New Jersey Court of Errors and Appeals.

Between

BURLINGTON CITY LOAN AND TRUST COMPANY, HEMAN DOWD, BAYARD STOCKTON, J. H. MCNEAL, GEO. WHITEFIELD BETTS, JR., as and constituting the Bondholders' Committee of the Princeton Lighting Company,

Complainants-Appellants,

and

PRINCETON LIGHTING COMPANY, RICHARD STOCKTON, Receiver of Princeton Lighting Company, WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY, JOHN A. ROEBLING'S SONS COMPANY, PRINCETON LIGHT, HEAT & POWER COMPANY, FIRST NATIONAL BANK of Cranbury, New Jersey, FRANK W. STOUT, JOHN W. SCUDDER, HARRISBURG FOUNDRY AND MACHINE WORKS, FRANK TOOMEY, CAROLINA B. DRAKE, W. S. TITUS and MARIA FISHER,

Defendants-Respondents.

On Appeal from Chancery. No. 63 March Term, 1907.

Brief for Appellants.

Statement.

This is an appeal by the complainants from so much of the final decree of foreclosure and sale

entered in the Court of Chancery July 24, 1906, as adjudges and decrees that 385 bonds of the Hopewell Electric Light, Heat & Power Company held by the complainant bondholders' committee, are not outstanding obligations of the Princeton Lighting Company, but were extinguished.

This suit was brought to foreclose a mortgage (p. 82) made by the Hopewell Electric Light, Heat & Power Company to the complainant trust company to secure an issue of $50,000 par value of bonds. All of said bonds were duly issued and were of the par value of $100 each.

Subsequent to the execution of the mortgage the mortgagor was merged with other corporations to form the Princeton Lighting Company. The merger agreement (p. 164) provided for the exchange of the Hopewell bonds for new bonds to be issued by the consolidated company under a new mortgage to be made by it. The new company after its formation executed its mortgage to the North American Trust Company, now The Trust Company of America. Said mortgage contained provision for the exchange of Hopewell bonds for bonds issued thereunder. $38,500 par value of Hopewell bonds were received by the North American Trust Company and bonds of the new issue delivered by it in exchange therefor.

Subsequently the Princeton Lighting Company mortgage was foreclosed and the properties described in the decree were sold, the sale resulting in a deficiency of more than $200,000 (notice of sale, p. 163). Thereupon the Hopewell bonds, exchanged as above, which had meanwhile been held by the North American Trust Company uncancelled and treated as collateral security for the Princeton bonds, were sold by the North American Trust Company and the proceeds applied on account of said deficiency.

The complainant Bondholders' Committee was the purchaser at said sale and presents said bonds

in this suit and claims that they are entitled to share in distribution.

The holders of $9,100 of the balance of bonds claim that said $38,500 of bonds were extinguished by the exchange,—that is the sole issue presented by this appeal.

I.

It is admitted in the pleadings that our bonds were duly issued,—they are produced uncancelled. The burden of proving that they were extinguished is on our adversaries. It is familiar law that these bonds could have been kept alive, and that whether they were extinguished or not depends on intent. Our adversaries must therefore establish the intent to extinguish.

They were not parties to the merger agreement or consolidated mortgage or intended to be benefited thereby, and have no standing to enforce the performance of any term of either.

> *Mott vs. N. Y. Security and Trust Company*, N. Y. Supreme Ct., 29 Misc., 39.
> *Same case*, 52 N. Y. App. Div., 623.
> *Morse vs. Chicago and Eastern Illinois R. R.*, 84 N. Y. App. Div., 406.

In *N. Y. Security and Trust Co. vs. Louisville, etc., R. R. Co.*, 97 Fed., 226, certain railroad companies were merged into one and a consolidated mortgage issued to take up the bonds of the constituent companies; it was held that such action was not for the benefit of the holders of the outstanding bonds of the companies and gave them no right to compel delivery to them of bonds of the consolidated company in exchange for their bonds. The court said, at p. 231, speaking of the rights of the holders of the underlying bonds: "The petitioners must stand upon their own rights, and their rights

were not considered, except possibly, incidentally in the agreement of consolidation. They cannot avail themselves of the agreement, except by the consent of the contracting parties, *and the agreement of the contracting parties may be abrogated or varied to suit themselves*, without consulting the bondholders, at any time before an agreement for exchange has been made."

It is not enough therefore for them even to establish that the bonds ought to have been extinguished,—they must establish that they were extinguished and to do that they must prove that the intent to extinguish existed at the time of exchange. They would get no benefit from showing that the intent existed at a time before the exchange, except such benefit as might accrue from the presumption of continuance of that intent if there were no evidence to the contrary.

To meet their burden they must force conviction at every point. They are claiming to be enriched by agreements to which they refused to become party, and by acts to which they in no way contributed, and neither equity nor law will indulge presumption, construction or intendment to bestow a gratuity.

The settled attitude of the courts toward such claims as those our adversaries make is well shown by the following judicial pronouncements:

> "The question must be resolved in each case upon the facts of the particular transaction. Where a novation is thus sought to be established it must be established that the substitution of the new obligation was with the design and intent to extingush the old obligation, *and as such an act would on its face appear to be against the interest of the holders of the bonds such intent will not be presumed but must be clearly established.* * * * The appellant comes de-

manding of a court of equity that it shall exercise its equitable powers to compass an inequitable. result:—Holding a minority of the bonds he declined to enter into this plan of reorganization. That he had a legal right to do; but he has no right either legal or equitable to say that through his non-assent he shall obtain so inequitable an advantage over the assenting bondholders. A court of equity will be slow to so construe any agreement of reorganization that it would work such an unjust result." (*Mowry vs. Farmers Loan & Trust Co.*, 76 Fed. R. 38.)

"A court of equity ought not to torture the language of the writing into an unconditional release of the security going to enrich a non-assenting bondholder." (*Union Trust Co. vs. Ill. Midland Railway Company*, 117 U. S., 434.)

"This attitude of the appellant is peculiar. He says: 'I am not bound by this reorganization agreement and the foreclosure sale which that agreement initiated. I was party to neither.' Yet he claims that under the reorganization scheme to which he was not a party and by which he is not bound certain advantages have accrued to him which he now strongly and *inequitably* insists should be decreed to him." (*Columbus, S. and H. R. R. Appeals* [4th appeals], 109 Fed. Rep., 177, 208, 209.)

Our adversaries are here strongly and inequitably insisting that they have derived an advantage by a scheme to which they were not parties and by which they were not bound,—they seek to establish an intent which on its face would appear to be against the interest of the parties supposed to

have entertained it. A court of equity will not torture language to enrich them, and it will be slow to so construe the agreements as to bring about such an inequitable result. If this be the attitude of equity in ascertaining an intent what basis can there be for the proposition which struck the learned Vice Chancellor so favorably, that the benevolent intent once having been formed could never thereafter be abandoned?

On what rule of law could he have based his ruling that the complainants could not prove the correspondence attending the exchange of the bonds in question between the Trust Company and the Princeton Lighting Company, the parties to the very mortgage to be construed? This correspondence was offered to prove the interpretation by the parties to the mortgage and the terms on which the bonds were exchanged. It would show that the bonds turned in were to be held as collateral for the Princeton Lighting Company bonds.

II.

Our adversaries offered in evidence as tending to show the intent with which the Hopewell bonds were received in exchange, a circular sent out by a certain creditors' committee. They examined witnesses with respect thereto. But both the circular and the testimony respecting it are incompetent and immaterial.

It appears on the record that the committee which sent out this circular is a defunct committee (Dowd, p. 36, lines 20-30), having no connection with the bondholders' committee, complainant herein. No element of estoppel is claimed to exist. The bondholders' committee cannot be bound by any views that may have been entertained, nor could they have been bound by any representations even that might have been made by the cred-

itors' committee. The latter is defunct, it cannot affect by its views or acts the interests committed to another committee organized for other purposes, even though the personnel of the two committees be in part the same.

If this circular meant what our adversaries contend, and was competent evidence, then by the same rule by which it was admitted, the evidence offered by us to show acts and correspondence of the Princeton Company and the trustee (Case, pp. 42, 43) should have been admitted.

Surely if the declarations of a mere creditors' committee are admissable to interpret or modify the merger agreement and mortgage, the acts and declarations of the parties to the agreement and mortgage must be admitted. The latter might well be admitted and the former be excluded, but there is no rule of evidence which would justify the admission of the former and the exclusion of the latter.

If therefore this circular and the evidence respecting it be competent and material, the decree must be reversed because of the exclusion of equally competent evidence offered by us. But even if competent and material, the circular had no such meaning as our adversaries contend. They rely solely upon a statement therein contained of the aggregate secured indebtedness of the consolidated company which aggregate they truly say was not large enough to include both the Hopewell bonds in question and the consolidated bonds issued in exchange for them. But even in interpretating the carefully worded opinions of learned jurists it is an established rule that the language must be interpreted with reference to the situation to which it is addressed. If that is true respecting a decision of a court it is certainly no less true respecting a circular issued in the course of business.

The purpose of the circular was to inform all of

the creditors of the financial condition of the company, and for that purpose its debt was the amount it might be called upon to pay. Upon this amount the exchanged Hopewell bonds even if alive would have no effect, for they were held only as collateral, for the sake of their prior lien upon properties already covered by the consolidated bonds: —they were not available to the consolidated company as an asset and since there could be but one recovery for the debt to which they were collateral they did not increase its obligations. If the circular had been addressed to the holders of the consolidated bonds as such for the purpose of informing them of the exact nature and extent of their security other language might have been adopted, but the language used, for the purposes for which it was used, was not only natural but accurate even though used with full belief that our bonds remained alive as collateral.

It is interesting to note that the circular does not even fit their theory that it admitted our bonds were extinguished, when the figures are examined. The non-exchanged bonds were $11,100, the two prior mortgages were $15,000 and $5,000 ($500 of the latter having been paid off previously, Trust sheet, p. 161) making a total of $31,100 instead of $36,800 in the circular (see stipulation pp. 49, 50, also Dowd, p. 37, lines 20-40).

We think therefore that either there must be reversible error in admitting the circular as pointed out in this article of our brief, or our adversaries must rely on the nature of the transaction as elucidated by the merger agreement and mortgage, which documents however we contend do not control.

III.

There was nothing in the nature and method of the exchange from which, standing by itself, ex-

tinguishment would result.

If an obligation be surrendered to the obligor extinguishment ordinarily results, but that is not this case.

The North American Trust Company was not the obligor on the Hopewell bonds, nor did it represent the obligor. It was not trustee under the Hopewell mortgage, nor was it the channel through which in the contemplation of that instrument the bonds were to be paid. Disregarding for the moment all reference to exchange of bonds in the merger agreement and consolidated mortgage, the North American Trust Company was primarily trustee for and representative of no interest but that of the holders of consolidated bonds, and its only other duties or connections were such as might arise after the full satisfaction of those bonds.

Every consolidated bond issued by the North American Trust Company in exchange diminished the security of the rest of the series, and consideration for the exchange therefore moved from its cestuis qui trustent.

When therefore that trust company made the exchanges in question, the transaction, in the absence of color derived from some other source than its own inherent nature, was strictly analogous to the case where a lender applies a part of his loan to the satisfaction of the holder of a prior lien. If in such a case the prior lien be evidenced by an instrument which passes by delivery and the instrument be taken over by the new lender no extinguishment results.

If there had been no express provision for exchange among the terms of its trust, and the North American Trust Company had without authority made the exchange, the Hopewell bonds would have remained alive in its hands as security. The holders of other consolidated bonds might have held it liable for any ensuing loss, but no stranger to the transaction could have set up extinguish-

ment as the result.

On its bare outlines the exchange sounds in assignment, and its inherent nature will control unless a contrary intent be shown. It is not enough for our adversaries' case that the language of the merger agreement and mortgage be consistent with an intent to extinguish, they must show that it is inconsistent with any other intent.

IV.

As the method of the exchange was such that, assignment rather than extinguishment would be inferred, so also the situation was one in which the intent to keep the exchanged bonds alive would naturally be expected.

To keep these bonds alive would be no detriment to the consolidated corporation, for they would exist only as collateral to the consolidated bonds in order that the latter might have the benefit of the prior lien; anything recovered either in personam or out of property on or by reason of the exchanged Hopewell bonds must be credited on the amount due on the consolidated bonds, and full recovery on the consolidated bonds would terminate the trust which alone stood between the exchanged Hopewell bonds and extinction.

To all other interests intended to be benefited by the merger agreement and mortgage the keeping of the exchanged bonds alive would be manifestly beneficial.

To extinguish the lien of the exchanged bonds one by one as exchanged would obviously tend to defeat one of the definite purposes expressed in the merger agreement.

In Articles 13 and 14 of that agreement (pp. 170, 171) the intent is expressed that "when this consolidation has been perfected as herein provided for" the whole bonded indebtedness of the

consolidated company shall be the $350,000 of consolidated bonds, and these, it appears from the form of bond annexed to the agreement and made part thereof, were to be first mortgage bonds. The exchange of the whole issue of Hopewell bonds was thus one of the objects intended to be provided for. To keep the Hopewell bonds alive as security would be to approach nearer to the accomplishment of the object "provided for;" to extinguish them would prevent the attainment of that very object, for each exchange would leave the unexchanged remainder more valuable, until finally it would be folly for the holder of a Hopewell bond to exchange.

The intent for which our adversaries contend "would on its face appear to be against the interests of the holders of the bonds and will not be presumed but must be clearly established" (*Mowry vs. F. L. and T. Co.*, supra).

Our adversaries must therefore show in the consolidation agreement and mortgage expressions so clear as to overcome the reluctance of the court to arrive at an inequitable result, to overcome the inferences that primarily arise from the transaction of exchange itself, and the strong presumption that the parties to the transaction intended to safeguard their own interests, and to place no obstacles in the way of the accomplishment of their declared purposes.

V.

Without admitting that the consolidation agreement and mortgage control we insist that neither shows the intent which our adversaries must establish.

The language of the consolidation agreement upon which they rely is found in Article 9 (Case, p. 168), and is as follows:

> "Of the foregoing number of bonds Fifty Thousand Dollars ($50,000) at par shall be retained by the Trustee, however, for the purpose of redeeming bond for bond as they are presented an issue of Fifty Thousand Dollars ($50,000) of bonds of the Hopewell Electric Light, Heat & Power Company, dated, &c., secured, &c., which last mentioned bonds shall be delivered up to the Trustee and cancelled so that they shall be no longer a lien upon the property of the Hopewell Electric Light, Heat & Power Company or upon any of the property of the consolidated company."

The language of the consolidated mortgage upon which they rely is in sub-division "b" of Section 2 (Case, p. 132), and is as follows:

> "Seventy Thousand Five Hundred Dollars ($70,500) of said bonds are to be retained by the Trustee and are to be certified and delivered from time to time as required to take up and replace Fifty Thousand Dollars ($50,000) at par of outstanding bonds of the Hopewell Electric Light, Heat & Power Company, dated &c."

They lay stress upon the provision of the merger agreement that the bonds shall be "redeemed" bond for bond, and upon the use of the words "take up" in the mortgage. We submit, however, that even if they stood alone and had nothing to explain their intent, neither word would infer immediate extinguishment. "Redeem" means, among other things, "purchase," and the Court is doubtless familiar with its use in many corporate mortgages coupled with an express provision that the bonds so redeemed shall be kept alive as security. The words "take up" would in ordinary commercial and banking parlance be applied to such a

transaction as we contend this was. If A have his note with a bank secured by pledge, and request B to meet it for him, taking over the pledge as security, the banker or business man in speaking of such a transaction will ordinarily speak of it as a "taking up" of A's loan by B.

Returning now to the language of the agreement quoted above, we find that it does not contemplate cancellation of the bonds by the North American Trust Company, but provides that they are to be delivered by it to the Trustee (the Burlington City Loan & Trust Company) for cancellation. It is not expressly provided that one bond or two bonds or twenty bonds are to be so delivered and cancelled: We think that it is the fair grammatical meaning that the issue of fifty thousand dollars of bonds is to be so delivered. It does not expressly provide that delivery is to be so made that one bond or two bonds or twenty bonds shall cease to be a lien, and we think that it is the fair grammatical meaning of the language used that the delivery is to be made so that the issue of fifty thousand dollars shall cease to be a lien.

The agreement provides for an act of extinguishment distinct from and subsequent to exchange, to be done by a person other than the North American Trust Company. If the intent does not affirmatively appear, as we believe it does from the language used, that delivery for this purpose is to be made only after all of the bonds are in, it does not affirmatively appear that it is to be made at any time before that.

So far, therefore, as our adversaries' case depends upon the specific provision for cancellation it hangs upon an omission, not an expression, and in supplying this omission as well as in selecting among the several possible meanings of the words "redeem" and "take up," the Court must remember that our adversaries are seeking to establish an inequitable result contrary to the interests of

the parties to the transaction (cases supra), and obstructive if not fatal to declared purposes.

If there is any language in either the agreement or the mortgage other than that remarked upon above which has any significance, it is the provision of the mortgage that the consolidated bonds are to "replace" the Hopewell bonds: It seems to us that so far as the word has any significance at all it is indicative that the draughtsman had in mind a substitution in lien.

In *Ames vs. New Orleans & Texas R. R. Co.*, 2 *Woods*, 206: A railroad company had executed a mortgage to secure bonds, and later executed another mortgage on the same property and a branch line to be constructed, to secure a larger number of bonds, which recited that the holders of the bonds secured by the original mortgage had agreed to exchange; all the first issue of bonds were exchanged except 20; *held* that the holders of the 20 bonds were not entitled to be paid out of the proceeds in preference to the holders of the substituted bonds, but were entitled to the same proceeds of the mortgaged property as if the second mortgage had not been executed.

In *Cook on Corporations*, section 765, it is said:

> "Where the owner of bonds delivers them all to the company in exchange for other bonds or securities, the courts are inclined to hold that he does not thereby waive the security of the mortgage that secured the bonds, but that the new bonds were subrogated to such security; thus where a reorganized company issues its bonds in exchange for bonds of the old company, such bonds of the old company are not thereby cancelled, so as to give a junior mortgage of the old company priority over the bonds so received in exchange. Where a part of the mortgage bonds which are in default are under a re-

organization agreement returned to the corporation and placed under a new mortgage securing bonds which are issued to the persons who so turned in the first mentioned bonds, the holders of the remaining old bonds cannot claim that the bonds so turned in have been cancelled thereby, reducing the first mortgage issue by that amount."

VI.

If our adversaries be right in their contention that on the face of all matters appearing on the record the intent to extinguish appears, then the decree below should be reversed because of the learned Vice Chancellor's refusal to admit evidence offered by us to show correspondence between, and acts of the Consolidated Company and the North American Trust Company (Case, pp. 42, 43).

The learned Vice Chancellor excluded this evidence on the ground that evidence could not be received to vary the terms of a written instrument, and it appears from his opinion that he was influenced by the idea that even if this evidence were otherwise competent and material, it must be preceded or accompanied by evidence that the persons surrendering the Hopewell bonds concurred in the intent to keep them alive.

In the latter of these propositions we think the learned Vice Chancellor was misled by his failure to observe the distinction between cases where it would be a detriment to the person surrendering the obligation to keep it alive as against him, and the present case where that course is not only no detriment to the persons who surrendered Hopewell bonds but is on the contrary a positive benefit to them.

It is true that where one standing to profit by

the extinguishment of an obligation surrenders it under circumstances which permit him to infer that extinguishment is intended, the obligation cannot thereafter be treated as alive as against him. Thus where a corporation procures another person to advance money to take up its interest coupons and agrees that the lender shall take the coupons, yet if the time, place, and circumstances of the surrender of the coupons be such as naturally to lead the bondholder to suppose that he is being paid by the mortgagor company, they cannot be set up as against the principal and subsequent coupons of his bond. But this doctrine goes no further than the protection of the parties in interest requires; and there is no principle of law or equity which requires, and nothing in any of the decisions which indicates, that even in the cases to which it applies it can be or is available to an utter stranger to the transaction.

Where it is a matter of indifference to the former holder whether the obligation be kept alive or not it is not necessary that he have any intent in the matter, and even his expressed intent that it shall be extinguished will not prevent it from being kept alive.

In "Pomeroy's Equity Jurisprudence" the true rule is stated in Sec. 1211:

> "Equitable Assignment by Subrogation. Under some circumstances, the payment of the amount due on a mortgage, when made by certain classes of persons, is held in equity to operate as an assignment of the mortgage. By means of the payment the mortgage is not satisfied, and the lien of it destroyed; but equity regards the person making the payment as thereby becoming the owner of the mortgage, at least for some definite purposes, and the mortgage as being kept alive, and the lien thereof as pre-

served, for his benefit and security. This equitable result follows, although no actual assignment, written or verbal, accompanies the payment, and the securities themselves were not delivered over to the person making payment, and even though a receipt was given speaking of the mortgage debt as being fully paid and sometimes even though the mortgage itself was actually discharged and satisfied of record. This equitable doctrine, which is a particular application of the broad principle of subrogation, is enforced whenever the person making the payment stands in such relations to the premises or to the other parties that his interests, recognized either by law or by equity, can only be fully protected and maintained by regarding the transaction as an assignment to him, and the lien of the mortgage as being kept alive, either wholly or in part, for his security and benefit."

It is familiar law that even where the mortgagee has given and the mortgagor accepted and recorded a formal discharge of a mortgage, the lien will be treated as continuing wherever that is necessary for the protection of interests entitled to equitable consideration. The books are full of such cases, and for the purposes of the principle involved there is no difference between the cases where the surrendered bond or note evidences the whole mortgage debt, and those where it represents a part only of the mortgage debt.

In *Neville vs. Demerritt*, 1 Green's Chan., 321, it was held that it is a rule in equity that an encumbrance shall be kept alive or considered extinguished as will most advance the justice of the case.

But we need not rely on analogy to the common real estate mortgage; it is a specific and well set-

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tled doctrine of corporation law that a corporation may at any time before maturity reissue its bonds that itself has bought and paid for, not as a matter of arrangement with the former holder, but as of absolute power.

Claflin vs. Railroad Co., 8 Fed. Rep., 118.
Barrie vs. M., K. and T. Ry. Co., 34 Fed. Rep., 829.
Cook on Corporations, 5th Ed., p. 1983.

In the Barrie case Wallace, J., says:

> "In that case (referring to Ames vs, Railroad Company), however, the court placed some emphasis upon the circumstance that there was an express understanding between the corporation and those bondholders who consented to the exchange that the first mortgage should stand for the benefit of the new bonds. *But suppose there is no express understanding between the corporation and assenting bondholders that the original security is to be kept alive for their protection how are the rights of non-assenting bondholders enlarged by the surrender or payment of part of the bonds originally covered by the mortgage? No new contract is made with them by which their rights or their original liens are amplified: If it becomes necessary to enforce their mortgage, complete equity is done them if they are awarded the same share of the proceeds of the property which they would have received if no bonds had been surrendered.*"

In *Claflin vs. R. R. Co.*, 8 Fed. Rep., 118, certain prior mortgage bonds had been acquired by the corporation in refunding operations, and the question arose whether the company, after having acquired them, could keep them alive and reissue

them, so that they would carry with them their original mortgage lien, there being no express provision in the refunding mortgage therefor. Chief Justice Waite, in deciding the case, said:

> "As against other bondholders secured by the same mortgage, I cannot believe there is a doubt of the power of the company to put out and keep out the entire issue up to the time the bonds became due. The contract with the individual bondholder was no more than that he shall have his due proportion of the security the mortgage on its face implies."

If the consolidated company had taken up these Hopewell bonds for cash in full payment, it could, except for its obligations to holders of consolidated bonds, have reissued them for its corporate purposes, and it could have turned them over to the North American Trust Company to hold as collateral to the consolidated bonds,—and to this transaction any arrangement or understanding with the former holder would have been unnecessary,—how then can the fact that they were taken up with consolidated bonds make the consent of the former holder essential to any arrangement between the consolidated company and the trustee under the consolidated mortgage for keeping them alive, whether such arrangement be taken to be an interpretation of the prior agreements, or the substitution of a new agreement.

If any former holder of a Hopewell bond had when he surrendered it any interest to be protected by the extinguishment thereof this court would be bound to protect it, but none of them is here asserting any such right, and it does not lie in the mouth of a stranger to invoke a doctrine which exists for the protection of the prior holder to the sole end that he the stranger shall profit.

If we are right in our proposition that the intent

of the former holder of the exchanged bonds need not be shown it seems obvious that the learned Vice Chancellor erred in excluding the evidence in question.

The consolidated company represented and was in itself the corporations which were parties to the merger agreement. The stockholders of the constituent corporations were not parties to the merger agreement—the corporations were the sole parties, and stockholders' action was merely one part of the corporate action necessary to authorize the agreement as a corporate act. Doubtless since to the merger agreement, action by stockholders was requisite, that agreement could not be modified by any lower corporate authority in any material part in such way as to affect adversely the corporate interest. But no rule of law or reason requires that the ordinary agencies of corporate authority be shorn of any of their usual powers to act for the corporation where the matter done or attempted is in full accord with the spirit of the merger agreement, tends directly to further the accomplishment of the expressed purposes of that agreement, and, except as it so tends toward accomplishment, has no effect on the interests of the corporation or its stock.

All interests that were not represented by the consolidated company were represented by the North American Trust Company, which had certainly power to make, or assent to, any arrangement purely beneficial to the interests which it represented. The learned Vice Chancellor would therefore seem to say that the concurrence of all of the parties to an agreement is powerless either to modify or interpret it. Since we cannot believe that he meant to impute to private contract a rigidity like that of the laws of the Medes and Persians, or broadly and generally to dispute the possibility of novation, we must assume that the sole ground of his refusal to admit the evidence in question

was the belief evidenced in his opinion that concurrence of the surrendering Hopewell bondholders was prerequisite. In this we think we have shown that he was wrong.

A contract or conveyance under seal can be modified by the parties by parol agreement or simple writing:

See

Greenleaf on Evidence, Sec. 303.

Measurall vs. Pearce, June, 1886, N. J. Court of Chancery, Stewart's N. J. Digest, 105.

Cooper vs. Hawley, 20 N. J. L. J., 148 (N. J. Sup. Ct.), and cases cited therein.

In *Mott vs. N. Y. S. & T. Co.*, 29 Miscel. (N. Y.), 39, 46, the Court said:

> "He (the prior bondholder) cannot avail himself of the agreement at any time, except by and with the consent of the contracting parties, and their agreement may be varied by them in such manner as they deem their interests demand, without considering the plaintiff until he has acted and obtained the new agreement, which was authorized by the consolidation" (i. e., the exchange).

At page 47:

> "I think this contract under consideration does not confer any interest upon the [prior] bondholder, except a statement of a willingness, or a license, revocable at pleasure, to exchange bonds, and until such exchange has been effectuated the bondholder has no enforcible rights under the consolidation agreement."

We think, therefore, that even though the evidence were offered as showing novation it was com-

petent; but we contend that what it was offered to show was the real interpretation of the merger agreement and mortgage, and that to show that it was both competent and material. We contend that even if the merger agreement and mortgage control, and even if they permit the construction for which our adversaries contend they were still not utterly inconsistent with the construction for which we contend. Where on its face a writing leaves room for doubt, the subsequent conduct and concurrence of both parties in a line of conduct consistent with but one interpretation is not only admissible but of persuasive force, and even in a contest between them. If by their conduct they can establish an interpretation which is of binding force even as against one of them—how can a stranger to the transaction exclude such evidence in this case where all parties other than he admit the interpretation?

If our proffered evidence being admitted had shown that the officers of both companies concurred explicitly in interpreting the mortgage and merger agreement as requiring that the Hopewell bonds be kept alive as security until the whole issue should be exchanged, it is inconceivable that that fact would have been immaterial. They were the people charged with the administration of the exchange, and it can hardly be that their concurrence in an interpretation or course of action beneficial to every interest represented by them, and against which the agreements are certainly not clear on their face, would be of no legal effect as against a stranger urging an inequitable claim.

Even if the evidence were incompetent for any other purpose it was competent to show the intent with which the trustee acted in making the exchanges. The trustee was not with respect to these exchanges a mere machine incapable of originating an intent. It was exercising a trust function, and giving consideration which moved from its

trust. It had the power and was charged with the duty to do all things permissible in the situation to further and protect the interests of its bondholders. It had the right that any obscurity of the original instrument be made clear. If it believed that the true intent was that the exchanged bonds should remain as security, but that that intent needed clearer expression, it would have had the right and duty to withhold deliveries pending a determination between itself and the consolidated company of the true meaning of the instruments, and the clear expression by proper corporate authority of the resulting conclusion. If having no such doubt it acted with the clearly evidenced belief and intent that the Hopewell bonds were intended to be and should be kept alive for the protection of its bondholders that intent was material.

Extinguishment rests on intent, and where it is not requisite to the protection of a substantial right of a person in interest to impute an intent, necessarily there must be a meeting of the minds. If by the failure of the minds to meet, any person entitled to consideration is or may be damaged, he has his remedy, either by rescision, or under the equitable maxim that equity regards that as done which ought to be done, but where the party from whom consideration moved did not intend extinguishment, extinguishment will not be predicated to the single end that inequity result and a perfect stranger profit.

The learned vice chancellor also erred in refusing to permit appellants to show (case, p. 51) that the Hopewell bonds exchanged were exchanged through the medium of the Princeton Lighting Company, merely because the agency through whom the bonds were exchanged was not specified in the stipulation (pp. 49, 50).

The fact that the parties stipulated in writing that certain exchanges of bonds were made cer-

tainly did not prevent the appellants from showing the immediate agencies and methods employed in the exchanges and the facts and circumstances surrounding them. This very evidence excluded would have shown what the agreement of exchange was. For instance, we could have shown that it was specifically agreed when the Hopewell bonds were exchanged that they were to be held as collateral security for the consolidated bonds.

VII.

We believe that notwithstanding the exclusion of the evidence above referred to it is established on the record that whatever be the interpretation of the merger agreement and mortgage these bonds were exchanged with the then existing affirmative intent that they should be kept alive.

At the head of the sheet from the trustee's trust record in this matter, which was offered in evidence, and at the head of the column thereof in which the Hopewell bonds received are set down, is the note "Received for exchange and cancellation when total issue is received" (p. 162).

It is in evidence that the trustee served notice upon the Princeton company, which was the successor in interest and representative of the Hopewell company, and also upon the receiver of the Princeton company, that it held these bonds as collateral security and intended to sell them (p. 163), and that neither of them objected to or dissented from this notice (Dowd p. 44, lines 30-40).

The bill in this suit alleges that all of the bonds are outstanding and that allegation has not been denied either by the Princeton Lighting Company or its receiver, or the Princeton Light, Heat & Power Company, which owns the premises on which the bonds, if alive, are a lien.

The affidavit of Dowd in evidence and printed

at defendants' request shows that the North American Trust Company held in its hands as security for the bondholders of the Princeton Lighting Company said $38,500 of Hopewell bonds which had been exchanged and that said bonds were to be held pursuant to the terms of both mortgages until the entire $50,000 of Hopewell bonds were exchanged. (P. 197, folio 591; p. 198, folio 592.)

Certainly this record is admissible as a whole to show the agreement of all parties in interest, either as a novation, or as persuasive evidence of the true interpretation.

VIII.

Even if it be considered that the failure of the Princeton Lighting Company and its receiver to dissent from or object to the notice of sale or traverse the allegations of the bill, is not evidence of acquiescence, the record still shows clearly that the trustee never delivered a single consolidated bond with the intent to extinguish the Hopewell bond received in exchange. As against our adversaries, that fact alone is for reasons stated above conclusive.

IX.

Each case is to be determined on its own facts, and we have found, and could expect to find no decision directly on the same facts as are here presented. But the general doctrine that such claims as the one asserted by our adversaries are inequitable and only to be allowed when inevitable is firmly established, and we think that even cases in which bonds have been held to be extinguished by exchange are conclusive in our favor.

Union Trust Company vs. Ill. Midland Ry. Co., 117 U. S., 434, turned upon the fact that "*the sur-*

render was for cancellation and there was cancellation." The bonds in question had been surrendered pursuant to an agreement that they be "forthwith cancelled," they were physically cancelled, and were presented in that condition; the holder claimed only that because one of the executory terms of said agreement of surrender had become impossible of performance he was entitled to rescind.

In *Mowry vs. Farmers Loan & Trust Co.*, (supra) it was said of this case—

> "As the Court states, the surrender was for cancellation and there was cancellation."

In *New York Security & Trust Co. vs. Louisville, Evansville & St. Louis Consolidated Railroad Co.*, 102 Federal Reporter, 382, the articles of consolidation provided that certain consolidated bonds—

> "Be placed in a safe place by direction of the board of directors of the consolidated company and thereafter held in trust for purposes of exchange"; that certain of the debenture bonds were to be used in taking up and in satisfaction of bonds of the various constituent companies, and in redemption thereof; "that such of the bonds of any of the constituent companies as may be surrendered in exchange as herein provided shall be stamped and defaced so that they shall not be negotiable."

There was further provision that the directors of the consolidated company might, in case of the neglect or refusal to exchange, make such arrangements in regard thereto as in their opinion the interests of the consolidated company might require, and that they might adopt such plan with respect to surrendered bonds as should protect the rights of the holders of new bonds. The consolidated

mortgage, which was issued in pursuance of this agreement, provided that the Trustee under the consolidated mortgage should certify and deliver to the company or its order the bonds which were to be used in exchange. The New York Security & Trust Co., which was trustee under the consolidated mortgage, made the exchange and stamped the bonds, as requested, but was instructed by the secretary of the consolidated company that they were to be held until all should come in, and were then to be defaced.

The opinion that these bonds were extinguished rests explicitly on the following facts: That the mortgage provided that the consolidated bonds which were reserved to make the exchanges were to be delivered by the Trustee and were to be deposited in a safe depositary to be selected by the directors of the consolidated company, and that therefore the New York Security & Trust Co. in making the exchange was *not performing one of its trust functions* but was acting as depository for the consolidated company; that as the mere agent of the consolidated company it could not originate an intent with respect to the bonds delivered to it but was governed by the intent of the consolidated company; that in view of the fact that the consolidation agreement expressly provided that the directors of the consolidated company might adopt a plan for keeping these bonds alive it must therefore be taken to mean that if no such action were taken by the directors they were not to be kept alive; that there was no evidence that any such action had been taken by the directors and that under the circumstances it was not competent for the secretary of the consolidated company to issue any instructions to the agent of the consolidated company which would color the effect of that agent's acts.

It seems to us that on every point on which either of the above cases turn our case presents the ob-

serse. In our case both the consolidated company and the trustee intended to and did keep alive the Hopewell bonds exchanged.

X.

The learned Vice Chancellor seems to base his opinion in part on the fact that the bondholders' committee, complainant herein, is self-constituted and that no proof was offered to show that it represents any body.

We would imagine that even if this were true it would have no bearing on any issue involved in this case. These gentlemen bought and paid for the bonds, and if in so doing they had chosen to call themselves a committee without basis of fact and purely for the distinction conferred by a sounding title, we should imagine that their harmless vanity would neither taint their title nor put them outside the pale of law and equity. Lest, however, there be a connection discernible by more astute minds than ours, we feel bound to remark that if the learned Vice Chancellor had read the pleadings, the affidavit of Dowd or the stipulation which was put in evidence, he would have discovered one of our reasons for offering no further proof on the subject. The stipulation (p. 48, lines 20-30) admits the allegations in paragraph first of the bill as amended (p. 21, lines 10-20) that said committee were duly appointed and constituted, and had deposited with them all but a small proportion of the Princeton bonds. To the same effect, see affidavit of Dowd, p. 196, folios 587, 588.

XI.

The decree appealed from should be reversed or modified and the $38,500 of Hopewell bonds ex-

changed should be held to be outstanding obligations secured by the mortgage, and complainants should have their costs.

Respectfully submitted,

GEO. WHITEFIELD BETTS, JR.,
JOHN G. BOSTON,
ERNEST WATTS,
Of Counsel with Complainants-Appellants.

Dated Feb. 28, 1907.

Appeal Ptg. Co., 14-16 Vesey St., N. Y.

New Jersey Court of Errors and Appeals.

Between

Burlington City Loan and Trust Company, *et al.*,
Complainants,

and

Princeton Lighting Company, *et al.*,
Defendants.

On Appeal from Chancery.

Respondents' Brief.

Statement of Facts.

The mortgage to foreclose which this suit is brought was dated August 1st, 1901, and executed by the Hopewell Electric Light, Heat & Power Company to the Burlington City Loan & Trust Company as Trustee, to secure an issue of Fifty thousand ($50,000) dollars of bonds, all of which were duly certified and delivered (page 10, line 15, Mortgage, page 81, Bill of Complaint, pages 2, 3).

On February 2d, 1903, an agreement was entered into between Hopewell Electric Light, Heat & Power Company, Princeton Electric Works and Princeton Gas Light Company, providing for the merger and consolidation of said three companies pursuant to the laws of the State of New Jersey into a company to be known as "Princeton Light-

ing Company," which new corporation should thenceforth "have and possess all and singular the rights, franchises, privileges, powers, immunities and capacities" possessed by the three former corporations, together with all their possessions and attributes (Ex. C16, page 164), and said three companies were thereupon on February 27, 1903 (page 13, line 33), and in accordance with the provisions of said consolidation agreement, merged into said Princeton Lighting Company, and the said three first mentioned companies thereupon ceased to exist (fol. 494).

The new company took possession of and operated all of the aforesaid property, premises, rights and franchises, and assumed the liabilities thereof including the bonds secured by the aforesaid mortgage (Bill of Complaint, Paragraph Thirteenth, page 14, line 10).

It was provided by Article IX of said consolidation agreement (fols. 501-503) as follows:

> "Immediately upon the filing of this agreement in the office of the Secretary of State, as provided by law, the capital stock of the *Hopewell Electric Light, Heat and Power Company*, issued and outstanding, amounting to One Hundred Thousand Dollars ($100,000.00) at par, *shall be converted into Bonds of the New Company to the amount of One Hundred and Sixty Thousand Dollars ($160,000.00), at par, secured by a mortgage upon the property of the New Company, as is hereafter mentioned*, and into stock of the New Company to the amount of Two Hundred Thousand Dollars ($200,000.00). *Of the foregoing number of Bonds, Fifty Thousand Dollars ($50,000.00) at par shall be retained by the Trustee, however, for the purpose of redeeming bond for bond as they are presented, an issue of Fifty Thousand Dollars ($50,000.00) of bonds of the Hopewell Electric Light, Heat and Power Company, dated August first, nineteen hundred and one, and secured by a mortgage to*

the Burlington City Loan and Trust Company, a corporation of the State of New Jersey, which last mentioned bonds shall be delivered up to the Trustee and cancelled, so that they shall be no longer a lien upon the property of the Hopewell Electric Light, Heat and Power Company or upon any of the property of the Consolidated Company."

Article XIII of said merger agreement (folio 510) provided as follows:

> "When this consolidation has been perfected as herein provided for, the bonded indebtedness of the New Company will be Three Hundred Thousand Dollars ($300,000.00), and the amount of capital stock issued and outstanding will be Three Hundred Thousand Dollars ($300,000.00)."

Article XIV of said merger agreement (folio 511) was as follows:

> "The bonds hereinafter mentioned amounting to Three Hundred Thousand Dollars ($300,000.00) are part of an authorized issue of Three Hundred and Fifty Thousand Dollars ($350,000.00) of bonds of the New Company, dated March second, nineteen hundred and three, payable in thirty years from the date with interest at the rate of five per cent per annum, payable semi-annually, both principal and interest to be payable in gold coin of the standard of weight and fineness of nineteen hundred and three. Said bonds may be registered at the option of the holder, and shall contain the provisions and be substantially in the form contained in "Schedule A" hereto annexed. Of the said Three Hundred and Fifty Thousand Dollars ($350,000.00) in bonds authorized to be issued as aforesaid, Three Hundred Thousand Dollars ($300,000.00) shall be issued as hereinbefore set forth, and the remainder of said issue, or Fifty Thousand Dollars ($50,000.00) of said bonds shall remain uncertified in the hands of the Trustee to be used from time to time for the acquisition of

new property, or for extensions, alterations or improvements in the plant of the New Company, *according to the terms and conditions of the first mortgage to be issued by the said New Company upon the consummation of this consolidation, to the North American Trust Company*, a corporation of the State of New York, upon all the property of the New Company, in trust for the security of said bonds."

Pursuant to the consolidation agreement aforesaid, an indenture of mortgage was entered into between Princeton Lighting Company and North American Trust Company as trustee, dated February 28th, 1903 (Exhibit C11, page 715), which, after reciting the merger and proper resolutions of the board of directors and stockholders providing for the issue of the bonds in the merger agreement mentioned, in the exact form and the same as to date, trustee, etc., as in said merger agreement set forth, conveyed to the said North American Trust Company in trust all the property of said consolidated companies and contained the following covenant (folios 387, 388):

"And it is hereby covenanted and declared that all such bonds with the coupons for interest thereon are to be issued and authenticated and delivered, and that the mortgaged premises are to be held by the Trustees, *subject to the further covenants, conditions, uses and trusts hereinafter set forth*, and it is agreed and covenanted between the said Company and the respective holders from time to time, of bonds issued hereunder, as follows, namely: * * *

Section 2 (fol. 393). The Trustee shall authenticate and deliver the said bonds as follows:

(a) Bonds to the aggregate amount of two hundred and twenty-nine thousand, five hundred dollars ($229,500.) at par with coupons

for interest from March second, nineteen hundred and three, attached thereto, shall be certified by the said Trustee and delivered to the Treasurer of the Princeton Lighting Company to be used as follows :

One hundred and ten thousand dollars ($110,000.00) in part payment of the property, rights and franchises of the Hopewell Electric Light, Heat and Power Company, subject to a certain indenture of mortgage of fifty thousand dollars ($50,000.00) as aforesaid, to be provided for as hereinafter mentioned * * * (fol. 394).

(b) Seventy thousand five hundred dollars ($70,500.00) of said bonds *are to be retained by the Trustee, and are to be certified and delivered from time to time as required to take up and replace fifty thousand dollars ($50.000.00), at par, of outstanding bonds of the Hopewell Electric Light, Heat and Power Company, dated August first, nineteen hundred and one, which bonds are redeemable by the conditions of the mortgage securing them* * * * * " (fol. 395).

The provision as to redemption above referred to is contained in Paragraph First of the Hopewell Electric Light, Heat & Power Company mortgage as follows (fol. 285) :

"Subject, however, *to the option of the said Electric Company to redeem* said bonds in whole or in part, after five years from their date, to wit: On or after August 1st, 1906, out of any moneys in the sinking fund or out of any other moneys that may be appropriated by the said Electric Company for this purpose (providing if less than the whole issue is redeemed, the bonds *to be paid* shall be determined by chance by the Trustee under this mortgage)."

In pursuance of its mortgage agreement with Princeton Lighting Company (Section 2, Subd-

(b), folios 395-6, page 40, lines 20-40; page 41, lines 20 24), the North American Trust Company thereafter retained Fifty thousand ($50,000) dollars of said Princeton Lighting Company bonds and certified and delivered from time to time to Hopewell Electric Light, Heat & Power Company bondholders Thirty-eight thousand five hundred ($38,500) dollars of said bonds to take up and replace Thirty-eight thousand five hundred ($38,500) dollars of said Hopewell bonds (page 40, lines 20-40, page 41, lines 21-23), which latter were delivered to said Trust Company by said Hopewell bondholders (Stipulation, page 49, lines 30-40, page 50, lines 1-10).

Subsequent thereto said North American Trust Company was consolidated with the Trust Company of America, which latter is the successor of said companies (page 50, lines 8 to 12), and on or about July 19th, 1905 (page 50, line 12, page 35, lines 8-11) said Trust Company offered at public auction in the City of New York said Thirty-eight thousand five hundred ($38,500) dollars of Hopewell bonds, and the same were bid in for the sum of Five thousand ($5,000) dollars (page 35, line 4), by the bondholders' committee of Princeton Lighting Company, complainants herein (page 50, line 20), said committee being composed of Heman Dowd, Bayard Stockton, J. Howard Pugh and George Whitefield Betts, Jr., and upon the death of said Pugh, J. H. McNeal, he having been appointed to fill the vacancy in said committee (page 21, lines 10-25); and said bonds are now in the hands of said committee and are part of the four hundred and five (405) bonds alleged in Paragraph First of the bill of complaint to be held and owned by said committee (p. 50, line 22); and the said committee also acquired from Adam Weber, a Hopewell Electric Light, Heat & Power Company bond-holder (page 34, line 16), twenty (20) of said

Hopewell bonds which, with the three hundred and eighty-five (385) bonds aforesaid, make up the four hundred and five (405) bonds alleged in the bill of complaint to be held and owned by said committee (page 50, lines 25-35).

Said Heman Dowd at and subsequent to the consolidation of the three companies aforesaid was one of the vice-presidents of said North American Trust Company and so continued up to the date of its merger with the Trust Company of America, and since such merger has been and now is a vice-president of said Trust Company of America, and said Dowd is also chairman of the bondholders' committee aforesaid and has been such since the formation thereof (page 50, lines 5-22).

The respondents First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Fouudry & Machine Works, Frank Toomey, Caroline B. Drake, W. S. Titus and Maria Fisher are the owners and holders of ninety-one (91) bonds of Hopewell Electric Light, Heat & Power Company, being part of the issue of five hundred (500) bonds in the bill of complaint mentioned (page 49, lines 3-21), and have refused to deliver up their bonds for Princeton Lighting Company bonds, and who on application were admitted to defend this suit (pages 22, 24). The final decree herein adjudges that the $38,500 of Hopewell bonds delivered up to the North American Trust Company for Princeton bonds have been in legal effect, cancelled, paid and satisfied, and are not outstanding legal obligations of said Princeton Lighting Company and are not entitled to the lien of said Hopewell mortgage (folios 196, 199); the appellants claim that said bonds are still alive, due and outstanding legal obligations secured by said mortgage (Petition on Appeal, pages 73, 74), and that the same having been sold at auction for Five thousand ($5,000) dollars to

the bondholders' committee, said committee is entitled to enforce the same upon this foreclosure.

POINT I.

The only alleged error complained of is that the decree adjudged that three hundred and eighty-five (385) bonds of Hopewell Electric Light, Heat and Power Company have been paid and satisfied and are no longer securities entitled to the lien of the mortgage under which they were issued, and that the outstanding bonds secured by said mortgage are of no more than the par value of Eleven thousand five hundred ($11,500) dollars principal (Petition on Appeal, pages 72, 73 and 74).

None of the rulings of the Chancellor upon the admission or rejection of evidence are complained of, and the appellants are limited to the grounds specifically stated in their petition on appeal.

As the Court said in N. Y. Building Loan Co. v. Lord, 66 N. J. Eq., 344, at page 350, where upon the argument, an additional question was raised: "It is sufficient to say that no such 'ground of appeal' is to be found in the petition of appeal now before us. Rule 21 of this Court requires the appellant to 'file a petition in which shall be briefly stated the order or decree complained of and the grounds of appeal.' The object of the rule is two fold—first, to apprise the Court, through the petition and the answer thereto, of the issue between the appellant and respondent; and secondly (as already determined in 10 C. E.

Gr., at page 536) 'to require a notice to the opposite party of the points in the proceeding which are to be made the subject of complaint in the Appellate Court.' "

"In Butterfield v. 3rd Ave. Savings Bank, 10 C. E. Gr., 533, 536, the ground of appeal in the petition was 'that the complainant's mortgage was held to be a valid lien'; and in argument the objection advanced was 'that the Vice-Chancellor would not admit evidence going to a certain point.' Whereupon this Court said that 'such generality of objection would scarcely seem to be a compliance with the rule requiring the grounds of appeal to be stated.' "

"We are but maintaining, or perhaps logically extending the view taken in the Butterfield case *when we hold, as we now do, that the appellant herein can neither in accordance with Rule 21, nor with plain principles of justice, assail the decree in the cause below on grounds of appeal which are nowhere stated in his petition.* (See also, Cumberland Lumber Co. v. Clinton Hill Lumber Mfg. Co., 12 Dick. Ch. Rep., 629.)"

POINT II.

The question is one of contract or intention and must be resolved in each case upon the facts of the particular transaction.

New York Security & Trust Co. v. Louisville, Evansville & St. Louis Consolidated R. R. Co., 102 Fed. Rep., 382, 398.

Mowry v. Farmers' Loan & Trust Co., 76 Fed. Rep., 38, 42

In Mowry v. Farmers' Loan & Trust Co. (76 Fed. Rep., 38) *there was a provision in the consol-*

idated mortgage that the bonds and coupons of prior issues of the railroad company *received in exchange should be held by the trustee under the consolidated mortgage as additional security for the benefit of the holders of the bonds thereby secured, and that when the bonds and coupons outstanding, of any one issue, should have been delivered over to the Trustee, then the mortgage securing such bonds* so delivered over and for which bonds had been received in exchange *should, on request of the railroad company, be cancelled*, and that no mortgage should be cancelled until the second income mortgage had been satisfied and discharged.

A similar provision is characteristic of all the cases where it has been held that the bonds delivered up in exchange for a new security were not delivered for cancellation but were to remain active until some purpose, evidenced by the agreement under which the new bonds were issued, had been accomplished.

Where new bonds are secured by a new mortgage and the old bonds are surrendered to the debtor, generally a prima facie case would be established of novation when no purpose of the parties appeared to retain the elder security, and if a bondholder gives up his bond and accepts other securities in its place, there is, in the absence of any agreement governing the transaction, a novation of the debt, a payment of the former obligations and a substitution of the latter.

The law is well stated in the New York Security & Trust Company case (*supra*) where the Court said (102 Fed. Rep., page 398). "The remaining question is whether the second mortgage on the eastern division of the system remains a security for the entire original issue of 3,000 bonds, or only for the 670 which were not exchanged. It

was alleged in the cross bill of the New York Security & Trust Company that the intention of the provision in the ninth article of consolidation was 'that any holder of a bond of a constituent company, who surrendered the same in exchange for a bond of the consolidated company, should have the bond so surrendered by him kept alive as additional security for the consolidated bond which he had accepted'; but at the hearing and in the briefs the contention of that company has been that it holds the surrendered bonds as additional security or collateral to the entire issue of consolidated bonds. Most of the decisions cited touching the question have been made in cases *where there was an express agreement or provision that the original bonds, surrendered in exchange for new, should be kept alive*, either for the benefit of those who surrendered them, or perhaps, more commonly, as collateral to the entire issue of new bonds (Ames v. Railroad Co., 1 Fed. Cas., 760; Barry v. Railway Co. (C. C.), 34 Fed., 829, 833; Central Trust Co. v. Marietta G. N. R. Co. (C. C.), 73 Fed., 589; Mowry v. Trust Co., 22 C. C. A., 52; 76 Fed., 38; Union Trust Co. v. Illinois M. Ry. Co., 117 U. S., 228; Fidelity Insurance, Trust & Safe Deposit Co. v. Shenandoah Val. R. Co. (Va.) (9 S. E., 759). *The question is one of contract or intention*, and little aid is to be derived from the cited cases, since in every instance they have turned upon the construction or force to be given to a writing or contract quite different from the articles of consolidation by which the present dispute must be determined. In Mowry v. Farmers' Loan & Trust Co., *supra*, decided by the United States Circuit Court of Appeals for the Seventh Circuit, it was said that 'where a novation is thus sought to be established, it must be shown that the substitution of the new obligation was with design and intent to extinguish the old obli-

gation, and as such an act would, upon its face, appear to be against the interest of the holder of the bonds, such intent will not be presumed, but must be clearly established'; *but the more relevant and dominant proposition was added that 'where the new bonds are secured by a new mortgage, and the old bonds are surrendered to the debtor, generally a prima facie case would be established of novation when no purpose of the parties appeared to retain the elder security.'* The citation in support of this was Jones, Corp. Bonds, Secs. 319, 320, but the author, on the authority of Fidelity Insurance, Trust & Safe Deposit Co. v. Shenandoah Val. R. Co., *supra*, makes, in Section 320, the broader statement, that *if 'a bondholder gives up his bonds, and accepts other securities in their place, there is, in the absence of any agreement governing the transaction, a novation of the debt, a payment of the former obligations, and a substitution of the latter.'* The bonds here in question were surrendered for exchange to the New York Security & Trust Company, one of the trustees in the consolidated mortgage, designated presumably by the Board of Directors of the consolidated company, in accordance with the fourth article of consolidation, as the custodian to receive and hold the new bonds 'in trust for the purpose of exchange, according to the terms of the articles of consolidation.' For the purpose of that exchange, the trust company was the representative of the consolidated company, and, though named also as one of the trustees in the consolidated mortgage, was performing no function or duty of trustee in that instrument; and since, by force of the consolidation, the consolidated company became responsible for all liabilities, including the bonded debt, of the several constituent companies, *when any holder of divisional bonds surrendered them to the trust company for exchange, the surrender,*

in legal contemplation, was to the debtor, and by the rule stated in the Mowry case *the effect was to extinguish the old bonds* unless there was at that time a contrary purpose.

"There was, of course, no purpose on the part of the consolidated company to exercise the power, declared by Chief Justice WAITE in Clafflin v. Railroad Co. (C. C.), 8 Fed., 122, 'to put out and keep out the entire issue (of seconds) up to the time the bonds became due.' On the contrary, *the intention was to substitute the new bonds and mortgage for the old* in accordance with the plan of consolidation. *No proof of an intention inconsistent with the articles could prevail* and the proof reported by the master need not be regarded as going further. The secretary of the trust company, it was testified, instructed his subordinates that the bonds surrendered were to be held by that company 'as against the second mortgage'; but that instruction, the report says, followed an examination of the articles of consolidation made at the time the bonds were received for exchange, and can signify no more than a conclusion of the secretary that the bonds should be so held. *There is no evidence that any holder, when surrendering his bonds for exchange, expressed a desire or intention that they should be kept alive for his own advantage, or for the benefit of the company, or as an additional security for all or any part of the consolidated bonds.* Except, therefore, as inferrable from the articles of consolidation, there was no reservation. *As the agent of the consolidated company to effect the proposed exchange of bonds, the limits of authority of the trust company were defined in the articles of consolidation, and could not be exceeded.* An absolute exchange, whereby, subject to to the power of the directors to act in the interest of the company, the surrendered bonds should be exstinguished, it is clear was not beyond the au-

thority conferred, but any attempt to restrict the effect of the exchange could not lawfully go beyond the provisions of the fourth and ninth articles—of the fourth, that in case of bonds or stock of any of the constituent companies remaining unexchanged 'the directors of the consolidated company shall be empowered to make such arrangement in regard thereto, not inconsistent with these articles, as in their opinion the interest of said consolidated company may require'; and of the ninth, that 'the board of directors of said consolidated company may adopt such plan, not inconsistent with these articles, as shall protect the rights of the holders of new bonds issued in such exchange, as against the holder of any bond of any such constituent companies who shall not exchange the same as herein provided.' These provisions point in different directions; the first to the interest of the consolidated company, and the second to the protection of the rights of the holders of new bonds issued in exchange for old ones, as against the holder of any unexchanged bonds of whatever issue of any of the constituent companies. Upon the latter provision is based the contention that the surrendered bonds were not extinguished, but are held as collateral security for all of the consols issued, and, while it is admitted that the board of directors of the consolidated company never adopted any plan or made any declaration on the subject, it is insisted that the case falls within the rule that equity will treat as done what ought to have been done, and so give effect to what was intended. For manifest reasons the doctrine is not applicable. *It was not definitely prescribed what should have been done, and therefore cannot be judicially declared what ought to have been done.* The board of directors had a manifest election between the two provisions. They could have

made arrangements according to the first in the interest of their company, or according to the second for the protection of the rights of holders of consols issued in exchange for seconds against the holders of unexchanged bonds, not seconds alone, but any or all of the constituent companies. It is not for the Court to say what arrangement would have been best for the consolidated company, or that the interest of that company and the contemplated protection of the rights of the bondholders could both have been best conserved by the same method. Even if we had to do with the ninth article alone, it is not evident but that different plans might have been adopted for effecting the contemplated protection of the rights of holders of the consols as against the holders of unexchanged bonds of the constituent companies, and the impossibility, on that supposition, of a remedy in a Court of equity for the failure of the board of directors to act is not less evident than upon the articles as they are. It is not clear, too, but that the arrangement or plan contemplated, in order to be availing, should have been adopted by the board of directors before exchanges were made; *but if it be accepted, as perhaps it may, that the provisions in the articles should be presumed to have been known to those who surrendered bonds for exchange*, and that the exchanges effected were all made upon the condition that the board of directors might exercise thereafter the authority conferred or reserved by those provisions, yet the fact being that the power was capable of being exercised in two or more ways, was therefore, discretionary, and was not exercised at all, the posture of *the case is the same as if the articles had provided simply for the exchange of the old bonds secured by the respective underlying mortgages for new bonds secured by the mortgage upon the entire property.*"

As said in Fidelity Insurance, Trust & Safe Deposit Co. v. Shenandoah Valley R. R. Co. (86 Va., 1; 9 S. E. Rep., 759; 19 Amer. St. Rep., 859):

"There is no better settled principle in equity, nor one, perhaps, which has been oftener recognized and acted upon by this Court, than that no mere change in the form of the evidence of a debt secured by mortgage, deed of trust or a vendor's lien will operate to discharge the debt, unless so intended by the parties. The cases of Yancy v. Mauck, 15 Gratt., 300; Gilbert v. Washington City, etc., R. R. Co, 33 Gratt, 586, and Stimson v. Bishop, 82 Va., 190, may be mentioned among the many cases in this Court on that subject. At the same time, it is equally well settled that *where one security is accepted by the creditor in satisfaction of another, the debt evidenced by the latter is discharged.* In a case, therefore, of a change of securities, the question always is, *What was the intention of the parties?* or as it is usually expressed, the question whether the transaction amounts to a novation is a question of intention, to be derived from all the circumstances of the case, although nothing positive be expressed. And *in the absence of proof of a special agreement, the giving up or the retention of the original security will, in general, be a decisive circumstance in determining that question; for if the creditor means in any contingency, to resort to the original indebtedness, he will scarcely be willing to surrrender all evidence of that indebtedness to his debtor without fortifying himself with some acknowledgment of the real nature of the transaction.* This was decided in Morriss v. Harveys, 75 Va., 726, and *such is the well settled doctrine.*

"In the present case, there was no express agreement when the coupons in question were surrendered, and hence we must look to the surrounding

circumstances to ascertain what the intention of the parties was."

"The appellants Clark and Kimball thus had, independently of their official connection with the company, full notice of the objects for which the bonds were purchased and now held by them were issued, and it is not reasonable to suppose that in surrendering their coupons at par, and getting for them at sixty cents on the dollar income bonds secured and guaranteed as already indicated, they were merely exchanging one form of indebtedness for another, leaving the original indebtedness evidenced by the coupons unaffected. On the contrary, the circumstances of the transaction preclude any such conclusion. Here was not only the original security given up, but a new one was taken."

POINT III.

It nowhere appears that it was the intent to keep the bonds alive.

(*a*) *There was no provision in the merger agreement that the bonds* of the Hopewell Company surrendered to the trustee under the contemplated consolidated mortgage, in exchange for Princeton bonds, *should be kept alive*, either for the benefit of those who surrendered them or as collateral to any issue of new bonds (Ex. C16, page 164).

(*b*) *Nor was there any such provision in the mortgage* executed by Princeton Lighting Company to North American Trust Company (Ex. C11, page 115) which mortgage was the mortgage contemplated by the consolidation agreement (page 49, lines 33, 34).

As appears from the cases cited under Point II such a provision is characteristic of all the cases where it has been held that the bonds delivered

up in exchange for a new security were not delivered for cancellation, but were to remain active.

(c) *It nowhere appears that the Hopewell bondholder made any reservation* nor intended to resort to the original indebtedness, for he surrendered his bonds, which were his evidence of indebtedness, to North American Trust Company in exchange for Princeton bonds.

Unless the intent to keep the bond alive does appear, a satisfaction and payment thereof results.

N. Y. Security & Trust Company v. Louisville, Evansville & St. Louis Con. R. R. Co., 102 Fed. R., 382,398, and cases cited under Point II.

POINT IV.

On the contrary, it clearly appears that the substitution of the new obligation was with the design and intent to extinguish the old obligation.

(a) *The merger agreement* entered into between Hopewell Electric Light, Heat & Power Company, Princeton Electric Works and Princeton Gas Light Company expressly provided, Article IX (page 167, folio 501) that One hundred and sixty thousand ($160,000.00) dollars of bonds secured by a mortgage upon property of the Consolidated Company as thereinafter mentioned, should be paid to the Hopewell Company for its capital stock, and that out "of the foregoing number of bonds, fifty thousand dollars ($50,000.00) at par shall be retained by the trustee, however, for the purpose of redeeming, bond for bond, as they are presented, an issue of Fifty thousand dollars ($50,000.00) of bonds of

the Hopewell Electric Light, Heat and Power Company, dated August first, nineteen hundred and one, and secured by a mortgage to the Burlington City Loan and Trust Company, a corporation of the State of New Jersey, which last mentioned bonds shall be delivered up to the trustee and cancelled, so that they shall be no longer a lien upon the property of the Hopewell Electric Light, Heat and Power Company, or upon any of the property of the Consolidated Company'' (Ex. C16, page 168, fols. 502, 503).

There is no ambiguity in the language above quoted. The bonds to be retained by the trustee and issued to Hopewell bondholders were for the purpose

> 1. Of ''*redeeming*, bond for bond, *as they are presented*,'' the Hopewell bonds; and
>
> 2. The bonds were to be ''*delivered up to the trustee and cancelled, so that they shall be no longer a lien* upon the property of the Hopewell Electric Light, Heat and Power Company, or upon any of the property of the Consolidated Company.''

The word ''redeeming'' means payment.

Century Dictionary:

> ''*Redeemable*, capable of being *paid off*; subject to a right on the part of the debtor to discharge, satisfy, recover, or take back *by payment*.
>
> ''*Redeemable rights* in law those conveyances in property or in security which contain a clause whereby the grantor or other person therein named may, on *payment* of a certain sum redeem the lands or subjects conveyed.
>
> ''*Redeem, in law*, to recover or disencumber, as mortgaged property *by payment* of what is due. *In commerce*, to *receive back by paying the obligation*, as a promissory note,

bond, or other evidence of debt given by a corporation, company or individual."

Webster's Dictionary:

"*Redeem.* To regain *by performing the obligation* stated; *to discharge the obligation* mentioned in, as a promissory note, *bond*, or other evidence of debt."

The word "redeem" means to purchase back.

Maxwell v. Foster, 45 s. e., 927, 932; s. c., 67; S. C., 371.

"To redeem is to purchase back; to regain, as mortgaged property, by paying what is due; to receive back by paying the obligation."

Miller v. Rallerman, 24 N. E., 496, 499; s. c., 47 Ohio St., 141.

The fact that the same were to be redeemed "bond for bond as they are presented," shows that as fast as they were presented they became redeemed and paid, and after the bonds had been redeemed by the trustee they were to be "cancelled." Plainer language showing the intent to pay off the Hopewell bonds and to cancel the same could not have been used.

(b) *The mortgage*, contemplated by the merger agreement, executed by Princeton Lighting Company to North American Trust Company as trustee, under which Princeton bonds were delivered to Hopewell bondholders and their Hopewell bonds delivered up to the trustee, contained language fully as significant as that used in the merger agreement. The trustee agreed with the Princeton Lighting Company to authenticate and deliver One hundred and ten thousand ($110,000.00) Dollars of Princeton bonds in payment for the property, rights and franchises of the Hopewell Company subject to the Fifty thousand ($50,000.00) dollar

mortgage in question (Art. I., Sec. 2 (a) page 131, folios 393, 394), the exact amount which the company was to receive under Article IX of the merger agreement, and provided (Sec. 2 (b), page 132 folio 395) that Seventy thousand five hundred ($70,500.-00) dollars of Princeton bonds should be retained by the trustee and that Fifty thousand ($50,000.00) dollars thereof should "be certified and delivered, from time to time, as required to take up and replace Fifty thousand ($50,000.00) dollars at par of outstanding bonds of the Hopewell Electric Light, Heat & Power Company dated August 1st, 1901, which bonds are redeemable by the conditions of the mortgage securing them." That payment of these Hopewell bonds was contemplated is apparent from the language used.

1. They were to be certified and delivered "*from time to time as required.*"

2. "*To take up and replace*" outstanding bonds of the Hopewell Company. This language clearly indicates the intention to take up the Hopewell bonds and put in place thereof the Princeton bonds, in other words, to satisfy and pay off the Hopewell bonds. To replace "to refund, to repay" (Webster's Dictionary)

3. "Which bonds are *redeemable.*" The use of this word in connection with the language above quoted (*b*) indicates a like intention that the Hopewell bonds should be paid off and delivered up for cancellation.

4. "*Which bonds are redeemable by the conditions of the mortgage securing them.*" The mortgage securing them was the Hopewell mortgage. The provision therein relating to redemption is found in Paragraph First thereof (Ex. C1, page 95, folio 285), the language used being as follows:

"Subject, however, to the option of the said

> Electric Company to *redeem* said bonds, in whole or in part, after five years from their date, to wit: On or after August 1st, 1906, out of any moneys in the sinking fund or out of any other moneys that may be appropriated by the said Electric Company for this purpose (providing if less than the whole issue is redeemed, *the bonds to be paid* shall be determined by chance by the Trustee under this mortgage)."

It is thus clearly expressed in the Hopewell mortgage that the word *redemption* meant *payment*, for the company had the option to redeem in whole or in part, and there was the express provision that if the whole issue was not redeemed the bonds which were redeemed were "*to be paid.*" The very fact that the Princeton mortgage, in providing for the taking up and replacing of the Hopewell bonds, referred to the fact that the same were redeemable under the Hopewell mortgage, thereby referring to the provision in the Hopewell mortgage relating to the redemption thereof, clearly shows the intention to pay off the same, and negatives the claim that the same were to be retained by the trustee and remain an active liability.

(*c*) *There was no mere change of one form of indebtedness for another* leaving the original indebtedness evidenced by the bonds, unaffected. On the contrary, the circumstances of the transaction preclude any such conclusion. The *original* security *covering only a part of the property of the Consolidated Company* was given up. The *new* security, *issued under a new mortgage, covering all the property of the three companies*, was taken. It is apparent that the Hopewell bondholder was induced to deliver up his Hopewell bond and to take a Princeton bond in place thereof, upon the theory that the Princeton bond was a better security than the Hopewell bond which he held.

This was not a mere change in the form of the mortgage debt, such as a substitution of new bonds for those originally secured by it (Stevens v. Railway Co., L. R., 8 Ch. App., 1064), and as said in Mowry v. Farmers' Loan & Trust Co. (76 Fed. Rep., 38, 42, 43): "Where the new bonds are secured by a new mortgage and the old bonds are surrendered to the debtor, generally a *prima facie* case would be established of novation, when no purpose of the parties appeared to retain the elder security."

And it was held in Bound v. South Carolina R. R. Co. (78 Fed. Rep., 49, 56), that where consolidated mortgage bonds are issued in exchange for bonds secured by prior lien but all of the prior bonds are not turned in and a foreclosure takes place, such of the prior bonds as were not turned in must be paid in full.

Not only does no purpose to keep the Hopewell bonds active appear from the written documents or otherwise, but, on the contrary, *it clearly appears therefrom that it was the purpose to take up, replace, redeem, pay off and cancel the Hopewell bonds, from time to time, as and when delivered.*

As in the case of Union Trust Co. v. Illinois Midland Ry. Co. (117 U. S., 434) there was no contingency and no reservation, and the surrender was for cancellation and was cancellation, whether the bonds were physically cancelled or not. It was a case of novation pure and simple (quoted with approval in Mowry v. Farmers' Loan & Trust Co., 76 Fed. Rep., 38, *supra*).

POINT V.

There being no special agreement of reservation by the Hopewell bondholders who surrendered their bonds for Princeton bonds, there was a novation of the debt, a payment of the former obligations, and a substitution of the latter.

There was no contingency nor reservation on the part of those surrendering their Hopewell bonds. The Hopewell bondholders simply handed in their bonds to the North American Trust Company and received Princeton bonds in place thereof (Stipulation, page 49, lines 35-40; page 50, lines 1-5).

The case is barren of evidence of any special agreement governing the transaction.

It is well settled that where one security is accepted by a creditor in satisfaction of another, the debt evidenced by the latter is discharged (Fidelity Ins. Trust & Safe Deposit Co. v. Shenandoah Val. R. R. Co., 9 S. E. Rep., 759), and as the Court there said: "In a case, therefore, of a change of securities, the question always is, what was the intention of the parties? or as it is usually expressed, the question whether the transaction amounts to a novation is a question of intention, to be derived from all the circumstances of the case, although nothing positive be expressed. And *in the absence of proof of a special agreement, the giving up or the retention of the original security will, in general, be a decisive circumstance* in determining that question; *for if the creditor means, in any contingency, to resort to the original indebtedness, he will scarcely be willing to surrender all evidence of that indebtedness to his debtor*

*without fortifying himself with some acknowledgement of the real nature of the transaction. * * * Such is the well settled doctrine.*"

As said in Jones on Corporate Bonds, Section 320 (quoted with approval in New York Security & Trust Co. v. Louisville, Evansville & St. Louis Consolidated R. R. Co., *supra*): "*If a bondholder gives up his bond and accepts other securities in their place, there is, in the absence of any agreement governing the transaction, a novation of the debt, a payment of the former obligations, and a substitution of the latter.*"

In Union Trust Co. v. Illinois Midland Co. (117 U. S., 434), there was a contract between the parties providing that three companies should be consolidated and a new mortgage made by the Consolidated Company which should be a first lien on the entire property, and certain bonds secured by mortgage upon one of the companies were delivered up in exchange for bonds issued under the new mortgage covering the entire property. Upon foreclosure, one of the parties who had delivered up certain of the bonds claimed that the bonds delivered up were still outstanding, and the language used by Mr. Justice BLATCHFORD therein is applicable to the present case, viz. (pages 473, 474): "*No surrender of any of the Paris & Decatur bonds by anyone was made dependent on the surrender of any others of them or of the whole.* Each person who surrendered gave up his lien under the Paris and Decatur mortgage and took one under the Illinois Midland mortgage, as it was, and took the risk of its value. *He left those who did not surrender to hold under the Paris and Decatur mortgage. There was no contingency and no reservation on the part of those surrendering. The surrender was for cancellation and was cancellation.*"

In the case at bar the Hopewell bondholder sur-

rendered his lien, represented by his Hopewell bond, and took the bond secured by Princeton Lighting Company mortgage in place thereof, and the only rights which the bondholder then had were those represented by the new bond which he received. As the learned Vice-Chancellor said in his opinion (page 80, fol. 240): "We cannot assume that one would surrender a mortgage bond, protected by a prior security, and accept another mortgage bond, secured by the same property, with the understanding that that security is to be preserved as a prior lien to the bond he is purchasing, to be sold by the trustee in the open market. Such a result must rest upon an express agreement."

POINT VI.

The bonds received from Hopewell bondholders by North American Trust Company, as Trustee under the Princeton mortgage, were treated as paid and satisfied.

A Receiver having been appointed for the Princeton Lighting Company, a committee was formed for the purpose of reorganizing the same, one of the members of this committee being Heman Dowd, Vice-President of said North American Trust Company, Trustee, and said committee thereupon, under date of July 1st, 1904, sent out to all the bondholders, creditors and stockholders of Princeton Lighting Company a circular (Exhibit D1, page 185) which stated that in co-operation with the Receiver and with the approval of the Court of Chancery the committee had caused a thorough examination to be made by Messrs. Haskins & Sells, accountants, of the the books and accounts of the Princeton Lighting

Company, which examination showed liabilities approximately as follows:

"Prior liens (mortgages and bonds of constituent Companies) $36,800" (page 185, page 37, page 54, lines 8-13).

The total amount of the prior liens of the three constituent Companies forming the Princeton Lighting Company were as follows (page 37, lines 23-33):

Hopewell Electric Light, Heat & Power Company mortgage	$50,000.
Princeton Gas Light Company mortgage	15,000.
Princeton Electric Works mortgage	5,500.
	$70,500.

No part of the Princeton Gas Light Company mortgage of $15,000 has been paid, nor has any part of the $5,500 mortgage of the Princeton Electric Works been paid, except a possible payment of $1,000 (page 38, lines 8-20)

The $38,500 Hopewell bonds had been turned in to the North American Trust Company prior to July 1st, 1904, when this circular was sent out (page 38, lines 30-40, page 39, line 1). As the total liability of the Princeton Lighting Company for prior liens by way of bonds and mortgages of constituent companies on July 1st, 1904, was $36,800, and as $20,500 or $19,500 of this amount consisted of the mortgages of Princeton Gas Light Company and Princeton Electric Works, it is apparant that on that date there could have been due upon the mortgage and bonds of Hopewell Electric Light, Heat & Power Company at most only the difference between $36,800 and $19,500 and not $50,000 as claimed by the appellants in this suit.

The fact that the bonds were treated as paid is of no weight so far as the question at issue is concerned, but is referred to as bearing upon the view taken by both the trustee and the Princeton Lighting Company and the good faith of the appellants herein on the question as to the payment of these Hopewell bonds.

All this is irrespective of the purpose expressed in the merger agreement, the provisions of which were well known to the trustee (page 39) that $50,000 of the new bonds of Princeton Lighting Company were to be retained by the trustee "for the purpose of *redeeming* bond for bond *as they are presented*" the Hopewell bonds "which last mentioned bonds shall be *delivered up to the trustee* (viz., North American Trust Company) *and cancelled so that they shall be no longer a lien* (page 168, fol. 503).

The appellants offered in evidence under respondents' objection a so-called "trust sheet" (Ex. C12, pages 161 and 162) on which appears the words "Hopewell Electric Light, Heat & Power Company bonds received for exchange and cancellation—when total issue is received."

The date when the last five words were written thereon does not appear, but the hyphen indicates a date subsequent to the time the company became aware of the respondents' contention. *While wholly incompetent as evidence*, this statement on this exhibit is nullified by the prior statement of Dowd, the Vice-President of the trustee, made in the circular sent out by him, July 1st, 1904 *(supra)*, treating these bonds as cancelled, paid and satisfied.

POINT VII.

The North American Trust Company, in delivering Princeton bonds to take up and replace Hopewell bonds, and in receiving the latter, acted as the representative of the Consolidated Company, the debtor.

The mortgage provides (page 120, fol. 358), that "*in order* * * * *to declare the terms and conditions upon which the said bonds are issued, the Princeton Lighting Company*, party of the first part, in consideration of the premises * * * *has granted*, bargained, sold, &c., to the Trustee."

The mortgage further provides (page 129, fol. 387), "that all such bonds * * * are to be issued and authenticated and delivered, and that the mortgaged premises are to be held by the trustee subject to the further covenants, conditions, uses and trusts hereinafter set forth, and it is agreed and covenanted between the said company (Princeton Lighting Company) and the respective holders, from time to time, of bonds issued hereunder as follows, namely:" (fol. 388). Then follow the provisions in question (Art. I, Sec. 2, Subdivisions (a) and (b).

The Princeton Lighting Company therefore conveyed its property to the North American Trust Company as trustee only, upon the covenant and agreement by the Trust Company (and by the respective holders of bonds to be issued thereunder) with the Princeton Lighting Company, that the trustee should retain, certify and deliver up to Fifty thousand ($50,000) dollars thereof, from time to time, as required, to take up and replace Fifty thousand ($50,000) at par of outstanding bonds of the Hopewell Company. The North American Trust Company in so

doing, was acting for the Princeton Lighting Company under the written mortgage agreement between them, and as the Princeton Company was, in effect, the Hopewell Company, all the liabilities of which it had assumed (page 14, lines 10-20) and which it merged and succeeded, the delivery of the Hopewell bonds to the North American Trust Company in exchange for Princeton bonds given to replace the Hopewell bonds, was, in effect, a delivery to the Hopewell Company, the mortgagor, and a cancellation, satisfaction and payment thereof. The bonds surrendered were, by the terms of both consolidation agreement and mortgage, to be delivered to the North American Trust Company, there was a duty upon it to have them cancelled, and delivery to it worked a cancellation (see provisions above referred to and also merger agreement, Article IX, page 167).

The North American Trust Company was not trustee for the Hopewell bondholders, but was trustee only for Princeton bondholders, and the Hopewell bondholders did not become Princeton bondholders until they had surrendered their Hopewell bonds and received Princeton bonds in exchange. It is, therefore, apparent that before the Hopewell bonds were delivered to the North American Trust Company there was no trust nor contractual relation between the parties relating to said bonds, nor did any such arise subsequent to the delivery thereof, the North American Trust Company being a trustee under the Princeton mortgage only.

As the Court said in the New York Security & Trust Company case (*supra*, 102 Fed. Rep., 399): "Since by force of the consolidation the Consolidated Company became responsible for all liabilities, including the bonded debt of the several constituent companies, when any holder of divisional

bonds surrendered them to the Trust Company for exchange, the surrender, in legal contemplation, was to the debtor." In the case at bar there was in addition a positive direction to cancel.

POINT VIII.

The bondholders' committee, complainants, were not bona fide purchasers, nor did the bonds pass by delivery.

The witness Dowd, who is and always has been the chairman of this bondholders' committee, has been at all times Vice-President of North American Trust Company, Trustee under the Princeton Lighting Company mortgage, and since its consolidation with the Trust Company of America, Vice-President of the latter company, in charge of its trust department (page 32, lines 10-20), having full knowledge of all the facts (page 50). Dowd bought the bonds sold at auction (page 35, line 8) two years after he had sent out the circular (Exhibit D1, page 185).

The powers of the trustee were limited to the powers conferred by the trust agreement which provided for the payment of the Hopewell bonds (see Points III and IV), consequently, the sale at auction of Thirty-eight thousand five hundred ($38,500) dollars of these first mortgage Hopewell bonds by the trustee, acting under the direction of Dowd its Vice-President, to Dowd as chairman of the bondholders' committee for Five thousand ($5,000) dollars was a nullity and known so to be by both vendor and vendee.

This is irrespective of the fact that the bonds (see Ex. C2, p. 112) if registered did not pass by delivery (p. 87) and the sample bond, all others being like it (p. 29, line 25) was registered (p. 114, fol. 342).

POINT IX.

No reason exists in equity why the complainants' claim should be sustained.

For every Princeton bond delivered, a Hopewell bond of like amount was received. The liability of the Princeton Lighting Company was never increased. As the mortgage indebtedness increased, the mortgage security correspondingly increased, for the Princeton mortgage covered premises subject to the Fifty thousand ($50,000) dollars lien of the Hopewell mortgage, which latter became constantly less as the Hopewell bonds were paid and delivered up.

In Fidelity Ins. Trust & Safe Deposit Co. v. Shenandoah Valley R. R. Co (*supra*), the security given up was a *first lien*; the security received in exchange was a *third lien*, guaranteed by a solvent third party, whose guarantee was not a lien but a mere promise which in the event of insolvency would have been no security. The Court there said that in such a case where the original security was given up and a new one taken, there was no mere change in the form of the security and that it was not reasonable to suppose that the original security remained alive.

In the case at bar, where a new lien under a new mortgage was given, covering not merely the security of the first mortgage but additional property of the three companies, *the inference that a cancellation resulted is stronger than in the case last cited, for* here a *first lien* was given up *for a first lien*, inasmuch as the principal due on the Hopewell mortgage was lessened *pro rata* as the principal of the Princeton mortgage was increased.

POINT X.

It is respectfully submitted that the Hopewell bonds in the hands of the bondholders' committee, complainants-appellants, have been cancelled, paid and satisfied, and that the outstanding bonds of Hopewell Electric Light, Heat & Power Company, in the hands of these defendants remain entitled to the security of the mortgage under which they were issued, and that the final decree herein should be affirmed.

Respectfully submitted,
EDWARD P. JOHNSON and
WALTER CARROLL LOW,
(Of the New York Bar),
Of Counsel for Respondents on Appeal,
First National Bank of Cranbury,
New Jersey, *et al.*

NORTH AMERICAN TRUST COMPANY,

135 Broadway.

Capital and Surplus $5,000,000.

Oakleigh Thorne, President.
Heman Dowd, Vice-President.
W. H. Chesebrough, Vice-President.
G. M. Wynkoop, Vice-President.
J. R. Burnet, Attorney and Trust Officer.
S. D. Scudder, Treasurer.
F. L. Hilton, Secretary.
F. C. Prest, Assistant Secretary.
Carleton Bunce, Assistant Secretary.
F. W. Black, Auditor.

TRUST DEPARTMENT
James Robison Burnet, Attorney.

New York, August 13, 1903.

Re Princeton Lighting Company.

Charles P. Fitch, Esq.,
Princeton, N. J.

Dear Sir:

I have looked into the matter of the exchange of Princeton Lighting Company bonds of the Hopewell Electric Light, Heat & Power Company, delivered to us by you, and find that it will be necessary for this Company to retain the Hopewell bonds until the full amount of the issue has been deposited, when we will undertake to secure from the Trustee a release of the mortgage, and the cancellation of the bonds.

We can, however, deliver an equal amount of Princeton bonds for the Hopewell bonds deposited from time to time, until the issue is completed. When you call for the new bonds, will

you kindly bring an order from the Company, authorizing us to exchange the Princeton Lighting Bonds for the bonds deposited.

Yours very truly,

NORTH AMERICAN TRUST COMPANY,

F. C. Prest,
Assistant Secretary.

F. C. P. W.

Address all communications to the company.

Capital $500,000.

Chas. P. Fitch, President.
Orrel A. Parker, Vice-President.
S. H. Blackwell, Treasurer.
T. B. Jackson, Jr., Secretary.

PRINCETON LIGHTING COMPANY,

First National Bank Building.

Princeton, N. J., Aug. 21, '03.

(Received: Aug. 22, 1903. Trust Dept.)

North American Trust Company,
No. 135 Broadway,
New York City, N. Y.

Attention of Mr. F. C. Prest, Ass't Sec'ty.

Gentlemen:—

In accordance with your favor of Aug. 13th, relative to the exchange of Princeton Lighting Company's Bonds for those of the Hopewell Electric Light, Heat & Power Company, we enclose herewith proper authorization for the exchange.

You will please forward to us at Princeton by Adams Express, $15,000.00 of the Princeton Lighting Company's Bonds in exchange for like amount of the Hopewell Electric Light, Heat & Power Company's Bonds, delivered to you by our Mr. Fitch on August 12th, and covered by your receipt No. 2751, and oblige,

Very truly yours,

PRINCETON LIGHTING COMPANY,
By *S. H. Blackwell,*
Treasurer.

Trust Dept.
Aug. 22, 1903
Ans. L.

Capital $500,000.

Chas. P. Fitch, President.
Orrel A. Parker, Vice-President.
S. H. Blackwell, Treasurer.
T. B. Jackson, Jr., Secretary.

PRINCETON LIGHTING COMPANY,

First National Bank Building.

Princeton, N. J., Aug. 19, 1903.

(Received: Aug. 22, 1903. Trust Dept.

North American Trust Company,
No. 135 Broadway,
New York City.

Gentlemen:—

In compliance with yours of August 13th, you are hereby authorized to deliver to the Treasurer of this Company an equal amount of the bonds of the Princeton Lighting Company an equal amount of the bonds of the Princeton Lighting Company in exchange for bonds of the Hopewell Electric Light, Heat & Power Company, which may be delivered to you for cancellation and exchange.

PRINCETON LIGHTING COMPANY,
By

Attest:
T. B. Jackson, Jr.,
Secretary.

Chas. P. Fitch,
President.

August 22, 1903.

Mr. S. H. Blackwell,
Treasurer, Princeton Lighting Company,
Princeton, New Jersey.

Dear Sir:—

We have your favor of the 21st instant, enclosing order covering the delivery of Princeton Lighting Company bonds in exchange for those of the Hopewell Electric Light, Heat & Power Company. We note your request to forward you at Princeton $15,000 of Princeton bonds and in compliance therewith are sending you to-day by Adams Express, collect, fifteen bonds numbered 1 to 15 inclusive. Will you kindly sign the enclosed receipt, and return to same to us?

Yours very truly,

NORTH AMERICAN TRUST COMPANY,
Assistant Secretary.

L. S.—L.
Enclosure.

Filed: Aug. 24, 1903. No. b. b. 47.

Capital $500,000.

Chas. P. Fitch, President.
Orrel A. Parker, Vice-President.
S. H. Blackwell, Treasurer.
T. B. Jackson, Jr., Secretary.

PRINCETON LIGHTING COMPANY,

First National Bank Building.

Princeton, N. J., Nov. 13, '03.

Mr. H. Dowd, Vice-President,
North American Trust Company,
Broadway, N. Y. City.

Mr. Dear Mr. Dowd:—

I beg to advise you that we are sending you to-day via Adams Express, bonds of the Hopewell Electric Light, Heat & Power Company, sixty in number, numbered from 1 to 60, both inclusive, aggregating $6,000, for exchange for bonds of like amount of the Princeton Lighting Company, to be delivered to us upon application for same. We prefer that bonds of the denomination of $500 be set aside to cover these, and would request that you forward us the numbers of the bonds thus set aside, in order that we may keep a record of same at this office.

Yours truly,

PRINCETON LIGHTING COMPANY,
By *Charles P. Fitch,*
President.

Trust Dept.
Nov. 16, 1903.
Ans. L.

Filed: Nov. 17, 1903. No. b. b. 47.

Filed: Nov. 17, 1903. No. b. b. 47.

Nov. 16, 1903.

Charles P. Fitch, Esq., President,
Princeton Lighting Company,
Princeton, N. J.

Dear Sir:—

We beg to advise you that we are this day in receipt of 60 bonds of the Hopewell Light, Heat & Power Company, numbered from 1 to 60 both inclusive, aggregating $6,000, which we understand are to be held and exchanged for bonds of the Princeton Lighting Company in like amount. We beg to advise you further that we have set aside bonds of the Princeton Lighting Company, Nos. 401 to 412 inclusive, for $500 each, aggregating $6,000, for the purpose mentioned above.

Very truly yours,

NORTH AMERICAN TRUST COMPANY,
Assistant Secretary.

L. S.—W.

Capital $500,000.

Chas. P. Fitch, President.
Orrel A. Parker, Vice-President.
S. H. Blackwell, Treasurer.
T. B. Jackson, Jr., Secretary.

PRINCETON LIGHTING COMPANY,

First National Bank Building.

Princeton, N. J., Nov. 27, '03.

North American Trust Company,
Broadway,
New York City.

(Received: Dec. 1, 1903. Trust Dept.)

Gentlemen:—

Please deliver to bearer, Mr. Charles P. Fitch, taking his receipt for the same, $7,000 of the bonds of the Princeton Lighting Company in exchange for bonds of the Hopewell Electric Light, Heat & Power Company, numbers 371 to 440 both inclusive, of $100 each, aggregating $7,000. Also $1,000 bonds of the Princeton Lighting Company in exchange for bonds of the Hopewell Electric Light, Heat & Power Company, on account of those due us, as per your letter of Nov. 16th, and oblige,

T. B. Jackson, Jr.,
Treasurer.

Capital $500,000.

Chas. P. Fitch, President.
Orrel A. Parker, Vice-President.
S. H. Blackwell, Treasurer.
T. B. Jackson, Jr., Secretary.

PRINCETON LIGHTING COMPANY,

First National Bank Building.

North American Trust Building,
Broadway,
N. Y.

(Received: Nov. 30, 19103. Trust Dept.)

Gentlemen:—

Kindly detach the coupons from the bonds of the Hopewell Electric Light, Heat & Power Company delivered to you yesterday, numbering 371 to 440, and return them to us. It has been the practice of this company to detach them before exchanging them, which in this case we omitted through an oversight. We refer to the coupons past due.

Very truly yours,

PRINCETON LIGHTING COMPANY,
By *Charles P. Fitch,*
President.

Trust Dept.
Dec. 2, 1903.
Ans. L.

Filed: Dec. 3, 1903. No. b. b. 47.

December 2, 1903.

T. B. Jackson, Esq., Treasurer,
Princeton Lighting Company,
Princeton, N. J.

Dear Sir:

We are in receipt of your favor of the 27th ult., being an order for the delivery of $8,000 par value bonds of the Princeton Lighting Company to Mr. Charles P. Fitch, as against a like amount of the bonds of the Hopewell Electric Light, Heat & Power Company deposited with us.

Thanking you for the same, we are,

Yours very truly,

NORTH AMERICAN TRUST COMPANY,
Assistant Secretary.

L. S. W.

Filed: Dec. 3, 1903. N. b. b. 47.

December 7, 1903.

Filed: Dec. 8, 1903. No. b. b. 47.

Princeton Lighting Company,
First National Bank Building,
Princeton, N. J.

Dear Sirs:—

We hand you herewith canceled No. 1 coupons cut from bonds Nos. 24 to 38 inclusive; these bonds having been delivered by us to-day to the President of your company in exchange for a like amount of the bonds of the Hopewell Electric Light, Heat & Power Company. The mortgage provides that all matured coupons shall be removed, canceled and returned to the Company before the delivery of the bonds, and is in accordance with this provision that we are forwarding these coupons.

We beg to advise you that we still retain $500 par value Hopewell bonds, against which we have not as yet delivered Princeton bonds.

Kindly acknowledged receipt of these coupons.

Yours very truly,

NORTH AMERICAN TRUST COMPANY,
Assistant Secretary.

Enclosure.
L. S. W.

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New Jersey Court of Errors and Appeals.

Bill of Complaint.

Filed March 1, 1906.

IN CHANCERY OF NEW JERSEY.

To His Honor, WILLIAM J. MAGIE,
Chancellor of the State of New Jersey:

Your orator, Burlington City Loan & Trust Company, complaining, showeth unto your Honor:

First. That your orator is a corporation, duly organized and existing under and by virtue of the laws of the State of New Jersey, and as such corporation is and was at the times hereinafter mentioned, fully authorized to hold in trust, property conveyed to it in trust as hereinafter fully stated, to execute the trusts and powers reposed in it, under and by virtue of the mortgage or deed of trust hereinafter set forth.

Second. That the said defendant, Princeton Lighting Company, is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and organized by merger of the Hopewell Electric Light, Heat and Power Company, Princeton Electric Works and the Princeton Gas Light Company, corporations organized under the laws of the State of New Jersey.

That the said Princeton Lighting Company is and was, at all the times hereinafter mentioned, duly empowered and authorized to hold real estate in the State of New Jersey, and other real and personal property, and among other things, to furnish light, heat and power.

Third. That before its merger, as aforesaid, Hopewell Electric Light, Heat and Power Company was a corporation created by and existing under the laws of the State of New Jersey, and was at all times hereinafter mentioned duly empowered and authorized to hold real estate in the State of New Jersey, and other real and personal property, and among other things, to furnish light, heat and power, to borrow money, and to sell, lease, mortgage and convey the real estate and other property real or personal, necessary or proper for the convenient and proper conduct of its business.

Fourth. That after its organization as aforesaid, Hopewell Electric Light, Heat and Power Company duly acquired title to certain real estate, franchises, rights of way and personal property in the State of New Jersey, hereinafter more particularly set forth, and to enable it to borrow money for its corporate purposes, and for the purpose of raising funds for the purpose of constructing its plant, erecting pole lines, equipping and installing a plant to carry out the purpose of its franchises and for other purposes and objects, in connection with its business and affairs, and for the extension, alteration and improvement thereof, the said Hopewell Electric Light, Heat and Power Company, in pursuance of proper resolutions of its Board of Directors, and of its stockholders, thereunto duly authorized, directed the isuse of its bonds, to an aggregate amount of Fifty thousand dollars, dated August first, nineteen hundred and one, of the denomination of one hundred dollars each, all of like tenor, and dated and numbered consecutively, one to five hundred, both inclusive, said bonds to mature and be payable twenty years after date, to wit, on the first day of August, nineteen hundred twenty-one; the same to bear interest at five per cent per annum, payable semi-annually on the first days of February and August in each year, principal and

interest payable at the First National Bank, Princeton, New Jersey, in gold coin of the United States of the then present standard of weight and fineness, and to be executed and certified in the manner and form hereinafter set forth.

Fifth. For the purpose of securing the payment of the principal and interest of said bonds when and as the same were issued which might at any time be outstanding according to the terms and tenor thereof, the said Hopewell Electric Light, Heat and Power Company, having been thereunto duly authorized by law and by resolutions and proceedings of the directors and stockholders of said Company, duly executed by its President and Secretary thereunto duly authorized, and under its corporate seal, its certain mortgage or deed of trust to your orator, dated the first day of August, nineteen hundred and one, which will be produced upon the trial of this cause, whereby the said Hopewell Electric Light, Heat and Power Company, granted, bargained, sold, aliened, enfeoffed, released, confirmed, assigned, transferred and set over unto your orator, and to its successors and assigns,

All these certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the said Borough of Rocky Hill, in the Township of Montgomery, in the County of Somerset, in the State of New Jersey, including the grist mill, plaster mill and fulling mill and being designated as Tract No. 1: Beginning at the west side of the Millstone River, at the middle of the foot of the old bridge, called the Rocky Hill Bridge, formerly standing upon said river, and running thence (1) easterly up said river and across the same until it strikes a stone now at the easterly end of the dam to the Millstone River; being also at the foot of the embankment of the Delaware and Raritan Canal; thence (2) south three degrees twenty-six minutes east, seven hundred and

forty feet more or less, to a point on the west side of the Millstone River, about opposite the lower one of two islands situate in said river; thence (3) north sixty-two degrees west, and skirting along the southerly shore of the mill pond, crossing the mouth of the brook and skirting along the head race, to a point in the northerly side of the Georgetown and Franklin Turnpike, on the westerly side of the said head race; thence (4) westerly along the northerly side of the Georgetown and Franklin Turnpike to a point distant fifteen feet easterly in a right line, from the easterly foundations of the burned buildings; thence (5) north twenty-four degrees east eighty-three feet to the rear of fence of the garden; thence (6) north fifty degrees west, one hundred and seventy feet, more or less, to a point in a line running from the said beginning point, over the centre of the old well in the Georgetown and Franklin Turnpike; thence (7) north two degrees forty-five minutes east to the place of beginning. Together with all and singular the buildings, improvements, ways, woods, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging, or in any wise appertaining; together with a sufficient right of way in and over the land on the westerly shore of the head race, and on the southwesterly shore of the mill pond, and the west shore of the river to the Van Horn line, for the grantees, their heirs, successors and assigns, and their agents and servants, and the tenants and occupants from time to time, of the premises hereinabove described, and any other person or persons for their benefit and advantage, at all times freely to pass and repass on foot and with animals and vehicles, loads or otherwise for the purpose (and for no other purpose) of making repairs and removing driftwood and debris, incident and necessary to the free flow of the water course.

Tract No. 2. All that lot or parcel of land and

premises situate, lying and being in the Township of Montgomery, in the County of Somerset and State of New Jersey, beginning at a post in the southerly side of the Georgetown and Franklin Turnpike, distant about forty-three feet from a well standing on the north side of the said turnpike, and running thence (1) south two degrees forty-five minutes west, about five hundred and twenty feet, to the middle of a brook; thence (2) northeasterly down the middle of said brook to its junction with the mill pond; thence (3) northerly along the westerly side of the head race to a point in the southerly line of the Georgetown and Franklin Turnpike; thence (4) westerly along the southerly line of said turnpike to the northeast corner of the stone tenement house; thence (5) south thirty degrees fifteen minutes east, one hundred and seventy-six feet and six inches, to a mark on the fence; thence (6) south seventy-nine degrees fifteen minutes west and passing eight feet northerly from the centre of a well one hundred and forty-three feet and six inches to a spike; thence (7) north seventeen degrees west, one hundred and thirty-nine feet and six inches to the southwesterly corner of the frame tenement; thence (8) north ten degrees forty-five minutes west along the side of said tenement fifty-nine feet, more or less, to the southerly line of the aforesaid turnpike; thence (9) westerly along said southerly line of said turnpike one hundred and eighty-seven feet, more or less, to the place of beginning. Subject, however, to a right of way in and over a certain strip of land adjacent to the head race, and running to the brook, for the person or persons seized of parcel number three, this day sold and called the quarry tract, their successors, heirs and assigns, and their agents and servants and the tenants and occupants from time to time of the said quarry premises, and any other person or persons, for his and their benefit and advantage, at all times freely to pass and repass on foot, and with animals and

vehicles, loads or otherwise, to and fro between the said quarry premises and the highway. And further subject to a sufficient right of way in and over the land on the westerly shore of the head race, for the person or persons seized of the premises this day sold, and known as parcel number one, and called the mill property, their successors, heirs and assigns, and their agents and servants, and the tenants and occupants from time to time of the premises aforesaid, and any other person or persons, for his and their benefit and advantage, at all times freely to pass and repass on foot and with animals and vehicles, loads or otherwise for the purpose (and for no other purpose) of making repairs and removing driftwood and debris, incident and necessary to the free flow of the water course. And further subject to a right of way over the alley on the westerly side of parcel number four, this day conveyed and known as the tenement houses parcel.

Tract No. 3. All that lot and parcel of land and premises, situate, lying and being in the Township of Montgomery, in the County of Somerset and State of New Jersey, beginning at a pile of stones in the old Van Horn line, about three feet easterly of a butternut tree, near the angle of the road leading from Rocky Hill to Princeton, and runs thence (1) along the said old Van Horn line, south sixty-six degrees fifteen minutes east one thousand and fifty-six feet to the Millstone River; thence (2) down the said river on a course of about north three degrees and twenty-six minutes west, one thousand and seventy-five feet more or less, to a point about opposite the lower one of two islands situate in said river; thence (3) north sixty-two degrees west, and skirting along the southerly shore of the pond, to the mouth of the brook emptying into said pond; thence (4) up the middle of said brook southwesterly to a point in a line running from the beginning point above mentioned to an old well standing in

the northerly side of the Georgetown and Franklin Turnpike, near what is known as the burned buildings; thence (5) along said line two degrees forty-five minutes west six hundred and sixty-seven and four-tenths feet, more or less, to the place of beginning. Together with a right of way in and over a strip of land running from the said brook to the Georgetown and Franklin Turnpike, which right of way is adjacent to the westerly side of the head race and brook, for the person or persons seized of the hereby granted premises, their successors and assigns, and their agents and servants, and the tenants and occupants from time to time of the premises above granted, and for their benefit and advantage, at all times freely to pass and repass on foot, and with animals and vehicles, loads or otherwise, to any fro between the premises hereby granted and the said Georgetown and Franklin Turnpike.

Tract No. 4. All that lot or parcel of land and premises, situate, lying and being in the Township of Montgomery, in the County of Somerset and State of New Jersey; beginning at a point in the southerly side of the Georgetown and Franklin Turnpike, about one hundred and eighty-seven feet easterly from a line passing through the centre of an old well, and the foot of the center of the old Rocky Hill Bridge, extended; thence (1) south ten degrees forty-five minutes, east fifty-nine feet, more or less, passing along the side of the tenement house to the southwest corner of the same; thence (2) south seventeen degrees, east one hundred and thirty-nine feet six inches to a spike; thence (3) north seventy-nine degrees fifteen minutes east, and passing eight northerly from a well, one hundred and forty-three feet six inches to a mark on the fence; thence (4) north thirty degrees fifteen minutes west, one hundred and seventy-six feet and six inches to the northeast corner of the stone tenement house; thence (5) along the front of the last men-

tioned house, and the southerly line of the Georgetown and Franklin Turnpike, to the place of beginning. Together with a right of way in and over the alley on the westerly side of the above granted premises, for the person or persons seized of the above granted premises, their successors, heirs and assigns, their agents and servants, and the tenants and occupants from time to time of the premises above granted and every other person or persons for their benefit and advantage.

And also all the franchises, property, rights, privileges, lands, tenements and hereditaments of every kind and nature whatsoever, now owned or that may be hereafter acquired by the said Electric Company, including all of the fast and movable machinery, shafting, both main and auxiliary, tools, supplies, electrical and other machinery, lamps, both attached to the line and detached therefrom, poles, wires, insulators, cross-arms, fixtures within building, in use by consumers as well as such fixtures as are in use by the Company, and all and every other article and thing going to make up an operating electrical plant, presently existing or which may hereafter be acquired, or placed in, or about the premises of the mortgagor for the use of said electrical plant.

TO HAVE AND TO HOLD, All and singular the above described lands, tenements, hereditaments, franchises, rights, property and privileges unto your orator, and its successors to and for its only use and behoof; but in trust nevertheless for the use, benefit and security as hereinafter mentioned of the several persons, bodies politic and corporate, their respective successors, administrators and assigns, who shall be or become the holders of the said bonds amounting in the aggregate to the sum of fifty thousand dollars, as aforesaid, intended to be hereby secured, or any of them, subject to the right of the said Electric Company and its successors and assigns or lessees to retain the

free and uncontrolled use and possession of and to manage, operate and enjoy the lands, plants, leasehold, interests, rights, franchises, tenements, hereditaments and premises hereby granted or intended so to be with the appurtenances and to take and use rents, tolls, issues and profits and the proceeds thereof with like effect, as if this deed had not been made, until your said orator, or its successor or successors in the trust, shall be authorized as hereinafter mentioned, to enter upon and take possession of or sell the same as hereinafter set forth.

Sixth. That under and pursuant to the provisions of said mortgage or deed of trust dated August first Nineteen hundred and one, the said Hopewell Electric Light, Heat and Power Company, duly executed by its President, bonds numbered from one to five hundred, each bond being attested by its Secretary, and having the corporate seal of said Company thereunto affixed, dated the first day of August, Nineteen hundred and one, principle payable on the first day of August, Nineteen hundred and twenty-one, at the First National Bank, Princeton, New Jersey, in gold coin of the United States, of the standard of weight and fineness of August first, Nineteen hundred and one, with interest thereon, at the rate of five per cent. per annum, payable in like gold coin at said First National Bank, Princeton, New Jersey, semi-annually, on the first days of February and August, in each year, upon surrender of interest coupons thereto attached, as they severally matured without any deduction for any National, State, County or municipal tax or assessment which should at any time be assessed or levied against said bonds.

The terms of said bonds provided for a sinking fund for the redemption of such bonds, and also that in case of default of either principal or interest continuing more than six months, no proceeding could be brought by any holder of any bonds or

coupons, but that your orator only could bring such proceedings and only on the written demand of the holders of a majority in amount of all bonds then outstanding. That the payment of said bonds was equally secured, and that said bonds should not be valid until authenticated by your orator, and said bonds were respectively and substantially in the form set forth in said mortgage or deed of trust herein mentioned and referred to.

Seventh. That pursuant to the provisions of the said mortgage or deed of trust, dated August first, Nineteen hundred and one, your orator, as trustee upon the execution and delivery and recording of said mortgage, and upon application of the said Hopewell Electric Light, Heat and Power Company, did duly certify all of the said five hundred bonds of said Hopewell Electric Light, Heat and Power Company, of the par value of one hundred dollars each, numbered from one to five hundred, both numbers inclusive, amounting in all to the sum of fifty thousand dollars principal, and as your orator is informed and believes, all of the said bonds have been duly issued, and are now outstanding legal obligations of said Princeton Lighting Company, as the successor of Hopewell Electric Light, Heat and Power Company.

Eighth. That said mortgage or deed of trust, dated August first, Ninteen hundred and one, was duly executed by said defendant Company by its President thereunto duly authorized and attested by its Secretary, and its corporate seal thereunto duly affixed, and the said execution thereof was duly acknowledged and proved. That said mortgage was and is the proper act and deed of said Hopewell Electric Light, Heat and Power Company, by it duly authorized and was duly delivered to your orator and is in all respects in conformity with law,

and a full conveyance for the purposes therein stated. That the trusts therein and thereby created were duly accepted by your orator, and said acceptance of said mortgage was duly executed by your orator, by its President thereunto duly authorized and attested by its Secretary, and its corporate seal thereunto duly affixed, and said execution thereof was duly acknowledged and proved and said mortgage or deed of trust was duly filed and recorded in the office of the Clerk of the County of Somerset, State of New Jersey, on the thirtieth day of September, Nineteen hundred and one, in book "Z" No. Four of mortgages, page two hundred and sixty-two, etc.

That the poles, wires, insulators and pole lines in general of said Electric Company extended and extend into the Counties of Mercer and Middlesex, besides the County of Somerset, and said Electric Company and its successors have rights and franchises and property, both real and personal, in said Counties of Mercer and Middlesex.

Ninth. That in and by said mortgage or deed of trust, said Hopewell Electric Light, Heat and Power Company agreed that it would punctually pay to the holders of the bonds aforesaid the interest due thereon, semi-annually, according to the terms of said bonds, on the days therein specified for the payment of same, and would also, on the days mentioned in said bonds, respectively, or whenever the said principal sums of said bonds should, according to the provisions thereof, become due and payable, fully and entirely pay off and satisfy the holder of said bonds, principal and interest, without further delay, provided also that none of said bonds should be entitled to the security of said mortgage, until the certification endorsed thereon should be signed by the trustee.

Tenth. Said mortgage further provided that in case the said Hopewell Electric Light, Heat and Power Company, its successors and assigns, should

at any time thereafter, after demand made, fail for any period exceeding six months, to pay the semi-annual interest on or the principal of the bonds, originally or substituted intended to be thereby secured, and then outstanding or any of them, when and as the same shall respectively become due and payable, then and in no other case, upon the written request of the holder or holders of a majority in amount of said bonds, then outstanding, the said Trust Company, or its successors in trust, upon being indemnified to its satisfaction, should enter upon and take possession of the premises, properties, estates, real, personal and mixed, franchises and rights hereby granted or agreed or intended so to be, and thereupon either directly or through one or more agents, operate, use, manage and control the said premises and franchises in such manner as said Trust Company should deem best, and appropriate the net income, after payment of expenses of maintenance and operation, taxes, assessments and other sums entitled to priority, and after deducting the expenses of the trust, including a reasonable counsel fee and indemnity against liability, to the payment in full, without preference, first, of the interest, and second, of the principal due on said bonds, then outstanding, in full, if the net income be sufficient, but if not, then pro-rata, or that said Trust Company, upon like written request of the holders of the majority in amount of said bonds outstanding, upon being indemnified to its satisfaction, with or without entry, should sell the said estate, real, personal and mixed, rights and franchises, with appurtenances, to the highest and best bidder, at public sale, on the premises in Somerset County, or such other place as shall be designated by the holders of a majority of said bonds outstanding, as provided in said mortgage, and apply the proceeds in like manner, as provided, in respect to the net income of said trust estate.

Eleventh. It was also provided in said mortgage

that the Trust Company might pay a reasonable compensation, out of the trust estate, to such person or persons as it might employ in the administration or management of said trust, and should be entitled to just compensation for all services rendered in connection with said trust, and that same should be paid out of the trust estate.

Twelfth. Said mortgage further provided that in the event of any such entry upon or taking possession of the estates, real, personal or mixed, properties, franchises or premises, thereby mortgaged or agreed or intended to be, before the maturity of any of said bonds, then and in such case the whole principal sum of each and all of said bonds, then outstanding and intended to be secured should, at the option to be expressed in writing of the holder or holders of a majority in amount of such bonds, and not otherwise, become forthwith due and payable, and that in the event of a sale of the premises, as hereinbefore mentioned, before the maturity of any of the said bonds, then the principal of said bonds should become due and payable, by reason of the failure of said Electric Company to keep and observe any of the covenants of said mortgage, or by lapse of time, no proceeding at law or in equity should be taken by the holder or holders of said coupons or bonds, for the purpose of selling by execution or otherwise the whole or any part of the premises hereby mortgaged, or intended so to be.

Thirteenth. That thereafter, by agreement of consolidation, dated February 2, 1903, and filed with the Secretary of the State of New Jersey February 27, 1903, said Hopewell Electric Light, Heat and Power Company, Princeton Electric Works and the Princeton Gas Light Company, New Jersey corporations, pursuant to the provisions of an act, entitled "An Act Concerning Corporations, Revision

of 1890," and the various acts supplementary thereto and amendatory thereof, were merged and consolidated into one single new corporation called and known by the corporate name and style of "Princeton Lighting Company," which possessed all the rights, franchises, privileges, powers, immunities and capacities, possessed by the three former corporations, together with all their possessions and attributes, and said three companies were thereby merged into the said Princeton Lighting Company, with all their assets and liabilities, and the said three first mentioned companies thereupon ceased to exist. The new Company took possession of and operated all the aforesaid properties, premises, rights and franchises, and assumed the liabilities thereof, including the bonds secured by the aforesaid mortgage.

That said Hopewell Electric Light, Heat and Power Company, subsequent to the execution and delivery of said mortgage, acquired other property, real and personal or franchises, not specified or mentioned in said mortgage or deed of trust, which by the terms of said mortgage, are and were intended to be covered thereby, and subject to the lien thereon, and your orator is unable to specify or describe more particularly the said after acquired property.

Fourteenth: And your orator further alleges that on or about April nineteneth, Nine hundred and four, Richard Stockton was duly appointed, by order of the Court of Chancery, receiver of defendant, Princeton Lighting Company, and of its property, and that said receiver was appointed on the ground of the insolvency of said Princeton Lighting Company, and still is such receiver.

Fifteenth. And your orator further alleges that on the first day of August, Nineteen hundred and four, the semi-annual installment of interest upon all of said bonds of said Hopewell Electric Light.

Heat and Power Company, issued and outstanding, as aforesaid, became due and payable, and that certain of said coupons were duly presented for payment at the office of the First National Bank at Princeton, New Jersey, and payment thereof refused, by reason of the fact that said defendant, Princeton Lighting Company, had not in the hands of said bank, and did not furnish said bank with funds wherewith to meet the payment of said coupons falling due August first, Nineteen hundred and four.

Sixteenth. That thereafter, the said Electric Company its successors and assigns, having failed, after demand made, for more than six months to pay the semi-annual interest on said bonds, your orator, upon the written request of the holders of a majority in amount of said bonds, then outstanding, did enter upon and take possession of the premises, properties, estates, real, personal and mixed, franchises and rights thereby mortgaged, or intended so to be, on or about the twenty-fourth day of January, Nineteen hundred and six, by its agent thereunto duly authorized, and thereafter the whole principal sum of each and all of said bonds then outstanding, did on the sixteenth day of February, become forthwith due and payable, the holders of a majority in amount of said bonds having so elected, by instrument in writing, as provided in said mortgage; and said bondholders and your orator do hereby elect that the whole principal sum of all of said bonds is now due and payable.

That therefore the whole of said principal sum of fifty thousand dollars, par value of bonds, are now outstanding and are now due and owing; with interest from August first, Nineteen hundred and four, together with their expenses and charges, which are, under the terms of the mortgage, a lien on the mortgaged premises.

Sevententh. That the said Princeton Lighting

Company became and is insolvent, and wholly unable to pay its just debts, and did not pay the taxes on or interest on the prior mortgages on the property. That by reason of the insolvency of said Company, there was danger that said bond holders may be seriously prejudiced, and your orator well hoped that said defendant would have complied with its reasonable duties, as in justice and equity it ought to have done.

That no action has been brought to recover any part of said mortgage debt, or for said bonds, or to enforce the lien of said mortgage, other than this suit.

Eighteenth. That subsequent to the mortgage aforesaid Princeton Lighting Company executed to the North American Trust Company a mortgage covering the above premises, and other property, to secure and issue of bonds of three hundred and fifty thousand dollars, and upon the insolvency of said Company, and its failure to pay the interest on said bonds, said mortgage was duly foreclosed in this Court, and said premises were sold at public sale by Robert S. Woodruff, Special Master, on or about May 31, 1905, to Heman Dowd, acting for bondholders of Princeton Lighting Company, and said premises were deeded to him by said Special Master, by deed recorded July thirty-first, Nineteen hundred and five, in the Clerk's office of Mercer County, in book two hundred and eighty of deeds, and said Heman Dowd thereafter duly deeded to Princeton Light, Heat and Power Company, a New Jersey corporation, all of said premises and rights and franchises, by deed dated July thirty-first, Nineteen hundred and five, and duly recorded in Mercer County, and said Princeton Light, Heat and Power Company is now the owner of all of said property, rights, premises and franchises, covered by the mortgage, which this bill is brought to foreclose.

and none of the interest on said bonds has been paid by said Company.

That John A. Roebling's Sons Company, Westinghouse Electric and Manufacturing Company and Princeton Light, Heat and Power Company claim to have some interest in or lien on said mortgaged premises, by way of judgment, deed or otherwise, but your orator shows and insists that their said alleged claims and liens, if any, are subsequent to said mortgage, and that said mortgage, executed to your orator, is a prior lien on the premises, property and franchises, therein mortgaged, and superior to the liens and claims of said defendants.

IN CONSIDERATION WHEREOF, and inasmuch as your orator is without remedy, in the courts of law, and can only have adequate relief in this Court, and to the end,

1. That said defendants and each of them, may full, true and perfect answer make to all and singular the matters aforesaid, your orator waiving an answer by the defendants, under oath.

2. That an account may be taken under the direction of this Court, of the amount due upon your orator's said mortgage, and the bonds outstanding.

3. That the defendants, or some of them, be decreed to pay unto your orator, the amount found due, with interest and costs and expenses by a short day to be appointed by this Court, and in default thereof, they and each of them, and all persons claiming by, from or under them, do stand debarred and foreclosed and may be debarred of all equity of redemption in said mortgaged premises, property and franchises and every part thereof.

4. That the property, premises, rights and franchises, covered by said mortgage and owned at the time of the execution and delivery thereof, and thereafter, be ascertained and decreed.

5. That said mortgage be foreclosed, by decree of this Court, and all the premises, property, rights, privileges and franchises covered by said mortgage, may be sold by and under, the decree of this Court, for the purpose of satisfying said bonds, outstanding as aforesaid, and secured thereby, and the charges and expenses of your orator in the execution of its trusts and powers, and that the defendants and all persons claiming under them, or claiming any interest in the said premises, property, rights and franchises, subsequent to the lien of said mortgage, and subsequent to the commencement of this action may be barred and foreclosed of all right, title, lien, claim and equity of redemption in and to said mortgaged premises, property, rights and franchises, real or personal, or any part thereof.

6. That from the proceeds of sale, the holders of said outstanding bonds and coupons, secured by said mortgage, may be paid such sum as may properly be due and payable thereon, after the payment of commissions, compensation, charges, expenses and advances of your orator, and the costs and expenses of this action, for insurance said premises, or for taxes upon said property, or for interest on prior liens, up to and including the time of the vesting of title, under any decree to be rendered herein.

7. That your orator have such other and further judgment and relief, in the premises, as shall be equitable and just, or shall be necessary to enable it to execute its said trusts, as the nature of the case may require, together with its costs.

May it please your Honor, the premises considered, 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 Defendants, Princeton Lighting Company, Richard Stockton, its receiver, Westinghouse Electric and

Manufacturing Company, John A. Roebling's Sons Company, and the Princeton Light, Heat and Power Company, commanding them by a certain day and under a certain penalty therein expressed to be and appear before your Honor in this Court, then and there to answer the premises and to stand to, abide by and perform such order or decree therein, as your Honor shall make, and your orator will ever pray.

E. B. LEAMING,
Solicitor for Complainant.

GEO. WHITEFIELD BETTS, JR.,
Of Counsel.

Order Amending Bill.

Filed May 7, 1906.

IN CHANCERY OF NEW JERSEY.

Between
BURLINGTON CITY LOAN AND TRUST COMPANY,
Complainant,
and
PRINCETON LIGHTING COMPANY, et al.,
Defendants.

On Bill, &c. Order.

Upon this matter being opened to the Court, by George Whitefield Betts, Jr., of Counsel for complainant, and it appearing that all the defendants herein, other than the intervening petitioners, are in default for want of an answer, plea or demurrer, and the Court having permitted the intervening petitioners, the First National Bank of Cranbury et al, to file an answer herein, and it being deemed advisable that the Bond Holders' Committee of the Princeton Lighting Company, who hold a large number of the bonds set forth in the Bill, be added as parties complainant in this action, it is, on this fourth day of May, nineteen hundred and six,

ORDERED, that Heman Dowd, Bayard Stockton, J. H. McNeal and George Whitefield Betts, Jr., as and constituting the Bond Holders' Committee of the Princeton Lighting Company, be joined as complainants with the Burlington City Loan and Trust Company, and that all the papers, pleadings and proceedings herein, be so amended accordingly, and that the Bill of Complaint be amended as follows:

First: By adding after the word "Company" in the address of the Bill, the following:

"And your orators, Heman Dowd, Bayard Stockton, J. H. McNeal and George Whitefield Betts, Jr., as the Bond Holders' Committee of the Princeton Lighting Company."

Second: By adding at the end of the first paragraph of the Bill, the following:

"That Heman Dowd, Bayard Stockton, J. Howard Pugh and George Whitefield Betts, Jr., as the Bond Holders' Committee of the Princeton Lighting Company, were, on or about the first day of October, nineteen hundred and four, duly appointed and constituted a committee to preserve the interests of such of the bond holders of the Princeton Lighting Company as should deposit with said Committee their bonds, secured by the mortgage to the North American Trust Company, of February twenty-eighth, nineteen hundred and three, executed by the Princeton Lighting Company. That thereafter and before the beginning of this suit, J. Howard Pugh died, and J. H. McNeal was duly appointed to fill the vacancy in said Committee, and said Committee are now acting as such, having had deposited with them all but a small proportion of the bonds of the said Princeton Lighting Company. That said Committee are now the holders and owners of four hundred and five bonds of the par value of one hundred dollars each of Hopewell Electric Light, Heat and Power Company, dated August first, nineteen hundred and one, due August first, nineteen hundred and twenty-one, and secured by mortgage, to foreclose which this suit is brought."

Third: By adding after the word "orator" in the tenth line of the firth article of said Bill, the words "Burlington City Loan and Trust Company."

Fourth: That so far as may be necessary in the

said Bill, the word "orator" be changed to "orators," so as to conform to the aforesaid amendment.

W. J. MAGIE,
C.

Respectfully advised,

J. J. BERGEN,
V. C.

Foregoing amendment consented to,

EDWARD P. JOHNSON, JR.,
Solicitor First National Bank of Cranbury et al, Defendants.

Order Admitting Cranbury Bank, et al., to Intervene.

Filed May 1, 1906.

IN CHANCERY OF NEW JERSEY.

Between BURLINGTON CITY LOAN AND TRUST COMPANY, Complainant, and PRINCETON LIGHTING COMPANY, et al., Defendants.	On Bill to Foreclose. Order admitting Cranbury National Bank, et al., to intervene as parties defendant.

This matter being opened to the Court by Edward P. Johnson, Jr., of Counsel with the petitioners, First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Foundry and Machine Works, Frank Toomey, Carolina B. Drake, W. S. Titus and Maria Fisher, and

it appearing that a copy of the rule to show cause and a copy of the petition and affidavits annexed thereto, have been duly served on the Solicitor of the Complainant, as directed in said rule; and it further appearing that the prayer of said petition should be granted:

It is, on this first day of May, nineteen hundred and six, ORDERED, that the said rule to show cause be made absolute, and that the said petitioners, First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Foundry and Machine Works, Frank Toomey, Carolina B. Drake, W. S. Titus and Maria Fisher, have four days to answer to the Complainant's bill of complaint, from and after the date of this order.

W. J. MAGIE,
C.

Respectfully advised,

J. J. BERGEN,
V. C.

Answer of First National Bank of Cranburg et al.

Filed ~~May 1~~ June 5, 1906.

IN CHANCERY OF NEW JERSEY.

Between BURLINGTON CITY LOAN AND TRUST COMPANY et al., Complainants, and PRINCETON LIGHTING COMPANY et al., Defendants.	On Bill to Foreclose. Amended answer of First National Bank of Cranbury et al.

The joint and several answer of First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Foundry and Machine Works, Frank Toomey, Carolina B. Drake, W. S. Titus and Maria Fisher, defendants, to the bill of complaint of Burlington City Loan and Trust Company et al., complainants.

These defendants respectively, severally answering, say:

First: That they admit the Third, Fourth, Sixth, Eighth, Ninth, Tenth, Twelfth, Fourteenth and Fifteenth paragraphs of the said complainants' bill of complaint.

Second: That they admit the First paragraph of said bill except that part which states "That said Committee are now the holders and owners of four hundred and five bonds of the par value of one hundred dollars each of Hopewell Electric Light, Heat and Power Company, dated August first, nineteen hundred and one, due August first, nineteen hundred and twenty-one, and secured by mortgage, to

foreclose which this suit is brought," and which said part they deny; they admit the Seventh paragraph of said bill except that part which states "and are now outstanding legal obligations of said Princeton Lighting Company, as the successor of Hopewell Electric Light, Heat and Power Company," and which said part they deny; they admit that part of the Thirteenth paragraph of said bill which states "That said Hopewell Electric Light, Heat and Power Company, subsequent to the execution and delivery of said mortgage, acquired other property, real and personal or franchises, not specified or mentioned in said mortgage or deed of trust, which by the terms of said mortgage, are and were intended to be covered thereby, and subject to the lien thereon"; they admit that part of the Eighteenth paragraph of said bill, which states "That said mortgage, executed to your orator, is a prior lien on the premises, property and franchises, therein mortgaged, and superior to the liens and claims of said defendants."

Third: That they neither admit nor deny the Second, Fifth, Eleventh, Thirteenth, except as to that part admitted in paragraph Two of this answer, Sixteenth, Seventeenth and Eighteenth, except as admitted in paragraph Two of this answer, paragraphs of the said complainants' bill of complainant as alleged and set forth in said bill but leaves the complainants to such proof as they may be able to show.

Fourth: That they deny the truth of that part of the First paragraph of said bill which states "That said Committee are now the holders and owners of four hundred and five bonds of the par value of one hundred dollars each of Hopewell Electric Light, Heat and Power Company, dated August first, nineteen hundred and one, due August first, nineteen hundred and twenty-one, and secured by mortgage, to foreclose which this suit is brought"; that they

deny the truth of that part of the Seventh paragraph of said bill which states "and are now outstanding legal obligations of said Princeton Lighting Company, as the successor of Hopewell Electric Light, Heat and Power Company."

Fifth: That the whole of said principal sum of fifty thousand dollars, par value of bonds, with interest from August 1, 1904, together with the expenses and charges of the said complainant, mentioned and referred to in said complainant's bill of complaint and therein alleged to be due and outstanding, are not now outstanding and now due and owing and a lien on the mortgaged premises.

And these defendants humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

EDWARD P. JOHNSON, JR.,
Solicitor and of Counsel with
First National Bank of Cranbury, N. J.,
Frank W. Stout,
John W. Scudder,
Harrisburg Foundry and Machine Works,
Frank Toomey,
Carolina B. Drake,
W. S. Titus and
Maria Fisher.

Endorsed: It is hereby consented that this amended answer be filed as of May 4th, 1906.

Usual Form of Replication Used.

Filed June 8, 1906.

Proceedings on Trial.

IN CHANCERY OF NEW JERSEY.

Between
BURLINGTON CITY LOAN AND TRUST COMPANY et al.,
Complainants,
and
PRINCETON LIGHTING COMPANY, et al.,
Defendants.

Transcript of Stenographer's notes of evidence, taken in the above entitled cause, before his Honor, JAMES J. BERGEN, Vice-Chancellor, at the Chancery Chambers, Trenton, N. J., June 25th, 1906, at 10 A. M.

Appearances:

Mr. George Whitefield Betts, Jr., and Mr. Boston, of the N. Y. Bar, for the Complainants.

Mr. Edward P. Johnson and Mr. Walter C. Low, of the N. Y. Bar, for the Defendants.

RICHARD MOTT, a witness produced in behalf of the complainants, being duly sworn according to law, on his oath saith:

EXAMINED BY MR. BETTS:

Q. How long have you been connected with the Burlington City Loan and Trust Co., the complainant in this cause?

A. Since its organization.

Q. When was that?

A. It was organized in 1901.

Q. Were you connected with it at the time of the issue of this Hopewell Electric Light, Heat and

Power Company mortgage to your company?

A. As a director.

Q. And what office are you now holding?

A. I am the Trust Officer and Vice-President.

Q. Have you the original mortgage with you of the Hopewell Electric Ligt, Heat and Power Company to the Burlington City Loan and Trust Company?

A. Yes, sir. (Produced).

Mr. Betts: I offer that mortgage in evidence.

Marked Exhibit C 1.

Q. When was the last interest paid on the bonds secured by that mortgage?

A. The interest was not payable with us; it was paid at the Princeton National Bank, and we have their letter stating that a default was made—

Mr. Johnson: I object to that—there is a stipulation in existence signed by the complainant's solicitor, and myself, admitting certain allegations, among them the allegation as to the default in the payment of the interest—if that stipulation were offered in evidence, it would show what we had agreed upon, as to that matter.

Mr. Betts: There are certain lienors who have appeared in the cause, but who have not answered, and I think we are entitled to prove the amount due.

Court: I will take it.

(MR. BETTS:)

Q. When was the last interest paid?

A. 1904, the August coupon, default was made in the August coupon.

Q. Has anything been paid on the principal of this bond?

A. No, sir.

Q. Have any of these bonds been returned to you for cancellation?

Mr. Low: I object to the question as irrelevant and incompetent and immaterial.

Court: You may answer the question.

A. No, sir.

(MR. BETTS:)

Q. You took formal possession of the plant of the Princeton Lighting Co., did you, for the purpose of making the principal of this bond due through Mr. Huff, as I understand?

A. The Princeton Lighting Co.?

Q. Yes—you executed a formal authority, did you not—didn't you give Mr. Huff authority to take possession of the plant for the purpose of declaring the Hopeyell Electric Light, Heat and Power Co. bonds due?

A. Yes, sir—the Hopewell Electric Light, Heat and Power Co. bonds.

Q. You were the trustee named in the Hopewell Electric Light, Heat and Power Co. mortgage, were you not?

A. Yes, sir.

Mr. Betts: We have here quite a large package of the bonds; I will produce one only as a sample of the lot.

Q. I will ask you if that is one of the Hopewell Electric Light, Heat and Power Co. bonds secured by the mortgage to your company, which you have identified and produced?

Mr. Low: I object to that part of the question as to whether it was now a lien or not.

Court: I will take it.

A. I can identify this as one of the bonds issued

by our company.

(MR. BETTS:)

Q. You know the signatures, do you?
A. I know the signatures, yes, sir.

Mr. Betts: I offer that bond in evidence.

Marked Exhibit C 2.

Mr. Betts: I want to have marked for identification a letter dated October 10th, 1904, from Mr. Barnett, the attorney and trust officer of the North American Trust Co., to Dr. J. Howard Pugh, the president of the Burlington City Loan and Trust Company.

Q. You received that letter, did you (handing witness paper)?
A. Yes, sir.

Letter marked C. 3 for identification.

Q. Have you any other letters received from the North American Trust Co.?
A. Yes, sir.
Q. Will you produce them, please?

(Witness produces a number of letters and hands them to counsel.

Q. State their dates and I will have them marked for identification.
A. They are dated October 12th, 1904, October 17th, 1904, October 18th, 1904, November 3rd, 1904, October 14th, 1904, and October 22nd, 1904.

Marked C. 4. to C. 9. inclusive for identification.

Q. Are you familiar with Dr. Pugh's signatures, who is now dead?
A. Yes, sir.
Q. Who was formerly president of your company?

A. Yes, sir.
Q. Look at that letter (handing witness paper)?
A. It is dated October 8th, 1904.
Q. From Dr. Pugh to whom?
A. J. R. Barnett.

Letter marked C. 10. for indentification.

NO CROSS-EXAMINATION.

FERGUS A. DENNIS, a witness produced in behalf of the complainants, being duly sworn according to law, on his oath saith:

EXAMINED BY MR. BETTS:

Q. Are you connected with the First National Bank of Princeton?
A. As its attorney, yes, sir.
Q. Are you familiar with the matter of the Hopewell Electric Light, Heat and Power Co. bonds secured by this Hopewell Co.'s mortgage?
A. Yes, sir.
Q. Have you made an examination of the books of the bank to ascertain when the last interest was paid on the coupons on the Hopewell Electric Light, Heat and Power Co.'s bonds?
A. A letter of yours to our bank caused me to make the examination called for in there, and I found as a result that the last charge against that fund was on the 10th of March, 1904, when $5 was charged up, and after that all payments were refused. There were some coupons presented and no payments made on them after that time.
Q. There were no payments made in March, 1904?
A. No, sir.
Q. Were any payments made on the principal of the bonds?
A. No, sir.

NO CROSS-EXAMINATION.

HEMAN DOWD, a witness produced in behalf of the complainants, being duly sworn according to law, on his oath saith:

EXAMINED BY MR. BETTS:

Q. Col. Dowd, what is your connection with the Trust Co. of America?

A. I am vice-president.

Q. And is that the result of the merger of the North American Trust Co. with your company?

A. Yes, sir.

Q. How long have you been connected with the Trust Co. of America, and its predecessor, the North American Trust Co.?

A. About seven years.

Q. As an officer?

A. As a vice-president.

Q. During your connection as an officer of these companies have you had oversight over the trust department of the companies?

A. A general oversight, yes, sir.

Q. Have you had general knowledge of the affairs of the Princeton Lighting Co., so far as your company was connected with it?

A. Yes, sir.

Q. Have you the original mortgage with you of the Princeton Lighting Co. to your company?

A. It is in those papers there (indicating). (Produces).

Mr. Betts: The original mortgage of the Princeton Lighting Co. to the North American Trust Co., dated February 28th, 1903, is produced and offered in evidence.

Marked Exhibit C. 11.

Q. Have you the trust-sheet of your company which shows the various bonds that were received and handed out by you?

A. I have.

Trust sheet marked C. 12. for identification.

Q. Col. Dowd, are you a member of the bondholders committee of the Princeton Lighting Co.?

A. Yes, sir.

Q. As representing such committee how many of these Hopewell Electric Light, Heat and Power Co. bonds do you hold secured by the Hopewell Electric Light, Heat and Power Co. mortgage?

Mr. Low: I object to the question as calling for a conclusion.

Court: He can state how many he holds—I will allow the question to that extent.

A. $40,500 par value.

(MR. BETTS:))

Q. Is that 405 bonds of the par value of $100 each?

A. Yes, sir, it is.

Q. Has any of the principal been paid on account of those bonds?

Mr. Low: I object to that as not the proper way to prove it, and also on the ground that it is immaterial, incompetent and irrelevant.

Question allowed.

A. No, sir.

(MR. BETTS:)

Q. Have any of those bonds been returned to the Burlington City Loan and Trust Co. for cancellation?

Mr. Low: I object to that question as irrelevant, incompetent and immaterial.

Question allowed.

A. No, sir.

(MR. BETTS:)

Q. How about the twenty bonds that have been mentioned specifically—how did you acquire those bonds?

Court: I understood the witness to say that there was $40,500 of bonds held by the bondholders' committee, and that none had been returned to the Burlington City Loan and Trust Co. for cancellation, that is all he has testified to.

(MR. BETTS:)

Q. How did you acquire twenty of these bonds as distinguished from the others?

A. We purchased them from the holder.

Q. And who was the holder?

A. Adam Weber, I think his name was.

Q. You purchased them, acting for the bondholders' committee?

A. Yes, sir, we purchased them acting for the bondholders' committee.

CROSS-EXAMINATION BY MR. LOW:

Q. How much did you pay for those bonds?

Mr. Betts: I object to that as immaterial.

Question allowed.

A. We gave the obligation of the company.

(MR. LOW:)

Q. How much was that obligation?

A. Such portion of the securities as may be issued of the new company, as were arranged between the holders and ourselves.

Q. What was the arrangement as to that?

Mr. Betts: I object to that as immaterial.

Question withdrawn.

(MR. LOW:)

Q. What did the bondholders' committee pay for

the $38,500 of bonds?

Mr. Betts: I make the same objection.

Question allowed.

A. We paid $5,000 for them.

(MR. LOW:)

Q. And those bonds were put up at public auction in the City of New York on July 19th, 1905, and sold?

A. Yes, sir.

Q. And you bought them at that date?

A. Yes, sir.

Q. Subsequent to the foreclosure of the Princeton Lighting Co.'s mortgage, a new corporation was formed, called the Princeton Light, Heat and Power Co., to take over the assets of the old company, was there not?

A. Yes, sir.

Q. Are you connected with that company?

A. Yes, sir.

Q. As what?

A. President.

Q. And always have been president of that company?

A. Yes, sir.

Q. I understand you to testify that you claim that $40,500 of bonds which you hold, which include the $38,500 which you say you have purchased, are outstanding liabilities of the Hopewell Electric Light, Heat and Power Co. and the Princeton Lighting Co.?

A. I do.

Q. That is your claim, is it not?

A. Yes, sir.

Q. Do you recollect that a receiver was appointed for the Princeton Lighting Co. about April 2nd, 1904?

A. In April, 1904, yes, sir.

Q. And did you, in connection with others, form

a committee for the purpose of reorganizing that company?

A. I did.

Q. Who were the other members of that committee?

A. Mr. Pugh, Mr. Betts, Mr. Bayard Stockton and myself, I think.

Q. Was not that the second reorganization committee which was formed for that purpose?

A. There has been only one reorganization committee.

Q. Don't you recollect a reorganization committee you belonged to comprised of Mr. Betts, Mr. Fergus A. Dennis and yourself?

A. I believe there was such a committee, but I never—

Q. You were a member of that committee, were you not?

A. Yes, sir.

Q. And you attempted to effect a reorganization of the Princeton Lighting Co., didn't you?

A. Yes, sir.

Q. And you were unsuccessful?

A. Yes, sir.

Q. You sent out various circulars to the creditors, stockholders and bondholders of the Princeton Lighting Co., didn't you?

Mr. Betts: I object to that question as immaterial.

Question allowed.

A. I believe there were such circulars sent out.

(MR. LOW:)

Q. Will you look at this paper which bears your name and see whether that was one of the circulars sent out by you (handing witness paper)?

A. That appears to be a copy of it.

Circular marked D. 1. for identification.

Q. This circular purports to set out the liabilities of the Princeton Lighting Co., on the date you sent it out, July 1st, 1904, does it not (handing witness paper)?

A. It shows the report of the accountant.

Q. And the report of the accountant which you sent out to all those bondholders, creditors and stockholders says "Prior liens—mortgages and bonds of the constituent companies $36,800"—what were the total bonds of the constituent companies?

Mr. Betts: I object to that question as immaterial and incompetent,—the document itself is the best evidence of what it contains.

Question allowed.

A. I do not understand the question.

(MR. LOW:)

Q. What was the total amount of the original bonds and mortgages of the three constituent companies forming the Princeton Lighting Co.?

A. I do not know.

Q. What was the Hopewell Electric Light, Heat and Power Co.'s mortgage?

A. $50,000.

Q. And what was the mortgage of the Princeton Gas-light Co.?

A. $15,000.

Q. And what was the mortgage of the Princeton Electric Works?

A. $5,500.

Q. Now this examination made by Haskins & Co., accountants, of the affairs of this company, was made by your committee in connection with them, or with the co-operation of the receiver and with the approval of the Court of Chancery—that is correct, is it not, as you state?

A. I believe it to be.

Q. And that report was on file in the office of the

North American Trust Co. from the date it was made, until your committee failed to ~~recognize~~ reorganize that company?

A. It was.

Q. And open to the inspection of all the bondholders, creditors and stockholders?

A. It was.

Q. Now, has the mortgage of the Princeton Gaslight Co. of $15,000 been paid?

A. It has not.

Q. Has the mortgage of the Princeton Electric Works of $5,500 been paid?

A. I believe there has been a payment of $1,000 on it.

Q. Was that paid at the date you sent out this circular, namely, July 1st, 1904?

A. I do not know, sir.

Q. Do you know whether it has been paid since that date or not?

A. I do not remember the date of payment.

Q. Do you remember that it was paid subsequent to the time the Princeton Lighting Co. went into the hands of a receiver?

A. My recollection is that it was paid prior to that time.

Q. Now, the $38,500 of bonds of the Hopewell Electric Light, Heat and Power Co. turned into the North American Trust Co. were turned in prior to the time you sent out this circular, July 1st, 1904, were they not?

Mr. Betts: I object to that question—I think that is a matter of defence, that is a matter for them to show, and I object to it, as not cross-examination.

Question allowed.

A. What is the date of the circular?

(MR. LOW:)

Q. July 1st, 1904?

A. They were.

Q. Was there filed with your company, the North American Trust Co., the copy of the merger agreement between the three companies mentioned?

A. There were.

Q. You are familiar with the provisions of that agreement?

A. Only in a very general way.

Q. You read it?

A. Not all of it.

Q. Have you read parts of it?

A. I have looked at parts of it, yes, sir.

Mr. Low: I will ask the gentleman on the other side if there is any question that the bonds issued by the North American Trust Co. the time they took up the $38,500 of Hopewell Electric Light, Heat and Power Co., bonds were issued under Article 1, subdivision B, and Section 2 of the Princeton Lighting Co.

Mr. Betts: That is a conclusion of law, I think.

Mr. Low: I call for the production of the affidavit verified by Mr. Dowd of April 30th, 1906, which has been called for under our notice to produce.

(Paper produced and handed to counsel.)

(MR. LOW:)

Q. I show you this paper and ask you whether that is your signature (handing witness paper)?

A. It is.

Paper marked D. 2. for identification.

Q. I would like to have you take the affidavit, and I will call your attention to the middle of Fol. 2 of the affidavit—will you kindly read the whole affidavit first?

Court: You may ask him any question you please in regard to the affidavit to refresh his recollection—it is not necessary for him to read the whole affidavit.

(MR. LOW:)

Q. Look at the middle of Fol. 2 at the end of the sixth line beginning with the words—"that the North American Trust Co. was the trustee, under a mortgage of the Princeton Lighting Co. for $350,000, dated February 28th, 1903 ,which mortgage has been"—interrupted—

Court: You cannot introduce the affidavit by reading it in that manner.

(MR. LOW:)

Q. Will you read your affidavit from the middle of Fol. 2 to the middle of Fol. 5?

Court: Ask him the question—what you want to prove by him, as to the affidavit.

(MR. LOW:)

Q. In this affidavit, you have sworn, that the Princeton Lighting Company mortgage contained the following provision with reference to the issue of $350,000 of bonds; $70,500 of said bonds are to be retained by the trustee and are to be certified on delivery from time to time, as required to take up and replace $50,000 at par, of the outstanding bonds of the Hopewell Electric Light, Heat and Power Co., dated August 1st, 1901, which bonds are redeemable by the conditions of the mortgage securing them; to take up $5,500 of the first mortgage of the Princeton Electric Works, and to take up the $15,000 mortgage on the Princeton Gas-light Co.; pursuant to said provisions from time to time, the North American Trust Co. exchanged $38,500 of the bonds of the Hopewell Electric Light, Heat and Power Co. in the par value of the Princeton

Lighting Co. bonds for bonds of the the Princeton Electric Light, Heat and Power Co. to the same amount—you so testified, did you not?

Mr. Betts: I object to the question as calling for a conclusion of law.

(MR. LOW:)

Q. Did you so testify.

Mr. Betts: He has not testified at all.

Question withdrawn.

(MR. LOW:)

Q. Is that a fact, did you state that in this affidavit, and is it a fact—did you state it in the affidavit first?

Mr. Betts: I object to the question.

Question overruled.

(COURT:)

Q. You have heard the matter read to you, is that true, according to your knowledge?

A. It is.

(MR. LOW:)

Q. This affidavit was made by you in opposition to the motion of the defendants, for leave to intervene in this suit, was it not?

A. I don't know what it was for; it was done under the advice of counsel.

Q. How many bonds of the Princeton Lighting Co. were certified by the North American Trust Co.?

A. I should have to refresh my memory by referring to the sheet.

Q. Will you refresh your memory (handing witness paper)?

A. The record shows that we certified $300,000.

New Jersey State Library

Q. And how many did you issue? ?

A. $268,000.

Q. So that $32,000 of those you certified, were never issued?

A. They were never delivered.

Q. I will ask you another question—who was president of the Princeton Lighting Co. during the time it was in existence?

A. Mr. Charles Fitch was president.

Q. And who was treasurer?

A. I believe it was Mr. Blackwell who was the treasurer.

RE-DIRECT BY MR. BETTS:

Q. I show you a package of letters, and I will ask you to identify the signatures and to state whether they were sent by your company to the Princeton Lighting Co., and received by your company from the Princeton Lighting Co. (handing letters to witness)?

A. These are all either copies of letters sent by the North American Trust Co., now the Trust Co. of America, or letters received by them, some of them are originals.

Mr. Betts: I offer the original letter of August 13th, 1903, received from the North American Trust Co. by the Princeton Lighting Co.

Mr. Low: I object to the offer as irrelevant, incompetent and immaterial, and as not binding upon the defendants. The mortgage speaks for itself, it is perfectly clear, and there is no ambiguity about it. No officer of the North American Trust Co., or acting for the North American Trust Co., can change the form of the provisions of the mortgage, or make a new agreement for the Princeton Lighting Co. or do anything that would be contrary to the provisions of this

mortgage, by writing a letter.

Court: I will overrule the evidence as to those letters.

Mr. Betts: Can I have these letters marked for identification, so that they can be printed with the record, if we should go up.

Court: You cannot have anything printed that is not in evidence.

Mr. Betts: I offer in evidence then the letters between the Princeton Lighting Co. and the North American Trust Co., and the Princeton Lighting Co. and the Burlington City Loan and Trust Co. showing—

Mr. Low: I object to that offer; counsel cannot read the letters or state what they show in any such offer.

Court: Objection sustained.

Mr. Betts: I want to make the offer of these letters in evidence for the purpose of showing the terms on which the bonds were exchanged, what was to be done with the Hopewell Electric Light, Heat and Power Co. bonds, after the North American Trust Co. received them, and for the purpose of showing the construction which the parties themselves placed on the terms of the Princeton Co. mortgage and the consolidation agreement with reference to the turning in of the Hopewell Electric Light, Heat and Power Co. bonds.

Mr. Low: I make the same objection.

Court: I will overrule the offer.

(MR. BETTS:)

Q. You have been asked on cross-examination

about the sale and purchase of $38,500 of bonds of the Hopewell Electric Light, Heat and Power Co.— I show you a paper and ask you if you recognize it, tell me what it is—do you recognize the paper?

A. I do.

Q. What is it?

A. It is a notice by the Trust Co. of America to the representative of the Princeton Lighting Co., Richard Stockton, its receiver, of the sale of the Hopewell Electric Light, Heat and Power Co. bonds, held by it.

Q. Do you recognize the signature to the paper?

A. I do.

Mr. Betts: I offer that paper in evidence.

Mr. Low: I object to the paper as being irrelevant, incompetent and immaterial.

Court: I will admit the paper.

Marked Exhibit C. 13.

(MR. BETTS:)

Q. Was any objection ever made to the sale?

Mr. Low: I object to the question as irrelevant, incompetent and immaterial.

Question withdrawn.

(MR. BETTS:)

Q. Did the Princeton Lighting Co. ever object to that statement that the bonds were held by your company as collateral for the Princeton Lighting Co. bondholders?

Same objection.

Question allowed.

A. They did not.

(MR. BETTS:)

Q. Did they acquiesce in that statement?

Same objection.

Objection sustained.

(MR. BETTS:)

Q. Did they ever consent to that statement?

Mr. Low: I object to the question as calling for a conclusion.

Court: You may prove what they said.

(MR. BETTS:)

Q. What did they say to you about that?

Mr. Low: I object to the question as irrelevant, incompetent and immaterial.

Question allowed.

A. They said nothing, they accepted the notice and said nothing.

(MR. BETTS:)

Q. Have you the trust sheet which you have been cross-examined upon?

Mr. Low: I object to the question and to the trust sheet as incompetent, immaterial and irrelevant, and as not binding on the defendants at all.

Court: You may hand the sheet to him, and examine him as to it.

(Produces.)

(MR. BETTS:)

Q. What does your trust sheet show with reference to the Hopewell Electric Light, Heat and Power Co. bonds?

Mr. Low: I object to the question as irrelevant, incompetent and immaterial.

Objection sustained.

(MR. BETTS:)

Q. What were the dates on which the Hopewell Electric Light, Heat and Power Co. bonds were exchanged by your company, and give the numbers of the bonds, and how much of them were exchanged on those dates?

Mr. Low: It is admitted that $38,500 of those bonds were delivered up, and I object to the question as immaterial, irrelevant and incompetent.

Question allowed.

A. On August 12th, 1903, bonds Nos. 61 to 162, $10,200; No. 245, $100; No. 195, $100; Nos. 247 to 276, $2.600; Nos. 343 to 350, $800; Nos. 359 to 370, $1,200, were delivered up and exchanged for Princeton Lighting Co. bonds.

Mr. Low: I object to the word "exchange" in the answer of the witness and ask that it be stricken out.

Court: I will let it stand.

(MR. BETTS:)

Q. Proceed?

A. November 16th, 1903, Nos. 1 to 60, $6,000; November 27th, 1903, Nos. 371 to 440, $7,000; December 7th, 1903, Nos. 232 to 244, $1,300; Nos. 273 to 340, $6,800; Nos. 351 to 358, $800; Nos. 485 to 500, $1,600; in all $38,500, were delivered up and exchanged.

Q. Did you make your exchange direct or—

Mr. Low: I object to the question and move to strike out the word "exchange" as not part of the answer to the question, and as calling for the conclusion of the witness.

Court: I will allow it to stand.

(MR. BETTS:)

Q. Did you make your exchange of these Hopewll Electric Light, Heat and Power Co. bonds with the holders direct, or with the Princeton Lighting Co.?

Mr. Low: I make the same objection to that question as to the former one; if he made the exchange direct or had any agreement in regard to them that should be stated. Now, if your Honor please, there is a stipulation in the cause here which fully covers that point, and which stipulates that the bonds were delivered by the North American Trust Co. to the Hopewell Electric Light, Heat and Power Co. bondholders itself.

Court: Why do you not introduce your stipulation?

Mr. Betts: I will read the stipulation at the proper time, your Honor, but I wish to examine my witness first.

Mr. Low: I object and I want the stipulation read here.

Court: Read the stipulation; the defendants are entitled to the benefit of their stipulation.

Mr. Betts: Then I will read the stipulation, your Honor. It is as follows:

"IT IS HEREBY STIPULATED by and be-
"tween the complainants and First National Bank
"of Cranbury, New Jersey, Frank W. Stout, John
"W. Scudder, Harrisburg Foundry and Machine
"Works, Frank Toomey, Carolina B. Drake, W. S.
"Titus and Maria Fisher, defendants, that the fol-
"lowing are admitted facts relating to the ques-
"tions at issue in the above entitled suit, viz:

"I. All the allegations of paragraphs Second, "Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, "Eleventh, Twelfth, Thirteenth, Fourteenth, Fif- "teenth, Seventeenth and Eighteenth of the bill of "complaint herein are true, and hereunto annexed "is a true copy of the mortgage or deed of trust "dated August 1st, 1901, in paragraph Fifth of the "bill mentioned, a true copy of the agreement of "consolidation dated February 2nd, 1903, and filed "with the Secretary of State of New Jersey, Feb- "ruary 27th, 1903, in the bill of complaint men- "tioned, and a true copy of the mortgage of said "Princeton Lighting Company to North American "Trust Company, trustee, dated February 28th, "1903, in paragraph eighteenth of the bill of com- "plaint mentioned, or the originals of said mort- "gages and agreement shall be produced and put in "evidence upon the trial hereof by the complain- "ants.

"II. All the allegations of paragraph First of "the bill of complaint herein are true, except the "allegation that the bondholders' committee therein "mentioned are now the owners and holders of four "hundred and five (405) bonds, of the par value of "one hundred ($100) dollars each, of Hopewell "Electric Light, Heat and Power Company, which "the above-named defendants deny; and the allega- "tions of paragraph Seventh of said bill are true, "except the allegation that all of the bonds therein "mentioned are now outstanding legal obligations "of said Princeton Lighting Company as the suc- "cessor of Hopewell Electric Light, Heat and Pow- "er Company, which said defendants deny; and the "allegations in paragraph Sixteenth of said bill of "complaint are true, except the allegation that the "whole of the principal sum of fifty thousand "($50,000) dollars, par value of said bonds, are "now outstanding and are now due and owing, with "interest from August 1st, 1904, together with their "expenses and charges, which are, under the terms

"of the mortgage, a lien on the mortgaged premises, "which said defendants deny.

"III. The said defendants are the owners and "holders of ninety-one (91) bonds of Hopewell "Electric Light, Heat and Power Company, being "part of the issue of five hundred (500) bonds in "the bill of complaint mentioned, distributed as follows:

"Name of bondholder.	Nos.	Number of bonds.
"First National Bank of Cran- "bury, New Jersey	441 to 484	44
"Frank W. Stout	192 and 193	2
"John W. Scudder	175 and 176	2
"Harrisburg Foundry and Ma- "chine Works	196 to 230	35
"Frank Toomey	170 to 174	5
"Carolina B. Drake	194	1
"W. S. Titus	231	1
"Maria Fisher	117	1

"IV. Subsequent to the consolidation agreement "dated February 2nd, 1903, between the Hopewell "Electric Light, Heat and Power Company, Prince- "ton Electric Works and Princeton Gas Light Com- "pany, providing for a consolidation of said three "companies, in the bill of complaint mentioned, an "indenture of mortgage or trust agreement, dated "February 28th, 1903, in said bill of complaint "mentioned, was duly entered into between Prince- "ton Lighting Company and North American Trust "Company, which is the mortgage contemplated by "said consolidation agreement, and said North "American Trust Company retained $50,000 of the "bonds of Princeton Lighting Company therein "mentioned, and thereafter from time to time said "North American Trust Company certified and de- "livered thirty-eight thousand five hundred ($38,- "500) dollars thereof to bondholders of Hopewell

"Electric Light, Heat and Power Company, and "bonds of the Hopewell Electric Light, Heat and "Power Company to the same amount held by said "bondholders were thereupon delivered unto said "Trust Company; that Heman Dowd, at and sub- "sequent to the consolidation of the three compa- "nies aforesaid, was one of the vice-presidents of "said North American Trust Company and so con- "tinued up to the date of its merger with the Trust "Company of America, and since said merger has "been and now is a vice-president of said Trust "Company of America; that on or about July 19th, "1905, said Trust Company of America, as succes- "sor to said North American Trust Company, of- "fered at public auction in the City of New York "said thirty-eight thousand five hundred ($38,500) "dollars of bonds of Hopewell Electric Light, Heat "and Power Company received by said Trust Com- "pany as aforesaid, and the bondholders' committee "of Princeton Lighting Company, of which Heman "Dowd is and always has been chairman, purchased "said bonds at said auction sale, which bonds are "now in the hands of said committee, and are a part "of the four hundred and five (405) bonds alleged "in paragraph first in the bill of complaint to be "held and owned by said committee. That twenty "(20) of the outstanding bonds of Hopewell Elec- "tric Light, Heat and Power Company thereafter "were acquired by said bondholders' committee, "which, together with the three hundred and "eighty-five (385) bonds aforesaid, make up the "four hundred and five (405) bonds alleged in the "bill of complaint to be held and owned by said "committee.

"Dated June 22, 1906.

"GEO. WHITEFIELD BETTS, JR.,
"Complainants' Solicitor.
"EDWARD P. JOHNSON,
"Defendants' Solicitor."

Stipulation offered in evidence and marked Exhibit C. 14.

Q. (Question repeated.) Did you make your exchange of these Hopewell Electric Light, Heat and Power Co. bonds with the holders direct, or with the Princeton Lighting Co., or through the medium of the Princeton Lighting Co.?

Mr. Low: I object to the question; the stipulation provides how that was to be done: "Said North American Trust Co. retaining $50,000 of the bonds of Princeton Lighting Co. therein mentioned, and thereafter from time to time said North American Trust Co. certified and delivered $38,500 thereof to bondholders of Hopewell Electric Light, Heat and Power Co."—that point is fully covered by the stipulation and we object to it.

Court: I will over-rule the question on the ground that the stipulation entered into by the parties covers the point, and unless you withdraw that, I shall consider it as a surprise to these people if you undertake to put in any evidence that is at all contradictory to the stipulation.

(MR. BETTS:)

Q. Col. Dowd, were the $38,500 of Hopewell Electric Light, Heat and Power Co. bonds that were retained by your company as trustee, delivered by your company direct to the Hopewell Electric Light, Heat and Power Co. bondholders, or through the medium of the Princeton Lighting Co.?

Mr. Low: I make the same objection as before.

Objection sustained.

(MR. BETTS:)

Q. Did you ever exchange any Hopewell Electric

Light, Heat and Power Co. bonds with the Hopewell Electric Light, Heat and Power Co. bondholders direct?

Mr. Low: I object to that question as immaterial and irrelevant—I do not object to it as to whether he did or not, but as to his company.

Question withdrawn.

Q. Did you or your company ever exchange any Hopewell Electric Light, Heat and Power Co. bonds with the Hopewell Electric Light, Heat and Power Co. bondholders direct?

Mr. Low: I make the same objection as before to that same question.

Court: I shall sustain the objection; the stipulation settles that question.

Mr. Betts: I offer this notice in evidence, being the notice that the trustees sent to the Receiver, which Col. Dowd has already identified.

Mr. Low: I object to the offer.

Court: I will take it.

Marked Exhibit C. 15.

Mr. Betts: I offer in evidence the trust sheet.

Mr. Low: I object to that.

Court: You will have to prove it first; it has not been proved sufficiently.

(MR. BETTS:)

Q. What is the paper which you have produced here to-day, which has been called the trust sheet?

Mr. Low: I object.

Question allowed.

A. It is a sheet from our trust ledger containing a record of the handling of the securities going out and coming in, under the Princeton Lighting Co. mortgage.

(MR. BETTS:)

Q. Are you familiar with that document?

A. I am.

Q. If so, how are you familiar with it?

A. I have had occasion to refer to it frequently.

Q. Is it the original trust sheet?

A. It is the original, it is a loose-leaf system of ledger that we have, and it has been taken out of a book, and can be put back.

FURTHER CROSS-EXAMINATION BY MR. LOW:

Q. Did you make the entries yourself?

A. I did not.

Q. I understand it was taken from one of your books?

A. Yes, sir.

Mr. Low: I object to the offer of the paper.

Court: I will take it.

(MR. LOW:)

Q. Were the entries upon that sheet original entries—are they original entries?

A. They are original entries.

Q. Is there no book from which these entries were made?

A. No, sir.

Q. What is the book from which it was taken?

A. What we call our "Trust Ledger."

Paper marked C. 12. for identification, being the trust sheet in question, now marked Exhibit C. 12.

Mr. Betts: I offer the original contract of merger between the three companies.

Marked Exhibit C. 16.

COMPLAINANTS REST.

Mr. Low: I offer in evidence the paper heretofore marked D. 1. for identification, being the paper which I examined Col. Dowd with reference to, sent out to the stockholders, bondholders and creditors, and containing the statement that the total prior liens then outstanding were $36,800.

Mr. Betts: I object to the offer as incompetent, immaterial and irrelevant.

Paper admitted.

Marked Exhibit D. 1.

SAMUEL J. M. McCARRELL, a witness produced in behalf of the defendants, being duly sworn according to law on his oath, saith:

EXAMINED BY MR. LOW:

Q. Where do you reside?

A. Harrisburg, Pa.

Q. Are you the United States attorney for that district?

A. I am.

Q. Are you the counsel for the Harrisburg Foundry and Machine Company?

A. I am general counsel and a director in the Harrisburg Foundry and Machine Co.

Q. Do you recollect some time after an application had been made for the appointment of a receiver of the Princeton Lighting Co. that you called at Princeton and had an interview with the officers of the Princeton Lighting Co.?

A. I do.

Q. Was that prior to the appointment of a receiver?

A. It was prior to the appointment of the receiver, a few days prior to the appointment of the receiver, but after the application for the appointment had been made.

Q. Where was that conversation held?

A. It was held in the office of the Princeton Lighting Co.

Q. Who was present at that conversation?

A. Mr. Van Doren, who was associated with me as counsel for the Harrisburg Foundry and Machine Co., Mr. Fitch, the president of the Princeton Lighting Co., and Mr. Blackwell, its treasurer.

Q. Did you have a conversation relating to the Hopewell Electric Light, Heat and Power Co. bonds?

Mr. Betts: I object to the question as immaterial.

Question allowed.

A. I did.

(MR. LOW:)

Q. Now, will you tell the conversation?

Mr. Betts: I object to the question as irrelevant, incompetent and immaterial.

Court: The question is, what was the contract between the men that surrendered their securities and took other securities—I will overrule the question.

Mr. Low: I admit that, but I think at the same time we are entitled to show what was said—I will ask one or two questions to show what our point is.

(MR. LOW:)

Q. Did Mr. Fitch, the president of the Princeton

Lighting Co., state to you that any part of the bonds issued under the mortgage of the Hopewell Electric Light, Heat and Power Co. had been cancelled, and if so, how many?

Mr. Betts: I object to that as irrelevant, incompetent and immaterial.

Objection sustained.

(MR. LOW:)

Q. Did he tell you how many bonds of the Hopewell Electric Light, Heat and Power Co. were then outstanding as obligations of the Princeton Lighting Co.?

Same objection.

Same ruling.

(MR. LOW:)

Q. Now, in pursuance to the conversation you had with Mr. Fitch and Mr. Blackwell, did you do any act on behalf of the Harrisburg Foundry and Machine Co. relying upon that statement?

Mr. Betts: I object to that question for the reasons heretofore given and also on the further ground that he has already had the bonds, and it does not develope that he bought any bonds on that statement, or that he suffered anything because of that statement.

Question overruled.

NO CROSS-EXAMINATION.

Mr. Low: I offer to show the same state of facts as to this conversation by Mr. Van Doren, who accompanied Mr. McCarrell to Princeton on that occasion.

Court: You may call him and ask him the question.

Mr. Low: We will call him later; he is not at present in the room.

GEORGE B. MERSHON, a witness produced on behalf of the defendants, being duly sworn according to law on his oath saith:

EXAMINED BY MR. LOW:

Q. You are an officer of the First National Bank of Cranbury, N. J.?

A. Yes, sir.

Q. What position do you hold?

A. Cashier.

Q. How long have you been such?

A. About nine years.

Q. I show you Exhibit D. 1. and ask you whether that paper was received by you through the mail (handing witness paper)?

A. I would say so, yes, sir.

Q. Mr. Mershon, did you have, subsequent to or about the time a receiver was appointed for the Princeton Lighting Co., a conversation with Charles P. Fitch, the president of that company, relating to the Hopewell Electric Light, Heat and Power Co. bonds?

A. I did.

Q. State the conversation?

Mr. Betts: I object to that for the reasons heretofore given to the same question put to Mr. McCarrell.

Question overruled.

CROSS-EXAMINATION BY MR. BETTS:

Q. Were you also a creditor of the Princeton Lighting Co.,—that is, your bank was a creditor of the Princeton Lighting Co., was it not?

A. It was.

Q. At the time you received this notice?

A. Yes, sir.

Q. An unsecured creditor—what was the debt the Princeton Lighting Co. owed you?

A. It was a note secured by some bonds of the Hopewell Electric Light, Heat and Power Co.?

Q. Was it a note of the Princeton Lighting Co.?

A. A note of the Princeton Lighting Co.

Q. How long had you held the bonds of the Hope-
10 Electric Light, Heat and Power Co.?

Mr. Low: I object to that as irrelevant.

Question allowed.

A. I would think close to a year.

(MR. BETTS:)

Q. A year before you got this notice?

A. Yes, sir.

20 Q. You do not pretend to say that this notice caused you to act in any way to your prejudice, do you?

Mr. Low: I object to the question as irrelevant and also on the further ground that it is not cross-examination.

Objection sustained.

(MR. BETTS:)

30 Q. Did you do anything with your Hopewell Electric Light, Heat and Power Co. bonds as a result of this notice?

Mr. Low: I make the same objection.

Question allowed.

A. As a result of this notice?

(MR. BETTS:)

Q. Yes?

40 A. No, sir, not as a result of that notice.

Q. You subsequently sold your Hopewell Electric Light, Heat and Power Co. bonds, did you not?

Mr. Low: I object to that as irrelevant, incompetent and immaterial and as not cross-examination.

Question allowed.

A. We did.

(MR. BETTS:)

Q. And bought them back again?

Same objection.

Same ruling.

A. Yes, sir.

(MR. BETTS:)

Q. How much did you pay for them, when you bought them back?

Mr. Low: I object to the question as immaterial.

Objection sustained.

(MR. BETTS:)

Q. And you proved your claim, the unsecured part of your claim against the Princeton Lighting Co., didn't you?

Mr. Low: I object to that as immaterial.

Question allowed.

A. We did.

DEFENDANTS REST.

HEMAN DOWD, being recalled in behalf of the complainants, in rebuttal, saith:

EXAMINED BY MR. BETTS:

Q. This circular marked Exhibit D. 1., to the

bondholders, creditors and stockholders of the Princeton Lighting Co., which has been offered in evidence by the defendants—to whom was that notice sent?

A. It was sent to the creditors of the Princeton Lighting Co.

Q. Was it sent to the bondholders of the Hopewell Electric Light, Heat and Power Co. bonds?

A. It was not.

Q. Was it sent to the secured creditors of the Princeton Lighting Co. or only the unsecured, do you remember?

A. Why, it was sent to all the creditors.

Q. Did you make, or did you intend by that statement, to convey the impression that the $38,500 of the Hopewell Electric Light, Heat and Power Co. bonds were cancelled?

Mr. Low: I object to that as irrelevant, incompetent and immaterial, and on the further ground that the statement speaks for itself.

Objection sustained.

(MR. BETTS:)

Q. Are the Hopewell Electric Light, Heat and Power Co. bonds mentioned specifically in that statement?

Mr. Low: I object to that statement as immaterial, irrelevant and incompetent—the statement speaks for itself.

Objection sustained.

CROSS-EXAMINATION BY MR. LOW:

Q. You sent that notice, Exhibit D. 1., to all the bondholders and stockholders, as well as all its creditors, didn't you?

A. I do not think we did.

Q. It is addressed to all the bondholders, credit-

ors and stockholders—were you not attempting to effect a reorganization of the company?

A. Only so far as it represented the creditors.

Q. You were not intending to get in the bondholders and stockholders?

A. No, sir.

(COURT:)

Q. Well, how did you expect to get in the bonds—your statement reads: "That the committee be empowered to purchase the property at such sale, and either to sell the same for the benefit of the parties in interest as provided in the agreement, or convey it to a new corporation, to be organized by the committee, in exchange for bonds, preferred and common stock of the new corporation, which the committee, after paying the expenses and compensation of the receiver, and of the reorganization committee, shall distribute on the following basis, the amounts being estimated on the liabilities as shown in the accountant's report,"—now, you have first, the secured creditors and the bondholders—you certainly must have meant the bondholders to come in, did you not—just look at that and say (handing Exhibit D. 1. to witness)?

A. We meant the bondholders of the Princeton Lighting Co.—yes, sir.

Q. You meant the bondholders to come in, did you not?

A. Yes, sir.

(MR. LOW:)

Q. Did you send the notices to them is what I asked you?

A. Yes, sir, this notice must have been sent to them.

Q. And to all the stockholders as well?

A. Probably, but there were only one or two stockholders.

Q. Look at this paper, and see if this does not

clearly refresh your recollection as to that—this paper went with and at the same time that you sent the notice Exhibit D. 1., did it not?

A. My recollection is not at all clear as to this paper, because it was a matter that was dropped almost as soon as it was started, and it passed entirely out of my recollection.

Q. Was not the paper, which I have just handed to you—was not that paper the paper that accompanied the notice marked Exhibit D. 1.?

A. It may be, I cannot testify to that fact now.

Q. This paper purports to be a proposed agreement of reorganization between Heman Dowd, George W. Betts, Jr., and Fergus A. Dennis, as a reorganization committee, acting at the request of and on behalf of the bondholders, creditors and stockholders of the Princeton Lighting Co., parties of the first part, hereinafter called the "Committee" and the several bondholders, creditors and stockholders of said company, who shall execute this agrement as parties of the second part, hereinafter called the "depositor"—does not that refresh your recollection as to the fact that that paper accompanied the notice heretofore marked Exhibit D. 1., which has already been shown to you?

A. I think it does, but that speaks for itself.

Mr. Low: I offer this other paper or agreement in evidence.

Marked Exhibit D. 2.

CROSS-EXAMINATION BY MR. BETTS:

Q. In this notice, which is addressed "To the bondholders, creditors and stockholders of the Princeton Lighting Co.," which you say was sent out to certain creditors—was that notice sent out to the holders of the bonds issued to the Princeton Lighting Co. under the mortgage, or was it sent out to the holders of the bonds under the Hopewell Electric Light, Heat and Power Co. mort-

gage, or both, which was it?

A. It was only sent to the bondholders under the Princeton Lighting Co. mortgage.

Q. Is that what is meant by the Princeton Lighting Co. bondholders when you spoke of them today?

A. That is what I meant.

CASE CLOSED.

Decree Pro Confesso.

Filed June 25, 1906.

IN CHANCERY OF NEW JERSEY,

Between BURLINGTON CITY LOAN AND TRUST COMPANY, et al Complainants, and PRINCETON LIGHTING COMPANY, et al, Defendants.	On Bill, &c. Decree Pro Confesso.

This cause being opened to the Court by Geo. Whitefield Betts, Jr., of counsel with the complainants, and it appearing that process of subpoena for the appearance of the defendants hath been duly issued and returned served upon Princeton Lighting Company, and that there has been due acknowledgment of due service thereof by the solicitors of defendants, Richard Stockton, Receiver of Princeton Lighting Company, John A. Roebling's Sons Company, Princeton Light, Heat and Power Company and Westinghouse Electric and Manufacturing Company, and that the said defendants have not filed any plea, demurrer or answer to said bill within the time limited by law, but have wholly failed and neglected so to do:

It is thereupon, on this twenty-fifth day of June, in the year of our Lord, one thousand nine hundred and six, ordered adjudged and decreed that the said bill be taken as confessed as against the aforesaid defendants to the end that such decree be made against them as the Chancellor shall think equitable and just.

W. J. MAGIE,
C.

A true copy,
VIVIAN M. LEWIS,
Clerk.

Final Decree. 193

Filed July 24, 1906.

IN CHANCERY OF NEW JERSEY.

Between BURLINGTON CITY LOAN AND TRUST COMPANY, et al, Complainants, and PRINCETON LIGHTING COMPANY, et al, Defendants.	On Bill to Foreclose. Final Decree.

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This cause being opened to the Court by George W. Betts, Jr., and John G. Boston, of counsel with the complainants, Burlington City Loan and Trust Company and Heman Dowd, Bayard Stockton, J. H. McNeal and George Whitefield Betts, Jr., as and constituting the Bondholders' Committee of the Princeton Lighting Company, and in the presence of Edward P. Johnson, Jr., and Walter Carroll Low, of counsel with the defendants, First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Foundry and Machine Works, Frank Toomey, Carolina B. Drake, W. S. Titus and Maria Fisher, and it appearing that the said complainants' bill has been heretofore taken as confessed as against all the defendants except First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Foundry and Machine Works, Frank Toomey, Carolina B. Drake, W. S. Titus and Maria Fisher, who have appeared and filed an answer herein, and the cause coming on to be heard before the Chancellor at the State House in Trenton on the twenty-fifth day of June, nineteen hundred and six, and the evidence produced by the parties and

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196 the arguments of their respective counsel having been heard and due deliberation being had in the premises.

And it appearing to the Court that of the whole amount of bonds issued under and secured by the mortgage set out in the bill of complaint, thirty-eight thousand five hundred dollars at par were surrendered by the holders thereof to The North American Trust Company and other bonds of like amount, issued by Princeton Lighting Company, accepted instead thereof. And the Court being of the opinion that such surrender and exchange satisfied said bonds and that they should be cancelled
197 and no longer constitute a debt secured by said mortgage.

And it further appearing that the remainder of said bonds, of the par value of eleven thousand five hundred dollars, are now due and unpaid together with interest thereon from the first day of February, nineteen hundred and four, and the Court being of the opinion that such bonds represent the only indebtedness entitled to the benefit of the mortgage aforesaid.

And it further appearing that the bonds which have, in the judgment of the Court, been satisfied are numbered as follows: One to one hundred and sixty-two, inclusive; one hundred and ninety-
198 five, two hundred and thirty-two to two hundred and forty-five, inclusive; two hundred and forty-seven to three hundred and forty, inclusive; three hundred and forty-three to four hundred and forty, inclusive, and four hundred and eighty-five to five hundred, inclusive.

It is, on this twenty-fourth day of July, nineteen hundred and six, on motion of George W. Betts, Jr., ORDERED, adjudged and decreed that there is due on the bonds secured by complainants' mortgage for principal and interest on this day the sum of twelve thousand nine hundred and twenty-six dollars and thirty-two cents, and that the mort-

gaged premises be sold under the direction of Carroll Robbins, one of the Special Masters of this Court to raise and pay said debt with interest and costs of the complainants and answering defendants to be taxed. 199

And it is further decreed that the bonds representing in value, at par, thirty-eight thousand five hundred dollars, and which are hereinbefore specifically set out by numbers, are not and do not constitute a lien upon the mortgaged premises, and are not part of the indebtedness now due and secured by the mortgage.

And it is further ordered and decreed that the said mortgaged premises, property and franchises shall be sold as a whole, as hereinafter directed, and that all the rights, title, estates, interest and equity of all the defendants in this action, and all persons claiming under them or any of them, in or to the said mortgaged premises, property and franchises and every part and parcel thereof, shall be forthwith barred and foreclosed and without right of redemption, and that the defendants herein stand absolutely debarred and foreclosed of and from all equity of redemption in and to said premises, property, rights and franchises when sold as herein directed and that a writ of fieri facias issue for the purpose of selling the aforesaid mortgaged premises, property and franchises out of this Court directed to the said Special Master commanding him to make sale according to law of so much of the said mortgaged premises and property, real, personal and mixed, rights, privileges, immunities and franchises as shall be sufficient to satisfy the amount herein found due upon the bonds and coupons secured by said mortgage or deed of trust, together with interest and costs, and that he pay the same as hereinafter directed, and in case more money should be raised by the sale than shall be sufficient to answer for such payment, such surplus money be brought into this Court and deposit- 200 201

202 ed with the clerk to abide the further order of this Court, and that said Special Master make return to this Court of his proceedings by virtue of said writ.

And it is further ordered and decreed that when the sale of said premises, property and franchises shall be made by said Special Master, as aforesaid, he is hereby authorized to make, execute and deliver deeds of conveyance of the property to be sold, to the purchaser or purchasers, upon the order of this Court confirming such sale, and upon payment of the purchase price.

And it is further ordered, adjudged and decreed that the fund arising from the sale of said prop-
203 erty, premises and franchises shall be applied as follows:

1. To the payment of the costs of this action, as hereinbefore decreed, and of all proper expense attendant upon such sale, including the compensation of the Special Master appointed to make such sale.

2. To the payment of said First Mortgage Bonds herein adjudged to be unsatisfied and the interest and coupons thereon hereinbefore found to be due, proportionately, without preference of interest over principal, together with interest from the date of this decree. The amount due to the holders of bonds
204 shall be paid upon presentation of the bonds, which shall be cancelled if paid in full, but marked as partially paid if paid only in part.

3. If, after making the foregoing payments, there shall remain any surplus, then, same shall be paid to the Clerk of this Court.

It is further ordered and decreed that whenever the Special Master shall be prepared, out of the proceeds of the sale, to make payment on any of the bonds, interest and coupons, to be paid as above specified, he shall give notice of the time when, and the place where, he will be prepared to make

such payment, by publication once at least ten days before the time of such proposed payment, in a newspaper in the City of Trenton, New Jersey. And no holder of any bond or coupon of the payment of which notice shall have been so given, who shall fail to present the same for payment, at the time and place specified, shall be entitled to the payment of any interest thereon after that date out of the proceeds of sale and the Special Master shall thereupon pay into this Court any moneys due such holder or holders. 205

And it is further ordered and decreed that the complainant, Burlington City Loan and Trust Company, at the time of the execution of any such deed or deeds by any such Special Master, shall as a further assurance to the grantee or grantees therein named, or to his successor or assigns, execute its deed or deeds, or join the said Special Master in the execution of the deed or deeds to be made by him, and the complainant, Burlington City Loan and Trust Company, shall thereby release all right, title and interest it may have as such trustee and mortgagee under said mortgage or deed of trust of August first, nineteen hundred and one. 206

And it is further ordered and decreed that the said defendants and each of them, and all persons claiming, or to claim, under and by virtue of them, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this decree. 207

W. J. MAGIE,
C.

JAMES J. BERGEN,
Vice-Chancellor.

208

Notice of Appeal.

Filed August 1, 1906.

IN CHANCERY OF NEW JERSEY.

Between
BURLINGTON CITY LOAN AND TRUST COMPANY, HEMAN DOWD, BAYARD STOCKTON, J. H. MCNEAL, GEORGE WHITEFIELD BETTS, JR., as and constituting the Bond Holders' Committee of the Princeton Lighting Company,

209 Complainants,

and

PRINCETON LIGHTING COMPANY, RICHARD STOCKTON, Receiver of Princeton Lighting Company, WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY, JOHN A. ROEBLING'S SONS COMPANY, PRINCETON LIGHT AND POWER COMPANY, FIRST NATIONAL BANK of Cranbury, New Jersey,

210 FRANK W. STOUT, JOHN W. SCUDDER, HARRISBURG FOUNDRY AND MACHINE WORKS, FRANK TOOMEY, CAROLINA B. DRAKE, W. S. TITUS and MARIA FISHER,

Defendants.

Notice of Appeal.

The complainants hereby appeal to the Court of Erros and Appeals, in the last resort in all causes, from the final decree made in this Court, in the above stated cause, and from those parts thereof

whereby it is adjudged that the par value 211
of the principal of the bonds secured by the mortgage to the complainant, set forth in the bill is no more than eleven thousand five hundred dollars, and that the three hundred and eighty-five bonds, numbered 61-162, 245, 195, 247-272, 343-350, 359-370, 1-60, 371-440, 232-244, 273-340, 351-358, 485-500, of the Hopewell Electric Light, Heat and Power Company, owned and held by complainants, Heman Dowd, Bayard Stockton, J. H. McNeal, George Whitefield Betts, Jr., as and constituting the Bond Holders' Committee of the Princeton Lighting Company, of the par value of one hundred dollars each, are not outstanding obligations 212
of the Princeton Lighting Comanpy, or secured by said mortgage, but were paid and extinguished.

E. B. LEAMING,
GEO. WHITEFIELD BETTS, JR.,
Solicitors for Complainants.

GEO. WHITEFIELD BETTS, JR.,
Of Counsel.

Dated July 25, 1906.

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

GEO. WHITEFIELD BETTS, JR., 213
Of Counsel with Complainants.

214 **Petition on Appeal.**

Filed August 2, 1906.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
BURLINGTON CITY LOAN AND TRUST COMPANY, HEMAN DOWD, BAYARD STOCKTON, J. H. MCNEAL, GEORGE WHITEFIELD BETTS, JR., as and con-
215 stituting the Bond Holders' Committee of the Princeton Lighting Company,
Complainants,
and
PRINCETON LIGHTING COMPANY, RICHARD STOCKTON, Receiver of Princeton Lighting Company, WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY, JOHN A. ROEBLING'S SONS COMPANY, PRINCETON LIGHT AND POWER COMPANY, FIRST NATIONAL BANK
216 of Cranbury, New Jersey, FRANK W. STOUT, JOHN W. SCUDDER, HARRISBURG FOUNDRY AND MACHINE WORKS, FRANK TOOMEY, CAROLINA B. DRAKE, W. S. TITUS and MARIA FISHER,
Defendants.

} Petition on Appeal.

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

The petition of Burlington City Loan and Trust

Company, Heman Dowd, Bayard Stockton, J. H. 217
McNeal, George Whitefield Betts, Jr., as and constituting the Bond Holders' Committee of the Princeton Lighting Company, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree, made in the Court of Chancery by His Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the twenty-third day of July, in the year nineteen hundred and six, wherein the said Burlington City Loan and Trust Company, Heman Dowd, Bayard Stockton, J. H. McNeal, George Whitefield Betts, Jr., as and constituting the Bond Holders' Committee of the Princeton 218
Lighting Company were complainants, and the said Princeton Lighting Company, Richard Stockton, receiver of Princeton Lighting Company, Westinghouse Electric and Manufacturing Company, John A. Roebling's Sons Company, Princeton Light, Heat and Power Company, First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Foundry and Machine Works, Frank Toomey, Carolina B. Drake, W. S. Titus and Maria Fisher were defendants, in this respect, to wit: That the said decree adjudges that the three hundred and eighty-five bonds, set forth in the bill, numbered 61-162, 245, 195, 247-272, 343-350, 359-370, 1-60, 371-440, 232- 219
244, 273-340, 351-358, 485-500, and held by Heman Dowd, Bayard Stockton, J. H. McNeal, George Whitefield Betts, Jr., as and constituting the Bond Holders' Committee of the Princeton Lighting Company, are not outstanding legal obligations of defendant, Princeton Lighting Company, but were paid and satisfied, and are no longer securities en titled to the lien of the mortgage of the Hopewell Electric Light, Heat and Power Company to the Burlington City Loan and Trust Company, and that said decree adjudges that the outstanding bonds secured by said mortgage, are of no more

than par value of eleven thousand five hundred dollars principal.

And your petitioners humbly appeal from that part of the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the said Chancellor should have decreed that the principal of said bonds, secured by said mortgage, due and oustanding, was, at the time of the filing of the bill, and now is, the sum of fifty thousand dollars par value, together with interest thereon at five per cent from February first, nineteen hundred and four, and that the complainants, Heman Dowd, Bayard Stockton, J. H. McNeal, George Whitefield Betts, Jr., as and constituting the Bond Holders' Committee of the Princeton Lighting Company, at the time of the filing of the bill herein, were and are now the holders and owners of three hundred and eighty-five bonds, aforesaid, of the Hopewell Electric Light, Heat and Power Company, of the par value of one hundred dollars each, numbered 61-162, 245, 195, 247-272, 343-350, 359-370, 1-60, 371-440, 232-244, 273-340, 351-358, 485-500, which are and were overdue, outstanding legal obligations of defendant, Princeton Lighting Company, secured by the said mortgage to the complainant, and are entitled to a share of the proceeds of the sale hereunder, and that the relief prayed for in the bill of complaint should be granted.

Your petitioners, therefore, pray that the said decree of said Chancellor may be, in the particulars aforesaid, reversed, set aside, and nothing holden or modified, and that your petitioners may have such relief in the premises as to this Honorable Court may seem meet.

E. B. LEAMING,
GEO. WHITEFIELD BETTS, JR.,
Solicitors for Complainants.

Answer to Petition on Appeal. 223

Filed August 30, 1906.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
BURLINGTON CITY LOAN AND TRUST COMPANY, HEMAN DOWD, BAYARD STOCKTON, J. H. MCNEAL, GEORGE WHITEFIELD BETTS, JR., as and constituting the Bond Holders' Committee of the Princeton Lighting Company,
Complainants,
and
PRINCETON LIGHTING COMPANY, RICHARD STOCKTON, Receiver of Princeton Lighting Company, WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY, JOHN A. ROEBLING'S SONS COMPANY, PRINCETON LIGHT AND POWER COMPANY, FIRST NATIONAL BANK of Cranbury, New Jersey, FRANK W. STOUT, JOHN W. SCUDDER, HARRISBURG FOUNDRY AND MACHINE WORKS, FRANK TOOMEY, CAROLINA B. DRAKE, W. S. TITUS and MARIA FISHER,
Defendants.

224

Answer to Petition on Appeal.

225

The answer of First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Foundry and Machine Works, Frank Toomey, Carolina S. Drake, W. S. Titus

226 and Maria Fisher, the above-named respondents to the petition of appeal of the above-named appellants.

These respondents, First National Bank of Cranbury, New Jersey, Frank W. Stout, John W. Scudder, Harrisburg Foundry and Machine Works, Frank Toomey, Carolina S. Drake, W. S. Titus and Maria Fisher, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was on the twenty-third day of July last past, made and entered in the Court of Chancery, in the cause for that pur-
227 pose mentioned in said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

EDWARD P. JOHNSON, JR.,
Solicitor and of Counsel with Respondents.

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Conclusions. 229

IN CHANCERY OF NEW JERSEY,

Between
BURLINGTON CITY LOAN AND TRUST COMPANY et al,
Complainants,
and
PRINCETON LIGHTING COMPANY, et al,
Defendants.

230

Mr. George W. Betts, Jr., and Mr. Boston, of the N. Y. Bar, for the Complainants.

Mr. Edward P. Johnson and Mr. Walter C. Low, of the N. Y. Bar, for the Defendants.

BERGEN, V. C.

My opinion about this matter is so well settled, that I have concluded to announce it now. The Hopewell Electric Light, Heat and Power Company, owning a lighting plant, had its property incumbered to the extent of $50,000. While in this condition a merger or consolidation was effected, which included that company, the Princeton Gaslight Co. and the Princeton Electric Works; the new company being known as the Princeton Lighting Company. By the terms of the merger the new company was to issue a mortgage, on all of its property, for three hundred and fifty thousand dollars, of which $50,000 was to be issued to take up and redeem for cancellation a like amount of bonds of the Hopewell Electric Light, Heat and Power Company, which were secured by a mortgage on the property of that company. 231

The mortgage also provided that the indebtedness of the other two companies, secured by a

mortgage, amounting in one case to $15,000, and in the other case to $5,500, was also to be taken up and redeemed by a part of the bonds issued by the new company.

We have nothing to consider here, except the bonds of the Hopewell Electric Light, Heat and Power Company.

What followed was this: The holders of the bonds of the Hopewell Electric Light, Heat and Power Company, to the extent of $38,500, surrendered their bonds to the trustee named in the new mortgage; that trustee being then the North American Trust Company. As the bonds were delivered to the trustee, that trustee issued to the persons surrendering the bonds a bond or bonds of the new company to an equal amount. The mortgage requires the trustee to cancel those bonds when taken up; but instead of actually sending the bonds to the Burlington City Loan and Trust Company, the complainant in this cause, for cancellation, they were held by the trustee and afterwards sold at public auction to the present holders.

The question to be disposed of arises over the right of the party holding these bonds, amounting to $38,500, to prove them as an indebtedness secured by the mortgage of $50,000, of which this complainant was the trustee, originally issued by the Hopewell Electric Light, Heat and Power Company. The persons holding the bonds that had not been presented and exchanged, insist that the holders who delivered their bonds to the trustee and accepted the bonds of the New Company, in lieu thereof, have had their bonds paid so that, to that extent, the mortgage of $50,000 is no longer a security which the holders can claim the benefit of.

The Princeton Lighting Company, the corporation giving the new mortgage of $350,000, became insolvent and a Receiver of that company was appointed, and the property afterwards sold under

foreclosure for $50,000. The property of the 235
Princeton Lighting Company not producing enough to pay the mortgage indebtedness, the trustee, the North American Trust Co., then proceeded to sell, and did sell at public auction the bonds, amounting to $38,500, which it had received in exchange for bonds of the Princeton Lighting Co. issued by it as trustee. These bonds were purchased by a party of gentlemen who called themselves "The Bondholders' Committee." That committee however, so far as I can observe from the evidence in this cause, represented no one except the bonds which they purchased—there is no evidence here which shows that any bondholder ever deposited a 236
bond with this so-called reorganization committee, but the bonds they hold and which they now present are the bonds purchased at this public sale of $38,500, and $2,000 of bonds purchased by a man by the name of Weber. So that the simple question which we are to pass upon here is, whether the bonds which were delivered by the respective bondholders of the Hopewell Electric Light, Heat and Power Co. to the trustee of the Princeton Lighting Co., were delivered in trust, to be held as additional security for the bonds which they were accepting, or whether they were delivered to be extinguished and cancelled?

Under the merger agreement and mortgage, the 237
bonds were to be exchanged for the bonds of the new company, and when so exchanged, were to be cancelled. The fact that the bonds were not actually sent to the Burlington City Loan and Trust Company, the trustee named in that mortgage, for cancellation, has but little weight or consequence, if the bonds were delivered for the purpose of cancellation, having been satisfied by the exchange, in equity, are cancelled, and if they have not been, should be directed to be cancelled, because that was the duty of the trustee. I fail to see what power this trustee had to sell these bonds at public auc-

238 tion. There is nothing in the mortgage authorizing this trust company to sell these bonds. They had a duty to perform, plainly stated in the papers, that is, to issue new bonds for the bonds of the Hopewell Electric Light, Heat and Power Co. as they were presented for exchange, and when they received those bonds, and issued the new bonds in place of them, so far as the trustee was concerned, those bonds were cancelled—they had no right to keep them alive, and had no right to put them on the market and sell them, and in so doing they exceeded any duty which they owed to the parties interested, and certainly exceeded any
239 authority which the papers making them trustees conferred.

Every person who delivered a bond to this new company, so far as this evidence shows, was relinquishing and giving up all his right to any security under that mortgage. This case is not governed by many of the cases cited by counsel here, because in nearly every case cited by counsel, and in every case of which I have any recollection, the mortgage provided that the securities when surrendered should be held until they were all in, but in this case that apparently was not contemplated, there is no such contract or agreement showing that any such ac-
240 tion was anticipated, expected or required.

Nor can I infer from the facts, that the party surrendering the bond, intended to have it held as a security. They were giving up a bond protected by a mortgage in exchange for one secured by a mortgage which covered not only the original, but additional property. They might justly assume that they were getting additional security, and when they surrendered a bond and took another in place of it, so far as I can see, they parted with the only interest they had in the bond.

On the other hand, ~~we~~ cannot assume that one would surrender a mortgage bond protected by a

prior security, and accept another mortgage bond 241
secured by the same property, with the understanding that that security is to be preserved as a prior lien to the bond he is purchasing, to be sold by the trustee in the open market. Such a result must rest upon an express agreement.

My view of the case is, that the $38,500 of bonds have been paid and satisfied and ought to be cancelled, and that the complainant is entitled to a decree for the balance of the $50,000.

The $2,000 of bonds, so far as this case shows, never were surrendered or exchanged, and the committee in buying them were within their legal rights. There is nothing here to show what their 242
authority was, or how far they were to act for the bondholders, or what right they had to buy the bonds, but it is not contended that this $2,000 of bonds were ever redeemed and put in a position to be cancelled, and if the committee had no authority to buy as a committee, they did have such right as individuals, and I therefore find that this $2,000 of bonds is subject to the mortgage. I will sign a decree drawn in conformity with these conclusions.

243

244

Exhibit C-1.

$50,000 Mortgage of Hopewell Electric Light, Heat and Power Co. to Burlington City Loan and Trust Co.

THIS INDENTURE, made this first day of August, nineteen hundred and one, between the HOPEWELL ELECTRIC LIGHT, HEAT AND POWER COMPANY, a corporation created by and existing under the laws of the State of New Jersey, duly organized, hereinafter called the "ELECTRIC COMPANY," party of the first part, and the BURLINGTON CITY LOAN AND TRUST COMPANY
245 of Burlington, New Jersey, hereinafter called the "TRUST COMPANY," as Trustee, party of the second part, WITNESSETH:

WHEREAS, at a certain meeting of the stockholders of the said Electric Company, duly called and held in accordance with the law, at which a majority of the stockholders were present, on the twenty-third day of July, A. D. 1901, said Company was duly authorized and empowered to increase its indebtedness in the sum of fifty thousand dollars ($50,000); and

WHEREAS, at the above mentioned meeting the
246 following resolution was adopted:

"*Resolved*, That the Board of Directors be and they are hereby authorized and empowered to issue the bonds of the Company in the sum of fifty thousand dollars, secured by a mortgage to a Trustee on all the property of the Company now owned or hereafter to be acquired. This right to be exercised at such times as the Board of Directors may deem best, said bonds and mortgages to be executed in such manner and form as the Board may determine, with power in the Board to negotiate said bonds in whole or part for the best price that can be obtained for the same, the proceeds to be

applied for the purposes of the Company as determined by the Board"; and 247

WHEREAS, said Electric Company, being the owner of certain lands situate in the Borough of Rocky Hill, in the County of Somerset and State of New Jersey, and of franchises granted to said Electric Company to furnish electric light and power in the Boroughs of Hopewell and Rocky Hill and the inhabitants thereof, and also of sundry contracts and agreements to use the light and power to be furnished by said Electric Company; and

WHEREAS, the Electric Company, being desirous of raising funds for the purpose of constructing its plant, erecting pole lines and equipping and installing a plant to carry out the purposes of said franchises, and for other purposes and objects in connection with its business and affairs, the Board of Directors of the said Electric Company, in pursuance of the power and authority vested in them as aforesaid, at a meeting held July twenty-fourth, 1901, adopted the following preamble and resolutions, to wit: 248

WHEREAS, at a meeting of the stockholders of the Company duly called in accordance with the law and held the twenty-third day of July, A. D. 1901, at the principal office of the Company at Hopewell, N. J., this Company was duly authorized to increase its indebtedness in the sum of fifty thousand dollars ($50,000); and 249

WHEREAS, at the above mentioned meeting the following resolution was adopted:

Resolved, That the Board of Directors be and they are hereby authorized and empowered to issue bonds of the Company in the sum of fifty thousand dollars, secured by a mortgage to a Trustee on all the property of the Company now owned or hereafter to be acquired. This right to be exercised at

such times as the Board of Directors may deem best, said bonds and mortgage to be executed in such manner and form as the Board may determine, with power in the Board to negotiate said bonds in whole or in part for the best price that can be obtained for the same, the proceeds to be applied for the purposes of the Company, as determined by the Board; and

WHEREAS, It is necessary to provide funds for the purposes above set forth and for other purposes of the Company;

Resolved, That the coupon bonds of the Company in the aggregate amount of fifty thousand dollars, dated August 1, 1901, be issued in bonds of denomination of $100 each, all of like tenor and date, and numbered consecutively from 1 to 500, both inclusive, said bonds to mature and be payable twenty years after date, to wit: On the first day of August, 1921, with the option of the Company to redeem the same in whole or in part five years after their date, to wit: On or after August 1, 1906, the same to bear interest at five per cent. per annum, payable semi-annually on the first days of February and August in each year; principal and interest payable at the First National Bank, Princeton, New Jersey, in gold coin of the United States of America of the present standard of weight and fineness, without any deduction for any National, State, County or Municipal tax or assessment which shall at any time be assessed or levied against said bonds; said principal and interest to be secured by a first mortgage of even date with said bonds, on all the franchises, property, real estate, rights, contracts and privileges of the Company now owned or that may hereafter be acquired by it. Said mortgage to be made to the Burlington City Loan and Trust Company, Burlington, New Jersey, Trustee, and to be duly recorded. Said mortgage shall contain a provision binding this

Company to set aside as a Sinking Fund for the 253
redemption of the bonds issued, the following sums of money at the times and in the manner specified, to wit: The sum of $500 during each and every year for a period of five years, commencing at the date of issue; $1,500 during each and every year next succeeding for a period of ten years; $6,500 during each and every succeeding year for the remaining period of five years, in case all the bonds are issued and in proportion for a less number, out of the gross earnings of the Company and before any cash salaries are paid to any officer of the Company, except the Superintendent, or any cash dividends are declared. 254

Provided, however, That the mortgagor shall have the right during the period of five years preceding the date when the option of redemption shall begin, to apply the Sinking Fund in the purchase of any outstanding bonds at a price not exceeding par. That the principal of said bonds my be registered as provided in the form of the bond hereinafter set forth. Said bonds shall not become obligatory until authenticated by the signature of the Trustee.

Resolved, further, That the following form of bond, coupon, Trustee's certificate and registration be and the same is hereby adopted and approved: 255

FORM OF BOND.

$100.00 No.....

UNITED STATES OF AMERICA,
STATE OF NEW JERSEY.

HOPEWELL ELECTRIC LIGHT, HEAT AND POWER COMPANY,
HOPEWELL, N. J.

First Mortgage, Sinking Fund Gold Bond.

Know all men by these presents, that the Hope-

256 well Electric Light, Heat and Power Company, a corporation created by and existing under the laws of the State of New Jersey, for value received, is indebted to the bearer hereof, or to the registered holder hereof, in the sum of one hundred dollars, United States gold coin, of the present standard of weight and fineness, redeemable at any time on or after August 1st, 1906, at the option of the said Company, in the manner provided for in the mortgage securing the payment hereof and absolutely due and payable twenty years after date hereof, to wit: August 1st, 1921, with interest at the rate of five per cent. per annum, payable in like gold coin,
257 semi-annually on the first days of February and August, in each year, upon surrender of interest coupons hereto attached as they shall respectively mature, principal and interest to be payable at the First National Bank, Princeton, New Jersey, without any deduction for any National, State, County or Municipal tax or assessment which shall at any time be assessed or levied against said bond. This bond is one of an issue of five hundred bonds of like tenor and date, numbered consecutively from one to five hundred, both inclusive, and of the denomination of one hundred dollars each, amounting in the aggregate to fifty thousand dollars, and all equally secured by a mortgage of even
258 date herewith, executed and delivered by the said Hopewell Electric Light, Heat and Power Company to the Burlington City Loan and Trust Company, in Burlington, N. J., as Trustee, and duly recorded, of all the franchises, property, real estate, rights, contracts and privileges, lands, tenements and hereditaments now owned or that may hereafter be acquired by said Company. Said mortgage provides for a sinking fund under which the said Company has the right until August 1st, 1906, to apply said sinking fund to the purchase of bonds at a price not exceeding par. Said mortgage also provides that in case of default of either

principal or interest continuing more than six 259
months, no proceeding can be brought by any holder of any bonds or coupons attached thereto, but that the Trustee only can bring such proceedings, and only on the written demand of the holders of a majority in amount of all bonds then outstanding. This bond shall pass by delivery or it may be registered as to the principal on the books of said Company in the Office of the Burlington City Loan and Trust Company, Trustee, in Burlington, N. J., when duly certified hereon and approved by an officer of the said Company, and when registered no transfer except on the books of the said Company shall be valid unless the last registration shall 260
have been to bearer, which shall restore the right of transfer by delivery or registation. This bond shall not become obligatoy until authenticated by the signature of the Trustee.

In witness whereof the said Hopewell Electric Light, Heat and Power Company has caused its common seal to be hereto affixed and this bond to be signed by its President and attested by its Secretary, and the coupons attached to be signed by its Treasurer in fac simile this first day of August, A. D. 1901.

.....President.

Attest: 261

.....

(Corporate Seal.)

(Form of Coupon.)

$2.50

On the first day of February, 1902, the Hopewell Electric Light, Heat and Power Company will pay the bearer at the First National Bank, Princeton, New Jersey, two and 50-100 dollars, United States gold coin, being six months interest on its first mortgage gold bond.

No.....

.....Treasurer.

262 (Form of Trustees' Certificate.)

It is hereby certified that this bond is one of the issue of bonds within mentioned and is secured by the mortgage therein referred to, subject to the conditions and limitations in said mortgage contained.

BURLINGTON CITY LOAN AND TRUST CO.,
Trustee.

By.....President.

(Form of Registration.)

The within bond has this day been duly registered on the books of the Hopewell Electric Light, Heat and Power Company, in the name of

263 ....
.....190..... .....
Treasurer.

Date of Transfer.	To Whom Transferred.	Transfer Agent.
.....	.....	.....
.....	.....	.....
.....	.....	.....

The present form of mortgage having been read, it was

Resolved, That the form of mortgage just read is hereby approved and adopted and the President is hereby authorized and directed to affix the com-
264 mon or corporate seal of the Company to each of the bonds to be secured thereby, and to sign the same as President, the Secretary to attest said execution; the coupons to be attested by the fac simile signature of the Treasurer; and the President is hereby authorized for and in behalf of the Company, and as and for its act and deed to affix the common or corporate seal of the Company to the said indenture of mortgage to be executed and sign the same as President, the said execution to be attested by the Secretary and said officers to duly acknowledge and record said indenture of mortgage.

NOW THIS INDENTURE WITNESSETH, 265
That the said Electric Company as well in consideration of the premises and for the better securing the payment of the said bonds so to be forthwith made and executed for the sum of fifty thousand dollars and the interest which will accrue thereon, as of the sum of one dollar, lawful money of the United States, unto it well and truly paid by the said Trust Company, at the time of the execution hereof, the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, enfeoffed, released, and confirmed, assigned, transferred and set over, and by these presents and in execution of the power and authority in it vested 266
by the said above recited resolutions and the acts of the Legislature of the State of New Jersey, and of all and every power and authority in it in any wise vested and in this behalf enabled does hereby grant, bargain, sell, alien, enfeoff, release, confirm, assign, transfer and set over unto the said Trust Company, its successor or successors:

All these certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the said Borough of Rocky Hill, in the Township of Montgomery, in the County of Somerset, in the State of New Jersey, including the grist mill, plaster mill and fulling mill and 267
being designated as Tract No. 1; Beginning at the West side of the Millstone river, at the middle of the foot of the old bridge, called the Rocky Hill Bridge, formerly standing upon said river; and running thence (1) easterly up said river, and across the same until it strikes a stone now at the easterly end of the dam to the Millstone River; being also at the foot of the embankment of the Delaware and Raritan Canal; thence (2) south three degrees twenty-six minutes east, seven hundred and forty feet more or less, to a point on the west side of the Millstone River, about opposite the lower one of two islands situate in said river;

thence (3) north sixty-two degrees west, and skirting along the southerly shore of the mill pond, crossing the mouth of the brook and skirting along the head race, to a point in the northerly side of the Georgetown and Franklin Turnpike, on the westerly side of the said head race; thence (4) westerly along the northerly side of the Georgetown and Franklin Turnpike to a point distant fifteen feet easterly in a right line, from the easterly foundation of the burned buildings; thence (5) north twenty-four degress east eighty-three feet to the rear of fence of the garden; thence (6) north fifty degrees west, one hundred and seventy feet, more or less, to a point in a line running from the said beginning point, over the centre of the old well in the Georgetown and Franklin Turnpike; thence (7) north two degrees forty-five minutes east to the place of beginning. Together with all and singular the buildings, improvements, ways woods, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging, or in any wise appertaining; together with a sufficient right of way in and over the land on the westerly shore of the head race, and on the southwesterly shore of the mill pond, and the west shore of the river to the VanHorn line, for the grantees, their heirs, successors and assigns, and their agents and servants, and the tenants and occupants from time to time, of the premises hereinabove described, and any other person or persons for their benefit and advantage, at all times freely to pass and repass on foot and with animals and vehicles, loads or otherwise for the purpose (and for no other purpose) of making repairs and removing driftwood and debris, incident and necessary to the free flow of the water course.

Tract No. 2—All that lot and parcel of land and premises, situate, lying and being in the Township of Montgomery, in the County of Somerset and State of New Jersey, beginning at a post in the

southerly side of the Georgetown and Franklin 271
Turnpike, distant about forty-three feet from a well standing on the north side of the said turnpike, and running thence (1) south two degrees forty-five minutes west, about five hundred and twenty feet, to the middle of a brook; thence (2) northeasterly down the middle of said brook to its junction with the mill pond; thence (3) northerly along the westerly side of the head race to a point in the southerly line of the Georgetown and Franklin turnpike; thence (4) westerly along the southerly line of said turnpike to the northeast corner of the stone tenement house; thence (5) south thirty degrees fifteen minutes east, one hundred 272
and seventy-six feet and six inches, to a mark on the fence; thence (6) south seventy-nine degrees fifteen minutes west and passing eight feet northerly from the center of a well one hundred and forty-three feet and six inches to a spike; thence (7) north seventeen degrees west, one hundred and thirty-nine feet and six inches to the southwesterly corner of the frame tenement; thence (8) north ten degrees forty-five minutes west along the side of said tenement fifty-nine feet, more or less, to the southerly line of the aforesaid turnpike; thence (9) westerly along said southerly line of said turnpike one hundred and eighty-seven feet, more or 273
less, to the place of beginning. Subject, however, to a right of way in and over a certain strip of land adjacent to the head race, and running to the brook, for the person or persons seized of parcel number three, this day sold and called the quarry tract, their successors, heirs and assigns, and their agents and servants and the tenants and occupants from time of the said quarry premises, and any other person or persons, for his and their benefit and advantage, at all times freely to pass and repass on foot, and with animals and vehicles, loads or otherwise, to and fro between the said quarry premises and the highway. And further subject

274 to a sufficient right of way in and over the land on the westerly shore of the head race, for the person or persons seized of the premises this day sold, and known as parcel number one, and called the mill property, their successors, heirs and assigns, and their agents and servants, and the tenants and occupants from time to time of the premises aforesaid, and any other person or persons, for his and their benefit and advantage, at all times freely to pass and repass on foot and with animals and vehicles, loads or otherwise, for the purpose (and for no other purpose) of making repairs and removing driftwood and debris, incident and necessary to
275 the free flow of the water course. And further subject to a right of way over the alley on the westerly side of parcel number four, this day conveyed and known as the tenement houses parcel.

The Third Tract—All that lot and parcel of land and premises, situate, lying and being in the township of Montgomery, in the County of Somerset and State of New Jersey, beginning at a pile of stones in the old Van Horn line, about three feet easterly of a butternut tree, near the angle of the road leading from Rocky Hill to Princeton, and runs thence(1) along the said old VanHorn line, south sixty-six degrees fifteen minutes east one thousand and fifty-six feet to the Millstone river;
276 thence (2) down the said river on a course of about north three degrees and twenty-six minutes west, one thousand and seventy-five feet, more or less, to a point about opposite the lower one of two islands situate in said river; thence (3) north sixty-two degrees west, and skirting along the southerly shore of the pond, to the mouth of the brook emptying into said pond; thence (4) up the middle of said brook southerly to a point in a line running from the beginning point above mentioned to an old well standing in the northerly side of the Georgetown and Franklin turnpike, near what is known as the burned buildings; thence (5) along

said line two degrees forty-five minutes west six 277
hundred and sixty-seven and four-tenths feet, more or less, to the place of beginning. Together with a right of way in and over a strip of land running from the said brook to the Georgetown and Franklin turnpike, which right of way is adjacent to the westerly side of the head race and brook, for the person or persons seized of the hereby granted premises, their successors and assigns, and their agents and servants, and the tenants and occupants from time to time of the premises above granted, and for their benefit and advantage, at all times freely to pass and repass on foot, and with animals and vehicles, loads or otherwise, to 278
and fro between the premises hereby granted and the said Georgetown and Franklin turnpike.

Tract No. 4—All that lot or parcel of land and premises, situate, lying and being in the Township of Montgomery, in the County of Somerset and State of New Jersey; beginning at a point in the southerly side of the Georgetown and Franklin turnpike, about one hundred and eighty-seven feet easterly from a line passing through the center of an old well, and the foot of the center of the old Rocky Hill bridge, extended; thence (1) south ten degrees forty-five minutes, east fifty-nine feet, more or less, passing along the side of the tenement 279
house to the southwest corner of the same; thence (2) south seventeen degrees, east one hundred and thirty-nine feet six inches to a spike; thence (3) north seventy-nine degrees fifteen minutes east, and passing eight northerly from a well, one hundred and forty-three feet six inches to a mark on the fence; thence (4) north thirty degrees fifteen minutes west, one hundred and seventy-six feet and six inches to the northeast corner of the stone tenement house; thence (5) along the front of the last mentioned house, and the southerly line of the Georgetown and Franklin turnpike, to the place of beginning. Together with a right of way in and

280 over the alley on the westerly side of the above granted premises, for the person or persons seized of the above granted premises, their successors, heirs and assigns, their agents and servants, and the tenants and occupants from time to time of the premises above granted and every other person or persons for their benefit and advantage.

And also all the franchises, property, rights, privileges, lands, tenements and hereditaments of every kind and nature whatsoever, now owned or that may be hereafter acquired by the said Electric Company, including all of the fast and movable machinery, shafting, both main and auxiliary,
281 tools, supplies, electrical and other machinery, lamps, both attached to the line and detached therefrom, poles, wires, insulators, cross arms, fixtures within building, in use by the consumers as well as such fixtures as are in use by the Company, and all and every other article and thing going to make up an operating electrical plant, presently existing or which may hereafter be acquired, or placed in, or about the premises of the mortgagor for the use of said electrical plant.

To have and to hold, all and singular the above described lands, tenements, hereditaments, franchises, rights, property and privileges unto the said Trust Company, and its successors to and for
282 its only use and behoof; but in trust nevertheless for the use, benefit and security as hereinafter mentioned of the several persons, bodies politic and corporate, their respective successors, administrators and assigns, who shall be or become the holders of the said bonds amounting in the aggregate to the sum of fifty thousand dollars, as aforesaid intended to be hereby secured, or any of them, subject to the right of the said Electric Company and its successors and assigns or lessees to retain the free and uncontrolled use and possession of and to manage, operate and enjoy the lands, plants, leasehold, interests, rights, franchises, ten-

ements, hereditaments and premises hereby granted or intended so to be with the appurtenances, and to take and use the rents, tolls, issues and profits and the proceeds thereof with like effect as if this deed had not been made, until the said Trust Company, or its successor or successors in the trust, shall be authorized as hereinafter mentioned, to enter upon and take possession of or sell the same as hereinafter set forth. 283

And it is hereby expressly declared, covenanted and agreed by and between the parties hereto (each party covenanting and agreeing for itself, its successors or assigns), in manner following, viz.:

First—That the said Electric Company will punctually pay to the holders of the bonds aforesaid, intended to be hereby secured, or any that may be issued and accepted in lieu, renewal or substitution of the same respectively, the interest thereon semi-annually, as the same shall become due and payable according to the terms in the said bonds contained, and on the days therein respectively mentioned for the payment of the same, and shall and will also on the days and times mentioned in the said bonds respectively or whenever the said principal sums of the said bonds shall, according to the provisions thereof become due and payable, fully and entirely pay off and satisfy as aforesaid the whole of said bonds, principal and interest, without further delay. Subject, however, to the option of the said Electric Company to redeem said bonds, in whole or in part, after five years from their date, to wit: On or after August 1st, 1906, out of any moneys in the sinking fund or out of any other moneys that may be appropriated by the said Electric Company for this purpose (providing if less than the whole issue is redeemed, the bonds to be paid shall be determined by chance by the Trustee under this mortgage). Provided that no one of the said bonds shall be 284 285

286 entitled to the security of these presents until the certification endorsed thereon shall have been signed by the Trustee.

Second—In case the said Electric Company, its successors or assigns, shall at any time hereafter, after demand made, fail for any period exceeding six months to pay the semi-annual interest on, or the principal of the bonds, original or substituted, intended to be hereby secured, and then outstanding, or any of them, when and as the same shall respectively become due and payable, then and in either case upon the written request of the holder or holder or holders of a majority in amount of the
287 said bonds then outstanding, the said Trust Company, or its successor or successors in the trust for the time being, upon being indemnified to its satisfaction, shall enter upon and take possession of the premises, properties, estates, real, personal and mixed, franchises and rights hereby granted, or agreed or intended so to be, and thereupon (either directly or through one or more agents) operate, use, manage and control the said premises, properties, real, personal and mixed, franchises and rights, possession of which shall have been so taken, and exercise the franchises relating thereto in such manner as the said Trust Company, or its successor or successors in the trust shall deem
288 best; and shall appropriate the net income derived therefrom (after defraying all expenses incurred in maintaining in efficient condition, and in operating the same and providing for the payment of all taxes, assessments and other sums entitled to priority of payment over the principal and interest of the bonds intended to be hereby secured, and after deducting the expenses of the trust, including reasonable counsel fee, and such sum or sums as may be sufficient to indemnify the said Trust Company, or its successor or successors in the trust, against any liability, loss or damage for or on account of any matter or thing omitted by the

said Trust Company or its successor or successors 289
in the trust, in good faith, in the discharge of its, their or his duty, to the payment in full, without preference, priority, or distinction of one bond over another; First, of the interest due thereon, and second, of the principal as it shall become due, of all the aforesaid bonds intended to be hereby secured, then outstanding, in full, if the net income be sufficient, but if not, then pro rata; or the said Trust Company, or its successor or successors in the trust upon a like written request of the holders of a majority in amount of the said bonds then outstanding, upon being indemnified to its satisfaction after or without such entry and taking pos- 290
session as aforesaid, shall sell the said estate, real, personal and mixed, corporate rights and franchises, property plant, machinery and premises with the appurtenances, to the highest and best bidder, at public sale, on the premises in Somerset county, New Jersey (or such other place as shall be designated by the holder or holders of a majority of the said bonds then outstanding, by written notice signed by him or them and delivered to the said Trust Company, or its successor or successors in the trust, before the said sale shall have been advertised), after having given at least two months' notice of the time and place of such in- 291
tended sale by advertising the same once a week for two months in one newspaper in the county of Mercer, State of New Jersey, and in one newspaper in the County of Somerset, State of New Jersey, and as the attorneys in fact of the said Electric Company for that purpose (by these presents duly constituted and appointed) by good and sufficient deed or deeds, bill or bills of sale, shall grant and convey the same to the purchaser or purchasers, freed from all and every the trusts hereby created and without liability on the part of the purchaser or purchasers to see to the application of the purchase money, and shall appropriate the said money

292 (after providing for all payments legally chargeable thereon in preference to the principal and interest of said bonds, for the expenses of the trust, and for indemnity to the said Trust Company, or its successor or successors in the trust as aforesaid) in like manner as hereinbefore provided in respect to the net income of the said trust estate; and in the event of there being in the hands of the said Trust Company, or its successors in the trust, any portion of the trust estate or the proceeds thereof, after the payment in full of the principal and interest of the aforesaid bonds, then the said Trust Company, or its suc-
293 cessor or successors in the trust shall reconvey, retransfer or pay over the same to the said Electric Company, its successor or successors or assigns for their sole use and benefit.

It Being Distinctly Understood and Agreed, That in the event of any such entry upon or taking possession of the estates, real, personal and mixed, properties, franchises and premises, hereby mortgaged or agreed or intended so to be, before the maturity of any of the said bonds, then in such case the whole principal sum of each and all of the said bonds then outstanding and intended to be secured shall, at the option (to be expressed in writing) of the holder or holders of a majority in
294 amount of such bonds, and not otherwise, become forthwith due and payable, and that in the event of a sale of the premises as hereinbefore mentioned, before the maturity of any one or more of the said bonds, then the principal of the said bonds shall be forthwith due and payable.

And It Being Further Distinctly Understood and Agreed by and between the said Electric Company and the said Trust Company and the holders of any of the bonds respectively secured by this mortgage and the holders of any of the coupons for interest thereon (any law or usage to the contrary notwithstanding) that if at any time the said

bonds should become due and payable by reason 295
of the failure of the said Electric Company to keep and observe any of the covenants of this mortgage, or by lapses of time, or any of said coupons should remain unpaid, no proceeding in law or in equity (except proceedings for the enforcement of the trusts herein declared) shall or will be taken, either by the said Trust Company, or its successor or successors in the trust, or by the holder or holders of any of the said coupons for interest, for the recovery of the whole or any portion of the principal or interest of said bonds, or for the purpose of selling by execution, or other process of law, the whole or any part of the premises hereby mort- 296
gaged, or intended so to be, it being the intention and agreement of the parties that no one or more holders of said bond or coupon shall have the right in any manner whatsoever, to affect, disturb or prejudice the lien of the mortgage by his, her or their action, but that for the better securing of the largest price for the mortgaged premises in the event of a sale thereof, the mode of sale hereinbefore provided shall be exclusive of all others.

It Being Further Understood and Agreed, That the said Trust Company, or its successor or successors in the trust shall comply with and perform a written request to sell the premises hereby 297
granted or agreed to be, in preference to a written request to enter upon and take possession of the same, should there be any conflict between the two.

Third—That it shall and may be lawful for the said Electric Company, its successor or successors or assigns, by and with the consent, in writing, of the said Trust Company, or its successor or successors in the trust, to be evidenced by its executing releases as hereinafter provided for, at any time or times hereafter, to exchange for other property, or to sell any part of the hereby mortgaged estate and premises which in the opinion of the Board of Directors of the said Electric Company, or its suc-

298 cessor or successors or assigns, may not be necessary for its corporate purposes, free and clear from the lien or encumbrance of these presents, and to convey the same without liability on the part of the grantee or the said Trust Company for the disposition made of the purchase money, or of the property received in exchange by the said Electric Company; and the said Trust Company, its successor or successors in the trust, shall thereupon, and upon demand made by the said Electric Company, execute, acknowledge and deliver a proper release from the lien of this indenture with respect to any property so sold or exchanged.

299 PROVIDED, HOWEVER, That the proceeds of any sale so made shall be invested by the said Electric Company, its successor or assigns, either in the improvement of the remaining part of the mortgaged premises or in the premises of other property, real or personal, which property so purchased, as also any that may be secured in exchange as aforesaid by the said Electric Company, its successor or assigns, shall be subject to all the trusts (including that of sale or exchange) hereby declared of the property described in this indenture and shall be conveyed in mortgage by the said Electric Company, its successor or assigns, to the said Trust Company, or its successor or successors in the trust,

300 to be so held, or in the purchase at the lowest market price, of bonds hereby secured, which bonds so purchased shall be forthwith cancelled and delivered to the said Trust Company, its successor or successors in the trust.

Fourth—That it shall be lawful for the said Electric Company, its successors or assigns, while operating the electric light plant and appurtenances, to be erected on said above described piece of land, from time to time, to sell or otherwise dispose of, free and clear from the lien, effect or operation of their present indenture, any equipment, supplies, machinery or other personal property, which

shall have become worn out or otherwise unsuitable 301
for use, or whenever it is intended to replace the same with other equipment, supplies, machinery or personal property; provided, however, that such sale or disposition shall not impair or reduce the efficiency of the supplies, equipment, machinery or personal property required for the proper working and operation of said plant and it appurtenances; and it being distinctly understood and agreed that all supplies, machinery or personal property required for the proper working and operation of said plant and its appurtenances; and it being distinctly understood and agreed that all supplies, equipment, machinery or personal property which 302
shall from time to time be acquired for or about said plant, with its extensions, branches and appurtenances, by the said Electric Company, its successors or assigns, with the proceeds of any sale or disposition as aforesaid or otherwise, shall be subject to the lien, effect and operation of this present indenture.

Fifth—That the said Electric Company shall and will from time to time hereafter, upon demand of the said Trust Company, or its successor or successors in the trust, grant, convey, assign, and set over to the said Trust Company, or its successors in the trust, to be held upon the trusts and sub- 303
ject to the conditions, covenants and stipulations herein declared, all real and personal estate, and all corporate franchises and rights, which the said Electric Company, its successors or assigns, shall hereafter in any manner acquire as appurtenant to, or for use upon the said premises, or in or about said plant, and shall and will also make, do, seal, execute, deliver and acknowledge, or cause to be made, done, sealed, executed and delivered and acknowledged all and every such further acts, matters, things, deeds, conveyances and assurances in the law for the better assuring, conveying and confirming unto the said Trust Company, or its suc-

304 cessor or successors in the trust, during the continuance of the trust, all and singular the premises, properties, estates, real and personal and mixed, franchises and rights hereby conveyed or intended so to be, as may be reasonably required for the better effectuating and carrying out the provisions, objects and purposes of this mortgage in trust and securing the payment of the principal and interest of the bonds intended to be hereby secured.

Sixth—The said Electric Company hereby agrees to and with the said Trust Company to set aside in a sinking fund for the redemption of the prin-
305 cipal of the bonds secured hereby as aforesaid, the sum of $500, for each and every year for a period of five years, commencing at date of issue; $1,500, for each and every year next succeeding for a period of ten years; $6,500, for each and every succeeding year for the remaining period of five years, in case all the bonds are issued, and in proportion for a less number, out of the gross receipts of the Company and before any cash salaries are paid to any officer of the Company (except the Superintendent), or any cash dividends are declared.

Provided, However, That the said Electric Company shall have right during the period of five years preceding the date when the option of re-
306 demption of the bonds secured hereby shall begin, as provided for in Article First, hereof, to apply the said sinking fund, or any part thereof, in the purchase of the bonds secured hereby at a price not exceeding par, and when from time to time subsequent to said period of five years, said sinking fund shall contain from the sources above set forth the sum of five hundred dollars ($500), the said Electric Company shall apply the same in the purchase, if possible, of bonds secured hereby at the lowest price at which they can be obtained less than par, failing which said fund shall be applied and used at the next semi-annually interest period in the re-

demption of bonds to a like aggregate amount under the right and option of redemption reserved to the said Electric Company in Article First hereof, the bonds to be so paid and redeemed to be selected by the Trustees in the manner therein set forth. 307

It being understood that nothing herein contained shall be construed to render the said Trust Company liable or responsible to see to the accumulation, management or appropriation of said sinking fund, but, on the contrary, the accumulation, management or appropriation of said sinking fund shall be entirely within the control and power of the said Electric Company, subject, however, to the terms and conditions of the Article.

Seventh—The Trust Company may at any time resign this trust and be thereby discharged from any liability thereunder, except to account for moneys then in its hands, upon giving to the said Electric Company ninety (90) days' notice in writing of its purpose so to do. 308

Such notice, as well as all other notices, may be given by mailing the same addressed to the Hopewell Electric Light, Heat and Power Company, at Hopewell, New Jersey, and any notice so mailed shall, for all purposes, be deemed equivalent to personal notice at the time of mailing.

That in the event of the resignation, neglect, refusal or inability to act of the said Trust Company, or any successor or successors in the trust, then the holder or holders of a majority of the said bonds, then outstanding, may, at any time within thirty days thereafter, by an instrument under his or their hands and seals, to be forthwith delivered to the said Electric Company, nominate and appoint a new trustee or trustees for the purpose of filling the vacancy so caused, and supplying the place of such trustee or trustees so resigning, neglecting, refusing or becoming incapable to act, and the said trustee or trustees so nominated and appointed, shall take upon himself, itself or them- 309

selves the same trusts and have the same powers and be subject to the limitations, stipulations and conditions of this indenture; and which trusts, powers, limitations, stipulations and conditions it is hereby agreed and declared shall extend to and be performed and executed by such newly appointed trustee or trustees as they can or may, or could or might be, by the party herein named as party of the second part, and the like nomination and appointment shall be made and carried into effect in like manner and as often from time to time as there may be occasion therefor, and with the same effect as before mentioned; and in case appointment should not be made within sixty days, then the said Electric Company, its successors or assigns may, in like manner and with like effect, make such appointment and the said Electric Company, if necessary, shall name and appoint a temporary trustee, shall name and appoint a temporary trustee to act hereunder with all the rights, powers and obligations of the trustee named herein, pending the selection of a permanent trustee as aforesaid.

Eighth—It is expressly declared to be a condition upon which the said Trust Company assents to the presents and accepts the hereby created trusts, that the said Trust Company shall not, nor shall any future trustee or trustees, incur any liability or responsibility whatever, in consequence of permitting or suffering the said Electric Company, its successors or assigns, to remain in the possession of the properties, estates and premises hereby mortgaged, or agreed or intended to be, or any part thereof, and to use and enjoy the same; nor shall the said Trust Company, or any future trustee or trustees, be or become responsible or liable for any destruction, deterioration, loss, or injury or damage which may be done or occur to the properties, premises and estates hereby mortgaged or agreed or intended so to be, either by the said

Electric Company or its agents or servants, or by 313
any other person or persons whomsoever, nor shall the said Trust Company, nor any trustee or trustees, present or future, be in any way responsible for the consequences of any breach or default on the part of the said Electric Company of any of the covenants herein contained, nor for any act of the said Electric Company, its agents or servants. The said Trust Company shall not be answerable for any error or mistake made by it, nor for any misconduct or default of its agents or attorneys, or for or on account of any matter connected with the premises, except to answer and account for money actually deposited with the said Trust 314
Company, and the liability of the said Trust Company is strictly limited to its duty to account for funds placed in its hands and that no other liability on the part of the said Trust Company exists or is created by this instrument by reason of any recitals therein contained.

The said Trust Company shall not be bound to do any act touching the execution of the trust which may in its opinion involve in it personal expense or liability unless first duly and satisfactorily indemnified against the same. The said Trust Company is authorized to pay reasonable compensation out of the trust estate to such person or per- 315
sons as it may employ in the administration or management of said trust, and shall be entitled to just compensation for all services rendered in connection with said trust and the same shall be paid out of the trust estate.

All recitals, statements of facts and representations herein contained shall be taken as statements of the said Electric Company and shall not be construed as made by the said Trust Company. The said Trust Company makes no representations as to the value of the property transferred to it hereunder or as to the title thereto and neither the said Trust Company or its officers or agents pur-

port to have any knowledge respecting any such matters.

It shall be no part of the duty of the said Trust Company to record on file this mortgage as mortgage of either real or personal property, and the said trust company shall not be held esponsible for failure to duly record or file the same, but the said Electric Company covenants and agrees to cause the same to be recorded as a mortgage of real and personal property and to keep the same filed as a mortgage of personal property in such manner and in such offices as may be required by the laws of the State of New Jersey, to create and preserve the same as a first lien upon all the property herein mentioned.

The said Trust Company shall be under no obligation to recognize any person or persons, firm or corporation, as holder or holders, owner or owners, of one or more of the bonds secured hereby or to do or refrain from doing any act pursuant to the request or demand of any person or persons, firm or corporation, professing or claiming to be such holder or holders, owner or owners, until such supposed owner or owners, holder or holders, shall have produced said bonds and deposited the same with the said Trust Company and indemnified the said Trust Company to its full satisfaction from any and all costs and expenses, outlays and counsel fees and other responsible disbursements for which it may become liable or responsible in carrying out such request or demand.

Should any suit or other proceeding be brought against the said Trust Company, by reason of any matter or thing connected with the trust hereby created or by reason of its being trustee hereunder, it shall be under no obligation to enter any appearance by counsel or in any way to appear in or defend such suit or other proceeding until indemnified to its satisfaction for so doing, but it may, nevertheless, appear and defend the same without

indemnity if it shall elect so to do. In such case it shall be compensated therefor and for all its expenses connected therewith from the trust fund. 319

PROVIDED ALWAYS, NEVERTHELESS, That if the said Electric Company, its successors or assigns, shall and do well and truly or cause to be paid unto the person or persons, bodies politic or corporate, who shall become holders of the bonds intended to be secured, hereby, the several and respective sums expressed therein, on the day and time hereinbefore mentioned for payment therefor, together with the interest upon the same, according to the provisions of the said recited obligations or bonds, or in accordance with the provisions hereof, without any fraud or further delay, then and from thenceforth, as well this present Indenture, and the estates hereby granted and conveyed or hereby agreed so to be, as the said recited obligations, shall become void and of no effect, anything hereinbefore contained and to the contrary thereof notwithstanding; and thereupon and upon demand made by the said Electric Company, satisfaction shall be forthwith duly entered by the said Trust Company, or its successor or successors in the trust, upon the record, of this Indenture of Mortgage. 320

IN WITNESS WHEREOF, The Hopewell Electric Light, Heat and Power Company has caused to be hereunto affixed its common and corporate seal, and the President of the said Electric Company by virtue of the authority vested in him, has hereunto affixed his signature, and the Secretary of the said Electric Company duly attested the execution hereof, this day and year first above written. 321

HOPEWELL ELECTRIC LIGHT, HEAT AND POWER COMPANY, by CHARLES P. FITCH,
President.

Signed, sealed and delivered
in the presence of
JOSEPH B. HILL,
Secretary, (SEAL.)

322 STATE OF NEW JERSEY, COUNTY OF MERCER. } ss.:

BE IT REMEMBERED, That before me, a Master in Chancery, in and for the State of New Jersey, residing in Princeton, in said County, personally came and appeared Charles P. Fitch, President of the Hopewell Electric Light, Heat and Power Compainy, who, being duly sworn according to law, deposes and says that he was personally present at the execution of the foregoing Mortgage and did affix the common or corporate seal of the said Hopewell Electric Light, Heat and Power Company, thereto; that the seal so affixed is the com-
323 mon and corporate seal of said Hopewell Electric Light, Heat and Power Company, and the foregoing Indenture of Mortgage was duly sealed and delivered as and for the act and deed of the said Hopewell Electric Light, Heat and Power Company, for the uses and purposes therein mentioned, and that the signature of this deponent to the said Indenture of Mortgage as President of said Hopewell Electric Light, Heat and Power Company, is deponent's own proper handwriting.

CHARLES P. FITCH.

Sworn and subscribed before
324 me, this twenty-first day of August, A. D., one thousand nine hundred and one (1901).

FERGUS A. DENNIS,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, COUNTY OF MERCER. } ss.:

BE IT REMEMBERED, That before me, the subscriber, a Master in Chancery, in and for the State of New Jersey, personally came and appeared Joseph B. Hill, Secretary of the foregoing named

corporation, the Hopewell Electric Light, Heat and Power Company, who, being duly sworn according to law, deposes and says that he was personally present at the execution of the foregoing Indenture of Mortgage, and saw Charles P. Fitch, President of said Corporation, affix the seal of the said corporation to the said Indenture of Mortgage, and delivered the same as the act and deed of the said corporation, and that the name of this deponent, subscribed to the said indenture as Secretary of the said corporation, in attestation of the due execution and delivery of the said Indenture, is of this deponent's own proper handwriting. 325

JOSEPH B. HILL. 326

Sworn to and subscribed before me. Witness my hand, this twenty-first day of August, A. D., one thousand nine hundred and one (1901.)

FERGUS A. DENNIS,
M. C. C., of N. J.

The Burlington City Loan and Trust Company, of Burlington, New Jersey, hereby accepts the foregoing trust.

In witness whereof the said Trust Company has caused its corporate seal to he hereunto affixed, duly attested, this twenty-ninth day of August, 1901. 327

BURLINGTON CITY LOAN AND TRUST COMPANY, by

J. HOWARD PUGH,
President.

(Seal.)

Signed, sealed and delivered in the presence of

NATHAN HAINES,
Secretary.

328 STATE OF NEW JERSEY, }
COUNTY OF BURLINGTON. } ss.:

BE IT REMEMBERED, That before me, the subscriber, a Master in Chancery in and for the State of New Jersey, personally came and appeared Nathan Haines, Secretary of the Burlington City Loan and Trust Company, who, being duly affirmed according to law, doth depose and say that he was personally present at the execution of the foregoing acceptance, and saw the common and corporate seal of the above named, The Burlington City Loan and Trust Company affixed thereto; that the seal so affixed is the common or corporate seal of
329 the said Burlington City Loan and Trust Company, of Burlington, and so affixed by the authority of the said corporation as act and deed thereof; that the above named J. Howard Pugh, is President of the said corporation, and did sign the said Indenture as such, in the presence of this deponent; that this deponent is the Secretary of the said corporation, and that the name of this deponent above signed, in attestation of the due execution of said acceptance is of this deponent's own and proper handwriting.

NATHAN HAINES.

330 Affirmed to and subscribed before me. In witness whereof I have hereunto set my hand this twenty-ninth day of August, A. D., one thousand nine hundred and one.

HOWARD FLANDERS,
M. C. C. of N. J.

The above mortgage is approved as to form.

HOWARD FLANDERS,
Sol'r of Burlington City Loan and Trust Co.
Aug. 29, 1901.

STATE OF NEW JERSEY, } ss.:
COUNTY OF BURLINGTON. }

331

J. HOWARD PUGH, of full age, being duly sworn, according to law, on his oath, says, that he is the President of the Burlington City Loan and Trust Company, of the City of Burlington, New Jersey, the mortgagee in the foregoing mortgage named as Trustee; that the true consideration of the said mortgage is for the security by the mortgagor for the issue of five hundred bonds, each of the denomination of One Hundred Dollars as recited in said mortgage; said mortgage being made to the said Trust Company, of which affirmant is President, and for this purpose, agent, as trustee, to secure the holders of said bonds as the same may be issued, the said sum of money due on each one thereof; that the amount due and to grow due thereon, is the sum of One Hundred Dollars on each bond, making a total of fifty thousand dollars, which said issue of bonds is to be delivered by said Trust Company, to the Treasurer of said mortgagor, and by him disposed of for the purpose of said company in pursuance of a resolution for that purpose; that the interest of said trustee in said mortgage is as above stated for the purposes aforesaid.

332

J. HOWARD PUGH.

333

Affirmed and subscribed to before me, this 12th day of September, 1901.

HOWARD FLANDERS,
M. C. C. of N. J.

334 **Exhibit C-2.**

Bond of the Hopewell Electric Light, Heat and Power Company.

$100.00 No. 190.

UNITED STATES OF AMERICA,

STATE OF NEW JERSEY.

HOPEWELL ELECTRIC LIGHT, HEAT AND POWER COMPANY,

335 HOPEWELL, N. J.

First Mortgage, Sinking Fund Gold Bond.

Know all men by these presents, that the Hopewell Electric Light, Heat and Power Company, a corporation created by and existing under the laws of the State of New Jersey, for value received, is indebted to the bearer hereof, or to the registered holder hereof, in the sum of one hundred dollars, United States gold coin, of the present standard of weight and fineness, redeemable at any time on or after August 1st, 1906, at the option of the said Company, in the manner provided for in the mortgage securing the payment hereof and absolutely
336 due and payable twenty years after date hereof, to wit: August 1st, 1921, with interest at the rate of five per cent per annum, payable in like gold coin, semi-annually on the first days of February and August, in each year, upon surrender of interest coupons hereto attached as they shall respectively mature, principal and interest to be payable at the First National Bank, Princeton, New Jersey, without any deduction for any National, State, County or Municipal tax or assessment which shall at any time be assessed or levied against said bond. This bond is one of an issue of five hundred bonds of like tenor and date, numbered consecutively from one

to five hundred, both inclusive, and of the denomination of one hundred dollars each, amounting in the aggregate to fifty thousand dollars, and all equally secured by a mortgage of even date herewith, executed and delivered by the said Hopewell Electric Light, Heat and Power Company to the Burlington City Loan and Trust Company, in Burlington, N. J., as Trustee, and duly recorded, of all the franchises, property, real estate, rights, contracts and privileges, lands, tenements and hereditaments now owned or that may hereafter be acquired by said Company. Said Mortgage provides for a sinking fund under which the said Company has the right until August 1, 1906, to apply said sinking fund to the purchase of bonds at a price not exceeding par. Said Mortgage also provides that in case of default of either principal or interest continuing more that six months, no proceeding can be brought by any holder of any bonds or coupons attached thereto, but that the Trustee only can bring such proceedings, and only on the written demand of the holders of a majority in amount of all bonds then outstanding. This bond shall pass by delivery or it may be registered as to the principal on the books of said Company in the office of the Burlington City Loan and Trust Company, Trustee, in Burlington, N. J., when duly certified hereon and approved by an officer of the said Company, and when registered no transfer except on the books of said Company shall be valid unless the last registration shall have been to bearer, which shall restore the right of transfer by delivery or registration. This bond shall not become obligatory until authenticated by the signature of the Trustee.

337 338 339

In witness whereof the said Hopewell Electric Light, Heat and Power Company has caused its common seal to be hereto affixed and this bond to be signed by its President and attested by its Sec-

retary, and the coupons attached to be signed by its Treasurer in facsimile, this first day of August A. D. 1901.

CHAS. P. FITCH,
President.

Attest:
J. B. HILL.
(Corporate Seal.)

(COUPON.)

$2.50.

On the first day of February, 1902, the Hopewell Electric Light, Heat and Power Company will pay the bearer at the First National Bank, Princeton, New Jersey, two and 50/100 dollars, United States gold coin, being six months' interest on its first mortgage gold bond.
No. 190.

S. H. BLACKWELL,
Treasurer.

(TRUSTEES' CERTIFICATE.)

It is hereby certified that this bond is one of the issue of bonds within mentioned and is secured by the mortgage therein referred to, subject to the conditions and limitations in said mortgage contained.

BURLINGTON CITY LOAN AND TRUST CO.,
Trustee.

By J. HOWARD PUGH,
President.

(REGISTRATION.)

The within bond has this day been duly registered on the books of the Hopewell Electric Light.

Heat and Power Company, in the name of 343
ADAM WEBER.
Oct. 22nd, 1904.

NATHAN HAINES,
Treasurer.

Date of Transfer.	To Whom Transferred.	Transfer Agent.
.....	.....	.....
.....	.....	.....
.....	.....	.....

344

Exhibit C-11.

$350,000 Mortgage of Princeton Lighting Co. to North American Trust Co.

THIS INDENTURE, made this Twenty-eighth day of February, nineteen hundred and three, between PRINCETON LIGHTING COMPANY, a corporation created under the laws of the State of New Jersey, hereinafter called the "Company," party of the first part, and NORTH AMERICAN TRUST COMPANY, a corporation created under the laws of New York, hereinafter called the "Trustee," party of the second part: 345

WHEREAS, The Company has been duly organized by merger of the HOPEWELL ELECTRIC LIGHT, HEAT AND POWER COMPANY, PRINCETON ELECTRIC WORKS, and the PRINCETON GAS LIGHT COMPANY; and

WHEREAS, For the purpose of raising a part of the funds necessary to make payment for the said properties, and for the extension, alterations and improvements thereof, and for a working cap-

346 ital therefor, the said Company, in pursuance of proper resolutions of its Board of Directors and of its stockholders, has determined to issue its bonds to an aggregate amount of Three Hundred and Fifty Thousand Dollars ($350,000.00), to be known as its First Mortgage Five Per Cent Gold Bonds; all of said bonds to be of like tenor and date, of the denominations of One Thousand Dollars ($1,000.00) and Five Hundred Dollars ($500.00); bonds of the denomination of One Thousand Dollars to be numbered consecutively from one to two hundred and fifty, inclusive, and the bonds of the denomination of Five Hundred Dollars consecu-
347 tively from two hundred and fifty-one to four hundred and fifty, inclusive, to be payable on the first day of March, nineteen hundred and thirty-three, at the office of the North American Trust Company, Manhattan, City of New York, New York, in gold coin of the United States of America, of the standard of weight and fineness of the year of nineteen hundred and three, with interest from the second day of March, nineteen hundred and three, at the rate of five per cent per annum, payable semi-yearly on the first days of March and September in each year, in like gold coin, at said office, according to the tenor and upon presentation and surrender of the coupons to be annexed hereto; and

348

WHEREAS, For the purposes aforesaid, and in pursuance further of resolutions of its Board of Directors and of its stock holders, the Company, in order to secure the payment of said first mortgage five per cent gold bonds, has determined to execute and deliver to said North American Trust Company, as Trustee, a mortgage or deed of trust of the property hereinafter described; and

WHEREAS, Said bonds and the coupons thereto annexed and the certificate of the Trustee thereon are substantially in the forms following:

(SCHEDULE A).—FORM OF BOND. 349

UNITED STATES OF AMERICA,

STATE OF NEW JERSEY.

PRINCETON LIGHTING COMPANY.

No..... $.....

First Mortgage Five Per Cent Thirty Year Gold Bond.

PRINCETON LIGHTING COMPANY, a corporation of the State of New Jersey, for value received, acknowledges itself to be indebted to the bearer, or if registered to the registered holder hereof, in the 350
sum of dollars, ($), which sum it promises to pay to the bearer, or if registered to the registered holder hereof, in gold coin of the United States of America, of the standard of weight and fineness of nineteen hundred and three, on the first day of March, in the year nineteen hundred and thirty-three, at the office of the North American Trust Company, in the City of New York, with interest thereon at the rate of five per cent per annum, payable in like gold coin, at the office of the North American Trust Company, semi-annually, on the first day of March and September, in each and every year, on presentation and surrender of the annexed coupons as they severally 351
mature. In case of default in the payment of this bond, or of the interest accruing hereon, or otherwise, such consequences shall ensue as are provided for in the first mortgage securing the payment of the same hereinafter mentioned.

The principal and interest of this bond are payable without any deduction for State, County or Municipal taxes. This bond is one of a series of bonds of like date, tenor and effect and of denominations of one thousand dollars and five hundred dollars, the bonds of the denomination of one thousand dollars being numbered consecutively from

352 one to two hundred and fifty inclusive, the bonds of the denomination of five hundred dollars being numbered from two hundred and fifty-one to four hundred and fifty inclusive, all of said bonds aggregating three hundred and fifty thousand dollars ($350,000.00). The payment of each and all of said bonds, with the interest coupons attached thereto, according to their tenor and effect, is equally secured, without preference, priority or distinction, as to the lien or otherwise of one bond over another, by mortgage bearing date the 28th day of February, in the year of nineteen hundred and three, executed and delivered by the Princeton
353 Lighting Company to the North American Trust Company, a corporation of the State of New York, as Trustee, conveying to it as Trustee all the property, rights and franchises of the said Princeton Lighting Company, owned or possessed by it at the date of said mortgage, and more particularly described and set forth in said mortgage, together with all properties, rights and franchises which it may thereafter acquire.

This bond, until registered, shall pass by delivery. This bond may, as to principal, be registered in books to be kept for that purpose, at the office of the North American Trust Company, and if so registered will thereafter be transferable only upon
354 the said books at the office of the North American Trust Company, by the owner in person or by his attorney, unless the last preceding transfer shall have been to bearer, and the transfer by delivery thereby restored; and it shall continue to be susceptible of successive registrations and transfers to the bearer at the option of the holder, but such registrations shall not affect the negotiability by delivery of the annexed coupons.

This bond is subject to redemption at any time after five years from date, at one hundred and ten (110) per centum of the par value hereof, and accrued interest, on the conditions and in the man-

ner provided in said mortgage or deed of trust. 355

This bond shall not be valid until it shall have been authenticated by a certificate hereon, duly signed by the Trustee under the mortgage aforesaid.

IN WITNESS WHEREOF the said PRINCETON LIGHTING COMPANY has caused these presents to be signed by its President, and its corporate seal duly attested by its Secretary, to be hereunto affixed, and has hereunto affixed coupons with the signature of its Treasurer engraved thereon, and has caused these presents to be dated the second day of March, nineteen hundred and three.

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PRINCETON LIGHTING COMPANY.

(Seal) By.....*President.*

Attest:.....*Secretary.*

COUPON.

On the first day of..... PRINCETON LIGHTING COMPANY will pay to bearer, at the office of the North American Trust Company, in the City of New York..... dollars ($.....), in gold coin of the nineteen hundred and three standard of weight and fineness, being six months' interest on its first mortgage gold bond No..... 357

.....*Treasurer.*

TRUSTEES' CERTIFICATE.

NORTH AMERICAN TRUST COMPANY hereby certifies that the within bond is one of a series of bonds described in the mortgage therein referred to.

NORTH AMERICAN TRUST COMPANY.

By

AND WHEREAS, In pursuance of the authority aforesaid, and of all legal power and authority

358 in it vested, the Company proposes to make and execute and thereafter to issue and deliver said bonds hereby secured.

NOW, THEREFORE, This Indenture WITNESSETH:

That in order to secure the payment of the principal and interest of all of said bonds, at any time issued and outstanding under this Indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which the said bonds are issued, the PRINCE-
359 TON LIGHTING COMPANY, party of the first part, in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by the Trustee at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, assigned, transferred, pledged and set over and by these presents does grant, bargain, sell, alien, release, convey, assign, transfer, pledge and set over to the said Trustee, party of the second part, and to its successors in the trust and its assigns forever:

360 All these certain tracts hereinafter described, situated, lying and being in the said Borough of Rocky Hill, in the Township of Montgomery, in the County of Somerset, in the State of New Jersey, including the grist mill, plaster mill and fulling mill, and being designated as TRACT No. 1: Beginning at the west side of the Millstone River, at the middle of the foot of the old bridge called the Rocky Hill Bridge, formerly standing upon said river; and running thence (1) easterly up said river, and across the same until it strikes a stone now at the easterly end of the dam to the Millstone River; being also at the foot of the embankment of the

Delaware and Raritan Canal; thence (2) south 361
three degrees twenty-six minutes east, seven hundred and forty feet, more or less, to a point on the west side of the Millstone River, about opposite the lower one of two islands situated in said river; thence (3) north sixty-two degrees west, and skirting along the southerly shore of the mill pond, crossing the mouth of the brook and skirting along the head race to a point in the northerly side of the Georgetown and Franklin turnpike, on the westerly side of the said head race; thence (4) westerly along the northerly side of the Georgetown and Franklin turnpike to a point distant fifteen feet easterly, in a right line, from the easterly foundation 362
of the burned buildings; thence (5) north twenty-four degrees east eighty-three feet to the rear of fence of the garden; thence (6) north fifty degrees west, one hundred and seventy feet, more or less, to a point in a line running from the said beginning point, over the centre of the old well in the Georgetown and Franklin turnpike; thence (7) north two degrees forty-five minutes east to the place of beginning. Together will all and singular the building, improvements, ways, woods, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging, or in any wise appertaining; together 363
with a sufficient right of way in and over the land on the westerly shore of the head race, and on the southwesterly shore of the mill pond, and the west shore of the river to the Van Horn line, for the grantees, their heirs, successors and assigns, and their agents and servants, and the tenants and occupants from time to time of the premises hereinabove described, and any other person or persons for their benefit and advantage, at all times freely to pass and repass on foot and with animals and vehicles, loads or otherwise, for the purpose (and for no other purpose) of making repairs and removing driftwood and debris, incident and neces-

364 sary to the free flow of the water course.

TRACT No. 2.—All that lot and parcel of land and premises situate, lying and being in the Township of Montgomery, in the County of Somerset and State of New Jersey, beginning at a post in the southerly side of the Georgetown and Franklin turnpike, distant about forty-three feet from a well standing on the north side of the said turnpike, and running thence (1) south two degrees forty-five minutes west, about five hundred and twenty feet, to the middle of a brook; thence (2) northeasterly down the middle of said brook to its junction with the mill pond; thence (3) northerly
365 along the westerly side of the head race to a point in the southerly line of the Georgetown and Franklin turnpike; thence (4) westerly along the southerly line of said turnpike to the northeast corner of the stone tenement house; thence (5) south thirty degrees fifteen minutes east, one hundred and seventy-six feet and six inches, to a mark on the fence; thence (6) south seventy-nine degrees fifteen minutes west and passing eight feet northerly from the centre of a well one hundred and forty-three feet and six inches to a spike; thence (7) north seventeen degrees west, one hundred and thirty-nine feet and six inches to the southwesterly corner of the frame tenement; thence (8) north ten
366 degrees forty-five minutes west along the side of said tenement fifty-nine feet more or less to the southerly line of the aforesaid turnpike; thence (9) westerly along the southerly line of said turnpike one hundred and eighty-seven feet, more or less, to the place of beginning. Subject, however, to a right of way and over a certain strip of land adjacent to the head race, and running to the brook, for the person or persons seized of parcel number three, this day sold and called the quarry tract, their successors, heirs and assigns, and their agents and servants and the tenants and occupants from time to time of the said quarry premises, and

any other person or persons, for his and their 367
benefit and advantage, at all times freely to pass and repass on foot, and with animals and vehicles, loads or otherwise, to and fro between the said quarry premises and the highway. And further subject to a sufficient right of way in and over the land on the westerly shore of the head race, for the person or persons seized of the premises this day sold, and known as parcel number one, and called the mill property, their successors, heirs and assigns, and their agents and servants, and the tenants and occupants from time to time of the premises aforesaid, and any other person or persons, for his and their benefit and advantage, at all 368
times freely to pass and repass on foot and with animals and vehicles, loads or otherwise, for the purpose, (and for no other purpose) of making repairs and removing driftwood and debris, incident and necessary to the free flow of the water course. And further subject to a right of way over the alley on the westerly side of parcel number four, this day conveyed and known as the tenement house parcel.

The Third Tract—All that lot and parcel of land and premises situated, lying and being in the Township of Montgomery, in the County of Somerset and State of New Jersey, beginning at a pile of 369
stones in the old Van Horn line, about three feet easterly of a butternut tree near the angle of the road leading from Rocky Hill to Princeton, and runs thence (1) along the said old Van Horn line, south sixty-six degrees fifteen minutes east one thousand and fifty-six feet to the Millstone River; thence (2) down the said river on a course of about north three degrees and twenty-six minutes west, one thousand and seventy-five feet more or less, to a point about opposite the lower one of two islands situated in said river; thence (3) north sixty-two degrees west, and skirting along the southerly shore of the pond, to the mouth of the brook empty-

370 ing into said pond; thence (4) up the middle of said brook, southwesterly to a point in a line running from the beginning point above mentioned, to an old well standing in the northerly side of the Georgetown and Franklin turnpike, near what is known as the burned buildings; thence (5) along said line two degrees forty-five minutes west six hundred and sixty-seven and four-tenths feet, more or less, to the place of beginning. Together with a right of way in and over a strip of land running from the said brook to the Georgetown and Franklin turnpike, which right of way is adjacent to the westerly side of the head race and brook, for the
371 person or persons seized of the hereby granted premises, their successors and assigns, and their agents and servants, and the tenants and occupants from time to time of the premises above granted, and for their benefit and advantage, at all times freely to pass and repass on foot, and with animals and vehicles, loads or otherwise, to and fro between the premises hereby granted and the said Georgetown and Franklin turnpike.

TRACT No. 4—All that lot or parcel of land and premises situate, lying and being in the Township of Montgomery, in the County of Somerset and State of New Jersey, beginning at a point in the
372 southerly side of the Georgetown and Franklin turnpike, about one hundred and eighty-seven feet easterly from a line passing through the centre of an old well, and the foot of the centre of the old Rocky Hill bridge, extended; thence (1) south ten degrees forty-five minutes, east fifty-nine feet, more or less, passing along the side of the tenement-house to the southwest corner of the same; thence (2) south seventeen degrees east one hundred and thirty-nine feet six inches to a spike; thence (3) north seventy-nine degrees, fifteen minutes east and passing eight northerly from a well, one hundred and forty-three feet six inches to a mark on the fence; thence (4) north

thirty degrees fifteen minutes west, one hun- 373
dred and seventy-six feet and six inches, to the northeast corner of the stone tenement-house; thence (5) along the front of the last mentioned house, and the southerly line of the Georgetown and Franklin turnpike, to the place of beginning. Together with a right of way in and over the alley on the westerly side of the above granted premises for the person or persons seized of the above granted premises, their successors, heirs and assigns, their agents and servants and the tenants and occupants from time to time of the premises above granted, and every other person or persons for their benefit and advantage, formerly belong- 374
ing to the Hopewell Electric Light, Heat and Power Company, and subject nevertheless to a certain Indenture of Mortgage, dated August first, nineteen hundred and one, for Fifty Thousand Dollars ($50,000.00) to the Burlington City Loan and Trust Company to secure an issue of bonds amounting in the aggregate to Fifty Thousand Dollars ($50,000.00), dated August first, nineteen hundred and one.

Also all those certain lots, tracts or parcels of land and premises situate, lying and being in the Borough of Princeton, in the County of Mercer and State of New Jersey, bounded and described as fol- 375
lows, to wit:

TRACT NO. ONE.—Beginning at the southwesterly corner of Jacob P. Davis lot and the line of Witherspoon street; thence running along said Witherspoon street, south, fourteen degrees and fifteen minutes east, one hundred and ninety-six feet, to land of James Van Deventer; thence along his land north seventy-four degrees and forty-five minutes east, one hundred and twenty-five feet to a stake corner of said Van Deventer's land; thence along his land north fourteen degrees and fifteen minutes west, one hundred and ninety-six feet to lands of the aforesaid Jacob P. Davis; thence along his line

376 south seventy-four degrees and forty-five minutes west, one hundred and twenty-five feet, to the place of beginning.

Being the same premises which were conveyed to the said The Princeton Gas Light Company by James Van Deventer and wife, by deed bearing date the twenty-fifth day of August, A. D., eighteen hundred and fifty-one, and recorded in the Mercer County Clerk's office in Book V of Deeds, page 197, etc.

TRACT No. TWO.—Beginning in a line of Witherspoon street and corner of a lot of land belonging to James Van Deventer; thence along the said Van
377 Deventer's land the two following courses and distances; first (1) North seventy-three and three-quarters degrees East, four chains and forty-three links; second (2) North thirteen degrees and a quarter West, two chains and forty-three links to the line of Wiggins street; thence along said street South sixty-eight and a half degrees West, four chains and forty-six links to a line of the aforesaid Witherspoon street; thence along said street, South thirteen and a quarter degrees East, one chain and ninety-seven links to the place of beginning. Containing ninety-eight hundredths of an acre of land, (98/100).

378 Being the same premises which were conveyed to the said The Princeton Gas Light Company by Ellen D. Rittenhouse, Helen F. Osler and John T. Osler by deed bearing date the first day of April, A. D., eighteen hundred and seventy-five, recorded in the Mercer County Clerk's office in Book 107 of Deeds, page 229, etc.

TRACT No. THREE.—Being in the rear of the Gas House lot; beginning at a stake in the line of the land of said Gas Light Company and running thence in an easterly course along the land of said Company and which was formerly the Rittenhouse property, thirty-five feet to a stake for a corner; thence in a southerly direction

along the land of James Van Deventer, one hun- 379
dred and ninety-six feet to a stake for a corner; thence in a westerly course, thirty-five feet to the land of the said Gas Light Company; thence in a northerly course along the land of the said compnay, one hundred and ninety-six feet to the place of beginning.

Being the same premises which were conveyed to the said The Princeton Gas Light Company by James Van Deventer and wife by deed bearing date the sixteenth of February, A. D. eighteen hundred and seventy-six, and recorded in the Mercer County Clerk's office in Book 110 of Deeds, page 511.

TRACT NUMBER FOUR.—Being all that tract em- 380
braced and included within a line running south from the northeast corner of lands of the said The Princeton Gas Light Company on Wiggins street, in said borough of Princeton, and at right angles to the south line of said Wiggins street to a point where a line being a continuance of the south line of the property now owned by one William Moore on Witherspoon street, intersects said line running south from Wiggins street. And further, that if the present water course over the lands hereby conveyed, and over other lands of William B. Van Deventer, is changed, the said company may construct a drain or passage for water through the lands of said Van Deventer where the said Van 381
Deventer may in writing direct the same to be built, and to use said drain or water passage for such purposes only, as the water course or waterway now running through the lands of the said Van Deventer is used. Provided, however, that if the said Van Deventer shall not within one month after notice so to do, designate as aforesaid the place where the said drain or water way shall be located, then and in that event, said company may make and designate said location.

Being the same premises which were conveyed to

382 the said The Princeton Gas Light Company by William B. Van Deventer, by deed bearing date the fourteenth day of April, A. D. eighteen hundred and ninety-eight, and recorded in the Mercer County Clerk's office in Book 220 of Deeds, page 587, etc.

Subject, nevertheless, to a certain Indenture of mortgage dated May thirty-first nineteen hundred, for fifteen thousand dollars ($15,000.00) to the Princeton Saving Bank. Also all the property, franchises, rights, privileges, machinery, boilers, engines, dynamos, supplies, poles, wires, cross arms, insulators, lamps and all other property of every
383 name, nature and description whatsoever formerly belonging to the Princeton Electric Works, but subject nevertheless to a certain indenture of mortgage, for five thousand, five hundred dollars ($5,500.00) made by the said Princeton Electric Works to C. S. Robinson.

And also all the franchises, properties, rights, privileges, lands, tenements and hereditaments of every kind and nature whatsoever now owned, or that may be hereafter acquired by said Company, including all the fast and movable machinery, boilers, engines, water wheels, dynamos, gas retorts, furnaces, purifiers, meters, tanks, gasometers, benches, pipe, shafting, tools, supplies, gas manu-
384 facturing, electrical and other machinery, gas mains, gas lamps, electric lamps, switchboards, poles, wires, insulators, cross arms, fixtures, whether gas or electrical, within building, in use by the consumers, as well as such fixtures as are in use by the company and all and every other article and thing going to make up an operating electrical plant or an operating gas plant presently existing or which may hereafter be acquired or placed in or about the premises of the mortgagor for the use of the said electical plant or the said gas plant.

TO HAVE AND TO HOLD all and singular the above described lands, tenements, hereditaments,

franchises, rights, property and privileges unto the 385
said Trustee and to its successors in the trust and to its assigns forever.

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of all the present and future holders of bonds and interest obligations issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations issued and to be issued under and secured by this indenture and for the enforcement of the payment of said bonds and interest obligations, when payable, and the performance and compliance with the covenants and conditions of this indenture, 386
without reference to priority or distinction as to lien or otherwise, of any one bond over any other bond by reason of priority in the issue or registrations thereof, so that each and every bond issued, and to be issued hereunder, shall have the same right, lien and privilege under this indenture, and so that the principal of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby as if all had been made, executed, delivered and registered simultaneously with the execution and delivery of this indenture, it being intended that the lien and security of this indenture shall take effect from the date of execu- 387
tion and delivery hereof, without regard to the time of actual issue, sale or disposition of said bonds, and as though upon such date all the said bonds had been actually issued, sold and delivered to and were in the hands of innocent holders thereof for value.

AND IT IS HEREBY COVENANTED and declared that all such bonds with the coupons for interest thereon are to be issued and authenticated and delivered and that the mortgaged premises are to be held by the Trustees, subject to the further covenants, conditions, uses and trusts hereinafter set forth, and

388 it is agreed and covenanted, between the said Company and the respective holders from time to time, of bonds issued hereunder, as follows, namely:

ARTICLE I.

ISSUE OF BONDS.

SECTION 1. The bonds to be issued under the security of this Indenture, together with the interest coupons appertaining thereto, shall be substantially of the tenor and purport above recited. In case an officer, who shall have signed and sealed any of such bonds, shall cease to be an officer of the
389 Company before the bonds so signed and sealed shall be actually authenticated and delivered by the Trustee, as herein provided, such bonds may, nevertheless, be adopted and used by the Company, and upon the written request of the Company shall be issued, authenticated and delivered subject to the provisions hereof, as though the person who signed and sealed such bonds had not ceased to be an officer of said Company. The coupons to be attached to said bonds shall be authenticated by the engraved or lithographed signature of the present Treasurer or any future Treasurer of the Company, and the Company may adopt and use for that purpose the engraved or lithographed signa-
390 ture of any person who shall have been Treasurer, notwithstanding the fact that such person may have ceased to be such Treasurer at the time when such bonds may actually be authenticated and delivered.

Only such bonds as shall bear thereon endorsed a certificate substantially of the form hereinbefore recited executed by the Trustee shall be secured by this Indenture, or entitled to any lien, right or benefit hereunder, and such certificate by such Trustee upon any such bond executed by the Company shall be conclusive evidence that the bond so authenticated has been duly issued hereun-

der, and that the holder is entitled to the benefit of the trust hereby created. 391

Before authenticating or delivering any bond all interest coupons thereon which shall then have matured, shall be cut off, cancelled and delivered to the Company. The bonds to be secured hereby may be executed and delivered from time to time by the Company to the Trustee for authentication, and thereupon or thereafter the Trustee shall authenticate and deliver the same as provided herein. On request of the Company the Trustee may authenticate such bonds and deliver the same pursuant to the provisions of this Indenture, whether or not such delivery shall be in advance of the registration or recording of this Indenture, or of the delivery to the Trustee of the evidence of such recording. 392

Until the engraving and completion of the definitive bonds each in the form and denomination aforesaid, temporary or interim bonds may be created by the Company for three hundred and fifty thousand dollars ($350,000.00) or any part thereof, which shall be of the same date thereof and substantially of the same tenor as provided in said form of definitive bond, except that such temporary or interim bonds shall be without coupons, and said interim bonds shall be certified by the Trustee and be subject to and have all the benefits and security as are herein provided for the definitive bonds, and upon the completion of the said definitive bonds, as herein provided, the same shall be certified and delivered by the Trustee in exchange for the said temporary bonds which shall thereupon be effectively cancelled by the Trustee. 393

SECTION 2. The Trustee shall authenticate and deliver said bonds as follows:

(a) Bonds to the aggregate amount of two hundred and twenty-nine thousand, five hundred dollars ($229,500) at par with coupons for interest from March second, nineteen hundred and three,

attached thereto, shall be certified by the said Trustee and delivered to the Treasurer of the Princeton Lighting Company to be used as follows:

One hundred and ten thousand dollars ($110,000.00) in part payment of the property, rights and franchises of the Hopewell Electric Light, Heat and Power Company, subject to a certain indenture of mortgage of fifty thousand dollars ($50,000.00) as aforesaid, to be provided for as hereinafter mentioned: Forty-four thousand five hundred dollars ($44,500.00) in part payment of the property, rights and franchises of the Princeton Electric Works, subject to a mortgage of five thousand five hundred dollars ($5,500.00), as hereinbefore mentioned, and seventy-five thousand dollars payment of the property, rights and franchises of the Princeton Gas Light Company, subject, nevertheless, to a certain indenture of mortgage for fifteen thousand dollars ($15,000.00), as above mentioned and as hereinafter provided for.

(b) Seventy thousand five hundred dollars ($70,500.00) of said bonds are to be retained by the Trustee, and are to be certified and delivered from time to time as required to take up and replace fifty thousand dollars ($50,000.00), at par, of outstanding bonds of the Hopewell Electric Light, Heat and Power Company, dated August first, nineteen hundred and one, which bonds are redeemable by the conditions of the mortgage securing them, to take up five thousand five hundred dollars ($5,500.00) first mortgage on the Princeton Electric Works, and to take up fifteen thousand dollars ($15,000.00) mortgage on the Princeton Gas Light Company.

(c) The remainder of said bonds in the aggregate amount of fifty thousand dollars ($50,000.00), at par, with the coupons thereon not yet matured, shall from time to time be authenticated by the Trustee and delivered to the Company, or on its order, on filing with the Trustee a certified copy of

the resolution by the Board of Directors of the 397
Company requesting such delivery, stating the amount required and purpose for which the same, or the proceeds of the sale thereof, are to be used, and which purpose shall be for the purchase by the Company of additional real or personal property (which *ipso facto* upon such purchase shall become subject to the terms and conditions of this Indenture) for the said Company, to be used by it in the conduct of its business, or for extensions, alterations or improvements in the plants of the new Company.

The Trustee shall also require of the Company to furnish in addition to the resolution of the 398
Board of Directors, a certificate of the President or Vice-President under its corporate seal, to the effect aforesaid, that such bonds then requested be certified and delivered, or the proceeds thereof are required fairly and reasonably for the purposes therein set forth, but the Trustee shall be under no obligation to look to the application of the said bonds or the proceeds thereof.

SECTION 3. In case any of said bonds with the coupons thereto belonging shall become mutilated or be destroyed or lost, the Company in its discretion may execute, and thereupon the Trustee shall authenticate and deliver a new bond of like tenor 399
and date and number, with similar coupons, in exchange and substitution for and upon cancellation of the mutilated bond and the coupons, or in lieu of and in substitution for the bond and the coupons so destroyed or lost, upon receipt of evidence satisfactory to the Company, of the destruction or loss of said bond and its coupons, and upon receipt also of indemnity satisfactory to the Company.

SECTION 4. Such resolutions, certificates, statements and requests shall be full and sufficient authority to the Trustee for the authentication and delivery by it of said First Mortgage Five Per

400 Cent. Gold Bonds, as herein provided, and the Trustee shall be under no obligation to see that the Company uses the said bonds delivered to it under any of the provisions hereof, or of the proceeds thereof, for the purposes for which the Company is authorized to use the same, and the Trustee shall be subjected to no liability for its action in authenticating and delivering bonds upon the faith of the certificates, statements, requests and certified copies of resolutions of the Board of Directors of said Company to be filed with it as is herein provided.

Article II.

401 COVENANTS OF PRINCETON LIGHTING COMPANY.

Section 1. It will duly and punctually pay or cause to be paid, to every holder of any of said bonds the principal and interest accruing thereon at the dates and place, and in the manner mentioned in such bonds, or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States of America, or by any State, County or Municipality, which the said Company may be required to pay or to retain therefrom under or
402 by reason of any present or future law thereof, the Company agreeing to pay the same in its own behalf; and when and as paid all such coupons shall be forthwith cancelled.

Section 2. The Company will not create or suffer to be created any lien or charge having priority to or preference over the lien of this Indenture, upon the mortgaged premises, or any part thereof, or upon the income thereof; and within three months after the same shall accrue, it will pay or cause to be discharged, or will make adequate provision for the satisfaction or discharge of all lawful claims and demands of mechanics, laborers and others which, if unpaid, might by

law be given precedence over this Indenture as a lien or charge upon the mortgaged premises, or any part thereof, or the income thereof. 403

SECTION 3. The Company from time to time will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the premises and property hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this Indenture shall be fully preserved in respect of such properties.

SECTION 4. The Company will not issue, negotiate, sell or dispose of any of said bonds in any manner other than in accordance with the provisions of this Indenture, and the agreement in that behalf herein contained; and in issuing, selling, negotiating or otherwise disposing of the said bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, to and for the purposes herein prescribed, and to and for no other different purpose. 404

ARTICLE III.

REDEMPTION OF BONDS.

The Company may at any time after five (5) years from date hereof, pay to the Trustee such a sum of money as may be sufficient in aount to pay all outstanding bonds secured by these presents, at par, together with ten per centum premium thereon, and accrued interest to the next semi-annual interest date, and thereupon the Trustee shall by public advertisement to be inserted twice a week for two successive weeks in one or more daily newspapers published respectively in the City of Trenton, State of New Jersey, and the City of New York, State of New York, the first publication to be not less than two months prior to the 405

406 date fixed for the payment of said bonds, call for payment on the next semi-annual interest day and before maturity, all of the outstanding bonds secured by these presents, at par, together with ten per centum premium and accrued interest, and thereafter the money so paid to the Trustee shall stand in lieu of the security of this mortgage and be applied by the Trustee to the payment of said bonds upon presentation at 110 and accrued interest.

And it shall be the duty of the Trustee in case of such call and payment to it, to execute to the Company a sufficient release of the mortgaged property from the lien of these presents. In case
407 of such call the interest shall cease to be payable on said bonds from and after the date fixed in the call. All bonds acquired by the Trustee, after call, as aforesaid, shall be cancelled by it and no other bonds shall be certified in their place.

All sums of money which are payable under the provisions of this article are declared to be payable in gold coin of the United States of America of the standard of weight and fineness of nineteen hundred and three.

It is understood that the Trustee shall be under no obligation to call bonds for payment on any particular interest date, unless the money from which such payment is to be made, is paid to
408 the Trustee in season to permit the giving of the notices hereinbefore provided for.

Article IV.

Remedies of trustees and bondholders.

Section 1. In case of the happening of any of the following events of default, that is to say:

(a) Default shall be made in the payment of any installment of interest on any of the said bonds when and as the same shall become payable, as therein and herein expressed, and such default shall have continued for the space of six months.

(b) Default shall be made in the payment, due observance or performance of any other of the covenants, conditions and agreements on the part of the Company, its successors or assigns, in the said bond, or in this indenture contained, either expressed or implied, and such default shall continue for the space of six months. 409

(c) An order shall be made for the appointment of a receiver for the Company, or of its property, or for the winding up or liquidation of its business and affairs, or proper corporate action shall be taken on the part of the Company for either of the purposes aforesaid; then the Trustee personally, or by is agents or attorneys, may, in its discretion, enter into and upon, and upon a requisition in writing, signed and duly acknowledged by the holders or by the agents of said holders duly authorized in writing, of fifty per cent. in amount of the said bonds then outstanding, and in such case and upon receiving a proper indemnity against all costs, expenses and charges, *shall* enter into and upon, all and singular the premises and property hereby conveyed or intended so to be (which collectively are hereinafter called the mortgaged premises), and each and every part thereof, and may exclude the Company, its officers, agents and servants wholly therefrom, and shall, after such entry and until the same shall be sold or surrendered to the Company, its successors or assigns, as hereinafter provided, use, operate, manage and control the same by its superintendents, managers, servants, or through attorneys or agents to the best advantage of the holders of the said bonds, as such may appear, in the absolute discretion of the said Trustee; and upon every such entry the Trustee, at the expense of the trust estate, from time to time, shall make all repairs and replacements as may seem to it judicious, may maintain and restore and in its discretion insure or keep insured any part of such property, and shall 410 411

412 collect and receive all the earnings, issues and profits of the operation of the same, and every part thereof, and after deducting therefrom the expense of operating the same and conducting the business thereof, and of all repairs and replacements and renewals and alterations, betterments and improvements, and all payments which may be made necessary for charges for liens prior to the lien of this Indenture upon the mortgaged premises, or any part thereof, as well as all taxes, assessments and insurance charges, as well as just and reasonable compensation for its own services, and for the services of such counsel, attorneys and agents as
413 may have been by it employed, shall apply the moneys arising as aforesaid, First: To the payment of the interest on the said bonds in the order in which installments of such interest shall become due, ratably to the persons holding the coupons evidencing the right to such interest, and later after the payment of such interest, and the fulfillment of all other covenants and provisos and agreements of the said bonds and of this Indenture, to be by the Company, its successors and assigns, kept and performed, any surplus remaining shall be held by the Trustee upon trust, that if possession shall not be restored to the Company as next hereinafter mentioned, then as additional
414 security for the said bonds, and to be held and applied accordingly, in the like manner as the net proceeds of the sale of the mortgaged premises; but if possession shall be restored to the mortgagor, as next hereinafter mentioned, then upon trust to pay the same to the Company , its successors or assigns.

SECTION 2. After the payment of all interest due and payment and fulfillment, as aforesaid, of all said covenants, conditions, provisos and agreements, the trustee shall, if no proceedings be then pending for the foreclosure or sale of the mortgaged premises, relinquish and restore the same to

the Company, its successors or assigns, to be held further subject to the terms and conditions of this indenture, which provision shall in like manner apply in respect of all subsequent defaults. 415

SECTION 3. The Company, its successors and assigns, upon the happening of any event of default, as hereinafter specified, shall immediately upon demand made deliver, surrender and yield up the mortgaged premises to the Trustee, which is hereby constituted its and their irrevocable attorney, with power to enter upon and take possession of the mortgaged premises immediately upon the happening of any event of default as aforesaid; and such entry by the Trustee upon the trust property shall be by the full license of the mortgagor, its successors and assigns, and the Trustee is hereby authorized to use all necessary and reasonable efforts and means to obtain and hold possession without being compelled to resort to any writ of entry or action of forcible detainer, or any legal proceeding. 416

SECTION 4. If any one or more of the events of default shall happen, the Trustee may, in its discretion, and upon the requisition of the holders of fifty per cent in amount of the said bonds then outstanding shall, by notice in writing delivered to the Company, declare the principal of all of said bonds then outstanding to be forthwith due and payable, anything in the said bonds or herein contained to the contrary notwithstanding. Such requisition upon the Trustee shall be evidenced by an instrument in writing, duly signed and acknowledged by persons proved by affidavit, or otherwise, to the reasonable satisfaction of the Trustee to be the owners of fifty per cent in amount of the said bonds then outstanding, or by their representatives duly authorized in writing. If the principal of the said bonds shall thus become due and payable, or at maturity, and shall not be paid according to the tenor thereof, and 417

such default in the payment of the principal with interest then accrued shall continue for the further space of sixty days, the Trustee *may*, in its discretion, and upon the request in writing, signed and acknowledged as hereinbefore provided by persons proved, as hereinbefore described to be the holders of fifty per cent in amount of the said bonds then outstanding, or by their representative duly authorized in writing, which may be combined with the request to declare due the principal of said bonds, and upon the tender of a proper indemnity against any and all costs, expenses, outlays and counsel fees and its own reasonable charges and other reasonable disbursements, for which it may become liable or responsible in proceeding to carry out such request, after entry as aforesaid, or without entry, personally or by attorney or agents, *shall* forthwith proceed, and is hereby authorized and empowered to sell and dispose of all and singular the mortgaged premises and franchises at public auction, at some suitable and convenient place on the mortgaged premises in the City of New York or elsewhere, as the Trustee may, in its discretion, decide, first giving public notice of such sale by advertisement in at least two newspapers, one to be published in the City of Trenton, State of New Jersey, and the other in the City of New York, once in each week for six successive weeks. Said sale may from time to time be adjourned by the Trustee, in its discretion, without further notice. Such sale shall be made to the highest bidder, and the Trustee shall, upon compliance by him with the conditions thereof in the name of the Company and as its attorney in fact for that purpose by this indenture duly constituted and appointed, convey to such bidder the mortgaged premises, property and franchises, free from all the trusts hereby declared; and such sale and conveyance so made shall be an absolute and final bar to the Company, it successors and as-

signs, and to all right and equity and right of re- 421
demption in and to the mortgaged premises and franchises, or any portion thereof, and to any persons claiming or to claim the same under the said Company.

After deducting from the proceeds of the sale made by it, just allowances for all the expenses thereof, including attorneys' and counsel fees and all other expenses, advances or liabilities which may have been made or incurred by the Trustee in operating or maintaining the mortgaged premises, or in managing the same or while in the possession thereof, and all payments which may have been made by it for taxes, assessments, charges and 422
liens which have become prior to the lien of this indenture on the mortgaged premises, or any part thereof, all of which payments are hereby authorized, as well as compensation for its own services, the Trustee shall apply such purchase money to the payment of the interest on the said bonds in the order in which the installments of such interest shall have become due, ratably to the persons holding the coupons evidencing the right to such interest, and after thus paying all interest which shall have become due on said bonds, then the Trustee shall apply the remainder to the payment of the principal of the said bonds ratably to the 423
holders thereof, and the receipt of the bearer of each coupon for the interest represented thereby, and of the bearer of each bond payable to bearer and of the registered holder of each registered bond for the principal moneys represented thereby, shall be a good dischage to the Trustee.

SECTION 5. If after the payment of the principal and interest and of all the said bonds, any surplus shall remain in the hands of the Trustee, the Trustee shall pay over, account for and deliver any such surplus or remainder to the Company, its successors or assigns, or dispose of the same as any court of competent jurisdiction may di-

rect. The receipt of the Trustee shall be a sufficient discharge to the purchaser for the purchase money, and such purchaser shall not, after the payment of said purchase money to the Trustee, and obtaining its receipt therefor, be answerable for its due application upon and for the trusts and purposes of these presents, or in any manner whatever for any loss, misapplication or non-application of such purchase money or any part thereof, or be obliged to inquire into the necessity, expediency or authority for any such sale.

SECTION 6. At any sale of the mortgaged premises, or any part thereof, made to enforce the lien created by this indenture, pursuant to the powers herein created or by judicial authority, the Trustee may bid for and purchase, or cause to be bid for and purchased on behalf of the holders of the said bonds then outstanding, in the proportion of the respective interests of such holders, the property so sold; provided that if all the mortgaged premises be sold as aforesaid, the price at which the purchase hereby authorized may be made shall not exceed the whole amount of the said bonds then outstanding, with the interest accrued thereon, in behalf of which the said purchase shall be made, together with costs and expenses of such sale, and if but a portion of the mortgaged premises be sold, the price shall not exceed such amount as shall be in the opinion of the Trustee reasonable. Nothing in this provision contained shall in anywise prohibit or forbid the holders of said bonds from bidding at such sale or from purchasing the mortgaged premises or any part thereof upon such sale; but any holder of said bonds may purchase the mortgaged premises at any such sale, and in the event of any such purchase by him, he shall be allowed credit as so much cash paid for so much of the purchase money as shall be a proper share of the dividend to which the bonds held by him shall be entitled upon the purchase price.

SECTION 7. The foregoing provisions are to be 427
subject to the conditions that, if at any time before the actual sale of the said mortgaged premises, either pursuant to the powers herein granted or by judicial authority, all arrears of interest upon all of such bonds, the expenses and charges of the Trustee and other sums for which it may be liable as aforesaid, and all other amounts in respect to which the Company shall then be in default under this indenture, other than the principal of said bonds, shall either be paid by the Company or be collected out of the mortgaged premises or any part thereof; then and in every such case the holders of sixty-six per cent in amount of the 428
said bonds then outstanding, by written notice to the Company and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned by reason of such waiver or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Company and the Trustee shall be restored to their former position and 429
rights hereunder in respect to the mortgaged premises, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Anything in this indenture contained to the contrary notwithstanding, the holders of sixty-six per cent in amount of the said bonds then outstanding shall have the right to direct and control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed, mortgaged or pledged, or for the foreclosure of this indenture, or for the appointment of a receiver, depositary or interventor, or for any

other proceeding hereunder.

SECTION 8. The Trustee may in its discretion resort to any proceedings, legal or equitable, in its judgment necessary or expedient for the enforcement of the security afforded by this indenture, and any remedy specially conferred by any of the provisions of this indenture shall be deemed cumulative and not exclusive.

SECTION 9. The Company will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force in any locality where the mortgaged premises or any part thereof shall or may be situated, or in which this indenture or any other security for the said bonds may be sought to be enforced, nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the mortgaged premises, or any part thereof, prior to any sales thereof, to be made as aforesaid or pursuant to the decree of any Court of competent jurisdiction; nor after such sale or sales under either authority will it claim or exercise any right under any statute enacted by any State of the United States to reedeem the property so sold, or any part thereof; and hereby expressly waives any benefit or advantage of any such law or laws.

SECTION 10. If, in the event of a default by the Company of the character and continuance indicated in Section 1 of this Article, a bill in equity shall be filed or any other judicial proceeding commenced to enforce any right of the Trustee, or of the bondholders, under this indenture, or any other instrument of security for the said bonds, then the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of the default as hereinbefore

provided. 433

SECTION 11. The Company, at any time before full payment of the said bonds, and whenever it shall deem it expedient for the better protection and security thereof, although there shall be then no default entitling the Trustee to enter into possession, may, with the consent of the Trustee, surrender and deliver to the Trustee full possession of the whole or any part of the property premises and interests hereby conveyed, or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery to the Trustee, with its consent the Trustee shall enter into and upon the premises so surrendered and delivered, and shall 434 take and receive possession thereof for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision thereof, to insist upon and to maintain such possession, although beyond the expiration of any prescribed period..

Upon such voluntary surrender and delivery of such property and premises, or of any part thereof, the Trustee, from the time of its entry, shall operate, maintain, use, manage, control and employ the same in accordance with the provisions 435 of this indenture, and shall receive and apply the income and revenues thereof as provided in Section 1 of this Article.

SECTION 12. No holder of any such bonds or coupons thereof shall have any right to institute any suit, action or proceeding, at law or in equity, for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, depositary or interventor, or for any other remedy hereunder, or under any other instrument of security for said bonds, unless such holder shall have previously given to the Trustee written

notice of such default, and of the continuance thereof, nor unless the holders of fifty per cent in amount of the said bonds then outstanding shall have made like written requisition upon the Trustee, and shall have afforded to it reasonable opportunity either to proceed or exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, nor unless also they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities, including its own reasonable charges to be incurred therein or thereby; and such a notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture, and to any action or cause of action for foreclosure or for the appointment of a receiver, or depositary or interventor, or for any other remedy hereunder, other than at the option of said Trustee; it being understood and intended that no one or more holders of bonds or coupons shall have any right, in any manner whatever, to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all such outstanding bonds and coupons.

SECTION 13. No delay or omission of the Trustee to exercise any right or power accruing upon any default as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given by this Article to the Trustee or the bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the bondholders, severally and respectively.

Article V.

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IMMUNITY OF OFFICERS, DIRECTORS AND STOCKHOLDERS.

Section 1. No recourse under or upon any obligation, covenant or agreement of this indenture, or of any of said bonds or coupons thereto belonging, shall be had against any incorporator, stockholder, officer or director of the said Company, either directly or through the Company, or by any legal equitable proceeding, by virtue of statute or otherwise; it being expressly agreed and understood that this indenture and the bonds hereby secured are solely corporate obligations, and that no 440
personal liability does or shall attach to or be incurred by the incorporators, stockkholders, officers or directors of the Company, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this indenture or in said bonds or coupons, or implied therefrom; and that any and all personal liability of every name and nature, either at common law or in equity, or by statute or constitution, of every such incorporator, stockholder, officer or director, is hereby expressly waived as a condition of and consideration for the execution and issue of this mortgage and such bonds and coupons.

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Article VI.

BONDHOLDERS' ACTS.

Section 1. Any request or other instrument required by this indenture to be signed and executed by bondholders, may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of bonds transferable by

delivery, shall be sufficient for any purpose of this indenture, if made in the manner provided in this Article.

SECTION 2. The fact and date of the execution by any person of any such request, or other instrument, or writing, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New Jersey, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution.

SECTION 3. The amount of bonds transferable by delivery, held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such persons, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depositary, wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depositary, or exhibited to it, the bonds herein described, which shall set forth the descriptions and numbers of the said bonds. The ownership of registered bonds shall be proved by the registers of said bonds, as provided in Article VIII. hereof. Such proof shall be conclusive in favor of the Trustee with regard to any action by it taken under such request or other instrument.

SECTION 4. The bearer of any bond, which at the time shall not be registered, and the bearer of any coupon for interest on any such bond, whether the same shall be registered or not, may be deemed and treated by the Company and the Trustee as the absolute owner of such bond or coupon, for the purpose of receiving payment therefor, and for all other purposes, and no notice to the contrary shall affect the Company or the Trustee.

ARTICLE VII. 445

RELEASE OF MORTGAGED PROPERTY.

SECTION 1. Upon the written request of the Company, containing a copy of the resolution by its Board of Directors or Executive Committee embodying the same, from time to time, while the Company is in possession of the mortgaged premises, but subject to the conditions and limitations in this Article prescribed, the Trustee shall release from the lien and operation of this indenture any part of the mortgaged premises then subject thereto.

No such release shall be made unless the Company shall have sold, or shall have contracted to exchange for other property, or to sell, the property so released; and the proceeds of any and all such sales, and all moneys received as compensation for any property subject to the indenture taken by the exercise of the power of eminent domain, shall be set apart and held in trust by the Company and applied to the payment for other property, real or personal, purchased by the Company, or in betterments of or additions to any part of the mortgaged premises or of other property acquired by the Company. Any new property acquired by the Company, to take the place of any property released hereunder, shall *ipso facto* become and be subject to the lien of this indenture as fully as if specifically mortgaged or pledged hereby; but, if requested by said Trustee, the Company will convey the same to the Trustee by appropriate deeds, upon the trusts and for the purposes of this indenture. 446 447

SECTION 2. The Company, while in the possession of the mortgaged premises, shall also have full power, in its discretion, from time to time, to dispose of any portion of the machinery, equipment and implements at any time held subject to the lien hereof, which may have become obsolete or otherwise unfit for such use, replacing the same by new

448 machinery, equipment or implements, which shall become subject to this indenture. The Company may also move from one part to another of the property hereby mortgaged, any of such machinery, equipment or implements as may in their discretion seem necessary for the operation of the said property.

SECTION 3. A certificate signed by the President or Vice-President of the Company may be received by the Trustee as conclusive evidence of any of the facts mentioned in this Article required to be established in order to authorize the release of any property thereunder, or of any other act of the
449 Trustee, and shall be full warrant and protection to the Trustee for any action on the faith thereof.

ARTICLE VIII.

CONCERNING THE TRUSTEE.

SECTION 1. The Trustee at its office in the Borough of Manhattan, City of New York, shall keep a sufficient register or registers of bonds, and upon presentation for such purpose it shall, under such reasonable regulations as it may prescribe, register therein any of said bonds, and such registration shall also be noted on the bonds so registered.

450 As to all bonds so registered and noted, the person in whose name the same shall be registered shall, for all purposes of this indenture, be deemed and be regarded as the owner thereof and thereafter, payment of, or on account of the principal of such bond shall be made only to, or upon the order of, such registered holder thereof, but such registration may be changed as provided. All such payments so made shall be valid and effectual to satisfy and discharge the liability upon such bonds to the extent of the sum or sums so paid.

Registration of any bond shall not, however, restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to

pass by delivery, and shall remain payable to bearer. 451

Upon presentation of any registered bond with a written power to transfer the same executed in a form approved by the Trustee, by the registered holder for the time being, such bond shall be transferred upon such register. The registered holder of any such registered bond shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond shall be payable to any person presenting the same, but any such bond registered as payable to bearer may be registered again in the name of the 452
holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration shall be noted on the bonds.

SECTION 2. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, or for anything whatever in connection with this trust, except wilful misconduct or gross negligence. The Trustee shall not be personally liable for any debts contracted by it, or for damages to persons or property, or for salaries or 453
non-fulfifillment of contracts, during any period wherein the Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, which in its opinion shall be likely to involve it in expense or liability, or to appear in or defend any suit or proceeding in respect hereof, unless one or more of the holders of the said bonds shall request it so to do, and shall, as often as required by the Trustee, furnish it reasonable indemnity

against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder unless notified in writing of such default by the holders of at least ten per cent in amount of the said bonds then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than fifty per cent in amount of the bonds then outstanding, and tendered reasonable indemity as aforesaid, anything herein contained to the contrary notwithstanding; but neither any such notice or request, nor this provision therefor, shall affect any discretion herein given to the Trustee to determine whether or not it shall take action in respect of such default, or to take action without such request. The Trustee shall not be responsible for the recording of this indenture, and shall not be required to file or refile the same as a chattel mortgage, or to do any other act for the continuance of the lien of this indenture, or to give notice thereof; the recitals of fact herein contained, and contained in the bonds hereby secured, shall be taken as statements by the Company, and shall not be construed as made by the Trustee.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and shall have a lien therefor on the mortgaged premises and fund.

SECTION 3. The Trustee, or any Trustee hereafter appointed, may resign and be discharged of the trusts created by this indenture, by giving written notice thereof to the Company at least sixty (60) days previously, or such other time as may be accepted by the Company as sufficient notice, and shall thereupon, if required, execute the transfer provided for in Section 4 of this Article.

SECTION 4. In case at any time the said Trust Company or any Trustee hereafter appointed

shall resign or otherwise become incapable of act- 457
ing, a successor or successors may be appointed by the holders of a majority in amount of the bonds then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact, duly authorized; provided, nevertheless, and it is hereby agreed and declared, that in case at any time there shall be a vacancy in the office of Trustee hereunder, the Company, by an instrument executed by order of its Board of Directors, may appoint a Trustee to fill such vacancy until a new Trustee shall be appointed by the bondholders, as herein authorized. The Company shall thereupon publish notice of such appointment once 458
a week for six consecutive weeks in a newspaper published in the City of New York, in the State of New York, and a paper published in the City of Trenton, New Jersey; and any new Trustee so appointed by the Company shall immediately, and without further act, be superseded by a Trustee appointed in the manner above provided by the holders of a majority in amount of the bonds prior to the expiration of six months after the last publication of such notice. Every such successor Trustee shall always be a trust company in good standing, doing business in the City of New York, and having a capital and surplus amounting to at 459
least one million dollars, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any such new Trustee appointed hereunder shall execute, asknowledge and deliver to the Trustee last in office and also to the Company an instrument accepting such appointment hereunder, and thereupon such new Trustee without any further act, deed or conveyance shall become vested with all the estates, properties, rights, powers and trusts hereunder with like effect as if originally named as Trustee herein; but the Trustee ceasing to act shall, nevertheless, on the written request of the

460 new Trustee, execute and deliver an instrument transferring to such new Trustee, upon the trust herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so resigning, and shall duly assign, transfer and deliver any and all property and moneys held by such Trustee to the new Trustee so appointed in its place.

Should any deed, conveyance or instrument in writing from the Company be required by any new Trustee, for more fully and certainly vesting in and confirming to such new Trustee such estate, rights, powers and duties, and any and all such deeds, conveyances and instruments in writing
461 shall, on request, be made, executed, acknowleedged and delivered by the Company.

Article IX.

COMPANY'S POSSESSION TILL DEFAULT.

Section 1. Until some default shall have been made (a) in the due and punctual payment of the interest, or of the principal of the bonds, or some part of such interest or principal; or (b) in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Company, and such default shall have continued beyond the period of grace, if any, herein pro-
462 vided in respect thereof; or until the Company shall have voluntarily surrendered possession to the Trustee as herein permitted, the Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the mortgaged premises, and to operate, manage and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits thereof.

Section 2. If, when the said bonds shall have become due and payable, the Company shall well and truly pay, or shall cause to be paid, the whole

amount of the principal moneys and the interest 463
due upon all of the bonds and coupons for interest thereon, and then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for the payment of such bonds and coupons, the entire amount due thereon for principal and interest, and also shall pay or cause to be paid all other sums payable hereunder by the Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then and in that case all property rights and interests hereby conveyed shall revert to the Company, and the estate, right, title and interest 464
of the Trustee shall thereupon cease, determine and become void, and the Trustee in such case, on demand of the Company, and at its cost and expense, shall enter satisfaction of this indenture upon the records; otherwise the same shall be continued and remain in full force and virtue.

Article X.

SUNDRY PROVISIONS.

Section 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Company, shall bind its 465
successors and assigns, whether so expressed or not.

Section 2. Nothing contained in this indenture, or in any of said bonds, shall prevent any consolidation or merger of the Company with any other corporation, or any conveyance and transfer, subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged premises as an entirety to a corporation at that time existing under and by virtue of the laws of any State or States of the United States, or of the United States, and entitled to acquire the same; provided, however, that such consolidation, merger

466 or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the Trustee, or of the bondholders hereunder; and that upon any such consolidation, merger and sale, the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the corporation formed by such consolidation or merger, or purchasing as aforesaid.

SECTION 3. Any act or proceeding by any provision of this indenture required to be done or per-
467 formed by any board or officer of the Company, shall and may be done and performed with like force and effect by the like board or officer of any corporation that at the time be such lawful sole successor of the Company.

SECTION 4. Except when otherwise indicated, the words the Trustee, or any other equivalent term, as used in this indenture, shall be held and construed to mean the Trustee or Trustees for the time being, whether original or successor, and the words Trustee, bond, bondholder and holder shall include the plural as well as the singular number, and the term majority shall signify majority in amount.

468 NORTH AMERICAN TRUST COMPANY Trustee, party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

IN WITNESS WHEREOF, THE PRINCETON LIGHTING COMPANY, the party hereto of the first part, has caused this indenture to be signed and acknowledged by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary, and the NORTH AMERICAN TRUST COMPANY, the party of second part, has caused its corporate seal to be

hereto affixed and attested by its Secretary, and 469
this indenture to be signed and acknowledged by its President; and the parties hereto have caused these presents to be dated the day and year first above written.

PRINCETON LIGHTING COMPANY.
By CHARLES P. FITCH
President. [L. S.]

Attest:
THOMAS B. JACKSON, Jr.,
Secretary.

Signed, sealed and delivered in
presence of 470
ORREL A. PARKER.

NORTH AMERICAN TRUST COMPANY.
By G. M. WYNKOOP,
Vice President. [L. S.]

Attest:
FRANK L. HILTON,
Secretary.

Signed, sealed and delivered in
presence of
GEORGE C. HOLTON.

STATE OF NEW JERSEY, } ss.: 471
COUNTY OF MERCER. }

BE IT REMEMBERED That before me, a Master in Chancery in and for the State of New Jersey, residing in Princeton, in said County, personally came and appeared Charles P. Fitch, President of the Princeton Lighting Company, who, being duly sworn according to law, deposes and says, that he was personally present at the execution of the foregoing Indenture of Mortgage, and did affix the common or corporate seal of the said Princeton Lighting Company thereto; that the seal so affixed is the common and corporate seal of said Princeton

472 Lighting Company; and the foregoing Indenture of Mortgage was duly sealed and delivered as and for the act and deed of the said Princeton Lighting Company, for the uses and purposes therein mentioned; and that the signature of this deponent to the said Indenture of Mortgage, as President of said Princeton Lighting Company, is deponent's own proper handwriting.

CHARLES P. FITCH.

Sworn and subscribed before me, this twenty-eighth day of February, A. D. one thousand nine hundred and
473 three.

FERGUS A. DENNIS,
Master of Chancery of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } ss.:

BE IT REMEMBERED, That before me, the subscriber, a Master in Chancery in and for the State of New Jersey, personally came and appeared Thomas B. Jackson, Jr., Secretary of the foregoing named corporation, the Princeton Lighting Company, who being duly sworn according to law, de-
474 poses and says, that he was personally present at the execution of the foregoing Indenture of Mortgage, and saw Charles P. Fitch, President of said corporation, affix the seal of said corporation to the said Indenture of Mortgage, and delivered the same as the act and deed of the said corporation; and that the name of this deponent, subscribed to the said Indenture as Secretary of the said corporation, in attestation of the due execution and delivery of said Indenture, is of this deponent's own proper handwriting.

THOMAS B. JACKSON, JR.

Sworn to and subscribed before me.

Witness my hand this twenty-eighth day of February, one thousand nine hundred and three. 475

FERGUS A. DENNIS,
M. C. C. of N. J.

STATE OF NEW YORK, }
County of New York. } ss.:

BE IT REMEMBERED, That on this fifth day of March, nineteen hundred and three, before me, George C. Holton, a Notary Public in and for the County of Kings, with a certificate filed in New York County and duly authorized to take acknowledgments of deeds therein, personally appeared 476
Frank L. Hilton, who is, I am satisfied, the Secretary of the North American Trust Company, and who being by me duly sworn according to law, deposed and said, that he knows the corporate seal of said North American Trust Company, and that the seal affixed to the foregoing indenture is the corporate seal of said North American Trust Company; that the said seal was affixed to the said indenture by order of the Board of Directors of said North American Trust Company; that the said G. M. Wynkoop is one of the Vice Presidents of the said North American Trust Company and signed the said indenture by order of the said Board of 477
Directors in this deponent's presence; and that this deponent, by the like order, signed his name thereto as the Secretary of the said North American Trust Company and the attesting witness of such execution.

FRANK L. HILTON.

Subscribed and sworn to before me,
this fifth day of March, 1903.

GEORGE C. HOLTON,
Notary Public, Kings County.

Cert. filed in N. Y. County.

[L. S.] My Commission expires March 30, 1904.

478 STATE OF NEW YORK, } ss.:
County of New York. }

Frank L. Hilton, being duly sworn, says that he is the Secretary of the North American Trust Company the mortgagee named in the foregoing mortgage or deed of trust, and is a duly authorized agent in its behalf, that the true consideration of the above mortgage is the issue of $350,000, in the bonds of the mortgagor, for the purpose specifically set forth in the foregoing mortgage or deed of trust.

FRANK L. HILTON.

Subscribed and sworn to before me,
479 this 5th day of March, 1903.

GEORGE C. HOLTON
Notary Public, Kings County.

Cert. filed in N. Y. County.
My commission expires March 30th, 1904.

STATE OF NEW YORK, } ss.:
County of New York, }

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That George C. Holton has filed in the Clerk's office of the County of New
480 York a certified copy of his appointment and qualification as Notary Public for the County of Kings, with his autograph signature, and was at the time of taking the annexed deposition duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and believe that the signature to the annexed certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the fifth day of March, 1903.

THOMAS L. HAMILTON,
Clerk.

Exhibit C-12.

Trust Sheet.

Name of Company, PRINCETON LIGHTING CO.

Mortgage Dated	Feb. 28, 1903. Executed by N. A. T. Co. Mar. 5, 1903.
Bonds	First Mortgage 5 per cent. 30 Year Gold. Mature, Mar. 1, 1933.
Issue	$350,000. Nos. 1 to 250 at $1,000. Nos. 251 to 450 at $500.
Interest	5 per cent. Payable March 1st and September 1st at N. A. T. Co.
Default	After 6 months upon written requisition of holders of 50 percent. of outstanding bonds, Trustee shall enter into possession of premises and take requisite precedure.
Registration	Optional to principal on books of N. A. T. Co. May be discharged to bearer.
Redemption	Bonds subject to redemption at any time after 5 yrs. from date at 110 per cent and accrued interest.
Sinking Fund	
Certification and Delivery	Bonds to aggregate of $229,500, with coupons for interest from Mar. 2, 1903, attached, shall be certified and delivered to Treasurer of Co. to be used, viz: $110,000 in payment in part of property of Hopewell Elec. Lt., Ht. and Power Co., subject to a mortgage of $50,000 to be provided for; $44,500 in part payment of property of Princeton Elec. Works, subject to a mortgage of $5,500; $75,000 in payment of property of Princeton Gas Light Co., subject to a mortgage of $15,000. $70,500 bonds are to be retained by Trustee to be certified and delivered from time to time as required to take up $50,000 at par of outstanding Hopewell Elec. Lt., Ht. and Power bonds, $5,500 First mortgage on Princeton Gas Light Co; remaining $50,000 Bonds shall from time to time be certified and delivered to Co. or on its order on receipt of certified copy of resolution of Board stating that bonds are to be used for acquisition of additional property or betterments. Matured coupons to be detached before delivery. There should also be certificate from Pres. or Vice Pres. as to last issue.

Recording of Mortgage

Date Sent	To Whom	Date Recorded	Time	Book	County	State	Date Returned
		Mar. 9, 1903	8 A. M.	Mtg. No. 136	Mercer	N. J.	
		" " "	"	Chattel Mort. No. 28	"	"	
		" 10, "	11:50	Mtg. E. 5	Somerset	"	
		" " "	"	Chattel Mtg. No. 21, P. 31	"	"	

Remarks	Apl. 2, 1903, ctf. of payment by Prin. Lg'tg Co. of $500 and accrued int. on Mtg. and Bond given by Prin. Elec. Wks. $500 Bond of Prin. Ltg. Co. delivered in exchange for said certificate.
9-27-'04	Coupon No. 3, due Sept. 1, '04, cut from bonds Nos. 71-100, 121-190 and 101-120 presented to coupon Dept. for payment, by N. A. T. Co.; payment refused; "no funds."
10-14-'04	Request to declare principal due filed with Trustee by bondholders' committee.
July 13, 1905	Richard Stockton and Charles P. Fitch, President, were this day notified that $38,500 bonds Hopewell Electric Light, Heat and Power Co. 1st mtge. S. F. G. B. will be sold at public auction by Adrian H. Muller & Sons, 14, 16 Vesey St., July 19, 1905.

PRINCETON LIGHTING CO.

BONDS RECEIVED

Date 1903	Numbers	Amount	Date	Certified by	Examined
			1903		
Apl. 11	1—250	$250,000	Apl. 14	F. C. P.	
" 11	251—450	100,000	14	F. C. P.	
			21	F. C. P.	
			"	H. D.	

Securities
Date.....Mer 2-9
Received by.....
Verified by.....
Execution }
Examined } .....
Entered:
Index.....
Inventory.....

BONDS CERTIFIED

Numbers	Amount	Date	Certified by	Examined	Numbers	Amount
251—300	25,000	Hopewell Elec. Lt. Ht. & Power Co. Bonds received for exchange and cancellation—when total issue is received.				
301—350	25,000	1903			61—162	$10,200
1—225	225,000	Aug. 12			—245	100
351—400	25,000	" "			—195	100
		" "			247—272	2,600
		" "			343—350	800
		" "			359—370	1,200
		Nov. 16			1— 60	6,000
		" 27			371—440	7,000
		Dec. 7			232—244	1,300
		" "			273—340	6,800
		" "			351—358	800
		" "			485—500	1,600

BONDS DELIVERED

Date 1903	Authority	To Whom Delivered	How Delivered	Numbers	Amount
Apl. 14	Resolution of Board	S. H. Blackwell, Treas.		301—250	$25,000
22	"	Orrel A. Parker, V. Pt.		191—225	35,000
"	"	"		251—300	25,000
"	"	"		351—400	25,000
25	"	Herman Dowd, V. Pt.	(Subsequently delivered to Co. through Loan Department)	101—120	20,000
May 1	"	Loan Dept. N. A. T. Co.		71—100	30,000
"	"	"		121—190	70,000
Aug. 22	Order of Pres., Secy., Treas.	Company	(Exchange for Hopewell Bonds)	1— 15	15,000
Nov. 27	" " Treas.	Pres. of Company	"	16— 23	8,000
Dec. 7		" " "	"	24— 38	15,000

Mar. 21 Amount proven upon mortgage before Vice-Chancellor

Sept., 1903, coupons,		$5,175
Mar., 1904,	"	5,200
Sept., 1904,	"	6,550
Mar., 1905,	"	6,550
Principal,		262,000
Acc'd int. 3-21-'05,		727 77
Total		$286,202 77

Exhibit C-13. 487

Notice of Sale by North American Trust Co.

To Richard Stockton, Esq., Receiver of the Assets, etc., of the Princeton Lighting Company:

You are hereby notified that in a certain suit in the Court of Chancery, of the State of New Jersey, between the North American Trust Company as complainants and Princeton Lighting Company and others as respondents, brought for the foreclosure of a certain mortgage made by said Princeton Lighting Company to the undersigned under its then name North American Trust Company as Trustee, to secure an issue of bonds therein described, and bearing date the 28th day of February, 1903, such proceedings were had that mortgaged property was sold on the 31st day of May, 1905, pursuant to decree entered in said suit on the 21st day of March, 1905; that said sale resulted in a deficiency of more than two hundred thousand dollars ($200,000), all of which remains unpaid; that demand for the payment of two hundred thousand dollars ($200,000) in satisfaction of said deficiency has been made upon said Princeton Lighting Company, and is hereby made also upon you; and that if said sum be not paid to the undersigned, the undersigned as such Trustee will sell the securities mentioned below, which are pledged with it as trustee as above as security for the bonds mentioned above, at public auction in the salesrooms of Adrian H. Muller and Son, Nos. 14 and 16 Vesey street, Borough of Manhattan, City of New York, on Wednesday, July 19, 1905, at 12:30 o'clock P. M. 488 489

The securities mentioned are thirty-eight thousand five hundred dollars ($38,500), face value of bonds known as the Hopewell Electric Light, Heat and Power Company First Mortgage Sinking Fund Gold Bonds, issued under a certain mortgage made

490 by the said Hopewell Electric Light, Heat and Power Company to the Burlington City Loan and Trust Company as trustee and dated August 1, 1901.

Dated July 13, 1905.

THE TRUST COMPANY OF AMERICA,
By WM. H. LEUPP, Vice Prest.

Exhibit C-14.

A stipulation admitting facts relating to the
491 *questions at issue, which is fully set forth in the testimony of Heman Dowd.*

Exhibit C-15.

Is the same as Exhibit C-13.

Exhibit C-16.

Contract of Merger.

492 THIS AGREEMENT made this second day of February, nineteen hundred and three.

BETWEEN The Hopewell Electric Light, Heat and Power Company, a corporation of the State of New Jersey, by the directors thereof, The Princeton Electric Works, a corporation of the State of New Jersey, by the directors thereof; and the Princeton Gas Light Company, a corporation of the State of New Jersey, by the directors thereof;

WITNESSETH: Whereas the said companies were organized under the laws of this state for the purpose of doing business of a similar nature in

certain localities in the Counties of Mercer, Somerset, Middlesex and Monmouth in the said State of New Jersey, and for the purposes of greater efficiency and economy of management it has been deemed advisable to merge and consolidate them under and pursuant to the provisions of an act entitled "An Act Concerning Corporations" (Revision of 1890), and the various acts supplementary thereto and amendments thereof; 493

AND WHEREAS, the parties hereto have agreed upon the provisions, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual agreements, covenants, provisions and grants herein contained, the said parties do, by these presents, merge, combine and consolidate their respective capital stocks, franchises, grants, immunities, privileges, capacities, properties and rights of every name and nature into a single and new corporation, to be called and known by the corporate name and style of "Princeton Lighting Company," which said new corporation shall henceforth have and possess all and singular the rights, franchises, privileges, powers, immunities and capacities which are or have been granted to, or conferred upon, or possessed or enjoined by any and all of the said parties hereto, by virtue of their charters, and the supplements thereto and any of the laws of the State of New Jersey, and the said parties hereto have agreed upon and by these presents do agree upon and prescribe the following as the terms and conditions of said consolidation, which terms and conditions the said parties hereto do mutually and severally covenant, promise and agree to observe, keep and perform, namely: 494 495

Article I. The name of the new corporation shall be "Princeton Lighting Company."

The corporate seal of said company shall have inscribed thereon the name of the Company, the

year of its creation, and such other device, if any, as may be prescribed by the by-laws.

Article II. The management of the business of said Company shall be vested in five directors to be chosen by and from the stockholders. Each stockholder may vote in person or by proxy, subject, however, to such rules and regulations as may be presented by the by-laws, and shall be entitled to one vote for each share of stock; the directors shall choose by majority vote a President, Vice President, a Secretary and a Treasurer from among themselves, all of whom shall be chosen or appointed annually, and who shall hold office for one year and until their successors are chosen and qualified, and the directors shall also appoint and remove from time to time such other officers and agents as they think proper. The Treasurer shall give bond in such sum and with such security as shall be required by the by-laws for the faithful discharge of his duties.

Article III. The Directors (other than the first Directors) shall be chosen on the third Tuesday in January of each and every year, beginning with the year nineteen hundred and four, and shall hold their office for one year, and until others are chosen and qualify in their stead, and until otherwise fixed in accordance with law the election shall take place at the principal office of the Company in Princeton, New Jersey, between the hours of twelve o'clock noon and one o'clock in the afternoon. If any of the Directors shall die or resign the remaining Directors may choose others in his or their place, who shall hold office for the unexpired term.

Article IV. The number of the first Directors of said Company is five, and the names and places of residence of the first Directors who shall hold their office and manage the affairs of the Company until the first annual election, or until their successors shall be chosen, are the following:

Name.	Place of Residence.
Charles P. Fitch,	Princeton.
Samuel H. Blackwell,	Princeton.
Orrel A. Parker,	New York City.
Charles E. LeBarbier,	New York City.
Thomas B. Jackson, Jr.,	Princeton.

Article V. The names and places of residence of the President, Vice President, Secretary and Treasurer of the said Company who shall hold their offices until their successors shall be chosen, are the following:

President,	Charles P. Fitch,	Princeton.
Vice President,	Orrel A. Parker,	New York City.
Secretary,	Thomas B. Jackson, Jr.,	Princeton.
Treasurer,	Samuel H. Blackwell,	Princeton.

Vacancies in any of the offices provided for in this article shall be filled by the Directors for the unexpired term.

Article VI. The Directors shall have power to appoint an executive committee of three members of the board, to whom shall be entrusted such power as may be prescribed by the by-laws. The by-laws made be made, altered or amended by the Directors.

Article VII. The annual meeting of the stockholders shall be held on the third Tuesday in January of each year at the principal office of the Company in Princeton, until otherwise provided in accordance with law.

Article VIII. The amount of the capital stock of the said Company shall be Five Hundred Thousand Dollars ($500,000.00), and the number of shares into which it shall be divided shall be Five Thousand (5,000) and the par value of each share of stock shall be One Hundred Dollars ($100.00).

Article IX. Immediately upon the filing of this agreement in the office of the Secretary of State, as provided by law, the capital stock of the Hope-

New Jersey State Library

well Electric Light, Heat and Power Company, issued and outstanding, amounting to One Hundred Thousand Dollars ($100,000.00), at par, shall be converted into bonds of the new Company to the amount of One Hundred and Sixty Thousand Dollars ($160,000.00) at par, secured by a mortgage upon the property of the new company, as is hereafter mentioned, and into stock of the new company to the amount of Two Hundred Thousand Dollars ($200,000.00). Of the foregoing number of bonds, Fifty Thousand Dollars ($50,000.00) at par shall be retained by the Trustee, however, for the purpose of redeeming bond for bond as they are presented, an issue of Fifty Thousand Dollars ($50,000.00) of bonds of the Hopewell Electric Light, Heat and Power Company, dated August first, nineteen hundred and one, and secured by a mortgage to the Burlington City Loan and Trust Company, a corporation of the State of New Jersey, which last mentioned bonds shall be delivered up to the Trustee and cancelled, so that they shall be no longer a lien upon the property of the Hopewell Light, Heat and Power Company, or upon any of the property of the consolidated company. In addition thereto the proceeds of Thirty-five Thousand Dollars ($35,000.00) of the bonds allotted as above in exchange for the capital stock of the Hopewell Electric Light, Heat and Power Company, shall be retained by the new company, and used, so far as may be necessary, in the payment of all expenses of this consolidation, of all interest charges incurred for the carrying of any of the above properties, pending this consolidation, and for all incidental expenses connected with said consolidation.

Article X. The capital stock of the Princeton Electric Works issued and outstanding to the amount of Seventy-five Thousand Dollars ($75,000.00) shall be converted into bonds of the new company to the amount of Fifty Thousand Dollars

($50,000.00) at par, secured by a mortgage upon 505
the property of the new company, as aforesaid, and into stock of the new company to the amount of One Hundred Thousand Dollars ($100,000). Of the foregoing number of bonds Five Thousand Five Hundred Dollars ($5,500.00) shall be retained by the Trustee for the purpose of paying off and discharging a mortgage now existing upon the property of the Princeton Electric Works for Five Thousand Five Hundred Dollars ($5,500.00), so that it may no longer be a lien upon the property of the said Princeton Electric Works, or upon any of the property of the consolidated company.

Article XI. The capital stock of the Princeton 506
Gas Light Company issued and outstanding, amounting to Fifty Thousand Dollars ($50,000.00) at par, shall be converted into bonds of the new company to the amount of Ninety Thousand Dollars ($90,000.00) at par, secured by a mortgage upon the property of the new company as aforesaid. Of the foregoing number of bonds Fifteen Thousand Dollars ($15,000) at par, shall be retained by the Trustee for the purpose of paying a certain mortgage for Fifteen Thousand Dollars ($15,000.00) upon the property of the Princeton Gas Light Company so that the said mortgage shall no longer be a lien upon the property of the Princeton
Gas Light Company, or upon any of the property 507
of the consolidated company.

Article XII. Immediately upon the filing of this agreement in the office of the Secretary of State, as provided by law, the said stocks of the Hopewell Electric Light, Heat and Power Company, Princeton Electric Works and the Princeton Gas Light Company or so much thereof as shall be held by or in trust for assenting stockholders, shall be delivered to the new company to be cancelled. As often as any of the said stock shall be so transferred, the new company shall issue to the stockholder or stockkholders of the companies named be-

low, transferring the same, at the time of his or their transfer, bonds and stock, or bonds of the new company, as follows, that is to say:

To the stockholder or stockholders of the Hopewell Electric Light, Heat and Power Company bonds and stock in the ratio of One Hundred and Sixty Dollars ($160.00), in bonds, and Two Hundred Dollars ($200.00) in stock of the new company to One Hundred Dollars ($100.00) in stock of the Hopewell Electric Light, Heat and Power Company. The above ratio of the bonds, however, shall be distinctly subject to the conditions set forth in Article IX of this agreement as to the conversion of the stock of the Hopewell Electric Light, Heat and Power Company pro tanto into bonds of the new company. To the stockholders of the Princeton Electric Works in the ratio of Sixty-six and two-third Dollars ($66 2/3) in bonds, and One Hundred and Thirty-three and one-third Dollars ($133 1/3) in stock of the Princeton Electric Works. The above ratio of bonds, however, shall be distinctly subject to the conditions in Article X of this agreement as to the conversion of the stock of the Princeton Electric Works, pro tanto, into bonds of the new company. To the stockholder or stockholders of the Princeton Gas Light Company in the ratio of One Hundred and Eighty Dollars ($180.00) in bonds of the new company to One Hundred Dollars ($100.00) in stock of the Princeton Gas Light Company. The above ratio of bonds, however, shall be distinctly subject to the conditions set forth in Article XI of this agreement as to the conversion of the stock of the Princeton Gas Light Company pro tanto into bonds of the new company.

Article XIII. When this consolidation has been perfected as herein provided for, the bonded indebtedness of the new company wil be Three Hundred Thousand Dollars ($300,000.00), and the amount of capital stock issued and outstanding will

be Three Hundred Thousand Dollars ($300,000.00). 511

Article XIV. The bonds hereinafter mentioned amounting to Three Hundred Thousand Dollars ($300,000.00) are part of an authorized issue of Three Hundred and Fifty Thousand Dollars ($350,000.00) of bonds of the new company dated March second, nineteen hundred and three, payable in thirty years from the date with interest at the rate of five per cent per annum, payable semi-annually, both principal and interest to be payable in gold coin of the standard of weight and fineness of nineteen hundred and three. Said bonds may be registered at the option of the holder, and shall contain the provisions and be substantially in the 512
form contained in "Schedule A" hereto annexed. Of the said Three Hundred and Fifty Thousand Dollars ($350,000.00) in bonds authorized to be issued as aforesaid, Three Hundred Thousand Dollars ($300,000.00) shall be issued as hereinbefore set forth, and the remainder of said issue, or Fifty Thousand Dollars ($50,000.00) of said bonds shall remain uncertified in the hands of the Trustee to be used from time to time for the acquisition of new property, or for extensions, alterations or improvements in the plant of the new company, according to the terms and conditions of the first mortgage to be issued by the said new company upon the con- 513
summation of this consolidation, to the North American Trust Company, a corporation of the State of New York, upon all the property of the new company, in trust for the security of said bonds.

Article XV. Upon the consummation of the agreement of consolidation herein provided for, temporary bonds, without interest coupons, substantially in the form of the schedule hereto annexed, marked "Schedule A," shall be issued by the new company certified by the North American Trust Company and delivered to the persons entitled to receive bonds hereunder.

514 The coupon bonds herein provided for to be issued at the time of the consolidation, shall be engraved as speedily as possible, issued by the new company, and certified by the Trustee at the option of the new company, and substituted for the temporary bonds before August first, ninteen hundred and three.

Article XVI. The bonds of the new company herein provided for shall be of the denominations of Five Hundred Dollars ($500) and One Thousand Dollars ($1,000.00) and shall draw interest from the second day of March, nineteen hundred and three. Persons entitled hereunder to frac-
515 tional portions of a bond or of a share of stock, shall receive therefor non interest-bearing script certifictaes, exchangeable for bonds or stocks, as the case may be, in even amounts.

Article XVII. The transfer of the properties of the respective companies shall be made on the 28th day of February, nineteen hundred and three.

Article XVIII. In case every share of stock of all the companies that are parties to this agreement shall not be secured in favor of said consolidation, or shall not assent to the plan thereof, then and in that case the new company shall pro-
516 ceed according to law with reference thereto.

Article XIX. The principal office of the new company within the State of New Jersey is situated at No. 90 Nassau street, Princeton, New Jersey, and the agent therein and in charge thereof, and upon whom process against the company may be served, is Thomas B. Jackson, Jr.

IN WITNESS WHEREOF, The said parties have hereunto set their respective seals, and have caused these presents to be signed by their respective Presidents, and attested by their respective secretaries, and also to be sign-

ed by their respective Directors, the day and year first above written. 517

THE HOPEWELL ELECTRIC LIGHT, HEAT AND POWER CO.,
By CHARLES P. FITCH,
President.

(Seal.)

Attest:
THOMAS B. JACKSON, JR.,
Secretary.

Directors.

CHAS. P. FITCH,
SAMUEL H. BLACKWELL,
THOMAS B. JACKSON, JR. 518

In the presence of
FERGUS A. DENNIS.

PRINCETON ELECTRIC WORKS,
By CHARLES P. FITCH,
President.

(Seal.)

Attest:
THOMAS B. JACKSON, JR.,
Secretary.

Directors.

CHAS. P. FITCH,
SAMUEL H. BLACKWELL,
ORREL A. PARKER,
THOMAS B. JACKSON, JR. 519

In the presence of
FERGUS A. DENNIS.

PRINCETON GAS LIGHT COMPANY,
By ORREL A. PARKER,
President.

(Seal.)

Attest:
THOMAS B. JACKSON, JR.,
Secretary.

520 Directors.

ORREL A. PARKER,
SAMUEL H. BLACKWELL,
THOMAS B. JACKSON, JR.,
CHARLES E. LEBARBIER,
CHAS. P. FITCH.

In the presence of
FERGUS A. DENNIS.

SCHEDULE A.

FORM OF BOND.

UNITED STATES OF AMERICA.

521 No. STATE OF NEW JERSEY.

PRINCETON LIGHTING COMPANY

First Mortgage Five Per Cent Thirty Year Gold Bond.

Princeton Lighting Company, a corporation of the State of New Jersey, for value received acknowledges itself to be indebted to the bearer, or if registered, to the registered holder thereof, in the sum of Dollars ($.....), which sum it promises to pay to the bearer, or if registered, to the registered holder hereof in gold coin of the United States of America, of the stand-
522 ard of weight and fineness of nineteen hundred and three, on the first day of March, in the year nineteen hundred and three, at the office of the North American Trust Company, in the City of New York, with interest thereon at the rate of five per cent. per annum, payable in like gold coin at the office of the North American Trust Company, semi-annually, on the first day of March and September. in each and every year, on presentation and surrender of the annexed coupons, as they severally mature. In case of default in the payment of this bond, or of the interest accruing hereon or otherwise, such consequences shall ensue as are provid-

ed for in the first mortgage securing the payment 523
of the same hereinafter mentioned.

The principal and interest of this bond are payable without any deduction for State, County or Municipal taxes. This bond is one of a series of bonds of like date, tenor and effect and of denominations of One Thousand Dollars and Five Hundred Dollars, the bonds of the denomination of One Thousand Dollars being numbered consecutively from one to two hundred and fifty inclusive, the bonds of the denomination of Five Hundred Dollars being numbered from two hundred and fifty-one to four hundred and fifty inclusive, all of said bonds aggregating Three Hundred and Fifty 524
Thousand Dollars ($350,000.00). The payment of each and all of said bonds, with the interest coupons attached thereto, according to their tenor and effect, is equally secured without preference, priority or distinction, as to the lien or otherwise of one bond over another by mortgage bearing date the 28th day of February, in the year nineteen hundred and three, executed and delivered by the Princeton Lighting Company to the North American Trust Company, a corporation of the State of New York, as trustee, conveying to it as Trustee, all the property, rights and franchises of the said Princeton Lighting Company, owned or possessed 525
by it at the date of said mortgage, and more particularly described and set forth in said mortgage, together with all properties, rights and franchises which it may thereafter acquire.

This bond, until registered, shall pass by delivery. This bond may, as to principal, be registered in books to be kept for that purpose, at the office of the North American Trust Company, and if so registered will thereafter be transferable only upon the said books at the office of the North American Trust Company, by the owner in person, or by his attorney, unless the last preceding transfer shall have been to bearer, and the transfer by de-

526 livery thereby restored; and it shall continue to be suscepible of successive registrations and transfers to the bearer at the option of the holder, but such registrations shall not affect the negotiability by delivery of the annexed coupons.

This bond is subject to redemption at any time after five years from date, at one hundred and ten (110) per centum of the par value hereof, and accrued interest on the conditions and in the manner provided in said mortgage or deed of trust.

This bond shall not be valid until it shall have been authenticated by a cetificate herein duly signed by the Trustee under the mortgage aforesaid.

527 IN WITNESS WHEREOF the said Princeton Lighting Company has caused these presents to be signed by its President, and its corporate seal, duly attested by its Secretary, to be hereunto affixed, and has hereunto affixed coupons with the signature of its Treasurer engraved thereon, and has caused these presents to be dated the Second day of March, nineteen hundred and three.

PRINCETON LIGHTING COMPANY,
By
President.

Attest:

Secretary.

528 COUPON.

On the first day of .....Princeton Lighting Company will pay to bearer, at the office of the North American Trust Company, in the City of New York,.....Dollars ($.....), in gold coin of the Nineteen hundred and Three standard of weight and fineness, being six months' interest on its first mortgage gold bond No.....

Treasurer.

TRUSTEE'S CERTIFICATE.

North American Trust Company hereby certifies that the within bond is one of a series of bonds de-

scribed in the mortgage therein referred to. 529

NORTH AMERICAN TRUST COMPANY,
By

STATE OF NEW JERSEY,
COUNTY OF MERCER. } ss.:

BE IT REMEMBERED that on this second day of January, nineteen hundred and three, personally appeared before me, the subscriber, a Master in Chancery of New Jersey, Thomas B. Jackson, Jr., who being by me duly sworn did depose and say that he is Secretary of the Hopewell Electric Light, Heat and Power Company, that Charles P. Fitch, who executed the foregoing instrument in the presence of this deponent, was at the time of signing 530
the same, President of the said Hopewell Electric Light, Heat and Power Company, and executed the same by virtue of a resolution of the Board of Directors of said Company, as the voluntary act and deed of said corporation; that deponent well knows the corporate seal of said corporation, that the seal thereto affixed is the seal of the Hopewell Electric Light, Heat and Power Company and was likewise affixed by order of the Directors of said Company; that deponent has subscribed his name thereto as an attesting witness.

Deponent further states that the names of the parties whose names are subscribed to said instrumentmen as Directors of the said Hopewell Electric Light, Heat and Power Company, at the time of signing their names thereto, to wit: On the second day of February, nineteen hundred and three, composed the Board of Directors of the Hopewell Electric Light, Heat and Power Company. 531

THOMAS B. JACKSON, JR.

Sworn to and subscribed before
me this 2nd day of February,
1903.

FERGUS A. DENNIS,
M. C. C. of N. J.

532 STATE OF NEW JERSEY, }
COUNTY OF MERCER. } ss.:

BE IT REMEMBERED that on this second day of February, nineteen hundred and three, personally appeared before me, the subscriber, a Master in Chancery of New Jersey, Thomas B. Jackson, Jr., who being by me duly sworn did depose and say that he is Secretary of the Princeton Electric Works, that Charles P. Fitch, who executed the foregoing instrument in the presence of this deponent, was at the time of signing the same, President of the said Princeton Electric Works, and executed the same by virtue of a resolution of the
533 Board of Directors of said Company, as the voluntary act and deed of said corporation; that deponent well knows the corporate seal of said corporation, that the seal thereto affixed is the seal of the Princeton Electric Works and was likewise affixed by order of the Directors of said Company; that deponent has subscribed his name thereto as an attesting witness.

Deponent further states that the names of the parties whose names are subscribed to said instrument as Directors of the said Princeton Electric Works, at the time of signing their names thereto, to wit: On the 2nd day of February, nineteen
534 hundred and three, composed the Board of Directors of the Princeton Electric Works.

THOMAS B. JACKSON, JR.

Sworn to and subscribed before
me this 2nd day of February,
1903.

FERGUS A. DENNIS,
M. C. C. of N. J.

STATE OF NEW JERSEY, COUNTY OF MERCER. } ss.: 535

BE IT REMEMBERED that on this second day of February, nineteen hundred and three, personally appeared before me, the subscriber, a Master in Chancery of New Jersey, Thomas B. Jackson, Jr., who being by me duly sworn did depose and say that he is Secretary of the Princeton Gas Light Company; that Orrel A. Parker, who executed the foregoing instrument in the presence of this deponent, was at the time of signing the same President of Princeton Gas Light Company, and executed the same by virtue of a resolution of the Board of Directors of said Company, as the voluntary act and 536 deed of said corporation, that deponent well knows the corporate seal of the said Company; that deponent has subscribed his name thereto as an attesting witness.

Deponent further states that the names of the parties whose names are subscribed to said instrument as Directors of said Princeton Gas Light Company, at the time of signing their names thereto, to wit: On the 2nd day of February, nineteen hundred and three, composed the Board of Directors of the Princeton Gas Light Company.

THOMAS B. JACKSON, JR. 537

Sworn to and subscribed before
me this 2nd day of February,
1903.

FERGUS A. DENNIS,
M. C. C. of N. J.

To the Secretary of State of the State of New Jersey:

I, THOMAS B. JACKSON, JR., Secretary of Hopewell Electric Light, Heat and Power Company, a corporation organized under the laws of

said State, do hereby certify, that in accordance with the provisions of a certain act entitled "An Act Concerning Corporations" (Revision of 1896) at a meeting of the stockholders of said corporation, in Princeton, New Jersey, on this 27th day of February, nineteen hundred and three, at the hour of 2 o'clock P. M., the said meeting having been duly called for the purpose of taking into consideration the foregoing agreement for the merger and consolidation of the Hopewell Electric Light, Heat and Power Company, the Princeton Electric Works and the Princeton Gas Light Company, into a single and new corporation, to be called "Princeton Lighting Company," upon the terms and conditions mentioned and set forth in said agreement; and the said meeting having been duly organized by the choice of Samuel H. Blackwell as chairman and Charles P. Fitch as clerk thereof, and it having been made to appear by affidavit that twenty days' notice of the time, place and object of said meeting had been duly mailed to the last known post office address of each one of said stockholders respectively, the said agreement (it being also the joint agreement of the respective directors of said corporation so proposing to merge and consolidate) was duly submitted to said stockholders so met, and was duly considered by them, and that a vote of said stockholders, by ballot, was thereupon duly taken for the adoption or rejection of said agreement, and that said ballots were duly cast by said stockholders in person, or their duly authorized proxies; and that the votes of the holders of one thousand shares (the same being all of the capital stock of said corporation issued and outstanding) were then and there duly cast for and in favor of the adoption of said agreement.

To all of which I do hereby certify under the seal of the said corporation, and that as such Secretary of said Corporation, I do cause the foregoing agreement, and this certificate, to be filed in the office of

the Secretary of State. 541

Witness my hand and the common seal of said corporation on this 27th day of February, in the year nineteen hundred and three.

THOMAS B. JACKSON, JR.,
(Seal.) Secretary.

To the Secretary of State of the State of New Jersey:

I, THOMAS B. JACKSON, JR., Secretary of the Princeton Electric Works, a corporation organized under the laws of said State, do hereby certify that in accordance with the provisions of a 542
certain act entitled "An Act Concerning Corporations" (Revision of 1896), at a meeting of the stockholders of said corporation which was duly held at the office of said corporation in Princeton, New Jersey, on this 27th day of February, nineteen hundred and three, at the hour of three o'clock P. M., the said meeting having been duly called for the purpose of taking into consideration the foregoing agreement for the merger and consolidation of the Hopewell Electric Light, Hea and Power Company, the Princeton Electric Works and the Princeton Gas Light Company, into a single and new corporation, to be called "Princeton Lighting Company," upon the terms and conditions 543
mentioned and set forth in said agreement; and the said meeting having been duly organized by the choice of Charles P. Fitch as chairman and Samuel H. Blackwell as clerk thereof and it having been made to appear by affidavit that twenty days' notice of the time, place and object of said meeting had been duly mailed to the last known post office address of each one of said stockholders respectively, the said agreement (it being also the joint agreement of the respective directors of said corporation so proposing to merge and consolidate) was duly submitted to said stockholders so met,

544 and was duly considered by them, and that a vote of said stockholders, by ballot was thereupon duly taken for the adoption or rejection of said agreement, and that said ballots were duly cast by said stockholders in person, or their duly authorized proxies; and that the votes of the holders of seven hundred and fifty shares (the same being all of the capital stock of said corporation issued and outstanding), were then and there duly cast for and in favor of the adoption of said agreement.

To all of which I do hereby certify under the seal of the said corporation, and that as such Secretary of said Corporation, I do cause the foregoing agree-
545 ment, and this certificate, to be filed in the office of the Secretary of State.

Witness my hand and the common seal of said corporation on this 27th day of February, in the year nineteen hundred and three.

THOMAS B. JACKSON, JR.,
(Seal.) Secretary.

To the Secretary of State of the State of New Jersey:

I, THOMAS B. JACKSON, JR., Secretary of the Princeton Gas Light Company, a corporation or-
546 ganized under the laws of said State, do hereby certify that in accordance with the provisions of a certain act entitled "An Act Concerning Corporations" (Revision of 1896), at a meeting of the stockholders of said corporation which was duly held at the office of the said corporation in Princeton, New Jersey, on this 27th day of February, nineteen hundred and three, at the hour of 1 o'clock P. M., the said meeting having been duly called for the purpose of taking into consideration the foregoing agreement for the merger and consolidation of the Hopewell Electric Light, Heat and Power Company, the Princeton Electric Works and the Princeton Gas Light Company, into a

single and new corporation, to be called "Princeton Lighting Company," upon the terms and conditions mentioned and set forth in said agreement; and the said meeting having been duly organized by the choice of Orrel A. Parker as chairman and Thomas B. Jackson, Jr., as clerk thereof, and it having been made to appear by affidavit that twenty days' notice of the time, place and object of said meeting had been duly mailed to the last known post office address of each one of said stockholders respectively, the said agreement (it being also the joint agreement of the respective directors of said corporation so proposing to merge and consolidate) was duly submitted to said stockholders so met, and was duly considered by them, and that a vote of said stockholders, by ballot was thereupon duly taken for the adoption or rejection of said agreement, and that said ballots were duly cast by said stockholders in person, or their duly authorized proxies; and that the votes of the holders of nineteen hundred and thirty 1/2 (1,930 1/2) shares (the same being all of the capital stock of said corporation issued and outstanding, except 569 1/2 shares and more than two-thirds thereof) were then and there duly cast for and in favor of the adoption of said agreement.

547 548

To all of which I do hereby certify under the seal of the said corporation, and that as such Secretary of said Corporation, I do cause the foregoing agreement, and this certificate, to be filed in the office of the Secretary of State.

549

Witness my hand and the common seal of said corporation on this 27th day of February, in the year nineteen hundred and three.

THOMAS B. JACKSON, Jr.,
(Seal.) Secretary.

Endorsed:

Filed Feb. 27, 1903.
S. D. Dickinson, Secretary of State.

550 STATE OF NEW JERSEY,

DEPARTMENT OF STATE.

I, S. D. DICKINSON, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of Agreement of Merger and Consolidation between the Hopewell Electric Light, Heat and Power Company, the Princeton Electric Works and the Princeton Gas Light Company, into a corporation to be known as the "Princeton Lighting Company," as the same is taken from and compared with the original filed February 27, 1903, and now remaining on file and of
551 record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Trenton this thirty-first day of October, A. D., 1904.

(Seal.)

S. D. DICKINSON,
Secretary of State.

552

Exhibit D-1.

553

Circular.

To the Bondholders, Creditors and Stockholders of the Princeton Lighting Company:

A receiver having been appointed for the Princeton Lighting Company by the Court of Chancery of New Jersey on or about April 2, 1904, the undersigned, at the request of a majority of the bondholders, creditors and stockholders of the company, having consented to act as a Reorganization Committee, with full power to take such action as in their judgment, may be advisable in the interests of the bondholders, creditors and stockholders, to 554
avoid the expense and delay of litigation, and to procure a prompt reorganization of the company.

In co-operation with the receiver, Richard Stockton, Esq., and with the approval of the Court of Chancery, the committee has caused to be made a thorough examination, by Messrs. J. G. White & Company, engineers, of the physical condition of the property, and by Messrs. Haskins & Sells, accountants, of the books and accounts of the company. This examination shows liabilities approximately as follows:

Prior Liens (mortgages and bonds of constituent companies)	$36,800
First Mortgage 5% bonds issued (including $44,000 sold and $224,000 pledged to secure indebtedness amounting to $174,092)	268,000
Notes payable (unsecured)	30,674
Accounts payable (unsecured)	12,219
Taxes accrued	2,206
Interest accrued on prior mortgages	600
Interest accrued on bonds	319
Interest accrued on notes	2,382
Total Liabilities	$353,200

555

556 There is outstanding capital stock to the amount of $320,000.

The examination further shows that the net result of the company's operations from March 2, 1903, the date of its organization, to April 11, 1904, from the date of the appointment of the receiver, was a loss of $10,933, which is made up in part by interest charges amounting to $15,110.

The report of the electrical engineers, which, together with the report of the accountants, is open to your inspection, at the office of the North American Trust Company, 135 Broadway, New York City, as depository for the committee is summarized as follows:

557 "Under the conditions which we have outlined in the body of our report, we estimate the following combined results of operation for the first year of complete operation under the organized plant, provided it receives competent management:

Estimated Gross Earnings::	
Gas	$21,000
Electricity	21,000
Total Gross Earnings	$42,000
Estimated Operating Expenses:	
Gas	$11,750
Electricity	14,700
558 Total Operating Expenses	26,450
Estimated Net Earnings from Operation	$15,550
Estimated Taxes	2,900
Estimated Net Income	12,650

The loss of the city lighting contract or competition of the University Power Company would materially change these results.

We believe that approximately $5,000 will be needed to put the property into a fair operating condition.

After careful consideration of these reports, together with an inspection of the property, your committee recommends an immediate reorganization of the company, to be effected by the sale of the company's property, either by the receiver or through the foreclosure of the trust mortgage, or in such manner as the committee may deem expedient; that the committee be empowered to purchase the property at such sale and either to sell the same for the benefit of the parties in interest, as provided in the agreement, or convey it to a new corporation to be organized by the committee, in exchange for bonds, preferred and common stock of the new corporation, which the committee, after paying the expenses and compensation of the receiver and of the Reorganization Committee, shall distribute on the following basis, the amounts being estimated on the libilities as shown in the accountant's report: 559 560

	New Securities.		
	Bonds	Preferred Stock	Common Stock
To secured creditors and bondholders 1/2 of present holdings of bonds in new bonds and 1/2 in 5% pfd stock	$135,000	$135,000	561
To unsecured creditors 1/2 of face of claim in pfd. stock and 1/2 in common stock....		22,000	$22,000
To present stockholders 1/3 of present holdings in common stock			107,000
	$135,000	$157,000	$129,000

The Committee recommends that the issue of bonds of the new corporation should not exceed $150,000 on which the interest charge at five per

562 cent. would be $7,500 per annum. In view of the net earnings estimated by the electrical engineers to be $12,600 per annum, which are subject to a deduction of about $2,500 per annum for interest charges on liens and mortgages ahead of the trust mortgage, the committee believe that the interest charge on the new bonds should not be fixed to ex ceed $7,500 per annum. It is proposed that the Committee be empowered to increase the issue of bonds up to $200,000, if found necessary or desirable to provide for retirement of prior liens or for alterations, additions or improvements to the propety, or for working capital for a new company.

563 It is believed that the foregoing plan affords substantial recognition of all existing equities, and as large a capitalization as the probable earnings of the company, on a conservative basis, now justify.

It is proposed that the committee shall have full power to alter or amend any of the provisions of the Plan of Reorganization, if, in their judgment, the interests of the creditors and stockholders will be thereby enhanced.

To accomplish such reorganization promptly, the bondholders, creditors and stockholders are asked to deposit their bonds, statements of claims and certificates of stock with the North American

564 Trust Company, 135 Broadway, New York City, as the depository designated by the Committee subject to the terms and conditions of the accompanying Reorganization agreement together with an assignment of claims in the form hereto annexed, which should be duly executed and forwarded to the depository above named.

Respectfully submitted,
HEMAN DOWD,
GEORGE W. BETTS, JR.,
FERGUS A. DENNIS,
Reorganization Committee.

New York, July 1st. 1904.

Exhibit D-2. 565

Proposed Agreement of Reorganization.

THIS AGREEMENT, made this first day of July, 1904, by and between Heman Dowd, George W. Betts, Jr., and Fergus A. Dennis, as a Reorganization Committee, acting at the request of and on the behalf of the bondholders, creditors, and stockholders of the Princeton Lighting Company, parties of the first part, hereinafter called the "Committee" and the several bondholders, creditors and stockholders of the said company, who shall execute this agreement as parties of the second part, hereinafter called the "Depositors," 566 witnesseth:

WHEREAS, A receiver has been appointed for the Princeton Lighting Company, hereinafter called the "company," a corporation duly organized and existing under the laws of the State of New Jersey, on an allegation of the insolvency of the company; and

WHEREAS, it is necessary for the preservation and protection of the rights and interests of the holders of the bonds of the company, whether as owners thereof, or as holders of the bonds as collateral for indebtedness of the company, and of the creditors and stockholders of the company, that a 567 sale or reorganization of the company's property, shall be effected, and the Committee have, at the request of a large number of such bondholders, creditors and stockholders, consented to act as a Committee to effect such sale or reorganization;

NOW, THEREFORE, in consideration of the premises, and of the agreements herein contained, and of other valuable considerations, the parties agree together as follows:

(1) The said Heman Dowd, George W. Betts, Jr. and Fergus A. Dennis are hereby constituted

568 and appointed a Reorganization Committee, to exercise the powers and perform the duties herein set forth, and the North American Trust Company is designated as the depository for the Committee as hereinafter provided.

(2) The several bondholders of the company who shall execute this agreement and deposit bonds hereunder hereby sell, assign and transfer to the Committee, its successors and assigns, all right, title and interest in and to said bonds.

The creditors of the company who shall execute this agreement and deposit hereunder verified statements or assignments of their respective
569 claims, in such form as the committee shall prescribe, hereby sell, assign and transfer to the committee, its successors and assigns, all their right, title and interest in and to their several claims.

The several stockholders of the company, who shall execute this agreement and deposit their certificates of stock hereunder, duly indorsed in blank for transfer, hereby sell, assign and transfer to the committee, its successors and assigns, all their right, title and interest in and to the said certificates of stock.

The several bondholders, creditors and stockholders agree to accept, in lieu of and in exchange for their said bonds, claims and stock respectively,
570 certificates of deposit issued by the depository, in such form as the committee may approve, and agree that only holders of such certificates of deposit shall be entitled to the benefits of this agreement, and all rights of the depositors in respect to such deposit shall be such only as are evidenced by such certificates and this agreement; and the holder of such certificate, or of any certificate issued in lieu thereof, or in exchange therefor, shall be deemed a party to this agreement and entitled to have and exercise the rights of the original hereunder.

The respective certificates of deposit and the in-

terests represented thereby, and all rights of the 571
holders in respect to the deposited bonds, shall be transferable only subject to the terms and conditions of this agreement, and in such manner as the Committee shall approve, and upon such transfer, the transferees and holders of such certificates shall for all purposes be substituted in place of the prior holders, subject to this agreement.

Notice to the Depositors for any purpose shall be given by mailing written or printed notices to the addresses of the registered holders of such certificates, as the same may appear upon the books of the depository, and such notice shall be as conclusive upon the holders of such certificates and other 572
persons having any interest therein as if said notice had been personally delivered.

Each of the depositors severally agees to execute such other assignments or other instruments or assurances of title as the Committee may require for the purposes of this agreement.

(3) Each Depositor hereby agrees that the Committee shall be and it is hereby vested with all rights and powers of owners of the bonds, claims and certificates of stock deposited hereunder. The Committee may take any action under the mortgage securing the said bonds, which the depositors, or any of them, could have taken, and may cause 573
proceedings to be instituted for the foreclosure of the said mortgage or for the sale of the property covered thereby, or any other proceeding, and shall have power to bid in or purchase the said property, or any part thereof, and if necessary to use the bonds deposited hereunder, together with any bonds the committee may acquire, for the purpose of purchasing such properties, or any part thereof, and to pay therefor such amounts as, in their judgment, may be necessary or desirable to protect the interests of the depositors hereunder, and shall have power to sell and convey any property so acquired, as hereinafter provided.

574 (4) If the Committee shall acquire any or all of the property of the company, it shall have power to sell and convey the same for cash or securities, on such terms as to the Committee may seem advantageous, or to transfer the same to a new Com pany, which the Committee may cause to be incorporated for this purpose, and which shall issue in exchange for the whole or any part of the said property, its bonds, preferred stock and common stock in such amounts and in such form as the Committee may determine.

In the event that the said property shall be sold by the committee for cash, the proceeds of such
575 sale, after the payment of the debts, expenses and compensation of the Committee, shall be distributed among the holders of certificates of deposit hereunder, according to the legal priorities of the bonds, claims and certificates of stock deposited hereunder.

In the event that the said properties shall be conveyed by the Committee to the New Company, as hereinbefore provided, the New Company shall issue bonds, not to exceed in the aggregate the sum of $200,000; preferred stock not to exceed $200,-000 and common stock not to exceed $150,000; and such new securities shall be distributed to the depositors hereunder, after payment of the debts,
576 expenses and compensation of the committee, according to their respective interests, as follows:

To Depositors of bonds: An amount of bonds of the New Company equal in par value to fifty per cent. of the par value of the deposited bonds, and an amount of preferred stock of the New Company equal in par value to the remaining fifty per cent. of the par value of the bonds deposited thereunder.

To Creditors depositing claims hereunder: An amount in par value of preferred stock of the New Company equal to fifty per cent. of the face of the claims deposited hereunder and approved by the Committee, and an amount in par value of the com-

mon stock of the New Company equal to the remaining fifty per cent. of the face of said claims. 577

To Depositors of certificates of stock hereunder: An amount in par value of the common stock of the New Company equal to one-third of the par value of the certificates of stock deposited hereunder.

Any bonds, preferred stock or common stock not distributed to Depositors hereunder shall be donated to the New Company as Treasury stock unless sold by the Committee for the purpose of paying the debts and expenses of the Committee, or raising funds for working capital for the New Company or for alterations, improvements or additions to the said property or for retiring or discharging prior liens or claims against the property, which the Committee is hereby empowered to do on such terms as it may seem expedient. 578

The Committee reserves the right to approve or reject any claim offered for deposit hereunder.

(5) The Committee shall have power, on such terms as it shall deem proper, to procure such loan or loans as may be required by the Committee for the purposes of this agreement, or for purchasing any property, claims or securities in connection herewith, or for paying the expenses and compensations of the Committee, the Receiver, and counsel for working capital for the New Company, hereinafter referred to, or for any improvements or additions to the property of the company, which in the judgment of the Committee, may be necessary or desirable, and to pledge as collateral for any such loan or loans any bonds, claims or certificates of stock deposited or acquired hereunder, or any securities received in exchange therefor. 579

(6) The Committee is vested with full power and authorized to do any and all acts and things necessary and proper in its judgment to be done to carry out this Plan of Reorganization including the power from time to time to make such changes

580 in the same as it may deem expedient or necessary. It shall give notice of any proposed change of the Plan of Reorganization, by filing a copy thereof with the depository and by giving notice thereof to the registered holders of certificates of deposit as herein provided. Any holder of a certificate of deposit who shall not dissent in writing from such change and withdraw his bonds, claims or certificates of stock, within ten days after the mailing of such notice, shall be deemed to have assented to such a change and shall be in all respects bound thereby. Any depositor so dissenting may withdraw his bonds, claims or certificates of stock only
581 on payment of his pro rata share of the debts, expenses and compensation of the Committee.

The Committee may employ counsel, agents or necessary assistants, and may incur and discharge any and all expenses by the Committee deemed reasonable for the purposes of this agreement.

The Committee shall have power to add, from time to time, to the number of its members, to fill any vacancy occasioned by death, resignation or otherwise. It may act by a majority of its members either at a regular or special meeting, convened on notice by its Chairman, or by writing signed by such majority, without a formal meeting.

The members of the Committee assume no re-
582 sponsibility for the execution of this Plan or any part thereof, nor for accuracy of any recitals or representations contained in this Plan or Agreement. No member of the Committee shall be personally liable in any case for the acts of any other nor for the acts of their agents or employees; and each member shall be so liable only in case of his own wilful malfeasance or gross neglect. The members of the Committee or any of them, or the depository, may be or become pecuniarly interested in any of the properties, securities or debts which are the subject of this agreeent, and they shall be allowed their expenses for counsel fees and other-

wise, and a reasonable compensation for their ser- 583
vices, to be fixed by themselves. Any member may, at any time, resign by notice in writing to the Chairman or the Secretary of the Committee.

(7) This Agreement shall bind the Committee and their successors in office, appointed in accordance herewith, and the Depositors hereunder, their and each of their executors, administrators, successors and assigns. The deposit of bonds, statements of claims, or certificates of stock, and the receipt of a certificate of deposit issued therefor shall have the same effect as if the holder of such certificate had actually subscribed this agreement, and a printed copy of this agreement, signed by a 584
majority of the Committee and lodged with the depository, shall be held and taken as the original agreement.

IN WITNESS WHEREOF, the members of the Committee have hereunto signed their names, and all other parties hereto, have deposited bonds, statements and assignments of claims or certificates of stock as above set forth.

Dated, New York, July 1st. 1904.

585

586 **Affidavit of Heman Dowd, used in Opposition to Petition to Intervene and printed at Defendant's Request.**

Filed October 2, 1906.

IN CHANCERY OF NEW JERSEY.

Between BURLINGTON CITY LOAN & TRUST COMPANY, Complainant, and 587 PRINCETON LIGHTING COMPANY, *et al*, Defendants.	On Bill to Foreclose, Affidavit in Opposition to Petition to Intervene.

HEMAN DOWD being duly sworn on his oath according to law, deposes and says:

I am of full age, and am one of the Vice-Presidents of The Trust Company of America, which is the successor of the North American Trust Company, and during the times hereinafter mentioned, I was one of the Vice-Presidents of said North American Trust Company before its merger with
588 The Trust Company of America; I am also Chairman of the Bondholders' Committee of the Princeton Lighting Company, which was duly appointed to conserve the interests of said bondholders who should deposit their bonds with said Committee, and almost all of said Princeton Lighting Company bonds were so deposited; that the North American Trust Company was the Trustee under a mortgage of the Princeton Lighting Company for Three Hundred and Fifty Thousand Dollars ($350,000), dated February 28, 1903, which mortgage has been foreclosed in this Court, and the premises sold to me

acting for said Bondholders Committee; said 589
mortgage was issued to secure Three Hundred and Fifty Thousand Dollars ($350,000) par value of bonds, and also covered the premises which are the subject of this foreclosure, subject to the mortgage of Fifty Thousand Dollars ($50,000) set forth in the Bill herein; said Princeton Lighting Company mortgage contains the following provision with reference to the issue of said Three Hundred and Fifty Thousand Dollars ($350,000) of bonds:

> "Seventy thousand five hundred dollars ($70,500) of said bonds are to be retained by the Trustee, and are to be certified and delivered from time to time as required to 590
> take up and *replace Fifty Thousand Dollars ($50,000) at par, of outstanding bonds* of the Hopewell Electric Light, Heat & Power Company, dated August 1, 1901, which bonds *are redeemable by* the conditions of the mortgage securing them, to take up Five Thousand Five Hundred Dollars ($5,500) first mortgage on the Princeton Electric Works and to take up Fifteen Thousand Dollars ($15,000) mortgage on the Princeton Gas Light Company."

Pursuant to said provision, from time to time, 591
the North American Trust Company exchanged Thirty-eight Thousand Five Hundred Dollars ($38,500) in par value Princeton Lighting Bonds for bonds of the Hopewell Electric Light, Heat & Power Company of the same amount, and held in its hands as Trustee for the Bondholders of the Princeton Lighting Company said Thirty-eight Thousand Five Hundred Dollars ($38,500) of bonds of said Hopewell Company, said bonds to be held pursuant to the terms of both mortgages until the entire Fifty Thousand Dollars ($50,000) par value of bonds of said Hopewell Company should be exchanged for the Fifty

592 Thousand Dollars ($50,000) of Princeton Light-
the Company bonds; that on or before July 19, 1905, The Trust Company of America, as successor to the North American Trust Company, Trustee for said Princeton Lighting Company bondholders, sold at public auction in the City of New York, the said Thirty-eight Thousand Five Hundred Dollars ($38,500) of bonds of the Hopewell Electric Light, Heat & Power Company, which bonds had been held as security for said Princeton Lighting Company bondholders; that the Bondholders' Committee of the Princeton Lighting Company purchased said bonds, and are now the
593 holders and owners thereof, and said bonds are now legal and outstanding obligations under the mortgage which is being foreclosed in his suit; that said bonds were never surrendered for cancellation, have never been canceled, and have never been delivered or surrendered to the Trustee complainant in this suit, but have always been in the possession of said Trustee for the Princeton Lighting Company bondholders until acquired by the Committee for said bondholders; that the Fifty Thousand Dollar ($50,000) mortgage by the Hopewell Company to your complainant set forth in the Bill herein provides as follows:

594 "And it being further distinctly understood and agreed by and between the said Electric Company and the said Trust Company and the holders of any of the bonds respectively secured by this mortgage and the holders of any of the coupons for interest thereon (any law or usage to the contrary notwithstanding) that if at any time the said bonds should become due and payable by reason of the failure of the said Electric Company to keep and observe any of the covenants of this mortgage or by lapses of time, or any of said coupons should re-

main unpaid, no proceeding in law or in 595
equity (except proceedings for the enforcement of the trusts herein declared) shall or will be taken either by the said Trust Company or its successor or successors in the trust, or by the holder or holders of any of the said coupons for interest, for the recovery of the whole or any portion of the principal or interest of said bonds, or for the purpose of selling by execution, or other process of law, the whole or any part of the premises hereby mortgaged, or intended so to be, it being the intention and agreement of the parties that no one or more holders 596
of said bonds or coupons shall have the right in any manner whatsoever to affect, disturb or prejudice the lien of the mortgage by his, her or their action, but that for the better securing of the largest price for the mortgaged premises in the event of a sale, thereof, the mode of sale hereinbefore provided shall be exclusive of all others."

Said mortgage further provided that the complainant shall be under no obligation to recognize any person or corporation as the holder or owner of any bond or bonds until such person shall have produced said bond or bonds and deposited same with the complainant and indemnified the complainant to its full satisfaction. 597

That deponent is informed that the parties who petition to intervene herein have already through their counsel demanded of complainant the foreclosure of the mortgage which is the subject of this suit; that no request or demand has ever been made of the Princeton Lighting Company or its successor that a defense be interposed in this suit, and that if there is any question as to whether any of the bonds are outstanding obligations that would properly be determined on the hearing before the Master to take an accounting and ascer-

598 tain what bonds are due; that neither deponent or any one else connected with the North American Trust Company or its successor, to the knowledge of deponent, ever stated that the said Thirty-eight Thousand Five Hundred Dollars ($38,500) of Hopewell bonds were cancelled or would be cancelled except upon this surrender of the entire issue for exchange for Princeton Bonds; that deponent is not informed of any charge made by the petitioners that the complainant will not duly and properly represent the interests of all the bondholders in this suit.

598 WHEREFORE, deponent prays that the petition for leave to intervene be denied with costs.

HEMAN DOWD.

Sworn to and subscribed before me this 30th day of April, 1906, Notary Public, duly sworn and commissioned and authorized to take affidavits and administer oaths in and for the City and County of New York.

ROBERT McLEOD JACKSON.
Notary Public.

(Seal.)

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