

NEW JERSEY
Court of Errors and Appeals,

ISRAEL CODINGTON, JOHN HERBERT, and LEVI
HETFIELD, Junior, partners in trade, under the
name, style, and firm of CODINGTON, HERBERT
& COMPANY,

Plaintiffs in Error,

vs.

NATHAN J. BEEBE, Builder, and THE HUDSON
COUNTY DRY DOCK AND WET DOCK COMPANY,
owner.

Defendants in Error.

*Writ of Error to
Hudson Circuit
Court.*

STEPHEN B. RANSOM, *Att'y of Plaintiffs in Error.*

ISAAC W. SCUDDER, *Att'y of Defendants in Error.*

This is an action of trespass on the case brought by 10
the plaintiffs in error against the defendants in error in
the Circuit Court of the county of Hudson. The action
was commenced by summons, returnable May 11th,
1860.

The following is the record of the Circuit Court of
the county of Hudson, viz :

NATHAN J. BEEBE and THE HUDSON COUNTY DRY
DOCK AND WET DOCK COMPANY,

Defendants,

adsm.

ISRAEL CODINGTON, JOHN HERBERT, and LEVI
HETFIELD, JUNIOR,

Plaintiffs.

Judgment for De-
fendant.
In case under Lien
Law.

RANSOM & BROWN, *Attorneys of Plaintiffs.*

I. W. SCUDDER, *Attorney of Defendants.*

10 Hudson County Circuit Court of the seventh day of
May, as yet of the term of May, in the year of our Lord
one thousand eight hundred and sixty.

HUDSON COUNTY, ss :

Israel Codington, John Herbert, and Levi Hetfield,
Junior, partners in trade, under the name, style and
firm of Codington, Herbert, and Company, put in their
place Ransom and Brown, their attorneys, against Na-
than J. Beebe, builder, and the Hudson County Dry
Dock and Wet Dock Company owner of a plea of tres-
20 pass on the case upon premises.

HUDSON COUNTY, ss :

The Hudson County Dry Dock and Wet Dock Com-
pany, defendants in this suit, put in their place, I. W.
Scudder, their attorney, at the suit of Israel Codington,
John Herbert, and Levi Hetfield, Junior, in a plea of
trespass in the case, under the lien law.

HUDSON COUNTY, ss :

Nathan J. Beebe, builder, and the Hudson County
Dry Dock and Wet Dock Company, a company duly
30 incorporated by an act of the Legislature of the State of
New Jersey, owner of the building and premises here-
inafter described, were summoned to answer Israel Cod-

ington, John Herbert, and Levi Hetfield, Junior, partners in trade under the name, style, and firm of Codington, Herbert and Company, of a plea of trespass on the case upon promises, the said Nathan J. Beebe having been summoned by the service by the sheriff of the county of Hudson, of a copy of the summons issued in this case upon the said Nathan J. Beebe, according to law; and the said defendant, the Hudson County Dry Dock and Wet Dock Company, having been summoned by the said sheriff serving a copy of the said summons 10 upon Benjamin F. Woolsey, the President of the said company, more than six days before the return day named therein. And thereupon the said plaintiffs by Ransom and Brown, their attorneys, complain, for that whereas the said defendant, Nathan J. Beebe, heretofore, to wit, on the fifteenth day of July, in the year of our Lord one thousand eight hundred and fifty-nine, at Jersey City, that is to say, at North Bergen, in the county of Hudson, and within the jurisdiction of this court, was indebted to the said plaintiff in the sum of twenty thou- 20 sand dollars for the price and value of lumber and timber, goods, wares, and merchandize, before that time bargained, sold, and delivered by the said plaintiffs to the said defendant, Nathan J. Beebe, at his request; and in the further sum of twenty thousand dollars for the price and value of work and labor before that time done and performed, and materials for the same provided by the plaintiffs for the said defendant Nathan J. Beebe, at his request; and in the further sum of twenty thousand dollars for so much money before that time lent 30 and advanced by the plaintiffs to the said defendant, Nathan J. Beebe, at his request; and in the further sum of twenty thousand dollars, for so much money before then paid by the said plaintiffs to and for the use of the said defendant, Nathan J. Beebe, at his request; and in the further sum of twenty thousand dollars, for so much money then and there had and received by the said defendant, Nathan J. Beebe, to and for the

use of the said plaintiffs; and in the further sum of twenty thousand dollars, for so much money found to be due from the said defendant, Nathan J. Beebe, to the said plaintiffs on an account then and there stated between them; and in the further sum of twenty thousand dollars, for interest due from the said defendant, Nathan J. Beebe, to the said plaintiffs, for the said plaintiffs having forborn to the said defendant, Nathan J. Beebe, moneys due from the said Nathan J. Beebe to the said
 10 plaintiffs at his, the said Nathan J. Beebe's request for a long time then elapsed. And whereas, the said defendant, Nathan J. Beebe, afterwards, to wit, on the day and year aforesaid, at Jersey City aforesaid, that is to say, at North Bergen aforesaid, in consideration of the premises, respectfully, then and there promised to pay the said several moneys respectively to the plaintiffs on request. Yet the said defendant, Nathan J. Beebe, has disregarded his promises and has not paid any of the said moneys or any part thereof, although often re-
 20 quested so to do, to the damage of the said plaintiffs of twenty thousand dollars; and therefore they bring their suit, &c.

And the said plaintiffs aver that the said debt mentioned in this declaration as due from the said defendant, Nathan J. Beebe, to the said plaintiffs is, by virtue of the provisions of the act of the Legislature of the State of New Jersey, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11th, eighteen hundred and fifty-three, and the supplements there-
 30 to, a lien upon all that certain building and fixture for manufacturing purposes and the fixed machinery and gearing attached to and connected therewith, and making a part thereof, known by the name of a Floating Dock, being constructed in five sections connected and fastened together, making a building one hundred and

seventy-five feet long by eighty feet wide and being thirty feet and four inches in extreme height, having an opening and a deck on which to float vessels, extending through all the said sections, which opening is in height from the said deck, twenty-one feet and six inches, and in the width at the top, sixty-nine feet, and at the bottom, sixty-six feet and four inches, and the floor of the said dock being eight feet and ten inches above the bottom of the said building, and is sixty-six feet and four inches wide, and extends the whole length of the 10 said building, together with a boiler and steam engine fixed in and to the said building, and making part thereof and an engine house attached to and making a part of said building, and used for pumping water out of the said building; and also upon the estate of the Hudson County Dry Dock and Wet Dock Company, the owner of the said building in the land whereon the said building stands, and to which it is attached, including the estate of the said the Hudson County Dry Dock and Wet Dock Cowpany in the lot whereon the said build- 20 ing is erected and to which it is attached, which estate is an estate for years which will terminate on the first day of November, in the year of our Lord one thousand eight hundred and sixty-nine; subject to the payment of a yearly rent until the first day of November, A. D., eighteen hundred and sixty-four, of three thousand dollars, and for the remainder of the said term to a yearly rent of three thousand five hundred dollars, which lot of land is situate in the city of Jersey City, in the county of Hudson, and state of New Jersey, and is bounded, 30 abutted, and described as follows, viz.: Beginning on the easterly line of Greene street at the distance of eighty-feet north from the northerly line of Harsimus or South Eighth street and running thence northerly along the easterly line of Greene street one hundred and fifty feet to the middle of South Seventh or Southmayd street, thence easterly along the middle of South Seventh or Southmayd street four hundred feet to the

westerly line of Hudson street, thence southerly along the westerly line of Hudson street one hundred and fifty feet to a point distant eighty feet north of the northerly line of Harsimus street, thence westerly parallel with Harsimus street and distant eighty feet therefrom, four hundred feet to the place of beginning, together with the exclusive right to use the land under water, eastwardly in front of the said abovementioned tract for the purpose of a wet dock or basin, and eastwardly in front of Southmayd or South Seventh street, and up to and along the wharf or pier there standing for the same purpose, together with the land and land under water upon which the said wharf or pier now stands, of which said building and fixture for manufacturing purposes, fixed machinery and gearing, and estate for years in the land and lot of ground whereon the same is erected and to which it is attached, the said the Hudson County Dry Dock and Wet Dock Company, a company duly incorporated by an act of the Legislature of the state of New Jersey, now is, and, at the time of the contracting of the debt for which this lien is claimed hereinbefore more particularly mentioned, was the owner.

The following is a bill of the particulars of the demand and copy of the account whereon the foregoing declaration is founded, viz. :

1859.

	April 19. To 16,000 feet white oak Timber	
	at \$34 per thousand	\$544.00
	" To 10,000 feet white pine Plank at	
30	\$22.50	225.00
	" 28. To 20,675 feet white oak Timber	
	at \$34	702.98
	" 29. To 22,563 " " "	767.14
	" To 15,500 feet white pine Plank at	
	\$22.50 per thousand	348.75

May 13.	To 20,548 feet white oak Timber at	
	\$34 per thousand	698.63
" 18.	To 19,282 " " " "	655.59
"	To 12,000 feet white pine Plank at	
	\$22.50 per thousand	270.00
June 1.	To 19,000 " " " "	427.50
"	To 23,564 feet white oak Timber at	
	\$34.00 per thousand	801.18
" 14.	To 15,000 " " " "	510.00
" 14.	To 11,317 feet white pine Plank at	
	\$22.50 per thousand	254.63 10
July 15.	To 2,000 feet white oak Timber at	
	\$34.00 per thousand	68.00

Total amount of material furnished \$6273.37

CREDIT.

By freight paid by N. J. Beebe \$70.00

\$6203.37

Interest from July 15, 1859, till paid, to be added.

RANSOM & BROWN,

Attorneys of Plaintiffs.

And the said "The Hudson County Dry Dock and 20 Wet Dock Company," one of the above defendants, by Isaac W. Scudder, their attorney, come and defend the the wrong and injury, when, &c., and say that the said plaintiffs ought not to have or maintain their aforesaid action against them, because they say, that the said Nathan J. Beebe, did not undertake and promise, in manner and form, as the said plaintiffs have above thereof complained against them, and of this they put themselves upon the country.

And for a further plea in this behalf the said The 30 Hudson County Dry Dock and Wet Dock Company, say, that the said plaintiffs ought not to have or maintain their aforesaid action against them, because, they say, that the said building and fixture for manufactur-

ing purposes, and the fixed machinery and gearing attached to, and connected therewith, and making a part thereof, known by the name of a floating dock, constructed in five sections, connected and fastened together, making a building one hundred and seventy feet long by eighty-five feet wide, and thirty feet and four inches in extreme height, having an opening and a deck on which to float vessels, extending through all said sections, which opening is, in height from said deck,
 10 twenty-one feet and six inches, and in width at the top, sixty-nine feet, and at the bottom, sixty-six feet and four inches, together with the boiler and steam engine fixed in and to said building, and making part thereof, and the engine house attached to and making part of said building, and the fixed gearing and machinery attached to and making part of said building, used for pumping water out of said building, and the estate of the said "The Hudson County Dry Dock and Wet Dock Com-
 20 pany," in the land whereon said building stands, as in the declaration mentioned, or either of them are not liable to the said debts, or to the payment of the sums of money in the several promises in the said declaration mentioned, or to any or either of them; and of this they the said defendants put themselves upon the country.

And for a further plea in this behalf the said "The Hudson County Dry Dock and Wet Dock Company," by leave of the Court, here for this purpose first had and obtained, according to the form of the statute, in such
 30 case made and provided, say, that the said plaintiffs ought not to have or maintain their aforesaid action against them, because, they say, that the said building and land in the declaration mentioned, or either of them, are not liable to the said debts, or to the payment of the sums of money in the several promises in the said declaration mentioned, or to any or either of them, and of this, they, the said defendants, put themselves upon the country.

And the said plaintiffs, as to the said several pleas of the said defendant, by it above pleaded, and whereof it has put itself upon the country, do the like.

And the said Nathan J. Beebe, in his proper person, comes and defends the wrong and injury when, &c., and says nothing in bar or preclusion of the said action of the said Israel Codington, John Herbert, and Levi Hetfield, junior, partners, &c., whereby the said Israel Codington, John Herbert and Levi Hetfield, junior, partners, &c., remain therein undefended against the said Nathan J. Beebe; wherefore the said Israel Codington, John Herbert and Levi Hetfield, junior, partners, &c., ought to recover against the said Nathan J. Beebe their damages on account of the promises. But because it is unknown to the court here what damages the said Israel Codington, John Herbert and Levi Hetfield, junior, partners, &c., have sustained on occasion thereof; and because it is convenient and necessary that there be but one taxation of the damages in this suit; therefore, let the giving of judgment in this behalf against the said Nathan J. Beebe be stayed until the trial of the said issues above joined between the said Israel Codington, John Herbert and Levi Hetfield junior, partners, &c., and the said "The Hudson County Dry Dock and Wet Dock Company." And as well to try the said last mentioned issues, as to inquire of and assess the damages which the said Israel Codington, John Herbert and Levi Hetfield, junior, partners, &c., have sustained by reason of the not performing the above promises and undertakings by the said Nathan J. Beebe, the sheriff is commanded that he cause to come here on the thirteenth day of October, in the year of our Lord one thousand eight hundred and sixty-two, twelve, &c., by whom &c., and who neither, &c.; to recognize, &c., because as well, &c.; the same day is given to the parties aforesaid &c.

Afterwards, that is to say on the thirteenth day of October, in the year one thousand eight hundred and sixty-two, at the city of Hudson, in the county of Hudson, aforesaid come the said parties by their attorneys, before the Honorable Elias B. D. Ogden, a justice of said court: and the jurors of the jury, whereof mention is above made also come, who to speak the truth of the matters within contained being chosen, tried and sworn, say upon their oath, as to the issue between the

10 said parties upon the first plea of the said defendants, that the said Nathan J. Beebe did undertake and promise in manner and form as the said plaintiffs have in their said declaration declared thereof against him, and they assess the damages of the said plaintiffs thereupon at the sum of seven thousand four hundred and thirteen dollars, with six cents costs.

And the said jurors further on their oaths aforesaid say as to the issue joined upon the second and third pleas of

20 the defendants, that "The Hudson County Dry Dock and Wet Dock Company, are a corporation authorized by an act of the State of New Jersey, passed February 13th, 1845 (*pro ut* the same,) for the purposes in said charter, duly set forth, that in the spring of 1859, the said company agreed with Dudley S. Gregory and Henry Southmayd, for the location of their place of business, under the said charter at Jersey City, upon certain premises to them belonging, described in the declaration in

30 this cause, took possession thereof, and while the sectional dock was building, began constructing the pier while the land owners filled up the property which was covered by the water of the Hudson river, and built the bulkhead, said improvements being made for the purpose of receiving the dry dock in said declaration mentioned, and which was the subject of the lien claimed in this cause. On the completion of these improvements, and by indenture made, and dated October 19th,

1859, and in pursuance of the agreement between the parties, under which possession of said premises was originally had, said Gregory and Southmayd entered into an indenture of lease with said defendants (*pro ut*, the same.)

After the verbal agreement for the occupation of said premises for the purpose aforesaid, and on the twenty-third day of May, A. D. 1859, said company entered in articles of contract with said Nathan J. Beebe for the construction of a dry dock, intending to place the same 10 at said location, (*pro ut* said contract.)

The lumber, for the price of which said suit is brought, and lien claimed, was furnished by the plaintiffs, at the dates and as set forth in the bill of particulars and claim of lien to said Nathan J. Beebe, at Jersey City aforesaid, for the construction therewith of the said dry dock, so as aforesaid contracted for, and was actually used in constructing the same.

Said lumber was delivered at the yard, in Jersey City, when said dry dock was in process of construction, 20 being land hired by said company for that purpose, about one thousand feet distant from said business location, one block and two streets, one of which was not open, intervening between them.

Said dock was built in five separate sections, two of which were launched at one time, and the rest at another. When launched, said sections were floated around to a wharf, west of, hard by, but not adjoining the premises described in said lease, and there were finished, except the connections between the sections 30 and the braces for securing vessels, and was there moored and chained, till the premises where it now is, were ready for the reception of said dock, which was in the spring of 1860. In order to such reception, the ground

which was shoal, but below low water mark, was dug out so as to float said dock at all tides, which is necessary for its operation.

After reaching the place of its destination, said sections were put together with bolts and keys, making together one dock, and the dock was finished there, after its location. Said dock as it exists with its appurtenances is correctly described in the claim of lien filed by the plaintiffs, (*pro ut*, the same.)

- 10 The engine, engine house and pumps are placed upon and connected with the dry dock and make a part thereof, and not otherwise connected with the pier, their office is to pump the water for the purpose of raising the dock. The dock was finally moved to its present place, in the spring of 1860. The pier and dock were built for each other; the business of the company could not be carried on without the wharf, the pier, and the dock; the pier, the dock and the ship yard are all used together, and are all required to carry
20 on the business of the company. When vessels come and wait for their turn to go on the dry dock they are fastened at the pier.

The map annexed to said lease (*pro ut* the same,) correctly exhibits the premises occupied by said company, under their said charter, and where said dry dock was located.

- Said dry dock was attached to the pier and wharf, beside which as shown by said map it was located in the following manner. At four different points along said
30 wharf and pier, timbers about sixteen inches thick are bolted and keyed to the pier. And those which extend from the bulkhead are about sixteen feet long, and those which extend from the pier are about twelve feet long. They extend towards the dock, from the bulk-

head and pier. There are two on the west end on the bulkhead, and two on the north side on the pier, one on the second and one on the fourth section. The first, third and fifth sections have none, attached to the pier. They consist of a main timber which runs at right angles across the bulkhead and is bolted to it, these extend from the bulkhead about sixteen feet over the water, across the end of these timbers, another piece of timber is mortised on, called the saddle. This consists of two pieces of timber the main saddle and face piece, the face piece 10 is fastened to the main saddle by four screw bolts, about 1 1/4 inches thick and about three feet long, the saddles are about five feet long. There are three diagonal braces to each saddle one each side of the main timber, extending from the saddle to the bulkhead, they are spiked to the main timber and to the bulkhead. The other extends from the saddle diagonally downwards to the bulkhead. In the centre of the saddle, between the main saddle and the face piece, there is an opening through which is passed a large timber bolted to the 20 dock at the top and bottom upon cross-pieces of timber which removes the upright timber some inches from the face of the dock. This upright timber slides up and down through the opening in the saddle, as the dock rises and falls in the water. The saddles attached to the pier are constructed in the same manner as those attached to the bulkhead. The face piece of the saddle is fast between the dock, and the upright timber bolted to it in the open space left for that purpose, and is then bolted to the main saddle, so that the upright piece 30 moves freely up and down in the opening between the two saddles as the tide rises and falls, thus securing the dock from floating away, from the pier or wharf, and bulkhead. The bolts securing the parts of the saddle are four to each saddle, each bolt, three feet long, one inch and a quarter thick, and they are fastened by screws, or nuts on each end. Besides these fastenings, heavy chains are used to secure the dock in its position.

By drawing these bolts, and undoing these chains the dock is removable, and can be floated away. It has never been removed. There are two launching ways, on the premises forming the ship yard, one in front of this dock, another in front of a smaller one near it. To use the launching way in front of this dock, it would, have to be ed. The small dock has been removed for that purpose, by loosening and swinging one end around.

10 The dock lies about sixteen feet from the pier, and is entered by a gang-plank. Water flows around and is always under it.

It is necessary in the use of dry docks to attach them thus, or in some similar manner to the land, to prevent lateral motion. The plan pursued in this case is the ordinary method of attachment in dry docks. Dry docks may be used in still water by securely anchoring them, but they cannot be used to advantage, and for regular business thus. They are located beside and attached to piers, because they and the vessels in them, 20 are thus protected from the wind and smooth water secured, and because the materials used in repairing must be prepared upon the wharf and cannot upon the dry dock itself. In carrying on the ship-wright business ordinarily, and in this case, the pier, wharf and dry dock, form component parts of a ship-yard, and are used together for carrying on the repair of vessels; on the piers are the materials and shops. They are there gathered, prepared and applied to vessels which have been floated into the dry dock. Everything necessary to 30 be done to the bottom of vessels is done in the dry dock. Vessels may be built there, but not to such advantage as on shore; they are frequently rebuilt, lengthened and shortened there. The dry dock is generally used for repairing and for all work necessary for the bottoms of vessels. Vessels are iron-plated there, painted, caulked, coppered, &c.

The peculiar method of attachment to the pier, is used, in order to secure the dock floating and rising and falling with the water, while the lateral motion is prevented. When about to receive a vessel, the water is admitted into the sections by opening valves, of which there are two in each section, whereupon the dock sinks below the surface of the water and the vessel is floated above the floor or deck of the dock thus sunk. With the engines and pumps, the water is then pumped out, and the dock rises, bearing the vessel within it. 10

The company paid Nathan J. Beebe in full, with the exception of a small amount of \$1,000, which was retained by the company to insure the completion of the docks, the company being likewise thereon indemnified against plaintiff's claim. *by a bond of indemnity of George W. Beebe.*

The plaintiffs filed their claim of lien, in the office of the Clerk of Hudson county, (*pro ut* the same,) on the twelfth day of April, 1860. Summons in this case issued thereon, April 25th, 1860.

The defendants filed said contract with said Nathan J. Beebe, July, 8, 1859, in the office of the Clerk of Hudson county.

September 24th, 1859, a written order was given by Nathan J. Beebe, and delivered to said company, (*pro ut* the same.) The same was never honored.

November 21st, 1859, notice of the claim, of lien was given, defendants (*pro ut* the same,)

Feb. 9th, 1861, said defendants executed, and delivered, the following mortgages, (*pro ut* the same) viz:

One to Peter Sandford, for	\$1688 45 30
One to Garret E. Wynants, for ;	885 00
One to James R. Thompson, for	5666 16
And August 1st, 1860, one to Thomas W. James, for	32000 00

But whether or not upon the whole matter aforesaid, in form aforesaid found, the said plaintiffs have in law a lien upon the said dry dock, and the said premises set forth and described in said declaration, or either of them, or any part of the same, or the estate of said defendants therein, as claimed and set forth in said declaration, for the said sum of seven thousand four hundred and thirteen dollars, due to them from the said Nathan J. Beebe, as aforesaid, the jurors aforesaid are altogether ignorant, and therefore they pray the advice of said court; and if upon the whole matter aforesaid, it shall seem to the said court, that said plaintiffs have, in law, such lien, then said jurors say, upon their oath aforesaid, that said plaintiffs have, in law, such lien; and that said dry dock and premises, or so much thereof as shall seem right to said court, as aforesaid, are liable to said debt of seven thousand four hundred and thirteen dollars, due from said Nathan J. Beebe, to said plaintiffs aforesaid, and if upon the whole matter aforesaid, it shall seem to the said court, that the said plaintiffs have, in law, no such lien, as in said declaration claimed, and that said dry docks and premises are in no wise liable to such debt, then the said jurors, upon their oaths aforesaid, say that said dry dock and premises are in no wise liable to said debt.

And because the court, now here, is not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid before the court here, until the twentieth day of October, as yet of the term of October, in the year of our Lord one thousand eight hundred and sixty-two, to hear the judgment of the said court thereupon, for that the said court, now here, are not advised thereof, &c. At which day, before the said court here, comes as well the said Israel Coddington, John Herbert and Levi Hetfield, junior partners, &c., as the said "The Hudson County Dry Dock and Wet Dock Company," by their respective attorneys

On the return of the writ of error, the plaintiffs in error assigned errors as follows :

NEW JERSEY COURT OF ERRORS AND APPEALS.

ISRAEL CODINGTON, JOHN HERBERT, and LEVI HETFIELD, Junior, partners in trade, under the name, style, and firm of CODINGTON, HERBERT & COMPANY,

Plaintiffs in Error,

vs.

THE HUDSON COUNTY DRY DOCK AND WET DOCK COMPANY, owner, impleaded, with NATHAN J. BEEBE, Builder,

Defendants in Error.

Assignment of Errors.

- 10 Afterwards, that is to say, on the tenth day of March, in the year of our Lord one thousand and eight hundred and sixty-three, before the Judges of the Court of Errors and Appeals, of the state of New Jersey, at Trenton, come the said Israel Codington, John Herbert and Levi Hetfield junior, partners, &c., by Stephen B. Ransom their attorney, and say : that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit: that the judgement aforesaid, by the record aforesaid, ap-
 20 pears to have been given for the said "The Hudson County Dry Dock and Wet Dock Company," against the said Israel Codington, John Herbert and Levi Hetfield, junior partners, &c. ; whereas by the law of the

land, the said judgment ought to have been given for the said Israel Codington, John Herbert and Levi Hetfield junior, partners, &c., against the said "The Hudson County Dry Dock and Wet Dock Company;" and, also, there is error in this, to wit: that the judgment aforesaid, by the record aforesaid, adjudges that the said Israel Codington, John Herbert and Levi Hetfield junior, partners, &c., have in law no lien upon the said dry dock and premises, set forth and described in the said declaration of the said plaintiffs, or upon either 10 of them, or upon any part of the same, or upon the estate of the said "The Hudson County Dry Dock and Wet Dock Company" therein, as claimed and set forth in the said declaration of the said plaintiffs, for the said sum of seven thousand four hundred and thirteen dollars, due to the said Israel Codington, John Herbert and Levi Hetfield, junior, partners, &c., from the said Nathan J. Beebe, as aforesaid, and that the said dry dock and premises are in no wise liable to said debt; whereas by the law of the land, the said judgment 20 ought to have adjudged that the said Israel Codington, John Herbert and Levi Hetfield junior, partners, &c., have in law a lien upon the said dry dock and premises set forth and described in the said declaration of the said plaintiffs, and upon the estate of the said "The Hudson County Dry Dock and Wet Dock Company" therein as claimed and set forth in the said declaration of the said plaintiffs for the said sum of seven thousand four hundred and thirteen dollars, due to the said Israel Codington, John Herbert and Levi Hetfield, junior, 30 partners, &c., from the said Nathan J. Beebe, as aforesaid, and that the said dry dock and premises are liable to the said debt; and the said Israel Codington, John Herbert and Levi Hetfield junior, partners, &c., pray that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings being may be reversed, annulled, and altogether holden for

naught, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

S. B. RANSOM,

*Attorney for and of Counsel with the
Plaintiffs in Error.*

The defendant in error has filed the common joinder in error.

PLAINTIFFS EXHIBITS.

No. 1.

Lease of the premises in question from Dudley S. Gregory and Henry J. Southmayd, to "The Hudson County Dry Dock and Wet Dock Company."

DUDLEY S. GREGORY and HENRY
J. SOUTHMAYD,

TO

THE HUDSON COUNTY DRY DOCK
AND WET DOCK COMPANY.

Lease dated October

19th, 1859.

This indenture made the nineteenth day of October, 10
one thousand eight hundred and fifty-nine, between
Dudley S. Gregory and Henry J. Southmayd, both of
Jersey City, in the County of Hudson, and State of New
Jersey, parties of the first part, and "The Hudson
County Dry Dock and Wet Dock Company," a body
corporate of the State of New Jersey, created by an
act of the legislature of said state, passed on the 13th
day of February, A. D. 1845, of the second part, wit-
nesseth: that the said parties of the first part, for and
in consideration of the rents, covenants and agreements 20
hereinafter mentioned, reserved and contained on the
part and behalf of the said parties of the second part,
their successors and assigns, to be paid, kept and per-

formed, have granted, demised and to farm letten, and by these presents do grant, demise and to farm let unto the said parties of the second part, and to their successors and assigns.

- All that certain tract or lot of land and premises, situate, lying and being in Jersey City aforesaid, and which (on a map made by Robert C. Bacot, surveyor, showing the width of Harsimus street, referred to and made part of a deed executed by the said Dudley S.
- 10 Gregory and Henry J. Southmayd and others, bearing date the 13th day of December, A. D. 1855, and filed in the clerk's office of the said county of Hudson, and also in the clerk's office of the Mayor and Common Council of Jersey City,) is butted and bounded as follows: Beginning on the easterly line of Greene street, at the distance of one hundred feet north of the northerly line of Harsimus or South Eighth street, thence running northerly along the said easterly line of Greene street one hundred and thirty (130) feet to the middle
- 20 of the street, which on said map is called South Seventh street, now known as Southmayd street; thence easterly along the middle of Southmayd street four hundred (400) feet to the westerly line of Hudson street; thence southerly along the westerly line of Hudson street one hundred and thirty (130) feet to a point distant one hundred (100) feet north of the northerly line of Harsimus street; thence westerly, parallel with Harsimus street and distant one hundred (100) feet therefrom, four hundred (400) feet to the place of beginning. And
- 30 secondly, a certain other tract or lot of land and premises, being twenty (20) feet wide by four hundred (400) feet long, adjoining the first above mentioned tract on the south, extending from Greene to Hudson streets, and formed of twenty (20) feet in depth, taken off the rear of each of the sixteen city lots, which on said map front on Harsimus street; and thirdly, the exclusive right to use the land under water, eastwardly, in front

of the said two above mentioned tracts, for the purpose of a wet dock or basin, and eastwardly, in front of Southmayd street, and up to and along the line of the wharf or pier hereinafter mentioned, for the same purpose; and fourthly, the land and lands under water upon which a certain wharf or pier is now in process of construction by said parties of the second part, and which when completed will cover the land and land under water, as shown upon the map signed by the parties hereto, and made a part of these presents and hereunto annexed. The whole of the said demised premises (except the said land under water,) being colored yellow in the said map hereto annexed. 10

To have and to hold the said above mentioned and described premises, with the appurtenances unto the said parties of the second part, their successors and assigns, from the first day of November, one thousand eight hundred and fifty-nine, for and during and until the full end and term of ten years, thence next ensuing and fully to be complete and ended, yielding and paying therefor, unto the said parties of the first part, their heirs or assigns yearly, and every year during the said term hereby granted, the yearly rents hereinafter mentioned, that is to say, for the first five years of the said term, the yearly rent of three thousand dollars (\$3,000) and for the last five years of the said term, the yearly rent of thirty-five hundred dollars (\$3500) lawful money of the United States of America, in equal quarter yearly payments, to wit: on the first day of February, May, August and November, in each and every year; provided, always, nevertheless, that if the yearly rent above reserved or any part thereof, shall be behind or unpaid, on any day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants herein contained, on the part and behalf of the said parties of the second part, their successors and assigns, to be paid, kept and performed then 30

and from thenceforth it shall and may be lawful for the said parties of the first part, their heirs or assigns, into and upon the said demised premises; and every part thereof, wholly to re-enter and the same to have again, repossess and enjoy, as in their first and former estate, anything hereinbefore contained to the contrary thereof in any wise notwithstanding. And the said parties of the second part for themselves, their successors and assigns; do hereby covenant and agree to and with the

10 said parties of the first part, their heirs and assigns, by these presents, that the said parties of the second part, their successors or assigns, shall and will yearly and every year during the said term hereby granted, well and truly pay, or cause to be paid unto the said parties of the first part, their heirs or assigns, the said yearly rent above reserved, on the days and in manner limited and prescribed as aforesaid, for the payment thereof, without any deduction, fraud or delay, according to the true intent and meaning of these presents. And, also,

20 that they, the said parties of the second part, shall and will pay off, satisfy and discharge, each and all of the taxes and water rents, and charges for water used, that shall or may be legally charged, imposed or assessed upon the said demised premises, and upon any part or parcel thereof, at any time during the said term of ten year, hereinbefore granted. And, also, that neither they, the said parties of the second part, nor their successors nor assigns, shall or will fill up or reclaim any part of the said land under water, hereinbefore mentioned as

30 demised to be used for the purpose of a wet dock or basin, without the written consent of the parties of the first part, their heirs or assigns, first had and obtained for that purpose. And that on the last day of the said term or other sooner determination of the estate hereby granted the said parties of the second part, their successors or assigns, shall and will peaceably and quietly leave, surrender and yield up unto the said parties of the first part, their heirs or assigns, all and singular the

said demised premises, in as good order and condition as reasonable use and wear thereof will permit, damages by the elements only excepted. And the said parties of the first part for themselves, their heirs and assigns, do covenant and agree to and with the said parties of the second part, their successors and assigns, by these presents, that the said parties of the second part, their successors or assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on their part, the said parties of 10 the second part, their successors and assigns, shall and may at all times during the said term hereby granted, peaceably and quietly have, hold and enjoy the said demised premises without any manner of let, suit, trouble or hinderance of or from the said parties of the first part, their heirs or assigns or any other person or persons whomsoever; and, also, that they, the said parties of the first part, their heirs or assigns, shall and will at their own proper cost, charges and expenses, on or before the first day of December next, after the date here- 20 of, fill up to the grade of the said streets, the said two several tracts of land hereinbefore, firstly and secondly above mentioned, with earth and other suitable filling up materials, and will secure the same with proper walls of bulkheads. And, also, that at the expiration of the said ten years, hereinbefore mentioned, the said parties of the first part, their heirs or assigns, shall and will pay unto them, the said parties of the second part, their successors or assigns, a just and fair valuation for the said pier or wharf, hereinbefore mentioned, such valu- 30 ation to be determined by two indifferent persons, one to be selected by each of the said parties hereto, or their representatives; and in case the two so selected cannot agree, then they two to select another to be joined with them, and the valuation made by the three or any two of them, to be final and binding upon the parties hereto and their respective representatives, but in making such valuation, due regard shall be had to

the purpose for which the said wharf or pier shall then be required, and deduction therefrom one-half of the then value of the solid crib work at the extremity of said pier. Provided, however, that the said parties of the first part, their heirs or assigns shall not be liable to pay such valuation, unless, in the meantime, the said parties of the second part, their successors or assigns, shall have duly paid all of the said rents hereinbefore mentioned and reserved, and the said taxes, water rents

10 and charges hereinbefore mentioned: and shall also have kept and performed all and every of the covenants and agreements herein contained, on their part and behalf to be kept and performed. And it is hereby mutually covenanted and agreed by and between the parties hereto, that if, at the expiration of the first five years of the said term, the parties of the second part, their successors or assigns, shall desire to surrender or yield up the said tract or parcel of land hereinbefore secondly

20 above mentioned, (being the tract twenty feet wide by four hundred feet deep,) they shall be at liberty so to do, and in that case the rent shall continue to be at the rate of three thousand dollars per annum, for the last five years of the said term, instead of at the rate of thirty-five hundred dollars per annum, as is hereinbefore reserved. And, also, that in case the said parties of the second part, their successors or assigns, shall and may at any time during the said term be evicted from the said demised premises, or from any part thereof, or

30 disturbed in the use and enjoyment of the same, or any part thereof by the filling up of Hudson or Southmayd street, so that the parties of the second part shall be hindered or debarred in the reasonable and convenient use of the said demised premises for the purpose of a pier, wharf, dock or basin by the ordinance or direction of the Mayor and Common Council of Jersey City, or of any other competent authority, without the consent, in writing, of the parties of the second part, their successors or assigns, then and in that case, at the option

of the parties of the second part, their successors or assigns, to be expressed in writing, this lease shall cease, and the parties of the second part, their successors and assigns, shall be released from the payment of any rents that may accrue thereafter.

In witness whereof the said parties of the first part have hereunto set their hands and seals, and the said parties of the second part have hereunto affixed their corporate seal, and caused these presents to be signed by their secretary, the day and year first above written. 10

D. S. GREGORY, [L.S.]

H. J. SOUTHMAYD, [L.S.]

G. W. BEEBE, [CORPORATE SEAL]

Secretary.

Signed sealed and delivered }
in the presence of }

THOS. W. JAMES.

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

Be it remembered that on this 14th day of November, 20
in the year of our Lord one thousand eight hundred
and fifty-nine, personally appeared before me, Robert
Gilchrist, jun., one of the masters in chancery, in and
for said state of New Jersey, Thomas W. James, of said
county, who being by me duly sworn, according to law,
on his oath saith, that he, this deponent, is the subscrib-
ing witness to the within deed of lease, that he saw the
within named lessors, Dudley S. Gregory and Henry J.
Southmayd, sign their names respectively to the same,
and heard them acknowledge that they signed, sealed, 30
and delivered the same as and for their voluntary act
and deed, for the uses and purposes therein mentioned,
and, also, that he, this deponent, did at the same time

subscribe his name thereto, as a witness to the due execution thereof.

THOS. W. JAMES.

Sworn and subscribed before me }
in Jersey City, the day and }
year above mentioned.

ROBT. GILCHRIST, Jr.,

Master in Ch'y, N. J.

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

Be it remembered that on this 14th day of November, A. D. 1859, before me, one of the masters in chancery, of said state of New Jersey, personally appeared George W. Beebe, who being by me duly sworn, according to law, on his oath saith, that he, this deponent, is the secretary of "The Hudson County Dry Dock and Wet Dock Company," the lessees within mentioned; that the seal affixed to the within deed of lease, purporting to be the seal of said company, is the corporate seal of
20 the said company; that the said seal was thereto affixed by this deponent, under and by virtue of authority of resolution passed by the board of directors of said company as and for the voluntary act and deed of said company; also, that he, this deponent, by the same authority, signed his name to said lease, as the secretary of said company and on their behalf.

G. W. BEEBE.

30 Sworn and subscribed before me, }
the day and year above written, }
in Jersey City.

ROBT. GILCHRIST, Jr.,

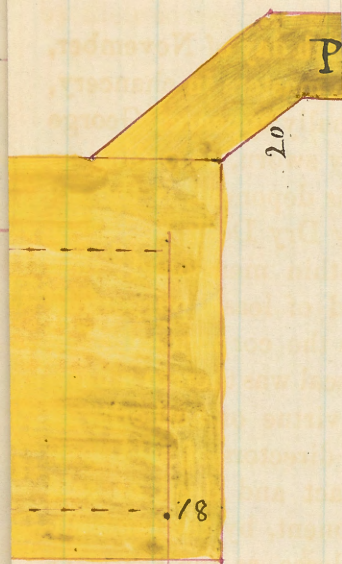
Master in Ch'y, N. J.

(N. B.—The map referred to in this lease, in description of property as annexed to this lease, was not recorded by request of I. W. Scudder, Esq.)

Received in the office and re- }
corded January 26, 1861. }

bearing date the 10th
 Southmayd of
 of the second part.

. S. GREGORY



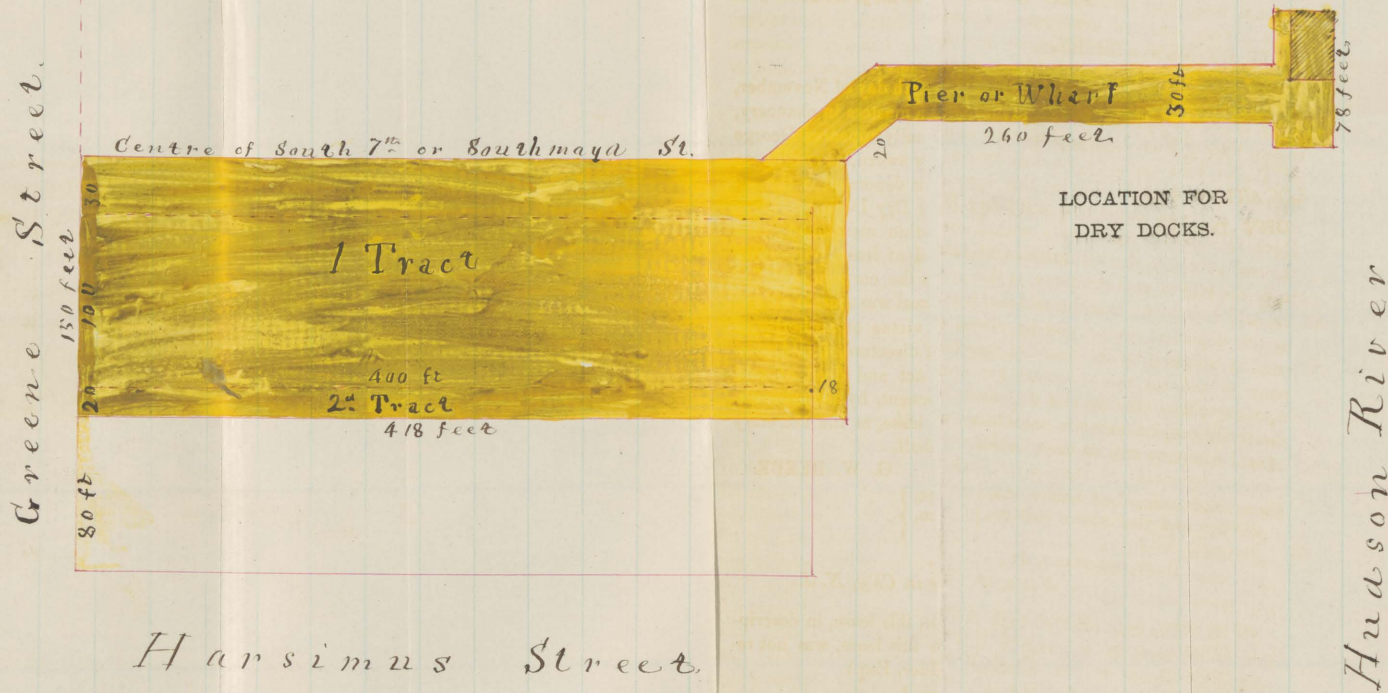
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Map referred to in, and made part of the lease bearing date the 19th day of October, 1859, made by and between Dudley S. Gregory and Henry J. Southmayd of the first part, and The Hudson County Dry Dock and Wet Dock Company of the second part.

D. S. GREGORY.



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No. 2.

Contract between "The Hudson County Dry Dock and Wet Dock Company," and Nathan J. Beebe. Filed in Clerk's Office of Hudson County, July 8th, 1859.

This agreement made and entered into this twenty-third day of May, in the year one thousand eight hundred and fifty-nine, by and between Nathan J. Beebe, of Jersey City, party of the first part, and "The Hudson County Dry Dock and Wet Dock Company," a corporation transacting business in the same place, parties of the second part. Witnesseth:

10

First.—The party of the first part agrees to construct for the parties of the second part, (he the party of the first furnishing all the materials therefor,) a floating dock, in the manner, within the time, for the price, and subject to the regulations hereinafter provided.

Second.—The parties of the second do hereby employ the party of the first part to construct for them such floating dock, and agree to pay him for the same, the sum of fifty-nine thousand five hundred dollars, in the manner and at the times as hereinafter provided.

Third.—The said dock shall be built at such suitable place, (upon premises belonging to the parties of the second part,) at Jersey City, as may be designated by the parties of the second part, and shall be delivered to and become the absolute property of the parties of the second part, as the work progresses.

Fourth.—The said dock shall be built in all respects in conformity to the plans and specifications hereto an-

nexed, and marked schedule A, and shall be completed by the first day of October next.

Fifth.—The parties of the second part shall pay the party of the first part for said dock, at the times and in the manner following, to wit:

1st. The sum of five thousand dollars shall be paid in cash, when the timber is delivered.

2d. The further sum of ten thousand shall be paid when the frame of the dock shall be completed, viz.:
10 five thousand dollars to be paid in cash and five thousand dollars to be paid in the stock of the company.

3d. The further sum of ten thousand dollars shall be paid when the dock shall be planked, viz.: five thousand dollars to be paid in cash, and five thousand dollars in the stock of the company.

4th. The further sum of ten thousand dollars shall be paid when the dock shall be ready to be launched, viz.: five thousand dollars to be paid in cash, and five thousand dollars in the stock of the company.

20 5th. The residue of the fifty-nine thousand five hundred dollars shall be paid when the whole work shall be completed and moved, at such proper place, at Jersey City, as the parties of the second part may designate, viz.: eleven thousand five hundred dollars in cash, and the balance, thirteen thousand dollars to be paid in the stock of the company.

It is further agreed, by the party of the first part, that should he not complete the said dock, by the time mentioned in this contract, that the party of the second
30 part shall have the power to employ others than the party first part, to do the whole or any part of

the said work, and deduct the same from the amounts hereunto agreed to be paid to the party of the first part.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

N. J. BEEBE, [L. s.]
 WILLIAM KEENEY, [L. s.]
 ANDREW CLERK, [L. s.]
 B. F. WOOLSEY, [L. s.] 10 01

Sealed and delivered in }
 the presence of }

G. W. BEEBE.

SCHEDULE A.

Specification for the construction of a Floating Dry Dock

GENERAL OUTLINE OF THE CONSTRUCTION.

For explanation of the following, see drawings made for the purpose.

The dock to be constructed in five separate sections. Each section to be in length as figured 85 feet, in width 35 feet, in extreme height 30 feet 4 inches. The opening for the deck is in height 21 feet 6 inches, in width at top 69 feet, in width at bottom, 66 feet 4 inches. The floor of each deck is 66.4x35 feet. The outside end of each section is 35x30 ft. 4 inches. The upright space enclosed at each end is called a tank, and

its inside next to the deck is 35x21 ft. 6 inches. The space below the deck between the deck floor and the bottom of bed floor, is also a tank, and is 8 feet 10 inches in depth out and out of its timbers as figured. The bed floor is 85x35 feet as figured. The sides of the deck tank are 85x8 ft. 10 in. each as figured. The sides of the end, or upright tanks, are 21 feet 6x8 ft. 8 average. The horizontal or deck tank has two watertight bulk heads across, near the centre as drawn, 35 10 feet by 8 ft. 10 in., the whole of each out and out as figured.

DESCRIPTION OF THE WORKS.

The following is a description of one of the five separate sections above mentioned, and the remaining four sections are to be constructed and finished in every particular in the same manner as below described. To construct each section with two side and three intermediate longitudinal trussed sections of framing with sills, beams, braces, posts, knees, upright side timbers, set as follows: Oak Sills, composed in two pieces each, the outside piece 9x16 inches, rabbetted with a 9-in. side up, and the inside piece 20x13 inches, with a 13-inch side up. Oak Beams composed in three pieces each, the inside piece 12x12 inches, the outside 9x8 inches with a 9-inch side up, and the top piece of Yellow Pine or Oak 14x10. 4 Oak Posts to each of these sections 12x12 inches rabbetted to receive the thickness of the side planking. Yellow pine plates at the top of the posts 12x8 inches. Yellow pine upright side timbers as drawn 9x7 inches, framed into the plates (on posts, with tenons, mortices drawn, bored and pins, the tenons 6 inches long and 2 1-2 inches thick, connected at the bottom ends with the sills by sinking in the outside sill, and by boxing both the upright and the inside sill together, all as shown by the drawing, also connected with the beams by sinking into the outside beam

and by boxing both, the upright and the inside beam together, all as shown by the drawing. 4 Y. Pine braces to each of these sections 12x16 inches, butted at the top, as drawn and sunk into the sills with three abutting toes to each as shown by the detail drawings. Bolt the braces and sills together through and through, with two 1 1/4 inch bolts through the toe of each brace, also bolt the top end of the braces and beams together by 2 1/4 inch bolts to each truss, each bolt passing through and through the beam, and the two braces each 10 side of the centre joint.

Bolt each upright side timber to the sill with two 3/4 inch bolts passing through the upright and sill, and also to the beam with one 3/4 inch bolt in the same manner. Bolt the outside sills to the inside sills and the outside beams to the inside beams with 3/4 inch bolts placed one between each upright timber. Bolt each upright to each brace where they intersect with a 3/4 inch bolt through and through. Yellow Pine Sills 12x14 inches. Yellow Pine Posts 12x12 inches 4 to each truss framed 20 into the top plates with tenons 6 inches long and 2 1/2 in. thick, drawbored and pined, also framed into the sills with mortice and tenons, the tenons 5 inches long and 4 inches thick and drawbored and pined, and also connected with the angle deck timbers by halving them together as shown by the drawings. Bolt the posts and angle deck timbers together with two 1 inch bolts to each intersection, one bolt passing through each deck timber and the post.

Connect the outside posts with the cross bedsills and 30 ends of the truss sills as shown by the detail drawings. Yellow pine braces 4 in each of these trusses 12x16 inches, to be connected and fastened top and bottom in the same manner as described for the braces of the two outside trusses. Yellow Pine plates around on the top of each end tank 12x8 inches, and morticed to receive

the upright side timbers, the mortices to be 9x6x2 1-2 inches.

Yellow Pine keel timbers forming a top beam for the intermediate trusses to be 14x10 inches.

Yellow Pine long end braces 10 in number 10x8, to extend from the tank girts to the truss sills, each brace butted at the ends and locked into the keel block timber where it intersects, and bolted to each timber where it intersects with 3-4 bolts. Yellow Pine deck beams 10 per drawings 8x8 inches to be framed at each end into the beams of the trusses with mortice and tenon and tusks, the tenons 8x6x2 in., drawbored and pined, also bolted and trenailed to the keel block timbers.

All bolts passing through and through to be headed, and points anealed and clenched.

Yellow Pine floor timbers per drawings 10x8 inches, boxed and framed with mortice and tenons, drawbored and pined in the sills of the trusses, the tenons 10x6x2 1-2 inches, four of these timbers to be 10x14 inches 20 framed into the truss sills as above, and also kneed to the same, also each timber to be bolted to each intermediate truss sill with 1 inch bolt. Yellow Pine sills and plates 10x8 inches and 14.7x7 in. upright struts framed together with mortice and tenons drawbored and pined and bolted to the deck and floor timbers. Oak timber heads eight in number 12x9 inches per drawing, with a bolt and wooden key in the top of each, also bolt to the side of the truss sills 4 pieces of yellow pine of suitable size for the bottom ends of the timber heads to 30 frame into. Also to bolt the timber heads to the top and bottom of the trusses. Yellow Pine tank girts 10 in number in each and 8x8 inches halved and bolted to the posts and bolted to the upright side timbers.

Yellow Pine cross pieces, 5 to each pair of girts, 6x5 inches, to be framed with the girts; with mortice and tenons and pined.

Yellow Pine upright side timbers for the inside and outside of the end tanks, 7x9 inches to be framed into the plates at top, and into the sills at the bottom end with mortice and tenons drawbored and pined, the inside timbers as well as the outside timbers to extend down to the lowest floor, and also to frame into a sill as above.

The outside and inside sides of the end tanks, and also the center, if required to be x, with 9x7 inches Yellow Pine timbers about 6 feet from centers, as will be directed in the progress of the work.

Oak bilged blocks, 10 to each section, 6x5 feet 10 inches, bolted together, fitted with irons to slide in the most suitable manner, also to furnish and prepare the necessary number of keel blocks.

To construct two bulk heads between the deck and floor crosswise the section of Yellow pine timber 6 inches thick, the timber composing their bulkheads, to be bolted together as follows: the plank to be bolted sufficiently through and through four 5x5 inch double sliding shores, and 7x7 inch at each end of each one section of Oak, fitted with iron rocks and pells.

32 Knees into each section, per drawings and directions. Deck timbers, 7 Yellow pine deck timbers 8x6 inches in the top end of each end tank, to be framed into the plate with mortice and tenons drawbored and pined. To cover the underside of the floor the outside of the end tank, with 4 inch yellow pine plank jointed for caulking; also, cover the sides between the floor and deck with 5 inch Yellow pine, jointed for caulking;

cover the deck with 4 inch white pine plank jointed for caulking, cover the deck of the tanks with 2 inch White pine plank, and also cover all the remainder of the section with 3 inch Yellow pine plank, jointed for caulking.

Square fasten the bottom and side planking all around as high as the deck, with 1 1-8 inch locust tree nails.

Cross fasten with tree nails, and spike the planking of the tanks above the deck.

- 10 Spike the deck with 8 inch wrought iron spikes, all the tree nails to be wedged inside and out. To caulk the bottom and sides below the deck with four threads of oakum horsed and made in for sheathing, and the deck and tank with three threads, and made in and all to be payed with pitch.

To sheath the bottom and sides all around as high as the deck, with 1 inch spruce or pine sheathing, all graved between the two thicknesses.

- 20 Stop watering to stop water; all joints where practical and necessary as directed, and render all the work perfectly water tight.

To construct pump wells (see drawings), as directed, with three inch plank, all caulked perfectly water tight, also a tank for fresh water, to hold sufficient water to fill the boiler.

- 30 The engine to be enclosed with a house, with a strong and suitable frame covered all around and on top, with narrow tongued and groved, beaded white pine strips, the roof to be circular form, covered with canvass painted, and made perfectly water tight. The size of the house to be made large enough to afford the necessary

working room for the work and workmen, and be provided with the necessary doors, windows and fastenings.

Contractor to furnish all the necessary piles, timber, rooms, scaffolding, poles, implements, machinery, labor and work for the building, launching and securing in its place in the water.

The Contractor of the within described docks, is to do all the work necessary to carry out and complete all the works according to the full intent and meaning of the drawings, specifications, model, instruction and purposes for which the said dock is built, and do the same under the direction, and to the entire satisfaction of the building Committee.

Specification of Machinery, Pumps, Engine, Boiler, Water Valves, &c. &c., for "The Hudson County Dry Dock, and Wet Dock Company."

Engine 12 inch diameter of Cylinder, 36 inch length of stroke, Bed plate not less than 16 inches deep, Fly wheel 12 feet diameter, Shaft about 7 feet long, and two pillar blocks, length of bearing 8 inches, Engine 20 and Boiler to be selected by competent superintendant, and to the entire satisfaction of building committee.

Bevel wheel on shaft not less than 24 inches in diameter, 8 inch face, working into bevel wheel of same size on intermediate shaft, to be of sufficient strength to carry all the works of the dock, pitch not less than 2 inches.

Intermediate shaft 4 inches in diameter, about 10 ft. 8 inches long, with sufficient pillar blocks, not less than

8 inches bearing. One bevel wheel to work into bevel wheel on fly wheel shaft, one bevel wheel not less than 24 inch diameter, 6 inch face to work on shaft, running down into the dock, and provided with a coupling clutch, and one gear wheel about 30 inches diameter of pitch line, 6 inch face, not less than 2 inch pitch to work main shaft.

Main shaft to extend across the 5 sections of the dock on each side sufficient to work the pumps. Main shaft on engine section 2 1-2 inches in diameter, and about 32 feet long, made in two pieces, supported by 6 pillar blocks 8 inch length of bearing.

One Spur Wheel about 28 inches in diameter of pitch line, 6 inch face, to work in spur wheel on intermediate shaft not less than 2 inch pitch and provided with a coupling clutch.

One pinion about 21 inches diameter 4 inch face, not less than 1 1-2 inch pitch to work pump shaft with clutch to work the same.

20 Main shaft on other sections 2 1-2 inches diameter, 32 feet long, made in two pieces, and supported by 5 pillar blocks 8 inch length of bearing, one pinion same as above.

Two upright shafts 3 inches diameter about 22 ft. long, and one cross shaft 3 1 2 inches diameter and about 76 feet 9 inches long, to communicate motion from one side of the dock to the other side, provided with bevel wheel not less than 24 inches diameter, and 6 inch face not less than two inch pitch. Pillar Blocks 30 not less than 8 feet apart and 8 inch bearing. Cross shaft to be coupled with sleeve couplings of wrought iron, and to pass through stuffing bores on the inner side of the dock. Sleeve couplings about 10 inches long.

Couplings for main shaft from one section to the other to have universal joints and sliding sleeves above 5 feet 6 long. From center to center of universal joints about 8 feet.

Pump gearing pumps worked by cranks fast on a shaft 2 1-2 inches in diameter. Cranks to be provided with three pin holes to allow the stroke of the pumps to be 24" 27" or 30" stroke with proper bearings. Pumps to be about 6 feet apart.

Spur wheel on pump shaft about 35 inches, diameter 10 of pitch line 4 inches, face to work into pinion on main shaft, not less than 1 1-2 inch pitch.

Pumps to be 12 inches diameter and thirty inch stroke, the upper part to be of brass with brass buckets, and iron rod with guides and India rubber valves on brass seats. The lower part of pump of cast iron with brass valve seat in chamber and India rubber valves. Chambers to be provided with suitable man-holes to get at the valves and replace the same. Four pumps in each section.

20

Connecting rods for pumps about 18 feet long, made with a forked end at the lower end to take hold of the lengthened pump rod and made with strop and key, on the upper end, with guides and braces.

Water valves on outside of dock two in each section 12 inches in diameter made of iron frame, with composition valves, seats and stem, and worked in upper side of dock by a rack and pinion and provided with suitable copper gratings on the outside of the dock.

30

Boiler to be of locomotive style 3 feet 6 inches outside of cylinder part. Whole length of boiler about

17 feet. Engine to make about 50 revolutions per minute, and pumps 30 revolutions.

All bolts to secure machinery to dock and suitable gearing to work all clutches as well as all tools to work the engine and boiler.

All machinery to be delivered and erected on the dock and of the best material and workmanship.

Shafting to be turned only where for bearing, gearing and clutches, &c., &c.

10 This is the specification referred to in the annexed contract.

N. J. BEEBE,
WILLIAM KEENEY,
ANDREW CLERK,
B. F. WOOLSEY.

STATE OF NEW JERSEY, }
HUDSON COUNTY, 18.

I, Robert Gilchrist, Clerk of Hudson County and
20 Clerk of the Circuit Court and Court of Common Pleas
holden in and for said county, do certify the foregoing
to be a true copy of a certain agreement and specifica-
tion filed in my office July 8th, 1859.

In witness whereof I have hereunto set my hand and
the seal of said courts and county, this ninth day of
April, Eighteen hundred and sixty-two by

ANDREW MOUNT, *Depty. Clk.*

No. 3.

Lien Claim, Filed April 12th, 1860.

Know all men by these presents, that we, Israel Codington, John Herbert and Levi Hetfield junior, partners in trade, under the name style and firm of Codington, Hebert and Company, of the county of Somerset, and state of New Jersey, claim in our own right, a lien for the payment of the sum of six thousand four hundred and seventy-three dollars and twenty-one cents, 10 upon all that certain building and fixture for manufacturing purposes and the fixed machinery and gearing attached to and connected therewith, and making a part thereof known by the name of a floating dock, being constructed in five sections, connected and fastened together, making a building one hundred and seventy-five feet long, by eighty-five feet wide, and being thirty feet and four inches in extreme height, having an opening and a deck on which to float vessels, extending through all the said sections, which opening is in height from 20 the said deck twenty-one feet and six inches, and in width at the top, sixty-nine feet, and at the bottom sixty-six feet and four inches, and the floor of the said deck being eight feet and ten inches above the bottom of the said building, and is sixty-six feet and four inches wide, and extends the whole length of the said building, together with a boiler and steam engine, fixed in and to the said building and making part thereof, and an engine house attached to and making part of said building, and certain fixed gearing 30 and machinery attached to and making part of the said building, and used for pumping water out of the said building. And also upon the estate of "The Hudson County Dry Dock and Wet Dock Company," the owner of the said building, in the land whereon the

said building stands, and to which it is attached including the estate of the said, "The Hudson County Dry Dock and Wet Dock Company," in the lot whereon the said building is erected and to which it is attached, which estate is an estate for years, which will terminate on the first day of November, in the year of our Lord, one thousand eight hundred and sixty-nine. Subject to the payment of a yearly rent until the first day of November, A. D., eighteen hundred and sixty-four, of

10 three thousand dollars, and for the remainder of the said term to a yearly rent of three thousand five hundred dollars, which lot of land is situated in the City of Jersey City, in the County of Hudson, and State of New Jersey, and is bounded, abutted and described as follows, viz.: Begining on the easterly line of Green street, at the distance of eighty feet north from the northerly line of Harsimus, or south Eighth street, and running thence northerly along the easterly line of Green street, one hundred and fifty feet to the middle of

20 south Seventh, or Southmayd street, thence easterly along the middle of South Seventh, or Southmayd street, four hundred feet to the westerly line of Hudson street, thence southerly along the westerly line of Hudson street, one hundred and fifty feet to a point distant eighty feet north of the northerly line of Harsimus street, thence westerly parrellel with Harsimus street and distant eighty feet therefrom, four hundred feet to the place of beginiing together with the exclusive right to use the land under water eastwardly in front of the

30 said above mentioned tract, for the purpose of a Wet Dock or Basin, and eastwardly in front of Southmayd or South Seventh street, and up to and along the wharf or pier there standing for the same purpose, together with the land and land under water upon which the said wharf or pier now stands, which said building and fixture for manufacturing purposes, fixed machinery and gearing and estate for years in the land and lot of ground whereon the same is erected, and to which it is

attached, the said "The Hudson County Dry Dock and Wet Dock Company" a company duly incorporated by an act of the legislature of the state of New Jersey and having its place of business in the State of New Jersey, now is, and at the time of the contracting of the debt for which this lien is claimed, hereinafter more particularly mentioned was the owner. That one Nathan J. Beebe of the city of Jersey City in the County of Hudson and State of New Jersey, contracted the said debt 10 of six thousand four hundred and seventy three dollars and twenty one cents, being the amount for which this lien is claimed as aforesaid, the same being for lumber and materials furnished by the said Israel Codington, John Herbert and Levi Hetfield junior, partners, as aforesaid to the said Nathan J. Beebe at his request, to be used for, and in construction and erection of the said building and fixture for manufacturing purposes within one year last past, he the said Nathan J. Beebe, being the builder thereof. That the following is a bill of par- 20 ticulars and statment of account of said lumber, exhibiting the amount and kind of materials furnished, and the prices at which and the times when the same were furnished, and giving credit for all payments made thereupon and deductions that ought to be made therefrom, and exhibiting the balance justly due to the said claimants viz:

NATHAN J. BEEBE,

To CODINGTON, HERBERT AND COMPANY, DR.

To the following bill of lumber sold and delivered by the 30 said Codington, Herbert and Company, to the said Nathan J. Beebe to be used in the erection and construction of "The Hudson County Dry Dock and Wet Dock Company's Dry Dock," viz:

1859.

	April 19.	To 16,000 feet white oak Timber at \$34 per thousand	\$544.00
	"	To 10,000 feet white pine Plank at \$22.50	225.00
	" 28.	To 20,675 feet white oak Timber at \$34	702.95
	" 29.	To 22,563 " " "	767.14
10	"	To 15,500 feet white pine Plank at \$22.50 per thousand	348.75
	May 3.	To 20,548 feet white oak Timber at \$34 per thousand	698.63
	" 18.	To 19,282 " " "	655.59
	"	To 12,000 feet white pine Plank at \$22.50 per thousand	270.00
	June 1.	To 19,000 " " \$22.50	427.50
	"	To 23,564 feet white oak Timber at \$34.00 per thousand	801.18
	" 14.	To 15,000 " " "	510.00
20	" "	To 11,317 feet white pine Plank at \$22.50 per thousand	254.63
	July 15.	To 2,000 feet white oak Timber at \$34.00 per thousand	68.00

Total amount of materials furnished \$6273.37

CREDIT.

By freight paid by Nathan J. Beebe 70.00

Balance due on said bill of materials furnished \$6203.37

Interest from July 15, 1859 to April 6, 1860,
the date hereof 8 m 22d 269.84

30 Total amount of principal and Interest due, \$6.473.21

Therefore to secure the payment of the said sum of six thousand four hundred seventy-three dollars and twenty-one cents, so due to the said claimants, they the said claimants file this their lien against the said building and fixture for manufacturing purposes, and said fixed machinery and gearing and the estate of the said

"The Hudson County Dry Dock and Wet Dock Company," in the land whereon the said building stands, including the lot whereon the same is erected, and to which it is attached, pursuant to the act entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11th, 1853, and the supplements thereto.

In witness whereof the said claimants have hereto subscribed their names this sixth day of April, in the 10 year of our Lord one thousand eight hundred and sixty.

CODINGTON HERBERT & CO.,

Claimants.

PER ISRAEL CODINGTON.

STATE OF NEW JERSEY, }
HUDSON COUNTY, *vs.* }

Israel Codington, of full age, being duly sworn on his oath saith, that he is one of the members of the firm of Codington, Herbert and Company, that the said firm is composed of this deponent, John Herbert and Levi Hetfield junior, and deponent further saith, that the facts and statements set forth in the foregoing claim are true, and that the bill of particulars and statement in the foregoing claim set forth is for materials furnished by the said claimants in the erection of the building in the said claim described and that the said materials in the said bill of particulars mentioned and set forth, were furnished at the times and for the prices therein specified, and that the amount as claimed therein is justly due to the said claimants.

ISRAEL CODINGTON.

Sworn and subscribed this }
sixth day of April, A. D., }
1860, before me.

J. R. HARDENBERGH,

Master in Chancery, N. J.

NEW JERSEY, }
HUDSON COUNTY, ss. }

I, Robert Gilchrist, Clerk of Hudson County, aforesaid, and Clerk of the Circuit Court and Court of Common Pleas, holden in and for said county, do certify the foregoing to be a true and correct copy of a certain lien claim filed in my office on the 12th day of April, A. D., 1860, and of the affidavit thereunto annexed.

- 10 In witness whereof I have hereunto set the seal of the said Courts and county, and caused these presents to be signed by my lawful deputy this 27th day of December, A. D., 1861.

ANDREW MOUNT, *Depty. Clk.*

No. 4.

Order of Nathan J. Beebe on the Company in favor of Plaintiffs, dated Sept. 24th, 1859.

To the Hudson County Dry Dock and Wet Dock Company:

- 20 Please pay to the order of Messrs. Codington, Herbert & Co., when my contract is completed and the last payment due, twenty five hundred and twenty-one 89-100 dollars, the same to be deducted from my said last payment.

\$2,521 89-100

N. J. BEEBE.

Jersey City, Sept. 24.

No. 5.

*Notice of Plaintiffs' claim served on the Company,
November 21st, 1859.*

JERSEY CITY, Nov. 21, 1859.

*To the Board of Directors of the
Hudson Co. Dry Dock & Wet Dock Co.*

GENTLEMEN :

Our clients, Messrs. Codington, Herbert & Co., have furnished lumber for the construction of your Dry Dock, to the amount of \$6,273 36-100, 10 beside interest to be added. The lumber was furnished from the 19th of April to the 15th of July last, under circumstances which in our opinion give our clients a lien upon the Dock for the amount of their bill.

We submit the matter to your consideration hoping it will be satisfactorily arranged by your board.

Very respectfully,

Your ob't serv'ts,

RANSOM & BROWN,

Att'ys of Codington, Herbert & Co. 20

No. 6.

*Mortgage from "The Hudson County Dry Dock and
Wet Dock Company, to Peter Sandford,
Dated February 9th, 1861.*

THE HUDSON COUNTY DRY DOCK
AND WET DOCK COMPANY,
TO
PETER SANFORD.

*Mortgage dated
Feby. 9, 1861.
\$1,688 45-100.*

This Indenture made the Ninth day of February, in
10 the year one thousand eight hundred and sixty-one,
between the Hudson County Dry Dock and Wet Dock
Company, a body corporate of the State of New Jersey,
party of the first part, and Peter Sanford, of Newark,
in the County of Essex, and State of New Jersey,
party of the second part:

Whereas, Dudley S. Gregory and Henry J. South-
mayd by a certain indenture of lease, bearing date the
Nineteenth day of October, in the year of our Lord
one thousand eight hundred and fifty-nine, did demise,
20 lease and to farm let unto the party of the first part
hereto, their successors and assigns, all the land and
premises hereinafter described, that is to say:

All that certain tract or lot of land and premises situ-
ate in Jersey City, New Jersey, and which on a map
made by Robert C. Bacot, Surveyor, and in the said
indenture of lease particularly described and referred
to is butted and bounded as follows: Beginning on the
easterly line of Green street, at the distance of one
hundred feet north of the northerly line of Harsimus or
30 South Eighth street, from thence running northerly along

the said easterly line of Green street, one hundred and thirty feet to the middle of the street which on said map is called South Seventh street, now known as Southmayd street, thence easterly along the middle of Southmayd street four hundred feet to the westerly side of Hudson street, thence southerly along the westerly side of Hudson street, one hundred and thirty feet to a point distant one hundred feet north of the northerly line of Harsimus street, thence westerly parallel with Harsimus street and distant one hundred feet there- 10 from, four hundred feet to the place, of beginning.

And secondly, a certain other tract or lot of land and premises being twenty feet wide by four hundred feet long, adjoining the first above mentioned tract on the south, extending from Green to Hudson street, and formed of twenty feet in depth, taken off of the rear of each of the sixteen city lots, which on said map front on Harsimus street.

And, thirdly, the exclusive right to use the land under water eastwardly in front of the said two above 20 mentioned tracts, for the purpose of a Wet Dock or Basin, and eastwardly in front of Southmayd street, and up to and along the line of the wharf or pier herein after mentioned for the same purpose.

And fourthly, the land and land under water upon which a certain wharf or pier is now and subsequent to the date of said lease, erected by said party of the first part hereto, and which covers the land and land under water as shown on a map in the said indenture of lease described (together with the two docks thereon, 30 one pair of horses, one wagon, one truck, the tools and fixtures used by the party of the first part hereto in the conducting their business, which with the lease and leasehold property above mentioned are hereby mortgaged) said lease was for the term of ten years, from November 1st, 1859, at the yearly rent of three thousand dol-

lars for 1st. 5 years and \$3,500 for the last five years payable quarterly.

And whereas the party of the first part are justly indebted to the party of the second part in the sum of one thousand six hundred and eighty-eight dollars and forty five cents secured to be paid by a certain bond or obligation bearing even date with these presents, in the penal sum of three thousand three hundred and seventy-six dollars and ninety cents, conditioned for the
 10 payment of the first mentioned sum of one thousand six hundred and eighty-eight dollars and forty-five cents, in one month after the date thereof, with lawful interest thereon, at and after the rate of seven per cent per annum, as by the said bond or obligation and the condition thereof reference being thereunto had may more fully appear.

Now this Indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the said bond or
 20 obligation with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his executors, administrators or assigns, the said indenture
 30 of lease, and all the property hereinbefore described.

Together with all and singular the edifices, buildings, rights, members, privileges and appurtenances thereunto belonging, or in anywise appertaining. And also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim and demand whatsoever, as well in law as in equity of the

said party of the first part, of, in and to the said demised premises, and every part and parcel thereof with the appurtenances. And also the said indenture of lease, and every clause article and condition therein expressed and contained. To have and to hold the said indenture of lease and other hereby granted premises, unto the said party of the second part his executors, administrators and assigns, to his and their only proper use, benefit and behoof, for and during all the rest, residue and remainder of the said term of years yet to come and un- 10 expired.

Subject nevertheless to the rents, covenants, conditions and provisions in the said indenture of lease mentioned.

Provided always, and these presents are upon the express condition that if the said party, the first part shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then and from thenceforth these presents, 20 and the estate hereby granted shall cease, determine and be utterly null and void, anything hereinbefore contained to the contrary in any wise notwithstanding. And the said party of the first part do hereby covenant grant, promise and agree to and with the said party of the second part, that they shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And if default shall 30 be made in the payment of the said sum of money above mentioned, or in the interest which shall accrue thereon or any part of either, that the said party of the second part his executors, administrators and assigns shall and may from time to time, and at all times after de-

fault shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hinderance or denial of the said party of the first part, their successors or assigns or any other person or persons whatsoever.

In witness whereof the party of the first part have
10 hereunto set their Corporate Seal, and caused these presents to be signed by their President, the day and year first above written.

B. G. CLARKE, [L. s.]

Prest.

Sealed and delivered in }
the presence of }

THOS. F. STODDARD, *Witness.*

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

Be it remembered, that on this eighteenth day of
20 February, in the year of our Lord one thousand eight hundred and sixty-one, before me personally appeared Thomas F. Stoddard, of full age, who being by me duly sworn according to law on his oath saith, that he is the Secretary of The Hudson County Dry Dock Company; that he knows the corporate seal of the said company; that the seal affixed to the written indenture is such corporate seal and was so affixed by order of the Board of Directors of said company: that he also knows Benjamin G. Clark, the President of the said
30 Hudson County Dry Dock and Wet Dock Company, and that he saw the said Benjamin G. Clark subscribe

his name to the within indenture, as and for the voluntary act and deed of the said company by the like order of the said company. And that he, the said Thomas F. Stoddard, subscribed his name to the same at the sametime as an attesting witness.

THOS. F. STODDARD.

Sworn and subscribed before
me at Jersey City, New
Jersey,

LUTHER S. ELMER.

10

*Master in Chancery,
of New Jersey.*

Received in the Office, and
Recorded February 18th,
1861.

No. 7.

Mortgage from "The Hudson County Dry Dock and Wet Dock Company, to Garret E. Winants, Dated February 9th, 1861.

THE HUDSON COUNTY DRY DOCK
AND WET DOCK COMPANY,
TO
GARRET E. WINANTS.

Mortgage dated
Feby. 9, 1861.
\$885 0-100.

This Indenture made this Ninth day of February, in
10 the year one thousand eight hundred and sixty-one,
between the Hudson County Dry Dock and Wet Dock
Company, a body corporate of the State of New Jersey,
party of the first part, and Garret E. Winants, of the
city, county and State of New York, party of the
second part.

Whereas, Dudley S. Gregory and Henry J. South-
mayd by a certain indenture of lease, bearing date the
Nineteenth day of October eighteen hundred and fifty-
nine, did demise, lease and to farm let unto the said
20 party of the second part hereto, their successors and
assigns,

All that certain tract or lot of land and premises situ-
ate in Jersey City, New Jersey, and which on a map
made by Robert C. Bacot, Surveyor, and in the said
indenture of lease particularly described and referred
to is butted and bounded as follows: Beginning on the
easterly line of Green street, at the distance of one
hundred feet north of the northerly line of Harsimus or
South Eighth street, from thence running northerly along

the said easterly line of Green street, one hundred and thirty feet to the middle of the street which on said map is called South Seventh street, now known as Southmayd street, thence easterly along the middle of Southmayd street four hundred feet to the westerly line of Hudson street, thence southerly along the westerly line of Hudson street, one hundred and thirty feet to a point distant one hundred feet north of the northerly line of Harsimus street, thence westerly parallel with Harsimus street and distant one hundred feet there- 10 from, four hundred feet to the place of beginning.

And secondly, a certain other tract or lot of land and premises being twenty feet wide by four hundred feet long, adjoining the first above mentioned tract on the south, extending from Green to Hudson street, and formed of twenty feet in depth, taken off of the rear of each of the sixteen city lots, which on said map front on Harsimus street.

And thirdly, the exclusive right to use the land under water eastwardly in front of the said two above 20 mentioned tracts, for the purpose of a Wet Dock or Basin, and eastwardly in front of Southmayd street, and up to and along the line of the wharf or pier herein after mentioned for the same purpose.

And fourthly, the land and land under water upon which a certain wharf or pier is now and subsequent to the date of said lease, erected by said party of the first part hereto, and which covers the land and land under water as shown on a map in the said indenture of lease described, which said premises in said lease mentioned 30 were demised, and to farm, let from the first day of November, eighteen hundred and fifty-nine, for during, and until the full end and term of ten years, then next ensuing, and fully to be complete and ended, said party of the first part, in the said indenture of lease, reserving yearly and every year from the said party of the second

part, in the said lease for the first five years of the said term, the yearly rent of three thousand dollars, and for the last five years of the said term, the yearly rent of thirty five hundred dollars, as by the said lease, reference being thereunto had, will more fully and at large appear, which said lease was lodged for record in the Clerk's Office of the County of Hudson, the twenty sixth day of January, eighteen hundred and sixty-one.

10 And whereas the party of the first part hereto are justly indebted to the party of the second part hereto in the sum of eight hundred and eighty-five dollars secured, to be paid by a certain bond or obligation bearing date the ninth day of February, eighteen hundred and sixty-one, which said bond or obligation is in the penal sum of seventeen hundred and seventy dollars, and conditioned for the payment of eight hundred and eighty-five dollars in one month after the date thereof, with lawful interest thereon, at and after the rate of seven per cent per annum, as by the said bond
20 or obligation and the condition thereof reference being thereunto had may more fully appear.

Now this Indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of one dollar to them paid, by said party of the second part, at or before the
30 whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part the said lease and leasehold premises, and all the property hereinbefore mentioned and described.

Together with the two docks on the said demised premises, and also one pair of horses, one wagon, one truck, and the tools fixtures and appurtenances thereunto belonging, or in anywise appertaining. And also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in and to the said demised premises, and every part and parcel thereof with the appurtenances. And also the said indenture of lease, 10 and every clause article and condition therein expressed and contained. To have and to hold the said indenture of lease and other hereby granted premises, unto the said party of the second part his executors, administrators and assigns, as trustees as aforesaid, for and during all the rest, residue and remainder of the said term of years yet to come and unexpired, subject nevertheless to the rents, covenants, conditions and provisions in the said indenture of lease mentioned.

Provided always, and these presents are upon this express condition that if the said party of the first part shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then and from thenceforth these presents, and the estate hereby granted shall cease, determine and be utterly null and void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And 30 the said party of the first part do hereby covenant, grant, promise and agree to and with the said party of the second part, that they shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And if default shall

be made in the payment of the said sum of money above mentioned, or in the interest which shall accrue thereon or any part of either, that the said party of the second part his executors, administrators and assigns shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained

10 premises, with the appurtenances, without the let, suit, trouble, hinderance or denial of the said party of the first part, their successors or assigns or any other person or persons whatsoever.

In witness whereof the party of the first part have hereunto set their Corporate Seal, and caused these presents to be signed by their President, the day and year first above written.

B. G. CLARKE, [L. s.]
Prest.

20 Sealed and delivered in }
 the presence of }

THOS. F. STODDARD, *Witness.*

STATE OF NEW JERSEY, }
 HUDSON COUNTY, ss,

Be it remembered, that on this eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty-one, before me, Luther S. Elmer, a Master in Chancery in said state, personally appeared Thomas F. Stoddard, of full age, who being by me duly

30 sworn according to law on his oath saith, that he is the Secretary of The Hudson County Dry Dock and Wet Dock Company ; that he knows the corporate seal of the said company ; that the seal affixed to the within indenture

is such corporate seal and was so affixed by order of the Board of Directors of the said company: that he also knows Benjamin G. Clarke, the President of the said Hudson County Dry Dock and Wet Dock Company, and that he saw the said Benjamin G. Clarke subscribe his name to the within indenture, as and for the voluntary act and deed of the said company by the like order of the said company. And that he, the said Thomas F. Stoddard, subscribed his name to the same at the same time as an attesting witness. 10

THOS. F. STODDARD.

Sworn and subscribed before
me at Jersey City, New
Jersey,

LUTHER S. ELMER.

*Master in Chancery,
of New Jersey.*

Received in the Office, and
Recorded February 18th,
1861. }

No. 8.

Mortgage from "The Hudson County Dry Dock and Wet Dock Company," to James R. Thompson, Dated February 9th, 1861.

THE HUDSON COUNTY DRY DOCK
AND WET DOCK COMPANY,
TO
JAMES R. THOMPSON,

*Mortgage dated
Feb'y. 9, 1861.*

\$5,666 64-100.

*Recorded Lib. 24,
pp. 707, &c.*

This Indenture made this Ninth day of February, in
10 the year one thousand eight hundred and sixty-one,
between the Hudson County Dry Dock and Wet Dock
Company, a body corporate of the State of New Jersey,
party of the first part, and James R. Thompson of
Jersey City, New Jersey, party of the second part.

Whereas, Dudley S. Gregory and Henry J. South-
mayd by a certain indenture of lease, bearing date the
Nineteenth day of October, in the year eighteen hun-
dred and fifty-nine, did demise, lease and to farm let
unto the party of the first part hereto, their suc-
20 cessors and assigns,

All that certain tract or lot of land and premises situ-
ate in Jersey City, New Jersey, and which on a map
made by Robert C. Bacot, Surveyor, and in the said
indenture of lease particularly described and referred
to is butted and bounded as follows: Beginning on the
easterly line of Green street, at the distance of one
hundred feet north of the northerly line of Harsimus or
South Eighth street, from thence running northerly along

the said easterly line of Green street, one hundred and thirty feet to the middle of the street which on said map is called South Seventh street, now known as Southmayd street, thence easterly along the middle of Southmayd street four hundred feet to the westerly line of Hudson street, thence southerly along the westerly line of Hudson street, one hundred and thirty feet to a point distant one hundred feet north of the northerly line of Harsimus street, thence westerly parallel with Harsimus street and distant one hundred feet there- 10 from, four hundred feet to the place of beginning.

And secondly, a certain other tract or lot of land and premises being twenty feet wide by four hundred feet long, adjoining the first above mentioned tract on the south, extending from Green to Hudson street, and formed of twenty feet in depth, taken off of the rear of each of the sixteen city lots, which on said map front on Harsimus street.

And thirdly, the exclusive right to use the land under water eastwardly in front of the said two above 20 mentioned tracts, for the purpose of a Wet Dock or Basin, and eastwardly in front of Southmayd street, and up to and along the line of the wharf or pier herein after mentioned for the same purpose.

And fourthly, the land and land under water upon which a certain wharf or pier is now and subsequent to the date of said lease, erected by said party of the first part hereto, and which covers the land and land under water as shown on a map in the said indenture of lease described.

(Together with the two docks on the said demised 30 premises, and also one pair of horses, one wagon, one truck, and the tools, fixtures and appurtenances used by the said company in the conducting of their business,) which with the lease and leasehold property above mentioned are hereby mortgaged, which said premises in the

said lease mentioned, were demised and to farm let from the first day of Noyember, eighteen hundred and fifty-nine, for, during and until the full end and term of ten years then next ensuing, and fully to be completed and ended, said party of the first part, in the said indenture of lease, reserving yearly and every year from the party of the second part, in the said lease for the first five years of the said term, the yearly rent of three thousand dollars, and for the last five years of the said term, the yearly rent of
 10 thirty five hundred dollars, as by the said lease, reference being thereunto had, will more fully and at large appear, which said lease was lodged for record in the Clerk's Office of the County of Hudson, the twenty-sixth day of January, eighteen hundred and sixty-one.

And whereas the party of the first party hereto are justly indebted to the parties of the second part hereto in the sum of five thousand six hundred and sixty-six dollars and sixty-four cents as trustee and in trust, to pay or to secure to pay the following sums of money
 20 due and owing by the Hudson Connty Dry Dock and Wet Dock Company, the party of the first part to the following named parties and persons, that is to say :

To the Hudson County Bank, nine hundred dollars.

To the Mechanics and Traders' Bank, twenty-five hundred dollars.

To Charles Keenan, two hundred and one dollars and sixty-five cents.

To Mason C. Hill, two hundred and eighty-four dollars and sixty-four cents.

30 To Wetmore & Company, two hundred and fifty-eight dollars and seventy-nine cents.

To McGraw and Company, one hundred and ninety-seven dollars and eighty-two cents.

To Cronham & Wetterson, one hundred and fifty-two dollars and six cents.

To Howell and Birdsell, one hundred and seventy-six dollars.

To Benjamin G. Clarke, ninety-six dollars and eighty-two cents.

To Randall & Morrell, one hundred and seventy dollars and seventy cents.

To certain small bills on the ledger of the said company, amounting to one hundred and six dollars and 10 twenty-five cents.

To John D. Carscallen, eighty-eight dollars and eighty-eight cents.

To William Birkbeck, fifty-four dollars and eighty-one cents.

To Hutton and Lacy, thirty-two dollars.

To the Counsel of the Company, fifty dollars.

And for taxes on the demised property, three hundred and ninety-six dollars and twenty-two cents, making in all the said sum of five thousand six hundred 20 and sixty-six dollars and sixty-four cents, as in the said bond or obligation is mentioned, which said bond or obligation is in the penal sum of eleven thousand three hundred and thirty-three dollars and twenty-eight cents and conditioned for the payment of five thousand six hundred and sixty-six dollars and sixty-four cents, in ten days after the date thereof, with lawful interest thereon, at and after the rate of seven per cent per annum, as by the said bond or obligation and the condition thereof, reference being thereunto had may more 30 fully appear.

Now this Indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of one dollar to them paid, by the said party of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bar-
 10 gained, sold, assigned, transferred and set over and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part the said lease and leasehold premises, and all the property hereinbefore mentioned and described.

Together with all and singular, the edifices, buildings, rights, members, privileges and appurtenances, thereunto belonging, or in any wise appertaining. And also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim and
 20 demand whatsoever, as well in law as in equity of the said party of the first part, of, in and to the said demised premises, and every part and parcel thereof with the appurtenances. And also the said indenture of lease, and every clause, article and condition therein expressed and contained. To have and to hold the said indenture of lease and other hereby granted premises, unto the said party of the second part his executors, administra-
 30 tors and assigns, as trustees as aforesaid, for and during all the rest, residue and remainder of the said term of years yet to come and unexpired, subject nevertheless to the rents, covenants, conditions and provisions in the said indenture of lease mentioned.

Provided always, and these presents are upon this express condition that if the said party of the first part shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition

of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then and from thenceforth these presents, and all the estate hereby granted shall cease, determine and be utterly null and void, anything hereinbefore contained to the contrary in anywise notwithstanding. And the said party of the first part do hereby covenant, promise and agree to and with the said party of the second part, that they shall well and truly pay unto the 10
said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And if default shall be made in the payment of the said sum of money above mentioned, or in the interest which shall accrue thereon or any part of either, that the said party of the second part his executors, administrators and assigns shall and may from time to time, and at all times after default shall be made in the performance of the proviso 20
or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hinderance or denial of the said party of the first part, their successors or assigns or any other person or persons whatsoever.

In witness whereof the party of the first part have hereunto set their Corporate Seal, and caused these presents to be signed by their President, the day and 30
year first above written.

B. G. CLARKE, [L. s.]

Prest.

Sealed and delivered in }
the presence of }

THOS. F. STODDARD, *Witness.*

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

Be it remembered, that on this eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty-one, before me, Thomas F. Stoddard, of full age, who being by me duly sworn according to law on his oath saith, that he is the Secretary of The Hudson County Dry Dock and Wet Dock Company; that he knows the corporate seal of the said company;
10 that the seal affixed to the within indenture is such corporate seal and was so affixed by order of the Board of Directors of the said company: that he also knows Benjamin G. Clarke, the President of the said Hudson County Dry Dock and Wet Dock Company, and that he saw the said Benjamin G. Clarke subscribe his name to the within indenture, as and for the voluntary act and deed of the said company by the like order of the said company. And that he, the said Thomas F. Stoddard, subscribed his name to the same
20 at the same time as an attesting witness.

THOS. F. STODDARD.

Sworn and subscribed before }
me at Jersey City, New }
Jersey, }

LUTHER S. ELMER.

*Master in Chancery,
of New Jersey.*

Received in the Office, and }
Recorded February 18th, }
1861. }

No. 9.

*Mortgage from "The Hudson County Dry Dock and Wet Dock Company," to Thomas W. James,
Dated Aug. 1st, 1860.*

THE HUDSON COUNTY DRY DOCK
AND WET DOCK COMPANY,
TO
THOMAS W. JAMES.

Mortgage dated

Aug. 1st, 1860.

Registered Aug.

13, 1860. Libr. 22,

pp. 750, &c.

This Indenture made the first day of August, in the year of our Lord one thousand eight hundred and 10 sixty, between the Hudson County Dry Dock and Wet Dock Company, a body corporate of the State of New Jersey, party of the first part; and Thomas W. James of Jersey City, in the county of Hudson and State of New Jersey, party of the second part, witnesseth :

Whereas the party of the first part, by an act entitled "A Supplement to an act entitled an act to incorporate The Hudson County Dry Dock and Wet Dock Company, approved February thirteenth, eighteen hundred and forty-five," which said supplement was approved March seventeenth, eighteen hundred and sixty, were authorized to issue their bonds bearing interest at a rate not exceeding seven per cent per annum, and to sell and otherwise dispose of them in such manner and upon such terms as in the judgment of the directors they should deem for the interest of the company; provided the amount should not exceed one-half of the capital stock actually paid in, as by reference to the act will fully appear.

And whereas, the capital stock of the said company actually paid in, amounts to the sum of sixty four thousand dollars and upwards, and whereas the said company have issued sixty-four bonds in the sum of five hundred dollars each, said bonds being numbered from one to sixty-four inclusively, and whereas the bonds are of the form next hereinafter set forth, that is to say :

"No.

\$500.

"UNITED STATES OF AMERICA,

10

"STATE OF NEW JERSEY.

"FIRST MORTGAGE BOND.

" The Hudson County Dry Dock and Wet Dock Company, do hereby bind themselves and their successors
 " to pay unto John S. Fox or bearer, the sum of five hundred dollars on the first day of August, eighteen hundred and sixty-five, with interest thereon, at the rate of
 " seven per cent per annum, payable on the first day
 " of February, and the first day of August in each year,
 " on the presentation of the interest warrants hereto
 20 " subjoined, to the Mechanics and Traders Bank of Jersey City, upon the delivery of each interest warrant,
 " on the payment of such interest, and of the bond, on
 " the payment of the principal, and in case of the non-payment of the interest for any half year when demanded as aforesaid, and the same remaining in
 " arrear for sixty days, the principal sum shall become
 " due, and payable on demand, from and after the said
 " sixty days, when default shall be made as aforesaid,
 " with interest then accrued and in arrear.

30

" In witness whereof, the said The Hudson County Dry Dock and Wet Dock Company, have caused their Corporate Seal to be hereunto affixed, and their President and Secretary to sign the same, and the

"interest warrants to be signed by their secretary, this
 "first day of August, in the year eighteen hundred and
 "sixty.

Secretary.

President."

"I do hereby certify that The Hudson County Dry
 "Dock and Wet Dock Company have executed a mort-
 "gage to me on their property as trustee, for the benefit
 "of the bondholders: said bonds being of a similar
 "kind as the foregoing, issued and to be issued to an
 "amount not exceeding thirty-two thousand dollars, the 10
 "said sum not exceeding one-half of the capital stock
 "actually paid in; in pursuance of a supplement to
 "the act entitled "An Act to incorporate the Hudson
 "County Dry Dock and Wet Dock Company," which
 "supplement was approved March 17, 1860.

Trustee."

Which said bonds have interest warrants attached.
 And whereas it is the intention of the said company to
 secure the said bonds by a mortgage on the property of
 the said company hereinafter specified, and it is the in- 20
 tention of the said company that the party of the
 second part herein, shall be the trustee for the said bond-
 holders.

Now, therefore, this Indenture further witnesseth,
 that the party of the first part, the better to secure the
 payment of the said bonds with interest, and in consid-
 eration of the sum of one dollar by the party of the
 second part in hand well and truly paid to the party of
 the first part, the receipt whereof is hereby acknowledg-
 ed, have granted, bargained, sold, aliened, released, 30
 assigned, transferred and set over, and by these pre-
 sents do grant, bargain, sell, alien, release, assign, transfer
 and set over to the said party of the second part his ex-
 ecutors, administrators and assigns forever.

All that certain lease, bearing date the nineteenth day of October, in the year of our Lord one thousand eight hundred and fifty nine; made by Dudley S. Gregory and Henry J. Southmayd, to The Hudson County Dry Dock and Wet Dock Company, for the property described as follows :

All that certain tract or lot of land and premises situate, lying and being in Jersey City aforesaid, and which on a map made by Robert C. Bacot, Surveyor, showing
 10 the width of Harsimus street referred to, and made part of a deed executed by the said Dudley S. Gregory and Henry J. Southmayd and others, bearing date the 13th day of December, A. D. 1855, and filed in the Clerk's Office of the said county of Hudson, and also in the Clerk's Office of the Mayor and Common Council of Jersey City, is butted and bounded as follows: Beginning on the easterly line of Green street, at the distance of one hundred feet north of the northerly line of Harsimus or South 8th street, thence running north-
 20 erly along the said easterly line of Green street, one hundred and thirty (130) feet to the middle of the street which on said map is called South 7th street, now known as Southmayd street, thence easterly along the middle of Southmayd street four hundred (400) feet to the westerly line of Hudson street, thence southerly along the westerly side of Hudson street, one hundred and thirty (130) feet to a point distant one hundred (100) feet north of the northerly line of Harsimus street, thence westerly parallel with Harsimus street and dis-
 30 tant one hundred (100) feet therefrom, four hundred (400) feet to the place of beginning.

And secondly, a certain other tract or lot of land and premises being twenty (20) feet wide by four hundred (400) feet long, adjoining the first above mentioned tract on the south, extending from Green to Hudson street, and formed of twenty (20) feet in depth, taken

off of the rear of each of the sixteen city lots, which on said map front on Harsimus street.

And thirdly, the exclusive right to use the land under water eastwardly in front of the said two above mentioned tracts, for the purpose of a Wet Dock or Basin, and eastwardly in front of Southmayd street, and up to and along the line of the wharf or pier herein after mentioned for the same purpose.

And fourthly, the land and land under water upon which a certain wharf or pier is now in process of construction by said parties of the second part, which when completed, will cover the land and land under water, as shown upon a map, signed by the parties thereto, and made a part of the said lease, and thereunto annexed, the whole of the said demised premises (except said land under water) being colored yellow on the said map thereto annexed, and the term yet to come and unexpired in the said demised premises, subject to the rent therein reserved and the clauses and conditions therein contained, and also the two docks of the party of the first part, situated upon or attached to the said demised premises, with the steam engines, fixtures and appurtenances thereunto belonging or in anywise appertaining. And also all the building, stable and other appurtenances situated on the demised premises aforesaid. And also the pier running out from or being upon or attached to the said demised premises. And also all other fixtures, tools, property or appurtenances now on or hereafter to be placed upon the said demised premises or attached in any way to the same, being the property of the party of the first part and used or to be used in conducting the business of the company, and not including lumber and materials intended to be worked up and removed from the demised premises. Together with all and singular the tenements and appurtenances thereunto belonging and in any wise appertaining, and

the rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof with the appurtenances. To have and to hold the said premises and property hereinbefore granted and assigned as aforesaid, to the said party of the second part, his executors, administrators and assigns in trust for the person or persons,

10 body or bodies politic or corporate, who shall become the holders of the said bonds or any of them, subject to the terms and stipulations of the said bonds. And this Indenture further witnesseth, that if the party of the first part, their successors, shall well and truly pay the interest and the principal of the said bonds according to the terms and conditions thereof, at the times and in the manner therein stated according to the true intent and meaning thereof, that then these presents and the estate hereby granted and assigned shall cease, deter-

20 mine and be void. And this Indenture further witnesseth that if default shall be made in the payment of either the principal or interest of the said bonds or any of them, then and from thenceforth it shall and may be lawful for the party of the second part, his executors, administrators or assigns, upon the request, in writing, of any one of the holders of said bonds on which interest or principal shall not be duly paid as aforesaid, to cause proceeding to be taken to foreclose the equity of redemption of the party of the first part, their succes-

30 sors or assigns in the said mortgaged premises and property, and to sell the said mortgaged premises and property under the direction and decree of any tribunal competent for that purpose, for the payment and satisfaction of the said bonds or any of them or any part thereof. And this Indenture further witnesseth, that if default shall be made in the payment of either principal or interest of the said bonds or any of them, then and from thenceforth it shall also be lawful for the

party of the second part, his executors, administrators or assigns upon request, in writing, of any one of the holders of said bonds upon which interest or principal shall not be duly paid according to the terms and conditions thereof, to enter into and upon and take possession of all and singular the mortgaged premises and property aforesaid, and take and receive the income and profits of the said mortgaged premises, for the purpose of the security hereinbefore declared, and further to sell and dispose of the same and all benefits and equity 10 of redemption of the party of the first part therein, giving reasonable public notice of the time and place of said sale, and as the attorney of the parties of the first part for that purpose by these presents duly constituted, to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance, assignment or transfer of the same, and out of the money arising from such sale to apply so much as shall discharge the principal and interest which shall be due, and said bonds, together with the costs 20 and charges of such advertisement and sale, and the expenses incident to taking possession as aforesaid, rendering the overplus of such purchase money unto the party of the first part or their assigns, which rule shall be a perpetual bar against the parties of the first part, and all persons claiming by, from or under them.

And this Indenture further witnesseth, that in case of death or removal of the party of the second part, or his incapacity to act in the matter of the said trust, or in case of the death, removal or incapacity to act of any 30 trustee as aforesaid, the party of the first part shall select a new trustee to supply the vacancy thereby created, and shall thereupon make, execute and deliver all and singular such further assurances as may be requisite to enable such trustee to execute the said trust. And it is further covenanted by the said parties of the first part, that the said party of the second part, using good faith

and reasonable diligence, shall not be responsible for any act, matter or thing, loss or damage arising out of the said trust, or done or to be done by him, excepting only such as shall arise from his acts of bad faith or gross negligence.

In witness whereof the said party of the first part have caused these presents to be signed by their President and Secretary, and their Corporate Seal to be hereunto affixed the day and year aforesaid, and the
 10 party of the second part has signified his consent by signing and sealing these presents.

B. F. WOOLSEY, [CORPORATE
President. SEAL.]

THOS. W. JAMES, [L. S.]

Sealed and delivered in the }
 presence of }

W. TITUS, *Secy.*

JACOB WEART.

20 STATE OF NEW JERSEY, }
 HUDSON COUNTY, *ss.* }

Be it remembered, that on this thirteenth day of August, eighteen hundred and sixty, before me, Jacob Weart, one of the Masters of the Court of Chancery in said State, personally appeared Walter Titus, who being by me duly sworn upon his oath doth depose and say that he is one of the subscribing witnesses to the above instrument, that he is the Secretary of The Hudson County Dry Dock and Wet Dock Company; that he saw Benjamin F. Woolsey execute the foregoing in-
 30 strument, and that he is the President of said company; that this deponent is well acquainted with the Corporate Seal of said company, and that the seal thereto annexed is the Corporate Seal of the said company; that

Benjamin F. Woolsey the President, and this deponent, were acquainted with the contents of the foregoing instrument, and that the same was signed and sealed as the voluntary act and deed of said President, and that said President and Secretary executed the same in pursuance of a resolution of the Board of Directors of said Company.

W. TITUS.

Sworn and subscribed before me at
Jersey City, on the day and year }
aforesaid,

10

JACOB WEART.

Received in the Office, and
Recorded August 13th, }
1860.

No. 10.

*Opinion of Judge Brown, in Court of Errors, on
overruling Demurrer.*

COURT OF ERRORS AND APPEALS.

ISRAEL CODDINGTON, JOHN HER-
BERT AND LEVI HETFIELD, JUN.,
PARTNERS, &c.

vs.

10 NATHAN J. BEEBE, BUILDER, and
THE HUDSON COUNTY DRY DOCK
& WET DOCK COMPANY, OWN-
ERS.

Error to Hudson

Circuit.

The declaration in this case is in the usual form for merchandize sold and delivered to Beebe, with an averment that the debt due from Beebe, is a lien upon the property of the Dock Company, by virtue of the mechanics' lien law.

20 The defendants demurred to the declaration, and assigned several causes of demurrer, raising the question, whether the facts stated in the declaration made a case within the operation of the lien act.

The plaintiffs insist, that the defendants cannot answer the declaration for such cause, otherwise than

by the statute plea, that the house and lands were not so liable, making an issue of fact.

To this position there are several answers : 1st. It is too late the plaintiffs have joined in demurrer and so referred the question to the court. 2d. There is no assignment of error for this cause. 3d. The rule of pleading prescribed by the statute, does not apply to the case, if the statute does not. This suit so far as respects the lien claim, is brought by virtue of the 8th section of the law, which enacts that "*when* a claim is filed agreeably to the 10 provisions of this act, upon any lien *created thereby*, the same may be enforced by suit, in the Circuit Court, &c., giving the form of summons." The 9th section provides, that the declaration shall conclude with an averment, that the debt is a lien upon the building and lot, describing the same as in the lien claim. If in making the description there required, of the building and lot, the plaintiff shows that either are not within the provisions of the act, that there is no lien upon them by virtue of it, it is clear that the owner is not bound to 20 answer, according to its provisions. The plaintiff by his own showing in such case, has no right to bring the suit, and the court has no jurisdiction to proceed *in rem*, or against the owner. The defendant in a case within the statute, is to plead that the buildings and lands are not liable for the debt; but if the plaintiff himself shows that the property described is not so liable, certainly the defendant has no issue of fact to make with him.

But the main question is, whether the declaration 30 does show a case, which if true is not within the statute.

A description of the building and of the lot or curtilage upon which the lien is claimed, and of its situation sufficient to identify the same, is one of the particulars of

the lien claim required by the 6th sec. of the act, and the same description by the 9th sec., is to be inserted in the declaration. The object of the description is to identify the property, not to show a case within the statute. The declaration need not do this further than by averment. But if in description the pleader shows a case to which the statute does not apply, as if the lien is claimed upon personal property, a demurrer is well pleaded.

- 10 The declaration avers, that the claim is a lien by virtue of the provisions of the act and its supplements, upon all that certain building and fixture for manufacturing purposes, and the fixed machinery and gearing attached to, and making part thereof, known by the name of a floating dock. It states that the building is constructed in five sections, gives its length, breadth and height; states that it has an opening and a deck on which to float vessels, a floor eight feet five inches above the bottom of the building, and a boiler and a
 20 steam engine, making part of it, used for the purpose of pumping water out of it. It further avers, that the claim is a lien upon the estate of the Dry Dock and Wet Dock Company, in the land whereon the building stands, and to which it is attached, including the lot whereon it is erected; that this estate is for years in a lot described, together with the exclusive right to the use of the land under water and in front of the lot, for the purpose of a wet dock or basin, and up to and along the wharf, there standing for the same purpose, and the
 30 land and land under water, on which the wharf stands.

It is insisted by the plaintiffs, that if the structure thus described is not within the original act, it is clearly included in the supplement passed March 22d, 1860, after the debt accrued to plaintiffs against Beebe, and just before this suit was commenced. It can have no effect in this case, unless it operates retrospectively. This

construction is not to be given to any Legislative act unless the words require it. The enactment is that the words, "fixtures for manufacturing purposes," as used in the 5th section of the said act, shall be construed to include any building or erection, or construction, of whatever description, attached or annexed, or intended to be attached or annexed to any land or tenement, and designed to be used in the building or repairing of vessels, whether the same be permanently attached to the freehold or so built as to be removed from place to 10 place, and only temporarily attached to the land, and whether the same be intended and designed for use on land or water.

It is manifest that this supplement was not intended for construction merely, but to extend the provisions of the law to cases not within its reach. Its words do not require that it should have a retrospective operation, no such intent appears from the words, and none such should be given them. If, however, such was the 20 intent of the law it would be so far void, for it would have the effect of divesting vested rights. It would have the effect to mortgage one man's land for the payment of another's debt. In this case supposing the plaintiff had no lien before the passage of this supplement, such construction would create a lien upon the Dock Company's property for Beebe's debt to plaintiff, this the Legislature has no power to do, nor can it be supposed they intended it.

The question then is to be considered only with reference to the act of 1853. That act in the 1st section 30 provides that every building hereafter erected or built within this state, shall be liable for the payment of any debt contracted in its construction, and that such debt shall be a lien upon such building, and on the land including the lot or curtilage whereon it stands.

This declaration avers that the debt in question is a

lien by virtue of that act, upon a building describing it, and the land whereon it stands, and to which it is attached, describing such land. So far, the allegation is clearly according to the terms of the statute. The argument is that in describing the building, the pleader shows that it is not a building but something else, viz: a Floating Dock. But there is no allegation that it is floating dock. The statement is, that it is a building, known by the name of a floating dock, erected upon
 10 and standing upon and attached to the land described. It may be known by the name of a floating dock, have been intended for a floating dock without floating at all, but it cannot be a building standing on the land whereon it is erected, which is the direct averment, and yet float upon the water. From this declaration so far, the defendant cannot say but that it is a building. We must take the averment rather than the name. But suppose it to be a floating dock, not standing upon the land described, but attached laterally, is
 20 it necessarily not such a structure as may be covered by a mechanic's lien?

Narr. is framed not only to meet 1st but the 5th section of the act. The 5th section provides that any addition erected to a former building, and any fixed machinery or gearing or *other fixture for manufacturing purposes*, shall be considered a building. Is it impossible that a floating dock can be a fixture for manufacturing purposes? In determining this question, it is necessary to ascertain the meaning of the
 30 phrase "fixtures for manufacturing purposes," as used in this act. Fixtures originally meant some chattel personal, which had been so attached to the realty as to become a part of it and be immovable except with the consent of the owner of the fee. This meaning is ancient and not now very much in use, because it seldom happens that what has become realty needs any special name to distinguish it. Besides it is too much

restricted for common use; the word in this sense will not serve as a general term for this kind of property. What is a fixture immovable between the heir at law, and the executor is not necessarily so between landlord and tenant. Annexation which binds permanently to the land fixtures for agricultural purposes, does not always have that effect as to fixtures for manufacturing purposes. The meaning of the word therefore varies with the claimant, whether tradesman, farmer, or nursery man, or whether executor, tenant 10 or mortgagee. M. Ferard, in his treatises on this subject, page 2nd, after mentioning this restricted meaning, says "There is, however, another sense in which the term fixture is very frequently used, and which it is thought expedient to adopt in the following treatises, viz: as denoting those personal chattels which have been annexed to the land, and which may afterwards be severed and removed by the party who has annexed them, or his personal representative against the will of the owner of the freehold." And again, on page 20 11, after referring to cases showing the different rights of different claimants, to this kind of property, under the name of fixtures; he justified the use of the word in this sense, saying: "It serves to distinguish a species of things which are subject to a very peculiar right of property, and which manifestly require some appropriate appellation. Indeed the application of the term indiscriminately to all chattels affixed to land, seems to point out their physical character only and has no reference to any legal rights that may attach to them. And 30 with respect to its application to those things which cannot legally be removed after annexation; there appears to be less necessity for giving a name to them, because the right of property in these cases is precisely of the same nature as that which is exercised over every part of the freehold."

This treatise is the most elaborate that has been published on this subject, and may, from its character, be regarded as authority for this definition, if authority were needed. But it is well known to every person who has had occasion to examine this subject, that the word has come to be generally used in reports and treatises in the sense given it by Mr. Ferard. I think it may be assumed that in our statute the word fixtures, connected as it is with machinery, gearing and manu-
 10 facturing, means trade fixtures. These as well as all other fixtures, must of course be annexed to the land, but do not become a part of it in legal contemplation, and are generally removable by the tenant during his term. If the structure be durable and the annexation of as durable a character as the structure, the question whether fixtures or not, will depend but little upon the mode of annexation. Its fitness for the particular place where it is annexed, its being connected with the general business conducted there, and other facts going
 20 to show the intent of the party annexing to make one thing of the land and chattel to carry out one general purpose, should perhaps, have more effect upon the question than the mode or the permanence of the annexation. In the case before the court supposing the thing to be a floating dock, it does not appear whether its use is at all connected with the land. It may be utterly independent of the land except for mere anchorage. It may have upon its deck all the necessary tools, machinery and materials for working in
 30 wood, iron and copper, and applying the work to the building, furnishing and repairing of vessels, or it may be appurtenant to and a necessary annexation to a ship yard, used merely or mainly to receive vessels on its deck, and to raise them to the level of an adjoining ship yard, and work shops, and the work applied to them be done partly on land, and partly on the dock. The land for the use to which it is put may require this appendage, and be useless without it. As this case is

now presented, it is impossible to determine the question on this demurer. Even supposing the fact that the structure is a floating dock not erected upon or standing upon the land, is fairly to be inferred from the declaration, that alone may not be decisive of the question. An intelligent judgment cannot be given upon it in advance.

It is impossible to determine the
fact in this case. I am supposing the fact that
the machine is a thing that is not created and
that it is the fact is that it is not created from
the machine, but alone may not be the fact of the
machine. An intelligent judgment cannot be given
and it is necessary.