

above written Henry S. Grove (seal\* Helen L. Grove (Seal) George H. McFadden (seal) Emily B. McFadden (seal\* William S. Blakeley (seal\* Mae King Blakeley (seal) Signed sealed and delivered in the presence of Wm. Wagner Jr. H. M. Trehudy State of Pennsylvania County of Philadelphia SS Be it Remembered that on this twenty-fourth day of May in the year of our Lord one thousand eight hundred and ninety-three before me a Commissioner

10) of Deeds of New Jersey personally appeared Henry S. Grove and Helen L. his wife George H. McFadden and Emily B. his wife William S. Blakeley and Mae King his wife who I am satisfied are the grantors in the within Indenture to whom I first made known the contents thereof and thereupon they acknowledged that they signed sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed and the said Helen L. Grove Emily B. McFadden and Mae King

20) Blakeley being by me privately examined separate and apart from their husbands further acknowledged that they signed, sealed and delivered the same as their voluntary act and deed freely without any fear threats or compulsion of their said husbands Witness my hand and official seal Wm. Wagner Jr. A Commissioner of Deeds of the State of New Jersey for the State of Pennsylvania residing in the City of Philadelphia (seal\* Recorded May 24th 1893 at 2.45 P. M. by Jacob Sickler Register.

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TO

This indenture made the twentieth day of November in the year of our Lord one thousand nine hundred and twenty-three (1923) Between

Frank L. Hummel Trustee of the City of New York City in the County and State of New York of the first part and Armstrong Cork Company a corporation under and by virtue of the laws of Pennsylvania of the second part Witnesseth that the said party of the first part for and in consideration of the sum of three hundred thousand dollars lawful money of the United States of America well and truly paid by the said party of the second part to the said party of the first part at and before the ensealing and delivering of these presents the receipt whereof is hereby acknowledged hath granted, bargained sold, aliened enfeoffed released, conveyed and confirmed and by these presents doth grant, bargain sell alien enfeoff release convey and confirm unto the said party of the second part its successors and assigns all those certain lots or parcels of land and premises situate in the City of Gloucester City in the County of Camden and State of New Jersey described as follows No. 1 Beginning at the northwest corner of Ellis Street as laid out on plan of streets and lots of Gloucester land Company on file in the Registers office of Camden County and the northerly line of Monmouth Street extended containing in front or breadth on said Ellis Street eight hundred and fifty feet and extending of that width in length or depth westwardly along the northerly line of Monmouth Street and the southerly line of Mercer Street to low water Mark in the River Delaware and so far into the Delaware River as the

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NOTICE OF APPEAL.

(Filed August 19, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between  
EDWARD L. KATZENBACH,  
Attorney-General of the  
State of New Jersey,  
Complainant,  
and  
ARMSTRONG CORK COMPANY,  
Defendant.

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On Information.  
Notice of Appeal.

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The defendant hereby appeals from the final de-  
cree entered in the above-entitled cause on the 6th 20  
day of July, 1927, by the Chancellor on the advice  
of Honorable Vivian M. Lewis, Vice-Chancellor, and  
from the whole and every part thereof, to the Court  
of Errors and Appeals of the last resort in all  
causes.

STARR, SUMMERILL & LLOYD,  
*Solicitors of Defendant.*  
LEWIS STARR,  
*Of Counsel.*

Dated August 18, 1927. 30

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

LEWIS STARR,  
*Of Counsel with Appellant.*

## BILL OF INFORMATION.

## IN CHANCERY OF NEW JERSEY.

To His Honor, Edwin Robert Walker, Chancellor  
of the State of New Jersey:

10 Informing, shows unto your Honor, your informant, Edward L. Katzenbach, Attorney-General of the State of New Jersey, on behalf of the said State, that:

1. The State of New Jersey is the owner in fee simple of certain riparian lands which lie under tide water of the Delaware River, particularly those lands lying adjacent to the City of Gloucester, Camden County, New Jersey, lying below high-water mark under the waters of said river between the lines of Monmouth Street and Mercer Street projected into said river, at which point the said Delaware River is a tidal stream.

2. The said lands so owned by the State of New Jersey were irrevocably appropriated to the support of free public schools of this State by an act entitled, "A supplement to an act entitled 'An act to establish a system of public instruction (Revision) approved March 27th, 1874,' " which said supplement was approved April 24th, 1894, Session Laws of 1894, Chap. 71, page 123.

3. The Armstrong Cork Company, a corporation, is the owner of certain lands lying in the City of Gloucester, fronting on the Delaware River between Monmouth Street and Mercer Street in said city;

that said lands so owned by the Armstrong Cork Company were owned by the Gloucester Land Company, a corporation of the State of New Jersey, under conveyance made to it dated October 9, 1846, recorded in Book E of Deeds for Camden County, on page 67, and conveyed by mesne conveyances to the said Armstrong Cork Company.

4. The said Gloucester Land Company was incorporated by Act of the Legislature of the State of New Jersey in the year 1846 (P. L. 1846, p. 20), and was thereby authorized to become the owner of said lands and premises and was also authorized and empowered to reclaim and improve the lands lying under the tide waters of the Delaware River adjacent to said land, as particularly set forth in Paragraphs 4 and 5 of said act of incorporation, as follows:

Paragraph 4. AND BE IT ENACTED, That, as soon as the said company shall be organized, the said John Siter and Samuel R. Simmons, who now hold the same in trust for the owners, shall convey to the said Company, by their corporate name, the residue of said lands unsold, and shall assign and transfer to the said company all bonds, mortgages or other securities held by them, and pay over all moneys received by them for lands sold, first deducting therefrom all costs and expenses attending such sales; and the said company are hereby authorized to purchase and hold such lands adjoining the above described premises, which, by forming angles and projections into their plot, mar the regularity and beauty of the whole, and such lands as may be necessary to reclaim portions of their property now flooded by the tide; provided the lands to be purchased shall not exceed thirty acres in the whole.

Paragraph 5. AND BE IT ENACTED, that the said company are authorized to improve the above

described premises, and any other lands hereby authorized to be purchased, by laying out the same in lots, streets, squares, blocks, lanes, alleys, or other divisions, and levelling, raising and grading streets; and they shall have liberty to fill up, occupy, possess, and enjoy all lands covered with water fronting and adjoining the premises, that may now be owned, or may hereafter be purchased by them, and may construct thereon wharves, harbours, piers, slips or other structures necessary for commercial and shipping purposes.

5. The said Armstrong Cork Company claims that, by virtue of said mesne conveyances from the said Gloucester Land Company to it, to which reference is made, and copies thereof attached hereto and made a part of this information, it became seized and possessed of all of the rights of the Gloucester Land Company in and to said lands lying under the tide waters of the Delaware River between the bulkhead line and high-water line, bounded on the south by the northerly line of Monmouth Street extended, and on the north by the southerly line of Mercer Street extended, and particularly claims the right to enter in and upon said lands and reclaim and improve the same and build wharves, piers and other structures thereon, under and by virtue of said Act of the Legislature incorporating the Gloucester Land Company.

6. Your informant charges and insists that under and by virtue of said Act of the Legislature, the Gloucester Land Company became a mere licensee, and the power and authority to reclaim and improve said lands under the tide waters of the Delaware River was not assignable, and that insofar as it did not reclaim and improve said lands the au-

thority to do so, as given by said Act of the Legislature, has expired and been extinguished by the grant and conveyance of the upland owned by it, and that the authority to reclaim and improve said land was not assignable and has not passed to the said Armstrong Cork Company by the conveyances aforesaid, and was revoked upon the appropriation of said lands to the school fund.

7. That the Board of Commerce and Navigation, as the agent of the State of New Jersey, having charge of riparian lands of said State, has insisted to the said Armstrong Cork Company that it has no authority or right to enter in and upon said lands or to reclaim and improve the same, without having first obtained from the State of New Jersey a grant, but notwithstanding the insistment of said Board of Commerce and Navigation, the said Armstrong Cork Company proposes to enter in and upon said lands and construct a wharf thereon and dredge thereon, and by its letter under date of January 21, 1924, addressed to Victor Gelineau, Director of the Board of Commerce and Navigation, gave notice of its intention to proceed with said work, without having first purchased said riparian lands from the State of New Jersey. (Copy of said letter is attached hereto and made a part of this information.)

8. The doing of said work by the Armstrong Cork Company constitutes a purpresture, and is unlawful.

Your informant, on behalf of the State of New Jersey, is without adequate remedy at law, and therefore prays:

1. That the premises considered, your Honor grant that the State's writ of injunction issue out

of and under the seal of this Honorable Court, to be directed to the said Armstrong Cork Company, its officers, agents, servants and employees, restraining them and each of them from entering in and upon said lands for the purpose of constructing any wharf or other structure thereon without having first obtained a license so to do and a grant from the State of New Jersey for such riparian land as shall be necessary to occupy and use in carrying on

10) the proposed work.

2. That the State's writ of subpoena issue out of and under the seal of this Honorable Court, to be directed to the said Armstrong Cork Company, commanding it by a certain day and under a certain penalty therein to be expressed, to answer the matters contained in this information, and to abide by and perform such order and decree as this Court may make in the premises.

20) And your informant, as in duty bound, will ever pray, etc.

EDWARD L. KATZENBACH,  
*Attorney-General of New  
 Jersey,  
 Solicitor and of Counsel.*

30) This Indenture made the sixth day of May in the year of our Lord one thousand nine hundred and twenty (1920) Between The Argo Mills Company a corporation under the laws of the State of New Jersey, party of the first part and Frank L. Hummel of the City of New York, in the State of New York Trustee under a certain Instrument of Trust dated the 15th day of January, A. D. 1920 between Frank

L. Hummel and William F. Clare and others, party of the second part Witnesseth that the said party of the first part for and in consideration of the sum of One Dollar lawful money of the United States of America well and truly paid by the said party of the second part to the said party of the first part at and before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part his heirs and assigns All those certain tracts or parcels of land and premises situate in the City of Gloucester in the County of Camden, and State of New Jersey, bounded and described as follows: First Tract: Beginning at the northwesterly corner of Ellis Street as laid out on the Plan of Streets and lots of the Gloucester Land Company recorded in the Register of Deeds office of the County of Camden and northerly line of Monmouth Street extended containing in front or breadth on the said Ellis Street eight hundred and fifty feet and extending of that width in length or depth westerly along the northerly line of said Monmouth Street and the southerly line of Mercer Street to low water mark in the River Delaware and so far into the Delaware River as the rights of The Argo Mills Company extend Together with the wharves, mills, boiler house, picker houses, machine shops, carpenter shops and buildings of every kind thereon erected. Second Tract: Beginning at the northwesterly corner of Monmouth Street and King Street as laid out on said Plan; thence westwardly along the northerly line of Monmouth Street one hundred and twenty-eight feet to the easterly side of Ellis Street; thence northwardly along the same four hundred feet to

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the southerly line of Hudson Street; thence eastwardly along the same one hundred and twenty eight feet to the westerly side of King Street; thence southwardly along the same four hundred feet to the place of beginning. Being the same lands and premises which Henry S. Grove et ux et als by deed dated May 24th, 1893, and of record in the Register of Deeds office of Camden County in Book No. 186 of deeds page 236 &c. granted and conveyed unto the

10) said The Argo Mills Company in fee. Together with the machinery tools and other like property situate and contained therein but not including any stock manufactured or unmanufactured on hand or manufacturing supplies. Together with all Riparian Rights now vested in the party of the first part whatsoever as well as any and all rights to make application for a Riparian Grant or Lease The said party of the second part hereto having by said instrument of trust above recited and being hereby

20) given full power and authority to grant, bargain, sell and convey in fee simple or for any lesser estate or by way of mortgage all or any part of the hereby conveyed lands and premises without any liability on the part of the purchaser or purchasers, mortgagee or mortgagees to see to the application non-application or misapplication of the purchase or mortgage money. Together with all and singular the improvements, buildings, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining and the reversion and reversions remainder and remainders, rents, issues and profits thereof and of every part and parcel thereof. And also all the estate, right, title interest, property possession, claim and demand whatsoever both in law and equity of the said party of the first part of in and to the said premises and every part thereof with the ap-

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purtenances. To have and to hold the said premises above described with all and singular the hereditaments and appurtenances unto the said party of the second part his heirs and assigns to the only proper use, benefit and behoof of the said party of the second part his heirs and assigns forever. And the said party of the first part for itself its successors and assigns does by these presents covenant grant and agree to and with the said party of the second part his heirs and assigns that it the said party of the first part and its successors all and singular the hereditaments and premises above described and granted or mentioned and intended so to be with the appurtenances unto the said party of the second part his heirs and assigns against it the said party of the first part and its successors and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend. In Witness Whereof the said party of the first part to these presents hath hereunto set its corporate seal and caused these presents to be signed by its president and attested by its secretary dated the day and year first above written. The Argo Mills Company by Henry S. Grove, President (corp. seal) Signed, sealed and delivered in the presence of Attest David A. Longacre, Secretary State of Pennsylvania, Philadelphia County SS. Be it remembered that on this 6th day of May in the year of our Lord one thousand nine hundred and twenty before me a Notary Public for the Commonwealth of Pennsylvania residing in the City of Philadelphia personally appeared David A. Longacre who being by me duly sworn on his oath saith that he is the Secretary of The Argo Mills Company the grantor within named and that Henry S. Grove is the president, that deponent knows the common or corporate seal of said

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grantor and that the seal annexed to the within deed or conveyance is such common or corporate seal that the said deed or conveyance was signed by the said president and the seal of said grantor affixed thereto in the presence of deponent that said deed or conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed pursuant to a resolution of the Board of Directors of said grantor and at the execution thereof this deponent subscribed his name thereto as witness. David A. Longacre, Sworn and subscribed the day and year aforesaid Henry Gross, Notary Public (seal) Commission expires Jany. 18th, 1921. 43170 In the Courts of Common Pleas of Philadelphia County, State of Pennsylvania County of Philadelphia, ss. I, Henry F. Walton Prothonotary of the Courts of Common Pleas of said County which are Courts of Record having a common seal being the officer authorized by the laws of the State of Pennsylvania to make the following certificate do certify that Henry Gross Esquire before whom the annexed affidavit was made was at the time of so doing a Notary Public for the Commonwealth of Pennsylvania residing in the County of Philadelphia duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania and to all whose acts as such full faith and credit are and ought to be given as well in Courts of Judicature as elsewhere and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania in Testimony whereof I

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have hereunto set my hand and affixed the seal of said court this 7 day of May in the year of our Lord one thousand nine hundred and twenty (1920) Henry F. Walton Prothonotary By Meredith Hanna Dep. Prothonotary Durante Absentia Secundum Legem (Court Seal) (IRS\$250.00) Recorded November 1st, 1920 at 3.55 P. M. by Edward W. Delacrois, Register.

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HENRY S. GROVE et al

—to—

“THE ARGO MILLS CO.”

This Indenture made the twenty-fourth day of May in the year of our Lord one thousand eight hundred and ninety-three Between Henry

S. Grove and Helen L. his wife and George H. McFadden and Emily B., his wife of the City and County of Philadelphia and State of Pennsylvania and William S. Blakeley and Mae King his wife of the City of Chester County of Delaware and State of Pennsylvania of the first part and the “Argo Mills Company a corporation organized under the laws of New Jersey and located at the City of Gloucester, County of Camden, New Jersey of the second part, Witnesseth that the said party of the first part for and in consideration of the sum of one hundred and thirty-eight thousand and eight hundred dollars lawful money of the United States of America to them in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the first part being therewith fully satisfied contented and paid have given granted, bargained sold, aliened

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released enfeoffed, conveyed and confirmed and by these presents do give, grant, bargain, sell, alien release, enfeoff, convey and confirm unto the said party of the second part and to its successors and assigns forever All those certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Gloucester in the County of Camden and State of New Jersey First Tract Beginning at the northwesterly corner of Ellis Street as laid out on the plan of streets and lots of "The Gloucester Land Company recorded in the Clerks office of the County of Camden and northerly line of Monmouth Street extended containing in front or breadth on the said Ellis Street eight hundred and fifty feet and extending of that width in length or depth westerly along the northerly line of said Monmouth Street and the southerly line of Mercer Street to low water mark in the river Delaware and so far into the Delaware River as the rights of the Washington Manufacturing Company extend together with the wharves, mills, boiler house, picker houses, machine shops, carpenter shops, machines, smith's shop, storehouse, barn, wash-house, dye-houses, dwellings buildings and structures of every kind and character stacks, machinery, office, supply room, scales, engines, boilers, shafting, belting, pulleys, tools and implements of every description erected thereon therein contained or used in connection therewith, together constituting and known as the Mills of Washington Manufacturing Company Second Tract Beginning at the northwesterly corner of Monmouth Street and King Street as laid out on said plan thence westwardly along the northerly line of Monmouth Street one hundred and twenty-eight feet to the easterly side of Ellis Street; thence northwardly along the same four hundred feet to the southerly

line of Hudson Street thence easterly along the same one hundred and twenty-eight feet to the westerly side of King Street thence southwardly along the same four hundred feet to the place of beginning: Being the same tracts of land and premises and appurtenances granted and conveyed by Philip H. Fowler Receiver of "Washington Manufacturing Company to the said parties of the first part hereto by deed dated March 27th, 1893 and recorded in the Register's Office of Camden County in Book No. 184 of Deeds for said County on pages 327 etc. Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging 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 and to the same and of in and to every part and parcel thereof To have and to hold all and singular the above described land and premises with the appurtenances unto the said party of the second part its successor's and assigns to the only proper use benefit and behoof of the said party of the second part its successors and assigns forever and the said Henry S. Grove, George H. McFadden and William S. Blakeley for themselves their heirs executors and administrators do covenant promise and agree to and with the said party of the second part its successors and assigns that they have not made done covenanted executed or suffered any act or acts thing or things whatsoever whereby or by means whereof the above mentioned and described premises or any part or parcel thereof now are or at any time hereafter shall or may be impeached charged or encumbered in any manner of way whatsoever In Witness Whereof the said party of the first part have hereto set their hands and seals the day and year first

rights of said party of the first part extend Together with the wharves mills boiler house power house picker houses machine shops carpenter shops and buildings of every kind thereon erected and boilers engines and other machinery and equipment contained therein and together with the right privilege and license now vested in said party of the first part to exclude the tide waters of the Delaware River by filling in reclaiming or otherwise improving the lands under water in said River in front of the above premises and to appropriate the said land to its or their exclusive use No. 2 Beginning at the northwest corner of Monmouth Street and King Street as laid out on said plan and extending thence westwardly along the northerly line of Monmouth Street one hundred and twenty-eight feet to the easterly side of Ellis Street thence northwardly along said easterly side of Ellis Street four hundred feet to the southerly line of Hudson Street thence eastwardly along said southerly line of Hudson Street one hundred and twenty-eight feet to the westerly side of King Street thence southwardly along said westerly side of King Street four hundred feet to the place of beginning Together with the buildings thereon and also play-ground equipment thereon erected such as is owned by said party of the first part Being the same premises that the Argo Mills Company by deed dated May 6, 1920 of record in said Register's office in Book No. 479 of deeds page 241 &c. granted and conveyed unto said Frank L. Hummel Trustee under a certain Instrument of Trust dated January 15, 1920 between Frank L. Hummel and William F. Clare et als said party of the first part hereto having by said instrument of trust above recited given full power and authority to grant, bargain sell and convey in fee simple or for any lesser estate or by way of mort-

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gage all or any part of the premises above described without any liability on the part of the purchaser or purchasers mortgagee or mortgagees to see to the application nonapplication or misapplication of the purchase or mortgage money Together with all and singular the buildings, improvements woods ways, rights liberties privileges hereditaments and appurtenances to the same belonging or in any wise appertaining and the reversion and reversions remainder and remainders rents, issues and the profits thereof and of every part and parcel thereof and also all the estate right, title, interest, property possession, claim and demand whatsoever both in law and equity of the said party of the first part of in and to the said premises with the appurtenances To have and to hold the said premises with all and singular the appurtenances unto the said party of the second part its successors and assigns to the only proper use benefit and behoof of the said party of the second part its successors and assigns forever and the said party of the first part doth hereby covenant and agree to and with the said party of the second part its successors and assigns that he the said covenanting party hath not at any time heretofore made done committed or knowingly suffered to be made done or committed any act deed matter or thing whatsoever whereby the said hereditaments and premises hereby granted and conveyed or intended so to be or any part thereof are is can shall or may be charged affected or encumbered in estate title or otherwise howsoever or whereby the said covenanting party is or ought to be hindered or prevented from executing the grant conveyance or assurance intended to be made by these presents In witness whereof the said party of the first part hereto hath hereunto set his hand and seal the day and year first above written. Frank

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L. Hummel Trustee (seal) Signed, sealed and delivered in the presence of page 3 1. 11 heirs stricken out before execution L. Edward Herrmann State of New Jersey Hudson County ss be it remembered that on this twenty-third day of November in the year of our Lord one thousand nine hundred and twenty-three (1923) before me the subscriber a Master in Chancery of New Jersey personally appeared Frank L. Hummel Trustee who I am satisfied is the grantor mentioned in the above deed or conveyance and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed All of which is hereby certified L. Edward Herrmann Master in Chancery of New Jersey (IRS-\$300.00) Recorded Nov. 26th 1923 at 4.30 N. M. by Joshua C. Haines Register.

This Indenture made this fifteenth day of April in the year of our Lord one thousand eight hundred and eighty six 1886 Between The Washington Manufacturing Company a corporation created by the Legislature of the State of New Jersey of the one part And the "Washington Manufacturing Company a corporation organized under the general corporation act of the State of New Jersey entitled, "An act concerning corporations approved April seventh eighteen hundred and seventy five of the other part Witnesseth that the said The Washington Manufacturing Company for divers good and valuable consideration and in consideration of the sum of One Dollar lawful money of the United States of America to it paid by the said Washington Manufacturing Company at or before the ensembling and delivery of these presents the receipt whereof is hereby acknowledged hath granted, bargained, sold aliened, enfeoffed, released and confirmed and by these presents doth grant, bargain, sell, alien, en-

feoff, release and confirm unto the said Washington Manufacturing Company its successors and assigns All those five certain lots or pieces of ground with the wharves, mills, boiler houses, picket houses, machine shops, carpenter shops, machines smiths shops, store houses, barn, wash house, dye houses, dwellings, buildings and structures of every kind and character, stacks, machinery, office supply room scales, engines, boilers, shafting, belting, pulleys, tools and implements of every description thereon erected therein contained or used in connection therewith situate in the City of Gloucester County of Camden, State of New Jersey and known as the Mills of the "Washington Manufacturing Company No. 1 Beginning at the northwesterly corner of Ellis Street as laid out on the plan of streets and lots of the Gloucester Land Company, recorded in the Clerk's Office of the said County of Camden and the northerly line of Monmouth Street extended containing in front or breadth on the said Ellis Street eight hundred and fifty feet and extending of that width in length or depth westwardly along the northerly line of the said Monmouth Street and the southerly line of Mercer Street to low water Mark in the river Delaware and so far into the said Delaware River as the rights of the said The Washington Manufacturing Company extend. No. 2 Beginning, at the northwesterly corner of Monmouth Street and King Street as laid out on said plan; thence westwardly along the northerly line of Monmouth Street one hundred and twenty eight feet to the easterly side of Ellis Street; thence northwardly along the same four hundred feet to the southerly line of Hudson Street; thence eastwardly along the same one hundred and twenty eight feet to the westerly side of King Street and thence southwardly along the same four hundred feet to the place of

beginning. No. 3 Beginning at the northwesterly corner of Hudson and King Streets as laid out on said plan; thence westwardly along the northerly line of Hudson Street one hundred and twenty eight feet to the easterly line of Ellis Street; thence northwardly along the same one hundred and seventy six feet to the southerly line of Middlesex Street; thence eastwardly along the same one hundred and twenty eight feet to the westerly line of King Street and thence southwardly along the same one hundred and seventy six feet to the place of beginning. No. 4. Beginning at the northwesterly corner of the said Middlesex and King Streets; thence westwardly along the northerly line of Middlesex Street one hundred and twenty eight feet to the easterly line of Ellis Street; thence northwardly along the same one hundred and seventy six feet to the southerly line of Mercer Street; thence eastwardly along the same one hundred and twenty eight feet to the westerly line of King Street and thence southwardly along the same one hundred and seventy six feet to the place of beginning. No. 5. Beginning at the southwesterly corner of said Ellis Street and said Monmouth Street continued containing in front or breadth on said Ellis Street one hundred and sixty-five feet and extending of that width in length or depth westwardly to low water mark in the River Delaware and so far into said river as the rights of the said The Washington Manufacturing Company extend, bounded northwardly by said Monmouth Street extended southwardly by ground now or formerly of the Gloucester Land Company, westwardly by the River Delaware and eastwardly by Ellis Street aforesaid Lots Nos. 1, 2, 3 and 4 being the same which The Gloucester Land Company by Indenture dated the first day of December A. D. 1846 recorded in the Clerk's

Office of Camden County aforesaid in Book E. of deeds page 150 &c. granted and conveyed unto the said The Washington Manufacturing Company and their assigns and lot No. 5 being composed of two lots which the said The Gloucester Land Company by two certain Indentures dated the tenth day of February A. D. 1854 and the twentieth day of January A. D. 1876 respectively and recorded in the Clerk's Office aforesaid in Book U. of deeds page 267 &c. and Book No. 83 of deeds page 337 &c. respectively granted and conveyed unto the said The Manufacturing Company their successors and assigns Saving and reserving as respects Nos. 1, 2, 3 and 4 to the said The Gloucester Land Company the right and privilege of laying out a street over part of the same of such width as they may think proper not exceeding sixty feet to run parallel with Ellis Street and not less than two hundred and eighty feet to the westward thereof. Subject as respects all of said lots to the covenant and agreement that the said The Washington Manufacturing Company and their assigns would not at any time thereafter vend make or sell or permit or suffer to be vended made or sold any malt or spirituous liquors by large or small quantity or measure on the said premises except when required as and for medicine and that should said covenant at any time be violated the stipulated compensation therefor should be at the rate of the just and full rent of the premises according to the time such making or sales of prohibited liquors should have been continued provided such compensation should never be less than twenty dollars for any one or more of said violations of said covenant within any one month and that it should and might be lawful for the said The Gloucester Land Company or their assigns or any of them to re-enter upon and rent or

hold the said premises until the amount of such stipulated compensation should have been fully paid and satisfied. And subject further as respects said lots Nos. 1, 2, 3 and 4 and the northernmost one hundred feet of lot No. 5 to the covenant and agreement that the said The Washington Manufacturing Company and their assigns would not erect or build at any time any frame or wooden buildings upon the said premises or any part thereof. Together with  
 10 all and singular the buildings improvements, woods, ways, waters, fisheries, rights, liberties, hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents, issues and profits thereof and of every part and parcel thereof and Also all the estate right title interest property possession claim and demand whatsoever both in law and equity of the said The Washington Manufacturing Company of in and to the said premises  
 20 with the appurtenances To have and to hold the said premises with all and singular the appurtenances unto the said Washington Manufacturing Company its successors and assigns to the only proper use, benefit and behoof of the said Washington Manufacturing Company its successors and assigns forever excepting and reserving and under and subject as hereinbefore particularly specified And the said The Washington Manufacturing Company for itself and its successors doth by these  
 30 presents covenant, grant and agree to and with the said Washington Manufacturing Company its successors and assigns that it the said The Washington Manufacturing Company and its successors all and singular the hereditaments and premises hereinbefore described and granted or mentioned and intended so to be with the appurtenances unto the said Washington Manufacturing Company its suc-

cessors and assigns against it the said The Washington Manufacturing Company and its successors and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by, from or under it, them or any of them shall and will excepting and under and subject as aforesaid warrant and forever defend. In witness whereof the said The Washington Manufacturing Company hath caused these presents to be sealed with its common or corporate seal duly  
 10 attested dated the day and year first herein written The Washington Manufacturing Company By Sam Welch, President (corp seal) Attest. Henry N. Paul Treasurer, Sealed and delivered in the presence of Chas. O. Kruger, E. C. Isard Jr. H. C. Isard. Received the day of the date of the foregoing Indenture of the therein named Washington Manufacturing Company the sum of One Dollar being the full cash consideration therein mentioned The Washington Manufacturing Company By Henry N. Paul  
 20 Treasurer, Witness at signing, Eleazar C. Isard Jr., H. C. Isard, State of Pennsylvania, County of Philadelphia ss: Eleazar C. Isard Jr., of the County of Camden and State of New Jersey, being of full age being first duly sworn on his oath saith that he was personally present at the execution of the foregoing Indenture and saw Samuel Welch President of the Washington Manufacturing Company affix the common or corporate seal of said company and attest the same as President of the said corporation and that the said Samuel Welch as such President thereupon declared that he delivered the said Indenture as the voluntary act and deed of the said company and Henry N. Paul, Treasurer of said Company join his signature and office to the same and this deponent at the same time subscribed his name thereto as a subscribing witness And this de-

ponent further saith that he is well acquainted with the common or corporate seal of the said company and knows that the seal affixed is the common or corporate seal of said company and that Samuel Welch is President of said company and is the proper officer to affix the seal of the said company and to sign his name thereto and that Henry N. Paul is the Treasurer of said company, Eleazar C. Isard, Jr. Subscribed and sworn before me this twenty-  
 10 sixth day of April 1886. Witness my hand and official seal Theo. D. Rand, a commissioner for New Jersey in Pennsylvania (seal) Recorded April 27, 1886 at 8.15 A. M. by Robert F. S. Heath, Register.

This Indenture made the first day of December in the year of our Lord one thousand eight hundred and forty six 1846 Between "The Gloucester Land Company", a corporation created by an Act of the Legislature of the State of New Jersey of the first part and "The Washington Manufacturing  
 20 Company", a corporation also created by an Act of the Legislature of the State of New Jersey of the second part Witnesseth that the said "the Gloucester Land Company" for and in consideration of the sum of Ten thousand Dollars lawful money of the United States to them paid by the said "The Washington Manufacturing Company" at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted, bargained sold aliened enfeoffed released,  
 30 conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said "The Washington Manufacturing Company", and to their assigns All that certain block or piece of ground situate at Gloucester Point in the Township of Union in the County of Camden and State of New Jersey and which according to the draught or plan of lots and streets

laid out by "The Gloucester Land Company", and recorded in the Clerk's office of the said County of Camden is bounded as follows, viz: Beginning in the westerly line of Ellis Street as laid out on said Plan at the point where the northerly line of Monmouth Street extended intersects said westerly line of Ellis Street and from thence extending westwardly along the northerly line of Monmouth Street extended to low water mark of the River Delaware  
 10 thence up the said River bounding thereon by low water mark the several courses and distances thereof to the southerly line of Mercer Street extended thence eastwardly along the southerly line of Mercer Street to the corner of Mercer and Ellis Streets thence southwardly along the westerly line of Ellis Street to the place of beginning. Also all that certain other block or piece of ground situate at Gloucester point in the township of Union in the County and State aforesaid and which according to  
 20 the draught or plan aforesaid is bounded as follows viz: Beginning at the northwesterly corner of Monmouth and King Streets as laid out on said plan and from thence extending westwardly along the northerly line of Monmouth Street one hundred and twenty-eight feet to the corner of Monmouth and Ellis Streets thence northwardly along the easterly line of Ellis Street four hundred feet to the corner of Ellis and Hudson Streets; thence eastwardly along the southerly line of Hudson Street one hundred and twenty-eight feet to the corner of Hudson  
 30 and King Streets and thence southwardly along the westerly line of King Street four hundred feet to the place of beginning. Also all that certain other block or piece of ground situate at Gloucester point in the township of Union in the County and State aforesaid and which according to the draught or plan aforesaid is bounded as follows viz: Beginning

at the northwesterly corner of Hudson and King Streets as laid out on said plan and from thence extending westerly along the northerly line of Hudson Street one hundred and twenty-eight feet to the corner of Hudson and Ellis Streets thence northwardly along the easterly line of Ellis Street one hundred and seventy-six feet to the corner of Ellis and Middlesex Streets; thence eastwardly along the southerly line of Middlesex Street one hundred and twenty-eight feet to the corner of Middlesex and King Streets thence southwardly along the westerly line of King Street one hundred and seventy six feet to the place of beginning. Also all that certain other Block or piece of ground situate at Gloucester point in the township of Union in the County and State aforesaid and which according to the draught or plan aforesaid is bounded as follows: Beginning at the northwesterly corner of Middlesex and King Streets as laid out on said plan and from thence extended westwardly along the northerly line of Middlesex Street one hundred and twenty-eight feet to the corner of Middlesex and Ellis Streets; thence northwardly along the easterly line of Ellis Street one hundred and seventy-six feet to the corner of Ellis and Mercer Streets thence eastwardly along the southerly line of Mercer Street one hundred and twenty-eight feet to the corner of Mercer and King Streets; thence southwardly along the westerly line of King Street one hundred and seventy-six feet to the place of beginning which said blocks or pieces of (lands) ground are parts and parcels of the premises that John and Maria his wife and Samuel R. Simmons of the City of Philadelphia by Indenture dated the third day of October in the year of our Lord one thousand eight hundred and forty six recorded in the Clerk's Office of the County of Camden in Book E. of deeds page 60 &c and made in

obedience to an act of the Legislature of the State of New Jersey granted and conveyed to the said "The Gloucester Land Company" and to their assigns in fee. Saving and reserving to the said "The Gloucester Land Company" the right and privilege of laying out a street over part of the lands hereby granted of such width as they may think proper not exceeding sixty feet to run parallel with Ellis Street and not less than two hundred and eighty feet to the westward thereof. Together with all and singular the improvements streets ways water courses rights liberties privileges hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversions and remainders rents issues and profits thereof and of every part and parcel thereof. And all the estate right, title interest, property, possession, claim and demand whatsoever of the said "The Gloucester Land Company" in law equity or otherwise howsoever of in and to the same and every part and parcel thereof To have and to hold the said four blocks or pieces of ground herein above described hereditaments and premises hereby granted or mentioned and intended so to be with the appurtenances unto the said "The Washington Manufacturing Company and their assigns to the only proper use, benefit and behoof of the said "The Washington Manufacturing Company" and their assigns forever. And the said "The Washington Manufacturing Company" for themselves and their assigns do hereby covenant and agree with the said "The Gloucester Land Company" and their assigns for their advantage and benefit as owners of the residue of said tract that the said "The Washington Manufacturing Company" and their assigns will not at any time hereafter vend, make or sell or permit or suffer to be made sold or vended any malt or spirituous liquors by large or small quantity or

measure on the said premises except when required as and for medicine. And that should this covenant at any time be violated the stipulated compensation therefor shall be at the rate of the just and full rent of the premises according to the time such making or sales of prohibited liquors shall have been continued provided such compensation shall never be less than twenty dollars for any one or more of said violations of said covenant within any one month

10 And it shall and may be lawful for the said "The Gloucester Land Company" or their assigns or any of them to re-enter upon and rent or hold the said premises until the amount of such stipulated compensation shall have been fully paid and satisfied. And the said "The Washington Manufacturing Company" for themselves and their assigns do further covenant and agree to and with the said "The Gloucester Land Company" and their assigns that they will not erect or build at any time any frame

20 or wooden buildings of any kind upon the hereby granted premises or any part thereof. And the said "The Gloucester Land Company" doth by these presents covenant grant and agree to and with the said "The Washington Manufacturing Company" and their assigns that the said "The Gloucester Land Company" all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so be with the appurtenances unto the said "The Washington Manufacturing"

30 "ing" and their assigns against the said "The Gloucester Land Company" and against all and every other person and persons whomsoever lawfully claiming or to claim the same or any part thereof by from or under the said "The Gloucester Land Company" shall and will warrant and forever defend by these presents In Witness Whereof John Rodman Paul the President of the said "The Glou-

cester Land Company" hath hereunto signed his name and affixed the seal of the said Company the day and year first above written. John Rodman Paul President G. L. C. (seal) John Siter Treas. G. L. Co. Signed, sealed and delivered in the presence of us T. E. Roberts The word "not exceeding sixty feet" being first interlined J. C. Smallwood, T. E. Roberts, Received at the execution and delivery of the above written Indenture of "The Washington Manufacturing Company" ten thousand dollars in full of the consideration money above mentioned, John Siter Treas. Witness T. E. Roberts J. C. Smallwood. State of New Jersey ss. Be it Remembered that on the first day of December A. D. 1846 before the subscriber one of the Masters in the Court of Chancery of the State of New Jersey personally appeared the above named John Rodman Paul President of "The Gloucester Land Company" and the contents of the above written Indenture having been first made known unto him by me And I

10 being satisfied that "the Gloucester Land Company" of which he is the President is the grantor of said Indenture he the said John Rodman Paul acknowledged that he signed his name to the said Indenture and affixed the seal of the said Company thereto and delivered the same as the act and deed of the said Company and as his own voluntary act and deed for the uses and purposes therein mentioned. J. C. Smallwood, Received January 13th A. D. 1847 and received by Wood Clk.

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This indenture made the fifteenth day of April in the year of our Lord one thousand eight hundred and eighty-six 1886 Between The Gloucester Land Company, a corporation created by the Legislature of the State of New Jersey of the one part and the Washington Manufacturing Company a corporation organized under the general corporation act of the

State of New Jersey entitled "an act concerning corporations approved April 7th, 1875 of the other part Whereas the Gloucester Land Company by Indenture bearing date the first day of December A. D. 1846 recorded in the Clerks Office of Camden County state of New Jersey aforesaid in Book E of deeds page 150 &c. granted and conveyed inter alia unto the Washington Manufacturing Company and its assigns All that certain lot or piece of ground  
 10 situate in the City of Gloucester, County of Camden aforesaid Beginning on the westerly line of Ellis Street as laid out on the plan of streets and lots of the Gloucester Land Company recorded in the Clerk's office of said County of Camden where the northerly line of Monmouth street extended intersects the same thence westwardly along the northerly line of said Monmouth Street extended to low water mark of the river Delaware thence up the said river by low water mark the several courses and  
 20 distances thereof to the southerly line of Mercer Street extended thence eastwardly along the same to the westerly line of Ellis street and thence southwardly along the same to the place of beginning. Saving and reserving to the said The Gloucester Land Company the right and privilege of laying out a street over a part of the same of such width as they might think proper not exceeding sixty (60) feet to run parallel with Ellis Street and not less than two hundred and eighty (280) feet to the westward thereof and Subject to the covenant and agree-  
 30 ment that the said the Washington Manufacturing Company and their assigns would not erect or build at any time any frame or wooden buildings upon the said premises or any part thereof And Whereas the said The Washington Manufacturing Company by indenture bearing date the 15th day of April A. D. 1886 and intended to be recorded granted and

conveyed inter alia unto the said Washington Manufacturing Company its successors and assigns the said lot or piece of ground described as Beginning at the northwesterly corner of Ellis Street and the northerly line of Monmouth Street extended Containing in front or breadth on the said Ellis Street eight hundred and fifty feet and extending of that width in length or depth westwardly along the northerly line of the said Monmouth street and the southerly line of Mercer Street to low water mark  
 10 in the river Delaware and so far into said river Delaware as the rights of the said The Washington Manufacturing Company extend. Saving and reserving and subject as aforesaid And Whereas the said street has never been laid out or opened nor has the said The Gloucester Land Company in any way exercised the right to it reserved as aforesaid And Whereas the said Washington Manufacturing Company hath requested the said The Gloucester  
 20 Land Company to release the lot or piece of ground of and from the reservation and covenant hereinbefore particularly set forth and mentioned Now This Indenture Witnesseth that the said The Gloucester Land Company in consideration of the premises doth hereby satisfy and confirm unto the said Washington Manufacturing Company its successors and assigns the above in part recited indenture of the 15th day of April 1886 so far as the same attempts to convey any Riparian rights or water privileges and the ground overflowed by water not heretofore  
 30 granted the said The Washington Manufacturing Company and doth grant, bargain, sell, alien, enfeoff release and confirm unto the said Washington Manufacturing Company its successors and assigns the lot or piece of ground situate between the western line of the above described or other lot of ground heretofore conveyed by the said The Gloucester

Land Company to the Washington Manufacturing Company the title to which is now vested in the said Washington Manufacturing Company by virtue of the above in part recited Indenture of the fifteenth day of April A. D. 1886 and the exterior line established by the commissioners appointed under the authority of the act or acts of the said State of New Jersey Together with the right liberty and privilege of excluding the tide water by filling in or otherwise  
 10 improving the same and appropriating the land to its and their exclusive use. To have and to hold the said hereditaments and premises hereby granted unto the said Washington Manufacturing Company its successors and assigns to and for its and their own proper use and behoof forever And the said The Gloucester Land Company favoring the request of the said Washington Manufacturing Company and for the purpose of evidencing its assent there-  
 20 to doth further grant, remise and release unto the said Washington Manufacturing Company its successors and assigns all the estate right, title interest, property claim and demand whatsoever of every kind and nature if it the said The Gloucester Land Company of in and to the aforesaid street to the end and intent that the same street shall to all in-  
 tents and purposes be for all times hereafter forever closed, obliterated and vacated And the said The Gloucester Land Company for itself and its successors doth covenant and agree to and with the  
 30 said Washington Manufacturing Company its successors and assigns that it and they shall hereafter have hold and enjoy the lots or pieces of ground conveyed by the above in part recited Indentures of the freed and discharged of and from every reservation or covenant made or entered into by the said The Washington Manufacturing Company as above re-  
 cited excepting the covenant in relation to the manu-

facture and sale of malt or spirituous liquors and particularly of and from every and all right of the said The Gloucester Land Company to open any street through any portion of the said grounds or to prohibit the erection thereon of any frame or wooden buildings so that the said Washington Manufacturing Company performing the covenant and agreement in the said Indenture contained respecting the manufacture and sale of malt or spirituous  
 10 liquors shall and may at all times hereafter forever freely peaceably and quietly have, hold and enjoy all and singular the premises granted by said above in part recited Indenture of the and every part thereof with their appurtenances without any mole-  
 station interruption or eviction of the said The Gloucester Land Company or its successors or of any other person or persons natural or corporate whom-  
 soever lawfully claiming or to claim by from or under it the said The Gloucester Land Company or any  
 20 of them or by or with its right or any of their act means consent or procurement In witness whereof the said the Gloucester Land Company hath caused these presents to be sealed with its common or corporate seal duly attested by its President the proper officer for that purpose, dated the day and year first herein written The Gloucester Land Company By  
 Geo. H. Boker Prest (corp. Seal) Attest Henry N. Paul Treasurer & Secretary Sealed and delivered in the presence of E. C. Isard Jr. H. C. Isard State of  
 Pennsylvania County of Philadelphia ss. Eleazar C. Isard Jr of the County of Camden & State of New  
 Jersey Being of full age being first duly sworn on his oath saith that he was personally present at the  
 30 execution of the foregoing indenture and saw George H. Boker President of the Gloucester Land Company affix the common or corporate seal of said company and attest the same as President of the said

corporation and that the said George H. Boker as such President thereupon declared that he delivered the said Indenture as the voluntary act and deed of the said Company and Henry N. Paul Treas. & Secretary of said Company join his signature and office of the same and this deponent at the same time subscribed his name thereto as a subscribing witness. And this deponent further saith that he is well acquainted with the common or corporate seal of the said company and knows that the seal affixed is the common or corporate seal of said company and that George H. Boker is President of said Company and is the proper officer to affix the seal of the said Company and to sign his name thereto and that Henry N. Paul is the Treasurer & Secretary of said Company, Eleazer C. Isard Jr Subscribed and sworn before me this fifteenth day of April 1886 Witness my hand and official seal Theo D. Rand A Commissioner of deeds of the state of New Jersey in Philadelphia. Pennsylvania (seal) Recorded April 24, 1886 at 10.45 A. M. by Robert F. S. Heath Register.

PHILIP H. FOWLER, Receiver  
 to  
 HENRY S. GROVE, et als  
 (1893) Between Philip H. Fowler Receiver of Washington Manufacturing Company appointed by the Court of Chancery of New Jersey party of the first part and Henry S. Grove of Philadelphia State of Pennsylvania William S. Blakeley of Chester State of Pennsylvania and George H. McFadden of Philadelphia in the State of Pennsylvania party of the second part, Witnesseth that whereas in and by an order or decree of the Court of Chancery of New

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Jersey on the twenty-seventh day of January eighteen hundred and ninety-two in a certain cause in said Court pending in which Zaviah West, Spencer M. Janney, Joseph A. Janney, William Verner, William R. Verner and Morris A. Janney are complainants and Washington Manufacturing Company a corporation heretofore organized and doing business under the laws of the State of New Jersey is defendant it was ordered among other things that the said Philip H. Fowler be appointed Receiver of the said Washington Manufacturing Company with the usual powers of Receivers in Chancery upon his taking the oath prescribed by law and giving bond as required by said order and whereas said receiver duly qualified as such receiver in accordance with said order and whereas by a certain other order of said Court made and entered in the Court aforesaid on the twenty-sixth day of April eighteen hundred and ninety-two it was ordered that said receiver proceed to sell the property of the said Washington Manufacturing Company the defendant Corporation covered by the mortgage bearing date the first day of August A. D. eighteen hundred and eighty-seven executed by said defendant corporation to Samuel W. Bell, Benjamin B. Comegys and Samuel H. Shipley as Trustees securing five hundred and fifty thousand dollars (\$550,000) clear of all encumbrances together with all the right, title and interest therein of the said Washington Manufacturing Company at public or private sale as in his discretion will tend to bring the best price for such property and shall bring the said money into this Court there to remain subject to the same liens and equities of all parties and interests as was the property before it was sold and to be disposed of as this Court by its decree should order and direct Provided that if he should sell at Public

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sale he should advertise said sale according to law by advertisements set up signed by his name as Receiver and by publication in three public newspapers printed and published two in the City of Camden in this State and one in the City of Philadelphia in the State of Pennsylvania, and in such other manner as he might deem advisable and mail a copy of his advertisement to each of the Trustees of said Mortgage The President and Directors of said corporation and the Creditors named in the schedule annexed to the Receiver's petition and such other creditors as shall have proved their claims before the receiver and after such sale make report thereof to the Chancellor and after his report of sale should have been confirmed by said Court make execute and deliver to the purchaser or purchasers of the said property good and sufficient conveyance in the law of the said property and of all the right title and interest of the said Receiver and of the said defendant Corporation therein and that such sale and conveyance or conveyances duly executed as aforesaid be valid and effectual as by said order now on file in the Clerk's office of the said Court of Chancery will more fully appear And whereas said Receiver in pursuance of said last named order did give public notice by advertisement according to law and the direction of said order and besides did mail a copy of the advertisement to each of the Trustees of said Mortgage and to the President and Directors of the said defendant corporation and to the creditors of the said defendant corporation respectively as far as they could be ascertained and at the time and place so appointed for said sale to wit: on Wednesday the twenty-first day of December eighteen hundred and ninety-two at the hour of twelve (12) o'clock noon on the premises at Gloucester City in the

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County of Camden said Receiver exposed for sale at public auction the said property and the highest and best price that was offered for the property hereinafter first described and mentioned was the sum of one hundred and six thousand dollars (\$106,000.00) and for the property secondly hereinafter described the sum of forty-five hundred dollars (\$4,500.00) and said sum in the opinion of the receiver being inadequate he publicly adjourned said sale until Friday January twentieth (20) A. D. eighteen hundred and ninety-three (1893) at the hour and place last aforesaid and caused notice and advertisement of said adjournment to be made in the same newspapers in which the original advertisement of sale was made and by notice in the same manner as required in the order for sale and on the last named date at the hour and place aforesaid did again expose said property for sale at public auction and the parties hereto of the second part bidding for the said two tracts of land in the aggregate one hundred and thirty-eight thousand eight hundred (\$138,800.00) dollars and they being the highest bidders therefor said property was then and there struck off and sold to the said party hereto of the second part their bids and offers being accepted and received subject to the approval of and confirmation by the Chancellor and whereas by an order of the Chancellor made and entered on the second day of March instant in the presence of the counsel of the respective parties representing the interests of all the parties and a large majority in interest of all creditors of the defendant corporation consenting to and acquiescing in said last named sale it appearing to the Chancellor that the offer and bid of the said party of the second part was the best price obtainable at the sale under the said order for sale as aforesaid it was ordered that

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the said bid and offer of the said party thereto of the second part aggregating the sum of one hundred and thirty eight thousand eight hundred dollars (\$138,800) be accepted and received and that said sale stand ratified and confirmed and that said Receiver do make execute and deliver to said party hereto of the second part in compliance with the aforesaid decree a good and sufficient conveyance in the law for said properties free and clear of and from all encumbrances upon their paying to the said Receiver the said sum of one hundred and thirty-eight thousand eight hundred dollars (\$138,800.00) and that the said conveyance when executed should be sufficient and valid in law for the conveyance of said properties as by the said order now on the files of the Clerk of the Court of Chancery will appear Now therefore in consideration of the premises and in obedience to said last mentioned order and for the purpose of giving effect to the same and in consideration of one hundred and thirty-eight thousand eight hundred dollars (\$138,800.00) lawful money of the United States of America in hand paid the receipt whereof is hereby acknowledged the said party of the first part has granted, bargained sold and conveyed and by these presents does grant bargain sell and convey unto the said party of the second part their heirs and assigns forever All those certain tracts of land and premises situate, lying and being in Gloucester City, County of Camden and State of New Jersey described as follows: First Beginning at the northwesterly corner of Ellis Street as laid out on the plan of Streets and lots of The Gloucester Land Company recorded in the Clerk's Office of the County of Camden and northerly line of Monmouth Street extended containing in front or breadth on said Ellis Street eight hundred and fifty feet and

extending of that width in length or depth westerly along the northerly line of said Monmouth Street and the southerly line of Mercer Street to low water mark in the River Delaware and as far into the Delaware River as the rights of the said Washington Manufacturing Company extend together with the wharves, mills, boiler house, picker houses, machine shops, carpenter shops, machines, smith's shop, store-house, barn, wash-house, dye-houses, dwellings buildings and structures of every kind and character, stacks, machinery, office, supply room, scales, engines, boilers, shafting, belting, pulleys, tools and implements of every description erected thereon therein containing or used in connection therewith together constituting and known as the Mills of Washington Manufacturing Company Being the same mills, machinery and portions of the tracts of land and premises and appurtenances granted and conveyed by "The Washington Manufacturing Company" to Washington Manufacturing Company by deed dated April 13th 1886 and recorded in the Register's office of Camden County in Book No. 123 of Deeds page 306 &c. Second Beginning at the Northwesterly corner of Monmouth Street and King Street as laid out on said plan thence westwardly along the northerly line of Monmouth Street one hundred and twenty-eight feet to the easterly side of Ellis Street; thence northwardly along the same four hundred feet to the southerly line of Hudson Street; thence easterly along the same one hundred and twenty-eight feet to the westerly side of King Street; thence southwardly along the same four hundred feet to the place of beginning. Being portion of the tracts of land premises and appurtenances granted and conveyed by "The Washington Manufacturing Company" to the said Washington Manufacturing Company by

deed dated April 15th, 1886 and recorded in the Register's office of Camden County in Book No. 123 of Deeds page 306 &c with all and singular the appurtenances and hereditaments clear of all encumbrances and all the estate right, title and interest claims and demand whatsoever in law or in equity of the party of the first part as such receiver as aforesaid or of the said Washington Manufacturing Company of in and to the above described premises with the hereditaments and appurtenances to have and to hold the same unto the said party of the second part their heirs and assigns forever In Witness Whereof the said party of the first part as such receiver as aforesaid has hereunto set his hand and seal the day and year first above written Philip H. Fowler Receiver (seal) Signed, sealed and delivered in the presence of Erasure "of" and insertion "to" 5th line 3d page Geo M Robeson Geo P Duryee State of New Jersey Camden County SS Be it Remembered that on this twenty-seventh day of March in the year of our Lord one thousand eight hundred and ninety-three before me the subscriber a Master in Chancery of said State personally appeared Philip H. Fowler Receiver of Washington Manufacturing Company who I am satisfied is the grantor mentioned in the above deed or conveyance and having first made known to him the contents thereof he acknowledged that he signed sealed and delivered the same as his voluntary act and deed as Receiver of said Washington Manufacturing Co. All of which is hereby certified Geo. P. Duryee M. C. of N. J. Rec. Mch. 27 1893 at 12.40 P. M. by Jas. Sickler Reg.

ARMSTRONG CORK COMPANY  
FOOT OF JEFFERSON STREET  
CAMDEN, N. J.

January 21, 1924.

Mr. Victor Gelineau, Director,  
Board of Commerce and Navigation,  
No. 1 Exchange Place, Jersey City, N. J.  
Dear Sir:—

Respecting the reclamation of the lands under water in front of the Argo Mills Property in Gloucester City, New Jersey, we desire to say that as the plans of construction and dredging for the marginal wharf have been approved by the Board of Commerce and Navigation we feel that the Board has no authority to withhold a permit upon the ground that the lands under water belong to the State, and before beginning the work this Company must acquire the same. 10

As hereto stated this Company claims that the right to reclaim and fill in the said lands exists by reason of an act of 1846, PL-20, incorporating the Gloucester Land Co. for the reason that this Company is the successor in title to said lands of the Gloucester Land Co. and now has the absolute right to do the work without purchasing the riparian lands from the State. 20

Therefore it is our purpose to proceed with the work of constructing and dredging under the plans as approved, without acquiring any of said lands from the State. 30

Very truly yours,  
ARMSTRONG CORK COMPANY.  
CHARLES W. RUSS.  
Works Manager.

ANSWER.

(Filed July 1, 1924.)

IN CHANCERY OF NEW JERSEY.

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Between  
 EDWARD L. KATZENBACH,  
 Attorney-General of the  
 State of New Jersey, In-  
 formant,  
*Complainant,*  
 and  
 ARMSTRONG CORK COMPANY,  
 a corporation,  
 20 *Defendant.*

On Bill, &c.  
Answer.

The defendant, a corporation of the State of Pennsylvania, duly authorized to transact business in New Jersey, by this answer:

1. Denies that the State of New Jersey is the owner in fee simple of the lands and premises described in paragraph 1 of the bill of complaint, but on the contrary avers that the defendant has a legal right to improve, fill in and reclaim the same as hereinafter set forth.

2. Denies that the lands and premises described in paragraph 1 of the complaint were irrevocably or

otherwise appropriated as in paragraph 2 of the complaint set forth.

3. Admits the allegations contained in paragraph 3 of the complaint.

4. Admits the allegations contained in paragraph 4 of the complaint.

5. Admits the allegations contained in paragraph 5 of the complaint. 10

6. Denies the allegations set forth in paragraph 6 of the complaint.

7. Admits the allegations contained in paragraph 7 of the complaint.

FIRST DEFENSE.

1. Pursuant to Chapter 123 of the laws of 1914, defendant presented to the Board of Commerce and Navigation plans for the improvement of its lands under water in front of its property in Gloucester, which plans included dredging and the construction of a marginal wharf to be erected thereon, and were duly approved by the action of said board on the 21st day of January, 1924. 20

2. Pursuant to the approval of said plans, defendant has the right to reclaim said lands, fill the same in and erect the structures in accordance therewith, without being obliged to obtain from the State either a grant or a lease for said lands under water. 30

## SECOND DEFENSE.

In accordance with the provisions of Chapter of the laws of 1891, P. L. 216, defendant has the right to fill in, occupy, possess and enjoy lands under water, extending to the exterior riparian lines established by the Board of Commerce and Navigation, and its predecessors, lying in front of and adjoining lands owned by the defendant, such right being  
 10 possessed by it, as the grantee and assignee of the Gloucester Land Company, upon which was conferred the right to fill in, occupy, possess and enjoy said lands pursuant to the Act of 1846, P. L., of that year, p. 20, more particularly set forth in paragraph 4 of the bill of complaint.

## FOURTH DEFENSE.

The defendant possesses the same right to fill in,  
 20 occupy, possess and enjoy the lands under water described in the complainant's bill as was conferred upon or vested in the Gloucester Land Company, pursuant to the Act of 1846 above referred to.

LEWIS STARR,  
*Solicitor for and of Counsel  
 with the Armstrong Cork  
 Company, Defendant.*

30

## TESTIMONY.

## IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill, &c. Testimony.	
EDWARD L. KATZENBACH, Attorney-General of the State of New Jersey,			10
<i>Complainant,</i>			
and			
ARMSTRONG CORK COMPANY, a corporation of New Jersey,	}		
<i>Defendant.</i>			

20

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(Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the tenth day of December, nineteen hundred and twenty-four, before HON. VIVIAN M. LEWIS, Vice-Chancellor.)

## APPEARANCES:

GAEDE & GAEDE, ESQS. (91 Washington Street, Hoboken), for the complainant;	30
LEWIS STARR, ESQ. (Camden, N. J.), for the defendant.	

Mr. Gaede: The Armstrong Cork Company are about to erect certain piers or walls opposite lands that they own at Gloucester; I think they have started their work. We have proof to offer on behalf of the State.

The Court: Put the map in.

Mr. Gaede: It is offered.

10

(Marked "Exhibit C1.")

Mr. Gaede: I desire to stipulate on the record that the Board of Commerce and Navigation approved the plans for the erection of certain piers on the lands opposite the lands of the Armstrong Cork Company. Judge Starr asked me to admit that. That is the fact.

20

Mr. Starr: The formal plans for the improvement were presented for approval, and they were approved by the Board. I offer in evidence the act to incorporate the Gloucester Land Company, which was approved February 16, 1846, and I have here copies of that act; I have here a copy of that, which can be marked as an exhibit, because, whatever rights we have are predicated on that charter. Also the Act of February 21, 1865, Pamphlet Laws, page 72.

30

(Marked "Exhibit D1.")

Mr. Gaede: No objection.

Mr. Starr: I also offer certified copy of a deed for the upland in front of which this improvement is intended to be put, dated the third of October,

1846, made by John Siter and wife and Samuel R. Simmons, to the Gloucester Land Company; it is recorded in the office of the Register of Deeds of Camden County, in Book E. of Deeds, page 60.

Mr. Gaede: No objection.

(Marked "Exhibit D2.")

Mr. Starr: The deed just offered in evidence is referred to in Section 4 of the act incorporating the Gloucester Land Company. 10

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DEFENSE.

MR. DAN ALBERTSON, being duly sworn, testified as follows:

20

Direct examination.

By Mr. Starr:

Q. Where do you reside at the present time?

A. 631 Hunter Street, Gloucester City, New Jersey.

Q. How old are you?

A. I was born in 1858, I am 66 years old.

Q. Do you know the allegation of what has been spoken of as the Argo Mills property in Gloucester? 30

A. Yes, sir, I have known it ever since way back in the seventies.

Q. Did you know it when it was owned and operated by the Washington Manufacturing Company?

A. Yes, sir, that is the name it always went by.

Q. Now, I show you a map which has been introduced in evidence and marked. I show you this map, marked "Exhibit C1" and call your attention to the word "Pier?"

A. Yes, sir.

Q. On the northerly side of the property in front of the Argo Mills?

A. Yes, sir.

10 Q. Do you know when that pier was built, about when?

A. No, sir, I looked my father's records up, but I could only get back to about 1876, but he had a proposal to repair this pier at that time.

Q. How long have you known of the existence of that pier?

A. In the seventies I worked on this pier.

Q. On that pier built prior to the first of January, 1892?

A. Yes, sir; I worked on it in the seventies.

20

Cross-examination.

By Mr. Gaede:

Q. Was the pier, as erected today, the pier that existed prior to 1892, as far as the dimensions and locations are concerned?

A. Only by being repaired, taking logs off and putting them back again.

30 Q. When did you last see this pier?

A. I looked over it the other day to make my mind sure that it was the same as it was in those days; it has not been altered in the way of lengthening or shortening the width of it.

Q. Do you say you live in Gloucester City?

A. Yes, sir.

Q. Since 1892, January, 1892, to the present time, how many times have you seen this pier referred to; how many times during that period of time from January 1, 1892, to the present time, have you seen this particular pier?

A. Mostly every day. There has been no alterations on this pier.

Q. Has it been enlarged in any way since 1892?

A. No, sir, it is just the same as when I worked 10 on it, except as I say, by being repaired.

Q. It was repaired but it was not extended, as far as dimensions were concerned?

A. That is correct.

Re-direct examination.

By Mr. Starr:

Q. How long have you lived in Gloucester City 20 continuously?

A. All my life.

Mr. Starr: That is our case. We rest.

Mr. Gaede: I desire to state our position and the points involved.

The Court: There has been a license granted to the defendant to use and occupy this property; is that right? 30

Mr. Gaede: No, sir. There was a license granted under the legislative act in 1846 to the Gloucester Land Company, and it is through the devolution of

that title down to the Armstrong Cork Company that they claim the right to reclaim and refit under the original legislative licenses granted in 1846. They apparently own between Monmouth Street and Mercer Street, as shown on this map, and claim the right to go out at any point of the high water mark under this legislative license. The question before the Court is really based on whether or not the rights under this legislative license passed from the  
 10 Gloucester Land Company to its successors in title; and we say it does not give them the right.

The Court: You had better get all the papers and send me a memorandum.

Mr. Starr: I have prepared a skeleton of a brief, but I did not write it up, because I did not know what points Mr. Gaede would make.

20 The Court: Send me all the papers with the deeds, and I will go over them; I think that is the best way to dispose of it.

Mr. Starr: That is satisfactory to us.

Mr. Gaede: I should be very glad to submit a brief.

30 (Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the second day of February, nineteen hundred and twenty-five, before HON. VIVIAN M. LEWIS, Vice-Chancellor.)

## APPEARANCES:

HENRY J. GAEDE, Esq. (Washington Street, Hoboken, N. J.), appeared as special counsel on behalf of the complainant;

L. EDWARD HERMANN, Esq., appeared in place of Lewis Starr, Esq., counsel for defendant.

FRANK BUTLER, being duly sworn, testified as follows: 10

Direct examination.

By Mr. Hermann:

Q. Where do you reside, Mr. Butler?

A. Gloucester City, New Jersey.

Q. Were you ever employed by the Argo Mills? 20

A. Yes, sir, as chief engineer.

Q. When?

A. From 1892 until it was sold; I was there from 1892; I was employed by the Argo Mills from 1892; I was first employed by the Washington Manufacturing Company in 1882.

Q. I show you a blueprint, being a copy of "Exhibit": title, "Survey, Haines and Curtis 1920." I show you a delineation marked "Pier;" what is that? 30

A. The main wharf belonging to the mill; that was erected before 1882.

Q. I show you delineation marked "Open and fill;" when was that fill erected?

A. This was erected about 1896 or 1897.

Q. The part adjoining that, when was that erected?

A. This is the opening between the two piers, this pier was erected before 1882.

Mr. Gaede: If I may interrupt—when he refers to a pier—now this appears to be marked “Fill,” so don’t confuse it with the actual pier.

Q. This part that you now refer to, marked “Fill,” which is further removed from the mark of the pier line, what is that, what is it used for?

10 A. Pilings, and filled with stone, used for a suction.

Q. And back of that is another delineation marked “Wood box;” what is that?

A. That is just a box over the pipe, 75 feet inland.

Q. From the point of that wood box there is another delineation marked “Suction pipe;” what is that?

20 A. That runs to this pier, and from the pier into the mill.

Q. From what you have testified, was the part marked “Fill,” nearest the shed, the wood box and the suction box, all in place prior to 1892?

A. These two suction pipes that are there now were put in there about 1895 or 1896, but there was another suction pipe which is there still, but abandoned, an 8-inch suction pipe that run to this pier; the 8-inch pipe was there before 1882.

30 Cross-examination.

By Mr. Gaede:

Q. How long before 1882 was that suction pipe that you have just referred to, placed there?

A. I don’t know; that was there before I went

there; I could not say how long; it has been there as long as I remember.

Q. Then that part marked “Fill” was there in 1882?

A. Yes, sir.

Q. But you don’t know how long prior thereto?

A. No, sir.

Q. I call your attention to the map; it says here, “Line of fill;” do you recall when the shore line was filled in?

10 A. It was filled in gradually from the time I went there; when I first went there, there was water all along here; all along the back part here; from the back of the mill all the way out to the channel.

Q. Designate what you mean is the mill.

A. This is the line.

Q. You are pointing to the old bulkhead line and New Jersey Board of Commerce and Navigation bulkhead line?

20 A. Yes, sir.

Q. So, in 1882, the water was up to that line?

A. Yes, sir.

Q. Since that time it has been gradually filled in?

A. It is filled in to here now. (Indicating low water mark.)

Q. But at high water, the water extends back to what appears to be the high water mark of 1920, on this map?

A. Yes, sir.

Q. I show you on the north portion of the property where there is a pier; do you recall when that pier was built?

A. No, sir, it was built when I came there. Now, this was in here before 1882. (Indicating the main wharf.)

Q. I call your attention to about the middle of the

property at the high water line; there appears on this map a 36-inch pipe?

A. A 36-inch city sewer.

Q. Was that put in there by the city?

A. Yes, sir.

Q. Over here to the south part of the property at the high water line there appears to be a drain extending out?

A. That was another sewer that belonged to the  
10 property, a private sewer, but that has been cut off now.

Mr. Gaede: I will offer at this time—I desire to have marked in evidence the original map of the Armstrong Cork Company to the directors of the Board of Commerce and Navigation.

(Marked “Exhibit G2½.”)

20

HARRIS C. POWELL, being duly sworn, testified as follows:

Direct examination.

By Mr. Hermann:

Q. You are the tax collector of Gloucester City?

30 A. Yes, sir.

Q. And have been for how long?

A. Thirteen years.

Q. Have you made an examination of the books with respect to the taxation of riparian rights of the Argo Mills property?

A. Yes, sir.

Q. When were the riparian rights first assessed there?

A. 1917.

Q. Just read into the record the amount that has been paid year by year since 1918?

Mr. Gaede: Objected to as irrelevant and immaterial.

The Court: Objection overruled.

10

A. Tax paid, year 1917, \$663.38; year 1918, \$687.-30; year 1919, \$635.00 even; year 1920, \$912.00 even; 1921, \$999.00 even; year 1922, \$1,044.00 even.

Q. These riparian rights were assessed separately from the rest of the property?

A. Yes, sir.

Q. And in addition to that, there was an assessment made for the lands, buildings, wharf and shed?

A. Yes, sir.

20

Mr. Hermann: I offer in evidence tax bill for 1920.

(Marked “Exhibit H1½” and “Exhibit H2½.”)

Cross-examination.

By Mr. Gaede:

Q. When you tax riparian rights, what have you  
taxed there—the land or what?

A. I do the collecting only.

Q. Then you cannot tell us what those tax bills mean by riparian rights?

A. No, sir, I do the collecting only.

30

(Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the sixth day of June, nineteen hundred and twenty-seven, before HON. VIVIAN M. LEWIS, Vice-Chancellor.

## APPEARANCES:

- 10 HENRY J. GAEDE, Esq., for the complainant;  
L. EDWARD HERRMANN, Esq., for the defendant.

## CONTINUATION.

FRANK BUTLER, being duly sworn, testified as follows:

- 20 Direct examination.

By Mr. Herrmann:

Q. In addition to the work that was done by either the Argo Mills or the Washington Company on the land in front of the upland, the land under water, there was a pier built, and then there were suction pipes laid out to another pier about 50 feet square?

- 30 A. The Washington Manufacturing Company built the first, pier 50 feet square; there was about five feet of water at the back of the buildings at that time. That has all been filled in up to the pier since that time, that is, during the manufacturing company's ownership and the Argo Pier.

Q. The leading pier I now refer to or call attention to, were the waters of the Delaware ever dredged adjoining that pier?

A. Several different times.

Q. To what width or area was the dredging?

A. In the dock alongside of the wharf it was dredged about 50 feet wide, out to the channel—the same in front of the wharf.

Q. Do you know whether any of the other lands under the water were dredged outside of the land immediately adjoining the wharf?

A. Around the pier; that is where the suction line run to from the pumps. 10

Q. That pier, you say, was how great in area?

A. The first pier was 50 feet square, and the next one 25 feet square, and was built by the Argo Mills Company.

Q. What area around that pier was dredged?

A. Well, I could not say exactly; I judge 50 feet all around the pier, and in between the two piers.

Q. What do you mean?

A. There was one pier 50 feet square first; and then this new pier was built 25 feet outside of the old one, which is 25 feet square. 20

Q. Are both piers present today?

A. Yes, sir, both are there today.

Q. In between both piers was entirely dredged?

A. Yes, sir.

Q. And outside how far?

A. All around the outside pier—at least 50 feet in area.

Cross-examination. 30

By Mr. Gaede:

Q. What are these two piers used for?

A. The suction line from the pumps.

Q. Do those piers extend above the water?

A. Yes, sir, about five feet above high water.

Q. What are they constructed of?

A. Of timbers.

Q. What was the purpose of dredging 50 feet around these piers?

A. To get water there for their pumps.

Q. Does this pipe also run from the shore out to these piers?

A. Yes, sir.

10 Q. Now, the pier that you refer to, is the leading pier, that is, the wharf that is shown on the map that we had previously at the hearing?

A. Yes, sir.

Q. How do you know it was dredged 50 feet around this pier or dock, loading pier?

A. I supervised the job; I measured it.

Q. At that time?

A. Yes, sir.

Q. And when was this dredging done?

20 A. I could not tell you the exact time; it was done at different times from 1895 up to 1910, I should judge.

Q. When, to your recollection, was the first time that there was any dredging around this dock?

A. When the first pier was put in by Argo Mills Company—that was somewhere around 1900.

Q. Was that the first dredging that you recollect?

A. By the Argo Mills Company, yes.

Q. When was it first dredged around this dock to your recollection, by any company?

30 A. 1882—a new wharf was built between the street and the mill wharf off way out to the end of the old wharf.

Q. And the dredgings took place at that time?

A. Yes, sir.

Q. To what extent?

A. The whole dock was dredged and filled in the new wharf that they built; that was in 1882.

Q. At that time did they do any dredging on the line of the wharf?

A. Yes, sir, all across the dock, that is, from the mill wharf to the city wharf.

Q. What area does that embrace?

A. I should judge that is about 110 or 115 feet.

Q. On which side of the dock?

A. All of the dock—that is, on the north side of the wharf.

Q. And you think they dredged in 1882 on the north side of the wharf to the extent of 110 feet northward of the wharf? 10

A. Yes, sir, that is, over to the city wharf; the whole dock was dredged at that time to fill in this new wharf.

Q. What was the purpose of the dredging?

A. To fill in the new wharf.

Q. They used the sand or gravel, whatever it is they got from the dredgings, and used that for the filling in of the wharf? 20

A. Yes, sir, they dredged it to give more water for the boats to come in; it was dredged about nine feet.

Q. Do you recall what water was there alongside of this dock before the dredging, that is, the depth of the water?

A. It was not over two feet into the new waters.

Q. And when was the last time it was dredged?

A. Around 1910, I think, but that was only dredged about fifty feet wide at that time, along- 30 side of the wharf, and from the end of the wharf to the channel.

Q. To the extent of about 50 feet?

A. The side of the wharf was dredged about fifty feet.

Q. That was for the purpose of deepening the wharf to bring the boats into this dock?

A. Yes, sir.

Re-direct examination.

By Mr. Hermann:

Q. When they dredged it to the extent of 110 feet before that, was that to admit boats?

10 A. That was to admit boats and also fill in the new wharf.

Mr. Gaede: I have the decree which I prepared at the time your Honor decided this case.

The Court: I think I ought to have this testimony before I sign the decree.

MEMORANDUM OPINION.

(Filed February 24, 1926.)

IN CHANCERY OF NEW JERSEY.

10

Between

EDWARD L. KATZENBACH, Attorney-General of the State of New Jersey, <i>Informant,</i>	}	Memorandum Opinion.
and		
ARMSTRONG CORK COMPANY, <i>Defendant.</i>	}	

10

ON PLEADINGS AND PROOFS.

20

MR. HENRY J. GAEDE, Deputy Attorney-General  
for Edward L. Katzenbach, Attorney-General  
of the State of New Jersey, Informant;  
MR. LEWIS STARR and MR. L. EDWARD HERRMANN,  
for the defendant.

30

LEWIS, V.-C.:

This is a bill to restrain the defendant from proceeding with the reclamation and improvement of certain riparian lands, of which it claims to be the

owner, in accordance with the plans covering the contemplated improvements which have been approved by the Board of Commerce and Navigation of this State. Notwithstanding such approval, however, the board contends that the defendant has no title to certain portions of the lands upon which the proposed improvements are to be constructed; and insists that title thereto is in the State; and that the defendant must now acquire, from the State, 10 either by grant or lease, and for an adequate consideration, the right to occupy, possess and use those disputed portions. The defendant, on the other hand, insists that it is not obliged to purchase or lease from the State, at this time, the lands in dispute; and claims that it has the absolute right to reclaim and occupy and use them pursuant to the approval of the plans, as the successor in title, by various mesne conveyances of the Gloucester Land Company, a corporation formed by the Act of the 20 Legislature of New Jersey of February 16, 1846 (P. L. 1846, p. 20).

Prior to 1846 a group of men were interested in developing Gloucester; and they had acquired a large area of land in that vicinity, bordering on the Delaware River, and which appears to have been held in trust for them by Siter and Simmons, two of their number. As contemplated by the act of incorporation of the Gloucester Land Company, Siter and Simmons conveyed the various tracts of land 30 which they so held, to the land company, including the upland adjacent to the tract involved in the present dispute. The land company, after its incorporation, in turn conveyed the same to The Washington Manufacturing Company, a corporation of the State of New Jersey, which held them until 1892, when it went into the hands of a receiver, who later conveyed the said lands and premises to Henry

S. Grove, William S. Blakeley and George H. McFadden. In 1893 they conveyed the same to the Argo Mills Company, a New Jersey corporation. In 1920, the Argo Mills Company conveyed to Frank L. Hummel, Trustee; and on November 20, 1923, Hummel conveyed to the defendant by a deed, which contained, among other things, the recital:

“Containing in front or breadth on said Ellis Street eight hundred and fifty feet, and extending of that width in length or depth Westwardly 10 along the Northerly line of Monmouth Street, and the Southerly line of Mercer Street to low water mark in the River Delaware, and so far into the Delaware River as the rights of said party of the first part extend. \* \* \* Together with the right, privilege and license now vested in said party of the first part to exclude tide waters of the Delaware River by filling in, reclaiming or otherwise improving the lands 20 under water in said river in front of the above premises, and to appropriate the said land to its or their exclusive use.”

The evidence shows that certain structures had existed on these lands since at least about 1870; and that the pier, as it exists at this time, is the same as was erected and existed at least prior to 1882, except certain portions thereof which were completed about 1886 or 1887, and that it was connected with a suction pipe running into the shore. 30 It also shows that the dock, according to the map of Haynes and Sherman, extends riverward of the low water mark.

It is conceded by the Attorney-General that any reclamation made by the owners of the upland adjoining the lands under water in question, vested in them an undisturbable right as far as such reclam-

ation took place within proper limits, and that the high-water mark, as shown on the map of Haynes and Sherman, offered in evidence in these proceedings, must now be taken to be the limit of the State's rights, as it appears from the testimony that the fill was made to the present high-water line a considerable time prior to 1891.

10 The legislative grant is to be strictly construed therefore, narrows itself down to the right of the defendant to reclaim and improve at this time, without the grant or lease of the State, those portions of the lands in controversy which have not, heretofore, been actually reclaimed, filled in or built upon. And the determination of this point depends upon the construction to be given the grant to the Gloucester Land Company by its charter of 1846, in conjunction with the then existing local usage respecting the rights of the abutting owner, and the effect thereon of subsequent legislation relating thereto.

20 *Bell v. Gough*, 23 N. J. Law, 624.

Section 5 of the Act of 1846 provides that the said company

30 "Shall have liberty to fill up, occupy, possess and enjoy all lands covered with water fronting and adjoining the premises that may now be owned or may hereafter be purchased by them, and may construct thereon wharves, harbours, piers, slips or other structures necessary for commercial and shipping purposes."

The legislative grant is to be strictly construed and its general terms should not be extended to include specific rights not clearly included within its language.

*Morris Canal, &c. Co. v. C. R. R. Co.*, 16 N. J. Eq. 419;

*Townsend v. Brown*, 24 N. J. Law, 80-87;  
*McCran v. Erie R. R. Co.*, 95 N. J. Eq., 653-656;  
*New Jersey Zinc Co. v. Morris Canal Co.*, 44 N. J. Eq., 398.

In my opinion, the right acquired by The Gloucester Land Company to reclaim the riparian lands adjacent to its upland, by its charter of 1846, and its like apparent common law or customary right, was a mere license or privilege or "liberty," which was subject to withdrawal or revocation by the State, if not previously exercised or acted upon by actual reclamation improvements; and that there has been a specific appropriation by the legislature of such portions of the lands involved in this suit as had not been actually reclaimed or otherwise improved or built upon at the time of the passage of the Act of 1891 (P. L. 1891, p. 216), which provides, in part, that "without the grant or permission of the Riparian Commissioners no person or corporation shall fill in, build upon, or make any erection on, or reclaim any of the lands under the tide waters of this State."

P. L. 1894, p. 123;

*Cons. of N. J.*, Art. XIV, Sec. 7, par. 6;

*Henderson v. Atlantic City*, 64 N. J. Eq., 583;

*Stevens v. Paterson Railway*, 34 N. J. L., p. 532.

30 It follows, therefore, that the bill of the Attorney-General, insofar as those hitherto unreclaimed portions of the lands in controversy are concerned, must be sustained; and I will advise a decree accordingly.

DECREE.

(Filed July 7, 1927.)

IN CHANCERY OF NEW JERSEY.

10

Between  
 EDWARD L. KATZENBACH,  
 Attorney-General of the  
 State of New Jersey,  
*Complainant,*  
 and  
 ARMSTRONG CORK COMPANY,  
*Defendant.*

Information.  
 Decree.

20

This cause, coming on to be heard in the presence of Edward L. Katzenbach, Attorney-General of the State of New Jersey, solicitor and of counsel of complainant, and L. Edward Hermann and Lewis Starr, solicitors and of counsel of the defendant, and the Court having examined the pleadings, and having taken proof orally and in open court, and heard and considered the arguments of counsel thereon.

30

And it appearing to the Court that the defendant, Armstrong Cork Company, proposes to enter in and upon the riparian lands described in the bill of complaint, for the purpose of dredging same and erecting a wharf or wharves thereon without first having purchased or leased same from the State of New Jersey.

And the Court being of the opinion that the defendant, Armstrong Cork Company, as successor in title to the lands formerly of the Gloucester Land Company as described in the bill of complaint herein, have no rights in said lands under water described in said bill of complaint, riverward of the high-water mark as shown on the map thereof, made by Haynes & Sherman, except to such part thereof as was actually reclaimed or built upon within proper limits prior to the passage of the Act of 1891 (P. L. 1891, p. 216).

10

It is on this sixth day of July, nineteen hundred and twenty-six, ordered, adjudged and decreed that the said defendant, Armstrong Cork Company, and its agents, servants and employees, and each and every one of them, be and they are hereby enjoined and commanded henceforth and forever to desist and refrain from using or permitting to be used such portions of the riparian lands which lie under tide water of the Delaware River, lying adjacent to the City of Gloucester, Camden County, New Jersey, below or riverward of the high-water mark as shown by the map of Haynes & Sherman between the lines of Monmouth Street and Mercer Street, projected into said river, or from dredging such lands or erecting wharves or other structures thereon, excepting, however, such part thereof as were actually reclaimed or built upon prior to the passage of said Act of 1891.

20

E. R. WALKER,

30

Respectfully advised.

VIVIAN M. LEWIS,

V. C.

PETITION OF APPEAL.

(Filed August 19, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

Between  
 EDWARD L. KATZENBACH,  
 Attorney-General of the  
 State of New Jersey,  
*Complainant-Respondent,*  
 and  
 ARMSTRONG CORK COMPANY,  
*Defendant-Appellant.* } Petition of Appeal.

20

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

The humble petition of the Armstrong Cork Company, the appellant in the above-stated cause, respectfully shows that:

30

1. Your petitioner finds itself aggrieved by a final decree made in the Court of Chancery, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the sixth day of July, 1927, wherein the said Edward L. Katzenbach, Attorney-General of the State of New Jersey, was complainant and your petitioner was defendant, in this respect, to wit:

That the said Chancellor ordered that the defendant, Armstrong Cork Company, and its agents, servants and employees, and each and every one of them, be and they are hereby enjoined and commanded henceforth and forever to desist and refrain from using or permitting to be used such portions of the riparian lands which lie under tide water of the Delaware River, lying adjacent to the City of Gloucester, Camden County, New Jersey, below or riverward of the high-water mark as shown by the map of Haynes & Sherman between the lines of Monmouth Street and Mercer Street, projected into said river, or from dredging such lands or erecting wharves or other structures thereon, excepting, however, such part thereof as were actually reclaimed or built upon prior to the passage of said Act of 1891.

2. Your petitioner humbly appeals from that part of said decree which the Chancellor decrees as aforesaid, upon the ground that the same is erroneous in that said Chancellor should have held that the complainant was not entitled to the relief prayed for in the information presented therein and that this appellant should not have been restrained from using, or permitting to be used, such portions of the riparian lands which lie under the tide water of the River Delaware lying adjacent to the City of Gloucester City, County of Camden, New Jersey, below and riverward of the high-water mark as shown by the map of Haines & Sherman, between the lines of Monmouth Street and Mercer Street, projected into said river, or from dredging said lands or erecting wharves and other structures thereon, and that it should have been found by the said Chancellor that the defendant had the right to

use the lands and premises described in the complainant's bill and to dredge same and erect wharves and other structures thereon.

Your petitioner, therefore, prays that the said final decree of the Chancellor may be, in the particulars aforesaid, 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.

10 STARR, SUMMERILL & LLOYD,  
*Solicitors of Appellant.*  
LEWIS STARR,  
*Of Counsel.*

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ANSWER TO PETITION OF APPEAL.  
NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between	}	On Appeal from the Court of Chancery. Answer to Petition of Appeal. 10
EDWARD L. KATZENBACH, Attorney-General of the State of New Jersey, <i>Complainant-Res-</i>		
<i>pondent,</i>		
and		
ARMSTRONG CORK COMPANY, <i>Defendant-Appellant.</i>		

The answer of Edward L. Katzenbach, Attorney-General of the State of New Jersey, the above-named appellee, to the petition of appeal of Armstrong Cork Company, the above-named appellant. 20

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was on July 6th, 1927, made and entered in the Court of Chancery of New Jersey in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said appeal this appellee begs leave to refer thereto when the same shall be produced. 30

This appellee is advised and believes that the said decree is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

EDWARD L. KATZENBACH,  
*Attorney-General of New Jersey,*  
HENRY J. GAEDE,  
*Deputy Attorney-General,*  
*Solicitor for and of Counsel with*  
*Appellee.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between  
EDWARD L. KATZENBACH, Attorney-General of the  
State of New Jersey,  
*Informant-Respondent,*  
and  
ARMSTRONG CORK COMPANY,  
*Defendant-Appellant.*

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ON APPEAL FROM CHANCERY.

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BRIEF ON BEHALF OF THE APPELLANT.

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STATEMENT OF THE CASE.

This is an appeal from a final decree entered in the Court of Chancery on July 6, 1927, restraining the defendant from making use of certain riparian lands, which lie under the tide waters of the Delaware River adjacent to the property owned by the defendant in Gloucester City, in this State.

The information is filed upon the theory that the lands, which the defendant seeks to make use of, belong to the State, while the contention of the defendant is that it has the right to use these lands pursuant to a Legislative license to the Gloucester

Land Company, in accordance with an Act incorporating the latter, passed February 16, 1846. The defendant claims to be the possessor of the rights conferred by said Act by various conveyances to it made by the Gloucester Land and intermediate owners.

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FACTS.

There is no serious dispute with reference to the facts of this case.

The defendant is the owner of land in Gloucester City, by virtue of a deed dated November 20, 1923, made by Frank L. Hummel, trustee, to it, in which the property conveyed is described as follows (C. p. 15, *et seq*):

ALL those certain lots or parcels of land and premises situate in the City of Gloucester City in the County of Camden and State of New Jersey described as follows:

NO. 1. BEGINNING at the Northwest corner of Ellis Street as laid out on plan of streets and lots of Gloucester Land Company on file in the Registers Office of Camden County and the Northerly line of Monmouth Street extended containing in front or breadth on said Ellis Street eight hundred and fifty feet and extending of that width in *length* or depth westwardly along the northerly line of Monmouth Street and the southerly line of Mercer Street to low water Mark in the River Delaware and so far into the Delaware River as the rights of said party of the first part extend Together with the wharves mills boiler house power house picker houses machine shops carpenter shops and buildings of every kind thereon erected and boilers engines and other machinery and equipment contained therein and to-

gether with the right privilege and license now vested in said party of the first part to exclude the tide waters of the Delaware River by filling in reclaiming or otherwise improveing the lands under water in said River in front of the above premises and to appropriate the said land to its or their exclusive use.

In 1846, the Gloucester Land Company, a corporation of New Jersey, was the owner of land in Gloucester City, aforesaid, bordering on the Delaware River, of which the premises conveyed to the defendant was a part.

The Land Company was incorporated by Act of the Legislature of New Jersey in 1846, passed February 16, 1846, P. L. of that year, p. 20. In order to show the entire purpose of the act of incorporation, the same is here given in full (Exhibit D1):

AN ACT TO INCORPORATE THE  
GLOUCESTER LAND COMPANY.

WHEREAS, it is represented to the legislature, that John Rodman Paul, Callender Price, Thomas S. Newlin, Benjamin Marshall, John Siter, Richard Price, Joseph Price, Junior, Richard Ashhurst, Lewis R. Ashhurst, John Ashhurst, John R. Worrell, James C. Worrell, Gideon Scull, David S. Brown, Robert F. Walsh, Benjamin T. Tredick, William Woodnutt, Charles W. Churchman, Mordecai D. Lewis, Robert Wharton Sykes, Thomas Sparks and Samuel R. Simmons are the owners of a tract of land, containing about one hundred and fifty acres, situated on the river Delaware, at Gloucester Point, in the township of Union, in the county of Camden, New Jersey, and have laid out the same into building lots, streets, and sites for manufacturing purposes, with the view of erecting a town, to

be called "Gloucester;" and already there have been established two large steam cotton manufactories, and other manufactories, and lots have been sold, upon which about one hundred substantial stores and dwelling-houses are now built, and they intend to sell building lots to all who are disposed to purchase in said town; and whereas it is indispensable that no obstacle should exist to the making of good and sufficient titles for said lots, by reason of death or other causes affecting the individuals now owning the said land—therefore,

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, that John Rodman Paul, Callender Price, Thomas S. Newlin, Benjamin Marshall, John Siter, Richard Price, Joseph Price, Junior, Richard Ashhurst, Lewis R. Ashhurst, John Ashhurst, John R. Worrell, James C. Worrell, Gideon Scull, David S. Brown, Robert F. Walsh, Benjamin T. Tredick, William Woodnutt, Charles W. Churchman, Mordecai D. Lewis, Robert Wharton Sykes, Thomas Sparks, Samuel R. Simmons, and their successors, shall be, and they are hereby incorporated and made a body politic and corporate, in fact and in name, by the name of "the Gloucester Land Company;" and, by that name, shall have perpetual succession, and be capable in law of purchasing, for the use of said company, and of holding and conveying such real and personal property as may be necessary for the objects of the incorporation; may sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law and equity; and may receive and make all deeds, conveyances, grants, transfers, covenants, contracts, agreements, and bargains, whatsoever, necessary for the said purposes; and may have and use a common seal, which they shall have power to renew and alter at pleasure;

and, generally, do any act or thing necessary to carry into effect the provisions of this act, and promote the objects and designs of said Company, as authorized by this act.

2. AND BE IT ENACTED, That the stockholders of said company shall meet annually, on the second Monday of May, at Gloucester, two weeks' previous notice of the time and place of meeting having been given in a newspaper published in the County of Camden, and shall then and there proceed to elect, by ballot, such number of directors as their by-laws shall direct, to serve for the term of one year and until others are chosen in their places; and said election shall be made by such of the stockholders of said company as shall attend for that purpose, either in person or by proxy, each share of stock to entitle the holder thereof to one vote; the directors so chosen shall elect one of their number to be president of the board of directors of said company, and, in case of vacancy or absence, the office shall be filled by such person or persons as the remainder of the directors, or a majority of them, may appoint; if an election shall not be held at the time so appointed, it may take place at any future time, on the like notice.

3. AND BE IT ENACTED, That the stockholders may meet at any time after the passage of this act (due notice in writing having been previously given to each stockholder), for the purpose of organizing said company, and of electing directors, to hold their office until the annual meeting on the second Monday of May next, or until others shall be chosen in their places.

4. AND BE IT ENACTED, That so soon as the said company shall be organized, the said John Siter and Samuel R. Simmons, who now hold the same in trust for the owners, shall convey to the said com-

pany, by their corporate name, the residue of said lands unsold, and shall assign and transfer to the said company all bonds, mortgages, or other securities held by them, and pay over all moneys received by them for lands sold, first deducting therefrom all costs and expenses attending such sales; and the said company are hereby authorized to purchase and hold such lands adjoining the above described premises, which, by forming angles and projections into their plot, mar the regularity and beauty of the whole, and such lands as may be necessary to reclaim portions of their property now flooded by the tide; provided the lands to be purchased shall not exceed thirty acres in the whole.

5. AND BE IT ENACTED, that the said company is authorized to improve the above described premises, and any other lands hereby authorized to be purchased, by laying out the same in lots, streets, squares, blocks, lanes, alleys, or other divisions, and levelling, raising and grading streets; and they shall have liberty to fill up, occupy, possess, and enjoy all lands covered with water fronting and adjoining the premises, that may now be owned, or may hereafter be purchased by them, and may construct thereon wharves, harbours, piers, slips, or other structures necessary for commercial and shipping purposes.

6. AND BE IT ENACTED, That the directors shall have full power to make by-laws, and to appoint such officers and agents as they shall deem expedient for the well conducting and transacting the business of the company, to declare and provide for the payment of dividends to the stockholders, and in general to superintend the business and concerns of the company; provided such by-laws shall not be repugnant to the constitution and laws of this state or of the United States.

7. AND BE IT ENACTED, That the capital stock

of the said company shall be fifty thousand dollars, to be divided into shares of one thousand dollars each, and shall be deemed personal property, transferable only on the books of the company, in such manner as the by-laws shall direct; and nothing herein contained shall be construed to restrict the legislature from imposing any tax upon the property of the company; and no part of the capital stock shall be used for banking purposes, or for any other purposes not clearly indicated by this act.

8. AND BE IT ENACTED, That the deeds to be made by the company, for property hereafter to be sold, shall each contain a clause prohibiting the making, selling, or vending malt or spirituous liquor, similar to the clause contained in the deeds for lots heretofore sold by the said John Siter and Samuel R. Simmons.

9. AND BE IT ENACTED, That the proceeds of all sales of lands shall be invested in bonds and mortgages, or other securities, until they shall amount to fifty thousand dollars, after which the interest arising from said investment, together with the further proceeds of the sales of lots, may be divided among the stockholders, until the said land is all disposed of, after which the capital stock shall be divided among the stockholders, and this charter shall cease and determine; provided no division of the capital stock shall be made until all the debts of said company shall be paid.

10. AND BE IT ENACTED, That this act shall not continue in force longer than twenty years, and the legislature may alter, modify, or repeal the same, whenever in their opinion the public good requires it.

Approved February 16, 1846.

(Charter extended 30 years. Act of February 21, 1865, page 72.)

The corporate existence of the land company was extended a further term of thirty years by Act approved February 21, 1865, P. L. of that year, p. 72.

Such existence was further extended twenty years by certificate filed February 4, 1896.

As contemplated by the act of incorporation of the land company, Siter and Simmons, two of the incorporators mentioned therein, who evidently held the legal title to the lands in question, as trustees, for the other incorporators, made a conveyance of various tracts of land in Gloucester City, including the one in which we are concerned, to the land company, by deed dated October 3, 1846, recorded in the clerk's office of Camden County, in Book E of Deeds, page 60, as will appear from the recitals in the deed from the land company to The Washington Manufacturing Company, hereinafter referred to. (Exhibit D2.)

The land company conveyed the premises involved in this suit, *inter alia*, to The Washington Manufacturing Company, by deed dated December 1, 1846, recorded January 13, 1847, in which the premises granted were described as follows (C. p. 24, l. 15, et seq.):

ALL that certain Block or piece of ground situate at Gloucester Point in the Township of Union in the County of Camden and State of New Jersey and which according to the draught or plan of lots and streets laid out by "The Gloucester Land Company" and recorded in the Clerk's office of the said County of Camden is bounded as follows, viz.: BEGINNING in the westerly line of Ellis Street as laid out on said Plan at the point where the northerly line of Monmouth Street extended intersects said westerly line of Ellis Street and from thence extending westwardly along the northerly line of Monmouth Street extended to low water mark of the River Delaware

thence up the said River bounding thereon by low water mark the several courses and distances thereof to the southerly line of Mercer Street extended thence eastwardly along the southerly line of Mercer Street to the corner of Mercer and Ellis Streets thence southwardly along the westerly line of Ellis Street to the place of beginning. \* \* \* \* \* Together with all and singular the improvements streets ways water courses rights liberties privileges hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversions and remainders rents issues and profits thereof and of ever part and parcel thereof. And all the estate right title interest property possession claim and demand whatsoever of the said "The Gloucester Land Company" in law equity or otherwise howsoever of in and to the same and every part and parcel thereof To have and to hold the said four blocks or pieces of ground herein above described hereditaments and premises hereby granted or mentioned and intended so to be with the appurtenances unto the said "The Washington Manufacturing Company" and their assigns to the only proper use benefit and behoof of the said "The Washington Manufacturing Company" and their assigns forever.

The Washington Manufacturing Company was incorporated for thirty years by Act of the Legislature of New Jersey, approved June 31, 1844, P. L. of that year 55, and its charter was extended for an additional fifty years, by Act passed in 1872, P. L. of that year, p. 149.

A new corporation known as "Washington Manufacturing Company," the article "The" being eliminated from the title, was incorporated in 1886, under the General Corporation Act of 1875, and "The Washington Manufacturing Company," by deed dated April 15, 1886, recorded in the Register's

Office in Book 123, p. 306, conveyed the property of which it then held title, by deed from the Gloucester Manufacturing Company to "Washington Manufacturing Company" in which the premises were described as follows (C. p. 18, l. 18, et seq.):

ALL of those five certain lots of pieces of ground with the wharves mills boiler houses picket houses machine shops carpenter shops machines smiths shops store houses barn wash house dye houses dwellings buildings and structures of every kind and character stacks machinery office supply room scales engines boilers shafting belting pulley tools and implements of every description thereon erected therein contained or used in connection therewith situate in the City of Gloucester County of Camden State of New Jersey and known as the Mills of the "Washington Manufacturing Company NO. 1 BEGINNING at the northwesterly corner of Ellis Street as laid out on the plan of streets and lots of the Gloucester Land Company recorded in the Clerk's Office of the said County of Camden and the northerly line of Monmouth Street extended containing in front or breadth on the said Ellis street eight hundred and fifty feet and extending of that width in length or depth westwardly along the northerly line of the said Monmouth Street and the southerly line of Mercer Street to low water Mark in the River Delaware and so far into the said Delaware River as the rights of the said The Washington Manufacturing Company extend. \* \* \* \* \* Together with all and singular the buildings improvements woods ways waters fisheries rights liberties privileges hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and of every part and parcel thereof and Also all the estate right title in-

terest property possession claim and demand whatsoever both in law and equity of the said The Washington Manufacturing Company of in and to the said premises with the appurtenances.

On April 15, 1886, the Gloucester Land Company executed a deed of confirmation to Washington Manufacturing Company, the second corporation above referred to, organized under the General Corporation Act, which deed was recorded April 24, 1886, in Book 123 of Deeds, page 277, in which was recited the conveyance from the Land Company to The Washington Manufacturing Company, dated December 1, 1846, above referred to, and also the deed from The Washington Manufacturing Company, dated April 15, 1886, above referred to. A portion of said deed, appurtenant to this inquiry is as follows (C. p. 29, l. 31, et seq.):

"Witnesseth that the said The Gloucester Land Company in consideration of the premises doth hereby ratify and confirm unto the said Washington Manufacturing Company its successors and assigns the above in part recited indenture of the 15th day of April 1886 so far as the same attempts to convey any Riparian rights or water privileges and the ground over flowed by water not heretofore granted and the *the* said The Washington Manufacturing Company and doth grant bargain sell alien enfeoff release and confirm unto the said Washington Manufacturing Company its successors and assigns the lot or piece of ground situate between the western line of the above described or other lot of ground heretofore conveyed by the said The Gloucester Land Company to the Washington Manufacturing Company the title to which is now vested in the said Washington Manufacturing Company by virtue of the above in part recited Indenture of the 15th day of April A. D. 1886 and the exterior line established

by the commissioners appointed under the authority of the act or acts of the said State of New Jersey Together with the right liberty and privilege of excluding the tide water by filling in or otherwise improving the same and appropriating the land to its and their exclusive use. To have and to hold the said hereditaments and premises hereby granted unto the said Washington Manufacturing Company its successors and assigns to and for its and their own proper use and behoof forever."

On April 27, 1892, a bill was filed in the Court of Chancery of New Jersey against Washington Manufacturing Company for injunction and Receiver, and pursuant thereto, Philip H. Fowler was appointed Receiver, and said Receiver, by deed dated March 27, 1893, recorded the same day, in Book No. 184, p. 327, granted the said lands and premises to Henry S. Grove, William S. Blakeley and George H. McFadden, by the following description:

ALL those certain tracts of land and premises situate lying and being in Gloucester City County of Camden and State of New Jersey described as follows First BEGINNING at the northwesterly corner of Ellis Street as laid out on the plan of Streets and lots of The Gloucester Land Company recorded in the Clerk's office of the County of Camden and northerly line of Monmouth Street extended containing in front or breadth on said Ellis Street eight hundred and fifty feet and extending of that width in length or depth Westerly along the Northerly line of said Monmouth Street and the southerly line of Mercer Street to low water mark in the River Delaware and as far into the Delaware River as the rights of the said Washington Manufacturing Company extend together with the wharves, mills, boiler house, picker houses, machine shops, carpenter

shops, machines, smith's shop, store-house, barn, washhouse, dye-houses, dwellings, buildings and structures of every kind and character stacks, machinery, office, supply-room, scales, engines, boilers, shafting, belting, pulleys, tools and implements of every description erected thereon therein containing or used in connection therewith together constituting and known as the Mills of Washington Manufacturing Company Being the same mills, machinery and portions of the tracts of land premises and appurtenances granted and conveyed by "The Washington Manufacturing Company" to Washington Manufacturing Company by deed dated April 15th, 1886 and recorded in the Register's office of Camden County in Book No. 123 of Deeds, page 306, &c. \* \* \* \* \* all the estate right title and interest claim and demand whatsoever in law or in equity of the party of the first part as such receiver as aforesaid or of the said Washington Manufacturing Company of in and to the above described premises with the hereditaments and appurtenances to have and to hold the same unto the said party of the second part their heirs and assigns forever (C. p. 34, l. 26, et seq.).

Subsequently the Argo Mills Company was incorporated under the General Corporation Act, filed in the office of the Secretary of State, April 3, 1893.

On May 24, 1893, Henry S. Grove, George H. McFadden and William S. Blakeley, together with their respective wives, by deed recorded the same day, in Book 186, p. 235, granted and conveyed to the Argo Mills the lands and premises now owned by the complainant, by the following description:

ALL those certain tracts or parcels of land and premises hereinafter particularly described situate lying and being in the City of Gloucester in the County of Camden and State of New Jersey First

Tract Beginning at the northwesterly corner of Ellis Street as laid out on the plan of streets and lots of "The Gloucester Land Company" recorded in the Clerks Office of the County of Camden and northerly line of Monmouth Street extended containing in front or breadth on the said Ellis Street eight hundred and fifty feet and extending of that width in length or depth westerly along the northerly line of said Monmouth Street and the southerly line of Mercer Street to low water mark in the river Delaware and so far into the Delaware River as the rights of the Washington Manufacturing Company extend together with the wharves, mills, boiler-house, picker-houses, machine shops, carpenter shops, machines, smith's shop, store-house, barn, wash-house, dye-houses, dwellings, buildings and structures of every kind and character stacks, machinery, office, supply room, scales, engines, boilers, shafting, belting, pulleys, tools and implements of every description erected thereon therein contained or used in connection therewith together constituting and known as the Mills of Washington Manufacturing Company. \* \* \* \* \*

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages with the appurtenances to the same belonging 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 and to the same and of in and to every part and parcel thereof To have and to hold all the singular the above described land and premises with the appurtenances unto the said party of the second part its successors and assigns to the only proper use benefit and behoof of the said party of the second part its successors and assigns forever (C. p. 11, l. 11, *et seq.*).

On May 6, 1920, The Argo Mills Company conveyed to Frank L. Hummel, trustee, said lands and premises by the following description:

ALL those certain tracts or parcels of land and premises situate in the City of Gloucester in the County of Camden and State of New Jersey bounded and described as follows: First Tract Beginning at the northwesterly corner of Ellis Street as laid out on the Plan of Streets and lots of the Gloucester Land Company recorded in the Register of Deeds office of the County of Camden and northerly line of Monmouth Street extended containing in front or breadth on the said Ellis Street eight hundred and fifty feet and extending of that width in length or depth westerly along the northerly line of said Monmouth Street and the southerly line of Mercer Street to low water mark in the River Delaware and so far into the Delaware River as the rights of The Argo Mills Company extend Together with the wharves mills boiler house picker houses machine shops carpenter shops and buildings of every kind thereon erected. \* \* \* \* \*

Together with the machinery tools and other like property situate and contained therein but not including any stock manufactured or unmanufactured on hand or manufacturing supplies Together with all Riparian Rights now vested in the party of the first part whatsoever as well as any and all rights to make application for a Riparian Grant or Lease. \* \* \* \* \*

Together with all and singular the improvements buildings woods ways rights liberties privileges hereditaments and appurtenances to the same belonging or in any wise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and of every part and parcel thereof And also all the estate right title interest

property possession claim and demand whatsoever both in law and equity of the said party of the first part of in and to the said premises and every part thereof with the appurtenances To have and to hold the said premises above described with all and singular the hereditaments and appurtenances To have and to hold the said premises above described with all and singular the hereditaments and appurtenances unto the said party of the second part his heirs and assigns to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever (C. p. 6, l. 29, *et seq.*)

It appears that there was an old United States bulkhead line and the New Jersey Riparian Commissioners bulkhead line established at a distance along Monmouth Street from the westerly line of Ellis Street 252.56 feet, which line did not run parallel with Ellis Street, but deflected westward, so that the distance along Mercer Street to said bulkhead line was 314.98 feet. The line of high-water mark extended beyond this line, as it appears at the present time designated on a survey of the property as the line of fill in May, 1920. The pier and wharf bulkhead and also the extension of the suction pipe, with the protection of the front end of said pipe, is westward and riverward beyond this line. Low-water line extends some considerable distance, say 200 feet, more or less, westward and riverward beyond the high-water line as it exists at this time. Neither the pier, bulkhead nor suction pipe extend as far out as the bulkhead line recently established as the Government United States bulkhead line and also which line was adopted by the Board of Commerce and Navigation as the bulkhead line. The pier-head line is located farther westwardly and in the river (Exhibit C1).

After the acquisition of title by the defendant, it

had plans prepared with reference to the bulkheading of the lands under water in front of its property, which plans were approved by action of the Board of Commerce & Navigation on January 21, 1924.

Notwithstanding the approval of the plans the State board refused to permit the work to be prosecuted, because of the claim made by the board that it was necessary for the defendant to acquire from the State either a grant or a lease for the riparian lands involved in the improvement, and to be reclaimed.

The defendant, contending that it had the right, by reason of the Legislative license of 1846, granted to the Gloucester Land Company, to re-claim the lands in question without obtaining any further lease or grant from the State, notified the commission that it proposed to prosecute the work, and this information was filed to prevent any improvement until the respective rights of the State and the defendant could be ascertained and settled.

Practically all of the facts of this case are set up and admitted in the pleadings.

Exhibit C1 is a map of the locus in quo, upon which is shown a pier, which extends from the fast land riverward beyond high-water line. This pier was built prior to January 1, 1892. The structure shown on said Exhibit C1 and marked "filled" was also erected prior to January 1, 1892.

Since 1917, each year, including 1922, the riparian rights located in front of the defendant's upland have been assessed by the authorities of Gloucester City and taxes paid thereon as follows:

1917.....	\$663.38
1918.....	687.30
1919.....	635.00
1920.....	912.00

1921..... 999.00  
 1922..... 1044.00 (C. p. 55, l. 11)

The deed from John Siter and wife and Samuel R. Simmons to the Gloucester Land Company was dated October 3, 1846, and conveyed the upland now owned by the defendant, including the submerged land in front thereof, to low-water mark (Exhibit D2).

A blue-print (Exhibit C1) shows the locus in quo and also the existence of a pier and other structures erected by the predecessors in title of the defendant prior to the first of January, 1892. The construction of these various improvements into the Delaware River beyond the line of high water is proven by the testimony of the defendant's witnesses, to wit: Daniel Albertson (C. p. 47, et seq.), and of Frank Butler (C. p. 51, et seq. and 56, et seq.).

It is also established that the Washington Manufacturing Company, prior to 1892, installed a pipe used for the purpose of conveying water from the river to the manufacturing plant erected above high-water line, and that a dock along the wharf had been dredged from time to time in order to permit access to the latter.

The issues involved in this litigation, appearing from the pleadings are as follows:

1. What is the legal effect of the Legislative license to the Gloucester Land Company in the Act of 1846, and of the present right of the defendant to exercise the same by re-claiming the land in question?

2. Whether or not the rights conferred by the act of incorporation of the Gloucester Land Company

were revoked by the terms of the Constitution of 1875, and appropriation by the Legislation, of all riparian lands to the State School Fund.

3. Whether the improvements of the lands below high water did not constitute reclamation.

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#### ARGUMENT OF LAW.

##### FIRST.

For the purposes of this suit, the defendant concedes that the legal title to the lands flowed by the tide, between high- and low-water mark, in front of the upland of the defendant, was in the State of New Jersey prior to the passage of the Act incorporating the Gloucester Land Company in 1846.

However, this title, in the State, was subject to the local custom, which has been recognized time and again, conferring upon the owner of the upland adjacent to high-water mark, the right to fill in and wharf out upon submerged land, the property of the State, which license, when exercised, became irrevocable and vested in such owner of the upland, the title to the property thus reclaimed.

*Bell v. Gough*, 23 N. J. L. 624;

*N. J. Zinc Co. v. Morris Canal Co.*, 44 N. J. E. 398.

The established New Jersey rule is that the riparian owners' title extends to high water and that the State owns all outside of such line into the navigable stream. Furthermore, the State, in the absence of

legislation to the contrary, may grant the submerged lands away to anyone, and the grantee may fill in and deprive the owner of the upland of the facility of approaching the water over what was once submerged property, and for such act the proprietor of the upland has no redress as he has no riparian easement over this property, but merely a license to fill in and thus acquire title, forfeitable until exercised.

In the case of *Roberts v. Mayor of Jersey City*, 25 L. 525, it was held that as the submerged land, until reclaimed, was in the State which could grant them to anybody, it was improper to assess them as part of the upland.

It was also held, in *Point Breeze Ferry Co. v. Bragaw*, 47 Eq. 298, that the preferential right of the shore owner to acquire a grant from the State could, under Revision, p. 984, Section 8, be repudiated on six months' notice.

The right of access of the shore owner to riparian lands is one of which the latter can be deprived only by the State, although such land may not have been wharfed out.

*Easton & Amboy Co. v. Central R. R.*, 52 N. J. L. 267.

In *N. J. Zinc Co. v. Morris Canal Co.*, *supra*, at page 400, it was decided that, without title to the ripa, there is no right to any land lying beyond high water, and also that such right, growing out of usage, exists in no one but the riparian owner. It grows out of adjacency and can have no indepen-

dent existence. Thus the canal company, having obtained a right-of-way through the property adjoining high-water mark, it was held it thereby obtained no interest in the fee that would enable it to prevent the owner from exercising his riparian license.

In the case of *Point Breeze Co. v. Bragaw*, *supra*, the riparian proprietor mortgaged land, which mortgage included land under water, which he did not own. Such proprietor then sold the lands subject to the mortgage. The purchaser reclaimed and erected valuable improvements. On foreclosure, it was held that the latter was entitled to have his improvements declared a superior lien.

In *Boon v. Kent*, 42 N. J. E. 134, defendant's grantor mortgaged to plaintiff's grantor property to low water, together with certain sand lots. He had no title to low water or in the sand lots. Defendant took subject to the mortgage and then obtained water rights from the State. Held in foreclosure that these rights so inhere in the ownership of the upland that they will pass under a mortgage. This latter decision was based upon *Cooper v. Bloodgood*, 32 Eq. 209, where the riparian proprietor conveyed land between high and low water taking a purchase money mortgage and agreeing with the grantee to obtain from him a wharf license, which he did. The riparian lease afterwards obtained by the grantee was held to have passed under the mortgage.

In *Yard v. Ocean Beach*, 49 E. 306, it was held that the expression "lands adjoining the ocean" or

“bounding on the ocean,” where mention of a map is given, is equivalent to a boundary at ordinary high water, with all the incidents of riparian ownership. In this case, sedge lands, below the bluff, sometimes washed by the Atlantic ocean were claimed by Yard. It was held that they were appurtenant to the main grant, which came by a deed not as broad as the earlier one from the proprietors. Yard had obtained his deed to the sedge wastes from the grantor to the association.

In *Camden & Atlantic Co. v. Lippincott*, 45 N. J. L. 405, it was held that where property is described as running to low-water mark, title really runs only to high water with the right to the alluvial increase. This principle applies as well to a boundary by the storm tide as to a boundary by the high-water mark or by the low-water mark. Such boundary will leave in the grantee that space of beach which lies between ordinary high-water mark and the fast land and is subject to be washed over by unusual tides so frequently as to be waste and unprofitable for use; but the title of the grantee will advance or recede as the line of storm tide changes from time to time.

It is apparent from these authorities that when the title to the upland, now owned by the defendant, was acquired and became vested in the Gloucester Land Company, the latter, under the local custom or common law, recognized and enforced under *Bell v. Gough*, had the right to reclaim the land submerged and located between high- and low-water mark, and upon such reclamation obtained an irrevocable title as against the State.

The title to the upland, by deed from Siter and Simmons, dated October 3, 1846, above referred to, became vested in the Gloucester Land Company as part of their tract of land.

It appears, by deed to Siter and Simmons from the Act incorporating the land company, that for a few years prior to 1846, a number of merchants of the City of Philadelphia, became interested in the erection and management of a manufacturing establishment, and the formation of manufacturing companies by the procuring of valuable sites for manufacturing purposes, and with that end in view, and also the developing of the surrounding land for dwelling and residential purposes, various tracts of land along the river in Gloucester City were purchased, and the title temporarily conveyed to Siter and Simmons, in trust for said merchants and others.

Section 4 of the Act provides that as soon as the land company is organized, Siter and Simmons, who then held lands in trust for the owners, should convey same to the company, by its corporate name, the residue of lands unsold and should transfer certain other assets and pay over all moneys received by them for lands, and the company was thereby authorized to purchase such lands adjoining the therein described premises, as may be necessary to reclaim portions of their property now flowed by the tide.

Section 5 of the Act conferred upon the land company the authority and liberty to fill up, occupy, possess and enjoy all lands covered by water, fronting and adjoining the premises that may be now owned, or which may hereafter be purchased by them, and may construct thereon wharves, harbors, piers, slips and other structures necessary for commercial and shipping purposes.

The character, scope and purpose of such a legislative enactment has been considered in quite a number of cases in this State.

In *Morris Canal v. Central R. R.*, 16 Eq. 419, the Act incorporating the associates of New Jersey conferred a right to build docks, wharves and piers, opposite to and adjoining a tract of land owned by it, formerly called Pawles Hook. The exact language of the provisions of the charter of the company in this respect is as follows:

“That the said associates shall have the privilege of erecting or building any docks, wharves and piers, opposite to and adjoining the said premises in Hudson River and the bays thereof, as far as they may deem it necessary for the improvement of the said premises, or the benefit of commerce, and to appropriate the same to their own use.”

It will be observed, however, that the grant to the Gloucester Land Company was somewhat more comprehensive, because in addition to the construction of wharves, harbors, piers, slips and other structures necessary for commercial and shipping purposes, express power was given to fill in, occupy, possess and enjoy all lands covered by water, fronting and adjoining the premises. It was claimed by the complainant, in the *Morris Canal* case, that under the provisions above recited, respecting the construction of docks, &c., a fee simple title in all lands under water was granted to the associates and that the right to build docks, &c. was also granted, and that such a right was an incorporeal hereditament and that the associates had a right to convey, and did convey, such fee simple to the complainants. On

the part of the defendant it was insisted that the privilege granted, by the use of the language above set forth, to the associates, was only a privilege or license to build docks, wharves and piers, and appropriate them to their own use, and that they could not confer or convey such privilege to the complainants or to any other corporation.

James Wilson, the Master to whom the matter was referred, came to the following conclusion at page 437:

“I am of the opinion that it (referring to the third section of the charter of the associates) gives to the associates merely a privilege or license to build docks, wharves and piers in the waters of the Hudson River, and the bays thereof, in the manner so mentioned, and when so built, to appropriate them to their own use, and that the associates could not transfer or convey such privilege or license to any other corporation.”

There is a manifest distinction between the situation in the instant case and that which existed in the *Morris Canal* case above referred to. In the former, there is an express authority conferring the liberty, power and authority to fill up, occupy, possess and enjoy all lands covered with water, fronting and adjoining said premises. It would seem, therefore, that the *Morris Canal* case is not absolutely dispositive of the questions here involved, except that it recognizes the efficacy of a Legislative license of the same character as involved in this discussion, and the question, of course, will remain as to the applicability of such a decision to the facts of this present case, and the construction so put upon the legislative license here involved. The Mor-

ris Canal case was decided in 1863 before the Act of 1891 was passed.

In the case of *Lake Erie R. R. Co. v. Hughes*, 46 L. 67, the following situation existed:

The prosecutor had title to the upland as an intermediate grantee of the Hoboken Land and Improvement Company, which latter company, by virtue of its charter, had the power to purchase, fill up, occupy, possess and enjoy all land covered with water, fronting and adjoining the lands owned by it. The prosecutor acquired the title to part of the upland,

“Together with all land under water in said river, Easterly and in front of said upland, and within the said Northerly and Southerly lines, as far Easterly as the right and title of the grantor in said lands under water extended, and all the water rights and other rights and privileges of said grantor, whether derived by legislative act or otherwise, to reclaim, improve and appropriate to their own use the said land under water, and within said lines, to the middle of the Hudson River.”

The question arose in this case, whether the power given to the Hoboken Company by its charter, to purchase, fill up, occupy, possess and enjoy the land covered with water, in front of the land owned by it, is to be considered as having conferred upon the Company merely the capacity to exercise the ordinary privilege of riparian owners to reclaim the shore in front of them, and so acquire title to it, or had a wider license to extend its reclamation and appropriation below low-water mark, as far as the interest of navigation would permit. This question,

however, Mr. Justice Dixon, who wrote the opinion in the Court of Errors, refused to decide. It was decided, however, that the power thus given, brought the company within the class of corporations mentioned in the 3rd and 4th sections of the Riparian Act of 1869, Revision, p. 982, by which it was enacted that any corporation, which had the power given directly by Legislative Act, to purchase, fill up, occupy, possess and enjoy lands covered by water, might secure from the State a conveyance in fee of the lands naturally under water, whether filled in or not, by paying to the State \$50 a front foot, and that the conveyance thus obtained, should pass not merely the title to the land described in it, but also the right to exclude the tide water, or such land as far out as the exterior line, and to appropriate the land to private use and also to the rights of perquisites of wharfage and other profits.

It was also there held that the power granted directly by the Act of the Legislature, covering this right to purchase the State's title was the very power that the land company received by its charter, and consequently, the company's assignee, the prosecutor, became entitled as owner of the upland, to the conveyance mentioned in the statute, on payment of the stipulated price.

Again there is a manifest distinction between the facts of the Hughes case and the powers granted in the Gloucester Land Company Charter.

First. The power in the latter corporation was to purchase and hold such lands as may be necessary to reclaim portions of their property now flowed by tide.

Second. The liberty to fill up, occupy, possess and enjoy all lands covered by water, fronting and

adjoining the said premises, which the corporation then owned, or might thereafter purchase, with the further privilege of constructing wharves and other structures necessary for shipping purposes.

Thus, the power conferred was the right and privilege of reclaiming all the lands under water, fronting or adjoining the premises then owned by them, or subsequently acquired.

In the case of *N. J. Zinc Co. v. Morris Canal Co.*, 44 Eq. 398, the following situation existed.

Complainant's immediate predecessor in title obtained a license under the Wharf Act of 1851, authorizing it to fill in and dock out the lands in dispute. Such licensee and the complainant, after obtaining the license, and before the institution of the suit, expended in improving the land, over \$17,000. Vice-Chancellor VanFleet held that such license gave no authority to fill in and dock out unless the licensee was the owner of the ripa lying behind the land covered by tide water, as a license granted under the Statute of 1851, conferred no right whatever on the licensee unless he was the owner of the shore, and it is of no use to him unless he was. His license was conditional, the condition being that he had title to the ripa lying behind the public domain covered by his license.

The Court held, at page 401:

"A grantee of lands abutting on a navigable stream acquires no peculiar rights as incidents of his estate in the land beyond high-water line, lying in front of his land, but in virtue of a local custom, long prevalent in this State, and now having the force of established law, the adjacency of his land to the stream invests him with a license to fill in and wharf out, on the public

domain, to such an extent as does not interfere with the public rights of fishing and navigation, and this license, when executed, becomes irrevocable and confers on the riparian owner a good and indefeasible title to the land thus reclaimed."

This case seems to be authority for the proposition that a license under the Wharf Act of 1851 will pass by conveyance of the upland as appurtenant thereto.

Assuming, therefore, that the Gloucester Land Company received from the State the privilege to fill up, occupy, possess and enjoy all lands covered by water, fronting or adjoining its premises, then owned or otherwise acquired, the question next to be considered is whether or not such privilege is now vested in or possessed by the defendant.

By deed dated February 15, 1886, the Land Company granted to Washington Manufacturing Company, its successors and assigns, a tract of land above high water and also tract situate between the westerly line thereof and the exterior line established by the commissioners appointed under the authority of the Acts of the State of New Jersey, with the right, privilege and liberty of excluding the tide water by filling in or otherwise improving the same and appropriating the land to its and their exclusive use.

There had been a prior attempt to make a similar grant to a corporation known as The Washington Manufacturing Company, which latter had con-

veyed all its rights in the lands obtained from the land company to Washington Manufacturing Company, grantee, in the deed of February 15, 1886, and it is recited in the latter that such deed was given to confirm in the grantee thereof, its successors and assigns, the riparian rights and water privileges and ground overflowed by water in the grant therefore, to The Washington Manufacturing Company. Therefore, by the two conveyances, the land company vested in Washington Manufacturing Company the upland, as well as the submerged ground between high-water mark and the exterior line established by the riparian commissioners, with the right, privilege and liberty of excluding the tide water by filling in and otherwise improving the same and appropriating the land to its and their exclusive use.

We, therefore, contend that whatever rights were possessed by the land company, pursuant to the provisions of its charter, to reclaim submerged land, the same became vested in the Washington Manufacturing Company. We also contend that these rights were expressly conveyed by the subsequent deeds, by which the title to the upland was vested in the present defendant, and in any event, such rights passed, as an appurtenant in gross, to the lands specifically conveyed.

The cases in New Jersey, which hold that the Legislative privilege or license is to the licensee and cannot be transferred or conveyed to any other corporation, were decided prior to the passage of the Act of 1891, P. L. of that year, p. 216, Compiled Statute, p. 4385, except for which right of reclamation existed without doubt. The 10th section of this Act provides substantially as follows:

“Without the grant or permission of the Riparian Commissioners, no person or corporation shall fill in, build upon or make any erection on or reclaim any of the lands under the tide waters of this State; provided, however, that neither this section nor any provision in this Act contained, shall in any wise repeal or impair any grant of land under water, *or right to reclaim made directly by Legislative Act, or grant or license, power or authority, so made or given, to purchase, fill up, occupy, possess and enjoy lands covered with water fronting and adjoining lands owned or authorized to be owned by the corporation, or grantee or licensee in the Legislative Act mentioned*, its, his or their representatives, grantee or assigns, or to repeal or impair any grant or license, power or authority to erect or build docks, wharves and piers *opposite to and adjoining lands owned or authorized to be owned by the corporation, or grantee or licensee in the Legislative Act mentioned*, its, his or their representative, grantees or assigns, heretofore made, or which may be made or granted at the time this Act goes into effect, or given directly by Legislative Acts, whether said acts are or are not repealable.”

The logical result, therefore, of this amendment, and the provisos therein contained, is that the right of the Washington Manufacturing Company, as the grantee of the Gloucester Land Company, to fill up, reclaim &c., would not be impaired, and that the Gloucester Land Company, its grantees or assigns, may at any time improve the land under water lying in front of the lands lying above high-water mark, whether the same had been theretofore improved or not. While the Act of incorporation of the Glou-

cester Land Company by sections 4 and 5 above quoted, may not have vested in the Gloucester Land Company any title to the land under water in front of its lands, and may not be construed as a grant of the lands of the State below high-water mark, yet the right under said Act to fill up, occupy, possess and enjoy all such lands and to construct thereon wharves, harbors, piers, slips or other structures necessary for commercial or shipping purposes, is unquestioned.

By the Amendment of 1891, all rights, which by custom were recognized as being vested in any person or corporation owning lands fronting or adjacent to the tide waters of the State, or were specially conferred by license by the board of freeholders of the county in which the lands were situate, under the Wharf Act of March 18, 1851, were repealed, unless improvements were completed prior to January 1, 1892, yet it was expressly stated that such proviso should not repeal or impair any grant of land under water or right to reclaim given directly by Legislative Act, grant or license given to fill up, occupy, possess and enjoy lands covered with water fronting and adjoining lands owned or authorized to be *owned by the corporation, grantee or licensee, in the Legislative Act mentioned, its representative, grantee or assigns*, or repeal or impair any grant or license, power or authority to erect or build docks, wharves and piers opposite and adjoining lands owned by *the corporation, grantee or licensee in the Act mentioned, its representative, grantees or assigns*, theretofore made, or which may be made or granted at the time said Act became effective or given directly by Legislative Acts, whether said Acts are or are not repealable.

While the said sections 4 and 5 of the Act incorporating the Gloucester Land Company do not, in express terms, authorize the assignment of the rights conferred by said Act, the said Amendment of 1891 of the Riparian Act expressly excepts from its operation the repeal or impairment of all rights to improve &c., theretofore existing, made by Legislative Act to fill up, occupy, possess and enjoy lands covered with water fronting or joining lands owned by the representative, grantee or assigns of the grantee or licensee in any Legislative Act mentioned.

Therefore, the rights to fill in &c., conferred upon the Gloucester Land Company, were extended to its representatives, grantee or assigns, and these rights, we contend, still exist, unimpaired and unrepealed, as originally conferred upon the Gloucester Land Company by sections 4 and 5 of the Act of its incorporation. The express terms of the repealing Act of 1891, except the grantee and assigns, of the Gloucester Land Company from the operation of said Act, and consequently no grant or lease from the Board of Commerce and Navigation is required for the defendant as grantee and assignee of said Gloucester Land Company to exercise the privileges and rights conferred by said sections.

The reservation contained in the Amendment of 1891 applied to all licensees in any Legislative Act mentioned, and its respective grantee or assigns, and it was expressly stated in the amendment that it was not intended to repeal or impair any license, power or authority owned by any corporation, grantee or licensee in the Act mentioned, its representative, grantee or assignee theretofore made, or which

might be made or granted at the time said amendment became effective.

The obvious result of this situation is that the rights and privileges vested in Washington Manufacturing Company, which owned the upland in 1891, when the amendment was passed and in the defendant as the ultimate grantee and assignee of the Gloucester Land Company were not affected by the Amendment of 1891. The defendant, therefore, had the same power and authority as vested in any riparian owner to improve the submerged area in front of its upland, as if the Amendment of 1891 had never been passed. This right not only exists by local custom, recognized in *Bell v. Gough*, referable to land between high- and low-water mark, but is also conferred as the privilege of improving beyond low-water mark, under the charter of the Gloucester Land Company, so long as such improvement does not interfere with the ordinary navigation of the river.

Assuming that the defendant now possesses the rights and privileges originally exercisable by the Gloucester Land Company, under its Act of incorporation, the status of the locus in quo, involved in this controversy, may be considered under three heads:

1. The land between the old bulkhead line and high-water mark, as found by the engineers, Haines & Sherman, shown on survey made May 26, 1920.
2. Land between high-water mark, last aforesaid mentioned, and low-water mark.
3. Land between low-water line and the United States and New Jersey Board of Commerce and Navigation pier-head line.

As to the land firstly mentioned, we assume, for the purpose of this argument, that New Jersey will eventually adopt, as the ultimate bulkhead line, to be established by the Board of Commerce and Navigation, the line delineated, on the map, as the new United States bulkhead line, to which solid filling will, in all probability, be permitted. We assume, also, that the high-water mark ascertained, as of May 26, 1920, is the normal high-water line. In any event, regardless of where the original high-water mark may have been, we contend that under the Act incorporating the Gloucester Land Company, that corporation, and its successors in title to the upland property involved, had, without question, up to 1891, the right generally to reclaim, and that upon reclamation, such owners acquire a good and indefeasible title as against the State. Therefore, the high-water line ascertained, as of May 26, 1920, shown on said map, is considered to be the line of ordinary high water. At such date, the owners, either past or present, of the property, had the right to fill to the line thereof, without obtaining riparian rights from the State. The map shows a present filling almost to this line, so far as the land south-east of high-water mark so delineated is concerned. The title of the present owner seems to be indisputable.

As to the second parcel, to wit: the land between high-water mark ascertained as aforesaid, and low water line delineated on the map, the question is somewhat different, and must be considered on another basis. Without regard to the terms of the Amendment of 1891, the shore owner had, by reason of the local custom, or local common law of New Jersey, the right to reclaim and fill in lands covered by

water between high- and low-water mark, located in front of his upland property. The right to take possession of land below low-water mark never existed, except under provisions of the old Wharf Act, which was repealed by the Amendment of 1891. The procedure prescribed by the Wharf Act, was to obtain a freehold dock license, which apparently was never done respecting this property. Therefore, with regard to all of the land riverward of high-water line, the rights of the shore owner depend upon the interpretation to be given the license granted in the certificate of incorporation of the Gloucester Land Company and the local common law, as affected, if at all, by the Amendment of 1891.

We may assume, for the purpose of this argument, that the license or privilege conferred by the Act incorporating the land company was not assignable or transferable by it, under the provisions of such Act, but a determination of this question is not necessarily involved in this discussion, if effect be given the provisions of the Amendment of 1891, which repeals the Wharf Act and abrogates rights existing under the local common law, with the proviso expressly reserving to licensees under special Acts of the Legislature, and their representatives, grantees and assigns, the privileges conferred thereby. The proviso contained in the amended Act is evidence of a Legislative intent to reserve to the Gloucester Land Company and all other similar owners, possessing such Legislative licenses, and their grantees and assigns, the power to fill up, occupy, possess and enjoy all lands covered with water, fronting and adjoining the premises owned by such licensees, with the power and authority to erect, build and construct thereon wharves, docks and piers opposite and adjoining same. The manifest purpose of this Legislation is not to revoke or repeal the special Legis-

lative licenses, but to show the intention of the Legislature to permit the privileges conferred thereby to be exercised, but not only by such licensees, but their representatives, grantees and assigns.

It may well be said, that as these Legislative licenses were granted many years before 1891, and in all probability, in many cases, the original Legislative licensees have either died, or parted with the ownership of their upland, the Legislature fully intended that the Amendment of 1891 was not to be construed as repealed, or in any way affect the rights granted by such legislative licenses, but, on the contrary, such licenses were to be exercised at all times thereafter by the original licensees, or their representatives, grantees or assigns, to the same extent as if the Amendment of 1891 had never been passed.

Therefore, to the line of low water, the defendant as the grantee of the land company, may fill in and reclaim, under the local common law above referred to, as well as the provisions of the Act of incorporation of the land company, without obtaining such rights from the State.

With respect to the third point involving land riverward of low-water line, and extending to the newly established bulkhead line, in the case of a solid fill, and to the exterior pier line in the case of a pier, the rights must depend entirely upon the construction eventually given to the rights, powers and privileges conferred by the Act incorporating the Gloucester Land Company, without regard to the local custom. This question has been thoroughly discussed herein, and it seems unnecessary to refer to the same respecting the lands beyond low-water mark. The interpretation, as to the effect of the Act of incorporation of the land company, is par-

tially applicable to the land between high- and low-water marks, but must control exclusively the situation with respect to land outside of the latter.

SECOND

Is the determination of this question controlled by the appropriation of all riparian lands for school purposes?

The Act of 1894, P. L. of that year, page 123, provided:

“That all the lands under water belonging to this state be and the same hereby are irrevocably appropriated for the support of free schools in this state, and that all moneys hereafter received from the sales and rentals of such lands under water belonging to this state shall be paid over to the trustees of the school fund and appropriated for the support of free public schools, and shall be held by them in trust for that purpose and shall be invested by the treasurer of the state, under their direction, in the same manner as the funds now held by them are invested, the same to constitute a part of the permanent school fund of the state, and the interest thereof to be applied to the support of public schools in the mode which now is, or may hereafter be, directed by law, and to no other purpose whatever.”

The constitutional provision of 1875, respecting school fund, found in article 4, section 7, paragraph 6, is as follows:

“The fund for the support of free schools, and all money, stock and other property which may hereafter be appropriated for that purpose or received into the treasury under the pro-

vision of any law heretofore passed to augment the said fund shall be securely invested and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools for the equal benefit of all the people of the state; and it shall not be competent for the legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose under any pretence whatever.”

The claim is made by the Attorney-General that by reason of this constitutional provision, and the Legislation of 1924, the Legislative license contained in the charter of the Gloucester Land Company was repealed and revoked, and that whatever rights the land company, as well as its grantees and assigns, had, were terminated.

It is perfectly manifest that this constitutional provision, and the Legislation of 1894, cannot have ascribed to it the effect claimed by the Attorney-General.

The Constitution of 1844, contained a similar provision, article 4, section 7, paragraph 6. The Legislature was obliged to make an appropriation before any property became subject to the constitutional provision.

Therefore, until the passage of the Act of 1894, appropriating the riparian lands for school purposes, the Legislature had a right to deal with these

lands as it saw fit, and make such grants or licenses as it thought advisable. It cannot be argued by the Attorney-General successfully that the Legislature of 1846, did not possess the requisite authority to confer upon the Gloucester Land Company the right and privilege of reclaiming the lands under water. Manifestly, therefore, the Act of 1894, only appropriates those riparian lands to school purposes, which had not theretofore been disposed of in some other manner by the Legislature, or had had imposed on them, by prior legislature some charge or incumbrance.

If it be conceded that the Gloucester Land Company did acquire a license by virtue of its Act of incorporation, and that such license was not affected by the amendment of 1891, a revocation of such license cannot be inferred or implied by the Act of 1894. It would require express action on the part of the Legislature to revoke such license, even if it were revocable. To hold otherwise would be to sustain the proposition that the Legislature could, by the Act of 1894, without compensation, take from the licensee the rights conferred by previous legislation. That proposition is untenable and would be illegal, not only under the provisions of our own Constitution, but by the provisions of the Constitution of the United States, prohibiting deprivation of private property without due course of law.

The contention of the Attorney-General based on the Act of 1894, can only be construed to apply to riparian lands, which had not theretofore been disposed of in some manner, by the state.

## THIRD.

THE LANDS BELOW HIGH WATER MARK  
HAVING BEEN IMPROVED AND RECLAIMED  
THE TITLE THERETO IS VESTED IN THE  
DEFENDANT.

The decree in effect holds that the title to that part of the land *which has not actually been reclaimed or built upon* prior to the Act of 1891, is vested in the State.

In reaching this determination the learned Vice-Chancellor construed the right acquired by the Gloucester Land Company, as a mere license or privilege or liberty which was subject to withdrawal or revocation by the State, if not previously exercised or acted upon by actual reclamation improvements. (C. p. 65, l. 8).

Assuming, but not admitting the right of the land company to be a mere license or privilege, we contend that it became executed by the making of the improvements conceded to have been made thereon prior to 1891.

The land company acquired the upland as a single parcel. The land in front thereof from high water mark must be regarded as a single parcel.

Exhibit C1 shows the improvements which were erected therein and thereon; they consist of a bulkhead, a pier, some filling and pipes. The testimony also showed that the area was dredged from time to time, so as to permit the entry of boats for loading and unloading at the pier. The area which was dredged is not accurately ascertainable. We submit that in exercising its right to reclaim and improve the area, it executed the license or privilege,

and that this execution should not be limited to the part of the area actually reclaimed or improved, but should be applied to the area in its entirety. The land company, presumably, in the exercise of its license used the entire area by filling in, erecting the bulkhead, erecting the pier, laying the pipes and dredging. We know of no rule of law which holds that a riparian owner is obliged to fill in to the extreme limits of the area over which it has the right so to do.

It was conceded by the State that the present high water line was established by filling in in front of the upland prior to 1891. (C. p. 63, l. 34; C. p. 64, l. 1).

We contend that had the land company engaged in no further reclamation or improvement than filling this area in, it would have exercised the license.

The other improvements, however, clearly indicate that in the exercise of its license the land company appropriated all of the area to its use, and that it cannot now be deprived of its property or the use thereof. It is fundamental, that a license when exercised becomes irrevocable.

#### ANSWER TO THE POINTS MADE BY COMPLAINANT IN BRIEF FILED BELOW.

Practically all of the questions raised by the Attorney-General in the Court below are considered and commented upon in the foregoing argument, and it will only be necessary to briefly advert some of them.

Point No. 1 urged below by the Attorney-General was as follows:

“The right to reclaim as contained or given in the Act of 1846, incorporating the Gloucester Land Company, was a mere privilege or license and nothing more, and as such is not assignable.”

#### POINT 1.

This point, which considers the character of the privilege conferred upon the Gloucester Land Company, by the Act of 1846, it seems to us, is sufficiently answered in the main portion of our brief. The facts of the instant case are easily distinguishable from those present in the case of *Morris Canal v. C. R. R.*, 16 N. J. E., 419. Manifestly, the Master, who sat in the latter case, came to the conclusion that the privilege, given by the language quoted in the main part of our brief, was limited to the associates (see p. 434). It will be observed that “they” and “then” are emphasized by the use of italics in his opinion. He reasons that the use granted was, therefore, personal to the associates and could not be sold, conveyed or assigned by them, but could only be used for their benefit.

He further held that, were any other construction placed upon it, it might be lost by virtue of judgment and execution against it, and thus pass into the hands of unfriendly interests, for other purposes, which might conflict or be hostile to the community or town of Paulus Hook.

Furthermore, in the instant case, there has been an exercise of the said license, by one of the grantees of the Gloucester Land Company, by the construction of a wharf or pier in front of the fast land, and also the building of another structure, which is shown on the map, as proved by the testi-

mony of the two witnesses sworn on behalf of the defendant. While these structures do not cover the entire area of the land between high-and low-water mark, we contend that the same, if constructed prior to the first of January, 1892, are sufficient to establish the ownership of the defendant in the entire tract, as an exercise of the license conferred by the Legislature, even if it be found that it was a mere privilege to improve and did not constitute a grant of any interest in the land itself.

Point No. 2 urged below by the Attorney-General was as follows:

“Even if the license by the Legislature to reclaim given to the Gloucester Land Company under its act of incorporation was assignable, the same did not pass by the deed of conveyance of the Gloucester Land Company to the Washington Manufacturing Company of December 1, 1846.”

#### POINT 2.

If we are correct in the statement that the license given by the Act of 1846, to the Gloucester Land Company created some right, title or interest in the land then flowed by the tide, or that the owner of the upland, by exercising this privilege prior to the first of January, 1892, acquired such right, title or interest, then it is perfectly apparent that the same constituted a right, liberty and privilege appurtenant to the lands actually conveyed, particularly in view of the fact that the confirmatory deed of 1885, to the Washington Manufacturing Company transferred the right, liberty and privilege of excluding tide water by filling in and otherwise im-

proving same and appropriating the lands to its and their exclusive use.

This language, in our judgment, was sufficient to transfer to the grantee in such deed, the interest or estate in the lands actually created by the Act itself, or the right the Washington Manufacturing Company had, as the riparian owner, to reclaim the lands, if such reclamation occurred before the first of January, 1892.

It seems to us that the opinion of Mr. Justice Katzenbach, in the Delaware River Bridge case, is not applicable, for the reason that there is a specific mention in the deed from the Gloucester Land Company, of the right and privilege to exclude the water by filling in the land thus flowed by the tide, or otherwise improving the lands under water. The situation, undoubtedly meets the argument of the Attorney-General, predicated upon the opinion of Judge Katzenbach.

Point No. 3 urged below by the Attorney-General, was as follows:

“The deed from the Gloucester Land Company to the Washington Manufacturing Company of December 1, 1846, not containing any apt words to grant, transfer or convey the license to reclaim given to the Gloucester Land Company by the Act of 1846, even if the same was assignable, became lost when the Gloucester Land Company divested itself of the title, and hence it had nothing to convey or transfer to the Washington Manufacturing Company by its deed of 1885, as far as such license is concerned, and such deed carried nothing.”

## POINT 3.

The deed of 1885, to the Washington Manufacturing Company was a deed of confirmation and was evidently given for the purpose of specifically transferring to the grantee the privilege of excluding the tide waters, which was not expressly referred to in the former conveyance. However, the right, which the Gloucester Land Company, then possessed in the locus in quo, passed by the former deed, or if retained by it, was conveyed by the deed of confirmation. In any event, the Washington Manufacturing Company became vested, by either or both of said conveyances, of whatever right, title or interest the Gloucester Land Company had in the premises.

Point No. 4 urged below by the Attorney General, was as follows:

“The title of the lands of the State under tidal waters extend to high water mark, hence the deed of Siter to the Gloucester Land Company, and the other deeds from the Gloucester Land Company down to the Armstrong Cork Company, attempting to convey to low water mark in the Delaware River, in fact, conveyed nothing beyond the high water mark.”

## POINT 4.

The argument under this head is sufficiently answered in the main portion of our brief.

All of the subsequent conveyances, and particularly the one which vested the land in the defendant, referred to the lands under water and the conveyance of title or interest ran to low water mark “and as far into the River Delaware as the rights of the

Washington Manufacturing Company extend.”

It seems to us that it was intended, by these deeds, to have them apply to the precise situation here involved and obviously there is a continuous chain of title, respecting the same, from the Gloucester Land Company to the present defendant.

Point No. 5 urged below by the Attorney-General, was as follows:

“The license given the Gloucester Land Company by the Legislative Act of 1846, to reclaim, if it was assignable or is held to have passed to the Armstrong Cork Company by the mesne conveyances from the Washington Manufacturing Company became revoked, in so far as the said license was unexecuted, upon the dedication of State lands under water to the school fund by virtue of the Legislative Act of 1894.”

## POINT 5.

We have argued in the main part of our brief that the statute relative to the maintenance of the school fund does not apply to this situation.

It is hardly a correct statement to say that the license, or whatever it may be called, granted to the land company, by the Act of 1846, was never coupled with an interest, and was, therefore, unrevocable, in view of the fact that there was an exercise of the license by construction of piers, etc., under the circumstances above referred to, prior to the first of January, 1892.

As argued in the main part of our brief, we insist that the Act of 1891, referred to herein, which repealed the Wharf Act and revoked privileges to improve lands flowed by tide water, if not so reclaimed before January 1, 1892, expressly excepting, how-

ever, the privileges created by certain Legislative enactments, of which the Act of 1846, was one, had the effect of making this license or privilege assignable, in view of the language of the Act in conferring upon the licensee, or its representative, grantee or assigns, the right to fill in, notwithstanding the limitation prescribed in the act in question.

Under this legislation, the privileges granted by special legislation similar to the Act of 1846, were put upon an entirely new basis and had the effect of extending the exercise of such privileges to the representative, grantee or assignees of the original licensee.

In our examination of this case, we have found an opinion of Judge Finch of New York, delivered in the case of *Williams v. Mayor of New York*, 105 N. Y., page 419, which reads as follows:

“The process by which it (New York City) became such owner (of the upland) is not immediately material, since its title and that of its grantees thus far is not here in dispute. The land had a water front, and the City was a riparian proprietor, but with much wider rights than simply attached to it in that character. The state had granted to the City by several earlier acts, but notably, by the Act of 1813, a general right to build and maintain wharves, piers and slips along the water front, wherever the municipality should choose. The general grant had at the time no limitation upon the original choice of location, it carried with it necessarily, and was surely intended so to do, at least two incidental and subsidiary rights, because inevitably involved in the terms and character of the grant; one of these was to occupy and possess the lands of the State under water so far as needed for the construction and maintenance of

the wharves which the city was at liberty to build. It needed no authority from the State to erect wharves on its own land; what it did need was a right to build them on land under water owned by the state, and safety and protection for them when built \* \* \* The authority thus given being commensurate with the municipal limits involved a grant of so much of the land of the State under water as those wharves would occupy if the City's choice of location required such appropriation. This right was tantamount to an ownership, it embraced the entire beneficial interest, and was inconsistent with any title remaining in the State.”

I think this language fairly states our position of the instant case.

The Attorney-General, in the Court below, made the further claim that the Gloucester Land Company divested itself of the title to the upland, retaining no interest therein, which could be the subject-matter of a subsequent conveyance to “Washington Manufacturing Company,” which we say unquestionably transferred whatever rights the land Company had pursuant to the legislative license of 1846 herein referred to.

As before stated, the first conveyance (C. p. 24, l. 15, *et. seq.*), was made December 1, 1846, long prior to the Act of 1891, which has usually been considered as a repeal of the local common law regarding riparian lands, conveyed to “The Washington Manufacturing Company” a title to low water mark of the River Delaware. (C. p. 25, l. 9).

The deed also contained the following clause:

“Together with all and singular the improve-

ments, streets, ways, water courses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining." (C. p. 27, l. 10).

It also contained a general warranty.

Without regard to the attempt to convey to low-water mark, whatever privilege or license the land company had obtained by virtue of the legislative license aforesaid, the same passed as appurtenant to the ownership of the upland and independently of the license, the right of reclamation could have been exercised at any time prior to January 1, 1892, under the common law of the State.

The confirmatory deed (C. p. 29, l. 30, *et seq.*), was dated April 15, 1886, about five years before the repealing Act of 1891, was passed. We think it reasonable to assume, as recited in the deed of confirmation that the latter conveyance was made to clear up any question as to whether or not the grantee in the second deed, became vested by the former deed of the benefit of the right to reclaim, contained in the charter of the land company.

The granting part of the second deed from the land company with respect to these rights is as follows:

"Doth hereby satisfy and confirm unto the said Washington Manufacturing Company its successors and assigns the above in part recited indenture of the 15th day of April, 1886, so far as the same attempts to convey any Riparian rights or water privileges and the ground overflowed by water not heretofore granted the said The Washington Manufacturing Company and doth grant, bargain, sell, alien, enfeoff release and confirm unto the said Washington Manufacturing Company its successors and assigns the lot or piece of ground situate between the

western line of the above described or other lot of ground heretofore conveyed by the said The Gloucester Land Company to the Washington Manufacturing Company the title to which is now vested in the said Washington Manufacturing Company by virtue of the above in part recited indenture of the fifteenth day of April, A. D. 1886, and the exterior line established by the commissioners appointed under the authority of the act or acts of the said State of New Jersey together with the right liberty and privilege of excluding the tide-water by filling in or otherwise improving the same and appropriating the land to its and their exclusive use." (C. p. 31, l. 24).

When this confirmatory deed was made, there had been no legislation revoking, or in any way limiting or affecting the right of land company to exercise the privilege conferred in the said Act of its incorporation. Under these conditions, there seems to be no merit in this contention made by the Attorney-General.

The latter also made the claim, in the Court below, that the provisions of the Amendment of 1891, did not apply to the Gloucester Manufacturing Company because there was no specific mention, in the Act of incorporation granting the privileges mentioned therein in favor of the assignees or grantees of the land company.

Manifestly, however, this privilege would pass an appurtenant to the ownership of the upland.

In this respect, the language of the amendment of 1891, is significant. It provides that without the con-

sent of the riparian commissioners no persons shall reclaim any lands under tide waters of the State:

“Provided, however, that neither this section nor any provision in this Act contained shall in any wise repeal or impair any grant of land under water or right to reclaim made by Legislative Act or grant, license, power or authority so made or given to purchase fill up, occupy, possess or enjoy lands covered by water fronting or adjoining lands owned or authorized to be owned by the corporation or grantee or licensee in the legislative Act mentioned, its, his or their representatives, grantees or assigns, or to repeal or impair any right or license, power or authority to erect or build docks, wharves or piers opposite and adjoining lands owned or authorized to be owned by the corporation, grantee, licensee in the legislative Act mentioned, its, his or their representative, grantees or assigns heretofore made, or which may be made or granted at the time this Act goes into effect, or given directly by legislative Acts whether said Acts are or are not repealable.”

It will be noted that the legislation reserves to the State's licensee or its grantee or assigns the rights conferred in any license theretofore made. There is nothing in the context of the Act to indicate that the Legislature intended to preserve these rights to licensees in any license only which ran to the licensee and its grantee or assigns. There is no support for the construction that the Legislature intended to create this reservation only in favor of grantees or assigns of the licensee when the license itself expressly conferred such right to the licensee and its grantee and assigns. The obvious purpose of the Act was not, in any way, to affect the right to

reclaim in those cases where a legislative grant or license had theretofore been made. By express words, the Legislature provided that all privileges existing pursuant to such legislative license could be exercised either by the licensee or its grantee or assigns. The legislation was intended only to repeal the common law right theretofore exercisable by an owner of upland, to reclaim beyond high water line. At the same time the Wharf Act was repealed. The only cases to which the legislation was applicable, were to shore owners, who possessed no legislative license, and who had not reclaimed and to shore owners who had no legislative license, but possessed a dock license under which there had been no reclamation. The rights and privileges held by these legislative licenses and their grantees and assignees were, regardless of the terms of the Act, permitted to exercise the privileges originally conferred by the Legislature. Had the legislature intended to limit the reservation or made the exception applicable only to the holders of licenses alone where the license, by express terms, passed to the assignees and grantees of the licensee, it certainly would have used language appropriate to this intention.

The reservation is in favor of legislative licensees and the plain import of the language used was to permit grantees and assignees of the licensee, to exercise the same privileges as the licensee itself possessed.

This question is also discussed at length in the main portion of this brief.

COMMENT ON THE OPINION OF HIS HONOR,  
VICE-CHANCELLOR LEWIS.

The cases cited by Vice-Chancellor Lewis do not in any way refute the contention of the defendant that under the amendment of 1891, above referred to, the defendant has the right to now reclaim and make use, for the construction of wharves and piers, of the land flowed by tide-water in front of and adjacent to the high land now owned by the defendant.

The learned Vice-Chancellor does not advert to the main contention by the defendant, to wit: that the effect of the amendment of 1891, was not to repeal or revoke the right created by the Act of 1846, for the benefit of the Gloucester Land Company which right passed to its assignees or grantees. The Vice-Chancellor failed to consider this question and no view is expressed by him, one way or the other, as to the effect of the amendment.

That portion of the opinion in reference to the appropriation of riparian lands for the benefit of the school fund, referred to by the learned Vice-Chancellor is commented upon under point 2 of this brief.

We submit that the decree appealed from should be reversed and the information dismissed.

STARR, SUMMERILL & LLOYD,  
*Solicitors of Appellant,*  
L. EDWARD HERMAN,  
*Of Counsel.*

**New Jersey Court of Errors and Appeals**

Between

EDWARD L. KATZENBACH, Attorney  
General of the State of  
New Jersey,

Informant-Respondent,

*and*

ARMSTRONG CORK COMPANY, a corporation of New Jersey,  
Defendant-Appellant.

ON APPEAL  
FROM  
CHANCERY.

**BRIEF ON BEHALF OF RESPONDENT.**

**POINT ONE.**

The right to reclaim as contained or given in the Act of 1846, incorporating the Gloucester Land Company, was a mere privilege or license and nothing more, and as such was not assignable. Such right, therefore, never devolved upon or vested in the appellant as successor in title to the Gloucester Land Company.

Paragraph 5 of the act incorporating the Gloucester Land Company, is as follows:

“And be it enacted that the said company are authorized to improve the above described premises, and any other lands hereby authorized to be purchased by laying out the same into lands, streets, squares, blocks, liens, or other divisions, in raising and creating

streets; and they shall have liberty to fill up, occupy, possess and enjoy all lands covered with water fronting and adjoining the premises that may now be or may hereafter be purchased by them, and may construct thereon wharves, harbors, piers, slips or other structures for commercial and shipping purposes”.

The Court will note that in Paragraph 5, there are no words of grant used. The only language used extending to said company the right to reclaim is that they shall have the liberty to fill up, etc., and may construct thereon wharves, etc. Such language gives and could give nothing more than a privilege to do the things therein enumerated. The words “liberty” and “may” are words merely of privilege which is ordinarily designated as a license and is not assignable.

*Morris Canal and Banking Co. vs. Central R. R. Co., et als., 16 N. J. E., 419.*

In this case the associates of the Jersey Company, by the third section of their charter, had the privilege of building docks, wharves, and piers in those waters, and of appropriating the same to their own use, and the Court construed this third section as granting a privilege or license which the company could not convey or transfer.

The Court in that case considered the purpose and intention of the act incorporating the associates of the Jersey Company, and I think it is well to examine what appears to be the intention and purpose of the act incorporating the Gloucester Land Company.

The preamble of said act in substance recites that certain persons own a tract of land, and have in view the erection of a town to be called Gloucester, and that certain of said lands have been sold, and a number of buildings were erected thereon,

and that said persons intend to sell said building lots to all who are disposed to purchase in said town, and that it is indispensable that no obstacle should exist in the making of good and sufficient title for said lots by reason of death or other causes affecting the individuals now owning said lands.

It would seem clear then that the purpose of the Gloucester Land Company, as its name signifies, and the facts as recited in the preamble, was to lay out and sell lots, and build up the Town of Gloucester, and for this purpose they were authorized to own certain lands and to carry out said purpose to reclaim and fill up the lands covered by water fronting and adjoining the premises to be owned by them.

The Court will note that this act was approved February 16, 1846, and on December of the same year it caused practically all the lands which were conveyed to it by Siter, et al., to be conveyed to the Washington Manufacturing Company. The charter of the Washington Manufacturing Company is to be found in Pamphlet Laws 1844, page 55, and the object of said Act of Incorporation was,

“For the purpose of manufacturing, bleaching and printing all goods of which cotton or other fibrous materials form part, and all machinery incident thereto, and for the transaction of such business as may be necessarily connected therewith, and may erect such mills and other works as may be required to carry on such branches of manufacture, and they shall have power to raise by subscription a capital of Fifty thousand dollars (\$50,000.00).”

Section Two of said Act of Incorporation authorizes to purchase and hold real estate in the City of Camden or within three miles thereof as

may be required for the purpose of said corporation.

It would seem that the purposes of the Gloucester Land Company and the Washington Manufacturing Company are entirely different, the first to acquire and develop lands for the purpose of laying out streets, selling it into lots, etc., and to aid in such purpose, and for the building up of Gloucester City, the legislature gave them a right to reclaim lands fronting their property flowed by the Delaware River.

The purpose of the Washington Manufacturing Company was that of a bleaching or cotton goods plant.

It is fair to assume in view of the purposes of the Gloucester Land Company that the legislature was prompted and granted to it the right to fill and reclaim land under water belonging to the State for the purpose of aiding the building up of the City of Gloucester, and so with this purpose and object the company was incorporated.

Clearly when the Gloucester Land Company conveyed practically all the property that it got for this specific purpose to the Washington Manufacturing Company, the real purpose and object of the corporation was largely defeated, the grantee of said company having been organized for purely commercial purposes and nothing more.

The Court in *Morris Canal and Banking Co. vs. C. R. R. Co.*, *supra*, in considering the effect of similar legislative provisions, in its opinion on page 431 says:

“What has been done in other cases of grant of lands by legislative act in this State? It is said by Judge Elmer, in the case of *Bell v. Gough*, 3 Zab. 667, that ‘but three cases of distinct grants of land covered with water, or of the shore, by the legislature, are to be found in our statute books,’

referring to the grant of the Pea Patch to Henry Gale, by the act of 24th November, 1831, Pamph. L. 15; the grant to Nathaniel Budd, by act of 8th November, 1836, Pamph. L. 13; and the grant to Aaron Ogden, by act of 25th January, 1937, Pamph. L. 64.”

In the Pea Patch grant, the language of the act is, that

“All the rights and title of the said State of New Jersey to the said island called the Pea Patch, with all and singular the appurtenances, be and the same are hereby granted and conveyed to the said Henry Gale, his heirs and assigns forever; and that the same shall forever hereafter be vested in the said Henry Gale, his heirs and assigns, in as full and ample a manner as the State of New Jersey hath right and title to grant the same,” reserving, however, the State’s right of jurisdiction and sovereignty. The language in the grant to Budd is the same, and in that to Ogden is equally clear.

The language used in these three acts leaves no doubt in regard to the intention of the legislature, or the nature and extent of the estate granted. Compare this with the language of the third section of the charter of the Associates. The difference is striking. The grant of the Pea Patch declares that “all the right and title” of the State to the same, “are hereby granted and conveyed to the said Henry Gale, his heirs and assigns forever, and that the same shall forever hereafter be vested in the said Henry Gale, his heirs and assigns”, &c.

The third section of the Associates’ charter declares that “they shall have the privilege to build docks, wharves and piers,” &c., and “to appropriate the same to their own use.” The words “grant”, “convey”, “right”, “title”, “estate”, are none of them found in it. Not only is the language of this third section different from that used in these grants, but it is also wholly unlike that uni-

formly used in a deed intended to convey a fee simple, or such right as the complainants are contending for. No discreet conveyancer would use such language in such a deed. It would not be deemed either apt or adequate for the purpose. And when a grant of an estate in fee, in lands so extensive and valuable, or a grant of so important a right over them as is argued for by the complainants, is intended to be made by the State, by means of an act of the Legislature, passed with all the formalities and deliberation attendant upon legislation, is it not reasonable to suppose that they would employ language at least as plain, explicit, and direct, as that which is deemed appropriate and necessary in an ordinary deed between individuals?

It is a well settled rule of construction in regard to a public grant, that the grantee can take nothing not clearly given him by the grant. In cases of doubt, the grant is construed in favor of the State, and most strongly against the grantee.

*United States v. Arredondo*, 6 Peters 738-9;

*Charles River Bridge v. Warren Bridge*, 11 Peters 545;

*State v. Bentley*, 3 Zab. 538;

*Proprietors of Bridges, etc. v. Hoboken Land & Improvement Co.*, 2 Beas. 94;

*New Jersey Zinc Co. v. Morris Canal Co.*, 44 N. J. E. 398;

*Townsend v. Brown*, 4 Zab. 87;

*McCran v. Erie R. R. Co.*, 95 N. J. E. 653-6.

In *Townsend v. Brown*, Chief Justice Green says:

“It is a rule of construction, no less wise than clear, that in all cases of public grants, the interpretation shall be most favorable to the public, and most strongly against the

grantee. The rule is founded in wisdom. All experience teaches that public rights are yielded to private interests with sufficient alacrity. If the legislature really design to grant to individuals the right of several fishery, below low water mark, it is easy to do so in plain and express terms. It is far better than the right should be settled by legislative interference, than that public rights should be frittered away by the aid of judicial construction.

I am not able to see, either from the language of the third section of the charter of the Associates, or from the other parts of the act, or from the whole act taken and considered together, and the object and intention of the legislature of passing it, that that section has the meaning and effect contended for by the counsel of the complainants. I am of opinion that it gives to the Associates merely a privilege or license to build docks, wharves and piers, in the waters of the Hudson River, and the bays aforesaid, in the manner there mentioned, and when so built, to appropriate them to their own use; and that the Associates could not transfer or convey such privilege or license to any other corporation.”

## POINT TWO.

**Even if the license by the Legislature to reclaim given to the Gloucester Land Company under its act of incorporation was assignable, the same did not pass by the deed of conveyance of the Gloucester Land Company to the Washington Manufacturing Company of December 1, 1846.**

There is no specific reference in the deed of the Gloucester Land Company of December 1, 1846, to the license to reclaim granted it by its charter

from the State. The only words employed in said deed are general words, namely:

“Together with all and singular the improvements, streets, ways, water-courses, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, etc.”

These are mere general words and are insufficient to pass this license to do a specific thing even if the same were assignable. This also seems to have been in the mind of the parties to these instruments, because when the Washington Manufacturing Company conveyed to Washington Manufacturing Company, a corporation under the General Corporation Act of 1875, they procured another deed from the Gloucester Land Company confirming the same as far as all attempts to convey any riparian rights or water privileges of the ground overflowed by water not heretofore granted the said Washington Manufacturing Company.

Said confirmatory deed specifically mentions and attempts to convey the license to reclaim as granted to the Gloucester Land Company in the following words:

“Together with the right, liberty and privilege of excluding the tide water by filling in or otherwise improving same, and appropriating the lands to its and their exclusive use.”

In the matter of the condemnation of lands in the City of Camden, to be taken as a bridge site for the Delaware River Bridge, Justice Katzenbach, in his opinion, filed in the Supreme Court December 3, 1923, says:

“There is no reference to this legislative grant in the deeds executed by the Stockhams for either of the properties, north or south of

Pearl Street extended, now owned by Mr. Baird. The act of 1873 moreover seems to be only a license to build wharves, and does not create an easement which would pass under the General clause of a deed without specific mention.”

### POINT THREE.

**The deed from the Gloucester Land Company to the Washington Manufacturing Company of December 1, 1846, not containing any apt words to grant, transfer or convey the license to reclaim given to the Gloucester Land Company by the Act of 1846, even if the same was assignable, the license or right to reclaim became lost when the Gloucester Land Company divested itself of the title, and hence it had nothing to convey or transfer to the Washington Manufacturing Company by its deed of 1885 as far as such license was concerned, and such deed carried nothing.**

It has clearly been determined in the case of *Morris Canal and Banking Company v. C. R. R. of N. J.*, *supra*, that the right conferred by the charter of the Gloucester Land Company to reclaim was that of a license and not a grant. No words of grant were contained in said act incorporating the Gloucester Land Company, and as stated in the opinion of the learned Master, if it was intended to confer or give a fee, apt words would have been used. This right or privilege then to reclaim being a mere license could only continue to exist and operate or be effective for the purpose for which it was given as long as the Gloucester Land Company owned the lands fronting on the Delaware River. In other words, a license to extend their lands in the Delaware River

by reclamation could only continue as long as the Gloucester Land Company owned the lands to be extended, and when they divested themselves of the upland the right or license to reclaim terminated.

*East Jersey Iron Co. vs. Wright*, 32 N. J. E. 248.

#### POINT FOUR.

The title of the lands of the State under tidal waters extend to high water mark, hence the deed of Siter to the Gloucester Land Company, and the other deeds from the Gloucester Land Company down to the Armstrong Cork Company, attempting to convey to low water mark in the Delaware River, in fact, conveyed nothing beyond the high water mark.

The title of the State extends to high water mark.

*Stevens vs. Paterson Railway*, 34 N. J. L. 532;  
*Kirk vs. Dempsey*, 85 N. J. L. 304.

Quoting from Justice Bergen's opinion on page 1030,

"This contention overlooks two important factors, the first of which is that plaintiff's deed indisputably carried his title to high water mark as it existed before the filling, because it undertook to convey not only the fast land but beyond it into tidal water, and while as to the latter it passed nothing, because Cramer could not convey the land of the State under water; it was efficacious to the extent of grantor's title, which was to the original high water mark and did not extend beyond the latter point."

#### POINT FIVE.

**The right to reclaim being a mere franchise or license may be revoked by the Legislature at any time before reclamation actually takes place.**

*Stevens vs. Paterson Railway*, 34 N. J. L., page 532;  
*State vs. J. C.*, 25 N. J. Law, page 525;  
*State vs. Garregan*, 37 N. J. Law, page 264.

#### POINT SIX.

The license given the Gloucester Land Company by the Legislative Act of 1846 to reclaim, if it was assignable or is held to have passed to the Armstrong Cork Company by the mesne conveyances from the Washington Manufacturing Company became revoked, insofar as the said license was unexecuted, upon the dedication of State lands under water to the school fund by virtue of the Legislative Act of 1894.

The lands were dedicated to the school fund by virtue of an act of the Legislature found in Pamphlet Law 1894, page 123.

A SUPPLEMENT to an act entitled "An act to establish a system of public instruction" (Revision), approved March twenty-seventh, one thousand eight hundred and seventy-four.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That all the lands under water belonging to this state be and the same hereby are irrevocably appropriated for the support

of free schools in this state, and that all moneys hereafter received from the sales and rentals of such lands under water belonging to this state, shall be paid over to the trustees of the school fund, and appropriated for the support of free public schools, and shall be held by them in trust for that purpose, and shall be invested by the treasurer of the state, under their direction, in the same manner as the funds now held by them are invested, the same to constitute a part of the permanent school fund of the state, and the interest thereof to be applied to the support of public schools in the mode which now is, or may hereafter be directed by law, and to no other purpose whatever.

2. \* \* \*

3. AND BE IT ENACTED, That all acts or parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Approved April 24, 1894.

It is clear to be seen from this act that these lands were put into the school fund and became a part of a trust, the purpose of which was to create an income for the support of the free schools.

Article 4, Section 7, Paragraph 6, of our State Constitution provides that:

“All property appropriated for the support of the free schools shall be securely invested and remain a perpetual fund, and that it shall not be competent for the legislature to borrow or appropriate or use said funds or any part thereof for any other purpose under any pretense whatever.”

The effect of this provision, coupled with the Act of 1894 was to impress a trust on the lands belonging to the State under tidal waters for the benefit of the school fund, and to preclude conveyance of any part thereof except for an adequate consideration.

*Henderson vs. City of Atlantic City*, 64 N. J. E., 583.

In the matter of the condemnation of lands in the City of Camden to be taken as a bridge site for the Delaware River Bridge, *supra*.

Quoting from Justice Katzenbach's opinion:

“The act authorizing the construction of the bridge does not embody any provision requiring a compensation to be paid for any lands belonging to the State. I would be inclined to adopt the view that the act authorizing the construction of the bridge carried with it an implied grant to take any lands of the State necessary for the erection of the bridge without compensation, were it not for the fact that the legislature of 1894 by an act (P. L. 1894, Page 123), irrevocably appropriated for the support of the free public schools of this State, all the lands under water belonging to the State of New Jersey. This act brought these lands or the proceeds of the sale thereof, within the provision of Article 4, Section 7, Paragraph 6, of the constitution, which provides that ‘any property, appropriated, etc.’ The act of 1894 was construed in the case of *Henderson vs. City of Atlantic City*, as irrevocably devoting lands under water to the support of the free schools by force of the constitutional provision referred to, and a grant of riparian lands to the City of Atlantic City for a nominal consideration was held void.”

It seems clear that if the license to reclaim the lands under water between Monmouth and Mercer

Streets, did survive to the Armstrong Cork Company, it necessarily became revoked insofar as unexecuted by reason of the act of 1894, appropriating the lands to the school fund, and the repeal of all acts or parts of acts inconsistent therewith.

Certainly if the purpose of such dedication to the school fund was to raise money, it would revoke any outstanding license not coupled with an interest insofar as such would be in derogation with the purpose and object of the act, and this would be so particularly in view of the fact that the State never parted with its title to the Gloucester Land Company, and the Gloucester Land Company insofar as it did not reclaim or improve same, never became vested with any fixed right or title thereto, which was at the time of the passage of the act of 1894 in the State of New Jersey, and as a fact always was and now is. The Act of 1894, was in effect to convey or transfer the lands for a particular purpose, and it is well settled that unless coupled with an interest or an equity has been created by acts done in pursuance of a license, a license is always subject to revocation in either of the following methods:

1. By the will of the licensor.
2. By the death of either of the parties, or
3. By a conveyance of the land upon which it was intended to operate.

*East Jersey Iron Co. vs. Wright*, 32 N. J. E. 248;

*Stevens vs. Paterson R. R.*, *supra*.

The license granted the Gloucester Land Company by the Act of 1846, was never coupled with an interest, and therefore, as such was revocable,

as far as unexecuted. Surely it cannot be said such license was coupled with any equity as far as unexecuted when it was permitted to remain unexecuted except possibly as to the pier for nearly a period of eighty (80) years, and if now permitted to be exercised would in effect be to divest the school fund of the benefit to be derived from the sale thereof, when in fact the title to such lands is now actually in the State in trust for this particular purpose.

The case of *State vs. Mayor and Common Council of Jersey City*, 25 N. J. L., on pages 525-527, we quote in part from the opinion of Justice Elmer as follows:

“The inchoate right, if such it may be called, which the proprietor of the upland has either with or without a license to acquire an exclusive right to the property by wharfing out or otherwise improving the same gives him no property in the land while it remains under water. It may be granted by the State to a stranger at any time before it is actually reclaimed and annexed to the upland, and such is unquestionably the common law, and I am aware of no alteration of it in this respect in New Jersey.

#### **Concluding Discussion and Answer to Appellant's Brief.**

It is conceded that by reason of the local custom existing in New Jersey up to the time of the passage of the Act of 1891, referred to in respondent's brief, that the owners of the upland had a right to reclaim and wharf out to the low water line. Under the Wharf Act, P. L. 1851, page 335, it was required, however, that any owner of land situate upon tide waters who was desirous to build any dock, wharf or pier in front of same to

extend beyond the limits of ordinary low water shall first obtain for the purpose a freeholder's license. It would seem that any reclamation made by the owners of the upland adjoining the lands under water in question vested in them an undisturbable right as far as such reclamation took place within proper limits, and that the high water mark as shown on the map of Haynes & Sherman offered in evidence in these proceedings, must now be taken to be the limit of the State's rights, as it appears from the testimony that the fill was made to the present high water line a considerable time prior to 1891.

It appears from the testimony, that the dock existing on the lands under water in question was existing as presently erected as far back as 1870 or 1875. It does not appear, however, whether this dock was erected by the Gloucester Land Company or its successor in title, the Washington Manufacturing Company. This is a matter of importance inasmuch as the dock, according to the map of Haynes & Sherman, extends riverward of the low water mark.

The State's contention, of course, is that the rights contained in the charter of the Gloucester Land Company to fill in, dock out, etc., was a mere license, and as such was not assignable, or if assignable, not having passed by the first deed of the Gloucester Land Company to the Washington Manufacturing Company, it became lost. Therefore, the Washington Manufacturing Company would then stand in the position of any other upland owner, and whatever rights it would have to fill in or wharf out would be by virtue of the then existing local custom. The Wharf Act of 1851 required a freeholder's license for any building of piers, etc., beyond the low water mark, and if this dock was built by the Washington Manufacturing Company without obtaining a freeholder's license

it was built without right as far as it extended beyond low water mark. However, I do not think that the Court is called upon to decide this particular question, as this suit is a suit to restrain the erection of piers or docks other than the present existing one, and if the present existing dock is there without right, it constitutes a purpresture and is a subject of a suit other than upon which the present bill of complaint is founded. It is the contention of the State in contravention of appellant's contention as per Point III of this brief, that the partial exercise of the license either as given under the charter of the Gloucester Land Company or by virtue of the common law to fill in, can only operate to vest in the upland owner an undisturbable right insofar as the land under water *was actually reclaimed or built upon*, and a partial exercise of this license cannot be taken to vest any right as to the remaining part not reclaimed or built upon.

*State v. Mayor and Common Council of Jersey City*, 25 N. J. L. 525-527, Elmer, J.:

"It must now be accepted as the established law in New Jersey, that the right of the owner of lands bounding on a navigable river extends only to the actual high water mark, and that all below that mark belongs to the State. The inchoate right, if such it may be called, which the proprietor of the upland has, either with or without a license, to acquire an exclusive right to the property, by wharfing out or otherwise improving the same, gives him no property in the land *while it remains under water*. It may be granted by the State to a stranger, at any time before it is actually reclaimed and annexed to the upland, and such is unquestionably the Common Law and I am aware of no alteration of it in this respect in New Jersey."

*Bell vs. Gough*, 23 N. J. Law holding:

1. If the owner of land bounded by the shore upon tide water make improvements upon or reclaim the shore adjoining his lands, *the part of the shore so improved* or reclaimed belongs to him and cannot be granted by the State.

Were not this so, one owning a mile of water front property, by the erection of a dock 10 feet wide could claim title to the remaining 5270 feet, though no reclamation thereof otherwise had been made. Such is the proposition urged by appellant under Point III, and is clearly contrary to the logic of the situation as well as the law.

As far as the license to fill in or build wharves either under the Gloucester Land Company charter or by virtue of the local common law was *exercised and executed* up to the passage of the Act of 1891, *within the limits authorized by custom or law to be exercised*, this respondent does not dispute appellant's rights thereto, but as to the remaining portion that has never been reclaimed or built upon prior or subsequent to the Act of 1891, it is respondent's contention that the license as to such part being unexercised, is subject to revocation, and became revoked for the reasons heretofore stated in respondent's brief.

It should be borne in mind that when the Gloucester Land Company were given their charter in 1846, there was no General Corporation Act, and therefore, the Gloucester Land Company took merely such powers as were specifically given it by the terms of its charter. They were given the privilege to fill in, but such privilege by the terms of its charter *was not extended to its successors or assigns*. It seem to have been generally considered at that time that the rights of an upland owner extended to low water mark, and it is respondent's contention that the right given to the Gloucester Land Company to fill in, occupy,

possess and enjoy, etc., was merely to extend to the corporation by its charter the rights and privileges ordinarily and usually possessed by a riparian owner. If we are correct in this, it would seem after the passage of the Wharf Act in 1851, in order for an upland owner to go beyond the low water mark in the building of piers, etc., it was necessary to procure a freeholder's license. This question arose in the case of *Lake Erie Railroad Company vs. Hughes*, 46 Law 67, cited appellant's brief, page 26. The Court in that case did not decide that particular question. However, *The Lake Erie Railroad Company vs. Hughes* case is authority that no title was acquired by virtue of the right to fill up, occupy, etc., lands covered by water as given in the charter of the Gloucester Land Company, because it was held that the power thus given brought the company within the class of corporations mentioned in the 3rd and 4th Sections of the Riparian Act of 1869, Revision page 982, whereby it was provided such corporation might secure from the State a conveyance in fee of the lands naturally under water by paying therefor, etc. Therefore, it would seem that after 1891, in order for the Gloucester Land Company to acquire title to the lands under water it would be necessary for it to secure from the State a conveyance of those lands.

The case of *Boone vs. Kent*, 42 N. J. E. 134; *Yards vs. Ocean Beach*, 49 E. 306 (page 21 of appellant's brief), seem to be authority for the propositions that when the upland owner exercised his right given by the common law to reclaim, or having acquired from the State its rights to the land under water that the same was so closely connected with the upland that it virtually became and was a part of it. This is quite different, however, from the case now before us where the State's title was never acquired by grant or

by exercising the license *in full as to all the lands affected.*

Counsel for appellant on page 25 of their brief state:

“There is a manifest distinction between the case of *Morris Canal vs. C. R. R.*, and the case under construction.”

In the *Morris Canal* case the right given under the charter was to build docks, wharves and piers. The rights given under the Gloucester Land Company included a similar right with the privilege of filling out, reclaiming, etc.

The mere fact that an additional privilege was given to the Gloucester Land Company by its charter to fill in lands besides wharfing, does not distinguish them in principal. In the *Morris Canal* dock case, the privilege to build wharves was held to be a mere license. In other words, it seems clear that the findings of the Court was to hold in effect that any right in the nature of a mere privilege was a mere license, and this should apply with equal force to the privilege *to fill in*, as well as build docks or wharves. As before stated it is our opinion that the privilege given to the Gloucester Land Company by its charter to fill in lands under water and to build docks, etc., was merely declaratory of the rights existing in any individual riparian owner to do likewise under local common law or custom. *If this was not so, apparently there would be no limitation as to how far out the Gloucester Land Company would have been permitted to go in the reclamation of lands or building of piers.* Surely the legislature never intended to give an unlimited right of filling in the river, and unless the limitation of the local custom to go merely to the low water line was applicable, the Gloucester Land Company might go unlimitedly riverward as far as it chose.

Appellant on page 29 of its brief, following a quotation from the opinion of the Court in the *New Jersey Zinc Company vs. Morris Canal*, says:

“This case seems to be authority for the proposition that a license under the Wharf Act of 1851 will pass by conveyance of the upland as appurtenant thereto.”

The Court's attention is directed to Section 5 of the Wharf Act of 1851, which specifically provides that a license obtained under said act shall not be assignable except with and as appurtenant to said lands and shall pass by any sale of said lands as appurtenant thereto.

Appellant contends that if the right to fill in, etc., was not assignable, or if such right as given by the charter of the Gloucester Land Company did not pass under the deed of the Gloucester Land Company to its grantee, or their successors in title, yet by reason of the Act of 1891, P. L. 216, set out on page 31 of its brief, such right became extended thereby to appellant as successors in title to the Gloucester Land Company.

It is our opinion that this act had no such effect; that by its provisions it was merely intended to preserve and save any existing right to fill in, etc., given directly by legislative act; that it did not, nor was it ever intended by its provisions, nor did it by its terms extend or apply to any riparian owner who at that time had no existing rights by virtue of such legislative grant or privilege.

What was intended by such provisions was merely to preserve unto the grantee of the corporation who had obtained a legislative license, such legislative right provided such grantee had obtained or acquired from such corporation such right given by such legislative act. In other words, if the Gloucester Land Company had the right to convey and assign the privilege or license to fill in, etc., as contained in its charter, and did effect-

ually convey or assign such privilege or license and same was properly conveyed or assigned by each successive owner of the premises in question down to the time that the defendant acquired title, then in such case the Act of 1891 may be applicable, but if the contention set up in respondent's brief in Points 1 and 2 is correct, and the Gloucester Land Company could not assign the privilege to fill in, or if such privilege was assignable but having become lost by reason of the failure to include it in its first conveyance to the Washington Manufacturing Company, clearly at the time of the passage of the Act of 1891, the then owner of the upland of the premises in question had acquired no right whatsoever as originally given to the Gloucester Land Company by legislative act, and surely it cannot be successfully urged that it was the intention of the Act of 1891 by using the words, "its, his or their representative, grantee or assigns", to revive or create a right that had then become lost or not then in existence. The words "representative, grantee or assigns" were intended to apply and extend to such representative, grantee or assigns only if such rights had been acquired by such grantee or assigns for its predecessors in title as granted originally by legislative enactment, and that such rights should be preserved to such grantee as was originally given to its predecessor or predecessors in title, if so acquired by them and were then in existence. It was never intended by the terms of said act to create any new right or revive a one time right that became lost, and if the contention is correct as set out in Points 1 and 2 of respondent's brief, the legislative right or license to fill in, etc., lands under water did not become revived by the Act of 1891.

However, irrespective of the effect of the Act of 1891, the legislative license given to the

Gloucester Land Company for the reasons outlined in Point 6 of respondent's brief became revoked by the dedication of the lands to the school fund.

Appellant in his brief on page 40, commenting on this point of complainant's brief below, says:

"Manifestly therefore, the Act of 1894 only appropriates those riparian lands to school purposes which had not heretofore been disposed of in some manner by the legislature or had had imposed on them by prior legislature some charge or encumbrance."

To this respondent agrees, but contends that the rights given under the charter to the Gloucester Land Company were merely those of license or privilege which became lost and was not in existence or effect at the time of the dedication of the lands of the State under water to the school fund, and even if the same were in existence and had not become lost at the time of the passage of the Act of 1894, the rights given under the charter of the Gloucester Land Company to fill, etc., are that of a license or privilege only, and are not in the nature of a charge or encumbrance, and as such were subject to revocation at any time until exercised or executed. The creation of these rights was not such a carving out of any part of the title or rights of the State that would cause the lands to pass to the school fund subject to the burden thereof, unless and only insofar as exercised lawfully and within proper limits at that time. Until actually reclaimed this land could be conveyed by the State.

And further, on page 40, says:

"That to sustain the proposition that the legislature could by the Act of 1894 without compensation, take from the licensee the rights conferred by a previous legislature would be illegal not only under the provisions of our constitution, but by the provisions

of the Constitution of the United States, prohibiting the privation of private property without due course of law.”

If the right given to the Gloucester Land Company to fill in, etc., state lands under water, was that of license as found by the Court in the *Morris Canal v. C. R. R.*, clearly a license or the license in question insofar as unexercised, is not such a property right as the revocation thereof would constitute the taking of property without due process of law. It is a well settled principle of law that a license unless coupled with an interest is revocable at the will of the creator, and this question is amply covered by Point 6 of Respondent's brief.

Appellant cites on page 48 of his brief, the case of *Williams v. Mayor of New York*, 105 N. Y., page 419. We have the authority of *Morris Canal v. C. R. R.*, a decision of our own courts which has construed the rights under a legislative charter to build wharves, etc., to be a mere license which is sufficient adjudication by the Court of our State to govern and control the present case.

Respondent desires to make this further point, that if the Act of 1891, relied on by the appellant, gave it any rights, these rights being inconsistent with the purposes of the Act of 1894, dedicating the lands to the school fund, became repealed by virtue of Section 3 of said Act of 1894.

**It is therefore respectfully submitted that for the above reasons the decree appealed from should be affirmed.**

HENRY J. GAEDE,  
Deputy Attorney General, for  
Edward L. Katzenbach, At-  
torney General of the State  
of New Jersey, Respondent.

RIVER

DELAWARE

U.S. PIERHEAD LINE AND N.J. BOARD OF COMMERCE & NAVIGATION PIERHEAD LINE

U.S. PIERHEAD LINE AND N.J. BOARD OF COMMERCE & NAVIGATION PIERHEAD LINE

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NEW U.S. BULKHEAD LINE 516.77' 22.74° W 886.40'

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by James Sherman, C.E.  
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EXHIBIT D1.

An Act to incorporate the Gloucester Land Company.

WHEREAS it is represented to the legislature,  
that John Rodman Paul, Callender Price, Thomas S.  
Newlin, Benjamin Marshall, John Siter, Richard  
Price, Joseph Price, Junior, Richard Ashhurst,  
Lewis R. Ashhurst, John Ashhurst, John R. Wor- 10  
rell, James C. Worrell, Gideon Scull, David S.  
Brown, Robert F. Walsh, Benjamin T. Tredick, Wil-  
liam Woodnutt, Charles W. Churchman, Mordecai  
D. Lewis, Robert Wharton Sykes, Thomas Sparks,  
and Samuel R. Simmons are the owners of a tract of  
land, containing about one hundred and fifty acres,  
situated on the river Delaware, at Gloucester Point,  
in the township of Union, in the County of Camden,  
New Jersey, and have laid out the same into build-  
ing lots, streets, and sites for manufacturing pur-  
poses, with the view of erecting a town, to be called 20  
"Gloucester;" and already there have been estab-  
lished two large steam cotton manufactories, and  
other manufactories, and lots have been sold, upon  
which about one hundred substantial stores and  
dwelling-houses are now built, and they intend to  
sell building lots to all who are disposed to purchase  
in said town; and whereas it is indispensable that  
no obstacle should exist to the making of good and  
sufficient titles for said lots, by reason of death or  
other causes affecting the individuals now owning 30  
said land—therefore,

1. BE IT ENACTED by the Senate and General  
Assembly of the State of New Jersey, That John  
Rodman Paul, Callender Price, Thomas S. Newlin,  
Benjamin Marshall, John Siter, Richard Price,  
Joseph Price, Junior, Richard Ashhurst, Lewis R.

Ashhurst, John Ashhurst, John R. Worrell, James C. Worrell, Gideon Scull, David S. Brown, Robert F. Walsh, Benjamin T. Tredick, William Woodnutt, Charles W. Churchman, Mordecai D. Lewis, Robert Wharton Sykes, Thomas Sparks, Samuel R. Simmons, and their successors, shall be, and they are hereby incorporated and made a body politic and corporate, in fact and in name, by the name of "The Gloucester Land Company;" and, by that name,

10 shall have perpetual succession, and be capable in law of purchasing, for the use of said company, and of holding and conveying such real and personal property as may be necessary for the objects of the incorporation; may sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law and equity; and may receive and make all deeds, conveyances, grants, transfers, covenants, contracts, agreements and bargains, whatsoever, necessary for the said purposes;

20 and may have and use a common seal, which they shall have power to renew and alter at pleasure; and, generally, do any act or thing necessary to carry into effect the provisions of this act, and promote the objects and designs of said company, as authorized by this act.

2. AND BE IT ENACTED, That the stockholders of said company shall meet annually, on the second Monday of May, at Gloucester, two weeks' previous notice of the time and place of meeting having been

30 given in a newspaper published in the County of Camden, and shall then and there proceed to elect, by ballot, such number of directors as their by-laws shall direct, to serve for the term of one year and until others are chosen in their places; and said election shall be made by such of the stockholders of said company as shall attend for that purpose,

either in person or by proxy, each share of stock to entitle the holder thereof to one vote; the directors so chosen shall elect one of their numbers to be president of the board of directors of said company, and, in case of vacancy or absence, the office shall be filled by such person or persons as the remainder of the directors, or a majority of them, may appoint; if an election shall not be held at the time so appointed, it may take place at any future time, on the like notice.

3. AND BE IT ENACTED, That the stockholders may meet at any time after the passage of this act (due notice in writing having been previously given to each stockholder), for the purpose of organizing said company, and of electing directors, to hold their office until the annual meeting on the second Monday of May next, or until others shall be chosen in their places.

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4. AND BE IT ENACTED, That so soon as the said company shall be organized, the said John Siter and Samuel R. Simmons, who now hold the same in trust for the owners, shall convey to the said company, by their corporate name, the residue of said lands unsold, and shall assign and transfer to said company all bonds, mortgages, or other securities held by them, and pay over all moneys received by them for lands sold, first deducting therefrom all costs and expenses attending such sales; and the said company are hereby authorized to purchase and hold such lands adjoining the above described premises, which, by forming, angles and projections into their plot, mar the regularity and beauty of the whole, and such lands as may be necessary to reclaim portions of their property now flooded by the tide; provided the lands to be purchased shall not exceed thirty acres in the whole.

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5. AND BE IT ENACTED, That the said company are authorized to improve the above described premises, and any other lands hereby authorized to be purchased, by laying out the same in lots, streets, squares, blocks, lanes, alleys, or other divisions, and levelling, raising, and grading streets; and they shall have liberty to fill up, occupy, possess, and enjoy all lands covered with water fronting and adjoining the premises, that may now be owned, or may here-  
 10 after be purchased by them, and may construct thereon wharves, harbours, piers, slips, or other structures necessary for commercial and shipping purposes.

6. AND BE IT ENACTED, That the directors shall have full power to make by-laws, and to appoint such officers and agents as they shall deem expedient for the well conducting and transacting the business of the company, to declare and provide for the payment of dividends to the stockholders,  
 20 and in general to superintend the business and concerns of the company; provided such by-laws shall not be repugnant to the constitution and laws of this state or of the United States.

7. AND BE IT ENACTED, That the capital stock of the said company shall be fifty thousand dollars, to be divided into shares of one thousand dollars each, and shall be deemed personal property, transferable only on the books of the company, in such manner as the by-laws shall direct; and  
 30 nothing herein contained shall be construed to restrict the legislature from imposing any tax upon the property of the company; and no part of the capital stock shall be used for banking purposes, or for any other purposes not clearly indicated by this act.

8. AND BE IT ENACTED, That the deeds to be made by the company, for property hereafter to be

sold, shall each contain a clause prohibiting the making, selling, or vending malt or spirituous liquor, similar to the clause contained in the deeds for lots heretofore sold by the said John Siter and Samuel R. Simmons.

9. AND BE IT ENACTED, That the proceeds of all sales of lands shall be invested in bonds and mortgages, or other securities, until they shall amount to fifty thousand dollars, after which the interest arising from said investment, together with  
 10 the further proceeds of the sales of lots, may be divided among the stockholders, until the said land is all disposed of, after which the capital stock shall be divided among the stockholders, and this charter shall cease and determine; provided no division of the capital stock shall be made until all the debts of said company shall be paid.

10. BE IT ENACTED, That this act shall not continue in force longer than twenty years, and the legislature may alter, modify, or repeal the same,  
 20 whenever in their opinion the public good requires it.

Approved, February 16, 1846.

(Charter extended 30 years. Act Feb. 21, 1865. Pam. 72)

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Exhibit D2.

This Indenture made the third day of October in the  
 30 year of our Lord one thousand eight hundred and forty six Between John Siter and Maria his wife and Samuel R Simmons of the City of Philadelphia in the Commonwealth of Pennsylvania of the one part and "The Gloucester Land Company" a com-

pany recently chartered by the Legislature of the State of New Jersey of the other part Whereas Samuel C Champion by Indenture bearing date the twentieth day of June in the year of our Lord one thousand eight hundred and forty four and recorded in the Clerks office of the County of Camden in Book A of deeds page 156 &c did grant and convey unto the said John Siter and Samuel R Simmons and to their heirs and assigns ALL that certain fishery and several lots of Land at Gloucester in the township of Union in the County of Camden in the State of New Jersey aforesaid the said fishery Beginning at the upper side of Robert W Sykes formerly Joseph Huggs wharf at high water marks of the River Delaware thence up the said high water mark till a line extended from the same and perpendicular thereto strike the low water mark of the said River at the mouth of Newton Creek thence down the said low water mark to the upper side of the said wharf thence along the same to the place of Beginning. Saving and reserving to the then present or any future owner or owners of the adjoining shore at all times thereafter the full and free ingress, egress and regress to the said River Delaware for all purposes whatever not interfering with the said fishery. Also two lots of ground and the right of fishery thereto Situate at Gloucester aforesaid in the Town proper one of which lots is more particularly known as "The Malt house Lot" the other both of which lots lie on the River and above the wharf aforesaid Also two other lots situated as aforesaid one of which lots lying on the easterly side of front street bounded on the west by front street on the south by market street and on the north and east by land formerly of William Harrison Con-

taining one hundred and fifty feet on front street by one hundred and eighty feet deep on market street The other lot bounded by front street the Malt house lot and the River and contains sixty feet on front street and is the same width on the River the beginning corner being ten feet from the south end of the Malt house. Also all that certain lot or piece of Land situate in the said township of Union and lying at the town of Gloucester bounded as follows viz: Beginning at a corner of lands formerly of William Hugg deceased in the edge of front or Water Street and runs from thence first along the said Street north forty one degrees east five chains and fifty links to a corner of lands late of Joseph Ellis deceased thence second by said Ellis' line westwardly to low water mark in the edge of the River Delaware thence (3) down said River bounding on low water mark the several courses and distances thereof to a corner of the land formerly belonging to the said William Hugg deceased thence (4) by said Huggs' line eastwardly to the place of beginning. Containing two acres be same more or less. Together with all the estate right title interest claim and demand of him the said Samuel C Champion in and to any other lands tenements and hereditaments not therein particularly described lying and being and situate between the aforesaid formerly Huggs' land and the mouth of Newton Creek on or near the said River Delaware with the appurtenances. And Whereas Robert W Sykes and Virginia his wife by Indenture dated the said Twentieth day of June in the year aforesaid and recorded in the Clerks Office of the County of Camden aforesaid in Book A of deeds page 159 &c did grant and convey unto the said John Siter and Samuel R Simmons their heirs and assigns All those messuages or tenements and tract

or piece of land and farm commonly called "The Ellis Estate" situate in the township of Union in the County and State aforesaid Beginning at point near the bank of the River Delaware in the north line of the road or Street called High or Market Street as now opened at the distance of thirty four feet and five inches south forty and a half degrees west from a large black Walnut tree thence along the said north line of said Market Street south forty nine and a half degrees east six chains and three links to the west line of the road called the old road thence along the west line of the said Old road north forty and a half degrees east six chains and twenty links thence crossing the said Old road and along the line of Ridge and Smallwoods' land now in the tenure of the Widow Watson south forty nine and a half degrees east three chains and seventy five links thence along the line of said Ridge and Smallwoods land south forty and a half degrees west four chains and thirty four links to the line of land of George Budd (now deceased) thence by the line of said Budds' land south forty nine and a half degrees east two chains and eighty seven links to the line of land of or in the tenure of Arthur Powell thence by the said Powells' land north forty and a half degrees east five chains and fifty seven links thence along the line of said Powell's land and the line of Parker's land south fifty and three quarters degrees east three chains thence along the line of said Parkers' land south forty one degrees west seven chains and fifty seven links to the north line of the said Market Street thence along the north line of the said Market Street south forty nine and a half degrees east one chain thence by the line of lands of Arthur Powell north forty two degrees east seven chains and fifty nine links thence by the line of land

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of the said Arthur Powell and the line of land of William Brick and crossing the road leading from Woodbury to Camden south fifty and three quarters east twenty four chains and ninety two links to the line of land of the heirs of Samuel Heritage thence by the said Heritages land and the line of land of Joseph Kaighn and the line of land of William Champion north twenty and a half degrees east twenty chains and sixteen links thence by the line of said Champions land and the line of lands of Joseph Kaighn and crossing said road leading from Woodbury to Camden north fifty four and a half degrees west thirty seven chains and fifty links to high water mark thence by the said last mentioned course to low water mark of the River Delaware and thence down the said River by the said low water mark and the several courses thereof to the line of land of the said Robert Wharton Sykes and certain of the heirs of Elizabeth Marshall deceased thence by the line of said land south forty nine and a half degrees east to a point at the distance of fifty two feet from the high water mark of the River Delaware thence north forty and a half degrees east to the place of beginning Containing eighty one acres of land be the same more or less. Also all that certain lot or parcel of land or meadow ground situate in the township of Union aforesaid Beginning at the side of Newton Creek by the lower side of the causeway that leads from the Old tollbridge towards Gloucester thence along the said causeway south thirty six and a half degrees west four chains and seventy one links thence along the said causeway south fifty one degrees west six chains and seventy five links thence along said causeway and crossing the road leading from Woodbury to Camden south forty five degrees west eleven chains and ninety

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- links to the line of land of Joseph Kaighn thence by the line of land of the said Joseph Kaighn north seven degrees west four chains and seventy five links thence by the line of said Joseph Kaighn's land north forty seven and a half degrees west two chains and thirty seven links thence by the same course into River Delaware and to the mouth of said Newton Creek and thence along the side of said Newton Creek by the several courses thereof to the
- 10) place of beginning. Containing twenty one acres and eleven hundredths of an acre of meadow and land exclusive of Marsh or Cripple lands be the same more or less. Subject nevertheless to the right of a certain Samuel C Champion his heirs and assigns of fishing between high and low water marks of the River Delaware in front of the said first above described tract of land and excepting there-out the Church lot (part and parcel of the said first described tract) heretofore conveyed by the said
- 20) Robert Wharton Sykes and Virginia his wife to John W Whitman and others situate on the southeasterly side of the Old road aforesaid at the distance of two hundred feet from Ridge and Smallwoods lot And Whereas also Frederick Plummer and Catharine his wife by Indenture bearing date the twenty second day of June in the year of our Lord one thousand eight hundred and forty four and recorded in the Clerks Office aforesaid in Book A of deeds page 154 &c did grant and convey unto
- 30) the said John Siter and Samuel R Simmons their heirs and assigns ALL the following described tract or piece of land Situate in the township of Union in the County and State aforesaid bounded as follows to wit: Beginning at a stake in the line of land late of Abigail Ellis now of Robert Wharton Sykes standing at high water mark of the River Delaware

thence by said land south fifty four degrees and ten minutes east twenty four chains and twenty six links to the middle of the public highway leading from Woodbury to Camden thence along the middle of said highway north three degrees and thirty minutes east twenty seven chains and twenty links to the edge of Newton Creek meadow thence leaving the said road and running along the edges of said meadow at the foot of the hill south sixty two degrees east two chains and sixty six links to a corner adjoining land of William Champion thence along the line of said Champions' land and through the said meadow north forty seven degrees east twenty five chains to Newton Creek thence down the said Creek to the Old toll bridge causeway thence along said causeway south thirty and a half degrees west four chains and twenty five links to a stake thence south fifty and a half degrees west seven chains and eighty two links to a stake thence south forty four and a quarter degrees west twelve chains and fifty four links to the foot of the hill along the edge of the meadow thence north seven and a half degrees west four chains and thirty seven links thence north thirteen degrees and three quarters west three chains and thirty eight links to a stake at high water mark on the shore of the River Delaware thence down the shore of said River at high water mark the several courses thereof to the place of beginning. Containing sixty four acres and seventy five hundredths of an acre of land be the same more or less agreeable to a survey made thereof by Samuel Nicholson 11th mo. 5th, 1827 with the appurtenances. Excepting and reserving unto the said Frederick Plummer his heirs and assigns out of the said above described tract of land apart thereof bounded and limited as follows viz: beginning at a

post where a stone is intended to be planted on the easterly or southeasterly side of the Old road (so called) at the distance of twenty feet and nine inches southeasterly from the present fence along the southeasterly side of said road as now opened and at the distance of two hundred feet and four inches southwesterly from where the said present road fence intersects the west line of the Camden and Woodbury road and south forty six degrees and a half east one and twenty four hundredths

10 chains from the nearest part of the body of a large poplar on the westerly side of said road thence extending by other parts of the above described tract south seventeen and a half degrees east three chains and eleven hundredths of a chain to a post thence south five degrees west seven chains and fifty hundredths of a chain to a post along the side of said road thence north fifty seven degrees west five chains and ninety hundredths of a chain and thence

20 north thirty three degrees east eight chains and sixty four hundredths of a chain to the place of beginning, last aforesaid. Containing three acres which was intended to be thereby granted as by the said Indentures or the records thereof reference being thereunto had will more fully and at large appear which said lands and premises so conveyed to the said John Siter and Samuel R Simmons by the deeds aforesaid are held by them subject to the Trusts and under the powers contained and expressed in a certain Declaration of Trust dated the

30 ninth day of June in the year of our Lord one thousand eight hundred and forty-five recorded in the Clerks Office of the County of Camden in Book B of deeds page 311 &c and executed by the said John Siter and Samuel R Simmons and the other persons interested therein as by the said declaration of Trust

or the record thereof reference being thereunto had will also more fully and at large appear. And Whereas the persons so interested in the said lands and premises to wit, David S Brown, John R Worrell, James C. Worrell, Richard Ashhurst, Lewis Ashhurst, John Ashhurst, John Siter, Richard Price, Joseph Price, Junr., Gideon Scull, Thomas S. Newlin, Benjamin Marshall, Samuel R. Simmons, Callender Price, Mordecai D. Lewis, Charles W. Churchman, William Woodnutt, Thomas Sparks, 10 Robert F. Walsh, John Rodman Paul, Robert Wharton Sykes and Benjamin T. Tredick, had associated themselves together under the name of "The Gloucester Land Company" and laid out the said lands into building Lots, Streets, lanes and Sites for Manufacturing purposes &c. and had sold divers lots and parcels thereof and in order to facilitate the operations of the said Company and upon the application and petition of the members thereof the Legislature of the State of New Jersey at its 20 last session passed an Act entitled "An act to incorporate the Gloucester Land Company" and among things enacted a fourth Section which is in the words following to wit: "4. And be it enacted that so soon as the said Company shall be organized the said John Siter and Samuel R Simmons who now hold the same In Trust for the owners shall convey to the said Company by their Corporate name the residue of said lands unsold and shall assign and transfer to the said Company all Bonds 30 Mortgages or other Securities held by them and pay over all moneys received by them for lands sold first deducting therefrom all costs and expenses attending such sales and the said Company are hereby authorized to purchase and hold such lands adjoining the above described premises which by

forming angles and projections into their plot mar the regularity and beauty of the whole and such lands as may be necessary to reclaim portions of their property now flooded by the tide provided the lands to be purchased shall not exceed thirty acres in the whole" as by the said Act approved the sixteenth day of February in the year of our Lord one thousand eight hundred and forty six and duly filed in the office of the Secretary of State of the State of New Jersey reference thereunto being had will more fully and at large appear. And the said Company having been duly organized under the name of "The Gloucester Land Company" agreeably to the provisions of their said Charter or Act of Incorporation. Now Therefore in order to carry the same into full effect and to convey the residue of said lands unsold to the said Company This Indenture Witnesseth that the said John Siter and Maria his wife and Samuel R Simmons in pursuance of the provisions of the said Charter and in conformity thereto and in consideration of the sum of One dollar lawful money of the United States to them in hand well and truly paid by the said "The Gloucester Land Company" at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted bragained sold aliened enfeoffed released conveyed and confirmed and by these presents do grant bargain sell alien enfeoff release convey and confirm unto the said "The Gloucester Land Company" and to their assigns ALL and singular the messuages tenements and lots or pieces of Land fisheries and fishing grounds with the privileges immunities and appurtenances so conveyed to the said John Siter and Samuel R Simmons by the said Samuel C Champion Robert Wharton Sykes and Virginia his wife and

Frederick Plummer and Catharine his wife by the deeds aforesaid Excepting only such lots and parts thereof have been heretofore sold and conveyed by the said John Siter and Maria his wife and Samuel R Simmons that is to say Except a lot or piece of land situate in the Township of Union aforesaid which the said John Siter and Samuel R Simmons granted and conveyed to the said Robert Wharton Sykes by Indenture dated the twenty first day of June in the year of our Lord one thousand eight hundred and forty four and recorded in the Clerks Office of Camden County aforesaid in Book A of deeds page 351 &c Beginning at a corner of land formerly of William Hugg in the edge of Front or Water Street and running thence along said Street north forty one degrees east five chains and fifty links to a corner of land of Joseph Ellis deceased thence by said Ellis land westwardly to low water mark in the edge of the River Delaware thence down the said River bounding on low water mark the several courses and distances thereof to a corner of the said land formerly of William Hugg and thence by said Hugg's land eastwardly to the place of beginning. Being part and parcel of the premises the said John Siter and Samuel R Simmons purchased of the said Samuel C Champion by the deed aforesaid and also all the estate right and title of the said John Siter and Samuel R Simmons of and in any other lands tenements or hereditaments situate on the River Delaware between the south line of High or Market Street continued into the River Delaware and the northerly line of the said Robert W Sykes (formerly Huggs) wharf and land Also excepting all that certain block or piece of land bounded by Ellis Street on the east by Mercer Street on the south by low water mark of the River Dela-

ware on the west and on the north by a line running through the centre of Morris Street continued into the said River upon which block there have been erected a Machine Shop, Iron Foundry &c which said Streets are laid out on the plan or draught of Certain lots and Streets laid out by the said "The Gloucester Land Company" and will be hereinafter more particularly referred to And also excepting all those certain lots of ground which the said John Siter and Maria his wife have heretofore sold and conveyed together with the said Samuel R Simmons to divers persons as the same are marked and numbered respectively on the plan or draught aforesaid with the numbers following viz, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 91, 92, 93, 94, 101, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 120, 121, 122, 123, 126, 127, 128, 129, Also excepting all that certain block or piece of ground bounded by Ellis Street on the east by a line running through the centre of Morris Street continued into the said River on the south by low water mark of the River on the west and by Essex Street on the north Also excepting all that certain other block or piece of ground bounded by King Street on the east by Mercer Street on the south by Ellis Street on the west and by Essex Street on the north All which said lots blocks and pieces of land having been heretofore sold and conveyed by the said John Siter and Maria his wife and Samuel R Simmons are not meant and intended to be herein and hereby granted and conveyed to "The Gloucester Land Company" as

by reference to the deeds therefore and to the said plan or draught of the lots and Streets intended to be recorded in the Clerk's Office of the County of Camden will more fully and at large appear Together also with all and singular the buildings improvements woods ways waters watercourses Streets lanes alleys passages rights liberties privileges improvements hereditaments and appurtenances to the same belonging or in any wise appertaining in as full free and ample a manner to all intents and purposes as the said John Siter and Maria his wife and Samuel R Simmons may can or ought to grant and convey the same to the said "The Gloucester Land Company" by virtue of the Act of the Legislature of the State of New Jersey herein before mentioned and referred to And also all the estate right title interest property possession claim and demand whatsoever of them the said John Siter and Maria his wife and Samuel R Simmons and of each and every of them in law equity or otherwise howsoever of in and to the said premises herein above described and every part and parcel thereof with the appurtenances To have and to hold the said tracts and pieces of lands fisheries and fishing privileges hereditaments and premises herein above described (excepting as is above excepted) unto the said "The Gloucester Land Company" and to their assigns to and for the only proper use benefit and behoof of the said "The Gloucester Land Company" and their assigns forever. And the said John Siter and Samuel R Simmons for themselves their heirs executors and administrators do hereby covenant grant and agree to and with the said "The Gloucester Land Company" and their assigns that they the said John Siter and Maria his wife and Samuel R Simmons or either of them have not done or suf-

ferred to be done any act matter or thing whereby or by reason whereof the said land and premises herein above described (except as is above excepted) can or may be changed charged incumbered or defeated, but that the same is hereby granted and conveyed unto the said "The Gloucester Land Company" and their assigns as freely and clearly as the same was vested in them the said John Siter and Maria his wife and Samuel R Simmons their

10) heirs and assigns and that they will warrant and defend the said premises (except as aforesaid) against the claim and demands of all and all manner of person whatsoever claiming the same by from or under them the said John Siter and Maria his wife and Samuel R Simmons or any of them. In witness whereof the said John Siter and Maria his wife and Samuel R Simmons have to these presents written on two sheets of parchment and fastened together set their hands and seals the day and year

20) first within written. John Siter (seal) Maria Siter (seal) Samuel R Simmons (seal) Signed sealed and delivered in the presence of us NB the words "together with the" first written over erasure J C Smallwood William Melcher State of New Jersey as

30) Be it Remembered that on this third day of October A D 1846 before me the subscriber one of the Masters in the Court of Chancery of the State of New Jersey personally appeared the above named John Siter and Maria his wife and Samuel R Simmons who I am satisfied are the grantors of the foregoing Indenture and the contents thereof having been first made known to them by me severally acknowledged that they signed sealed and delivered the same as their voluntary act and deed for the uses and purposes therein mentioned And the said Maria Siter on a private examination apart from her husband

acknowledged that she signed sealed and delivered the same as her voluntary act and deed freely without any fear threats or compulsion of her said husband Acknowledged before me J C Smallwood. Received at the execution and delivery of the above written Indenture of "The Gloucester Land Company" the consideration above mentioned in full John Siter, Saml R. Simmons. Witnesses J C Smallwood William Melcher.

Know all men that we who have signed and sealed 10) these presents and who (with the said John Siter and Samuel R Simmons) are the only persons interested in the premises within described do hereby acknowledge and declare to all whom it may concern that the within written deed of conveyance from the said John Siter and Maria his wife and Samuel R Simmons to "The Gloucester Land Company" was made in pursuance of and agreeably to the directions of an Act of the Legislature of the State of New Jersey entitled "An act incorporating 20) the Gloucester Land Company" which said Act meets with our entire approbation and we for ourselves our heirs executors administrators and assigns de hereby ratify approve and confirm the said conveyance Witness our hands and seals respectively this ninth day of October in the year of our Lord one thousand eight hundred and forty six. David S Brown (seal) John R Worrell (seal) James C Worrell (seal) Richd. Ashhurst (seal) Lewis R. Ashhurst (seal) Jno. Ashhurst (seal) Richd. Price 30) (seal) Joseph Price Jr. (seal) Gildeon Scull (seal). Thos. S. Newlin (seal) Benj. Marshall (seal) Mordecai D. Lewis (seal) Chas. W. Churchman (seal) W. Woodnutt (seal) Thos. Sparks (seal) Robt. F. Walsh (seal) Jno. Rodman Paul (seal) R. W. Sykes (seal) Benj. T. Tredick (seal) Signed sealed and delivered

in the presence of us Stephen A Caldwell Richd. B. Duane Callender Price (seal) NB the several small interlineations and the words "to the said Creek" erased was errors made in recording. And the name of "Callender Price" was omitted in its proper place in recording it should have been arranged next to Benj Marchalls' agreeable to their arrangement of signing. Wood. Clk. Received October 21st A D 1846 and Recorded by Wood Clk.

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STATE OF NEW JERSEY.  
COUNTY OF CAMDEN.

I, JOSHUA C. HAINES, register of deeds and mortgages for the County of Camden, do hereby certify, that the foregoing is a true copy of the record of the deed from John Siter et ux., et al., to The Gloucester Land Co., as the same is of record in my office in Book E of deeds, page 60, &c.

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In testimony whereof, I have hereunto set my hand and affixed my official seal at Camden, this second day of December, A. D. 1924.

JOSHUA C. HAINES,  
*Register.*

(Seal)

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JM  
1  
Name  
Charge M  
Location  
Ripar  
Last Half  
  
Date  
  
DO NO



1190

1920

Name  
Argo Mills Co.,  
Location  
Riparian Rights,  
Last Half of Tax

Date

DO NOT DETACH

PLEASE BRING THIS BILL. OFFICE OF COLLECTOR OF TAXES—CITY HALL.

No 1190

Argo Mills Company,  
LOCATION.

BLOCK NO. LOT NO.

River Front,

To GLOUCESTER CITY, N. J. Dr. 1920

HARRIS C. POWELL, Collector of Taxes.

The Rate of Assessment for the Annual Taxes of Gloucester City, N. J., for the year 1920, on each one hundred dollars' has been made, viz:

State School Rate.....	\$ .21
County .....	.39
City.....	1.58
School.....	.76
State Highways.....	.10
Total.....	\$3.04

Last Half of Taxes	Property	Size	Value of Lots	Value of Improvements	Value of Personal Property	Total Valuation	Poll Tax	Whole Amount of Taxes	First Half of Taxes
\$456.00	Riparian Rights,					\$30,000.		\$912.00	\$456 00

Paid by Frank L. Hummell,

NOTICE.—The County Board of Taxation will sit in the City Hall, Gloucester City, N. J., on Thursday, May 27, 1920, during the hours of 10 A. M. to 12 Noon, to hear appeals. No appeals will be considered by the State Board of Equalization of Taxes unless they are first filed with the County Board of Taxation. According to the law, Assessors must assess property at its full, fair and true value, at such price as in the judgment of the Assessor it would sell at any fair sale by private contract on the first day of October in each year.

ARTICLE VI, SECTIONS 602 and 603, CHAPTERS 236 and 237, Revision of 1918, provides that taxes are payable one-half of the amount thereof on the First day of April, which if not paid on or before the First day of

June will be delinquent on that date, and the taxpayer or property assessed will be subject to interest not to exceed 9 per cent. per annum. The remaining half of said taxes shall be paid on or before the First day of December, after which date, if unpaid, they shall become delinquent, and the taxpayer or property subject to the same penalties.

When any municipal lien, or part thereof, on real property remains in arrears on the First day of July in the year following the date when the same became in arrears, the collector or other officer charged by law in the municipality with that duty, shall enforce such lien by selling such property in the manner set forth in this Act.

Received Payment,

Last Half of Taxes

*55073* *H24*

Collector

Checks must be certified by the Banks on which they are drawn.

TO INSURE RETURN OF RECEIPTED TAX BILL ENCLOSE ADDRESSED STAMPED ENVELOPE.

Received Payment

First Half of Taxes,

MAY 20 PAID

*Harris C. Powell*

Collector

PLEASE BRING THIS BILL. OFFICE OF COLLECTOR OF TAXES—CITY HALL.

No 813

Argo Mills Co.,  
LOCATION.

Willis St.

BLOCK NO. LOT NO.  
26 1  
38 1  
43 1

To GLOUCESTER CITY, N. J. Dr. 1920

HARRIS C. POWELL, Collector of Taxes.

The Rate of Assessment for the Annual Taxes of Gloucester City, N. J., for the year 1920, on each one hundred dollars' has been made, viz:

State School Rate.....	\$ .21
County .....	.39
City.....	1.58
School.....	.76
State Highways.....	.10
Total.....	\$3.04

Last Half of Taxes	Property	Size	Value of Lots	Value of Improvements	Value of Personal Property	Total Valuation	Poll Tax	Whole Amount of Taxes	First Half of Taxes
\$4,180.00	Land Bldgs, & Wharf, & shed,		\$60,000.	\$130,000.	\$75,000.	\$275,000.		\$8,360 00	\$4,180 00

Paid by Frank L. Hummell,

NOTICE.—The County Board of Taxation will sit in the City Hall, Gloucester City, N. J., on Thursday, May 27, 1920, during the hours of 10 A. M. to 12 Noon, to hear appeals. No appeals will be considered by the State Board of Equalization of Taxes unless they are first filed with the County Board of Taxation. According to the law, Assessors must assess property at its full, fair and true value, at such price as in the judgment of the Assessor it would sell at any fair sale by private contract on the first day of October in each year.

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June will be delinquent on that date, and the taxpayer or property assessed will be subject to interest not to exceed 9 per cent. per annum. The remaining half of said taxes shall be paid on or before the First day of December, after which date, if unpaid, they shall become delinquent, and the taxpayer or property subject to the same penalties. When any municipal lien, or part thereof, on real property remains in arrears on the First day of July in the year following the date when the same became in arrears, the collector or other officer charged by law in the municipality with that duty, shall enforce such lien by selling such property in the manner set forth in this Act.

Received Payment,

Last Half of Taxes,

*H-14*

Checks must be certified by the Banks on which they are drawn.

TO INSURE RETURN OF RECEIPTED TAX BILL ENCLOSE ADDRESSED STAMPED ENVELOPE.

Received Payment,

First Half of Taxes,

MAY 20 PAID

*Harris C. Powell*

Collector

NEW JERSEY COURT OF ERRORS AND APPEALS.

AMSTER RICHMOND,  
Complainant-Respondent,

vs.

GIULIO C. BIANCHI,  
Defendant-Appellant.

In Bill, Sec.  
Addendum 10  
to Note  
of Case

It is hereby stipulated and agreed by and between Edward A. Schilling, solicitor of complainant, and James F. K. O'Brien, solicitor of defendant, that that part of the charge of Judge [illegible] in the suit at law between the [illegible] by the Common Pleas Court of [illegible] [illegible] as Exhibit A annexed to the printed case to be considered as having been introduced in evidence and considered as a part of the record upon the trial of this

EDWARD A. SCHILLING,  
Solicitor for Complainant-Respondent, 20

JAMES F. K. O'BRIEN,  
Solicitor for Defendant-Appellant.