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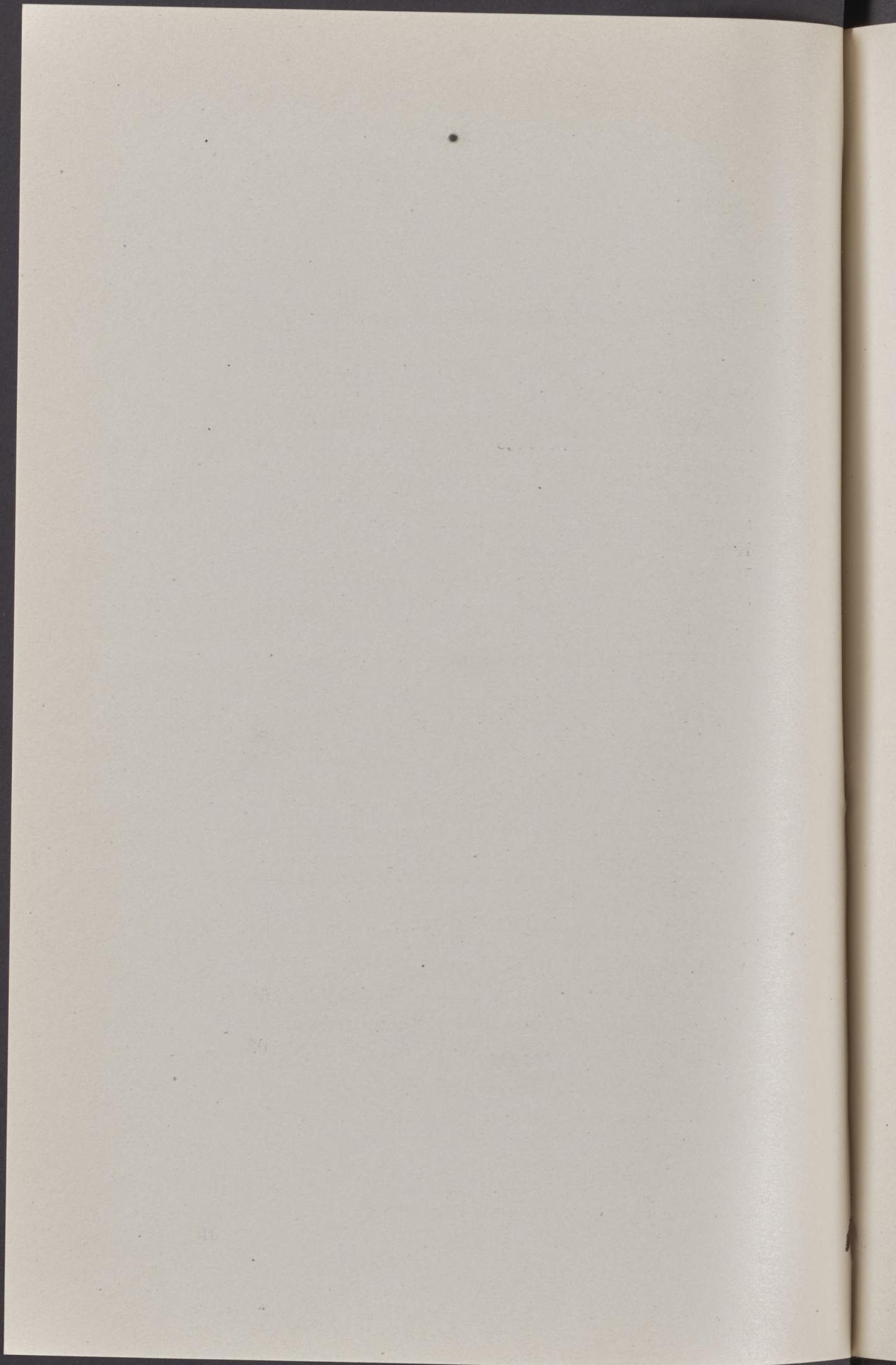
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PLAINTIFF'S CASE.

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Notice and Grounds of Appeal.

(Filed July 13, 1918.)

New Jersey Supreme Court

10

CHARLES H. LEONARD,
Plaintiff,

vs.

WILLIAM A. WILLIAMSON,
Defendant.

Action at Law.
Notice of
Appeal.

20

To:

Messrs. CONDUCT, CONDUCT & BOARDMAN,
Attorneys of Defendant.

Sirs:

TAKE NOTICE that the above-named plaintiff hereby appeals to the New Jersey Court of Errors and Appeals from the judgment of the New Jersey Supreme Court entered in this cause, and hereby assigns the following as his grounds of appeal:

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1. Because the Court directed a verdict for the defendant.

2. Because the Court ordered judgment for the defendant, whereas judgment should have been for the plaintiff.

3. Because the Court held that the plaintiff's action was barred by the statute of limitations.

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Notice and Grounds of Appeal.

4. Because the Court held that the statute of limitations ran from the time the deed referred to in the evidence was to be delivered.

10 5. Because the Court refused to hold that the plaintiff's right of action accrued on the ascertainment of the deficiency on the resale of the property as ordered by the Court.

6. Because the Court refused to hold that the statute of limitations began to run from the time the plaintiff's cause of action for the deficiency accrued.

7. Because the Court should have, on the case before it, directed a verdict in favor of plaintiff.

JOHN P. LLOYD,
Attorney of Plaintiff-Appellant.

20

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss. :

30 JACOB BARBASH, being duly sworn, according to law, on his oath, says that on the 6th day of July, 1918, he served the within notice of appeal upon Condict, Condict & Boardman, attorneys of defendant, by delivering a true copy of the same to Mr. Henry V. Condict, a member of said firm, at the office of said firm No. 15 Exchange Place, Jersey City, N. J.

JACOB BARBASH.

Sworn and subscribed before me this
9th day of July, 1918.

HENRY N. OETJEN,
Notary Public of New Jersey.

40

Complaint.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

CHARLES H. LEONARD,
Plaintiff,

vs.

WILLIAM A. WILLIAMSON,
Defendant.

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Action at Law.
(Summons issued April 9,
1917.)

Plaintiff, Charles H. Leonard, residing in the City of Elizabeth, in the County of Union and State of New Jersey, says that: 20

1. On October 19, 1912, Theodore Rurode, Receiver of Jamesburg Light & Water Company, a corporation, of the State of New Jersey, offered for sale, at public auction, under an order of the Court of Chancery of New Jersey, the said Receiver's claims against William A. Williamson, defendant herein, for the difference between balance due from said William A. Williamson on forfeiture of his bid for the property of the Jamesburg Light & Water Company, namely, \$10,300 and the amount which the property brought on Receiver's sale of \$5700, namely, the sum of \$4600. 30

2. On October 19, 1912, Charles H. Leonard, plaintiff herein, was the highest bidder for the said Receiver's claim against said William A. William-

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Complaint.

son, defendant herein, and purchased at said Receiver's sale the said Receiver's claim aforesaid of \$4600 for a valuable consideration, namely, the sum of \$30, which sale was, on October 21, 1912, confirmed by the Court of Chancery of New Jersey, and the Receiver ordered to execute and deliver to plaintiff a good and sufficient bill of sale and transfer of said claim to pass the right, title and interest of said Receiver, and said corporation therein to the plaintiff herein.

3. On October 21, 1912, Theodore Rurode, Receiver aforesaid, in consideration of the said sum of \$30 to him paid by the plaintiff herein, and in pursuance of the order of the Court of Chancery aforesaid, executed and delivered a certificate of sale unto the plaintiff for his said purchase aforesaid of all the said Receiver's right, title and interest in and to said chose in action, namely, claim against William A. Williamson, defendant herein, for \$4600, a copy of which certificate of sale of the said Receiver is hereto annexed and made a part hereof.

4. Plaintiff still owns said certificate of sale, and that no part thereof has been paid by the defendant.

Plaintiff claims as damages \$4600, with interest from October 21, 1912.

JOHN P. LLOYD,
Attorney of Plaintiff.

Complaint.

WHEREAS, by an order of the Court of Chancery the undersigned receiver of the Jamesburg Light & Water Company, a corporation of the State of New Jersey, did on the nineteenth day of October, nineteen hundred and twelve, offer for sale, at public auction, the said receiver's claim against William A. Williamson for the difference between balance due from said Williamson on forfeiture of his bid for the property of the Jamesburg Light & Water Company, namely, Ten Thousand Three Hundred (\$10,300) Dollars, and the amount which the property brought on receiver's sale Fifty Seven Hundred (\$5700) Dollars, namely, Forty six hundred (\$4600) Dollars, or such sum as the receiver might claim as damages against said Williamson upon his said forfeited bid, at which sale Charles H. Leonard, of Elizabeth, New Jersey, was the highest bidder for the sum of Thirty (\$30) Dollars, which sale was on Monday, the twenty first day of October, 1912, confirmed by the Court of Chancery, and the receiver ordered to execute and deliver to the purchaser good and sufficient bill of sale and transfer of said claim to pass the right, title and interest of said receiver and said corporation therein.

NOW, THEREFORE, in consideration of the sum of Thirty (\$30) Dollars to me in hand paid I do sell, assign, transfer and set over unto Charles H. Leonard all my right, title and interest as receiver of the Jamesburg Light & Water Company in and to the following chose in action, namely, claim against William A. Williamson for the difference between the balance due from said Williamson on forfeiture of his bid for the defendant's property, namely, Ten Thousand Three Hundred (\$10,300)

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Complaint.

Dollars, and the amount which the property brought on resale, Fifty Seven Hundred (\$5700) Dollars, namely, Forty six Hundred (\$4600) Dollars, or such sum as the receiver might claim as damages against said Williamson upon his said forfeited bid.

Witness my hand and seal this twenty first day of October, nineteen hundred and twelve.

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THEO. RURODE, (L. S.)
Receiver of Jamesburg Light
& Water Company.

A true copy.

JOHN P. LLOYD,
Attorney for plaintiff.

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Answer.

The defendant, William A. Williamson, residing in the Borough of Essex Fells, in the County of Essex and State of New Jersey, says:

FIRST DEFENSE:

That he admits the allegations of Paragraphs Two, Three and Four of the complaint.

He admits the allegations of Paragraph One, with the exception that he denies that the said Receiver's claim mentioned therein was or is a just claim or of any value whatsoever.

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SECOND DEFENSE:

This defendant says that the complaint in this case states no cause of action in the plaintiff against the defendant.

20

THIRD DEFENSE:

This defendant says that the claim of the Receiver, Theodore Rurode, against him, if any, did not arise within six years of the bringing of this action.

FOURTH DEFENSE:

This defendant, at the time of the purchase of the said claim, had a just and valid counterclaim against the said Theodore Rurode as Receiver of the Jamesburg Light and Water Company, a corporation of the State of New Jersey, for coal and other material sold and delivered by the defendant to the said Receiver, far in excess of the amount of the said claim against defendant.

30

CONDUCT, CONDUCT & BOARDMAN,
Attys. for Defendant.

40

Amended Complaint.

(Filed December 11, 1917.)

Plaintiff, Charles H. Leonard, residing in the City of Elizabeth, County of Union and State of New Jersey, amends his complaint herein, and says that:

10 1. Plaintiff, in addition to the matters set out
in paragraphs one, two, three and four of his com-
plaint in this cause and the bill of sale, a copy of
which is attached to said complaint, says that Theo-
dore Rurode, Receiver of the Jamesburg Light &
Water Company, an insolvent corporation of the
State of New Jersey, was duly appointed such Re-
ceiver pursuant to an order of the Chancellor in a
certain cause then pending in the Court of Chan-
20 cery of New Jersey, between William J. Lansley,
complainant, and Jamesburg Light & Water Com-
pany, defendant, and that as such Receiver the said
Theodore Rurode, after qualifying took upon him-
self the administration of the estate of said insol-
vent corporation, and pursuant to an order of the
Court of Chancery, made December 20, 1909, sold
at public sale all the property, real, personal and
mixed, together with the chartered rights, privi-
leges and franchises of the aforesaid insolvent cor-
30 poration, made on or about the 28th day of May,
1910, at ten o'clock in the forenoon to the highest
bidder at said sale, the said William A. Williamson,
for the sum of \$12,000, and he did thereupon sign
the conditions of sale as prepared by the said re-
ceiver, a copy of which is hereto attached and made
a part hereof.

2. On or about May 28th, 1910, William A. Wil-
liamson, defendant, at the time of signing the con-
ditions of sale paid 10% of the purchase money,

Amended Complaint.

and thereafter defaulted in his payment to the Receiver of the balance of the purchase money, excepting a payment of \$500 to the Receiver, whereupon the said Receiver gave notice to the said William A. Williamson of an application to the Chancellor at the Chancery Chambers, Jersey City, N. J., for Monday, the 29th day of May, 1911, for an order ratifying and confirming the action of the Receiver in forfeiting the bid of William A. Williamson for the property of said insolvent corporation, and reselling the same; that said defendant then applied to said Receiver for a postponement of said application, to which the said Receiver consented that the application be made to the Chancellor at the same place at ten o'clock in the forenoon on Monday, the 5th day of June, 1911; that an application of said defendant to said Receiver for a further adjournment of the aforesaid application to the Chancellor was given to the 26th day of June, 1911, at the same hour and place; said applications were reduced to writing and signed by the Receiver and the defendant; that attached hereto and made a part hereof is a copy of the aforesaid consent.

3. On June 26th, 1911, by reason of the failure of William A. Williamson, defendant, to complete the purchase of the said property as aforesaid, and pursuant to a written notice of resale sent out by the Receiver to all the known creditors of the insolvent corporation, stockholders and bondholders, an order was made by the Chancellor on above date, and filed in the office of the Clerk in Chancery June 26th, 1911, confirming the action of said Receiver in declaring bid forfeited of said William A. Williamson, defendant, and an order made for the Receiver to resell the property at public auction to

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Amended Complaint.

the highest bidder; whereupon the said Receiver re-sold the property to one William L. Lansley, the highest bidder at the resale, for the sum of \$5700, who signed the conditions of sale of the Receiver and paid the purchase price and received the conveyance of the property in accordance with the conditions of the sale on said resale, after confirmation.

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4. On September 14th, 1910, and before June 26th, 1911, the date of the order confirming the forfeiture of the bid by the Receiver of William A. Williamson, defendant, the said Receiver received from said defendant on his bid to purchase in addition to the 10% the sum of \$500, leaving a balance due from said William A. Williamson on forfeiture of his bid for the property of the said insolvent corporation of \$10,300, whereupon the said Receiver obtained an order from the Chancellor to sell at public auction to the highest bidder, for cash, the receiver's claim against William A. Williamson, defendant, on his forfeited bid, and to hold said sale on October 19, 1912, and that said Receiver mailed notices of said sale to stockholders, creditors and bondholders of said insolvent corporation, and to William A. Williamson, defendant, at their last known post office addresses.

5. On October 19, 1912, said Receiver, pursuant to said order, sold at public auction to the highest bidder, for cash, the receiver's claim against William A. Williamson, defendant, for the difference between balance due from said William A. Williamson, on forfeiture of his bid for the property aforesaid, namely, \$10,300 and the amount which the property brought on receiver's resale of \$5700,

Amended Complaint.

namely, the sum of \$4600, at which said sale William A. Williamson was present, and Charles H. Leonard, plaintiff, then and there bidding for said receiver's claim of \$4600 the sum of \$30, and no other person then and there bidding a higher sum for the said claim, the said Receiver did then and there strike off and sell to said plaintiff the receiver's claim against the said William A. Williamson for the said sum of \$30, and said Receiver did thereupon report the sale to the Chancellor, who approved and confirmed the sale by an order of said court dated October 21, 1912, in which the receiver was ordered to execute and deliver to said plaintiff a good and sufficient bill of sale and transfer of said claim to pass the right, title and interest of said receiver, and the said corporation therein to the plaintiff. 10

6. On October 21, 1912, plaintiff paid to the said receiver the sum of \$30, the amount of his bid for said receiver's claim, and said receiver, pursuant to the order of said court, executed and delivered to the plaintiff a bill of sale and transfer of said claim to pass the right, title and interest of the said receiver therein. 20

7. Plaintiff is the present owner of said receiver's claim under the aforesaid bill of sale and has demanded payment from the said William A. Williamson of the amount of said claim of \$4600, but said William A. Williamson has paid no part thereof, and has refused to pay plaintiff the same. 30

Plaintiff claims damages \$4600, with interest from October 21, 1912.

JOHN P. LLOYD,
Attorney for Plaintiff.

Amended Complaint.

COPY OF CONDITIONS OF SALE.

10 Conditions of the sale of all the property, real, personal and mixed, together with the chartered rights, privileges and franchises of the above Jamesburg Light and Water Company, an insolvent corporation, made on the 28th day of May, A. D. 1910, at ten o'clock in the forenoon, by Theodore Rurode, Receiver of the Jamesburg Light and Water Company, by virtue of the power and authority aforesaid in him as such Receiver and pursuant to an order of the Court of Chancery made December 20th, 1909, in the above cause.

20 1. The highest bidder for each lot sold shall be the purchaser and shall, immediately after sale, sign his name to an acknowledgment of his purchase and pay 10% of the purchase money. The property to be sold first in parcels, and then as a whole; the manner of sale which brings the greatest sum shall prevail, and such bidder or bidders the purchaser.

30 2. A deed will be delivered to the purchaser at the office of the Receiver, No. 1 Montgomery Street, Jersey City, New Jersey, within five days after the confirmation of said sale by the Court of Chancery, provided such sale shall have been confirmed, when and where the purchaser shall pay the balance of the purchase money in cash.

40 3. The purchaser shall be liable for the payment of the purchase money whether he attends and receives his deed at the time and place aforesaid or not, and in case he neglects to receive the deed and pay the purchase money as aforesaid the property

Amended Complaint.

will be advertised and sold again and if it produces a less sum than the former bid and interest and expenses, the purchaser will be held liable for the difference, and if it produces a larger sum he shall not be benefited thereby.

(Signed) THEODORE RURODE,
Receiver. 10

I hereby acknowledge myself to be the purchaser of all the property above described, including all the rights, privileges and franchises of said Company pertaining to said property, sold this day under the above mentioned authority and order, at the price of \$12000.00 subject to the foregoing conditions.

(Signed) WM. A. WILLIAMSON, 20
55 William St.
New York City.

Dated, May 27th, 1910.

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(Copy of Consent)

Consent.

IN CHANCERY OF NEW JERSEY.

| | | | |
|----|-----------------------------------------------------------------------------------------------------------------------|---|--------------|
| 10 | Between, WILLIAM J. LANSLEY, Complainant, and JAMESBURG LIGHT AND WATER COMPANY, Defendant. | } | On Bill, &c. |
|----|-----------------------------------------------------------------------------------------------------------------------|---|--------------|

20 The Receiver having given notice of an applica-
 tion to the Chancellor at the Chancery Chambers,
 Jersey City, New Jersey, for Monday the 29th day
 of May 1911, for an order ratifying and confirming
 the action of the Receiver in forfeiting the bid of
 William A. Williamson for the property of the de-
 fendant Company and re-selling the same; and said
 William A. Williamson having applied to the Re-
 ceiver for a postponement of said application, and
 the Receiver consenting thereto, it is hereby con-
 sented that such application may be made to the
 Chancellor at the same place at 10 o'clock in the
 forenoon, on Monday the 5th day of June, 1911.

30 (Signed) THEODORE RURODE,
 Receiver.

“ WILLIAM A. WILLIAMSON.

The above application is hereby further ad-
 journed to the 26th day of June, 1911, at the same
 hour and place.

Dated, May 29th, 1911.

(Signed) WM. A. WILLIAMSON.
 “ THEODORE RURODE.

Answer to Amended Complaint.

(Filed December 20, 1917.)

FIRST DEFENSE:

(1) This defendant admits the appointment and qualification of Theodore Rurode as Receiver of the Jamesburg Light & Water Company.

Subject to correction upon production of the instrument, this defendant admits that on May 28, 1910, he signed the memorandum annexed to the conditions of sale in form similar to that annexed to the complaint. 10

That on May 28, 1910, he paid to Theodore Rurode, Receiver, &c., 10% of the purchase money or \$1200. That on September 24, 1910, he paid a further sum of \$500 to said Receiver on account of said purchase price. That he thereupon defaulted and has made no further payments on account of said contract. Subject to correction, defendant admits the signing of the two remaining memorandum annexed to the complaint. 20

(2) This defendant denies that he was present at the Receiver's sale of October 19, 1912, as alleged in the Fifth Paragraph of the amended complaint.

(3) This defendant denies the conclusions of law and fact and allegations of fact contained in the said amended complaint, not expressly admitted. 30

SECOND DEFENSE:

The defendant did not make the promise to Theodore Rurode, Receiver of the Jamesburg Light & Water Company, alleged in the said amended complaint, upon which this action is brought, within six years prior to the bringing of this action.

Answer to Amended Complaint.

THIRD DEFENSE:

This defendant, in the purchase of the property mentioned in the amended complaint and in the signing of said conditions of sale annexed to the amended complaint and in the paying of the \$500 on September 14, 1910, and in all other matters
10 mentioned in the amended complaint, acted as the agent of William J. Lansley, the person mentioned in the First and Third Paragraphs of the amended complaint, and being the person who purchased the property mentioned in the amended complaint from the Receiver on the resale on June 26, 1911.

The plaintiff, Charles H. Leonard, in purchasing the claim against this defendant from the Receiver, acted as agent of the said William J. Lansley.

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FURTHER DEFENSES:

This defendant repeats the Second, Third and Fourth Defenses contained in his original answer filed in this cause.

CONDICT, CONDICT & BOARDMAN,
Attys. for Deft.

30

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Reply.

(Filed December 22, 1917.)

Plaintiff denies the second paragraph of the answer to amended complaint under first defense.

Plaintiff denies the allegation in the answer to amended complaint under the second defense.

Plaintiff denies the allegation in the answer to amended complaint under the third defense. 10

The plaintiff denies that he purchased the claim against this defendant from the Receiver as agent of William J. Lansley.

Dated, December 22, 1917.

JOHN P. LLOYD,
Attorney for Plaintiff.

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Postea.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

| | | |
|----|------------------------------------------------------------------------------------------|------------------|
| 10 | CHARLES A. LEONARD, Plaintiff, vs. WILLIAM A. WILLIAMSON, Defendant. | } Action at Law. |
|----|------------------------------------------------------------------------------------------|------------------|

20 This cause came on for trial at the Union Circuit for the January Term, 1918, and was tried on the 14th and 15th days of February, 1918; and it appearing that the cause of action was barred by the Statute of Limitations;

A verdict was directed in favor of the defendant, whereupon the Jury found a verdict in favor of the defendant and against the plaintiff.

GEO. S. SILZER,
Judge.

30 A true copy,
 ENOCH L. JOHNSON,
 Clerk.

On Postea.

NEW JERSEY SUPREME COURT.

| | | | |
|--------------------------------------------------------------|---|----------------|----|
| WILLIAM A. WILLIAMSON ads. CHARLES H. LEONARD. | } | Action at Law. | 10 |
|--------------------------------------------------------------|---|----------------|----|

It is ordered that judgment be and hereby is entered in favor of defendant and against the plaintiff, with costs to be taxed nisi.

Entered February 26, 1918.

On motion of

CONDICT, CONDUCT & BOARDMAN, 20
 Attys.

A true copy,

ENOCH L. JOHNSON,
 Clerk.

30

40

Testimony.

NEW JERSEY SUPREME COURT,

UNION COUNTY CIRCUIT.

JANUARY TERM, 1918.

10

CHARLES H. LEONARD

vs.

WILLIAM A. WILLIAMSON.

No. 19 in the
List.

20

Transcript of stenographer's notes of evidence, in the above-entitled cause, taken before Hon. GEORGE S. SILZER, Circuit Court Judge, in the Union County Court House, City of Elizabeth, New Jersey, on the fourteenth day of February, A. D. 1918, at 1.30 P. M.

APPEARANCES:

JOHN P. LLOYD, Esq., Representing the Plaintiff.
MESSRS. CONDIT, CONDIT & BOARDMAN, Represent
the Defendant.

30

The Court: One of the jurors is not feeling very well. Can we go on with eleven?

Mr. Boardman: I am satisfied.

The Court: Are you satisfied to go on with eleven?

Mr. Lloyd: Yes, I will be satisfied.

Mr. Lloyd opens the case for the plaintiff.

Mr. Boardman opens the case for the defendant.

40

Mortimer H. Potts—For Plaintiff—Direct.

Mr. Lloyd: I think we can save some time if the defense will agree to admit some of these papers in evidence, that is, the orders, and papers in the Court of Chancery, so that we will not have to prove them. Otherwise I will put the Clerk in Chancery upon the stand and prove the filing of these papers. What do you say, Mr. Boardman? 10

Mr. Boardman: Put him on.

MORTIMER H. POTTS, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Lloyd.

Mr. Lloyd: I will offer in evidence the whole file of these papers. 20

Q. You look them over and tell me if they are all there? A. Yes, they are.

Q. Have you examined them? A. I have examined them.

Mr. Lloyd: Then I offer in evidence the whole lot of these papers in this suit between William J. Lansley, complainant, and the Jamesburg Light & Water Company, defendant, in the Court of Chancery, of New Jersey. 30

Mr. Boardman: I object. I do not want any such offer as that to go in.

Mr. Lloyd: What do you object to?

Mr. Boardman: I do not think that is a proper way to proceed. To offer the files that don't have anything to do with it. 40

Mortimer H. Potts—For Plaintiff—Direct.

Mr. Lloyd: It will save time.

The Court: What else do you want to introduce that are relevant to the case?

Mr. Lloyd: Well, I want the conditions of sale in the first place, in which the Receiver sold this property. The conditions are attached here to the report of sale of Receiver.

10 The Court: Well, you offer the report of sale?

Mr. Lloyd: Yes, I offer the report of sale by the Receiver, filed July 17th, 1911.

The Court: It will be admitted.

Mr. Boardman: I object to that.

The Court: I understand that is an order confirming the sale.

20 Mr. Lloyd: No. That is the report, Receiver's report on resale. And that contains the conditions of sale. I also want to get the first report here, Receiver's report.

Mr. Boardman: Does that paper go in or not?

The Court: Yes.

Mr. Boardman: I object to it. We are not shown to be a party to this suit. It is not shown what the purpose of it is for.

30 The Court: I understand it is the record showing the resale, or showing report of the resale.

Mr. Lloyd: There are so many reports and things here that I will have to examine to see what I want.

I offer in evidence the first report of sale by Receiver, which is filed June 2nd, 1910. This ought to be really the first offer instead of the other report, which was the second report.

40

Mortimer H. Potts—For Plaintiff—Direct.

Now, I offer in evidence the order confirming sale dated June 1st, 1910, and filed on the second day of June, 1910.

I offer this supplemental report of sale by Receiver, dated June 27th, 1910, filed on the same date.

Mr. Boardman: These reports are nothing else than reports verified by any ex-parte affidavit of a witness who is here present in court. They have no other probative force that I can see. 10

The Court: Objection will be overruled.

Mr. Boardman: I take exception.

The Court: Exception allowed.

Exception allowed, sealed accordingly.

.....,

Judge. 20

Mr. Lloyd: I offer in evidence the supplemental order confirming Receiver's sale, dated June 27th, 1910, and filed on the same date. I next offer in evidence the Receiver's petition for leave to resell, dated May 23rd, 1911, and filed June 26th, 1911.

Mr. Boardman: I make the same objection to that.

The Court: Same ruling. 30

Mr. Lloyd: There was a paper confirming the second sale.

The Court: That paper will be offered in evidence.

Mr. Lloyd: Next I offer an order of continuance dated the 14th day of October, 1912, and filed October 28th, 1912.

Next is a supplemental final report, a report of sale, dated October 14th, 1912. 40

Mortimer H. Potts—For Plaintiff—Direct.

Theodore Rurode—For Plaintiff—Direct.

Mr. Boardman: I object to that.

Mr. Lloyd: And filed October 28th, 1912.

Mr. Boardman: What is the purpose of that, Mr. Lloyd?

10 Mr. Lloyd: This is a supplemental final report of the Receiver of the plant against your client.

Then I offer next an order confirming the sale of claim of the Receiver against William A. Williamson, bearing date October 21, 1912, filed October 28th, 1912.

20 I next offer in evidence the original certificate of sale by the Receiver to Charles H. Leonard, which is dated the 21st of October, 1912, under the hand and seal of the Receiver. This is not on file, and you might mark this.

(Paper entered in evidence and marked Exhibit P-1.)

Mr. Lloyd: That is all I have to offer.

30 THEODORE RURODE, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

Direct examination by Mr. Lloyd.

Q. Mr. Rurode, you are the Receiver, or were the Receiver of the Jamesburg Water & Light Company? A. Jamesburg Light & Water Company.

Q. As the Receiver did you make a sale of the plant? A. Yes.

Theodore Rurode—For Plaintiff—Direct.

Q. I show you a report of sale. Please look it over and tell me whether that report of sale is the report of the first sale of the plant, which contains all the proceedings? A. Yes.

The Court: Sale to Mr. Williamson?

Mr. Lloyd: Yes.

Q. To whom was the sale made by you? A. To Mr. William A. Williamson. 10

Q. The defendant in this action? A. Yes.

Q. And what was the price? A. I believe \$12,000.

Q. Was that sale at private sale or public sale? A. Public sale.

Q. Where was it held? A. At my office, Jersey City.

Q. Was there any competitive bidding at that sale? A. Oh, yes. 20

Q. And Mr. Williamson was the highest bidder? A. He was.

Q. Were the conditions of sale signed by Mr. Williamson? A. Yes.

Q. Tell me if the conditions of sale are attached there, or a copy of them? A. This is a correct and true copy of the conditions of sale. I don't know where the original conditions of sale are. They probably were filed, or supposed to be filed in the Court of Chancery. But this is a correct copy, made by me. I signed this paper before. 30

Q. Did you get up those conditions of sale? A. Yes.

Q. You know what they were? A. Well, I would not remember the terms now, I don't believe.

Q. You afterwards, after selling this property to Mr. Williamson, had him sign the conditions of sale? A. Oh, yes, surely.

Theodore Rurode—For Plaintiff—Direct.

Q. And sign the acknowledgment of his purchase? A. Yes. Mr. Williamson signed his name to the conditions of sale in my presence.

Q. On the same day? A. On that same day. They were there and prepared and he signed them and paid, I believe, \$1200 in cash.

10 Q. 10 per cent.? A. 10 per cent. of the amount of the bid.

Q. The conditions of sale express that if the sale was confirmed by the Court. Was this sale confirmed by the Court? A. Yes.

By the Court.

Q. First on June the 1st and then on June 27th?
A. I have forgotten the dates.

Q. Two orders? A. Whatever the papers show.

20 *By Mr. Lloyd.*

Q. I show you an order, dated June 1st, 1910.
A. Yes. That is the original order confirming sale, signed by Vice-Chancellor Stevenson.

Q. To Williamson? A. To Williamson.

Q. Under this sale that was made by you for \$12,000, is that right? A. Yes. Of that same sale to Williamson.

30 Q. Was there a supplemental report of this sale made by you? I show you a paper which says, supplemental report. A. Yes. That is the supplemental order confirming Receiver's sale and report.

Q. Here is the supplemental report and here is the supplemental order. There was a supplemental report and order of this sale? A. Yes.

40 Q. After this sale was confirmed on June 27th, 1910, what did you do next, Mr. Rurode? A. Why, I waited for the purchaser, I presume, to make his final payment.

Theodore Rurode—For Plaintiff—Direct.

By the Court.

Q. Did you have a deed drawn and executed?

A. Oh, yes. The deed was already drawn and all the papers ready for him to sign.

Q. Five days after the order was confirmed? A. Oh, yes, I think so.

10

By Mr. Lloyd.

Q. Did you notify him that you had your deed ready—that the sale had been confirmed and you had your deed ready and to come to your office and pay the balance of the purchase price? A. I think he knew it, because he had counsel present at the time. I think Mr. Bailey, of the New York Bar, was his counsel.

Q. Where did Mr. Bailey, his counsel, have his office? A. New York City some place.

20

Q. Did you confer with him about this? A. He came to see me quite often.

Mr. Boardman: I object. Parol conferences cannot have any bearing.

The Court: I understand this is for the purpose of notifying Mr. Williamson the deed was ready for delivery, isn't it?

Mr. Boardman: Perhaps so. Consequently, that Mr. Bailey—

30

The Court: You certainly do not object to that, do you?

Mr. Boardman: No, as far as that is concerned, we don't object to that. But we do object to having Mr. Bailey put over on us in this happy-go-lucky way. Mr. Bailey is not a member of this bar and we do not admit his authority to sign this. He cannot

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Theodore Rurode—For Plaintiff—Direct.

negotiate for his client. There is no implied obligation.

The Court: Mr. Rurode says at the time fixed for the delivery of the deed your client knew it, because Mr. Bailey, who had been acting previous to that, had information about it. You do not object to that, do you?

10 Mr. Boardman: I object——

The Court: Do you insist that your clients had to have notice?

Mr. Boardman: We will admit we had notice. We will not accept notice through Bailey, that is what I object to.

The Court: You may show Mr. Bailey was his attorney.

20 Q. Mr. Rurode, did Mr. Bailey act for Mr. Williamson at the time of the sale on May 27th at your office? A. Mr. Bailey acted for Mr. Williamson throughout the whole period of Mr. Williamson's connection with the purchase of this property. Mr. Williamson informed me on several occasions that Mr. Bailey was his attorney and they were together, and at my office together on different occasions, so that I knew Mr. Bailey was Mr. Williamson's attorney. Not only from what Mr. Williamson had stated, but from the fact they came together and talked about the business together at different times.

30

Q. Well, was Mr. Bailey acting, can you tell me, for Mr. Williamson, on the day of the sale, May 27th, 1910, do you remember whether he was there at your office? A. I would not swear that Mr. Bailey was actually present on the date of the sale. Mr. Williamson was there and I believe Mr. Lansley, who was interested with Mr. Williamson at that time, and several others, I think probably Mr.

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Foles, who was another attorney interested with Mr. Williamson and Mr. Lansley.

Q. Were there many at the sale on May 27th, A. Oh, I have forgotten. I think Mr. Leonard was there and probably a man named Hill, and several of the stockholders and bondholders there, and probably Mr. McDermott was there. I have forgotten. Sale was very well advertised, but naturally very few purchasers. 10

Q. How did you advertise the sale? A. I have forgotten now. According to the order of the Court of Chancery.

Q. When did you first learn of Mr. Bailey acting as Mr. Williamson's attorney in this matter? After the sale, or before? A. Oh, no. Mr. Bailey had been interested in the matter before Mr. Williamson came in. He had been interested with Mr. Lansley. Mr. Bailey and Mr. Bowles both represented Mr. Lansley, and Mr. Lansley brought Mr. Williamson in on the purchase. They were together on the proposition. At least, I so understood. In fact, as I know, that is a fact. 20

Q. Did anyone do the bidding for Mr. Williamson at this sale, or did he do the bidding in person? A. I don't know that now whether he did it personally or whether he had somebody else. I think he bid personally, if I am not mistaken, but I would not swear to that. 30

Q. You have stated that you had the deed ready within the five days and Mr. Williamson was notified to appear at your office and receive a deed and pay the balance of the purchase money. Did he appear and pay the balance? A. Whether he appeared on that day or not I do not know.

Theodore Rurode—For Plaintiff—Direct.

By the Court.

Q. You know he did not come that day and give you \$12,000? A. He didn't give me the balance, however.

By Mr. Lloyd.

10 Q. Did he appear at all, if you know? A. After that I had numerous talks with Mr. Williamson—

Mr. Boardman: Just a minute. Answer the question, please.

A. You don't object to it as not responsive, do you?

The Court: Answer the question.

20 Q. (Question repeated by the stenographer) In response to your notice to appear at your office? A. I would not say whether or not he did appear on that day. I can't remember.

Q. Tell us then after you notified him to appear and receive the deed and pay the balance of the consideration, tell us what the succeeding things were that happened? A. Well, Mr. Williamson wasn't ready to pay the balance of the purchase money, and so informed me. I saw him on numerous occasions after that, at his office in New York, and he came to my office and made continual—

30

Mr. Boardman: I object. I do not think any of this parol proof—

The Court: Statements made by your defendant.

Mr. Boardman: That cannot bind us on the statute of limitations. Cannot prove a new promise by parol proof. It must, under

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the statute, be in writing. We will stand for anything that is in writing.

The Court: Question will be admitted.

Mr. Boardman: I object.

The Court: Exception allowed.

Exception allowed; sealed accordingly.

..... 10
Judge.

A. He made numerous promises to me.

By the Court.

Q. What did he say, Mr. Rurode? A. I would not remember his exact language now. To the effect that he didn't have the money at the time, the balance, that he expected to get it, there was one or two—one occasion when he was on a trip in the West, and Mr. Bailey, his attorney, came to me and told me that Mr. Williamson was out there and was delayed, and when he got back he would fix it up. And then I saw Mr. Williamson—

Mr. Boardman: I do not want to be captious, but I must object to this. How can—

The Court: Why didn't you object before it is in, Mr. Boardman? You cannot let it go in and see whether you like it or not.

Mr. Boardman: No, I didn't. It is not responsive. It is not answering the question. I move to strike it out.

The Court: You have no right to strike it out because it is not responsive.

Mr. Boardman: It is improper evidence. It is trying to make a new contract.

The Court: Yes, but you are too late with it. If you had objected I would have overruled it.

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Mr. Boardman: I object. I except.
Exception allowed; sealed accordingly.

.....
Judge.

Q. Please proceed, Mr. Rurode.

10

The Court: Put your question.

Mr. Lloyd: He was answering my question.

20

Q. I asked him what were the succeeding matters that occurred after the purchaser was notified that the deed was ready at his office to be delivered, what occurred succeeding that time. A. Well, as I stated, Mr. Williamson saw me on numerous occasions, and I saw him at his office and at my office, and he wasn't ready to pay the balance, and made promises to me that he would be ready at some future time. When that time would arrive he would make further promises, and I kept urging him to make this final payment, and he kept promising to do so, and not only himself but Mr. Bailey also, his attorney, promised on several occasions, and fixed some time in the future.

30

Mr. Boardman: May I object to this whole line?

The Court: You must object to the question. I cannot let you go on and see whether you like it and if you do not make your objection, and strike it out, and have the Supreme Court say there was no objection.

Mr. Boardman: It is perfectly plain from the evidence that I have objected to this line of testimony.

40

The Court: You cannot object to a line, Mr. Boardman. You object to a question.

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Mr. Boardman: I move to strike that out as not answering the question, and not being proper evidence, and being absolutely immaterial and illegal.

The Court: Motion to strike out will be denied.

Mr. Boardman: I except.

Exception allowed; sealed accordingly. 10

.....

Judge.

A. And——

Mr. Boardman: Just a minute. What is the question?

Mr. Lloyd: I will have to go back and read it again, or put a new question.

The Court: Put a new question. 20

By the Court.

Q. What happened between you and Mr. Williamson after that?

Mr. Boardman: I object to that.

The Court: Objection overruled, and exception allowed.

Mr. Boardman: On the ground that it calls for parol discussion, not in writing. 30

Exception allowed; sealed accordingly.

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Judge.

A. When Mr. Williamson didn't appear to pay the balance he stated that he wasn't able to do so at the time, and wasn't ready with the money, and he would be able later on to pay it, and gave nu- 40

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merous excuses for not paying the balance, and I saw him on numerous occasions at his office in New York, and he would make a promise that he expected in a couple of weeks, and he would fix it up in a couple of weeks, or a week or ten days. He made numerous statements to me all along the same line. And upon those statements I relied—relying
 10 upon those statements, I naturally didn't declare his bid forfeited. Later on, I have forgotten the time, he did send a check on account of this purchase price, an additional check of \$500, the date of which appears some place in the papers.

By Mr. Lloyd.

Q. That was September 14th, 1910?

Mr. Boardman: Yes.

20

A. September 14th, 1910, if that is the correct date, Mr. Williamson did pay \$500 additional.

Q. How was that paid, by check or cash? A. Yes, by check.

Q. Whose check was it? A. Mr. Williamson's. Suppose it was his check. He sent it to me: Yes, I guess it was.

Q. How did you come to get that check for \$500?
 A. Oh, I think it came through the mails. It may
 30 have been delivered. I don't know that now. I may have got it at his office. I have forgotten. I couldn't begin to remember that detail.

Q. Was it in response to any demand that you made? A. I think it probably was. On this general talk we had all along that he expected to pay, and that he wasn't financially fixed so that he could pay at the time, but would.

Q. Did his attorney, Mr. Bailey, enter into any promises for Mr. Williamson?

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Mr. Boardman: I object to that

The Court: Question will be overruled.

Q. Well, please explain what you did after the payment of \$500?

Mr. Boardman: Just a minute.

A. Well, during this time and shortly after I sold the property to him, or it was put up and he bid it in. 10

Q. Yes. A. Mr. Williamson, with Mr. Lansley—

Mr. Boardman: I object to anything parol that he may testify to in response to that question. I am willing to have anything that was done.

The Court: Objection overruled. 20

Exception allowed.

Exception allowed; sealed accordingly.

.....

Judge.

A. Mr. Williamson and Mr. Lansley began to do some work on this property down there. They erected—

Q. When was this, Mr. Rurode? A. Oh, right shortly after the property was sold to them, and continuing for some time. I don't know when they stopped. 30

Q. Commenced to do some work on this plant that you sold to Mr. Williamson? A. Yes, built some lines, put up new telegraph poles, and, if I am not mistaken, put in some new machinery. I had no objection to it; they were improving my property, and I was taking the rents and they were

Theodore Rurode—For Plaintiff—Direct.

buying coal. I said, "If you want to buy coal and run this plant night and day go ahead and do it, but I will take all the proceeds." I saw no objection to that, and I took the proceeds, and they paid the expenses for a while, until they got tired of it. The net result was that Mr. Williamson made these several promises to me up to the time when I re-
 10 refused to accept any more promises, and formally by a writing declared his bid forfeited, and gave a notice that I would apply to the Court to have his bid forfeited, I have forgotten just what the form of it was, and upon that notice, even then Mr. Williamson came in and had me extend the time until some time in July, 1911, I believe, when the bid was finally declared forfeited. I don't believe there was any new promise made in writing. If so, I have not been able to find it. I don't say there was.

20 Q. I show you a notice, Mr. Rurode, attached to petition for leave to resell, and ask you is that your signature to that notice? A. Yes. This is my signature.

Q. What is that notice? A. This is a notice addressed to William A. Willaimson that unless—

Mr. Boardman: The paper speaks for itself, doesn't it?

30 Mr. Lloyd: I would like to have him read it into the record.

A. This is addressed to "William A. Willaimson, fifty-five William Street, New York City. Sir: Please take notice that unless you complete the purchase of the property of the Jamesburg Light and Water Company, which was bid in by you at Receiver's Sale, on or before Monday, May twenty-second, 1911, at ten o'clock in the forenoon, by attending at my office, number one Montgomery Street,

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Jersey City, New Jersey, and paying the balance of the purchase money, that I will readvertise and resell the property and hold you liable for any deficiency that may arise by reason of said resale. Dated May nineteenth, 1911. Signed by me as Receiver of the Jamesburg Light and Water Company."

Q. Did you serve that notice, or a copy of this notice, rather, on Mr. Williamson? A. Yes. 10

Q. Did he on the 22nd day of May, 1910, or '11, at 10 A. M., appear at your office in response to this notice? A. I don't know whether he appeared there or not. He may have appeared, but he didn't appear and pay the balance of the purchase money, if that is what you mean.

Q. Yes. As the result of this notice and your not receiving the balance of the purchase money, what did you do? A. I think the papers will show that I gave notice of an application to the Court of Chancery to have his bid declared formally forfeited. I don't know whether I was bound to do that. But receivers sometimes seek the aid of the Court, although they can move themselves, I understand, without the confirming orders. 20

By the Court.

Q. You had, Mr. Rurode, an order from the Court of Chancery to sell this property? A. Yes, sir. 30

Q. Then you advertised it and prescribed certain conditions of sale? A. Yes.

Q. Among them were that the deed was to be delivered at your office at a certain hour, at least at a certain time five days after the sale was confirmed? A. Yes.

Q. The sale was confirmed? A. The sale was confirmed.

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Q. Now, then, it was your duty then to deliver the deed according to the order of the Court? A. That is correct.

Q. Did you have any discretion in the matter at all? A. I think this: That I could have declared his bid forfeited on that day without giving him any further time, but I thought a receiver, and I so
10 understand the law, that a receiver has discretion to extend the time in his judgment.

Q. Why do you think you have any such discretion as that? You present to the Court the fact that you have sold the property and you make a condition that you will deliver the deed and he will take the deed and pay you the money at a certain time and place? A. Yes.

Q. And the Court confirms that sale. Now, you have no more power, unless the Court gives you,
20 which is, that you shall deliver a deed at a certain time and place. Did you assume any powers beyond that? A. Oh, yes. I think a receiver has absolute power.

Q. To set aside the order—— A. To extend that time. There may be numerous reasons why the deed could not be delivered right on that day. And I think in this particular case that there was some question, at first, as to their inability to search the title, and the time was very short. It is true they
30 had signed the conditions of sale, but as a matter of fact, I did agree to extend their time.

Q. Until when? A. There was no particular time mentioned. They were not ready to go on and it was understood, within a reasonable time, they came across with this purchase money.

By Mr. Lloyd.

Q. Was it a mutual agreement between you and the purchaser? A. Oh, yes. The purchaser made
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a promise that he wasn't ready at that time, but would, at a certain time, be able to complete, and I thought it was sound business judgment; I had made a very advantageous sale.

By the Court.

Q. You extended the time until when? A. There was no specific time—I can't remember a specific time. 10

Q. You either made an extension or you didn't. A. Oh, I probably did. They probably said, "We will be ready in two weeks or ten days."

Q. It is very important, Mr. Rurode, not to know what you probably did, but to know what you did do. A. I couldn't begin to remember it now.

Q. You had a certain fixed time in which you were to deliver your deed, and if the man didn't come there there was a default on his part. Now, whether you had the right or not, the question is whether you did extend that to any particular period? A. I couldn't remember the particular period that I extended it to. I did extend it, however, to a particular time, the time they said they would be ready to pass the title and take the property. 20

Q. When was that? A. Oh, when that time was I don't know. But from then on——

Q. Let us find out when that was, because it is important. A. I couldn't remember that. 30

Q. Was that a week after the time called for delivery, or two weeks, or three weeks, or what? A. I wouldn't want to endeavor to swear to the time. If I remember rightly, they said they would not be ready for a couple of weeks.

Q. You extended it for that time? A. Yes.

Q. Was there any further extension on your part? A. Yes. After that I extended it off and on a

Theodore Rurode—For Plaintiff—Direct.

couple of weeks at a time until I declared it forfeited.

By Mr. Lloyd.

10 Q. I show you, Mr. Rurode, a consent attached to the second report of sale. Who signed that consent, and what is it? A. My signature is there and Mr. Williamson's.

Q. What was that consent to? A. Well, you can read it.

Mr. Boardman: I object. The writing speaks for itself.

Mr. Lloyd: I understand that. That is right. I would like to have this inserted in the record, your Honor, by having——

20 The Court: You have offered it in evidence, haven't you?

Mr. Lloyd: Yes.

The Court: Then it is in the record.

Q. Mr. Williamson signed this in two places. Were there two consents here? A. Whatever it shows there. If you will read them. I have forgotten.

30 Q. This was to the 26th day of June, 1911. On the 26th day of June, 1911, did Mr. Williamson come up and pay the balance of the purchase money? A. No.

Q. What did you do on that date? A. On the 26th day of June——

Mr. Boardman: I object. Absolutely immaterial what he did on the 26th day of June, 1911.

The Court: I will allow the question. You may answer it, Mr. Rurode.

Theodore Rurode—For Plaintiff—Direct.

A. On the 26th day of June I took an order to resell the property and confirming my action in declaring the bid forfeited, the bid to Mr. Williamson.

By the Court.

Q. I do not understand, Mr. Rurode, if the Court of Chancery confirmed your sale and declared a decree that you should deliver a deed at a certain time, what right you had to fix your own time for the delivery of the deed. You had no power except as the Court of Chancery gave you. You were simply an instrument of the Court. What business had you to say, "Now, I will give you more time"? The Court of Chancery said it will be delivered at a certain time. A. I suppose that may be so, if the Court of Chancery wanted to criticize me for doing that. On the contrary, the Court stated to me on numerous occasions that the Receiver must exercise his sound business judgment. 10

Q. Yes, on certain things. You can draw your conditions of sale, but having drawn the conditions of sale and made them a part of Mr. Williamson's contract, what power had you to do any more than the Court gave you? If the Court said to you, "Mr. Receiver, you deliver this five days after we have confirmed it, and at that time you will get your money," what business had you to say, "Now, I will not do that. The Court of Chancery decrees that, but I am an instrument of the Court, but I am going to take my own time about it." Suppose, for instance, Mr. Williamson's financial status had changed, could you have been held responsible for your extension of time? A. I took that risk, yes. 20 30

Q. Yes, but you were then liable. If you could be held responsible, then you had no business to do it. A. I don't think I could, unless I acted *mala* 40

Theodore Rurode—For Plaintiff—Direct.

vide. If I acted in sound business judgment and make a mistake, my best judgment is to——

Q. Wasn't your judgment to say to William Williamson, "This is the time to pay the money; you have committed a breach of this contract; of course, if you come in later I may waive the breach, if you bring me the money, but you have broken this contract"? A. Suppose, on the contrary, I said, "No, I refuse to extend your time," and then I had readvertised and sold and obtained practically no price at all, and lost Mr. Williamson as a purchaser, I was unable to collect from the lessee, it might be I would make a worse business deal. So, in the exercise of sound business judgment, and which business judgment was afterwards confirmed by the Court of Chancery in its subsequent——

Q. I cannot see where it was remarkable business judgment if you lost the sale of \$12,000, and a deficiency of \$4600; no remarkable business judgment about that. A. Well, the point about that was this, that at the time I sold all the creditors had a chance, and the stockholders had a chance to bid it in, and I had information at that time that Mr. Williamson was not financially able to take care of this proposition.

Q. That is just the reason that you should have carried out the decree of the Court of Chancery instead of relying on your own judgment. If you let him go on, then you would be responsible yourself, wouldn't you?

Mr. Lloyd: What was the difference whether he declared the bid forfeited at that time, or tried to help Mr. Williamson by letting him have further extensions of time to carry out his contract and not take——

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The Court: The question is, Mr. Lloyd, whether he had any power to do it. He could have said, "You were to be here in so many days, on the order of the Court, and you were to pay your money on that day; now, not having come here, you have broken this contract, but I will let the matter stand in that situation, and I don't propose to extend any time, but if you do happen to come in at some time that is agreeable to me, before I do anything else, and offer \$12,000, I may take it. But I want to put myself hard on the fact that there has been a breach." 10

By the Court.

Q. This was covered with mortgages, wasn't it, Mr. Rurode? A. That was the only way I needed to sell, free and clear of the lien. I could have sold otherwise. 20

Mr. Lloyd: Title to all the real and personal property and all the franchises, rights, privileges, and so forth.

The Court: Certainly, he had the authority, for the purpose of closing the corporation, but he could not sell this, because there were mortgages on it, and they had to be taken care of, and he had to get an order of the Court, and he did get an order of the Court. 30

Mr. Lloyd: The Courts have also held in the management and disposition of this property in the State by Receivers that Receivers are officers of the Court and at all times entitled to and must receive its protection. And further, in the case of Knott vs. Canal,

Theodore Rurode—For Plaintiff—Direct.

4 Equity, 423, "In the disposition of the trust property in their hands" (reading).

10 The Court: Certainly, and Mr. Rurode exercised that discretion here by drawing certain conditions of sale under which he sold this property, and there is where his exercise of discretion ended. Because when he had sold under certain conditions there was a contract on behalf of Mr. Williamson that he could enforce; and, on the other hand, assuming that the Court of Chancery confirmed it, there was a contract Mr. Rurode could enforce. But how could he change it? If Mr. Rurode could change the time, he might change the quantity of the property.

20 Mr. Lloyd: I think when I go further here I will show you in this decision, and other decisions I have here, that the Receiver did have the right to use his discretion in extending the time for Mr. Williamson to pay the money on this contract (reading).

30 The Court: The question is, when did the breach take place. If the breach took place at that time, then the six years have run. If the breach took place at any other time, the six years have not run. If Mr. Rurode had no right to extend the time, but was bound by the order of the Court, then there was a breach of this contract the moment Mr. Williamson did not come there with his money. If he had a right to extend the time and it was extended by mutual agreement, then there would not be any breach until that time had expired. So the question is whether he had the right to extend this beyond the order of the Court. Have you got anything shows he has?

40

Theodore Rurode—For Plaintiff—Direct.

Mr. Lloyd: My contention is that he did have the right. He acted in good faith. He had the right to act in this matter as he believed would be to the best interests of the estate of which he was vested of the title as Receiver. He had a right to act as he thought was for the best interests as long as he has acted in a *bona fide*, good faith manner toward the parties that he represented. He represented the bondholders, the stockholders and the creditors, and as long as he was acting in absolute good faith in what he was doing, he was doing what he thought was for the interests of those parties that were interested in this estate, I claim that he was doing what he had a right to do as Receiver. 10

I have not a direct case right on that point, but my contention is that the Receiver did have the right. 20

The Court: I know what your contention is, but I would like to get a little higher authority, if I could.

Mr. Lloyd: He had the power under the statute to do it, as the property was vested in him to handle it for the best interest of the creditors. He had the power under the statute to do it. 30

By Mr. Lloyd.

Q. I believe you stated last, Mr. Rurode, that the Court confirmed your action by an order declaring the bid forfeited of the purchaser, and gave you an order to resell on June 26th, 1911?

The Court: Mr. Boardman, have you investigated this branch of the subject at all?

Mr. Boardman: It seems to me perfectly 40

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obvious that where a receiver, an officer of the Court, goes to the Court for instructions and gets explicit instructions to carry out a contract, he must carry out a contract. I cannot see any escape from it.

The Court: Have you found any judicial determination of it?

10 Mr. Boardman: Yes.

The Court: Let me see it.

Mr. Boardman: I have not any case on it; I didn't look it up from that point of view.

The Court: See what you can find by to-morrow, because it is a very important part of the case. It may be the crucial point.

Q. What did you do after the Court gave you an order to resell? A. I advertised and resold the property at public auction.

20

(Adjourned until to-morrow, February 15th, 1918, at 9.30 A. M.)

The Court (after argument): Gentlemen, I think I can dispose of the matter now. It seems to me it gets itself into this position: The Statute of Limitations begins to run from the time the action accrues.

30

Mr. Lloyd: Yes.

The Court: When did the action accrue? The action accrued when there was a breach. Mr. Rurode says that there was no breach because he had extended the time to Mr. Williamson to close the matter for a number of months, which would bring it within the statute. And if Mr. Rurode had the right to do that, then there would be no breach until such time as the extended period had ex-

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Case.

pired, which would be well within the statute. So that you come back to the question as to whether Mr. Rurode had any such power or not. I do not think he had, because he was operating under an order of the Court, and under certain conditions of sale. He sold the property in the exercise of his discretion, and prepared certain conditions of sale, and they became a part of the contract, provided the Court sustained it. It was an inchoate contract. It was not a completed contract until the sale was confirmed by the Court. The Court finally confirmed the sale. And then the sale and the conditions of sale all became a part of the contract between the Receiver and Mr. Williamson. 10

Now, what was the duty then? When was there a breach?

The contract and the conditions of sale provided that a deed was to be delivered within five days after the order was confirmed, and the buyer would be held whether he attended to receive the deed or not. The evident intention of the Court in its order and Mr. Rurode in selling the property being to really act at once if the purchaser did not apply at the time and place mentioned in the conditions of sale and in the order of confirmation, the Receiver had no right, in my judgment, to extend the time at all. The moment the purchaser did not take the deed there was a breach at once. And if there was a breach, there was an action accrued immediately. That action the Receiver could bring at once and simply secure nominal damages, or he could wait until the shrinkage was demonstrated by a resale and then add that to his damages. But I do not think he had any power to continue the time of the delivery any more than he had power to change the price, or change the conditions of sale, or change 20 30

Case.

the character of the land which he was selling. So that if that is so, then the conditions of the Statute of Limitations ran on July 2nd or 3rd, which is five days after the order was confirmed, June 27th.

Mr. Lloyd: What about the payment of \$500?

10 The Court: I think the payment of the \$500 was, in legal contemplation, an acceptance of that on account of the breach, and not on account of the sale. But even if it was, if he had no power to extend it, it was his business to go right on. If he could not extend it, he could take the money by taking the chances.

Mr. Lloyd: What about the Court ratifying the contract and the action of the Receiver in rescinding the deed of the purchaser on the 22nd day of May, 1911?

The Court: I do not think that was——

20 Mr. Lloyd: And ordering the resale of the property?

The Court: I do not think that was at all necessary. But if it was, the effect of that was to get out of the way the previous order of sale, which, upon the record, appeared to be a sale to Mr. Williamson, and in order that the record might be cleared of the situation a new order was made, a new petition for a resale, because the Receiver could not make another sale without another order because there were
30 mortgages on this property, as I recall it. They could not have made the sale——

Mr. Lloyd: I do not know of any mortgages on the property.

The Court: Yes, Mr. Rurode said that yesterday. I will enter judgment for the defendant, upon the ground the Statute of Limitations ran from the time the deed was to be delivered.

40 Mr. Lloyd: I pray an exception to your Honor's ruling.

Case.

The Court: Exception.

Mr. Boardman: Do you direct a verdict?

The Court: If you rest your side of the case, I will.

Mr. Boardman: I will rest.

DEFENSE RESTS.

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Mr. Lloyd: Yes, I will rest.

PLAINTIFF RESTS.

The Court: I direct a verdict for the defendant.

Mr. Lloyd: I take exception to your Honor's ruling.

Exception allowed.

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Plaintiff's Exhibits.

REPORTS, ORDERS, &C., FROM FILES OF COURT OF
CHANCERY NOT ACTUALLY MARKED
AS EXHIBITS.

IN CHANCERY OF NEW JERSEY

| | | |
|----|------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 10 | Between WILLIAM J. LANSLEY, Complainant, and JAMESBURG LIGHT & WATER COMPANY, Defendant. | } 31—343. } On Bill, etc. } Report of } Sale by } Receiver. } On Resale. } (Filed June } 1, 1910.) |
|----|------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|

20 The undersigned Receiver of the Jamesburg Light & Water Company, makes report of the sale of the property, real and personal, rights, privileges and franchises, of the said defendant corporation as follows:

30 That the property of the defendant corporation consists, generally, of two electric lighting plants, one at Jamesburg and the other at Englishtown, in this State, and the necessary poles and wires and the machinery connected with its business of supplying electric light, and as more fully appears by the inventory on file.

Your Receiver has, since his appointment, continued the operation of the business, pursuant to the order of this Court made in this cause.

That on the ninth day of November, nineteen hundred and nine, your petitioner presented a petition for leave to sell the property of the defendant, free and clear of the liens of two mortgages, one given to the Fidelity Trust Company, and the other given to Frank Jennings, as trustees, to

Plaintiff's Exhibits.

secure bonds; and for leave to issue Receiver's certificates; and an order was thereupon made requiring the said trustees and bondholders to show cause why the prayer of said petition should not be granted; and such proceedings were thereupon had that on the twentieth day of December, nineteen hundred and nine, an order was made, directing the Receiver to sell the property free and clear of the lien and encumbrance of said two mortgages and giving him leave to borrow Five hundred dollars (\$500.00) on Receiver's certificates for the purpose of continuing the business pending a sale; a copy of which petition, order to show cause, and order for sale, are hereto annexed as a part hereof. 10

The Receiver thereupon advertised for bids, by inserting advertisements in the Monmouth Democrat, Newark News, Trenton Times, New Brunswick News, newspapers published in this State a copy of which advertisement is hereto annexed as a part hereof. 20

And this Receiver reports that as a result of said advertisement and his efforts to sell, only one bid was received, namely, a bid of about Three Hundred (\$300.00) Dollars for what is known as the Jamesburg Plant, which bid the Receiver rejected, first, because he considered the bid inadequate, and second, he considered that the said Jamesburg Plant would be a factor in the sale of the English-town and Freehold property, and in the absence of a bid for that portion, he considered it was not advisable to accept the small bid received for the Jamesburg Plant. 30

That since that time your Receiver has made efforts to find a purchaser for these properties, personally interviewing likely purchasers, and writing to others.

Plaintiff's Exhibits.

That on the third day of May, nineteen hundred and ten, one William J. Lansley, offered to this Receiver, the sum of Two thousand Dollars (\$2,000.00) for all the property, real, personal and mixed of the defendant corporation, except a part thereof known as the dismantled power house at or near Freehold, and your Receiver thereupon
10 reported said offer to this Court, and an order to show cause was made thereon on the Tenth day of May, nineteen hundred and ten, which order to show cause is hereto annexed as a part hereof.

That on the return of the said order to show cause, objection being made by Edward Hill, one of the bondholders, who appeared by J. Frank Finn, Jr., as his solicitor, and by arrangement with the said Hill, William J. Lansley and the Receiver, the matter of confirmation of said sale was con-
20 tinued until May nineteenth, nineteen hundred and ten, at ten A. M. at the Chancery Chambers, Jersey City, as appears by copy of the order hereto annexed; at which time, by consent, the matter was further continued until May twenty-third, at ten A. M., at the Chancery Chambers, as appears by copy of the order hereto annexed.

And this Receiver further reports that before the adjourned day for hearing upon the said order to show cause why sale should not be made to
30 said Lansley pursuant to said report and offer, one Edward Hill, a bondholder, submitted an offer to this Receiver of Two thousand Five Hundred (\$2,500.00) Dollars for the property and franchises of the defendant corporation and your Receiver thereupon concluded that in view of the apparent interest taken that it was advisable to ask this Court to refuse to confirm said proposed sale to William J. Lansley and that on May twenty-third, nineteen hundred and ten, your Receiver applied
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Plaintiff's Exhibits.

for an order to that effect, a copy of which order is hereto annexed as a part hereof.

Your Receiver further reports that on the twentieth day of May, nineteen hundred and ten, he caused notices to be mailed to all the known bondholders, stockholders and creditors of the defendant corporation, as appears by affidavit of mailing hereto annexed as a part hereof, and pursuant to said notice your Receiver attended at his office, No. 1 Montgomery Street, Jersey City, New Jersey, at ten o'clock in the forenoon, on Friday, the twenty-seventh day of May, nineteen hundred and ten, for the purpose of receiving competitive bids for the property of the said defendant corporation, at which time and place he was attended by Edward Hill, William J. Lansley, H. C. Pitcher and the Englishtown Bank, owners of bonds, and by Harry Rush, a creditor, and by Rulif V. Lawrence, solicitor of the Englishtown Bank, and J. Frank Finn, solicitor for Edward Hill, and thereupon the Receiver read the conditions of sale, a copy of which conditions of sale is hereto annexed as a part hereof, and thereupon received from Rulif V. Lawrence, an offer of Two Thousand (\$2,000.00) Dollars for lot number one (1) mentioned in said conditions of sale, and an offer of One thousand and Fifty Dollars (\$1,050.00) from Rulif V. Lawrence for lot number two (2) mentioned in said conditions of sale and thereupon your Receiver, pursuant to said conditions of sale, offered the said property as a whole and received an offer of Twelve Thousand (\$12,000.) Dollars for the same, from William A. Williamson, 55 William Street, New York City, and thereupon accepted said offer of said William A. Williamson, subject to confirmation of said sale by the Court.

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Plaintiff's Exhibits.

That the said purchaser William A. Williamson failed to carry out his agreement of purchase and thereupon your Receiver filed a petition, on June sixth, nineteen hundred and eleven, asking for leave to resell, and on said day an order to resell said property was made and filed, a copy of which petition and order to resell are hereto annexed.

10 That previous to obtaining said order, the default of said purchaser having already taken place, the Receiver, on the twenty-third day of May, caused notices of a resale of the property to be given for May thirty-first, nineteen hundred and eleven, at the office of the Receiver, at which time the said sale was adjourned by the Receiver, at the request of said William A. Williamson until June seventh, nineteen hundred and eleven, at which time it was further adjourned until June fourteenth, 20 nineteen hundred and eleven, and again until June twenty-first, nineteen hundred and eleven, again until June twenty-eighth, nineteen hundred and eleven, and again until July fifth, nineteen hundred and eleven, and was further adjourned until July eleven, nineteen hundred and eleven, at eleven o'clock in the forenoon, at which time your Receiver attended at his office, for the purpose of receiving competitive bids for the said property pursuant to notices duly mailed to all the known 30 stockholders, creditors and bondholders, as appears by the affidavit of the Receiver hereto annexed, and that he was attended at said sale by William J. Lansley, Edward Hill, stockholders and bondholders, J. Frank Finn, attorney for Edward Hill, Victor H. Christofferson, a bondholder, and Charles H. Leonard, the owner of certain machinery in the power house at Englishtown, and thereupon the Receiver read the conditions of sale, a copy of which is hereto annexed as a part hereof, and thereupon

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Plaintiff's Exhibits.

receiver from Edward Hill a bid of Five thousand one Hundred (\$5,100.00) Dollars for the property as a whole, and an offer of Three thousand Two Hundred (\$3,200.00) Dollars from William J. Lansley for the property at Englishtown and Freehold, and the connecting line, and an offer of Two thousand Five hundred (\$2,500.00) Dollars from Victor H. Christofferson for the property at Jamesburg, New Jersey, and the said offer of the property in parcels being for a more advantageous price, the Receiver accepted the offer of William J. Lansley of Three thousand Two Hundred (\$3,200.00) Dollars for the Englishtown and Freehold property, and the connecting line, and the offer of Two thousand Five Hundred (\$2,500.00) Dollars from Victor H. Christofferson for the Jamesburg property, subject to confirmation of said sale by the Court.

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Your Receiver is of the opinion that this is a very advantageous price for this property, and is the highest bid in the opinion of your Receiver that he will be able to obtain.

Your Receiver therefore prays that he may be permitted to accept said bid and that the said sale to William J. Lansley and to Victor H. Christofferson, as aforesaid, be confirmed, and that the Receiver may make conveyance accordingly.

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THEO. RURODE,

Receiver of the Jamesburg Light & Water Co.

Dated July 11th, 1911.

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Plaintiff's Exhibits.

STATE OF NEW JERSEY }
 COUNTY OF HUDSON } ss. :

THEODORE RURODE, being duly sworn on his oath, says: That the facts stated in the foregoing petition are true.

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THEO. RURODE.

Sworn to and subscribed before me
 this 17th day of July, 1911.

GEORGE W. FLAACKE,
 Master in Chancery of New Jersey.

 IN CHANCERY OF NEW JERSEY.

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| | | |
|--------------------------------------------------------------------------------------------------------------|---|------------------------------------------------------|
| Between WILLIAM J. LANSLEY, Complainant, and JAMESBURG LIGHT & WATER COM- PANY, Defendant. | } | On Bill etc. Petition for leave to sell &c. |
|--------------------------------------------------------------------------------------------------------------|---|------------------------------------------------------|

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The petition of Theodore Rurode, Receiver, shows:

That the property of the defendant consists of two electric lighting plants in operation, one at Englishtown and the other at Jamesburg, and a dismantled power house at Freehold; together with lines of poles and wires in Jamesburg and in Englishtown and Freehold, and a line of poles and wires

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Plaintiff's Exhibits.

between Englishtown and Freehold. That your petitioner has been operating the plants, and has not at present sufficient funds to successfully carry on the operation because of failure to make collections, and is further in need of immediate funds for the purchase of meters, wire, incandescent bulbs and other supplies necessary for operating the works. That it is essential to the preservation of the property that these plants should be run and turned over to any purchaser as a going concern, and in order that the value of its contracts with the municipalities may not be impaired. 10

The Englishtown Plant is subject to a mortgage for \$25,000. made by the Manalapin Light Company, a previous owner of the property, to the Fidelity Trust Company, as trustee for bondholders. That so far as your petitioner can learn, all of the bonds have been issued. That \$5,000. of these bonds were issued for cash to Mr. Edward Hill of Newark, and so far as your petitioner knows, there is no dispute as to this issue of bonds. \$8,000. of the bonds were issued to the Jamesburg Light & Water Company for the purchase of a capital stock, bonds, rights of ways and property of the Jamesburg Light & Water Company, but your petitioner is not informed to whom these bonds were delivered, although they were authorized to be taken from the trustees, and your petitioner is further informed that the property of the Jamesburg Light & Water Company was never conveyed to the Manalapin Light Company and the legality of the issue of these \$8,000. of bonds is therefore in dispute. 20 30

And your petitioner further shows that \$4,000. of the Manalapin Light Company bonds were issued as collateral security on notes given to Walter MacLear. There is also in the hands of the 40

Plaintiff's Exhibits.

First National Bank of Woodbridge, three bonds of the par value of \$1500. to secure a note of \$500., which note has not been paid. The Manalapin Light Company is in the hands of a Receiver and if the Receiver is able to pay the amount of this note, these three bonds will be cancelled. That \$5,000. worth of bonds of the Manalapin Light
10 Company were issued to H. C. Pitcher for about \$2500. alleged by him to be due to him for work done for the Manalapin Light Company and for which notes had been given and not paid and your petitioner is informed that these bonds were sold under the collateral agreement and bought in by a man named Ryesdorp for the amount of the note. Your petitioner further shows that there are also some bonds held by the First National Bank of
20 Englishtown as collateral upon notes and your petitioner says that these bonds held by said bank are in dispute.

Your petitioner further shows that the plant at Jamesburg is subject to a mortgage of \$18,000. given to Frank Jennings, trustee, to secure bondholders. That \$12,000. of the bonds were issued by the Jamesburg Light & Water Company to the Manalapin Holding Company upon an agreement that the Manalapin Holding Company should raise \$10,000. for the Jamesburg Light & Water
30 Company to be used for the line extensions, machinery, etc., and that after the said bonds were issued to the Manalapin Holding Company the said sum of \$12,000. was not raised by them; and your petitioner is informed that the Manalapin Holding Company only raised about \$600. of this amount and illegally holds the \$12,000. of bonds. That your petitioner is further informed that the following bonds were issued and never paid for, namely:
40 William P. Emmons, Jamesburg, \$100., Joseph Mc-

Plaintiff's Exhibits.

Gee, \$500., W. C. Buckalew, \$200., C. E. Paxton, Jamesburg, \$100. That the bonds mentioned above in the case of the bonds issued by the Manalapan Light Company are secured by a mortgage to the Fidelity Trust Company and the bonds of the Jamesburg Light & Water Company are secured by a mortgage to Frank Jennings, trustee, covering the property at Jamesburg, and being a second mortgage on the Englishtown property. 10

Your petitioner further shows, that the property subject to the liens of these mortgages if the same is not run as a going concern, will materially deteriorate in value pending the litigation as to the legality of the bonds above mentioned, and that your Receiver will not be able to continue the operation of the plants during the litigation for the reason that the running expenses are slightly in excess of the receipts; and this is due to a lack of capital necessary to an economical carrying on of the business. 20

Your petitioner further shows that the dismantled plant at Freehold, is subject to a first mortgage of \$1500. with accrued interest, and is subject to the mortgages to the Fidelity Trust Company and Frank Jennings, trustee, under the terms of said mortgages, and that he is informed that the property is not worth the amount of first mortgage lien. This dismantled plant, therefore, should be sold subject to the lien of the first mortgage and separate from the other property. 30

Your petitioner further prays that he be allowed to sell the property of the defendant except the dismantled power house at Freehold, free and clear of the liens and that he be permitted to sell the power house property at Freehold free of the liens of the mortgages to the Fidelity Trust Company and Frank Jennings, trustee, but subject to all 40

Plaintiff's Exhibits.

other incumbrances; that pending the sale that he
 be permitted to borrow, on Receiver's certificate
 \$500. which shall be a first lien on the property
 except the Freehold Power House and payable first
 out of the proceeds of any sale, and he prays that
 the mortgages and bondholders be required to show
 cause why the prayer of this petition should not be
 10 granted. And your petitioner will ever pray, &c.

THEO. RURODE,
 Receiver of the Jamesburg Light & Water Co.

STATE OF NEW JERSEY }
 COUNTY OF HUDSON } ss.:

20 THEODORE RURODE, being duly sworn on his oath,
 says, that the facts stated in the foregoing petition
 are true to the best of his knowledge and belief.

THEO. RURODE.

Sworn to and subscribed before me
 Nov. 9, 1909.

GEORGE W. FLAACKE,
 Master in Chancery of N. J.

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER COM-
PANY,

Defendant.

On Bill etc.
Order to
Show Cause.

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Theodore Rurode, Receiver, having presented his petition for leave to sell the property of the defendant, except the Power House at Freehold, free and clear of the liens because said liens are in dispute; and asking further for leave to issue \$500. of Receiver's certificates for expenses of the Receivership pending a sale, said certificates to be a first lien on defendant's property and payable first out of the proceeds of any sale;

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IT IS, on this ninth day of November, nineteen hundred and nine, on motion of Theodore Rurode, Receiver, ordered that the Fidelity Trust Company, trustee, and Frank Jennings, trustee, the bondholders of the mortgage made by the Manalapan Light Company, and the bondholders of the mortgages of the defendant company, show cause before this Court, on the twenty-second day of November 1909, at ten o'clock in the forenoon at the Chancery Chambers, at Jersey City, why the prayer of this petition should not be granted; and that copies of this order which may be certified by the solicitor for petitioner, be served on said trustees and known bondholders, either personally or by mailing to their

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Plaintiff's Exhibits.

last known post office addresses, within four days of the date hereof.

Respectfully advised,

EUGENE STEVENSON,
V. C.

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IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER Co.,
Defendant.

On Bill etc.
Order to sell
clear of en-
cumbrances
and for Re-
ceiver's cer-
tificates.

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The Receiver having filed his petition setting forth that the property of the defendant is encumbered with mortgages given to the Fidelity Trust Company, trustee, and to Frank Jennings, trustee, for bondholders, and that the legality of some of the bonds secured by both said mortgages is brought in question, and that the property is of a character materially to deteriorate in value pending litigation; and further asking for leave to borrow five hundred (\$500.00) dollars, on his Receiver's certificates in order to pay obligations incurred and to be incurred by him in and about the management and control of the properties; and an order having been heretofore made requiring the said trustees and the bondholders to show cause why the prayer of the petition should not be granted; and

Plaintiff's Exhibits.

proof of service of the order to show cause, on the said trustees and known bondholders, being filed; and by consent of Malcolm MacLear, Esq., Rulif V. Lawrence, Esq., James R. Bowen, Esq., and Andrew Foulds, Jr., Esq., Solicitors representing certain bondholders, the application being continued by order from time to time until this date; and the Court being satisfied that the legality of the said mortgages is brought in question, and that the property is of a character materially to deteriorate in value pending litigation; and that the prayer of the petition should be granted;

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IT IS, on this twentieth day of December, nineteen hundred and nine, on motion of Theodore Rurode, Receiver, and in the presence of James R. Bowen, Esq., and Rulif V. Lawrence, Esq., representing certain bondholders.

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ORDERED, that the Receiver do sell, at public or private sale, all the property, real, personal and mixed, together with the chartered rights, privileges and franchises belonging to the said insolvent corporation, Jamesburg Light & Water Company, and appertaining to its work, free and clear of the lien and incumbrance of the mortgages on said property given to Fidelity Trust Company, trustee, and Frank Jennings, trustee;

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And it is further ordered that the Receiver be allowed to borrow, on his Receiver's Certificates, five hundred (\$500.00) Dollars, said certificate to be issued by him in such denominations as he may see fit, and payable first out of the proceeds of sale of the property, prior to any of said bonds, said certificates to bear interest at the rate of six per cent per annum, the principal and interest there-

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Plaintiff's Exhibits.

of being payable at the close of the Receivership, or at any such other time antecedently thereto as the Receiver may desire or the Court direct.

MAHLON PITNEY, C.

Respectfully advised

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EUGENE STEVENSON,
V. C.

RECEIVER'S SALE.

Electric lighting properties and plants for sale. By order of the Court of Chancery of New Jersey. All the real estate, machinery, poles, wires, transformers, water right, right over poles, contracts for lighting, etc., of the Jamesburg Light & Water Company, at Jamesburg, Englishtown and Freehold, free and clear of the encumbrances of the mortgages given to Frank Jennings, trustee for bondholders, and Fidelity Trust Company, trustee for bondholders.

The property will be sold in three separate parcels:

No. 1. The property known as the Jamesburg plant, with the rights and contracts connected therewith.

No. 2. The property known as the Englishtown Plant, including the lines to and in Freehold, and the rights and contracts connected therewith.

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Plaintiff's Exhibits.

No. 3. The property known as the dismantled power house at Freehold, consisting of real estate on Banard Street.

Sealed bids received accordingly up to December 29, 1909, at 2 P. M. Full information on application to Receiver.

Each bidder must accompany his bid or bids with cash or certified check for \$100. payable to the Receiver, and to be returned to him if bid is rejected. 10

THEO. RURODE,
Receiver of the Jamesburg Light
and Water Company,
No. 1 Montgomery Street,
Jersey City, N. J.

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RECEIVER'S SALE.

Of electric lighting plants and properties of Jamesburg Light & Water Company.

The time to put in bids is extended from December 29th, 1909 to January 6th, 1910, at 2 P. M.

THEO. RURODE,
Receiver of the Jamesburg Light
and Water Company, 30
No. 1 Montgomery Street,
Jersey City, N. J.

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

| | | | |
|----|-----------------------------------------------------------------------------------------------------|---|-----------------------------------------------|
| 10 | Between WILLIAM J. LANSLEY, Complainant, and JAMESBURG LIGHT & WATER Co., Defendant. | } | On Bill etc. Order to Show Cause &c. |
|----|-----------------------------------------------------------------------------------------------------|---|-----------------------------------------------|

20 The Receiver of the above defendant, having presented his petition asking for leave to accept a bid of Two thousand (\$2,000.00) Dollars, made to him by William J. Lansley, for all the property of the defendant except the real estate at Freehold, known as the dismantled power house of the defendant, free and clear of the lien and encumbrance of the mortgages made by the Manalapan Light Company to the Fidelity Trust Company, trustee, and by Jamesburg Light & Water Company to Frank Jennings, trustee, to secure bonds;

It Is, on this Tenth day of May, nineteen hundred and ten, on motion of Theodore Rurode, Receiver,

30 ORDERED, that the said Receiver have leave to accept said bid, and make proper conveyance to said William J. Lansley, or his assigns, unless the said trustees and bondholders in said two mortgages, and the stockholders and creditors of defendant corporation show cause before this Court on Monday the Sixteenth day of May, Nineteen hundred and Ten, at the Chancery Chambers, Jersey City, why said bid should not be accepted and

Plaintiff's Exhibits.

said conveyance made by the Receiver in accordance with the prayer of his petition.

AND IT IS FURTHER ORDERED that a copy of said petition be deposited with the Sergeant-at-Arms, at Jersey City, for inspection, and that a copy of this order which may be certified by the Receiver as solicitor *pro se* be mailed to the Trustees, known bondholders, stockholders, and creditors who have proved their claims within two days of the date hereof. 10

MAHLON PITNEY, C.

Respectfully advised,

EUGENE STEVENSON,

V. C. 20

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

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|----|------------------------------------------------------------------------------------------------------|---|--------------|
| 10 | Between WILLIAM J. LANSLEY, Compl't., and JAMESBURG LIGHT & WATER CO., Def't. | } | On Bill etc. |
|----|------------------------------------------------------------------------------------------------------|---|--------------|

20 An order to show cause, returnable this day, having been made requiring the stockholders, creditors, bondholders, etc., of defendant to show cause why the bid of William J. Lansley of Two Thousand Dollars, made to the Receiver, should not be accepted and said sale made, and Edward Hill, holder of bonds, appearing by J. Frank Finn, Jr., his solicitor and asking for postponement until Thursday of this week;

It is ordered that the said order to show cause be continued to Thursday, May 19th, 1910 at 10 A. M. at the Chancery Chambers, Jersey City.

30 Respectfully advised,

EUGENE STEVENSON,
V. C.

I consent to above order.

J. FRANK FINN, JR.,
Solicitor of Edward D. Hill.

Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER CO.,
Defendant.

On Bill etc. 10

An order to show cause returnable May Sixteenth, Nineteen Hundred and Ten, at the Chancery Chambers, Jersey City, having been made requiring the stockholders, creditors, bondholders, etc., of the defendant to show cause why the bid of William J. Lansley of Two thousand (\$2,000.00) Dollars made to the Receiver, should not be accepted and said sale made and the said order to show cause having, by order made on the said Sixteenth day of May, nineteen hundred and Ten, been continued until Thursday, May Nineteen, Nineteen Hundred and Ten, at 10 A. M., at the Chancery Chambers, Jersey City, and the Receiver now appearing and asking that the matter be further continued;

IT IS on this Nineteenth day of May, Nineteen hundred and Ten, on motion of Theodore Rurode, Receiver;

ORDERED that the said order to show cause why the bid of said Lansley should not be accepted, be further continued until Monday, May twenty-third,

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Plaintiff's Exhibits.

at 10 A. M. at the Chancery Chambers, Jersey City.

Respectfully advised,

LINDLEY M. GARRISON,
V. C.

10 I consent to the above order.

J. FRANK FINN, JR.,
Solicitor of Edward D. Hill,
a bondholder.

IN CHANCERY OF NEW JERSEY.

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|------------------------------------------------------------------------------------------------------------------------|---|--------------|
| <p>Between WILLIAM J. LANSLEY, Compl't., and JAMESBURG LIGHT & WATER Co., Def't.</p> | } | On Bill etc. |
|------------------------------------------------------------------------------------------------------------------------|---|--------------|

30 The Receiver of the defendant corporation having filed a petition asking for leave to accept a bid made by William J. Lansley, of Two Thousand (\$2,000.00) Dollars, for the property and franchises of the defendant, except the dismantled power house at Freehold and having obtained an order to show cause thereon, which order to show cause was continued until this day, and the Receiver now appearing and stating that he is satis-

Plaintiff's Exhibits.

fied that he can now obtain a more advantageous price for the said property and that his said proposed sale to William J. Lansley should not be confirmed and the order to show cause thereon, discharged;

IT IS on this twenty-third day of May, nineteen hundred and ten, on motion of Theodore Rurode, as Solicitor *pro se*; 10

ORDERED that the said proposed sale by Receiver to said William J. Lansley pursuant to his petition heretofore filed, stands unconfirmed and the said order to show cause obtained thereon and in respect thereto is discharged.

Respectfully advised,

EUGENE STEVENSON,
V. C. 20

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER CO.,
Defendant.

On Bill etc.
Notice of
Receiver's
Sale. 30

The undersigned, as Receiver of the Jamesburg Light & Water Company, in view of objections made to the acceptance of the bid given to the Re-

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Plaintiff's Exhibits.

ceiver for the property of the Jamesburg Light & Water Company, will in lieu of asking for confirmation of said proposed sale, sell the said property and franchises of the defendant (except the real estate known as the dismantled power house near Freehold), free and clear of the lien and incumbrance of the mortgage given by the Manalapan Light Company to the Fidelity Trust Company, trustee, and the mortgage given by the Jamesburg Light & Water Company to Frank Jennings, trustee, said sale being made free and clear of the lien and incumbrance of said mortgages, pursuant to an order of the Court of Chancery made in this cause, by competitive bidding, on Friday the twenty-seventh day of May, Nineteen Hundred and Ten, at ten o'clock in the forenoon at the office of the Receiver, No. 1 Montgomery Street, Jersey City, New Jersey.

Manner of sale will be announced by the Receiver at the time of sale.

Ten per cent. of amount bid must be deposited with Receiver on the day of sale balance to be paid within five days after confirmation of the sale by the Court.

THEODORE RURODE,
Receiver of Jamesburg Light &
Water Company.

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,

Compl't.,

and

JAMESBURG LIGHT & WATER CO.,

Def't.

On Bill etc.
Conditions
of Sale.

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Conditions of the sale of all the property, real, personal and mixed, together with the chartered rights, privileges and franchises of the above Jamesburg Light & Water Company an insolvent corporation, made on the twenty-seventh day of May, Nineteen hundred and Ten, at ten o'clock in the forenoon by Theodore Rurode, Receiver of the Jamesburg Light & Water Company, by virtue of the power and authority vested in him as such Receiver and pursuant to an order of the Court of Chancery made on December twentieth, Nineteen hundred and Nine in the above cause. 20

1. The highest bidder for each lot sold shall be the purchaser and shall, immediately after the sale, sign his name to an acknowledgment of his purchase and pay 10% of the purchase money. The property to be sold first in parcels and then as a whole; the manner of sale which brings the greatest sum shall prevail, and such bidder or bidders the purchaser. 30

2. A deed will be delivered to the purchaser at the office of the Receiver, No. 1 Montgomery Street, Jersey City, New Jersey, within five days after the

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Plaintiff's Exhibits.

in the County of Middlesex, including the rights, privileges and franchises of the said company pertaining to said property sold this day under the above mentioned authority and order at the price of _____ Dollars, subject to the foregoing conditions.

Dated May 27th, 1910.

10

I hereby acknowledge myself to be the purchaser of all the property above described, including all the rights, privileges and franchises of said company pertaining to said property sold this day under the above mentioned authority and order, at the price of Twelve Thousand Dollars (\$12,000) subject to the foregoing conditions.

WM. A. WILLIAMSON,
55 William St.,
New York City.

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Dated May 27th, 1910.
Filed June 1, 1910.

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

| | | |
|----|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| 10 | Between WILLIAM J. LANSLEY, Complainant, and JAMESBURG LIGHT & WATER COM- PANY, Defendant. | } 31—343. } On Bill &c. } Receiver's } Petition for } Leave to } Resell. } (Filed June } 26, 1911.) |
|----|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|

The petition of Theodore Rurode, Receiver of the Jamesburg Light & Water Company, the above named defendant, respectfully shows:

20 That William A. Williamson, who bid in certain of the property of the defendant, at the Receiver's sale, as appears by report of Receiver, and order confirming said sale on file in this court, has failed to complete his purchase by payment of the balance of the purchase money, and that the time for him to complete said purchase has long since passed. That your petitioner did, on the nineteenth day of May, nineteen hundred and eleven, cause a notice to be served upon the said William A. Williamson, which notice, with affidavit of service thereof, is

30 hereto annexed. That in conformity to the said notice your petitioner attended at his office on May twenty-second, nineteen hundred and eleven, at ten o'clock in the forenoon, but that said William A. Williamson did not appear, nor has he since made tender to your petitioner of the balance due on the purchase of the said property and that your petitioner on said day declared his bid forfeited, and that there is a balance due from him of Ten

40 thousand and Three hundred Dollars (\$10,300.00).

Plaintiff's Exhibits.

Your petitioner therefore prays that he may by reason of said failure of said William A. Williamson to complete his purchase be permitted to re-sell said property of said defendant corporation, pursuant to the order for the sale of said property heretofore made.

Dated May 23rd, 1911.

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THEO. RURODE,
Receiver of the Jamesburg
Light & Water Co.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER COM-
PANY,
Defendant.

20

On Bill &c.
Notice.

To:

WILLIAM A. WILLIAMSON, Esq.,
55 William Street,
New York City.

30

Sir:

PLEASE TAKE NOTICE that unless you complete the purchase of the property of the Jamesburg Light & Water Company, which was bid in by you at Receiver's Sale, on or before Monday, May

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Plaintiff's Exhibits.

twenty-second, nineteen hundred and eleven, at ten o'clock in the forenoon, by attending at my office, No. 1 Montgomery Street, Jersey City, New Jersey, and paying the balance of the purchase money, that I will readvertise and resell the property and hold you liable for any deficiency that may arise by reason of said resale.

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Dated, May 19th, 1911.

THEO. RURODE,
Receiver of the Jamesburg
Light & Water Co.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss. :

20

HUGH A. KELLY, being duly sworn, on his oath says: That on the nineteenth day of May, nineteen hundred and eleven, he served the within notice on William A. Williamson by exhibiting the original notice to the person in charge of the office of said William A. Williamson at 55 William Street, New York City, and leaving with her a copy of said notice, the said William A. Williamson not being present.

30

HUGH A. KELLY.

Sworn and subscribed to before me
this 23rd day of May, 1911.

GEORGE W. FLAACKE,
Master in Chancery of New Jersey.

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER COM-
PANY,
Defendant.On Bill &c.
Consent.

10

The Receiver having given notice of an application to the Chancellor at the Chancery Chambers, Jersey City, New Jersey, for Monday, the twenty-ninth day of May, Nineteen Hundred and Eleven, for an order ratifying and confirming the action of the Receiver in forfeiting the bid of William A. Williamson for the property of the defendant company and reselling the same, and said William A. Williamson having applied to the Receiver for a postponement of said application and the Receiver consenting thereto, it is hereby consented that such application may be made to the Chancellor at the same place at ten o'clock in the forenoon, on Monday, the fifth day of June, Nineteen Hundred and Eleven.

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Dated, May 29th, 1911.

30

THEO. RURODE, Receiver.
WM. A. WILLIAMSON.

The above application is hereby further adjourned to the 26th day of June, 1911, at the same hour and place.

Dated May 29, 1911.

WM. A. WILLIAMSON,
THEO. RURODE.

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

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|----|------------------------------------------------------------------------------------------------------------------|---|---------------------|
| 10 | Between WILLIAM J. LANSLEY, Complainant, and JAMESBURG LIGHT & WATER COM- PANY, Defendant. | } | Order to Resell. |
|----|------------------------------------------------------------------------------------------------------------------|---|---------------------|

20 The Receiver of the above named defendant corporation having this day filed his petition setting forth that William A. Williamson has failed to complete his purchase of the property of the defendant corporation, and that the time to so complete said purchase has long since passed, and that written notice has been served upon him to attend at the office of the Receiver, on Monday, the nineteenth day of May, Nineteen hundred and eleven, at ten o'clock in the forenoon, to complete said purchase by the payment of the balance of the purchase money, and that there is due on said balance of purchase price Ten thousand three hundred (\$10,300.) Dollars, and that he failed to appear or complete said purchase; and notice of this application having been given as appears by the notice 30 this day filed;

IT IS, on this twenty-sixth day of June, in the year nineteen hundred and eleven, on motion of Theodore Rurode, Receiver, ORDERED that the action of the Receiver in declaring said bid forfeited be confirmed, and that the said Receiver by reason of the failure of said William A. Williamson to

Plaintiff's Exhibits.

complete the purchase of the said property, resell the same.

MAHLON PITNEY, C.

Respectfully advised:

LINDLEY M. GARRISON,
V. C.

10

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER COM-
PANY,

Defendant.

On Bill &c.
Notice of
Resale of
Property by
Receiver.

20

William A. Williamson, the purchaser at the sale of the property of the defendant company having failed to complete his purchase by payment of the balance of the purchase price, the undersigned, as Receiver of the Jamesburg Light & Water Com-
pany, will resell the said property and franchises of the defendant corporation (except the real estate known as the dismantled power house near Freehold) free and clear of the lien and incumbrance of the mortgage given by the Manalapan Light Company to the Fidelity Trust Company, trustee, and the mortgage given by the Jamesburg Light & Water Company to Frank Jennings, trustee, said sale being made free and clear of the lien and in-

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Plaintiff's Exhibits.

cumbrance of such mortgages, pursuant to an order of the Court of Chancery made in this cause, by competitive bidding, on Wednesday, the thirty-first day of May, Nineteen hundred and eleven, at eleven o'clock in the forenoon, at the office of the Receiver, No. 1 Montgomery Street, Jersey City, New Jersey.

10 Manner of sale will be announced by the Receiver at the time of sale.

Ten (10%) per cent of amount bid must be deposited with the Receiver on the day of sale, balance to be paid within five (5) days after confirmation of the sale by the Court.

THEODORE RURODE,
Receiver of the Jamesburg
Light & Water Co.

20

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.:

30 THEODORE RURODE, being duly sworn on his oath says: that on the twenty-third day of May, Nineteen hundred and eleven he caused copies of the within notice for a re-sale of the property of the Jamesburg Light & Water Company for May thirty-first, Nineteen hundred and eleven, and on June twenty-first, Nineteen hundred and eleven caused additional notices of said re-sale for June twenty-eighth, Nineteen hundred and eleven to be mailed, in envelopes, addressed to all the known creditors, stockholders and bondholders of the Jamesburg Light & Water Company, and the bondholders of the Manalapan Light Company, a previous owner of the property, which envelopes were addressed as

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Plaintiff's Exhibits.

above to the last known addresses of said persons,
in envelopes with postage prepaid.

THEO. RURODE.

Sworn to and subscribed this
17th day of July, 1911.

GEORGE W. FLAACKE,
Master in Chancery of New Jersey.

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IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Compl't.,

and

JAMESBURG LIGHT & WATER CO.,
Def't.

On Bill &c.
Conditions
of sale.
On Resale.

20

Conditions of the sale on a resale of all the prop-
erty, real, personal and mixed, together with the
chartered rights, privileges and franchises of the
above Jamesburg Light & Water Company, an in-
solvent corporation, made on the eleventh day of
July, Nineteen Hundred and Eleven, at eleven
o'clock in the forenoon, by Theodore Rurode, Re-
ceiver of the Jamesburg Light & Water Company,
by virtue of the power and authority vested in him
as such Receiver and pursuant to an order of the
Court of Chancery made on December twentieth,
Nineteen Hundred and Nine, in above cause.

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Plaintiff's Exhibits.

1. The highest bidder for each lot sold shall be the purchaser and shall, immediately after the sale, sign his name to an acknowledgment of his purchase and pay 10% of the purchase money. The property to be sold first as a whole and then in parcels; the manner of sale which brings the greatest sum shall prevail, and such bidder or bidders the purchaser.

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2. A deed will be delivered to the purchaser at the office of the Receiver, No. 1 Montgomery Street, Jersey City, New Jersey, within five days after the confirmation of said sale by the Court of Chancery, provided such sale shall have been confirmed, when and where the purchaser shall pay the balance of the purchase money in cash.

3. The purchaser shall be liable for the payment of the purchase money whether he attends and receives his deed at the time and place aforesaid or not, and in case he neglects to receive the deed and to pay the purchase money as aforesaid, the property will be advertised and sold again and if it produces a less sum than the former bid and interest and expenses, the purchaser will be held liable for the difference and if it produces a larger sum he shall not be benefited thereby.

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THEO. RURODE,
Receiver of the Jamesburg
Light & Water Co.

I acknowledge myself to be the purchaser of that part and parcel of the property above described, being the real estate and personal property situate at Englishtown and between Englishtown and Freehold, and at Freehold, including all the rights, privileges and franchises of the said company pertaining to said property sold this day under the

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Plaintiff's Exhibits.

above mentioned authority and order at the price of Thirty Two Hundred Dollars, subject to the foregoing conditions.

Dated July 11th, 1911.

WM. J. LANSLEY.

I acknowledge myself to be the purchaser of that part and parcel of the property above described, being the real estate and personal property of the said defendant corporation situate at Jamesburg, in the County of Middlesex, including the rights, privileges and franchises of the said company pertaining to said property sold this day under the above mentioned authority and order at the price of Twenty-five Hundred Dollars, subject to the foregoing conditions.

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Dated July 11th, 1911.

V. H. CHRISTOFFERSON.

I hereby acknowledge myself to be the purchaser of all the property above described, including all the rights, privileges and franchises of said company pertaining to said property sold this day under the above mentioned authority and order, at the price of _____ Dollars, subject to the foregoing conditions.

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Dated July 11th, 1911.

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER Co.,
Defendant.On Bill etc.
Report of sale
by Receiver. 10

The undersigned Receiver of the Jamesburg Light & Water Company, makes report of the sale of the property, real and personal, rights, privileges and franchises, of the said defendant corporation as follows:

That the property of the defendant corporation consists, generally, of two electric lighting plants, one at Jamesburg and the other at Englishtown, in this State, and the necessary poles and wires and the machinery connected with its business of supplying electric light, and as more fully appears by the inventory on file. 20

Your Receiver has, since his appointment, continued the operation of the business, pursuant to the order of this Court made in this cause. 30

That on the ninth day of November, Nineteen hundred and Nine, your petitioner presented a petition for leave to sell the property of the defendant, free and clear of the liens of two mortgages, one given to the Fidelity Trust Company, and the other given to Frank Jennings, as trustees, to secure bonds; and for leave to issue Receiver's certificates; and an order was thereupon made requiring the said trustees and bondholders to show cause why the prayer of said petition should not be granted; 40

Plaintiff's Exhibits.

and such proceedings were thereupon had that on the twentieth day of December, Nineteen Hundred and Nine, an order was made, directing the Receiver, to sell the property free and clear of the lien and encumbrance of said two mortgages and giving him leave to borrow Five Hundred Dollars (\$500.00) on Receiver's certificates for the purpose of continuing the business pending a sale; a copy of which petition, order to show cause, and order for sale, are hereto annexed as a part hereof.

The Receiver thereupon advertised for bids, by inserting advertisements in the Monmouth Democrat, Newark News, Trenton Times, New Brunswick News, newspapers published in this State, a copy of which advertisement is hereto annexed as a part hereof.

And this Receiver reports that as a result of said advertisement and his efforts to sell, only one bid was received, namely, a bid of about Three Hundred (\$300.00) Dollars for what is known as the Jamesburg Plant, which bid the Receiver rejected, first, because he considered the bid inadequate, and second, he considered that the said Jamesburg Plant would be a factor in the sale of the Englishtown and Freehold property, and in the absence of a bid for that portion, he considered it was not advisable to accept the small bid received for the Jamesburg Plant.

That since that time, your Receiver has made efforts to find a purchaser for these properties, personally interviewing likely purchasers, and writing to others.

That on the third day of May, Nineteen Hundred and Ten, one William J. Lansley offered to this Receiver, the sum of Two Thousand Dollars (\$2,000.00) for all the property, real, personal and mixed of the defendant corporation, except a part

Plaintiff's Exhibits.

thereof known as the dismantled power house at or near Freehold, and your Receiver thereupon reported said offer to this Court, and an order to show cause was made thereon on the Tenth day of May, Nineteen Hundred and Ten, which order to show cause is hereto annexed as a part hereof.

That on the return of the said order to show cause, objection being made by Edward Hill, one of the bondholders, who appeared by J. Frank Finn, Jr., as his solicitor, and by arrangement with the said Hill, William J. Lansley and the Receiver, the matter of confirmation of said sale was continued until May Nineteenth, Nineteen Hundred and Ten, at ten A. M., at the Chancery Chambers, Jersey City, as appears by copy of the order hereto annexed; at which time, by consent, the matter was further continued until May twenty-third, at ten A. M., at the Chancery Chambers, as appears by copy of the order hereto annexed.

And this Receiver further reports that before the adjourned day for hearing upon the said order to show cause why sale should not be made to said Lansley pursuant to said report and offer, one Edward Hill, a bondholder, submitted an offer to this Receiver of Two Thousand Five Hundred (\$2,500,00.) Dollars for the property and franchises of the defendant corporation and your Receiver thereupon concluded that in view of the apparent interest taken that it was advisable to ask this Court to refuse to confirm said proposed sale to William J. Lansley and that on May twenty-third, Nineteen Hundred and Ten, your Receiver applied for an order to that effect, a copy of which order is hereto annexed as a part hereof.

Your Receiver further reports that on the twentieth day of May, Nineteen Hundred and Ten, he caused notices to be mailed to all the known bond-

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Plaintiff's Exhibits.

holders, stockholders and creditors of the defendant corporation, as appears by affidavit of mailing hereto annexed as a part hereof, and pursuant to said notice your receiver attended at his office, No. 1 Montgomery Street, Jersey City, New Jersey, at ten o'clock in the forenoon, on Friday the twenty-seventh day of May, Nineteen hundred and Ten, for the purpose of receiving competitive bids for the property of the said defendant corporation, at which time and place he was attended by Edward Hill, William J. Lansley, H. C. Pitcher and the Englishtown Bank, owners of bonds, and by Harry Rush, a creditor, and by Rulif V. Lawrence, Solicitor of the Englishtown Bank, and J. Frank Finn, Solicitor for Edward Hill, and thereupon the Receiver read the conditions of sale, a copy of which conditions of sale is hereto annexed as a part hereof, and thereupon received from Rulif V. Lawrence, an offer of Two Thousand (\$2,000.) Dollars for lot number one (1) mentioned in said conditions of sale, and an offer of One Thousand and Fifty Dollars (\$1,050.00) from Rulif V. Lawrence, for lot number two (2) mentioned in said conditions of sale and thereupon your Receiver, pursuant to said conditions of sale, offered the said property as a whole and received an offer of Twelve Thousand (\$12,000.) Dollars for the same, from William A. Williamson of 55 William Street, New York City, and thereupon accepted said offer of said William A. Williamson, subject to confirmation of said sale by the Court.

Your Receiver is of the opinion that this is a very advantageous price for this property, and is the highest bid, in the opinion of your Receiver, that he will ever be able to obtain.

This Receiver further shows that at about the time of the making of the order for sale as afore-

Plaintiff's Exhibits.

said, free and clear of the incumbrances of the two mortgages given to the Fidelity Trust Company and to Frank Jennings, as trustees, this Court, upon application of the Otto Gas Engine Works, owner of all the machinery in the defendant's Jamesburg Plant, and upon application of Harry Rush, owner of all the machinery in the English-town Plant, except a dynamo and switchboard, ordered your Receiver to turn over to them all their machinery, boilers, etc., and that he has only been able to continue the said business by arranging with said parties for the use of their machinery, pending a sale, and that as a matter of fact, the defendant has no machinery with which it can continue its business. 10

Your Receiver therefore prays that he may be permitted to accept said bid, and that the said sale to William A. Williamson as aforesaid, be confirmed, and that the Receiver may make conveyance accordingly. 20

THEO. RURODE,
Receiver of the Jamesburg
Light & Water Co.

Dated May 31st, 1910.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.: 30

THEODORE RURODE, being duly sworn on his oath says: That the facts stated in the foregoing petition are true.

THEO. RURODE.

Sworn and subscribed to before me
this 31st day of May, 1910.

GEORGE W. FLAACKE,
Master in Chancery of New Jersey. 40
Filed June 1, 1910.

Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

| | | | |
|----|-----------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------------------------------------------------------|
| 10 | Between WILLIAM J. LANSLEY, Complainant, and JAMESBURG LIGHT & WATER Co., Defendant. | } | On Bill &c. Order confirming Receiver's sale of prop- erty of insol- vent corpora- tion. |
|----|-----------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------------------------------------------------------|

This matter being opened to the court by Theodore Rurode, the Receiver, and it appearing by his report this day filed, that as such Receiver he has made sale of the real and personal property of the said defendant;

20 IT IS, on this first day of June, Nineteen Hundred and Ten, ORDERED, that the said sale be in all things confirmed; and that the said Receiver shall proceed to make conveyance of the said real estate, and to give possession of the said personal property according to the conditions of the said sale; and that he hold the moneys derived therefrom to abide the further order of this court.

30 MAHLON PITNEY, C.

Respectfully advised

EUGENE STEVENSON,
 V. C.

Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER COM-
PANY,
Defendant.On Bill &c.
Supplemental
report of sale
by Receiver. 10

The undersigned Receiver of the Jamesburg Light & Water Company makes this report of sale supplemental to the report of sale of the property real and personal, rights, privileges and franchises of the defendant corporation filed on June first, Nineteen Hundred and Ten. 20

That the said bid of William A. Williamson for the said property reported in the report of sale made by this Receiver and filed June First, Nineteen Hundred and Ten, is the best price that can be obtained for the said property.

Your Receiver therefore prays that a further order permitting him to accept said bid be made and that the said sale to William A. Williamson as aforesaid, be further confirmed and that the Receiver may make conveyance accordingly. 30

THEO. RURODE,
Receiver of the Jamesburg
Light & Water Co.

Dated June 27th, 1910.

Plaintiff's Exhibits.

STATE OF NEW JERSEY }
 COUNTY OF HUDSON }^{ss. :}

THEODORE RURODE, being duly sworn on his oath says, that the facts stated in the foregoing petition are true.

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THEO. RURODE.

Sworn to and subscribed before me
 this 27th day of June, 1910.

CHARLES C. KELLY,
 Master in Chancery of New Jersey.

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IN CHANCERY OF NEW JERSEY.

Between
 WILLIAM J. LANSLEY,
 Complainant,

and

JAMESBURG LIGHT & WATER Co.,
 Defendant.

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On Bill &c.
 Supplemental
 Order
 confirming
 Receiver's
 sale of prop-
 erty of insol-
 vent corpora-
 tion.

This matter being opened to the Court by Theo-
 dore Rurode, the Receiver, and it appearing by his
 report filed June first, Nineteen hundred and Ten,
 and by his supplemental report this day filed, that
 as such Receiver he has made sale of the real and
 personal property of the said defendant for the
 best price that can be obtained,

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Plaintiff's Exhibits.

IT IS on this twenty-seventh day of June, Nineteen hundred and Ten, confirmatory of the order confirming sale made and filed on June 1, 1910, ORDERED, that the said sale be in all things confirmed and that the said Receiver shall proceed to make conveyance of the said real estate and to give possession of the said personal property according to the conditions of the said sale and that he hold the moneys derived therefrom to abide the further order of this Court. 10

MAHLON PITNEY, C.

Respectfully advised:

EUGENE STEVENSON,
V. C.

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IN CHANCERY OF NEW JERSEY.

Between
WILLIAM J. LANSLEY,
Complainant,
and
JAMESBURG LIGHT & WATER CO.,
Defendant.

On Bill &c.
Order of
Continuance,
&c.

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The receiver having filed his final account and report and an order to show cause why the same should not be confirmed, and asking for certain instructions, having been made and being returnable on the 14th day of October, 1912, and on the return of said order to show cause the appearance

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Plaintiff's Exhibits.

of Rulif V. Lawrence, Esq., solicitor for the Englishtown Bank, a bondholder, and of Frank P. McDermott, Esq., solicitor for Charles H. Leonard, a creditor and owner of the machinery mentioned in the order to show cause, and of Edward O. Stanley, Jr., Esq., solicitor for William J. Lansley, a bondholder and stockholder, and of Andrew Foulds, Jr., Esq., solicitor for the temporary receiver, and of Theodore Rurode, the receiver, being noted, and the court being of opinion that the claim of the receiver against William A. Williamson should be sold at public auction to the highest bidder, and that the other matters referred to in the order to show cause should stand over for one week:

IT IS, on this fourteenth day of October, nineteen hundred and twelve, ORDERED that the said receiver do sell at public auction to the highest bidder, for cash, the receiver's claim against William A. Williamson on his forfeited bid, and that the order to show cause returnable this day be continued over until Monday, the twenty-first day of October, nineteen hundred and twelve, at ten o'clock in the forenoon, at the Chancery Chambers, Jersey City; and that the receiver mail notices of said sale to stockholders, creditors and bondholders of said defendant, and to William A. Williamson, at their last known post office address, and hold said sale on October 19th, 1912.

E. R. WALKER, C.

Respectfully advised:

EUGENE STEVENSON,
V. C.

Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER COM-
PANY,
Defendant.On Bill, &c.
Supplemental
Final Report
and Report of
Sale.

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The receiver reports that pursuant to the order of the court he caused notices to be mailed to all the creditors, stockholders, bondholders, William A. Williamson, and to the trustees of the mortgages mentioned in his report, of a sale of the receiver's claim against William A. Williamson for the difference between the balance due from said Williamson on forfeiture of his bid for the defendant's property, namely, \$10,300., and the amount which the property brought on resale, \$5700.00, namely, \$4600.00, or such sum as the receiver might claim as damages against said Williamson upon his said forfeited bid, for Saturday, the nineteenth day of October, nineteen hundred and twelve, at ten o'clock in the forenoon, at Room 310, No. 1 Montgomery Street, Jersey City, proof of mailing of which notice is hereto annexed, and that at the time and place of said sale he was attended by William J. Lansley and D. A. Reynolds, who are bondholders, and Charles H. Leonard, and that the receiver offered said claim against said Williamson for sale and that the said Charles H. Leonard bid Thirty (\$30.) Dollars for said claim, which was

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Plaintiff's Exhibits.

the highest bid received, and that said Charles H. Leonard paid to your receiver the said sum of Thirty (\$30.) Dollars in cash. Your receiver reports that he has in his hands the said sum of Thirty (\$30.) Dollars for distribution and he prays that the said sale be approved.

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THEO. RURODE,
Recr.

IN CHANCERY OF NEW JERSEY.

| | | |
|----|----------------------------------------------------------------------------------------------------------------------|--------------|
| 20 | Between WILLIAM J. LANSLEY, Complainant, and JAMESBURG LIGHT & WATER COM- PANY, Defendant. | } Affidavit. |
|----|----------------------------------------------------------------------------------------------------------------------|--------------|

30 STATE OF NEW JERSEY }
 COUNTY OF HUDSON } ss. :

LILLIAN J. GRAF, being duly sworn, says: that she is employed in the office of Theodore Rurode, and that on the fourteenth day of September, Nineteen hundred and twelve, she mailed copies of the within notice to the following named persons, at the following addresses, in envelopes with postage prepaid:

40 C. M. Davison, Jamesburg, New Jersey.

Plaintiff's Exhibits.

-
- Standard Oil Company, 45 Academy St., Newark, N. J.
- Borne-Scrymser Co., 80 South St., New York.
- Maclear & Fort, 736 Broad St., Newark, N. J.
- Wm. Van Outersterp, Jamesburg, New Jersey.
- Garrett B. Conover, Englishtown, New Jersey.
- National Oil Supply Co., P. O. Box 404, Newark, N. J. 10
- Frank Jennings, Jamesburg, N. J.
- W. T. Emmons, Jamesburg, N. J.
- B. D. Davison, Jamesburg, N. J.
- F. Marriott, Jamesburg, N. J.
- A. Chilton, Jamesburg, N. J.
- James A. Christie, Englishtown, N. J.
- E. H. Harlos, Jamesburg, N. J.
- Harry P. Rush, 120-122 Liberty St., N. Y. C.
- H. J. (or N. H.) Moore, Perth Amboy, N. J.
- V. Christofferson, Perth Amboy, N. J. 20
- C. T. Hadley, Mt. Union, Pennsylvania.
- Jamesburg Ice Co., Long Branch, N. J.
- T. Elliott, Jamesburg, N. J.
- George Schultz, Jamesburg, N. J.
- Rev. Father Callahan, Jamesburg, N. J.
- C. Mount, Jamesburg, N. J.
- Thos. Perrine, Jamesburg, N. J.
- Frederick L. Buckalew, Jamesburg, N. J.
- Jos. Perrine, Jamesburg, N. J.
- Manalapin Holding Co., 30 Church St., New York City. 30
- Frank P. McDermott, 76 Montgomery Street, Jersey City.
- W. C. Buckalew, Red Bank, N. J.
- Exrs. Joseph Magee, Jamesburg, N. J.
- 1st National Bank, Englishtown, N. J.
- William A. Williamson, 55 William St., New York City.

Plaintiff's Exhibits.

-
- William A. Williamson, 34 Pine St., New York City.
- 1st National Bank, Woodbridge, N. J.
- Wm. M. Brown, Woodbridge, N. J.
- D. A. Reynolds, 30 Church St., New York.
- W. J. Lansley, Perth Amboy, N. J.
- Edward Hill, c/o Frank Finn, 15 Exchange Pl.,
- 10 Jersey City.
- Hon. Malcolm MacLear, Newark, N. J.
- William J. Emmons, Jamesburg, N. J.
- Fidelity Trust Co., Newark, N. J.
- D. H. Smith, Jamesburg, N. J.
- Sunbeam Incandescent Lamp Company, c/o Howard A. Reynolds, 384 George Street, New Brunswick.
- Charles H. Burke, Englishtown, N. J.
- Charles H. Leonard, 161 Washington St., N.
- 20 Y. C.
- Andrew Foulds, Atty. General, 25 Broad Street, N. Y. C.
- Messrs. Summer, Colby & Whiting, Newark, N. J.

LILLIAN J. GRAF.

Sworn and subscribed to before me
this 16th day of October, 1912.

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GEORGE W. FLAACKE,
Master in Chancery of New Jersey.

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Plaintiff's Exhibits.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM J. LANSLEY,
Complainant,

and

JAMESBURG LIGHT & WATER Co.,
Defendant.On Bill, &c.
Notice of
Receiver's
Sale.

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TAKE NOTICE, that the undersigned receiver of the Jamesburg Light & Water Company will sell at public auction to the highest bidder, for cash, on Saturday, the nineteenth day of October, nineteen hundred and twelve, at ten o'clock in the forenoon, at Room 310, No. 1 Montgomery Street, Jersey City, N. J., the following chose in action, namely, claim against William A. Williamson for the difference between the balance due from said Williamson on forfeiture of his bid for the defendant's property, namely, \$10,300., and the amount which the property brought on resale, \$5700.00, namely, \$4600.00, or such sum as the receiver might claim as damages against said Williamson upon his said forfeited bid.

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Dated October 14th, 1912.

THEODORE RURODE,
Receiver.

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Exhibit P-1.

Whereas, by an order of the Court of Chancery the undersigned receiver of the Jamesburg Light & Water Company a corporation of the State of New Jersey, did on the nineteenth day of October, nineteen hundred and twelve, offer for sale, at public auction, the said receiver's claim against William A. Williamson for the difference between balance due from said Williamson on forfeiture of his bid for the property of the Jamesburg Light & Water Company, namely, Ten Thousand Three Hundred (\$10,300.) Dollars, and the amount which the property brought on receiver's sale Fifty-Seven Hundred (\$5700.) Dollars, namely, Forty-Six Hundred (\$4600) Dollars, or such sum as the receiver might claim as damages against said Williamson upon his said forfeited bid, at which sale Charles H. Leonard, of Elizabeth, New Jersey, was the highest bidder for the sum of Thirty (\$30.) Dollars, which sale was on Monday, the twenty-first day of October, 1912, confirmed by the Court of Chancery, and the receiver ordered to execute and deliver to the purchaser good and sufficient bill of sale and transfer of said claim to pass the right, title and interest of said receiver and said corporation therein.

Now, therefore, in consideration of the sum of Thirty (\$30) Dollars to me in hand paid I do sell, assign, transfer and set over unto Charles H. Leonard all my right, title and interest as receiver of the Jamesburg Light & Water Company in and to the following chose in action, namely claim against William A. Williamson for the difference between the balance due from said Williamson on forfeiture of his bid for the defendant's property, namely, Ten Thousand Three Hundred (\$10,300) Dollars, and the amount which the property brought on resale,

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Exhibit P-1.

Fifty-Seven Hundred (\$5700) Dollars, namely, Forty-Six Hundred (\$4600) Dollars, or such sum as the receiver might claim as damages against said Williamson upon his said forfeited bid.

Witness my hand and seal this twenty-first day of October, nineteen hundred and twelve.

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THEO. RURODE,
Receiver of Jamesburg Light
& Water Company.

(Seal)

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[14910]

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100 NOV. 1. 1910

New Jersey Court of Errors and Appeals.

| | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------------------------------------|---------------------|
| <p style="text-align: center;">CHARLES H. LEONARD, <i>Plaintiff-Appellant,</i> <i>vs.</i> WILLIAM A. WILLIAMSON, <i>Defendant-Respondent.</i></p> | } | <p>On Appeal from Supreme Court:</p> <p>Sat below, Silzer, C. C. J.</p> | <p>20</p> <p>30</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------------------------------------|---------------------|

BRIEF ON PART OF APPELLANT.

Statement of Facts.

Theodore Rurode, the duly appointed receiver of Jamesburg Light and Water Company, sold the property of that company at public sale on May 27, 1910. The defendant, William A. Williamson, became the purchaser for the sum of \$12,000, subject to the conditions of sale, which are printed on pages 73, 74, 75. These conditions provide: (1) That ten per cent shall be paid immediately after the sale, (2) the deed to be delivered and the balance of purchase money paid within five days after confirmation of sale and (3) "The purchaser shall be liable for the payment of the purchase money whether he attends and receives the deed at the time and place aforesaid or not, and in case he neglects to receive the deed and pay the purchase money as aforesaid, the property will be advertised and sold again and if it produces a less sum than the former bid and interest and expenses, the purchaser will be held liable for the difference, and if it produces a larger sum he shall not be benefited thereby."

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This sale was reported to the Chancellor on June 1, 1910, and an order confirming made on that day, in which the receiver was directed to make conveyance and give possession according to the conditions of sale (pp. 87, 88, 89, 90, 91, 92).

10 On June 27, 1910, the receiver presented a supplemental report of sale and on that day a supplemental order was made confirmatory of the other confirming sale made on June 1, 1910, and the receiver was ordered to proceed to make conveyance and give possession according to the conditions of sale (pp. 93, 94, 95).

20 On May 27, 1910, the day of sale, the defendant paid \$1200, ten per cent of the amount of his bid in cash (p. 26). On September 14, 1910, the defendant paid \$500 additional to the receiver (p. 34) and made repeated promises to pay the balance (p. 36). On May 19, 1911, the receiver notified the defendant that unless he completed the purchase on or before Monday, May 22, 1911, he would re-advertise and re-sell the property and hold him liable for any deficiency that might arise (pp. 77, 78). The receiver then, on May 23, 1911, petitioned the Chancellor for permission to re-sell the property (pp. 76, 77), and gave notice of an application to be made on May 29, 1911, for an order ratifying and confirming the action of the receiver in forfeiting the bid of the defendant and re-selling the same. The defendant requested a postponement of such application and by stipulation it was laid over from time to time until June 26, 1911 (p. 79), at which time the petition was filed (p. 76) and an order made confirming the action of the receiver in declaring the bid forfeited and directing a re-sale of the property (pp. 80, 81).

40 The receiver then advertised the property for

sale and on July 11, 1911, offered the same for sale on conditions which appear to be identical with those of the original sale (pp. 83, 84). On this occasion the property produced \$5700 (p. 85), resulting in a deficiency of \$4600, no part of which has been paid, and which then became due and remains due, from the defendant on his failure to comply with the original conditions of sale.

No action appears to have been brought by the receiver against the defendant and on October 4, 1912, the Chancellor ordered that the receiver sell at public auction to the highest bidder his claim against the defendant on his forfeited bid (pp. 95, 96). 10

On October 19, 1912, in pursuance of said order and on notice to all parties interested, including the defendant, the receiver sold said claim to the plaintiff (pp. 97, 98, 99, 100, 101). On October 21, 1912, this sale was confirmed (p. 102) and the receiver ordered to execute and deliver an assignment of the claim to the plaintiff (p. 103), which he did the same day. 20

During the period intervening between the original sale and the re-sale the defendant saw the receiver on a number of occasions and made numerous promises to pay the balance due and numerous excuses for non payment, but paid nothing beyond the original \$1200 and the additional \$500 on September 14, 1910 (pp. 32, 34). 30

Plaintiff brought suit in the Supreme Court by summons issued April 9, 1917 (p. 3). The case was tried before Circuit Judge Silzer, who directed a verdict for the defendant and ordered judgment for the defendant, upon the ground that the statute of limitations ran from the time the deed was delivered, July 2, 1910, to which direction and order exceptions were duly taken (pp. 48, 49). 40

Grounds of Appeal.

Plaintiff-appellant is aggrieved by the direction of the verdict and ordering of judgment for the defendant by the Circuit Judge which rested upon the sole ground that the statute of limitations ran from the time the deed was to be delivered, that is to say, five days after June 27, 1910, the date of final confirmation of the sale to the defendant (pp. 94, 95), and the judgment entered thereon in the Supreme Court.

The appellant insists that the statute of limitations did not begin to run at the end of five days from June 27, 1910, the time provided for the delivery of the deed, but from July 11, 1911, the date of the re-sale of the property, when the amount to deficiency due from the defendant was ascertained (pp. 83, 84). This action was instituted in the Supreme Court on April 9, 1917, well within six years from that date (p. 3).

Argument.

The action of the learned Judge of the Circuit Court was based on the theory that the statute began to run on the day when the deed was to be delivered and the balance of purchase money paid; that the breach occurred then and the cause of action arose (p. 66, et seq.). The action was not brought within six years from this date and if his view is correct our appeal must fail.

But we cannot assent to this view, which leaves out of consideration a material part of clause 3 of the conditions of sale (p. 74), and the facts subsequent to the day set for delivery of deed.

The defendant was to pay the balance on delivery of deed, and was to be liable for the payment of the balance of purchase price (\$12,000 — \$1,200) whether he attended and received his

deed or not. But this was not all: in case he neglected to receive the deed and pay the purchase money, the conditions provided (p. 74) "the property will be advertised and sold again and if it produces less than the former bid and interest and expenses, the purchaser will be held liable for the difference."

It may be that suit could have been brought for the full purchase price—less the ten per cent paid—and the purchaser permitted to become the owner of the property, immediately on the deed being tendered. But this is only one of the receiver's remedies. He can elect which remedy he will pursue and is not obliged to let the property go to the defaulting purchaser and sue for the purchase price. That he can bring a suit for damages without a resale seems to be denied in *Smith vs. Cunningham*, 69 E., 622, at p. 623, where Vice Chancellor Emery relies on *Webster vs. Hoban*, 7 Cranch., 399. He can take another course: retain the property and the percentage paid, treat the first sale as a nullity and proceed to ascertain the difference for which the purchaser is liable by a re-sale in accordance with the conditions. This is the more usual, the more prudent course, and the receiver in the present instance, followed it. He retained title to the property, collected a little more money, listened to various promises and excuses, and then haled the defendant into Court, obtained an order to re-sell on due notice to defendant and on the resale ascertained the "difference" for which defendant was to be held. This "difference" was not payable when the deed was to be delivered, it was not collectible then, no cause of action to recover it arose then. The cause of action arose when the difference became due to the receiver, that is to say, when it was ascertained by a resale.

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POINT I.

The receiver's right to ascertain the deficiency due from the first purchaser by a re-sale is well established.

10 It is unnecessary to support the above by an extended list of authorities. Some of the earlier ones are collated by Mr. Justice Depue in *Townshend vs. Simon*, 38 L., 239 at 242. In this Court in *Chancellor vs. Gummere*, 40 Eq., 279, the conditions of sale under review seem to have been similar or possibly identical with those employed by the receiver here, and Mr. Justice Reed observes that the terms of the conditions reserve to the officer the right to treat the first sale as a nullity, and expose the property for sale again in the event of a failure on the part of the purchaser
20 to complete such sale by a payment of his bid. The liability of the purchaser is made to depend upon the result of the second sale.

30 "If the outcome of such re-sale is such that the complainants would be in a position where they would receive a less sum than if the first sale had been consummated, the first purchaser must make good the deficit.
* * * The express stipulation as to the contingency upon the happening of which he is to be held for any loss and the limitation of his liability to the amount of the loss excludes the notion that he is to be visited with damages in any other event or for any other amount."

In Chancery an elaborate opinion was filed by Vice Chancellor Van Fleet, which is reported in 39 Eq., 582.

See also

40 *Smith vs. Cunningham*, 69 Eq., 622, quoting the Supreme Court of Pennsylvania in

Helfrich, Receiver, etc., vs. Frank, 6 Atl., 89, on p. 90.

"It is unnecessary to remark that if the property was sold again, that an action cannot be maintained on the covenant for recovery of the purchase money.

"If the re-sale is ordered upon failure of the purchaser to comply with the terms of his purchase, he may be charged with the deficiency therein on a resale."

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34 Cyc., 330 Tit. Receivers.

"Where a re-sale is had because the successful bidder fails to comply with the terms of the sale, the re-sale is at his risk, and if less than the amount of his bid is realized at the second sale, he will be liable for the deficiency, together with the expenses of the second sale, and an action may be maintained against him to recover such amount."

24 Cyc., 47 Tit. Judicial Sales.

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POINT II.

The statute of limitations began to run at the time the receiver acquired a complete cause of action against defendant.

This has been settled for many years in this State, and the statute itself is plain enough.

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3 *Comp. Stat.*, p. 3162.

Larason vs. Lambert, 7 Halst, 247.

French vs. Higgins, 66 L., 579.

Berry vs. Doremus, 30 L., 399.

25 Cyc., 1066.

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POINT III.

The right of action by the receiver depended on a contingency until the happening of which the statute did not begin to run.

10 The learned Judge who tried this cause at Circuit relied on the case of *Gogoliu vs. Williams*, then recently decided by this Court and reported in 102 Atl. Rep., 667. There, a professional man was employed to perform a service which he negligently performed to the damage of the person employing him. It was held that the statute began to run from the time of the occurrence of the breach of duty and not from the time of the discovery of actual damage as a result of such breach. This decision was amply supported by
20 authority, but is no warrant for the application of the statute in the instant case.

Here, whatever may be said as to the liability of the purchaser to pay the entire purchase price on tender of the deed, he is not liable for the "difference" between the amount realized on a re-sale and the former bid until such re-sale takes place.

30 In *Chancellor vs. Gummere*, 40 E., 279, the opinion rendered in this Court makes several things entirely clear: (a) Under conditions of the kind employed by the receiver in present case, the provision for a re-sale is an express stipulation as to the contingency upon the happening of which the defendant was to be held for any loss (p. 281) and (b) the limitation of his liability to the amount of the loss excludes the notion that he is to be visited with damages in any other event or for any other amount. (Id.)

40 The general rule is given in 19 *A. & E. Encyc. Law*, 193, in these words:

"The right of action on a claim depending on a contingency or condition does not accrue until the happening of the contingency or the fulfillment of the condition and the statute does not begin to run until then. * * * Whether the contingency affects the right or merely the amount of recovery, the rule is the same; if the plaintiff is entitled to recover a greater or less amount, dependent upon a certain contingency which may or may not happen, the statute runs against him only after the amount to which he is entitled becomes certain."

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In an old New Jersey case, *Richman vs. Richman*, 10 N. J. L., Chief Justice Ewing quotes Lord Mansfield, "The statute proceeds upon the presumption of laches which can never happen until after the contingency is determined."

And the eminent Chief Justice, referring to the claim that the statute began to run from the date of a bond, says:

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"Instead, the construction might almost deserve to be called absurd, which would make the time of limitation, which as Lord Mansfield said, proceeds on the idea of laches, to commence before the day, when the creditor could demand his money, and to be running while he is necessarily compelled to stand still."

In *Hawkins v. Glenn, Trustee*, 131 U. S., 334, a familiar case involving liability on unpaid stock subscription, Chief Justice Fuller quotes freely from *Scoville vs. Thayer*, 105 U. S., 143, 155. The stockholder

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"was under no obligation to pay any more, and he was under no obligation to pay anything until the amount necessary for him to pay was at least approximately ascertained. Until then his obligation did not become complete, &c."

In our Courts it has been held (*Culver vs. Cul-*

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ver, 31 E., 448) that the statute did not begin to run against a claim for a share of profits of a contract until the date of the final settlement between the parties to the contract; that the right of action to recover assessments on mutual insurance notes did not accrue until the day fixed on which payment thereof was required. (*French vs. Higgins*, 66 L., 579): that in the case of a revised assessment for improvements the interest (and presumably the right to sue) began to run from the date of the revised assessment.

State ex rel Miller vs. Love, 37 L., 261.

Newark Home Builders Co. vs. Bernards Twp., 103 Atl., 692.

Quoting Mr. Justice Swayze in last citation—

“We think it should not begin to run until the amount is ascertained by the Court. Until that time the land owner is in no default. He cannot pay until the amount is known.”

POINT IV.

Assuming that the condition of sale provided two remedies, either of which might be pursued by the receiver, and one has become barred by the statute, this does not prevent his proceeding on the other which is not barred.

As a general rule where a party has an election of remedies, one of which is barred by the statute of limitations, he may proceed on the other cause of action.

25 *Cyc.*, 999.

Wood on Limitations, 4th Edition, 1916, volume 1, Section 57 B. P., 202.

“Where plaintiff has several remedies for the same cause of action, the fact that one or more of his remedies have become barred will not affect his right to any other which are not barred.”

The following cases support this view.

- Palmer vs. White*, 65 N. J. L., 69, at 71.
Graves vs. Dawson, 133 Mass., 419.
United States to use against Mercantile Trust Co., 213 Pa. St., 411, 62 Atl., 1062. **10**
Missouri Savings Co. vs. Rice, 84 Fed., 131.
Christie vs. Farlan, 49 Mich., 319.
McCombs vs. Guild, 77 Tenn., 81.
Hyde vs. Hartford Ins. Co., 97 N. W., 629.
McManus vs. Harrigan, 41 Misc. (N. Y.), 615. **20**
Greenley vs. Greenley, 114 N. Y. App. Div., 640.
Kelleher vs. New York Central & Hudson R. R. Co., 136 N. Y. Supp., 256.
Lamb vs. Clark, 22 Mass., 193.
Dininy vs. Gavin, 39 N. Y. Supp., 485; affirmed, 54 N. E., 1090, and approved in *Greenley vs. Greenley*, 100 N. Y. Supp., 114, at 117. **30**

Where different sections of the statute of limitations are equally applicable the one allowing the longer period governs.

- Crum vs. Johnson*, 92 N. W., 1054 (Neb. 1902).

POINT V.

The judgment below should be reversed.

JOHN P. LLOYD,
Attorney of Defendant.

FRANK P. McDERMOTT,
Of Counsel.

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100 NOV. 1. 1910

New Jersey Court of Errors and Appeals.

CHARLES H. LEONARD,
Plaintiff-Appellant,

v.

WILLIAM A. WILLIAMSON,
Defendant-Respondent.

On Appeal
from Su-
preme Court.

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BRIEF ON BEHALF OF RESPOND- ENT.

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Facts.

The plaintiff purchased for the sum of \$30.00 this claim for \$4600.00 and interest against the defendant from the receiver of Jamesburg Light and Water Company, an insolvent corporation. The claim is based on the defendant's alleged failure to perform an agreement of purchase of certain assets from the receiver. Under the terms of the agreement, the receiver was to deliver a deed on a day five days after confirmation of the sale, i. e., on July 2, 1910, and the defendant was to pay the balance of the purchase price in cash on that day. The defendant, according to plaintiff's proof, defaulted, in that he failed to make such payment on the day fixed. Under the terms of the sale to him he was liable for the purchase price, and the receiver was authorized to resell the property, and hold him liable for any deficiency. The receiver resold the property

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on July 11, 1911, more than a year after the original sale to defendant; and on October 19, 1912, sold his claim against defendant, for such deficiency, for a consideration of \$30.00 to the plaintiff. Plaintiff did not bring this suit to recover the deficiency until April 9, 1917.

10 Plaintiff was non-suited below upon the ground that the statute of limitations began to run on July 2, 1910, the day fixed for the performance of the contract.

As the various records of the Court of Chancery, in evidence, appear in the State of the Case without regard to proper order, the following chronological table of the proceedings in Chancery may be helpful to the Court. The page numbers indicate the page in the printed case upon which each record may be found:

| | Page | Document. |
|----|------|----------------------------------------------------------------------------------|
| 20 | 56 | Petition for sale of property, verified Nov. 9, 1909. |
| | 61 | Order to show cause thereon, dated Nov. 9, 1909. |
| | 62 | Order to sell property, dated Dec. 20, 1909. |
| | 64 | Notice of sale for Dec. 29, 1909. |
| | 65 | Notice extending sale to Jan. 1, 1910. |
| | 66 | Order to show cause on sale to Lansley, dated May 10, 1910. |
| 30 | 67 | Order continuing hearing on above to May 19, 1910 (undated). |
| | 69 | Order continuing hearing on above to May 23, 1910 (dated May 19, 1910). |
| | 70. | Order denying confirmation of sale to Lansley (May 23, 1910). |
| | 71 | Notice of sale for May 27, 1910. |
| | 73 | Conditions of said sale; acknowledgment of purchase by Williamson, May 27, 1910. |
| 40 | 87 | Report of sale to Williamson, dated May 31, 1910; filed June 1, 1910. |

- 92 Order confirming above sale, dated June 1, 1910; filed June 1, 1910.
- 93 Supplemental Report on sale to Williamson, dated June 27, 1910.
- 94 Supplemental order confirming sale to Williamson, dated June 27, 1910.
- 77 Notice to Williamson of proposed forfeiture, dated May 19, 1911.
- 76 Petition for resale, dated May 23, 1911.
- 79 Consent to continuance of hearing, dated May 29, 1911. **10**
- 81 Notice of resale.
- 83 Conditions of resale and acceptance, etc.
- 80 Order for resale, dated June 26, 1911.
- 50 Report of resale to Lansley, et al., dated July 11, 1911; filed June 1, 1910; verified July 17, 1911.
- 86 Order confirming resale, dated Aug. 8, 1911.
- 101 Receiver's notice of proposed sale of claim against Williamson, dated Oct. 14, 1912. **20**
- 98 Affidavit of mailing of above notice, dated Oct. 16, 1912.
- 95 Continuing hearing on Receiver's final account, dated Oct. 14, 1912.
- 97 Receiver's supplemental final report and report of sale to Leonard of claim against Williamson, undated.
- 102 Order confirming sale of claim against Williamson, dated Oct. 21, 1912. **30**
- 103 (Ex. P. 1) Assignment by Receiver to Leonard of claim against Williamson.

POINT I.

The cause of action accrued, and the statute began to run at the time fixed for performance under the terms of sale.

10 The conditions of sale (p. 73) provided that the deed should be delivered at the office of the receiver within five days after the confirmation of the sale by the court, "when and where the purchaser shall pay the balance of the purchase price in cash." These further provided (p. 74):

20 "The purchaser shall be liable for the payment of the purchase money whether he attends and receives his deed at the time and place aforesaid or not, and in case he neglects to receive the deed and to pay the purchase money as aforesaid, the property will be advertised and sold again, and if it produces a less sum than the former bid and interest and expenses, the purchaser will be held liable for the difference, and if it produces a larger sum he shall not be benefited thereby."

30 The original order confirming the sale was made on June 1, 1910 (p. 92). A supplemental order of confirmation was made on June 27, 1910 (p. 94). The receiver had his deed executed and ready for delivery within the five days (p. 27). The defendant did not pay the balance of the purchase price, and a breach of the agreement had thus occurred at the expiration of five days, after June 27, 1910, or on July 2, 1910. Allowing all of the last day for performance by the defendant, a right of action had accrued to the receiver on July 3, 1910. The summons in this suit was issued April 9, 1917.

4 Section 1 of "An act for the limitation of actions (3 N. J. Comp. St., 3162) provides:

“That * * * all actions of debt, founded upon any lending or contract without speciality * * * shall be commenced and sued within six years next after the *cause of such actions shall have accrued*, and not after.”

In *Larason v. Lambert*, 12 N. J. L., 247, Chief Justice Ewing, in construing this statute, said (p. 248):

“By the accrual of the cause of action is to be understood the right to institute and maintain a suit. Whenever the party has a full and complete cause of action, whether it be at the making of the contract or at some subsequent period, *so that he may commence an action*, the statute begins to run.” 10

After reviewing a number of English cases, the Chief Justice concludes (p. 254):

“The whole of these cases rest on the same great principle, and all point to the same conclusion. The time of limitation begins as soon as the plaintiff has a full and complete cause of action and may maintain a suit; and is to be computed from the time when such legal claim of his right might have been made and enforced; and consequently on a promissory note payable on demand, as the payee may forthwith maintain an action, even without previous actual demand, the time is to be computed from the making of the note.” 20 30

In *French v. Higgins*, 66 N. J. L., 579, this court held that a right of action to recover assessments upon notes held by the receiver of a mutual insurance company accrued on the day on which payment thereof was required.

In other jurisdictions it has been uniformly held that a cause of action for breach of a contract accrues as soon as the contract is broken. 40

- Amy v. Dubuque*, 98 U. S., 470, 476.
Kohler v. Matlage, 72 N. Y., 259.
Taylor v. Bradley, 39 N. Y., 129.
Sutherland v. Wyer, 67 Me., 64.
Scheele v. Lafayette Bank, 120 Mo. App.,
 611; 97 S. W., 621.

It is also well established that wherever a legal
 right has been violated an action may be main-
 10 tained, although no actual appreciable damage
 has been sustained, there being in such cases a
 right to at least nominal damages.

- Paterson v. East Jersey Water Co.*, 74
 N. J. Eq., 49; aff'd, 77 N. J. Eq., 588.
Furniture Co. v. Board of Education, 58
 N. J. L., 646.
Lance v. Apgar, 60 N. J. L., 447.
Phillips v. Crosby, 70 N. J. L., 785.
Power v. Munger, 52 Fed., 705.
 20 *Delaware, etc., Canal Co. v. Torrey*, 33
 Pa., 143, 149.
Stowell v. Lincoln, 11 Gray, 434.
Munroe v. Stickney, 48 Me., 462.
State v. Dickman, 146 Mo. App., 396;
 124 S. W., 29.
King v. Rochdale Co., 14 Q. B., 136; 68
 E. C. L., 136; aff'd, 14 Q. B., 122; 68
 E. C. L., 122.

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POINT II.

The fact that the actual damage was ascertained at a date later than the occurrence of the breach of the contract does not defer the commencement of the running of the statute.

It has been already pointed out that the accrual of a cause of action is fixed by the breach of the agreement, whether the damages then provable are appreciable or not. Another recognized rule is that a right of action accrues and the statute begins to run at the time the contract is broken, and not at the time when actual damage results or is ascertained. 10

Battley v. Faulkner, 3 B. & Ald., 288;
5 E. C. L., 172.

Howell v. Young, 5 B. & C., 259; 11 E. C. L., 454. 20

Wilcox v. Plummer, 4 Pet., 172.

Insurance Co. v. Morton, 156 Fed., 654.

Crowley v. Johnston, 96 N. Y., App. Div., 319; 89 N. Y. Supp., 258.

Argall v. Bryant, 1 Sandf., 98.

Oil Co. v. Byers, 223 Pa., 241; 72 Atl., 518.

Manning v. Perkins, 86 Me., 419. 30

In *Arkansas Fertilizer Co. v. United States*, 193 Fed., 667, it was held, under a statute requiring claims for damages to be filed "within two years from the time the cause of action accrues" as applied to the claim of a shipper to damages on the ground that the published rate of a railroad company under which he made a shipment was unjust and unreasonable, that the cause of action accrued when the shipment termi-

nated and complainant became liable for the freight, and not when he actually paid it.

In *Gogoliu v. Williams*, 102 Atl., 667, this Court held that a cause of action against a surveyor for damages for negligent performance of his contract accrued, and the statute began to run, when the breach of duty occurred and not when the actual damages were discovered or accrued.

10 In the instant case, the right of action accrued when the contract was broken, and not when the actual damage was ascertained. Moreover, it is to be observed that the time when such damage should be ascertained was in the control of the receiver. If he might extend the operation of the statute of limitations for one year, as he seeks to do, upon the same reasoning he might extend it for ten years and thus defeat the very object of the statute, which is to discourage old
20 and stale claims, and to visit upon himself a claimant's laches.

This case is in no sense one of a contract to be performed upon the happening of a contingency. In that class of cases the promise is that performance shall take place on the happening of a certain event. Here the promise was to pay on a day certain. It is not deemed necessary to discuss the cases in the class referred to. They are collected in 25 Cyc., 1072,
30 and I C. J., 1147.

It is respectfully submitted that the judgment below should be affirmed.

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