

Court of Errors and Appeals.

Between
THEODORE F. RANDOLPH, *et al.*,
Trustees,
Appellants, } *On Appeal.*
and
REUBEN S. MIDDLETON, *et. als.*,
Appellees.

BRIEF OF OPENING ARGUMENT:

I.

Section first of the order to sell, appealed from, directs that the receiver shall sell, in one parcel, all the corporate rights, privileges and franchises of the company, with all its property of every kind belonging to the company included in and covered by appellants' mortgage, and including the franchise to extend the railroad to tide-water, freed and cleared of all encumbrances.

Case, page 37, lines 4-16.

The Constitution of the United States provides that no State shall pass any *ex-post facto* law, or law impairing the obligation of contracts. (Art. 1, § 10.)

The Constitution of New Jersey has the same provision, with the additional one that the legislature shall not pass

any law depriving a party of any remedy for enforcing a contract which existed when the contract was made. (Art. 3, § 7, ¶ 3.)

By direct analogy, no court can have power to do, without statute, that which the legislature is forbidden to authorize by law.

This order complained of violates both constitutional provisions.

It impairs the obligation of the contract in appellants' mortgage contained, and deprives appellants, and their *cestui que trusts*, of the remedies which existed when the contract was made, for its enforcement.

See Mortgage, p. 15-35.

The mortgage conveys the property in fee, subject only to be defeated by one contingency, to wit, payment of principal and interest in full.

Mortgage, p. 19 l. 30, p. 20 l. 7, inclusive.

Powell on Mortgages, 157, N. A.

But this order takes the property away entirely, and compels mortgagees to be satisfied with what it may bring at a sale over which they have no control. By the mortgage they are given the property in fee, in case of default. By the order, nothing but what may be realized at a forced sale. The receiver may sell for what the property will bring. He is not even required to make it bring enough to pay the mortgage.

In this respect the order is unconstitutional.

The mortgage gives three remedies for enforcing the contract :

1. The ordinary equitable remedy by foreclosure and sale.

2. The right to take the railroad, with all its franchises and property, and operate it until the revenues derived from it, over and above expenses and repairs, shall have paid in full the interest and principal of the bonds, and all commissions, advances, disbursements and expenses of the trustees.

Mortgage, p. 20 l. 8, p. 21 l. 35, inclusive.

3. The right to enter and sell, or, without entry, to sell, at a time selected by them, the railroad and all its appurtenances, and to make and deliver deeds in fee simple therefor, and out of the proceeds to pay the total indebtedness of the bonds and the commissions, advances, disbursements and expenses of the trustees.

Mortgage, p. 21 l. 35, p. 26 l. 3, inclusive.

The order deprives appellants of all these remedies. In this respect it is unconstitutional.

Martin vs. The Somerville Co., 3 Wall, Jr., p. 206.

THE STATUTE.

1. NOT RETROACTIVE.

It is said the order was made by virtue of a statute passed March 17, 1870.

See Laws, 1870, p. 55.

But this statute was not passed until after the execution, delivery and record of appellants' mortgage.

Mortgage, p. 15, l. 1 and 2; p. 33, 34 and 35.

Therefore it cannot be construed to apply to this mortgage.

“Words in a statute ought not to have a retrospective operation, unless they are so clear, strong and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. This rule ought to be especially adhered to, when such a construction will alter the preexisting situation of parties, or will affect or interfere with their antecedent rights, services and remuneration.”

United States vs. Heth, 3 *Cranch*, 413.

Berdan vs. Van Riper, 1 *Harr.*, 15.

2. CONSTRUCTION OF THE WORD *May*.

But even if the statute be construed to be retroactive, still it does not authorize the order in question.

The statute (*laws*, 1870, *p.* 56) says “but where such property is subject to a mortgage, the chancellor *may*, with the consent of the plaintiff, or without such consent if the principal is not due, direct a sale or lease to be made, subject to the lien of the mortgage.”

In this case there *is a mortgage*, and as appears on its face the *principal is not due*.

This being the case it becomes the chancellor's duty to make the order, if at all, *subject* to the mortgage.

He has no option, the word "*may*" must be construed "*shall*."

McDougall vs. Patterson, 11 C. B., 755.

Sedgwick, 438.

Potter's Dwarris on Stat., 220, and authorities there cited.

Smith on Constitutional Construction 602. Col. 600. 604

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B. Even if this view be erroneous, still the discretion of the chancellor is a legal one, and has been erroneously exercised.

3. UNCONSTITUTIONALITY.

If this statute shall be construed to have a retroactive effect, and to include this mortgage, and to give the chancellor an option to order the land sold clear of this mortgage, then I submit that, as to this mortgage, the statute is unconstitutional and void, for the same reasons as those above applied to the order.

Martin vs. The Somerville Co., 3 Wall, Jr., 206.

Berdan vs. Van Riper, 1 Harr., 11-13.

McCracken vs. Hayward, 2 Howard, 612-614.

Curran vs. Arkansas, 15 Howard, 304-319.

Dalke vs. Whitehead 16 Wallace 317

Green vs. Biddle 8 Wheaton 1

Bronson vs. Kinzie 1 Howard 311

Cooley on Stat. Limitations 289 et. seq.

CASES CITED IN THE OPINION CONSIDERED.

The case of *Potts vs. N. J. Arms and Ordnance Co.*, 2 *C. E. Green*, cited by his Honor the Chancellor, in the opinion, even if correct, does not apply to this case. There, so far as appears by the opinion, the only right of the mortgagee was by foreclosure in equity. In the present case three remedies existed when the contract was made, and by its terms, one equitable and two legal.

The case of *Reader vs. S. E. Road Dist.*, 7 *Vroom*, 273, also cited, fails to apply. The corporation there referred to owned no property, and the act dissolving it expressly saved the obligation of contracts, leaving the remedy the same as before its repeal.

The learned justice who delivered the opinion sustains the case of *Martin vs. The Somerville Co.*, when the facts are similar to the present. (*See page 280.*)

II.

THE ACQUISITIONS.

Section 2 of the order directs the sale of the water front at Jersey City, separately, from the property mentioned in section 1 thereof, but subject to appellants' mortgage.

See case, p. 37, l. 17-25.

But this water front property is included in appellants' mortgage.

Mortgage, p. 30, l. 1-35, p. 31, l. 10-20.

It is there covenanted that whenever, and as often as the company shall acquire lands or any property which shall result from any addition or chartered rights of the company in the ownership or management of said main line of railroad, the trustees (appellants) shall acquire, possess and hold

the same, and *also* the said main line of railroad, upon and subject to the trusts of the mortgage—that not to include a branch railroad.

By supplement of 1872, February 29, laws 1872, p. 309–314, the company were authorized to *extend* their railroad *from* its proposed terminus in Essex County *to* the exterior line for solid filling established in the Hudson River. *See section 1.*

The authority is not to build a branch only, (this also is given), but to *extend* their *railroad*.

The act also empowers them to buy land.

This land was bought by authority of that act, and is an acquisition resulting from an addition or chartered rights of said company, and by the terms of the mortgage passes the fee to the appellants, subject to the trusts of the mortgage.

Such a covenant binds, within the limits of its terms, and suffices to pass the acquisitions.

Davenport vs. Lamb, 13 *Wal.*, 430, 431.

The order, therefore, directs the mortgaged property to be sold in two parcels, one free of appellants mortgage, the other subject.

In this respect also it is, I respectfully submit, both improvident and unconstitutional.

FLAVEL MCGEE.

NOTE.—The references to “mortgage” are to the paging at the end of this book; those to “case” are to the body of it.

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In Chancery of New Jersey.

Between

REUBEN S. MIDDLETON,
Complainant,

and

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

Bill.

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

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

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

it was, at the times hereinafter specified, and now is designated and known; that under and by virtue of the said act of incorporation, and the supplements thereto, the said company went into operation, was duly organized and commenced business, exercising the powers, privileges and franchises, thereby conferred; that the said corporation, under the said act and the supplements thereto, after its organization as aforesaid, in pursuance of the powers thereby conferred, commenced the construction of the said railroad on the route authorized by the said act and the supplements thereto, and selected by the said corporation by virtue thereof

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

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

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

And your orator further shows unto your Honor that by the express condition of the said bonds, and each of them, there became due and payable on the first day of November, eighteen hundred and seventy-one, the sum of thirty-five dollars in gold coin of the United States of America, being 40 for interest for six months, at the rate of seven per centum

per annum, no part of which said sum has been paid by the said company to your orator or to any other person or persons on his behalf, notwithstanding the said coupons were duly presented and the payment of the said interest duly demanded upon each of them ; that by reason of the default in the non-payment of the said interest, the whole amount of the principal sum named in each of the said bonds became due and payable by the terms thereof to your orator.

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

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

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

40 And your orator further showeth unto your Honor, that the said property and franchises of the said railroad company

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

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

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

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

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

or otherwise disposing of any of the real estate of the said railroad company, and from paying any of the debts of the said railroad company until further order of this court; and, also, may it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpoena of the State of New Jersey to be directed to The New Jersey West Line Railroad Company, therein and thereby commanding them and each of them on a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Hon- 10
orable Court, then and there to answer the premises and to stand to, abide and perform such order, direction and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

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

LEONARD & COULT,

Sol'rs and of Counsel with Complainant.

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

Reuben S. Middleton, the complainant in the foregoing 20
bill of complaint, being duly sworn on his oath, saith :

That that the matters and things set forth in the foregoing bill of complaint, so far as they relate to his own acts, and are stated as of his own knowledge, are true ; and so far as they relate to the acts of others, and are therein stated on information and belief, he believes them to be true ; and this defendant further saith, that the said The New Jersey West Line Railroad Company, the defendant in the said suit, is a corporation existing under the laws of the State of New Jersey, as in the said bill set forth ; that 30
the said company, organized under the act of the said state, as therein stated, and has commenced the construction of a railroad, as in the said bill set forth ; that it issued its bonds at the time, in the manner and for the amounts, as in the said bill stated, and made them payable as therein set forth, and mortgaged its property and franchises as in the said bill alleged ; that this deponent is now the owner of the bonds of the said company, so issued as aforesaid, to the amount

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

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

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

R. S. MIDDLETON.

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

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

IN CHANCERY OF NEW JERSEY.

Between
 REUBEN S. MIDDLETON,
Complainant,
 and
 THE NEW JERSEY WEST LINE RAILROAD
 COMPANY,
Defendant.

On Bill, &c.

Order to show cause. Filed February 8, 1874.

LEONARD & COULT, *Sol'rs.* 10

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

THEODORE RUNYON, *C.*

ORDER FOR INJUNCTION.

Filed February 16, 1874.

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

16 Dated February 16, 1874.

THEODORE RUNYON, C.

INJUNCTION.

Ret'ble Feb. 28, 1874.

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

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

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

LEONARD & COULT,
Sol'rs.

H. S. LITTLE,
Clerk.

Service of the writ of injunction is hereby acknowledged.

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

February 19th, 1874.

ORDER FOR RECEIVER.

Filed February 16, 1874.

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

THEODORE RUNYON, C.

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RECEIVER'S OATH.

Filed February 17, 1874.

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

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

W. Z. LARNED.

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

THEODORE RUNYON, C.

ORDER EMPOWERING RECEIVER TO OPERATE
THE RAILROAD.

Filed February 17, 1874.

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

THEODORE RUNYON, C.

REPORT OF RECEIVER.

Filed March 10, 1874.

To the Honorable THEODORE RUNYON, *Chancellor:*

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

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

W. Z. LARNED,
Receiver.

BERNARDSVILLE, N. J., March 2d, 1874.

W. Z. LARNARD, Esq.,
Receiver N. J. W. Line R. R.,

DEAR SIR: Herewith find statement of receipts and expenses, from February 19th to 28th, inclusive, 1874:

EXPENSES.

Check roll.....	\$386 48	
Coal oil, waste and tallow.....	93 00	
Car service.....	23 04	
	<hr/>	502 52 10
Deduct for collecting company's materials between Summit and Newark..		55 72
		<hr/>
Total cost of running road between Bernardsville and Summit.....		\$446 80

RECEIPTS.

For passengers.....	\$242 85	
“ freight.....	89 60	
“ express.....	14 20	
“ rent.....	3 00	
“ U. S. mail.....	50 00	
	<hr/>	399 65 20
Total loss.....		47 15
Add to deficiency over estimate on U. S. mail.....		30 00
		<hr/>
		\$77 15

I have reduced the expenses of the road for month March \$215, which will insure the running expenses. If the trains should be taken off there will have to be some provision made for the care of the property, such as engines, tools, machinery, bridges, &c., which will cost more than any 30 loss we may sustain in running the road. My experience with the road warrants me in saying that the receipts for the next eight months will be more than the expenditures, as we have never had our force reduced so low in numbers and wages. There is just one man to the mile—boss and all hands.

Yours respectfully,

W. T. RUNDIE
Superintendent.

INVENTORY OF PROPERTY, &c.

Filed March 14th, 1874.

To the Hon. THEODORE RUNYON, Chancellor :

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

ing the estate and property thereof, and hereto attached as Schedule E, is such examination. From this examination, and from such other information as I have been able to obtain, I am of the opinion that the probable value of all the estate property and effects of said company is from eight hundred thousand to twelve hundred thousand dollars.

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

W. Z. LARNED,
Receiver.

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

SCHEDULE A.

The franchise, right of way, and track of the New Jersey West Line Railroad Company, between the Delaware river and Jersey City, New Jersey, the track being laid and in use (a single track) from Summit to Bernardsville, and partly graded from summit to Newark, with engine house, freight house, tank and turn table at Bernardsville, and depot, ground and houses, at Basking Ridge, Ellendor and Murray Hill. Also a tract of land, about twenty-three acres, situated at Jersey City, and certified by the Riparian Commissioners, to come within the location of the route and of the depots, stations, and other works of the said New Jersey West Line Railroad Company, this tract was granted by the State to said Company by deed, dated ————. The State of New Jersey took a mortgage back upon the property, which it now holds for the sum of eighty-two thousand dollars, part of the purchase money, and upon which interest is due from September 19, 1872. The company has since given a mortgage upon this Jersey City tract for fifteen

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

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

SCHEDULE B.

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

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

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

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

SCHEDULE C.

MACHINERY, TOOLS, &C.

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

OFFICE FURNITURE.

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

SCHEDULE D.

UNPAID STOCK SUBSCRIPTIONS, NOTES, ACCOUNTS, &C.

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

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

SCHEDULE E.

IN CHANCERY OF NEW JERSEY.

<p>Between REUBEN S. MIDDLETON, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>THE NEW JERSEY WEST LINE RAILROAD COMPANY, <i>Defendant.</i></p>	}
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Benjamin F. Beekman, being duly sworn and interro- 10
gated thereto by W. Z. Larned, receiver, appointed in the
above proceeding, doth depose and say that he is and has
been since June 5th, 1872, President of the New Jersey
West Line Railroad Company. He further states that he
has read and examined the foregoing inventory of the estate,
property and effects of said company prepared by the said
receiver. That he knows of no other property than that
therein mentioned belonging to said company, and he be-
lieves that the same is a complete and full inventory of said
property. This deponent doth further state that in his 20
opinion the probable value of the whole estate, property,
and effects of the said New Jersey West Line Railroad
Company is from twelve hundred thousand dollars to fifteen
hundred thousand dollars, and would be worth much more
than either sum to parties furnishing means enough to com-
plete the road.

B. F. BEEKMAN.

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

W. Z. LARNED,

Receiver. 30

RECEIVER'S REPORT.

Filed March 26, 1874.

To Hon. THEODORE RUNYON, Chancellor :

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

Newark, March 21, 1874.

W. Z. LARNED,
Receiver.

SCHEDULE A.

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

30 Of these seventeen hundred and ninety-five bonds are held absolutely against the company, representing an indebtedness payable in gold of..... \$1,795,000
 The interest upon fifteen hundred and twenty-eight (1,528) of said bonds is

due and unpaid since November 1st, 1870, making, including the coupon due May 1st, 1874, seven coupons upon each bond of \$35, each in gold, representing a total indebtedness in gold of	\$374,360	
Brought forward.....	\$2,169,360	
The interest upon the other two hundred and sixty-seven (267) of said bonds held absolutely against the company is due and unpaid since May 1st, 1871, making, including the coupon due May 1st, 1874, five coupons upon each bond of \$35, each in gold, and representing a total indebtedness in gold of.....	\$46,725	10
	<u>\$2,216,085</u>	
This amount should be reduced by about 150 coupons on bonds held by G. H. Smith, which were prosecuted to judgment against the company, and collected by execution sales of its property...	5,250 00	20
Total gold indebtedness.....	<u>2,210,835 00</u>	
Money borrowed by The New Jersey West Line Railroad Company of John Brisbin, Esq., August 6th, 1872, two hundred and ninety-five thousand one hundred and fifteen dollars and fifty cents.....	\$295,115 50	
Interest to May 1st, 1874.....	35,807 33	
	<u>330,922 83</u>	
Bond of New Jersey West Line Railroad Company to the State of New Jersey (or to the trustees of the school fund).....	\$82,000 00	30
Interest from Sept. 9, 1872, to May 1st, 1874.....	9,263 71	
	<u>\$91,263 71</u>	
(This bond is secured by a mortgage on the tract of land in Jersey City, in part		

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

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

10

SCHEDULE B.

Judgment against the New Jersey West Line Railroad Company in the Supreme Court of the State of New York, in favor of Charles J. Pusey, entered July 19th, 1873, and bearing interest from that date for..... 12,320 37

20 Judgment against said company in the — of the State of New Jersey, in favor of Joseph J. Potter, for \$—— with interest from ——. This judgment was taken in a suit upon certain coupons upon the mortgage bonds mentioned in Schedule A, and the debt is therefore embraced in that Schedule. Judgment against the Company for right of way as follows, to wit:

(NOTE.—I have been unable to ascertain the amount of the last two judgments.)

30 Bond of The New Jersey West Line Railroad Company to S. W. Cadwell to secure payment of the sum of fifteen thousand dollars (\$15,000), and interest from January 15th, 1874, secured by a second mortgage upon the Jersey City tract of land set forth in the inventory of property and guaranteed by B. F. Beekman..... 15,000 00

Claim against the company of S. C. Stay- naker for balance of salary as engineer.	500 00	
Claim of G. W. Howell against the company for balance of salary as engineer	300 00	
Claim of Benjamin F. Beekman for balance due him for money advanced to the company to meet current expenses, (se- cured by certain real estate in his hands as stated in inventory of property)	6,570 00	
Claim of Archibald Gracie for rent of office Summit	40 00	10

ORDER.

Filed September 12, 1874.

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

THEODORE RUNYON, C.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between REUBEN S. MIDDLETON, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">THE NEW JERSEY WEST LINE RAILROAD COMPANY, <i>Defendant.</i></p>	}	<p><i>Petition for order to sell.</i></p>
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*To the Hon. THEODORE RUNYON, Chancellor of the State of
New Jersey :*

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

20 He further shows, that on the fourteenth day of March instant he reported to this court the amount of the property and assets of the said defendant, and annexed to his report an inventory thereof, and that the estimated value of the property and assets aforesaid then made by him does not exceed the sum of twelve hundred thousand dollars, and your petitioner shows that, that sum is so far as he is able to ascertain a full estimate of the value of the said property.

30 Your petitioner further shows that he has this day filed his report, showing the indebtedness of the said The New Jersey West Line Railroad Company, giving a schedule of the said indebtedness, and that it appears from his report, which

He believes to be true, that the said company is indebted in about the sum of two million six hundred thousand dollars.

Your petitioner further shows that the property and franchises of the said company are in such condition that a sale thereof, as soon as the same can be made fairly and with notice to all parties concerned, will in his opinion be greatly to the interest of the creditors of the said corporation; that but a small portion of the railroad of the said company is in operation, and that that portion is not in complete order; that the operating expenses without any extra expense exceed the sum of the receipts; that the property is constantly depreciating in value. 10

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

Your petitioner further prays that an order of this court may be made, authorizing him to make sale of the property, rights and franchises of the said company, at such time and place, and upon such notice as your Honor may direct, and as may be deemed best for the interests of all concerned. 20

LEONARD & COULT, *Solicitors*.

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

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

That the matter and things set forth in the foregoing petition are true, so far as they relate to his own acts, and so far as they relate to the acts of others, and are therein stated on information and belief he believes them to be true. 30

W. Z. LARNED.

Sworn and subscribed before me this 24th day of March, A. D. 1874, at Newark, N. J.

FRED'K T. JOHNSTON, [L. s.]
Notary Public of New Jersey.

Filed, March 26, 1874.

IN CHANCERY OF NEW JERSEY.

Between

REUBEN S. MIDDLETON,

*Complainant,**and*THE NEW JERSEY WEST LINE RAILROAD
COMPANY,*Defendant.**On Bill, &c.**Rule to show
cause.*

William Z. Larned, receiver heretofore appointed in this
 10 suit, having this day filed a petition in which he states that
 after having made an inventory of the assets of the said de-
 fendant and a statement of their liabilities, by which it
 appears that the said company is largely insolvent, and
 stating that he is of the opinion that it is to the interests of
 the creditors of the said corporation that the property,
 rights and franchises of the same be sold, and that the sale
 take place as soon as the interests of the parties interested
 therein can be fully protected by suitable and sufficient
 notice, and praying that an order be made by this court
 20 directing him to make sale thereof: It is, on this twenty-
 sixth day of March, eighteen hundred and seventy-four, on
 motion of Leonard & Coult, solicitors of, and of counsel
 with the complainant, Ordered that the defendant show
 cause before me on the thirteenth day of April next, at my
 Chambers, in the City of Newark, at the hour of ten o'clock
 in the forenoon of that day, why the order asked for by the
 said receiver should not be made and he be directed to sell
 the property, rights and franchises of the said corporation
 in accordance with the statutes in such case made and pro-
 30 vided.

And it is further ordered, That a copy of this order be served upon the said defendant, and also upon the trustees of the mortgage bondholders and such of the judgment creditors of the said defendant as can be found within the time limited, within twelve days from the date hereof.

And it is further ordered, That service may be made, first, personally ; second, in case personal service cannot be made by leaving a copy of the said order at the place of business or usual place of abode of the parties, and in case their place of business or place of abode cannot be ascertained, 10 by mailing a copy thereof in an envelope, directed to them, or either of them, at their last place of business, or last place of abode, with postage prepaid.

THEODORE RUNYON, *C.*

(NOTE.—Proofs of service of foregoing rule are on file as to Theodore F. Randolph, R. Gilchrist, Attorney General ; John Taylor Johnston, President of The Central Railroad of New Jersey ; and Charles J. Pusey. This last served by mail, directed to Souders Point, Wayne County, New 20 York.)

OCT. T., 1874.

10	REUBEN S. MIDDLETON, <i>vs.</i> THE NEW JERSEY WEST LINE RAIL- ROAD COMPANY.	}	<i>Opinion.</i>
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On application for order directing the receiver to sell the property of the company free from the encumbrance of the mortgages and other liens on the same.

MR. JOSEPH COULT for the receiver.

20 MR. J. VANATTA, MR. T. N. McCARTER and HON. B. WILLIAMSON for the holders of bonds secured by mortgage on the railroad.

MR. J. F. MCGEE and MR. CORTLANDT PARKER for the trustees under that mortgage.

HON. R. GILCHRIST, Atty. Gen., for the trustees for the support of public schools.

30 THE CHANCELLOR.—This is an application made under the supplement of March 17th, 1870, Pamph. L., 1870, p. 55, to the act to prevent frauds by incorporated companies, for an order directing the receiver to sell the property and the chartered rights, privileges and franchises of The New Jersey West Line Railroad Company free from all liens and incumbrances thereon.

By the supplement above referred to power is given to the Chancellor to appoint on application of any creditor, mortgagee or stockholder of any railroad, canal or turnpike company incorporated under the laws of this State which has become insolvent, or failed for ninety days after the

same has become due to pay the interest or principal of any mortgage on its property and franchises, a receiver or receivers, or trustees who is or are to have and exercise all the powers and authority which it is lawful for receivers or trustees to exercise under the original act; and the supplement provides that it shall be lawful for the receivers or trustees to sell or lease the canal, railroad or turnpike belonging to the company, together with all the chartered rights, privileges and franchises of the company, and that the purchaser or purchasers, lessee or lessees of such work, 10 chartered rights, privileges and franchises shall thereafter hold, use and enjoy the same during the whole of the residue of the term limited in the charter of the company or during the term in the lease specified, in as full and ample a manner as the stockholders of such company could or might have enjoyed the same, subject, however, to all the restrictions, limitations and conditions contained in the charter; and upon filing in the office of the Secretary of State, within six months after such sale or lease, a certificate 20 that they accept the charter of the company whose property has been sold or leased, under some corporate name different from that of the company, the purchasers or lessees shall become a corporation under the name so specified with all the powers, rights, privileges and franchises of the former company. The supplement further provides that the lessees or purchasers or corporation so formed shall hold and enjoy the property and chartered rights, privileges and franchises free and clear of all debts, claims and demands of creditors, mortgagees or stockholders, who are to look only to the fund 30 arising from such lease or sale; and the money so collected is to be paid into this court. It further provides that where the property is subject to a mortgage the Chancellor may, with the consent of the plaintiff, or without such consent, if the principal is not due, direct a sale or lease to be made subject to the mortgage.

The receiver appointed by this court for the creditors and stockholders of The New Jersey West Line Railroad Company, a corporation under the laws of this State, applies for an order authorizing him to sell the property and chartered rights, privileges and franchises of the company 40

free from all debts, claims and demands of creditors, mortgagees or stockholders. The property is the railroad and land purchased for its construction and the goods and chattels used on the railroad. It is subject to two mortgages, one only on certain land under water at Jersey City for \$80,000 and interest, held by the trustees for the support of public schools, and the other claimed by the mortgagees (who are trustees for bondholders) thereunder, to be upon all the property, chartered rights, privileges, and franchises

10 of the company, but admitted to be subsequent to the first mentioned mortgage. The mortgagees under the mortgage on the land under water object to the sale of the property clear of their mortgage, on the ground that they are unable to protect their interest thereunder, and insist that if the sale be ordered it should be subject to their mortgage. The mortgagees under the other mortgage object to the sale on the ground that it would deprive them of part of their remedy for the security and collection of their debt, and that the supplement is in contravention of the provisions of

20 the constitution of this State, which prohibits the Legislature from passing any law depriving a party of any remedy for enforcing a contract which existed when the contract was made. They insist, also, that the sale, if ordered, would not be lawfully or equitably ordered, to be made subject to the mortgage on the land under water, but clear of theirs. It is obviously of very great importance to the parties in interest that a final determination of the questions raised on this application be had at the earliest practicable moment and before sale of the property. The constitutional

30 question was passed upon in this Court in *Potts vs. N. J. Arms and Ordinance Co.*, 2 C. E. G., 395, in reference to the supplement of March 13th, 1866, (Nix. Dig., 409, §24) to the act to prevent frauds by incorporated companies. That supplement provides that where the property of an insolvent corporation in the hands of a receiver or trustees appointed under the original act is encumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, thereupon the

40 Court of Chancery may order the receiver or trustees to sell

the same, clear of encumbrances, at public or private sale for the best price that can be obtained, bringing the money into the Court of Chancery, there to remain, subject to the same liens and equities of all parties in interest as was the property before it was sold, and to be disposed of as the said Court by its decree shall order and direct. The constitutionality of that act was there maintained. The subject was considered also in the Supreme Court in *Rader vs. Southeasterly Road District, &c.*, 7 *Vroom*, 273. See also *Martin vs. Somerville Co.*, 3 *Wall, Jr.*, 206. Whichever 10 way, however, the decision of this court may be, an appeal will be taken by the one side or the other. In order, therefore, to prevent any delay and to advance the matter towards its final determination, and that it may, if opportunity be afforded, be heard at the next term of the Court of Errors and Appeals, I deem it proper to make at once, without an expression of opinion, an order *pro forma* in the premises, from which an appeal may be taken.

There will be an order that the receiver sell at public auction, all the property, rights, privileges and franchises of 20 the company, in the following manner: First, in one parcel all the corporate rights, privileges and franchises of the company, with its railroad track, right of way, rolling stock, and all the property of every kind belonging to the company, included in and covered by the mortgage given by the company to Benjamin G. Clark and Theodore F. Randolph, trustees, including in the parcel the franchise or right of the company to extend its railroad from Newark to a point in Hudson county; which property, rights, privileges and franchises shall be sold absolutely freed and cleared of and 30 from all liens and encumbrances of every kind and description whatsoever. Second, separately and in one parcel that portion of the property owned by the company known as the water-front, situated at Communipaw bay, subject to the mortgage held by the Trustees for the Support of Public Schools, and to all other liens and encumbrances now on the same. Third, in such parcels as he may deem most advantageous, the other property held in trust for the company, which is to be sold subject to all the legal and equitable liens thereon, if any. Fourth, all the personal 40

property of the company not covered by the mortgage of Messrs. Clark and Randolph, trustees, in such parcels as he may deem most advantageous; the property to be sold free and clear of all liens and encumbrances.

IN CHANCERY OF NEW JERSEY.

Between REUBEN S. MIDDLETON, <i>Complainant,</i> and THE NEW JERSEY WEST LINE RAILROAD COMPANY, <i>Defendant.</i>	}	<i>On Bill, &c.</i> <i>Order to Sell.</i>
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A petition having been filed in this cause by William Z. Larned, the receiver heretofore appointed, praying that an order be made directing him to make sale of the property, rights and franchises of the defendant, and the Court having made order therein as follows :

“William Z. Larned, receiver heretofore appointed in this suit, having this day filed a petition, in which he states that after having made an inventory of the assets of the said defendant, and a statement of their liabilities, by which it appears that the said company is largely insolvent, and stating that he is of the opinion that it is to the interest of the creditors of the said corporation that the property, rights and franchises of the same be sold, and that the sale take place as soon as the interests of the parties interested therein can be fully protected by suitable and sufficient notice, and praying that an order be made by this Court directing him to make sale thereof ;

“It is on this twenty-sixth day of March, eighteen hundred and seventy-four, on motion of Leonard & Coult, solicitors, and of counsel with the complainant, ordered that the defendant show cause before me, on the thirteenth day of April next, at my chambers, in the city of Newark, at the hour of ten o'clock in the forenoon of that day, why the

order asked for by the said receiver should not be made and he be directed to sell the property, rights and franchises of the said corporation, in accordance with the statutes in such case made and provided.

“And it is further ordered, that a copy of this order be served upon the said defendant, and also upon the trustees of the mortgage bond holders, and such of the judgment creditors of the said defendant as can be found within the time limited, within twelve days from the date hereof.

- 10 “And it is further ordered, that service may be made, first, personally; second, in case personal service cannot be made, by leaving a copy of said order at the place of business, or usual place of abode of the parties, and in case their place of business or place of abode cannot be ascertained, by mailing a copy thereof in an envelope, directed to them, or either of them, at their last place of business, or last place of abode, with postage prepaid.”

And it appearing to my satisfaction that the said order was duly served, as therein directed, and no sufficient cause
 20 having been shown why the prayer of the said petitioner should not be granted, and it appearing to the Chancellor, after hearing counsel in behalf of the said petitioner and other parties, who appeared at the time and place mentioned in the said order, viz.: Thomas N. McCarter, Esquire, who appeared on behalf of Asa Packer and The Lehigh Valley Railroad Company; Robert Gilchrist, Esquire, who appeared on the part of the State of New Jersey; J. Flavell McGee, Esquire, who appeared on behalf of Benjamin G. Clark and Theodore F. Randolph, trustees of the mortgage
 30 bond holders; Benjamin Williamson, Esquire, who appeared on behalf of The Central Railroad Company, and Jacob Vanatta, Esquire, who appeared on behalf of The Delaware, Lackawana, and Western Railroad Company, that it is just and proper, and for the interest of all the creditors of the said defendant, that a sale be made of its property, rights and franchises by the said receiver.

It is therefore, on this twelfth day of September, eighteen hundred and seventy-four, on motion of Leonard & Coult, solicitors for, and of counsel with the complainant and the
 40 said receiver, ordered that the said receiver make sale at:

public auction of all the property, rights, privileges and franchises of the said defendant The New Jersey West Line Railroad Company in the following manner :

First.—The said receiver shall sell in one parcel all the corporate rights, privileges and franchises of the said company, with its railroad track, right of way, rolling stock, and all the property of every kind belonging to the company, included in and covered by the mortgage given by the said defendant to Benjamin G. Clark and Theodore F. Randolph, trustees, and including in the said parcel the 10 franchise or right of said defendant to extend the said railroad from Newark, in the State of New Jersey, to a point in Hudson County, in the said State, which property, rights, privileges and franchises shall be sold, absolutely freed and cleared of and from all liens and encumbrances of every kind and description whatsoever.

Second.—The said receiver shall sell separately, and in one parcel, that portion of the property owned by the said defendant, known as the water-front, situate at Communipaw Bay, near Jersey City, in the County of Hudson, being 20 the same property purchased by it of the State of New Jersey, which said property shall be sold subject to the mortgage given by the said defendants to the State of New Jersey, and now held by the said State, and subject to all other liens or encumbrances now on the same.

Third.—The said receiver shall sell in such parcels as he may deem most advantageous, the other property held in trust for the said company, which sale shall be made subject to all the legal and equitable liens thereon, if any.

Fourth.—The said receiver shall sell all the personal 30 property of the said defendant not covered by the mortgage of the said trustees, in such parcels as he may deem most advantageous, which sale shall be made free and clear of all liens and incumbrances.

Fifth.—The said sale shall be made at the Continental Hotel, in the city of Newark.

Sixth.—The said receiver shall give notice of the time and place of the said sale, as directed by the laws of this State regulating sales of real estate sold by public officers, or by the order of a court, and shall also advertise the same at 40

least four weeks successively, once each week next prior to the day fixed for the sale, in the Newark Herald and the New York Evening Post, two newspapers published in the city of Newark.

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

Eighth.—The terms and conditions of the said sale shall be as follows: The personal property shall be sold for cash. On the sale of the real estate, together with the rights, privi-
 10 leges and franchises of the said defendant, ten per cent. of the purchase money shall be paid on the day of sale, and the balance within three months thereafter, and the delivery of the deed or deeds of conveyance therefor, and the receiver shall take security for the payment of the same, with interest from the day in which the deeds are delivered and possession given.

Ninth.—The said receiver may on the sale of the property now included in and covered by the mortgage held by the said Benjamin G. Clark and Theodore F. Randolph as
 20 trustees, and of the franchises, rights and privileges sold therewith, receive as security for the payment of the purchase money from the purchaser or purchasers thereof, the bonds of the said defendant secured by the said mortgage at such per cent. of their par value as the holders of the said bonds would be entitled to receive on a distribution of the proceeds of the sale made under this order

Tenth.—The said receiver shall make and deliver to the purchaser or purchasers under this sale proper deeds of conveyance and bills of sale for the property, rights, privileges
 30 and franchises so to be sold, which shall vest in him or them the title thereto.

Eleventh.—The sale shall be made subject to the confirmations of this court.

THEODORE RUNYON, C.

IN CHANCERY OF NEW JERSEY.

Between REUBEN S. MIDDLETON, <i>Complainant,</i> <i>and</i> THE NEW JERSEY WEST LINE RAILROAD COMPANY, <i>Defendant.</i>	}	<i>Appeal.</i>
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The defendants, Theodore F. Randolph and Benjamin G. Clarke, trustees of the first mortgage given by the said The 10
 New Jersey West Line Railroad Company, appeal from so
 much of the order directing the receiver William Z. Larned
 to sell the said railroad, made in this cause on the twelfth
 day of September last in this court, as directs as follows:

"*First*, The said receiver shall sell in one parcel all the
 corporate rights, privileges and franchises of the said com-
 pany, with its railroad track, right of way, rolling stock,
 and all the property of every kind belonging to the company
 included in and covered by the mortgage given by the said
 defendant to Benjamin G. Clarke and Theodore F. Ran- 20
 dolph, trustees, and including in the said parcel, the fran-
 chise or right of said defendant to extend the said railroad
 from Newark in the State of New Jersey to a point in Hud-
 son county in the said State, which property, rights, privi-
 leges and franchises shall be sold absolutely freed and
 cleared of and from all liens and encumbrances of every
 kind and description whatsoever.

"*Second*, The said receiver shall sell separately, and in
 one parcel, that portion of the property owned by the said

defendant known as the water-front, situate at Communipaw Bay, near Jersey City, in the County of Hudson, being the same property purchased by it of the State of New Jersey, which said property shall be sold subject to the mortgage given by the said defendant to the State of New Jersey, and now held by the said State, and subject to all other liens and encumbrances now on the same.

Dated October 21, 1874.

MUIRHEID & MCGEE,

10

*Solicitors for, and of Counsel with defendants,
Theodore F. Randolph and Benjamin G
Clarke, Trustees, &c.*

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

J. F. MCGEE,

Of Counsel with above named defendants.

COURT OF ERRORS AND APPEALS.

Between

THEODORE F. RANDOLPH, *et al*,
Trustees,
Appellants.

and

REUBEN S. MIDDLETON, *et als*,
Appellees.

*On Bill, &c.**Petition of Appeal.*

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

The humble petition of Theodore F. Randolph and Benjamin G. Clarke, trustees, the appellants in this cause, respectfully show, that your petitioners (by a certain order directing the receiver of the New Jersey West Line Railroad Company, William Z. Larned, to sell the said railroad, made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, on the twelfth day of September, 1874, in a cause wherein the said Reuben S. Middleton was complainant, and the New Jersey West Line Railroad Company were the defendants, and wherein your petitioners, Theodore F. Randolph and Benjamin G. Clarke, as trustees of the first mortgage given by the said, The New Jersey West Line Railroad Company, and Asa Packer, The Lehigh Valley Railroad Company, the State of New Jersey, The Central Railroad Company, and The Delaware, Lackawanna and Western Railroad Company, as parties interested, were admitted and heard as defendants), find themselves aggrieved by so much thereof as directs as follows :

First.—The said receiver shall sell in one parcel all the corporate rights, privileges, and franchises of the said company, with its railroad-track, right of way, rolling-stock, and all the property of every kind belonging to the company included in and covered by the mortgage given by the said defendant to Benjamin G. Clark and Theodore F. Randolph, trustees, and including in the said parcel the franchises or rights of said defendants to extend the said railroad from Newark, in the State of New Jersey, to a point in Hudson
 10 County, in the said State, which property, rights, privileges, and franchises, shall be sold, absolutely freed, and cleared of and from all liens and encumbrances of every kind and description whatever.

And your petitioners humbly appeal from that part of the said order of the Chancellor which decrees as aforesaid on the ground that the same is erroneous for that wherein it directs said property, &c., to be sold freed and cleared of encumbrances, said order is beyond the power of the said court to make, and that for other reasons the same ought
 20 not to have been made. And also by so much of said order as directs as follows :

Second.—The said receiver shall sell separately and in one parcel that portion of the property owned by the said defendant, known as the water front, situate at Communipaw Bay, near Jersey City, in the county of Hudson, being the same property purchased by it of the State of New Jersey, which said property shall be sold subject to the mortgage given by the said defendants to the State of New Jersey, and now held by the said State and subject to all other liens
 30 or encumbrances now on the same.

And your petitioners humbly appeal from that part of the said order of the Chancellor which decrees as last aforesaid recited, upon the ground that the same is erroneous, for that by the terms of your petitioners' said mortgage said last mentioned property is included within and is a part of the property thereby mentioned and conveyed, and that said court has no power to order part of said mortgaged property sold by said receiver free and clear of said mortgage, and another part subject thereto but divided and sep-

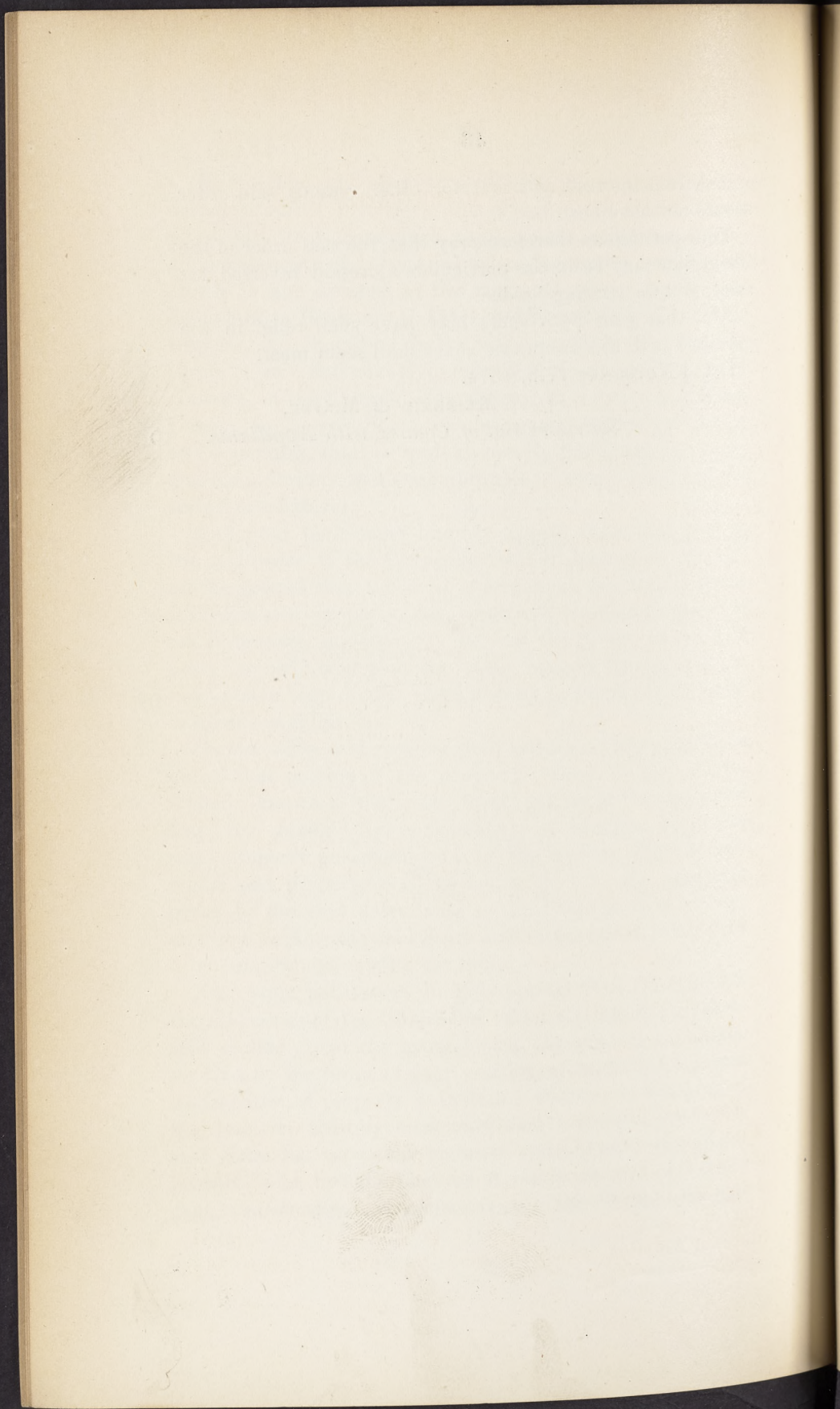
arated from the rest, and that for other reasons said order should not have been made.

Your petitioners therefore pray that the said order of the Chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden.

And that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated November 17th, 1874.

MUIRHEAD & MCGEE,
Solicitors and of Counsel with Appellants. 10



COPY OF MORTGAGE.

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

THIS INDENTURE, made the eleventh day of March, in the year of our Lord one thousand eight hundred and seventy, between the New Jersey West Line Railroad Company, a corporation of the State of New Jersey, in the United States of America, party of the first part, and Theodore F. Randolph and Benjamin G. Clarke of said State, party of the 10 second part; whereas, pursuant to the power and authority in it vested, the party of the first part has resolved, to enable it to construct its railroad and equip the same, to make and issue a series of three thousand of its bonds, each of one thousand dollars, numbered respectively from one to three thousand, inclusive, to amount in the aggregate to three million dollars, which bonds are to have coupons or warrants thereto annexed for the payment of interest thereon at the rate of seven per cent. per annum, which said bonds are to be all equally secured, principal and interest, by these pre- 20 sents, which is a deed of trust or first mortgage, which bonds are of like tenor and date, each bearing even date herewith, payable, principal and interest, in gold coin of the United States of America, and in form following:

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

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

*Know all Men by these Presents, that the New Jersey 30
 West Line Railroad Company, a corporation by a charter of
 the State of New Jersey, is indebted to Theodore F. Ran-
 dolph and Benjamin G. Clarke, or the bearer hereof, in the
 sum of one thousand dollars in gold coin of the United
 States of America, which the said company promises to pay*

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

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

This bond shall pass by delivery, or it may be registered by its owner in the books of the company at the office of said company. After a registration of ownership certified thereon by the transfer agent of the company, no transfer of this bond shall be valid except upon the books of the company, unless the last transfer shall have been to bearer, and transferability by delivery thereby restored, but this bond shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of the
 40 holder.

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

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

President.

Secretary.

FORM OF COUPON OR INTEREST WARRANT.
NEW JERSEY WEST LINE RAILROAD COMPANY.

STATE OF NEW JERSEY, UNITED STATES OF AMERICA.

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

20

\$35.

Treasurer.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, That for and in consideration of the premises and the sum of one dollar to it duly paid by the party of the second part, the receipt whereof is hereby acknowledged by the party of the first part, and in order to secure the payment of the principal and interest of the said bonds according to the tenor thereof and of the coupons or interest warrants thereto annexed, the party hereto of the first part hath granted, bargained, sold, assigned, transferred, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, transfer, convey and confirm unto the party of the second part as joint tenants and not as tenants in common, and unto the survivor of them, and their successors and assigns, all and singular

the railroad of the New Jersey West Line Railroad Company, the party of the first part hereto, and all the appurtenances thereto belonging, acquired and to be acquired, constructed and to be constructed, throughout and along the entire main line of said company's railroad, from the eastern terminus of said railroad at the City of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the western terminus of said railroad at the Pennsylvania state line, including all the lands and real estate acquired

10 and that shall be acquired by the said company, on which the said main line, of the said company's railroad is by law authorized to be constructed; also the bridge across the Delaware river and the tracks thereon, and all the tracks, bridges, viaducts and fences on and that shall be on and belonging to said main line of said railroad, together with all the franchises, powers, and privileges to own, obtain, construct, operate, manage and maintain the said main line of railroad possessed by the said company as a corporation, also

20 houses, station houses, engine houses, car houses, freight houses, water stations, turn tables, machine and other buildings and structures on or along and adjacent to said main line of railroad belonging to or that shall be acquired by said company, or that shall be used on or along said main line of railroad of said company, together with the land on which the same are or shall be erected, acquired or that shall be acquired by said company, and all the machinery, tools, implements and materials for constructing, operating, repairing or replacing the said line of railroad, or any part thereof, and the rights of way, roadbed, and other grounds forming and to

30 form part of and belonging or to belong to the said line of railroad, embracing as to the parcels and items of property hereinbefore specified as conveyed hereby, such and such parts thereof as have been heretofore acquired by, constructed or placed in the possession of the said company, as also such as shall be hereafter acquired by or constructed or placed in the possession of the said company, and which forms and constitutes, or shall form and constitute the said main line of railroad, and lands, buildings and structures thereto belonging; also all the locomotives, tenders, cars

40 and other rolling stock or equipment which by virtue of the

contract for the construction of said main line of railroad and equipment thereof and bridge across the Delaware river, shall be placed on the said railroad, or furnished to, or procured, or that shall be procured by the said company for that purpose, and all the property, franchises, rights and things of whatsoever name or nature now held or acquired, or which shall hereafter be held or acquired by the party of the first part hereto or its successors, pertaining to the said main line of railroad, or the equipment thereof; together with all and singular the tenements, hereditaments, and appur- 10 tenances to the said main line of railroad, lands and premises or either thereof belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part hereto, of, in, and to the same and every part and parcel thereof with the appurtenances.

To HAVE AND TO HOLD the above mentioned and described 20 railroad, bridges, real estate, property and premises with the appurtenances unto the party of the second part as joint tenants and not as tenants in common, and to the survivor of them and their successors and assigns as joint tenants and not as tenants in common as aforesaid, to the only proper use, benefit and behoof of the party of the second part and the survivor of them and their successors and assigns as joint tenants and not as tenants in common as aforesaid forever, in trust nevertheless for the purposes herein expressed, to wit:

Article First. Until default shall be made by the party of the first part, its successors or assigns, in the payment, in gold coin as aforesaid, of the principal or interest, or some part thereof, of the said bonds or some one of them, when due, and the coupon or coupons for interest shall have been presented and the amount thereof demanded and the continuance of such default for the period of three months after such presentment of the coupon or coupons and demand, the party of the first part, its successors and assigns, shall be 30 suffered and permitted to possess, manage, operate and enjoy 40

the said railroad with its equipment and appurtenances, and also the bridges, real estate, lands and premises, property and franchises hereinbefore described and hereby mortgaged, and to receive, take and use the tolls, incomes, revenues, rents, issues and profits thereof and of every part and parcel thereof, in the same manner and with the same effect as if this mortgage had not been made.

Article Second. In case default or failure shall be made or occur in the payment, in gold coin as aforesaid, of any interest on any of the said bonds according to the tenor thereof, or of the coupons thereto annexed, or any or either of them when the same shall become due, and the coupon or coupons for such interest shall have been presented and the amount thereof demanded, and such default or failure shall continue for the period of three months after such presentation of the coupon or coupons aforesaid and demand, or in case of default or failure in the payment, in gold coin as aforesaid, of the principal or any part thereof of said bonds or any of them when the same shall become due and be presented for payment, and such default or failure shall continue for the period of three months, then and in either of such cases it shall be lawful for the said trustees, Theodore F. Randolph and Benjamin G. Clarke, or the survivor of them, or their successors, personally or by their or his attorney or agents, the said default or failure then still existing, upon the written request of the holder or holders of one hundred and fifty bonds issued by said company and secured by and under this mortgage and deed of trust, on which by the non-payment of interest or principal such default or failure shall continue to exist, or on their or his own motion to enter into and upon and take possession of all and singular the railroad, bridges, real estate, lands, property and premises, rolling stock and equipment hereby conveyed and mortgaged or intended to be, and of each and every part thereof, without any let or hindrance of or from the party of the first part or its successors, and to have, hold, possess, occupy, use, employ and enjoy the same, and to operate by their or his superintendents, managers, receivers or servants, or other attorneys or agents, the said railroad and rolling stock and equipment thereof hereby mortgaged,

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

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

fault be in the payment of the principal secured by any of
 said bonds or any part thereof, and shall continue for the
 period of six months after such principal shall become due;
 then in either case it shall likewise be lawful for the said
 trustees, or the survivor of them, or their successors, after
 entry as aforesaid, or other entry, or without entry, person-
 ally or by their or his attorney or attorneys, agent or agents,
 to sell and dispose of all and singular the railroad, bridges,
 real estate, lands, property and premises, rolling stock and
 10 equipment, franchises, rights and powers hereby conveyed
 or intended so to be at public auction, in the City of New-
 ark, in the County of Essex, in the State of New Jersey; or
 in Jersey City, in the County of Hudson, in said State of
 New Jersey, as the said trustees, or the survivor of them, or
 their successors shall designate, and at such time as they or
 he may appoint, having after the expiration of said period
 of six months, first given notice of the place and time of
 such sale by advertisement published not less than three
 20 times a week for two months in one or more newspapers
 published in the city of New York, and also in two or more
 newspapers published in New Jersey, and in whatever way
 and wherever else required by law, and to adjourn the said
 sale from time to time, as often as in their or his discretion
 may be for the best interest and advantage of the holders of
 bonds and coupons or interest warrants secured hereby; and
 if there be an adjournment or adjournments to make the
 sale aforesaid without further notice, by advertisement, un-
 less notice of adjournment by advertisement should be re-
 quired by law, then such notice to be as required by law,
 30 the said sale to be in case of adjournment, at the time and
 place to which any adjournment of the same may be made,
 and to make and deliver to the purchaser or purchasers of
 the said property and premises, good and sufficient deed or
 deeds in the law in fee simple conveying thereby the whole
 of said main line of railroad, bridges, real estate, lands,
 property and premises, with the said franchises, rights and
 powers of said corporation, and the said rolling stock and
 equipment and all appurtenances to the said property or
 any part thereof belonging; which sale and conveyance
 40 made as aforesaid shall be a perpetual bar both in law and

equity against the party of the first part, its successors and assigns, and all other persons claiming or to claim the said railroad, bridges, real estate, lands, property and premises, franchises, rights and powers, rolling stock and equipment, or any part or parcel thereof, by, from, through or under the said party of the first part its successors or assigns; which said sale and conveyance shall vest the right, title, estate, interest, property and possession of, in and to the said premises, franchises and equipment wholly and absolutely in the purchaser or purchasers; and after deducting from the 10 proceeds of such sale, just allowances for all expenses thereof, and for attorneys and counsel fees, and for costs, taxes, assessments, and for all other expenses, advances or liabilities which may have been made or incurred by the said trustees or either of them, or advances made for the benefit of the trust, in respect to the said railroad, bridges, real estate, lands, property and premises, rolling stock and equipment or any part or parcel thereof, or in respect to the business of the trust hereby created, or in operating or maintaining the said railroad, or bridges, or equipment or any part of either or 20 anything appertaining thereto or in managing the business thereof, or in taking charge or control of the said property and business or any part thereof, and in arranging for and completing the sale aforesaid and all the payments which may have been made by the said trustees, or the survivor of them or their successors, or either of them, in the execution of the trust and in the discharge of their or his duty as trustees or trustee, as well as compensation for their or his own services, to apply the said proceeds to the payment of the principal of such of the said bonds as may be at that 30 time unpaid, whether or not the same shall have previously become due and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and accrued and unpaid interest, but always so that if of any of the coupons or interest warrants then past due annexed to all of said bonds, which came due at the same date, a part only shall then have been paid in part or in full, then the others of said coupons or interest warrants which came due at the same date with 40

those thus paid in part or in full which shall not then have been paid in part or in full, shall be first paid to an amount which will make the payments of the interest on all the said bonds secured by this mortgage or deed of trust, to be in full of interest to the same date, in order and to the intent that the security for and payment of all the said bonds shall be perfectly equal without any preference in favor of one over the other either as to principal or interest, and if after the payment of the principal and interest of said bonds

10 in full, a surplus shall remain, to pay over such surplus to the said company or render the same and account therefor and pay the same, or so much thereof as may be required, to the person or persons who may be entitled thereto under or by virtue of any second mortgage that may be given by the party hereto of the first part or its successors on or covering the estate, property, franchises and rights covered by this mortgage or deed of trust, which second mortgage or deed of trust if so given is to be distinct from, subject to, and second in the order of priority to this mortgage or deed of

20 trust, the right to give, make and execute a valid second mortgage or deed of trust which shall be a lien subsequent to this mortgage or deed of trust on all the said main line of railroad, bridges, real estate, lands and premises, rolling stock, equipment, franchises and other property and rights embraced in this mortgage or deed of trust is hereby reserved, but only so that it shall be operative on any remainder or equity of redemption or surplus, after the complete execution of the trust hereby created and the payment in full by the said company or its successors, or by a

30 sale and conveyance in fee simple by the said trustees or the survivor of them, or their successors as aforesaid or by other means, of the principal and interest secured by this mortgage and deed of trust, any balance of said surplus over what may be required to pay any second mortgage to be paid to the said company, or the said surplus shall be rendered and accounted for by the said trustees, or the survivor of them or their successors, as any court of competent jurisdiction shall order or decree; it being expressly understood that in no case shall any advantage be taken of any

40 valuation, appraisement, or stay or extension laws by the

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

And it is hereby declared and agreed that the receipt of the said trustees, or of such one or more of them as shall make such sale and conveyance, for the purchase money or for securities therefor, whether mentioned in said conveyance or such receipt be separate, shall be a sufficient discharge to the purchaser or purchasers of the estate, property and premises, franchises and rights, which shall be sold and conveyed as aforesaid, for his or their purchase money; and 30 that such purchaser or purchasers, his or their executors or administrators, or any claiming under him or them, shall not, after the payment of said purchase money, and having such receipt therefor, whether expressed in the conveyance to such purchaser or purchasers or in a separate writing, be liable or under obligation to see to the application of such purchase money or any part or portion thereof, to, upon or for the trusts or purposes of these presents, or any or either of them, or be in any manner whatever answerable for any loss, misapplication, or nonapplication or misuse of such pur- 40

chase money or any part or portion thereof, or be obliged to inquire into or be affected by any question as to the necessity, expediency or authority of or for such sale.

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

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

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

Article Sixth. It is hereby provided always, nevertheless, 20 and it is the true intent and meaning of these presents, that if the party of the first part shall well and truly pay, or cause to be paid, the principal of the said bonds when the same shall become due, in coin as aforesaid, and interest thereon, when the same shall have become payable, and the coupon or coupons therefor shall have been presented and payment thereof demanded according to the tenor of said bonds and of the coupons or interest warrants thereto annexed and according to the true intent and meaning of said bonds and said coupons or interest warrants thereto annexed 30 and of these presents, said interest to be paid in gold coin; then and in that case upon the payment of the principal and all the interest aforesaid, the estate, right, title and interest of the said parties of the second part, trustees as aforesaid, the survivor of them and their successors in the trusts hereby created, and these presents, as well as the said bonds and coupons or interest warrants issued therewith, shall cease, determine and become null and void, anything herein to the contrary notwithstanding, otherwise the same shall 40 be and remain in full force and virtue.

Article Seventh. It is mutually agreed by and between the parties hereto, that the word "trustees," as used in these presents, shall be construed to mean trustees or trustee for the time being, whether original or new, and whenever a vacancy shall exist, to mean the surviving or continuing trustee; and such trustee shall during such vacancy be competent to exercise all the powers by these presents granted to or conferred upon the parties hereto of the second part. And it is mutually agreed by and between the parties hereto

10 that neither of the said trustees or their successors or either of them shall be in any manner responsible for any default or misconduct of any other of them; that the said trustees and each of them and their successors, and each of them shall be entitled to just compensation for all services which they or either of them may hereafter render in their or his trust, and to the repayment to them of all expenses incurred by them, including counsel and attorney's fees paid by them in connection with the trust hereby created, the same to be paid by the company or out of the income of the property,

20 and for that purpose they or he may at any time apply to the courts or any of them without notice to any person except to the party hereto of the first part, its successors or assigns; that either of said trustees or any successor may discharge himself of the trust created by these presents by notice in writing to the said company, and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as may be accepted, by written consent, as adequate notice, and upon the due execution of the conveyances hereinafter required.

30 That in case at any time hereafter either of the said trustees, or any trustees or trustee hereafter appointed shall die, or resign, or become incapable or unfit to act in the said trust, a successor or successors to such trustee or trustees shall be appointed by the surviving or continuing trustee, with the consent of the company, and the trustee or trustees so appointed, with the trustee surviving or continuing shall thereupon become vested with all and singular the powers, authorities and estates granted to or conferred upon the parties of the second part as trustees by these presents,

40 and all the rights and interests requisite to enable them or

him to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful, but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises jointly with himself, to the trustee so appointed; and upon the death, resignation or removal by any court of competent jurisdiction, of any trustee, or an appointment of another in his place, all the powers and authorities of the one so dying, resigning or removed, 10 by virtue hereof shall cease, and all the estate, right, title and interest in the said property, premises, franchises and powers, of any trustee so dying, resigning or removed, shall, if there be a co-trustee surviving or continuing in office wholly cease and determine; but the said trustee so resigning or removed shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights and franchises which may 20 be at that time held upon the said trusts; provided nevertheless, and it is hereby declared and agreed, that in case it shall at any time hereafter prove impracticable after reasonable exertions, to appoint in the manner hereinbefore provided, a successor in any vacancy which may have happened in said trust, application in behalf of all the holders of the bonds secured hereby may be made by the surviving or continuing trustee, or if the trust be wholly vacant, by holders of bonds secured hereby, or any of them on giving notice in writing to the company, or in default of such ap- 30 plication by any bondholder or bondholders, then by the said company, making application to the Court of Chancery of the State of New Jersey, or to any court of competent jurisdiction, for the appointment of a new trustee or trustees, and in case of application as aforesaid by the said company such notice of the time and place for the appointment of a new trustee or new trustees shall be given by publication thereof in such newspapers published in the city of New York and in the State of New Jersey, and for such length of time as the court shall direct. 40

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

And the said party of the first part, for itself, its successors and assigns, in consideration of the premises, and of one dollar to it duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the party of the second part and the survivor of them and their successors and assigns, that the
 40 said company and its successors and assigns, shall and will

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

And it is mutually agreed between the parties hereto, and the said trusts are accepted and created with the distinct understanding that the party hereto of the second part, and the survivor of them and their successors in said trusts, 40

shall be accountable, liable or responsible for reasonable care and diligence only in the performance of the trusts hereby created, and in the management of the said estate and property, in like manner as a bailee without reward, and that they shall not nor shall either of them be under obligation by virtue of anything herein to do any act, or require it to be done, which shall require an advance, or outlay or expenditure of money or funds, until the money or funds necessary to be advanced, laid out or expended,

10 shall be furnished or paid to them, or the survivor of them or their successors, which money or funds so paid or furnished to them necessary to be advanced, laid out or expended in the business or duties connected with said trusts shall be deemed part of the expenses to be paid to the person or persons who may have advanced the same out of monies which by virtue of said trusts shall come to the hands of said trustees, or the survivor of them or their successors; and it is mutually understood and agreed between

20 the parties hereto, and the trusts aforesaid are hereby created, and the appointment of trustees accepted with the further distinct understanding that the party hereto of the second part, the survivor of them and their successors shall not, nor shall either of them be accountable, liable or responsible for the act or acts of any attorney, agent, depository, employee or of any other person or persons whatever employed by them or him, or for any act which shall be done pursuant to the advice of counsel, or done and performed in good faith, when such attorney, agent depository, employee, counsel or any other person or persons employed

30 by them or him, shall have been selected with reasonable discretion.

In Witness whereof, the said party of the first part, "The New Jersey West Line Railroad Company," has caused its corporate seal to be hereto affixed, and the same to be attested by the signature of John H. Lyon, its president, who is duly authorized to do so by a resolution of said corporation, and the same is also attested by Beverley C. Sanders, the company's secretary; and the said

[L.S.]

Theodore F. Randolph and Benjamin G. Clarke, the party of the second part, have hereto set their hands and seals, to evidence their acceptance of the trust hereby created, the day and year first above written.

JOHN H. LYON,
President.

Attest :

BEVERLEY C. SANDERS,
Secretary.

10

THEODORE F. RANDOLPH, [L.S.]
BENJAMIN G. CLARKE. [L.S.]

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

WILL. J. LYON.

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

Will. J. Lyon, of full age, of Jersey City, Hudson County, New Jersey, being duly sworn according to law, on his oath, says that he is well acquainted with the common seal of the New Jersey West Line Railroad Company, the grantor named in the foregoing indenture; that the seal affixed thereto, attested by the signatures of the president and secretary of said company, is the common seal of said company; that this deponent was present at the execution of said indenture, on the day of the date thereof, by the grantor, at Jersey City, Hudson County, New Jersey, and saw John H. Lyon, who is the president of said company, as said president, seal said indenture by affixing the said common seal thereto, and sign, seal and deliver the said deed of trust and mortgage as the voluntary act and deed of the said company; and this deponent saw the secretary aforesaid, Beverley C. Sanders, attest said seal and sign his name to said indenture; and they respectively first stated that the said company

knew and were informed of the contents thereof, and the contents of the same were made known to them in the presence of this deponent prior to the execution thereof; and this deponent thereupon signed his name as the subscribing witness to such execution thereof; and this deponent further says that he also saw Theodore F. Randolph and Benjamin G. Clarke, the party of the second part to the foregoing indenture of mortgage and deed of trust, the contents thereof having first been made known to them, sign seal and deliver the same as their voluntary act and deed, and this deponent signed his name as the subscribing witness to such execution by them; and this deponent also saw \$3,000 (three thousand dollars) in value of United States Internal Revenue stamps affixed to the said indenture, and duly cancelled at the same time of the execution of said indenture.

WILL. J. LYON.

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

BENNINGTON F. RANDOLPH,

Master in Chancery of New Jersey.

20

No. 6,913,

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

HENRY R. CANNON, *Clerk.*

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

WILLIAM ROSS, Jr., *Clerk.*

30

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

Compared,

RICHARD SPEER, *Clerk.*

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

JULIUS STAPFF, *Reg.*

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