

N. J. Court of Errors and Appeals.

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WILLIAM A. GUEST,  
*Appellant,*  
*and*  
ABRAM S. HEWITT, Trustee, *et al.*,  
*Respondents.*

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WILLIAM A. GUEST,  
*Appellant,*  
*and*  
ABRAM S. HEWITT, and MARCUS  
L. WARD, Trustees, *et al.*,  
*Respondents.*

APPELLANT'S POINTS.

The appellant, after the commencement of these suits, acquired an interest in their subject matter, such as would

have required that he should have been made a party if acquired before the commencement of the suits.

By Section 4 and Section 6, of the act entitled "An act relating to the Court of Chancery," found in Session laws of 1870, pages 41 and 42, he was entitled to be made a party in the cause, upon the facts alleged in his petition, and proved by the evidence taken.

The fact that a final decree had been taken in the first cause, did not preclude him from being made a party. Although bound by that decree, he was still interested in the sale of the property, and in the disposition of the moneys arising therefrom, especially the surplus money.

Upon the facts alleged in the petition and proved by the evidence, the Chancellor should have opened the decree, and allowed the appellant to defend the suit, and protect his property.

There was good cause shown for vacating the enrollment and opening the final decree in this case, and the Chancellor had power to do it, and should have done so.

2 Daniel's Chan. Prac., 1026 and notes.

1 Barbour's Chan. Prac., 366-7 (last Edition.)

Parker vs. Grant, 1 John, Chan. 630.

Moore vs. De Graw, 1 Hal., 346.

Williamson vs. Sykes, 2 Beasley, 182.

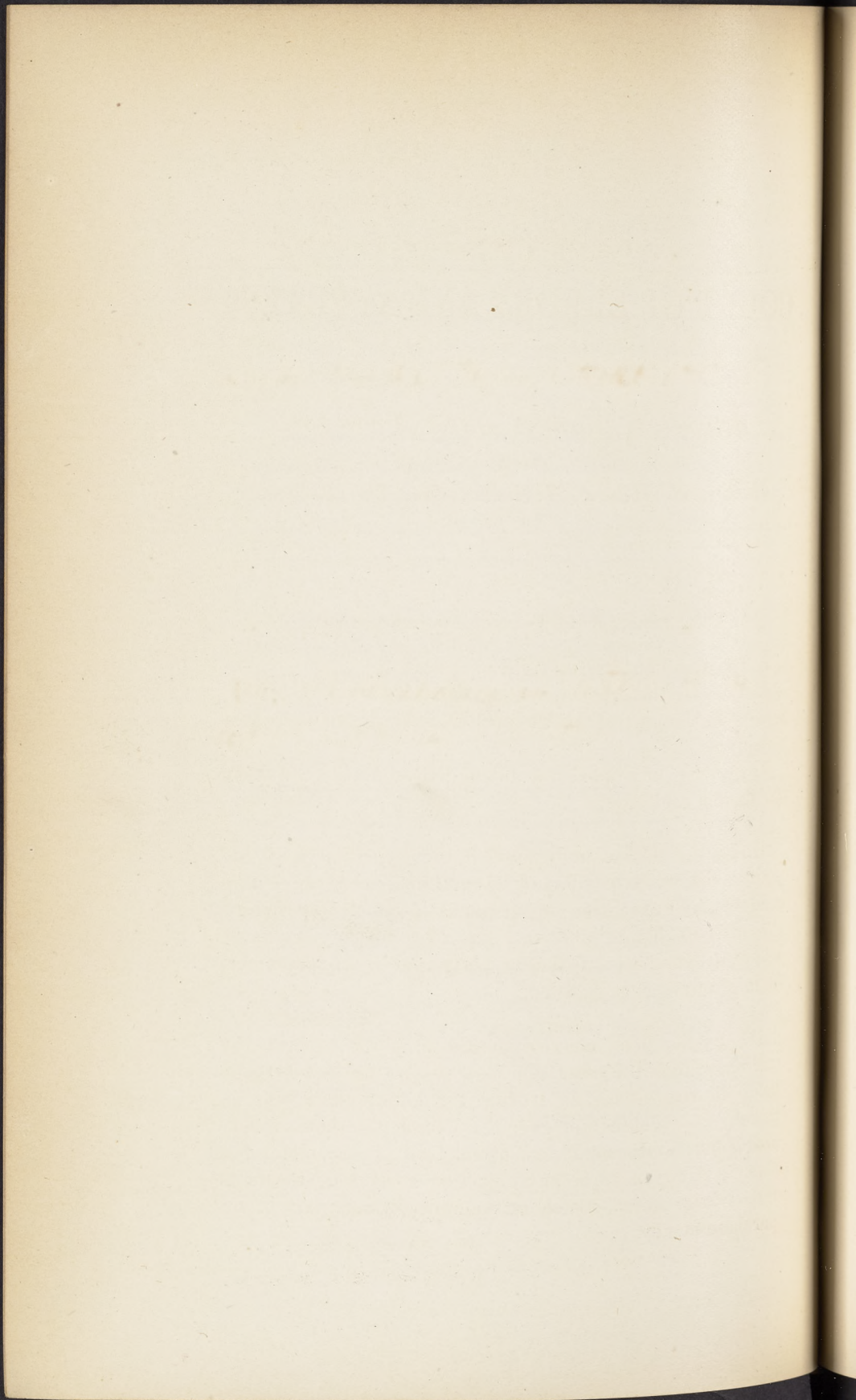
Brinkerhoof vs. Franklin 6, C. E. G., 334.

And authorities cited by the Chancellor in this last case.

JOHN LINN,

Counsel for Appellant.

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## COURT OF ERRORS AND APPEALS.

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*Between William A. Guest, Appellant,*  
*and*  
*Abram S. Hewit, Trustee, &c., Defendant.*

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### ON APPEAL, &c.—POINTS FOR RESPONDENT.

- I. The appellant has no right of appeal—
  1. Because the order appealed from was a matter of discretion on the part of the Chancellor, from which there lies no appeal.
  2. Because no appeal was taken within forty days from the date of said order.
  
- II. By the statute under which the appellant filed his petition below, he was bound by the final decree previously rendered, and execution in pursuance of which was then in the master's hands, and was foreclosed of any rights to which, as purchaser of the property sold by the receiver, he might have been entitled.
  
- III. By the deed conveying said property to him, the said Guest took the same, expressly subject to the mortgage held by respondent as trustee for bondholders secured thereby; on which mortgage the decree was then already made, and in process of execution; and the appellant was thereby estopped from any objection to said decree, or to the amount thereof—such an amount formed part of his purchase money.

IV. The bonds secured by said mortgage and decree, being payable to bearer, and with coupons also so payable annexed, of which various parties were possessed as *bona fide* holders, without notice, by sale from railway company, the defences sought to be set up by said appellant were inadmissible.

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V. The defence sought to be set up by said appellant could not be admitted, because the issue of bonds being confessedly good up to the amount of twenty thousand dollars per mile, and it being impossible to distinguish what bonds constituted the alleged over-issue, neither the railway company nor petitioner could justly defend against any bonds issued.

VI. The proof shows no over-issue, nor other defence set up by appellant.

*VII. The bondholders in interest are not brought in as parties.*

# COURT OF ERRORS AND APPEALS.

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*Between William A. Guest, Appellant,  
and  
Marcus L. Ward & Abram S. Hewitt, Trustees,  
Respondents.*

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## POINTS FOR RESPONDENTS.

1. The appellant has no right of appeal from the order complained of, the matter being one of discretion with the Chancellor, whether or not to grant said petition.

2. The appellant has no right of appeal, because all his interest in the subject matter of the suit has been sold and conveyed by deed made by William Paterson, master, under another mortgage and decree thereon, subject to which said appellant acquired his said interest.

3. The statute under which said appellant filed his petition, forbids his being permitted to answer—or being admitted as defendant otherwise than subject to proceedings already taken.

4. The said order gave the said appellant the opportunity of all relief by him needed or asked for in his said petition.

REPORT OF ERRORS AND APPEALS

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# In Chancery of New Jersey. <sup>1</sup>

TO THE HONORABLE THEODORE RUNYON,  
CHANCELLOR OF THE STATE OF NEW JERSEY.

Between ABRAM S. HEWITT,

*Plaintiff.*

and

The MONTCLAIR RAILWAY COM-  
PANY and others,  
*Defendants.*

Bill to foreclose ~~an~~ ~~prohi-~~  
~~tion of William A. Gust.~~

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Humbly complaining showeth unto your honor, your orator, Abram S. Hewitt, of Ringwood, in the township of Pompton, in the county of Passaic and State of New Jersey, Trustee as hereinafter mentioned, that heretofore about the        day of        one thousand eight hundred and seventy-one, the Montclair Railway Company, a corporation duly incor-<sup>3</sup> porated under the laws of the State of New Jersey by virtue of their charter, entitled "An act to incorporate the Montclair Railway Company," approved March 18th, A. D. 1867, and the supplements thereto approved April 9th, A. D. 1868, and March 16th, A. D. 1869, in which charter it is provided that the said company shall have the power, and they were thereby authorized to issue their bonds and for the purpose of securing their payment, mortgage their real estate, and <sup>4</sup> personal property, railway or railways and all the appurtenances, franchises, powers, privileges and rights belonging thereto, which they might possess under the said act of incorporation, to such amount as they might deem expedient and to sell or negotiate the same at such rate of interest or discount, as they might deem for their best interest,

without invalidation thereof, by virtue of any statute of this  
 5 State, and that the said Bonds and Mortgages so sold or ne-  
 gotiated, should be valid and binding in law and in equity,  
 and that the purchaser or purchasers under a decree in  
 equity, or foreclosure founded upon any such bond or mort-  
 gage, should be vested with all the estate, rights, franchises,  
 powers and privileges, which were or might be conferred  
 upon said company, under and by virtue of said act of in-  
 corporation or any supplement thereto, subject to the res-  
 trictions, conditions and limitations contained therein, did  
 by their Board of Directors, intrusted with the control and  
 6 management of their corporate affairs, resolve to borrow  
 money on second mortgage of the said road, not to exceed  
 one million five hundred thousand dollars, and to issue its  
 second mortgage bonds to secure the payment thereof, which  
 said bonds should be of the denomination severally of five  
 hundred or one thousand dollars each, and of the amount in  
 the aggregate of one million five hundred thousand dol-  
 lars, which said bonds were to stand equally secured accord-  
 ing to their amount, by the mortgage hereinafter mentioned.

7 And your orator further shows unto your Honor that, af-  
 terwards about the first day of November, in the year one  
 thousand eight hundred and seventy-one, the said the Mont-  
 clair Railway Company did make and execute, under their  
 corporate seal, and deliver unto your orator as trustee, a cer-  
 tain indenture of mortgage made by the said, The Montclair  
 Railway Company of the first part, signed by its President, J.  
 H. Pratt and its Treasurer, H. R. Low, and also signed and  
 sealed by your orator, of the second part, a copy of which said  
 indenture of mortgage, is hereto annexed, and which your  
 8 orator prays may be taken as part thereof, and to which  
 copy, or to the said indenture of mortgage, now in posses-  
 sion of your orator, ready to be produced and proved, your  
 orator prays leave to refer for greater certainty if it be ne-  
 cessary so to do, by which said indenture of mortgage after  
 reciting that the said party of the first part theretofore, on

the first day of September, one thousand eight hundred and  
 seventy, had issued first mortgage bonds dated on that day, <sup>9</sup>  
 to the amount of two millions five hundred thousand dollars,  
 and had executed to Marcus L. Ward, and your orator as  
 trustees, a certain indenture of mortgage, or deed of trust,  
 dated on that day, and after reciting their resolution to bor-  
 row money to a further amount, not to exceed one million  
 five hundred thousand dollars, as aforesaid, and that the  
 bonds mentioned in the said resolution, were to be of the  
 form of bond, coupon and guarantee, shown therein, and in  
 the said copy of said indenture of mortgage hereto annexed, <sup>10</sup>  
 the said the Montclair Railway Company, did grant, bar-  
 gain, sell, assign, transfer, and convey unto your orator, as  
 trustee, and to his successor and successors, in the trust and  
 to his and their assigns, all and singular the property, real  
 and personal in said mortgage described as "the line of rail-  
 "way, known and to be known as the Montclair Railway, as  
 "the same is being and shall be constructed, from the line of  
 "the State of New York, at or near Greenwood Lake, to the  
 "Hudson River; and also the branches thereof, to-wit: The  
 "Patterson branch, extending from a point near the Hack- <sup>11</sup>  
 "ensack River, to a point on said railway, in the township of  
 "Wayne, near Mead's Basin, and the Caldwell branch of said  
 "railway, extending from Montclair into the Township of Cald-  
 "well, including all the railway, ways, rights of way, depot  
 "grounds or other lands all tracks, bridges, viaducts, culverts,  
 "fences, and other structures, depots, station houses, engine  
 "houses, freight houses, wood houses, water stations, and  
 "other buildings, and all machine shops and all real or per-  
 "sonal property, held or acquired, or hereafter to be held or  
 "acquired by the said company their successors or assigns, <sup>12</sup>  
 "for use in connection with the aforesaid railway, and  
 "branches of the party of the first part, or with any  
 "part thereof, or with the business of the same including  
 "all locomotives, tenders, cars and other rolling stock  
 "or equipment, and all machinery, tools, implements, fuel

- 13 “and materials for constructing, operating, repairing or  
 “replacing the aforesaid railway and branches or any part  
 “thereof or of any of the equipments or appurtenances of  
 “the aforesaid railway and branches or any part thereof, and  
 “all machinery of all kinds, and all and singular the other  
 “personal property of any nature, kind and description  
 “whatsoever belonging to the said party of the first part,  
 “wheresoever the same may be situated, all of which personal  
 “chattels are hereby declared and agreed to be fixtures and  
 “appurtenances of the said railway and said branches, and  
 14 “are to be used and sold in connection therewith, and not  
 “separate therefrom, and are to be taken as part thereof.  
 “And all tolls, incomes, issues, and profits to be had or de-  
 “rived from the same, or any part or portion thereof, and all  
 “right to receive or recover the same, and also all franchises  
 “connected with or relating to the aforesaid railway and  
 “branches or to the construction, maintenance or use  
 “of the same.” Together with all and singular the tene-  
 ments, hereditaments and appurtenances to the aforesaid  
 railway lands and premises, or either thereof belonging or  
 15 in anywise appertaining, and the reversion or reversions re-  
 mainder or remainders, tolls, incomes, revenues, rents, issues  
 and profits thereof. And also all the estate, right, title inter-  
 est, 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 any and every part thereof with the  
 appurtenances subject nevertheless to the aforesaid first  
 mortgage lien upon said premises and appurtenances created  
 in and by the said mortgage executed and delivered to Mar-  
 cus L. Ward and Abram S. Hewett as aforesaid, to have and  
 16 to hold the estate, property, rights, privileges, franchises and in-  
 terests of the said, the Montclair Railway Company, together  
 with all and singular the emoluments income and advan-  
 tages, tenements, hereditaments, and appurtenances thereunto  
 belonging, or in any wise appertaining, and the reversion and  
 reversions, remainder and remainders, rents, issues and

profits thereof, unto your orator, his successor or suc-  
 cessors and assigns on the trust, and for the uses and  
 purposes therein declared, and none other. Provided,  
 and the said mortgage was made and executed upon the  
 express condition, that if the said, the Montclair Railway  
 Company should well and truly pay or cause to be paid to  
 the holders of the said bonds or obligations intended to be  
 secured thereby and each and every of them after the same  
 should be issued, the principal sums of money therein re-  
 spectively mentioned at the maturity thereof, according to  
 their true intent and meaning, with the interest thereon,  
 accruing at the time, and in the way and manner therein  
 provided, that then the said indenture and the estate thereby  
 granted, should cease, determine and be void and of no effect. 18

And your orator further shows that in and by the said  
 mortgage, the said, the Montclair Railway Company, did  
 covenant and agree with your orator for the execution of any  
 further assurance for the better vesting and confirming the  
 premises thereby granted, especially for conveying any prop-  
 erty subsequent to the date thereof acquired by the said  
 Railway Company, and to do all the things on the part of the  
 said, the Montclair Railway Company, to be done and per-  
 formed as therein provided, and to pay unto the holder,  
 or holders of said bonds the principal sums of money  
 therein respectively mentioned, and the interest thereon  
 as the same should become due and payable, and that  
 in case of default in the payment of the interest on any day  
 on which the same should become due and payable, such de-  
 fault continuing for a period of six months, that after the  
 expiration of the said six months the whole amount of the  
 principal and interest of the bonds thereby secured should  
 be deemed to become and should be due and payable, and  
 the said, the Montclair Railway Company, should and would,  
 on demand made by your orator assign and transfer in due  
 form to him or to his successors or agents duly authorized,  
 the actual possession of all the property and premises therein 20

21 granted and intended to be embraced, and that the  
expenses of taking, holding and managing the said  
property and premises therein granted or intended to be  
embraced if possession should be taken, should be paid from  
the income, and if necessary from the sale of the property  
and premises by your orator or the trustee thereof, for the  
time being, and further, that in case your orator or his suc-  
cessors in the said trust, or his assigns, should take and re-  
ceive, collect and have the income and profits of the said rail-  
way and other property, first applying the same to the pay-  
22 ment and discharge of all current, necessary operating ex-  
penses, and the repairs and all taxes and other similar  
charges, and next to the payment of all sums of money due  
and payable upon the aforesaid bond thereby secured; and  
that your orator, his successor in said trust, or assigns, hav-  
ing entered into full possession of the premises, property and  
estate thereby conveyed (the said default still continuing) at  
his or their discretion, and with the approbation of any court  
of competent jurisdiction, of said State, may or on the writ-  
ten request of the holders of at least forty per centum of the  
23 bonds thereby secured and then outstanding unpaid, should  
proceed to sell and dispose, or cause to be sold and disposed  
of, all the premises property and estate thereby conveyed or  
intended to be conveyed, or so much thereof as should be  
necessary to pay and discharge the principal and interest ac-  
cording to the tenor thereof, of all such bonds thereby se-  
cured and then outstanding as may then have been issued by  
the said the Montclair Railway Company, and which then re-  
main unpaid, together with all benefit and equity of redemption  
of the said the Montclair Railway Company therein at public  
24 auction, in the city of New York, upon previous notice therein  
provided, but with a provision that nothing therein contained  
as to such sale at public auction should be so construed as to  
deprive your orator of the right to proceed by bill in equity  
in any court of competent jurisdiction for foreclosure of the  
said mortgage, and a sale of the therein granted property

franchises and premises at his option, at any time after default shall have been made in the payment of the interest or principal thereby intended to be secured. 25

And your orator further shows that it was further provided in the said indenture of mortgage that the same, together with the said bonds thereby secured, were made, executed and delivered upon certain terms and conditions set forth in the said mortgage.

First : That the actual possession, use, management and control of all the said mortgaged property and premises should remain in and with the said the Montclair Railway 26 Company, so long as the said bonds so issued should be and remain without default or forfeiture.

Second : That the said bonds should be countersigned by your orators, and should be issued and offered and exposed for sale only to such an amount as should be at and after the rate of twenty thousand dollars in bonds per mile in length of the track of said railway and its several branches, and that the said bonds should be so issued and the avails thereof paid over to the said the Montclair Railway Company at the rate aforesaid per mile, so fast as the track of said road 27 should be graded and the iron rails laid thereon, and no faster ; provided, however, that when the said road should have been completed from the state line of the State of New York, near Greenwood Lake, to the Hackensack River, and when the said bonds should be needed for the purpose of constructing a double track for said railway, then the balance of the bonds remaining in the hands of the said trustee and not yet issued, should be countersigned by him and delivered to the said party of the first part, said Company, at the rate of fifteen thousand dollars per mile of said double track as 28 laid, and the balance of the bonds, if any, when the whole of the said second track is laid ; and

Third : That in case of vacancy in said trusteeship, a new trustee should be appointed in the manner therein pointed out.

29 And it was further understood and agreed by and between the parties to the said mortgage, that your orator should only be accountable for reasonable dilligence in the management of said trust, and should not be responsible for the acts or negligencies of any agent or agents necessarily employed by him when selected with proper discretion or with the approbation of the said Company.

And your orator further shows that on the tenth day of January, one thousand eight hundred and seventy-two, the said indenture of mortgage was duly proved by Josiah T. Wilcox, one of the subscribing witnesses thereto, and the 30 Secretary of said Company, and by Theodore R. Shear, the other subscribing witness, before Hezekiah Watkins, a Commissioner of the State of New Jersey residing in the State of New York, and afterwards was duly deposited for record in the books of record of mortgages of the various counties in which said property is situate, that is to say, in the Register's office of the county of Essex, on the twelfth day of January last aforesaid, and afterwards on the same day in the Clerk's office of Passaic county; on the thirteenth day of said January, in the Clerk's office of the county of Morris; on the 31 fifteenth day thereof, in the Clerk's office of the county of Hudson, and on the sixteenth day thereof in the Clerk's office of the county of Bergen, and was thereupon duly recorded in the book of mortgages of said several counties.

And your orator further shows unto your Honor that about the same first day of November, in the year one thousand eight hundred and seventy-one, being the date of the said above mentioned indenture of mortgage to your orator the said, the Montclair Railway Company did make 32 and execute under their corporate seal that certain bonds of the forms set out in the said indenture of mortgage to your orator, signed by the president of the said company and attested by the said H. R. Low, the treasurer thereof to the amount in all of one million five hundred thousand dollars, by each of which the said the Montclair

Railway Company did promise to pay to the person named therein or the holder thereof, thirty years from the said date thereof, for value received, the sum either of five hundred or one thousand dollars, lawful money at the agency of said company in the City of New York, and interest thereon from said date, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each year, free from all government tax upon presentation and surrender of the coupons thereto annexed at the said agency as they severally should become due, it being on each bond recited that the same was one of a series secured by the said mortgage to your orator, and that the same should not be obligatory until your orator should endorse thereon a certificate that the same was one of the said series and to which said bonds, coupons were annexed, signed by the said treasurer for the payment of the interest thereon half yearly as in said bonds provided.

And your orator further shows that afterwards the construction of the railway of the Montclair Railway Company was carried on, and that from time to time and in accordance with the terms of the said mortgage, and so far as the said railway was constructed, and your orator therefore authorised by the said mortgage, your orator as such trustee, did countersign certain of the said bonds and deliver the same to the said The Montclair Railway Company, and that thereupon the same were offered, exposed to sale, hypothecated, or sold to various persons, and the avails of the said bonds so sold or hypothecated were paid over to the said the Montclair Railway Company.

And your orator shows that the said bonds, so countersigned and delivered by your orator, amounted to about eight hundred and twenty thousand dollars, all or nearly all of which are outstanding and unpaid in the hands of various holders.

And your orator further shows that it was the intention of your orator and of the said the Montclair Railway Company parties, to the said indenture of mort-

37 gage, that the same should convey to your orator a full  
 and undefeasible estate in fee simple in the said rail-  
 road franchises and privileges, but through the mistake of  
 the scrivener who drew the same the necessary words of in-  
 heritance were omitted, that thereupon your orator filed his  
 bill of complaint in this court, for the reformation of the said  
 mortgage, and that such proceedings were thereupon had  
 that by decree of this court made on the nineteenth day of  
 March, eighteen hundred and seventy-two, the same was re-  
 formed, and it was decreed that the said mortgage conveyed  
 38 to your orator and his heirs a full estate in fee simple in all  
 the premises aforesaid subject only to the said former deed  
 of mortgage as by reference to the said decree and the pro-  
 ceedings in the said cause will more fully appear.

And your orator further shows unto your honor, that said  
 the New York and Oswego Midland Railroad Company  
 shortly after the execution and record of the said mortgage  
 to your orators entered into possession of the railroad de-  
 scribed therein, and have continued in possession thereof  
 until now constructing and operating the same; that your  
 39 orator is informed, and believes that the said the New York  
 and Oswego Midland Railroad Company now claim that they  
 have some lease of the said premises from the Montclair Rail-  
 way Company, but your orator shows and expressly charges  
 that whatever estate, possession or interest they have therein  
 if any valid interest, lease or estate is subsequent and subject  
 to the lien of your orators said mortgage, and that at the  
 time of the execution, delivery, and record of said mortgage,  
 the said The New York and Oswego Midland Railraid Com-  
 pany knew of and assented to the mortgaging of said premi-  
 40 ses to your orator in fee simple, and that if they had any claim  
 or estate in the said premises, the same is void as against  
 your orators said mortgage. Your orator having no notice of  
 the same.

And your orator further shows that about the third day of  
 October, eighteen hundred and seventy-one, Samuel H. Ben-

son and Henry K. Benson, recorded a verdict in the Essex County Circuit Court against the Montclair Railway Company for damages and costs, that the same was set aside and new trial granted on which judgment was obtained, the twenty-second day of April next thereafter for seven thousand seven dollars and eleven cents, or some other sum besides costs, that a writ of error has been taken on said judgment, but the same still remains of record. 41

And your orator further shows that afterwards in the same court, Emma Saunders and Thorndyke Saunders, her husband, recovered a judgment against said company for eighteen hundred and thirty-three dollars, or some other sum on the ninth day of October last, as appears of record. 42

And your orator further shows that by virtue of the said judgment the said Samuel Benson, Henry K. Benson, Emma Saunders and Thorndyke Saunders, claim some lien on parts of said premises, but your orator shows that said judgment were all entered subsequent to the record of your orators, mortgage, and are subject to the lien thereof.

And your orator further shows unto your Honor, that on the first day of November, in the year one thousand eight hundred and seventy-two, six months interest on said bonds, that is to say, thirty-five dollars on each bond of one thousand dollars and seventeen dollars and fifty cents on each bond of five hundred dollars, then issued, and outstanding as aforesaid became due and payable upon presentation and surrender at the said agency of the coupons annexed to said bonds, and made default in the payment of the same, although the coupons becoming due thereon, were duly presented and offered for surrender at the said agency. And your orator further shows that such default has continued for over six months since the time when the said coupons became due and payable as aforesaid and still continues, whereby your orator shows and expressly charges that the whole amount of the principal and interest of the said bonds secured by the said mortgage has become and is justly due and payable according to the terms of said mortgage. 44

45 And your orator further shows that the said, the Montclair Railway Company have made default and failed to pay the interest on the said bonds which came due on the first day of May, eighteen hundred and seventy-three, although coupons becoming due at the time last aforesaid, were duly presented for payment at the New York agency of The Montclair Railway Company, as in the said bond provided, and that said default still continues.

46 And your orator further shows that the holder of forty per centum of the bonds by said mortgage secured and now outstanding unpaid, (the said company having failed to pay their coupons as aforesaid,) have requested your orator to take proceedings for the sale of said premises according to law.

47 And your orator further shows unto your Honor that the said bonds are in the hands of many persons for money (as your orator is informed and believes,) advanced to the said, the Montclair Railway Company, according to the purpose expressed in the mortgage of the said bonds, and that he believes and charges they were accepted by such persons in reliance upon the security contained in, and created by your orators, said mortgage, and upon good consideration by them paid and advanced, that the said bonds have come into the hands of numerous owners and holders thereof respectively who are entitled to the benefit of the said mortgage, and the security thereof upon good and valuable consideration by them respectively paid, relying upon the security of said mortgage as your orator believes; that your orator does not know the names of the owners and holders of all the said bonds, but alleges that the persons owning the same are too numerous  
48 to be made parties to this suit without exposing the same to great delays, from abatement by bill or otherwise. And your orator is informed, that almost all, if not all, the interest secured to be paid by said coupons remains unpaid notwithstanding due presentation of the same for payment. And your orator shows and expressly charges that the whole

amount of the said bonds now outstanding with large arrears  
 of interest remains justly due and payable to the holders<sup>49</sup>  
 thereof as aforesaid respectively, whereby and by the said de-  
 fault in the payment of the said interest, the said deed of  
 mortgage to your orator and the estate thereby mortgaged  
 hath become absolute in your orator and his heirs. And your  
 orator further shows that the said, the Montclair Railway  
 Company, and the New York and Oswego Midland Railroad  
 Company since the execution of your orators, said mortgage,  
 have possessed and enjoyed, and that they do still possess and  
 enjoy the said mortgaged premises with the appurtenances<sup>50</sup>  
 and have always received, and still do receive the rents, is-  
 sues and profits thereof, and your orator shows, and ex-  
 pressly charges that, the said premises are a slender and  
 scanty security for the payment of the principal and interest  
 money due on the said bonds, as aforesaid, and that he, or  
 some other person for him, have frequently and in a friendly  
 manner applied to the said the Montclair Railway Company,  
 and the New York and Oswego Midland Railroad Company,  
 Samuel Benson, Henry K. Benson, Emma Saunders, and  
 Thorndyke Saunders, who are the defendants in this suit, and<sup>51</sup>  
 have requested them to pay and discharge the said principal  
 and interest moneys so due to the holders of said bonds, or  
 obligations, and secured thereby. And the said deed of  
 mortgage to your orator as in equity and good conscience  
 they ought to have done. But now so it is, may it please  
 your Honor, that the said the Montclair Railway Company,  
 The New York and Oswego Midland Railroad Company,  
 Samuel Benson, Henry K. Benson, and Emma Saunders, and  
 Thorndyke Saunders, combining and confederating together,  
 and with other persons unknown to your orator, whose<sup>52</sup>  
 names when discovered, he prays may be inserted herein,  
 with proper and apt words, to charge them as parties, de-  
 fendants herein, and contriving how to injure and aggrieve  
 your orator in the premises, sometimes give out and pre-  
 tend that, though your orator's estate in the premises has

53 become absolute at law, yet that your orator cannot dispose of the same, to any purchaser in any manner, but that the same will be subject to an equity of redemption, and at other times they pretend that their estate in the premises, is prior to your orator's said mortgage, by virtue of certain alleged encumbrances, whereas your orator charges that, if any such encumbrances exist, they are fraudulent and void, or without consideration or kept on foot to injure your orator and ought to be delivered up to be cancelled or declared of no effect as against your orator, who had no notice of said  
54 pretended encumbrances, all which actings and doings of the said defendants and their confederates are contrary to equity and good conscience and tend to the wrong, injury and oppression of your orator.

In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises by the strict rules of common law, nor can safely sell the said premises for the payment of the said bonds, or foreclose the equity of redemption of the defendants therein, without the aid of this Honorable Court.

55 To the end therefore, that the said defendants and their confederates when discovered, may, on their several and respective corporal oaths, true, full and perfect answer, make to all and singular the premises, and that the defendants may be decreed to pay to your orator, in trust for the holders of the said bonds, the said sums so due thereon, and also all his costs and charges by him in his suit in this behalf sustained, by a short day to be appointed by this honorable Court, and in default thereof that the said defendants and each of them, and all persons claiming, or to claim under them, or any or  
56 either of them, may be foreclosed of and from all equity of redemption, or claim of, in and to the said mortgaged premises, and may deliver to your orator all deeds, demises and writings whatever, relating to, or concerning the same, or else that all and singular the mortgaged premises, with the appurtenances may, by the order and decree of this honora-

ble Court, be sold subject to the lien of the said prior mortgage, and out of the money arising from the sale thereof,<sup>57</sup> your orator may be paid the costs and charges by him in this behalf sustained, and his commission or compensation, for performing his said trust, and also the principal and interest money due on said bonds, and that an account may be taken of the bonds secured by the said mortgage to your orator's, and of the amount due on the said bonds for principal and interest, and that the names of the owners thereof may be ascertained and decree made for their payment, and that your orator may have such further, and other relief in<sup>58</sup> the premises, as may be agreeable to equity and good conscience. May it please your honor, the premises considered to graht unto your orator a writ, or writs of subpoena issuing out, and under the seal of this honorable Court, to be directed to the said defendants, respectively therein, and hereby commanding them and each of them to appear before your honor in this honorable Court, then and there to answer all and singular the premises, and to do, further stand to, abide by, and perform such orders as to your honor shall seem meet, and shall be agreeable to equity and good conscience, and<sup>59</sup> your orator, as in duty bound, will ever pray, &c.

PARKER & KEASBEY,

Sol. and of Counsel with Complainant.

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60

THIS INDENTURE, made the first day of November, in the year one thousand eight hundred and seventy-one between the Montclair Railway Company, a corporation duly incorporated under and pursuant to the laws of the State of New Jersey, party of the first part, and Abram S. Hewitt, as trustee, party of the second part:

61 Whereas, The said party of the first part, heretofore, and on the first day of September, one thousand eight hundred and seventy, issued its first mortgage bonds, dated on that day to the amount of two millions five hundred thousand dollars, and to secure the payment thereof also on the same day, duly executed and delivered to Marcus L. Ward and Abram S. Hewitt as trustees, a certain indenture of mortgage or deed of trust dated on that day,

62 And whereas, The said party of the first part has now by its Board of Directors, entrusted with the control and management of its corporate affairs, resolved to borrow money to a further amount not to exceed one million five hundred thousand dollars, and to issue its second mortgage bonds to secure the repayment thereof which said bonds are to be of the denominations severally of five hundred dollars and one thousand dollars each, and to amount, in the aggregate to one million five hundred thousand dollars, and which said bonds are to stand equally secured according to their amount by these presents, and are to be of the following form of bond, coupon and guarantee to wit:

63

#### SECOND MORTGAGE BOND—BOND OF \$1,000.

64 The Montclair Railway Company of the State of New Jersey, promises to pay to Peter Cooper, or the holder of this bond, thirty years from the date hereof for value received, the sum of one thousand dollars, lawful money of the United States of America, at its agency in the City of New York, and also interest thereon from date at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each year, free from any United States Government tax, upon presentation and surrender at the said agency of the annexed coupons as they severally become due as provided therein.

This bond is one of a series of second mortgage bonds, amounting to one million five hundred thousand dollars to

be issued at the rate of twenty thousand dollars per mile of road as provided in the mortgage hereinafter mentioned (as by reference thereto will more fully and at large appear) all bearing even date herewith, the payment whereof is secured<sup>65</sup> by a mortgage on the railway of said company, its several branches, its equipment and all appurtenances thereto, franchises and other property in the State of New Jersey, executed in trust for the benefit of the holders of the said bonds to Abram S. Hewitt as trustee, and bearing date the first day of November, A.D., 1871, subject, however to a prior lien or mortgage bearing date September 1st, A.D., 1870, made by said company to Marcus L. Ward and Abram S. Hewitt, as trustees to secure the payment of an issue of first mortgage<sup>66</sup> bonds amounting in the aggregate to two millions five hundred thousand dollars.

This bond shall pass by delivery or transfer on the books of the company in the City of New York, and at any other place which the company may determine. After a registration of ownership certified hereon by the transfer agent of the company, no transfer except upon the books of the company shall be valid unless the last transfer be to bearer which shall restore transferability by delivery, and this bond shall continue subject to successive registrations and transfers to bearer as aforesaid at the option of each holder. On a<sup>67</sup> registration of ownership, the holder may, at his option surrender the coupons which will then be cancelled, and thereafter interest will be payable to the registered holder or his attorney.

This bond shall not become obligatory until the certificate endorsed hereon shall have been duly signed by the said trustee.

In witness whereof the said company has caused its corporate seal to be hereto affixed, and these presents to be signed by its President, and attested by the Treasurer this first day of November, A. D., 1871. <sup>68</sup>

J. H. PRATT,  
President.

Attest:  
H. R. Low,  
Treasurer.

## (CERTIFICATE.)

69

I hereby certify that this bond is one of a series of Second Mortgage Bonds referred to above, secured by the mortgage above mentioned, duly executed and delivered to me as trustee, and recorded as authorized by law.

ABRAM S. HEWITT,

Trustee.

## (COUPON.)

70

\$35.00.

On the first day of May, 1872, the Montclair Railway Co. will pay the bearer, at its agency in the city of New York, on surrender of this coupon, thirty-five dollars, for six months' interest due on that day on its second mortgage bond No. —

H. R. LOW,

Treasurer.

## (GUARANTEE.)

71 In accordance with the terms of an agreement entered into between the Montclair Railway Company, and the New York and Oswego Midland Railroad Company, and as part of the consideration to said agreement, the New York and Oswego Midland Railroad Company hereby guarantees the payment of the within bond, and of the several coupons thereunto belonging as the same shall severally mature.

As witness the seal of the New York and Oswego Midland Railroad Company, and the signature of its President, this first day of November, A. D., 1871.

72

[SEAL.]

D. C. LITTLEJOHN,  
President New York and Oswego  
Midland Railway Company.

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## SECOND MORTGAGE BOND.

73

(Bond of \$500.)

The Montclair Railway Company of the State of New Jersey promise to pay to Peter Cooper, or to the holder of this bond, thirty years from the date hereof, for value received, the sum of five hundred dollars, lawful money of the United States of America, at its agency in the city of New York, and also interest thereon from date at the rate of seven per cent. per annum, payable semi-annually, on the first days of May and November in each year, free from any United States government tax, upon presentation and surrender at the said agency 74 of the annexed coupons as they severally become due, as provided therein.

This bond is one of a series of second mortgage bonds, amounting to one million five hundred thousand dollars, to be issued at the rate of twenty thousand dollars per mile of road, as provided in the mortgage hereinafter mentioned (as by reference thereto will more fully and at large appear) all bearing even date herewith, the payment whereof is secured by a mortgage on the railway of said company, its several 75 branches, its equipment, and all appurtenances thereto, franchises, and other property in the State of New Jersey, executed in trust for the benefit of the holders of the said bonds to Abram S. Hewitt, as trustee, and bearing date the first day of November, A. D., 1871, subject, however, to a prior lien of mortgage, bearing date September 1st, A. D., 1870, made by said company to Marcus L. Ward and Abram S. Hewitt as trustees, to secure the payment of an issue of first mortgage bonds, amounting in the aggregate to two millions five hundred thousand dollars. 76

This bond shall pass by delivery or by transfer on the books of the company in the City of New York, and at any other place which the company may determine.

After a registration of ownership certified hereon by the transfer agent of the company, no transfer except upon the

77 books of the company shall be valid, unless the last transfer  
 be to bearer, which shall restore transferability by delivery;  
 but this bond shall continue subject to successive registrations  
 and transfers to bearer, as aforesaid, at the option of each  
 holder. On a registration of ownership the holder may, at  
 his option, surrender the coupons which will then be cancelled,  
 and thereafter interest will be payable to the registered  
 holder or his attorney.

This bond shall not become obligatory until the certificate  
 endorsed hereon shall have been duly signed by the said  
 trustee.

78

In witness whereof the said company has caused  
 its corporate seal to be hereunto affixed, and  
 [SEAL.] these presents to be signed by its President,  
 and attested by its Treasurer this first day of  
 November, A. D., 1871.

J. H. PRATT,

President.

Attest:

79 H. R. Low,

Treasurer.

## (CERTIFICATE.)

I hereby certify, that this bond is one of the series of  
 second mortgage bonds referred to above, secured by the  
 mortgage above mentioned, duly executed and delivered to  
 me as trustee, and recorded as authorized by law.

ABRAM S. HEWITT,

Trustee.

80

## (COUPON.)

\$17.50.

On the first day of May, 1875, the Montclair Railway  
 Company, will pay the bearer at its agency in the City of  
 New York, on surrender of this coupon, seventeen dollars

and fifty cents, for six months' interest due on that day on its  
second mortgage bond No. — 81

H. R. LOW,  
Treasurer.

(GUARANTEE.)

In accordance with the terms of an agreement entered into  
between the Montclair Railway Company, and the New York  
and Oswego Midland Railroad Company, and as part of the  
consideration to said agreement, the New York and Oswego 82  
Midland Railway Company hereby guarantees the payment  
of the within bond, and of the several coupons thereunto  
belonging as the same shall severally mature.

As witness the seal of the New York and Oswego  
Midland Railway Company, and the signature  
of its President, this first day of November,  
A. D. 1871.

[SEAL.]

D. C. LITTLEJOHN, 83  
President New York and Oswego  
Midland Railroad Company.

Now, therefore, this indeture, witnesseth, that the said  
party of the first part for the purpose of securing and mak-  
ing more sure and certain the payment of the sums of money  
mentioned and provided for in the said bonds bearing even  
date herewith and each and every one of them, with the inter- 84  
est thereon, accruing after actual issue, according to the  
true intent and meaning thereof, and in consideration of the  
recited premises, the loan of said money, and the sum of one  
dollar to the said party of the first part, in hand paid by the  
said party of the second part, at or before the ensembling and

85 delivery hereof, the receipt whereof is hereby acknowledged  
by the said party of the first part, the Montclair Railway  
Company, the party of the first part aforesaid, has granted,  
bargained, sold, assigned, transferred and conveyed, and by  
these presents, does grant, bargain, sell, assign, transfer and  
convey unto the said Abram S. Hewitt, as trustee, the party  
of the second part aforesaid, and to his successor and succes-  
sors in the trust, and to his and their assigns, all and singu-  
lar, the line of railway known, and to be known as the Mont-  
clair Railway, as the same is being and shall be constructed  
86 from the line of the State of New York, at or near Green-  
wood Lake, to the Hudson River, and also the branches  
thereof, to-wit: the Paterson branch, extending from a point  
near the Hackensack River, to a point on said railway, in the  
township of Wayne, near Mead's Basin; and the Caldwell  
branch of railway extending from Montclair into the  
township of Caldwell, including all the railway, ways,  
rights of way, depot grounds or other lands, all tracks,  
bridges, viaducts, culvert fences, and other structures, de-  
pots, station houses, engine houses, car houses, freight  
87 houses, wood houses, water stations and other build-  
ings, and all machine shops, and all real or personal  
property, held or acquired, or hereafter to be held or ac-  
quired by the said company, its successors or assigns, for use  
in connection with the aforesaid railway and branches of the  
party of the first part, or with any part thereof, or with the  
business of the same, including all locomotives, tenders, cars  
and other rolling stock or equipment, and all machinery,  
tools, implements, fuel and materials for constructing, oper-  
ating, repairing or replacing the aforesaid railway and  
88 branches, or any part thereof, or of any of the equipments  
or appurtenances of the aforesaid railway and branches, or  
any part thereof, and all machinery of all kinds, and all and  
singular the other personal property of any nature, kind and  
description whatsoever, belonging to the said party of the  
first part, wheresoever the same may be situated; all of

which personal chattels, are hereby declared and agreed to  
 be fixtures, and appurtenances of the said railway and said  
 branches, and are to be used and sold in connection there-  
 with and not separate therefrom, and are to be taken as a  
 part thereof; and all tools, incomes, issues, and profits to be  
 had or derived from the same, or any part or portion thereof,  
 and all right to receive or recover the same; and also, all  
 franchises connected with, or relating to the aforesaid rail-  
 way and branches, or to the construction, maintenances, or  
 use of the same; together with all and singular the tene-  
 ments, hereditaments and appurtenances to the aforesaid  
 railway lands and premises or either thereof, belonging,  
 or in any wise appertaining, and the revision or revisions,  
 remainder or remainders, tolls, incomes, revenues, rents,  
 issues and profits thereof; and also, all the estate, right, title  
 interest, property, profession, claim and demands whatsoever,  
 as well in law as in equity, of the said party of the first part,  
 of, in and to the same, and any and every part thereof, with  
 the appurtenances, subject nevertheless to the aforesaid first  
 mortgage lien, upon said premises and appurtenances created  
 in and by the said mortgage lien upon said premises and ap-  
 purtenances created in and by the said mortgage executed,  
 and delivered to Marcus L. Ward and Abram S. Hewitt, as  
 aforesaid, bearing date, the first day of September, in the  
 year one thousand eight hundred and seventy, and recorded  
 in the clerk's office of Hudson County, September 2, 1870,  
 in book 216, deeds, at page 79, etc., and re-corded in said  
 office, December 22d, 1871, in book 89, of mortgages at page  
 694, etc., in the register's office of Essex County, September  
 3d, 1870, in book of mortgages at page, etc., and in the  
 clerks office of Morris County, September 3d, 1870, in book 92  
 T2 of mortgages at page 205, etc; And in the clerks office  
 of Passaic County, September 5th, 1870, in book U of mort-  
 gages at page, etc; and in the clerks office of Bergen County,  
 September 5th, 1870, in Liber B2 of mortgages at page  
 etc. But nothing therein contained shall be held, under-

stood or construed, to prevent said party of the first part,  
93 from selling, hypothecating or otherwise disposing of any-  
thing received in payment of shares of capital stock, or on  
and for other interests; or from disposing of, by and with  
the consent in writing, of the parties of the second part, any  
lands or other property and effects not essential or neces-  
sary to be retained for the said roadway, depots or station  
g.ounds, nor required for the construction or convenient use  
of the said railway, nor from selling shares nor from collect-  
ing money due on capital stock, subscriptions or otherwise,  
94 or for other things, provided, the said first party, shall dili-  
gently proceed to apply all such means and proceeds to the  
constructing, finishing, repairing and equipping of said  
railway and said branches, and to the laying and con-  
struction of a double track for the same whenever  
such double track shall, by them, be deemed necessary  
for the interests of said railway company, and to  
other like necessary purposes thereof; nor from receiving  
and using the income from the earnings of said railway  
provided, also, that no fault shall have been made and at the  
95 time remain in the payment of the interest, or principal of  
any of the bonds hereby secured. But even after default in  
the payment of interest, the said trustee shall have full power  
in his discretion upon the written request, of the party of  
the first part, to convey, by way of lease or otherwise, to the  
persons designated by the said party of the first part, any  
bonds acquired or held for the purposes of stations,  
depots, shops, or other buildings, and shall, also, have  
power to convey, as aforesaid on like request, any lands  
or property, which, in his judgment shall not be ne-  
96 cessary for use in connection with the said railway, or  
which may have been held for a supply of fuel, gravel or other  
material, and, also, to convey, as aforesaid, on like request,  
any lands not occupied by the track which may become dis-  
used by reason of a change of the location of any station  
house, depot, shop or other building, connected with the said

railway, and such lands occupied by the track and adjacent  
 to such station house, depot, shop or other buildings, as the  
 said party of the first part may deem it expedient to disuse  
 or abandon by reason of such change, and the consent to any  
 such change, and to such other changes in the location of  
 the track or depot, or other buildings as shall have become  
 expedient and to make and deliver the conveyances necessary  
 to carry the same into effect, but any lands which may be  
 acquired for permanent use in substitution for any so re-  
 leased shall be conveyed to the said trustee upon the trusts  
 of these presents, and the said trustee, shall also have full  
 power to allow the said party of the first part, from time to  
 time, to dispose of such portions of the equipment, machinery  
 and implements at any time held or acquired, for the use of  
 the said railway, as may have become unfit for such use, re-  
 placing the same by new, which shall be conveyed to the said  
 trustee, or to be otherwise made subject to the operation of  
 these presents. To have and to hold the estate property  
 rights, privileges, franchises and interest of the said party  
 of the first part, together with all and singular the emolu-  
 ments, income and advantages, tenements, hereditaments  
 and appurtenances thereunto belonging, or in any wise ap-  
 pertaining, and the reversion and reversions, remainder and  
 remainders, rents, issues and profits thereof unto the said  
 Abram S. Hewitt, the party of the second part, his successor  
 or successors and assigns, on the trusts and for the uses and  
 purposes herein declared, and none other. Provided, al-  
 ways, and these presents are made, and executed upon the  
 express condition that if the said party of the first part shall  
 well and truly pay or cause to be paid, to the holders of the  
 said bonds or obligations intended to be secured hereby, 100  
 and each and every of them after the same shall be issued,  
 the principal sums of money therein respectively mentioned,  
 at the maturity thereof, according to their true intent and  
 meaning, with the interest thereon accruing at the time,  
 and in the way and manner therein provided according to the

true intent and meaning of these presents, that then and from thenceforth this indenture and the estate hereby granted, shall cease, determine and be utterly void and of non-effect without any other release or formal, re-conveyance re-entry, acknowledgment of satisfaction, or any other act whatsoever.

And, the said party of the first part in consideration of the premises, hereby covenants and agrees to and with the said Abram S. Hewitt, his successor and successors in said trust and assigns, that the said party of the first part, will at any time or times hereafter, upon the reasonable request of the said party of the second part, his successors or assigns, execute and deliver, or cause to be executed and delivered, all, and every such further and reasonable deeds, conveyances, assignments and assurances in the law, for the better and more effectual vesting and confirming of the premises hereby granted or intended so to be, and especially for conveying any property subsequently to the date hereof acquired by the said party of the first part, and comprehended in the description contained in these presents, if any such there be, which shall not inure to the use and benefit of the holders of said bonds under the terms and covenants of this indenture to the said party of the second part, his successors and assigns, as by him or them, or his or their counsel learned in the law, shall be reasonably devised, advised or required for the better effectuating of the objects and purposes of these presents.

And further, that the said party of the first part will do and perform all the things on the part of the said first party to be done and performed, as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said bonds in good faith, to the construction of the said railway and branches, and to putting the same into operation and to the purposes hereinbefore recited or mentioned as the objects thereof; and further, that the said first party will pay unto the holder, or holders of the said bonds respectively, the said principal sums of money therein res-

pectively mentioned and as expressed therein, and the interest thereon, as the same shall become due and payable; and further, that in case of default in the payment of the interest on any day on which the same becomes due and payable, and such default continuing for a period of six months, that then, that is after the expiration of the said six months, the whole amount of principal and interest of the bonds hereby secured, shall be deemed to become, and shall be due and payable, and the said party of the first part, shall and will, on demand made by the party of the second part, his successors or assigns, trustee for the time being, or his, or their agent or agents duly authorized in writing, assign and transfer in due form to him or them, or to his or their agent or agents so authorized, the actual possession of all the herein granted and conveyed property and premises, and herein recited and mentioned or intended to be embraced in this trust; and further, that the expense of taking, holding and managing said property and premises, if possession be taken, shall be paid from the income, and if necessary, from the sale of the property and premises by the said trustee for the time being; and further, that in such case, the party of the second part, his successors in said trust, and assigns, shall and may by himself or themselves, or his or their officers and agents, take and receive, collect and have the income and profits of the said railway and other property, first applying the same to the payment and discharge of all current necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges; and next to the payment of all sums of money due, and payable upon the aforesaid bonds, issued by the said party of the first part, and hereby secured according to the tenor thereof; and further, that the said party of the second part, his successor in said trust or assigns, having entered as hereinbefore mentioned, into full possession of the premises, property and estate hereby conveyed (the said default still continuing) at his or their discretion, and with the ap-

- 109 probation of any court of competent jurisdiction of said State, may, or on the written request of the holders, of at least forty per centum of the bonds hereby secured, and then outstanding, unpaid, shall proceed to sell, and dispose of, or cause to be sold and disposed of all the premises, property and estate hereby conveyed, or intended to be conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest, according to the tenor thereof, of all of such of said bonds hereby secured, and then outstanding, as may have been issued by the said first party, and
- 110 which then remain unpaid, together with all benefit and equity of redemption of said party of the first part therein at public auction, in the city of New York to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the specific property to be sold, by publishing the same in at least two newspapers of good general circulation in the said city, and wherever else the said trustee may deem expedient or required by law, for a period of at least six months previous to such sale, and as the attorney or attorneys of the
- 111 said first party for that purpose, by these presents duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to said purchaser or purchasers, all such estate, right, property and interest, and to the same extent as the said first party had therein at the date hereof, or at any time subsequent, and also a good and sufficient transfer and assignment of said personal property, choses in action, contracts and leases, and out of the moneys arising from such sale or
- 112 sales, to retain the cost and charges of advertisement of the sale of the said premises, and all other sums of money which said trustee or his successor in said trust, may have been obliged to pay by reason of his or their taking possession of and operating said premises, and a reasonable allowance for his own services and for legal professional advice, aid and

assistance in effecting and consummating such possession, operation and sale; and also the principal and interest which shall then remain due and unpaid on said bonds, remaining issued and outstanding, and hereby secured as aforesaid for the benefit, and to be paid to the holders thereof, and then restore the residue of the said proceeds to the said party of the first part, it being expressly understood that the bonds issued by said first party and secured by these presents, shall be ratably received in payment of said sale by said trustee, or his successor, in case any such sale shall be made at the option of the holder or holders thereof; and the said sale when fully consummated, shall be a perpetual bar, both in law and equity against the said party of the first part, and all persons claiming, or to claim the premises or any part thereof, by, through, or under said party of the first part, subsequent to the date of these presents.

And it is hereby declared and agreed that the receipt of the said trustee shall be a sufficient discharge to the purchaser or purchasers of the premises which shall be sold as aforesaid for his, or their purchase money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not after payment thereof and having such receipts be liable to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in any manner whatever answerable for any loss, misapplication or non-application of such purchase money, or of any part thereof, or to be obliged to inquire into the necessity, expediency or authority of, or for any such sale. But nothing herein contained shall be so construed as to deprive the said trustee of the right to proceed by bill in equity in any court of competent jurisdiction for a foreclosure of this mortgage, and a sale of the herein granted property, franchises and premises, at his option, at any time after default shall have been made in the payment of the interest or principal hereby intended to be secured.

AND THIS INDENTURE further witnesseth, that these

117 presents and the said bonds hereby secured or intended so to be, are made, executed, and issued or delivered upon the terms, conditions, and agreements following, that is to say:

First, That the actual possession, use, management, and control of all the hereinbefore granted estate, property and premises, shall be and remain in and with the said party of the first part, so long as the bonds so issued shall be and remain without default or forfeiture.

Second, That the said bonds shall be countersigned by the said party of the second part, and shall be issued and offered, and exposed for sale only to such an amount as shall be at 118 and after the rate of twenty thousand dollars (\$20,000) in bonds per mile, in length of the track of said railway and its several branches, and the said bonds shall be so issued, and the avails thereof shall be paid over to the said party of the first part at the rate aforesaid per mile, so fast as the track of said road shall be graded and the iron rails laid thereon, and no faster; provided, however, that when the said road shall have been completed from the State line of the State of New York, near Greenwood Lake, to the Hackensack River, and when 119 the said bonds shall be needed for the purpose of constructing a double track for said railroad, then the balance of the bonds remaining in the hands of the said trustee and not yet issued, shall be countersigned by him and delivered to the said party of the first part, at the rate of fifteen thousand dollars per mile of said double track as laid, and the balance of the bonds, if any, when the whole of the said second track is laid.

Third, That in case of any vacancy in the said trusteeship, 120 by the incapacity to act, death or resignation of the said trustee, or from any other cause, all his estate, right, interest, power, and control shall be thereupon divested, and lease and determine; and the said company the party of the first part, and the holders of not less than forty per cent. in the amount of said bonds hereby secured, and then outstanding shall select a new trustee to fill the vacancy thereby created, and in

case of disagreement between said company and the aforesaid holders of the said bonds, that then and in that case, the holders of not less than forty per centum, in amount of the said bonds hereby secured and then outstanding, may upon due notice to the said party of the first part apply to the Circuit Court of the United States for the District of New Jersey, or to the Court of Chancery of New Jersey, or to any other court of competent jurisdiction for any judicial district in which any part of the aforesaid railway may be situated, to appoint a new trustee to supply the vacancy and such proceedings may be had and appointments and selections made, as often as the like accasion may require the appointment of a trustee to execute the trusts herein declared, and when so selected, such new trustee shall thereupon become vested for the purposes of the said trust, with all the estate, rights, interests, power, property, and control hereby conveyed or granted to or vested in the said Abram S. Hewitt, by these presents without any further assurance, grant or conveyance of the same as fully and effectually as if such appointment had been originally made herein. But if the same shall be necessary, both the said party of the first part, and such new trustee, or either of them, shall make, execute and deliver all necessary conveyance and agreements, and grants and proceeds, and authorities for that purpose.

And it is further understood and agreed by and between the parties to these presents, that the said party of the second part his successor or successors in said trust shall only be accountable for reasonable diligence in management thereof, and shall not be responsible for the acts or negligences of any agent or agents necessarily employed by him or them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part. And the officers of the said railway company shall have at all times the right to inspect the books kept by the receivers of the road and their agents.

And this indenture further witnesseth that the said party

of the second part, hereby accepts the aforesaid trusts, and  
 125 also covenants and agrees to and with the said party of the  
 first part, to execute the same upon the terms hereinbefore  
 as well as hereinafter mentioned and provided, and which  
 said terms and conditions are hereby mutually agreed to and  
 upon by both the parties presents.

In witness whereof the said party of the first part, in pur-  
 suance of authority given by law, and in conformity with the  
 order of its board of directors, has caused its corporate seal  
 to be hereto affixed, and the same to be executed by its  
 126 President and Treasurer, and the said party of the second  
 part has hereunto set his hand and seal to evidence his  
 acceptance of the trust hereby created, the day and year first  
 above written.

THE MONTCLAIR RAILROAD COMPANY,

By



J. H. PRATT, Pres't  
 H. R. LOW, Treas'r.

ABRAM S. HEWITT, [L. s.]

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The bonds, secured by this mortgage are duly  
 stamped in compliance with the Internal Reve-  
 nue Laws of the United States.

Signed, sealed, and delivered,  
 in presence of

THODORE R. SHEAR.  
 JOSIAH T. WILCOX.

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State of New York, }  
 City and County of New York. } ss

Be it remembered, that on this tenth day of January, in  
 the year one thousand eight hundred and seventy-two, be-

fore me, the undersigned commissioner, to take acknowledgments for the state of New Jersey, residing in the State of New York, personally came, Josiah T. Wilcox, who is, I am satisfied, the secretary of the Montclair Railway Company of the State of New Jersey, who being by me duly sworn, did depose and say: That he knows the corporate seal of said company, that the seal affixed to the foregoing instrument, is the corporate seal of said company, and that the said seal was affixed to the said instrument by the order of the directors of said company; that Julius H. Pratt is the President of said company, and that the said Julius H. Pratt did sign his name to the said instrument as President of said company, by the like order of the said directors of said company in deponents presence, and that Henry R. Low is the Treasurer of said company, and that the said Henry R. Low did sign his name to the said instrument as Treasurer of said company, by the like order of the said directors of said company in deponents presence.

And on the same day, before me, the aforesaid commissioner for the State of New Jersey personally came Theodore R. Shear of full age, with whom I am personally acquainted, and whom I know to be the subscribing witness to the foregoing instrument, who being by me duly sworn according to law, on his oath saith: That he resides in the City and County of New York, and that he knew Abram S. Hewitt, the person described in and who has executed the foregoing instrument; that he saw the said Abram S. Hewitt sign, seal, and deliver the foregoing instrument as and for his voluntary act and deed, and that the said Abram S. Hewitt, at the same time, acknowledged to him the said deponent that he had executed the same; and that the said Theodore R. Shear thereupon subscribed his name to the said instrument, at the said time, as an attesting witness thereto.

HEZEKIAH WATKINS,

A commissioner for the State of New Jersey,  
residing in the State of New York.

A true copy.  
H. S. LITTLE,  
Clerk.

## IN CHANCERY OF NEW JERSEY.

BETWEEN		
ARRAM S. HEWITT,		
<i>Complainant.</i>		
and		
134	The MONTCLAIR RAILWAY COM- PANY and others,	} On Bill, etc. Master's Report.
<i>Defendants.</i>		

In pursuance of an order in the above stated cause made by his Honor, Theodore Runyon chancellor, of the State of New Jersey, and bearing date, the twenty-seventh day of September, in the year of our Lord, one thousand eight hundred and seventy-three, whereby it was among other things ordered, adjudged and decreed, that it be referred to the subscriber, one of the Masters of this court, to ascertain and report the amount due upon the bonds secured by the mortgage to the complainant, as trustee, and mentioned and described in the bill of complaint and to report accordingly, and also, to report whether the said mortgaged premises, land franchises and property should be sold together, or in parcels, and if in parcels, in what parcels, and how much, and in what order.

I. S. Meredith Dickinson, one of the Masters of the Court of Chancery of New Jersey, do respectfully report that I have been attended by Cortlandt Parker Esq., Solicitor of the complainant, no person appearing for any other party in said cause except as is hereinafter mentioned, and in his presence

I examined the several matters referred to me by the said order.

And the said Solicitor of the complainant produced before me, the mortgage before me in the bill of complaint in this cause mentioned bearing date the first day of November, in the year eighteen hundred and seventy-one, made and executed by and between the Montclair Railway Company, of the first part and Abram S. Hewitt, as Trustee of the second part signed by J. H. Pratt President, and by H. R. Low, Treasurer, and by the said Abram S. Hewitt, and with the seals of the respective parties thereto attached. 137

And the execution whereof, was duly proved by the oaths of Josiah T. Wilcox, the Secretary of the said the Montclair Railway Company, as to the execution thereof by the said company, and of Theodore R. Shear, as to the execution thereof, by the said Abram S. Hewitt, the said Josiah T. Wilcox and Theodore R. Shear, being subscribing witnesses thereto, as appears by endorsement thereon; and which said mortgage, was recorded in the Registers Office of the County of Essex on the twelfth day of January eighteen hundred and seventy-two; and in the Clerk's Office of the county of Morris, on the thirteenth day of January, eighteen hundred and seventy-two; and in the Clerk's Office, of the county of Hudson, on the fifteenth day of January, eighteen hundred and seventy-two; and in the Clerk's Office of the County of Passaic, on the twelfth day of January, eighteen hundred and seventy-two; and in the clerk's office, of the county of Bergen on the sixteenth day of January eighteen hundred and seventy-two, as appears by said endorsements thereon, and which mortgage I have marked Exhibit A, on the part of the complainant in this cause. 138

And I do further report that the said mortgage appears to have been executed according to the terms thereof to secure the payment of second mortgage bonds of the said, the Montclair Railway Company of the denominations severally of five hundred dollars and one thousand dollars each, and 140

to amount in the aggregate to one million five hundred  
 141 thousand dollars; and which said bonds were to stand  
 equally secured according to their amount by said mort-  
 gage, and bearing date to the first day of November, eighteen  
 hundred and seventy-one, payable thirty years from the date  
 thereof, with interest thereon from date at the rate of seven  
 per cent per annum, payable semi-annually on the first days  
 of May and November, in each year, free from any United  
 States Government tax, upon presentation and surrender at  
 the agency of said company in the City of New York, of cer-  
 142 tain coupons, for said interest annexed to said bonus re-  
 spectively. And that it was provided in said mortgage that in  
 case of default in the payment of the interest on any day on  
 which the same should become due and payable, and such  
 default should continue for a period of six months, that then  
 the whole amount of principal and interest of said bonds,  
 should be deemed to become and should be due and payable;  
 and that it was further provided in said mortgage, that  
 nothing therein contained, should be so construed as to  
 deprive the said Trustee of the right to proceed by  
 143 bill in equity in any court of competent jurisdiction, for a  
 foreclosure of said mortgage and a sale of the therein  
 granted property, franchises and premises, at his option at  
 any time after default should have been made in the pay-  
 ment of the interest or principal thereby intended to be se-  
 cured.

And I do further report, that bonds to the amount of seven  
 hundred and eighty thousand dollars, to secure which and  
 other bonds, the said mortgage was made, have been issued  
 and are now outstanding, as appears by the depositions taken  
 144 before me in pursuance of said order, which depositions I  
 have hereto annexed and beg leave to have considered as a  
 part of this my report.

And I do further report, that Samuel J. Tilden produced  
 before me two hundred and thirteen of said bonds, numbered  
 from 15 to 24 inclusive, 29, 30, 100, 145, 146, 147, 177, 178,

179, 180, 209, 210, 213 to 230 inclusive, 253, 260 to 267 inclusive; 274 to 283 inclusive, 299 to 307 inclusive, 367 to 403<sup>145</sup> inclusive, 507 to 509 inclusive, 511 to 520 inclusive, 525, 526, 527, 531 to 549 inclusive, 551 to 554 inclusive, 562 to 610 inclusive, 621 to 628 inclusive, 638, 644, 666, 667, 668, 671 to 674 inclusive, and 683 each for one thousand dollars, which bonds I have marked respectively exhibits 1 to 213 inclusive in this cause on the part of said Tilden, and also forty-six coupons of said bonds and being coupon number two (2), each for thirty-five dollars, due on the first day of November, 1872; and also two hundred and twelve other coupons of<sup>146</sup> said bonds, being coupon number three (3), each for thirty-five dollars, and due on the first day of May, 1873, and the said Samuel J. Tilden, also produced before me forty-six of said bonds numbered 41 to 50 inclusive, 59, 60, 83, 84, 101 to 112 inclusive, 173 to 186 inclusive, 195 to 200 inclusive, each for five hundred dollars, which bonds I have marked respectively exhibits 214 to 246 inclusive in this cause, on the part of said Tilden; and also fourteen coupons of said bonds, and being coupon number two (2), each for seventeen 50-100 dollars due on the first day of November,<sup>147</sup> 1872; and also forty-six other coupons of said bonds, being coupon number three (3), each for seventeen 50-100 dollars due on the first day of May, 1873; and I do find and report that said coupons which fell due on the first day of November, 1872, amount to one thousand eight hundred and fifty-five dollars, and that there is due thereon for interest, from that day to the date hereof one hundred and twenty-six dollars and fifty-one cents; and that the said coupons which fell due on the first day of May, 1873, amount to eight thousand two hundred and twenty-five dollars, and that there is due there-<sup>148</sup> on for interest from that day to the date of this report, two hundred and seventy-three dollars and six cents, and that there has accrued for interest upon said bonds, from the first day of May, 1873, to this date, being part of the coupon number four (4,) attached to said bonds, eight thousand one

149 hundred and seventy dollars, making in all for said coupons, interest thereon and interest accrued but not due on said bond, the sum of eighteen thousand six hundred and forty-nine dollars and fifty-seven cents due to said Tilden, and I further report, that schedule No. 1 hereto annexed, contains a statement and account of the amount so due to said Tilden, to which for greater certainty I refer.

And I do further report, that Peter Cooper produced before me one hundred of said bonds, numbered from 1 to 14 inclusive, 25 to 28 inclusive, 61, 62, 81 to 86 inclusive, 95 to 150 98 inclusive, 171 to 176 inclusive, 181 to 200 inclusive, 211, 212, 231 to 252 inclusive, 284 to 288 inclusive, 319 to 328 inclusive, 485 to 488 inclusive, and 550, each for one thousand dollars, which bonds I have marked respectively Exhibits 1 to 100 inclusive in this cause, on the part of the said Cooper; and also thirty-seven coupons of said bonds, being coupon number two (2), each for thirty-five dollars, due on the first day of November, 1872, and also one hundred other coupons of said bonds, being coupon number three (3), each for thirty-five dollars, and due on the first day of May, 1873; 151 and I do find and report that said coupons which fell due on the first day of November, 1872, amount to twelve hundred and ninety-five dollars, and that there is due thereon for interest, from that date to the date hereof, eighty-eight dollars and thirty-two cents, and that said coupons which fell due on the first day of May, 1873, amount to three thousand five hundred dollars, and that there is due thereon for interest, from that day to the date hereof, one hundred and sixteen dollars and nineteen cents, and that there has accrued for interest upon said bonds, from the first day of May, 1873, to 152 this date, being part of the coupon number four (4) attached to said bonds, three thousand three hundred and twenty dollars, making in all for said coupons and interest thereon and interest accrued, but not due on said bonds, the sum of eight thousand three hundred and nineteen dollars and fifty-one cents, due to said Cooper; and I further report that schedule

o. 2 hereto annexed, contains a statement and account of the amount so due to said Cooper, to which for greater certainty I refer. 153

And I do further report, that Peter A. H. Jackson produced before me, eighty-four of said bonds mentioned from 41 to 50 inclusive, 111 to 130 inclusive, 135 to 144 inclusive, 268 to 273 inclusive, 308, 492 to 500 inclusive, 645 to 664 inclusive, 685 to 688 inclusive, 528, 629, 529, 530, each for one thousand dollars; which bonds I have marked respectively, exhibits 1 to 84 inclusive in this cause, on the part of said Jackson; and the said Jackson also produced to me, twenty of said bonds numbered 133 to 152 inclusive, each for five hundred dollars which bonds I have marked respectively exhibits 85 to 104 inclusive in this cause, on the part of the said Jackson; and I do find and report, that there has accrued, for interest upon said bonds, from the first day of May, 1873, to this date, being part of the coupon number four (4,) attached to said bond, the sum of three thousand one hundred and twenty dollars; and I further report, that schedule No. 3 hereto annexed, contains a statement and account of the amount of said accrued interest, to which, for greater certainty I refer. 154 155

And I do further report, that the Tredegar Company of Richmond, Virginia, produced before me thirty of said bonds numbered from 434 to 463 inclusive, each for one thousand dollars, which bonds I have marked, respectively Exhibits 1 to 30 inclusive in this cause, on the part of said Tredegar Company, and also thirty coupons of said bonds, and being coupon number two (2), each for thirty-five dollars, due on the first day of November, 1872; and also thirty other coupons of said bonds, being coupons number three (3), each for thirty-five dollars, and due on the first day of May, 1873; and I do find and report that said coupons which fell due on the first day of November, 1872; is one thousand and fifty dollars, and that there is due thereon for interest for that day to the date hereof, seventy-one dol- 156

lars and sixty-one cents, and that the said coupons, which  
 157 fell due on the first day of May, 1873, amount to one thousand and fifty dollars, and that there is due thereon, for interest from that day to the date hereof, thirty-four dollars and eighty-six cents, and that there has accrued for interest upon said bonds, from the first day of May, 1873, to this date, being part of the coupon number four (4) attached to said bond, one thousand dollars, making in all for said coupons, interest thereon and interest accrued, but not due on said bonds, the sum of three thousand two hundred and six dollars and forty-seven cents due to the said, the Tredegar  
 158 Company; and I further report, that schedule No. 4 hereto annexed, contains a statement and account of the amount so due to the said, the Tredegar Company, to which for greater certainty I refer.

And I do further report that the Pequannock National Bank of Bridgeport Connecticut, produced before me sixteen of said bonds numbered from 51 to 60 inclusive; and 89 to 94 inclusive, each for one thousand dollars, which bonds I have marked respectively exhibits 1 to 16 inclusive, in the  
 159 cause, on the part of the said Pequannock National Bank, and also sixteen coupons of said bonds, and being coupon number three (3) each for thirty-five dollars due on the first day of May, 1873; and said Pequannock National Bank also, produced before me two of said bonds, numbered 193 and 194 each, for five hundred dollars which bonds I have marked respectively, exhibits 17 and 18 in this cause on the part of Pequannock National Bank; and also, two coupons of said bonds, and being coupon number three (3) each for seven-  
 160 teen 51-100 dollars, due on the first day of May 1873; and I do find and report that said coupons, which fell due on the first day of May 1873, amount to five hundred and ninety-five dollars, and that there is due thereon for interest from that day to the date of this report, nineteen dollars and seventy-four cents.

And that there has accrued for interest upon said bonds,

from the first day of May 1873, to this date being part of the  
 coupon number four (4) attached to said bonds five hundred <sup>161</sup>  
 and thirty dollars making in all for said coupons interest  
 thereon and interest accrued, but not due on said bonds  
 the sum of one thousand one hundred and forty-four dollars  
 and seventy-four cents due to said Pequannock National  
 Bank, and I further report that schedule No. 5, hereto an-  
 nexed contains a statement and account of the amount so  
 due to said Pequannock National Bank, to which for greater  
 certainty I refer; and I do further report that I. W. Snede-  
 ker, produced before me seventeen of said bonds numbered <sup>162</sup>  
 from 161 to 170, inclusive and from 204 to 208 inclusive, and  
 Nos. 510 and 684, each for one thousand dollars, which bonds  
 I have marked respectively Exhibits 1 to 17 inclusive in this  
 cause on the part of the said Snedeker, and also, ten cou-  
 pons of said bonds, and being coupon number two (2) each  
 for thirty-five dollars due on the first day of November, 1872,  
 and which are attached to said bonds, and also, ten other  
 coupons of said bonds being coupon number three (3), each  
 for thirty-five dollars, and due on the first day May, 1873,  
 and which are also attached to said bonds; and also seven <sup>163</sup>  
 other coupons of said bonds being coupon number three (3),  
 each for thirty-five dollars, and due on the first day of May,  
 1873, and which are also attached to said bonds; and I do  
 find and report that said coupons fell due on the first day  
 of November, 1872, amount to three hundred and fifty  
 dollars, and that there is due thereon, for interest from that  
 day to the day hereof twenty-three dollars and eighty seven  
 cents, and that the said coupons, which fell due in the first day  
 of May 1873, amount to five hundred and ninety-five dollars,  
 and that there is due thereon, for interest from that day to  
 the date hereof, the sum of nineteen dollars and seventy-four <sup>164</sup>  
 cents and that there has accrued for interest upon said bonds  
 from the first day of May, 1873, to this date being part of the  
 coupon number four (4) attached to said bonds, five hundred  
 and seventy dollars, making in all for said coupons interest

165 thereon, and interest accrued, but not due on said bonds the sum of fifteen hundred and fifty eight dollars and sixty-one cents due to said Snedeker, and I further report that schedule No. 6, hereto annexed contains a statement and account of the amount so due to said Snedeker to which for greater certainty I refer.

166 And I do further report that John M. Conway produced before me five of said bonds, numbered 99, and from 131 to 134, inclusive each for one thousand dollars, which bonds I have marked respectively Exhibits 1 to 5 inclusive in this cause on the part of said Conway, and also five coupons of said bonds being coupon number three (3), each for thirty-five dollars due on the first day of May 1873, which are attached to said bonds, and I do find and report that said coupons which fell due on the first day of May, 1873, amount to one hundred and seventy-five dollars, and that there is due thereon for interest from that day to the date hereof, five dollars and eighty-one cents, and that there has accrued for interest upon said bonds from the first day of May, 1873, to this date, being part of the coupon number four (4) attached 167 to said bond one hundred and sixty-six dollars, making in all for said coupons, interest thereon and interest accrued but not due on said bonds, the sum of three hundred and forty-six dollars and eighty-one cents due to said Conway. And I further report that schedule No. 7 hereto annexed, contains a statement and account of the amount so due to said Conway to which for greater certainty I beg leave to refer.

168 And I do further report that Gilbert Dubois (President) produced before me ten of said bonds, numbered from 31 to 40, inclusive each for one thousand dollars, which bonds I have marked respectively, Exhibits 1 to 10, inclusive in this cause on the part of said Du Bois Pt., and also ten coupons of said bonds being coupon number two (2) each for thirty-five dollars due on the first day of November, 1872, which are attached to said bonds, and also ten other coupons of said

bonds being coupon number three (3), each thirty-five dollars, and due on the first day of May, 1873, and which are also attached to said bonds, and I do find and report that said coupons which fell due on the first day of November, 1872, amount to three hundred and fifty dollars, and that there is due thereon for interest from that date to the date hereof, twenty-three dollars and eighty-seven cents, and that the said coupons which fell due on the first day of May, 1873, amount to three hundred and fifty dollars, and that there is due thereon for interest from that day to the date hereof, eleven dollars and sixty-two cents, and that there has accrued for interest upon said bonds from the first day of May, 1873, to this date being part of the coupon number four (4), attached to said bonds three hundred and thirty-two dollars, making in all for said coupons, interest thereon and interest accrued but not due on said bonds, the sum of one thousand and sixty-seven dollars, and forty-nine cents, due to said Du Bois (President). And I further report that schedule No. 8, hereto annexed, contains a statement and account of the amount so due to said Du Bois, to which for greater certainty I refer.

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And I do further report, that Barthold Schlesinger produced before me eighteen of said bonds, numbered from 464 to 479, both inclusive, 489 and 490, each for one thousand dollars, which bonds I have marked, respectively, 1 to 18, inclusive in this cause on the part of the said Schlesinger.

And I do find and report, that there has accrued for interest on said bonds, from the first day of May, 1873, to this date, being part of the coupon number four (4) attached to said bonds, six hundred dollars, due to said Schlesinger, and I further report that schedule No. 9, hereto annexed, contains a statement and account of the amount so due to said Schlesinger, to which, for greater certainty I refer.

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And I do further report that Theodore Dreier produced before me five of said bonds, numbered from 480 to 484, both inclusive, each for one thousand dollars, which bonds I have

marked respectively, Exhibits 1 to 5 inclusive in this cause,  
 173 on the part of said Dreier; and I do find and report that  
 there has accrued, for interest upon said bonds, from the first  
 day of May, 1873, being part of the coupon number four (4)  
 attached to said bonds, one hundred and sixty-six dollars,  
 due to said Dreier; and I further report that schedule No. 10  
 hereto annexed, contains a statement and account of the  
 amount so due to said Dreier to which for greater certainty  
 I refer.

And I do further report that A. Lemassena & Co., pro-  
 174 duced before me, five of said bonds, numbered from 678 to  
 682 both inclusive, each for one thousand dollars, which  
 bonds I have marked respectively Exhibits 1 to 5 inclusive in  
 this cause, on the part of said A. Lemassena & Co., and also  
 five coupons of said bonds, being coupon number three (3)  
 each for thirty-five dollars, due on the first day of May, 1873,  
 which are attached to said bonds; and I do find and report  
 that said coupons, which fell due on the first day of May,  
 1873, amount to one hundred and seventy-five dollars, and  
 that there is due thereon for interest from that day to the  
 173 date hereof five dollars and eighty-one cents, and that there  
 has accrued for interest upon said bonds, from the first day  
 of May, 1873, to this date, being part of coupon number  
 four (4) attached to said bonds, one hundred and sixty-six  
 dollars, making in all for said coupons, interest thereon and  
 interest accrued, but not due on said bonds, the sum of three  
 hundred and forty-six dollars and eighty-one cents, due to  
 said Lemassena & Co.; and I further report that schedule  
 No. 11 hereto annexed, contains a statement and account of  
 the amount so due to said A. Lemassena & Co., to which for  
 174 greater certainty I beg leave to refer.

And I do further report that F. B. Loomis produced be-  
 fore me, nineteen of said bonds, numbered from 148 to 160,  
 both inclusive, and 254 to 259, both inclusive, each for one  
 thousand dollars, which bonds I have marked respectively,  
 Exhibits 1 to 19 inclusive, in this cause, on the part of said

Loomis, and also nineteen coupons of said bonds, being coupon number three (3,) each for thirty-five dollars, due on the first day of May, 1873, which are attached to said bonds and the said F. B. Loomis, also produced before me, twenty-<sup>177</sup> two of said bonds, numbered from 61 to 82, both inclusive, each for five hundred dollars, which bonds I have marked, respectively, Exhibits 1 to 22 inclusive, in this cause, on the part of the said Loomis, and also twenty-two coupons of said bonds, being coupon number three (3,) each for seventeen 50-100 dollars, due on the first day of May, 1873, which are attached to said bonds; and I do find and report that said coupons, which fell due on the first day of May, 1873, amount to one thousand and fifty dollars, and that there is due there-<sup>178</sup> on for interest from that day to the date hereof, thirty-four dollars and eighty-six cents, and that there has accrued, for interest upon said bonds, from the first day of May, 1873, to this date, being part of the coupon number four (4,) attached to said bonds, one thousand dollars, making in all for said coupons, interest thereon and interest accrued, but not due on said bonds, the sum of two thousand and eighty-four dollars and eighty-six cents, due to said Loomis; and I further report that schedule No. 12 hereto annexed, contains a state-<sup>179</sup> ment and account of the amount so due to said Loomis, to which, for greater certainty I beg leave to refer.

And I do further report that Parker & Keasbey, produced before me eight of said bonds, numbered from 51 to 58, both inclusive, each for five hundred dollars, which bonds I have marked, respectively, Exhibits 1 to 8 inclusive, in this cause, on the part of said Parker & Keasbey, and also eight coupons of said bonds, being coupon number three (3,) each for seven-<sup>180</sup> teen 50-100 dollars due on the first day of may, 1873, which are attached to said bonds; and I do find and report that said coupons amount to one hundred and forty dollars, and that there is due thereon, for interest from that date to the date hereof, four dollars and sixty-six cents, and that there has accrued for interest upon said bonds, from the first

181 day of may, 1873, to this date, being part of coupon number four (4) attached to said bonds, one hundred and thirty-two dollars and eighty cents, making in all for said coupons, interest thereon and interest accrued, but not due on said bonds, the sum of two hundred and seventy-seven dollars and forty-six cents due to said Parker & Keasbey.

And I further report that Schedule No. 13, hereto annexed, contains a statement and account of the amount so due to said Parker & Keasbey, to which for greater certainty I refer.

182 And I do further report that the First National Bank of Sing Sing, New York, produced before me forty of said bonds, numbered from 1 to 40, both inclusive, each for five hundred dollars, which bonds I have marked respectively, exhibits 1 to 40, inclusive in this cause, on the part of said National Bank of Sing Sing. And I do find and report that there has accrued for interest upon said bonds, from the first day of May, 1873, to the date hereof, being part of the coupon number four (4) attached to said bonds, the sum of six hundred and sixty-four dollars, due to said First National Bank of Sing Sing.

183 And I further report that Schedule No. 4, hereto annexed contains a statement and account of the amount so due to said Bank, to which for greater certainty I refer.

And I do further report that H. R. Low produced before me, ten of said bonds, numbered from 101 to 109, inclusive, and 491, each for one thousand dollars, which bond I have marked respectively, exhibits 1 to 10 inclusive, in this cause, on the part of said Low; and also nine coupons of said bonds, being coupon number two (2), each for thirty-five dollars, and due on the first day of November, 1872, and which are also attached to said bonds, and also nine (9) other coupons of said bonds, being coupon number three (3) each for thirty-five dollars, and due on the first day of May, 1873, attached to said bonds, and also ten other of said bonds, numbered from 153 to 156, inclusive, and from 187 to 192, inclusive

each for five hundred dollars, which bonds I have marked 185  
 respectively, exhibits 11 to 20, inclusive in this cause on the  
 part of said Low; and also five coupons of said bonds, being  
 coupon number two (2) each for seventeen 50-100 dollars,  
 and due on the first day of November, 1872, and which are  
 attached to said bonds, and also ten other coupons of said  
 bonds, being coupon number three (3), each for seventeen  
 50-100 dollars, and due on the first day of May, 1873, and  
 which are also attached to said bonds; and I do find and re-  
 port that said coupons which fell due on the first day of No-  
 vember, 1872, amount to four hundred and two dollars and 186  
 fifty cents, and that there is due thereon, from that day to  
 the date hereof, the sum of twenty-seven dollars and forty-  
 four cents, and that said coupons which fell due on the first  
 day of May, 1873, amount to four hundred and ninety dol-  
 lars, and that there is due thereon for interest, from that  
 day to the date hereof, sixteen dollars and twenty-seven  
 cents, and that there has accrued for interest on said bonds,  
 from the first day of May, 1873, to the date hereof, being part  
 of coupon number four (4) attached to said bonds, four hun-  
 dred and ninety-seven dollars and ninety cents, making in all 187  
 for said coupons, interest thereon and interest accrued, but  
 not due, on said bonds at this date, fourteen hundred and  
 thirty-four dollars and eleven cents, due to the said H. R.  
 Low.

And I further report that Schedule No. 15, hereto annexed,  
 contains a statement and account of the amount so due to said  
 Low, to which I refer.

And I do further report that William K. Lewis produced  
 before me three of said bonds, numbered 201, 202  
 and 203, each for one thousand dollars which bonds I have 188  
 marked, respectively Exhibits 1 to 3, inclusive in this cause,  
 on the part of said William K. Lewis, and also three cou-  
 pons of said bonds, being coupon number three (3), each for  
 thirty-five dollars, and due on the first day of May, 1873, and  
 which are attached to said bonds; and I do find and report

189 that said coupons amount to one hundred and five dollars, and that there is due for interest thereon, from that day to the date hereof, the sum of three dollars and forty-nine cents, and that there has accrued for interest on said bonds, from the first day of May, 1873, to the date hereof, being part of the coupon number four (4) attached to said bonds, ninety-nine dollars and sixty cents, making in all for said coupons, interest thereon and interest accrued but not due on said bonds to this date, the sum of two hundred and eight dollars and nine cents, due to the said William K. Lewis.

190 And I further report that schedule No. 16, hereto annexed, contains a statement and account of the amount so due to said Lewis, to which I refer.

And I do further report that there were presented to me, as above set forth, in all of the coupons number two (2), due on the first day of November, 1872, one hundred and sixty-one, amounting to the sum of five thousand three hundred and two dollars and fifty cents; and that the whole interest due thereon from said first day of November, 1872, to the date hereof, is the sum of three hundred and sixty-one dollars and sixty-three cents; and of the coupons number three (3), due on the first day of May, 1873, five hundred and fourteen, amounting to the sum of sixteen thousand four hundred and fifty dollars, and that the whole interest due thereon from said first day of May, 1873, to the date hereof, is five hundred and forty-six dollars and eight cents; and that upon the six hundred and eighty-three bonds so presented to and produced before me as aforesaid, there has accrued in all to the date hereof, and since the first day of May, 1873, being part of coupon number four (4), on said bonds, the sum of twenty thousand five hundred and thirty-four dollars and thirty cents, making in all for the coupons aforesaid, the interest thereon and the accrued interest on said bonds at the date hereof, the sum of forty-three thousand and eighty-nine dollars and fifty-one cents.

And I do further report that six hundred and eighty-three

of said bonds, being those above enumerated, were presented to and produced before me, amounting in the whole to six hundred and nine thousand dollars, and that it appears by the depositions hereto annexed, and to which I refer, that there were issued in all, and are outstanding of said bonds, seven hundred and eighty thousand dollars, and that the whole interest thereon from the first day of November, 1871, the date of issue of said bonds, to the date of this report, is one hundred and seven thousand, seven hundred and ninety dollars, and that the aggregate amount of said bonds and the interest thereon, as aforesaid, is eight hundred and eighty-seven thousand seven hundred and ninety dollars. 193  
194

And I further report that Schedule No. 17, hereto annexed, contains a statement and account of the said bonds outstanding, and the interest thereon at the date of this report, to which I refer.

And I do further report that there will accrue upon said seven hundred and eighty thousand dollars of said bonds, from the date hereof up to the first day of November, 1901, when they become due by the terms thereof, for interest alone, one million five hundred and thirty thousand dollars; and that Schedule No. 17 1-2 contains a statement and account thereof, to which I refer. 195

And I do further report that the complainant further produced before me a claim against the said The Montclair Railway Company, defendant in this cause, for services in signing certain of the said bonds, and amounting to eight hundred and twenty dollars, and which is shown by a bill thereof duly verified, marked by me Exhibit "C," in said cause, on the part of the complainant; and I report that complainant is entitled to such claim. 196

And I do further report that it was proved before me, as appears by the depositions hereto annexed, that default was made by said Montclair Railway Company in the payment to interest due upon said bonds on the first day of November one thousand eight hundred and seventy-two, and that such

197 default continued for a period of six months, whereby the whole amount of the principal and interest of the bonds by said mortgage secured, became by the terms of said mortgage due and payable before the commencement of this suit, and coupons for said interest, as well as those for interest due the first day of May, 1873, were presented for payment on the twenty-fifth day of June, one thousand eight hundred and seventy-three, and before the commencement of this suit, but payment thereof was refused.

198 And I do further report that a competent part of the said mortgaged premises, land, franchises, and property could not be sold separately without material injury to the remaining part thereof, to raise what is due under said mortgage of the complainant with the costs of this suit, and that it is just and reasonable that the whole of said mortgaged premises, land, franchises and property should be sold together.

199 And I do find and report that a competent part of the said mortgaged premises, land, franchises, and property contained in said mortgage, cannot be sold to raise and satisfy even the coupons interest due thereon, and accrued interest on said bonds and above reported, without material injury to the remaining part, but that under the circumstances of the case it is just and reasonable that the whole of the said mortgaged premises, land, franchises, and property should be sold.

All which is respectfully submitted this twenty-second day of October, one thousand eight hundred and seventy-three.

S. M. DICKINSON,

Master in Chancery, of N. J.

200

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Examination of witnesses, etc., in a cause depending in the Court of Chancery of the State of New Jersey, wherein

Abram S. Hewitt is complainant and the Montclair Railway Company and others are defendants, taken on the twentieth day of October, in the year of our Lord, one thousand eight hundred and seventy-three, before S. Meredith Dickinson, one of the Masters and Examiners of the said court in the presence of Cortlandt Parker, of counsel with said complainant. 201

Complainant first produces the mortgage mentioned in the bill of complaint, bearing date, the first day of November, eighteen hundred and seventy-one, made and executed by and between the Montclair Railway Company of the first part, and Abram S. Hewitt as Trustee of the second part, to secure certain second mortgage bonds of said company, to the amount of one million five hundred thousand dollars, payable November 1, 1901, with interest at seven per cent., payable semi-annually according to certain coupons attached. 202

S. M. DICKINSON,

Master.

203

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Josiah T. Wilcox, a witness produced, on the part of the complainant, who being duly sworn according to law, on his oath saith : I was Secretary of the Montclair Railway Company, and as such was acquainted with the issue of the bonds of said company, under their second mortgage, being the same now produced; as the bonds were issued I took them to Mr. Hewitt for his signature as trustee some times I sent them, after being signed, they came back to me, and were then issued in the course of business these bonds were as follows : F. W. Hutchins, \$5000; H. R. Low, \$44,000; Geo. Opdyke & Co. \$30,000; Tredegar & Co., or J. M. Wickes, \$30,000, sold by Leonard Shelden & Foster, \$44,000; M. R. 204

205 Jessup & Co., \$37,000; First National Bank, Ellerville \$22,000; D. E. Calver and others, \$192,000; East River National Bank, \$70,000; T. Calontendyke, \$2,000; Ca. Colby, \$8,500; ditto, \$8,500; M. K. Jessup & Co., \$38,000; T. P. Simpson, \$6000; H. Talmdage & Co., \$2000; First National Bank, New London, \$30,000; H. C. Spalding, \$5,000; T. W. Park, \$20,000; H. C. Spalding, \$12,000; Parker & Teasbey, \$4,000; James Yereance, \$7,000; A. Lemassena & Co., \$5,000; McArthur, Sere & Co., \$5,000; P. W. Sallandett, \$10,000; First National Bank, Ellerville, \$20,000; P. A. H. Jackson, \$94,000; S. E. Olmstead, \$8,000; and New York and  
 206 Oswego Midland Railroad Company, \$21,000; the paper now produced and marked Exhibit B, is a statement of said second mortgage bonds showing the amount of the whole issue, and where they first went to, excepting that when I knew of a change, this paper shows that instead of the first issue; the whole amount issued and now outstanding, known to me, is seven hundred and eighty thousand dollars; forty thousand dollars, more was sent to Mr. Hewitt for signature, but I do not know of their being issued.

207

JOSIAH T. WILCOX.

Sworn and subscribed before me,  
 this 20th day October, 1873.

S. M. DICKINSON, M. C. C.

208

Abram S. Hewitt, a witness produced for complainant, being duly sworn according to law saith: I am the trustee of the mortgage named in the bill of complaint, and as such was required to sign and did sign bonds issued under it. I signed bonds to the amount in all of eight hundred and

twenty thousand dollars and delivered to the company for issue \$780,000. I also, delivered to James Hall, by order of <sup>209</sup> the company, \$40,000 in bonds to be held by him in escrow, and delivered to Cooper & Hewitt in payment of a certain contract, for construction of part of the road, that construction has not taken place to a sufficient extent to entitle Cooper & Hewitt to these bonds; and they are to be returned to me as trustee. I was required to foreclose by the request of the bond holders.

ABRAM S. HEWITT.

Sworn and subscribed before me, 210  
this 20th day of October, 1873.

S. M. DICKINSON, M. C. C.

Conrad N. Jordan, a witness, for the complainant, being sworn saith: I reside in Englewood, New Jersey, and am Cashier of Third National Bank, New York City, I am possessed as trustee for various parties of bonds, 2d mortgage bonds of the Montclair Railway Company, to the amount of <sup>211</sup> \$445,000. I made demand for the payment of the unpaid coupons of these bonds upon D. E. Culver, President of the company, in New York, on or about the 25th day of June, 1873, having the bonds and the coupons with me, Mr. Culver replied that the company had no funds with which to pay the coupons and interest due; the foreclosure was commenced, as I believe, immediately afterwards; immediately after the demand, I am not certain as to the date, I made demand on Mr. Hewitt, for the foreclosure of the mortgage; I produced the bonds held by me.

C. N. JORDAN. 212

Sworn and subscribed before me,  
this 20th day of October, A. D., 1873.

S. M. DICKINSON, M. C. C.

213 Delos E. Culver, a witness, produced on the part of the complainant, being duly sworn according to law, on his oath saith; I was President of the Montclair Railway Company, from May last, and am now President. Prior to the commencement of this suit, demand was made upon me as such President, for the payment of coupons, then due for interest on second mortgage bonds of said company. The demand was made by Conrad N. Jordan, in New York. He had a package of bonds and Exhibited the coupons to me; the company was not in funds to pay them, and I so then told  
 214 Mr. Jordan; I made a memorandum at the time certifying to this fact and giving the particular date and amount, which I handed to Mr. Jordan, at his request, or to some other person who was with him and interested in the matter, I have never seen it since; there were coupons due on the first day of November, 1872, and they were past due six months; I know the demand was before this suit was brought, though I cannot recollect the date without the memorandum, because it was stated at the time that the demand was made for the purpose of immediately foreclosing.

215

DELOS E. CULVER.

Sworn and subscribed before me,  
 this 20th day of October, A. D., 1873.

S. M. DICKINSON, M. C. C.

216

## IN CHANCERY OF NEW JERSEY.

BETWEEN ABRAM S. HEWITT, <i>Trustee.</i> <i>and</i> The MONTCLAIR RAILWAY COM- PANY.	}	218
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City and County of New York—ss :

Abram S. Hewitt being duly sworn says, that he is the trustee in the bill of complaint in this cause mentioned; that as such trustee he certified bonds amounting in the aggregate to eight hundred and twenty thousand dollars; that he has never been paid for such service; that the usual compensation for such service is at the rate of one dollar per thousand dollars, and that at that rate his services are worth eight hundred and twenty dollars.

ABRAM S. HEWITT.

Sworn and subscribed to before me  
 this tenth day of November, 1873.

220

CHARLES B. ALEXANDER,  
 Commissioner of Deeds, [Commissioner's stamp.]  
 of New Jersey,  
 residing in New York.

City and County of New York—ss :

221 E. A. Wickes and Ashbel Green being duly sworn, each for himself saith that he is familiar with the rate of compensation paid to trustees under railway mortgages, and that the rate for certifying such mortgages to be paid to the trustees is one dollar per thousand dollars.

E. A. WICKES.

ASHBEL GREEN.

Sworn and subscribed before me  
222 this      day of November, 1873.

CHARLES B. ALEXANDER.

Commissioner of Deeds,

[Commissioner's stamp.] of New Jersey  
residing in New York.

223

SCHEDULE NO. 1.

Samuel J. Tilden's 213 bonds, dated November 1, 1871, and payable on November 1, 1901, with interest semi-annually according to certain coupons attached thereto of \$1,000 each,	\$213,000.00
46 coupons of said bonds, due November 1, 1872, of \$35 each,	1,614.00
Interest thereon from November 1, 1872, to October 22, 1873, 11 months and 21 days,	109.80—\$1,719.80
212 coupons of said bonds, due May 1, 1873, of \$35 each,	7,420.00

Interest thereon from May 1, 1873, to October 22, 1873, 5 months and 21 days,	225 246.34— 7,666.34
Samuel J. Tilden's 46 bonds dated No- vember 1, 1871, and payable Novem- ber 1, 1901, with interest, &c., semi- annually of \$500 each,	23,000.00
14 coupons of said bonds, due Novem- ber 1, 1872, of \$17 50-100 each,	245.00
Interest thereon from November 1, 1872, to October 22, 1873, 11 months and 21 days,	226 16.71— 261.71
46 coupons of said bonds, due May 1, 1873, of \$17 50-100 each,	805.00
Interest thereon from from May 1, 1873, to October 22, 1873, 5 months and 21 days,	26.72— 831.72
Accrued interest on said bonds from May 1, 1873, to October 22, 1873, being part of coupon attached to said bonds, 5 months and 21 days,	8,170.00 227
Total coupons, interest thereon and ac- crued interest to this date,	\$18,649.57
Total principal of said bonds, coupons, interest and accrued interest, &c., October 31, 1873.	\$254,649.57

S. M. DICKINSON,  
M. C. C

228

#### SCHEDULE NO. 2.

Peter Cooper, 100 bonds, dated Novem-  
ber 1, 1871, and payable November 1,

227	1901, with interest semi-annually, according to certain coupons attached thereto of \$1,000 each,	\$100,000.00
	37 coupons of said bonds due November 1, 1872, of \$35 each,	1,295.00
	Interest thereon from November 1, 1872, to October 22, 1873, 11 months and 21 days,	88.32— 1,383.32
	100 coupons of said bonds, due May 1, 1873, of \$35 each,	3,500.00
228	Interest thereon from May 1, 1873, to October 22, 1873, 5 months and 21 days,	116.19— 3,616.19
	Accrued interest on said bonds, from May 1, 1873, to October 22, 1873, being part of coupon attached to said bonds, 5 months and 21 days,	3,320.00
	Total coupons, interest thereon and accrued interest to this date,	8,319.51
229	Total principal of said bonds, coupon, interest and accrued interest, &c., October 22, 1873.	\$108,319.51

S. M. DICKINSON, M. C. C.

230

SCHEDULE NO. 3.

Peter A. H. Jackson's 84 bonds, dated November 1, 1871, and payable on November 1, 1901, with interest semi-annually, according to certain coupons attached thereto of \$1,000 each

\$84,000.00

also 20 bonds of like date and purport of \$500 each,	10,000.00 <sup>231</sup>
Accrued interest on said bonds, from May 1, 1873, to October 22, 1873, be- ing part of coupon attached to said bonds, 5 months and 21 days,	3,120.00
Total principal of said bonds and accrued interest, &c. October 22, 1873.	\$97,120.00

S. M. DICKINSON, M. C. C. 232

#### SCHEDULE NO. 4.

The Tredegar Company's 30 bonds, dated November 1, 1871, and payable on No- vember 1, 1901, with interest semi-an- nually, according to certain coupons attached thereto, of \$1,000 each,	30,000.00 233
30 coupons of said bonds, due November 1, 1872, of \$35 each.	1,050.00
Interest thereon from November 1, 1872, to October 22, 1873, 11 months and 21 days.	71.61— 1,121.61
30 coupons of said bonds due May 1, 1873, of \$35 each.	1,050.00
Interest thereon from May 1, 1873, to October 22, 1873, 5 months and 21 days.	34.86— 1,084.86 234
Accrued interest on said bonds from May 1, 1873, to October 22, 1873, being part of coupon attached to said bonds, 5 months and 21 days.	1,000.00

237	Total coupons, interest thereon and accrued interest to this date.	3,206.47
	Total principal of said bonds, coupon, interest and accrued interest, &c.	\$33,206.47
	October 22, 1873.	

S. M. DICKINSON, M. C. C.

238

## SCHEDULE NO. 5.

	The Pequonnock National Bank 16 bonds dated November 1, 1901, with interest semi-annually, according to certain coupons attached thereto, \$1,000 each.	16,000.00
	16 coupons of said bonds due May 2, 1873, of \$35 each.	560.00
	Interest thereon from May 1, 1873, to October 22, 1873, 5 months and 21 days.	18.58— 578.58
239	Also two bonds of like tenor and purport of \$500 each.	1,000.00
	2 coupons of said bonds due May 1, 1873, of \$17.50 each.	35.00
	Interest thereon, from May 1, 1873, to October 22, 1873.	1.16— 36.16
	Accrued interest on said bonds from May 1, 1873, to October 22, 1873.	530.00
240	Total coupons, interest thereon and accrued interest to this date.	1,144.74
	Total principal of said bonds, coupon interest, and accrued interest, &c.	\$18,144.74
	October 22, 1873.	

S. M. DICKINSON, M. C. C.

## SCHEDULE No. 6.

241

J. W. Snedeker's, 17 bonds dated Nov., 1, 1871, payable Nov. 1, 1901, with in- terest payable semi-annually according to certain coupons attached thereto of \$1,000 each		17,000.00	
10 coupons of said bonds, due Nov. 1, 1872 of \$35 each	350.00		
Interest thereon from Nov. 1, 1872 to Oct. 22, 1873. 11 months and 21 days.	23.87	373.87	
			242
17 coupons of said bonds, due May 1, 1873 of \$35 each	595.00		
Interest thereon from May 1, 1873, to Oct. 22, 1873, 5 months and 21 days	19.74	614.74	
Accrued interest on said bonds, from May 1, 1873 to Oct. 22, 1873, being part of coupon attached to said bonds		570.00	
Total coupons, interest thereon and ac- crued interest to this date		1,558.61	243
Total principal of said bonds, coupon interest, accrued interest, etc., Oct. 22, 1873.		\$18,558.61	

S. M. DICKINSON, M. C. C.

## SCHEDULE, No. 7.

244

Jno. M. Conway's, 5 bonds dated Nov. 1, 1871, and payable, Nov. 1, 1901, with interest semi-annually according to certain coupons attached thereto, \$1,000 each.		\$5,000.00	
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245	coupons of said bonds due May 1, 1873 of \$35 each.	175.00	
	Interest thereon from May 1, 1873, to Oct. 22, 1873, 5 months 21 days	5.81	180.81
	Accrued interest on said bonds, from May 1, 1873 to Oct. 22, 1873, being part of coupon attached to said bonds.		166.00
			<hr/>
	Total coupons interest thereon, and ac- crued interest to this date.		346.81
246	Total principal of said bonds, coupon in- terest and accrued interest, etc. Oct. 22, 1873.		\$5,346.81

S. M. DICKINSON, M. C. C.

247

SCHEDULE NO. 8.

	Gilbert Du Bois, 10 bonds dated Nov. 1, 1871, and payable Nov. 1, 1901, with interest semi-annually according to certain coupons attached thereto of \$1,000 each.		10,000.00
	10 coupons of said bonds, due Nov. 1, 1872, of \$35 each.	350.00	
	Interest thereon from Nov. 1, 1872, to October 22, 1873.	23.87—	373.87
248	10 coupons of said bonds, dne May 1, 1873 \$35 each.	350.00	
	Interest thereon from May 1, 1873, to October 22, 1873	11.62—	361.62
	Accrued interest on said bonds, from		

May 1, 1873, to October 22, 1873, being part of coupon attached to said bonds	249
	332.00
<hr/>	
Total coupons, interest thereon and accrued interest to this date.	1,067.49
Total principal of said bonds coupon interest and accrued interest, etc.	\$11,067.49
October 22, 1873.	
S. M. DICKINSON, M. C. C.	250

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SCHEDULE NO. 9.

Barthold Schlessinger's 18 bonds, dated November, 1, 1871, and payable on November 1, 1901 with interest semi-annually according to certain coupons attached thereto of \$1,000 each.	18,000.00 <sup>251</sup>
Accrued interest on said bonds from May 1, 1873, to October 22, 1873, being part of coupon attached to said bonds	00.00
Total principal of said bonds and accrued interest at this date.	\$18,600.00
October 22, 1873.	
S. M. DICKINSON, M. C. C.	252

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SCHEDULE No. 10.

Theodore Dreier's 5 bonds dated, Novem-

253	ber 1, 1871, and payable November 5, 1901, with interest semi-annually according to certain coupons attached thereto of \$1,000 each.	\$5,000.00
	Accrued interest on said bonds from May 1, 1873, to October 22, 1873, being part of coupons attached to said bonds.	\$166.00
	Total principal of said bonds and accrued interest at this date.	\$5,166.00
254	October 22, 1873.	
	S. M. DICKINSON, M. C. C.	

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SCHEDULE NO. 11.

255	A. Lemassena & Co's, 5 bonds, dated Nov. 1, 1871, and payable Nov. 1, 1901, with interest semi-annually according to certain coupons attached thereto of \$1,000 each,	\$5,000.00
	5 coupons of said bonds due May 1, 1873, \$35 each	175.00
	Interest thereon, from May, 1, 1873, to Oct. 22, 1873.	5.81— 180.81
	Accrued interest on said bonds, from May 1, 1873, to October 22, 1873, being part of coupon attached to said bonds.	166.00
256	Total coupons, interest thereon and accrued interest to this date.	\$346.81
	Total principal of said bonds, coupon interest and accrued interest, etc.,	\$5,346.81
	October 22, 1873.	
	S. M. DICKINSON, M. C. C.	

## SCHEDULE NO. 12.

257

F. B. Loomis' 19 bonds, dated November 1, 1871, and payable November 1, 1901, with interest semi-annually, according to certain coupons attached thereto of \$1,000 each,	\$19,000.00
19 coupons of said bonds, due May 1, 1873, of \$35 each.	665.00
Interest thereon from May 1, 1873, to October 22, 1873, 5 months and 21 days.	22.08— 687.08 258
F. B. Loomis' 22 bonds of like purport and date, etc., of \$500 each.	11,000.00
22 coupons of said bonds due May 1, 1873, \$17.50 each.	385.00
Interest thereon from May 1, 1873, to October 22, 1873, 5 months and 21 days.	21.78— 397.79
Accrued interest on said bonds, from May 1, 1873 to October 22, 1873, being part coupon attached to said bonds 5 months and 21 days.	1,000.00 259
Total coupons, interest thereon and accrued interest, etc.	\$2,084.86
Total principal of said bonds, coupon interest, and accrued interest, etc., at this date.	\$32,084.86
October 22, 1873.	

S. M. DICKINSON, M. C. C.

260

## SCHEDULE NO. 13.

Parker & Keasbey's, 8 bonds, dated Nov. 1, 1871, and payable Nov. 1, 1901, with

261	interest semi-annually, according to certain coupons attached thereto of \$500 each.		4,000.00
	8 coupons of said bonds due May 1, 1873, \$17 50-100 each.	140.00	
	Interest thereon, from May 1, 1873, to October 22, 1873, 5 months and 21 days.	4.66—	144.66
	Accrued interest on said bonds from May 1, 1873 to October 22, 1873, being part of coupons attached to said said bonds,		
262	5 months and 21 days.		132.80
	Total coupons, interest thereon and accrued interest to this date.		\$277.46
	Total principal of said bonds, coupon interest, and interest accrued, etc.		\$4,277.46
	October 22, 1873.		

S. M. DICKINSON, M. C. C.

263

SCH DULE NO. 14.

	First National Bank of Sing Sing, New York's, forty bonds (40), dated November 1, 1871, and payable November 1, 1901, with interest semi-annually, according to certain coupons attached thereto, of \$500 each.		\$20,000.00
264	Accrued interest on said bonds, from May 1, 1873, to Oct. 22, 1873, being part of coupon number four attached to said bonds.		664.00
	Total bonds, coupons and accrued interest thereon to this date.		\$20,664.00
	October 22, 1873.		

S. M. DICKINSON, M. C. C.

## SCHEDULE NO. 15.

H. R. Low's 10 bonds, dated November 1, 1871, and payable November 1, 1901, with interest semi-annually, according to certain coupons attached thereto of \$1,000 each.		265
	10,000.00	
9 coupons of said bonds due November 1, 1872, of \$35 each.	315.00	
Interest thereon from November 1, 1872, to October 22, 1873.	21.48—	336.48
9 coupons of said bonds, due May 1, 1873, of \$35 each.	315.00	
Interest thereon from May 1, 1873, to October 22, 1873.	1046—	266 325.46.
H. R. Low's 10 bonds of same date, etc., of \$500 each.		5,000.00
5 coupons of said bonds, due November 1, 1872, of \$17.50 each.		87.50
Interest thereon from November 1, 1872, to October 22, 1873.	5.96—	93.46
10 coupons of said bonds, due May 1, 1873, of \$17.50 each.	175.00	267
Interest thereon from May 1, 1873, to October 22, 1873.	5.81—	180.81
Accrued interest on all said bonds from May 1, 1873, to October 22, 1873.		497.90
Total principal of bonds, coupons, interest thereon and accrued interest this 22, October, 1873.		\$16,434.11

S. M. DICKINSON, M. C. C.

268

## SCHEDULE NO. 16.

William R. Lewis, 3 bonds, dated Nov.

269	1, 1871, payable Nov. 1, 1901 with interest semi-annually according to certain coupons thereto attached of \$1,000 each.	\$3,000.00
	3 coupons of said bonds, due May 1, 1873, of \$35 each.	105.00
	Interest thereon from May 1, 1873, to October 22, 1873	3.49
	Accrued interest thereon, from May 1, 1873, to October 22, 1873	99.60
270	Total coupons, interest thereon, and accrued interest this day and principal of bonds. October 22, 1873.	\$3,208.09
	S. M. DICKINSON, M. C. C.	

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SCHEDULE NO. 17.

271	Coupons of bonds of Montclair Railway Company, presented, etc., No. 2, which fell due November 1, 1872,		
	Samuel J. Tilden	46	\$1,610.00
	"	" 14	245.00
	Peter Cooper,	37	1,295.00
	The Tredegar Co.	30	1,050.00
	Gilbert Du Bois,	10	350.00
	J. W. Snedeker,	10	350.00
272	H. R. Low.	9	315.00
	"	" 5	87.50
		161	\$5,302.50
	Interest thereon from November 1, 1872, to October 22, 1873.		\$361.63—5,664.13

## NO. 3. WHICH FELL DUE MAY 1, 1873.

Samuel J. Tilden	212	amounting to	\$7,420.00	273
"	"	46	" 805.00	
Peter Cooper,	100	"	3,500.00	
The Tredegar Co.,	30	"	1,050.00	
Pequonnock Bank	16	"	560.00	
"	"	2	" 35.00	
J. W. Snedeker,	17	"	595.00	
Jno. M. Conway,	5	"	175.00	
Gilbert Du Bois,	10	"	350.00	
Lamassena & Co.,	5	"	175.00	274
F. B. Loomis,	19	"	665.00	
"	"	22	" 385.00	
Parker & Keasbey,	8	"	140.00	
R. H. Low,	9	"	315.00	
"	"	10	" 175.00	
William K. Lewis,	3	"	105.00	
"	"	514	" 16,450.00	
Interest thereon from May 1, 1873, to October 22, 1873,			546.8—\$16,891.08	
			<hr/>	275
Total amount of coupons presented and interest due thereon to this date,			22,555.21	
Interest accrued on the 683 bonds pre- sented from May 1, 1873, to this date,			20,534.30	
			<hr/>	
Making in all for coupons past due, inter- est and accrued interest thereon to this date,			\$43,089.51	
October 22, 1873.				
S. M. DICKINSON, M. C. C.				276
Bonds presented, 535 a \$1,000 each,			535,000.00	
Bonds presented, 148 a \$500 each,			74,000.00	
			<hr/>	
			\$609,000.00	

## SCHEDULE NO. 17 1-2.

277	Bonds, outstanding, amount to	\$780,000.00
	Interest that will accrue thereon from October 22, 1873, to November 1, 1901,	1,530,100.00
		<hr/>
		\$2,310,100.00

278

## SCHEDULE NO. 18.

	Interest on 683 bonds presented,	\$43,089.51
	Principal of bonds outstanding,	780,000.00
		<hr/>
		\$823,089.33

279

## SCHEDULE NO. 19.

	Bonds outstanding,	\$780,000.00
	Interest thereon and accrued interest now due from November 1, 1871, to October 22, 1873,	107,700.90
		<hr/>
		\$887,790.00

S. M. DICKINSON, M. C. C.

280 A true copy.  
H. S. LITTLE,  
Clerk.

## IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAM S. HEWITT, Trustee,

*Complainant.**and*

The MONTCLAIR RAILWAY COM-  
 PANY, the NEW YORK and OSWEGO  
 MIDLAND RAILROAD COMPANY and  
 others.

*Defendants.*

On bill, etc., Final De-282  
 cree.

This cause coming on to be heard in the presence of Cort-283  
 landt Parker, of counsel for said complainant, no one ap-  
 pearing on behalf of the said defendants, or either of them.  
 And it appearing to the Court that the bill of complaint in  
 this cause was ordered to be taken as confessed, against all  
 the defendants thereto, by the order of this Court, bearing  
 date the twenty-seventh day of September, in the year of our  
 Lord, one thousand eight hundred and seventy-three, and  
 that by the same order it was likewise adjudged and decreed  
 that it be referred to S. Meredith Dickinson, Esquire, one of  
 one of the Masters of this Court, to ascertain and report the 284  
 amount due on the bonds secured by the mortgage of the  
 complainant as trustee, mentioned and described in said bill of  
 complaint; and also whether the said mortgaged premises,  
 land, franchises and property, should be sold together or in  
 parcels, and if in parcels, in what parcels and how much, and

285 in what order; and as to other matters in said order specified; and it further appearing that the said Master hath made his report in conformity with the said order, bearing date the twenty-second day of October, eighteen hundred and seventy-three, by which report among other things it appears that bonds to the amount of seven hundred and eighty thousand dollars to secure which, and other bonds, the said mortgage was made, have been issued and are now outstanding; and the whole interest due thereon, from the first day of November, eighteen hundred and seventy-one, the date of the issue thereof, to the said twenty-second day of 286 October, one thousand eight hundred and seventy-three, is the sum of one hundred and seven thousand, seven hundred and ninety dollars.

And that the aggregate amount of said bonds and the interest thereon, at the said date of said report, was the sum of eight hundred and eighty-seven thousand seven hundred and ninety dollars.

And it further appearing by said report, that it was proved before the said Master, that default was made by said Montclair Railway Company, in the payment of interest due on 287 said bonds, on the first day of November, one thousand eight hundred and seventy-two, and that said default continued for a period of six months, whereby the whole amount of the principal and interest of the bonds by said mortgage secured, became by the terms of said mortgage, due and payable before the commencement of this suit and coupons for said interest, as well as those for interest due the first day of May, one thousand eight hundred and seventy-three, were presented for payment before the commencement of this suit, 288 but payment thereof was refused; and it further appearing by said report, that a competent part of the said mortgaged premises, land, franchises, and property could not be sold separately without material injury to the remaining part thereof, to raise what is due on the said mortgage of the complainants, as aforesaid with the costs of this suit; and

that it is just and reasonable that the whole of the said mortgaged premises, land, franchises and property should be sold together; and it further appearing by said report, that a competent part of the said premises and property contained in the said mortgage, could not be sold to raise and satisfy even the coupons, interest due thereon, and accrued interest on said bonds, without material injury to the remaining part thereof, but that under the circumstances, it is just and reasonable that the whole of the said mortgaged premises, land, franchises and property should be sold; and no cause being shown or appearing to the contrary.

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It is on this twenty-second day of December, one thousand eight hundred and seventy-three, by Theodore Runyon, Esquire, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said chancellor doth by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the said Master's report and all the matters and things therein contained, do stand ratified and confirmed, in all the aforesaid matters, and that the said complainants are entitled to the relief prayed for by their said bill, and to a sale of the said mortgaged premises, land, franchises and property, described in the said mortgage, by the said the Montclair Railway Company made and given to the said Abram S. Hewitt, trustee as aforesaid, bearing date the first day of November, one thousand eight hundred and seventy-one, and mentioned and set forth in the bill of complaint in this cause, that is to say: "the line of Railway known and to be known as the Montclair Railway, as the same is, has been and shall be constructed from the line of the State of New York, at or near Greenwood Lake, to the Hudson River, and also the branches thereof, to-wit:—the Paterson branch extending from a point near the Hackensack River to a point on said railway, in the Township of Wayne, near Mead's Basin, and the Caldwell Branch of said railway, extending from Montclair into the Township of Caldwell; including all the railway, ways, rights of way,

291

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293 " depot grounds, or other lands, all tracks, bridges, viaducts,  
 " culverts, fences and other structures, depots, station  
 " houses, engine houses, car houses, freight houses, wood  
 " houses, water stations and other buildings, and all machine  
 " shops, and all real or personal property, held or acquired  
 " or thereafter to be held or acquired by the said Company,  
 " their successors and assigns, for use in connection with the  
 " aforesaid railway and branches of the Montclair Railway  
 " Company, or with any part thereof, or with the business of  
 " the same, including all locomotives, tenders, cars and other  
 294 " rolling stock or equipment, and all machinery, tools, im-  
 " plements, fuel and materials for constructing, operating,  
 " repairing or replacing the aforesaid railway and branches or  
 " any part thereof, or of any of the equipments or appur-  
 " tenances of the aforesaid railway and branches or any part  
 " thereof, and all machinery of all kinds, and all and singu-  
 " lar the other personal property of any nature, kind and  
 " description whatsoever, belonging to the Montclair Rail-  
 " way Company, wheresoever the same may be situated; all  
 " of which personal chattels are by said mortgage declared  
 295 " and agreed to be fixtures and appurtenances of the said  
 " railway and said branches, and to be used and sold in con-  
 " nection therewith, and not separate therefrom, and to be  
 " taken as part thereof; and all tolls, incomes, issues and  
 " profits, to be had or derived from the same, or any part or  
 " portion thereof, and all right to receive or recover the  
 " same; and also all the franchises, connected with or relat-  
 " ing to the aforesaid railway and branches, or to the con-  
 " struction, maintenance, or use of the same," or belonging  
 296 aforesaid, to-wit: the said sum of eight hundred and eighty-  
 seven thousand seven hundred and ninety dollars, due for  
 principal and interest on said bonds issued upon said mort-  
 gage; on the said twenty-second day of October, one thou-  
 sand eight hundred and seventy-three, unto the said Abram  
 S. Hewitt, trustee therein named.

And it is further ordered, adjudged and decreed that the said premises above described and set forth in the said mortgage, be sold to raise and satisfy the sum of money so as aforesaid reported to be due to the complainant, with lawful interest thereon, until the same be paid and satisfied, together with his costs to be taxed; and that for that purpose a writ of fieri facias do issue out of this Court directed to William Paterson, Esquire, one of the Masters of this Court, commanding him to make sale according to law of the said premises, land, franchises and property whatsoever described in the said mortgage and hereinbefore set forth, and that out of the moneys arising from such sale, the said Master do pay to the solicitors of the said complainants their costs to be taxed. And that he do pay the residue of such sum arising from said sale unto said complainant, as such trustee, to be by him equally distributed among the holders of the bonds and coupons secured by the said mortgage until the same shall be fully paid and satisfied, with interest thereon to the date of such payment, such distribution to be made without discrimination or preference, as among the holders of said bond; secured by said mortgage, but ratably to the aggregate amount of the unpaid principal and coupons, and interest thereon to the time of such payment; and that he do pay any balance that may remain after the payments aforesaid into this Court, to be disposed of according to law; and that the said Master make return to this Court of his proceedings by virtue of the said writ. 297 298 299

And it is further ordered, adjudged and decreed, that the said above named defendants and any person or persons claiming by, through, or under any of them, do stand absolutely and forever debarred and foreclosed of and from all equity of redemption of, in and to the said land, premises, franchises and property whatsoever described in the said mortgage, and every part and parcel thereof, when sold as aforesaid, by virtue of this decree, and that all and every of the holders of the aforesaid bonds and each and every of them, and 300

301 of the coupons attached thereto secured or intended  
to be secured by the aforesaid mortgage, be also  
respectively debarred and foreclosed, forever here-  
after, of and from all equity of redemption of, or in said  
mortgaged premises or any part thereof, by virtue of the said  
bonds or coupons or the said mortgage, or any of them; the  
Court for satisfactory reasons, being of opinion that the  
*cestui que* trusts, to-wit: the holders of the said bonds or  
coupons, are not necessary or proper parties to this suit, but  
302 should be concluded by this decree, but this exclusion of said  
bond holders, shall in no wise interfere with any of their  
rights, heretofore provided for in this decree.

THEODORE RUNYON, C.

A true copy.

H. S. LITTLE, Clerk.

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303

304

## IN CHANCERY OF NEW JERSEY.

BETWEEN		
ABRAM S. HEWITT,		
<i>Complainant,</i>		
<i>and</i>		
The MONTCLAIR RAILWAY COM-	On bill to foreclose	
PANY, et. als.,	Petition.	306
<i>Defendants.</i>		

To the honorable: Theodore Runyon Chancellor of the State of New Jersey.

The petition of William A. Guest of the City of New York, respectfully sheweth unto your Honor—That on the fourth 307 day of April, eighteen hundred and seventy-four your petition became the purchaser of the Montclair Railway, together with all the chartered rights, privileges and franchises, belonging to the said Montclair Railway Company, at a sale thereof made by Conrad N. Jordan, Mason Loomis and Elias N. Miller, the receivers of said corporation appointed by your Honor, in this honorable Court under and by virtue of an order and decree of your Honor, subject to prior liens and in incumbrances, and that he paid therefore, the sum of six thousand two hundred and fifty dollars. 308

That on the twenty-third day of April, eighteen hundred and seventy-four the said sale by said receivers was duly confirmed by your Honor in this Honorable Court, and on the twenty third day of April, aforesaid a deed of conveyance from said receivers to your petitioner for said railway, rights

309 privileges and franchises was duly executed and delivered by said receivers to your petitioner.

At the time of the purchase of said property, by your petitioner, the same was subject to two mortgages, the first one executed by said company, to Marcus L. Ward and Abram S. Hewitt, Trustee, to secure the payment of bonds to be issued by said company, not to exceed in amount, the sum of two million five hundred thousand dollars, and the second executed by said Company to Abram S. Hewitt, Trustee, to secure the payment of bonds to be issued by said company, not to exceed in amount the sum of one million  
 310 five hundred thousand dollars, on the twenty-sixth day of June, eighteen hundred and seventy-three, the said, Abram S. Hewitt filed his bill in this Honorable Court, in the above entitled cause, for the foreclosure of said second mortgage, and such proceedings were had thereon, that on the twenty-second day of December, eighteen hundred and seventy-three, a final decree was taken in said cause, for the sale of said mortgaged premises, and directing the execution to be issued for that purpose to William Paterson, Esq., one  
 311 of the Masters of this Court, and by virtue of said decree, and execution, the said William Paterson, has advertised said mortgaged premises for sale at Taylor's Hotel, in the City of Jersey City, in the County of Hudson, on Saturday the twenty-fifth day of April, eighteen hundred and seventy-four.

Neither the said company nor said receivers filed any answer to said bill of complaint, nor did they appear before the Master to whom it was referred by your Honor, to report upon said complaints claim in said foreclosure suit, but  
 312 the interlocutory and final decrees in said cause were allowed to be taken by default, and the proceedings before the said Master, were entirely exparte, and in behalf of the complainant alone.

By the terms of said deed of trust or mortgage Abram S. Hewitt, it was expressly provided that the bonds to be there-

by recorded should be countersigned by said Trustee, and  
 issued and offered and exposed for sale, only to such an  
 amount as should be at and after the rate of twenty thousand  
 dollars, in bonds per mile in length of the track of said  
 railway, and its several branches, and that the said bonds  
 should be so issued, and the avails thereof paid over to the said  
 company, at the rate aforesaid so fast as the track of said  
 road should be graded, and the iron rails laid thereon, and  
 no faster. 313

Your petitioner is informed, and so charges, that the whole  
 length of the track of said road, and its branches so graded,  
 and upon which the iron rails have been laid does not exceed  
 thirty-five miles, and that the amount of the principal  
 of said bonds issued, and countersigned by said Trustee,  
 and claimed by him in his said proceedings for foreclosure,  
 and for which the decree in said suit has been taken in his  
 favor, is seven hundred and eighty thousand dollars, being  
 eighty thousand dollars in excess of the amount authorized  
 by said deed of trust according to the terms and provisions  
 thereof. The said decree directs the sale of said mortgaged  
 premises to raise and pay to said Abram S. Hewitt, said sum  
 of seven hundred and eighty thousand dollars, with the interest  
 thereon, amounting at the date of the Master's report  
 to the sum of eight hundred and eighty-seven thousand  
 seven hundred and ninety dollars. And your petitioner is  
 advised, and humbly insists that the issue and countersigning  
 of said bonds by said Trustee, so far as the same exceeded  
 twenty thousand dollars per mile for the graded track of  
 said railway upon which the iron rails had been laid, was  
 illegal, and not warranted by said deed of trust, and that the  
 said decree in directing a sale of said property to raise and  
 pay the whole amount of said bonds in is that respect erroneous  
 and unjust; your petitioner is informed and believes,  
 and so charges, that of the amount of said bonds so issued,  
 and consigned by said Trustee only a very small part, if any,  
 has ever been sold by said company, and that whatever part 316

317 thereof may have passed from said company to the hands of innocent and bona fide holders, have been pledged as collateral security for the loan of money or for other indebtedness, and that in the hands of the holders thereof they are only valid securities for the money advanced, or intended to be secured, with the interest thereon, and that the true amount of incumbrances upon said railway, and the franchises of said company by reason of said second mortgage bonds, when correctly ascertained will not and does not exceed the sum of two hundred thousand dollars.

318 Your petitioner, as the purchaser and owner of said railway and the franchises of said company, is desirous of paying off and satisfying the incumbrances of said second mortgage and hereby tenders himself ready and willing and prepared to do so whenever and so soon as the true amount thereof can be correctly ascertained under the order and direction of your Honor in this Honorable Court, but your petitioner humbly insists that there is not more than one quarter of the amount, if so much justly and honestly due, and owing to said complainants in said suits, or to the hold-  
319 ers of said bonds, which has been reported by said Master, and is named in the final decree in said cause.

Your petitioner therefore, humbly prays that your Honor will make an order, opening said decree, and allowing your petitioner to be made a defendant in said cause, and to answer said bill of complaint, and that all further proceedings by said Master may be stayed in the mean time, in order that the rights of your petitioner as the purchaser of said railway, and franchises may be fully protested, and the true amount of the incumbrance of said second mortgage upon the same  
320 may be correctly ascertained, and justice and equity, faithfully and fairly administered. And your petitioner will ever pray, etc.

JOHN LINN,

Solicitor and of Counsel of petitioner.

New Jersey, ss :

321

William A Guest, the above named petitioner, being duly sworn, on his oath saith that the matters and things set forth in the foregoing petition, so far as relates to his own acts, are true, and so far as relates to the acts of others, he believes them to be true. All of the facts stated in paragraphs I, II, III, IV., and the first part of paragraph V., deponent knows to be true.

WM. A. GUEST.

Sworn and subscribed before me  
this 3d day of April, 1874.

322

LUDLOW McCARTER,  
Master in Chancery, N. J.

Hudson County, ss :

Josiah T. Wilcox being duly sworn, on his oath saith that he was Secretary of the Montclair Railway Company on the first day of November, eighteen hundred and seventy-one and continued to be from that time to the time of the appointment of the Receivers of said Company by the Court of Chancery of New Jersey, deposes : Says that he was familiar with the business transactions of said Company, and knew the number and amount of bonds issued under the second mortgage given upon their property, and when the same were issued. And deponent says that said second mortgage bonds were not any of them sold by said Company, but were only hypothecated as security for loans of money or other indebtedness of said Company or its officers, and they were generally hypothecated for about fifty cents on the dollar. There was no price in the market for said bonds. These bonds were in part hypothecated originally with some of the

323

324

325 parties named in my evidence annexed to the Master's report in the suit for foreclosure brought by Abram S. Hewitt, upon said second mortgage.

JOSIAH T. WILCOX.

Subscribed and sworn April  
22, 1872, before me.

JOHN S. DEHART,

Master in Chancery, New Jersey.

326

New Jersey, Essex County, ss:

Edward H. Spaulding, of Bloomfield, in the County of Essex and State of New Jersey, being duly sworn, on his oath saith that he is a civil engineer by profession, and has  
327 been engaged in the practice of his profession for the past seven years, nearly all the time. For a greater part of the time he has been engaged upon the Montclair Railway. Within the past week deponent has made an actual and accurate survey and measurement of the length of the track of said railway which has been graded, and upon which the iron rails have been laid. From such survey and measurement deponent finds that the whole length of the track of said railroad which has been graded and upon which  
328 the iron rails have been laid, is from the eastern terminus to Monks, a distance of thirty-three miles and four-fifths of a mile, and thirty feet from Monks westward there have been graded a distance of one mile and a half and one hundred and nine feet, upon which have been laid iron rails, old, second-hand, and so light as not suitable for use of said railway, and which could only have been intended for a tem-

porary use in the construction of said road. The measurement made by me was done with great care, and is, I think, as accurate as can be made. Upon no other portion of said railway or any of its branches, so far as deponent is aware, has the track been graded and iron rails laid thereon, except for construction purpose, most of which has been taken up to lay the track westward from Monks. 329

EDWARD H. SPAULDING.

Subscribed and sworn this 16th day  
of April, A. D., 1874, before me.

Z. S. CRANE,  
Master in Chancery.

330

A true copy.

H. S. LITTLE,  
Clerk.

IN CHANCERY OF NEW JERSEY.

331

BETWEEN

ABRAM S. HEWITT,

*Complainant.*

and

THE MONTCLAIR RAILWAY COM-

PANY and others,

*Defendants.*

On bill to Foreclose.

332

Upon reading and filing the petition of William A. Guest, in the above stated cause, and the affidavits thereto annexed.

333 It is ordered by the Chancellor that the said complainant show cause before the Chancellor, at his chambers in the City of Newark, on the eleventh day of May next, at ten o'clock in the forenoon, why the decree in this cause should not be opened, and the said William A. Guest be made a defendant in said suit, and allowed to answer said bill of complaint; and it is further ordered that the Master, to whom the execution in said cause for sale of said mortgaged premises, has been issued and delivered, stay all further proceedings under and by virtue of said execution, until the argument of 334 said Rule to show cause, and until the further order of this Court, except to adjourn said sale.

And it is further ordered, that a copy of this Order, with a copy of said Petition be served upon said complainant, or his solicitors within three days from this date, and that both parties have leave to take affidavits to be used on the argument of said Rule to show cause.

April 23, 1874.

335

THEODORE RUNYON, C.

A true copy.

H. S. LITTLE, Clerk.

336

## IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAM S. HEWITT,

*Complainant.**and*The MONTCLAIR RAILWAY COM-  
PANY, and others.*Defendants.*

On Petition of

William A. Guest.

338

Examination of witnesses, etc., in the above entitled cause, on the part of the petitioner, William A. Guest, before me, Isaac Romaine, a Master and examiner of said Court, at my office No. 111 Washington Street, Jersey City, on Wednesday, May 6th, 1874, at ten o'clock in the forenoon, in the presence of John Linn, Counsel for the petitioner, and R. Wayne Parker, counsel for the complainant. 339

Conrad N. Jordan, a witness, produced on the part of William A Guest, being duly sworn on his oath saith:

Q. Have you, in your possession, any second mortgage bonds of the Montclair Railway Company—

A. No, sir.

Q. Or under your control?

A. Individually, No, sir. 340

Q. As Cashier of the Third National Bank of New York?

A. Yes, sir, \$20,000—as collateral to loans to two parties.

Q. To whom?

A. E. A. Wiches and the New York and Oswego Midland Railway Co.

341 Q. How many bonds were hypothecated by Mr. Wiches and how many by the New York and Oswego Middleland Railway Co?

A. Six by Wicks, and the balance by the New York and Oswego Middleland Railroad Co.

Q. Do you know whether these bonds were owned absolutely by the parties hypothecating them?

A. I have no doubt of it. They were delivered to me by the Treasurer of the company, Mr. Schlessinger, and by Mr. Wicks. I wish to add that I have six bonds belonging to  
342 Thomas M. Simpson, on special deposit.

Q. You have no other means of knowing that these parties owned the bonds, except that they delivered them to you personally as security for loans?

A. I may as well answer that. No, no.

Q. Has the bank, of which you are Cashier, any other of these bonds in its possession, or under its control?

A. No, sir.

Q. Do you know where any other of these bonds are hypothecated or held?

343 A. As one of the Committee at the meeting held yesterday, I know where nearly all of them are.

Q. Please state by whom they are held, as near as you can?

	A. Peter Cooper about	\$100,000
	Samuel J. Tilden,	250,000
	Pequonnock National Bank,	17,000
	Mr. Loomis, Bridgeport, Conn.,	30,000
	Mr. Jackson (A. H., I think),	94,000
	Lamassena & Co., about	5,000
344	First National Bank, Ellenville,	10,000
	“ “ “ Sing Sing,	20,000
	Tredegan Company,	30,000
	Drexel Morgan & Co.,	25,000
	George Opdyke & Co.,	10,000
	John W. Snedeker,	17,000

Mr. Jeneance,	7,000	345
Thomas M. Conney, I think,	5,000	
Schlessenger & Drieyer,	23,000	
East River National Bank,	8,000	
Thomas M., or Thomas R. Lewis,	3,000	
Parker & Keasbey,	4,000	

Q. Do you know who own the bonds held or claimed to be held by these several parties ?

A. I think the present holders of them, with two or three exceptions.

346

Q. How do you derive your information that present holders are the owners with few exceptions ?

A. With few exceptions they so stated to the bondholders at the meeting yesterday.

Q. Who were present at that meeting of the bondholders ?

A. There were represented there \$714,000 of the bonds.

Q. I mean what gentlemen were present ?

A. Mr. Sclessenger, Mr. Jackson, Mr. Martin, (of Martin & Smith attorneys) Mr. Snedeker, Mr. Jeneance Mr. Opdyke, Mr. Conney, myself, Mr. Hewitt ; he represented also Mr. Cooper and Mr. Tilden. Then by letter I represented The Peqnonnock Bank, The Sing Sing Bank, and verbally the Tredegar Company. Mr. Wickes and Mr. Simpson, Mr. Strong was also present, representing Drexel, Morgan & Company.

347

Q. Were any bonds produced there, or was it only stated that these persons held these amount of bonds ?

A. Statements were made.

Q. Was it claimed that Mr. Tilden owned the bonds said to be held by him ?

348

A. We acted upon that presumption.

Q. Do you know that the Company ever sold any of these bonds ?

A. I have no knowledge of that kind.

Q. Do you know that these bonds, or any of them were

349 sold by parties with whom they were hypothecated for loans?

A. I do.

Q. By whom?

A. By Mr. Samuel J. Tilden, the East River National Bank; that is all I remember or have knowledge of.

Q. What amount was sold by them?

A. Somewhere about \$300,000.

Q. Were they sold at auction or private sale?

A. At auction.

Q. When and where?

350 A. At 111 Broadway, auction salesroom.

Q. Who bought them?

A. I bought \$60,000; J. L. Taylor bought the balance.

Q. For whom, or on whose account were they bought?

A. Those I bought I bought to sell again, on my own account; if it were in existence now, I should say that those bought by Mr. Taylor were bought on account of the syndicate; as it has ceased to exist, I am pretty positive it is on Mr. Tilden's account.

351 Q. Who composed the syndicate?

[Question objected to.]

A. Mr. Opdyke, Mr. Schlessinger, the Tredegar Company, Mr. Cooper, Mr. Tilden, H. R. Low; those are all I recollect of.

Q. When was that formed, and for what purpose?

[Objected to as before.]

A. Last spring, under an agreement to purchase the bonds at 60, and to become the owners of the road.

352 Q. Had Mr. Hewitt anything to do with that arrangement?

A. Well, I cannot say, except as acting for Mr. Cooper.

Q. Did he act for Mr. Cooper?

A. He did.

Q. How were they to become the owners of the road?

A. By the purchase and co-operation of the other bondholders.

Q. Had Mr. Culver anything to do with that arrangement? 353

A. Mr. Culver could be hardly said to have had more than an indirect interest, if any, in it; Mr. Culver had had money transactions with Mr Tilden, and among others these Montclair bonds were held as collateral by Mr. Tilden; this interest in these bonds had ceased by these sales, the proceeds being applied as credits on loans made to him by Mr. Tilden.

Q. Do you know how Mr. Cooper got his \$100,000 in bonds?

A. He bought them.

Q. Of whom did he buy them?

354

A. Of me.

Q. Of whom did you obtain them?

A. At the auction sales of the bonds, and by private purchase.

Q. Was there any regular price in the market for these bonds?

A. It ranged anywhere from twenty to sixty cents.

Q. Was Mr. Snedeker present at the meeting of the bondholders yesterday?

A. Yes, sir.

355

Q. Did he claim to be the absolute owner of 17 bonds?

A. He did.

Q. Do you know, or have you understood from Mr. Cooper or Mr. Hewitt, that the Erie Railway Company, or any person representing them, had guaranteed or promised to guarantee the payment of the \$100,000 of the bonds held by Mr. Cooper, or any part of them?

[Question objected to.]

A. I haven't knowledge enough to speak upon that subject. 356

Q. Have you heard Mr. Hewitt say anything about it?

A. I don't remember of Mr. Hewitt making such a statement to me; I think he said something to me about the possible purchase of the Montclair Road by the Erie; I think he further said to me, but I can't be positive whether it was

357 from hearsay or whether I heard it from him, that a guarantee of purchase would be worthless in the then condition of the Erie Road.

Q. Did Mr. Cooper personally purchase these bonds of you?

A. I made the delivery and sale at the office of Cooper, Hewitt & Co., and was paid for them in a check of Cooper, Hewitt & Co.

Q. Who acted for Mr. Cooper in making the purchase of these bonds?

358 A. Mr. Hewitt, as I testified before.

Q. Did Mr. Hewitt state at the time of making the contract that he was purchasing them for Mr. Cooper?

A. Yes, sir.

And being cross-examined he says.

Q. Have you any interest in these bonds?

A. None whatever.

359 Q. Who pledged the bonds to Mr. Tilden which you have stated were sold?

A. Mr. D. E. Culver.

Q. You have stated that the proceeds of sale were applied as credits on loans made to Mr. Culver by Mr. Tilden; was that application made with Mr. Culver's knowledge or assent or not?

A. Yes, sir; they were made with *his knowledge and assent*.

Q. Was what you call the syndicate merely for the advantage of the gentlemen named as in it, or open to any bondholder to join in?

360 A. Open to any bondholder; the agreement to purchase was intended to cover the bonds that would remain in the hands of parties unwilling to come into the arrangement, and they fixed 60 as the limit to purchase.

Q. Do you know the custom of trade in New York as to realizing on collaterals, and what is it?

A. It depends upon the nature of the contract between lender and borrower; the usual stipulation is that bonds held as collateral may be sold at public or private sale; sale at public sale is the course usually adopted; the bonds sold at the sale at which I was present brought at from twenty to thirty per cent. more than if sold now; they brought ranging from forty to sixty; they would now bring from fifteen to eighteen; I have bought them at fifteen and a half.

Q. When were these bonds pledged by Mr. Culver to Mr. Tilden?

A. I am not certain; at different periods from November 1st, 1872.

C. N. JORDAN.

Taken, sworn to, and subscribed this

6th day of May, A. D., 1874, at

Jersey City, before me.

ISAAC ROMAINE,

Mastery in Chancery.

Whereupon the examination was adjourned to Thursday, May 7th, 1874, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the respective parties.

Delos E. Culver, a witness produced on the part of the complainant, being duly sworn, on his oath saith:

Q. Are you President of the Montclair Railway Company?

A. Yes, sir.

Q. When were you elected?

A. Some time in May, 1873.

Q. Were you Treasurer, or any other officer of the Company before that?

365 A. I was Treasurer.

Q. How long had you been Treasurer before that?

A. I was elected, I think, in January.

Q. Did you hold the office of President and Treasurer after you were elected President?

A. My recollection is that I did not.

Q. Who was made Treasurer when you became President?

A. Mr. Wilcox.

Q. Was there a change in the Board of Directors about the time you became President?

A. Then or soon after there was.

366 Q. Who retired from the Board and who were elected to fill their places?

A. Mr. Pratt tendered his resignation, and I think, Mr. Fuller, Edward P. Hatch, Thomas P. Simpson, and McArthur came into the Board.

Q. Were all of these new Directors stockholders of the Company?

A. I believe they were, or were made so; I recollect of assigning shares to Hatch and Simpson, and I think I did 367 also to McArthur.

Q. Were any second mortgage bonds issued while you were Treasurer of the Company?

A. To my recollection none ever came into the hands of the Company.

Q. Were any issued after you became President?

A. I think not.

Q. In what manner were those second mortgage bonds issued, countersigned and negotiated?

A. I don't know.

Q. Did you ever negotiate those bonds for the Company?

368 A. I have taken them in pledge from the Company for loans made to the Company by me, and pledged them again for loans made to me.

Q. From whom did you receive such bonds?

A. Either from Mr. Pratt as President or from Mr. Wilcox either as Treasurer or Secretary of the Company?

Q. What amount have you thus received?

A. I think somewhere in the neighborhood of \$100,000  
that I received individually ; I think as Treasurer I received  
a larger amount. and made new loans as agent of the Com-  
pany. 369

Q. This \$100,000 in bonds received by you individually  
were pledged to you by the company for loans made by you  
to them?

A. Yes.

Q. What amount were they pledged to you to secure?

A. I think about fifty cents on the dollar. 370

Q. What did you do with those bonds?

A. I borrowed money on them.

Q. Of whom?

A. It would be hard to say ; at different times I borrowed  
from a great many people, and in different amounts, finally  
I think all or nearly all the bonds were pledged to Mr. Til-  
den.

Q. For what amount were they pledged to Mr. Tilden ?

A. That, it would be impossible to tell; they were pledged  
with other securities as general collateral. 371

Q. They were pledged for money borrowed by you of him ?

A. Yes.

Q. Does he hold those bonds still ?

A. They have been sold, and I have understood that he  
bought some, or all of them in.

Q. They were sold by him, by reason of the non-payment  
of your loans?

A. I think so.

Q. You have never had them since you pledged them to  
him? 372

A. Never.

Q. Have you any interest in them now ?

A. Can't say: that is a question I am not able to answer;  
whether I have or not depends upon the will of Mr. Tilden.  
I don't think I have any right to claim any.

373 Q. Have you any understanding or agreement with Mr. Tilden by which you have a right to redeem those bonds?

A. No.

Q. Do you own any other of these second mortgage bonds?

A. No, sir, not one.

Q. Have you any interest in any other?

A. Not at present, I have not.

Q. Did you ever sell this \$100,000 in bonds for non-payment of the loan by you, to the company.

A. I didn't sell them.

374 Q. They were all sold by Mr. Tilden?

A. I understood they were sold by order of Mr. Tilden, both the company and myself were notified.

Q. Was that notification verbal or written?

A. Written; the bonds were advertised for sale in the public newspapers, and they were sold at 111 Broadway.

Q. What officer of the company was notified?

A. The President and Treasurer; that was myself and Mr. Wilcox.

375 Q. How much money have you borrowed from Mr. Tilden for which these bonds or other securities were pledged?

A. Somewhere between \$100,000 and \$200,000.

Q. When these \$100,000 in bonds were delivered to you by the company, did you give any receipt for them?

A. I gave my checks to the company and the bonds were handed over to me, and charged to me.

Q. Did you give your check, to the company at the time you received the bonds, or before, or afterwards?

376 A. I can't say; the bonds were delivered to me in different lots, and the money paid in different amounts, and at different times.

Q. What did you do with the other bonds delivered to you as Treasurer of the Company?

A. None were ever delivered to me as Treasurer; the Secretary of the company, Mr. Wilcox, had the keys of the safe, and had the custody of all the bonds, books and papers of

the company. In my official capacity of Treasurer, I nominally had the custody of the bonds, I never had personal custody or actual custody of the bonds. 377

Q. Had you at any time in your actual possession any others of these second mortgage bonds, except the amount delivered to you individually for loans by you to the company, and which you pledged to Mr. Tilden?

A. I probably had bonds under my direction as Treasurer, where loans were made for the company on them, whether any of them actually passed through my hands or not. I am unable to say; the custom was to have the bonds delivered by Mr. Wilcox. 378

Q. Can you tell what loans were made for the company under your direction, upon any of these second mortgage bonds?

A. I borrowed money of a Bank at New London. I cannot recollect the amount I borrowed. I also borrowed from a bank at Danbury, at Norwalk, Conn.; at Southport, Conn.; Norwich, Conn. I guess all of the banks in Jersey City, from the 3d National Bank, in New York. This loan was paid off. The bonds did not have to be sold, and others, I don't recollect. All this information could be obtained from the books more accurately than I can get it. 379

Q. For what amounts were these bonds usually pledged as security?

A. The intention was to borrow on them at fifty cents as near as we could.

Q. Do you know of any parties still holding any of these bonds, thus pledged as collateral security?

A. Not as a fact, and only by hearsay. 380

Q. Do you know that any of these bonds have been sold for non-payment of loans, and if so to what amount?

A. The bonds held by Mr. Tilden were sold and credited to me for about sixty cents on the dollar, a mighty good price; they were credited to me by him on account, and by

381 me to the company on their notes, which I held, at that price; the notes were cancelled and a statement given to Mr. Wilcox, the then Treasurer, and as President I ordered him to enter it in the books; a great many bonds were sold by different parties of which I continually received notice, as President of the Company, and generally attended the sales; these bonds brought according to the best of my knowledge from ten to forty-five cents on the dollar; the price continually declined from the time of the Tilden sale; that was the highest sale; I kept notices of the sales, and filed them with the company's papers continually.

382 Q. Were any time loans made upon any of those bonds, as collateral, charged to demand loans, or admitted to be due before the time for which they were made had expired, in order that, the holders might proceed to sell the bonds held as collateral, and acquire or give title to the same?

A. I don't recollect; I think such a resolution was proposed or passed by the Board of Directors, but whether it was ever acted upon, I don't recollect; I don't think it was ever acted upon; it was proposed in the Board by Judge

383 Low.

Q. Who constituted the Board of Directors, when the resolution was passed?

A. I don't recollect.

Q. Were you President at that time?

A. I can't say.

Q. Were you one of the Board of Directors at that time?

A. Yes.

384 Q. Was there a syndicate formed for the purpose of purchasing these second mortgage bonds, and controlling the road of this company?

A. I have heard so; I don't know anything about it, of my own knowledge.

Q. Did you ever sign any paper agreeing to become a party to any such arrangement?

A. No.

Q. Do you know who composed, or agreed to become<sup>385</sup> members of that syndicate?

A. No; only from hearsay.

Q. Can you state why any part of the old Directors of the company, resigned in the Spring of 1873?

[Question objected to.]

A. Yes, sir; I think they resigned because they thought they couldn't make any more money out of the company; I think they thought they had bled that concern all they could get out of it.

Q. Did any of them resign at your solicitation or request?<sup>386</sup>

A. I can't say.

Q. In what way had those who did resign, bled the Company?

A. I think they got salaries they never earned, for one thing.

Q. Any other way?

A. Yes; I think some of them borrowed money they never repaid; I don't say those alone who resigned; there were others; I think they purchased land at a low price, and sold it<sup>387</sup> to the Company at a high price, or had some interest in such transactions; I think they took a large amount of money out of the Treasury of the Company on account of purchases, unlawfully.

Witness here desires to state, that while he considers his recollection generally good, he is not in the habit of charging it with matters the record of which is kept in books.

And being cross-examined, he says:

388

Q. About how many of those bonds were sold at Mr. Tilden's sale?

A. Of the second mortgage bonds, this lot which were pledged to him by me, I think about \$97,000; I think there

389 were other bonds of that same character sold at the same sale, but by whom or for whose account, I can't say.

Q. As whose property did you pledge those bonds to Mr. Tilden?

A. I don't think I ever disclosed any ownership in the bonds, except for myself to him; I borrowed money indiscriminately upon bonds owned by me out and out, and others which I had taken in pledge, intending that the loans made to me from him, should be only of a temporary nature.

D. E. CULVER.

390 Taken, sworn to, and subscribed this  
7th day of May, A. D. 1874, at Jersey City before me,

ISAAC ROMAINE,

Master in Chancery.

391 Whereupon the examination was adjourned to Monday, May 11, 1874, at twelve o'clock noon, at the same place.

At which time and place, the examination was resumed in the presence of the counsel for the respective parties.

Mason Loomis, a witness produced on the part of the complainant, being duly sworn, on his oath saith:

Q. Have you had any connection with the Montclair Railway Company, and if so, what?

A. Yes; I was chief engineer of the Morristown Branch, and did engineering on the main line; procured right of way and did other business for them.

392 Q. Have the company graded and laid any iron rails upon any part of the track of their road, for which they have not obtained title?

A. Yes.

Q. How much, and where to your knowledge, as near as you can tell?

A. At Pompton Junction, about 1,300 feet in length; at Montclair, probably 150 feet to 200 feet in length; that is all of my own knowledge that I know about. 393

Q. Were you one of the receivers of the Montclair Railway, by whom the road was sold to Mr. Guest?

A. Yes, sir.

Q. At that sale, was any reservation of right of way claimed by Abram S. Hewitt, or by Cooper & Hewitt?

A. Yes, sir.

Q. What was the extent of that reservation?

A. I can't tell you. 394

[The last two questions are objected to by the counsel for the complainant as not involved in the petition.]

Q. Have the company graded and laid the iron upon any of the branches of their road, and if so, to what extent and where?

A. I will speak of the Morristown Branch; that comes within my knowledge; they graded about two miles and a half partially, and iron was laid upon it by the contractors, for the purpose of doing their work of grading. 395

Q. Is that iron there still?

A. No.

Q. By whom has it been removed?

A. McArthur, the contractor, he gave orders to have it removed, and assisted in the removal with his men.

Q. Do you know whether that iron belonged to the company or the contractor?

A. I don't know.

Q. What was the gauge of the track laid by the contractor? 396

A. About three feet.

Q. What is the gauge of their main track?

A. 4 feet 8 1-2 inches or 4 feet 10 inches.

Q. Do you know what is the character of the track, at the western terminus beyond Monks.

A. It is a construction track.

397 Q. Not designed, nor intended for the permanent use of the road?

A. It would be impossible to use such a track for the regular running of trains.

Q. Has any part of the track of the Morristown Branch been so far completed in grading and ironing the same, as to make it of any use as a railway, in the condition it is, or has been?

A. No part of it was ever completed.

398 Q. Has there been any grading, or ironing upon any other branch to your knowledge?

A. Not definitely to my knowledge; there is a branch at Pompton, but I don't know the status of it.

Q. Do you know the length of the track from its connection with the Hudson Connecting Railway to its terminus?

A. No, sir; only from information.

Q. As to that part of the track at Pompton, for which the company have not obtained title, have any proceedings been taken to condemn it, or has it been purchased by the company?

399 A. I answer, no, to both questions.

Q. Did, or not they take possession without authority of the owner?

A. They did.

And being cross-examined, he says:

400 Q. Do you know of the proportion of any certificates to the amount of track gradeed, and iron rails laid, intended to be submitted to the trustees of the mortgagees, or which was so submitted?

A. No, except by hearsay.

Q. Did you ever prepare such certificates?

A. No, I declined do that.

Q. Do you know of any sidings, graded or laid on the road?

A. Yes.

401

Q. Do you know their length approximately?

A. No, I do not.

Q. When you speak of the Pompton branch, what do you mean by that, and where does it go?

A. It goes from Riverdale; there is a connection between the Montclair Railway and the New Jersey Midland Railroad, leaving the Montclair at Riverdale, and running to near Bloomingdale on the New Jersey Midland Railroad.

Q. The claim alluded to at the receiver's sale was in writing, was it not?

402

A. Yes, sir. Mr. Hewitt gave it to Mr. Miller to read.

MASON LOOMIS.

Taken, subscribed and sworn to, etc.

Josiah T. Wilcox, a witness, produced on the part of the petitioner, being duly sworn on his oath saith: 403

Q. Have you been connected with the Montclair Railway Company, and if so, in what capacity?

A. I have, as Secretary.

Q. Was any charge made in the directorship and officers of company last spring, about a year ago?

A. There was.

Q. What changes?

A. At a meeting held on the 25th of April 1873, E. P. Hatch, Thomas P. Simpson, and A. S. Hatch were elected directors, in the places, respectively, of Charles A. —, Alfred, 404 E. Beach and Hezekiah Watkins, resigned. There were subsequent changes made. On the 19th day of June, at a meeting, S. D. Schuyler and James Tompkins were elected directors, in the place of A. S. Hatch and Abram S. Hewitt, who resigned. At a meeting on June 27th, Archibald McArthur

was elected a director in place of J. H. Pratt, who resigned.  
 405 I give this information as I find, from the records of the  
 company.

Q. Were these newly Directors stockholders of the company?

[Question objected to unless property proved by the books.]

A. I can't say yes or no, as to one or two, without explanation. A. T. Hatch had a certificate for 63 shares prepared for him, but it has never been delivered to him. E. P. Hatch  
 406 and Thomas B. Simpson had no stock. I don't know if there was any transfer made authorizing them to receive any. Archibald McArthur had no stock. James Tompkins and J. D. Schuyler had no stock, certificates of stock for one share, each were filled up, but never signed.

Q. Do you know of any resolution of the board authorizing loans to be maturated before the time, when they were required to be paid?

[Same objection as before.]

407

A. I do not.

Q. Do you know when the last second mortgage bonds of the company were issued and countersigned by the trustee?

A. I do not.

Q. Is there anything on the books of the company, which will show when that was done?

A. I think there is.

Q. By whom was that record kept?

A. I kept it.

408 Q. Will you state, as near as you can, when the last bonds were issued?

A. I am unable to state with precision; I think it was the latter part of 1872, or the early part of 1873.

Q. Was it the practice when those bonds were countersigned by the trustee to return them to the company?

A. It was to the extent for which he had a certificate, and<sup>409</sup>  
in some cases bonds were left in his hands for future delivery,  
I cannot say whether they were signed or not.

Q. Do you mean to say that bonds were signed by officers of  
the company, and delivered to the trustee to be countersigned  
by him for the purpose of being used when he felt author-  
ized to do so?

A. They were given to him to be used, by giving them  
back to the company and in no other way, and that in not all  
cases. In some cases there were simply enough handed to  
him to answer the requisition made in the certificate. 410

And being cross-examined he says:

Q. About how many certificates were made to the trustee?

A. I am unable to say from memory; there may have been  
eight or nine, or ten perhaps.

Q. Who signed them, and what was their form?

A. They were signed by the Chief Engineer, Daniel H.  
Wood. I can't give you the exact form, but the substance  
was, he certified that there were a certain number of miles of<sup>411</sup>  
the road graded, and the iron laid thereon.

Q. To whom were the bonds given by the trustee, and who  
had their custody?

A. They came to the company, and I had their custody; I  
may have brought them sometimes, and sometimes they  
were brought by the boy, or some one connected with the  
office.

Q. Did the trustee always have a certificate for the full  
amount of bonds he issued?

A. Yes, sir. 412

Q. Did you forward the certificate to the trustee, or see it  
before it was forwarded?

A. I did; there may have been one or two of the first ones  
I did not see; I don't know about that.

Q. Did you have anything to do with the preparation of

the certificates or the estimate of the number of miles, or did  
413 you know how that estimate was made?

A. No, sir.

Q. Do you know if any one had anything to do with it except the chief engineer, and if so who?

A. I don't know of anyone.

Q. Did you know at the time on what principles the certificate was made up, as to construction, track, and siding, and whether they were counted as miles or not?

A. I did not.

Q. If I understand you right then, all you did was to  
414 take the certificate from the engineer as true and forward it to the trustee to obtain the bonds?

A. Yes, sir.

Q. Do you know now whether construction, track or siding, was included in those certificates, and counted as length?

A. No, sir.

Q. Have you any information on that subject from the books or agents of the company?

A. I don't know that I have.

415 Q. In Mr. Culver's testimony he states that certain bonds pledged by him to Tilden, were sold and credited to him at sixty cents on the dollar, and by him to the company on their notes which he held at that price. The notes were cancelled, and a statement given to Mr. Wilcox, the then Treasurer, and as President he ordered you to enter it on the books. Do you remember any such request, and did you make such entry?

A. I remember some part of it, and some part I don't know; Mr. Culver, handed me a statement of certain bonds,  
416 which he said had been sold in accordance with that statement and the proceeds applied to the payment of notes given by the company to Mr. Culver, specified in detail, and directed me to make the necessary entries, but did not return to me the notes and on examination, I found one note of \$10,000, which had not been issued by the company,

and on inquiry of Mr. Jordan, who had the notes in his possession, found that it was an individual note of Mr. Culver's, and in making the entries I necessarily charged that amount to Mr. Culver. 417

[The witness desires to state that the bonds were not in a condition to be used until they came back to the company from the Trustee when the seal would be affixed.]

JOSIAH T. WILCOX.

418

Henry C. Spaulding, a witness produced on the part of the petitioner being duly sworn, on his oath saith:

Q. Have you had any connection with the Montclair Railway Company, and if so what?

A. I was one of the incorporators appointed by the Legislature, and invested with the franchises of the company; I subsequently became a director.

Q. Was you a director at the time of the appointment of the receivers? 419

A. Yes.

Q. Can you tell why the changes in the directorship of the company, testified to by Mr. Wilcox, were made?

A. They were made for the purpose, as I understood; it, of bringing Mr. Culver's friends and associates in the board, and placing the board under his control.

Q. Did the old directors volunteer their resignations?

A. No, sir.

420

Q. How and for what ostensible purpose were their resignation obtained?

A. The resignation of Mr. Hewitt and Mr. Watkins, Mr. Lombard and Mr. Beach were obtained by Mr. Culver, upon the assurance by him, that he would fill their places with men who would furnish a large sum of money to the com-

pany; Mr. Pratt never did resign, although his pretended  
421 resignation was offered to the board by Mr. Culver.

Q. Did the directors elected in place of those who had resigned furnish any money to the company, or were they of ability to do it.

Most of them had not the ability to do it; they did not furnish the money; one of whom might have been able to furnish money never met with the board, the other offered his resignation immediately after being elected.

Q. Were any loans of the company matured before the time  
422 of payment had arrived by the action of the board or any of its officers?

A. Yes.

Q. Can you state when?

A. I cannot give the precise date, but I know a resolution to that effect was passed by the board at the instance of two persons connected with the syndicate formed for the purchase of the second mortgage bonds.

Q. Who were those two persons?

A. H. R. Low and D. E. Culver.

423 Q. Was that before or after the board had reorganized?

A. After the reorganization of the board.

Q. Was D. E. Culver then President?

A. He was.

Q. What was the object of maturing those loans.

A. The object as stated was to get possession of the bonds in part, and in part to enable the holders of some of the laterals to join the syndicate.

Q. Had second mortgage bonds of the Company been  
424 pledged as collateral to these loans?

A. Yes.

Q. Who composed that syndicate?

A. Mr. Tilden, Mr. Jordan, Judge Low, Mr. Opdyke, Mr. Culver, Mr. Nichols, Mr. Hewitt; these are all the names I remember now.

Q. Had Mr. Hewitt any second mortgage bonds?

A. I may say my information on this subject came from Mr. Culver, with whom I communicated frequently about it; he told me that Mr. Hewitt had purchased \$100,000 of the bonds. 425

Q. Can you state what part and about how much of the track of the railway of this company, which has been graded and upon which the iron has been laid, the company had no title to ?

[Objected to.]

A. There are quite a number of pieces; one of about a mile in length, belonging to the North Jersey Land Company, I think, at Kearney; another about two miles in length, immediately east of and adjoining the above, extending to the Hackensack River, belonging to S. N. Rhea's estate; a piece about 200 feet long, between Snake Hill and Mill Creek, belonging to Hudson County; one belonging to the Erie Railway Company, on each side of Penhorn Creek, about a mile long; one belonging to Julius H. Pratt, at Bloomfield, about 500 feet long; that was the Hart property, the Bensen property, also at Bloomfield; the Dunscomb property, also at Bloomfield; this is about 400 feet long; the Bensen property is about 1,000 feet, if I remember rightly; the Blackwell property, at the , about 500 feet; the Francisco property, two pieces, I think they were about 100 feet each; the heirs of H. Stanley; these three lie on the east slope of the First Mountain; there was in the Stanton tract, as near as I can remember, about 100 feet; a piece of land of the East Jersey Land Company, near Little Falls, about 1,500 feet, as near as I can remember; three pieces of land, two east of the Pompton river and one just west of it, one belonging to Van Ness, one to Ryerson, and one to a party whose name I have forgotten; they altogether comprise about 1,000 feet; about half a mile on Pompton Plains, belonging to the North Jersey Land Company; about 500 feet also on Pompton Plains, belonging to Martin John Ryerson; also land belonging to Judge Low, at Wynockie; about 426 427 428

429 1,000 feet land formerly of Charles F. Johnson, at Boardville, I should say about 1,500 feet, maybe more, I can't tell exactly, besides land beyond Monks, on which there are temporary tracks, belonging to Charles \_\_\_\_\_, nearly a mile, besides those stated by Mr. Loomis in his testimony; I believe I haven't them all, but I can't remember the rest; the distances I have given are as near as I can remember, and I believe I am not far out of the way generally.

430 Q. Is the branch connecting the Montclair branch with the Midland at Bloomingdale, the property of the Montclair Railway or the New Jersey Midland Railway?

A. It is the property of the New Jersey Midland; it never was the property of the Montclair Railway Company.

Q. What is the character of the work west of Monks, on the Montclair Railway; I mean the grading and the iron laid, for track?

431 A. There has been considerable work done in patches all the way to Greenwood Lake; the grading is, however, incomplete in all parts; the iron used is generally such as has been used in construction; they are forty pound rails, used in hauling light dirt cars; there are a few fifty-six pound rails interspersed with the others, and I think a few fifty pound; it is a sort of medley; there are a small number of ties under it, but not sufficient for a roadway even where the rails are of a sufficient weight.

Q. Have the company graded the track, and laid the iron upon any part of the branches of their road, or any part of them, and if so, to what extent?

432 A. No attempt has been made at construction of any branch except the Morristown Branch, which consists principally of six or seven short stretches of embankment, neither of which have been fully completed, and of road-bed graded into the east end of the tunnel for a short distance, and part of the west approach of the tunnel, but not entirely; a little work has been done at the east end of the cut, in the second mountain, about one-fourth finished, and about a mile be-

yond the summit of the mountain at Caldwell; I think the company have not laid any iron on any branch; there are a few rails belonging to the company which have been used in the construction track on the Morristown Branch, say ten tons, a tenth of a mile; they are not, however, of the regular gauge of the railway. 433

Q. Do you know that any of the second mortgage bonds have been hypothecated by the company and not sold, so as to perfect the title of the pledge?

A. Yes.

Q. Can you state any definite amount?

A. I know of \$12,000 of those bonds which were proved before the Master, of which the title remains in the company. 434

And being cross-examined, he says:

Q. Whose?

A. They were pledged to me, or rather they came into my possession, as endorser by my taking up the paper for which they were pledged. 435

Q. Did you prove them?

A. No, I caused them to be proved.

Q. Were you superintendent of the company, and how long?

A. I was up to the first of May last, from the beginning.

Q. What duties did you perform for the company?

A. I had general charge of the construction and land business.

Q. Who is D. H. Wood, and where does he live?

A. He is a Civil Engineer; he has been connected with three or four railroads; he lives at Montclair. 436

Q. Did he act under you?

A. No, he did not.

Q. Explain your respective duties, as to the construction?

A. He had charge of the engineering department, and re-

437 reported directly to the company; my oversight was more general in its character, and reported direct to the company; at first I was in charge of the engineering until the duties became too laborious, then it was divided.

Q. Were you active as a director ?

A. Yes.

Q. As to the financial affairs of the company as well as the others ?

A. No more so than other directors, as to finance, except sometimes that I had been specially engaged as others were,  
438 and frequently are, to perform special financial duties.

Q. Did you see, or were you informed of any of the certificates of completion of track sent to the trustees under the mortgages ?

A. In some of the first instances, I was, latterly I was not; I was absent from the county.

Q. How long were you so absent ?

A. About three months during the latter part of the Winter and Spring of 1873.

Q. Except at that time, did you know as director, how  
439 many bonds had been issued ?

A. I didn't keep the run of it.

Q. Or for how much track certificates had been given ?

A. Not always.

Q. When did you know of any such certificates, and how many ?

A. I Cannot tell to place them, which of them I knew of, and which I didn't know of.

Q. Were those you knew of true ?

A. I didn't inquire as to their truthfulness or their un-  
440 truthfulness.

Q. Question repeated ?

A. I can't tell whether they were true or not.

Q. Did you not know continually of the construction of the road ?

A. I had the general run of it, but I don't know to this day what was to be its entire length.

Q. As to any certificates of which you knew, did you know or were you informed, whether or not construction track, such as you have described, was counted as to length? 442

A. I can't remember.

Q. Was not a commission put on Pike's land, and the amount afterwards tendered?

A. Yes.

Q. Was that so in any other case you have mentioned?

A. No, except the Bensen case. 442

Q. In any of those cases did the company enter without objection by the owner or with their consent?

A. In some of the cases the owners objected, and forbade their entering; in other cases the company had permission to do some things, but not to lay track; in other cases I have reason to believe that the owners did not know of their entering.

Q. Were there agreements in any of these cases, and if so, which?

A. I cannot tell how to answer the question; in some cases there were disputes, whether there were agreements or not; there were attempts at bargains, papers made, some of which were never delivered, and hence it is impossible for me to classify them. 443

Q. Have you any interest in either of the land companies you have mentioned?

A. No.

Q. Has Julius H. Pratt?

A. Not to my knowledge.

Q. Do you know William A. Guest? 444

A. I have seen the man.

Q. Have you ever been with him in any conversation?

A. Yes.

Q. More than one?

A. Yes.

445 Q. How many?

A. I can't tell.

Q. Were the subjects of any of those conversations, connected with the purchase of this road at receiver's sale?

A. I do not think I am obliged to go into the matter of those conversations.

Q. Question repeated.

A. He told me that he had bought it.

Q. Were any of those conversations before the sale?

A. I have talked with him about bonds before the sale; I have tried to sell him bonds.

446 Q. Was Julius H. Pratt present at any of these conversations?

A. No.

Q. Did you act, or pretend to act on behalf of Mr. Pratt, at any of them?

A. No.

Q. Do you know, or have you understood from Mr. Guest for whom he acted in that sale, or who has any interest in that purchase?

447 A. He never told me.

Q. Question repeated.

A. Mr. Guest has told me that he was the party in interest.

Q. Question again repeated.

A. So far as I know, he acted for himself and paid his own money; he alone was interested in it that I know of; there are no agreements or contracts with him that I know of.

HENRY C. SPALDING.

448

Archibald McArthur, a witness produced on the part of the petitioner, being duly sworn testified as follows:

Q. Have you had any contracts with the Montclair Railway Company.

A. Not directly.

Q. Have you indirectly, and what?

449

A. I made no contract; no contract was made between George S. Dwight, William McArthur and R. Nelson Gere for the construction of the Montclair Tunnel, as we term it, and its approaches, and I am one of the firm of McArthur, Gere & Co.

Q. Was that a part of the Morristown Branch of the Montclair Railway Company?

A. It was.

Q. How much work was done upon that branch?

450

A. About one-half of the labor necessary to construct the tunnel; I did not have the whole of the contract; other parties did work beyond the tunnel.

Q. What part of the track of that branch was graded, and the iron rails laid thereon, if any?

A. There was no portion of it graded, and the iron rails laid thereon, in the sense in which I understand the term; there was portions of the embankment built, and the only track upon it was a temporary construction track, for the use 451 of our horse cars with a three foot gauge and only four ties to a rail; it was a track that we constantly shifted with, as was necessary in the construction of our work.

Q. By whom was that track laid, and who owned the iron and materials of which it was made?

A. The track was laid, by McArthur, Gere & Co., or our firm; the iron was delivered to us by George S. Dwight, at the Morris and Essex depot in Montclair; when the track was laid, the iron belonged to George T. Dwight.

Q. What became of that iron afterwards?

452

A. It was sold to McArthur, Gere & Co., and afterwards removed from the work.

Q. Was any other part of the track of that branch graded, and the iron rails laid thereon by other persons?

A. Not to my knowledge, or I might say no portion other

453 than a temporary track I do know; that no other than a temporary track was laid.

Q. For what purpose was a temporary track laid?

A. For the purpose of facilitating the contractors in the construction of the work, and running horse cars, or dirt cars upon it; it was used merely as a tool for construction.

Q. Did you institute proceedings in the Court of Chancery, to have the receivers appointed?

A. I did.

454 Q. Had you an interview with A. S. Hewitt, the next day, or very soon after the receivers had been appointed?

A. No, sir; I had an interview with Mr. A. S. Hewitt, the next day after the order of the Chancellor was granted to show cause why receivers should not be appointed.

Q. Where, and who else was present?

A. At the Montclair Railway Office 25 Nassau street, New York City, and D. C. Littlejohn was present.

Q. Please state what Mr. Hewitt said on that occasion with reference to your proceedings and the Montclair Railway?

455 A. Mr. Hewitt asked me what I expected to make out of investigating those proceedings; he said that I never would get a dollar out of it; he said that he had a claim of a million dollars ahead of, or under the first and second mortgage bonds; possibly I ought to give the conversation: when Mr. Hewitt, asked me what I expected to make out of it, I answered, that I possibly would not make anything out of it, more than the satisfaction of not sitting quietly by and seeing a third mortgage bond put between me and the hope of getting anything; he then said I never would get a dollar  
456 out of it, as he had a claim of a million dollars that lay under the first and second mortgage bonds; I asked him how that could be? and he said it was by way of a contract made with the Montclair Company; we were there some little time, that was the substance.

Q. What was said about the third mortgage bonds?

A. Mr. Hewitt said at first that he has issued the third mortgage bonds, but afterwards said he had not delivered them, or something to that effect; I think that is mainly the conversation with Mr. Hewitt, at that time; that conversation came in alternately with a conversation with Mr. Littlejohn. 457

Q. Was it stated there at that time by Mr. Hewitt or Littlejohn, what they had done or proposed to do, with the third mortgage bonds?

[Obj., so far as refers to Littlejohn.]

458

A. Mr. Littlejohn said they had negotiated or arranged to negotiate the third mortgage bonds for one hundred and fifty thousand dollars; I won't swear positively as to the amounts, but as I understood it, or my recollection is, they were to negotiate a million of third mortgage bonds, for two hundred and fifty thousand dollars; my recollection is positive as to the amount to be received, out of which, Mr. Littlejohn, said they proposed to pay the indebtedness to us; I said to Mr. Littlejohn, that if that was the intention, that if they would give me security for the payment of that money; I would withdraw the suit as I was the only party who had commenced any proceedings; Mr. Littlejohn said that it was rather unusual proceeding, and that I had probably given the cue to others, (that was his tone) that it would hardly be worth while now to arrange it; I don't know but that constitutes the substance; there was a good deal said as to the effect of my proceedings. 459

Q. What month was this interview?

A. It was about the 7th or 8th of May, 1873, if my recollection serves me. 460

Q. Did you at any time hear any conversation between Mr. Hewitt and Mr. Pratt, in reference to the issuing of second mortgage bonds, and if so, when and what was it?

A. I heard a conversation between Hewitt and Pratt,

461 in regard to the issue of some bonds of the Montclair Road; I can't say whether first or second; it was about the middle of April 1873. I was sitting in the Montclair office, writing at a desk; Mr. Pratt was in the room; Mr. Hewitt entered and inquired where was Mr. Wood.

A. Some conversation took place between Pratt & Hewitt, which I paid no attention to, as I was writing; in a moment after, Mr. Pratt turned to me, and asked me what was the gauge of the track we were using on the Montclair tunnel; 462 I said if he meant our construction track, it was three feet; thereupon Mr. Hewitt, who was standing by, with considerable demonstration said: they need not send for Mr. Wood, as he had repeatedly told them he would not issue bonds upon any three feet gauge.

And being cross-examined by Richard Parker, counsel of complainant, witness deposes and says:

Q. What do you mean by considerable demonstration?

463 A. Well, he took his hat off at the time, and swung his hat and cane; it attracted my attention, as though he might be a little out of humor, at the idea of their asking him to issue bonds on a three foot gauge or something of that kind; that was my impression.

Q. The tunnel is in First Mountain?

A. I think so; in our contract it is designed as Watchung Mountain.

Q. Have you been all over the Morristown branch since work was done on it?

464 A. No, sir; I have not, since the work ceased; I have since it was begun; I have been all over the part on which work has been done, since it ceased, but not over the entire line.

Q. How long is the part on which any has been done?

A. It has been done in several little pieces; I think there is no point where there is a mile of continuous grading;

there is no great amount of construction track upon any part,  
a few rails, but nothing to amount to anything. 465

ARCH. McARTHUR.

To all to whom these presents shall come, or whom they may  
concern:

Mason Loomis, Conrad N. Jordan, and Elias N. Miller, 466  
Receivers of the Montclair Railway Company, send greeting:

Whereas, heretofore, to wit, on or about the eighth day of  
May, one thousand eight hundred and seventy-three, Wil-  
liam McArthur, Archibald McArthur, R. Nelson Gere, N.  
Stanton Gere and Edward B. Van Dusen, filed their bill of  
complaint in Chancery of New Jersey, as complainants  
against the Montclair Railroad Company, alleging the same  
to have become insolvent, as defendants; for certain relief  
therein mentioned and prayed for, upon which process of 467  
subpcena issued, and was duly served upon the said Mont-  
clair Railroad Company, defendants.

And whereas, afterwards such proceedings were had in  
said cause as that on or about the twenty-first day of July  
one thousand eight hundred and seventy-three, it was or-  
dered by the Chancellor in the said cause that the said Mason  
Loomis, Conrad N. Jordan, Elias N. Miller, should be ap-  
pointed receivers and trustees in the said cause, with full  
power and authority to demand, sue for, collect, receive, and  
take into their possession all the goods and chattels, rights 468  
and credits, money and effects, lands and tenements, books,  
papers, choses in action, bills, notes, and property of every  
description belonging to the said The Montclair Railroad  
Company at the time of their insolvency or suspension of  
business, as set forth in said bill of complaint, and to sell,

convey or assign all the said real or personal estate, and to  
 469 pay into the Court of Chancery all the moneys and securities  
 for money received from such sales, or which the said trustees  
 should collect or receive by virtue of the authority vested in  
 them, to be disposed of by the said trustees from time to  
 time, under the order of said Court, among the creditors of  
 the said company, and to report to the said Court from time  
 to time of their proceedings as such trustees, and in all re-  
 spects to act under the control and authority of said Court,  
 under powers to be thereafter enlarged or diminished at the  
 470 pleasure of the Court, and that the said trustees be allowed  
 for their service just compensation, to be allowed by the  
 Court.

And whereas, afterwards, and on or about the second day  
 of January, one thousand eight hundred and seventy-four, by  
 another order of said Court, bearing date as last aforesaid,  
 made in said cause, it was recited that upon reading and  
 considering a certain report and petition of the said Mason  
 Loomis, Elias N. Miller and Conrad N. Jordan, receivers ap-  
 pointed in the said cause, bearing date December 30th,  
 471 eighteen hundred and seventy-three, it appeared that the  
 said Montclair Railway was a work of a public nature, whose  
 value was dependent upon its franchises, and in the continu-  
 ance of which the public as well as the creditors and cor-  
 porators of said company had an interest, that the said rail-  
 way, with all its franchise and properties was sub-  
 ject to two mortgages recited in said petition, and that  
 said mortgages were in process of foreclosure, that said rail-  
 way company besides such indebtedness, owe a large num-  
 ber of income bonds which were guaranteed by the New  
 472 York and Oswego Midland Railway Company, but which  
 last mentioned company has been declared insolvent, that  
 the value of the said railway and property was inadequate to  
 satisfy the said mortgages, and that the franchises of said com-  
 pany constituted its main value, that there was little proba-  
 bility, that the receivers would be able to pay any dividend

of any amount upon the unsecured debt of said company and that it was reasonable that their trust should not be prolonged, and that the Court were of opinion and there adjudged, that the said railway of the Montclair Railway Company, being its principal work, is a work of a public nature, whose value is dependant upon its franchises, and in the continuance of which the public as well as the creditors, incorporators of said company have an interest and, that the same ought to be sold, in conformity with the statute and the petition of said receivers, and it was thereupon ordered, adjudged and decreed by said order, that the petition of the said receivers should be granted, and that the said receivers should make public sale, without delay of the railway and the railways of the Montclair Railway Company, for the construction whereof the said company, was incorporated, together with all the charter, rights, privileges and franchises belonging to said company and appertaining to said railway, being their principal work as aforesaid, and it was further ordered that the receivers should advertise such public sale, according to law to take place at Jersey City, in the County of Hudson, for at least two months in newspapers circulating in this State, and published in each of the counties through which said railway passes, and it was further ordered that the said receivers have authority to make sale and dispose of all assets whatsoever of the said company to the end that they might without delay, make their final report, and be discharged of their said trust as in, and by a copy of the said order now on file in the Office of the Clerk in Chancery will more fully and at large appear.

And whereas afterwards the said receivers and trustees in pursuance of said order did give notice by public advertisements signed by themselves respectively, and set up at five or more public places, in each of the counties through which said railway, runs to wit; the counties of Hudson, Essex, Bergen, Passaic and Morris, one of which public places in

477 each of the said counties was in the township through which said railway runs, that they would sell at public auction at Taylor's Hotel in the City of Jersey City, in the county of Hudson and State of New Jersey, on Saturday, the fourth day of April, one thousand eight hundred and seventy-four, at two o'clock, in the afternoon, the railway and railways of the Montclair Railway Company, for the construction whereof the said company, was incorporated together with all the chartered rights, privileges and franchises belonging to said company and appertaining to said railways; which notice was so given, at least two months, next before the time therein

478 as aforesaid appointed, and said receivers and trustees did likewise cause the same to be published and advertised in two of the newspapers, printed and published nearest to the places in the said several counties, in which the said railway runs and is situated, that are designated by law for the publication of the law of the State for at least four weeks successively; once in each week next preceding the time appointed for selling the same, and in compliance with the order of said court.

479 And whereas, also the said receivers and trustees on the said day, as aforesaid, advertised to wit, the fourth day of April, one thousand eight hundred and seventy-four, at two o'clock in the afternoon, at Taylor's Hotel, in the City of Jersey City, of the County of Hudson, did expose the said property in the said advertisement, described to public sale and out-cry, and did thereupon, then and there, sell the same to William A. Guest, in the City of New York, in the State of New York, who then and there was the highest bidder for the same, for the sum of six thousand two hundred and fifty

480 dollars, by him agreed to be paid therefor, which sum was the highest sum which could then and there be obtained for said property.

And whereas the said receivers, afterwards by their report, made and dated, the twenty-third day of April, one thousand eight hundred and seventy-four, and presented to the said

Court of Chancery, did report the said sale, together with proof of the due publication of said advertisements, according to law and the requirements of said order. 481

And whereas, by order of said Court, made and dated the twenty-third day of April, in the year last aforesaid the said proofs were respectively declared and adjudged sufficient, and it was adjudged by the Court, that the said receivers had duly given notice of the said sale, as required by law and by said Court, and the said sale was by said Court, duly ratified and confirmed, and the said receivers ordered to make a deed of conveyance to the said William A. Guest, the said purchase for the said property so by them advertised. 482

Now, therefore, this indenture witnesseth that the said Mason Loomis, Conrad N. Jordan, and Elias N. Miller, receivers and trustees as aforesaid, by virtue of the authority in them vested, in pursuance of the order of the Court of Chancery, herein before recited, and in consideration of the sum of six thousand two hundred and fifty dollars, to them in hand, paid by the said William A. Guest, purchased as aforesaid; have bargained, sold, aliened, release, conveyed, and confined; and do by these presents, bargain, sell, alien, release, convey, and confirm unto the said William A. Guest, his heirs and assigns forever; all that property so as aforesaid, sold in said advertisement of such sale, described as follows, that is to say: The railway and railways of the Montclair Railway Company for the construction, whereof the said company was incorporated, together with all the chartered rights, privileges, and franchises belonging to the said Company and appertaining to said railway the said sale and conveyance being subject, nevertheless, to all liens thereon prior to the accrual of the right of said receivers to sell the same, especially to two certain mortgages, one thereof to Abram S. Hewitt, and Marcus L. Ward, Trustee, made by the Montclair Railway Company to secure certain bond in said mortgage mentioned, which mortgage bears date the first day of 483

485 September, one thousand eight hundred and seventy, and is  
 duly received in the counties of Hudson, Essex, Bergen,  
 Passaic and Morris, in the offices of the clerks or registry of  
 said respective counties; the other thereof, made by the said  
 the Montclair Railway Company to Abram S. Hewitt, trustee  
 of the holders of certain bonds, in said mortgage described,  
 which last mentioned mortgage bears date the first day of  
 November, one thousand eight hundred and seventy-one, and  
 was duly recorded in the counties aforesaid.

To have and to hold the said above described property,  
 and each and every part thereof, unto the said William A.  
 486 Guest, his heirs and assigns for ever.

In witness whereof, the said Mason Loomis, Conrad N. Jordan  
 and Elias N. Miller, trustees, as aforesaid, have hereto set  
 their hands and seals respectively, this twenty-third day of  
 April, one thousand eight hundred and seventy-four.

C. N. JORDAN, [L. s.]

E. N. MILLER, [L. s.]

MASON LOOMIS, [L. s.]

487 Sealed and Delivered in the  
 presence of

JOHN LINN.

State of New Jersey, Essex County, ss:

488 Be it remembered that on this twenty-third day of April,  
 in the year of our Lord one thousand eight hundred and  
 seventy-four, before me a Master in Chancery of New Jersey,  
 personally appeared Mason Loomis, Conrad N. Jordan,  
 Elias N. Miller, to me known to be the Grantors in the fore-  
 going deed named, and I, having first made known to them

the contents thereof, they severally acknowledged that they signed, sealed and delivered the same as their respective voluntary act and deed, for the uses and purposes therein expressed. 489

JOHN LINN,

Master in Chancery of New Jersey.

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State of New Jersey, Passaic County, ss.:

I, Jacob H. Blauvelt, Clerk of said County and also Clerk of the County Courts thereof, do hereby certify that the above is a true copy of a deed made by the Receivers of the Montclair Railway, to William A. Guest, and left for record May 12, 1874, and not yet recorded.

In testimony whereof, I have hereunto set my hand and the seal of said Court and county, this 23d day of May, A. D., 1874. 491

[SEAL.]

J. H. BLAUVELT,

Clerk.

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## IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAM S. HEWITT,

*Complainant.*

*and*

494 The MONTCLAIR RAILWAY COM-  
PANY, and others.

*Defendants.*

On Petition of  
William A. Guest.

The said William A. Guest, having filed his petition, praying that the decree in this cause be opened, and that he be admitted to answer, and defend the suit, and that mean-  
495 while sale be stayed; and order to show cause having been granted thereon, and evidence having been taken, and the matter argued before the Chancellor, and it appearing to the Chancellor that the petitioner is not entitled to the relief prayed for by his petition.

It is on this ninth day of July, one thousand eight hundred and seventy-four, on motion of Parker and Keasbey, Solicitors of the complainant ordered, adjudged and decreed by  
496 Theodore Runyon, Chancellor of the State of New Jersey, that the prayer of said petitioner be denied, and the said petition dismissed, and said order to show cause be set aside and vacated, and that the order restraining the Master from paying over to the complainant the money decreed to be due upon said mortgage, or so much thereof as shall be realized by said sale, and all orders made in said cause at the instance of said petitioner, and upon the fact of his petition

a party, but he may be made a party on petition; he shall be bound, however, by all orders and proceedings in the cause against the party, whose interest he has acquired, and the cause shall not be delayed by his admission, except for such time as it may seem to the Chancellor absolutely necessary for the evidence regarding his claim. The sixth section provides that in such case, any person may be made a party, either before, or after final or interlocutory decree, but such decree shall not be opened, or set aside thereby. The order to shew cause granted on the petition, in the suit on the second mortgage, is discharged with costs. The subsequent order, restraining the Master, to whom the execution in that case was issued, from paying the complainants the money decreed, to be due them thereon, is also discharged. The prayer of the petition in the other suit, is granted so far as to admit the petitioner as a defendant, but without leave to answer.

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## IN CHANCERY OF NEW JERSEY.

BETWEEN

ABRAM S. HEWITT,

*Complainant,**and*The MONTCLAIR RAILWAY COM-  
PANY, et als.,*Defendants.*

On Bill, etc.

On application of William  
A. Guest to be made a  
party defendant to said  
suit.

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The petitioner, William A. Guest, hereby appeals from so  
519 much of the final decree made in this Court in the above  
stated cause, upon the application of said petitioner to be  
made a party defendant therein, as decrees that the prayer  
of said petition be denied and the said petition be dismissed,  
and that the order restraining the Master from paying over  
to the complainant the money decreed to be due upon said  
mortgage, or so much thereof as shall be realized by said  
sale, and all orders made in said cause at the instance of said  
petitioner, and upon the fact of his petition be set aside and  
vacated, and that said petitioner do pay said complainant  
520 his costs thereon to be taxed.

To the Court of Appeals, in the last resort in all causes of  
law.

JOHN LINN,

Solicitor and Counsel of Petitioner.

Dated November 2, 1874.

I conceive there is good cause of appeal in the above  
stated cause. 521

JOHN LINN,  
Counsel of Appellant.

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## NEW JERSEY COURT OF ERRORS AND APPEALS.

	BETWEEN	
	WILLIAM A. GUEST.	
526	<i>Appellant.</i>	On Bill, etc. Petition of Appeal.
	and	
	ABRAM S. HEWITT.	
	<i>Appellee.</i>	

To the Honorable the Court of Appeals, in the last resort, in all causes of law.

527 The humble petition of William A Guest, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an order and decree, made in the Court of Chancery, by his Honor, Theodore Runyon, Chancellor of the State of New Jersey, bearing date the ninth day of July, eighteen hundred and seventy-four ; in a certain cause, wherein the said Abram S. Hewitt is complainant, and the Montclair Railway company and others, are defendants; upon the application of your petitioner, to be made a party defendant to said suit, and to be allowed to answer the same, 528 in this respect, to wit, that the said order and decree adjudges that the prayer of said petitioner be denied, and the said petition dismissed; and that the order restraining the Master from paying over to the complainant the money decreed to be due upon said mortgage, or so much thereof as shall be realized by said sale; and all orders made in said

cause, at the instance of said petitioner, and upon the part of  
 his petition be set aside and vacated; and that said petitioner 529  
 pay said complainant his costs upon said petition to be  
 taxed; and your petitioner humbly appeals from that part of  
 said decree of the Chancellor, which decrees that the prayer  
 of said petition be denied, and the said petition dismissed;  
 and that the order restraining the Master from paying over  
 to the Complainant the money decreed to be due upon said  
 mortgage, or so much thereof as shall be realized by said  
 sale; and all orders made in said cause at the instance of said  
 petitioner; and upon the part of his petition, be set aside and 530  
 vacated, and that said petitioner do pay said complainant his  
 costs upon said petition to be taxed; upon the ground that  
 the same is erroneous, for that your petitioner had a right to  
 be made a defendant in said suit, as the purchaser and  
 owner of said mortgaged premises, and to defend the said  
 suit, and to require the money to be raised by the sale of said  
 mortgaged premises, to be paid into said Court of Chancery;  
 to be disposed of by the order and direction of said Court;  
 your petitioner, therefore, prays that this said decree of the  
 said Chancellor may be in the particulars aforesaid reversed, 531  
 set aside, and for nothing holden; and that your petitioner  
 may have such relief in the premises, as to this Honorable  
 Court shall seem meet.

JOHN LINN,  
 Solicitor and Counsel of Appellant.

533

## IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE THEODORE RUNYON, CHANCELLOR OF THE  
STATE OF NEW JERSEY.

Humbly complaining, showeth unto your Honor, your orators, Marcus L. Ward, of the City of Newark, Essex County, and Abram S. Hewitt of Ringwood; in the Township of Pompton, in the County of Passaic and State of New Jersey, Trustees as hereinafter mentioned, that heretofore about the  
534 day of one thousand eight hundred and seventy. The Montclair Railway Company, were a corporation, duly incorporated under the laws of the State of New Jersey, by virtue of their charter entituled "An act to incorporate the Montclair Railway Company," approved, March 18, A. D. 1867, and the supplements thereto approved, April 9th, A. D. 1868, and March 16th 1869, in which charter it was provided that the said company should have the power, and they were thereby authorized to issue their bonds, and  
535 for the purpose of securing their payment, mortgage their Real Estate and personal property, railway or railways, and and all the appurtenances, franchises, powers, privileges and rights, "belonging thereto, which they might possess, under the said act of incorporation to such amount as they might deem expedient, and to sell or negotiate the same at such rate of interest or discount, as they might deem for the best interest, without invalidation thereof, by virtue of any statute of this State, and that the said bonds and mortgages  
538 in equity, and that the purchaser or purchasers under a decree in equity or foreclosure, founded upon any such bond or mortgage should be vested with all the estate, rights, franchises, powers and privileges which were or might be conferred upon said company, under and by virtue of said act of incorporation, or any supplements thereto, subject to the restrictions, con-

ditions and limitations contained therein, as by said act of incorporation as supplements, reference being thereto, had for greater certainty will appear. 537

That on the said day of the said the Montclair Railway Company did by their Board of Directors, intrusted with the control and management of their corporate affairs, resolved to borrow money on mortgage of the said road, not to exceed two million five hundred thousand dollars, and to issue its bonds to secure the payment thereof," which said bonds should be of the amount and denomination as follows : One thousand bonds of one thousand dollars each, numbered from number one (1) to number one thousand (1,000), both inclusive ; two thousand bonds of five hundred dollars each, numbered from number one thousand and one to number three thousand (3,000), both inclusive; and five thousand bonds of one hundred dollars each, numbered from number three thousand and one (3001) to number eight thousand (8,000), both inclusive, which said bonds were to stand equally secured according to their amount by the mortgage hereinafter mentioned. 538

And your orators further show unto your Honor thae afterwards, about the first day of September, in the year ont thousand eight hundred and seventy, the said the Montclair Railway Company did make and execute, under their corporate seal, and deliver unto your orators as trustees, a certain indenture of mortgage made by the said the Montclair Railway Company of the first part, signed by its President, J. H. Pratt, and its Treasurer, H. R. Low, and also signed and sealed by your orators of the second part, a copy of which said indenture of mortgage is hereto annexed, and which your orators pray may be taken as part hereof, and to which copy, or to the said indenture of mortgage now in possession of your orators, ready to be produced and proved, your orators pray leave to refer for greater certainty, if it be necessary so to do, by which said indenture of mortgage the said party of the first part, after reciting their resolution to bor- 539

541 row money to the said amount, not to exceed two million  
 five hundred thousand dollars, as aforesaid, and that the  
 bonds mentioned in the said resolution were to be of the  
 form of bond, coupon and certificates shown therein, and in  
 the said copy of said indenture of mortgage hereto annexed,  
 did grant, bargain, sell, assign, transfer and convey unto your  
 orators as trustees, as joint tenants, and not as tenants in  
 common, and to the survivors and survivor of them, and to  
 their successor and successors in the trust, and to his and  
 their assigns, all and singular the property real and person-  
 al situate in this State, and in said mortgage described as  
 542 the "line of railway known and to be known as the Mont-  
 "clair Railway, as the same is being and shall be constructed  
 "from the line of the State of New York at or near Green-  
 "wood Lake, to the Hudson River ; and also the branches  
 "thereof, to wit : The Paterson branch, extending from a  
 "point near the Hackensack River to a point on said railway  
 "in the township of Wayne, near Mead's Basin ; and the  
 "Caldwell branch of said railway, extending from Montclair  
 "into the township of Caldwell, including all the railway,  
 543 "ways, rights of way, depot grounds or other lands, all  
 "tracks, bridges, viaducts, culverts, fences and other struc-  
 "tures, depots, station houses, engine houses, car houses,  
 "freight houses, wood houses, water stations, and other  
 "buildings ; and all machine shops and all real or personal  
 "property held or acquired, or hereafter to be held or ac-  
 "quired by the said Company, its successors and assigns, for  
 "use in connection with the aforesaid railway and branches  
 "of the party of the first part, or with any part thereof, or  
 "with the business of the same, including all the locomotives,  
 544 "tenders, cars and other rolling stock or equipment, and all  
 "machinery, tools, implements, fuel and materials for con-  
 "structing, operating, repairing or replacing the aforesaid  
 "railway and said branches, or any part thereof, or of any  
 "of the equipments or appurtenances of the aforesaid rail-  
 "way and branches, or any part thereof, and all machinery

“of all kinds, and all and singular the other personal pro-  
 priety of any nature, kind and description whatever belong- 545  
 ing to the said party of the first part, wheresoever the  
 same might be situated; all of which personal chattels are  
 hereby declared and agreed to be fixtures and appurte-  
 nances of the said railway and said branches, and are to be  
 used and sold therewith, and not separate therefrom, and  
 are to be taken as part thereof.”

“And all tolls, incomes, issues and profits to be had or  
 derived from the same, or any part or portion thereof; and  
 all right to receive or recover the same; and also all fran- 546  
 chises connected with, or relating to the aforesaid railway  
 and said branches, or to the construction maintenances or  
 use of the same.” Together with all and singular the tene-  
 ments hereditaments and appurtenances to the aforesaid  
 railway, lands and premises, or either thereof, belonging, or  
 in any wise appertaining; and the reversion or reversions,  
 remainder or remainders, tolls, incomes, revenues, rents,  
 issues and profits thereof; and also all the estate, right, title,  
 interest, property, possession, claim and demand whatso-  
 ever, as well in law as in equity, of the said party of the first 547  
 part of, in and to the same, and any and every part thereof  
 with the appurtenances. To have and to hold the estate,  
 property, rights, privileges, franchises and interests of the  
 said the Montclair Railway Company, together with all and  
 singular the emoluments, income and advantages, tenements,  
 hereditaments and appurtenances thereunto belonging, or in  
 any wise appertaining and the reversion and reversions, re-  
 mainder and remainders, rents, issues and profits thereof,  
 unto your orators, their survivor or survivors, their succes-  
 sor or successors and assigns, on the trusts and for the uses 548  
 and purposes therein declared and none other.

Provided, and the said mortgage was made and executed  
 upon the express condition, that if the said the Montclair  
 Railway Company, should well and truly pay, or cause to be  
 paid to the holders of the said bonds, or obligations intended

549 to be secured thereby, and each and every of them, after the same should be issued, the principal sums of money therein respectively mentioned at the maturity thereof, according to their true intent and meaning, with the interest thereon arising, at the time and in the way and manner therein provided, that then the said Indenture and the estate thereby granted, should cease, determine, and be void and of no effect.

And your orators further show that in, and by the said mortgage, the said the Montclair Railway Company, did covenant and agree with your orators for the execution of  
 550 any further assurance for the better vesting and confirming the premises thereby granted, especially for conveying any property, subsequent to the date thereof, acquired by the said railway company, and to do all the things on the part of the said the Montclair Railway Company, to be done and performed as therein provided, and to pay unto the holder or holders of the said bonds respectively, the principal sums of money therein respectively mentioned, and the interest thereon as the same should become due and payable; and that in case of default in the payment of the interest, on  
 551 any day on which the same should become due and payable, and such default continuing for a period of six months, that after the expiration of the said six months, the whole amount of the principal and interest of the bonds thereby secured, should be deemed to become an<sup>d</sup> should be due and payable, and the said the Montclair Railway Company should and would on demand made by your orators, their survivor or survivors, assign and transfer in due form to him or to his successors, or agents duly authorized, the actual  
 552 possession of all the property and premises therein granted or intended to be embraced; and that the expenses of taking, holding and managing the said property and premises therein granted, or intended to be embraced, if possession should be taken, should be paid from the income, and if necessary from the sale of the property and premises by your orators or the trustee thereof for the time being;

and further, that in such case your orators or their successors, in the said trust or assigns, should take and receive, collect and have, the income and profits of the said railway, and other property, first applying the same to the payment and discharge of all current necessary operating expenses and repairs, and all taxes and other similiar charges, and next to the payment of all sums of money due and payable upon the aforesaid bonds, and thereby secured; and that your orators, their successors in said trust or assigns, having entered into full possession of the premises, property and estate thereby conveyed, (the said default still continuing) at their discretion, and with the approbation of any Court of competent jurisdiction of said State, might or on the written request of the holders of at least forty per centum of the bonds thereby secured and then outstanding unpaid, should proceed to sell and dispose, or cause to be sold and disposed of all the premises, property and estate thereby conveyed, or intended to be conveyed, or so much thereof as should be necessary to pay and discharge the principal and interest according to the tenor thereof of all such of said bonds thereby secured, and then outstanding, as may then have been issued by the said, the Montclair Railway Company, and which then remain unpaid; together with all benefit and equity of redemption of the said, the Montclair Railway Company therein, at public auction, in the City of New York, upon previous notice as therein provided, but with a provision that nothing therein contained as to such sale at public auction, should be so construed as to deprive your orators of the right to proceed by bill in equity in any Court of competent jurisdiction for foreclosure of the said mortgage, and a sale of the therein granted property, franchises and premises at their option, at any time after default should have been made in the payment of the interest or principal thereby intended to be secured.

And your orators further show that it was further provided in the said Indenture of mortgage that the same to-

557 gether with the said bonds thereby secured, were made, executed and issued or delivered upon certain terms and conditions set forth in the said mortgage: First, the actual possession, use, management and control of all the said mortgaged property, and premises should remain in and with the said, the Montclair Railway Company, so long as the said bonds so issued should be and remain without default or forfeiture.

558 Second, that the said bonds should be countersigned by your orators, and after bonds to an amount not exceeding in par value the sum of six hundred thousand dollars should have been issued by the said, the Montclair Railway Company, that then and thereafter bonds should be issued by them and the avails thereof paid over to the said, the Montclair Railway Company, only to such an amount as should be at, and after the rate of thirty thousand dollars in bonds per mile, in length of the track of said railway and its several branches, then constructed, and to be thereafter built, so fast as the track of said road should be graded, and the iron rails laid thereon and no faster.

559 Third, that in case of vacancy in said Trusteeship, a new Trustee should be appointed in the manner therein pointed out, and it was further understood and agreed, by and between the parties to the said mortgage, that your orators should only be accountable for reasonable diligence in the management of said trust, and should not be responsible for the acts of each other, to which they should not severally assent, nor the acts or negligencies of any agent or agents necessarily employed by them when selected with proper discretion or with the approbation of the said company.

560 And your orators further show that on the first day of September, one thousand eight hundred and seventy, the said indenture of mortgage was duly proved by William M. Pratt, one of the subscribing witnesses thereto, and the Secretary of said company, and by Hezekiah Watkins, the other subscribing witness before Washing-

ton B. Williams, a Master in Chancery of the State of New Jersey, and afterwards was duly deposited for record in the books of record of mortgages of the various counties in which said property is situated, that is to say, in the Register's office of the County of Essex, on the            day of            last aforesaid, and afterwards on the same day, in the Clerk's office of Passaic County, on the            day of            in the Clerk's office of the County of Morris, on the twenty-ninth day of December, eighteen hundred and seventy-one, in the Clerk's Office of the County of Hudson, and on the            day of            in the Clerk's Office of the County of Bergen, and was thereupon duly recorded in the books of mortgages of said several counties —, and your orators further show unto your Honor, that about, the same first day of September in the year one thousand eight hundred and seventy, being the date of the said above mentioned indenture of mortgage to your orators, the said The Montclair Railway Company did make and execute, under their corporate seal, their certain bonds of the form set out in the said indenture of Mortgage to your orators, signed by the President of said company, and attested by the said H. R. Low, the treasurer thereof, to the amount, in all, of two million five hundred thousand dollars, by each of which the said The Montclair Railway Company did promise to pay the person named therein, or the holder thereof, thirty years from the said date thereof, for value received, the sum either of one hundred, five hundred, or one thousand dollars lawful money, at the agency of said company, in the city of New York, and interest thereon from said date, at the rate of seven per cent. per annum, payable semi-annually, on the first days of March and September, in each year, free from all government tax upon presentation and surrender of the coupons thereto annexed; as they severally should become due, it being on each bond recited, that the same was one of three series, as mentioned in said resolution, secured by said mortgage to your orators, and on which said bonds a certificate was endorsed, to be signed by

565 your orators, that the same was one of the series of bonds  
 therein referred to, secured by the said mortgage duly executed and delivered to your orators, and recorded as authorized by law, and to which said bonds, coupons were annexed; signed by the said treasurer for the payment of the interest thereon half yearly, as in said bonds provided; and your orators further show, that before and after the execution of said mortgage, the construction of the railway of the Montclair railway Company was carried on; and that from time to time, and in accordance with the terms of said mortgage, and so fast as the said railway was constructed and built;

566 and your orators thereto authorized by the said Mortgage, your orators, as such trustees, did countersign certain of the said bonds, and deliver the same to the said The Montclair Railway Company; and that thereupon the same were offered and exposed to sale, hypothecated or sold to various persons, and the avails of the said bonds, received by the said The Montclair Railway Company, as your orators believe; and your orators show that the said bonds countersigned and delivered by them, amount to about one million eight hundred and thirty thousand dollars

567 all or nearly all of which are outstanding and unpaid, in the hands of various holders; and your orator further show that afterwards, about the first day of November, in the year one thousand eight hundred and seventy-one, the said the Montclair Railway made a second mortgage of the same property, privileges, and franchises, to your orator, the said Abram S. Hewitt, as trustee, to secure the sum of one million five hundred thousand dollars; for which bonds were to be issued for the payment of one thousand dollars, and five hundred dollars each,

568 as in said mortgage provided, which said last indenture of mortgage was proved according to law, and afterwards duly recorded in the books of mortgages of the County of Essex, on the twelfth day of January, in the year one thousand eight hundred and seventy-two; also in the books of mortgages of the County of Hudson, on the fifteenth day of said January;

also in the books of Mortgages for the County of Morris, on the thirteenth day of said January; also in the books of mortgages of the County of Passaic, on the twelfth day of said January; and in the Clerk's office of the County of Bergen, on the sixteenth day of said January. 569

And your orators believe that the bonds issued, and secured by said mortgage, amount to about eight hundred and twenty thousand dollars, for which they admit that said second mortgage to your orator, Abram S. Hewitt, is a lien upon said property; but they show that by the terms of said second mortgage the same is subject to the lien of the said mortgage first herein mentioned. 570

And your orators further show that it was the intention of your orators, and of the Montclair Railway Company, parties to the said indenture of mortgage, that the same should convey to your orators, and to your orator, the said Abram S. Hewitt, respectively, a full and indefeasible estate, in fee simple, in the said railroad, franchises and privileges; but through the mistake of the scrivener who drew the same, the necessary words of inheritance were omitted; that thereupon your orators filed their bill of complaint in this Court for the reformation of the said mortgages, and that such proceedings were thereupon had; that by decree of this Court made on the nineteenth day of March, eighteen hundred and seventy-two, the same were reformed, and it was decreed that they respectively conveyed to the parties of the second part therein respectively, and their heirs, a full estate in fee simple of all the premises, as by reference to the said decree and the proceedings in the said cause will more fully appear. 571

And your orators further show that the New York and Oswego Midland Railway Company, shortly after the execution and record of said last mortgage, entered into possession of said railroad, and continued in possession thereof, constructing and operating the same, as your orators show and believe that afterwards some claim was made that said possession was taken under lease from the said the Mont- 572

clair Railway Company; but your orators show and charge  
 573 that whatever estate, possession or interest the said the New  
 York and Oswego Railway Company have had in said prem-  
 ises was created after the making of your orators' said mort-  
 gage; that at the time of the making of said two mortgages,  
 the said last named company knew of the mortgaging of the  
 same in fee simple, and even if they then had any claim or  
 estate in said premises, the same is void as against your ora-  
 tors' said mortgage, your orators having no notice of the  
 same.

574 And your orators further show that about the third day of  
 October, eighteen hundred and seventy-one, Samuel Bensen  
 and Henry K. Bensen, recovered a verdict in the Essex  
 County Circuit Court against the Montclair Railway Com-  
 pany for damages and costs; that said verdict was set aside  
 and a new trial granted, on which said Samuel and Henry  
 K. Bensen obtained judgment about the twenty-second day  
 of April next thereafter, for seven thousand seven dollars and  
 eleven cents, or some other sum, besides costs; that the said  
 Company sued out a writ of error on the said judgment,  
 575 which, however, still remained of record, and afterwards the  
 said writ of error was dismissed and the said judgment af-  
 firmed.

And your orators further show that afterwards Emma  
 Saunders and Thorndyke Saunders, her husband, recovered  
 judgment in the same Court against the Montclair Railway  
 Company for eighteen hundred and thirty-three dollars, or  
 some other sum, about the ninth day of October, Anno Dom-  
 ini eighteen hundred and seventy-two, as appears of record.

576 And your orators further show, that by virtue of the said  
 judgments, the said Samuel Benson, Henry K. Bensen,  
 Emma Saunders and Thorndyke Saunders, her husband,  
 claim some lien on parts of the premises, but your orators  
 show that said judgments were all entered subsequent to  
 the record of your orators' said mortgage, and are subject  
 to the lien thereof.

And your orators further show, that proceedings having  
 been commenced in the Courts of the State of New York,  
 under the Statutes of that State, against the said the New  
 York and Oswego Midland Railroad Company, being a cor-  
 poration, incorporated and having its place of business in  
 said State, and that in said proceedings the said Abram S  
 Hewitt and John G. Stevens were appointed Receivers of the  
 said the New York and Oswego Midland Railroad Company,  
 and claim to own all the property thereof, but how far they  
 have any rights in the Courts of this State as such receivers,  
 your orators are ignorant, but submit, and the said Abram  
 S. Hewitt, himself as such receiver, admits, that such rights,  
 if any he have, are subject to your orators' said mortgage. 577

And your orators further show unto your Honor, that  
 about the eighth day of May last, William McArthur, Ar-  
 chibald McArthur, R. Nelson Gere, N. Stanton Gere, and  
 Edward B. Van Dusen, filed their bill in this Court, against  
 the said the Montclair Railway Company, defendants, praying  
 that a Receiver or Receivers or trustees, should be ap-  
 pointed thereof, according to the act of this State, entitled  
 "An Act to prevent fraud by incorporated companies," and 578  
 that such proceedings were thereupon had, that afterwards  
 about the twenty-first day of July last, Mason Loomis,  
 Elias N. Miller, and Conrad N. Jordan were appointed re-  
 ceivers thereof, and that they duly qualified as such receivers  
 and entered upon the execution of their duties and into pos-  
 session of the said property. 579

And your orators further show, that about the twenty-  
 sixth day of June last, your orator, said Abram S. Hewitt, as  
 trustee of said second mortgage, filed his bill for the fore-  
 closure thereof, against the said the Montclair Railway Com-  
 pany, Samuel Bensen and Henry Bensen, Emma Saun- 580  
 ders and Thorndyke Saunders, her husband, and the New  
 York and Oswego Midland Railroad Company, and that de-  
 cree interlocutory has been taken in the said last mentioned  
 cause, whereby the same was referred to determined the

581 amount due, on said second mortgage and the bonds secured thereby and the holders of said bonds, and other proceedings were therein taken, as by reference to the record of said suit before your Honor will appear; but your orators show and charge, that all the said last proceedings were taken subject to the lien of your orators' mortgage first therein mentioned, and without disturbing the same in any way.

582 And your orators further show unto your Honor, that about the first day of September, in the year one thousand eight hundred and seventy-three, six months' interest on said bonds, secured by said mortgage to your orators, and first therein set forth; that is to say, thirty-five dollars on each bond of one thousand dollars, seventeen dollars and fifty cents on each bond of five hundred dollars and three dollars and fifty cents on each bond of one hundred dollars issued and outstanding as aforesaid became due and payable thereon, and that no part of the same has been paid, either by the said the Montclair Railway Company, or the said receivers thereof, although the coupons thereof are held by the owners of said bonds ready for surrender.

583 And your orators show especially, that on and since the first day of September last, many holders of bonds secured by said mortgage caused the coupons thereof which fell due on said day to be presented at the former New York office of said company, and also to the said receivers for payment at the office of the said receivers in Jersey City, and that the said receiver neglected and refused to pay the same, that your orators believe that the said receivers have no funds to pay any of the said bonds, and your orators show that the said railway company is to-  
584 tally insolvent, and unable to pay any of its debts, and was so at the time, said coupons became due.

And your orators further show, that the bonds secured by your orators, said mortgage are in the hands of many persons for value advanced to the said, the Montclair Railway Company according to the purpose expressed in the said

mortgage, all of whom respectfully are entitled to the benefit of the said mortgage, and the security thereof, that your orators do not know the names of said persons, but aver and charge that they are too numerous to be made parties to this suit without exposing the same to great delay, by abatement by death or otherwise. 585

And your orators aver and charge that by the default in payment of the said interest, the said deed of mortgage to your orators, and the estate thereby mortgaged have become absolute in your orators and their heirs.

And your orators further show that within the first week in March next, unless payment be made of the said interest, before the said time, the whole of the said amount secured by said bonds will become due, and payable according to said mortgage. 586

And your orators further show that the said, the Montclair Railway Company, the New York and Oswego Midland Railroad Company, Abram S. Hewitt, receiver of said last company, and Mason Loomis, Conrad N. Jordon, and Elias N. Miller, receivers of the Montclair Railway Company, or one of them since the execution of your orators said mortgage, have possessed and enjoyed, and still do possess and enjoy, the said mortgaged premises with the appurtenances, and have always received, and still do receive the rents, issues and profits thereof. 587

And your orators further show and expressly charge that the said premises are a slender and scanty security for the payment of the principal and interest moneys due on the said bonds as aforesaid, and also that the same are a single line of railroad, intended to be worked as one road, and incapable of division, and that your orators, or some other person for them, have frequently and in a friendly manner applied to the said the Montclair Railway Company and the New York and Oswego Midland Railroad Company, Samuel Bensen, Henry K. Bensen, Emma Saunders and Thorndyke Saunders, Mason Loomis, Elias N. Miller and Conrad N. 583

589 Jordan, receivers of the Montclair Railway Company, Abram S. Hewitt and John G. Stevens, receivers of the New York and Oswego Midland Railroad Company, and Abram S. Hewitt, trustee of said second mortgage, who are the defendants in this suit, and have requested them to pay and discharge the said principal and interest moneys so due to the holders of the said bonds or obligations, and secured thereby, and the said deed of mortgage, to your orators, as in equity and good conscience they ought to have done.

590 But now so it is, may it please your Honor, that the said the Montclair Railway Company, the New York and Oswego Midland Railroad Company, Samuel Bensen and Henry K. Bensen, Emma Saunders and Thorndyke Saunders, Mason Loomis, Elias N. Miller and Conrad N. Jordan, receivers of the Montclair Railway Company, Abram S. Hewitt and John G. Stevens, receivers of the New York and Oswego Midland Railroad Company, and Abram S. Hewitt, trustee of said second mortgage, combining and confederating together, and with other persons unknown to your orators, whose names when discovered they pray may be inserted  
591 herein, with proper and apt words, to charge them as parties defendant herein, and contriving how to injure and aggrieve your orators in the premises, sometimes give out and pretend that though your orators' estates in the premises have become absolute at law, yet that your orators cannot dispose of the same to any purchaser in any manner, but the same will be subject to an equity of redemption, and at other times they pretend that their estate in the premises is prior to your orators' said mortgage, by virtue of certain alleged encumbrances.

592 Whereas your orators charge, that if any such encumbrances exist, they are fraudulent and void, or without consideration or kept on foot to injure your orators, and ought to be delivered up to be cancelled or declared of no effect as against your orators, who had no notice of said pretended encumbrances.

All which actings and doings of the defeddants and their confederates are contrary to equity and good conscience and tend to the wrong, injury and oppression of your orators. 593

In tender consideration whereof, and for as much as your orators have not a complete and safe remedy in the premises by the strict rules of the common law, nor can safely sell the said premises for the payment of the said bonds, or foreclose the equity of redemption of the defendants therein without the aid of this Honorable Court.

To the end therefore, that the said defendants and their confederates when discovered, may, on their several and respective corporal oaths, true, full and perfect, answer, make to all and singular the premises, and that the defendants may be decreed to pay to your orators in trust, for the holders of the said bonds, the said sums so due thereon, and also their costs and charges by them in their suit in this behalf sustained by a short day to be appointed by this Honorable Court, and in default that the said defendants and each of them, and all persons claiming or to claim, under them, or any, or either of them may be foreclosed of and from all equity of redemption, or claim of, in and to the said mortgaged premises, and may deliver to your orators all deeds, demises and writings, whatever relating to or concerning the same, or else, that all and singular, the mortgaged premises, with the appurtenances, may by the order and decree of this Honorable Court be sold, and out of the money arising from the sale thereof, yours orators may be paid the costs and charges by them in this behalf sustained, and their commissions or compensation for performing their said trust, and also, the principal and interest money due on said bonds, 596 and that an account may be taken of the bonds secured by the said mortgage to your orators, and of the amount due on the said bonds for principal and interest, and that the names of the owners thereof, may be ascertained and decree made for their payment, and that your orators may have

597 such further and other relief in the premises as may be agreeable to equity and good conscience?

May it please your Honor, the premises considered to grant unto your orators, a writ or writs of subpoena, issuing out, and under the seal of this Honorable Court, to be directed to the said defendants respectively therein, and thereby commanding them, and each of them to appear before your Honor in this Honorable Court, then and their to answer all and singular the premises, and to further stand to, abide by and perform such order as to your Honor shall seem meet, and shall be agreeable to equity and good con-  
598 science, and your orators who bring this, their bill of foreclosure against the said receivers of the Montclair Railway Company under lease first had of this Honorable Court, as in duty bound, will ever pray, etc.

Richard Wayne Parker, Solicitor, and of counsel with the complainants.

A true copy.

H. S. LITTLE, Clerk.

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## IN CHANCERY OF NEW JERSEY.

BETWEEN

MARCUS L. WARD and ABRAM S.

HEWITT, Trustees,

*Complainants,**and*

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ELIAS N. MILLER, MASON LOOMIS

and CONRAD N. JORDAN, Re-

ceivers of The Montclair Rail-

way Company; The New York

and Oswego Midland Rail-

road Company; SAMUEL BEN-

SEN and HENRY K. BENSEN,

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EMMA SAUNDERS and THORN-

DYKE SAUNDERS, her husband;

ABRAM S. HEWITT, Trustee;

and ABRAM S. HEWITT and

JOHN G. STEVENS, Receivers of

The New York and Oswego

Midland Railroad Company,

604

and The Montclair Railway

Company,

*Defendants.*

This cause being opened to the Court by Richard Wayne

605 Parker, of counsel with the complainants, and it appearing that process of subpoena for the appearance of the defendants with proper tickets was duly issued and returned, and that such process, returnable to the first day of December, was returned by the Sheriff of the County of Essex, served on the said Elias N. Miller, Mason Loomis and Conrad N. Jordan, receivers, as appears by their acknowledgment, endorsed on said subpoena, and also served on Samuel Bensen and Henry K. Bensen, Thorndyke Saunders and Emma Saunders, also served upon the said Abram S. Hewitt, trustee, as appears  
606 by his acknowledgement thereon, endorsed by Parker & Keasbey, his solicitors.

And that said process returnable to the sixth day of said December, was duly served on the said Abram S. Hewitt and John G. Stevens, receivers of the New York and Oswego, Midland Railroad Company, as appears by their several acknowledgements thereon endorsed; and that said process returnable to the sixteenth day of December, was duly returned, served by the sheriff of the County of Essex, on the said the Montclair Railway Company.

607 And it being further made to appear by affidavit of Edward S. Savage, to the satisfaction of the Chancellor, that due notice of the order of this Court, made on the second day of December last, directing the New York and Oswego, Midland Railroad Company a foreign corporation chartered by the laws of the State of New York having their office out of this State, and neither whose President nor any of whose chief officers reside therein, to appear and plead, answer or demur to the said bill on or before the third day of February, then next, or in default thereof, that such decree should be  
608 made against them as the Chancellor should think equitable and just; has been duly served upon the said absent defendants as required by the rules of this Court, within twenty days from the date of said order by delivery thereof to one of their head officers, to wit: their Secretary personally, and to the said receivers of said company then in charge of their

principal office, at the said office, in manner, and as in the said order directed and prescribed; and it further appearing 609 that the said Samuel Benson and Henry K. Benson, have filed their answer to the said bill, and that the said Abram S. Hewitt and John G. Stevens have filled their appearance in this cause, but have not pleaded; demurred or answered therein, but that the other defendants have not, nor have any of them, appeared, pleaded, answered or demurred to said bill within the time limited by law, and the said order, but have wholly failed and neglected, so to do:

It is on this ninth day of March in the year eighteen hundred and seventy-four, on motion of Richard Wayne Parker, Solicitor, and of Counsel with complainants, ordered, adjudged and decreed that the said bill be, and the same is taken as confessed against all the said defendants except the said Samuel Bensen and Henry K. Bensen, that is to say, against Elias N. Miller, Mason Loomis and Conrad N. Jordan, receivers of the Montclair Railway Company, the New York and Oswego Midland Railroad Company, Abram S. Hewitt and John G. Stevens, receivers of the New York and Oswego Midland Railroad Company, Emma Saunders and 611 Thorndyke Saunders, her husband, Abram S. Hewitt Trustee.

And it further appearing that the said Samuel Bensen and Henry K. Bensen, were made parties to said bill, in order to foreclose the lien upon the mortgaged premises in said bill described, of a certain judgment recovered by them against the Montclair Railway Company, for the value of certain lands taken by said railway company, and no denial being made by the answer of said defendants, that said judgment is subsequent to said mortgage, but the said defendants, 612 Samuel and Henry K. Bensen, having set up that their title to said lands so taken by said company, is prior and paramount to any lien of the complainants thereon by virtue of their mortgage, said lands never having been paid for by said company; and it further appearing by the said bill and

613 admission of the complainants, that they have no intention or desire to foreclose any such estate of said defendants in said lands so taken, but only the lien of said judgment on property of the Montclair Railway Company; and no denial of any of the other facts in the said bill, being made by the said Samuel Bensen and Henry K. Bensen, or of the right of the complainants to a foreclosure of their said mortgaged premises.

It is further ordered, adjudged and decreed that the said defendants, the Montclair Railway Company, now represented by said receivers, and indebted to the holders of the  
 614 bonds, secured by said mortgage to the complainants in said bill set forth, in certain large sums of money, which have for a long time remained due and unpaid. And that the said the Montclair Railway Company have made default in the payment of said interest moneys, and that the complainants are entitled to relief in this Court, as by said complainants' bill is payed, and to a sale of the lands, franchise and real and personal property mortgaged, or some part thereof, in order to satisfy the said debt, and to a foreclosure of the equity  
 615 of redemption therein, without, however, affecting the title of said Samuel Bensen and Henry K. Bensen, to their lands as aforesaid taken by the said company, for which they have not been paid, and the estate of said defendants therein; and it is further ordered, adjudged and decreed, that it be referred to William Paterson, Esquire, one of the Masters of this Court, to ascertain and report to this Court, the amount due upon the bonds secured by the mortgage of the complainants' trustees, mentioned and described in their said bill of complaint; and also what is due, if anything, upon those  
 616 secured by said mortgage to said Abram S. Hewitt, trustee, and also what is due to the defendants, Samuel Bensen and Henry K. Bensen, Emma Saunders and Thorndyke Saunders, upon their respective judgments and their right of priority of payment; and also to ascertain and report whether the said mortgaged lands, premises and franchises,

should be sold together or in parcels, and if in parcels, in what order and how much thereof; and that the said Masters do make his report thereon with all convenient speed; and all further equity is reserved until the coming in of the said Master's report. 617

THEODORE RUNYON, C.

We consent to the above decree on behalf of Samuel Bensen and Henry K. Bensen.

McCARTER & KEEN, 618  
Their Solrs.

A true copy.

H. S. LITTLE,  
Clerk.

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## IN CHANCERY OF NEW JERSEY.

BETWEEN

622 MARCUS L. WARD and ABRAM S.  
HEWITT.*Complainants**and*The MONTCLAIR RAILWAY COM-  
PANY, and others.*Defendants.*On Bill to  
Foreclose.

623

To the Honorable Theodore Runyon, Choncellor of the  
State of New Jersey.

The petition of William A. Guest, of the City of New York,  
respectfully sheweth:

That on the fourth day of April, eighteen hundred and  
seventy-four, your petitioner became the purchaser of the  
Montclair Railway, together with all the chartered rights,  
624 priveliges and franchises, belonging to the said Montclair  
Railway Company, at a sale thereof made by Conrad N. Jor-  
don, Mason Loomis and Elias N. Miller, the Receivers of  
said corporation appointed by your Honor in this Honorable  
Court, and under and by virtue of an order and decree of  
your Honor, subject to prior leins and incumbrances, and

that he paid therefore the sum of six thousand two hundred and fifty dollars. 625

That on the twenty-third day of April, eighteen hundred and seventy-four, the said sale by said receivers was duly confirmed by your Honor in this honorable Court, and on the twenty-third day of April aforesaid a deed of conveyance from said receivers to your petitioner for said railway rights, privileges and franchises was duly executed and delivered by said receivers to your petitioner.

At the time of the purchase of said property by your petitioner, the same was subject to two mortgages, the first one executed by said company to Marcus L. Ward and Abram S. Hewitt Trustees, to secure the payment of bonds to be issued by said company, not to exceed in amount the sum of two millions five hundred thousand dollars, and the second executed by said company, to Abram S. Hewitt Trustee, to secure the payment of bonds to be issued by said company, not to exceed in amount the sum of one million five hundred thousand dollars. 626

On or about the 26th day of June, eighteen hundred and seventy-three, the said Abram S. Hewitt and Marcus L. Ward filed their bill of complaint in this Honorable Court, to foreclose the mortgage so as aforesaid given to them by said company, in which suit for foreclosure no final decree has yet been taken. 627

Your petitioner is advised and believes that a much larger amount of bonds has been issued under said mortgage so given to said Abram S. Hewitt and Marcus L. Ward, than by the terms thereof, the said company or the said Trustees had a right to issue, and that a large proportion of the money claimed by said Abram S. Hewitt and Marcus L. Ward in their said bill of complaint is not due, and is not a lien or incumbrance upon said mortgaged premises, 628

Your petitioner therefore prays that he may be made a defendant to said suit for foreclosure, and allowed to answer said bill of complaint, as he may be advised by his counsel, may

629 be necessary and proper to protect his interest as the purchaser and owner of said mortgaged premises.

JOHN LINN,

Solicitor and Counsel for Petitioner.

Hudson County, ss:

630 William A Guest being duly sworn, on his oath, saith:  
that the facts, matters and things set forth in the foregoing  
petition are true.

WILLIAM A. GUEST.

Submitted and sworn, May 4th,  
1874, before

R. O. BABBITT, M. C. C.

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## IN CHANCERY N. J.

BETWEEN

ABRAM S. HEWITT and MARCUS  
L. WARD,  
*Complainants,*  
*and*  
The MONTCLAIR RAILWAY COM-  
PANY.  
*Defendants.*

On bill to  
Foreclose.  
Rule to show cause.

634

Upon reading and filing the petition and affidavit of Wil- 635  
liam A. Guest in the above cause.

It is ordered that the said complainants show cause before  
the Chancellor, at the State House in Trenton, on Monday,  
the twenty-fifth day of May, instant, at ten o'clock in the  
forenoon, why the prayer of said petition should not be  
granted, and that a copy of this order and said petition be  
served upon said complainants or their solicitors, ten days  
before said day, and that affidavits may be taken by both  
parties, to be used on the argument of said rule to show  
cause.

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May 6th, 1874.

THEODORE RUNYON, C.

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## IN CHANCERY OF NEW JERSEY.

ABRAM S. HEWITT and MARCUS L.

WARD,

638

*Complainants,*

and

The Receivers of THE MONT-  
CLAIR RAILWAY COMPANY *et als.*,

*Defendants.*

On Petition of  
William A. Guest.

The said William A. Guest having filed his petition pray-  
639 ing that he be admitted to answer and defend this suit, and  
an order to show cause having been granted thereon, evi-  
dence taken and the matter argued before the Chancellor,  
and it appearing that after the decree *pro confesso*, taken in  
this cause, the said William A. Guest became the purchaser  
of said railway and the franchise thereof, at the sale thereof  
made by the receivers, trustees of said Montclair Railway  
Company, under the authority of this court, but that his said  
purchase was subject to the mortgage sought to be fore-  
closed in the bill of complaint.

640 It is therefore, on this ninth day of July, one thousand  
eight hundred and seventy-four, on motion of John Linn, so-  
licitor and of counsel with the petitioner, ordered and de-  
creed that the said William A. Guest be admitted as a de-  
fendant in this cause, as purchaser from Elias N. Miller,  
Mason Loomis and Conrad N. Jordan, receivers of the Mont-

clair Railway Company, but not to file answer plea in demurrer to the bill of complaint in this cause, or to set up any defense thereto. 633

It is ordered that said William A. Guest have the right to appear before the Master on the reference in this cause, and that notice of the time and place of taking such reference be given him, and then and there to act in the premises as if he was an original defendant and owner of the mortgaged premises.

THEODORE RUNYON, C.

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## IN CHANCERY OF NEW JERSEY.

638	BETWEEN ABRAM S. HEWITT and MARCUS L. WARD, <i>Complainants.</i> <i>and</i> The RECEIVERS of the MONTCLAIR RAILWAY COMPANY and others, <i>Defendants.</i>	On Petition of William A. Guest. Appeal.
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639 The petitioner, William A. Guest, appeals from so much of the order and decree made in this Court in the above stated cause, as denies the right of said petitioner to file any answer, plea, or demurrer to the bill of complaint in this cause, or to set up any defence thereto, to the Court of Errors and Appeals in the last resort in all causes of law.

JOHN LINN,

Solicitor and Counsel of said Petitioner.

Dated July 30, 1874.

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

JOHN LINN,

Solicitor and Counsel of said Petitioner.

## NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

WILLIAM A. GUEST,

*Appellant,*

and

ABRAM S. HEWITT, and MARCUS

L. WARD, Trustees, etc.,

*Appellees.*

On Bill, etc.

Petition of 642

Appeal.

To the Honorable, the Court of Appeals in the last resort  
in all causes of law.

The humble petition of William A. Guest, the appellant in 643  
the above stated cause, respectfully shows that your peti-  
tioner finds himself assured by an order and decree made in  
the Court of Chancery by his Honor Theodore Runyon,  
Chancellor of the State of New Jersey, bearing date the  
ninth day of July, eighteen hundred and seventy-four, in a  
certain cause wherein the said Abram S. Hewitt and Marcus  
L. Ward, trustees, etc., are complainants, and Mason Loomis,  
Elias N. Miller, Conrad N. Jordan, receivers, and others are  
defendants, upon the application of your petitioner to be  
made a party defendant to said suit, and to be allowed to 644  
answer and defend the same in this respect, to-wit: that the  
said order and decree adjudges that your petitioner be ad-  
mitted as a defendant in said cause as purchaser from Elias  
N. Miller, Mason Loomis and Conrad N. Jordan, receivers  
of the Montclair Railway Company, but not to file any

645 answer, plea or demurrer to the bill of complaint in said  
cause, or to set up any defence thereto; and your petitioner  
humbly appeals from that part of said decree of the Chancel-  
lor, which decrees that he shall not file any answer, plea or  
demurrer to the bill of complaint in said cause, nor set up  
any defence thereto, upon the ground that the same is er-  
roneous, for that your petitioner has a right by law, as pur-  
chaser of said mortgaged premises, to answer said bill of  
complaint and to set up his defence thereto. Your peti-  
tioner therefore prays, that the said decree of the said Chan-  
cellor may be in the particulars aforesaid, reserved, set aside  
646 and for nothing holden. And that your petitioner may have  
such relief in the premises as this Honorable Court shall  
deem meet.

JOHN LINN,

Solicitor and Counsel of Appellant.

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