

In Chancery of New Jersey.

Between

REUBEN S. MIDDLETON,
Complainant.

and

THE NEW JERSEY WEST LINE RAIL-
ROAD COMPANY,
Defendant.

Bill.

To His Honor THEODORE RUNYON, *Chancellor of the State
of New Jersey:*

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Humbly complaining, showeth unto your Honor, your orator, Reuben S. Middleton, of the city of New York, in the county and State of New York, that The New Jersey West Line Railroad Company, the defendant herein, is a corporation duly organized under and by virtue of a special act of the Legislature of the State of New Jersey, entitled "An act to charter the Passaic Valley and Peapack Railroad Company," approved March 29, 1865, and the several acts amendatory and supplemental thereto.

And your orator further showeth unto your Honor, that 20
by one of the supplements to the said act, entitled "An act to change the name of the Passaic Valley and Peapack Railroad Company," approved February 15, 1870, the corporate name of the said company or corporation, as designated in the original act or charter, was changed from the

Passaic Valley and Peapack Railroad Company to The New Jersey West Line Railroad Company, by which name it was, at the times hereinafter specified, and now is designated and known; that under and by virtue of the said act of incorporation, and the supplements thereto, the said company went into operation, was duly organized and commenced business, exercising the powers, privileges and franchises, thereby conferred; that the said corporation, under the said act and the supplements thereto, after its
 10 organization as aforesaid, in pursuance of the powers thereby conferred, commenced the construction of the said railroad on the route authorized by the said act and the supplements thereto, and selected by the said corporation by virtue thereof.

And your orator further shows unto your Honor, that the said corporation did also in pursuance of the said act of incorporation and the supplements thereto, afterwards and on the eleventh day of March, in the year eighteen hundred and seventy, and at different times subsequent thereto, and
 20 prior to January ninth, eighteen hundred and seventy-one, make and issue the bonds of the said company for the aggregate sum of three millions of dollars, each bond being for the sum of one thousand dollars, and the said bonds being numbered respectively from 1 to 3,000, inclusive, which bonds so issued have attached thereto coupons or warrants for the payment of interest thereon at the rate of seven per centum per annum, and are made payable to Theodore F. Randolph and Benjamin G. Clarke, or to the bearer thereof; and did also on the day and year aforesaid make and execute
 30 and deliver to the said Theodore F. Randolph and Benjamin G. Clarke, as trustees, a certain indenture of mortgage bearing date on that day, in and by which said indenture of mortgage the said company granted and conveyed to the said Theodore F. Randolph and Benjamin G. Clarke, in trust, all and singular the railroad of the said The New Jersey West Line Railroad Company, and all the appurtenances thereto belonging, acquired and to be acquired, constructed and to be constructed throughout and along the entire main line of the said company's railroad, from the eastern terminus
 40 thereof in the city of Newark, to the westerly terminus

thereof at the Pennsylvania State Line, including all the lands and real estate acquired or to be acquired by the said company on which the said main line of the said company's railroad is by law authorized to be constructed; and all the property real and personal of the said company connected with the said railroad which was then owned by the said corporation, or which they might afterwards acquire, to secure the payment of the bonds so issued as aforesaid, according to the condition contained therein.

And your orator further showeth unto your Honor that 10 he is now the lawful owner and holder for value of two hundred and sixty-seven of the said bonds of the said railroad company, wherein and whereby the said railroad company acknowledged itself indebted to the bearer thereof in the sum of one thousand dollars for each and every of the said bonds, and in which the said company thereby agreed to pay the bearer thereof on the first day of May, in the year nineteen hundred, at the City of New York, in the State of New York, with interest thereon at the rate of seven per centum per annum, payable in gold coin of the United States of 20 America, semi-annually on the first days of May and November in each year, upon presentation and surrender of the coupons thereto annexed as they severally should become due; and it was therein and thereby stipulated and agreed that in case of the non-payment of any half-yearly instalment of interest which should have become payable and the coupons thereof should have been presented and the amount thereof demanded, and the continuance of the said default for a period of three months after such presentment of coupons and demand, the principal of the said bonds to be 30 come due in the manner and with the effect provided in a certain deed of trust or mortgage securing the same, which said bonds all bear date on the eleventh day of March, eighteen hundred and seventy, and are duly signed by the president and secretary of the said company, and are duly sealed with the corporate seal thereof.

And your arator further shows unto your Honor that by the express condition of the said bonds, and each of them, there became due and payable on the first day of November, eighteen hundred and seventy-one, the sum of thirty-five 40

dollars in gold coin of the United States of America, being for interest for six months, at the rate of seven per centum per annum, no part of which said sum has been paid by the said company to your orator or to any other person or persons on his behalf, notwithstanding the said coupons were duly presented and the payment of the said interest duly demanded upon each of them; that by reason of the default in the non-payment of the said interest, the whole amount of the principal sum named in each of the said bonds became
 10 due and papable by the terms thereof to your orator.

And your orator further showeth unto your Honor, that there is now due and owing from the said railroad company to your orator in all the sum of two hundred and sixty-seven thousand dollars, with interest thereon from the first day of May, eighteen hundred and seventy-one, in gold coin of the United States of America.

And your orator further showeth unto your Honor, that from and after the said first day of November, in the year
 20 eighteen hundred and seventy-one, the said railroad company have refused and neglected to pay the principal and interest on the bonds so held by your orator when the same were presented for that purpose, and still neglect and refuse to pay the same as well as other bonds, together with its just debts due and owing from the said company, and that the said company have suspended since the time last above mentioned the payment of the interest due on all of the said bonds.

And your orator further shows, that the entire amount of the indebtedness of the said railroad company, represented
 30 by its said bonds, is the sum of three millions of dollars or more, with large amounts of interest accrued thereupon and unpaid, and that all the franchises and property of the said company, of any and all kinds whatsoever, will not exceed in value the sum of twelve hundred and fifty thousand dollars; that but a small portion of their road has been constructed, to wit: that portion running from Bernardsville to Summit, in the State of New Jersey, a distance of about fourteen miles; that the only income of the business of the said railroad company is derived from that portion of the
 40 road and from no other source.

And your orator further showeth unto your Honor, that the said property and franchises of the said railroad company are being depreciated in value, and that the said company, as your orator is informed and verily believes to be true, is now insolvent and unable to pay its just debts, and that there is no hope or expectation of its ever being able to pay its just debts, or of completing, finishing, equipping and successfully operating the said railroad; that the funds of the said company are exhausted, its credit gone, and the said company is now hopelessly insolvent. 10

And your orator further showeth unto your Honor, that divers creditors of the said railroad company have from time to time recovered judgments against the said railroad company for large amounts, both in the Supreme Court of the State of New York and of the State of New Jersey, and elsewhere, as your orator is informed and verily believes to be true, upon which executions have issued against the property and franchises of the said railroad company, which executions and all of them have been returned wholly unsatisfied and unpaid. 20

In tender consideration whereof, and forasmuch as your orator has no effectual remedy in the premises at law, and can only in this honorable court obtain an injunction against the said railroad company, and its officers and agents, from receiving any debts due the said railroad company, and from paying or transferring any of the moneys or effects of the same, and from exercising any of the privileges and franchises granted by the said several acts of incorporation, and the acts extending and limiting the same, and the appointment of a receiver or receivers, or trustees, to receive and 30 take charge of the moneys, goods and chattels, and effects, lands and tenements of the said railroad company, for the benefit of the creditors and stockholders of the said company, to the end, therefore, that the said president and directors of the said railroad company, and their confederates, when discovered, may according to law, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and set forth, as fully and particularly as if the same were herein again repeated, and they thereto particularly interrogated, and may set forth 40

and discover the goods and rights, and credits, moneys and effects, and real estate of every kind and description, belonging to the said corporation; and that your orator and the other creditors and stockholders of the said railroad company who may come in as parties to this suit, and contribute to the carrying on of the same, may be paid what is justly due them; and that the said president and directors of the said railroad company, their officers and agents, may be enjoined from receiving any of the debts due to the said corporation, and from paying or transferring any debts, moneys, or effects of the same, or from exercising any of the franchises or privileges granted by any of the acts of the legislature, above mentioned and referred to; and that a receiver or receivers, or trustees may be appointed with full power and authority to sue for, collect, receive and take into his or their possession, all the goods, chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every kind and description, belonging to the said company at the time of
 20 its suspending business as aforesaid, and to sell, convey and assign all the said real and personal estate, and all the franchises, rights, credits, assets and property of every description whatever of the said railroad company, and to bring into this court all the moneys and securities for moneys arising from such sale, on which the said receiver and receivers, or trustees, shall collect or receive by virtue of the authority vested in them, and according to the act of the Legislature of the State of New Jersey in such case made and provided; and that your orator may have such other
 30 and further relief in the premises as the nature and circumstances of the case may require, and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of injunction issuing out of and under the seal of this court to the said The New Jersey West Line Railroad Company and its agents and officers to be directed, enjoining and restraining them and each and every of them from operating the said railroad and from receiving any of the debts due to the said company
 40 and from selling, transferring or conveying away any

of the goods, chattels, rights, credits or effects of the said railroad company, and from conveying away, encumbering, or otherwise disposing of any of the real estate of the said railroad company, and from paying any of the debts of the said railroad company until further order of this court; and, also, may it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpœna of the State of New Jersey to be directed to The New Jersey West Line Railroad Company, therein and thereby commanding them and each of them on a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises and to stand to, abide and perform such order, direction and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator as in duty bound will ever pray, &c.

LEONARD & COULT,
Sol'rs and of Counsel with Complainant.

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

Reuben S. Middleton, the complainant in the foregoing bill of complaint, being duly sworn on his oath, saith:

That the matters and things set forth in the foregoing bill of complaint, so far as they relate to his own acts, and are stated as of his own knowledge, are true; and so far as they relate to the acts of others; and are therein stated on information and belief, he believes them to be true; and this deponent further saith, that the said The New Jersey West Line Railroad Company, the defendant in the said suit, is a corporation existing under the laws of the State of New Jersey, as in the said bill set forth; that the said company, organized under the act of the said state, as therein stated, and has commenced the construction of a railroad, as in the said bill set forth; that it issued its bonds at the time, in the manner and for the amounts, as in the said bill stated, and made them payable as therein set forth, and mortgaged its property and franchises as in the said bill

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alleged ; that this deponent is now the owner of the bonds of the said company, so issued as aforesaid, to the amount of two hundred and sixty-seven thousand dollars ; that the principal is due and the interest in arrear on the said bonds, as stated in the said bill, and that the said company made default in the payment of the interest not only on the bonds held by this deponent, but on all the bonds issued by the said company as aforesaid, as in the said bill stated.

Deponent further saith, that the bonded debt of the said
 10 company, with the interest due thereon, exceeds the sum of three million dollars ; that all the property, real and personal, with all the franchises of the said company does not exceed in value the sum of twelve hundred and fifty thousand dollars, as stated in the said bill ; that but a small part of the railroad of said company has been constructed, and only about fourteen miles of the same operated as in the said bill alleged ; that the said company for nearly a year past have ceased work upon the said railroad, and that no efforts are now being made by it to complete the same ; that the por-
 20 tion of the said road operated by the said company does not pay the expenses of operating the same, and that the property of the said company is constantly depreciating in value and growing less and less valuable ; and that the said company is now and for some time past have been insolvent and unable to pay its obligation.

Deponent further saith, that judgments have been recovered against the said company in the State of New Jersey and in the State of New York, and that execution issued on said judgments have been returned unsatisfied, as stated in
 30 said bill, and that the said judgments are for large amounts and remain wholly unpaid.

R. S. MIDDLETON.

Subscribed and sworn before me, at Newark, N. J., this sixth day of February, A. D. 1874.

JAMES M. C. MORROW,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

REUBEN S. MIDDLETON,
*Complainant,**and*THE NEW JERSEY WEST LINE RAILROAD
COMPANY,*Defendant.**On Bill, &c.*

Order to show cause. Filed February 8, 1874.

LEONARD & COULT, *Sol'rs.* 10

The complainant in the above stated cause having filed his bill of complaint, wherein it is alleged, that the said The New Jersey West Line Railroad Company is insolvent and wholly unable to pay its just debts and liabilities, and therein praying that an injunction may issue enjoining and restraining the said company from operating the said railroad, and from receiving any debts due the said company any from paying or transferring any debts, moneys or effects of the same, or exercising any of the franchises or privileges granted by the Legislature of New Jersey to said 20 company, and that a receiver or trustees may be appointed to take into its possession said railroad and its property of every kind and description and to sell and convey the same. It is, therefore, on this seventh day of February, in the year eighteen hundred and seventy four, on motion of Leonard & Coult, solicitors, and of counsel with the complainant: Ordered, That the said The New Jersey West Line Railroad Company show cause on Monday, the sixteenth day of February inst., at ten o'clock in the forenoon, at the Chancellor's Chambers, No. 745 High street, in the city of 30 Newark, why the said receiver or trustees should not be appointed and the said injunction granted.

THEODORE RUYNON, *C.*

ORDER FOR INJUNCTION.

Filed February 16, 1874.

Upon opening the matter this day to the court by Messrs. Leonard & Coult, solicitors for and of counsel with complainant, and upon reading the bill of complaint in this cause and the affidavit thereto annexed, and on duly considering the same: It is ordered, That the same be filed and that thereupon an injunction do issue against the said defendant according to the prayer of the said bill.

10 Dated February 16, 1874.

THEODORE RUNYON, *C.*

INJUNCTION.

Ret'ble Feb. 28, 1874.

NEW JERSEY TO WIT:—The State of New Jersey [L.s.] to The New Jersey West Line Railroad Company, and their attorneys, counsellors, officers, servants and agents, and each and every of them, Greeting: Whereas it hath been represented to us in our Court of Chancery, on the part of Reuben S. Middleton, the com-
 20 plaint, that he hath lately exhibited his bill of complaint against you, the said The New Jersey West Line Railroad Company, defendant, to be relieved touching the matters set forth in the said bill, in which said bill it is, among other matters, set forth that you, the said defendant, are combining and confederating with others to injure the complainant touching the matters set forth in the said bill, and that the actings and doings of you, the said defendant, are contrary to equity and good conscience. We therefore, in consideration of the premises, and of the particular mat-
 30 ters set forth in the said bill, do strictly enjoin and command you, the said The New Jersey West Line Railroad Company, and your attorneys, counsellors, officers, servants,

agents, and all and every the persons before mentioned, and each and every of you, under the penalty that may fall thereon, that you and every of you, do absolutely desist and refrain from receiving any of the debts due to the said The New Jersey West Line Railroad Company, and from paying or transferring any debts, moneys or effects, of the said company, or from exercising any of the franchises or privileges granted by any of the acts of the legislature in the bill of complaint aforesaid mentioned and referred to, and from selling, transferring or conveying away, any of the 10 goods, chattels, rights and credits, of the said company, and from conveying away, encumbering or otherwise disposing of any of the real estate or other property of any kind whatsoever, of or belonging to the said company, and from paying or discharging any of its debts or liabilities, and from doing any other matter or thing in and about the said company, of any kind whatsoever, until the further order of this court, until you, the said defendant, shall have fully answered the said bill of complaint, and our said court shall make other order to the contrary. 20

Witness, his honor, Theodore Runyon, our Chancellor, at Trenton, the sixteenth day of February, in the year of our Lord one thousand eight hundred and seventy-four.

LEONARD & COULT,
Sol'rs.

H. S. LITTLE,
Clerk.

Service of the writ of injunction is hereby acknowledged.

B. F. BEEKMAN,
Pres't N. J. West Line R. R. Co. 30

February 19th, 1874.

ORDER FOR RECEIVER.

Filed February 16, 1874.

Upon opening the matter this day to the court, by Leonard & Coult, solicitors for and of counsel with the complainant, and due proof being made to me of the service of notice of this application on the said defendants: It is ordered that William Z. Larned be and he hereby is appointed receiver, with full power to demand, sue for, collect and receive, and to take into his possession all the goods
 10 and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of any and every description, belonging to the said The New Jersey West Line Railroad Company at this time, and to do and perform all the duties imposed upon him and required by law, and especially by an act of the Legislature of New Jersey, entitled "An Act to prevent fraud by incorporated companies," approved April 15, 1846, and the several supplements thereto.

THEODORE RUNYON, *C.*

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RECEIVER'S OATH.

Filed February 17, 1874.

STATE OF NEW JERSEY, }
 Essex County. } *ss.*

I, *William Z. Larned*, do solemnly swear that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as receiver for the creditors and stockholders of The New Jersey West Line Railroad Company, and that without favor or affection.

W. Z. LARNED.

80 Sworn and subscribed before me this 17th day of February, 1874, at my chambers, Newark, N. J.

THEODORE RUNYON, *C.*

ORDER EMPOWERING RECEIVER TO OPERATE
THE RAILROAD.

Filed February 17, 1874.

It appearing to the Chancellor, to his satisfaction, that the said The New Jersey West Line Railroad Company, the defendant in the above stated suit, is an insolvent corporation, and that William Z. Larned, the receiver heretofore appointed by the court, has duly qualified as such, and that the property of such company has passed into his hands as such and it appearing that the said company has hitherto 10 operated a portion of their said railroad, namely, that part between Bernardsville and Summit, it is ordered, this 17th day of February, 1874, that the said receiver be and he hereby is empowered to operate said railroad for the use of the public subject at all times to the order of this court.

THEODORE RUNYON, C.

REPORT OF RECEIVER.

Filed March 10, 1874.

To the Honorable THEODORE RUNYON, Chancellor :

The undersigned, receiver appointed by an order filed on 20 the 16th day of February, 1874, and by an order filed on the 15th day of said February, empowered to operate that portion of the said New Jersey West Line Railroad, between Summit and Bernardsville, for the use of the public, respectfully reports, That under and in pursuance of the authority granted by the said order, he, on the 18th day of February, 1874, took possession of the property and effects of the said railroad company, a full inventory of which is being prepared and will be filed during the present week. That from and including the 19th day of February, 1874, 30 the undersigned has under the said last named order, operated that part of said railroad between Summit and Ber-

nardsville. That hereto attached is a report of W. T. Rundie, the superintendent formerly in charge of the road and who has been retained by me, of the expenses and receipts of the road from the 19th to the 28th of February last, both inclusive; that such report shows for the nine days embraced in it an excess of expenditures over receipts of \$77.15, or at the rate of about \$250 per month. The undersigned respectfully shows that in his opinion the receipts for the month of March will be increased over those
10 of February, while as said Rundie's report states he has reduced the rate of expenditure, and that the deficiency in March will be very small, if any; that it would cost at least \$300 per month to watch and take care of the property if the trains were taken off and the road not operated; that the sudden stoppage of the trains at this season of the year would be a great inconvenience to a large population living along the route, and would depreciate the value of a large amount of property to a very considerable extent. From the best estimate the receiver is able to make he is of the opin-
20 ion that for the next two, three or four months taken together he can make the receipts pay the expenses of running the road. I think that the property, real and personal, of the railroad, will be best preserved in the receiver's hands, by keeping the road running, increasing its selling value when a sale is reached many more times in amount than any possible deficiency of receipts over expenses. All which is respectfully submitted.

W. Z. LARNED,
Receiver.

INVENTORY OF PROPERTY, &c.

Filed March 14th, 1874.

To the Hon. THEODORE RUNYON, Chancellor:

The undersigned receiver, appointed herein by an order filed February 16th, 1874, respectfully reports—that hereto attached is as full and complete an inventory of the estate, property and effects of The New Jersey West Line Railroad Company, as with the means at hand I have been able to make. That such part of the said property as was capable of manual delivery, particularly that part embraced in Schedules A and C, has been delivered and surrendered to me by the officers of said company. I further report that the lands mentioned and described in Schedule B are held (the title standing in his name) by Mr. B. F. Beekman, the president of the company, and that he claims to hold the same under resolutions of the Board of Directors, as security for a balance of advances made by him to the company to meet its current expenses, the balance being (\$6,570⁰⁰/₁₀₀) six thousand five hundred and seventy dollars, and also as security against his liability as guarantor of the bond of the company to S. W. Cadwell for \$15,000, and interest from January 15th, 1872. I further report that the books, papers and maps of the company, including the notes and checks mentioned in Schedule D, have been delivered to me by the officers of the company, and are now in my possession. I am informed by the officers of the company that the makers of these notes and checks claim to have defences or offsets to them, and that they are considered of little or no value, and that the instalments due and unpaid upon stock subscriptions mentioned in said Schedule have been refused payment by the subscribers to such stock; that some of the subscribers are of no pecuniary responsibility, that others claim defences against their liability, and that probably none of them can be collected, except by suit. It is difficult to estimate the value of these claims, if, indeed,

they are of any value. I further report that I have examined, under oath, the president of the company, respecting the estate and property thereof, and hereto attached as Schedule E, is such examination. From this examination, and from such other information as I have been able to obtain, I am of the opinion that the probable value of all the estate, property and effects of said company is from eight hundred thousand to twelve hundred thousand dollars.

I make this estimate in accordance with the requirements of the statute, and as the best I am able to form; but the nature of the property is such that any estimate of its present value must be very unreliable, depending as it does largely upon the circumstances of the buyer. Its intrinsic value as a separate and detached property may be less than the lowest limit above stated, whilst to a corporation owning connecting railroads, it probably would be larger than the highest limit.

W. Z. LARNED,
Receiver.

20 Dated Newark, N. J., March 14, 1874.

SCHEDULE A.

The franchise, right of way, and track of the New Jersey West Line Railroad Company, between the Delaware river and Jersey City, New Jersey, the track being laid and in use (a single track) from Summit to Bernardsville, and partly graded from Summit to Newark, with engine house, freight house, tank and turn table at Bernardsville, and depot, ground and houses, at Basking Ridge, Ellendor and Murray Hill. Also a tract of land, about twenty-three acres, situated at Jersey City, and certified by the Riparian Commissioners to come within the location of the route and of the depots, stations and other works of the said New Jersey West Line Railroad Company, this tract was granted by the State to said company by deed, dated ————. The State of New Jersey took a mortgage back upon the property, which it now holds, for the sum of eighty-two thousand

dollars, part of the purchase money, and upon which interest is due from September 19, 1872. The company has since given a mortgage upon this Jersey City tract for fifteen thousand dollars and interest from _____ to S. W. Cadwell ; as far as the receiver is informed, the company has contracts for rights of way for a considerable distance west of Bernardsville, but owns right of way only between Newark and Bernardsville, and between these points there are several tracts over which their road passes to which they have no title, and several others in which the title of the 10 company is held subject to conditions or is disputed. The following rolling stock upon the portions of said road is in operation, to wit: One locomotive and tender "New Providence," one locomotive and tender "Schuylkill," and the necessary tools belonging thereto—six platform cars.

Mr. B. F. Beekman claims to own the locomotive and tender "New Providence," but the receiver believes the claim not to be well founded, as against the mortgage bondholders or the receiver as representing them.

SCHEDULE B.

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I. A lot of land situated at West Summit, in the township of Summit, Union County, known as the Osborne property, containing about five acres of land. This is subject to a mortgage held by Mrs. Osborne for three thousand dollars (\$3,000) and interest thereon from _____. An installment of \$1,000 of this mortgage is now past due.

II. A lot of land situated near Milburn, Essex County, known as the Baldwin property, containing about seven acres of land.

III. A lot of land situated near Milburn, aforesaid, 30 known as the Sheriff Peckwell property, containing about two acres of land.

IV. Fifty lots of land situated in the City of Newark and known as the Foler property. These lots are subject to a mortgage to secure the sum of twenty thousand three hundred dollars, held by Hugh A. Toler.

SCHEDULE C.

MACHINERY, TOOLS, &C.

One bellows, 1 grindstone, 2 vises, 40 feet 2 1-2 in. gum hose, 1 tackle blocks, 6 lamps (hand), 1 pair old wheels, 11 engine tank springs, 100 lbs. tallow, 20 gals. signal oil, 1 bbl. kerosene, 1 bbl. rock oil, 25 lbs. waste, 1 large tool box, 2 hydraulic jacks, 6 screw jacks, 1 drag rope, 1 hatchet, 1 monkey wrench, 1 square, 1 chisel, 1 brace and bits, 23 new braces, 17 old braces, 8 look-outs, 1 coal screen, 15 bridge
 10 rods, 1-2 doz. files, 2,000 feet hemlock timber, 18 new shovels, 40 old shovels, 11 picks, 7 crowbars, 4 clawbars, 22 tamping bars, 2 sledges, 6 spiking hammers, 5 cold chisels, 4 track wrenches, 5 tongs, 3 gauges, 2 levels, 3 adzes, 3 axes, 3 saws and 1 cross-cut saw, 3 dirt cars, 13 wheelbarrows, 33 new iron rails, 15 old iron rails, 5 rail splices, 2,000 lbs. spikes, 8 switch locks, 1 switch frame, 6 switch rods, 3 head shoes, 1 frog, 4 frog timbers, 125 cross ties, 2 bush scythes, 100 lbs. nuts, 100 lbs. washers, 100 lbs. track bolts, detached rails and ties, about 1,500 cross ties between Summit and
 20 Newark not laid down, about 65 iron rails piled between Summit and Newark, about 350 iron rails temporarily laid down for grading between Summit and Newark.

OFFICE FURNITURE.

Three office desks, 14 chairs, 2 copying presses, 1 bureau, 1 drafting table, 1 drafting board, 1 rack, 1 roll matting, 1 roll carpet, 7 buckets, lot baggage checks, 2 lamps, 1 book-case, 4 stoves and pipe, 2 signs, 1 ticket stamp, 2 trunks.

SCHEDULE D.

UNPAID STOCK SUBSCRIPTIONS, NOTES, ACCOUNTS, &C.

The secretary of the company on the 15th day of July, 1872, made a report to the board of directors, in regard to the condition of the stock of the company, from which I take the following statement of unpaid subscriptions, and the late treasurer of the company (Mr. Ferguson) informed me that nothing has been paid upon said subscriptions since that time as far as he knows or believes, to wit:

Total amount of unpaid subscriptions is 4,421 shares upon which there is due for unpaid installments besides interest, the sum of \$185,957 50.....	\$185,957 50	10
Note of S. H. Barringer, dated January 16th, 1870, on demand.....	70 00	
Note of Upp & Ellmaker, due bill for estimate, March, 1871.....	93 36	
Note of Wm. Phelan, dated Nov. 21st, 1870, at 3 months.....	110 00	
Note of Geo. Sayre and Aaron Parsons, dated April 19th, 1870, at 6 months.....	250 00	20
Note by same parties and same date, payable at 8 months.....	250 00	
Note of T. Schwalb, dated Oct. 7th, 1870, due,	140 00	
Note of D. R. Valentine, dated Oct. 7th, 1870, at 3 months, for.....	200 00	
Check of C. N. Lockwood upon the First National Bank of Newark, N. J.....	2,365 00	

SCHEDULE E.

IN CHANCERY OF NEW JERSEY.

 Between

REUBEN S. MIDDLETON,

Complainant,

and

THE NEW JERSEY WEST LINE RAIL-
ROAD COMPANY,*Defendant.*

- 10 *Benjamin F. Beekman*, being duly sworn and interrogated thereto by W. Z. Larned, receiver, appointed in the above proceeding, doth depose and say that he is and has been, since June 5th, 1872, President of the New Jersey West Line Railroad Company. He further states that he has read and examined the foregoing inventory of the estate, property and effects of said company prepared by the said receiver. That he knows of no other property than that therein mentioned belonging to said company, and he believes that the same is a complete and full inventory of said
- 20 property. This deponent doth further state that in his opinion the probable value of the whole estate, property, and effects of the said New Jersey West Line Railroad Company is from twelve hundred thousand dollars to fifteen hundred thousand dollars, and would be worth much more than either sum to parties furnishing means enough to complete the road.

B. F. BEEKMAN.

Sworn to before me this 12th day of March, 1874.

W. Z. LARNED,
Receiver.

RECEIVER'S REPORT.

Filed March 26, 1874.

To Hon. THEODORE RUNYON, Chancellor:

The undersigned receiver, &c., of The New Jersey West Line Railroad Company respectfully reports, That hereto attached is a full account, as nearly as I can ascertain the same, of all the debts due from the said New Jersey West Line Railroad Company. Schedule A embraces the mortgage bonds held absolutely against the company and all debts secured by bonds held as collateral, with interest calculated to May 1, 1874. Schedule B is intended to include all other debts due from the company. It will be observed ¹⁰ that I have not reported as debts against the company the mortgages upon lands held by Mr. Beekman mentioned in the inventory of property, as the company never held title to these lands, or assumed the mortgages, and is not considered liable for them, and they could not probably be proved against it. For this reason only the equity of redemption is reported as property of the company. All which is respectfully submitted.

Newark, March 21, 1874.

W. Z. LARNED,
Receiver. ²⁰

SCHEDULE A.

The whole amount of mortgage bonds which appears to have been issued by The New Jersey West Line Railroad Company, a copy of which bond and mortgage securing it is hereto attached and made a part of this schedule, is three thousand (3,000) bonds of \$1,000 each, representing an indebtedness of three million dollars (\$3,000,000). ³⁰

Of these, seventeen hundred and ninety-five bonds are held absolutely against the company, representing an indebtedness, payable in gold, of..... \$1,795,000

	The interest upon fifteen hundred and twenty-eight (1,528) of said bonds is due and unpaid since November 1st, 1870, making, including the coupon due May 1st, 1874, seven coupons upon each bond of \$35, each in gold, representing a total indebtedness in gold of	\$374,360
	Brought forward.....	\$2,169,360
10	The interest upon the other two hundred and sixty-seven (267) of said bonds held absolutely against the company is due and unpaid since May 1st, 1871, making, including the coupon due May 1st, 1874, five coupons upon each bond of \$35, each in gold, and representing a total indebtedness in gold of.....	46,725
		\$2,216,085
20	This amount should be reduced by about 150 coupons on bonds held by G. H. Smith, which were prosecuted to judgment against the company, and collected by execution sales of its property..	5,250 00
	Total gold indebtedness.....	\$2,210,835 00
	Money borrowed by The New Jersey West Line Railroad Company of John Brisbin, Esq., August 6th, 1872, two hundred and ninety-five thousand one hundred and fifteen dollars and fifty cents.....	\$295,115 50
30	Interest to May 1st, 1874.....	35,807 33
	Bond of New Jersey West Line Railroad Company to the State of New Jersey (or to the trustees of the school fund).....	\$82,000 00
	Interest from Sept. 9, 1872, to May 1st, 1874.....	\$9,263 71
		91,263 71

(This bond is secured by a mortgage on the tract of land in Jersey City, in part payment for which it was given. It is also guaranteed by Judge Asa Packer, and the latter, as security against his liability as such guarantor, holds 250 of the above mentioned mortgage bonds of the company of \$1,000 each, with interest on them from Nov. 1st, 1871.)

Total indebtedness secured by bonds, of which \$2,210,835 is payable in gold..	10
	\$2,633,021 54

SCHEDULE B.

Judgment against the New Jersey West Line Railroad Company in the Supreme Court of the State of New York, in favor of Charles J. Pusey, entered July 19th, 1873, and bearing interest from that date for.....	12,320 37
Judgment against said company in the — of the State of New Jersey, in favor of Joseph J. Potter, for \$—— with interest from ——. This judgment was taken in a suit upon certain coupons upon the mortgage bonds mentioned in Schedule A, and the debt is therefore embraced in that Schedule. Judgment against the Company for right of way, as follows, to wit:	20
(NOTE.—I have been unable to ascertain the amount of the last two judgments.)	30
Bond of The New Jersey West Line Railroad Company to S. W. Cadwell, to secure payment of the sum of fifteen thousand dollars (\$15,000), and interest from January 15th, 1874, secured by a second mortgage upon the Jersey City tract of land set forth in the inventory	

	of property and guaranteed by B. F. Beekman.....	\$15,000 00
	Claim against the company of S. C. Staymaker for balance of salary as engineer.	\$500 00
	Claim of G. W. Howell against the company for balance of salary as engineer.....	300 00
10	Claim of Benjamin F. Beekman for balance due him for money advanced to the company to meet current expenses, (secured by certain real estate in his hands as stated in inventory of property)....	6,570 00
	Claim of Archibald Gracie for rent of office, Summit.. ..	40 00

ORDER.

Filed September 12, 1874.

This cause being opened to the court by Leonard & Coult, solicitors for and of counsel with the complainant, and it appearing that process of subpoena for the defendant to appear and answer the complainant's bill hath been duly issued and returned served on the said defendant, and that the said defendant has not appeared, answered, pleaded or demurred to the complainant's bill of complaint within the time limited by law and the rule of this court, or at any other time, but has wholly failed and neglected so to do: It is thereupon, on this twelfth day of September, eighteen hundred and seventy-four, ordered, adjudged and decreed that the complainant's bill be and the same hereby is taken as confessed against the said defendant, The New Jersey West Line Railroad Company, and that the complainant have leave to apply to the Court for such further order and decree herein as the nature of the case may require, and the rules and practice of this court permit.

THEODORE RUNYON, *C.*

Filed 10th May, 1875.

IN CHANCERY OF NEW JERSEY.

Between

REUBEN S. MIDDLETON,
Compl't.

and

THE NEW JERSEY WEST LINE RAILROAD
COMPANY,
*Def't.**On Bill, &c.
Petition of trustees for permission to take possession.*

*To the Honorable, THEODORE RUNYON, Chancellor of the
State of New Jersey :*

Your petitioners, Theodore F. Randolph and Benjamin 10
G. Clark, trustees, respectfully show unto your Honor, that
the New Jersey West Line Railroad Company is a corpora-
tion duly organized under and by virtue of an act of the
Legislature of the State of New Jersey, entitled "An Act to
charter the Passaic Valley and Peapack Railroad Company,"
approved March 29, 1865, and the several acts amendatory
and supplemental thereto. And they further show unto
your Honor, that by one of the supplements to the said act,
entitled "An Act to change the name of the Passaic Valley
and Peapack Railroad Company," approved February 15, 20
1870, the corporate name of the said company was changed
to "The New Jersey West Line Railroad Company," by
which name it has been ever since and now is known ; that
under and by virtue of one of the supplements to said act,
approved March 16, 1869, the said corporation was given
power to make deeds, bonds, and for the purpose of securing
their payment to mortgage its real estate and personal
property, railway and all the appurtenances, franchises,
powers and privileges and rights belonging thereto which it
might possess under its act of corporation and the supple- 30

mental acts, to such an amount as it might deem expedient, and sell or negotiate the same at such rate of discount as it might deem for the best interest of the company without invalidation thereof by virtue of any statute of this State, and said bonds and mortgages so sold or negotiated should be valid and binding in law and equity, and the purchaser or purchasers under a decree in equity or foreclosure founded upon any such bond and mortgage should be invested with all the estates, rights, franchises, powers and privileges which

10 were or might be conferred upon or possessed by said company under or by virtue of its act of incorporation and any supplements thereto, subject notwithstanding to all the limitations, restrictions and conditions contained therein as by said act reference thereto being had will appear, and that by said supplement of February 15, 1870, it was among other things provided that the bonds the company were authorized to issue and mortgages to secure bonds might be made in the name in said supplement designated, which name was as aforesaid "The New Jersey West Line Railroad Company."

20 Your petitioners further show, that pursuant to said acts the said New Jersey West Line Railroad Company did on or about the eleventh day of March, 1870, make and issue the bonds of the said company for the aggregate sum of three millions dollars, each bond for the sum of one thousand dollars and the said bonds were numbered respectively from one to three thousand inclusive, each of which bonds so issued have attached thereto coupons or warrants for the payment of interest thereon at the rate of seven per centum per annum and are made payable to your petitioners or the

30 bearer thereof in the sum of one thousand dollars in gold coin of the United States of America each, which bonds were made payable to your petitioners or the bearers thereof on the first day of May in the year 1900 at the City of New York with interest thereon at the rate of seven per cent. per annum payable semi-annually in gold coin at the City of New York on the first day of May and November in each year upon presentation and surrender of the coupons thereto annexed as they severally should become due, and in case of non-payment of any half-yearly installments of interest

40 which should have become payable and the coupons therefor

should have been presented and the continuance of such default for the period of such presentment of coupon and demand it was provided in each bond that the principal of that bond should become due in the manner and with the effect provided in the deed of trust or mortgage securing the same.

And your petitioners further show, that on the said eleventh day of March, 1870, the said New Jersey West Line Railroad Company did make and execute to your petitioners as trustees a certain indenture of mortgage bearing 10 date on that day in and by which said indenture of mortgage the said company granted and conveyed to your petitioners in trust all and singular the railroad of the New Jersey West Line Railroad Company and all the appurtenances thereunto belonging, acquired and to be acquired, constructed and to be constructed throughout and along the entire main line of said company's railroad from the eastern terminus of said railroad at the City of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the western terminus of said railroad at 20 the Pennsylvania State line, including all the lands and real estate acquired, and that should be acquired, by the said company on which the said main line of the said company's railroad was by law authorized to be constructed, and all the property, real and personal, of said company, connected with the said railroad, which was then owned by the said corporation, or which they might afterwards acquire, to secure the payment of the bonds so issued as aforesaid according to the conditions contained therein.

Your petitioners further show, that it was provided in said 30 mortgage or deed of trust in the habendum thereto in article second, that in case default or failure should be made or occur in the payment in gold coin as aforesaid of any interest on any of the said bonds according to the tenor thereof or of the coupons thereto annexed, or any or either of them, when the same should become due and the coupon or coupons for such interest should have been presented, and the amount thereof demanded, and such default or failure shall continue for the period of three months after such presentment of the coupon or coupons aforesaid, and 40

demand, or in case of default or failure in the payment in gold coin as aforesaid of the principal or any part thereof, the said bonds or any of them, when the same should become due and be presented for payment, and such default or failure should continue for the period of three months, then, and in either of such cases, it should be lawful for your petitioners, the said trustees or the survivor of them, or their successors personally, or by their heirs, attorneys, or agents, the said default or failure then still existing, upon

10 the written request of the holder or holders of one hundred and fifty bonds issued by said company, and secured by and under the said mortgage and deed of trust on which, by the non-payment of interest or principal, such default or failure should continue to exist, or on their or his own motion to enter into and upon and take possession of all and singular, the railroad, bridges, real estate, lands, property and premises, rolling stock and equipment thereby conveyed and mortgaged, or intended to be, and of each and every

20 New Jersey West Line Railroad Company or its successors, and to have, hold, possess, occupy, use, employ and enjoy the same, and to operate by their or his superintendents, managers, receivers or servants, or other persons or agents, the said railroad and rolling stock and equipment thereby mortgaged and conduct the business thereof, and to make from time to time all repairs and replacements thereof, and of any part thereof, and of the bridges and other property connected therewith, and such useful alterations, additions and improvements thereof and thereto as might seem to

30 them or him in their or his discretion judicious, and to collect and receive all tolls, freight, incomes, rents, issues and profits of the said railroad, bridges, real estate, lands, property and premises, rolling stock and equipments, and of every part and parcel thereof, and after deducting the expenses of operating the same and conducting the business thereof, and the repairs and replacements, alterations, additions and improvements, and all the expenses incurred in the holding and management of the same, and of every part and parcel thereof, and all payments which may be made

40 for advances of any money or moneys, or for taxes or assess-

ments upon the said premises, or any part or parcel thereof or against the said company, or against your petitioners as such trustees, as well as just compensation for the services of your petitioners as trustees, and for the services and reasonable charges of such attorneys and counsel as may have been by them employed, and any and all costs which might have been incurred to apply the moneys arising as aforesaid to the payment of interest on the said bonds as therein provided, and after paying all interest which should have become due to apply the balance to the payment of the 10 principal of such of said bonds secured thereby as might then be due and unpaid as is thereby provided, and the surplus, if any, to said company, as by reference to said mortgage, a copy of which is hereto annexed, and forms a part of this petition, will more fully appear.

And your petitioners further show that said mortgage was duly executed and acknowledged on the said eleventh day of March, 1870, and recorded on the fifteenth of said March, in the clerk's office of the counties of Union, Somerset and Morris, and in the register's office of the county of 20 Essex.

And your petitioners further show that no interest has ever been paid upon any of the said bonds according to the tenor thereof, or of the coupons thereto annexed, or any or either of them, although large numbers of such coupons have been presented and the amount thereof demanded, and they further show that such default has continued for a period of much more than three months since such presentment of the coupons aforesaid and demand, although the same are very largely overdue, and that there is now due and unpaid 30 all of the interest upon said mortgage from its date aforesaid, and all of the said coupons and interest warrants that have become due up to this time.

And your petitioners further show that by the terms of said mortgage as above set forth it has, as your petitioners are advised, become lawful for your petitioners, as such trustees, to enter into and upon and take possession of all and singular the said railroad, its real and personal property of every nature, and to have, hold, possess, occupy, use, em-

ploy, and enjoy the same, and to operate the same as is in said mortgage provided.

But your petitioners further show that, by virtue of the proceedings had in this court, in the suit in which this petition is entitled, wherein the said Reuben S. Middleton was complainant and the said New Jersey West Line Railroad Company was defendant, on application for injunction and receiver, it was, by an order filed on the sixteenth day of February, 1874, ordered that one William Z. Larned be and
 10 he thereby was appointed receiver, with full power to demand, sue for, collect and take into his possession, all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description belonging to the said The New Jersey West Line Railroad Company at that time, and to do and perform all the duties imposed upon him and required by law, and especially by an act of the legislature of New Jersey, entitled "An Act to prevent fraud by incorporated companies," approved April 15, 1846,
 20 and the several supplements thereto, as by said order reference thereto being had will more fully appear, under and by virtue of which order the said William Z. Larned entered into and took possession of the said railroad and all its estate, both real and personal, and has been ever since and now is in the occupation and possession thereof, and in charge thereof.

And your petitioners further show that in consequence of said order and the occupation of said Larned under the direction of this court, and of the said railroad being thus in
 30 the possession of the court, by its officer, your petitioners are rendered unable to enter into and take possession of said railroad and its estate, real and personal, as by the terms of the said mortgage and their said contract therein contained they are empowered and authorized lawfully to do, and that thereby they are divested of the rights given to them by law and their said contract; and they further show that, as has been hereinbefore set out, very large arrears of interest are due upon said mortgage, that the property of the said railroad is a very slender and scanty security, and utterly inad-
 40 equate to pay even the principal sum of the said bonds so

issued by said railroad company, and secured by said mortgage or any considerable proportion thereof, and not enough to pay any part of the interest thereon. They further show that in view of the foregoing facts and of the obligation imposed upon them by said mortgage, they deem it to be their duty to take possession of said railroad, and all its property real and personal, and to operate the same as is in said mortgage provided, and so to conduct and manage the same as shall be in accordance with the terms of their said contract and of their duty in the premises. 10

Wherefore your petitioners pray that they may be permitted to enter into and upon and take possession of all and singular the said New Jersey West Line Railroad, its bridges, real estate, lands, property and premises, rolling stock and equipment, by their said mortgage conveyed or intended to be, and of each and of every part thereof, and to have, hold, possess, occupy, use, employ and enjoy the same and to operate the same by their superintendents and managers, receivers, servants or other persons or agents, and conduct the business thereof as in said mortgage provided, 20 and that the said William Z. Larned, the receiver aforesaid, may be directed to turn over to your petitioners the said railroad and all its property, both real and personal, now in his possession or under his control, to your petitioners, as such trustees aforesaid, and that your petitioners may be authorized to proceed under and according to the terms of their said mortgage, notwithstanding the said order of this court above referred to, and for such other and further relief in the premises as to your Honor shall seem meet and in accordance with equity. 30

And your petitioners will ever pray, &c.

MUIRHEID & MCGEE,

Sol'rs and of Counsel with Petitioners.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } ss.

Theodore F. Randolph, being duly sworn according to law, on his oath saith: That he is one of the petitioners in the foregoing petition named; that the matters, facts and things therein set forth are true; that three million dollars of the bonds of the said company were issued as is therein set forth; that said bonds were numbered from one to three thousand, inclusive, and were each for one thousand dollars, and that to each of which were interest warrants on coupons, as is in said mortgage provided for; that the same were executed and issued on the eleventh day of March, 1870,
10 and at different times subsequent thereto and prior to January ninth, 1871; that no one of said interest warrants or coupons has been paid; that large numbers of them have been presented for payment; that all the interest on the said mortgage from the date of its execution to the present is due and payable, and that default in the payment of said interest has been made; that said default has existed for more than three months after presentment of coupon and demand for the payment thereof; and that said default now exists, and that by the terms of said mortgage the principal of all said bonds has become due as provided in the said mortgage.

THEO. F. RANDOLPH.

20 Sworn to and subscribed before me this eighth day of May, A. D. 1875, at the City, County and State of New York, as witness my hand and official seal.

CHARLES NETTLETON, [L. S.]
Commissioner for New Jersey in New York.

Filed 10th May, 1875.

IN CHANCERY OF NEW JERSEY.

Between

REUBEN S. MIDDLETON,

Complainant,

and

THE NEW JERSEY WEST LINE RAILROAD
COMPANY,*Defendant.**On Bill, &c.
On Petition, &c.
Order to Show
Cause.*

On reading and filing the petition of Theodore F. Randolph and Benjamin G. Clarke, trustees under the first mortgage of The New Jersey West Line Railroad Company, asking for permission to take possession of said railroad and all its property, real and personal, as mortgagees under the terms of the mortgage, notwithstanding that said road is now in the custody of this court by William Z. Larned, receiver, heretofore appointed.

It is on this 8th day of May, 1875, on motion of Muirheid & McGee, solicitors of petitioners, ordered that said defendant and William Z. Larned, the said receiver, do show cause before this court, at the chancellor's chambers in Newark, at ten o'clock in the morning of May 17th, instant, or as soon after as counsel can be heard, why the prayer of said petition should not be granted.

And it is further ordered that a copy of said petition and the affidavit thereto annexed be served at least four days prior to said hearing.

THEODORE RUNYON, *C.*

Service of a copy of the petition of Theodore F. Randolph and Benjamin G. Clarke, trustees, &c., for permission to

take possession of The New Jersey West Line Railroad, and also of the rule to show cause thereon, acknowledged this eleventh day of May, A. D. 1875.

W. Z. LARNED.

THE NEW JERSEY WEST LINE
RAILROAD COMPANY,

By JOHN H. LYON, *Director.*

Filed May 17, 1875.

IN CHANCERY OF NEW JERSEY.

10 Between

REUBEN S. MIDDLETON,

Complainant,

and

THE NEW JERSEY WEST LINE RAIL-
ROAD COMPANY,

Defendant.

*Petition for Or-
der to Sell.*

*To the Hon. THEODORE RUNYON, Chancellor of the State of
New Jersey :*

Your petitioner, William Z. Larned, receiver of the New
20 Jersey West Line Railroad Company, respectfully shows
that by an order of this court made on the sixteenth day of
February, 1874, he was appointed receiver of the said The
New Jersey West Line Railroad Company, and soon after
took possession of the property and franchises of the said
defendant.

He further shows that, on the fourteenth day of March,
A. D. 1874, he reported to this court the amount of the prop-
erty and assets of the said defendant, and annexed to his
report an inventory thereof, and that the estimated value of

the property and assets aforesaid then made by him does not exceed the sum of twelve hundred thousand dollars, and your petitioner shows that that sum is, so far as he is able to ascertain, a full estimate of the value of the said property.

And your petitioner further shows that on the twenty-sixth day of March, 1874, he made his report showing the indebtedness of the said The New Jersey West Line Railroad Company, giving a schedule of the said indebtedness, and that it appears from his report, which he believes to be 10 true, that the said company is indebted in about the sum of two million six hundred thousand dollars.

And your petitioner further shows that your petitioner has been since the said day of taking possession of said railroad in the month of February, 1874, operating the completed part of said railroad between Summit and Bernardsville, and that the receipts of the same after deducting an allowance of one thousand dollars made by your Honor on account of your petitioner's compensation and expenses of counsel as such receiver, have barely paid 20 the running expenses of the road; that no sufficient surplus remains to make the repairs necessary to keep the said railroad in good repair and condition and in proper running order; that there is a long stretch of trestle-work on said railroad, near the town of Millburn, which is in a state of decay, and the trestle-work on that portion of the road which is now being operated requires more funds to repair it than the surplus over operating expenses will provide; that Theodore F. Randolph and Benjamin G. Clarke, trustees of the mortgage for three million dollars given by 30 the said railroad company, have filed a bill in this honorable court to foreclose the said mortgage, and that the said trustees have in their said bill declared their election; that the principal of said mortgage shall become and is due and by their petition lately filed in this honorable court have further declared that the said principal sum mentioned in said mortgage is due; that answers to the said bill of foreclosure have been filed by several of the defendants thereto, who are mortgage and judgment creditors of the said New 40 Jersey West Line Railroad Company, denying the validity

of the said mortgage as a subsisting lien upon that portion of the railroad lying east of the Passaic river, and its priority of lien over their claims as claimed in the said bill of foreclosure ; that a bill of foreclosure has been filed in this honorable court by the Commissioners of the Public School Fund of the State of New Jersey, to foreclose a mortgage of eighty-two thousand dollars upon a portion of said railroad, and that in consequence of these several suits a long litigation must follow ; that one of the questions in-
 10 volved in this litigation must be whether the said trustees, Theodore F. Randolph and Benjamin G. Clarke, ought to have possession of the whole of said railroad or of any part thereof.

Your petitioner further shows that the property and franchises of the said company are in such condition that a sale thereof, as soon as the same can be made fairly and with notice to all parties concerned, will, in his opinion, be greatly to the interest of the creditors of the said corporation ; that but a small portion of the railroad of the said
 20 company is in operation, and that portion is not in complete order ; that the operating expenses, without any extra expense, nearly equal the sum of the receipts ; that the property is constantly depreciating in value, but that the receipts are not sufficiently in excess of the operating expenses of said railroad to keep that portion of said railroad which is in operation in good condition.

Your petitioner further shows that so far as he is advised the principal creditors of the said company desire that the rights, property and franchises of the said company be
 30 sold, and application of the proceeds be made to the payment of their claims.

And your petitioner prays that an order of this Court may be made staying the proceedings under the said several bills of foreclosure as against your petitioner.

Your petitioner further prays that an order of this court may be made authorizing him to make sale of the property, rights and franchises of the said company, at such time and place, and upon such notice as your Honor may direct, and as may be deemed best for the interest of all con-

cerned, and that the proceeds of said sale may be paid into this honorable court, to abide the order of the court in the premises.

WILLIAM Z. LARNED,
Petitioner.

By G. N. ABEEL.

STATE OF NEW JERSEY, } ss
ESSEX COUNTY.

William Z. Larned, receiver of The New Jersey West Line Railroad Company, the petitioner above named, being 10 duly sworn, on his oath saith :

That the matters and things set forth in the foregoing petition are true, so far as they relate to his own acts, and as far as they relate to the acts of others, and are therein stated on information and belief, he believes them to be true.

W. Z. LARNED.

Sworn and subscribed before me this fifteenth day of May, A. D. 1875, at Newark, New Jersey.

WALTER J. KNIGHT, 20
Notary Public, Newark, N. J.

Filed May 17th, 1875.

IN CHANCERY OF NEW JERSEY.

Between

REUBEN S. MIDDLETON,
Complainant,

and

THE NEW JERSEY WEST LINE RAILROAD
COMPANY,*Defendant.**On Petition for
Order to Sell.**Rule to Show
Cause.*

- 10 It appearing by the petition of William Z. Larned, the receiver of the New Jersey West Line Railroad Company, that he has been in possession of the said railroad since the month of February, eighteen hundred and seventy-four; that he has been operating the said railroad, that is, the completed part of the same between Summit and Bernardsville; and that the receipts of the same are barely sufficient to pay the running expenses of the road; that no sufficient surplus remains to make repairs sufficient to keep the said railroad in order; that Theodore F. Randolph and Benjamin
- 20 G. Clarke, trustees of the mortgage for three millions of dollars given by the said company, have filed their bill to foreclose the same and have in said bill declared the said principal sum of money in said mortgage to be due; that answers to the said bill have been filed by several of the defendants denying the validity of said mortgage on a portion of the said railroad; and that a bill of foreclosure has been also filed by the Commissioners of the Public School Fund of the State of New Jersey, to foreclose a mortgage of eighty-two thousand dollars upon a portion of said railroad
- 30 in consequence of the same long litigation must follow, as the question involved is, whether the said trustees ought to have possession of the whole or only part of the said rail-

road; that the property and franchises of the said railroad; company are in such a condition that a sale thereof as soon as the same can be made would be greatly to the interest of the creditors of said railroad; and that the principal creditors as far as he can learn desire that the said road, and its franchises be sold to pay their claims, and by which said petition the petitioner prays that an order may be made staying the proceedings under the said several bills of foreclosure as against the said receiver; and that an order of the court may be made authorizing him to make sale of the 10 property, rights and franchises of the said company.

It is ordered, That the said Theodore F. Randolph and Benjamin G. Clarke show cause before his Honor, the Chancellor, at his Chambers in Newark, New Jersey, on the thirty-first day of May, instant, why the prayer of the said petitioner should not be granted.

THEODORE RUNYON, *C.*

This rule was served on the solicitors of the trustees on May 15, 1875.

MAY T., 1875.

<p style="text-align: center;">REUBEN S. MIDDLETON,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">THE NEW JERSEY WEST LINE RAILROAD COMPANY.</p>	<p style="font-size: 4em; line-height: 1;">}</p>
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On petition of the receiver for an order to sell the property, rights and franchises of the company free from incumbrances, and an order to show cause thereon, and also on the petition of the trustees of the first mortgage bond-
 10 holders that the mortgaged premises be delivered over to them as mortgagees thereof.

Mr. G. N. Abeel, for the receiver.

Mr. Joel Parker, Attorney-General, for the commissioners of the school fund.

Mr. F. McGee and Mr. Cortlandt Parker for the trustees of the first mortgage bondholders.

The Chancellor.—The receiver states in his petition that the amount of the property and assets of the company does not exceed \$1,200,000, and that its indebtedness is over
 20 \$2,600,000; that there is no income derivable from the four miles of road which are completed and in use, to meet the expense of the repairs which are necessary to keep the road in proper running order; and that there is a long stretch of trestle work near Millburn which is in a state of decay, and that the trestle work on that part of the road which is in use is also in need of repairs which there are no funds to make. The property of the company is of such a character as will materially deteriorate in value pending a protracted litigation. That it is now actually deteriorating in value
 30 seems to admit of no doubt. Indeed, no question was made

or suggested on that score on the argument. Nor does it appear to admit of any question that it is the interest of all concerned in the sale of that property that it should be sold with as little delay as possible. I am unable to perceive the force of the suggestion made in behalf of the trustees on the argument, that it would be more advantageous for those interested in the property that the sale should be made under the proceedings for foreclosure instituted by the trustees. Prior to the former application made by the receiver for the sale of the property, the trustees had filed 10 their bill to foreclose their mortgage and therein had declared their option that the principal money secured by the mortgage should be due, and they thereby sought the sale of the mortgaged premises to raise and pay the whole amount accordingly. To their bill answers have been filed disputing the claim of the trustees as to the extent of the lien of the mortgage, and otherwise questioning its validity as an incumbrance. This has already given rise to considerable delay in that suit, and threatens to occasion much more. It is clearly for the interest of all concerned that the 20 road and all its franchises should be sold together, and I see no reason why the sale should not be made without awaiting the termination of the foreclosure proceedings. Indeed, the holders of almost all of the bonds are before me by their counsel, and ask that the sale may be ordered. There will be no practical difficulty in ascertaining the value of the franchise to build a road from Newark to Jersey City, in case it should be decreed that the first mortgage does not cover that franchise. On behalf of the Commissioners of the Public School Fund of the State of New Jersey, the Attorney 30 General protests against the sale free of all incumbrances of the land under water at Jersey City, on which they hold a mortgage for \$82,000 and interest, for purchase money. Under the circumstances I think the property and franchises should be sold subject to that mortgage.

The counsel of the trustees insist that the supplement (approved March 13, 1866, *Nix. Dig.*, 409) to the act to prevent frauds by incorporated companies, does not authorize a sale unless the validity of the mortgage as a lien,

irrespective of the extent of its lien or incumbrance, is brought into question; that to question the extent of its lien is not to question its legality. The language of the act, which the revision has left substantially unchanged, is: "Where the property of an insolvent corporation in the hands of a receiver or trustees appointed under the act to which this is a supplement, is incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to

10 deteriorate in value pending the litigation thereupon, the the Court of Chancery may order such receiver or trustees to sell the same clear of incumbrances at public or private sale, for the best price that can be obtained, bringing the money into the Court of Chancery, there to remain subject to the same liens and equities of all parties in interest on the property before it was sold; and to be disposed of as the said Court by its decree shall order and direct." The narrow construction which the counsel of the trustees seek to put upon the word "legality," is, for very obvious

20 reasons, wholly inadmissible. To confine the meaning of the term to objections to the instrument or proceeding under which the lien or incumbrance is claimed, or, to state it perhaps more fairly, to exclude from its scope cases in which the objections are to the extent of the lien or incumbrance claimed alone would be to do violence to settled principles of construction. The intention of the legislature is not obscure or doubtful. They intended to authorize the sale of the property of an insolvent corporation in the hands of a receiver or trustees, wherever it was liable

30 materially to deteriorate during litigation which might ensue over disputed liens or incumbrances. The mischief was the depreciation of the property during protracted litigation t) settle the rights of conflicting claimants of liens or incumbrances thereon. Such a case as that now before me is obviously within the mischief, and it is equally clear that it is within the scope and meaning of the act. It is further urged on behalf of the trustees that the application of the act to the property mortgaged to them will be in contravention of their constitutional rights in the premises. It is

40 insisted that the act of 1866 was repealed in the revision of

the laws, and that on such repeal the power given by it to this court was of course at an end ; and that when the provision was re-enacted in the revision their mortgage was not, by reason of the repealer, subject to it, and that they consequently cannot be affected by it, because of the constitutional prohibition forbidding the passage of any " bill depriving a party of any remedy for enforcing a contract which existed when the contract was made." The act of 1866 existed when the mortgage was made. The mortgagees took their lien subject to the provision of that act, and therefore subject to the power thereby given to this court over the mortgaged premises. The provision has never ceased to exist since the mortgage was made. Simultaneously with the repeal of the provision it was re-enacted substantially without alteration. The repeal must be regarded as part of the means of revision merely, as a necessary formality for the substitution of the provision as revised for the provision as it originally stood. The language of Chief Justice Shaw, in *Wright v. Oakley*, 6 Metc., 400, 406, is apposite. " In construing the revised statutes, and the connected acts of amendment and repeal, it is necessary to observe great caution to avoid giving an effect to these acts which was never contemplated by the legislature. In terms, the whole body of the statute law was repealed ; but these repeals went into operation simultaneously with the revised statutes, which were substituted for them, and were intended to replace them, with such modifications as were intended to be made by that revision. There was no moment in which the repealing act stood in force without being replaced by the corresponding provisions of the revised statutes. In practical operation and effect, therefore, they are rather to be considered as a continuance and modification of old laws than as an abrogation of those old, and the re-enactment of new ones. In order to construe them correctly, we must take the whole of the revised statutes, together with the act of amendment and the repealing act, and consider them in reference to the known purposes which the legislature had in view in making the revision." In *Steamship Co. v. Jolliffe*, 2 Wall., 450, like considerations were recognized in adjudicating upon the effect of the repeal

of a particular law which had been immediately re-enacted without substantial alteration. The court said, "The new act took effect simultaneously with the repeal of the first act; its provisions may, therefore, more properly be said to be substituted in the place of and to continue in force, with modifications, the provisions of the original act, rather than to have abrogated and annulled them." In *Warren R. R. Co. v. Town of Belvidere*, 6 Vroom, 584, the like discrimination is made. The court say, section 27 of the act
 10 (law) of 1866, although in words substantially the same as section 15 of the act of 1862, yet with some variations, is only prospective in its operation and does not reach past delinquencies, and is not a revision or continuation of section fifteen.

But, irrespective of these considerations, I do not see how, if it be conceded that the repeal worked the complete extinguishment of the provision, the constitutional right of the mortgagees can be said to be contravened by applying the law as re-enacted to the mortgaged premises. The revised
 20 act merely re-invested this court with a power in respect to the property which it had by statute when the mortgage was made, and which it continued to have up to the time of the repeal.

The receiver will be ordered to sell the property at public sale, free from all incumbrances except the mortgage held by the commissioners of the school fund.

The petition of the trustees that the road be delivered over to them will consequently be denied.

Filed November 16, 1875.

IN CHANCERY OF NEW JERSEY.

Between

REUBEN S. MIDDLETON,

Complainant,

and

THE NEW JERSEY WEST LINE RAILROAD
COMPANY,*Defendant.**On Bill, &c.,
for
Order to Sell.*

A petition having been filed in this cause by William Z. Larned, the receiver heretofore appointed, praying that an order be made directing him to make sale of the property, rights and franchises of the defendant, and the Court having made order therein as follows :

It appearing by the petition of William Z. Larned, the receiver of the New Jersey West Line Railroad Company, since the month of February, eighteen hundred and seventy-four, that he has been operating the said railroad, that is, the completed portion of the same, between Summit and Bernardsville, and that the receipts of the same are barely sufficient to pay the running expenses of the road ; that no sufficient surplus remains to make repairs sufficient to keep the railroad in order ; that Theodore F. Randolph and Benjamin G. Clarke, trustees of the mortgage for three millions of dollars given by the said company, have filed their bill to foreclose the same, and have in said bill declared the said principal sum of money in said mortgage to be due ; that answers to the said bill have been filed by several of the defendants, denying the validity of said mortgages on a portion of the said railroad, and that a bill of foreclosure has also been filed by the

Commissioners of the Public School Fund of New Jersey to foreclose a mortgage of eighty-two thousand dollars upon a portion of said railroad ; and in consequence of the same long litigation must follow, as the question involved is whether the said mortgage to said trustees cover the whole or only part of the said railroad ; that the property and franchises of the said railroad company are in such a condition that a sale thereof, as soon as the same can be made, would be greatly to the interest of the creditors of
 10 the said railroad ; and by which petition the petitioner prays that an order of this Court may be made authorizing him to make sale of the property, rights and franchises of the said company. It is ordered that the said Theodore F. Randolph and Benjamin G. Clark, and the trustees for the support of the public schools, Asa Packer, Stephen W. Caldwell, John Whitehead, trustee of Clara D. Thornton, Albert G. Thornton, James G. Jagers, Henry H. Jones, Denman N. Beardsley, George H. Smith, Joseph John Potter and Phœbe Grummon show cause before his Honor
 20 the Chancellor, at his chambers in Newark, New Jersey, on the thirty-first day of May, instant, why the prayer of the said petitioner should not be granted."

And whereas, also, on the tenth day of May, eighteen hundred and seventy-five, a petition was filed in the above cause by Theodore F. Randolph and Benjamin G. Clarke, trustees of the mortgage for three million dollars upon The New Jersey West Line Railroad, whereby it appeared that, pursuant to a certain act of the Legislature of the State of New Jersey, the said The New Jersey West Line Railroad
 30 Company, on or about the eleventh day of March, eighteen hundred and seventy, did make and issue certain bonds of the said company, for the aggregate sum of three million dollars, and that they did on the same day execute a certain deed of mortgage to secure said bonds to the said Theodore F. Randolph and Benjamin G. Clarke, which said mortgage was therein claimed to be a lien upon the said railroad as far as the same extended, in the State of New Jersey, and all the property, real and personal, of the same mentioned in said mortgage, and that in case there should be any fail-
 40 ure to pay the interest upon the said bonds, according to

the tenor of the same, or to the coupons thereto annexed, or any of them, and such default should continue for the period of three months after such presentment of the coupons, that then the principal of the said bonds should become due at the election of the said trustees, and that the trustees should have the right of entry upon all the property of the said company ;

And whereas, that petition further showed that no interest had ever been paid on any of the said bonds, according to the tenor thereof, and that the same were largely 10
overdue ;

And whereas, upon the filing of said last mentioned petition, on motion of Muirheid and McGee, solicitors of the petitioners, it was, on the eighth day of May, eighteen hundred and seventy-five, ordered that the said defendant, The New Jersey West Line Railroad Company, by William Z. Larned, receiver, should show cause before this court, at the Chancellor's chambers in Newark, at 10 o'clock, on the morning of May the seventeenth, eighteen hundred and 20
seventy-five, or as soon thereafter as counsel could be heard, why the prayer of said petitioners should not be granted, and the said trustees be permitted to take possession of the said railroad and all its property, real and personal, mentioned in said mortgage, as mortgagees, under the terms of the said mortgage, notwithstanding that the said road is now in the custody of this court by William Z. Larned, the aforesaid receiver ;

And whereas, it appears to the court that the parties in interest were duly served with notice of the said petition and orders ; 30

And whereas, upon an agreement of counsel in open court, it was agreed that the said orders under both petitions be heard at the same time ;

And whereas, the said matters came on to be heard under said orders, before his Honor the Chancellor, on the fourteenth day of June, 1875, Hon. Joel Parker, Attorney General, appearing on the part of the State of New Jersey ; Flavell McGee and Cortland Parker, Esquires, appearing on the part of Benjamin G. Clarke and Theodore F. Randolph, trustees of the mortgage bondholders ; Joseph Coult, 40

Esquire, appearing on behalf of the estate of Beekman, and G. N. Abeel, Esquire, appearing on behalf of the receiver.

And it appearing to the court, after hearing the arguments of counsel, just and proper and for the interest of all the creditors of the said defendant, that a sale be made by the said receiver of its property, rights and franchises; and it being admitted by counsel that the said principal of said mortgage given as aforesaid to the said trustees, Benjamin G. Clarke and Theodore F. Randolph, 10 had been declared and elected by them to be due and payable according to the tenor of the said mortgage.

It is, therefore, on the sixteenth day of November, eighteen hundred and seventy-five, on motion of Abeel and Leonard, solicitors, and of counsel for the said receiver, ordered that the said receiver sell, at public auction, all the property, rights, privileges and franchises of the said defendant, The New Jersey West Line Railroad Company, in the following manner:

First—That said receiver shall sell in one parcel all the 20 property, rights, privileges and franchises of the said company, with its railroad track, right of way, rolling stock, and all the property, real and personal, belonging to the said company, which was conveyed by and included in the mortgage given as aforesaid to Benjamin G. Clarke and Theodore F. Randolph; and also, in the same parcel, the franchises or right of way of the said defendant to extend the said railroad from Newark to a point in Hudson County, in said State, and the water front purchased of the State of New Jersey in Hudson County, which said property, rights, 30 privileges and franchises shall be sold absolutely free and clear from all liens and incumbrances of every kind and description whatsoever, except the lien of the mortgage held by the Commissioners of the School Fund upon which a final decree of foreclosure and sale has been made in this court, and the purchaser under the said sale shall take the said property, free and clear of all liens, claims and incumbrances, except that the said mortgage and decree so held by the Commissioners of the School Fund, shall remain a lien upon the property covered by the same.

40 Second—The receiver shall sell in another parcel or par-

cels all other property and rights of every description belonging to said company.

Third—The said sale shall be made at the Continental hotel in the City of Newark.

Fourth—The said receiver shall give notice of the time and place of the said sale as directed by the laws of this State regulating sales of real estate sold by public officers or by the order of a court, and shall also advertise the same for at least four weeks successively, once in each week, next prior to the date fixed for the sale in the New York Tribune, 10 a paper published in New York City.

Fifth—The said receiver may adjourn the said sale from time to time.

Sixth—The terms and conditions of the said sale shall be as follows: The sale shall be for cash, five per cent. of the purchase money shall be paid to the said receiver on the day of sale and the balance within three months thereafter and upon the tender or delivery of the deed or deeds of conveyance therefore.

Seventh—The said receiver shall make and deliver to the purchaser or purchasers under said sale proper deeds of conveyance and bills of sale for the property, rights, privileges and franchises so to be sold, which shall vest in said purchaser or purchasers the absolute title thereto except as above stated. 20

Eighth—The sale shall be made subject to the confirmation of this court.

It is further ordered, That the petition of the trustees aforesaid, that the said railroad and its property and franchises be delivered over to the said trustees, be denied. 30

THEODORE RUNYON, *C.*

A true copy.

H. S. LITTLE,
Clerk.

Filed 13th December, 1875.

IN CHANCERY OF NEW JERSEY.

Between

REUBEN S. MIDDLETON,

Compl't.

and

THE NEW JERSEY WEST LINE RAILROAD
COMPANY AND OTHERS,*Def'ts.**On Bill, &c.**On cross petitions for orders to sell and for possession.**Appeal.*

- 10 The defendants, Theodore F. Randolph and Benjamin G. Clarke, trustees of the first mortgage given by the said The New Jersey West Line Railroad Company appeal from so much of the order, directing the receiver, William Z. Larned, to sell the said railroad and denying the petitions of these appellants for possession of said railroad under said first mortgage, made in this court on the sixteenth day of November last, as directs as follows:—

- It is, therefore, on the sixteenth day of November, eighteen hundred and seventy-five, on motion of Abeel &
20 Leonard, solicitors, and of counsel for the said receiver, ordered that the said receiver sell at public auction all the property, rights and privileges, and franchises of the said defendants, The New Jersey West Line Railroad Company, in the following manner:

- First.—That said receiver shall sell in one parcel all the property, rights, privileges and franchises of the said company, with its railroad track, right of way, rolling stock, and all the property, real and personal, belonging to the said company, which was conveyed by and included in the
30 mortgage given as aforesaid to Benjamin G. Clarke and Theodore F. Randolph, and also in the same parcel the franchises or right of way of the said defendant to extend the said railroad from Newark to a point in Hudson County in said State, and the water front purchased of the State of New Jersey, in Hudson County, which said property,

rights, privileges and franchises shall be sold absolutely free and clear from all liens and incumbrances of every kind and description whatsoever, except the lien of the mortgage held by the Commissioners of the School Fund, upon which a final decree of foreclosure and sale has been made in this court, and the purchaser under the said sale shall take the said property free and clear of all liens, claims and incumbrances except that the said mortgage and decree so held by the Commissioners of the School Fund, shall remain a lien upon the property covered by the same. 10

Sixth—The terms and conditions of the said sale shall be as follows: The sale shall be for cash, five per cent. of the purchase money shall be paid to the said receiver on the day of sale and the balance within three months thereafter and upon the tender or delivery of the deed or deeds of conveyance therefor.

Seventh—The said receiver shall make and deliver to the purchaser or purchasers under said sale proper deeds of conveyance and bills of sale for the property, rights, privileges and franchises so to be sold which shall vest in said purchaser or purchasers the absolute title thereto except as above stated. 20

It is further ordered, That the petition of the trustees aforesaid, that the said railroad and its property and franchises be delivered over to the said trustees, be denied.

Dated 4th December, 1875.

MUIRHEAD & MCGEE,
Solicitors for and of Counsel with Appellants.

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

FLAVEL MCGEE, 30
Of Counsel with Appellants.

Service of a true copy of the within appeal is hereby acknowledged, this 13th day of December, A. D. 1875.

MCCARTER, COULT & KEEN,
Sol'rs.

ABEEL & LEONARD,
Sol'rs for Receiver.

JACOB VANATTA,
Att'y General.

"It is therefore, on the sixteenth day of November, eighteen hundred and seventy-five, on motion of Abeel & Leonard, solicitors and of counsel for the said receiver, ordered that the said receiver sell at public auction, all the property, rights, privileges and franchises of the said defendants, The New Jersey West Line Railroad Company, in the following manner :

First—That said receiver shall sell in one parcel all the property, rights, privileges and franchises of the said company with its railroad track, right of way, rolling stock and 10 all the property real and personal belonging to the said company which was conveyed by and included in the mortgage given as aforesaid to Benjamin G. Clarke and Theodore F. Randolph, and also in the same parcel the franchise or right of way of the said defendant to extend the said railroad from Newark to a point in Hudson county in said State and the water front purchased of the State of New Jersey in Hudson county which said property, rights, privileges and franchises shall be sold absolutely free and clear from all liens and incumbrances of every kind and description what- 20 soever except the lien of the mortgage held by the Commissioners of the School Fund upon which a final decree of foreclosure and sale has been made in this court, and the purchaser under the said sale shall take the said property free and clear of all liens, claims and incumbrances except that the said mortgage and decree so held by the Commissioners of the School Fund shall remain a lien upon the property covered by the same."

Your petitioners respectfully appeal from that part of the said order of the Chancellor which decrees as aforesaid, on 30 the ground that the same is erroneous, for that wherein it directs said property, &c., to be sold absolutely free and clear from all liens and incumbrances of every kind and description whatsoever excepting the school commissioners' mortgage, and that the purchaser shall take said property free and clear of all liens except said school commissioners' mortgage, said order is inequitable and is beyond the power of the said court to make, and that for other reasons the same ought not to have been made.

And also by so much of said order as directs as follows: 40

“Sixth—The terms and conditions of the said sale shall be as follows: The sale shall be for cash, five per cent. of the purchase money shall be paid to the said receiver on the day of sale, and the balance within three months thereafter, and upon the tender or delivery of the deed or deeds of conveyance therefor.”

And your petitioners respectfully appeal from that part of said order which directs as last aforesaid recited upon the ground that the same is erroneous, for that it is inequitable,
10 and is beyond the power of said court to make, and for other reasons the same ought not to have been made.

And also by so much of said order as directs as follows:

“Seventh—The said receiver shall make and deliver to the purchaser or purchasers under said sale proper deeds of conveyance and bills of sale for the property, rights, privileges, and franchises, so to be sold which shall vest in said purchaser or purchasers the absolute title thereto except as above stated.”

And your petitioners respectfully appeal from that part
20 of said order which directs as last aforesaid recited, upon the ground that the same is erroneous, for that wherein it directs that the receiver make and deliver to the purchaser or purchasers under said sale, deed or deeds of conveyance and bills of sale for the property, &c., so to be sold, which shall vest in said purchaser or purchasers the absolute title thereto except as above stated, said order is inequitable and is beyond the power of said court to make.

And also by so much of said order as directs as follows:

“It is further ordered that the petition of the trustees afore-
30 said that the said railroad and its property and franchises be delivered over to the said trustees be denied.”

And your petitioners respectfully appeal from that part of said order which directs as last aforesaid recited, upon the ground that the same is erroneous, for that by the terms of your petitioners said mortgage it is provided that in case default or failure shall be made or occur in the payment of any interest on any of the said bonds according to the tenor thereof or of the coupons thereto annexed or any or either
40 of them, when the same should become due and upon presentment and demand, and such default or failure should

have continued for the period of three months after such presentment and demand, or in case of default or failure in the payment of the principal or any part thereof of said bonds or any of them when the same should become due and be presented for payment and such default or failure should continue for three months, then and in such case your petitioners were thereby authorized, the said default or failure still continuing, to enter into and take possession of all and singular the said property, &c., to have, hold, possess, occupy, use, employ and enjoy the same, and to operate the same, and to conduct the business thereof and to make repairs and replacements thereof and to collect and receive all the incomes thereof, and after deducting expenses and costs to apply the moneys arising therefrom as directed by said mortgage, and for that said default and failure had occurred said demands and presentments had been made, said default and failure had continued for a period of more than three months before the filing of the said petition for permission to take possession and was then still continuing; and that in view of the premises said court has no power to make an order denying to your petitioners permission to take possession, and no power to refuse to order that the same be delivered over to your petitioners as aforesaid, and that said order in the part last recited as aforesaid is inequitable, and that for other reasons said order should not have been made.

Your petitioners therefore pray that the said order of the Chancellor may, in the particulars aforesaid, be reversed, and that your petitioners may have such further and other relief in the premises as to your honorable court shall seem meet.

Dated January 28, 1876.

MUIRHEAD & MCGEE,
Sol'rs and of Counsel with Appellants.

SCHEDULE A.

The following is a copy of the answer to the trustees' bill of foreclosure, referred to in the petition of the receiver, and is the only answer on file:

Filed May 17, 1875.

IN CHANCERY OF NEW JERSEY.

10	Between THEODORE F. RANDOLPH AND BEN- JAMIN G. CLARKE, Trustees, &c., and THE NEW JERSEY WEST LINE RAILROAD COMPANY, ET ALS.,	}	<i>On Bill, &c.</i> <i>Answer of Beek-</i> <i>man's Executors,</i> <i>Asa Packer and</i> <i>Jos. J. Potter.</i> <i>Def'ts.</i>
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The joint and several answer of Catharine Adelaide Beekman, J. Reeve Van Derveer and William Z. Larned, executors of the last will and testament of Benjamin F. Beekman, deceased, and Asa Packer and Joseph J. Potter, defendants to the bill of complaint of Theodore F. Randolph and Benjamin G. Clarke, trustees as aforesaid, complainants.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained for answer thereto or unto so much and such parts thereof as these defendants are advised is material or necessary for them to make answer unto, answering say and admit that the said New Jersey West Line Railroad Company is a corporation duly chartered, organized and em-

powered to transact business, by the laws of the State of New Jersey, as stated in said bill, also having power to build, construct and maintain a railroad between the termini and along the route set forth in said bill.

And these defendants, further answering, say and admit that the said The New Jersey West Line Railroad Company, on or about the eleventh day of March, eighteen hundred and seventy, did make, execute and deliver to the said complainants, a certain indenture of mortgage on the main line of the railroad of the said company, to secure the bonds 10 of said company, to the amount of three millions of dollars, and for the other purposes stated in said mortgage, as set forth in said bill, but the defendants deny that the said mortgage covers any portion of the line of said railroad of said company, excepting that portion thereof which lies between the city of Newark, on the east, and the Delaware river on the west, or such portion of said road as may be constructed between said points, as is hereafter more fully and expressly stated, and these defendants admit that the said mortgage was duly recorded in the proper offices, in 20 the counties of Union, Somerset, Morris, Essex and Hunterdon, as stated in said bill, and that the bonds of said company, to the amount of three millions of dollars, were also issued by said company, at the time, in the manner and of the purport stated in said bill.

And these defendants, further answering, say that they do not admit that it was the intention of the parties to said indenture of mortgage that the same should convey to the said complainants a full and indefeasible estate in fee 30 simple in the said railroad franchises, privileges, and properties of the said railroad company, or that any mistake was made by the scrivener who drew the same, or that said intention in any manner appears from the mortgage itself, or that it is a fact that such was the intention or that it was upon the understanding and belief that this intention had been carried out, that the said bonds and mortgage were executed and the said trust accepted by said complainants, or that the said mortgage ought, of right, to be held to convey the said premises to said complainants in fee simple; and these defendants say that they have no 40

knowledge of the truth of said statements, except as set forth in said bill, and therefore pray that the said complainants be compelled by this honorable court to make such proof thereof as they may think advisable, and as may be necessary.

And these defendants further answering say that at the time of the execution, delivery and recording of the said mortgage to the said complainants the main line of the railroad of the said company extended from a point at, in, 10 or near the City of Newark, westward toward the Delaware river and Pennsylvania line, and that said mortgage at the time of its execution could by law cover, and in fact did cover only that portion of said road extending westward from the City of Newark, as aforesaid, with the appurtenances and the franchises belonging to said company at that time, and these defendants say that although it was in and by said mortgage covenanted by the said The New Jersey West Line Railroad Company that if the said company 20 company should thereafter acquire any lands for use as part of the width allowed by law to be held and owned by said company for said main line of railroad, or to be used for bridges, depots or other buildings, or which should result from any addition or chartered rights of said company in the ownership of said main line of railroad that in such case such new acquisitions should be held subject to said mortgage, yet that the said covenant was intended to apply, and in fact did apply only to any and such acquisitions and additions as might necessarily be made from time to time to said main line, and between said termini.

30 And these defendants further answering, say and submit that by an act of the Legislature of the State of New Jersey, entitled "A Supplement to an act entitled 'An Act to charter the Passaic Valley and Peapack Railroad Company,'" approved March twenty-ninth, eighteen hundred and sixty-five which supplement was approved February twenty-ninth, eighteen hundred and seventy-two, the said The New Jersey West Line Railroad Company was authorized and empowered to extend their railroad from its proposed terminus in Essex county as aforesaid to some point in the most east- 40 terly exterior line for solid filling established in the

Hudson river by the act of the Legislature of New Jersey commonly known as the Riparian Commission Act with power to have and to hold necessary real estate for the construction and maintenance of such extension and that in pursuance of such power the said company did purchase and the State of New Jersey did convey to said company the said tract of land in the city of Jersey City and county of Hudson described in said bill, but these defendants deny that the said lands lastly mentioned by virtue of the said conveyance from the State of New Jersey became and were 10
 vested in said company subject to the trusts in said mortgage contained or subject to the lien thereof or that said lands became immediately included within and covered by said mortgage or that the said complainants by virtue of said mortgage have any title legal or equitable or any interest absolute or contingent in the said lands.

And this defendant, Asa Packer, answering for himself, says that on the purchase of the said property of the State of New Jersey as aforesaid, he did, as the president of the said defendant corporation, make, execute and deliver to 20
 the trustees for the support of public schools of the State, the mortgage for \$84,600 mentioned and set forth in complainants' bill of complaint, and that the said was given to secure a part of the purchase money of the said property conveyed by the State to the said corporation. That the said mortgage was executed by him as president of the said company, and by the order and direction of its board of directors, and that it was intended to be and was and is the first lien on the said land so purchased; and the defendant Asa Packer, further answering, says, that in 30
 order to induce the said The Trustees of the Public Schools to accept a mortgage for so large a part of the purchase money of said lands, he did at the request of the said defendants, The New Jersey West Line Railroad Company, individually guarantee to the said trustees the payment of the moneys secured by the said mortgage, and in case sufficient moneys cannot be realized on the sale of said lands to pay the amount due on said mortgage, this defendant is bound to pay the deficiency, and he therefore charges and insists that the allegation in said bill of complaint, that the 40

said mortgage of the complainant is a prior lien on said land to the lien of the mortgage so guaranteed by this defendant is untrue; and this defendant insists that the mortgage of the complainant is no lien thereon, but if a lien at all, that it is subsequent to and subject to the lien of the said mortgage held by the Trustees of Public Schools.

And these defendants, Adelaide Beekman, J. Reeve Van Derveer and W. Z. Larned, further answering, say and admit, that on the first day of January, eighteen hundred
 10 and seventy-four, the said The New Jersey West Line Railroad Company made, executed and delivered a mortgage on the premises last mentioned to Stephen N. Caldwell, to secure the sum of fifteen thousand dollars; that said mortgage was, on the twenty-second day of January, eighteen hundred and seventy-four, at four o'clock in the afternoon of said day, recorded in the Hudson County Clerk's office, in Book 108 of Mortgages, page 437, &c.; that on the second day of July, eighteen hundred and
 20 seventy-four, the said Stephen N. Caldwell, by writing under his hand and seal, duly acknowledged, assigned the said mortgage to Benjamin F. Beekman; that the said Benjamin F. Beekman, on or about the first day of March, eighteen hundred and seventy-five, departed this life, leaving a will, probate of which was made and letters testamentary granted thereon to these defendants, Catharine Adelaide Beekman, J. Reeves Van Derveer and William Z. Larned, on the thirty-first day of March following, and that the said Asa Packer and the said mortgage of these
 30 defendant executors and the said assignment and the said letters testamentary are in the possession of these defendants respectively ready to be produced and proved as this honorable court may direct.

And these defendants further answering say that the mortgage so held by the said complainants was never recorded in the County of Hudson, where the lands owned by these defendants mortgage lie, and that these defendants or either of them, or the said Benjamin F. Beekman in his life time, or the said Stephen M. Caldwell never had actual notice that the said mortgage of the said complainants
 40 covered and conveyed that portion of the railroad of the

said The New Jersey West Line Railroad Company, or the other real estate properties and franchises of the said company lying in Hudson County, and they charge and insist that being without notice either actual or constructive that the said mortgage of the said complainants covered any portion of the lands of the said company in Hudson County, the mortgages of these defendants respectively ought in equity to be held and decreed by this honorable court to be liens on the property therein mortgaged in their proper order prior to the lien and incum- 10
brance of the mortgage of the said complainants thereon.

And this defendant, Joseph J. Potter, answering for himself, says that he recorded judgment against the said defendant at the time and in the manner and for the sum stated in said bill of complaint and that he denies the allegation in the said bill that the said judgment is subject to the lien of the complainant's said mortgage on all the property, rights, privileges and franchises of the defendant as in said bill alleged, but this defendant claims and insists that said judgment is a lien on all that portion of said defendant's 20
property lying east of the eastern terminus of the main line of said *said* road as located at the time said mortgage was given and on all the property of said defendant lying in the County of Hudson in said State prior to the mortgage of the said complainant and should be paid and satisfied out of the proceeds of the sale of said property in the order of its priority.

And these defendants further answering, say that they are strangers to all and every the other matters and things set forth in said bill and not herein and hereby expressly 30
confessed or avoided, traversed or denied and have no knowledge thereof except as in said bill set forth and they pray that the said complainants may be put to their proof of the said matters and things charged as fully and completely as if the same were herein and hereby expressly determined.

And these defendants, further answering, say that they are advised, and they humbly submit that the said complainants are not entitled to any relief in the premises, as against these defendants, or either of them, and that their said mortgage ought not to be held to cover the rights, fran- 40

chises, and properties of the said railroad company, in the said County of Hudson, to the prejudice of these defendants, or either of them, and they jointly and severally crave the same benefit from this defence as if they had respectively demurred to said bill.

And these defendants deny all and all manner of unlawful combination and confederacy, wherewith they are by the said bill charged, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants.

All which matters and things these defendants are ready and willing to aver and maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

20

McCARTER, COULT & KEEN,
Sol'rs of said Defendants.

SCHEDULE B.

Copy of Mortgage.

.....
 \$3,000
 REVENUE STAMPS,
 CANCELLED.

THIS INDENTURE, made the eleventh day of March, in the year of our Lord one thousand eight hundred and seventy, between the New Jersey West Line Railroad Company, a corporation of the State of New Jersey, in the United States of America, party of the first part and Theodore F. Randolph and Benjamin G. Clarke of said State, party of the second part; whereas, pursuant to the power and authority in it vested, the party of the first part has resolved, to enable it to construct its railroad and equip the same, to make and issue a series of three thousand of its bonds, each of one thousand dollars, numbered respectively from one to three thousand, inclusive, to amount in the aggregate to three million dollars, which bonds are to have coupons or warrants thereto annexed for the payment of interest thereon at the rate of seven per cent. per annum, which said bonds are to be all equally secured, principal and interest, by these presents, which is a deed of trust of first mortgage, which bonds are of like tenor and date, each bearing even date herewith, payable, principal and interest, in gold coin of the United States of America, and in form following:

\$1,000. STATE OF (No.) NEW JERSEY. \$1,000.
 NEW JERSEY WEST LINE
 RAILROAD COMPANY.
 UNITED STATES OF AMERICA.

Principal and Interest payable in gold coin of the 30
United States of America.

Know all Men by these Presents, That the New Jersey

West Line Railroad Company, a corporation by a charter of the State of New Jersey, is indebted to Theodore F. Randolph and Benjamin G. Clarke, or the bearer hereof, in the sum of one thousand dollars in gold coin of the United States of America, which the said company promises to pay to said Theodore F. Randolph and Benjamin G. Clarke, or the bearer hereof, on the first day of May, in the year one thousand nine hundred, at the City of New York, with interest thereon at the rate of seven per cent. per annum payable semi-annually in gold coin of the United States of America, at the City of New York, on the first day of May and November in each year, upon presentation and surrender of the coupons hereto annexed as they severally become due, and in case of non payment of any half-yearly instalment of interest which shall have become payable and the coupon therefor shall have been presented and the amount thereof demanded, and the continuance of such default for the period of three months after such presentment of coupon and demand, the principal of this bond shall become due in the manner and with the effect provided in the deed of trust or mortgage securing the same.

This bond is one of a series of three thousand bonds, each for one thousand dollars of like tenor and date, numbered from 1 to 3,000 inclusive, amounting in the aggregate to three million dollars, the payment of each and all of which bonds is secured equally by a deed of trust or first mortgage bearing date the eleventh day of March, one thousand eight hundred and seventy, duly executed and delivered by the said railroad company to said Theodore F. Randolph and Benjamin G. Clarke, trustees, covering the railway of said company and all the appurtenances thereto belonging, together with the franchises, powers and privileges possessed by said company by law as a corporation; also the rolling stock and equipment in the said deed of trust or mortgage mentioned.

This bond shall pass by delivery, or it may be registered by its owner in the books of the company at the office of said company. After a registration of ownership certified thereon by the transfer agent of the company, no transfer of this bond shall be valid except upon the books of the

company, unless the last transfer shall have been to bearer, and transferability by delivery thereby restored, but this bond shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of the holder.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and signed by the trustees named above, or the survivor of them or their successors as such trustees.

IN WITNESS WHEREOF, the said company has caused its corporate seal to be hereto affixed, and the same to be attested by the signature of the President and Secretary, and has also caused the coupons hereto annexed to be signed by its Treasurer, this eleventh day of March, in the year one thousand eight hundred and seventy.

President.

Secretary.

FORM OF COUPON OR INTEREST WARRANT.

NEW JERSEY WEST LINE RAILROAD COMPANY.

STATE OF NEW JERSEY, UNITED STATES OF AMERICA. 20

Warrant for thirty-five dollars for six months interest due on First Mortgage Bond, No. of the New Jersey West Line Railroad Company, for one thousand dollars; this interest is payable in gold coin in New York City, on the day of

\$35.

Treasurer.

Now, THEREFORE, THIS INDENTURE WITNESSETH, That for and in consideration of the premises and the sum of one dollar to it duly paid by the party of the second part, the receipt whereof is hereby acknowledged by the party of the first part, and in order to secure the payment of the principal and interest of the said bonds according to the tenor thereof

and of the coupons or interest warrants thereto annexed, the party hereto of the first part hath granted, bargained, sold, assigned, transferred, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, transfer, convey and confirm unto the party of the second part as joint tenants and not as tenants in common, and unto the survivor of them, and their successors and assigns, all and singular the railroad of The New Jersey West Line Railroad Company, the party of the first part hereto, and all the appurtenances thereto belonging, acquired and to be acquired, 10 constructed and to be constructed, throughout and along the entire main line of said company's railroad, from the eastern terminus of said railroad at the City of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the western terminus of said railroad at the Pennsylvania State line, including all the lands and real estate acquired and that shall be acquired by the said company, on which the said main line of the said company's railroad is by law authorized to be constructed; also the bridge across the Delaware 20 river and the tracks thereon, and all the tracks, bridges, viaducts and fences on and that shall be on and belonging to said main line of said railroad, together with all the franchises, powers and privileges to own, obtain, construct, operate, manage and maintain the said main line of railroad possessed by the said company as a corporation, also the depots, station houses, engine houses, car houses, freight houses, water stations, turn tables, machine and other buildings and structures on or along and adjacent to said main line of railroad belonging to or that shall be acquired by said company, or that shall be used on or along said main line of 30 road of said company, together with the land on which the same are or shall be erected, acquired or that shall be acquired by said company, and all the machinery, tools, implements and materials for constructing, operating, repairing or replacing the said line of railroad, or any part thereof, and the rights of way, roadbed, and other grounds, forming and to form part of and belonging or to belong to the said line of railroad, embracing as to the parcels and items of property hereinbefore specified as conveyed hereby, such and such 40 parts thereof as have been heretofore acquired by, con-

structed or placed in the possession of the said company, as
 also such as shall be hereafter acquired by or constructed or
 placed in the possession of the said company, and which
 forms and constitutes, or shall form and constitute the said
 main line of railroad, and lands, buildings and structures
 thereto belonging; also all the locomotives, tenders, cars
 and other rolling stock or equipment which by virtue of the
 contract for the construction of said main line of railroad
 and equipment thereof and bridge across the Delaware
 river, shall be placed on the said railroad, or furnished to, 10
 or procured, or that shall be procured by the said company
 for that purpose, and all the property, franchises, rights
 and things of whatsoever name or nature now held or ac-
 quired, or which shall hereafter be held or acquired by the
 party of the first part hereto or its successors, pertaining to
 the said main line of railroad, or the equipment thereof,
 together with all and singular the tenements, hereditaments,
 and appurtenances to the said main line of railroad, lands
 and premises or either thereof belonging, or in anywise
 appertaining, and the reversion and reversions, remainder 20
 and remainders, tolls, incomes, revenues, 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, as well in law as in equity,
 of the party of the first part hereto, of, in, and to the same
 and every part and parcel thereof with the appurtenances.

To HAVE AND TO HOLD the above mentioned and described
 railroad, bridges, real estate, property and premises with the
 appurtenances unto the party of the second part as joint
 tenants and not as tenants in common, and to the survivor 30
 of them and their successors and assigns as joint tenants
 and not as tenants in common as aforesaid, to the only
 proper use, benefit and behoof of the party of the second
 part and the survivor of them and their successors and
 assigns as joint tenants and not as tenants in common as
 aforesaid forever, in trust nevertheless for the purposes
 herein expressed, to wit :

Article First.—Until default shall be made by the party
 of the first part, its successors or assigns, in the payment, in
 gold coin as aforesaid, of the principal or interest, or some 40

part thereof, of the said bonds or some one of them, when due, and the coupon or coupons for interest shall have been presented and the amount thereof demanded and the continuance of such default for the period of three months after such presentment of the coupon or coupons and demand, the party of the first part, its successors and assigns shall be suffered and permitted to possess, manage, operate and enjoy the said railroad with its equipment and appurtenances, and also the bridges, real estate, lands and premises, property
 10 and franchises hereinbefore described and hereby mortgaged, and to receive, take and use the tolls, incomes, revenues, rents, issues and profits thereof and of every part and parcel thereof, in the same manner and with the same effect as if this mortgage had not been made.

Article Second.—In case default or failure shall be made or occur in the payment, in gold coin as aforesaid, of any interest on any of the said bonds according to the tenor thereof, or of the coupons thereto annexed, or any or either of them when the same shall become due, and the coupon
 20 or coupons for such interest shall have been presented and the amount thereof demanded, and such default or failure shall continue for the period of three months after such presentment of the coupon or coupons aforesaid and demand, or in case of default or failure in the payment, in gold coin as aforesaid, of the principal or any part thereof of said bonds or any of them when the same shall become due and be presented for payment, and such default or failure shall continue for the period of three months, then and in either of such cases it shall be lawful for the said trustees, Theodore
 30 F. Randolph and Benjamin G. Clarke, or the survivor of them, or their successors, personally or by their or his attorney or agents, the said default or failure then still existing, upon the written request of the holder or holders of one hundred and fifty bonds issued by said company and secured by and under this mortgage and deed of trust, on which by the non-payment of interest or principal such default or failure shall continue to exist, or on their or his own motion to enter into and upon and take possession of all and singular the railroad, bridges, real estate, lands, property
 40 and premises, rolling stock and equipment hereby conveyed.

and mortgaged or intended to be, and of each and every part thereof, without any let or hindrance of or from the party of the first part or its successors, and to have, hold, possess, occupy, use, employ and enjoy the same, and to operate by their or his superintendents, managers, receivers, or servants, or other attorneys or agents, the said railroad and rolling stock and equipment thereof hereby mortgaged, and conduct the business thereof, and to make from time to time all repairs and replacements thereof, and of any part thereof, and of the bridges and other property connected therewith, and such useful alterations, additions and improvements thereof and thereto as may seem to them or him in their or his discretion judicious, and to collect and receive all tolls, freight, incomes, rents, issues and profits of the said railroad, bridges, real estate, lands, property and premises, rolling stock and equipment, and of every part and parcel thereof, and after deducting the expenses of operating the same, and conducting the business thereof, and of repairs and replacements, alterations, additions and improvements, and all the expenses incurred in the holding and management of the same and of every part and parcel thereof, and all payments which may be made for advances of any money or moneys, or for taxes or assessments upon the said premises or any part or parcel thereof or against the said company, or against said trustees as such, as well as just compensation for their or his services as trustees or trustee, and for the services and reasonable charges of such attorneys and counsel as may have been by them or him employed, and any and all costs which may have been incurred, to apply the moneys arising as aforesaid to the payment of interest on the said bonds, the interest on which shall be past due, in the order in which such interest shall have become due rateably to the persons holding the coupons evidencing the right to such interest, and after paying all interest which shall have become due, to apply the said moneys to the payment of the principal of such of said bonds, secured hereby, as may then be due and unpaid rateably and without discrimination or preference, and if after satisfaction of said interest and principal a surplus shall remain to pay over such surplus to the company, its succes-

sors or assigns, or as any court of competent jurisdiction shall order.

Article Third.—In case default be made, as aforesaid, and shall continue for the period of six months after the presentment of any coupon or coupons aforesaid past due, and demand of the payment of the interest on any of said bonds mentioned in said coupon or coupons, or in case such default be in the payment of the principal secured by any of said bonds or any part thereof, and shall continue for the

10 period of six months after such principal shall become due; then in either case it shall likewise be lawful for the said trustees, or the survivor of them, or their successors, after entry as aforesaid, or other entry, or without entry, personally or by their or his attorney or attorneys, agent or agents, to sell and dispose of all and singular the railroad, bridges, real estate, lands, property and premises, rolling stock and equipment, franchises, rights and powers hereby conveyed or intended so to be at public auction, in the City of New-

20 ark, in the County of Essex, in the State of New Jersey; or in Jersey City, in the County of Hudson, in said State of New Jersey, as the said trustees, or the survivor of them, or their successors shall designate, and at such time as they or he may appoint, having after the expiration of said period of six months, first given notice of the place and time of such sale by advertisement published not less than three times a week for two months in one or more newspapers published in the City of New York, and also in two or more newspapers published in New Jersey, and in whatever way

30 and wherever else required by law, and to adjourn the said sale from time to time, as often as in their or his discretion may be for the best interest and advantage of the holders of bonds and coupons or interest warrants secured hereby; and if there be an adjournment or adjournments to make the sale aforesaid without further notice, by advertisement, unless notice of adjournment by advertisement should be required by law, then such notice to be as required by law, the said sale to be in case of adjournment, at the time and place to which any adjournment of the same may be made, and to make and deliver to the purchaser or purchasers of

40 the said property and premises, good and sufficient deed or

deeds in the law in fee simple conveying thereby the whole of said main line of railroad, bridges, real estate, lands, property and premises, with the said franchises, rights and powers of said corporation, and the said rolling stock and equipment and all appurtenances to the said property or any part thereof belonging; which sale and conveyance made as aforesaid shall be a perpetual bar both in law and equity against the party of the first part, its successors and assigns, and all other persons claiming or to claim the said railroad, bridges, real estate, lands, property and premises, 10 franchises, rights and powers, rolling stock and equipment, or any part or parcel thereof, by, from, through or under the said party of the first part, its successors or assigns; which said sale and conveyance shall vest the right, title, estate, interest, property and possession of, in and to the said premises, franchises and equipment wholly and absolutely in the purchaser or purchasers; and after deducting from the proceeds of such sale, just allowances for all expenses thereof, and for attorneys and counsel fees, and for costs, taxes, assessments, and for all other expenses, advances or liabilities 20 which may have been made or incurred by the said trustees or either of them, or advances made for the benefit of the trust, in respect to the said railroad, bridges, real estate, lands, property and premises, rolling stock and equipment or any part or parcel thereof, or in respect to the business of the trust hereby created, or in operating or maintaining the said railroad, or bridges, or equipment or any part of either or anything appertaining thereto, or in managing the business thereof, or in taking charge or control of the said property and business or any part thereof, and in arranging for and 30 completing the sale aforesaid and all the payments which may have been made by the said trustees, or the survivor of them or their successors, or either of them, in the execution of the trust and in the discharge of their or his duty as trustees or trustee, as well as compensation for their or his own services, to apply the said proceeds to the payment of the principal of such of the said bonds as may be at that time unpaid, whether or not the same shall have previously become due and of the interest which shall at that time have accrued on the said principal and be unpaid, without 40

discrimination or preference, but rateably to the aggregate amount of such unpaid principal and accrued and unpaid interest, but always so that if any of the coupons or interest warrants then past due annexed to all of said bonds, which came due at the same date, a part only shall then have been paid in part or in full, then the others of said coupons or interest warrants which came due at the same date with those thus paid in part or in full which shall not then have been paid in part or in full, shall be first paid to an amount

10 which will make the payments of the interest on all the said bonds secured by this mortgage or deed of trust, to be in full of interest to the same date, in order and to the intent that the security for and payment of all the said bonds shall be perfectly equal, without any preference in favor of one over the other, either as to principal or interest, and if after the payment of the principal and interest of said bonds in full, a surplus shall remain, to pay over such surplus to the said company or render the same and account therefor and pay the same, or so much thereof as may be required,

20 to the person or persons who may be entitled thereto under or by virtue of any second mortgage that may be given by the party hereto of the first part or its successors on or covering the estate, property, franchises and rights covered by this mortgage or deed of trust, which second mortgage or deed of trust, if so given, is to be distinct from, subject to, and second in the order of priority to this mortgage or deed of trust, the right to give, make and execute a valid second mortgage or deed of trust which shall be a lien subsequent

30 to this mortgage or deed of trust on all the said main line of railroad, bridges, real estate, lands and premises, rolling stock, equipment, franchises and other property and rights embraced in this mortgage or deed of trust is hereby reserved, but only so that it shall be operative on any remainder or equity of redemption or surplus, after the complete execution of the trust hereby created and the payment in full by the said company or its successors, or by a sale and conveyance in fee simple by the said trustees or the survivor of them, or their successors as aforesaid, or by other means, of the principal and interest secured by this

40 mortgage and deed of trust, any balance of said surplus over

what may be required to pay any second mortgage to be paid to the said company, or the said surplus shall be rendered and accounted for by the said trustees, or the survivor of them or their successors, as any court of competent jurisdiction shall order or decree; it being expressly understood that in no case shall any advantage be taken of any valuation, appraisement, or stay or extension laws by the party of the first part or its successors, nor of any injunction or stay of proceedings, or any process to be applied for by the party of the first part, or its successors, to prevent 10 the entry, possession or use of said main line of railroad and premises, and property, as provided in article second of this instrument, or to prevent such entry and sale as aforesaid, and that such second mortgage or deed of trust, if given or made hereafter, shall in no way interfere with or abridge the full and complete effect and operation of this mortgage or deed of trust, or the rights and security of the holders of bonds and of coupons or interest warrants thereto annexed secured by this instrument, and that in case of a sale and conveyance by said trustees or the survivor of them or their 20 successors, by virtue of and pursuant to this mortgage or deed of trust, the purchaser or purchasers by virtue of such sale and conveyance, shall take the said main line of railroad, real estate, lands, property, premises, franchises and rights, conveyed by this mortgage or deed of trust free and clear of any claim or lien, under or by virtue of any second mortgage or deed of trust that may be made as aforesaid; but such second mortgage or deed of trust shall operate on and be a claim against and lien upon the said surplus.

And it is hereby declared and agreed that the receipt of 30 the said trustees, or of such one or more of them as shall make such sale and conveyance, for the purchase money or for securities therefor, whether mentioned in said conveyance or such receipt be separate, shall be a sufficient discharge to the purchaser or purchasers of the estate, property and premises, franchises and rights, which shall be sold and conveyed as aforesaid, for his or their purchase money; and that such purchaser or purchasers, his or their executors or administrators, or any claiming under him or them shall not, after the payment of said purchase money, and having 40

such receipt therefor, whether expressed in the conveyance to such purchaser or purchasers or in a separate writing, be liable or under obligation to see to the application of such purchase money or any part or portion thereof, to, upon or for the trusts or purposes of these presents, or any or either of them, or be in any manner whatever answerable for any loss, misapplication, or nonapplication or misuse of such purchase money or any part or portion thereof, or be obliged to inquire into or be affected by any question
 10 as to the necessity, expediency or authority of or for such sale.

Article Fourth.—In case default shall be made in the payment of any half year's interest on any of the said bonds at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented for payment, and the payment of the interest therein specified having been demanded, and that such default shall continue for the space or period of three months after the interest expressed in said coupon shall have become due, and from
 20 and after the coupon shall have been presented and the payment thereof demanded as aforesaid, then and thereupon the principal of all the said bonds shall at the election of the trustees become immediately due and payable.

Article Fifth.—The said trustees, or the survivor of them, or their successors, shall also in their or his discretion have full power to convey or release, upon the written request of the party of the first part, any lands acquired or held for the purposes of stations, depots, shops, bridges, or for other purposes, than as part of the width of land authorized by
 30 law for said main line of railroad, occupied or to be occupied by the tract from the City of Newark to the Pennsylvania State line, which lands, not part of that occupied by or intended for the track, in their or his judgment shall not be necessary for use in connection with said railroad, or any lands not occupied by the track, which may become disused by reason of the change of location of any station or station house, depot, shop, bridge, or other building or structure connected with the said railroad or any part thereof, and any lands not occupied by the track adjacent to such station
 40 or station house, depot, shop, bridge, or other building or

structure which the company may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change or any other changes in the location of the track, depots, buildings, or other structures, or any or either of them, which in their or his judgment shall have become expedient or necessary to increase the facilities of said main line of railroad as a through railroad from the City of Newark to the Pennsylvania State line, and to make and deliver the instruments necessary or proper to carry the same into effect; and said conveyance or release shall 10 operate to release said land mentioned therein, from this mortgage or deed of trust as a lien, but they are not to convey or re-lease, under or by virtue of this article, any part of the permanent main line of railroad through from the City of Newark to the Pennsylvania State line, or the land for the width authorized by law and necessary for the track; any lands which may have been acquired for permanent use in substitution for any so re-leased shall be conveyed to the trustees upon the trusts of these presents; and the trustees shall also have full power to allow the said company, 20 from time to time, to dispose of, according to its discretion such portions of the equipment, machinery and implements at any time held or acquired for the use of the said railroad as may have become unfit for such use, replacing the same by new or other, which shall be conveyed by the said company to the trustees, and made subject to the lien and operation and held upon the trusts of these presents.

Article Sixth.—*It is hereby provided always, nevertheless,* and it is the true intent and meaning of these presents, that if the party of the first part shall well and truly pay, or 30 cause to be paid, the principal of the said bonds when the same shall become due, in coin as aforesaid, and interest thereon, when the same shall have become payable, and the coupon or coupons therefor shall have been presented and payment thereof demanded according to the tenor of said bonds and of the coupons or interest warrants thereto annexed and according to the true intent and meaning of said bonds and said coupons or interest warrants thereto annexed and of these presents, said interest to be paid in gold coin; then and in that case upon the payment of the principal and 40

all the interest aforesaid, the estate, right, title and interest of the said parties of the second part, trustees as aforesaid, the survivor of them and their successors in the trusts hereby created, and these presents, as well as the said bonds and coupons or interest warrants issued therewith, shall cease, determine and become null and void, anything herein to the contrary notwithstanding, otherwise the same shall be and remain in full force and virtue.

Article Seventh.—It is mutually agreed by and between
 10 the parties hereto, that the word “trustees,” as used in these presents, shall be construed to mean trustees or trustee for the time being, whether original or new, and whenever a vacancy shall exist, to mean the surviving or continuing trustee; and such trustee shall, during such vacancy, be competent to exercise all the powers by these presents granted to or conferred upon the parties hereto of the second part. And it is mutually agreed by and between the parties hereto that neither of the said trustees or their successors or either
 20 of them shall be in any manner responsible for any default or misconduct of any other of them; that the said trustees and each of them and their successors, and each of them shall be entitled to just compensation for all services which they or either of them may hereafter render in their or his trust, and to the repayment to them of all expenses incurred by them, including counsel and attorney’s fees paid by them in connection with the trust hereby created, the same to be paid by the company or out of the income of the property, and for that purpose they or he may at any time apply to
 30 the courts or any of them, without notice to any person except to the party hereto of the first part, its successors or assigns; that either of said trustees or any successor may discharge himself of the trust created by these presents, by notice in writing to the said company, and to the existing trustee, if there be such, three months before such resignation, shall take effect, or such shorter time as may be accepted, by written consent, as adequate notice, and upon the due execution of the conveyances hereinafter required.

That in case at any time hereafter either of the said trust-
 40 tees, or any trustees or trustee hereafter appointed shall die,

or resign, or become incapable or unfit to act in the said trust, a successor or successors to such trustee or trustees shall be appointed by the surviving or continuing trustee, with the consent of the company, and the trustee or trustees so appointed, with the trustee surviving or continuing shall thereupon become vested with all and singular the powers, authorities and estates granted to or conferred upon the parties of the second part as trustees by these presents, and all the rights and interests requisite to enable them or him to execute the purposes of this trust, without any fur- 10
 further assurance or conveyance, so far as such effect may be lawful, but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises jointly with himself, to the trustee so appointed; and upon the death, resignation or removal by any court of competent jurisdiction, of any trustee, or an appointment of another in his place, all the powers and authorities of the one so dying, resigning or removed, by virtue hereof shall cease, and all the estate, right, title 20
 and interest in the said property, premises, franchises and powers, of any trustee so dying, resigning or removed, shall, if there be a co-trustee surviving or continuing in office wholly cease and determine; but the said trustee so resigning or removed shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights and franchises which may be at that time held upon the said trusts; provided, never- 30
 theless, and it is hereby declared and agreed, that in case it shall at any time hereafter prove impracticable after reasonable exertions, to appoint in the manner hereinbefore provided, a successor in any vacancy which may have happened in said trust, application in behalf of all the holders of the bonds secured hereby may be made by the surviving or continuing trustee, or if the trust be wholly vacant, by holders of bonds secured hereby, or any of them on giving notice in writing to the company, or in default of such application by any bondholder or bondholders, then by the 40

said company, making application to the Court of Chancery of the State of New Jersey, or to any court of competent jurisdiction, for the appointment of a new trustee or trustees, and in case of application as aforesaid by the said company such notice of the time and place for the appointment of a new trustee or new trustees shall be given by publication thereof in such newspapers published in the City of New York and in the State of New Jersey, and for such length of time as the court shall direct.

- 10 And the party of the first part for itself, its successors and assigns, in consideration of the premises and of one dollar to it duly paid, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the party hereto of the second part, and the survivor of them and their successors and assigns, that whenever and as often as the party of the first part, its successors or assigns, shall hereafter acquire any lands for use as part of the width allowed by law to be held and owned by said company for said main line of railroad—or to be used for bridges, depots, station houses
- 20 or other buildings, or any equipment, or any other property or things, of whatever name or nature, for use as a part of said main line of railroad, or for bridges, depots, station houses or other buildings adjoining thereto, or any rights or privileges of the company, which shall result from any addition or chartered rights of the company in the ownership or management of the said main line of railroad, the said party of the first part, its successors and assigns, shall and will acquire, possess and hold the same and every part and parcel thereof, and also all the said main line of railroad of the
- 30 party of the first part, and the bridges, buildings, houses and other structures, and rolling stock and equipment connected with the said main line of railroad and forming part thereof contracted for, constructed, or that may be contracted for by, constructed for, or furnished to the company, upon and subject to the trusts of this indenture; but this deed of trust or mortgage is not to cover or effect and does not include any branch railroad that may be built to connect with said main line of railroad, or any lands temporarily held by said company not a part of the width
- 40 allowed by law for the said main line of railroad, and not

required for bridges, depots, buildings and other structures contiguous to said main line of railroad.

And the said party of the first part, for itself, its successors and assigns, in consideration of the premises, and of one dollar to it duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the party of the second part and the survivor of them and their successors and assigns, that the said company and its successors and assigns, shall and will from time to time, and at all times hereafter, and as often 10 as thereunto requested by the trustees under this indenture, execute, deliver and acknowledge all such further deeds, conveyances and assurances in the law for the better assuring unto the parties of the second part, the survivor of them and their successors as trustees or trustee, upon the trust herein expressed the said main line of railroad, and the said real estate, lands, bridges, houses and other structures, rolling stock, equipment, franchises, property and things which are hereinbefore referred to as conveyed by this deed of trust or mortgage, or which the company may hereafter for 20 any reason become entitled to or may acquire for, or for the use of said main line of railroad, or the bridges or buildings adjacent thereto, and also all franchises and corporate rights which may hereafter be acquired by the said party of the first part, its successors or assigns, to facilitate the ownership, use or management of said main line of railroad, with the appurtenances, as by the said trustees or their counsel learned in the law, shall be reasonably advised, devised or required, but always so that if no further or other deeds, conveyances or assurances should be made, yet that 30 the said property of every kind so as aforesaid, a part of said main line of railroad, or lands for bridges, buildings or structures adjoining the same, including the franchises, shall as well all thereof now acquired as all that shall hereafter be acquired by the party hereto of the first part, its successors and assigns, be held, acquired, received and possessed by the party hereto of the first part, its successors and assigns, by virtue of this deed of trust or mortgage, subject to the trusts in and by this instrument created, and subject to the estate, right and interest of said trustees, and the 40

survivor of them and their successors, in and to the said property of every kind and franchises now acquired, or that shall hereafter be acquired by the said company, its successors and assigns, hereinbefore referred to as embraced in and intended to be covered by this instrument.

- And it is mutually agreed between the parties hereto, and the said trusts are accepted and created with the distinct understanding that the party hereto of the second part, and the survivor of them and their successors in said trusts
- 10 shall be accountable, liable or responsible for reasonable care and diligence only in the performance of the trusts hereby created, and in the management of the said estate and property, in like manner as a bailee without reward, and that they shall not nor shall either of them be under obligation by virtue of anything herein, to do any act, or require it to be done, which shall require an advance, or outlay or expenditure of money or funds, until the money or funds necessary to be advanced, laid out or expended, shall be furnished or paid to them, or the survivor of them
- 20 or their successors, which money or funds so paid or furnished to them necessary to be advanced, laid out or expended in the business or duties connected with said trusts shall be deemed part of the expenses to be paid to the person or persons who may have advanced the same out of moneys which by virtue of said trusts shall come to the hands of said trustees, or the survivor of them or their successors; and it is mutually understood and agreed between the parties hereto, and the trusts aforesaid are hereby created, and the appointment of trustees accepted with the
- 30 further distinct understanding that the party hereto of the second part, the survivor of them and their successors shall not, nor shall either of them be accountable, liable or responsible for the act or acts of any attorney, agent, depositary, employee or of any other person or persons whatever employed by them or him, or for any act which shall be done pursuant to the advice of counsel, or done and performed in good faith, when such attorney, agent, depositary, employee, counsel or any other person or persons employed by them or him, shall have been selected with reasonable
- 40 discretion.

In Witness Whereof, the said party of the first part, "The New Jersey West Line Railroad Company," has caused its corporate seal to be hereto affixed, and the same to be attested by the signature of John H. Lyon, its president, who is duly authorized to do so by a resolution of said corporation, and the same is also attested by Beverley C. Sanders, the company's secretary; and the said Theodore F. Randolph and Benjamin G. Clarke, the party of the second part, have hereto set their hands and seals, to evidence their acceptance of the trust hereby created, the day and year first above written.

[L. s.]

JOHN H. LYON,
President.

Attest:

BEVERLEY C. SANDERS,
Secretary.

THEODORE F. RANDOLPH, [L.s.]
BENJAMIN G. CLARKE. [L.s.] 20

Sealed and delivered in the presence of, who also witnessed the affixing United States Internal Stamps to the amount of \$3,000, which were cancelled.

WILL. J. LYON.

STATE OF NEW JERSEY, }
Hudson County. } ss.

Will. J. Lyon, of full age, of Jersey City, Hudson County, New Jersey, being duly sworn according to law, on his oath, says that he is well acquainted with the common seal of the New Jersey West Line Railroad Company, the grantor named in the foregoing indenture; that the seal affixed thereto, attested by the signatures of the president and secretary of said company, is the common seal of said company; that this deponent was present at the execution of said indenture, on the day of the date thereof, by the grantor, at Jersey City, Hudson County, New Jersey, and saw

John H. Lyon, who is the president of said company, as said president, seal said indenture by affixing the said common seal thereto, and sign, seal and deliver the said deed of trust and mortgage as the voluntary act and deed of the said company; and this deponent saw the secretary aforesaid, Beverley C. Sanders, attest said seal and sign his name to said indenture; and they respectively first stated that the said company knew and were informed of the contents thereof, and the contents of the same were made known to them in the
 10 presence of this deponent prior to the execution thereof; and this deponent thereupon signed his name as the subscribing witness to such execution thereof; and this deponent further says that he also saw Theodore F. Randolph and Benjamin G. Clarke, the party of the second part to the foregoing indenture of mortgage and deed of trust, the contents thereof having first been made known to them, sign, seal and deliver the same as their voluntary act and deed, and this deponent signed his name as the subscribing witness to such execution by them; and this deponent also saw
 20 \$3,000 (three thousand dollars) in value of United States Internal Revenue stamps affixed to the said indenture, and duly cancelled at the same time of the execution of said indenture.

WILL. J. LYON.

Sworn and subscribed before me, at Jersey City, Hudson County, New Jersey, March 11th, 1870.

BENNINGTON F. RANDOLPH,
Master in Chancery of New Jersey.

No. 6,913.

30 Received in the Clerk's Office of the County of Union, March 15, A. D. 1870, at 1 o'clock, P. M., and recorded in Book 11 of Mortgages for said county, on page 621, &c.

HENRY R. CANNON, *Clerk.*

Received in the Clerk's Office of the County of Somerset, on the 15th day of March, A. D. eighteen hundred and seventy (at 3.47 P. M.), and recorded in Book C, No. 2 of Mortgages for Somerset County, on page 576, &c., &c.

WILLIAM ROSS, JR., *Clerk.*

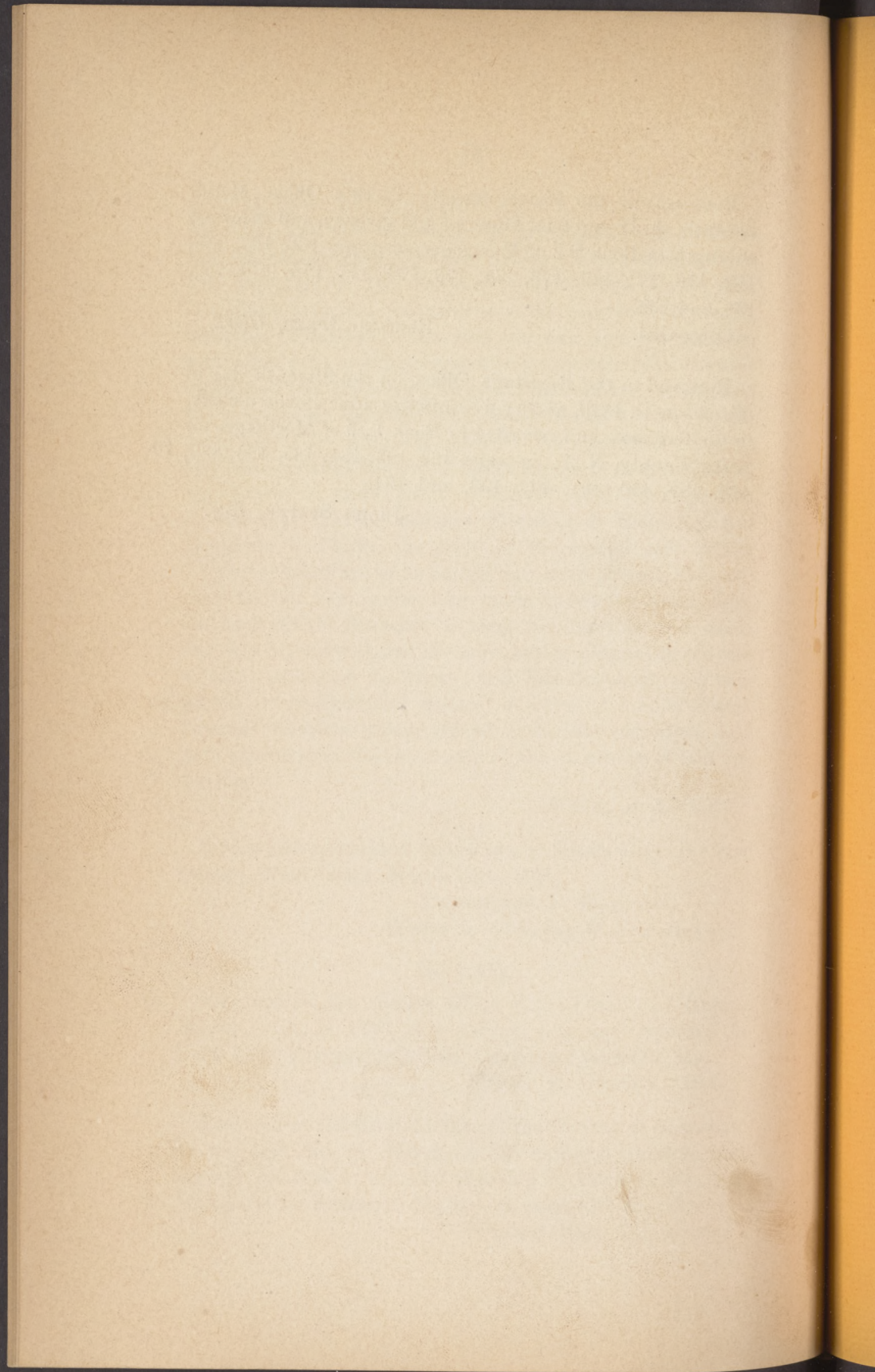
Received in the Morris County Clerk's Office, March fifteenth, A. D. eighteen hundred and seventy, and recorded at length in Book S 2 of Mortgager, on pages 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, and 182.

Compared.

RICHARD SPEER, *Clerk.*

Received in the Register's Office, on the fifteenth day of March, A. D. 1870, at fifty-five minutes after eleven o'clock, in the forenoon, and recorded in Book L, 5 of Mortgages for Essex County, N. J., on pages 482, 483, 484, 485, 486, 487, 10 488, 489, 490, 491, 492, 493, and 494.

JULIUS STAPFF, *Reg.*





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