

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

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Between	)	
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MONMOUTH COUNTY	)	10
	)	
ELECTRIC COMPANY,	)	
	)	
Complainant-Respondent,	)	
	)	
and	)	
	)	
THOMAS P. McKENNA,	)	
	)	
Defendant-Appellant.	)	
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BRIEF FOR RESPONDENT.

The Monmouth County Electric Company was incorporated April 9, 1895, for the purpose of building a trolley road between Red Bank, Atlantic Highlands and Long Branch. To provide funds for this purpose a bond issue of \$500,000 was authorized and a mortgage securing same was executed July 1, 1895, 30 to the Hamilton Trust Company, Trustee, duly recorded as a real estate and chattel mortgage. This mortgage "doth grant, alien, remise, release, convey and confirm unto the Trustee and its successors all and singular its (the railroad company's) property and franchises of every description whatsoever, whether now owned or hereafter to be acquired." (Page 53, l. 40).

Then follows an enumeration of certain property particularly described as being included, and this par- 40

agraph of the mortgage closes with the description, "and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the Railroad Company in and to the same, and every part and parcel thereof, with the appurtenances." (Page 55, line 33).

10 Thereafter the road was built into Long Branch partially over a private right of way, and to secure this right of way the company purchased some fourteen parcels of real estate in fee. Among the properties so acquired was the property of Eliza V. Foster, which was conveyed to the company by deed dated June 1, 1897, and recorded September 13 of the same year.

20 The Foster property consisted of a building lot which was needed for the right of way, upon which was erected a large double house, which had to be removed in order to lay the tracks. The price paid was \$4,500.

The appellant McKenna was the attorney for the Railroad Company in Long Branch, and had represented it in that capacity since 1896. He represented it in acquiring the Foster property as well as all other property purchased. He was necessarily familiar with the bond issue secured by mortgage, and must 30 have known that the road was being built and the needed property acquired with the proceeds of the bonds.

This was conceded at the trial, and although it does not appear in the reported case that fact is mentioned by the Vice-Chancellor in his conclusions. (Page 122, line 10).

40 Upon the purchase of the Foster property McKenna, as attorney for the company, was directed by

its President to sell the building. No price was put on the building when offered to outsiders. The company being unable to find a purchaser, then offered the building to McKenna for \$500, and later offered to give him the house if he would move it at his own cost. This offer he declined to accept. (Page 23). He countered with an offer to sell to the company for \$1,000 a lot owned by him nearby, upon which the house might readily be moved. The evidence shows ¹⁰ that this was a fancy price, the value of the lot being about \$600. (Page 29, line 38). McKenna in his testimony volunteers the statement that this was not at all a fictitious price, which, however, rather suggests a contrary conclusion. His statement that a nearby lot was purchased for \$1,000 by the company through him, and that the company was not "bled" in so doing, does not destroy that impression.

Greenberg says that McKenna failing to sell the ²⁰ house for \$500, and declining to accept it as a gift upon condition that he pay the cost of removal, he agreed that the company should buy the lot for \$1,000, and thereupon the house in question was moved from the Foster lot to the McKenna lot, the company paying the cost of removal and the cost of building cellar and foundation, the cost of water and sewer connections, and other expenses necessary to put the property in habitable condition. Greenberg ³⁰ then instructed McKenna, who was attorney of the Company, in Long Branch, to take charge of the renting of the property and look after the taxes and repairs. (Page 18, line 40). McKenna was already doing this with respect to other property owned by the Railway Company, and from time to time thereafter he rendered accounts to the Company, showing the rents collected. (Page 19, line 10).

The McKenna lot, prior to the transaction, had been assessed to McKenna as owner by the Town- ⁴⁰

ship of Ocean. The next tax assessed, however, was assessed against the Railway Company, and during each succeeding year continued to be assessed, either to the old company or its successors, until the property was sold by McKenna to Hayes, and the Township taxes for these years were paid by the old company or its Receiver until the reorganized company took charge and then by the complainant company. This change upon the assessment books must
 10 have been at the instance either of the Railway company or McKenna (for none else would have had an interest), and in either event is a contemporaneous circumstance of great weight in showing the intent of the parties.

The defendant in his answer says that it was agreed:

20 "That the said company might have the privilege of purchasing the said lot of this defendant for the sum of \$1,000, or if the said lot was not purchased and paid for that this defendant should pay to said company for the said house the sum of \$500, and that after waiting a long time for it to purchase the same the Railway Company rejected the privilege and directed this defendant to retain the lot and the building placed thereon and account to the Railway Company for the sum of \$500. (Page 10, line 10).
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McKenna's testimony, given on the first day of the trial, is that he was authorized to sell the house for \$500, and not being able to get a purchaser, and the company needing to move it, Greenberg told him to take it for \$500.

He quotes Greenberg as follows: "McKenna, you take it for \$500 and if we get in a position to purchase your lot for \$1,000 we will do so for \$1,000, but
 40 if we don't get in a position to do it, you take the

house." Said also he would allow \$500 for it in the event we don't take your lot, and you credit the same on your bill, and also whatever the expenses are for moving.

Further he says: "My lot was to be taken at \$1,000."

"(By the Court). But there was a price fixed between you and Greenberg at \$1,000? A. Price fixed at \$1,000." (Page 38.) 10

McKenna says that afterwards Greenberg said when the company was in difficulty that it was impossible to pay the \$1,000, but: "You keep the house." Then the company went into the hands of a Receiver. They owed me about \$3,000, and I asked the Receiver if he could not arrange in some way to take up the proposition where Mr. Greenberg said he was absolutely unable to do it, and Mr. Deghan (the Receiver) informed me that he saw no way. (Page 39-20) 20

Taking this testimony of McKenna all in all, it does not greatly differ from that given by Mr. Greenberg.

Clearly there was a price agreed upon at \$1,000, and up to the time of the insolvency of the company at least McKenna was still looking for that price. 30

From above it will be seen that he asked the Receiver to take up the proposition where Mr. Greenberg said he was absolutely unable to do it. The intention of McKenna to treat the house as having been purchased by him for \$500 clearly originated at a later day. At the trial he admitted that he gave no credit upon the bill which he rendered to the company and filed as a claim with the Receiver, for the value of this house. He failed to produce this bill in 40

evidence, and although it is printed in the case by the appellant on page 104, it is improperly so printed and is not evidence.

Since the appellant has seen fit to print it, however, we refer to one of the items he charges against the company dated September 2, 1897. (Page 105): "To
 10 arranging with Mrs. St. Vincent for removal of Foster house across her lot, drawing agreement to that effect, &c., \$10.00." Also item Sept. 2: "To amount paid Mrs. St. Vincent, for privilege of moving Foster house across her lot, \$1.00." (Page 110.) Also charge of November 9, 1898 (page 106): "Attention to removing tenants from Mrs. E. V. Foster house, and to the removal of the house, \$10.00."

20 These entries, together with the failure to give credit on the bill for the value of the house, show that McKenna at that time regarded the house, not as his own property, but as the property of the company, and that in procuring its removal he was not managing his own property, but the property of the company, and was justified in making a charge therefor.

It is true that on the second day of the trial McKenna testified to an agreement radically different
 30 both from that which he set forth in his testimony and in his answer. This was after the case was closed, however, except for the single purpose of permitting Mr. Degnan to prove the account filed with the Receiver, and objection being then made to the reception of McKenna's testimony in the absence of rebutting witnesses, the Vice-Chancellor took the testimony with a reservation. In the filed conclusions he holds that the objection was well taken, and that he
 40 (Page 17, line 20).

In view of this conclusion we submit that the revised version of McKenna's testimony should not be considered on this appeal. If considered at all, we submit that it is inconsistent with his answer, which he admits he was familiar with, and with which as a lawyer he must be particularly charged as the deliberate statement of his case, and is also so inconsistent with his previous sworn testimony and with the logic of events, that it leads to no conclusion except the **10** unreliability of the witness.

I.

A PAROL AGREEMENT BY McKENNA TO SELL TO THE RAILWAY COMPANY FOR THE SUM OF \$1,000, TO BE PAID BY THE RAILWAY COMPANY, HAS BEEN ESTABLISHED, AND SUCH CONTRACT WAS **20** PARTLY PERFORMED AND ACTED UPON BY THE RAILWAY COMPANY IN ERECTING THIS HOUSE, AND SHOULD BE ENFORCED.

"The terms of the contract must be established by proofs clearly, definitely and unequivocally. But it is sufficient that the terms of the contract be made out in a manner satisfactory to the Court. The fact **30** that the details of the agreement are controverted by the parties will not deter the Court from ascertaining what the terms of it really were, and giving effect to the agreement where a complainant shows himself to be entitled to a specific performance, by a part performance which shall be referable only to a part execution of the agreement."

In the case at bar the Vice-Chancellor finds such a parol contract is clearly established (Page 118-40), and we submit that the testimony supports his conclusion.

The effect of such transaction was to create an equitable title to the land in the Trolley Company subject to the payment of the purchase price.

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"In equity upon an agreement for the sale of land the contract is regarded for common purposes as being specifically executed. The purchaser becomes the equitable owner of the land, and the vendor, of the purchase money. After the contract the vendor is the trustee of the legal estate for the vendee."

Houghwout vs. Murphy, 7 C. E. Green, 531, 546.

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"An equitable estate arises in the vendee under these circumstances."

Same case, page 549.

Other authorities under such circumstances treat the vendee as the owner of the land and the vendor retaining title as a mortgagee holding security for the unpaid price.

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Am. & Eng. Ency. Law, Vol. 29, pages 771, 775.

II.

THE PROPERTY IN QUESTION BECAME SUBJECT TO THE LIEN OF THE TRUST MORTGAGE.

The pertinent parts of the mortgage are above
40 cited. The intent of this mortgage clearly is to cover

all property of the company of whatever sort and whenever acquired. Replacements are provided for, but only on condition that property of equal value be acquired and become subject to the mortgage, or that money representing the value of the property disposed of be deposited with the Trustee.

The Foster lot was acquired for the necessary right of way of the railroad. Without doubt this land became subject to the mortgage lien, and the fixture upon the land, namely, the house before its severance, was undoubtedly subject to the mortgage lien. This was prior to the agreement between McKenna and Greenberg. Whatever these two agreed to with respect to the house then was subject to the mortgage lien upon the house. McKenna was familiar with the mortgage. The removal of the house from the Foster lot to the McKenna lot, no matter upon what agreement between the company and McKenna, could not destroy the lien of the mortgage upon the house. 10 20

It is clear, therefore, that the company, through Greenberg, agreed to buy the lot for the purpose of utilizing this building, which was then part of the railroad right of way, and was undoubtedly subject to the mortgage, and the legal title of which was in the mortgagor. The railroad company thereupon acquired an equitable title to the McKenna land, and since the building, the legal title of which was in the mortgagor and which was at all times subject to the mortgage, was afterward affixed to this new land, the equitable title of which was in the mortgagor, it was necessary in order to preserve the mortgage lien upon the house, if for no other purpose, that the whole property should be considered as subject to the mortgage lien (subject only to the prior vendor's lien upon the land). 30

Further, the mortgage in terms declares that it is 40

to cover the equitable estate as well as the legal estate of the mortgagor. (Page 55-30).

The efficiency of this particular mortgage to cover after acquired property is determined by the case of Monmouth County Electric Co. vs. Central R. R. Co., 54 Atl. Rep., 140, and see cases there cited.

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III.

THROUGH THE FORECLOSURE OF THE TRUST MORTGAGE THE COMPLAINANT ACQUIRED THE EQUITABLE TITLE OF THE MORTGAGOR TO THE LOT AND THE LEGAL TITLE TO THE HOUSE, AND THE SAME NOT HAVING BEEN SOLD BY McKENNA UNTIL AFTER THE ACQUISITION OF COMPLAINANT'S TITLE, THE LATTER
20 IS ENTITLED TO AN ACCOUNT.

The case and exhibits briefly show the foreclosure of the trust mortgage. The decree was for something over \$500,000, and the property was bid in for \$250,000. The successive deeds from the master to L. M. Garrison, and from the latter to the Monmouth County Electric Company, we submit, are effective to pass everything that was subject to the lien of the mortgage.

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IV.

IF, HOWEVER, FOR ANY REASON IT BE CONSIDERED THAT ALTHOUGH THIS PROPERTY WAS SUBJECT TO THE LIEN OF THE MORTGAGE, THE FORECLOSURE PROCEEDINGS AND THE DEEDS WERE NOT EFFECTIVE TO CREATE A TITLE IN THE COMPLAINANT, THEN WE SUBMIT THAT THE PURCHASER AT THE FORECLOSURE
40 SALE IS ENTITLED TO BE SUBROGATED

TO THE LIEN OF THE MORTGAGE, AND BEFORE THE FILING OF THIS BILL THE PROPERTY HAVING BEEN SOLD BY McKENNA AND TURNED INTO CASH, AND THE CASH RECEIVED BEING LESS THAN THE DEFICIENCY UPON THE MORTGAGE, THE COMPLAINANT IS ENTITLED TO AN ACCOUNTING FOR THE MONEY SO RECEIVED.

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On Subrogation see *Monmouth County Electric Co. vs. Central R. R. Company*, supra, and on the right to an accounting where property has been sold pending a suit to establish a mortgage lien, see

Dunn vs. Hastings, 9 Dick., 503.

V.

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McKENNA HAS NO RIGHT AGAINST THE MORTGAGEE OR ONE STANDING IN ITS PLACE TO SET OFF THE DEBT DUE HIM FROM THE MORTGAGOR ON ACCOUNT OF SERVICES.

At the time of the agreement for the purchase of the lot, the Atlantic Highlands Company owed McKenna for services. The amount does not appear, nor does it appear that this amount was then liquidated. Thereafter McKenna continued to render services and the account was not liquidated apparently until the appointment of the Receiver.

A distinct and separate agreement was made for the purchase of this land, and upon the tender of the price of \$1,000 McKenna would have been compelled to deliver a deed. "A grantor's lien wherever recognized is only permitted as a security for the

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unpaid purchase price and not for any other indebtedness nor liability." (Pomeroy's Equity Jurisprudence, Second Edition, Vol. 3, par. 1251.)

"The lien (vendor's) cannot be extended to any other indebtedness of the vendee arising from other transactions."

10 Jones on Mortgages, par. 193.
Refeld vs. Ferror, 30 Ark., 465.

In Lewis vs. Cranmer, 9 Stew., 124, an answer to a suit to enforce a vendor's lien set forth that it was understood that a debt due from vendor to vendee on an open account was to be offset against the price of the land.

20 This part of the answer was stricken out for failure to aver an agreement to offset.

Considering vendor's title ~~as~~ a purchase money mortgage, the present suit is in the nature of a bill to redeem, filed by one claiming in the right of a subsequent encumbrance.

30 Upon such a bill the subsequent mortgagee is only required to tender the mortgage debt and the first mortgagee cannot retain title upon showing an outside indebtedness.

Jones on Mortgages, par. 1081.
Burnett vs. Deniston, 5 Johns, 35.

GENERAL EQUITIES.

THE EQUITY OF THE CASE IS WITH THE COMPLAINANT.

40 The real value of the property in question over and above the price of the lot was in the building.

Against this building Mr. McKenna had no claim whatever. It was purchased with the bondholder's money. Mr. McKenna was allowed a very liberal price for his land. In this, notwithstanding he was the attorney for the company, he seems to have profited somewhat from its necessity. When he rendered his services he undoubtedly knew of the bonded debt and the mortgage, and that the bondholder's money was being advanced upon the faith of a first 10 lien upon the property of the company. He was content to render his services without security, and the bondholders are therefore not to be deprived of the security for which they bargained, in order to give Mr. McKenna a security for his general indebtedness for which he did not contract.

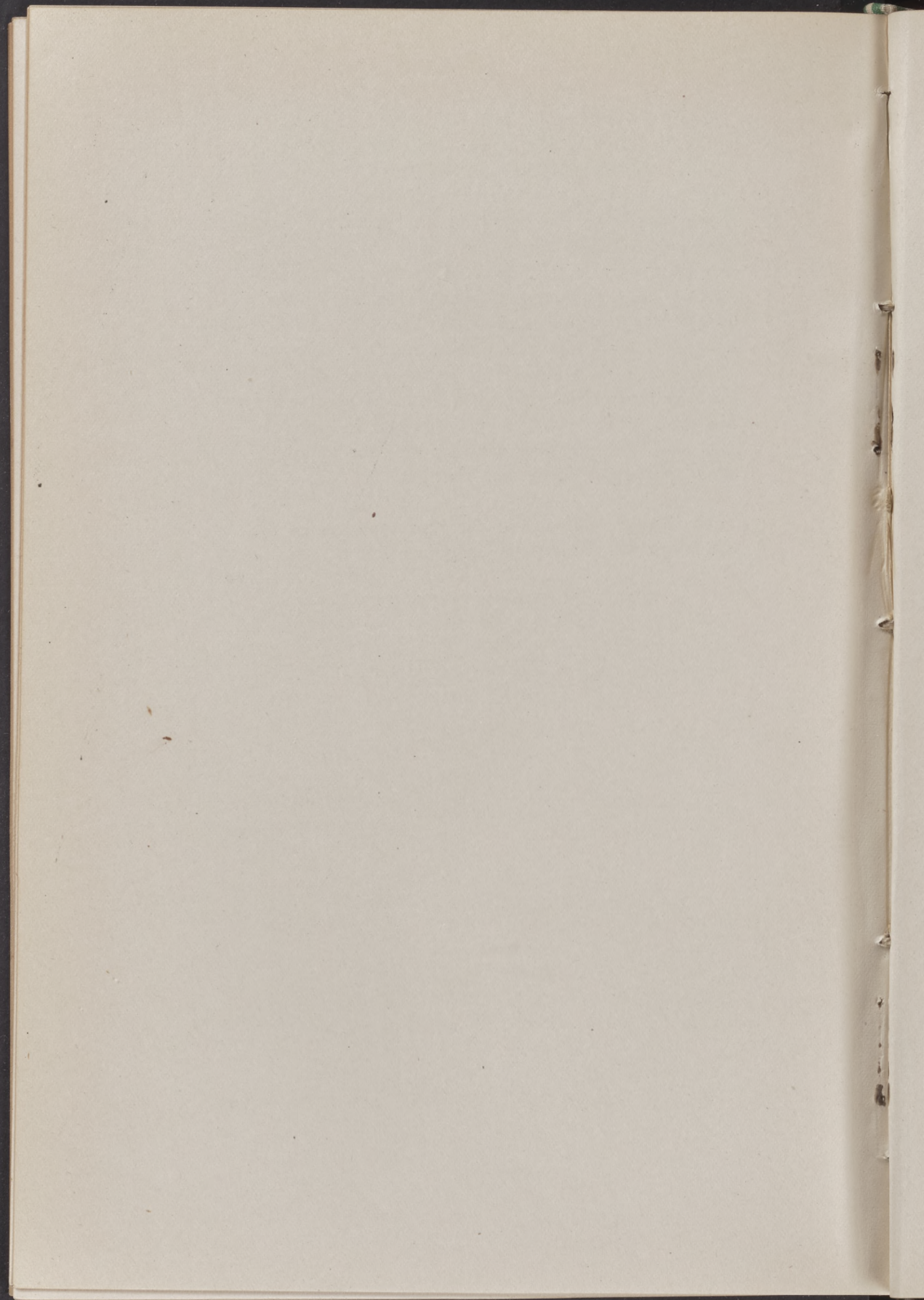
The complainant is but the representative of the old bondholders through reorganization.

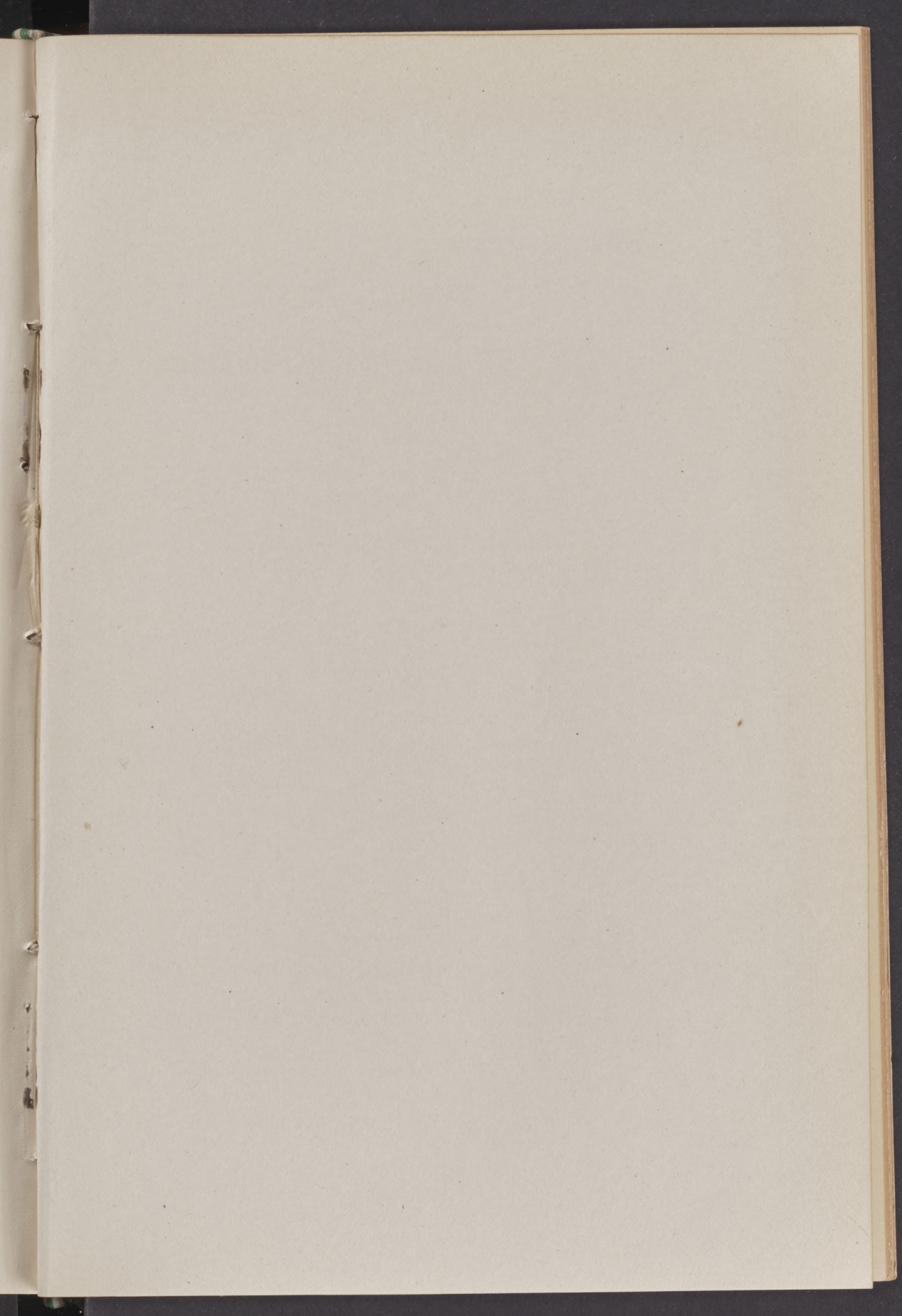
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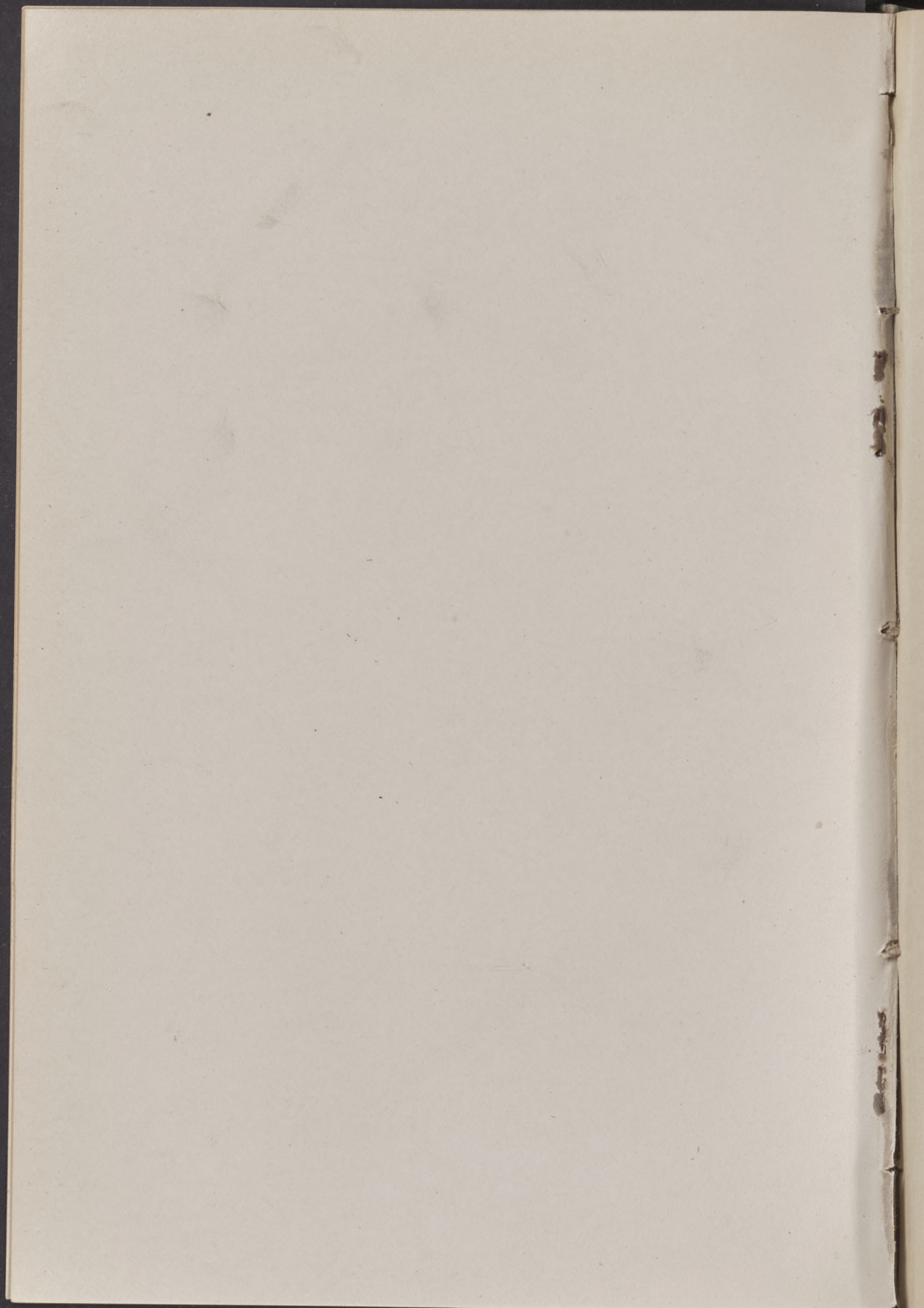
GREY, McDERMOTT & ENRIGHT,
Of Counsel with Complainant-Respondent.

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NEW JERSEY

Court of Errors and Appeals.

MONMOUTH COUNTY ELECTRIC COMPANY,	Respondent,	}
<i>and</i>		
THOMAS P. McKENNA,	<i>Appellant.</i>	

Brief for Appellant.

In June, 1897, a street railway company, called the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company, purchased a house and lot on Fifth avenue, in Long Branch, the land being needed for a right of way which crossed that street. It was necessary to remove the house from the lot, and the president of the company tried to sell the house for \$500, but was unable to do so, and, after some months had elapsed, offered to give it to Thomas P. McKenna, who owned lots near by, if he would move it away (p. 23, l. 30). McKenna did not accept this offer to take the house for nothing and move it away, and the Railway Company proposed, verbally, to buy one of McKenna's lots for \$1,000, with a view to move the house upon it at the expense of the company. McKenna was willing to sell the lot for \$1,000, but the company was short of money and unable to buy it; still, without ac-

quiring any title, they did move the house on McKenna's lot. Under what precise arrangement this was done is not clear from the testimony. Mr. Greenburg, the president of the Railway Company, says that he made three separate offers to McKenna: *First*, to give him the house, if he would move it away. *Second*, to sell it to him for \$500. *Third*, to buy his lot for \$1,000, on which to place the house. He says that he considered that on the arrangement to buy the lot for \$1,000 the other plan lapsed, or, at least, that McKenna was either to take the house for \$500, or to sell the lot for \$1,000 (p. 24, l. 21). McKenna says that Greenburg's verbal offer was as follows: "McKenna, you take it for \$500, and if we get in a position to purchase your lot for \$1,000 we will do so, but, if we do not get in a position to do it, you take the house." That the \$500 and cost of moving was to be credited on a bill which McKenna had against the company (p. 38).

Greenburg does not mention this arrangement whereby, in case of default of the company to pay for the lot, McKenna was to pay \$500 and the cost of moving by getting credit on his bill, but he admits that a bill of over \$3,000 was owing to McKenna for services, largely, in acquiring the right of way (p. 25, l. 10). He says that McKenna's services were of the "highest value." (*Q.*, p. 19, l. 39. *A.*, p. 22, l. 31.)

The several bills of McKenna, which were produced on the trial and frequently referred to in the testimony, show that in November, 1897, when the house was moved, a large part of this sum of \$3,000 was already due, being much in excess of the \$500 and cost of removal, which was about \$250 (p. 104 to 111). Among the items of McKenna's bills are disbursements and services in connection with this very matter of moving the Foster house (p. 105, l. 35; p. 106, l. 15; p. 108, l. 25; p. 110, l. 18; p. 110, l. 26).

Mr. Greenburg was not recalled to deny this statement of the understanding about giving credit on the bill, and his testimony was not inconsistent with it. The

company never paid the \$1,000, although requested to do so, but were unable to make payment; neither did they pay McKenna anything for services or disbursements. Mr. Greenburg says that McKenna accounted for rents, which went into the railroad accounts; that he thinks there were several houses which McKenna looked after (p. 19, ll. 1 to 15). He evidently was not speaking from personal knowledge, and no such accounts were produced; on the contrary, accounts of McKenna which were produced show no rent account, except a single item of rent relating to other property (p. 112, l. 37). The fact that McKenna did not so account to the Railroad Company is established by the decree against McKenna in this very matter, wherein he is charged with all the rent from December 1st, 1897, being the month following the moving of the house (p. 130, l. 20).

Mr. McKenna further testifies that the original proposal to buy his lot for \$1,000 was made six months before the proposition was spoken of, at a time when the original plan was to locate the right of way of the railroad across the lot of McKenna and a lot opposite to it, which was bought, instead of across the Foster lot, but the plan was afterwards changed (p. 46; p. 47, ll. 1 to 12). The Vice-Chancellor seems to think that this somehow conflicts with his previous testimony, but it does not, and was offered to show that the price of \$1,000 was fair. McKenna rented the house from December 1st, 1897, soon after it was moved on his lot; the price of \$1,000 was never paid to him, and the company became insolvent and went into receivership June 1st, 1898.

There was a mortgage covering the railroad and after-acquired property of the company, made in 1895, more than two years before the contract in question. This mortgage was foreclosed by bill filed in 1900, under which a sale was made in February, 1901; afterwards, in April, 1901, the complainant was organized (p. 49), and bought from the purchaser at the fore-

closure sale all the property purchased by him, by a general description. McKenna was not a party to this foreclosure, nor does there appear to have been any claim set up at the time of the foreclosure, in the proceedings, that this lot was included in the sale. McKenna sold the house and lot for \$2,600, in July, 1902. The complainant claims to have acquired the verbal contract for the land and filed this bill in December, 1903. The delay is not explained. The Court held that the house and lot became the property of the Railroad Company by force of the verbal contract and on the removal of the house in November, 1897, and that it was charged with the payment to McKenna of \$1,000, and that the rights of the Railway Company were subject to the lien of the mortgage, and passed to the purchaser on foreclosure, and that McKenna must account for the rents and for the proceeds of sale.

I.

The verbal contract found by the Vice-Chancellor was not sufficiently proved to be enforced.

A verbal contract for the purchase of land may be specifically enforced in equity, in favor of the purchaser, where the consideration has been paid, notwithstanding the statute of frauds; but, in order to secure such enforcement, the proof must be decisive both as to the terms and the existence of the verbal contract.

In *Barbour v. Barbour*, 6 Dick. 267, 271, Beasley, C. J., said: "Those decisions that maintain that a parol contract relating to land may be performed by the court after a part performance of a certain character, most strenuously insist that the proof of such contract must be of the most demonstrative character."

In *Laurence v. Springer*, 4 Dick. 289, 298, the Chief Justice approves the statement of Prof. Pomeroy that in such a case, "the most certain and unmistakable evidence is inexorably demanded."

In this case, Mr. Greenburg's statement of the verbal contract is shown by the testimony of the defendant, to be a statement of only part of it, and there is nothing in what Mr. Greenburg said to contradict the testimony of Mr. McKenna as to their dealings. On the contrary, there is much to confirm it. Manifestly, in view of the inability of the Railway Company to pay the price before placing the building upon the lot, some arrangement to meet that situation was called for, and that which Mr. McKenna says was made was just and reasonable. It is not strange that Mr. Greenburg should not distinctly recall the whole of an agreement made in 1897, as the result of many proposals, after the lapse of seven years, with nothing in the interval to keep his recollection of it alive.

The verbal contract found by the Vice-Chancellor is not established by unmistakable evidence, and, therefore, cannot be enforced.

The Vice-Chancellor lays much stress on the fact that the municipal authorities made some of their tax assessments on the lot in the name of the Railway Company, as owner. It appears that the property was assessed separately by the Long Branch Commission and by Ocean township, and that McKenna paid the Long Branch taxes, including arrears (pp. 93 to 100), but that there is in the list of lots assessed to the Railroad Company in the tax bills of Ocean township for 1901 and 1902, an assessment for several lots not described, on Fifth avenue, one of which may mean the lot in question (pp. 88 and 90). There is no evidence whatever that McKenna knew of the assessment to or payment by the company of this tax, and the assessment could in no manner affect this case.

II.

The building was not placed on the land in execution of the verbal contract, and there was no part performance.

The contract as found by the Vice-Chancellor, upon

the testimony of Mr. Greenburg, was merely that McKenna should sell the lot to the company for \$1,000 cash, which means that he was to receive payment on or before giving possession. It was no part of that contract that any building should be placed on the lot. Greenburg being asked by the Court: "What was the agreement with McKenna," answers: "The Railroad Company were to pay McKenna \$1,000 for his lot, in cash" (p. 17, l. 14). There is no suggestion that any credit was to be given, or that there was any obligation entered into with McKenna, that the building should be placed on the lot. The moving of the house was not any part of the consideration for McKenna's promise to convey, and the case is not one of an executed consideration. The sole consideration for the contract which Mr. Greenburg stated, and which the Vice-Chancellor has found to exist, was \$1,000, in cash, and no part of that was ever paid.

In *Eyre v. Eyre*, 4 C. E. G. 102, it was held, that in order to take a verbal contract out of the statute of frauds, so that it may be enforced in equity, "the acts of part performance must be referable to the contract alone."

This principle was re-affirmed in *Vreeland v. Vreeland*, 8 Dick. 383, 390, on the authority of *Eyre v. Eyre*, and also of *Pomeroy Spec. Perf.*, Secs. 108, 109.

We have, therefore, a case completely bare of any element of part performance, and, therefore, a case which equity has no jurisdiction to enforce.

The Vice-Chancellor says that McKenna's agreement was to convey to the old Trolley Company the house and lot here in question for \$1,000, and that it was partly performed, *or rather, irretrievably acted upon* by the Trolley Company "by moving thereon a house," etc. (p. 118, l. 37). But, irretrievable action is not part performance.

The case is one of a vendee entering upon the land before acquiring title or paying the price, and making improvements on the land. He becomes a mere tenant

at sufferance on his default, and if he fails to fulfill his contract to purchase he loses all title to his improvements. A tenant who defaults in the payment of rent and is dispossessed, loses his improvements on the land, however costly; but, equity will not intervene and relieve against such a loss, nor will equity turn the contract into something else because of such a hardship.

III.

Neither the Railway Company nor the complainant ever became the equitable owner of the lot.

The legal proposition on which the decision is founded is stated as follows—substituting the term “Railway Company” for the term “complainant,” which is evidently the real meaning:

“By well settled and familiar equitable principles, as soon as the transaction was completed by the erection, I think I am justified in calling it, by the Railway Company on the lot of the defendant, of the house in question, in pursuance of a contract of sale for the sum of \$1,000, the complainant became the owner in equity of the lot, and the debtor to defendant in the sum of \$1,000, and the defendant held the legal title to the premises as security for the purchase money; he was a mortgagee of the land to secure the purchase money. The citation of authority for this decision is not necessary. The property then passed, at once, under the dominion of the previously given mortgage, but the defendant was in possession, which he retained properly as mortgagee, and was entitled to collect the rents, but was bound to appropriate them to the reduction of the mortgage debt. This seems to me to result originally and naturally from the situation as I have found it” (page 120, lines 18 to 37).

We submit that this is not a correct statement of the law applicable. The law that controls is not the law of mortgagor and mortgagee, but the law of vendor and vendee.

After the court has determined that there is a contract which should be specifically enforced, then, in working out the equities in the decree, the principle is to consider the buyer as owner of the land, and the seller as entitled to the money from the date when the contract ought to have been performed.

Lindley v. Keim, 9 Dick. 418, 429.

We cannot, however, apply this principle until we have first found a case for specific performance, and the proposition, that on every contract of sale, equity at once regards the vendor as mortgagee, is unfounded and misleading. No doubt, equity sometimes regards that as done which is agreed to be done. McKenna agreed to convey the land on receipt of \$1,000; if he had received it, the Railway Company would have become the equitable owner; but, McKenna never agreed to convey, except on receipt of \$1,000, in cash, within a reasonable time, and, as he did not get the \$1,000, equity cannot regard the conveyance as made; it was not agreed to be made on any other terms, and equity cannot regard it as done on other terms.

If it had been a part of the contract that the vendee should have immediate possession, and he had entered and paid the price, equity would regard him as the owner for some purposes, even though he had no deed; but, an equitable conversion cannot be worked in favor of one who has no possession, and has utterly defaulted on the price.

In 29 *Amer. & Eng. Ency.* (2d Ed.), p. 603, appears the following statement of the law:

"It has been said that when Articles of Agreement
"are entered into for the sale and purchase of land, the
"purchaser is, in equity, considered as the owner of the
"land, subject to the payment of the purchase money;
"that he is regarded as trustee of the purchase money
"for the vendor, and the vendor is treated as trustee
"for the purchaser of the legal title, having no interest
"in the land beyond the amount of the purchase money
"due, and that such fact results, not from the payment

"of the purchase money, but from the contract. This statement, however, is much too comprehensive, because it is well settled that a contract of sale may or may not operate to transfer the equitable title to the purchaser, accordingly as the contract is executed or executory; that is, accordingly as the transaction amounts to a present sale, or constitutes merely an agreement that the vendor will make sale at a future time, and whether it is the one or the other is a matter which rests in the intention of the parties."

In the present case, it is apparent that it was not intended that the ownership or possession of the property should be given until payment of the price, which, it was contemplated, would be made within a reasonable time.

IV.

No purchase by the Railway Company has been proven; the authority of the president was not shown.

The only person who sought to act for the company in the purchase of the lot, was the president. It may be questioned whether the company itself had power to buy the lot for other than its railroad purposes; but whether the company could or not, it is clear that the president could not, by virtue of his office, make such a purchase. While the president may, on slight evidence, be found to have been given authority to bind the company in the course of its ordinary business, such authority will not be implied for a dealing like this. We might imply power to buy a lot for the right of way, on slight evidence, but we cannot imply such power to buy a lot outside of the right of way. It was necessary to show an authority from the directors; either precedent authority, or subsequent ratification should appear, and there is no evidence whatever to show either. It may be that the receiver of the Railway Company, appointed less than a year afterwards, might have ratified the purchase, but he took no action to do so. In the absence

of authority or ratification, the Railway Company never assumed any liability to pay the \$1,000, and never acquired any title to the land to which the lien of the mortgage of the complainant could attach. A contract, in order to be enforced, must be mutual, and McKenna was never placed in a position where he could hold either the company or the receiver liable to him for \$1,000.

Ten Eyck v. Manning, 7 Dick. 47.

V.

The vendee abandoned the contract.

The testimony shows that both the company and the receiver definitely abandoned the contract.

Greenburg testifies: "He asked for pay, but we never had the money to do it with" (p. 24, l. 25).

McKenna says that Greenburg told him it was absolutely impossible to pay the price, and that, after the receiver was appointed, McKenna "asked the receiver if he could not arrange in some way to take up the proposition when Mr. Greenburg said he was unable to do it, and Mr. Degnan informed me that he, too, saw no way" (p. 39, ll. 10 to 25).

Where one party gives notice to the other that he can not perform, this is an abandonment of the contract, if the party receiving such notice acquiesces, and, unless he promptly sues, he is considered as acquiescing.

Pomeroy Spec. Perf., Sec. 425.

When the vendee, not having paid the contract price, becomes insolvent, the vendor may treat the contract as rescinded, and thereafter successfully resist specific performance.

Pomeroy Spec. Perf., Sec. 426.

After the definite statement by the company and receiver that they could not perform, no action was taken by any one to enforce the contract until more than six years after the agreed time of performance, when this bill was filed. The long delay was itself an abandonment.

VI.

The long delay to perform and the long delay to sue bar the remedy for laches.

Under the verbal contract found by the Vice-Chancellor the purchaser was to pay \$1,000 in cash at the time of the moving of the building on the lot, in November, 1897. It is not pretended that such payment was ever made or tendered, or that the payment was ever waived. The bill was filed in December, 1903, and, in the long interval of more than six years, no action was taken on the part of the vendee, or its assigns, to fulfil. The vendor had the house and lot thrown on his hands. If the property had turned out badly he would have had no recourse. By his care and management it was kept up and carried along until, in July, 1902, he made a sale of it for \$2,600. Had there been a loss he must have borne it, but, as there was a profit, the complainants seek to share it, after having delayed until all risks of loss were at an end. The laches of the Railway Company and of the receiver, under whom the complainant claims, will be imputed to the complainant.

Such laches of assignors will bar specific performance, even though some of the assignors may have been under disability.

Hayes v. Nourse, 114 N. Y. 595, 606.

There is plenty of laches on the part of complainant as well. The foreclosure sale took place in February, nineteen hundred and one. No claim was made on account of this house and lot until December, nineteen hundred and three, nearly three years later. Complainant delayed nearly a year and a half, until July, nineteen hundred and two, when McKenna's sale demonstrated that there would be no risk in claiming under the contract, and then delayed nearly a year and a half more, and these delays are not at all explained, except on the supposition that complainant did not care for the property until it was profitable, beyond a doubt, to claim

it. The total delay to be considered here as against complainant is for over six years.

We know of no case where laches for so long a time, both to fulfil and to sue, has ever been disregarded.

In *Merritt v. Brown*, 6 C. E. G. 401, 406, Beasley, C. J., said: "The usual maxim is that a party seeking specific performance must show himself ready, desirous, prompt and eager to perform the contract. Unreasonable delay will, of itself, be often a bar to a suit of this character." The delay here was a little over two years, and the court held it fatal to the relief prayed.

In *Haughwort v. Murphy*, 6 C. E. G. 118, 122, a delay of two years and a half to file a bill was held fatal. The Chancellor said: "It is the doctrine of equity that specific performance will not be decreed in favor of a complainant who has been guilty of laches, either in performing his part of a contract or in applying to the court for relief." This was affirmed on appeal (7 C. E. G. 531).

In *Harrigan v. Smith*, 12 Dick. 635, V. C. Emery held a bill for specific performance barred after five years, and said that the cases where specific performance had been allowed after a long period were cases of executed trusts, where the complainant seeking performance had been put into actual possession of the property on the making of the agreement, and supposed that no other assurance was necessary. On appeal, this court approved the views of the Vice-Chancellor, but said that the complainant might still have the benefit of a different contract, which the defendant conceded (p. 641); nevertheless, the court also denied to the complainant relief for laches, the complainant claiming profits from the property during the delay, just as complainant here claims rents. The Court said (p. 643): "It would be very unjust to permit complainant, who for years has stood by while defendant, by his energy and industry, was building up a business, now to come in and even raise the question of a right to share in the success of that business in the past. He did not sow, and should not reap."

It is well settled, as stated by Emery, V. C., that where the vendee is in possession, and has substantially fulfilled his contract, his delay will not necessarily defeat his remedy of specific performance.

Pomeroy Spec. Perf., Sec. 404.

But where the vendor is in possession mere lapse of time will defeat the remedy, even where the contract is written (*Pom. Spec. Perf., Sec. 403*); where the contract is oral the effect of delay is, of course, even more effective to defeat the remedy.

Where there is a default while the contract is doubtful, and the defaulter comes forward after it turns out profitable, specific performance will be denied.

Pom. Spec. Perf., Sec. 407; Merritt v. Brown, 4 C. E. G. 286, 293; approved on appeal, 6 C. E. G. 406; Johns v. Norris, 7 C. E. G. 102, 109.

There is nothing in the fact that the mortgage was formerly on this building to relieve the laches. When the building was moved away from the lot on which the trust mortgage was a lien, the remedy, if any, of the mortgagee was legal; it was an action on the case for injury to the security; replevin could not be maintained. *Jackson v. Turrell, 10 Vr. 329; Kircher v. Schalk, 10 Vr. 335; Devlin v. Collier, 24 Vr. 422, 426.* This legal remedy was outlawed more than six years before the filing of the bill, and by analogy the equitable remedy, if any, is barred.

VII.

The complainant has shown no right to an account for rents.

It will be observed that it was no part of the consideration for the contract between the parties that the building should be placed on the lot, nor were the purchasers to be put in possession of the lot without payment of the price. It would be absurd to say that the owner of the lot must be deprived of making use of it

because the vendee had put a building on it, and then defaulted without entering into possession. There was no contract between the parties that the owner should let the building and lot for the account of the vendee. It very often happens, on a purchase of land, that the buyer does not fulfil until long after the time fixed; but, unless by the contract the buyer is to have possession upon the making of the contract, it is never considered that he obtains any right to the rents of the property until he pays for it and obtains his deed.

In this case, the Vice-Chancellor has made for the parties a contract which they never made for themselves, and has given to the party in default the advantage of profits which he never earned, while, at the same time, he never incurred any risks of loss. If the vendee had fully paid the price for the property, so that McKenna became in equity merely the trustee for property belonging to some one else, then the relief now granted would be appropriate; but no such situation exists. There is no doctrine, either in law or in equity, whereby the vendor, while he remains in possession, and before the price is paid, is chargeable with the income received by him from the property. Nothing could bring about such a result except an express agreement with the parties to that effect.

Even if, however, there was a duty on the part of McKenna to account to the railway company, the complainant, as mortgagee, or as purchaser on foreclosure, has not obtained any such right. The mortgage does not pledge the income or the rents of the mortgaged premises, and, therefore, even if such rents had been collected by an agent of the Railway Company or of the receiver, the mortgagee would have had no claim upon them. If McKenna must account for the rents, he must account to the receiver, and not to the mortgagee, or to the purchaser under the mortgage, who have no claim whatever to them.

Leeds v. Gifford, 14 Stew. 464, 467; affirmed
18 Stew. 245.

Willis v. Eastern Trust & Banking Co., 169
U. S. 295, 310.

In fact, even where there is a pledge of the rents and income, the mortgagor cannot be required to account therefor until after demand for possession by the mortgagee.

Dow v. Memphis, &c., R. Co., 124 U. S. 652.

Manifestly, therefore, so much of the decree as requires the defendant to account to the complainant for rent is unauthorized.

VIII.

The trust mortgage on future acquired property did not become a lien upon the lot in question.

The trust mortgage first specifies all the property and franchises of the mortgagor "whether now owned or hereafter to be acquired, including all its railroads, railroad routes, railroad properties, and all its franchises" (Case, page 54, lines 1 to 3). There is then a route particularly described, and the description concludes: "Together with franchises, &c., and all lands and leasehold interests now or hereafter owned or acquired for "railways, power houses, depots or stations, and all "buildings erected or which hereafter may be erected "thereon" (page 55, line 15). It may be doubted whether this indicates an intent to mortgage land thereafter purchased, if not used for railroad purposes. The specification of "railroad properties," under the description of what is included, seems to imply that other properties, not specified, are not included.

Smith, Recr., v. McCullough, 104 U. S. 25.

Alabama v. Montague, 117 U. S. 602.

Even if the mortgage was intended to include such other properties, the question remains whether a subsequent contract right to buy land, never exercised by payment of the price, or by delivery of possession, can give to the mortgagee any interest in said land out-

side of the right of way, not connected with the franchises, and not specifically described.

We submit that either possession or title is necessary before the lien can attach. An equitable mortgage may be created by a vendee by assigning the contract to secure a debt—*Jones on Mortgages, Sec. 172*—but the intent to create such a mortgage must be clear, and a mortgage on all property of the mortgagor, must, *prima facie*, mean, in the absence of any description, property on which a legal lien can be created.

The decree should be reversed.

June 21, 1905.

C. L. CORBIN,
Counsel for Appellant.

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**Bill of Complaint (Filed December
15th, 1903).**

IN CHANCERY OF NEW JERSEY.

To His Honor William J. Magie,

Chancellor of the State of New Jersey:—

Humbly complaining shows unto your Honor your
orator, The Monmouth County Electric Company,
a body corporate, created by and existing under
the laws of the State of New Jersey and charges:

(1) That heretofore on or about the ninth day
of April, Eighteen hundred and ninety-five, The At-
lantic Highlands, Red Bank & Long Branch Elec-
tric Railway Company was duly incorporated un-
der and pursuant to the provisions of an act of the
Legislature of this state entitled, "An Act Concern-
ing Street Railway Companies," approved March
fourteenth, Eighteen hundred and ninety-three,
and the several supplements thereto. That said
railway company was organized for the purpose of
building an electric surface railway to and through
Long Branch, in the County of Monmouth in this
State, among other places and for the purposes of
said railway was obliged to purchase a private
right of way through portions of Long Island afore-
said. That in order to secure said private right of
way it became necessary for said company to pur-
chase in fee sundry parcels of land many of which
had buildings thereon erected, and included in the
property so acquired was a two-story and attic
frame dwelling of the value of Two thousand dol-
lars (\$2,000) and upwards, situate on land re-
quired for the purpose of laying tracks for said
railway, which said land together with the dwelling
house thereon situate was purchased and acquired
by said railway company on or about the 4th day
of June, Eighteen hundred and ninety-seven.

(2) That at the time of the purchase of said house and lot and the construction of said railway, Thomas P. McKenna, of Long Branch aforesaid, the defendant in this suit, was employed by said railway company as attorney in several of the matters incident to acquiring the franchises and right of way of said railway company and occupied a position of trust and confidence with said railway company and especially with its then president, one Adolph G. Greenberg.

(3) That at the time aforesaid, said McKenna was the owner of a certain parcel of unimproved and vacant land situate at Long Branch, in the Township of Ocean aforesaid, nearly adjacent to said proposed line of railway, and the house and lot acquired as aforesaid for the purpose thereof, which said McKenna lot is more particularly described as beginning at a point on the east side of Fifth avenue, in Long Branch aforesaid, the said point being distant one hundred and fifty feet north from the corner of said Fifth avenue and Broadway and running thence (1) north one degree and seventeen minutes east along the east side of Fifth avenue fifty-two feet and six inches, thence (2) south eighty-eight degrees and forty-five minutes east one hundred and forty-nine feet and nine inches, thence (3) south one degree and seventeen minutes west fifty-two feet and six inches, thence (4) north eighty-five degrees and thirty-five minutes west one hundred and forty-five feet and nine inches to the place of beginning, being the same premises conveyed to said McKenna by deed of William C. Poole, executor, dated August seventeenth, Eighteen hundred and ninety four, and recorded in Book 545 of Deeds for Monmouth County, page 270, which said McKenna lot was then of the reasonable value of six hundred dollars.

(4) That in the construction of said railway it became necessary to remove the dwelling house above referred to from its then location in the route of said railway, and thereupon it was agreed between said McKenna and said Greenberg as president of said Railway Company that said Railway Company should purchase the above described parcel of land from McKenna for the purpose of removing said dwelling house thereon, and pay said McKenna therefor the reasonable value thereof, to wit, the sum of six hundred dollars, and that said McKenna, as attorney for the Railway Company, should attend to the legal formalities of the contract of sale and the examination and passing of title. In reliance thereon the officers and agents of the Railway Company prosecuting the work of construction did remove said dwelling house to the McKenna lot paying the cost of said removal and setting up and erecting said building on the premises aforesaid, all with the knowledge and consent of said McKenna.

(5) That prior to the occurrences aforesaid on or about the first day of July, Eighteen hundred and ninety-five, in due form of law pursuant to the powers in it vested said Railway Company executed a certain indenture of mortgage or deed of trust to the Hamilton Trust Company, a corporation of the State of New York, to secure the payment of an issue of bonds aggregating five hundred thousand dollars mortgaging and conveying all and singular the property and franchises of every nature and description whatsoever whether then owned or thereafter acquired by said Railroad Company, together with all lands and leasehold interest then owned, or which might thereafter be owned or acquired, power houses, depots or stations and all buildings erected or which might thereafter be

erected thereon, and all chattels which then were or might thereafter be owned by said Railway Company, and all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said Railway Company, of, in and to the same and every part and parcel thereof, which said Deed of Trust or mortgage was afterward on the thirty-first day of August, Eighteen hundred and ninety-five, duly proved and acknowledged as required by the laws of this State and on the fourth of September, Eighteen hundred and ninety-five, recorded in said Monmouth County Clerk's Office, in Book 191 of Mortgages, page 223, as by reference to said Deed of Trust or mortgage hereby tendered to the court and the record thereof will more fully and at large appear. That afterward said Railway Company defaulted in the performance of the terms and conditions of said mortgage, and thereupon in an action lately pending in this court, wherein said Hamilton Trust Company was complainant and said Railway Company and others were defendants, by decree made on the sixth day of December, Nineteen hundred all of said defendants were foreclosed of all equity of redemption in said mortgaged property, and it was ordered that said property be sold in order to satisfy the amounts found due by said decree, and that afterwards one Henry S. Terhune, one of the special masters of this court, pursuant to a writ of Fieri Facias issued out of this court did make sale of all and singular the mortgaged property and franchises embraced in said deed of trust or mortgage and said sale having afterward been duly confirmed said Henry S. Terhune did by deed bearing date the twenty-third day of February, Nineteen hundred and one, grant, bargain, sell, assign, convey and transfer unto Lind-

ley M. Garrison, his heirs and assigns all and singular the said property and franchises of said Railway Company of every nature and description which said deed (having first been duly acknowledged and sworn to) was on the twenty-eighth day of February, Nineteen hundred and one, recorded in the Monmouth County Clerk's Office in Book 664 of Deeds, page 365, as by reference to the records of this court and said deed hereby tendered to the court and the record thereof will more fully and at large appear; that afterward on or about the first day of April, Nineteen hundred and one, by deed then bearing date said Lindley M. Garrison and Margaret H., his wife, did sell, assign, transfer and convey unto your orator its successors and assigns all and singular the property of every nature and description conveyed to said Lindley M. Garrison as aforesaid, which said deed (having been first duly acknowledged) was on the eighth day of April, Nineteen hundred and one, recorded in said Clerk's Office in Book 667 of Deeds, page 126, as by reference to said deed hereby tendered to the court and the record thereof will more fully and at large appear.

By reason whereof your orator shows and charges that it succeeded to the equitable ownership of the land first above described subject to the payment to said defendant of the purchase price therefor, viz., the reasonable value thereof, as well as to the absolute ownership of the dwelling house removed and now situate thereon.

(6) That after the removal of said dwelling house to said McKenna lot said McKenna, nevertheless, continued to hold the title thereto and failed to arrange for the examination and passing of title as agreed and received and collected the rent and income derived from said premises by reason

of their improvement, causing and permitting, however, the taxes thereon to be assessed to and paid by said Railway Company and its successors from thence hitherto, all of which matters except payment of taxes being foreign to the routine business of a Railway Company and being in the hands of said McKenna as attorney were overlooked and neglected throughout the time said railway was operated by said Railway Company, and managed by said Greenberg as president. But afterward upon the acquisition of said property by your orator as aforesaid, it demanded of said McKenna conveyance of said land and tendered itself willing and ready to pay him the reasonable value thereof, notwithstanding which said McKenna did refuse to convey said land to your orator or to account for the rents received by him from said house, and afterward without the knowledge or consent of your orator did convey said land and premises with the building thereon to one William L. Hayes, of the Township of Ocean, in Monmouth County aforesaid, by Deed of Conveyance, dated and acknowledged the twenty-ninth day of July, Nineteen hundred and two, and recorded on the thirty-first day of July, Nineteen hundred and two, in the Monmouth County Clerk's Office in Book 694 of Deeds, page 422, as by reference to the record of said deed will more fully appear, which said Deed of Conveyance purports to be made for the nominal sum of one dollar.

In consideration whereof and for as much as your orator has not a full remedy in the premises at common law to the end therefore that said defendant, Thomas P. McKenna, may without oath true, full and perfect answer make to all and singular the premises as fully as if here repeated and he may thereto be particularly interrogated, and that he may in full set forth and discover the contract and

agreement between him and said Railway Company for the sale of said premises above referred to, and whether said contract and argeement was in writ-
 ing or oral, and by whom said premises have been
 tenanted and what rents have been received and
 collected by him since the removal of said build-
 ing thereon, and what was the real consideration
 received by him upon said conveyance to said Wil- 10
 liam L. Hayes, above referred to, and whether said
 Hayes does not hold said premises in trust for him
 the said McKenna; and that it may be decreed that
 the said defendant account to your orator for all
 moneys received by him by reason of the rent or
 sale of said premises during the period aforesaid
 with interest thereon, and that he be decreed to pay
 over to your orator the balance of said money re-
 maining after deducting the price for which said 20
 land was to be conveyed to said Railway Company,
 and that your orator may have such further and
 other relief in the premises as the case may require
 and as shall be agreeable to equity and good con-
 science.

May it please your Honor the premises con-
 sidered to grant unto your orator the State's Writ
 or Writs of Subpoena issuing out of and under the
 seal of this Honorable Court, to be directed to the
 said Thomas P. McKenna therein and thereby com-
 manding him on a certain day and under a certain 30
 penalty to be and appear before your Honor in this
 Honorable Court, then and there to answer the
 premises and to stand to and abide by and perform
 such decree therein as to your Honor shall seem
 meet and agreeable to equity and good conscience.

And your orator will ever pray, etc.

GARRISON, McMANUS & ENRIGHT.
 Solicitors and of Counsel with Complainant.

Answer (Filed March 23, 1904).

IN CHANCERY OF NEW JERSEY.

10 	Between MONMOUTH COUNTY ELECTRIC COMPANY, Complainant, and THOMAS P. McKENNA, Defendant.	} On Bill, &c., Answer.
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20 The answer of Thomas P. McKenna, defendant, to the bill of complaint of the Monmouth County Electric Company, body corporate, complainant.

This defendant for answer unto the said bill of complaint, or unto so much thereof as he is advised it is material or necessary to make answer unto, answering says:

30 That he admits that the Atlantic Highlands, Red Bank and Long Branch Railway Company was incorporated as set forth in said bill of complaint, and that the purpose of its organization was as therein stated. He further admits that in order to secure the private right of way through certain portions of Long Branch, in the County of Monmouth, it became necessary for it to purchase in fee, some sundry parcels of land, on many of which buildings were erected, and included in which—property so acquired—was a two story and attic frame dwelling, situate on land acquired for the purpose of laying tracks for said railway, which said land, together with the dwelling house, thereon, was purchased and acquired by said Railway Company at
40 the time set forth in said bill of complaint, but

this defendant denies that the value of the said dwelling house was the sum of two thousand dollars or upwards, as set forth in said bill; but on the contrary states that the value of the house on the lot where it was then located was much less than the sum of two thousand dollars and for purpose of removal from said lot to other premises was worth only the sum of five hundred dollars, and that this defendant was directed by the officers of said Railway Company to sell the same at that price. 10

And this defendant, further answering, admits the statements set forth in paragraph two of said bill.

And this defendant, further answering, admits the allegations of paragraph three of the said bill of complaint except the statement that the lot therein mentioned was then of the reasonable value of six hundred dollars, and on the contrary states that said lot was then of the reasonable value of one thousand dollars. 20

And this defendant, further answering, admits that in the construction of said railway it became necessary as set forth in paragraph four of said bill to remove the dwelling house referred to from its then location in the road of the said railway, but denies that it was agreed between this defendant and the said Greenberg as President of the said Railway Company that it should purchase the said parcel of land from this defendant for the sum of six hundred dollars, and denies that this defendant was to attend to the legal formalities of the contract of sale and the agreement, examination and passing of title, and denies that the officers and agents of the said Railway Company removed the said dwelling house to the lot of this defendant in reliance on any such agreement as is stated in said 30 40

paragraph, but admits that the cost of said removal and setting up and erecting said dwelling on the premises of this defendant was paid by the said railway company, with the knowledge and consent of this defendant.

10 And this defendant, further answering, the matters set forth in said paragraph four, says that it was agreed between this defendant and the said railway company that the said company might have the privilege of purchasing the said lot from this defendant for the sum of one thousand dollars, or, if the said lot was not so purchased and paid for, that this defendant should pay to said company for the said house the sum of five hundred dollars. That the said lot of this defendant was never paid
20 for or purchased by said company, and that after waiting a long time for it to purchase the same, the said railway company rejected the said privilege and directed this defendant to retain the lot and the building placed thereon and account to the railway company for the sum of five hundred dollars. That this defendant did not seek to purchase the said dwelling house, but that it was urgently necessary that the same should be removed from the right of way by the said railway company and that said com-
30 pany desired to sell the same to anyone who would buy it for that sum, and failing to secure any other purchaser, offered it to this defendant at the same figure.

And this defendant further answering says that he has no knowledge of the matters set forth in paragraph five of the said bill of complaint and leaves the said complainant to make such proof thereof as he may be advised, but denies that by reason of anything set forth in said paragraph that
40 the complainant succeeded to the equitable owner-

ship of the land described in said bill of complaint or to the absolute ownership of the dwelling house and now situated thereon.

And this defendant, further answering, admits that after the removal of said dwelling house to the lot of this defendant, he continued to hold the title thereto and received and collected the rent and income thereof from said premises, but denies that there was any agreement that he should arrange for the examination and passing of title and denies that he failed to arrange for the examination and passing of title in pursuance of any such agreement. And further denies that this defendant caused or permitted the taxes on said lot to be assessed to and paid by the said railway company and its successors from the time the said building was placed thereon, but, on the contrary, states the fact to be that the taxes against said premises were assessed to and paid by this defendant, and if any taxes thereon were assessed to or paid by said railway company it was wholly without the knowledge of this defendant.

And this defendant, further answering, denies that the matters referred to in said paragraph six were in the hands of this defendant as attorney, but, on the contrary, states that the said lot was owned by this defendant long before he was the attorney of the railroad company, and that the rents and income derived from said premises were collected by this defendant in his own behalf and by reason of his ownership of the said lot and the house placed thereon, as therein set forth.

And this defendant, further answering, denies the acquisition of the said property by the said complainant, but admits that said complainant shortly before the filing of the said bill of complaint and over a year after conveyance of said land and prem-

ises by this defendant to William L. Hayes, demanded that this defendant account to the said complainant for the price paid by the said Hayes to this defendant for said premises, less the sum of one thousand dollars, but denies that it demanded of this defendant the conveyance of said land and tendered itself willing and ready to pay him the reasonable value thereof, as set forth in said paragraph, and further answering, denies that this defendant refused to convey the said land to the complainant, but admits that he did refuse to account for the said rents received by him from said house.

And this defendant, further answering, admits that he conveyed the said lands and premises with the building thereon to one William L. Hayes, as set forth in said bill of complaint.

And this defendant, further answering, says that at the time of the removal of the said house to the lot owned by this defendant, he had been in the employ of the said railway company for a long time, and performed professional and other services, and disbursed moneys for said railway company, and that there was then a large sum of money due to this defendant from the said railway company, and that afterwards this defendant continued to serve the said railway company and other large sums of money became due to him for services and disbursements made by him, that after the said services were so rendered and the said disbursements so made by this defendant the said railway company became insolvent and was placed in the hands of a receiver. That at the time the said railway company was placed in the hands of such receiver there was due from it to this defendant, upon a fair valuation of the services rendered, over the sum of two thousand dollars, which has never been paid to this defendant in whole or part, and that after making a due allowance to the said railway

company for the valuation of the said house, there was and is still due to this defendant a large sum of money.

And this defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

FRANK P. McDERMOTT,
Solicitor of Defendant.

10

(Formal replication filed.)

Testimony.

May 16, 1904.

IN CHANCERY OF NEW JERSEY.

Between

MONMOUTH COUNTY ELECTRIC
COMPANY,
Complainant,

and

THOMAS P. McKENNA,
Defendant.

20

Transcript of shorthand of testimony
taken in the above entitled cause before Hon.
Henry C. Pitney, vice-chancellor, at the
Chancery Chambers, Newark, New Jersey,
on May 16, 1904, in the presence of Mr. En-
right, of Garrison, McManus & Enright, so-
licitors for the complainant, and Mr. Frank
P. McDermott, solicitor for the defendant.

30

Mr. Enright: First I offer in evidence the
documentary evidence.

Certified copy of a certificate of organiza-

40

tion of the Monmouth County Electric Company, marked Exhibit C 1.

10 Printed copy of a deed of trust of Atlantic Highlands, Red Bank and Long Branch Electric Railway Company to Hamilton Trust Company, trustee, dated July 1st, 1895, marked Exhibit C 2.

Also offer the record of the foreclosure of the last named mortgage, Hamilton Trust Company *et als.*, complainants:

The Court: Papers in that cause?

Mr. Enright: Yes, sir.

20 Deed of Henry S. Terhune, special master, to Lindley M. Garrison, dated February 23, 1901, recorded in Monmouth County Clerks' Office, book 664 of deeds, page 365, marked Exhibit C 4.

Deed of Lindley M. Garrison and wife to Monmouth County Electric Company, dated April 1st, 1901, recorded in Monmouth County Clerk's Office book 667 of deeds, page 126, marked Exhibit C 5.

30 Deed of Eliza V. Foster to Atlantic Highlands, Red Bank and Long Branch Electric Railway Company, dated June 1st, 1897, recorded in Monmouth County Clerk's Office, book 594 of deeds, page 179.

Mr. McDermott: Won't you be kind enough to say that that is not for the premises in question at all?

Mr. Enright: This last deed covers the right of way tract from which the house in question was moved to Mr. McKenna's, the defendant's, lot.

Marked Exhibit C 6.

40 By stipulation a sworn copy of the assessment record of the Township of Ocean, the

record in the custody of the township collector in the Township of Ocean showing assessments against the *locus in quo* is offered with the same effect as though the original record were offered.

Mr. McDermott: This offer is objected to as immaterial and irrelevant.

10

The Court: It is admitted.

Marked Exhibit C 7.

Receipted tax bills for the years 1901 and 1902 against the Monmouth Electric Company is offered, and it is admitted that William F. Hogan, if called, will testify that he is the president of the Monmouth County Electric Company, and that the company paid the taxes called for in these receipts.

Marked Exhibits C 8 and C 9.

20

ADOLPH G. GREENBERG, sworn.

Direct-examination by Mr. Enright:

Q. Where do you live? A. Brooklyn, New York.

Q. What was your connection with the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company? A. At the time of this transaction I was its president.

30

Q. At the time of its organization up to the time of appointment of receiver? A. I was not connected with it at its organization.

Q. (By the Court.) When did you become connected with it? A. January, 1896.

Q. (By the Court.) What was its situation at that time? A. I was president of the corporation.

Q. And continued until the time of the appointment of the receiver? A. Until the receiver was appointed.

40

Q. (By the Court). That was on the occasion of the foreclosure proceedings? A. Yes, sir.

Q. (By the Court). Did you give it personal attention? A. Yes, sir.

Q. (By the Court). Where did you live, down there? A. No, sir; I lived in Brooklyn.

10 Q. You were on the work quite constantly? A. Constantly.

Q. It was under your supervision that the road was built? A. Altogether.

Q. Through Long Branch how was this road built, public highway? A. Partially on public highway and partially on private right of way.

Q. Crossing Fifth avenue, Long Branch, it was on private right of way? A. Private right of way; we had to buy abutting property from Fifth avenue,
20 both sides.

Q. Do you recall the purchase of the property of Eliza V. Foster? A. I do.

Q. Who attended to the purchase of that property? A. Mr. McKenna.

Q. He was attorney for the railroad company?
A. He was attorney for the railroad company in Long Branch.

Q. In any other matters except Foster? A. In all of the matters in Long Branch.

30 Q. (By the Court). Where does your road run from? A. It runs from Red Bank to Long Branch, Second avenue and Broadway in Long Branch.

Q. What was the character of the Foster property? A. It was a lot about 100 feet deep and 50 feet wide, containing a house large enough for two families, namely, a double house.

Q. (By the Court). Double house? A. Double house; yes, sir.

40 Q. That was needed for the right of way? A. We needed that property, and had to remove the building in order to connect our road.

Q. The price mentioned in this deed from Foster to the company, \$4,500, is the price paid for that property? A. Is price that I paid for that property.

Q. (By the Court). Did you make any estimate of the value of the house? A. Yes, sir; and of the property, and had an estimate from other people. 10

Q. What was done with the house on the right of way? A. We tried to sell it, and finally moved it on a lot belonging to Mr. McKenna, which we agreed to buy.

Q. (By the Court). What was the agreement with McKenna? A. I was to pay Mr. McKenna, the railroad company were to pay Mr. McKenna a thousand dollars for his lot, in cash.

Q. Who paid the cost of removing the building from it? A. The railroad company. 20

The Court: It is admitted, I think.

Mr. Enright: Yes, sir; admitted in the answer.

Q. (By the Court). Did you pay the cost of putting up the foundation under it, and all that? A. Yes, sir.

Q. (By the Court). And of fitting it up for use? A. Yes, sir; making the water and sewer connections. 30

Q. (By the Court). Do you know what it all cost, the moving? A. I do not; it was a matter of record, and the record was turned over to the receiver, the itemized record; but I think it was about \$250 for moving the house and making the connections.

Q. (By the Court). And putting the foundation under it, I suppose? A. And putting the foundation under it.

Q. (By the Court). Putting the house in livable order? A. Yes, sir. 40

Q. (By the Court). I guess you didn't do it for that. Was his house close by? A. His lot was within a hundred feet of where the lot was located.

Q. (By the Court). What was the size of the lot as you understood it? A. I think the lot was 50x100, about the same size lot as from which the house was taken.

10 Q. (By the Court). Was it next to your— A. No; there was one in between, had one in between; Mr. McKenna got permission to move the house across the vacant lot so we wouldn't have to go in the street and do it; it was shorter distance.

Q. Did you ever offer to sell the house to Mr. McKenna? A. Yes, sir; I offered to sell the house to Mr. McKenna and instructed Mr. McKenna to sell the house to any customer he could find.

20 Q. (By the Court). That was before it was moved? A. Yes, sir.

Q. What did he do with respect to that offer by you? A. The house was not sold.

Q. And subsequent to that then the agreement was made to purchase the lot from him for a thousand dollars? A. Yes, sir; when we could not dispose of the house, and we had to get it out of the way, we had to get a lot to put it on, and Mr. McKenna's lot was most available and we made a bargain with Mr. McKenna.

30 Q. (By the Court). That was after the effort to sell had failed you made a bargain with Mr. McKenna to buy this lot and put this on it? A. Yes, sir.

Q. Did you ever pay him a thousand dollars? A. We never did.

Q. Who collected the rents of the house after? A. I instructed Mr. McKenna to look after the collection of the rentals and paying of the taxes

40 and water rents.

Q. Did he ever account for the rents collected while you were president of the company? A. Yes, sir.

Q. (By the Court). How is that, did he account to you for the rents? A. Yes, sir, which went into the railroad account, with all of the papers and receipts.

Q. (By the Court). That is in your time? A. In my time; yes, sir; there were several houses Mr. McKenna had charge of down there, I think there were, that he collected rents for and paid the taxes and water rents and assessments.

Cross-examination by Mr. McDermott:

Q. You stated that Mr. McKenna was the attorney throughout all the transactions down at Long Branch? A. Yes, sir.

Q. Extending over several years? A. I think over three years; I have to be a little guarded in my answers because it has been some time since, and I have been very active since that time; but Mr. McKenna had absolute charge of the railroad company's interests in Long Branch from the time we began to try to enter Long Branch until we succeeded in getting our road in Long Branch, and I think the receiver was appointed.

Q. And extended over a considerable period of time? A. I think over three years.

Q. Two or three years? A. I think so.

Q. And he handled a great many transactions there for your railroad? A. Everything we had to do.

Q. And there were a good many to handle? A. Yes, sir; I think we bought some sixteen pieces of property through Mr. McKenna.

Q. And his services were valuable and extensive in that connection?

Objected to as immaterial.

The Court: The answer sets up an off-set; it does not give any bill of particulars; you haven't demanded any, have you?

10 Mr. Enright: No, sir. We claim, however, through the foreclosure of the trust mortgage and any off-set there might have been for services against the insolvent company cannot affect a title perfected through this mortgage.

The Court: He has not yet attacked that equity; it is not specified; the property isn't particularly described in your deed, is it?

Mr. Enright: No, sir; except it goes in as against that property.

20 The Court: This is a bill for specific performance, I think, might properly be called bill for specific performance. You have no written contract, but the equity that you set up, as I understand, is that it was partially performed; you paid a part of the purchase money, you altered your position irrevocably, and therefore it is inequitable for him to set up the statute of frauds when you relied on a verbal contract which is substantially admitted; I won't say it is admitted, but there is enough admission in it
30 to make it pretty clear to the court that there isn't much doubt about some such contract being made. Now he says I have got an off-set against that for services rendered to this very company. Now, can the Hamilton Trust Company, or the purchaser under the Hamilton Trust Company mortgage, get any better equity than the original company had, and isn't that where you stand?

40 Mr. Enright: With respect to the building, our contention is that the minute the

first property was acquired it became subject to the Hamilton Trust mortgage, and that nothing that the railroad company and Mr. McKenna might do afterward could diminish or alter the lien on that building with respect to the land. We claim that the company agreed to give Mr. McKenna a thousand dollars as purchase price. That price the successor company still stands ready to give, but how services and general debt due Mr. McKenna from the insolvent company can increase that burden, it does not seem now to me to be material; I do not see how it can be done; we owe him a thousand dollars on the price of this property, but because of that debt we cannot owe this general debt which the Atlantic Highlands Company owe for services. 10 20

The Court: But can you increase the equity that the old company had, which was not properly subject to mortgage in the ordinary sense of the term. Now, a mortgage, you know, is a legal right; you enforce it in equity, but it is a legal right, but an equity which passes as an incident only to a mortgage, as an appurtenance, so to speak, is an equity subject to all the rules of equity and if at the time, at any time while the property was in the control of the original company, do you think a mortgage put on it, general mortgage on the property, could effect that? 30

Mr. Enright: Yes, sir.

The Court: That is your ground, is it?

Mr. Enright: Yes, sir; that is the ground.

The Court: What is the date of this mortgage?

Mr. Enright: Mortgage dated July 1st, 40

1895. In this very court this mortgage has been adjudged sufficient to cover future acquired property, and a very similar issue has been tried out in the New Jersey Central Railroad case. At a proper time I will refer to that.

10 The Court: It is a mortgage, by its terms acquires future acquired property.

Mr. Enright: Yes, sir.

The Court: And you say that this equity, equitable right to specific performance which arose, was future acquired property?

Mr. Enright: Yes, sir.

20 The Court: And the mortgage took it precisely in the condition that it was when it arose; and that services rendered after that, after the original transaction—this is your point, I understand—cannot be brought in as a set-off?

Mr. Enright: That is it. And with respect to services rendered before that time, we claim the agreement, so far as brought out by this witness, fails to show any agreement to offset.

30 The Court: The agreement shown by this man does not. I shall admit his evidence.

Q. (Question read.) A. Yes, sir; of the highest.

Q. You stated on your direct-examination that you instructed Mr. McKenna, I understand, to sell the house, to sell this house? A. Yes, sir.

Q. (By the Court). In the first place? A. In the first place or after we had it on the lot to sell the house and lot, simply because the railroad company at that time had no money to invest in real estate, that was the underlying reason.

40 Q. And the only purpose of the company buying

the property was to get the right of way? A. Get the road connected.

Q. And not acquire outside property? A. No, sir.

The Court: By his order to sell the other property, the McKenna property, with house on it, in order to get clear of real estate they did not need. 10

A. Yes, sir.

Q. Before you moved the house there you told him to sell it? A. Yes, sir; before we moved it we tried to sell it.

Q. (By the Court). First off told him to sell the house by itself as making it personal property, and when failed in that and had to have her move it on McKenna's lot on the bargain that he stated, and then he further ordered Mr. McKenna to sell the thing in its then shape, house and lot and all? A. Yes, sir. 20

Q. Do you recall the price at which you directed him to sell it to outsiders? A. I don't remember fixing any price; the object was to get as much above cost as possible.

Q. Do you remember the sum of Five hundred dollars being discussed by you and Mr. McKenna? A. I told Mr. McKenna he could have the house for Five hundred dollars, or I would give him the house if he would take it out of our way. 30

Q. You did tell him that? A. Yes, sir.

Q. After that he took the house? A. After that we put the house on his lot.

Q. (By the Court). On that bargain? A. No, sir; he didn't take the house when we offered it.

Q. (By the Court). He didn't accept it, but he took it on the bargain to sell his lot to you for a thousand dollars? A. Yes, he did. 40

Q. You really made both offers to him, either to sell it to him for Five hundred dollars or buy the lot for a thousand dollars—both those propositions were made to him? A. Yes, sir.

Q. (By the Court). But you didn't offer to give it to him for nothing and go to the expense of moving it and setting it up and fitting it for sale?
10 A. No, sir; I felt after we made the agreement to buy the lot, of course the agreement to give him the house had lapsed.

Q. (By the Court). Of course, or the agreement to sell to him for Five hundred dollars? A. Yes, sir.

Q. (By the Court). If he let you incur the expense of fitting it up? A. Yes, sir.

Q. At any rate, you didn't make both these offers to him?

20

The Court: He has sworn to that.

Q. Either take the house at \$500 or take the lot for \$1,000? Did you ever offer to pay for the lot?

A. No, he asked for pay, but we never had the money to do it with.

Q. (By the Court). Authorized him to sell? A. Authorized him to sell.

Q. You have spoken of Mr. McKenna's services; at the time the company went in the hands of a receiver there was a large sum of money due Mr. McKenna?
30

Objected to.

The Court: You better ask him whether he rendered a bill. It is very disagreeable when he comes in here—did he ever render any bill to the company?

A. Yes, sir.

40

Mr. Enright: I object to that.

The Court: You can have that objection.
I want to distinguish between bill rendered—

Q. Do you remember about the amount of that bill, about the close of the company's operations?

A. I do not.

Q. How many thousand dollars it was? A. I 10
think it was something in excess of three thousand.

Mr. Enright: I have an exception to all this.

The Court: You cannot have any exception; you have objection.

Q. And so far as you know none of that was ever paid by the company, went in the hands of the receiver? A. As far as I can remember, all the bills rendered during the interim were never paid. 20

Q. (By the Court). You mean to say you never paid anything? A. To Mr. McKenna. No, sir. We merely gave him money for his disbursements and necessary fees for filing deeds, things of that kind; we didn't have the money; we were building a railroad without money.

Q. And the final bill was presented to the receiver, and, so far as you know, was never paid?

Objected to. 30

A. As far as I know it has never been paid.

The Court: The receiver was the receiver in foreclosure, wasn't it?

Mr. McDermott: No, sir; receiver in insolvency. I think foreclosure was a year later.

Q. Will you be kind enough to identify these letters that are here. I show the witness letter of 40

November 7, 1901, addressed Thomas P. McKenna, and signed A. G. Greenberg.

The Court: That was written long after he was out of the fight.

A. Yes, sir.

10 Q. I am going to identify them. I am not going to offer them now; I don't know as I will ever offer them. A. I wrote that letter.

Q. I show you also letter of February 8, 1901; that was also written by you to Mr. McKenna? A. Yes, sir; that is my writing.

Letters marked Exhibits D 1 and D 2.
Marked, but not offered in evidence.

20

WILLIAM L. HAYES, sworn.

Direct-examination by Mr. Enright:

Q. Where do you live? A. Long Branch.

Q. And your business? A. In the bathing business in the summer time.

Q. You are the present owner of the McKenna property on Fifth avenue, Long Branch? A. I am, sir.

30 Q. You purchased from him? A. I did, sir.

Q. When did you purchase? A. A year ago last August, I think, or last July, 1902, if I am not mistaken.

Q. How much did you pay him for the property? A. \$2,600 cash.

Q. Is the house now insured against loss by fire? A. Yes, sir.

40 Q. What insurance is carried on it? A. \$2,500.

Q. (By the Court). You insure the house for \$2,-

500 and bought the whole for \$2,600; you got the thing pretty cheap? A. I don't know whether it is cheap or not; some says I gave too much for it.

Q. You are satisfied with it? A. I wouldn't have bought it if I hadn't wanted it; I had the money and invested it.

Q. (By the Court). What does it rent for? A. 10
Twenty dollars a month.

Q. The house is in substantially the same condition now as when you bought it? A. Well, I put some improvements on it.

Q. Interior or exterior? A. Interior.

Q. Interior? A. Yes, sir.

Q. The ordinary improvements of keeping up frame property? A. Yes, sir; the house couldn't be built for \$2,600.

20

DAVID H. CRAIG, sworn.

Direct-examination by Mr. Enright:

Q. You are the present tenant of one part of this property in question, are you not? A. Yes, sir.

The Court: Do you expect to get beyond 30
the \$2,600?

Q. No, sir. I want to fix the rents from the period it was changed. You moved in there and became a tenant after the building was moved from the Foster property, did you not? A. Yes, sir.

Q. And have continued in there ever since? A. Yes, sir.

Q. Paying what rent? A. Ten dollars a month.

Q. Do you know what the other side of the building rents for? A. It always rented for the same. 40

Q. Has it been occupied? A. Yes, sir.

Q. Continuously since you moved there? A. I guess it was vacant about a month or six weeks this winter.

Q. After Mr. Hayes bought it? A. Yes, sir.

10 Q. Were any repairs of any account made on the property from the time you moved in up to the first of August, 1902? A. There was nothing only paper; well, he did fix the roof a little this fall.

Q. Well, up to the first of August, 1902, when Mr. Hayes bought it, had any repairs been made, except papering the interior? A. No.

Q. The building was in the same condition then as it was when it was moved on there? A. Yes, sir; just the same.

20 Q. Who did you pay the rent to from September, 1897?

The Court: It is admitted that Mr. McKenna had the rents.

Q. (By the Court). Did you rent first of McKenna or the other man? A. McKenna.

Mr. McDermott: There is no quibbling about that.

30 Cross-examination by Mr. McDermitt:

Q. When did you go in the house? A. In 1897; November, 1897.

Q. November, 1897? A. Yes, sir.

Q. (By the Court). Pretty soon after the house was moved on, eh? A. It wasn't finished when I went in.

Q. And when did the tenant go in on the other side? A. He moved in the same time.

40 Q. (By the Court). Both gave ten dollars a month ever since? A. Yes, sir.

The Court: And this transaction occurred in the fall of 1897, I understand.

Mr. Enright: Yes, sir.

H. S. EMANUEL, sworn.

Direct-examination by Mr. Enright:

10

Q. Where do you live? A. Long Branch.

Q. And your occupation? A. Real estate and insurance.

Q. What firm did you succeed? A. I succeeded S. H. Emanuel.

Q. He was your father? A. No; he succeeded my uncle; my father was in business before my uncle.

Q. And you were engaged in the same line of business with your father? A. Yes, sir, and my uncle too. 20

Q. Are you familiar with the real estate values in and about Long Branch? A. I am.

Q. You are engaged in the business of buying and selling? A. Yes, sir.

Q. And in your business as an insurance agent, are you familiar with the value of buildings? A. A good deal.

Q. In that vicinity? A. Yes, sir.

Q. Have you inspected this property in question owned by Mr. Hayes? A. Yes, sir. 30

Q. When did you do that? A. I inspected it on Saturday.

Q. In your judgment, what is the value of the lot on which the building now stands, independent of the building? A. About \$600.

Mr. McDermott: As to what time is this?

Mr. Enright: When he examined it.

Mr. McDermott: Lately? 40

Mr. Enright: Yes.

Mr. McDermott: How is that material now?

The Court: It is shorter to take it and ask him what it was worth in 1897 and what it is worth now, subject to your direction.

10 Q. In your judgment what is a lot in that location on Fifth avenue worth at this time? A. About \$600.

Q. (By the Court). What was it worth in 1897, seven years ago? A. Oh, I should say about 20 per cent. less.

Q. In your judgment, what is the present value of the building on this lot?

20 The Court: Building by itself?

A. The building would cost, I should think, in the neighborhood of \$3,000; I should say the value of the building is in the neighborhood of \$2,000.

Cross-examination by Mr. McDermott:

Q. How long have you been engaged in the real estate business? A. I have been engaged on and off since 1898.

30 Q. You mean on and off—you went to school part of the time, I suppose? A. I did in 1898 and 1899.

Q. You went to school part of the time and part of the time you were in business? A. Yes, with my father.

Q. You were not familiar with the real estate values in 1897, I suppose? A. No.

Q. You don't know what they were worth then? A. I was a good deal with my father and knew a little bit about it.

40 Q. You wouldn't claim to be an expert about it? A. No.

- Q. How old are you? A. Twenty-two.
 Q. Twenty-two now? A. Yes, sir.
 Q. You are rather an immature real estate man?
 A. Yes, but I took a good deal of interest in it.

HOWARD A. BRINLEY, sworn.

10

Direct-examination by Mr. Enright:

It is admitted that the item endorsed on the tax bills C8 and C9 as follows: "H and L Fifth avenue," refers to the McKenna house and lot in question.

Q. You are the assessor in Ocean Township, are you not? A. Yes, sir.

Q. I show you what has been stipulated to be a copy of the collector's book for the township, and call your attention to the items assessed to the Atlantic Highlands, Red Bank and Long Branch Trolley Company for the years 1898, 1899, 1900, and to the Monmouth Electric Company for 1901, 1902, and ask you what property is referred to there? A. This is a house and lot on North Fifth avenue. 20

Q. Do you know the McKenna property on Fifth avenue? A. Where the house is? 30

Q. You know where that property is? A. Yes, sir.

Q. Property now owned by Mr. Hayes? A. Yes, sir.

Q. Is this the same property referred to here as "One H. and L."? A. Yes, sir.

Q. (By the Court). Then it would appear from that that the property has been assessed by the township to the Trolley Company? A. Yes, sir; no, not last year; last year it was assessed to Hayes. 40

Q. (By the Court). Up to the time Mr. Hayes bought it? A. Yes, sir.

The Court: For how long does that run, from 1898 on?

Mr. Enright: 1898.

10 Q. (By the Court). Who has paid it, the taxes?
A. I don't know that; I don't know officially.

Cross-examination by Mr. McDermott:

Q. There seems to be a difference here in the description. '98, does that mean north of St. Vincent? A. No, St. Vincent is on the north of that.

Q. No, St. Vincent is on the north of that? A. Yes, sir.

20 Q. And this one for 1900 seems to have Foster on the north? Foster isn't on the north of this property, and St. Vincent on the south, that is a different property, isn't it? A. It hadn't ought to be.

Q. No, I know, but as it describes it here, it is a different property? A. It looks so, yes, sir. There are the properties (indicating the map).

Q. With St. Vincent on the north and Astoria on the south? A. Yes, sir.

30 Q. It is either a mistake or it is a different property? A. It is the same property.

Q. That description would not apply to the same property? A. No.

Redirect-examination:

Q. You assessed the property during these years? A. Yes, sir.

40 Q. You know it is the same property? A. Yes, sir.

Recross-examination:

Q. You assessed a number of pieces of property?

A. Yes, sir, I assessed every piece of property that the trolley company bought separate, located them as they bought them, and assessed them.

Q. (By the Court). I want to understand this tax of 1902, Long Branch, Township of Ocean, \$10,- 10
000 and \$12,000, making \$22,000; now on the back is a list of the real estate, and one is house and lot No. 5 Fifth avenue. That is the property here in question? A. Yes, sir.

Q. (By the Court). \$5, that means \$1,500, isn't it?

Q. By the Court.) Meant to be \$500? A. \$1,- 500, I think.

The Court: Five dollars or five hundred 20
dollars, I don't know which.

Mr. Enright: I think that is the amount of the extension.

The Court: I can't tell what it means, I confess. I would like to have you explain it to me, Mr. Enright, if you will.

The Court: (Looking at another paper.)
Oh, yes, it is \$500, assessed at \$1,500.

A. That is what I said, \$1,500. 30

Q. (By the Court). Here is Fifth avenue, \$500, then again it is \$1,500? A. Well, it is different lots on Fifth avenue bought of different parties to run the railway through.

The Court: Can't you agree on that, between counsel, what that means? This one is very plain. The white paper one for the year 1901, contains a list of real estate, and among others is a house and lot, Fifth ave- 40

nue, \$500, and then house and lot Fifth avenue, \$1,500, different strips. Now he says that is the one he assessed at \$1,500?

A. \$1,500, that is one.

Q. (By the Court). It is not on there at all.

10 Mr. McDermott: No, sir; this is all the Fifth avenue, \$1,500.

A. He has wrote it off wrong, separate lot on Fifth avenue, opposite there, and the house and lot is \$1,500.

Q. (By the Court). This don't include the village taxes, does it? A. No, sir, that includes the county.

20 The Court: It is taxed all the way through at \$1,500. Mr. Hayes very prudently got it reduced to \$1,200.

Q. You tried to tax the property where the rails were placed, didn't you? A. Oh, yes. Where the rails were laid, yes.

Q. Where the rails were laid, isn't that what is known as the Foster lot? A. Foster lot, yes.

Q. Now, where is that on this list here? A. I presume that is it (indicating).

Q. Which one? A. Fifth avenue.

30 Q. The lot Fifth avenue, \$1,500? A. No, \$500.

Q. That is the old place where the rails were? A. Yes, sir, house and lot, \$1,500.

The Court: That is L, not house and lot.

Q. Yes; but it is carried out \$1,500? A. There was no other lot in that line that had house on but this.

40 Q. (By the Court). Here is another one, house and lot, Martin street? A. That is way uptown.

Q. He has run them off wrong? A. Yes, sir.

I am conversant with, I know the \$1,500 is the house and lot.

Q. (By the Court). And the others are \$500? A. Yes, sir.

Q. (By the Court). Merely taxed the ground the rails laid on, you taxed at \$500? A. That is all.

Q. (By the Court). Where there was house and lot, you taxed them \$1,500? A. Yes, sir. 10

Q. You assessed that for years, you said, \$1,500? A. Yes, sir.

Q. Since Mr. Hayes got it, you reduced it to \$1,200? A. I don't know.

Q. It seems to be on that paper? A. I think I can explain that, if that is so; that is the same one.

Q. Just look at it and see.

The Court: You got the tax down? 20

Mr. Hayes: The taxes were \$1,500, County and State.

Q. (By the Court). Then you got it down to \$1,200 after you bought?

Mr. Hayes: I guess I did.

Q. Any reason for reducing it? A. I did from his statement.

Q. It ought to be reduced? A. One reason I reduced it— 30

The Court: Never mind. We are not asking into that; it is a question of identity.

Mr. McDermott: I was trying to ask him about the reduction, if there was reason for reduction. He says Mr. Hayes presented one.

A. The house was in poor condition at the time, 40

and he was at considerable expense to repair it, and it was also butt end, it was rear end lot running from Broadway.

Q. And you thought \$1,200 was a fair assessment for it? A. I think so.

10

THOMAS P. McKENNA sworn.

Direct-examination by Mr. McDermott:

Q. You are a practicing lawyer and been so for several years? A. Yes, sir.

Q. And you were such in 1897? A. Yes, sir.

Q. Were you employed by the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company? A. Yes, sir.

20 Q. To look after its business in Long Branch? A. Yes, sir.

Q. How long did your work in that connection continue? A. From the time they first approached Long Branch, about in the latter part of—about in the spring of 1896 until 1901? I was with them, representing the receiver also, at Long Branch, for about five years.

30

The Court: When was the receiver appointed?

Mr. Enright: It was in 1898. The receiver was appointed shortly before the default on the bond. That was June 1, 1898.

A. For a number of years.

Q. Look at your bill? A. Yes, sir, I can tell you from this.

Q. This service was rendered, for which the bill was rendered, through what period? A. From June, 40 1896 to May, 1898.

Q. Did you handle large sums of money for the company at that time? A. Yes, sir.

Objected to on the ground previously stated, that the nature of his services, and the value of them is immaterial and irrelevant.

The Court: You have got your objections. 10
I shall admit it.

Q. Do you recall the occasion mentioned by Mr. Greenburgh, when the company needed what is known as the Foster property? A. Yes, sir.

Q. As continuation of its right of way? A. Yes, sir.

Q. And who purchased that property for the company?

The Court: Who negotiated? 20

A. Mr. Greenburgh.

Q. And after it was purchased, what was done with the house? A. The house was moved upon a lot which I own, second lot to the south of where the Foster house had been located.

Q. One lot in between, was there? A. In between, yes, sir.

Q. And before that was moved on your property, was there anything—get any instructions about selling that, did you? A. Yes, sir. 30

Q. From whom? A. I got my instructions from Mr. Greenburgh for that house, and also another one on the block above, which I did sell. "

Q. Did the company need this property in its business there? A. Yes, sir.

The Court: Oh, Greenburgh has sworn to that. 40

A. Yes, sir, needed it immediately.

Q. And what price was fixed on it? A. For the house?

Q. Yes. A. The price fixed for the house was \$500; I was authorized to sell it for \$500, and not being able to get a purchaser, and they needing to move it immediately, he told me to take it for \$500. First he wanted me to take it for nothing, get it out of the way. I told him I wouldn't do business that way, but I would take it for \$500. Mr. Greenburg said, "McKenna, you take it for \$500, and if you get in a position to purchase your lot for \$1,000, we will do so for \$1,000, but if we don't get in a position to do it, you take the house." Said he would allow \$500 for in the event we don't take your lot, and you credit the same on your bill, and also whatever the expenses are for moving, &c.," for which I have bill, which, when the settlement of my bill was made, I was to then pay them \$500, and whatever the expenses were.

Q. What was said about taking your lot? A. My lot was to be taken at \$1,000, which was the same price I had purchased a lot in front of mine on the other side of Fifth avenue from Mrs. Glaser, and that price was not at all fictitious; I purchased that lot from her, she not knowing it was to be sold to the Trolley Company. That was my position to the Trolley Company, to negotiate to purchase, so they would not be "bled" as the remark goes; I purchased it from the lady as her price—as the value of that property, \$1,000.

Q. (By the Court). But there was a price fixed between you and Greenburg at \$1,000? A. Price fixed at \$1,000.

The Court: He has sworn to it.

A. He has sworn to it, too.

Q. So that that was the conversation in relation to it, was it? A. Yes.

Q. And was the house then moved over on the lot? A. The house was then moved over on my lot.

Q. Did they ever pay you the \$1,000? A. No.

Q. Ever offer to pay for it? A. No.

10

Q. Ever say they wanted to do it? A. No, sir. Mr. Greenburg said afterwards, when the company was in difficulty, it was absolutely impossible to pay it. He said, "You keep the house"; we discussed it very thoroughly; I was to make that payment of \$500 for the house, and cost of moving of it, which I stood ready to do. Then the company went into the hands of a receiver, and I had never been paid for my services at all, for those two or three years. They owed me about \$3,000, and I 20 asked the receiver if he could not arrange in some way to take up the proposition where Mr. Greenburg said he was absolutely unable to do it, and Mr. Degnan informed me that he too saw no way.

What Mr. Degnan said objected to.

Q. The receiver? A. Yes, sir, the receiver.

Q. (By the Court). Did you put in a claim against the estate? A. Yes, sir, I did so; it was all filed; never any objection raised to it, whatever. 30

Q. Did you ever get any pay for it? A. Never got one cent. No, sir; they agreed to give me stock and bonds, never gave me one thing.

Q. All you have ever had for your claim of \$3,000 is this house, the value of which is fixed at \$500? A. They never gave it to me. Mr. Greenburg came around on the basis of reorganizing the company, and got creditors to agree to a certain basis of stock and bonds over and above my house. 40

Q. (By the Court). Did you ever ask for them?
A. Yes, sir.

Q. (By the Court). Other people got stock and bonds? A. No—few.

Q. (By the Court). The thing didn't go through?
A. No, I think Mr. Corbin is the only one that got
10 his bond; I don't know anybody else that ever got
it; they have held them up under one plea and
another; I never got mine; I have been to every
official, Mr. Garrison and everybody else, trying to
get them.

Q. (By the Court). You agreed to take them?
Did you subscribe to anything in writing? A. No,
sir. Never gave me any opportunity to.

Q. (By the Court). Whom did you make the
20 agreement with? A. Mr. Greenburg, and that is
one of the papers.

The Court: Why didn't you ask him that
when he was on the stand?

Mr. McDermott: I did; I asked him
about that letter.

Q. Is that the letter? A. Yes, sir, this is the
letter that sets out what he proposes to do, but they
never carried it out.

30 Letter objected to.

Q. The fact is, that you got nothing at all? A.
Absolutely nothing.

Q. And you were a general creditor only?

The Court: Of course.

Q. Of course, you hadn't any bonds or anything
of that sort? A. I think that is where I was able
to undertake to argue. I ought to be entitled to a
40 little better than that, or they would never have
had any right of way.

Q. Did you, after that—it is said you rented this property to these gentlemen, is that so? A. Yes, that is so.

Q. To Mr. Craig, and whoever the other tenant was? A. Yes, sir.

Q. And did you collect the rents? A. Yes, sir.

Q. Did you pay any taxes on that property? A. Yes, sir, I paid all the taxes on the Long Branch Commission. 10

Q. I show you two receipts. I show you a receipt for taxes, 1899, signed by James R. Woolley, collector. Does that cover this property in question? A. Yes, that is this property.

Q. Who was that paid by? A. Paid by me.

Q. I show you the one for 1900? A. Yes, sir, that is paid by me.

Q. And for 1901? A. Yes, sir; I also paid \$898; and Mr. Hayes, I think, has paid 1902 and 1903; at least he has the bills. 20

Q. (By the Court). Is this all the real estate you have there? A. No, sir; I have plenty of other receipts.

Q. (By the Court). Gave you separate receipts for each one? A. Yes, sir.

Q. (By the Court). You knew that it was tax of the township? A. no, I did not; I inquired about that, and understood from the assessor that was assessed \$500. At that time I was a member of the Monmouth County Cavalry, and entitled to \$500 reduction, and it was understood under those circumstances that the property would not be taxed and until recently I find that it was taxed in that form. But I understood that it was only intended to cover the two lots on Fifth avenue, not including this one; I only paid what was forwarded to me; I never thought of the other. 30 40

Q. Did you pay all the taxes you ever got any bills for? A. That I ever got any bills for, I paid for six years, five or six years.

10 Tax bills on the City of Long Branch, what is called "Long Branch Commission," 1899, 1900 and 1901, offered in evidence and marked Exhibits 3, 4 and 5.

Mr. Enright: My objection is on the ground that the description of the property in the bill is not sufficiently connected with the *locus quo*.

The Court: It says "House and lot, Fifth Avenue."

Tax bills above offered marked "Exhibits 3, 4, and 5.

20 Q. I think I asked you if that was the identical property? A. Yes, sir. That is the only property I ever owned on that street; I owned it before the trolley ever came there.

Cross-examination by Mr. Enright:

Q. During this time did you also collect the rents of the house and lot belonging—

The Court: That is admitted.

30 Mr. Enright: Oh, no, this is another property, on Martin street. I want to ask him if he collected the rents of the house and lot on Martin street.

A. No, sir; never did.

Q. Now, you said you filed a claim with the receiver? A. Yes, sir.

Q. That was in writing? A. Yes, sir, verified.

40 Q. On that claim, did you give credit for the value of this house, \$500? A. No, sir.

Q. Nor, did you give credit for the rents collected? A. No, sir.

Q. (By the Court). What has become of that? A. It is with the receiver; I saw the receiver this morning, he hoped to have it here, but he hasn't been able to put his hands on it. Mr. Degnan, he is assistant with Mr. Senator Smith in the United States Ship Building, and he will have it here tomorrow. 10

Q. Isn't it a fact that that claim has never been allowed? A. It has never been disallowed, no, sir; it was filed promptly at the time, and I have never heard one word of dissent from it.

Q. You say it has never been disallowed? A. No, sir.

Q. Don't you know this is practically the only claim for which stock and bonds of the reorganized company have not been exchanged? A. No, sir; never heard of any other claim, for which they were exchanged, except Mr. Corbin's, is the only one I have heard it; there was never any notification sent to me of any kind or description. 20

Q. You know why you didn't get stock and bonds of the reorganized company, of course? A. No, sir.

Q. Didn't you go to Mr. Fletcher Frazier at one time and ask him for your equity of stock and bonds? A. No, sir, I went to Mr. Fletcher Frazier to ask him why it was that I was not given my stock and bonds as it was arranged, and simply because Mr. Garrison said he couldn't see any reason why I should not get them and number of others, but that is all; Mr. Fletcher Frazier was the man that had the matter in charge. 30

Q. Mr. Fletcher Frazier told you that the claim was not admitted, didn't he? A. No, sir, Mr. Fletcher Frazier never did; he said it was a matter that he didn't know anything about the details of, and 40

he personally had no personal knowledge of it, and he would take memoranda of it and look it up.

Q. You say that you thought the house and lot were assessed by the township at \$500, and for that reason, you being an enlisted militia man, you were entitled to an exemption. Is it customary for such a variation between the township and commission assessment in Long Branch? A. This explanation may be a little long, but assessment in this Long Branch commission is a great deal larger than it is in the township; the commission is only permitted under its charter, to raise three dollars on a thousand dollars, and they usually try to assess it at its full value, but in the township, it is assessed as one-third and a half and two-thirds of its valuation, but rarely exceeds half.

20 In the commission it is much higher, because they have to raise considerable more money.

Q. In this instance, the assessment seems to be less in the commission than in the township.

The Court: Don't argue that.

A. We are like Mr. Hayes, everybody, I think we take advantage of low assessment.

Mr. McDermott reserves the right to introduce Mr. Degan's testimony next Monday.

30

Adjourned until next Monday.

June 6, 1904.

Between MONMOUTH COUNTY ELECTRIC COMPANY, Complainant, and THOMAS P. McKENNA, Defendant.	}	10
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Continuation of examination pursuant to adjournment, at the place and in the presence of the parties, as before, on June 6, 1904.

20

THOMAS P. McKENNA, recalled.

Mr. Enright: I object to the examination of Mr. McKenna at this time, on the ground that the case was closed, and it is a hardship to the complainant to take Mr. McKenna's testimony in the absence of Mr. Greenburg.

The Court: He only wants to prove by him the payment of these taxes, I believe. 30

Mr. Enright: Mr. Greenburg is away.

The Court: Ought not you to have done it?

Mr. McDermott: It is an omitted question; at that time there was some confusion about it; at that time there were a lot of other people waiting; we rushed along with it.

The Court: Just ask the question, and I will see. 40

Direct-examination by Mr. McDermott:

10 Q. In the examination at the time this case was on, examination by Mr. Greenburg, he referred to a proposition of sale made to the company of a lot which you own and also referred to the price which was fixed upon the house which you claim to have purchased. Will you tell us which of these took place first in the order of time?

The Court: I haven't the evidence here; it hasn't been written up. It was so easy to correct that at the time, and Mr. Greenburg lives out of the State, I believe.

Mr. Enright: We had to bring him down here from Syracuse for that day.

20 Mr. McDermott: I examined him too, as my witness, so he was examined by both of us.

The Court: I know, but he was brought way down here from Syracuse.

Mr. McDermott: I ought to have asked this question, I admit, but it seems I ought not to be barred because I failed to do it.

The Court: I will take the evidence, but I must confess it is very doubtful whether I ought to use it or not.

30 Mr. Enright: Allow me an exception.

The Court: Yes. Proceed.

A. The proposition of the purchase of the lot—

The Court: By the company from you?

40 A. By the Trolley Company from me, took place some six months, I think, before the house proposition was spoken of. It was in connection with a little difference, a little varied line from the one over which they go over at present, my lot at that

time being nearer Broadway, and that being the plan originally contemplated, was to keep the trolley as near Broadway as possible without touching it.

Q. For what purpose was your lot to be used, then? A. My lot at that time was to be used as a part of the right of way over which the road went, and the price agreed upon was the same price at which a lot on the opposite side was purchased, \$1,000. 10

Q. You produced, at the other hearing, some tax bills, covering this lot, and you have produced to-day some further tax bills. Will you kindly tell the court what they cover?

The Court: Were the other marked?

Mr. McDermott: The others were marked, I believe so. 20

Q. (By the Court). What are these? The bundle you have got in your hand was not produced. Where did you get these? A. Mr. Hayes had them; the purchaser of the lot, and he did not bring them to court; I had turned them over to him at the time I turned over the deed, and all the other papers.

Q. (By the Court). One of them is a Long Branch Commission, taxes of 1895, and it is made out to Mrs. Jane Poole's estate. 30

Mr. Enright: That certainly cannot refer to this, because this transaction was not until 1897; it was not paid until August 31, 1896, except one of June 6. Now the next is tax of township to Ellen Gill, tax of 1891, bill dated March, 1894, two lots on Fifth avenue, value, \$600, duplicate receipt signed, "William R. Joline, Collector." 40

10 The next is the tax of 1892, and it is also dated March 4, 1894; two lots on Fifth avenue made out to Mrs. Ellen Gill same valuation, \$60, and receipted by William R. Joline, collector. The next is tax of 1893, but it is dated March 4, 1894; it is Mrs. Gill 2 lots, 5th avenue, valuation \$600, and receipted by William R. Joline, collector, March 4, 1894. The next is the township of Ocean, tax of 1894, made out to Thomas McKenna, lot Fifth avenue, William C. Poole, lot, \$300, signed by Mr. R. Joline, collector, dated September 1, 1896.

20 Q. (By the Court). When Mr. McKenna got the property, I suppose he had a lot or arrears of taxes to pay, is that right? A. That is right, Vice Chancellor.

Tax bills last referred to marked "Exhibits 2, 3, 4 and 5, June 6, 1904."

Cross-examination by Mr. Enright:

Q. You read the answer filed in this case, didn't you? A. Yes.

30 Mr. McDermott: I want to offer certified copy of articles of incorporation of Atlantic Highlands R. Co. marked Exhibit D6.

Testimony closed.

Stipulation.

40 It is hereby stipulated and agreed by the parties hereto through their respective solicitors that sworn copies of the assessment books and tax records of the Township of Ocean or of the Long Branch Commission, may be offered in evidence

with the same effect as though the original books and records were produced and duly proved by witnesses; also that the printed copy of the Deed of Trust or Mortgage by the Atlantic Highlands, Red Bank & Long Branch Electric Railway Company to the Hamilton Trust Company, Trustee, marked Exhibit C 1, June 3rd, 1902, in the suit of Monmouth County Electric Company against New Jersey Southern Railway Company, *et al.*, be offered in evidence without further proof as to execution with the same effect as though the original indenture were produced duly proved; saving to either party the right to object to the materiality or relevancy of such evidence. 10

Dated May 10th, 1904.

FRANK P. McDERMOTT,

Solicitor of Defendant. 20

GARRISON, McMANUS & ENRIGHT,

Solicitors of Complainant.

Exhibit C 1.

Certificate of Organization of the Monmouth County Electric Company.

The principal office of the Company is at No. 259 Washington Street, Jersey City, N. J., and the name of the agent therein and in charge thereof, upon whom process against the Company may be served is Lindley M. Garrison. 30

This is to certify that the person or persons for or on whose account the railroad of the Atlantic Highlands, Red Bank & Long Branch Electric Railway Company was purchased and who by virtue of the Statutes of the State of New Jersey in such case made and provided are constituted a body politic and corporate have duly met, after proper notice, and have organized such corporation. 40

That the date of such organization is April first, nineteen hundred and one.

That the name adopted is

The Monmouth County Electric Company.

That the amount of Capital stock is \$500,000 divided into 10,000 shares of the par value of \$50 each.

That the names and residences of the Officers and Directors elected are as follows:

President, William F. Hogan, 643 Tenth Street, Brooklyn, New York.

Secretary and Treasurer, Lindley M. Garrison, 259 Washington Street, Jersey City, N. J.

Directors, Silas B. Dutcher, 191 Montague Street, Brooklyn, N. Y.

Austin B. Fletcher, 32 Liberty Street, New York City.

John H. Coon, 148 Monroe Street, Brooklyn, N. Y.

Charles A. Porter, Philadelphia, Pa.

G. B. Walbridge, New York City, and

Lindley M. Garrison, 259 Washington Street, Jersey City, N. J.

In witness whereof the said Corporation under its corporate seal attested by the signature of its President does hereby certify the above facts.

The Monmouth County Electric Company
William F. Hogan,

President.

Attest:

Lindley M. Garrison,

Secretary.

Endorsed.

"Filed Apr 5 1901,

George Wurts,

Secretary of State."

Exhibit C 2.

Atlantic Highlands,	First Mortgage.	
Red Bank and Long	Dated July 1, 1895.	
Branch Electric Rail-	Ackd. Aug. 31, "	
way Company	Recd. Sep. 4, "	
	Liber 191, p. 223 of	
To	Mortgages for Mon-	10
	mouth County. Amount	
Hamilton Trust Com-	\$500,000. Rate of In-	
pany as Trustee.	terest 5%.	

The following is a copy of the principal parts of the Mortgage:

This indenture, made the first day of July, 1895. Between the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company, a corporation organized and existing under and by virtue of the Laws of the State of New Jersey (hereinafter called the Railroad Company) party of the first part, and Hamilton Trust Company, a corporation organized and existing under the Laws of the State of New York, and located in Brooklyn, Kings County, New York, as Trustee (hereinafter called "the Trustee") party of the second part. 20

Witnesseth:

Whereas, The Railroad Company is under and by virtue of its charter and the Laws of the State of New Jersey authorized and empowered to construct and operate motors, cables and other machinery for supplying motive power to street railways and the necessary apparatus for applying the same, and also to locate, own, construct, equip, maintain and operate street railways and other railroads now operating or to be hereafter operated as street railways, for public use in the transportation of persons and property within and throughout the State of New Jersey; and 30 40

Whereas, The said Railroad Company has obtained the necessary legal consents and privileges from the proper authorities for constructing, equipping and maintaining a street railway to be operated by electricity between the towns of Atlantic Highlands, Red Bank and Long Branch in the State of New Jersey; that said Railroad Company is the sole owner and has the exclusive right, privilege and franchise to equip and operate said street railroad upon and along the route hereinafter more particularly described; and

Whereas, The Railroad Company, party of the first part, hath, under and by virtue of its charter and the Laws of the State of New Jersey aforesaid, the full right, power and authority of contracting and being contracted with and to acquire, hold and occupy and convey such real estate and personal property as may be proper and necessary for its corporate purposes; and

Whereas, By virtue of its charter said Railroad Company has, among other powers, the right and power to borrow and raise money to any amount, not exceeding the total amount of its authorized capital, by the issue and sale of bonds, notes, debentures or collateral trust certificates of the company, or in any other manner, secured by mortgage or lien upon the real estate, property and franchises of said company; and

Whereas, The said Railroad Company desires and has entered into a contract to borrow money for acquiring constructing, equipping and operating its railway, for which purpose, at a meeting of its Directors held in Jersey City, State of New Jersey, on the 13th day of April, 1895, it was duly resolved to make, issue and deliver five hundred (500) first mortgage coupon bonds for the sum of one thousand (\$1,000.00) dollars each, bearing

date July first, 1895, and to be payable July first, 1945, and to bear interest from the first day of July, 1895, at the rate of five per cent. (5%) per annum; to contain a provision for registration and to be numbered consecutively from one ((1) to five hundred (500), inclusive, and to be secured by mortgage or deed of trust to the Hamilton Trust Company, party of the second part above named, as Trustee, upon the hereinafter described property, rights, privileges and franchises of the Railroad Company; said bonds to the extent and amount of Three hundred thousand (\$300,000.00) dollars, to be issued by said Trustee, and delivered upon the order of the Chief Engineer and President of the Railroad Company, in accordance with the terms of a certain contract, made and entered into between said Railroad Company and the White Crosby Company, a corporation, bearing date May 2d, 1895, for the construction and equipment of said railway; said bonds to be executed under the seal of said Railroad Company, by its President and Treasurer, and the interest coupons to be authenticated by the engraved signature of its Treasurer, and to be substantially in the following form and tenor; that is to say:

Now, therefore, this indenture witnesseth, that the Railroad Company, party of the first part, for and in consideration of the sum of one (\$1.00) dollar to it in hand paid by the Trustee, the receipt whereof is hereby acknowledged, and in order to secure equally the payment of the principal and interest of the bonds aforesaid at any time outstanding doth grant, bargain, alien, remise, release, convey and confirm unto the Trustee, party of the second part, and its successors, all and singular its property and franchises of every nature and description whatsoever, whether now owned or here-

after to be acquired, including all its railroads, railroad routes, railroad properties and all its franchises, to maintain construct or operate railroads and to exact fares thereon and all its rights, privileges and franchises to use the routs, roads and franchises of other companies.

10 Including particularly the following described properties, namely:

All the right, title and interest of the Railroad Company in and to the following railroad routes and the franchises of maintaining and operating the same, all being in the County of Monmouth, in the State of New Jersey, that is to say:

20 Beginning at the centre of First Avenue in the Borough of Atlantic Highlands, at the shore of the bay, running thence along First Avenue to the public road leading from Leonardville to Navesink; thence along said road to the centre of the road leading from Chapple Hill to the Highlands; thence along said road to McDonald's corner, and thence along the road leading to Locust Point, and continuing along the same to the northerly end of the Oceanic Bridge; thence across the Oceanic Bridge to the centre of the road running between Oceanic, Fair Haven and Red Bank, and thence along said road to the centre of Prospect Street, in the Town of Red Bank, and thence along 30 Prospect Street to Wallace Street; thence along Wallace Street to the centre of Broad Street; thence a spur from the centre of Broad Street west, on Monmouth Street to Maple Avenue; thence on Maple Avenue south to Oakland street; thence on Oakland Street west to West Street; and thence to the New Jersey Southern Rail Road station, corner of West and Oakland Street, and thence again 40 along Broad Street and continuing along the Red Bank and Eatontown Turnpike to the middle of

the Shrewsbury Road, and thence along said road to a point in the middle of the Red Bank Turnpike, and in line with the middle of the Eatontown and Long Branch Turnpike in the Village of Eatontown, and thence along the Long Branch Turnpike to a point in the middle of Broadway, opposite the centre of Oak Hill Avenue in the City of Long Branch; thence along Broadway to the west side of Ocean Avenue in said City of Long Branch. 10

Together with the privileges, rights, and franchises now owned by the Railroad Company, or which may hereafter be owned or acquired by it, and all lands and leasehold interests now or hereafter owned or acquired for railways, power houses, depots or stations and all buildings erected or which hereafter may be erected thereon, and all the locomotives, tenders, motors, cars, carriages, tools, 20 chattels, electric poles, lines of wire, machinery and equipment, now owned, or hereafter to be owned by the Railroad Company, and all rights, privileges, and franchises now acquired or hereafter to be acquired by the Railroad Company, whether by contract, lease or otherwise, to use the routes, roads, tracks and railway equipment of any other street surface railroad corporation, which may be acquired by the Railroad Company, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging 30 or in any wise appertaining and revision and revisions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railroad Company, of, in and to the same, and every part and parcel thereof with the appurtenances.

To have and to hold the same unto the Trustee 40

and its successors forever; in trust nevertheless (subject to each and all the provisions hereinafter in this deed of trust set forth), for the persons, corporations, firms and partnerships, and for the benefit and security and protection of the persons, corporations, firms and partnerships, who shall
 10 from time to time hold the said bonds and the interest coupons aforesaid, or any or either of them, and for enforcing the payment thereof and the interest due thereon, when payable, in accordance with the true intent and meaning of the stipulations of this instrument and of said bonds and said coupons; provided, however, and these bonds are upon the express condition that if the Railroad Company, its successors or assigns, shall well and truly pay, or cause to be paid, unto the
 20 holders of the said bonds so issued, or to be issued, as aforesaid, the principal and interest to become due to them, the said holders respectively at the times and in the manner mentioned in the said bonds and in the coupons or interest warrants thereto annexed, according to the true intent and meaning thereof, then these presents and the estate hereby granted shall cease, determine and be void, otherwise to be and remain in full force and virtue.

For the control, guidance and protection of the
 30 Trustee hereunder in the certification of the bonds intended to be secured hereby, it is declared and agreed that said bonds to the extent and amount of Three hundred thousand (\$300,000.00) dollars are to be certified by the Trustee, and delivered upon the order of the Chief Engineer and President of the Railroad Company, in accordance with the terms of a contract between the Railroad Company and the White Crosby Company, hereinbefore referred
 40 to; the balance of said bonds shall be certified and

delivered by said Trustee to the Railroad Company, or to any person by the Railroad Company designated to receive the same, at any time or from time to time, only upon the written application of the Railroad Company, expressed through a resolution of its Board of Directors, wherein shall be stated what amount of bonds is required at the time and for what purpose, and each such application on the part of the Railroad Company shall be accompanied by a certified copy of such resolution, and by the consent in writing of the White Crosby Company, or, if the Railroad Company shall, with the consent of the said White Crosby Company, place, sell or negotiate any or all of the bonds hereby secured, the proceeds of such sale shall be paid and turned over to the Trustee, who shall hold same in lieu of the bonds, and shall make payments to the White Crosby Company as the same shall become due under its contract with the Railroad Company in cash, instead of in bonds as by said contract provided. The certification and delivery of the bonds by the Trustee, in the event of the sale of said bonds by the Railroad Company under the provision last above recited, shall be made upon the joint written application of the Railroad Company and the White Crosby Company, expressed through the resolution of the Board of Directors of said Railroad Company, wherein shall be stated what amount of bonds is required at the time, and for what purpose, and said application shall be accompanied by a certified copy of such resolution, and the delivery of such certified copy of such resolution and the presentation of the certificate of the Chief Engineer and President of the Railroad Company, in accordance with the terms of the contract hereinbefore referred to and the joint written application

of the Railroad Company and the White Crosby Company, shall be full protection to the Trustee to certify and deliver bonds pursuant thereto, and no duty or obligation is imposed upon the Trustee to look behind any such joint written application and certified copy of such resolution or of such certificate and order of the Chief Engineer and President of the Railroad Company before certifying and delivering the bonds in accordance therewith.

10

Nor shall the Trustee be in any wise responsible or answerable for the issue and negotiation of any of the bonds secured hereunder, which may be by it certified and delivered in accordance therewith.

20

It is hereby declared and agreed by and between the parties hereto, that the trusts, uses and purposes, conditions and covenants for and upon which property hereinbefore described is conveyed to the Trustee, and is to be held and disposed of by the Trustee are as follows, that is to say:

30

First.—No bonds secured by this Indenture shall be deemed as having been issued or shall be valid and effectual for any purpose until the same shall be signed by the President or Vice-President of the Railroad Company, numbered and sealed with its corporate seal, attested by its Treasurer, and shall have been certified by the Trustee to be one of the series of bonds described in this Indenture of Mortgage; and the number of bonds which may be issued by the Railroad Company under and secured by this Indenture and certified by the Trustee is limited to the aggregate principal sum of five hundred thousand (\$500,000.00) dollars outstanding at any one time.

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All such bonds, issued under and in pursuance of the terms of this Indenture of Mortgage, and at any time outstanding, shall be in all respects, equally and ratably secured hereby without pre-

ference, priority or discrimination on account of or with reference to the actual time or times of the issue of said bonds or any of them, so that all such bonds at any time outstanding shall have the same right, lien and privilege under and by virtue of this mortgage or deed of trust, and shall all be equally secured hereby with like effect as if they had all been made, executed and delivered and negotiated simultaneously on the date of the recording of this deed of trust, whether the same or any of them shall actually be sold or disposed of at such date, or whether they are any part of them shall be negotiated or sold at some future date.

10

Second. The Railroad Company promises and agrees to pay, from time to time, all taxes, assessments, laborers' and mechanics' liens and other charges lawfully imposed upon the property hereinbefore conveyed, or any part thereof, the lien of which might or could be held to be a lien prior to the lien of this mortgage, so that the priority of this mortgage may be duly preserved, and further covenants that it will not suffer to be done or permitted, any act, matter or thing whatsoever, whereby the lien of this mortgage might or could be impaired, until the bonds hereby secured, with all interest accrued thereon, shall be fully paid and satisfied.

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30

Upon default by the Railroad Company in paying any such taxes, assessments or other charges, the Trustee may, if so advised, and without impairments of or prejudice to any of its rights under this mortgage, by reason of such default, itself pay such taxes, assessments, or other lien or charges and have a first lien upon the mortgaged premises for its advances for that purpose.

40

Third.—If default shall be made in the payment of all or any part of any instalment of the interest hereby secured to be paid, and should the same remain unpaid and in arrears for the space of ninety days after demand, or should taxes or assessments upon the mortgaged premises or other charges having priority over the lien of this mortgage, remain in arrears for the space of six months after the same shall become due and payable, then and in that event, after the lapse of said periods respectively, the entire principal sum secured by said bonds then outstanding, together with all arrears payable, provided a majority in interest of the holders of said bonds shall so elect and certify their said election in writing to the Trustee, or its successors, signed to the Trustee, or its successors, signed by them or their lawful attorneys and duly acknowledged, even though the time in said bond limited for the payment thereof shall not then have expired, anything in said bonds contained to the contrary thereof notwithstanding.

Upon the request in writing of the holders of a majority in amount of the bonds hereby secured and then outstanding, upon any such default, and after the lapse of said periods, respectively, it shall be the duty of the Trustee to declare the principal of all said bonds due, and to give notice thereof to the Railroad Company aforesaid, or to refrain from making such declaration, or to waive any such default in the payment of interest or other default, except in the payment of the principal of said bonds, or any of them, upon the maturity thereof, upon such terms and conditions as such majority holders shall signify in writing. Such holders may in like manner annual or reverse any such declaration already made by the Trustee, anything herein contained to the contrary notwithstanding;

provided, however, that the Railroad Company shall not, on the faith of such declaration, have paid said bonds to the holders thereof, or deposited with the Trustee the amount payable thereon. It is expressly understood, however, that the action of the Trustee or of the bondholders, in case of any one default, shall not affect or impair the rights of the Trustee, or of such holders, in respect to any subsequent default on the part of the Railroad Company, or impair any rights resulting therefrom. 10

Fourth.—In case of default in the payment of the principal of the bonds hereby secured to be paid, or any part thereof, and if such default shall continue for sixty days after such payment shall become due either by the maturity of the bonds or by reason of the declaration of the Trustee under the provisions of this mortgage, it shall be the duty of the Trustee and its successors, as hereinafter provided on the written request of a majority in interest of the holders of such bonds then outstanding, signed by them or their lawful attorneys, and duly acknowledged, with or without entry, to sell the said railroad together with the real estate, railways, rails, equipments, privileges, rights and franchises owned by the Railroad Company, and all the mortgaged property hereby conveyed, at public auction, in manner to be determined by the Trustee, and upon such sale to deliver to the purchasers thereof good and sufficient deeds of conveyances for the same, in fee simple, which sale shall be a perpetual bar in law and in equity against the Railroad Company, and all persons and corporations lawfully claiming by, through or under it, and for all purposes of the title to be conveyed on such sale this deed shall be deemed to be an absolute conveyance of the property afore- 20 30 40

said to the Trustee, and the possession retained by the Railroad Company hereunder shall be deemed to be the possession of the Trustee as absolute grantee; and, upon making of such sale, the Trustee of its successors shall apply the proceeds arising therefrom as follows, to wit:

10 1st. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and all expenses, liabilities and advances made or incurred by the Trustee in operating and maintaining the property hereby conveyed and all taxes, assessments or liens prior to the lien of these presents.

20 2nd. To the payment of the whole amount of principal and interest which shall then be owing and unpaid upon the said bonds, or any of them, whether said principal, by the tenor of said bonds, be then due or yet to become due, and, in case of a deficiency of said proceeds to pay in full the whole amount of said principal and interest owing or unpaid upon said bonds, the said proceeds shall be paid ratably in proportion to the amount owing and unpaid upon said bonds respectively, and
30 without preference of any one bond or of interest due thereon over any of the others.

3rd. To pay over the surplus, if any, to the Railroad Company, its successors, or assigns, or as any court of competent jurisdiction may direct.

The receipt of the Trustee, who shall make the sale hereinbefore authorized, shall be a sufficient discharge to the purchaser or purchasers, at such sale, for his or their purchase money; and such purchaser or purchasers, his or their heirs or as
40 signs or personal representatives, shall not, after

paying such purchase money, and receiving such receipt of the Trustee, be obliged to see to the application of such purchase money upon or for the purposes of these presents, or be in any wise answerable for any loss, misapplication or non-application of such purchase money by the Trustee.

Fifth.—It shall be the duty of the Trustee and its successors, upon proper indemnification, to execute the power of sale hereby granted, or to take appropriate proceedings at law or in equity to enforce the rights of the Trustee and of the bondholders under these presents upon requisition in manner as follows, to wit: 10

Such requisition shall be by not less than a majority in interest of the holders of the bonds hereby secured and then outstanding, and shall be, by an instrument or concurrent instruments in writing, signed by such bondholders, or by their duly authorized attorney or attorneys in fact; and, upon such requisition and proper indemnification, the Trustee shall proceed forthwith to enforce the rights of the Trustee and of the bondholders under these presents by a sale, or by judicial proceedings or otherwise, as such requisition shall indicate. 20

The several remedies in these presents specified are cumulative and not exclusive, one of the other, and shall be in addition to all other remedies to enforce the lien of these presents. 30

Upon any default in the payment of the principal or interest of any of said bonds when the same shall have become due and payable, the Trustee may and upon request in writing of the holders of the majority in interest of said bonds outstanding and proper indemnification, the Trustee shall proceed forthwith to enforce and protect the rights of the Trustee and of the bondholders here- 40

under, according to such requisition; or in default of request or specific instructions by such majority, by action, suit or other judicial proceedings as it, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds secured hereby.

- 10 All proceedings of the Trustee hereunder in regard to enforcing to any extent the lien created by this mortgage or deed of trust, either by taking possession or by sale at auction or by resort to judicial proceedings or by any means authorized or contemplated hereby, shall be at all times subject to the control of the holders of a majority in amount of the bonds issued hereunder and then outstanding, their wishes being expressed in writing to the Trustee; and the holders of a majority
- 20 in amount of said bonds secured hereby and outstanding shall at all times have power, by an instrument in writing, to direct the Trustee to waive any default of the Railroad Company hereunder, except in the payment of the principal of said bonds, or any of them, upon the maturity thereof, upon such terms as may be directed by the said majority in said writing and no action taken by the Trustee or by the bondholders shall prejudice or affect the powers or rights of the Trustee or
- 30 of the bondholders in the event of any subsequent default.

- Sixth.—Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondholders under these presents, the Trustee, pending such proceedings, shall be entitled without further notice to apply for and secure the appointment
- 40 of a Receiver of the property hereby mortgaged, and of the income, rents, issues and profits thereof.

Seventh.—In case of foreclosure and sale under the provisions hereof, the purchasers at such sale shall be entitled, in making settlement for or payment of the purchase money bidden, to pay in toward the payment of such money any of the bonds secured hereby which may be held by such purchasers, counting such bonds and the accrued and unpaid coupons thereon for that purpose at the sum which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds as his or their just share of the net proceeds properly applicable thereto; and if such share of the net proceeds shall be less than the amount then due upon such bonds and coupons, to make such settlement by receipting upon such bonds the amount to be paid thereupon. 10

Eighth.—The Trustee shall not be under any obligation to take any action towards the execution of this trust, which, in its opinion, may be likely to involve it in any personal expense or liability unless first indemnified to its satisfaction. 20

The Trustee may resign or discharge itself of the trust herein created by written notice to the Railroad Company at least three months before such resignation shall take effect, or such shorter time as the Railroad Company shall be willing to accept. 30

Whenever a vacancy shall occur in the office of Trustee hereunder by resignation or otherwise, the Board of Directors of the Railroad Company shall have the right to appoint a successor to fill the vacancy, which appointment shall be attested by the written certificate of the President and Secretary of the said Board of Directors executed in a sufficient number of parts, each of which shall be an original duly signed, sealed and acknowledged and which certificate shall be recorded in 40

the office of the Clerk of the County of Monmouth in the State of New Jersey.

10 The successor of the Trustee so appointed shall continue to be the Trustee hereunder, until a majority in interest of the holders of the bonds hereby secured, and then outstanding, shall appoint a new Trustee or Trustees to act hereunder by filing with the said Clerk of the County of Monmouth a written instrument or concurrent instruments, executed and acknowledged under their hands and seals or the hands and seals of their duly authorized attorneys in fact, in which case, upon the filing of such instrument or instruments, the Trustee or Trustees so appointed shall, without further act or deed or conveyance, become the Trustee or Trustees hereunder; and, in the event of the said
20 Board of Directors refusing or neglecting to fill such vacancy within thirty days after the same shall occur, the same may forthwith be filed by a majority in interest of the holders of the said bonds hereby secured and then outstanding, by making and recording, as aforesaid, the instrument or instruments of appointment hereinbefore specified. An appointment made in the manner hereinbefore prescribed by, or on behalf of a majority in interest of the holders of the said bonds
30 then outstanding shall supercede any appointment theretofore made to fill the vacancy in any other manner whatsoever, and any Trustee or Trustees appointed to fill any such vacancy, or to succeed any Trustee or Trustees hereunder, shall be vested with and subject to all the right, title, interest and estate, powers, duties and trusts herein conveyed and contained, as if originally named in this instrument; provided that with the instrument or instruments of appointment a written acceptance,
40 signed and duly acknowledged by the new Trustee

or Trustees, shall be filed or recorded in the office of the said Clerk.

Ninth.—It is expressly declared to be a condition upon which the Trustee assents to these presents and accepts the hereby created trust, that the Trustee shall not in any manner be held responsible for persons employed by it in the furtherance of this Trust, if selected with reasonable care, nor shall the Trustee or its successors be answerable, except for its or their wilful default; and in all cases after default as is herein provided, the trustee and its successors shall be authorized to pay, reasonable compensation out of the trust estate to such persons as they may employ in the administration or management of this trust, and the Trustee or its successors shall, after such default as aforesaid, be entitled to just compensation for all services rendered by it or by them in connection with such trust, which shall be paid by the Railroad Company or out of the trust estate. The recitals of fact herein contained and contained in the bonds hereby secured, shall be taken as statements of the Railroad Company and shall not be construed as made by the Trustee. The Trustee shall be under no obligation to file, register or record this instrument, provided it be filed and recorded by the mortgagor as a mortgage of real estate.

Tenth.—The several covenants, promises and agreements by the Railroad Company, herein contained, shall be binding as well upon its successors and assigns.

For the debt and bond secured hereby the Railroad Company is liable in *personam* and any deficiency, after exhausting the mortgage security, may be enforced against the Railroad Company but not against its Directors or Stockholders in-

dividually, and it is expressly agreed between the parties hereto and by every person who shall take or hold any bond or bonds issued hereunder, and by every person who shall claim any benefit under this mortgage, that the existing and all future Directors and Stockholders of the Railroad Company shall not be individually liable to any extent or for any purpose or at any time or in any suit or proceeding, with respect to said bonds or any of them, anything in said bonds or in the statutes or laws of any state to the contrary notwithstanding.

Eleventh.—The Railroad Company hereby covenants and agrees with the Trustee to keep insured to an amount satisfactory to the Trustee the buildings, locomotives, tenders, cars, carriages, tools, machinery and equipment so long as this lien hereby created, or any part thereof, is in full force and effect; and until the full payment of the said bonds and interest due thereon; the loss, if any, shall be payable to the Trustee, and the policies representing such insurance shall be delivered to the Trustee; but the Trustee shall be under no obligation to effect any insurance upon the mortgaged premises unless provided with funds sufficient therefor.

Twelfth.—The within mortgage is made to secure the payment of the bonds aforesaid and specified herein, amounting to Five hundred thousand dollars (\$500,000.00) to be issued as aforesaid.

Thirteenth.—Until default on the part of the Railroad Company in the performance of any of the premises, covenants or undertakings herein set forth and the lapse respectively of the periods specified in Article Third, or until a Receiver of the mortgaged property shall have been appointed

as provided in Article Sixth, the said party of the first part shall have the right to remain in possession of all its railroad premises and property hereinafore granted or hereafter acquired and hereby mortgaged, and shall be suffered and permitted to possess and enjoy the same. The Railroad Company shall at all times and from time to time, until default as aforesaid, have full power of management and control of the said railroads and the mortgaged property, with the right to change the motive power and in its discretion, when duly authorized by law, to substitute such motive power as in its judgment shall be for the best interest of the property; and until default, as aforesaid, the Railroad Company shall have full power to sell and dispose of any real estate or other property which in its judgment has become unnecessary for the purposes of the railroad. But the substituted motive power, and the plant connected therewith, shall become subject to the lien of this mortgage, and no real estate shall be sold unless the then market value thereof shall first have been appraised by an appraiser appointed by the Trustee, and unless an amount equal to such appraised value or other property of equal or greater value acquired by the Railroad Company in its discretion shall be deposited with the Trustee or made subject to the lien of this mortgage.

Fourteenth.—Until default, as aforesaid, the Railroad Company shall at any time and from time to time, be permitted to alter, remove, sell or dispose of any buildings, fixtures, machinery or other appliances upon the mortgaged premises, which, in its opinion, cannot be advantageously used in the judicious operation and management of its business; and on the request of the Railroad

Company the Trustee shall convey by way of release or otherwise to the persons designated by the Railroad Company, any such property or any property which by the preceding Article the Railroad Company has power to sell; provided, however, that the Railroad Company shall (and it hereby agrees
 10 that in such cases it will) replace any real estate, buildings, fixtures machinery or other appliances removed, sold or otherwise disposed of by acquiring, subject to this mortgage additional real estate, or by placing upon the mortgaged property, subject to this mortgage, other buildings fixtures, machinery or appliances equal in value to the value of the property so removed, sold or otherwise disposed of, or by paying to the Trustee the appraised value of such property at the time of the execution
 20 any such release.

Until the default, as aforesaid, the Railroad Company may at any time and from time to time, sell, exchange or otherwise dispose of such materials, rolling stock and other like property as may have become old, worn out, disused or undesirable or not needed; renewing the same or substituting other property of equal or greater value; the said materials or property thus substituted to be covered by and subject to the lien of this mortgage;
 30 but the Trustee is not and shall not be charged with any duty as to seeing whether such substitutions are so covered.

Any money received by the Trustee as the proceeds of any sale or exchange or other disposition of property under the provisions of this article, shall, in the discretion of and upon the request of the Railroad Company, be invested by the Trustee, subject to the lien of this mortgage, in real estate, railroads, railroad routes or franchises, materials, rolling stock, building fixtures, machinery
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or other appliances, or in bonds secured by this mortgage, or in bonds, mortgages or securities authorized by law for the investment of trust funds or of the funds of savings banks in the State of New York, which bonds, mortgages or securities shall be held for the further security of the bonds issued and to be issued and outstanding hereunder; but, until default in the payment of the principal or interest of the bonds secured hereby, or some part thereof, the rents, profits, interest and income accruing from such investments shall be paid to the Railroad Company, which, until default as aforesaid, shall also have full power to invest, sell and reinvest any and all moneys, property, bonds, mortgages or securities so acquired, provided that no property shall at any time be sold for less than its actual market value at such time, and provided, also, that, if sold, the proceeds shall be deposited with the Trustee, or other property of equal or greater value shall be made subject to the lien of this mortgage either by depositing the same with or transferring the same to the Trustee or otherwise, as the Railroad Company in its discretion may determine.

Wherever the provisions of this or of the preceding article shall require an appraisal of real estate, or of any interest therein, the values shall be ascertained, by the appraisal of any person appointed or approved in writing by the Trustee. The sworn statement of the President or Treasurer and Chief Engineer for the time being of the Railroad Company, and a copy of a resolution of the Board of Directors of said Company, certified by its Secretary, may be received by the Trustee as sufficient and conclusive evidence of any other facts mentioned in this article, and shall be full protection to the Trustee for any action taken by it on the faith thereof, but the Trustee may in its

discretion require such further and additional evidence as to it may seem reasonable.

10 Fifteenth.—The Railroad Company further cove-
nants with the Trustee, and its successors, and
with all persons, who at any time, become holders of
the said bonds secured hereby, that it and its suc-
cessors and assigns shall and will, at any and
all times, make, do, execute and deliver all such
further acts, deeds, and assurances in the law, as
may reasonably be required for effecting the inten-
tion of these presents, and for the better assuring
and confirming unto the Trustee and its successors
the trust hereby created, and all and singular the
property, both real and personal, privileges, rights
and franchises now owned by the Railroad Com-
pany, or which shall hereafter be owned by it.

20 Sixteenth.—The Trustee and its successors, in
all matters involving active duty or interference
with the trust, shall be entitled to suitable indem-
nity against all loss, liability and expense; shall
be entitled to the advice of counsel in all matters
concerning the trust, and shall be entitled to rea-
sonable compensation for its services and to re-
ceive on demand from the Railroad Company, par-
ty of the first part, all sums due for its services
and expenses, which sums shall be a first lien on the
30 property hereby conveyed and all the property in
its hands belonging to the trust; and the Railroad
Company, party of the first part, hereby declares
and agrees that it will, on demand, promptly pay
to the Trustee entitled thereto all such sums. But
this article shall not relieve any bondholder from
the necessity, if required by the Trustee, of giving
indemnity to be enforceable by the Trustee, in re-
spect of any action requested by such bondholder
40 which the Trustee, looking to the interest of the
whole body of bondholders shall believe ought not
to be taken.

Exhibit C 3.**Record of Foreclosure of Trust
Mortgage.**

HAMILTON TRUST COMPANY and Others, Complainants, and	Garrison & McManus, Solicitors	10
ATLANTIC HIGHLANDS, RED BANK & LONG BRANCH ELEC- TRIC R. Co, and Others, Defendants.	Copy of Docket Entries 23-615.	

1900

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July 25, Bill, costs, 2 appearances, James Steen, solicitor, 11 Answer, James Steen, solicitor, Subpoena and (12) tickets returnable Sept. 4, (8) service acknowledged, (5) duly served, Sheriff Monmouth, Oct. 4 appearance and answer, James E. Degnan, sol'r, 5 Decree *pro con.* 6 appearance and answer, Wallis, Edwards & Bumsted, solicitors, 24 order reference, 21 searches, report, rule *nisi*, (5) notices, 6 Decree, (3) costs, 24 *fi fa.* issued, Feb. 11, 1901, report of sale, 23 order confirming sale.

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Exhibit C 4.

Henry S. Terhune, Special Master in Chancery of the State of New Jersey,

Deed.

Dated Feby. 23, 1901.

Ackd. " 26, "

Recd. " 28, "

Book 664, p. 365, &c. of Deeds for Monmouth County.

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To

Lindley M. Garrison.

Following are the recitals and description :

Whereas a certain writ of *fieri facias* lately issued out of the Court of Chancery of the State of New Jersey, to the said Henry S. Terhune, Special Master in Chancery of New Jersey, directed and delivered in the following words, to wit:

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"New Jersey ss: The State of New Jersey to Henry S. Terhune, Esquire, Special Master in Chancery of New Jersey.

[SEAL.]

Greeting:

30

Whereas, on the sixth day of December, in the year of our Lord, One thousand nine hundred, by a certain decree made in our Court of Chancery before our Chancellor at Trenton, in a certain cause therein pending, wherein Hamilton Trust Company, trustee, *et als.*, are complainants, and Atlantic Highlands, Red Bank and Long Branch Electric Railway Company, *et als.*, are defendants, it was ordered, adjudged and decreed that the whole of the mortgaged premises, franchises, rights, privileges and property described in the complainant's mortgage and more fully set forth and described in the bill of complaint in this cause, which are in said mortgage described as follows:—

40

to wit:

All and singular the property and franchises of the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company of every nature and description, whatsoever whether owned at the date of said mortgage on the first day of July eighteen hundred and ninety five, or thereafter acquired, including all its railroads, railroad routes, railroad property and all its franchises to maintain, construct, or operate railroads, and to exact fares thereon, and all its rights, privileges and franchises, to use the routes, roads and franchises of other companies, "including particularly the following described properties namely: All the right, title and interest of the Railroad Company in and to the following railroad routes and the franchises of maintaining and operating the same, all being in the county of Monmouth, in the State of New Jersey, that is to say:

Beginning at the centre of First Avenue, in the borough of Atlantic Highlands, at the shore of the Bay and running thence along First Avenue to the public road leading from Leonardville to Navesink; thence along said road to the centre of the road leading from Chappel Hill to the Highlands; thence along said road to McDonald's corner, and thence along the road leading to Locust Point, and continuing along the same to the northerly end of the Oceanic Bridge; thence across the Oceanic Bridge, to the centre of the road running between Oceanic, Fair Haven and Red Bank, and thence along said road to the centre of Prospect Street in the Town of Red Bank and thence along Prospect Street to Wallace Street; thence along Wallace Street to the centre of Broad Street; thence a spur from the centre of Broad Street West on Monmouth Street, to Maple Avenue; thence on Maple Avenue south to Oakland Street; thence on Oakland Street, west to West Street and thence

to the New Jersey Southern Railroad station corner of West and Oakland Street, and thence again along Broad Street and continuing along the Red Bank and Eatontown Turnpike to the middle of the Shrewsbury road, and thence along said road to a point in the middle of the Red Bank Turnpike and in the line with the middle of the Eatontown and Long Branch Turnpike in the village of Eatontown, and thence along the Long Branch Turnpike to a point in the middle of Broadway opposite the centre of Oak Hill avenue in the City of Long Branch; thence along Broadway to the west side of Ocean Avenue, in said City of Long Branch.

Together with the privileges, rights and franchises then owned by the Railroad Company, or which were thereafter owned or acquired by it, and all lands and leasehold interests then or thereafter owned or acquired for railways, power houses, depots, or stations and all buildings erected or which thereafter may be erected thereon, and all the locomotives, tenders, motors, cars, carriages, tools, chattels, electric poles, lines or wire, machinery and equipment, then owned, or thereafter owned by the Railroad Company and all rights, privileges, and franchises then acquired or thereafter acquired by the Railroad Company whether by contract, lease or otherwise, to use the routes, roads, tracks and railway equipment of any other street surface railroad corporation which may be acquired by the Railroad Company.

The lines of railway constructed and operated are in said bill described as follows:

Description of the Route of the Atlantic Highlands
and Red Bank and Long Branch Electric
Railway Company.

(Then follows description of route.)

Description of the Route from Monmouth Street
Through West Street, Front Street and Mon-
ford Place.

(Then follows description of route.)

Together with all and singular, the rights, lib- 10
erties, privileges, hereditaments and appurtenances,
thereunto belonging, or in any wise appertaining,
the reversion and remainders, rents, issues and
profits thereof, and also all the estate, right, title,
interest, property, claim and demand of the said
defendants, of, in, to and out of the same, be sold
to pay and satisfy in the first place, unto the said
complainants, its costs in this cause to be taxed;
in the second place, to the defendant Michael J.
Fogerty, the sum of two thousand and forty nine 20
dollars and eighty-six cents, together with lawful
interest thereon from the twenty-fourth day of
November, nineteen hundred; to the defendant, the
New York and Long Branch Railroad Company
the sum of two hundred and twelve dollars and
thirty cents; together with lawful interest thereon
as aforesaid; to the defendant The Inhabitants of
the Township of Eatontown, in the county of
Monmouth, the sum of ten thousand two hundred
and fifty eight dollars and six cents, together with 30
lawful interest thereon, as aforesaid, to the defend-
ant The Long Branch Commission, the sum of four
hundred and fifty three dollars and three cents,
together with lawful interest thereon as aforesaid,
upon their several receiver's certificates issued by
James E. Degnan receiver; and also the costs of the
said defendants; in the third place, unto the com-
plainant Hamilton Trust Company trustee, the
sum of five hundred thousand, three hundred and
sixty five dollars and nine cents, principal and in-
terest of the bonds issued, secured by a certain 40

10 mortgage made by the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company to Hamilton Trust Company, trustee, bearing date the first day of July, eighteen hundred and ninety-five, and of record in the Office of the Clerk of the County of Monmouth in Book 191 of Mortgages pages 223, &c., Together with lawful interest there-
 20 on as aforesaid, until the same be paid and satisfied, and also to said Hamilton Trust Company, trustee, the sum of two hundred and eighteen dollars and fifty cents as just compensation for all services rendered by it in connection with its trust except the certifying of the bonds secured by its mortgage, and that for that purpose a writ of *fieri facias* should issue directed to Henry S. Terhune, Esq., one of the special masters of this Court commanding him to make sale as aforesaid, and that the surplus money arising from said sale if any there be, should be brought into said Court subject to the further order of said Court of Chancery at Trenton, doth and may more fully appear.

And whereas the costs of the said complaint have been duly taxed at two thousand, four hundred six dollars and eighty eight cents, the costs of the defendant The Inhabitants of the Township of Eatontown, in the county of Monmouth, have been
 30 taxed at Thirty-five dollars and eighty eight cents; the costs of the defendant Michael J. Fogerty have been taxed at eighteen dollars and twenty two cents.

Therefore you are hereby commanded that you cause to be made by a sale of the whole of the mortgaged premises, franchises, rights, privileges, and property embraced in the complainants' mortgage, and more fully set forth and described in the bill of complaint in this cause or so much thereof as
 40 may be necessary the moneys aforesaid, and that

out of the proceeds of said sale you do pay in the first place unto the said complainant Hamilton Trust Company trustee the sum aforesaid, taxed as complainant's costs; in the second place, to the defendant Michael J. Fogerty, the sum of two thousand and forty-nine dollars and eighty-six cents, together with lawful interest thereon as aforesaid; 10
to the defendant The New York and Long Branch Railroad Company, the sum of two hundred and twelve dollars and thirty cents, together with lawful interest thereon as aforesaid; to the defendant The Inhabitants of the Township of Eatontown in the county of Monmouth, the sum of ten thousand, two hundred and fifty eight dollars, and six cents, together with lawful interest thereon as aforesaid; to the defendant The Long Branch Commission, the sum of four hundred and fifty three dollars and three cents, together with lawful interest thereon as aforesaid; in full, if the proceeds so far extend, otherwise *pro rata* with their several costs taxed to them as aforesaid, and to the defendant James E. Degnan, receiver, his costs to be taxed. And 20
in the third place, to the complainant Hamilton Trust Company, trustee, the sum of five hundred thousand three hundred and sixty five dollars and nine cents, together with lawful interest thereon as aforesaid, and the further sum of two hundred and eighteen dollars and fifty cents, and that you have 30
those moneys before our said Chancellor in our Court of Chancery, aforesaid at Trenton, on the first Tuesday of February, next, to render to the said complainant and defendants, and also the surplus moneys if any there be, to abide by the further order of our Court, according to the decree aforesaid.

And you are to make return at the time and place aforesaid by certificate under your hand, 40

of the manner in which you shall have executed this our writ, together with this writ.

Witness William J. Magie, Esquire, our Chancellor, at Trenton, aforesaid, the twenty fourth day of December, in the year of our Lord, one thousand nine hundred.

10	Garrison & McManus, Sol'rs.	L. A. Thompson, Clerk."
----	--------------------------------	----------------------------

as by the said writ duly recorded in the Clerk's Office of the Court of Chancery of the State of New Jersey, in Book "A-8" page 552 &c., will more fully appear.

20	And to the end that a sale of the said lands, premises, franchises, rights, privileges, and property should be made pursuant to the Statute in such case made and provided, the said Henry S. Terhune, special master as aforesaid, by public advertisements, signed by himself and set up in five or more public places in the said County of Monmouth, one whereof was in each township, ward and and city, where the lands, real estate, and property described in said execution are situate at least four weeks next before the time appointed for selling the same, and also published in the Monmouth Democrat, The Red Bank Register,
30	The Long Branch Record, The Eatontown Advertiser and The Standard, five of the newspapers designated by said Henry S. Terhune, special master as aforesaid, printed and published in the County of Monmouth, in which all of said lands and real estate are situate (one of which the Monmouth Democrat, being a newspaper printed and published at the county sea of said county of Monmouth) at least four weeks successively, once a week, next preceding the time appointed for said
40	sale, did give public notice that the said lands, real

estate, franchises, rights, privileges and property would be exposed to sale at public vendue at the Globe Hotel, located at Red Bank, in the Township of Shrewsbury, County of Monmouth and state of New Jersey, on Monday the elventh day of February, nineteen hundred and one, at two o'clock in the afternoon and at the time and place so appointed, did expose the said lands, premises, franchises, rights, privileges, and property in one parcel to sale at public vendue to the highest bidder, and the said Lindley M. Garrison, being the highest bidder therefor, the same were then and there, between the hours of twelve and five o'clock in the afternoon of the day last aforesaid, struck off and sold to him for the sum of two hundred and fifty thousand dollars according to the form of the statute in such case made and provided. 10

And whereas the said Henry S. Terhune, Special Master as aforesaid, reported the said sale in writing to the Chancellor stating the name of the purchaser of the said lands, premises, franchises, rights privileges, and property, and the price obtained therefor, annexing to said report, an affidavit that said lands, premises, franchises, rights, privileges, and property were sold for the highest and best price the same would at the time of the sale bring in cash, and the said Chancellor did, by an order made on the Fourteenth day of February, nineteen hundred and one, confirm the said sale, as valid and effectual in law and directed the said Henry S. Terhune, Special Master as aforesaid, to execute a good and sufficient conveyance in law, to the said Lindley M. Garrison, the purchaser, for the said mortgaged premises, franchises, rights, privileges and property, so sold as by the said order of confirmation, reference being thereto had, will more fully appear. 20 30 40

Now this indenture witnesseth that the said Henry S. Terhune, Special Master as aforesaid, for and in consideration of the sum of Two hundred and Fifty Thousand Dollars, to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain, sell, convey, assign, and transfer
 10 unto the said Lindley M. Garrison, his heirs and assigns:

All and singular the property and franchises of the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company, of every nature and description, being the mortgaged premises, franchises, rights, privileges and property described in the complainant's mortgage, more fully set forth and described in the bill of complaint in
 20 said cause, and directed to be sold by said execution as aforesaid.

Together with the hereditaments and appurtenances thereto belonging or appertaining:

To have and to hold the said above mentioned described and referred to mortgaged premises, franchises, rights, privileges, and property with the appurtenances, unto the said Lindley M. Garrison, his heirs and assigns forever, as fully and absolutely as the said Henry S. Terhune, party of the
 30 first part, special master as aforesaid, can, may, or ought, by virtue of the said execution, and of the Statutes in such cases made and provided, to grant, bargain, sell, convey, assign and transfer the same.

Exhibit C 5.

Lindley M. Garrison	Deed.	
and wife	Dated April 1, 1901,	
	Ackd. do	
to	Rec'd " 8 "	
	Book 667, p. 126 of	10
The Monmouth County	Deeds for Monmouth	
Electric Company, a	County, Consideration	
corporation.	\$1.00.	

Recites as follows:

Witnesseth, that whereas at a Special Master's sale held by Henry S. Terhune, Special Master in Chancery of New Jersey, on the eleventh day of February One thousand Nine Hundred and One, by virtue of a decree of the Court of Chancery of New Jersey in a cause therein depending wherein the Hamilton Trust Company, and others, were complainants and the Atlantic Highlands, Red Bank & Long Branch Electric Railway Company, and others, were defendants, and wherein the complainants prayed for the foreclosure of certain mortgage, made by said Railroad Company to said Trust Company, dated the first day of July One Thousand eight hundred and ninety-five, the said Lindley M. Garrison became the purchaser of all and singular the rights and privileges, franchises and property hereinafter more particularly described which were of the Atlantic Highlands, Red Bank & Long Branch Electric Railway Company, which purchase was made however, by said Lindley M. Garrison for and on account of divers persons who were thereby constituted a body, politic and corporate by virtue of the Statute in such case made and provided and as such have since assumed the name of "The Monmouth County Elec-

tric Company," the party of the second part hereto, and the successor in interest to said Atlantic Highlands, Red Bank & Long Branch Electric Railway Company, and

10 Whereas said sale was afterwards confirmed by the Chancellor and a deed for said property duly executed to said Lindley M. Garrison, dated the Twenty-Third day of February One Thousand Nine Hundred and One and recorded in the Monmouth County Clerk's Office in Book 664 of Deeds on pages 365 &c.

20 Now, therefore, the said party of the first part for and in consideration of One Dollar lawful money of the United States to them paid the receipt whereof is hereby acknowledged have given, granted, bargained, sold, assigned, transferred, released, enfeoffed, confirmed, and conveyed, and by these presents do give, grant, bargain, sell, assign, transfer, release, enfeoff, confirm, and convey unto the said The Monmouth County Electric Company, its successors and assigns All and singular the property and franchises which were of the Atlantic Highlands, Red Bank & Long Branch Electric Railway of every nature and description whatsoever, whether owned at the date of said mortgage on the first day of July Eighteen Hundred and
30 Ninety Five, or thereafter acquired, including all its railroads, railroad routes, railroad property and all its franchises to maintain, construct or operate railroads, and to exact fares thereon, and all its rights, privileges and franchises to use the routes, roads and franchises of other companies, including particularly the following described properties, namely: All the right, title and interest which were of the Railroad Company in and to the following railroad routes and the franchises of main-
40 taining and operating the same, all being in the

County of Monmouth, in the State of New Jersey,
that is to say:

(Then follows description, which is the same as
in Exhibit C.4.)

Exhibit C 6.

Eliza V. Foster

Deed.

10

to

Dated June 1, 1897,

Ack'd " 4, "

Rec'd Sept. 13, "

Atlantic Highlands,
Red Bank and Long
Branch Electric Rail-
way Company.

Lib. 594 p. 179 of Deeds
for Monmouth County,
Consideration \$4,500.

Conveys the following described property: All
that certain tract or parcel of land and premises,
hereinafter particularly described, situate, lying
and being in the Township of Ocean, in the County
of Monmouth and State of New Jersey, at Long
Branch,

20

Beginning at a point on the east side of Fifth
Avenue two hundred and fifty-two feet and six
inches from the corner of Broadway and Fifth Ave-
nue, and running thence (1) along the east side
of said Fifth Avenue, north one degree and seven-
teen minutes east seventy-five feet and six inches;
thence (2) south eighty-eight degrees and forty-
three minutes east one hundred and fifty feet, more
or less, to the line of lands formerly belonging to
Michael M. Wooley and others; thence (3) south
one degree and seventeen minutes west seventy-five
feet and six inches; thence (4) north eighty-eight
degrees and forty-three minutes west one hundred
and forty-nine feet, nine inches to the place of be-
ginning; together with the right of ingress and
egress at all times over that portion of land in front

30

40

thereof, designated and known as Fifth avenue.

The said land and premises are conveyed and sold upon the following expressed covenants and conditions, to wit:

That no building shall ever be erected thereon nearer the line of said Fifth Avenue than twenty-five feet, and that the said premises or any part thereof shall not be sold, conveyed, let, or allowed to be occupied by any person of Italian or African descent.

Full covenants, except as to existing leases to present occupants.

Exhibit C 7.

ASSESSMENT RECORD, TOWNSHIP OF OCEAN.

	Names	Residence	De. scrip- tion.	North	South	East West	No. of Acres	Real	Remarks
10	1898								
	A. H. R. B. L. B. Trolley Co.	Bill to A. G. Greenbury, 29 B'way.	1 H. & L.	St. Vincent.	Nastasia.	5th Ave.	c.s.s. 1500	24.00	Tax
20	1899								
	Atlantic Highlands, Red Bank and Long Branch Trolley Co.	Bill to James E. Degnan, Red Bank	1 H. & L.	St. Vincent.	Nastasia.	5th Ave.	c.s.s. 1500	21.60	Tax
30	1900								
	Atlantic Highlands, R. Bank & L. B. Trolley Co.	Bill to James E. Degnan, R. Bank.	Foster H. & L.	Foster.	St. Vincent.	5th Ave.	c.s.s. 1500	23.25	Tax
	1901								
	Monmouth Electric Co.	Red Bank	1 H. & L.	St. Vincent.	Nastasia.	5th Ave.	c.s.s. 1500	23.25	Tax
	1902								
	Monmouth Electric Co.	Red Bank N. J.	1 H. & L.	St. Vincent.	Nastasia.	5th Ave.	c.s.s. 1500	24.45	Tax
40	1903								
	William Hayes.	L. B.	1 H. & L.	St. Vincent.	Nastasia.	5th Ave.	c.s.s. 1200	26.55	Tax

Exhibit C 8.

Tax Bill.

Tax of 1901.

Long Branch, N. J., 10/1.

Monmouth Electric Co.

To Township of Ocean, Dr.

10

Description of Property other side.

Valuation of Real Estate \$10,000

" " Personal Estate 12,000

Total Amount

Indebtedness

Amount of Taxable Property \$220.00

Rate per cent. \$10.10 on \$1,000 \$222.20

Special School Tax, Dist. 85, \$5.40 on \$1,000 118.80

" " " Ocean Township Dist., \$2.60 20
on \$1,000.

Poll Tax

Dog Tax

Costs

Interest

Amount of Tax

\$341.00

Credit by

\$

30

Received payment,

William R. Joline, Collector.
per J. W. S.

(Endorsed).

	H. & L. Martin St.	\$1500
	Lot Grand Ave.	300
	" Jackson St.	200
	" 7th Ave.	800
	" Lippincott Ave.	500
10	" Hewing Estate	500
	" 6th Ave.	500
	" Lippincott Ave.	500
	" 6th Ave.	500
	" 5th Ave.	500
	" 7th "	800
	" Rockwell Ave.	1000
	" 5th "	500
	" Dudley St.	400
	H. & L. 5th Ave. #	1500
20	# We paid taxes on H. & L. for 1901.	
	Voucher #140.	

Exhibit C 9.

Tax of 1902.

Long Branch, N. J., Dec. 20th, 1902.

Monmouth Electric Co.

To Township of Ocean, Dr.

Description of property.

10

See description on other side.

Valuation of Real Estate 10,000

" " Person Estate 12,000

Total Amount

Amount of Taxable Property

22,000

Rate per cent. \$11.10 on \$1000 244.20

Special School Tax, Dist. 85, \$5.20 on \$1000. 114.40

" " " Ocean Township Dist.

20

\$2.20 on \$1000

Poll Tax

Dog Tax

Costs

Interest

Amount of Tax

Credit by

F. P. M. \$358.60

Received payment,

Wm. R. Joline, Collector.

30

Per J. W. S.

(Endorsed).

	H. & Lot Martin St.	15.00
	“ Grand Ave.	3.00
	“ Jackson St.	2.00
	“ 1 & 2 7th Ave.	8.00
	“ 29 Lippincott Ave.	5.00
	“ 19-20-37 Crawford Lots	5.00
10	“ 6th Ave.	5.00
	“ Lippincott Ave.	5.00
	Adams South 6th Ave.	5.00
	H. & Lot No. 5 5th Ave. #	5.00
	“ 7th Ave.	8.00
	“ Rockwell Ave.	10.00
	“ Dudley St.	4.00
	H. & Lot 5th Ave.	5.00
	Lot 5th “	15.00
20	Personal	12,000.00
		12,100.00

We paid taxes on H. & L. for 1902.
Voucher #398.

Exhibit D 1.

New York, November 7, 1901.

Mr. Thomas P. McKenna,
Long Branch,
New Jersey.

30

Dear Sir:—

Your valued favor of October 31st has been received.

This whole matter will have to be settled with Mr. Fletcher, and I will have to make up to you any difference between the face of your claim and the amount received by you in settlement.

40

I have done all I can to have your claim recognized, but the members of the re-organization committee do not look upon the services rendered

to us in Long Branch with as liberal a view as I do.

It is my opinion that you will do much better in making your settlement direct without my presence, and would suggest that you do so.

Very truly yours,

A. G. Greenberg.

10

Exhibit D 2.

Feby. 8th, 1901.

Thos. P. McKenna.

In reference to your claim it will be considered on basis of claim filed for cash advanced to the extent of the full amount of your claim, and when the re-organization is completed you will receive 24% of your claim in Bonds & 76% of your claim in stock of the New Company.

20

As to the services rendered both to myself and the R. R. Co. and to the amount of your claim as presented to the Receiver I make no objections but will do and have done all possible to further said claim.

I further agreed in the event of your accepting the above outlined settlement, to redeem said securities from you, to the best of my ability to save you from any loss.

Adolph G. Greenberg.

30

To Mr. Thomas P. McKenna,
Long Branch, N. J.

40

Exhibit D 3.

Tax Collector's Office at Town Hall.

Office hours from 9 A. M. to 12 M. daily. Taxes may be paid in cash, by certified check or postal order payable to order of

Thos. R. Wooley,
Collector.

10

Address P. O. Box 160,
Long Branch, N. J.

Take Notice.

By virtue of the original act, and the supplement approved April 8th, 1875, Five Per Cent. will be added to all taxes remaining unpaid on the 15th day of October, 1900, and an additional five per cent. on all taxes remaining unpaid on the 1st day of December, 1900, and five per cent. additional on all unpaid on the 1st day of February, 1901.

20

Commissioners of Appeal will meet at the office of the Long Branch Commissioners, Town Hall on Tuesday, September 11th, 1900, at 9 o'clock A. M.

W. H. DeNyse,
Levi G. Bliss,
Wm. R. Warwick,

Commissioners of Appeal.

30

40

Taxes of 1900.

Long Branch, N. J., Aug. 7, 1900.

Thos. P. McKenna

To Long Branch Commission, Dr.

Description of Property 1 H & L

5th Ave.

Valuation of Real Estate 1400 10

Valuation of Personal Estate

Amount of Taxable Property 1400

Rate Per cent., \$3.00 on \$1,000 4.20

Watering Streets \$1.50 on \$1,000

Exemptions—Firemen, Soldiers

or Militiamen

Amount of Tax \$4.20 20

Received Payment, Oct. 15, 1900.

Thos. R. Woolley

Exhibit D 4.

Tax Collector's Office at Town Hall.

Office hours from 9 A. M. to 12 M. daily. Taxes
may be paid in cash, by certified check or postal
order payable to order of

Thos. R. Woolley, 30
Collector..

Address P. O. Box 16,

Long Branch, N. J.

Take Notice.

By virtue of the original act, and the supplement
approved April 8th, 1875, five per cent. will be
added to all taxes remaining unpaid on the 15th
day of October, 1901, and an additional five per
cent. on all taxes remaining unpaid on the 1st day 40

of December, 1901, and five per cent. additional on all unpaid on the 1st day of February, 1902.

Commissioners of Appeal will meet at the office of the Long Branch Commissioners, Town Hall on Tuesday, September 10th, 1901, at 9 o'clock A. M.

W. H. DeNyse,
Levi G. Bliss,
10 Wm. R. Warwick,

Commissioners of Appeal.

Taxes of 1901.

Long Branch, N. J., Aug. 6, 1901.

Mr. Thomas P. McKenna

To Long Branch Commission, Dr.

Description of Property H & L
5th Ave.

Valuation of Real Estate	1400
20 Valuation of Personal Estate	

Amount of Taxable Property	1400
Rate Per Cent., \$3.00 on \$1,000	4.20
Watering Streets \$1.50 on \$1,000	2.10

Exemptions—Firemen, Soldiers
or Militiamen

Amount of Tax,	6.30
Duplicate receipts.	

30 Received Payment, Oct. 15, 1901.

Thos. R. Woolley
Collector.

Exhibit D 5.

Tax Collector's Office at Town Hall.

Office hours from 9 A. M. to 12 M. daily. Taxes may be paid in cash, by certified check or postal order payable to order of

40 Thomas R. Woolley,
Collector..

Address P. O. Box 160,
Long Branch, N. J.

Take Notice.

By virtue of the original act, and the supplement approved April 8th, 1875, five per cent. will be added to all taxes remaining unpaid on the 15th day of October, 1899, and an additional five per cent. on all taxes remaining unpaid on the 1st day of December, 1899, and five per cent. additional on all unpaid on the 1st day of February, 1900. 10

Commissioners of Appeal will meet at the office of the Long Branch Commissioners, Town Hall on Tuesday, September 12th, 1899, at 9 o'clock A. M.
H. B. Bannard,
W. H. DeNyse,
Levi G. Bliss,

Commissioners of Appeal.

Taxes of 1899. 20

Long Branch, N. J., Aug. 8, 1899.

Mr. Thos P McKenna

To Long Branch Commission, Dr.
Description of property H & L
5th Ave.

Valuation of Real Estate 1400

Valuation of Personal Estate

Amount of Taxable Property 1400 30

Rate Per Cent., \$3.00 on \$1,000 4.20

Watering Streets \$1.50 on \$1,-
000 1.50

Exemptions—Firemen, Soldiers
or Militiamen

Amount of Tax 2.70

Received Payment, Oct. 14, 1899.

Thos. R. Woolley
Collector. 40

Exhibit D 1, June 6th.

Tax 1895.

Collector's Office at Town Hall.

Long Branch, N. J., 189

Mrs. Jane Poole Est

To The Long Branch Commission, Dr.

10 Description of Property—1 Lt adj St between Fifth
Ave

Valuation of Real Estate 350

Valuation of Personal Estate

Amount of Taxable Property 350

Rate Per Cent., \$3.00 on \$1,000 1.05

Watering Streets \$1.50 on \$1,000 —

Penalty Feb. 1/96 16

1/2 advance 1.32

20 Exemption—Firemen, Soldiers
or Militiamen, —

Amount of Tax 2.53

Tax of 1895.

Penalty added Oct. 15

Dec. 1

Feb. 1

Received payment, Aug. 31/96

Thos. R Woolley Collector.

30

40

Exhibit D 2, June 6.

Long Branch, N. J., March 1894.
1891 Tax

M. Ellen Gill

To Township of Ocean, Dr.

Description of Property 2 Lot

5th Ave

10

Valuation of Real Estate 600

Valuation of Personal Estate

Total Amount 600

Indebtedness

Amount of Taxable Property 600

Rate Per Cent., \$11.30 on \$1,000 6.78

Special School Tax, Dist. 85,
\$4.90 on \$1,000 2.94

Special School Tax, Dist. 90 1/2, 20
\$3.90 on \$1,000

Poll Tax

Costs

Interest

Amount of Tax 9.72

Credit by

Received payment,
Duplicate.

30

William R. Joline, Collector.

Exhibit D 3, June 6.

Long Branch, N. J., Mch 4 1894
Tax 1892

M Ellen Gill

To Township of Ocean, Dr.

Description of Property 2 Lots 5th Ave

10 Valuation of Real Estate 600

Valuation of Personal Estate

Total Amount 600

Indebtedness

Amount of Taxable Property 7.39

Rate Per Cent., \$12.33 on \$1,000 7.39

Special School Tax, Dist. 85, \$4.20 on \$1,000 2.52

Special School Tax, Dist. 87 .60 on \$1,000

20 Special School Tax, Dist. 90 1/2 .40 on \$1,000

Sea Bright Commission, \$2.35 on \$1,000

Poll Tax

Dog Tax

Costs

Interest

Amount of Tax 9.91

Credit by

Received payment,

30 Duplicate.

William R. Joline, Collector.

Exhibit D 4, June 6.

Long Branch, N. J., Mch. 4 1894
Tax 1893

Ellen Gill

To Township of Ocean, Dr.

Description of property 2 Lots 5th Ave		10
Valuation of Real Estate	600	
Valuation of Personal Estate		
Total Amount	600	
Indebtedness		

Amount of Taxable Property	600	
Rate Per Cent. \$10.25 on \$1,000		6.15
Special School Tax, Dist. 85 \$4.10 on \$1,000		2.46
Special School Tax, Dist 90 1/2 \$2.50 on \$1,000		
Special School Tax, Dist. 818, \$1.25 on \$1,000		20
Poll Tax		
Dog Tax		
Costs		
Interest		

Amount of Tax	8.61
Credit by	
Received payment	
Duplicate.	

William R. Joline, Collector. 30

Exhibit D 5, June 6.

Long Branch, N. J., Sept. 1st 1896
Tax 1894.

Thos. McKenna

To Township of Ocean, Dr.

Description of Property Lot 5th Ave Wm C. Poole

10 Lot

Valuation of Real Estate \$300

Valuation of Personal Estate

Total Amount

Indebtedness

Amount of Taxable Property 300

Rate per cent., \$10.75 on \$1,000 3.23

Special School Tax, Dist. 85 \$4.00 on \$1,000 1.20

Special School Tax, Dist. 90 1/2 2.75 on \$1,000

20 Poll Tax

Dog Tax

Costs

Interest

Amount of Tax 4.43

Credit by

Received payment,

William R. Joline, Collector.

30

Per J. W. S.

Exhibit D 6.

Article of Incorporation
of

Atlantic Highlands, Red Bank and Long Branch
Electric Railway Company.

40 This is to certify that we, David S. Arnott, Silas
B. Dutcher, William H. Hazard, all of Brooklyn,
County of Kings, and State of New York; Andrew

J. Allen, of Hoboken, County of Hudson, State of New Jersey, William T. Parker of Little Silver, Monmouth County, New Jersey, Samuel S. Whitehouse and Benj. Frick of Brooklyn, N. Y., Charles B. Parsons, William T. Corlies and Arthur A. Patterson of Red Bank, N. J., and James Steen of Eatontown, N. J. do hereby associate ourselves into a company for the construction and operation of motors, cables, and other machinery for supplying motive power to street railways, and the necessary apparatus for applying the same, and the locating, constructing, equipping, maintaining and operating of street railways, and other railroads now operating or to be hereafter operated as street railways, for the public use in the transportation of persons and property, within and throughout the state of New Jersey, under and by virtue of an act of the Legislature of the State of New Jersey, entitled "An Act to authorize the formation of traction companies, for the construction and operation of street railways, or railroads operated as street railways, and to regulate the same," approved March 4th, 1893, and the several supplements thereto and acts amendatory thereof, and to that end we do, by this our certificate, set forth:

First: The name which we have assumed to designate such company and to be used in its business and dealings is Atlantic Highlands Red Bank and Long Branch Electric Railway Co.

Second: The place in this State where the principal office of the company is located is at Red Bank, in the County of Monmouth.

Third: The total amount of the capital stock of said Company is Five Hundred Thousand Dollars;

the number of shares into which the same is divided is Five Thousand, and the par value of each share is one hundred dollars. The amount with which it will commence business is twenty five thousand dollars.

- 10 Fourth: The names and residences of the stockholders, and the number of shares held by each, are as follows, to wit:

	Names.		
	Residences	No. of Shares.	
	David S. Arnott	Brooklyn, N. Y.	150
	Silas B. Dutcher	Brooklyn, N. Y.	25
	William H. Hazard	Brooklyn, N. Y.	25
20	A. J. Allen	Hoboken, N. J.	5
	William T. Parker	Little Silver, N. J.	5
	S. S. Whitehouse	Brooklyn, N. Y.	10
	Benj. Frick	Brooklyn, N. Y.	5
	Charles B. Parsons	Red Bank, N. J.	5
	William T. Corlies	Red Bank, N. J.	5
	Arthur A. Patterson	Red Bank, N. J.	5
	James Steen	Eatontown, N. J.	10

- 30 Fifth: The period at which said company shall commence business is the sixth day of April A. D. eighteen hundred and ninety five; and the period at which it shall terminate is the sixth day of April A. D., Nineteen hundred and ninety-five

In witness whereof, we have hereunto set our

hands and seals the sixth day of April A. D. eighteen hundred and ninety five.

Signed and sealed in the
presence of

David S. Arnott	[L. S.]	
Silas B. Dutcher	[L. S.]	
W. H. Hazard	[L. S.]	10
A. J. Allen	[L. S.]	
Samuel S. Whitehouse	[L. S.]	
Benj. Frick	[L. S.]	
Charles B. Parsons	[L. S.]	
James Steen	[L. S.]	
William T. Parker	[L. S.]	
W. T. Corlies	[L. S.]	
A. A. Patterson	[L. S.]	

State Treasurer's Office.

Trenton, N. J., April 9th, 1895. 20

Received from the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company, the sum of Twenty Five Thousand Dollars (\$25,000) the same being deposited with me, as required by "An Act to authorize the formation of Traction Companies for the construction and operation of Street Railways or Railroads operated as Street Railways and to regulate the same" approved March Fourteenth A. D. Eighteen Hundred and Ninety Three, and Supplements thereto. 30

G. B. Swain,
State Treasurer.

Endorsed:

"Received April 8th, 1895 and recorded in the Clerk's Office of the County of Monmouth in Book C of Corporations page 96 &c.

Theo. Aumack,
Clk."

"Filed Apr 9 1895
Henry C. Kelsey, Secretary of State." 40

Copy of Bill Filed with Receiver.

Atlantic Highlands, Red Bank & Long Branch
Electric Railway Co.

To Thomas P. McKenna, Dr.

1896

	June 25	To one day attention to consents	\$10.00
10	July 14	" one-half day attention to consents	5.00
	" 16	" one day attention to consents	10.00
	Aug. 10	" one day at New York procuring March consent, drawing agreement regarding asphalt pavement etc.	15.00

1897

20	May 7	" procuring bids for moving of Newing house	5.00
	" 11	" drawing lease with Mrs. Goff and attention to procuring erection of same, several trips to her house and general attention to the same, also drawing two other leases regarding this property and attention to their execution	25.00
30	June 7	" services seeing witness preparing and procuring affidavits in the Newing injunction case, several days, in Jersey City	50.00
	" 12	" preparing new affidavits in the Newing case, one day	15.00
40	" 14	" attention to adjourned hearing one day at Newark	15.00

June 21	"	trip to New York seeing Mr. Smith and Mr. Barrett	15.00	
July 7	"	preparing affidavits of Mr. Allen as to posting notices in condemnation proceedings	1.00	10
" 9	"	services preparing testimony Maps, title &c. in the Bliss and McWood certiorari cases and attendance before Judge Cummere, several days	30.00	
" 14	"	services in regard to Mr. Greenberg's arrest	5.00	
" "	"	closing sale of Campbell house with Gilmore West	10.00	20
" 22	"	attendance before meeting of appraisers in condemnation proceedings	5.00	
" 27	"	attention to Rachel Slocum certiorari assistance in preparation of case, trips to Trenton and Elizabeth to see C. J. Magie	50.00	
" 30	"	one day arranging settlement of Slocum case	15.00	30
			291.00	

1897

Sept. 2	To	arranging with Mrs. St. Vincent for removal of Foster house across her lot, drawing agreement to that effect &c.	10.00	40
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	Sept. 2	To	attention to Commission taxes, appearance before Board of Commissioners several times	15.00
10	Oct. 4	"	drawing distress warrant and attention to distress proceedings against Lizzie Goff	5.00
	" 4	"	drawing bond and mortgage to Long Branch Banking Co. and attention to execution of same	5.00
	Nov. 9	"	attention to removing tenants from Mrs. E. V. Foster house and to the removal of the house	10.00
20	" 9	"	drawing agreement with Lewis Kirby mover	1.00
	Dec. 20	"	preparing distress proceedings against Mrs. Goff and collecting her rent	5.00
	1898			
	Feb. 4	"	attention to Goff rent and distress proceedings	3.00
30	Mar. 21	"	attention to George Jackson accident and attendance at Coroner's inquest Newbold's Hotel and Hospital, one day preparation for inquest	4.00
	Apr. 11	"	attention to pushing pavement of Union Avenue and moving obstructions	5.00
	" 14	"	drawing lease with Williams	2.00
40				392.00

Atlantic Highlands, Red Bank & Long Branch
Electric Railway Co.
To Thomas P. McKenna, Dr.

Titles.

1897

June	1	To examining Newing title and deed, making search, closing title	\$20.00	10
"	4	" examining West title and deed, making search, closing title	10.00	
"	7	" closing purchase with Laura E. Gleaser New York (several trips) examining title and deed, making search, drawing deed, clearing title of encumbrances procuring release of mortgage from Messrs. Bliss & West (several days)	50.00	20
"	15	" closing purchase with John Foster at Long Branch and in New York (twice) examining title, drawing deed, making search	40.00	
"	20	" examining Crawford title and deed, making search, closing title, attention to clearing title of mortgages, attendance at Building & Loan meeting, procuring release of lots in question	25.00	30

40

	July	1	To closing purchase with Mrs. Covert, at Brooklyn, Elberon and at my office, examining title and deed, making search drawing deed and closing title	50.00
10	"	3	" arranging and closing purchase with Mrs. Campbell, examining title and deed, making search and closing title	50.00
	"	15	" examining Durnell title and deed, making search, drawing deed and closing title	20.00
20	"	15	" closing purchase with Wm. N. Mount, examining title and deed, making search, drawing deed and closing title	20.00
	Sept.	11	" investigating Mrs. E. V. Foster's title, clearing same, making search, investigating deed and closing purchase, arranging removal of tenants, &c.	50.00
30				\$335.00

Atlantic Highlands, Red Bank & Long Branch
Electric Railway Co.
To Thomas P. McKenna, Dr.

(Expense)

1896

	July	16	To two telephones to Red Bank	\$0.30
	Aug.	7	" three telephones to Red Bank	1.50
40	"	7	" expense to New York	2.00

1897

Apr.	15	To telephones	1.50	
		" expense to Mr. Chasey and myself to Rockaway	15.00	
		" telephone to New York	.50	
May	20	" recording Newing deed	1.75	
"	26	" expense to New York seeing Mr. Greenberg and Mr. Foster	2.50	10
June	1	" expense to New York seeing Gleaser	2.50	
		" amount paid Gleaser on account	2.00	
"	2	" telegram	.31	
"	2	" telephone	.30	
"	3	" amount paid for service of papers upon Miss E. Slocum	.50	20
"	7	" expense to Jersey City	2.00	
"	7	" expense to Brooklyn to see Mrs. Covert	2.50	
"	7	" amount paid for serving papers in condemnation proceedings	2.00	
"	11	" expense to New York to see Mrs. Covert	2.50	
"	14	" expense to Newark	2.00	30
"	21	" expense to New York	2.50	
"	23	" amount paid Louis Williams service with Mr. Allen	1.00	
"	23	" telephones to Freehold and Red Bank	.55	
"	30	" telephone to New York	.50	
July	7	" telegram to Gleaser	.69	
"	7	" telegram to Gleaser	.25	
"	7	" telegram to Gleaser	.40	40

	July 12	To telephones to Red Bank	.60
	" 14	" expense of recording Gilmore West mortgage	1.75
	" 17	" telephone to Princeton	1.00
	" 17	" 4 telephones to Red Bank	.60
	" 19	" trip to Princeton	5.00
10	" 22	" amount paid R. J. Van Brunt for copy of ordinance	1.00
	" 27	" expense to Elizabeth	2.00
	" 28	" expense of dinner etc.	1.00
	" 28	" telephone	.35
	" 30	" telephones to New York	1.00
	Aug 13	" " " "	.50
	Sept. 2	" amount paid Mrs. St. Vincent for privilege of moving Foster house across her lot	1.00
20			

63.35

Expense No. 2.

	Amt fwd		63.35
	Sept. 7	To moving Foster house	\$25.00
	" 7	" telephone to New York	.50
	Dec. 8	" two telephones to New York	1.00
	" 8	" one telephone	.10
30	1898		
	Jan. 7	" discount paid Long Branch Banking Co. on trolley note	14.63
	May 6	" recording Williams lease	1.50
			106.08
	Atlantic Highlands, Red Bank & Long Branch Electric Railway Co.		
	To Thomas P. McKenna, Dr.		
40	Franchise		
	To general attention and services in con-		

nection with application for franchise north of Broadway to Second Ave., procuring consents, attendance at Commissioners meetings, efforts to remove opposition, also services and attention in connection with Bernard Mann and others on Broadway, attending meeting of Commissioners in regard to this application etc., general attention and services in relation to application for South Broadway		\$1500.00	
" calling on abutting owners, procuring consents, conferences with Pier Co., etc. preparatory to North Broadway application		50.00	10
" general attention and services to application for Broadway and Martin street, procuring consents, etc., attendance at meetings of Commissioners		250.00	20
" attention and services in connection with modification of franchise granted, efforts to remove opposition, etc.		150.00	
		\$1950.00	
Atlantic Highlands, Red Bank & Long Branch Electric Railway Co.,			30
To Thomas P. McKenna, Dr.			
Amounts disbursed:			
1897			
May	To amount paid Mrs. Goff for lease of property on Broadway	\$295.00	
June 4	To amount paid John Foster as deposit on property	100.00	
" 11	To amount paid Mrs Fannie Covert for lot	1000.00	40

	May 29	To amount paid Mrs. Campbell	10.	
	June 15	" " " "	90.	
	" 30	" " " "	200.	
	" 30	" " " Henry S. Terhune for Mrs. Jackson for mortgage against Mrs. Campbell property	1500.	2400.00
10	July 3	To amount paid Mrs. Campbell	600.	
	" 7	" " " Laura E Gleaser for lot	1000.00	
	Sept. 11	" " " Mrs. E. V. Foster for property	3519.16	
				\$8314.16

20 Atlantic Highlands, Red Bank & Long Branch
Electric Railway Co.,
To Thomas P. McKenna, Dr.

Amounts received:

	1897		
	June 2	Cash	\$200.00
	" 11	"	1900.00
	" 29	"	1000.00
	" 29	"	1500.00
30	Sept. 7	"	600.00
	" 11	"	2950.00
	" 13	"	150.00
			8300.00
	Nov. 24	Gilmore West interest	18.75
	Dec. 20	Goff rent	20.00
	1898		
	July 13	Gilmore West interest	18.75
40			\$8357.50

Mr. John M. Enright for Complainant.

Mr. Frank P. McDermott for Defendant.

PITNEY, V. C.

The complainant, the Monmouth County Electric Company, by its bill, asks an accounting from the defendant Thomas P. McKenna for the proceeds of the rents received from, and those of the sale and conveyance by him, of a certain house and lot situate on Fifth avenue in the Borough of Long Branch in this State. 10

The ground of its equity is that while the legal title of said premises rested in the defendant the equitable title was in the complainant.

Complainant claims such title through a mortgage executed by the Atlantic Highlands, Red Bank and Long Branch Railway Company to the Hamilton Trust Company, dated July 1, 1895, to secure certain bonds. The particular clause in the description in that mortgage under which it claims is this —“all and singular its property and franchises of every nature and description whatsoever, whether now owned or hereafter to be acquired.” Further on is this language: “including particularly the following described properties”; then follows a description in general of the route of the railway. 20

Complainant asserts that the equitable title to the house and lot here in question was acquired by the mortgagor in the summer or early fall of the year 1897, and became at once vested in the mortgagee and subject to the lien of the mortgage just stated. That mortgage was foreclosed by proceedings in this court, and an execution was issued to Master Terhune which contained a description in accordance with the decree in the same verbiage as that above set forth, using this language: “all 30 40

and singular the property and franchises of the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company of every nature and description whatsoever, whether owned at the date of said mortgage on the first day of July, 1895, or thereafter acquired."

10 Under that execution the Master made his deed to Lindley M. Garrison, and the verbilage of that deed follows that of the execution, Mr. Garrison conveyed to the complainant by a similar description.

The bill in that foreclosure case was filed after the acquisition by the mortgagor of whatever title it ever had to the lot here in question, so that I feel constrained to hold, upon well settled principles, that if the equitable title vested in the mortgagor it became at once subject to the lien of the mortgage. (See Monmouth Co. Electric Co. v. Central R. R. of N. J. and others, 54 Atl. Rep. 140, which seems to be a decision directly in point on the construction of this mortgage.)

The complainant sustains his proof of the acquisition by the mortgagor of the equitable title by the following evidence of the then president of the old company, Mr. Adolph G. Greenberg.

30 He testifies that in locating and building their route in the borough of Long Branch they were obliged to occupy a private property.

For that purpose they purchased among others a house and lot of a Mrs. Foster by deed dated June 1, 1897, for the sum of \$4,500.. At that time the defendant McKenna was acting as the attorney and counsel of the old company and assisting in the purchase of the right of way. Adjoining the Foster house on the south were two vacant lots of about 100 by 150 feet each. The second one from the

Foster house and lot was owned by Mr. McKenna and is the one here in controversy.

The old company wished to dispose of the dwelling standing on the Foster lot, in order to make way for the tracks, and authorized Mr. McKenna to sell it for \$500. This he did not succeed in doing. It then authorized him to give it away to any one who would remove it immediately. This he did not succeed in doing. 10

It was then agreed between Mr. Greenberg and Mr. McKenna that the company should purchase from him his lot at the price of \$1000 and that the company should move the Foster house upon it. This was done, Mr. McKenna securing permission from the owner of the intervening lot to pass the house over it. The company incurred all the expense of moving the house, of excavating the cellar and building the foundation, and fitting the house for occupancy, and directed Mr. McKenna to rent the same, and to account for the rents thereof. This he did from time to time, including them with his account of other rents received by him from other tenements acquired by the company in that vicinity. 20

The building was a double tenement house, designed for two families, and was rented to two families continuously, commencing with November, 1897, at ten dollars a month each. It is admitted that Mr. McKenna collected these rents until he conveyed away the premises about the first of August, 1902, and received therefore in cash the sum of \$2,600. 30

In addition to the foregoing facts it appears by the assessment books of the township of Ocean, in which the premises are situate, that in the next year, 1898, this house and lot was assessed to the old company (mortgagor), and again in 1899 to the 40

same, and again in 1900, bills being sent in 1898 to the president, Mr. Greenberg, and in 1899 and 1900 to Mr. Degnan, the receiver. In the years 1901 and 1902 it was assessed to the complainant and the tax paid by it. The aggregate of the two years' taxes so paid with interest amount to over \$50.

10 The lot was also subject to taxation by the municipal authorities of the Borough of Long Branch, and it seems pretty clear that Mr. McKenna discharged those taxes. But this was a much smaller tax than that of the township.

The old company was never in a position to pay Mr. McKenna the \$1,000, purchase money for the lot in question, and finally Mr. Greenberg directed him to sell it and account to the company for the proceeds. This he did not do. And on the ap-
20 pointment of the receiver in 1898 whatever authority to sell Mr. McKenna had under Greenberg's directions, which were oral, expired, if such authority ever was binding against the mortgagee; on this I express no opinion.

Mr. McKenna's defense to the case so made is twofold.

First. He says that the agreement between him and Greenberg was that he was to account to the company for the value of the house, \$500, and the
30 cost of moving it and setting it up on his lot, and that there was no contract on his part to convey to the company.

I have carefully compared Mr. McKenna's evidence on this part of the case with Mr. Greenberg's and I am unable to reconcile them or to reconcile Mr. McKenna's evidence with itself and other well established facts in the case.

When sworn on the same day that Mr. Greenberg was sworn and in his presence, he admitted that
40 there was a price fixed at \$1000 for his lot, to be

paid to him by the company. The fixing of the price to be paid by the company for the land is quite inconsistent with the theory that there was no contract of sale from him to the company and that the actual contract was that he was to take the house and pay for it, \$500, together with the cost of removing it and setting it up.

The hearing of the case was adjourned over to enable Mr. McKenna to produce Mr. Degan. 10

In the absence of Mr. Greenberg, who resides somewhere in New York, Mr. McKenna attempted on that second day to vary his previous evidence by stating that the fixing of the price of \$1,000 to be paid by the company was in connection with the plans the company had, at one time, of so locating their route as to cross defendant's lot instead of Mrs. Foster's.

I think the objection taken (in time) by the counsel of the complainant to this evidence was well taken, and that I ought not to consider it. But, giving it all weight that, under the circumstances, it is entitled to have, it does not change my view of the result of Mr. Greenberg's evidence, as above stated. 20

He is quite clear in his recollection and statement that the offers made by him to McKenna, first, to sell the house, as it stood, at five hundred dollars, the purchaser to remove it promptly, and next, to give it away to any person who would quickly remove it were off, and expired for want of acceptance, before the bargain for purchase at \$1,000 was made. 30

His evidence is inconsistent with the idea that there was any option to McKenna, viz.: either to take \$1,000 for the lot or to take the house at \$500 and the cost of moving and erecting.

He seemed an intelligent and reliable witness, 40

and in fact was relied upon by both sides, and his natural sympathies were clearly with Mr. McKenna on the next defense which he sets up.

Moreover, I think that the fact that the property was assessed to the trolley company up to the time that Mr. McKenna conveyed it away is most significant. It had previously been assessed to him and no explanation is made of how it came to be assessed to the old company. It is questionable in my mind whether the mere fact that a house was moved off of the line of the railway on to it was sufficient notice to the assessor that the property had passed to the trolley company.

My interpretation of Mr. McKenna's evidence in connection with a batch of tax bills, which he produced, is that this property was assessed to him by the assessor of the township of Ocean for the two years which he owned it prior to 1897. He says that he did not think of the tax in the township because the lot had been valued at only \$500 or less, and he was entitled to an exemption of \$5000 by reason of his service as a mounted militia man. But this does not account for the property being assessed in the name of the railway company at \$1,500, as it undoubtedly was.

Moreover, Mr. McKenna does not deny the evidence of Mr. Greenberg that he included the amount of the rents collected by him from this house in the general account of the rents collected by him for the company from other property of theirs.

I think then that a parol contract is clearly established by which Mr. McKenna agreed to convey to the old trolley company the house and lot here in question for \$1,000, and that it was partly performed, or rather irretrievably acted upon by the trolley company by moving thereon a house and expending money in establishing it, which

house when so established was worth by the evidence the house when so established was worth by the evidence part of the company was taken on the strength of the parol contract which is clear in all its parts, and hence it would be inequitable for Mr. McKenna to be permitted to recede from it.

Defendant's next defense is a set off for services rendered by him to the old trolley company. 10

It is proven clearly that he did render services for a period of two years or more to that company and that they were valuable. In this part of the case he is cheerfully supported by Mr. Greenberg.

He presented a bill for those services to the receiver, Mr. Degnan. Neither the original of that bill nor a copy was furnished to the court, though the hearing was adjourned to enable him to produce it from the possession of Mr. Degnan, who was within the jurisdiction of the court. He admits that he gave no credit thereon for anything arising out of the house and lot transaction here in question. He swears that he was never notified that the bill was contested. The foreclosure sale under the mortgage and the sale to Mr. Garrison was a part of a re-organization scheme in which the creditors were to take pay partly in bonds and partly in stock of the new company, and he swears that he never received anything on his claim, and it would seem from two letters which he produced, written by Mr. Greenberg, that the re-organization committee or the receiver was not willing to acknowledge that he was entitled to any. Be that as it may, all that appeared before me is that he rendered services as an attorney for the old company, which if properly itemized and proven, according to the practice of this court, would amount to a considerable sum of money. It also 40

appears that he received, during the period that he was performing those services, divers sums of money as rent from other tenants of the old company.

10 Now the question on these facts is, whether, as a condition precedent, or as part of the remedy, asked for by the complainant, the defendant is entitled to have the account between him and the old company adjusted and to have credit for anything which may be found to be due to him from the old company.

The solution of that question leads us to a consideration of the precise result of the transaction as it occurred in the fall of 1897.

20 By well settled and familiar equitable principles, as soon as the transaction was completed by the erection, I think I am justified in calling it, by the complainant on the lot of the defendant of the house in question, in pursuance of the contract of sale for the sum of \$1,000, the complainant became the owner in equity of the lot and the debtor to defendant in the sum of \$1,000, and defendant held the legal title to the premises, as security for the purchase money. He was a mortgagee of the land to secure the purchase money. The citation of authority for this position is not necessary.

30 The property then passed at once under the dominion of the previously given mortgage. But the defendant was in possession, which he retained properly, as mortgagee, and was entitled to collect the rents, but was bound to appropriate them to the reduction of the mortgage debt. This seems to me to result, logically and naturally from the situation as I have found it.

40 No serious change in the situation could be affected by the immediate parties, the old trolley company and the defendant, without the consent of

the mortgagee, and none was attempted, so far as I can find from the evidence, prior to the appointment of the receiver, unless it be the verbal authority, alleged to have been given by President Greenberg to the defendant to sell and convey.

But this was not acted upon, and so far as proven, I do not understand from the evidence, that it went so far as to authorize the defendant to apply the surplus money, if any, arising from the sale, towards the payment of his claim against the company for services. 10

It follows, as it seems to me, that the doctrine of set off relied upon by the defendant does not reach the case.

The services rendered were rendered on the credit of the old company. There is nothing to indicate that there was any understanding at the time that the work was being done that Mr. McKenna was to hold the title of these premises as security for his payment therefore and it seems to me that it was not competent for the parties to make such a contract. 20

Mr. McKenna held the title to the property as mortgagee to secure the \$1,000. To that extent his mortgage was prior to the mortgage of the Trust Company, but he could not annex, or, as the old lawyers expressed it, "tack" to that mortgage an additional lien for services rendered and thereby cut out the intervening right of the bondholders secured by the mortgage to the Trust Company. 30

His remedy was that of every mortgagee, viz.: a suit for foreclosure.

Upon reflection I find nothing inequitable or unjust in this result. Mr. McKenna is clearly chargeable with two matters, one of fact and one of law; he is chargeable with notice of the existence of the mortgage and of its contents and he is chargeable 40

10 with notice of the effect in law, or rather in equity, of a transaction, such as he entered into with the company; and he is further chargeable with knowledge of the fact, which was admitted at the hearing, and must have been notorious among the employees of the company, that this road was being built with the proceeds of the sale of its mortgage bonds. He knew, or ought to have known, that the valuable house which, according to the evidence was worth \$2,000, when erected on his lot, was paid for out of the money of the bondholders; that before it was moved from the Foster lot it was clearly subject to their mortgage, and that the cost of erecting it on his lot was borne by the bondholders. Looked at in that light it seems to me that the clear equity of the case is with the complainant.

20 For these reasons I shall advise a decree that Mr. McKenna must account to the complainant for the price which he received for the house and the rents which he received during the five years which he collected them and be credited with the \$1,000 of purchase money and such taxes as he can show that he has paid, if any, and also the repairs. If the parties cannot agree upon the amount there must be a reference to a Master.

30

Substitution.

SUBSTITUTION.

(Filed March 1, 1905.)

I hereby consent that Messrs. Collins & Corbin be substituted in my place and stead as solicitors of the defendant in above entitled cause.

March 1, 1905.

FRANK P. McDERMOTT,
Solicitor for Defendant.

40

Interlocutory Decree.

(Filed March 15, 1905.)

This cause coming on to be heard, upon bill, answer, replication and proofs, in the presence of John M. Enright, of counsel with complainant, and of Frank P. McDermott, of counsel with the defendant, and the pleadings having been read and proofs heard, and the arguments of counsel heard and considered; and it appearing to the court that the defendant did make a parol agreement with the Atlantic Highlands, Red Bank & Long Branch Electric Railway Company to sell and convey to it the premises described in complainant's bill, for the sum of One thousand dollars; and that said railway company, acting on said agreement, moved upon said premises a certain dwelling house belonging to it, and fitted the same for the occupation of tenants, and that the defendant thereafter retained the legal title to said land and collected the rents and issues thereof, and subsequently, on the twenty-ninth day of July, nineteen hundred and two, sold the same and received in cash the sum of twenty-six hundred dollars therefor; and it further appearing that prior to the agreement of said railway company to purchase said land from the defendant said railway company had executed a mortgage to the Hamilton Trust Company as trustee, mortgaging all and singular its property and franchises, of every nature or description whatsoever, then owned or thereafter to be acquired, and that default having been made the said mortgage was afterward foreclosed and the property covered thereby sold in foreclosure to one Lindley M. Garrison, and by said Garrison and wife conveyed to the complainant herein; and the court being of the opinion that by reason of the premises the equitable

title to said lot of land became vested in said railway company, subject to defendant's lien for the purchase price of one thousand dollars, and that said equitable title thereupon became subject to the lien of the trust mortgage made to the Hamilton Trust Company, trustee, and passed by the foreclosure sale aforesaid to the complainant, and that
 10 the complainant is entitled to relief in the premises and that the defendant is not entitled to set off as against the complainant his charge for services rendered to said railway company.

It is thereupon, on this fifteenth day of March, nineteen hundred and five, by his Honor William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the defendant, Thomas P. McKenna, account to the complainant,
 20 Monmouth County Electric Company, for the moneys received by him upon the sale of the house and lot described in complainant's bill, as well as for all rents received by the defendant from said premises after moving thereon the house aforesaid, and that the defendant be credited thereon with the sum of one thousand dollars as the purchase price agreed to be paid for said lot by the Atlantic Highlands, Red Bank & Long Branch Electric Railway Com-
 30 pany with interest from June 1, 1897, and with the amount expended by the defendant for taxes, insurance and repairs, if any, on account of said premises, during said period.

And it is further ordered, that it be referred to Pierre F. Cook, one of the masters of this court, to take and state an account of the rents and profits of the said lands received by the defendant, or by any other person by his order or for his use, as well as of the money received by the defendant
 40 upon the sale of said premises, and of the moneys expended by the defendant during the period afore-

said for taxes, insurance and repairs on account of said premises, making proper allowances of interest, and report thereon to this court. Leave is reserved to either party to apply to the court for further directions pending the reference and all further equities are reserved.

Respectfully advised,

H. C. PITNEY, V. C.

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W. J. MAGIE, C.

Notice of Appeal from Interlocutory Decree.

(Filed March 29, 1905.)

The defendant hereby appeals from the interlocutory decree, and from the whole and every part thereof, made in this court on the fifteenth day of March, nineteen hundred and five, whereby it was ordered, adjudged and decreed that the defendant account to the complainant for the moneys received by him upon the sale of the house and lot described in the complainant's bill, as well as for all rents received by the defendant from said premises after moving thereon the house mentioned in complainant's bill, and whereby it was ordered mentioned in complainant's bill, and whereby it was ordered that it be referred to one of the masters of this court to take and state an account of the rents and profits of said lands, and the moneys received by the said defendant on the sale of the said premises, to the Court of Errors and Appeals, in the last resort in all causes.

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Dated March 29th, 1905.

COLLINS & CORBIN,

Solicitors of Defendant.

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

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GEO. S. HOBERT,

Of Counsel with the Defendant.

Petition of Appeal from Interlocutory Decree.

(Filed March 29, 1905.)

To the Honorable, the Court of Errors and Appeals
in the Last Resort in All Causes:

10 The petition of Thomas P. McKenna, the appellant in the above cause, respectfully shows that your petitioner finds himself aggrieved by the decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the fifteenth day of March, nineteen hundred and five, wherein the said Monmouth Electric Company was complainant and your petitioner was defendant in this respect, to wit.: that the said decree adjudges that your
20 petitioner (the defendant below) account to the complainant for the moneys received by him upon the sale of the house and lot described in the complainant's bill as well as for all rents received by the defendant from said premises after moving thereon the house mentioned in complainant's bill, receiving credit thereon for the sum of one thousand dollars, the purchase price agreed to be paid for said lot by the Atlantic Highlands, Red Bank and Long Branch Electric Railway Company, with
30 interest from June first, eighteen hundred and ninety-seven, and for the amount expended by your petitioner for taxes, insurance and repairs and ordering that it be referred to one of the masters of this court to take and state an account of the rents and profits of said lands received by your petitioner and of the moneys expended by your petitioner for taxes, insurance and repairs.

40 And your petitioner humbly appeals from that part of the decree which decrees, as aforesaid, upon the ground that the same is erroneous for that the

Chancellor should have decreed that the said bill of the complainant be dismissed with costs.

Your petitioner therefore prays that the said decree of the Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

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COLLINS & CORBIN,
Solicitors and Counsel for Appellant.

(Formal answer filed.)

Master's Report on Accounting.

(Dated April 20, 1905.)

In pursuance of an order made by said court in the above entitled cause, bearing date the fifteenth day of March, nineteen hundred and five, whereby it was referred to me, Pierre F. Cook, one of the masters of said court, to take and state an account of the rents and profits of the lands, mentioned in said order and described in the bill of complaint in said cause, received by the defendant, or by any other person by his order or for his use, as well as of the money received by the defendant upon the sale of said premises, and of the moneys expended by the defendant during the period mentioned in said order for taxes, insurance and repairs on account of said premises, making proper allowances of interest.

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I have been attended by the solicitors of the complainant and defendant, and in their presence have considered the matters referred to me by said order.

And I report that I have taken an account of the moneys received and expended by the defendant as directed, and do find that the said defendant re-

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ceived the following amounts as rents and profits and from the sale of the said premises, to wit.:

	1902, Aug. 1, Amount received from sale of property, described in bill	\$2600.00
10	Interest thereon from August 1, 1902, to May 1, 1905 (2 yrs. 9 mos., 16½%)	429.00
	Amount of rents collected by the defendant from December 1, 1897, to August 1, 1902, at the rate of \$20. per month; total of \$1120, less \$90. not collected,	1030.00
20	Interest on rents collected during a period of 4 years and 8 months, averaged at 24 months,	123.60
	Total,	\$4182.60

And I further report, that the said defendant is to be credited with the purchase price agreed to be paid for said premises and for moneys expended by him, as follows:

30	1897, June 1, Purchase price agreed to be paid for the premises described in the bill, by Atlantic Highlands, Red Bank & Long Branch Electric Railway Company	\$1000.00
	Interest thereon from June 1, 1897, to August 1, 1902, 5 years and 2 months at 6 per cent.,	310.00
	Cost of repairs made by defendant during said period,	100.00
40	Commission on amount of rents collected, to wit.: 5 per cent. on \$1030,	51.50

Taxes paid by defendant to the Long
Branch Commission as follows:

1897,	\$4.20	
1898,	4.20	
1899,	6.30	
1900,	4.20	
1901,	4.20	23.10
		10
Carried forward,		\$1484.60
Brought forward,		\$1484.60
Water rents paid by defendant from December, 1897, to August 1, 1902		93.50
Sewerage charges paid by defendant during said period,		93.50
Interest on repairs, taxes, sewerage charges, water rents and insurance during said period, averaged at 24 months,		39.48
Insurance, 5 years,		19.00
Total,		\$1730.08

I, therefore, report that the defendant is to be charged with the sum of four thousand one hundred and eighty-two dollars and sixty cents and credited with the sum of one thousand seven hundred and thirty dollars and eight cents, leaving a balance due from the said defendant to the complainant of two thousand four hundred and fifty-two dollars and fifty-two cents (\$2,452.52). 30

All which is respectfully submitted, this twentieth day of April, nineteen hundred and five.

PIERRE F. COOKE,
Master in Chancery.

Stipulation.

(Attached to Master's Report.)

It is stipulated by and between the parties hereto, by their respective solicitors, that the defendant is chargeable with the following amount, to wit.:

10	1902, Aug. 1, Amount received from sale of property described in bill,	\$2600.00
	Interest thereon from August 1, 1902, to May 1, 1905 (2 yrs. 9 mos., 16½%),	429.00
	Amount of rents collected by the defendant from December 1, 1897, to August 1, 1902, at the rate of \$20 per month, total of \$1120, less \$90 not collected,	1030.00
20	Interest on rents collected during a period of 4 years and 8 months, averaged at 24 months,	123.60
		\$4182.60

Defendant is to be credited with the following items:

30	1897, June 1, Purchase price agreed to be paid for the premises described in the bill, by Atlantic Highlands, Red Bank & Long Branch Electric Railway Co.,	\$1000.00
	Interest thereon from June 1, 1897 to August 1, 1902, 5 years and 2 months at 6 per cent,	310.00
	Cost of repairs made by defendant during said period,	100.00
40	Commission on amount of rents collected, to wit, 5 per cent on \$1,030.,	51.50

Taxes paid by defendant to the Long
Branch Commission, as follows:

1897,	\$4.20	
1898,	4.20	
1899,	6.30	
1900,	4.20	
1901,	4.20	
	—	\$23.10 10

Water rents paid by defendant from
December, 1897, to August 1, 1902, 93.50

Sewerage charges paid by defendant
during said period, 93.50

Interest on repairs, taxes, sewerage
charges, water rents and insur-
ance, during said period, averaged
at 24 months, 39.48

Insurance, 5 years 19.00 20

GREY, McDERMOTT & ENRIGHT,
Solicitors of Complainant.

COLLINS & CORBIN,
Solicitors of Defendant.

Final Decree.

(Filed May 3, 1905.)

This cause coming on to be heard, in the pres-
ence of John M. Enright, of counsel with the com-
plainant, and Collins & Corbin, of counsel with the
defendant, and the pleadings having been read and
proofs heard, and the arguments of counsel heard
and considered; and it appearing to the court that
the defendant did make a parol agreement with
the Atlantic Highlands, Red Bank & Long Branch
Electric Railway Company to sell and convey to it
the premises described in complainant's bill, for
the sum of one thousand dollars; and that said
railway company, acting on said agreement, moved
upon said premises a certain dwelling house be-

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longing to it, and fitted the same for the occupation of tenants; and that the defendant thereafter retained the legal title to said land and collected the rents and issues thereof, and subsequently, on the twenty-ninth day of July, nineteen hundred and two, sold the same and received in cash the sum of twenty-six hundred dollars therefor; and it further appearing that prior to the agreement of said railway company to purchase said land from the defendant said railway company had executed a mortgage to the Hamilton Trust Company as trustee, mortgaging all and singular its property and franchises, of every nature or description whatsoever, then owned or thereafter to be acquired, and that default having been made the said mortgage was afterward foreclosed and the property covered thereby sold in foreclosure to one Lindley M. Garrison, and by said Garrison and wife conveyed to the complainant herein; and the court being of the opinion that by reason of the premises the equitable title to said lot of land became vested in said railway company, subject to defendant's lien for the purchase price of one thousand dollars, and that said equitable title thereupon became subject to the lien of the trust mortgage made to the Hamilton Trust Company, trustee, and passed by the foreclosure sale aforesaid to the complainant, and That the complainant is entitled to relief in the premises and that the defendant is not entitled to set off as against the complainant his charge for services rendered to said railway company.

And a decree having been made in this cause on the fifteenth day of March, nineteen hundred and five, whereby it was ordered, adjudged and decreed that the defendant, Thomas P. McKenna, account to the complainant, Monmouth County Electric Company, for the moneys received by him upon the

sale of the house and lot described in complainant's bill, as well as for all rents received by the defendant from said premises after moving thereon the house aforesaid, and that the defendant be credited thereon with the sum of one thousand dollars as the purchase price agreed to be paid for said lot by the Atlantic Highlands, Red Bank & Long Branch Electric Railway Company, with interest from the first day of June, eighteen hundred and ninety-seven, and with the amount expended by the defendant for taxes, insurance and repairs, if any, on account of said premises, during said period; and that it be referred to Pierre F Cook, one of the masters of this court, to take and state said account: 10

And the said Master having made his report to this court, bearing date the twentieth day of April, nineteen hundred and five, by which it appears that there is due to the said complainant on said accounting, from the said defendant, the sum of twenty-four hundred and fifty-two dollars and fifty-two cents; and on filing the said report, and no cause being shown or appearing to the contrary: 20

It is, on this third day of May, one thousand nine hundred and five, by William J. Magie, chancellor of the State or New Jersey,

Ordered, adjudged and decreed, and the said chancellor, by virtue of the power of this court, doth hereby order, adjudge and decree, that the report of the said master and all the matters and things therein contained, be and the same is hereby in all things confirmed, and that there is due to the complainant, Monmouth County Electric Company, from the defendant, Thomas P. McKenna, the sum of two thousand four hundred and fifty-two dollars and fifty-two cents. 30

And it is further ordered, adjudged and decreed, 40

that the said complainant do recover against the defendant, Thomas P. McKenna, and that he do pay to the said complainant the said sum of two thousand four hundred and fifty-two dollars and fifty-two cents, together with its costs of this suit to be taxed, including a counsel fee of one hundred dollars, and that the complainant have execution therefor, according to the course and practice of this court.

Respectfully advised,

H. C. PITNEY, V. C.

W. J. MAGIE, C.

NOTICE OF APPEAL FROM FINAL DECREE.

(Filed May 18, 1905.)

The defendant hereby appeals from the final decree and from the whole and every part thereof made in this court on the third day of May, nineteen hundred and five, whereby it was ordered, adjudged and decreed that the report of the master, to whom the cause was referred for an accounting pursuant to the decree of this court, dated March fifteenth, nineteen hundred and five, be confirmed, and that there was due to the complainant from the defendant the sum of twenty-four hundred and fifty-two dollars and fifty-two cents (\$2452.52), and whereby it was ordered, adjudged and decreed that the defendant pay to the complainant the said sum of twenty-four hundred and fifty-two dollars and fifty-two cents, with costs including a counsel fee of one hundred dollars, and that the complainant have execution therefor, to the Court of Errors and

Appeals in the last resort in all causes.

Dated May 18, 1905.

COLLINS & CORBIN,
Solicitors of Defendant.

I conceive there is good cause for appeal in the above entitled suit.

GEO. S. HOBART,
Of Counsel with Defendant.

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To the Honorable, the Court of Errors and Appeals
in the Last Resort in all Causes:

The petition of Thomas P. McKenna, the appellant in the above cause, respectfully shows:

That your petitioner finds himself aggrieved by the decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the third day of April, Nineteen hundred and five, wherein the said Monmouth County Electric Company was complainant, and your petitioner was defendant, in this respect, to wit:

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That the said decree adjudges that the report of the Master, to whom the cause was referred for an accounting pursuant to a decree of the Court of Chancery, dated March fifteenth, Nineteen hundred and five, be confirmed, and that there is due to the said complainant from the said defendant the sum of Twenty-four hundred and fifty-two dollars and fifty-two cents (\$2,452.52); and also in this respect, to wit:

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That the said decree adjudges that the said defendant pay to the said complainant the said sum of Twenty-four hundred and fifty-two dollars and fifty-two cents (\$2,452.52), with costs, including a counsel fee of One hundred dollars, and that the complainant have execution therefor.

And your petitioner humbly appeals from that

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part of the decree which decrees as aforesaid, upon the ground that the same is erroneous, for that the Chancellor should have decreed that the said bill of the complainant be dismissed, with costs, and that there is nothing due to the said complainant from the said defendant.

10 Your petitioner therefore prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

COLLINS & COOPER,

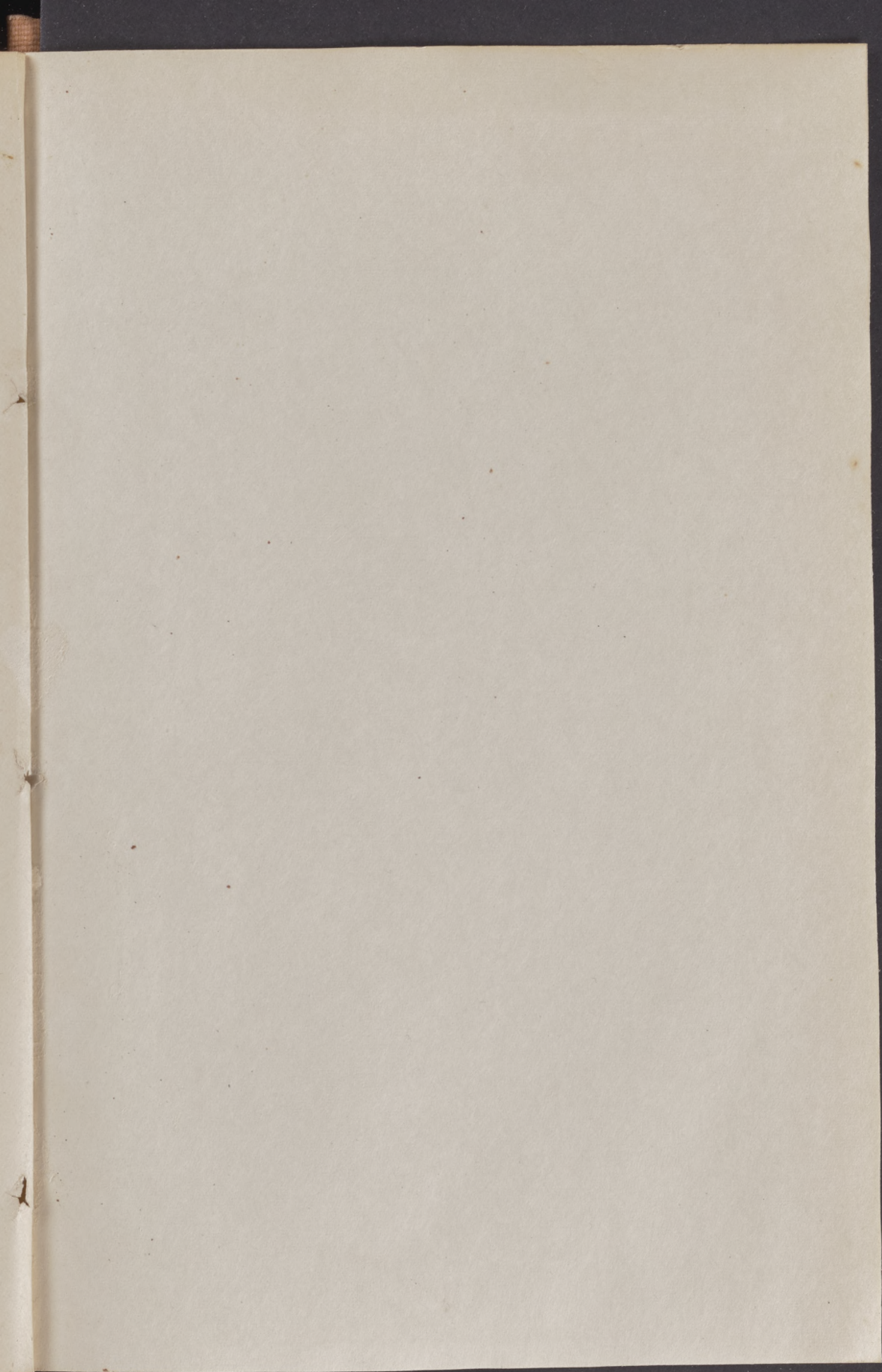
Solicitors and Counsel of Appellant.

(Formal answer filed.)

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THE FIRST PART OF THE HISTORY OF THE
LIFE OF THE LATE LORD OF THE TREASURY
OF THE KINGDOM OF GREAT BRITAIN
AND OF THE ISLES OF GREAT BRITAIN
AND IRELAND

BY
JAMES OAKLEY
ESQ.
OF THE MIDDLE TEMPLE
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