Court:

Q. In booking attractions for these amusement parks, does that take you always, or sometimes, as the case may be, to these parks, to see the managment and view the parks? A. Yes, sir.

The Court: I think the question may be answered.

Mr. Backes: I object to it.

The Court: Read the question.

. (Hypothetical question read again.) A. I understand the question.

Further direct:

Q. Will you answer it?

Mr. Backes: I object.

A. After carefully going over the situation, I consider that $200 per week would be a very nominal figure, and figuring at a season approximately of 14 weeks per year, which is lower than the Ocean City rental.

Cross examination by Mr. Backes:

Q. In arriving at that figure, what do you take into consideration? A. The cost of production, the rental, and the probable profit.

Q. The cost of what production? A. The production of the amusements; the main attraction.

Q. And the profit that you would derive from it? A. Yes, sir.

Q. Is your judgment exclusively predicated upon that? A. Yes, sir, as near as I can.

Q. What did you figure as to the number of attendants at the place per week? A. I usually go by the seating capacity, and in most cases I cut it in half.

Q. But suppose the seating capacity far exceeded the demand for seats, would you still adhere to that method in arriving at your opinion? A. I don't understand that question.

Q. (Question read.) A. I would not.

Q. Did not your judgment as to the rental value depend very much upon a realization of your expectation or hope of attendance at the park; is that right? A. No, sir.

Q. In a great measure, that is the basis for your opinion, isn't it? A. No, sir.

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Q. What is? A. On the business that has been done and is being done.

Q. Did you know the amount of business that was being done during the year 1907 at the White City Park, then called Spring Lake Park; make that 1906? A. I can only go by what the two managers of the park told me at the time, which was, that they had made money.

By the Court:

Q. Who were those managers? A. Messrs. Hurley and Wurfflein.

Q. And if they falsified to you, and it appeared, in fact, that they did not make money, do you still adhere to your judgement that the property, the park property, was worth $200 a week? A. I sure do.

Q. You say it was worth $200 a week, whether is was a losing game or a prosperous one; is that right? A. Well, the property was to be improved; that is where I base my valuation on.

Q. Upon what in the future it might be? A. Yes, sir.

Q. I thought you said you based your valuation, or yearly rental valuation, upon the information that you got as to what the park earned in those previous years; now, is that so or not? A. You asked me whether that was exclusive—

Q. And if I did, then you answered me in the affirmative; now, is that so or not; I want the facts?

A. I will give them to you as nearly as I can understand the question.

Q. Was your judgment as to rental values made up from what you understood the park had earned in previous years? A. This $200 figure, yes, sir.

Q. In the years that Messrs. Hurley and Wurfflein ran it? A. Yes, sir, in that year.

Q. Was it exclusively based upon that information? A. And what I saw at the park; I saw the park every week; I always saw good business.

Q. And you also know the amount it cost to carry on the park? A. The major part.

Q. Do you know as a fact, whether there was any profit left, other than what Hurley and Wurfflein told you? A. Only what it appeared to me to be.

Q. Then, am I right in assuming that you based your judgment as to yearly rental upon the statement made by Hurley and Wurfflein, that they made a profit, and from what you saw at the park? A. Yes, sir.

Q. And without knowing what the fixed charges, and other charges were, in operating the park, during that season, and the preceding season; is that right? A. Well, I had a fair knowledge of what those fixed charges were, while I did not have the exact figures, and that while my figures are based on what my charges were there, the major portion; I will say, yes.

Q. Well, now, suppose as a fact, that they had misinformed you, and that, in fact, the cost of production exceeded the income, and that the park had then been run at a loss, would you then adhere to your statement, that, in your opinion, the rental was worth $200 a week? A. At what time?

Q. 1906, when Hurley and Wurfflein ran it? A. Yes, sir, I would.

Q. Then you would regard it to be worth $200 a week, whether it was a failure or a success? A. Why, yes, if I had no way of knowing that they lost any money, and it looked to me as though they were making money from what I saw; I always saw good filled houses, and their expenses were not great.

Q. You were not informed as to what their expenses were? A. I could almost figure up what their expenses were.

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Mr. JOHN J. ASHTON, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Dickinson:

Q. Mr. Ashton, were you connected in any way with the White City Park Company in the year 1907? A. I was, yes, sir.

Q. What was your connection with that company? A. Cashier and bookkeeper.

Q. Did you keep all the books in connection with the park? A. I did, yes, sir.

Q. Did those books show what the admissions were to the park; you paid admissions? A. They do.

Q. During the first year the park was in operation? A. Yes, sir.

Q. Do the books show generally the gross receipts of the park, not only cash receipts, but from concessions throughout the park? A. Yes, sir.

Q. Have you calculated from the books what the paid admissions were to the park during the year 1907? A. Yes, sir.

Mr. Backes: I shall object to his testifying from books or memory.

Q. Tell us what the paid gate receipts to the park were in the year 1907?

Mr. Backes: Objected to.

The Court: What is the object?

Mr. Dickinson: The object is, if your Honor please, to form some basis from which an estimate could be made of the rental value of this property; I am not cer

tain at all that your Honor will consider it is any factor at all in the rental value.

The Court: How can it be, because it had not been put to the test then; these people organized this company and launched this park project, and I said they were entitled to the fair rental value as of that date, at the time that they made the negotiations and the agreement for the lease. They had a right to hope for success and to expect it, but you cannot go to work and lay before the Court now the result of the actual operation afterwards. No, no, I am against that proposition.

Q. What were your hours at the White City Park? A. I can hardly tell you that.

Q. Were you there in the day time, or when? A. I got there about ten o'clock in the morning, and then I went home about five, and then went back at seven and stayed until they closed.

Q. And what time did it close? A. About half-past eleven at night; I was the last one out.

Q. While you were there between seven o'clock in the evening and the time the park closed, did you observe whether the arc lights in the park were burning or not—the lights in the park? A. They were, yes, sir.

Q. Can you tell what time in the evening these lights were lit? A. Well, they were lit at different hours in the Summer time; as the days got shorter the earlier they were lit, but they were closed down about 11.30 at night.

Q. Were they lighted when the park commenced to get dark? A. About twilight.

Q. And that was so every evening throughout the park season?

Mr. Backes: Don't lead the witness.

Q. Was that so every evening throughout the park season? A. Yes, sir.

Cross examination by Mr. Backes:

Q. Did you have any arc lights in the park?

Mr. Dickinson: Objected to, because this lease provides that they should provide arc lights; it makes no difference whether they had any or not.

The Court: Objection overruled.

A. Yes, sir.

Q. Where were they located? A. They were located all around the ground; on the uplands, and also, I think, from the park up to Broad Street Station.

Q. They were incandescent lights, were they not; the small lights like this (indicating)? A. No, sir.

Q. Don't you know as a fact, that there were onyl 20 arc lights in the entire park, and that they were around the lake; don't you know there were only 20 arc lights in the park, and that they were around the lake? A. (No answer.)

By the Court:

Q. What do you know about that? A. I was trying to get that through my head; there were arc lamps on both places.

Further cross:

Q. Who had charge of the arc lights, did Austin Wolverton? A. Yes, sir.

Q. Did anyone else have charge other than he? A. There was someone from Adams' place had charge of them too.

Q. Do you know whether Mr. Wolverton had

charge of lights other than those that were around the lake? A. He had charge of all of them.

Q. Do you know when the arc lights were put out? A. About 11:30.

Q. Do you know who put them out? A. The man who had charge of lighting up the ground.

Q. You say you were the last one out? A. Generally I was the last one out.

Q. 11 o'clock was the customary hour for closing the park and having the audience leave, wasn't it? A. Yes, sir, generally.

Q. And it was the help and the employees at the park who remained up until 11:30, between 11 and 11:30? A. Yes, sir.

Q. Don't you know, as a fact, that the arc lamps were put out at 11 o'clock sharp every night? A. No, sir.

Q. Were there any orders from you to Wolverton to that effect? A. No, sir.

Q. Where, in the park, on the upland, was there one arc light? A. Right between the gates and the mansion, several of them, and all round the road there, clear down to the skating rink.

Q. Who were the lights furnished by? A. I could not tell you.

Q. By the Public Service Corporation? A. I think so.

Q. It was not the Trenton Street Railway? A. I cannot tell you; I don't know.

Q. You had a contract with the Public Service for that, didn't you? A. I don't know; those arrangements were all made before I went there.

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WALTER M. DICKINSON recalled.

Direct examination by Mr. Strong:

Q. You were one of the gentlemen who were interested in the promotion of this enterprise, were

you? A. Yes, sir.

Q. And did you personally render services in connection with it? A. I did.

Q. When did you begin to give your time and attention to the promotion of the White City Company? A. In the early Summer and Fall of 1906.

Q. Commencing about what month? A. In October or November.

Q. Then, what did you do? A. We met Mr. Oberheide, who wanted to interest me in the promotion of a park, and we looked over—do you want to get me to say everything I did?

Q. Well, I would like you to give us a pretty full idea of your services from the beginning, as well as you can at this time. A. Well, I have made a list of these services the best I can from memory.

Q. Well, I suppose you could use that now to refresh your memory as you go along.

Mr. Backes: And I suppose you cannot; I object.

The Court: The objection is sustained.

Q. Were you the first one that came in communication with Mr. Oberheide? A. I believe I was.

Q. And afterwards the others were interested through you, is that right? A. Yes, sir.

Q. Well, now, commencing with the beginning of your interviews with Mr. Oberheide, tell us, as well as you can recollect, about what you did, and about how much of your time was consumed in what you did? A. Well, Mr. Oberheide found me first and got me interested in the park proposition; he said that Trenton was a place so well located, and with a lack of amusement enterprise,

in the Summer time particularly, and he thought it was a very good place to begin an amusement park where the people could go in the Summer time and spend their money and enjoy themselves.

Q. Well, without going into what he said, I suppose he kind of talked you into it? A. Yes, sir; I did not want to take the burden of it all on myself, and I interested Mr. Barker Hamill and Mr. John S. Broughton at first, and then, a little later than that, Mr. Sadler became interested in the park; and a little later than that, Mr. Ferdinand W. Roebling, Jr.; and we first began to look 'round to see where we could locate the park advantageously.

Q. Who do you mean by "we"? A. The gentlemen I have mentioned.

Q. After you had interested the others in it? A. Yes, sir; I do not think, at this time, that Mr. Roebling was interested in it, but I think the other gentlemen were.

Q. Now, the project which you had at first, was it attached to any particular park, or simply to get an amusement park somewhere? A. Simply to get up an amusement park somewhere.

Q. And had you under consideration any other property besides this White City Park? A. Yes, sir; the Bromley tract in East Trenton, which was owned by E. C. Hill; and then we also had under consideration the Scudder place, just beyond the asylum, on the right hand side of the road; we had many negotiations with Mr. Hill and also many negotiations with Steele and Skirm, who, we understood, at that time controlled—I believe the "Charlie Scudder place" it is known as—it had a pond on it; but, after going to the railroad company we found that the railroad company said that we could not get proper

trolley facilities for either one of those places, because there was only a single track, and for that reason we had to discard it.

Q. Then you settled down on the White City proposition? A. Yes, sir; as the only available tract.

Q. Before you determined on the White City tract as the only available one, how much of your time can you tell, did you devote—I am speaking of yourself personally—to the interviews with these other persons interested in other places? A. I could only answer that in a general way by saying, that I think that from the early Fall of 1906 until long after the White City Park was actually opened, that I devoted anywhere from two to four hours a day, with the exception of Sundays; and sometimes I was busy Sundays with it, and sometimes for a short time on Saturdays.

Q. That relates to the services rendered in connection with the White City enterprise generally, doesn't it? A. Yes, sir; from the time that the promotion of it was conceived until the end.

Q. And that would be, say, from the beginning of October, 1906, until what time in 1907?

Mr. Backes: I object to that as leading.

A. Through the season; to the middle of the season of 1907, anyway, and we were busy at it right up to the time the gates were opened in 1907.

Q. When was the last time the gates were opened? A. It closed after Labor Day; it may have been open a week or two after Labor Day, but I do not remember.

Q. Do you mean, then, that during the whole season of 1907, you were devoting a portion of your time daily to it? A. Yes, sir.

Mr. Backes: Objected to.

The Court: Objection sustained.

Q. Throughout that period, from the time of the inception or the conception of the enterprise, until the season closed, as you have said, how much of your time did you devote to the business of the White City Company?

Mr. Backes: I object to that, on the ground that whatever may have been done by Mr. Dickinson after the formation of the company, after the surrender of the lease, was done for the company, not as a promoter, but as an officer of the company, and if he is entitled to compensation it is as a general creditor whose claim must be presented to the Receiver.

The Court: That is obviously so. The claim for services in promotion must have ended at the organization of the company; a service rendered afterwards must have been for the company; you will have to restrict it to that period. They got stock then

Q. Do you recall the date of the organization of the company? A. I believe it was in March, sometime.

The Court: March the 26th, it is in evidence.

Q. Confine yourself, then, to the time down to and including the date of organization; what portion of your time did you devote to the promotion of the enterprise? A. Anywhere from two to four hours a day. One of the principal things I did, for instance, was to talk to people about putting money in the enterprise. I called on innumerable people, and some of them subscribed

and some did not. I wrote letters away to people out of town whom I knew, who might be interested in subscribing to the park, and talked the matter over with each prospective person who, we thought might be a subscriber, and explained the proposition, and it was a long and tedious matter, and it took hours of time; and also during this time we were discussing plans with architects looking over places where we could lease land, and finally decided that we would lease the White City property if we could get it; going to see Mr. Rigg, the president of the line, at Philadelphia, to see if the railway company would lease the White City Park for ten years; and going to New York; Mr. Rigg was the President of the Trenton Street Railway Company; I had several interviews with Mr. Rigg, going to Philadelphia, and practically taking up all day, because he was a busy man and he could not see us when we would get there; we would have to wait for our turn.

Q. Did you pay your own expenses? A. Yes, sir, I paid all my own expenses; I paid my expenses going to New York with Mr. Hamill, and the whole general proposition of the promotion of this park, going into contracts with contractors and architects; looking up concessions and concessionaires; advertising in vaudeville and amusement papers for concessions; talking to concessionaires; making arrangements for the introduction of buildings, construction of the roller coaster—

Mr. Backes: You are going to a period of time that his Honor has excluded.

A. (continued): All these propositions were tentative—the labor was done on—

Q. So you really were busy about these things before the actual organization? A. We were busy

with everything that appeared finally in the park, long before the organization of the park; the actual leases and contracts might not have been signed by these people, but it was all in shape so that when we did get the park incorporated and started we could go ahead and make our contracts with these people.

Q. Had you, during that time—confining yourself to a period prior to March 27th—interviews with Directors of the Public Service Corporation in relation to lights? A. Yes, sir, we had; it came about that we would not be able to light the park, owing to the fact that there were no feed wires to run down there; and we went to the Public Service Corporation, and the Public Service Corporation said that they could not give us any light because it did not have any feed wires, and we came to a dead stand on that; and, through the influence of ourselves with some of the Directors of the Public Service Corporation, by going to those Directors with whom we were influential, we were enabled to have the Public Service extend to our park the feed wires.

Q. How much time did those negotiations take; did it extend over quite a period? A. It took a considerable length of time, as I remember it; the Public Service Corporation were loath to do it, and it was only by a large amount of what you might call "pull" that we were able to get it through.

Q. Was the feed wire put in? A. I don't know when it was put in, but it was put in; I don't remember the date.

Q. Was it arranged for before the organization? A. Yes, sir.

Q. The arrangement was made before that? A. Yes, sir.

Q. What was the expense of putting it in? A.

I understand it was $10,000, from the Public Service Corporation.

Q. They bore that expense, though? A. Yes, sir; it was an expense that they would not have gone to if we had not had the influence as I remember it, to get it through.

Q. It was your personal solicitation and influence that was exerted with the different Directors, is that it? A. Yes, sir.

Q. During this time were there frequent meetings of the gentlemen interested? A. I think we met every day, and we had a standing rule to meet at 12 every day, either at the office of General Sadler or at the Trust Company.

Q. How many of you were there that were then interested, and were in the habit of meeting daily? A. I think it was General Sadler for awhile, and then he was taken sick, and then it was Mr. Hamill and Mr. John Broughton; sometimes Mr. Ferdinand Roebling, Jr. and myself; Mr. Oberheide, my brother John Dickinson, and myself.

Q. Now, you are confining yourself to a period anterior to the organization? A. Yes, sir.

Q. During that same period was your attention occupied with plans, specifications for buildings that were intended? A. Yes, sir.

Q. Was that a matter of much time or not? A. It was a matter of a great deal of time; we finally hit upon architects by the name of Evans and Bright, of Philadelphia, both of whom I knew, and we were continually having them up here, and going down there, and continually going with them to the White City itself, and looking over these buildings, we then went into the matter of the buildings of the White City Park, and finally we took that matter up with James G. Doak and Company, of Philadelphia.

Q. What do you mean by the "buildings?" A.

Of the building of the buildings; we went into that proposition when we got this thing started, of who was to build the buildings and how we were to do it, and getting estimates and getting the plans in shape, and getting practical amusement people's ideas as to the construction of the buildings, and as to the landscape of the park.

Q. What buildings were there, in fact, under discussion? A. The enlargement of the present building there, which was formerly known as the mansion house or casino; there was the changing of a little building that stood alongside of that, in the women's building; there was the enlargement of the carousel building to house a much larger carousel that we expected to purchase; there was a building for the roller coaster device; a roller skating rink; open air theatre; the band stand, and an amusement building for the penny arcade, candy, soda water fountain, peanut stands and other stands throughout the park; shooting galleries, photograph galleries; the mirror-maze; a miniature railroad.

Q. A house of mystery? A. No, sir, we did not have a house of mystery.

Q. You spoke also of some landscape gardening that was done. A. It was necessary to lay the walks out through the park, to wire it under ground, to fix the location for the lights, and fix up the lake; our intention was, to run motor boats on the lake; arrangements had to be made to light it up; facilities for the steps going down to the lake, and a kind of a dock we were going to build. The whole details of the whole park were constructed in our minds, as to what we were going to do, before we actually incorporated this company and started to build the park; in other words the details were arranged.

Q. And you spoke, I think, of interviewing concessionaires? A. Our efforts all during the Winter, the first part of the Winter of 1907, were in interesting different people to come in and put in different devices in the park for amusement purposes.

Q. Just how did you do that; just tell us what your method was? A. We did that through a theatrical paper called "The Billboard," and we did it through booking agencies, and we did it by going to New York and talking with these booking agencies personally, and by talking to different amusement device people. We were frequently called on here by people who heard that we were going to have a park, and we gave up hours of our time talking to those people.

Q. Did you have a Figure 8 up there? A. Yes, sir; the Figure 8 is a device where a car is hauled to the top of an incline, and then it comes down by gravity in the shape of the figure 8, or a roller coaster.

Q. Was much time spent in arranging about that? A. There was a tremendous lot of time spent in arranging about that; the difficulty was, that the people we expected to build it, they fell down on their contract; that was Breunig and Company, and we had to finance the roller coaster device, and we formed a separate company to operate the roller coaster device; so, I think it was called the Roller Coaster Device Company.

Q. Did you get up prospectuses? A. Yes, sir, we got up typewritten prospectuses of the company, setting forth (which information we got principally from Mr. Oberheide), setting forth what had been done in other places; what a city of the size of Trenton should do; what the probable receipts should be, and what the supposed profits were put at.

Q. It had the general feature of an optimistic prospectus, I suppose? A. Yes, sir, but there was nothing in the prospectus which made any unreasonable claims, nothing but what the White City Park could reasonably do.

Q. Who were Doak and Company? A. James B. Doak and Company were the contractors who finally built the park, giving their supervisory labors free, charging us only the actual amount which they paid the workmen; at least, that is what they claimed they were going to do, and I think they did charge us only that; we kept track of the number of men they employed and what they paid their men; so James B. Doak and Company got no profit out of the building of this park; they took their profit in the stock of the company.

Q. The actual building was after the organization? A. Yes, sir.

Q. But before the organization, were you in negotiation with them? A. Yes, sir.

Q. Do you mean they built the buildings? A. Yes, sir.

Q. And undertook the charge of the landscape gardening too? A. No, sir, we attended to the landscape gardening ourselves.

Q. Was there a man named Kennedy who had something to do there? A. We went about town trying to make the most advantageous arrangements we could with dealers in lumber, to see under what conditions they would supply the lumber, and what price—Doak & Company doing the work practically free of charge; and after talks with Wilson and Stokes Company, and I think the Willey people down at Broad Street Park, and with the Robert W. Kennedy Company—there may have been others, but I do not remember, we finally were able to make a most

advantageous arrangement with the Robert W. Kennedy Company.

Q. For the lumber for the buildings? A. Yes, sir; they supplied almost all the lumber; Wilson and Stokes supplied a little of it.

Q. Were there meetings with your counsel in relation to this? A. Yes, sir.

Q. Who was the counsel? A. John M. Dickinson.

Q. And you had frequent consultations with him? A. Yes, sir.

Q. When it came to the matter of arranging for the actual organization, did that occupy considerable time? A. Yes, sir.

Q. You said, I think, a while ago, that you spent a good deal of time in interesting people in the enterprise, soliciting persons to take stock; I believe that is so, isn't it? A. That is so.

Q. Did you personally secure stockholders, induce persons to take stock? A. Yes, sir.

Q. To what amount, do you know? A. I probably could, if I saw one of the old stock subscription lists; I personally got in most of the money; most of my associates helped me with some of it, and personally I obtained most of the subscriptions.

Q. Can you tell approximately what the amount was—the entire amount of subscriptions obtained; do you know that? A. In the neighborhood of $38,000 or $40,000, I think, and I think I must have obtained from $25,000 to $28,000 at least, probably, of the subscriptions, personally.

Q. And with regard to all the work that you have been telling us about, you personally took part in it, did you? A. Yes, sir.

Q. In that, others assisted you—yourself and what others? A. We were divided up in the actual business, divided up into committees; I

think that Mr. Broughton and I were on the Building Committee, and I think that Mr. Sadler was on the Ground Committee, and Mr. Hamill was on the Finance Committee; Mr. Oberheide was also on one of the committees, I think it was the Ground and Buildings Committee; I do not recollect, but Mr. Oberheide was at the White City Park and was also uptown, and we would meet him in a general discussion of the park every day.

Q. Did you, before the organization, arrange for the purchase of motor boats, or was that afterwards? A. I don't remember when it was; we instructed my brother, John M. Dickinson, to attend to that, I believe, in New York; however, the lake proposition, as a proposition for canoes and motor boats and rowboats had been considered, and we had decided that we would have boats of a certain character on the lake, and I believe, if I remember correctly, I believe rowboats were already under way at the time of the organization.

Q. Was anything necessary to be done to the lake itself in order to make it suitable for boating? A. Yes, sir; the lily patches had to be cleaned out of the lake; the lights put up around it; certain parts of the tank had to be filled in to keep the water up to a certain level; new overflows put in; a new dock had to be conveyed and built; finally, we knew we should have to come to it, but it did not happen until the Summer, that the water was drained out of the lake, and the stumps were all blasted out of it.

Q. But, up to the time of the organization, had this matter of the condition of the lake required your attention? A. We had considered it, but I do not think we had started to work on the

lake; it was simply a part of the plan, that was all.

Q. It was one of the things you had to plan about? A. Yes, sir.

Q. Well, now, has your statement, so far, covered, in a general way, about all the different matters with which you were occupied down to the organization or do you think of anything further? A. I do not think of anything further; all the details as to the promotion and to the construction of the park, and what we were going to have done there, were worked out, one of the greatest troubles being to get in the stock subscriptions, and attending to the lease and the lights; they were the principal troubles at that time.

Q. I did not ask you—perhaps, it has appeared already in the case—what your business was? A. I am in the real estate and insurance business.

Q. And were at that time? A. Yes, sir.

Cross examination by Mr. Backes:

Q. And all of these things you were able to accomplish between October and March, by giving from two to four hours a day of your time to it? A. I should say at least two to four hours a day, together with my associates.

Q. I assume, am I not right, that the actual burden of this was cast upon you and not upon your asssociates? A. It might have been the greatest burden as to actual time; there might have been not so much burden as to thought; I don't know how much thought my confreres gave it.

Q. At that time you were engaged in the real estate and insurance business in Trenton? A. Yes, sir.

Q. And had been for how long a time? A. Since March, 1898.

Q. And have you regular hours in attending to your office business? A. Yes, sir.

Q. What were those hours? A. Usually, say nine o'clock to five or six o'clock.

Q. And the time that you spent between October and March of 1906-1907, was after those hours? A. It was during those hours.

Q. Always during those hours? A. Also, sometimes, in addition to those hours, we had to work nights on this proposition.

Q. You met Mr. Oberheide when? A. In the Summer of 1906, I think.

Q. And he did not speak to you of the White City Park until October? A. I think he spoke to me about parks in an off-hand kind of way, but I did not take must interest in it.

Q. Where was it you met Mr. Oberheide first? A. I think it was the Hotel Sterling.

Q. When was it that the idea of building a White City Park took hold of you? A. In the early fall of 1906.

Q. What month do you mean? A. To the best of my recollection and belief, it was along in October.

Q. Don't you know it was as late as the middle of November before you became interested in the project? A. I don't remember.

Q. You would not say it was earlier than the 15th of November that you first became interested in this Oberheide project? A. I would not swear to it.

Q. Now, at this distant day, five years after this project was undertaken, can you distinguish between what work was done prior to the 26th of March, and the work done after that time, in furthering this enterprise? A. I think I can, yes, sir.

Q. Is there any line of demarcation in your memory between the work done before and the work done after? A. The only line of demarcation that I can remember is, that we had everything ready under way to proceed with all speed at the time we had the company incorporated.

Q. Your first work was the work of securing subscriptions, wasn't it? A. And in promoting, and in telling about what we thought the park would do; telling that to prospective subscribers.

Q. Do you remember who your first subscriber was, outside of your own immediate coterie? A. No, sir; I don't remember.

Q. You did not begin any active work in the promotion of this enterprise before securing the first subscriber, did you? A. I don't remember.

Q. Don't you know—would you recall the first subscriber if I showed you a list of subscribers? A. I might.

Q. Here is the list then; look it over. A. (Witness looks it over.) I am afraid I cannot tell you; I am rather under the impression that it was Henry W. Green.

Q. Now, the first subscription was obtained under date of January 31, 1907? A. It might have been the first one that was actually obtained in writing, but I am of the opinion that I obtained promises like this, for instance, that a certain person would subscribe if someone else did; people would say, "You come around again if you get so and so," and finally we would get the money.

Q. You took with you the blank subscriptions? A. Yes, sir; and lots of times people would say, "I will subscribe a thousand dollars."

Q. Do you know any person who promised to subscribe before you actually obtained a subscription? A. I don't remember, now, but that is my recollection of what happened.

Q. Well, you had some 50 or more subscribers? A. I don't remember that either; I take your word for it.

Q. You have the list there, what is the last number? A. 66 is the last number, but they don't seem to start at No. 1 or No. 2.

Q. Do you know of any preliminary work that you did prior to securing the first subscriber? A. Yes, sir.

Q. What? A. Looking over possible or likely sites to locate the park.

Q. That is all, eh? A. You asked me if I knew of anything, and I mentioned that as one of the things.

Q. That is all? A. I do not remember.

Q. Don't you recall anything else? A. I do not at this minute; no, sir.

Q. Isn't it a fact that the building of a White City Park took form and shape only after the 31st day of January, 1907, the day that you secured in writing the first subscriber to the capital stock? A. I think not.

Q. You won't assert to the contrary? A. I won't assert to the contrary, but I think not; I know that my labor started early in the Fall of 1906; I gave up entirely too much time to this business.

Q. When was it that you went to New York with Mr. Hamill? A. In the early part of the Winter of 1907.

Q. Are you quite sure of that? A. I am not certain when I went.

Q. Don't you know it was in the month of February of 1907? A. It might have been.

Q. When was it that you advertised the park—advertised it for attraction? A. I could not tell you.

Q. Don't you know it was after the park was amusement parks such as the kind he was inducing formed—after the park corporation was formed?

A. I could not tell you; I don't remember, but I remember that we inserted some advertisements in "The Billboard," as I remember it.

Q. For what—for attractions to come there—A. That was under the charge of Mr. Oberheide, that end of it, and I am not willing to state when it was; I don't know; I know that that was all looked into; that we decided we would advertise; authorizations were made for it.

Q. Mr. Oberheide was known to you at that time as a producer of amusements of this kind? A. He was supposed to be.

Q. And he represented himself to you as a man who had in the past, constructed and operated you to engage in? A. He did, certainly.

Q. As a matter of fact, he undertook a great deal of the labor which you have described to us, didn't he? A. He did, and did the best he could.

Q. And he was constantly engaged in promoting this enterprise; outside of securing subscribers? A. Yes, sir, he was in his own way.

Q. He was the one who planned for you and advised how things should be done, and he was the one that accomplished—A. I don't think so; I think that we called upon Mr. Oberheide as to what should be done, we took Mr. Oberheide's advice and counsel.

Q. Mr. Oberheide steered you, you mean? A. We did not watch him close enough.

Q. Who built the roller coaster for you? A. Breunig started it, I believe, and an old bird named Charles Cook, Jr., built it, as I remember.

Q. And from whom did you buy the merry-go-round? A. From a man named Denzil.

Q. Mr. Oberheide arranged for the purchase of that, didn't he? A. I am afraid he did.

Q. Altogether? A. Yes, sir, I think he made the deal with Mr. Denzil.

Q. When was it that Breunig, the contractor for the roller-coaster, announced that he would not go on with his work? A. I don't remember; I think it was after the park was incorporated, along in April, maybe.

Q. So, whatever work you did with reference to the construction of the roller-coaster, was done after the formation of the company? A. No, sir, because all those plans for the proper size of the roller-coaster and for the kind of a roller-coaster that we were going to construct, and as to what it was going to cost, were all gone into previous to that.

Q. In consultation with Mr. Oberheide? A. Yes, sir, and I don't remember who all. Evans and Bright also, as to their ideas as to what kind of roller-coaster we should have.

Q. Mr. Dickinson, you had a beautifully decorated map showing the topography of the White City Park, with handsome buildings on it, who did that for you? A. I don't remember—I think Evans and Bright.

Q. Under the directions of Mr. Oberheide? A. Yes, sir.

Q. You had nothing to do with that? A. Just carting it around and showing it to prospective subscribers.

Q. Did you secure the subscription of Henry W. Green? A. Yes, sir.

Q. How long did it take you to get that? A. I don't remember; it took some time.

Q. How many visits did you have to make to Henry W. Green before you got him? A. I don't remember.

Q. More than once? A. Yes, sir.

Q. Where did you visit him in order to secure

him? A. I cannot tell you; I know I made call after call, as I remember it.

Q. Did you meet him on the street? A. No, sir, we did not solicit on the streets; I don't think we ever solicited on the streets.

Q. Did you secure Herbert Sinclair? A. Yes, sir.

Q. How long did you take to get him? A. I cannot recall how many hours I spent securing each subscription.

Q. Did he subscribe upon the first application? A. No, sir.

Q. How about Roland Blakely? A. I think I secured him, together with the help of somebody else; I do not know whether Mr. Oberheide went with me on that occasion or not.

Q. Did you secure Holt Apgar? A. Yes, sir.

Q. How long did it take for you to persuade him? A. I don't know.

Q. Did you secure Leroy C. Thompson? A. I think not.

Q. Charles H. Holcomb? A. I think I helped to secure him.

Q. With whose help? A. I think Mr. Barker Hamill.

Q. Do you know how many visits you made to him? A. No, sir.

Q. Here is Horace C. Case; did you get his subscription? A. I don't remember, but he never paid the money.

Q. Did you secure the subscription of ex-Governor Edward C. Stokes? A. Yes, sir; I remember calling on him a great many times, and many times together with Mr. Barker Hamill and John Broughton.

Q. Did you secure Isaac F. Richey? A. I secured that myself, because they said I could not get it.

Q. Did you call upon Mr. Richey more than once? A. I think I did, quite a number of times.

Q. Did you, in fact? A. Yes, sir, to the best of my knowledge and belief, I called on him a number of times.

Q. Did you secure the subscription of William S. Hancock? A. No, sir.

Q. Or Robert C. Kolb? A. I think that I helped Mr. Oberheide with Mr. Kolb.

Q. You had to have help with him? A. Yes, sir.

Q. Do you know how much assistance you rendered to Mr. Oberheide in securing Mr. Kolb's subscription? A. I think I did most of it; but Mr. Oberheide and Mr. Kolb were quite friendly, and both lived at the Hotel Sterling at that time, and in addition to seeing Mr. Kolb myself, I had Mr. Oberheide to see him.

Redirect examination by Mr. Strong:

Q. Did you solicit other persons who did not become subscribers? A. We did, a great many other people; we wrote letters out of town to other people.

Q. So that the actual subscriptions do not measure your labors exactly? A. The actual subscriptions are only representing a very small portion of the people called on to subscribe.

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BARKER G. HAMILL recalled, in behalf of the defendant testified as follows:

Direct examination by Mr. Strong:

Q. You were one of the promoters of the White City Company? A. I was.

Q. And at what time, about what time, did you become interested in it? A. I was introduced to Mr. Oberheide in the office of Barker Gummere

at the Trust Company, in the first two weeks of November, 1906.

Q. And did you, on that occasion, become interested in the enterprise, or later? A. I became interested on that occasion.

Q. From that time on until the organization of the company, will you give us an idea of what amount of time you spent in promoting the enterprise? A. My time would be about the same as Mr. Dickinson's, with the exception that I did not procure as many subscribers.

Q. He was interested somewhat earlier than you, wasn't he; was he already in it before you? A. Yes, sir.

Q. Then, except for not getting so many subscriptions, the time you put in was about what he has detailed? A. About the same.

Q. Did you take part in all of the different matters that he has spoken of? A. I did, in great detail.

Q. About how much of your time—say, from the second week in November until the time of the orgainzation of the company, do you think that you devoted to the White City Company? A. I don't think, during that time, with the exception of Saturdays and Sundays, that I spent less than two hours a day; sometimes more, and frequently two or three hours in the evening; I will say frequently, maybe once a week, twice a week sometimes.

Q. Were you engaged in business during that time? A. Yes, sir.

Q. What is your business; what was it then? A. I was a banker.

Q. And the time that you devoted to the affairs of the White City Company, was that during the hours that you would have devoted to your banking business? A. Yes, sir, with the exception of the meetings in the evenings.

Q. With regard to the arc lights: there were arc lights that were used at the park, were there, during the time it was running? A. Yes, sir.

Q. Where were they located? A. They started at the corner, near the corner of Board and Harrison Avenue, and ran along one side of Harrison Avenue to the entrance of the park; at the entrance of the park there was an arc light, and then, what always seemed to be, a larger arc light, between the entrance and the casino; it used to be called the mansion house; we had two arc lights in the roller-skating rink, and one in front of it at the end of the long walk; one in front of the penny-in-the-slot place, and one down below the carousel, where subsequently another large device was. In addition to that, there was an arc light hung on wires on the Open-Air Theatre, and another one in the top of the band stand, and then around the lake; how many, though, I could not tell you.

By the Court:

Q. By whom was the power supplied for those lights? A. By the Trenton Street Railway Company.

Q. That is, these lights commencing at Broad and Harrison Avenue? A. All of them were tapped from the Street Railway wire; it was brought very forcibly to me, because when we had large crowds, a pull would make our lights wavy; it took the load off our wires and made our lights jumpy.

Q. Then there were arc lights around the lake supplied from the same source? A. Yes, sir.

Q. In fact, you have just said that all the arc lights were supplied by power from the trolley company? A. Yes, sir.

Q. Now, there were incandescent lights there too? A. In very large quantities, and they were supplied by the Public Service Company.

Q. And the Public Service supplied no arc lights? A. Not that I know of and I have refreshed my memory by calling up somebody who really did know.

Further direct:

Q. That is your own recollection? A. Yes, sir.

Q. Can you tell us anything about the hours during which the arc lights were burning? A. They burned continuously from the time the park opened until the time it closed; my impression being, that the one arc light at the right-hand side of the ground, for the first year, was burnt continuously all night, on account of its rather policing the park; there might have been a great many things that could have happened there.

Q. It was very necessary that a place of that kind should be lighted? A. Yes, sir.

Q. Do you know whether more than one of the lights was burning all night? A. My recollection is, that the lights at the end of the lake, the far end of the lake, burnt until nearly sunrise, as a matter of protection to the general morality of the park.

Q. Those that did not burn so late, when were they put out? A. Between the hours of 11.30 and 12 o'clock, depending on what particular feature was at the park at the time. I mean by that, that there were numerous occasions, such as extra days that we would have, and especially when we had a great many children in the park at night, that it required our employees to stay until midnight to do some of the cleaning up, that they would not be able to get through in the morning; and, therefore, there were times, and frequent times, that we burnt lights until midnight.

Q. How many arc lights would you say there were that burnt until nearly morning? A. Four

at the end of the lake, and one in the corner of the park.

Q. Making five? A. Yes, sir.

Cross examination by Mr. Backes:

Q. It was arranged to close the park at 11 o'clock at night,wasn't it? A. I take it that the regular hour was 11 o'clock.

Q. And you say it was provided by a resolution recorded in your minutes, don't you? A. I do not recall such a resolution.

Q. Well, on days that children came to the park because of their coming it was not necessary to keep the park open until 12 o'clock, was it? A. Yes, sir, that is the reason we would keep it open later.

Q. To entertain little children late at night? A. These were not babes in arms; they were children ranging from, I suppose, ten or twelve years old up to eighteen.

Q. Do you mean you made the place especially attractive for people of that age? A. Yes, sir, we used to have carnivals.

By the Court:

Q. They were generally attended by chaperons, guardians, parents, et al., Sunday-school teachers? A. I can't say about that.

Further cross:

Q. Are you able, five years after the time of the first promotion, to distinguish what work you did before the incorporation of the company? A. With a certain degree of certainty.

Q. Only a certain degree? A. I cannot absolutely be positive as to events that might have happened within a week or ten days of the 27th of March.

Q. Up until the formation of the company there had been no improvements made upon the lands of the park, had there? A. I am not sure; I believe not.

Q. The first undertaking in the line of promotion by you promoters, was the securing of capital from people whom you could get to buy the preferred stock of the company? A. That is not a fact.

Q. What took place prior to that time? A. After my meeting with Mr. Oberheide, the next thing that I interested myself in was getting my friend, General Sadler, to join me and Mr. Dickinson in the promotion of the matter, and it took quite some persuading.

Q. To induce you three to go into the enterprise? A. Yes, sir.

Q. And you three were persuaded to go into the enterprise no sooner than the time that you endeavored to get other capital in by subscribing to the preferred stock, isn't that so? A. No, sir, that is not so.

Q. What other work did you do before getting your first subscriber in writing? A. I thought that one of the most valuable things that we did was to engage the help of Mr. Broughton and Mr. Sadler, who afterwards did so much towards the promotion of this enterprise. Then, we got in communication immediately with Evans and Bright, and we spent considerable time with them, first in Trenton and subsequently in Philadelphia; I went to their office in Philadelphia on a number of occasions.

Q. How long was Mr. Oberheide engaged in the persuasion of you and Mr. Dickinson to go into the enterprise? A. I regret to say that it took him but a very short time to persuade me.

Q. How long did it take you to persuade Mr.

Broughton and General Sadler to associate themselves with you? A. About a week or ten days.

Q. That would carry you up to the first of December? A. Yes, sir.

Q. And then it was that you four concluded that you would undertake the building of a White City Park, is that right? A. Yes, sir, but Mr. Dickinson and myself had concluded that we would do it anyway, before we got those two gentlemen.

Q. But before you did any work outside of that, which led up to you four combining to engage in this enterprise, you had not consulted with any of what I may call outside people, to go into this matter, had you? A. Up to the first of December, perhaps, nobody but Evans and Bright, but Mr. Dickinson and I did formulate plans with them before we were able to interest General Sadler and Mr. Broughton in the proposition. In other words, I knew Evans and Bright in the matter before I knew Mr. Broughton and General Sadler in it.

Q. Then you went to Evans and Bright and consulted with them in order to assure yourself that it would be a profitable enterprise to you, didn't you? A. Undoubtedly.

Q. And up to that time, that was the only purpose for which you consulted Evans and Bright, wasn't it? A. No, sir, because Evans and Bright, when I first met them, had already drawn a tentative plan for the park, to be situated—

Q. At whose behest? A. At the behest of Mr. Oberheide.

Q. How soon after you met Mr. Oberheide was it, that you consulted with Evans and Bright? A. I met them at the same time that I met Mr. Oberheide.

Q. Then, together, they were endeavoring to per-

suade you to undertake, with your associates, this enterprise? A. I always supposed that Evans and Bright had an axe to grind, somehow.

Q. Do you know whether Evans and Bright laid their matters before anyone else except you and Mr. Dickinson—up until that time? A. With no one, I think, except Mr. Oberheide.

Q. And after you had been in conference with Evans and Bright, and Mr. Oberheide, and had been induced, or partly induced—seduced, probably is the better term—to go into this project, how long a time after that did it take for you to secure the co-operation of Mr. Broughton and Mr. Sadler? A. I think I stated about a week or ten days.

Q. But up until what time, what date would you fix? A. I could not fix the date.

Q. Was it before New Year's of 1907? A. I should think around December 1st.

Q. Don't you know that the first letter that was written by the promoters to Evans and Bright, bore date the 27th day of December? A. I don't know it.

Q. Do you recall your testimony in which you averred that the first communication you had with Evans and Bright was on the 27th of December as appeared by a letter which was offered in evidence? A. I do not remember.

Q. You do not recall that? A. No, sir.

Q. Then, after you had induced Mr. Broughton and Mr. Sadler, to join Mr. Oberheide, yourself and Mr. Walter M. Dickinson, what was the first work that you five did? A. The first work was the general formulating of our plans for the park, covering a period of some time; the work of going over plans, more plans; we had considerable work in interviews with Messrs. Steele and Skirm, who, at that time, were very much

interested in the Charlie Scudder farm, and they wanted to join us and go into the proposition with us, and Mr. Edmund C. Hill was also anxious to have us take over his Bromley Park land; and I had a great many interviews with both of those gentlemen, requiring a good deal of time, and some of that time was on Saturdays; that was some of the Saturday work that I did, then there was the getting into communication with the Street Railway people; my several interviews with Mr. Rigg, my several interviews with Mr. F. W. Roebling; my trip to Newark to see Colonel Anthony R. Kuser, a number of interviews with my father in regard to lighting, a Public Service matter; all of these things covering a period from some time in December up to around the time that the company was organized; so that, I can say, in a condensed way, I think that the day that the organization took place in the office of the Trenton Club, that that park was practically built in the minds of these five gentlemen, with the exception of the actual work of putting the buildings up and having the concessionaries come there on the ground; everything else had been practically completed, and after that time our principal work was the building of the park. Towards the latter part of the Spring of 1907, we commenced to get rather disgruntled with Mr. Oberheide.

Q. That was after the formation of the company? A. Well, we commenced to think about the time the contract was made with Mr. Denzil, not the written contract; Mr. Denzil was in Trenton several times; one time he was in my office on Sunday morning at the Trust Company, and we got very suspicious of a deal.

Q. That was after the formation of the company? A. No, sir.

Q. Was not that after Breunig had failed to perform his part of the contract? A. No, sir; that was before March 27th.

Q. You think you spent from two to four hours daily from the time that you, with your associates, concluded to build this park, up until the 26th day of March? A. That is an approximate estimate.

Q. You say you are a banker engaged with the Trenton Trust Company? A. Yes, sir.

Q. In what capacity did you serve the Trust Company in 1906 and 1907; what was your office with them? A. I was the Assistant Secretary and Superintendent of vaults.

Q. And you had fixed hours? A. Yes, sir.

Q. From 9 o'clock in the morning until what hour in the afternoon? A. I don't think I have left my office, with few exceptions, until six o'clock, for the last ten years.

Q. And your regular office hours are supposed to be from 9 to 6? A. Yes, sir.

Q. And the work that you performed in the promotion of this White City project was during the office hours, during your office hours at the Trust Company? A. Not altogether, the majority of it, but not entirely so.

Q. Do you mean to say you took from two to four hours a day out, of the time that you have mentioned, from nine o'clock in the morning until six at night, which were due to the bank, and devoted them to the prosecution of the White City undertaking? A. I regret to say, that I did that thing.

Q. Where were you able to accomplish that, where, in the bank, were you able to devote from two to four hours out of the nine hours that you have spoken of each day? A. A good many

of these conferences took place in my office at the Trust Company; some conferences were at General Sadler's office, which is just across the street; and in the afternoons, I had to, after banking hours, after three o'clock, go to the park; I lost a great deal of time, which I regretted very much.

Q. When you speak of after banking hours, what do you refer to? A. The time the bank doors are closed, three o'clock.

Q. Was the principal time of from two to four hours a day, spent at the bank, after banking hours? A. No, sir; I should think from one to one and a half hours a day would be spent in the bank, uptown, on the business of the White City.

Q. And the remaining time was spent down at the park? A. Yes, sir.

Q. What did you do down at the park, what took you down there? A. First, we would go down there, perhaps I had a lumber man to see, and then again, I had a landscape gardener, and so on; going 'round with the heads of these different concerns that were going to build this park for us.

Q. Do you say you did that every day from the time you say you concluded to build the park up until the 26th of March? A. Every day, I should think, after the first of the year.

Q. Not during December? A. No, sir; during December it was more the formulating of the general idea, etc.

Q. And you would spend on an average of two and a half hours at the park each day? A. Well, if you put the figure at four hours, and give me an hour and a half uptown, the balance would be about that.

Q. Two hours and a half? A. Yes, sir.

Q. You would get down there at three o'clock? A. Yes, sir; and I would be back uptown by six.

Q. This was in the winter months? A. Yes, sir.

Q. Night set in about five o'clock? A. Yes, sir.

Q. Do you mean to say you would spend the dark portion of the day at the park with these men? A. Yes, sir; frequently, in the so-called casino.

Q. Did you have electric lights down there during that time? A. In the casino.

Q. Only in the casino? A. We had some of the arc lights.

Mr. Dickinson: We have two more witnesses, Mr. Broughton and General Sadler.

The Court: Then we will adjourn to Thursday, April 25th, 1912, at 10.30 A. M.

## Testimony.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>ALFRED G. HOLCOMB, *et al.*,<br>Complainants,<br>*and*<br>TRENTON WHITE CITY COMPANY,<br>Defendant. | On Bill, etc. |

Transcript of testimony taken in the above-entitled cause, before Hon. Edwin Robert Walker, Chancellor, at the State House, Trenton, New Jersey, on the twenty-fifth day of April, nineteen hundred and twelve.

Same appearances as before noted.

JOHN S. BROUGHTON, recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Dickinson:

Q. Are you one of the gentlemen interested in the promotion of the White City Company? A. I was interested in the formation of the company, although not at the first inception.

Q. When were you first interested in the promotion of the company? A. I think about December, in the month of December of the year in which it was formed.

The Court: December, 1906.

Q. You became interested, didn't you, before the actual—or were you interested in the promotion of the company before it procured a charter? A. Yes, sir.

Q. Can you state about the time you became interested in the promotion of the company? A. It was the latter part of that year—in fact, the last month—about November or December of 1906.

Q. I would like you to state how you first became interested in this company, and what you did from the time you first became interested, as near as you can recollect.

A. Well, Mr. Hamill and Mr. Gummere—no, Mr. Hamill and Mr. Dickinson, rather—came to me after they had arranged for a lease with Mr. Hurley, and they desired me to subscribe for stock, which I did, and there were considerable negotiations leading up to a concession we desired to obtain from the Street Railway Company —the main office of which, I think, was in Philadelphia. Mr. Rigg was the President of the company.

Q. Did you meet with Mr. Dickinson and Mr. Hamill in reference to the matter connected with the promotion of the company? A. Yes, sir; several times.

Q. Can you state how many days, between December, 1906 and the time when this park was incorporated, that you met with these gentlemen and discussed matters connected with the park. A. Well, every day, I guess, that I was in Trenton, with the exception of Sundays.

Q. What proportion of each week were you out of Trenton? A. Well, always once a week, and possible twice a week, some weeks.

Q. Can you state, then, how many days per week you consulted with these gentlemen about matters connected with the park? A. Five days a week, at least.

Q. How much time during those five days a week did you devote to the park matters? A. Well, I don't know; I have not formed any esti-

mate of the time; sometimes our meetings would be short, and sometimes they would be long. At one time we had almost daily meetings of the Board of Directors, I remember; then these meetings sometimes were at night, then they would be quite lengthy; sometimes a matter of two or three hours.

Q. Can you state what you did at these meetings, or what you discussed? A. Well, the principal work which, perhaps, I did, was in connection with President Rigg, of this Street Railway Company, in Philadelphia, in obtaining from him a favorable lease. I made several trips to see him; that was one of the principal things I did, and then, the next matter which I had under my supervision particularly, and which took a great deal of time, was as a member of the Building Committee, to supervise the buildings at the White City Park, and there were very few days that I did not go down there. It was very easy for me to go in the automobile, and I would run down there and supervise this work almost daily, and see how it was getting along. It was a long, tedious task, and someone had to be on that committee, and I was chosen.

Q. Do you know what period of time your visits to the park in superintending these buildings extended over? A. Right up to the opening day, which I think was May 30th.

Q. How many buildings did you superintend?

Mr. Backes: Objected to as incompetent, irrelevant and immaterial. The matter has already been ruled out.

By the Court:

Q. March 20th or the 27th, was the day the corporation was formed; you did not put up any buildings until after the corporation was formed?

A. We started as soon as the weather was favorable; I do not remember the date.

The Court: My recollection is, that the testimony shows there were no buildings erected until after the corporation was formed.

Mr. Dickinson: I think that is probably right.

Mr. Backes: That was the admission of counsel at the last hearing, and with that admission in the case I made the objection.

The Court: I shall have to sustain that objection.

A. I spent considerable time with the architects in Philadelphia in going over these plans before the contract was given. I must have made a half a dozen visits.

Q. Who were the architects? A. Evans and Bright, something like that.

Q. Can you think of any other services that you performed, other than seeing these architects and superintending the buildings and seeing Mr. Rigg?

Mr. Backes: Objected to. It has already been ruled out about the superintending of the buildings.

Mr. Dickinson: The question is withdrawn.

Q. How many visits did you make to Mr. Rigg in reference to the lease?

Mr. Backes: He said several trips.

A. Three or four at least.

Q. Where was Mr. Rigg when you visited him? A. In Philadelphia.

Q. Can you state how long you were in consultation with him on the occasion of these visits? A. Well, I should say that the shortest was half an hour, and the longest was two hours.

Q. Did you accomplish with Mr. Rigg what you went for? A. Yes, sir.

Q. You have testified that you were in consultation with Mr. Hamill and Mr Dickinson nearly every day, with the exception of the days when you were out of town; can you state about how many days you were in consultation with them about these matters?

Mr. Backes: That is a mere matter of calculation.

The Court: He may make the estimate if he chooses, if he can, and say how many days it is.

A. Well, that period would cover, say 180 days—I should say 150 of those days and more, probably 160; there was not a day that I did not consult with Mr. Hamill, Mr. Dickinson and General Sadler also.

Q. What was your business at that time? A. The rubber business.

Cross examination by Mr. Backes:

Q. Had Messrs. Hamill and Dickinson secured the lease from Mr. Hurley at the time that you took an interest in the corporation; had it been actually procured? A. They talked to me about that lease a few days before they procured it.

Q. I want to know whether you did anything in the promotion of this company before the lease was obtained from Mr. Hurley? A. I did; yes, sir.

Q. What? A. I suggested ways by which they

might procure that lease, and also was of some benefit to them in obtaining the money to buy that lease.

Q. Tell us what you did. A. I suggested ways by which they could get that lease and pay for it.

Q. What ways did you suggest? A. I suggested, by giving them the money myself.

Q. That was the first work you did in the promotion of this company, wasn't it? A. That is prior to the obtaining of the lease.

Q. The suggestion by you of means by which the lease could be procured, was the first work you did in the promotion of the company, wasn't it? A. No, sir; my opinion was asked several times about the advisability of a park, and—

Q. But you were not then interested? A. No one was interested then.

Q. How long was that before the money was paid over to Mr. Hurley for his lease? A. A month or six weeks.

Q. Now, when was it that you suggested a method to be pursued by which means might be obtained for this Hurley lease? A. About a week before they procured it.

Q. And about a week before you gave your check? A. I don't know the date that I gave my check.

Q. I say, about a week before you gave your check? A. I won't say that.

Q. You won't say it was not two or three days before that you first suggested the thing to be pursued? A. No, sir; because I don't know just when I did give my check.

Q. Do you know how long after you suggested the way that means might be procured for getting this lease, that the lease was actually procured from Mr. Hurley, and that a check was

given to him for it? A. No, sir.

Q. A day or two? A. I don't remember.

Q. Was it a week? A. I don't remember.

Q. You have a distinct recollection of the 150 days you spent in conference, and you have a very vivid recollection of things that happened otherwise than this; now, how is it, that you have no recollection at all as to the time when it was that you first suggested the means by which the money might be procured to buy the Hurley lease? A. The other matter is very much easier to remember, because I know about when the lease was obtained, and I know when the park was opened; but this other matter I have not tried to remember.

Q. Now, so far as you recall, that was the first step of a substantial character that inducted you into this promotion? A. Yes, sir.

Q. So it was at or about the giving of the Hurley check that you first began your work of a promoter? A. Well, I said some six weeks before that, that Mr. Hamill and Mr. Dickinson and I had been talking and in consultation about park matters.

Q. But at that time you say nobody became interested until something substantial was obtained, namely, the Hurley check? A. No, sir— the lease.

Q. In being successful with Mr. Rigg you, of course, mean that you procured from Mr. Rigg the ten year lease? A. Yes, sir.

Q. Did you personally procure the writing from the corporation—from the Real Estate Title, Insurance and Trust Company of Philadelphia—the holding company for the Trenton Street Railway Company? A. I did not actually procure the paper; it had to be prepared; the agreement

had to be prepared, and Mr. Rigg said that it would be sent to us.

Q. Do you know how soon, in fact, it was sent to you after? A. No, sir; I don't know anything about it, because that was left to the Secretary of the company; I don't know when he received it.

Q. It was not until the month of May, the 27th of May, that the lease between this company and the White City for ten years was signed; now, how long was it before the 27th of May that you had your last interview with Mr. Rigg, in which you concluded all your arrangements? A. I don't know; it was all settled and we finally received the agreement.

Q. I am asking you if you can tell me about how long before the 27th of May—the date of the lease—it was that you had your last conference with Mr. Rigg; in June you concluded the arrangement for the making of the lease; would you say it was within a week? A. I don't remember.

Q. Would you say it was within a month? A. It is too far back; I cannot remember.

Q. Was it before the incorporation or after the incorporation? A. I don't know that I could say.

Q. You don't know whether these visits to Mr. Rigg, three or four, visits, were made before the White City was incorporated, or after? A. Some of them were before.

Q. By you? A. Oh, yes.

Q. Do you know that the check to Mr. Hurley for his lease was given after the incorporation of the company? A. I had nothing to do with giving the check to Mr. Hurley.

Q. It was your check that was given, wasn't it? A. No, sir.

Q. You did not procure the money? A. No, sir.

Q. Whose check was it? A. My dealings were with Mr. Dickinson; I think, probably, my check was made payable to Mr. Dickinson or to Mr. Dickinson and Mr. Hamill jointly.

Q. Don't you know your check was given to Mr. Hurley in the purchase price of the Hurley lease? A. I don't think so.

Q. Can you obtain that check for us? A. Yes, sir.

Q. I wish you would. Do you remember when it was that you first saw Mr. Rigg? A. I don't remember the date.

Q. What month was it? A. It was in the early stage when we were talking about the starting the park, long before the incorporation, and long before the park was really decided upon.

Q. You saw Mr. Rigg where? A. In Philadelphia, and he came to see me once or twice.

Q. Who was with you when you went to Philadelphia? A. Mr. Dickinson and Mr. Hamill.

Q. Did you go purposely to see Mr. Rigg? A. Yes, sir.

Q. And you saw him? A. Yes, sir; we had an appointment with him to see him.

Q. And you had a conference with him of how long? A. Anywhere, I should say, from half an hour to two hours, at the different interviews.

Q. Were your arrangements, then, completed at this one visit? A. No, sir.

Q. Did you have another appointment with him? A. Yes, sir, the oftener we went the more concessions we got; we went several times; we could not close it up the first time.

Q. What concessions did you succeed in getting the first time?

Mr. Dickinson: Objected to.

The Court: That is a proper cross examination; counsel has the right to cross examine this witness to ascertain what he did in the way of promotion of this company; and he has a right to explore the whole question, and find out what he first acquired and what he last acquired in the way of concessions.

A. I don't remember whether it was the first time; I don't remember.

Q. Nor do you remember what you got the second time? A. I don't know whether we obtained anything on our second visit or not.

Q. Do you remember that you did go a third time? A. Yes, sir.

Q. Do you remember when it was? A. Yes, sir.

Q. Do you remember how long after the first time it was? A. Probably a week.

Q. You are guessing at that? A. Well, I went down very soon after the first visit.

Q. Was your third visit—your third visit was when? A. I don't know the date.

Q. How long was it after the second visit? A. I judge it was a matter of two weeks, two or three weeks, I am not certain.

Q. You said the third visit was one week after the first; now, you say the second visit was two or three weeks after the first? A. Yes, sir.

Q. Did you take any interest in the promotion of the company before you actually subscribed for your stock? A. I was interested in it, thinking that possibly I might invest in it.

Q. But not otherwise than that—not otherwise than thinking you might become a promoter and an investor? A. I did everything I could to help along the project.

Q. Not, however, at that time, as a promoter or an investor? A. No one had invested any money up to that time.

Q. Not at that time, even as a promoter, I say? A. As much as anyone else, probably.

Q. Then, your real connection with the company began when you subscribed for your stock? A. Real connection?

Q. Yes. A. I should say that my real connection with the company in a substantial way began when I gave my check for the lease, which was $4,000.

Q. That was given after you made a formal subscription to the stock, wasn't it? A. I am not sure about that.

Q. Where would these conversations, five days a week, take place, Mr. Broughton? A. Generally at the Trust Company, I think.

Q. And what time of day? A. Oh, at different hours, whenever the matter came up—morning and afternoon, and many evenings.

Q. You would have company meeting with Mr. Sadler and Mr. Roebling, Jr., Mr. Hamill and Mr. Dickinson, and yourself? A. Yes, sir.

Q. And usually General Sadler, of course, was present? A. Part of the time he was ill.

Q. But, aside from the period of his illness, the matters upon which you gentlemen consulted were also taken up with General Sadler? A. Whenever he was present.

Q. And if he were not present, the matter sometimes would again be submitted to him before a conclusion was reached? A. Possibly.

Q. And those are the conferences and those are the meetings that you refer to when you say that you were in conference with these men for a period of five days a week, covering 150 days? A. Not altogether, no, sir.

Q. Not altogether what? A. These meetings of the Trust Company—

Q. You refer to them principally as being held

at the Trust Company? A. Some of them were held there.

Q. But I am speaking now of the meetings that were held, or the conferences that you had on an average of five days a week; were those at which General Sadler usually attended, or where subject matters were taken up which might have been subsequently submitted to General Sadler; and the meetings of five days a week are those that are included and make up the 150 or so meetings that you had? A. I do not see the connection with regard to General Sadler; we had meetings whether or not he was there; we were divided up into different committees; and it depended on whether your committee was going to report on that day; if General Sadler had some special work he would be present.

Q. These 150 meetings, held on an average of five days a week, were meetings held during the time when General Sadler was interested, as you were, as a promoter of the company? A. I don't know exactly when General Sadler's interest began or when it ended.

Q. I have not asked you that—

Mr. Dickinson: I agree with the witness.

The Court: If the question should be objectionable from any view, you can make your objection and state your specific point of objection, and I will rule on it.

Q. You, at the time, knew when General Sadler's connection with the company began as a promoter, didn't you? A. No, sir.

Q. You knew when General Sadler became one of you? A. I knew at the time, probably.

Q. And these meetings that you speak of, the 150, held on an average of five a week, were after the time that General Sadler became one of you?

A. I don't know that he was in it at the original inception; I cannot answer for General Sadler.

Q. When the original thought came to your mind, or was suggested to you, of forming a White City Park— A. I do not remember when General Sadler's connection was made with it.

Q. You are not charging for the original thought, are you, that it either sprung from you or it was suggested to you, that it would be a profitable undertaking to have a White City in Trenton? A. I have not charged anything yet.

Q. You have not, in amount? A. (No answer.)

Mr. Dickinson: The only other witness we have is General Sadler, and he is engaged in his own case. With that exception we rest on this issue.

Defendant Rests.

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CHARLES G. COOK, recalled in behalf of the Receiver, testified as follows:

Direct examination by Mr. Backes:

Q. Have you an agreement made between your company and the Trenton White City for the furnishing of electric current? A. Yes, sir.

Q. Will you produce it? A. There it is.

Q. Is this it? A. That is a copy of it, Mr. Backes.

The Court: You mean a duplicate original or a mere copy?

Mr. Backes: It is a duplicate original, sir. It is signed by the Public Service Corporation, "John J. Burleigh, Vice-President," and attested by its Secretary, under the seal of that company, and signed by

Mr. W. M. Dickinson. I offer this in evidence.

Mr. Dickinson: I object to that leaf being offered in evidence, because it appears that the leaf was for the furnishing of power for incandescent lighting, whereas, the only matter in issue is the cost of arc lights in this case, and that this is for the cost of furnishing incandescent lights. I object to the lease being introduced in evidence on that ground.

The Court: How does it become evidence?

Mr. Backes: Why, it is some evidence as to the value of the electric energy which was agreed to be furnished by the Trenton Street Railway Company, a subsidiary corporation, in this, that contemporaneously with the making of the lease, or nearly so, these very promoters entered into an agreement for the furnishing of electric current at a certain price, under conditions similar to those that were to prevail in the furnishing of electric current—

The Court: The light provided for in that agreement is incandescent lighting?

Mr. Backes: No, sir, there are some arc lights.

The Court: I am in a state of some dubiety, and I will admit it; you have your objection and you may argue it.

Mr. Dickinson: It seems to me this is a very important matter to us at this time, unless they can show some relation between the cost—

The Court: It may be argued; I will admit it as evidence. I have some doubt as to whether it is evidential; if I should conclude that it was not, at the conclusion of

the argument, I will exclude it or ignore it, at least. I will admit it now.

Marked "Exhibit P-A-F 1."

Cross examination by Mr. Dickinson:

Q. Where did you get this agreement from? A. From our vault in the office here in Trenton.

Mr. Backes: In lieu of the original, a copy will be offered in evidence.

Redirect examination by Mr. Backes:

Q. How long have you been connected with the Public Service Corporation? A. I have been connected with its underlying companies and the Public Service, for about twelve years. Q. And during that time the Public Service and its present underlying companies were engaged in the sale of electric current? Do you know anything about the measurement of electric current? A. Not from a practical or technical point of view.

Q. But from your experience in connection with the Public Service Corporation and the subsidiary companies, you do know, do you—you say you did not know from experience; what I want to know is, is there any difference in the measurement of electric current or electric energy supplied to arc lights or incandescent lights?

Mr. Dickinson: Objected to; the witness says he is not qualified theoretically to testify on the subject.

The Court: That seems to be so.

Q. Do you know; have you any knowledge upon that subject, whether there is any difference in the measurement of electric current when supplied either to an arc or to an incandescent lamp? A. I think I can answer the question, Mr. Backes.

Mr. Dickinson: Objected to.

The Court: I will sustain the objection. It is a question that calls for expert testimony; if it does not, you can argue it and put it up to me on the testimony of my own senses.

Q. Did you ever see electric current metered? A. Yes, sir.

Q. You actually observed that, did you? A. Yes, sir.

Q. Where? A. In a number of places.

Q. Is there any difference in the metering of electric current, whether it is supplied for power or heat, or whether being supplied for power in lighting either arc or incandescent lights?

Mr. Dickinson: Objected to; because all he knows is simply the reading of the meter, he does not know anything else.

The Court: I will sustain the objection.

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CHARLES CASE, sworn in behalf of the Receiver, testified as follows:

Direct examination by Mr. Backes:

Q. What is your occupation? A. Real estate broker.

Q. How long have you been a real estate broker? A. Between 25 and 30 years in the City of Trenton.

Q. During that time has your business been small or large; have you been extensively engaged in it? A. Pretty extensively.

Q. During that period of time, did you buy and sell real estate and rent real estate? A. Yes, sir.

Q. Where? A. In and about the City of Trenton.

Q. To what extent, Mr. Case, did you buy and sell, and to what extent did you rent? A. I don't know how to answer that question; I suppose we have sold millions of dollars' worth of property.

Q. And as to renting? A. Well, we have rented houses and buildings.

Q. Many? A. Yes, sir, quite extensively.

Q. Did you own any property? A. Yes, sir.

Q. Any suburban property? A. Yes, sir, a farm or two.

Q. The suburban property that you own—where near Trenton, is it located? A. Just across the river, in Pennsylvania, it was a farm.

Q. Did you buy and sell during this period of time any suburban properties? A. Yes, sir.

Q. Did you buy tracts of land for the purpose of subdivision? A. Yes, sir.

Q. Have you rented property, or known of the rental charges for suburban property? A. We have rented suburban property; I do not call to mind just now which particular ones, but I know we have done so.

Q. Are you familiar with rental values of property in and about Trenton? A. Yes, sir.

Q. Do you know where the Trenton White City Park is located? A. Yes, sir.

Q. When were you at the Trenton White City Park last? A. I should say about ten days ago.

Q. Then you went for what purpose at that time? A. At your request, to look over the property.

Q. Had you been to White City Park before? A. Not since it was the White City Park.

Q. But before it was the White City Park were you there? A. Yes, sir.

Q. When, with reference to the time that the White City Park came into existence? A. Oh, a number of years before. I do not recall having

been on the ground with the exception of about ten days ago, I do not recall having been there within twenty years before that.

By the Court:

Q. You used to go out there a good deal about 25 years ago? A. Yes, sir; I was quite familiar with it.

Q. You sold off a part of the farm that was not incorporated in the White City Park, into building— A. Yes, sir; I sold the DeCou plot.

Further direct:

Q. Who went with you ten days ago when you went there at my request? A. Mr. Benjamin M. Phillips, Gardner H. Cain, Edmund C. Hill, Mr. L. C. Case and Mr. Comp.

Q. Now, what about it? A. We walked over the upland where the buildings were; we went to the hedge and looked over the low ground, meadow ground, with a view to fixing a rental value on the property.

Q. A rental value for what period of time? A. For a period commencing, I think it was five years ago.

Q. March, 1907? A. Yes, sir; for a period of ten years.

Q. Now, did you do it? A. We did.

Q. In March of 1907, there was on that land the mansion house, not adorned as it is now with a porch, nor fixed up in the way that it now is in the interior; a small house adjoining that was not in the condition that it is now in, in the condtion of repair; and a merry-go-round house or stand, which has since been torn down, and smaller than the one that is now there, but in fair or good condition; an open theatre, capable of seating about 1,200, in fair or good condition.

Now, what, in your opinion, was the fair rental value in March of 1907 for that park in the condition it then was?

Mr. Dickinson: I wish to cross examine him on this.

Cross examination by Mr. Dickinson:

Q. Mr. Case, have you ever rented any farm of the size of the White City property near that property? A. No, sir.

Q. Do you know what any property has rented for in the last few years which is situated like the White City Park, and about its size? A. No, sir.

Q. Do you know how large the White City Park is? A. I was told about 120 acres.

Q. You say you went out there with some other real estate men; did you discuss together the rental value which you were sent there to ascertain? A. We talked the matter over in general, but did not try to arrive at any price that we as a company of experts would fix on it.

Q. You mean to say that, although you discussed the rental value, you did not arrive at any price between yourselves? A. No, sir.

Q. Was no price mentioned? A. Each one expressed different views.

Q. And different amounts were mentioned? A. Yes, sir; but we did not try to agree upon any price.

Q. Were you told not to do that? A. No, sir; not that I remember of.

Q. You heard, however, what, in the opinion of each of the others, was their idea of the rental value, didn't you? A. I heard the opinion of some—different amounts that were spoken of.

Q. Did some fail to express any opinion? A. Well, let me see; I presume that some expression

was given by everybody, but what they were I do not remember; I presume some figure was mentioned by all.

Q. You say you did not all come to one opinion? A. No, sir; we did not; in fact, I don't think that any of us agreed—from the statements that were made.

Q. Had any of the others, to your knowledge, rented property near the White City Park before then?

Mr. Backes: Objected to.

The Court: Objection sustained.

Mr. Dickinson: I don't think this witness has qualified.

The Court: His testimony shows that he has had a large and varied experience in the real estate business, both in renting and selling properties, and he says he has rented and known of renting of suburban properties; I think he is qualified to speak.

Q. Have you any knowledge of the rental value of properties such as the White City property, for amusement purposes? A. No, sir.

By the Court:

Q. Your estimate of the rental value of this property contemplates what use of it by a tenant renting it? A. It contemplates the use of it, first of all, as to the rental value of the house?

Q. As a residence? A. Yes, sir; in the condition it was at that time. The approximate value of the ground on the other side of the lake—some 50 or 60 acres, is part of the year under water, and is worth something for grazing purposes; I think they sometimes cut hay from it; they used to do so. And also the place being fenced, its value as a place for holding picnics,

renting out some privileges, such as could be done with these buildings there, and renting an ice cream place or restaurant, and soft drinks, in the house, if they desired.

Further cross:

Q. Did you give any consideration to the value of the lake as an attraction on the property? A. Yes, sir.

Q. You did not, however, value it with the idea that it was to be used as an amusement park. A. Only just as I speak of it.

Mr. Dickinson: It seems to me, if your Honor please, that the value of this property for the purpose of this investigation is to be considered as its value for amusement park purposes.

The Court: I think he is qualified to give his opinion as to the rental value. I will receive the answer to the question.

Further direct:

Q. In March of 1907, there was on that land the mansion house, not adorned as it is now with a porch, nor fixed up in the way that it now is in the interior' a small house adjoining that was not in the condition that it is now in, in the condtion of repair; and a merry-go-round house or stand, whch has since been torn down, and smaller than the one that is now there, but in fair or good condition; an open theatre, capable of seating about 1,200, in fair or good condition. Now, what, in your opinion, was the fair rental value in March of 1907 for that park in the condition that it then was? A. May I ask a question before I answer that? The question we were asked as to its rental value is not the same as we were

asked to consider, because at that time we were told the park was lighted free of charge to the lessee. Q. Well, add that to it.

By Mr. Dickinson:

Q. Do you mean to say you were asked to value the park—the rental value of the park, with lights prepared? A. We were told that it was lighted.

Mr. Dickinson: I object to his testimony on that ground, because that is a distinct covenant in the lease.

By the Court:

Q. Cannot you eliminate the lighting and give us an estimate?

The Witness: Yes, sir; I can.

The Court: Well, do so.

A. About $500.

Q. Per annum? A. Yes, sir.

Cross examination by Mr. Dickinson:

Q. You did not consider this estimate that you have now given until just now, did you? A. No, sir.

Q. You have not given it any mature consideration then whatever? A. I based it on the same reasoning that I did in regard to the other.

Q. How did you arrive at $500? A. In this way—the house in the condition it was in at that time as described—I knew the house before it was fixed up—about $20.00 per month, that is $240.00. The small house that was near by at a very slight rental.

Q. How much? A. Not over $5.00 per month. Then I figured the lake privileges for fishing and boating for daytime, because there are no lights furnished—at, perhaps, $50.00 or $60.00; and

the balance was for what they might get from day picnics, there being no lights furnished for night privileges. I should have added a little to that for the ground beyond the lake.

Q. Should have added a little to that? A. To that value of $500—perhaps, from $50.00 to $100.00 for grazing purposes.

Q. Well, which do you say, $50.00 or $100.00? A. $50.00; it is under water a good part of the year.

Q. Then your estimate would be $550.00 a year? A. About $550.00 a year; yes, sir.

Q. You have not taken into consideration in your estimate of the rental value, the fact that gate receipts were charged on entry into this park when used by the White City, amounting to 10 cents per person? A. No, sir.

Q. If you were told that the gate receipts in this park amounted to seventeen or eighteen thou sand dollars a year, would that change your opinion as to the rental value of this property? A. As of March, 1907?

Q. Yes. A. When the buildings were not there —why, of course, if you showed to me that there was an income there of seventeen or eighteen thousand dollars, or whatever it was, I should take that into consideration, if the income came at the time when it was in the condition that I was asked to give the rental value.

Q. If you were told in March, 1907, that a company wished to rent this property for an amusement park, that they intended to charge gate receipts, gate entrance, 10 cents a person; that they intended to have numerous amusements in that park; that the park was just outside the city limits of the City of Trenton, that the City of Trenton had a population of 95,000 people, that the park property was passed by two

street railway lines, with a five cent fare, and that the company exploiting the park was to spend forty or fifty thousand dollars in beautifying it, would you change your opinion as to the rental value which you have stated this property to be worth? A. I certainly could not give an opinion now.

Q. Why not? A. Because I would have to know exactly what the cost was and take everything into consideration, what the cost would be to put those things in shape, what it would cost to run the park, and what the risks were and everything of that kind.

Q. Suppose, Mr. Case, that you were the owner of the property in the year 1907, at the time I speak of, and had in mind the facts I have related; would that change your opinion as to the rental value of this park, if someone should come and ask you for a lease of the park for ten years, from the year 1907? A. It is pretty hard to answer that right on the spur of the moment, but if I had owned that place at that time—and anyone had come and offered me $800 to $1,000 a year for it, taking it just as it was, and to turn it back to me at the end of ten years just as it was when they accepted it, I should have been very glad to have accepted that rental; I do not believe I would have gotten it.

Q. If you owned this property and had a proposition to rent it for an amusement park, would you have fixed the rental value upon the basis of $20.00 a month for that house, $60.00 a month for the middle house, and $60.00 a month for that lake, for the lake privileges, and the balance for grazing privileges— A. The privileges for renting out for Sunday-school picnics or something of that character, because there is a fence around it.

Q. Is that the way you would have got at the rental value of that property? A. Yes, sir.

Q. If you were the landlord? A. Yes, sir.

By the Court:

Q. If you were the landlord and about to rent the property, would you ask all you could reasonably get for it? A. Yes, sir, and I would take this into consideration, that I would be bound up and could not sell it if I had an opportunity to sell it, therefore, I would ask a little more than I thought it was worth.

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PAUL LUPKE, recalled in behalf of the Receiver, testified as follows:

Direct examination by Mr. Backes:

Q. Is there any difference in the measurement of an electric current or electric energy, when that current or energy is supplied either to an arc or incandescent light?

Mr. Dickinson: Objected to; the point is, is there any difference in the cost.

The Court: The objection is overruled.

A. The energy expended is measured in watt hours in either case.

Q. By the same mechanism? A. No, sir.

Q. How do they differ? A. They differ in mechanical arrangement suitable to the pressure and amount of current measured.

Q. But is there any difference in the actual measurement of the flow of the current, whether it be supplied to incandescent or arc lights? A. The flow of the current does not measuure the energy expended.

Q. It is measured in watts, or wattage, isn't it? A. It is measured in watts—take into con-

sideration the pressure under which the current flows.

Q. In measuring a watt hour, is there any difference whether the electric current is used in an incandescent or an arc light, or for heating purposes? A. A watt hour is a different unit, it does not make any difference what it is expended in.

Cross examination by Mr. Dickinson:

Q. Mr. Lupke, would there be any difference in the cost for a contract for a large number of watt hours a year, and a contract for a small number of watt hours per year?

Mr. Backes: Objected to; he is getting up the cost.

The Court: The objection is overruled.

A. There probably would be, yes.

Q. Did you ever see that agreement before?

Mr. Backes: Objected to as not cross examination.

The Court: The agreement came from the company in which he is Superintendent, and you have examined on the question of current supplied by that company and offered this agreement for the purpose of showing that; I think he may use this in cross examining him; he has testified as an official of the corporation here, and I think that the whole question is open on cross examination. I will admit it.

Q. Did you ever see that agreement before?

Mr. Backes: This witness has at no time testified as an official of the company; he is called here as an expert; he is now brought on the witness stand to testify as

to whether there has been any difference in the measurement of that current. He, perchance, happened to be the Superintendent of the company.

The Court: His testimony the other day showed him to be the Superintendent of the company, and you have introduced this agreement between his company and this White City Company. Now on an inquiry as to this electric energy, leading up ultimately to the question of its cost, I think he may be examined on this agreement. I do not think it amounts to a great deal.

Mr. Dickinson: I suppose I might ask him a long question.

The Court: What is the point?

The Witness: Yes, sir, I saw this agreement.

The Court: Proceed.

Q. This agreement provides that the White City Company shall pay the Public Service Company 7 cents per kilowatt hour for current, and you testified the other day in respect to the arc light, that a fair price was 15 cents per kilowatt hour? A. Yes, sir.

Q. How do you explain that? A. That agreement not only provides for payment of 7 cents per kilowatt hour, but it provides for a guarantee of $4,400 per year, regardless of the cost per kilowatt hour.

Q. Then, in your opinion, the price provided for in this agreement would have no bearing upon the price fixed by your testimony for 70 arc lights?

Mr. Backes: Objected to. This witness was the defendant's witness, and testified to the matters to which his attention is

now being called, and they are attempting to reconcile his former testimony to a contract which is in the case——I mean their own testimony to a contract which, upon its face, apparently stultifies their own witness.

The Court: I do not see that there is any stultification about it; I think he may well be asked if there is any dispartiy or discrepancy in his testimony, or anything irreconcilable; I will admit it.

Q. (Question read.) A. No, sir.

Mr. Backes: He is not my witness now; I did not develop these things.

The Court: My judgment is, that it is a proper cross examination, but if it is not, I will allow it to stand as an original examination by the other side; you may have that if you choose; I will put it in that position, and, therefore, you are not bound by his testimony. Have it that way.

Mr. Backes: That puts me in the desired position.

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LEWIS C. CASE, sworn in behalf of the Receiver, testified as follows:

Direct examination by Mr. Backes:

Q. Where do you live? A. Trenton, New Jersey.

Q. How long have you lived in Trenton? A. About 15 years.

Q. What is your business? A. Real estate.

Q. Where? A. In Trenton.

Q. How long have you been in that business in Trenton? A. About 12 years.

Q. Extensively or moderately? A. Well, moderately, I suppose.

Q. That is modestly stated. What is the amount of your average dealings per year in the buying and selling of real estate? A. I have sold as high as $400,000 a year.

Q. And have you exceeded that? A. No, sir; that was the best I ever did.

Q. What would be your average during a period of twelve years? A. Between two and three hundred thousand dollars.

Q. Was it all Trenton property or in the immediate neighborhood? A. Yes, sir.

Q. Have you also had experience in the renting of properties? A. Yes, sir.

Q. As extensively as your buying and selling? A. No, sir.

Q. And in the same property? A. No, sir.

Q. Are you acquainted with the rental value of suburban properties in Trenton? A. To some extent.

Q. Are you the owner of such suburban property in Trenton? A. I am connected with corporations that own considerable suburban Trenton property at the west end of the city, known as the Buttolph Farm.

Q. Proceeed. A. The Atterbury tract.

Q. The Buttolph Farm adjoins the Cadwalader Park, doesn't it? A. Yes, sir.

Q. And in Cadwalader Park? A. I have some properties there; yes, sir.

Q. You were speaking of the Atterbury tract; are you interested in that? A. Yes, sir.

Q. How long have you been interested in that? A. About seven or eight months.

Q. Did you rent the Buttolph tract? A. Yes, sir.

Q. What acreage is that? A. There is about 125 acres that we rent.

Q. Good, tillable soil? A. Fine.

Q. What acreage is there in the Atterbury tract? A. I don't know about that.

Q. Where is that located? A. It is located between Atterbury Avenue and Hermitage Avenue, and along the Delaware River and West State Street.

Q. What other tracts are you financially interested in, as a stockholder or part owner? A. Well, no other large tract.

Q. Have you been in the past connected with other large tracts, either as a stockholder of the corporation that owned them or as part owner? A. No, sir.

Q. Now, do you know of a suburban property that has been bought and sold for subdivision purposes? A. Yes, sir.

Q. Do you know of the renting of such properties in the past? A. I don't know of any tract outside of our own that has been rented—that is, large tract.

Q. Do you know the Bromley Inn tract? A. Yes, sir.

Q. Do you know that Steele and Skirm were interested in? A. The Charlie Scudder tract?

Q. Yes. A. That is out of the City.

Q. Is that further away from the City of Trenton than the Buttolph farm? A. Yes, sir.

Q. Do you know what acreage that has? A. No, sir.

Q. Do you know whether it has ever been rented? A. Not to my knowledge.

Q. Have you any knowledge of the rental values of suburban properties? A. House, do you mean?

Q. Houses or tracts of land? A. Yes, sir.

Q. Do you know the tract of land known as the White City Park? A. I do.

Q. Did you visit that park ten days or two

weeks ago, at my request, and in company with your brother, Charles Case, the preceding witness, and some other gentlemen that he named when he was on the witness stand? A. Yes, sir.

Q. And you went there for that purpose? A. In order to qualify myself as a witness.

Q. What did you do when you got there? A. We took a general survey of the property and talked the matter over in general.

Q. Had you been at White City Park prior to that time? A. Yes, sir.

Q. During the operation of that place by the White City Company? A. No, sir, I never was there then.

Q. Were you there before the White City Company took hold? A. I was.

Q. For how long a period prior to that time were you last there? A. I was there just a little while before the White City took hold of it.

Q. During Mr. Wurfflein's time? A. I don't remember who run it, but I was there.

Q. Did you, at that time, observe the condition of the park as to superstructure? A. I knew about what the buildings were on the property.

Q. At that time was it used as an amusement park? A. Yes, sir.

Q. Was there any change, any substantial change in the topography between that time and when you were there a couple of weeks ago; I mean in the lay of the ground? A. No, sir, only in the buildings, that is all.

Q. What was a fair rental value?

Mr. Dickinson: I object to the competency of this witness, on the ground that he has never rented any properties in the vicinity of the White City Park, similar to it, and that he did not consider the rental

value of the property with a view that this property was to be used for amusement purposes as the White City Park.

The Court: Nevertheless, his testimony as to rental value, his opinion, will assist me in arriving at a determination as to what the fair rental value of that property for the purposes to which it was devoted was and is. I will receive the evidence; it will be some evidence on that issue, his opinion will, to be considered with the other testimony.

Mr. Dickinson: May I cross examine this witness first?

The Court: Yes.

Cross examination by Mr. Dickinson:

Q. Do you know the rental value of any tracts of land in the suburbs of the City of Trenton, about the same size as the White City Park? A. Yes, sir.

Q. What tract? A. The Buttolph tract, that lays between Cadwalader Park and the State Hospital; some of it is on West State Street.

Q. Has that been rented? A. Yes, sir.

Q. As an entire tract? A. Yes, sir.

Q. For what purposes? A. Rented to the State Hospital for farming purposes.

Q. What did it rent for? A. For $600 a year, for the last three years.

Q. Has that got a lake on it? A. No, sir.

Q. Has it got any buildings on? A. No, sir.

Q. Is it near a car line? A. Yes, sir, two of them.

Q. Do you know the rental value of any properties in that neighborhood, in the neighborhood of the White City Park? A. I have never rented any

tracts in that neighborhood; I know the rental value of some houses there.

Q. When you went to the White City Park and qualified as a witness, did you consider the rental value of those grounds for amusement purposes? A. I was asked to go there to give my opinion of the rental value of that property prior to the possession of the White City Company.

Q. Did you take into consideration the possible value of the property for amusement purposes? A. In a small way, yes, sir.

Q. What way? A. Well, using the lake there for boating purposes and having picincs and ice cream stands.

Q. Did you talk over with the other gentlemen that were with you the rental value of this place? A. It was discussed, yes, sir.

Q. Did you all fix upon a value? A. I don't know that they did, all of them, no, sir.

Q. How many of them fixed upon a value? A. Well, I know I did; I don't know whether the rest of them did or not.

Q. Did you tell the others what you thought? A. I think I did tell one of them.

Q. Did they agree with you? A. No, sir, not altogether.

Q. Some were larger and some smaller? A. Yes, sir.

Mr. Dickinson: I renew my objection.

Mr. Backes: I have not asked the question yet.

Further direct:

Q. What, in your opinion, was a fair rental value in March of 1907 for this White City Park for a period of ten years then to come, per annum?

Mr. Dickinson: I object, on the grounds stated.

The Court: The objection is overruled.

A. It is worth about $50.00 a month.

Cross examination by Mr. Dickinson:

Q. $600 a year? A. Yes, sir.

Q. $6,000 for ten years? A. Yes, sir; I would like to say that that did not include lighting.

The Court: That is what we understand.

Q. Then, your opinion of the rental value of the bare ground and such buildings as were on it—that is your opinion? A. Yes, sir.

Q. How large is the White City Park property? A. Why, about 100 acres all together, I understand.

Q. How did you arrive at the value of $600? A. Well, I valued the two houses and the barn at $40.00 a month, and the lower land at $10.00.

Q. Do you know where you can rent lowland of the size and character of that lowland for $10.00 a month? A. I don't believe anyone would want to rent it—the lowland I am speaking of.

Q. Did you take into consideration in fixing that rental value, the transportation facilities of that property and its nearness to the City of Trenton? A. Yes, sir.

Q. Did you take into consideration the population of the City of Trenton as it might have a bearing upon the amusement company who sought to lease that park? A. I did.

Q. Did you ever try to rent a property for amusement park purposes? A. No, sir.

Q. Don't you know that a person seeking a lease of property for amusement park purposes always pays more than ordinary lessees? A. I don't know it, no, sir.

Q. You don't know anything about the rental values of property, then, for amusement park purposes? A. No, sir.

CHARLES A. COMP, sworn in behalf of the Receiver, testified as follows:

Direct examination by Mr. Backes:

Q. What is your business? A. Real estate and insurance and investment.

Q. Where do you carry on your business? A. At the Broad Street Bank Building in the City of Trenton.

Q. Where is your business carried on? A. Throughout Trenton and Mercer County.

Q. How long have you been engaged in that business in this locality? A. 14 years.

Q. Is your business a large or a small business? A. Moderate.

Q. Your average purchases and sales annually amount to what? A. About $250,000 a year, I guess.

Q. Do you also rent property? A. Yes, sir.

Q. Many? A. Not very many.

Q. In and around the City of Trenton? A. Yes, sir.

Q. Do you rent any suburban property? A. Yes, sir.

Q. Have you sold suburban property? A. Yes, sir.

Q. Very much? A. Quite a good bit, more than the city property.

Q. You live at Yardville? A. Yes, sir.

Q. And Yardville is south of Trenton White City Park? A. Yes, sir.

Q. In other words, to get to Yardville, you have to go on one of these two trolley lines to get to your home? A. Yes, sir.

Q. Have you bought and sold land in that neighborhood? A. Yes, sir.

Q. Have you rented land in that neighborhood? A. Yes, sir.

Q. For how many years past? A. Ever since I have been in business.

Q. You have been to the Trenton White City Park? A. Yes, sir.

Q. Did you go there two weeks ago at my request? A. Yes, sir.

Q. For what purpose? A. To look the property over.

Q. To what end? A. To arrive at the rental value of it in the condition it was in in 1907.

Q. Were you acquainted with the Trenton White City Park before the White City Company took hold? A. I was, yes, sir.

Q. Were you very familiar with it? A. Well, I used to go there quite often, to all the Sunday-school picnics, township picnics; in fact, I used to go down there quite frequently.

Q. Do you know now and recall now, its condition during the Wurfflein regimé, just before the Trenton White City Company took hold? A. I do.

Cross examination by Mr. Dickinson:

Q. Did you ever rent any premises such as the White City Park for amusement park purposes? A. I have not, no, sir.

Q. Have you rented any properties in the immediate vicinity of the White City Park? A. Such as that property, do you mean?

Q. Yes. A. No, sir, I have not.

Mr. Dickinson: I make the same objection.

The Court: And I make the same ruling.

Redirect examination by Mr. Backes:

Q. When you say "such as that property" you have not, what do you mean? A. I mean as an amusement place.

Q. In your opinion, what was a fair rental value of the park in March of 1907, for a period of ten

years then next to ensue, per annum? A. I think it ought to be worth $1500 a year.

Q. For what purpose? A. For amusement purposes.

Q. In that statement of amount what is comprised, what elements are comprised in the making up of your figures? A. Well, the boating privileges, the privilege of the lake, the boating privileges of the lake; the merry-go-round privilege; I think they got 25%, as I understand, at that time, of their gross receipts; the ice cream privilege; the other privileges which were sold for stands; the peanut privilege, and the privilege for selling hot frankfurters, and those things; there were four or five or six of them around there at that time.

Q. When you speak of "that time," you speak of the Wurfflein period? A. Yes, sir; at the time the big building was there, where they had the vaudeville performances.

Recross examination by Mr. Dickinson:

Q. Did you go out there with Mr. Lewis Case and Mr. Charles Case? A. Yes, sir.

Q. Who else was there? A. Mr. Phillips, Mr. John Dullard and Mr. Hill.

Q. Did you tell them what you thought this was worth at that time? A. I don't know that I did; I don't know that I expressed any opinion as to the value.

Q. Did they express any opinion? A. I think Mr. Case did.

Q. Did he discuss it with you? A. Yes, sir; he said that it was worth $50.00 a month, and I told him it was worth a good bit more than that, and he said he did not know.

Q. Did you suggest to him or to either of the others, that it was worth more for amusement purposes? A. I do not recall that I did say much more

about it; I told them I was going to write to a party that lived there at that time, and that I understood had had something to do with the ice cream privilege, to find out what it paid, and I understood it was operated on the percentage basis.

Q. You based your valuation, then, upon the character of the ground and the amusements in it at that time—in the Wurfflein time? A. Yes, sir.

Q. If a much larger park was conducted there, or to be conducted there, would you say that the rental value was more?

Mr. Backes: As of what time?
Mr. Dickinson: As of 1907?

A. Well, that is a question whether it would warrant it or not.

Q. If there were a greater amount of concessions in the ground and amusements and an entrance fee charged, would you say then that the property was worth more? A. Yes, sir; it should be worth more.

Redirect examination by Mr. Backes:

Q. Well, would it be worth more in March, 1907—would the rental value be increased in March, 1907, if these things were in contemplation? A. No, sir.

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BENJAMIN M. PHILLIPS, sworn in behalf of the Receiver, testified as follows:

Direct examination by Mr. Backes:

Q. What is your occupation? A. Real estate and insurance and investment, et cetera.

Q. You carry on your business where? A. In the Commonwealth Building in Trenton, New Jersey, at the present time.

Q. Your business is carried on where? A. In the City of Trenton and the State of New Jersey.

Q. How long have you been engaged in the business in Trenton? A. About 40 years.

Q. Your business has been very extensive, hasn't it? A. Yes, sir.

Q. Probably as much as any other real estate man in town, if not larger? A. Well, in previous years it was so; I do not suppose that that is so in the last few years.

Q. Do you rent property? A. I used to rent property, I do not rent properties of any amount now.

Q. Do you know the rental value of suburban properties? A. Yes, sir—no, sir, I do not.

Q. You have no idea of rental values at all of suburban properties? A. What do you mean?

Q. Land, generally? A. Only as farms.

Q. You went with some other gentlemen down to the Broad Street Park, or the White City Park, two weeks ago, at my request? A. Yes, sir.

Q. You went for the purpose of placing an annual rental value upon the White City Park, as of March of 1907, didn't you? A. Yes, sir.

Q. At that time were you capable of doing that? A. No, sir; I did not consider I was.

Mr. Backes: Then I withdraw the witness.

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JOHN P. DULLARD, sworn in behalf of the Receiver, testified as follows:

Direct examination by Mr. Backes:

Q. What is your occupation? A. I am one of the City Assessors of the City of Trenton.

Q. How long have you been a City Assessor? A. 13 years.

Q. Have you been the active City Assessor really, for almost all of that length of time? A. I have been President of the Board the greater portion of the time.

Q. What are your duties as City Assessor? A. The valuation of property for taxation.

Q. And the aim in the valuation of property for assessment purposes as to values is what? A. To get them valued at their true value.

Q. And have you become acquainted with the values of real estate in the City of Trenton? A. Yes, sir.

Q. Pretty thoroughly, Mr. Dullard? A. I think so.

Q. Do you know where the White City Park is located? A. I do.

Q. How near to the City of Trenton is that? A. It is out on South Broad Street, beyond the City limits, a little more than a mile.

Q. Have you had occasion to value similar property or properties, similarly located, within the boundaries of the City of Trenton? A. Yes, sir.

Q. Did you, a couple of weeks ago or more, go to the White City Park at my request for the purpose of forming a judgment as to the annual rental value of the White City Park for a period of ten years as from March, 1907, and as of that date? A. Yes, sir.

Q. Did you form such an opinion? A. I did.

Q. Did you regard yourself as qualified? A. I did.

Q. From what experience or what knowledge did you regard yourself as qualified? A. From the relation that rental values bear to the value of the property.

Q. Any others? A. Well, that is the main ele-

ment in determining the rental value; that is, the value of the property is the main element in determining the value of the properties, except where there may be what you might call exclusive conditions; that is to say, where there would be an established business that would come to the occupant of the property, an advantage that he otherwise would not have; or where there were exclusive privileges, as, for instance, where a man kept a saloon there would be a license there, and that property would be worth more on that account.

Q. Well, proceed. A. But ordinarily, the rental value is determinable by the value of the property to a large extent.

Q. Did these elements enter into the conclusion that you formed as to the value of the Trenton White City Park? A. Yes, sir.

Q. As to the rental value of the Trenton White City Park? A. Yes, sir.

Q. Did any other element enter into the making of your judgment? A. Yes, sir, I considered that from taking the value of the property as I saw it, I considered the uncertainty of the business, having a tendency to depreciate the rental value as compared with the return upon the investment to the owner?

Q. Any others? A. Those, I think, were all.

Mr. Backes: I wish to ask the question now.

Mr. Dickinson: I object most strenously. The qualification of the witness, from his own testimony, is that derived from assessing these properties. Now, as I understand, your Honor somewhere in your opinion has held that the value of the land is not necessarily any evidence of the rental value of the property; and, even if you had not

already ruled that, I have authorities to that effect, which say that evidence of the value of the real estate itself is not competent as bearing upon its rental value; now, we are here to discuss the rental value of this property.

The Court: That is my understanding of the rule. My judgment is, that the law recognizes no fixed standard of rental value predicated upon actual value of the physical property.

Mr. Backes: True, but this witness's judgment in a measure is predicated upon what he regards as the controlling elements in fixing a rental value. Now, while undoubtedly the law is, as your Honor states it, yet, it in a measure qualifies a witness to give his opinion as to the value. It is simply opinion evidence, and the witness in making up his judgment does not limit himself to the value, but to the special privileges that may prevail there; the special opportunities that may prevail there; and I submit that it is some testimony; it is competent, at least—

The Court: He is asked now to give opinion evidence as to the rental value of suburban property, property outside of the corporate limits of the City of Trenton, property that he does not assess, property that he never rented, and, so far as the testimony shows, that he never had anything to do with renting suburban properties, nor even city properties, and I think that, having regard to the rules that obtain with reference to opinion evidence, Mr. Dullard has not qualified himself to speak as to this subject.

Mr. Backes: I will put the formal question and have a ruling.

Q. In March of 1907, there was on that land the mansion house, not adorned as it is now with a porch, nor fixed up in the way that it now is in the interior; a small house adjoining that was not in the condition that it is now in, in the condition of repair; and a merry-go-round house or stand, which has since been torn down, and smaller than the one that is now there, but in fair or good condition; an open theatre, capable of seating about 1,200, in fair or good condition. Now, what, in your opinion, was the fair rental value in March of 1907 for that park in the condition that it then was?

Mr. Dickinson: I make the same objection as before.

The Court: I sustain the objection.

Adjourned to 2 P. M.

After Recess.

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GARDNER H. CAIN, sworn in behalf of the Receiver, testified as follows:

Direct examination by Mr. Backes:

Q. What is your business? A. Real estate chiefly.

Q. Are you a member of the firm of Case and Cain? A. Yes, sir.

Q. Your partner is Charles B. Case? A. Yes, sir.

Q. How long have you been in that business in the City of Trenton? A. For 26 years.

Q. With Mr. Charles Case? A. Yes, sir.

Q. And are you an active member of the firm? A. Yes, sir.

Q. As active as Mr. Case is? A. Well, I do chiefly the inside business, and partly the outside business; I am active all the time.

Q. The work that is done is community work? A. Yes, sir.

Q. You know the location, of Broad Street Park? A. Yes, sir.

Q. Now known as the White City Park? A. Yes, sir.

Q. Did you visit the White City Park within the last two or three weeks? A. Yes, sir.

Q. At my request, for the purpose of forming an opinion as to the annual rental value of the park for a period of ten years beginning, March, 1907? A. I did, yes, sir.

Q. Had you been to the park prior to its being taken over by the White City Company? A. I remember being there once when it was run by the trolley company.

Q. By Mr. Wurfflein? A. I don't know; I went out with Mr. Moore, the President of the company; I don't know who was managing it.

Q. What year was that? A. It was about 11 years ago, or 12 years ago.

Q. Well, the White City took it in March, 1907; how long before that time was it that you were there last? A. I cannot fix the exact date.

Q. Well, the year? A. No, sir, I cannot recall it.

Q. Did you at that time make an inspection of the place? A. No, sir, there was an amusement stand right by the gate, and I walked around the grounds and came away.

Q. In March, 1907, there was in the park the present mansion house, not improved on the outside by a large porch which is there now, nor improved in the interior as it is now; there was a smaller house, which was not in good repair, not

in the same repair that it is now; a merry-go-round stand, smaller than the one that is there now, but in fairly good shape, or in good shape; an open theatre, seating about 1,200 people, in fairly good or good shape; with these facts existing, and this condition prevailing in March, 1907, what, in your opinion, was a reasonable annual rental value for the park as of March, 1907, for a period of ten years next ensuing?

Mr. Dickinson: We object, we want to cross-examine.

The Court Very well.

Cross examination by Mr. Dickinson:

Q. Have you ever rented properties similar to the White City property, near the City of Trenton? A. No, sir, I have no knowledge of amusement properties; I only looked it over as a piece of real estate with its real estate value, and formed my opinion as to that as to what it should rent for.

Q. Did you base your opinion as to the rental value of the park on its value as real estate? A. As real estate with the lake, which is a side issue, as bringing part of the revenue.

Q. Then the opinion you formed as to rental value was based on the value of the land—A. Yes, sir, with the buildings that were upon it, and with the lake, and with the land that was there, not for amusement purposes, except, as a side issue.

Mr. Dickinson: Then the testimony is incompetent, and I object to it.

The Court: This is a little bit different from the testimony which I excluded, which was based entirely upon, or sought to give a rental value based entirely upon the value of the real estate. This witness says that

that entered into his estimation of value, but that included was the lake which could be rented and a revenue derived from that, and I understand his testimony, as far as given to be that he formed an idea of the rental value of that property by reason of its adaptability for renting purposes, exclusive of an amusement park; is that right?

The Witness: Yes, sir, that is right.

Q. You say you have never rented property similar to this for amusement purposes? A. No, sir.

Q. You do not know then what its value would be for amusement purposes? A. No, sir.

Q. Did you go down there in company with other real estate men? A. Yes, sir.

Q. With Mr. Comp, Mr. Phillips, Mr. Charles Case and Mr. Lewis Case? A. Yes, sir.

Q. Did you all discuss its rental value together? A. Yes, sir.

Q. Did you all come to an agreement about it? A. No, sir.

Q. Did you ever rent a piece of property like this for any other purpose than amusement purposes? A. No other ground with a lake and meadow round it.

Q. Have you rented any property like this anywhere near the White City Park? A. No, sir.

Q. Have you rented any property like this as near the City of Trenton as this is? A. No, sir, I don't know of any other property like it.

Q. As near the City of Trenton as this is? A. No, sir, I don't know of any other property like it; we haven't the charge of any like it.

Q. What have you rented land for near the City of Trenton? A. We have not rented farm

ing land; I know of others similar to this, that have rented it for trucking purposes.

Mr. Dickinson: I think the testimony is not competent.

Redirect examination by Mr. Backes:

Q. I shall cut across lots; have you rented properties in Trenton? A. Yes, sir.

Q. Extensively? A. Yes, sir.

Q. Over a period of how many years? A. The whole 26 years.

Q. Do you know the rental value of properties in and near Trenton? A. Yes, sir.

Q. Do you know of other properties in Trenton that have 20 acres of upland and 100 acres of lowland? A. I know of none that is for rent.

Q. In forming your opinion, did you take into consideration the possible or probable use to which this land could be put, and that use being an amusement park? A. Shall I state just how I arrived at my conclusion?

Q. Yes. A. That the house was worth a certain sum, that the land, part of it, could be used for this purpose; that the lake had boating privileges, it being so near to the trolleys it could be sold for boating purposes and picnic grounds, and that the meadow raises some amount of hay—it did when I went over there 25 years ago.

Q. Did you take into consideration the availability of this property as a picnic or amusement ground? A. Yes, sir, in a small way; it could be used in a small way.

Q. Now, answer my question.

Mr. Dickinson: I would like to cross examine the witness still more.

The Court: Very well.

Recross examination by Mr. Dickinson:

Q. Did you ever conduct an amusement park? A. No, sir, I don't know anything about them.

Q. You don't know, then, what the rental value of a property would be for the purposes of an amusement park? A. No, sir.

Q. The mere fact that you bore in mind that this property was to be valued by you for an amusement park, would not give you any idea of its value for that purpose? A. None at all.

Q. Have you ever rented farm properties near the City of Trenton? A. No, sir; I have known of those that have rented.

Mr. Dickinson: I do not think his testimony is competent, your Honor.

The Court: I think he is qualified; I think he may testify. Of course, in forming a judgment based upon his testimony, I shall have to take into consideration the fact that he did not value it as a property to be leased to an amusement company; all those matters will be considered. I will receive the testimony.

Redirect examination by Mr. Backes:

Q. Now, you may answer the question. A. $60.00 a month.

Q. $720 a year? A. Yes, sir.

Recross examination by Mr. Dickinson:

Q. How did you arrive at those figures? A. The buildings were worth $25.00 a month, that is, the houses that were there; and the upland was worth $15.00 a month, and with the boating privileges and the meadow that was worth $20.00 a month.

Q. How did you determine that the upland was

worth $15.00 a month? A. There is about ten acres that could be used, and, with some of the buildings that are on it, it could be used for raising truck.

Q. Do you know anything about the truck business? A. I lived 27 years on a farm.

Q. Can you state from your knowledge of farming and the trucking business, what a piece of ground of the area of that upland would be worth for rental purposes for a year? A. I know that other land rents right on the edge of Trenton for trucking purposes at certain amounts; it is purely a matter of opinion and not definite.

Q. Then, you decided your estimate of the value of the upland for its possibilities as trucking land? A. Yes, sir.

Q. Did you give any value to the meadow land back of the lake? A. Very little.

Q. Is that good for no useful purpose? A. It produces a little grass, but it is of very poor quality. I have lived on a farm for 27 years, and have knowledge of what crops were; I have not rented any property like this, but I know of other properties similarly located like this around Trenton rented for trucking purposes, and I know what people have paid for them.

Q. Did you ever conduct any boating privileges on a lake like this? A. No, sir, I knew about the boating privileges being rented on Hutchinson's Pond.

Q. That is further away? A. Yes, but it is on the trolley line and of a similar nature.

Q. What did boats rent for on Hutchinson's Pond? A. About $3.00 a year for boating privileges.

Q. In estimating the rental value of the house, you estimated it upon the value that it was used for dwelling house purposes only, not for business? A. That is right.

Q. Would your opinion as to the rental value of this property be the same if you knew it was to be taken possession of and operated by a corporation for an amusement park? A. Unless I had some reason to suppose it would bring more; I don't know what it would be worth as an amusement park.

Redirect examination by Mr. Backes:

Q. What estimate did you place on the meadow land? A. I put that in with the lake privileges and the meadow, all together.

Complainants Rest.

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Both Sides Rest.

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Argument set down for May 14, at 2 P. M.

[2168]

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

# NEW JERSEY
# Court of Errors and Appeals.

Between
Alfred G. Holcombe et al.,
*Complainants,*
and
Trenton White City Company,
*Defendant.*

On Cross Appeals of John S. Broughton et al. and of Charles J. Fury, Receiver.

## Brief for John S. Broughton et al.

On bill filed in the Court of Chancery, the Trenton White City Company, a New Jersey corporation was adjudged insolvent, and Charles J. Fury was appointed receiver for the creditors and stockholders thereof. Conceiving that there were unpaid subscriptions to the common capital stock, the receiver filed a petition for an order authorizing him to levy an assessment; and from an order of the Chancellor authorizing such an assessment, the present appeals have been taken. No point is made by our clients of any irregularity in procedure, or that the assessment authorized is premature or excessive. Their grievance is that no order was proper because, as they claim, the common stock was paid for in full. On the other hand, the receiver

on his appeal claims that a larger assessment should have been authorized. The facts are fully recited in the opinion of the learned Chancellor.

The whole case turns on the determination of (1) whether the judgment of the directors of the company of the value of property in part payment of which stock was issued to the vendors who were the promoters of the company or to their assigns, can, in the absence of actual fraud, be questioned by creditors, and (2) if so, whether the property was in fact overvalued.

## I.

**After stock has been issued as fully paid stock for property purchased, the judgment of the directors as to the value of the property becomes conclusive in the absence of actual fraud in the transaction, and such stock is not liable to any further call.**

This proposition is quoted from the third head-note in *Donald* v. *American Smelting, etc., Co., 17 Dick. 729.* It formulated the deliberate opinion of this court based on the express legislative declaration contained in section 49 of the General Corporation act, under which both the Smelting Company and the Trenton White City Company were formed, and afforded the only justification for directing an award of an injunction to prohibit the purchase of property for stock at a valuation found to be excessive. Therefore, the point is *stare decisis,* and dispositive of the present case. The Chancellor expressly finds that there was no fraud in the transaction now under review (Case, p. 82), and bases his refusal to give effect to the deliverance in *Donald* v. *American Smelting Company* upon a criticism of that case made by Vice-Chancellor Pitney in *See v. Heppenheimer, 3 Robb. 36.* That learned judge thought the remarks of Dixon, J., were *obiter* as to creditors; but what he himself said was *obiter,* because

as will be seen the statute before him, antedating the Act of 1896, did not contain the declaration of the later statute, and because what it was improperly attempted to capitalize was not property at all but good will and contemplated profits.

It should be borne in mind that the entire capital stock was issued in part payment for the property purchased, and that all parties in interest had full knowledge of the transaction. We do not see how subsequent creditors can challenge it. If some part of what was given for the stock was not "property" at all, it might be that the statute is to that extent applicable; but as hereinafter argued, what was transferred was property, and its value was a matter for the judgment of the promoters and stockholders.

It is claimed on the part of the receiver that there was no exercise of judgment by a lawfully elected board of directors. The proof is to the contrary, and the argument as to irregularity defeats itself, for if there was not a board of directors qualified to act, then the transaction wholly failed and the stock was never issued at all. The receiver is on the horns of a dilemma. If he asserts a valid subscription to stock, he must concede the regularity of the transaction. The doctrine that promoters must provide a board of directors who can exercise an independent judgment in contracting with them exists only where stock is to be disposed of to the general public, for neither the corporation nor a shareholder can complain of a fraudulent transaction to which all the stockholders assented with full knowledge of the facts. *Arnold* v. *Searing, 3 Buch. 262; Bigelow* v. *Old Dominion Copper Co., 4 Buch. 457, 502.* The doctrine that an independent board of directors is requisite has really no applicability except in suits by or on behalf of the corporation or its receiver to recover undisclosed profits or to set aside a voidable contract of purchase. No adjudged case can be found sustaining a right of action for unpaid subscriptions

to the capital stock of a corporation issued for property purchased, when the property in fact is worth what was paid for it in stock, even though the vendors were also directors who voted in favor of the purchase. It is important to bear in mind the distinction between the *avoiding* a contract with a corporation (whether involving stock subscription or of any other character) because of interest of the directors, and the enforcement of a contract for stock subscription by requiring full payment for the stock. If a contract is avoided altogether, the subscribers are not bound to pay for their stock, but merely to surrender it. If a stock subscription to be paid for in property is to be enforced, while indeed overvaluation of the property may be inquired into, the question of dual capacity, *i. e.*, as subscribers and directors, is really foreign to the inquiry. If the subscribers are to be held on a subscription payable in property, they are entitled to be credited on their subscription with the value of the property turned over to the corporation—not exceeding, of course, the contract price. Neither the corporation, nor a receiver, in case of insolvency, can affirm and at the same time repudiate such a contract. Take the case in hand. The receiver says to the subscribers of common stock, "Pay your subscriptions in cash." The stockholders answer, "We only subscribed for stock to be paid for in property, and turned over the property to the corporation at a valuation agreed on." The receiver may possibly rejoin, "The property was overvalued; make up the deficiency;" but he cannot rescind the contract altogether, and still hold the vendors as on a cash stock subscription. The only question therefore (if not foreclosed by the *bona fide* judgment of the directors) is the value of the property turned over for the common stock. We will demonstrate the value of such property turned over exceeded the face of the stock. The corporation received it, retained it, and the receiver has disposed of it at a great sacrifice, it is true; but for that the subscribers are not responsible.

## II.

**What was given for the stock was "property" and the various items were not overvalued.**

(a) *The lease with its option of purchase.*

The chief point of contest was over this item. We submit that an option given a lessee to purchase the demised premises at a fixed price is property of a very substantial character. The adjudged cases are of that purport. An agreement that a lessee shall have an option to buy is an agreement to convey an estate in fee simple

*McCormick* v. *Stephany, 16 Dick. 208.*

Under a lease containing an agreement to sell at a named price, at the option of the lessee, he became the purchaser of the right to buy the property. His privilege to buy induced the taking of the lease and the payment of the rent. He became a *bona fide* purchaser of the right to buy for a valuable consideration paid by him in the rent.

*Connely* v. *Hagerty, 20 Dick. 596.*

Where a person leases land for a definite period, the lease providing that he may purchase the property at any time before its expiration, the interest acquired under it may be mortgaged under Gen. St. C. 63, art. 1, section 6, providing that "any interest in or claim to real estate may be disposed of by deed or will in writing."

*Bank of Louisville* v. *Baumeister, 87 Ky. 6, 7 S. W. 170.*

The stipulation in a lease that the lessee at the end of the term may have a conveyance of the premises at a specified price is not merely a personal covenant but a right which may be transferred by the lessee to his vendee on assignment of the lease and enforced at his option as if the contract had been absolute.

*Napier* v. *Darlington, 70 Pa. 64.*

In the matter of New York 118 App. Div. 865. This was a condemnation proceeding. The property taken was subject to a lease for 21 years, which contained an option to renew for a further period of 21 years. In determining the value of the property the Court said (page 867): "What the tenant is entitled to is the fair market value of the property that is taken. That property is the value of the leasehold, which includes the privilege of the renewal of the lease." This case was affirmed in 189 N. Y. 508. From this it could be argued that the option contained in the lease was considered property for which the lessee was entitled to compensation.

In *Underwood on Landlord and Tenant, Vol. 2, section 597,* it is set out that a lesee who is entitled under a covenant in his lease to purchase the premises at a price specified, may recover damages against his lessor for refusal to convey, and that the lessee can recover for the loss of his bargain the difference between the market price at the time he was entitled to the conveyance and the price which he agreed to pay.

If a tenant can recover damages for the loss of his option, certainly it must be a thing of value which may be deemed property.

In *Soulard* v. *United States, 4 Peters 511,* Chief Justice Marshall said: "The term property, as applied to land, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract, those which are executory as well as those which are executed."

The doctrine has been applied to a sale of such an option for the stock of a corporation organized under laws similar to that of this State; following are instances:

A contract whereby plaintiff and defendant, who had an option on mining property, were to sell the same to a corporation at a profit, and to receive money and stock in payment, was held not to violate the South Dakota constitution (art. 17, sec. 8), providing that no

corporation shall issue stock or bonds except for money, labor done or money or property actually received; or Rev. Civ. Code, sec. 1271, providing "that is not lawful which is: (1) contrary to an express provision of law; (2) contrary to the policy of express law, though not expressly prohibited; or (3) otherwise contrary to good morals," or section 1272, providing that all contracts which exempt any one from responsibility for his own fraud, or wilful injury to another, or violation of the law, are against the policy of the law.

*Chambers* v. *Mittnacht, 122 N. W. 434.*

In *Torrey* v. *Toledo Portland Cement Co., 122 N. W. 674* (Supreme Court of Michigan), the promoters and their assigns were held liable at the suit of subsequent purchasers of stock held in the treasury for their stock subscriptions in a case where they received of a par value much greater than the value of options turned in to the company, for which options indeed they were paid in cash. The Court clearly implied that it would have been perfectly legal to turn over the options at their value for stock of the company.

On May 27th, 1907, the Real Estate Title Insurance and Trust Company of Philadelphia, Trustee for the Trenton Street Railway Company, executed a lease to the Trenton White City Company for the property above referred to, in consideration of the sum of one dollar. The lease sets out that the property consists of 120 acres of land, together with the lake thereon, covering about 22 acres, and also 82 lots of land on the northerly side of said park. The term of the lease was ten years from the first day of April, 1907. The lessor covenanted that it would furnish 70 arc lights and keep said lights burning during the periods when said park was open, and *also that they would sell the premises at the option of the lessee at any time during the term of the lease for $35,000.* It becomes necessary, therefore, to inquire into the value of the property conveyed under the lease. Mr. Wesley Gibbs was the witness as to the value of this property produced

on behalf of our clients. This witness is probably more competent to testify as to values in this locality than any witness who could be produced. He has lived in the immediate locality for twelve years, has bought and sold many lots, both for himself and other persons, and testified (p. 332, l. 41) that he has dealt in 300 lots in and about this tract. He testified (p. 334, l. 19) that there were 29 or 30 lots on Overlook avenue, which he designated as on the bluff, and that they were worth $300 each, or a total of $8,700; that eight lots on Harrison avenue were worth $400 each, or a total of $3,200, and that the balance of the lots were worth $250 each. From an inspection of the map which was offered in evidence it will be seen that there are 38 lots on Overlook avenue, worth in all, on this estimate $9,500; 36 lots on McClellan avenue, worth in all $9,000, or a total valuation for the entire number of lots of $30,400. The witness further testified that the balance of the property between the railroad and Overlook avenue was worth $35,000, which would make the total valuation of this tract $65,400.

This estimate would make the value of the park proper, not including the lots, about $350 an acre. On page 347, l. 5, *et seq.*, the witness testified that another tract called the Lalor tract, which adjoined this property at one place, consisted of about 150 acres, and that he had heard through real estate people that an offer for this property of $150,000 had been declined. This would make the Lalor street tract worth about $1,000 an acre. It is a matter of common knowledge that some such transaction as the witness testified to was had in respect to the Lalor tract, and that the persons who are commonly supposed to have been the intending purchasers, upon being unable to obtain the property, moved their manufacturing plant elsewhere.

The receiver offered as a witness as to the value of this property Benjamin N. B. Miller (p. 371, *et seq.*). Mr. Miller testified (p. 377, l. 32) that he came to Trenton in the summer of 1907 to look after some

property interests here, and that he has developed several tracts of land since that time. He had had no previous experience in actually developing land in Trenton or elsewhere, and before he came here had no knowledge whatever of the value of property in Trenton, and especially in this location. The only information he got in respect thereto was hearsay. He testified that in the last year or two he had developed a tract on Lalor street, populated chiefly by Polish and Hungarian people. Although the exact character of that development is not in evidence, it is arguable, at least, from the class of the persons living on that tract, that it is entirely different from the character of the development of the property at Broad Street Park. Mr. Miller had never been in Trenton at the time this lease was negotiated, and he could have had no knowledge of the value of the land at that time. An objection was made to the admission of the testimony of this witness upon the ground that he was incompetent, and we submit that such objection should be sustained. The valuation of the entire tract of $21,500, testified to by this witness (p. 385, l. 18) is so absurdly low, as a matter of common knowledge, that it alone disqualifies him. This tract of land is situated a short distance beyond the city of Trenton, and in a locality that is growing rapidly. It is reached by two trolley lines that run to the heart of the city, and the lowland lies along the Pennsylvania Railroad, and we submit that it is entirely reasonable to suppose that lots in that locality are worth at least $250, and probably more, and that unimproved land in that locality is worth $350 an acre.

The lease also provided that the lessors would provide power for 75 arc lamps, which Mr. Sadler testified (p. 277, l. 5) were worth $3,150 a year, and for ten years would be worth $31,500. Mr. Woolverton testified on behalf of the receiver (p. 391, l. 2) that the cost of each lamp would be about $30 a season, therefore 75 lamps would be $2,250 a year, or the value of the con-

tract in ten years $22,500. He testified, it is true, that there were only 20 lamps at the park the light for which was furnished by the railroad company, but under the terms of the lease the park was entitled to 75 lights, and in placing a value upon that portion of the lease it is proper to consider the value of 75 and not of 20. From the testimony of the receiver's own witness, therefore, this covenant in the lease was worth to the White City Company over $22,000 for the term of the lease—ten years.

The learned Chancellor fell into grave error in estimating the value of the lease in disregard of the privilege or option of purchase.

(b) *Contracts or arrangements entered into by promoters prior to the formation of the park.*

The promoters, prior to the organization of the company, entered into various contracts or agreements which would be valuable assets for the park to acquire. Some of these contracts were in writing, and some were only verbal agreements; but all of these contracts or arrangements were subsequently turned over by the promoters to the park and carried out by the parties precisely as arranged for. These contracts or options the promoters contend are property or property rights, such as may be given in payment of stock of the company (*Haskins* v. *Ryan, 78 Atl. 566*), and were acquired by the promoters, not as a part of the duties under their contract with the subscribers, but were acquired by them as individuals, with the intention of subsequently giving the park the benefit thereof for a consideration, to wit, a part of the capital stock.

We will first discuss the value of the contract with Doak & Company for the construction of the park. Mr. Stewart, a member of the firm of Doak & Company, testified (p. 268, l. 24) that he had negotiations with Mr. Oberheide, Mr. Dickinson and others, and wrote them a letter on March 19th, 1907, the result of which was that Doak & Company agreed to construct the

buildings on the park, the total cost of which was $24,000 or $26,000, for a commission of ten per cent. of the cost of such buildings, which commission Doak & Company were to take in stock of the company. By this arrangement, which was subsequently taken advantage of by the company, the promoters contend that the company benefited to the extent of $2,600, which otherwise they would have been obliged to pay Doak & Company in cash.

Another contract or arrangement made by the promoters which they turned over to the company was the agreement with the Public Service Corporation to run a feed wire to the park for the purpose of supplying light. The question of power and light was a very serious one for the park. There was no light to be had and the Public Service Corporation was the only one which could furnish it. This it refused to do at first, and was only persuaded to do so at the solicitation of the promoters, and by reason of the friendly influence which they had with that company. Mr. Luptke, an employee of the Public Service Corporation, testified (p. 361, l. 8) that the company built a special cable or feed wire for the express purpose of furnishing light to the White City, and that it was done exclusively at the instance of the White City promoters, and that the cost of the extension was about $10,000. The benefit of this arrangement was given to the White City Company by the promoters, and by it they were saved an expenditure of that amount of money.

In addition to the above arrangements turned over by the promoters to the company, they also furnished a certain number of skates (p. 171, l. 23) which saved the company about $1,400.

Also an arrangement was made with the Breunig Company for the construction of a "figure eight" machine, by which the White City Company was benefited to the extent of $3,000 (p. 235, l. 7).

The total value, therefore, of the property turned over by the promoters, including the lease and the

New Jersey State Library

various contracts or arrangements above referred to, at the valuation placed upon it by the promoters and their witnesses, is as follows:

| | |
|---|---|
| Value of the real estate acquirable under the lease, | $65,400 |
| Value of the lighting agreement contained in the lease for the full term thereof, | 31,500 |
| Value of the contract with the Public Service Corporation, | 10,000 |
| Value of the contract with Doak & Co., | 2,600 |
| Value of the arrangement with reference to skates, | 1,400 |
| Value of the contract with the Breunig Construction Company, | 3,000 |
| Or a total valuation of, | $113,900 |

The only dispute as to the value of any of this property is concerning the value of the real estate. Taking the evidence of the receiver's witness, Miller, who placed the value at $21,500, which is $43,900 less than that placed upon it by the promoters, would still leave a total valuation of this property of $70,000. If the park had continued operations and at any time during the term of the lease had desired to avail itself of the option to purchase the property for $35,000, the company could have paid that sum and have acquired the ownership of property worth, above the option price, according to the figures of the promoters, $78,950, and according to the value placed upon it by the receiver, of the value of $35,000. The debts of the company being about $40,000, the common stockholders would be liable to be assessed for that amount, provided they had not paid for their stock. It appears, however, that, even upon the valuations of the receiver's witnesses, the net value of the property turned over by the promoters equalled approximately the amount of the debts of the company for which they might be liable to assessment.

In ascertaining the value of the property as above several things have not been considered, the principal

one of which is the probable increased value of this property, had the White City Company owned it the full term of ten years. It is fair to assume that property in this location seven or eight years from now would be worth a far larger sum than it is at present, and it is entirely fair to take this into consideration when considering its value, as the company, if a going concern, could have taken advantage of the option to purchase, and could have acquired the entire ownership of this valuable tract of land for the sum of $35,000. It seems to us, therefore, abundantly proved that it might fairly be said from the testimony of the receiver's own witnesses that the property turned over by the promoters in payment of the common stock acquired by them was fairly worth the par value of that stock.

The fact that the promoters were willing to donate a part of the common stock, to which they were entitled, as a bonus to subscribers to preferred stock is immaterial. They were interested in the success of the company and could give away their property if they chose to do so. The person receiving stock in payment for property may be willing to sacrifice a part of his stock in order to make the rest more valuable. Such stock is called "treasury stock" and in transactions similar to that now before the court have frequently been upheld by the courts. *Cook on Corporations, 6th ed., vol. 1, p. 182, sec. 46.*

Section 49 of the Corporation Act provides that any corporation may purchase property necessary for its business and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be fully paid and not liable to any further call. The question therefore arises, was the option or control of the lease in these lands, and the contracts, agreements and other arrangements turned over by the promoters in return for the stock, property? There seems no doubt but that the interest or control which the promoters held or exercised in reference to the lease

was property. While they had no formal written agreement, they had correspondence with the persons who controlled the lease on the part of the railroad company, they had actually paid $4,000 to get out of the way an existing lease upon the property, which was a condition precedent to their obtaining a new lease, and they had the assurance of the persons who controlled the railroad company that they would obtain such a lease, and they undoubtedly could have procured a written option for such a lease prior to the formation of the company, had they thought it necessary to take such a course. The $4,000 which they paid to Mr. Hurley for his individual interest in the old lease, and at the same time receiving his assurance and guarantee that they would receive the lease which was subsequently made, may be considered as a payment on account of the agreement, and as a consideration paid for an actual option. We think there can be no doubt that the control which the promoters had in this lease, and which was subsequently turned over to the company, is undoubtedly property within the meaning of the Act (*ubi supra*). It has been suggested, however, that the other agreements and contracts entered into by the promoters, of which the park subsequently got the benefit, are not property. We refer to such arrangements as were made with Doak & Company, the Public Service Corporations and others.

In the case of *Haskins* v. *Ryan, 1 Buch. 575,* and reported upon a demurrer to an amended bill in *78 Atlantic Reporter 566,* the complainant procured options on certain manufacturing properties which he intended to combine, and he also procured certain papers, data, estimates and other documents and information in connection with or bearing upon his plan or scheme of combination. He then formulated a plan of acquiring all these plants and laid it before the defendant. The defendant appropriated the entire plan and all the ideas of the complainant, and proceeded to

combine the various companies, independently of the complainant, and made an enormous profit. The complainant filed a bill for an accounting of the profits and a share of them. Vice-Chancellor Stevens held that a mere idea, unprotected by statute or contract, is not capable of legal ownership, but he did hold that the options, data, estimates and information turned over by the complainant were undoubtedly property.

Assuming, however, for the sake of argument, that the property turned over in return for the stock, did not, as a matter of fact, approximate the par value of the stock, but that in the judgment of the directors they considered that it did approximate that value, is not their judgment a compliance with the statute, in the absence of actual fraud on their part? People may differ in their judgment as to the value of property, and this is especially the case in regard to the value of real estate. There is no kind of property concerning which there is such a difference of opinion as to its value. All the directors who testified in this case stated that in their judgment the property was worth at least $79,000. The value given to it by the respondents is $113,900, and considering the value placed upon the real estate by the receiver's witnesses, and the value of the other property concerning which he produced no evidence, the total amounts to $70,000. It is evident at least that the property is worth a large sum of money, and we do not think that it is the intention of the statute that the value of property turned over for stock must in fact exactly equal it in value, but that the statute means that in the honest judgment of the directors the value should be approximate. When this fact is considered in connection with the contention heretofore made that no actual fraud has been proved in the transaction or no facts from which fraud could be inferred, we think that no ground whatever was shown by the receiver to justify an order for an assessment of the stockholders in this case. It seems

to us, moreover, that all doubts in reference to the transaction should be resolved in favor of the persons whose stock is now sought to be assessed. They are all persons of standing in this community, and it would occur to no one to charge any one of them with fraud in this transaction, or in any other; and the Chancellor so held. They made no profit whatever. They all stand in the same position with reference to the common stock. None of the common stock was sold to any one for cash, and no holders of the common stock were deceived in the slightest degree by this transaction, as there were no holders other than these promoters and the subscribers to the preferred stock, who got their common stock for nothing. The only persons in any event, therefore, who could complain of any wrong are the creditors, and it seems to us far fetched in a degree to say that they were in any way injured by this transaction. Only by a legal fiction can they be said to have relied in any degree upon the authorized capital stock of the company, and it is safe to say that not one of them put any reliance therein. The theory of creditors relying upon the authorized capital stock of the company has been greatly modified in late years, and the idea that credit is given on the basis of the capital stock is discredited. *Cook on Corporations, 6th ed., vol. 1, sec. 46, p. 178; Rubino* v. *Pressed Steel Car Co., 53 Atl. 1050.*

The foregoing argument, if sustained, disposes adversely of the receiver's appeal.

**As to the stockholder appellants, the decree should be reversed and a dismissal of the petition should be directed; or the assessment should be reduced and modified.**

JOHN M. DICKINSON,
GILBERT COLLINS,
*Of Counsel with John S. Broughton et al.*

State Gazette Publishing Co., Printers, Trenton, N. J.

# New Jersey Court of Errors and Appeals

Between

ALFRED G. HOLCOMBE ET AL.,
Complainants,
and
TRENTON WHITE CITY COMPANY,
Defendants.

JOHN S. BROUGHTON, BARKER G. HAMILL, W. MEREDITH DICKINSON and WILBUR F. SADLER, Jr.,
Defendants-Appellants and Respondents,
and
CHARLES J. FURY,
Receiver,
Respondent and Appellant.

On Appeal from the Court of Chancery.

On Bill, &c.

## Brief of Peter Backes, of Counsel for Charles J. Fury, Receiver.

This appeal is from an order of the Chancellor made on the petition of the Receiver appointed in this cause to levy an assessment upon the stockholders of the aforesaid company for the payment of unpaid stock subscriptions to pay the debts of said company.

The appellants, who were the promotors and principal stockholders of said company, appeal from the whole and every part of said order.

The principal reasons assigned by them for setting aside said order are: (1) That their stock was full paid, non-assessable and not liable to an assessment in the hands of the holder thereof; (2) That said stock was issued for property purchased, the value of which equalled the par value of the stock so issued.

The Trenton White City Company was formed on March 26, 1907, under "An act concerning corporations (Revision of 1896)," with an authorized capital stock of $150,000, divided into 15,000 shares of the par value of $10 each. The capital stock was divided into 7,500 shares of preferred and 7,500 shares of common stock.

The incorporators were Christian H. Oberheide, John M. Dickinson and W. Meredith Dickinson, who, together, subscribed for shares aggregating the value of $1,000.

The business of the corporation was to operate a pleasure park, known as "White City Park," near Trenton.

On the fourteenth day of August, nineteen hundred and nine, the company was declared insolvent, and Charles J. Fury was appointed its receiver. The liabilities of the company exceed $40,000. Its assets amount to $1,767.84.

The proceedings were brought to put the receiver in funds to pay the debts.

The subscriptions for the preferred stock have been paid. All of the common stock was in the first instance issued to the promoters, W. Meredith Dickinson, John S. Broughton, Barker G. Hamill, Wilbur F. Sadler, Jr., and Christian H. Oberheide, by certificate number one for 2,500 shares, and by certificate number two for 5,000 shares. Of this common stock the promoters returned to the treasury of the company 2,500 shares, to be used as a bonus to the subscribers of the preferred stock. The bonus stock was issued at the rate of one share of the common stock for every two shares of the preferred stock subscribed. The common stock was issued accordingly to the preferred stockholders, who, by reason of their common stockholdings, and the promoters, are called upon to respond.

They resist the receiver's application on the ground that their aggregate holdings of $75,000 of the common stock was issued for property purchased by the defunct company from the promoters, and seek to fortify this position by the formal action of the stockholders and directors, as recited in the minutes of the company.

On the day of the incorporation (March 26, 1907) the three incorporators elected the promoters and John M. Dickinson and Ferdinand W. Roebling, Jr., directors. At the stockholders' meeting a resolution was passed which reads as follows:

> "Whereas, Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H. Oberheide own and control a certain leasehold in and to a certain large tract of land and premises in the township of Hamilton and county of Mercer, commonly known as Broad Street Park, in which lease there is an unexpired term of four years; and, whereas, said persons above named also control an option upon said property to lease the same for an additional period of six years from the time of the expiration of the term of their present lease aforesaid; and, whereas, said persons have entered into various contracts with certain persons, firms and corporations for the construction and erection of various devices which would be useful and necessary in the operation and conduct of the business of this company; and, whereas, it appears to the stockholders that such property and rights and interests would be of great value to this company, and that their acquisition is indispensable to the successful operation of this company and the conduct of its business, and that no other property rights and interests of a similar nature and character can be acquired by this company which would be of equal value to it; and, whereas, the said Barker G. Hamill, John S. Broughton, W. Meredith Dickinson, Wilbur F. Sadler, Jr., and C. H.

Oberheide have offered to sell said property interests and contract rights to this company for the sum of four thousand dollars in cash, and in consideration of the issue of the common capital stock of this company to them to the amount of seventy-five thousand dollars, par value;

"Now, Therefore, be it Resolved that the board of directors of this company be and they are hereby authorized in their discretion to purchase the property, leasehold interests and contract rights above mentioned, for the price aforesaid, and to issue said stock in payment therefor." (Schedule A, page 23, State of Case.)

At a supposed meeting of the directors held on the same day, from which there was absent Wilbur F. Sadler, Jr. and Ferdinand W. Roebling, Jr., the resolution of the stockholders' meeting was adopted and affirmed.

By a writing bearing date April the first following, the promoters transferred to the company the property described in the resolution mentioned. (Schedule C, page 25.) By another paper-writing dated in June, the promoters certify that they assigned to the company 2,500 shares of their common capital stock, in trust, for distribution among the preferred stockholders, to enable it to carry out the original bonus agreement with them. (Schedule D, page 27.)

The pertinent section of the corporation act under which the appellants seek protection, is "49":

"Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment

> under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact."

The preceding section provides that "*Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this act,* except as hereinafter provided, *in case of the purchase of property.*"

Unless the $75,000 of the common stock was issued to the promoters in strict conformity with the requirements of section 49, and for property of the value of the face of the stock, the resolutions of the stockholders and directors referred to, will not avail the appellants, and we shall presently show that the resolution of the board of directors is invalid:

(1) *Because the board was not then duly assembled.*

(2) *Because the property purchased was grossly overvalued,* and

(3) *The judgment of the directors as to its value was not made in the absence of actual fraud.*

## POINT I.

THE BOARD OF DIRECTORS OF A CORPORATION MAY ONLY ACT FOR THE CORPORATION WHEN DULY ASSEMBLED.

At the meeting of the board of directors held on March 26, 1907, when it was supposed to solemnly pass judgment that the property of the promoters was worth $79,000 to the company, Wilbur F. Sadler, Jr., and Ferdinand W. Roebling, Jr., were absent. The minute-book (page 18) does not report them present. On page 21 is

recorded a waiver of a notice of this meeting, signed by all of the directors, including the two absent ones. The latter two appended their signatures after the meeting. They had no notice that it was to be held. Mr. Sadler was in a hospital in New York undergoing an operation. He went there the latter part of February, and did not return until the tenth of April (page 285). The waiver was signed by him after his return (page 285).

He said that he discussed the values of the property with the other stockholders prior to his going, with all of them collectively, except Mr. John M. Dickinson (page 283).

Mr. Ferdinand W. Roebling, Jr., testifies that he was informed that he was elected a director a little after March twenty-sixth—within a week—it might have been the same day (page 239). That he had no notice that the meeting of the board of directors of March twenty-sixth was to be held. That he presumes he signed the waiver of notice after the twenty-sixth of March (page 242).

This incomplete board of directors had not the power to pass the resolution upon which the appellants rely.

> "The members of a corporation, public or private, can do no corporate act of a constituent character, such as must be done at a general meeting of all the members or of a quorum of them, unless the meeting is duly assembled, in conformity with the law of its organization. It has been well said that the act of a majority of the corporators does not bind the minority, if it has not been expressed in the form pointed out by law; and accordingly, that the act of a majority, expressed elsewhere than at a meeting of the shareholders, is not binding on the corporation, as where the assent of each one is given separately and at different times. The reason is that each member has the right of consultation with the others, and that the minority have the right to be

heard. In the line of authority establishing the foregoing principles no break has been discovered, although it should be added that an election or other proceeding had at a meeting irregularly assembled may be valid if all attend and act or assent."

10 Cyc., p. 323; see 10 Cyc., pp. 774-5.

In Whitehead *v.* Hamilton Rubber Company, 7 Dick., page 78, the validity of an assignment of accounts to Mr. Whitehead, presumably authorized by the board of directors, was attacked. One of the directors was not at the meeting of the board at which the assignment was claimed to have been authorized, and in holding the assignment void, Vice-Chancellor Bird said: "That all the directors are entitled to notice, either expressed or implied, of any meeting at which any business is transacted, in order that the business may be binding upon all the persons concerned, admits of no question." He cites numerous authorities in support of this proposition.

## POINT II.

THE PROPERTY PURCHASED WAS GROSSLY OVERVALUED, AND THE COMMON STOCK ISSUED TO THE PROMOTERS WAS NOT FULL PAID, IS LIABLE TO ASSESSMENT, AND WAS NOT ISSUED IN THE ABSENCE OF ACTUAL FRAUD IN THE TRANSACTION.

The property purchased was not, in money's worth, equal to the par value of the capital stock.

The appellants shield themselves behind the promoters' (directors') resolution, which declares that in the judgment of the directors the property purchased was worth $79,000, and which, in the language of the section of the Corporation act above quoted, is conclusive in the absence of "actual fraud."

This section of the statute introduces no novelty in the law; it is simply declaratory of the law.

Easton Natl. Bank *v.* Am. Brick & T. Co., 3 Robb. 326.
Coit *v.* Gold Amalgamating Co., 119 U. S. 345.
Bickley *v.* Schlag et al., 1 Dick. 533.
Rural Homestead Co. *v.* Wildes, 9 Dick. 668.
Donald *v.* American Smelting & Refin. Co. et al., 17 Dick. 729.

The resolution of a board of directors is of no legal force to prevent an examination into the bona fides of a purchase where "actual fraud" appears. This is apparent from the language of Judge Dill, in the case of Knickerbocker Imp. Co. *v.* State Board of Assessors, 65 Atl. Rep., 913-915, "neither bookkeeping nor mere recitative language in resolutions of a board of directors creating values can be accepted as the equivalent of the proof of bona fide value required by our statute, where stock is issued for property purchased. Judged by the rule either of 'good faith' or 'true value' as applicable to stock issues, the proofs do not satisfy us of the legality of this transaction."

Many of the reported cases in this State dealing with the subject under consideration, arose under the Corporation act of 1875, which provided for stock "issued for property purchased" to be so stamped on its face, and did not include that "in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property shall be conclusive." But we argue that the principles laid down in these cases are pertinent and applicable to the issue in hand, and that the provision of the 1906 statute makes no essential difference in the law's estimate when a palpable and obvious overvaluation is presented for judicial donouncement.

Vice-Chancellor Bergen's opinion, in Easton National Bank *v.* American Brick and Tile Company *supra* (page 329), affirmed, 4 Robb. 722, referring to the meaning of "actual fraud" as employed in the case of Coit *v.* Gold Amalgamating Co., *supra,* says:

"The expression 'actual fraud,' as used in the cases last mentioned, must be interpreted to mean and include any device by which the stock of a corporation passes to a stockholder without payment in full, either in cash or by property purchased, 'to the amount of the value thereof,' and that an intentional overvaluation of property upon the understanding that a portion of the stock issued should be returned for distribution among the directors voting for the purchase without payment by them, is such a device, and falls within the definition of 'actual fraud' as intended by the Court of Errors and Appeals."

In Donald *v.* American Smelting and Refining Company, 16 Dick., page 458, Vice-Chancellor Stevens gives a history of the legislation in this State, relating to the subject-matter contained in the sections 48 and 49, pertinent to the present inquiry.

In speaking of section 49, he says, "It will be seen that it differs from the act of 1875 in omitting the requirement that the stock be stamped "issued for property purchased," and in providing that in the absence of actual fraud, the judgment of the directors as to value should be conclusive. It is somewhat singular that our courts have not been called upon to apply these various statutory provisions more frequently. In New York, however, the decisions upon a provision of a statute almost identical with that already mentioned in the act of 1875, are numerous and will throw much light upon what is to be deemed 'actual fraud.'"

Among the cases referred to is Boynton *v.* Hatch, 47 N. Y., page 225, in which Judge Allen was of the opinion "That the real question was whether the act of the directors in purchasing the property and issuing the stock for it, was a fraud upon the law. That is, whether it was a mere evasion of the statute which authorized stock to be issued only to the amount of the value of the property purchased." And citing Douglas *v.* Ireland,

73 N. Y., page 102, as upholding Judge Allen's opinion, states that it was there held that "All that is necessary to establish the legal fraud (i. e., the fraud upon the law) is to prove two facts: *First,* that the stock issued exceeded in amount the value of the property, in exchange for which it was issued; *second,* that the trustees deliberately and with knowledge of the real value of the property overvalued it and paid in stock for it an amount which they knew was in excess of its actual value."

The Vice-Chancellor then refers to the case of Bickley *v.* Schlag, 1 Dick., page 534, and quotes from it thus: "The inquiry, therefore, in the court below should have been, whether the agreement in question was fraudulent or not; for if the transaction was an honest one, the difference in value between the property constituting the consideration of the sale and the stock had no legal significance."

And the Vice-Chancellor adds:

> "Now it is quite apparent that the intention of the revisers of the act of 1896 was to put in statutory form the result of this prior course of adjudication. The fraud referred to in the forty-ninth section is fraud upon the law; and in the words of Mr. Justice Allen, in Douglas *v.* Ireland, *supra,* no other fraudulent intent need be proved 'than that which is evidenced by the act of *knowingly* issuing stock for property in excess of its value.' It must be remembered, however, that a wide discretion in the matter of valuation, as in other matters, is confided to directors. As long as 'they act in good faith, with honest motives, for honest ends', the exercise of their discretion will not be interfered with. 'Courts of equity', says Mr. Thompson in his work on Corporations, section 4518, 'cannot be called upon to control the discretion of the managing bodies of corporations. Otherwise they would be choked with applications of recalcitrant stockholders. The action of a

board of directors may be ill-advised or apparently unprofitable, but this furnishes no ground for invoking the restraining powers of the court.' "

In the Douglas *v.* Ireland case referred to by Vice-Chancellor Stevens, it was held that "the *scienter* and guilty action of the trustees may be either proved directly or inferred from circumstances."

The devices in this case making for "actual fraud" and which vitiates the resolution (Schedule B, page 24) as a conclusive judgment of value, barring a recovery, is that elements of value were drafted in aid of property which in fact were not property, and that there was conscious overvaluation.

At the time the stock was voted and issued, the only "property" possessed by the promoters and by them turned over to the company, was a lease outstanding upon the "park" in the name of one Wurflein, and controlled by Peter E. Hurley. This lease was for one year (then about expired) with a renewal option of a four year additional term.

An option for an additional period of six years and the right to purchase the "park" at $35,000; contracts entered into with various persons for the construction of amusement devices for the park, and contracts to concessionairs—all designated in the directors' resolution—did not in fact nor in law exist, as we shall presently show. These, together were taken as the basis upon which the directors say they honestly adjudged a value of $79,000.

The Wurflein-Hurley lease of the "park" was bought by the promoters shortly before the organization, for $4,000. The company's promoters reimbursed themselves out of the company's funds to this amount, by adding it as a cash item in the resolution, voting to themselves all of the company's common stock. The truth is, and the testimony so shows, *that the four year term of the lease*—the only tangible property conveyed—was turned over to the company *at cost-price,* and was not regarded in the valuation of the so-called other property for which

$75,000 of the common stock was issued. (Mr. Hamill, pages 209-212.) Mr. Dickinson declared he had no recollection of doing so. (Pages 162-163.)

The remaining property consisted of (a) an option of a further extension of the lease for six years; (b) a right to purchase at $35,000; (c) contracts with the Public Service Corporation for lighting; with J. G. Doak & Co. for building super-structures; with S. R. Cook for building Figure 8; with G. A. Dentzel for building of the carousel; with Hamill and Dickinson for use of roller skates; with Evans and Bright as architects; and with concessionairs; Fury, Cook and Atchley; Japanese Bazaar; Figure 8; circle swing; laughing gallery; photograph gallery; penny arcade; shooting gallery; boating etc.

Not one of these did the promoters possess by a legally enforceable contract. There was some loose, hap-hazard, indefinitely vague, understanding, that if the promoters built a park, the other parties might avail themselves of its benefits. Not a single writing is produced, as evidence to show binding agreements, and we have only in the case the evidence of the promoters of uncertain and dim recollection of a "something" that transpired between them and the other parties that morally bound the latter, in the event of the promotion becoming a reality, they would join in the enterprise.

### (*a*) LEASE FOR A SIX-YEAR EXTENSION AND THE OPTION TO PURCHASE.

Mr. Dickinson's testimony is that as far as he can recollect, Mr. Hurley promised Mr. Oberheide that for the $4,000 paid for the Wurflein lease, they would in addition to that lease be given a lease on the property and an extension for six years—that is, to get a ten-year lease, with the privilege of buying at $35,000—that this was verbal promise of Mr. Hurley (pages 163-164-178.)

Mr. Hamill testifies that he had similar conversations

with Mr. Hurley, and from him received a verbal promise. That in addition to this, he had gone to Mr. John A. Rigg, president of the Trenton Street Railway Company, and to Mr. F. W. Roebling, its local director, and from them received a like verbal promise that if they purchased the Hurley lease, that the Trenton Street Railway Company, or somebody for them, would enter into a lease with us for $1 for ten years, with an option to buy at $35,000. (Pages 189-190-191.) That there was numerous correspondence between him and Mr. Rigg concerning the proposed extension. (Page 192.) These letters were not forthcoming, and the fair inference is that they spoke only as far as the witness has now testified, and his summary of what transpired is disclosed by his statement that no actual lease was made by the railroad company, or anyone for it, to the promoters, and that they had only a verbal arrangement that the railroad company would consummate the lease. (Page 229.)

Mr. Hurley says that he took the matter up with Mr. Rigg, and that he (Hurley) asked about an extension beyond the four years, and that he told Mr. Rigg that the promoters wanted a ten-year lease, and that the reply was, "We will give them a ten-year lease and as much longer as they want it, if they run the right kind of a park * * * there was no question about their getting a lease." He said that he conducted all of the negotiations with the promoters for this lease, and that he sometimes took it up with Mr. Rigg. (Page 392.) There was never any writing between the Trenton Street Railway Company or any of the companies and the promoters concerning the option of extension of lease and of purchase. (Page 394.)

Mr. Sadler makes bold in asserting that he saw a letter from Mr. Rigg, binding him, and he adds, as well the promoters, but he sadly relapses into a state of "don't remember" when asked to recite the details (page 288).

Mr. Broughton and Mr. Sadler had no hand in the matter. The title to the "park" stood in the name of the Real Estate Title Insurance and Trust Company, an as-

sociate or subsidiary company of the local railroad company, of which Mr. John A. Rigg was the president, and with which concern Mr. Peter E. Hurley had no connection.

In endeavoring to show a property right in these two so-called "options," the promoters are confronted by numerous legal obstacles. Mr. Hurley obviously had no power to give them. Mr. Rigg, as president of the company, was likewise impotent. If either had the power, there was nothing in writing to establish them in avoidance of the statute of frauds.

In now advancing these options as elements of value, the promoters signally fail.

### (*b*) THE CONTRACT WITH THE PUBLIC SERVICE CORPORATION FOR LIGHTING.

The promoters, because of their family, social and business influences, obtained from the Public Service Corporation a verbal promise to extend a feed-wire to supply the "park" with electricity. The cost to the Public Service Corporation was about $10,000. Just with whom of the officials of the Public Service Corporation having the right to bind that company, the understanding was had, does not appear. Certainly there was nothing in writing which was made by binding authority, and if it was made with one in authority, it was upon a contingency, mutually without consideration, and a performance of which could not have been enforced.

Mr. Hamill is quite positive that this arrangement was all brought about and the cable laid before the formation of the company (page 214). The minute-book shows it was not done until after April 18 (page 30).

At all events, the arrangement did not make for property in the promoters.

(*c*) CONTRACT FOR BUILDING OF SUPERSTRUCTURES, AMUSEMENT DEVICES, AND AGREEMENT WITH CONCESSIONAIRS.

Some of the promoters (principally Oberheid, who had no power to bind the promoters—Dickinson, page 174), had talks, we may say negotiations, with James G. Doak & Company to build the "park" in the event of the forming of a company for that purpose (page 167). Mr. Dickinson's testimony is to this effect. He says that he had entered into a bargain with Doak, that the terms were specified, but there was nothing in writing. That Doak had not bound himself in any legal manner, "but he would have if we had asked him to" (page 168). "I don't suppose we could have held Doak legally" (page 169).

Mr. Stewart, of that firm, says that he had two talks with Mr. Oberheide about the matter, and that on March nineteenth, in writing, he made a proposition to Mr. Oberheide, which appears on page 271 of his testimony. That he received no reply to his proposition and that after the formation of the company he came to Trenton, and there saw the promoters, and that thereafter they entered into a formal agreement with the Trenton White City Company on April 6 (pages 271, 273).

Mr. S. R. Cook was the builder of Figure 8. Mr. Oberheide had been to see him and had secured from him his terms. There was no bargain between them (page 168).

Evans & Bright, architects, had been consulted by some of the promoters, and their views obtained as to the manner of construction. Mr. Dickinson says: "As far as I know, we had only talks with Evans and Bright." That they had had no understanding with them "that would be of any particular benefit to the White City Company" (pages 168-169).

Mr. George A. Dentzel was a carousel builder, and through the efforts of Mr. Oberheide he agreed, in the

event that the corporation desired it, to build one for eight thousand dollars, it being claimed that the usual cost was $10,000, and it was left to be inferred that by reason of Mr. Oberheide's efforts $2,000 had been saved to the company.

Mr. Dickinson says that he knew of no agreement binding Dentzel. It was "just an arrangement made whereby we were to get at a cheaper sum than ordinarily" (pages 169-170).

Mr. Hamill says that there was a contract entered into between the promoters and Mr. Dentzel prior to the formation of the company. That it was a verbal contract and a guarantee. The guarantee was in writing. That the verbal contract with Mr. Dentzel was "that Mr. Dentzel would sell to a company which we were going to form, a carousel at a certain fixed price * * * I believe it was $8,000 * * * that the verbal promise was never put in writing * * * these interviews with Mr. Dentzel were personal." That although a written guarantee was exacted by Dentzel, they did not think it necessary to have a written promise from him. (Pages 193-194.)

Mr. Hamill admits that he considered this contract as an element of value when it was turned over for the stock, "because the negotiations were made largely through Mr. Oberheide, who was, in the first place, a personal friend of Mr. Dentzel, and who, in the second place, had purchased a number of carousels from him, owing to which circumstance we believed that Mr. Oberheide purchased that carousel for less money, probably, than we could have done without him." (Page 237.)

Mr. Sadler's testimony is substantially the same. "A man named Oberheide had gone into a contract with some one in Philadelphia; I am not sure whether that was verbal or written, but he satisfied me that the contract would be carried out; and because he was buying a number of these machines, or had been doing so, that he could get it at a reduction of $2,000." He took Oberheide's word for all of this and assessed the company in stock at the rate of $2,000. (Page 289.)

The personal guarantee of the promoters to Dentzel of payment for his carousel in the event that he should build it, adds nothing to Dentzel's promise to furnish it to the White City Company. As Mr. Hamill says, the promise to them was that Dentzel would furnish it to the White City Company, if such a company should later be formed. (Page 193.) From all that appears in the evidence, there was not a then present complete agreement under which Dentzel was to build, and the promoters for themselves or the White City were to take and pay for a carousel. The White City Company was then an unknown quantity. It was in prospect, and the arrangement undoubtedly with Dentzel was a tentative one that he would construct a carousel if called upon, for the price mentioned, which was to be guaranteed by the personal responsibility of the gentlemen contemplating the enterprise.

The roller skating, miniature railway, restaurant, Japanese Bazaar, circle swing, laughing gallery, penny arcade, shooting gallery, boating privileges, were all "promotions" and not contracts. They existed chiefly in discussions, interviews and offers, which were subject to acceptance or rejection by either party thereafter. Indeed, it is doubtful whether all or any of them were even in an incubating stage at the time the corporation was formed.

Mr. Dickinson says, "As a result of that (Mr. Oberheide's efforts) we were able to make concessions with all kinds of amusement people for amusement in our park, which concessions were turned over to the White City Company when the White City was formed." That there were no binding concessions made with any of these people before the promotion of the company. (Page 175.)

Mr. Hamill says that they were all made before the company was formed. That they were all binding contracts and that they were all on the same basis as the Fury restaurant concession, and as such entered into the estimated value of $79,000. (Pages 200-203.)

The minute-book refutes the testimony of the promoters to the effect that contracts of a substantial character

had been entered into by them with parties beneficial to the White City, prior to its formation.

On page 23 (April 10, 1907), we find "By a resolution duly passed, Doak & Co. were authorized to proceed with the construction of the entrance to the grounds, carousel, bandstand, shooting gallery, skating rink and stairway."

On page 24 (April 11, 1907) "It was resolved that the President be authorized to secure from the Hildebrecht Catering Company, Charles Fury, Harry Stout and J. F. Margerum, bids and propositions on a percentage and rental basis, for the restaurant privilege for the season of 1907 at the park; bids to be in not later than April 19, 1907."

On page 29 (April 15, 1907) "Mr. Oberheide also reported in detail on certain lighting contracts which he had received, and also propositions to build a 'Figure 8' device, and that he had ordered certain blanks. The decision as to constructing a 'Figure 8' device was thereupon laid over."

On page 30 (April 18, 1907) "It was regularly moved and seconded that Mr. Oberheide contract with the North Penn Iron Company on the best terms possible for the circle swing to be placed in the park not later than May 30, 1907."

"In regard to the electric lighting of the park it was further resolved that Mr. Oberheide and Mr. Sadler wait upon Mr. Lupke to arrange for the *laying of a cable* to the White City, and secure the best rate possible from him."

On page 32 (April 29, 1907) "Messrs. Broughton, Hamill and Sadler were appointed a committee to notify Mr. Rigg concerning the ten years' lease on the property to the company."

On page 33 (April 29, 1907), "It was resolved * * * that Mr. Oberheide be appointed to negotiate with Mr. E. J. Mahoney for concession on a three-year basis * * * for the laughing gallery."

On page 35 (May 6, 1907) "It was moved and sec-

onded that the architects revise the plans and specifications for the penny arcade and moving picture theatre."

All of these "contracts," according to the promoter-directors, were used as elements of value when the stock was taken over by the promoters.

We pause to observe that their testimony was fabricated, to bolster their defence, and to express the belief that, aside from the Wurflein-Hurley lease, nothing of a tangible nature was owned by the promoters which they could sell to the company.

(*d*) PROSPECTS ARE NOT PROPERTY—THE BASIS OF THE DIRECTOR-PROMOTER'S JUDGMENT WAS ILLUSORY AND WITHOUT LEGAL SUBSTANCE.

So much of the recital in the resolution voting the stock to the promoters, viz., "And whereas the said persons above named also control an option upon said property to lease the same for an additional period of six years from the time of the expiration of the term of their present lease aforesaid; and whereas said persons have entered into various contracts with certain persons, firms and corporations for the construction and erection of various devices which would be useful and necessary in the operation and conduct of the business of this company;" is without foundation and some of it is false.

To predicate an issue of stock "as money's worth" upon mere *prospects,* is a device which the law denounces as the "actual fraud," contemplated by the statute, and which was so characterised by Vice-Chancellor Pitney in the case of See *v.* Heppenheimer, 3 Robb., p. 36, in which case the directors attempted to justify an issue of stock upon prospective profits. Vice-Chancellor Pitney in that case asked counsel during the course of the argument (page 42):

> "Can prospective profits, however promising, be considered as *property*, as that word is used in the statute above quoted?"

And after repeating the pertinent words of the statute, continues in his opinion (page 43):

> "There the word 'property' must evidently be construed by its context with reference to something visible and tangible and necessary for the business and the amount of stock to be issued therefor is limited to the *value thereof*. That is, to the value of that *property*." * * *

And after a review of some of the testimony he continues (page 45):

> "It follows that we are driven back to the question first stated—whether prospective and contingent profits of any business, depending, as they always must and do, upon good management and the general course of business of the country, including, always, the element of competition, can be treated as *property* in the sense in which that word is used in the statute above cited.
>
> "It seems to me that there can be but one opinion as to the soundness of the notion that profits derived, or to be derived, from the prosecution of any business can be properly taken into account, except to a limited extent, in estimating the value of the mere inanimate instrument which is used in conducting that business." * * *
>
> "The present case is a painful illustration of the utter impossibility of giving the word 'property' the construction claimed for it.
>
> "The rose-colored future (presently to be stated at length), for this enterprise, created with so much confidence by its promoters, failed entirely in the face of actual experience."

The Vice-Chancellor then proceeds to discuss the question of good faith, and says (page 53) that "I am unable to find that the defendant's belief and faith went beyond

this," meaning that they believed that the enterprise would be a success; that it would pay dividends, and for that reason the property was equal to the amount of the stock then issued.

## POINT III.

THE JUDGMENT OF DIRECTORS WAS NOT BASED UPON AN INVENTORY AND APPRAISEMENT OF CONSTITUENT PARTS OF "PROPERTY."

At the time of the passing of the resolution by the board of directors, according to the testimony of some of them, there was no discussion or interchange of views between them as to values.

Mr. John M. Dickinson, the counsel of the corporation and one of its directors, says that he prepared the resolution as it is now recorded, before the meeting, from instructions that he had received individually from the promoters. (Page 317.) He says that there was some informal discussion (pages 313-314), but that he himself formed no judgment as to the value of the property that was being purchased, other than he ratified the judgment and acquiesced in the judgment that had been formed by the other directors. He stated that he was not a very active director, and simply aided them in forming the company.

Mr. Barker G. Hamill says that there was no discussion at the time the resolution was passed. (Page 206.)

There was at no time a unity of minds, as the evidence shows, between the directors, either as such or as promoters, of the values of the integral parts of the so-called property, aggregating a $79,000 valuation.

Prior to the board meeting, the promoters, as they testified, met and discussed the company's affairs and its pretended property possession, but what they regarded as each item worth, so as to fairly form a judgment as to the value of the whole, was not considered. At no time did all of the promoters meet. Mr. Barker Hamill says, "I never actually figured out with Mr. Broughton, but

we used to discuss it as to its real estate value with Mr. Sadler and with Mr. Dickinson." The nearest approach to a conference of all was a few days before Mr. Sadler went to the hospital, when Messrs. Broughton, Hamill and Dickinson were at his house, and where they discussed the affair. At this meeting Mr. John M. Dickinson was not present. (Page 283.)

If we believe their testimony, they talked and deluded themselves into the notion that the promotion, regardless of anything tangible, was or ought to be worth $75,000, and this for the purpose of encompassing their object to absorb all of the common stock. It was a case of "making the punishment suit the crime," or in other words, "making the circumstances fit their demands," to accomplish their purpose.

Mr. Hamill says that a month or two before the organization, the capitalization was agreed upon, and how the common stock was to be distributed. (Page 186.) This was before some of the "contracts" were made which were afterwards turned in to bolster up "judgment." Mr. Dickinson says that the scheme of the promoters was *to make something out of it by way* of stockholding. (Page 264.)

A part of the scheme was to give to the subscribers of the preferred stock one share of the common stock for every two shares of the preferred stock which they would take. (Walter M. Dickinson, pages 139-140); and the returning of one-third of the common stock to the treasury of the company for that purpose. This is a badge of fraud, which shatters the claim that the valuation was the result of honest dealings.

A similar transaction in the case of Knickerbocker Import. Co. *v.* State Board of Assessors, *supra*, brought forth this comment from Judge Dill:

> "The purpose of the prosecutor in acquiring this stock is manifest, because this purchase is but a part of an entire transaction. The organization of the prosecutor, the subscription by the Casanove Champagne Company, the issuance of

the stock and the return thereof were all provided for in the same contract, were concurrent transactions; the purpose of the whole undertaking being to create so-called treasury stock and dispose of it upon the representation that it was fully paid and non-assessable and at a price inferentially below par, and out of the proceeds to provide working capital for the prosecutor. The Casanove Champagne Company subscribed for $500,000 of the stock of the prosecutor. The prosecutor could not satisfy this obligation by accepting a less value, either in cash or property, and the Casanove Champagne Company could not, even with the consent or the connivance of the prosecutor, discharge itself of the liability to pay its subscription in full by paying a less sum either in money or property. Our statutes expressly forbid it. There is no adequate proof of dollar for dollar value in the property received by the prosecutor for the stock issued therefor. The property is described as 'the rights and everything' of the Casanove Champagne Company. There is no other description of the property or competent proof of its tangibility or value. The allegations of assumption of liability by the prosecutor are not evidence, and are of no assistance in determining the actual value received, because there is no proof as to the extent or substantiability of the liability."

Vice-Chancellor Pitney in See *v.* Heppenheimer, *supra,* on page 74, says:

"But, further, I am of the opinion that so far as the directors who passed the resolution in question for purchasing this property are concerned, such of them as had already learned the terms on which the mortgage bonds were to be floated, had direct notice that the property was being overvalued. Since they knew that a bonus of 60 per

> cent. in stock was being given as an inducement to persons to advance cash at par on bonds secured by property which, if worth anything like the sum at which they rated it, ought to be easily negotiated without a bonus, and they knew perfectly well that if the property was worth that amount of money the company could not afford to give such a bonus for money."

All of the director-promoter witnesses admit the absence of an inventory and appraisement of the items forming the "property" upon which a gross valuation of $79,000 was put by the resolution. (Mr. Hamill, page 207 *et seq.*) It is also admitted that at the time the directors voted themselves the stock as promoters, no work by way of improvement had been done by the promoters at the "park." (Page 260.)

The advance in value from $4,000, the sum paid for the Wurflein-Hurley lease, to $79,000, recited in the resolution, was a figment of the promoters; an invention devised for but a single ulterior and unlawful purpose. As we have seen by the testimony of Mr. Hamill (page 210), the value of the Wurflein-Hurley lease in their estimation, remained stationary. It was valued in the resolution at its net cash cost. All else was nebulous. There were promises—of an extension of the lease—of a right to purchase—to build an electric cable to light the "park"—to build carousels—Figure 8—and other amusement devices—to take concessions in the "park"—to supervise its construction—to construct it—all intangible, hazy and in the indefinite future—dependent upon the ability of the promoters to unload the preferred stock upon their business and social acquaintances, and the gullible public at large.

That these things were not property and were not so considered by the promoters, is the statement of Messrs. Hamill and Dickinson. The former said, "I don't know that that (Public Service contract) could be called property." (Page 215.) Mr. Dickinson, referring to the

Japanese concession, stated: "I don't see how I could regard it as property." (Page 174.)

Vice-Chancellor Pitney, in the case of See *v.* Heppenheimer, *supra,* on page 58, says:

> "If, then, the promoters of this enterprise and the directors, who assisted them in adopting the valuation in question, consciously included in their valuation thereof 'an estimate of matters which really are not property,' which I have shown they did, then there was a conscious overvaluation of the property which amounts to a fraud on the act."

This statement of the law was applied to that case, following the language of Mr. Justice Dixon, in Donald *v.* American Smelting, &c., Co., 17 Dick., p. 729, in which the principle was laid down that:

> "Nor is it necessary that conscious overvaluation or any other form of fraudulent conduct on the part of these primary valuers should be shown to justify judicial interposition. Their honest judgment, if reached without due examination into the elements of value, or if based in part upon an estimate of matters which really are not property, or if plainly warped by self-interest, may lead to a violation of this statutory rule as surely as would corrupt motive."

Even though we should assume for the purposes of this argument, that the director-promoters believe these items to be of property value, it nevertheless clearly appears that their valuation was not the result of an honest judgment. Mr. Dickinson says that they lumped all of the property at $79,000, without a valuation being placed upon each separate item, so as to aggregate the sum total. (Page 165.)

To the same effect was the testimony of Mr. Hamill.

(Pages 207-209.) Strange to say, Mr. John M. Dickinson gave us to understand that the $79,000 valuation was limited to the Wurflein-Hurley lease, and the promise by the railroad to give a further lease for six years, with the right to purchase, and that all of the other so-called contracts were an afterthought of his, and put into the resolution for full measure. (Page 313.)

The conclusion to be drawn from the authorities in this State, herein cited, is that when a board of directors exercise their statutory right of valuing property for which capital stock is to be issued, and which is formed of independent constituent parts, they must necessarily in an honest effort to ascertain the total value, investigate and form a judgment of separate values of each part making up the aggregate.

General Sadler made an heroic effort to justify the valuations fixed by the board of directors. His testimony is not germane to establishing honest, but perhaps, erroneous judgment of the directors, because he did not participate in the directors' deliberation in assessing the values.

Of whatever benefit his testimony is in this case, it can only be looked upon as that of an expert (if he is so qualified) to establish values. The promise of Mr. Rigg to furnish 75 arc lights three months of the year, and ten lights throughout the year, he values at $31,500 for the full term of ten years. (Page 279.)

The profit on the carousel contract he figured at $2,000. (Page 279.) The value he placed on the land was $55,000 to $60,000, leaving a net gain of $20,000. (Page 231.) The Public Service contract he regarded as worth $5,000. (Page 280.)

As to the contract for building, architects' supervisions, the furnishing of amusement contrivances and contract with concessionairs, the General says he is somewhat hazy. Taking the General's most rosy view of the values of the items he gives, they amount to only $58,000. Notwithstanding this, he ventures his opinion that the "property" was, at the time the promoter-directors

took all of the common stock of the defunct company, worth more than $75,000. (Page 282.)

The largest item is that of the street railway company's agreement to keep the park lighted. There is nothing but Mr. Sadler's word and that of his associates for it, that such an agreement existed with the promoters at the time they were supposed to have sold it to the White City Company. It is true, he says, that he saw letters from Mr. Rigg, and he gives it as his opinion that it bound the railroad company, but the fair inference from the testimony of all of the participants is that what took place was tentative. If such a valuable asset existed, it is not unreasonable to assume that the promoters, who are all business men, would have had it reduced to writing. Nothing of that kind has ever been done. Mr. Dickinson, the president of the defendant company, so avers. (Page 351.) Mr. Hurley, the manager of the street railway company, says there was no writing except the lease from the holding company to the White City Company, made May 27, 1907. (Page 392.)

Mr. Sadler's knowledge as an expert in the cost of electricity was not strongly developed at the trial.

Austin Woolverton, the White City Company's electrician, testified that there were twenty arc lights supplied to the Trenton White City Company. (Page 364.) If the company had been entitled to seventy-five, is it not likely that they would have exacted them?

According to Woolverton, the lights were turned on at eight and off at eleven P. M., from Decoration Day to Labor Day, a period of about three months. These lamps consumed 13½ Kilo-Watts of current per hour—40½ Kilo-Watts per night—at full measure for the season of 100 nights—4,500 Kilo-Watts. The Public Service Corporation's price, per its agreement with the White City, dated April 30, 1907, was seven cents per Kilo-Watt hour—a grand total per season of $315. If the actual 75 arc lights had been supplied, the cost per season would have been but $1,181.25. This, in effect, is the calculation of Woolverton.

The saving of $2,000 on the carousel, and the value of $5,000 placed upon the Public Service supplying a cable for lighting, are mythical, and of course, are not to be considered.

The remaining item is the enhanced value of the property over the price fixed by the owner, at which it was then or at any time within ten years thereafter willing to sell. The price fixed was $35,000. Mr. Sadler says it was at that time worth $55,000 to $60,000. Aladdin could not have worked such wonderful changes in the twinkling of an eye. The whole story is so fanciful—so preposterous—that it is a waste of time to give it serious consideration.

The promoters brought one Gibbs, who has operated somewhat in real estate at Broad Street Park, who goes Mr. Sadler one better. He said that in his judgment the tract is worth $75,000. (Page 337.) He tries to make his estimate good by putting prices of $300 to $400 upon lots, the like of which he had purchased for $50 a piece. The swamp-land, the abode of frogs and snakes, he regards as available and valuable for manufacturing purposes.

The receiver produced an expert operator in real estate, who had just finished developing the Lalor tract adjoining that of the park. Mr. Miller's estimate of the value of the property is $21,300. In all, the best test of value, as of the time of the supposed sale by the promoters of the company, is that which the owner of the land agreed to take and the White City agreed to give for it, viz., $35,000.

In summarizing the testimony of the promoters, wherein they religiously adhered to the contention that on the twenty-sixth day of March, nineteen hundred and seven, in their then judgment the "property" which they conveyed to the company was worth $75,000, the language of Vice-Chancellor Pitney in See *v.* Heppenheimer, *supra,* on page 55, is pertinent:

> "After all, it seems to me that the true test under this statute, as applied to the case here in

hand, is this: If the company actually had to its credit in the bank the sum of $5,000,000, would it have been willing to have paid that price in cash for the property in question for the uses and purposes to which it proposed to devote it; would the property be worth that sum in cash to the company?

In the law's estimate, the capital stock of a corporation is merely regarded as a convenient means of interchange of commerce of values. It is intended to represent the unit of dollars. It may be bought for a dollar in cash—no less. It may be purchased for property, but the property must be worth a dollar.

By Section 49, making the judgment of the directors as to the value of property, conclusive, it was not intended to encourage "high financing." Whatever the scheme may have been, the courts of this State, when the matters have been brought before them, have demanded that a dollar in money or money's worth, be paid as an equivalent for capital stock, and they have at no time tolerated an evasion, no matter what the plausible subterfuge may have been.

Wetherby *v.* Baker, 8 Stew. 501.
Bickley *v.* Schlag, 1 Dick. 533.
Rural Homestead Co. *v.* Wildes, 9 Dick. 668.
Hebbard *v.* S. W. Cattle Co., 10 Dick. 18.
Donald *v.* Am. Smelting & T. Co., 16 Dick. 458.
Donald *v.* Am. Smelting & T. Co., on appeal, 17 Dick. 729; and the cases therein recited by Justice Nixon.
Volney *v.* Nixon, 1 Robb. 457.
Volney *v.* Nixon, on appeal, 2 Robb. 605.
See *v.* Heppenheimer, 3 Robb. 36.
Easton Natl. Bk. *v.* Am. Brick Co., 3 Robb. 326.
Easton Natl. Bk. *v.* Am. Brick Co., on appeal, 4 Robb. 722, and cases.
Strickland *v.* National Salt Co., 2 Buch. 170.
Honeyman *v.* Haughey, 66 Atl. Rep. 582.

In See *v.* Heppenheimer, *supra,* it was pleaded before Vice-Chancellor Pitney that the practice of so valuing property (fictitious values) under our statute, has been indulged in frequently before, and numerous corporations have been organized and have existed upon such a basis, and that the practice has become well-nigh crystallized and sanctioned by long usage. In reply to this, the Vice-Chancellor, on page 50, says:

> "I am sorry to feel constrained to admit that this practice has been frequently indulged in, and, further, that it has brought obloquy upon our State and its legislation. But I am happy to be able to assert with confidence, that such practice is entirely unwarranted by anything either in our statute or in the decisions of our courts, and whenever it has been indulged in it has involved a clear infringement of, if not a fraud upon, the plain letter and spirit of our legislation.
>
> "So far from approving these transactions, our court of errors and appeals has recently, in a case not yet reported, made a decision and rendered an opinion, in which it disapproves of these inflated transactions in the most emphatic and practical manner. I allude to the case of Volney *v.* Nixon, since reported (68 N. J. Eq. 605), the opinion in which I have had opportunity to examine, the headnote of which is as follows: 'A contract between two persons that, in exchange for their joint property, one of them shall procure from a corporation of this State an original issue of stock to an amount known by all parties to be in excess of the value of the property, and shall divide the stock thus procured with the other person, is illegal; and the courts of this State will not aid in its enforcement, even though the objectionable feature has been accomplished by the actual issue of the stock.' "

The deeper we delve into the facts in this case, and the rule of law governing, the stronger grows the conviction that there is not a loop-hole of escape left to the promoters and those who took their loot—there was not a *quid pro quo* nor a semblance of it upon which the promoters can hope to escape responsibility. The bonus stockholders stand in no better position.

*The stockholders who acquired their holdings of common stock as a bonus with their preferred stock, took them from the original holders, chargeable with knowledge of actual fraud* perpetrated by the directors, and do not occupy the position of *bona fide purchasers.*

The respondents, other than the promoters, claim immunity because they alleged they received the stock upon which they are now asked to contribute as a bonus for their purchase of preferred stock, and that they so received it under the representation that it had been originally issued to the promoters as fully paid stock.

We think that they cannot, on this ground, escape liability. They do not come within that class of cases where a purchase was made from an original holder without notice of unpaid subscription and under the conviction that the stock was fully paid, as decided by Vice-Chancellor Bergen in Easton National Bank *v.* American Brick & Tile Co., *supra.*

See, Receiver, *v.* Heppenheimer, 10 Dick. 244.

The contention was made that there could be no *bona fide* purchaser of the stock from a subscriber who has not paid for the same in full. This point the court declined to pass upon at that time.

Upon the assumption that the "actual fraud" as intended by the forty-ninth section of the Corporation act, is shown in the original holders, the transferees of this common stock having taken it as a bonus, did not occupy the position of *bona fide* purchasers. They had knowledge, or were in a position where knowledge is to be attributed to them of the manner of holding by their transferrers. We submit that the present case is ruled by Hebberd *v.* S. W. Cattle Co., 55 N. J. Eq. 18.

## RECEIVER'S CROSS APPEAL.

The receiver has appealed from so much of the order of the Chancellor which allows to the promoters a credit of $26,655.62 as a part payment on account of their stock subscription, and which levied against them an assessment of $6.44 per share instead of $10.00 per share, the par value of their stock. He prays that so much of the said order should be set aside.

In allowing this credit to the stockholders, the Chancellor considered only three (3) items. (*a*) The extended term agreed upon between the railroad company and the holder of the Hurley-Wurflein lease, which the Chancellor valued at the sum of $13,903.67. (*b*) For the use of fifty (50) additional arc lamps during the term of the said lease, valued at $11,261.95. (*c*) For services rendered by the promoters in the formation of the company, valued at $1,500.

The reasons heretofore assigned in this brief against the position of the stockholders that the stock so issued to them is full paid, and non-assessable, must again be urged against the credit so given to the stockholders on these three (3) items.

They comprise no new property, and no additional value for which the company had not already paid—the $4,000 for the Hurley-Wurflein lease.

As to the item of credit for services rendered the company by the promoters. While the amount of this item is not excessive, if the company received any services from the promoters, yet from their testimony it is only too apparent that they never, either directly or indirectly, gave any services to the company. All their labors were for their own personal gain, with the hope that they might secure to themselves the common stock without making payment therefor.

For the reasons hereinbefore stated, it is respectfully submitted that appellants' appeal should be dismissed, so much of the order made by the Chancellor in this cause

and dated on the 8th day of October, 1912, which allowed to the stockholders the sum of $26,655.62 as part payment on account of their stock subscription; and which further ordered that an assessment of $6.44 should be levied upon the holders and owners of the capital stock of the Trenton White City Company, for each share of said stock held by them respectively, should be set aside as erroneous; to the end that it may be ordered that an assessment of $10 per share should be levied upon the holders and owners of the capital stock of said company for each share of said stock held by them respectively, and that the same or some other large sum of money sufficient to pay the debts of said company and to liquidate its affairs, should be paid to the said receiver.

Respectfully submitted,

PETER BACKES,
*Of Counsel.*

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

# In Chancery of New Jersey

Between
Alfred G. Holcombe et al.,
*Complainants,*
and
Trenton White City Company,
*Defendant.*

## SUPPLEMENTAL MEMORANDUM.

In the printed state of the case there was omitted a copy of the lease executed by the Real Estate Title Insurance & Trust Co., of Philadelphia, to the Trenton White City Co., and there was also omitted a memorandum filed by the Chancellor subsequent to the filing of his main opinion, and fixing the credit to be given the promoters on account of the lease, the lighting contract contained in the lease and the services of the promoters. Copies of that lease and memorandum are printed herewith.

It was argued before the Chancellor at the time he fixed the credits to be given the promoters that the promoters received common capital stock amounting to the par value of $75,000, consisting of 7,500 shares. They immediately turned back into the treasury of the company 2,500 shares of the par value of

$25,000, to enable the company to issue to subscribers for the preferred stock one share of common to each two shares of preferred. The company did subsequently issue of said 2,500 shares 1,645 shares, as bonus stock to subscribers to the preferred stock, and there remained in the treasury of the company at the time of its insolvency 855 shares of common stock, which we contend are still held by the company, were accepted by the company under the original agreement with the promoters, were in fact not issued at the time the company became insolvent, and that neither the promoters or anyone else is now liable to be assessed thereon.

The proceeding instituted by the receiver had for its purpose an assessment upon the stock, upon the ground that it was not paid for, and is not a proceeding against the promoters for secret profits. There is a clear distinction between such cases. It may be that in some other action the receiver could recover from these promoters in respect to the 855 shares of stock, upon the ground that the stock returned to the company by them was not paid for, but that cannot be done in this suit.

We contend, therefore, that the only liability which can be set up, if any, is that of the actual holders of *outstanding* stock certificates at the time the company became insolvent and the rights of creditors intervened, to have the stock in their possession assessed for the unpaid portion of the stock subscription.

The lease of the property which the promoters turned over to the company in part payment of their stock was not actually executed until after the stock was issued to the promoters, and it was questioned upon the argument whether the lease, not having been actually delivered to the company at the time of the issue of the stock, although subsequently acquired by the company, could be considered property which was turned over for the stock at the time of its issue. Mr. Justice Swayze referred to the case of the *Vineland Grape*

*Juice Co.* v. *Chandler, 10 Buchanan, page 437,* opinion written by the Chief Justice, which disposes of that proposition. The second headnote reads as follows:

> "2. Whether corporate stock may be legally issued by a corporation in anticipation of work and labor afterward to be performed, or services afterward to be rendered, is at least doubtful; but conceding that the law does not permit this, nevertheless when it is thus issued, and the work and labor are subsequently performed, or the services rendered, and they are equal in value to the par value of the stock which has been issued in prepayment therefor, it does not lie in the mouth of the corporation to attack the transaction in a court of equity, without at the same time tendering itself ready to pay the parties to whom the stock was issued, or their assigns, the full value of the work done or services rendered for its benefit."

JOHN M. DICKINSON,
GILBERT COLLINS,
*Of Counsel with John S. Broughton et al.*

The Real Estate Title Insurance and Trust Company of Philadelphia, al. Trustees,
To
Trenton White City Company.

THIS INDENTURE, made the 27th day of May, nineteen hundred and seven, BETWEEN The Real Estate Title Insurance and Trust Company of Philadelphia, a corporation of the Commonwealth of Pennsylvania, trustee for the Trenton Street Railway Company, and the said Trenton Street Railway Company hereinafter called Lessor, parties of the first part, and the Trenton White City Company, a corporation duly organized

and existing under and by virtue of the laws of the State of New Jersey hereinafter called Lessee, party of the second part, *Witnesseth,* that the said Lessor for and in consideration of the sum of One Dollar, the receipt whereof is hereby acknowledged, and the covenants and agreements hereinafter set forth to be fully kept and performed by the Lessee, has hereby let, and by these presents doth hereby grant, demise and to farm let unto the said Lessee, "all that large lot of land and premises in the township of Hamilton, County of Mercer and State of New Jersey, commonly called Broad Street Park, consisting of about one hundred and twenty (120) acres of land, together with a lake thereon, covering about twenty-two (22) acres of land, commonly called Spring Lake, and also eighty-two (82) lots of land on the northerly side of said tract of land aforesaid, said lots being bounded by Randall Avenue, McClellan Avenue, Buchanan Avenue and Sewall Avenue, as shown on a map of the Broad Street Land Association, made in 1892, all of which demised premises are more fully and accurately described in a deed bearing date February 16, 1895 and made by Lewis Perrine, Jr., and Addie Slack Perrine, his wife, to John L. Kuser and Robert S. Woodruff, Trustees of the Trenton Passenger Railway Company, Consolidated, and recorded in the Clerk's Office of the county of Mercer in Book 201 of Deeds, pages 94, &c., on April 15, 1895, and also described in a certain other confirmatory deed dated April 27, 1907, and made by the said Lewis Perrine, Jr., and Addie Slack Perrine, his wife, to The Real Estate Title Insurance and Trust Company of Philadelphia, trustee for the Trenton Street Railway Company, and about to be recorded, with the appurtenances, for the term of ten years, from the first day of April, nineteen hundred and seven to the first day of April nineteen hundred and seventeen. And the said Lessor in consideration of the premises does hereby covenant and agree, as follows: (a) That Lessee shall and may peaceably have, hold

and enjoy the said demised premises for the term aforesaid. (b) That they will furnish power for seventy arc lights of three watts each or their equivalent, and keep said lights lighted during the periods when said Park is open during the term of this lease. (c) That they will sell said demised premises, and Lessee hereby has the option to purchase the same at any time during the term of this lease for the sum of Thirty-five Thousand Dollars ($35,000). (d) That at the end of the term aforesaid said Lessee may remove from said demised premises all buildings erected thereon exclusively by Lessee during the term of this lease, or acquired by it by purchase or otherwise, excepting as specified in covenants of Lessee herein." And the said Lessee, in consideration of the premises, does hereby covenant and agree as follows: 1. Lessee agrees not to sell or give away any spirituous liquor on the demised premises, nor to permit any other person or persons, company or association so to do, without the consent of the Lessor in writing. 2. Lessee agrees to procure and pay for sufficient fire insurance to cove the value of Lessor's buildings as they exist on the demised premises for the benefit of Lessor and subject to its approval. Lessee may also protect its buildings in separate policies. 3. Lessee covenants to leave buildings on the premises at all times, to belong to Lessor, of a value at least as great as the buildings, &c., found in the demised premises by Lessee. 4. Lessee covenants and agrees that the character of all performances and amusements shall be lawful and unobjectionable and expressly covenants that Lessor has the right to forbid any performances or entertainment which does not meet these requirements; failure of Lessee to observe lawful restrictions concerning amusements shall constitute a cancellation of this lease. 5. Lessee agrees to allow Lessor to remove the hay from the demised premises and to provide means of ingress and egress without compensation to Lesee. 6. Lessee agrees to keep in repair the embankment surrounding

and supporting the lake aforesaid, together with the dike or sluice gate in said embankment on the southeasterly side of said lake. 7. At the expiration of the said term, Lessee will quit and surrender the premises hereby demised in as good state and condition as reasonable use and wear thereof will permit damages by the elements excepted, unless said premises shall be purchased by Lessee, before the expiration of said term, as aforesaid. *In witness whereof,* the parties hereto have caused their respective corporate names to be hereunto subscribed by their respective presidents, and their respective corporate seals to be hereto affixed, duly attested by their respective secretaries, the day and year first above written. The Real Estate Title Insurance and Trust Company of Philadelphia, By Lewis S. Renshaw, Vice Pesident, (L. S.) Attest: Chas. S. King, Secy. Trenton Street Railway Company, By John N. Rigg, President, (L. S.) Attest: T. W. Grookett, Jr., Secretary Trenton White City Company, By W. M. Dickinson, President (L. S.) Attest: J. M. Dickinson. Secretary COMMONWEALTH OF PENNSYLVANIA, County of Philadelphia, ss. *Be it remembered,* that on this twenty-eighth day of May, nineteen hundred and seven, before me, the subscriber, A Notary Public for the Commonwealth of Pennsylvania residing in the City of Philadelphia, personally appears Charles S. King, Secretary, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of The Real Estate Title Insurance and Trust Company of Philadelphia, one of the grantors named in the foregoing lease; that the seal thereto affixed is the proper corporate seal of said company, that the same was so affixed thereto and the said lease signed and delivered by Lewis S. Renshaw, Vice President who was at the date and execution thereof the president of said company, in the presence of the said deponent, as the voluntary act and deed of said company, and that the said deponent thereupon signed, the same as subscribing witness. Sworn to and subscribed

before me at Philadelphia the date aforesaid. Chas. S. King, I am not a Director, Stockholder of, or Clerk in employ of said Company. W. H. Ball, Notary Public, Commission expires Jan. 21, 1911. (L. S.) STATE OF PENNSYLVANIA, County of Philadelphia, ss. I, Craig Biddle Prothonotary of the county of Philadelphia and Clerk of the Court of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the law of the State of Pennsylvania to make the following Certificate, do *certify,* That W. H. Ball, Esquire, before whom the annexed affidavit was made, was at the time of so doing a Notary Public, for the Commonwealth of Pennsylvania, residing in the county of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or conveyances for lands, tenements, and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania *In testimony whereof,* I have hereunto set my hand and affixed the seal of said Court, this 27, day of June in the year of our Lord one thousand nine hundred and seven (1907) Craig Biddle Prothonotary. (L. S.) STATE OF NEW JERSEY, County of Mercer, ss. *Be it remembered,* that on this 27th day of May, nineteen hundred and seven, before me, the subscriber, A Master in Chancery of N. J. personally appears Thomas W. Grookett, Jr., who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Trenton Street Railway Company, one of the grantors in the foregoing lease; that the seal thereto affixed is the proper corporate seal of said Company, and that the same was so affixed thereto and

the said lease signed and delivered by John N. Rigg who, was at the date and execution thereof the president of said company, in the presence of the said deponent, as the voluntary act and deed of said company, and that the said deponent thereupon signed the same as subscribing witness. Thomas W. Grookett, Jr., Sworn to and subscribed before me at Trenton, N. J. the date aforesaid, Geo. W. Macpherson, Master in Chancery of N. J. STATE OF NEW JERSEY, County of Mercer, ss. *Be it remembered,* that on this thirty-first day of May, nineteen hundred and seven, before me, the subscriber a Master in Chancery personally appears J. M. Dickinson, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Trenton White City Company, the grantee named in the foregoing lease; that the seal thereto affixed is the proper corporate seal of said company, and that the same was so affixed thereto and the said lease signed and delivered by W. M. Dickinson, who was at the date and execution thereof the president of said company, in the presence of the said deponent, as the voluntary act and deed of said company, and that the said deponent thereupon signed the same as subscribing witness. J. M. Dickinson, Sworn to and subscribed before me at Trenton, N. J. the date aforesaid, Henry W. Green, M. C. C. of N. J.

Recorded June 27th, at 5 P. M. 1907.

Special Deeds, P 1906.

IN CHANCERY OF NEW JERSEY.

BETWEEN
ALFRED G. HOLCOMBE ET AL.,
*Complainants,*
AND
TRENTON WHITE CITY COMPANY,
*Defendants.*
} On Bill, &c.

## MEMORANDUM.

On hearing on question reserved.

*Mr. John H. Backes,* for receiver.

*Mr. John M. Dickinson* and *Mr. Allan H. Strong,* for stockholders.

WALKER, *C.*

In my opinion filed in this case I held that there must be an assessment upon the bonus stock of the defendant company in favor of creditors, but that the stockholders were entitled to have credited to the payment of stock the value of the property conveyed to the corporation and of the services rendered to it by the promoters, and for which stock was issued, although at an excessive valuation.

The matters and things for which credit is to be given are, first, the lease; second, the arc lighting contract contained in the lease, and, third, the services of the promoters in organizing the company and setting it upon foot as a going concern.

First, as to the lease. On this hearing there was evidence tending to show the rental value of the Trenton White City Park, for park purposes, to be all the way from $720 to $3,000 per year. In my judgment the witness Charles A. Comp, came nearest to determining the value. He values it at $1,500 per year. In my opinion $1,750 a year was the fair and reasonable rental value of the premises in March of 1907, at the

time the project was launched, and that the company might readily and honestly have procured from the promoters a ten years' lease at that figure at that time. This sum for ten years would make $17,500, but it must be discounted by the annuity tables.

Second, as to the electric lights. I held in the opinion that the stockholders are entitled to an allowance of whatever was the worth of having the 70 arc lights lighted for the full term of ten years. Mr. Lupke, an expert witness, says that they would be worth $1,575 per season or $15,750 for ten years, if lessor who furnished the current also furnished the lamps, but if the lessee furnished the lamps and the lessor had only to furnish the current, the price would be 10 per cent. less, or $1,417.50 per year, which is $14,175 for ten years. As the lease does not require the covenantor to furnish the lamps, but only to furnish the current, the latter figures will be adjudged to be the value of this item. It, too, must be discounted by the annuity tables.

Third, as to the services of the promoters. This is a very difficult question. They furnished testimony showing what they did and the time consumed in doing it, but their evidence is barren of any showing as to the value of their services. It is left, therefore, to me, very much as the question of the allowance of counsel fees is left in causes pending in the court. One trouble is that much that was done by the promoters was done for the corporation after it was organized. However, a great deal of work was done in the way of promotion—that is, getting the project in tangible shape for incorporation and operation. This work was done by gentlemen who became corporators in the company which was formed. Often, and I may say ordinarily, this is done by one or more persons entirely disassociated from those investing in the company. If some promoter or promoters had brought the proposition of launching the park to those who in fact were the promoters, having done the preliminary work which they did, and they took it over, I incline to the opinion that

their bargaining would not have resulted in the payment of more than $1,500 for the "promotion," as it is called.

While it is true that several men of affairs devoted considerable time to this enterprise in its initial stages, and while they, doubtless, by the expenditure of the same time and energy in their own vocations would have made considerable money (how much I was not informed); nevertheless, that is not the criterion; the test is: how much was it worth to promote the White City Park, no matter who promoted it.

Under the evidence I cannot see my way clear to allow the promoters more than that sum ($1,500) for their services.

Let a form of decree be presented to me by the solicitor of the receiver embodying the result reached in the former opinion and in this memorandum. It will, of course, be on notice to the solicitors of the stockholders.