

# NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between  
ROBERT H. McCARTER, Attorney  
General,  
Informant and Respondent,  
and  
VINELAND LIGHT AND POWER  
COMPANY,  
Defendant and Appellant.

}  
APPEAL FROM  
CHANCERY.

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## BRIEF FOR APPELLANT.

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This appeal is from an order allowing a preliminary injunction against appellant restraining it "from constructing any extension to its gas plant or gas system, and from opening or digging ditches or trenches in any of the streets, roads, highways or other public places in the township of Landis and in the borough of Vineland, Cumberland county, New Jersey, for the purpose of lay-

ing any gas pipe therein and from laying pipes for any extension in the trenches already opened."

The information is filed by the Attorney General without a relator for the purpose of restraining the appellant from operating its gas plant or exercising any of its franchises.

The appellant is engaged in supplying gas for light and fuel to eight hundred and fifty families and also to public buildings and State institutions. No other company is operating a gas works or supplying gas within the territory covered by the restraint.

The Legislature granted to Vineland Gas Light Company, in 1870, a special charter giving it perpetual succession and granting to it the right to do the things enjoined in this order.

In 1884, under insolvency proceedings, a receiver of Vineland Gas Light Company conveyed all its property and franchises to John R. Farnum, who individually operated the plant and exercised the franchises for sixteen years, when he caused the defendant corporation to be formed and the property and franchises to be turned over to it. The method of transfer was a deed from Farnum to Holbrook for the real and personal property and franchises, a deed from Holbrook to the defendant for the real and personal property and a lease of the franchises for ninety-nine years. It was one entire transaction. Farnum was present and the consideration for his deed was secured by bonds of the defendant company.

The defendant has operated the property and franchises so acquired since 1900 without the right to do so being questioned.

AN INDIVIDUAL MAY EXERCISE THE FRANCHISES TILL  
HE SEES FIT TO ORGANIZE A CORPORATION.

The Vice Chancellor held that the act of 1842, which is now section 82 of the Corporation act, vested "in an individual purchaser at the receiver's sale an absolute title to the franchises, including the power to operate under the franchises so conveyed to the same extent that the insolvent corporation could have operated; this necessarily includes the right to make extensions within the territory defined in the Charter act of the insolvent corporation." He says: "The title transmitted at the sale is to the highest bidder and cannot be regarded as a right bestowed in personal confidence and incapable of future transmission, or one that will terminate at the decease of the purchaser. The duration of the term for the enjoyment of the franchise is specifically defined by the act as the remaining portion of the term of the franchise as originally granted."

So far as gas companies are concerned, prior to 1881, the Vice Chancellor finds "no provision contemplating other than that a purchaser at such sale should be privileged to operate as an individual, under the franchises so acquired by the purchaser or to transmit the title to the rights so acquired in the same manner that the title to other property rights could by law be transmitted."

So that, so far as any legislation existing prior to eighteen hundred and eighty-one is concerned, the proceedings this case are entirely regular; there is nothing of which the Attorney General could complain, and under his opinion the Vice Chancellor would be obliged to deny the injunction.

In 1881 an act was passed which the compilers of our General Statutes have placed under the title of "Turnpikes."

*3 Genl. Stat., 3694, secs. 34, 35.*

It is claimed that this act has taken from the purchaser the right to use the franchise.

In the first place, we claim that the act of 1881 is a special law and unconstitutional.

The Constitution provides that the Legislature shall not pass special laws "granting to any corporation association or individual any exclusive privilege, immunity or franchise whatever.

*Constitution Article IV, sec. VII., par. II.*

The act of 1881 creates a new corporation in which it vests "all the rights, powers, immunities, privileges and franchises of the corporation as whose the same may have been sold." In many instances, if not in every case, the privileges so granted are exclusive. In turnpike, bridge and plank road companies the franchise at that particular place is necessarily exclusive, and in gas and water companies it is usually so, particularly where the old company was formed under a special act.

The 82d section of the corporation act establishes a class of cases in which the franchise is preserved to the purchaser. The class is there defined as companies "in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the stockholders and creditors have an interest." All public utility companies come within this class.

The act of 1881 selects from this class certain companies and legislates as to them, omitting sewer companies, electric light companies, telegraph and telephone companies, street railway companies and a large number of others.

An act to be constitutional must extend its provisions to all the members of that class.

*Cox vs. Truitt*, 28 Vr., 635.

*Chancellor vs. Elizabeth*, 35 Vr., 502.

*Van Riper vs. Parsons*, 11 Vr., 1.

*Closson vs. Trenton*, 19 Vr., 438.

*Schmalz vs. Wooley*, 11 Dick., 649-655.

*State vs. Somers Point*, 23 Vr., 32-34.

*Budd vs. Hancock*, 37 Vr., 133.

In the last mentioned case the Court said: "It is not, therefore, what a law includes that makes it special, but what it excludes. If nothing be excluded that should be contained the law is general. Within this distinction between a special and a general law the question in every case is whether any appropriate object is excluded to which the law but for its limitations would apply.

An act giving to certain street railway companies the benefits of the Traction act was held invalid because it did not apply to all street railway companies.

*Perrine vs. Traction Co.*, 41 Vr., 168.

It has been held by this Court that an act applying to railroads must apply to all railroads, without regard to the time of their construction.

*Delaware Bay & C. M. R. R. Co. vs. Markley*, 18 Stew., 139-150.

This Court has also held that railroad companies which have entered into void contracts do not form a class and a legislative grant to them is void.

*P. R. R. vs. Burlington, 13 Dick., 547-549.*

We know of no valid reason why all public utility companies should not have the benefit of this act, nor any peculiarity which properly makes turnpike, bridge, plank road, gas and water companies a class.

However, if the act of 1881 were constitutional it would not have the effect ascribed to it by the Vice Chancellor.

He holds, "it clearly withdraws whatever legislative sanction might have theretofore existed for the use by an individual of the sovereign prerogatives purchased under decrees of courts, and requires their use by a corporation which is created by the act and which it is intended that the purchasers of the franchises shall organize as an operative concern by the election of its officers pursuant to the act."

By the act of 1881 it was not intended to take away from any previous purchaser the property he had obtained, nor was it intended to place restrictions upon the use thereof which would make franchises thereafter sold produce less money.

The act of 1881 does not provide that there shall be a forfeiture of the franchise for failure to organize a corporation. If it did, it may be doubted whether the legislature could thus destroy the vested right in property. But there is no evidence of any intent of the legislature to forfeit the franchise. It is not even enjoined upon the purchasers that they shall incorporate under:

the act; the act merely offers them the privilege of doing so.

To create a private corporation there must be an acceptance by the incorporators. The law is stated in Clark and Marshall on Corporations, page 120, as follows: "In the creation of a private corporation, the consent of all members is essential, and therefore the grant or offer of a charter does not create such a corporation until it is expressly or impliedly accepted by the incorporators. This is true whether the offer of a charter is by special act or by the general law."

The cases recognize a distinction between primary and secondary franchises. The primary franchise is the right to be a corporation, or as is sometimes expressed the right to a corporate name and common seal. The secondary franchises are all other corporate rights, powers and privileges.

*10 Cyc., 1090.*

The act of 1842, now section 82 of the corporation act, gave the purchaser absolute title to the secondary franchises but did not give him the primary franchise or the right to be a corporation.

For thirty-nine years the Legislature had provided no way by which the purchaser could exercise the franchise of being a corporation.

The individual purchaser might desire to exercise the franchise of being a corporation, so the Legislature by the act of 1881 gave him this tentative franchise. He might accept it or not.

The language is, "may organize said corporation." The act was an enabling act giving him greater powers than he had before.

Justice Van Syckel, speaking of this act, says: "It relates to the effect of the sale, when directed by the process or decree of any court of this State empowered to make sale by providing a way in which the purchaser shall become capable of enjoying the fruits of his purchase."

*State vs. Middletown Turnpike Co., 36 Vr., 73-74.*

It does not prevent him from enjoying the fruits of his purchase in other ways.

In the case of *French vs. Robb*, the defendant Robb was operating an electric light franchise under a transfer from a receiver. The action was in ejectment by an owner of the fee for the land occupied by a pole carrying electric light wires. Justice Hendrickson at the Circuit directed a verdict for Robb. The Court of Errors modified this by holding that Robb could only use the pole for public lighting. His right to exercise the franchise was not questioned.

*French vs. Robb, 38 Vr., 260.*

It seems to have been the practice to treat these franchises after a receiver's sale as property which the purchaser might use or dispose of as he saw fit. The fact that so able a lawyer as Col. Potter, over twenty years ago, so construed the act and advised that the franchise could be so used or disposed of is entitled to great consideration. The construction which the bar have placed on a statute frequently influences the Court in its determination.

The present Chief Justice, speaking of the rule in *Clement vs. Kaighn*, said: "So far as we are aware, it has been universally accepted by the members of the pro-

fession as a sound exposition of the statute in their dealings with questions which involved its application. Originally it may not have been of grave consequence whether the statutory provision received the broad construction given to it in *Clement vs. Kaighn*, or the narrower one suggested by counsel for the respondent. But granting this, it certainly is important that the construction then adopted and so universally followed during so long a period should be firmly adhered to."

*Lippincott vs. Smith, 64 Atl., 141-143.*

It can serve no useful purpose to compare the act of 1881 with the act of 1875, which admittedly does not apply to gas companies.

Besides, the act of 1875 directs that the purchaser "shall organize a corporation," while the act of 1881 provides that he "may" do so. If the comparison will indicate any legislative intent it is that so far as gas companies are concerned the purchaser need not organize a corporation but may exercise the franchises as he might have done before.

#### A CORPORATION MAY LEASE THE FRANCHISES FROM AN INDIVIDUAL.

If Farnham, the purchaser, could use the franchises it follows from the construction given by the Vice Chancellor to the 82d section of the Corporation Act, that he could sell or lease them.

Under the act of 1899, the defendant corporation could take a lease of them.

*Laws of 1899, page 334.*

THE DEFENDANT IS A CORPORATION IN SUBSTANTIAL COMPLIANCE WITH THE ACT OF 1881.

It is admitted that by its certificate of incorporation the defendant was formed for the express purpose of exercising the franchise in question.

The inquiry as to its power to exercise the franchise is not within the jurisdiction of the Court of Chancery. It goes directly to the organization of the company, and not even the Attorney General can raise such an inquiry in the Court of Chancery.

*Attorney General vs. American Tobacco Co.*, 10 Dick., 352-369, and cases there cited. Affirmed 11 Dick., 847.

However, section 6 of the General Corporation Act authorizes the formation of companies "for any lawful purpose whatever" except companies "which need to possess the rights of taking and condemning lands in this State." Gas companies are not excepted and do not need the right to condemn land.

*Laws of 1899, page 473.*

Even if this Court should adopt the view expressed by the Supreme Court in *Fogg vs. Ocean City*, 65 Atl., 885-886, that while the purpose of the company is lawful it acquires no right to lay pipes in the streets in the absence of such a power being mentioned in the act under which it is incorporated, we see nothing to prevent its acquiring such right by grant or lease from the private owner of such a franchise just as it might acquire any other real property useful for its purposes.

Such a franchise is real property. It is classed as an incorporeal hereditament.

3 *Kent. Comm. Lect. LII.*

When held by an individual it is inheritable and passes to his heirs.

*Columbia Bridge Co. vs. Geisse, 9 Vr., 39.*

The Corporation act, sec. 1, expressly confers upon every corporation the authority to purchase and hold such real property as its purposes require. Ordinarily, it is not possible for a corporation to obtain such power in the highway except by direct grant from the State or from the town, and the town is empowered to make such a grant only to a corporation formed under the Gas Company act. But here the franchise has already been granted by the State, with authority to the Chancellor to transfer it in case of insolvency to any purchaser, and we can see no reason why such franchises may not be acquired by purchase or lease by a corporation formed under the General Corporation law.

The company does not exercise a right in the street by force of its own corporate franchise, but by force of the franchise acquired by the grant and lease.

We have many corporations formed under the General Corporation law of New Jersey, which exercise public franchises in other States and countries; they could not do this by force of the franchise granted by the State of New Jersey, but they may lawfully do it under their charter if they obtain the franchise from the foreign State or country. It is lawful for them just as it would be for an individual.

In the case of *Stockton vs. Baltimore & New York R. R.*, 32 *Fed. R.*, 9, 15, Bradley, J., sustained the power of a New Jersey corporation to bridge Staten Island Sound under the provisions of a franchise granted by Congress, and in face of a prohibition to do so by the laws of New Jersey.

So we have many companies organized under the General Corporation law supplying water through highways and taking land under city contracts. The charter does not give power to the company, but the city, having power, delegates it by contract, and, on such delegation, the use is valid by the company.

*Slingerland vs. Newark*, 25 *Vr.*, 62.

*Oakley vs. Atlantic City*, 34 *Vr.*, 127.

The Public Service Corporation of New Jersey, operating gas works throughout the State, was formed under the General Corporation act.

The point of these illustrations is that a corporation may obtain valid authority to use property for public purposes in other ways than by a direct grant from the State in its charter.

That act (P. L. 1881, p. 33) gives the privilege of incorporation by organization and by filing certain statements with the Secretary of State. It imposes no limit upon the time when such corporation might be organized.

The certificate of incorporation of the Vineland Light & Power Company embodies all that is required, and is, in that respect, a full compliance with the act of 1881, and the lease and deed of Holbrook also identify it with the old franchises. The question is whether the persons who formed it were authorized to do so by the act of

1881. That act must be liberally construed. It is not a grant of a right against the public to be construed strictly but a remedial act to facilitate the use of a franchise already granted to promote a public purpose, and therefore should be liberally construed to carry out its objects. Its objects are presumably a provision for perpetual succession, so as to avoid the inconveniences arising from the chances of individual life and to enable a number of individuals to combine their resources and thus more efficiently serve the public.

The persons who may organize are, in the words of the State (P. L. 1881, p. 33), "the persons for or on whose account any such property and franchises are, may be or shall have been purchased under or by virtue of any process or decree."

Now, the sale and grant were not merely to Farnham, but were to his heirs and assigns, and in view of the general purpose of the act, it is a reasonable construction that the assigns of Farnham are included among those on whose account the purchase is made. That the grant is not to be narrowly limited is manifest from the use of the words "for or on whose account" the property was purchased, showing that the right to incorporate is not restricted to the bidder at the official sale or to the grantee from the receiver. No one probably would question the right to organize of purchasers from the bidder within a week after the sale, and the right was not lost by the lapse of sixteen years.

In effect, the privilege was to those who may own the franchise at the time of the organization.

In the present case the organization of The Vineland Light & Power Company and the grant and lease to it of

the property and franchises of the defunct corporation were all part of one transaction, so that the organizers of the new company, which is grantee and lessee claiming title through a judicial sale, are persons for and on account of whom the property was purchased at the judicial sale within the fair meaning of the act of 1881.

This interpretation of the rights of the purchaser as extending to assigns, under the act of 1881, is supported by the terms of the General Corporation law of 1875, 25, under which the franchise was sold. (G. S., 924, 85.) This provides that the receiver shall sell or lease a public work together with the franchise, and that the purchaser or lessee shall hold the franchise sold during the whole term limited in the charter. Now, of course, the first purchaser from the receiver would, in most cases, die before the end of the term of the franchise, and it could not be contended that the franchise would expire with his life. The "purchaser" here, under sec. 85, evidently includes his heirs and assigns, and the same broad meaning must be given to the terms "persons for or on whose account" the property and franchise were purchased under the act of 1881, which act is, in effect, a supplement to the General Corporation act, and applies specially to sales made under sec. 85.

Here, however, Farnum himself formed the defendant company for the express purpose of taking over this franchise. He was represented by his attorney, Leverett Newcomb, who became one of the incorporators, and Farnum received the bonds of defendant company to secure the purchase price.

*State of the Case, pages 67, 68 & 69.*

Some incidental questions may be raised.

Sec. 85 contemplates that the property and franchise sold or leased by the receiver shall be used together, and the act of 1881 seems to imply the same thing. Holbrook sold the property in fee to the company and leased to it the franchise for ninety-nine years. Up to the present time there has been no severance of property and franchise, and should an attempt be made to exercise the franchise by one not interested in the property, the question of the right to do so will then arise; it has not yet arisen.

#### THE INFORMANT IS IN LACHES.

For sixteen years John R. Farnum was permitted to hold, exercise and operate the franchises. For over six years the defendant has been permitted to hold, exercise and operate them. During the whole twenty-two years they have each been so engaged openly and in full view. Up to the time of the filing of this information the public have taken no action whatever in the premises.

The Vice Chancellor seemed to think that this could not bar the assertion of sovereign rights to new or additional encroachments. In each of the following cases, however, it will be found that the work attacked was incomplete and required "new and additional encroachments" to complete it.

"The public, as represented by the Attorney General, stand in no better position than the relators and are bound by like rules. Though a stronger case of delay is required to effect these who assert a public right than

where a private right alone is in dispute, delay even in such cases is not without effect.

*Atty. Gen. vs. N. Y. & L. B. R. R. Co.*, 9 *C. E. Gr.*,  
49.

*Atty. Genl. vs. Sheffield Gas Co.*, 3 *D. M. & G.*, 304.

Chancellor Runyan, in denying relief upon a similar information, comments unfavorably upon a *seventeen days' delay*.

*Atty. Genl. vs. Brown*, 9 *C. E. Gr.*, 89.

A delay of twenty-two years is certainly enough to charge the informant with laches.

THE STATE IS ESTOPPED BY ACQUIESCENCE AND ACCEPTANCE OF FRANCHISE TAXES.

The defendant and its predecessor, Farnum, have been permitted to expend large sums of money from time to time in improving and extending the plant. The cost of the plant to the defendant was fifty-five thousand dollars. It has since expended thereon for improvements and extensions over thirty-eight thousand dollars.

The defendant, during the six years last past, has been assessed by the State a franchise tax at the rate required of gas companies, which is many times the amount which could be required of the defendant if it did not have a gas company franchise. It has regularly paid such franchise tax amounting in the six years to one thousand eight hundred and sixty-nine dollars and fifty-five cents.

Chancellor Runyan, in dealing with the question, says: "For many months the defendants have been permitted

to proceed with the construction of the bridge. The amount of their expenditure and liabilities incurred in the work is necessarily a very large sum. \* \* \* \*  
 If acquiescence cannot be imputed to the complainants they certainly are chargeable with delay, which, though it may not amount to proof of acquiescence, may be sufficient to disentitle the complainant to the summary interference of the Court by interlocutory injunction; and this principle applies with peculiar force where the act complained of is caused by a public company in the execution and construction of their works. The extent of the expenditure is, to a certain degree, the measure of the acquiescence."

*Kerr on Injunction*, pp. 202-206.

*Atty. Genl. vs. N. Y. & L. B. R. R. Co.*, 9 C. E. Gr., 49.

Here we have in addition the acceptance of franchise taxes, which is positive proof of acquiescence.

IT IS INEQUITABLE TO ALLOW INFORMANT THE RELIEF GRANTED.

The failure to re-organize the company after the receiver's sale was the result of advice of able counsel in an effort to comply with the restrictions of the law, and if a mistake was made in so construing the law it was an honest mistake.

In *Atty. Genl. vs. Stevens* it was claimed that a company was unlawfully erecting a bridge over South river; as its stock had not been legally subscribed it had no express authority to erect a bridge and a survey of its

route and location had not been deposited in the office of the Secretary of State. The Chancellor, in refusing an injunction, says: "If a mistake has been made by the company acting without fraud or corrupt intention but seeking to comply with the restrictions of the law, it does not present a proper case for the interference of this Court by the extraordinary remedy of injunction.

*Atty. Genl. vs. Stevens, Saxton, 369.*

The defendant has in good faith engaged in a public work, requiring a large outlay of money, and is supplying light and heat to a large number of people besides light to public buildings and State institutions.

To grant the prayer of the information would cause great injury to the defendant and occasion great inconvenience to the public.

In *Atty. Genl. vs. M. & E. R. R. Co.*, the Chancellor held that the defendants were not authorized to lay their track upon the street and granted the injunction applied for by the information. Upon appeal this was reversed, upon a vote of 7 to 12. Justice Depue in delivering the opinion said: "It must not be overlooked that the defendants are engaged in a public work, by the completion of which the public interests will be greatly advanced. The injunction by which the progress of the work is arrested must not only cause great injury to the defendants, but also is the occasion of great inconvenience to the public."

In the case of *Allen vs. Freeholders of Monmouth County, 2d Beasley, page 68*, it was held "that although a bridge which was being erected over navigable waters without competent authority was technically a nuisance, yet as it was being built in good faith, and for the public

benefit, a Court of Equity would not restrain its erection even on an information by the Attorney General in behalf of the public."

*Atty Genl. vs. M. & E. R. R. Co., 5 C. E. Gr., 530.*

In *Atty Genl. vs. Del. & B. B. R. R. Co.*, the Court said: "There is still another consideration constraining me to the conclusion at which I have arrived. The defendants have acted bona fide under what they believed to be sufficient legislative authority. They have expended a very large sum of money in their enterprise. \* \* \* The defendants have been permitted to make their immense expenditure upon their enterprise, in the confidence of their convictions that they possessed all requisite legislative authority without even a word of protest or remonstrance. Under such circumstances, equity will refuse its aid even to the State, leaving it to its remedy at law."

*Atty. Genl. vs. D. & B. B. R. R. Co., 12 C. E. Gr. 1.*

There is nothing in the present case requiring any municipal consent. There was no effort here by hasty action to render an appeal to the courts impossible.

The case of *Atty. Genl. vs. N. Y. & Phila. T. Co., 11 Dick., 463*, does not in any sense apply.

In numerous cases it has been held that the remedy by indictment being adequate, equitable relief would be denied.

*Atty. Genl. vs. N. J. R. R. & T. Co., 2 Gr. Ch., 136.*

*Atty. Genl. vs. Paterson, 1 Sto., 624.*

*Atty. Genl. vs. Heishon, 3 C. E. Gr., 410.*

*Atty. Genl. vs. M. & E. R. R. Co., 5 C. E. Gr., 530.*

*Atty. Genl. vs. Brown, 9 C. E. Gr., 89.*

*Atty. Genl. vs. D. & B. B. R. R. Co., 12 C. E. Gr., 1.*

*Quo warranto* has been held to be the proper remedy.  
*Atty. Genl. vs. American Tobacco Co.*, 10 Dick, 332.  
*Affirmed on opinion below*, 11 Dick., 847.

Equitable relief has been denied where the rights of the parties are not clearly established or have not been previously settled at law.

*Atty. Genl. vs. D. & B. R. R. Co.*, 12 C. E. Gr., 1.  
*Atty. Genl. vs. M. & E. R. R. Co.*, 4 C. E. Gr. 386.

The information on its face fails to make out or establish a case which would entitle the informant to relief.

It is submitted the decree should be reversed and the injunction denied.

FRENCH & RICHARDS,  
For Defendant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN  
ROBERT H. MCCARTER,  
ATTORNEY GENERAL,  
APPELLEE. } On  
AND } information  
THE VINELAND LIGHT & POWER COMPANY, } &c.  
APPELLANT. }

BRIEF OF APPELLEE.

The defendant is operating a gas plant and gas works at the Borough of Vineland and at the Township of Landis, in Cumberland County. Its pipes and mains are extended in, through and along various public streets and highways of those municipalities, and through them the corporation is supplying gas to public and private consumers. At the time of filing this Information the defendant had made excavations along about one-half mile of public road in the Township, and had also excavated and dug up for the same distance a street in the Borough. In these excavations in the highways defendant proposes to lay gas mains and thus to extend its gas plant or system.

The State, through the Attorney General, attacks the right, franchise, power and privilege of the defendant to operate a gas plant, to use the public highways for distributing gas, or to excavate and dig up the highways.

On filing the Information and ex-parte affidavits, an order to show cause why a preliminary injunction should not issue was allowed, with an ad interim stay; and the present appeal is from a decree granting a preliminary injunction against any extension in the public highways of the gas system of the defendant.

The defendant was organized March 1, 1900 under the General Corporation Act. It claims a right to use the franchises conferred on the Vineland Gas Light Company by P. L. 1870 p. 577.

The property, works and franchises of the Vineland Gas Light Company were sold in 1884 by a Receiver in pursuance of a decree of the Court of Chancery of New Jersey to John R. Farnum of Waltham, Mass. Farnum operated the plant until March 27, 1900, when he and his wife Henrietta attempted to convey to Arthur A. Holbrook, of Wilkesbarre, Pa., the plant, works and franchises; and Holbrook and wife, by deed dated March 31, 1900 pretended to convey the plant and works to the defendant, and by an instrument also dated March 31, 1900, pretended to lease to the defendant the franchises originally granted to the Vineland Gas Light Company, for a term of ninety-nine years.

The right of the defendant to exercise the franchise conferred originally on the Vineland Gas Light Company is claimed by the defendant solely under its charter and the instruments mentioned, copies of which are attached to the information. It claims no powers otherwise.

Farnum took no proceedings under the Turnpike Act (*General Statutes, 3694*) and he is now dead.

The questions to be resolved by the Court, therefore, are the following:

- I. What property and franchises were conveyed, and to whom were they conveyed, by the Receiver's deed?
- II. Did Farnum have power to convey the works to Holbrook?
- III. Did Farnum have power to convey the gas franchises to Holbrook?
- IV. Did Holbrook have power to take the works under the Farnum deed?
- V. Did Holbrook take any franchises under the Farnum deed?
- VI. Did the Holbrook deed to the defendant lawfully convey the gas works?
- VII. Did the Holbrook lease transfer the gas franchise

to the defendant?

VIII. Can the State now interfere with the exercise of the right claimed by the defendant?

I.

*What property and franchises were conveyed, and to whom were they conveyed, by the Receiver's deed to Farnum?*

The Informant maintains:

(a) The franchise of being a corporation, possessed by the corporators of the Vineland Gas Light Company could not, and did not pass, but reverted to the State.

(b) The franchises of operating and maintaining the gas works, etc. passed, with the works, by the deed, but not the power to extend them.

(c) The franchises which passed with the works vested in a new corporation, and not in Farnum as an individual.

(d) If the franchises did vest in Farnum as an individual, he might exercise them only for life, and they could not be assigned, mortgaged or transferred, nor did they go to his heirs or personal representatives at his death.

I (a).

The authorities hold that the franchise of being a corporation is incapable of transference or assignment.

*Morowitz on Corp. Sec. 924.*

The old charter or franchise of existing as a corporation was abandoned or surrendered to the State.

"The real transaction in all such cases of transfer (of a charter or franchise of a corporation) in legal effect is nothing more or less than a surrender or abandonment of the old charter by the corporators, and a grant *de novo* of a similar charter to the so called transferees or purchasers."

*Morowitz on Corp. Sec. 928*, quoting from *State v. Sherman*, 22 Ohio St., 411, 428. Also quoted in *Memphis & C. RR. Co. vs. RR. Com.* 112 U. S. 609, 622.

And at the surrender or abandonment of the old fran-

chise to be a corporation, that of the Vineland Gas Light Company reverted to the sovereignty from which it was derived.

*Black vs. Canal Co. 9 C. E. Green, 465.*

I (b).

The franchise of operating and maintaining the gas works passed, with the plant, by the Receiver's deed, but not the power to extend them.

It was suggested in *Memphis &c. RR. vs. RR. Com.* 112 U. S. 609 that the "franchise of being a corporation need not be implied as necessary to secure to the mortgage bondholders, or the purchasers at a foreclosure sale, the substantial rights intended to be secured. They acquire the ownership of the railroad and the property incident to it, and the franchise of maintaining and operating it as such, and the corporate existence is not essential to its use and enjoyment. All the franchises necessary or important to beneficial use of the railroad could as well be exercised by natural persons."

112 U. S. 609.

And, for present purposes, it may be conceded that the franchise to operate and maintain the works passed to the purchaser named in the Receiver's deed.

But it is not conceded that the grantee took, by the deed, the power to extend and enlarge the works. The grantee would have had such power if the corporation which by the sale the grantee was made and constituted, had been organized.

The deed, of itself, passed only the chartered rights of the insolvent company "appertaining to such principal work."

*Rev. title "Corporations," p. 192, 193, Sec 85.*

In the case of *Memphis &c. RR. vs. RR. Comrs.* the most liberal construction of such grants has been made, as will appear from the quotation above. But it was not

held in that case that, with the franchise of operating and maintaining the railroad, would also go the power of extending its lines, and of exercising the power of eminent domain. See *Noyes on Int. Rel. Sec. 159*.

And so with the Receiver's deed went, at most, the power of operating and maintaining the principal works, for such power probably appertained thereto. But the statutory sanction must be construed strictly, and no additional power will be implied.

"It is clear, however, that a corporation has no authority or power to charter a new corporation, or to confer any franchises whatever upon another company or set of persons (meaning by Receiver's sale &c.) unless the power is conferred in express terms, or by necessary implication."

*Morowitz on Corp. Sec. 930.*

*Snell vs. Chicago, 152 U. S. 191.*

*Pennison v. Chicago &c. RR. 93 Wis. 347, 67 N. W. 702.*

Therefore, by the Receiver's deed of itself the grantee took only the plant as it existed in May 1884, with the right of operating and maintaining it, but unless the purchaser organized the corporation he has made and constituted by the Act of 1881, without the power of extending it.

#### I (c)

The franchises appertaining to the principal works vested in a new corporation, and not in an individual.

See the interesting opinion of Vice Chancellor Leaming in this case.

The transfer of any corporate franchise, privilege or immunity is inhibited by the common law, and when authorized by statute the statute must be construed strictly.

*7 Am. & Eng. (2nd Ed.) p. 751 and notes.*

*Black v. Del. &c. Canal Co.* 7 C. E. Green at p. 399 and 401.

*Black v. Del. &c. Canal Co.* 9 C. E. Green at p. 465.

The statutes operative at the time of the Receiver's sale were Sec. 85 of the then Corporation Act (*Rev. p. 192*) and the act entitled, "An Act concerning the sale of turnpike, bridge, plank-road, gas, water or gas and water companies, and providing for the reorganization thereof after such sale" approved February 17, 1881 (*General Statutes, pp. 3694, &c.*) which in this suit has been referred to as the Turnpike Act.

Section 85 of the Corporation Act authorizes the sale of the principal works of the original company and "all the chartered rights, privileges and franchises belonging to said company *and appertaining to such principal work.*"

The words "principal works and all the chartered rights, privileges and franchises appertaining to such principal works," evidently mean, the works in existence at the time of sale, and all rights of the corporation exercised by it at the time of sale.

But they certainly cannot be held to include property not in existence at the time of sale, nor can they be held to include any rights which the corporation might have exercised but which it never did exercise.

The Turnpike Act constituted the purchaser at such sale a corporation, with power to reorganize the old company. There can be no difficulty in interpreting the statute, and it must be construed strictly. The Act provides:

"1. That whenever the property, rights, powers, immunities, privileges and franchises of any \* \* gas \* \* corporation created by or under any law of this State shall be or has been sold and conveyed under and by virtue of any process or decree of any Court of this State \* \* the person or persons for or on whose account such

property &c. and franchises may be purchased *shall be and they are hereby constituted a body politic and corporate*, and shall be and they are vested with all the right, title interest, property, possession, claim and demand in law and in equity, in and to such \* \* gas \* \* company with its appurtenances, and with all the rights, powers, immunities, privileges and franchises as whose the same may have been sold, and which may have been granted to or conferred thereupon by any law of this State in force at the time of such sale and conveyance, and the persons for or on whose account any such property, rights, powers, immunities, privileges and franchises of such corporation which may or shall have been purchased under or by virtue of any process or decree of any Court of this State, &c. may *organize said new corporation* by the election of such officers and directors, issue such certificates of stock, create and issue such preferred stock, and from time to time issue such bonds and secure the same as was authorized by the Act or Acts under and by which said former corporation was created.”

*(General Statutes, pp. 3694 et seq.)*

The person or persons for or on whose account the property and franchises may be purchased are, by the Act, constituted a corporation.

The making of the certificate and transmission of the same to the Secretary of State for filing was not made a condition precedent to the legal existence of the new corporation. They are merely legal evidence of such existence.

*Vanneman v. Young 23 Vr. at p. 405.*

Under the present corporation act, the existence of a corporate body commences at the filing of the certificate. Organization of the company is deferred until after the corporate life commences.

Under the “Act to incorporate associations not for

pecuniary profit" the corporate existence begins on filing a certificate. (*P. L. 1898, p. 423*). The fourth section of the Act provides for filing in the County Clerk's office a certificate giving the names of officers elected and their terms of office, &c. But it would not be argued that corporate existence does not commence until this certificate is filed.

Under the very charter of the Vineland Gas Light Co. itself, Henry E. Thayer and others are by the terms of the of the Act created a body politic and corporate. The commencement of corporate life was not deferred until the stock was subscribed and officers elected.

It would be burdensome to cite further analogies.

The object of the Act of 1881 was to constitute the purchaser a corporation, with power to organize the same; and when organized the new corporation was empowered to exercise all the franchises originally conferred on the old corporation.

Prior to that time, the purchaser, if an individual could purchase, might take the works and the franchise belonging to the Company and appertaining to the *principal work*. He took no more than this, and could at the most only maintain and operate the works; but he could not extend them. Says Mr. Justice Field in *Morgan v. Louisiana*, 93 U. S. 217:

"Much confusion of thought has arisen in this case and in similar cases from attaching a vague and undefined meaning to the term "franchises." It is often used as synonymous with rights, privileges and immunities, tho' of a personal and temporary character; so that if any one of these exists, it is loosely termed a "franchise," and is supposed to pass upon a transfer of the franchises of the Company. But the term must always be considered in connection with the corporation *or property to which it is alleged to appertain*. The franchises of a railroad corporation

are rights or privileges which are essential to the operations of the corporation, and without which its road and works would be of little value; such is the franchise to run cars, to take toll, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like. They are positive rights or privileges without which the road could not be successfully worked."

93 U. S. 217.

See also *Memphis &c. RR. vs. Comrs. Id.*

And in *State Board v. RR.* 20 Vr. at p. 200, the Court of Errors held that under a decree founded upon a mortgage which in terms covers only the property and franchises of the company, or under process upon a money judgment, or upon a sale in foreclosure of a statutory lien on the company's property, "Nothing will pass but the property of the company and such franchises as are necessary to the operation of the company, without which its road and works would be of little value."

20 Vr. p. 200, citing.

*Morgan v. Louisiana Id.*

*Mason v. Gaines* 103 U. S. 421.

*Chesapeake &c. R'y v. Miller* 114 U. S. 176.

For the 39 years prior to 1881, it is true, a purchaser could not exercise the power of being a corporation, and he was in consequence hampered in various ways in maintaining quasi-public properties and works. But he took such franchises as appertained to the principal works. The Act of 1881 placed such purchasers on an entirely different footing, and constituted them corporations. If they neglected to accept the valuable powers and franchises, and permitted them to be lost, the State will not complain. The Act merely provided a "way in which the purchaser shall become capable of enjoying the fruits of his purchase."

*State v. Middletown Turnpike Co.* 36 Vr. 74.

Farnum purchased at the Receiver's sale, and the sale

was authorized by section 84 of the then Corporation Act. The Turnpike Act constituted the person for or on whose account the property and franchises were purchased a corporation. By the purchase Farnum became and was ipso facto a corporation. There does not seem to be reasonable ground to debate that proposition. The statute of 1881 is plain and its terms are decisive.

Could the terms of the Receiver's deed which purports to grant to Farnum and his heirs and assigns forever a gas franchise &c. convey more than the statute authorized to be conveyed, or in anywise vary or alter the true terms, limitations and conditions of Farnum's purchase? If so, we have a Receiver setting aside a statute, and granting to individuals a franchise the Legislature had not intended to and indeed could not, as to a single individual, under our constitution, confer.

In *Snell vs. Chicago* 152 U. S. 191, a turnpike company was authorized by a special Act of the Legislature to convey its property and franchises to "any person or persons" and "thereby make the same private property." The Act is printed in the reported cases, and the statute made no mention of the heirs or assigns of the purchaser. The Turnpike Company executed a deed for the property and franchises to Snell, "his heirs, executors, administrators and assigns." The Court held that "the question is, not what the language of the deed was, but what the Legislature authorized to be put in the deed" (152 U. S. at p. 198); and the Court held that the franchise died with Snell.

See also *Pennison v. Chicago supra*.

The Receiver had no authority to convey to Farnum's heirs, executors, administrators and assigns, and his attempt so to do was a nullity. By no expression in his deed could the Receiver convey to Farnum as an individual when, by the purchase, he was constituted a corporation.

Nor could Farnum have taken the property as an individual had he intended so to do, for the transfer of the corporate franchise was hedged about by the statute, and could be made only to a corporation to be organized in the manner prescribed by law. *10 cyc. 1094,7.*

Prior to 1881, it can be readily imagined how uncertain were the rights of persons purchasing franchises under judicial decrees. The statute of 1881 placed such purchasers in a position to protect their franchises. Not only was the statute operative as to future sales, but it was retroactive, and by its terms created bodies politic all purchasers of franchises then outstanding in the hands of individuals. It was a sweeping enactment that absolutely governed the effect and operation of the Receiver's sale. The Receiver had no authority to convey, nor Farnum power to take as an individual.

I (d).

If, however, the Court shall determine that Farnum did take as an individual, then Informant maintains that he took the franchise for life only, and it could not lawfully be assigned, transferred nor mortgaged; nor did it go to his heirs or personal representatives at his death.

*Snell vs. Chicago Id.*

But it is respectfully insisted that, by the controlling statute, the Turnpike Act, the Receiver did not convey to Farnum as an individual. It is evident that, even by the original corporation act, it was not contemplated that an individual might purchase and acquire a franchise to operate and extend a public plant or works, for the word "heirs" is omitted from section 85 of the Act, in mentioning the purchasers, and it cannot be supplied or written in the statute by judicial determination.

## II.

DID FARNUM HAVE POWER TO CONVEY THE  
WORKS TO HOLBROOK?

It is not admitted that Farnum could alienate the corporate plant, for with the plant of necessity must go certain appurtenant franchises which franchises are inalienable without statutory authority.

In *Memphis &c. RR. vs. RR. Comrs.* 112 U. S. 609, Mr. Justice Matthews held that a sale of a railroad carries with it so much of a corporate franchise as is required to maintain and operate it.

“If the property of a corporation is of such a character as to be adapted only to a particular use, a grant of authority to the corporation to mortgage the property would by implication include a grant of authority to confer upon the transferee or purchaser under the mortgage the right and power of applying the property to the particular use for which it is adapted. Otherwise, the grant of the authority to transfer or mortgage the property would be nugatory.”

*Mor. on Private Corp. Sec. 932.*

See also *Morgan vs. Louisiana* 93 U. S. 217.

*Noyes on In. Rel. Sec. 157.*

If, therefore Farnum took the property as an individual it is not admitted that he could transfer it to Holbrook, because by so doing the franchise necessary to operate the plant of necessity would go with it; and it is denied that any statute gave to Farnum the right to alienate the franchise, even if he did take that as an individual.

But, it is submitted, that Farnum did not take, nor did he hold, the works as an individual, but as a corporation; that as a corporation he could not transfer the works, because the franchise went with the works; and being a corporation he could not assign or transfer his corporate franchise indirectly, by selling the works, when he could

not do so directly because of want of statutory authority.

*Randolph vs. Larned* 12 C. E. Green 561.

Further, he would be disabled from performing the public duty cast upon him. 10 Cyc. 1090 C. 2.

### III.

#### FARNUM HAD NO POWER TO CONVEY THE FRANCHISES.

1. He had (unless he had lost it) a franchise or power of forming a new corporation. The corporation existed but was not yet organized. Could this right, franchise and privilege be transferred to another?

"Power to sell the franchise of forming a new corporation, or in other words to create a new corporation by appointing the incorporators, can never be implied nor is such power included in a grant of power to sell or mortgage the property and franchises of a company."

*Morowitz Private Corp.* 936.

*Noyes on Inter Corporate Relations* Sec. 132, 134, 135, 136, 137, 138, 139.

*Randolph vs. Larned* 12 C. E. Green 561.

But Farnum did not attempt to transfer a mere power of appointment, he attempted to grant a gas franchise.

Being a corporation, he could not make the grant because he had no legislative sanction for so doing.

*Attorney General vs. RR.* 5 Dick, at p. 65.

7 Am. & Eng. 2 Ed. 751.

*Rangan vs. Aiken* 9 Tenn. 613.

"A corporation of any kind, whether strictly private, or quasi-public, may in the absence of constitutional restriction, be expressly authorized by the Legislature to sell, lease or mortgage its franchises and special privileges, and all or any part of its property, whether necessary to the performance of its duty or not. In such case, the mode and terms of transfer point out \* \* by the statute must be followed, and a conveyance, lease or mortgage can be

made only for the purposes specified.”

*Id.* 751 and notes.

See note 7 *Am. St. Rep.* 723.

*Black vs. Canal Co.* 7 *C. E. Green* 399 and cases cited.

*Black vs. Canal Co.* 9 *C. E. Green* 465.

35 *Am. St. Rep.* 390, 404.

It is clear that Farnum, at the sale, was the “person for or on whose account such property, powers, immunities, privileges and franchises” were purchased. His subsequent acts, and his deed from the Receiver, and his own deed to Holbrook sufficiently show that. And so he became and was a body politic and corporate with certain franchises.

He might organize this corporation and invest it with life, and when given officers and directors this artificial person might act, and exercise powers and franchises. This franchise of organizing the corporation could not be transferred, as has been said. And the franchises of the embryo corporation, its privilege to operate a gas works, and use the public highways, could not be alienated without legislative sanction, even if the corporation had been organized and become possessed of all its powers.

But it is doubtful if the new corporation (Farnum) was ever endowed with the franchises that it might have become fully possessed of when organized.

For it seems quite consonant with our system of jurisprudence to construe the words “may organize” as mandatory (20 *Am. & Eng. 2nd Ed.* 239); and to hold that the organization of the new corporation was a condition precedent to its investment with and exercise of the franchises the Legislature had conferred on it when it should organize. The Act of 1881 was necessary in our system of laws because special charters for organized corporations could no longer be granted after the Constitutional Amendments of 1875.

See *10 Cyc.* 282 note "Rights of purchasers pending reorganization."

*Morowitz Private Corp. Sec. 42.*

The defendant denies in effect that Farnum accepted the charter conferred by the Act of 1881, for it claims that he took over and operated the works and the franchises as an individual.

It does not follow that because Farnum did not choose to accept the charter and organize the new company, the franchises thereupon vested in *himself* as an individual. They were already vested in the new corporation. He could not cause them to vest in himself, by mere neglect and failure to execute the statute. This would be taking advantage of his own wrong, and further would be void because it would amount to a transfer to him as an individual by the corporation he constituted of its franchises, without legislative sanction, which was *ultra vires* the new corporation. But Farnum did in fact by force of the statute, accept the grant by the mere act of purchasing; although he failed to give the corporation life and perpetuity by organizing it as required by the statute.

The argument that if Farnum did not see fit to avail himself of the provisions of the Act of 1881, his title was not impaired by it is based on the assumption that Farnum, in his own proper person, had title, which was not so. The corporation which he constituted had title, but he did not as a natural person. A corporation, as Mr. Corbin admitted below, and as all the cases and authorities hold, needs statutory power to enable it to convey a franchise; and the corporation which Farnum constituted was without statutory authority to convey.

Since the franchise was that of the corporation created by the Turnpike Act, he could not use, nor in any way acquire the franchise of that corporation, as an individual.

If the franchises of the Vineland Gas Light Company

ever passed at all by the Receiver's deed, they passed to a corporation and not an individual, and because of lack of statutory authority, the franchises bestowed on the new corporation could not be alienated, or in any way acquired by Farnum, the individual.

Notwithstanding the defendant, in the court below, denied in one breath that Farnum accepted the provisions of the Turnpike Act, in another part of their argument their counsel made a directly contrary suggestion, to wit:

That the Vineland Light & Power Co. was formed as part of a general scheme, to execute the provisions of the Turnpike Act, whereby the company succeeded to the place of the purchaser at the Receiver's sale. But that contention is not borne out (a) by the fact that Farnum deeded to a stranger, instead of to the Vineland Light & Power Co.; (b) by the charter of that company which sets forth its objects; (c) by the fact that neither Farnum nor Holbrook joined in the incorporation; and (d) that Holbrook himself did not attempt to convey the franchise, but only to lease it, and held a reversion to himself and his heirs after the expiration of ninety-nine years. The proceedings provided for in the Act of 1881 are distinctly different from those pursued in organizing the defendant corporation. It is perfectly plain, that the transaction was, as to Holbrook, a mere stock jobbing scheme.

2. The franchise of the Vineland Gas Light Company could not be conveyed by Farnum to Holbrook. The franchises had ceased to exist (a) because Farnum failed and neglected to reinvigorate them by organizing the new corporation; (b) because they had been abandoned; (c) The old corporation had been dissolved; (d) The new corporation had also been dissolved; (e) The franchises can never be revived without legislative sanction.

(a).

The franchises were lost because Farnum failed to re-

vive them by organizing a new corporation under the Turnpike Act.

It is settled that the corporate franchises of the Vine-land Gas Light Company could not be transferred at all, in the absence of express legislative authority.

*7 Am. & Eng. (2nd Ed.) p. 750.*

And then the mode and terms of transfer pointed out by the statute must be followed.

*Id. p. 751.*

And the conveyance to Farnum could be made only for the purposes specified by the Turnpike Act.

*Id. p. 751.*

And because Farnum failed and neglected to comply with the statute, no corporation with power to exercise the grant came into being.

It was not obligatory on Farnum to organize the new corporation. It was mandatory on him to perform certain conditions precedent in order to organize the new company, but he was not bound to organize it unless he chose to do so.

“It may be safely predicated that, whether it is or is not theoretically ultra vires of a corporation to allow its members to die out totally, or as to any integral part, (and Farnum, who was at most a corporation sole, and the only integral part thereof, is dead) the Crown at least will not intervene to prevent this. If the members themselves find the duty too onerous, or do not value the privileges sufficiently to keep them alive, neither political necessities nor public needs can now be deemed sufficiently pressing to require that corporations should be made to discharge their functions.”

*Greens Brice's Ultra Vires, Title "Dissolution &c."* p. 658. And this is especially so with regard to corporations organized for profit. *Id.*

(b).

The franchises which passed to the new corporation had been abandoned when the transfer to Holbrook was made, and if not they were abandoned by the making of the Farnum deed.

After the Receiver's sale, a new corporation was created through the powers conferred on Farnum by the Turnpike Act, but because of Farnum's neglect, its powers remained suspended in his lifetime. At Farnum's death the corporation ceased to exist.

"A mere neglect by a corporation to exercise its corporate functions will not per se operate as a dissolution so long as the power of resuming them remains in the corporation."

*9 Am. & Eng. (2nd Ed.) 558.*

"An omission to elect officers or directors for a corporation though such functionaries are necessary to valid corporate action, will not dissolve the corporation as long as the members or stockholders retain the right to assemble and supply the vacancies."

*9 Am. & Eng. (2nd Ed.) 558.*

But here, the power to resume the corporate function, which power was conferred on Farnum, is gone, and there are no officers, members or stockholders to assemble and supply any vacancies.

(c).

The Vineland Gas Light Co. has been dissolved.

At the Receiver's sale its secondary franchises were conveyed to Farnum, and he was created a new corporation for the purpose of taking the franchises. But the old company was dissolved by the Receiver's sale.

*Morowitz Private Corp. 728.*

(d).

The new corporation has likewise ceased to exist. Farnum failed to invigorate the new corporation, and its

franchises continued in abeyance perhaps until his death, or, as Informant contends, on its complete abandonment thereof evidenced by the Farnum deed, But at Farnum's death, the new corporation certainly ceased to exist and its franchises reverted to the State. *9 C. E. Green at p. 465.*

Farnum was the only member of the new corporation, its sole corporate factor. He was more than an integral part; he was the new corporation.

It has been uniformly held by all the authorities, that at the death of all the members, or loss of an integral part a corporation is dissolved, by reason of its being in such a condition as to be incapable of continuing itself.

*9 Am. & Eng. (2nd Ed.) 557.*

A corporation perishes whether the whole of its members have died out, or the whole of those who constitute an integral and essential part, providing there is no means of repairing the breach.

*Greens Brice's Ultra Vires, 655.*

*Morowitz Private Corp. Sec. 1007 &c.*

By his failure to organize the new corporation the franchises conferred on it were lost. It was not necessary that the statute should expressly so provide. By Farnum's neglect, and by his deed he showed not only that he did not choose to ripen the corporate powers conferred upon him as a corporation by the Act of 1881, and that he abandoned them; but the corporation he constituted if it had not been dissolved by misuser or by abandonment of its franchise, by his death surely became, ipso facto, dissolved.

His death was a circumstance which created an incapacity to revive or resuscitate the powers of the corporation.

*10 Cyc. 1293 D.*

The franchise reverted to the State because of the abandonment of them. The Court of Errors seems so to

hold in *Black v. Canal Co.*, 9 C. E. Green at p. 465. But at any rate, at the dissolution of the corporation, caused by Farnum's death, the franchises of the new corporation reverted to the State. *Id.*

It was not a forfeiture, but a reversion to the State of its sovereignty.

The case in Court presents an example of a complete dissolution of a corporation, under the familiar common law rule. None of the exceptions, so eagerly seized upon by courts as an excuse to avoid a judicial determination of corporate dissolution, is applicable here. Here there is no capital stock descendible to personal representatives.

The new corporation has been dissolved.

(e).

The new charter can never be revived without legislative sanction.

*Greens Brice's Ultra Vires*, 656.

"The incapacity to revive or resuscitate the powers of a corporation may arise from three causes: 1st, the absence of the necessary officers who are required to be present, when the deficiency is to be supplied, or their incapacity or neglect to do some act which is required to the validity of the appointment: 2nd, the want of the necessary corporators who are required to unite in the appointment: and 3rd, the want of the proper persons from whom the appointment is to be made."

*Phillips v. Wickenham*, 1 Paige (N. Y.) 590, cited in note 5, p. 557, 9 Am. & Eng. (2nd Ed.)

Here the incapacity exists, because of one of the first causes specified, viz. the present incapacity of Farnum and his neglect to do the acts required by the provisions of the Turnpike Act.

And so, in the absence of statutory authority, the new corporation is beyond resuscitation.

The right to organize the new corporation was a per-

sonal trust conferred by the State upon Farnum, which he could not transfer without the consent of the State.

*Morowitz Private Corp. Sec. 936.*

"Franchises are parts of the sovereign power delegated to a subject, and privileges to which other citizens are not entitled. In such grants the State regards the character of the grantee, if an individual, and the guards and restrictions placed upon the artificial body when the grant of a franchise is given to a corporation, the members of which are continually changing by transfer of stock. The exercise of the franchise is therefore, a personal trust, which cannot be transferred without consent of the sovereign power."

*Green's Brice's Ultra Vires p. 104.*

And the power was vested in him as a corporation sole and did not go to his heirs, so that Farnum's place is not succeeded to by his personal representatives, nor by Holbrook his assignee. For, at Farnum's death, assuming that any corporate franchise then remained in him, they could not go to an heir or personal representative, for he was a corporation and the powers would have vested in his successors if there had been any; and his attempted assignment to Holbrook was a nullity.

#### IV.

#### HOLBROOK HAD NO POWER TO TAKE THE WORKS UNDER THE FARNUM DEED.

If a franchise, necessarily appertaining to the works passed with them, Holbrook could not take the works.

For the only authority to make any sale of the franchise is found in the two Acts of the Legislature hereinbefore mentioned, neither of which authorizes any transfer except by a judicial sale. And those statutes must be construed strictly.

*Black vs. Canal Co. 7 C. E. G. 399, 401*

*9 C. E. G. at p. 474.*

*Noyes on Inter Cor. Rel. Sec. 159.*

There is no statutory authority for a transfer of the franchise to any individual, and without such authority Holbrook could not take the works; because taking the works necessarily involved the taking over of a franchise to maintain and operate them.

*Memphis &c. RR. vs. Commissioners. Id.*

*Morgan vs. Louisiana Id.*

*Black vs. Canal Co. 9 C. E. G. at p. 766.*

The right to use the public streets for the purpose of placing pipes therein through which gas may be furnished to customers is a right which the sovereign alone can confer. The rule must be considered settled, that no person can acquire a right to make special or exceptional use of a public highway, not common to all the citizens of the State, except by grant from the sovereign power.

*Jersey City Gas Co. vs. Dwight, 2 Stew. at p. 248.*

But if the Court shall hold that Holbrook took the works, then Informant insists that he could take no more of the franchises than were necessary to maintain and operate the works, and not the franchise of extending them by digging up the streets and highways.

## V.

### HOLBROOK TOOK NO FRANCHISE UNDER THE FARNUM DEED.

Informant insists that he did not, for the reasons stated touching the questions above discussed. Farnum had no authority to convey the franchise, nor did Holbrook have power to take them.

*Noyes Inter Rel. Sec. 139.*

*Black vs. Canal Co. 9 C. E. G. at p. 466.*

*In Chicago Gas Light & Coke Co. vs. The Peoples' Gas Light & Coke Co. 16 Amer. & Eng. Corporation cases, 577, bottom of page 581, quoting from, New Orleans Gas Co. vs.*

*Louisiana Light Co.* 115 U. S. 650,  
the Supreme Court of the United States says:

A manufacturer of gas and its distribution for public and private use by means of a pipe laid under legislative authority in the streets and ways of a City is not an ordinary business in which everyone may engage but is a franchise belonging to the Government to be granted for the accomplishment of public objects to any consumers whomsoever and on what terms it pleases. It is a business of a public nature and meets a public necessity for which the State may make provision. It is one which so far from affecting the public injuriously has become one of the most important agencies of civilization for the promotion of the public convenience and public safety.

The right to operate a gas plant works, and to illuminate a city, is not an ancient or usual occupation of citizens generally. No one has the right to dig up the streets and lay down gas pipes, erect lamp posts and carry on the business of lighting the streets and houses without special authority from the sovereign. It is a franchise belonging to the State and in the exercise of the police power, the State could carry on the business itself or select one of several agents to do so.

*New Orleans Gas Light Co. v. Louisiana Light Co.* 115 U. S. 650.

*Crescent City Gas Light Co. v. N. O. Gas Light Co.* 27 La. Am. 147.

“Plainly a franchise possessed by a corporation cannot be transferred to an individual, unless it is such a franchise as an individual might hold and exercise. A franchise personal to the grantee already possessed of it cannot be sold to an individual; nor can a franchise to operate a railroad, since this would have the effect of turning a franchise granted for a public benefit into a mere means of private emolument; nor can a navigation company grant to an in-

dividual the privilege of taking water from its dam for private purposes. But of course the Legislature may authorize the sale of the franchise of a corporation to a natural person, and such a statute will not be unconstitutional."

*10 Cyc. 1094, 7.*

The case of a ferry franchise mentioned in the court below, stands on a different footing. Though emanating from the sovereign, they have always been transferable by deed, when held by an individual and descend like other real estate.

*Am. & Eng. Title, "Ferries," 1048.*

*10 Cyc. 1091 Notes.*

*Col. Br. Co. vs. Geisso 9 Vr. 39.*

*In Gordon v. Winchester &c. Ass'n, 12 Bush. 114, quoted with approval in Louisville Gas Co. v. Citizens Gas Light Co. 115 U. S. 683,* the court likened a ferry franchise to a tavern license; permission to erect a toll bridge; the right to build a mill dam, and the like; which privileges may be owned by individuals. But it is to be noted, that the right of an individual to exercise even such privileges is always granted by statute.

A ferry franchise differs from all other franchises respecting the right to transfer.

*10 Cyc. 1091 Note.*

No other franchise of a corporation having public duties to perform may be transferred without legislative sanction because this would disable them from discharging the public duties which they have assumed.

*10 Cyc. 1090 C 2.*

A gas company may not alienate its secondary franchises.

*10 Cyc. 1092.*

*Id. 1152 p. 1153 q. (11)*

The sale of a Turnpike franchise, cited below, litigat-

ed in *Clow v. Van Loan*, 4 Hun N. Y. 184, was authorized by statute. See the text to note 23, 10 Cyc. 1094 and the reported case. The authorities hold that franchises which involve a duty to the public, cannot be transferred without legislative sanction.

10 Cyc. 1090 at seq. and other authorities hereinbefore cited.

## VI.

### THE HOLBROOK DEED TO THE DEFENDANT DID NOT CONVEY THE GAS WORKS.

Inasmuch as Holbrook never had lawful title to the plant, he could not make a valid deed therefore.

If he had the works, he could not convey the same to the defendant company, if a franchise to operate and maintain (but not to extend) the same went with the plant; for it is ultra vires the defendant to exercise a gas franchise. (Point VII, b.)

In whom at present is the lawful title to the gas plant is not in issue; but the suggestion made in the court below, that this title to the works may be in the heirs of Farnum is not acceded to, although perhaps there is some authority for it in the principal laid down in 10 Cyc. 1328 f. But it is more probable that at the dissolution the corporate property would be considered a trust fund for creditors of the corporation Farnum constituted; and there being no director, officer or stockholder, on whom the trust shall devolve, the Court will appoint a trustee, pay creditors—if any—and turn the balance of the property over to Farnum's personal representatives.

If the corporation Farnum constituted had not been dissolved by his death, the property and franchises would yet be in it. See an interesting case in point, *Huber vs. Martin*, 105 N. W. 1031; 3 L. R. A. (N. S.) 653.

## VII.

THE HOLBROOK LEASE TRANSFERRED NO RIGHTS  
OR FRANCHISES TO THE DEFENDANT  
COMPANY.

(a).

Holbrook had no franchise to convey, for he had taken nothing from Farnum. But if he had authority to convey, where is the authority for the making of such an extraordinary document as the pretended "lease?" Could the franchise be severed from the property to which it was incident and to which it appertained?

*Chicago Gas Light Co. v. Peoples' Gas Light Co.* 16 Am. & Eng. Corp. Cos. 581 and cases cited.

*New Orleans Gas Co. vs. Louisiana Gas Co.* 115 U. S. at p. 659.

(b).

The Vineland Light & Power Co. had no authority or power to take a franchise to operate and maintain a gas plant in the public streets. It was organized under the general corporation act.

The defendant claims that it is empowered to purchase and use a gas franchise. The authority given for this proposition is the General Corporation Act as amended by the Act P. L. 1899 p. 473.

But the amendment of 1899 cannot be construed to confer authority to organize gas companies. Its principal objects seem to have been to confer on telegraph and telephone companies power to organize under the Act and to operate outside of the State; and to make the exceptions against banking, safe deposit and the like corporations so plain that no wild cat banking company might be incorporated here to do business in other States, after the revision of the trust company and other Acts of 1899. The defendant had no authority to organize a gas company under that Act, to operate in this State.

*Domestic Tel. Co. vs. Newark* 20 Vr. 348.

*Dill Corp. Prec.* (1902) p. 15.

*Richards v. Dover* 32 Vr. 402.

*Montclair &c. vs. Board*, 36 Vr. 516.

*Assessors v. Plainfield*, 38 Vr. 358.

In *Fogg v. Ocean City*, 65 At. 885, it was lately held by the Supreme Court that a sewer company organized under the General Corporation Act has no power to use the public highways; and in *Knickerbocker Trust Co. v. Assessors* 65 At. at p. 905, Judge Dill speaking for the Court of Errors cites with approval *Richards v. Dover, Id.*

It is clear that the General Corporation Act was not intended to repeal the Gas Act. The Act itself is not intended to apply to corporations whose powers and public duties make the Act inappropriate and inapplicable. The Act provides *P. L. 1898 p. 279, Sec. 2:*

“In addition to the powers enumerated in the 1st section of the Act and the powers specified in its charter, or in the Act or certificate under which it was incorporated every corporation \* \* shall possess and exercise all the powers and privileges contained in this Act, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this Act contained, *so far as the same are appropriate to and not inconsistent with such charter or the Act under which such corporation was formed*; and no corporation shall possess or exercise any other corporate powers except such incidental powers as shall be necessary to the exercise of the powers so given.”

In other words, companies organized under the Gas Act and other general laws are not “governed by the provisions” \* \* in the General Corporation Act, except and only so far as the same is appropriate to and not

inconsistent with the Act under which such gas and other companies may be performed.

To hold that a gas corporation may be formed under the General Corporation Act, with powers to use the public highways, would be to imply a grant not contained in that Act, which is forbidden.

*Stockton v. RR.* 5 Dick. at p. 65.

*Fogg v. Ocean City*, 65 At. 885.

Nothing passes to the corporation by implication, when the meaning is doubtful, or where the implication is unnecessary.

10 Cyc. 1088.

The case cited below, of a water company making a contract, as in *Slingerland v. Newark*, 25 Vr. 62, has no application. Such contracts are made under the Water Act of 1888 (General Statutes, 2210). That Act provides "that it shall be lawful for the Board of Aldermen &c. to make and enter into a contract or agreement with any water company or other company &c. for the obtaining of a supply &c. of water &c." So that, under that Act, any corporation might contract. (General Statutes, 2210, Sec. 405.) It gets this power by direct authority of the Legislature.

As to the power of condemnation exercised as in *Slingerland v. Newark* it is to be observed that the City condemned the lands, under powers directly conferred on it by the Act P. L. 1891 p. 172. It had agreed with the water company to exercise its power of condemnation, and merely carried out the contract. But the company did not by either implication, or by grant, have any such power.

25 Vr. at pp. 63, 65, 66.

The case of *French v. Robb*, (38 Vr. 260,) cited below, does not aid the defendant.

1. Robb, by the Act of 1881, if he purchased by judicial order, or decree, was constituted a corporation in the same manner as was Farnum.

2. The pole was erected by authority conferred on the municipality under the Act of 1894 (General Statutes 2174.)

3. Robb could only use the pole for public lighting, because it seems the corporation to whose property and franchises he, as a corporation, succeeded, had no consent of the property-owners', nor any franchise to use the public streets for private lighting, as required by the Act of 1896 (*P. L. 1896 p. 322.*)

4. It was not necessary that the contractor should have, of itself, such franchise of supplying either public or private consumers, because the power of the City under General Statutes 2174, enabled it to make a contract even with a private person, the municipal authority respecting the use of the streets being sufficient.

The rule of construction is settled that what is not clearly granted is withheld.

*Black vs. Canal Co. 9 C. E. Green at p. 474.*

#### VIII.

### CAN THE STATE NOW INTERFERE WITH THE EXERCISE OF THE FRANCHISES CLAIMED BY THE DEFENDANT?

No laches may be imputed to the State. The State may interfere at any time to prevent an usurpation of its franchises.

*C. & Atl. R. vs. Mays Ldg. RR. 19 Vr. at p. 567.*

*29 Am. & Eng. (2nd Ed.) 87.*

In the Middletown Turnpike case, *36 Vr. 73*, the user had been for a period of 14 years.

It is not too late for the State to intervene under the rule laid down in *Attorney General v. RR. 12 C. E. Green 25, 26 and 27*, and the other cases cited by the defendant below. In that case the bridge was complete and there was no purpresture, no nuisance, no threat of invading or

further usurping the State's franchises. Here the corporation is not contented with the franchises it has usurped, but seeks to extend its unlawful operations in public highways, thus creating a public nuisance.

*In Attorney General vs. RR. 12 C. E. Green 50*, a bridge case, the Court exercised a judicial discretion because the work was almost completed under color of legislative authority. And there was a complete remedy at law (p. 59.) And the work was prosecuted in good faith (58) while here the defendant—if Holbrook and Farnum were indeed back of the scheme of organization as is now alleged—was organized in bad faith, to aid in a stock jobbing scheme for issuing watered stock in defiance of the laws intended to regulate gas companies.

*In Attorney General vs. Brown, 12 C. E. Green, 89*, the highway obstructed was not used by the public, so that there was only an inconsiderable nuisance. Here there is a seizure of franchises and an exercise of usurped powers in highways in a well settled territory.

*In Attorney General v. Hoboken, 3 C. E. Green 413*, there was a complete remedy at law, and no threat of irreparable mischief, *3 C. E. Green at p. 413*.

*Sumner v. Seaton, 2 Dick. 111* was a case between two private litigants. The State was not a party.

The rule is that the State may interfere at any time, and if irreparable injury is threatened to the public, an injunction will go. The corporation defendant is about to do an ultra vires act—is doing ultra vires acts, of such nature as to produce public mischief, and the Attorney General as the representative of the public and of the Government may maintain an equitable suit for preventive relief.

*Pom. Eq. Jur. par. 1093.*

*Stockton v. RR. 5 Dick. 79.*

*Camden &c. RR. vs. Mays Landing RR. 19 Vr. at p. 567.*

On the question of laches, there is nothing before the Court to show that any material extension of the mains and systems of the defendant, in the streets of either the Township or the Borough had ever before been attempted. It may well be inferred that heretofore the company has been content to maintain and operate the plant substantially as it existed at the time of the Receiver's sale.

In instances of public nuisances, threatened acts interfering with roads, streets, highways, State property &c., it may be regarded as settled that where a quasi-public corporation exceeds its corporate powers and its acts involve a nuisance, or otherwise tend to public injury, a bill may be exhibited against such corporation in the Court of Chancery.

*Atty Gen'l vs. Am. Tobacco Co.* 10 Dick. 366. approved  
11 Dick. 847, citing:

*Atty Gen'l vs. Middle Kent Ry* 1 Drew & S. 154.

*Atty Gen'l vs. RR.* 11 Ch. Div. 450.

*Atty Gen'l vs. RR.* 3 Ch. App. Cases 100.

*Atty Gen'l vs. Board L. R.* 1889, 172.

*Mayor &c. & Canal Co.* 12 Pet. 91.

*Penn. vs. Bridge Co.* 13 How. 518.

*Dis. Atty vs. RR.* 16 Grey, 242.

*People vs. Vanderbilt* 26 N. Y. 287.

*Raritan &c. Co. v. Del. &c. Canal et al.* 3 C. E. G. 547.

*Atty Gen'l vs. Del. &c. RR. Co.* 12 C. E. G. 631.

See also *Atty Gen'l v. Central RR. Co.* 5 Dick. Ch. at  
pp. 78, 79 and 88 citing:

*Atty Gen'l v. RR.* 12 C. E. G. 633.

*Porn Eq. Jur.* par. 1093.

*Thomas vs. W. J. RR.* 101 U. S. 71.

*Greens Brice's Ultra Vires* (2nd Ed.) 708.

*Atty Gen'l vs. Bridge Co.* 21 Ch. Div. 752.

*Atty Gen'l v. Board Id.*

*Atty Gen'l vs. Ry 11 Ch. Div. 449.*

*Atty Gen'l vs. Ry 1 Drew & S. 184.*

*Atty Gen'l vs. Bds 35 Wis. 525.*

The authority is all in favor of the jurisdiction of the Court.

It will be observed moreover that the defendant is not, even de facto, a gas corporation; for, although there is a valid law under which it might have been created (the Gas Act) it has not attempted, even colorably, to comply with that Act.

Contracts by which a corporation created for the performance of a public duty abnegate those duties by devolving them on others, whether in the form of a lease, mortgage, sales, or any other form of devolution, are ultra vires and void, unless made with the consent of the Legislature, *10 Cyc. 1152*. In case of such contracts, whereby a corporation seeks to devolve upon another corporation without the consent of the Legislature, its public duties, the Courts will not allow the contracts to gain strength with lapse of time. *10 Cyc 1153 q. (4)*.

The Legislature alone may waive usurpation of corporate franchises.

*People vs. Phoenix Bank, 24 Wend. (N. Y.) 431, 35 Am. Dick. 634.*

The payment of a State tax was not a waiver by the State.

Where, in quo warranto proceedings to oust a foreign insurance company from the right to do business prohibited by the laws of Ohio, the defense set up that the offence had been condoned by the issue of a certificate to the offending corporation by the Ohio Superintendent of Insurance, Marshall, J. said:

"We are all of the opinion that the issuing of a license to a foreign insurance company to do a judicial act \* \* is not a bar to a proceeding against it in quo warranto

when it is found to be exercising any of the franchises of the State without authority of law."

*State v. Fidelity Ins. Co.* 49 Ohio St. 440: 37 Am. & Eng. Corp. cases, 583.

See also *State vs. Fidelity Ins. Co.* 39 Minn. 538: 29 Am. & Eng. (2nd Ed.) 85.

The ratification by the Legislature will not be implied.

*Thomas vs. West Jersey RR. Co.* 101 U. S. 71.

Here one of the acts complained of, to wit, the excavation of a large extent of highway, has not even been consummated. The company is about to transgress further against the State, and is engaged in an illegal act tending to injure the public, and as to that act and future like aggressions there could be no complaint of laches even if this suit were by a party other than the State.

*Kerr. on Inj.* 531: *Id.* 169.

21 Am. & Eng. (2nd Ed.) 703.

The defendant says that it is engaged in the unlawful acts in good faith, and that an injunction against it preventing the making of the extensions to its mains will injure the public.

It is denied that the defendant engaged in the work in good faith, for it would seem that it organized under the General Corporation Act for the express purpose of evading the laws governing gas companies, under which the stock jobbing operations of Holbrook and Farnum would have been impossible.

To grant the prayer of the injunction would not in truth inconvenience the public, but would, in the end, compel some sort of reorganization of the defendant under a charter where its successor will be amenable to the municipal authorities, will be restricted in price of gas, regulated as to measurement and quality of its product, and limited in its capital to the actual amount of money invested therein; and will be subjected to proper regulations and

restrictions relating to the digging up and restoration of street surfaces—an important matter, when the Court considers that the defendant had, at the filing of the bill opened and for two months permitted to remain open, a whole mile of trenches in the public highways. Under the usual regulations, a gas company would not be permitted to open any greater length of street than was actually necessary.

The remedy by indictment will not stay the acts defendant contemplates doing. It seeks to make very considerable extensions to its plant. When made, if attacked, would again complain of the amount it had expended “in good faith.” As to the effect of the injunction upon possible consumers along new extensions, see *Landis Township v. Millville Gas Light Co.*, In Chancery, Opinion by Leaming, V. C. February, 1907.

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The essential facts in the case are all undisputed. The principles of law have all been settled. There is no reason why the injunction should not go.

The defendant by its lawless act in assuming the right to maintain a gas plant free from the restrictions prescribed by the Gas Act for the protection of the public, is doing continuously an act detrimental to the public interests. It now threatens a further invasion of the public highways. An injunction should go according to the prayer of the bill.

LOUIS H. MILLER,  
GASKILL & GASKILL,  
Of Counsel with the Informant.

No 49

November Term 1907.

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## N. J. Court of Errors & Appeals

Between

ROBERT H. McCARTER, Attorney General,

Informant and Respondent,

and

VINELAND LIGHT AND POWER COMPANY.

Defendant and Appellant.

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APPEAL FROM CHANCERY.

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STATE OF THE CASE.

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FRENCH & RICHARDS,  
For Appellant.

EDWIN F. MILLER,  
GASKILL & GASKILL,  
For Respondent.

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## INDEX.

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	PAGE
Bill.....	1
Rule to Show Cause.....	16
Continuance.....	18
Answer.....	19
Opinion.....	70
Order for preliminary Injunction.....	78
Notice of Appeal.....	79
Petition of Appeal.....	80
Answer to Petition of Appeal.....	81

*Bill filed December 14th, 1906.*

## IN CHANCERY OF NEW JERSEY.

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*To his Honor, William J. Magie, Chancellor of the State  
of New Jersey:* 10

Informing shows unto your Honor, your informant, Robert H. McCarter, Attorney General of the State of New Jersey, on behalf of the said State, that the Vineland Gas Light Company was incorporated by an act of the Legislature of the State of New Jersey, approved March 15th, 1870, whereby said company was given power and authority to manufacture and sell gas for the purpose of lighting the streets and other places in the township of Landis and county of Cumberland, and was also empowered to lay down gas pipes and to erect gas posts in the streets, avenues and public grounds of the township of Landis, and to do all things necessary to light said township, or any part thereof, provided that public travel should at no time be affected or impeded by the laying of pipes or erection of the posts, and that said streets and avenues should be left in as good and perfect condition as before the laying of said pipes and the erection of said posts; a true copy of said act of incorporation being hereto annexed and marked Schedule A, and made part of this bill of complaint. 20 30

Informant further shows unto your Honor that afterward, to wit, on or about the thirtieth day of April, in the year of our Lord one thousand eight hundred and eighty-four, the said Vineland Gas Light Company became insolvent and Daniel Washburn was appointed re-

ceiver thereof by this honorable Court, and such proceedings were had that under the order of said Court said Daniel Washburn sold all the property and franchises of the said Vineland Gas Light Company to one John R. Farnum, which sale was afterwards duly approved and deed for said property and franchise made by the said Daniel Washburn, receiver, to the said John R. Farnum, which deed bears date the tenth day of May, in the year of our Lord one thousand eight hundred and eighty-four, and is recorded in the Clerk's office of the county of Cumberland in Book 173 of Deeds, p. 418; a true copy of which deed being hereto annexed, marked Schedule B, and made a part of this bill of complaint.

10 Informant further shows unto your Honor that the said John R. Farnum did afterwards, to wit, on the twenty-seventh day of March, in the year of our Lord one thousand nine hundred, execute a deed to one Arthur A. Holbrook, conveying certain lots of land and premises in the borough of Vineland, township of Landis, county of Cumberland and State of New Jersey, "To-  
 20 "gether with gas works located upon the above described "land with their machinery, plant and appurtenances, the "purifyer, engine house, retort house, coal sheds, office "buildings and all outbuildings; also all the delivery "pipes and apparatus set and laid, used and connected "with said gas works and plant throughout the borough "of Vineland, township of Landis, Cumberland county, in "the State of New Jersey, the property of the said party "of the first part:

30 And purporting also to convey "all the chartered "rights, privileges and franchises conveyed to the said "party of the first part by the said deed of Daniel Wash- "burn, receiver as aforesaid, and any and all rights, priv- "ileges and franchises thereafter acquired and now owned "by the grantor in the borough of Vineland aforesaid, and "in the township of Landis aforesaid, appertaining to the "said gas works and the operation thereof.

“Together with the good will of the grantor hereof, John R. Farnum, in the business of the manufacture and sale of gas in the borough of Vineland and in the township of Landis aforesaid.”

Which said deed is recorded in the Clerk’s office of Cumberland county in Book No. 251 of Deeds, p. 217, etc.; a true copy of which deed being hereto annexed and marked Schedule C, and made part of this bill of complaint.

Informant further shows unto your Honor that the said Arthur A. Holbrook did afterwards, to wit, on the thirty-first day of March, in the year of our Lord one thousand nine hundred, execute a deed to the Vineland Light and Power Company, a corporation of the State of New Jersey, conveying the last aforesaid lots of land and premises, “Together with gas works located upon the above described land with their machinery, plant and appurtenances, the purifyer, engine house, retort house, coal sheds, office buildings and all outbuildings.” 10

“Also all the delivery pipes and apparatus set and laid, used and connected with said works and plant throughout the borough of Vineland and township of Landis, Cumberland county, in the State of New Jersey, the property of the said party of the first part.” 20

Which said deed is duly recorded in the office of the Clerk of Cumberland county, in Book No. 251 of Deeds, p. 220; a true copy of which deed being hereto annexed and marked Schedule D and made part of this bill of complaint.

Informant further shows unto your Honor that the said Arthur A. Holbrook, by the last mentioned deed, did not attempt to convey the chartered rights, privileges and franchises conveyed to the said John R. Farnum by the said Daniel Washburn, receiver. 30

Informant further shows unto your Honor that the said Arthur A. Holbrook, on the thirty-first day of March last aforesaid, executed a paper purporting to be

a lease to the Vineland Light and Power Company of the chartered rights, franchises and privileges granted by the act of the Legislature incorporating the Vineland Gas Light Company and attempted to be conveyed to said Holbrook by said Farnum by the deed hereinbefore recited and referred to, for the period of ninety-nine years, which said lease is recorded in the office of the Clerk of Cumberland county in Book A of Leases, p. 169; a true copy of which lease being hereto annexed and marked Schedule E, and made a part of this bill of complaint.

10 Informant further shows unto your Honor that on or about the first day of March, one thousand nine hundred, the said Vineland Light and Power Company, grantee of said Holbrook, was incorporated under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act concerning corporations (Revision of 1896)," and the several supplements thereto and the acts amendatory thereof, having for its object to "make, generate and manufacture, 20 "distribute, furnish and sell gas and electricity for light, "power and all other uses and purposes for which the "same may be used, to the inhabitants, companies, corporations and public generally in the borough of Vineland and in the township of Landis, county of Cumberland and State of New Jersey, and also in the various "settlements and townships adjacent thereto"; a true copy of which certificate of incorporation being hereto annexed and marked Schedule F, and made part of this bill of complaint.

20 Informant further shows unto your Honor that the said Vineland Light and Power Company, after its incorporation as aforesaid, to wit, on the twenty-seventh day of May, in the year of our Lord one thousand nine hundred and four, filed an amended certificate of incorporation increasing its capital stock and authorizing the issue of preferred stock; a true copy of which amended

certificate of incorporation being annexed hereto and marked Schedule G, and made part of this bill of complaint.

Informant further shows unto your Honor that after the incorporation of the Vineland Gas Light Company by the Legislature of the State of New Jersey, in the year one thousand eight hundred and seventy, as hereinbefore set out, a portion of the territory of the then township of Landis was created into a borough known as the borough of Vineland, and that the territory now known as the borough of Vineland and as the township of Landis comprise the territory that constituted the township of Landis at the time of the incorporation of the said Vineland Gas Light Company. 10

Informant further shows unto your Honor that on or about the sixteenth day of November last past the said Vineland Light and Power Company placed upon and along that part of Main road or Main avenue, from Landis avenue, in said township of Landis, southwardly as far as Chestnut avenue, in said township, divers sections or lengths of three-inch gas main, and on said last named day commenced, by and through its employes and laborers, to dig up and excavate said Main road or Main avenue for the purpose of laying an extension of its gas plant or system therein, and that said Vineland Light and Power Company was actively engaged in the extension of its plant or system along said Main avenue, from Landis avenue southwardly to or beyond Chestnut street as aforesaid, opening ditches in said street or avenue and laying pipe therein, when its work was enjoined by a rule to show cause with a restraining order issuing out of this honorable Court on the seventeenth day of November last past, in a suit wherein the Millville Gas Light Company was complainant and the said Vineland Light and Power Company was defendant, as will appear by the records of this Court, to which your informant begs leave to refer; and that subsequently the said Vineland 20 30

Light and Power Company commenced the extension of its gas plant or system from Landis avenue southwardly on West avenue to Chestnut avenue, in the borough of Vineland, and made excavations and trenches for the purpose of laying gas pipe therein, when it was enjoined from proceeding with said work under a further restraining order issuing out of this honorable Court in said cause, dated the twenty-second day of November last past, as will appear by the records of this Court, to which your informant begs leave to refer; that the trenches or ditches dug by said Vineland Light and Power Company for the laying of its pipe as aforesaid, have not been filled; that the pipe to be laid in said ditches or trenches is alongside and near thereto, and is about to be laid in said ditches and said gas plant or system extended, and that it is the expressed intention, as this informant has been informed and believes to be true, of the said Vineland Light and Power Company further to extend its plant and system by the continuation of the digging of said ditches along said streets or roads and upon other streets and roads in said borough and township and the laying of pipe therein.

Informant further shows unto your Honor that the said John R. Farnum, after his purchase of the property, rights and franchises of the Vineland Gas Light Company from Daniel Washburn, receiver, did not organize a new corporation by the election of officers and directors and issue of stock pursuant to the statute in such case made and provided, nor did the said John R. Farnum convey the property, corporate rights and franchises thus purchased by him to any other corporation organized for the purpose of accepting the same, or having the power to purchase the same, but, on the contrary, attempted to convey the same to the said Arthur A. Holbrook, as hereinbefore set out, and that the said John R. Farnum has since departed this life.

Informant further shows unto your Honor that the said Vineland Light and Power Company has never ac-

quired any franchise, grant or right to use any of the streets, roads, highways and other public places in the borough of Vineland and the township of Landis from the municipal authorities of said borough or township, or either of them.

Informant further shows unto your Honor that upon due notice to the said Vineland Light and Power Company a hearing was had before your informant on the fourth day of December instant, upon an application for an information, in the nature of a *quo warranto*, to revoke the charter of the said Vineland Light and Power Company; that upon said hearing the facts and circumstances hereinbefore set out were fully brought to your informant's attention and argument heard thereupon, as well on behalf of the applicant as on behalf of the said Vineland Light and Power Company; that after due consideration, your informant notified the parties in interest in writing of his decision, a true copy of your informant's letter notifying the parties of his decision being hereto attached as Schedule H and made part of this bill of complaint; that subsequently your informant received a letter from the counsel of one of the parties in interest inquiring whether your informant's authority to institute proceeding in the name of the State was confined to the *quo warranto* proceedings, or whether such authority included the filing of a bill in equity, which letter is hereto attached and marked Schedule I and made part of this bill of complaint; that your informant replied suggesting a preference for a bill in equity for injunction, a true copy of your informant's last letter being hereto annexed as Schedule J and hereby made a part of this bill of complaint.

Your informant charges that the Vineland Light and Power Company possesses no corporate right or franchise to use, occupy or open any of the streets, roads, highways or other public places in any of the municipalities in this State for the purpose of laying gas pipes and

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erecting gas posts, and that its action in the premises is entirely without warrant of law and against the rights of the State; that the corporate rights and franchises granted by the said act of the Legislature of the State of New Jersey, approved April 15th, 1870, incorporating the Vineland Gas Light Company have become extinguished and are no longer of any force and effect; that the same did not and cannot pass to and become vested in the Vineland Light and Power Company; that the Vineland Light and Power Company acquired no right or franchise under the act under which it is incorporated, and supplements thereto, to occupy, use and enjoy any of the streets, roads or highways of any of the municipalities of this State for the purpose of laying gas pipes and erecting gas posts therein.

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Your informant further charges that by the statutes of this State in such case made and provided the conveyance from said Daniel Washburn, receiver, to the said John R. Farnum, hereinbefore recited, did not operate as an absolute, unconditional and unrestricted conveyance of the property and corporate rights and franchises of the said Vineland Gas Light Company, so that the said John R. Farnum was constituted a corporation sole with power to hold said property and exercise said franchises for an indefinite period of time, but that the only force and effect of said conveyance under the statutes of this State was to vest in said John R. Farnum said property and corporate rights for the purpose of enabling him, the said John R. Farnum, to organize a new corporation to own said property and exercise said franchises, or to convey said property and franchises to a corporation thereafter to be formed, or to some existing corporation authorized by law to acquire said property and exercise said franchises, and that only and solely for the purpose of organizing such new corporation, or conveying as aforesaid, were the corporate rights and franchises of the insolvent company preserved and kept alive by force

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of the statutes; that the said John R. Farnum, having failed to organize a new corporation pursuant to the statutes, or to convey said property and franchises to a new corporation thereafter formed having power to acquire said property and exercise said franchises, the corporate rights and franchises became thereby extinguished.

Your informant further charges that none of the corporate rights and franchises which had been granted to the Vineland Gas Light Company by the act of the Legislature hereinbefore referred to passed by the deed of conveyance from the said John R. Farnum to the said Arthur A. Holbrook; that the said John R. Farnum was without power to convey said corporate rights and franchises, and the said Arthur A. Holbrook was without power to receive a conveyance of said corporate rights and franchises, and that the same had become extinguished by the failure of the said John R. Farnum to comply with the statutes of this State with respect to the same. **10**

Your informant further charges that the said Vineland Light and Power Company acquired no corporate right or franchise enabling it to occupy, use and open any of the streets, roads, highways, or other public places in the borough of Vineland or township of Landis for the purpose of laying gas pipes and erecting gas posts, or in any other municipality in this State, by virtue of the pretended lease from the said Arthur A. Holbrook to the said Vineland Light and Power Company hereinbefore referred to; that the said Arthur A. Holbrook had no right, title or interest in and to the corporate rights or franchises granted by the Legislature of this State to the Vineland Gas Light Company, and could not make any lease or other conveyance of the same; that the said Arthur A. Holbrook was without power to make such pretended lease and that the said Vineland Light and Power Company was without power or authority to acquire said corporate rights and **20** **30**

franchises under said pretended lease; and that the said Vineland Light and Power Company did not by virtue of said pretended lease acquire any right to open, use or occupy any of the streets, roads, highways or other public places in the borough of Vineland or in the township of Landis or in any other municipality in this State.

10 Your informant further charges that the action of the said Vineland Light and Power Company in opening said streets and highways, and digging trenches therein, and laying, or attempting to lay gas pipes, is a usurpation of the rights of the State, and is without warrant of law and should be restrained by this honorable Court.

In consideration whereof and forasmuch as your informant is entitled to relief in this honorable Court, where matters of this nature are properly cognizable and relievable:

20 To the end therefore that the said Vineland Light and Power Company may, without oath, answer all and singular the premises in the same manner as though they had been here repeated and it particularly interrogated thereto, and more especially that it may in manner aforesaid answer and set forth fully its claim of corporate rights and franchises, and its right and power to occupy, use and enjoy the streets, roads, highways and public places in the borough of Vineland and in the township of Landis, or in any other municipality in this State; and that it may be enjoined and restrained from exercising any of the corporate rights or franchises granted by the Legislature of this State to the Vineland Gas Light Company, and from exercising and enjoying

30 any corporate rights or franchises not granted to it under the General Corporation Act of this State under which said Vineland Light and Power Company is incorporated; and from occupying, using and opening any of the streets, roads, highways or public places in the borough of Vineland or in the township of Landis, or in any other municipality in this State; and from con-

structing, operating and maintaining any extension of its gas plant, or gas system, along or under any of the streets, roads, highways, or other public places in said borough of Vineland or in said township of Landis, or in any other municipality in this State; and from continuing the construction of the extension of its gas plant, or system commenced by it along Main road or avenue, from Landis avenue southwardly in the township of Landis, and from continuing the construction of an extension from Landis avenue southwardly to West avenue in the borough of Vineland; and from making any other extension of its plant or system; and from using, occupying or opening any other street, road, highway, or public place in the township of Landis or in the borough of Vineland, or in any other municipality in this State; and that it may be required to remove any and all pipes laid by it in any of the streets, roads, highways, or other public places in said township of Landis or said borough of Vineland, since the first day of November last past, and fill up all ditches or trenches by it dug for the purpose of laying pipe therein for the transmission of gas since the first day of November last past; and that your informant may have such other or further relief as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your informant, not only the State's writ of injunction issuing out of and under the seal of this honorable Court to be directed to the said Vineland Light and Power Company restraining it, its officers, agents, employes and workmen from exercising any of the corporate rights or franchises granted by the Legislature of this State to the Vineland Gas Light Company, and from exercising and enjoying any corporate rights or franchises not granted to it under the General Corporation Act of this State under which said Vineland Light and Power Company is incorporated; and from

occupying, using and opening any of the streets, roads, highways, or public places in the borough of Vineland or in the township of Landis, or in any other municipality in this State; and from constructing, operating and maintaining any extension of its gas plant, or gas system, along or under any of the streets, roads, highways, or other public places in said borough of Vineland or in said township of Landis, or in any other municipality in this State; and from continuing the construction of the

10 extension of its gas plant, or system commenced by it along Main road or avenue from Landis avenue southwardly in the township of Landis, and from continuing the construction of an extension from Landis avenue southwardly to West avenue in the borough of Vineland; and from making any other extension of its plant or system; and from using, occupying or opening any other street, road, highway or public place in the township of Landis or in the borough of Vineland, or in any other municipality in this State; and that it may be re-

20 quired to remove any and all pipes laid by it in any of the streets, roads, highways, or other public places in said township of Landis or said borough of Vineland since the first day of November last past, and fill up all ditches or trenches by it dug for the purpose of laying pipe therein for the transmission of gas since the first day of November last past,—but also the State's writ of subpoena, issuing out of and under the seal of this honorable Court, to be directed to the said Vineland Light and Power Company, commanding it by a certain day and under a certain penalty therein to be expressed to

30 be and appear before your Honor in this honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your informant, as in duty bound, will ever pray,  
etc.

EDWIN F. MILLER,  
Solicitor of Informant.

GASKILL & GASKILL,  
Of Counsel with Informant.

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

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S. J. FRANKLIN, of full age, being duly sworn according to law on his oath saith, that he has heard the foregoing bill of complaint read and knows the contents thereof, and that the same is true of his own knowledge, except as to matters stated to be on information and belief, and as to these matters he believes it to be true.

And deponent further saith, that since the incorporation by the Legislature of this State of the Vineland Gas Light Company, a portion of the then territory of Landis township has been set off and created into a borough known as the borough of Vineland; that on or about the sixteenth day of November last past, the Vineland Light and Power Company placed along and upon Main road or Main avenue from Landis avenue in the township of Landis southwardly to Chestnut avenue in said township, divers sections or lengths of gas mains, and on the same day commenced through its employes and laborers to dig up and excavate said Main road or Main avenue for the purpose of laying gas pipe therein, and that they were actively engaged in said work of opening ditches in said street or avenue as aforesaid when the work was stopped by an order issuing out of the Court of Chancery on the seventeenth day of November last past; that thereafter said Vineland Light and Power Company commenced the excavation and digging of trenches for the purpose of

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laying gas pipe in, along and upon West avenue from Landis avenue to Chestnut avenue, and had pipe strewn along said road for the purpose of laying in said trenches, when said work was enjoined by a further order issuing out of this Court on the twenty-third day of November last past; that the ditches or trenches dug by the said Vineland Light and Power Company are still open, and the pipe to be laid in the same still remains on said roads alongside said ditches ready to be laid; that the ditches or trenches so dug by said Vineland Light and Power Company, or of which they have commenced the digging, are at least one mile in extent along and upon the public roads in the borough of Vineland and in the township of Landis; that deponent has heard J. Hector McNeil holding himself out as the representative and agent of the Vineland Light and Power Company, declare that it was the intention of said company to excavate or dig ditches and lay pipes along the whole length of Main road or Main avenue southwardly to Millville, a distance of some five miles, and also to dig up certain other streets, roads and highways in the borough of Vineland and in the township of Landis, and to lay pipe therein.

And upon information this deponent says, that the said John R. Farnum, after his purchase of the property, rights and franchises of the Vineland Gas Light Company, did not organize any new corporation by the election of officers and directors and the issue of stock, pursuant to the statute, nor did he, the said John R. Farnum, convey the property, corporate rights and franchises acquired by him to any other corporation organized for the purpose of accepting the same, or having the power to purchase the same.

And deponent further saith, that he has been informed by the officials of the borough of Vineland and of the township of Landis that no franchise, grant, or right to use any of the streets, roads, highways or other public places in said municipalities has ever been made or given

by the municipal authorities of said borough or said township to the said Vineland Light and Power Company.

Deponent further saith, that he was present at the hearing before the Attorney-General upon the application for quo warranto, at which time the said Vineland Light and Power Company was represented by three different attorneys, all of whom spoke in opposition to the application, and that upon said application the facts and circumstances stated in this bill were fully brought to the attention of the Attorney-General before argument was had upon said application. 10

Deponent further saith, that he was present in the Court of Chancery, in the city of Camden, on Monday, the twenty-sixth day of November last past, when argument was had before the Honorable Edmund B. Leaming, Vice Chancellor, upon a rule to show cause with a restraining order in a suit wherein the Millville Gas Light Company was complainant, and the Vineland Light and Power Company was defendant, at which time he heard the counsel for the defendant state by way of interruption in the argument of the counsel for the complainant, that the said defendant company claimed no franchise or right to the streets in the Borough of Vineland or township of Landis under the General Corporation Act, under which it was incorporated, but that their claim of right was under the lease made to them by Arthur A. Holbrook. 20

S. J. FRANKLIN.

Sworn and subscribed before me this thirteenth day of December, A. D. 1906.

WILBERT V. PIKE, 30  
Attorney-at-Law of N. J.

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

GEORGE N. WATKINS, of full age, being duly sworn according to law, on his oath saith, that he made the copies of the papers in Schedules A to J inclusive, and has

carefully prepared the same. Schedule A is a true copy from the act of the Legislature as found in the Pamphlet Laws of 1870, page 577; that B, C, D and E are true copies of duly certified copies of the deeds and the lease contained in said schedules, the original certified copies being in the possession of the complainant; that Schedules F and G are true copies of certified copies of said certificate of incorporation and amendment thereof, which original copies are in the possession of the complainant, and that Schedules H, I, J are true copies of the originals made by deponent.

GEORGE N. WATKINS.

Sworn and subscribed to before me this fourteenth day of December, A. D. 1906.

MATTHEW JEFFERSON,  
M. C. C. of N. J.

IN CHANCERY OF NEW JERSEY.

20 Between

ROBERT H. McCARTER, Attorney

General,

Informant,

ON INFORMATION,

and

Etc.

30 VINELAND LIGHT AND POWER

RULE.

COMPANY,

Defendant.

On reading and filing the information in the above matter and the exhibits and affidavits thereto annexed, it is, on this fourteenth day of December, in the year of

our Lord one thousand nine hundred and six, ordered, that the Vineland Light and Power Company, defendant, show cause before the Chancellor, on Monday, the twenty-fourth day of December instant, in the Chancery Chambers, in the city of Camden, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard thereon, why an injunction should not issue pursuant to the prayer of the informant.

And in the meantime, and until further order of this Court in the premises, it is ordered, that the defendant company, its officers, servants, employes and agents, be and they are hereby enjoined and restrained from constructing any extension to its gas plant or gas system and from opening or digging ditches or trenches in any of the streets, roads, highways or other public places in the township of Landis and in the borough of Vineland, Cumberland county, New Jersey, for the purpose of laying any gas pipe therein, and from laying pipes for any extension in the trenches already opened, provided this order shall not prevent the defendant company from making repairs or house connections in the borough of Vineland; and that the information, or a copy thereof, together with a copy of this order marked true copies by counsel for the informant, be served on the defendant company within three days from the date hereof by delivering the same to the president of said defendant company or its duly registered agent in this State.

W. J. MAGIE,  
C.

Respectfully advised.

E. B. LEAMING,  
V. C.

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Continuance to January 7, 1907.

## IN CHANCERY OF NEW JERSEY.

	Between	
	ROBERT H. McCARTER, Attorney	} ON INFORMATION.
	General of the State of New	
10	Jersey,	
	Informant,	
	and	} CONTINUANCE.
	THE VINELAND LIGHT AND	
	POWER COMPANY,	
	Defendant.	

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The order to show cause why an injunction should not issue in this case being continued until to-day, and application being made on behalf of the defendant for a further continuance and leave to fill up the ditch dug by defendant in Main road, and counsel for informant assenting thereto,

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It is, on this seventh day of January, nineteen hundred and seven, ordered that the hearing of said order to show cause be continued to January twenty-first instant, at ten o'clock in the forenoon, at the Chancery Chambers in Camden, and that defendant be permitted to fill up the ditch in main road dug by it.

E. B. LEAMING,  
V. C.

*Answer filed January 21, 1907.*

IN CHANCERY OF NEW JERSEY.

Between

ROBERT H. McCARTER, Attorney

General,

Informant,

and

VINELAND LIGHT AND POWER

COMPANY,

Defendant.

ON INFORMATION, 10

&c.

ANSWER.

The answer of Vineland Light and Power Company, defendant, to the information of Robert H. McCarter, Attorney General of the State of New Jersey, informant. 20

This defendant, answering, says it admits that The Vineland Gas Light Company was incorporated by an act of the Legislature of the State of New Jersey, approved March 15, 1870 (laws of 1870, page 577, &c.), whereby it was, among other things, given all the power and authority mentioned in the first paragraph of said information, and this defendant says said The Vineland Gas Light Company was thereby with its successors expressly given perpetual succession with the power and authority to enter into and execute contracts, agreements or covenants in relation to the objects of the corporation and of enforcing the same and be capable of purchasing, holding, leasing, mortgaging and conveying any estate, real and personal, necessary to give effect to the purposes of the corporation for the accommodation of its 30

business and concerns and was further given the power, among other things, to do all things necessary to light the said township or any part thereof as then existing, or under whatever corporate name or names the same might thereafter exist and the dwellings, stores and other places situated therein.

10 This defendant, further answering, admits the insolvency proceedings and the sale by Daniel Washburn, Receiver of The Vineland Gas Light Company, to John R. Farnum of all the property and franchises of said The Vineland Gas Light Company, the confirmation of such sale and the deed therefor as in the second paragraph of said information set forth, a true copy of which deed is hereto annexed and made part hereof and which deed by its terms conveyed said property and franchises to said Farnum, his heirs, executors, administrators and assigns.

20 This defendant, further answering, admits that said John R. Farnum did make and execute to Arthur A. Holbrook a deed, a copy of which is hereto annexed, hereby referred to and made part hereof, whereby this defendant says he did grant and convey to said Arthur A. Holbrook among other things all the property and franchises of said The Vineland Gas Light Company.

This defendant, further answering, says that said Arthur A. Holbrook did make and execute to this defendant a deed, a copy whereof is hereto annexed, hereby referred to and made part hereof.

30 This defendant, further answering, says that said Arthur A. Holbrook did make and execute to this defendant a lease of the chartered rights, privileges and franchises of The Vineland Gas Light Company, a copy of which is hereto annexed, hereby referred to and made part hereof.

This defendant, further answering, says that on the ninth day of March, nineteen hundred, this defendant became incorporated under and by virtue of the pro-

visions of an act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (reversion of 1896)" and the several supplements thereto and acts amendatory thereof, a copy of its certificate of incorporation being hereto annexed, hereby referred to and made part hereof.

This defendant, further answering, admits that it afterwards filed an amended certificate of incorporation increasing its capital stock and authorizing the issue of preferred stock, as in said bill set forth. 19

This defendant, further answering, says that after the incorporation of The Vineland Gas Light Company, the erection of its gas works and the operation thereof for about ten years, in the year eighteen hundred and eighty a tract of land about one mile square in the center of Landis township was duly incorporated as the borough of Vineland. The remaining portion of said township continued and still continues to be the township of Landis, in the county of Cumberland.

This defendant, further answering, says that the plant and gas works operated by this defendant were erected by The Vineland Gas Light Company under the authority aforesaid, in the year eighteen hundred and seventy, and were operated by said The Vineland Gas Light Company from the year eighteen hundred and seventy to the year eighteen hundred and eighty-four, when insolvency proceedings were commenced against it, resulting in a sale as aforesaid by Daniel Washburn, receiver of all its property and franchises, to said John R. Farnum. That said John R. Farnum at the time of his purchase of said property and franchises was represented and advised by Col. William E. Potter, who was then considered one of the ablest lawyers of this State and was one whose advice was much sought after by other members of the bar. Said Farnum at the time of said purchase was advised by said Potter that he, Farnum, could use the gas works and franchises of said The Vine- 20 30

land Gas Light Company in the same manner as said The Vineland Gas Light Company could have done before the appointment of a receiver; that he, said Farnum, would not be obliged to form a new company; that if he had capital and means to do it he was at perfect liberty to exercise it himself, and that he, said Farnum, had the right to sell said property and franchises to anyone. Some ten or twelve years later said Potter advised said Farnum as to his title to said property and franchises and right to operate and sell the same in the same manner and to the same effect as above set forth. Said Farnum was seeking to comply with the restriction of the law and under the advice of counsel operated said gas plant and supplied the public and the inhabitants of the said township and borough with gas from the year eighteen hundred and eighty-four to the year nineteen hundred. The failure to re-organize the company after the receiver's sale was due to no effort to defraud or injure anyone and without corrupt intention but in the belief and upon the advice of counsel that the statute, which is now section 32 of the general corporation act, gave the purchaser and those claiming under him the right to hold, use and enjoy the chartered rights, privileges and franchises of The Vineland Gas Light Company for an unlimited time, as by its charter said The Vineland Gas Light Company and its successors were given perpetual succession.

And this defendant further says, that said John R. Farnum, Arthur A. Holbrook and this defendant were each advised by counsel learned in the law that said John R. Farnum or Arthur A. Holbrook could sell or lease the property and franchises aforesaid and that this defendant could purchase or become lessee thereof from said John R. Farnum or Arthur A. Holbrook; that this defendant would acquire thereby a good and indefeasible estate in said property and franchises and that this defendant could then exercise and operate the said gas

plant property and franchises in said township of Landis and borough of Vineland as fully as said The Vineland Gas Light Company could have done before the application for a receiver.

This defendant, acting upon said advice and believing it to be correct, thereupon purchased from said John R. Farnum and Arthur A. Holbrook the real estate and property aforesaid and took a ninety-nine year lease of said franchises and paid said Farnum and Holbrook therefor. This defendant has always sought to comply with the restrictions of the law and under the advice of counsel has in good faith operated said plant and supplied the public and the inhabitants of said township and borough with gas from the year nineteen hundred to the present time. This defendant has so operated said plant, in the belief and upon the advice of counsel that the statutes of this State gave the purchaser and those claiming under him the right to hold, use and enjoy the chartered rights, privileges and franchises of The Vineland Gas Light Company for an unlimited time, as by its charter said The Vineland Gas Light Company and its successors were given perpetual succession.

This defendant further says, that this defendant was formed by said John R. Farnum for the purpose of taking over the plant and franchises held by said Farnum as aforesaid, and the various deeds and lease whereby the property and franchises aforesaid became vested in this defendant were part of a pre-arranged plan to transmit the title from said Farnum to this defendant and the purchase money therefor was paid to said Farnum in instalments as the bonds of this defendant were sold.

This defendant further says, that for over thirty years last past the inhabitants of what is now the borough of Vineland and the parts of the township of Landis adjacent thereto have been supplied continuously with gas from said plant as the public required the same. This defendant has operated said plant and gas works con-

tinuously since the fourth day of April, nineteen hundred, supplying gas in and through the borough of Vineland and in portions of the township of Landis on its main thoroughfares, roads and avenues adjacent to said borough and has from time to time, as its business required, extended its plant and laid pipes in various streets, lanes and avenues extending from and through the borough of Vineland and into the township of Landis.

10 That there has been in existence, use and operation a line of gas pipe extending from its works in the borough of Vineland to the State Institution for Feeble Minded Women, and also to the New Jersey Training School for Feeble Minded Girls and Boys, located on Landis avenue, about one mile and a half eastwardly from the center of the borough of Vineland, for the past thirteen years, and an extension of its pipes to the building known as the Soldiers' Home, in Landis township, for more than fifteen years last past; and that the pipes of said company

20 have been extended through Myrtle street, State street and Columbia avenue, three streets lying in the township of Landis, eastwardly of the borough of Vineland, for four or five years last past, also on Michigan avenue and Park avenue; also Crystal avenue and Division street, and on the West Boulevard south to the Capital Glass Works, through all of which streets, which are in the township of Landis adjacent to the borough of Vineland, defendant gas company has for several years last past extended its gas pipes to furnish the inhabitants and people thereof with gas.

30 That the public and municipal authorities, both in the borough of Vineland and in the township of Landis, have always acquiesced and consented in the construction of all lines, both new and old, laid by said defendant company and each of its predecessors who have carried on the business of manufacturing and distributing gas in said borough and township, and the right so to do has

never been questioned or contested by any person or corporation, public or private.

The borough of Vineland was created out of the township of Landis in the year 1880. No other company has any gas franchise for either the township of Landis or the borough of Vineland, and no company other than the defendant is engaged in manufacturing or supplying gas in either the same township or borough. No other gas company ever claimed the right to operate in Landis township.

The municipal authorities of said township and borough have given no consent to any other company to lay gas pipes therein. **10**

Up to the time of the filing of said information no other company had ever laid any gas pipes in either said township or borough. Shortly prior to the construction of said gas plant all the land where defendant now operates was bush land. The said defendant and its predecessors in possession of said plant have gradually increased said plant and extended the mains as the public needs have from time to time required it. **20**

That prior to the year nineteen hundred, said Vineland Gas Light Company and said John R. Farnum had extended their gas pipes and mains throughout the borough of Vineland and on many of the streets and roads outside of said borough in the township of Landis. The defendant has been operating said plant since its purchase of the real estate and lease of the franchises, in the year nineteen hundred, and has from time to time extended its gas pipe and mains in said township.

All extensions have been a gradual growth. The line which was being constructed by the defendant in said township, at the time of the restraint upon the bill of complaint filed by Millville Gas Light Company in said information mentioned, was not being laid or constructed with any unusual or undue haste or with any intention to disregard the law or any disposition to render an appeal to the courts prior to the completion of the work **30**

impossible. With a desire to further accommodate and supply the public and inhabitants with gas and thereby increase the earning power of the defendant, it proceeded with what it has long intended to do in the regular course of business. The restraint above mentioned at the suit of Millville Gas Light Company has since been dissolved and removed.

10 The trenches along the line upon which defendant was laying pipe at the time of the filing of said information do not to any appreciable extent obstruct or delay public travel and do not irreparably or in any way injure any public rights.

20 The defendant company is in good faith engaged in a public work and is constantly supplying gas for lighting and heating to inhabitants of the borough of Vineland and to the inhabitants of portions of the township of Landis surrounding said borough. It also is engaged in furnishing light for public buildings and State institutions in said territory. The defendant company paid to John R. Farnum and Arthur A. Holbrook, as a consideration for the property and franchises of the Vineland Gas Light Company in the year nineteen hundred, a full and fair price for a good title to said property and franchises and said defendant since said purchase has continuously in good faith and for the public benefit operated said plant and has expended over thirty-eight thousand dollars in improvements to its said plant and the extension thereof in said township and borough and enabling it to furnish better service. The defendant company is now engaged in furnishing and supplying gas to about eight  
30 hundred and fifty families within said borough and township, and is also engaged in supplying gas as aforesaid for lamps for public lighting. The operation of its gas plant by the defendant and the natural growth thereof is no serious injury or inconvenience, but on the contrary supplies the public with what has become a necessity. To grant the prayer of said information would cause great

injury to the defendant and occasion great inconvenience to and be a great hardship to the public.

For about sixteen years John R. Farnum was permitted to hold and operated said franchise. For over six years the defendant company claiming under said Farnum has been permitted to hold and operate said franchise. Said John R. Farnum and the defendant have each been engaged openly and in full view. During that time they and each of them have expended large sums of money in improving and gradually extending the plant. The State has recognized the title of each of them and has received from the defendant a franchise tax each year upon the franchise of a gas company so operated by it. Up to the time of the filing of this information the public have taken no action whatever in the premises, but by delay and acceptance of franchise taxes have acquiesced in the construction placed by the defendant and those through whom it claims upon the statutes applicable to this case. 10

That Landis township in 1865 contained 3,050 inhabitants. In 1875 said township had 5,431 inhabitants. In 1880 the borough of Vineland was formed. In 1885, not including the borough of Vineland, said township had a population of 3,851. The borough of Vineland in the same year last mentioned had 3,170 inhabitants. In 1895, not including the borough, the township had a population of 4,660, and the same year the borough had a population of 4,126. In 1905, not including the borough, the township had a population of 5,351, and the same year the borough had a population of 4,593, according to the compendium of censuses issued by the Secretary of State. 20

That the State of New Jersey has annually demanded and received from this defendant a franchise tax based upon its operation of a gas company franchise. In the year nineteen hundred and one the amount of such franchise tax was two hundred and seventeen dollars and forty-three cents; in nineteen hundred and two, two hundred and sixty-one dollars and thirty-one cents; in 30

nineteen hundred and three, three hundred and twenty-one dollars and eighty-six cents; in nineteen hundred and four, three hundred and forty-nine dollars and sixty-two cents; in nineteen hundred and five, three hundred and forty-nine dollars and forty-nine cents; in nineteen hundred and six, three hundred and sixty-nine dollars and eighty-four cents.

**10** This defendant further says, if any mistake was made in construing the law as counsel for said Farnum and counsel for this defendant have construed it, it was an honest mistake. To grant the prayer of said bill would cause great injury to the defendant and occasion great inconvenience to the public.

**20** This defendant, further answering the allegations of said information, denies that this defendant possesses no corporate right or franchise to use, occupy, or open any of the streets, roads, highways or other public places in any of the municipalities in this State for the purpose of laying gas pipes and erecting gas posts and denies that its action in the premises is entirely without warrant of law or against the rights of the State and denies that the franchises granted to The Vineland Gas Light Company have become extinguished and denies that the right to use and exercise such franchises did not or cannot pass to and become vested in this defendant and denies that by the deed to said Farnum said Farnum did not have the right and power to hold said property and exercise said franchises for an indefinite period of time and denies that such corporate rights and franchises have become extinguished.

**30** This defendant, further answering, denies that said Farnum and Holbrook were without the power to make the deeds and lease by them respectively made and denies that this defendant was or is without power to receive, hold the same and operate said franchises and denies that the action of this defendant in opening streets and highways and digging trenches and laying

gas pipes therein is a usurpation of the rights of the State or without warrant of law.

This defendant alleges the fact to be, that by reason of the deeds and lease above mentioned this defendant has as full and complete a right to operate and exercise the franchise of The Vineland Gas Light Company as The Vineland Gas Light Company could have done before the appointment of a receiver.

And this defendant submits to this honorable Court, that upon the face of the information informant has shown no right of action; that the rights of the informant in the matter are, to say the least, doubtful; that it appears by said information that to grant the prayer of said information would not only cause great injury to the defendant but occasion great inconvenience to the public; that it also appears by said information that the laches and acquiescence of the State have been such as to make the granting of relief under said information inequitable, and that all and every of the matters in said information mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief in this court; and this defendant hopes it shall have the same benefit of these defence as if it had demurred to the said information. 10  
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And this defendant humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

VINELAND LIGHT AND  
POWER COMPANY,  
J. H. DOWLER, JR.,

President.

EDITH A. YOUNGQUEST,  
Secretary.

[SEAL]

30

STATE OF NEW JERSEY, }  
 COUNTY OF } ss.

The answer of the defendant, Vineland Light and Power Company, was taken this seventh day of January, in the year nineteen hundred and seven, before me, a notary public of the State of New Jersey, duly commissioned and sworn, under the common seal of the said corporation, as by their said seal, thereto affixed, appears.

- 10** Witness my hand and notarial seal.  
 [SEAL] CYRUS D. MARTER,  
 Notary Public.

AN ACT TO INCORPORATE THE VINELAND  
 GAS LIGHT COMPANY.

- 20** 1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that Henry E. Thayer, John B. Allender, Edwin M. Turner, Andrew J. Perry and William A. House, and such other persons as may be hereafter associated with them, be and they are hereby ordained, constituted and declared a body politic and corporate, in fact and in law, by the name of "The Vineland Gas Light Company," and by that name they and their successors may have perpetual succession, and shall in
- 30** places whatsoever, and may have a common seal with power to alter or change the same at pleasure; and by the said name the said corporation shall have power and authority to manufacture, make and sell gas, to be made of bituminous coal or other materials, for the purpose of lighting the streets, buildings, manufactories and other places situate in the township of Landis, in the county of Cumberland, and to enter into and execute contracts,

agreements or covenants in relation to the objects of this corporation and of enforcing the same, and be capable of purchasing, holding, leasing, mortgaging and conveying any estate, real and personal, necessary to give effect to the purposes of this corporation for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold for the purpose of securing debts which have become due to them in the regular business of the said corporation.

2. And be it enacted, that the said corporation shall be and they are hereby empowered to lay down their gas pipes, and to erect gas posts, burners and reflectors, in the streets, alleys, lanes, avenues and public grounds of the township of Landis, and to do all things necessary to light the said township or any part thereof, as now existing, or under whatever corporate name or names the same may hereafter exist, and the dwellings, stores and other places situate therein; provided, that the public travel shall at no time be affected or impeded by the laying of the said pipe or the erection of the said posts, and the streets, sidewalks and cross-walks, public grounds, lanes and avenues, shall not be injured, but all be left in as good and perfect condition as before the laying of the said pipes or the erection of the said posts.

3. And be it enacted, that the capital stock of said company shall be fifty thousand dollars, with power to increase the same, by a vote of the board of directors, to two hundred thousand dollars, to be divided into shares of one hundred dollars each, which shall be deemed personal property, and the said company may organize and commence business whenever ten thousand dollars shall have been subscribed and ten per centum thereof paid in; all stock subscribed shall be paid in at such times and upon such notice as the board of directors of said company may direct.

4. And be it enacted, that the business of said corporation shall be managed and conducted by a board of five

directors, who shall be stockholders in said company, one of whom shall be president thereof, and three members, at least, of said board of directors shall be residents of the State of New Jersey; said board of directors shall have power to appoint such other officers and agents as they shall deem necessary; said board of directors shall hold their office for one year and until others are chosen to fill their places; and that the annual election of said corporation shall be held at such time and place as the  
 10 by-laws of said corporation shall prescribe, ten days' previous notice thereof to be given in some newspaper published in Cumberland county; and until such annual election shall be held the persons named in this act shall be the directors of said corporation, a majority of whom shall be competent to transact business, and that the principal office of said company shall be in the village of Vineland, Cumberland county.

5. And be it enacted, that in case an election of directors should not be held upon the day when, pursuant to the by-laws of said company, it ought to have been  
 20 held, the corporation shall not be deemed dissolved, but the stockholders may proceed to hold an election on any other day, ten days previous notice of the time and place of said election having been given in some newspaper published in said county of Cumberland, at which election and at all meetings of the company each stockholder shall be entitled to one vote in person or by proxy for each share of stock held.

6. And be it enacted, that the township committee of the township of Landis are hereby authorized and em-  
 30 powered to purchase, lay down or erect such gas pipes, gas posts, lamps and burners as they may deem necessary for lighting the streets and public grounds of said township or to make such contract with said company for the lighting of said streets and public grounds as they may deem fit and proper for the interests of said township.

7. And be it enacted, that if any person or persons shall wilfully do, or cause to be done, any act or acts whatsoever, with intent thereby to injure any conduit, pipe, cock, machine or structure whatsoever, or anything appertaining to the works of the said corporation, or whereby the same may be stopped, obstructed or injured, the person or persons so offending shall be considered guilty of a misdemeanor, and being thereof convicted shall be punished by a fine not exceeding three hundred dollars, or imprisonment at hard labor not exceeding two years, or both; provided, such criminal prosecutions shall not in any wise impair the rights of action for damages by a civil suit hereby authorized to be brought for any such injury as aforesaid, by and in the name of the said incorporation, in any court of this State having cognizance of the same. 10

8. And be it enacted, that the stock of the corporation shall be considered personal property and shall be transferred according to its by-laws and regulations; and the company shall keep proper books of account, in which shall be fairly entered all the transactions of the company, and shall be opened at all reasonable times to the inspection of the stockholders. 20

9. And be it enacted, that the said company shall have power to borrow from time to time such sum or sums of money as to them may seem advisable for the carrying out of any of the objects or plans of said corporation (and to secure the same by bond and mortgage, or otherwise, with interest) not exceeding seven per centum per annum on their lands, works, property and franchises, and may receive property suitable for its purposes, at a valuation to be agreed upon in lieu of cash. 30

10. And be it enacted, that the directors of said company shall have power to declare stock forfeited, and all previous payments made thereon, in case of non-payment, when duly called for, if they deem it expedient, and to make such dividends as the profits, plans and rules of the company will allow.

II. And be it enacted, that this act shall take effect immediately.

Approved March 15, 1870.

State of New Jersey, Department of State. Comparing and certifying division. Copy correct; compared by J. L. Hendricks, original read by M. T. Simpson.  
J. L. Hendricks in charge of division.

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STATE OF NEW JERSEY,

(State Seal.)

DEPARTMENT OF STATE.

20 I, S. D. DICKINSON, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of an act passed by the Legislature of this State, and approved by the Governor, the fifteenth day of March, A. D. 1870, as taken from and compared with the original now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this twentieth day of November, one thousand nine hundred and six.

[SEAL]

S. D. DICKINSON,  
Secretary of State.

30

## IN CHANCERY OF NEW JERSEY.

Between

JOHN R. FARNUM, trading, &amp;c.,

Petitioner,

and

THE VINELAND GAS LIGHT COM-

PANY,

Respondent.

ON PETITION, &amp;c. 10

This matter being opened to the Court by Potter & Nixon, of counsel with the petitioner, and upon reading and filing the petition and affidavit of Daniel Washburn, the receiver of the said respondent, The Vineland Gas Light Company, asking the direction of this Court, and it appearing that the said The Vineland Gas Light Company is a work of a public nature in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the corporators and creditors of said company have an interest; and that the machinery and apparatus of said company are out of repair, and expensive repairs are immediately needed or the business of making and furnishing gas, which is the business of said corporation, must cease, and that the running expenses of said company since the said receiver assumed charge have exhausted its available funds.

It is, on this thirty-first day of March, eighteen hundred and eighty-four, by Theodore Runyon, Chancellor of the State of New Jersey, ordered that the said re-

ceiver make sale of the principal work, for the construction of which the said company was incorporated, together with all the chartered rights, privileges and franchises belonging to said company and pertaining to said principal work; and that he give ten days' notice of such sale by hand bills signed by himself and set up in at least five of the most public places in the county of Cumberland, at least one thereof in the township of Landis, in said county, and also published in one newspaper in each of the cities of New York and Philadelphia, and in two of the newspapers of the county of Cumberland.

THEODORE RUNYON,  
C.

A true copy.  
VIVIAN M. LEWIS,  
Clerk.

20

COPY OF DEED.

Washburn, Receiver, to John R. Farnum.

This indenture, made this tenth day of May, in the year eighteen hundred and eighty-four, between Daniel Washburn, of the township of Landis, county of Cumberland and State of New Jersey, Receiver of the Vineland Gas Light Company, a corporation under the laws of the said State of New Jersey, of the first part, and John R. Farnum, of Waltham, county of Middlesex and State of Massachusetts, of the second part.

Whereas, on the thirtieth day of April, in the year eighteen hundred and eighty-four, by an order of the Court of Chancery of the State of New Jersey, in a cause therein depending, wherein John R. Farnum, trading, &c., is complainant and The Vineland Gas Light Company is respondent, and bearing date and entered

on the thirty-first day of March in the year last aforesaid, the said Daniel Washburn, the receiver appointed in the said cause of the said corporation respondent, sold at public sale, after due advertisement in accordance with said order, all the property and franchises of the said The Vineland Gas Light Company to the said John R. Farnum, who was the highest bidder, for the sum of eight thousand dollars;

And whereas, afterwards, on the fifth day of May, an order was duly made and entered in said cause, approving said sale as follows, to wit: **10**

IN CHANCERY OF NEW JERSEY.

Between

JOHN R. FARNUM, trading, &c.,

Petitioner,

and

THE VINELAND GAS LIGHT COM-

PANY,

Respondent.

ON PETITION, &c. **20**

ORDER CONFIRM-

ING SALE.

This matter being opened by Potter & Nixon, of counsel with the said petitioner, and it appearing by his report on file in the office of the clerk of this Court, that the receiver has made sale of the real and personal property and franchises of the said respondent: **30**

It is, on this fifth day of May, in the year eighteen hundred and eighty-four, ordered that the said sale be in all things confirmed, and that the said receiver do pro-

ceed to make conveyances of the said real estate and franchises and give possession of the said personal property, according to the conditions of the said sale; and that he hold the moneys derived therefrom to abide the further order of this Court.

THEODORE RUNYON,  
C.

10 And whereas, all earnings of said corporation respondent, up to the date of this conveyance, were by the said conditions of sale reserved to the said receiver;

Now this indenture witnesseth, that the said Daniel Washburn, receiver as aforesaid, in consideration of the premises and the sum of eight thousand dollars to him in hand paid by the said John R. Farnum, the receipt whereof is hereby acknowledged, has given, granted, bargained, sold, conveyed and confirmed, and by these presents does give, bargain, grant, sell, convey and confirm unto the said John R. Farnum, his heirs, executors, administrators and assigns, all the real estate, franchises and personal property of the said The Vineland Gas Light Company, described as follows:

20 All those several tracts or parcels of land and premises situate in the township of Landis, county of Cumberland and State of New Jersey, bounded and described as follows:

Beginning at a stake on the East Railroad Boulevard, at the distance of one hundred and eighty-eight feet southwardly of the southerly side of Park avenue; and thence extending (1) along the easterly side of the East  
30 Railroad Boulevard south eight and a half degrees west one hundred and fifty feet to a stake; and at right angles thereto between parallel lines in length or depth eastwardly one hundred and fifty feet. Comprising lots numbers four, five and six, of Block number five, of the East District of the town plot of Vineland.

Being the same premises conveyed to the Vineland Gas Light Company by the Equitable Loan and Improvement

Company by deed dated January 18th, A. D. 1878, and recorded in the Cumberland County Clerk's office, in Book of Deeds No. 152, page 90.

Lot No. 2. Beginning at a stake on the northerly side of Peach street, at the distance of one hundred and fifty feet eastwardly of the easterly side of the East Railroad Boulevard; and thence extending (1) north eight and a half degrees east two hundred and nineteen feet to a stake; thence (2) south eighty-one and a half degrees east one hundred feet to a stake; thence (3) south eight and a half degrees west two hundred and nineteen feet to a stake on the northerly side of Peach street aforesaid, and thence (4) along the northerly side of the same north eighty-one and a half degrees west one hundred feet to the place of beginning. Containing twenty-one thousand nine hundred square feet of land strict measure. 10

Being lots numbers eighteen and nineteen of block number five of the east district of the town plot of Vineland. And being the same premises conveyed to the Vineland Gas Light Company by Charles K. Landis, by deed dated May 2d, A. D. 1877, and recorded in the Clerk's office aforesaid in Book of Deeds No. 152, page 92. 20

As by said deeds and the record thereof, relation to the same being had, will more fully and at large appear.

Also the gas works, with their machinery, plant and appurtenances, the purifier and engine house, retort house, coal shed and out building;

Also the delivery pipe and apparatus throughout the town of Vineland, the property of said corporation;

Also all personal property of said corporation of every kind and description (excepting and reserving the earnings of said corporation up to the delivery of these presents), with all fuel and material on hand; 30

Also all the chartered rights, privileges and franchises belonging to the said The Vineland Gas Light Company, and appertaining to the principal work for the construction whereof the said company was incorporated.

Together with all and singular the appurtenances, privileges and hereditaments thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof.

To have and to hold the same unto the said John R. Farnum, his heirs, executors, administrators and assigns, to his and their only proper use, benefit and behoof forever, in as full, ample and beneficial a manner as the said Daniel Washburn, receiver as aforesaid, by virtue of the power and authority of his said office and the orders of sale aforesaid and confirmed thereof, may, can or ought to convey the same.

10 And I, the said Daniel Washburn, do hereby covenant, promise and agree to and with the said John R. Farnum, his heirs and assigns, that I have not, as such receiver as aforesaid, done or caused, suffered or procured to be done, any act, matter or thing whereby the said premises, or any part thereof, with the appurtenances, are or may be charged or encumbered in estate, title or otherwise.

In witness whereof, the said Daniel Washburn, receiver as aforesaid, has hereunto set his hand and seal the day and year first above written.

20 DANIEL WASHBURN. [SEAL]

Signed, sealed and delivered in the presence of,  
J. BOYD NIXON.

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

30 Be it remembered, that on this tenth day of May, in the year eighteen hundred and eighty-four, before me, the subscriber, a Master in the Court of Chancery of New Jersey, personally appeared Daniel Washburn, who I am satisfied is the person named in the foregoing deed, and I having first made known to him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed.

All which is hereby certified.

J. BOYD NIXON.

## COPY OF DEED.

FARNUM TO HOLBROOK.

This indenture, made the twenty-seventh day of March, in the year of our Lord one thousand nine hundred, between John R. Farnum and Henrietta M. Farnum, his wife, of Waltham, county of Middlesex, Commonwealth of Massachusetts, of the first part, and Arthur A. Hollbrook, of Wilkesbarre, State of Pennsylvania, of the second part; 10

Witnesseth, that the said party of the first part, for and in consideration of the sum of forty-five thousand dollars (\$45,000), lawful money of the United States of America well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents, do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, his heirs and assigns, all those several tracts and lots of land and premises situate in the borough of Vineland and in the township of Landis, county of Cumberland and State of New Jersey, bounded and described as follows, to wit: 20

No. 1. Beginning at a stake on the East Railroad Boulevard at the distance of one hundred and eighty-eight feet southwardly of the southerly side of Park avenue, and thence extending (1) along the easterly side of the East Railroad Boulevard south eight and a half degrees west one hundred and fifty feet to a stake, and at right angles thereto between parallel lines in length or depth eastwardly one hundred and fifty feet. Comprising lots numbers four, five and six of block number five of the east district of the town plot of Vineland. Being the same premises conveyed to the Vineland Gas Light 30

Company by the Equitable Loan and Improvement Company, by deed dated January 18th, A. D. 1878, and recorded in the Cumberland County Clerk's office in Book of Deeds No. 152, page 90, &c.

- 10** No. 2. Beginning at a stake on the northerly side of Peach street, at the distance of one hundred and fifty feet eastwardly of the easterly side of the East Railroad Boulevard, and thence extending (first) north eight and a half degrees east, two hundred and nineteen feet to a stake; thence (2) south eighty-one and a half degrees east, one hundred feet to a stake; thence (3) south eight and a half degrees west, two hundred and nineteen feet to a stake on the northerly side of Peach street aforesaid; and thence (4) along the northerly side of the same north eighty-one and a half degrees west, one hundred feet to the place of beginning.

Containing twenty-one thousand nine hundred square feet of land, strict measure. Being lots numbers eighteen and nineteen of block number five of the East District of Vineland aforesaid.

- 20** All the above described tracts being the same premises conveyed to the grantor hereof, John R. Farnum, by Daniel Washburn, receiver of the Vineland Gas Light Company, by deed dated May 10th, A. D. 1884; and recorded in the Clerk's office of Cumberland county aforesaid, in Book 173 of Deeds, folio 418, &c.

- 30** No. 3. Beginning at a point at the southeasterly corner of land formerly of one Boody, at the distance of one hundred and fifty feet eastwardly from the easterly Railroad Boulevard, at a right angle thereto, and at the distance of one hundred and eighty-eight feet southwardly from Park avenue, at a right angle thereto, and extending thence southwardly parallel with said Railroad Boulevard thirty-one feet and at right angles thereto between parallel lines in length or depth eastwardly fifty feet.

Containing fifteen hundred and fifty square feet of land. Comprising the southerly end of lot number nine

of block number five of the East District of Vineland aforesaid. Said last described piece of land being the same premises conveyed to the grantor hereof, John R. Farnum, by Henry S. Alvord and wife, by deed dated January 6th, A. D. 1893, and recorded in the Clerk's office of Cumberland county, New Jersey, in Book of Deeds 217, folio 64, &c.

Together with the gas works located upon the above described land, with their machinery, plant and appurtenances, the purifier, engine house, retort house, coal shed, office buildings and all out-buildings. **10**

Also all the delivery pipes and apparatus set and laid, used and connected with said gas works and plant throughout the borough of Vineland and the township of Landis, Cumberland copnty, in the State of New Jersey, the property of said party of the first part.

Also all the chartered rights, privileges and franchises conveyed to the said party of the first part by the said deed of Daniel Washburn, receiver as aforesaid, and any and all rights, privileges and franchises thereafter acquired and now owned by the grantor in the borough of Vineland aforesaid, and in the township of Landis aforesaid, appertaining to said gas works and the operation thereof. **20**

Together with the good will of the grantor hereof, John R. Farnum, in the business of the manufacture and sale of gas in the borough of Vineland and in the township of Landis aforesaid.

And for the consideration specified in this deed the grantor hereof agrees to and with the said Arthur A. Holbrook, his heirs and assigns, that he will not at any time hereafter engage in the business of the manufacture and sale of gas in the borough of Vineland and in the township of Landis aforesaid. **30**

This indenture shall not be construed so as to include any coal, gas meters not set, or other personal property of the party of the first part except as hereinbefore specified.

Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, 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, both in law and equity, of the said party of the first part, of, in and to the said premises with the appurtenances.

10 To have and to hold the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

20 And the said grantor, John R. Farnum, for himself, his heirs, executors and administrators, does, by these presents, covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he, the said grantor, his heirs, all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him, the said grantor, his heirs and assigns, against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from, through or under him, but against none other.

Shall and will warrant and forever defend.

30 In witness whereof, the said party of the first part to these presents have hereunto set their hands and seals, dated the day and year first above written.

JOHN R. FARNUM, [SEAL.]  
HENRIETTA M. FARNUM, [SEAL.]

Signed, sealed and delivered in the presence of  
CHAS. HALL ADAMS,  
BLANCHE IRENE BRACKETT.

STATE OF MASSACHUSETTS, }  
 SUFFOLK COUNTY, } cs.

Be it remembered, that on this 27th day of March, in the year of our Lord one thousand nine hundred, A. D. (1900), before me, Chas. Hall Adams, a foreign Commissioner of Deeds for New Jersey, personally appeared John R. Farnum and Henrietta M. Farnum, his wife, who, I am satisfied, are the grantors mentioned in the above deed of conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; and the said Henrietta M. Farnum, being of full age, on a private examination apart from her said husband, before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed freely without any fear, threats or compulsion of her said husband. All of which is here certified.

10

CHAS. HALL ADAMS,

A foreign Commissioner of Deeds for  
 New Jersey.

20

\$45 Revenue Stamps attached and canceled.

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This is to certify that the undersigned do hereby associate themselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act concerning corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite to their respective names.

30

First, the name of the corporation is Vineland Light and Power Company.

Second, the location of the principal office in this State is at number 647½ Landis avenue, in the borough of

• Vineland, county of Cumberland and State of New Jersey.

The name of the agent therein and in charge thereof upon whom process against this corporation may be served is Leverett Newcomb.

10 Third. The objects for which this corporation is formed are to make, generate and manufacture, distribute, furnish and sell gas and electricity for light, power and all other uses and purposes for which the same may be used, to the inhabitants, companies, corporations and public generally in the borough of Vineland and in the township of Landis, county of Cumberland, and State of New Jersey, and also in the boroughs, settlements and townships adjacent thereto. The corporation shall have the power to conduct its business in all its branches, at one or more offices, and unlimitedly to hold, purchase, mortgage and convey, real and personal property in the State of New Jersey, and as well in all other States and in foreign countries, and especially in the city of Philadelphia, in the State of Pennsylvania, and in the city of  
 20 New York, and State of New York.

Fourth. The total authorized capital of this corporation is sixty thousand dollars (\$60,000) divided into six hundred shares of the par value of one hundred dollars each.

Fifth. The names and post office addresses of the incorporators and number of shares subscribed for by each, the aggregate of such subscriptions being the amount of the capital stock with which the company will commence business, are as follows :

30

Name.	Post Office Address.	No. of Shares.
Addison A. Sterling,	Wilkesbarre, Pa.....	1 share
John Flanigan,	Wilkesbarre, Pa.....	1 share
John B. Reynolds,	Wilkesbarre, Pa.....	596 shares
Leverett Newcomb,	Vineland, N. J.....	1 share
William MacGeorge,	Vineland, N. J.....	1 share
Total .....		600 shares

Sixth. The period of existence of this corporation is limited to ninety-nine years.

In testimony whereof we have hereunto set our hands and seals the first day of March, Anno Domini, one thousand nine hundred.

ADDISON A. STERLING, [SEAL]  
 JOHN FLANIGAN, [SEAL]  
 JOHN B. REYNOLDS, [SEAL]  
 LEVERETT NEWCOMB, [SEAL]  
 WILLIAM MacGEORGE, [SEAL]

10

Signed, sealed and delivered in the presence of,  
 EDGAR R. JONES.

[Ten cent documentary stamp attached.]

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

20

Be it remembered, that on this the first day of March, Anno Domini nineteen hundred (1900), before me a Commissioner of Deeds for the State of New Jersey, personally appeared Addison A. Sterling, John Flanigan, John B. Reynolds, Leverett Newcomb and William MacGeorge, who I as satisfied are the persons named in, and who executed the within certificate of incorporation, and I having first made known to them severally the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

30

EDGAR R. JONES,  
 Commissioner of Deeds of N. J.

[U. S. toc. stamp, documentary.]

“Endorsed: Received March 5th, A. D. 1900, and recorded in the Clerk’s office of Cumberland county, at 8 o’clock forenoon, in Book B of Corporations, page 261.

GEO. W. BETCHNER,

Filed March 9th, 1900.

Clerk.

GEORGE WURTS,

Secretary of State.”

10

STATE OF NEW JERSEY.

(Coat of Arms.)

DEPARTMENT OF STATE.

I, George Wurts, Secretary of State of the State of New Jersey, do hereby certify, that the foregoing is a true copy of the certificate of incorporation of Vineland Light and Power Company and the endorsements thereon, as the same is taken from and compared with the original and filed in my office on the ninth day of March, A. D. 1900, and now remaining on file therein.

20

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this ninth day of March, A. D. 1900.

[SEAL]

GEORGE WURTS,  
Secretary of State.

DEED.

30

HOLBROOK TO VINELAND LIGHT AND POWER CO.

This indenture, made the thirty-first day of March, in the year one thousand nine hundred, between Arthur A. Holbrook and Emma J. Holbrook his wife, of Wilkesbarre, State of Pennsylvania, of the first part, and Vine-

land Light and Power Company, a corporation of the State of New Jersey, of the second part.

Witnesseth, that the said party of the first part for and in consideration of the sum of fifty thousand dollars (and other good causes and considerations) lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, its successors and assigns; all those several tracts and lots of land and premises, situate in the borough of Vineland, and in the township of Landis, county of Cumberland, and State of New Jersey, bounded and described as follows, to wit:

No. 1. Beginning at a stake on the East Railroad Boulevard, at the distance of one hundred and eighty-eight feet southwardly of the southerly side of Park avenue, and thence extending (1) along the easterly side of the East Railroad Boulevard south eight and a half degrees west one hundred and fifty feet to a stake, and at right angles thereto between parallel lines in length or depth eastwardly one hundred and fifty feet. Comprising lots numbers four, five and six of block number five of the east district of the town plot of Vineland. **20**

No. 2. Beginning at a stake on the northerly side of Peach street, at the distance of one hundred and fifty feet eastwardly of the easterly side of the East Railroad Boulevard; and thence extending (1) north, eight and a half degrees east, two hundred and nineteen feet to a stake; thence (2) south, eighty-one and a half degrees east, one hundred feet to a stake; thence (3) south, eight and a half degrees west, two hundred and nineteen feet to a stake on the northerly side of Peach street aforesaid; and thence (4) along **30**

the northerly side of the same north, eighty-one and a half degrees west, one hundred feet to the place of beginning. Containing twenty-one thousand nine hundred square feet of land strict measure. Being lots numbers eighteen and nineteen, of block number five, of the East District of Vineland aforesaid.

10 No. 3. Beginning at a point at the southeasterly corner of land formerly of one Boody, at the distance of one hundred and fifty feet eastwardly from the easterly Railroad Boulevard, at a right angle thereto, and at the distance of one hundred and eighty-eight feet southwardly from Park avenue, at a right angle thereto; and extending thence southwardly parallel with said Railroad Boulevard thirty-one feet and at right angles thereto, between parallel lines, in length or depth eastwardly fifty feet. Containing fifteen hundred and fifty square feet of land. Comprising the southerly end of lot number nine of block number five, of the East District of Vineland aforesaid.

20 Together with the gas works located upon the above described land, with their machinery, plant and appurtenances, the purifier, engine house, retort house, coal sheds, office buildings and all out buildings.

Also, all the delivery pipes and the apparatus set and laid, used and connected with said works and plant throughout the borough of Vineland and township of Landis, Cumberland county, in the State of New Jersey, the property of the said party of the first part.

30 Being the same property conveyed to the grantor hereof, Arthur A. Holbrook, by John R. Farnum and wife, by deed dated March 27th, A. D. 1900, and intended to be forthwith recorded in the Clerk's office of Cumberland county, New Jersey.

Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and re-

versions, remainder and remainders, 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, both in law and equity, of the said party of the first part, of, in and to the said premises with the appurtenances.

To have and to hold the said premises with all and singular the appurtenances unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever. And the said grantor, Arthur A. Holbrook, for himself, his heirs, executors and administrators, does by these presents covenant, grant and agree to and with the said party of the second part, its successors and assigns, that he, the said grantor, his heirs, all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so to be with the appurtenances unto the said party of the second part, his successors and assigns against him, the said grantor, his heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof. 100

Shall and will warrant and forever defend. 200

In witness whereof, the said party of the first part to these presents have hereunto set their hands and seals, dated the day and year first above written.

ARTHUR A. HOLBROOK, [SEAL.]  
EMMA J. HOLBROOK, [SEAL.]

Signed, sealed and delivered in the presence of 300  
FAITH A. BULLARD.

\$50.50 in revenue stamps attached and cancelled.

STATE OF PENNSYLVANIA, }  
 LUZERNE COUNTY, } ss.

Be it remembered, that on this thirty-first day of March, in the year of our Lord one thousand nine hundred, before me, a notary public residing in and having my office in Wilkesbarre, Pa., personally appeared Arthur A. Holbrook and Emma J. Holbrook, who, I am satisfied, are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, and the said Emma J. Holbrook, being of full age, on a private examination apart from her said husband, before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

Witness my hand and seal the day and year aforesaid.

FAITH A. BULLARD,  
 Notary Public.

20 [NOTARY'S SEAL.]

LUZERNE COUNTY, SS.

The Commonwealth of Pennsylvania, I,  
 [L. s.] Walter B. Koons, Clerk of the Courts in  
 and for said county, do hereby certify  
 that Faith A. Bullard, whose name is signed to the  
 foregoing certificate of acknowledgement, was at the  
 time of taking such acknowledgement a Notary Public  
 in and for said county, duly commissioned and sworn,  
 and residing in said county, and was at the time of  
 taking such acknowledgement duly authorized to take  
 the same and authorized by the laws of said State to  
 take the proof and acknowledgement of deeds and ad-  
 minister oaths generally and other instruments, and that

I am well acquainted with the handwriting of said Faith A. Bullard and verily believe that the above signature to said certificate of acknowledgement is genuine.

In testimony whereof I have hereunto subscribed my name and affixed my official seal at Wilkesbarre, in said county, this 31st day of March, A. D. 1900

WALTER B. KOONS,  
Clerk of the Courts of Luzerne County.

loc. stamp cancelled.

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This indenture, made the thirty-first day of March, nineteen hundred:

Witnesseth, that whereas, by an act of the Legislature of the State of New Jersey, enacted and approved on the fifteenth day of March, Anno Domini, eighteen hundred and seventy, The Vineland Gas Light Company was created and incorporated and authorized thereby to be a body corporate and politic, for the purpose of manufacturing and distributing gas in the township of Landis, as then existing, under whatsoever corporate name or names the same might thereafter exist in the county of Cumberland and State of New Jersey, and thereupon said corporation was, by said act of the Legislature of said State invested with the chartered rights, franchises and privileges to enter into and upon all of the streets, alleys, lanes, avenues and public grounds of the said township of Landis or any part thereof as now existing, under whatever name or names the same might thereafter exist, and lay down their or its gas pipes, mains and conductors, to erect gas posts, burners and reflectors in any part of said territory and in pursuance of said act, and to accomplish the object of its incorporation said Vineland Gas Light Company forthwith erected and constructed an ample and complete gas works in said town-

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- ship to manufacture and supply all demands; public and private, for gas in said territory, and for that purpose laid its mains and distributing pipes in the streets, alleys, avenues and public grounds and erected its gas posts, burners and reflectors in said territory wherever the same were needed and required to be placed for general use, which chartered rights and franchises were continuously exercised and made useful and available in the prosecution of the said business of the Vineland Gas
- 10** Light Company, from and after the enactment of said law, whereby the same was given and granted unto the fifth day of January, eighteen hundred and eighty-four, at which time a suit was instituted in the Court of Chancery of New Jersey, wherein John R. Farnum, one of the stockholders of said Vineland Gas Light Company, was complainant, and the said Vineland Gas Light Company was defendant, and such proceedings were therein had and taken whereby a final decree was made
- 20** in said cause by the Chancellor of the State of New Jersey, bearing date March 31st, 1884, directing Daniel Washburn, receiver, duly appointed in said cause, whereby said receiver was ordered and directed to sell at public vendue all of the property and estate, real and personal, of the said Vineland Gas Light Company, together with all its chartered rights, franchises and privileges, whereby it was invested by virtue of the said act of the Legislature of the State of New Jersey, to the highest bidder, and whereas, on the tenth day of May, eighteen hundred and eighty-four, in pursuance of said decree, all of the property, real and personal, of said
- 30** Vineland Gas Light Company, together with all its said chartered rights, franchises and privileges aforesaid, were sold by said receiver to John R. Farnum, the complainant in said cause; and whereas, the said Farnum has heretofore, from the date of said sale until the twenty-seventh day of March, nineteen hundred, operated said gas works and availed himself of all the chartered

rights, franchises and privileges aforesaid, in the territory above described, and on the said twenty-seventh day of March, said Farnum sold and conveyed all of said gas works, real and personal, including all improvements and extensions thereto, and appurtenances therewith belonging, together with all of said chartered rights, franchises and privilege, to one Arthur A. Holbrook; and whereas, the said Arthur A. Holbrook, by deed of conveyance, bearing date March thirty-first, nineteen hundred, sold and conveyed said gas works, including all real and personal property and appurtenances therewith belonging, to the Vineland Light and Power Company, a corporation created under and by virtue of the laws of the State of New Jersey, for the purpose of manufacturing and distributing gas in the same territory above described. **10**

And whereas, the said Vineland Light and Power Company is desirous of availing itself of all the benefits and advantages in the operation, extension and improvements of said gas works in the territory above named. **20**

Therefore this indenture witnesseth, that for and in consideration of one thousand dollars, lawful money of the United States of America, to the said Arthur A. Holbrook in hand paid by the Vineland Light and Power Company, and for divers other good causes and considerations thereunto moving, the receipt whereof is hereby acknowledged, the said Arthur A. Holbrook doth hereby transfer, make over and lease unto the said Vineland Light and Power Company, the said lessee, its successors and assigns, to use and enjoy all the chartered rights, franchises and privileges above described, granted by the said act of the Legislature of the State of New Jersey and conveyed to said Holbrook as aforesaid, and heretofore used in the territory above named, and hereafter to be used, with said gas works and all its improvements and extensions for and during the period **30**

of ninety-nine years from and after the date hereof, in as full, ample and complete a manner in every respect and particular as he, the said lessor, Arthur A. Holbrook, could have used and enjoyed the same if this indenture of lease had not been made and executed.

In testimony whereof, said lessor, Arthur A. Holbrook, hath hereunto set his hand and seal the day and year first above written.

ARTHUR A. HOLBROOK, [SEAL.]

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Signed, sealed and delivered in the presence of  
LEVERETT NEWCOMB.

2 50c. Rev. Stamps attached and canceled.

20 STATE OF NEW JERSEY, }  
CUMBERLAND COUNTY, } ss.

Be it remembered, that on this thirty-first day of March, in the year of our Lord one thousand nine hundred, before me, one of the Masters in the Court of Chancery of New Jersey, personally appeared Arthur A. Holbrook, who, I am satisfied, is the grantor mentioned in the foregoing deed of lease, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

LEVERETT NEWCOMB,  
Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

ROBERT H. McCARTER, Attorney

General,

Informant,

ON INFORMATION.

and

AFFIDAVIT. **10**

VINELAND LIGHT AND POWER

COMPANY,

Defendant.

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

WILLIAM MACGEORGE, of full age, being duly sworn according to law, on his oath says: **20**

That he has lived in Vineland, New Jersey, for about thirty years last past, and that for about three years onward from April 4th, 1900, he was the general manager of the Vineland Light and Power Company; and that the gas plant of said company is located in the borough of Vineland, county and state aforesaid, on the corner of the East Boulevard and Peach street, and has been located there for about thirty years last past; and that from said plant the inhabitants of the borough of Vineland and Landis township, in the parts now adjacent to said borough in said township, have been supplied continuously with gas as the public required the same, and that in the principal streets of Vineland they have been supplied with gas from said plant for about thirty years, and in the principal streets in Landis township, adjacent to said borough, for about fifteen years **30**

last past; and that he was an employee as general manager of the Vineland Light and Power Company in the spring of 1900, when said company became interested as owner of this gas plant in the borough of Vineland, and that after said formation of said Vineland Light and Power Company and within four years thereafter said Vineland Light and Power Company expended over and above the sum of thirty-eight thousand dollars in the improvement and extension of said gas plant in the borough of Vineland, in the township of Landis.

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That deponent has for several years been clerk of the borough of Vineland, and is familiar with the records thereof, and that he has thoroughly examined the same; and that he is also familiar with the records of Landis township and the Clerk's book containing the same, and that he has thoroughly examined the same and knows that there is nothing in the records of either municipalities to show that any other company than the defendant ever had or obtained any right to use the public streets, roads or thoroughfares in any part of said

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township or borough to lay gas pipes, mains or fixtures. No other company than the defendant and its predecessors in title up to the year 1907 has ever laid any gas pipes or fixtures either in said borough or township. That Landis township in 1865 contained 3,050 inhabitants. In 1875 said township had 5,431 inhabitants. In 1880 the borough of Vineland was formed. In 1885, not including the borough of Vineland, said township had a population of 3,851. The borough of Vineland in the same year last mentioned had 3,170 inhabitants. In

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1895, not including the borough, the township had a population of 4,660, and the same year the borough had a population of 4,126. In 1905, not including the borough, the township had a population of 5,351, and the same year the borough had a population of 4,593, according to the compendium of censuses issued by the Secretary of State.

Deponent was present when said Vineland Light and Power Company was advised by Leverett Newcomb, Esq., its counsel, that the title acquired by the defendant company would be a good and indefeasible estate in said property and franchises and that the defendant could operate said plant and franchises as full as said Vineland Gas Light Company could have done before the application for a receiver. The said defendant thereupon proceeded to operate said plant and pay to the State each year the franchise tax of a gas company thereon, which the State regularly demanded and received. The plant was operated without effort to deceive or injure any one and without corrupt intention, believing its rights to be as advised by counsel. It was seeking to comply with the restrictions of the law and if a mistake was made in so construing the law on operating thereunder it was an honest mistake. 10

WM. MACGEORGE,

Sworn and subscribed before me this eighteenth day of January, 1907. 20

EDGAR R. JONES,  
Attorney-at-Law of New Jersey.

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

JOSEPH H. DOWLER, of full age, being duly sworn according to law, on his oath says: 30

That he lives in the borough of Vineland, New Jersey, and that he is the treasurer and general manager of the plant and gas works of The Vineland Light and Power Company, the defendant in the above entitled cause, and has been connected with said plant and gas works for the last four years, and has a knowledge of the opera-

tion of said plant and gas works since the year eighteen hundred and seventy.

That said plant and gas works was erected in the year eighteen hundred and seventy by the Vineland Gas Light Company, a corporation of the State of New Jersey, incorporated by special act of the Legislature of New Jersey, entitled "An Act to incorporate The Vineland Gas Light Company," approved March 17th, 1870, laws of 1870, page 577.

- 10** That under and by virtue of its said charter said Vineland Gas Light Company operated said plant until the year 1884, when insolvency proceedings were commenced against it in the Court of Chancery of New Jersey, in a suit wherein John R. Farnum, trading, &c., was petitioner and The Vineland Gas Light Company was respondent; and that such proceedings were had thereon as against said respondent; that Daniel Washburn was appointed receiver for the property and business of the said respondent; and that in pursuance of said proceedings an order and decree was made in said cause on the thirty-first day of March, eighteen hundred and eighty-four, wherein and whereby said receiver was ordered to make sale of the principal work for the construction of which said company was incorporated, together with all the chartered rights, privileges and franchises belonging to said company and pertaining to said principal work. A true copy of which order and decree is hereto annexed and made a part hereof.

- 30** And which said receiver, in pursuance of said order and decree, did make sale of said principal works, together with all of its chartered rights and franchises, to the said John R. Farnum, by deed dated May 10th, 1884, and recorded in the Clerk's office of Cumberland county, New Jersey, on May 10th, 1884, in Book of Deeds 173, folio 418, &c., a compared and true copy thereof is hereto annexed, which grant and deed conveyed unto the said John

R. Farnum all of said principal works, franchises and chartered right belonging therewith. Which said compared deed is made a part hereof.

And that said John R. Farnum then became absolute owner of said principal works, together with its chartered rights and franchises, and by virtue thereof carried on the business of manufacturing and distributing gas to the public from the date of said deed up to April 4th, 1900, in the township of Landis and borough of Vineland, New Jersey.

That the said Vineland Light and Power Company has operated said plant and gas works continuously since the fourth day of April, 1900, supplying gas in and through the borough of Vineland and in portions of the township of Landis on its main thoroughfare, roads and avenues adjacent to said borough, and has from time to time, as its business required, extended its plant and laid pipes in various streets, lanes and avenues, extending from and through the borough of Vineland and into the township of Landis.

That there has been in existence, use and operation a line of gas pipe extending from its works in the borough of Vineland to the State Institution for Feeble Minded Women, and also to the New Jersey Training School for Feeble Minded Girls and Boys, located on Landis avenue about one mile and a half eastwardly from the center of the borough of Vineland, for the past thirteen years, and an extension of its pipes to the building known as the Soldier's Home, in Landis township, for more than fifteen years last past, and that the pipes of said company have been extended through Myrtle street, State street and Columbia avenue, three streets lying in the township of Landis, eastwardly of the borough of Vineland, for four or five years last past, also on Michigan avenue and Park avenue, also Crystal avenue and Division street, and on the West Boulevard south to the Capital Glass works, through all of which streets, which are in the township of Landis adjacent to the borough of Vineland, defendant

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gas company has for several years last past extended its gas pipes to furnish the inhabitants and people thereof with gas.

10 That the borough of Vineland comprises a tract of land about one mile square in the center of Landis township, and that the same was duly incorporated as a borough in the year 1880, and that about twenty-five years ago had about twenty-five hundred inhabitants, and that since that time it has gradually increased until it now has about five thousand inhabitants, and that about ten years ago the territory outside of the borough of Vineland, and known as the township of Landis, had about forty-six hundred inhabitants and since that time has gradually increased so that at the present time it has about five thousand four hundred inhabitants.

20 That the public and municipal authorities both in the borough of Vineland and in the township of Landis, have always acquiesced in and consented to the construction of all lines, both new and old, laid by said defendant company, and each of its predecessors who have carried on the business of manufacturing and distributing gas in said borough and township, and the right so to do has never been questioned or contested.

30 The borough of Vineland was created out of the township of Landis in the year 1880. No other company has any gas franchise for either the township of Landis or the borough of Vineland, and no company other than the defendant is engaged in manufacturing or supplying gas in either the said township or borough. Up to the year 1907, no other company had ever laid any gas pipes in either said township or borough. Shortly prior to the construction of said gas plant all the land where defendant now operates was bush land. The said defendant and its predecessors in possession of said plant have gradually increased said plant and extended the mains as the public needs have from time to time required it.

That prior to the year nineteen hundred said Vineland Gas Light Company and said John R. Farnum had ex-

tended their gas pipes and mains throughout the borough of Vineland, and on many of the streets and roads outside of said borough in the township of Landis. The defendant has been operating said plant since its purchase of the real estate and lease of the franchises in the year nineteen hundred, and has from time to time extended its gas pipe and mains in said township. All extensions have been a gradual growth. The line which was being constructed by the defendant in said township at the time of the restraint upon the bill of complaint filed by Millville Gas Light Company in said information mentioned, was not being laid or constructed with any unusual or undue haste or with any intention to disregard the law by any disposition to render an appeal to the courts prior to the completion of the work impossible. With a desire to further accommodate and supply the public and inhabitants with gas, and thereby increase the earning power of the defendant, it proceeded with what it had long intended to do in the regular course of business. The restraint above mentioned at the suit of Millville Gas Light Company has since been dissolved and removed.

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The trenches along the line upon which defendant was laying pipe at the time of the filing of this information do not to any appreciable extent obstruct or delay public travel and do not irreparably or in any way injure any public right.

The defendant company is in good faith engaged in a public work and is constantly supplying gas for lighting and heating to inhabitants of the borough of Vineland and to the inhabitants of portions of the township of Landis surrounding said borough. It is also engaged in furnishing light for public buildings and State institutions in said territory. Said defendant, since 1900, has continuously, in good faith and for the public benefit, operated said plant and has expended over thirty-eight thousand dollars in improvements to its said plant and the extension thereof in said township and borough and

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enabling it to furnish better service. The defendant company is now engaged in furnishing and supplying gas to about eight hundred and fifty families within said borough and township and is also engaged in supplying gas as aforesaid for lamps for public lighting. The operation of its gas plant by the defendant and the natural growth thereof is no serious injury of inconvenience, but on the contrary supplies the public with what has become a necessity. To grant the prayer of said information would cause great injury to the defendant and occasion great inconvenience to and be a great hardship to the public.

10 For about sixteen years John R. Farnum was permitted to hold and operate said franchise. For over six years the defendant company claiming under Farnum has been permitted to hold and operate said franchises. Said John R. Farnum and the defendant have each been so engaged openly and in full view. During that time they and each of them have expended large sums of money in improving and gradually extending the plant.

20 The State has recognized the title of each of them and has received from the defendant a franchise tax each year upon the franchise of a gas company so operated by it. Up to the time of the filing of this information the public have taken no action whatever in the premises but by delay and acceptance of franchise taxes have acquiesced in the construction placed by the defendant and those through whom it claims upon the 82d section of the corporation act.

JOSEPH H. DOWLER.

30 Sworn and subscribed before me this eighteenth day of January, A. D. 1907.

EDGAR R. JONES,  
Attorney-at-Law of N. J.

## IN CHANCERY OF NEW JERSEY.

Between

ROBERT H. McCARTER, Attorney

General,

Informant,

ON INFORMATION.

and

AFFIDAVIT. **10**

VINELAN LIGHT AND POWER

COMPANY,

Defendant.

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

ARTHUR A. HOLBROOK, of full age, being duly sworn, **30**  
 on his oath says, that he helped to form the Vineland  
 Light and Power Company, the defendant in the above  
 stated cause; that John R. Farnum, <sup>and</sup> the deponent, solicit-  
 ed the incorporators of said corporation and the corpora-  
 tion was formed for the benefit of said Farnum and de-  
 ponent; before the delivery of the deed from said Far-  
 num to deponent for the property and franchises of the  
 Vineland Gas Light Company a deed and lease had been  
 drawn from deponent to said Vineland Light and Power  
 Company and a mortgage securing an issue of bond of **30**  
 the last named company was prepared said Farnum re-  
 ceived as consideration for his said deed a note of de-  
 ponent which was secured by substantially all of the  
 bonds of Vineland Light and Power Company.

Deponent further says, that at the time of the delivery  
 of the deed from Farnum to deponent and from de-

ponent to Vineland Light and Power Company, John R. Farnum, Leverett Newcomb and deponent were all present at the office of Leverett Newcomb, in Vineland, New Jersey. All of the directors of the Light and Power Company were also present at the meeting, and that all the deeds and leases above referred to were delivered simultaneously, that at the same time of the delivery of the deeds and lease above referred to the bonds of said Vineland Light and Power Company were delivered to said Farnum as security for said purchase price of the plant and franchises, said Farnum held a portion of said bonds of said Vineland Light and Power Company as security for a period of at least one year.

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The bonds put up as collateral were from time to time sold in parcels and not in bulk and the proceeds of sales were from time to time forwarded to said Farnum for the purpose of paying for the purchase price of said gas plant and its chartered rights and franchises till said franchise price was fully paid.

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ARTHUR A. HOLBROOK.

Sworn and subscribed before me this 7th day of January, A. D. 1907.

CYRUS D. MARTER,  
Notary Public.

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## IN CHANCERY OF NEW JERSEY.

Between

ROBERT H. McCARTER, Attorney

General,

Informant,

and

THE VINELAND LIGHT AND

POWER COMPANY,

Defendant.

ON INFORMATION. 10

AFFIDAVIT.

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

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LEVERETT NEWCOMB, being duly sworn according to law, on his oath says, that he was well acquainted with John R. Farnum, who formerly owned the plant and franchises of the Vineland Gas Light Company; that said Farnum was anxious for deponent to find a purchaser for the plant, and he said Farnum told deponent that he said Farnum would help to form a company to take the plant; deponent thereupon drew up articles of incorporation with said Farnum as one of the incorporators; said Farnum then told deponent that he, said Farnum, was eighty-two years of age living in Waltham, a suburb of Boston, and that he wanted deponent to take his, said Farnum's, place in said corporation to be formed; thereupon deponent caused another certificate of incorporation to be prepared with deponent's name therein as an incorporator instead of John R. Farnum.

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Deponent further said, that the Vineland Light and Power Company was formed for the express purpose of taking over from said Farnum a property and franchises of said Vineland Gas Light Company.

Deponent further says, that at the time of the delivery of the deed from Farnum to Holbrook and the deed and lease from Holbrook to Vineland Light and Power Company which took place in deponent's office in Vineland, New Jersey, there were then present at the same time all of the directors of Vineland Light and Power Company, **10** John R. Farnum, Arthur A. Holbrook and deponent, that said deeds and lease were delivered simultaneously, the purchase money to said Farnum being secured by bonds of Vineland Light and Power Company.

The bonds put up as collateral were from time to time sold in parcels and not in bulk, and the proceeds of sales were from time to time forwarded to said Farnum for the purpose of paying the purchase price of said gas plant and its chartered rights and franchises till the purchase price was fully paid. Some of said bonds were **20** held by said Farnum as security as aforesaid for over one year.

Deponent further says, that deponent has lived in Vineland, N. J., for thirty-eight years. Deponent was acquainted with said Farnum in 1884, when said Farnum purchased of Daniel Washburn, receiver, the property and franchises of the Vineland Gas Light Company. At that time said John R. Farnum was represented by Potter & Nixon, counsellors at law. At or about the time of said purchase in 1884, deponent heard William E. **30** Potter of said firm advise said John R. Farnum that he, Farnum, could use the gas works and franchises of said Vineland Gas Light Company in the same manner as said Vineland Gas Light Company could have done before the appointment of a receiver; that he, said Farnum, would not be obliged to form a new company, and that if he had capital and means to do it he was at perfect

liberty to exercise it himself, and that he, said Farnum, had the right to sell said property and franchises to anyone at any time. Some ten or twelve years after said Farnum made said purchase he had some difficulty with a tenant to whom he, said Farnum, had leased the said property and franchises and employed said William E. Potter to eject said lessee. Proceedings for that purpose were begun resulting in the eviction of said lessee and the resumption by said Farnum of the operation of said gas works and franchises. Deponent at the time last mentioned again heard said William E. Potter advise said Farnum as to his title to said property and franchises and right to operate or sell the same in the same manner and to the same effect as above set forth. 10

Deponent knows that said Farnum was seeking to comply with the restrictions of the law, and that said Farnum operated said gas plant and franchises from 1884 to 1900, under the advice of said William E. Potter.

Deponent further says, that he, this deponent, advised said John R. Farnum, Arthur A. Holbrook and Vineland and Power Company that the property and franchises of the Vineland Gas Light Company could be transferred by said Farnum to Vineland Light and Power Company by the deeds and lease above mentioned, and that said Vineland Light and Power Company could exercise and operate said franchises in the township of Landis and the borough of Vineland. 20

LEVERETT NEWCOMB.

Sworn and subscribed before me this sixteenth day of January, A. D. 1907. 30

JOS. T. SICKLER,  
M. C. C. of N. J.

## IN CHANCERY OF NEW JERSEY.

	Between	
	ROBERT H. McCARTER, Attorney	} ON INFORMATION BY THE ATTORNEY GENERAL FOR IN- JUNCTION. OPINION.
	General,	
	Informant,	
10	and	
	THE VINELAND LIGHT AND	
	POWER COMPANY,	
	Defendant.	

20 The information seeks to restrain defendant corporation from extending its gas mains through the highways of the borough of Vineland and township of Landis. Defendant was incorporated in the year 1900 under the general corporation act. (P. L. 1896, p. 277.) Among the objects named in its certificate of incorporation is the power to perform the acts which are now sought to be restrained. No permission has been given to defendant, by either of the municipalities named, to open or occupy the highways. Defendant claims the right to do so as lessee of the franchises granted by the

30 Legislature to The Vineland Gas Light Company, by act approved March 15, 1870. (P. L. 1870, p. 577.) That act granted to the company last named the right to lay gas pipes in the highways now in dispute. Defendant company claims title to the franchises of the earlier company in the following manner: In the year 1884 The Vineland Gas Light Company became insolvent and passed into the hands of a receiver appointed by

this Court. Pursuant to an order of Court the receiver made public sale of all the property and franchises of the insolvent company and John R. Farnum became the purchaser at that sale. The sale was thereafter duly confirmed by the Court. Farnum operated the works until the year 1900, when, on March 27th, he conveyed the same to Arthur A. Halbrook. The conveyance included all the real and personal property purchased by Farnum at the receiver's sale and some additional property and extensions of the works, and specifically included the franchises sold by the receiver. At the same time, though under date of March 31, 1900, Holbrook and wife conveyed the same property, except the franchises, to defendant company, and, by a separate instrument, leased the franchises to defendant company for the term of ninety-nine years. Since that date defendant company has operated the works and made such improvements and extensions as the growth of the community has seemed to warrant. At the time the information, <sup>was filed defendant was engaged in making further extensions</sup> and the present information, is filed to enjoin this proposed new work. The present application is for a preliminary injunction and has been heard on the information, answer and accompanying affidavits.

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EDWIN F. MILLER and GASKILL & GASKILL, for informant.

FRENCH & RICHARDS and LEVERETT NEWCOMB, for defendant.

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LEAMING, V. C.:

By act of March 11, 1842, the Legislature authorized the sale, through the medium of receiverships, of the franchises of public utility corporations. (P. L. 1842, p. 164.) This legislation, with but minor changes, has

- been preserved since that date. (R. S., p. 136, sec. 20; Rev., p. 192, sec. 85; P. L. 1896, p. 303, sec. 82.) This statute authorized the sale of the franchises of insolvent public service corporations to any person or persons for the unexpired term of the franchises, and bestowed upon the purchaser the use and enjoyment of the franchises so sold to the same extent that the stockholders of the corporation to which the franchises had been theretofore granted could have used and enjoyed the same. The corporations referred to by the act are only insolvent corporations engaged in work of a public nature, and the franchises referred to are manifestly such parts of the sovereign power as had been granted to the corporation,—rights and privileges which can only be enjoyed through legislative grant. In the case of the gas corporation in question this would include the right to lay and maintain gas pipes in the public highways now in dispute for the purpose of supplying the public with gas. Unless some limitation can be found upon the legislative power to grant such franchises to an individual, the act must be regarded as vesting in an individual purchaser at the receiver's sale an absolute title to the franchises sold, including the power to operate under the franchises so conveyed to the same extent that the insolvent corporation could have operated; this necessarily includes the right to make extensions within the territory defined in the charter act of the insolvent corporation. I am not aware of any limitation upon the legislative power of the nature suggested. I apprehend that it is, at this time, within the legislative power to authorize gas works to be constructed and operated by an individual in substantially the same manner that such privileges are now conferred upon gas corporations. It is urged that a strict construction of the act authorizing sales of franchises must be adopted, and that such a construction will discover limitations upon the rights passing to the purchaser under the sale. I cannot re-
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gard the statute as one requiring that strict construction which is ~~supplied~~ applied to legislative grants. The statute grants no new rights, but simply makes provision for the transmission of title by sale or lease, of the rights already granted. *Black vs. Delaware & Raritan Canal Co.*, 7 C. E. Gr., 130, 402. The title transmitted at the sale is to the highest bidder and cannot be regarded as a right bestowed in personal confidence and incapable of future transmission, or one that will terminate at the decease of the purchaser. The duration of the term for the enjoyment of the franchise is specifically defined by the act as the remaining portion of the term of the franchise as originally granted. **10**

Our law appears to have contained no provision contemplating other than that a purchaser at such sale should be privileged to operate, as an individual, under the franchises so acquired by the purchaser or to transmit the title to the rights so acquired in the same manner that the title to other property rights could by law be transmitted until the year 1875—the year that the constitutional amendments took effect. March 25th, 1875, an act was approved (P. L. 1875, p. 41) which provided that whenever any railroad, canal, turnpike, bridge (or) plank road of any corporation of this State should be sold under the decree of Court or under power of sale in a mortgage deed, the person or persons for or on whose account the purchase should be made were, by the act, constituted a body politic and corporate, and vested with: “all the right, title, interest, property, possession, claim and demand in law and equity, of, in and to such railroad, canal, turnpike, bridge or plank road, with the appurtenances, with all the rights, powers, immunities, privileges and franchises of the said corporation which may have been granted to or conferred thereon by statute or statutes in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far **20**

**30**

as the same are modified hereby." The act then required the persons for or on whose account the purchase was made to meet, within thirty days after the conveyance, at the county town of one of the counties in which the works were located, two weeks' notice of such meeting first being given by newspaper notice, and organize "said new corporation" by electing a president and six directors. At that meeting a corporate name and seal were required to be adopted, and the amount of capital stock determined. Preferred stock is also authorized, as well as bonds not exceeding, in amount, the aggregate amount of stock. The new corporation was also required to file in the office of the Secretary of State, within one month after organization, a certificate of the date of organization, the name adopted, the amount of stock and the name of the officers selected.

This statute of 1875 does not authorize the persons, in whose interest the purchase is made, to form themselves into a corporation. The act, *ex proprio vigore*, makes them a corporation and requires them to effect an organization in the manner and within the time specified. Whatever legal title may pass by the conveyance, in form made to an individual purchaser or to individual purchasers, is clearly intended by the statute to be held by him or them, not for his or their individual use, but for the use of and to be used by the statutory creation. It seems entirely manifest that this act denies legislative sanction to the exercise of the franchises by an individual or individuals as such, and in effect forbids such use, and requires that any use of the franchises shall be exercised through the medium of the corporation created by the act and organized pursuant to the directions of the act.

It will be observed that the act last referred to does not include gas corporations. No legislation of this nature appears to have been adopted touching gas corporations until the act of February 17, 1881. (P. L. 1881, p. 33;

G. S. 3694, secs. 34, 35.) This act relates to sales made pursuant to a decree of Court which include the "property, rights, powers, immunities, privileges and franchises of any turnpike, plank road, gas, water, or gas and water corporation." By language almost identical with the former act, it provides that "the person or persons for or on whose account such property, rights, powers, immunities, privileges and franchises may be purchased shall be and they are hereby constituted a body politic and corporate, and shall be and they are vested with all the right, title, interest, property, possession, claim and demand in law and equity of, in and to such turnpike, bridge, plank road, gas, water, or gas and water company, with the appurtenances and with the rights, powers, immunities, privileges and franchises of the corporation as whose the same may have been sold, and which may have been granted to or conferred thereupon by any law of this State in force at the time of such sale or conveyance." The act then provides that the persons in whose interest the purchase was made "may organize said new corporation by the election of such officers and directors, issue such certificates of stock, create and issue such preferred stock, and from time to time issue such bonds and secure the same as was authorized by the act or acts under and by which said former corporation was created." The act then makes it the duty of the new corporation to file a certificate of the organization with the Secretary of State within one month after the date of the organization. This provision touching the certificate is in almost the exact language of the similar provision of the act of 1875. It will be observed that the later act differs from the earlier in the matter of the organization of the new company in that the later act introduces the organization provision with the word "may," whereas "shall" is used in the earlier act. In the later act no time is named for the organization and no place for meeting is named and no notice of the meeting is required. The later act fixes

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the amount of the stock and bonds authorized as that authorized by the predecessor corporation, whereas, in the former act these matters were to be determined by action of the organization meeting.

10 It is entirely clear that the general scope and purpose of the act of 1881 is the same as that of the act of 1875. It clearly withdraws whatever legislative sanction might have theretofore existed for the use, by an individual, for the sovereign prerogatives purchased under decrees of courts, and requires their use by a corporation which is created by the act and which it is intended that the purchasers of the franchises shall organize as an operative concern by the election of its officers pursuant to the act. It is possible that, in the absence of an adjudication of forfeiture, through *quo warranto*, long delay, upon the part of the person or persons holding the legal title to the franchises, in organizing the corporation pursuant to the act of 1881, will not operate to destroy the right to do so, but I am entirely clear that until this shall have been done any exercise of these franchises by an individual, or by a corporation not created by the act and organized in substantial compliance with the act, is without legislative sanction and is an unwarranted usurpation of power. If this be true, there can be no doubt of the power of this Court to restrain such acts at the instance of the Attorney General.

*Stockton vs. Cent. Ry. Co., 5 Dick., 52, 78.*

30 Farnum, who purchased at the receiver's sale in 1884, instead of associating with himself the requisite persons and organizing the corporation created by the act, conveyed the works and franchises to Holbrook, and Holbrook conveyed the works and leased the franchises to defendant corporation. Defendant is a corporation created by and organized under the general corporation act, and can in no sense be considered or treated as the corporation created by the act of 1881, and organized pur-

suant to the requirements of that act. The construction which I have given to the act of 1881 as denying to the individual purchaser the right to operate under the franchises purchased operates, in like manner, to deny the right to defendant.

Acquiescence upon the part of the State in the operation of defendant's works is urged as a bar to the relief sought by the present information. If it should be assumed to be possible for the sovereign, by acquiescence in encroachments upon sovereign prerogatives, to be barred from the assertion of sovereign rights, such view could not properly be extended to the new or additional encroachments here sought to be restrained. **10**

I am not unmindful of the duty of this Court to withhold its extraordinary writ when rights are not clear and especially when it is sought to restrain the progress of a public work upon a preliminary injunction. But the present record appears to disclose all the facts useful to the determination of the questions involved, and I consider it clear that informant is entitled to the relief sought. **20**

A preliminary injunction will be advised.

Submitted February 8th, 1907.

Decided February 11th, 1907.

## IN CHANCERY OF NEW JERSEY.

	Between		
	ROBERT H. McCARTER, Attorney	} ON INFORMATION.	
	General,		
10		Informant,	} &c.
	and		
	VINELAND LIGHT AND POWER	} ORDER FOR PRE-	
	COMPANY,		
	Defendant.	} LIMINARY IN-	
		} JUNCTION.	

20 Upon reading the information filed in this cause and the affidavits thereto annexed, and the answer and answering affidavits, and upon hearing Edwin F. Miller and Gaskill & Gaskill, for the informant, and French & Richards and Leverett Newcomb, for the defendant,

30 It is, on this 25th day of February, nineteen hundred and seven, ordered, that the rule to show cause heretofore issued in this matter be made absolute, and that an injunction issue, enjoining and restraining the said defendant company, its officers, servants, employes and agents from constructing any extension to its gas plant or gas system, and from opening or digging ditches or trenches in any of the streets, roads, highways or other public places in the township of Landis and in the borough of Vineland, Cumberland county, New Jersey, for the purpose of laying any gas pipe therein, and from laying pipes for any extension in the trenches already opened, provided this order shall not prevent the defendant

company from making repairs or house connections in the borough of Vineland.

W. J. MAGIE,  
C.

Respectfull advised.

E. B. LEAMING,  
V. C.

Filed February 25th, 1907.

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IN CHANCERY OF NEW JERSEY.

Between	}	ON INFORMATION,	20
ROBERT H. McCARTER, Attorney			
General,	}	&c.	20
Informant,			
and	}	NOTICE OF	30
VINELAND LIGHT AND POWER			
COMPANY,	}	APPEAL.	30
Defendant.			

The defendant hereby appeals from an order made in the above entitled cause on the twenty-fifth day of February, nineteen hundred and seven, and from the whole and every part thereof and the Court of Errors and Appeals in the last resort in all causes.

FRENCH & RICHARDS,  
Solicitors for and of Counsel with Defendant.

Dated March 14th, 1907.

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

SAMUEL H. RICHARDS,  
Of counsel with Defendant.

10 NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

Between

ROBERT H. McCARTER, Attorney

General,

Informant and Respondent,

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and

VINELAND LIGHT AND POWER

COMPANY,

Defendant, Appellant.

PETITION OF  
APPEAL.

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

30 The petition of Vineland Light and Power Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an order made in the Court of Chancery by his Honor, William J. Magie, Chancellor of New Jersey, bearing date the twenty-fifth day of February, nineteen hundred and seven, in the cause wherein Robert H. McCarter Attorney Gen-

eral, was informant, and your petitioner was defendant in this respect, to wit: That the said order directs that an order to show cause theretofore issued be made absolute and that an injunction issue, enjoining and restraining your petitioner, its officers, servants, employes and agents, from constructing any extension to its gas plant or gas system, and from opening or digging ditches or trenches in any of the streets, roads, highways, or other public places in the township of Landis and in the borough of Vineland, Cumberland county, New Jersey, for the purpose of laying any gas pipe therein and from laying pipes for any extension in the trenches already opened. 10

And your petitioner humbly appeals from that part of the said order of the Chancellor which orders that said order to show cause be made absolute and that said injunction issue upon the ground that the same is erroneous, for that said order to show cause should have been dismissed and said injunction denied. The Court was without jurisdiction to make such order. The information and the facts appearing before the said Court did not justify the making of said order. 20

Your petitioner therefore prays that said order of the said Chancellor may be reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

FRENCH & RICHARDS,  
Solicitors for and of Counsel with Appellant.

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Answer to petition of appeal in usual form.





