NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
WILBUR J. ADAMS, *et al.*,
Complainants,
and
LAMBERTVILLE HEAT, LIGHT AND POWER COMPANY,
Defendant.

ON BILL, &c.
APPEAL.

BRIEF FOR F. STANLEY NORTH, APPELLANT.

STATEMENT.

This is an appeal of F. Stanley North, a stockholder of record of the Lambertville Heat, Light and Power Company (hereinafter called the "Lambertville Company"), from certain portions of an order of the Court of Chancery made on February 15th, 1916, based on conclusions of Vice-Chancellor Backes, directing the distribution of the funds in the hands of the Receiver of said Lambertville Company. The portions of the order appealed from are set forth at length in the Record, pages 179 and 180. Briefly, the two matters appealed are (first) the al-

lowance of and the direction to the Receiver to pay a claim submitted by the Real Estate Trust Company of Philadelphia for the sum of $5666.67, being the interest from April 1st, 1914, to September 1st, 1915, on an issue of $80,000 of bonds secured by a mortgage to said Real Estate Trust Company of Philadelphia, as Trustee, upon the property of said Lambertville Company; (second) the allowance of and direction to the Receiver to pay out of the funds in his hands an amount which would represent the franchise tax upon the gross receipts of said company for the calendar year 1914 and during the period from January 1st, 1915, to August 31st, 1915, at the request and upon the petition of the Lambertville Public Service Company, the assignee of the bid of the Bondholders' Committee of said Lambertville Company for the property of the said Lambertville Company sold by the Receiver.

A statement of the history of this litigation is necessary for the proper understanding of the present situation. On June 5th, 1914, a Receiver was appointed by the Court of Chancery for the property of the Lambertville Heat, Light and Power Company. On August 7th, 1914, the Receiver of the Lambertville Company filed a petition to sell its property free of liens including the lien of the mortgage securing the issue of $80,000 of bonds. An order to show cause on this petition was allowed and served. On August 25th, 1914, in the presence of counsel representing bondholders and counsel representing the Trustee, an order was made to which all parties in interest assented, that the property be sold free of liens including the mortgage securing the $80,000 of bonds. On September 30th, 1914, the Receiver held the sale and the property was struck off for $30,500. At the sale counsel on behalf of the

Bondholders' Committee requested that the property be sold subject to the mortgage encumbrance and offered to make a bid for the same subject to the mortgage encumbrance thereon (Record, p. 91, line 1).

The Bondholders' Committee filed objections to the confirmation of the sale. In paragraph 3 of said objections (Record, p. 69, line 30), the objectors said as follows:

> "3. That your objectors offer on behalf of their interest, to pay the expenses of readvertising said sale, and will likewise agree to pay at least the sum of five thousand dollars ($5,000) for said property over and above the mortgage thereon, and that they will likewise provide for the payment of interest upon coupons maturing on October 1st, A. D. 1914, and further agree to place said property in such repair that the interests of the public being served by said company will not suffer."

It will be noticed that four things were offered to secure a re-sale of the property subject to the mortgage, (1st) payment of the expenses of the re-sale, (2nd) to pay at least the sum of $5,000 for the property over and above the mortgage thereon, (3rd) to provide for the payment of the interest coupons maturing on October 1st, 1914, and (4th) to place said property in good repair.

In the affidavit of Owen J. Roberts, chairman of the Bondholders' Committee, accompanying the petition, this offer is repeated in the following language (Record, p. 77, line 11):

> "That the committee offers on behalf of the interests which it represents to pay the expenses of readvertising said sale, and will likewise agree to pay at least the sum of $5,000 for said

property over and above the mortgage thereon, provided the said property is sold subject to the mortgage thereon, and that it will likewise provide for the payment of interest upon coupons maturing on October first, instant, and further agrees to place said property in such repair that the interests of the public being served by said company will not suffer. That the committee will enter into such an agreement with either the Receiver or the Court, and will deposit the necessary security to faithfully perform the same."

On October 27, 1914, the Bondholders' Committee filed a petition for an order directing a re-sale of the property and the offer was again repeated in the following language (Record, p. 105, line 3):

"That your petitioners offer, on behalf of their interests, to pay the expenses of readvertising said sale, and will likewise agree to pay at least the sum of five thousand dollars for said property over and above the mortgage thereon, provided the said property is sold subject to the mortgage thereon, and they will likewise provide for the payment of the interest upon coupons maturing October first, instant, and further agree to place said property in such repair that the interests of the public being served by said company will not suffer. That your petitioners will enter into such an agreement with either the Receiver or the Court and will deposit the necessary security either in cash or in the form of a certified check to faithfully perform the same."

In the opinion filed in the Court of Chancery November 27th, 1914, the Court refers to the offer of the objectors, as follows (Record, p. 112, line 35):

"In the objections to confirmation, and petition for re-sale, the committee renew the offer to bid at least $5,000, and further agree that they will pay the expenses of readvertisement and will provide for the payment of interest on the bonds which matured October 1, 1914, and further agree to place the property in such repair that the interest of the public being served by the company will not suffer. A certified check of $5,000 is tendered as a guarantee."

In the concluding part of the opinion the Court said (Record, p. 114, line 22):

"The order to sell will be amended, ordering a sale of the property subject to the mortgage lien, upon condition that the Bondholders' Committee stipulate in writing with the Chancellor, that upon a re-sale they will bid at least the sum of $5,000 and as much more as will, together with the funds in the hands of the Receiver, pay the costs of administration, and all of the debts secured and unsecured of the company (exclusive of the bonded indebtedness), and also the interest on the bonds which matured October 1, 1914; that they deposit with the Receiver a certified check for $5,000, as a guarantee; * * * * ."

On December 17th, 1914, the Bondholders' Committee filed the stipulation using the exact language of the opinion (Record, p. 115, line 20), as follows:

"It is hereby stipulated by the Bondholders' Committee of the Lambertville Heat, Light and Power Company that they will, upon the re-sale of the property of said company, bid at least the sum of five thousand dollars ($5,000) for the property of said company, subject to the mort-

> gage lien of eighty thousand dollars ($80,000) and as much more as will, together with the funds in the hands of the Receiver of said company, pay the costs of administration and all of the debts secured and unsecured of said company (exclusive of the bonded indebtedness), and also the interest on the bonds which matured October 1, 1914; and further stipulate that they will, and do hereby, deposit with said Receiver a certified check for five thousand dollars ($5,000), as a guarantee of the performance of this stipulation.''

From the order directing a re-sale of the property the purchaser at the Receiver's sale appealed to this Court. The cause was argued on March 11th, 1915, and decided June 14th, 1915, by a *per curiam* opinion affirming the order of the Court of Chancery (84 Eq. 499).

On August 2nd, 1915, the Receiver again sold the property and the same was bought by the Bondholders' Committee for the sum of $5,000, ''subject to the aforesaid mortgage, the conditions of the sale and the stipulation of the Bondholders' Committee hereinbefore mentioned'' (Record, p. 190, line 27). This sale was confirmed by the Court on August 17th, 1915, and a deed delivered for said property which took effect on September 1st, 1915. The deed was made to the Lambertville Public Service Company, a new corporation, to which the bid of the Bondholders' Committee was assigned (Record, p. 192, line 20).

On June 20th, 1914, an order limiting creditors was entered (Record, p. 120). On September 17th, 1914, an order barring creditors was entered (Record, page 122).

On September 2nd, 1915, the Real Estate Trust Company of Philadelphia, presumably at the request of the Bondholders' Committee, filed with the Receiver of the Lambertville Company a claim in which, amongst other items, the said Real Estate Trust Company claimed that the said Lambertville Company was indebted to the said Real Estate Trust Company of Philadelphia for $5666.67, being the interest upon the $80,000 of mortgage bonds of the said Lambertville Company from April 1st, 1914, to September 1st, 1915, the latter being the date on which the new company, the Lambertville Public Service Company, took the property from the Receiver. This claim was contested by F. Stanley North, a stockholder of the Lambertville Company and the appellant in this cause, on the following grounds:

1. That the said interest moneys for which said claim was submitted had been agreed to be paid by the Bondholders' Committee of said Lambertville Company in the offer made by it to obtain a re-sale of said property, and especially the interest accruing from April 1st, 1914, to October 1st, 1914.

2. That the deed made by the Receiver to the Lambertville Public Service Company, assignee of the bid of the Bondholders' Committee, was made subject to the mortgage and was therefore subject to the interest which had accrued upon the mortgage.

3. That the Real Estate Trust Company of Philadelphia was not a creditor of said Lambertville Company, and was not the holder of the coupons representing the interest as set forth in its claim.

4. That there was no contract between the Lam-

bertville Company under said mortgage to pay said interest to the Real Estate Trust Company of Philadelphia, and that said Real Estate Trust Company had no authority under the mortgage or otherwise to submit a claim for said interest.

5. That said claim was submitted subsequent to the rule taken to bar creditors and had no standing in court for the allowance thereof.

On December 7, 1915, the Lambertville Public Service Company filed its petition in the Court of Chancery alleging that under date of November 16, 1915, it had received a bill for franchise taxes from the State Board of Taxes and Assessment for the year ending December 31, 1914 (Record, p. 199), and praying that the Receiver of said Lambertville Company should pay said taxes and also should pay to it an amount which would represent the portion of the taxes to be thereafter assessed for the period between January 1, 1915, and September 1, 1915.

The Court of Chancery through Vice-Chancellor Backes filed on January 31, 1916, conclusions in which the claim of the Real Estate Trust Company for the said sum of $5,666.67 for interest was allowed and in which the claim of the Lambertville Public Service Company for said franchise taxes was also allowed.

The result of the allowance of these claims is to substantially exhaust the funds in the hands of the Receiver which otherwise would have gone to the stockholders of the Lambertville Company, of whom the appellant, F. Stanley North, is one.

The appellant contends that the Court erred in allowing the claim put in by the Real Estate Trust Company of Philadelphia for interest and in the al-

lowance and direction to the Receiver to pay the franchise taxes upon the gross receipts for the period between January 1, 1914, and September 1, 1915.

POINT I.

The Offer of the Bondholders' Committee of the Lambertville Company, made to Obtain a Re-sale of the Property, was an Express Agreement, Among Other Things, to Pay the Interest Upon the Outstanding Bonds of the Lambertville Company.

In the objections filed to the confirmation of the first sale of the Lambertville Company's property which was made free and clear of the lien of the mortgage to secure the issue of $80,000 of bonds, the Bondholders' Committee stated "that your objectors offer on behalf of their interests, to pay the expenses of re-advertising said sale, and will likewise agree to pay at least the sum of five thousand dollars ($5,000) for said property over and above the mortgage thereon, and that they will likewise provide for the payment of interest upon coupons maturing upon October 1st, A. D. 1914, and further agree to place said property in such repair that the interests of the public being served by said company will not suffer."

As has been pointed out heretofore, there were four things which were offered by the Bondholders' Committee to secure a re-sale of the property subject to the mortgage, 1st, payment of the expenses of the re-sale, 2nd, to pay at least the sum of $5,000 for the property over and above the mortgage indebtedness, 3rd, to provide for the payment of interest

coupons maturing on October 1, 1914, and, 4th, to place said property in good repair. This offer was confirmed (first) by the affidavit of the chairman of the Bondholders' Committee (Record, p. 77, line 11), and (second) by the petition filed by the Bondholders' Committee for an order directing a re-sale of the property. The language of the objections, affidavit of the chairman and the petition for a re-sale of the property is clear that the Bondholders' Committee would provide for the payment of the interest upon the coupons maturing October 1, 1914. The opinion of the Court which denied confirmation of the sale and directed a re-sale of the property clearly states that in the objections to the confirmation and petition for re-sale "the committee renew the offer to bid at least $5,000 and further agree that they will pay the expenses of re-advertisement and will provide for the payment of interest on the bonds which matured October 1, 1914, and further agree to place the property in such repair that the interests of the public being served will not suffer. A certified check for $5,000 is tendered as a guarantee."

It will therefore be observed that the opinion of the Court denying confirmation of the former sale and directing a re-sale of the property was based upon the Bondholders' Committee doing that which they had offered to do. The Court directed in its opinion that a stipulation should be entered into to this effect. The stipulation was filed and must be construed in accordance with the offer made by the Bondholders' Committee, as it was that offer which prompted the Court to deny the confirmation of the former sale and direct a re-sale of the property.

As above stated, the offer of the Bondholders' Committee was clearly and beyond question an offer not only to bid $5,000 for the property above the

mortgage thereon, but to provide for the payment of interest upon coupons maturing on October 1, 1914. It cannot now be contended, after the re-sale has been granted on these terms, and the property bought by the Bondholders' Committee, that the stipulation does not place the payment of the interest upon the mortgage upon the Bondholders' Committee and that the Bondholders' Committee can evade payment of the obligation which they expressly assumed by turning around and asking that the funds in the hands of the Receiver, which would go to the stockholders of the Lambertville Company, be used to pay that which the Bondholders' Committee had expressly agreed to pay.

The contention of the Bondholders' Committee is that the stipulation is not clear on this point. The offer of the Bondholders' Committee made in the objections filed by them in this case and in the affidavit of the chairman of the committee and in the petition for re-sale, as before stated, is very clear and beyond question that the payment of the interest was something that was to be met or provided for by the Bondholders' Committee. The stipulation, were it not to be read in the light of the other documents in this case, would itself show that it was the agreement that the interest in question should be paid by the Bondholders' Committee for the reason that in the stipulation the committee agreed that they would upon a re-sale of the property "bid at least the sum of five thousand dollars ($5,000) for the property of said company, subject to the mortgage lien of eighty thousand dollars ($80,000) and as much more as will, together with the funds in the hands of the Receiver of said company, pay the costs of administration and all of the debts secured and unsecured of said company (exclusive of the bonded indebtedness), and

also the interest on the bonds which matured October 1, 1914."

It will be observed, first, that in this stipulation the coupons were not to be considered as a debt of the company to be paid out of the $5,000 fund and the money in the hands of the Receiver, for the stipulation expressly excepts the bonded indebtedness of the company from the debts secured and unsecured to be paid, and the bonded indebtedness of the company included the coupons as well as the bonds themselves. The coupons were equally secured with the bonds under the terms of the mortgage, and formed as much a part of the mortgage debt as the bonds. (Record, p. 151, line 1, *et seq.*)

It is well settled that the coupons of a bond secured by mortgage and payable to bearer, though detached from the bond and owned by a person other than the owner of the bond, are still part of the mortgage debt, because the mortgage was executed to secure the coupons as well as the bonds.

Thompson on Corporations (2nd Ed.) Vol. 3, Sec. 2326.

In the second place the stipulation contained the words "and also the interest on the bonds which matured October 1, 1914," which should be construed in view of the offer made by the Bondholders' Committee, and which, as before stated, is so clear and unequivocal as to leave no room for doubt and ambiguity that the Bondholders' Committee was to pay, in addition to the other things which it agreed to do, the interest upon the bonds, which matured October 1, 1914.

The offer was made by the Bondholders' Committee voluntarily in order to obtain a re-sale of the property. The stipulation is presumed to embody

the offer as originally made by the Bondholders' Committee. The stipulation should also be construed most strongly against the party making it upon any question arising as to the meaning thereof. If the stipulation is ambiguous the original offer and the re-affirmation thereof in the form of the petition by the Bondholders' Committee to obtain a re-sale of the property should be used as a guide to determine the construction of the stipulation.

Had no specific provision been made for the payment of the interest, the property sold would have been taken subject to the interest due on the mortgage, as the interest is but a part of the mortgage debt.

It was unquestionably the purpose and plan of the Bondholders' Committee to assume and pay the interest on the mortgage debt upon the property, provided the property at the re-sale thereof was sold, as it was, to the Bondholders' Committee. The Bondholders' Committee expressly provided for the payment of the interest by them on the coupons which matured October 1, 1914, in their offer. They filed their stipulation in the Court of Chancery on December 17, 1914, two months and seventeen days after the first proposal had been made for the re-sale of the property subject to the mortgage. This clearly shows that the Bondholders' Committee had in mind the assumption of the interest upon the mortgage, for they knew the interest was running, and at the time of the making of the stipulation would have naturally brought the matter to the attention of the Court had it not been their intention to assume the interest which matured after October 1, 1914.

It is true that the plans of the Bondholders' Committee were interfered with by the appeal of the pur-

chaser from the order of the Court of Chancery denying confirmation of the first sale and directing a re-sale of the property. The stockholders, however, were not responsible for this delay. The Bondholders' Committee expected necessarily some delay, and the delay was undoubtedly greater than they had anticipated at the time of the making of their offer by which they agreed to pay the coupons which matured October 1, 1914, and purchase the property subject to the mortgage. Such delay cannot enlarge the rights of the bondholders so as to make it possible for the Court to permit them to evade by reason of such delay a burden which they expressly assumed and which they ought to have foreseen and guarded against in the offer which they made.

It is true that the Receiver was in possession of the property and by its use accumulated a larger fund than he would have accumulated had not there been the delay incident to the appeal by the purchaser. But such delay could not be made the medium of benefiting the Bondholders' Committee by permitting them to escape a burden they voluntarily assumed in their agreement, that is, to pay the interest which matured October 1, 1914, and by implication to pay the interest which matured subsequent to that date.

The Court below in its conclusions said in speaking of so much of the offer of the Bondholders' Committee as stipulates to "provide for the payment of interest upon coupons maturing October 1, instant," "that was not the understanding." In this, the Court is in error, as it was the understanding. A reading of the objections made by the Bondholders' Committee at the first sale, a reading of the affidavit of the chairman of the Bondholders' Com-

mittee and a reading of the petition of the Bondholders' Committee praying for a re-sale of the property will show that it was the express agreement on the part of the Bondholders' Committee to provide for the payment of the interest due October 1, 1914. It was the understanding at the time the order was signed, and so stated by the Court, that the interest was to be paid by the Bondholders' Committee in addition to the $5,000.

The Court assigns as a reason for letting the Bondholders' Committee free from the payment of the obligation which they expressly undertook, that "at the time the committee did not represent all of the bondholders—if I recall correctly not much more than one-half of the amount had then consented—and to placate the outsiders this feature was introduced." Thus, in the very language of the Court, there is an admission that the payment of the interest had been agreed upon by the Bondholders' Committee as something which the Bondholders' Committee was to do. There is no evidence that the Bondholders' Committee at the time the Court below permitted them to evade their agreement, represented any more of the outstanding bonds than at the time the offer was made by them to pay the interest. If the Bondholders' Committee did represent more bondholders, this is no reason why the Bondholders' Committee should be permitted to escape the payment of the sum of money which they had agreed to pay for interest. The Court also said that at the time of the making of this offer by the Bondholders' Committee "the situation of the creditors was precarious and no one suspected that we would ever be troubled with a surplus created by good management of the Receiver." The fact that there is a surplus which would go to the stockhold-

ers, would seem to afford no good or sufficient reason why the stockholders should have this surplus taken from them and the Bondholders' Committee should be freed from the payment of an obligation which they had expressly agreed to pay.

The Court below, in assigning its reasons for its conclusions, said, "All that had gone before was thus absorbed by the terms fixed by the Court, and they were recited in the selling order that followed." In other words, the Court below assigns as a reason for not making the Bondholders' Committee pay this interest which they had agreed to pay, the fact that the order which the Court entered in the case is, according to the Court, equivocal, and that the offer made by the Bondholders' Committee should now have excluded from it three of the four things which the Bondholders' Committee expressly agreed to do. The Bondholders' Committee agreed, (1st) to pay the expenses of the re-sale, (2nd) to bid $5,000 over and above the mortgage indebtedness, (3rd) to provide for the payment of the interest coupons maturing on October 1, 1914, and (4th) to place said property in good repair. The Court below now says that the Bondholders' Committee does not have to pay the expenses of the re-sale, does not have to pay the interest coupons, and does not have to place the property in good repair. It has permitted the Bondholders' Committee to escape from doing three of the four things which it agreed to do. It is difficult to understand how the order of the Court based wholly on the offer of the Bondholders' Committee can be so construed.

The next reason assigned by the Court below is that the coupons were debts of the Lambertville Company and should have been paid as debts out of the funds in the hands of the Receiver. It is admit-

ted that the coupons were debts, but they are secured debts of the company and form a part of the bonded indebtedness and the stipulation, as has been heretofore pointed out, expressly excepts the bonded indebtedness from the debts to be paid out of the funds in the hands of the Receiver, so that by the stipulation the coupons are expressly excepted as one of the obligations to be paid out of the funds in the Receiver's hands.

The inconsistency of the Court below is shown best by the fact that claims submitted to the Receiver upon the bonds of the company were not allowed by the Court, and it would, therefore, seem to be strange that the claim for coupons which are a part of the mortgage debt, should be allowed out of the funds in the hands of the Receiver.

The effect of the decision in the Court below on the subject of the bond interest is to give to the Bondholders' Committee, or its assignee, the Lambertville Public Service Company, this property at a less sum than the Bondholders' Committee expressly agreed to pay for it in the offer made to obtain a re-sale thereof.

POINT II.

The Real Estate Trust Company of Philadelphia, Trustee Under the Mortgage of the Lambertville Company to Secure Bonds, has no Standing to Submit a Claim on Interest Coupons Which it Does Not Hold.

The claim for interest is made by the Real Estate Trust Company of Philadelphia, Trustee, under the mortgage of the Lambertville Company. This interest is represented by coupons which are in the hands of parties other than the Real Estate Trust Company of Philadelphia. The Trustee does not hold these coupons. It is insisted that if a claim for interest could have been submitted to the Receiver of the Lambertville Company it should have been presented by those holding the coupons. The powers and duties of the Trustee are defined by the mortgage. The mortgage contains no provision giving authority to the Trustee to submit a claim for interest on unpaid interest coupons. The coupons contain the promise of payment to the holders thereof, but not to the Trustee (Record, p. 134, line 10). The provisions of the mortgage outlined the procedure to be taken by the Trustee to enter upon the property and to sell the same in the event of a default in the payment of interest. The action of the Trustee in these particulars can only be taken upon the written demand of twenty-five per cent. of the bondholders (Record, p. 148, line 20). Unless there is authority in the mortgage for the Trustee to present the claims of bondholders for interest, the action of

the Trustee in so doing cannot be maintained. There is no such authority, therefore the claim cannot be considered. The Court of Chancery in this very case has decided that a bondholder who presented his claim upon the bonds held by him was not entitled to be paid a dividend out of the funds in the Receiver's hands, on the theory that the mortgaged property must first be resorted to for this purpose. It follows that the claim for interest is based upon a part of the mortgage debt and resort must first be had to the avails of the mortgaged property. At least until the security pledged for the payment of the coupons is exhausted, no other funds can be used for the payment of coupons. The payment of the interest coupons is to utilize the avails of the equity in the property belonging to the stockholders after the payment of unsecured creditors for the purpose of paying a secured claim. The result is that the stockholders are thus deprived of a fund which rightfully belongs to them.

POINT III.

The Franchise Taxes Ordered to be Paid by the Receiver by the Court of Chancery Were Not a Lien on the Property Conveyed by the Receiver and Were Not a Debt Due Either by the Receiver or by the Lambertville Company.

On December 7th, 1915, the Lambertville Public Service Company which had accepted from the Receiver a deed dated August 31st, 1915, and to take effect as of the date of September 1, 1915, filed its petition asking that a bill received by it under date

of November 16, 1915, for franchise taxes for the year ending December 31st, 1914, be paid by the Receiver and also that the Receiver be required to pay the amount that such franchise taxes would be for the period between January 1, 1915, and September 1, 1915. The Court below held that these franchise taxes should be paid by the Receiver.

It is insisted that this decision was erroneous for the following reasons: (1st) that at the time of the delivery of the deed to the said Lambertville Public Service Company there were no franchise taxes which were a lien on the property; (2nd) that there was no agreement between the Receiver and the Bondholders' Committee, which was the purchaser at the Receiver's sale of the property, that the said Receiver would pay said franchise taxes; (3rd) the payment of said franchise taxes would relieve the Bondholders' Committee of a burden expressly assumed by it in its agreement or stipulation filed December 7th, 1914, and (4th) that said franchise taxes were not a debt due from either the Receiver or the Lambertville Company at the time of the making of the Receiver's deed.

The statutes applicable to franchise taxes are P. L. 1900, p. 502, as amended by P. L. 1903, p. 225. These provisions are to be found in compiled statutes 1910, p. 5298, Sections, 527 to 532.

The tax imposed by this Act is a license tax and not a tax upon property. *North Jersey St. Railway Co. vs. Jersey City* (Supreme Court 1906) 73 N. J. L. 481, 63 Atl. 833; affirmed in Court of Appeals, 74 N. J. L. 761, 67 Atl. 33.

Notwithstanding this ruling, consideration of this Act and of the sections of the general tax law upon which it must depend in part for its practical efficacy, must lead to the conclusion that the rights and

duties of the grantors and grantees of the property of a company subject to taxation under the Act, with respect to the payment of the tax, are the same as in the case of a tax assessed against real estate. In support of this proposition the following analysis is made. (The statutory references are for brevity limited to the section numbers of the various Acts collected under the title "Taxes and Assessments," in Compiled Statutes, 1910, Vol. 4, p. 5075, *et seq.*)

No tax under the Act of 1900, could be imposed against a company unless it were *actually occupying* the streets. Section 527. Its occupancy of the streets consists solely in maintaining in them its poles and lines of wire. These structures are real estate. They are to be annually valued by the local assessors, and the value certified to the State Board of Assessors, and it is upon the basis of such valuation that the State Board of Assessors apportions among the local taxing districts the taxes imposed by virtue of this Act upon a corporation whose use of the streets extends over more than one taxing district. Sections, 528, 529, 532.

It is apparent, therefore, that the amount of revenue to be derived out of this tax by a municipality whose highways are occupied by a public utility is dependent upon the proportion which the value of the real estate of the utility located upon the highways, &c., in that municipality bears to the value of all of its real estate located on the public highways, &c., of this State. The apportionment is based upon *values,* and not upon the length of lines or any other measure. And the thing valued as the basis of apportionment is real estate located in the highways, &c.

The Franchise Tax Act of 1900 does not in itself

provide a complete scheme of taxation. It provides a basis of assessment, a basis of apportionment, among various taxing districts entitled to share in a single tax to be imposed upon a single company having property in more than one taxing district, but it does not provide any method of collecting the taxes to be imposed by virtue of its provisions.

To render the collection of the tax possible, that is, to give to the entire Act its practical efficacy, the Legislature turns to the other tax laws of the State, and provides that the franchise taxes to be assessed and imposed by virtue of this Act shall become due at the time and place when and where other taxes are due and payable in the particular taxing district, and shall be and remain a first lien on the property and assets of the person or corporation assessed, until paid, and shall be collected in the same manner that other taxes are collected, with the same proceedings now available for the collection of other taxes made applicable to the collection of this tax. Section 532.

The franchise tax therefore cannot be collected without resort to other laws than the law by virtue of which it is imposed. Its due date, its lien, and the method of enforcing the lien all depend upon the general tax law of the State. Section 532.

Turning to the General Tax Act of 1903, and its amendments and supplements we find that taxes become due as soon as the tax duplicate shall be delivered to the collector, (Section 40); which is to be within 30 days after the adjournment of the County Board of Assessors, (Section 26); which board is required to meet on the second Tuesday in September and proceed by adjournment from day to day until its work is completed, (Section 20).

It is apparent, therefore, that taxes cannot become due any earlier than the second Tuesday in September, and conceivably, might not become due until the 20th day of December, if the County Board of Assessors encountered great delay in performing its work. Taxes do, however, indubitably become a lien on real estate on the 20th day of December next after the assessment. (Section 49.) And the payment of taxes, whether or not there be real estate for them to become a lien upon, may be enforced forthwith after the 20th day of December, (Section 43) (but not any earlier).

The methods of enforcing payment are:

(Section 43.)

(1) Distress and sale of goods and chattels of the delinquent in the county.

(2) (Except for real estate tax) arrest and imprisonment of the body of the delinquent.

(Section 51, *et seq.*)

(3) (Real estate taxes) by sale of the property.

A person against whom real estate is assessed may be relieved from payment by showing that he was not the owner at the time the tax became a lien (Section 43.)

Giving due weight to all the foregoing provisions it is apparent that the franchise tax must be regarded as a tax creating, when unpaid, a lien upon real estate; or in many instances it would be impossible for the municipality to which the tax is payable to enforce payment of the same. (This tax is payable to the municipality, not to the State. Section 532.)

The franchise tax to be assessed in respect of the gross receipts of the Lambertville Company from January 1, 1915, to September 1, 1915, when the grantee under the Receiver's deed took possession of the property, will certainly not be assessed previous to the first Tuesday in May, 1916, which is the time set for the companies affected by the Act to make to the State Board of Assessors the report upon which the assessment is based. If the Lambertville Public Service Company had not made its application to the Court, and the Receiver had distributed the entire fund in his hands and been discharged, would not the tax be enforceable against the property on and after December 20th, 1916, despite its purchase by the new company? Surely the Receiver would not in such case be held personally liable for the tax, nor would the city lose the tax because of the sale of the property, for it could neither restrain the sale nor compel before the sale payment of a tax the basis for assessment of which had not yet been created.

Suppose this case: A session of the Legislature intervenes between this time and the time fixed by law for the report of the gross receipts of the defendant from January 1 to September 1, 1915, to be filed. In that session the Legislature may repeal the Franchise Tax Act, it may reduce the rate of taxation, or it may increase the same. How then can the Court at this time render effective justice, or administer proper equity by making an order designed to provide for the payment of a due proportion of this tax out of the fund in the Receiver's hands? If the respondent's contention is sound in principle, viz., that the fund in the Receiver's hands ought to be charged with such franchise tax as may hereafter be assessed in respect of gross receipts

between January 1 and September 1, 1915, then, if at the ensuing session of the Legislature the tax should be increased from 2% to 5%, the increased rate should be charged upon the fund; and it is therefore impossible for the Court to make an order at this time which shall be certain to work justice and equity between the parties.

The question here discussed is a novel one and upon consideration of all of the provisions of the statute relating to the assessment and collection of this tax, and of the difficulties which would ensue upon following any other course, it is apparent that no other rule can be followed than to hold that in the case of companies subject to this tax, purchasers of their property previous to the date when any tax imposed or liable to be imposed by virtue of the Act has become a lien, must be held charged with notice that a tax will eventually be assessed and that the real property of the company is the primary (if not indeed the only) source from which it is to be collected; and that unless they have required from their grantors some stipulation in regard to the payment of the tax, they must be required to pay it when it becomes due, in the same manner as the purchaser of real estate between May 20 and December 20 of any year is charged with the payment of taxes becoming a lien on December 20.

To hold thus is to follow the analogies of the decided cases dealing with assessments against real estate and to create a rule which cannot be said to do injustice to any party, and which avoids the intricacies and difficulties attendant upon making in each case that may arise and adjustment of taxes which by reason of a legislative session always intervening between the end of the taxing period and the date of the making of the assessment must

always be involved in uncertainty, with a possibility that any adjustment seemingly equitable when made may turn out to be inequitable by reason of a change in the statute law before the tax becomes payable.

The Lambertville Public Service Company cannot be said to have any equity to have this tax charged upon the fund in the Receiver's hands. It is the Receiver's grantee. It is charged with knowledge of the notice of sale and conditions of sale and of the fact that the law imposes this tax and makes it a lien upon the property. The Lambertville Public Service Company's assignors, viz., the Bondholders' Committee, who purchased at the Receiver's sale and caused this company to be created, had stipulated for the making of a certain bid for the property, without reference being made to these taxes, and the bid for the property was no whit greater than the sum they had stipulated to bid. The taxes had not at the time of the Receiver's sale become a lien upon the property, nor are they yet a lien.

The stockholders of the company have, however, an equity. When the property was sold under duly noticed conditions, and in the face of a stipulation previously filed binding the Bondholders' Committee to make a certain bid, the stockholders had a right to believe that the fund to be realized from the compliance with the stipulation should not afterward be burdened with the payment of any charges which the conditions of sale would not require the Receiver to pay; and that the Bondholders' Committee, if it became the purchaser, would not by any subsequent action of the Court be relieved from the burden of performing at least the minimum terms of the stipulation which it had filed, viz., "to bid

at least the sum of $5,000," &c. For the Court below to have granted relief to the petitioner in the instant case was in effect to relieve the Bondholders' Committee, whose position is now occupied by the Lambertville Public Service Company, the assignee of the Committee, from a portion of the burden which it took upon itself by the stipulation, and to this the stockholders may reasonably object; for they had a right to believe that if, by compliance with the minimum terms of the stipulation, there was created a fund in excess of the amount required to pay those persons protected by the stipulation, viz., those concerned in the administration of the receivership, and the creditors then having debts against the company, such excess should enure to their benefit. Assuming that the words "debts secured and unsecured of said company" as used in the stipulation, referred not only to those debts existing at the time the stipulation was entered into, but also included such additional debts as might exist at the time of the re-sale which was predicated upon the stipulation, it must be remembered that at the time of the re-sale, August 2nd, 1915, and at the time of the delivery of the deed, September 1, 1915, the franchise taxes assessed in respect of the gross receipts of the calendar year 1914 had not yet become due, much less so had become a lien; and the taxes possibly to be assessed in 1916, in respect of receipts for 1915, could by no means have been looked upon at the time of the sale and delivery of the deed as in any sense a debt of the company.

Respectfully submitted,
FRANK S. KATZENBACH, JR.,
Solicitor of and Counsel for Appellant.

New Jersey Court of Errors and Appeals

Between

WILBUR J. ADAMS, *et als.*,
Complainants,
and
LAMBERTVILLE HEAT, LIGHT AND POWER COMPANY,
Defendant.

on appeal.
On Bill, &c.,

BRIEF OF COUNSEL FOR BOND-HOLDERS' COMMITTEE.

This is an appeal of F. Stanley North, the principal stockholder of the Lambertville Heat, Light and Power Company, from portions of an order allowing and confirming the account of the Receiver and distributing the funds in the hands of the Receiver; which order is dated February 15, 1916. This stockholder appellant was likewise one of the complainants in the bill filed for the appointment of the Receiver. The order of distribution was based upon the conclusions of Vice Chancellor Backes, found on pages 166 *et seq.*, of the case.

The matters to which the appeal is addressed, are:

FIRST.

The direction to the Receiver to allow and pay the claim of the Real Estate Trust Company of Philadelphia, for the sum of $5,666.67, the Trus-

tee appointed by the defendant company, for interest accruing from April 1, 1914, to September 1, 1915, on the outstanding bonds of said defendant company, secured by its mortgage to said trust company, as aforesaid, which said mortgage is set forth at length upon pages 129 *et seq.*, of the case.

SECOND.

The allowance of the application of the Lambertville Public Service Company to direct the Receiver to pay out of the funds in his hands, the franchise taxes upon the gross receipts of said Receiver in the operation of the business of the defendant company, during the calendar year of 1914, and during the period from January 1, 1915, to August 31, 1915.

I.

A.

In considering the first matter of appeal, viz: as to the allowance and direction of the Court, that the Receiver pay the claim of the Real Estate Trust Company of Philadelphia, Trustee, we think it quite essential to give a resumé of the litigation which had taken place up to the time that the Vice Chancellor made an order directing these payments to be made. This history is best stated in the language of the Vice Chancellor, as appears on page 169 of the case, and is as follows:

> "For a better understanding of the situation, it will be necessary to recall some of the history of this litigation.
>
> "The Company was declared insolvent and the receiver was appointed June 5, 1914. In time, the receiver sold the company's plant free and clear of the trust mortgage, for $30,500. Before the sale, a Bondholders' Committee was formed to protect their interests, and upon their petition the sale was set aside and a resale ordered, subject to the mortgage encumbrance,

Adams v. Lambertville Heat, Light & Power Co., 84 N. J. Eq., 96, 499. In their petition the committee asked that so much of the order of sale as directed the property to be offered free and clear of the mortgage, be rescinded, and they offered to pay the expenses of re-advertising said sale, and will likewise agree to pay at least the sum of five thousand dollars ($5,000) for said property over and above the mortgage thereon, and that they will likewise *provide for the payment of interest upon coupons maturing on October 1st, A. D., 1914*, and further agreed to place said property in such repair that the interests of the public being served by said company will not suffer. So much of the offer as stipulates to provide for the payment of interest upon coupons maturing October 1st instant, is claimed by the stockholders to be tantamount to an absolute promise by the Bondholders' Committee to liquidate the coupons to the relief of the company. *That was not the understanding.* At the time the committee did not represent all of the bondholders—if I recall correctly not much more than one-half in amount had then assented—and to placate the outsiders, this feature was introduced. It may also be remarked that at that time the situation of the creditors was precarious, and no one suspected that we would ever be troubled with a surplus created by good management of the Receiver. The *offer respecting the coupons was somewhat equivocal*, and was not entirely satisfactory; so, *to make sure that the interest would be paid*, it was ruled that the order to sell will be amended, ordering a sale of the property *subject to the mortgage lien*, upon condition that the Bondholders' Committee stipulate in writing with the Chancellor, that upon a resale they will bid at least the sum of $5,000 and as much more as will, together with the funds in the hands of the Receiver, pay the costs of administration, and all of the debts secured and unsecured of the company (*exclusive of the bonded indebtedness*), and *also the interest on*

the bonds which matured October 1, 1914; that they deposit with the Receiver a certified check for $5,000, as a guarantee.

"All that had gone before was thus absorbed by the terms fixed by the Court, and they were recited in the selling order that followed. The scheme was, to offer the property subject to a net encumbrance of $80,000, so that all bidders would be on an equal footing. It was also the aim to *impress the property with a lien to that sum against the purchaser, in favor of the stockholders,* who claimed that some of the bond issue was illegal. The concluding language of the opinion emphasizes this. *Over and above the fixed lien,* the committee was to bid not less than $5,000, and as much more as would, with whatever the Receiver may have—much or little—pay all of the debts and expenses whatsoever. The *debts represented by the coupons of the trust company were intended to be included;* as well as the expenses of re-advertising. The written conclusions leave this in no doubt. The *detached coupons are provable against the Receiver.* (*Reinhardt v. Interstate Telephone Co.,* 71 N. J. Eq., 70; *Jones Co. v. Guttenberg,* 66 N. J. L., 659; *Mack v. American Telephone Co.,* 79 N. J. L., 109); and are entitled to be paid. This would have been the case had the Receiver's management been profitless, for, in that event, a compliance with the condition of the order of resale would have called for an increased bid by the committee. The inclusion of 'also the interest on the bonds which matured October 1, 1914,' as an item of the debts to be covered by the bid mentioned in the conditions of sale, was *descriptive of* and *not a limitation* upon the Bondholders' Committee's duty in that respect. When the resale was determined upon (November 27), only the coupons maturing October 1, 1914, were overdue and to be taken care of. Delay in the resale, occasioned by an appeal, was not anticipated, and hence no mention was made of interest thereafter to accrue.

> "Furthermore, the Receiver was in possession of the mortgaged premises—the company's plant—and by its use accumulated the greater part of the fund in controversy. It is but just that he should stand the burden of the interest accruing in that time."

The stipulation above referred to and found on page 115 of the case, was dictated by the Vice Chancellor in the presence of the counsel for the Receiver and counsel for the Bondholders' Committee. The Court prepared the stipulation because neither counsel could agree upon its terms; under these circumstances, it seems to us, that the Vice Chancellor was particularly qualified to construe the meaning of this stipulation, and that his judgment as to the construction and meaning of the stipulation should have great weight, because of these circumstances.

As stated by the Vice Chancellor, all the offers set forth in the several objections and in the petition filed in the case were absorbed by the terms fixed by the Court in its order. The stipulation and order denying the confirmation of sale were both filed on December 17, 1914.

Upon the entry of the order denying the confirmation of sale, an appeal was taken by the purchaser at said sale, and the decision of the Vice Chancellor was affirmed (*Adams v. Lambertville Heat, Light and Power Company,* 84 N. J. Eq., 499), for the reasons given by the Vice Chancellor.

The order refusing confirmation of the sale and directing that the property again be sold, and the terms of said order as set forth on pages 116, *et seq.,* of the case, among other things provided (page 118), that the order of August 25, 1914 (the same being the original selling order), be amended so as to direct the Receiver to offer the property for public sale, in one parcel, "subject to the mortgage thereon, made by the said defendant company to the Real Estate Trust Company of Philadelphia, Trustee * * *

and the $80,000 of bonds issued and outstanding and secured thereby."

Accordingly the Receiver advertised the property for sale, the same to take place on August 2, 1915.

Prior to the sale and on the same day, inquiry was made of the Receiver and his counsel of the amount of claims against the company which the Receiver had allowed, and the amount of expenses or disbursements which the Receiver had made, as well as the estimated amount of expenses the Receiver would necessarily incur, up to the time of the confirmation of the sale and the delivery of the deed and the possession of the property given to the purchaser. At this time an estimate was made of the amount of interest which would accrue upon the bond indebtedness of the company up to the time of the delivery of the possession of the property and understood to be September 1, 1915. The Receiver likewise gave an estimate of the monies on hand, also an estimate of the amounts which he expected the company would receive up to the time of the delivery of the deed to the purchaser. Inquiry was also made at this time of the Receiver and his counsel, of the amount that the Receiver and counsel would request the Court to allow for allowances and fees, and it was ascertained that the bid of $5,000, including all of the items above mentioned, was sufficient, with the monies on hand with the Receiver, to pay all of the expenses of administration; all of the debts of the company, including the interest upon the bonded indebtedness; and still leave a balance in his hands to cover any liability which the Receiver had either not expected or overlooked.

After the above inquiries had been made, the receiver then adjourned to the office of the company, where the sale of the property was conducted. The receiver read a copy of the advertisement and the conditions of sale, a copy of which conditions is found on page 211 of the case. It will be noted that the con-

ditions of sale provided, that the property was to be sold subject only to the mortgage made by the defendant company to the Real Estate Trust Company of Philadelphia, trustee, and the $80,000 of bonds issued and outstanding and secured by said mortgage, but free from all other liens and encumbrances, and the property was sold upon these conditions to the Bondholders' Committee, who made a bid of $5,000 in accordance with the order of the Court. The deed given by the Receiver likewise contains the provision, that the property is sold only subject to the $80,000 of bonds, "but free from all other liens and encumbrances" (case, page 189, lines 10 and 11).

The sale was duly reported to the Court and an order to show cause why the sale should not be confirmed was made and served upon all stockholders and creditors, and there was no objection made to the confirmation of the sale. After the sale had been made, and on the same day, at a conference in the office of the Receiver's counsel, the question was discussed with the Receiver and his counsel as to what method should be adopted to protect the Receiver in the payment of the interest upon the bonded indebtedness, and it was as a result of this conference that the claim of the Real Estate Trust Company of Philadelphia, trustee, found on page 124 of the case, was filed with the Receiver.

The Receiver raised no question as to the claim being filed after the entry of the order barring creditors, and the Receiver, pursuant to the authority of the statute, conducted a hearing upon this claim and the proper officer of the Trust Company was present at the Receiver's hearing and proved the several items of the claim.

In due time the Receiver filed his account, which disclosed that he had on hand after the disbursements for expenses in the conduct of the receivership, approximately the sum of $15,000, which said sum was

more than sufficient to pay all of the claims allowed by the Receiver, including Receiver's allowances, and counsel fees to Receiver's counsel, franchise, taxes, the claim of the Real Estate Trust Company of Philadelphia, trustee, for interest, and still leave in his hands a balance for distribution to the stockholders of the defendant company.

With the Receiver's report, he presented his ruling upon the claim of the Real Estate Trust Company of Philadelphia, trustee. The Receiver allowed certain of the claims of the Trust Company, disallowed certain items consisting of fees and costs paid to counsel for the Trustee, and presented the portion of the claim covering the interest from April 1, 1914, to September 1, 1915, for instructions as to whether the same should be allowed or disallowed.

Upon the filing of the final account of the Receiver, an order, dated November 9, 1915, was obtained, directing the stockholders and creditors of the defendant company to show cause before the Court of Chancery, on the twenty-third day of November, 1915, why the final account of the Receiver, showing the receipts and disbursements, should not be allowed and confirmed, and also praying the affirmance of the acts of the Receiver in allowing and disallowing certain claims filed with him.

At the time that the order to show cause was obtained, there had not yet been any application made by the Lambertville Public Service Company for the direction to the Receiver to pay the franchise taxes for the year 1914 and those earned up to September 1, 1915, but at the return of the order to show cause, the fact that the Receiver had not paid the franchise taxes for the year 1914 and had made no provision for the payment of the franchise taxes earned up to September 1, 1915, was brought to the attention of the Receiver and his counsel, and it was then that the Court directed that a petition be prepared and filed,

setting up the facts, in order that the matter might properly be brought to the attention of the Court. The petition of the Lambertville Public Service Company was filed on December 7, 1915, and will be found on page 190 of the case.

Upon this petition, the order to show cause, found on page 201 of the case, was made returnable on December 7, 1915, at which time all of the matters were argued before the Court.

In the petition which was submitted by the Lambertville Public Service Company, the matter of real estate taxes was also included, although the Vice Chancellor, at the time of the hearing, was satisfied that the real estate taxes were not a proper disbursement to be made by the Receiver, but these taxes, however, the Lambertville Public Service Company included in their petition, and the Court adhered to its views expressed at the time of the argument of the cause, and denied the application of the company to have the property taxes paid out of the funds in the hands of the Receiver (see order, case, p. 177).

All of the above recited facts were before the Vice Chancellor, and considered by him in reaching the conclusion that the trustee's claim should be allowed.

The conclusion is irresistible, that the Vice Chancellor intended by the order to resell the property just as his conclusions stated, that "the scheme was to offer the property subject to the *net* encumbrance of $80,000," and that all other claims, secured or unsecured, which were against the property and estate of the defendant company, including the interest which would accrue upon this bonded indebtedness, was to be met out of the fund which came into the hands of the Receiver from the bid of the Bondholders' Committee, together with the balance remaining in his hands after paying the administration costs, and expenses. If the amount of this fund was not sufficient to pay all of said items, the deficiency would have to

be met by the Bondholders' Committee. This liability on the part of the Bondholders' Committee would be great or small, depending upon the successful administration of the trust by the Receiver. If the Receiver's expenses exceeded the receipts the amount required to be paid by the Bondholders' Committee would have been increased accordingly. Fortunately, however, the administration of the trust was successful, and the amount of the bid of $5,000 was more than sufficient, together with the funds in the hands of the Receiver, to pay all of the debts, including the interest debt, and the expenses of the administration, and still leave a balance to be distributed to the stockholders.

The Receiver and his counsel undoubtedly understood that when the Bondholders' Committee made their bid of $5,000, the same covered all of the debts, interest on the bonds, and left a substantial balance to cover the administration expenses, or else, why would the Receiver report the sale to the Court and obtain an order of confirmation without further assurance as to the interest upon the bonds. The deed of the Receiver expressly states that the property is sold subject only to the bonded indebtedness of $80,000, and free from all other liens and incumbrances, in other words, that this was the "net encumbrance" upon the property, and that the purchaser took the same subject thereto (see Receiver's deed, case, page 189, line 9, *et seq.*).

A still further reason is given by the Vice Chancellor for the allowance of the claim of the Trust Company, Trustee, and that is, "The Receiver was in possession of the mortgaged premises—the company's plant—and by its use accumulated the greater part of the fund in controversy. It is but just that he should stand the burden of the interest accruing in that time" (Case, page 171).

Were there no other ground in the case, but this fact to support the conclusions of the Vice Chancellor,

in our opinion it would have been sufficient. This theory of the law is expressed in the text books and as well in the cases cited in support thereof.

Gluck and Becker, on *Receivers of Corporations,* 2d Ed., Section 33, at page 141, says:

> "After the Court has once taken possession of a railroad, and is operating it through its Receiver, it necessarily follows, to accomplish the effectual administration of the trust assumed by the Court, that expenses of preservation and other necessary expenses should be paid out of the income, or when necessary, out of the corpus of the property, before distribution, or before the Court passes over the property to those adjudged to be entitled to it. Any act necessary for the protection or preservation of the property, is a legitimate and proper act, and whatever is manifestly appropriate to such preservation, or to the enhancement of the value of the property, and not in excess of the powers of the corporation will always be upheld and enforced by the Courts."

And on page 142 further says:

> "The reason of this rule is to be found in the character of quasi public corporations. The assumption of control by a court, though a receiver, of a railroad devolves upon that Court, a duty to the public in the continued operation of the road. It must be assumed that the holders of vested liens upon railroad property, have taken them subject to the exercise of this power by the Court."

And in support of this proposition of law, they cite, *inter alia, Lloyd vs. Chesapeake &c., R. R. Company,* 65 Fed. Rep., 351, in which case their Circuit Judge Lurton, held (p. 359), that it was within the scope and discretion of a court of equity, in preserving subordinate interests, to authorize and direct receivers appointed at the instance of creditors to borrow money and pay the coupon interest on first mortgage bonds.

The defendant company in the present case was incorporated under the General Corporation Act "Act, &c." (1896), and was operating an electric light plant at Lambertville which supplied that city with its electric light, and it was highly essential because of this service, and in order to preserve the value of its property, consisting of these franchises, etc., to operate the plant of the company, and because of this the Court by its order, dated June 5, 1914, authorized the Receiver to continue and conduct the business of the defendant company with the usual powers prescribed, among which were, "to do all acts and things proper and necessary to protect the property and rights of which he was so appointed Receiver, for the benefit of the creditors and stockholders of the company; and with leave to apply to the Court for instructions touching his said duties." There is no doubt that it was the duty of the Receiver to see to it that the interest upon the mortgage which covered all of the property in his hands was paid, as this was absolutely essential for the preservation of the property in his hands in the interest of the creditors and stockholders. This duty required the Receiver to take every necessary step to protect the property of the company in his charge, including the payment of the interest which was accruing during the pendency of the receivership. The Receiver knew that there was sufficient monies coming into his possession to more than discharge the expenses of administration, as well as a sum sufficient to pay the interest upon the bonded indebtedness and as he took the property "subject to all the duties and obligations which rested upon the corporation with respect thereto" (*N. J. Southern Railway Co. vs. Board of Railroad Commissioners,* 41 N. J. L., 235). He should, during the pendency of the receivership make provision for and pay this interest.

Two reasons may be advanced in excuse of the nonaction of the Receiver: First, that if the appeal

of Shields was sustained, all the funds in his hands would, under the statute, be subject to the lien of the principal and interest of the bonds, and would be paid so far as the funds would extend. Second, if the appeal was unsuccessful, then with the funds he was accumulating and the bid of $5,000, he knew there would be a sum sufficient to meet all demands including the interest on the bonds.

B.

In the Court below, and in this Court, the point is made that the Real Estate Trust Company of Philadelphia, the Trustee under the mortgage, had no standing to submit a claim on the interest coupons, the basis of this contention being that there was no authority in the mortgage for the Trustee to present the claims of bondholders for interest, and that hence the claim filed by the Trustee was filed without any authority granted them under the mortgage, and therefore the claim could not be considered by the Receiver. By reference to the mortgage it will be seen that under the several trusts as therein set out, specific authority is given to the Trustee, in addition to entry upon the property, foreclosure and sale, as follows (Case, p. 151): "or the Trustee shall and will, upon the written request of the holders of a like amount of said bonds, then outstanding, and upon like deposit and security and indemnity, or without such request or deposit, or security or indemnity, in the Trustee's own discretion, the Trustee may proceed to protect and enforce the rights of the bondholders under these presents by a suit or suits in equity or at law, whether for the specific performance of the said stipulated covenants and agreements, or any of them, contained herein and on the part of the company to be kept and performed, or in aid of the execution of the powers herein granted or otherwise, as the Trustee

being advised by counsel learned in the law, shall deem most effectual to protect and enforce such rights—it being understood and it is hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies additional to all other remedies allowed by law, and that the same shall not be deemed in any manner whatever to deprive the Trustee or the beneficiaries under this trust of any legal or equitable remedy by judicial proceedings consistent with the provisions of these presents, according to the true intent and meaning thereof."

In addition to this authority it seems to us that the duty of the Trustee, as set forth in the deed of trust, to collect and enforce not only the payment of the principal of the bonds, but the interest as well. In this case, notice had been served upon the Trustee notifying it that the property of the defendant company would be sold subject only to the $80,000 of bonds, and the Trustee had notice of the order which had been entered in the cause limiting the time in which creditors could file their claims. The Trustee also had notice that it was intended that the interest upon the bonded indebtedness up to the time that the property would be handed over to the purchaser by the Receiver would be payable out of the funds in his hands, and it would seem to us that it was its duty, under these particular circumstances, to present its claim, on behalf of its *cestui que trust,* and insist upon the payment by the Receiver of the interest which had accrued up to the time that the Receiver gave up the possession of the property.

> "Trustees for bondholders are governed by general rules that govern trustees in the ordinary performance of the duties of a trust."
>
> 2 *Perry on Trusts,* Sec. 760 (5 Ed.)
>
> "When they (trustees) consent to accept a mortgage or conveyance in trust they take the office with the possibility of being called upon

> to perform such duties. They must take care that the security is not depreciated or destroyed by a stoppage of the operations of the corporation; and courts of equity will compel them to take such steps as the safety of the bondholders require."
>
> *Ibid.*, Sec. 763.

We think from the foregoing that the conclusion of the Vice Chancellor, that the claim of the Trustee should be allowed, was perfectly proper and was entirely within the rule of law as above laid down.

II.

The second matter of appeal is to the allowance of the application of the Lambertville Public Service Company directing the Receiver to pay the franchise taxes for the year 1914 and during the period of 1915 up to Spetember 1, 1915.

In support of the appeal, the contention is made:

(a) The franchise taxes were not a lien on the property conveyed by the Receiver; and

(b) Were not a debt due either by the Receiver or by the Lambertville Heat, Light and Power Company, the insolvent corporation.

Counsel argues in support of contention (a) that the taxes were not a lien on the property of the defendant company at the time of conveyance, that the Section 6 of the Franchise Tax Act (P. L. 1903, p. 225, Comp. Stat., pp. 5299-5300), which provides that "such franchise tax so ascertained, which shall become due at the time and place when and where other taxes are due and payable in such taxing district," and because the franchise tax act does not provide a method for its collection, resort must be had to the General Tax Act of 1903, and that under that act the taxes in question did not become a lien until De-

cember 20th of the year subsequent to their being earned.

Counsel further argues that the taxes "had not at the time of the receiver's sale become a lien upon the property, nor are they yet a lien."

Reasoning likewise from the provisions of the General Tax Act of 1903, counsel argues in support of contention (b) that the franchise taxes assessed with respect to the gross receipts of the calendar year 1914, had not yet become due, much less had become a lien; and the taxes possibly to be assessed in 1916 in respect of receipts for 1915 could by no means have been looked upon at the time of the sale and delivery of the deed as in any sense a debt of the company.

The Vice Chancellor, in disposing of the same contention, made before him, said:

> "The proportion of the franchise tax for the year 1915 on the gross receipts of the Receiver from January 1st to September 1st, is ordered to be paid. This is a fee levied by the State for its license to the Receiver to prosecute a public function within the public easement of highways. C. S., 5298, *North Jersey St. Ry. Co. vs. Jersey City*, 73 N. J. L., 481; 74 N. J. L., 761. The Receiver has enjoyed the privilege during his administration, and he is debtor to the State. The fact that the State orders the taxes distributed amongst the various municipalities in which the physical properties, in the highways, of the common carrier are located, according to their assessed valuation; and that they are payable, to be collected, and become liens on the property, the same as taxes on real estate, does not relieve the Receiver of his personal duty to pay them. They are readily ascertainable by calculating at the rate of two per cent on the gross income during the period mentioned. The amount may be retained until the assessment is made, or the sum may be paid into court to await that event. If there are any like past taxes due and assessed, the Receiver will pay them."

We think the Vice Chancellor is fully supported by the authorities hereafter cited.

The argument of counsel for the appellant is a contention, that the rule governing taxes upon real estate, namely, that they do not become due or a lien upon real estate until December 20th of each year, governs the payment of franchise taxes. This insistment is unsupported in his brief by the citation of a single adjudication.

To our minds it was an immaterial fact whether the franchise taxes ordered paid were due or not due, a lien or not a lien at the time of the delivery of the deed. The fact was that the officer of the Court of Chancery had sold all of the property of the defendant company; that there were certain license fees or taxes due the State, but as to some of said fees the State by its municipal officers were not in position to enforce collection; the Court appointing such officer (receiver) being apprised that the entire estate of the company is about to be distributed, directs its Receiver inasmuch as he has enjoyed the franchise, to pay such taxes as are due and those to be assessed, as the Receiver is debtor to the State.

Neither the Franchise Act of 1900 as amended in 1903 (Comp. Stat., 5298-5300) nor the General Tax Act of 1903 contemplated an insolvent corporation, and it is apparent that the General Tax Act of 1903, is inefficacious in collecting the tax in such cases. The franchise tax is a personal tax (*State, N. J. S. R. R. Co. vs. Railroad Commissioners,* 41 N. J. L., 235), and under Section 43 of the Tax Act two methods are to be employed, distress and imprisonment, adopting either would it result in the payment of the taxes?

In the present instance, assuming counsel's argument to be the law, the taxing officer, on December 20, 1915, would have a franchise tax against an insolvent corporation, no property in his taxing district, and the only semblance of the body of the delinquent

would be the Receiver, to take into custody. While the latter method might accomplish something—yet not the payment of the taxes.

Rather than to follow the General Tax Act of 1903, it would seem more efficacious to follow the provisions of P. L., 1905, page 508, which is a further supplement to the original Franchise Tax Act of 1884. The act of 1905 also contains a general repealer.

It seems to us that this case and the ruling of the Vice Chancellor, is one not limited to a strict construction of the taxing law, but is to be decided upon the broader powers of the Court, although under the statute and the decisions, the ruling is fully supported.

This broader power is well stated in Gluck & Becker on *Receivers of Corporations,* at page 374:

> "That the receiver of a railroad, while operating the road is operating it under and by virtue of the franchise which has been conferred upon the corporation by the State.
>
> "Under the order of the Court he takes possession of all the property of the corporation, and proceeds to operate, that is, to run its trains, and to do all that was formerly done under the direction of the Board of Directors. In this way he uses the franchise which has been conferred by the State upon the company, and he uses it as an officer of the Court which is administering the affairs of the Company, and, through the Court, he acts as the company to the same extent, *pro hac vice,* as if the Board of Directors were operating the railroad. It is the franchise which is being used in both cases, only in one case it is for the company and substantially by it, by means of its Board of Directors, while in the other, the same franchise is being used and the road is operated under it by an officer of the Court.
>
> "When such officer receives the gross earnings arising from its management, and has in his hands money enough to pay the taxes upon the franchise, the State has a paramount right to collect them before the moneys applicable to

> such payment shall be paid away by the receiver.
>
> "Having such paramount right, the Court may, in its discretion, listen to the petition of the State, and direct its officers to make the payment of the taxes, etc."

> "The State having a paramount right to be paid out of the assets in the hands of the receiver for taxes due it, it devolves upon the Court to be satisfied, and upon the receiver to see that the taxes due the State are paid before the trust estate is distributed to other creditors.
>
> "This paramount right of the State upon the untrammeled exercise of which depends the power to protect the very fund being distributed, and to maintain the existence of the tribunal engaged in distributing it, cannot be reduced to the level of an ordinary debt, and be cut off even if it be not presented to the Court in the prescribed period" (p. 375).

In support of this statement the learned author cites the following authorities:

Central Trust Co. v. Railroad Company, Court of Appeals, of petition of Attorney General, 110 N. Y., 250.

Syllabus:

> "Where a railroad corporation is insolvent and all its property is in the hands of a receiver appointed in an action to foreclose a mortgage thereon, the amount of which exceeds the value of all the property, and the Receiver, as such, is operating the road, under the order of the Court, and has in his hands moneys arising from the gross earnings sufficient to pay a tax imposed upon the corporation under and pursuant to the Corporation Act of 1881 (Chap. 361 of the Laws of 1881), the State is not confined to the proceedings prescribed in said act to collect such tax, but the Court, on petition and application of the Attorney General made in the foreclosure suit, and on notice to

> the corporation and to the Receiver, may, in its discretion, make an order directing the Receiver to pay the same out of the said gro earnings."

Peckham, J., after reciting the provisions of the statute relative to the collection of these taxes, in several respects similar to our act, said, on page 256:

> "We do not think that these provisions of the statute should, under such circumstances, be held to restrict the general power of the Court to direct its officer to pay those claims which exist in favor of the State for taxes imposed upon the corporation, when the claim of the State for the payment of such tax is, as we think, a paramount one."

At page 259 he says:

> "We reiterate the statement of Porter, J., in *re receivership of Columbian Ins. Co.* (3 Abb. Court of Appeals, Dec., 239), that there is great force in the claim that the State has succeeded to all the perogatives of the British Crown, so far as they are essential to the efficient exercise of powers inherent in the nature of civil government, and that there is the same privity right here, in respect to the payment of taxes, which existed at common law in favor of the public treasury."
>
> *Philadelphia & R. R. R. Co. v. Commonwealth Supreme Court,* 104 Pa. St., 80.

The company's property was in the hands of a receiver, a judgment had been recovered against the company in favor of the Commonwealth, pending the receivership for taxes due the State, upon the gross receipts of the company, during its operation by the receiver.

Mr. Justice Gordon, delivering the opinion of the Court:

> "That the receipts were taxable under and by force of the act of 1879 there can be no doubt; and if they were not to be assessed

against the Philadelphia & Reading Railroad Company, we know not who was to account for them. If the owner of this property was not to bear the burden of the public charges against it, we are at a loss to determine upon whom they should fall. The receivers, the appointees of the United States Circuit Court, were owners neither of these receipts nor of the property whence they were derived, and they were certainly not personally accountable for the taxes upon it. The receivers had nothing but a qualified right to the receipts, which by the decree came into their possession. They had a right to receive them, but only for the purpose of applying them to the debts of the Company. If then, this was the defendants property, and was used for the defendant's benefit, we cannot see to whom else the taxes could properly be charged.

"The money to pay the taxes must at all events come from the purse of the company. In either event the Commonwealth was entitled to her taxes, and that the owner of the property taxes should be made to pay the charges upon it is a conclusion that is but just and reasonable."

Geeley vs. Savings Bank (Supreme Court), 98 Mo., 458.

Defendant's property in hands of Receiver. Collector of taxes intervened by petition, claiming taxes against the personal property of the bank for $2,-918.22, and praying an order on the receiver to pay the same.

On October 7, 1886, rule to bar creditors.

The court below refused to make an order for the received to pay, on the ground that the claim was not filed within the time prescribed by the order. *Appealed.*

Brace, J., says:

"The amount of the taxes was undisputed, and the receiver had in his hands funds suffi-

cient to pay them, and we think that the order should have been made.

"It may be conceded that the State did not have an express *lien* upon the assets that went into the hands of the receiver, but it had a right paramount to other creditors to be paid out of these assets, a right which it could have enforced through its revenue officers by the summary powers of distress, but for the fact that the property and assets of its debtor had passed into the custody of its courts, whose duty it was, in the administration and distribution of those assets, to respect that paramount right, upon the untrammelled exercise of which depends the power to protect the very fund being distributed, and to maintain the existence of the tribunal engaged in distributing it, and to make no order for the distribution of assets, *in custodia legis,* except in subordination to that right. The duty devolved upon the Court to be satisfied, and upon the receiver to see that the taxes due the State were paid before the estate was distributed to other creditors; and we can conceive of no scheme of administration that the Court could properly adopt by which the State's demand could be reduced to the level of an ordinary debt, and be cut off unless presented to the Court for allowance within a given time."

That the Vice Chancellor was fully within his rights when he directed that the receiver deposit in the hands of the Clerk of the Court, a sum sufficient to pay the amount of the franchise taxes for the period up to September 1, 1915, is supported by the following authorities:

In re George Mathers' Sons Co., 52 N. J. Eq., 607.

"Where a receiver has been appointed for an insolvent corporation, and has taken possession of its assets, and exercises its franchises, he is a necessary party to a petition by the State for an injunction to restrain the further exercise of any franchise, etc., because of the

corporation's non-payment of the franchise tax."

"Where an insolvent corporation is of a public character, its property and work being dependent upon the franchise, and the public being interested in the continuance of the work, its receiver must pay the State franchise tax until the franchise of the corporation shall be sold."

The Chancellor (McGill) says, p. 609:

"Our Corporation Act contemplates two classes of insolvent corporations. (1) Those of a public character, such as a canal, railroad or turnpike corporation, whose property and work are dependent upon the franchise and in whose continuance the public is interested. * * * (2) Those which are mere private corporations," etc. "In the former class, the franchise is taken by the receiver, kept alive by the performance of corporate duties and ultimately sold. It follows, as to the first of these classes, from the receiver's duty to preserve the franchise, he must pay the franchise tax from year to year until the franchise passes from him."

On page 610:

"I should add, however, that if after the creditors of such an insolvent corporation are paid in full, there remains some money to distribute to stockholders, the receiver should pay all franchise taxes assessed after his appointment, before he makes any distribution to stockholders, because it is the capital of the corporation that he then holds, which is pledged to satisfy all obligations of the corporation before it is free to be returned to the stockholders.

"What is to be considered an exercise of the franchise of an insolvent corporation by a receiver may vary with the circumstances in each case. Where the ordinary and usual business of the corporation is continued, as in the present instance, at a profit, in the name of the

company, by the receiver, in the hope that the financial difficulties may be adjusted and the assets may be restored to the company, there can be little hesitation in concluding that it is the duty of the receiver to pay the tax while he continues the business."

In the case of *Crews vs. United States Car Co.*, 60 N. J. Eq., 514, Chief Justice Gummere, speaking for the Court of Errors and Appeals, at page 516, uses this language:

"Although the Statute designates an imposition of this kind as a license fee or franchise tax, it plainly is not a tax against corporate franchises. In fact it is not, strictly speaking, a tax at all, nor has it the elements of one. It is, in reality, an arbitrary imposition laid upon the corporation, without regard to the value of its property, or of its franchises, and without regard to whether it exercises the latter or not, solely as a condition of its continued existence.

"But, it is contended on behalf of the receivers that even if it be considered that this 'tax' was properly laid, still, by force of the statute, under which it was assessed, it became, 'a debt due to the state *when determined*,' and that, as it was not, 'determined,' until some months after the receivers were appointed it was, distinctly, not a debt of the corporation, at the time of their appointment, and consequently, is not payable out of the assets in their hands, for the reason, that, by their appointment, such assets were converted into a trust fund for the *then existing* creditors. In support of this contention *Collins vs. Brierfield*, 150 U. S., 371, and Cook Stock (4 Ed.), par. 9, are cited.

"It seems to us, however, that this contention cannot prevail without disregarding the statutory provisions which regulate the subject. Section 6 of the act under which this so-called tax is laid, declares, as has already been stated that such tax shall be a preferred debt in case of insolvency, and Section 68 of the Corporation Act (P. L. of 1896, p. 209), provides that:

> "'All the real and personal property of an insolvent corporation and all its franchises, rights, privileges and effects, shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.'
>
> "It is manifest, therefore, that when the 'tax' is assessed against an insolvent corporation, after the appointment of a receiver the fund out of which its payment must be preferred is that which is in his hands, for there is no other fund upon which it can be charged, and, consequently, in no other way can each of these two statutory provisions be given full force and effect.
>
> "The decree appealed from should be reversed and the receivers be directed to pay into the state treasury the amount of the disputed tax."

And in *Phillipsburgh R. R. vs. Assessors*, 82 N. J. L. at page 56, Judge Trenchard quotes and follows the Court of Errors in *North Jersey, &c. Railway Company vs. Jersey City* (*supra*).

The syllabus (2) reads:

> "The annual franchise tax which Sections 4 and 5 of Chapter 290 of the Laws of 1906 (P. L., p. 644) require the State Board of Assessors to levy upon such proportion of the annual gross receipts of a street railroad corporation as the length of its line in this state, upon any street, highway, road, lane or other public place, bears to the length of its whole line, is not levied on the gross receipts of the corporation, nor on the business of the corporation, but is merely an excise tax upon the franchises of the corporation, viz., the franchise to exist and the franchise to occupy the streets, which is measured in part by the gross receipts," etc.
>
> *Chesapeake, &c. Railway Co., vs. Transportation Company*, 62 N. J. Eq., 752.

In this case the assets of the insolvent corporation were not sufficient to satisfy the liens thereon and the

expenses of the receivership. Corporate business carried on at a loss, and a franchise tax levied during the receivership had not been paid. The Attorney General contended that this tax was entitled to preference in payment. Decree denied payment in preference to receiver's allowances and expenses of administration and to liabilities assumed by receiver. ~~Summere~~ Garrison, J., held; correct in denying preference to, etc.,

> "and it was incorrect as far as it denied application of Attorney General for payment of the franchise tax in preference to liabilities other than expenses incurred by receiver in carrying on the business or in the course of the administration of its affairs."

Decree reversed to effect this modification.

From the foregoing authorities, it is apparent that the Court adopted the best method provided, to insure the payment of the franchise fees due the State and his order to that effect was wholly consistent with the law and the adjudications on the subject.

Respectfully submitted,

SCOTT SCAMMELL,
W. HOLT APGAR,
LINTON SATTERTHWAITE,
Of Counsel with Respondents.

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PETITION BY RECEIVER TO SELL FREE OF LIENS, ETC.

(Filed August 7, 1914)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between WILBUR J. ADAMS, *et al.*, *Complainants,* and LAMBERTVILLE HEAT, LIGHT AND POWER COMPANY, *Defendant.*	ON BILL, &c. APPEAL.

IN CHANCERY OF NEW JERSEY.

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

Your petitioner, Charles D. McCracken, heretofore appointed by this Court Receiver of the insolvent corporation, defendant in the above-entitled cause, respectfully shows unto your Honor:

1. That your petition has lately filed in the office of the clerk of this Court an inventory of all the

estate, property and effects of the defendant corporation and an appraisement thereof, which appraisement shows that the probable present value of the entire assets (except franchises), is, as nearly as can be estimated, about the sum of twenty-seven thousand and forty 56/100 dollars; and that the entire property could be replaced new, at this date, with structures, equipment and materials of a like kind and quality, for, as nearly as can be estimated, about the sum of forty-one thousand and ninety-eight 94/100 dollars.

That the defendant company has the right, under an ordinance passed by the City of Lambertville, to occupy the public streets of said city with its lines; and that the New Hope Electric Company, a corporation of the State of Pennsylvania, the stock of which is owned by the defendant, has a similar right, under ordinance of the Borough Council, to occupy the streets of the Borough of New Hope, in Bucks County, Pennsylvania. That neither of said ordinances purports to grant an exclusive right. That your petitioner has not, in his inventory, assigned any specific money value to these rights, the same not being susceptible of exact valuation.

2. That, in pursuance of the orders of this Court, your petitioner is carrying on the business of the defendant corporation, lighting the streets of the City of Lambertville and the Borough of New Hope by electricity and supplying electric current for private lighting and power to about two hundred ninety-four private consumers in Lambertville and about fifty-six private consumers in New Hope. That there is no other source from which electric current for public or private use can be had, either in Lambertville or New Hope. That the entire capital stock

of the New Hope Electric Company is owned or controlled by the defendant corporation, and that the transmission lines and all physical property belonging to the New Hope company and covering the New Hope territory, are leased to the defendant for a period of twenty years, ending in January, nineteen hundred and twenty-five, with options permitting the defendant to extend the same for further periods aggregating seventy-five years. That the lines of the New Hope Electric Company are supplied with electric current direct from the plant of the defendant in New Jersey, and are maintained and kept in repair, and added to as occasion may require, by defendant, and to all practical intents and purposes the said New Hope Electric Company is operated as an integral part of the defendant company's property; the defendant, as a matter of form in the conduct of its business, paying an annual rental of two hundred dollars to the New Hope Electric Company, which said company immediately pays back to the defendant in the form of a ten per cent. dividend on its capital stock of two thousand dollars owned and controlled by the defendant.

3. That your petitioner has examined and made careful inquiry into the physical condition of the property of the defendant, and finds it to be such that electric current can be generated and distributed only at a very excessive cost, and that a serious breakdown, necessitating the closing of the plant for a considerable period, is not unlikely to occur at any time. Specifically, the boilers are old, have had hard usage, and are in a bad state of repair; their walls being, in places, cracked, bulged and sagged, and the re-enforcing trusses running from wall to wall being burned off, so that the boilers have set-

tled somewhat out of line and level and the operation of the plant requires the burning of probably one-third more coal than would be necessary with boilers and engines in a good state of repair and efficiency. The plant's winter load, petitioner is informed by the chief engineer, requires the running of two engines and generators at the same time, and the chief engineer advises petitioner that the boilers, in their present condition, are not capable of generating sufficient steam to run the two engines that are in running order, in their condition.

The engines are in such condition that the plant cannot be operated week-days, even with but one engine running, on one boiler, and during six days of the week it is necessary to use both boilers continuously, day and night. If the old boilers should fail a complete shutdown would be necessary until they could be repaired or a new set installed. If one boiler only should fail it would be necessary to cut off either the street lights or the current for private consumers. The installation of a new boiler or boilers would probably require as much as three weeks' time at the least; the resetting of the present boilers would probably require at least ten days and probably more time. A pair of new boilers of the same size as those now in use would cost, set, deponent is informed, about three thousand six hundred dollars; resetting the present boilers about five to six hundred dollars each.

The No. 1 engine is operating at low efficiency and high cost for lack of having the cylinders rebored, but it might be temporarily greatly improved at a very small cost by having new and larger rings placed in the piston heads.

The No. 2 engine is operating at low efficiency and high cost for the same reason and for lack of other

repairs, and reboring is very badly needed. It could be put into fairly good condition by the expenditure of about one hundred dollars.

The No. 3 engine is practically worn out and cannot safely be used. An estimate on the cost of necessary repairs to it, procured by the company some time ago, indicates the necessity of an outlay of about three hundred and seventy-five dollars to put it in proper shape. The engine is practically exhausted and obsolete and not worth such an outlay for repairs.

The transmission lines are, in places, in such a condition as to excite the apprehension that poles may fall or be blown over, or cross-arms or pins become detached from the poles. The pole lines are of various ages, some of the original construction of the first electric company in Lambertville, in 1893, being still in use, along with other line more or less of which has been built nearly every year since. On many lines of wire the insulation is off or hanging in rags and there is a considerable loss of current by partial grounding where the bare wires come in contact with trees or other objects, especially when wet. There is a source of danger to the public from these bare or but partially insulated wires, highly charged with electric current, coming in contact with telephone or telegraph wires, trees and other objects. Effective repairs to transmission lines would cost anywhere from a few hundred dollars up to several thousand dollars, according to the amount and nature of the work to be done.

The buildings at the central station require some repairs, but those most pressing could be done at a cost of from one hundred to two hundred dollars.

The defendant has not, for a considerable period of years, spent an adequate sum annually in repairs and upkeep.

4. Your petitioner further shows that the defendant corporation has outstanding bonds to the amount of eighty thousand dollars, secured by a mortgage on certain of its property, which bonds bear interest at the rate of five per centum per annum, payable semi-annually, on the first days of April and October, and the principal of which becomes due and payable on the first day of October, nineteen hundred and thirty-four. The mortgage securing these bonds bears date the first day of October, nineteen hundred and four, and is made and executed by the defendant to the Real Estate Trust Company of Philadelphia, a corporation of the State of Pennsylvania, as Trustee, and was recorded as a real estate mortgage in the Clerk's Office of the County of Hunterdon, New Jersey, on October 21, 1904, in Book 88 of Mortgages, page 306, &c. That said mortgage purports to cover, on its face, the tract of land described in the inventory filed by petitioner, the central station buildings and machinery, and fixtures, implements and tools in and upon the said tract of land, and the lines of poles and wires strung thereon, erected and being in the streets of the City of Lambertville, and the conductors to convey electric current to the lamps and other translating devices utilizing such current for light, "together with all extensions, branches and relocations of the said lines of poles and the wires strung thereon, all manufactories, stations or buildings, machinery, apparatus and equipment, tools, implements, fuel and materials of the said company, now owned or which may hereafter be acquired, for constructing, maintaining, operating, replacing or improving the said property or any part thereof, or in or for the business of the said company, and all other property, real and personal, now owned, or

which may hereafter be acquired, for the purposes of the said company or its business."

That the said mortgage is not recorded as a chattel mortgage.

That at the time of the execution, delivery and recording of said mortgage the New Hope Electric Company had not been organized and the lines owned by it and now under lease to the defendant had not been built; and the mortgage does not cover said New Hope lines or any of the property situated in the State of Pennsylvania. There are in the State of Pennsylvania about eight and four-tenths miles of wire (as nearly as can be estimated) out of a total of twenty-five and nine-tenths miles radiating from the central station in Lambertville, and there are one hundred twenty-seven poles owned by the New Hope Electric Company as against two hundred sixty-six poles owned by the defendant. There are several transformers on the New Hope lines, and numerous meters.

Your petitioner further shows that in the two towns of Lambertville and New Hope there are thirty-nine poles used by the defendant to carry its lines and the lines of the New Hope Company which are either owned jointly by the defendant or the New Hope Electric Company and other companies or individuals, or the ownership of which is in doubt or dispute; and that some poles in Lambertville which your petitioner is informed are the property of the defendant company are marked with initials or brands indicating a claim of ownership by some other company jointly occupying the poles.

5. Your petitioner further shows that the defendant company owes a franchise tax amounting originally to three hundred one 22/100 dollars, assessed

against it under the provisions of Chapter 195 of the Laws of 1900 (P. L., p. 502), in respect of its gross receipts for the calendar year nineteen hundred and twelve, and that said tax became due and payable on the twentieth day of December, nineteen hundred and thirteen, and has not been paid.

6. Your petitioner further shows that prior to his appointment as Receiver, to wit, in May, nineteen hundred and fourteen, a judgment was recovered against the defendant in the Supreme Court of New Jersey by the Pennsylvania Coal and Coke Corporation, for the sum of six hundred sixty-eight 51/100 dollars, with interest from February 19, 1914, and costs of suit, amounting in the aggregate to considerably over seven hundred dollars; and that on or about the third day of June, nineteen hundred and fourteen, and prior to the appointment of a Receiver for said defendant, a judgment was recovered and docketed in the Court of Common Pleas of Hunterdon County against the defendant, in favor of National Carbon Company, for the sum of thirty-nine 45/100 dollars; and that on the same day another judgment was recovered and docketed in said Court of Common Pleas against the said defendant, in favor of Commercial Coal Mining Company, for the sum of one hundred thirty-six 80/100 dollars; and that, prior to the appointment of a Receiver for the defendant, a writ of execution was issued upon each of these judgments, and the Sheriff of Hunterdon County, by virtue of said executions, made three several levies upon the real and personal property of the defendant corporation situate and being in Hunterdon County, by virtue of which the judgment creditors may have acquired some lien upon certain property of the defendant which might be set up

as superior to the lien of the said mortgage above mentioned, by reason of said mortgage not being recorded as a chattel mortgage; and that disputes may arise between the Trustee under said mortgage and said judgment creditors as to the priority of their several liens upon certain of the defendant's property.

7. Your petitioner further shows that it appears by certain documents of the Hunterdon Electric Company and by certain minutes and records of the defendant Lambertville Heat, Light and Power Company, that at the time of the conveyance by the Hunterdon Electric Company to the said defendant the same group of persons were in control, by stock ownership in themselves and their associates and confederates, of both companies; and that whereas there was apparently outstanding of Hunterdon Electric securities at the time of the conveyance of the property stock to the amount of thirty thousand dollars and bonds to the amount of thirty thousand dollars, being a total of sixty thousand dollars, there were issued by the defendant company, in consideration of the conveyance, stock to the amount of forty thousand dollars and bonds to the amount of forty thousand dollars, being a total of eighty thousand dollars; and that all of said stock and ten thousand dollars of said bonds were issued to the Hunterdon Electric Company or its nominees; and that the minutes and stock transfer book of the defendant company show that the Hunterdon Electric Company shortly afterward disposed of said forty thousand dollars of stock (being sixteen hundred shares of the par value of twenty-five dollars each) in the following manner: Forty shares to cover the stock subscribed by the incorporators; four hundred shares

to J. H. Jefferis; four hundred shares to Merritt N. Willetts, Jr.; five hundred ninety-two shares to H. C. Case; twenty shares to S. C. Case (the father of H. C. Case); twenty shares to W. M. Measey (an attorney acting for the parties), and one hundred and twenty-eight shares to S. S. Ingman. That said Merritt N. Willets, Jr., and S. S. Ingman were elected Directors of the defendant company at its first meeting; that said H. C. Case and S. C. Case became Directors by being elected to fill vacancies created by resignation at the second meeting of the Board, on November eighteenth, nineteen hundred and four, and that J. H. Jefferis became a Director by election at the annual meeting held January ninth, nineteen hundred and six. That the said persons above named were the owners of at least two-thirds of the outstanding capital stock of the Hunterdon Electric Company at the time of the making the said conveyance and issuance of said defendant company's stock and bonds. That the said J. H. Jefferis, M. N. Willets, Jr., and H. C. Case remained as Directors and officers of the defendant company until January, nineteen hundred and thirteen, and said H. C. Case still remains a Director. That your petitioner has no information as to what was done with the ten thousand dollars of the defendant company's bonds issued to said Hunterdon Electric Company as part consideration for said conveyance.

That information derived from income tax exemption certificates coming to your petitioner as Receiver show that on the first day of April last said H. C. Case was the owner and holder of forty-nine hundred dollars par value of the defendant company's bonds, and that three ladies named Jefferis, residing at Wayne, Pennsylvania, who, petitioner is informed, are daughters of said J. H. Jefferis, are

the owners and holders of seventy-eight hundred dollars thereof. No certificates appear showing any others of the persons above named as the holders of any of said bonds.

Since the original issue of forty thousand dollars of capital stock and forty thousand dollars of bonds, the defendant has from time to time issued other bonds to an aggregate of another forty thousand dollars, on resolutions of the stockholders, as required by the mortgage, that said bonds were required for working capital, extensions, improvements and betterments; and the total bond issue now outstanding is eighty thousand dollars.

8. In view of the matters set forth in the foregoing paragraph your petitioner respectfully represents that there is some ground for apprehension that litigation might arise among the holders of the bonds secured by said mortgage over the right of certain of the bonds issued and outstanding to have the advantage of any of the provisions of the mortgage, and that such litigation might operate to delay the operation of any remedies authorized or provided by the terms of the mortgage.

9. Your petitioner further shows that the said mortgage authorizes the trustee to bring foreclosure proceedings in advance of the maturity of the mortgage on October first, nineteen hundred and thirty-four, only after sixty days default in payment of interest, or after the defendant shall have permitted taxes to fall in arrears to the impairment of the security of the mortgage, or after any lien postponing, divesting or impairing the security of the mortgage shall have been acquired; and your petitioner shows that the moneys now in his hands as Receiver are

sufficient to pay the overdue taxes above mentioned, and that there has been no default in the payment of interest on said bonds, and that the next semi-annual interest does not fall due until October first, nineteen hundred and fourteen, so that no foreclosure proceedings could be commenced until the first day of December, nineteen hundred and fourteen.

10. And your petitioner further shows that the property of the defendant corporation is of a character materially to deteriorate in value, and is already in such an advanced state of deterioration that further losses in quality and value are likely to proceed in a constantly accelerating ratio; and that the property ought, in the public interest, to be put into such a condition as to enable it to perform its duty to the public with reasonable safety, before the season of shorter days and heavier loads again arrives; and that to put the property into such condition would require the outlay of a large sum of money, which can be raised, if the property remains in the hands of the Receiver, only by the issuance of Receiver's certificates, under orders of this court, as first liens upon the property, displacing to that extent the lien of the first mortgage bonds now outstanding; and that the property of the New Hope Electric Company ought to be sold together with and as an integral part of the other property of the defendant, if the best price obtainable is to be realized from the sale.

11. Your petitioner therefore prays that this court will, by an order to be made in this cause, direct your petitioner to sell all and singular the real and personal property (excepting only cash in hand and accounts receivable), and the franchises, of the

said defendant, Lambertville Heat, Light & Power Company, and with the same, and as an integral part thereof, the entire capital stock of said New Hope Electric Company and the lease to the defendant by said New Hope Electric Company of its transmission lines and property, free and clear of all liens and encumbrances existing upon or against said property or any part thereof, and especially free and clear of the lien and encumbrance of the mortgage and the three judgments hereinbefore mentioned, at either public or private sale, as this Court may direct, for the best price that can be obtained for the same, and subject to confirmation by this Court; and to bring the money arising from such sale into this Court, there to remain subject to the same liens and equities of all parties interest as was the property before the sale, and to be disposed of as this Court shall direct.

And your petitioner will ever pray, etc.

CHAS. D. MCCRACKEN,
Receiver-Petitioner.

E. W. HUNT,
Sol'r and of Counsel with Receiver.

COUNTY OF HUNTERDON,
STATE OF NEW JERSEY, } *ss.*

CHARLES D. MCCRACKEN, of full age, being by me duly sworn according to law, on his oath says that he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof, and that the matters and things therein stated are true, except such matters and things as

are stated upon information and belief, and as to such matters and things deponent is credibly informed that the same are true, and believes them to be true.

And deponent further says that the boilers used in generating steam to run the plant of the defendant are old and have had hard use and are in a bad state of repair, and that the walls supporting them are in places cracked, bulged and sagged, so as to allow the boilers to settle somewhat out of line and level; and that the inspector of the Public Utilities Commission, after examining these boilers, told deponent that they were depreciated to the extent of from eighty to ninety per cent. That deponent is credibly informed and believes that the operation of the electric plant requires the consumption of probably one-third more coal than would be necessary with boilers and engines in a good state of repair and efficiency. Deponent further says that he is credibly informed, by persons having had experience in such matters, that to procure new boilers and have them set up would require probably as much as three weeks' time, and that to have the present boilers reset would probably require at least ten days' time and probably more; and that he is credibly informed and believes that the cost of a pair of new boilers like the ones now in use would be about thirty-six hundred dollars, set; and that the cost of having the present boilers reset would be about five or six hundred dollars each. Deponent further says that the statements contained in said petition as to the physical condition of the three engines at the plant, and the transmission lines, and the central station buildings, are based upon frequent personal examination by deponent and statements made to him by the chief engineer and other employees of

the company, and said petition correctly describes the conditions with reference to said engines, lines and station buildings.

Deponent further says that the books and records of the corporation show the following expenditures for repairs of various kinds during several years past:

	1910.	1911.	1912.	1913.
Steam Motive Power	$276.31	$176.31	$121.60	*$322.79
Electric Plant	26.56	197.47	58.00	35.76
Arc Lamps and Motors	43.42	25.65	.....	79.85
Maintenance Station & Buildings	67.74	61.59	31.09	71.57
Pole Lines	12.15	106.72	29.75	67.00

* Indicates accuracy doubted by deponent.

And deponent says that such expenditures have not been adequate to keep the property in a good state of repair and efficiency, and that very much heavier expenditures are now required to make up for the lack of sufficient repair and upkeep over a period of years.

Deponent further says that the defendant company has outstanding bonds to the amount of eighty thousand dollars, secured by a mortgage payable to the Real Estate Trust Company of Philadelphia, Trustee, bearing date October first, nineteen hundred and four, and maturing October first, nineteen hundred and thirty-four, and recorded as a real estate mortgage in Book 88 of Mortgages, for Hunterdon County, page 306, &c., and as deponent is informed and believes, not recorded as a chattel mortgage. That as shown by a copy thereof appearing

in the book of minutes of the defendant, the said mortgage covers the tract of land in Lambertville mentioned and described in petitioner's inventory (and no other lands), and following the description of said land embodies clauses reading as follows:

"And also all and singular the manufactories stations or buildings, boiler house, power house, engines, dynamos, machinery, apparatus and devices for the generation or regulation of electric current, fixtures, implements and tools in and upon said premises, together with the lines of poles and wires strung thereon, erected and being in the streets of the said City of Lambertville, and the conductors to convey such current to the lamps and other translating devices, utilizing such current for light, hitherto used for the supply and distribution of electricity for electric lights in said city, now belonging to said Company. Being the same premises and property which the Hunterdon Electric Company, a corporation of the State of New Jersey, by deed bearing date the thirtieth day of September, A. D. 1904, and intended to be recorded, granted and conveyed unto the said Lambertville Heat, Light & Power Company in fee.

"And together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the reversions and remainders thereof, and all the estate, right, title and interest, claim and demand whatsoever, either in law or in equity of the said Company of, in and to the above-described premises and property, with the hereditaments and appurtenances.

"And together with all extensions, branches and relocations of the said lines of poles and the wires strung thereon, all manufactories, stations or buildings, machinery, apparatus and equipment, tools,

implements, fuel and materials of the said Company, now owned or which may hereafter be acquired, for constructing, maintaining, operating, replacing or improving the said property or any part thereof, or in or for the business of the said Company, and all other property, real and personal, now owned, or which may hereafter be acquired for the purposes of the said Company or its business.

"And together with all and singular the rights, privileges and franchises of the said Company derived from the State of New Jersey, the County of Hunterdon, the City of Lambertville, and all other sources, whether now possessed or hereafter acquired by it and connected with or related to the business or property of the said Company, and the maintenance, use and enjoyment of the same.

"And together with all the streets, ways, passages, waters and water-courses, easements, rights, privileges, hereditaments and appurtenances whatsoever to any of the hereby granted premises belonging or appertaining or to belong or appertain, and the reversions and remainders, thereof, and all the estate, right, title, interest, property, claim and demand of ever nature and kind whatsoever of the of the said Company now owned and possessed or which may hereafter be acquired as well at law as in equity of, in and to the same and every part and parcel thereof."

And deponent further says that said mortgage does not in express terms refer to or purport to cover any property located outside the State of New Jersey, or any shares of stock in other corporations owned by the defendant, or any leases of physical property owned or held by defendant. Deponent further says that the defendant is the owner of the capital stock of the New Hope Electric Company, a

corporation of the State of Pennsylvania, the transmission lines of which are under lease to the defendant for a period of twenty years, ending in January, nineteen hundred and twenty-five, with options giving the defendant the right to extend said lease for further periods aggregating seventy-five years. That at the time of the making of the said mortgage the New Hope Electric Company had not been organized and its lines had not been built. That the lines of said New Hope Electric Company, situate in the State of Pennsylvania, contain, as nearly as deponent can estimate, about eight and four-tenths miles of wire, out of a total estimated length of twenty-five and nine-tenths miles of wire radiating from the central generating station of the defendant; and there are one hundred and twenty-seven poles owned by said New Hope Electric Company and situated in the State of Pennnsylvania, as against two hundred sixty-six poles owned by the defendant in New Jersey. Deponent further says that in Lambertville and New Hope there are thirty-nine poles belonging to the defendant or the New Hope Electric Company and other companies or individuals jointly, or the ownership of which is in doubt or dispute; and that some poles which deponent is informed belong to the defendant bear marks indicating a claim of ownership by other companies. Deponent further says that there are a number of transformers and numerous meters, and Tungsten arc street lamps in use on the New Hope lines, in the State of Pennsylvania, and deponent believes that many appliances of this kind have been purchased since the building of the original New Hope lines, and with the funds of the defendant company.

Deponent further says that before the appoint-

ment of a Receiver for the defendant three judgments had been entered against it, and executions issued under each, and levies made under said executions on real and personal property of the defendant, as follows: a judgment in the New Jersey Supreme Court in favor of the Pennsylvania Coal and Coke Corporation, for over seven hundred dollars; a judgment docketed in the Hunterdon County Common Pleas in favor of the National Carbon Company for thirty-nine 45/100 dollars; and a judgment docketed in said Hunterdon Common Pleas in favor of Commercial Coal Mining Company for one hundred thirty-six 80/100 dollars.

Deponent further says that it appears by documents, records and minutes of the defendant and the Hunterdon Electric Company that the same group of persons were in control of both companies at the time of the time of the conveyance by the Hunterdon Company to the defendant of its property; and that at such time the Hunterdon Electric Company had outstanding thirty thousand dollars of stock and thirty thousand dollars of bonds, and that in consideration of the conveyance and in refunding or providing for the refunding of outstanding Hunterdon bonds the defendant issued or authorized the issue of forty thousand dollars of its bonds. That all of said stock was issued by the defendant to the Hunterdon Electric Company or its nominees and was afterwards disposed of by said Hunterdon Electric Company in the manner set forth in said petition. That ten thousand dollars of said bonds were issued to the Hunterdon Electric Company, and deponent has no knowledge as to what disposition said Hunterdon Electric Company made of them. That, by income tax certificates coming to deponent's hands as Receiver, it appears that on April the first of this

year H. C. Case was the owner and holder of forty-nine hundred dollars par value of the bonds of the company, and three ladies named Jefferis, residing at Wayne, Pennsylvania, who deponent is informed are the daughters of J. H. Jefferis, were the owners and holders of seventy-eight hundred dollars par value of said bonds. Records identifying these bonds by numbers show that seventy-five hundred dollars of the bonds held by the Misses Jefferis are a part of these used in the acquisition of the Hunterdon Electric Company property; and that at least twenty-two hundred dollars of the bonds held by H. C. Case are a part of those so used. Two thousand dollars of the bonds held by Mr. Case are not identified by number.

Deponent further says that said mortgage contains provisions in reference to foreclosure and other remedies, as follows:

Sixth. "Until default be made by the said Company in the payment of the principal or interest of said bonds, or any of them, according to the tenor and effect of said bonds, and on the days and times mentioned in said bonds, respectively, without deduction from either principal or interest for any tax or taxes which the said Company may be required to pay or retain therefrom by any present or future laws of the United States or of the State of New Jersey, or any other State—the said Company having agreed and hereby agreeing to pay the same—or until default be made by the said Company in respect to some other act or thing in any of said bonds or herein required to be done, kept and performed, the said Company shall be permitted to possess, manage, operate, use and enjoy all and singular the premises hereinbefore described, with the appurtenances, and to receive, use and dispose of

the income therefrom, in the same manner and to the same effect and extent as if these presents had not been executed, but in such manner as will not impair the security hereby created.

Seventh. If the Company, its successors or assigns, shall, at any time hereafter, after demand made, make default, or refuse, neglect or omit for any period exceeding sixty days to pay the semi-annual interest on the bonds intended hereby to be secured, or any of them, or the interest on the bonds secured, or to be secured, by any prior or superior mortgage, or shall, after demand made, make default, or refuse, neglect or omit, for any period exceeding thirty days after maturity, to pay the principal sum of each and all of the said bonds, intended hereby to be secured or any of them, or shall suffer or allow any taxes or assessments to fall in arrear whereby the security of this deed of trust or mortgage may be impaired, or shall permit any lien except the lien of prior or superior mortgages, to be filed or acquired, or any charge to be created by any person or corporation, whereby the lien of this deed of trust or mortgage may possibly be divested, postponed or otherwise impaired, or shall neglect or refuse to keep or perform any of the covenants and stipulations contained herein, or in the bonds secured or intended to be secured hereby, and on its part to be kept and performed, then, and in either of such events, the Trustee shall and will, upon the written request of holders of twenty-five per cent. in amount of the bonds secured hereby and then outstanding, and a deposit with the Trustee of the bonds of the requesting bondholders, and upon adequate security and in indemnity against all costs, expenses and liabilities to be by the Trustee incurred, or without such request, or deposit, or se-

curity or indemnity, it shall be lawful for the Trustee, in the Trustee's own discretion, forthwith to demand, and with such force as may be necessary, to enter, take and maintain possession of all and singular the premises, property and franchises hereby conveyed and mortgaged, or agreed or intended so to be and as the attorney in fact or agent of the Company and by the Trustee's agents and substitutes duly constituted, or by the Trustee's managers, superintendents, receivers or servants, have, hold, use, manage, operate, lease and enjoy the same, and each and every part thereof, to as full an extent as the Company might lawfully do, making from time to time all needful and proper repairs, alterations and additions, and receiving all the rents, income and revenue thereof, and after deducting the expenses of such use, operation, reasonable repairs, alterations and additions, and the cost and charges of taking such possession, and proper compensation for the services of such taking possession, and management while in possession, and such sum or sums as may be sufficient to indemnify the Trustee against any liability, loss or damage for or on account of any matter or thing done in good faith in pursuance of the duties of the Trustee, the Trustee shall apply the remaining net income and revenue therefrom, and also all the sums of money which may have been paid to and are in the hands of the Trustee at the time of taking possession as proceeds of property released, to the payment, without giving preference, priority or distinction to one bond over another, of the full principal of and all accrued interest due on all of the said bonds outstanding and intended hereby to be secured, if the said income and proceeds be sufficient, but if not, then, without distinction between principal and interest, pro rata;

or the Trustee shall and will, after or without entering upon or taking such possession, upon the written request of holders of a like amount of said bonds then outstanding, and upon a like deposit of the bonds, and upon like security and indemnity, or without such request or deposit, or security, or indemnity, in the Trustee's own discretion, the Trustee may proceed to sell and dispose of all and singular the said premises, property and franchises hereby mortgaged, or agreed or intended so to be, to the highest and best bidder at public auction in the City of Lambertville or at such place as the Trustee may designate, and at such time as the Trustee may appoint, having first given notice of the time and place of such sale by advertisement, published not less than once each week for five successive weeks in one or more newspapers in the City of Lambertville, or elsewhere at the option of the Trustee, or to adjourn the said sale from time to time in the Trustee's discretion, and if so adjourning, to make the said sale at the time and place to which the same may be so adjourned; and to make and deliver to the purchaser or purchasers of the said premises, property and franchises, good and sufficient deed or deeds in the law in fee simple, 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 without obligation to inquire into the necessity, expediency or authority of or for any such sale; which sale, made as aforesaid, shall be a perpetual bar, both at law and in equity, against the Company, and all persons claiming or to claim the said premises, property and franchises, and any part thereof, or any interest therein, by, from or through the Company; and after deducting from the proceeds of such sale proper allowances

for all expenses thereof, including attorney and counsel fees, and all other expenses, advances or liabilities which may have been made by the Trustee for taxes or assessments on the said premises, property and franchises, as well as reasonable compensation for its own services, it shall be lawful for the Trustee, and it shall be the Trustee's duty to apply the residue of the money arising from said sale, to the payment of the full principal of, and all accrued interest on, all the said bonds which shall then be outstanding the and unpaid, without giving preference, priority, or distinction to one bond over another, if the said purchase money be sufficient, but if not, then pro rata, without distinction between principal and interest; and in the event of there being in the hands of the Trustee 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 Trustee shall reconvey, retransfer, or pay over the same to the Company, its successors or assigns, for its sole use and benefit; or the Trustee shall and will upon the written request of the holders of a like amount of said bonds then outstanding, and upon like deposit and security or indemnity or without such request or deposit or security or indemnity, in the Trustee's own discretion, the Trustee may proceed to protect and enforce the rights of the bondholders under these presents by a suit or suits in equity or at law, whether for the specific performance of the stipulated covenants and agreements, or any of them, contained therein on the part of the company to be kept and performed or in aid of the execution of powers herein granted, or otherwise, as the Trustee being advised by counsel learned in the law, shall deem most effectual to protect and enforce such

rights—it being understood, and it is hereby expressly declared that the rights of entry and sale hereinbefore granted are intended as cumulative remedies additional to all other remedies allowed by law, and that the same shall not be deemed in any manner whatever to deprive the Trustee or the beneficiaries under this trust of any legal or equitable remedy by judicial proceedings consistent with the provisions of these presents, according to the true intent and meaning thereof; *provided, always,* and it is hereby expressly declared and agreed, that no holder or holders of a bond, or of any bonds secured hereby, shall have the right to institute any suit, action or proceeding, in equity or law, for the foreclosure of this indenture or for the execution of the trusts thereof, or for the appointment of a Receiver, or for any other remedy, without first giving notice in writing to the Trustee of default having occurred and continued as aforesaid, and unless twenty-five per cent. in amount of the holders of bonds then outstanding have made requests in writing to the Trustee as above provided, and have afforded the Trustee a reasonable opportunity to proceed to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in the Trustee's own name, have also offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and offered to deposit their bonds as aforesaid; and such notification, request and offer of deposit and indemnity are hereby declared to be conditions precedent to the execution of the powers and trusts of this indenture, to any action or cause of action for foreclosure to the appointment of a Receiver, or to any other remedy hereunder; *and provided, also,* that neither the Trustee nor the holder

or holders of the bonds intended to be secured hereby, or any of them, shall sell the premises hereby mortgaged, or intended so to be, or any part thereof, or institute any suit, action, or procedure in law or equity for the foreclosure hereof, or for the appointment of a Receiver, otherwise than in the manner herein provided.

Eighth. It is further distinctly understood and agreed that in the event of the Trustee making such entry upon or taking possession of the premises, property and franchises hereby mortgaged, or agreed or intended so to be, or in the event of any sale thereof, either by the Trustee or by judicial proceedings, as hereinbefore mentioned, then and in either such case the whole principal sum of each and all of the said bonds then outstanding and intended hereby to be secured shall forthwith become due and payable, anything in said bonds or herein contained to the contrary notwithstanding; and in no other case, and for no other purpose, shall the principal sum of any of said bonds become due and payable before the date fixed in such bonds for the payment thereof, except when such bonds shall have been called for redemption, or when the principal sum thereof has been so declared to have become due and payable by the Trustee or by the holders of twenty-five per cent. in amount of the bonds then outstanding, in an instrument of writing under their hands and seals, after default in the payment of interest thereon continuing for sixty days after due demand therefor, and the Trustee, without any instruction from the bondholders, in the Trustee's own discretion, may in such case declare the principal sum to be due, or the holders of a majority in amount of the bonds then outstanding may in such case instruct the Trustee to declare the principal

sum to be due, or waive, or instruct the Trustee to waive, the right so to declare on such terms and conditions as the said holders of a majority in amount may deem proper, and may annul and reverse a previous declaration made by the Trustee in that behalf; *provided always,* And it is hereby declared that no such action of the Trustee or of the bondholders shall extend to or be taken to affect any subsequent default or impair the rights resulting therefrom; *and provided also,* That is shall and may be lawful for the Trustee when and as soon as the bonds then outstanding and hereby secured shall become due and payable according to the terms hereof, to proceed thereon to judgment and execution for the recovery of the whole amount of the bonds then outstanding and secured hereby, and all taxes and interest due thereon together with an attorney's commission for collection, and the Trustee's charges, fees and expenses, besides costs of suit, without further stay, any law, usage or custom to the contrary notwithstanding.

Deponent further says that much of the property of the is of a character materially to deteriorate in value, and is already in an advanced state of deterioration; and that to arrest deterioration and put the property into a condition for safe and economical operation would require the outlay of a large sum of money. Deponent further says that in his opinion the property of the New Hope Electric Company ought to be sold together with the property of the defendant and as an integral part of an entire system, if the best price obtainable is to be realized from the sale; and that the two properties sold separately are not likely to bring as much as if sold together.

CHAS. D. MCCRACKEN.

Sworn to and subscribed before me this sixth day of August, A. D. 1914.

L. H. SERGEANT,
Master in Chancery of New Jersey.

COUNTY OF HUNTERDON,
STATE OF NEW JERSEY, } *ss.*

PERCY H. SKILLMAN, being by me duly sworn according to law, on his oath deposes and says that he is, and has been continuously ever since the month of January, nineteen hundred, or January, nineteen hundred and one, employed at the Electric Light Plant in Lambertville, at first by the Hunterdon Electric Company, and since the sale of the plant to the Lambertville Heat, Light and Power Company by the latter company and that he is carried on the pay-rolls of said company in the capacity of chief engineer; that as a matter of fact this deponent performs work of many and various kinds for said electric plant, firing the boilers, and running the plant during a portion of each day, building and repairing transmission lines, hanging and trimming street lamps, doing inside and outside wiring, reading meters, and something of practically every kind of work involved in the running of the plant. Deponent is thoroughly acquainted with the plant and property of said company.

And deponent further says that the boilers at the said electric plant are two in number, of one hundred and fifty rated horsepower each, and were installed either in the latter part of nineteen hundred and five or the early part of nineteen hundred and six, at which time one of them was a brand-new

boiler and the other was a second-hand boiler but practically as good as new. These boilers have been used continuously seven days per week from the time of their installation until the present time, except on certain days, particularly on Sundays, when one boiler or the other has been temporarily out of service while being repaired or cleaned. The walls supporting these boilers are, in places, cracked and bulged, and one of the back-stay rods running from wall to wall is burned off.

Deponent further says that in his opinion the added customers on the company's lines will make it necessary to run two engines at the same time during the coming fall and winter at peak load and in the opinion of this deponent the boilers in their present condition are not capable of generating enough steam to run the two engines that are in running order in their present condition. The condition of the engines is such that the plant cannot now be operated on one boiler during six days of the week, even with but one engine running. If they should fail to or break down it would be necessary to close the plant until they could be repaired or new boilers installed. If only one boiler should fail it would be necessary to cut off either the street lights or the current to private consumers in order that the load might be reduced to a point where one boiler could carry it.

Deponent has had experience in the putting in of new boilers in several cases, and in his opinion a new set of boilers could not be installed in less than three weeks. In the opinion of this deponent it would take as long or almost as long as three weeks to reset the present boilers. The brickwork of the boilers has been repaired several times during the last year and a half or two years, and each time

the masons doing the work have told this deponent that it was of no use to repair the walls, that the bricks they set would not stay and that the lining was in danger of falling in at any time, and that the boilers required resetting from the foundation up. As a matter of fact, the bricks set in in the course of these repairs have only stayed for a short time and have then fallen out.

And deponent further says that in his opinion the brickwork of the boilers is in such condition that the lining is likely to fall down into the fire box at any time. This would not necessarily make it impossible to keep fire under the boilers, but would make it necessary to burn a great deal more coal and it would be doubtful whether enough steam could be generated to run the engines. In order to cure this condition and prevent the possibility of the linings falling it would be necessary to reset these boilers. On numerous occasions within the last two years and a half various boiler inspectors inspecting these boilers have told this deponent that the boilers ought to be reset. With the boilers and engines in their present condition the operation of the plant requires the consumption of about one-third more coal than would be necessary to create the same amount of power with boilers and engines in good working condition.

The number one engine described in the inventory is operating at low efficiency and high cost for lack of having the cylinders rebored, but it might be temporarily improved by having new and larger rings placed in the cylinder on the pistons. This would cost but a small amount. The number two engine is operated at a low efficiency and high cost and in order to be put in proper shape its cylinders should be rebored and it should have a new piston

and its governor wants some repairs. These repairs could be made at a cost of about one hundred dollars. The number three engine is practically worn-out and cannot safely be used and is not worth repairing.

The poles carrying the company's lines are of different ages, some having been put up every year since deponent has worked for the company and some having been put up before deponent entered the company's service. Some of these poles are in good condition and others require to be reset with the rotten butt sawed off, or to be replaced by new poles. About two-thirds of the poles are in good or fairly good condition. The company's wires are in various states of repair running from good condition down to very poor condition. Some wire was run before this deponent began to work at the electric plant and is the original line that was put up in eighteen hundred and ninety-three. On many of the old lines the insulation is off and the wires are bare. Fully one-half of the cross-arms attached to the company's poles are in need of repairs. On some cross-arms pins are broken off; and many cross-arms are rotten and should be replaced by new ones.

PERCY H. SKILLMAN.

Sworn to and subscribed before me this sixth day of August, A. D. 1914.

L. H. SERGEANT,
M. C. C.

MORTGAGE, JUDGMENT AND TAX LIEN SEARCH.

I do hereby certify that I have carefully examined

the Indexes to Mortgages, Judgments, Mechanics' Liens and Tax Liens, in the office of the Recorder of Deeds, Prothonotary and Court of Common Pleas, respectively, in and for the County of Bucks and State of Pennsylvania, and find no liens existing or entered against the Lambertville Heat, Light and Power Company and New Hope Electric Company since October 1, 1904, as to mortgages and five years last past as to judgments, etc., to date, this thirty-first day of July, A. D. 1914.

TIMOTHY CADWALLADER,
Title Examiner and Conveyances.

Doylestown, Pa., July 31, 1914.

STATE OF NEW JERSEY,
COUNTY OF HUNTERDON, } *ss.*

EDGAR W. HUNT, being by me duly sworn according to law, on his oath deposes and says that he has examined the indexes of the records in the office of the clerk of Hunterdon County, New Jersey, and finds therein no reference to any chattel mortgage made by the Lambertville Heat, Light & Power Company from the first day of October, nineteen hundred and four, to the first day of July, nineteen hundred and fourteen.

And deponent further says that he has examined the records of a certain mortgage given by said Lambertville Heat, Light & Power Company to the Real Estate Trust Company, of Philadelphia, Trustee, dated the first day of October, nineteen hundred and four, and recorded in Book Eighty-eight of Mortgages, page three hundred and six, etc., and that the said mortgage does not contain any affidavit of

consideration, and is not recorded as a chattel mortgage.

E. W. HUNT.

Sworn to and subscribed before me, this seventh day of August, A. D. 1914.

P. H. WALTER, (?)
M. C. C. of N. J.

ORDER TO SHOW CAUSE.

(Filed August 7, 1914)

IN CHANCERY OF NEW JERSEY.

A petition, supported by affidavits, having been filed in the office of the clerk of this court by Charles D. McCracken, heretofore appointed Receiver of the insolvent corporation, defendant in the above-entitled cause, and it appearing therefrom that said petitioner has lately filed in the office of the clerk of this court an inventory of the estate, property and effects of the said defendant, and an appraisement thereof, which appraisement shows that the probable present value of the entire assets (except franchises) of the defendant, is, as nearly as can be estimated, about the sum of twenty-seven thousand forty 56/100 dollars, and that the entire property could be replaced new, at this date, with structures and materials and equipment of a like kind, for, as nearly as can be estimated, about the sum of forty-one thousand and ninety-eight 94/100 dollars; and that said defendant has the right, under ordinances granted by the City Council of Lam-

bertville and the Borough Council of New Hope, to maintain its lines of poles and wires in the streets of the City of Lambertville in this State, and of the Borough of New Hope, in the State of Pennsylvania, upon which rights the petitioner has not found it practicable to place any specific money value.

And it further appearing by said petition that said petitioner, as Receiver, is carrying on the business of the defendant corporation, lighting the streets of said City of Lambertville and Borough of New Hope by electricity and supplying electric current for private lighting and power to about two hundred ninety-four private consumers in Lambertville and about fifty-six private consumers in New Hope, and that there is no other source from which electric current for public or private use can be had, either in Lambertville or New Hope; and that the entire capital stock of the New Hope Electric Company, a Pennsylvania corporation through which the lighting business in New Hope is carried on, is owned by the defendant, and that the transmission lines and all physical property owned by said New Hope Electric Company are leased to the defendant for a period of twenty years ending in January, nineteen hundred and twenty-five, with options permitting the defendant to extend the same for further periods aggregating seventy-five years; and that the lines of said New Hope Electric Company are supplied with current direct from the plant of the defendant in New Jersey, and are maintained and repaired, and added to, as occasion may require, by the defendant and at its expense, and that to all practical intents and purposes the said New Hope Electric Company is maintained and operated as an integral part of the defendant's property.

And it further appearing by said petition that the

cost of production of electric current in the plant of the defendant is excessive, and that the boilers, engines, transmission lines and central station buildings owned by the defendant are in such a bad state of repair that a serious breakdown, necessitating the closing of the plant for a considerable period, is not unlikely to occur at any time; and that to put the property of the defendant into such condition as to enable it to perform its duty of affording service to the public with a reasonable degree of safety, would require the outlay of a considerable sum of money in repairs, which sum could be raised only by the issuance of Receiver's certificates as a first lien against the property.

And it further appearing by said petition that the defendant has outstanding bonds to the amount of eighty thousand dollars, secured by a mortgage made to the Real Estate Trust Company of Philadelphia, Trustee, bearing date the first day of October, nineteen hundred and four, and recorded in the clerk's office of Hunterdon County, in Book 88 of Mortgages, page 306, etc., and that the said mortgage does not cover either the capital stock or the physical property of the New Hope Electric Company above mentioned, and that it is not recorded as a chattel mortgage.

And it further appearing by said petition that before the appointment of a Receiver in this cause a judgment against said defendant was recovered in the Supreme Court of New Jersey by the Pennsylvania Coal & Coke Corporation, for the sum of more than seven hundred dollars, and another judgment was recovered against said defendant and docketed in the Court of Common Pleas of Hunterdon County, by the National Carbon Company, for thirty-nine 45/100 dollars, and another judgment

was recovered against said defendant and docketed in said Court of Common Pleas by the Commercial Mining Company, for the sum of one hundred thirty-six 80/100 dollars, and that executions were issued upon each of said judgments and levies made by the Sheriff of Hunterdon county by virtue thereof upon the real and personal property of the defendant; by reason of which disputes may arise between the Trustee under said mortgage and the said judgment creditors as to the priority of their several liens.

And it further appearing by said petition that certain facts exist which give rise to the apprehension that litigation may ensue among the holders of the bonds secured by said mortgage over the right of certain of said bonds to have the benefit of any of the provisions of the said mortgage, owing to possible irregularities in the issue of certain bonds, causing them to be invalid; and it further appearing that the terms of the mortgage securing said bonds are such that foreclosure proceedings can not be immediately commenced.

And it further appearing by said petition that the lines of the New Hope Electric Company above mentioned constitute a large, valuable and important part of the system operated by the defendant company, and that the New Hope property should be sold at the same time as and together with the New Jersey property of the defendant, if the best price obtainable is to be realized from all the property.

And it further appearing by said petition that the property of the defendant is of a character materially to deteriorate in value.

And the said Receiver seeking the aid of the court in the premises:

It is, on this seventh day of August, in the year of our Lord nineteen hundred and fourteen, on motion of Edgar W. Hunt, solicitor for the petitioner, ordered, that all parties in interest in this matter show cause before this court, at the State House in Trenton, on Tuesday, the twenty-fifth day of August, instant (1914), at ten o'clock in the forenoon, or as soon thereafter as the matter can be heard, why the court should not order the said petitioner as Receiver to sell all and singular the real and personal property (excepting only cash in hand and accounts receivable) and the franchises, of the said defendant, Lambertville Heat, Light & Power Company, and with the same and as an integral part thereof, the entire capital stock of the New Hope Electric Company, and the lease to the defendant by said New Hope Electric Company of its transmission lines and property, free and clear of all liens and encumbrances existing upon or against said property, or any part thereof, and especially free and clear of the lien and encumbrance of the mortgage and the three judgments hereinbefore mentioned, at either public or private sale, as this court may direct, for the best price that can be obtained for the same, and subject to confirmation by this court; and to bring the money arising from such sale into this court, there to remain subject to the same liens and equities of all parties in interest as was the property before the sale, and to be disposed of as this court shall direct.

And it is further ordered that a copy of this order, which need not be certified, be mailed to the Trustee under said mortgage and to each bondholder, creditor and stockholder of the defendant corporation, whose address is known to the Receiver, or can be

ascertained by him, within five days from the date of this order, with the postage thereon prepaid.

E. R. WALKER, *C.*

Respectfully advised,
JOHN H. BACKES,
V. C.

ORDER DIRECTING RECEIVER TO SELL, ETC., FREE AND CLEAR OF ENCUMBRANCE.

IN CHANCERY OF NEW JERSEY.

Between
WILBUR J. ADAMS, *et al.*,
Complainants,
and
LAMBERTVILLE HEAT, LIGHT AND POWER COMPANY,
Defendant.

ON BILL, &c.

This matter being opened to the court by Edgar W. Hunt, of counsel with Charles D. McCracken, Receiver of the defendant company, in the presence of Scott Scammell, of counsel with certain bondholders and creditors of the defendant company, and of Linton Satterthwaite, of counsel with the Real Estate Trust Company of Philadelphia, Trustee for the bondholders under the mortgage hereinafter mentioned, upon a petition by the said Receiver for

leave to sell the real estate and personal property of the defendant company, and to sell the said real estate and personal property free and clear of the encumbrance of the mortgage hereinafter recited and of the lien of a judgment recovered against the defendant company by the Pennsylvania Coal and Coke Corporation in the New Jersey Supreme Court, and of the lien of a judgment recovered against the defendant company by the National Carbon Company, and docketed in the Hunterdon County Court of Common Pleas, and of the lien of a judgment recovered against the defendant company by the Commercial Coal Mining Company, and docketed in the Hunterdon County Court of Common Pleas; and it appearing that a copy of the order to show cause made on said petition, and returnable on the day of the date hereof, has been served as directed in and by the said order; and it appearing that the said Receiver has in his possession all of the real and personal property of the defendant company, which is more fully and at length described in an inventory made by the said Receiver and on file in the office of the clerk of this court, and embraces among other things certain lands and premises hereinafter more fully and at length described, and also the entire capital stock, being twenty shares of the par value of one hundred dollars each, of the New Hope Electric Company, a corporation organized under the laws of the State of Pennsylvania.

And it further appearing that the said lands and premises are encumbered by a certain mortgage made by the defendant company to the Real Estate Trust Company of Philadelphia, Trustee, bearing date the first day of October, in the year of our Lord nineteen hundred and four, and recorded in the clerk's office of Hunterdon County in Book 88 of

Mortgages, page 306, etc., conveying the said lands and premises to secure an issue of bonds of said defendant company, amounting in the aggregate to the sum of one hundred thousand dollars, of which eighty thousand dollars have been certified by the Trustee and are issued and outstanding, and are of the form and tenor and effect as recited in the said mortgage; and it further appearing that of the said eighty thousand dollars of bonds issued and outstanding, bonds to the amount of twenty-seven thousand five hundred dollars, numbered as follows, numbers 1 to 25, both inclusive, for one hundred dollars each, and numbers 251 to 300, both inclusive, of the denomination of five hundred dollars each, were issued by the defendant company under such circumstances as to raise a question as to the legality of said bonds and the use thereof, and the right or title of the present holders thereof to participate with other bondholders in the avails or proceeds of the property mortgaged to secure said bonds, whereby the legality of said mortgage as securing said bonds is brought into dispute.

And it further appearing to the court that the property of the defendant corporation is of a character materially to deteriorate in value pending litigation concerning the lien and security and priority of the said mortgage and the several judgments above mentioned, and that the said property, real and personal, including the stock of the said New Hope Electric Company above mentioned, should be sold, free and clear of all liens and encumbrances, and especially free and clear of the lien of the said mortgage and the several judgments above mentioned, and that the petition of the said Receiver should be granted.

It is thereupon, on this twenty-fifth day of August,

nineteen hundred and fourteen, upon motion of counsel for the said Receiver, ordered that the said Charles D. McCracken, Receiver of the defendant company, sell certain of the property, real and personal, estate and effects of the said defendant, hereinafter described, in the following manner, that is to say;

First. That he offer for sale separately and as one parcel the land and property embraced within and covered by the mortgage above mentioned, said land being particularly described as follows, to wit:

All that certain lot, tract or parcel of land situate, lying and being in the City of Lambertville in the County of Hunterdon and State of New Jersey, beginning at a corner in the middle of Elm street one hundred feet from the west side of Union street and running thence (1) north nine degrees and twenty minutes west, two hundred and ninety-two and one-tenth feet parallel with Union street, thence (2) south eighty degrees and fifty minutes west eighty-four and one-tenth feet, thence (3) southeasterly twenty-nine feet along the lands of the Canal Company, thence (4) southeasterly sixty-four feet along the same, thence (5) thirty-five and three-quarters degrees east four and nine-tenth feet, thence (6) south ten and a half degrees east seventy-six and nine-tenths feet, (7) eighty degrees and fifty minutes east five feet, thence (8) south nine degrees and twenty minutes east, one hundred and thirty-nine and four-tenths feet still along the same to the middle of Elm street, and thence (9) north eight degrees and forty minutes east one hundred and twenty feet to the place of beginning.

And also all and singular the manufactories, stations or buildings, boiler house, power house, engines, dynamos, machinery, apparatus and devices

for the generation or regulation of electric current, fixtures, in and upon the said premises, together with the lines of poles and wires and lamps strung thereon, erected and being in the streets of the said City of Lambertville, and the conductors to convey such current to the lamps and other translating devices, utilizing such current for light, hitherto used for the supply and distribution of electricity for electric lights in said city, now belonging to said company.

And together with and as appurtenant to the property above described the franchise of said company to carry on its business in the City of Lambertville, and elsewhere in the State of New Jersey, and to occupy the public streets and places in said city and elsewhere in the State of New Jersey with its poles and wires and other property.

Second. That he offer for sale separately and as another parcel the various items of movable personal property described as items numbers 20½, 21 and 23 C in the inventory filed in the office of the clerk of this court by said Receiver.

Third. That he offer for sale separately and as another parcel the capital stock of the New Hope Electric Company, owned by said defendant, and with the same the lease, with all its rights and privileges, from said New Hope Electric Company to the defendant company bearing date the twenty-seventh day of January, nineteen hundred and five.

Fourth. That he offer for sale separately and as another parcel certain contract rights of the defendant company, as follows:

(a) A contract with the Pennsylvania Railroad

for lighting for five years from June 1, 1912, subject to termination by either party by thirty days' notice given at the end of any year.

(b) A contract with the New Hope Delaware Bridge Company, for carrying the defendant's wires across the Delaware river upon the Bridge Company's bridge, for five years fom October 1, 1910.

(c) A contract with the said Bridge Company for lighting its bridge and approaches, for five years from November 1, 1910.

(d) A contract with the New Jersey Rubber Company for power for motor, until April 26, 1915 (guaranteeing a minimum payment of fifty dollars per month to defendant).

Fifth. That after the several items of property above mentioned shall have been offered in parcels, the said Receiver shall offer them all together as an entirety.

And it is further ordered that if the aggregate of the bids received for the several items of property offered as parcels shall exceed the bids received for the several items offered together and as an entirety, then the several parcels shall be struck off and sold separately to the person or persons respectively who shall have bid the highest sum offered for each of the same; and if the bid received for the several items offered together and as an entirety shall exceed the aggregate of the bids received for the several parcels offered separately, then the several items of property shall be struck off and sold together and as an entirety to the person or persons who shall have bid the highest sum offered for the same as an entirety. The report of sale to be made by said Receiver shall set forth the manner and order in which the several items of property were offered and the highest bids received for each of the

several parcels, as well as that received for the several items together and as an entirety.

And it is further ordered that said Receiver sell the property herein mentioned and described and each and every parcel of the same free and clear and discharged of the encumbrance of the mortgage and the three several judgments hereinbefore mentioned, and of all other liens and encumbrances whatsoever, at public sale, and that he give public notice of the time and place of such sale, and in all respects conduct the same according to the provisions of the statute in such case made and provided, and that he forthwith, after such sale, make report thereof to this Court, and after his report of sale shall have been confirmed by this Court, make and execute unto the purchaser or purchasers thereof good and sufficient acknowledgments of sale for the said personal property, and conveyances in the law for the said lands and premises, upon their compliance with the conditions of sale, and that such sale, and the conveyance or conveyances duly executed as aforesaid, be valid and effectual forever and operate as an effectual bar, both at law and in equity, against the said defendant, and all and every the said mortgagee-trustee, bondholders, judgment creditors, unsecured creditors, stockholders and all persons whomsoever having any interest in the said premises and property, or any part or parcel thereof, and all persons claiming or to claim any interest therein by, through or under them or any of them.

And it is further ordered that at least twenty per cent. of the purchase money bid for each and every of the parcels of property above described, if the same, or any of them, be sold separately, or at least twenty per cent. of the purchase price bid for the entire property, if the several parcels be sold together and as an entirety, shall be paid to the Re-

ceiver in cash at the time the property is struck off; and the balance of said purchase price shall be paid to the Receiver in cash within thirty days after notice in writing of the confirmation of the sale by this Court, and upon delivery by the Receiver of proper instruments of transfer and conveyance for said property. The conditions of sale of said property shall expressly provide that the sale of neither of said parcels nor of the whole property as an entirety shall be valid unless and until confirmed by this Court.

And it is further ordered that the said Receiver bring into this Court and pay to the clerk thereof the moneys arising from the sale of the property hereby ordered to be sold, after deducting therefrom any costs, charges and expenses to which the same may be liable, to the end that the same may be disposed of as the Chancellor shall by order direct.

And it is further ordered that the said Receiver shall, within ten days hereafter, enter into further bond for the faithful performance of the duties of his office in the sum of fifteen thousand dollars, to be approved as to form and security by Peter Backes, one of the Special Masters of this Court.

And it is further ordered that the said parties, or either of them, be at liberty to apply to this Court for further directions, if occasion shall require, and that all questions as to the right of the holders of any of said bonds to participate in the proceeds of sale of said mortgaged property and all questions as to relative rights of lien holders, be reserved for further determination by the Court, after further consideration and the taking of testimony, if necessary.

E. R. Walker, *C.*

Respectfully advised,
John H. Backes, *V. C.*

CONDITIONS OF RECEIVER'S SALE OF PLANT AND PROPERTY.

Receiver's Sale of Electric Plant.

By Virtue of an order of the Court of Chancery made on the twenty-fifth day of August, A. D. 1914, in a case wherein Wilbur J. Adams, *et al.*, are complainants and the Lambertville Heat, Light & Power Company is defendant, the subscriber, Charles D. McCracken, Receiver of said Company, will expose for sale at public vendue to the highest bidder, on Wednesday, the thirtieth day of September, 1914, between the hours of twelve and five o'clock in the afternoon, to wit, at two o'clock, at the office of said Lambertville Heat, Light & Power Company, No. 7 North Union Street, in the City of Lambertville, Hunterdon County, New Jersey, certain of the property, real and personal, estate and effects of said Lambertville Heat, Light & Power Company, described as follows, to wit:—

The First Parcel.

All that certain lot, tract or parcel of land, situate, lying and being in the City of Lambertville, in the County of Hunterdon and State of New Jersey, beginning at a corner in the middle of Elm Street one hundred feet from the west side of Union Street and running thence (1) north nine degrees and twenty minutes west two hundred and ninety-two and one-tenth feet parallel with Union Street, thence

(2) south eighty degrees and fifty minutes west eighty-four and one-tenth feet, thence (3) southeasterly twenty-nine feet along the lands of the Canal Company, thence (4) southeasterly sixty-four feet along the same, thence (5) thirty-five and three-quarters degrees east four and nine-tenths feet, thence (6) south ten and a half degrees east seventy-six and nine-tenths feet, (7) eighty degrees and fifty minutes east five feet, thence (8) south nine degrees and twenty minutes east one hundred and thirty-nine and four-tenths feet still along the same to the middle of Elm Street, and thence (9) north eighty degrees and forty minutes east one hundred and twenty feet to the place of beginning.

And also all and singular the manufactories, stations or buildings, boiler house, power house, engines, dynamos, machinery, apparatus and devices for the generation or regulation of electric current, fixtures, in and upon the said premises, together with the lines of poles and wires and lamps strung thereon, erected and being in the streets of the said City of Lambertville, and the conductors to convey such current to the lamps and other translating devices, utilizing such current for light, hitherto used for the supply and distribution of electricity for electric lights in said city, now belonging to said company.

And together with and as appurtenant to the property above described the franchise of said company to carry on its business in the City of Lambertville, and elsewhere in the State of New Jersey, and to occupy the public streets and places in said city and elsewhere in the State of New Jersey, with its poles and wires and other property.

The Second Parcel.

Various items of movable personal property described as items Nos. 20½, 21 and 23C in the inventory filed in the office of the Clerk of the Court of Chancery by said Receiver (and a copy of which may be seen at the Receiver's office, No. 35½ Bridge Street, in said City of Lambertville), consisting of miscellaneous materials and supplies, tools and utensils used in the carrying on of the business of said company, and of the office furniture of said company, including desks, chairs, iron safe and typewriter.

The Third Parcel.

The entire capital stock of the New Hope Electric Company, a corporation of the State of Pennsylvania, being twenty shares of the par value of one hundred dollars each; and with the same the lease, with all its rights and privileges, from said New Hope Electric Company to the defendant company bearing date January 27, 1905.

The Fourth Parcel.

Certain contracts and contract rights of said company described as follows:

(a) A contract with the Pennsylvania Railroad Company for lighting for five years from June 1, 1912, subject to termination by either party by thirty days' notice given at the end of any year.

(b) A contract with the New Hope Delaware

Bridge Company for carrying the defendant's wires across the Delaware River upon the Bridge Company's bridge, for five years from October 1, 1910.

(c) A contact with said Bridge Company for lighting its bridge and approaches, for five years from November 1, 1910.

(d) A contract with the New Jersey Rubber Company for power for motor, until April 26, 1915 (guaranteeing a minimum payment of fifty dollars per month to the defendant).

All of the foregoing property will be struck off and sold free and clear of all mortgages, judgments and other liens and encumbrances whatsoever.

Each of the several parcels as above described will be offered for sale separately, and also all of them will be offered together and as an entirety; and the property will be struck off and sold in whichever manner will bring the highest and best price. No sale, either of any parcel or of the entirety, will be valid until approved and confirmed by the Court of Chancery, after report thereof made by the Receiver.

The purchaser of any parcel or of the whole property offered as an entirety will be required to pay to the Receiver in cash at the time the property is struck off at last twenty per cent. of the amount of his bid; and the balance in cash within thirty days after notice in writing of the confirmation of the sale by the Court and upon delivery of proper instruments of transfer and conveyance.

Other conditions will be made known at the time of sale.

The property and the inventory thereof may be seen by application to the undersigned, Receiver.

CHARLES D. MCCRACKEN,
Receiver of Lambertville Heat, Light & Power Company.

EDGAR W. HUNT, *Sol'r.*

Conditions of Sale of the several items of real and personal property described in the notice annexed hereto, to be sold on the thirtieth day of September, nineteen hundred and fourteen, by Charles D. McCracken, Receiver of Lambertville Heat, Light and Power Company, by virtue of an order of the Court of Chancery of New Jersey, made on the twenty-fifth day of August, nineteen hundred and fourteen.

1. The said property will be sold at public vendue to the highest responsible bidder, in the manner and subject to the conditions hereinafter set forth. The auctioneer shall be the judge of all disputes as to bids.

2. The said property and each parcel thereof will be sold free and clear of all mortgages, judgments, liens and encumbrances whatsoever.

3. The sale of either parcel, or of the whole property shall not be valid unless and until confirmed by the Court of Chancery of New Jersey.

4. The Receiver will first offer for sale separately, and in such order as he may deem proper, the four several parcels described in the annexed notice;

and thereafter will offer the four parcels together and as an entirety. If the aggregate of the bids received for the several items of property offered as parcels shall exceed the bid received for the several items offered together and as an entirety, then the several parcels shall be struck off and sold separately to the person or persons respectively who shall have bid the highest sum offered for each of the same; and if the bids received for the several items offered together and as an entirety shall exceed the aggregate of the bids received for the several parcels offered separately, then the several items of property shall be struck off and sold together and as an entirety to the person or persons who shall have bid the highest sum offered for the same as an entirety.

5. The purchaser of each of the said four several items, or the purchaser of the whole property as an entirety, as the case may be, shall pay to the Receiver in cash at the time the property is struck off, at least twenty per cent. of his bid, and shall also sign his name to an acknowledgment of his purchase, binding himself to pay the balance of his bid according to the terms of these conditions of sale; and upon his failure to do so the sale to him may be immediately rescinded and declared void by the Receiver and the property struck off to him, put up and resold.

6. The sale will be reported by the Receiver to the Court of Chancery with all convenient speed, and if confirmed by that Court the purchaser of any parcel, or of the entire property, as the case may be, shall attend at such place in the City of Lambert-

ville, and at such time during ordinary business hours as the Receiver may appoint, and pay the balance of his bid, in cash, and receive his deed or other proper instrument of transfer or conveyance for the property struck off to him; provided, however, that without the consent of the purchaser the day fixed by the Receiver for such payment of the balance of the bid shall not be less than thirty days after written notice given the purchaser by the Receiver of the confirmation of the sale by the Court of Chancery. The purchaser, in signing these conditions, consents that sending by United States Mail, registered, to his address as subscribed hereto, shall be sufficient communication of the notice of confirmation herein provided for.

7. If the Court of Chancery refuses to confirm the sale, of any parcel or of the entirety, for no reason imputable to the fault of the purchaser thereof, the purchaser's deposit shall be returned to him. If said Court confirms the sale the purchaser shall be liable for the payment of the purchase money whether he attends and receives his deed or other instrument of title at the time and place fixed by the Receiver or not; and in case he fails or neglects to attend and pay the purchase money and receive his deed or other instrument of title, the Receiver, at his option, or in compliance with such directions as the Court may give him, may take proceedings as for contempt of the Court of Chancery, or proceedings to compel specific performance of the contract of purchase, or may advertise and sell the property again, in which last case, if the property upon which the bidder is in default brings a less sum than the former bid, with interest and costs of re-advertise-

ment and re-sale, the purchaser will be held liable for the difference, and if it bring a larger sum he shall not be benefited thereby.

8. It is understood, and the purchaser of each and every parcel, or of the entirety, as the case may be, agrees and consents thereto, that pending confirmation of the sale and delivery of instruments of title for the property, the entire property shall remain in the custody of the Receiver, and be operated by him as heretofore, and that the Receiver shall be entitled to all the receipts and earnings from operation; and further, that the Receiver shall not be liable for any loss, damage or injury occurring to or sustained by the property or any part thereof during such time, unless the same be due to the wilful wrongful act of the Receiver, and that in case of loss or damage by fire, covered by insurance, the Receiver shall be entitled to any insurance money that may be payable and paid in respect thereof, and shall make an abatement in price equal to the amount of insurance received by him; and further, that the Receiver may use, out of the property described as the Second Parcel, any materials and supplies necessary for the maintenance and operation of the plant, and if such Second Parcel be purchased by a person other than the purchaser of the First Parcel, he will account to such purchaser for the reasonable value of any of said materials and supplies so used by him. It is understood, however, that said Second Parcel does not include fuel and oil purchased by the Receiver since his appointment, such fuel and oil being reserved for the present and not sold.

Receiver of Lambertville Heat, Light and Power Company.

I hereby acknowledge to be the purchaser of the property described as the First Parcel in the annexed notice, subject to the foregoing conditions of sale.

hereby acknowledge to be the purchaser of the property described as the Second Parcel in the annexed notice, subject to the foregoing conditions of sale.

hereby acknowledge to be the purchaser of the property described as the Third Parcel in the annexed notice, subject to the foregoing conditions of sale.

hereby acknowledge to be the purchaser of the property described as the Fourth Parcel in the annexed notice, subject to the foregoing conditions of sale.

hereby acknowledge to be the purchaser of the four several Parcels of Property described in the annexed notice, together and as an entirety, subject to the foregoing conditions of sale.

RECEIVER'S SALE OF ELECTRIC PLANT.

By Virtue of an order of the Court of Chancery made on the twenty-fifth day of August, A. D. 1914, in a cause wherein Wilbur J. Adams, *et al.*, are complainants and the Lambertville Heat, Light & Power

Company is the defendant, the subscriber, Charles D. McCracken, Receiver of said Company, will expose for sale at public vendue to the highest bidder, on Wednesday, the thirtieth day of September, 1914, between the hours of twelve and five o'clock in the afternoon, to wit, at two o'clock, at the office of said Lambertville Heat, Light & Power Company, No. 7 North Union Street, in the City of Lambertville, Hunterdon County, New Jersey, certain of the property, real and personal, estate and effects of said Lambertville Heat, Light & Power Company, described as follows, to wit:

The First Parcel.

All that certain lot, tract or parcel of land situate, lying and being in the City of Lambertville, in the County of Hunterdon and State of New Jersey, beginning at a corner in the middle of Elm Street one hundred feet from the west side of Union Street, and running thence (1) north nine degrees and twenty minutes west two hundred and ninety-two and one-tenth feet parallel with Union Street, thence (2) south eighty degrees and fifty minutes west eighty-four and one-tenth feet, thence (3) southeasterly twenty-nine feet along the lands of the Canal Company, thence (4) southeasterly sixty-four feet along the same, thence (5) thirty-five and three-quarters degrees east four and nine-tenths feet, thence (6) south ten and a half degrees east seventy-six and nine-tenths feet, (7) eighty degrees and fifty minutes east five feet, thence (8) south nine degrees and twenty minutes east one hundred and thirty-nine and four-tenths feet still along the same to the middle of Elm Street, and thence (9) north eighty

degrees and forty minutes east one hundred and twenty feet to the place of beginning.

And also all and singular the manufactories, stations or buildings, boiler house, power house, engines, dynamos, machinery, apparatus and devices for the generation or regulation of electric current, fixtures, in and upon the said premises, together with the lines of poles and wires and lamps strung thereon, erected and being in the streets of the said City of Lambertville, and the conductors to convey such current to the lamps and other translating devices, utilizing such current for light, hitherto used for the supply and distribution of electricity for electric lights in said city, now belonging to said company.

And together with and as appurtenant to the property above described the franchise of said company to carry on its business in the City of Lambertville, and elsewhere in the State of New Jersey, and to occupy the public streets and places in said city and elsewhere in the State of New Jersey, with its poles and wires and other property.

The Second Parcel.

Various items of movable personal property described as items Nos. 20½, 21 and 23C in the inventory filed in the office of the Clerk of the Court of Chancery by said Receiver (and a copy of which may be seen at the Receiver's office, No. 35½ Bridge Street, in said City of Lambertville), consisting of miscellaneous materials and supplies, tools and utensils used in the carrying on of the business of said company, and of the office furniture of said company, including desks, chairs, iron safe and typewriter.

The Third Parcel.

The entire capital stock of the New Hope Electric Company, a corporation of the State of Pennsylvania, being twenty shares of the par value of one hundred dollars each; and with the same the lease, with all its rights and privileges, from said New Hope Electric Company to the defendant company bearing date January 27, 1915.

The Fourth Parcel.

Certain contracts and contract rights of said company described as follows:

(a) A contract with the Pennsylvania Railroad Company for lighting for five years from June 1, 1912, subject to termination by either party by thirty days' notice given at the end of any year.

(b) A contract with the New Hope Delaware Bridge Company for carrying the defendant's wires across the Delaware River upon the Bridge Company's bridge, for five years from October 1, 1910.

(c) A contract with said Bridge Company for lighting its bridge and approaches, for five years from November 1, 1910.

(d) A contract with the New Jersey Rubber Company for power for motor, until April 26, 1915 (guaranteeing a minimum payment of fifty dollars per month to the defendant).

All of the foregoing property will be struck off and sold free and clear of all mortgages, judgments and other liens and encumbrances whatsoever.

Each of the several parcels as above described will be offered for sale separately, and also all of them will be offered together and as an entirety; and the property will be struck off and sold in whichever manner will bring the highest and best price. No sale, either of any parcel or of the entirety, will be valid until approved and confirmed by the Court of Chancery, after report thereof made by the Receiver.

The purchaser of any parcel or of the whole property offered as an entirety will be required to pay to the Receiver in cash at the time the property is struck off at least twenty per cent. of the amount of his bid; and the balance in cash within thirty days after notice in writing of the confirmation of the sale by the Court and upon delivery of proper instruments of transfer and conveyance.

Other conditions will be made known at the time of sale.

The property and the inventory thereof may be seen by application to the undersigned, Receiver.

CHARLES D. MCCRACKEN,
Receiver of the Lambertville Heat, Light & Power Company.

EDGAR W. HUNT, *Sol'r.*

Copy of notice referred to in annexed report.

CHAS. D. MCCRACKEN,
Receiver of Lambertville Heat, Light & Power Company.

RECEIVER'S REPORT OF SALE.

(Filed October 2, 1914)

IN CHANCERY OF NEW JERSEY.

In pursuance of an order of this Court made in the above-entitled cause on the twenty-fifth day of August, nineteen hundred and fourteen, by which it was ordered that the undersigned, Receiver of the above-named defendant company, should sell certain of the property, real and personal, estate and effects of the said defendant, in said order for sale particularly mentioned and described, at public sale, free and clear and discharged of the encumbrance of the mortgage and the three several judgments mentioned in said order of sale, and of all other liens and encumbrances whatsoever, and that he forthwith after such sale make a report thereof to this Court.

I, Charles D. McCracken, Receiver as aforesaid, do hereby report to his Honor the Chancellor, that I did by public advertisements signed by myself and set up at five or more public places in the County of Hunterdon, at least one whereof was in the Third Ward and another in the Second Ward of the City of Lambertville, wherein the real estate and other premises of the said defendant company are situate, at least three weeks next before the time appointed for selling the same, and also published in the Lambertville Beacon and the Hunterdon Republican, two of the newspapers printed and published in the said County of Hunterdon, one of which is a newspaper printed and published at the county seat of

said county, and the other a newspaper printed and published in the municipality in said county having the largest population by the last preceding federal census, at least once a week, during at least four consecutive calendar weeks next preceding the time appointed for selling the same, the last publication in each of said newspapers being not more than seven days prior to the time appointed for selling the same, give public notice that the said property, real and personal, estate and effects, would be exposed for sale at public vendue on Wednesday, the thirtieth day of September, nineteen hundred and fourteen, between the hours of twelve and five o'clock in the afternoon, to wit, at two o'clock, at the office of said defendant company in Lambertville; as by a copy of said notices so set up and published, hereto annexed, reference thereunto being had, will more fully appear.

And I do further report that on the day and at the time and place mentioned in said notices I did expose the said property, real and personal, estate and effects to sale at public vendue to the highest bidder free and clear of all encumbrances in the manner advertised, and directed by the said order of sale; that is to say, I first exposed for sale the property described in said notices as the *First Parcel,* and I received a bid of five thousand dollars for the same, and no other bid; I then exposed for sale the property described in said notices as the *Second Parcel,* and I received a bid of five hundred dollars for the same, and no other bid; I then exposed for sale the property described in said notices as the *Third Parcel,* and I received a bid of five hundred dollars for the same and no other bid; I then exposed for sale the property described in said notices as the *Fourth Parcel,* and I received a bid of one hundred dollars for the same, and no other bid; so that

the total amount bid for the four parcels offered separately aggregated the sum of six thousand one hundred dollars. I then exposed for sale the *Four Parcels* described in the said notices, together and as an *entirety,* free and clear of all encumbrances as directed in said order of sale, and Robert C. Shields, of 611 Chestnut Street, in the City and County of Philadelphia, in the State of Pennsylvania, then and there bidding for the same the sum of thirty thousand five hundred dollars, and no one bidding so much or more for the same, and the said bid being more than the aggregate of the bids received for the four several parcels offered separately, I then and there struck off and sold to him, the said Robert C. Shields, for the price aforesaid, the said four parcels of property, real and personal, estate and effects, together and as an entirety, he being the highest bidder for the same; subject, nevertheless, to confirmation by this Court.

And I do further report that the said Robert C. Shields forthwith after said property was struck off to him in the manner aforesaid, paid to me the sum of six thousand one hundred dollars, being twenty per cent. of the amount of his said bid, in cash, and signed an acknowledgment of his purchase binding himself to pay the balance of the purchase money after confirmation of the sale, in conformity with the said order of this Court directing me to sell said property; and I have deposited the said sum of six thousand one hundred dollars in bank to my credit as Receiver, and am ready to pay the same into the office of the Clerk of this Court if directed by the Court so to do.

All of which is respectfully submitted this thirtieth day of September, nineteen hundred and fourteen.

CHAS. D. MCCRACKEN,
Receiver of Lambertville Heat, Light and Power Company.

STATE OF NEW JERSEY, }
COUNTY OF HUNTERDON, } *ss.*

CHARLES D. MCCRACKEN, Receiver of Lambertville Heat, Light & Power Company, of full age, being by me duly sworn according to law, on his oath deposes and says that the matters and things set forth in the foregoing report are true, and that the property, real and personal, estate and effects mentioned and referred to in said report were duly offered for sale agreeably to the provisions of the order of this Court authorizing and directing said sale, and were struck off and sold for the highest and best price bid for the same in cash at the time of the sale.

CHAS. D. MCCRACKEN.

Sworn to and subscribed before me this first day of October, A. D. 1914.

A. D. ANDERSON,
Master in Chancery of N. J.

ORDER TO SHOW CAUSE WHY SALE SHOULD NOT BE CONFIRMED.

(Filed October 2, 1914)

IN CHANCERY OF NEW JERSEY.

The report of Charles D. McCracken, Receiver of the insolvent corporation, defendant in the above-entitled cause, of the sale of certain of the property, real and personal, estate and effects, of said defend-

ant agreeably to the provisions of an order of the Court of Chancery heretofore made in that behalf, having been read and ordered filed;

And it appearing from said report and from a copy of the notice of sale annexed thereto that public notice of the time and place of said sale were duly given, by advertisement and the setting up of notices, in the manner required by law, and that the property ordered to be sold was first exposed for sale in four separate parcels, briefly described as follows (a full description being given in said notices and advertisements):

The First Parcel: The land and real estate, central generating station, with all machinery and appurtenances, and the distribution lines with their appurtenances, including street lamps, situate and being in Lambertville, and the franchises of the company to carry on business and occupy the public streets and places in said City of Lambertville and elsewhere in the State of New Jersey.

The Second Parcel: Various items of movable personal property described as Items Nos. 20½, 21 and 23C in the Inventory filed in the office of the clerk of this court by the Receiver, consisting of miscellaneous materials and supplies, tools and utensils and office furniture.

The Third Parcel: The capital stock of the New Hope Electric Company, a corporation of the State of Pennsylvania, being twenty shares of the par value of one hundred dollars each, and with the same the lease, with all its rights and privileges, from said New Hope Electric Company to the defendant company, bearing date January 27th, 1905.

The Fourth Parcel: Certain contracts and contract rights of the defendant described as follows:

(a) A contract with the Pennsylvania Railroad Company for lighting for five years from June 1, 1912, subject to termination by either party by thirty days' notice given at the end of any year;

(b) A contract with the New Hope Delaware Bridge Company for carrying the defendant's wires across the Delaware River upon the bridge company's bridge, for five years from October 1, 1910;

(c) A contract with said bridge company for lighting its bridge and approaches for five years from November 1, 1910;

(d) A contract with the New Jersey Rubber Company for power for motor until April 26, 1915 (guaranteeing a minimum payment of fifty dollars per month to the defendant).

And it further appearing that after each of said four parcels had been offered separately, the same were offered together and as an entirety; and that the offering, both of the several parcels separately and of the four parcels as an entirety, were free and clear of all encumbrances, agreeably to the order of sale heretofore made.

And it further appearing that for the four parcels offered separately bids were received as follows:

For the First Parcel, the sum of five thousand dollars;

For the Second Parcel, the sum of five hundred dollars;

For the Third Parcel, the sum of five hundred dollars;

For the Fourth Parcel, the sum of one hundred dollars;

and that no other bids were received for any of said parcels offered separately.

And it further appearing that for the four parcels offered together and as an entirety, Robert C. Shields, of the City and County of Philadelphia, in the State of Pennsylvania, bid the sum of thirty thousand five hundred dollars, and that no other person bidding so much or more for the same, and the said bid being more than the aggregate of the bids for the said four parcels offered separately, the said Receiver then and there struck off and sold the said four parcels together and as an entirety to the said Robert C. Shields, for the sum aforesaid, subject, nevertheless, to confirmation by this court; and that immediately thereafter the said Robert C. Shields, in conformity with the order and conditions of the sale, paid to the Receiver twenty per cent. of his bid, being the sum of six thousand one hundred dollars, in cash, and signed an acknowledgment of his purchase binding himself to pay the balance of the purchase money after confirmation of the sale in conformity with the said order of this Court directing the sale of said property.

And it appearing by affidavit that the said property was sold for the highest and best price the same would bring in cash at the time of the sale, and the Receiver now applying for the aid and direction of the court in the premises;

It is thereupon, on this second day of October, in the year of our Lord nineteen hundred and fourteen, on motion of Edgar W. Hunt, of counsel with the said Receiver, ordered, that all and every the Trustee for bondholders under the mortgage heretofore made by the defendant company, and the bondholders, creditors and stockholders of the said defendant, Lambertville Heat, Light & Power Company, do show cause before this court, on Tuesday, the

thirteenth day of October, instant, at ten o'clock in the forenoon, at the State House, in Trenton, why the said Receiver's report of sale, and all the matters and things therein contained, should not be ratified and confirmed, and the said Receiver be directed to make, execute and deliver to the said Robert C. Shields, in compliance with the aforesaid order of sale, good and sufficient conveyances and other instruments of transfer in the law, for the said property, real and personal, estate and effects so purchased by him as aforesaid, upon his complying with the order for and conditions of said sale.

And it is further ordered, that true copies of this order, which need not be certified, be served upon each and every the said Trustee for bondholders, and the bondholders, creditors and stockholders of the said defendant company, whose addresses are known to the said Receiver, within four days from the date hereof, by service upon them personally or upon their several and respective solicitors, or by mailing one of said copies to each of them, directed to it, him or her, at its, his or her post-office address, with the postage thereupon prepaid.

E. R. WALKER, *C.*

Respectfully advised,

JOHN H. BACKES,

V. C.

OBJECTIONS TO CONFIRMATION OF SALE.

(Filed October 13, 1914)

IN CHANCERY OF NEW JERSEY.

Owen J. Roberts, chairman of the Committee of Bondholders of the Lambertville Heat, Light and Power Company, the above-named defendant, Harry C. Case, a stockholder, bondholder, director and common creditor of the defendant corporation; George W. Arnett, of Lambertville, one of the complainants in the above cause, a bondholder and common creditor of said defendant corporation, and H. S. Hulsizer, a bondholder of said defendant corporation, by their solicitors, whose names are hereto attached, respectfully protest against, and object to, the confirmation of the sale of the plant, real and personal property, franchises and other assets of the defendant company, which was made by said Receiver by virtue of an order of this Court made August 25th, A. D. 1914, and which sale was held on Wednesday, September 30th, A. D. 1914, for the following reasons:

1. That the bondholders' committee endeavoring to effect a reorganization of the defendant company, desired to ascertain the name of the holder of the twenty-seven thousand dollars' ($27,000) worth of bonds formerly held by F. Stanley North (which were bonds formerly held in the treasury and issued for the purpose of securing collateral loans of the company aggregating twenty-two thousand dollars

($22,000), a former officer of the corporation and by whose management the defendant corporation was rendered insolvent within the short period of a little over a year, but that notwithstanding efforts of counsel representing some of your objectors, the name of said owner of said bonds could not be ascertained by reason of the refusal of the counsel of the Receiver to give to your objectors the names of the holders of said bonds; that notwithstanding the refusal of the said Receiver and his counsel to give such information, your objectors, through counsel, attended at the time and place of the sale of the said defendant corporation and first requested said Receiver to adjourn said sale in order that the solicitors of your objectors might have further time within which to form such reorganization and secure moneys with which to make a bid upon said property for a sum at least somewhere near its true value, but that said Receiver, after consultation with his counsel refused such adjournment, that thereupon when said property was offered for public sale by said Receiver on the date mentioned in the said order of sale the said Receiver and his counsel were requested to offer the property of the said defendant company for sale subject to the mortgage thereon and agreed to make a bid of at least the sum of five thousand dollars ($5,000) for said property over and above the encumbrance on said property, but notwithstanding said offer, said Receiver and his counsel refused to offer the property for sale in such a manner and to accept such offer of bid, and thereupon sale of said premises for the ridiculously low sum of thirty thousand five hundred dollars ($30,500) was made.

2. That your objector Harry C. Case has knowl-

edge of the plant of the said defendant company, which knowledge has been acquired by operating electric plants for a number of years, and also because of his active management of said defendant company for several years, in addition to a personal examination of the property October 3d, A. D. 1914; that your objector, the said Harry C. Case, believes that the said plant is worth at least the sum of seventy-six thousand dollars ($76,000), which said sum was fixed by the Public Utilities Commission of New Jersey in its appraisal of the plant a little over two years ago; that to confirm the sale of said premises for the sum of thirty thousand five hundred dollars ($30,500) would mean the sacrifice of the said property of the said corporation, and that if your objectors had been able to obtain the necessary information from the said Receiver of said corporation, a plan of reorganization could have been perfected whereby the creditors of the company would have received all of their claims in full and the bondholders would have been protected in their interests in the said corporation by the security upon said property. That the personal property under items 20½, 21 and 23C, in the inventory filed, which it was claimed that the mortgage did not cover, received only one bid of five hundred dollars ($500) and the item of the New Hope Electric Company stock likewise received only one bid of five hundred dollars ($500).

3. That your objectors offer, on behalf of their interests, to pay the expenses of readvertising said sale, and will likewise agree to pay at least the sum of five thousand dollars ($5,000) for said property over and above the mortgage thereon, and that they will likewise provide for the payment of interest

upon coupons maturing on October 1st, A. D. 1914, and further agree to place said property in such repair that the interests of the public being served by said company will not suffer.

4. That the said sum of five thousand dollars ($5,000) which your objectors herewith offer for the said property, subject to the mortgage thereon, will pay the costs of the receivership, the judgment creditors, whose judgments aggregate the sum of eight hundred forty-four dollars and seventy-six cents ($844.76), and will leave a sum which can be applied to the claims of general creditors, the total amount of judgment and general or common creditors' claims amounting according as they are filed with the Receiver, to the sum of four thousand thirty-three dollars and seven cents ($4,033.07), to which should be added the sum of three hundred dollars ($300.00) and over for franchise taxes due the State of New Jersey. If, on the other hand, the present sale of thirty thousand five hundred dollars ($30,500) is confirmed, not only will general creditors receive nothing, but the bonds which aggregate eighty thousand dollars ($80,000) will not realize over twenty-five or thirty per cent. of their face value.

5. Your objectors further show that the bondholders' committee represents a number of small bondholders, whose holdings run from one hundred dollars'($100) to thirty-five hundred dollars'($3500) worth of bonds each, held by about fifty-one different persons, that the holdings being in such small amounts and there being so many of them, it was impossible for the committee of bondholders to see personally, after the order for sale was made directing that said property should be sold free and clear of

all encumbrances, and before the date of the sale, all or the greater portion of them, but that those who were seen were not able financially to protect their holdings by raising any such sum of money as it was necessary to raise in order to bid at the sale of the property free and clear of all encumbrances, and that had such sale been adjourned to have given time to have presented same to the Chancellor in a petition asking for an amendment to the order so that such sale could have been made subject to the order, had such amendment been granted it would have meant that all judgment and common creditors would have been paid probably in full, together with the cost of administration of the receivership, whereas by said sale having been made as it has been, no return can come to the said common creditors and possibly none to the judgment creditors for the claims which they have against said insolvent estate.

6. Your objectors further show that Robert C. Shields, the party to whom the property was struck down at the sale held Wednesday, September 30th, A.D. 1914, was present at the time when the colloquy ensued between Scott Scammell, one of the solicitors for your objectors, the Receiver or his counsel, Mr. Hunt, and that the said Robert C. Shields took part therein, that from said conversation made in his presence he knew that a protest was made against the sale of the property for the sum that he had bid. He likewise had information thus given him that there was a desire and request on the part of the objectors, through their solicitors, that the property should be set up at that sale at which he was present and where he could have had opportunity to bid on the premises, subject to the mortgage of eighty thousand dollars ($80,000) thereon, and that said bidder

realized that he had such right to bid if the property was so offered, because he asked the amount of the bonded indebtedness and was told it was eighty thousand dollars ($80,000); that had said property been offered for sale as requested by Mr. Scammell, the bidder, Robert C. Shields being present and knowing the amount of the mortgage encumbrance, had full, free and fair opportunity to bid for said premises subject to the said bond and mortgage, and your objectors insist that no harm can come to the bidder if this sale be not confirmed, and an amended order be made by this Court offering the property for sale in the manner in which, by the objectors it is stated, they are willing to bid, and the amount they are willing to name as a minimum bid under such a sale.

7. Your objectors further object to the confirmation of said sale on the ground that the price bid is grossly inadequate, that at least seventy-eight thousand dollars ($78,000) in cash has been put into said plant, and that by a statement taken from the books of the said corporation kept under the direction and control of F. Stanley North, general manager of the company, and who is also one of the complainants in this cause, on January 1st, A. D. 1914, the plant and equipment of the said Lambertville Heat, Light and Power Company (December 31st, A. D. 1913), was stated to be one hundred twenty-three thousand four hundred and seventy-eight dollars and seven cents ($123,478.07).

8. Your objectors further object to the confirmation of said sale because they believe that the actions of the Receiver and his counsel have not been full, fair, frank and open with the bondholders who

herein stand as objectors. That they have not done what they could to assist the bondholders, judgment and common creditors to receive the largest sum possible for said plant and to secure to said judgment and common creditors the largest percentage possible for their claims; but believe that the action of the counsel of the Receiver in refusing to give information to the solicitor of the bondholders when asked so to do, has worked injury to your bondholders and practically worked a fraud upon them in preventing them from ascertaining information which would have assisted them materially in their work of reorganization and in preserving this plant for the stockholders and bondholders, and in paying to the judgment and common creditors the full, or very large, percentage of their claims, and further claim that if any injury might come to the bidder by the non-confirmation of this sale, he had full notice and at said sale made his bid with the full understanding that it was the desire of interested parties that this property should be sold subject to the mortgage and that the sale as it was then being attempted, was protested and that the confirmation thereof would be objected to.

9. That as it appears by affidavit of Harry C. Case, one of the objectors hereto, the action of the counsel for the Receiver, in refusing to give information as to who had filed the claim of the twenty-seven thousand dollars' ($27,000) worth of bonds, which inquiry was made concerning, it is believed by the objectors, was refused by reason of collusion between the counsel of the Receiver and whoever was the holder of said bonds, because in said affidavit it appears that said bonds were taken from the treasury of the company and pledged as security for the

debt of seventeen thousand five hundred dollars ($17,500) by action of the Board of Directors at a meeting illegally called and of which meeting the said Case, as a Director, had no notice or notices; that while your objectors do not know or make any charge that the bidder has any connection with the owner of said bonds, nor with the acts of said counsel of the Receiver, yet by reason of those facts the sale should not be confirmed, as the bidder will have opportunity at a sale held under fairer auspices than this sale has been, to be present and make any other or further bid under whatever conditions that might be imposed, if he shall see fit.

SCOTT SCAMMELL,
W. HOLT APGAR,
HARRY C. CASE,
Solicitors and of Counsel with Objectors.
LINTON SATTERTHWAITE,
Solicitor and of Counsel with Real Estate Trust Company of Philadelphia, Trustee.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.*

OWEN J. ROBERTS, being duly sworn according to law, deposes and says that he is the Chairman of the bondholders' protective committee of the Lambertville Heat, Light & Power Company, which committee is operating under a bondholders' protective agreement, dated the 30th day of June, 1914, a copy of which is hereto attached.

Deponent further saith that there have been deposited with the depositary named in said agreement bonds aggregating in amount $38,100, and owned and held by the following persons, and in the following amounts:

John Lefferts, 332 W. School lane, Germantown	$ 700.00
Watson P. Church, Newtown, Pa.	100.00
J. Jerome Miller, Hamburg, Pa.	2,000.00
J. Edward Miller, Hamburg, Pa.	1,500.00
Rebecca C. Wright, Yardley, Pa.	500.00
Mrs. Rachel B. Saxton, Taylorsville, Pa.	200.00
Mrs. Ella S. Cadwallader, Taylorsville, Pa.	100.00
Harry S. Townsend, Treasurer, Wilmington, Del.	1,000.00
Harry S. Peoples, Settlement Assn.	100.00
Franck C. Lefferts, 1114 Herbert St., Frankford	500.00
Wm. R. Huston, Clifton Heights, Pa.	100.00
W. J. Brown, Florence, S. C.	600.00
Florence L. DeLong, Cynwyd, Pa.	500.00
John K. LaRue, Wrightstown, Pa.	200.00
Helen L. Jefferis, Wayne, Pa.	3,000.00
Katharine M. Jefferis, Wayne, Pa.	3,500.00
Marie S. Jefferis, Wayne, Pa.	1,200.00
F. L. Harner, 1811 Market St.	100.00
Clarence C. Leadbeater, Alexandria, Va.	100.00
Warren G. Mitchell, West Chester, Pa.	100.00
Mrs. Jennie B. Sharp, 335 Dear St., W. Chester, Pa.	900.00
Henry Kunser, Forest Grove, Bucks Co., Pa.	500.00
Elmira H. VanHart, Newtown, Pa.	300.00
Tacie B. Gillingham, Moorestown, N. J.	100.00
Rebecca C. Heleoig, Merchantville, N. J.	100.00
R. H. Smith, 606 Penna. Ave. West, Warren, Pa.	200.00
Helen P. Fretz, Newtown, Bucks Co., Pa.	500.00

Robert T. McCracken, 500 West End Trust Bldg.	100.00
Frank Tomson, Doylestown, Pa.	700.00
Frank Tomson, Doylestown, Pa.	500.00
Geo. C. Worstall, Newtown, Pa.	200.00
Miss Mary Lyons, Cape May Pt., N. J.	500.00
Hannah Ann Buckman, Est. W. H. Paxson, care of Hugh B. Eastburn, Esq., Doylestown, Pa.	200.00
Wayne Junction Trust Co.	100.00
Winfield S. Pool, H. B. Hageland, 1st Nat'l Bank, Newton, Pa.	200.00
William E. Martindell, H. B. Hageland, 1st Nat'l Bank, Newton, Pa.	100.00
Mary C. Linton, H. B. Hageland, 1st Nat'l Bank, Newton, Pa.	200.00
Martha P. Slack, H. B. Hageland, 1st Nat'l Bank, Newton, Pa.	500.00
Louisa Gray, H. B. Hageland, 1st Nat'l Bank, Newton, Pa.	500.00
F. J. McGraw, Downington, Pa.	500.00
Harry Swartzlander, Yardley, Pa.	500.00
Fairmount Trust Co. for H. C. Case	1,500.00
Elizabeth S. Case	600.00
H. C. Case	1,000.00
Wm. B. Anderson	1,000.00
Owen J. Roberts	500.00
Robert S. Loose, Hamburg, Pa.	500.00
Elizabeth W. LeCompte, Bristol, Pa.	500.00
The Yardley Nat. Bank, Yardley, Pa.	400.00
The Yardley Nat. Bank, Yardley, Pa.	500.00
A. P. Avery, St. Petersburg, Fla.	2,000.00
Jos. S. Reed, St. Petersburg, Fla.	2,000.00
George Edwards, St. Petersburg, Fla.	2,000.00
R. H. Sumner, by Central Nat'l Bank, St. Petersburg, Fla.	2,000.00
	$38,100.00

Deponent further saith that co-operating with said Committee in its work are other bondholders, holding bonds aggregating $2,600 in amount, which bonds have not yet been deposited with the said depositary. Deponent further saith that there are several other bondholders holding bonds aggregating in the neighborhood of $1,000, who have signed the agreement, and are cooperating with the Committee, but have not yet deposited their bonds with the depositary.

That the committee offers on behalf of the interests which it represents to pay the expenses of readvertising said sale, and will likewise agree to pay at least the sum of $5,000 for said property over and above the mortgage thereon, provided the said property is sold subject to the mortgage thereon, and that it will likewise provide for the payment of interest upon coupons maturing on October first, instant, and further agrees to place said property in such repair that the interests of the public being served by said Company will not suffer. That the committee will enter into such an agreement with either the Receiver or the Court, and will deposit the necessary security to faithfully perform the same.

That the said sum of $5,000 which the Committee herewith offers for the said property, subject to the mortgage thereon, will pay the costs of the receivership, the judgment creditors, whose judgments aggregate the sum of $844.76, and will leave a sum which can be applied to the claims of general creditors. If, on the other hand, the present sale for $30,500 is confirmed, not only will general creditors receive nothing, but the bonds which aggregate $80,000 will not realize over twenty-five or thirty per cent. of their face value.

Deponent further saith that since the appointment

of the said bondholders' protective committee he and his fellow-committeemen have made every effort to effect some form of reorganization of the Lambertville Heat, Light and Power Company, but have been unable to do so by reason of the fact, first, that they have been unable to learn of the ownership of some $30,000 of bonds formerly held in the treasury of the corporation, and deposited as collateral to secure loans to the company of approximately $22,000; and, secondly, because of the great number of persons holding the bonds which have been deposited with the committee, and the small holdings by the great majority of the bondholders, together with widely distributed addresses of said bondholders. This condition has made it practically impossible to collect and assemble the said bondholders for any concerted action, and the committee has, therefore, been left to its own devices in its endeavor to preserve the plant and property of the corporation for the benefit of bondholders and creditors. By reason of the fact that the order of sale made by this Court on the 25th day of August, 1914, required cash to be bid for the property, and did not permit the bidding of bonds, it became practically impossible for the said bondholders' protective committee to make a bid in accordance therewith.

Further deponent saith not.

OWEN J. ROBERTS.

Sworn to and subscribed before me this 8th day of October, A. D. 1914.

ROBERT T. MCCRACKEN,
[L. S.] *Notary Public.*
Commission expires March 10, 1917.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.*

I, HENRY F. WALTON, Prothonotary of the County of Philadelphia, and clerk of the Courts of Common Pleas of said county, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify, that Robert T. McCracken, Esquire, before whom the annexed affidavit was made, was at the time of so doing a notary public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said notary public, and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, this 8th day of October, in the year of our Lord one thousand nine hundred and fourteen (1914).

HENRY F. WALTON,
Prothonotary.

[L. S.]

BONDHOLDERS' PROTECTIVE AGREEMENT.

Dated June 30th, 1914.

THIS AGREEMENT, made the 30th day of June, 1914, at Philadelphia, Pennsylvania, between Owen J. Roberts, Fred L. Harner, both of Philadelphia, Pennsylvania, and Harry C. Case, of St. Petersburg, Florida, who, and whose successors are hereinafter called "COMMITTEE," of the first part; and such holders of the First Mortgage Five Per Cent. Thirty year Gold Bonds of the Lambertville Heat, Light & Power Company, a corporation of the State of New Jersey, hereinafter called "COMPANY," as shall become parties to this agreement in the manner hereinafter provided (who, with their successors in interest are hereinafter called "BONDHOLDERS") of the second part; and the CENTRAL TRUST & SAVINGS COMPANY of Philadelphia, Pennsylvania (which is hereinafter called "DEPOSITORY"), of the third part, *Witnesseth:*

WHEREAS, a Receiver has been appointed for the Company by the Chancery Court of New Jersey at the suit of certain stockholders and creditors; and

WHEREAS, Bondholders desire to act effectively and in concert in all matters affecting their interest as holders of said bonds, and as holders of stock of the said Company; and for that purpose to vest in Committee full power and authority to protect their interests;

Now, therefore, in consideration of the premises, and of the benefits which will accrue to Bondholders through united action and combination of interest, and of the conditions and agreements herein contained, and for other good and valuable considera-

tion, it is agreed by and between the parties hereto—Bondholders severally agreeing with each other and with Committee and Depository as follows:

1. Any holder of the above described bonds may, with the consent of the committee, become a party hereto to by signing this agreement within twenty days from the date hereof and depositing his bonds within such period with the Depository, at 4th and Market Streets, Philadelphia, Pennsylvania, or by such deposit without signature of this agreement. The Committee may extend the time for such signature or deposit at its option. Bonds thus deposited shall bear all unpaid coupons, matured or unmatured, and if registered, shall be transferred to bearer.

2. Each depositor depositing his bonds as aforesaid, shall receive a certificate of deposit from the Depository.

3. Depository shall hold the bonds and coupons so deposited subject to the direction and control of the Committee, in the same manner and with the same effect as if Committee were the legal owner thereof, and Depository shall at all times be free from any liability or responsibility in dealing with, or disposing of, such bonds and coupons as directed by Committee. And it may accept the certificate of the Secretary of Committee as sufficient evidence of any change in the membership of Committee or as to any order, resolution, direction or action of Committee.

4. The Committee is hereby authorized to proceed to act in all matters wherein Bondholders could themselves act for their own protection, or otherwise, as Bondholders or creditors; to deposit bonds with the Trustee and do all things required in the mortgage to obtain action by the Trustee; to com-

mence and carry on any proceedings in any Court of appropriate jurisdiction in the names of members of Committee for the establishment or protection of the rights of Bondholders; and to institute or to become parties to any legal proceedings to such end; to appear in any proceedings wherein Receivers have been or shall be appointed; to oppose or assent to, or request the issuance of Receivers' certificates for any purpose, and whether taking precedence of the bonds or not; to make any demand upon the Trustee or Company, in cause of default by Company of any covenant under said mortgage; to request the Trustee under the mortgage to declare due principal of said bonds, and to enforce the rights of said Trustee and of the Bondholders under said mortgage by sale or entry, or both, or by judicial proceedings for such purpose; to co-operate with the Trustee or Receivers in any action taken by said Trustee or Receivers; to bid, or refrain from bidding, for the mortgaged or pledged property at any foreclosure or other sale; to purchase in said property for account of Bondholders, at any price which Committee may, in its judgment, deem advisable; to approve or participate in any settlement of any litigation or claim now or hereafter pending or threatening and affecting the property of the Company; to take any action or proceeding which Committee, in its discretion, deems proper for perfecting the title, ownership or possession of Company's property, or any part of it, or for the purpose of expediting any reorganization or avoiding litigation; to initiate or participate in any plan for reorganization or readjusting the affairs of the Company.

5. Before any plan of reorganization or creation of a new corporation is affected by Committee, a notice, stating substantially the terms of the pro-

posed plan or corporation, shall be mailed by Committee to Bondholders at the address they have furnished Committee. No Bondholder who fails to furnish such an address shall be entitled to have any notice mailed to him. Any Bondholder may, within twenty days from the mailing of such notice, file with Committee a written notice that he dissents from said plan. Each Bondholder shall be conclusively deemed to have assented to such plan unless notice shall have been filed by him within twenty days. Committee shall be the sole and final judge as to when and whether sufficient assents to such plan or proposition shall have been obtained and as to whether other circumstances and conditions warrant declaring the plan operative and effective. Bondholders dissenting from the plan may withdraw their bonds upon payment of their pro rata share of all expenses of the Committee as hereinbefore designated.

6. Committee, for the purpose of paying the necessary expenses or liabilities incurred by Committee under this agreement in the exercise of the powers given it, and for the purpose of providing funds for all matters connected with any purchase of the mortgaged or pledged property or the maintenance thereof after such purchase or for the performance of any of the powers of Committee hereunder, and to pay or purchase such obligations, if any, of Company, if Committee deems best, and to raise funds to secure the amount necessary to make a deposit at the time of purchase of the mortgaged or pledged property, is authorized and empowered to raise any moneys deemed by it advisable, in such manner and on such terms as Committee shall deem best, and to secure the payment thereof with the pledge with power of sale of the bonds deposited hereunder, or of any property or securities received by Commit-

tee under the exercise of its powers hereunder. Committee shall have a lien with power of sale upon said bonds and other securities in its hands or to which it is entitled for such charges, expenses and other liabilities incurred under this agreement.

7. In case Committee shall acquire the mortgaged property or any part of it Committee may re-sell in whole or in part whether in cash or in securities or partly in cash and partly in securities and upon such terms, or otherwise, as Committee deems advisable.

8. Committee shall have a lien with power of sale upon any bonds or other securities in its hands or to which it is entitled for any charges, expenses or other liabilities incurred under this agreement, said expenses not to exceed two per cent. of the face value of the bonds deposited hereunder.

9. Upon completion of any sale or reorganization, or other arrangement which Committee considers as the final accomplishment of this agreement, or upon the termination of this agreement, the Committee shall hold all the resultant cash securities or property in trust (subject to the payment of all expenses and liabilities incurred by the Committee together with a reasonable compensation to the Committee not exceeding two per cent. of the par value of the bonds deposited), to distribute the same among Bondholders pro rata to the principal amounts, principal and interest of their bonds.

10. Vacancies in Committee from whatever cause occurring may be filled by the remaining members of the Committee, and written notice thereof shall be forthwith mailed to Bondholders, signatories hereto.

11. Depository shall not be liable for anything done or permitted at the direction or request of

Committee, it being the intent hereof that the bonds deposited are to be wholly at the order and under the control of Committee. The only duty of Depository hereunder is to receive and hold the bonds subject to the terms and for the purposes of this agreement; to issue proper certificates of deposit for such bonds and properly to transfer said certificates. Depository shall not be responsible in any manner to Committee or to Depositors on account of the terms or provisions of this agreement except for its own wilful neglect or default in acting as Depository, and shall not be responsible for the validity or genuineness of the bonds deposited with it hereunder.

12. The members of Committee shall not be personally liable for the acts or omissions of each other or for the acts or omissions of any other member or any Depositor or any other attorney or agent selected in good faith or of the Depository or for any error or judgment or mistake of law or fact, but each shall be liable only for his own wilful default.

13. All notices filed by Bondholders with Committee shall be addressed to Owen J. Roberts, Esq., Chairman, 500 West End Trust Building, Philadelphia, Pennsylvania.

We, the undersigned members of Committee and holders of bonds above described, assent to, and agree to be bound by the terms hereof.

Sgd. Owen J. Roberts,
" Fred L. Harner,
" Harry C. Case,
Bondholders' Committee.

Central Trust & Savings Company,
Sgd. by C. S. Walton,
President.

.....
Bondholder.

Affidavits.

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

IN CHANCERY OF NEW JERSEY.

HARRY C. CASE, of full age, being duly sworn according to law, upon his oath deposes and says that he is a bondholder, stockholder and a Director, and a common creditor of the defendant corporation, and that at the present time he owns forty-five (45) shares of the stock of the said company; that he was actively connected with the said defendant corporation since it has been in existence, and is somewhat familiar with its affairs and physical condition; that he believes that if the sum of three thousand dollars ($3,000) could be at once used for repairs, betterment and rehabilitation of said plant, that it could be put in splendid working condition and can safely render the service that it is now rendering to its patrons and without danger of breaking down, can furnish heat, light and power to customers in addition to those it is now serving. That from his knowledge of the said plant he believes that it is well worth the sum of at least seventy-six thousand dollars ($76,000), which sum was fixed by an appraisal of the Public Utility Commission of New Jersey, and can be readily improved at little cost, and that the sum of five thousand dollars ($5,000), over and above its bonded indebtedness, is not such an indebtedness as would be too heavy for an owner of the plant to carry.

Deponent further says that at the time the Lambertville Heat, Light and Power Company was

organized, in the year 1904, there was a cash outlay for the purchase of the old plant and property of the Hunterdon Electric Company by the Lambertville Heat, Light and Power Company of at least as much as the proceeds from the sale of twenty-seven thousand, five hundred dollars ($27,500) worth of bonds, the company also assuming an unpaid mortgage of the Hunterdon Electric Company in the amount of twelve thousand five hundred dollars ($12,500) making a total outlay in the purchase of the property equivalent to forty thousand dollars ($40,000). This forty thousand dollars ($40,000) represented all expenses of organization of the Lambertville Heat, Light and Power Company, the services paid the engineers in purchasing and erecting the new plant and lines, as well as attorney's fees in the organization of the company and securing its franchises and making of its contracts.

Deponent further says that to his knowledge since the organization of the company a sum at least equal to forty thousand dollars ($40,000) has been expended in improvements, extensions and alterations of property and the plant of the company, said funds being raised from the proceeds of sale of bonds of the company and from surplus earnings of the company during the years 1904 to 1912 inclusive.

Deponent further says that at the time of the purchase of the stock of the company by Mr. F. Stanley North, early in the year 1913 (January), the company had collateral loans aggregating seventeen thousand five hundred and seventy-five dollars ($17,575), to secure which treasury bonds of the company to the amount of twenty-seven thousand dollars ($27,000) were pledged as collateral. The outstanding bonds of the company at that time

amounted to forty-nine thousand dollars ($49,000), and there was still unpaid a balance of four thousand dollars ($4,000) on account of the Hunterdon Electric Company mortgage mentioned above, which made a total indebtedness at that time of seventy thousand five hundred and seventy-five dollars ($70,575) plus current indebtedness for running expenses, etc. That this deponent further says he has examined the list of claims filed with the Receiver against said company, and finds that they amount to the sum of four thousand thirty-three 7/100 dollars ($4,033.07). That of said amount, the sum of one thousand two hundred and thirteen 47/100 dollars ($1,213.47) is for judgments upon which executions were issued, and that as this deponent understands, levy was not made upon the personal property of the said corporation but only on a portion thereof. That the unsecured debts of the common creditors of the said company amount to the sum of two thousand eight hundred seventeen 60/100 dollars ($2,817.60), and that this deponent is a common creditor for an unsecured claim of five hundred dollars ($500) for services rendered to this defendant prior to and after the time when F. Stanley North became managing Director thereof; that the debt of this deponent against the said corporation is for services rendered, and is a legal and just debt, no part of which has been paid. That should the sale of the premises for the very low sum of thirty thousand five hundred dollars ($30,500) be confirmed, this deponent verily believes that he will not only lose his claim as a common creditor, but that he will also be compelled to accept for the bonds which he holds, amounting to the sum of twenty-five hundred dollars ($2,500.00), less than thirty per cent. therefor, thus causing this deponent to suffer serious financial loss.

This deponent further says that in examining the affairs of said company, he finds that at a meeting of the Board of Directors, of which this deponent, as a member of the Board of Directors, had no notice whatever, it was voted to issue from the treasury twenty-seven thousand dollars ($27,000) worth of bonds of the company as security for the debt of seventeen thousand five hundred dollars ($17,500), and that as this deponent has been informed, and believes to be true, such bonds have been sold and the company has only received therefor the sum of seventeen thousand five hundred dollars ($17,500), and this deponent further says that having examined the list of bondholders in the affidavit attached hereto by Owen J. Roberts, he does not find that this twenty-seven thousand dollars ($27,000) worth of bonds are included therein, and that he verily believes that those bonds have been filed as a claim with the Receiver, for the full amount thereof, to wit: Twenty-seven thousand dollars ($27,000), when in fact but seventeen thousand five hundred dollars ($17,500) was paid for the same, and that said bonds are the ones which, as he has been informed by Mr. Scott Scammell, Mr. Hunt, the solicitor for the Receiver, refused to state in whose name they are filed as owner.

Deponent further says that owing to his time being entirely occupied for the last year in the State of Florida, he was unable to make any efforts among the bondholders endeavoring to form a plan of reorganization, and on account of unfavorable financial conditions was unable to make a cash bid for the property at the time of the sale as advertised, in accordance with an order of this Court, dated August 25th, 1914.

Deponent further says that he made a personal

examination of the plant of the company on October 3d, 1914, and believes that the plant is in a perfectly safe condition for the operation of its business, and that there is no danger of an immediate breakdown.

HARRY C. CASE.

Sworn and subscribed to before me this thirteenth day of October, A. D. 1914.

PHILLIP FORMAN,
Notary Public of N. J.

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

ANNE E. MARTINO, on her oath deposeth and saith that she is a stenographer in the office of W. Holt Apgar, Counsellor-at-Law, Trenton, N. J. That at his request she did, on Wednesday, September 30th, 1914, accompany Scott Scammell, Esq., and W. Holt Apgar, Esq., to Lambertville, New Jersey, and attend at 2 o'clock in the afternoon of said day, the sale held by the Receiver of the plant and property of the Lambertville Heat, Light and Power Company, the above-named defendant. That the property was put up first in parcels and then as a whole, and that just a short time before the property was struck off and after, as this deponent believes, the sum of thirty thousand five hundred dollars ($30,500) had been bid, Mr. Scott Scammell asked that the proceedings be suspended for a moment as he had something which he wished to say. The Receiver consenting to the suspension of bids, the following colloquy ensued:

Mr. Scammell: Mr. Receiver, on behalf of the Bondholders' Committee and an interested purchaser in this property, I request you to offer this property for sale subject to the mortgage encumbrance thereon, and I offer to make a bid for the property subject to the mortgage encumbrance of not less than $5,000.00.

Bidder: What is the mortgage encumbrance?

Mr. Scammell: $80,000.

Mr. Hunt: Mr. Scammell, my advice to the Receiver is that he has no authority to submit the sale subject to the mortgage encumbrance, and since he could not make the sale, it would be absurd for him to do so, I think.

Mr. Scammell: I make that request because the property is being sold for very much less than its actual value.

Mr. Hunt: I know nothing of the value of the property, but the terms of the sale expressly state that the sale must be confirmed by the Court of Chancery—you understand that, the sale must be reported and confirmed by the Court of Chancery. Under these circumstances your objection as to price is unnecessary.

Mr. Scammell: I also desire to enter an objection to the sale because the Receiver has not given me access to the claims which have been filed for the purpose of assisting the Bondholders' Committee in obtaining a reorganization of this company. On Monday last I requested Mr. Hunt, the counsel for the Receiver, to allow me to have access to the claims, $27,000 bonds, filed with the Receiver. Such request was refused.

Mr. Hunt: Yes, and Mr. Hunt will now state that the purpose for which that information was

required was not stated to me. No mention was made to me of its being for the purpose of enabling the bondholders to effect a reorganization. My reply was that I considered when the Receiver's report was filed that was confidential information which he had no right to divulge. He had no right to give that information to you any more than he had any information he had concerning you.

Mr. Scammell: I deny that I did not disclose the object of my inquiry, and on the contrary stated that the purpose of it was to effect a reorganization and make a deal which would more than enable us to pay all the creditors of the company above the mortgage indebtedness.

Mr. Hunt: I want to call your attention to the fact that you, so far as the Receiver knows, have not bid here. If you want to bid, of course, the Receiver means to make every effort to get the highest bid he can get for the property. If you want to bid, do not expect him to hold the crowd here until four, five or six o'clock.

Mr. Scammell: I have not asked the Receiver to hold the bidders here. I have made my statement as above, and protested against the sale for what I consider an absolutely inadequate price for the property.

That the above colloquy was taken down by this deponent at the time, and that she has transcribed same from her notes taken as aforesaid. That she verily believes that her notes as taken at that time are correct and show truly the words that passed between the different parties mentiond in the above colloquy, and that from said notes the transcription

above is correct, and that the same as hereinabove appears truly states what occurred between Mr. Scammell, the bidder, and Mr. Hunt. That the bidder who made the remark at the beginning of the colloquy, to wit: "What is the mortgage encumbrance?" is the same party to whom the property was struck down for thirty thousand five hundred dollars ($30,500), and that he gave his name as Robert C. Shields, 611 Chestnut Street, Philadelphia, Pennsylvania, care of Day and Zimmerman, and that said bidder heard all the colloquy between Mr. Scammell and Mr. Hunt as hereinabove given. That this deponent has her original notes of the above colloquy, which can be produced if so desired.

ANNE E. MARTINO.

Sworn and subscribed to before me this twelfth day of October, A. D. 1914.

RICHARD S. WILSON,
M. C. C. of N. J.

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

W. HOLT APGAR, of full age, on his oath deposeth and saith that he is a solicitor in the Court of Chancery, and is one of the solicitors interested for the Bondholders' Committee in the above-entitled matter. That together with Scott Scammell, his colleague as solicitor for the Bondholders' Committee, Mr. H. C. Case, a bondholder, stockholder, member of the Board of Directors and common creditor of the defendant company, and Miss Anne E. Martino, he attended the sale held by the Receiver of the

defendant company at Lambertville on Wednesday, September 30th, 1914, at 2 P. M. That prior to the sale Mr. Scammell, Mr. McCracken, the Receiver, and this deponent were talking on the pavement in front of the office of the company and the place at which the sale was held. During the conversation Mr. Scammell stated to Mr. McCracken that we would like to have an adjournment of the sale; that we wanted to make an offer subject to the mortgage, and that we thought, in the interest of the creditors, bondholders and all concerned, that there should be an adjournment. That Mr. McCracken replied that he would speak to his counsel as to whether same could be done. That shortly thereafter Mr. McCracken stated to Mr. Scammell, in the presence of this deponent, that he had spoken to his counsel, Mr. Hunt, who stated that the sale could not be adjourned, and that, therefore, he could not grant the request.

This deponent further says that he has read the affidavit of Anne E. Martino hereto attached, and the colloquy which took place just before the property was struck down to the party who stated his name was Robert C. Shields, and that he remembers distinctly the colloquy, and believes same is absolutely correct as stated in said Martino's affidavit.

W. Holt Apgar.

Sworn and subscribed to before me this twelfth day of October, A. D. 1914.

Richard S. Wilson,
M. C. C. of N. J.

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

SCOTT SCAMMELL, of full age, being duly sworn according to law, upon his oath deposes and says: that he is one of the solicitors and counsel for the Bondholders' Committee in the above-entitled cause, and that as such, together with W. Holt Apgar, Esquire, has been active in the interests aforesaid; that deponent has had several conferences with the chairman of the Bondholders' Committee for the purpose of affecting a reorganization of the company upon a basis which would keep the company intact and pay all the creditors in full; that for the purpose of accomplishing such a result deponent has endeavored to obtain the name of the owner of bonds of the company to the extent of $27,000, which had been previously held as collateral for certain loans of the company, but by some authority had been sold for the amount of said loans; that on Friday, September 18th, it was agreed by this deponent with the aforesaid W. Holt Apgar, Esquire, that on Saturday morning, the 19th of September, he would go to the office of the Receiver in this matter, or his counsel, for the purpose of ascertaining the name of the owner of these bonds, but that by reason of some error in the mailing of a letter to Mr. Hunt, the counsel of the Receiver, Mr. Apgar was unable to find Mr. Hunt at his office; that deponent was advised of this fact by Edgar W. Hunt, Esquire, the solicitor and counsel of the Receiver, on Tuesday, September 22d, last; that at this last mentioned interview deponent requested to know from Mr. Hunt the name of the person filing the claim for the $27,000 of bonds, above referred to, and

said Hunt stated to deponent that he could not recollect the name of the person filing the claim, nor the name of the present owner of the bonds; that deponent stated that it seemed singular to this deponent that the counsel for the Receiver could not recollect the name of the owner of the bonds, neither did he know the name of the person filing the claim; that on Monday, September 28th, this deponent went to the office of the Receiver of the defendant company, in Lambertville, and found that Mr. McCracken, the Receiver, was not in at that time; that deponent then went to the office of said Edgar W. Hunt, Esquire, the counsel of the Receiver, and then asked to see the claim filed by the person claiming to own the $27,000 of bonds before referred to; that the said counsel for the Receiver said that he did not have the claim in his office, that the same was filed with the Receiver; that deponent then requested the said counsel to communicate with the said Receiver and advise him to allow this deponent to examine said claim; that the said Hunt said that he refused to allow this deponent to see said claim, for the reason that he thought such information should not be given to this deponent; that thereupon this deponent advised the said Hunt that representing the bondholders approximately to the extent of $41,000, that a plan of reorganization was being effected, which plan contemplated a bid sufficient to pay the creditors in full, and that inasmuch as he represented a Receiver for the creditors and stockholders, it was to his interests to give his assistance to that end; that deponent then asked the said Hunt whether he had not been served with a petition and affidavits, which deponent supposed had been duly signed by the chairman of the Creditors' Committee and Mr. Case, a former Director and

stockholder of the company, and the said Hunt said that he had not, as yet; that deponent then advised the said Hunt that such a petition was prepared, and that deponent assumed that it had been signed, and that he would no doubt, during the day, be served with such papers; that at said interview this deponent asked the said Hunt whether any action had been taken against one F. Stanley North, for moneys which he had illegally taken from the company; that the said Hunt said that no action had been taken in this respect, and that he was not sure that any moneys had been illegally taken from the company, and that such fact would not appear until an audit had been made; that deponent drew the said Hunt's attention to the fact that the minutes distinctly show, under date of January 20th, 1913, that said North had no authority to withdraw any more than the sum of $150 per month, that from his own affidavit filed in this cause, he, the said North, admitted that he had withdrawn more than that amount; that deponent thereupon requested to know from the said Hunt whether the Receiver had allowed the claim filed for the $27,000 of bonds, because deponent desired to draw his attention to the fact that these bonds were deposited as collateral security for loans aggregating $17,575; that the said Hunt stated to this deponent that the said bonds had been sold to the said North for the amount of the said loans; that deponent then stated that North was not the whole company, and that he could not assume to take these bonds for a price very far below their actual value; that the said Hunt thereupon stated that one of the Directors was one of "our own" Directors, and that he had voted in favor of such resolution; that deponent thereupon stated to said Hunt that neither Mr. Apgar nor

deponent represented any particular interest, but that they were acting in behalf of all of the bondholders depositing their bonds under the bondholders' agreement, and that they were required to protect all of the bondholders and not any particular one; that deponent thereupon desired to know the attitude of the said Hunt with respect to an adjournment of said sale, although this deponent stated that the rule to show cause, which would be asked for upon the petition to be filed, would cover the question of the adjournment; that the said Hunt stated that unless there was some action taken by the Vice-Chancellor he could see no reason for an adjournment of the sale; that at the close of the interview this deponent made particular request of the said Hunt to examine said claim of aforesaid bonds, but that the said Hunt stated positively that he would refuse to allow this deponent to see said claim; that deponent returned to the City of Trenton, and there ascertained that the petition and affidavits upon which a rule to show cause would be requested of the Vice-Chancellor hearing the said application, had not been signed because of some question of the authority of the Bondholders' Committee to execute the application and to furnish the security contemplated thereby; that because of the absence of one member of the Bondholders' Committee it was impossible to obtain the consent of the committee until early morning of Wednesday, the 30th of September; that as soon as said committee had agreed to authorize this deponent to make the offer of $5,000, and to pay the expenses of readvertising, if necessary, that this deponent immediately endeavored to make the application to his Honor, John H. Backes, one of the Vice-Chancellors, and the same being the one heretofore making the order

allowing the property to be sold in this cause, but that deponent ascertained that the said Vice-Chancellor had gone to the town of Belvidere, for the purpose of trying a case in that town, and it was impossible to get in touch with him; that your deponent then appeared before his Honor, Edwin Robert Walker, the Chancellor, and stated to the Chancellor all the facts, and requested that an order immediately be made directing the Receiver to adjourn said sale; that deponent at the time of the application to the Chancellor had not as yet received the duly signed papers, but deponent gave his personal assurance that such offer would be made; that deponent was advised by the Chancellor that the Chancellor could not assume that the property would not be sold for a sum equal to the bid deponent proposed, which is the sum hereinafter mentioned, but stated that if the property sold for a small sum that this fact together with a statement that deponent had been unable to obtain access to the records in the possession of the Receiver, which records would assist in a reorganization of the company, would have great weight as to whether the sale by the Receiver should be confirmed.

That deponent, together with his associate, Mr. Apgar, and Mr. H. C. Case, attended the sale advertised to take place at the office of the defendant company at Lambertville, on the thirtieth of September; that deponent with his associate went to the office of the company, and shortly before the time fixed for the sale spoke to the Receiver, Mr. McCracken, and told him that his counsel, Mr. Hunt, had refused to allow this deponent to obtain the name of the person claiming to own $27,000 of bonds formerly held by the aforesaid North, and by reason of the failure to give the deponent such information the

plan of the Bondholders' Committee that Mr. Apgar and this deponent represented, had been to a large extent frustrated, and that the aforesaid Mr. Apgar and this deponent were unable to perfect the plan which meant that the creditors would receive their claims in full; that the said Receiver stated that he was endeavoring to work out the property for the best interests of all concerned; and that deponent thereupon stated that if such were the case, deponent, on behalf of said Bondholders' Committee, requested an adjournment of said sale; that the said McCracken stated that he was guided entirely by his counsel, and that he would have to consult with him before any decision was made; that the said McCracken shortly afterwards stated to this deponent that he could not consent to an adjournment; that shortly after the said property, as per the parcels advertised, were offered in the manner indicated in the advertisement, and when all the property was offered for sale, this deponent thereupon stated to the Receiver and his counsel that he desired to request the Receiver to offer the sale subject to the mortgage encumbrance thereon, and that deponent would thereupon make a bid for the property of not less than $5,000, subject to the mortgage encumbrance; that thereupon the Receiver consulted with his counsel, and the said counsel advised the said Receiver not to accept such an offer, or to submit the property to such a sale; that thereupon this deponent stated that the property was being sold for a sum very much less than its actual value, and that deponent, on behalf of the interests that he represented, entered an objection to the sale for such reason, and for the further reason that if the counsel for the Receiver had allowed the deponent to obtain the necessary information, that there would

have been a complete plan of reorganization effected which would have paid the creditors in full; that notwithstanding said request of this deponent, the said Receiver refused to accept such offer, and likewise refused to adjourn the sale.

SCOTT SCAMMELL.

Sworn to and subscribed before me this 13th day of October, A. D. 1914.

PHILLIP FORMAN,
Notary Public of N. J.

COUNTY OF HUNTERDON,
STATE OF NEW JERSEY, } *ss.*

H. M. MOORHEAD, being duly sworn according to law, deposes and says that during the years 1904 to 1912, inclusive, he was the operating manager of the Lambertville Heat, Light and Power Company, and had practically entire charge of the plant, including operation and construction; that during said years there was to deponent's personal knowledge expended upon alterations, improvements and betterments on the plant and property of the corporation a sum aggregating $40,000, which sum was obtained partly from additional bonds issued under mortgage, and partly from surplus earnings of the company.

H. M. MOORHEAD.

Sworn to and subscribed before me this eighth day of October, A. D. 1914.

WALLACE P. THORNTON,
[L. S.] *Notary Public.*
Commission expires Oct., 1916.
Certificate filed in Dep't at Washington, D. C.

PETITION TO ORDER RE-SALE.

(Filed October 27, 1914)

In Chancery of New Jersey.

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

Your petitioners, Owen J. Roberts, Chairman of a committee of bondholders of the Lambertville Heat, Light and Power Company, the above-named defendant, and Harry C. Case, a stockholder of said company, respectfully show unto your Honor:

1. The holders of bonds of the defendant company, which bonds are secured by a mortgage upon all of the real and personal property of the said defendant company, to the amount of thirty-eight thousand one hundred dollars, formed a committee and named as chairman thereof your petitioner, Owen J. Roberts, with authority to the said Owen J. Roberts to take all steps necessary, proper and legal, to preserve all their rights, and, if possible, secure payment of said bonds; and likewise to secure such sale of such property by the Court of Chancery as would give to such bondholders the best protection possible so that the bondholders might have a minimum loss, if loss occurred by reason of the said corporation becoming insolvent and the same being sold. Other bondholders holding bonds aggregating twenty-six hundred dollars are cooperating with the said committee.

2. That Harry C. Case, also petitioner, beside being a bondholder and joining in the appointment of the above-named bondholders' committee, is likewise a stockholder and member of the Board of Directors of the said defendant corporation, holding at the present time forty-five shares of the capital stock of the said corporation.

3. That your petitioners, representing the interests as aforesaid, for the purpose of affecting a reorganization of the company, endeavored to ascertain the name of the holder of the thirty-one thousand dollars' worth of bonds formerly held by F. Stanley North (which were bonds formerly held in the treasury and issued for the purpose of securing collateral loans of the company aggregating twenty-two thousand dollars), a former officer of the defendant corporation, and by whose management the defendant corporation was rendered insolvent within the short period of a little over a year, but that notwithstanding the efforts of counsel representing your petitioners the name of the said owner of the said bonds could not be ascertained by reason of the refusal of counsel for the Receiver to give to your petitioners' representatives the name of the holder of the said bonds; that notwithstanding the refusal of the said Receiver and his counsel to give such information, your petitioners attended at the time and place of the sale of said property of the defendant corporation and there requested the said Receiver and his counsel to adjourn said sale so as to enable said petitioners to apply to the court for an order amending the decree for sale; that your petitioners announced to all persons present, including the bidder, Robert C. Shields, that your petitioner would agree to pay at least the sum

of five thousand dollars over and above the encumbrances upon said property, but notwithstanding said request and offer, said Receiver and his counsel refused to adjourn said sale and did not accept said offer and thereupon sold the said premises for the ridiculous sum of thirty thousand five hundred dollars.

4. That your petitioner, Harry C. Case, has knowledge of the plant of the said defendant company, which knowledge has been acquired by operating electric plants for a number of years, and also because of his active management of said defendant company for several years, in addition to a personal examination of the property on October third, instant; that your petitioner, the said Harry C. Case, believes that the said plant is worth at least the sum of seventy-six thousand dollars, which said sum was fixed by the Public Utilities Commission of New Jersey in its appraisal of the plant a little over two years ago; that to confirm the sale of the said premises for the sum of thirty thousand five hundred dollars would mean the sacrifice of the property of said corporation, and that if your petitioners had been able to obtain the necessary information from the said Receiver of the said corporation, a plan of reorganization could have been perfected whereby the creditors of the company would have received all of their claims in full and the bondholders would have been protected in their interests in the said corporation by the security upon said property. That the personal property items twenty and one-half, twenty-one and twenty-two C, in the inventory filed, which it was claimed that the mortgage did not cover, received only one bid of five hundred dollars, and the item of the New Hope Electric Company stock

likewise received only one bid of five hundred dollars.

5. That your petitioners offer, on behalf of their interests, to pay the expenses of readvertising said sale, and will likewise agree to pay at least the sum of five thousand dollars for said property over and above the mortgage thereon, provided the said property is sold subject to the mortgage thereon, and they will likewise provide for the payment of the interest upon coupons maturing on October first, instant, and further agree to place said property in such repair that the interests of the public being served by said company will not suffer. That your petitioners will enter into such an agreement with either the Receiver or the court and will deposit the necessary security either in cash or in the form of a certified check to faithfully perform the same.

6. That the said sum of five thousand dollars which your petitioners herewith offer for the said property, subject to the mortgage thereon, will pay the costs of the receivership, the judgment creditors, whose judgments aggregate the sum of eight hundred and forty-four dollars and seventy-six cents and will leave a sum, which can be applied to the claims of general creditors. If, on the other hand, the present sale for thirty thousand five hundred dollars is confirmed, not only will general creditors receive nothing, but the bonds which aggregate eighty thousand dollars will not realize over twenty-five or thirty per cent. of their face value.

Your petitioners therefore pray that the sale of the said property and premises made on the thirtieth day of September, nineteen hundred and four-

teen, under the order of this Honorable Court, dated the day of August, nineteen hundred and fourteen, which sale was made to Robert C. Shields, for the price or sum of thirty thousand five hundred dollars, be not confirmed, and that the said order of this Honorable Court, made on the day of August last, nineteen hundred and fourteen, for the sale of the real and personal property to said corporation, be so amended that the said Receiver may offer said property for sale as one parcel subject to the bond mortgage thereon, together with all the franchises of the said corporation, and all of its contracts and interest in the capital stock of any other corporation, said sale to be made subject to the approval of this Court.

And your petitioners will ever pray, &c.

SCOTT SCAMMELL,
W. HOLT APGAR,
Solicitors for and of Counsel with the Petitioners.

ORDER TO SHOW CAUSE IN MATTER OF RE-SALE OF PROPERTY.

(Filed October 27, 1914)

IN CHANCERY OF NEW JERSEY.

A petition having been presented to this Court by Scott Scammell and W. Holt Apgar, solicitors for and of counsel with a committee of bondholders of the above-named defendant corporation, said committee being represented in this application by Owen J.

Roberts, the chairman thereof, and counsel aforesaid likewise appearing on behalf of Harry C. Case, a creditor and stockholder of said corporation, who also joined in the aforesaid petition filed in this cause; and it appearing that the aforesaid committee represents and acts for bondholders to the extent of $41,700 out of a total issue of $80,000 of outstanding bonds of said company, and it further appearing that counsel as aforesaid, in order to protect and preserve the interest of all of the bondholders of said company, and also to secure to the creditors the payment of their several debts against said corporation, endeavored to obtain from the Receiver and his counsel certain information concerning the ownership of certain bonds heretofore held in the treasury of said corporation and thereby to accomplish the result as aforesaid; and it further appearing that the said Receiver and his counsel refused to disclose the name of the owner claiming to own said treasury bonds prior to the time of the sale of the property of the said defendant company; and it further appearing that the said committee, through its counsel as aforesaid, sought to obtain an adjournment of the sale of the said property of the company prior to the time of the actual sale thereof, and that said counsel likewise applied to the Receiver and his counsel for an adjournment of said sale for the purposes aforesaid, and that such adjournment was not granted;

And that the said petitioners now praying that the sale of certain of the property of the defendant lately made as aforesaid be not confirmed, and that the order of this Court, made on the twenty-fifth day of August last, directing such sale to be made, be so amended as to direct the Receiver to offer the

same property described in said former order and put up at the former sale for sale as one parcel, subject to the mortgage and outstanding bonds of $80,000 existing against the same; and the petitioners offering in such event to bid for the said property subject to the said mortgage and the eighty thousand dollars of bonds secured thereby, the sum of five thousand dollars, and also to pay the expense of advertising and conducting said sale, and if the said property be purchased by them to provide for the payment of interest upon coupons upon said bonds maturing the first day of October, instant, and to place the said property in such repair that the interest of the public being served by said company will not suffer;

It is thereupon, on this twenty-second day of October, nineteen hundred and fourteen, on motion of Scott Scammell and W. Holt Apgar, ordered that the purchaser at said former sale, the Trustee for bondholders under the mortgage heretofore given by said corporation, and all and singular the bondholders, creditors and stockholders of the said defendant corporation show cause before this Court, at the State House, in Trenton, on Tuesday, the tenth day of November, nineteen hundred and fourteen, at the hour of ten o'clock in the forenoon, or as soon thereafter as the matter can be heard, why the prayer of said petition should not be granted, and why the former order of this Court above mentioned should not be amended in such manner as to direct the said Receiver to offer all of the property of said defendant in said former order described for sale at public vendue to the highest bidder in one parcel, subject to the said mortgage and the eighty thousand dollars of bonds now outstanding and secured by the same.

And it is further ordered that the affidavits read and filed in this court on Tuesday, the twentieth day of October, instant, on the hearing of objections heretofore filed by the petitioners to the confirmation of the said sale heretofore made by the said Receiver free of encumbrances may be used and considered at the hearing on the return of this order to show cause, and that all parties having an interest in this matter as bondholders, stockholders or creditors of said defendant corporation, or bidders at the said former sale, have leave to take further affidavits, copies thereof to be served on all other parties appearing in this cause at least five days before the return day of this order.

And it is further ordered that the Receiver in this cause shall, within four days from the date hereof, cause copies of this order, which need not be certified, to be mailed, with the postage thereon prepaid to Robert C. Shields, purchaser at the said former sale of said property, and to the Trustee for bondholders under the mortgage heretofore given by said corporation, and to each bondholder, creditor and stockholder of the said defendant corporation, whose address is known to said Receiver.

E. R. WALKER, *C.*

Respectfully advised,
JOHN H. BACKES, *V. C.*

CONCLUSIONS.

(Filed November 27, 1914)

IN CHANCERY OF NEW JERSEY.

Submitted, November 10, 1914. Decided, November 14, 1914.

On objection to confirmation of sale and petition for re-sale.

For the objectors — Mr. Scott Scammell and Mr. W. Holt Apgar.

For the purchaser—Mr. William J. Kraft.

For the Receiver—Mr. Edgar W. Hunt.

For the Mortgagee-Trustee—Mr. Linton Satterthwaite.

BACKES, *V. C.*

The Receiver of the defendant, an insolvent corporation, sold its plant free of a mortgage of $80,000 and of several judgments against the company upon which executions were issued and levied. The order to thus sell was made, chiefly because of a conflict between the mortgage and judgment holders as to the extent and priority of their respective liens; pending the litigation of which the property of the company was likely to deteriorate in value. The mortgage referred to was executed to a Trustee, to secure an issue of $80,000 of bonds, and shortly after the appointment of the Receiver in June last, a committee of the bondholders was formed to protect their interests, which committee has filed objections to the sale and a petition that the property be

re-sold subject to the mortgage. The property was struck off and sold for $30,500. The affidavits of the objectors satisfy me that this price is less than one-half of its value. It was appraised by experts of the Public Utility Commission, about two years ago, at $76,000. The physical property, exclusive of the real estate upon which the power-station of the company is located, and of the franchise of the company in the City of Lambertville and in the town of New Hope, in Pennsylvania, was appraised by an expert of the purchaser at $24,185. What the value of the real estate is he does not say, nor did he place an estimate upon the franchises. In none of the affidavits before me is it attempted to appraise the franchises, but it is a matter of common knowledge that public grants of this kind are usually the principal asset of public utility corporations, the value of which is measurable only by the company's earning capacity. This company was fairly prosperous until about two years ago, and even up to the time of the decree of insolvency it had earned sufficient to pay the interest on its bonds. That it become insolvent within so short a period, is charged to mismanagement and unlawful diversion of its funds. However this may be, I think it is a fair deduction, based upon the estimate of the physical property as given by the purchaser's expert, plus the land and the company's two franchises, that the value of the plant approximates nearly the amount of the bonded indebtedness; showing pretty clearly that it was struck off at a price far below its actual market worth. Support of this view is to be found in the offer of the bondholders' committee to the Receiver at the time of the sale, to bid not less than $5,000 in excess of the mortgage encumbrances, if the property were exposed to sale, subject to the

mortgage; in effect, a bid of $85,000, of which I will now speak.

The bondholders' committee, at the time of the sale, represented more than a majority of the outstanding bonds. The bondholders were numerous and widely scattered throughout the States. Some held bonds of only the par value of $100. The committee worked diligently to bring them all into the protective scheme. The holders of $27,000 of these bonds were unknown to the committee, and the Receiver declined to divulge their names and addresses until advised to do so by the court, but too late to be available to the committee before the sale. But, representing more than one-half of the bondholders, and to obtain further time in which to secure the cooperation of the balance and thus to enable the committee to apply to the court to allow the mortgage to remain undisturbed, the committee, on the day of sale, requested and were denied an adjournment, and during the progress of the sale offered to bid not less than $5,000 for the property, if it were then put up subject to the mortgage. This the Receiver also denied. In the objections to confirmation, and petition for re-sale, the committee renew the offer to bid at least $5,000, and further that they will pay the expenses of re-advertisement and will provide for the payment of interest on the bonds which matured October 1, 1914, and further agree to place the property in such repair that the interest of the public being served by the company will not suffer. A certified check of $5,000 is tendered as a guarantee. If this offer is accepted, it will result in enabling the Receiver to pay all the company's debts, including the expenses of the Receiver's administration. These circumstances present a situation not merely of a subsequent offer by

another of a higher price, for if that were the case the general settled rule would be applicable "that where the sale is made for a fair price and in good faith, and there is no irregularity, fraud, mistake or legal surprise with which the purchaser is or ought to be chargeable, the subsequent offer by another bidder of a higher price, is not of itself sufficient reason for refusing confirmation." *Morrissee vs. Inglis,* 46 N. J. Eq. 306; *Rogers vs. Rogers Locomotive Co.,* 62 N. J. Eq. 111; *Hoffman vs. Godfrey,* 79 N. J. Eq. 617. Here the bondholders were diligent in their efforts to protect their property interests before the sale, and made, what is now the increased offer, at the time of the sale, and were frustrated only by the Receiver's zeal to strictly comply with the mandate of the selling-order. Had the facts which were presented to the Receiver been laid before the court—and it appears that the committee's counsel tried, but was unable, to reach the Vice-Chancellor who granted the selling-order—the relief sought would have been granted. The exigency should have appealed to the Receiver. The property was in his hands as Trustee primarily for the common creditors, in whose interests the insolvency proceedings were instituted. To confirm the sale will result in a total loss to them, and a sacrifice of nearly seventy-five per cent. of the interest of the bondholders; whereas, had the Receiver granted the committee's request for an adjournment of the sale, to enable the bondholders to have excised from the selling-order the foreclosure of their mortgage, all would have been saved. And, indeed, I am of the opinion that under the circumstances the bondholders were entitled to an adjournment as a matter of right. Although, as to them, the order to sell free of the lien of their mortgage, was *in invitum,* they,

to all intents and purposes, at the time of sale, occupied the position of mortgagees in foreclosure, and as such would have been, and as constructive selling-mortgagees were, entitled to have the sale postponed on request. Measured by the fruits of a sale, as then and now desired by the bondholders, the property of the Receiver *cestuis que* trust was sacrificed by the bid he accepted, and confirmation, which would work such great hardship and injustice, will be withheld. *Rowan vs. Congdon,* 53 N. J. Eq. 385; *Porch vs. Agnew Co.,* 66 N. J. Eq. 232; *Strong vs. Smith,* 68 N. J. Eq. 650.

The purchaser was fully apprised at the sale of the offer made to the Receiver by the bondholders. The auction was halted when the purchase-price was offered, and it was then that the offer to bid not less than $5,000 for the property, subject to the mortgage, was made, and it must be assumed that the purchaser made his bid with notice of the inequities, and also subject to the equities of the bondholders, as they have now been laid before the court.

The order to sell will be amended, ordering a sale of the property subject to the mortgage lien, upon condition that the bondholders' committee stipulate in writing with the Chancellor, that upon a re-sale they will bid at least the sum of $5,000 and as much more as will, together with the funds in the hands of the Receiver, pay the costs of administration, and all of the debts secured and unsecured of the company (exclusive of the bonded indebtedness) and also the interest on the bonds which matured October 1, 1914; that they deposit with the Receiver a certified check for $5,000, as a guarantee; and that upon such sale the mortgage encumbrances, as between the Receiver and the purchaser, but not as between the Receiver and the bondholders, be re-

garded as a fixed lien upon the property so to be sold —which shall also be incorporated in the conditions of sale. This requirement is because the legality of some of the bond-issue is assailed, and if the assault is successful it is to enure to the Receiver for the benefit of the stockholders. To be more explicit: The property is to be sold for $80,000 (the mortgage lien to form so much of the consideration) plus the sums above mentioned. If these conditions are not complied with within twenty days, or such further time as the court may, upon application, grant, the sale will be confirmed.

STIPULATION.

(Filed December 17, 1914)

IN CHANCERY OF NEW JERSEY.

It is hereby stipulated by the bondholders' committee of the Lambertville Heat, Light and Power Company that they will, upon the re-sale of the property of said company, bid at least the sum of five thousand dollars ($5,000) for the property of said company, subject to the mortgage lien of eighty thousand dollars ($80,000) and as much more as will, together with the funds in the hands of the Receiver of said company, pay the costs of administration and all of the debts secured and unsecured of said company (exclusive of the bonded indebtedness) and also the interest on the bonds which matured October 1, 1914; and further stipulate that they will, and do hereby, deposit with the said Receiver a certified check for five thousand dollars

($5,000), as a guaranty of the performance of this stipulation.

It is also hereby stipulated that the bondholders' protective committee hereby submit themselves and the bonds held by them under the bondholders' protective agreement, a copy of which has been filed in this court, to the jurisdiction of this court, insofar as the determination of all questions relating to the validity and right of payment of said bonds are concerned; and consent that all such questions may be litigated and determined at the suit or at the motion of the Receiver in this cause.

OWEN J. ROBERTS,
For the Bondholders' Committee.
By W. HOLT APGAR,
Solicitor and of Counsel with said Committee.

ORDER DENYING CONFIRMATION AND DIRECTING RE-SALE.

(Filed December 17, 1914)

IN CHANCERY OF NEW JERSEY.

This matter being opened to the court by Scott Scammell and W. Holt Apgar, of counsel with the objectors and petitioners, and Edgar W. Hunt, of counsel with the Receiver, and William J. Kraft, of counsel with the purchaser; and it appearing that pursuant to the direction of an order made on the twenty-fifth day of August, nineteen hundred and fourteen, the Receiver in this cause sold the property therein described free and clear of encum-

brances to Robert C. Shields for the sum of thirty thousand five hundred dollars ($30,500), and objections having been filed to the confirmation of the said sale, and the objectors having petitioned that the said property be re-sold, and the Court having read the said objections and the petition and affidavits thereto annexed, in support thereof and in opposition thereto, and having heard the argument of counsel and having duly considered the same, and being of the opinion that the said sale should not be confirmed and that the prayer of the petition should be granted upon the terms hereinafter set forth; and it further appearing that the property so ordered to be sold is subject to a mortgage of $80,000 to secure $80,000 of the bonds of the defendant company, now issued and outstanding, and that the objectors and petitioners, the holders of the said bonds, who have formed themselves into a committee known as the bondholders' committee, acting by Owen J. Roberts, chairman of the said committee, have filed a stipulation in writing, wherein they agree that upon a re-sale of the said property they will bid at least the sum of five thousand ($5,000) for the same, and as much more as will, together with the funds in the hands of the Receiver, pay the cost of administration and all the debts secured and unsecured of the defendant company, exclusive of the bonded indebtedness, and also the interest on the bonds which matured on the first day of October, nineteen hundred and fourteen, subject to the mortgage lien of eighty thousand dollars ($80,000), as aforesaid, and that they have deposited with the Receiver a certified check for five thousand dollars ($5,000) as a guaranty of the performance of the terms of the said stipulation; and further, in and

thereby, have submitted themselves and their bonds to the jurisdiction of this court, insofar as the determination of all questions relating to the validity and right to payment of their bonds are concerned, and consent that all such questions may be litigated or determined at the suit or upon motion of the Receiver in this cause;

It is thereupon, on this fourteenth day of December, nineteen hundred and fourteen, on motion of the counsel for the petitioner, ordered that the sale heretofore made be not confirmed, and that confirmation thereof be refused;

And it is further ordered that the said order heretofore made on the twenty-fifth day of August, nineteen hundred and fourteen, be so amended as to direct the said Receiver to offer the said property therein described for sale at public vendue, to the highest bidder, in one parcel, and as an entirety, subject to the mortgage thereon, made by the said defendant company to the Real Estate Trust Company of Philadelphia, Trustee, bearing date the first day of October, nineteen hundred and four, and recorded in the clerk's office of Hunterdon County in Book 88 of Mortgages, page 306, etc., and the eighty thousand dollars of bonds issued and outstanding and secured thereby, but free from the lien of the several judgments mentioned in said former order; and that the said Receiver give public notice of the time and place of said sale and in all respects conduct the same according to the provisions of the statute in such case made and provided, and that he forthwith, after such sale, make report thereof to this court, and after his report of sale shall have been confirmed by this court, execute and make unto the purchaser or purchasers of said property, good

and sufficient deeds of conveyances and acknowledgments of sale for the real and personal property and franchises so sold, upon the purchaser's compliance with the conditions of sale, and that such sale and the conveyance executed as aforesaid, be valid and effectual forever and operate as an effectual bar, both at law and in equity, against the said defendant company, its judgment creditors and all persons whomsoever claiming by, through or under them;

And it is further ordered that as between the Receiver in this cause and the purchaser at said sale, and all persons claiming or to claim by, through or under such purchaser, the entire outstanding bond issue of eighty thousand dollars ($80,000), secured by said mortgage, shall be regarded as and be a valid and indisputable fixed lien upon the said premises, property real and personal, and franchises, which are covered by said mortgage, for the benefit of the stockholders, subject to the prior equities of valid bonds; but, that as between the Receiver and the several holders of the bonds constituting said outstanding issue, none of said bonds shall be considered as a valid and indisputable lien secured by said mortgage, but all of them shall be open to attack by the Receiver, for the benefit of stockholders, as hereinafter provided, upon any ground affecting their validity or the legality of their issuance, or a sum of money for which they ought, in law or in equity, to stand, and this provision shall be incorporated in the conditions of sale of said property, and in the Receiver's deed; to the end, that if any bonds be declared invalid, in whole or in part, the amount so declared to be invalid shall nevertheless continue to stand as liens against the said property in the hands of the purchaser, his heirs, executors, admin-

istrators and assigns, and shall enure to the Receiver for the benefit of the stockholders, subject to the prior equities of the holders of valid bonds.

E. R. WALKER, *C.*

Respectfully advised:
JOHN H. BACKES, *V. C.*

ORDER LIMITING CREDITORS.

IN CHANCERY OF NEW JERSEY.

(Filed June 30, 1914)

Between
WILBUR J. ADAMS, *et al.*,
Complainants,
and
LAMBERTVILLE HEAT, LIGHT & POWER COMPANY,
Defendant.

ON BILL, &C.
ORDER LIMITING CREDITORS.

Upon opening this matter to the Court by Edgar W. Hunt, of counsel with the Receiver in the above cause, It Is, on this 30th day of June, A. D. one thousand nine hundred and fourteen, Ordered, that the creditors of the said Lambertville Heat, Light and Power Company do present to the Receiver appointed in this cause, and prove before him, under oath or affirmation, or otherwise as the said Receiver shall direct, to the satisfaction of the said Receiver,

their several claims and demands against the said corporation, within two months from the date of this order, or that they be excluded from the benefit of such dividends as may thereafter be made and declared by this Court upon the proceeds of the effects of said corporation; and for the better ascertaining of the creditors of said corporation, and what is due to them respectfully, the said creditors are to be examined as the said Receiver shall direct or may deem necessary and expedient, and produce books and papers before him, on oath or affirmation (which oath or affirmation the said Receiver is hereby authorized to administer), as well as to examine, under oath or affirmation, all such witnesses as shall be produced before him touching the demands of said creditors.

And it is further ordered that the said Receiver do cause proper advertisements to be published in at least two newspapers published in this State, and such newspapers published in other places as he shall deem advisable, for the creditors of said corporation to come in before him and prove their claims and demands, as in this order directed; and that such publication be made within ten days from the date hereof and be continued to such papers as aforesaid for the space of four weeks, at least once in each week.

And it is further ordered that within the same time said Receiver shall also mail a notice of this order to the post-office address of each of the sale creditors, if the same can be ascertained, with postage prepaid thereon.

E. R. Walker, *C.*

ORDER BARRING CREDITORS.

(Filed September 17, 1914)

IN CHANCERY OF NEW JERSEY.

Between
WILBUR J. ADAMS, *et al.*,
Complainants,
and
LAMBERTVILLE HEAT, LIGHT & POWER COMPANY,
Defendant.

ON BILL, &c.
ORDER BARRING CREDITORS.

It appearing by an order of this Court, made on the thirtieth day of June, nineteen hundred and fourteen, that the creditors of Lambertville Heat, Light & Power Company, defendant in the above-entitled cause, were ordered and directed to present to the Receiver theretofore appointed in this cause, and to prove before him under oath or affirmation or otherwise, their several claims and demands against the said defendant corporation, within two months from the date of said order, or be excluded from the benefit of such dividend as may hereafter be made and declared by this Court from the proceeds of the property and effects of the said defendant corporation, and that the said Receiver should cause proper ad-

vertisements to be published in at least two newspapers published in this State for the creditors of said corporation to come in before him and prove their several claims and demands, and that the said Receiver should also mail a notice of said order to the post-office address of each of said creditors of said company whose address could be ascertained, as will more fully appear by reference to said order; and it further appearing that the time limited in and by said order for said creditors of said defendant corporation to present their said claims to the said Receiver has expired, and that the said notice has been published and mailed to each of the creditors of the defendant company whose addresses could be ascertained by said Receiver, in the manner directed in and by the said order:

It is thereupon, on this seventeenth day of September, on motion of Edgar W. Hunt, solicitor for the Receiver, ordered, that the creditors of said defendant company who have not brought in their claims to the said Receiver be and they hereby are barred and excluded from the benefit of any dividend that may hereafter be made and declared by this Court from the proceeds of the property and effects of the said Lambertville Heat, Light & Power Company.

E. R. WALKER, *C.*

Respectfully advised,

JAMES BUCHANAN,

A. M.

CLAIM OF REAL ESTATE TRUST COMPANY.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.*

JOHN A. MCCARTHY, being duly sworn, says that he is the Trust Officer of The Real Estate Trust Company of Philadelphia, to which company the Lambertville Heat, Light and Power Company executed a Deed of Trust, dated October 1st, 1904, to secure an issue of One Hundred Thousand Dollars ($100,000), first mortgage five per cent. thirty year gold bonds of said company; that Eighty Thousand Dollars ($80,000), par value of said bonds have been duly certified by the said Trustee and issued; that said Lambertville Heat, Light and Power Company is now indebted to the said The Real Estate Trust Company of Philadelphia, Trustee as aforesaid, in the following sums:

(a) Six Months' interest on $80,000 par of said bonds, due October 1st, 1914,	$2,000.00
(b) Six Months' interest on $80,000. par of said bonds, due April 1st, 1915,	2,000.00
(c) Accrued interest from April 1st, 1915, to September 1st, 1915, on said bonds	1,666.67
(d) Services of Trustee for registration and payment of coupons for the years beginning October 1st, 1913, in advance, and October 1st, 1914, in advance,	40.00
(e) Expenditures of Trustee in connection with the sale of the property	

of the said Lambertville Heat, Light and Power Company, being railroad fares, telephone calls and cost of circular letter to bondholders,	13.22
(f) Services of Philadelphia and Trenton Counsel of Trustee,	250.00
Total,	$5,969.89

That all of said indebtedness is now justly due and owing by the said Lambertville Heat, Light and Power Company to the said The Real Estate Trust Company of Philadelphia, Trustee.

JNO. A. MCCARTHY.

Sworn and subscribed to before me, this second day of September, 1915.

SARA A. HERRMAN,
Notary Public.

Commission expires March 11, 1917.

STATE OF NEW JERSEY,
COUNTY OF HUNTERDON, } *ss.*

F. A. ZARRA, being duly sworn according to law, on his oath deposes and says, that he is in the employ of the Real Estate Trust Company of Philadelphia in the Trust Department, and has charge of the corporate records of said Trust Company appertaining to the mortgage given by the Lambertville Heat, Light & Power Company to the Real Estate Trust Company of Philadelphia, Trustee, dated October 1, 1904, to secure an issue of one hundred thousand

dollars five per cent. gold bonds of said Lambertville Heat, Light & Power Company, maturing October 1, 1934. That on April 1, 1914, eighty thousand dollars of the bonds authorized by said mortgage were issued and outstanding, and all of the same are still outstanding. That the interest due October 1, 1914, amounted to two thousand dollars and the interest due April 1, 1915, amounted to two thousand dollars was not paid when due and is still in default. That in addition to these two interest installments there is due the sum of one thousand six hundred and sixty-six dollars and sixty-seven cents for interest on said bonds accruing up to September 1, 1915.

By a contract entered into by the said Lambertville Heat, Light & Power Company and the said Real Estate Trust Company it was agreed that said Lambertville Heat, Light & Power Company should pay to said Trustee for its services for the registration of bonds and payment of coupons the sum of twenty dollars per year in advance. One of such payments became due October 1, 1913, and has never been paid, and another payment became due October 1, 1914, and has not been paid.

In connection with the receivership of said Lambertville Heat, Light & Power Company the Trustee expended the sum of thirteen dollars and twenty-two cents in railroad fares, telephone calls and letters informing bondholders of various matters connected with said receivership, and said sum has never been paid and is now due to said Trustee.

The Trustee deemed it necessary to employ counsel for the protection of the bondholders whose interest it was the duty of the Trustee to protect, and for its own protection in the performance of all of its duties as Trustee, and did employ Mr. Joseph

De F. Junkin, of the Philadelphia Bar, and Mr. Linton Satterthwaite, of the New Jersey Bar, in such capacity; and a bill has been rendered by said counsel to said Trustee for the services of counsel in that connection for the sum of two hundred and fifty dollars, which bill is hereto annexed.

F. A. ZARA.

Sworn to and subscribed before me, this 27th day of October, A. D. 1915.

CHAS. D. MCCRACKEN,
Rec'r of Lambertville Heat, Light & Power Company.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA

S. E. Corner Broad and Chestnut Streets.

Oct. 1, 1915

The Real Estate Trust Company of Philadelphia
Trustee under mortgage of
Lambertville Heat, Light & Power Co.
Dr:
To Linton Satterthwaite, Esq.,
Joseph De F. Junkin, Esq.,

1915		
Oct. 1.	To professional services to Trustee in matter of Receivership proceedings of above company, consultations in Philadelphia and Trenton, allowances to court, in protection of Trustees and Bondholders' rights.	$250.00

RECEIVER'S RULING ON CLAIM.

(Filed November 9, 1915)

IN CHANCERY OF NEW JERSEY.

Between WILBUR J. ADAMS, *et al.*, *Complainants*, and LAMBERTVILLE HEAT, LIGHT & POWER COMPANY, *Defendant*.	ON BILL, &c. RECEIVER'S RULING ON CLAIM.

EVIDENCE AND DETERMINATION OF RECEIVER ON CLAIM OF REAL ESTATE TRUST COMPANY OF PHILADELPHIA.

The claim in question is annexed hereto and marked Exhibit A.

An additional affidavit in reference to the claim is annexed hereto and marked Exhibit B.

FINDINGS OF RECEIVER.

Item (d) for $40.00 is allowed. $40.00

(Another claim separately filed and covering $20.00 of this $40.00 is stricken out by consent of the claimant's representative.)

Items, (e) for $13.22, costs and expenses of the Trustee, and (f) for $250.00 fees claimed on behalf of the counsel of the Trustee, are disallowed, on the ground that application for allowances for disbursements and fees in favor of persons not employed by the corporation previous to insolvency or by the Receiver should be addressed to the Court and not to the Receiver.

As to items (a), (b) and (c) aggregating $5,666.67, for interest accruing on the bonds of the defendant from April 1, 1914, to September 1, 1915, the Receiver prays the aid and direction of the Court as to whether he shall allow them, respectfully submitting to the Court that the allowance or disallowance of these items involves the determination of legal questions with the responsibility of settling which the Receiver ought not to be charged.

CHAS. D. MCCRACKEN,
Receiver of Lambertville Heat, Light & Power Company.

MORTGAGE OF LAMBERTVILLE HEAT, LIGHT AND POWER COMPANY TO REAL ESTATE TRUST COMPANY OF PHILADELPHIA, TRUSTEE.

(Copy)

This Indenture, made this first day of October, in the year of our Lord one thousand nine hundred and four, (1904), between the Lambertville Heat, Light & Power Company, a corporation organized and existing under the laws of the State of New Jersey,

(hereinafter called the Company,) and the Real Estate Trust Company of Philadelphia, a corporation organized and existing under the laws of the State of Pennsylvania, (hereinafter called the Trustee,) witnesseth:

Whereas at a meeting of the stockholders of the Lambertville Heat, Light & Power Company, duly called and held at the Company's office at Lambertville, New Jersey, on the twenty-third day of September, A. D. 1904, at 2.30 o'clock in the afternoon, at which meeting stockholders holding all the capital stock were present, either in person or by proxy, the following resolution was unanimously adopted:

"Resolved, that the board of directors of this Company be, and they are hereby authorized to issue bonds of this Company to the amount of one hundred thousand dollars ($100,000), and to secure the same by a mortgage upon the property and rights of the Company, whether now owned by it or hereafter to be acquired by it, and to dispose of the said bonds for the uses and benefit of this Company upon such terms and in such manner as to them may seem most advantageous for the interests of the Company."

And whereas, at a meeting of the board of directors of said Lambertville Heat, Light & Power Company, duly called and held on the twenty-third day of September, A. D. 1904, at 3.45 o'clock in the afternoon, at which meeting a quorum of directors attended and participated, the following resolutions were adopted:

"Resolved, that in pursuance of the resolution of a stockholders meeting of this Company, held the 23d. day of September, A. D. 1904, at 2.30 o'clock in the afternoon, the president and secretary of this Company be, and they

are hereby authorized and directed to execute, in the name of this Company, its bonds to be known as its 'First Mortgage five percent Thirty Year Gold Bonds,' to the amount of one hundred thousand dollars ($100,000,) to be numbered from '1' to '400' inclusive, two hundred and fifty of them numbered from '1' to '250' inclusive, each for the sum of one hundred dollars, ($100), and one hundred and fifty of them, each for the sum of numbered from '251' to '400', each for the sum of five hundred dollars ($500,) and in general form and substance as follows, namely:

Number $

United States of America
State of New Jersey
Lambertville Heat, Light & Power Company
First Mortgage Five Per Cent
Thirty Year Gold Bond
Loan of $100,000.

"The Lambertville Heat, Light & Power Company acknowledges itself indebted to the Real Estate Trust Company of Philadelphia, or bearer, or the registered holder hereof, in the sum of Hundred Dollars ($) lawful money of the United States of America, which sum the said Company promises to pay in gold coin of the United States of America of the present standard of weight and fineness, at the office of the Real Estate Trust Company of Philadelphia, in the city of Philadelphia, State of Pennsylvania, on the first day of October, A. D. 1934, with interest from the first day of October, A. D. 1904, at the rate of five per cent per annum, payable semi-annually in gold coin

as aforesaid, or its equivalent, at the office of the Real Estate Company of Philadelphia, in the City of Philadelphia, on the first day of the months of October and April in each year, on presentation and surrender of the proper coupon hereto attached. The principal and interest of this bond is payable without deduction for any government or state taxes whatever which the Company is now or may hereafter be required to pay or retain therefrom, the Company hereby agreeing to assume the same.

"This bond is one of a series of four hundred bonds, numbered from '1' to '400' inclusive, two hundred and fifty of them, numbered from '1' to '250' inclusive, each for the sum of one hundred dollars ($100,) and one hundred and fifty of them, numbered from '251' to '400' inclusive, each for the sum of five hundred dollars ($500,) of like, date, tenor and effect, and is entitled to the security to be derived from a certain deed of trust or mortgage of even date herewith, made by the Lambertville Heat, Light & Power Company to the Real Estate Trust Company of Philadelphia, as Trustee, secured upon all the real estate and other property, including franchises, now owned or that may hereafter be acquired by the Lambertville Heat, Light & Power Company, to which deed of trust or mortgage reference is hereby made for the terms and conditions upon which this bond is issued and secured, and for a description of the said property and franchises.

"This bond is redeemable at any time after its date and before its maturity at the option of the said Company upon the payment of the

principal sum hereof and all accrued interest to the time of redemption and a premium of five per cent of the principal, in accordance with the terms of the said deed of trust or mortgage.

"In case of default for sixty days in payment of any half-yearly installment of interest upon any of the said bonds, and when the same shall become due and payment thereof be demanded in writing, the principal of the bonds shall become due and payable as provided in said mortgage.

"This bond shall pass by delivery, or by transfer upon the books of the said Company, but after registration of ownership, duly certified hereon, no transfer except upon the books of the Company shall be valid unless the last preceding transfer shall have been to bearer, which shall restore the right to transfer by delivery, but this bond shall continue to be susceptible of successive registrations at the option of its holder, and the registry shall not restrain the negotiability of the coupons by delivery merely.

"This bond shall not become obligatory until the certificate endorsed hereon is duly signed by the Trustee.

"In witness whereof the said Lambertville Heat, Light & Power Company has caused these presents to be sealed with its corporate seal and to be subscribed by its president and attested by its secretary, this

day of A. D. 1904.

"Lambertville Heat, Light & Power Company,

President

"Attest"

"Secretary.

"And resolved further that the coupons and the trustee's certficate to be attached to each of the said bonds shall be in the form following, and that each of the said coupons shall have a facsimile of the signature of the Treasurer of the Company attached thereto.

"Form of Coupon

"Lambertville Heat, Light & Power Company will pay the bearer on the first day of A. D. 19 on the surrender of this coupon, at the office of the Real Estate Trust Company of Philadelphia, in the city of Philadelphia, Pennsylvania, the sum of $ in gold coin of the United States of America, or its equivalent, for six months interest on its First Mortgage Five Per cent Thirty Year Gold Bond No.

Treasurer.

Form of Trustee's Certificate.

"The Real Estate Trust Company of Philadelphia hereby certified that this bond is one of the series, amounting in the aggregate to the sum of one thousand hundred thousand dollars, ($100,000) described in the within mentioned deed of trust or mortgage.

The Real Estate Trust Co of Philadelphia,
Trustee, by President.

"And resolved further, that in order to secure the payment of the said bonds, this Company shall make, execute, acknowledge, prove and deliver to the Real Estate Trust Company of Philadelphia, a certain deed of trust or mortgage of all the real estate, buildings, property and franchises of this Company, now owned or hereafter to be acquired by it, as described and

set forth in the said deed of trust or mortgage, which said deed of trust or mortgage shall be and is hereby declared to be a continuing lien to secure the full and final payment of all bonds so to be issued, and shall be for the benefit and security of, and in trust for the holders of the said bonds, without preference, priority or distinction, as to lien or otherwise of any over another, but so that each and all of the said bonds to be issued as aforesaid shall have the same right, lien and privilege under and by virtue of the said deed of trust or mortgage and shall be all equally secured thereby.

"And resolved further, that the president of this Company be and he is hereby authorized and directed for and on behalf of this Company, and as and for its act and deed, to sign, in the name of this Company, the said bonds and deed of trust or mortgage, to affix thereto the corporate seal of this Company, and to cause the said seal to be duly attested by the Secretary of this Company, and when the said deed of trust or mortgage shall have been so signed, sealed and attested, then to acknowledge, deliver and record the same.

"And resolved further, that immediately upon the execution of all of said bonds by the officers of this Company, they shall forthwith be delivered to the said Trustee, which shall endorse and authenticate the same to the amount of ten thousand dollars ($10,000) and forthwith deliver the bonds so authenticated to the treasurer of the Hunterdon Electric Company, in part payment for the conveyance to this Company by the said Hunterdon Electric Company of all its

property, rights and franchises. And the said Trustee shall further endorse and authenticate of the said bonds bonds of the par value of seventeen thousand five hundred dollars ($17,500,) and shall exchange the same at par for the first refunding mortgage bonds of the Hunterdon Electric Company of a like par value, which are now a prior lien upon the property of this Company acquired by purchase from said Hunterdon Electric Company, and which by agreement dated the twenty-third day of September, A. D. 1904, the said Hunterdon Electric Company undertook and agreed should be exchanged at par for the bonds of this Company of the present issue. And the trustee shall reserve and set apart bonds of this issue of the par value of twelve thousand five hundred dollars ($12,500,) to be utilized solely for the redemption of the unpaid bonds of an issue of bonds of the Hunterdon Electric Company, which bonds are dated the thirty-first day of December, A. D. 1894, and are secured by a deed of trust or mortgage on the property of the said Company (which has since been conveyed to this Company,) bearing even date therewith and executed to the Trenton Trust & Safe Deposit Company, Trustee; and when all or any portion thereof shall be delivered to it by the Treasurer of the Company for surrender to and cancellation by the said Trustee, Trenton Trust & Safe Deposit Company, then it shall endorse and authenticate, of the bonds so reserved and set apart, the equivalent in amount at par value of the bonds so delivered for surrender and cancellation, and deliver the same to the Treasurer of this Com-

pany, to be disposed of by the board of directors for the purposes of this Company. And the remaining bonds of the par value of sixty thousand dollars ($60,000,) shall be utilized solely for working capital, extensions, improvements and betterments of the property owned by this Company, or for the purchase of the stock or property and franchises of other persons or corporations which this Company may deem advisable to acquire and operate, and the trustee shall from time to time endorse, authenticate and deliver the same to the Treasurer of this Company in such amounts as may be called for by a resolution or resolutions adopted by an affirmative vote of two thirds of all the stock then issued and outstanding, at a meeting to be called for that purpose; such resolution to be duly certified by the Secretary under the seal of the Company, reciting that the amount of bonds so called for is required for such working capital, extensions, improvements and betterments of the property owned by this Company, or for the purchase of the stock or of the property and franchises of other persons or corporations which this Company may deem it advisable to acquire and operate; provided, however, that no limitation is to be implied from the said indenture of mortgage or any provision therein contained, upon the exercise of an absolute discretion upon the part of the stockholders in determining the necessity or ad desirability of of or for such working capital, extensions, improvements, and betterments, or in determining as to the advisability of acquiring such stock or property of such other person or persons, cor-

poration or corporations; and such resolution shall be to the trustee final and conclusive evidence of the fact that the bonds so called for are required for such working capital extensions, improvements and betterments, or for such acquirement of stock and property of other persons or corporations as aforesaid; and said bonds, when so endorsed, authenticated and delivered, shall be equal in lien and security with all other bonds secured by the said mortgage.

"And whereas at the said meeting of the board of directors the form of this deed of trust or mortgage was submitted to said board of directors and it was unanimously

"Resolved, that the deed of trust or mortgage to be executed, acknowledged, proved, delivered and recorded for and on behalf of this Company, as this day authorized and directed by this board, shall be in the form now submitted, which form is hereby adopted and approved, and ordered to be set forth at length upon the minutes of this meeting."

And whereas, the said Company, in pursuance of the said resolutions, and of the laws of the State of New Jersey the said Company in that behalf enabling, and of all and every legal power and authority in it vested, has made, executed and issued bonds or obligations in the form substantially as in hereinbefore set forth, known as its FIRST MORTGAGE FIVE PER CENT THIRTY YEAR GOLD BONDS, in the aggregate sum of one hundred thousand dollars, and has delivered the said bonds to said Trustee for certification:

Now this Indenture witnesseth, that the said Lam-

bertville Heat, Light & Power Company, in consideration of the premises and of the sum of one dollar to it well and truly paid by the Real Estate Trust Company of Philadelphia, party of the second part, and for the purpose of securing the payment of the principal and interest of all the said bonds when and as the same shall become due and payable, according to the tenor and effect thereof, has granted, bargained, sold assigned, set over, released, conveyed and confirmed, and by these presents does grant, bargain, sell, assign, set over, release, convey and confirm unto the said the Real Estate Trust Company of Philadelphia, party of the second part and to its successor or successors in the trusts hereby created, and to its and their successors and assigns forever.

All that certain lot, tract or parcel of land situate lying and being in the city of Lambertville, in the county of Hunterdon and state of New Jersey, beginning at a corner in the middle of Elm Street one hundred feet from the west side of Union Street and running thence (1) north nine degrees and twenty minutes west, two hundred and ninety-two and one-tenth feet parallel with Union Street, thence (2) south eighty degrees and fifty minutes west eighty-four and one tenth feet, thence (3) southeasterly twenty-nine feet along the lands of the Canal Company, thence (4) southeasterly sixty-four feet along the same, thence (5) thirty-five and three quarters degrees east four and nine tenths feet, thence (6) south ten and a half degrees east seventy-six and nine tenths feet, (7) eighty degrees and fifty minutes east five feet, thence (8) south nine degrees and twenty minutes east, one hundred and thirty-nine and four tenths feet still along the same to the middle of Elm Street, and thence (9) north eighty

degrees and forty minutes east one hundred and twenty feet to the place of beginning.

And also all and singular the manufactories, stations or buildings, boiler house, power house, engines, dynamos, machinery, apparatus and devices for the generation or regulation of electric current, fixtures, implements and tools in and upon the said premises, together with the lines of poles and wires strung thereon, erected and being in the streets of the said city of Lambertville, and the conductors to convey such current to the lamps and other translating devices, utilizing such current for light, hitherto used for the supply and distribution of electricity for electric lights in said City, now belonging to said Company. Being the same premises and property which the Hunterdon Electric Company, a corporation of the State of New Jersey, by deed bearing date the thirtieth day of September, A. D. 1904, and intended to be recorded, granted and conveyed unto said Lambertville Heat, Light & Power Company in fee.

And together with all and singular the hereditaments and appurtenances thereunto belonging or otherwise appertaining, and all the revisions and remainders thereof, and all the estate, right, title and interest, claim and demand whatsoever, both in law and in equity of the said Company, of, in and to the above described premises and property, with the hereditaments and appurtenances.

And together with all extensions, branches and relocations of the said lines of poles and the wires strung thereon, all manufactories, stations or buildings, machinery, apparatus and equipment, tools, implements, fuel and materials of the said Company, now owned or which may hereafter be acquired, for

constructing, maintaining, operating, replacing, or improving the said property or any part thereof, or in or for the business of the said Company, and all other property real and personal now owned or which may hereafter be acquired for the purposes of the said Company or its business.

And together with all and singular the rights, privileges and franchises of the said Company derived from the State of New Jersey, the County of Hunterdon, the City of Lambertville, and all sources, whether now possessed or hereafter acquired by it and connected with or related to the business or property of the said Company, and the maintenance, use and enjoyment of the same.

And together with all the streets, ways, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever to any of the hereby granted premises belonging or appertaining or to belong or appertain, and the reversions and remainders thereof and all the estate, right, title, interest, property, claim and demand of every nature and kind whatsoever of the said Company now owned or possessed or which may hereafter be acquired as well at law as in equity of, in and to the same and every part and parcel thereof.

To have and to hold the above described premises, property and franchises, (subject, however, to prior or superior mortgages) unto the said party of the second part, and its lawful successor or successors and assigns forever, to and for the only proper use and behoof of the said party of the second part, and its successors and assigns forever.

In trust, nevertheless, for the equal pro rata benefit and security of all and every the persons or corpo-

rations who may be or become the holders of the said "First Mortgage Five Per Cent. Thirty Year Gold Bonds" to the aggregate amount of one hundred thousand dollars, without preference, priority or distinction as to the lien or otherwise of any over another, and so that all of the said bonds issued and to be issued as aforesaid, and outstanding at any one time, shall have the same right, lien and privilege under and by this deed of trust or mortgage, and shall be equally secured hereby, with like effect, as if they had all been made, executed, delivered and negotiated simultaneously on the date hereof.

And it is hereby expressly covenanted and agreed by and between the parties hereto, the said party of the first part covenanting not only for itself, but also for its successors and assigns, and the party of the second part covenanting not only for itself, but also for its successors and assigns and its successor and successors in the trusts hereby created, that the above described premises, property and appurtenances are to be held by the said party of the second part upon and for the trusts, uses and purposes following, that is to say:

First: The trustee shall forthwith endorse and authenticate the said bonds to the amount of ten thousand dollars ($10,000) and forthwith deliver the same to the treasurer of the Hunterdon Electric Company. And the said trustee shall further endorse and authenticate of the said bonds, bonds of the par value of seventeen thousand five hundred dollars ($17,500,) and shall exchange the same at par for the first refunding mortgage bonds of the Hunterdon Electric Company of a like par value, which are now a prior lien upon the property of the Company acquired by purchase from the said Hun-

terdon Electric Company. And the trustee shall reserve and set apart bonds of this issue of the par value of twelve thousand five hundred dollars ($12,-500,) to be utilized solely for the redemption of the unpaid bonds of an issue of bonds of the Hunterdon Electric Company, which bonds are dated the thirty-first day of December, A. D. 1894, and are secured by a deed of trust or mortgage on the property of the said company, (which has since been conveyed to this Company,) bearing even date therewith and executed to the Trenton Trust & Safe Deposit Company, Trustee; and when all or any portion thereof shall be delivered to it by the Treasurer of the Company for surrender to and cancellation by the said Trenton Trust & Safe Deposit Company, then it shall endorse and authenticate, of the bonds so set apart and reserved, the equivalent in amount at par value to the bonds so delivered for surrender and cancellation, and deliver the same to the Treasurer of the Company. And the Company shall utilize the remaining bonds of the par value of sixty thousand dollars ($60,000,) solely for working capital, extensions, improvements and betterments of the property owned by the Company, or for the purchase of the stock or property and franchises of other persons or corporations which the Company may deem advisable to acquire and operate, and the Trustee shall, from time to time, endorse, authenticate and deliver the same to the Treasurer of the Company in such amounts as may be called for by a resolution or resolutions adopted by an affirmative vote of two thirds of all the stock then issued and outstanding, at a meeting to be called for that purpose, such resolution to be duly certified by the Secretary under the seal of the Company, reciting that the

amount of bonds so called for is required for such working capital, extensions, improvements and betterments of the property owned by the Company, or for the purchase of the stock or property and franchises of other persons or corporations which the Company may deem advisable to acquire and operate; provided, however, that no limitation is to be implied from this indenture of mortgage, or any provision herein contained, upon the exercise of an absolute discretion on the part of the stockholders in determining the necessity or desirability of or for such working capital extensions, improvements and betterments, or in determining as to the advisability of acquiring such stock or property of such other person or persons, corporation or corporations; and such resolution shall be to the trustee final and conclusive evidence of the fact that the bonds so called for are required for such working capital, extensions, improvements and betterments, or for such acquirement of stock or property of other persons or corporations as aforesaid; and said bonds, when so endorsed, authenticated and delivered, shall be equal in lien and security with all other bonds secured by the said mortgage.

Second: The endorsement and authentication by the trustee of any such bond to the effect that it is issued under and secured by this deed of trust or indenture of mortgage shall be conclusive evidence that said bond has been issued in accordance with and is entitled to the security of this deed of trust or mortgage.

Third: The Company shall hereafter and until all the bonds hereby secured shall have been paid or redeemed, keep at its own expense, at its office, or at the office of the trustee, an appropriate book

to be designated "Register of Lambertville Heat, Light & Power Company's First Mortgage Five Per Cent Thirty Year Gold Bonds," for the purpose of registry and transfer of the respective bonds secured hereby, in accordance with the terms of the said bonds, and every holder of bonds secured hereby shall be entitled to have his name and address and the numbers of any of the bonds held by him entered therein, upon presenting at the said office or agency a written statement of the said particulars, signed by himself, and, if required, duly verifying his title to the said bonds by the production thereof, or upon written order, duly verified, of the person last registered as the holder. And in case the said book is kept in the Company's office the trustee shall have free access at all reasonable times to such bond registry, and shall from time to time, on request in writing, be furnished with a copy thereof.

Fourth: In case any bonds issued hereunder become mutilated or destroyed, it shall be lawful for the Company to issue new bonds of like tenor and date and bearing the same serial numbers, and the officers of the Company for the time being may sign, and the Trustee, upon being fully indemnified, may certify the same, for delivery in exchange for or in lieu of bonds so mutilated or destroyed.

Fifth: Any or all of the bonds hereby secured are liable to be redeemed, at one hundred and five per cent of the par value and accrued interest, by the Company, at any time after five years from the date thereof and before the maturity thereof, at the option or call of the Company. The bonds to be redeemed at the option or call of the Company shall be ascertained by lot in a drawing in the manner fol-

lowing, viz: The Trustee shall cause to be prepared cards of equal size containing the numbers of all outstanding bonds, one number to each card, and a drawing by lot shall then be made in the presence of a notary public until the requisite amount of bonds shall have been drawn, the result of which drawing shall be certified by the notary, describing by numbers the bonds so drawn, and a copy of his certificate of drawing shall be delivered to the said Trustee, and a copy to the President or treasurer of the Company. The Company shall, within ninety days after each drawing, by written notice to all bondholders or by advertisement, published once a week for two successive weeks in a newspaper published in the city of Lambertville, state the numbers of the bonds called for redemption, its intention to pay and redeem the bonds so called and the time and place for the presentation and surrender thereof for redemption, and after the expiration of three weeks from the service of the said written notice or the first publication of the said advertisement, all interest shall cease on the bonds so called; provided, however, that in the event of any of the bonds so called for redemption not being presented for payment on or before the date when the interest thereon shall cease, as aforesaid, then the Company shall deposit with the said Trustee sufficient funds to pay the principal and premium as aforesaid and interest to the said date, of such unpresented bonds, and the said trustee shall retain the said money for the benefit of the holders thereof, without further accumulation of interest thereon; and at any time thereafter upon the surrender to the trustee of any of the said unpresented bonds by the holders thereof, the said trustee shall pay over to said holders the proportion

of the said fund which the bonds so surrendered may entitle them to receive. All bonds from time to time redeemed by the Company shall without unreasonable delay be cancelled, and the debt hereby secured shall to that extent be extinguished.

Sixth: Until default be made by the said Company in the payment of the principal or interest of the said bonds, or any of them, according to the tenor and effect of said bonds, and on the days and times mentioned in said bonds respectively, without deduction from either principal of interest of any tax or taxes which the said Company may be required to pay or retain therefrom by and present or future laws of the United States or of the State of New Jersey, or any other State, the said Company having agreed and hereby agreeing to pay the same, or until default be made by said Company in respect to some other act or thing in any of said bonds or herein required to be done, kept and performed, the said Company shall be permitted to possess, manage, operate, use and enjoy all and singular the premises hereinbefore described, with the appurtenances, and to receive, use and dispose of the income therefrom, in the same manner and to the same effect and extent as if these presents had not been executed, but in such manner as will not impair the security hereby created.

Seventh: If the Company, its successors or assigns, shall, at any time hereafter, after demand made, make default, or refuse, neglect or omit for any period exceeding sixty days to pay the semi-annual interest on the bonds intended hereby to be secured or any of them, or the interest on the bonds secured or to be secured by any prior or superior mortgage, or shall, after demand made, make de-

fault, or refuse, neglect or omit, for any period exceeding thirty days after maturity, to pay the principal sum of each and all of the said bonds, intended hereby to be secured, or any of them, or shall suffer or allow any taxes or assessments to fall in arrear, whereby the security of this deed of trust or mortgage may be impaired, or shall permit any lien, except the lien, except the lien of prior or superior mortgages, to be filed or acquired, or any charge to be created by any person or corporation, whereby the lien of this deed of trust or mortgage may possibly be divested, postponed or otherwise impaired, or shall neglect or refuse to keep or perform any of the covenants and stipulations herein contained, or in the bonds secured or intended to be secured hereby, and on its part to be kept and performed, then and in either such events, the trustee shall and will, upon the written request of holders of twenty-five per cent in amount of the bonds secured hereby and then outstanding, and a deposit with the trustee of the bonds of the requesting bondholders, and upon adequate security and indemnity against all costs, expenses and liabilities to be by the trustee incurred, or without such request, or deposit, or security, or indemnity, it shall be lawful for the trustee, in the trustee's own discretion, forthwith to demand, and with such force as may be necessary to enter, take and maintain possession of all and singular the premises, property and franchises hereby conveyed and mortgaged, or agreed or intended so to be, and as the attorney in fact or agent of the Company, and by the trustee's agents and substitutes duly constituted, or by the trustee's managers, superintendents, receivers, or servants, have, hold, use, manage, operate, lease and enjoy the same, and each

and every part thereof, to as full an extent as the Company might lawfully do, making from time to time all needful and proper repairs, alterations and additions, and receiving all the rents, income and revenue thereof, and after deducting the expenses of such use, operation, reasonable repairs, alterations and additions, and the costs and charges of taking such possession, and proper compensation for the services of taking such taking posession, and management while in possession, and such sum or sums as may be sufficient to indemnify the trustee against any liability, loss or damage for or on account of any matter or thing done in good faith in pursuance of the duties of the trustee, the trustee shall apply the remaining net income and revenues therefrom, and also all sums of money which may have been paid to and are in the hands of the trustee at the time of taking possession, as proceeds of property released, to the payment, without giving preference, priority, or distinction to one bond over another, of the full principal of and all accrued interest due on all of the said bonds outstanding and intended hereby to be secured, if the said income and proceeds be sufficient, but if not then without distinction between principal and interest, pro rata; or the trustee shall and will, after or without entering upon or taking such possession, upon the written request of holders of a like amount of bonds then outstanding, and upon a like deposit of the bonds, and upon like security and indemnity, or without such request, or deposit, or security, or indemnity, in the trustee's own discretion, the trustee may proceed to sell and dispose of all and singular the said premises, property and franchises hereby mortgaged, or agreed or intended so to be, to the highest

and best bidder at public auction in the city of Lambertville or at such place as the trustee may designate, and at such time as the trustee may appoint, having first given notice of the time and place of such sale by advertisement, published not less than once each week for five successive weeks in one or more newspapers in the city of Lambertville, or elsewhere at the option of the trustee, or to adjourn the said sale from time to time in the trustee's discretion, and if so adjourning to make the said sale at the time and place to which the same may be so adjourned; and to make and deliver to the purchaser or purchasers of the said premises, property and franchises, good and sufficient deed or deeds in the law in fee simple, 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 without obligation to inquire into the necessity, expediency or authority of or for any such sale; which sale, made as aforesaid, shall be a perpetual bar, both at law and in equity, against the Company and all persons claiming or to claim the said premises, property and franchises, and any part thereof or interest therein, by, from or through the Company; and after deducting from the proceeds of such sale proper allowances for all expenses thereof, including attorney and counsel fees, and all other expenses, advances or liabilities which may have been made by the trustee for taxes, and assessments on the said premises, property and franchises, as well as reasonable compensation for its own services, it shall be lawful for the trustee, and it shall be the trustee's duty, to apply the residue of the money arising from the said sale to the payment of the full principal of, and all

accrued interest on, all the said bonds which shall then be outstanding and unpaid, without giving preference, priority or distinction to one bond over another if the said purchase money be sufficient, but if not, then pro rata, without distinction between principal and interest; and in the event of there being in the hands of the Trustee 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 trustee shall reconvey, retransfer, or pay over the same to the Company, its successors or assigns, for its sole use and benefit; or the trustee shall and will, upon the written request of the holders of a like amount of said bonds then outstanding, and upon like deposit and security and indemnity, or without such request or deposit, or security or indemnity, in the trustee's own discretion, the trustee may proceed to protect and enforce the rights of the bondholders under these presents by a suit or suits in equity or at law, whether for the specific performance of the said stipulated covenants and agreements, or any of them, contained herein and on the part of the Company to be kept and performed, or in aid of the execution of powers herein granted or otherwise, as the trustee being advised by counsel learned in the law, shall deem most effectual to protect and enforce such rights—it being understood and it is hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies additional to all other remedies allowed by law, and that the same shall not be deemed in any maner whatever to deprive the trustee or the beneficiaries under this trust of any legal or equitable remedy by judicial proceedings consistent with the provisions of

these presents, according to the true intent and meaning thereof; provided always, and it is hereby expressly declared and agreed that no holder or holders of a bond, or of any bonds secured hereby, shall have the right to institute any suit, action or proceeding, in equity or at law, for the foreclosure of this indenture or for the execution of the trusts thereof, or for the appointment of a receiver, or for any other remedy, without first giving notice in writing to the trustee of a default having occurred and continued as aforesaid, and unless twenty-five per cent in amount of the holders of bonds then outstanding have made requests in writing to the trustee as above provided, and have afforded the trustee a reasonable opportunity to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in the trustee's own name, and have also offered to the trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and offered to deposit their bonds as aforesaid; and such notification, request and offer of deposit and indemnity are hereby declared to be conditions precedent to the execution of the powers and trusts of this indenture, to any action or cause of action for foreclosure, to the appointment of a receiver, or to any other remedy hereunder, and provided also, that neither the trustee or the holder or holders of the bonds intended to be secured hereby or any of them, shall sell the premises hereby mortgaged, or intended so to be, or any part thereof, or institute any suit, action or procedure in law or equity for the foreclosure hereof, or for the appointment of a receiver, otherwise than in the manner herein provided.

Eighth: It is further distinctly understood and agreed that in the event of the trustee making such entry upon or taking possession of the premises, property and franchises hereby mortgaged, or agreed or intended so to be, or in the event of any sale thereof, either by the trustee or by judicial proceedings, as hereinbefore mentioned, then and in either such case the whole principal sum of each and all of the said bonds then outstanding and intended hereby to be secured shall forthwith become due and payable anything in said bonds herein contained to the contrary notwithstanding; and in no other case, and for no other purpose, shall the principal sum of any of said bonds become due and payable before the date fixed in such bonds for the payment thereof, except when such bonds shall have been called for redemption or when the principal sum thereof has been so declared to have become due and payable by the trustee or by the holders of twenty five per cent in amount of the bonds then outstanding, in an instrument of writing under their hands and seals, after default in the payment of interest thereon continuing for sixty days after due demand therefor, and the trustee, without any instruction from the bondholders, in the trustee's own discretion, may in such case declare the principal sum to be due, or the holders of a majority in amount of the bonds then outstanding may in such case instruct the trustee to declare the principal sum to be due, or waive, or instruct the trustee to waive, the right to so declare on such terms and conditions as the said holders of a majority in amount may deem proper, and may annul and reverse a previous declaration made by the trustee in that behalf.

Provided always, and it is hereby declared that

no such action of the trustee or of the bondholders shall extend to or be taken to affect any subsequent default or impair the rights resulting therefrom. And provided also, that it shall and may be lawful for the trustee, when and as soon as the bonds then outstanding and hereby secured shall become due and payable according to the terms hereof, to proceed thereon to judgment and execution for the recovery of the whole amount of bonds then outstanding and secured hereby, and all taxes and interest due thereon, together with an attorney's commission for collection, and the trustee's charges, fees and expenses, besides cost of suit, without further stay, any law, usage or custom to the contrary notwithstanding.

Ninth: At any sale of the aforesaid premises, property and franchises or of either or any part thereof, whether made by virtue of any power herein granted or by judicial authority, the trustee may bid for and purchase, or cause to be bid for and purchased, the same for and on behalf of all the holders of the bonds hereby secured and then outstanding in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion thereof be sold, or, if the whole of said mortgaged premises be sold, at a price not exceeding the total amount of such bonds outstanding, with the interest accrued thereon, and the expenses of such sale; and, in the event of such purchase by the trustee on behalf of the bondholders, the subsequent disposition of the property shall be according the determination of a majority in interest of such bondholders, which determination shall be expressed in writing or otherwise, in such manner as the trustee may require. In case of a sale of the