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New Jersey Court of Errors and Appeals.

Between
GUSTAV W. LEMBECK,
Complainant,

AND

JARVIS TERMINAL COLD STORAGE COMPANY,
Defendant.

On Petition of
Nathalie Jarvis.

Brief for Respondents Young and Irvin, and Union Terminal Cold Storage Company.

This is an appeal by the Erie Railroad Company and Nathalie Jarvis from a decree of the Court of Chancery, advised by Vice-Chancellor GARRISON. The action was brought to have the defendant declared insolvent and a Receiver appointed. The result of the suit, among other things, was the appointment of Receivers on the 28th day of March, 1904. The only substantial asset of the defendant was its cold storage plant in the City of Jersey City. At the time of the receivership there were upon the plant the following encumbrances :

1. Mortgage of the Commercial Trust Company, dated February 2, 1903, given to secure the payment of one hundred and fifty bonds, each of the par value

of one thousand dollars, and bearing interest at the rate of six per cent. per annum.

2. Various mechanics' liens amounting in the aggregate to forty-five thousand dollars.

3. Mortgage to the Erie Railroad Company, dated December 16, 1903, to secure the sum of sixteen thousand five hundred dollars.

By order of the Court of Chancery, dated May 23, 1904, the Receivers were directed to sell the plant of the company free and clear of these liens, the liens to attach to the purchase price. In the order a minimum price of one hundred and ninety thousand (190,000) dollars was placed upon the property. No bid of this amount being made, the Receivers reported that fact to the Court, and, on the 20th of June, 1904, they were directed to sell the property without restriction as to price. It was further provided in the order of June 20th that the purchaser must pay at least twenty-five thousand (25,000) dollars in cash, and that he might secure the payment of the balance by depositing with the Receivers first mortgage bonds of the defendant, and assignments of Mechanics' Liens to an amount stated in that order.

On the 26th of June, 1904, the property was sold pursuant to these orders to Daniel E. Cleary, Charles E. Cassidy and Gustav W. Lembeck, a committee of the first mortgage bondholders, for one hundred and thirty-five thousand (135,000) dollars. This sale was confirmed by order dated July 5, 1904. Twenty-five thousand (25,000) dollars was paid in cash and seventy-five (75) first mortgage bonds were deposited to secure the balance of the purchase price. Meanwhile the respondents John Alvin Young and Richard Irvin were attempting to reorganize and rehabilitate the company. Acting as a reorganization committee, they procured the formation of the Union Terminal Cold Storage Company, the other respondent herein. They purchased all the first mortgage bonds, one hundred and

fifty (150) in number, and all the claims secured by mechanics' liens, thereby acquiring all the claims secured by liens upon the property, except the claim of the Erie Railroad Company. They entered into an agreement with Messrs. Lembeck, Cleary and Cassidy to take over their bid at the sale, and arranged to convey the plant to the Union Terminal Cold Storage Company. Under the reorganization agreement the holders of the old bonds were to receive bonds of the new company and the mechanics' lienors were given cash and stock of the new company.

Twenty-five thousand (25,000) dollars having been paid on account of the purchase price it was necessary for Messrs. Young and Irvin, in order to secure a deed to the property, to pay the additional sum of one hundred and ten thousand (110,000) dollars.

It is apparent that the first mortgage bonds, amounting to one hundred and fifty thousand (150,000) dollars and the mechanics' liens, amounting to forty thousand (40,000) dollars, if valid, constituted a first lien upon the purchase price far in excess of the amount which they were called upon to pay to secure a deed to the property; and, as the bonds and liens were held by the same persons, it was unnecessary to determine their relative priority. Thereupon, they petitioned the Court for an order.

First. Adjudicating that the claims which they held were a first lien upon the purchase price of the property in at least the sum of one hundred and ten thousand (110,000) dollars and interest.

Second. That upon depositing with the receivers the bonds and assignments of liens, the receivers be directed to execute to them, or their nominee, a deed to the property in question; and

Third. That after deducting the expenses of the receivership, the receivers be directed to pay to them the balance in their hands remaining from the twenty-five

thousand (25,000) dollars paid in cash on account of the sale.

Upon filing their petition, an order to show cause was granted, directed to all the creditors of the company who had filed claims, as well as to all the stockholders. Upon the return of the order to show cause, it was conceded that the claims held by Young and Irvin, as aforesaid, were prior, valid and existing liens against the purchase price of the property to at least the sum of one hundred and ten thousand (110,000) dollars and interest, and that the petitioners were entitled to the deed as prayed for in their petition. An order directing the delivery of the deed was thereupon advised by Vice-Chancellor STEVENSON. The Vice-Chancellor, however, declined to pass upon the right of the petitioners to receive any balance in the hands of the Receivers, and that matter was continued, from time to time, until the final report of the Receivers came on to be heard. It was then ascertained and ordered that the net amount remaining in the hands of the Receivers, after paying all the expenses of the receivership, namely the sum of seven thousand six hundred and sixty-eight and $\frac{28}{100}$ (7,668.28) dollars should be paid into Court, the ownership of which would be determined upon petition of anyone claiming the same. Thereupon Nathalie Jarvis filed her petition praying that this sum be paid to her. To that petition answers, in the nature of cross-petitions were filed by the respondents, Young and Irvin, and the Union Terminal Cold Storage Company and by the appellant, the Erie Railroad Company. The issues arising upon the petitions and answers came on to be tried before Vice-Chancellor GARRISON, who decided that the respondents were entitled to the money, and from the decree entered pursuant to that decision the present appeal is taken.

The Claims of the Parties.

The respondents, Young and Irvin, claim the fund in question by reason of their ownership of the first mortgage bonds, which, they allege, are a first lien upon the price paid for the plant to an amount sufficient to include this balance. (The respondent Union Terminal Cold Storage Company assigned all its rights to Young and Irvin.)

The appellant Nathalie Jarvis admits the priority of the bonds, but claims an equitable ownership in seven of them.

The appellant the Erie Railroad Company claims that only 125 bonds were legally issued, and that they are liens to the extent of only 88 cents on the dollar.

POINTS.

I.

The bonds owned by the respondents Young and Irvin are valid and first liens against the purchase price of the defendants' property for their full face value and interest, except in so far as they have already been satisfied.

The fund in controversy is $7,668.28. The bonds deposited with the Receivers as consideration for the deed were held to be worth at least $110,000 and interest from June 26th, 1904, to September 23d, 1904, and were, by the delivery of the deed, satisfied to that extent. In order to entitle us to the fund, therefore, under our claim it is only necessary to show that there

is due on the bonds $7,668.28 more than the amount for which they have received credit.

It is conceded by all that one hundred and twenty-five bonds are valid, and, if they are liens for their face value, they are sufficient without interest to absorb the fund.

It is important, therefore, to ascertain at the outset how much is due upon those bonds. Under the terms of the mortgage, one hundred and twenty-five (125) bonds were issued at once and the remaining twenty-five (25) were to be issued under conditions which will be referred to later. The one hundred and twenty-five (125) bonds in question were sold at eighty-eight cents on the dollar. The Erie Railroad Company contends that in the hands of holders, they are a charge against the corporation only to the extent of eighty-eight cents on the dollar; and furthermore, that under the usury laws of the State of New Jersey, they are not entitled to interest. We claim both that they are entitled to interest and that they are liens to the extent of their par value. The New Jersey statute, Chapter 144 of the Laws of 1902, provides:

> " No corporation shall hereafter plead or set up
> " the defense of usury to any action brought against
> " it to recover damages or enforce a remedy on
> " any obligation executed by said corporation."

So far as we can ascertain, the effect of this provision upon corporate bonds has never been passed upon by the New Jersey Courts, except in the present instance. Judge DILL, in his work on New Jersey Corporations, commenting upon this provision, states that it is for the protection of holders of corporate bonds and obligations originally issued at less than par and makes such securities unimpeachable so far as the defense of usury is concerned. As authority for this statement, he cites numerous decisions of the Courts of New York, construing a similar statute of that State (including

Rosa vs. Butterfield and Stewart vs. Bramhall, *infra*), which statute reads:

> "No corporation shall hereafter interpose the "defense of usury in any action."

The repeated and uniform construction placed upon the New York statute by the highest Courts of that State is to the effect that it operated as a repeal of the statutes of usury as to all contracts with corporations stipulating to pay interest and that such contracts being valid in their inception are thereafter valid for all purposes and that it is immaterial that the defense is not made directly by the corporation.

Curtis vs. Leavitt, 15 N. Y., 87.
Trust Co. vs. Packer, 17 N. Y., 52.
Rosa vs. Butterfield, 33 N. Y., 665.
Stewart vs. Bramhall, 74 N. Y., 87.
Bank vs. Wheeler, 60 N. Y., 613.
Gamble vs. Water Co., 123 N. Y., 108.

The New York statute, as well as the general question of the amount due upon bonds sold for less than their face value, was construed by the Federal Courts in the case of the *Vigilancia*, 68 Fed. Rep., 781, a decision of the District Court for the Southern District of New York, and afterwards by the United States Circuit Court of Appeals whose decision is reported in 73 Fed. Rep., 452. That case was quite similar to the one at bar. A petition for the surplus proceeds of certain vessels was filed by the Atlantic Trust Company, as mortgagee in trust for holders of bonds of the company owning the ships. In addition to the mortgage, there were various other claims against the proceeds, the holders of which contended, among other things, that the mortgage was void for usury, because the bonds were sold at the discount of twenty (20) per cent. The case was first heard by a Commissioner, who reported that there was due and unpaid on the bonds the full face value thereof, with interest. The Commissioner's report was afterward confirmed by the District

Court, in an opinion reported in 68 Fed. Rep., 781. In his opinion, Judge BROWN used the following language:

> " It is a principle of constant application in the " Federal Courts that the construction of a state " statute given to it by the highest Court of the " state, is to be taken as the meaning of the stat- " ute, and effect given to it accordingly. The " defense of usury in actions against corporations " is expressly prohibited by the state statute of " 1850. The construction given to this Act is, " that in effect it repeats the statute of usury as " respects corporations (citing cases). * * * " The statute is for the protection of the lender to " corporations; and this purpose would be " thwarted if his security could be destroyed by a " defense of usury interposed by creditors, as " much as if that defense were allowed to be inter- " posed by the corporation itself. In the language " of *Rosa v. Butterfield*, such contracts, since the " Act of 1850, are ' not usurious ' and it is imma- " terial that the defense is not made directly by " the corporation " (33 N. Y., 665).

From the District Court an appeal was taken to the United States Circuit Court of Appeals, which affirmed the decree of the District Court, in an opinion containing the following:—

> " The bonds which the two mortgages were " created to secure were negotiated at 80 cents on " the dollar of their face value, and the appellant " contends that the mortgages were void for usury. " A sufficient answer to this contention is found in " the statute of New York (Laws 1850, c. 172), " which declares that no corporation shall here- " after interpose a defense of usury. According " to the repeated and uniform construction placed " upon it by the highest courts of the state, this

" statute operated as a repeal of the statutes of
" usury as to all contracts with corporations
" stipulating to pay interest. *Curtis v. Leavitt*,
" 15 N. Y., 85; *Trust Co. v. Packer*, 17 N. Y., 52;
" *Rosa v. Butterfield*, 33 N. Y., 665; *Stewart v.*
" *Bramhall*, 74 N. Y., 87; *Bank v. Wheeler*, 60
" N. Y., 613; *Gamble v. Water Co.*, 123 N. Y., 108,
" 25 N. E., 201; *Duncomb v. Railroad Co.*, 84 N.
" Y., 190. As thus construed, the statute has be-
" come a rule of property, and to question it now
" would unsettle titles in which enormous invest-
" ments have been made. A very large proportion
" of the bonds secured by corporate mortgages
" are originally negotiated at a discount beyond
" the legal rate of interest; and it is quite too
" late to urge that the language of the statute
" only operates upon a corporation in personam,
" and not upon the contract it has made."

The Vigilancia, 73 Fed. Rep., 452, at 455,
U. S. C. C. A., Second Circuit.

It is a well known fact that most corporation bonds are sold at less than par and it is inconceivable that any other rule of construction should be applied to the New Jersey statute, than that which has been uniformly applied to the statutes of New York, not only by its highest courts, but by the courts of the United States.

We claim, therefore, that, upon the one hundred and twenty-five (125) bonds which are concededly ours and which are concededly valid and first liens, there is now due the sum of one hundred and twenty-five thousand ($125,000) dollars, with interest from the first day of February, 1904, minus the amount credited upon the bonds when they were received in payment of the purchase price of the plant, which sum far exceeds in amount the fund involved in this controversy.

II.

The claim made by Nathalie Jarvis that she is to be considered as an owner of seven of the bonds is not well founded.

The appellant, Nathalie Jarvis, concedes that the Commercial Trust Company mortgage is a first lien; that Messrs. Young and Irvin are the owners of one hundred and thirty (130) of the bonds; that the remaining twenty (20) bonds have never been lawfully issued, and that she is to be considered in equity as entitled to seven of them.

This contention is based upon the following facts:

The Jarvis Terminal Cold Storage Company was promoted by one Robert M. Jarvis. Prior to the incorporation of the company, he held an option upon the land upon which its plant was subsequently erected, which land was owned by the appellant, Nathalie Jarvis, who was the widow of the nephew of Robert M. Jarvis. After the incorporation of the company, it took over this option, received a conveyance of the property, paid to Mrs. Jarvis eight thousand (8,000) dollars in cash, and gave a purchase money mortgage for fourteen thousand (14,000) dollars, dated December 1, 1902, due December 1, 1903. Shortly thereafter, it became necessary for the company to raise money to construct its plant and, for that purpose, it desired to sell its bonds to be secured by mortgage upon the property in question. In order that its bonds might be salable, it became necessary, of course, to procure the satisfaction of Mrs. Jarvis' mortgage. It is alleged in the petition of Nathalie Jarvis that she, being "a woman unfamiliar with business affairs was requested by the said Jarvis Terminal Cold Storage Company, through its president, Robert M. Jarvis, to satisfy her mortgage of record, so that the Commercial Trust Company mortgage should thereby become a first lien upon the mortgaged property, in consideration of

which, the said storage company agreed to pay to your petitioner Seven thousand (7,000) Dollars, in cash, and deliver to her its promissory note for the balance of seven thousand (7,000) dollars, payable sixty (60) days after date, with interest at five (5) per cent. per annum ; and further, to deliver to her, when issued, seven (7) of the first mortgage bonds of the company secured by the Commercial Trust mortgage, as aforesaid, to be held by your petitioner as collateral security for the payment of said note, the said Robert M. Jarvis, as president of said Storage Company, at the same time representing that said bonds were amply secured by property worth double the value thereof and that said company was solvent and in a condition to pay said note when due, relying upon said representations and agreement, your petitioner was induced to execute an instrument satisfying her mortgage, etc."

Whatever may be the fact as to the unfamiliarity of Mrs. Jarvis with business affairs, the evidence shows that she never had anything to do with the transaction whatever, and that all the negotiations were conducted in her behalf by one Schafer, a stock-broker of New York City who does not claim to be unfamiliar with business affairs (Testimony of Schafer, page 46). So far as it appears by the evidence, Mrs. Jarvis was entirely ignorant of the transaction and any claim that she was imposed upon, by reason of her inexperience in business affairs, falls to the ground. Schafer testified that in January, 1903, he reached an agreement with Mr. Jarvis, by which the mortgage held by Mrs. Jarvis was to be satisfied for seven thousand (7,000) dollars, in cash, and the note of the company at sixty (60) days for the other seven thousand (7,000) dollars, which was to be secured by seven (7) of the bonds of the contemplated issue of one hundred and fifty thousand (150,000) dollars (page 52). At any rate, Schafer sent a satisfaction piece of the mortgage to Mrs. Jarvis, in Europe, who executed it and returned it. The satisfaction piece was delivered to Mr. Jarvis on or before

the 19th day of February, 1903, and on that date Mr. Jarvis delivered to Schafer, for Mrs. Jarvis, the note of the Jarvis Terminal Cold Storage Company, payable in sixty (60) days, together with seventy (70) shares of the capital stock of the company. The note recited that these seventy (70) shares were deposited as collateral security for the note. This note was executed and this collateral given pursuant to a resolution of the executive committee of the directors of the Jarvis Company held on that date (page 211). The resolution makes no mention of bonds. Mr. Schafer testified that Mr. Jarvis explained to him that the bonds of the company were not yet finished and hence he could not deliver them as agreed and that the stock was delivered as a temporary collateral (page 55). *The trust mortgage, however, and the agreement, under which one hundred and twenty-five bonds were sold had, eight days before, been approved by the board of directors at a meeting at which Mr. Jarvis presided* (page 218). This note was renewed, as it became due from time to time, for seven renewals, the last renewal note being dated November 23, 1903. No other collateral was ever substituted for the stock and each note recited that the stock was collateral security for its payment. Mr. Schafer produced several letters from Mr. Jarvis in which bonds are mentioned, claiming that they corroborated his story. The first, however, bears date June 22, 1903 (page 168), four months after the transaction. It must be remembered that it was never in the power of Mr. Jarvis to carry out this alleged bargain, for the method of disposing of the bonds had been fixed by action of the board of directors, and if Mr. Jarvis promised to give bonds to Schafer he must have referred to bonds owned by him individually.

On the 8th of June, 1904, Mrs. Jarvis filed with the receivers a claim, verified by her oath. In it she states "relying upon these representations I consented to discharge said mortgage and to satisfy same of record, and to take, in lieu there-

of, the sum of seven thousand (7,000) dollars, cash, and a note of seven thousand (7,000) Dollars dated February 19, 1903, payable in sixty (60) days and bearing interest at the rate of five (5) per cent. per annum, *with seventy (70) shares of the stock of defendant as collateral*, which note given with the said collateral I still hold; that no part of said note has been paid" (page 206).

In her claim, she asked a preference, on the ground that the representations made to her were false and that she was entitled to be paid before any other creditors, excepting the bondholders, whose claims she admitted to the amount actually paid by them for their bonds. As the time for filing claims had expired, application was made to the Court for leave to file this claim out of time which application was granted by order dated July 18, 1904.

The first time that Mrs. Jarvis made any claim that she was ever promised bonds of the defendant was on December 5, 1904, when she filed the petition resulting in the decree here under consideration. On the 21st day of February, 1903, the Trust mortgage was recorded simultaneously with the satisfaction of the mortgage of Mrs. Jarvis. The Trust mortgage, therefore, became a first lien upon the property of the defendant, by the voluntary act of Mrs. Jarvis in permitting her mortgage to be satisfied of record, and upon the record so established, the whole world had the right to rely, and the purchasers of the bonds secured by the mortgage were chargeable only with the matters appearing in the mortgage affecting the nature and extent of the security afforded by their bonds. This mortgage provided that bonds to the amount of one hundred and twenty-five thousand (125,000) dollars should forthwith be certified by the trustee and delivered upon the order of the officers of the mortgagor company. These bonds were so certified, so delivered and were sold at eighty-eight (88) cents on the dollar to various purchasers. The remaining twenty-five (25) bonds, authorized by the mortgage, were to be re-

tained by the company for the purchase of additional property and for the making of additions and improvements, to be certified by the trustee, in the manner provided in the mortgage. There was nothing in the mortgage to show that seven (7) bonds were to be delivered to Mrs. Jarvis in any contingency and the purchaser of any bond had a right to assume that the Jarvis Terminal Cold Storage Company owned its land free and clear of all incumbrances except the trust mortgage, the proceeds of which were to be applied to the construction of a cold storage plant thereon.

If Mrs. Jarvis's agent, Schafer, was incompetent and neglectful in protecting her interests, by all rules of equity she must bear the loss. To permit that loss to be visited upon the other bondholders would be to visit the consequences of neglect and incompetence upon the innocent, rather than the guilty.

On or about the 22d day of December, 1903, the certificate required by the terms of the mortgage to authorize the certification of the additional twenty-five (25) bonds was made and delivered to the trustee, and the bonds were thereupon certified and delivered to the company (page 199).

Meanwhile, the company had become in sore straits for money. It had borrowed from the United States Mortgage and Trust Company the sum of twenty thousand (20,000) dollars upon the note of the company, secured by a subscription agreement of those who had agreed to subscribe for the stock of the company (pages 246–249). Upon this agreement the sum of forty-five hundred (4,500) dollars had been paid, leaving fifteen thousand five hundred (15,500) dollars still due upon the note. These twenty-five (25) bonds, when certified by the trustee, were taken by Mr. Jarvis, president of the company, to the United States Mortgage and Trust Company, for the purpose, as he states, of having that company buy them, sell them or make a loan upon them. It is to be observed that, under the terms of the mortgage, the certificate of the trustee was "conclusive evidence that the bond, so certified, has been

duly issued hereunder, and is entitled to the benefit of the trust hereby created."

Mr. Jarvis conferred with Mr. Cumming, Vice-President of the United States Mortgage and Trust Company; he stated the object of his visit, produced the bonds and left them with Mr. Cumming who said that he would submit the matter to the proper committee and advise Mr. Jarvis of their decision (page 75). It seems that Mr. Cumming discovered that the subscription agreement had been taken from the possession of his company by Mr. Jarvis's son apparently for the purpose of securing additional signatures thereto. At any rate, it had not been returned, and it seemed to have disappeared. The Mortgage and Trust Company was, therefore, without security for its loan, and under these circumstances Mr. Cumming informed Mr. Jarvis that he would retain the bonds as such security (pages 84–87).

Under the terms of the note held by the United States Mortgage and Trust Company, the payee had a right to demand additional security in the event of the depreciation of the value of the original collateral (page 246). The Vice-Chancellor finds as a fact that the net result of the various happenings with respect to these bonds was that it was agreed that the Trust Company might keep them as additional collateral to the existing indebtedness if it would advance additional money necessary to meet the coupons upon the bonds becoming due February 1st, 1904. The Trust Company did this and advanced four thousand six hundred dollars ($4,600) (page 151). While these bonds were in the hands of the Trust Company, the Crane Company, one of the creditors of the Jarvis Company, became importunate. The claim of the Crane Company, amounting to $8,000 (page 112), was for materials furnished and used in the construction of the plant and was a just and valid obligation. Mr. Finney, representing the Crane Company, with Mr. Jarvis, called upon Mr. Cumming of the United States Mortgage and Trust Company, and

as a result of their negotiations Mr. Cumming delivered five of the bonds to Mr. Jarvis who turned them over to the representative of the Crane Company as security for its claim (pages 82, 83, 112). These bonds were afterwards sold at auction, after notice, and were subsequently acquired by Young & Irvin. The remaining twenty bonds continued to be held by the Trust Company until the Trust Company parted with its right, title and interest in them to Messrs. Young & Irvin.

We think the fair interpretation of this case shows that the bonds in question were, so far as Young & Irvin are concerned, validly issued, and whether validly issued or not, they have a better title to them than does any one else. The contention of Nathalie Jarvis is that they were not validly issued and being still in the treasury of the company, she is entitled to seven of them under verbal agreement to have been made by Mr. Schafer and Mr. Jarvis. A sufficient answer to this is that if they were not validly issued they can not now be validly issued because the conditions of the mortgage can no longer be fulfilled, but the conclusive answer to her claim is that given by Vice-Chancellor GARRISON in his opinion.

The Laches of Mrs. Jarvis.

Equity helps them who help themselves. It aids the diligent, not the slothful and negligent. It aids those who are without fault rather than those who have erred. In the present case Messrs. Young and Irvin have so conducted themselves as to deserve the favorable consideration of the Chancellor. They have been diligent and without fault. When the Jarvis Company became insolvent they undertook a reorganization of its affairs. An inspection of the claims against it showed that the secured creditors would be the only ones who would share in the distribution of the assets, and they, therefore, had to become parties to the reor-

ganization. The one hundred and fifty first mortgage bonds were outstanding, and no settlement could be complete until every bond, whether properly or improperly issued, had been brought into Court and surrendered for cancellation. Whether just or unjust, the claim of the United States Mortgage and Trust Company was a fact, and it was fortified by the possession of the bonds. Messrs. Young and Irvin bought its interest in the bonds and were thus able to bring into Court all the bonds. Meanwhile what was Nathalie Jarvis doing? She was certainly not asserting any claim of ownership in any of these bonds. She had taken note after note which recited that the collateral thereto was seventy shares of stock, no mention being made of bonds. After the appointment of Receivers she neglected to file a claim within the time allowed, but her default was opened and she was permitted to file it out of order. Under these circumstances it would naturally be supposed that a claim so filed would be considered with care. Under the solemnity of an oath she averred that her claim was upon a note secured by stock. On the 21st of September, 1904, upon the hearing on their petition, Messrs. Young and Irvin, in Court and in the presence of Mrs. Jarvis's solicitors, asserted their ownership of these bonds, and *this claim was admitted to be true*, and a decree was made accordingly. And it was not until December 5th, 1904, that she was heard to assert an equitable title to the bonds. Would it now be equitable to permit her to have this fund as against us, in other words, to receive in cash practically the face value of seven bonds as a reward for sitting idly by and allowing us to do the work and furnish the money necessary to redeem these and all the other bonds from worthlessness? Had she asserted her claim when the Receivers were appointed, she might have become a party to the reorganization agreement on contributing as the others did, or she might have made an expensive peace with the United States Mortgage and Trust Company, as we did, or she might have

precipitated litigation which would effectually have prevented all hope of a speedy ending of the receivership. In any case she would not have received in cash the par value of the bonds. To pay it to her now would be to reward her laches and that of her agent.

III.

The claim of the Erie Railroad Company is without merit.

The claim that the mortgage given to the Commercial Trust Company to secure the bonds was usurious has already been shown to be invalid. Therefore, the coupons attached to the one hundred and twenty-five bonds whose validity is admitted are also valid. The facts already stated show that the five bonds which were given to the Crane Company were also valid and are entitled to be so regarded in the hands of Messrs. Young and Irvin. The officers of the Jarvis Company complied scrupulously with the provisions of the mortgage with respect to the issuance of these bonds. The certificate required by the mortgage was duly made and delivered to the trust company and the trust company thereupon certified the bonds and delivered them to Mr. Jarvis, president of the company.

The Crane Company had a valid claim to the amount of $8,000 for materials used in the construction of the Jarvis Company's plant. The affairs of the Jarvis Company were in a critical condition; its plant was substantially completed and it was, of course, hoped that it would soon be receiving income. There were numerous creditors; the Crane Company was insist-

ent; it was in a position to file a lien against the property which would, of course, have precipitated action by other creditors, and the act of Mr. Jarvis in giving these five bonds to the Crane Company, thereby inducing that company to forego immediate suit, was, unquestionably, done in the interests of his company. The good faith of the Crane Company in the transaction is beyond doubt. When these bonds, issued in strict compliance with the mortgage, were placed in the hands of the Crane Company, as security for its debt, that company acquired a valid title to them for that purpose, and when, after being sold at public auction, they came into the possession of Messrs. Young and Irvin, they represented valid liens under the mortgage against the property of the Jarvis Company. Even if the first one hundred and twenty-five bonds are to be allowed as liens only to the extent of eighty-eight cents on the dollar, these five bonds must be allowed at their face value, for they unquestionably represent materials of the value of $8,000 used in the construction of the plant, and for which nothing has been received except what was realized from these bonds. These bonds, with the coupons attached to the one hundred and twenty-five bonds, are more than sufficient to exhaust the fund now in controversy. It is not necessary, therefore, to decide whether or not anything is to be allowed for the twenty bonds which were obtained from the United States Mortgage and Trust Company.

Furthermore, the mortgage of the Erie Railroad Company was taken specifically subject to the lien of the first mortgage by the following provision:

> "This property is subject to a prior mortgage given by said Storage Company to the Commercial Trust Company of New Jersey, as Trustee, to secure the payment of bonds to the amount of One Hundred and Fifty Thousand Dollars ($150,000) and said mortgage is recognized as prior to this

> to the full amount thereof, whether said bonds have been issued or not" (p. 231).

Under these circumstances, the Erie Railroad Company is estopped from now claiming that the first mortgage was usurious or that the bonds are in any way invalid.

Section 15 of the Mechanics' Lien Law, which is claimed by counsel for the Erie Railroad Company to be applicable to the case is as follows:

> "Every mortgage given or to be given upon lands in this State shall have priority over any claim that may be filed in pursuance of this act to the extent of the money actually advanced and paid by the mortgagee and applied to the erection of any new building upon the mortgaged lands or any alterations, repairs or additions to any building on said lands."

This statute has no application to the present controversy. It applies only to the priority of mortgages over mechanics' liens. It does not pretend to govern the relative priority of mortgages, and certainly cannot be construed so as to make a second mortgage a prior lien to a first mortgage. It is hardly necessary to refer to the well known principle that statutes like the Mechanics' Lien Law are construed strictly.

The proceeds of the Erie Railroad Company's mortgage were not "advanced and paid by the mortgagee and applied to the erection of any new building," or "alterations, repairs or additions to any building." The money advanced by the Erie Railroad Company was applied,

(1) To the payment of obligations long overdue; and

(2) To the procurement of a written agreement from the Jarvis Company that it would not permit connec-

tion to be made between its warehouse and the tracks of any other railroad company, and that it would give preference for storage accommodations to the Erie Railroad Company and its patrons.

That the money was applied to the payment of the existing indebtedness appears from the testimony of Robert M. Jarvis, at page 130, and the vouchers, marked "Exhibit BB" of the Erie Railroad Company, at pages 232 to 242.

The substance of Mr. Jarvis' testimony is that this money was used to satisfy creditors of the company, and that the vouchers were delivered to the Erie Railroad Company. These vouchers, "Exhibit BB", are in the form of certificates by the Assistant Engineer of the company, certifying that specified work had been done or materials furnished, and receipts by the various creditors for the amount of the accounts thus stated. A note seems to have been given in satisfaction of one of these claims (p. 233), and some of the money realized on the Erie mortgage was used to take up the note, which had gone to protest. It is unnecessary to refer to all the vouchers.

The purpose of the provision of the Mechanics' Lien Law undoubtedly was to protect one who loaned money for the purpose of constructing a new building or altering an old one against mechanics' liens which should thereafter be filed against the work which his money was performing. It certainly had no reference to a case like this where the money was loaned, not for the prosecution of new work, but for paying bills for work already done, where the right to file mechanics' liens already existed.

Even if the theory of the Erie Railroad Company's contention is correct, therefore, the fact is that the money realized from its mortgage was not advanced and paid by the mortgagee and applied to the erection of any "new" building or "alterations, repairs or additions to any building" within the meaning of the statute. One of the considerations of the mortgage, too, was the agreement in regard to tracks and ware-

house preference. This agreement is shown at page 197.

For the foregoing reasons, we submit that the decree should be affirmed.

PIERRE F. COOK,
Solicitor for Respondents Young and Irvin, and Union Terminal Cold Storage Company.

PIERRE F. COOK,
ALFRED A. WHEAT,
Of Counsel.

MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

BETWEEN
GUSTAV W. LEMBECK,
Complainant,
and
JARVIS TERMINAL COLD STORAGE COMPANY,
Defendant.

} On Appeal.
On Petition of
Nathalie Jarvis.

Brief of Collins & Corbin on behalf of Appellant, Erie Railroad Company.

The controversy among the parties to this appeal relates to a fund of $7,668.28, the balance paid into the Court of Chancery by the receivers of the defendant company after the filing of their final report. (Vol. 1, p. 180.)

In March, 1904, a bill was filed praying for the appointment of a receiver of the defendant company, and, on March 28th, 1904, Palmer Campbell and J. Warren Hardenbergh were appointed receivers. (Vol. 1, p. 6.) They qualified and immediately took possession of the defendant's property, which consisted almost wholly of a cold-storage warehouse, situate in Jersey City.

(Receiver's report No. 1, Vol. 1, p. 9; Receiver's report No. 3, Vol. 1, p. 39.) At the time of the appointment of the receivers the company's property was subject to a trust mortgage, dated February 2d, 1903, made to the Commercial Trust Company of New Jersey, Trustee, to secure an issue of bonds in the aggregate amount of $150,000, of which $125,000 had been subscribed and paid for at the rate of $88 on $100. There were also several mechanics' liens filed at various dates between February 25th, 1904, and April 6th, 1904. (Vol. 1, p. 13.) There was also a mortgage to the Erie Railroad Company for $16,500. (Vol. 1, p. 14.) This was dated December 16th, 1903, prior to the filing of any of the mechanics' liens. (Vol. 2, p. 230.)

Under direction of the Court, the receivers proceeded to operate the cold storage warehouse and conduct the business, which was barely sufficient to pay running expenses (p. 42, l. 5). Receiver's certificates were issued to meet the more pressing claims (Vol. 1, p. 100), but the final report shows that the cold storage business was conducted at a very small profit. (Vol. 1, p. 157.) On account of the conflicting claims for liens, application was made, on due notice, to sell the property clear of liens. (Receiver's report No. 3, p. 39.) An order for such sale, clear of liens, was made on May 23d, 1904. (Vol. 1, p. 50.) After the making of this order a petition was filed by a committee of bondholders, objecting to a sale clear of liens (Vol. 1, p. 57), and thereupon, a further order was made on June 13th, 1904, directing that no bid should be accepted by the receivers for a less sum than $190,000. (Vol. 1, p. 84.) (Note: This order of June 13th will be found in the printed book at p. 103.) The receivers proceeded to advertise, but no bid was made or received (Vol. 1, p. 85), and on June 20th, 1904, after due notice, an order was made that the receivers again advertise the property, and that the sale be made without restriction as to the bid price. (Vol.

1, p. 98, l. 15.) At the receiver's sale the property of the defendant company was purchased by Daniel E. Cleary, Charles E. Cassidy and Gustav W. Lembeck for $135,000. (Vol. 1, p. 105, l. 25.) This sale was confirmed by the Court of Chancery on July 5th, 1904, and the receivers were ordered to execute and deliver a deed to the purchasers upon their complying with the conditions of sale. (Vol. 1, p. 120.) The purchasers paid $25,000 in cash and deposited with the receivers $75,000 par value of the defendant's first mortgage bonds. (Vol. 1, p. 123.) Pending the delivery of the deed the purchasers at the receiver's sale made an agreement to assign their bid to Messrs. John Alvin Young and Richard Irwin. (Vol. 2, p. 2, l. 30.) Thereupon, on notice to all parties in interest, an order was made on September 19th, 1904, directing the receivers to execute and deliver the deed to the Union Terminal Cold Storage Company (which had been organized by Messrs. Young & Irwin for the purpose of acquiring the property). (Vol. 2, p. 8.) Pursuant to this order of September 19th, 1904, the receivers did deliver the deed to the Union Terminal Cold Storage Company on September 23d, 1904, and received at the time of the delivery an assignment of the bid of Lembeck et al. to Young & Irwin, an assignment of Young & Irwin to Union Terminal Cold Storage Company of their right to receive the deed, one hundred and fifty first-mortgage bonds of the defendant, with coupons due August 1st, 1904, and all following coupons, and assignments of the several mechanics' liens and claims against the defendant. (Vol. 1, p. 130.)

The order of September 19th, 1904, for the delivery of the deed was made on a petition filed by Young & Irwin. (Vol. 2, p. 1, *et seq.*) This petition prayed, among other things, that the Receivers be directed to pay to the petitioners for their order all moneys remaining in their hands after deducting such fees and allowances as might be made by the Court. The order

of September 19th, 1904, reserved the determination of this matter. (Vol. 2, p. 11, l. 10.) Pending the determination of the claim of Young & Irwin for the money remaining in the hands of the receivers, a petition was filed by Nathalie Jarvis, claiming that she was entitled to have the defendant corporation or receivers deliver to her seven bonds of the defendant, pursuant to a certain agreement set up in the petition, whereby she was induced to cancel a mortgage held by her on the same property covered by the trust mortgage and by the mortgage of the Erie Railroad Company; and that the receiver's sale be set aside, or if it be not set aside, that out out of the moneys remaining in Court as the proceeds of sale, there be paid to her the proportionate amount to which she would be entitled as the holder of seven bonds of the defendant company. An order to show cause was made on this petition and answers were filed by Young & Irwin, claiming as in the petition filed by them, that they were entitled to the payment of any moneys remaining in the hands of the receiver. The Commercial Trust Company filed an answer, claiming that it was entitled to receive part of the fund in payment of certain services and disbursements made by it as trustee. The Erie Railroad Company filed an answer, claiming that it was entitled to the payment of these moneys on the ground that the money advanced by it on its second mortgage was applied to the erection of a building upon the mortgaged lands. The case came to a hearing on the petition of Nathalie Jarvis and these several answers, and after the taking of testimony the Court of Chancery made its decree that the petitioner, Nathalie Jarvis, had no claim upon the fund remaining on deposit with the Clerk, and that her petition be dismissed; that the Erie Railroad had no claim on said fund "because the prior liens thereon will not be paid in full"; that the Commercial Trust Company had a first and prior lien upon said fund and was entitled to receive for its own use out of said fund the following sums: (1) $1,814.25 for premiums on fire insurance policies; (2)

$300 as compensation for acting as trustee; (3) $150 for certifying bonds; (4) $200 for counsel fees. After the payment of these said several sums of money, it was adjudged that Young & Irwin, or the Union Terminal Cold Storage Company, were entitled to receive from the Commercial Trust Company the balance of the said fund. From this order separate appeals were filed by Nathalie Jarvis and by the Erie Railroad Company.

I.

Summary of Objections to the Claim of Erie Railroad Company.

Under the order of September 19th, 1904, it was provided that the bonds, liens and claims, enumerated therein, should be valid and prior claims against the purchase price of the property to an amount not less than $110,000, with interest at five per cent. from the 26th day of June, 1904, "being the balance due upon the purchase price of said sale." (Vol. 2, p. 9, l. 35.) The purchase price was $135,000, of which $25,000 was paid by the purchasers in cash, and out of this $25,000 the receivers, after paying their several disbursements and the allowances made by the Court, paid into Court the balance of $7,668.28 now in question. It should be noted, however, that out of this sum of $25,000 the receivers have paid their counsel's fee of $2,500 and the receivers' fee of $4,000. (Vol. 1, p. 180.) The Erie Railroad Company has also appealed from the order directing these payments to be made out of these moneys (Vol. 1, p. 181), on the ground that the allowances to receivers and counsel could not lawfully be made out of the proceeds of the receivers' sale of real estate covered by the railroad's mortgage, because such order impaired the lien of its mortgage to that extent. If this appeal of the railroad should be successful, and the allowances made to the receivers and their counsel returned, the

total amount of the fund would be increased by $6,500. It appears that the 125 first-mortgage bonds first issued were sold at 88, so that the net amount realized therefrom by the company was the sum of $110,000. It is admitted that the first mortgage is prior to the Erie Railroad mortgage to the extent of this sum of $110,000.

The claim of the Erie Railroad Company to the balance of $7,668.28 would be wiped out if any one of the three following claims is a prior lien, to wit:

(1) The balance of $15,000 (exclusive of interest) of the face value of the one hundred and twenty-five first-mortgage bonds held by Young & Irwin;

(2) The twenty-five bonds which were claimed by the United States Mortgage and Trust Company as further collateral on a loan to the Jarvis Company and now held by Young & Irwin;

(3) The mechanics' liens, amounting to upwards of $45,000. (See the receiver's report, No. 8, Vol. 1, pp. 135 to 138).

The claim of the Erie Railroad Company to the balance of the fund would be reduced if anyone of the following items is a prior lien:

(4) Interest on 130 first-mortgage bonds.

(*a*) Semi-annual interest coupons due August 1, 1904, ... (See receiver's report, No. 8, Vol. 1, p. 134).	$3,900 00
(*b*) Interest on $130,000 of principal from August 1, 1904, to September 23, 1904 (date of delivery of deed), ...	1,127 00
(*c*) Interest on $3,900 of coupons from August 1, 1904, to September 23, 1904,..	33 80
Total, ...	$5,060 80

The railroad company claims that only 125 of the first-mortgage bonds are a valid and prior lien, and the interest figured on this basis would be as follows:

(*a*) Coupons due August 1, 1904, ... $3,750 00

(*b*) Interest from August 1, 1904, to September 23, 1904, on $125,000 of principal,	1,104 17
(*c*) Interest from August 1, 1904, to September 23, 1904, on $3,750 of coupons,	33 13
Total,	$4,887 30

(5) The five bonds out of the twenty-five bonds retained by the United States Mortgage Trust Company, which were afterwards turned over to the contractor, Crane, on account of his claim against the defendant company. On these five bonds there would be due the following:

(*a*) Face of bonds,	$5,000 00
(*b*) Coupons due August 1, 1904,	150 00
(*c*) Interest on coupons from August 1, 1904, to September 23, 1904,	12 13
Total,	$5,162 13

(6) Claim of Nathalie Jarvis.

(*a*) Face amount of claim,	$7,000 00
(*b*) Interest from February 23, 1903, to September 23, 1904, one year, 7 mos.,	665 00
Total,	$7,665 00

It will be observed that if the claim of Nathalie Jarvis is allowed in full, there will be a balance due the Erie Railroad Company of $3.28, provided we establish that our claim is prior to all the other claims except hers.

(7) Claims of Commercial Trust Company of New Jersey.

(*a*) Premiums on fire insurance,	$814 25
(*b*) Compensation for services as trustee,	300 00
(*c*) Fee for certifying bonds,	150 00
(*d*) Bill for legal services,	200 00
Total,	$1,464 25

We claim that the lien of the mortgage of the Erie Railroad Company is ahead of all these claims, with the possible exception of some of the claims of the Commercial Trust Company, and that the Erie Railroad Company is, therefore, entitled to receive this balance of $7,668.28 (and in addition the sum of $6,500, the amount paid the receivers and counsel out of the cash in the hands of the receivers, if it should be determined on the appeal relating thereto that this sum should not have been paid out of the moneys received from the sale of the mortgaged property).

II.

The mortgage of the Erie Railroad Company is prior to the first mortgage bonds issued under the trust mortgage, except to the extent of one hundred and ten thousand dollars.

(*a*) It is conceded by all parties that 125 of the first-mortgage bonds were properly issued. It is also conceded that all of these were sold at the rate of 88 cents on the dollar, making the net proceeds $110,000. It is further conceded that practically all of this money was applied to the payment of labor and material used in the erection of a cold storage warehouse on the lands described in the trust mortgage. It is proved that the sum of $16,500, paid by the railroad company at the time of the execution and delivery of its mortgage, was nearly all applied to the payment of bills for labor and material for this same warehouse. (Vol. 2, pp. 130, 232, 240.)

The vouchers show that at least $16,000 of the Erie money was applied to the payment of bills for labor done or materials furnished for the new building. The mortgage of the Erie Railroad Company was recorded December 18th, 1903. (Vol. 2, p. 230.) None of the mechanics' liens was filed until some months after

that date. See the allegations in the petition of Nathalie Jarvis with respect to the mechanics' liens (Vol. 2, p. 217), which in this respect are admitted by all parties. The dates of the filing of the liens also appear from the various reports of the receivers.

The statute as to the effect of the recording of a mortgage before the filing of mechanics' liens is found in P. L., 1898, p. 543, and reads as follows:

"15. Every mortgage given, or to be given upon lands "in this State, shall have priority over any claim that "may be filed in pursuance of this act to the extent of "the money actually advanced and paid by the mortgagee "and applied to the erection of any new building upon "the mortgaged lands, or any alterations, repairs or ad- "ditions to any building on said lands; provided, such "mortgage be registered or recorded before the filing "of any such claim."

Inasmuch as the mechanics' liens would be prior to a *general* mortgage we have this result:

(*a*) The Erie mortgage is prior to the lien claims.

(*b*) The lien claims are prior to a general mortgage.

(*c*) Therefore, the Erie mortgage would be prior to a general mortgage.

(For a full exposition of this argument, see *Luce's Mechanics Lien Law, p. 57.*)

Now, if the trust mortgage were a *general* mortgage, the lien of the Erie mortgage would be wholly prior to the lien of the first mortgage; but the money raised from the sale of the bonds issued under the trust mortgage was also applied to the erection of the same building, but only to the extent of 88 cents on a dollar—that is, $110,000. Hence, we claim that the lien of the 125 first-mortgage bonds is prior to the Erie mortgage *only* to the extent of the actual money raised from the sale of those bonds and applied to the erection of the building. Therefore, the lien of the trust mortgage, as against the Erie mortgage, is valid only to the extent of $110,000.

(*b*) The bonds issued under the trust mortgage bore interest at the rate of six per cent. (Vol. 2, p. 171.)

They were sold at 88 cents, hence, the purchasers received a usurious rate of interest. Under the statute of this State only the amount "actually lent," without interest or costs, can be recovered in a suit to enforce such mortgage. (*G. S. 3703, Secs. 1 and 2.*) Under this statute only the amount actually lent, to wit, the sum of $110,000, could be recovered. It will, no doubt, be claimed that this point is met by the provisions of "An act relating to usury." (*P. L. 1902, p. 459.*) This provides that no *corporation* shall hereafter plead or set up the defense of usury to any action brought *against it* to recover damages or to enforce a remedy on any obligation executed by said corporation. This act was evidently intended to meet the case of a corporation which sells its bonds at less than par, and an action is then brought against *it* to enforce the lien of the bonds. The statute would thus prevent the corporation from taking advantage of its own violation of law. The present proceeding is not against the corporation which issued the bonds. The defendant corporation is not a party to the petition, and it does not plead or set up this statute. Neither did any of the other parties. The receivers as representing the corporation have not set up this statute, and, in fact, could not do so, because they were discharged by order of the Court on October 17th, 1904. We have here conflicting equities, and it is certainly equitable that the first-mortgage bondholders should receive back as against an advance money mortgagee no more than has been actually expended in the construction of the building on the mortgaged property. We, therefore, claim that as against the mortgage of the Erie Railroad these 125 bonds are good to the extent of only $110,000. Moreover, if the statute of 1902 does not apply to a case of this kind, the bondholders are not entitled to interest as against the claim of the Erie R. R.

(*c*) It will also be argued that there is a recital in the Erie mortgage to the effect that it is subject to the trust mortgage, "and said mortgage is recognized as prior to this to the full amount thereof, whether said bonds have

been yet issued or not." (Vol. 2, p. 231.) At the time this mortgage was executed the remaining 25 bonds of the 150 first-mortgage bonds had not been issued. We claim that these 25 bonds were never lawfully issued. If they were, of course, that ends the case so far as the Erie Railroad is concerned. This point is discussed later. We call attention to it now as part of the argument that any number of recitals in the mortgage would not make the Erie mortgage subsequent to the trust mortgage to the full amount unless bonds were lawfully issued thereunder. If these 25 bonds were stolen or misappropriated, of course, they are not a valid lien against the company's property, and no amount of recital would change the situation. The mere fact of the recital, without proof that the 25 bonds making up the remainder of the 150 were lawfully issued, and, hence, were a valid lien, is of no importance.

III.

The mortgage of the Erie Railroad Company is prior to the last twenty-five bonds issued under the trust mortgage.

These bonds were issued under a certificate made by the president and treasurer of the Jarvis Company, from which it appeared that the company had purchased additional personal property and had erected additions and improvements to its plant, and that the cost thereof had been expended in good faith by the company. (Vol. 2, p. 199.) The circumstances under which the last twenty-five bonds were issued, are stated by Mr. Jarvis, the president of the company. On receiving them from the trustee, he says that he took them to the United States Mortgage and Trust Company for the purpose of negotiating a sale or loan on them, as secuirty, and he saw Mr. Cumming, the vice-president of the company. Jarvis left the bonds with Cumming on the promise of the latter that he would place the matter of making the

loan before the committee of the United States Mortgage Company "and will let you know." (Vol. 2, pp. 74 and 75.) About a week after this interview, Jarvis again saw Cumming and requested an answer from him. Mr. Crane, one of the material men, went with him as he had been looking for some of these bonds in payment of his claim. Cumming said that he had looked into the matter *and did not feel like acting upon the loan until a previous loan was paid.* Jarvis insisted that there must be a decision as to whether there would be a loan or not, and said that he had promised Mr. Crane that he could have five of the bonds if Cumming was not ready to loan the money. Thereupon, Crane gave five of the bonds to Cumming "in part liquidation of the claim, or as a sort of security for his claim, out of that lot of bonds that were placed there *for the purpose of being sold or having the loan made upon them for the company.*". Vol. 2, p. 78, ll. 1 to 15.)

As to the other twenty bonds, Jarvis said that he would expect to hear from Cumming "shortly" one way or the other, and then left him. These interviews were either in November or December, 1903. (Vol. 2, p. 77, l. 8.) Nothing was done until toward the time when the interest fell due. This was the ensuing February. Jarvis said he then called the Executive Committee together, consisting of Mr. Case and Mr. Bumsted, and they all went down to see Cumming. An explanation was demanded of Cumming why he retained the bonds, and he said "he retained them as an additional security for the loan that had been previously made and had not yet been paid." Cumming excused his retaining the bonds by saying that he "inferred" that Jarvis, by leaving them there, was willing to have them retained as more security. (Vol. 2, p. 79.) So far as appears from the proof this was the first suggestion that Cumming had made any such claim.

Mr. Case was also sworn and testified that he went to the office of the United States Mortgage and Trust Company, and found Jarvis and Bumsted engaged in an

animated conference with Cumming. He learned that the company was holding $20,000 or $25,000 of bonds, which Jarvis had taken there to be sold or to raise money on leaving them there as collateral, and it developed that a prior note, which Jarvis had executed, was without protection, and that the subscription list had been obtained by Jarvis in order to secure additional subscriptions, and had not been returned to the United States Mortgage and Trust Company, so that that company had no security for this prior loan, which was about due. (Vol. 2, p. 116, ll. 10 to 40.) Mr. Case protested against the action of Cumming in holding these bonds and insisted that Jarvis had no authority to place the bonds there. Cumming said, "*I may not have the right, but I intend to do it;* I am holding the company's note, which we discounted for Mr. Jarvis, and he has withdrawn the security which he gave us, and we will test the matter." (Vol. 2, p. 117, ll. 25 to 35.) It was, of course, important for Young & Irwin and the Union Terminal Cold Storage Company to show that these bonds were lawfully issued, but they did not call Mr. Cumming to testify on this point, so that the evidence of Mr. Case stands without contradiction. The only evidence that is offered by Young & Irwin was that of Mr. Rasmus, Treasurer of the United States Mortgage and Trust Company, who produced a note of the Jarvis Company and a copy of the account of the Jarvis Company with the Mortgage Company. He says that there was some conversation between him, Jarvis and Cumming, and continues: "The conversation as I remember it was that the bonds were placed with us as additional collateral to the loan and to secure overdrafts on their deposit account." (Vol. 2, p. 151, l. 20.) The witness, however, took great pains not to say who said that the bonds were additional collateral, and his attorney took great pains not to ask that question. The witness failed to produce the record of the date when the twenty-five bonds were received, although his company kept such record. He also failed to produce a

record of the date when the subscription agreement was delivered to Jarvis. (Vol. 2, p. 154.)

No explanation was offered of the failure to call Mr. Cumming as a witness. If he could not be subpœnaed to attend in New Jersey, it would have been a very simple matter for Young & Irwin to take his testimony in New York. It appears that Young & Irwin got twenty of these twenty-five bonds from the United States Mortgage and Trust Company by turning over to them bonds of the new company. (Vol. 2, p. 126, ll. 10 to 20.) The bonds, however, had all defaulted in their interest when Young & Irwin got them, and they knew that the corporation was in the hands of a receiver, and that the Mortgage Company had filed a claim relating to these bonds. They knew all about the litigation, had counsel representing them and were taking part in it. (Vol. 2, pp. 127 and 128.) It is evident that Young & Irwin can make no claim to be bona fide purchasers of these bonds, so that so far as their claim on these bonds is concerned, its validity depends on the validity of the claim of the United States Mortgage and Trust Company to the same bonds. It is apparent from the testimony, first, that Mr. Jarvis had no authority whatever from the defendant company to negotiate a loan with the United States Mortgage and Trust Company, and leave these bonds as collateral security therefor, and, second, that, whether he had such authority or not, the fact is that the bonds were not left with the Mortgage Company as addiional collateral, but, to use a mild term, were appropriated by Cumming without any lawful justification for so doing. The case is exactly the same as the supposititious case suggested by the Vice-Chancellor of a man walking into the office of the trustee, taking the twenty-five bonds, putting them in his pocket and walking out. (Vol. 2, p. 76.)

As to the five bonds out of these twenty-five, which were turned over to the Crane Company, it appears from the testimony of Mr. Case that Jarvis had no authority to apply the bonds to that purpose. (Vol. 2,

p. 117.) Hence they were not lawfully issued. These five bonds were sold at auction, and the trustees applied the indebtedness of the Jarvis Company to the Crane Company. (Vol. 2, pp. 112, 113.) These five bonds were included in the one hundred and thirty bonds which Young & Irwin obtained through the committee which bought the property of the company at the receiver's sale. (Vol. 2, p. 126.) Inasmuch as Young & Irwin knew all about the litigation and kept themselves posted as to everything that was done, there can be no question but that they knew all about the infirmity in the title of these bonds as well as the other twenty. The attempt to cover it up by a fictitious sale at auction cannot avail Young & Irwin; certainly not in the absence of any explanation from them as to the circumstances under which they got these five bonds with the other one hundred and twenty-five first issued. The burden was on them to show that they acquired these five bonds in good faith and without knowledge or without information sufficient to put them on inquiry respecting the validity of their issue and sale.

The Vice-Chancellor, in his opinion, says that he thinks the net result was that it was understood and agreed that the Trust Company might keep the bonds as additional collateral to the existing indebtedness if it would advance the additional money needed to pay the February interest on the one hundred and twenty-five bonds theretofore issued. (Vol. 2, p. 257, ll. 30 to 40.) We have been unable to find in the case any testimony to justify such an opinion. The only testimony was that of Jarvis and Case. Certainly there was no such agreement made with Jarvis, and, even if there was, he had no authority to make it, and as to Mr. Case, his testimony is that additional *stock* (not bonds) owned by Case and Bumsted personally would be put up as the additional collateral. (Vol. 2, p. 117.) There was not a word said by either Case or Bumsted whereby it can be inferred that the United States Mortgage and Trust Company was to keep the *bonds* as collateral, and

no action authorizing this was ever taken by the Executive Committee. (Vol. 2, p. 118.)

IV.

The Mortgage of the Erie Railroad Company is Prior to All of the Mechanics' Liens.

The mortgage of the Erie Railroad Company was recorded on December 18th, 1903. (Vol. 2, p. 230.) The earliest of the mechanics' liens was filed on February 25th, 1904. (Vol. 1, p. 30.) It is undisputed that practically all of the money advanced by the Erie Railroad Company at the time that it accepted its mortgage was applied either to the erection of the new warehouse upon the mortgaged lands, or to alterations, repairs or additions thereto. Hence, as to these mechanics' liens, the claim under this mortgage comes directly under §15 of the Mechanics' Lien Law, and is prior to these mechanics' liens to the extent of the money thus actually advanced and paid by the mortgagee. There will probably be not much dispute on this point by Messrs. Young & Irwin, although there is no explicit finding by the Vice-Chancellor.

V.

The Mortgage of the Erie Railroad Company is Prior to the Claim of the Petitioner, Nathalie Jarvis.

(*a*). *The petitioner, Nathalie Jarvis, is estopped from claiming to be a bondholder.*

The argument under this head is stated so fully in the opinion of the Vice-Chancellor that little more need be said. (Vol. 2, p. 261.) Her claim filed with the receivers, dated June 6th, 1903, said nothing whatever about bonds. On the contrary, it stated that she claimed to be entitled to receive stock as collateral.

(Vol. 2, p. 205, 206.) The money was advanced by the Erie Railroad Company on this mortgage subject to the date of the filing of this claim. Her petition was not filed until December 5th, 1904 (Vol. 2, p. 11,), long after all the parties in interest had changed their position in reliance upon the claim which she had made a year and a half before. Her mortgage had been cancelled of record, and on the faith of that the Erie mortgage was accepted. See *Heyder* vs. *Excelsior Association, 15 Stew. 403.*

(*b*). *There was no sufficient proof that the Jarvis Company agreed to give the petitioner seven bonds, when issued, as collateral security on the note held by the petitioner.*

Whether or not the petitioner was estopped, as found by the Vice-Chancellor, we futher claim that the proof showed that there was no such agreement as claimed by her in her petition. It will be observed that Mrs. Jervis, herself, was not called as a witness, nor was any explanation offered of her absence. Her whole case depends on the testimony of Mr. Schafer, who calls himself "her agent and attorney." He says he negotiated the sale with Mr. Jarvis. At the time of the negotiations Schafer did not even know that Jarvis had any connection with the Jarvis Terminal Cold Storage Company. (Vol. 2, p. 46.) It appears that the petitioner owned the property on which the warehouse was afterward erected, and it was agreed that it should be sold to Jarvis (not to the company) for $22,000. $8,000 was paid in cash and $14,000 by a purchase-money mortgage. (Vol. 2, p. 49.) Then Jarvis agreed to pay $7,000 of the balance of $14,000, "and he proposed to give me bonds for the cancellation of that mortgage." Schafer. (Vol. 2, p. 51, l. 10.) It was intended to have this mortgage cancelled so that the mortgage to the Trust Company would be a first lien. Schafer then says he agreed to satisfy the mortgage of Mrs. Jarvis on condition that $7,000 be paid in cash and that the

balance be secured by $7,000 of bonds. (Vol. 2, p. 52.) After a good deal of prodding by both counsel and Court, the witness finally testified that a note was given by the Jarvis Company for $7,000 under date of February 19th, 1903. (Vol. 2, pp. 52, 53; for copy of note, see Vol. 2, p. 167.) This note provides that the collateral was seventy shares of *stock*. There is not a word in it about bonds. This note was renewed seven different times, and every time it was exactly the same in form as the first note. (Vol. 2, p. 168.) Mr. Schafer claimed to be a business man, but he had absolutely nothing to show for this alleged agreement to have bonds issued as collateral for the note. The first letter of Mr. Jarvis, which refers to the bonds, was not sent until June 22d, 1903, and the next was sent on October 22d, 1903. The notes had been renewed several times in the meanwhile without anything said in them about bonds. The mortgage under which the bonds were issued was executed in February, 1903. The very least attention on the part of Mr. Schafer would have disclosed that bonds had been issued under the mortgage long prior to November 23d, 1903, the date of the last renewal. (Vol. 2, pp. 168 to 170.) Nevertheless, Mr. Schafer, who claims to know something about business, and who was acting as the agent and attorney for a lady who knew nothing about business, made no attempt to obtain anything in writing to show that his client was entitled to receive bonds, instead of stock. Either he is an absolute ignoramus, or the agreement was not as he claimed it to be at the hearing of this case.

Furthermore, the claim of Mrs. Jarvis, which was filed with the receivers in June, 1904, says not a word about bonds. She signs and swears to this claim and states therein that she consented to discharge her mortgage and satisfy it of record and take in lieu thereof $7,000 and a note "bearing interest at the rate of five per cent. per annum, with seventy shares *of the stock* of defendant as collateral." (Vol. 2, p. 206.) When

she swore to this claim she was represented by attorneys, but neither her business agent, Mr. Schafer, nor her attorney (up to June 6th, 1904,) had the remotest idea, so far as the written papers show, that she was entitled to receive any bonds of the company. At the time this claim was sworn to the company was in the hands of receivers, and it was evident that the stock would be worthless, but even with that knowledge her attorney and agent did not even suggest that there was any claim for bonds. It was not until December, 1904, when it became apparent that there would be a balance for distribution among such parties who could prove a prior lien thereto, that her attorney then developed the theory that his client was entitled to seven bonds, or, in lieu thereof, that she was entitled to receive the moneys which had been paid into court.

(We are referring to her New York attorney. So far as appears in the case, the New Jersey solicitors of the petitioner were not called into the case until the time of the filing of the petition.) The New York attorney of Mrs. Jarvis attempted to explain the peculiar way in which this claim was filed, but his explanation is very lame. He admits he had no conversation with Mr. Schafer as to the facts until after December 23d, and he never saw Mrs. Jarvis at all about the preparation of this claim. He was evidently relying entirely upon Mr. Schafer. (Vol. 2, p. 145.)

The only other witness who could throw any light on the subject of the agreement for the issuing of the bonds was Mr. Jarvis. He was called by the Erie Railroad Company to testify on this point, and was asked the direct question whether he had made any agreement with regard to giving bonds. The attorney of Mrs.. Jarvis objected most strenuously on the ground that the case had been closed the previous day, and the objection was sustained, apparently, on the theory that it was unfair for Jarvis to testify when Mr. Schafer was not present, although it would have been a very simple matter to have him come from New York on a telephone mes-

sage, if it should be necessary to recall him. He could get from his office in New York to the Chancery Chambers in Jersey City in twenty minutes, if necessary, but both Court and counsel refused to permit the Railroad Company to prove the facts according to Jarvis. (Vol. 2, p. 162.)

We submit, however, that even without the testimony of Jarvis, it appears that Schafer never had any such understanding as he claimed with respect to the issue of bonds, or that if he did it was an afterthought on his part, and that when the original transaction was closed and the first note given it was understood that the collateral was to be stock and nothing but stock. It is possible that after February, 1903, Schafer, as a business man, might have thought it desirable to get bonds, instead of stock, but so far as the original transaction is concerned, it is apparent that he got all that he bargained for on behalf of Mrs. Jarvis; to wit, $7,000 in cash and the note for $7,000, secured by seventy shares of stock.

It further appears in the case that no corporate action was ever taken by the defendant company for the issue of bonds to Mrs. Jarvis. The minutes show that the matter was never presented, either to the company, or to the Executive Committee. Mr. Jarvis took it upon himself to make the agreement with the petitioner. According to the by-laws, he had no authority to make any such agreement, even if Schafer's testimony is true that he did make it. (See By-Laws, Vol. 2, p. 212 to 215.)

VI.

The mortgage of the Erie Railroad Company is prior to the claims of the Commercial Trust Company of New Jersey.

In the final decree the Court of Chancery adjudged that the *Commercial Trust Company* was entitled to be paid first for the following items:

(1) Premiums on fire insurance paid by the trustee, ... $814 25
(2) Compensation for acting as trustee,..... 300 00
(3) Compensation for certifying bonds,..... 150 00
(4) Bill of William Brinkerhoff for legal services rendered to the trustee, ... 200 00

(1) Under the terms of the trust mortgage the Storage Company covenanted to keep the mortgaged property insured against loss by fire. (Vol. 2, p. 179, l. 25.) There was no obligtaion on the part of the trustee to obtain such insurance. (Vol. 2, p. 190, l. 28.) Further, there is no provision in the trust mortgage providing that premiums on fire insurance shall be a prior lien to the bonds, or that such premiums shall be a lien at all on the trust property. This claim for fire insurance was allowed by the receivers as a *general* claim. (Vol. 1, p. 145, l. 30.) And the most that the Trust Company can claim is that the Storage Company reimburse it for the sums paid out as fire insurance premiums.

(2) and (3) Under the terms of the trust mortgage the Storage Company agrees to pay to the trustee reasonable compensation for its services, and the claim for such compensation is made a first lien in favor of the trustee. Under the terms of this mortgage there seems to be no doubt that the Trust Company is entitled to a first lien for its compensation as trustee. (Vol. 2, p. 190, ll. 10 to 30.)

The allowance to the trustee based upon its bills is three hundred dollars ($300) "as compensation," and one hundred fifty dollars (150) "for certifying bonds." We have no objection to the item of three hundred dollars ($300), but we claim that no further allowance can be made under the terms of the mortgage for certifying bonds. The services for so doing are properly included under the first item of three hundred dollars ($300).

(4) As to the claim for legal services, the bill of Mr. Brinkerhoff does not specify what services were performed for the trustee. (Vol. 2, p. 199.) Under the

terms of the trust mortgage the trustee was not obligated to defend any suit in respect to the mortgage except on written request of some person interested in the trust. (Vol. 2, p. 189, l. 30.) No such request was made in this case. There is also a provision in the trust mortgage that the trustee may advise with counsel, but this must be done at the expense of the Storage Company. (Vol. 2, p. 190, l. 30.)

We, therefore, claim that this bill cannot be a lien on the proceeds of sale prior to the lien of the mortgage to the *Erie Railroad Company*.

COLLINS & CORBIN,

Counsel for Erie Railroad Co., Appellant.

NEW JERSEY COURT OF ERRORS AND APEALS.

Between	On Appeal of
GUSTAV W. LEMBECK, Complainant,	Nathalie Jarvis from decree dismissing her petition.
and	
JARVIS TERMINAL COLD STORAGE COMPANY, Defendant.	Appeal No. 56, November Term, 1905.

BRIEF OF McDERMOTT & ENRIGHT FOR NATHALIE JARVIS, APPELLANT.

This appeal concerns the disposition to be made of a fund in Court, representing the valuable cold storage warehouse of the Jarvis Terminal Cold Storage Company, situated in Jersey City. The property was sold in the course of administration of the estate of said company as an insolvent corporation, but the fund is subject to the same equities as attached to the land and improvements.

The Jarvis Company was incorporated in November, nineteen hundred and two, for the purpose of building a cold storage warehouse adjacent to the Erie Railroad terminal in Jersey City.

The promoter was Robert M. Jarvis. For the purpose he secured an option upon a valuable plot of

land near the Jersey City water front, adjacent on the South to the freight terminal of the Erie Railroad and on the north to the freight terminal of the Delaware, Lackawanna and Western Railroad.

This plot was owned by the petitioner, Nathalie Jarvis, who was the widow of an uncle of Robert M. Jarvis. There was no blood relationship between the two and little or no friendship.

Mrs. Jarvis did not personally participate in the sale of the property, nor in any of the subsequent transactions. She was throughout represented by her man of business, S. M. Schafer, a New York banker and stock broker. It was distinctly a business transaction managed by Mrs. Jarvis's agent.

Mrs. Jarvis sold the land in question to the Jarvis Company for twenty-two thousand dollars, giving a deed dated December 1, 1902. She received in payment $8,000 cash, and a purchase money mortgage for $14,000, payable in one year, which mortgage was duly recorded December 3, 1902. (Vol. 2, page 165.)

It may be inferred from the case that even at this time it was intended by the promoters to provide a large part of the necessary funds to build the warehouse by an issue of bonds to be secured by a trust mortgage covering the property. In arranging for this trust mortgage, however, it was found desirable to have the purchase money mortgage held by Mrs. Jarvis cancelled.

Schafer says that he consented to cancel this mortgage on the agreement that he should receive $7,000 in cash and the balance in sixty days, to be secured by a note of the company with seven of the proposed bonds as collateral. (Vol. 2, pages 52, 53.)

His version of the agreement is corroborated by his son and by letters subsequently written by Mr. Jarvis. (Vol. 2, pages 168-9.) There is no testimony whatever in contradiction and the Vice-Chancellor concludes, "There does not appear to be any good reason for refusing to believe the only testimony that

there is in the case concerning it." (Vol. 2, pg. 252.)

Pursuant to this agreement a satisfaction piece was forwarded by Mr. Schafer to Mrs. Jarvis, who was then in Europe. She returned this to Mr. Schafer duly executed. The post-mark shows that it was received February 15, 1903. (Vol. 2, pg. 67.)

In the meantime Jarvis had proceeded with his arrangements for a bond issue, and a mortgage or deed of trust to secure the proposed issue of bonds to the amount of $150,000 had been prepared, as appears by its date, February 2, 1903.

This mortgage provided for the securing of one hundred and fifty bonds of equal priority, of which one hundred and twenty-five bonds were to be immediately certified and delivered to the Treasurer of the Company, and the remaining twenty-five bonds as follows: "Whenever after the plant under construction by the Storage Company at the date hereof (Feb. 2, 1903) shall have been fully completed and equipped, the Storage Company shall furnish to the Trustee a certificate signed by its President or Vice-President and also by its Treasurer, and verified by the oath of the signers, that the Storage Company has purchased or is about to purchase additional property, real or personal, in addition to the plant now under construction, or has erected or proposes to erect additions or improvements to such plant;" in which event, "the Trustee shall certify and deliver on the order of the Treasurer of the Storage Company, countersigned by its President or Vice-President, an amount of bonds equivalent at par to the amount certified in such certificate to have been expended, not exceeding the amount of $25,000 par value, and such certificate shall be conclusive evidence to the Trustee of the facts therein stated." (Vol. 2, pg. 178, l. 20.)

This mortgage was acknowledged February 20th, and recorded February 21st, 1903.

Prior to the acknowledgment and record of this trust mortgage, however, Mr. Jarvis had arranged for the sale of all or nearly all of the one hundred and twenty-five bonds, which would be immediately at his disposal by a subscription agreement dated February 16, 1903, between the Jarvis Company of the first part, the bond subscribers of the second part and the Commercial Trust Company of the third part. (Vol. 2, pg. 204.) Neither Mrs. Jarvis nor her agent, Mr. Schafer, knew anything of this agreement, however, and at the time of the subscription agreement the property in question was, in fact, subject to the lien of the mortgage held by Mrs. Jarvis.

It does not appear exactly when this satisfaction piece with the accompanying bond and mortgage were delivered by Schafer to Mr. Jarvis. The seven thousand in cash was paid, however, Feb. 19, 1903. (Vol. 2, page 69.) While the language of the witness as to the exact date of payment seems uncertain, the fact is fixed by a book entry, with reference to which the witness testified, although the book itself was not produced under the ruling of the Court. A note for $7,000 to cover the balance of the debt bears the same date, but it seems clear that the note was not delivered at the same time, but later, either on the afternoon of the same day or within the next succeeding few days. (Vol. 2, pages 55, 65.) This note purports to carry with it instead of bonds, 70 shares of stock in the company as collateral.

It is entirely clear that the certificate for the seventy shares of stock although dated the same day (Feb. 19) was not delivered until February 21st or later, for the certificate of the registrar bears the latter date. (Vol. 2, pages 67, 168.) This date is also the date of record of the trust mortgage and it thus would seem that the note and stock were delivered to Schafer simultaneously with the record of the trust mortgage and after he received his cash and parted with the satisfaction piece.

Schafer says that when the note came to be delivered Jarvis told him the bonds were not yet ready for delivery and that the stock was therefore delivered as temporary collateral until the bonds should be delivered. (Vol. 2, page 55.) This was, of course, true, for the trust mortgage had not yet been recorded, and the bonds were not, in fact, delivered by the engraver until April 3, 1903. (Vol. 2, page 73.)

Mrs. Jarvis was thus in the position of a purchase money mortgagee, who had surrendered the security of her purchase money mortgage upon the agreement that she was to have for the balance of her purchase money debt a lien for the same amount, upon the same property, plus valuable improvements, which lien should pro rate with others who were to provide funds for the improvements.

The origin of her right was that of a purchase money mortgagee or vendor, and those equities still inhered to her, attaching however, to the trust mortgage lien and the bonds secured thereby.

The original subscribers to the bonds acquired their rights under the subscription agreement of Feb. 16th, at which time their rights were subject to the then subsisting Jarvis mortgage. Mrs. Jarvis acquired her right to seven of these same bonds when issued under a parole agreement made at least prior to Feb. 15th, upon which she acted irrevocably not later than February 19th. Both rights or equities arose before the trust mortgage had come into existence and before there were bonds upon which the equities could operate. The Company did not and could not then satisfy both equities, but delivered all the available bonds to the cash subscribers. Mrs. Jarvis, therefore, could not enforce her equity until such time as the Company had placed additional property under the lien of the mortgage, beyond that originally contemplated, of sufficient amount to warrant the issue of her seven bonds, without diminishing or impairing the security of the original 125 bond-

holders. This condition was met on or about Dec. 22, 1903. (Vol. 2, pg. 199, etc.)

We do not contend that Mrs. Jarvis had the right specifically to seven of these extension bonds for she had not changed her position and cancelled her mortgage upon the promise that she would receive seven extension bonds. Her equity against the Company was to have seven of the original bonds or to be given the same rights as though she held seven original bonds. Such rights could not, however, be given her as against the original bondholders who had actually received their bonds, for they had a right to say that they should not be required to pro rate in a greater lien than $125,000, until such time as the plant should be completed and additions and improvements made. When that condition was met, however, Mrs. Jarvis became entitled both as against the company and the original bondholders to occupy the position of bondholder as of the time of original issue February 21, 1903. This was her vendor's equity. Hers was the foundational property upon which all the super-structure rests.

On December 16, 1903, the Jarvis Company negotiated a further loan from the Erie Railroad of $16,500, which was secured by a second mortgage which expressly recites, "This property is subject to a prior mortgage given by the Storage Company to secure the payment of bonds to the amount of $150,000; and said mortgage is recognized as prior to this to the full amount thereof, whether said bonds have been yet issued or not." (Vol. 2, page 231.)

This Erie lien was entirely a matter of contract between the parties. The Erie Company knew when it took this mortgage that either one hundred and fifty bonds had been issued or were likely to be issued, and the parties agreed that the Erie Company was to have no right or interest in the property except in the equity over and above one hundred and fifty thousand. Both parties understood that the com-

pany was reserving the unissued bonds as prior lien when issued for any lawful purpose of the company, and what more lawful than to discharge this obligation to Mrs. Jarvis, for which it had received the benefit? Mrs. Jarvis was in the position of one having paid for bonds in advance, and the Erie Company could not reasonably object to the enforcement of her equity against the Company to have the bonds delivered so long as the underlying lien is not thereby increased beyond $150,000.

The position of the mechanics and material men with relation to Mrs. Jarvis is not brought into the case, for next after the trust mortgage which is admitted by all to be the first in lien, comes the Erie mortgage, recorded prior to the filing of any lien, and the proceeds of which went into the erection of the building. The mechanics' liens come third in order and in no view would there be a fund for distribution among them.

This was practically conceded at the trial and the case tried by all parties on the assumption that the mechanics' liens were not affected, and that the contest lay between the bondholders, Mrs. Jarvis and the Erie Railroad.

Young and Erwin, the assignees of the mechanics' liens did not even take the trouble to prove the existence of the liens, their validity or extent or priority, but rested their right upon the possession of the bonds.

Under these circumstances we claim for Mrs. Jarvis that on December 22, 1903, when it was certified that the plant was complete and additional property acquired to the extent of twenty-five thousand dollars, subject to the trust mortgage lien, she had the right against the company, the original bondholders, the Erie Railroad, (who are the only parties who have offered proofs in support of their claims), to share pro rata with the holders of the one hundred and twenty-five bonds in the security of the mortgage

in every respect as though she had actually received her seven bonds on February 21, 1903.

The proposition in brief is that the company was under the obligation to deliver to her seven bonds for which it had received full consideration, but which it had disenabled itself to perform; that on December 22, 1903, a condition had been complied with which gave the Company the right to increase its mortgage lien as against all parties before the Court; that, therefore, it was equitable at that time to say that the original bondholders should be considered as one hundred and thirty-two in number instead of one hundred and twenty-five, thereby giving Mrs. Jarvis the right she was entitled to, without depriving any other party before the Court of his lawful rights

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THE TWENTY-FIVE EXTENSION BONDS WERE NEVER LAWFULLY DISPOSED OF BY THE JARVIS COMPANY AND ARE TO BE REGARDED AS THOUGH ACTUALLY REMAINING IN THE TREASURY OF THE COMPANY AND SUBJECT TO THE NATHALIE JARVIS EQUITY.

These twenty-five bonds, as above stated, were actually certified by the Trustee and delivered to the Treasurer of the Jarvis Company. In the ordinary course of corporate management the directors of the latter company would then authorize their disposal. In this case, however, the directors took no action. R. M. Jarvis, on his own responsibility, (Vol. 2, pg. 117, l. 13, 25) took the twenty-five bonds to the United States Mortgage and Trust Company and asked the President, Mr. Cummings, to purchase them or make an additional loan upon them. The Mortgage company was the banker for the Jarvis Company and had previously loaned to it $20,000 upon collateral which was satisfactory to the lender.

This was a three months' loan and it still had about two months to run. The Mortgage Company was apparently not pressing for collateral, for no mention is made of the matter in the directors' minutes of December 4, 1903, when Mr. Jarvis made a statement of the pressing needs of the Company. (Vol. 2, page 222.)

The only evidence of the manner in which the Mortgage Company got the bonds is the testimony of R. M. Jarvis, Charles F. Case and Carl G. Rasmus. Mr. Jarvis testified in substance as follows:

"I said, 'Mr. Cumming, I called to see you in reference to negotiating a sale or a loan upon these securities, issued for additions and improvements, and I would like you to take the matter into consideration, and let me know what you can do?' He said, 'I will do so with pleasure, and if you leave the bonds here I will place the matter before the committee—that is, the Committee of the United States Mortgage Company—and will let you know,' and I left the bonds at his request." (Vol. 2, pg. 75.) This statement is consistent with the proven facts.

The $20,000 loan by the Mortgage Company had been made about a month before and still had two months to run before maturity. It had been made upon collateral satisfactory to the lender. It does not appear when the temporary misplacement of the stock subscription agreement which the Mortgage Company held as collateral was made, but this in itself, did not destroy the efficacy of the collateral. It merely affected the convenience of its proof. There is no evidence that the Mortgage Company was then pressing for additional security and the omission of Mr. Jarvis to say anything about this at his directors' meeting as a pressing obligation is significant of the fact. On the other hand, the company greatly needed the additional money to pay for the labor and material for its plant and the natural

object of Mr. Jarvis, I think, would be, not to provide additional security for a debt which still had two months to run, but to use this collateral to procure additional funds for pressing necessities.

About a week later Jarvis saw Cumming and the latter said that he had not yet had an opportunity to take the matter up but would do so and let Jarvis know. (Vol. 2, page, 77, line 18.)

Thereafter creditors were pressing with great vigor for payment, and Mr. Jarvis took Mr. Finney, the representative of one of the creditors, to the office of the Mortgage Company in order that Mr. Finney might be assured that negotiations were actually pending for realizing cash to the Jarvis Company on the extension bonds.

In the presence of Mr. Finney, Jarvis requested Cumming to answer what he was going to do with the proposition. That he had brought Cane's representative down there to have him hear what Mr. Cumming had to say about it and relieve his anxiety, and Mr. Cumming said: "Well, Mr. Jarvis, we have looked into this matter and we do not feel like acting on this loan until the previous loan that will be due in a short while is paid," and I said, "Mr. Cumming, I want those bonds or I want a decision as to whether you will loan on them or not. They were placed here for the purpose of obtaining a loan and I promised Mr. Cane's represenative that he could have five bonds if you were not ready to loan the money or purchase them, and I told Mr. Cumming that and asked him whether he would give five of the bonds to this party and he consented to do it, and he gave them to him in part liquidation of the claim, or as a sort of security for his claim, out of that lot of bonds that were placed there for the purpose of being sold or having a loan made upon them for the Company. I said, 'what are you going to do with the other twenty?' 'Well,' he says, 'the matter is still in abeyance, but that is the way we feel about

it.' 'Well,' I said, 'I want to have an answer to it. I brought them here in good faith and I expect that I will hear from you shortly in a decided manner one way or the other." (Vol. 2, pages 77-78.)

Nothing further seems to have been done until near the time when the February interest on the outstanding bonds would be due. Then Jarvis called his Executive Committee together to see Mr. Cumming and have an understanding on behalf of the Company. (Vol. 2, page 78). The members of this committee went from their meeting directly to the Mortgage Company and saw Mr. Cumming. Jarvis says "I demanded an explanation why he retained the bonds, and he said to myself and those gentlemen that he retained them as an additional security for the loan that had been previously made and had not yet been paid. I told him those were not the conditions upon which the bonds were left there with him, and then he said that he inferred that I, leaving them there, was willing to have them retained under the impression that it would be more security for the previous loan that had not been paid; and I told him that there was no such agreement, and the result was that the bonds were retained and $12,500 additional security left with him in order to protect the indebtedness then due the company by the Jarvis Terminal Cold Storage Company. (Vol. 2, page 79.) (See also page 82, line 33.)

Mr. Case corroborates Mr. Jarvis's statement as to what took place at the interview of the Executive Committeemen with Mr. Cummings.

"When I arrived there I found them in conference which soon became rather animated, and it led to quite an exchange of feeling between Mr. Jarvis and Mr. Cumming, the result of which caused Mr. Cumming to turn suddenly and say: "I am through with this business." I had hardly been able to understand what the difficulty was, but I learned that the Mortgage & Trust Company were holding

$20,000 or $25,000 of bonds of the Jarvis Company which Mr. Jarvis had taken there to be sold, or to raise money on, leaving them as collateral, and it developed that the prior note which Mr. Jarvis had executed was there without protection, and I heard the explanation of the incident, which was that the collateral which had been tendered to the Trust Company, the subscription list, had been obtained by Mr. Jarvis and that it had not been returned to the Mortgage & Trust Company, and that, as the matter stood, they had no security for their loan, and the note was about due. Mr. Cumming felt that he was only protecting himself by holding the bonds that Mr. Jarvis had brought there for sale. We were naturally surprised that the bonds were there, and we did not know that any authority had been given to Mr. Jarvis to place the bonds there, and so stated. Mr. Cumming said that he considered that he had a right to hold those bonds, and would do so, and he then appealed to me, when I said to him,

"These bonds are here without action of the company, neither the Board of Directors nor the Executive Committee knew that they were here, and we do not think you have a right to retain them," and he said, "I may not have the right, but I intend to do it; I am holding the company's note, which we discounted for Mr. Jarvis, and he has withdrawn the security which he gave us, and we will test the matter." The result of the conference was that Mr. Cumming was very angry and refused to consider any proposition that was made by Mr. Jarvis. I took him aside and suggested to him that we would endeavor to make him whole, and that I would surrender fifty shares of stock and Mr. Bumsted agreed to do the same thing, in order that the interest that was due could be met. We both realized that if the interest on the bonds, that I believed was due on the first of February, was not paid, and learning that the Commercial Trust Company had refused to honor

Mr. Jarvis' check, we were in a pretty tight place, and upon our show of willingness to give up additional security, Mr. Cumming agreed to pay that interest." Q. Well, did you or Mr. Bumsted say anything at that time about whether you were willing to have him keep the bonds as collateral? A. No, sir." (Pages 116, 117, 118.)

The present representatives of the Mortgage Company seeks to support this retention of the bonds on the theory that they were left there as security for the overdraft necessary to pay the February coupons. It is clear, however, that this overdraft was secured by other collateral put up for that specific purpose, namely, stock of the company to the amount of $12,500 pledged individually by the three Executive Committeemen. (Page 88.)

At the conclusion of Young and Irwin's case, after this testimony of Jarvis and Case had been fully developed, leave was reserved to call a representative of the Mortgage Company on the following day. Notwithstanding this, Mr. Cumming was not produced. Instead, a Mr. Rasmus, then Assistant Treasurer of the Mortgage Company, was called. He had no part in the negotiations with Mr. Jarvis, but states that he recalls that the bonds were sent back to his cage by the President, Mr. Cumming. That he then went to Mr. Cumming's office to be sure of the arrangement and there met Mr. Jarvis and Mr. Cumming. He states: "The conversation as I remember it was that the bonds were placed with us as additional collateral to the loan and to secure overdrafts on their deposit account." That this was about the time that the account became overdrawn, January 22, 1904. (Page 151, Vol. 2.)

This is not consistent with the proven facts of the case. The conversation Rasmus has testified to was on the occasion when the bonds were first brought to the Trust Company. He so fixes it by the fact that the bonds were first handed in at his cage, and

that he then went to the President's office to find out what to do with them. He fixes this by reference to the overdraft as January 22, 1904. It is established, however, by the certificates that the bonds were issued December 22, 1903, and considering the need of the Company there can be no doubt that Jarvis immediately took them to the Mortgage Company as he says.

We have already urged the improbability that Mr. Jarvis in the first instance took the bonds to the Trust Company to give the latter additional collateral for an existing unmatured loan. What Jarvis wanted was to realize more money on these bonds, not to exhaust the company's sole remaining means for raising money by a pledge to secure an existing loan. If the facts were as Mr. Rasmus stated he would of course have made the memoranda usual in banking transactions where additional or substituted security is given. The note is in evidence and it is significant that the usual memorandum of additional or substituted security is wholly absent. Mr. Rasmus without difficulty produced the loose leaf from his ledger showing the Jarvis Company's account. The usual course of business in this bank was to enter substituted collateral on the substitution book and on the loan slip. (Page 156, line 32.)

Yet these records are not produced, and it does not appear that in the present case any such entry was made.

All these things, the absence of Mr. Cumming, the failure of the bank to enter up these bonds as substituted or additional collateral, indicate that Mr. Rasmus was at fault in his statement, but that the facts are as stated by Jarvis and Case.

We submit that the established fact is that the extension bonds were procured from the Mortgage Trustee by Mr. Jarvis upon the certificates of himself, the treasurer of the company and its chief engineer, without the authority of the directors or

the Executive Committee. That nevertheless the conditions had been complied with, which warranted the issue of the bonds, provided proper corporate action had been taken. That Mr. Jarvis, having possession of the bonds, took them to the bankers of the company for the purpose of realizing additional cash for the company, that the Mortgage Company got possession of the bonds on the plea that the matter of an additional loan or purchase would be taken up with the committee, and thereafter having possession of the bonds retained them contrary to the original terms of the deposit and without the consent and against the protest of Mr Jarvis and the members of the Executive Committee. That the money advanced by the Mortgage Company to pay the interest was advanced wholly upon the security of capital stock of the company of the par value of $12,500, put up by the individual members of the Executive Committee for that particular purpose.

Under these circumstances we submit that the Mortgage Company has no right to retain the bonds, but that the same are to be considered as though in the treasury of the company.

THESE DISPUTED BONDS ARE SUBJECT TO THE SAME DEFENSE IN THE HANDS OF THE PRESENT HOLDERS, YOUNG AND IRWIN, AS IN THE HANDS OF THE U. S. MORTGAGE AND TRUST COMPANY.

Subsequent to the events above narrated, the Cold Storage Company started in operation sometime in February or March, 1904, and being unable to raise additional moneys required to pay the debts due for construction, and mechanic's liens having been filed against the plant a bill for a Receiver was filed in Chancery in March, 1904. (Vol. 1, page 1.)

The complainant was Gustave W. Lembeck, a bond holder and the bill was filed as a result of some sort of an agreement among the bond holders. (Vol ', page, 175, line 1.)

The company was adjudged insolvent and receivers appointed March 28, 1904. On April 18, 1904, the receivers filed their report No. 1. (Vol. 1, page 9.) The receivers reported among other things (page 13), "$25,000 of the issue of bonds have passed out of the control of the defendant company under circumstances which may raise a question as to whether they have been legally sold and are a valid liability of the defendant company."

On May 10, 1904, the receivers filed their report No. 2, (page 20.) Note "F" attached to this report sets out the circumstances under which the extension bonds got into the possession of the Mortgage Company substantially as above stated and concludes, (page 37, line 1.) "The receivers, in order to preserve the rights of all the parties in interest so soon after their appointment as the facts came to their knowledge, served written notice upon the United States Mortgage and Trust Company of New York, demanding the return of the $20,000 of bonds held by them and notifying them that it was claimed that the bonds had not been legally issued by the defendant company."

May 12, 1904, the receivers filed their report No. 3, (p. 139), praying for a sale of the property free and clear of encumbrances, setting forth among other things as the basis of the application that the priority and extent of the trust mortgage was brought in question by the contention that the $25,000 extension bonds were never legally issued and disposed of by the company, and that the same did not constitute a valid lien under the trust mortgage. (Vol. 1, page 42.)

On this report an order to show cause was made and finally on May 23, 1904, an order to sell the

property free and clear of the disputed liens including the trust mortgage. (Vol. 1, page 50.) This order to sell was modified by an order made June 13, 1904, fixing an upset price of $190,000. No bid being received the fact was reported to the Court and a further order to sell without limitation was made June 28, 1904. (Vol. 2, page 97.)

This order includes a provision that the purchaser at the sale might pay five per cent. of his bid in cash and might at the time fixed by the receivers for closing title pay to the receivers an additional amount in cash to make up the sum of $25,000 and deposit as security for the payment of the balance of the purchase price first mortgage bonds of the company or assignments of mechanic's liens against the property of the company sufficient in amount, taking the bonds at two-thirds of their par value and the mechanics's liens at one-third of the amount claimed, so as to amount to $50,000 upon giving which security the purchaser was to have the right to enter immediately into possession of the plant, deferring the payment of the balance of the purchase money until such time as the legality and extent and the relative priority of the several liens on the property should be determined by the Court, the purchaser stipulating in writing with the receivers to pay the difference between the value as determined for distribution on the securities deposited by him, and the unpaid balance of the purchase price, together with interest at five per cent. (Page 98-99, vol. 1.)

Under this order the property was sold on June 29, 1904, to a committee of bond holders consisting of Gustave W. Lembeck, (the complainant in the insolvency suit), Daniel E. Cleary and Charles E. Cassidy, for the sum of $135,000.

(See report No. 6, vol. 1, page 103.) This sale was confirmed July 5, 1904. (Vol. 1, l. 20.)

The purchasers availed themselves of the privilege of paying part cash and deposited bonds to secure

the balance. See report No. 7. (Vol. 1, page 102.)

On September 13, 1904, Young and Irwin who appear to have undertaken the re-organization of the company for the various lienors, filed a petition setting forth that they had caused to be formed and incorporated under the laws of New Jersey, the Union Terminal Cold Storage Company and had entered into an agreement with Lembeck, Cleary and Cassidy to take an assignment of their bid. (Vol. 2, page 2.) That said petitioners had "pursuant to the agreement heretofore mentioned for the re-organization of the affairs of the defendant," procured to be assigned and delivered in escrow for the Union Terminal Cold Storage Company the mechanic's liens and 149 of the first mortgage bonds." (Vol. 2, page 4.)

The petitioners then prayed that a deed be delivered upon their assigning to the receiver 74 of the bonds and all the claims of mechanic's lienors set forth in the petition, and that the balance of moneys remaining in the hands of the receivers be then paid over to the petitioners, Young and Irwin.

An order to show cause was made on this petition, returnable September 19, 1904. (Vol. 2, page 6.) On the return of this order various appearances were noted and various objections were made to the priority of the mechanic's liens and the validity of the $25,000 of extension bonds, and the validity of the original issue of bonds beyond the price received therefor by the company, namely, 88. It was admitted by all parties, however, that $125,000 of the bonds were valid to the extent of 88 per cent. of par or a total of $110,000, and that being exactly the amount remaining due upon the purchase at the receiver's sale, the order made was that the bonds, liens and claims specifically enumerated are valid and prior liens to an amount not less than $110,000 and that the petitioners, Young and Irwin be permitted to deposit said bonds and assignments with the re-

ceivers in lieu of the balance of the purchase price, without prejudice to their right to receive the money remaining in the hands of the Receivers upon proving that said bonds and liens were valid claims to an amount greater than $110,000, that upon receiving such deposit and assignment a deed be delivered to the Union Terminal Cold Storage Company, and that "the determination of the other matters arising upon said order to show cause, dated September 13, 1904, be continued until the 26th day of September '04." (Vol. 2, pages 8, 9, 10.)

No action was taken on September 26, however, and the matter next came into Court upon Receiver's report No. 8. (Vol. 1, page 128.)

This report contains, among other things, an adjudication of claims.

The U. S. Mortgage and Trust Company had filed a claim with the receivers as creditors claiming to hold twenty bonds of the company as collateral security. The receivers in their report (page 134) disallow $20,000 of the bonds claimed by the U. S. Mortgage and Trust Company as security for a claim of $20,000 against the defendant company, for the reason that said $20,000 of bonds were not legally obtained from the defendant company and it still retains the title thereto.

On this report an application for confirmation and allowances of compensation to the receivers and cause was made returnable October 17, 1904. On the application for allowances certain of the parties objected that compensation could not be given to the receivers for the creditors on an insolvency bill, payable out of the proceeds of the property so as to impair the lien of the mortgage and diminish the dividend of the bond holders.

Vice-Chancellor Stevenson in passing on this question considered that from the time the order was made to sell free of liens "this whole proceeding was practically converted into a mortgagee's suit—lienors

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suit—to foreclose their liens. (Vol. 1, page 170.) (Page 175) "It is very plain that even the bill of complaint itself and earlier costs incurred practically belong to the mortgagees and correspond exactly with the costs of the foreclosure bill—and saved them the costs of a foreclosure bill—took the place of a foreclosure bill."

At the time of this opinion the Vice-Chancellor again declined to go into the question of the priority and extent of mortgage and other liens, simply determining the question "that compensation to receivers and counsel was to be taken from the fund and fixing the amount, and permitting Mr. Fisk, (page 175), "to take an order approving this report as against all these parties that appear here, the Erie Railroad, Mrs. Jarvis, Mr. Enright's client, and the others, and then all these other matters can be saved and the parties may be permitted to present them to the Court by petition."

Upon this opinion an order was made dated October 17, 1904, providing 1or the allowances and concluding: (Page 178.) "It is further ordered that nothing in said receiver's report No. 8 or in this order shall be deemed to be an adjudication or determination of the rights of the Commercial Trust Company of New Jersey, Trustee, John Alvin Young and Richard Irwin, Erie Railroad Company and Nathalie Jarvis, or either of them, in the balance of moneys in the receivers' hands ordered to be paid to the Clerk of the Court, but the said parties named, or either of them, have leave to apply to the Court by petition or otherwise to determine their rights in the said fund."

By reason of the various events above outlined, Young and Irwin claim to have acquired from the Mortgage Company its interest in twenty of the extension bonds obtained by the Mortgage Company from Mr. Jarvis under the conditions above set forth. We submit, however, that they are subject to all

defenses which could be urged against the Mortgage Company. Young was a director of the Cold Storage Company and presumably familiar with its affairs. (Vol. 2, page 229.) Irwin, his associate, admits his familiarity with the legal proceedings. (Vol. 2, page 128, line 20.) Every report of the receivers shows their denial of the validity of these bonds, and finally the receivers formally adjudicated the bonds to be invalid upon a claim duly filed by the Mortgage Company .

It may be urged that the receivers had no right or power to adjudicate on liens. The disputed bonds, however, were proved by the Mortgage Company before the receivers as debts due by the company, which the Mortgage Company was entitled to hold as collateral.

The Mortgage Company having voluntarily submitted this claim upon the bonds to the receivers for their judicial determination and immediate notice of objection being given, the claim of the Mortgage Company to the bonds is to be regarded as any other claim in suit. Young and Irwin acquired their rights pending and subject to the determination of this litigation pending before the receivers and on the coming in of the receivers report adjudicating the claims, Young and Irwin would have been bound by the report, except for the Court's order made thereon saving the rights of objecting parties, which provision was intended to take the place of an appeal.

We therefore claim that Young and Irwin can have no better position than the Mortgage Company with respect to these bonds, inasmuch as they acquired their rights pending and subject to a judicial investigation instituted by the Mortgage Company itself for their determination.

YOUNG AND IRWIN HAVE NOT MATERIALLY CHANGED THEIR POSITION.

The Vice-Chancellor held that the insolvency proceeding was practically a foreclosure suit managed by the bond holders in the interest of and controlled by the various lienors against the property. That the sale was practically a foreclosure sale. The property was purchased by the underlying lienors and they paid for it just as the mortgagee does at a foreclosure sale, by paying a deposit in cash to cover the cost of the proceedings and the balance by giving credit upon the mortgage lien. By this sale the relations of the parties did not substantially change. The lienors simply foreclosed the equity of the general creditors and stockholders.

Young and Irwin were simply the media in reorganization, who organized the new company and exchanged securities. The money which their agreement with Lembeck recites that they paid is the exact equivalent of the money which Lembeck, et als, had paid to te receivers. The Lembeck Committee was the committee of the $125,000 bond holders. Young and Irwin representing all the lienors simply took the place of the smaller committee and these lienors through this committee in reality only acquired a title where before they had a lien, and they still hold the property through the new company which they organized. On this head we therefore submit. (1) That the twenty extension bonds which remained in the hands of the Mortgage Company were not its property. (2) That Young and Irwin acquired no better title to these bonds than the Mortgage Company.

THERE IS NOTHING IN THE CASE ESTOPPING MRS. JARVIS FROM SETTING UP HER EQUITY AGAINST ANY OF THE CLAIMANTS TO THE FUND.

In the first branch of the argument we have contended that at the time Mrs. Jarvis's last note came due, December 23, 1903 she could have enforced her equity against all parties. She could have brought a specific performance suit against the company and the trustee representing the 125 original bondholders and compelled them to deliver to her seven of the bonds which the company was then entitled to issue for extensions, or accord her the position of a holder of seven bonds as of the date of original issue of the trust mortgage.

If the contention that the U. S. Mortgage & Trust Company acquired no title to these extension bonds, be sustained, then the Mortgage Company could make no objection to granting Mrs. Jarvis her relief.

These twenty bonds seem to have continued in the possession of the Mortgage Company until long after the appointment of the receivers and until the formation of the Young and Irwin committee in August, 1904. (Vol. 2, page 126.)

Young and Irwin were fully informed of the infirmity of these twenty bonds or chargeable with notice thereof. The bonds were defaulted, (which of itself put holders upon notice), and the infirmity of the title of the Mortgage Company was fully set out in the several reports of the receivers.

The receivers had the right to compel the return of these bonds in specie by the Mortgage Company or its successors in interest and in fact they did make such demand. (Vol. 1, page 37.) They effected the same thing by disallowing the claim made by the holders of the bonds.

If the receivers had actually received the custody of the bonds from the Mortgage Company pursuant

to their demand could it be contended that Mrs. Jarvis is estopped from having the receivers now deliver to her seven of the bonds or accord her the position of one so entitled.

If the receivers could have compelled the return of these twenty bonds by Young and Irwin and then award seven of them to Mrs. Jarvis, surely this Court can enforce Mrs. Jarvs's equity directly against Young and Irwin.

If the bonds in question had been stolen from the Jarvis Company and Young and Irwin knowing that fact had purchased them from the thief, could they be permitted to say against Mrs. Jarvis that her laches in setting up her equitable title estopped her from compelling restitution of the stolen goods in order that her claim might be satisfied.

In Central Railroad Company vs. McCartney, 39 Vroom 165, Justice Pitney collects the authorities in New Jersey dealing with estoppel and from them states the rule. (Page 175.)

"The essential elements which must unite in order to create an equitable estoppel by conduct may be stated with approximate accuracy as follows: 1. That the party against whom the estoppel is urged has on a previous occasion, by words or conduct, made a representation or concealment of material facts inconsistent with the facts forming the basis of his present claim. 2. That such party either knew the facts to be otherwise than represented, or except for gross negligence would have known; or that he pretended to know the facts when he knew that he did not know them. 3. That such representation or concealment was made either with the intent to influence the conduct of another or else was made under such circumstances that a reasonably prudent man would suppose that it was intended to be acted upon as true. 4. That the party to whom it was made was ignorant of the facts and had no convenient opportunity to ascertain them. 5. That the latter party, in good

faith, relied upon the representations or conduct of the other party and thereby was led into such a course of conduct that he will now be substantially prejudiced if the other party be permitted to repudiate his former action or representation.

See also Bigelow, 3d ed., page 484.

In Kuhl vs. Jersey City, VIII, C. E. Green, (page 84), a City Collector, had been requested to make a tax search at the instance of an intending purchaser and found that there were arrears. The owner thereupon delivered a check to the collector, who receipted the tax bill as paid. The intending purchaser upon the strength of the collector's receipt purchased the property and paid the full price. Subsequently the check was dishonored and the payment of taxes cancelled. An injunction restraining the tax sale was asked for at the instance of the purchaser on the ground of estoppel and denied.

Chancellor Zabrisky in an exhaustive review of the authorities observes. (Page 85.) "There is a seeming conflict among the numerous decisions on the doctrine of estoppels in pais, sometimes called equitable estoppels, whether anyone will be estopped by a representation made, which turns out not to be true, where there was no INTENTION to influence the conduct of anyone by it, and where it was not apparent that the representation would have that effect. I take the doctrine established by decided weight of authority, that, there must be such intention, or that it must be so apparent that the representation will have that effect that the intention must be presumed."

In Mutual Life vs. Norris, 4 Stewart 585, Vice Chancellor Van Fleet discussing the question says:

The main purpose of the doctrine is to prevent fraud. There can, therefore, be no estoppel without fraud either actual or legal. To impart this virtue to a representation it must be made by a person with knowledge of the truth or by a person whose duty it

is to know the truth. He must make it with the INTENTION of influencing the conduct of another. Or under such circumstances as to show that he had reason to believe when he made it that it would influence the conduct of another. He who seeks to take advantage of an estoppel must show that he has been misled by the words or conduct of another." This case also holds that where the complainant's act appears to be rather the result of his own will or judgment than the product of the defendant's representation or act there can be no estoppel.

In the present case the Jarvis Company or its representative cannot and does not invoke estoppel for it has received and retained the benefit and is estopped to deny the obligation to pay the price.

The original 125 bondholders or their present representatives cannot urge estoppel against Mrs. Jarvis so long as the property subject to their lien has been increased by additions to the extent of $7,000 and the total amout of indebtedness secured thereby is not increased beyond the value of the additions up to a total of $150,000. For thus it is denominated in the bond.

Furthermore these original bondholders were the direct and immediate beneficiaries of the first mortgage cancellation. The United States Mortgage and Trust Company cannot urge estoppel against Mrs. Jarvis for they never had the lawful right to hold the bonds against anybody. It cannot be urged that Mrs. Jarvis's silence induced the Mortgage Company to act unlawfully and wrongfully, and it cannot be said that Mrs. Jarvis should have apprehended that the Mortgage Company by reason of her silence would be induced to commit a wrong.

The Erie Railroad cannot urge estoppel for it agreed to take its lien subject to the entire mortgage lien then issued or not. It agreed not to be concerned with the underlying lien so long as it did not exceed $150,000.

The mechanics liens are not a factor in the case. Young and Irwin have not seen fit to prove them, so their validity, extent and priority can not be determined. It is apparent, however, that if they had been proved they would all be subsequent and subject to the Erie mortgage and therefore in no event are they concerned. For the proceeds from the sale are insufficient to pay the admitted bond debt, the Erie mortgage and the costs.

This was the situation up to the time of insolvency of the company.

Notwithstanding, Mrs. Jarvis was known to the receivers as a creditor and a holder of stock as collateral as appears by their report No. 2, dated May 10, 1904, (Vol 1, page 27), she was not listed by them as a creditor or stockholder and did not receive notice of any of the proceedings.

It was necessary to take in her behalf an order permitting her claim to be filed with the receivers after the expiration of the time limited. Even after the filing of this claim she was not entered on the mailing list as a stockholder or creditor, and the appearance of her counsel on the application of Young and Irwin for a deed was not pursuant to any regular notice so far as appears. The mailing list of creditors and stockholders is printed in full in Vol. 1, page 46, etc., and again on page 107, etc.

The claim filed on behalf of Mrs. Jarvis with the receivers, (Vol. 1, page 205), unfortunately does not disclose the full ground of her equity. The manner in which the claim was prepared is shown in the testimony of Mr. Tuska who attended to it. He was not the regular legal adviser either of Mr. Schaffer or Mrs. Jarvis, but he met Mr. Schaffer while representing Mr. R. M. Jarvis. Schaffer said he had a claim against the Company and for Tuska to attend to it for him. Tuska said, "send over the claim," and Mr. Schaffer thereupon sent over the note. Tuska

had some conversation with R. M. Jarvis, but none whatever with Schaffer or Mrs. Jarvis, and on this he prepared the proof of claim, which was sworn to by Mrs. Jarvis and filed.

Tuska said he did not have any conversation with Schaffer as to the facts of the claim until sometime between September 23 and October 10, 1904, (Vol. 2, page 145), and that the facts constituting Mrs. Jarvis's case were then for the first time disclosed.

Even in this proof of claim Nathalie Jarvis claims seven thousand dollars with interest from February 19, 1903, to be preferred in payment ahead of all the creditors of the defendants other than the holders of bonds issued under the mortgage aforesaid, who are to be preferred only to the amount actually paid by said bondholders for their bonds and the note with the stock as collateral is tendered back to the company, (Vol. 2, page 206, line 30), That is precisely her position to-day.

The proper function of this proof of claim was to submit to the receivers only such a claim as they could lawfully adjudicate. It is at least doubtful if the receivers could have passed upon the equitable title of Nathalie Jarvis to receive seven bonds had it been presented, for the actual bonds were not then in the custody of the receiver. The receivers could not adjudicate the right to these bonds as between the Mortgage Company and Nathalie Jarvis.

There is nothing to show that Mrs. Jarvis or her agents knew that this proof of claim would be inspected by Young and Irwin, nor by anyone else than the receivers to whom it was addressed, nor that she had any reasonable ground to believe that the ommission of the claim to state specifically the grounds upon which she claimed to be preferred next after the lawfully issued bonds to the amount paid, would be relied upon by anyone purchasing the dishonored bonds, pending the receivership, nor that she or her agents knew or had reason to know that

Young and Irwin or any one else were contemplating the purchase of the bonds or that there was any change of position contemplated by any of the parties after the insolvency of the Company.

There is nothing to show that Young and Irwin did in fact inspect this claim. If they did they would have been apprised that Mrs. Jarvis claimed a preference next after the amount actually paid by the bond holders and they were put upon inquiry to find out how much had actually been paid, and to ascertain the full facts upon which she based her right.

If they did not see the claim then they have not changed their position in reliance upon her silence or ommissions therein. Two essential elements of estoppel are therefore lacking. 1. A representation or omission made with intent that it should be acted upon by the party now urging estoppel. 2. That the party urging estoppel in fact acted upon the alleged misrepresentations or omissions.

The case is somewhat similar in this aspect to Andrews vs. Lyons, 11 Allen 349, (Bigelow page 529), when one being about to purchase a promissory note, before closing the bargain, exhibited it to the maker and asked if it was all right. The latter answered, "Yes, it is all right; I shall pay it soon." The purchase of the note was then closed and when the endorsee sued, the defense was made that the note was for a liquor debt and void. Held defendant not estopped because no evidence that the defendant knew plaintiff was about to act on his statement, and that there was nothing inconsistent with defendant's belief when the statement was made, that plaintiff was already the owner of the note.

Bigelow, page 503, further states, "It follows that it is not enough to raise an estoppel that there was an opportunity to speak; there must have been an imperative duty to speak. Nor is any duty generated by the mere fact that a man is aware that someone MAY act to his prejudice if the true state of things is not disclosed."

Mrs. Jarvis had no knowledge or reason to suppose that Young and Irwin were reorganizing the company or acquiring the defaulted bonds, until they came into Court and asked to have these liens adjudged valid and a sufficient payment of the balance remaining due at the receiver's sale.

They had then perfected their re-organization arrangements, and according to their own petition they had acquired the Mechanics' Liens and bonds and simply asked leave to turn these in to the Receivers as payment in lieu of cash for the property purchased. On the other hand, they must have known or are chargeable with knowledge of the proceeding in which they acquired title from the Receivers. These show that the very ground on which the property was sold them as clear of the Trust Mortgage Lien was that the validity of the twenty-five bonds held by the Mortgage Company was disputed by the Receivers.

We therefore submit that Young and Erwin, if they substantially changed their position at all (which is denied) did not do so upon the faith of any statement or silence of Mrs. Jarvis but in full knowledge, or means of knowledge, that twenty-five of the bonds they acquired were bad. The case is, therefore, within the rule laid down by Vice-Chancellor Van Fleet: "Where the complainant's act appears to be rather the result of his own will or judgment than the product of the defendant's representation or act there can be no estoppel." Mutual Life vs. Norris supra.

When Young and Erwin presented their petition to the Court stating that they had already acquired the liens and bonds, counsel for Mrs. Jarvis appeared and objected to the adjudication of the bonds and liens as valid in accordance with the prayer of the petition and the Court thereupon reserved that question, it being merely permitted the re-organizers to take a deed upon turning over the bonds and liens.

it being admitted by all that the original issue of $125,000 bonds were valid to the extent of 88%, which would provide the exact balance due upon the purchase price of the property.

Prior to this date Young and Erwin had bound themselves to pay the balance of the purchase price for the property in cash and had acquired the Mechanics' Liens and bonds "upon their own will or judgment." Such change as there has been in their position was, therefore, prior to this petition to the Court.

In the order authorizing the delivery of the deed (Vol. 2, pg. 10) they were simply allowed to discharge their obligation to pay the balance of the purchase price and receive the deed upon turning over securities, which in any view were worth the unpaid balance of the price. In turning in these liens and securities knowing that they were challenged and under an order expressly reserving the determination of validity they were again acting "upon their own will and judgment."

The Vice-Chancellor in his conclusions comments on the fact that Mrs. Jarvis did not assert her claim until the filing of her petition, December 5, 1904. (Vol. 2, page 261.) This, however, is not justified, for on the application of Young and Erwin for a deed September 19, 1904, she denied the validity of their claims over and above $110,000.

Inasmuch as the Court determined not to hear these contentions upon the merits but to reserve all disputed questions, Mrs. Jarvis was not bound to state specifically or formally the grounds of her objection; it was enough for her to deny the Young and Erwin claim.

For these reasons we submit that the Court of Chancery so far as it dismisses the petition of Nathalie Jarvis should be reversed. We have not

discussed the situation of the Mechanics' Liens, inasmuch as no evidence whatever was taken with respect to them and their validity and extent not passed upon.

McDERMOTT & ENRIGHT,
Of Counsel with Appellant, Nathalie Jarvis.

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BILL FOR RECEIVER.

(Filed March, 1904.)

IN CHANCERY OF NEW JERSEY.

To His Honor, William J. Magie,

Chancellor of the State of New Jersey:

Complaining shows unto your Honor, your orator, Gustav W. Lembeck, of the City of Jersey City, in the County of Hudson and State of New Jersey, a stockholder of the Jarvis Terminal Cold Storage Company, in behalf of himself and all of the stockholders and all creditors of said company who shall come in and contribute to the expense of this suit. That said corporation was organized under the laws of this State in or about the month of October, nineteen hundred and two, for the purpose of engaging in business of a general cold storage warehouse. That the authorized capital of the company was one hundred and fifty thousand dollars, divided into fifteen hundred shares of par value of one hundred dollars each. That shortly after organization of the company one hundred and twenty-five thousand dollars of the capital stock was issued and of that amount of stock is still outsanding. That one hundred and twenty-five thousand dollars of bonds were issued by the company shortly after the organization, which bonds bear six per cent. interest and are securedl by mortgage to the Commercia Trust Company of New Jersey as Trustee.

Your orator further shows that in the latter part of the year nineteen hundred and two the company caused to be commenced the erection of a cold storage warehouse at the northwest corner of Provost

and 12th streets, Jersey City, on property of the company, with a powerhouse attached thereto, and the installment of the necessary machinery to be used in the business, and that the building was completed and the machinery installed and everything ready for the commencement of business early in January of the present year. That business was commenced in the month of January of the present year and has been continued up to this time, and there is now on storage in said warehouse sixty carloads of perishable property, consisting of poultry, meat, celery, cauliflower and other vegetables; that the total capacity of said warehouse is about five hundred car loads.

Your orator further shows that there are nine directors of said corporation, as follows:

Robert H. Jarvis, William Bumsted, Charles F. Mattlage, Charles E. Case, W. O. Smith, James H. Clakemore, Robert M. Jarvis, Jr., John Elvin Young and Oscar L. Gubelman. That Robert M. Jarvis is President of the Company, Charles Case Vice-President and Robert M. Jarvis, Jr., Secretary and Treasurer.

Your orator further shows that a large indebtedness of the company, namely, to persons who took part in the construction of the warehouse and the installment of machinery now exists, amounting in all to seventy-six thousand dollars, seventy-one thousand dollars, of which is due for construction and installment of machinery. Of this indebtedness about ninety per cent. has existed for the past four months.

Your orator further shows that ever since the company commenced business the creditors have been using every effort to obtain from the company a settlement of their claims, and that very many meetings have been had with Robert M. Jarvis, the President of the Company, with the creditors, and said Jarvis made many promises of settlement, none of which were carried out.

That on Monday, March fourteenth, nineteen hundred and four, there was a meeting held of the creditors of the company, at which it was ascertained that the wages of the employees for the previous week had not been paid; said Robert M. Jarvis was present at this meeting and admitted that the employees had not been paid for the previous week. At said meeting it was also learned that the insurance premium on the policy covering the property had not been paid and this insurance had expired, and it was also learned that the coal supply was nearly exhausted and that the company had no means to obtain same, and all of these facts were admitted to be true by said Robert M. Jarvis.

Your orator further shows, that at said meeting of creditors it was arranged that a committee consisting of three stockholders, namely: Palmer Campbell, Gustav Lembeck and William Schweckendisck, for the week ending the twenty-first day of March, nineteen hundred and four, should guarantee money necessary to pay the employees, supply coal and do whatever was absolutely needed for the continuance of the business. Your orator charges the truth to be that the company was at this time absolutely without funds and is so now, and utterly unable to carry on the business, and, that but for the fact that the committee of stockholders, at the request of the creditors and for the benefit of the creditors, agreed, during the past week to supply the funds necessary to continue the business, a stoppage of the business would have occurred, which would have resulted in the ruin of all the property in storage.

Your orator further charges the truth to be that the said corporation is entirely insolvent and it has no funds to carry on its business and has not been carrying on its business for the past two weeks by reason of its inability to procure money.

Your orator further shows, that the committee of stockholders above referred to, during the past

week, raised this necessary money to pay the employees and put the same into the hands of the Superintendent of the company for that purpose.

Your orator further shows, that mechanics' liens have been placed against the property of the company by some of the creditors and that they amount at this time to about forty thousand dollars.

In consideration whereof, and forasmuch as your orator, on behalf of himself and the other stockholders and creditors of said corporation is without adequate remedy, without the assistance of this Honorable Court, where matters of this nature are particularly cognizable and relievable, to the end thereof that the said Jarvis Terminal Cold Storage Company, make full, true and perfect answer to all and singular the matters and things hereinbefore stated.

And that your orator and the other stockholders and the creditors of the company may be paid what is justly due them and that the said company may be enjoined from receiving any debts due to it, and from paying and transferring any of its moneys or effects, and from continuing its said business and that it may be decreed to be insolvent and that a receiver may be appointed according to the form of the statute in such case made and provided and that your orator may have such further and other relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto your orator, not ony the State's writ of injunction, issuing out of and under the seal of this Honorable Court, directed to the said Jarvis Terminal Cold Storage Company, its officers, servants and agents and enjoining and restraining them and each of them from receiving any debts due said corporation and from paying and transferring any moneys or effects of said corporation and from continuing its said business, and also the State's writ of

subpoena issuing out of and under the seal of this Honorable Court to be directed to the said Jarvis Terminal Cold Storage Company therein and thereby commanding said corporation to appear before your Honor according to law and the course of this court at a certain day and under a certain penalty therein to be expressed, then and there to answer the premises and stand to abide by and perform such decree as to your Honor shall seem meet.

And your orator will ever pray, &c.

WILLIAM E. SKINNER,
Solicitor for and of counsel with complainant.

(Affidavits attached of Frederic W. Cane and Gustave W. Lembeck.)

ORDER TO SHOW CAUSE.

Upon reading and filing the bill of complaint and affidavits attached thereto, it is on this twenty-first day of March, nineteen hundred and four, ORDERED that the defendant, The Jarvis Terminal Cold Storage Company show cause before the Chancellor, at the Chancery Chambers in the City of Jersey City, on the twenty-eighth day of March, instant, at ten o'clock in the forenoon why an injunction should not issue and a receiver be appointed as prayed for in said bill.

It is FURTHER ORERDED that true copies of the bill and of this order (they may be uncertified) be served upon Robert M. Jarvis, President of said Company within two days of the date hereof, and that within the same time a like copy of this order

be mailed to the directors whose post office addresses can be ascertained.

Respectfully advised,

WILLIAM J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

ORDER APPOINTING RECEIVER.

This matter being opened to the Court by William E. Skinner, of counsel with the complainant, and by William A. Lewis and Willard C. Fisk, of counsel with Robert M. Jarvis, and the corporate defendant, and it appearing to the Court that the company is without funds to carry on its ordinary business, and that the corporation has become insolvent, and is not about to resume its business with safety to the public and advantage to the stockholders, it is thereupon, on this twenty-eighth day of March, nineteen hundred and four,

ORDERED, ADJUDGED AND DECREED that the said corporation is insolvent, and is not about to resume its business with safety to the public and advantage to the stockholders; and it being represented to the Court by counsel other than those above mentioned, that the general creditors and creditors holding liens against said property consent thereto; it is

ORDERED, That Palmer Campbell, of the City of Hoboken, and J. Warren Hardenbergh, of Jersey City, both in this State, be, and they hereby are appointed Receivers, with full power to demand, sue for, collect and receive, and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers,

choses in action, bills, notes and property of every kind and description belonging to said defendant corporation, and to do and perform all the duties imposed upon them, and required by law; and it is further

ORDERED, that said Palmer Campbell and J. Warren Hardenbergh, before entering upon their duties as such Receivers, take the oath of office prescribed by law and give a bond to the Chancellor in the sum of one hundred thousand dollars, conditioned for the faithful performance of their duties, to be approved as to form and sufficiency by William G. E. See, one of the Special Masters of this Court; and it is further

ORDERED, that an injunction do issue pursuant to the prayer of the bill herein to restrain the said corporation and its officers and agents from exercising any of its privileges and franchises, and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects except to the Receivers herein appointed; and it is further ordered that the Receiver continue the business of the company until the further order of the Court, and said defendant is hereby enjoined as aforesaid.

Respectfully advised,

W. J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

Then follows:

Proof of Mailing Copies of Order to Show Cause.

Oath of Receiver, J. W. Hardenburgh.
Oath of Receiver, Palmer Campbell.
Injunction in usual form.

ORDER LIMITING CREDITORS.

Upon opening this matter to the Court by McDermott & Fisk, of counsel, with the receivers heretofore appointed in this cause.

It is on this fourth day of April, nineteen hundred and four, ORDERED that the creditors of the said Jarvis Terminal Cold Storage Company do present to the receivers in this cause and prove before them under oath or affirmation, or otherwise, as the said receiver shall direct and to their satisfaction, their several claims and demands against the said corporations within two months from the date of this order, or that they be excluded from the benefit of such dividends as may hereafter be made and declared by this Court upon the proceeds of the effects of such corporation; and for the better ascertaining the creditors of said corporation and what is due to them respectively, the said creditors are to be examined as the said receivers shall direct or may deem necessary and expedient, and produce books and papers before them on oath or affirmation, (which oath or affirmation either of said receivers is hereby authorized to administer), as well as to examine under oath or affirmation all such witnesses as shall be produced before them touching the demands of said creditors.

AND IT IS FURTHER ORDERED that said receivers do cause proper advertisements to be published in at least one newspaper published in Jersey City in this State, to be selected by said receivers, for the creditors of said corporation to come in before said receivers and prove their claims and demands as in this order is directed; and that such publication be made within seven days from the date hereof, and be continued in such newspaper as aforesaid for the space of four weeks, once in each week.

AND IT IS FURTHER ORDERED that said

receivers also mail notice of this order to the post office address of each of said creditors if the same can be ascertained.

Respectfully advised.

WILLIAM J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

RECEIVERS REPORT No. 1.

The undersigned, appointed receivers in the above cause of the defendant corporation by order made herein and dated March twenty-eighth, nineteen hundred and four, respectfully report:

1. That, in pursuance of said order of appointment, the receivers have duly qualified by giving bond and taking the oath of office as required, and have entered upon the discharge of their duties, and have proceeded to take into their possessions the property and assets of the defendant corporation.

2. That the receivers have entered into possession of the cold storage warehouse of the defendant corporation, situated at the northwest corner of Provost and Twelfth streets, Jersey City, and in pursuance of the directions of the order appointing them have continued the business of the defendant company by continuing the operation of the said warehouse.

3. The cold storage warehouse business requires that the plant, including the necessary appliances for the cooling process should be continuously run, as any interruption of the operation, even for a short period of time, would result in the damage or total destruction of the perishable products stored by customers with the warehouse men.

4. The receivers have carefully examined the warehouse plant and appliances, and have also caused the same to be examined by experts, and find that the plant of the defendant corporation while opened for business in January, nineteen hundred and four, has not been in all respects completed for the safe and economical operation of the business. By reason of the great loss to customers' property which would follow a temporary interruption of the operation of the cooling apparatus in the plant, it was designed as is customary in plants of this character to install a duplicate cooling apparatus, so that in the event of the temporary stoppage by accident of one of the cooling systems, the other may be operated until repairs can be completed and thus minimize the danger of loss. The plant of the defendant company is constructed on this principle and a duplicate set of machinery for the operation of the cooling system has been installed, but all the connections necessary to complete the duplication of the system have not been made; this work can be completed at an expense of about one hundred dollars.

The receivers are of the opinion that the completion of duplicate machinery for the cooling system by making the connections in question is absolutely essential to the safe and continuous operation of the plant.

5. The receivers have ascertained and report that in the operation of the defendant company's plant a lerge quantity of water is required, and that at present this water is obtained from the public water supply of Jersey City, and the charges for the water so used constitute a large item of the operating expenses of the plant. In the construction of the plant in question it was intended to obtain the water supply from artesian wells, and for that purpose three artesian wells have been driven, one to a depth of six hundred feet, and the other two to a depth of five hun-

dred feet each. These wells have not been used in the operation of the plant for the reason that prior to the appointment of the receivers they had not been connected up with the machinery and the necessary air compressor and air lift for the operation of the wells have not been installed There is upon the premises the necessary apparatus to complete the system for the operation of the wells, which apparatus was sent to the premises by the Chicago Pneumatic Tool Company, under a conditional agreement, dated March sixteenth, nineteen hundred and four, between them and the defendant company, providing that the apparatus in question should remain the property of the vendor, the same being delivered until such time as satisfactory arrangements might be made in regard to purchase and sale, the apparatus to be installed merely for trial purposes, and if the parties should not come to an agreement for the purchase of the apparatus by April fifteenth, nineteen hundred and four, the vendor reserved the right to then enter upon the premises and remove the apparatus. If the defendant corporation desired to purchase the apparatus, it was to pay for it thirteen hundred and ninety-three dollars and fifty cents; in case the apparatus was not purchased, then the defendant company was to have returned to it freight charges, amounting to fifty-three dollars and eighty-two cents, which it had paid. The apparatus is described in the agreement as consisting of one class S. S. 14 by 14 by 14 air compressor, No. 631, purchase price thirteen hundred dollars, and one air receiver 42 inches diameter by 8 inches high, complete purchase price ninety-three dollars and fifty cents; together with miscellaneous fittings. The agreement in question was recorded in the Hudson County Register's office, March seventeenth, nineteen hundred and four, in liber 215 of chattel mortgages, page 573.

The receivers have ascertained that the expense of installing the above described apparatus and con-

necting up the wells for use, will amount to about one thousand dollars, and the cost of purchasing the apparatus as set forth in the agreement recited is thirteen hundred and ninety-three dollars and fifty cents, making the total expense of completing and connecting the wells so as to secure a supply of water for the operation of the plant twenty-three hundred and ninety-three dollars and fifty cents.

The receivers are of the opinion that the completion of the system as stated for securing a supply of water from the artesian wells is necessary in the economical operation of the plant and would materially increase beyond the cost of installation the salable value of the entire plant.

6. The receivers report that on the fifteenth day of March, nineteen hundred and four, policies of fire insurance were taken out on the building and plant of the defendant company to the amount of eighty thousand dollars; the premiums payable on said policies being three hundred and sixty-eight dollars, which have not been paid and which premium bills under the terms under which such insurance was taken out, will become due and payable May first next. In the opinion of the receivers it is essential to the protection of the bondholders, creditors and stockholders of the defendant company that such insurance should be continued.

7. The receivers report that the business of the Company at the present time is scarcely sufficient to pay the actual running expenses for wages, coal and other current charges and is not now sufficient, and the receivers have not come into possession of any other funds of the company from which to pay the one hundred dollars required to complete the duplicate cooling system, to pay the twenty-three hundred and ninety-three dollars and fifty cents required to make ready for use the supply of water from the artesian wells, and to pay the three hundred and sixty-eight dollars which will become due for premiums on fire insurance May first next. In the

judgment of the receivers all of these expenditures are necessary to the preservation of the property and to the economical and profitable operation of the plant, and would enhance the value of the assets beyond the cost of the improvements and would be for the benefit of the bondholders, creditors and stockholders of the defendant company.

8. The receivers report that the property, real and personal, of the defendant company is subject to a mortgage or deed of trust, dated February second, nineteen hundred and three, made by the defendant company to the Commercial Trust Company of New Jersey, trustee, to secure an issue of the company's bonds in the aggregate amount of one hundred and fifty thousand dollars, of which issue one hundred and twenty-five thousand dollars of bonds have been subscribed and paid for at the rate of eighty-eight dollars on the hundred dollars, and twenty-five thousand dollars of the issue of bonds have passed out of the control of the defendant company under circumstances which may raise the question as to whether they have been legally sold and are a valid liability of the defendant company.

There has been filed in the Clerk's office of Hudson County mechanics liens against the lands and buildings of the defendant company, constituting the cold storage plant as follows:

No. 2743, L. 8. p. 152, Ferbuary 25, $12,833.14, The Taylor-Martin Engineering Company.

No. 2745 L. 8, p. 154, March 10, $25,075.35, Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L. 8, p. 154, March 12, $4,160.67, Heine Safety Boiler Company.

No. 2748, L. 8, p.. 155, March 21, $1,325, Electrical Construction and Supply Company.

No. 2749, L. 8, p. 156, March 21, $1,699.75, Electrical Construction and Supply Company.

No. 2751, L. 8, p. 157, March 28, $1,302.50, B. F. Sturtevant Company.

No. 2753, L. 8, p. 158, April 6, $155, Timothy W. Dorsett.

There is a second mortgage upon the company's building and lands amounting to sixteen thousand five hundred dollars, held by the Erie Railroad Company. The remaining indebtedness of the company, the receivers believe to be unsecured.

9. The receivers respectfully submit the matters aforesaid for the consideration and direction of the Court, and recommend that they be authorized to borrow the sum of twenty-nine hundred dollars, to be expended for the purposes hereinbefore recited, and to issue for the money so borrowed the receivers certificate or certificates to bear interest at the rate of six per centum per annum from the date of issue, which certificates shall be made a first lien upon the property and assets in the hands of the receivers paramount to the lien thereon of all lieniors and creditors of the defendant company, or that the Court make such other order in the premises as may be deemed proper.

Dated April 18, 1904.

Respectfully,
J. W. HARDENBERGH,
PALMER CAMPBELL,
Receivers.

McDERMOTT & FISK,
Solicitors.

Affidavits of Receivers attached.

ORDER TO SHOW CAUSE ON REPORT No. 1.

Upon reading and filing report number one, dated April eighteenth, nineteen hundred and four, of John

W. Hardenbergh and Palmer Campbell, receivers of the above named defendant corporation, wherein said receivers ask leave of the Court to borrow the sum of twenty-nine hundred dollars upon receivers' certificates to be issued under authority of the Court, to bear interest at the rate of six per centum per annum from the date of issue, and from the moneys so borrowed to complete the duplicate cooling system in the defendant's cold storage plant; to complete, connect and make ready for use the supply of water from the artesian wells on the premises, and to pay premiums on fire insurance policies coming due May first, next.

It is, on this nineteenth day of April, nineteen hundred and four, on motion of McDermott & Fisk, counsel with the receivers, ordered, that the creditors and stockholders of the defendant corporation show cause at Chancery Chambers, Jersey City, on May second, nineteen hundred and four, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the receivers should not be authorized to borrow money on receivers' certificates in the amount, under the terms and for the purposes aforesaid, and why such certificate or certificates should not be made a first lien upon the property and assets of the defendant company in the hands of the receivers subsequent and subject only to the two mortgages now on the property of the defendant company, one dated February second, nineteen hundred and three, and made by the defendant company to the Commercial Trust Company of New Jersey, Trustee, to secure an issue of corporate bonds to the aggregate amount of one hundred and fifty thousand dollars, and the other made by the defendant company to the Erie Railroad Company, to secure the sum of sixteen thousand five hundred dollars.

And it is furthered ordered, that copies of this order be served on the stockholders and creditors

(other than creditors who have filed mechanics' liens against the lands and buildings of the defendant corporation) within four days from the date hereof by mailing such copies to such creditors and stockholders to their post office addresses as nearly as the same can be ascertained, and that copies of this order and of the said receivers' report be served within the same time upon the following creditors of the defendant company, or their attorneys, who have filed mechanics' liens against the lands and buildings of the defendant company, as follows:

The Taylor Martin Engineering Company, $12,833.14, February 25, 1904.

Frederick W. Cane, trading as W. H. and F. W. Cane, $25,075.35, March 10, 1904.

Heine Safety Boiler Company, $4,160.67, March 12, 1904.

Electrical Construction and Supply Company, $1,325.00, March 21, 1904.

Electrical Construction and Supply Company, $1,699.75, March 21, 1904.

B. F. Sturtevant Company, $1,302.50, March 28, 1904.

Timothy W. Dorsett, $155.00, April 6, 1904.

It is further ordered, that the service of uncertified copies of theis order, and of the said report shall be sufficient.

Respectfully advised,

WILLIAM J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

Then follows petitions of Heine Safety Boiler Co., Taylor Martin Engineering Co., and F. W. Cane, Robt. A. Keasby Co., Electric Construction and Supply Co., for leave to issue summons on mechanics' lien claim; notices of motion and orders granting such leave.

Then follows:

Proof of mailing notices to creditors to file claim and proof of publication thereof.

Proof of mailing and of service of receivers' report No. 1 and of order to show cause thereon (sent to 89 creditors and stockholders).

Notice and petition of Gardeman and Jungclaus and order for payment.

ORDER FOR ISSUING RECEIVERS' CERTIFICATES.

(Filed May 5, 1904.)

The report No. 1 and application for direction, dated April eighteenth, nineteen hundred and four, of John W. Hardenbergh and Palmer Campbell, the receivers appointed in the above cause for the defendant corporation, having been heretofore presented and filed, and an order to show cause thereon, dated April nineteenth, nineteen hundred and four, having been heretofore made, requiring the creditors and stockholders of the defendant corporation to show cause at this time and place why said receivers should not be authorized to borrow the sum of twenty-nine hundred dollars upon receivers' certificate or certificates, to be issued under the authority of the Court, to bear interest at the rate of six per centum per annum from the date of issue, and from the moneys so borrowed to complete the duplicate cooling system in the defendant's cold storage plant, to complete, connect and make ready for use the water supply from the artesian wells on the premises, and to pay premiums on fire insurance policies becoming due May first, nineteen hundred and four, and why such certificate or certificates should not be

made a first lien upon the property and assets of the defendant corporation in the hands of the receivers subsequent and subject only to the two mortgages on the property of the defendant company, one dated February second, nineteen hundred and three, and made by the defendant Company to the Commercial Trust Company of New Jersey, trustee, to secure an issue of corporate bonds, to the aggregate amount of one hundred and fifty thousand dollars, and the other made by the defendant company to the Erie Railroad Company, to secure the sum of sixteen thousand five hundred dollars.

And proof being now made and filed that the said order to show cause has been duly served on the stockholders and creditors, including mechanics lien creditors of the defendant corporation, within the time and in the manner as in said order provided.

And the said application of the said receivers and the said order to show cause now coming on to be heard, and the Court having heard the arguments of counsel for the said receivers, and of Francis A. Nott, Jr., of counsel with the Taylor-Martin Engineering Company, and Electrical Construction and Supply Company; and of Robert L. Lawrence, of counsel with Frederick W. Cane, trading as W. H. and F. W. Cane; James P. Northrop, of counsel with Heine Safety Boiler Company; all of whom approved of said application, and Edward Q. Keasby, of counsel with B. F. Sturtevant Company, who opposed said application, and having duly considered the said application and arguments, and considering it for the best interests of the stockholders and creditors of the defendant corporation and necessary for the care and preservation of the assets in the hands of the receivers that the borrowing of said sum of money on receivers' certificate or certificates for the purposes aforesaid should be authorized:—

It is on this second day of May, nineteen hundred and four on motion of McDermott & Fisk, of

counsel with the receivers aforesaid, ORDERED, that John W. Hardenbergh and Palmer Campbell, receivers of the Jarvis Terminal Cold Storage Company be and they hereby are authorized to borrow the sum of twenty-nine hundred dollars upon receivers' certificate or certificates, to be issued by them upder the authority of this Court, to bear interest at the rate of six per centum per annum from the date of issue, and that from the moneys so borrowed, the said receivers be authorized to complete the duplicate cooling system in the defendant's cold storage plant, to complete, connect and make ready for use the supply of water from the artesian wells on the said premises, and to pay premiums on fire insurance policies which became due May first, nineteen hundred and four.

And it is further ORDERED that the said receivers' certificate or certificates for the amount aforesaid when issued shall be a first lien upon all the property and assets of the defendant corporation in the hands of the said receivers subsequent and subject only to the mortgage now on the property of the defendant corporation, dated February second, nineteen hundred and three, and made by the defendant corporation to the Commercial Trust Company of New Jersey, trustee, to secure an issue of corporate bonds to the aggregate amount of one hundred and fifty thousand dollars, and to the mortgage made by the defendant corporation to the Erie Railroad Company, to secure the sum of sixteen thousand five hundred dollars; but this order shall in nowise be deemed to be an adjudication between the parties as to the priority of the several mortgages mechanics' liens or other claims against the defendant corporation.

Respectfully advised.

WILLIAM J. MAGIE,
C.

EUGENE STEVENSON
V. C.

RECEIVERS' REPORT NO. 2.

INVENTORY AND LIST OF CREDITORS.

(Filed May 16, 1904.)
IN CHANCERY OF NEW JERSEY.

John W. Hardenbergh and Palmer Campbell, appointed in the above cause Receivers of the defendant corporation, respectfully submit to the Court the following inventory of all the estate, property and effects of the defendant corporation that have come to their hands, its nature and probable value and an account of all debts due from and to it as nearly as the same can now be ascertained; the inventory being made as of March 29, 1904, the date on which the Receivers qualified.

INVENTORY.

Eleven (11) lots of land on Provost, 12th and 13th Sts., Jersey City, N. J., known as lots one (1) to ten (10) both inclusive, and lot thirty-two (32) in Block 185 on Fowler's Official Assessment Map of Jersey City, 1894		$37,000.00
(See Note "A" attached.)		
Cold Storage Warehouse erected on above lands, with equipment in same as follows:—		
Cash paid for construction	$157,401.07	
Cash due for construction	28,285.96	
Cash paid for equipment..	64,096.08	
Cash due for equipment..	46,161.29	295,944.40
(See Note "B" attached.)		
Promissory note of R. M. Jarvis, dated		

Jan. 20, 1904, due six months after date, to order of company at its office, 12th and Provost Sts., Jersey City	2,500.00
(See Note "C" attached.)	
Cash payments to Jarvis & Co., as appears from company's books against which is claimed an off-set of $694.52	2,125.00
Balance due on original subscriptions to capital stock.....	150.00
(See Note "D" attached.)	
Balance due on underwriters subscription to stock, pledged with United States Mortgage and Trust Co. of New York	11,600.00
(See Note "E" attached.)	
Accrued and uncollected storage charges on goods in storage.....	1,181.04
Cash on deposit with Third National Bank, Jersey City, at date of appointment of Receivers.....	213.61
Cash on deposit with Commercial Trust Co. of New Jersey at date of appointment of Receivers.....	6.18
Total	$350,720.23

LIABILITIES.

Mortgage bonds secured by Trust Mortgage to Commercial Trust Co. of New Jersey, Trustee, dated Feb. 2, 1903, recorded Hudson Co. Register's Office, Feb. 21, 1903, in Book 486 of Real Estate Mortgages, page 391, and in Book 207 of Chattel Mortgages, page 416—authorized issue	$150,000.00

(See Note "F" attached.)

Bond and Mortgage of Jarvis Terminal Cold Storage Company to The Erie Railroad Company, dated Dec. 16, 1903, recorded Dec. 18, 1903, Hudson Co. Register's Office, Book 504 of Mortgages, page 633. 16,500.00

(See Note "G" attached.)

Taxes on real estate due Jersey City as follows:—

Taxes 1901	610.40	
Taxes 1902	606.04	
Taxes 1903	1,562.00	2,778.44

In addition interest at the rate of 10 per cent. per annum is chargeable on these water bills from thirty days from the year of levy to date of payment.

Water bills due Jersey City as follows:

Bill Oct. 14, 1903, metered water	$34.50	
Bill Apl. 2, 1904, metered water	732.00	766.50

In addition interest at the rate of 10 per cent. per annum is chargeable on these water bills fro mthirty days after they became due to date of payment.

Note of company held by United States Mortgage Company of New York 20,000.00

Interest on above to be added.

(See Notes "E" and "F" attached.)

Note of company held by Third National Bank of Jersey City..... 5,743.00

This was a contingent liability and has been discharged since the appointment of the receivers. The company may still be liable to the firm of Garderman & Jungclaus, of Newhall, Iowa, for $743.00 of this amount.	
Overdraft on deposit account of company with United States Mortgage and Trust Company of New York.	4,649.97

GENERAL CLAIMS.

W. H. and F. W. Cane (mechanics' lien filed)	25,075.35
Electric Construction & Supply Co. (mechanics' lien filed)	3,024.74
Heine Safety Boiler Co. (mechanics' lien filed)	4,160.67
Taylor-Martin Engineering Co. (mechanics' lien filed)	12,833.14
B. F. Sturtevant (mechanics' lien filed)	1,302.50
T. W. Dorsett (mechanics' lien filed).	155.00
Carbondale Machine Co	15,933.00
P. & H. Conlon	350.00
Gould Manufacturing Co	648.84
Geo. Howland Stoddard	1,681.70
American Desk & Stool Co	100.00
N. Y. & N. J. Telephone Co	64.50
Ice Refrigeration	75.00
Arthur L. Perkins	25.46
"Cold Storage"	71.50
J. E. Carlock	4.00
Cockburn Barrow & Machine Co	186.93
Geo. A. Hay	46.03
Tock Bros.	209.40
Fairbanks & Co	135.00
Deane Steam Pump Co	5.40
Jas. L. Robertson & Son	7.93

Arthur Mountain & Co	2.50
E. J. Batchelar	225.85
Carbondale Chemical Co	1,968.70
Jos. Dixon Crucible Co	4.50
Everson & Reed	49.45
"Fruit Produce"	6.00
Fagan Iron Works	9.52
Albert Hepp & Co	17.45
Robert A. Keasbey Co	975.00
T. R. McMann's Sons	85.27
F. Macy Co	60.02
Pugsley & Chapman	13.30
Spook & Son	85.00
G. R. Sheppard	8.63
F. Underhill	5.00
Whitney & Kemmerer	25.53
Winthrop & Stimson	500.00
Eastern States Refrigerating Co	168.02
Gardemann & Jungclaus	11.53
Jersey City Coal Co	12.00
Jarvis & Co	694.52
Palmer Campbell	105.67
Taylor Brothers Co	45.33
W. S. Batcheller	335.83
A. J. Ditmar, Jr	56.65
Hall-Jagels Bellis Co	423.32
The Henry Johnson Co	37.95
John S. Menagh Co	172.15
National Machine Painting Co	155.00
Borne, Scrymser Co	36.15
F. B. Brill	49.00
William Sumner Belting Co	80.68
Snow Steam Pump Works	1,104.94
The Reeves Engine Co	575.00
C. G. Dennison & Son	226.10
Page, Dennis & Co	16.00
Morrow & Day	40.00
Williams & Peters	62.81
United Electric Co. of N. J	509.44
Otis Elevator Co	2,167.50

W. M. Obergful	2.00
Western Union Telegraph Co	16.15
Hay Foundry & Iron Works	2,100.66
Horace Dickerman	100.00
H. F. Jones	9.69
Strong Machinery & Supply Co	3.98
Leighton G. Knipe	875.00
The Under Feed Stoker Co. of America	683.34
C. H. O'Neil	210.43
Commercial Trust Co of N. J.	48.36
Commercial Trust Co. of N. J., Trustee	814.25
Commercial Trust Co. of N. J., Trustee	350.00
Commercial Trust Co. of N. J.	55.00
	$282,930.17

The foregoing list of liabilities and general claims is made up from the records in the Hudson County Clerk's and Register's offices; the books and memoranda of the defendant company and the sworn claims as so far presented to the receivers. The time for creditors to file claims expires June 4, 1904. The receivers have not yet passed upon and allowed or disallowed any of the claims filed with them, and this report is presented without prejudice to their right under the law to allow or disallow any of said claims.

NOTE "A"—LOTS AT PROVOST, 12TH AND 13TH STREETS.

These lots were conveyed by Nathalie Jarvis, of White Plains, Westchester County, New York, to the Jarvis Terminal Cold Storage Company, by deed dated October 21, 1902, recorded December 3, 1902, in Hudson County Register's office in Liber 821 of Deeds, page 490, for a consideration of "One dollar and other valuable considerations," and by the following description:—

All that certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots, described and bounded as follows:

Beginning at a point at the southwest corner of Provost street and Thirteenth street and running in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred feet to Thirteenth street, and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

At the time of the incorporation of the Company (certificate filed October 2, 1902), Robert M. Jarvis held an option dated September 22, 1902, from Nathalie Jarvis for the purchase of the above described lands for $22,000. Jarvis and Company (of which firm Robert M. Jarvis was then a member) owned certain sheds and buildings then on this land and also held a lease of the property.

At a meeting of the Board of Directors, held October 27, 1902, Robert M. Jarvis submitted a proposal in writing to convey to the Company his rights under his option of purchase with Nathalie Jarvis; to give an option for the Company to purchase for three thousand dollars in cash the title of Jarvis and Company to the buildings, sheds and improvements on the property including the leasehold interest; to convey the right to use the railroad tracks then used by Jarvis and Company in the adjacent streets as provided in an ordinance of the Common Council of Jersey City, passed April 26, 1864, and to turn over

all drawings, plans and specifications in reference to a proposed cold storage plant which he had theretofore secured, for the sum of thirty thousand dollars, to be paid for in the stock of the Company at its par value.

The directors accepted the proposal and a contract accordingly was entered into and the thirty thousand dollars of stock ordered issued to Robert M. Jarvis. It appears from the books of the Commercial Trust Company, of New Jersey, the registrar of the stock, that Certificate No. 1 for two hundred and fifty shares, and Certificate No. 2 for fifty shares were issued to Robert M. Jarvis December 30, 1902. The option to purchase from Nathalie Jarvis expired November 22, 1902. On November 20, 1902, the executive committee of the Board of Directors of the Company authorized the acceptance of the option. The Company secured the deed from Mrs. Jarvis, paid to her $8,000 in cash and executed to her a purchase money mortgage for $14,000, and this action by the officers was ratified at a director's meeting held December 2, 1902.

On February 19, 1903, the executive committee of the Board of Directors authorized the officers of the Company to pay off the mortgage of the Company held by Mrs. Nathalie Jarvis, by paying to her $7,000 in cash and interest on the mortgage to date of payment, and giving to her the Company's note for $7,000, due in sixty days with interest at 5 per cent., and also delivering to her stock of the Company of the par value of $7,000, as collateral to the note. This transaction was carried through; the mortgage was cancelled; the note delivered to Mrs. Jarvis, and the stock issued. The $7,000 of stock was not issued directly to Mrs. Jarvis. A written communication dated February 19, 1903, from the Secretary of the company to the Registrar of the Stock, states that Certificate No. 5, for seventy shares of stock, was issued to William H. Gibson as "the

duly authorized agent of Mrs. Nathalie Jarvis." The note still remains unpaid.

On December 1, 1902, the executive committee of the Board of Directors authorized the payment of $3,000 to Robert M. Jarvis for the right, title and interest of himself and Jarvis and Company in the sheds and improvements on the lands as provided for in his contract with the Company, and the money was so paid to him. This action was reported to the directors at their meeting held December 2, 1902, and ratified.

The Company has paid for the lands, lease, &c., $30,000 in stock to Robert M. Jarvis; $3,000 in cash to Jarvis and Company; $15,000 in cash to Nathalie Jarvis, and owes on note secured by stock, $7,000.

The cash payments appear in the Company accounts under cost of "Construction of Plant."

NOTE "B"—COST OF PLANT AND EQUIPMENT.

The figures of cost of construction and equipment are taken from the books and memorandum of the Company. No building contracts were filed in the Clerk's Office of Hudson County.

The following is a list of contracts for building and equipment as the same have come into the possession of the Receivers:—

Date.	Contractor.	Contract Price.
November 15, 1902—	Carbondale Machine Co. Refrigerating Machinery.	$2,400.00
December 2, 1902—	W. H. & F. W. Cane. Buildings.	$79,413.00
January 28, 1903—	P. H. & J. Conlon. Driven wells.	82,400.00

Rate per foot of driven wells.

February 11, 1903—Otis Elevator Co.
Elevators.
$8,670.00

February 25, 1903—The Clonbrock Steam Boiler Co.
Steel smoke stack.
$1,040.00

March 13, 1903...—Underfeed-Stoker Co.
Mechanical stokers.
$1,825.00

March 16, 1903...—Heine Safety Boiler Co.
Water tube boilers.
$5,518.00

March 26, 1903...—Electrical Construction & Supply Co.
Electric motors.
$2,650.00

April 29, 1903....—The Goulds Manufacturing Co.
Power pump.
$2,275.00

June 4, 1903.....—Electrical Construction & Supply Co.
Electric generators, &c.
$6,799.00

July 20, 1903.....—Reeves Engine Co.
Engines.
$575.00

September 21, 1903—Taylor-Martin Engineering Co.
Constructing Engineers.
10 per cent. of cost of work

December 4, 1904—National Machine Painting Co.
Painting.
$280.00

The following is a list of mechanics liens filed in the Hudson County Clerk's office up to the date of this report:—

No. 2743, L. 8, p. 152, February 25, 1904, $12,-833.14. The Taylor-Martin Engineering Company.

No. 2745, L. 8, p. 154, March 10, 1904, $25,075.35. Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L. 8, p. 154, March 12, 1904, $4,160.67. Heine Safety Boiler Company.

No. 2748, L. 8, p. 155, March 21, 1904, $1,325, Electrical Construction and Supply Company.

No. 2749, L. 8, p. 156, March 21, 1904, $1,699.75, Electrical Construction and Supply Company.

No. 2751, L. 8, p. 157, March 28, 1904, $1,302.50, B. F. Sturtevant Company.

No. 2753, L. 8, p. 158 April 6, 1904, $155. Timothy W. Dorsett.

May 6, 1904, $975.00, Robert A. Keasbey Co.

NOTE "C"—$2,500 NOTE OF R. M. JARVIS.

This note was given to, and accepted by the Company in payment of stock subscription of Mr. Robert Jarvis, President of the Company, as evidenced by the following extract from the minutes of a meeting January 20, 1904, of the Executive Committee of the Board of Directors:—

"Whereas, Mr R. M. Jarvis wishes to purchase "fifty (50) shares of the capital stock of this Company "at par, and offers in payment of same twenty-five "hundred dollars ($2,500) in cash and his six months' "note for twenty-five hundred dollars ($2,500);

"Be it therefore resolved, That we accept the said "R. M. Jarvis's offer and deliver to him, through the "Commercial Trust Company of New Jersey, fifty "(50) shares of the capital stock of the Company "duly countersigned and registered."

Certificate of stock No. 28 for fifty shares was issued January 20, 1904, to Robert M. Jarvis as appears by the books of the registrar of stock.

NOTE "D."—BALANCE DUE ON ORIGINAL SUBSCRIPTIONS OF STOCK.

Prior to the incorporation of the Company, the promoters circulated a subscription paper to the stock in the proposed Company, the subscribers agreeing to pay for the stock at par. A considerable amount of stock was subscribed for under this paper and paid for in full, but the books and memoranda of the Company show a balance of unpaid subscriptions amounting to $150. The original subscription papers have not come into the possession of the Receivers.

NOTE "E."—UNDERWRITING AGREEMENT AND SUBSCRIPTIONS TO STOCK.

At a meeting of the Executive Committee of the Board of Directors of the Company held October 29, 1903, the following resolutions were adopted:—

"WHEREAS, it is necessary that this company "raise the sum of twenty thousand dollars for the "purpose of paying for the completion of its cold "storage warehouse now in process of erection;

"RESOLVED, that is is expedient to sell and "dispose of two hundred shares of the authorized "capital stock of this company, at par, and the proper "officers of this company are authorized and em-"powered to obtain subscriptions for the same, it "being understood that the present stockholders of "this company shall be first offered an opportunity "to subscribe for the same to the extent of twenty "cent of their present holdings;

"Further Resolved, that such subscriptions be re-
"ceivable payable ninety days from the date thereof.

"AND WHEREAS, it is necessary that the com-
"pany raise for its immediate purposes to pay for the
"completion of the building aforesaid the sum of
"$20,000;

"RESOLVED, that the proper officers of this
"company be and they hereby are authorized to bor-
"row from the United States Mortgage and Trust
"Company twenty thousand dollars upon the note of
"the Jarvis Terminal Cold Storage Company, the
"said note to be payable in ninety days and to be
"secured by an assignment of the subscriptions to the
"stock aforesaid."

In pursuance of this authority a note for $20,000 was made and delivered to the United States Mortgage and Trust Company of New York, and that sum was received by the Storage Company, subscriptions to one hundred and sixty-one shares of stock at par were obtained under an underwriting agreement, dated November 21, 1903, which was to be deposited with the United States Mortgage and Trust Company, of New York, as collateral for the above loan. The original underwriting subscription agreement has been lost or mislaid and is not now in the possession of the Trust Company or of the Receivers.

The following list of the names and addresses of the subscribers to stock under this underwriting agreement is furnished by the Trust Company:

R. M. Jarvis, 68 Broad St., N. Y.....	40	shares
Jas. H. Blakemore, 68 Broad St., N. Y.	5	"
R. M. Jarvis, Jr., 68 Broad St., N. Y....	6	"
W. O. Smith, Produce Exchange, N. Y.	5	"
Louis Cellar, 44 Cedar St., N. Y.....	10	"
Sig. Goldstein, 44 Cedar St., N. Y.....	10	"
Chas. F. Mattlage, 335 Greenwich St., N. Y	10	"
Jos. H. Bumsted, 374 Broadway, N. Y.	5	"

Wm. Buchanan, 14 East 69th St., N. Y.	5	"
Dudley D. Fleming, 249 Washington St., N. Y	5	"
Dr. Wallace Pyle, 15 Exchange Pl., J. C	5	"
L. G. Knipe, 13th & Provost Sts., J. C.	5	"
Luther D. Martin, 365 Market St., Newark, N. J	10	"
Frank A. White, Newark, N. J	5	"
Bronson Winthrop, 32 Liberty St., N. Y.	2	"
Oscar Wollheim, 46 Warren St., N. Y.	10	"
Alvin Beveridge, 10 Wall St., N. Y	10	"
Geo. B. Wilson, 15 Exchange Pl., J. C.	10	"
Wallace, Muller & Co., Broad & Pearl Sts., N. Y	2	"
Robt. McCreery, Produce Exchange, N. Y	1	"
	161	"

Under this subscription and agreement the sum of four thousand five hundred dollars has been paid in to the Trust Company, who have applied the amount to the indebtedness due them by the Storage Company

It is claimed that Robert McCreery, shown on foregoing list as a subscriber to one share of stock, in fact never signed the subscription agreement.

NOTE "F."—ISSUE OF MORTGAGE BONDS.

Under the trust mortgage executed to the Commercial Trust Company of New Jersey, trustee, an issue of $150,000 of first mortgage gold bonds was authorized, the bonds to be of the denomination of $1,000 each, and to become due February 1, 1903, with interest of 6%, payable February and August, each year. The mortgage covers the lands and buildings at Provost, Twelfth and Thirteenth streets, Jer-

sey City; the right to the railroad tracks in Twelfth street, as acquired by agreement with Robert M. Jarvis dated October 27, 1902, and all the machinery, boilers, engines and personal property whatsoever, with all corporate rights, privileges and franchises, excepting merchandise, accounts receivable, bills receivable and cash. $125,000 of the bonds were to be immediately certified by the trustee and delivered by the company, the balance of $25,000 of the bonds were to be reserved for the purchase of additional property or the erection of future additions and improvements to the company's plant, and were to be certified and delivered by the trustee under the following conditions:

"Whenever, after the plant under construction by "the Storage Company at the date hereof shall have "been fully completed and equipped, the Storage "Company shall furnish to the trustee a certificate "signed by its president or vice-president and also by "its treasurer, and verified by the oath of the signers, "that the Storage Company has purchased or is "about to purchase additional property, real or per- "sonal, in addition to the plant now under construc- "tion, or has erected or proposes to erect additions "or improvements to such plant, and stating also "the cost of such purchase or of such additions or im- "provements, the trustee shall certify and deliver, on "the order of the treasurer of the Storage Company, "countersigned by its president or vice-president, "an amount of bonds equivalent at par to amount "certified in such certificate to have been expended, "not exceeding the amount of twenty-five thousand "dollars par value; and such certificate shall be con- "clusive evidence to the trustee of the facts therein "stated, and shall be full warrant and protection to "the trustee for any action taken by it on the faith thereof."

A subscription agreement was entered into February 16, 1903, between the company, the subscribers

thereto and the Commercial Trust Company of New Jersey wherein the subscribers agreed to purchase bonds of the company at the rate of 88% and accrued interest, that is to say, $880 for each bond of $1,000 par value. The subscription to the bonds was made payable in installments to the Commercial Trust Company of New Jersey as depositary for the bonds. The money paid to the depositary was subject to the order of the company. Upon the execution of the mortgage, $125,000 of bonds were to be certified by the trustee, delivered to the company and deposited with the depositary under the agreement in question. The provision in this supplemental agreement as to the issue of the balance of bonds amounting to $25,000, is as follows:

"The balance of the issue of bonds, namely, $25,000 par value shall only be certified by the trustee under said mortgage and issued by the Jarvis Company to pay for the acquisition of additional property or the erection of extensions to the plant of the Jarvis Company under construction."

The agreements as to the subscription to the bonds were carried out and $125,000 par value of bonds were sold at $880 a bond, producing $110,000, which amount was paid over by the depositary to the company.

Under date of December 22, 1903, a certificate in the form required under the terms of the trust mortgage and subscription agreement of February 16, 1903, was presented by the company to the trustee under the mortgage, certifying to the acquisition of additional property and the erection of extensions to the plant costing more than $26,000, and requesting the trustee to certify the additional $25,000 of bonds and to deliver the same to the company. Under this certificate the trustee certified the bonds, and the same were delivered to the company. It does not appear that any corporate action was thereafter taken, authorizing the sale or pledge of this

$25,000 of bonds. It appears, however, that these bonds passed out of the control of the company before the appointment of the receivers, under circumstances which are stated by Robert M. Jarvis to be as follows:

The company had a loan with the United States Mortgage and Trust Company of New York of $20,000 secured by the company's note and other collateral. Mr. Jarvis, as president of the company, took the twenty-five bonds to the office of the United States Mortgage and Trust Company of New York for the purpose of negotiating a further loan. The proposal was submitted to the officials of the Trust Company, who stated that they would take the matter under advisement, and pending their reply, Mr. Jarvis left the bonds in the custody of the Trust Company. Some days later, Mr. Jarvis went to the office of the Trust Company accompanied by a representative of Cane Company, one of the contractors and creditors of the company, and was informed that the Trust Company would not negotiate a further loan on thhe bonds. Mr. Jarvis then requested the return of the bonds, but was told that the Trust Company would hold them as additional collateral to their existing loan. After some discussion the Trust Company delivered up five of the bonds to Mr. Jarvis, who thereupon turned them over to the representative of Cane Company as security for the indebtedness due to it by the company. Cane Company subsequently caused the bonds to be sold at auction, and they were purchased at the price of fifty cents on the dollar.

The coupons on $125,000 of the bonds becoming due August 1, 1903, and February 1, 1904, were paid by the company. The coupons due August 1, 1903, on the extra $25,000 of bonds, were cancelled by the trustee before delivery of the bonds to the company; the coupons on these bonds due February 1, 1904, have not been paid or presented for payment.

The receivers, in order to preserve the rights of all the parties in interest so soon after their appointment as the facts came to their knowledge, served written notice upon the United States Mortgage and Trust Company of New York, demanding the return of the $20,000 of bonds held by them and notifying them that it was claimed that the bonds had not been legally issued by the defendant company.

NOTE "G."—ERIE RAILROAD COMPANY MORTGAGE, $16,500.

This mortgage bears interest at the rate of 5% per annum, payable semi-annually, and is due December 16, 1904, and contains a privilege to the mortgagor of paying the principal at any time before said date of payment. It also contains the following clause:—

"This property is subject to a prior mortgage "given by said Storage Company to the Commercial "Trust Company of New Jersey, as trustee, to secure "the payment of bonds to the amount of $150,000 "and said mortgage is recognized as prior to this "to the full amount thereof, whether said bonds have "yet been issued or not."

There has come into the possession of the Receivers an agreement of even date with the mortgage between the Erie Railroad Company and Jarvis Terminal Cold Storage Company, reciting that the Erie Railroad Company has loaned to the Jarvis Company $16,500 on mortgage, and that there is a track connection between the cold storage plant and the Erie Railroad Company, and agreeing in consideration of the loan substantially as follows:

First. The Storage Company agrees that it will not make any track connection with any other railroad than the Erie Railroad Company. The Erie Railroad Company agrees to maintain a suitable con-

nection on the southerly line of Twelfth street between its tracks and the tracks run across the street and on the property for the transaction of the Storage Company business.

Second. The Storage Company agrees that it will give preference for storage accommodations to the business of the Erie Railroad Company and its customers over the business of other customers.

Third. Rates for storage to the Erie Railroad Company and its shippers shall be as favorable as those given to other customers of the Storage Company, and as favorable as the current rates for storage in and about New York Harbor.

Fourth. The agreement is to run for five years from the date of payment of the mortgage loan and thereafter until one year's notice in writing has been given by either party to the other to terminate the agreement.

Fifth. If by reason of changes in its terminal arrangements the Railroad Company cannot continue the present connection with the storage property or substitute other connection equally convenient, the Railroad Company can terminate the agreement on three months' written notice.

Dated, May 10, 1904.

J. W. HARDENBERGH,
PALMER CAMPBELL,
Receivers.

McDERMOTT & FISK,
Counsel.

(Affidavits of receivers attached).

RECEIVERS' REPORT No. 3.

(Application to sell property clear of liens.)

(Filed May 16, 1904.)

John W. Hardenbergh and Palmer Campbell, appointed in the above cause receivers of the defendant company, respectfully show:

1. That they have duly qualified as such receivers and have taken into their possession the property and assets of the defendant company, and are now conducting the cold storage business of the company at the plant, located on Provost, Twelfth and Thirteenth streets Jersey City, New Jersey.

2. That the principal, and practically the only valuable asset, of the defendant company, is the cold storage plant aforesaid, with the machinery, fixtures and railroad trackage rights in adjacent streets, located on lands belonging to the company and described in the deed for the same as follows:

ALL that certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost street and Thirteenth street and running in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred

feet to Thirteenth street, and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

3. That the said lands and the cold storage warehouse with the machinery and fixtures therein contained were incumbered at the time of the appointment of the receivers with mortgages and other liens as follows:

(1st). Trust mortgage by the defendant company to Commercial Trust Company of New Jersey, Trustee, dated February second, nineteen hundred and three, recorded in Hudson County Register's office February twenty-first, nineteen hundred and three, in Book 486 of Real Estate Mortgages, page 391, and in Book 207 of Chattel Mortgages, page 416, to secure an issue of first mortgage gold bonds of the defendant company in the aggregate amount of one hundred and fifty thousand dollars.

(2nd). Mortgage of the defendant company to the Erie Railroad Company, dated December sixteenth, nineteen hundred and three, recorded December eighteenth, nineteen hundred and three, in Hudson County Register's office in Book 504 of Mortgages, page 633, to secure the company's bond for sixteen thousand five hundred dollars.

(3d). Mechanics liens filed in the Hudson County Clerk's office as follows:

No. 2743, L. 8, p. 152, February 25, 1904, $12,833.14, The Taylor-Martin Engineering Company.

No. 2745, L. 8, p. 154, March 10, 1904, $25,075.35, Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L. 8, p. 154, March 12, 1904, $4,160.67, Heine Safety Boiler Company.

No. 2748, L. 8, p. 155, March 21, 1904, $1,325.00, Electrical Construction and Supply Company.

No. 2749, L. 8, p. 156, March 21, 1904, $1,699.75, Electrical Construction and Supply Company.

No. 2751, L. 8, p. 157, March 28, 1904, $1,302.50, B. F. Sturtevant Company.

Since the appointment of the receivers liens have been filed as follows:

No. 2753, L. 8, p. 158, April 6, 1904, $155.00, Timothy W. Dorsett.

May 6, 1904, $975, Robert A. Keasbey Co.

4. That the legality, priority and extent of the said mortgages and mechanics liens is brought in question in the following particulars:

It is claimed by certain of the mechanics lienors that their contracts with the defendant company were entered into and work and construction thereunder was actually begun before the execution, delivery and record of the two mortgages on the property, and that their liens are prior to that of the mortgagees. These claims are disputed by the mortgagees.

It is claimed by certain of the mechanics lienors that in the event of the mortgage by the defendant to the Commercial Trust Company of New Jersey, Trustee, to secure the issue of bonds, being held to be a lien prior to the liens of such mechanics lienors, that then it is only such lien as against them to the extent of eighty-eight per centum of the par value of the bonds issued thereunder, that being the amount paid in by the subscribers to said bonds, which amount was advanced in payment of contractors. This claim is disputed by the holders of the bonds secured by said mortgage.

It is claimed by the mechanics lienors, second mortgagee, general creditors and stockholders of the defendant company that although the trust mortgage is given to secure a total issue of one hundred and fifty thousand dollars of bonds, and bonds to that amount have passed out of the possession and control of the defendant company, that twenty-five thousand dollars of the bonds were never legally issued and disposed of by the company, and that the same do not constitute a valid lien under the trust mortgage against the assets in the receivers' hands. Twenty thousand dollars of these bonds in question are now in the possession of the United States Mortgage and Trust Company of New York, and five thousand dollars of these bonds are held by some person or persons unknown to the receivers. This claim is disputed by the United States Mortgage and Trust Company of New York and presumably is disputed by the unknown holder or holders of the remaining five thousand dollars of bonds in question.

5. That the receivers are now, under direction of the Court, operating the cold storage plant and conducting the business. That the business now being done and in prospect is barely sufficient to pay the running expenses of the plant for labor, coal and other plant charges, without providing for taxes, charges for metered water and insurance. That as the cold storage business is conducted it is essential to the successful running of the business that the warehouseman should be in a position to arrange advances of money on the goods of customers stored with him; this the receivers are not in a position to do, and consequently they are obliged to refuse a considerable amount of business that is offered to them on such terms. The conducting of a cold storage warehouse is a hazardous business, due to the danger of accident to the machinery and the great loss that would follow any temporary stoppage of the plant.

The receivers are of the opinion that it would be unwise for them to conduct the business any longer

than is necessary to secure a sale of the plant and property; that such sale cannot be made with advantage, subject to said liens thereon while the legality, priority and extent remain in question; and that if a sale of the plant and property should be postponed until the questions as to priority, legality and extent of the liens were determined by judicial procedure, the property would materially depreciate in value.

6. The receivers respectfully ask the direction of the Court in the premises, and that an order may be made authorizing the receivers to sell the said real estate with the cold storage plant, including machinery and fixtures and trackage rights in adjacent streets, clear of the mortgages and mechanics liens on the property and plant, and that when so sold, the money realized from such sale less all municipal liens and charges to be first paid by the receivers, may be paid into this Court, there to remain, subject to the same liens and equities of all parties in interest as was the property before sale, and to be disposed of as this Court shall then direct.

7. That in order to effect such sale, the receivers recommend that they be authorized to advertise for sealed proposals of purchase to be received at a time and place to be fixed by the receivers, under terms and conditions to be made by them, anl the acceptance of any such proposal of purchase to be subject to the approval of this Court. That for the purpose of properly advertising for such proposals of purchase, the receivers be permitted in their discretion to expend a sum not exceeding two hundred and fifty dollars.

Dated, May 12, 1904.

J. W. HARDENBERGH,
PALMER CAMPBELL,
Receivers.

McDERMOTT & FISK,
Counsel.

(Affidavit attached).

ORDER TO SHOW CAUSE TO SELL CLEAR OF LIENS.

The receivers of the above named defendant corporation having presented and filed their report number two, dated May tenth, nineteen hundred and four, being an inventory of assets and list of debts, it is ORDERED that a copy thereof, which need not be certified, be deposited by the receivers with the Sergeant-at-Arms, Chancery Chambers, in Jersey City, where it may be inspected by creditors and stockholders.

The receivers having also presented and filed their report number three, dated May twelfth, nineteen hundred and four, being an application for an order authorizing them to sell the lands of the defendant company, situated on Provost, Twelfth and Thirteenth streets, Jersey City, with the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets, clear of all mortgages and mechanics' liens on said property:

It is on this sixteenth day of May, nineteen hundred and four, on motion of McDermott and Fisk, of counsel with the receivers, ORDERED that the mortgagees, creditors and stockholders of the defendant company show cause at Chancery Chambers, in Jersey City, on May twenty-third, nineteen hundred and four, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the receivers should not be authorized to sell the aforesaid lands, and cold storage plant, including machinery and fixtures and trackage rights in adjacent streets,

clear of all mortgages, mechanics and other liens on said property, and in order to effect such sale why the receivers should not be authorized to advertise for sealed proposals of purchase to be received at a time and place and under terms and conditions to be fixed by them, the acceptance of any such proposal to be subject to the approval of this Court; and why the receivers should not be permitted in their discretion to expend a sum not exceeding two hundred and fifty dollars in advertising for such proposals of purchase.

And it is further ordered, that copies of this order be served on the stockholders and creditors (other than creditors holding mortgages or mechanics liens against said lands and buildings of the defendant corporation) within three days from the date hereof by mailing such copies to such stockholders and creditors to their post office addresses as nearly as the same can be ascertained, and that copies of this order and of the said receivers' report number three be served within the same time upon the following creditors of the defendant company, or their attorneys, who hold mortgages on, or have filed mechanics liens against the lands and buildings of the defendant company, viz.:

(1) Commercial Trust Company of New Jersey, Trustee; (2) Erie Railroad Company; (3) The Taylor-Martin Engineering Company; (4) Frederick W. Cane, trading as W. H. & F. W. Cane; (5) Heine Safety Boiler Company; (6) Electrical Construction and Supply Company; (7) B. F. Sturtevant Company; (8) Timothy W. Dorsett; (9) Robert A. Keasbey Company.

It is further ordered, that service of uncertified copies of this order and of the said report shall be sufficient.

Respectfully advised.

WILLIAM J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

PROOF OF MAILING ORDER TO SHOW CAUSE TO CREDITORS AND STOCKHOLDERS.

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

NELLIE P. HAMILTON, of full age, being duly sworn, acording to law, on her oath, says that on the eighteenth day of May, nineteen hundred and four, she deposited in the United States mail at Jersey City, New Jersey, envelopes severally addressed to the creditors and stockholders of the Jarvis Terminal Cold Storage Company, according to the list of creditors and stockholders hereto attached; that said envelopes each contained a copy of the order to show cause hereto attached and had the postage prepaid thereon.

Sworn and sbscribed to before me this 20th day of May, 1904.

NELLIE P. HAMILTON.

THOMAS E. HAIGHT,
Notary Public of New Jersey.

LIST OF CREDITORS.

American Desk & Stool Company, 30 Howard street, New York City.

E. J. Batcheler, 15 Exchange place, Jersey City.

W. S. Batcheller, care of Jarvis Terminal Cold Storage Company, 12th & Provost streets, Jersey City, N. J.

Borne Scrymser Company, 80 and 81 South street, New York City.

F. B. Brill, 82 Montgomery street, Jersey City, N. J.

Carbondale Machine Company, Carbondale, Penn.

J. E. Carlock 94 Myrtle avenue, Jersey City, N. J.

Carbondale Machine Company, Carbonlale, Penn.

Chicago Pneumatic Tool Company, Chicago, Illinois.

P. H. & C. Conlon, Newark, N. J.

"Cold Storage," Produce Exchange, New York City

Cockburn Barrow & Machine Company, 240 Eleventh street, Jersey City, N. J.

Commercial Trust Company of New Jersey 15 Exchange Place, Jersey City, N. J.

Deane Steam Pump Company, P. O. Box 311, New Cork City.

C. G. Dennison, Buffalo, N. Y.

Horace Dickerman, 30 Howard street, New York City.

O. J. Dittmar, 204 Pavonia avenue, Jersey City, N. J.

Dixon Crucible Company, Jersey City, N. J.

Eastern States Refrg Co., Jersey City, N. J.

Everson & Reed, 245 Broadway, New York City.

Fagan Iron Works, Hoboken, N. J.

Fairbanks & Company, Broome & Elm streets, New York City.

"Fruit & Produce News," 8-10 Jay street, New York City.

Garderman & Jungclaus, Newhall, Iowa.

Gould Manufacturing Company, Boston, Mass.

Hall, Jagels, Bellis Company, Hoboken, N. J.

Hay Foundry & Iron Works, 145 Broadway, New York City.

Geo. A. Haws, 25 Bridge street, New York City.

Heppe & Company, 239 Greenwich street, New York City.

Ice & Refrigeration, Chicago Illinois.

Jarvis & Company, 64 Broad street, New York City.

Jersey City Coal Company, Jersey City, N. J.

Johnson & Co., Gates avenue, Jersey City, N. J.

H. F. Jones, 185 Twelfth street, Jersey City, N. J.

Robert A. Keasby Company, 100 North Moore street, New York City.

L. G. Knipe, Provost & 13th streets, Jersey City, N. J.

F. Macy Company, 343 Broadway, New York City.

John S. Menagh, Newark avenue, Jersey City, N. J.

T. R. McMahon, 56 Gold street, New York City.

Morrow & Day, 81 Montgomery street, Jersey City, N. J.

Mountain & Co., 111 Liberty street, New York City.

National Paint Machine Company, 4th avenue & 22d street, New York City.

New York & New Jersey Telephone Co., 81 Willoughby street, Brooklyn, N. Y.

W. M. Obergful, 131-137 Ninth street, Jersey City, N. J.

C. H. O'Neill, Jersey avenue, Jersey City, N. J.

Otis Elevator Company, 71 Broadway, New York City.

Page Dennis Company, 341 Broadway, New York City.

Arthur L. Perkins 285 Warren street, Jersey City, N. J.

Pugsley & Chapman, 180 West street, New York City.

Reeves Engine Company, 85 Liberty street, New York City.

J. L. Robertson & Sons, 204 Fulton street, New York City.

G. R. Sheppard, 5 Dutch street, New York City.

Snow Steam Pump Company, 114 Liberty street, New York City.

Snook & Son, 261 Broadway, New York City.

George H. Stoddard, Boston, Mass.

B. or Wm. Sumner Company, 62 Cortlandt street, New York City.

Taylor Bros., Rochester, N. Y.

Third National Bank, Jersey City, N. J.

Toch Bros., 472 West Broadway, New York City.

Underfeed Stoker Company, Boston, Mass.

I. Underhill, 17 Park Place, New York City.

United Electric Company of N. J., 15 Newark avenue, Jersey City, N. J.

U. S. Mortgage & Trust Company, 55 Cedar street, New York City.

Western Union Telegraph Co., 76 Montgomery street, Jersey City, N. J.

Whitney & Renner, 143 Liberty street, New York City.

Williams & Peters, 1 Broadway, New York City.

Winthrop & Stinson, 32 Liberty street, New York City.

LIST OF STOCKHOLDERS.

James H. Blakeman, 68 Broad street, New York City.

Henry Bohme & Sons, 83 Beaver street, New York City.

W. M. Buchanan, 14 East 69th street, New York City.

Joseph H. Bumsted, 374 Broadway, New York City.

Frederick W. Crane, 21 Park Row, New York City.

Palmer Campbell, 1 Newark street, Hoboken, N. J.

D. D. Fleming, 249 Washington street, Jersey City, N. J.

George F. Gantz, 62 Wall street, New York City.

W. H. Gibson, 35 Wall street, New York City.

Oscar L. Gubelman, Cedar & Nassau streets, New York City.

Robert M. Jarvis, Jr., 68 Broad street, New York City.

Robert M. Jarvis, 68 Broad street, New York City.

Gustav W. Lembeck, 173 Ninth street, Jersey City, N. J.

Addie J. Maltbie, care of Armstrong & Maltbie, 92 William street, New York City.

Charles F. Mattlage, 335 Greenwich street, New York City.

Robert McCreery, Produce Exchange, New York City.

W. M. H. Miller, 92 William street, New York City.

Theodore P. Muth, 389 West street, New York City.

M. Poppenheimer, 51 Stone street, New York City.

Dr. Wallace Pyle, 713 Bergen avenue, Jersey City, N. J.

L. Scanga, 145 Mulberry street, New York City.

William Schweckendrick, 116 Broad street, New York City.

Henry Siebert, 116 Broad street New York City.

W. O. Smith, F 23 Produce Exchange, New York City.

W. C. Smith F 23 Produce Exchange, New York City.

W. L. Wallace, 48 Pearl street, New York City.

George B. Wilson, 15 Exchange Place, Jersey City, N. J.

Bronson Winthrop, 32 Liberty street, New York City.

ORDER TO SELL CLEAR OF LIENS.

The report number three and appliciation for leave to sell property clear of liens, dated May twelfth,

nineteen hundred and four, of John W. Hardenbergh and Palmer Campbell, the receivers appointed in the above cause for the defendant corporation, having been heretofore presented and filed, and an order to show cause thereon dated May sixteenth, nineteen hundred and four, having been heretofore made requiring the mortgages, creditors and stockholders of the defendant corporation to show cause at this time and place why the said receivers should not be authorized to sell the lands of the defendant company, situated on Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, (being the lands hereinafter particularly described) and the cold storage plant thereon erected including machinery and fixtures and trackage rights in adjacent streets, clear of all mortgages, mechanics and other liens on said property, and in order to effect such sale, why the receivers should not be authorized to advertise for sealed proposals of purchase to be received at a time and place and under terms and conditions to be fixed by them, the acceptance of any such proposal to be subject to the approval of this Court; and why the said receivers should not be permitted in their discretion to expend a sum not exceeding two hundred and fifty dollars in advertising for such proposals of purchase.

And proof being now presented and filed that the said order to show cause and the said receivers report number three and application have been duly served on the mortgagees, creditors and stockholders of the defendant company within the time and in the manner as in said order provided.

And the said application of the said receivers and the said order to show cause now coming on to be heard in the presence of McDermott & Fisk, of counsel with the receivers; of William Brinkerhoff, of counsel with the Commercial Trust Company of New

Jersey, trustee, mortgagee; of Charles L. Corbin, of counsel with the Erie Railroad Company, mortgagee; of James A. Nott, Jr., of counsel with The Taylor-Martin Engineering Company, Electric Construction and Supply Company and Robert A. Keasby Company, mechanics lienors; of Robert L. Lawrence, of counsel with F. W. Cane, trading as W. H. & F. W. Cane, mechanics lienor; of James P. Northrop, of counsel with Heine Safety Boiler Company, mechanics lienor; of George M. Keasbey, of counsel with B. F. Sturtevant Company, mechanics lienor; (no one appearing for Timothy W. Dorsett, mechanics lienor); and none of said counsel presenting any objection to the making of an order for the receivers to sell said property clear of the liens they respectively represent; and all of said counsel except the counsel of the Commercial Trust Company of New Jersey, trustee, consenting to the making of the order.

And Randolph Perkins and Edward Russ, appearing as counsel for the Carbondale Machine Company, a creditof of the defendant company and presenting and filing an affidavit in behalf of said Carbondale Machine Company, wherein is asserted the claim of the said company to the ownership of certain refrigerating machines in the defendants' cold storage plant, and stating that in the event of such claim of title not being maintained that then it claimed a vendor's lien on said machines or a right to a mechanics' lien against said lands and building, and said counsel consenting on behalf of said Carbondale Machine Company to the making of this order and the sale of said refrigerating machines by the receivers upon condition that if the title of the said Carbondale Machine Company to the said refrigerating machines shall be hereafter established, that then the said Carbondale Machine Company may be paid in full the balance hereafter found to be due to

it on account of the installation of said machines, from the proceeds of sale of the said property; but if it be found said company has not title to said machines, but has a vendor's or other lien against said machines or property, that then such lien shall attach to the proceeds of the sale of said property; and the counsel for the receivers and the counsel for the respective lienors now present, consenting that the rights, if any, of the said Carbondale Machine Company may be preserved in the manner aforesaid.

And the Court having duly considered the said applciation of the receivers, and the said matter of the Carbondale Machine Company, and it appearing to the Court that the aforesaid property of the defendant company is incumbered with mortgages and other liens, as hereinafter specifically recited, the legality of which are brought in question, and that the said property is of a character materially to deteriorate in value pending litigation, and sufficient cause appearing therefor:

It is on this twenty-third day of May, nineteen hundred and four, on motion of McDermott and Fisk, of counsel with John W. Hardenbergh and Palmer Campbell, receivers of the defendant company, ORDERED that said receivers sell the lands of the defendant, situated in Jersey City, New Jersey, and the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets, said lands being particularly described as follows:

ALL that certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost street and Thirteenth street and running

in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred feet to Thirteenth street, and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

And it is further ordered that the said receivers sell the said property clear of the followng mortgages and other liens, that is to say:

(1) Trust mortgage by the defendant company to Commercial Trust Company of New Jersey, Trustee, dated February second, nineteen hundred and three, recorded in Hudson County Register's office February twenty-first, nineteen hundred and three, in Book 486 of Real Estate Mortgages, page 391, and in Book 207 of Chattel Mortgages, page 416, to secure an issue of first mortgage gold bonds of the defendant company in the aggregate amount of one hundred and fifty thousand dollars.

(2) Mortgage of the defendant company to the Erie Railroad Company, dated December sixteenth, nineteen hundred and three, recorded December eighteenth, nineteen hundred and three, in Hudson County Register's office in Book 504 of mortgages, page 633, to secure the company's bond for sixteen thousand five hundred dollars.

(3) Mechanics liens filed in the Hudson County Clerk's office as follows:

No. 2743, L. 8, P. 152, February 25, 1904, $12,833.14, The Taylor-Martin Engineering Company.

No. 2745, L. 8, p. 154, March 10, 1904, $25,075.35,

Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L. 8, p. 154, March 12, 1904, $4,160.67, Heine Safety Boiler Company.

No. 2748, L. 8, p. 155, March 21, 1904, $1,325.00, Electric Construction and Supply Company.

No. 2749, L. 8, p. 156, March 21, 1904, $1,699.75, Electric Construction and Supply Company.

No. 2751, L. 8, p. 157, March 28, 1904, $1,302.50, B. F. Sturtevant Company.

No. 2753, L. 8, p. 158, April 6, 1904, $155.00, Timothy W. Dorsett.

May 6, 1904, $975.00, Robert A. Keasbey Company.

(4) All title or lien of the Carbondale Machine Company to or upon refrigerating machines now installed in the cold storage plant of the defendant company.

And it is further ordered that from the proceeds of said sale, said receivers do pay and discharge all taxes, water rents and other municipal charges now a lien against said property, and do pay the ablanec of said proceeds of sale into this Court, there to remain subject to the same liens and equities as was the property before sale, including the claim of title or lien of Carbondale Machine Company, and to be disposed of as this Court shall direct.

And it is further ordered that said receivers make such sale by public auction at a time and place and under terms and conditions to be fixed by them, provided, however, such sale shall take place at such time as to enable the receivers to report the result thereof for the confirmation of this Court on Monday, June twentieth, nineteen hundred and four, at Chancery Chambers, in Jersey City, and that the receivers give at least five days previous notice by mail to all lienors, creditors and stockholders of the defendant Company of the said report and motion for confirmation of sale.

It is further ordered that nothing herein contained shall prevent the receivers from negotiating a private sale of said property, before the time fixed for sale by public auction, provided such sale shall be reported to the Court for confirmation, and that five days' notice of application to confirm such report at private sale be given to all lienors, creditors and stockholders of the defendant Company.

And it is further ordered that said receivers be authorized in their discretion to expend a sum not exceeding two hundred and fifty dollars in advertising said property for sale at public auction.

Respectfully advised,

EUGENE STEVENSON,
V. C.

W. J. MAGIE,
C.

NOTICE AND PETITION OF FRANKLIN B. LORD AND ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

SIRS:—

TAKE NOTICE, that on Monday the thirteenth day of June, nineteen hundred and four, at ten o'clock in the forenoon, at the Chancery Chambers in the City of Jersey City, we shall make an application for an order enjoining the sale of the property and assets of Jarvis Terminal Cold Storage Company, advertised to be sold on the fourteenth instant, in ac-

cordance with the prayer of the petition served herewith.

Dated, June, 6th, 1904.

Yours, &c.,
VREDENBURGH, WALL & VAN WINKLE,
Solicitors for and of Counsel with
Complainant

TO

JOHN W. HARDENBERGH and PALMER CAMPBELL, Esqrs.,
Receivers of Jarvis Terminal Cold Storage Co.

IN CHANCERY OF NEW JERSEY.

BETWEEN	
GUSTAV W. LIMBECK,	
Complainant,	ON BILL, &c.
and	PETITION OF
JARVIS TERMINAL COLD STORAGE COMPANY,	FRANKLIN B. LORD.
Defendant.	

To His Honor, William J. Magie, Chancellor of the State of New Jersey:—

IN CHANCERY OF NEW JERSEY.

Your petitioner, Franklin B. Lord, of Lawrence, Long Island, on his own behalf and on behalf of all

other persons similiarly situated who shall come in and contribute to the expenses of this proceeding, respectfully shows:—

I. Petitioner is the bona fide owner and holder of bonds numbered 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, inclusive, being part of an authorized issue of 150 First Mortgage Gold Bonds of One Thousand Dollars each, of the Jarvis Terminal Cold Sorage Company (hereinafter referred to as the Storage Company), secured by a mortgage duly executed by said company to Commercial Trust Company of New Jersey, trustee, dated February second nineteen hundred and three, and recorded in the Hudson County Register's office February twenty-first, nineteen hundred and three, in Liber 486 of Real Estate Mortages, Page 391, and in Liber 207 of Chattel Mortgages, Page 416. The properties covered by said mortgage are:—

1. All that certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:—

Beginning at a point at the southwest corner of Provost stret and Thirteenth street and running in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street, one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred feet to Thirteenth street ,and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

Together with all the right, title and interest of the said party of the first part in or to Twelfth and Thirteenth streets and the lands forming the same

lying opposite to and adjoining the said premises; and all the right, title and interest of the said party of the first part in or to Provost street and the land forming the same lying opposite to and adjoining the said premises to the centre line of said Provost street, being the same premises which were conveyed by deed dated October 21st, 1902, from Nathalie Jarvis to the Storage Company.

Together with all and singular the tenements, hereditaments and appurtenances to the same belonging to or in any wise appertaining. Also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in or to the above described premises and to every part and parcel thereof, with the appurtenances.

2. All the right, title and interest of the Storage Company in and to the tracks situated on Twelfth street, in Jersey City, in front of the premises hereinabove described and connecting with the tracks of the Erie Railroad Company, at or near Meadow or Barnum street, and the right to use the same as acquired by the Storage Company under an agreement with Robert M. Jarvis, dated October 27, 1902.

3. All machinery, boilers, engines, appliances and fixtures upon the said land and premises; also all machinery, fixtures and other property to be brought in and upon said premises to replace that which may be worn or as a substitute thereof, and also all other machinery, fixtures or property brough in and upon said premises as additions to or extensions of the cold storage plant or warehouse erected or to be erected on said premises; all of which is hereby declared to be a single plant and is to be considered and treated as land and real estate for all purposes hereof; and all other property, real, personal or mixed, now owned by the Storage Company, or hereafter acquired by it, together with all

and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title and interest, property, possession, claim and demand as well in law as in equity of the Storage Company of, in and to the same and every part and parcel thereof with the appurtenances.

4. All and singular the corporate rights, privileges and franchises of the Storage Company now owned or hereafter to be acquired by it.

Saving and excepting, however, all merchandise, accounts receivable, bills receivable and cash, all of which are expressly reserved by the Storage Company and excepted from the lien of this mortgage, provided, however, and it is expressly agreed, that in case default shall be made in the payment of any of said bonds when the same shall mature or be sooner payable under the provisions hereof, then and in such case all merchandise, accounts receivable, bills receivable and cash of the said mortgagor shall thereupon become and be subject to the lien of this mortgage.

II. Petitioner paid in cash for said ten bonds, as follows:

May 6, 1903, $900; April 15, 1903, $900; May 15, 1903, $7,200.

III. On the twelfth day of May, nineteen hundred and three, John W. Hardenberg and Palmer Campbell, Receivers of the Storage Company appointed by this honorable Court, in proceedings in the above stated cause, presented and filed their report number three, being an application for an order to sell certain of the properties described in the mortgage above referred to, viz: the lands above described with the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets, clear of all mortgages and mechanics

liens on said property. A copy of said report and application is annexed hereto and marked "A".

IV. Petitioner had no notice or knowledge of the making, filing and presentment of said report and application.

V. Such proceedings were thereupon had that on the sixteenth day of May, nineteenth hundred and four, this honorable Court by an order returnable May twenty-third, nineteen hundred and four, directed the persons named therein to show cause why the receivers should not be authorized to sell the aforesaid lands and cold storage plant, including fixtures and trackage rights in adjacent streets, clear of all mortgages, mechanics and other liens on said property. A copy of said order of the sixteenth day of May is annexed hereto and marked "B".

VI. Petitioner had no notice or knowledge of the making of said order until after the return day named therein.

VII. Thereupon, on the twenty-third day of May, nineteen hundred and four, such proceedings were had that this honorable Court, no one objecting thereto, made an order for the receivers to sell the property clear of all liens. A copy of said order of sale is annexed hereto and marked "C."

VIII. Petitioner had no notice or knowledge of the making of said order until after the making thereof.

IX. Petitioner denies that the legality, priority and extent of the said mortgages and mechanics liens enumerated on Exhibit "A" attached has been brought in question, and denies that the property covered by the said first mortgage is of a character materially to deteriorate pending litigation, and says that the security of petitioner's bonds will not deteriorate pending litigation.

X. Petitioner is informed that a public sale has been advertised by the said receivers to be held June fourteen, nineteen hundred and four, as will appear

by a copy of the notice of sale annexed hereto marked "D".

XI. The properties covered by the said first mortgage are inventoried by the receivers as follows:

Land	$ 37,000.00
Construction (paid)	157,401.07
Construction (due)	28,285.96
Equipment (paid)	64,096.08
Equipment (due)	46,161.29
Total	$332,944.40
The total assets stated in said inventory being	$350,720.23
And the total liabilities	282,930.17

And are amply sufficient to pay in full all moneys due or to grow due to the holders of bonds thereunder as well as to pay such of the mechanics lineors as may have claims prior to the lien of the mortgage by virtue of the Mechanics Lien Act; and your petitioner says and charges the fact to be that if the receivers are permitted to carry out the sale as advertised, persons acting in the interest of subsequent incumbrances and the holders of the equity of redemption, will buy in the said property at a price insufficient to pay prior incumbrances and profit unjustly at the expense of your petitioner and other first mortgage bondholders who, to protect their holdings, would be forced to bid at least the amount of the first mortgage in cash.

XII. The sale as proposed is unjust to your petitioner in the further respect that it separates the properties described in said mortgage and subject to the lien thereof, and arbitrarily excludes from said sale all the property mentioned in the mortgage and not included in the property advertised to be sold; whereas it is to the interest of your petitioner and

other bondholders that if a sale shall be had, all the property subject to the lien of said mortgage shall be sold as an entirety.

XIII. The proposed sale would work further injustice to your petitioner for the reason that in the order for sale of May twenty-third, nineteen hundred and four, it was ordered on the agreement of the counsel of the receivers and of the lienors then present, that in the event of the Carbondale Machine Company succeeding in establishing title to certain machines in the defendant's cold storage plant, that then said machine company should be paid in full the balance thereafter found to be due it for the installation of said machines, from the proceeds of sale of said property; but if it should be found that said company had not title to said machines but had a vendor's or other lien against said machines or property, that then such lien should attach to the proceeds of sale of said property. The Carbondale Machine Company appears in the inventory of the receivers as a general claimant in the sum of fifteen thousand nine hundred and thirty-three dollars. And your petitioner says that, as appears by said order, the Carbondale Machine Company was not a mechanics lienor and that the counsel then present had not the right to create a mechanics lien or other lien in the alternative on the property subject to said first mortgage.

Wherefore your petitioner prays first, that the said sale be enjoined except upon terms that it be made subject to the lien of the said first mortgage, or unless the said sale be made on terms that the properties advertised to be sold be not sold except for a price sufficient to pay in full the said first mortgage, with interest thereon, as well as the sums due on lien claims, which take precedence to the said mortgage.

Second, that the receivers shall set forth and discover the manner in which the legality of the said

mortgage has been called in question and the names of the lienors who call the same in question; and also what arrangement or plan has been made or is under consideration whereby provision will be made either in cash, securities, negotiable paper or stock for any of the lienors or encumbrances and third, for such other and further relief as to this honorable Court may seem equitable and just.

And your petitioners will ever pray, &c.

VREDENBURGH, WALL & VAN WINKLE,
Solicitors for and of Counsel with Petitioner.

"A."

John W. Hardenbergh and Palmer Campbell, appointed in the above cause receivers of the defendant company, respectfully show:

1. That they have duly qualified as such receivers and have taken into their possession the property and assets of the defendant company and are now conducting the cold storage business of the company at the plant located on Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey.

2. That the principal and practically the only valuable asset of the defendant company is the cold storage plant aforesaid, with the machinery, fixtures and railroad trackage rights in adjacent streets, located on lands belonging to the company and described in the deed for the same as follows:

ALL THAT certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost street and Thirteenth street and running

in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred feet to Thirteenth street, and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

3. That the said lands and the cold storage warehouse with the machinery and fixtures therein contained were incumbered at the time of the appointment of the receivers with mortgages and other liens as follows:

(1st). Trust mortgage by the defendant company to Commercial Trust Company of New Jersey, trustee, dated February second, nineteen hundred and three, recorded in Hudson County Register's office, February twenty-first, nineteen hundred and three, n Book 486 of Real Estate Mortgages, page 391, and in Book 207 of Chattel Mortgages, page 416, to secure an issue of first mortgage gold bonds of the defendant company in the aggregate amount of one hundred and fifty thousand dollars.

(2d.) Mortgage of the defendant company to the Erie Railroad Company, dated December sixteenth, nineteen hundred and three, recorded December eighteenth, nineteen hundred and three, in Hudson County Register's office in Book 504 of Mortgages, page 633, to secure the company's bond for sixteen thousand five hundred dollars.

(3d.) Mechanics' liens filed in the Hudson County Clerk's office as follows:

No. 2743, L. 8, P. 152, February 25, 1904, $12,833.14; The Taylor-Martin Engineering Company.

No. 2745, L. 8, P. 154, March 10, 1904, $25,075.35; Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L 8, P. 154, March 12, 1904, $4,160.67; Heine Safety Boiler Company.

No. 2748, L. 8, P. 155, March 21, 1904, $1,325.00; Electrical Construction and Supply Company.

No. 2749, L. 8, P. 156, March 21, 1904, $1,699.75; Electrical Construction and Supply Company.

No. 2751, L. 8, P. 157, March 28, 1904, $1,302.50; B. F. Sturtevant Company.

Since the appointment of the receivers, liens have been filed as follows:

No. 2753, L. 8, P. 156, April 6, 1904, $155.00; Timothy W. Dorsett.

May 6, 1904, $975; Robert A. Keasbey Co.

4. That the legality, priority and extent of the said mortgages and mechanics liens is brought in question in the following particulars:

It is claimed by certain of the mechanics lienors that their contracts with the defendant company were entered into and work and construction thereunder was actually begun before the execution, delivery and record of the two mortgages on the property, and that their liens are prior to that of the mortgagees. These claims are disputed by the mortgagees.

It is claimed by certain of the mechanics lienors that in the event of the mortgage by the defendant to the Commercial Trust Company of New Jersey, trustee, to secure the issue of bonds, being held to be a lien prior to the liens of such mechanics lienors, that then it is only such lien as against them to the extent of eighty-eight per centum of the par value of the bonds issued thereunder, that being the amount paid in by the subscribers to said bonds, which amount was advanced in payment of contract-

ors. This claim is disputed by the holders of the bonds secured by said mortgage.

It is claimed by the mechanics lienors, second mortgagee, general creditors and stockholders of the defendant company, that although the trust mortgage is given to secure a total issue of one hundred and fifty thousand dollars of bonds and bonds to that amount have passed out of the possession and control of the defendant company, that twenty-five thousand dollars of the bonds were never legally disposed of by the company, and that the same do not constitute a valid lien under the trust mortgage against the assets in the receivers' hands. Twenty thousand dollars of these bonds in question are now in the possession of the United States Mortgage and Trust Company of New York, and five thousand dollars of these bonds are held by some person or persons unknown to the receivers. This claim is disputed by the United States Mortgage and Trust Company of New York and presumably is disputed by the unknown holder or holders of the remaining five thousand dollars of bonds in question.

5. That the receivers are now, under direction of the Court, operating the cold storage plant and conducting the business; that the business now being done and in prospect is barely sufficient to pay the running expenses of the plant for labor, coal and other plant charges, without providing for taxes, charges for metered water and insurance; that as the cold storage business is conducted it is essential to the successful running of the business that the warehouseman should be in a position to arrange advances of money on the goods of customers stored with him; this the receivers are not in a position to do, and consequently they are obliged to refuse a considerable amount of business that is offered to them on such terms. The conducting of a cold storage warehouse is a hazardous business due to the danger of accident to the machinery and the great

loss that would follow any temporary stoppage of the plant.

The receivers are of the opinion that it would be unwise for them to conduct the business any longer than is necessary to secure a sale of the plant and property; that such sale cannot be made with advantage, subject to said liens thereon while their legality priority and extent remain in question; and that if a sale of the plant and property should be postponed until the questions as to priority, legality and extent of the liens were determined by judicial procedure, the property would materially depreciate in value.

6. The receivers respectfully ask the direction of the Court in the premises, and that an order may be made authorizing the receivers to sell the said real estate with the cold storage plant, including machinery and fixtures and trackage rights in adjacent streets. clear of the mortgages and mechanics' liens on the property and plant, and that when so sold the money realized from such sale less all municipal liens and charges to be first paid by the receivers, may be paid into this Court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, and to be disposed of as this Court shall then direct.

7. That in order to effect such sale, the receivers recommend that they be authorized to advertise for sealed proposals of purchase to be received at a time and place to be fixed by the receivers, under terms and conditions to be made by them, and the acceptance of any such proposal of purchase to be subject to the approval of this Court; that for the purpose of properly advertising for such proposals of purchase, the receivers be permitted in their discretion, to expend a sum not exceeding two hundred and fifty dollars.

Dated May 12, 1904.

Receivers.

Counsel.

"B".

The receivers of the above named defendant corporation having presented and filed their report number two, dated May tenth, nineteen hundred and four, being an inventory of assets and list of debts, it is ordered that a copy thereof, which need not be certified, be deposited by the receivers with the Sergeant-atArms, Chancery Chambers in Jersey City, where it may be inspected by creditors and stockholders.

The receivers having also presented and filed their report number three, dated May twelfth, nineteen hundred and four, being an application for an order authorizing them to sell the lands of the defendant company situated on Provost, Twelfth and Thirteenth streets, Jersey City, with the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets, clear of all mortgages and mechanics' liens on said property:

IT IS, on this sixteenth day of May, nineteen hundred and four, on motion of McDermott & Fisk, of counsel with the receivers, ORDERED that the mortgagees, creditors and stockholders of the defendant company show cause at Chancery Chambers in Jersey City, on May twenty-third, nineteen hundred and four, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why the receivers should not be authorized to sell the aforesaid lands and cold storage plant, including machinery and fixtures and trackage rights in adjacent streets, clear of all mortgages, mechanics' and other liens on said property, and in order to effect such sale, why the receivers should not be authorized to advertise for sealed proposals of purchase to be received at a time and place and under terms and conditions to be fixed by them, the acceptance of any such proposal to be subject to the approval of this Court; and why the

receivers should not be permitted in their discretion to expend a sum not exceeding two hundred and fifty dollars in advertising for such proposals of purchase.

AND IT IS FURTHER ORDERED that copies of this order be served on the stockholders and creditors (other than creditors holding mortgages or mechanics' liens against said lands and buildings of the defendant corporation) within three days from date hereof, by mailing such copies to such stockholders and creditors to their post office addresses as nearly as the same can be ascertained, and that copies of this order and of the said receivers' report number three be served within the same time upon the following creditors of the defendant company, or their attorneys, who hold mortgages on or have filed mechanics' liens against the lands and buildings of the defendant company, viz:

(1) Commercial Trust Company of New Jersey, trustee; (2) Erie Railroad Company; (3) The Taylor-Martin Engineering Company; (4) Frederick W. Cane, trading as W. H. & F. W. Cane; (5) Heine Safety Boiler Company; (6) Electrical Construction and Supply Company; (7) B. F. Sturtevant Company; (8) Timothy W. Dorsett; (9) Robert A. Keasbey Company.

IT IS FURTHER ORDERED that service of uncertified copies of this order and of the said report shall be sufficient.

Respectfully advised,

WILLIAM J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

"C".

The report number three and application for leave to sell property clear of liens, dated May twelfth, nineteen hundred and four, of John W. Hardenbergh and Palmer Campbell, the receivers appointed in the above cause for the defendant corporation, having been heretofore presented and filed and an order to show cause thereon dated May sixteenth, nineteen hundred and four, having been heretofore made requiring the mortgagees, creditors and stockholders of the defendant corporation to show cause at this time and place why the said receivers should not be authorized to sell the lands of the defendant company situated on Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, (being the lands hereinafter particularly described), and the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets, clear of all mortgages, mechanics and other liens on said property; and in order to effect such sale, why the receivers should not be authorized to advertise for sealed proposals of purchase to be received at a time and place and under terms and conditions to be fixed by them, the acceptance of any such proposal to be subject to the approval of this Court; and why the said receivers should not be permitted, in their discretion, to expend a sum not exceeding two hundred and fifty dollars in advertising for such proposals of purchase.

And proof being now presented and filed that the said order to show cause and the said receivers report number three and application have been duly served on the mortgagees, creditors and stockholders of the defendant company within the time and in the manner as in said order provided; and the said application of the said receivers and the said order to show cause now coming on to be heard in the presence of McDermott & Fisk, of counsel with the

receivers; of William Brinkerhoff, of counsel with the Commercial Trust Company of New Jersey, trustee, mortgagee; of Charles L. Corbin, of counsel with the Erie Railroad Company, mortgagee; of James A. Nott, Jr., of counsel with The Taylor-Martin Engineering Company, Electric Construction and Supply Company and Robert A. Keasbey Company, mechanics lienors; of Robert L. Lawrence, of counsel with F. W. Cane, trading as W. H. & F. W. Cane, mechanics lienor; of James P Northrop, of counsel with Heine Safety Boiler Company, mechanics lienor; of George M. Keasbey, of counsel with B. F. Sturtevant Company, mechanics lienor; (no one appearing for Timothy W. Dorsett, mechanics lienor); and none of said counsel presenting any objection to the making of an order for the receivers to sell said property clear of the liens they respectively represent; and all of said counsel except the counsel of the Commercial Trust Company of New Jersey, trustee, consenting to the making of the order; and Randolph Perkins and Edward Russ appearing as counsel for the Carbondale Machine Company, a creditor of the defendant company, and presenting and filing an affidavit in behalf of said Carbondale Machine Company wherein is asserted the claim of the said company to the ownership of certain refrigerating machines in the defendant's cold storage plant, and stating that in the event of such claim of title not being maintained, that then it claimed a vendor's lien on said machines or a right to a mechanics lien against said lands and building; and said counsel consenting on behalf of said Carbondale Machine Company to the making of this order and the sale of said refrigerating machines by the receivers upon condition that if the title of the said Carbondale Machine Company to the said refrigerating machines shall be hereafter established, that then the said Carbondale Machine Company may be paid in full the balance hereafter found to be due to it on account of the installation of said machines, from the proceeds of sale of

the said property; but if it be found said company has not title to said machines, but has a vendor's or other lien against said machines or property, that then such lien shall attach to the proceeds of the sale of said property; and the counsel for the receivers and the counsel for the respective lienors now present consenting that the rights, if any, of the said Carbondale Machine Company may be preserved in the manner aforesaid; and the Court having duly considered the said application of the receivers, and the said matter of the Carbondale Machine Company; and it appearing to the Court that the aforesaid property of the defendant company is incumbered with mortgages and other liens, as hereinafter specifically recited, the legality of which are brought in question, and that the said property is of a character materially to deteriorate in value pending litigation, and sufficient cause appearing therefor:

IT IS, on this twenty-third day of May, nineteen hundred and four, on motion of McDermott & Fisk, of counsel with John W. Hardenbergh and Palmer Campbell, receivers of the defendant company,

ORDERED that said receivers sell the lands of the defendant situated in Jersey City, New Jersey, and the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets, said lands being particularly described as follows:

ALL THAT certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost street and Thirteenth street and running in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence

northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred feet to Thirteenth street, and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

AND IT IS FURTHER ORDERED that the said receivers sell the said property clear of the following mortgages and other liens, that is to say:

(1) Trust mortgage by the defendant company to Commercial Trust Company of New Jersey, trustee, dated February second, nineteen hundred and three, recorded in Hudson County Register's office, February twenty-first, nineteen hundred and three, in Book 486 of Real Estate Mortgages, page 391, and in Book 207 of Chattel Mortgages, page 416, to secure an issue of first mortgage gold bonds of the defendant company in the aggregate amount of one hundred and fifty thousand dollars.

(2) Mortgage of the defendant company to the Erie Railroad Company dated December sixteenth, nineteen hundred and three, recorded December eighteenth, nineteen hundred and three in Hudson County Register's office in Book 504 of Mortgages, page 633, to secure the company's bond for sixteen thousand five hundred dollars.

(3) Mechanics liens filed in the Hudson County Clerk's office as follows:

No. 2743, L. 8, p. 152, February 25, 1904, $12,833.14; The Taylor-Martin Engineering Company.

No. 2745, L. 8, p. 154, March 10, 1904, $25,075.35; Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L. 8, p. 154, March 12, 1904, $4,160.67; Heine Safety Boiler Company.

No. 2748, L. 8, p. 155, March 21, 1904, $1,325.00; Electric Construction and Supply Company.

No. 2749, L. 8. p. 156, March 21, 1904, $1,699.75; Electric Construction and Supply Company.

No. 2751, L. 8, p. 157, March 28, 1904, $1,302.50; B. F. Sturtevant Company.

No. 2755, L. 8, p. 158, April 6, 1904, $155.00; Timothy W. Dorsett.

May 6, 1904, $975.00; Robert A. Keasbey Company.

(4) All title or lien of the Carbondale Machine Company to or upon refrigerating machines now installed in the cold storage plant of the defendant company.

AND IT IS FURTHER ORDERED that from the proceeds of said sale, said receivers do pay and discharge all taxes, water rents and other municipal charges now a lien against said property, and do pay the balance of said proceeds of sale into this Court, there to remain subject to the same liens and equities as was the property before sale, including the claim of title or lien of Carbondale Machine Company, and to be disposed of as this Court shall direct.

AND IT IS FURTHER ORDERED that said receivers make such sale by public auction at a time and place and under terms and conditions to be fixed by them, provided, however, such sale shall take place at such time as to enable the receivers to report the result thereof for the confirmation of this Court on Monday, June twentieth, nineteen hundred and four, at Chancery Chambers in Jersey City, and that the receivers give at least five days previous notice by mail to all lienors, creditors and stockholders of the defendant company of the said report and motion for confirmation of sale.

AND IT IS FURTHER ORDERED that nothing herein contained shall prevent the receivers from negotiating a private sale of said property before

the time fixed for sale by public auction, provided such private sale shall be reported to the Court for confirmation, and that five days notice of application to confirm such report at private sale be given to all lienors, creditors and stockholders of the defendant company.

AND IT IS FURTHER ORDERED that said receivers be authorized in their discretion to expend a sum not exceeding two hundred and fifty dollars in advertising said property for sale at public auction.

Respectfully advised,
WM. J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

NOTICE OF SALE.

RECEIVERS' SALE.

JARVIS TERMINAL COLD STORAGE COMPANY.

Frank Stevens, Auctioneer.

Pursuant to an order of the Court of Chancery of New Jersey, dated May 23, 1904, the undersigned, receivers of the Jarvis Terminal Cold Storage Company will on

TUESDAY, JUNE 14, 1904,

at two o'clock in the afternoon, on the premises—Provost, Twelfth and Thirteenth streets, Jersey City,

New Jersey, sell at public auction to the highest bidder the following property:

ALL that certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost street and Thirteenth street and running in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred (100) feet to Thirteenth street; and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

Including the cold storage warehouse thereon erected, with all the machinery and fixtures therein contained, and railroad trackage rights in adjacent streets, as provided in an ordinance of the Common Council of Jersey City, passed April 26, 1864. The property will be sold clear of taxes, mortgages, mechanics liens and other encumbrances. The cold storage plant has recently been completed and is of scientific and modern construction, having a storage capacity of about eight hundred thousand cubic feet. The business is now being conducted by the receivers under the authority of the Court. Permits to inspect the plant and further particulars may be obtained on application to any of the undersigned. Five per cent. of the bid price is to be paid when the

property is struck off; other conditions and terms will be announced at time of sale.

Dated May 25, 1904.

John W. Hardenbergh,
15 Exchange Place,
Jersey City, N. J.
Palmer Campbell,
1 Newark Street,
Hoboken, N. J.
Receivers.

McDermott & Fisk,
Counsel,
15 Exchange Place,
Jersey City, N. J.

RECEIVERS' SALE.

JARVIS TERMINAL COLD STORAGE COMPANY.

Frank Stevens Auctioneer.

Pursuant to an order of the Court of Chancery of New Jersey, dated May 23 1904, the undersigned, receivers of the Jarvis Terminal Cold Storage Company, will on

TUESDAY, JUNE 14, 1904,

at two o'clock in the afternoon, on the premises—Provost, Twelfth and Thirteenth Streets, Jersey City, New Jersey, sell at public auction to the highest bidder the following property:

ALL that certain tract or parcel of land and premises situate lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost Street and Thirteenth Street and running in a southerly direction along the westerly side of Provost Street two hudred (200) feet to Twelfth Street; thence westerly along the northerly side of Twelfth Street one hundred and fifty (150) feet; thence northerly and parallel with Provost Street one hundred (100) feet; thence easterly and parallel with Twelfth Street twenty-five (25) feet; thence northerly and parallel with Provost Street one hundred (100) feet to Thirteenth Street; and thence easterly along the southerly side of Thirteenth Street one hundred and twenty-five (125) feet to the place or point of beginning.

Including the cold storage warehouse thereon erected, with all machinery and fixtures therein contained, and railroad trackage rights in adjacent streets, as provided in an ordinance of the Common Council of Jersey City passed April 26, 1864. The property will be sold clear of taxes, mortgages mechanics liens and other encumbrances. The cold storage plant has recently been completed and is of scientific and modern construction, having a storage capacity of about eight hundred thousand cubic feet. The business is now being conducted by the receivers under authority of the Court. Permits to inspect the plant and further particulars may be obtained on application to any of the undersigned. Five per cent. of the bid price is to be paid when the property is struck off; other conditions and terms will be announced at time of sale.

Dated May 25, 1904.

John W. Hardenbergh,
15 Exchange Place,
Jersey City, N. J.
Palmer Campbell,
1 Newark Street,
Hoboken, N. J.
Receivers.

McDermott & Fisk,
Counsel,
15 Exchange Place,
Jersey City, N. J.

ANSWER OF RECEIVERS.

The answer of John W. Hardenbergh and Palmer Campbell, receivers of the Jarvis Terminal Cold Storage Company to the petition of Franklin B. Lord, filed on his own behalf and on behalf of all other persons similarly situated who shall come in and contribute to the expenses of the proceedings, respectfully shows:—

I. The receivers admit the allegations set forth in the third, fifth, seventh and tenth paragraphs of the petition.

II. The receivers have no knowledge, save as set forth in said petition, of the truth of the allegations contained in the second, fourth, sixth and eighth paragraphs of the petition.

III. The receivers have no knowledge, save as set forth in the first paragraph of the petition, that the petitioner is the owner of any bonds of the defendant Company, but the receivers admit that there is a mortgage executed by the defendant Company to the Commercial Trust Company of New Jersey, Trustee, dated February second, nineteen hundred and three, to secure an issue of one hundred and fifty thousand dollars first mortgage gold bonds of one thousand dollars each, dated, recorded and covering the property as set forth in said first paragraph of the petition.

IV. In answer to the allegation of the ninth paragraph of the petition wherein the petitioner denies that the legality, priority and extent of

the mortgage and other liens on the defendant property has been brought in question, and denies that the said property is of a character materially to deteriorate pending litigation, the receivers say that the matters and things aforesaid have been duly presented to and considered by this Court after notice to all parties in interest, and after hearing thereon, and that the questions aforesaid have been duly and finally adjudicated by this Court.

V. The receivers admit that, pursuant to the order of this Court, they have advertised the property and plant of the defendant Company for sale at public auction on June fourteenth, nineteen hundred and four, at two o'clock in the afternoon. That the receivers have caused the said sale to be advertised in the Jersey City Evening Journal and the Hoboken Observer, two newspapers printed and published in the County of Hudson where the land is situated, in the New York Herald and the New York Commercial and Price Current, two newspapers printed and published in the City of New York, in "Ice & Refrigeration" and "National Provisioner," two trade publications, and in addition have caused copies of the notiec of sale to be mailed to all stockholders, bondholders and creditors of the defendant Company, and to a list of persons whom the receivers are advised would be likely to be interested in the sale of property of this character. The receivers have employed an auctioneer to make sale of the property and the auctioneer has caused to be mailed to persons interested in the cold storage warehouse business a large number of notices of sale of the property, and the receivers have made all preparations for the sale, and have given it wide publicity, to the end that the best price may be obtained at such sale.

VI. The receivers admit that in their report number two, being inventory of assets and list of debts heretofore filed by them, the assets and liabilities are therein given as stated in the eleventh paragraph of

the petition, but the receivers further answering say that as stated in said inventory and list of debts, the time for the filing of claims with the receivers had not then expired, and the receivers were unable to state the total amount of liabilities of the defendant Company until the period for filing claims should have expired. The receivers deny that if permitted to carry out the sale as advertised, persons acting in the interest of subsequent encumbrances and the holders of the equity of redemption will buy in the said property at a price insufficient to pay prior encumbrances and profit unjustly at the expense of the petitioner and other first mortgage bondholders. That under the terms of the order directing the receivers to sell, the sale is made subject to report to and confirmation by this Court on notice to parties in interest.

VII. The receivers know of no property of the defendant Company covered by the mortgage to secure the mortgage bonds that is excluded from the sale as advertised by them and therefore they deny the allegations as set forth in the twelfth paragraph of the petition.

VIII. The receivers deny that under the terms of the order for sale, dated May twenty-third, nineteen hundred and four, the Carbondale Machine Company was given any title to or lien upon the proceeds of sale of the land and cold storage plant; that said Company did not have against the land and building, but on the contrary under the terms of the order of sale the proceeds of the sale are to be brought into this Court, there to be subject to the same liens and equities as was the property before sale.

IX. The receivers in further answer to said petition say that the said petitioner had knowledge of the said order for sale clear of liens and of the notice of sale for June fourteenth on or before May twenty-sixth last, as on that date said petitioner communi-

cated with the receivers in respect to said proposed sale.

X. The receivers therefor ask that the relief petitioned for be denied, and that the said petition be dismissed.

McDermott & Fisk,
Solicitors and Counsel
with Receivers.

(Affidavits attached.)

RECEIVERS' REPORT NO. 4.

(Application for further direction as to sale of property.)

Filed June 20, 1904.

John W. Hardenbergh and Palmer Campbell, receivers of the defendant Company appointed in the above cause respectfully show:—

1. That by order made herein, dated May twenty-third, nineteen hundred and four, the receivers were directed to sell the lands of the defendant Company, situated on Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, and the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets clear of certain mortgages and other liens in said order specifically set out, and that they make such sale by public auction at a time and place and under terms and conditions to be fixed by them, provided, however, that such sale should take place at such time as to enable the receivers to report the result thereof for the confirmation of the Court on Monday, June twentieth, nineteen hundred and four, at Chancery Chambers, in Jersey City, and that the receivers give at least five

days previous notice by mail to all lienors, creditors and stockholders of the defendant Company of the said report and motion for confirmation of sale.

2. That by further order made herein, dated June thirteenth, nineteen hundred and four, the order for sale dated May twenty-third, nineteen hundred and four was confirmed, and it was further ordered that at the sale to be made by the receivers on June fourteenth, nineteen hundred and four that no bid be accepted by the receivers for a less sum than one hundred and ninety thousand dollars.

3. That pursuant to said order of sale of May twenty-third, nineteen hundred and four, the receivers advertised said property for sale at public auction on Tuesday, June fourteenth, nineteen hundred and four, at two o'clock in the afternoon, on the premises in the form of advertisement, a copy of which is hereto attached marked "Schedule A." That the receivers caused said notice of sale to be published in the Jersey City Evening Journal and in the Hoboken Observer, two newspapers printed and published in the County of Hudson, on May twenty-sixth and thirty-first, June second, seventh, ninth and thirteenth; in the New York Commercial and Price Current on May twenty-seventh and thirty-first, June second and seventh; in the New York Herald on May twenty-ninth and June fifth; in the National Provisioner, a monthly trade journal, on May twenty-eighth; in "Ice and Refrigeration," a monthly trade journal, on June first. That in addition to said publications, the receivers caused copies of said notice of sale to be mailed to all stockholders, creditors, bondholders and lienors of the defendant company so far as their names and addresses could be ascertained, and also caused copies of said notice of sale to be mailed to a number of firms, corporations and individuals that the receivers considered would be interested in a sale of property of this character. The receivers are informed and believe that the sale

was widely and sufficiently advertised and that in addition to the published notices of the receivers, newspaper comment on the proposed sale was made in many publications in the principal cities of the United States.

4. That the receivers employed Frank Stevens, Esquire a licensed auctioneer in Jersey City, to cry off the property, and that the auctioneer also circulated a considerable number of the notices of sale.

5. That on June fourteenth, nineteen hundred and four at the time and place advertised, said receivers, through said auctioneer, offered the said property for sale at public auction under conditions of sale announced at the time and place of sale, a copy of which conditions of sale is hereto attached marked "Schedule B."

6. That as required by order of this Court, dated June thirteenth, nineteen hundred and four, it was announced as one of the conditions of sale that no bid for said property would be received or reported for confirmation below one hundred and ninety thousand dollars.

7. That there were present at the sale between forty and fifty persons and the property was duly offered for sale but no bid whatever was made or received, and that thereupon the auctioneer on the instructions of the receivers, who were then present, stated that the facts and circumstances connected with the failure to make sale would be reported to this Court for its consideration on Monday, June twentieth, nineteen hundred and four, at ten A. M. at Chancery Chambers, Jersey City.

8. That on June fifteenth, nineteen hundred and four the receivers caused printed notices to be mailed to all stockholders, creditors, bondholders, solicitors of lienors and other persons in interest, that they would report the facts and circumstances of the failure to make sale of the property to the Court on June twentieth, nineteen hundred and four, at ten A.M.

Chancery Chambers, Jersey City at which time and place they would ask the further direction of the Court and also notice that any private offers which might be received by the receivers for the purchase of the property would at that ime and place be reported for the consideration of the Court. A proof of the mailing of said notices is submitted herewith, and a copy of the notice is hereto attached marked "Schedule C."

9. That the receivers are now conducting, under the direction of this Court, the cold storage warehouse business at a loss over actual receipts of one thousand dollars per month and upwards, and that the prospect for the continuation of the business in the hands of the receivers at a profit, or even to obtain sufficient money from the business to pay actual running expenses is unlikely, and that the longer the business and property remains in the hands of the receivers, the greater will be the loss to creditors and stockholders.

10. That no private offer for the purchase of said cold storage plant has been made to the receivers, and they are of the opinion that an order should be made permitting them to sell said property at public auction under the terms and conditions provided in said order of May twenty-third, nineteen hundred and four, but without restriction as to the bid price to be received, and they submit the matters aforesaid and ask the further direction of the Court.

Dated June 20, 1904.

Respectfully,
J. W. Hardenbergh,
Palmer Campbell,
Receivers.

McDermott & Fisk,
Counsel.

(Affidavits attached.)

SCHEDULE "A."

RECEIVERS' SALE.

JARVIS TERMINAL COLD STORAGE COMPANY.

Frank Stevens, Auctioneer.

Pursuant to an order of the Court of Chancery of New Jersey, dated May 23, 1904, the undersigned, receivers of the Jarvis Terminal Cold Storage Company, will on

TUESDAY, JUNE 14, 1904,

at two o'clock in the afternoon on the premises—Provost Twelfth and Thirteenth streets, Jersey City, New Jersey, sell at public auction to the highest bidder the following property:

ALL that certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consistng of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost street and Thirteenth street and running in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred (100) feet to Thirteenth street; and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

Including the cold storage warehouse thereon

erected, with all the machinery and fixtures therein contained, and railroad trackage rights in adjacent streets, as provided in an ordinance of the Common Council of Jersey City, passed April 26, 1864. The property will be sold clear of taxes, mortgages, mechanics liens and other encumbrances. The cold storage plant has recently been completed and is of scientific and modern construction, having a storage capacity of about eight hundred thousand cubic feet. The business is now being conducted by the receivers under authority of the Court. Permits to inspect the plant and further particulars may be obtained on application to any of the undersigned. Five per cent of the bid price is to be paid when the property is struck off; other conditions and terms will be announced at time of sale.

Dated May 25, 1904.

John W. Hardenberg,
15 Exchange Place,
Jersey City, N. J.
Palmer Campbell,
1 Newark Street,
Hoboken, N. J.
Receivers.

McDermott & Fisk,
Counsel,
15 Exchange Place,
Jersey City, N. J.

SCHEDULE "B."

JARVIS TERMINAL COLD STORAGE COMPANY.

Conditions of Receivers' Sale.

First. The property is sold pursuant to an order of the Court of Chancery of New Jersey, dated May 23,

1904, and the sale is subject to approval by the Court. The receivers will report the result of the sale to the Court of Chancery, June 20, 1904, at ten A.M. at Chancery Chambers, Jersey City, at which time and place the sale will be considered by the Court and parties in interest may attend and be heard.

Second. The property will be sold to the highest bidder, but no bid under one hundred and ninety thousand dollars will be received or reported to the Court for confirmation.

Third. Five per centum of the bid price shall be paid when the property offered is struck off. In default thereof it may be put up again and sold immediately.

Fourth. The purchaser will re required, in addition to the purchase price, to pay an auctioneer's fee of seventy-five dollars, payable when the property offered is struck off.

Fifth. In addition to the purchase price bid, the purchaser will be required at the time of taking title to pay to the receivers the amount of the accrued storage charges then due to the receivers on contracts for goods and merchandise then on storage in the storage warehouse, and to assume the storage contracts of the receivers. The receivers will at the time the purchaser takes title assign to him all accrued storage charges due to the receivers as aforesaid. These accrued storage charges amount at this date to approximately $525.

Sixth. In the event of the confirmation of the sale by the Court of Chancery the balance of the purchase price shall be paid on Tuesday, the fifth day of July, nineteen hundred and four, at two o'clock in the afternoon, at the office of McDermott and Fisk, counsel of the receivers, 15 Exchange Place, Jersey City, New Jersey, at which time and place the deed will be delivered and the assignment of storage charges made upon compliance by the purchaser with these conditions of sale.

Seventh. The purchaser will be held bound by the purchase price whether he attends to receive the deed and comply with the conditions of sale or not. If he does not so comply with them, the property may, subject to the direction of the Court of Chancery, be again advertised and sold, or the purchaser may be held liable for his bid at the option of the receivers. In case of re-sale at less price than the former bid with interest and expenses, the former purchaser will be held liable for the dificiency, to meet which the money paid by him shall be retained and applied by the receivers; signed in duplicate

Dated June 14, 1904

J. W Hardenbergh,
Palmer Campbell,
Receivers.

I have bid off the property described in the attached notice of sale for the sum of
and agree to comply with the above conditions of sale; signed in duplicate.

Dated June 14, 1904.

SCHEDULE "C."

RECEIVERS' NOTICE.

Notice is hereby given that pursuant to an order of the Court of Chancery, dated May 23, 1904, and a further order, dated June 13, 1904, the receivers of the defendant company on June 14, 1904, offered for sale at public auction the defendant's lands with the cold storage plant thereon erected, situated on Provost, Twelfth and Thirteenth Streets, Jersey City, New Jersey, and no bid was made for the said property above the upset price of $190,000, fixed by the Court.

The receivers will report these facts and circumstances and their proceedings in the premises to the Court at Chancery Chambers, Jersey City, on Monday, June 20, 1904, at ten o'clock in the forenoon, at which time and place they will ask the further direction of the Court. If, before the time above stated, the receivers receive any private offer or offers for the purchase of the said property, they will at said time and place submit the same for the consideration and direction of the Court.

Dated June 15, 1904.

J. W Hardenbergh,
Palmer Campbell,
Receivers.

McDermott & Fisk,
Counsel.

PROOF OF MAILING RECEIVERS' NOTICE OF JUNE 15, 1905.

(Filed June 20, 1904.)

RECEIVERS' REPORT NO. 5.

(Application to issue Receivers' Certificates.)

(Filed June 20, 1904.)

John W. Hardenbergh and Palmer Campbell, receivers of the defendant corporation in the above cause, respectfully show:—

1. That pursuant to the order of their appointment made herein March twenty-eighth, nineteen hundred and four, they are carrying on the cold storage warehouse business of the defendant Company at the cold storage plant, located at Provost,

Twelfth and Thirteenth streets, Jersey City, New Jersey.

2. That at no time since the receivers took possession of said business have the receipts from the business been sufficient to meet the ordinary running expenses of the plant. That the approximate expenses of running the plant without including water charges, taxes or insurance are sixteen hundred dollars a month, and that the approximate returns from the business at this time are about five hundred and thirty dollars a month. That the receivers now have unpaid bills incurred by them in running the plant amounting to approximately sixteen hundred and fifty dollars, and have no funds in hand with which to meet these bills or the current pay rolls for labor. That the receivers are without sufficient funds to meet the pay rolls for labor which became due on Saturday, June eighteenth.

3. That under order of this Court, dated May twenty-third, nineteen hundred and four, the receivers were directed to advertise the cold storage plant for sale and to expend in such advertising a sum not exceeding two hundred and fifty dollars. That the receivers advertised the property for sale in accordance with the direction of the Court, and incurred an expense therefor approximating two hundred dollars, which they have no funds in hand to meet. That in connection with said sale, said receivers employed an auctioneer at an expense of seventy-five dollars, which charge the receivers have no funds in hand to meet. That the accrued storage charges due to the receivers at this date amount to between five hundred and twenty-five dollars and six hundred dollars. That in the opinion of the receivers it will cost them to run the plant for four weeks from this date at least one thousand dollars in excess of the probable receipts from the business during that period of time.

4. The receivers report that the property, real and

personal of the defendant Company is subject to mortgages and liens as follows:—

(1) Mortgage of defendant Company to Commercial Trust Company of New Jersey, Trustee, dated February second, nineteen hundred and three, to secure an issue of bonds in the aggregate amount of one hundred and fifty thousand dollars.

(2) Mortgage of the defendant Company to the Erie Railroad Company to secure the sum of sixteen thousand five hundred dollars.

(3) Mechanics liens filed in the Hudson County Clerk's office as follows:—

No. 2743, L, 8, p. 152, February 25, 1904, $12,833.14, The Taylor-Martin Engineering Company.

No. 2745, L, 8, p. 154, March 10, 1904, $25,075.35, Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L 8, p. 154, March 12, 1904, $4,160.67, Heine Safety Boiler Company.

No. 2748, L, 8, p. 155, March 21, 1904, $1,325.00, Electric Construction and Supply Company.

No. 2749, L. 8, p. 156, March 21, 1904, $1,699.75, Electric Construction and Supply Co.

No. 2751, L. 8, p. 157 March 28, 1904, $1,302.50, B. F. Sturtevant Company

No. 2753, L. 8, p. 158, April 6, 1904, $155.00, Timothy W. Dorsett.

May 6, 1904, $975.00, Robert A. Keasbey Company.

(4) Claim or lien of the Carbondale Machine Company, as set forth in order of this Court, dated May twenty-third, nineteen hundred and four, for the sale of the cold storage plant.

(5) The receivers are of the opinion that it is to the interest of all mortgagees and lienors, as well as general creditors and stockholders, that the cold storage plant of the defendant Company should be continued in operation and until the same can be disposed of under the direction of the Court; that it is impossible without material loss to close the plant for the reason that there is on storage therein cer-

tain property which cannot be moved at this season of the year without damage or deterioration. That these perishable goods are put on storage for the season with the intention of keeping them in the storage warehouse until the cold weather of the fall or early winter will permit their removal without deterioration or loss. That the receivers are without funds to further carry on the cold storage business and without funds to meet indebtedness already incurred for carrying on the business under the direction of the Court.

6. The receivers respectfully submit the matters aforesaid for the direction and consideration of the Court, and recommended that they be authorized to borrow a sum not exceeding thirty-five hundred dollars, to be expended by them in meeting bills heretofore incurred by them in the running of the cold storage plant and to enable them to continue the running of the cold storage plant until the same may be finally disposed of by order of this Court, and to meet the expenses heretofore incurred and to be incurred by them in the administration of their trust, and that they be authorized to issue for the money so borrowed the receivers certificate or certificates, to bear interest at the rate of six per centum per annum, from the date of issue, which certificate or certificates shall be made a first lien upon the property and assets in the hands of the receivers paramount to the lien thereon of all mortgagees, mechanic lienors and creditors of the defendant Company, or that the Court may make such other order in the premises as may be deemed proper.

Dated June 20, 1904.

Respectfully,
J. W Hardenbergh,
Palmer Campbell,
Receivers.

McDermott & Fisk,
Counsel.

(Affidavits attached.)

ORDER TO SHOW CAUSE

On Report No. 5.

(Filed June 21, 1904.)

Upon reading and filing report number five, dated June twentieth, nineteen hundred and four, of John W. Hardenbergh and Palmer Campbell, receivers of the above named defendant corporation, wherein said receivers ask leave of the Court to borrow a sum of money not exceeding thirty-five hundred dollars upon receivers' certificates, to be issued under authority of the Court, to bear interest at the rate of six per centum per annum from the date of issue, and from the moneys so borrowed to pay bills heretofore or hereafter to be incurred by them in conducting the business of the cold storage warehouse of the defendant Company, and to meet expenses heretofore or hereafter to be incurred by them in the administration of their trust as such receivers:

It is on this twentieth day of June, nineteen hundred and four, on motion of McDermott & Fisk, counsel with the receivers, ORDERED that the creditors and stockholders of the defendant corporation show cause at Chancery Chambers, Jersey City, on June twenty-seventh, nineteen hundred and four, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the receivers should not be authorized to borrow money on receivers' certificates in the amount, under the terms and for the purposes aforesaid, and why such certificate or certificates should not be made a first lien upon the property and assets of the defendant Company, paramount and prior to all mortgages, mechanics and other liens thereon.

And it is further ordered that copies of this order be served on the stockholders and creditors (other than the mechanics and other lienors hereinafter

mentioned) within four days from the date hereof by mailing such copies to such creditors and stockholders to the post office addresses as nearly as the same can be ascertained and that copies of this order and of the said receivers' report number five be served within the same time upon the following mortgagees, mechanics and other lienors of the defendant Company, or upon their attorneys or solicitors:

Commercial Trust Company of New Jersey, Trustee;

Erie Railroad Company;

The Taylor-Martin Engineering Company;

Frederick W. Cane trading as W. H. & F. W. Cane;

Heine Safety Boiler Company;

Electrical Construction and Supply Company;

B. F. Sturtevant Company;

Timothy W. Dorsett;

Robert A. Keasbey Company;

Carbondale Machine Company.

It is further ordered that the copies of this order and of the said report to be served need not be certified.

Respectfully advised,

WILLIAM J. MAGIE, C.

EUGENE STEVENSON, V. C.

PROOF OF MAILING ORDER TO SHOW CAUSE.

Dated June 20, 1904.

(Filed June 27, 1904.)

PROOF OF SERVICE OF RECEIVERS' REPORT NO. 5 AND ORDER TO SHOW CAUSE THEREON.

Dated June 20, 1904.

(Filed June 27, 1904.)

ADDITIONAL ORDER FOR SALE.

(Filed June 28, 1904.)

John W. Hardenbergh and Palmer Campbell, receivers of the above named defendant corporation, having presented their report number four and application for further direction as to sale of the defendant's property, and said report being now filed, from which report and application it appears that, pursuant to an order made herein May twenty-third, nineteen hundred and four, and a further order made June thirteenth, nineteen hundred and four, the said receivers on June fourteenth, nineteen hundred and four, exposed for sale at public auction the lands of the defendant Company, situated on Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, and the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets, clear of certain mechanics and other liens in said order of May twenty-third, nineteen hundred and four, specifically set out, and that at such sale no bid was received for the said property above the sum of one hundred and ninety thousand dollars, the upset price therefor as fixed by the order herein of June thirteenth, nineteen hundred and four, and the said receivers now asking the further direction of the Court in the premises,

And there being now presented and filed proof of service on the creditors, lienors and stockholders of the defendant corporation of the notice of said receivers that they would report the facts and circumstances of the failure to make sale of the said property as aforesaid at this time and place,

And the Court having considered the said report and application, and hearing the arguments of McDermott and Fisk, of counsel with the receivers; of Vredenburgh, Wall and Van Winkle, of counsel with Franklin B. Lord and Committee of bondholders; of Northrop and Griffiths, of counsel with Heine Safety

Boiler Company; of Robert L. Lawrence, of counsel with Frederick W. Cane, trading as W. H. and F. W. Cane and Francis A. Nott, Jr., of counsel with The Taylor-Martin Engineering Company

It is on this twentieth day of June, nineteen hundred and four, on motion of McDermott and Fisk, of counsel with the receivers, ORDERED that the said receivers forthwith again advertise said property, as described in said order of sale of May twenty-third, nineteen hundred and four, for sale at public auction at a time and place to be fixed by them, and that such sale be held by said receivers without restriction as to the bid price to be received at such sale, and that otherwise said sale be conducted as provided in said order for sale of May twenty-third, nineteen hundred and four, except as hereinafter provided, and be held at such time as to enable the receivers to report the result thereof to this Court on Tuesday, July fifth, nineteen hundred and four, at ten o'clock in the forenoon, at Chancery Chambers, Jersey City, and to give at least three days previous notice by mail to the stockholders and creditors of the defendant Company of such report of sale.

IT IS FURTHER ORDERED that if the purchaser at such sale having paid five per cent. in cash on account of the purchase money shall at the time fixed by the receivers for passing title (which shall be not more than thirty days after the date of confirmation of such sale), pay to the receivers an additional amount in cash which, with the five per cent. paid at the time of sale, shall aggregate twenty-five thousand dollars, and shall deposit as security for the payment of the balance of the purchase price first mortgage bonds of the defendant company or such bonds and mechanics liens against the property of the defendant company as filed (and to be duly assigned to the receivers), which, taken as to the bonds at two-thirds of their par value and as to mechanics' liens at one-third of the amount claimed, shall amount to fifty thou-

sand dollars, then the payment of the balance of the purchase money shall be deferred until their legality and extent and the relative priority of the several liens on the property shall have been determined by the Court; the purchaser stipulating in writing with the receivers to pay the difference between the value as determined for distribution of the securities depositd by him with the receivers or the claims assigned by him to the receivers, and the unpaid balance of the purchase money, together with interest at the rate of five per cent. per annum, from the date of the receivers' sale to the time of payment, such interest to be paid quarter yearly during said period, and such payment shall be made within twenty days after the service upon the purchaser of an order of the Court directing such payment to be made; and thereupon the receivers' deed shall be delivered.

AND IT IS FURTHER ORDERED that in case the purchaser shall avail himself of the foregoing privilege and shall, as above provided, deliver or assign bonds or indebtedness on lien claims represening any part of his bid, and shall fail when ordered so to do to pay the amount which shall be found due in order to effect the full payment in cash of the whole or such part of his said bid as may be necessary to satisfy the claims of all parties who shall be adjudged entitled to a share of the proceeds of sale in cash, then the receivers may resell said property without further application to the Court and without notice to the purchaser. In case of a resale by reason of the failure of the purchaser to make payment, as above provided, and such resale is at a less price than the former bid, with interest and expenses, including a reasonable rental, to be fixed by the Court, for the occupancy by the purchaser of the said premises, and all injury or damage to the property which he may have done or permitted, also to be fixed by the Court, the said purchaser will be held liable for the defi-

ciency, to meet which the money paid by him and the securities deposited and assigned by him shall be retained and applied by the receivers.

IT IS FURTHER ORDERED that in the event of the purchaser availing himself of the foregoing privilege and complying with the terms of this order, he shall be let into possession of the property and shall be liable to pay, and shall pay as the same shall become due and payable, all taxes, water rents and other municipal charges, and all insurance premiums and other charges thereon, from the date of entry; the insurance to be in the name of the receivers, as owners, and in an amount to be fixed by them.

Respectfully advised,

W. J. MAGIE, C.

EUGENE STEVENSON, V. C.

ORDER FOR ISSUING RECEIVERS' CERTIFICATES.

Filed June 28, 1904.

The report number five and application, dated June twentieth, nineteen hundred and four, of John W. Hardenbergh and Palmer Campbell, the receivers appointed in the above cause, having been heretofore presented and filed and an order to show cause thereon, dated June twentieth, nineteen hundred and four, having been heretofore made, requiring the creditors and stockholders of the defendant corporation to show cause at this time and place why the receivers should not be authorized to borrow money on receivers' certificates, not to exceed the sum of thirty-five hundred dollars, to be issued under the authority of the Court, and to bear interest at the rate of six per centum per annum from the date of issue, and from the moneys so borrowed to pay bills heretofore or

hereafter to be incurred by the receivers in conducting the business of the cold storage warehouse of the defendant Company, and to meet expenses heretofore or hereafter to be incurred by them in the administraton of their trust as such receivers, and why such certificate or certificates should not be made a first lien upon the property and assets of the defendant Company, paramount and prior to all mortgages, mechanics and other liens thereon.

And proof being now made and filed that the said order to show cause has been duly served on the stockholders and creditors, including mortgagees, mechanics' and other lienors, as in said order provided,

And the said application of the said receivers and the said order to show cause now coming on to be heard, and the Court having heard the arguments of counsel for the said receivers, and Robert L. Lawrence, Esquire, appearing as counsel for Frederick W. Cane, trading as W. H. and F. W. Cane; A. Q. Keasbey and Sons, appearing as counsel for B. F. Sturtevant Company, and Randolph Perkins, appearing as counsel for Carbondale Machine Company; and Vredenburgh, Wall and Van Winkle, appearing as counsel for Franklin B. Lord, and for committee representing bondholders, and no objection being made to the making of this order,

And the Court having duly considered the said application and arguments, and considering it for the best interests of the stockholders and creditors, including the mortgagees, mechanics and other lienors of the defendant company, and necessary for the care and preservation of the assets in the hands of the receivers that the borrowing of said sum of money on receivers' certificate or certificates for the purposes aforesaid should be authorized:—

It is on this twenty-seventh day of June, nineteen hundred and four, on motion of McDermott and Fisk, of counsel with the receivers aforesaid, OR-

DERED that John W. Hardenbergh and Palmer Campbell, receivers of the Jarvis Terminal Cold Storage Company, be and they hereby are authorized to borrow a sum or sums of money not exceeding in the aggregate thirty-five hundred dollars upon receivers' certificate or certificates, to be issued by them under the authority of this Court, to bear interest at the rate of six per centum per annum from the date of issue, and that from the moneys so borrowed they pay bills heretofore or hereafter to be incurred by them in conducting the business of the cold storage warehouse of the defendant company, and pay the expenses heretofore or hereafter to be incurred by them in the administration of their trust as such receivers.

AND IT IS FURTHER ORDERED that the said receivers' certificate or certificates, not exceeding the amount aforesaid, when issued, shall be a first lien upon all the property and assets of the defendant Company, in the hands of the said receivers, paramount and prior to all mortgages, mechanics and other liens thereon.

Respectfully advised,

W. J. MAGIE, C.

EUGENE STEVENSON, V. C.

ORDER ON PETITION OF F. B. LORD.

Filed Oct. 20, 1904.

This matter coming on to be heard in the presence of Messrs. Vredenburgh, Wall & Van Winkle, of counsel with the petitioner Lord, and of counsel with the other first mortgage bondholders holding ninety-eight bonds of the said Jarvis Terminal Cold Storage Company, and of Willard C. Fisk, of counsel with the Receivers of said company, and Robert L. Lawrence,

of counsel with F. H. Cane, trading as W. H. and F. W. Cane, mechanics lienor, and Edward Russ and Randolph Perkins, of counsel with the Carbondale Machine Company, and of William A. Lewis, of counsel with Robert M. Jarvis, and of Randolph Perkins, of counsel with a committee of the lienors holding mechancs liens to the amount of Forty-seven Thousand Dollars; and the petition and affidavit of the petitioner and the answer of the Receivers having been read and the arguments of the respective counsel considered:

It is, on this thirteenth day of June, nineteen hundred and four, ORDERED, ADJUDGED and DECREED that the order for sale heretofore made herein on the twenty-third day of May, nineteen hundred and four, be confirmed.

AND IT IS FURTHER ORDERED that no bid be accepted by the said Receivers at the sale as advertised by the Receivers to be held on Tuesday, the fourteenth day of June, nineteen hundred and four, for a sum less than One Hundred and Ninety Thousand Dollars.

Respectfully advised,

W. J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

Proof of Mailing Notice of Receivers' Report of Sale.

Filed July 5, 1904.

RECEIVERS' REPORT NO. 6.
(OF SALE OF PROPERTY JUNE 29, 1904.)

Filed July 5 1904.

John W. Hardenbergh and Palmer Campbell, receivers of the defendant company, appointed in the above cause, respectfully report:—

1. That by order made herein, dated May twenty-third, nineteen hundred and four, and a further order, dated June twentieth, nineteen hundred and four, the receivers were directed to sell the lands of the defendant company, situated on Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, and the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets, clear of certain mortgages and other liens and encumbrances, and that they make such sale by public auction at the time and place and under terms and conditions to be fixed by them and as specified in said order of June twentieth, nineteen hundred and four, provided, however, that such sale should be held at such time as to enable the receivers to report the result thereof for confirmation of the Court on Tuesday, July fifth, nineteen hundred and four, at ten o'clock in the forenoon, at Chancery Chambers, Jersey City, and that the receivers give at least three days previous notice by mail to the stockholders and creditors of the defendant company of such report and motion for confirmation of sale.

2. That pursuant to said order of May twenty-third, nineteen hundre and four, and said additional order of June twentieth, nineteen hundred and four, the receivers advertised the said property for sale at public auction on Wednesday, June twenty-ninth, nineteen hundred and four, at two o'clock in the afternoon, on the premises, in the form of advertisement, a copy of which is hereto attached, marked "Schedule A." The receivers caused said notice of sale to be published in the Jersey City Evening Journal and in the Hoboken Observer, two newspapers printed and published in the County of Hudson, on June twenty-third and June twenty-seventh, nineteen hundred and four, and also caused copies of said notice of sale to be mailed on June twenty-second, nineteen hundred and four, to all stockholders, creditors, bondholders and

lienors of the defendant company, so far as their names and addresses could be ascertained, and on the same date caused copies of said notice of sale to be mailed to a number of firms, corporations and individuals that the receivers considered would be interested in the sale of property of this character. That proof of the mailing of said notice of sale to the stockholders, creditors, bondholders, lienors and possible purchasers is hereto attached, marked "Schedule B."

3. That the receivers employed Frank Stevens, Esquire, a licensed auctioneer in Jersey City, to cry off the property at the time fixed for the sale.

4. That on Wednesday, June twenty-ninth, nineteen hundred and four, at the time and place advertised, said receivers through said auctioneer, offered the said property for sale at public auction under conditions of sale announced at the time and place of sale, a copy of which conditions of sale and a copy of the agreement to purchase, as signed by the purchaser, is hereto attached, marked "Schedule C." That at the time and place aforesaid, Daniel E. Cleary, Charles E. Cassidy and Gustav W. Lembeck, jointly bidding for the property then offered for sale, the sum of one hundred and thirty-five thousand dollars, and no one bidding so much or more for the same, the said property, being the property described in said notice of sale, was struck off and sold to the said Daniel E. Cleary, Charles E. Cassidy and Gustav W. Lembeck at the price aforesaid, they being the highest bidder for the same.

5. That said receivers hereby submit this report of said sale for the approval and confirmation of the Court

Dated, June 30, 1904.

Respectfully submitted,

J. W. HARDENBERGH,
PALMER CAMPBELL,
Receivers.

McDERMOTT & FISK,
Solicitors and Counsel.

(Affidavits attached.)

SCHEDULE "A."

RECEIVERS' SALE

JARVIS TERMINAL COLD STORAGE COMPANY.

FRANK STEVENS, Auctioneer.

Pursuant to an order of the Court of Chancery of New Jersey, dated May 23, 1904, and a further order dated June 20, 1904, the undersigned, receivers of the Jarvis Terminal Cold Storage Company, will on

WEDNESDAY, JUNE 29, 1904.

at two o'clock in the afternoon, on the premises—Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, sell at public auction to the highest bidder, without reserve, the following property:

ALL that certain tract or parcel of land and premises, situate lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost street and Thirteenth street and running in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred (100) feet to Thirteenth street; and thence easterly along the southerly side of Thirteenth street one hundred and twenty-five (125) feet to the place or point of beginning.

Including the cold storage warehouse thereon

erected, with all the machinery and fixtures therein contained, and railroad trackage rights in adjacent streets, as provided in an ordinance of the Common Council of Jersey City, passed April 26, 1864. The property will be sold clear of taxes, mortgages, mechanics liens and other encumbrances. The cold storage plant has recently been completed and is of scientific and modern construction, having a storage capacity of about eight hundred thousand cubic feet. The business is now being conducted by the receivers under authority of the Court. Permits to inspect the plant and further particulars may be obtained on application to any of the undersigned. Five per cent. of the bid price is to be paid when the property is struck off; other conditions and terms will be announced at time of sale.

Dated, June 21, 1904.

John W. Hardenbergh,
15 Exchange Place,
Jersey City, N. J.
Palmer Campbell,
1 Newark Street,
Hoboken, N. J.
Receivers.

McDermott & Fisk,
Counsel,
15 Exchange Place, Jersey City, N. J.

(Filed July 5, 1904.)

Proof of mailing notice of receivers' sale for June 20, 1904, to following:

LIST OF CREDITORS.

American Desk & Stool Company, 30 Howard street, New York City.

E. J. Batcheler, 15 Exchange Place, Jersey City, N. J.

New Jersey State Library

W. S. Batcheller, care Jarvis Terminal Cold Storage Company, 12th and Provost streets, Jersey City, N. J.

Borne, Scrymser Company, 80 & 81 South street, New York City.

F. B. Brill, 82 Montgomery street, Jersey City, N. J.

Carbondale Chemical Company, Carbondale, Penn.

J. E. Carlock, 94 Myrtle avenue, Jersey City, N. J.

Carbondale Machine Company, Carbondale, Penn.

Chicago Pneumatic Tool Company, Chicago, Illinois.

P. H. & C. Conlon, Newark, N. J.

"Cold Storage," Produce Exchange, New York City.

Cockburn Barrow & Machine Company, 240 Eleventh street, Jersey City, N. J.

Commercial Trust Company of New Jersey, 15 Exchange Place, Jersey City N. J.

Deane Steam Pump Company, P. O. Box 311, New York City.

C. G. Dennison, Buffalo, N. Y.

Horace Dickerman, 30 Howard street, New York City.

O. J. Dittmar, 204 Pavonia avenue, Jersey City, N. J.

Dixon Crucible Company, Jersey City, N. J.

Eastern States Refg. Co., Jersey City, N. J.

Everson & Reed, 245 Broadway, New York City.

Fagan Iron Works, Hoboken, N. J.

Fairbanks & Company, Broome & Elm streets, New York City.

Fay Belting Company, 3 Jacob street, New York City.

"Fruit & Produce News," 8-10 Jay street, New York City.

Garderman & Jungclaus, Newhall, Iowa.

Gould Manufacturing Company, Boston, Mass.

Hall-Jagels Bellis Company, Hoboken, N. J.

Hay Foundry & Iron Works, 145 Broadway, New York City.

George A. Haws, 25 Bridge street, New York City.

Heppe & Company, 239 Greenwich street, New York City.

Ice & Refrigeration, Chicago, Illinois.

Jarvis & Company, 64 Broad street, New York City.

Jersey City Coal Company, Jersey City, N. J.

Johnson & Co., Gates avenue, Jersey City, N. J.

H. F. Jones, 185 Twelfth street, Jersey City, N. J.

Robert A. Keasbey Company, 100 North Moore street, New York City.

L. G. Knipe, Provost & 13th streets, Jersey City, N. J.

F. Macy Company, 343 Broadway, New York Citv.

John S. Menagh, Newark avenue, Jersey City, N.J.

T. R. McMahon, 56 Gold street, New York City.

Morrow & Day, 81 Montgomery street, Jersey City, N. J.

Mountain & Co., 111 Liberty street, New York City.

National Paint Machine Company, 4th avenue & 22d street, New York City.

New York & New Jersey Telephone Co., 81 Wiloughby street, Brooklyn, N. Y.

W. M. Obergful, 131-137 Ninth street, Jersey City, N. J.

C. H. O'Neil, Jersey avenue, Jersey City, N. J.

Otis Elevator Company, 71 Broadway, New York City.

Page Dennis Company, 341 Broadway, New York City.

Arthur L. Perkins, 285 Warren street, Jersey City, N. J.

Pugsley & Chapman, 180 West street, New York City.

Reeves Engine Company, 85 Liberty street, New York City.

J. L. Robertson & Sons, 204 Fulton street, New York City.

G. R. Sheppard, 5 Dutch street, New York City.

Snow Steam Pump Company, 114 Liberty street, New York City.

Snook & Son, 261 Broadway, New York City.

George H. Stoddard, Boston, Mass.

B. or Wm. Sumner Company, 62 Cortlandt street, New York City.

Taylor Bros., Rochester, N. Y.

Third National Bank, Jersey City, N. J.

Toch Bros, 472 West Broadway, New York City.

Underfeed Stoker Company, Boston, Mass.

I. Underhill, 17 Park Place, New York City.

United Electric Company of N. J., 15 Newark avenue, Jersey City, N. J.

U. S. Mortgage & Trust Company, 55 Cedar street, New York City.

Western Union Telegraph Co., 76 Montgomery street, Jersey City, N. J.

Whitney & Renner, 143 Liberty street, New York City.

Williams & Peters, 1 Broadway, New York City.

Winthrop & Stimson, 32 Liberty street, New York City.

LIST OF STOCKHOLDERS.

James H. Blakeman, 68 Broad street, New York City.

Henry Bohme & Sons, 83 Beaver street, New York City.

W. M. Buchanan, 14 East 69th street, New York City.

Joseph H. Bumsted, 374 Broadway, New York City.

Frederick W. Cane, 21 Park Row, New York City.

Palmer Campbell, 1 Newark street, Hoboken, N. J.

D. D. Fleming, 249 Washington street, Jersey City, N. J.

George F. Gantz, 62 Wall street, New York City.

W. H. Gibson, 35 Wall street, New York City.

Oscar L. Gubelman, Cedar and Nassau streets, New York City.

Robert M. Jarvis, Jr., 68 Broad street, New York City.

Robert M. Jarvis, 68 Broad street, New York City.

Gustav W. Lembeck, 173 Ninth street, Jersey City, N. J.

Addie J. Maltbie, care Armstrong & Maltbie, 92 William street, New York City.

Charles F. Mattlage, 335 Greenwich street, New York City.

Robert McCreery, Produce Exchange, New York City.

W. M. H. Miller, 92 William street, New York City.

Theodore P. Muth, 389 West street, New York City.

M. Poppenheimer, 51 Stone street, New York City.

Dr. Wallace Pyle, 713 Bergen avenue, Jersey City, N. J.

L. Scanga, 145 Mulberry street, New York City.

William Schweckendrick, 116 Broad street, New York City.

Henry Siebert, 116 Broad street, New York City.

W. O. Smith, F 23 Produce Exchange, New York City.

W. C. Smith, F 23 Produce Exchange, New York City.

W. L. Wallace, 48 Pearl street, New York City.

George B. Wilson, 15 Exchange Place, Jersey City, N. J.

Bronson Winthrop, 32 Liberty street, New York City.

LIST OF BONDHOLDERS.

John F. Boyle, 500 Montgomery street, Jersey City, N. J.

J. D. Carscallen, Third National Bank, Jersey City, N. J.

C. E. Cassidy, 110 Pavonia avenue, Jersey City, N. J.

D. E. Cleary, 32 Montgomery street, Jersey City, N. J.

R. C. F. Combs, care F. E. Pitkin, 874 President street, Brooklyn, N. Y.

J. B. Conover, 122 Morgan street, Jersey City. N.J.

Greenville Banking & Trust Company, Jersey City, N. J.

Dr. P. Hoffman, 209 Pavonia avenue, Jersey City, N. J.

Richard Irvin & Co., 25 Broad street, New York City.

Henry Lembeck, 148 Lembeck avenue, Jersey City, N. J.

William A. Lewis, 76 Montgomery street, Jersey City, N. J.

Franklin B. Lord, Lord, Day & Lord, 49 Wall street, New York City.

A. Neilson, 200 Pavonia avenue, Jersey City, N. J.

H. E. Niese, 32 Gifford avenue, Jersey City, N. J.

Oliver H. Perry, 98 Pavonia avenue, Jersey City, N. J.

R. H. Perry, 98 Pavonia avenue, Jersey City, N. J.

F. E. Pitkin, 874 President street, Brooklyn, N. Y.

John Sullivan, 514 Henderson street, Jersey City, N. J.

M. C. Underwood, care F. E. Pitkin, 874 President street, Brooklyn, N. Y.

P. G. VanZandt, 294 Varick street, Jersey City, N. J.

LIST OF LIENORS.

Collins & Corbin, (Solrs. Erie Railroad Co., mortgagee), 243 Washington street, Jersey City, N. J.

Brinkerhoff & Fielder, (Solrs. Commercial Trust Company of New Jersey, trustee mortgagee), 15 Exchange place, Jersey City, N. J.

Francis A. Nott, Jr., (Solr. The Taylor-Martin Engineering Company, Electric Construction & Supply Company, and Robert A. Keasbey Company, mechanics lienors), 142 Market street, Newark, N. J.

Robert L. Lawrence, (Solr. Frederick W. Cane, trading as W. H. & F. W. Cane, mechanics lienor), 15 Exchange place, Jersey City, N J.

Northrop & Griffiths, (Solrs. Heine Safety Boiler Company, mechanics lienor), 1 Exchange place, Jersey City, N. J.

Frederick N. Eberhard, (Solr. Timothy W. Dorsett, mechanics lienor), Second National Bank, Hoboken, N. J.

A. Q. Keasbey & Sons, (Solrs. B. F. Sturtevant, Company, mechanics lienor), Prudential Building, Newark, N. J.

Vredenburgh, Wall & Van Winkle, (Solrs. Franklin B. Lord and committee representing first mortgage bondholders), 1 Exchange Place, Jersey City, N. J.

Randolph Perkins, (Solr. Carbondale Machine Company, and committee representing mechanics lienors), 15 Exchange Place, Jersey City, N. J.

Edward Russ, (Solr. Carbondale Machine Company), Second National Bank Bldg., Hoboken, N. J.

LIST OF POSSIBLE PURCHASERS.

Armour & Co., 173 Duane street, New York City.
Armour & Co., Chicago, Illinois.

Swift & Co., Wool Exchange Bldg., New York City.

L. A. Carten, Treas., Swift & Co., Chicago, Illinois.

Swarzschild & Sulsberger Co., 45th street & First avenue, New York City.

Cudahy Packing Co., 454-6 West 14th street, New York City.

Cudahy Packing Co., Chicago, Illinois.

Frank E. Loughran, 220 Broadway, New York City.

Sanborn-Farrell Co., 325 Washington street, New York City.

J. H. Everitt Co., 326 Washington street, New York City.

Merchants Refrigerating Co. of N. J., Second & Warren streets, Jersey City, N. J.

J. C. Linde & Co., Beach & Varick streets, New York City.

W. Fellowes Morgan, 11 Harrison street, New York City.

Gustav E. Kissell, 32 Nassau street, New York City.

Wilkinson, Gaddis & Co., 866 Broad street, Newark, N. J.

S. S. Long & Bro., 102-6 Warren street, New York City.

Schafer Bros., 35 Wall street, New York City.

Merchants Refrigerating Co. of N. Y., 161 Chambers street, New York City.

H. J. W. S. Cooke, care Merchants Refrigerating Co. of N. J., Jersey City, N J.

Buffalo Cold Storage Co., Buffalo, N. Y.

Eastern States Refrigerating Co, Springfield, Mass.

Western Refrigerating Co., 39 N. State street, Chicago, Illinois.

Monarch Refrigerating Co., 255 Michigan street, Chicago, Illinois.

SCHEDULE "C."

RECEIVERS' SALE.

JARVIS TERMINAL COLD STORAGE COMPANY.

FRANK STEVENS, Auctioneer.

Pursuant to an order of the Court of Chancery of New Jersey, dated May 23, 1904, and a further order dated June 20, 1904, the undersigned, receivers of the Jarvis Terminal Cold Storage Company, will on

WEDNESDAY, JUNE 29, 1904,

at two o'clock in the afternoon, on the premises— Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, sell at public auction to the highest bidder, without reserve, the following property:

ALL that certain tract or parcel of land and premises situate, lying and being in Jersey City, County of Hudson, State of New Jersey, consisting of eleven (11) lots described and bounded as follows:

BEGINNING at a point at the southwest corner of Provost street and Thirteenth street and running in a southerly direction along the westerly side of Provost street two hundred (200) feet to Twelfth street; thence westerly along the northerly side of Twelfth street one hundred and fifty (150) feet; thence northerly and parallel with Provost street one hundred (100) feet; thence easterly and parallel with Twelfth street twenty-five (25) feet; thence northerly and parallel with Provost street one hundred (100) feet to Thirteenth street; and thence easterly along the southerly side of Thirteenth street one hundred

and twenty-five (125) feet to the place or point of beginning.

Including the cold storage warehouse thereon erected, with all the machinery and fixtures therein contained, and railroad trackage rights in adjacent streets, as provided in an ordinance of the Common Council of Jersey City, passed April 26, 1864. The property will be sold clear of taxes, mortgages, mechanics liens and other encumbrances. The cold storage plant has recently been completed and is of scientific and modern construction, having a storage capacity of about eight hundred thousand cubic feet. The business is now being conducted by the receivers under authority of the Court. Permits to inspect the plant and further particulars may be obtained on application to any of the undersigned. Five per cent of the bid price is to be paid when the property is struck off, other conditions and terms will be announced at time of sale.

Dated June 21, 1904.

John W. Hardenbergh,
15 Exchange Place,
Jersey City, N. J.

Palmer Campbell,
1 Newark Street,
Hoboken, N. J.
Receivers.

McDermott & Fisk,
Counsel,
15 Exchange Place, Jersey City, N. J.

JARVIS TERMINAL COLD STORAGE COMPANY.

Conditions of Receivers' Sale.

First. The property is sold pursuant to an order of the Court of Chancery of New Jersey, dated May

23, 1904, and an additional order for sale dated June 20, 1904, and the sale is subject to approval by the Court. The receivers will report the result of the sale to the Court on Tuesday, July 5, 1904, at ten A. M., at Chancery Chambers, Jersey City, at which time and place the sale will be considered by the Court and parties in interest may attend and be heard.

Second. The property will be sold to the highest bidder.

Third. Five per centum of the bid price shall be paid when the property offered is struck off. In default thereof it may be put up again and sold immediately.

Fourth. The purchaser will be required, in addition to the purchase price, to pay an auctioneer's fee of fifty dollars, payable when the property offered is struck off.

Fifth. In addition to the purchase price bid, the purchaser will be required at the time of taking title on entering into possession to pay to the receivers the amount of the accrued storage charges then due to the receivers on contracts for goods and merchandise then on storage in the storage warehouse, and to assume the storage contracts of the receivers. The receivers will at the time the purchaser takes title or enters into possession assign to him all accrued storage charges due to the receivers as aforesaid. These accrued storage charges amount at this date to approximately $750.00.

Sixth. In the event of the confirmation of the sale by the Court of Chancery the balance of the purchase price shall be paid on Tuesday, the twenty-sixth day of July, nineteen hundred and four, at eleven o'clock in the forenoon, at the office of Mc-

Dermott & Fisk, counsel of the receivers, 15 Exchange Place, Jersey City, New Jersey, at which time and place the deed will be delivered and the assignment of storage charges made upon compliance by the purchaser with these condition of sale.

Seventh. The purchaser will be held bound by the purchase price whether he attends to receive the deed and comply with the conditions of sale or not. If he does not so comply, then the property may, subject to the direction of the Court of Chancery, be again advertised and sold or the purchaser may be held liable for his bid at the option of the receivers. In case of re-sale at less price than the former bid with interest and expenses, the former purchaser will be held liable for the deficiency, to meet which the money paid by him shall be retained and applied by the receivers.

Eighth. The purchaser may, at his election, avail himself of the option provided in the additional order for sale made by the Court of Chancery, dated June 20, 1904, in which are the following provisions:

"IT IS FURTHER ORDERED that if the purchaser at such sale having paid five per cent. in cash on account of the purchase money shall at the time fixed by the receivers for passing title, (which shall be not more than thirty days after the date of confirmation of such sale), pay to the receivers an additional amount in cash, which, with the five per cent. paid at the time of sale, shall aggregate twenty-five thousand dollars, and shall deposit as security for the payment of the balance of the purchase price first mortgage bonds of the defendant company or such bonds and mechanics liens against the property of the defendant company as filed, (and to be duly assigned to the receivers), which, taken as to the bonds at two thirds of their par value and as to mechanics'

liens at one-third of the amount claimed, shall amount to fifty thousand dollars, then the payment of the balance of the purchase money shall be deferred until the legality and extent and the relative priority of the several liens on the property shall have been determined by the Court; the purchaser stipulating in writing with the receivers to pay the difference between the value as determined for distribution of the securities deposited by him with the receivers or the claims assigned by him to the receivers, and the unpaid balance of the purchase money, together with interest at the rate of five per cent. per annum from the date of the receivers sale to the time of payment, such interest to be paid quarter yearly during said period, and such payment shall be made within twenty days after the service upon the purchaser of an order of the Court directing such payment to be made; and thereupon the receivers' deed shall be delivered."

"AND IT IS FURTHER ORDERED that in case the purchaser shall avail himself of the foregoing privilege and shall as above provided deliver or assign bonds or indebtedness on lien claim representing any part of this bid, and shall fail when ordered so to do to pay the amount which shall be found due in order to effect the full payment in cash of the whole or such part of his said bid as may be necessary to satisfy the claims of all parties who shall be adjudged entitled to a share of the proceeds of sale in cash, then the receivers may resell said property without further application to the Court and without notice to the purchaser. In case of re-sale by reason of the failure of the purchaser to make payment as above provided and such re-sale is at a less price than the former bid, with interest and expenses including a reasonable rental to be fixed by the Court for the occupancy by the purchaser of the said premises, and all injury or damage to the property which he may

have done or permitted, also to be fixed by the Court, the said purchaser will be held liable for the deficiency, to meet which the money paid by him and the securities deposited and assigned by him shall be retained and applied by the receivers."

"IT IS FURTHER ORDERED that in the event of the purchaser availing himself of the foregoing privilege and complying with the terms of this order, he shall be let into possession of the property and shall be liable to pay, and shall pay as the same shall become due and payable all taxes, water rents and other municipal charges, and all insurance premiums and other charges thereon from the date of entry; the insurance to be in the name of the receivers as owners and in an amount to be fixed by them."

Dated June 29, 1904.

J. W. Hardenbergh,
Palmer Campbell,
Receivers.

We have bid off the property described in the attached notice of sale for the sum of one hundred and thirty-five thousand dollars, and agree to comply with the foregoing conditions of sale.

Dated June 29, 1904.

Daniel E. Cleary,
C. E. Cassidy,
G. W. Lembeck.

ORDER CONFIRMING RECEIVERS' SALE.

Upon reading and filing report number six, dated June thirtieth, nineteen hundred and four, of John W. Hardenbergh and Palmer Campbell, receivers of

the above named defendant company, by which it appears, that, in pursuance of an order made herein, dated May twenty-third, nineteen hundred and four, and a further order made herein, dated June twentieth, nineteen hundred and four, wherein, among other things, it was ordered that the said receivers do sell the lands mentioned and described in the said order, dated May twenty-third, nineteen hundred and four, and the cold storage plant thereon erected, including machinery and fixtures therein contained and trackage rights in adjacent streets at public auction at a time and place to be fixed by them, but to be held at such time as to enable the receivers to report the result of said sale to this Court on Tuesday, July fifth, nineteen hundred and four, at ten o'clock in the forenoon, at Chancery Chambers, Jersey City, and to give at least three days' previous nctice by mail to the stockholders and creditors of the defendant company of such report of sale.

And it further appearing from the said report that said receivers did sufficiently advertise the time and place of said sale and at the time and place so advertised by them, namely, on Wednesday, June twenty-ninth, nineteen hundred and four, at two o'clock in the afternoon, upon the premises to be sold, did expose the said property for sale at public auction to the highest bidder, and that Daniel E. Cleary, Charles E. Cassidy and Gustav W. Lembeck, jointly bidding for the said property the sum of one hundred and thirty-five thousand dollars, and they being the highest bidder for the same, the said property was then and there struck off and sold to them at the price aforesaid.

And it further appearing from proof now presented and filed by the receivers, that they have given notice by mail to the stockholders and creditors of the defendant company of the presentation of said report of sale at this time and place in the way and as provided in said order of June twentieth, nineteen hun-

dred and four, and no cause being shown or appearing against confirming said report and the said sale:

It is on this fifth day of July, nineteen hundred and four, on motion of McDermott & Fisk, of counsel with the receivers, ORDERED that the said receivers' report and all the matters and things therein contained and that the said sale made by the said receivers of the said property be and the same is hereby approved and confirmed.

And it is further ordered that the said receivers do make execute and deliver to the said Daniel E. Cleary, Charles E. Cassidy and Gustav W. Lembeck, a good and sufficient conveyance in the law for the lands and property purchased by them as aforesaid upon their complying with the conditions of said sale; and that such conveyance when made in pursuance of this order shall convey to the said Daniel E. Cleary, Charles E. Cassidy and Gustav W. Lembeck all the estate in said lands and title to the said property of the Jarvis Terminal Cold Storage Company, and of the said receivers, and that such conveyance shall be valid and effectual forever, and shall convey the lands and premises and other property particularly described in said order of sale dated May twenty-third, nineteen hundred and four, clear and discharged from mortgages and other liens and encumbrances.

WM. J. MAGIE
C.

Respectfully advised,
H. C. PITNEY,
V. C.

RECEIVERS' REPORT No. 7.

(Application for order to pay receivers' certificates filed Aug. 1, 1904).

John W. Hardenbergh and Palmer Campbell, re-

ceivers of the defendant company, appointed in the above cause respectfully report:

1. That pursuant to an order for sale made herein May twenty-third, nineteen hundred and four, and an additional order for sale made herein June twentieth, nineteen hundred and four, the receivers sold on June twenty-ninth, nineteen hundred and four, the lands of the defendant company, situated on Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, and the cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets clear of certain mortgages and other liens and encumbrances to Daniel E. Cleary, Charles E. Cassidy and Gustav Lembeck, for the sum of one hundred and thirty-five thousand dollars and reported the result of said sale to the Court July fifth, nineteen hundred and four, and thereupon by order herein dated July fifth, nineteen hundred and four, the Court did confirm said sale and ordered conveyance of title by the receivers to the said purchasers.

2. That under the terms of the additional order of sale dated June twentieth, nineteen hundred and four, it was provided that the purchaser or purchasers at such sale might at the time fixed for passing title pay to the receivers an amount in cash which with the five per centum paid at the time of sale would amount to twenty-five thousand dollars and deposit as security for the payment of the balance of the purchase price first mortgage bonds of the defendant company, which taken at two-thirds of their par value would amount to fifty thousand dollars, then the time for taking title might be deferred at the option of the purchaser, as provided in said order.

3. That under the terms of sale the time fixed for passing title was July twenty-sixth, nineteen hundred and four and at the time and place so fixed the purchasers availed themselves of the option provided

for in the order of June twentieth, nineteen hundred and four, and paid to the receivers a sum, which with the five per centum paid at the time of sale, aggregated twenty-five thousand dollars and deposited with the receivers seventy-five thousand dollars par value of the first mortgage bonds of the defendant company, and also paid to the receivers all accrued storage charges for goods on storage in the warehouse, and thereupon the receivers assigned to them the storage charges and storage contracts and let the purchasers into possession of the property under the terms of said order of June twentieth, nineteen hundred and four.

4. That in said order for sale dated May twenty-third, nineteen hundred and four, it was among other things, provided that from the proceeds of sale the receivers pay and discharge all taxes, water rents and other municipal charges, a lien against said property, and in pursuance of said order the receivers on July twenty-sixth, nineteen hundred four, from the twenty-five thousand dollars received from the purchasers on account of the purchase price for said property, paid to the municipal authorities of Jersey City for taxes, water rents and bills for metered water then due, with interest and penalty, the sum of fifty-seven hundred and twenty-four dollars and ten cents, leaving in the receivers' hands a balance of said purchase money now amounting to nineteen thousand two hundred and seventy-five dollars and ninety cents.

5. That by order made herein, dated May second, nineteen hundred and four, the receivers were authorized to borrow the sum of twenty-nine hundred dollars upon receivers' certificate or certificates to be issued by them under the authority of this Court, to bear interest at the rate of six per centum per annum from the date of issue, and that from the moneys so borrowed, the said receivers were authorized to complete the dupli-

cate cooling system in the defendant's cold storage plant, to pay premiums on fire insurance policies and otherwise as in said order provided, which certificate or certificates when issued as aforesaid were made a first lien upon the property and assets of the defendant corporation in the hands of the receivers, subsequent and subject only to the two mortgages thereon. That pursuant to the authority so granted to them, said receivers borrowed from the Commercial Trust Company of New Jersey, the sum of eighteen hundred dollars on receivers' certificate, dated May sixth, nineteen hundred and four, such certificate bearing interest at the rate of six per centum per annum, and payable when payment should be ordered by this Court.

5. That by order made herein dated June twenty-ninth nineteen hundred and four, the receivers were authorized to borrow a sum not exceeding thirty-five hundred dollars upon receivers' certificate or certificates, to be issued by them under the authority of this Court, to bear interest at the rate of six per centum per annum from the date of issue, and that from the moneys so borrowed, the said receivers pay bills theretofore or thereafter to be incurred by them in conducting the business of the cold storage warehouse of the defendant company and otherwise as in said order provided, which certificate or certificates when issued as aforesaid were made a first lien upon all the property and assets of the defendant company in the hands of said receivers paramount and prior to all mortgages, mechanics and other liens thereon. That pursuant to the authority so granted to them, said receivers borrowed from the Commercial Trust Company of New Jersey the sum of twenty-five hundred dollars on receivers' certificate, dated June twenty-ninth, nineteen hundred and four, such certificate bearing interest at the rate of six per centum per annum, and payable when payment should be ordered by this Court.

That both of said receivers' certificates remain unpaid with interest from their respective dates.

6. The receivers respectfully request the authority of this Court to pay the said two receivers' certificates with the interest due thereon from the moneys in their hands received on account of the purchase price of the defendant's cold storage plant.

Dated August 1, 1904.

Respectfully,

J. W. Hardenbergh,
Receiver.

McDermott & Fisk,
Counsel.

(Affidavits attached.)

ORDER FOR PAYMENT OF RECEIVERS' CERTIFICATES.

Upon reading and filing report number seven of John W. Hardenbergh and Palmer Campbell, receivers of the Jarvis Terminal Cold Storage Company, from which it appears that they have in their hands on account of the purchase money for the property of the defendant company heretofore ordered to be sold by them after paying taxes, water rents and other municipal charges, the sum of nineteen thousand two hundred and seventy-five dollars and ninety cents, and it further appearing that under orders made herein dated respectively May second and June twenty-seventh, nineteen hundred and four, said receivers have borrowed from the Commercial Trust Company of New Jersey the sum of forty-three hundred dollars on receivers' certificates, which amount now remains due with interest at the rate of six per

centum per annum from the respective dates of said certificates.

IT IS on this first day of August, nineteen hundred and four, on motion of McDermott & Fisk, of counsel with the receivers, ORDERED, that from the balance of the moneys in their hands on account of the proceeds of sale of the defendant's property, the said receivers do pay to the Commercial Trust Company of New Jersey the amount of money borrowed by them from said Trust Company on receivers' certificates issued under the authority and order of this Court, together with interest on said certificates from the dates thereof at the rate of six per centum per annum.

Respectfully advised,

EUGENE STEVENSON,
V. C.
BY THE STATUTE,
J. J. BERGEN,
Master.

Order to show cause to allow liens and execute deed to Union Terminal Cold Storage Company.
Dated Sept. 13, 1904.

Proof of mailing order to show cause, dated Sept. 13, 1904.
Filed Sept. 19, 1904.

Order to allow liens and to execute deed of premises to Union Terminal Cold Storage Company.
Filed Sept. 21, 1904.

RECEIVERS' REPORT NO. 8.

(Adjudication of liens and claims; Receivers' accounts and application for discharge.)

Filed Oct. 10, 1904.

John W. Hardenbergh and Palmer Campbell, receivers of the Jarvis Terminal Cold Storage Company, present their report number eight, containing an adjudication of liens and claims, the receivers' final accounts and receivers' application for discharge.

SUMMARY OF PROCEEDINGS HEREIN.

March 28, 1904—Order signed appointing John W. Hardenbergh and Palmer Campbell receivers of defendant Company.

March 29, 1904—Receivers' bond one hundred thousand dollars, approved and filed, and receivers qualified.

April 4, 1904—Order for creditors to file claims and prove same by June fourth, 1904. Proof of publication and mailing notice subsequently filed.

April 19, 1904—Receivers' report No. 1 filed, asking leave to issue receivers' certificates for twenty-nine hundred dollars, to be made a first lien upon the assets. Order to show cause granted thereon, returnable May second, 1904. Proof of mailing and service of order to show cause subsequently filed.

May 2, 1904—Order authorizing receivers to borrow twenty-nine hundred dollars and issue certificates therefor, to bear interest at six per cent.

May 16, 1904—Receivers' report No. 2, being inventory and list of debts filed.

Receivers' report No. 3, being application to sell defendant's cold storage plant free of liens. Order to show cause thereon returnable May twenty-third.

Proof of service of order to show cause subsequently filed.

May 23, 1904—Order for receivers to sell defendant's lands and cold storage plant free from liens at public auction.

June 13, 1904—Order for receivers to put an upset price of one hundred and ninety thousand dollars at public sale of the defendant's lands and cold storage plant.

June 20, 1904—Receivers' report No. 4 filed, being report of failure to sell defendant's lands and cold storage plant at upset price, and asking further direction as to sale of property. Order that receivers again advertise defendant's lands and cold storage plant for sale at public auction without restriction as to price, and provision for purchasers entering into possession on payment of twenty-five thousand dollars in cash and on filing security with receivers for payment of balance of purchase price as provided in the order.

Receivers' report No. 5 filed, being application for leave to borrow not exceeding thirty-five hundred dollars, and to issue receivers' certificates to be a first lien on the assets. Order to show cause thereon returnable June twenty-seventh. Proof of service of order to show cause subsequently filed.

June 27, 1904—Order for receivers to borrow not exceeding thirty-five hundred dollars upon receivers' certificates, to bear interest at six per cent. from date to pay expenses incurred by them in the conduct of the defendant's business, such certificates to be a first lien on the assets.

July 5, 1904—Receivers' report No. 6 of sale of property June twenty-ninth, 1904, to Daniel E. Cleary, Charles E. Cassidy and Gusatv W. Lembeck, jointly, for one hundred and thirty-five thousand dollars, and application for confirmation. Proof of service of notice of application of confirmation filed. Order confirming receivers' sale and directing deed to be given to the purchasers.

August 1, 1904—Receivers' report No. 7 filed, and application for leave to pay Receivers' certificates issued under orders of May second and June twenty-ninth, 1904.

Order for receivers to pay to the Commercial Trust Company of New Jersey, forty-three hundred dollars, borrowed on receivers' certificates, together with interest at six per cent. from date of the certificates.

Sept. 13, 1904—Petition of John Alvin Young and Richard Irvin filed, asking that receivers' deed under sale of June twenty-ninth, 1904, be made to the Union Terminal Cold Storage Company on filing with the receivers certain first mortgage bonds and assignment of mechanics liens. Order to show cause on the petiton returnable September nineteenth.

Sept. 19, 1904—Order made adjudicating the first mortgage bonds and mechanics liens, including claim of Carbondale Machine Company to be valid and prior lien on the purchase price of the property sold to the extent of one hundred and ten thousand dollars, and interest from date of sale, and directing receivers to deliver deed to Union Terminal Cold Storage Company upon there being deposited with them one hundred and fifty thousand first mortgage bonds of the defendant Company and assignments of all the mechanics liens, including claim of Carbondale Machine Company.

DELIVERY OF DEED BY RECEIVERS.

The receivers report that in pursuance of the order herein dated September nineteenth, 1904, they did on September twenty-third, 1904, make, execute and deliver to the Union Terminal Cold Storage Company a receivers' deed for the lands of the defendant Company, situated on Provost, Twelfth and Thirteenth streets, Jersey City, including the cold storage plant thereon erected, and the machinery and

fixtures therein contained and trackage rights in adjacent streets, being the property sold by the receivers under order of sale herein made May twenty-third, 1904, and the supplemental orders in reference to said sale thereafter made.

That at the time of the execution and delivery of said deed, and in pursuance of said order of September nineteenth, 1904, John Alvin Young and Richard Irvin delivered to and deposited with the receivers the following instruments and securities:—

1. Assignment in writing of Gustav W. Lembeck, Daniel E. Cleary and Charles E. Cassidy to John Alvin Young and Richard Irvin, dated September 23, 1904, of the right, title and interest of the assignors in and to their bid and in and to their right to a deed for the defendant's property sold by the receivers June 29, 1904, including their right to receive any further dividends or payments from the proceeds of sale. Copy attached marked "Exhibit A."

2. Assignment in writing of John Alvin Young and Richard Irvin to Union Terminal Cold Storage Company, dated September 23, 1904, of their right to receive from the receivers a deed for the property sold June 29, 1904, in accordance with the assignment to them by Gustave W. Lembeck, Daniel E. Cleary and Charles E. Cassidy. Copy attached marked "Exhibit B."

3. One hundred and fifty-one thousand dollar first mortgage bonds of the Jarvis Terminal Cold Storage Company, with coupons due August 1, 1904, and all following coupons thereto attached.

4. Assignment of mechanics liens and claims against the Jarvis Terminal Cold Storage Company gainst the Jarvis Terminal Cold Storage Company to the Union Terminal Cold Storage Company, as follows:—

(a) Assignment by Frederick W. Cane, trading as W. H. & F. W. Cane, dated September 8, 1904, assigns mechanics lien and claim of $25,075.35, recorded Hudson County Clerk's office Liber 8 of Liens, page 154. Copy attached marked "Exhibit C."

(b) Assignment by Robert A. Keasbey Company, dated August 6, 1904, assigns mechanics lien and claim of $975.00, recorded Hudson County Clerk's office Liber 8 of Liens, page 162. Copy attached marked "Exhibit D."

(c) Assignment by Timothy W. Dorsett, dated September 16, 1904, assigns mechanics lien and claim of $155.00, recorded Hudson County Clerk's office Liber 8 of Liens, page 158. Copy attached marked "Exhibit E."

(d) Assignment by Heine Safety Boiler Company, dated September 3, 1904, assigns mechanics lien and claim of $4,160.67, recorded Hudson County Clerk's office Liber 8 of Liens, page 154. Copy attached marked "Exhibit F."

(e) Assignment by The Taylor-Martin Engineering Company, dated September 7, 1904, assigns mechanics lien and claim of $12,833.14, recorded Hudson County Clerk's office Liber 8 of Liens, page 152. Copy attached marked "Exhibit G."

(f) Assignment by B. F. Sturtevant Company, dated September 16, 1904, assigns mechanics lien and claim of $1,302.50, recorded Hudson County Clerk's office Liber 8 of Liens, page 157. Copy attached marked "Exhibit H."

(g) Assignment by Electric Construction and Supply Company, dated September 17, 1904, assigns two mechanics liens and claims thereunder, one for $1,325.00, recorded in Hudson County Clerk's office Liber 8 of Liens, page 155, and one for $1,699.75, recorded in Hud-

son County Clerk's office in Liber 8 of Liens, page 156. Copy attached marked "Exhibit I."

(h) Assignment by Carbondale Machine Company, dated September 3, 1904, of all title and interest in property of every kind heretofore delivered by it or installed in the plant of the Jarvis Terminal Cold Storage Company, and all its claims of every kind and nature against the Jarvis Terminal Cold Storage Company, including its right to lien against the property of that Company. Copy attached marked "Exhibit J."

On September twenty-fourth, 1904, there was filed with the receivers assignment in writing of the Union Terminal Cold Storage Company to John Alvin Young and Richard Irvin, of that date, assigning and transferring to said Young and Irvin all sums of money then or thereafter in the hands of the receivers, to which the assignor then was or might become entitled by reason of the assignments to it of the mechanics liens and claims deposited with the receivers. Copy attached marked "Exhibit K."

ADJUDICATION OF LIENS AND CLAIMS.

SCHEDULE "A."

The receivers do adjudicate and allow the following liens for the amounts severally stated against the proceeds of the sale of the defendant's lands and cold storage plant:—

1. Mortgage defendant Company to Commercial Trust Company of New Jersey, Trustee, dated February 2, 1903, recorded Hud-

son County Register's office February 21, 1903, in Book 486 of Real Estate Mortgages, page 391, and Book 207 of Chattel Mortgages, page 416, to secure an issue of bonds of the defendant Company in the aggregate amount of $150,000; amount of principal due on bonds.. $130,000.00

Semi-annual interest coupons due August 1, 1904.. 3,900.00

Interest on $130,000. principal of bonds from August 1 to September 23, 1904.... 1,127.00

Interest on $3,900 coupons due August 1, 1904, from that date to September 23, 1904.. 33.80

Interest on $24,174.65, balance of principal and interest due September 23, 1904, after crediting on account of purchase price of property $110,886.15— interest from September 23 to October 10, 1904..... 68.52

Total amount due and allowed on bonds.. $135,129.32

The receivers disallow under this mortgage $20,000. of bonds, formerly held by the United States Mortgage and Trust Company, as security for their claim of $20,000 against the defendant Company, for the reason that said $20,000 of bonds were not legally obtained from the de-

fendant Company, and it still retains the title thereto. The amount due on the bonds under this trust mortgage as adjudicated by the receivers is payable under the assignments filed with them to Commercial Trust Company of New Jersey, Trustee under the mortgage, or to John Alvin Young and Richard Irvin, the Owners of all the bonds

2. Mechanics lien of The Taylor-Martin Engineering Company, filed in Hudson County Clerk's office February 25, 1904, Book 8, page 152, No. 2743..... $10,799.83

Interest thereon at 6% from January 15, 1904, to October 10, 1904 ..... 477.00

Total due and allowed on claim 11,276.83

The lien claim as filed is for $12,833.14, but under the proof filed with the receivers is $10,799.83 as allowed above.

3. Mechanics lien of Frederick W. Cane, trading as W. H. & F. W. Cane, filed in Hudson County Clerk's office March 10 1904, Book 8, page 154, No. 2745.....$ 25,075.35

Interest thereon at 6% from February 1, 1904, to October 10, 1904	1,040.72	
Total due and allowed on claim		26,116.07
4. Mechanics lien of Heine Safety Boiler Company, filed Hudson County Clerk's office March 21, 1904, Book 8, page 155, No. 2746	4,160.67	
Interest thereon at 6% from February 6, 1904, to October 10, 1904	169.21	
Total due and allowed on claim		4,329.88
5. Mechanics lien of Electrical Construction & Supply Company, filed Hudson County Clerk's office, March 21, 1904, Book 8, page 155, No. 2748	1,325.00	
Interest thereon at 6% from January 20, 1904, to October 10, 1904	57.41	
Total due and allowed on claim		1,382.41
Forward		$178,234.51
6. Mechanics lien of Electrical Construction & Supply Company, filed March 21, 1904, Hudson County Clerk's office, Book 8, page 156, No. 2749	$ 1,699.75	

Interest thereon at 6% from January 20, 1904, to October 10, 1904	76.87	
Total due and allowed on claim		1,776.62
7. Mechanics lien of B. F. Sturtevant Company, filed Hudson County Clerk's office, March 28, 1904, Book 8, page 156, No. 2751.....$	1,302,50	
Interest thereon at 6% from January 16, 1904, to October 10, 1904	57.31	
Total due and allowed on claim		1,359.81
8. Mechanics lien of Timothy W. Dorsett, filed Hudson County Clerk's office, April 6, 1904, Book 8, page 158, No. 2753.....$	155.00	
Interest thereon at 6% from January 22, 1904, to October 10, 1904	6.67	
Total due and allowed on claim		161.67
9. Mechanics lien of Robert A. Keasbey Company, filed May 6, 1904, Hudson County Clerk's office, Book 8, page No. 2756.....$	975.00	

Interest thereon at 6% from March 2, 1904, to October 10, 1904	35.43	
Total due and allowed on claim		1,010.43
Forward		$182,543.04

(The proof of claim of the Carbondale Machine Company filed with the receivers was subsequently withdrawn by that corporation.)

Under assignments filed with the receivers any moneys distributed on account of the foregoing mechanics liens are payable to John Alvin Young and Richard Irvin.

Total amount adjudged and allowed on mortgage bonds and mechanics liens		$182,543.04
Less amount of balance of purchase price of the cold storage plant and interest credited thereon under order dated September 19, 1904		110,886.15
Net balance due on bonds	$ 24,174.65	
Net balance due on liens	47,482.24	
		71,656.89

10. Bond and mortgage defendant Company to Erie Railroad Company, dated December 16, 1903, recorded Hudson County Register's office, liber 504, page 633, principal due ..... $ 16,500.00

Interest thereon at 6% from December 16, 1903, to October 10, 1904 ..... 673.75

Total due on mortgage 17,173.75

Under the assignments in writing filed with the receivers, John Alvin Young and Richard Irvin are the owners of all the first mortgage bonds of the defendant Company, and of all the mechanics liens filed against the defendant's property, and being so entitled, no question of priority arises between the first mortgage bonds and the mechanics liens, and the receivers adjudge and allow the total amount above stated ($182, 543.04) to be due thereon, less the credit of the balance of the purchase price of the defendant's property ($110,886.15), to be a first and prior lien on the proceeds of sale of the property sold free of liens.

The receivers adjudge and allow the amount above found due to the Erie Railroad Company on their bond and mortgage ($17,173.75) to be a lien upon the proceeds of sale of the defendant's property second in priority to the lien of the mortgage bonds and mechanics liens.

SCHEDULE "B."

The receivers do adjudicate and allow the following claims as preferred for payment from assets in the receivers' hands:

1. Claim State of New Jersey for corporation tax for the year 1904.. $115.65
Penalty thereon at 1% a month from the first Monday in June to date 4.62

120.27

2. Claim Eastern States Refrigerating Company, filed July 18, 1904, for moneys of that Company in the hands of the defendant corporation at the date of appointment of receivers 179.55

(This claim was filed after the time limited by order of April 4, 1904, for creditors to file claims. By order dated August 1, 1904, the receivers were directed to receive this claim the same as if filed within time.)

See note below for statement of facts respecting this claim.

Total allowed under this Schedule $299.82

NOTE:—The facts in regard to the claim of the Eastern States Refrigerating Company are as follows:—The firm of Garderman & Jungclaus prior to March 28, 1904, had on storage with the defendant Company certain merchandise. The Eastern States Refrigerating Company issued an attachment against Gardermann & Jungclaus from the Hudson County Circuit Court and under the writ the goods on storage in the defendant's warehouse were attached by the Sheriff. Garderman & Jungclaus sent to the defendant corporation their check for $179.55 with which to pay the attachment and costs. The check was payable to the order of the Jarvis Terminal Cold Storage Company, and was deposited by it in its personal account with the Third National Bank of Jersey City on March 18, 1904. On March 18, 1904, the Jarvis Company gave a check to the Eastern States Refrigerating Company in payment of the attachment for $168.02, payable at the Third National Bank of Jersey City. This check was presented to that bank for payment, and payment refused for the reason that it was drawn against the check of Garder-

mann & Jungclaus, which was payable at a bank in Iowa, and it had not then been collected. Subsequently and before the appointment of the receivers, the check was collected by the Third National Bank of Jersey City and credited to the account of the Jarvis Company under date of March 18, 1904. The receivers were appointed March 28, 1904, and the specific moneys received by the Jarvis Company from Garderman & Jungclaus for the use of the Eastern States Refrigerating Company came into the hands of the receivers in the balance of the Jarvis Company account, amounting to $213.61, which was paid over to the receivers by the Third National Bank of Jersey City.

SCHEDULE "C."

The receivers do adjudicate and allow the following claims as preferred for payment pro rata from assets in the receivers' hands other than the balance of proceeds of sale of the defendant's cold storage plant, and after the payment of the claims allowed in Schedule "B":—

1. Claim W. S. Batcheller, filed April 12, 1904, for balance of salary as Superintendent of the Jarvis Company's cold storage plant from February 15, to March 29, 1904, $335.83

Interest at 6% from March 29, 1904, to date of payment.

2. Claim of Leighton S. Knipe, filed May 5, 1904, for balance of services as assistant engineer of construction of the Jarvis cold storage plant from January 29 to March 28, 1904 ..... 205.00

Interest at 6% from March 28, 1904, to date of payment.

(The balance of this claim for services prior to January 29, 1904, is allowed as an unsecured claim in Schedule

Total allowed, $540.83

SCHEDULE "D."

The receivers do adjudicate and allow the following unsecured claims for the amounts severally stated against the assets of the defendant corporation pro rata after the payment of the liens and claims as adjudicated and allowed in Schedules "A," "B" and "C";—

1. Taylor Brothers Company, filed April 9, 1904, for merchandise.....$ 45.33
Interest at 6% from December 14, 1903, to date of payment,

2. A. J. Dittmar, filed April 12, 1904, for material and labor..... 56.65
Interest at 6% from January 28, 1904, to date of payment,

3. Hall-Jagels-Bellis Company, filed April 12, 1904, for coal..... 433.32
Interest at 6% from February 12, 1904 to date of payment,

4. The Henry Johnson Company, filed April 12, 1904, for engine packing..... 37.95
Interest at 6% from February 3, 1904, to date of payment,

5. John S. Menagh Company, filed April 13, 1904, for hardware and supplies..... 172.15
Interest at 6% from March 15, 1904, to date of payment,

6. The National Machine Painting Company filed April 14, 1904, for painting..... 155.00
Interest at 6% from December 31, 1903, to date of payment,

7. Borne, Scrymser Company, filed April 14, 1904, for oils..... 36.15
Interest at 6% from December 10, 1903, to date of payment,

Forward .....$ 936.55

8. The William Sumner Belting Company, filed April 16, 1904, for merchandise. 80.68
Interest at 6% from January 23, 1904, to date of payment,

9. Joseph Dixon Crucible Company, filed April 16, 1904, for paint..... 4.50
Interest at 6% from November 13, 1903, to date of payment,

10. F. B. Brill, filed April 16, 1904, for merchandise 49.00
Interest at 6% from January 16, 1904, to date of payment,

11. Snow Steam Pump Works, filed April 16, 1904, for promissory note.....1,104.94
Interest at 6% from February 16, 1904, to date of payment.

12. The Reeves Engine Company, filed April 18, 1904, for merchandise..... 575.00
Interest at 6% from January 12, 1904, to date of payment,

13. C. G. Denison & Son, filed April 18, 1904, for coal..... 226.10
Interest at 6% from March 4, 1904, to date of payment,

14. Page, Dennis & Company, filed April 20, 1904, for skids and trucks..... 305.00
Interest at 6% from December 8, 1903, to date of payment,

15. Morrow and Day, filed April 20, 1904, for collation..... 40.00
Interest at 6% from January 14, 1904, to date of payment,

16. Williams & Peters, filed April 21, 1904, for coal..... 62.81
Interest at 6% from March 11, 1904, to date of payment,

17. United Electric Company of N. J., filed April 21, 1904, for electric light..... 509.44

Interest at 6% from January 1, 1904, to date of payment,

18. W. M. Obergfell, filed April 25, 1904, for tools 2.00

Interest at 6% from December 16, 1904, to date of payment,

19. Otis Elevator Company, filed April 25, 1904, for elevators..... 2,167.50

Interest at 6% from October 9, 1903, to date of payment,

20. Western Union Telegraph Company, filed April 25, 1904, for Telegrams..... 16.15

Interest at 6% from February 26, 1904, to date of payment,

21. Hay Foundry & Iron Works, filed April 25, 1904, for judgment New York Court 2,100.66

Interest at 6% from March 24, 1904, to date of payment,

22. American Desk & Stool Company, filed April 27, 1904, for office furniture.... 100.00

Interest at 6% from December 31, 1904, to date of payment,

23. H. F. Jones, filed May 2, 1904, for carpenter work..... 9.69

Interest at 6% from February 1, 1904, to date of payment,

24. Strong Machinery & Supply Company, filed May 3, 1904, for merchandise.. 3.98

Interest at 6% from January 14, 1904, to date of payment,

25. N. Y. & N. J. Telephone Company, filed May 4, 1904, for telephones..... 98.29

Interest at 6% from April 1, 1094, to date of payment,

26. Leighton S. Knipe, filed May 5, 1904, for balance of services as assistant engineer of construction..... 670.00

Interest at 6% from January 29, 1904, to date of payment,

(Two months services on this claim from January 28 to March 28, 1904, being the two months preceding the appointment of the receivers, has been allowed in Schedule as a preferred claim.)

27. Margaret O'Neill, trading as C. H. O'Neill, filed May 6, 1904, for lumber.... 210.43 10

Interest at 6% from April 1, 1904, to date of payment,

28. Underfeed Stoker Co. of America, filed May 6, 1904, for mechanical stokers. 683.34

Interest at 6% from September 12 1904, to date of payment,

29. Commercial Trust Company of New Jersey, filed May 9, 1904, for Trustees' services 350.00

Interest at 6% from March 4, 1904, to date of payment, 20

30. Commercial Trust Company of New Jersey, filed May 9, 1904, for overdraft coupon account 48.36

Interest at 6% from May 6, 1904, to date of payment.

31. Commercial Trust Company of New Jersey, filed May 9, 1904, for insurance.... 814.25

Interest at 6% from March 17, 1904, to date of payment, 30

32. Arthur L. Perkins, filed May 10, 1904, for engine supplies..... 25.46

Interest at 6% from February 23, 1904, to date of payment,

33. The Fairbanks Company, filed May 10, 1904, for scales 135.00

34. T. R. McMann's Sons, filed May 10, 1904, for merchandise 85.27

Interest at 6% from March 1, 1904 to date of payment, 40

25. George H. Stoddard, filed May 10, 1904, for architect's services..... 1,681.70
Interest at 6% from December 1, 1903, to date of payment,

36. Commercial Trust Company of New Jersey, filed May 11, 1904, for office rent and expenses 55.00
Interest at 6% from October 2, 1903, to date of payment,

37. Everson & Reed, filed May 12, 1904, for stamps, &c. 49.45
Interest at 6% from December 11, 1903, to date of payment,

38. Fay Belting Company, filed May 12, 1904, for belting 104.63
Interest at 6% from January 6, 1904, to date of payment,

39. George A. Haws, filed May 13, 1904, for engine oils 68.63
Interest at 6% from March 8, 1904, to date of payment.

40. W. S. Batcheller, filed May 14, 1904, for postage 4.52
Interest at 6% from March 11, 1904, to date of payment.

41. The Goulds Manufacturing Company, filed May 15, 1904, for judgment... 808.05
Interest at 6% from April 28, 1904, to date of payment.

42. Jersey City Coal Company, filed May 19, 1904, for coal 12.00
Interest at 6% from March 28, 1904, to date of payment.

43. Winthrop & Stimson, filed May 20, 1904, for legal services..... 501.35
Interest at 6% from April 1, 1904, to date of payment.

44. The Cockburn Barrow and Machine Company, filed May 20, 1904, for merchandise 188.23

Interest at 6% from February 1, 1904, to date of payment,

45. P. H. & J. Conlon, filed May 20, 1904, for driving wells..... 350.00

Interest at 6% from October 2, 1903, to date of payment.

46. Deane Steam Pump Company, filed May 21, 1904, for steam pump..... 5.40

Interest at 6% from March 16, 1904, to date of payment.

47. United States Mortgage and Trust Company, fied May 28, 1904, for balance on note of defendant Company. $15,500.00

Amount of overdraft on account of defendant Company.. 4,672.65

$20,172.65

Less amount received on sale of subscription agreement of stock of defendant Company assigned as collateral, sold September 28, 1904..... 10.00

20,162.65

Interest at 6% to be added.

(The United States Mortgage and Trust Company held as security for this indebtedness a subscription agreement to stock of the Jarvis Terminal Cold Storage Company. On September 28, 1904, the equity in this subscription agreement was sold at public auction under the direction of the United States Mortgage & Trust Company, by Adrain H. Muller & Son, at the New York Real Estate salesrooms, 161 Broadway, New York City, and was purchased for $10.00.)

48. Fagan Iron Works, filed June 1, 1904, for iron beams 9.52
Interest at 6% from December 16, 1903, to date of payment,

49. John B. Snook & Sons, filed June 1, 1904, for drawings 85.00
Interest at 6% from May 26 1903, to date of payment.

50. James L. Robertson & Sons, filed June 4, 1904, for merchandise 7.93
Interest at 6% from March 1, 1904, to date of payment.

51. Nathalie Jarvis, filed June 8, 1904, for note 7,000.00
Interest at 6% from February 19, 1903, to date of payment.

(This claim was filed out of time. By order of the Court, dated July 18, 1904, the receivers were directed to receive the claim the same as if filed in time.)

Total of unsecured claims allowed....$42,508.46
Interest to be added.

NOTE: The Egg Reporter filed a claim with the receivers June 6, 1904, for $70.00 for advertising. As this claim was filed after June 4, 1904, the date fixed by the order of April 4, 1904, for creditors to file and prove claims, and as no order has been made admitting this claim, the same is disallowed. Irving Underhill filed a claim with the receivers September 21, 1904, for $5.00 for photograph; this claim being filed after June 4, 1904, is also disallowed.

RECEIVERS' ACCOUNTS.

The receivers present their final account of receipts and disbursements from the sale of the defend-

ant corporation's cold storage plant and of the moneys received and disbursed on account of the operation of the plant and the administration of the estate.

SALE OF PLANT.

Receipts and disbursements on account of the sale of the cold storage plant and property sold under order dated May 20, 1904, and orders supplemental thereto.

RECEIPTS.

June 29, 1904—By cash received from Gustav W. Lembeck and others, being 5% on account of the purchase price for the property of $135,000		$6,750.00
July 22, 1904—By cash received from Gustav W. Lembeck and others, being balance of cash payment on purchase price under order of June 20, 1904, on sale of cold storage plant		18,250.00
July 30, 1904—By Commercial Trust Company of New Jersey, interest on balance	$11.29	
August 20, 1904—By Commercial Trust Company of New Jersey, interest on balance	27.62	
Sept. 30, 1904—By Commercial Trust Company of New Jersey, interest on balance	26.68	65.59
Total cash receipts		25,065.59
Sept. 23, 1904—By credit for balance of purchase price on delivery of deed under order dated September 19, 1904		110,886.15
Total cash and credit received		$135,951.74

DISBURSEMENTS.

July 26, 1904—To cash paid Edward Fry, City Collector, Jersey City, for taxes on defendant's cold storage plant, paid under order of April 20, 1904.....V. 50 $3,127.83

July 26, 1904—To cash paid Edward Fry, Water Register, Jersey City, for water taxes on defendant's cold storage plant, paid under order of April 20, 1904, ...V. 51 1,803.82

Aug. 1, 1904—To cash paid Commercial Trust Company of New Jersey, for receivers' certificates, under order dated Aug. 1, 1904.....V. 54

Certificate authorized by order dated May 2, 1904..... $1,800.00

Interest thereon 26.10

Certificate authorized by order dated June 27, 1904..... 2,500.00

Interest thereon 13.75 4,339.85

Total cash disbursements $9,271.50

Sept. 23, 1904—To credit on first mortgage bonds and mechanics liens on delivery of deed, under order dated September 19, 1904 ..... 110,886.15

Total disbursements $120,157.65

Total receipts $135,951.74

Total disbursements 120,157.65

Balance (cash) $15,794.09

OPERATION OF PLANT AND ESTATE.

RECEIPTS.

March 30, 1904—By cash, storage charges $35.70

March 31, 1904—By cash, storage charges		34.40
April 4, 1904—By cash, bank balances of defendant company at date of appointment of receivers, Third National Bank of Jersey City.	$213.61	
Commercial Trust Company of New Jersey	6.18	219.79
April 5, 1904—By cash, storage charges		107.77
April 6, 1904—By cash, storage charges		18.00
April 9, 1904—By cash, storage charges		73.32
April 12, 1904—By cash, storage charges		144.00
April 16, 1904—By cash, storage charges		57.80
April 20, 1904—By cash, storage charges		139.45
April 21, 1904—By cash, storage charges		53.95
April 22, 1904—By cash, storage charges		160.63
April 23, 1904—By cash, storage charges		80.69
April 26, 1904—By cash, storage charges		20.75
April 30, 1904—By cash, storage charges		3.20
April 30, 1904—By cash, Commercial Trust Company of New Jersey, interest on balance		.38
May 3, 1904—By cash, storage charges		148.03
May 4, 1904—By cash, storage charges		220.43

May 6, 1904—By cash, Commercial Trust Company of New Jersey, borrowed on receivers' certificate authorized under order of May 2, 1904.....	1,800.00
May 11, 1904—By cash, storage charges	236.61
May 14, 1904—By cash, storage charges	16.60
May 20, 1904—By cash, storage charges	75.37
May 24, 1904—By cash, storage charges	64.15
May 26, 1904—By cash, storage charges	107.38
May 28, 1904—By cash, storage charges	32.18
May 31, 1904—By cash, advanced freight charges	44.44
May 31, 1904—By cash, Commercial Trust Company of New Jersey, interest on balance.....	.66
June 6, 1904—By cash, storage charges	1.80
June 7, 1904—By cash, storage charges	226.67
June 18, 1904—By cash, storage interest	119.73
June 25, 1904—By cash, storage charges	49.12
June 27, 1904—By cash, advanced freight charges.....	55.66
June 29, 1904—By cash, Commercial Trust Company of New Jersey, borrowed on receivers' certificate, authorized under order of June 27, 1904....	2,500.00
June 30, 1904—By cash, storage charges	15.85
July 21, 1904—By cash, storage charges	4.05

July 22, 1904—By cash, storage charges	111.31
July 26, 1904—By cash, Gustav W. Lembeck and others for accrued storage charges	1,299.07
July 26, 1904—By cash, Gustav W. Lembeck and others for unearned premium on fire insurance policies, paid under order dated June 20, 1904	640.26 10
July 29, 1904—By cash, storage charges	158.51
July 26, 1904—By cash, storage charges	207.36
Aug. 4, 1906—By cash, unused balances, petty cash	8.04
Aug. 25, 1904—By cash, check 39 paid by W. S. Batcheller, Superintendent, from petty cash	1.50
Aug. 30, 1904—By cash, Commercial Trust Company of New Jersey, interest on balance 20	1.97
Sept. 30, 1904—By cash, Commercial Trust Company of New Jersey, interest on balance	1.10
Total receipts	$9,297.68

DISBURSEMENTS.

30

April 1, 1904—To cash, payroll, V. 1.	$157.33
April 9, 1904—To cash, payroll, V. 2.	161.55
April 12, 1904—To cash, William G. E. See, approving receivers' bond, V. 3.	5.00
April 16, 1904—To cash, payroll ($162.19); petty cash, ($20.65), V. 4	182.84
April 22, 1904—To cash, Everson & Reed, rubber stamp, V. 5	1.00
April 22, 1904—To cash, Berry Forwarding Company, cartage, V. 6 40	1.50

April 23, 1904—To cash, payroll,V. 7 157.69
April 30, 1904—To cash, payroll, ($181.76); petty cash, ($10.00), V. 8.. 191.76
May 5 1904—To cash, Chicago Pneumatic Tool Company, under order of May 22, 1904, V. 1a..... 1,393.50
May 6, 1904—To cash, W. E. Wilson, for fire insurance, under order of May 10 2, 1904, V. 2a..... 368.00
May 7, 1904—To cash, payroll, ($167.69); petty cash, $20.68), V. 9.... 188.37
May 9, 1904—To cash, J. M. Moseman, safe, V 10..... 70.00
May 9, 1904—To cash, M. C. Warren, & Co., adjustable fastenings, V. 11.... 85.60
May 9, 1904—To cash, C. H. O'Neill, lumber, V. 12..... 256.70
May 14 1904—To cash, payroll, 20 ($195.75); petty cash, ($10.00), V. 13. 205.75
May 21, 1904—To cash, payroll, ($187.36); petty cash, ($10.00), V. 14. 197.36
May 21, 1904—To cash, advanced freight charges, V. 15..... 103.10
May 24, 1905—To cash, A. E. Rode, inspector weights, &c., V. 16..... 4.50
May 28, 1904—To cash, payroll, ($179.69); petty cash, ($10.00), V. 17.... 189.69
30 June 4, 1904—To cash, payroll, V. 18. 182.46
June 10, 1904—To cash, payroll, ($194.37); petty cash, ($10.00), V. 19... 204.37
June 18, 1904—To cash, payroll,. V. 20 ..... 193.73
June 25, 1904—To cash, payroll, ($192.73); petty cash, ($10.00), V. 21.... 202.73
June 28, 1904—To cash, Hall-Jaegels-Bellis Co. coal, V. 22..... 254.74
June 28, 1904—To cash, Western 40 Union Telegraph Co., V. 23..... 2.30

June 28, 1904—To cash, Borne, Scrymser Co., oil, V. 24..... 58.28

June 28, 1904—To cash, The Henry, Johnson Co., packing, V. 25..... 39.40

June 28, 1904—To cash, George D. Harris & Co., coal, V. 26..... 119.41

June 28, 1904—To cash, J. A. coal, V. 27..... 152.37

June 28, To cash, O. H. Perry, V. 28. 202.30

June 28, 1904—To cash stationery, V. 29 ..... 22.65

June 28, 1904—To cash, Jones Perpetual Ledger Co., stationery, V. 30... 32.35

June 28, 1904—To cash, E. A. Gibbons, packing, V. 31..... 10.18

June 28, 1904—To cash, Carbondale Chemical Co., chemicals, V. 32..... 231.89

June 28, 1904—To cash, N. Y. & N. J. Telephone Co., V. 33..... 41.46

June 28, 1904—To cash, W. E. Wilson, fire insurance, V. 34..... 49.00

June 28, 1904—To cash, W. H. & F. W. Cane, carpenter work, V. 35..... 37.80

June 28 1904—To cash, Charles S. Shultz, lime, V. 36..... 6.00

June 28, 1904—To cash, Union Towel Supply Co., V. 37..... 4.00

June 28, 1904—To cash, American District Telegraph Company, V. 38.... .30

June 28, 1904—To cash, J. M. Rankin, cartage, V. 39..... 1.50

June 28, 1904—To cash, E. L. Bader, typewriting, V. 40..... 33.22

June 28, 1904—To cash, F. D. Mack, inspection, V. 41..... 75.00

June 28, 1904—To cash, Metropolitan Advertising Co., V. 42..... 128.00

June 28, 1904—To cash, The Observer, advertising sale, V. 43.... 25.50

June 28, 1904—To cash, R. M. Dickinson, accounting, V. 44..... 150.00

July 2, 1904—To cash, payroll, ($206.92); petty cash, ($10.00), V. 45.. 216.92

July 9, 1904—To cash, payroll, V. 46. 189.57

July 16, 1904—To cash, payroll, V. 47 209.17

July 18, 1904—To cash, petty cash, V. 48 ..... 10.00

July 23, 1904—To cash, payroll, V. 49 212.17

July 26, 1904—To cash, payroll to and including July 26th, V. 52..... 83.28

July 26, 1904—To cash, Edward Fry, Water Registrar, water rents, V. 53.. 792.75

July 29, 1904—To cash, National Ammonia Co., chemicals, V. 55..... 208.75

July 29, 1904—To cash, N. Y. & N. J. Telephone Co., V. 56..... 33.15

July 29, 1904—To cash, John S. Menagh Co., hardware, V. 57..... 49.70

Sept. 2, 1904—To cash, Cold Storage, advertising sale, V. 58..... 11.50

Sept 2, 1904—O. H. Perry, V. 59.... 192.70

Sept. 3, 1904—To cash, J. E. Carlock, sawdust, V. 60..... 7.50

Sept. 20, 1904—To cash, National Surety Co., premium on receivers' bond, V. 61..... 100.00

Sept. 21, 1904—To cash, Metropolitan Advertising Co., V. 62..... 24.00

Sept. 21, 1904—To cash, E. A. Gibbons, packing, V. 63..... 161.04

Sept. 22, 1904—To cash, Union Towel Supply Co., V. 64..... 4.00

Sept. 22, 1904—To cash, Cockburn Barrow & Machine Co., V. 65..... 56.72

Sept. 22, 1904—To cash, George F. Blake Mfg Co., V. 66..... 58.00

Sept. 26, 1904—To cash, N. Y. & N. J. Telephone Co., V. 67..... 10.70

Sept. 27, 1904—To cash, Real Estate Trusts Co., auctioneer's fee, V. 68....	75.00
Total disbursements	$9,088.80
Total receipts—Operation of plant and estate	$9,297.68
Total disbursements	9,088.80
Balance, (cash)	$208.88

SUMMARY.

Balance on hand account of sale cold storage plant.....	$15,794.09
Balance on hand account of operation and administration.....	208.88
Total cash on hand.....	$16,002.97

The only asset remaining in the hands of the receivers except the cash and balance before stated, is a promissory note of Robert M. Jarvis, given for the purchase of stock in the defendant corporation, which the receivers consider worthless, but which at its face value amounts as follows:

Note dated January 20, 1904, due June 20, 1904..	$2,500.00	
Interest thereon from June 20, 1904, to October 10, 1904	45.84	$2,545.84

UNPAID ACCOUNTS OF THE RECEIVERS.

The receivers have remaining unpaid the following bills incurred by them in the operation of the plant and the administration of the estate:

O. H. Perry, coal.....	$188.23
Borne Scrymser Company, oil.....	12.77

Henry Johnson Company, packing.....	11.63
Hudson Engineering Company, air lift....	390.50
National Ammonia Company, chemicals..	104.25
E. A. Gibbons, packing	66.02
Hall- Jaegels-Bellis Company, coal.....	40.66
Interborough Engineering Company, repairs	2.50
Campbell Stores, cartage.....	2.00
	$818.56

The receivers further report that from the cash balance of $16,002.97 now remaining in their hands there should be made the following payments in the order stated:

1. The preferred claims adjudicated and allowed in Schedule "B".....	$299.82
2. The unpaid bills of the receivers in the operation of plant and administration of estate as shown above.....	818.56
3. The receivers fees to be allowed by the Court.	
4. The taxed costs, disbursements and fees of counsel of the receivers to be allowed by the Court.	
5. The balance due for principal and interest on the first mortgage bonds of the defendant company to be paid either to John Alvin Young and Richard Irvin, owners of the bonds, or to the Commercial Trust Company of New Jersey, trustee for the bondholders, as shown in Schedule "A".....	24,174.65
6. The amount due on mechanics lien claims, as allowed and shown in Schedule "A" to be paid to John Alvin Young and Richard Irvin, assignees.....	47,482.24

7. The amount due the Erie Railroad Company, on its bond and mortgage, as shown in Schedule "A" 17,173.75

8. The amount of preferred claims adjudicated and allowed in Schedule "C" to be paid pro rata (Interest to be added). 540.83

9. The amount of the unsecured claims adjudicated and allowed in schedule "D" to be paid pro rata, (interest to be added) 42,508.46

The receivers respectfully ask that an order may be made as follows:

1. Confirming the adjudication and allowance of claims as herein adjudicated and allowed by the receivers.

2. Approving and passing the accounts of the receivers as herein reported.

3. Fixing the amount of the receivers' allowances.

4. Fixing the amount of counsel fee for the counsel of the receivers, and directing the payment of their disbursements and costs to be taxed.

5. Directing the payment of the cash balance then remaining in the hands of the receivers in accordance with the foregoing report of the receivers.

6. Authorizing the receivers with the consent of the creditor or creditors in interest to transfer in payment of claims at its face value the note of Robert M. Jarvis for $2,500 and interest, now held by the receivers.

7. Discharging the receivers from their trust upon their compliance with the order of distribution to be made herein.

Dated October 7, 1904.

Respectfully submitted,
J. W. Hardenbergh,
Palmer Campbell,
Receivers.

(Affidavits attached.)

EXHIBIT "A".

AGREEMENT made this twenty-third day of September, in the year one thousand nine hundred and four,

BETWEEN GUSTAV W. LEMBECK, DANIEL E. CLEARY and CHARLES E. CASSIDY, all of Jersey City, New Jersey, parties of the first part (hereinafter called the Assignors), and JOHN ALVIN YOUNG and RICHARD IRVIN, parties of the second part (hereinafter called the Assignees):

WHEREAS, at a public sale of the property and plant of JARVIS TERMINAL COLD STORAGE COMPANY, held on the twenty-ninth day of June, nineteen hundred and four, the Assignors purchased the same from PALMER CAMPBELL and JOHN W. HARDENBERGH, Receivers of said company; and on the twenty-sixth day of July, nineteen hundred and four, entered into two certain agreements (original copies of which are annexed hereto); and

WHEREAS, on said twenty-sixth day of July, the Assignors entered into possession of said plant and property and have since operated said plant and carried on the cold storage business; and

WHEREAS, the said Assignors have agreed to sell, transfer and assign all their right, title and interest in and to said property and plant, and in and to the business carried on since the twenty-sixth day of July as fully and entirely as if the Assignees had entered into possession on said day:

NOW, THEREFORE, in consideration of the premises, the said Assignors do transfer, set over and assign to the Assignees, their successors and assigns,

all their right title and interest in and to their bid at such public sale and all rights thereunder since acquired and of whatsoever kind and nature, together with the right to the return of such funds, if any, as may have been deposited to pay off the liens or claims upon or against the said premises.

IT IS EXPRESSLY UNDERSTOOD, HOWEVER, that the above named Assignors shall forever be kept and saved harmless by the said Assignees from all costs or charges whatsoever for or by reason of any obligation or liability under said bid or contracts with the Receivers above named, or any liability incident to the operation and management of said plant and storage business from the twenty-sixth day of July, nineteen hundred and four until entry by the Assignees hereunder.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

In presence of:

Francis V. Many as to
G. W. Lembeck and
Charles E. Cassidy.

G. W. Lembeck (L. S.)
C. E. Cassidy (L S.)

Willard C. Fisk as to
John Alvin Young and
Richard Irvin.

Jno. Alvin Young (L. S.)
Rich'd Irvin (L. S.)

EXHIBIT "B."

WHEREAS, at a public sale of the property and plant of Jarvis Terminal Cold Storage Company

held on the 29th day of June, 1904 Gustav W. Lembeck, Daniel E. Cleary and Charles E. Cassidy purchased the same from Palmer Campbell and John W. Hardenbergh, Receivers of said Company; and

WHEREAS, the said Gustav W. Lembeck, Daniel E. Cleary and Charles E. Cassidy have sold, transferred and assigned to the undersigned John Alvin Young and Richard Irvin all their right, title and interest in and to their bid at such sale and all rights thereunder, including the right to receive from the receivers a deed of said premises and property upon complying with the terms of said sale; and

WHEREAS, the undersigned John Alvin Young and Richard Irvin have agreed to cause said property to be conveyed to Union Terminal Cold Storage Company, a corporation of the State of New Jersey;

Now THEREFORE, IN CONSIDERATION of One Dollar, receipt whereof is hereby acknowledged, and of other good and valuable considerations, we, John Alvin Young and Richard Irvin, do hereby transfer, set over and assign to Union Terminal Cold Storage Company our right to receive a deed of said premises and property pursuant to the said assignment to us by Gustav W. Lembeck, Daniel E. Cleary and Charles E. Cassidy, as aforesaid, and do hereby consent that a deed of said premises and property may be by said receivers executed and delivered to Union Terminal Cold Storage Company.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 23d day of September, nineteen hundred and four.

John Alvin Young (L.S.)
Rich'd. Irvin (L.S.)

(Acknowledgment attached.)

EXHIBIT "C."

IN CONSIDERATION of the sum of One Dollar and other valuable consideration to him in hand paid, the receipt whereof is hereby acknowledged, Frederick W. Cane, trading as W. H. & F. W. Cane, does hereby sell, assign, transfer and set over unto Union Terminal Cold Storage Company, a New Jersey corporation, all his claim or claims and cause of action or causes of action of every kind and nature whatsoever against the Jarvis Terminal Cold Storage Company, together with all his rights in, to, by and under his lien against the property of such Jarvis Terminal Cold Storage Company to the amount of twenty-five thousand and seventy-five and 35/100 Dollars ($25, 075.35) a notice of which lien was filed in the office of the Clerk of Hudson County, New Jersey, numbered 2745, and recorded in liber 8 of "Liens" at page 154, March 10th, 1904, and the said Frederick W. Cane hereby covenants and agrees to execute any and all further instruments or instruments in writing, and to do any and all further act or acts requested by Union Terminal Cold Storage Company for further assuring and effecting the assignment to it of such lien, or, if it shall so desire, for the further canceling and discharging the same of record.

IN WITNESS WHEREOF the said Frederick W. Cane, has hereunto set his hand and seal this 8th day of Sept. 1904.

Frederick W. Cane (L.S.)

(Acknowledgment attached.)

Exhibits D, E, F, G, H. I, J are assignments to Union Terminal Cold Storage Co. from the following lienors:

Robert A. Keasbey Co.
Timothy W. Dorsett.
Heine Safety Boiler Co.
The Taylor-Martin Engineering Co.
B. F. Sturtevant Company.
Electric Construction & Supply Co.
Carbondale Machine Co.

They are the same in form as Exhibit C.

EXHIBIT "K."

WHEREAS, John Alvin Young and Richard Irvin have procured and caused to be deposited with Palmer Campbell and John W. Hardenbergh, Receivers of the Jarvis Terminal Cold Storage Company, assignments to this Company of the following mechanics liens and claims:

No. 2743, L. 8, p. 152, February 25, 1904, $12,833.14. The Taylor-Martin Engineering Company.

No. 2745, L. 8, p. 154, March 10 1904, $25,075.35. Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L 8, p. 154, March 12, 1904, $4,160.67. Heine Safety Boiler Company.

No. 2748, L. 8, p. 155, March 21, 1904, $1,325.00. Electric Construction and Supply Company.

No. 2749, L. 8, p. 156, March 21 1904, $1,699.75. Electric Construction and Supply Company.

No. 2751, L. 8, p. 157, March 28, 1904, $1,302.50. B. F. Sturtevant Company.

No. 2753, L. 8, p. 158, April 6, 1904, $155.00. Timothy W. Dorsett.

May 6, 1904, $975,00. Robert A. Keasbey Company.

All title or lien of the Carbondale Machine Company to or upon refrigerating machines now installed in the cold storage plant of the defendant Company; and

WHEREAS, there are or may be in the hands of said Receivers certain sums of money to which the owners of said claims and liens may be now or hereafter entitled;

NOW THEREFORE, in consideration of the premises and of the sum of One Dollar and other valuable considerations to it in hand paid, the receipt whereof is hereby acknowledged, Union Terminal Cold Storage Company, a corporation duly organized and existing under the laws of the State of New Jersey, does hereby sell, assign, transfer and set over unto John Alvin Young and Richard Irvin all right, title or interest in and to any sums of money now or hereafter in the hands of the Receivers of the Jarvis Terminal Cold Storage Company to which it is or may become entitled by reason of the assignments to it, the Union Terminal Cold Storage Company, of the liens and claims hereinbefore specifically set forth.

IN WITNESS WHEREOF, Union Terminal Cold Storage Company has caused these presents to be signed by its President and its coporate seal duly affixed, duly attested by its Secretary, this 24th day of September, 1904.

UNION TERMINAL COLD STORAGE COMPANY,
By I. Cleveland Kirkham,
President.

(Seal.)
Attest and witness:
W. T. Hunter,
Secretary.

(Acknowledgment attached.)

PETITION OF APPEAL OF ERIE RAILROAD COMPANY FROM DETERMINATION OF RECEIVERS.

(Served Oct. 15, 1904.)

(Filed Oct. 17 1904.)

To

HON. WILLIAM J. MAGIE,
Chancellor of the State of New Jersey.

The petition of Erie Railroad Company respectfully shows that your petitioner is the mortgagee of a mortgage, made and executed by the defendant, dated December sixteenth, nineteen hundred and three, for the sum of sixteen thousand five hundred dollars, with interest at five per cent., on which there is due the full amount of principal and interest. The moneys advanced and paid to the defendant by the petitioner on said mortgage were applied to the erection of new buildings on the mortgaged lands and to alterations, repairs and additions to buildings on said lands. The petitioner presented to the Receivers appointed in this cause, an affidavit of the amount due on its said mortgage and the said Receivers have allowed your petitioner's claim thereon, but in their report No. eight, filed October tenth, nineteen hundred and four, the Receivers have adjudged that the amount due to the petitioner on its said mortgage (and the bond accompanying the same), which on the date of said report amounted to the sum of seventeen thousand one hundred and seventy-three dollars and seventy-five cents, is a lien upon the proceeds of sale of defendant's property, second in priority to the lien of the amount due on certain bonds secured by a first mortgage on defendant's property, and have also adjudged the lien of your petitioner to be second in priority to the lien of certain mechanics liens, more particularly set forth in

said report, and amounting to the sum of forty-seven thousand four hundred and eighty-two dollars and twenty-four cents, all of which were filed subsequent to the recording of petitioner's mortgage.

Your petitioner conceives that it is aggrieved by said determination of the Receivers and insists that its claim on its said bond and mortgage is prior to the lien of the said mechanics liens, and also to the lien of the said first mortgage to the extent that the moneys advanced under said first mortgage were not applied to the erection of buildings upon the mortgaged lands or to alterations, repairs or additions to buildings on said lands.

Your petitioner respectfully appeals from said determination of the Receivers and prays that the same may be reversed and such order made as shall be agreeable to equity.

COLLINS & CORBIN,
Solicitors of Erie Railroad Company.

ORDER TO SHOW CHAUSE TO AFFIRM RECEIVERS' REPORT.

John W. Hardenbergh and Palmer Campbell, Receivers of the defendant corporation having presented and filed their report No. 8, containing an adjudication and allowance by the Receivers of the liens against the defendant's real estate and cold storage plant and aginst the proceeds of sale thereof; an adjudication and allowance by the Receivers of all other claims against the defendant filed with and proved before them; the Receivers' final accounts of their receipts and disbursements both on the sale of defendant's real estate and cold storage plant and on their administration of the defendant's assets, and

asking that the Court shall confirm their adjudication and allowance of liens and claims; shall allow their accounts as stated; shall fix the compensation of the Receivers; shall fix the fees and allowances of counsel of the Receivers and shall direct the payment and distribution of the balance of the money and assets in the Receivers' hands in the manner provided in their report.

It is on this tenth day of October, nineteen hundred and four, on motion of McDermott and Fisk, counsel of the Receivers, ORDERED that a copy of said Receivers' report be deposited with the Sergeant at Arms, Chancery Chambers, Jersey City, for the inspection of persons interested therein.

IT IS FURTHER ORDERED that the creditors and stockholders of the defendant Company show cause at Chancery Chambers, Jersey City, on Monday, October 17th, 1904, at ten o'clock in the forenoon why an order should not be made in accordance with said report and application of the Receivers.

IT IS FURTHER ORDERED that copies of this order, which need not be certified, be served within two days from this date upon the following creditors of the defendant Company who have appeared herein, or upon their solicitors, namely:—

1. Commercial Trust Company of New Jersey, Trustee, William Brinkerhoff, Solicitor.
2. John Alvin Young and Richard Irvin, Pierre F. Cook, Solicitor.
3. Erie Railroad Company, Collins and Corbin, Solicitors.

IT IS FURTHER ORDERED that like copies of this order be served within the same time upon all other creditors and stockholders of the defendant

Company by mailing the same to them at their post office addresses as near as the same can be ascertained.

Respectfully advised.

WM. J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

PROOF OF MAILING ORDER TO SHOW CAUSE, DATED OCT. 10, 1904.

(Filed Oct. 17, 1904).

OPINION.

Filed Dec. 9, 1904.

Jersey City, October 17, 1904.

Application for allowance of compensation to receivers of an insolvent corporation and to their counsel on settlement of receivers' account.

Mr. Willard C. Fisk for receiver.

Mr. Gilbert Collins for Erie Railroad Company, mortgagee.

Mr. John M. Enright for creditors.

Mr. William Brinkerhoff for Commercial Trust Company of New Jersey, Trustee.

Mr. Pierre F. Cook for John Alvin Young and Richard Irvin, holders of mortgage bonds and mechanics lienors.

STEVENSON, V. C. (Orally).

It is difficult to do exact justice in a case of this sort in awarding compensation to the receivers and to counsel, but I shall endeavor to make the best approximation that I can.

The case is peculiar. The case was started on behalf, undoubtedly, of the stockholders and creditors of this corporation; and if the cause had proceeded, as such causes generally do, these questions would not have been before the Court; the receiver would have taken the property subject to the liens that were upon it, and would have sold that property, and what he got would have been the fund out of which primarily he would receive his compensation. If he did not get any fund he might not get any compensation; it would be what has been termed a dry receivership; and it is proper in such cases for the complainant to be compelled oftentimes to put up a bond to secure the fees of the receiver whom the Court appoints at his instance.

But in this case I think I may rely on my memory to say that practically from the start it was apparent to all parties interested that there was no equity to administer for the general creditors at all, and that the proper course to take was to have the property sold under this statute and have all the proceeds brought into court by the receiver, to await the same sort of adjudication in regard to the title to the fund which would be made upon a suit or suits of foreclosure—suits to foreclose mortgage liens. From the time when that situation was declared,— and I think is was apparent at the start—this whole proceeding was practically converted into a mortgagee's suit, lienors' suit to foreclose their liens, have their priorities adjusted to have the property sold to the best advantage, and meanwhile have the property preserved for them—not preserved for the general creditors. The general creditors practically disappeared from view at the very start.

Every person who accepts a mortgage or a bond secured by a mortgage from a corporation, or in any way acquires a lien upon the property of a New

Jersey corporation, takes subject to the effect of insolvency proceedings which may subsequently be commenced and in which a receiver may be appointed of all the corporate assets, including the property upon which the encumbrance has been so acquired. This mortgagee—these bondholders, accepted their securities knowing that in future insolvency proceedings against this cold storage company the legality of their encumbrances might be called in question, the whole property might be administered by the receiver and not the equity only, and their liens, if found valid, would attach to the proceeds which would result from the receiver's sale. Where under our statute the receiver sells not the equity but the property itself, he is acting not for the stockholders or unsecured creditors necessarily, but for whatever class of creditors may finally be adjudged entitled to the funds in his hands. Where this kind of a sale is had under our statute the proceedings amount to a foreclosure suit for the benefit of the encumbrancer in case the validity of the encumbrance is established.

In this case not one dollar of compensation is allowed out of the fund to the receiver or to his counsel, which was not earned in the care and sale of the mortgaged property. If instead of taking advantage of the insolvency proceedings to realize upon their pledge, these bondholders, or rather their trustee, the mortgagee, had filed a bill, is it not perfectly plain that precisely this same receivership with its attendant expenses including compensation to counsel, would have been incurred? My recollection is that the mortgage covered the whole plant practically as a going concern, but if it did not then the encumbrances may have secured a more valuable receivership in insolvency proceedings than they would have been able to get in their own suit to foreclose.

The rule upon which I have acted in cases of this class a number of times is to allow to the receiver and his counsel at least the same compensation which they would have been entitled to receive if they had been appointed in a suit to foreclose the mortgage or other encumbrance which received the benefits of the receiver's care and the receiver's sale. Where the encumbrance is finally adjudged invalid, no difficulty arises because the entire proceeds of sale stand as a fund for the benefit of the unsecured creditors. But where the encumbrance is finally adjudged valid, then that part of the services of the insolvency receiver and his counsel, which have directly benefited the encumbrancer, and have corresponded precisely with similar expenses which he would have been obliged to incur on his own behalf in his own suit, plainly should be charged against the fund upon which the encumbrance is fastened. Where the insolvency receiver has had other assets besides those found to be subject to the mortgage, the effort of course should be to make each class, the encumbrancers and the general creditors, pay for the services of which it derived the benefit.

I do not know that there has been any published adjudication on this subject, but the matter came up directly before the late Chancellor McGill in the case of Boehme, Receiver of the New York Silk Ribbon Manufacturing Co. vs. Rall, about ten years ago. (6 Dick. 541.) In that case the mortgagees accepted from the corporation a mortgage of doubtful validity upon the entire assets, and thereupon the corporation was immediately put into insolvency and a receiver was appointed. Before the mortgagees could file a bill to establish and foreclose their mortgage, the receiver filed a bill to have it declared void. Meanwhile the receiver was obliged to care for the plant and operate it for the completion of goods, all of which were covered by the mortgage, if there was any mortgage. After a time the statute was in-

voked and the whole property was converted into cash by the receiver. The litigation between the receiver and the mortgagee then proceeded to a conclusion, and the result established the mortgage as a valid lien. The entire fund in the hands of the receiver was thus subjected to the mortgage and was not sufficient to pay the amount due thereon. Nevertheless upon an application by the receiver which was resisted, Chancellor McGill allowed substantial compensation to the receiver and to his counsel. Whether the late Chancellor in fixing the counsel fee consciously compensated the receiver's counsel out of the mortgagee's money for trying to defeat the mortgage, I do not know. I have never been obliged to decide this precise point, and it is not raised in this case because no allowance is made to the receiver or his counsel for any services rendered to the stockholders or general creditors in any proceedings hostile to the interests of any mortgagee, bondholder or lienholder who will take any part of the funds in the receiver's hands, or who would receive any part thereof if no compensation were allowed to the receiver or his counsel. The allowance is made on the theory that the encumbrancers who have had the advantage of this receivership to have their pledge cared for, kept in shape for sale and sold to advantage, and have thus been saved similar expensive proceedings in a suit on their own behalf, ought in equity to pay for the advantages which they have received. The fund has been administered by this court through its officers for their benefit, and they acquired their encumbrances subject to the very condition which has occurred. The receivers had a very difficult and delicate problem before them when they took possession of this plant. It was in peculiar shape. A magnificent factory was built and equiped for this peculiar work. The corporation failed, as I recall it,—at least the indications were that the corporation failed, because they did not have any capital to carry on the business after

they had their plant installed. Well, the receivers took hold of it, and then they could not stop the business; if they did great damage would follow, not merely to the large amounts of vegetable and meats on storage, but to the plant itself from the suspension of the business. The plant had to be kept in operation for its own preservation. I do not think that the situation of a railroad more imperatively requires from a receiver its operation than the situation of this plant called for such service on the part of these receivers, and the indications are that they performed their duties faithfully and with skill. They have had, and their counsel has had a great deal of work in getting this property sold, and sold in such a shape that all of the equities would be protected, and these bondholders would not be obliged to put up more money than was necessary; and the whole proceedings have been handled with great care to protect these bondholders from unnecessary hardship and loss, and to protect the lienors, to the extent that they had a claim, and of course to protect the Erie Railroad, the mortgagee, to the extent to which it may have a claim. The receivers and their counsel did all this really for the mortgagees, the bondholders and lienholders; and there is hardly any part of their work, as I now recall, the work of the receivers or of their counsel which can be attributed to the insolvency proceedings in their original form. Practically there is nothing of their work which is to be so classified. There may be a little. I don't know about how it would be about this bill of costs; perhaps the very earliest items in it would belong to the insolvency proceedings pure and simple. Do counsel desire to have that bill of costs examined and the portion disallowed which preceded the appearance of the lienors and bondholders? I think it is hardly worth while; and really the costs of the filing of the bill saved the bondholders the costs of filing a foreclosure bill.

MR. FISK:—This bill was filed by Mr. Lembeck representing a committee of bondholders.

THE COURT:—Yes, it is very plain that even the bill of complaint itself and the earliest costs incurred practically belong to the mortgagees, and correspond exactly with the costs of a foreclosure bill—and saved them the costs of a foreclosure bill—took the place of a foreclosure bill. I don't think any distinction can be drawn between the possible two kinds of services rendered by these two receivers and their counsel.

As to the amount asked for the two receivers, no specific objection is made. They certainly have had considerable work to do, and work that required a good deal of skill and involved a good deal of responsibility. Certainly there is a large amount of property involved, and property that had to be handled with great care. It does not strike me that the total amount asked for, four thousand dollars, is excessive. The amount that counsel asks for, twenty-five hundred dollars, does not strike me to be beyond what is fair compensation. I know myself that a good deal of work has been done; services have been performed involving a great deal of work and skill on the part of counsel, for the benefit of all these different interests, and the whole business has been done to the satisfaction of all those interests; and at the end we have two or three sharp questions, which can be litigated and decided on petition, and in which the receivers have no concern whatever.

The total amount—$6,500 and a few dollars of costs and disbursements—$180, about, of actual disbursements—is a little more than four per cent. on the amount administered. It does not seem that the charge is excessive, and therefore those charges will be allowed.

Mr. Fisk can take an order approving this report as against all of these parties that appear here—the

Erie Railroad, Mrs. Jarvis, Mr. Enright's clients and the others; and then all these other matters can be saved, and the parties may be permitted to present them to the court by petition.

ORDER FOR ALLOWANCES, ETC,

John W. Hardenbergh and Palmer Campbell, receivers of the defendant corporation, having filed their report No. 8 on October tenth, nineteen hundred and four, and the Court on the date aforesaid having made an order for the creditors and stockholders of the defendant Company to show cause why an order should not be made in accordance with the said report, and application of the receivers, and the said order to show cause now coming on to be heard at the time and place therein mentioned, in the presence of McDermott and Fisk, of counsel with the receivers; Collins and Corbin, of counsel with the Erie Railroad Company; Pierre F. Cook, of counsel with John Alvin Young and Richard Irvin; William Brinkerhoff, of counsel with Commercial Trust Company of New Jersey, Trustee; and Grey, McDermott and Enright, of counsel with Nathalie Jarvis; and proof being now presented and filed of the service of said order to show cause on the creditors and stockholders of the defendant Company as in said order provided; and the Court having duly considered the said receiver's report and the arguments of counsel thereon, and sufficient cause appearing therefor;

It is on this seventeenth day of October, nineteen hundred and four, on motion of McDermott and Fisk, of counsel with the receivers ODRERED that the said receivers forthwith advertise and sell at public sale the note in their hands of Robert M. Jarvis to the order of the defendant Company, dated January twentieth, nineteen hundred and four, due June twentieth, nineteen hundred and four, for twenty-five

hundred dollars, and that after deducting the expenses of said sale from the proceeds thereof, they add the balance to the cash now remaining in their hands as such receivers.

IT IS FURTHER ORDERED that the final accounts of the said receivers as stated in their said report be approved and allowed.

IT IS FURTHER ORDERED that from the balance of moneys in their hands as shown by said report, namely, sixteen thousand and two dollars and ninety-seven cents, the receivers make the following payments:—

FIRST. The preferred claims adjudicated and allowed by the receivers in Schedule "B" attached to their said report and amounting to two hundred and ninety-nine dollars and eighty-two cents.

SECOND. The unpaid accounts of the receivers in the operation of the defendant's cold storage plant and in the administration of the estate as set out in their said report, and amounting to eight hundred and eighteen dollars and fifty-six cents.

THIRD. To McDermott and Fisk the sum of one hundred and eighty dollars and fifty-two cents, the amount of their disbursements made as counsel to the receivers, a statement of which disbursements is now presented in open Court and approved and allowed.

FOURTH. To McDermott and Fisk, solicitors and counsel of the receivers, their costs in this cause to be taxed by the Clerk.

FIFTH. To McDermott and Fisk, counsel of the receivers, twenty-five hundred dollars, which sum is

hereby allowed to them for their services as such counsel.

SIXTH. To John W. Hardenbergh and Palmer Campbell, receivers of the defendant Company four thousand dollars, which sum is hereby allowed to them for their services as such receivers.

IT IS FURTHER ORDERED that the balance of the moneys then remaining in the hands of the said receivers, including proceeds of the sale of the said note of Robert M. Jarvis heretofore ordered to be sold, after the making of the several payments herein ordered to be made, be paid by the said receivers to the Clerk of this Court, there to remain subject to the further order of the Court.

IT IS FURTHER ORDERED that upon making the several payments herein ordered to be made, and upon paying to the Clerk of the Court such balance of moneys in their hands and upon filing a report of such payments, the said receivers be discharged.

IT IS FURTHER ORDERED that nothing in the said receivers' report No. 8, or in this order shall be deemed to be an adjudication or determination of the rights of the Commercial Trust Company of New Jersey, Trustee, John Alvin Young and Richard Irvin, Erie Railroad Company, and Nathalie Jarvis, or either of them, in the balance of moneys in the receivers' hands ordered to be paid to the Clerk of the Court, but the said parties named, or either of them, have leave to apply to the Court by petition or otherwise to determine their rights in the said fund.

Respectfully advised,

W. J. MAGIE,
C.

EUGENE STVENSON,
V.C.

RECEIVERS' REPORT OF DISTRIBUTION OF FUNDS UNDER ORDER FOR DISCHARGE, DATED OCT. 17, 1904.

Filed Oct. 26, 1904.

John W. Hardenbergh and Palmer Campbell, receivers of the Jarvis Terminal Cold Storage Company, hereby report their payments from the balance of moneys in ther hands as such receivers, as provided in the order made herein, dated October seventeenth, nineteen hundred and four.

Balance of cash in receivers' hands, as shown in their report No. 8, dated October 17, 1904		$16,002.97
Proceeds of sale of note of R. M. Jarvis for $2,500, dated January 20, due June 20, 1904, sold at public auction October 24, 1904, in accordance with order of October 17, 1904	$10.50	
Less bill for advertising sale in Jersey City Evening Journal	4.80	5.70
Total balance in receivers' hands		$16,008.67

Preferred claims paid as follows:—

State of New Jersey corporation tax	$120.27	
Eastern States Refrigerating Company	179.55	$299.82

Unpaid receivers' accounts:—

O. H. Perry	$188.23
Borne Scrymser Company	12.77
Henry Johnson Company	11.63
Hudson Engineering Company	390.50
National Ammonia Company	104.25
E. A. Gibbons	66.02
Hall-Jagels-Bellis Company	40.66

Interborough Engineering Company	2.50	
Campbell's Stores	2.00	818.56
McDermott & Fisk, counsel's disbursements	180.52	
McDermott & Fisk, taxed costs.	541.49	
McDermott & Fisk, counsel's allowance	2,500.00	
John W. Hardenbergh and Palmer Campbell, Receivers' fees	4,000.00	
Balance paid to Clerk of the Court	7,668.28	
		$16,008.67

Dated, October 25, 1904.

J. W. HARDENBERGH,
PALMER CAMPBELL,
Receivers.

(Affidavit attached).

State of New Jersey,)
)ss:
County of Hudson.)

John W. Hardenbergh, of full age, being duly sworn, on his oath, says that he is one of the receivers of the Jarvis Terminal Cold Storage Company; that the foregoing report of payments by the said receivers under order of the Court, dated October

17, 1904, is true to the best of his knowledge and belief.

J. W. HARDENBERGH.

Sworn and subscribed to before me)
this 25th day of October, 1904.)

WM. J. FIELD,
Notary Public,
N. J.

State of New Jersey,)
)ss:
County of Hudson.)

Palmer Campbell, of full age, being duly sworn, on his oath, says that he is one of the receivers of the Jarvis Terminal Cold Storage Company; that the foregoing report of payments by the said receivers, under order of the Court, dated October 17, 1904, is true to the best of his knowledge and belief.

PALMER CAMPBELL.

Sworn and subscribed to before me)
this 25th day of October, 1904.)

WM. J. FIELD,
Notary Public,
N. J.

NOTICE OF APPEAL.

(Filed Nov. 21, 1904.)

The Erie Railroad Company hereby appeals from so much of the decree made in this Court in the above cause on the seventeenth day of October, nine-

teen hundred and four, as orders that from the balance of moneys in the hands of the Receivers of the defendant, as shown by their report filed October tenth nineteen hundred and four, the Receivers make payment to McDermott & Fisk, counsel of Receivers, the sum of twenty-five hundred dollars, and as an allowance for services as such counsel, and to the Receivers the sum of four thousand dollars as an allowance to them for their services as such Receivers, to the Court of Errors and Appeals in the last resort in all causes.

COLLINS & CORBIN,
Solicitors and Counsel of
Erie Railroad Company.

Dated, November 5th, 1904.

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

GEO. S. HOBART.
Of Counsel with Erie Railroad Company.

PETITION OF APPEAL FROM ORDER FIXING ALLOWANCES.

The petition of Erie Railroad Company, the appellant in the above cause respectfully shows, that your petitioner finds itself aggrieved by a decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the 17th day of October, 1904, wherein the said Gustav W. Lembeck was complainant and the said Jarvis Terminal Cold Storage Company was defendant, and the said petitioner was one of the interested parties, in this respect, to wit: The said decree adjudges that from the balance of money in the hands of the receivers of the said defendant, Jarvis Terminal Cold Storage Company, as shown

by the report of the said receivers, filed October 10th, 1904, to wit, the sum of $16,002.97, the receivers make payment to McDermott & Fisk, counsel of receivers, of the sum of $2,500 as an allowance to them for their services as such counsel, and to the said receivers the sum of $4,000 as an allowance to them for their services as such receivers. Your petitioner appeals from that part of the decree which decrees as aforesaid, upon the ground that the same is erroneous for that the said allowances to the receivers and their said counsel, or some part thereof, should not have been decreed to be paid from the balance of moneys in the hands of the said receivers, as shown by their said report.

Your petitioner therefore prays that the said decree of the Chancellor may, in the particulars aforesaid, be reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as shall seem meet.

COLLINS & CORBIN,
Solicitors of Erie Railroad Company, Appellant.

ANSWER TO PETITION OF APPEAL.

The answer of John W. Hardenbergh and Palmer Campbell, Receivers of the Jarvis Terminal Cold Storage Company, to the petition of appeal of Erie Railroad Company:—

John W. Hardenbergh and Palmer Campbell, Receivers of Jarvis Terminal Cold Storage Company, not answering all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was on the seventeenth day of October, nineteen hundred and four, made and entered in the

Court of Chancery in this cause for the purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, the said Receivers pray to refer thereto when the same shall be produced. And the said Receivers are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs to ge adjudged to them.

McDERMOTT & FISK,
Solicitors and Counsel.

EVENING POST JOB PRINTING HOUSE, NEW YORK.

Argued by
FRANK E. LOUGHRAN,
Of Counsel with Respondents.

New Jersey Court of Errors and Appeals.

Between GUSTAV W. LEMBECK, Complainant, AND JARVIS TERMINAL COLD STORAGE COMPANY, Defendant.	On Bill for Receiver. On Petition, &c.
WESTERN COLD STORAGE COMPANY and SANBORN-FARRELL COMPANY, Petitioners-Respondents, VS. ERIE RAILROAD COMPANY, Defendant-Appellant.	On Appeal.

~~APPELLANT'S~~ Respondents BRIEF.

The facts are sufficiently stated in the Vice-Chancellor's findings and opinion (see State of Case, p. 105, *et seq.*).

The following brief is respectfully submitted in support of the decree of the Court of Chancery on behalf of the respondents, the Western Cold Storage Company and the Sanborn-Farrell Company, who were the petitioners below.

POINT ONE.

The carrier's lien for freight is lost by delivery.

A carrier's lien for freight is a right to hold and not a right to take. It begins with, rests upon, and ends with possession. Delivery has always been held an abandonment of the right.

McFarland *vs.* Wheeler, 26 Wend. (N. Y.), 467, in which appears a most able and instructive opinion by Senator Verplanck;
Remman *vs.* C. C. & B. R. R. Co., 51 Iowa, 338;
Black *vs.* Bogert, 65 N. Y., 601;
Hartshorne *vs.* Johnson, 7 N. J. L., 112;
Bigelow *vs.* Heaton, 4 Denio (N. Y.), 496;
G. I. & S. R. R. Co. *vs.* Sage, 35 Hun (N. Y.), 96;
Wingard *vs.* Banning, 39 Cal., 543;
Sweet *vs.* Pyin, 1 East., 4;
19 Am. & Eng. Enc. of Law, p. 10 and cases cited.

This principle is too well established to require the citation of the great number of cases that might be produced in its support.

By relinquishing possession the carrier is deemed to yield up the security he has by means of it. Possession is the first requisite of a common law lien, and if this be parted with, the lien is gone for ever, and thereafter the carrier must look to the personal responsibility of the owner or consignee, G. I. & S. R. R. Co. *vs.* Sage, *supra.*

The Erie contends that it did not unqualifiedly deliver the goods to the Storage Company, but asserts that it delivered under an agreement which

arose by reason of certain conversations which is claimed took place between its local agent, Mr. Reeve Wescott and the Superintendent of the Storage Company, Mr. Willoughby S. Batcheller.

The Vice-Chancellor found as a matter of fact that the Railroad Company delivered the goods before making any arrangement with the consignees about payment of freight charges (see pp. 107 and 111).

The Vice-Chancellor's findings on this question of fact is abundantly sustained by the proofs, and that too by the mouth of the Erie's own witnesses. All the evidence in relation to what was said or done in connection with the delivery of the goods was in the possession of the Railroad Company who presented two witnesses, Mr. Wescott, their local agent, and Mr. Batcheller the Storage Company's superintendent.

Upon the trial it was sought to determine by these two witnesses the time when these alleged conversations were had, whether before, at the time of, or after the delivery of the goods. The witness Westcott when asked both by the Vice-Chancellor and by counsel showed a determined disposition to refuse and avoid this very important question. The testimony reads as follows:

By the Vice-Chancellor:

Q. He asked you whether the conversation was after the delivery or before the delivery?

A. When this storage house was opened, I was very ambitious to put it on a good basis——

Q. That is not what you are asked. You are asked whether the conversation was the day of the delivery, the day before the delivery, or the day after the delivery.

A. I cannot answer a question of that kind; it is not a relevant question.

By Mr. Loughran:

Your counsel has charge of the relevancy of it.

A. If you ask me whether this delivery was made on the day of the conversation with Mr. Batcheller, then I can answer that.

Q. I ask the question just as it was put aud I ask a ruling of the Court on it.

A. I can't answer that; I don't know how to, sir; if you put it in another way I will answer it; I cannot answer a question of that kind (see p. 58).

The other witness offered by the Erie was Willoughby S. Batcheller, who testifies that the conversations in reference to freight charges between himself and Mr. Wescott occurred *after the delivery of the goods.* He testifies (see pp. 49, 50, 51) that the first two cars had been unloaded and stored in the warehouse before the conversations in regard to them occurred, then later, on the 26th day of January, 1904, a third car arrived, after which a similar conversation took place with regard to it, *i. e.*, the order of delivery and conversation was as follows: (1) Delivery of two cars, (2) conversation in regard to them, (3) delivery of third car, (4) conversation in regard to it.

The Erie's common law lien lost by delivery could not be revived by these subsequent conversations, for the reason that a carrier who has once parted with the possession cannot revive his lien by subsequent agreement (Jones on Lien Law, Sec. 310, and cases cited).

POINT TWO.

Constructive possession is not sufficient to sustain a carrier's common law lien, the possession must be actual.

Some loose expressions may be found in some of the cases about retaining constructive possession to preserve the carrier's lien. A careful exami-

nation of these cases will disclose that there is no such thing as constructive possession to save a common law carrier's lien; in order to retain the lien, the carrier must retain the actual possession; he may store the goods in a third parties' warehouse, but the goods should be deposited in the name of the carrier, or in such a way as to constitute the warehousemen the carrier's agent to maintain actual possession of the goods.

Gregg *v.* R. R. Co., 147 Ill., 562;
Compton *v.* Shaw, 1 Hun, 441.
Western Transportation Co. *v.* Barber, 56 N. Y., 544.

Care should be exercised in examining the cases on this point to distinguish those cited from the admiralty courts, which, dealing with sea shipments, are not controlling in the determination of questions relating to the lien of land carriers whose rights are governed by the technical rules of the common law.

Sears *v.* Wills, 66 U. S., 108.

POINT THREE.

The Erie cannot rely upon an express lien without abandoning its carriers' lien.

19 Am. & Eng. Ency. of Law, p. 8, note 4, and cases cited.

We have seen that the goods in question had all been delivered some two months prior to the letters of Westcott and Batcheller (pp. 72 and 73); also at a time prior to conversations between these gentlemen in reference to freight charges, and further, that the Erie had by these deliveries lost its common law lien, which these subsequent conversations could

not operate to revive; it follows that if any lien is to be made out by subsequent conversations or correspondence, it must be predicated upon an abandonment of the carriers' lien and that reliance must be had thereafter upon an express lien created by the convention of the parties and upon that lien alone.

POINT FOUR.

An express lien is founded on contract, and there must be privity of contract between the owner and the lien claimant.

In order to establish an express lien valid even between the parties, the Erie must show that the Storage Company or Batcheller had authority to bind the owners of the goods to such a contract. They must show agency. Upon this point there is an utter failure of proof.

They must also make out an express contract on terms which will either amount to a pledge of the goods or a mortgage of them; there is no other way to secure a debt.

Wilmerding *v.* Mitchell, 13 Vroom, 476.

Does the evidence show that in these conversations the Erie was to hold these goods in pledge or pawn to secure the freight, possession is as essential to a pledge as to a common law lien; the goods were in a third party's warehouse, deposited in the name of the owners, it follows that they were not pledged.

Were the goods mortgaged to the Erie, did the legal property in the goods pass by these conversations with a condition of defeasance in case the freight was paid?

Where is there anything in these alleged con-

versations to create either of these contracts, that of a pledge or that of a mortgage?

For a discussion of the distinction between a lien, a pledge and a mortgage, see Senator Verplanck's opinion in McFarland *v.* Wheeler, at page 475, and Jones on Liens, 2nd Ed., Sections 10 and 11.

POINT FIVE.

An agreement to operate as a chattel mortgage should be reduced to writing, contain an affidavit of consideration, and be recorded in order to preclude bona fide subsequent lienors.

Genl. Statutes, p. 2113, Sections 52 and 53.

In order to make an express lien valid as to third parties, *i. e.*, as against the Bank, and your petitioners who now stand in the shoes of the Bank, it would have been necessary to show that the Bank loaned with notice of the express lien. The evidence shows (see pp. 41, 43, 198), and the truth is, that the warehouse receipt was issued to the Bank without an endorsement of any kind to show a lien for freight and that the Bank had no notice or knowledge of any lien whatever.

The Bank was a *bona fide* incumbrancer without notice and the Sanborn-Farrell Company, who paid the Bank's claim in full and took over the note held by the Bank, is in equity subrogated to the Bank's securities and position.

POINT SIX.

If the Erie entrusted the goods with the Storage Company with instructions to collect the freight, thus making the Storage Company its agents for the collection, they are precluded, as the Storage Company has already been paid for the freight by the owners.

The facts as proven by the Erie's own witnesses are that after the goods had been delivered, Wescott sent the freight bills over to Batcheller, who received them and said that he would do all he could so far as his power was concerned, so long as he remained superintendent (pp. 42, 72 and 73), and thereupon sent the freight bills over to Jarvis in New York, with a request that they be paid. There is not much doubt that the intention of this arrangement was to extend credit to the Storage Company, as is the usual custom (pp. 38 and 82), and which has often been held a waiver of the carrier's lien.

Pinney *v.* Wells, 10 Conn., 104;
Chalder *v.* Belden, 18 Johns. (N. Y.), 157;
Sears *v.* Willis, 4 Allen (Mass.), 212.
Wiles Landering Co. *v.* Hahlo, 105 N. Y., 234.
Kents Commentaries, Vol. 2, p. *638.

The only other purpose of sending the freight bills to the Storage Company would be for the purpose of collection, and this would create agency.

Mr. Batcheller said he would do all in his power so long as he remained superintendent and his employment by the Jarvis Terminal Storage Company ceased when the Receivers took possession.

But let us, contrary in most respects to the proofs,

assume, for the purpose of argument, that the Railroad Company deposited the goods with the Storage Company in the name of the owners, but with instructions to the Warehouse Company at the time to collect the freight from the owners, and not let the goods go out of storage until the freight was paid. By so doing they constituted the warehouseman the agent of the Railroad Company for the collection of the freight and if the Warehouse Company was the duly authorized agent of the Erie Company for the collection of this freight, they are bound by the acts of their agent in and about the collection. The evidence shows and the truth is that the bank turned over to the Warehouse Company the money to pay the freight, taking the owner's note therefor, which was subsequently paid by the Sanborn-Farrell Company at the owner's request.

To put it brief, the owners paid the freight to the duly authorized agent of the Erie Railroad Company, who had been expressly charged by the Railroad Company with this particular duty. The Erie is therefore precluded from repudiating the acts of its agent in this regard and must stand satisfied as to this freight as fully as if it had been paid to the local agent of the company. This upon their own theory of the case and putting the matter in a much more favorable light for the company than can be sustained by the pleadings and proofs.

POINT SEVEN.

Where one of two parties must bear a loss, the law imposes it upon that one whose lack of care made possible the happening of the loss.

Norfolk Southern R. R. Co. *v.* Barnes, 5. L. R. A., 611; 104 N. C., 25.

There is a side to this question that cannot be emphasized too strongly, and that is that this contention is not between the original parties, but between a third party who advanced the money for the payment of the note and who stands in the shoes of the bank.

The bank was a *bona fide* innocent party who, in the usual course of business and without notice, loaned money upon the security of an absolutely clean, negotiable warehouse receipt. If the railroad company had been diligent and the intention was, as is claimed, that the lien was to be kept alive after possession had been delivered up, then some condition to that effect should have been endorsed on the warehouse receipt so as to give notice of the lien.

POINT EIGHT.

The contention that the Sanborn-Farrell Company should account to the Railroad Company and pay the freight charges out of any surplus realized out of the sale of the goods after paying third parties is untenable for the following reasons:

(*a.*) *It is not our contract.*

The stipulation or receipt of the Receivers (p. 13) is pursuant to and the written expressions of an agreement between, the Receivers, the Sanborn-Farrell Company and the Erie Railroad Company; the latter was consulted and was a party to this agreement through counsel (see p. 17).

A perusal of this contract as expressed in the stipulation or receipt of the Receivers will show that the matter depends solely upon the question of lien, and that there is no agreement on the part of the petitioners to account.

This agreement was made upon the fullest consideration, the petitioners changed their position, they could have reached the goods by replevin on behalf of the owners whose order for delivery they held, but instead they were induced by the terms of this stipulation to deposit their money in lieu of the goods and await a decision as provided therein. At this late day they cannot have another and different contract forced upon them.

(*b.*) *It is not within the issues raised by the pleadings.*

The answer of the Erie Railroad Company expressly limits their claim to the money in the hands of the Receivers (see p. 21) and contains no demand or prayer for an accounting.

The appellants cannot make us try a case other than the one the issues of which are raised by the pleadings, especially when the question is raised for the first time after the evidence is closed.

(*c*) *The contention is not sustained by the evidence.*

The only evidence in regard to the goods is that of William Gardemann, who says he did not know for how much the goods were sold (see p. 99). If counsel had disclosed the purpose of this cross-examination, we would have been very willing to have shown by witnesses at the trial the facts to have been exactly to the contrary of their contention, as the goods were improperly cared for, came out in bad condition, and sold below the market price; opposing counsel having sought to save this argument as a surprise after evidence was all in will be strictly confined to the testimony which is that of Mr. Gardemann to the effect that he did not know (see p. 99).

(*d.*) *The freight has been paid.*

A discussion of this question appears under Point Six.

If this reasoning is correct, there is nothing due the railroad company for freight, no liability on the part of any one, except the insolvent storage company.

(e.) *There is an adequate remedy at law.*

The only question presented is whether the Erie had or had not at the time of the shipment a lien upon the goods then in storage which was enforceable against these petitioners; if the Erie had no such lien, then the money belongs to the Sanborn-Farrell Company. If some one other than a party to the agreement owes the Railroad Company a freight bill, the company has an adequate remedy at law; chancery will not aid them in this proceeding. A court of chancery is not a collection agency.

CONCLUSION.

In any view of the rights of the parties to this proceeding, the Sanborn-Farrell Company is entitled to a return of the money deposited under the stipulation.

See Vice-Chancellor Gamson's conclusion, p. 114 of State of Case.

For these reasons the decree of the Court of Chancery is correct and should be affirmed with costs, and disbursements of this appeal.

Dated June 28, 1905.

Respectfully submitted,

FRANK E. LOUGHRAN,
Counsel for Respondents.

[Q9292]

MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals.

Between
WESTERN COLD STORAGE COMPANY
AND OTHERS,
Respondents,
AND
ERIE RAILROAD COMPANY,
Appellant.
} On Appeal.

Brief for the Erie Railroad Company, Appellant.

This case brings up an order made on a petition in the case of the Jarvis Terminal Cold Storage Company, an insolvent corporation, and relates to the disposal of a fund in the hands of the receivers.

The Jarvis Terminal Cold Storage Company was a warehouse company, whose warehouse adjoined the Jersey City freight yard of the Erie Railroad Company, and was connected therewith by tracks, so that cars could be unloaded directly into the warehouse. It became insolvent March twenty-eighth, nineteen hundred and four, and the property stored fell into the hands of the receivers of the Court of Chancery.

The goods on storage, to which this controversy relates, were three car-loads of poultry and eggs, worth

thirteen thousand dollars (Case, p. 96). These belonged to Gardemann & Jungclaus, of Iowa, dealers in eggs and poultry, and had been shipped by them from Iowa in January, 1904. Two of the cars reached the custody of the Erie Railroad Company at Weehawken, from the West Shore Railroad, January 16th, 1904, and the third car was delivered to the Erie Railroad Company at Hammond, Indiana, January 18th, 1904. (Case, p. 74.) The first two cars arrived in Jersey City, and were at once placed in the warehouse, January 18th, and the third arrived January 27th (p. 52). The Erie Railroad Company made advances to other carriers, amounting to five hundred and forty-eight dollars and seventy-nine cents ($548.79), and its own charges were one hundred and seventy dollars and seventy-five cents ($170.75), making its total freight bill seven hundred and nineteen dollars and fifty-four cents ($719.54). This freight was not paid, and the Erie Railroad Company claimed a carrier's lien therefor on the goods. The Third National Bank of Jersey City also claimed a lien for fifty-seven hundred and forty-three dollars ($5,-743.00), which they had loaned on a note of Gardemann & Jungclaus, secured by a warehouse receipt for the goods in question, then in cold storage, which note was made February 3d, 1904. (Case, p. 103.) After this property had come into the hands of the receivers, Gardemann & Jungclaus, on April 9th, 1904, ordered the receivers to turn the goods over to the New York Commission House, Sanborn-Farrell Company, but the receivers refused to do so, because of the claim of the Erie Railroad Company that they had a carrier's lien.

An arrangement was thereupon made, in the interest of all parties, and the Sanborn-Farrell Company deposited seven hundred and forty-three ($743.00) dollars with the receivers, April 30th, 1904, and the receivers gave them a stipulation that the fund was taken subject to the lien of the Erie Railroad Company for freight. If there was such lien, the money was to be paid to the Company, and if none, then to the Sanborn-

Farrell Company, and the matter was to be submitted to the Court of Chancery. (Case, p. 13.)

After this stipulation Gardemann & Jungclaus gave a chattel mortgage, dated May 2d, 1904, to the Sanborn-Farrell Company, on the goods (p. 10); but, this being after the deposit was made, is not material, because by the prior stipulation, under which they got possession, the sum paid to the receivers is held for the freight, if there was a lien.

The Sanborn-Farrell Company filed a petition in the cause, claiming this fund, and the Erie Railroad Company answered, also claiming it. The decree denies the existence of the lien, and from this decree the Erie Railroad Company appeals.

I.

The Delivery by the Erie Railroad Company to the Jarvis Terminal Cold Storage Company was not a Waiver of the Lien.

The three cars shipped by Gardemann & Jungclaus were all consigned to the Storage Company. When the first two cars reached Jersey City the Superintendent of the Storage Company solicited their immediate delivery, and the freight agent consented—the goods being perishable—and ordered the cars at once to be placed on the siding of the Storage Company, although the freight bills had not yet come to hand. The Superintendent received the freight bills promptly, and agreed with the freight agent, verbally, that the goods in these two cars should not be taken out of the warehouse until the freight should be paid. The Superintendent says that the freight bills were sent to him "immediately after the goods arrived," and he had them in the warehouse (p. 49, l. 30); that on the next day after the agent had ordered in the cars he told the Superintendent not to deliver the goods out of the warehouse until the freight charges were paid, to which the Super-

intendent assented (p. 49, ll. 1 to 22). The freight agent says that this conversation took place before delivery (p. 61, ll. 1 to 4). As to the third car, which was delivered January 27th, it is not disputed that a like understanding preceded or accompanied the actual delivery of the car (p. 51, ll. 30 to 40; p. 54, ll. 18 to 40; p. 55, ll. 1 to 60). Some time after, in order to have a record of this understanding, the agent wrote a letter stating it, which was addressed to the Storage Company, and the Superintendent answered this letter, not disputing the correctness of the statement, and promising that the goods should be held as far as was in his power (p. 72, *Exhibit D 2,* and p. 73, *Exhibit D 3*). The goods were stored in the name of Gardemann & Jungclaus, and were their property (p. 51, l. 1). No third party other than the carrier acquired any interest in them, until the note was given to the Third National Bank on February 3d.

On the part of the Erie Railroad Company, we claim that the carrier's lien was retained, not only because of the understanding between the carrier and the Storage Company, but also because of the usage of the trade. It is proven that a warehouse man receiving goods from a railroad company, with notice that freight is not paid, is, by the custom at New York terminals and warehouses, bound to hold the goods to protect the carrier. This is stated in the testimony of Palmer Campbell, a most competent and impartial witness, whose statement does not appear to be definitely disputed by any of the other witnesses on the subject (p. 65, l. 35, to p. 68, l. 35).

The Vice Chancellor does not question the existence of the usage and custom, but holds the lien to be waived because in this case the Storage Company was named in the way-bill as the consignee of the goods, and he cites several cases to the effect that an *unqualified* delivery to the consignee extinguishes the lien (p. 111, l. 15). The very statement of the rule recognizes the exception that the delivery may be qualified. The Vice

Chancellor goes on to discuss the qualification arising out of the arrangement between the freight agent and the Superintendent, and says that he finds as a matter of fact that the delivery of the goods preceded the arrangement.

As to the delivery of the first two cars there is no doubt a conflict in the testimony whether the conversation took place on the very day of the placing of the cars on the siding, or on the day after; but it seems to us that in such a transaction, where urgency is called for in delivering perishable goods, and where the arrangement was made as soon as the bills could be presented, the arrangement would be regarded as part of the same transaction with the delivery, especially as the Storage Company did not raise any question of waiver by delivery, but acquiesced in this understanding as soon as suggested, and before issuing any storage receipt, and before any new rights could intervene.

On this point we refer to the case of *The Giulio, 34 F. R. 909*, hereinafter stated.

Furthermore, the point does not exist as to the second delivery, for there is no dispute that this was made under the arrangement.

Beyond all this comes the usage, which made the arrangement superfluous. It is a reasonable usage, and is, in itself, a qualification of the effect of delivery, and preserves the carrier's lien. Such usages are for the convenience of trade, and are treated with favor and enforced by the courts.

The courts adopt them as settled law, "with a view to the interests of trade and the public convenience." Cockburn, C. J., in *Goodwin* v. *Robarts, L. R., 10 Exch. 345*. The law of common carriers is largely made up of usages which have been adapted to the changed modes of transport.

Where the consignee is not the owner, but a mere bailee for hire in the course of the transit of the goods to market—like a warehouse man—delivery to him is much like the delivery by one carrier to another, and

it is reasonable that the lien should be presumed to be preserved.

The lien of the carrier on the goods carried is a lien which secures the debt due not from the consignee, but from the owner of the goods to the carrier, and, in general, it must be such a debt as may be recovered by action against the owner.

Fitch v. *Newbury, 1 Dougl. (Mich.) 1.*

It often happens that the goods are shipped to a purchaser who agrees to pay the freight, in which case he becomes the owner immediately upon delivery of the goods to the carrier. (*1 Benj. on Sales, Corbin's Ed. Sec. 567.*) From this cause it results that in many cases the word "consignee" is loosely used, as if it were the equivalent of owner, as it usually is on a delivery made in carrying out a contract of sale, but a distinction, which we think was overlooked by the Vice-Chancellor, exists where the goods are delivered without change of ownership, as, for example, to be sold by the consignee, or to be stored for account of the consignor.

1 Benj. on Sales, Sec. 573.

In such a case the consignee is not liable to the carrier for the freight charges, and the Court below erred in the view that the delivery to such a consignee is equivalent to delivery to the owner, so as to waive the carrier's lien.

The debt due the carrier is the debt of the owners, namely, Gardemann & Jungclaus, not merely because they are the consignors, but because they are also the owners.

Grant v. *Wood, 1 Zab. 292.*

See quotation *1 Zab. 296*, from *Barker* v. *Havens*, showing importance of ownership in determining the liability to pay the freight.

Whether the delivery by the carrier to the warehouse company is a waiver of the carrier's lien is a question of intention. Intention to waive the lien, of course, cannot be found where the understanding between the

warehouseman and carrier is that the warehouseman shall retain the goods until the freight is paid, and such intent may be shown by usage and by circumstances.

The testimony is, we think, satisfactory that the course of business in New York between railroads and warehousemen is that when the goods are taken for storage from a railroad company, with the freight unpaid, they "hold the goods subject to payment of the freight." (Case, p. 65, l. 35, and p. 66, l. 20 to 40; p. 64.)

The warehouseman does not assume any liability to pay the freight, except by holding the goods, but does undertake to hold the goods subject to the carrier's claim for freight (p. 67, ll. 1 to 5). An invariable part of the receipt is "subject to all charges," which the warehouseman interprets to include the freight charges (p. 68, ll. 1 to 28), and which certainly puts the party taking the receipt on inquiry to ascertain what the charges are.

In view of this trade usage, it is evidently not material whether the conversation between the freight agent of the Erie Railroad Company and the agent of the storage company, to the effect that the warehouse company should protect the railroad company, took place on the day of the unloading of the first two cars or on the day after. The custom of the trade protects the lien. With perishable freight like this it would often happen that it would be for the interest of all parties that the unloading should take place at the earliest possible moment; bills for freight would often be, for a short time, delayed where the bill includes the charges of other railroad companies. Here bills showing the amount of the lien for the first two cars were sent to the warehouseman as soon as received by the freight agent, which was immediately after the goods arrived on January 18th, 1904 (p. 49, ll. 20 to 35). The delivery and sending in of the bill were, in fact, simultaneous. The third car came January 26th, 1904, and was taken by the warehouse company on a like understanding (p.

56, l. 30). The goods were stored in the name of Gardemann & Jungclaus (p. 51, l. 1), and, as above shown, they were the owners and the consignors, and were the debtors to the Erie Railroad Company for the freight.

It is well settled in cases of the delivery of cargoes from vessels that a conditional delivery may be made to the consignee, even where he is owner, reserving the lien, and there seems to be no reason why any different doctrine should be applied to the lien of carriers by land, and no distinction has been established. On the contrary, the doctrine is stated as applicable alike to railroads by Elliott in his work on Railroads, Sec. 1572, and the authorities bear him out.

In the case of *Sears* v. *Wills*, also cited as *"Bags of "Linseed," 1 Black, 108*, Taney, C. J., says: "The lien "of the carrier by water for his freight under the ordi- "nary bill of lading, although maritime, yet, it stands *"upon the same ground with the carrier by land,* and "arises from his right to retain the possession until the "freight is paid or is lost by an unconditional delivery "to the consignee." And, further, he says: "It often "happens that the necessities and usages of trade require "that the cargo should pass into the hands of the con- "signee before he pays the freight. It is the interest of "the shipowner that his vessel should discharge her "cargo as speedily as possible after her arrival at the "port of delivery. The consignee, too, in many in- "stances, might desire to see the cargo unladen before "he paid the freight, in order to ascertain whether all "of the goods mentioned in the bill of lading were on "board and not damaged by the fault of the ship. It is "his duty, and not that of the shipowner, to provide a "suitable and safe place on shore in which they may be "stored; and several days are often consumed in unload- "ing and storing the cargo of a large merchant vessel. "And if the cargo cannot be unladen and placed in the "warehouse of the consignee without waiving the lien, "it would seriously embarrass ordinary operations and

"convenience of commerce both as to the shipowner and "the merchant. It is true that such a delivery, without "any condition or qualification annexed, would be a "waiver of the lien, because, as we have said, the lien "is but an incident to the possession with the right to "retain. But, in cases of the kind above mentioned, it "is frequently, perhaps more usually, understood be- "tween the parties that transferring the goods from the "ship to the warehouse shall not be regarded as a waiver "of the lien; and that the shipowner reserves the right "to proceed *in rem* to enforce it, if the freight is not "paid, and if it appears by the evidence that such an "understanding did exist between the parties, before or "at the time the cargo was placed in the hands of the "consignee, *or, if such an understanding is plainly to "be inferred from the established local usage of the port,* "a Court of Admiralty will regard the transaction as a "deposit of the goods, for the time, in the warehouse, "and not as an absolute delivery, and, on that ground, "will consider the shipowner as still, constructively, in "possession, so far as to preserve his lien and his remedy *"in rem."*

We submit that the principles of this decision apply to deliveries of perishable goods at our great railroad terminals in New Jersey.

In the case of *The Giulio, 34 F. R. 909, 912*, Brown, J., said that while the unqualified delivery of a cargo to the consignee, without notice of any intent to retain the lien, is deemed a waiver, yet a delivery to a warehouse- man on the assignor's account, accompanied by a notice of lien, is no waiver.

"In this case the evidence shows that the delivery to "the warehouse directed by the consignee was completed "about noon of the 17th, and that, on the same day, "about noon, a written notice of the ship's lien upon the "cargo was served on the warehouseman. It is clear "that there was no intent to make an unconditional de- "livery of the cargo; the contrary intent seems to be "manifest. Even if the actual service of the notice

"were an hour or two after the last bale was delivered "on the 17th, so slight a delay as the mere fraction of a "day in serving notice could not justly be deemed as "indicative of any intent to make an unconditional de- "livery, *and the situation of the consignee, of the ware- "houseman and of the goods being unchanged,* no "waiver of the lien could be found."

In *Costello* v. *Cargo of Laths, 44 Fed. Rep. 105,* the shipmaster discharged a cargo according to the direction of the consignee, and it was piled in the yard of the purchaser of the cargo; demand was made for freight, but there was a dispute as to the amount. The ship- master served notice of lien and libelled the cargo, and his lien was sustained.

In *Cuff* v. *95 Tons of Coal, 46 F. R. 670,* it was held that a delivery of a cargo was not a waiver of the lien unless there was an intention to waive such a lien by making the delivery.

In the case of *The Eddy, 5 Wall. 481,* it was held that the parties might agree that the goods should be placed in the warehouse of the owner or consignee, and that such a deposit should not be a waiver of the lien.

See, also, the case of *151 Tons of Coal, 4 Blatch. 468, and 600 Tons of Ore, 9 F. R. 595.*

In the case of *Pioneer Fuel Co.* v. *McBrier, 84 F. R. 495, 499,* in the U. S. Circuit Court of Appeal, Brewer, J., said: "The rule is settled that the mere unloading of "a cargo does not discharge the lien; that may be only a conditional delivery, and, unless there be circum- "stances to show the abandonment of the lien, as where "other security is taken, or, unless the cargo when deliv- "ered is so mixed with other goods as to be incapable of "separation, the lien will continue."

In the case of the lien of a seller for the price of goods sold, in general the delivery of the goods to the buyer terminates the lien, yet this is a mere presumption of in- tention, and the parties may, by agreement expressed or implied, reserve the lien after delivery to the buyer.

Copland v. *Bosquet, 4 Wash. C. C. 588, 593.*

Gregory v. *Morris, 96 U. S. 619, 623.*
Husted v. *Ingraham, 75 N. Y. 251, 257.*

The Vice-Chancellor distinguished the case of the *Bags of Linseed, 1 Black. 108,* because that was a case of shipping by vessel, and quotes from the opinion that admiralty courts are not governed by strict rules of common law, but deal with maritime liens "upon equitable "principles and with reference to the usages and necessi- "ties of trade."

Are we to infer from this that the Vice-Chancellor thinks that he should not deal with this case in equity upon equitable principles, and that he should not deal with it with reference to the usages and necessities of trade? Surely, the principles applied by the United States Supreme Court are fully applicable to such a case as this. That is all we need ask. We are now in a Court of Equity, and in that court the question of liens is dealt with on equitable principles.

The necessities and usages of trade at our great railroad terminals require that railroad cargoes should pass into the hands of the consignee in many cases before he pays the freight. Shall we say that our courts are so incapable of developing principles that they cannot recognize the business methods of railroad carriers. Cars come laden with cattle, or perishable freight; must they be detained in the cars or in the yard until the charges can be ascertained and made up, in order to maintain the lien? It is inevitable that usages should grow up for the protection alike of owners and carriers, in the case of railroads, as well as in the case of ships. Some judge or some court had to be the first to mention and recognize such usages in the case of ships. Have the courts lost their faculty of recognizing such reasonable usages? What more natural and reasonable usage could there be than that which we have proven, that the warehouse should represent and protect both owner and carrier, in order to promote safe and speedy deliveries of freight?

If, as the decisions show, such usages will avail to protect the lien, even where delivery is made upon the

premises of the owner, surely they will avail all the more when the delivery is made to a common warehouse-keeper, a part of whose duty it is to hold property awaiting a market, for the benefit of whom it may concern.

There is no State where railroad law and railroad usages are better known than in New Jersey. The declaration in this court recognizing this usage will establish the law for the whole country, and such a development of the law by recognition of usage is in accordance with the best judicial traditions.

II.

The Jarvis Company was the Agent of Gardemann & Jungclaus to Pay, and not the Agent of the Railroad Company to Receive Payment.

There is no ground whatever to warrant the finding of the Vice Chancellor that the undertaking by the Storage Company was, that they would keep possession until they, the Storage Company, should collect the charges. (Case, p. 114, ll. 17 to 20.) On the contrary, both the express testimony and the circumstances show that the possession was to be held until the Railroad Company was satisfied. The Superintendent of the Storage Company says that the freight agent told him not to deliver the goods out of the warehouse "until these freight charges are satisfied," and that he replied that he would retain them, so far as he could, "until his (the agent's) freight charges were satisfied" (Case, p. 49). The freight agent says that he told the Superintendent when he ordered the cars sent in to the warehouse siding not to let the goods go out until the charges were satisfied, and that the Superintendent agreed to it (p. 53). A like arrangement is proved as to the third car (p. 54, l. 24, to p. 55, l. 10). The subsequent correspondence puts this beyond doubt. The agent writes to the Storage Company that the goods are to be held until the freight

charges are satisfied to the *Erie Railroad Company* (p. 72), and the Superintendent, in reply, does not question that the understanding was as stated, and says that he will do all he can to see that the goods are not removed until the claim for freight charges is satisfied (p. 73). It could not be satisfied by payment to the Storage Company. Neither as to the first or second delivery is there any suggestion that the payment of freight was to be made to any one except the Railroad Company, to which it was due. The owners, Gardemann & Jungclaus, having entrusted their goods to the Storage Company, very naturally entrusted them with the money to pay the freight; they provided for this through discount of the note. The Jarvis Company thereby became the agents of the owners to pay the freight, and, in fact, as consignees for storage, were probably such agents before they received the money; and, if they had paid the freight, could have held the owners for it, as money authorized by them to be paid on their account, within the scope of their agency; but, their agency for the Railroad Company is clearly defined by the circumstances and by the conversation between the freight agent and the Superintendent, as well as by the usage and custom of trade, and there is no evidence to warrant a finding that the Storage Company was the agent of the Railroad Company for any other purpose than to hold the goods, under the carrier's lien, until the freight should be satisfied.

III.

The Arrangement Between the Superintendent and the Freight Agent was not a Substitute for the Carrier's Lien.

The theory of the Vice Chancellor that the Storage Company and the Railroad Company created some other relation than a carrier's lien has no basis in the evidence. Even if they had attempted to do so it would not destroy

the lien created by usage, if in support of it, and not inconsistent with it. But this theory is effectually discredited by the fact that the Storage Company could not give or protect, and the carrier could not hold, any other lien than a carrier's lien. The carrier's only power over the goods is to hold possession, either in its own cars or warehouse, or in the warehouse or custody of some other party, by arrangement, until the freight is paid. At common law the carrier could not even sell to enforce his lien (*Briggs* v. *Boston, &c., R. R. Co., 6 Allen, 246*), although by statute in New Jersey he could make such sale.

We must assume that the intent of the parties in seeking to prevent the removal of the goods from the warehouse was to preserve the right which the law gave to the carrier of the goods, not to attempt an unlawful interference with them.

Neither is there any force in the suggestion that the right of the carrier was qualified by the statement of the Superintendent that he would protect the company so long as he remained Superintendent (p. 73).

The letter of the agent to the Storage Company asserts the right to have the goods held without any qualification (p. 72), and the lien created by law, and by the usage proven, of course has no such qualification. The statement of the Superintendent did not, and could not, create any lien at all, but was a recognition of the existence of the lien, and an avowal of his intention to protect it. Furthermore, the control on the part of the Superintendent lasted until the Court of Chancery—through its receivers—took possession, and the receivers took subject to all liens and equities. The Vice Chancellor errs in supposing that a forced change of possession by act of law could divest or impair the lien of the Railroad Company.

IV.

No Rights of Innocent Third Parties Have Intervened to Defeat the Lien.

The owners against whom we claim a lien are Gardemann & Jungclaus. We are their creditors and they are our debtors. They made the Storage Company their agents to pay us the freight and gave them the money, but this was done without our knowledge or authority, and they did not pay it, and the default of their agent is their loss and not ours. The property upon which we hold a lien has a value of $13,000.00 (p. 96).

It is contended that the Third National Bank obtained a lien prior to ours for $5,743.00, because the Storage Company issued a warehouse receipt to secure a note of Gardemann & Jungclaus, on which the bank loaned that sum. If it were necessary, we might well argue that a warehouseman cannot by his receipts change the ownership or destroy liens on property in his possession. After the receipt is issued to the owner it represents whatever title he has in it and becomes the means whereby he can deal conveniently with the title which he had at the time the receipt was given, but the warehouseman cannot, by any receipt, create or diminish the title of any depositor, nor can any transfer by the depositor confer any larger interest than the depositor has.

The maxim applies: *"Nemo dat quod non habet."*

But what does it matter whether the lien of the Erie Railroad Company is prior to that of the bank, amounting to $5,743.00, or even to that claimed by the Western Cold Storage Company, amounting to $2,700.00 (p. 78)? Since it is proven by the witnesses of our adversaries themselves that the goods are worth $13,000.00, it is evident that if both these claims were prior to ours there would still be an interest in our debtors, Gardemann & Jungclaus, ample to satisfy our lien. In the absence of any showing by our adversaries of the amount

realized by them from the goods, which were placed in the hands of the Sanborn-Farrell Company for sale, we have the right to assume that they have realized the value proven by their own witnesses. If they disputed this it was their duty to account for the goods received by them, subject to our lien, and to show that, having satisfied their prior liens, nothing remains for our lien.

It cannot be conceded for a moment that a Court of Equity can take charge of pledged assets, and thereby prevent a lienor from resorting to them, and thus destroy the security by turning the assets over to a prior lienor. Whoever heard of telling the holder of security that the court, by appointing a receiver, has taken his lien away on goods in New Jersey, and he, the lienor, must go to another State and prosecute an unsecured debt there? The duty of the Court of Equity is to determine priorities, and to protect subsequent liens by giving the prior lienor only what is due to him and no more.

COLLINS & CORBIN,
Counsel for Appellant.

June Term, 1905.

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STATEMENT

In the principal case bill was filed by Gustav W. Lembeck, complainant, against the Jarvis Terminal Cold Storage Company, defendant, to have a Receiver appointed for said company on the ground of insolvency. Messrs. Palmer D. Campbell and J. Warren Hardenberg were appointed Receivers of the defendant by order dated March 28th, 1904, and thereupon they duly qualified as such.

Pending the receivership the Western Cold Storage Company and the Sanborn-Farrell Company filed the petition which gave rise to the controversy now before the Court.

PETITION

To his Honor William J. Magie, Chancellor of the State of New Jersey.

The petition of the Western Cold Storage Company, and of Sanborn-Farrell Company, respectfully shows:

I. That your petitioner, the Western Cold Storage Company, is a corporation duly incorporated and existing under the laws of the State of Illinois, having its principal place of business in the city of Chicago; and that your petitioner, the Sanborn-Farrell Company, is a corporation duly incorporated and existing under the laws of the State of New York, Borough of Manhattan, in the city of New York.

II. That William Gardemann and Adolph Jungclaus are partners, trading in the firm name of Gardemann & Jungclaus, in the village of Newhall, County of Benton and State of Iowa.

III. Upon information and belief, that on or about January 8th, 1904, the said Gardemann &

Jungclaus shipped a certain quantity, to wit, 193 boxes containing 31,139 pounds, more or less, of dressed poultry and 56 tubs containing 3,420 lbs. of extra creamery butter by the M. D. T. Railroad from Chicago to Buffalo, and from thence by the Erie Railroad to Jersey City, and on or about January 16th, 1904, it arrived in Jersey City over the lines of the Erie Railroad and was delivered unconditionally by the Erie Railroad to the above named defendant corporation, to whom it was consigned for storage and who stored the same in their cold storage warehouses in Jersey City.

IV. Upon information and belief, that subsequently or on or about January 16th, 1904, the said Gardemann & Jungclaus shipped from Newhall, Iowa, 1 car of 172 boxes containg 25,241 lbs., more or less, of dressed poultry, and on or about January 26th, 1904, this car arrived in Jersey City, over the lines of the Erie Railroad, and was delivered also unconditionally by the Erie Railroad to the above named defendant corporation, to whom it was consigned for storage and who stored the same in their cold storage warehouses in Jersey City.

V. On February 2nd and 3rd, 1904, the following correspondence passed between the above named defendant corporation, the said Gardemann & Jungclaus, and the Third National Bank of Jersey City:

(TELEGRAM) Feb. 2, 1904.

Dated G2 Jersey City, N. J.

To Gardemann & J., Newhall, Ia.

Five thousand dollars including freight insurance; if you accept wire First National Bank Jersey City to accept and deliver papers. (Signed)

JARVIS TER. C. S. CO.

(TELEGRAM) Feb. 2, 1904.

To Jarvis Terminal Cold Storage Co.,
Jersey City, N. J.

Wire received. Wire us the amount of freight and insurance. (Signed)
GARDEMANN & JUNGCLAUS.

(TELEGRAM) Feb. 3, 1904.

Dated Jersey City, N. J.

To Gardemann & Jungclaus, Newhall.

Freight & insurance seven hundred forty three dollars make demand note fifty seven hundred forty three dollars draw draft five thousand dollars through Third National Bank Jersey City.
(Signed) JARVIS TER. C. S. Co.

(LETTER) Feb. 3, 1904.

Jarvis Terminal Cold Storage Co.,
Jersey City, N. J.

GENTLEMEN:

We beg to acknowledge the receipt of your wire of to-day as follows: Gardemann & Jungclaus, freight and insurance seven hundred and forty three made demand note fifty seven hundred and forty three dollars $5743; drawn draft Five thousand Dollars through Third National Bank of Jersey City signed Jarvis Terminal Cold Storage Co., all of which we hereby confirm and wired you as follows: Will mail papers and make draft as per your wire (signed) Gardemann & Jungclaus so we have this day drawn up demand note for 5743.00 at six per cent. interest and make a draft on you for $5000.00 through the Third National Bank of Jer-

sey City, having instructed them to collect draft and deliver note to you.

(LETTER) Feb. 3, 1904.

Third National Bank,
Jersey City, N. J.

GENTLEMEN:

Enclosed find sight draft for $5000.00 on Jarvis Terminal Cold Storage Company. Kindly collect same and send us your ck. for the above amount by ret. mail. You will find attached to dft. our note for $5743.00 which kindly deliver to Jarvis Terminal Cold Storage Co. on payment of our draft.

Yours very truly,

(Signed) GARDEMANN & JUNGCLAUS.

VI. Upon information and and belief, that in connection with the above correspondence and in fulfilling the terms of the same, the said Gardemann & Jungclaus made their promissory note, a copy of which is as follows:

$5,743.00. Newhall, Iowa, Feb. 3, 1904.

On demand after date, 1904, I, we, or either of us, promise to pay to order of Jarvis Terminal Cold Storage Company, Five thousand and seven hundred and forty-three and no-100 Dollars, with interest from date at 6 per cent. per annum, payable annually and eight per cent. on unpaid principal and interest after maturity, for value received. The maker, indorsers and sureties of this note severally waive presentment for payment, notice of non-payment, protest, notice of protest and diligence in bringing suit against any party thereto, and consent that any Justice of the Peace may have

jurisdiction in any suit brought hereon to the amount of $300.00; also agree to pay all costs and expenses of collection, including a reasonable attorney's fee. Endorsers and sureties consent that time of payment may be extended, without notice thereof, and guarantee the payment with interest and costs, if any, at maturity, or at any time, or times, to which it may be extended.

Payable at Jersey City, N. J.

(Signed) GARDEMANN & JUNGCLAUS.

For loan of 55,774 lbs. Dressed poultry, and 56 Tubs 3,420 lbs. extra creamery butter, all of which now stored in their cold storage house at Jersey City, N. J.

(INDORSEMENT ON ABOVE NOTE).

Jarvis Terminal Cold Storage Co.,

R. M. Jarvis, Pres.,

which was delivered to the Third Natioual Bank; also at the same time the said draft was drawn by Gardemann & Jungclaus upon the Jarvis Terminal Cold Storage Company for the sum of $5,000.00, which was accepted by the Jarvis Terminal Cold Storage Company, payable at the Third National Bank; also at the same time, the Jarvis Terminal Cold Storage Company issued to the Third National Bank a warehouse receipt for all of said poultry and butter, which warehouse receipt bore no evidence whatever of any charge or lien of any kind. Upon turning over these papers, viz., the draft with the acceptance, the note, and the warehouse receipt as aforesaid, the Third National Bank paid and delivered to the Jarvis Terminal Cold Storage Company the sum of seven hundred and forty-three and no–100 ($743.00) dollars, and remitted the sum

of five thousand ($5,000.00) dollars to Gardemann & Jungclaus.

VII. That subsequently, or on or about April 4th, 1904, the defendant corporation went into the hands of Receivers by virtue of an order of this Court in the above entitled suit.

VIII. That thereafter, and on or about April 9th, 1904, the said Gardemann & Jungclaus made the following order upon the Receivers of the above named defendant corporation.

(WRITTEN ORDER).

Newhall, Iowa, April 9, 1904.

J. W. Gardenberg & Palmer Campbell, Receivers,
Jarvis Terminal Cold Storage Company,
Jersey City, N. J.

GENTLEMEN:

On payment of advances and other legitimate charges you will please deliver to Messrs. Sanborn-Farrell Co., of New York City, all goods stored in your house for our account.

(Signed) GARDEMANN & JUNGCLAUS.

In pursuance of the above order there was delivered from time to time to the Sanborn-Farrell Company, certain quantities of the poultry in storage, and at the times of said deliveries certain amounts were paid by the Sanborn-Farrell Company upon the note held by the Third National Bank, and the poultry thus delivered was endorsed as delivered upon the warehouse receipt held by the Third National Bank, until there was left due upon the said note to the Third National Bank the sum of twenty-two hundred and sixty-seven and 47-100 ($2,267.47) dollars, and there was left in

storage 193 boxes of poultry and 56 tubs of butter.

IX. Upon information and belief, that from time to time, both before and after the Receivership, your petitioner, the Western Cold Storage Company, advanced to Gardemann & Jungclaus on the security of the poultry and butter stored in the Jarvis Terminal Cold Storage Company's warehouse in Jersey, certain sums of money amounting in all to the sum of twenty seven hundred ($2,700.00) dollars.

That at the time this money was loaned by the Western Cold Storage Company to Gardemann & Jungclaus your petitioner, the Western Cold Storage, had no notice whatever of any lien upon said poultry or butter excepting that of the Third National Bank.

X. Upon information and belief, that at the time and times at which the said twenty-seven hundred ($2,700.00) dollars was advanced by your petitioner, the Western Cold Storage Company, the said Gardemann & Jungclaus did give to your petitioner, the Western Cold Storage Company, a lien upon the said poultry and butter in Jersey City, and did subsequently formally express such lien by a chattel mortgage which was given by said Gardemann & Jungclaus to your petifioner, the Western Cold Storage Company, and recorded in the Register's Office of Hudson County, in Book 218 of Chattel Mortgages, at page 605, a copy of which is hereunto attached, marked Exhibit "A," and made a part of this petition.

XI. That on or about April 30th, 1904, your petitioner, the Sanborn-Farrell Company, paid in full the balance then due to the Third National Bank of Jersey City, upon the said Gardemann & Jung-

claus note, *i. e.*, the sum of twenty-two hundred and sixty-seven and 47-100 (2,267.47) dollars, whereupon the said Third National Bank did release all claim or lien upon the said poultry and butter in storage, and did duly deliver to your petitioner, the Sanborn-Farrell Company, the said Gardemann & Jungclaus note which is dated February 3rd, 1904, and is for fifty-seven hundred and forty-three and 00-100 ($5,743.00) dollars, with interest from date of note as heretofore set forth, and your petitioner, the Sanborn-Farrell Company, is now the owner and holder of said note.

XII. This advance thus made by your petitioner, the Sanborn-Farrell Company, to Gardemann & Jungclaus, by paying their indebtedness to the Third National Bank of Jersey City, at their request, was made by your petitioner on the security of the poultry and butter in storage in the Jarvis Terminal Cold Storage Company's warehouse at Jersey City, and the lien thus made and given by Gardemann & Jungclaus to your petitioner was subsequently evidenced by a chattel mortgage duly executed and delivered to your petitioner, the Sanborn-Farrell Company, by the said Gardemann & Jungclaus, which chattel mortgage was duly recorded in the Register's office of Hudson County, in Book 218 of Chattel Mortgages, at page 605, a copy of which is hereunto attached, marked Exhibit "B," and made a part of this petition.

XIII. At this time, to wit, on or about April 30th, 1904, upon the payment of said sum then due to the said Third National Bank, and the release by it of its claim in said poultry and butter, your petitioner, the Sanborn-Farrell Company, made a demand upon the Receiver of the above-named defendant corporation, for the delivery by them of the balance of the poultry and butter belonging to

the said Gardemann & Jungclaus then stored in the Jarvis Terminal Cold Storage Company's warehouse, but a claim for freight charges having been lodged with the Receivers herein by the Erie Railroad Company, this demand for delivery was refused; a delivery of the said poultry and butter was subsequently made, however, by the Receivers to your petitioner, the Sanborn-Farrell Company, upon they, the Sanborn-Farrell Company, depositing with the Receivers the sum of seven hundred and forty-three and 00-100 ($743.00) dollars, under the conditions of a certain writing signed by the said Receivers, a copy of which is hereunto attached, marked Exhibit "C," and made a part of this petition.

XIV. Your petitioner, the Western Cold Storage Company, is made a party to this petition for the reason that its lien, by reason of having advanced the sum of twenty-seven hundred ($2,700.00) dollars as aforesaid, will suffer under an agreement with the Sanborn-Farrell Company in the event that the Sanborn-Farrell Company should not receive from the Receivers the return of the money deposited by them with the Receivers under the writing made and signed by the Receiver above referred to.

Your petitioners therefore pray that an order of this Court be made directing the Receivers of the above-named defendant corporation to pay over to your petitioner, the Sanborn-Farrell Company, the said sum of seven hundred and forty-three ($743.00) dollars so left on deposit under the conditions of the said writing made and signed by the Receivers herein; and your petitioners will ever pray, etc.

FRANK E. LOUGHRAN,
Solicitor for and of Counsel with the Petitioners.

(Affidavit attached of William J. Farrell, Treasurer of Sanborn-Farrell Company).

EXHIBIT A

CHATTEL MORTGAGE.

WILLIAM GARDEMANN AND ADOLPH JUNGCLAUS, PARTNERS, TRADING AS GARDEMANN & JUNGCLAUS,	*Dated May 2, 1904.*
to	*Acknowledged May 2, 1904.*
WESTERN COLD STORAGE COMPANY A CORPORATION OF THE STATE OF ILLINOIS.	*Recorded May 13, 1904, 9.06 A. M.*
	Book 218 of Chattel Mortgages, 605.
	Amount $2,700.
	Payable two days from date.

Covers all the goods and chattles mentioned in Schedule.

Schedule.

The following is the schedule referred to in the foregoing mortgage:

119 Boxes "A" Chickens, containing about 177 lbs. of chickens each.

22 Boxes "B" Chickens, containing about 120 lbs. of chickens each.

38 Boxes "A" Fowls, containing about 170 lbs. each of fowls.

14 Boxes Turkeys, containing in the aggregate about 1960 lbs of Turkeys.

56 Tubs of Butter, containing in the aggregate about 3,420 lbs. of Butter.

Said above described property now situated and contained in the cold storage warehouse of the Jarvis Terminal Cold Storage Company in Jersey City, N. J.

Affidavit attached to Ex. A.

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

WILLIAM J. FARRELL, the agent of the Western Cold Storage Company, a corporation duly organized and existing under the laws of the State of Illinois, the mortgagee in the foregoing mortgage named, being duly sworn on his oath, says, that the true consideration of the said mortgage is as follows, viz., actual cash in current funds and lawful money of the United States of America heretofore actually advanced and loaned by the mortgagee corporation to the mortgagors hereof at the latter's special instance and request and in consideration of which money so loaned the mortgagors did promise to pay to the mortgagee corporation the said sum of twenty-seven hundred dollars ($2,700.00).

Deponent further says that there is due on said mortgage the sum of twenty-seven hundred dollars ($2,700.00) and —— cents, besides lawful interest thereon from the date of this mortgage.

WILLIAM J. FARRELL.

Sworn and subscribed before me }
this 5th day of May, A. D. 1904. }

FRANK E. LOUGHRAN,
Master in Chancery of New Jersey.

EXHIBIT B

CHATTEL MORTGAGE.

WILLIAM GARDEMANN AND ADOLPH JUNGCLAUS, PARTNERS, TRADING AS GARDEMANN & JUNGCLAUS,	*Dated May 2, 1904.*
	Acknowledged May 2, 1904.
	Recorded May 13, 1904, 9.06 A. M.
to	*Book 218 of Chattel Mortgages, p. 608.*
SANBORN-FARRELL COMPANY A CORPORATION OF THE STATE OF NEW YORK.	*Amount $2,267.47.*
	Payable two days from date.

Covers the goods and chattels mentioned in schedule.

Schedule

(Same as schedule attached to Exhibit A.)

Affidavit attached to Exhibit B

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

WILLIAM J. FARRELL, Treasurer of the Sanborn-Farrell Company, a corporation duly organized and existing under the laws of the State of New York, the mortgagee in the foregoing mortgage named, being duly sworn on his oath, says that the true consideration of the said mortgage is as follows, viz.: Actual cash in current funds and lawful money of the United States of America heretofore actually advanced and loaned by the mortgagee corporation to the mortgagors hereof at the latter's special instance and request, and in consideration of which money so loaned the mortgagors did promise

to pay to the mortgagee corporation the said sum of twenty-two hundred and sixty-seven and 47-100 dollars.

Deponent further says that there is due on said mortgage the sum of twenty-two hundred and sixty-seven dollars and forty-seven cents, besides lawful interest thereon from the date of this mortgage.

WILLIAM J. FARRELL.

Sworn and subscribed before me this May 4th, A. D. 1904.

FRANK E. LOUGHRAN,
Master in Chancery of New Jersey.

EXHIBIT "C"

Stipulation by Receivers

Received Jersey City, April 30, 1904, from Sanborn Farrell Company, seven hundred and forty-three dollars ($743.00), which sum is received by the undersigned on deposit to stand in lieu of goods now on storage with the Jarvis Terminal Cold Storage Company, being balance of goods heretofore stored there by the firm of Gardemann & Jungclaus. It is claimed by the Erie Railroad Company that they have a lien upon said goods for freight charges, and this money is to be held by the Receivers in lieu of the goods, to be subject to said lien, if any there be, and the deposit is made without prejudice to the rights of any of the parties in interest as to the question of freight lien or liability by Gardemann & Jungclaus, or their assigns to pay the same, and the money is to be retained by the Receivers until the direction of the Court of

Chancery as to its disposition. If it is determined by the Court of Chancery that there is not any lien upon the goods for freight by the Erie Railroad Company, the money is to be returned to the depositors, the said Sanborn-Farrell Company.

It is further understood that this money is simply a deposit with the Receivers and is not to be considered in any way assets of the Jarvis Terminal Cold Storage Company in their hands.

J. W. HARDENBERGH,
PALMER CAMPBELL,
Receivers Jarvis Terminal Cold Storage Co.

ANSWER OF RECEIVERS

The answer of John W. Hardenbergh on his own behalf and on behalf of Palmer Campell, Receivers of the Jarvis Terminal Cold Storage Company, to the petition of Western Cold Storage Company and of Sanborn-Farrell Company:

I. The Receivers have no knowledge save as set forth in said petition of the incorporation of the petitioners.

II. That the Receivers have no knowledge save as set forth in said petition of the names of the individuals composing the firm of Gardemann & Jungelaus, doing business in Newhall, Benton County, Iowa.

III. The Receivers are informed and believe it to be true that on January eighth, nineteen hundred and four, the firm of Gardermann & Jungclaus shipped to the defendant corporation one hundred and ninety-three boxes of poultry and fifty-six tubs of

butter, and that the same were received over the lines of the Erie Railroad Company and stored in the cold storage warehouse in Jersey City of the defendant company.

IV. The Receivers are informed and believe it to be true that on January sixteenth, nineteen hundred and four, the firm of Gardermann & Jungclaus shipped to the defendant corporation one hundred and seventy-two boxes of poultry, and that the same were received over the line of the Erie Railroad Company and stored in the cold storage warehouse in Jersey City of the defendant company.

V. The Receivers are informed and believe that the three telegrams dated February second and third and the letter of February third of Gardermann & Jungclaus to the defendant company, as set out in paragraph five of the petition, were sent and received by the Jarvis Cold Storage Company and by Gardermann & Jungclaus.

The Receivers have no knowledge, save as set forth in the fifth paragraph of the petition, of the letter, dated February third, nineteen hundred and four, purported to be written by Gardermann & Jungclaus to the Third National Bank of Jersey City.

VI. The Receivers are informed and believe that said Gardermann & Jungclaus made their promissory note for fifty-seven hundred and forty-three dollars substantially in the form set out in paragraph six of petition, and that the same was delivered to the Third National Bank of Jersey City after being first endorsed by the Jarvis Terminal Cold Storage Company; that a draft was drawn upon the Jarvis Terminal Cold Storage Company by Gardermann & Jungclaus for five thousand dollars, which the de-

fendant company accepted, payable at the Third National Bank, and that said draft was paid, and that the Jarvis Terminal Cold Storage Company issued to the Third National Bank a warehouse receipt for the poultry and butter stored in its warehouse by Gardermann & Jungclaus, and that such receipt bore no evidence of any charge or lien of any kind.

The Receivers are informed and believe that upon these papers being turned over to the said bank seven hundred and forty-three dollars was credited to the account in that bank of the Jarvis Terminal Cold Storage Company, and five thousand dollars was remitted to Gardemann & Jungclaus.

VII. The Receivers admit that subsequently the Jarvis Terminal Cold Storage Company was placed in the hands of John W. Hardenbergh and Palmer Campbell as Receivers, but say that such appointment was made in insolvency proceedings and by order dated March twenty-eighth, nineteen hundred and four.

VIII. The Receivers admit that on or about April ninth, nineteen hundred and four, they received from Gardemann & Jungclaus an order to deliver the goods on storage for their account to Sanborn-Farrell Company, of New York city, such order being in writing and substantially in the form set out in paragraph eighth of the petition.

The Receivers admit that in pursuance of said order there was delivered from time to time to said Sanborn-Farrell Company certain quantities of poultry in storage for the account of Gardemann & Jungclaus, and that said Sanborn-Farrell Company made payments upon the said note held by the Third National Bank.

IX. That the Receivers have no knowledge, save

as set forth in the petition, of the matters and things alleged in the ninth paragraph thereof.

X. That the Receivers have no knowledge, save as set forth in the petition, of the matters and things alleged in the tenth paragraph thereof.

XI. The Receivers are informed and believe that on or about April thirtieth, nineteen hundred and four, the Sanborn-Farrell Company paid in full the balance then due to the Third National Bank of Jersey City upon the aforesaid note of Gardemann & Jungclaus, which had been endorsed by the defendant company, and that the Third National Bank thereupon delivered the said note to the Sanborn-Farrell Company, but the Receivers are without knowledge as to the present holder or owner thereof.

XII. The Receivers have no knowledge, save as set forth in the petition, of the matters and things set out in paragraph twelve thereof.

XIII. The Receivers admit that on or about April thirtieth, nineteen hundred and four, the Sanborn-Farrell Company demanded of the Receivers the delivery of the balance of the poultry stored in the Jarvis Terminal Cold Storage Company's warehouse by Gardemann & Jungclaus, and they admit that a claim for freight had been theretofore lodged with them by the Erie Railroad Company claiming a lien against the said poultry. The Receivers, however, say that by arrangement between counsel for the Receivers, counsel for Sanborn-Farrell Company and counsel for the Erie Railroad Company, said poultry was delivered to Sanborn-Farrell Company upon their depositing with the Receivers seven hundred and forty-three dollars under a written stipulation, substantially in the form set out in Schedule "C,"

attached to the petition, and that said sum of seven hundred and forty-three dollars is still in the possession of the Receivers.

XIV. That the Receivers have no knowledge, save from the petition, of the matters and things set forth in the fourteenth paragraph thereof.

The Receivers submit the matter aforesaid for the instruction and direction of the Court.

Dated July 11, 1904.

J. W. HARDENBERG,
Receiver.

McDERMOTT & FISK,
Counsel.

(Affidavit attached of John W. Hardenberg.)

ANSWER OF ERIE RAILROAD COMPANY

(Filed January 18, 1905).

The answer of the Erie Railroad Company to the petition of the Western Cold Storage Company, and the Sanborn-Farrell Company, respectfully shows:

1. The respondent has no information as to the facts set up in paragraphs 1 and 2 of the petition, and requires proof thereof.

2. The respondent denies that the goods referred to in paragraphs 2, 3 and 4, of the petition, were delivered unconditionally by the respondent to the Jarvis Terminal Cold Storage Company, and says that, on the contrary, when said goods were received at the Jersey City Terminus of the respondent, there was due to respondent the sum of seven

hundred and nineteen and fifty-four one hundredths ($719.54) dollars, for freight charges, and on the arrival of the said goods at Jersey City the agent of the railroad company refused to deliver the same to the storage company until the said freight charges were paid; and thereupon the said storage company agreed with the railroad company to have the goods delivered to the storage company, on condition that they were not to be removed from the warehouse of the storage company until all of the charges of the railroad company should have been paid; and thereupon the railroad company delivered the goods to the storage company, pursuant to the said agreement, and rendered a bill for the amount of freight thereon to the storage company, and on receiving the said goods in its warehouse, the storage company agreed that the goods should remain in its possession, in its warehouse, until the said freight charges should be paid to the Erie Railroad Company. Said agreement was made verbally between the representatives of the railroad company and of the storage company, and was afterwards confirmed in writing.

3. The respondent shows that the correct weight of the goods in question, and the amount of freight thereon, was as follows:

In car No. 61,279, there was 20,400 pounds of poultry, on which the freight charges amount to	$223.38
In car No. 8,864, there were 20,130 pounds of poultry, butter and eggs, on which the freight charges amount to	216.78
In car No. 10,090, there were 24,400 pounds of poultry, on which the freight charges amount to	279.38
Making a total of freight charges of	$719.54

Cars Nos. 8,864 and 10,090 were received at Jersey City on January 16th, 1904, and car No. 61,279 was received at Jersey City on January 26th, 1904.

4. The respondent has no information as to the facts set up in paragraph 5, and requires proof thereof.

5. The respondent has no information as to the facts set up in paragraph 6, except that it has been informed that the Jarvis Terminal Cold Storage Company delivered to the Third National Bank warehouse receipts for part of the said goods, and respondent says that the Jarvis Terminal Cold Storage Company was not the owner of said goods at the time of the delivery of said warehouse receipts, and that said bank took the same with notice of this fact, and of respondent's lien for freight charges.

6. The respondent admits that Receivers were appointed for said storage company, on or about April fourth, nineteen hundred and four.

7. The respondent has no information as to the facts set up in paragraph 8 of the petition, and requires proof thereof, except that it has been informed that the said goods have been delivered, from time to time, to other parties, and are no longer in the possession of the Jarvis Terminal Cold Storage Company.

8. The respondent has no information as to the moneys advanced by the Western Cold Storage Company on the security of said goods, and requires proof thereof, and it says that said Western Cold Storage Company advanced said moneys with notice of the lien of the respondent for freight charges, and that the claim of said Western Cold Storage Company is subject to said lien.

9. The respondent has no information as to the alleged lien, by chattel mortgages, set up in paragraphs 10 and 12 of the petition, but says that if there are any such mortgages, they are subject to the lien of the respondent for freight charges.

10. The respondent has no information as to the facts set up in paragraph 10 of the petition, and requires proof thereof.

11. Respondent says that it has been informed of the agreement referred to in paragraph 13 of the petition, and believes that a true copy thereof is annexed to the said petition.

12. The respondent shows that at the time the said goods were delivered to the Jarvis Terminal Cold Storage Company, the said company was not the owner thereof, but received the same on account of the true owner, and that there was an express agreement made between it and the Storage Company, at the time the said goods were delivered, that they were not to be removed from the warehouse, or to pass out of the possession of the storage company, until the respondent's claim for freight had been fully satisfied, and respondent shows that its claim for freight amounts, as aforesaid, to seven hundred and nineteen dollars and fifty-four cents ($719.54), and that the same has never been paid to the respondent, or to any one authorized to receive the same on behalf of the respondent, and that the respondent is entitled to the payment thereof out of the moneys in the hands of the Receivers, which was paid over to them by Sanborn-Farrell Company, in accordance with the terms of the agreement referred to in the petition.

COLLINS & CORBIN,
Solicitors of Erie Railroad Company.

(Affidavits attached of Reeve Westcott, Freight

Agent of Erie R. R., Willoughby S. Batcheller, Superintendent of Jarvis Company, and C. H. Clark.)

ORDER TO TAKE TESTIMONY

This matter coming on to be heard in presence of Frank E. Loughran, Solicitor for Western Cold Storage Company, and Sanborn-Farrell Company, and Willard Fisk, Counsel for Receivers, and Collins & Corbin, Solicitors for Erie Railroad:

Ordered, this eighteenth day of July, nineteen hundred and four, on motion of Collins & Corbin, that the same be and hereby is continued until August first, at the same time and place, at which time oral testimony may be taken by either party before the Vice-Chancellor, or depositions may be taken by either party, upon usual notice, and read at the hearing.

W. J. MAGIE,
C.

Respectfully advised,

LINDLEY M. GARRISON,
V. C.

IN CHANCERY OF NEW JERSEY.

BETWEEN GUSTAV W. LEMBECK, *Petitioner,* *and* JARVIS TERMINAL COLD STORAGE COMPANY, *Defendant.*	*On Petition of Western Cold Storage Company et al.* *Hearing and Proofs.* *Before Hon. Lindley M. Garrison, V. C.*

MR. LOUGHRAN, for the petitioners, Western Cold Storage Co., and Sanborn-Farrell Company.

Messrs. CHARLES L. CORBIN and GEO. S. HOBART for Erie R. R. Co.

WILLARD C. FISK for Receiver of Defendant.

JERSEY CITY, N. J., October 31, 1904.

EVIDENCE FOR PETITIONERS.

JOHN HENRY CASTENS, sworn.

By Mr. Loughran.

Q. Where do you reside, and what is your business or occupation?

A. Jersey City; Cashier of the Third National Bank.

Q. Do you know the defendant corporation in this action, the Jarvis Terminal Cold Storage Company?

A. I do.

Q. Do you know Gardmann & Jungclaus, of Newhall, Iowa?

A. I do.

Q. Will you state briefly the transactions between the bank and Gardemann & Jungclaus in this matter?

MR. HOBART—I object to tl at. The transactions were in writing. The telegrams, letters or documents should be produced.

THE VICE CHANCELLOR—If these negotiations or transactions were in writing, the writings must be produced.

Q. Have you a letter from Gardemann & Jungclaus?

A. Yes, sir. (Witness here produces a letter and hands it to examining counsel, which paper, dated February 3d, 1904, on the letter head of Gardemann & Jungclaus, addressed to the Third National Bank of Jersey City, signed by Gardemann & Jungclaus, is offered in evidence, admitted and marked Exhibit P 1.)

Q. This letter says: "Enclosed, find sight draft for $5,000 on Jarvis Terminal Cold Storage Company;" will you look at this (showing witness another paper) and state whether that is the draft referred to in the letter?

A. It is.

(The draft identified by the witness, dated January 4th, 1904, for $5,000, made by Gardemann & Jungclaus, on the Jarvis Terminal Cold Storage Company, is offered in evidence, admitted without objection, and marked Exhibit P 2.)

Q. Will you explain, if you can, the difference in the dates between the letter P 1; and the draft, P, 2?

A. That I could not explain.

Q. This letter (Exhibit P 1) also refers to a note. It says: "You will find attached draft and note for $5,743." Will you look at that (showing witness paper) and state whether that is the note that was attached to the draft and came in this letter P 1?

A. No, sir; that is not the note.

Q. Can you state what became of that note?

A. It was delivered with the rest of the papers to the Receivers of the Jarvis Company, to the best of my knowledge.

Q. Will you please state what this note is (showing witness another paper)?

A. That is the collateral note of the Third National Bank, on which we loaned the money, with the warehouse receipt attached; the original note was in the shape of a draft; it is about the same sort of a paper, with a memorandum on it as to what the goods were, so much butter, so much poultry, &c.

MR. CORBIN—I do not think we ought to have anything but the document itself.

(Counsel for petitioners thereupon produces the collateral note identified by the witness, which is offered in evidence, admitted without objection, and marked Exhibit P 3).

Q. Do you know where the warehouse receipt is?

A. Also delivered to the Receivers.

Q. Will you state how and when the Third National Bank received payment for this note, Exhibit P 3?

A. I cannot give you the dates; they were paid in about half a dozen different payments as they took the goods out; the final payment this gentleman, I believe, took care of himself for Mr. Cas-

cowen (referring to counsel for the petitioners).

Q. Can you swear of your own knowledge as to that transaction?

A. As to which, their being paid on account?

Q. No, as to the final payment?

A. Who paid it?

Q. Can you swear of your own knowledge as to that transaction?

A. As to its payment, no; I cannot recall it.

Q. Do you know who made this final payment?

A. In the shape of the money, or the person who offered the payment?

Question repeated.

A. No.

MR. LOUGHRAN—This warehouse receipt is lost and I shall have to make proof of that upon secondary evidence.

CROSS-EXAMINATION.

By Mr. Corbin.

Q. You made this loan on a note, also, of Gardemann & Jungclaus?

A. Yes.

Q. Do you know what has become of that?

A. No, sir.

Q. Just look at this (showing witness paper); is that the note?

A. That is the note.

(Said note is marked for identification, "G. W. B., 1")

Q. Who looked after this transaction on the part of the bank, personally?

A. I did.

Q. Then the application was made to you by a

letter from Gardemann & Jungclaus, and also by Mr. Jarvis?

A. Yes, sir.

Q. Then you knew that Mr. Jarvis was storage agent?

A. Yes, sir.

Q. In charge of the storage?

A. Yes.

Q. And that the goods belonged to Gardemann & Jungclaus?

A. Yes.

Q. And how was the freight to be paid, who was to pay that?

A. Well, I don't know just who was to pay the freight, but I did understand that that seven hundred—

THE VICE CHANCELLOR—No, I do not think we ought have this witness' understanding, unless he knows.

THE WITNESS—I do not know.

Q. You know the total of the note was $5,743?

A. Yes, sir.

Q. And five thousand dollars of that went to the owner of the goods?

A. Yes, sir.

Q. And the rest went to pay the freight, didn't it?

A. I don't know.

Q. What is that?

A. I don't know.

Q. You don't know what was done with it?

A. No, sir.

Q. But it was turned over to Mr. Jarvis?

A. Yes, sir.

Q. And that was the amount of the freight bill?

A. That I don't know; I don't know the amount of the freight bill; I never saw it.

Q. Did you have any conversation with Mr. Jarvis about the matter?

A. Yes.

Q. What was it?

A. Just that he knew these people in the West, and asked me to make the remittance such as they suggested, to send them a draft for $5,000 and credit the account of the Jarvis Terminal Cold Storage Company with $743.

By Mr. Loughran.

Q. As you recollect the warehouse receipt, did it have upon the face of it any endorsement as to a lien.

MR. CORBIN—I object to that.

THE VICE CHANCELLOR—There is no evidence as yet to show that the warehouse receipt is not in the possession of the Receivers. I will not permit that question at this time.

WILLIAM J. FARRELL, sworn.

By Mr. Loughran.

Q. Where do you reside and what is your business?

A. New York City; produce commission.

Q. What office in the corporation of the Sanborn-Farrell Company do you hold?

A. Treasurer.

Q. Is that company a corporation, and, if so, under and by virtue of what law?

A. Under the law of the State of New York it is a corporation.

Q. As Treasurer of that company what are your duties?

A. To manage the New York branch of the corporation.

Q. Are you acquainted with the firm of Gardemann & Jungclaus of Benton, Iowa.

A. Yes, sir.

Q. Do you know the defendant corporation, the Jarvis Terminal Cold Storage Company?

A. Yes, sir.

Q. Do you know if Gardemann & Jungclaus had any poultry in storage with the Jarvis Company?

A. They had.

Q. How did you first become acquainted with this fact?

A. Well, through a knowledge received by us from the Western Cold Storage Company, who notified us that there was a possibility of our handling that account, as they were acquainted with the parties, Gardemann & Junglaus, and we were doing business with the Western Cold Storage Company.

Q. Did you receive any order upon the Receivers for the delivery of these goods?

A. We did.

Q. Look at that (showing witness paper) and say if that is the order that you received?

A. Yes, sir.

(The order referred to is marked for identification, "G. W. B, 2.")

Q. Upon the receipt of this order what arrangement did you make for obtaining these goods from the Jarvis people?

A. Well, we understood, I believe it was the Third National Bank had advanced money on these goods, and that we would have to make arrangements with them to release them, which is usually the custom where there is an advance made. So we got a memorandum from the bank stating that

there was somewhere in the neighborhood of fifty-seven hundred dollars, I believe, advanced on this poultry, and our arrangement with the bank was to pay them proportionately, as we took the goods out, this amount; that is, we were not to pay them in one amount, but to pay them as we would take the proportion of the goods out, so much per package, as the rate would be, according to the amount involved. We had taken one or two loads, I think, out, and had paid them this amount, when we were notified by the Jarvis people that there was some question as to the freight, and then we stopped for a while until that matter would be straightened out in some way.

Q. Will you state whether you finally paid the bank in full, or not?

A. We paid them in full the amout, the memorandum they sent over to us; yes, sir.

Q. How was this matter of the freight arranged, as you recollect it?

A. Well, the Jarvis people—

THE VICE CHANCELLOR—Would not that arrangement be in writing?

MR. LOUGHRAN—Yes.

(Paper shown witness.)

By the Vice Chancellor.

Q. Was not the matter of the freight finally arranged by the written stipulation that is now shown you?

A. Yes, sir.

(Said stipulation is marked for identification "G. W. B. 3").

By Mr. Loughran.

Q. Do you now hold this note that was paid (referring to paper marked "G. W. B. 1")?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Corbin.

Q. You say that when you received goods you made proportional payments on the note?

A. Yes, sir.

Q. Do mean you made the same proportional payment on the note as the goods withdrawn were in value to the whole amount of the goods?

A. Yes, sir.

Q. Do you know what the goods were worth?

A. Do I know what they are worth?

Q. Yes?

A. What they realized, do you mean?

Q. Yes.

A. No, I could not tell you exactly; I did not go into the details; that would be a matter of bookkeeping?

At this point a recess was taken until two o'clock P. M.

Hearing of the matter resumed at two o'clock P. M.

JOHN W. HARDENBERGH, sworn.

By Mr. Loughran.

Q. Mr. Hardenbergh, you were one of the Receivers, I believe, of the Jarvis Terminal Cold Storage Company?

A. I was.

Q. It has been testified that in this Sanborn-Farrell transaction, at the time the money was paid, the warehouse receipt was turned over to the Receivers?

A. That is so.

Q. Do you know where that warehouse receipt is at the present moment?

A. My recollection is that that warehouse receipt was returned to the office of the company.

Q. Where?

A. At the warehouse,

Q. Is it in the possession of the Receivers at present?

A. It is not.

By the Vice Chancellor.

Q. I do not understand what you mean by saying that it was returned to the office of the company. Was that the Receivers' office?

A. My recollection is that I sent it to Mr. Batcheller, in order that he might issue a new receipt for the balance of the goods remaining in the warehouse.

Q. Who was Mr. Batcheller?

A. Mr. Batcheller was the Superintendent of the company.

Q. Do you mean Superintendent under the Receivers?

A. He was Superintendent under the old company, and remained Superintendent under the Receivers.

Q. And you sent it then to one of your own agents; to Mr. Batcheller?

A. Yes, sir.

Q. That is the last you saw of it?

A. Yes, sir.

Mr. Corbin—Mr. Batcheller is here in Court.

THE VICE CHANCELLOR—Let Mr. Hardenberg step aside until we learn from Mr. Batcheller what became of the paper.

(Witness stands aside.)

WILLOUGHBY S. BATCHELLER, sworn:

By Mr. Loughran.

Q. Mr. Hardenberg has just testified that this warehouse receipt, to his recollection, was turned over to you; do you know where that receipt is at the present moment?

A. I do not.

By the Vice Chancellor.

Q. What is your recollection about it after it got into your possession?

A. That warehouse receipt was sent over to me by Mr. Loughran; it was brought over to me by Mr. Loughran, and I issued—

Q. Never mind that. What do you remember about the receipt itself?

MR. LOUGHRAN—That is the wrong receipt; he is talking about another receipt.

Q. Do you know what receipt we are talking about?

A. A negotiable warehouse receipt.

Q. I know, but what one?

A. I have reference to one from Gardemann & Jungclaus.

Q. What is the last recollection you have of the warehouse receipt of Gardemann & Jungclaus?

A. Of the original one?

Q. Yes, the original.

A. It was sent over to me with some other docu-

ments, I think with the note; I think they were sent over to me and I put them in the safe.

Q. Was that the last you saw of them?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Corbin.

Q. That safe is there yet?

A. The safe is in the office; yes, sir.

Q. Who has access to it?

A. I had access to it at that time.

Q. Who has now? Do you know anything about that?

By the Vice Chancellor.

Q. Are you in the employ of the company still?

A. I am not, sir.

By Mr. Corbin.

Q. How do you know who has charge of it now?

A. I don't know.

Q. Did Mr. Jarvis have access to it?

A. No, sir; Mr. Jarvis did not; I was the only one that had access to it.

Q. And when you left you turned it over to whom?

A. In my absence—

THE VICE CHANCELLOR—No, when you left, to whom did you turn over this safe and its contents?

A. The Receivers took that warehouse receipt and papers away from there before it was turned over to other people.

Q. Well, did they take it away before you left?

A. Sir?

Q. You say you put it in the safe?
A. Yes, sir.
Q. They took it away after that.
A. The Receivers took it away.
Q. That is the last you know of it?
A. Yes, sir.
Q. Then it was not in the safe when you left there, was it?
A. No, sir.

By the Vice Chancellor.

Q. When did the Receivers take it away?
A. They took it away before the 28th—let me see—the Receivers took it away between the 26th day of July and the 1st of September.
Q. Of what year?
A. 1904.
Q. Of this year?
A. Yes, sir.
Q. How do you know they took this original receipt of Gardemann & Jungclaus?
A. Because I had it in the package together, and turned it over to the auditor.
Q. You, yourself?
A. Yes, sir.
Q. Turned this particular paper, among others, over to the auditor?
A. Yes, sir.
Q. Who was he?
A. Mr. Dickson.
Q. And Mr. Dickson took them away from that office, did he?
A. Yes, sir.

By Mr. Loughran.

Q. Which warehouse receipt do you refer to now? There are two, one that was issued originally by

the Jarvis Company to the Third National Bank; that is the receipt of which we are inquiring?

A. Yes, sir.

Q. And there was another receipt which was issued by the Receivers upon the surrender of this original receipt?

A. Yes, sir.

Q. The latter receipt I have in my possession, and I delivered it to you.

A. Yes, sir.

Q. Now, which receipt are you testifying in regard to?

A. The original receipt.

By the Vice Chancellor.

Q. Not the one that Mr. Loughran had and turned over to you?

A. No, sir.

(The witness was directed to stand aside for the present, by agreement of counsel, and it was consented by all parties that the witness Frank A. Horne should be called out of order).

FRANK A. HORNE, sworn.

By Mr. Loughran.

Q. What is your residence and occupation?

A. My residence is Brooklyn, New York; my occupation is refrigeration and cold storage.

Q. How long have you been connected with that business?

A. Fifteen years.

Q. What are your present duties?

A. I am in charge of the office of the Merchants Refrigerating Company of New York, as Assistant Secretary, and I also hold the position as Cashier of

the Merchants Refrigerating Company of New Jersey.

Q. Are you familiar with the rules and customs prevailing in regard to cold storage warehousing in relation to freight charges?

A. I am, so far as our companies are concerned.

Q. And particularly in Jersey City, as to what the customs are here?

A. Jersey City and New York city.

Q. Will you please state what is the custom among warehouse men in regard to freight charges in Jersey City?

MR. CORBIN—I object, on the ground that he is not shown to be an expert as to the general usage of the trade.

THE VICE CHANCELLOR—You may cross-examine as to that before he is allowed to answer the question.

By Mr. Corbin.

Q. You say you are familiar with it as far as your companies are concerned?

A. Yes, sir.

Q. You have a practice that you have established for your own dealings, have you?

A. Been established by the requirements of the railroad companies.

Q. But do you know what the practice of other storage companies or warehouse men is, apart from your own practice?

A. The same as our own.

Q. What knowledge have you in regard to that?

A. The general knowledge which comes from general imformation and discussion with other warehouse men.

Q. Discussion had when? When did you have that discussion?

New Jersey State Library

A. I cannot refer to any particular discussion; it is a matter of general information; a matter discussed by the Warehousemen's Association, and in general conversation; I cannot relate any particular date.

Q. Your own experience is limited to your employment by the Merchants Refrigerating Company?

A. Yes, sir.

THE VICE CHANCELLOR—Do you still think the witness is incompetent?

MR. CORBIN—I think he is not shown to be competent.

THE VICE CHANCELLOR—I will allow him to answer the question.

Former question repeated as follows:

Q. Will you please state what is the custom among warehousemen in regard to freight charges in Jersey City?

A. The warehousemen pay the freight, charging the customers, charging the clients, and crediting the companies, and make settlements according to their arrangement with the various railroad companies.

By the Vice Chancellor.

Q. And by "making settlements" you mean at times arranged, or what?

A. At the times arranged.

By Mr. Loughran.

Q. The warehousemen, do I understand, then become obligated personally to the railroad companies?

Objected to. Question withdrawn.

Q. When poultry or goods in cold storage are delivered to a warehouseman and the warehouseman pays the freight, or credits the company with the freight, are the goods stored in the name of the owners, or in the name of the railroad company?

MR. HOBART—I object to that.

MR. CORBIN—Of course that would be according to the special arrangement made.

THE VICE CHANCELLOR—That question applies to every case of that sort. If the witness can answer as to every case, then he may do so; if he cannot, he must not say. I will permit the witness to answer the question with that understanding.

A. In the name of the owners.

NO CROSS-EXAMINATION.

Depositions of George Dietrich and William Gardemann, two witnesses produced on the part of the petitioners, taken under stipulation of counsel for the petitioners, Western Cold Storage Company, Sanborn-Farrell Company, Palmer Campbell and J. Warren Hardenbergh, Receivers of Jarvis Terminal Cold Storage Company, and Erie Railroad Company, respondent, before G. Fairbairn, Notary Public in and for the State of Illinois, at Chicago, Illinois, on September 2, 1904, are now read to the Court by counsel.

JOHN W. HARDENBERGH, Recalled.

By Mr. Loughran.

Q. Do you recall this warehouse receipt about which we have been talking?

A. I do.

Q. Did that warehouse receipt bear any evidence of any lien?

THE VICE CHANCELLOR—Wait. That will not do. You have only shown that the witness Batcheller testifies that a Mr. Dickson, on the 26th of July, or thereabout, took this original warehouse reciept from the office of the Receivers, or the company. Now, so far as appears, Dickson still has it. I understood Mr. Hardenbergh to say that Mr. Dickson gave him those papers back, and he has been through them. If that is so, you had better prove that.

Q. Have you been through the papers that Mr. Dickson returned?

A. I have.

Q. Did you find this warehouse receipt among those papers?

A. No, nothing but bills against the Jarvis Company, check books and ledgers.

THE VICE CHANCELLOR—Do you want to cross-examine upon the question of the loss of this paper?

MR. CORBIN—No, sir.

Q. Do you recall the condition of this warehouse receipt, what was upon it, in a generel way?

A. My recollection is that it was a warehouse receipt, made out to the Third National Bank of Jersey City.

Q. Did the warehouse receipt have any endorsements upon it?

A. It had the endorsement of the Third National Bank when they returned it to me.

Q. Did the warehouse receipt have any endorsement upon it that indicated that there was any lien upon the goods other than the warehouse receipt?

THE VICE CHANCELLOR—I think the proper thing to ask this witness is what he recalls as to the contents of the paper. If you have a regular form (I make this suggestion to save time) why not hand the regular form to this witness and ask him with respect to that. If it had that and something else, well and good; if only that, he can so testify.

By the Vice Chancellor.

Q. Is there a regular printed form used by the Jarvis people, or by the Erie Railroad?

A. As it happened, in this particular case it was on an old blank of another warehouse company.

Q. Have you any of those?

A. No, sir.

By Mr. Loughran.

Q. From your recollection, what did this warehouse receipt contain?

A. My recollection is that it was a warehouse receipt of the Jarvis Tobacco Warehouse Company, issued before they had printed warehouse receipts for the Jarvis Terminal Cold Storage Company. It was issued in the name of the Third National Bank, but I do not know what goods were specified on the receipt. It was an ordinary receipt for goods issued to the Third National Bank.

Q. Were there any other writings on it of any kind?

A. Not that I recollect.

Cross-examination by Mr. Corbin.

Q. Did you notice who signed it; did you notice what signature was on it?

A. I do not remember, Mr. Corbin.

JOHN HENRY CASTENS, recalled.

By Mr. Loughran.

Q. Do you recall this warehouse receipt that was used as collateral for the note in question?

A. I do.

Q. Will you state what was upon that warehouse receipt?

A. It was just an ordinary negotiable receipt of the Jarvis Terminal Cold Storage Company.

By Mr. Corbin.

Q. What do you mean by a "negotiable?" Tell what it said.

A. A warehouse receipt it usually negotiable, unless it is marked otherwise.

Q. I say, tell what it said; I do not think you ought to characterize it?

A. The form?

THE VICE CHANCELLOR—(To the witness). Counsel asks you to state, as you recall it, what this paper said.

A. It was just a warehouse receipt, made out to the Third National Bank, signed by the Jarvis Terminal Cold Storage Company.

THE VICE CHANCELLOR—What did it say?

A. "On poultry, as per schedule," which you will find among the papers delivered over to the Receivers; poultry, butter and eggs, I think it was.

By Mr. Loughran.

Q. What endorsements, if any, were upon the warehouse receipt?

A. None that I can recall.

By the Vice Chancellor.

Q. Is it your recollection of the paper that it merely acknowledged the receipt of a certain amount of poultry and a certain amount of other articles, like butter and things of that sort.

A. Yes.

Q. And it had no printed or written conditions, other than the acknowledgement of the receipt, is that your recollection?

A. A regular warehouse receipt, that is all.

Q. Does that have other conditions printed on it?

A. The conditions of the company.

Q. It does have?

A. Yes, sir.

THE VICE CHANCELLOR—Is there any contention that among the ordinary conditions of a warehouse receipt, as the warehousemen prepare them, there is any reference to the freight whatever.

MR. CORBIN—I do not know that there is.

THE VICE CHANCELLOR—That ought to be cleared up, because otherwise I will permit this witness to be asked specifically whether or not there was any endorsement by the railroad company on it.

MR. CORBIN—I should not imagine there would be in an ordinary warehouse receipt; I should not expect to find it.

THE VICE CHANCELLOR—Then, unless there is something written on there by the

warehouse company or the railroad company, the prepared blank itself would not refer to freight charges; is that the understanding.

MR. CORBIN—Probably not, no, I should think not.

THE VICE CHANCELLOR—You may ask whether there was any endorsement by anybody of any language relating to or concerning freight charges.

Q. Was there, upon the warehouse receipt in question, any endorsement by anybody in any language relating to or concerning freight charges?

A. No, not as I recall.

Cross-examination by Mr. Corbin.

Q. I understand you to say that this receipt was an acknowledgement of the receipt of these goods from the Third National Bank?

A. From the Third National Bank?

Q. Yes?

A. No.

Q. You said it was a receipt made out by the Third National Bank?

A. The warehouse receipt was made out to the Third National Bank.

Q. Acknowledging the receipt from the Third National Bank, of these goods?

A. No, sir.

Q. From whom?

A. From whoever the shippers were.

Q. Who were they?

A. Gardemann & Jungclaus.

Q. Acknowledging the receipt from Gardemann & Jungclaus of these goods. Then why did you say it was made out to the Third National Bank?

A. It was made out to the Third National Bank for the schedule of the butter and eggs and poultry.

Q. What was there about the Third National Bank on a receipt made by the Jarvis Company to Gardemann & Jungclaus?

A. Nothing.

Q. Nothing about it?

A. Nothing.

Q. When you say it was made out to the Third National Bank, you do not mean that the Third National Bank was named as a depositor of these goods?

A. I don't know how you would interpret that.

Q. What is there on the face of the paper about the Third National Bank?

A. Just "pay to."

Q. Signed by whom?

A. Jarvis Terminal Cold Storage Company.

Q. Then the Jarvis Terminal Cold Storage Company gave an order to pay to somebody that was not on the storage receipt, was that it?

A. I don't know that it was.

Q. There was nothing on the storage receipt about the Third National Bank?

A. Just the name of the Third National Bank appeared.

Q. Appeared in what way?

Q. As any name would appear, "Third National Bank."

Q. I cannot understand; you say there is a receipt, and this storage receipt reads, "Received from Gardemann & Jungclaus certain goods," signed by the Jarvis Terminal Cold Storage Company. Now how does the Third National Bonk's name come in?

A. It does not say they were received from Gardemann & Jungclaus.

By the Vice Chancellor.

Q. That is what counsel wants to know; what did it say about from whom they were received?

A. It didn't say anything, that I can recall.

Q. Give us your own recollection of whatever language there was on that receipt that related to the Third National Bank in any way?

A. That I could not tell without seeing the receipt.

Q. What is your recollection about where the name of the Third National Bank appeared on this paper?

A. It appeared on the face of the receipt.

By Mr. Corbin.

Q. It appeared in what way? You know these goods belong to Gardemann & Jungclaus, and that they deposited them with the warehouse, don't you?

A. Yes, sir.

Q. And this receipt showed that fact, didn't it?

A. Yes, sir.

Q. Now, what has the Third Nation Bank got to do with that receipt?

A. That is a question I cannot determine.

THE VICE CHANCELLOR—The witness evidently does not recollect the language that brought the name of the Third National Bank on the face of the paper.

THE WITNESS—I have a copy of one of those receipts in the bank.

By the Vice Chancellor.

Q. You haven't got it here?

A. No, sir.

By Mr. Corbin.

Q. Have you got a copy of this one?

A. No, sir; a copy of one, I say.

By the Vice Chancellor.

Q. Did it have anything to do with this matter?

A. No, sir; just a printed form is all.

PETITIONERS REST.

EVIDENCE FOR RESPONDENT, ERIE R. R. CO.

WILLOUGHBY S. BATCHELLER, recalled.

By Mr. Corbin.

Q. Mr. Batcheller, you were employed in January and February and March last in the Jarvis Terminal Cold Storage Company?

A. Yes, sir.

Q. In what capacity?

A. As Superintendent.

Q. Do you recall the receipt there of these three car loads of goods from Gardemann & Jungclaus in January last?

Q. Yes, sir.

Q. Now, did you learn of the arrival of the goods by rail?

A. I did.

Q. What did you do about it, about getting possession of them?

A. I was notified by the Erie Railroad that there were two cars of goods on the track.

Q. To what officer of the road did you go?

A. Mr. Wescott, the agent; the local agent.

Q. What took place between you and Mr. Wescott about the custody of the goods?

MR. LOUGHRAN—That is objected to unless the witness can be shown to have been the agent of the shipper.

THE VICE CHANCELLOR—I understand that Mr. Corbin's contention is that Gardemann & Jungclaus selected the Jarvis Terminal Cold Storage Company as their agent to receive these goods, and he is now showing from the mouth of the Superintendent of his agent what Gardemann & Jungclaus did with the railroad —is that right?

MR. CORBIN—Yes, sir.

THE VICE CHANCELLOR—I will admit it over your objection.

A. Mr. Wescott said that the cars were there on the track.

Q. Well, what did you tell him?

A. I asked Mr. Wescott to place them on our sidetrack, so I could take them into the warehouse.

Q. Go on; give the whole conversation.

MR. LOUGHRAN—The conversation is objected to, on the ground that he is not the agent of the shipper.

THE VICE CHANCELLOR—I will take this testimony. It can not hurt, if I find the company had no right to make this contract. (To the witness) Give us the whole conversation between you and Mr. Wescott at this time.

A. Mr. Wescott said that he would place them on our track at the warehouse so I could take them in, and the next day, if I remember right, he came over and says to me, he says, "I will send you over the freight bills for this freight," and he says, "I don't want you to deliver this freight or these goods out of the warehouse until these freight charges are satisfied."

MR. LOUGHRAN—I move to strike out everything that was said after the delivery of the goods.

THE VICE CHANCELLOR—I will take it all, subject to the right to deal with it after I get the whole thing in.

A. (Resuming) I told him I would do all I could to retain the goods there until his freight charges were satisfied, as far as my power was concerned.

Q. What was done with the freight bills?

A. The freight bills were presented to me, and I looked them over, and sent them over to Mr. Jarvis' office, at 68 Broad street, New York, the very day that I received them, and requested Mr. Jarvis to see that they were paid.

Q. This was at the time the goods came there.

A. Immediately after the goods arrived.

Q. Immediately after they arrived?

A. Yes, sir; and I had them in the house.

A. Did you afterwards put this in writing?

THE VICE CHANCELLOR—Put what in writing?

Q. Did you afterwards give Mr. Wescott a writing?

A. I did not at that time; no, sir.

Q. Afterwards, I say? Did you afterwards give Mr. Wescott a writing?

A. I replied to a letter that I received from Mr. Wescott.

Q. (Showing witness letter). Is that your reply?

A. Yes, sir; that is my reply; that is the letter and my reply to it.

MR. CORBIN—We offer the letters in evidence.

MR. LOUGHRAN—I objected to this, on the ground that the letter was written after the goods had been delivered; that these petitioners cannot be bound by any transactions occurring after the delivery of the goods.

MR. CORBIN—It is prior to the time when it is claimed that these orders came in, that these chattel mortgages were made, or these other alleged liabilities incurred. Besides, it simply ratifies the previous understanding.

THE VICE CHANCELLOR—I will admit these papers for what they are worth and rule on them after the issue is more clearly defined than it is now. These papers may be admitted.

(The letter of Wescott is marked Exhibit D 2, and the reply of Batcheller is marked Exhibit D 3).

Cross-examination by Mr. Loughran.

Q. Have you stated the entire conversation had with the agent of the Erie at this time?

A. Practically the whole thing; yes, sir.

Q. In whose name were these goods stored with the Jarvis Company?

A. In the name of Gardemann & Jungclaus.

By the Vice Chancellor.

Q. In what month was it you had this conversation with Mr. Wescott, the first conversation you had with him?

A. In the month of January.

Q. And how soon after the conversation did you actually get the cars into the warehouse, get the contents of the cars into the warehouse?

A. Oh, two of the cars came into the warehouse before I had the actual conversation in regard to retaining them for charges; they were in the warehouse previous to that.

Q. The first conversation that you had was his telling you the cars were there?

A. Two of them.

Q. And your asking him to put them on your switch?

A. Yes, sir.

Q. Now, he did that, did he?

A. Yes, sir.

Q. Then you had the contents of these cars in your warehouse when you had this subsequent conversation about your retaining the goods until the charges were paid?

A. Yes, sir.

Q. With respect to that matter, when did the third car come?

A. The third car came in on the 26th day of January.

Q. Was that after these conversations?

A. Yes, sir.

Q. After both of the conversations?

A. Yes, sir; and then we had still another conversation in regard to the freight charges on that car which came in, the same as the others, practically speaking, and then the thing was bunched to-

gether, and the negotiations were made at the bank after that, on the 8th day of February.

REEVE WESCOTT, sworn.

By Mr. Corbin.

Q. Mr. Wescott, you are Freight Agent of the Erie Railroad Company?

A. Yes.

Q. Do you recall the receipt of several car loads of goods consigned to the Jarvis Cold Storage Company?

A. Three cars.

Q. (Showing witness number of way bills. Will you look at these way bills; do they show the goods?

A. Yes, sir.

Q. Will you please state when those goods got there?

A. I know all about them, without looking at them.

Q. Go ahead; when did they get there?

A. One of them got there on the 18th of January, 1904; the other one was placed on the 27th of January, and the other one was placed on the 18th —two on the 18th and one on the 27th.

Q. When the first ones got there what took place with you and the Jarvis Company people?

A. They were the first cars that were placed in the Jarvis Terminal Cold Storage. I placed them in there with a conversation with Mr. Batcheller, who was the General Superintendent, under the conditions that they should not—

MR. LOUGHRAN—I object to this, on the same grounds as before.

THE VICE CHANCELLOR—It may be understood that Mr. Loughran objects to the

conversation between this gentleman and Mr. Batcheller, the Superintendent, and that the Court will admit it, subject to dealing with it after the whole matter is in.

Q. What did you say? State the conversation.

A. Mr. Batcheller said to me, "I am looking for two cars of poultry off of the West Shore Railroad." I says, "I don't know anything about them." He told me later that they were down at Seventh street and Newark avenue, on the West Shore Railroad. I says, "I will try to get them over for you," and I did, and I got them there, and I delivered them to him on the 18th of January. I told him—

Q. When?

A. Well, it must be the 17th; I can't remember that, just the day you know. I hurried to do it. I says, "I will get those cars over for you just as soon as possible. They had to move from Seventh street and Newark avenue, Jersey City, over to Weehawken, down over the Weehawken Branch, through the tunnel and over to our place. I think they got them on the same day. I think I am safe to say the 18th of January we got them there. I told Mr. Batcheller, I says, "These cars came in to you with charges unpaid; now, they must not go out of here until my charges is satisfied." Make the distinction, Judge, if you please, between "paid" and "satisfied."

Q. Tell what he said, and what you said?

A. He said he would; and later he modified it with his latter there, that, "as long as he was General Agent, or General Superintendent, he would."

Q. Well, now, was this conversation before or after you delivered him the goods?

A. The same day; the same day.

Q. Was it before he had unloaded the cars?

A. Yes, sir; yes, sir; sure; I don't do business any other way.

Q. And you ran them in on their switch, but this conversation was before he unloaded the cars.

A. I put these cars in to his siding, so he could have them; yes, sir.

Q. Now, what did you do about the freight bill?

A. I rendered him a freight bill for the three cars in question; you are only asking me about two; there is a distinction there.

Q. What conversation took place as to the third car?

A. He said, "I will refer them to Mr. Jarvis," who was the President.

Q. What conversation took place as to the third car?

A. The third car?

Q. Yes?

A. Why, the same as the previous ones; he said, "They have all been referred to Broad street, New York," where the Treasurer was.

Q. I am asking you what conversation took place with Mr. Batcheller with reference to the third car; just answer that, please.

A. I asked him about the payment of the charges. He said, "The freight bills have been referred to young Mr. Jarvis, Broad street, New York," I forget the number.

Q. Well, what did you say as to that then?

A. Well, then I says, "Are the charges coming?" He says , "I think so."

Q. What about the delivery of the goods? What did you say to him about holding on to the goods, if anything?

A. Why, just what I told you; I said the goods were not to be delivered until the Erie Railroad freight charges were satisfied—not "paid," please make the distinction, not "paid," "satisfied."

Q. I am asking you what was said, never mind the distinction, when you gave him those goods to put into his warehouse; what did he say about whether he would hold on to them or what he would do about them?

A. He said, "Mr. Westcott, those goods shall not go out of here until the freight charges are paid;" he did not say "satisfied," he said "paid."

Q. Now, then, when did you next have any conversation with him?

A. Oh, I had one dozen; and I rendered them new freight bills, duplicates.

Q. Now, how about these papers here (referring to Exhibits D 2 and D 3); what took place in regard to them?

THE VICE CHANCELLOR—How can we have any conversations in regard to those? Those are written papers.

Q. Did you have any conversation with him in reference to sending a paper?

A. One dozen times.

Q. Well, about sending these papers, about your getting these orders from him?

MR. LOUGHRAN—I object to any conversation, inasmuch as we have the written instructions about them.

Q. I am asking whether you had a conversation about getting from him any paper? What led you to write that letter to him, of which you have the copy?

A. Why, because the conditions got such that it was necessary to have something of this kind in writing.

Q. Well, did you have any talk with him about getting something in writing?

A. Yes; I talked with him a day or two before, and he said he would give me anything I wanted in that direction,

Q. Then you wrote that letter?

A. I wrote that letter; yes, sir.

Q. That is a copy of your letter?

A. That is a copy of my letter; yes, sir.

Q. What is the date of the letter?

A. March 22, 1904.

MR. CORBIN—We ask for the production of the letter written March 22, 1904, to the Jarvis Company.

THE VICE CHANCELLOR—Of whom do you ask that? These petitioners cannot produce it; these petitioners are not the Jarvis Company; you cannot call upon them for that letter. You will have to serve a subpœna *duces tecum*.

Q. At the time you wrote that letter did you have a carbon copy of it?

A. Yes, sir.

Q. (Showing witness paper)—Is that the carbon copy?

A. Yes, sir.

Q. Of the original letter sent?

A. Yes, sir.

Q. To which that is the reply? (Showing witness another letter).

A. Yes, sir.

MR. CORBIN—I submit, your Honor, the carbon copy of the original, of which this is an impressson.

THE VICE CHANCELLOR—That is not competent.

MR. CORBIN—My understanding is that a press or carbon copy is admissible.

THE VICE CHANCELLOR—Yes, if you show that the original cannot be produced.

MR. CORBIN—No, it is admissible as original evidence, as primary evidence. I know that has been held as to a press copy, and Mr. Hobart thinks the same ruling has been made as to a carbon copy.

THE VICE CHANCELLOR—Mr. Loughran may not object to the letter on the ground of its competency, he may merely object to the letter on the ground of its relevancy. If he does not object on the ground of its competency, I will admit it, and rule on the relevancy later.

MR. LOUGHRAN—I object to its relevancy.

THE VICE CHANCELLOR—The paper may be admitted then as evidence, to be hereafter ruled upon when the entire case is in.

Cross-examination by Mr. Loughran.

Q. When were these conversations had in reference to the delivery of the car, before or after the delivery?

A. The conversation about the two cars that came to us from the West Shore Railroad on January 18th was on January 17th or 18th, I can't just say, you know; I can't remember those things.

Q. The day following, wasn't it?

A. I think so; I hurried to get them there.

Q. The day following what?

A. I didn't say the day following the delivery, I say the day following the conversation.

By the Vice Chancellor.

Q. He asked you whether the conversation was after the delivery or before the delivery?

A. When this storage house was opened I was very ambitious to put it on a good basis—

Q. That is not what you are asked You are asked whether the conversation was the day of the delivery, the day before the delivery, or the day after the delivery.

A. I cannot answer a question of that kind; it is not a relevant question.

By Mr. Loughran.

Q. Your counsel has charge of the relevancy of it.

A. If you ask me whether this delivery was made on the day of the conversation with Mr. Batcheller, then I can answer that.

Q. I ask the question just as it was put, and I ask for a ruling of the Court on it.

A. I can't answer that; I don't know how to, sir; if you put it in another way I will answer it; I cannot answer a question of that kind.

By Mr. Corbin.

Q. Was this conversation when Mr. Batcheller told you the goods should not go out of the warehonse until your freight was paid, before the goods were out of your control or after?

MR. LOUGHRAN—I object.

THE VICE CHANCELLOR—I will not permit that question.

Q. Where were the goods at the time of this conversation?

A. How do I know where they were?

Q. Well, were they in the car? Had they been taken out of the car and delivered into the warehouse, or were they still in the custody of the warehouse company?

THE VICE CHANCELLOR—I will not permit that question. I will not permit you to put the word "custody" in there. You may ask him as to the physical fact, as you did a while ago, but you must not interpolate into the question any question of "custody."

Q. You say you don't know where the goods were at the time of this conversation; I ask you whether they were in the car or not at the time you had the conversation.

A. I can simply answer that they were in the possession of the West Shore Railroad, two of the cars.

THE VICE CHANCELLOR—Strike out that answer about in whose possession they were. You can ask him the fact, Mr. Corbin. I am not ruling against you on the question as to the fact, but I will not have the witness interpret the law.

Q. You had this conversation while they were in the hands of the West Shore Railroad?

A. Yes, sir; two cars.

THE VICE CHANCELLOR—Strike that out. You may ask this witness the fact, but I will not have the witness decide the law of the case.

MR. CORBIN—I do not understand the Court's objection. These cars came to the Erie from the West Shore—

THE VICE CHANCELLOR—You may ask the witness where the cars were, and I will determine that question.

Q. Where were the cars when you had this conversation; on what track?

A. I cannot answer that except from the billing here. Here is where they were, according to the billings.

Q. Well, on what tracks were they?

A. I don't know. They were billed to me from Weehawken, and the record shows they came from the West Shore Railroad, on the West Shore Railroad tracks, two of them. Now, let me try to be fair. I want to answer the question right.

Q. You are speaking now of your first inquiry about the cars. Now, when they came into your yard, where did you send them, on to what siding?

A. Jarvis Terminal Cold Storage's—two cars.

Q. On their siding?

A. Yes, sir.

Q. Now, then, when you first discussed it what was your expectation then about getting the freight?

Objected to.

THE VICE CHANCELLOR—I will not permit that question, Mr. Corbin.

MR. CORBIN—The point is here: it would make no difference where they were delivered if they were delivered in the expectation of the payment of freight.

THE VICE CHANCELLOR—This gentleman's expectation is not probative of anything. I would take any fact, but I will not take expectation, hope, thought or fear. Let him state the facts.

Q. Was this conversation about holding the goods until the freight was paid before or after the cars were on the Jarvis siding?

A. Prior.

By Mr. Loughran.

Q. Mr. Batcheller has sworn that these conversations took place after the goods had been delivered into his warehouse?

A. That may be.

Q. Well, did he swear to the truth or not?

THE VICE CHANCELLOR—He says "that may be."

A. It is a question between Mr. Batcheller and I.

THE VICE CHANCELLOR—The witness says it is a question of veracity between Mr. Batcheller and him.

C. HOWELL CLARKE, sworn.

Direct examination by Mr. Corbin.

Q. Mr. Clarke, you are in the warehouse business?

A. Yes, sir.

Q. How long have you been in that business?

A. Ten years; going on eleven years.

Q. Do you know the customs of the trade with reference to the receipt of goods from railroads and other carriers?

A. Well, I have a general idea; an idea, rather, of the general methods employed.

Q. Well, suppose the goods are delivered to the carrier with a freight bill, what is the understanding in that case?

MR. LOUGHRAN—I object to that; he has hardly been qualified as an expert.

Q. What is your experience of this business; you say you have had ten years' experience?

A. From ten to eleven years, yes.

Q. Have you been accustomed to receive goods from various carriers?

A. Yes, sir.

Q Railroad carriers?

A. Yes.

Q. Have you been accustomed to receive them for your company?

THE VICE CHANCELLOR—It has not been testified that he was connected with any company.

Q. Well, which one, the Terminal Warehouse Company?

A. Yes; the company with which I am at present connected.

Q. Are you familiar with the business of other companies as well?

A. From general conversation.

By Mr. Loughran.

A. What do you mean by "general conversation?"

A. From actually being in that line of business; people gather together and talk, and in that manner we get the idea of what the others are doing.

Q. Whom are you employed with now?

A. Terminal Warehouse Company.

Q. Where are they located?

A. At Fifty-ninth street and North River, at twenty-seventh and North River, New York.

Q. Is the Erie Railroad connected with that company in any way?

A. Connected how, do you mean?

Q. Own stock in it?

A. None whatever, that I know of.

By the Vice Chancellor.

Q. What is your connection with the Terminal Warehouse Company now?

A. Assistant Secretary.

THE VICE CHANCELLOR—The witness may answer this question.

Former question repeated, as follows:

Q. Well, suppose the goods are delivered to the carrier with a freight bill, what is the understanding in that case?

THE VICE CHANCELLOR—Well, how does that become material in this case? I do not recall that there is any testimony that these goods were delivered to the carrier with a freight bill.

MR. CORBIN—Delivered by the carrier to the warehouse company with a freight bill.

THE VICE CHANCELLOR—I do not understand that they were delivered to the warehouse company with a freight bill. I fail to remember any one single item of testimony to the effect that the goods were delivered to the warehouse company with a freight bill. Whose testimony do you think established the fact that freight bills accompanied the goods?

MR. CORBIN—The testimony of the witness Mr. Wescott is that the arrangement was made that they should be held, and he subsequently did send the bills to him.

THE VICE CHANCELLOR—Oh, I admit that, but this question I do not have to de-

cide, because it is not sworn to in the case by anybody, and there is no use having a hypothetical question put which would not help me to decide any point which is in issue; and there is no issue to which this testimony is relevant.

Q. What is the practice, when goods are delivered to a warehouseman and the freight is not paid at the time, with reference to the provision the warehouseman makes?

A. The warehouseman must be advised by the railroad company as to whether the freight has been paid or not.

Q. Suppose they are advised it has not been paid, what is the practice of the warehousemen with regard to the custody of the goods?

M. LOUGHRAN—I object, because there is no evidence that at the time these goods were delivered the warehouseman had any notice from the railroad company that the freight had not been paid.

THE VICE CHANCELLOR—I think Mr. Westcott testified that it was prior. I will take it under that idea.

A. I can tell you what the practice of our company is.

Q. What is the general practice, as far as it is known to you, as to holding on to the goods.

A. The prudent method—

Q. I am not asking for the prudent method; what is the custom.

A. The custom, so far as I know, is to hold those goods until those charges are paid.

Cross-examination. by Mr. Loughran.

Q. Mr. Clarke, under those circumstances, doesn't

the warehouseman store the goods in the warehouse in the name of the railroad company?

A. It is my opinion that that is done that way.

By Mr. Corbin.

Q. Always?

A. No.

Q. What is that?

A. Not always; sometimes it is done that way, and sometimes stored in the name of the owner.

MR. LOUGHRAN—I move to strike out the whole of this evidence, because the evidence shows that it is not the custom.

THE VICE CHANCELLOR—It may stay in for what it is worth. If it is not the general custom it may not weigh; but it may stay in for what it is worth.

PALMER CAMPBELL, sworn.

Direct examination by Mr. Corbin.

Q. Mr. Campbell, you are in charge of a storage warehouse, are you not?

A. I am President of one; yes, sir; President of the company.

Q. And you have been in that business for a number of years?

A. About twenty-five years.

Q. And you are familiar with the modes of business?

A. Yes, sir; I think I am.

Q. What is the custom of business of warehouse companies when they take goods from a railroad company, freight unpaid?

A. We hold the goods subject to the payment of the freight.

Q. You are one of the Receivers in this case, are you not?

A. Yes, sir.

Cross-examination by Mr. Loughran.

Q. Do you then act as agent for the railroad company in the collection of the freight?

MR. CORBIN—I object to that as immaterial. That is a question of law, isn't it?

THE VICE CHANCELLOR—Ask him what the fact is, and we will determine for whom he is agent. Ask him the fact about what they do about getting the money, and paying it over.

Q. Explain the method of getting this money and paying it over to the railroad company?

A. The railroad company send the goods to the warehouse and notify us that there are charges against it for freight, and we notify the customers that these goods are held subject to the payment of freight and storage charges.

Q. In those cases, in whose name are the goods stored?

A. They are stored in the names of the owners of the goods, unless the railroad companies specifically hand the goods to us without our knowing who the owners are, and then it is stored in the name of the railroad company; quite often railroads will send goods to the warehouses for storage, and we don't know who the owners of the goods are; in that case they are stored in the name of the railroad company.

Q. When you say that you notify the shipper that you are holding the goods for freight, you mean by that, that you are holding the goods for the freight which you have advanced to the railroad

company, or are obligated to pay the railroad company?

A. No, sir; I do not; we do not consider ourselves obligated to pay the freights unless we can get them out of the goods; hold the goods for them.

Q. What, then, is the relation between yourselves and the railroad company?

MR. CORBIN—I object to that; I think that is a question of law; I have my own view of that; I think they are depositories for two people; that they are depositories for both the railroad company and the owner.

THE VICE CHANCELLOR—I think Mr. Loughran is along the right line, but his question is framed to bring out the legal question rather than the question of fact.

Q. What do you do in case you do not get the freight?

By the Vice Chancellor.

Q. Suppose you notify the shipper that you are holding these goods subject to payment of freight, and he don't send you the freight, what do you do then?

A. We hold the goods, and if a year has expired and they are still in our warehouse—provided they are not perishable—we sell them for charges, which would include the freight and the handling, and so forth.

Q. And how does the railroad get the freight?

A. It gets it from us.

Q. Suppose the shipper should sell the goods to me while they are in your warehouse, and I brought you the shipper's assignment of your receipt, would you deliver the goods to me?

A. Not without the freight and storage charges being paid.

Q. If I paid you the freight and storage charges, then you would deliver the goods to me?

A. I would.

Q. Then how would the railroad company get its freight?

A. Get it from us.

By Mr. Loughran.

Q. In those instances where you are holding for freight, is it customary for the warehouse company to issue a clean warehouse receipt, a clean negotiable warehouse receipt?

A. Well, negotiable warehouse receipts, I think, without variation, have a sentence on them, printed or written, that "these goods are held subject to all charges."

By the Vice Chancellor.

Q. Well, does that include anything but storage charges?

A. That includes whatever charges the warehouse has against them.

MR. LOUGHRAN—I object to that, because that is a matter of law.

THE VICE CHANCELLOR—I think the statement the witness makes is a perfectly proper one. Whether or not that would include the freight charges is a matter of argument, I think. We will have to determine, under the law, whether it does include that or not.

DEFENDANT RESTS.

BOTH SIDES CLOSE.

EXHIBIT P 1.

Letter from Gardemann & Jungclaus to Third National Bank, dated February 3d, 1904, same as Exhibit G, attached to deposition. See p. 102

EXHIBIT P 2.

$5,000.00. Newhall, Ia., Jan. 4, 1904.

At sight pay to the order of Third National Bank of Jersey City, Five thousand and 00–100 dollars.

Value received and charge the same to account of To Jarvis Terminal Cold Storage Co.

GARDEMANN & JUNGCLAUS.

Jersey City, N. J.

(Endorsed).

Jarvis Terminal Cold Storage Co.,
R. M. JARVIS,
Pres.

EXHIBIT P 3.

$5,743.00–100.

Jersey City, N. J., Feb'y 8th, 1904.

On demand after date, for value received we promise to pay to The Third National Bank of Jersey City, N. J., or order, at the office of said Bank, in funds current at the New York Clearing House, Fifty-seven hundred forty-three 00–100 dollars, (with interest at the rate of 6 per cent. per annum), having deposited or pledged herewith, as collateral

security, for the payment of this or any other liability or liabilities of the undersigned to said bank, due or to become due, or which may hereafter be contracted or existing, with authority to sell at public or private sale, in the manner and on the terms hereinafter stated, on the non-performance of this promise, or any of its conditions, the following property, viz:

Warehouse receipt Jarvis Terminal Cold Storage Co., No. 1.

In case of depreciation of said securities, or either of them or any which may be hereafter pledged for this loan, a payment shall forthwith be made on account, or additional securities given satisfactory to said bank, so that the market value of the collateral shall always be at least twenty per cent. more than the amount unpaid on this note. In case of failure so to do, this note shall forthwith become due and payable, anything herein contained to the contrary notwithstanding, with full right, power and authority to the said bank, or the holder or holders hereof, without further demand or notice, to sell, assign and deliver the whole or any part of such securities, substitutes or additions, at any Broker's Board, or at public or private sale at their option, at any time or times thereafter, without advertisement or notice, and also with the right to become purchasers thereof at such sale or sales, freed and discharged from any equity of redemption; all interest, and legal or other costs, charges and expenses for collection, sale and delivery to be deducted from the proceeds of such sale, and the residue applied on the liability or indebtedness under this note and agreement; the overplus, if any, to be returned to the undersigned, except as hereinafter stated. If there be any deficiency the under-

signed hereby promises to pay the same forthwith. And it is hereby agreed and understood that any excess of security upon this note shall be applicable to any other note or claim held at the time of default by said bank, against the undersigned, whether then due or not due, making proper rebate for interest and liabilities not then due.

The undersigned hereby further authorizes the said bank at its option, at any time, to appropriate and apply to the payment of any of the said liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said bank on deposit, or otherwise, to the credit of belonging to the undersigned, whether the said liabilities are then due or not due. All the provisions of this instrument shall innure to the benefit of the holders or assigns thereof; collaterals to be returned on due payment of this note at maturity, unless sold or held under the provisions hereof.

JARVIS TERMINAL COLD STORAGE CO.,
R. M. JARVIS, Pres.
R. M. JARVIS, JR.,
Treasurer.

(Stamped)—Third National Bank. Paid. Apl. 28, 1904. Jersey City, N. J.

EXHIBIT (G. W. B. 1).

Demand note for $5,743.00—Gardemann & Jungclaus to Jarvis Terminal Cold Storage Company. Dated Feb. 3, 1904.

(Same as Exhibit H, attached to depositions; see p.——).

EXHIBIT (G. W. B. 2).

Order from Gardemann & Jungclaus to Receiver. Dated April 9, 1904.

(Same as Exhibit I, attached to depositions; see p. ~~104~~).

EXHIBIT (G. W. B. 3).

Stipulation by Receiver.

(Same as Exhibit C attached to petition; see p. ~~13~~).

EXHIBIT D 2.

JERSEY CITY LOCAL STATION.

JERSEY CITY, March 22, 1904.

Jarvis Terminal Cold Storage Co.,
Jersey City, N. J.

GENTLEMEN:

You have in your storehouse property from cars No. 10090 M. D. T.—8864 M. D. T., 61279 Erie with total freight charges amounting to $729.54 and I have the promise of your General Superintendent, Mr. Batchelor, that this property will not be delivered from your storehouse until the freight charges have been satisfied to the Erie R. R. through me and I look to you to protect me in this direction and wish you would write me that you will do so.

Yours truly,

R. WESTCOTT,
Agent.

EXHIBIT D 3.

JARVIS TERMINAL COLD STORAGE CO.

At Terminus of Erie Railroad.

12th and Provost streets, Jersey City, N. J.

R. M. Jarvis, Prest. W. S. Batchellor, Supt. Ro. M. Jarvis, Jr. Sec'y and Treas.

Chas. F. Case, Vice-President. Jas. H. Blakemore, Asst. Sec'y.

Telephone 792 Jersey.

March 23d, 1904.

Erie R. R.
Mr. Westcott, Agent,
City.

DEAR SIR:

Your letter dated March 22d received contents of same noted. Will say in reply that the property you have reference to I will do everything I can to see that the property is not moved until your claim for freight charges is satisfied as long as I remain Superintendent of the Jarvis Terminal Cold Storage Warehouses.

Yours truly,
Jarvis Terminal Cold Storage Co.
W. S. BATCHELLER,
Supt.

Stamped,
(Erie Railroad Co.,
March 24, 1904,
Jersey City Local Station.)

COPIES OF WAY BILLS.

(1.)

ERIE RAILROAD COMPANY.

From Weehawken, N. J., to Jersey City Local.

(Date of way-bill) Jan. the 16, 1904.

(Series and number of W. B.) T 464.

(Car Initials) M. D. T. (Car number) 8864.

(Marks, consignee and destination) Jarvis Cold Storage Co., J. City.

(Articles and classification) 16 bbls. eggs, 56 tubs butter, 60 bbls. D. poultry.

W. S. R. R.

(Weight) 20130.

(Freight) $10.07.

(Advances) $206.71.

ERIE RAILROAD COMPANY.

(2.)

From Weehawken, N. J., to Jersey City Local.

(Date of way-bill) Jan. the 16, 1904.

(Series and number of W. B.) T 463.

(Car Initials) M. D. T. (Car number) 10090.

(Marks, consignee and destination). Jarvis Cold Storage Co., Jersey City.

(Articles and classification) 121 bbls. poultry.

W. S. R. R.

(Weight) 24400.

(Freight) $12.20.

(Advances) $267.18.

ERIE RAILROAD COMPANY.

(3.)

From Hammond, Ind., to Jersey City Local.

(Date of way-bill) Jan. the 18, 1904.

(Series and number of W. B.) T 547.

(Car Initials) Erie. (Car number) 61279.

(Marks, consignee and destination). Jarvis Terminal Cold Storage Co.

(Articles and classification) 137 bbls poultry.

	(Weight)	(Freight)	(Advances)
	20400	$151.98	$71.40
Less C. J. switch.....		3.50	3.50
		$148.48	$74.90

STIPULATION AS TO DEPOSITION.

The petitioners, Western Cold Storage Company, Sanborn-Farrell Company, Palmer Campbell and J. Warren Hardenberg, Receivers of Jarvis Terminal Cold Storage Company, Erie Railroad Company, respondent, by their respective solicitors, hereby stipulate that the depositions of George Dietrich, of the City of Chicago, Illinois, and of William Gardemann, of Benton County, Iowa, may be taken without further notice, before G. Fairbairn, a Notary Public in and for the State of Illinois, at the office of W. O. Johnson, in the office building known as "The Rookery," in the city of Chicago, Illinois, at eleven o'clock in the forenoon of first day of September, nineteen hundred and four, or at such adjourned day as may be agreed on in Chi-

cago. Said depositions may be taken stenographically before such stenographers as may be agreed upon by the parties who attend at the taking of the depositions, but the depositions are to be signed by the witnesses.

Dated Jersey City, N. J., August 22nd, 1904.

FRANK E. LOUGHRAN,
Solicitor for Petitioners.

McDERMOTT & FISK,
Solicitors for Receivers.

COLLINS & CORBIN,
Solicitors for Erie Railroad Company.

On the day and hour appointed and set by the stipulation of counsel for the parties hereto, Mr. Frank E. Loughran appeared on behalf of the petitioners, and Mr. W. O. Johnson on behalf of the Erie Railroad Company, and the taking of depositions was duly adjourned until 2 P. M. of the following day, September 2nd, 1904, by consent, at which time Frank E. Loughran again appeared on behalf of the petitioners, and W. O. Johnson on behalf of the Erie Railroad Company, whereupon the following proceedings were had:

It was stipulated and agreed by the counsel for the respective parties that all objections as to incompetency, irrelevancy and immateriality and the general objection as to leading questions should be considered as having been made at the proper time and place, and their disposition reserved for the final hearing of the cause.

IN CHANCERY OF NEW JERSEY.

BETWEEN GUSTAV W. LEMBECK, *Complainant,* *and* JARVIS TERMINAL COLD STORAGE COMPANY, *Defendant.*	*On Bill, etc. Petition of Western Cold Storage Company and of Sanborn - Farrell Co.* *Depositions taken on behalf of Petitioners pursuant to stipulation.*

The undersigned, G. Fairbairn, having been duly sworn, faithfully, fairly and impartially to take the said depositions, the following witnesses were duly examined:

GEORGE DIETRICH, a witness produced on the part of the petitioners, being first duly sworn according to law, on his oath deposes and says: (Direct examination by Frank E. Loughran, cross-examination by W. O. Johnson.

Direct examination.

Q. What is your name?

A. George Dietrich.

Q. Where do you reside and what is your business or occupation?

A. Chicago, Cook County, Illinois. Secretary of the Western Cold Storage Company.

Q. Are you familiar with the corporation of the Western Cold Storage Co.?

A. Yes, sir.

Q. Please state under what laws the Western Cold Storage is incorporated?

A. The laws of Illinois.

Q. Do you know the firm of Gardemann & Jungclaus of Newhall, Iowa?

A. Yes, sir.

Q. How is that firm constituted?

A. It consists of William Gardemann and Adolph Jungclaus.

Q. Has the Western Cold Storage Company had any business relations with Gardemann & Jungclaus?

A. Yes, sir.

Q. Please state what relations they have had recently?

A. The Western Cold Storage Co. has advanced the firm of Gardemann & Jungclaus certain moneys.

Q. State at what time and what amount was advanced to Gardemann & Jungclaus?

A. Mr. Gardemann came to us, told us that he had certain quantities of poultry stored in Jarvis Cold Storage & Warehouse Co., and on March 22nd we advanced them $1,300.00; on April the 20th $1,400.00; total of $2,700.00.

Q. What security did Gardemann & Jungclaus give the Western Cold Storage for this money so advanced?

A. Mr. Gardemann gave us a chattel mortgage on the equities due him for this poultry.

Q. Going back to this chattel mortgage, to the time when the cash was actually advanced, what was the understanding between Gardemann & Jungclaus and the Western Cold Storage Co.?

A. That the equities of the poultry stored in Jersey City were to be paid us through our agents in New York City, Messrs. Sanborn-Farrell Co.

Objected to on the ground that the witness should state the terms of the contract and not its legal effect.

Q. Mr. Dietrich, please state the terms of this con-

tract in relation to the lien given by Gardemann & Jungclaus.

A. Mr. Gardemann called at my office, the Western Cold Storage Co., 39 North State street, and told me that he was in need of money to help him out in his business, and he said: "While I have no shipments to give you to-day, I will have some right along, but I have got a certain quantity of poultry stored with the Jarvis Cold Storage Co., and if you will advance me some money I will agree to give you a chattel mortgage on whatever may be coming to me on what equities I have on this money;" I then asked him to show me his storage papers, so that we could figure out with him. He showed me those papers and we telegraphed Mr. Farrell, of the firm of Sanborn-Farrell Co., New York, asking the value of those goods, and on receiving a reply I told Mr. Gardemann that we would gladly accommodate him. We also wanted it understood that we were to have his continued shipments. As a storage company, naturally we were looking for additional business in a storage way.

These statements of the witness objected to, on the ground that the witness has no right to state conversations between himself and Mr. Gardemann.

Q. Was this one of the first advances made?
A. This is one of the first advances made.

Original chattel mortgage offered in evidence.

Witness is handed Exhibit "A" and asked if he recognizes that instrument.

Q. What is the instrument and when was it given, and what for?

A. It is a chattel mortgage given for moneys ad-

vanced on poultry stored in the Jarvis Cold Storage Co. The instrument was executed on May 2nd, 1904.

Objected to same as above.

Q. Will you look at the affidavit which accompanies that chattel mortgage and state whether the facts sworn to by Mr. Farrell as your agent are true or not?

A. They are.

Q. At the time this money was advanced to Gardemann & Jungclaus, state what lien on the poultry that you had knowledge of?

A. We had liens on all of the poultry.

Q. You do not get my question. State what liens held by other people upon this poultry and merchandise in storage that you had knowledge of at the time that you advanced this money?

A. Why, we had no knowledge of any liens. There were none, so far as we knew.

Q. Did you not know that the Third National Bank of Jersey City had advanced money on the security of this merchandise?

A. No, sir; positively not.

Q. Did you understand at the time this money was advanced that the lien given to you was a first lien?

A. Yes, sir.

Q. Did you not have knowledge that the railroad companies as common carrier had lien for freight upon this merchandise?

A. No, sir.

Q. Do you know as a fact whether the freight charges on this merchandise in question has been paid?

A. Do I know as a fact whether it has been paid? Why, I understood it was paid. Mr. Gardemann

told me so, the man for whose account the goods were stored.

Objected to.

Q. Speaking of the present moment. Do you know whether those charges have been paid or not?

A. I do not.

Q. What correspondence, if any, have you had with your agents in relation to this matter?

A. We have had a great deal of correspondence with relation to this particular case. I could bring it down if it is necessary.

Q. In what position does the Western Cold Storage stand in the event that Sanborn-Farrell Co. are not repaid the money which they advanced and pledged with the Receiver?

A. Why, we lose our money.

Q. Mr. Dietrich, how long have you been connected with cold storage warehouses?

A. About three years.

Q. Are you familiar with the rules and customs prevailing among cold storage warehouses throughout this country in relation to freight charges?

A. I am.

Objected to, on the ground that witness is not an expert on that subject.

Q. Do you have any knowledge of the customs prevailing in Jersey City in relation to freight charges?

A. I will answer that by saying that as members of the National Warehousemen's Association we are cognizant practially of all customs pertaining to warehousemen in the United States.

By Mr. Gale.

Q. Do you know as a matter of fact, Mr. Dietrich,

have you any knowledge what the customs are in Jersey City?

A. Do I know of my own knowledge as a matter of fact what the customs are? I do not, except what we have gleaned from conversations with warehousemen on visiting them in the East and also what has taken place at the Warehousemen's Association meetings that we hold annually, where all these coustoms pertaining to warehouses are discussed openly. That is the only knowledge that I have.

By Mr. Loughran.

Q. Will you state what the custom is among warehousemen in relation to freight charges?

Objected to by Mr. Gale.

A. If a railroad company should get a carload of perishable goods that in their estimation needed protection and the goods were shipped to shipper's order, the custom is for the railroad company to deliver those goods to us and ask us to surrender them on payment of charges and delivery of original bill of lading. We thereby act as agents for the common carrier, but where the goods are consigned direct to John Smith or Sam Jones and they lay around on the track, they often turn these goods over to us to be stored for this man's account and we pay the railroad company their freight charges and we collect it from Mr. Jones.

Q. In the latter case the warehouseman becomes personally responsible to the railroad company?

A. Absolutely.

Objected to.

Q. And the railroad company abandons its lien upon the merchandise?

A. Absolutely.

Objected to.

Cross-examination.

Q. You say that at the time you made these advances you had no notice of any lien against the poultry in Jersey City?

A. No, sir.

Q. Do you know whether anybody connected with your company did have any such knowledge?

A. No one did.

Q. You are sure of that?

A. Yes, sir; positively.

Q. Had you any knowledge of the arrangement with the Sanborn-Farrell Co. by which they were to have certain of this poultry?

A. Yes, sir.

Q. You knew about this?

A. Yes, sir; I made the arrangement.

Q. Are the Western Cold Storage Co. and Sanborn-Farrell Co. connected?

A. They are our agents.

Q. They are your agents in New York?

A. Yes, sir.

Q. You knew then that they were getting certain of this poultry and butter and eggs, whatever it was, out of the storage there as they advanced moneys, did you?

A. Well, I knew after they got it.

Q. Did you know before they got it that they were going to get it.

A. We supposed they were going to get it.

Q. You did make the arrangent?

A. I did not make the arrangement with the Cold Storage Co. We made the arrangement whereby Sanborn-Farrell Co. was to handle the goods and whatever the advances were they were to pay the advances.

Q. And you repaid them?

A. Oh, no; they repaid themselves out of the proceeds and it was the amount over and above the advances that went to our firm.

Q. Did you know at the time you agreed to make these advances of the $1,300 and $1,400 that the Sanborn-Farrell Company had advanced certain amounts on the poultry, and had taken certain amounts of the poultry and butter out?

A. No, sir; they had not done so at that time.

Q. To whom was this $2,700 paid?

A. Mr. William Gardemann.

Q. Himself?

A. Yes, sir.

Q. Is the Western Cold Storage Company incorporated?

A. Yes, sir.

Q. Where?

A. Illinois.

Q. An Illinois corporation?

A. Yes, sir.

Q. Do you know what the poultry and butter that were in storage there actually sold for?

A. Do I know? No, I don't know; that is, I don't know whether the account that I got was a final accounting; I don't remember that.

Q. From whom did you get the account?

A. Sanborn-Farrell Company.

Q. Sanborn-Farrell Company then would know all about that, and their papers would show all the amounts that it actually brought?

A. Yes, sir.

Q. Why didn't you take this mortgage at the time you made the advances?

A. Why didn't we take this mortgage at the time we took the advance? We were doing a running business with Mr. Gardemann and when this question came up he said that he would be in later and

execute these papers. We were getting some goods on which they were making drafts right along and we supposed there would be certain equities in this until his account became overdrawn with us. We then insisted on his coming to Chicago and executing these papers.

Q. Then you were doing other business with Gardemann & Jungclaus all the time right along?

A. Oh, yes; we did lots of business with them.

Q. And you did not as a matter of fact take this mortgage until the other business dropped low?

A. No, sir; this mortgage was promised us at the time when Mr. Gardemann spoke to me about the poultry, but we could not come to any agreement or any settlement, because we were in correspondence then with Sanborn-Farrell Co. as to about what we could get. We made the first advance on these goods in March and the next advance before we got around to find where we were at was nearly a month later. It was April 20th.

Q. April 20th you made the second one and did not takes the mortgage until the 2nd of May?

A. Yes, sir.

Q. Mr. Gardemann was dealing with you all the time with other shipements and consignments, wasn't he?

A. Yes, sir.

Q. I see that butter was put into the mortgage; 56 tubs of butter was scheduled in the mortgage. Am I right?

A. Yes, sir. That is correct.

Q. Did you know that that butter was not in storage at the time the mortgage was given?

A. No, sir.

Q. As a matter of fact, Mr. Dietrich, about all your company knew about the condition of that stuff in Jersey City was what Mr. Gardemann told you, wasn't it—when you made the adavnces?

A. No, sir.

Q. What else did you find out about it?

A. When he asked us for this money we wired Mr. Farrell to inspect the goods and tell us the value of it and wired him an inspection order on the goods signed by Mr. Gardemann. We certainly would not advance money to anyone who would come in, on a lot of poultry without having an investigation made.

GEORGE DIETRICH.

Subscribed and sworn to before me this 2d day of September, 1904.

G. FAIRBAIRN,
Notary Public.

WILLIAM GARDEMANN, a witness produced on the part of the petitioners, being first duly sworn according to law, on his oath deposes and says: (Direct examination by Frank E. Loughran, cross-examination by W. O. Johnson).

Q. What is your name?

A. William Gardemann.

Q. Where do you reside and what is your occupation?

A. Newhall, Iowa; buyers and shippers of poultry, eggs and butter.

Q. What is your firm name and who is your partner?

A. Gardemann & Jungclaus; my partner's name is Adolpf Jungclaus.

Q. Do you know the defendant coporation, Jarvis Terminal Cold Storage Co.?

A. Yes, sir.

Q. What business have you done with them?

A. We shipped them on January 8th, I think, we shipped them two carloads of poultry, butter

and eggs, and on January 16th we shipped them a car of poultry for storage.

Q. Do you recall over what lines these cars were transported?

A. The first two cars was billed, care of Merchants Dispatch via Erie from Buffalo; whether they went that way I don't know; that is the way I billed them.

Q. And how did the last car go?

A. The last car went via Erie Railroad.

Q. Did you ship it from Newhall?

A. Yes, sir.

Q. Upon what terms did you ship these goods to the Jarvis Terminal Cold Storage Co.?

A. For storage—for our account.

Q. What arrangements, if any, did you make with the Jarvis Terminal Cold Storage Co., in reference to the freight charges?

A. Not any.

Q. What provision, if any, did you make with any one for the payment of freight charges?

A. We made no provisions whatever; it was supposed it would go the same always; the storage or warehouse pays the freight and charges to our account.

Objected to as not responsive to the question.

Q. Did you at that time know that the Jarvis Terminal Cold Storage Co. had not paid the freight when they took the goods.

A. No, I didn't.

Q. Did you direct the Jarvis Terminal Cold Storage Co. to make arrangements for you with the Erie Railroad so that you would have credit for the freight with them?

A. Nothing whatever.

Objected to, on the ground that these arrangements and directions were in writing and that the writings should be produced.

Q. Did you ever ship any goods for storage to the Jarvis Terminal Cold Storage Co. prior to these shipments which you have mentioned?

A. No.

Q. Have you had any business relations of any kind with the Jarvis Cold Storage Co. other than these transactions which are mentioned?

A. No.

Q. Have you ever had any conversation with any of the officers of the Jarvis Terminal Cold Storage Co.?

A. No.

Q. None whatever?

A. None whatever.

Q. Did you receive any telegram on February 2nd, 1904, from the Jarvis Terminal Cold Storage Co.?

A. Yes, sir; I did.

Q. What was the contents of that telegram.

Objected to, on the ground that the original telegram should be produced and can be produced at the Eastern end.

A. "3:40 P. M., Feb. 2, 1904.

Jersey City, N. J.

Gardemann J.,

Newhall, Ia.

Five thousand dollars is all we care to take on your holdings here at present, including freight, insurance. If you accept wire First National Bank, Jersey City, to accept and deliver papers.

JARVIS TER. C. S. Co."

(Telegram marked Exhibit "B.")

Answer objected to on the ground the telegram is not referred to or used in the pleading.

Q. Did you reply to this telegram?

A. Yes, sir.

Q. How did the telegram read?

A. "Newhall, Ia., Feb. 2, 1903.

Jarvis Terminal Cold Storage Co.,

Jersey City, N. J.

Wire received. Wire us the amount of freight and insurance.

GARDEMANN & JUNGCLAUS.

(Telegram marked Exhibit "C.")

Witness is handed Exhibit "C" and asked:

Q. Is this telegram which you have just read the original telegram sent by you?

A. Yes, sir.

Q. This last telegram to which you have testified is dated February 2, 1903; is that date correct?

A. It should be 1904.

Q. Did you get any reply to the last telegram to which you have testified?

A. Yes, sir.

Q. What reply did you get?

A. "5:35 P. M., Feb. 3, 1904.

Jersey City, N. J.

Gardemann & Jungclaus,

Newhall,

Freight and insurance, seven hundred forty-three dollars. Make demand note fifty-seven hundred forty-three dollars. Draw draft five thousand dollars through Third Nat'l Bank, Jersey City.

JARVIS TER. C. S. Co."

(Telegram marked Exhibit "D.")

Q. Did you make any reply to the last telegram?

A. Yes, I did.

Q. What reply did you make?

A. "Feb. 3, 1904.

Jarvis Terminal Cold Storage Co.,

Jersey City, N. J.

Wire received. Will mail papers and make draft as per your wire.

GARDEMANN & JUNGCLAUS."

(Telegram marked Exhibit "E.")

Witness is handed Exhibit "E" and asked:

Q. Is this the original telegram sent by you that day?

A. Yes.

Q. Did you write any letters that day to Jarvis Terminal Cold Storage Co.?

A. Yes, sir; I did.

Q. What was the contents of the letter to the Jarvis Terminal Cold Storage Co.?

Objected to, on the ground that it is not the original letter.

Impression copy marked "Exhibit F."

Q. The paper which you are reading from is a copy of the original letter?

A. Yes, sir.

Q. What kind of a copy?

A. It is a copy press copy.

Q. Did you write any other letter that day in reference to the matter?

A. I wrote one to the Third National Bank of Jersey City.

Q. What was the contents of that?

Objected to on the same ground—original letter should be shown.

Impression copy of letter marked Exhibit "G."

Q. Is that the original letter?
A. No, sir.
Q. Is it a copy of the original letter?
A. Yes, sir; it is a copy press copy.

Witness is shown Exhibit "H" and asked:

Q. Do you recognize this note?
A. Yes, sir.
Q. What note is it?
A. That is the note given to the Jarvis Terminal Cold Storage Co., and was discounted at the Third National Bank.
Q. Is this the note referred to in the letter to the Third National Bank?
A. Yes, sir.
Q. By whom is this note signed?
A. Signed by me for the firm of Gardemann & Jungclaus.
Q. Do you know if this note was discounted at the Third National Bank?
A. I think it was.
Q. What was done with the proceeds?
A. Why, we received $5,000 and the balance was credited to the Jarvis Terminal Cold Storage Co.
Q. At this time did you owe the Jarvis Terminal Cold Storage this amount of $743.00?
A. Yes, sir.
Q. What did you owe the Jarvis Terminal Cold Storage this amount for?
A. Well, we supposed that they had paid the freight.
Q. When did you suppose that they had paid the freight?

A. I supposed they had paid the freight on the arrival of goods or on the receipt of goods.

Objected to.

Q. When did you first learn that this $743.00 had not been paid to the Erie Railroad Company?

A. Not until the Receivers refused to deliver goods.

Q. Until they refused to deliver goods to whom?

A. To Sanborn-Farrell Co.

Q. Did you give the Receivers any orders in reference to the delivery?

A. Yes, sir; wired them and also wrote them.

Letter marked Exhibit "I."

Witness is shown Exhibit "I" and asked if this is the original order for delivery.

A. Yes, sir.

Q. To whom did you send this order?

A. Sent this to Sanborn-Farrell Co.

Q. Do you know if this order for delivery to Sanborn-Farrell Co. was honored by the Receivers?

A. Well, at the time it was given I understood that they delivered a certain amount of goods on the installment plan from time to time; when we received word that they refused to deliver goods about one-half or three-quarters of the goods had been delivered on the installment plan.

Q. Did the Sanborn-Farrell Co. ever advance any money to you?

A. Yes, sir.

Q. Do you know how much?

A. I think it was about $2,260.00; somewhere around that.

Q. At the time that this money was advanced by the Sanborn-Farrell Co. to you did you give them any security?

A. I think we did just about that time; shortly after that we gave them a chattel mortgage.

Q. Before the chattel mortgage was given and at the time that the money was advanced did you give to them any lien upon this merchandise?

A. No, only the mortgage.

Q. Was it not the understanding at the time that Sanborn-Farrell advanced this money that they did so on the security of the merchandise in the freezer?

A. Yes.

Objected to as not proper to ask his understanding.

Q. Did you have any correspondence with Sanborn-Farrell Co. in which you requested them to advance this money?

A. Yes.

Q. What was the terms mentioned in this correspondence in regard to the advance of this money

Objected to on the ground that the correspondence itself should be produced.

A. Why, we were to give them a mortgage on the goods we had in storage.

Witness is handed Exhibit "J" and asked:

Q. Do you recognize this instrument?

A. Yes, sir.

Q. What is the instrument?

A. A chattel mortgage.

Q. Who executed it?

A. I executed it for the firm of Gardemann & Jungclaus.

Q. Read the affidavit in the chattel mortgage and say whether the statements contained therein are or are not true.

A. Yes, sir.

Q. Do you know the Western Cold Storage Co. of Chicago?

A. Yes, sir.

Q. Did you ever borrow any money of them on the security of this merchandise?

A. Yes, we did.

Q. State when and how much you borrowed from the Western Cold Storage upon the security of this mortgage.

A. March the 22nd, we borrowed $1,300.00; April the 20th $1,400.00, making a total of $2,700.00.

Q. Have you ever paid this amount in whole or part?

A. No, sir.

Q. Are you still indebted to the Western Cold Storage for this amount?

A. Yes, sir.

Witness is handed Exhibit "A" and asked:

Q. Do you recognize this instrument?

A. Yes, sir.

Q. What is that instrument?

A. That is a chattel mortgage given by myself for the firm of Gardemann & Jungclaus.

Q. To whom?

A. To Western Cold Storage.

Q. Read the affidavit accompanying this chattel mortgage and state if the facts there sworn to by Mr. Farrell are or are not true.

A. Yes.

Q. Has the Jarvis Terminal Cold Storage Co. ever paid you any part of this $743.00?

A. No, sir.

Cross-examination.

Q. Mr. Gardemann, you made a note for $5,745?

A. Yes, sir.

Q. And only got $5,000.00 on it?

A. That is all.

Q. What did you do with the other $743.00?

A. The other $743.00 we supposed was paid to the Jarvis Terminal Cold Storage Co.

Q. What for?

A. Why, we supposed they had paid our freight on those three carloads of stuff.

Q. Why did you suppose that?

A. Because it is a rule or customary when you ship goods to a cold storage company they pay all freight and collect it from the shipper.

Q. Did they ever tell you that they had paid the freight?

A. No.

Q. You expected them to pay the freight, did you not?

A. Yes, because it was customary.

Q. Did you ship those goods to the Jarvis Terminal Cold Storage Co.?

A. Yes, sir.

Q. They were the consignees, were they?

A. Yes, sir.

Q. And were sold to them actually?

A. No; it was consigned to them for storage.

Q. Well, then, in effect it was consigned to yourself to be stored in their warehouse?

A. It was billed direct to them to be stored for us.

Q. To be stored for your account for you.

A. Yes, sir.

Q. Then the goods were your goods after they got to Jersey City and after they got into the warehouse of the Jarvis Terminal Cold Storage Co.?

A. Yes, sir.

Q. Where is the original bill of lading?

A. The original bill of lading was attached to the draft when we first made the shipment.

Q. Where is the draft?

A. I don't know.

Q. Mr. Gardemann, how much was this merchandise you shipped worth?

A. I can't just exactly tell.

Q. I don't mean to a dollar, I mean approximately?

A. It should have been worth at least $13,000.

Q. $13,000,00?

A. Yes, sir.

Q. What were chickens worth at that time?

A. Well, fowls were worth about 14 to 14½. 14½ was about the usual price.

Q. Say they were worth 15 cents. Well, then your poultry was worth $7,400; you shipped 3,420 pounds of butter; how much was that worth?

A. About 24½ cents a pound.

Q. And how much were eggs worth?

A. They were worth 30 cents a dozen.

Q. How many in a case?

A. Thirty dozen in a case.

Q. Five thousand dozen eggs?

A. Yes.

Q. How much were they worth, do you say?

A. Thirty cents a dozen.

Q. How do you make $13,000.00 out of that?

A. That is only fowls you are figuring; we had spring chickens; we had capons worth—20,000 pounds—worth 20 cents a pound; you will probably find it on some of those papers.

Q. You shipped almost 56,000 pounds of poultry, and 20,000 pounds of that you say was worth 20 cents a pound?

A. Yes, sir.

Q. Have you any papers showing how much there was?

A. The mortgage shows, I think.

Q. Well, you only got for this poultry then $5,000 from Jarvis Co., $2,267 from Sanborn-Farrell and

$2,700 from the Western Cold Storage? You actually got then nearly $10,000?

A. Yes.

Q. What did you tell the Western Cold Storage people when they advanced this money to you?

A. I told them we would give them a chattel mortgage on the stuff.

A. Is that what you told Sanborn-Farrell Co. when they advanced?

A. Yes.

Q. Didn't you expect the Sanborn-Farrell Co. to take this property out of the Jarvis Cold Storage Warehouse by paying these advances to the bank and sell it for you?

A. Yes, sir.

Q. Is not that the purpose for which you gave them the order?

A. Yes.

Q. Do you know how much money they advanced on the property under that order?

A. No, I don't.

Q. Now, did you know when the Sanborn-Farrell Co. were making these advances and getting poultry out—I am not referring to the $2,267.00 they paid you, but to the amount that is not paid you but was paid the bank at Jersey City.

A. Yes.

Q. How much did they get for the poultry that they took out in that way?

A. I don't know.

Q. Didn't you ever get any account sales for them?

A. No account sales would be rendered Western Cold Storage.

Q. Where are those account sales?

A. I think they have got them yet, because the thing is not settled up yet.

Q. You can't tell then what the selling price of this poultry and butter and eggs was?

A. No.

Q. You don't know anything about that?

A. I know what the market was, but whether they sold at the market I don't know.

Q. What was the date of this advance of the $2,267.00 to you?

A. I can't exactly tell the date, but it was just before we had given that mortgage.

Q. How long before—a week or a month.

A. A few days before; may be three or four days.

Q. You don't think it was much over three or four days?

A. No; I don't think it was.

Q. How much money did you get for the sale of the butter and eggs?

A. We didn't get any, only what they advanced us.

Q. What was done with that?

A. We used that in our business.

Q. Well, what was done with it?

A. Well, we used it in our business, the $2,267.00; we were carrying on a business there.

Q. Part of that was for the eggs, then, and the butter?

A. Well, I don't know; it was on all the stuff; they simply advanced to us because the Receivers refused to deliver the goods and we needed money and they simply advanced us and we give a chattel mortgage on the stuff.

Q. Have they ever credited you with any payments on those chattel mortgages?

A. Well, I presume they have on their books.

Q. Do you know whether they have or not, Mr. Gardemann?

I don't know, I am sure.

Q. In fact, you don't know anything at all as to what that poultry and the butter and eggs brought, do you?

A. No.

Q. You don't know whether it brought seven thousand dollars or fifteen?

A. No; it may have brought twenty.

Q. And you never had any payments credited on the mortgages?

A. I can't tell.

A. And has your note of $5,743.00 ever been paid?

A. It has been paid off by the Sanborn-Farrell Company.

Q. And they now hold the note—do they hold it against you?

A. I presume they do.

Q. Then there is a note for $5,743.00 and two chattel mortgages out, and you do not know what has become of the property? You have no knowledge as to what it sold for? Is that right?

A. Yes, sir.

WILLIAM GARDEMANN.

Subscribed and sworn to before me, this 2nd day of September, 1904.

G. FAIRBAIRN,
Notary Public.

EXHIBIT "A."

Chattel mortgage, Gardemann & Jnngclaus to Western Cold Storage Company.

Dated May 2, 1904.

Same as Exhibit A, attached to Petition. See p. ~~10~~.

EXHIBIT "B."

(Telegram.)

C A G A 31 paid.

Received at 3:40 P. M.

Feb. 2, 1904.

Dated G 2, Jersey City, N. J.,

To Gardemann & J.,

Newhall, Ia.

Five thousand dollars is all we care to take on your holdings here at present, including freight, insurance; if you accept wire First National Bank, Jersey City, to accept and deliver papers.

JARVIS TER. C. S. Co.

EXHIBIT "C."

(Telegram.)

Ca Rd, 9:35 P. M., 10 paid night 40c.

Feb. 2, 1904.

To Jarvis Terminal Cold Storage Co.,

Jersey City, N. J.

Wire received. Wire to us the amount of freight and insurance.

GARDEMANN & JUNGCLAUS.

EXHIBIT "D."

(Telegram.)

Ca H A 27 paid 128.
Received at 5:35 p. m., Feb. 3, 1904.
Dated Jersey City, N. J.
To Gardemann & J.,
Newhall.

Freight and insurance seven hundred forty-three dollars, make demand note fifty-seven hundred forty-three dollars; draw draft five thousand dollars through Third National Bank, Jersey City.

JARVIS TER. C. S. Co.

EXHIBIT "E."

(Telegram.)

Feb. 3, 1904.

To Jarvis Terminal Cold Storage Co.,
Jersey City, N. J.

Wire received. Will mail papers and make draft as per your wire.

GARDEMANN & JUNGCLAUS.

EXHIBIT "F."

(Letter).

Feb. 3, 1904.

Jarvis Terminal Cold Storage Co.,
Jersey City, N. J.

GENTLEMEN:

We beg to acknowlege the receipt of your wire to-day, as follows: Gardemann & Jungclaus, freight and insurance seven hundred and forty-

three, make demand note fifty-seven hundred and forty-three dollars, ($5,743.00), draw draft five thousand dollars to-night, Third National Bank of Jersey City, signed Jarvis Terminal Cold Storage Co., all of which we now hereby confirm, and wired you as follows. Will mail papers and make draft as per your wire.

(Signed) GARDEMANN & JUNGCLAUS.

So we have this day drawn up demand note for $5,743.00 at six per cent. interest, and made draft on you for $5,000.00 to-night, the Third National Bank of Jersey City, and instructed them to collect the draft and deliver note to you.

EXHIBIT "G."

(Letter).

Feb. 3, 1904.

Third National Bank,

Jersey City, N. J.

GENTLEMEN:

Enclose find sight draft for $5,000.00 on Jarvis Terminal Cold Storage Co. Kindly collect same and send us your Ck., for the above amount by Ret. mail. You will find attached to dft. our note for $5,743,00, which kindly deliver to Jarvis Terminal Cold Storage Co., on payment of our draft.

Yours very truly,

GARDEMANN & JUNGCLAUS.

3

G. & J.

Third National Bank,

Jersey City, N. J.

EXHIBIT "H."

(Same as Exhibit G. W. B. 1).

$5,743.00.

NEWHALL, Iowa, Feb. 3, 1904.

On demand, after date, 1904, I, we, or either of us, promise to pay to order of Jarvis Terminal Cold Storage Co. of Jersey City, N. J., five thousand and seven hundred and forty-three and no–00 dollars, with interest from date at 6 per cent. per annum, payable annually, and eight per cent. on unpaid principal and interest after maturity for value received. The maker, endorser and sureties of this note severally waive presentment for payment, notice of non-payment, protest, notice of protest and diligence in bringing suit against any party thereto, and consent that any Justice of the Peace may have jurisdiction in any suit brought thereon to the amount of $300; also agree to pay all costs and expenses of collection, including a reasonable attorney's fee. Endorsers and sureties consent that time of payment may be extended without notice thereof, and guarantee the payment with interest and costs, if any, at maturity, or at any time or times, to which it may be extended.

Payable at Jersey City, N. J.

GARDEMANN & JUNGCLAUS,

for loan on 55,774 lbs. dressed poultry and 56 tubs 3,420 lbs. extra creamery butter, all of which now stored in their Cold Storage House at Jersey City, N. J.

G. W. B., 1.

(Endorsed).

Without recourse,

Jarvis Terminal Cold Storage Co.

By J. W. HARDENBERG,

Receiver.

EXHIBIT "I."

(Same as Exhibit G. W. B. 2).

NEWHALL, Iowa, April 9th, 1904.

J. W. HARDENBERG & PALMER CAMPBELL,
Receivers,
Jarvis Terminal Cold Storage Company,
Jersey City, New Jersey.

GENTLEMEN:

You will please pay proceeds of all butter and eggs sold for us on commission by you or the Jarvis Terminal Cold Storage Co., to Messrs. Sanborn-Farrell Co., of New York City.

Yours very truly,

GARDEMANN & JUNGCLAUS.

NEWHALL, Iowa, April 9th, 1904.

J. W. HARDENBERG & PALMER CAMPBELL,
Receivers,
Jarvis Terminal Cold Storage Company,
Jersey City, New Jersey.

GENTLEMEN:

On payment of advances and other legitimate charges you will please deliver to Messrs. Sanborn-Farrell Co., of New York City, all goods stored in your house for our account.

GARDEMANN & JUNGCLAUS.

EXHIBIT "J."

Chattel mortgage—Gardemann & Jungclaus, to Sanborn-Farrell Company, dated May 2, 1904.

Same as Exhibit B, attached to Petition. See p. 12.

CONCLUSION.

Heard on petition of Sanborn-Farrell Company et al., answer of Erie Rairoad Company and proofs.

The main case was an action to have the Jarvis Terminal Cold Storage Company enjoined and a Receiver appointed, under the corporation act, upon the ground of insolvency.

At the time of the appointment of the Receivers there was in the warehouse of the defendant company certain property which had been shipped by Gardemann & Jungclaus to the Jarvis Terminal Cold Storage Company.

The Sanborn-Farrell Company were removing this property in parcels or installments under orders authorizing them to do so, which orders were given to them by Gardemann & Jungclaus.

The Erie Railroad Company claimed a lien upon the property for freight charges, and thereupon the Receivers of the Jarvis Company refused to permit the remaining portion of the property to be removed, and a stipulation was entered into between the parties which reads as follows:

"Received, Jersey City, April 30, 1904, from Sanborn-Farrell Company, seven hundred and forty-three dollars ($743), which sum is received by the undersignad on deposit to stand in lieu of goods now on storage with the Jarvis Terminal Cold Storage Company, being balance of goods heretofore stored there by the firm of Gardemann & Jungclaus. It is claimed by the Erie Railroad Company that they have a lien upon said goods for freight charges, and this money is to be held by the Receivers in lieu of the goods, to be subject to said lien, if any there be, and the deposit is made without prejudice to the rights of any of the parties

in interest as to the question of freight lien or liability by Gardemann & Jungclaus, or their assigns to pay the same, and the money is to be retained by the Receivers until the direction of the Court of Chancery as to its disposition. If it is determined by the Court of Chancery that there is not any lien upon the goods for freight by the Erie Railroad Company, the money is to be returned to the depositors, the said Sanborn-Farrell Company.

It is further understood that this money is simply a deposit with the Receivers and is not to be considered in any way assets of the Jarvis Terminal Cold Storage Company in their hands.

J. W. HARDENBERGH,
PALMER CAMPBELL,
Receivers Jarvis Terminal Cold
Storage Company."

The Sanborn-Farrell Company then filed a petition, joining with themselves as petitioners the Western Cold Storage Company, which company claims to have advanced some twenty-seven hundred dollars on the same goods, praying that the Court should direct the Receivers to return the seven hundred and forty-three dollars deposited under the stipulation, to the Sanborn-Farrell Company.

To this petition the Erie Railroad Company filed an answer, and it is the issue raised by these pleadings, and the proofs which each side took to substantiate its allegations, that is here for determination.

FRANK E. LOUGHRAN, ESQ., for Petitioners.
MESS. CHARLES L. CORBIN AND GEORGE S. HOBART for Erie R. R. Co.

MR. WILLARD C. FISK, for Receivers of Jarvis Terminal Cold Storage Co.

GARRISON, V. C.

I find that on January 7th, 1904, Gardemann & Jungclaus, wholesale dealers and shippers of poultry, shipped from Newhall, Iowa, to the Jarvis Terminal Cold Storage Company, two carloads of poultry and dairy products, and upon the 16th of January shipped one carload, and that these cars arrived at Jersey City, over the Erie Railroad, on the 16th and 18th of January, 1904.

When the cars arrived they were delivered by the agents of the railroad company to the consignee, the Jarvis Terminal Cold Storage Company, and in each instance after the delivery there was a request upon the part of the railroad to the Jarvis Company to hold the goods until the freight charges should be paid, and a response by the Superintendent of the Jarvis Company to the railroad company that he would do all in his power to see that the goods were held until the freight charges were paid, so long as he remained Superintendent.

Subsequently freight bills were sent to the consignee by the railroad company.

In the early part of February, 1904, Gardemann & Jungclaus, who were the owners of the property consigned to the Jarvis Company, were desirous of borrowing five thousand dollars upon the credit of this property. By communications which passed between Gardemann & Jungclaus and the Jarvis Company, it was arranged that Gardemann & Jungclaus should make their promissory note to the Jarvis Company for $5,743.00, which note was to be discounted by the Third National Bank of Jersey City, and that the Jarvis Company should honor a draft for five thousand dollars in favor of Gardemann & Jungclaus, and should retain the seven hundred and forty-three dollars, which is the

amount of the freight charge, plus a small item of insurance.

Thereupon, the proper papers to carry out this arrangement were executed, and the Jarvis Company obtained the discount from the Third National Bank, pledging the property in its custody as collateral security, giving to the bank for this purpose a warehouse receipt in which was set forth the property pledged, which receipt contained no notice of any lien for freight.

In April of 1904 the Western Cold Storage Company advanced moneys to Gardemann & Jungclaus on the same property and received chattel mortgages thereon from Gardemann & Jungclaus, the amount of their advances being about twenty-seven hundred dollars.

Sanborn-Farrell Company are the Eastern agents of the Western Cold Storage Company, and it was arranged that they should obtain an order from Gardemann & Jungclaus for the delivery to them of the goods, and should sell the same and pay off the note of $5,743.00, made by Gardemann & Jungclaus to the Jarvis Company, and discounted by the Third National Bank, and should pay back the advances made by the Western Cold Storage Company.

They began taking the goods out of the warehouse in instalments, paying the value of the proportional part of the goods so taken to the bank, upon the note held by it.

It was at this juncture, and about the 30th of April, 1904, that the Erie Railroad Company, claiming that it had a lien upon the goods, notified the Receivers not to permit the goods to be taken out, and that the stipulation heretofore quoted was made.

The sole question that is to be determined in this proceeding, as I view it, is, whether the Erie Railroad Company had a lien on the goods in question for the freight, which it might assert against the petitioners.

I am of opinion that the railroad company had lost its lien, and that as against the petitioners it cannot successfully assert that it has a lien.

A common carrier has a lien on goods carried by it, and still in its possession, for all charges that may be due to it for their transportation.

5 Am. & Eng. Ency. of Law, 2d Ed., p. 399.

But its lien is a mere right to retain the goods until the payment of the charges due thereon, and its lien is lost by a delivery of them to the owner or consignee.

Idem., p. 411.

Hartshorn vs. Johnson, 7 N. J. L., 108 (Sup. Ct., 1823).

The contract of the carrier includes delivery, and the freight is not due until the delivery is made; therefore the delivery of the freight and the payment of the charges are concurrent acts.

5 Am. & Eng. Ency. of Law, p. 405.

If the consignee refuses to accept the goods and pay the freight, the carrier has the right to store at the expense of the goods.

Idem, p. 405.

I think that that which is termed "the carrier's lien" is nothing more than the right to retain the

goods until the charge for carraige is paid, and that there is in this respect an analogy between this so-called lien and the right which a seller has, who sells goods for cash.

In each case there is a right to retain the goods until the price is paid, and delivery and payment are concurrent acts. In each case, if the receiver of the goods obtains possession by fraud, a right to pursue the goods remains. But if the goods are actually delivered without fraud, the right to pursue the goods is lost, and the obligation to pay must be enforced against the person liable.

Bigelow vs. Heaton, 6 Hill, 43, (Sup. Ct. N. Y., 1842).

Whether the consignor or the consignee, or both, are liable to the carrier for the freight charges depends upon the respective contracts made by the parties or implied by law.

Central R. R. of N. J. vs. McCartney, 52 Atl. Rep., p. 575 (Sup. Ct., 1902).

Leaving aside the cause in which fraud enters, the real question in each case is whether there has been an actual delivery of the goods by the carrier to the consignee.

In this connection it should be noted that cases cited from the admiralty courts should not be taken as controlling in jurisdictions where the lien is a strict common law lien.

In the admiralty courts a distinction is drawn between goods shipped on land and those shipped on water.

The reasons for this distinction are pointed out

by Chief Justice Taney, in Sears vs. Wills, 1 Black., 108; 17 L. Ed., 38; 66 U. S., Rep., 108.

He says, "Courts of Admiralty, when carrying into execution maritime contracts and liens, are not governed by the strict and technical rules of the common law, and deal with them upon equitable principles, and with reference to the usages and necessities of trade. And it often happens that the necessities and usages of trade require that the cargo should pass into the hands of the consignee before he pays the freight."

At common law there is no doubt that an unqualified delivery to the consignee extinguishes the lien.

Bigelow vs. Heaton, 4 Denio, N. Y., 496.
Lane vs. Old Colony R. R. Co., 14 Gray, 143.
Sears vs. Wills, 4 Allen, 212.
Bowman vs. Hilton, 11 Ohio, 303.
Wingard vs. Banning, 39 Cal., 543.
Sweet vs Pym, 1 East., 4.
Reinman vs. C. C. & B. R. R. Co., 51 Iowa, 338.

It is the contention of the railroad company that it did not unqualifiedly deliver the goods to the consigeee, but it asserts that it delivered the same to the consignee, subject to the lien of the railroad company for freight.

In the first place, I do not find, as a matter of fact, that the proofs sustained this contention. I find that the railroad company delivered the goods before making any arrangement with the consignees about payment of freight charges; and that the only arrangement made was with the Superintendent of the Jarvis Company, the consignee, and was to the effect that he would do all

in his power while he remained Superintendent of the company to see that the goods were not removed until the freight charges were paid. He ceased to be Superintendent of the company on April 4th, 1904, when the company was placed in the hands of the Receiver.

And furthermore, it does not seem to me to be consistent with the origin and theory of this lien to maintain the right of delivery of possession by the carrier to the consignee, subject to the lien, in any case where the rights of innocent third parties intervene.

This lien is retained while possession by the carrier is retained, and ceases when the carrier ceases to have possession.

To permit the carrier to give possession to the consignee and hold the property subject to the carrier's right of lien "would be recognizing a right to retain after the property had ceased to be retained."

McFarland vs. Wheeler, 26 Wend., 467, at p. 474; (Ct. of Er. N. Y., 1841).

It is not necessary in this case to decide what the law is where a carrier and consignee agree that property shall be delivered to the latter to be held until the charges are paid.

Assuming that such an agreement created a lien, as between the parties, and that, as between the parties, it is enforceable, such lien would arise out of the convention of the parties and would not be the common law lien of the carrier, and would not follow the property into the hands of the innocent third parties, or be effectual as against innocent third parties acquiring an interest in the property through or against the consignee.

There is such an inseparable connection between possession and the existence of the common law lien of the carrier that debate arose whether the lien was not lost in cases where the carrier deposited the goods in a warehouse of a third person; but the Court held, and I think properly, that the possession of such third person was the possession of the carrier, and hence the lien remained.

Western Transportation Co. vs. Barber, 56 N. Y., 544, 12 L. Ed., 165 (N. Y. Ct. Ap., 1874).

The railroad company, in the case at bar, seeks to extend this doctrine and contends that the consignee here was their agent to hold possession subject to the lien. This, I think, is an unwarrantable extension of the doctrine, where the rights of third parties intervene.

Where one of two parties must bear a loss the law imposes it upon that one whose lack of care made possible the happening of the loss.

Norfolk Southern R. R. Co. vs. Barnes, 5 L. R. A., 611; 104 N. C., 25.

By delivery to the consignee, the carrier makes it possible for the former to deal with the property as his own, and as if entirely free from lien; and if the consignee does so and loss thereby ensures, it is surely right that such loss should fall upon the carrier, since he could, by retaining possession, have prevented the happening of the loss.

As against third parties (without notice) the lien of the carrier was lost by delivery of possession to the consignee, even if the latter agreed with the carrier to hold possession subject to the lien.

McFarland v. Wheeler, *supra*.

This case is directly in point, and the well-reasoned and clearly expressed opinion of Senator Verplanck states the law as I conclude the law is.

But should my conclusions as to the law upon this point be erroneous, and it should be decided that the Jarvis Company, the consignee, must be held to have been constituted the agent of the railroad company to hold possession for it, subject to the lien for freight, it would not, in my judgment, alter the result of the determination of this case. The utmost that the railroad company can legally claim to have established with respect to the relations between it and the Jarvis Company is an agreement by the Jarvis Company that "we will not let this property leave our possession until we receive the freight charges."

The Jarvis Company did receive the freight charges.

I think if it be held that the Jarvis Company was constituted an agent of the railroad company at all, its agency was to hold until it collected. This is the reasonable construction of such a contract as the railrond company claims to have proven in this case, and the various experts called by the respective parties practically agree that such is the customary construction in similar circumstances which arise in dealings between warehousemen and carriers.

I therefore conclude that, in any view of the rights of the parties to this proceeding, the Sanborn-Farrell Company is entitled to a return of the money deposited under the stipulation.

It is urged by counsel for the railroad company that if the Court should find that it cannot assert its lien

against the rights of the third parties, still the Court should hold that Sanborn-Farrell Company, having gotten possession of the goods, were bound to account to the railroad company, and pay the freight charges out of any surplus realized by the sale of the goods over and above the amounts due the third parties.

In the first place, the contention between the parties arose out of the claim of the railroad company, that it had a lien prior to the pledgees' rights, represented by Sanborn-Farrell Company. I find it had not.

Secondly, there is no proof that there was any surplus arising from the sale of the goods, and, finally, I do not think that the issue sought to be raised by the contention is within the issues made by the pleadings and proofs, and I think that if the railroad company has any such right as it claims, it must seek its enforcement in some direct proceeding, and I am inclined to think that the proper forum would be a Court of law.

DECREE.

The petition filed by the Western Cold Storage Company and Sanborn-Farrell Company in this cause and the answers thereto filed by the Erie Railroad Company and John W. Hardenberg and Palmer Campbell, Receivers of the defendant corporation, above named, coming on to be heard at Chancery Chambers in Jersey City, on the thirty-first day of October, nineteen hundred and four, in the presence of Frank E. Loughran, solicitor and counsel of the petitioners, and of Collins & Corbin, solicitors and counsel of the Erie Railroad Company, and of McDermott & Fisk, solicitors and counsel of said Receivers, and the pleadings and

proofs and the argument of counsel thereon having been heard and considered, and it appearing to the Court that the said Sanborn-Farrell Company is entitled to a return of the money deposited under the receipt or stipulation in said petition mentioned;

It is, on this sixteenth day of January, mineteen hundred and five, on motion of Frank E. Loughran, Esq., solicitor of said petitioners, by William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, does hereby order, adjudge and decree, that the said John W. Hardenberg and Palmer Campbell, Receivers as aforesaid, within ten days after service upon them of a certified copy of this decree, pay over to the petitioner, Sanborn-Farrell Company, or its solicitor, the sum of seven hundred and forty-three ($743.00) dollars heretofore deposited by the said petitioner with the said Receivers, pursuant to the said receipt or stipulation.

It is further ordered, adjudged and decreed, that the said Erie Railroad Company pay to the said petitioners the costs of this suit to be taxed and that execution issue therefor according to the practice of this Court.

W. J. MAGIE,
C.

Respectfully advised,
L. M. GARRISON,
V. C.

STIPULATION.

A decree having been made in the above matter directing the Receivers of the defendant corporation to pay over to the petitioner, Sanborn-Farrell Company, the sum of seven hundred and forty-three

dollars, deposited with the Receivers pursuant to the stipulation mentioned in the pleadings, and the Erie Railroad Company, one of the parties interested in said deposit, having given notice of an appeal to the Court of Errors and Appeals from the said decree of the Court of Chancery, the parties hereto, by their solicitors, stipulate that the said Receivers may retain the said sum of seven hundred and forty-three dollars, pending the determination of said appeal.

FRANK E. LOUGHRAN,
Solicitor of Petitioner.

COLLINS & CORBIN,
Solicitors of Erie Railroad Co.

Dated January 16, 1905.

NOTICE OF APPEAL.

(Served Jan 17, 1905.)

The Erie Railroad Company, respondent to the petition filed by the Western Cold Storage Company and Sanborn-Farrell Company in above cause, hereby appeals from the decree made in this Court in the above cause on the sixteenth day of January, one thousand nine hundred and five and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

COLLINS & CORBIN,
Solicitors of Erie Railroad Company.

Dated January 16, 1905.

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

GEO. S. HOBART,
Of Counsel with Complainant.

PETITION OF APPEAL

(Served Jan. 25, 1905.)

To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes.

The petition of Erie Railroad Company, the appellant in the above stated cause, respectfully shows, that your petitioner finds itself aggrieved by the final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the sixteenth day of January, nineteen hundred and five, wherein Gustav W. Lembeck was complainant, and Jarvis Terminal Cold Storage Company was defendant, in which said cause the Western Cold Storage Company and Sanborn-Farrell Company were petitioners, and your petitioner, Erie Railroad Company, was respondent as one of the parties interested under said petition filed by the said Western Cold Storage Company and Sanborn-Farrell Company in this respect, to wit, that the said decree adjudges that John W. Hardenberg and Palmer Campbell, Receivers of the defendant, Jarvis Terminal Cold Storage Company, do pay over to the peitioner, Sanborn-Farrell Company, or its solicitors, the sum of seven hundred and forty-three dollars, being the amount theretofore deposited by said petitioner, Sanborn-Farrell Company, with said Receivers, pursuant to the receipt or stipulation mentioned in the said petition, and in this respect also, to wit, that the said decree further adjudges that your petitioner, Erie Railroad Company, do pay to the said petitioners, Western Cold Storage Company and Sanborn-Farrell Company, the costs of their petition.

And your petitioner humbly appeals from those parts of the said decrees as aforesaid, upon the ground that the same is erroneous for that the

Chancellor should have adjudged that the said Receivers, John W. Hardenberg and Palmer Campbell, do pay over to your petitioner, Erie Railroad Company, the said sum of seven hundred and forty-three dollars, with costs. and for that the decree should not have adjudged that your petitioner, the said Erie Railroad Company, pay to the said petitioners, Sanborn-Farrell Company and Western Cold Storage Company, the costs of their petition.

Your petitioner, therefore, prays that the said decree of the Chancellor may, in the particulars aforesaid, be reversed, 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.

COLLINS & CORBIN,
Solicitors and Counsel of
Appellant.

(Formal answer to petition of appeal filed Feb. 2, 1905.)