

A

Page.

TESTIMONY.

139-142

Charles F. Case—Direct exam.....	114-123
Robert M. Jarvis (recalled)—Direct exam.	130
“ “ “ “ Cross “ .	135-139
“ “ “ ((again recalled) — Direct exam	162-164

EXHIBITS.

EXHIBITS OF NATHALIE JARVIS.

P. 1 and 2.	Bond and Mortgage Jarvis Terminal Cold Storage Co. to Nathalie Jarvis....	165
P. 3.	Satisfaction of Mortgage....	165
P. 4.	Note of Jarvis Terminal Cold Storage Co. to Nathalie Jarvis dated February 19, 1903	167
P. 6.	Certificate for seventy shares capital stock of Jarvis Terminal Cold Storage Co..	168
P. 7.	Note of Jarvis Terminal Cold Storage Co. to Nathalie Jarvis, dated April 20th, 1903	168
P. 8.	Six renewal notes.....	168
P. 9.	Letter from R. M. Jarvis to Samuel M. Schafer, dated June 22nd, 1903	168
P. 10.	Letter from R. M. Jarvis to Samuel M. Schafer, dated Oct. 22nd, 1903	169
P. 11.	Letter from R. M. Jarvis to Samuel M. Schafer, dated November 23rd, 1903....	170
P. 12.	Envelope addressed to S. M. Schafer	170

P. 13.	Mortgage—Jarvis Terminal Cold Storage Co. to Commercial Trust Co. of N. J., dated Feb. 2nd, 1903	171
P. 14.	Twenty-five bonds issued under said Mortgage	194
P. 15.	Claim of U. S. Mortgage & Trust Co., filed with Receivers.....	195

EXHIBITS OF COMMERCIAL TRUST CO. OF N. J.

A.	Receipts from Insurance Companies for Premiums on Fire Insurance	196
A-B.	Minute Book of Jarvis Terminal Cold Storage Co	196
A-C.	Bank Pass Book	197
A-D.	Agreement between Erie R. R. Co. and Jarvis Terminal Cold Storage Co., dated December 16th, 1903	197
B.	Bill of William Brinkerhoff for services as Counsel	199
C.	Certificate for Issue of Twenty-five Bonds	199
D.	Bond Subscription Agreement, dated February 16th, 1903.....	204
E.	Order extending time for filing claim of Nathalie Jarvis and claim filed with Receivers	204-205
F.	125 Bonds Issued under trust mortgage.....	207
G.	Seven Assignments of liens from Cane and others to Union Terminal Cold Storage Co.....	208
H.	Claim for over draft.....	210
I.	Claim for fee as Trustee.....	210
J.	Claim for Fire Insurance Premiums	210

EXHIBITS OF ERIE RAILROAD CO.

1.	Minute Book of Jarvis Terminal Cold Storage Co., pages 130, 131	211
2.	Minute Book, pages 21 to 29 (By-Laws)	212
C.	Minute Book, pages 123 to 128....	216
D.	Minute Book, pages 146 to 150....	220
E.	Minute Book, pages 165 to 173....	223
F.	Bond and Mortgage Jarvis Terminal Cold Storage Co. to Erie R. R. Co., dated Dec. 16th, 1903.....	230
B. B.—	Vouchers showing application for moneys advanced by Erie R. R. Co	232

EXHIBITS OF YOUNG & IRWIN AND UNION TERMINAL COLD STORAGE COMPANY.

A.	Agreement between Lembeck, et als., and Young and Irwin, dated August 30th, 1904.....*	242
A. B.	Note of Jarvis Terminal Cold Storage Co. to U. S. Mortgage & Trust Co	246
B.	Transcript from Bank Book.....	247
C.	Assignment Jarvis Terminal Cold Storage Co. to U. S. Mortgage & Trust Co. of bond subscription Agreement	248

Conclusions of Vice-Chancellor.....	249
Final decree adjudicating liens.....	263
Notice of Appeal of Erie R. R. Co.....	267
Notice of Appeal of Nathalie Jarvis.....	269
Petition of Appeal of Erie R. R. Co.....	271
Pettiton of Appeal of Nathalie Jarvis.....	273

PETITION OF YOUNG & IRVIN.

(Filed Sept. 13, 1904).

IN CHANCERY OF NEW JERSEY.

_____	o	
	)	
Between	)	
	)	
GUSTAV W. LEMBECK,	)	
	)	
Complainant,	)	
	)	On Bill, &c.
—and—	)	
	)	Petition.
JARVIS TERMINAL COLD	)	
	)	
STORAGE COMPANY	)	20
	)	
Defendant.	)	
_____	o	

To the Hon. William J. Magie, Chancellor of the State of New Jersey.

The petition of John Alvin Young and Richard Irvin respectfully alleges and shows to the Court: 30

First. That your petitioners are citizens of the State of New York, and reside respectively at Glen Cove and at 135 West Thirty-fourth St., New York City, in said State, and that they have, pursuant to agreement, acted as a committee of the stockholders and creditors of the Jarvis Terminal Cold Storage Company, the defendant herein, for the purpose of procuring a settlement of the claims against said company, the organization of a corporation to suc- 10

ceed to its business and to procure to be conveyed to such new corporation the cold storage plant of the defendant.

Second. As your petitioners are informed and verily believe, at a public sale of the property and plant of the said Jarvis Terminal Cold Storage Company, held on the 29th day of June, 1904, Gustav
 10 W. Lembeck, Daniel E. Cleary and Charles E. Cassidy purchased the same from Palmer Campbell and John W. Hardenbergh, receivers of said company, for the sum of \$135,000, and upon the 26th day of July, 1904, entered into the possession of said plant and property, and have since operated said plant and carried on the said cold storage business.

Third. That as petitioners are informed and verily believe, Messrs. Lembeck, Cleary and Cassidy,
 20 pursuant to the terms of the order of this Court directing the sale, paid \$25,000 on account of the purchase price to Palmer Campbell and John W. Hardenbergh, receivers of the defendant, and the further sum of \$50 to Frank Stevens, auctioneer, together with \$1,299.07 for accrued storage charges and \$640.26 for unearned insurance premiums, and deposited with the said receivers seventy-five of the said first mortgage bonds of said company.

30 Fourth. That your petitioners have caused to be formed and duly incorporated under and pursuant to the laws of the State of New Jersey, a corporation known as Union Terminal Cold Storage Company, and have entered into an agreement with said corporation to procure to be conveyed to said corporation the said property purchased from the receivers by Messrs. Lembeck, Cleary and Cassidy, as herein-
 before set forth, and have, further entered into an agreement with said Lembeck, Cleary and Cassidy
 40 to take from them an assignment of their bid upon

payment to said Lembeck, Cleary and Cassidy of certain sums of money and the delivery to them of bonds of the Union Terminal Cold Storage Company to be secured by a mortgage which shall include the said property of the Jarvis Terminal Cold Storage Company.

Fifth. That said property was sold pursuant to the order of the Court clear of the following mortgages and other liens:

1. Trust mortgage by the defendant company to the Commercial Trust Company of New Jersey, Trustee, dated February 2, 1903, recorded in Hudson County Register's office, February 21, 1903, in Book 486 of Real Estate Mortgages, page 391, and in Book 207 of Chattel Mortgages, page 416, to secure an issue of first mortgage gold bonds of the defendant company in the aggregate amount of \$150,000. ²⁰

2. Mortgage of the defendant company to the Erie Railroad Company, dated December 16, 1903, recorded December 18, 1903, in Hudson County Register's office in Book 504 of Mortgages, page 633, to secure the company's bond for \$16,500.

3. Mechanics' liens filed in the Hudson County Clerk's office as follows: ³⁰

No. 2743, Liber 8, page 152, February 25, 1904, \$12,833.14; the Taylor-Martin Engineering Company.

No. 2743, Liber 8, page 154, March 10, 1904, \$25,075.35; Frederick W. Cane, trading as W. H. & F. W. Cane

No. 2746, Liber 8, page 164, March 12, 1904, \$4,160.67; Heine Safety Boiler Company. ⁴⁰

No. 2748, Liber 8, page 155, March 21, 1904, \$1,325; Electric Construction & Supply Company.

No. 2749, Liber 8, page, 156, March 21, 1904, \$1,699.75; Electric Construction & Supply Company.

No. 2751, Liber 8, page 157, March 28, 1904, \$1,302.50; B. F. Sturtevant Company.

No. 2753, Liber 8, page 158, April 6, 1904, \$155;
 10 Timothy W. Dorsett.

May 6, 1904, \$975, Robert A. Keasbey Company.

4. All title or lien of the Carbondale Machine Company to or upon the refrigerating machines then installed in the cold storage plant of the defendant company. That the proceeds of said sale are now, pursuant to the order of this Court, held by the receivers to await the determination of the extent, validity and priority of said liens.

20

Sixth. Pursuant to the agreement heretofore mentioned for the reorganization of the affairs of the defendant, your petitioners have procured to be assigned to the Union Terminal Cold Storage Company the afore mentioned liens and claims of the Taylor-Martin Engineering Company, Frederick W. Cane, the Heine Safety Boiler Company, the Robert A. Keasbey Company and Carbondale Machine Company. Said
 30 assignments have been deposited with the Windsor Trust Company, a moneyed corporation of the State of New York, to be delivered to said Union Terminal Cold Storage Company in consideration of the issue to the assignors of certain securities of said Union Terminal Cold Storage Company.

Your petitioners have, moreover, procured agreements from holders of 149 of the said first mortgage bonds, and are able, pursuant to such agreements,
 40 to deposit said bonds with said receivers.

Your petitioners are advised and verily believe, and therefore allege, that the claims represented by the bonds which they control as aforesaid, together with the claims assigned to the Union Terminal Cold Storage Company, are valid liens and claims against the proceeds of the sale heretofore made to Messrs. Lembeck, Cleary and Cassidy; that said claims are more than sufficient to pay the amount still due upon the purchase price of said property, and are prior to all other claims and liens.

Your petitioners therefore pray that this Honorable Court will order, adjudge and decree:

1. That the said liens and claims controlled by your petitioners, as aforesaid, are valid liens against the purchase price of said property to an amount not less than \$135,000.

2. That the receivers be directed to deliver to Union Terminal Cold Storage Company a good and sufficient deed of the premises heretofore sold to Messrs. Lembeck, Cleary and Cassidy upon filing with said receivers an assignment of said bid to the petitioners, together with an assignment by the petitioners to the Union Terminal Cold Storage Company of their right to said deed, and to receive in full payment therefor seventy-four of the first mortgage bonds of the Jarvis Terminal Cold Storage Company and the assignments of the claims of lienors hereinbefore described as having been deposited with the Windsor Trust Company for the benefit of the Union Terminal Cold Storage Company, and that the receivers be directed to pay over to petitioners or to their order all moneys remaining in their hands, after deducting such fees and allowances as shall be allowed by this Honorable Court; and that your petitioners may have such other and further relief in the premises as shall seem to the Court proper.

PIERRE F. COOK,

Solicitor for Petitioners. 40

(Affidavits of John A. Young and Richard Irvin attached).

ORDER TO SHOW CAUSE.

A petition having been presented and filed by
 1c John Alvin Young and Richard Irvin, for an order directing the Receivers to execute and deliver to the Union Terminal Cold Storage Company a good and sufficient deed of the premises heretofore sold to Messrs. Gustav W. Lembeck, Daniel E. Cleary and Charles E. Cassidy, it is, on this 13th day of September 1904, on motion of Pierre F. Cook, Esq., solicitor for said petitioners,

ORDERED that the mortgagees, creditors and
 20 stockholders of the defendant company show cause at Chancery Chambers in Jersey City, on September 19, 1904, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why it should not be adjudged and decreed that the liens and claims controlled by the petitioners, as alleged in their petition are valid liens against the purchase price of said property to an amount not less than \$135,000, and why the Receivers should not be directed to deliver
 30 to Union Terminal Cold Storage Company a good and sufficient deed of the premises heretofore sold to Messrs. Lembeck, Cleary and Cassidy, upon filing with said Receivers an assignment of their bid to the petitioners, together with an assignment by the petitioners to the Union Terminal Cold Storage Company of their right to said deed, and to receive in full payment therefor seventy-four of the first mortgage bonds of the Jarvis Terminal Cold Storage Company and the assignments of the claims of lienors described in said petition, and that the Receivers be directed to pay over to petitioners, or to their
 40 order, all moneys remaining in their hands, after

deducting such fees and allowances as shall be allowed by this Court, and why said petitioners should not have such other and further relief in the premises as shall seem to the Court proper. And it is further

ORDERED that copies of this order be served on the stockholders and creditors other than creditors holding mortgages or mechanics' liens, within two days from the date hereof, by mailing such copies to such stockholders and creditors, to their post office addresses as nearly as the same can be ascertained, and that copies of this order and of the said petition be served within the same time upon the following creditors of the defendant company, or their attorneys, who hold mortgages or have filed mechanics' liens against the lands and buildings of the defendant company:

20

(1) Commercial Trust Company of New Jersey, Trustee; (2) Erie Railroad Company; (3) The Taylor-Martin Engineering Company; (4) Frederick W. Cane, trading as W. H. & F. W. Cane; (5) Heine Safety Boiler Company; (6) Electrical Construction and Supply Company; (7) B. F. Sturtevant Company; (8) Timothy W. Dorsett; (9) Robert A. Keasbey Company.

30

It is further

ORDERED that service of uncertified copies of this order and of the said petition shall be sufficient.

Respectfully advised,

W. J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

40

ORDER.

(Filed Sept. 21, 1904).

The order to show cause made in the above entitled cause dated the thirteenth day of September, nineteen hundred and four, coming on to be heard in the presence of Pierre F. Cook, solicitor for the petitioners, John Alvin Young and Richard Irvin, acting as a committee of the stockholders and creditors of the Jarvis Terminal Cold Storage Company, the defendant herein, and of Brinkerhoff and Fielder, solicitors for the Commercial Trust Company of New Jersey, Trustee; Robert L. Lawrence, solicitor for Frederick W. Cane, trading as W. H. & F. W. Cane; Collins and Corbin, solicitors for the Erie Railroad Company; Vredenburgh, Wall and Van Winkle, solicitors for Franklin B. Lord and committee representing first mortgage bondholders; Russ and Heppenheimer and Randolph Perkins, solicitors for Carbondale Machine Company and committee representing mechanics' lienors; John Mulford Enright, solicitor for Nathalie M. Jarvis, and McDermott and Fisk, solicitors for John W. Hardenbergh and Palmer Campbell, receivers of the Jarvis Terminal Cold Storage Company, and due service of said order to show cause and of the petition upon which the same is founded having been made, as appears by proofs of service and acknowledgements of solicitors of the various parties on file, and no one objecting thereto; and the solicitor for the petitioners claiming that the petitioners owned or controlled one hundred and fifty of the first mortgage bonds of the Jarvis Terminal Cold Storage Company, being the entire number of said bonds issued and outstanding, which they are prepared to deposit with the said Receivers in the manner and for the purpose hereinafter provided, together with assignments to the Union Terminal Cold Storage Company of the following mechanics' liens and claims, to wit:

No. 2743, L. 8, p. 152, February 25, 1904, \$12,-
833.14, The Taylor-Martin Engineering Company.

No. 2745, L. 8, p. 154, March 10, 1904, \$25,075.35;
Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, L. 8, p. 154, March 12, 1904, \$4,160.67;
Heine Safety Boiler Company.

No. 2748, L. 8, p. 155, March 21, 1904, \$1,325.00;
Electric Construction and Supply Company.

No. 2749, L. 8, p. 156, March 21, 1904, \$1,699.75;
Electric Construction and Supply Company.

No. 2751, L. 8, p. 157, March 28, 1904, \$1,302.50;
B. F. Sturtevant Company.

No. 2753, L. 8, p. 158, April 6, 1904, \$155.00;
Timothy W. Dorsett.

May 6, 1904, \$975.00, Robert A. Keasbey Com-
pany.

All title or lien of the Carbondale Machine Com-
pany to or upon refrigerating machines now installed
in the cold storage plant of the defendant company: 20

And it being further claimed by the solicitor for
the petitioners that said bonds and liens were valid
and prior liens to the extent of at least one hundred
and ten thousand dollars (\$110,000) with interest at
five per cent. from the 26th day of June, 1904, being
the amount due upon the purchase price of the
premises and property of said defendant corporation
heretofore sold to Messrs. Gustav W. Lembeck,
Daniel E. Cleary and Charles E. Cassidy; and all the
solicitors appearing as aforesaid admitting that said 30
claims were true and consenting to the relief here-
inafter granted, it is now, on this 19th day of Sep-
tember, 1904, on motion of Pierre F. Cook, solicitor
for said petitioners, and upon the consent and admis-
sion aforesaid,

ORDERED AND ADJUDGED: That the
bonds, liens and claims heretofore specifically enumer-
ated are valid and prior liens against the purchase
price of the property of the defendant corporation
heretofore sold to Messrs. Gustav W. Lembeck, Dan- 0

iel E. Cleary, and Charles E. Cassidy to an amount not less than one hundred and ten thousand dollars (\$110,000) with interest at five per cent. from the 26th day of June, 1904, being the balance due upon the purchase price of said sale; and it is further

10 ORDERED: That the petitioners be and they hereby are permitted to deposit or cause to be deposited with said Receivers the bonds and assignments hereinbefore specifically enumerated in lieu of the balance due upon the purchase price of said property, without prejudice to their right hereafter to claim any or all sums of money in the hands of said Receivers upon a division of said moneys, to which they as owners of said bonds and liens might be entitled should it afterward appear that said bonds and liens were valid claims against said funds to an amount greater than one hundred and ten thousand 20 dollars (\$110,000), and interest at five per cent. from the 26th day of June, 1904; and it is further

ORDERED: That the assignments and bonds so deposited with the Receivers be held by the Receivers pending the determination of the amount, if any, to which the owners of said bonds and liens shall be entitled upon a division of any surplus in the hands of said Receivers; and it is further

30 ORDERED, That upon receiving the said bonds and assignments hereinbefore enumerated, together with an assignment from Messrs. Lembeck, Cleary and Cassidy to John Alvin Young and Richard Irvin of their bid and also an assignment by said John Alvin Young and Richard Irvin to the Union Terminal Cold Storage Company of their right to a deed under said bid, the said Receivers be and they hereby are ordered to execute and deliver to the Union Terminal Cold Storage Company a good and sufficient deed of the premises and property heretofore sold to Messrs. Lembeck, Cleary and Cassidy; and the de- 40 livery of said deed is hereby declared and adjudged

to be a satisfaction of the claims under said bonds and liens to the extent of one hundred and ten thousand dollars (\$110,000) with interest at five per cent. from the 26th day of June, 1904.

And it is further ordered that the determination of the other matters arising upon said order to show cause, dated September thirteenth, nineteen hundred and four, be continued until the twenty-sixth day of September, nineteen hundred and four at ten o'clock in the forenoon, at the Chancery Chambers, in Jersey City, New Jersey.

Respectfully advised,

W. J. MAGIE,
C.

EUGENE STEVENSON,
V C.

STATEMENT.

20

Pending the determination of the other matters referred to in the foregoing orders a petition was filed by Nathalie Jarvis relating to the same matters. All parties answered and by consent the several claims were heard and adjudicated under their latter petition.

PETITION OF NATHALIE JARVIS.

30

(Filed December 5, 1904).

To the Honorable William J. Magie, Chancellor of the State of New Jersey.

The petition of Nathalie Jarvis, of the Borough of Manhattan, City, County and State of New York, respectfully shows:

40

(1) That heretofore, on the first day of December, nineteen hundred and two, the above named defendant, Jarvis Terminal Cold Storage Company, executed a mortgage to your petitioner to secure the sum of fourteen thousand dollars, being part of the purchase price due and owing to your petitioner upon the sale by her to the defendant of said mortgaged premises. This mortgage covers the land
 10 and premises at Provost and Thirteenth streets, Jersey City, afterward sold by the Receivers in above cause. Said mortgage was recorded December third, nineteen hundred and two, in the Hudson County Register's office, in Book 480, page 628; which said mortgage became due and payable December 1st, nineteen hundred and three; all as by reference to the record of said mortgage will more fully appear.

20 (2) That thereafter said defendant, Jarvis Terminal Cold Storage Company, executed a certain other mortgage, to the Commercial Trust Company of New Jersey, as Trustee, securing the payment of one hundred and fifty bonds of the defendant corporation, of the denomination of one thousand dollars each, which said mortgage was executed, dated and proved on the second day of February, nineteen hundred and three, and recorded in the Hudson County Register's office February 21st, nineteen
 30 hundred and three, in Book 486, page 391. The lands covered by this mortgage are the same as described in your petitioner's mortgage, all as by reference to the records thereof will appear.

(3) That thereafter the said defendant corporation executed a certain other mortgage, to the Erie Railroad Company, securing payment of the sum of sixteen thousand five hundred dollars, which mortgage bears date of December 16, nineteen hundred and three, and was proved December 17th, nineteen
 40 hundred and three, and recorded December 18th,

nineteen hundred and three, in the Hudson County Register's office, in Book 504 of Mortgages, page 633; which last mentioned mortgage, however, expressly recites that it is subject to the payment of the mortgage to the Commercial Trust Company for one hundred and fifty thousand dollars above mentioned.

(4) That after the execution of said trust mortgage to the Commercial Trust Company, but prior to the actual issue of the bonds secured thereby, your petitioner, who is a woman unfamiliar with business affairs, was requested by the said Jarvis Terminal Cold Storage Company, through its President, Robert M. Jarvis, to satisfy her mortgage of record, so that the Commercial Trust Company mortgage should thereby become a first lien upon the mortgaged property, in consideration of which the said Storage Company agreed to pay to your petitioner 20 Seven Thousand Dollars in cash and deliver to her its promissory note for the balance of Seven Thousand Dollars, payable sixty days after date, with interest at five per cent. per annum, and further to deliver to her when issued seven of the first mortgage bonds of the Company secured by the Commercial Trust Mortgage aforesaid, to be held by your petitioner as collateral security for the payment of said note, the said Robert M. Jarvis, as President of said 30 Storage Company, at the same time representing that said bonds were amply secured, by property worth double the value thereof, and that said company was solvent and in a condition to pay said note when due. Relying upon said representations and agreement, your petitioner was induced to execute an instrument satisfying her mortgage, which satisfaction-piece is dated February 5th, nineteen hundred and three, and was on the same day duly acknowledged by your petitioner and afterward recorded in the Hudson County Register's Office, 10

February 21st, nineteen hundred and three in Book 11 of Satisfactions, page 457, the trustee of said trust mortgage filing the satisfaction-piece for record.

Shortly subsequent to the execution of said satisfaction-piece by your petitioner your petitioner applied to the defendant company for the promissory note and bonds to be to her delivered as part consideration for the cancellation of her mortgage. In response to said request, the Company tendered to your petitioner its promissory note dated February 19th, nineteen hundred and three, payable sixty days after date, for the sum of Seven Thousand Dollars, and together therewith also tendered to your petitioner a certificate for seventy shares of the capital stock of the Company, to be by her held as additional collateral security for the payment of said note, until such time as the bonds of the Company should be ready for delivery, at which time bonds were to be delivered to her as collateral in accordance with the original agreement under which your petitioner's mortgage was cancelled.

Your petitioner, relying on the promise and representation made by the defendant company that its first mortgage bonds of the par value of Seven Thousand Dollars would be thereafter delivered as collateral security, accepted said note and the certificate of stock tendered therewith.

Notwithstanding said promises however, the defendant corporation failed and neglected to deliver to your petitioner as collateral to her note the bonds promised at the time of inducing her to satisfy her mortgage and being unable to obtain said bonds your petitioner a few weeks after the satisfaction of her mortgage consulted her business manager, and he thereafter renewed your petitioner's request and demand for the delivery of said bonds and entered into negotiations with the Company for the same, said

Company always promising to deliver said bonds but neglecting, however so to do.

Your petitioner further shows, that her said note has not been paid, in whole part, and is wholly due, and that she has never made any disposition of the stock delivered to her as aforesaid, but that the same is still in her possession, subject to the disposal of the defendant corporation or its receiver.

Your petitioner charges that the representations made to her in order to induce her to cancel her mortgage as aforesaid were untrue in fact; that the shares of stock tendered her as collateral were in fact worthless; that the defendant corporation at the time of the satisfaction of her mortgage was in fact insolvent, and that its directors and officers then well knew that they would not be able to pay the note given to your petitioner at its maturity; that said bonds were not in fact secured by property worth double the amount thereof, and that the defendant corporation obtained the cancellation of your petitioner's mortgage by the representations aforesaid and, further, upon the representation that she was to receive bonds of the defendant corporation of the par value of Seven Thousand Dollars as collateral security, when in fact said Company never intended so to do.

(5) Your petitioner further shows, that of the total bond issue of One Hundred and Fifty Thousand Dollars secured by the mortgage to the Commercial Trust Company twenty bonds, of the par value of Twenty Thousand Dollars, remain undisposed of and in the treasury of the Company; that the balance of said bonds, amounting to One Hundred and Thirty Thousand Dollars, were taken by the holders thereof in the knowledge that they were a part of a total bond issue of One Hundred and Fifty Thousand Dollars; that said corporation has received, in reliance upon its promise to deliver Seven Thousand Dollars of its bonds to your petitioner,

full value therefor, in the way of a loan to the Company of Seven Thousand Dollars as aforesaid, and, that all of the holders of said bonds have been benefitted by the proceeds of your petitioner's loan, which went to cancel your petitioner's first mortgage; that the mortgage of the Erie Railroad Company was taken expressly subject to the lien of the trust mortgage, for the full amount of the bonds authorized
 10 thereby, namely, the sum of One Hundred and Fifty Thousand Dollars.

(6) Your petitioner further shows that heretofore, on the Twenty-ninth day of June, nineteen hundred and four, the Receivers appointed by this Court in above cause made sale of said mortgaged property, to John Cassidy, Gustav W. Lembeck and Daniel E. Cleary, for the sum of One Hundred and Thirty-five Thousand Dollars, which said sum was
 20 not, however, paid in cash, but the sum of Twenty-five Thousand Dollars was paid in cash and the balance in bonds and mechanics' liens against the property of said defendant, as will appear by reference to the files of this Court. That said sale was had pursuant to an order made in above cause May 23d, nineteen hundred and four directing that said premises be sold free and clear of liens, and further order made June 13th, nineteen hundred and four, fixing
 30 an upset price upon said premises, and a certain other order filed herein on the Twentieth day of June, nineteen hundred and four, directing that said premises be sold without reservation as to price, and that upon completing said sale the purchaser be permitted to deposit as security for the payment of the balance of the purchase price first mortgage bonds and mechanics' liens against the property of the defendant company.

Your petitioner further shows that after said sale the same was reported to the Court and confirmed by order made on the fifth day of July, nineteen
 40 hundred and four.

Your petitioner further shows, and charges, that she has never assented to said sale or the terms thereof; and was never notified of the confirmation thereof; that she in fact objects to said sale and the method of conducting the same, and charges that by reason of the advantage given to the bondholders and mechanics' lienors under the order of June 20th, nineteen hundred and four, open bidding was discouraged and said bondholders and lienors were enabled to, and did in fact combine for the purchase of said property, and the discouragement and exclusion of those not equally situated; and that by reason of said combination said property was sold for less than its fair value. 10

That said property was sold free and clear of the following mortgages and other liens:

First,—Trust Mortgage by the defendant Company to the Commercial Trust Company, Trustee, dated February 2nd, nineteen hundred and three; 20

Second,—Mortgage by the Company to the Erie Railroad Company dated December 16th, nineteen hundred and three.

Third,—Mechanics' liens filed in the Hudson County Clerk's Office as follows:

No. 2743, Liber 8, Page 152, February 25, 1904, \$12,833.14; the Taylor-Martin Engineering Company. 30

No. 2745, Liber 8, Page 154, March 10, 1904, \$25,075.35; Frederick W. Cane, trading as W. H. & F. W. Cane.

No. 2746, Liber 8, Page 154, March 12, 1904, \$4,160.67; Heine Safety Boiler Company.

No. 2748, Liber 8, Page 155, March 21, 1904, \$1,325; Electric Construction & Supply Company.

No. 2749, Liber 8, Page 156, March 21, 1904, \$1,699.75; Electric Construction & Supply Company.

No. 2751, Liber 8, Page 157, March 28, 1904, \$1,302.50; B. F. Sturtevant Company. 40

No. 2753, Liber 8, Page 158, April 6, 1904, \$155;
Timothy W. Dorsett.

May 6, 1904, \$975, Robert A. Keasbey Company.

Fourth—Title or lien of the Carbondale Machine Company on the refrigerating machines installed in the building located on the mortgaged property.

That out of the part of the purchase price bid for said mortgaged premises at the Receivers' sale, after
10c allowing credit for the mortgage bonds held by the purchasers and the payment of costs of administration there remained in cash in the hands of the Receivers the Sum of Seven Thousand Six Hundred and Sixty-eight Dollars and twenty-eight cents, which amount has been paid into Court to await the determination of the extent, validity and priority of the liens against said premises.

(7) That as appears by the petition of John Alvin
20c Young and Richard Irvin, filed in above cause, the said petitioners have caused to be formed and incorporated under the laws of the State of New Jersey a corporation known as the Union Terminal Cold Storage Company, which is a re-organization of the bondholders and other lienors of the Jarvis Terminal Cold Storage Company excepting your petitioner and the Erie Railroad Company, and that said Young and Irvin have caused the mortgaged property purchased by Lembeck, Cleary and Cassidy
30c to be conveyed to said Union Terminal Cold Storage Company, and for their account have delivered bonds to the Receivers of the defendant Company of the par value of One Hundred and Thirty Thousand Dollars, and that said Young and Irvin have procured to be assigned to the said Union Terminal Cold Storage Company the liens and claims of the Taylor-Martin Engineering Company, Frederick W. Cane, The Heine Safety Boiler Company, the Robert A. Keasbey Company and the Carbondale Machine Company, which assignment, however, is in escrow,
40c subject to the payment therefor to said Irvin and

Young. Your petitioner charges, however, that all of said liens are subsequent to the lien of the Commercial Trust Company mortgage and the bonds thereby.

Your petitioner, therefore, prays that the sale made by the receivers as aforesaid may be set aside and said Receivers directed to re-sell said property, because in said sale open bidding was discouraged in the advantage given to lien holders; that your petitioner may be restored to the lien of her said mortgage, or if such remedy be denied then that the defendant corporation or its receivers be required to deliver to your petitioner out of the bonds remaining in its treasury unissued Seven Bonds, of the par value of Seven Thousand Dollars, pursuant to the agreement upon which your petitioner was induced to cancel her mortgage as aforesaid; and that the lien of the trust mortgage made to the Commercial Trust Company as aforesaid may be decreed to be prior to the lien of the several mechanics' liens and the mortgage of the Erie Railroad Company above mentioned, to the extent at least of One Hundred and Thirty-seven Thousand Dollars; and if the prayer of your petitioner to have said Receivers' sale set aside shall be denied, your petitioner prays that out of the money remaining in Court as the proceeds of said sale there shall be paid to your petitioner the proportionate amount to which she would be entitled as the holder of seven bonds of the defendant Company.

And your petitioner will ever pray, &c.,

GREY, McDERMOTT & ENRIGHT,
Solicitors and of counsel with
Petitioner.

ORDER ON PETITION.

Nathalie Jarvis having filed her petition herein among other things praying that the Receivers' sale herein be set aside, and that in case the said remedy be denied, that then the money paid into court as the result of said sale be paid to said petitioner as one entitled to seven bonds of the defendant company.

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IT IS, on this fifth day of December, nineteen hundred and four, ORDERED that a copy of the petition, which need not be certified, be served upon the Commercial Trust Company of New Jersey, the Erie Railroad Company, Richard Irvin, John Alvin Young and the Union Terminal Cold Storage Company within five days from the date hereof, and that they file their answers thereto if any they have on or before the tenth day of January next, and that the

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issue so raised be then brought on before the Court in such manner as the Court shall then prescribe.

Respectfully advised,

W. J. MAGIE,
C.

EUGENE STEVENSON,
V. C.

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ANSWER OF JOHN A. YOUNG AND RICHARD IRVIN TO PETITION OF NATHALIE JARVIS.

(Filed Jan. 10, 1905).

The joint and several answer of JOHN ALVIN YOUNG and RICHARD IRVIN to the petition of Nathalie Jarvis, or to so much thereof as they are

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advised is necessary for them to make answer unto.

These respondents, as to the allegations of said petitioner in respect to a mortgage of the Jarvis Terminal Cold Storage Company alleged to have been executed to said petitioner to secure the sum of \$14,000, covering lands and premises at Provost and 13th Streets, Jersey City, and as to the record of said mortgage, say that they have no knowledge, and leave said petitioner to make such proof thereof as she may be able.

And these respondents, further answering, say that they admit that said defendant, Jarvis Terminal Cold Storage Company, executed a mortgage to the Commercial Trust Company of New Jersey as trustee, securing the payment of 150 bonds of the defendant corporation of the denomination of \$1,000 each, and that said mortgage was executed, dated and proved on the 2nd day of February, 1903, and recorded in the Hudson County Register's office February 21, 1903, in Book 486, page 391.

And these respondents, further answering, admit that said defendant corporation executed a certain mortgage to the Erie Railroad Company, securing the payment of the sum of \$16,500, or some other sum, which mortgage bears date and was recorded as is alleged in said petition, and expressly recites that it is subject to the payment of the mortgage of the Commercial Trust Company for \$150,000 as above mentioned.

And these respondents, further answering, as to the allegations contained in the fourth paragraph of the petitioner's petition, say they have no knowledge, but leave the petitioner to make such proof thereof as she may be able, denying, however, that said allegations, if true, are relevant or material to support the claim of said petitioner.

And these respondents, further answering, as to the allegations contained in paragraph "(5)" of said petition, say that they deny that the total bond issue of \$150,000 secured by the mortgage of the Com-

mercial Trust Company, 20 bonds of the par value of \$20,000 remained undisposed of in the treasury of the Company, and admit that the balance of said bonds, amounting to \$130,000, were taken by the holders thereof in the knowledge that they were a part of a total bond issue of \$150,000.

And these respondents, further answering, say that they deny that said defendant corporation has
 10 received, in reliance upon its promise to deliver \$7,000 of its bonds to the petitioner, full value thereof, in the way of a loan to the Company of \$7,000.

And these respondents, further answering, deny that all the holders of said bonds have been benefited by the proceeds of said alleged loan.

And these respondents further answering admit that the said mortgage of the Erie Railroad Company was taken expressly subject to the lien of said trust
 20 mortgage for the full amount of the bonds authorized thereby, namely, the sum of \$150,000 and interest, as provided in said trust mortgage.

And these respondents, further answering, say that they admit that on the 29th day of June, 1904, the receivers appointed by this court in the above cause made sale of said mortgaged property to Charles E. Cassidy, Gustav W. Lembeck and Daniel E. Cleary for the sum of \$135,000, but for greater
 30 certainty as to the manner of payment of said purchase price beg leave to refer to the record of the same as contained in the files of this court.

And these respondents, further answering, admit that said sale was had pursuant to an order made in the above cause May 23, 1904, directing that said premises be sold free and clear of liens, a further order made June 13, 1904, fixing an upset price upon said premises, and a certain other order filed herein on the 20th day of June, 1904, directing that said premises be sold without reservation as to price;
 40 but for greater certainty respecting the directions

as to completion of the said sale, these respondents beg leave to refer to the orders heretofore made herein.

And these respondents, further answering, admit that after said sale the same was reported to the court and confirmed by an order made on the 5th day of July, 1904.

And these respondents, further answering, deny that said petitioner never assented to said sale or the terms thereof, or that she was never notified of the confirmation thereof, or that open bidding was discouraged, or that said bondholders and lienors were enabled to or did in fact combine for the purchase of said property and the discouragement and exclusion of those not equally situated, or that by reason of said combine said property was sold for less than its fair value.

And these respondents, further answering, admit that said property was sold free and clear of the various mortgages and other liens specified in paragraph "(6)" of said petition.

And these respondents, further answering, admit that out of the purchase price bid for said mortgaged premises at the receivers' sale, there remained in cash in the hands of the receivers the sum of \$7,668.-28, which amount has been paid into court to await the determination of the extent of the validity and priority of the liens against said premises; but for greater certainty as to the sums and credits allowed against and paid from said purchase price, resulting in the said balance in the hands of the receivers and paid into court, these respondents beg leave to refer to the report of said receivers and the various orders and papers herein in the files of this court.

And these respondents, further answering, admit that they have caused to be formed and incorporated under the laws of the State of New Jersey, a corporation known as the "Union Terminal Cold Storage Company," and deny that said corporation is a

re-organization of the bondholders and other lienors of the Jarvis Terminal Cold Storage Company excepting said petitioner and the Erie Railroad Company.

And these respondents, further answering, admit that said Young and Irvin have caused the mortgaged property purchased by Gustav W. Lembeck, Charles E. Cassidy and Daniel E. Cleary to be conveyed to said Union Terminal Cold Storage Company, and, for the account of said Young and Irvin, have delivered bonds to the receivers of the defendant Company of the par value of \$150,000 and not \$130,000 as alleged in said petition; and further admit that said Young and Irvin have procured to be assigned to said Union Terminal Cold Storage Company the liens and claims of the Taylor-Martin Engineering Company, Frederick W. Cane, The Heine Safety Boiler Company, Electric Construction
 20 and Supply Company, B. F. Sturtevant Company, Timothy W. Dorsett, the Robert A. Keasbey Company and the Carbondale Machine Company, and deny that said assignments are in escrow subject to the payment therefor to said Young and Irvin.

And these respondents, further answering, deny that all of said liens are subsequent to the lien of the Commercial Trust Company mortgage and the bonds secured thereby.

And these respondents, by way of cross-petition to
 30 said petition, further answering, allege as follows:

1. That heretofore and on or about the 29th day of June, 1904, at a public sale of the property and plant of the defendant, Jarvis Terminal Cold Storage Company, Gustav W. Lembeck, Daniel E. Cleary and Charles E. Cassidy purchased the same from Palmer Campbell and John W. Hardenbergh, Receivers of said Jarvis Terminal Cold Storage Company, for the sum of \$135,000, and upon the 26th day of July, 1904, entered into the possession of said
 40 plant and property. That Messrs. Lembeck, Cleary

and Cassidy, pursuant to the terms of an order of this court directing the sale, paid \$25,000 on account of the purchase price to said Receivers together with certain other sums directed by said order to be paid, and, to secure the remainder of such purchase price, deposited with the said Receivers 75 of the bonds of said Jarvis Terminal Cold Storage Company secured by the mortgage to the Commercial Trust Company of New Jersey referred to and described in the second paragraph of the said petition of Nathalie Jarvis.

2. That said property at the time of said sale was subject to certain mortgages and liens and was sold, pursuant to the order of the court, clear of said mortgages and liens, which mortgages and liens are set forth in the sixth paragraph of the said petition of Nathalie Jarvis.

3. That thereafter these respondents, John Alvin Young and Richard Irvin, purchased for a valuable consideration and became and now are the owners of all the bonds secured by said first mortgage to the Commercial Trust Company of New Jersey, said bonds being one hundred and fifty in number, of the par value of \$1,000 each. That these respondents also caused to be formed and duly incorporated under and pursuant to the laws of the State of New Jersey a corporation known as Union Terminal Cold Storage Company and caused to be assigned to said Union Terminal Cold Storage Company the said liens and the claims secured thereby of the Taylor-Martin Engineering Company, Frederick W. Cane trading as W. H. & F. W. Cane, Heine Safety Boiler Company, Electric Construction and Supply Company, B. F. Sturtevant Company, Timothy W. Dorsett, Robert A. Keasbey Company and the Carbon-dale Machine Company, being all the liens against said property except the lien of the mortgage of the Erie Railroad Company.

4. That thereafter the said Daniel B. Cleary, Charles E. Cassidy and Gustav W. Lembeck, by instrument in writing, duly assigned their bid to the said property and plant and their right to receive a deed to the same to these respondents, John Alvin Young and Richard Irvin, and thereafter these respondents, by instrument in writing, duly assigned their right to receive a deed for the said lands and
 10 property to the said Union Terminal Cold Storage Company. That on or about the 19th day of September, 1904, by order of the Court of Chancery made and dated on said date said Palmer Campbell and John W. Hardenbergh, Receivers, were directed, on terms and conditions in said order set forth, to execute and deliver a deed for the said lands and property sold as aforesaid to the said Union Terminal Cold Storage Company, which said order was entered upon the petition of these respondents after due
 20 notice to all stockholders and creditors of said Jarvis Terminal Cold Storage Company, including the petitioner, Nathalie Jarvis, and which order was consented to in open court before the Hon. Eugene Stevenson, Vice-Chancellor, by all parties appearing, including counsel for said Nathalie Jarvis and the Erie Railroad Company. For greater certainty as to the terms and conditions of said order, these respondents beg leave to refer to the record of the same as contained in the files of this court.

30 5. That in and by said order dated September 19, 1904, it was adjudged that said first mortgage bonds and said mechanics' and other liens so assigned to Union Treminal Cold Storage Company were prior and valid liens against the purchase price of the property of the Jarvis Terminal Cold Storage Company sold as aforesaid to at least the sum of \$110,000 with interest from the 29th day of June, 1904, the amount remaining unpaid upon said purchase price, and that upon the delivery of the deed pursuant to said order
 40 said bonds and liens should be deposited with the

Receivers and accepted by them as payment in full of the balance due on said purchase price, and when so deposited should be cancelled to the extent of \$110,000 with interest from the 29th day of June, 1904.

6. The said Union Terminal Cold Storage Company and these respondents complied with all the terms and conditions of said last-mentioned order and, upon the 23rd day of September, 1904, a deed conveying said lands and property of the Jarvis Terminal Cold Storage Company was duly made, executed and delivered to the Union Terminal Cold Storage Company.

7. These respondents further allege that they are the owners and holders, for value of all the said first mortgage bonds of said Jarvis Terminal Cold Storage Company; that said bonds are valid liens against the purchase price of the said lands and property of Jarvis Terminal Cold Storage Company for the sum of \$150,000 with interest from the 1st day of February, 1904, subject only to credit under the terms of the order of September 19, 1904, hereinbefore referred to. That by instrument in writing, dated the day of September, 1904, said Union Terminal Cold Storage Company duly assigned to these respondents, John Alvin Young and Richard Irvin, all its right, title or interest in and to any sums of money then or thereafter to be in the hands of the Receivers of the Jarvis Terminal Cold Storage Company to which it was or might become entitled by reason of the assignments to it of the liens and claims hereinbefore set forth as having been assigned to said Union Terminal Cold Storage Company.

8. That by reason of their ownership of said first mortgage bonds as hereinbefore set forth and the said assignments of said liens and rights under said liens, these respondents, John Alvin Young and Richard Irvin, are entitled to the sum of \$7,668.28 paid into court, as alleged in the sixth paragraph of the said petition of Nathalie Jarvis.

WHEREFORE these respondents pray that the said petition of Nathalie Jarvis be dismissed, and that an order be made directing the payment to these respondents of any and all sums of money paid into court by the Receivers of Jarvis Terminal Cold Storage Company.

Dated January 7, 1905.

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PIERRE F. COOK,
Solicitor of and of Counsel with
the respondents, John Alvin
Young and Richard Irvin.

ANSWER OF UNION TERMINAL COLD
STORAGE COMPANY TO PETITION OF
NATHALIE JARVIS.

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(Filed Jan. 10, 1905.)

The answer of UNION TERMINAL COLD STORAGE COMPANY to the petition of Nathalie Jarvis, or to so much thereof as it is advised is necessary for it to make answer unto.

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This respondent, as to the allegations of said petitioner in respect to a mortgage of the Jarvis Terminal Cold Storage Company alleged to have been executed to said petitioner to secure the sum of \$14,000, covering lands and premises at Provost and 13th Streets, Jersey City, and as to the record of said mortgage, says that it has no knowledge, and leaves said petitioner to make such proof thereof as she may be able.

And this respondent further answering, says that it admits that said defendant, Jarvis Terminal Cold Storage Company, executed a mortgage to the Commercial Trust Company of New Jersey as trustee,
40 securing the payment of 150 bonds of the defendant

corporation of the denomination of \$1,000 each, and that said mortgage was executed, dated and proved on the 2nd day of February, 1903, and recorded in the Hudson County Register's office, February 21, 1903, in Book 486, page 391.

And this respondent, further answering, admits that said defendant corporation executed a certain mortgage to the Erie Railroad Company, securing the payment of the sum of \$16,500, or some other sum, which mortgage bears date and was recorded as is alleged in said petition, and expressly recites that it is subject to the payment of the mortgage of the Commercial Trust Company for \$150,000 as above mentioned.

And this respondent, further answering, as to the allegations contained in the fourth paragraph of the petitioner's petition says it has no knowledge, but leaves the petitioner to make such proof thereof as she may be able, denying, however, that said allegations, if true, are relevant or material to support the claim of said petitioner. 20

And this respondent, further answering, as to the allegations contained in paragraph "(5)" of said petition, says that it denies that of the total bond issue of \$150,000 secured by the mortgage of the Commercial Trust Company, 20 bonds of the par value of \$20,000 remained undisposed of in the treasury of the Company, and admits that the balance of said bonds, amounting to \$130,000, were taken by the holders thereof in the knowledge that they were a part of a total bond issue of \$150,000. 30

And this respondent, further answering, says that it denies that said defendant corporation has received, in reliance upon its promise to deliver \$7,000 of its bonds to the petitioner, full value thereof, in the way of a loan to the company of \$7,000.

And this respondent, further answering, denies that all the holders of said bonds have been benefited by the proceeds of said alleged loan. 40

And this respondent, further answering, admits that the mortgage of the Erie Railroad Company was taken expressly subject to the lien of said trust mortgage for the full amount of the bonds authorized thereby, namely, the sum of \$150,000 and interest, as provided in said trust mortgage.

And this respondent, further answering, says that it admits that on the 29th day of June, 1904, the Receivers appointed by this court in the above cause made sale of said mortgaged property to Charles E. Cassidy, Gustav W. Lembeck and Daniel E. Cleary for the sum of \$135,000, but for greater certainty as to the manner of payment of said purchase price begs leave to refer to the record of the same as contained in the files of this court.

And this respondent, further answering, admits that said sale was had pursuant to an order made in the above cause May 23, 1904, directing that said premises be sold free and clear of liens, a further order made June 13, 1904, fixing an upset price upon said premises, and a certain other order filed herein on the 20th day of June, 1904, directing that said premises be sold without reservation as to price; but for greater certainty respecting the directions as to completion of the said sale, this respondent begs leave to refer to the orders heretofore made herein.

And this respondent, further answering, admits that after said sale the same was reported to the court and confirmed by an order made on the 5th day of July, 1904.

And this respondent, further answering, denies that said petitioner never assented to said sale or the terms thereof, or that she was never notified of the confirmation thereof, or that open bidding was discouraged, or that said bondholders and lienors were enabled to or did in fact combine for the purchase of said property and the discouragement and exclusion of those not equally situated, or that by reason of said combine said property was sold for less than its fair value.

And this respondent, further answering, admits that said property was sold free and clear of the various mortgages and other liens specified in paragraph "(6)" of said petition.

And this respondent, further answering, admits that out of the purchase price bid for said mortgaged premises at the Receivers' sale, there remained in cash in the hands of the Receivers the sum of \$7,668.-28, which amount has been paid into court to await the determination of the extent of the validity and priority of the liens against said premises; but for greater certainty as to the sums and credits allowed against and paid from said purchase price, resulting in the said balance in the hands of the Receivers and paid into court, this respondent begs leave to refer to the report of said Receivers and the various orders and papers herein in the files of this court.

And this respondent, further answering, admits that it is a corporation duly formed and incorporated under the laws of the State of New Jersey and that the respondents John Alvin Young and Richard Irvin were instrumental in organizing it and causing it to be incorporated, and denies that it is a re-organization of the bondholders and other lienors of the Jarvis Terminal Cold Storage Company, excepting said petitioner and the Erie Railroad Company.

And this respondent, further answering, admits that said Young and Irvin have caused the mortgaged property purchased by Gustav W. Lembeck, Charles E. Cassidy and Daniel E. Cleary to be conveyed to this respondent, Union Terminal Cold Storage Company and, for the account of said Young and Irvin, said Young and Irvin have delivered bonds to the Receivers of the defendant Company of the par value of \$150,000 and not \$130,000 as alleged in said petition, and further admits that said Young and Irvin have procured to be assigned to this respondent the liens and claims of the Taylor-Martin Engineering Company, Frederick W. Cane,

The Heine Safety Boiler Company, Electric Construction and Supply Company, B. F. Sturtevant Company, Timothy W. Dorsett, the Robert A. Keasbey Company and the Carbondale Machine Company, and denies that said assignments are in escrow subject to the payment therefor to said Young and Irvin.

And this respondent, further answering, denies
 1c that all of said liens are subsequent to the lien of the Commercial Trust Company mortgage and the bonds secured thereby.

And this respondent, further answering, alleges that on or about the 19th day of September, 1904, by order of the Court of Chancery made and dated on said date, said Palmer Campbell and John W. Hardenbergh, Receivers, were directed, on the terms and conditions in said order set forth, to execute and deliver a deed for the said lands and property sold
 20 as aforesaid to this respondent, Union Terminal Cold Storage Company, which said order was entered upon the petition of the respondents John Alvin Young and Richard Irvin after due notice to all stockholders and creditors of said Jarvis Terminal Cold Storage Company, including the petitioner, Nathalie Jarvis, and which order was consented to in open court before the Hon. Eugene Stevenson, Vice-Chancellor, by all parties appearing,
 30 including counsel for said Nathalie Jarvis and the Erie Railroad Company. For greater certainty as to the terms and conditions of said order, this respondent begs leave to refer to the record of the same as contained in the files of this court.

And this respondent, further answering, says that the Union Terminal Cold Storage Company, this respondent, and the respondents Young and Irvin, complied with all the terms and conditions of said last-mentioned order and, upon the 23d day of September, 1904, a deed conveying said lands and prop-
 4c erty of the Jarvis Terminal Cold Storage Company

was duly made, executed and delivered, pursuant to the terms of said order, to Union Terminal Cold Storage Company and that it has ever since been and now is in possession of said property under said deed.

And this respondent, further answering, alleges that on or about the day of September, 1904, it duly assigned to the respondents Young and Irvin all its right, title or interest in and to any sums of money then or thereafter to be in the hands of the Receivers of the Jarvis Terminal Cold Storage Company to which it was or might become entitled by reason of the assignments to it of the liens and claims hereinbefore set forth as having been assigned to it.

WHEREFORE this respondent prays that the said petition of Nathalie Jarvis be dismissed.

Dated January 7 1905.

PIERRE S. COOK,
Solicitor of and of Counsel with
the respondent, Union Terminal
Cold Storage Company.

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ANSWER OF COMMERCIAL TRUST COMPANY TO PETITION OF NATHALIE JARVIS.

(Filed Jan. 9, 1905.)

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The answer of Commercial Trust Company of New Jersey, Trustee, to the petition of Nathalie Jarvis, or to so much thereof as it is advised it is necessary for it to make answer unto, shows:—

1. This respondent as to the allegation of said petitioner in respect to a mortgage of the Jarvis Terminal Cold Storage Company alleged to have been executed to said petitioner, to secure the sum 10

of fourteen thousand dollars, covering lands and premises at Provost and Thirteenth streets, Jersey City, and as to the record of said mortgage, says that it has no knowledge, and leaves the petitioner to make such proof thereof as she may be able.

2. This respondent further answering admits that the defendant, the Jarvis Terminal Cold Storage Company, executed a mortgage to the respondent as
 10 Trustee, securing the payment of one hundred and fifty bonds of the defendant Corporation of the denomination of one thousand dollars each, and that said mortgage was executed, dated and proved on the second day of February, nineteen hundred and three, and recorded in the Hudson County Register's office February twenty-first, nineteen hundred and three, in Book 486 of Mortgages, page 391. And further answering, this respondent says that, as
 20 Trustee, under said mortgage it did thereafter, in accordance with the terms thereof, certify as such Trustee the said one hundred and fifty bonds of the par value of one thousand dollars each.

3. This respondent further answering says that it admits that the defendant corporation executed a mortgage to the Erie Railroad Company to secure sixteen thousand five hundred dollars, or some other sum, which mortgage bears date and was recorded as in said petition set out, and which mortgage expressly recites that it is subject to the pay-
 30 ment of the bonds to the extent of one hundred and fifty thousand dollars, issued under and secured by the said mortgage made to this respondent, as Trustee, as aforesaid.

4. This respondent further answering as to the allegations in the fourth paragraph of the petitioner's petition, says it has no knowledge of the facts therein stated, but leaves the petitioner to make such proof thereof as she may be able, denying, however, that the said allegations, if true, are relative
 40 or material to support the claim of said petitioner.

5. This respondent further answering as to the allegations contained in the fifth paragraph of said petition, says that it denies that of the total bond issue of one hundred and fifty thousand dollars, secured by the mortgage to this respondent, twenty bonds of the par value of twenty thousand dollars remained undisposed of in the treasury of the Company, but it admits that the balance of said bonds, amounting to one hundred and thirty thousand dollars were taken by the holders thereof in the knowledge that they were a part of the total bond issue of one hundred and fifty thousand dollars, and it further denies that said defendant corporation has received in reliance upon its alleged promise to deliver seven thousand dollars of its bonds to the petitioner full value thereof in the way of a loan to the defendant Company of seven thousand dollars, and it further denies that all the holders of said bonds have been benefited by the proceeds of said alleged loan. It admits that the mortgage of the Erie Railroad Company was taken expressly subject to the lien of said trust mortgage for the full amount of the bonds authorized thereby, namely the sum of one hundred and fifty thousand dollars and interest.

6. This respondent further answering admits that on June twenty-ninth, nineteen hundred and four the receivers in this cause made sale of the mortgaged property to Charles E. Cassidy, Gustav W. Lembeck and Daniel E. Cleary for one hundred and thirty-five thousand dollars, but for greater certainty as to the manner of payment of said purchase price begs leave to refer to the record of the same, as contained in the files of the Court in this cause. It further admits that such sale was pursuant to an order made herein May twenty-third, nineteen hundred and four, directing said premises to be sold free and clear of liens, and a further order made June thirteenth, nineteen hundred and four, fixing an upset price at said sale, and a further order made June twentieth, nineteen

hundred and four directing the sale of the premises without restriction as to price; but for greater certainty respecting the directions and conditions of the said sale, this respondent begs leave to refer to the orders in respect thereto heretofore made in this cause. It admits that said sale was reported to and confirmed by the Court by order made July fifth, nineteen hundred and four. It denies that the petitioner never assented to the said sale or the terms thereof, or that she was never notified of the confirmation thereof, or that open bidding was discouraged, or that said bondholders or lienors were enabled to and did in fact combine for the purchase of said property, and the discouragement and exclusion of those not equally situated, or that by reason of said alleged combine, said property was sold for less than its par value. It admits that said property was sold free and clear of the mortgages and other liens set out in paragraph six of said petition. It admits that from the purchase price bid for said mortgage premises there remained in cash in the hands of the receivers the sum of seventy-six hundred and thirty-eight dollars and twenty-eight cents, and it admits that said sum has been paid into court by the receivers to await the determination of the court as to the extent of the validity and priority of said liens, but for greater certainty as to the sum and credits allowed against and paid from said purchase price remaining in the said balance in the hands of the receivers and paid into court this respondent begs leave to refer to the reports of said receivers and the various orders and papers herein so filed with the court.

7. This respondent further answering admits that the respondents John Alvin Young and Richard Irvin were instrumental in organizing and incorporating the respondent the Union Terminal Cold Storage Company, and admits that said Young and Irvin have caused the property purchased by Charles

E. Cassidy, Gustav W. Lembeck and Daniel E. Cleary to be conveyed to said Union Terminal Cold Storage Company, for the account of said Young and Irvin, and says that said Young and Irvin have delivered bonds of the defendant Company to the receivers of the par value of one hundred and fifty thousand dollars and not one hundred and thirty thousand dollars, as alleged in said petition, and admits that said Young and Irvin procured to be assigned to the Union Terminal Cold Storage Company the liens and claims of the Talyor-Martin Engineering Company; Frederick W. Cane; The Heine Safety Boiler Company; Electric Construction and Supply Company; B. F. Sturtevant Company; Timothy W. Dorsett; Robert A. Keasbey Company and Carbondale Machine Company, and says that said liens have been deposited by said Young and Irvin with the receivers. It admits that all of said liens are subsequent to the liens of the mortgage of the defendant Company to this respondent, as Trustee, to secure the said issue of bonds hereinbefore referred to.

And this respondent by way of cross petition to the said petition of Nathalie Jarvis, further answering, alleges as follows:—

1. That this respondent charges and insists that all the balance of moneys now on deposit with this Court, on account of the balance of the purchase price of the sale of the said property by the receivers,³⁰ is money derived from the sale of property and assets upon which the mortgage held by this respondent, as Trustee, is a first and prior lien, and that under the terms of the said mortgage this respondent is entitled to receive the same, as Trustee, for the holders of bonds secured by the said mortgage.

2. That in and by the terms and conditions of the said mortgage so held by this respondent as aforesaid, it is among other things provided as follows: 40

"The Storage Company agrees from time to time on demand to pay to the Trustee reasonable compensation for its services hereunder; also to make reimbursements to the Trustee for all counsel fees, compensation of attorneys and agents, and other expenditures made by the Trustee hereunder, with interest thereon; also to indemnify and save the Trustee harmless against any and all liabilities of any kind
 10 which the Trustee may incur in the exercise and performance of its powers and duties hereunder, including any penalty or liability suffered by the Trustee under this instrument; and for such indemnification, reimbursement and payment of Trustee's compensation, a first lien is hereby imposed in favor of the Trustee upon all the property and funds hereby conveyed in trust." * * * "The Trustee may, in its discretion, advise with legal counsel, to be selected and employed by it at the expense of the company,
 20 and anything done or suffered by it in good faith by the Trustee, in accordance with the opinion of counsel, shall be conclusive in favor of the Trustee on the Storage Company, and on all holders of bonds and coupons secured thereby."

3. This respondent further charges and insists that, in accordance with the terms of the said mortgage, it has a first and prior lien upon the balance of proceeds of sale for the following items of compensation,
 30 tion, counsel fees and other expenditures made by it, as Trustee, under said mortgage, with interest thereon, and is entitled to be paid said sums of money before the distribution of any of said balance of proceeds of sale to the holders of the bonds secured by the said mortgage, namely:

(a) For amount of fire insurance policies on premiums of fire insurance on the buildings and cold storage plant covered by the trust mortgage, said
 40 premiums having been paid by the Trustee March

sixteenth and seventeenth, nineteen hundred and four, and amounting to eight hundred and fourteen dollars and twenty-five cents, together with interest thereon from March seventeenth, nineteen hundred and four. Under the terms of the sale by the receivers to Messrs. Cassidy, Lembeck and Cleary, the said purchasers, on taking possession of the mortgaged property, paid to the receivers the unearned premiums on these fire insurance policies, and the moneys so received by the receivers were covered into their accounts and form part of the balance of purchase price now on deposit with the Court.

(b) Amount of overdraft on coupon account for coupons on bonds secured by the trust mortgage falling due February first, nineteen hundred and four, advanced and paid by the Trustee, and amounting to forty-eight dollars and thirty-six cents, with interest thereon from February first, nineteen hundred and four.

(c) Trustee's fee for certifying one hundred and fifty bonds of the par value of one thousand dollars each, certified and issued under the terms of the trust mortgage, one hundred and fifty dollars.

(d) Bill of William Brinkerhoff, Esquire, for two hundred dollars for legal services rendered to the Trustee in representing the Trustee in the insolvency proceedings against the defendant corporation in this Court.

(e) For the reasonable compensation of the Trustee for its services as such Trustee under the mortgage in connection with the various proceedings in relation thereto to which it has been made a party, the sum of three hundred dollars.

This respondent therefore prays that an order may be made, directing the payment to it of the sums of money aforesaid out of the money paid into Court by the said receivers before the payment of any of said funds to any of the other claimants.

WM. BRINKERHOFF,

Solicitor and Counsel with respondent, Commercial Trust Company of New Jersey,
Trustee.

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ANSWER OF ERIE RAILROAD COMPANY.

(Filed Jan. 19 1905.)

The answer of Erie Railroad Company to the petition of Natalie Jarvis:

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1. The respondent, Erie Railroad Company, has no knowledge of the facts set up in paragraph one of said petition and requires proof thereof.

2. This respondent admits that the Jarvis Terminal Cold Storage Company executed a mortgage to the Commercial Trust Company of New Jersey, as trustee, to secure the payment of one hundred and fifty bonds of said corporation, of the denomination of one thousand dollars each, and prays reference to the original mortgage, or the record thereof, for certainty as to its terms.

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3. This respondent admits that the said Jarvis Terminal Cold Storage Company executed a mortgage to this respondent to secure payment of the sum of sixteen thousand five hundred dollars, dated December sixteenth, nineteen hundred and three, and proved and recorded as stated in the petition, and respondent prays reference to the original of said mortgage for certainty as to the terms thereof.

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4. This respondent has no knowledge of the facts set up in paragraph four of said petition, and requires proof thereof.

5. As to the allegations in paragraph five of said petition, this respondent denies that the said Storage Company received any value for the loan of seven thousand dollars, alleged to have been made by the petitioner, and denies that the lien of the respondent's mortgage is subject to the lien of the said trust mortgage to the full amount of the bonds authorized thereby.

6. This respondent further answering shows that of the one hundred and fifty bonds secured by the said mortgage to the Commercial Trust Company of New Jersey, only one hundred and twenty-five bonds were lawfully issued, and that said one hundred and twenty-five bonds were sold at the rate of eighty-eight cents on the dollar, and that the amount due thereon, as against this respondent, is the sum of one hundred and ten thousand dollars, and no more; and that the remaining twenty-five of said bonds were issued and delivered without consideration, and without authority of said Storage Company, and without authority of the trustee, and are void as against this respondent.

7. This respondent has no knowledge as to the allegations in paragraph seven of the petition, except that it believes that Messrs. John Alvin Young and Richard Irvin have caused to be incorporated under the laws of the State of New Jersey, a corporation known as the Union Terminal Cold Storage Company, and that said Union Terminal Cold Storage Company has purchased the property covered by the mortgage of this respondent.

8. And this respondent, by way of cross-petition, further answering, repeats the allegations hereinbefore set forth, and shows that the full amount of respondent's said mortgage, to wit, the sum of sixteen thousand five hundred dollars, was advanced and paid by the respondent to the said Jarvis Terminal Cold Storage Company, and that said sum so advanced was applied solely to the erection of new
 10 buildings upon the mortgaged lands, and to alterations, repairs and additions to buildings on said lands; and that its said mortgage was duly recorded in the office of the Register of Hudson County, on December eighteenth, nineteen hundred and three, and that none of the mechanics liens mentioned in said petition were filed until long subsequent to the recording of respondent's mortgage, and that by virtue of the statute in such case made and provided, the lien of said respondent's mortgage is prior to the
 20 lien of all said mechanics liens.

9. Respondent further answering shows that the total amount received by the said Jarvis Terminal Cold Storage Company on the sale of the bonds issued under the said trust mortgage is the sum of one hundred and ten thousand dollars, and no more.

30 10. Respondent further answering shows that some or all of the moneys received by the defendant from the sale of the said bonds was not applied to the erection of new buildings, or to alterations, repairs or additions on buildings on the lands covered by said trust mortgage, and by reason thereof the lien of the respondent's mortgage is prior to the lien of the bonds secured by said trust mortgage to the extent that the moneys thereby procured to the defendant were not applied to the erection of new buildings, or to alterations, repairs or additions to buildings on
 40 the lands covered by said mortgage.

11. This respondent further answering shows that the bonds issued under said trust mortgage are entitled by the terms thereof to interest at the rate of six per cent. per annum. That one hundred and twenty-five bonds were in fact sold at the rate of eighty-eight cents on the dollar, and were issued and sold at a usurious rate of interest, and by reason thereof the holders of said bonds are entitled as against this respondent to an allowance for the same only to the extent of the amount actually loaned to the defendant on said bonds without any interest.

This respondent therefore prays that the said petition of Natalie Jarvis be dismissed, and that an order may be made directing the payment to it of the said sum of seven thousand six hundred and sixty-eight dollars and twenty-eight cents, paid into Court by the Receivers out of the purchase price paid for the mortgaged premises at the receivers' sale. 20

COLLINS & CORBIN,
Solicitors of Erie Railroad
Company, respondent.

CONSENT TO AND ORDER OF REFERENCE.

Issue being joined on the petition of Natalie Jarvis, filed in above cause by John Alvin Young, Richard 30 Irvin, Union Terminal Cold Storage Company, Commercial Trust Company of New Jersey, and the Erie Railroad Company, and counsel for the respective parties agreeing hereto:

IT IS, on this twentieth day of January, nineteen hundred and five, on motion of Grey, McDermott & Enright, of counsel with petitioner,

ORDERED, that the above stated cause be referred to Lindley M. Garrison, Esq., one of the Vice-Chancellors, to hear the same for the Chancellor, 10

WILLIAM BRINKERHOFF, ESQ., and
WILLIAM C. FISK, ESQ., for Com-
mercial Trust Company of New Jersey.

PIERRE F. COOK, ESQ., (with whom
was Alfred A. Wheat, Esq., of the New
York Bar), for John Alvin Young and
Richard Irvin and Union Terminal
Cold Storage Company. 19

CHARLES L. CORBIN and GEO. S.
HOBART, of Collins & Corbin, for
Erie Railroad Company.

THE CASE FOR THE PETITIONER.

20

SAMUEL M. SCHAFER, sworn.

By MR. ENRIGHT:

Q. Mr. Schafer, where do you live? A. My pri-
vate residence is 52 W. Forty-sixth street.

Q. What is your business? A. 35 Wall Street.

Q. What is your business I say? A. Banker and 30
Broker.

Q. What relation did you occupy towards Mrs.
Nathalie Jarvis in 1902 and 1903? A. Well, acting
as her agent and attorney; I had different business
affairs with her.

Q. Were you concerned, for her, with her prop-
erty in Jersey City? A. I acted as her agent and at-
torney for the property in Jersey City.

Q. Do you remember the sale of property to the
Jarvis Terminal Cold Storage Warehouse Com-
pany? A. I do. 40

Q. Personally, did you participate in that sale? A. I did.

Q. Who negotiated the sale, and fixed the price and the details of payment? A. Mr. Jarvis and myself.

Q. Mr. Robert M. Jarvis? A. Yes, sir.

Q. What is his relation to Mrs. Nathalie Jarvis?

A. Well, he is a nephew of Mrs Jarvis's husband, and
 10 her nephew, too

THE VICE-CHANCELLOR: Is this lady married? Someone told me she was single when I got the names of the parties

THE WITNESS: No, sir; she is a widow.

20 Q. She is no blood relationship, then, to Robert M. Jarvis? A. No blood relationship. The old man Jarvis was the uncle of Mr. Robert M. Jarvis.

Q. And in 1902, at the time you took up this negotiation with Robert M. Jarvis, what was his connection with the Jarvis Terminal Cold Storage Company? A. At that time I did not know he had any connection with the Jarvis Terminal Cold Storage Company. I understood he was buying it for them. I didn't know who he bought it for at the time. Then
 30 subsequently it turned out that it was the Terminal Company, I believe.

Q. Did you subsequently learn what position he occupied with the company? A. Yes, sir; subsequently I learned it.

Q. What was it? A. I believe he was president of the company.

Q. Now, when this property was sold to the Jarvis Company, what were the terms of the sale? A. It was to be sold for twenty-two thousand dollars.

40 Q. And how paid?

Mr. HOBART: I object to that, because there is an option in writing which gives all the terms, and if the paper is in writing it must be produced.

Q. Have you, Mr. Schafer, got a copy of that option? A. I believe it is amongst your papers.

Mr. FISK: To keep the matter clear, I might say that this option was not with the Jarvis Company, it was with Mr. Jarvis.

The VICE-CHANCELLOR: That does not keep the matter clear, it only confuses it. Wait until we see the paper. If the paper is not relevant I won't admit it.

Q. Have you got a duplicate original of that option? A. I haven't it with me. If I have, I don't know. 20

Q. If I show you a typewritten paper, marked "Copy," and ask you if that is the only copy you have of that option? A. To the best of my recollection this is the only copy I have.

Q. Well, have you got the original? A. I believe Mr. Jarvis has the original.

Q. Well, have you got it? A. I don't know that I have; I don't think I have. 30

Mr. ENRIGHT: I will offer this paper in evidence.

The VICE-CHANCELLOR: Counsel may all inspect it.

(The paper was thereupon submitted to the respective counsel for their inspection.) 40

Mr. HOBART: All of the counsel object to it, on the grounds, first, that it is not a complete copy, according to the record of the company; and, second, it is not made with the company itself.

10 The VICE-CHANCELLOR: I shall rule it out upon the ground that there is no proof that this is an original paper. Appearing on the face to be a typewritten paper, signed in typewriting, and the original not being accounted for, this paper is not competent. I will not rue now on its relevancy.

Mr. ENRIGHT: I call upon the counsel for the Commercial Trust Company, Trustee, to produce the original.

20 Mr. FISK: We haven't it. The Commercial Trust Company never did have it. There was no way they could have it.

(The paper was thereupon marked for identification "G. W. B. 1.")

Q. When you negotiated the sale of this property what was the price agreed upon? A. Twenty-two thousand dollars.

30 Q. How was that price, in fact, paid or secured to you?

Mr. FISK: On behalf of the petitioning trustee, I think that we should object. Your Honor has already said this agreement was in writing, and it should be produced in evidence. It has not been accounted for.

Mr. HOBART: I make the same objection.

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(Question allowed.)

A. They paid eight thousand dollars cash, and fourteen thousand dollars was given in a purchase mortgage.

Q. Mr. Schafer. I show you a bond dated December 1, 1902, made by the Jarvis Terminal Cold Storage Company to Nathalie Jarvis, in the penal sum of twenty-eight thousand dollars, securing the payment of fourteen thousand dollars in one year, and ask you if that is the bond which you have mentioned as securing part of the purchase price? A. Yes, sir.

(The bond identified by the witness is offered in evidence, admitted without objection, and marked Exhibit P. 1.)

Q. I show you mortgage, made by the Jarvis Terminal Cold Storage Company to Nathalie Jarvis, dated December 1, 1902, recorded in the Hudson County Register's Office, December 3, 1902, in Book 480 of Mortgages, page 628, and ask you if that is the mortgage that you got?

The VICE-CHANCELLOR: (To the witness.) Is that the mortgage that accompanied the bond that has just been put in evidence?

A. That is it; yes, sir.

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(The mortgage identified by the witness is offered in evidence, admitted without objection, and marked Exhibit P. 2).

Q. In whose custody did that bond and mortgage remain after it was executed? A. I believe it was in my custody, of course.

Q. Up to what time? A. Up until the time that the first payment was made of seven thousand dollars.

Q. After the giving of this bond and mortgage—

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By the VICE-CHANCELLOR:

Q. One minute: When you say "a payment of seven thousand dollars," you do not mean the payment of eight thousand dollars cash that preceded the giving of the mortgage, do you? A. No, sir.

Q. You mean some other payment about which you have not yet testified? A. Yes, sir; the second
10 payment.

By Mr. ENRIGHT:

Q. Now, do you recall in the giving of this bond and mortgage, any negotiations for the cancellation of that bond and mortgage? A. Can I recall it?

Q. Yes? A. I do.

Q. With whom were they conducted? A. With Mr. Jarvis, Robert M. Jarvis.

20 Q. Whereabouts? A. At my office.

Q. Well, will you tell when they took place? A. Why, they took place at the time when that payment was made, I believe, February 3d—or wait, I have got a memorandum of that, when that second payment was made (producing a paper).

By the VICE-CHANCELLOR:

Q. Is there some paper which fixes the date in
30 your memory? A. No, I took the memorandum last night.

Q. Answer my question,—is there some paper which fixes the date in your memory? A. No, sir; my books show that. There may be some papers, but my cash book shows when I received the money. That is where I got it.

By Mr. ENRIGHT:

Q. Your cash books show that you received
40 money? A. Yes, sir.

Q. Now, weren't there negotiations before the time when you got the money? A. I think there were.

Q. Now, what did Mr. Jarvis ask you when he came to your office and negotiated for the cancellation of this first bond and mortgage? A. He said he would pay seven thousand and I should extend the other, and he proposed to give me bonds for the cancellation of that mortgage. The object of cancelling the mortgage and giving the satisfaction piece was to facilitate the business that they were going to start in, the Cold Storage Company; and they wanted to have the property free and clear with the object of issuing their bonds.

Q. Was anything said at that time about an intended bond issue as secured by mortgage? A. Yes. When they asked me that I should release that bond and mortgage, and give them a satisfaction piece, I said, very naturally, "As I represent another lady I want some security, and a note to that effect, to permit me—"

The VICE-CHANCELLOR: Oh, no; listen to the question.

(Question repeated.)

A. Yes, I understood there was to be.

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The VICE-CHANCELLOR: What he asked you was whether anything was said.

The WITNESS: Yes, sir.

Q. Well, what was said? A. I believe he said there was one hundred and twenty-five thousand of bonds to be issued, and stock to the same amount, if I am not mistaken.

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Q. Was anything said as to what you were to get upon cancelling your mortgage? A. He was to send me bonds as collateral against the balance which he owed.

By the VICE-CHANCELLOR:

10 Q. He was to pay you seven thousand dollars in cash and that would leave seven thousand dollars due you on the mortgage? A. Yes, sir.

Q. Now, how many bonds was he to send you? A. Seven thousand dollars.

Q. Seven thousand dollars worth of bonds to secure the balance of the mortgage after he had paid you seven thousand dollars in cash? A. Yes, sir.

20 By Mr. ENRIGHT:

Q. Where was Mrs. Jarvis at that time? A. I think she was in Europe at that time, if I am not mistaken.

Q. Did you agree to satisfy the mortgage upon those terms? A. I did.

The VICE-CHANCELLOR: You have not stated all the terms yet.

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Q. Well, were there any other terms upon which you were to satisfy the mortgage, except those you have just given? A. None that I remember of, no.

Q. State fully the agreement, as you recall it? A. The agreement was that I was to receive bonds as collateral for that note.

The VICE-CHANCELLOR: You have not told us about the note, don't you see? That is what I called your attention to.

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The WITNESS: Well, he sent me a note. I wanted an evidence of indebtedness.

Q. Tell us about that? A. Well, we have got the note here.

The VICE-CHANCELLOR: Let counsel show you the note, then. The trouble is that the Court can only know what happened when someone tells it. Now you assume that the Court knows. The Court does not know. If there was a note, you must say so, and say what the amount was.

Q. Tell us, as succinctly as you can, what the terms were—what you were to get, and what you were to do? A. The terms were that Mr. Jarvis suggested to me to take the bonds, and for the time being it was suggested, or I suggested, that I wanted to show the indebtedness and he gave me a note payable in sixty days.

By the VICE-CHANCELLOR:

Q. A note of what concern? A. The Jarvis Cold Storage Company, signed by Mr. Robert M. Jarvis as President.

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By Mr. ENRIGHT:

Q. I was directing your attention particularly to the negotiation before the mortgage was satisfied, and before the note was given. Now, what was the arrangement, when you first reached an agreement with Mr. Jarvis, as to the terms upon which you were to satisfy the mortgage? A. The agreement was that he was to send me bonds for the balance of the amount which he owed.

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Q. And was he to give you a note? A. He was to give a note with it.

Q. With it? A. Yes, sir; of course a note was to come with it, a collateral note, as we usually have in Wall Street.

Q. Were there any papers executed at that time? A. Not at that moment.

Q. Did you get at that time, or at any other time,
 10 an instrument to satisfy the mortgage, which was to be executed by Mrs. Jarvis? A. Yes, sir; I sent that to Europe.

Q. I show you a satisfaction of mortgage, dated February 5, 1903, made by Nathalie Jarvis to the Jarvis Terminal Cold Storage Company, and ask you if that is the paper to which you have just referred?

A. Yes, sir; that is the paper which was sent to Europe for the purpose of getting that signature on it.

Q. When it came back what did you do with it?

20 A. I handed it to Mr. Jarvis.

(The satisfaction of mortgage identified by the witness is offered in evidence, admitted without objection, and marked Exhibit P. 3.)

Q. After you had handed that to Mr. Jarvis did you have any further transaction with him respecting the note which he was to give you? A. No, sir.
 30 When it came due he sent another one.

Q. Well, did he ever give you the note that had been agreed upon? A. I think he did, yes.

Q. I show you what purports to be a note of the Jarvis Terminal Cold Storage Company, to the order of Nathaie Jarvis, dated February 19, 1903, for seven thousand dollars, payable sixty days after date, signed "Jarvis Terminal Cold Storage Company, by R. M. Jarvis, President; R. M. Jarvis, Jr., Treasurer," and ask you if that is the note which you got?

40 A. Yes sir; that is the note.

(The note identified by the witness is offered in evidence, admitted without objection, and marked Exhibit P. 4.)

Q. I call your attention to the terms of that note, that a certificate for 70 shares of the stock of the Jarvis Company was deposited as collateral; I ask you how it happened—if you know—that stock was ¹⁰ given as collateral with that note? A. I will answer exactly just as it happened: I was to receive seven thousand of bonds, and I frequently requested Mr. Jarvis for those bonds, and he said they were not finished yet, or he couldn't deliver them; and he, voluntarily, himself, sent that seventy shares of stock temporarily, in lieu of this seven thousand of bonds, until they were issued; and he sent that stock to me that I should keep the same until I would get the bonds. ²⁰

Q. Where was that note given to you? A. It was all in my office, the transaction. Which note do you mean?

Q. The first note? A. Well that note was given in my office.

Q. Was that before or after the satisfaction piece had been given by you to Mr. Jarvis? A. That was after.

Q. Was there any certificate for stock that accompanied that note at the time that it came to you? A. ³⁰ No, I don't believe there was.

Q. Did you ever get a certificate for stock? A. Yes, you have got it there.

Q. When? A. Well, I cannot exactly tell; it was some time after.

Q. Some time after? A. Yes sir.

Q. I show you Certificate No. 5, for capital stock of the Jarvis Terminal Cold Storage Company, for seventy shares of stock, dated February 19, 1903, registered February, ²¹ 1903, drawn to the name of ⁴⁰

William H Gibson, and ask you if that is the certificate of stock which you got—if that is the certificate which you have just testified about? A. Yes, sir.

(The certificate of stock identified by the witness is offered in evidence, admitted without objection, and marked Exhibit P. 6.)

10 Q. Was that note paid when it came due? A. No, sir.

Q. What happened when that came due? A. Well, I renewed it again with another note; it was renewed.

Q. In the meantime had anything further been said about the bonds? A. I asked for the bonds, and then it was stated that they were not ready.

20 By Mr. FISK:

Q. Asked whom? A. Mr. Jarvis the President.

By Mr. ENRIGHT:

Q. Did you see Mr. Jarvis very often? A. Yes, sir.

Q. How often, about, did you see him? A. Oh, 30 at that time, once or twice a week.

Q. I show you another note for seven thousand dollars, dated April 20, 1903, made by the Jarvis Terminal Cold Storage Company to the order of Nathalie Jarvis, payable sixty days after date, and ask you if that is the renewal note that you have just testified about? A. Yes, sir.

(Renewal note identified by the witness offered in evidence, admitted without objection, and marked Exhibit P. 7.)

Q. Was that note paid when it came due? A. No, sir.

Q. What happened to it? A. I got a third one.

Q. A renewal? A. Yes, sir.

Q. Was the renewal note paid? A. No, sir.

Mr. FISK: Have you got that third note?

Mr. ENRIGHT: I am going to offer them ¹⁰
all together.

Q. And was the indebtedness secured by the note ever paid? A. Never paid.

Q. From time to time it was renewed? A. From time to time it was renewed; yes, sir.

Q. I show you notes of like character, dated June 20, 1903; July 20, 1903; August 19, 1903; September 21, 1903; October 22, 1903; and November 23, ²⁰ 1903, and ask you if those are all renewals of the first note that you testified to? A. Yes, sir.

(The six renewal notes last identified by the witness are offered in evidence, admitted without objection, and marked, as one Exhibit, Exhibit P. 8.)

Q. Did you ever get, with any of those renewal notes, the bonds which you have said were to come ³⁰
to you as collateral? A. No, sir.

Q. What was done about those bonds? A. What was done about them?

The VICE-CHANCELLOR: Do you mean, what did he do about them?

Q. Yes, what did you do? A. I asked for them; that is about all I could do up to the present time.

Q. Well, whom did you ask? A. Mr. Jarvis. ⁴⁰

Q. And what would he say? A. He said, "They ain't ready," or "As soon as I can get them I will deliver them to you," which I took as granted, taking his word for it

Q. Did he ever write you any letters?

10 The VICE-CHANCELLOR: If you have the letters, it is easier to show them to him and ask him about them. He cannot remember what is in the letters.

Q. I show you a letter addressed to you, signed "R. M. Jarvis," dated June 22, 1903, and ask you if you know whom that came from? A. That came from Mr. Jarvis.

Q. What does that refer to?

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The VICE-CHANCELLOR: The letter speaks for itself. Let the witness read it, and if it is relevant you may offer it after counsel inspect it.

The WITNESS: Yes, sir, I remember this letter.

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(Letter identified by the witness, offered in evidence, and read by Mr. Enright to opposing counsel.)

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Mr. WHEAT: We object to that letter as immaterial and irrelevant and not binding upon the corporation, and not binding any of the parties to this proceeding. I object on behalf of Young and Irvin, cross-petitioners, and the Union Terminal Cold Storage Company.

The VICE-CHANCELLOR: It will be admitted.

(The letter was thereupon marked Exhibit P. 9.)

Q. It was after the receipt of that letter that you accepted the renewal of the note falling due about that time? A. Yes, sir; of course.

Q. I show you another letter addressed to Samuel M. Schafer, dated October 22, 1903, signed "R. M. Jarvis," and ask you from whom you received that letter? A. I received it from Mr. Jarvis.

Q. You are familiar with his signature? A. Yes, sir.

Q. Is that his signature to the letter? A. Yes, sir.

(Letter identified by the witness offered in evidence, read to opposing counsel by Mr. Enright, admitted without objection, and marked Exhibit P. 10.)

Q. I show you another letter, addressed to Samuel M. Schafer, signed "R. M. Jarvis," dated November 23, 1903, and ask you from whom you received that? A. From Mr. Robert M. Jarvis.

Q. At the time or about the time of its date, do you remember? A. Well, it must have been that date.

30

(Letter identified by the witness offered in evidence, read to opposing counsel by Mr. Enright, admitted without objection, and marked Exhibit P. 11.)

CROSS EXAMINATION.

By. Mr. FISK (for the Commercial Trust Company, Trustee):

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Q. You were aware of the appointment of receivers for the Jarvis Terminal Cold Storage Company by this Court? A. After it took place; yes, sir.

Q. Did you represent Mrs. Jarvis in the matter of preparing and presenting her claim on the note to the Receivers? A. I represented Mrs. Jarvis.

Q. I show you paper, purporting to be the claim filed by Mrs. Jarvis with the Receivers, and ask if
10 you assisted in the preparation of that, and if that is Mrs. Jarvis's signature to the claim?

Mr. ENRIGHT: It is admitted that that is Mrs. Jarvis's signature.

Mr. FISK: Is it admitted that that is the claim she filed with the Receivers?

20

Mr. ENRIGHT: It is admitted that that is the claim she filed with the Receivers.

(Said paper is marked for identification "W. C. F. 1.")

By Mr. CORBIN. (For the Erie Railroad Com-
30 pany:

Q. When you sent this satisfaction to Mrs. Jarvis to execute did you write her any letter with the satisfaction? A. Yes, sir; I had to write her a letter very naturally, to explain it.

Q. Well, did you? A. Yes, sir; I wrote her a letter.

Q. Explaining what the transaction was? A. Well, she knew of the transaction before she left for
40 Europe.

Q. Have you a copy of the letter you sent her? A. I don't think I have.

Mr. CORBIN: I ask counsel to produce the letter which was sent to her, if they have it.

Mr. ENRIGHT: We haven't been able to find it.

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Q. Do you not keep copies of business letters sent out from your office? A. We do. I may have that letter copy but usually when I wrote Mrs. Jarvis I did not copy the letters. I never wrote to her much.

Q. You may have a press copy of the letter? A. I may have one.

Q. Will you look and see whether you have, or not? A. I will.

20

Q. Did Mrs. Jarvis ever bind herself that she would not take the bonds—did she ever waive her right to insist on payment in cash for those notes?

Mr. ENRIGHT: I object to that.

The VICE-CHANCELLOR: I do not think that I understand that question. It is two questions in one and I cannot rule on it in its present shape. If you will divide the question up so I can rule on it, I will do so.

30

Q. Did Mrs. Jarvis ever agree that she would take bonds, or did she reserve the right to insist on payment of her notes according to their terms? A. Mrs. Jarvis left everything for me to attend to, and whatever I agreed upon she was satisfied with.

Q. Well, do the writings express the agreement you made? A. The writings I wrote her? I don't remember what I wrote her in her letters.

40

Q. I refer to the writing which was given you by the Storage Company—does that express the agreement which you made?

Mr. ENRIGHT: Which writing?

Q. The note. You received that note from the Storage Company? A. Yes, sir.

10 Q. Does that express the agreement you had made with them? A. It expresses part of it—the sense of it.

Q. Did you demand anything more? A. I demanded the bonds, the collateral for it.

Q. At the time when you got that note did you get the stock? A. No, the stock was sent afterwards. I expected the bonds, and the Mr. Jarvis sent the stock temporarily until the bonds were ready to be delivered.

20 Q. Did you require any resolution of the Storage Company to show his authority to execute the notes? A. I was dealing with the President of the company at that time, and I thought everything was proper, and I had confidence in Mr. Jarvis.

Q. Did you ask for any copy of the resolution? A. No, sir; I did not.

Q. Did you see the resolution? A. I did not.

Q. And you did not ask to see it? A. No, I did not ask to see it.

30 Q. Well, did you procure any other writing from him, or any writing whatever from him, to show any agreement about your obtaining bonds? A. Well, except these letters that I have got here; and I may have more at home.

Q. You may have more at home? A. I may.

Q. At the time you got this note did you have any other writing relating to the bonds? A. I don't know.

Q. You found this note only referred to the stock
40 as the collateral? A. No, sir; the note referred that

bonds were to be as collateral.

Q. Look at the note—the note doesn't say anything about bonds, does it? A. No, sir; but the bonds were to go as collateral against this note.

Q. I say, does the note say anything about bonds?

A. No, sir.

Q. Did you make any objection to the form of the note when you received it? A. I made objection to the stock when he sent it.

Q. You accepted it? A. Well, I had to accept it, under the circumstances.

Q. And you accepted the note? A. I accepted the note. He sent the stock afterwards.

Q. You never got any writing about the bonds at all, then, except these letters you speak of? A. I don't believe I ever got a writing, except Mr. Jarvis's word of honor.

Q. When you got this note did you give Mr. Jarvis the satisfaction of the mortgage? A. Of course,²⁰ I must have given it to him; I gave it to him, I don't know whether before or after.

Q. On the receipt of this note you delivered up the satisfaction? A. I believe I did it before; whether before or after I cannot recollect. I delivered the satisfaction.

By Mr. WHEAT: (For Young and Irvin, and The Union Terminal Cold Storage Company).³⁰

Q. I want to call your attention, Mr. Shafer, to the first note, dated February 19, 1903; I want to call your attention, at the same time, to this certificate of stock, Exhibit P. 6, and ask you to look at the name of the witness on the back of the certificate, and ask you if that is your signature? A. Yes, sir.

Q. And did you sign that on the date which you purported to sign it, February 19, 1903? A. I think so.⁴⁰

Q. That is the same as the date of the note; and was that certificate endorsed in your presence? A. Yes, sir.

Q. At the same time this note was delivered to you? A. I don't know whether it was the same time.

Q. Well, was this note delivered to you on the 19th, the date which it bears? A. Well, I believe that note bears the date of the time when the mortgage was due, and sometimes Mr. Jarvis would date them a head a little, and sometimes a day behind.

Q. I want you to think about that: Was this note delivered to you on the 19th, the date it bears? A. I cannot remember whether it was the same date.

Q. Who is Mr. Gibson? His name appears on the certificate of stock here. A. He is a young man in our office.

Q. Now, what is your best recollection, Mr. Schafer, about the date that that note was received by you—is it February 19, 1903? A. It was about that time.

Q. Well, is it not true that this certificate of stock was endorsed by a clerk in your office, witnessed by you at the same time that note was delivered to you, and at the same time you delivered the satisfaction to Mr. Jarvis—is not that the fact? A. Well, I couldn't answer that quite correctly just now; I don't remember that part of the facts; because sometimes I would receive them before, and sometimes afterward. Maybe Mr. Jarvis can say.

Q. Well, this was the first transaction, was it not? A. I believe it was.

Q. And you had a satisfaction piece, belonging to your client, whereby she released a mortgage for fourteen thousand dollars on property? A. Fourteen thousand dollars, yes.

Q. And does it not occur to you at all whether or not you delivered that satisfaction piece without receiving any security?

Mr. ENRIGHT: I object. The question is not intelligible.

The VICE CHANCELLOR: That is an intelligible question to the Court. It is a perfectly proper question on cross-examination.

A. Well, I remember, when I received the satisfaction piece from Europe, Mr. Jarvis was in a hurry to get it, to get his discharge over there for the property; and, if my memory serves me, I think I gave him that satisfaction piece, and the things were done afterwards, or they might have been done the same afternoon.

Q. Might have been done the same afternoon?

A. Might have been done the same afternoon.

Q. Well, wasn't it done the same afternoon? A. I couldn't state that positively, because Mr. Jarvis and I were on friendly relations all the time, and if he had asked me for the satisfaction piece I would have given it to him without anything.

Q. I call your attention, Mr. Schafer, to the satisfaction piece—it is Exhibit P, 3—and direct your attention to the certificate of record in the office of the Register of Hudson County, bearing date the 21st of February, and ask you if that refreshes your recollection? A. Whether I remember this?

30

The VICE CHANCELLOR: No, whether that refreshes your recollection as to when you delivered it.

A. When was this—February 21? I had no object in remembering it; I don't remember it.

By the VICE-CHANCELLOR:

Q. Just answer whether it does or does not refresh your recollection? A. No, it does not.

40

By Mr. WHEAT:

Q. Look at the date of the satisfaction piece—the date that it purports to be executed by Mrs. Jarvis? A. That was executed in Europe, you know, in London.

Q. Well, what is the date? A. The 5th day of February.

Q. Now, what is the usual time required for transmission of a paper across the Atlantic Ocean—from seven to ten days? A. Yes, say ten days; call it, in round amount, ten days.

Q. The execution and delivery to you of this note; the receipt by you of this stock as security for the note; the execution of the satisfaction piece of the mortgage, and the record of the satisfaction piece, all took place between the 5th day of February and the 21st of February, 1903; is not that true?

20

The VICE CHANCELLOR: There is no evidence here that the date of the record of the mortgage was between those dates.

A. That I suppose is all right; I don't know.

By Mr. ENRIGHT:

30 Q. Mr. Schafer, I show you an envelope addressed to S. M. Schafer, 35 Wall street, New York City, marked "Consulate General, United States of America, Berlin," and ask you if you recognize that envelope?

The VICE CHANCELLOR: What came in it, you mean.

Q. What came in that? A. The satisfaction piece,
40 to the best of my memory.

Q. Where did you get that for the purpose of the court to-day? A. I had it amongst my papers.

Q. Amongst the Jarvis papers? A. Yes, sir.

Q. Your best recollection is, then, that the satisfaction piece came in that envelope? A. Came in that envelope; yes, sir.

Q. Will you turn to the post-mark upon that, and see if that refreshes your memory as to the time when you received the satisfaction piece from Mrs. Jarvis? ¹⁰

A. February 15th.

(The envelope identified by the witness is offered in evidence, admitted without objection, and marked Exhibit P, 12).

Q. After you got this certificate of stock from Mr. Jarvis, did you part with it for the purpose of having it registered by the Commercial Trust Company? ²⁰
A. Not to my knowledge.

Q. Well, do you have personal custody of the papers of the Jarvis Estate in your office? A. There is no estate; it is not an estate. The papers of Mrs. Jarvis, you mean?

Q. Do you have personal custody of the papers of Mrs. Jarvis? A. Yes.

Q. And you know what is done with them? A. Yes, sir.

Q. Now, from the time that certificate was received, are you certain that you never took it, or sent it, to the Commercial Trust Company to have it registered? A. Not to my best knowledge and belief, sir; no, sir. I don't think I would receive the certificate without it was registered. ³⁰

Q. I call your attention to the words upon this certificate of stock, P, 6, "Countersigned and registered, February 21, 1903, Commercial Trust Company of New Jersey, by Oscar Gubelman, Secretary"—does that recall to you anything about the date when you got the certificate? A. It must have ⁴⁰

been around that date which it is dated here, the 19th day of February, 1903; about the 21st; it is endorsed on the 19th of February—

The VICE CHANCELLOR: That is not an answer to the question at all.

(Question repeated).

10

A The back of it recalls the date, February 19th; that recalls the date to me.

By the VICE CHANCELLOR:

Q. That is what he calls your attention to, and he wants to know whether that endorsement, February 21, 1903, makes any impression upon your mind as to when you got that certificate of stock?

o A. I want to state that there is only two days between the one and the other; it must have been between the 19th and the 21st.

By Mr. ENRIGHT:

Q. After you got that certificate you say you never sent it to the Commercial Trust Company to have it registered? A. No, sir; I did not.

Q. That register mark of the Commercial Trust
30 Company was on the certificate when you got it?

A. When I received it; yes, sir.

Q. Is that right? A. Yes, sir; to the best of my knowledge.

Q. Now, do you recall when you got the seven thousand dollars in cash?

Mr. FISK: He said he had a book entry of that; he said he had an entry in his cash book; I suppose that would be the best evidence of the transaction.

40

Mr. ENRIGHT: Well, we will produce the cash book.

The VICE CHANCELLOR: Oh, no, not at all; a man may give independent testimony as to when he received money. He is not seeking to charge anybody by books of account, Mr. Fisk. I doubt seriously whether he could produce that book in his own behalf. You might compel him to produce it as an admission, but I doubt very seriously whether it would be evidence in his favor. If counsel desires to press the question, the Court will permit it.

(Question repeated.)

A. Can I recall by memory?

20

The VICE CHANCELLOR: That is what he asks you.

A. Well, it was some date in February, I believe February the 19th, 1902 or 1903, or whenever it was; I mean 1903, February 19th, 1903.

Q. Another question: Have you made an effort to find all the letters which you have from Mrs. Jarvis, or from Robert M. Jarvis, relating to this transaction? A. I did make an effort. I found those which I have got now.

30

Q. Are they all you found? A. All I found up to the present.

Q. Have you made any search through your letter book for copies of letters written by you to Robert M. Jarvis, or to Mrs. Jarvis about this matter? A. I did.

Q. Have you found any? A. I have not found any.

40

ALGERNON S. SCHAFER, Sworn.

By Mr. ENRIGHT:

Q. Where do you live? A. 52 W. Forty-sixth.

Q. What is your occupation? A. Broker, 35 Wall street

10 Q. Whereabout are you employed? A. At Schafer Brothers, 35 Wall.

Q. What relation are you to the last witness? A. Son.

Q. Do you recall hearing any conversations between your father and Robert M. Jarvis relative to bonds? A. I do.

Q. As nearly as you recall, just tell what you heard.

20 The VICE CHANCELLOR: Let the witness fix the time first.

Q. When did you hear these conversations? A. It would be very hard for me to state any definite date at all sir.

By the VICE CHANCELLOR:

30 Q. Give us your best recollection. When did you hear the first conversation? A. I heard the conversations within the last few years, all the time.

Q. Tell us when you heard the first conversation, how many years ago; about when it was; you see, it may not be material because your evidence may be at a time when it has no bearing on this issue whatever; so we must ascertain whether it was at a time when it may be material before we can admit it. A.

40 Well, I heard conversations prior to this cold storage matter, prior to all that cold storage matter.

By Mr. ENRIGHT:

Q. Did you hear any talk about renewal of the notes held by your company for Nathalie Jarvis? A. I did, sir.

Q. Now, what did you hear? A. Mr. Jarvis came into the office from time to time and had various interviews, and Mr. S. M. Schaffer would invariably ask him "How about the bonds?" He would say, "The bonds are not ready yet, but as soon as they are ready, why, I will give them to you"—"as soon as they are ready," or "they are not ready," or some such thing as that. 10

Q. Were these conversations usually quiet or noisy ones? A. Well, I think if a man was at the other end of the office he would usually hear them. Of course, our office is an open one.

Q. They did not take place in any private office? A. No, sir; they did not take place in any private office. We have various compartments, but there is no private one. 20

Q. What is your father's ordinary habit of conversation about the office, is it quiet or noisy? A. I should say noisy, sir,—with no disrespect.

Q. Did you make any examination of the letter book for letters to Robert Jarvis? A. Yes, sir, I did.

Q. When? A. Yesterday.

Q. Did you find any? A. None at all. 30

Q. Did you look for any letters from your company to Mrs. Nathalie Jarvis, with reference to the execution of the satisfaction piece? A. I did, sir.

Q. Did you find any? A. None at all.

CROSS EXAMINATION:

By Mr. CORBIN (for the Erie Railroad Company):

Q. Did you find any letters to her at all? A. No, sir.

Q. To Nathalie Jarvis? A. No, sir; I did not. 40

By Mr. WHEAT (for Young, Irvin & The Union Terminal Cold Storage Company):

Q. Do you remember whether or not you heard any conversation between your father and Mr. Robert Jarvis prior to the month of June, 1903, in which bonds were mentioned? A. To the best of my recollection—of course this is quite a while back to speak from memory—but to the best of my recollection, no bonds were to be given as collateral—

Question repeated.

A. I cannot remember that; I cannot answer the question that I can remember before that date, because I cannot remember that date, what just happened on that date.

Q. You cannot remember any particular date then on which bonds were mentioned?

By the VICE CHANCELLOR:

Q. Let me tell you what counsel is trying to get at: If you were asked whether, before to-day, you had ever heard bonds mentioned in relation to this matter, could you do that? A. Yes, sir.

Q. Now, he fixes some date, he says "Before June, 1903, did you ever hear bonds mentioned?" That is what he wants to find out. He don't ask you what happened in June, 1903, but, fixing the arbitrary date June, 1903, did you ever hear bonds mentioned before that, he asks you. A. I am quite sure I did.

By Mr. WHEAT:

Q. Can you state what the earliest date was—I do not mean the absolute date, but the period of time? When did you first hear bonds talked about, what month? A. I cannot answer, sir.

ROBERT M. JARVIS, sworn:

By Mr. ENRIGHT:

Q. Mr. Jarvis, do you recall when it was you or your company got the bonds secured by the Commercial Trust mortgage back from the engraver?

A. On the 3rd of April, 1903, they came from the engraver.

13.

Mr. ENRIGHT: I call for the Commercial Trust mortgage.

(Counsel for Commercial Trust Company produces and hands to examining counsel the mortgage called for).

Mr. ENRIGHT: I offer in evidence mortgage made by Jarvis Terminal Cold Storage ²⁰ Company to Commercial Trust Company of New Jersey, dated February 2, 1903, recorded in Hudson County, February 21, 1903, securing a bond issue of \$150,000.

(Said mortgage is admitted without objection and is marked Exhibit P, 13).

Mr. ENRIGHT: I call for the last 25 of the series of bonds secured by that mortgage ³⁰ Exhibit P, 13.

Mr. FISK: We have got the whole series here.

The VICE CHANCELLOR: Well, you can certainly respond to that call then.

(Counsel for the Commercial Trust Company produces and hands to examining counsel the bonds called for).

40

Mr. ENRIGHT: I offer bonds of the Jarvis Terminal Cold Storage Company, purporting to be secured by the mortgage just offered, numbered from 126 to 150 inclusive.

10 Mr. HOBART: I make the formal objection, on the part of the Erie Railroad Company, that under the terms of the mortgage itself, there are certain conditions to be complied with before those bonds can be lawfully issued, and there is no proof that any such conditions were complied with before the issue and delivery of the bonds.

20 The VICE CHANCELLOR: The papers may be admitted for what they are worth. There is no adjudication now that they are bonds.

Q. You were the President of the Jarvis Terminal Cold Storage Company from its incorporation, were you not? A. Up until the time it went into the hands of the receivers, yes.

30 Q. Do you recall the circumstances under which the last 25 bonds secured by the mortgage to the Commercial Trust Company were issued? A. Yes, sir.

Q. Will you state from whom you first received those bonds? A. The Commercial Trust Company of New Jersey.

Q. Each bearing the certificate of the Commercial Trust Company, as it now appears, endorsed upon them? A. Yes, sir.

40 Q. What did you do with the bonds after you received them from the Commercial Trust Company, so certified? A. I took them to the United States Mortgage Company.

Q. For what purpose? A. For the purpose of negotiating a sale or loan on them as security.

Q. Whom did you see in the United States Mortgage Company? A. I saw Mr. George W. Cumming, the Vice President of the Company.

Q. What took place between you and Mr. Cumming on that occasion? A. I said Mr. Cumming, I called to see you in reference to negotiating a sale or a loan upon these securities, issued for additions and improvements, and I would like you to take the matter into consideration, and let me know what you can do." He said, "I will do so with pleasure, and if you leave the bonds here I will place the matter before the committee"—that is, the committee of the United States Mortgage Company—"and will let you know;" and I left the bonds at his request.

Q. When next did you see Mr. Cumming, or anyone connected with the United States Mortgage and Trust Company? 20

MR. WHEAT. I object to that on the ground that it is irrelevant, immaterial, and not within the issues raised by the petition and answer.

THE VICE-CHANCELLOR. Is there anything in the petition stating that these bonds were not correctly issued and were not a lien?

Mr. ENRIGHT. There is an allegation in the petition that of the authorized bond issue of \$150,000 only \$130,000 are issued and the balance are in the treasury. 30

Mr. WHEAT. If the Court please, the objection has already been made that the mortgage itself provides the process that shall be followed in order to validate the issue of these bonds. 40

10 THE VICE-CHANCELLOR. Suppose that at a period after the bonds had been issued and had been countersigned by the trustee, somebody had walked into the Trust Company's office and had taken this \$25,000 worth of bonds and put them in his pocket and walked out—do you think that could not be proven here to show that they were not valid liens against the property?

Mr. WHEAT. There is no doubt but what that could be proven.

THE VICE-CHANCELLOR. Well, you see I don't know, until it is developed, that this United States Mortgage & Trust Company did not just keep the bonds and did not put up any money at all. I must know the facts before I can rule. If it turns out that the bonds were properly issued, it cannot hurt your client; if it turns out that they were not, it may have an important bearing on the petitioner's case.

30 Mr WHEAT. The petitioner's case depends upon the fact that she must prove that she is entitled to seven of them. Now to prove that, it seems to me that she must prove that they were validly issued; and she has not proved yet that they were, according to the terms of the mortgage itself.

THE VICE-CHANCELLOR. She may want to prove that they are still in the possession of the officers of the company, so that she can have seven of them. I will admit the testimony. I cannot say now that it is irrelevant.

40 c A. I cannot remember the exact date.

THE VICE-CHANCELLOR. He has not told us when the first interview took place, has he?

Q. Can you fix the time when you saw Mr. Cumming first, and handed to him these 25 bonds?

A. Not exactly, but I think it was either November or December, 1903.

Q. How long after that first interview in which you gave him the bonds was it before you saw him again?

A. About a week.

Q. Have you heard anything from him in the meantime?

A. He said he hadn't had an opportunity to take the matter up, but that he would do so and let me know.

Q. Did you see him again after that?

A. I did.

Q. What happened at the next interview?

A. Well, I went to see him again, in company with the representative of Cane & Co., to whom the Jarvis Terminal Cold Storage Company was indebted.

Q. And what happened at that interview?

A. And I demanded (or at least I requested of him, I did not demand), an answer as to what he was going to do, that Mr. Cane had been waiting for five of those bonds, or least for some of those bonds, in liquidation of his claim, or else for some of the proceeds that we would procure through the loan from them, and was impatient, and talked as if he was uncertain as to whether the conditions relative to the bonds were as I stated, and that I had brought him down there to have him hear what Mr. Cumming had to say about it, and relieve his anxiety; and Mr. Cumming said, "Well, Mr. Jarvis, we have looked into this matter, and we do not feel like acting upon this loan until a previous loan that will be due in a short

while is paid," and I said, "Mr. Cumming, I want those bonds, or I want a decision as to whether you will loan on them or not; they were placed here for the purpose of obtaining a loan, and I promised Mr. Cane's representative" (which I had) 'that he could have five of the bonds if you were not ready to loan the money or purchase them," and I told Mr. Cumming that, and asked him whether he would give five of the bonds to this party, and he consented to do it, and he gave them to him in part liquidation of the claim, or as a sort of security for his claim, out of that lot of bonds that were placed there for the purpose of being sold or having a loan made upon them for the company.

Q. Did you ask Mr. Cumming for the other twenty?

A. I said, "What are you going to do with the other twenty?" "Well," he says "the matter is
20 still in abeyance, but that is the way we feel about it." "Well," I said, "I want to have an answer to it. I brought them here in good faith, and I expect that I will hear from you shortly in a decided manner, one way or the other. So I left him.

Q. Did you ever see him afterward about the bonds?

A. Yes, sir.

Q. How long after?

A. It drifted on then towards the time when the
30 interest was due on the previous bonds, and at the same time the money that was due on the first loan had not been paid, all of it; and I called the executive committee together, consisting of Charles F. Case and Mr. Bumstead, and told them that I thought the time had come when we should see Mr. Cumming and have an understanding on behalf of the company. So we went down there.

Q. Who went down?

A. Mr. Case Mr. Bumstead and myself, the
40 executive committee of the Jarvis Terminal Cold

Storage Company; and I demanded an explanation why he retained the bonds, and he said to myself and those gentlemen that he retained them as an additional security for the loan that had been previously made and had not yet been paid. I told him those were not the conditions upon which the bonds were left there with him, and then he said that he inferred that I, leaving them there, was willing to have them retained, under the impression that it would be more security for the previous loan that had not been paid; and I told him that there was no such agreement: and the result was that the bonds were retained and \$12,500 additional security left with him in order to protect the indebtedness then due the company by the Jarvis Terminal Cold Storage Company. That is the last time I had any dealings with him.

Q. Who was present at that time?

A. I, Mr. Case, Mr. Bumstead and Mr. Cumming.

Q. Are they in court?

A. Mr. Case is in court. He is one of the executive committee. Mr. Bumstead is not in court, I believe.

Q. Did you ever consent that the Mortgage Company should retain those bonds as additional security for the open account?

Mr. WHEAT. I object to that question as improper. The acts of the witness speak for themselves. What he said and what he did show whether he consented or not.

(Question stricken out as leading.)

CROSS EXAMINATION.

By Mr. WHEAT (For Young, Irvin and Union Terminal Cold Storage Company).

Q. Mr. Jarvis, do you remember when it was you first took these bonds to Mr. Cumming?

A. I do not remember the exact date.

Q. Prior to that you had a loan, did you not, with the United States Mortgage & Trust Company?

A. Yes, sir; the Company had a loan.

Q. That is, the Jarvis Terminal Cold Storage Company had a loan?

A. Yes sir.

Q. Of how much?

A. \$20,000.

Q. And what security was given for that loan?

A. An underwriting paper, consisting of names and amounts subscribed to the stock.

Q. Where is it?

A. I don't know.

Q. When did you see it last?

A. I saw it last at 68 Broad Street.

Q. Whose office is that?

A. That is the office of Jarvis & Company, and was the temporary office of the Jarvis Terminal Cold Storage Company.

Q. When was that you saw it last?

A. I cannot remember the exact date. It was about a little while previous to the issuance of those bonds.

Q. Was that the only security which the United States Mortgage & Trust Company had?

A. They had a note.

Q. The only security for the note?

A. That is the only security that they had; yes, sir.

Q. And that underwriting agreement was an agreement whereby certain persons promised to subscribe for and pay for the stock of the Jarvis Terminal Cold Storage Company?

A. Yes sir.

Q. Have you a copy of that?

A. I believe there is one in existence, but it may be in the hands of the receivers. We gave up all the papers.

Q. You were a subscriber to it?

A. I was.

Q. Now, when you went to Mr. Cumming with these 25 bonds, what did you say to him?

A. I said, "Mr. Cumming, I have come here with these bonds for the purpose of negotiating a sale or a loan upon them."

Q. And what was his reply?

A. He asked me about the bonds, and he looked at them, and he said, "Well, I am not prepared to give you an answer now; I will take the bonds, and have the matter brought up before the committee, and give you an answer."

Q. How long after that was it that you went there with Mr. Finney, was it, the representative of Cane & Company?

20

A. I believe that it the name.

Q. How long after that was it?

A. Oh, it was several weeks. I cannot remember the exact time. It was several weeks afterwards.

Q. Did the Cane Company have a claim against the Jarvis Terminal Cold Storage Company?

A. Yes sir.

Q. For what?

A. For material furnished, pipe, and so forth.

30

Q. They are contracting plumbers, the Cane Company?

A. And iron workers; yes, sir.

Q. And had been working on the plant of the Jarvis Terminal Cold Storage Company?

A. They had furnished supplies. I do not think they had performed any work. They had furnished supplies for the refrigerating of the plant.

Q. Well, what they furnished went into the plant, did it not?

40

A. Yes, that is right.

Q. And what was the amount of the indebtedness of the Jarvis Company to the Cane Company?

A. I think there was a balance due then of some six or seven thousand dollars.

Q. What was Mr. Finney's attitude toward the payment of that claim, was he urgent?

A. He was very urgent, for the reason that we had
1. given him a note, and the note had become past due, and he had been very lenient waiting for it, and he said his principals were pushing him to render an account, or else he would have to take other means, and he had been very indulgent. I said, "Mr. Finney, I feel very badly about this. I have been disappointed in not being able to realize on those bonds as soon as I expected. If you will come down with me to Mr. Cumming, you will hear the whole story;" and I said, "Would you take any of the bonds in part
20 payment of your claim?" He said, "Yes, I will take five of the bonds." "Well," I said, "perhaps Mr. Cumming would in the meantime release five." That was our conversation on the way down.

Q. What did you mean by "release five?"

A. That is give him five of the bonds in part liquidation of his indebtedness.

Q. You claim that Mr. Cumming had no claim to those bonds do you not?

A. What I meant was that he would give them to
30 me when I asked for them.

Q. Then you and Mr. Finney went to the Mortgage Company to get five bonds to pay Mr. Finney?

A. Not expressly for that purpose. I said I would go with him, as I have already related, and ascertain the position of the loan matter with Mr. Cumming, and, for the first time, ascertained his attitude, that he was inclined to withhold a decision until the other loan was paid. Then, in conversation, as I have already stated, on the way down (part
40 of the conversation took place in the office) I said,

"In case he is not ready, and we cannot get any money yet, will you take five of the bonds?" He said, "I will do that, yes, because I must satisfy my principals."

Q. And that is what was done, is it not?

A. That is what was done; and I protested against the delay, or the attitude he took in reference to him hesitating as to whether they would go on and continue the negotiations with us, or retain the bonds as additional security for the loan that had not yet matured.

Q. Let us confine ourselves now to these five bonds. Then they were given by you to Mr. Finney, the representative of the Cane Company, and received by him in payment of the claim against the Jarvis Company for materials furnished in the construction of the cold storage plant of that company?

A. He certainly received those bonds in part liquidation.

20

Q. And the claim was a valid one against your company?

A. A valid claim.

Q. For the face value of these bonds?

A. For more than the face value.

Q. This work that the Cane Company performed was part of the construction of this plant of the Jarvis Company?

A. It was; yes, sir.

30

THE VICE CHANCELLOR. He said they did not perform any work.

The WITNESS. That is, the material furnished was part of the construction work, but they did not perform any of the work.

THE VICE-CHANCELLOR. They furnished material that went into the refrigerating part of this plant, the witness has said.

40

The WITNESS. That is what I said.

Q. Do you know what became of those bonds afterwards?

A. Well, I am not positive in my knowledge. I have been told.

110 THE VICE-CHANCELLOR. It is not cross examination anyhow, Mr. Wheat, is it? I do not think Mr. Enright traced the bonds further than into the hands of United States Mortgage & Trust Company. If it is cross examination, I will permit it, but it seems to me that so far as this witness' knowledge is concerned, we had them left with United States Mortgage & Trust Company. You may have the right to show what became of them afterward, but I doubt if you can, by
20 this witness, now show it.

Q. Do you remember the numbers of those bonds, the one that went to Cane?

A. Well, I cannot remember the exact numbers; no, sir, now.

Q. Whether it was the first five of the 126? The numbers run from 1 to 150.

30 THE VICE-CHANCELLOR. It will be quite manifest that they were five of the last issued.

Q. But you do not remember the numbers?

A. I do not remember the numbers; no, sir.

Q. Now, taking the other twenty, is it not a fact, Mr. Jarvis, that the next time you saw Mr. Cumming he asked you what had become of your underwriting agreement that was placed with his company as security for the note?

A. He had asked me that several times before that.

Q. Had he asked you that prior to the time you took these bonds there?

A. I believe he did; yes, sir.

Q. Are you sure of that?

A. I am quite sure of it.

Q. That it was prior to the time that you took these bonds there?

A. Yes, sir; I am quite sure of it.

Q. Then at the time you took these bonds, the Mortgage & Trust Company had no security for their note, had they?

A. They had the note for the security.

Q. But not collateral security.

A. Yes, sir; they had a copy of it, which I furnished immediately, which had the names and addresses of all the people that subscribed, with the amounts; and people had paid several amounts after that, according to their subscriptions.

Q. To be perfectly clear, the only security, then, which the Mortgage & Trust Company had, collateral to their note, was a copy of an underwriting agreement the original of which has disappeared?

A. Had disappeared; yes, sir.

Q. And had disappeared from your possession?

A. No, I won't say that.

Q. Well, you had it last, had you not?

A. I don't know that I had it last? The last I remember seeing it was in my office.

Q. In your office?

A. Yes sir.

Q. Is it not a fact, Mr. Jarvis, that you went to the Trust Company and borrowed it, asked them if you could take it away?

A. No, sir, I did not.

Q. Did you not go and ask Mr. Rasmus, the assistant Treasurer, to be allowed to take that?

A. No, sir; I did not. I sent word by my son, who went there and got it in order to get additional names, to give it to Mr. Cane, our builder, who said he could get additional names; and he went there and got it, and Mr. Cane kept it out for quite a while, and claims to have returned it, but I have never seen it since; it may have been returned to the office, but I never saw it.

10 Q. And Mr. Cumming has frequently asked you for it?

A. He asked me for it. We had several conversations about it.

Q. Now, at the time those bonds were left there, wasn't there a conversation about this underwriting agreement?

A. It was merely this, that the people had not paid up and there was a large amount due on the underwriting, and that had to be made good, together
20 with an overdraft caused by the payment, if I remember correctly, of the mortgage interest when due, and some other items which Mr. Cumming was kind enough to advance. He pointed that out at this meeting with these gentlemen and said, "I feel that I am justified in holding these under the circumstances."

BY THE VICE-CHANCELLOR.

30 Q. You are ahead of what counsel asked you. He asked you, when you first took the bonds there, whether Mr. Cumming did not then call your attention to the fact that this underwriting agreement had been taken away and not returned?

A. At that time I do not have any recollection that he ever mentioned the subject.

By. Mr. WHEAT.

Q. At the second meeting it may have been. You
40 left the bonds there with him for the purpose of

getting an additional loan from his company—that is right, is it not?

A. I did,—either to sell them or get an additional loan.

Q. And he told you he could not decide about it then and there?

A. Yes sir.

Q. What was he going to do, talk with his executive committee? 10

A. Talk with the executive committee; yes, sir; or see Mr. Young and have a talk with the other officers of the company.

Q. Then the next time you saw him, is it not true that he said, "Mr. Jarvis, where is the security which we had for the loan which we have already made to your company?"

A. I do not recollect that at the next time he said anything of the kind.

Q. Do you deny that he said it? 20

A. I have already stated that he had said it several times.

Q. Now did you not say, in substance, then, "I suppose Mr. Cumming, you will have to have some other security, now that that underwriting agreement is gone?"

A. I never said anything excepting what I had authority to say. I stuck to it (and my executive committee will bear me out, I think, when you put them on the stand) that that was a separate negotiation. 30

(Question repeated.)

A. I do not recollect that I said that to Mr. Cumming, no.

Q. Did you not say that in substance?

A. Well, there may have been an inference in our discussion; but I never made a statement positive of that kind to him, no, sir, because we had been at difference altogether on that point. 40

Q. Is it not true, Mr. Jarvis, that, in substance, you told Mr. Cumming that he was entitled to more security, now that that underwriting agreement had disappeared; and that then and there you said, "I will leave these bonds with you, if you will give me about three or four thousand dollars more loan," and did not he permit you to overdraw your account —by "your account" I mean your company's account?

A. Not for that reason; no, sir.

Q. You did overdraw your account?

A. We had overdrawn it before that took place.

Q. With Mr. Cumming's consent?

A. With Mr. Cumming's consent

Q. And while these bonds were in his possession?

A. I won't say they were in his possession at the time, but I believe they were.

Q. Was not the only reason he permitted you to overdraw your account because you left those bonds and agreed that he should hold them?

A. I do not think so.

Q. Do you deny it?

A. I deny it.

Q. When did they give you this \$4,000 more?

A. They did when the executive committee gave them \$12,500 as security for it.

Q. What was that?

A. It was \$12,500 in the bonds of the Jarvis Terminal Cold Storage Company—not bonds, I don't mean, but in stock.

Q. You mean you paid them \$12,500

A. We left it there as security if he would allow us to draw additional money.

Q. Did you ever pay any cash on this loan?

A. Oh, yes.

By THE VICE-CHANCELLOR.

Q. On the \$20,000 loan?

A. Oh, yes.

By Mr. WHEAT.

Q. At the time you took those bonds there how much was due on that loan?

A. I don't remember, but I think there was between four and five thousand dollars paid on account of it already.

Q. Then there was due about \$16,000?

A. About \$15,000; and they had the \$12,500 in stock beside.

Q. When was that left?

A. That was left at the time of the controversy when I brought the executive committee down there, and in order to get Mr. Cumming to pay this money to enable the company to meet the interest charges. He agreed to do it when the executive committee left this additional security.

By THE VICE-CHANCELLOR.

20

Q. And what was it they left?

A. They left \$12,500 worth of stock.

By Mr. WHEAT:

Q. Didn't you leave the bonds at the same time you left the stock?

A. No, sir.

Q. When was this interest due?

30

A. The interest was due, I think, in February, but I am not positive.

Q. On the 1st of February and the 1st of August, was it not?

A. I think those are the two dates.

Q. I want, at this point, to ask you this: You say you did not leave the bonds there at the time you left the stock.

A. I left them some time previous to that, excepting \$5,000.

40

Q. Left which, the bonds or the stock?

A. I left the bonds before I left the stock.

Q. Before you left the stock?

A. Yes.

Q. Now, cannot you remember when it was you left the bonds?

A. Not exactly. I can get the information for you.

Q. Well, that is what we want.

10 A. Well, I will have to refer to the memoranda on our books.

Q. Have you it with you?

A. No, sir.

Q. Is there anything in court that will enable you to do it?

A. My son may be able to do it. He is Treasurer of the company. I have had a great deal to contend with, and my memory is not as fresh as it might be otherwise.

20 Q. I appreciate that, and I do not want to unduly press you.

A. I tell you everything as I remember it.

By Mr. HOBART (For the Erie Railroad Company).

Q. You spoke of this payment to Cane?

A. No, Crane.

30 Q. Not Cane?

A. Not Cane.

Q. For what purpose did you take away this underwriting agreement or get it from Mr. Cumming?

A. If I remember correctly, at the request of Mr. Cane, who was the builder or contractor, for the purpose of getting some additional names on the list; and my son went down and asked the loan clerk to allow him to have it for that purpose, and he gave it to Mr. Cane, and it was returned some time after
40 that.

Q. And the intention was then to return it to the Mortgage Company?

A. To return it to them. But after a certain time had elapsed after that, I was sent for by Mr. Cumming, or the loan clerk, I don't remember which, and they said they would like to have the original underwriting paper, and I went to the office and I asked my son about it, and he said that Mr. Cane had returned the paper to the office and it was lying on my desk the last time he saw it; and I had never seen it from the time it went to Mr. Cane until the present time. I cannot state what became of it. 10

THE VICE-CHANCELLOR. You have answered the question fully, Mr. Jarvis. It came back, as far as your son's information goes, and you have never seen it since?

The WITNESS. That is right. 20

Q. When you borrowed the agreement from the Mortgage Company, did you at that time agree with Mr. Cumming, or some one on behalf of the Mortgage Company, to return the agreement to them as collateral on the loan you already had?

A. We recognized that as part of the collateral; yes, sir.

The VICE-CHANCELLOR. This witness did not get the paper. He cannot say what his messenger said. 30

Mr. HOBART: I want to ask what the agreement was, if any, that this witness had.

The VICE-CHANCELLOR. He said he made no agreement; that he sent his son; he said that about five times. If you want to prove anything as to the agreement you must call the son. 40

By the VICE-CHANCELLOR.

Q. I understand that you personally had no communication with the Trust Company about getting the underwriting agreement from them for any purpose; is that correct?

A. That is correct; yes, sir.

¹⁰ By Mr. HOBART.

Q. In your later conversations with Mr. Cumming was any agreement then arrived at between you and him as to the return to the Mortgage Company of this agreement?

A. When I was apprized of the fact of its loss I told them I would undertake to search for it.

Q. No, but before it was lost, in your conversations with the company?

²⁰ A. No, it was only this,—that we went there and asked for a loan, and stated what we predicated it upon; I think it was \$5,000 in stock and the syndicate paper—not the syndicate paper, but the underwriting paper—with \$16,000, making \$21,000. I think that was the basis of the loan, with a note of the company.

Q. Was there ever any agreement or understanding with Mr. Cumming or any one for the Mortgage Company that you were to return this original underwriting agreement as security for their loan to the Jarvis Company?

³⁰

The VICE-CHANCELLOR: This witness has told us certainly five times that when that paper was taken away it as not done by him, that he was not present, and he does not know what was said.

Mr. CORBIN. But he had subsequent interviews.

⁴⁰

The VICE-CHANCELLOR. I do not object to his attention being directed to subsequent interviews. If you direct his attention to what happened after the paper was taken away, I will permit the question; if you include in it what happened when his son got the paper, I will exclude it.

Mr. HOBART. I think the question is plain, and I stand upon the question.

The VICE-CHANCELLOR. All right, I will exclude it.

Q. Now, Mr. Jarvis, this mortgage which has been offered refers to certain property consisting of eleven lots and some other property of the Jarvis Company?

A. Yes sir.

Q. You, of course, are familiar with the property that was covered by the mortgage?

A. Yes, sir.

Q. Now, can you tell us whether the company ever purchased any additional property outside of that covered by the mortgage?

Mr. ENRIGHT. I object to the question as immaterial and irrelevant.

The VICE-CHANCELLOR. It is not cross examination. This witness was not asked anything about any mortgage, as I recall it. You may make him your own witness at the proper time.

Mr. HOBART. The mortgage is offered in evidence, and attention has been directed to the issue of these 25 bonds. I want to show that those bonds were not delivered or issued under the terms of the mortgage itself.

10 The VICE-CHANCELLOR. As I recall the testimony of this witness, it had nothing to do with the proof of the mortgage in any possible way. He was asked where he got the 25 bonds, and he said he got them from the Commercial Trust Company. Then he told what he did with them. From anything he says it is not shown that the bonds were even the bonds of the Jarvis Company. He did not identify them as such. It is not cross examination.

Mr. HOBART. Well, if it appears that way to your Honor, of course I won't press the question now.

20 The VICE-CHANCELLOR. Can you show me where this witness testifies in chief as to what the mortgage covered?

Mr. HOBART. The mortgage was offered on direct examination.

30 The VICE-CHANCELLOR. I beg your pardon. The mortgage was not offered on direct examination. Counsel happened, while this witness was on the stand, to offer the mortgage, which he got from the custody of somebody else, not through this witness.

By Mr. FISK (For the Commercial Trust Co.).

Q. I show you a paper, Mr. Jarvis, to which your name purports to be signed, as President, four times?

A. Yes, sir.

Q. Was that paper executed by you on behalf of the Jarvis Company, Mr. Jarvis?

A. I would like to read it before giving the an-
40 swer.

Q. I wish you would. I will tell you what it is.

A. Well, tell me what it is.

Q. That is the certificate under which these last 25 bonds were issued, as certified by the trustees. I just want you to identify the paper. Look over it.

A. Yes, that is all right. I signed that and executed it.

Q. On behalf of the company?

A. On behalf of the company. 10

Q. And delivered it to the trustee under the mortgage?

A. Yes, sir.

(The certificate identified by the witness is marked for identification, W. C. F., 2.)

Q. Mr. Jarvis, I show you page 130 of the minutes of the Executive Committee and Directors of the Jarvis Terminal Cold Storage Company, and also page 131; your name appears to be signed there as one of the members of the executive committee; is that the action taken by the executive committee on the date stated? 20

Mr. ENRIGHT. I object. I do not see how that is material, relevant or cross examination.

Mr. FISK. I have not offered it. I am going to ask him this so it can be identified. 30

The VICE-CHANCELLOR. No, it is excluded at the present time. You may make this man your witness at the proper time, if you are going to ask anything about the action of this executive committee. It is not anything about which he was examined in direct examination. I will direct the witness to remain here so that you may examine him at the proper time. 40

PETITIONER RESTS.

THE CASE FOR THE COMMERCIAL
TRUST COMPANY.

10

JOHN W. HARDENBERGH, sworn.

By Mr. FISK.

Q. Mr. Hardenbergh, you are the President of the Commercial Trust Company of New Jersey, the Trustee under the Trust Mortgage of the Jarvis Terminal Cold Storage Company?

20 A. I am.

Q. You were also one of the Receivers, appointed by this Court in insolvency proceedings, of the Jarvis Terminal Cold Storage Company?

A. I was.

Q. About what date were the receivers appointed?

A. I think it was March 26th, 1904.

30 Q. Prior to March 24th or 26th, or at any rate, prior to the date of the appointment of the receivers, did a committee of the bondholders communicate with the trustee with reference to the subject of fire insurance on this property; and if so what was the communication, and what action was taken by the trustee under the mortgage?

A. They communicated with me by telephone, notifying me that the insurance policies would be cancelled that day, and asking the trustee to pay the premium in order that the plant might be insured.

Q. That is to say cancelled for what cause, do you know?

A. Non-payment of premium.

40 Q. And did the trustee under the terms of the

mortgage pay the premium on the fire insurance policies?

A. Yes.

Q. On or about what date?

A. About the 16th of March.

Q. I show you four vouchers here, Mr. Hardenbergh, and ask you if those are the receipts from the insurance companies for the premiums paid on fire insurance policies then in arrears on the plant covered by the trust mortgage?

A. They are.

Mr. FISK. I offer those four vouchers in evidence.

(Said vouchers are admitted without objection and marked as one exhibit, Exhibit A of Commercial Trust Company.)

Q. Those amount to how much, Mr. Hardenbergh, in total—\$814.25 is the correct amount, is it not?²⁰

A. That is the correct amount, I believe.

Q. Mr. Hardenbergh, as one of the receivers, and under the order of the court, you sold this property at public auction to Messrs. Cleary, Cassidy & Lembeck?

A. Yes.

Q. And under the terms of the sale made by this court, under which they entered into possession,³⁰ they paid a certain amount of cash on account of the purchase price, and, in addition, the unearned premium on insurance policies then existing on the property, being the policies referred to in these vouchers, Exhibit A of Commercial Trust Company?

A. Yes, they did.

Q. And how much return premium did you receive as Receiver from the purchasers on account of these insurance policies which you had paid?

A. \$640.26.

Q. And that \$640.26, received from the purchasers, forms part of the balance paid by the receivers into court and now awaiting distribution?

A. Yes, it does.

By the VICE-CHANCELLOR.

Q. So that the Commercial Trust Company is out the whole \$814.25?

A. Yes, sir.

By Mr. FISK:

Q. Mr. Hardenbergh, at the time of the execution of this mortgage, or about the time of the execution of this mortgage and the certification of the bonds by the trustee, what arrangement was made as to the compensation of the trustee for acting under the mortgage and certifying the bonds?

A. There was no written agreement made.

Q. I do not mean written, I mean what arrangement was made?

A. I think the arrangement was our usual charge.

Q. What is that?

A. One dollar per bond.

Q. And on this issue of bonds that would amount to how much?

A. \$150.

Q. Has the trustee received that \$150 compensation?

A. They have not.

Q. Mr. Hardenbergh, the trustee under the mortgage was made a party in the proceedings in this cause for the sale of the land, and the different applications in regard to the matter before the Court of Chancery?

A. It was.

Q. And were you represented by counsel in those proceedings?

A. We were.

Q. Who represented you?

A. Brinkerhoff & Fielder.

Q. And have you received a bill for the compensation of Senator Brinkerhoff, as the counsel for the trustee in the Chancery proceedings and Insolvency proceedings?

A. We have.

Q. (Showing witness paper) And is that the bill which I now show you?

A. It is.

Q. How much is it?

A. \$200.

(The said bill, identified by the witness, is offered in evidence, admitted without objection, and marked Exhibit B of Commercial Trust Co.)

Q. Mr. Hardenbergh, the trustee under this mortgage not only certified the bonds, but also received the subscription to \$125,000 of bonds, issued the calls to the subscribers for the payments on their subscriptions, and, under the terms of the mortgage and subscription agreement, paid that money over to the company; and has also acted, and been represented by counsel, in this proceeding in the Court of Chancery. Has the trustee under the mortgage ever received any compensation of any kind whatsoever for its action as trustee? 20

A. They have so acted, and have received no compensation. 30

Mr. FISK. I am a little unfamiliar with the practice in a case of this character. We have asked for a reasonable allowance to the trustee for its services under the terms of the mortgage, which say that it shall be compensated for its services, and we have asked for \$300. 40

The VICE-CHANCELLOR. Just ask him what he deems to be a reasonable compensation for the services.

Q. What do you consider a reasonable compensation to the trustee for the services that have been enumerated, and for which it has not been compensated?

10 A. I think \$300 is a reasonable amount of compensation.

Mr. FISK. I would like to ask the respective counsel to be allowed to prove, without bringing the books up from downstairs, that on the payment of the coupons on these bonds, which were paid in February, 1903, the company overdrew its account \$48.26.

20 (Counsel for the respective parties consented that this should be done.)

Q. You examined the books yesterday?

A. Yes, sir.

By the VICE-CHANCELLOR.

Q. Can you tell us how much the Jarvis Terminal Cold Storage Company overdrew its account for the 30 purpose of paying the coupon interest, February 1, 1903?

A. \$48.26.

By Mr. FISK.

Q. And that is an account specifically devoted to the payment of coupons on the bonds and no other purpose whatever on the books?

A. It is.

Q. And the bondholders had the benefit of that \$48.26 payment on the coupons?

A. They had.

Q. I show you a paper marked W. C. F., 2 for identification; is that the certificate which was furnished to the trustee, under the terms of the trust mortgage, on which the last 25 of the bonds were certified by the trustee and delivered to the Jarvis Company?

A. It is.

Q. The last 25?

13

A. The last 25.

(Said certificate identified by the witness is offered in evidence, admitted without objection, and marked Exhibit C of Commercial Trust Company.)

Q. I show you a paper, and ask you whether that is the bond subscription paper under which \$125,000 of these bonds were subscribed for, and subscriptions received by the trustee on behalf of the Jarvis Com- 20
pany?

A. That is the original subscription agreement.

(Said subscription agreement is offered in evidence.)

Mr. ENRIGHT. I have no objection to it as evidence of the service performed by the trustee. I object to it as being —

30

The VICE-CHANCELLOR. That is as far as I will admit it for the present. It is admitted for the present purely for the purpose of enabling the Court to compute the value of the services of the trustee in connection with this agreement.

(Said agreement is marked Exhibit D of Commercial Trust Co.)

40

Q. I show you a paper which has been marked W. C. F., 1, for identification; was that claim filed with you as Receiver of the Jarvis Company, on behalf of Nathalie Jarvis?

A. I believe that is the claim that was filed.

Q. That is your memorandum on it, is it not?

A. Yes. That is the claim that was filed.

10 The VICE-CHANCELLOR: Is this paper offered?

Mr. FISK. Yes, sir. That will bring the matter up. There is on the record an order permitting this claim to be filed out of time, on the application of Mr. Frank P. McDermott, and that order is before the court.

20 The VICE-CHANCELLOR. Do you offer it in evidence?

Mr. FISK. I offer the claim.

The VICE-CHANCELLOR. Do you offer the order of the court?

Mr. FISK. Yes, sir.

30 (The claim of Nathalie Jarvis, identified by the witness, and the order of the court referred to by the counsel, are admitted without objection, and the claim of Nathalie Jarvis is marked Exhibit E of Commercial Trust Co).

Q. Mr. Hardenbergh, under the direction of the court in this cause, you, with your co-receiver executed a deed for property of the Jarvis Company, covered by the trust mortgage, and one of the conditions of sale and delivery of the deed was that there
40 should be deposited with you as Receiver the \$150,000

of the full issue of bonds, under the mortgage, with the coupons attached; are these the bonds, in addition to the 25 bonds which have already been offered in evidence, that you received as such Receiver? (showing witness number of bonds).

Mr. ENRIGHT. I object. There is a record and that will speak for itself.

The VICE-CHANCELLOR. Counsel has
10 stated that you have not correctly stated the facts, Mr. Fisk, and the Court will have to find that out before it can permit the question.

Mr. ENRIGHT. I do not say that he has not properly stated the facts, I say there is a record, and that that is the best evidence.

Mr. FISK. I do not want to give my ver-
20 sion of it, but I say, under the terms of the order, they were to receive \$150,000 of bonds, and I want to know if these are the bonds they received.

The VICE-CHANCELLOR. Well, counsel objects and says that whether or not those are the terms of the order can only appear by the record.

30

Mr. FISK. I will offer the order.

The VICE-CHANCELLOR. Just ask him whether as part of the consideration he received this \$150,000 of bonds.

Q. Are these the bonds received by you on the delivery of the deed for the property, in addition to the 25 bonds already offered in evidence?

A. These 125 and the other 25.

40

By the VICE-CHANCELLOR.

Q. Were received by you at the time you delivered the deed, as Receiver, to whomsoever you did deliver it?

A. Yes, sir.

10 (The 125 bonds identified by the witness, and numbered from 1 to 125 inclusive, are offered in evidence, admitted without objection, and marked as one exhibit, Exhibit F of Commercial Trust Co.)

By Mr. FISK:

Q. I show you eight assignments of liens to the Union Terminal Cold Storage Company, and an assignment of these liens from the Union Terminal Cold Storage Company to John Alvin Young and Richard Irvin, and ask you if those are papers that you received, as Receiver, at the time of the delivery of the deed for this property?

30 Mr. ENRIGHT: I object to it as immaterial and irrelevant. The controversy here is respecting liens upon this property, and one ground of the objection is that a mechanics lien is not assignable, it is a personal lien to the mechanic or material man; and that it is no part of this present inquiry to determine the validity or priority of these liens, it appearing that they had been assigned. In the second place, it does not appear that these assignments were made to the Receiver at all. He is asked whether those are the assignments of liens which he had received upon the tender of the deed; but it appears on the face of them that they are made in the first

40

place to the Union Terminal Cold Storage, and from the Union Terminal Cold Storage to Young and Irvin.

The VICE CHANCELLOR: I will admit them. I do not pass upon anything now except what he says he received.

A. Yes.

15

(The eight assignments of lien are offered in evidence.)

Mr. ENRIGHT: I renew my objection to the offer on the ground just stated.

The VICE-CHANCELLOR: The papers will be admitted over the objection.

20

(The eight assignments of liens are marked as one exhibit, Exhibit G of Commercial Trust Co.)

By Mr. WHEAT. (For Young and Irvin and the Union Terminal Cold Storage Company).

Q. From whom did you receive these bonds and assignments, the 150 bonds of the Jarvis Terminal Cold Storage Company and the assignments just offered in evidence? A. Received those, I think, from Young and Irvin.

30

Q. John Alvin Young and Richard Irvin? A. John Alvin Young and Richard Irvin.

Q. You mentioned, in the claim of the Trust Company for services, an item of \$300; for what was that, Mr. Hardenbergh? A. For receiving the payments from the underwriting, the subscribers to the bonds.

Q. The underwriting of the stock as well as the bonds? A. Just bonds.

Q. Just the bonds? A. Just the bonds.

40

The VICE-CHANCELLOR: The agreement under which he received these payments is in evidence. It is a pure question of what that agreement reads. He put in the agreement, for which he determines that he is entitled to \$300.

Mr. FISK: We have another paper that we rely on, and that is the mortgage.

The VICE-CHANCELLOR: The mortgage is in evidence.

Mr. WHEAT: I thought there was a charge made for something beside the certification and issue of these bonds.

20 The VICE-CHANCELLOR: So there is, —a charge made for receiving moneys that the subscribers to the bonds paid in to the Commercial Trust Company for the Jarvis Terminal Cold Storage Company.

Q. Is not part of the claim you make here to-day, Mr. Hardenbergh, for the Trust Company, on account of services rendered for receiving subscriptions for the stock? A. No, sir.

Q. What is the usual charge for certifying a bond
30 of this kind? A. A dollar a bond.

Q. And any charge you make above a dollar a bond is for something done under the agreement offered in evidence? A. Outside of the mere certification of the bonds, something else.

By Mr. HOBART. (For the Erie Railroad Company).

Q. Did you file a claim with the Receivers, on behalf of the Commercial Trust Company, for these
40 various disbursements? A. Yes.

Q. The claim is here in the papers, I suppose? A.
Yes, sir.

The VICE-CHANCELLOR: Is it agreed to by all the counsel in this proceeding that the Court shall consider as if in evidence all of the official filed papers in the main case of Lembeck vs. The Jarvis Terminal Cold Storage Company? 10

Mr. FISK: As far as we are concerned; yes, sir.

Mr. HOBART: And as far as we are concerned.

Mr. ENRIGHT: And as far as we are concerned. 20

The VICE-CHANCELLOR: Very well, then; counsel hereafter need not offer in evidence any part of the record in the main cause but may refer to it, and the Court will then look at the original record to ascertain what the fact is.

(It is consented by all counsel that there shall be introduced into evidence the written claims sworn to and filed by the Commercial Trust Company with the Receivers for the overdraft of \$48.26, the \$150 for certification and the \$814.25 paid for fire insurance, which claims are marked respectively Exhibits H, I, and J, of Commercial Trust Co. 30

By Mr. FISK:

Q. Mr. Hardenbergh, this is the Minute Book of the Jarvis corporation, that came into your posses- 40

sion as Receiver of the company? (Showing witness book.) A. It is.

Mr. FISK: I only want to identify it.

The VICE-CHANCELLOR: Do you want it marked as a book that he identified?

10 Mr. FISK: You had better mark it.

(The book was thereupon marked for identification, J. W. H.)

Q. I have shown you a claim which has been marked as an exhibit, a claim filed by Nathalie Jarvis with the Receiver—did you ever know of any other claim of Mrs. Jarvis against the corporation except the claim under the petition in this Court?

20 A. I know of no other one.

Q. Never heard of any claim as to bonds before this petition was filed, did you? A. I think not.

CROSS EXAMINATION:

By Mr. ENRIGHT:

Q. Were the coupons represented by that over-
20 draft cancelled by the Trust Company? A. Yes.

Q. And the Jarvis Company had a general account with you at that time, hadn't they? A. A general account, as well as a coupon account; yes.

Q. In the beginning, did you understand that you were going to make a charge against the company for receiving these moneys under the subscription agreement? A. I did not make the agreement with the Jarvis Company, Mr. Gubelman made the agreement.

Q. Is there any regular basis of charge for acting as custodian of funds under a subscription agree-

ment? A. According to the amount of work to be done and notices to be issued.

Q. There is no regular basis, such as you have testified to for certification? I do not know of any.

By the VICE-CHANCELLOR:

Q. Had you ever, before this one, made any charges to any other company for acting as trustee—not for certifying? A. No, I think I do not remember any such. 10

By. Mr. ENRIGHT:

Q. As the moneys resulting from these subscriptions were paid to you, you held them on deposit for a time? A. We turned them over almost immediately, I believe, to the Jarvis Company.

Q. By depositing them in their general account with you? A. Yes. 20

Q. Mr. Hardenbergh, did the United States Mortgage & Trust Company file a claim with you as Receiver? A. They did.

Q. And did they make claim in that to be the holders of 20 bonds?

Mr. FISK: I object. The claim is here.

The VICE-CHANCELLOR: Is that your only objection? 30

Mr. FISK: Yes, sir; the claim will speak for itself.

Mr. ENRIGHT: Does it so state, Mr. Fisk?

Mr. FISK: I cannot tell you. I will look it up. I will have to ask for a little time to look for it. There is a large number of papers here. 40

Mr. ENRIGHT: I will have to reserve that question until the claim is found, and I would like to reserve cross-examination on the action of the Receivers upon it.

3 The VICE-CHANCELLOR: Oh, you can ask him as to the action of the Receivers upon it. He does not have to have the claim before him to answer as to that. Was the Receivers' action in writing, what they did?

Mr. FISK: Yes; notice was given and all parties appeared. It was Report No. 8, I think.

Mr. ENRIGHT: Then what I want to ascertain is whether the claim was filed as a secured claim, with bonds as collateral.

20 The VICE-CHANCELLOR: Well, the claim will speak for itself. The point is whether any oral testimony is needed to add to the situation disclosed by the written paper. I am perfectly willing that this witness shall be examined, but I do not see how you can add anything to the written papers.

30 Mr. ENRIGHT: That is all.

COMMERCIAL TRUST COMPANY RESTS.

40 THE CASE FOR JOHN ALVIN YOUNG, RICH-
ARD IRVIN AND UNION TERMINAL
COLD STORAGE COMPANY.

Mr. FISK: We would like to have any proof taken under the petition of Young and Irvin also taken in behalf of the Trustee.

The VICE-CHANCELLOR: I have been thinking about that. I am inclined to think that in considering this case the Court will have to consider all of the testimony as relevant wherever it is relevant. My notion is that I will admit all of this testimony, keeping out only that which I think is irrelevant as against anybody, and then I will consider it in wherever it is relevant, leaving counsel to object if they desire to keep the record straight, wherever they think it is not relevant as to them. I shall permit the respective counsel to use this testimony where it is relevant in their cases, reserving the right to not permit them to argue it where it is not relevant as to them. 20

WILLIAM H. FINNEY sworn.

By Mr. WHEAT:

Q. Where do you reside? A. 112 West Seventy-second street, New York City.

Q. With what company are you connected? A. 30
The Crane Company.

Q. What officer are you of the Crane Company?
A. I am in the Credit and Collection Department.

Q. This Crane Company is the Crane Company that furnished materials to the plant of the Jarvis Terminal Cold Storage Company of Jersey City? A.
It is.

Q. Now, in order to consume but little time, did you hear Mr. Jarvis testify here? A. I did not.

Q. He testified that you had a claim against the company—

Mr. ENRIGHT: I object.

Q. I thought it would save time, but I see it won't. Did you have a claim against the Jarvis Terminal Cold Storage Company? A. We did.

Q. For what? A. About \$8,000.

Q. For doing what? A. Furnishing material.

Q. What sort of material? A. Pipe and fittings.

10

By the VICE-CHANCELLOR:

Q. Where did the stuff go? A. Jarvis Terminal warehouse, Jersey City.

Q. It went into the building and construction of the plant? A. Yes, sir.

By Mr. WHEAT:

20

Q. Was that claim of yours paid? A. No, sir.

Q. Do you remember, on one occasion, going to the United States Mortgage & Trust Company with Mr. Robert M. Jarvis, the President of the Company? A. Yes, sir.

Q. Tell us what took place there? A. Mr. Cumming, after some argument with Mr. Jarvis, turned over five bonds, which he held, to us.

Q. To you? A. Yes, sir.

Q. As representing the Crane Company? A. Yes, sir.

Q. And did you receive them in part satisfaction of your claim? A. We received them as collateral for our claim.

Q. What did you do with those bonds? A. We sold them at the Real Estate Board Auction Rooms in New York City, No. 161 Broadway.

Q. Do you remember when that was? A. I cannot tell; no, sir.

Q. Do you know who bought them? A. I do not.

40

Q. At public auction, you mean? A. I say I do not know—I do not know at the present time, but I did not know at that time.

Q. Well, who did? A. A man by the name of Swettenbach, or something of that nature.

Q. They were sold at public auction, then, and the proceeds applied to the indebtedness of the Jarvis Terminal Cold Storage Company to the Crane Company? A. Yes, sir. 15

Q. On account of this claim you have told us about? A. Yes, sir.

Q. Do you remember the numbers of those

Q. But you do know that they were five bonds bonds? A. I do not.

that were with the United States Mortgage & Trust Company? A. Yes, sir.

By Mr. CORBIN. (For the Erie Railroad Company): 20

Q. How much did you get for the bonds? A. \$2,481—fifty cents on the dollar, less commission for brokerage.

Q. When were they sold? A. I do not know.

Q. How much did you say was owed to the Crane Company,—about \$8,000? A. About \$8,000.

Q. Did they have any security for that in the form of a note? A. We had orders on Jarvis from the parties to whom we sold the material. 30

Q. Didn't you have a note of the Jarvis Company for \$4,000? A. We have got that note yet; yes, sir.

Q. I show you a note dated December 1, 1903, which appears to be endorsed to the order of Crane & Co.; does that note represent part of the indebtedness you have spoken of? A. This is the first note. That was paid.

Q. That was paid—it first went to protest, and was paid afterwards, some time in December? A. Yes, sir. 40

Q. What I want to know is whether the \$8,000—
A. (Interrupting.) Is in addition.

Q. It is an addition to this? A. Yes, sir.

By Mr. WHEAT:

Q. Then the proceeds of these bonds are all you
ever got out of the claim of \$8,000; is that right? A.
That is correct.

Recess until 2 o'clock P. M.

Hearing of the cause resumed at 2 o'clock
P. M.

20

CHARLES F. CASE, sworn. (For the Erie Rail-
road Company).

By Mr. HOBART:

30 Q. Mr. Case, are you employed by the Erie Rail-
road Company? A. I am.

Q. In what capacity? A. Commercial agent.

Q. You were at one time, I believe, a stockholder
and director of the Jarvis Terminal Cold Storage
Company? A. I was.

Q. And also a member of the executive commit-
tee? A. Yes, sir.

Q. Do you know about the sale of the \$125,000
in bonds? A. I do.

Q. Do you know at what price they were sold?
40 A. At \$88.

Q. That would net the company how much? A. \$110,000.

Q. Do you know if any of the purchasers of bonds received stock as bonds, or anything of that kind?

A. They did not.

Q. They paid for the stock separately, did they?

A. Yes, sir.

Q. Now I call your attention to the transaction of the United States Mortgage & Trust Company which has been referred to by some of the witnesses: Were you present at one of the interviews between Mr. Jarvis and Mr. Cumming? A. I was. 10

Q. Can you recall when that interview took place?

A. It was on or about the time when the interest was due on the bonds.

Q. That is to say, some time in February? A. Yes, sir; I think just prior to the 1st of February.

Q. Of what year? A. 1904. 20

Q. How did you come to go to Mr. Cumming's office? A. I received a message from Mr. Jarvis's office that an important meeting was to be held, and I was requested to be present. When I received the notice I was very busy and had one or two engagements which I could not break, and I said to Mr. Jarvis over the 'phone it would be impossible for me to reach his office at 2 o'clock, the time they had set, but I would get there as soon after as possible, and I did so; I arrived there about somewhere in the neighborhood of 3 o'clock, and found that the meeting had adjourned. There was no one in his office except his clerks, and I asked if they could tell me where they had gone, and they didn't know, but they thought they might have gone to the Trust Company's office. 30

Q. Then you went to the Trust Company's office, did you? A. I went there.

Q. Whom did you find there? A. I found Mr. Jarvis and Mr. Bumstead.

Q. Were they at that time members of the Exec- 40

utive Committee of the Jarvis Company? A. They were.

Q. Those two, and you, formed the committee?

A. Yes, sir.

By the VICE-CHANCELLOR:

10 Q. And the Trust Company of which you have spoken was the United States Mortgage & Trust Company? A. Yes, sir.

By Mr. HOBART:

Q. Now, was there an interview with Mr. Cumming, the Vice-President of the Mortgage Company? A. Yes, sir.

20 Q. State what was said by Mr. Cumming, or by any of the members of the executive committee, with regard to the bonds of the Jarvis Company? A. When I arrived there I found them in conference, which soon became rather animated, and it led to quite an exchange of feeling between Mr. Jarvis and Mr. Cumming, the result of which caused Mr. Cumming to turn suddenly and say, "I am through with this business." I had hardly been able to understand what the difficulty was, but I learned that the Mortgage & Trust Company were holding twenty or
20 twenty-five-thousand dollars of bonds of the Jarvis Company which Mr. Jarvis had taken there to be sold, or to raise money on, leaving them as collateral, and it developed that the prior note which Mr. Jarvis had executed was there without protection, and I heard the explanation of the incident, which was that the collateral which had been tendered to the Trust Company, the subscription list, had been obtained by Mr. Jarvis in order to secure additional subscribers. and that it had not been returned to the Mortgage & Trust Company, and that, as the matter stood, they had no security for their loan, and the

note was about due. Mr. Cumming felt that he was only protecting himself by holding the bonds that Mr. Jarvis had brought there for sale.

By the VICE-CHANCELLOR:

Q. When you say "he felt," you mean "he said," don't you? A. "He said," yes.

By Mr. HOBART:

Q. Now, what was said by the other members of the executive committee with regard to Mr. Cumming's attempt to hold the bonds? A. We were naturally surprised that the bonds were there, and we did not know that any authority had been given to Mr. Jarvis to place the bonds there, and so stated.

Q. Well, had any authority been given, so far as the committee was concerned? A. No, except that²⁰ as President he had taken authority for the conduct of all the financial business of the company. Mr. Cumming said that he considered that he had a right to hold those bonds, and would do so, and he then appealed to me, when I said to him, "These bonds are here without action of the company, neither the Board of Directors nor the Executive Committee knew that they were here, and we do not think you have a right to retain them," and he said, "I may not have the right, but I intend to do it; I am holding the³⁰ company's note, which we discounted for Mr. Jarvis, and he has withdrawn the security which he gave us, and we will test the matter." The result of the conference was that Mr. Cumming was very angry and refused to consider any proposition that was made by Mr. Jarvis. I took him aside and suggested to him that we would endeavor to make him whole, and that I would surrender fifty shares of stock, and Mr. Bumstead agreed to do the same thing, in order that the interest that was due could be met. We both⁴⁰

realized that if the interest on the bonds, that I believe was due on the 1st of February, was not paid, and learning that the Commercial Trust Company had refused to honor Mr. Jarvis's check, we were in a pretty tight place; and upon our show of willingness to give up additional security, Mr. Cumming agreed to pay that interest.

Q. Well, did you or Mr. Bumstead say anything at that time about whether you were willing to have him keep the bonds as collateral? A. No, sir. He desired that we should have action taken by the executive committee, and that Mr. Jarvis should be authorized, but before any action could be taken the company went into the hands of a Receiver.

Q. No such action ever was taken? A. No such action ever was taken.

20 Mr. HOBART: Now, passing to the matter of the claim of Mrs. Nathalie Jarvis, I will offer in evidence pages 130 and 131 of the Minute Book of the Company, and ask the witness to examine the minutes of that meeting, being a meeting of the Executive Committee, dated February 19, 1903.

Mr. ENRIGHT: I object to the offer as immaterial and incompetent, as against Mrs. Jarvis.

30

The VICE-CHANCELLOR: Now, upon which ground are you making your objection?

Mr. ENRIGHT: On both, that it is immaterial and incompetent.

40

The VICE-CHANCELLOR: I do not see that it is competent. I cannot rule on its relevancy until I have some competent proof of it. The Receiver simply said this book was

delivered to him as the Minute Book, and I do not recall that anybody has identified that in evidence as the Minute Book of the Company, or the Minute Book of the Committee. I think at the time Mr. Jarvis was examined about it, the Court indicated that the testimony was not cross examination, and you would have to bring it in in your own case.

19

Mr. FISK: I only asked to have it marked for identification.

The VICE-CHANCELLOR: Therefore, the only thing you have identified about it is that that is his signature.

Mr. FISK: And that that was the minutes of that date.

20

The VICE-CHANCELLOR: I do not recall that. Mr. Enright's objection was on three grounds, that it was irrelevant, immaterial and incompetent. I am now ruling upon the question of its competency, and I do not think, in the present state of the proofs, that it is competent.

Q. Do you know the minutes of the Jarvis Company? A. I recognize this as the Minute Book.

30

Q. Is that it, the one you have before you? A. It is.

Q. Is this your signature on page 131? A. It is.

Q. Do you recognize the minutes on pages 130 and 131 as the minutes of a meeting of the Executive Committee on February 19, 1903? A. I do.

Mr. HOBART: I offer the minutes in evidence.

40

The VICE-CHANCELLOR: Mr. Enright, do you desire to cross examine upon that?

Mr. ENRIGHT: I object to their materiality or relevancy as against Mrs. Jarvis.

10 The VICE-CHANCELLOR: I first want to discuss the question as to whether it is competent.

Mr. ENRIGHT: No, I do not wish to cross examine upon that,

20 The VICE-CHANCELLOR: The question of competency being passed, now, how does this bind Mrs. Jarvis? How is it evidence against her of anything? She was neither a stockholder nor a director, was she?

30 Mr. HOBART: It shows the action that the company took with regard to this purchase of the property from Mrs. Jarvis, and the payment of the balance due on that purchase. It shows the only course of action which was taken. You see, the only evidence we have, so far, is the evidence of personal transaction between Mr. Robert M. Jarvis and Mrs. Nathalie Jarvis. I now propose to show what the corporate action was in regard to that same matter.

40 The VICE CHANCELLOR: I will admit it. I will reserve for consideration at the final argument the question as to how this may affect Mrs. Jarvis, and whether it is evidence against her or not. The two pages that have been identified and offered are admitted in evidence.

(The two pages 130 and 131 of the Minute Book were thereupon marked Exhibit A, of Erie Railroad Company.)

Q. I now ask you, Mr. Case, if this action of the Executive Committee, taken on February 19, 1903, is the only action that was ever taken by your committee relative to the payment of Mrs. Jarvis of the balance due her on the sale of her property? A. To ¹⁰ the best of my recollection, it is.

Q. I now call your attention, Mr. Case, to the By-Laws of the company, as they appear in this Minute Book, on pages 1 to 9, et seq., and ask if those are the by-laws of the company? A. They are.

Mr. HOBART: I offer these By-Laws in evidence.

20

Mr. ENRIGHT: I make the same objection as to their materiality and relevancy as against Mrs. Jarvis.

The VICE-CHANCELLOR: I will permit you to cross examine now.

Mr. ENRIGHT: I do not object to the competency of the proof.

30

The VICE-CHANCELLOR: I will admit them then, reserving until the final disposition of the case the determination of the question as to their relevancy and materiality.

(The By-Laws referred to, contained on pages 1 to 9 inclusive of the Minute Book, were thereupon marked Exhibit B of Erie Railroad Company.)

40

Q. I now call your attention to page 123 of the Minutes of a meeting of Directors, February 11th, 1903, and particularly to page 125, the minute there being part of the minutes of that meeting; will you look there and see if those minutes are the minutes of that meeting, and with particular reference to the authority to make the trust mortgage? A. Yes, that is the record.

10

The VICE-CHANCELLOR: Do these minutes show that this witness was present?

Mr. HOBART: Yes; Mr. Case was present.

Q. Pages 125 and 126 have particular reference to the trust mortgage. Those are the minutes of that meeting? A. Yes, sir.

20

(Minutes referred to offered in evidence, admitted without objection, and marked Exhibit C of Erie Railroad Company.)

Q. I now call your attention to the minutes of the meeting of December 4, 1903, beginning on page 146, being the minutes of a meeting of the Board of Directors. A. I do not seem to have been there.

Q. You do not appear to have been there at that time? A. No.

30

Mr. ENRIGHT: We have no objection to the competency of the proof of these minutes; we have the same objection as to the relevancy and materiality as against Mrs. Jarvis.

The VICE CHANCELLOR: The relevancy and materiality of it I will consider in the final disposition of the case, admitting the book as the evidence of the minutes on page 146.

40

(The minutes of December 4th, 1903, beginning on page 146, are marked Exhibit D of Erie Railroad Company).

Q. I now call your attention to the minutes of a meeting of the stockholders on February 1st, 1904, and with particular reference to page 167. A. I was not present at that meeting.

Q. Not present at that meeting? A. No, sir. 10

Mr. HOBART: Have you any objection to them, Mr. Enright?

Mr. ENRIGHT: No objection to the competency of it, but the same objection to its relevancy and materiality.

The VICE CHANCELLOR: The minutes of the stockholders meeting of February 1st, 1904, beginning on page 165 and ending on page 173, being offered and objection being made of the materiality and relevancy as against Mrs. Nathalie Jarvis, will be admitted, subject to the disposition of the objection at the final argument. 20

(The minutes referred to, on pages 165 to 173 inclusive, are marked Exhibit E of Erie Railroad Company). 30

(Claim of United States Mortgage & Trust Company, under the insolvency proceeding, made to the Receivers May 28, 1904, is now produced and offered in evidence on the part of the petitioner, and is marked Exhibit P, 15).

Mr. HOBART: I offer in evidence bond and mortgage, dated December 16, 1903, from the 40

Jarvis Terminal Cold Storage Company to the Erie Railroad Company, recorded December 18, 1903, in book 504, page 633, and in that connection I will offer a minute which I have here, being a copy of minutes of the meeting of December 16th, 1903, authorizing the issuing of this mortgage. The copy of the minute referred to is attached to the mortgage.

(The said mortgage, with the copy of the minute referred to attached, is marked Exhibit F of Erie Railroad Company).

RICHARD IRVIN, (sworn on the part of Young and Irvin and Union Terminal Cold Storage Company):

By Mr. WHEAT:

Q. You reside in New York? A. Yes.

Q. Where? A. 135 East 34th street.

Q. And you are the Mr. Irvin who is one of the respondents, and also a petitioner in this proceeding?

A. Yes, sir.

Q. Who was associated with you? A. John Alvin Young.

Q. Do you remember last summer, Mr. Irvin, after the appointment of receivers for the Jarvis Terminal Cold Storage Company? A. Yes.

Q. Did you and Mr. Young formulate a plan to reorganize the affairs of that company? A. Yes.

Q. And had an agreement drawn? A. Yes.

Q. And signed? A. Yes.

Q. (Showing witness four papers). I show you those papers and ask you if they are duplicate originals of that agreement? A. Yes.

Mr. WHEAT: I offer those in evidence.

Mr. ENRIGHT: We object.

Mr. WHEAT: Then I withdraw them for the present

Q. Well, Mr. Irvin, did you and Mr. Young organize a corporation? 10

Mr. CORBIN: I do not see how that is material.

The VICE-CHANCELLOR: Does anybody object?

(No response).

The VICE-CHANCELLOR: Proceed. 20

A. Yes, sir.

Q. What was the name of the corporation? A. Union Terminal Cold Storage Company.

Q. Now, you remember the sale of the property to Messrs. Lembeck, Cleary and Cassidy, do you not?

A. Yes, sir.

Q. Did you enter into an agreement with Messrs. Lembeck Cleary and Cassidy? A. Yes.

Q. To take over their bid? A. We entered into 30
an agreement to take over their bid and all their rights.

Q. Now, have you got that agreement here? A. Yes, (producing a paper).

Q. Is that it? A. This is the agreement.

Mr. WHEAT: I offer that in evidence.

(Agreement admitted without objection and marked Exhibit A of Young and Irvin). 40

Q. Now these 150 bonds of the Jarvis Terminal Cold Storage Company that have been offered in evidence, where did you get them? A. We got 130 of those bonds through the committee which bought in the property, the original holders of the bonds.

Q. Who were they? A. Lembeck, Cassidy and Cleary and others.

Q. 130 of those bonds you got pursuant to the agreement that has just been offered in evidence, Exhibit A of Young and Irvin? A. Yes.

Q. And you complied with the terms of that agreement, did you? A. Yes.

Q. Where did you get the other 20? A. Well, the other 20 were not subject to that agreement, but were held by the United States Mortgage & Trust Company, and we got them from that company by turning over to them new bonds, bond for bond, dollar for dollar—20 of them.

Q. You persuaded them to give up those bonds, and let you turn them in, by giving them bonds of the new corporation which you formed? A. Yes, sir.

By the VICE-CHANCELLOR:

Q. To the same amount? A. Yes.

By Mr. WHEAT:

Q. Mr. Irvin, you were a bondholder of the Jarvis Terminal Cold Storage Company, were you not? A. Yes, you might say I was at one time.

Q. Well, your firm, Richard Irvin & Company were, were they not? A. Well, not at the time of the reorganization.

Q. Or were you, at any time, a holder of some of the original bonds of the Jarvis Company? A. Yes, we held some.

Q. That was your only connection with the Jarvis Company, was it not—that of a bondholder at one time? A. Yes, as far as I can remember.

Q. Now, Mr. Irvin, you remember the 24th of September last, when the deed of the receivers was passed over? A. Yes.

Q. Now, are these bonds, these 150 bonds of the Jarvis Company, the bonds which you deposited with the Receiver on receiving that deed? A. I am not certain that every single one of those was deposited then, but that is in the main, that bulk of them were. I think there was one bond that we got afterwards, 10 that was agreed to be given at that time.

Q. Well, you got it afterwards did you. A. Yes.

Q. And deposited it with the receivers? A. Yes.

Q. Now, Mr. Irvin, I show you these papers, consisting of assignments marked Exhibit G of Commercial Trust Company; just look at them; I want to ask you, Mr. Irvin, if those assignments are assignments which you procured from various persons having claims against the Jarvis Company? Those are the assignments which you procured, are they? A. 20 Yes, they are. I remember them very well.

Q. You remember the work you did in procuring them? A. Yes.

Q. And these you deposited with the receivers at the same time you deposited the bonds of the Jarvis Company? A. Yes.

CROSS EXAMINATION:

By Mr. ENRIGHT:

30

Q. These bonds were all defaulted in their interest, were they not, when you got them?

Mr. WHEAT: I object to that. That is a conclusion of law which it is hardly fair to ask this witness to state.

The VICE-CHANCELLOR: I will permit it.

40

A. I think they were.

Q. And you knew that the corporation was in the hands of a Receiver, of course? A. Yes.

Q. Did you know that the Mortgage Company had filed a proof of claim, claiming to hold these 20 bonds as collateral? A. I do not know what they had filed, no.

Q. You know they had filed some sort of a claim 10 about the bonds, though, didn't you? A. I knew they had a claim, I don't know what they have done about it.

Q. Did you get the bonds from the Mortgage Company after the receivers had filed their report allowing and disallowing claims? A. Well, I am not sure about the time they did that.

Q. You knew that the receivers did file a report passing on claims, did you not? A. I do not remember particularly about that point, one way or the 20 other, no.

Q. Well, in the course of this reorganization you kept yourself pretty well informed about the litigation, didn't you? A. Oh, yes, yes.

Q. And you had counsel representing you all the while? A. Yes.

Q. Who were participating in the litigation? A. Yes, more or less.

30 Mr. HOBART: Have the assignments of the mechanics' liens been offered?

Mr. FISK: Yes.

Q. What did you pay for these assignments of the mechanics' liens, did you pay the face value, or how much?

40 Mr. WHEAT: The terms of which this corporation was reorganized we have already offered in evidence. The agreement was objected to—

The VICE-CHANCELLOR: What are you doing, making some motion?

Mr. WHEAT: I am objecting to the question.

The VICE-CHANCELLOR: I will admit it

A. We arranged different sorts of terms to provide for the transfer of those liens.

Q. What per cent of their face value did you pay?

A. Well, in some cases, all; in some cases, less; in some cases more.

Q. Have you any record of what you paid? A. Oh, yes, yes.

Q. Where is it? A. Oh, I think it is probably in my office.

Q. Well, can you tell us about how much you paid for all of the mechanics' lien that you took hold of?

The VICE-CHANCELLOR: You have not ascertained yet whether he paid any cash, have you?

Mr. HOBART: No, sir; I want to ask that.

The VICE-CHANCELLOR: That is the trouble. Maybe he did not pay it in cash; maybe he paid in stock or bonds of the new company, or something else.

A. Well, it was not far from the face value.

Q. Did you pay in cash, or stock and bonds? A. Partly in cash and partly in securities.

The VICE-CHANCELLOR: That is what I feared, that he would not be able to answer that question. If you desire to take

up each one, perhaps he can give you his recollection of how he arranged for each one, if that is material to the inquiry.

Mr. HOBART: Well, I do not think it is. I was just a little curious about it. There is one phase in which it might be material, but I do not think it is material so far as the Erie Railroad is concerned.

10

ROBERT M. JARVIS, recalled (on the part of the Erie Railroad Company):

By Mr. HOBART:

20 Q. Mr. Jarvis, you are familiar with the negotiations leading up to the giving to the Erie Railroad of this mortgage of \$16,500 on December 16th, 1903? A. Yes, sir.

Q. And was the face amount of that mortgage paid over to your company? A. Yes, sir; it was paid over to the company.

Q. You received \$16,500? A. Yes, sir.

30 Q. Do you know to what that money was applied, what it was used for? A. It was used for the payment of supplies and materials used in the construction of the Jarvis Terminal Cold Storage Company, as per receipts furnished the Erie Railroad Company to that amount.

Q. You furnished them receipts for that amount and upwards? A. Yes, sir.

Q. Showing the application of the money to each particular payment? A. Yes sir; as each payment was made we rendered a receipt to the Erie Railroad Company for it.

40 Q. (Handing witness number of papers). I show you a batch of receipts, and ask you if those were

the ones that you furnished to the company, to show the application of the Erie money? A. If the amount is correct, the receipts appear to be all right, to me.

Q. The Erie money paid the bills represented by those receipts and notes? A. The Erie Railroad Company paid the amount of the mortgage money as per those receipts.

Mr. HOBART: I will offer the receipts 10
and notes altogether.

(The bundle of notes and receipts identified by the witness are admitted in evidence without objection and marked as one exhibit. Exhibit BB of Erie Railroad Company).

The WITNESS: I will only state, if it is in order, that my son was the treasurer, and he went with those receipts and handed them to 20
the company. I did not do it myself, but I recognize all those as being correct.

Mr. FISK: I would like to make Mr. Jarvis our witness.

The VICE-CHANCELLOR: All right,
sir.

By Mr. FISK. (For the Commercial Trust Com- 30
pany).

Q. Mr. Jarvis, this Erie Railroad mortgage was given on December 16th, 1903, I believe? A. I do not remember the date.

Q. You received no money from the Erie Railroad Company prior to the execution of this mortgage—the money on this mortgage was paid on or after the date of the execution? A. I do not understand the question. Do you refer to the \$16,500. 40

Q. Yes, sir. A. The only money we received was through these receipts.

Q. Did you not receive a check for \$16,500 from the Erie Railroad Company, in one sum? A. From the Erie Railroad Company we received it and paid it out, and gave them the voucher for it.

Q. I mean you did not receive that check for \$16,500 before the date of the mortgage? A. I only
10 know we received \$16,500 under mortgage from the Erie Railroad, and paid it out as per these vouchers.

Q. Did you receive the money on that mortgage on or after the date of the mortgage, or before? A. I cannot recollect the exact date.

Q. Prior to the receipt of the Erie Railroad money (which was December 16th, or after, 1903) you had expended a large sum of money in the erection of this plant, had you not? A. Yes, sir.

Q. Over \$200,000? A. It must be more than
20 that.

Q. And had you then expended, in the construction of this plant, all the money that had been received on the subscription of the bonds? A. I do not recollect.

Q. I show you certificate, signed by you, which has been offered in evidence and marked Exhibit C of Commercial Trust Company, dated December 22d, six days after the date of the mortgage, and ask you
30 whether you can tell from that certificate whether all the money received on subscription to bonds, under the trust mortgage, had been spent on the plant? A. I have already testified that every dollar we received was spent on the plant, as per those receipts.

Question repeated.

A. If this is the certificate showing that all the money was spent of the \$125,000, per subscription, then I say yes.

40 Q. Well, I am asking you if that is not what it is?

A. Yes, I did not understand you. Then there was a new issue of one hundred and twenty-five thousand that we made afterwards.

Q. That was for additional matters that you had spent? A. Yes. I did not understand you at first.

Q. So at this time, December 22d, 1902, which is the date of this Exhibit C of Commercial Trust Company, all the money under the subscription agreement to the bonds had been paid in and used in the plant, as well as the subscriptions received from the stock? A. We gave that certificate to that effect to the company.

Q. As well as the subscriptions received on the stock? A. That I don't remember, as to the stock.

Q. The stock was subscribed for at par, wasn't it? A. Subscribed for at par, every dollar.

Q. And that certificate states, Mr. Jarvis, that at that time over \$200,000 had been spent on the plant; that was correct, wasn't it? A. Whatever that certificate stated is correct. It was passed upon by our counsel, so I presume it is correct.

By the VICE-CHANCELLOR:

Q. He wants to know whether the fact is so or not—was it a fact that at that time you had expended the amount of money represented in that certificate?

A. We had expended every dollar represented in that certificate.

30

By Mr. FISK:

Q. You were a member of the Board of Directors, and a member of the Executive Committee of this company? A. Yes, sir.

Q. And you were present at all of the meetings of the Executive Committee? A. I do not remember that I was present at all of them.

Q. Now, Mr. Jarvis, was any official action ever taken, either by the directors or the executive com- 40

mittee of the Jarvis Company, with reference to giving any bonds of the company to Mrs. Nathalie Jarvis as security for the \$7,000 which the company owed her on a note?

Mr. ENRIGHT: I object to the materiality and relevancy of the action of the executive committee as binding Mrs. Jarvis.

10

The VICE-CHANCELLOR: I will admit it.

Q. I do not recollect. If there was any, the minutes will show it.

Q. Do you not recollect any, do you? A. I do not recollect; no, sir.

Q. Do you find any such action in the minute
20 book (showing witness minute book)? A. Well, it will take me quite awhile to go over it. It will only take time.

Q. Well, do so, unless you can say positively there is no such action in the book? A. Well, I cannot say positively, because I was not present at all the meetings.

The VICE-CHANCELLOR: Why will not the book show for itself?

30

Mr. FISK: It is not all in evidence.

The VICE-CHANCELLOR: You may offer it all in evidence, if you desire, for that purpose.

Q. This is the Minute Book of the corporation?

A. I presume it is. All the papers of the Jarvis Cold Storage Company were handed to the Receivers by
40 order of the court.

Q. And this is the book handed over to the Receivers as the Minute Book? A. Well, I cannot testify to that, because I did not keep the minute book.

CROSS EXAMINATION:

By Mr. WHEAT: (For Young and Irvin and the Union Terminal Cold Storage Company).

10

Q. You did not get any money from the Erie Railroad Company until you had given the mortgage, did you? A. The money that I received for that mortgage was—

Question repeated.

A. Not in connection with this transaction.

20

Q. That is what I mean,—you did not get any of the \$16,500 until you had given them the mortgage? Don't I make myself plain? A. Well, I cannot remember whether the mortgage was executed before they paid out the money on the same day, or not. I am trying to recollect that. I cannot recollect that to the day or the hour; but I know, at the time the mortgage was executed, the agreement was made to pay the money, and whether it was paid that day or not I don't know.

30

Q. Well, certainly it was not paid before, was it?

A. It was not paid before, no.

Q. Now, did it all come in one check for \$16,500?

A. I cannot recollect whether it did or not. I was not treasurer of the company, I was only president.

Q. Don't you remember receiving a check for \$16,500, and depositing it with the Commercial Trust Company of New Jersey? A. I presume it was deposited through my son, the treasurer.

Q. That is where the Jarvis Company kept its account? A. Yes, sir; but whether it was in two checks

40

or one, I cannot remember that; I admit getting the money.

Q. Well, did the Jarvis Cold Storage Company get \$16,500 from any other source than the Erie Railroad Company on or about the 16th day of December, 1903? A. No, sir.

Q. Is it not a matter of fact, Mr. Jarvis, that every debt represented by these receipts that have been offered in evidence, marked Exhibit BB of Erie Railroad Company, existed at the time you made this mortgage? A. That I could not answer; I don't know.

Q. Well, take the first one of these receipts, dated December 18th, 1903, "This is to certify that Crane & Company, contractors, are entitled to a payment of \$4,000"—that indebtedness existed on December 18th, 1903, did it not? A. According to the date there; yes, sir.

Q. And this check dated December 1, 1903, was given in payment of that claim; how do you explain that, Mr. Jarvis, that this check is dated December 1st 1903, and the claim is certified by the engineer as to December 18th, 1903, and the mortgage to the Erie Railroad was dated December 16th, 1903, and yet the proceeds of the mortgage were used to pay that check with? A. Will your Honor allow me to explain?

The VICE-CHANCELLOR: Oh, certainly, under the question that has been asked you may explain.

The WITNESS: We applied to the Erie Railroad Company for this money. We were in financial straits. We owed men who had acted as engineers and men who had acted as clerks, and men who had supplied material, and men who had done labor, and they were waiting for their money. The receipts went

over to the office in the usual way, but they laid there because there was no money to pay them. I went to the Erie Railroad Company and stated our financial condition, that we had amounts that were due and payable, and people clamoring for their money, and some that were coming due, and that it would require \$16,500 to liquidate those that were due for which we had vouchers, and those that ¹⁰ were coming due; and after quite a lengthy negotiation and a good deal of trouble they consented to let us have \$16,500, as per items estimated, furnished them on those dates that I spoke of; and a mortgage was made to cover that amount.

By the VICE-CHANCELLOR:

Q. Now he asks you how, if all that is true, you ²⁰ came to have a check there dated December 1st, in payment of a bill— A. (Referring to the voucher shown the witness). This is not a check, this is a note.

By Mr. WHEAT:

Q. Well, without going through all these papers, ³⁰ is it not your best recollection that the claims which were paid out of the mortgage of the Erie Railroad Company, out of the proceeds of that mortgage, were claims that existed at the time you made the mortgage? A. There were some that existed at the time, and some were coming due, and some were nearly due; and we made a list of them, and I think the treasurer can enlighten you on that subject.

Q. You made the mortgage for the purpose of raising money to pay the claims which then had accrued against you? A. Partly. ⁴⁰

Q. Not to build new buildings? A. I don't know that that came into the question, did it?

Q. Well, did it? A. I don't know.

Q. You had long negotiations with the Erie Railroad Company about this mortgage, did you? A. Some weeks; yes, sir.

Q. With whom did you negotiate? A. With the now second or third vice-president of the Erie road.

10 Q. Mr. Brownell? A. No, I forget his name,—the confidential man to the president, before he was made second vice-president.

By Mr. HOBART:

Q. Mr. Richardson? A. Richardson.

20 By Mr. WHEAT:

Q. I ask your attention to the Erie Railroad mortgage, particularly to the clause which reads in this way, "This property is subject to a prior mortgage given by said Storage Company to the Commercial Trust Company of New Jersey as trustee to secure the payment of bonds to the amount of \$150,000, and said mortgage is recognized as prior to this to the full amount thereof, whether the said
30 bonds have been yet issued or not": Do you remember at whose suggestion that was put in there? A. The mortgage was made up by Mr. Northrop of the firm of Northrup, Simpson & Company in New York, and submitted to the counsel for the Commercial Trust Company, and approved.

By Mr. FISK:

Q. To the Commercial Trust Company—this
40 mortgage? A. That is, the \$150,000 mortgage.

By Mr. WHEAT:

Q. No, the mortgage to the Erie Railroad Company for \$16,500? A. Oh, I did not understand the question. We had no counsel excepting the Erie Railroad counsel in this matter. It was all done between Mr. Richardson, myself, and the representative counsel of the Erie Railroad Company.

Q. Who, as a matter of fact, drew it, do you know? 10
A. I don't know who drew it, but it came to us through Mr. Brownell's representative or associate, I forget his name.

By Mr. HOBART:

Q. Mr. Taylor? A. A slight man with a black moustache and glasses.

By Mr. WHEAT:

20

Q. You see it bears the endorsement "Collins & Corbin, Counsellors-at-Law," printed; does that refresh your recollection in any way? Do you remember whether you did the business at the office of Collins & Corbin? A. I think we were in there at the time they were preparing the mortgage, and Mr. Corbin drafted the mortgage for them.

30

ROBERT M. JARVIS, JR., sworn (on the part of Commercial Trust Company):

By Mr. FISK:

Q. You were the Secretary and Treasurer of the defendant corporation? A. Yes, sir.

Q. I show you a book,— is that the minute book, 40

of the corporation? A. Yes, sir; the book is the minute book; I suppose the contents are the same as I had.

Q. Those were handed over to the Receivers at the time of the appointment of the Receivers? A. Yes, sir.

Q. Mr. Jarvis, is there any record in that minute book, to your knowledge, of any authorization by
10 the executive committee or board of directors, of the pledging or deposit of any bonds with Mrs. Nathalie Jarvis as security for the debt due to her by the company?

Mr. ENRIGHT: I object. The book will speak for itself.

The VICE-CHANCELLOR: The objection is good. You can offer the book, if you
20 want to.

(Question withdrawn).

Q. Mr. Jarvis, do you know of any meeting or action of the directors or the executive committee of the company in respect to the pledging of bonds with Mrs. Jarvis for security for a note? A. No, sir.

Mr. ENRIGHT: I object to that ques-
30 tion, on the ground that it now appears that this company kept a record of the minutes, and the minutes speak for themselves.

The VICE-CHANCELLOR: Well, this question is whether he knew of it. It might be entirely immaterial as to whether he knew of it. The fact that somebody kept this record would not make any difference. He may not have been present at the meeting. This question was merely "Do you happen to
40

know of any meeting?" I will admit the question, merely because it may aid us to get on the track of it, if there is such a thing.

Mr. FISK: I now offer in evidence the minute book of the corporation, complete.

Mr. ENRIGHT: I object to it as not binding on Mrs. Jarvis.

10

The VICE-CHANCELLOR: I will admit it, not as binding on Mrs. Jarvis, but as being relevant for certain purposes; and its binding effect upon Mrs. Jarvis will have to be considered in the final disposition of the case.

(The Minute Book was thereupon marked

Exhibit AB for Commercial Trust Company).

20

Q. You were Treasurer for the company also?
A. Yes, sir.

Q. And the company kept one account with the Commercial Trust Company of New Jersey? A. Yes, sir.

Q. Do you know where the proceeds of the Erie Railroad Company were deposited? A. In the Commercial Trust Company.

Q. I show you a book purporting to be pass book³⁰ of the Jarvis Terminal Cold Storage Company with the Commercial Trust Company, and ask you whether the entry under date of December 18th, 1903, is the deposit of the \$16,500 received from the Erie Railroad mortgage. A. Well, I see there it has been changed from December 2d to December 18th, in the book. There has been a different color ink there. I deposited the \$16,500 in the Commercial myself, on the night of December 16th, about 5 o'clock.

40

Q. December 16th? A. Yes, about 5 o'clock, if I remember correctly.

Q. That is, the entry for the \$16,500 is the only \$16,500 you deposited there in that month? A. But I don't acknowledge that date there. It has been changed, you can see that.

Question repeated.

10

A. In that month; yes, sir.

(Bank pass book identified by the witness offered in evidence, admitted without objection and marked Exhibit AC of Commercial Trust Company).

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(Reserving the right to call Mr. Rasmus, on the part of Young, Irvin and the Union Terminal Cold Storage Company, all of the defendants and cross petitioners rest).

PETITIONER'S REBUTTAL.

30 BENJAMIN TUSKA, ESQ., sworn:

By Mr. ENRIGHT.

Q. You reside in the City of New York? A. I do.

Q. And what is your profession? A. Attorney-at-law.

By the VICE-CHANCELLOR:

40 Q. Not of this bar? A. Of the New York bar.

By Mr. ENRIGHT:

Q. Did you prepare the proof of claim filed on behalf of Mrs. Jarvis with the Receivers of the Jarvis Company? A. I did.

Q. I show you Exhibit E of Commercial Trust Company and ask you if that is the proof of claim which you prepared? A. It is. I see my handwriting on the face of it, on the first page. 10

Q. Will you state how you came to prepare that proof of claim, upon what data?

Mr. FISK: I object. This is a paper under oath, and is filed in the cause, and stands for itself. It cannot be attacked. It is presented by his own client. He cannot attack the paper. It is submitted by invitation of the court to submit claims. 20

The VICE-CHANCELLOR: How do you justify that question, Mr Enright.

Mr. ENRIGHT: Why, I suppose the claim itself was offered for the purpose of contradicting the position now taken by Mrs. Jarvis. I want to show how it happened that that claim as filed, upon what insufficient data. 30 If there is an inconsistency there, I think the Court ought to consider the sworn proof in connection with the surrounding circumstances under which it was sworn to.

The VICE-CHANCELLOR: Did Nathalie Jarvis sign it?

Mr. FISK: Yes, sir; with the affidavit and certificate of the County Clerk. 40

The VICE-CHANCELLOR: Are you endeavoring to explain this written paper of thalie Jarvis sign this?

Mr. ENRIGHT: Yes, sir.

10 The VICE-CHANCELLOR: How can you do that by this witness? He cannot be cross examined as to what Nathalie Jarvis knew. We are not trying to find out what this gentleman knew, we are trying to find out what Nathalie Jarvis did, and how far she was precluded or estopped by what she did when she signed that paper.

20 Mr. ENRIGHT: I want to show the circumstances under which the paper was drawn.

Mr. FISK: She should be called, if the testimony is competent at all. This was sworn to in the State of New York, not in Europe—sworn to before Mr. Gibson, who is said to be a young man in Mr. Schaefer's office, a notary public.

30 (Question repeated, at the request of the Court).

The VICE-CHANCELLOR: I will admit it. I can see an aspect of the case in which it may be relevant.

A. Some time between the 19th and 30th of May, in the year in which that proof of claim was verified I was representing Mr. Robert Jarvis in a number of disposses actions that were brought in New York City, and in those actions it was necessary for me to
40 see Mr. Schafer in order to get from him, as the

of the party borrowing the money, if that is what you mean.

Q. And if I come there to borrow money you make an entry of that first where? A. In the loan book.

Q. And then you credit my account with \$100—is that correct? A. Credit your account with the money.

Q. And these sheets show the two entries of each 10 of such transactions with the Jarvis Terminal Cold Storage Company? A. Yes, sir.

The VICE-CHANCELLOR. I shall permit these sheets to be used to refresh the recollection of the witness. I shall not permit the sheets themselves to go into evidence, because I do not understand that they can be used as evidence of the transaction; but he may refresh his memory from them. Ask him 20 what the facts are.

By Mr. WHEAT.

Q. Tell us when the first loan was made to the Jarvis Terminal Cold Storage Company on this note?

A. The first loan was made on November 10th, 1903.

The VICE-CHANCELLOR. What is the date of the note? 30

Q. That is the date of the note, is it not? A. Yes, sir.

Q. And for how much was that first loan? A. For ten thousand dollars.

Q. When was the next loan made on that note? A. November 20th, 1903.

Q. For how much? A. Ten thousand dollars.

Q. Now, at the time this note was taken what, if any, collateral security was received by the Trust 40

Company? A. We got a subscription list to capital stock of the Jarvis Terminal Cold Storage Company.

By the VICE-CHANCELLOR.

Q. A "subscription agreement" don't you mean?

A. Well, we call it a "list." It was a subscription agreement signed by various parties who took certain stock.

Q. A list may be a list of names merely, but this was an agreement, was it? A. This was an agreement. And we got fifty shares of the stock of the Jarvis Terminal Cold Storage Company.

By Mr. WHEAT.

Q. When did you last see that subscription agreement? Or, I will change that question: What is the last knowledge you have of that subscription agreement? A. The last knowledge I have of the subscription agreement was handing it out to Mr. Robert M. Jarvis, Jr., Treasurer of the Company, and getting his receipt for it, some time early in 1901.

Q. And have you ever seen it since? A. No, sir.

Q. Now, can you tell us when that was that you gave him that agreement? A. Well, it was early in 1904, along in January, in my recollection.

Q. Now, do you remember receiving 25 bonds of the Jarvis Terminal Cold Storage Company in connection with this loan? A. Yes, sir.

Q. State the circumstances under which you received those bonds? A. The bonds were brought back to the loan cage and given to me by Mr. Cumming, at that time Vice-President of the Company; and he told me —

Mr. ENRIGHT. I object.

tell what Mr. Cumming told him; that is not evidence.

The WITNESS. Well, they were given to me by Mr. Cumming.

The VICE-CHANCELLOR. That much is proper.

Q. Now, at the same time did you accompany Mr. Cumming to the front of the office of the Mortgage and Trust Company and see there Mr. Robert M. Jarvis, the President of the Company? A. I did. ¹⁰

Q. That was immediately after Mr. Cumming delivered the bonds to you? A. Yes, sir.

Q. Now, state what you heard, or what conversation passed between you, Mr. Robert M. Jarvis and Mr. Cumming with relation to these bonds? A. The conversation, as I remember it, was that the bonds were placed with us as additional collateral to the loan and to secure overdrafts on their deposit account. ²⁰

Q. As a matter of fact, can you state whether the deposit account of the Jarvis Terminal Cold Storage Company was at that time overdrawn? A. I cannot state that.

Q. What is your best recollection, as refreshed from examination of these books, if the examination does refresh it? A. My recollection is that at the time the account was about to be overdrawn, or was overdrawn. ³⁰

Q. State when that account became overdrawn? A. It became overdrawn January 22, 1904.

Q. And does that correspond with your recollection of the time when these bonds were left with you—about the time? A. About that time, yes.

Q. Now, after that, state how much that account became overdrawn? A. That account, on February 29th, 1904, was overdrawn to the amount of \$4649.97, with interest. ⁴⁰

Q. And at the time these bonds were delivered to you did Mr. Cumming, in the presence of Mr. Jarvis, direct you to allow it to become overdrawn?

(Objected to.)

The VICE-CHANCELLOR. The question is leading.

10 Q. Well, are there any other facts, or is there any other of the conversation which you can remember whereat you and Mr. Cumming and Mr. Jarvis were all present? A. In connection with our conversation Mr. Cumming also granted that we should allow these overdrafts.

Q. Well, just think it out Mr. Rasmus—it was some time ago. A. The bonds were given to us as additional collateral to the loan and to cover any overdrafts that the Jarvis people might make on their
20 account.

Q. Well, now, have you had any conversations with Mr. Robert M. Jarvis, subsequent to that conversation when Mr. Cumming was present, with regard to these bonds and these overdrafts? A. I have never had any conversation with Mr. Jarvis, except with Mr. Cumming, or at least, I never alone had a conversation with Mr. Robert M. Jarvis.

Q. Well, can you remember any conversation except that one when you got those bonds? A. I
30 remember a conversation at which I was present in which Mr. Jarvis requested additional money to meet the company's interest payments, and referred to these bonds as additional collateral, and told us that they would secure any overdrafts that we had—that we had plenty of security for our loan and such overdrafts.

Q. Now, how much remains due on this note at the present time, including these overdrafts? A. The balance of the loan and overdraft amount to
40 \$20,172.65, and interest.

By the VICE-CHANCELLOR.

Q. Well, divide that—how much is on the loan, and how much on the overdraft? A. The loan is \$15,500 and interest, and the overdraft is \$4649.97 and interest.

Q. Now, is there any interest figured into that total you have given us of overdraft, or is that just the net amount withdrawn? A. \$4649.97 is the net 10
amount of their overdraft.

Q. With respect to the note, is the \$15,500 that you have given us the actual amount? A. The actual amount.

Q. And no interest added to it? A. No interest.

By Mr. WHEAT.

Q. Now, Mr. Rasmus, did you receive those bonds after Mr. Robert M. Jarvis, Jr. took the subscription 20
agreement away, or before?

Mr. ENRIGHT. I object to that as leading.

(Question admitted)

A. My recollection is that we got the bonds after we gave up the subscription agreement.

Q. Well, are you quite positive of that? 30

The VICE-CHANCELLOR. Do not cross-examine your own witness.

CROSS EXAMINATION.

By Mr. ENRIGHT. 40

Q. Mr. Rasmus, is it customary with your company to keep a record of the time when they receive collateral on loans? A. Yes, sir.

Q. Have you got any record kept of the date when you received these 25 bonds from Mr. Jarvis?

A. I haven't got it with me; no, sir.

Q. The company has such a record? A. Yes, sir.

Q. And you could have produced it, if you had so desired? A. If I had been asked about it.

Q. Has your company preserved any record of the time when that subscription agreement was delivered to Mr. Robert M. Jarvis, Jr.? A. Yes, sir.

Q. Have you got that with you? A. No sir.

Q. You could have bought it, if you had desired? A. I could.

Q. Do you recall the time the Executive Committee of the Jarvis Terminal Cold Storage Company came to the Mortgage Company respecting these 20 bonds? A. Never met the gentlemen.

Q. You were not present?

The VICE-CHANCELLOR. He says he never met the gentlemen; if he had been present he would have.

Q. Now, you have testified to the allowance of an overdraft; is it not true that before that overdraft was allowed the Mortgage Company got from Mr. Jarvis and others additional security in the way of stock of the Jarvis Company? A. We got stock; yes, sir.

Q. And it was after that that the overdraft was allowed, was it not? A. I don't know that that had anything—I never connected that—the stock was given to us to put in the loan.

Q. Have you got any record here of the time when the stock was delivered to you? A. No, sir.

Q. It was received as collateral, however, wasn't it? A. It was put in the loan as collateral; yes, sir.

Q. Did you ever hear that the Jarvis Company desired to sell those twenty-five bonds for the purpose of raising additional money? A. No, sir.

Q. Did you ever hear that they desired to obtain an additional loan upon those twenty-five bonds? A. No, sir.

Q. Mr. Jarvis did not say anything about that? A. Not to me.

Q. Or to Mr. Cumming, in your presence? A. ¹⁰
A. Not to Mr. Cumming in my presence; no, sir.

Q. Have you a very clear recollection of this occurrence, Mr. Rasmus? A. Yes, sir.

Q. Was the matter directly under your charge, or Mr. Cumming's? A. Mr. Cumming directly had charge of loaning money to the Jarvis Company.

Q. And your knowledge of the matter is simply because you happened to be there at that first conference when the bonds were turned over—is that right? A. My part of the business was that I was ²⁰
called in whenever anything was to be done in connection with the loan.

Q. But the bonds had already been handed to Mr. Cumming, and by him sent back to your department, before you had any knowledge of the matter at all? A. On these bonds, yes.

Q. So you do not know what was said by Mr. Jarvis and Mr. Cumming when the bonds were first turned over, do you? A. No, sir.

Q. Now, will you just repeat again what Mr. Jarvis said to Mr. Cumming? A. When I was there? ³⁰

Q. In the interview you have testified to? A. He said that the bonds were to be left there as additional collateral to the loan and to so such overdrafts as the company might establish in their deposit account.

Q. Said that in just that way? A. I don't say that I am repeating it word for word, but that is my recollection of the sense of the conversation.

Q. But he had already left the bonds there, hadn't he? A. He had given the bonds; yes, sir. ⁴⁰

Q. What was the occasion for his saying, in your presence, after he had given up the bonds, that the bonds were to remain there as additional collateral?

A. Because my recollection is that I wanted to be sure that I had gotten the instruction correctly.

Q. Don't you usually take a written instruction in your banking house in cases of that kind? A. No, sir.

10 Q. Is it not customary to take a collateral note, where you are giving stock and bonds as collateral?

A. A collateral note would not show what had been subsequently placed with the loan.

Q. Is it not customary to take some writing to show the terms on which you get additional collateral? A. No, sir; our notes call for additional collateral.

Q. How do you make a sale of collateral which is not covered by an agreement? A. We would not
20 sell collateral under a note without written instructions.

Q. Is it a very frequent thing for you to take collateral without any writing at all? A. Yes, sir.

Q. Do it all the time? A. Yes, sir.

Q. Is it customary for you to enter in the books of your bank all collateral received for a loan? A. In our loan book we show the original collateral deposited at the time the loan is made.

Q. You do not enter up any subsequent collateral
30 received? A. No, sir; not in that book.

Q. What book do you enter it up in? A. We enter it on the substitution book and on the loan slip.

Q. That is the uniform practice of the bank? A. In our place, yes.

Q. Have you got those records here? A. No, sir.

Q. According to this sheet headed "Loan No. 2085," which you have used to refresh your mem-
40 ory —

Mr. WHEAT. If your Honor please, that sheet is not in evidence.

The VICE-CHANCELLOR. If the gentleman uses it it will go into evidence.

Mr. WHEAT. I would just as soon have it come in.

10

The VICE-CHANCELLOR. I am telling him that that is the effect of his using it. If he uses it, it becomes evidence.

(Question withdrawn.)

Q. Did you make a loan to the Jarvis Terminal Cold Storage Company of ten thousand dollars, on November 10, 1903? A. The United States Mortgage and Trust Company did, yes.

20

Q. Did the mortgage company make another loan of ten thousand dollars to the Jarvis Terminal Cold Storage Company on November 20th, 1903? A. Yes, sir.

Q. Were notes taken for each of those loans? A. There was one note taken on November 10th for Twenty thousand dollars.

Q. That is the note produced? A. Yes, sir.

Q. That is the only note the Mortgage Company holds? A. The only note the Mortgage Company holds.

30

Q. Mr. Rasmus, what was the interest upon this note?

The VICE-CHANCELLOR. Do you mean what was the legal rate of interest?

Mr. ENRIGHT. No, what was the interest reserved upon this loan to the Jarvis Company.

40

A. Why, I don't know. The note says "six per cent."

Q. Was that right (handing to the witness the note in question)? A. That was the interest charge, yes, sir.

Q. Was any commission taken, besides, for making the loan? A. Yes, sir.

Q. How much. A. Well, the sheets show it.

10 Q. (Sheet handed the witness.) A. 2% was charged.

Q. That is four hundred dollars? A. Four hundred dollars; yes, sir.

Q. And that was paid by the Jarvis Company in addition to the 6%? A. That was paid by the Jarvis Company; yes, sir.

Q. In addition to the 6% interest charge? A. They have not paid the 6%.

Q. In addition to the 6% reserved upon the note?
20 A. Yes, sir.

Mr. FISK. What do you mean by "reserved?"

The VICE-CHANCELLOR. Well, it is quite clear. Let him ask it that way if he wants to. It is quite clear that they were to pay four hundred dollars for the loan and were to pay 6% interest on the note. Go
30 ahead—straighten it out.

The WITNESS. They paid four hundred dollars in commissions, and were to pay 6% on the amount of the note.

Q. The 6% interest on the face of the note runs from the date of the note, doesn't it? A. Runs from the date of the advance.

Q. From the date of the advance, and not the
40 date of the note? A. Yes, sir.

By Mr. WHEAT.

Q. Mr. Rasmus, this subscription agreement which we have been talking about was an agreement whereby certain men agreed to buy certain stock? A. Yes, sir.

Q. And pay for it? A. Yes, sir.

Q. And under the pledge of this collateral, this agreement, with your company, did you undertake ¹⁰ to receive those subscriptions? The subscriptions were to be paid —

Q. (Interrupting) Were to be paid in to you, were they? A. Wait a minute; I want to recall the circumstances: The subscriptions were to be credited on account of the loan; yes, sir.

Q. Now, when those subscriptions were paid to you did you have certificates of stock of the Jarvis Company there? A. No, sir.

Q. You did not? A. Not for the subscriptions, ²⁰ no, sir.

Q. Well, as the subscriptions were paid, did you not issue stock certificates to the subscribers? A. No, sir.

Q. Well, do you mean, as a matter of fact, that you did not, or that you did not undertake to do that?

Mr. ENRIGHT. I object to the form of ³⁰ the question.

The VICE-CHANCELLOR. It is objectionable. Ask him what he knows happened. You are cross-examining him now.

The WITNESS. We received the money for the stock subscriptions, and then instructed the Commercial Trust Company to issue a certificate for the amount of shares to the party making the payment to us. Then ⁴⁰

we received the certificates and delivered them to the party having made the payment.

Q. Well, what function would the Commercial Trust Company have in this matter—what were they with reference to the Jarvis Company? A. I think they were transfer agents.

Q. When a stock subscription would be paid pursuant to this agreement then you would notify the Commercial Trust Company, they would send the certificate over to you—is that right — A. Yes.

Q. And you would deliver it to the person making the payment? A. Yes, sir.

Q. And you undertook to do that in addition to making the loan? A. Yes sir.

Q. Now, this note which the Jarvis Company gave—is that the ordinary form used by the Mortgage & Trust Company for its loans? A. Yes, sir.

20 Q. And state whether or not it is customary for collateral to be substituted and exchanged constantly on loans made by your companys? A. It is to a certain extent; yes, sir.

Q. Is that particularly true with reference to loans made to stock brokers? A. Yes, that is a daily occurrence.

Mr. ENRIGHT. I submit all these questions are very leading.

30 The VICE-CHANCELLOR. Well, he testified to all of this under your cross-examination; he is just getting him to repeat everything he said under your cross-examination. The witness said they constantly exchanged collateral and did not make any note of it. He said the original entry was only of the original collateral, and after that they did not, on this sheet make any change when there was a substitution or exchange.

40 Mr. WHEAT. That closes our testimony.

Mr. FISK. I desire to offer in evidence an instrument that I overlooked yesterday. The execution of it is admitted. It is an agreement dated the 16th day of December, 1903, between the Erie Railroad Company and the Jarvis Terminal Cold Storage Company, executed by the officers of the two corporations, with reference to this mortgage of the Erie Railroad Company. 10

The VICE-CHANCELLOR. Is there any objection?

Mr. HOBART. No, sir.

Mr. ENRIGHT. I object, on the part of the petitioner, Mrs. Jarvis, that this being *res inter alios acta*, it is not binding upon her. 20

The VICE-CHANCELLOR: The Court admits it, under the general understanding that it will determine the relevancy of it with respect to the parties who may be bound by it.

(The agreement offered was thereupon marked Exhibit A D of Commercial Trust Company.) 30

Mr. HOBART. I would like to put Mr. Jarvis on the stand on one point which I intended to ask him, but which I forgot to ask him.

The VICE-CHANCELLOR. All right; Mr. Jarvis will resume the stand. 40

ROBERT M. JARVIS, recalled (On the part of the Erie Railroad Company).

By Mr. HOBART.

Q. Do you know Mr. Schafer, the witness who was on the stand yesterday? A. Yes, sir.

Q. Will you state whether, at any time in the month of February, 1903, you made any agreement with him with regard to giving bonds as collateral for the balance due on the purchase price of the property to be conveyed by Mrs. Nathalie Jarvis to the Jarvis Company?

Mr. ENRIGHT. I object to the question on the ground that the case was closed yesterday except for the calling of Mr. Rasmus this morning, which right was reserved, and Mr. Jarvis has already been sworn by the Erie Railroad Company upon their defense when the Schafers were in court, and they did not go into this line of examination. Nothing new has been brought out since then to make this proper rebuttal of anything that the petitioner has since offered; and we are to-day without the other witness to the transaction which the Erie Railroad Company now seeks to go into. We had a right, at the conclusion of the case yesterday, to assume that it was opened this morning simply for the purpose of allowing Mr. Rasmus to testify, and for the production of whatever evidence was necessary or proper to rebut his testimony. But this does not rebut anything brought out in the testimony of Mr. Rasmus, who was sworn in place of Mr. Cumming.

The VICE-CHANCELLOR: I am inclined to think that this is reasonable, Mr. Hobart.

Yesterday the Schafers, father and son, were each here, and were each sworn. Mr. Wheat, representing the new company and Irvin & Young, at a time when it appeared that the case would be closed yesterday afternoon, regretted that he could not give some one here from the United States Mortgage & Trust Company, and when it was found that the case could not be closed last night, requested 10 that, before argument began this morning, he be permitted to produce a representative of the United States Mortgage & Trust Company. I think it would be very unfair to the other parties in this suit, I must say (and as I have remarked before I don't know how the line can be drawn as between the parties, and therefore I do not know how many it may be unfair to) to permit this witness, who was on the stand certainly twice yesterday, during 20 which time the Schafers, father and son were here, to be recalled now to testify further in regard to this matter. There was no notice given that he was to be recalled to-day for any purpose; and I think it would be very unfair to the other parties to permit him now to be examined upon a subject which he was entirely open to yesterday when the other witnesses were here. Unless you can show me some reason for it I will not permit that testi- 30 mony to be gone into now.

Mr. HOBART. I suppose if this testimony will in any way bring out new matter that might in any way be subject to rebuttal by Mr. Schafer, they would not be barred from putting Mr. Schafer on the stand, if necessary.

The VICE-CHANCELLOR. Why did you not put him on that stand yesterday? He 40

was here all day yesterday, on and off the stand. If this matter was important for your clients it must have particularly appealed to your mind yesterday. The case was practically closed last night, and the Court was ready to hear argument, until Mr. Wheat said he desired to call Mr. Cumming or the representative of the United States Mortgage and Trust Company, and the Court acceded to that and was willing that the testimony should be produced to-day before the argument took place. But I do not see how, without great unfairness to the other parties, I can permit you now to re-open the whole case as to the Schafer transaction. The Court is always loath, of course, to bar out any testimony, but an orderly course of procedure is at times almost as much a guarantee of justice as is the application of correct legal principles. I will not permit this. If I do you an injury, the Court will have to correct it in that respect.

Mr. HOBART. All right. I have no further questions for Mr. Jarvis.

Mr. FISK. I desire to offer this paper, Exhibit D of the Commercial Trust Company, which was admitted in evidence for a specific purpose, now generally in evidence.

Mr. ENRIGHT. I object to its materiality and relevancy as respects Mrs. Jarvis, on the ground that the bond and the mortgage are contracts which speak for themselves. If the effort is to show a different contract between the corporation and the bondholders in a bond and mortgage which are of later date,

the agreement is inadmissible; it had been merged in the more solemn paper of later date.

Mr. FISK. We do not offer it to vary the papers.

The VICE-CHANCELLOR. I will admit it. It will retain the same marking, Ex-¹⁰hibit D of Commercial Trust Co.

ALL PARTIES CLOSE.

EXHIBITS OF NATHALIE JARVIS.

EX. "P. 1" and "P. 2."

20

Bond and Mortgage. Jarvis Terminal Cold Storage Company, to Nathalie Jarvis, dated December 1, 1902, for the sum of \$14,000 payable December 1, 1903, with interest at 5%.

Covers premises conveyed to said company by said Nathalie Jarvis, by deed delivered and intended to be recorded simultaneously with this indenture. "This mortgage being a Purchase Money Mortgage, and given to secure a portion of the consideration in said deed expressed." 30

Mortgage acknowledged December 1, 1902. Recorded December 3, 1902, in Register's Office, of Hudson County, Book 480, pages 628, etc.

EX. "P. 3."

I, NATHALIE JARVIS, DO HEREBY CERTIFY, that a certain Indenture of Mortgage bearing 40

date the first day of December in the year One thousand nine hundred and two, made and executed by Jarvis Terminal Cold Storage Company, a corporation organized and existing under the laws of the State of New Jersey, party of the first part, to Nathalie Jarvis, of White Plains, in the State of New York, party of the second part, and recorded in the office of the Register of the County of Hudson, New Jersey, in Liber 480 of Mortgages, page 628, on the third day of December in the year One thousand nine hundred and two at 9 o'clock 37 minutes in the forenoon, IS PAID, and do hereby consent that the same be discharged of record.

Dated the fifth day of February, 1903.

Signed in the Presence of:

Nathalie Jarvis

(L.S.)

20 Henry Harper.

W. Haugh.

____—o
)
 Consulate-General of the United)
)
 States of America.)
)
 City of Berlin, Kingdom of)
)
 30 Prussia, Empire of Germany.)
)
 ____—o

BE IT REMEMBERED that on this fifth day of February, A.D., One thousand nine hundred and three, before me, the subscriber, Dean B. Mason, M. F. Vice and Deputy Consul General at Berlin, Germany, personally appeared NATHALIE JARVIS, who I am satisfied is the person named in and who executed the foregoing satisfaction of mortgage, and I having first made known to her the con-

tents thereof, she did thereon acknowledge that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

DEAN B. MASON,
Vice and Deputy Consul-General of the United States of America at Berlin.

10

(SEAL)

EX. "P. 4."

20

PROMISSORY NOTE.

New York, February 19th, 1903.

Sixty days after date Jarvis Terminal Cold Storage Company promises to pay to Mrs. Nathalie Jarvis, or order, at the Banking House of Messrs. Schafer Brothers, 35 Wall Street, in the City of New York, the sum of Seven thousand (\$7,000) with interest at the rate of five per cent, per annum, value received; having deposited with said Nathalie Jarvis as collateral security certificate No. 5 for seventy shares of the par value of One hundred dollars each of the capital stock of Jarvis Terminal Cold Storage Company.

30

JARVIS COLD STORAGE COMPANY.

By R. M. Jarvis,
President.

R. M. Jarvis, Jr., Treasurer.

40

EX. "P. 6."

Certificate No. 5, Jarvis Terminal Cold Storage Company for seventy shares issued to William Gibson, dated February 19, 1903. Signed, R. M. Jarvis, President; R. M. Jarvis, Jr., Treasurer; countersigned and registered February 2, 1903, by Commercial Trust Company of New Jersey, by Oscar Gubelman, Secretary; endorsed in blank by William H. Gibson, on February 19, 1903, in the presence of Samuel M. Schafer.

EX. "P. 7."

Promissory note dated April 20, 1903, at 60 days.

Identical in form with "P. 4."

20

EX. "P. 8."

Six promissory notes identical in form with "P. 4," each for 30 days and dated respectively as follows:

June 20, 1903; July 20, 1903; Aug. 19, 1903; Sept. 21, 1903; Oct. 22, 1903; Nov. 23, 1903.

30

EX. "P. 9."

(Letterhead of)

JARVIS TERMINAL COLD STORAGE CO.

Dear Mr. Schafer:

Enclosed please find renewal note for thirty days

40

of loan from Mrs. Nathalie Jarvis held by you and falling due to-day.

We request the renewal of this loan for the reason that we are not ready to offer you the bonds, and take up stock, your present security, and therefore trust you will kindly arrange for the extension of time as required.

Sincerely yours,

(Sgd) R. M. Jarvis. 10

June 22, 1903.

I will try to get over to see you to-morrow.

R. M. J.

EX. "P. 10."

(Letter head.)

JARVIS & CO.'S TOBACCO INSPECTION. 20

New York, October 22, 1903.

Mr. Samuel M. Schafer,
32 Wall St., City.

Dear Mr. Schafer:

It is absolutely necessary to have the note falling due to-day extended thirty days longer, as owing to strikes and delays the Cold Storage Building cannot be completed or ready for business before the 15th of November. 30

Until the plant is completed, we cannot issue any more bonds, but as soon as the bonds are issued, we will be able to pay off this loan either in bonds or cash as Mrs. A. S. Jarvis may decide.

The bonds are first-class investments as well as the stock, they being secured for more than double the value and pay 6%. The stock will be a much better investment still, and I cannot understand why you 40

do not approve of this investment for Mrs. Jarvis, especially so that the preference was given her property and the Company will be in a position in the future to benefit her in regard to her other property.

Yours sincerely,

(Sgd) R. M. Jarvis.

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EX. "P. 11."

(Letter head.)

JARVIS TERMINAL COLD STORAGE CO.

November 23, 1903.

Samuel M. Schafer, Esq.,
35 Wall St., New York City.

20

My dear Mr. Schafer:

As I informed you when I saw you last, the Cold Storage Company will be ready for business on or about December 1st, soon after which the Company will doubtless be in a position to take up the stock held by you as collateral security for a loan, and they will do so with as little delay as possible.

30

Yours sincerely,

(Sgd) R. M. Jarvis.

EX. "P. 12."

Envelope addressed to S. M. Schafer, 35 Wall St., New York City, marked "Consulate-General, United States of America, Berlin." Postmarked "N. Y.,
40 Feb. 15, 1903."

EX. "P. 13."

_____o	)	MORTGAGE.
JARVIS TERMINAL COLD)	)	Dated, Feb. 2,
	)	1903.
STORAGE COMPANY,	)	Acknowledged
	)	Feb. 20, 1903.
to	)	Rec. Feb. 21, 1903.
	)	Bk. 486, p. 391 of 10
COMMERCIAL TRUSTCOM-)	)	Real Estate.
	)	Bk. 207, p. 416
PANY OF NEW JERSEY.	)	of Chattel.
_____o	)	

RECITES:

WHEREAS, the Storage Company is a corporation duly organized and existing under the laws of the State of New Jersey, with a capital stock of the 20
par value of One hundred and fifty thousand dollars, divided into fifteen hundred shares of One hundred dollars each, and is formed for the purpose of carrying on a cold storage and warehouse business; and

WHEREAS, it is necessary to borrow money and contract debts for the transaction of its business, and for the acquisition of property, and for the building and equipment of its plant; and

30

WHEREAS, the execution and delivery of this mortgage or deed of trust, and of the bonds therein referred to, have been duly consented to and authorized by the stockholders of the Storage Company, which consent was given by a vote at the annual meeting of the stockholders; and

WHEREAS, the board of directors of the Storage Company, at a meeting duly convened and held, have by resolution duly passed, authorized the execution 40

and delivery of this mortgage or deed of trust, and of the bonds therein referred to, of the denomination of one thousand dollars each amounting in the aggregate to one hundred and fifty thousand dollars, which said bonds, with the coupons and certificate of the Trustee attached, are all substantially in the following form:

(Form of Bond).

10

UNITED STATES OF AMERICA.

JARVIS TERMINAL COLD STORAGE COMPANY.

	First Mortgage Gold Bond.	
No.		\$1,000.

20 Jarvis Terminal Cold Storage Company, a corporation organized and existing under the laws of the State of New Jersey, and hereinafter called the Obligor, acknowledges itself indebted and it hereby promises to pay, at the Office of Commercial Trust Company of New Jersey in Jersey City, New Jersey, to the bearer, or if this bond be registered to the registered owner thereof, upon surrender hereof on the 1st day of February, 1923 (unless sooner paid as hereinafter provided) the principal sum of one
30 thousand dollars in gold coin of the United States of the present standard of weight and fineness, and until such principal sum shall be fully paid to pay interest thereon from the FIRST DAY OF FEBRUARY, 1903, in like gold coin at the rate OF SIX PER CENT. per annum on the first days OF FEBRUARY AND AUGUST in each year upon the surrender of the annexed coupons as they respectfully mature.

Both principal and interest of this bond are payable without deduction for any tax or taxes imposed
40 by any governmental authority whatever.

This bond is one of a series of coupon bonds, consisting of one hundred and fifty coupon bonds, all of like tenor, date and amount herewith, numbered from one to one hundred and fifty inclusive, amounting in all to the principal sum of one hundred and fifty thousand dollars, all of them ratably and without preference over one another, secured by a certain first mortgage or deed of trust bearing even date herewith, made by the Obligor to the Commercial Trust Company of New Jersey, as Trustee, and conveying to said Commercial Trust Company of New Jersey, as security for said bonds its real and personal property as in said deed of trust is specifically described. 10

This bond may, on the terms prescribed in the said deed of trust, be paid off by the Obligor before maturity at par and accrued interest.

This bond may be registered in the owner's name by entry upon the bond and upon the books of the Obligor, and no transfer of a bond so registered shall be valid unless likewise made by entry upon the bond and such books. But this bond if so registered may be discharged from registry by transfer to bearer, after which it shall be again transferable by delivery, and it shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of each holder, provided the coupons issued with the same and yet to mature are attached to the said bond. The registry of said bond shall not prevent negotiability of coupons by delivery. 20 30

This bond shall not be valid until the certificate endorsed hereon shall be signed on behalf of the Trustee.

IN WITNESS WHEREOF, the Obligor has caused its corporate seal to be hereunto affixed and these presents to be attested by its President or its Vice-President and its Secretary, this second day of February, nineteen hundred and three. 40

JARVIS TERMINAL COLD STORAGE COM-
PANY,

By

President.

(Seal.)

Attest:

Secretary.

10

(Back of Bond.)

JARVIS TERMINAL COLD STORAGE
COMPANY.

First Mortgage 20 Year 6% Gold Bond.

\$1000.

20

Secured by Deed of Trust to Commercial Trust Com-
pany of New Jersey, dated February 2nd, 1903.

Interest payable August and February.
Principal due February 1st, 1923.

(Form of Coupon of which first is to be payable
August 1st, 1903.)

30

Coupon No.

\$30.

Jarvis Terminal Cold Storage Company will pay
to bearer, at the office of the Commercial Trust Com-
pany of New Jersey in Jersey City, New Jersey,
Thirty dollars (\$30) in United States gold coin on
the 1st day of _____ being six
months' interest on its first mortgage gold bond
No.

40

Treasurer.

(Form of Trustee's Certificate.)

This is one of the series of bonds specified in the Indenture of Mortgage within mentioned.

COMMERCIAL TRUST COMPANY OF NEW
JERSEY.

Trustee.

By

1c

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal and interest of the bonds aforesaid at any time outstanding according to their tenor and effect, and the fulfillment of the conditions and covenants hereinafter contained, irrespective of the time of issue of the said bonds, and in consideration of the sum of One Dollar to it duly paid by the Trustee, party of the second part, at or before the en- 20 sealing of these presents, the receipt whereof is hereby acknowledged, the Storage Company, party of the first part, has granted, bargained, sold, aliened, remised, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, convey, confirm, assign, transfer and set over unto the said Trustee, party of the second part, and to its successors and assigns forever, all and singular the following described properties: (Then follows description of real and 30 personal property.)

TO HAVE AND TO HOLD unto the said Commercial Trust Company of New Jersey, and to its successors and assigns forever, the said real and personal property.

BUT IN TRUST, NEVERTHELESS, for the benefit, security and protection of the persons, corporations, firms and partnerships who may be or be- 40

come holders of the aforesaid bonds and interest coupons, or any or either of them, and for enforcing the payment thereof when payable according to the true intent and meaning of the stipulations of this mortgage or deed of trust and of said bonds and said interest coupons, without preference, priority or distinction as to lien or otherwise or any of said bonds by reason of priority in the issue or the negotiation thereof or otherwise; Provided, however, and these presents are upon the expressed condition, that if the party of the first part, its successors and assigns, shall well and truly pay or cause to be paid unto the holders of the bonds to be issued hereunder the principal and interest to become due thereon to said holder at thereof, and shall well and truly keep, observe and perform all and singular the covenants, terms and conditions in the said bonds hereby secured, and in this indenture expressed to be kept, observed and performed by or on the part of the said party of the first part; then these presents and the estate and right thereby granted shall cease, determine and be void, otherwise to remain in full force and effect. And it is hereby covenanted and declared that all such bonds with the coupons for interest thereon are to be ISSUED AND CERTIFIED AND DELIVERED, and that the mortgaged property is to be held by the Trustee, subject to the further covenants, conditions, uses and trusts hereinafter set forth, and it is covenanted between the parties hereto as follows, viz:

ARTICLE ONE.

Issue of Bonds.

Section 1. The aggregate amount of the bonds (whether coupon or temporary bonds) issued and outstanding under this indenture shall never at any one time exceed the principal sum of one hundred and fifty thousand dollars (\$150,000).

Section 2. The bonds secured hereby shall be signed by the President or Vice-President of the Storage Company, and the corporate seal of the Storage Company shall be affixed and attested by the Secretary of the Storage Company. In case the officers who shall sign and seal any of said bonds shall cease to be such officers of the Storage Company after delivery of such bonds to the Trustee, but before the bonds so signed and sealed shall have been 10 actually certified and delivered by the Trustee, such bonds may, nevertheless, upon request of the Storage Company, be issued, certified and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the Storage Company. The coupons attached to said bonds shall be authenticated by the engraved signature of the present Treasurer, or of any future Treasurer of the Storage Company; it being intended that the Company may adopt and use for 20 that purpose the engraved signature of any such Treasurer notwithstanding that he may have ceased to be Treasurer of the Company at the time when such bonds shall be actually certified and delivered. All of such bonds when executed by the Storage Company shall be delivered to the Trustee to be certified by it, and the Trustee shall certify and deliver the same only as provided in this Article.

Only such bonds as shall bear thereon the certificate of the Trustee, duly signed, shall be secured by 30 this indenture or entitled to any lien or benefit hereunder; and such certificate of the Trustee upon any such bond executed on behalf of the Storage Company shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created. The Trustee, however, shall be under no duty or responsibility whatever in respect to the issue or negotiation or the application of the proceeds of any bonds certified and delivered by it in conformity with the provisions of this Article.

Section 3. Bonds to the amount of one hundred and twenty-five thousand dollars, with all coupons for interest thereto attached, shall forthwith be executed by the Storage Company and delivered to the Trustee for certification, and the Trustee shall immediately upon the execution of this indenture certify and deliver such bonds upon an order signed by the Treasurer of the Storage Company and countersigned by the President or Vice-President thereof.

Section 4. The balance of the issue of bonds, amounting to twenty-five thousand dollars, shall be reserved for the purchase of additional property or the erection of future additions or improvements to the company plant, and shall be certified and delivered by the Trustee as follows:

Whenever, after the plant under construction by the Storage Company at the date hereof shall have
20 been fully completed and equipped, the Storage Company shall furnish to the Trustee a certificate signed by its President or Vice-President, and also by its Treasurer, and verified by the oath of the signers, that the Storage Company has purchased or is about to purchase additional property, real or personal, in addition to the plant now under construction, or has erected or proposes to erect additions or improvements to such plant, and stating also the cost of such purchase or
30 of such additions or improvements, the Trustee shall certify and deliver, on the order of the Treasurer of the Storage Company, countersigned by its President or Vice-President, an amount of bonds equivalent at par to the amount certified in such certificate to have been expended, not exceeding the amount of twenty-five thousand dollars par value; and such certificate shall be conclusive evidence to the Trustee of the facts therein stated, and shall be full warrant and protection to the Trustee for any action
40 taken by it on the faith thereof.

Section 5. If the Storage Company shall so desire, the Storage Company may issue and the Trustee shall certify temporary bonds without coupons to be exchangeable for the engraved coupon bonds herein provided for, when the same shall be ready for delivery, such temporary bonds shall correspond as nearly as possible to the form of such coupon bonds.

ARTICLE TWO.

10

Particular Covenants of the Storage Company.

1. To pay principal and interest of bonds without deduction for taxes.

2. To grant and convey to the Trustee the right, title and interest of the Storage Company in and to property hereafter acquired for the purposes of its business.

3. To pay taxes, water rents and assessments.

20

4. To keep property in good repair and not to permit to be created mechanics' liens or charges prior to the lien of their mortgage.

5. The Storage company further covenants that it will keep such portions of the mortgaged property as are liable to be injured by fire insured against loss in some solvent fire insurance company or companies approved by the Trustee to an amount usually taken out by companies engaged in a similar business, the loss, if any, to be made payable to the Trustee, and all moneys collected from such insurance shall be held or invested by the Trustee for the security of the bonds secured hereby, until the Storage Company shall, after the fire, have proceeded to reconstruct or repair the part of the mortgaged premises destroyed or injured by fire, or to erect other permanent improvements upon such mortgaged premises, whereupon from such insurance moneys the Trustee shall pay to the Storage Company from time to time an

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amount equal to the amount so applied by the Storage Company to such reconstruction, repair or new erection.

A resolution of the board of directors certified under the seal of the company and a certificate verified under the oath of the President or Vice-President or the Treasurer of the company, stating the amount expended by the Storage Company on account of such reconstruction, repair or new erection shall be full authority and protection to the Trustee for the payment by it to the Storage Company of the amount stated to have been expended in such resolution and certificate, and the Trustee shall not be under any further duty or responsibility in respect to the application of the moneys so paid over by it.

6. Provisions for bond registry.

ARTICLE THREE.

20

Remedies of Trustee and Bondholders.

Section 1. In case (1) default shall be made in the payment of any interest on any of the bonds secured hereby as and when such interest shall become due, and such default shall continue for the period of six months or (2) in case default shall be made in the punctual payment of the principal of any of said bonds when the same shall mature or otherwise become payable, or (3) in case default shall be made in the performance by the Storage Company of any of the covenants herein by it to be performed, and such default shall continue for a period of six months after written notice thereof from the Trustee, or from five per cent. in amount of the bonds hereby secured and outstanding, then and in every such case the Trustee may institute legal proceedings for the foreclosure of this mortgage and the sale of the property conveyed thereby, or it may without instituting such proceedings and with or without entry, personally or by at-

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torney, in its discretion, sell to the highest and best bidder, in one lot or in separate parcels, as it may deem best, all the premises, estate, property rights and franchises of the Storage Company hereby conveyed, or so intended to be, at public auction at such place in the City of New York, or in Jersey City, or at such other place at such time and upon such terms as the Trustee may determine after giving notice of such sale as required by law, and also notice by publication in at least two newspapers published in the City of New York at least once a week for the four consecutive weeks next preceding such sale, and it may, from time to time, adjourn such sale or sales in its discretion and without further notice hold such adjourned sale, and upon any such sale it may make and deliver to the purchaser or purchasers of the premises, estate, property, rights and franchises so sold a good and sufficient deed or deeds and transfers for the same, which sale shall be a perpetual bar, both in law and in equity, against the Storage Company and all persons and corporations lawfully claiming or to claim by, through or under it; and, upon the making of any such sale, the principal of all the bonds hereby secured and then outstanding shall forthwith become due and payable, anything in said bonds to the contrary notwithstanding; and upon the MAKING OF ANY SUCH SALE THE SAID Trustee shall apply the proceeds thereof as follows, to wit:

(a) To the payment of the costs and expenses of such sale or sales, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and all liabilities and advances made and incurred by the Trustee in managing and maintaining the property hereby conveyed, and all taxes, and assessments and charges superior to the lien of these presents, except the liens to which such sale shall have been made subject.

(b) To the payment of the whole amount of principal and interest which shall then be owing or unpaid upon the bonds secured hereby without any preference or priority whatever, whether the said principal by the tenor of said bonds be then due or yet to become due; and in case of the insufficiency of such proceeds to pay in full the whole amount of such principal and interest owing and unpaid upon the said bonds, then to the payment first of the accrued interest in the order of the maturity of the installments and then to the payment pro rata of the principal of all bonds hereby secured without discrimination or preference.

(c) To pay over the surplus, if any, to the Storage Company or as a court of competent jurisdiction shall direct.

20 In case of any such sale the receipt of the Trustee who shall make such sale shall be a sufficient discharge to the purchaser at such sale for his purchase money, and such purchaser or his agent after paying such purchase money and receiving such receipt of the Trustee shall not be obliged to see to the application of such purchase money by the Trustee.

30 In case of any such sale any and all purchasers in making settlement or payment shall be entitled to turn in any bonds and any matured and unpaid coupons hereby secured, estimating the value of such bonds and coupons for that purpose at the sum payable out of the net proceeds of such sale to the holder or holders of such bonds and coupons as his or their ratable share of such net proceeds after allowing for the proportion of the total payment required to be made in cash for the costs and expenses of the sale or otherwise. And if such share of net proceeds shall be less than the amount then due upon such bonds or coupons such purchaser or purchasers may make such settlement by receipting on
40 each bond the amount to be credited thereon; and at

any and every such sale any or all of the bondholders may bid for and purchase such property, and upon compliance with the terms of sale, may hold and retain and dispose of such property without further accountability therefor.

Section 2. In case of default, as provided in Section 1 of this article, the Trustee may, in its discretion, either personally or by its agents or attorneys, enter into and upon all or any part of the mortgaged ¹⁰ property and exclude the Storage Company therefrom, and wholly operate manage and control the same, and receive the income and profits therefrom, and conduct the business thereof either personally or by its managers, receivers, agents or attorneys to the best interest of the holders of the bonds secured hereby, and upon every such entry the Trustee, at the expense of the trust estate, from time to time may, either by purchase, repairs or construction, maintain and restore and insure the plant, tools, ²⁰ machinery and other property used in connection with the said plant, and may from time to time, at the expense of the trust estate, make all necessary or proper repairs or renewals, alterations, additions and improvements as to it may seem judicious, and it may collect and receive all tolls, incomes, rents, issues and profits and all the income from all the property pledged hereunder, and, after deducting the expenses of operating said property, and of conducting the business thereof, and of all repairs and im- ³⁰ provements, and all payments made for taxes, assessments, insurance and other charges, as well as a just and reasonable compensation for its own services, and the services of its agents, attorneys and counsel, it shall apply the moneys arising as aforesaid as follows:

(a) In case the principal of the bonds hereby secured shall not be due, to the payment of the interest that may be in default in the order of the maturity of the installments of such interest ratably to ⁴⁰

the persons entitled thereto without discrimination or preference.

(b) In case the principal moneys of the said bonds shall have become due by declaration or otherwise, then first to the payment of the accrued interest in the order of the maturity of the installments, and then to the payment of the principal of all bonds
 10 hereby secured without discrimination or preference.

Section 3. In case (1) default shall be made in the payment of any interest on any of the bonds hereby secured as and when such interest shall become due and such default shall continue for the period of six months, or (2) in case default shall be made in the performance by the Storage Company of any of the covenants herein by it to be performed and such
 20 default shall continue for a period of six months after written notice thereof from the Trustee from the holders of five per cent. in amount of the bonds then outstanding, then and in every case of such continuing default the Trustee, by a declaration in writing delivered to the Storage Company, shall have the right to declare the principal of all the bonds hereby secured and then outstanding to be due and payable immediately, and upon any such declaration
 30 the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding.

The Trustee, upon the written request of the holders of a majority in amount of the bonds hereby secured and then outstanding, shall declare the principal of all the bonds secured hereby to be immediately due and payable as aforesaid, or shall refrain from making such declaration, as such bondholders may request, but no such request to refrain from making such declaration shall extend to affect any subse-
 40 quent default.

The provisions of this section are, however, subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable by the Trustee all arrears of interest upon all such bonds, with interest thereon at the rate of six per cent. per annum, shall have been paid by the Storage Company or been collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in ¹⁰ every such case the holders of a majority in amount of the bonds hereby secured and then outstanding, by written notice to the Trustee may instruct the Trustee to waive any such default and its consequences, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 4. The remedies hereinbefore reserved to the Trustee are not intended to be exclusive of any other remedy, but each and every such remedy shall ²⁰ be cumulative, and shall be in addition to the right of the Trustee to institute a judicial proceeding for the foreclosure of this mortgage and for the sale of the mortgaged property, and to every other remedy now or hereafter existing at law or in equity or by statute.

Section 5. The Trustee may proceed to the enforcement of this mortgage by such one or more of the remedies hereinabove provided as it shall deem ³⁰ advisable. Upon the request in writing of the holders of a majority of the bonds then outstanding, and upon receiving indemnity for its costs, expenses, counsel fee and all liability which may be incurred by it, it shall be the duty of the Trustee to adopt such one of the remedies hereinbefore provided as it shall deem best.

Section 6. Upon filing a bill in equity, or upon the commencement of any other judicial proceeding to enforce any right of the Trustee or of the ⁴⁰

bondholders under this indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the property hereby mortgaged, and of the earnings, income, issues and profits thereof, with such powers as the court making such appointment shall confer.

Section 7. The Storage Company will not at any time insist upon or plead, or in manner whatsoever
 1 claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force in the locality where the mortgage premises, or any part thereof, may or shall be situate, nor will it claim, take or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisal of the mortgaged premises, or any part thereof, prior to any sale or sales thereof, to be made pursuant to any provisions herein contained, or to the decree of any court of
 20 competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any authority to redeem the property so sold, or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

30 Section 8. No holder of and bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture or for the execution of any trust thereof or for the appointment of a receiver or for any other remedy hereunder on account of any default by the Storage Company unless such holder previously shall have given to the Trustee written notice of such default and of the continuance thereof as hereinbefore provided, nor unless also the holders
 40 of twenty-five per cent. in amount of the bonds here-

by secured then outstanding shall have made written request to the Trustee and shall have afforded to it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name nor unless also they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, including reasonable compensation to its attorneys and ^{1c} counsel, and such notification, request or offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien ²⁰ of this indenture by his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

ARTICLE FOUR.

Sinking Fund Provisions.

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ARTICLE FIVE.

Rights of Storage Company.

1. To pay bonds before maturity on giving notice thereof.
2. On payment of principle and interest of bonds, to have the property revert and the mortgage satisfied of record.

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3. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds hereby secured, or in the due and punctual performance of some covenant or condition hereof to be performed by the Storage Company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the Storage Company, its successors and
 10 assigns, shall be suffered and permitted to retain actual possession of all the premises hereby mortgaged, and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, use and enjoy the earnings, income, rents, issues and profits thereof.

ARTICLE SIX.

Provides for release of mortgaged property in
 20 whole or in part.

ARTICLE SEVEN.

Provides for formal requisites for execution of requests or other instruments by bondholders.

ARTICLE EIGHT.

30 Provides for immunity of officers, directors and stockholders.

ARTICLE NINE.

Concerning the Trustee.

Upon the terms and conditions stated in this and the subsequent articles hereof, and not otherwise, the Commercial Trust Company of New Jersey hereby accepts the trust of this instrument, and the Storage
 40 Company and all present and future holders of

bonds and coupons secured hereby expressly assent and agree to and acknowledge themselves bound by said terms and conditions.

The Trustee shall incur no liability to anybody in acting upon any notice, request, consent, certificate, bond, document, or paper believed by it to be genuine and to have been signed by the proper person.

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The Trustee, save for its willful default, or for its gross negligence after personal notice and distinct specification in writing from some person interested in the trust, shall not be personally liable to anybody.

The Trustee shall not be responsible for the recording, registration or filing of this instrument or any instrument of further assurance or for the affixing or cancellation of any revenue stamps or for the estimation or payment of any taxes, and the Trustee may select and employ in and about the execution of any of the duties incumbent upon it hereunder suitable agents and attorneys and for their acts and neglects, if selected with reasonable care, the Trustee shall be in no wise responsible.

20

The Trustee shall be under no obligation or duty to perform any act hereunder or to defend any suit in respect hereof, except upon the request in writing of some person or persons interested in the trust, nor unless first satisfactorily indemnified, nor unless satisfactory provision is made for furnishing additional indemnity from time to time as in the judgment of the Trustee may be required for its protection; nor shall the Trustee be chargeable with notice of any default on the part of the Storage Company except upon delivery to it of a distinct specification in writing of such default by some person or persons interested in the trust, whose interest, if required, must be proved to the reasonable satisfaction of the Trustee.

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The recitals and statements herein and in said bonds and coupons contained shall be taken as statements by the party of the first part and shall not be considered as made by or as imposing any obligation or liability upon the Trustee, nor shall the Trustee be held responsible for the legality or validity of said bonds or coupons under any provisions of the laws of New Jersey or otherwise.

- 1 The Storage Company agrees, from time to time, on demand, to pay to the Trustee, reasonable compensation for its services hereunder; also to make reimbursement to the Trustee for all counsel fees, compensation of attorneys and agents, and other expenditures made by the Trustee hereunder, with interest thereon; also to indemnify and save the Trustee harmless against any and all liabilities of any kind which the Trustee may incur in the exercise and performance of its powers and duties hereunder, including any penalty or liability suffered by the Trustee under this instrument; and for such indemnification, reimbursement and payment of Trustee's compensation a first lien is hereby imposed in favor of the Trustee upon all the property and funds hereby conveyed in trust.

It shall be no part of the duty of the Trustee to see to the insurance of any part of the property hereby conveyed in trust, or itself to effect such insurance, but it may do so.

- 30 The Trustee may, in its discretion, advise with legal counsel to be selected and employed BY IT AT THE EXPENSE OF THE COMPANY, and anything done or suffered by it in good faith by the Trustee in accordance with the opinion of counsel shall be conclusive in favor of the Trustee on the Storage Company and on all holders of bonds and coupons secured hereby.

The trust estate, property and funds, shall be primarily liable to third persons for all debts contracted
40 by the Trustee and for all damages to persons or

property injured and for salaries and for non-performance of contract, and for all other torts, obligations and liabilities arising during any period wherein the Trustee shall manage the trust property or any of it, upon entry or voluntary surrender as aforesaid or otherwise; and the Trustee shall not be personally liable in respect of any such matters.

In executing this indenture the Trustee makes no covenant or representation as to the title or interest ¹⁰ of the Storage Company in or to the property described therein, and it shall be no part of the duty of the Trustee to see that any of the property intended to be conveyed in Trust hereunder is properly and legally subjected to the lien hereof.

The Trustee may resign and be discharged of the trusts created hereby by giving at least two months notice thereof to the Storage Company.

In case the Trustee shall resign as herein provided or be removed, two-thirds in amount of the holders ²⁰ of the bonds outstanding shall have power by instrument in writing under their hands to appoint a new Trustee to fill such vacancy.

In case any bond secured hereby shall become mutilated or lost, then upon the surrender of such mutilated bond to the Trustee or upon filing with the Trustee evidence of such loss, which the Trustee shall consider satisfactory, the Storage Company in its discretion may issue and the Trustee may certify ³⁰ a new bond bearing the same serial number and in identical form in substitution or exchange for the bond so mutilated or lost.

Whenever in this deed of trust the existence of any situation, matter, conclusion or fact of any character, or the sufficiency or validity of any instrument, paper proceeding, or of any proof or evidence of any fact of any character, shall be prescribed as a condition of or in any manner with respect to any action or proceeding on the part of the Trustee, or shall be deemed necessary to be ascertained by the ⁴⁰

Trustee as a basis of an opinion by the Trustee, a certified copy of a resolution of the Storage Company, together with a certificate of the president, treasurer secretary and managing agent of the Storage Company, or any two of them, verified under oath, shall in the discretion of the Trustee, except where other evidence is hereinbefore specifically prescribed, be sufficient evidence of any such fact, situation, matter or conclusion, and shall be complete protection to the Trustee for any act or proceeding on its part upon the faith thereof, but the Trustee may in its reasonable discretion require other evidence.

ARTICLE X.

20 General Provision.
 (Then follows Execution and Acknowledgment.)

(AFFIDAVIT ATTACHED TO MORTGAGE).

STATE OF NEW JERSEY,)
) ss:
 County of Hudson.)

30 JOHN W. HARDENBERGH, being by me duly sworn according to law, on his oath, says that the Commercial Trust Company of New Jersey, a corporation organized under the laws of the State of New Jersey, is the mortgagee named in the foregoing mortgage and is the holder thereof; that he, the said deponent, is the President of the said corporation and its duly authorized agent in the taking and holding of the said chattel mortgage and all the business connected therewith, and that the consideration of said mortgage is as follows:

The Jarvis Terminal Cold Storage Company, the mortgagor in the foregoing mortgage named, for the purpose of raising money for the accomplishment of the purposes of the said corporation in the management of its business has arranged to issue and sell certain coupon bonds fully described and set forth in the foregoing mortgage; the said bonds being one hundred and fifty (150) in number, aggregating the sum of one hundred and fifty thousand dollars (\$150,- 10 000) at par value as in said mortgage more particularly appears, all of the said bonds to be secured by said mortgage. The said mortgage is therefore executed to the Commercial Trust Company of New Jersey as trustee to secure the payment of each one of the said bonds which may be hereafter lawfully issued or negotiated to the party or parties who shall hereafter hold the same; all of said bonds lawfully outstanding being equally secured by said mortgage without priority of any kind. The nature of 20 the whole transaction which is the ordinary transaction for securing a large issue of bonds by a mortgagor to a trustee is correctly set forth in said mortgage. Each of said bonds on its face bears date the second day of February, nineteen hundred and three, The said bonds and coupons annexed thereto have been executed and prepared for issue, but at the present time none of the said bonds have been actually issued or negotiated in any way, nor will any of them be issued or negotiated until the said mort- 30 gage is recorded in the Clerk's office of Hudson County, New Jersey, and therefore at the present time there is no amount due upon said bonds or any of them, or upon said mortgage. The amount to grow due upon the said mortgage as nearly as it is possible for this deponent to state the same, is the aggregate amount of such bonds which shall hereafter be lawfully issued and are outstanding obligations of the said mortgagor to the holder or holders thereof not exceeding one hundred and fifty thousand dollars of principal with all unpaid interest which 40

may become due upon each of said bonds as shall have been issued, and which amount due hereafter on said mortgage will vary from time to time as said bonds are issued and retired and paid in pursuance of said mortgage. Deponent cannot further state the amount to grow due upon said mortgage for the reason that he does not and cannot know how many of the said bonds will be lawfully issued or negotiated so as to be held as valid obligations against the said The Jarvis Terminal Cold Storage Company.

JOHN W. HARDENBERGH.

Sworn and subscribed to before me this 20th day of February, 1903.

20

WILLARD C. FISK.
Master in Chancery of New Jersey.

EX. "P. 14."

Twenty-five bonds identical in form all issued by Jarvis Terminal Cold Storage Company, dated
30 February 2, 1903, payable twenty years from date. with interest at 6%, payable February 1 and August 1st of each year. Said twenty-five bonds were all certified to and issued under the certificate Exhibit C of Commercial Trust Company, and on the day of the date of said certificate.

Coupons.

Cut Off?

40 (For form of bond see Ex. "P 13").

EX. "P. 15."

PROOF OF DEBT OF UNITED STATES
MORTGAGE & TRUST CO.

CARL G. RASMUS being duly sworn, doth depose and say, that he is the Assistant Treasurer of the United States Mortgage and Trust Company, a corporation organized and existing under the laws of the State of New York, and that he is familiar with all the facts and circumstances hereinafter set forth. ¹⁰

That heretofore and on or about the 10th day of November, 1903, at the special instance and request of Jarvis Terminal Cold Storage Company, the said United States Mortgage and Trust Company loaned to it the sum of twenty thousand dollars (\$20,000) and received therefor the note of such Jarvis Terminal Cold Storage Company for a like amount, a copy of which note is hereto annexed, made a part hereof and marked Exhibit "A." ²⁰

That there has been paid on account of such loan the sum of four thousand five hundred dollars (\$4,500), leaving now due thereon the sum of fifteen thousand five hundred dollars (\$15,500), together with interest thereon to date at six per cent. (6%), which amounts to five hundred and forty-five and 11-100 dollars (\$545.11).

That between January 1 and April 1, 1904, Jarvis Terminal Cold Storage Company maintained a deposit account with United States Mortgage and Trust Company, which account it overdrew, and against which such United States Mortgage and Trust Company honored and paid its checks to the amount of four thousand six hundred and seventy-two and 65-100 dollars (\$4,672.65) beyond its funds on deposit with such United States Mortgage and Trust Company. ³⁰

That a copy of such account is hereto annexed and marked Exhibit "B." ⁴⁰

That no part of the aforesaid indebtedness has been paid, but that as collateral security for the payment thereof, United State Mortgage and Trust Company now holds the following:

1. Two hundred and seventy-five (275) shares capital stock Jarvis Terminal Cold Storage Company;
2. The assignment of Jarvis Terminal Cold Storage Company's rights under a subscription agreement for one hundred and sixty (160) shares of its stock, a copy of which assignment is hereto annexed and marked Exhibit "C", under which subscription agreement forty-five (45) shares of such stock have been delivered to and paid for by the subscribers, and the amount of such payments, aggregating four thousand five hundred dollars (\$4,500), has been applied on account of the aforesaid note.
3. 6% first mortgage bonds of Jarvis Terminal Cold Storage Company, of the aggregate principal sum of twenty thousand dollars (\$20,000).

CARL G. RASMUS.

Sworn to before me this 24th day of May, 1904.

E. G. BABCOCK,

Notary Public, Kings Co., No. 174.

Certificate filed in N. Y. County.

EXHIBITS OF COMMERCIAL TRUST CO.

30

EX. "A".

Receipted bills from insurance companies for premiums on fire insurance, on buildings covered by trust mortgage; premiums were paid March 16 and 17, 1904.

Amount thereof is \$814.25.

EX. "AB".

Minute Book of Jarvis Terminal Cold Storage Company. (For extracts to which particular refer-

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ence was made, see exhibits 1, 2, C, D and E of Erie Railroad Company).

EX. "A C".

Bank pass book showing account of Jarvis Terminal Cold Storage Company with Commercial Trust Company of New Jersey. One of the entries is as follows:

"1903 Dec. 18, \$16,500."

EX. "AD".

AGREEMENT made this sixteenth day of December, in the year one thousand nine hundred and three, between the ERIE RAILROAD COMPANY and JARVIS TERMINAL COLD STORAGE COMPANY.

WHEREAS, the said Storage Company has under construction in Jersey City, in block one hundred and eighty-five (185), City Assessment Map, a cold storage plant, having a track connection with the Erie Railroad Company, and the Erie Company has loaned to the Storage Company the sum of sixteen thousand five hundred (\$16,500.00) dollars secured by mortgage on said property.

NOW, IN CONSIDERATION of said loan and of the mutual agreements hereinafter contained, the parties do AGREE as follows, binding also their successors and assigns.

First. The said Storage Company agrees that it will not make, or permit to be made, any connection with any tracks on its said property with the tracks of any railroad company, other than the Erie Railroad Company; and the Erie Railroad Company agrees that it will maintain suitable connection at the southerly line of Twelfth street, between its tracks and the tracks laid across the street and on said property, for the transaction of the business of

the Storage Company with the Erie Railroad Company and its shippers.

Second. The said Storage Company agrees that in carrying on cold storage business on its said property in Block 185, it will give preference for storage accommodations in its warehouses to the business of the Erie Railroad Company and customers shipping or receiving freight over the Erie Railroad, over the business of other customers.

Third. It is agreed that the rates of storage to be given to the Erie Railroad Company and its shippers shall be as favorable as those given to the other customers of the Storage Company, and shall also be reasonable and as favorable as the current rates for storage in and about New York Harbor.

Fourth. This agreement shall run for the term of five years from the date of payment of the loan on mortgage above referred to, and thereafter until one year's notice in writing has been given by either party to the other of the termination of this agreement.

Fifth. In case by reason of changes by the Railroad Company in its terminal arrangements, the Railroad Company cannot advantageously either continue the present connection with said storage property, or substitute any other connection, equally convenient to the Storage Company, then the Railroad Company may terminate this agreement on three months notice in writing.

IN WITNESS WHEREOF, the parties have hereunto set their seals and caused this agreement to be signed by their Presidents the day and year aforesaid.

JARVIS TERMINAL COLD STORAGE COMPANY,

R. M. Jarvis, President.

(Seal).

Attest:

R. M. Jarvis, Jr.,

Secretary.

ERIE RAILROAD COMPANY,
By F. D. Underwood,
President.

(Seal).

Attest:

David Bosman,
Secretary.

EX. "B".

10

Jersey City, N. J., Nov. 1, 1904.

Commercial Trust Co. of N. J.,
Trustee under Jarvis Cold
Storage Co. mortgage,

To William Brinkerhoff, Dr.

To professional services from April 1, 1904,
to date, in proceedings in the Court of
Chancery of New Jersey on appointment
of receivers for the Jarvis Cold Storage
Co., and proceedings to sell property free
from liens..... \$200.00

20

EX. "C".

(Certificate for issue of 25 bonds).

We, ROBERT M. JARVIS, the President, and³⁰
ROBERT M. JARVIS, JR., the Treasurer, of Jar-
vis Terminal Cold Storage Company, hereby cer-
tify to Commercial Trust Company of New Jersey,
as follows:

1. That the plant under construction by Jarvis
Terminal Cold Storage Company at the date of its
first mortgage to Commercial Trust Company of
New Jersey, viz., February 2nd, 1903, is now fully
completed and equipped and is ready for operation.⁴⁰

2. That Jarvis Terminal Cold Storage Company has purchased additional personal property in addition to the plant under construction on the date aforesaid, viz., machinery consisting of a compressor, the cost of which is \$1,400; under feed storers, the cost of which is \$2,050; Deane pumps, Snow pumps and Blake pumps, the cost of which is \$1,500; feed water heater, the cost of which is \$415.

3. That Jarvis Terminal Cold Storage Company has erected additions and improvements to its plant aforesaid, which additions and improvements and the cost thereof are as follows:

An addition, 100 feet by 50 feet, to its power house adjacent to the cold storage plant, the cost of which addition is \$11,000.

Air locks to effect a complete separation of the cold storage rooms from the outside windows of the building, the cost of which is \$2,000.

4. The insulation of the cellar of the building, thereby rendering an additional floor available for cold storage purposes, the cost of which is \$8,000.

4. That the sums aforesaid have been expended in good faith by Jarvis Terminal Cold Storage Company for the purposes aforesaid, and that such expenditures were reasonable and advantageous to the security of the bonds secured by the mortgage aforesaid.

WHEREFORE, we request Commercial Trust Company of New Jersey, to certify and deliver, on the order of Robert M. Jarvis, Jr., Treasurer of Jarvis Terminal Cold Storage Company, countersigned by its President or Vice-President, twenty-five thousand dollars (\$25,000) par value of bonds secured by the first mortgage of Jarvis Terminal Cold Storage Company to the Commercial Trust Company of New Jersey as Trustee, dated February 2nd 1903.

R. M. JARVIS,
Pres.

Dated, New York, December 22nd, 1903.

R. M. JARVIS, JR.,
(Seal). Secretary.

STATE OF NEW YORK,)
County of New York.)ss.

ROBERT M. JARVIS and ROBERT M. JARVIS, JR., being severally duly sworn, each for himself deposes and says that he has read the foregoing certificate and is acquainted with the matters therein stated, and the same is in all respects true.

Notary Public,

JAS. H. BLACKMORE,
Notary Public, New York
County, No. 92.

(Seal.)

20

I, LEIGHTON G. KNIPE, Assistant Engineer of Construction of the Jarvis Terminal Cold Storage Company, do hereby certify that the cold storage plant of said Company erected on its property at the corner of Twelfth and Provost Streets in Jersey City is now completed and equipped and ready for operation.

Dated, Jersey City, December 22nd, 1903.

LEIGHTON G. KNIPE,
Asst. Eng. of Con.

JARVIS TERMINAL COLD STORAGE COMPANY HEREBY CERTIFIES that LEIGHTON G. KNIPE, the person who has signed the foregoing certificate, is the Architect and Engineer employed by the Jarvis Terminal Cold Storage Company in the erection and equipment of its cold storage plant. 40

JARVIS TERMINAL COLD STORAGE
COMPANY,

By R. M. Jarvis,
President.

(Seal.)

Attest:

R. M. Jarvis, Jr.,
Secretary.

15

JARVIS TERMINAL COLD STORAGE COMPANY, hereby certifies, under its corporate seal, to COMMERCIAL TRUST COMPANY OF NEW JERSEY, as follows:

That it has received in cash by or on behalf of the stockholders of the Jarvis Terminal Cold Storage Company on account of the stock in said company
20 subscribed for by them an amount exceeding one hundred and fifteen thousand dollars (\$115,000), in which amount is included Twenty-five thousand dollars (\$25,000) deemed under the terms of an agreement dated February 16th, 1903, between Jarvis Terminal Cold Storage Company, the Subscribers, and Commercial Trust Company of New Jersey, to have been paid in cash to said Company for three hundred shares of stock which the Jarvis Terminal Cold Storage Company issued to Robert M. Jarvis
30 under a contract therein mentioned, and seven thousand dollars (\$7,000) deemed in the aforesaid agreement to have been received in cash for the payment or satisfaction of the purchase money mortgage on the premises of Jarvis Terminal Cold Storage Company on February 16th, 1903.

Dated, New York, Dec. 22, 1903.

JARVIS TERMINAL COLD STORAGE
COMPANY.

By R. M. Jarvis,
President.

40

(Seal.)

Attest:

R. M. Jarvis, Jr.,
Secretary.

I, LEIGHTON G. KNIPE, the Architect or Engineer employed by Jarvis Terminal Cold Storage Company in the erection and equipment of its cold storage plant, do hereby certify to Commercial Trust Company of New Jersey, as follows:

1. That the Jarvis Terminal Cold Storage Company has erected its cold storage plant on a portion of the premises now owned by the Jarvis Terminal Cold Storage Company on Thirteenth, Provost and Twelfth Streets, in Jersey City, in the State of New Jersey, and that said plant is ready for operation.

2. That there has been expended by the Jarvis Terminal Cold Storage Company in the erection and equipment of its cold storage plant an amount in excess of two hundred thousand dollars (\$200,000).

Dated, Jersey City, December 22nd, 1903.

LEIGHTON G. KNIPE,

Eng. of Con.

JARVIS TERMINAL COLD STORAGE COMPANY HEREBY CERTIFIES that LEIGHTON G. KNIPE, the person who has signed the foregoing certificate, is the Architect and Engineer employed by the Jarvis Terminal Cold Storage Company in the erection and equipment of its cold storage plant.

JARVIS TERMINAL COLD STORAGE
COMPANY.

By R. M. Jarvis,
President.

(Seal.)

Attest:

R. M. Jarvis, Jr.,
Secretary.

EX. "D."

Agreement, dated February 16, 1903, between Jarvis Terminal Cold Storage Company, of the first part, the Bond Subscribers of the second part, and Commercial Trust Company of the third part: Recites that the subscribers agree to purchase bonds of the Jarvis Company at the rate of 88 per cent. and accrued interest with price to be paid in installments of 10 per cent. each.

All moneys to be paid to the Commercial Trust Company as depository. The Jarvis Company agrees to sell bonds up to the total amount of \$125,000 par value. Then follow stipulations relating to the terms of the trust mortgage including the following agreements:

"The balance of the issue of bonds namely \$25,000 par value shall only be certified by the trustee under said mortgage, and issued by the Jarvis Company to pay for the acquisitions of additional property, or the erection of extensions to the plant of the Jarvis Company, now under construction."

The Commercial Trust Company agrees to act as depository, and to issue calls to the subscribers for the payment of installments. The certificate of the Jarvis Company is to be conclusive and the depository is to be under no liability to further ascertain the truth of the facts certified.

30

EX. "E."

ORDER EXTENDING TIME FOR FILING
CLAIM OF NATHALIE JARVIS.

(Filed July 19, 1904.)

On the application of Nathalie Jarvis who has
40 filed her claim out of time, it is on this eighteenth

day of July, nineteen hundred and four,

ORDERED that the Receivers of the defendant corporation deal with the said claim as if filed with said Receivers within the time limited by the order to limit creditors taken in this cause.

Respectfully advised,

W. J. MAGIE,
C.

H. C. PITNEY,
V. C.

10

EX. "E." (continued)

PROOF OF CLAIM OF NATHALIE JARVIS.

STATE OF NEW YORK)
)ss.
County of New York)

20

Nathalie Jarvis being duly sworn says: I reside at the Manhattan Hotel, Manhattan Borough, New York City and am a creditor of the above named defendant for the sum of seven thousand dollars. The consideration of said debt is as follows. I held a purchase money mortgage upon the property of defendant for the sum of fourteen thousand (\$14,000) dollars which mortgage bore interest at the rate of 5% per annum and was to become due in one year or sooner at the option of the defendant.

30

On or about the day of January, 1903, defendant made arrangements to mortgage its property and plant to the Commercial Trust Company of New Jersey as trustee for the sum of one hundred and fifty thousand (\$150,000) dollars and to issue bonds under such mortgage and it was represented to me by said defendant and its officers and agents that in order that the said mortgage could be placed and the bonds thereunder sold it would be necessary to discharge my said purchase money mortgage. It

40

was also represented to me that defendant was solvent and that I would not suffer by reason of consenting to the discharge of said mortgage.

Relying upon these representations I consented to discharge said mortgage and to satisfy same of record and to take in lieu thereof the sum of seven (\$7,000) dollars dated February 19, 1903, payable in (\$000) dollars dated February 19, 1903, payable in
 10 sixty days and bearing interest at the rate of 5% per annum with seventy shares of the stock of defendant as collateral, which note together with the said collateral I still hold, and no part of said note has been paid.

Said representations were untrue and were made in order to induce me to cancel the said purchase money mortgage and to forego the security thereof.

20 By reason of such misrepresentations I have been damaged in the sum of \$7000 since after the cancellation of my said purchase money mortgage various creditors filed mechanics liens against the said premises and a large amount of floating indebtedness was suffered by defendant to accrue against it, as a result of which it is doubtful whether upon the sale of the property of the defendant there will be realized sufficient money to pay my aforesaid claim.

30 I therefore claim of defendant the sum of seven thousand (\$7000) dollars with interest from February 19, 1903, the same to be preferred in payment over all the creditors of defendant other than the holders of bonds issued under the trust mortgage aforesaid and against these I claim that the indebtedness to me is to be deferred only to the amount actually paid by said bondholders for their said bonds, and herewith tender note and collateral in return for the sum of seven thousand (\$7000) dollars with interest as aforesaid.

Sworn to before me this
 6th day of June, 1904.
 Chas. F. Gibson.
 (34) Notary Public, N. Y. Co.

(Seal)

COUNTY OF NEW YORK, ss:

10

Nathalie Jarvis, being duly sworn, deposes and says, that she is the party in the above entitled action, that she has read the foregoing and knows the contents thereof, that the same is true to her own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters she believes it to be true.

20

Sworn to before me this
 6th day of June, 1904.
 Chas. F. Gibson,
 (54) Notary Public.

(Seal)

(Then follows certificate of County Clerk of New York County, dated June 7, 1904.)

30

EX. "F."

One hundred twenty-five bonds identical in form and similar to the bonds referred to in Exhibit P. 14; dated and issued Feb. 2, 1903, of coupon numbers 1 and 2 for interest due August 1, 1903, and February 1, 1904, have been cut off. (For form of bond, see Ex. "P." 13.)

40

EX. "G."

Seven assignments of liens from Frederick W. Cane and other lien claimants to Union Terminal Cold Storage Company.

Following is a copy of the assignment from Frederick W. Cane:

10 IN CONSIDERATION of the sum of one dollar and other valuable consideration to him in hand paid, receipt whereof is hereby acknowledged, Frederick W. Cane, trading as W. H. & F. W. Cane, does hereby sell, assign, transfer and set over unto Union Terminal Cold Storage Company, a New Jersey corporation, all his claim or claims and cause of action or causes of action of every kind and nature whatsoever against the Jarvis Terminal Cold Storage Company, together with all his rights in, to, by and under his
20 lien against the property of such Jarvis Terminal Cold Storage Company to the amount of twenty-five thousand and seventy-five and $35/100$ Dollars (\$25,075.35) a notice of which lien was filed in the office of the Clerk of Hudson County, New Jersey, numbered 2745, and recorded in liber 8 of "Liens" at page 154, March 10th, 1904, and the said Frederick W. Cane hereby covenants and agrees to execute any and all further instrument or instruments in writing, and to do any and all further act or acts re-
30 quested by Union Terminal Cold Storage Company for further assuring and affecting the assignment to it of such lien, or, if it shall so desire, for the further cancelling and discharging the same of record.

IN WITNESS WHEREOF, the said Frederick W. Cane, has hereunto set his hand and seal this 8th day of Sept., 1904.

FREDERICK W. CANE.

(The follows acknowledgment in usual form, dated
40 Sept. 8, 1904.)

The other six assignments are identical in form, the parties, dates, amounts, being as follows:

Name.	Date.	Amt.
Robert A. Keasbey.....	Aug. 6, 1904.	\$ 975.00
Timothy W. Dorsett....	Sept. 16, 1904.	155.00
Heine Safety Boiler Co.	Sept. 3, 1904.	4,160.67
Taylor-Martin Engineer- ing Co.	Sept. 7, 1904.	12,833.14
B. F. Sturtevant Co.....	Sept. 16, 1904.	1,302.50 ¹⁰
Electric Construction & Supply Co.	Sept. 17, 1904.	1,325.00

Also assignment from Carbondale Machine Company reading as follows:

IN CONSIDERATION of the sum of One Dollar and other valuable consideration to it in hand paid, the receipt whereof is hereby acknowledged,²⁰ Carbondale Machine Company, a corporation duly organized and existing under the laws of the State of Pennsylvania, does hereby sell, assign, transfer and set over unto Union Terminal Cold Storage Company, a New Jersey corporation, all its right, title and interest in and to any and all property of every kind and nature whatsoever which it heretofore delivered to, or installed in the plant of the Jarvis Terminal Cold Storage Company, and also all its claim or claims, and cause of action or causes of action of³⁰ every kind and nature whatsoever against the Jarvis Terminal Cold Storage Company, together with all its rights in, to, by and under any lien against the property of such Jarvis Terminal Cold Storage Company; and the said Carbondale Machine Company hereby covenants and agrees to execute any and all further instrument or instruments in writing and to do any and all further act or acts requested by Union Terminal Cold Storage Company for further assuring and effecting this assignment.

IN WITNESS WHEREOF, Carbondale Machine Company has caused these presents to be signed by its President and its corporate seal affixed, duly attested by its Secretary the tenth day of September, 1904.

THE CARBONDALE MACHINE CO.

A. P. Trauwein, President.

Attest:

15 G. A. Singer, Sec'y.
(Acknowledgment in usual form.)

Also: Assignment from Union Terminal Cold Storage Company, to John Alvin Young and Richard Irvin, dated September 24, 1904, assigning to said Young and Irvin all the foregoing assignments.

20

EX. "H."

Claim for overdraft on coupon account \$48.36.

EX. "I."

30 Claim for fee for acting as trustee for issuing bonds, accepting payments and issuing stock certificate, accepting payments and issuing bonds under trustee of agreements, \$350.00.

EX. "J."

Claim for premiums advanced for Fire Insurance
40 amounting to \$814.25. See Ex. "A."

EXHIBITS OF ERIE R. R. CO.

EX. "1."

(Pages 130-131 of Minute Book.)

Action of Executive Committee

of

10

JARVIS TERMINAL COLD STORAGE
COMPANY.

February 19th, 1903.

WHEREAS, Jarvis Terminal Cold Storage Company is indebted to Mrs. Nathalie Jarvis in the sum of \$14,000 evidenced by its bond and purchase 20 money mortgage on the property of the Company at Twelfth, Provost and Thirteenth Street, Jersey City; and

WHEREAS, said Company desires to pay off said purchase money mortgage so that it may place a first mortgage for \$150,000 on the property aforesaid, as authorized by its stockholders and Board of Directors; now, therefore,

30

RESOLVED, that the proper officers of the Company be and they hereby are authorized to pay to Mrs. Nathalie Jarvis the sum of \$7,000 in cash, together with interest on the aforesaid sum of \$14,000 from December 1st, 1902, to date of payment, and to make and deliver to said Nathalie Jarvis or her agent, the promissory note of this Company for \$7,000 payable in sixty days, with interest at five per cent, per annum, and to deliver to Mrs. Nathalie Jarvis, or her agent, a certificate for stock of this 40

Company for seventy shares of the par value of \$100 each as collateral to said note; the said sum to be paid and said note and collateral to be delivered upon receiving from Mrs. Nathalie Jarvis a satisfaction piece of the mortgage now held by her for \$14,000 on the property of this Company.

Approved:

Chas. F. Case,
Joseph H. Bumsted,
R. M. Jarvis.

10

EX. "2."

(Pages 21-29 of Minute Book.)

BY-LAWS

of the

20

JARVIS TERMINAL COLD STORAGE COMPANY.

I.

MEETINGS OF STOCKHOLDERS.

1. All meetings of stockholders shall be held at the principal office of the Company, at the Commercial Trust Company Building Nos. 15, 17, 19 and 21
30 Exchange Place, in Jersey City, County of Hudson.

2. A majority of the stock issued and outstanding shall be present in person or by proxy to constitute a quorum.

3. The annual meeting of stockholders shall be held on the first Monday of February in each year, at 12 o'clock noon, except when such day shall be a legal holiday in which case the meeting shall be held on the following day.

(Then follow provisions regulating annual and
40 special meetings.)

II.

DIRECTORS.

1. The Board of Directors, consisting of seven members, shall be chosen from the stockholders, and shall hold office for one year and until their successors qualify.

The Directors elected at the first meeting of the 10
incorporators shall hold office until the next annual meeting of the stockholders.

The Board of Directors may be increased or decreased by amendment of this provision of the By-Laws.

(Then follow provisions regulating meetings of Directors.)

6. The Board of Directors shall have the management of the business of the Company, and in addition to the powers and authority by the Certificate of 20
Incorporation and these By-Laws expressly conferred upon them, may exercise all such powers and do all such things as may be exercised or done by the corporation, but subject nevertheless to the provisions of the statute, of the charter and of these By-Laws.

III.

EXECUTIVE COMMITTEE.

30

There may be an Executive Committee of three Directors appointed by the Board who shall meet when they see fit. They shall have authority to exercise all the powers of the Board at any time when the Board is not in session. Power is hereby given to the Executive Committee to act by the written consent of a quorum thereof although not formally convened.

The Board may at any time remove any member of the Executive Committee.

40

IV.

OFFICERS.

1. At the first meeting of the Directors after their election they shall elect by ballot a President and Vice-President from their own number, who shall hold office for one year and until their successors qualify.

2. The Directors shall also annually choose a Secretary and Treasurer, or one person to act as both Secretary and Treasurer, who need not be a member of the Board, who shall hold office for one year, subject to removal by the Board at any time with or without cause. (Then follow provisions for compensation of officers.)

V.

20

PRESIDENT.

The President shall be the chief executive officer of the Company, and in the recess of the Board of Directors and of the Executive Committee shall have the general control and management of its business and affairs, subject, however, to the right of the Directors to delegate any specific power, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the Company. He shall have the power to authorize the seal of the Company to be affixed to all papers which may be required.

VI.

VICE-PRESIDENT.

The Vice-President shall be vested with all the powers and perform all the duties of the President in his absence.

VII.

SECRETARY.

(Usual provisions as to giving notices, and keeping books and records.)

VIII.

10

TREASURER.

(Usual provisions for keeping accounts and signing checks.)

IX.

VACANCIES.

20

Vacancies to be filled by vote of directors.

X.

DIVIDENDS.

(Usual provision giving directors power to fix dividends.)

XI.

30

STOCK CERTIFICATES.

(Usual Provision.)

XII.

SEAL.

(Usual Provision.)

40

XIII.

AMENDMENT OF BY-LAWS.
(Usual provisions.)

EX. "C."

10

(Minutes, pages 123-128.)

MEETING OF DIRECTORS OF "JARVIS TERMINAL COLD STORAGE COMPANY," FEBRUARY 11TH, 1903.

Pursuant to the call of the President, an adjourned meeting of the Board of Directors was held at No. 68 Broad Street, New York City, on the 11th day of
20 February, 1903, at 1:30 P.M.

PRESENT:

Mr. R. M. Jarvis,
" Case,
" Smith,
" Blakemore,
" Gubelman,
" R. M. Jarvis Jr.

constituting a majority of the members of the Board.

30 Mr. R. M. Jarvis the President of the Company took the chair.

The Secretary presented and read a waiver of notice of the meeting called for February 10th, 1903, signed by all of the Directors except Mr. Matlage, and the same was ordered to be annexed to these minutes.

The President declared the election of officers of the Company to serve during the ensuing year and until their successors qualify to be in order.

40 A vote by ballot having been taken, the following were duly chosen President, Vice-President and

Secretary and Treasurer of the Company, respectively, to serve during the ensuing year and until their successors are elected and qualify, viz:

President, Mr. R. M. Jarvis,

Vice-President, Mr. Charles F. Case,

Secretary and Treasurer, Mr. R. M. Jarvis, Jr.

It was ordered that the Secretary take the oath of office and subscribe the written oath in the form annexed to these minutes. 10

The Secretary thereupon took and subscribed the oath and entered upon the discharge of his duties.

Mr. Joseph F. Bumsted, Mr. Charles F. Case and Mr. R. M. Jarvis were appointed members of the Executive Committee, Mr. Joseph F. Bumsted to be chairman thereof.

On motion of Mr. Case, duly seconded, it was

RESOLVED, that the Secretary be and he hereby 20 is instructed to give five days notice in writing by mail to each of the directors of the time and place of the next meeting of the Board of Directors and like notice to each of the said directors that at said meeting the following proposed amendment to the by-laws will be submitted to the Board for its action:

Amend By-Law III. by substituting the word "five" for the word "three," so that the same shall read as follows:

"There may be an Executive Committee of five 30 Directors appointed by the Board who shall meet when they see fit. They shall have authority to exercise all the powers of the Board at any time when the Board is not in session. Power is hereby given to the Executive Committee to act by the written consent of a quorum thereof although not formally convened.

"The Board may at any time remove any member of the Executive Committee."

Mr. Case introduced the following resolution: 40

WHEREAS, it is necessary to borrow money and contract debts in order to properly transact the business of this Company and for the acquisition of property and for the building and equipment of a cold storage and warehouse plant;

RESOLVED, that this Company, by its proper officers, make, execute and deliver a mortgage or deed of trust constituting a first lien upon all its property and franchises to the Commercial Trust Company of New Jersey as Trustee, said mortgage or deed of trust to be dated the 2nd day of February, 1903, and to be for the sum of \$150,000, and conditioned as security for the payment of \$150,000 in bonds to be issued by the said Company, as follows, to wit: One hundred and fifty bonds of one thousand dollars each, numbered from 1 to 150 inclusive, the said bonds to be dated the 2nd day of February, 1903, and to become due and payable on the first day of February, 1923 unless sooner paid under terms to be inserted in the mortgage authorizing the payment thereof prior to the date of maturity, and to bear interest from the 1st day of February, 1903, until the maturity thereof, or until paid, at the rate of six per cent. per annum payable semi-annually on the first days of February and August in each year, and to contain provisions for the creation of a sinking fund and such tax, insurance and other clauses as to the officers of the Company shall seem proper.

Mr. Case moved the adoption of the resolution. This motion having been seconded and put to a vote was unanimously carried.

Mr. Case presented to the Board a form of mortgage embodying the provisions contained in the foregoing resolution. The same having been duly examined, it was on motion duly seconded unanimously.

RESOLVED, that the said mortgage be executed in the form this day submitted to this Board, by the President or Vice-President of this Company

in the name of this Company and that the corporate seal of this Company be thereunto affixed and attested by the Secretary of this Company, and that the mortgage be delivered on behalf of this Company to the Trustee therein named.

Mr. Case submitted to the Board for its consideration and action thereon a form of agreement to be entered into by and between this Company and the several persons who shall sign the same as subscribers for the bonds of this Company and the Commercial Trust Company of New Jersey as depository for the sale of not less than 100 nor more than 125 of the bonds to be issued under the terms of the mortgage of this Company dated February 2nd, 1903, this day authorized by this Board, at the rate of 88 per cent, and accrued interest, that is to say: \$880 and accrued interest for each of the said bonds of the par value of \$1,000, embracing in full the terms, conditions and provisions upon which the said sale shall be made. The said form of agreement having been read to the Board, and due consideration having been given thereto it was, on motion duly seconded, unanimously

RESOLVED, that the officers of this Company be authorized to enter into an agreement to be substantially in the form form this day submitted to this Board with the several persons who shall sign the said agreement as subscribers for the said bonds and the Commercial Trust Company of New Jersey as the depository thereunder, said agreement to provide for the sale, upon the terms, conditions and provisions embraced in said agreement, of not less than 100 nor more than 125 bonds of this Company at the rate of 88 per cent. and accrued interest, that is, \$880 and accrued interest for every bond of the par value of \$1,000.

On motion, duly seconded, it was

RESOLVED, that the subject of the payment of a salary to the Treasurer of the Company be referred to the Executive Committee with power to act thereon.

There being no further business before the meeting, the same was, on motion, adjourned.

R. M. Jarvis, Jr.,
Secretary.

10

EX. "D."

(Minutes, pages 146-150.)

SPECIAL MEETING OF THE BOARD OF DIRECTORS

of

20

JARVIS TERMINAL COLD STORAGE COMPANY.

December 4th, 1903.

A Special Meeting of the Board of Directors was held at No. 68 Broad Street, New York City, on the 4th day of December, 1903, at one o'clock P. M.

PRESENT:

30

R. M. Jarvis,
Joseph H. Bumsted,
Chas. F. Mattlage,
W. O. Smith,
Jas. H. Blakemore and
R. M. Jarvis, Jr.

constituting a majority of the members of the Board.

Mr. R. M. Jarvis, the President, took the chair. The Secretary read the minutes of the meetings of the Exetive Committee between the last Dirctectors'

40 Meeting and this meeting.

The President reported as follows as to the financial condition of the Company, and also as to the progress of the plant.

We expect that the building will be in a position to receive goods not later than next Saturday, December 12th, and that everything up to date has been progressing as favorably as possible. Mr. Cane, the builder, says that the entire building, insulation and power house will be all finished by the middle of 10 next week, all the machinery is set up and connected in the Power House. There has been steam on in the boilers for the past week. We expect to turn on the electric current through the building to-morrow. We have a party who wishes to put in about fourteen carloads of apples next week, and we expect to be able to take them at that time. Our prospects for business are very bright indeed, and there is no doubt that in a short time there will be enough consignments to fill the warehouse. Mr. Batcheller 20 seems to be a most competent man and is very enthusiastic over our plant.

The President reported the financial condition of the Company as follows:

It was in reference to the financial condition that this meeting was called to-day. I have done all in my power to manage the company's finances successfully, but just at this time I feel that I would like to have the advice and support of this Board. There 30 is at this present time some 150 shares of stock which have not been disposed of. There is falling due to-morrow a check of \$1844. which we had to give the Piping contractor, and to pay which there is not in the bank enough money. Also Mr. Cane, the builder, says that he must have a check for some \$1100 on account of insulation. Some 45 days ago, we gave Mr. Cane a 45 day note for \$5,000 which falls due on Monday, December 7th. We gave him this on the supposition that the building would be finished in time to release the balance of the Bond 40

money held by the Commercial Trust Co., and which we intended to use to pay this note, but owing to the delay in the completion of the building, this cannot be done, and therefore the payment of same must be met in some other way. We have given Crane Company, Pipers, two notes in payment of their bill, and they aggregate some \$8,000, \$4,000 of which falls due on December 15th, and the balance on January 15th, 1904. These items represent the pressing liabilities of the company, and I would like to have your opinion and advice how we are to meet these obligations.

The President also reported that the plant is costing more than the figures given in the prospectus, owing to the fact that material and labor are now dearer than when these figures were made up, and also on account of the additions. The Power House instead of costing \$5,000 will cost nearer to \$16,000.
 20 as it has been increased more than double in size. Owing to the insulating of cellars the insulation will cost nearly \$50,000 where in the prospectus the figure was \$35,000. It was necessary to insulate the cellar in order to take care of a certain portion of our prospectus business. In order to provide the necessary funds to pay these increases, it is necessary for us to issue more bonds. In our charter we are allowed to issue \$25,000 more of bonds for additions, etc. Our Counsel says that under the exist-
 30 ing mortgage, he thinks that it will be possible to issue nearly all of these bonds. If so, it will provide sufficient funds to take care of our increased costs. But, owing to the delay in the completion of building, we cannot do this at present, and because of this fact, as well as not having sold the full quota of stock, we are short of cash. I would like to have the opinions of the members of this Board on what would be the best course to pursue.

After a discussion of this subject by the Board,
 40 Mr. Blakemore made the following resolution:

RESOLVED, That proper officers of the Company be authorized to draw a sixty-day note with interest for \$6500 to the order of W. H. & F. W. Cane, and request them to discount same and pay note of \$5,000 falling due on December 7th, and after paying same, it would leave them a balance of \$1500. to their credit, which would take care of the \$1100. required by them to-morrow in order that they may meet their pay-roll. Also that the proper officers of the company draw a check for \$1844 and date them December 10th, to the order of Jarvis & Company, and request Jarvis & Co. to endorse this check, after which same shall presented to the U. S. Mortgage & Trust Co. with a request that they accept same and pay from the proceeds check of like amount given the Piping Contractor.

Mr. Joseph H. Bumsted moved the adoption of the resolution, the motion having been seconded and put to a vote was carried.

The Secretary was instructed to call a special meeting of the Board of Directors for Wednesday, December 9th, at Two o'clock P.M., at 68 Broad Street.

There being no further business, the meeting was unanimously adjourned.

R. M. Jarvis, Jr.,
Secretary.

EX. "E."

(Minutes, pages 165-173.)

Minutes of the annual meeting of the stockholders of "Jarvis Terminal Cold Storage Company," held at the principal office of the Company, Nos. 15, 17, 19 and 21 Exchange Place, Jersey City, County of Hudson, State of New Jersey, on the 1st day of February, in the year 1904, at 12 o'clock noon.

PRESENT, in person:			No. Shares.
	R. M. Jarvis,	owning	513
	F. W. Cane,	"	100
	W. O. Smith,	"	5
	Theodore B. Muth,	"	100
	James H. Blakemore,	"	1
	R. M. Jarvis, Jr.	"	30
PRESENT, by Theodore B. Muth, Proxy:			
10	Wallace Pyle,	owning	10
	William Buchanan	"	10
	John Alvin Young,	"	50
	Bronson Winthrop,	"	10
	Robert McCreery,	"	05
			834

The Secretary of the Company, Mr. Robert M. Jarvis, Jr., called the meeting to order.

20 On motion, duly seconded, Mr. R. M. Jarvis was unanimously elected Chairman of the meeting.

Mr. R. M. Jarvis thereupon took the chair.

On motion, duly seconded, Mr. R. M. Jarvis, Jr., was unanimously elected Secretary of the meeting.

30 Mr. Robert M. Jarvis, Jr., the Secretary of the Company, reported that he had made a full, true and complete list in alphabetical order of all the stockholders entitled to vote at his meeting, with the residence of each, and the number of shares held by each, and that the same had been kept at the principal office of the Company, open to the examination of any stockholder thereat, for at least ten days prior to this date; and he further reported that a notice of the time and place and object of this meeting had been given by mailing ten days previous to this date, postage prepaid, a notice of this meeting addressed to each stockholder at his address as shown by the records of the Company. The notice for this meeting was then read and a copy thereof was ordered to
40 be annexed to these minutes.

The roll of stockholders was then called, and it was ascertained that there were present either in person or by proxy stockholders owning more than one-half of the stock of the Company issued and outstanding, to wit, 834 shares.

The minutes of the last annual meeting of the stockholders of the Company, held on the second day of February, 1903, were then read by the Secretary, and on motion, duly seconded, were unanimously approved. 10

The following resolution was then offered by Mr. Blakemore, and having been duly seconded was put to a vote and unanimously adopted:

RESOLVED, that the stockholders of the Jarvis Terminal Cold Storage Company do now proceed to the election of directors of this Company for the ensuing year, and that the Chairman of this meeting be instructed to appoint two persons to act as inspectors of such election. 20

The Chairman thereupon appointed Mr. Letterhouse and Mr. Haslett to act as inspectors of election, and declared that the polls would remain open for one hour for the reception of votes for directors of this Company, to act as such for the ensuing year.

Mr. Letterhouse and Mr. Haslett, the inspectors of the election appointed by the Chairman, thereupon took and subscribed an oath to faithfully, honestly and impartially perform the duties of inspectors, a copy of which oath is annexed to their report embodied in these minutes. 30

The President reported orally, in substance, as follows:

The building and Cold Storage plant constructed for the Company was practically completed on or about December 31, 1904. The Company started with a capital stock of \$150,000., and a mortgage on its plant under which it could issue \$125,000 worth of bonds, and \$25,000 worth of bonds later on. The 40

estimated cost of the plant was \$275,000, but owing to changes which it was deemed necessary and advisable to make in the plans, the total cost of the plant has been over \$300,000. This increased cost was caused mainly by the change made in the insulation plant and in the power house. The estimated cost of the insulation plant was \$35,000, but owing to changes which it was deemed advisable to make
10 when the same was put in, the total cost as \$53,000. On the recommendation of Mr. Stoddard, the power house was greatly increased in size, and a total cost of erecting the same was \$16,000, instead of \$5,000, the estimated cost.

The President further reported in detail the manner in which the work had progressed, the other changes which had been made in the plans, and the difficulties encountered in completing the plant. He then gave a description of the plant as it now stands,
20 and his estimate of the value thereof. He stated that in his opinion the property had increased greatly in value during the last year, and that if certain arrangements were perfected with the Erie Railroad, it would undoubtedly still further increase in value. He gave in detail a statement of the storage capacity of the plant, and an estimate of its earning capacity.

The President further reported that pursuant to the authority conferred upon them by the Board of Directors, the officers of the Company had entered
30 into an agreement with certain persons and corporations whereby the bonds of the Company were sold to such persons and corporations at 88. He also reported that all of the stock of the Company has not yet been sold, and stated the reasons therefor. He reported that he had made up an underwriting agreement for the purpose of disposing of 250 shares of the stock for the Company, and that he had procured subscriptions thereon for 160 shares. Upon this agreement, together with 50 shares of his own fully paid-up stock he had borrowed from the United
40 States Mortgage and Trust Company \$20,000.

The President then urged upon the stockholders the necessity of raising additional money for the use of the Company, and discussed with them various methods of doing so.

Upon motion, duly seconded, it was unanimously RESOLVED, that the report of the President be received and approved, and the Secretary was directed to spread the substance thereof upon the minutes.

10

The Treasurer read the following report:

TREASURER'S REPORT, FEBRUARY 1, 1904.

JARVIS TERMINAL COLD STORAGE COMPANY.

Amount of cash received on account of Bond Subscription	\$110,000.00	
Amount of cash received on account of Stock Subscription	80,850.00	20
Amount loaned by U. S. Mortgage & Trust Company, on underwriting of 160 shares of Stock and the assignment of 50 shares belonging to R. M. Jarvis	20,000.00	
Amount loaned by Erie Railroad Company	16,500.00	
Interest earned	223.36	
	\$227,573.36	30
Amount of cash paid Mrs. N. Jarvis in part payment of land; and R. M. Jarvis for leases, railroad tracks, privileges, buildings, etc.	\$ 18,000.00	
Total amount of expenditures on contracts, etc.	209,343.03	
	\$227,343.03	40

\$ 230.33

Sold 125—\$1000. 6% Bonds at 880.=\$110,000.

	Stock subscribed for up to date.....	836½ shares	
10	“ issued to R. M. Jarvis and Mrs. N. Jarvis, in part payment of land, leases, railroad tracks, privileges, buildings, etc.	370	“
	Stock underwritten Nov. 2nd and lodged with U. S. Mortgage & Trust Co. as collateral	160	“
		1366½	“
	Unsold shares to balance.....	133½	“
20			
		1500	“

On motion, duly seconded, the same was received and ordered on file.

On motion of Mr. Cane, duly seconded, it was unanimously

Resolved, That the President be authorized to appoint a committee of five stockholders to confer with the directors for the purpose of devising means of raising additional money for the use of the Company.

The polls having remained open one hour and all the stockholders present, either in person or by proxy, having deposited their votes, it was, upon motion duly seconded, resolved that the polls be closed.

The chairman thereupon declared the polls closed.

Mr. Haslett and Mr. Letterhouse, the inspectors of election, having duly canvassed the vote cast by the stockholders, made the following report:

The

JARVIS TERMINAL COLD STORAGE COMPANY.

INSPECTORS' CERTIFICATE.

We, the subscribers, inspectors of election, appointed by the stockholders of the company above named, at their meeting held this 1st day of February, 1904, do report that they have taken an oath impartially to conduct the election, we did receive the votes of the stockholders by ballot.

We report that 734 votes were cast, and that the following persons received the number of votes set opposite their respective names, to wit:

For Directors.	)	Number of votes.	20
R. M. Jarvis	)		
Chas. F. Case	)		
Chas. F. Mattlage	)		
Wm. O. Smith	)	734 votes cast for each	
Jos. H. Bumsted	)	director.	
John Alvin Young	)		
O. L. Gubelman	)		
Jas. H. Blakemore	)		
R. M. Jarvis, Jr.	)		

30

All of which is respectfully submitted this 1st day of February, 1904, at Jersey City, New Jersey.

E. C. Haslett,
Geo. Letterhouse,
Inspectors.

On motion, duly seconded, the report of the inspectors of election, as above set forth, was received and approved.

40

The chairman of the meeting thereupon declared the gentlemen whose names appear upon the certificate of the inspectors of election as having been elected directors of this company to serve for the ensuing year, duly elected.

Mr. Cane withdrew from the meeting without having cast his ballot for directors, but instructed Mr. Muth as his proxy to vote for the above-named
10 gentlemen. Mr. Muth did so, but the inspectors of election declined to count the votes cast in behalf of Mr. Cane for the reason that Mr. Muth was not able to produce Mr. Cane's written proxy.

There being no further business before the meeting, on motion, it was adjourned.

R. M. Jarvis, Jr.,
Secretary.

20

EX. "F."

		0
		) MORTGAGE.
JARVIS TERMINAL COLD		) Dated Dec. 16, '03
		) Ack'd Dec. 17, '03.
STORAGE COMPANY,		) Rec'd Dec. 18, '03.
		) Bk. 504 of Mort-
		) gages.
	to	) P'ge 633, for Hud-
		) son Co.
30		) Amount, \$16,500.
ERIE RAILROAD COM-		) Rate of int., 5%.
PANY.		) Payable semi-an-
		) nually.
		0

COVERS the following described property:

ALL those eleven lots, tracts or parcels of land
and premises, hereinafter particularly described, sit-
40 uate, lying and being in Jersey City, in the County

of Hudson and State of New Jersey, which upon the Jersey City Assessment Map are known as Lots numbered from one (1) to ten (10) both inclusive and Lot numbered thirty-two (32) all in Block numbered one hundred and eighty-five (185), said lots forming one tract fronting two hundred (200) feet on the westerly side of Provost street, one hundred and fifty (150) feet on the northerly side of Twelfth street, and one hundred and twenty-five (125) feet on the south-¹⁰erly side of Thirteenth street.

Recites as follows: "This property is subject to a "prior mortgage given by said Storage Company to "the Commercial Trust Company of New Jersey, as "Trustee, to secure the payment of bonds to the "amount of one hundred and fifty thousand dollars "(\$150,000.00), and said mortgage is recognized as "prior to this to the full amount thereof, whether "said bonds have been yet issued or not."

20

BOND.

Accompanying foregoing mortgage, attached to bond, is the following: Extract from minutes of Jarvis Terminal Cold Storage Company:

Action of Executive Committee on December 16th,
1903.

RESOLVED, That the proper officers of this³⁰ company be authorized to execute and deliver to the Erie Railroad Company a second mortgage on its plant at Twelfth and Provost Streets, Jersey City, to secure the payment of sixteen thousand five hundred dollars, on December 16th, 1904, with interest at five per cent., with privilege to pay the principal at any earlier date.

Robert M. Jarvis,
Chas. F. Case,
Joseph H. Bumsted.

40

I certify that the above is a correct transcript of a resolution adopted by the executive committee of the Jarvis Terminal Cold Storage Company in December 16, 1903.

(L. S.) R. M. Jarvis, Jr.,
Secretary.

10

EX. "BB."

ERIE RAILROAD COMPANY.

To Jarvis Terminal Cold Storage Company, Dr.

(Address) Jersey City, N. J.

20 1903.

Dec. 17.—Amount of advance for the payment of certain bills for labor and material entering into the construction of the Jarvis Terminal Cold Storage Plant at Jersey City, N. J., in accordance with agreements between the Erie Railroad Company and the Jarvis Terminal Cold Storage Company and Jarvis & Company, under date of December 16th, 1903.. \$16,500.00
Sixteen thousand five hundred and 00/100 dollars.

30

I certify that the above account is correct and the expenditure was duly authorized.

Approved:

F. D. Underwood,
President.

G. W. Richardson,
Secretary.

40

Draft received.

(Stamped)

Erie Railroad Co.

office

of

AUDITOR OF DISBURSEMENTS,

received

Dec. 18, 1903, A. M.

\$4000 00/000.

Dec. 19, 1903.

10

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, that Crane & Co., contractors for the pipe & fittings of The Jarvis Terminal Cold Storage Co. are entitled to a payment of four thousand 00/100 dollars by the terms of contract.

Leighton G. Knipe,

Asst. Eng of Co.

20

Contract Price.....	\$	_____	)
Extra Work	\$	_____	)
Total Am't issued...	\$	4000 00/100)	
		_____	)
Balance	\$	_____	)

(Endorsed) Received of JARVIS TERMINAL COLD STORAGE CO. the within amount of Certificate.

Crane Company

30

A. M. Loskamp,

A Cr.

\$4000

New York, December 1st, 1903.

On December fifteenth, 1903, after date we promise to pay to the order of Jarvis & Co., four thousand dollars, at 68 Broad street, N. Y. City.

JARVIS TERMINAL COLD STORAGE CO.

R. M. Jarvis, Pres., R. M. Jarvis, Jr.,

Treasurer. 40

Value received.

No. 155. Due Dec. 15/03.

(Endorsed) Pay to the order of Crane Co.

Jarvis & Co.

Pay to Importers' and Traders' Nat'l Bank,
of N. Y., or order,

Crane Company Chicago,

A. F. Gartz, Treasurer.

New York.

10

(Protest of foregoing note attached thereto.)

\$2631 17/100.

Dec. 2, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That Taylor-Martin En-
gineering Co., contracor for the general equipment,
piping and electrical, The Jarvis Terminal Cold Stor-
age Co., entitled to a payment of two thousand six
hundred and thirty-one 17/100 dollars, by the terms
of contract.

20

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Contract Price \$

Extra Work \$

Total Am't issued..... \$2631 17/100

Balance \$

(Endorsed.) Received of JARVIS TERMINAL
COLD STORAGE CO. the within
amount of Certificate.

30

Taylor-Martin Engineering Co.,

Luther D. Martin,

Treas.

\$607 06/100.

Dec. 2nd, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That Taylor-Martin En-
gineering Co., Contractor for the electrical word of
The Jarvis Terminal Cold Storage Co. entitled to a

40

payment of six hundred and seven 06/100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Contract Price.....	\$
Extra Work	\$1412 47/100
Total Am't issued.....	\$2019 53/100

Balance \$

10

(Endorsed.) Received of JARVIS TERMINAL COLD STORAGE CO. the within amount of Certificate.

Taylor-Martin Engineering Co.

Luther D. Martin, Treas.

\$591 62/100.

Dec. 2nd, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That Taylor-Martin En- 20
gineering Co., contractor for the bin piping of The
Jarvis Terminal Cold Storage Co. entitled to a pay-
ment of five hundred and ninety-one 62/100 dollars,
by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Contract Price	\$
Extra Work	\$3052 77
Total Am't issued	\$3644 39

30

Balance \$

(Endorsed) Received of JARVIS TERMINAL COLD STORAGE CO., the within amount of certificate.

Taylor-Martin Engineering Co.

Luther D. Martin,

Treas.

\$646 31/100

Dec. 2nd, 1903.

To R. M. Jarvis, Jr., Treas.

40

THIS IS TO CERTIFY, That Taylor-Martin Engineering Co., contractor for the high pressure work of The Jarvis Terminal Cold Storage Co., entitled to a payment of six hundred and forty-six 31-100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

	Contract Price	\$
10	Extra Work	\$ 922.93
	Total Amount issued...	<u>\$1,569.24-100</u>

Balance\$

(Endorsed) Received of JARVIS TERMINAL COLD STORAGE CO. the within amount of certificate.

Taylor-Martin Engineer Co.,

Luther D. Martin, Treas.

20 \$1,568 44-100

Dec. 16th, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That Taylor-Martin Engineering Co., contractor for the piping & electrical equipment of The Jarvis Terminal Cold Storage Co. are entitled to a payment of one thousand five hundred and sixty-eight 44-100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

	Percentage	
30	Labor Cnt.	..
	Total amount issued.....	<u>\$1,568 44-100</u>

Balance \$

(Endorsed) Received of JARVIS TERMINAL COLD STORAGE CO. the within amount of certificate.

On account four hundred and thirty-nine and 73-100 (\$439.73-100).

Taylor-Martin Engineer Co.,

Luther D. Martin, Treas.

40

Received balance due on this certificate Dec. 23,
1903.

Taylor-Martin Engineer Co.,
Luther D. Martin, Treas.

\$560 27-100

Dec. 16th, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That Taylor-Martin¹⁰
Engineering Co., contractor for the electrical equip-
ment of The Jarvis Terminal Cold Storage Co. en-
titled to a payment of five hundred and sixty 27-100
dollars, by the terms of contract.

LEIGHTON G. KNIPE,
Asst. Eng. of Co.

Material,

Silby & Putnam.

Total Amount issued..... \$560 27-100

20

Balance \$

(Endorsed) Received of JARVIS TERMINAL
COLD STORAGE CO. the within
amount of certificate.

Taylor-Martin Engineering Co.
Luther D. Martin, Treas.

\$2,794.06.

Oct. 1st, 1903.

To R. M. Jarvis, Jr., Treas.

30

MATERIAL.

THIS IS TO CERTIFY, That W. H. & F. W.
Cane, Contractor for the insulation of The Jarvis
Terminal Cold Storage Co. are entitled to a pay-
ment of two thousand seven hundred and ninety-four
06-100 dollars by the terms of contract.

LEIGHTON G. KNIPE,
Asst. Eng. of Co. 40

Percentage.

Extra Work \$32,507.93

Total Amount issued..... \$35,301.99

Balance \$

(Endorsed).

10 Received of Jarvis Terminal Cold Storage Co.
the within amount of certificate, as follows:

By note. W. H. & F. W. Cane.

Oct. 15, one thousand dollars by check.

Oct. 16, one thousand dollars by check.

Oct. 22, seven hundred ninety-four & 06-100, by
note.

\$2,339.25.

Oct. 13, 1903.

To R. M. Jarvis, Jr., Treas.

20 THIS IS TO CERTIFY, That W. H. & F. W.
Cane, contractor for the insulation of The Jarvis
Terminal Cold Storage Co., entitled to a payment
of two thousand three hundred and thirty nine 25-
100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Percentage.

Previous Pay \$37,566.78

Total Amount issued..... \$39,906.03

30

Balance \$

(Endorsed) Received of JARVIS TERMINAL
COLD STORAGE CO. the within
amount of certificate.

By note. W. H. & F. W. Cane.

\$1,927.77.

Oct. 22, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That W. H. & F. W.
40 Cane, contractor for the insulation of The Jarvis Ter-

minal Cold Storage Co., entitled to a payment of one thousand nine hundred and twenty-seven 77-100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Percentage.

Extra Work \$39,906.03

Total Amount issued \$41,833.80

Balance \$

10

(Endorsed).

Received of.....the within amount of certificate.

By note. W. H. & F. W. Cane.

\$5,099.03. New York, Oct, 22nd, 1903.

Forty-five days after date we promise to pay to the order of W. H. & F. W. Cane, five thousand 20 ninety-nine and 03 dollars at Commercial Trust Company of New Jersey, Jersey City.

Value received,

R. M. Jarvis,

Pres.

Jarvis Terminal Cold Storage Co.

R. M. Jarvis,

Treasurer.

No. Due Dec. 6.

(2d National Bank

Paid,

Jersey City).

30

(Endorsed).

W. H. & F. W. Cane.

Frederick W. Cane.

\$260 00-100.

Dec. 18, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That Geo F. Blake Mfg Co., contractor for the pumps of The Jarvis 40

Terminal Cold Storage Co., are entitled to a payment of two hundred and sixty 00-100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Contract Price \$510.10

Less \$ 5.00

10 Total Amount issued \$505.00

(Endorsed) Received of JARVIS TERMINAL COLD STORAGE CO. the within amount of certificate.

The Geo. F. Blake Mfg Co.,

By Frank Knapp.

\$176 00-100.

Dec. 18, 1903.

To R. M. Jarvis, Jr., Treas.

20 THIS IS TO CERTIFY, That Deane Steam Pump Co., contractor for the pumps of The Jarvis Terminal Cold Storage Co. are entitled to a payment of one hundred and seventy-six 00-100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Contract Price \$352.00

Extra Work

Total Amount issued..... \$352.00

30 (Endorsed) Received of JARVIS TERMINAL COLD STORAGE CO. the within amount of certificate.

The Deane Steam Pump Co.,

By Frank Knapp.

\$15 75-100.

Nov. 23, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That John McDonough,
40 fireman of The Jarvis Terminal Cold Storage Co.

is entitled to a payment of fifteen 75-100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Week ending Nov. 18, 1903.

Then follow certificates similar in form and of following dates and amounts:

Date.	Amount. 10
1903, Nov. 26.....	\$15.75
1903, Dec. 3.....	15.75
1903, Dec. 10.....	15.75
1903, Dec. 12.....	9.00

All said certificates are endorsed as follows:

Received of Jarvis Terminal Cold Storage Co.,
Dec. 18, 1903, the within amount of certificate.

L. G. Knipe for John McDonough.

20

Dec. 18th, 1903.

\$250 00-100.

Dec. 18, 1903.

THIS IS TO CERTIFY, That Mr. W. S. Batcheller, the Superintendent of The Jarvis Terminal Cold Storage Co., entitled to a payment of two hundred and fifty 00-100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

30

To Dec. 15th, 1903.

(Endorsed) Received of JARVIS TERMINAL
COLD STORAGE CO. the within
amount of certificate.

W. S. Batcheller.

\$25 00-100.

Nov. 23, 1903.

To R. M. Jarvis, Jr., Treas.

THIS IS TO CERTIFY, That John Burns,
Engineer of The Jarvis Terminal Cold Storage Co., 40

is entitled to a payment of twenty-five 00-100 dollars, by the terms of contract.

LEIGHTON G. KNIPE,

Asst. Eng. of Co.

Week ending Nov. 18, 1903.

Then following certificates similar in form and of following dates and amounts:

10	Date—1903.	Amount.
	Week Ending, Nov. 25 —Nov. 26.....	\$25.00
	Week Ending, Dec. 2 —Dec. 3.....	\$25.00
	Week Ending, Dec. 9 —Dec. 10.....	\$25.00
	Week Ending Dec. 16-19—Dec. 19.....	\$12.00

All said certificates are endorsed as follows:

Received of Jarvis Terminal Cold Storage Company the within amounts of certificate.

John Burns

20 EXHIBITS OF YOUNG AND IRVIN.

EX. "A."

AGREEMENT made and entered into this thirtieth day of August, nineteen hundred and four, between GUSTAV W. LEMBECK, DANIEL E. CLEARY and CHARLES E. CASSIDY, all of Jersey City, New Jersey, parties of the first part (hereinafter called the vendors), and JOHN ALVIN
 30 YOUNG and RICHARD IRVIN, both of New York City, New York, parties of the second part (hereinafter called the purchasers).

WHEREAS, pursuant to the terms of an agreement dated the twenty-fourth day of June, nineteen hundred and four, entered into between certain holders of first mortgage bonds of the Jarvis Terminal Cold Storage Company of the first part, and Gustav W. Lembeck, Daniel E. Cleary and Charles E. Cassidy of the second part, and the Greenville Bank-
 40 ing and Trust Company, as depositary, of the third

part, bonds to the number of one hundred and twenty-two (122) were deposited with the depository; and

WHEREAS, eight (8) other of such bonds the said Lembeck, Cleary and Cassidy expect to deposit with the said depository, and which, when so deposited, shall come within the terms of this agreement; and

WHEREAS, the said parties of the second part¹⁰ were appointed a committee to purchase on behalf of the subscribing bondholders the property of the Jarvis Terminal Cold Storage Company, ordered to be sold under the order of the Court of Chancery of New Jersey, and were authorized to use in compliance with the terms of said sale, all moneys deposited by the bondholders with the said depository, as well as the bonds of the bondholders so deposited; and

WHEREAS, pursuant to said agreement, the said²⁰ Lembeck, Cleary and Cassidy, on the twenty-ninth day of June, nineteen hundred and four, purchased said property and signed conditions of sale, in conformity to which the sum of six thousand seven hundred and fifty dollars (\$6,750), being five per cent. (5%) of the purchase price, was then and there paid to Palmer Campbell and John W. Hardenbergh, Receivers of said Storage Company, and the further sum of fifty dollars (\$50) to Frank Stevens, auc-³⁰ tioneer; and on the twenty-sixth day of July, further sums as follows were paid to the said Receivers:

On account of purchase price..	\$18,250.00
For accrued storage charges....	1,299.07
For unearned insurance pre- miums	640.26

And simultaneously therewith seventy-five (75) of the first mortgage bonds of the said company were deposited with said Receivers, who thereupon entered into an agreement with said Lembeck, Cleary⁴⁰

and Cassidy, surrendering and delivering up possession of the said property to the persons last named, who thereupon entered into the possession thereof, subject to the terms and provisions of the last named agreement; and

WHEREAS, since entering, said persons have received therefrom various amounts and have expended or become obligated for various amounts, including repairs, betterments, legal expenses amounting to one thousand dollars (\$1,000) and one hundred dollars (\$100) due to the New Jersey Title Guarantee and Trust Company; and

WHEREAS, the within named purchasers desire to purchase from the vendors the said bid and all rights thereunder, together with all the bonds deposited as aforesaid and which may be deposited as aforesaid, with the said Greenville Banking and Trust Company;

NOW, THEREFORE, in consideration of the premises and the agreements hereinafter contained, and in consideration of ten thousand dollars (\$10,000) paid by the purchasers to the vendors on the signing of this agreement, on account of the amounts above mentioned, the parties hereto agree as follows:

First. The purchasers, on the eighth day of September, nineteen hundred and four, will pay to the vendors the sum of twenty-six thousand nine hundred and eighty-nine dollars and thirty-three cents (\$26,989.33), less the ten thousand dollars paid to the vendors by the purchasers on the signing of this agreement, together also with any excess of expenditures and obligations hereinbefore referred to, over receipts, and also accrued interest on the bonds since the last paid coupons on the bonds so deposited, up to the first day of September, nineteen hundred and four; should the receipts hereinbefore mentioned

exceed the expenditures and obligations incurred, such excess of receipts over expenditures and obligations shall belong to the purchasers.

Second. The purchasers will deliver to the vendors in exchange for all the bonds deposited as aforesaid, an equal amount of bonds, or interim bonds, in the Union Terminal Cold Storage Company, incorporated under the laws of the State of New Jersey, with a capital stock of two hundred and fifty ¹⁰ thousand dollars (\$250,000), of which not more than one hundred thousand dollars shall be preferred stock, and not more than one hundred and fifty thousand dollars shall be common stock; and with a mortgage obligation of not more than one hundred and eighty thousand dollars representing five per cent. Twenty-year first mortgage gold bonds of the par value of one thousand dollars each, secured by a first mortgage upon all the property, real and personal, recently belonging to the Jarvis Terminal ²⁰ Cold Storage Company, and sold at Receivers' Sale, as above mentioned; the sum of at least fifty thousand dollars (\$50,000) shall be paid forthwith into the treasury of the said new company, from the sale of its stock.

Third. The form of the proposed mortgage shall be submitted for approval to the counsel of the vendors.

Fourth. The vendors, immediately on receipt of the new bonds and the balance of cash above mentioned, will assign their bid and all rights thereunder, ³⁰ and the rights to the return of such funds, if any, as may have been deposited to pay off the liens or claims upon or against the said premises, provided that any such liens shall be satisfied or otherwise disposed of by the purchasers, and simultaneously will deliver to the purchasers all the bonds aforesaid, and surrender possession of the said plant and property to the new company, which shall immediately enter into possession thereof. ⁴⁰

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed, sealed and delivered the day and year first above written.

G. W. LEMBECK, (L. S.)

C. E. CASSIDY, (L. S.)

D. E. CLEARY, (L. S.)

JOHN ALVIN YOUNG, (L. S.)

RICHARD IRVIN, (L. S.)

10 Signed, sealed and delivered in the presence of:
FRANCIS V. MANY,
ALFRED A. WHEAT,
as to Young and Irvin.

EX. "A B."

\$20,000.

New York, Nov. 10, 1903.

20 Ninety days after date, for value received, we promise to pay to the UNITED STATES MORTGAGE & TRUST COMPANY, or order, at the office of said company in the City of New York, twenty thousand 00/100 dollars, with interest at the rate of six per cent. per annum having deposited with said company as collateral security for payment thereof, the following property, viz:

30 Assignment of subscription to capital stock of Jarvis Terminal Cold Storage Co., which hereby authorize said company on non-performance of any obligation herein contained, to sell in such manner as it may deem proper, without notice, either at any Broker's Board, or at any public or private sale, applying the proceeds to the payment of the principal and interest of this note after deducting all legal and other costs and expenses of collection, sale and delivery, and accounting to the promissor for the surplus, if any. In case of deficiency after sale hereunder, the promissor agree to pay the amount thereof, with legal interest.

40 In case of depreciation in the market value of the security held as collateral for this loan, a pay-

ment is to be made on account, or additional satisfactory securities pledged at the option of the said payee. In case of failure to do so, this note shall be deemed to be due and payable forthwith, anything hereinbefore expressed to the contrary notwithstanding, and the payee may immediately sell the collateral as hereinbefore provided. It is understood and agreed that upon any sale of collateral hereunder, the said payee may purchase and hold for 10 its own account, and not as pledgee, any property offered at such sale. All collaterals herein mentioned and the proceeds thereof shall also be held and treated as collateral security, for any and all other debts or claims held against the promissor by said company, and which may be outstanding and unpaid at any time; and all other or further collateral securities which shall be either added to or substituted for the above, shall be subject to the same conditions and agreements. 20

(Signed) Jarvis Terminal Gold Storage Co.

(Signed) R. M. JARVIS,

Pres.

R. M. JARVIS, JR.,

Treasurer.

(Endorsed).

Jarvis & Co.,

R. M. Jarvis.

Paid on account of within note as follows:

Nov. 12, 1903.....	\$500.....	Bal.	\$19,500	30
Jan. 28, 1904.....	1,000.....	Bal.	18,500	
Jan. 29, 1904.....	100.....	Bal.	18,400	
Feb. 1, 1904.....	1,900.....	Bal.	16,500	
Feb. 4, 1904.....	500.....	Bal.	16,000	
Feb. 6, 1904.....	500.....	Bal.	15,500	

EX. "B".

Transcript Jarvis Terminal Cold Storage Co. 40

Date,		Dr.	Cr.	Balance.
1904.				
Jan.	1, Bal.		\$47.52	\$47.52
	4,	8.30		39.22
	21,		2500.00	2539.22
	22,	1200.00		1339.22
	23,	507.97		831.25
	25,	718.01		113.24
10		14.50		98.74
	28, Int.		.11	98.85
	29, Ctf.	586.24		487.39 over-
Feb.	1,	145.00		632.39 draft.
	2,	1000.00		1632.39 "
	3,	1000.00		2632.39 "
	8,	2168.18		4800.57 "
			168.18	4632.39 "
	29,	17.58		4649.97 "
Mch.	29,	22.68		4672.65 "
20				

EX. "C."

FOR VALUE RECEIVED, Jarvis Terminal Cold Storage Company hereby assigns and transfers to United States Mortgage and Trust Company, all its right, title and interest in and to a certain subscription agreement to the stock of Jarvis Terminal Cold Storage Company, dated November 2nd, 1903, and all its right to demand and receive from the several subscribers thereto to the amount of their subscriptions.

Jarvis Terminal Cold Storage Company further authorizes and empowers the United States Mortgage and Trust Company to demand and receive from The Commercial Trust Company of New Jersey two hundred shares of the capital stock of said Jarvis Terminal Cold Storage Company, said stock to be distributed to the subscribers to said subscription

agreement aforesaid in the amounts called for by said subscriptions respectively.

Jarvis Terminal Cold Storage Company further assigns to United States Mortgage and Trust Company the certificate numbered 23 for fifty shares of the Jarvis Terminal Cold Storage Company stock, full paid and non-assessable.

This assignment is made as collateral security for a certain note of Jarvis Terminal Cold Storage Company for Twenty thousand dollars (\$20,000) to United States Mortgage and Trust Company, dated November 10th, 1903, payable ninety days from date.

The subscription agreement has been signed by subscribers to the extent of One hundred and fifty shares. It is understood that if Jarvis Terminal Cold Storage Company shall procure subscriptions for fifty additional shares signed by persons acceptable to the United States Mortgage and Trust Company, then and in that event the aforesaid certificate for fifty shares of Jarvis Terminal Cold Storage Company stock shall be returned to the Jarvis Terminal Cold Storage Company, and the Jarvis Terminal Cold Storage Company agrees to assign and transfer to United States Mortgage and Trust Company in lieu thereof all its right, title and interest in and to such additional subscriptions

Dated Nov. 10th 1903.

(Signed) R. M. Jarvis,

Pres. 30

Jarvis Terminal Cold Storage Co.,

R. M. Jarvis, Jr.,

Treas.

(Seal)

CONCLUSIONS.

The main case was a proceeding under the Corporation Act to have the defendant corporation de- 40

clared insolvent, and to have an injunrtion issued against it and a receiver appointed for it.

The result of this suit was, among other things, the appointment of receivers on the twenty-eighth day of March, 1904.

The property of the defendant corporation was encumbered by mortgage and other liens, and was, by order of this Court, dated May 23, 1904, ordered
10 to be sold by the receivers free and clear of all liens.

It was so sold, and by an order dated October 17, 1904 it was ascertained and ordered that the net amount remaining in the hands of the receivers, namely, \$7,668.28, should be paid into this Court, subject to the same liens and equities as before the sale.

On the fifth of December, 1904, Nathalie Jarvis filed her petition in this cause, praying that she might receive a portion of this money, and to that petition
20 answers and cross petitions have been filed by the Commercial Trust Company, of New Jersey, the trustee under one of the mortgages, by John Alvin Young and Richard Irvin; by the Union Terminal Cold Storage Company, and by the Erie Railroad Company.

The case was heard upon the pleadings and proofs taken in open Court.

30 Grey, McDermott & Enright (with whom was Benjamin F. Tuska of the New York Bar) for Nathalie Jarvis:

William Brinkerhoff, Esq., and Willard C. Fisk, Esq., for Commercial Trust Company of New Jersey;

Pierre F. Cook, Esq., (with whom was Alfred A. Wheat, Esq., of the New York Bar) for John Alvin Young and Richard Irvin and Union Terminal Cold Storage Company:

40 Collins & Corbin, for Erie Railroad Company.

GARRISON, V. C.

It will be necessary to state facts before it can be made to appear what the issues are and what conclusion is reached respecting them.

The Jarvis Terminal Cold Storage Company was a corporation of this State organized on the second day of October, 1902.

10

It was promoted by Robert M. Jarvis. Prior to its incorporation he held an option upon land owned by Nathalie Jarvis, who was the widow of the nephew of Robert M. Jarvis. This option provided that he might purchase the property for \$22,500. After the incorporation of the Company it took over this option and paid eight thousand dollars in cash and gave a purchase money mortgage to Nathalie Jarvis for fourteen thousand dollars dated December 1, 1902, due December 1, 1903. It does not appear what²⁰ became of the difference between this cash payment plus the mortgage and the \$22,500, agreed to be paid.

All of Mrs. Jarvis's business, with this company at least, was transacted by a New York stockbroker named Samuel M. Schafer.

Almost immediately after the conveyance and mortgaging of this property, as above described, the company expressed its desire to have the property freed from the lien of her mortgage so that a trust mortgage might be placed upon this property to include the real estate of which it then consisted and the large storage plant to be erected thereon; this trust mortgage to be for \$150,000.³⁰

In pursuance of this purpose Robert M. Jarvis on behalf of the Company negotiated with Mr. Schafer, who acted for Mrs. Nathalie Jarvis. Mr. Schafer's testimony is that in these negotiations, which were held in January of 1903, he reached an agreement with Mr. Jarvis by which Schafer agreed that he⁴⁰

would release or satisfy the mortgage held by Mrs. Jarvis upon the real estate for fourteen thousand dollars, of which seven thousand dollars was to be paid in cash, and the other seven thousand dollars was to be represented by a note of the Company at sixty days, secured by seven thousand dollars of the bonds out of the contemplated issue of one hundred and fifty thousand dollars of bonds to be secured by the trust mortgage before mentioned.

While the others parties to this proceeding seek to cast doubt upon this version of the agreement, there does not appear to be any good reason for refusing to believe the only testimony that there is in the case concerning it.

The bargain, as stated above, was testified to by Samuel M. Schafer, and is to some extent corroborated by his son's testimony and by letters of Robert M. Jarvis written to Mr. Schafer after the date of the negotiations, the contents of which letters concern the terms of the negotiation.

This testimony was all given upon the first day of the trial of this suit and while Mr. Robert M. Jarvis was in the court room. Subsequently Mr. Jarvis was sworn, was examined at length, left the stand, and, after other witnesses had been sworn, was recalled to the stand and examined again.

The court, upon Mr. Jarvis requesting leave to depart, stated that he should remain because it had been suggested by other counsel that they desired to call him.

After this and at the afternoon session Mr. Jarvis returned and was again put upon the stand and examined.

At the close of the first day's session counsel announced that all testimony was in excepting that of an officer of the United States Mortgage and Trust Company, whose testimony they desired to take the next morning, and this was agreed to.

The next morning this officer was produced and sworn and after his testimony had been given, counsel for the Erie Railroad Company desired again to examine Mr. Jarvis, this time concerning the dealings with Mr. Schafer. At that time the petitioner had none of his witnesses present, and it seemed then, and seems now, to the Court that it would have been unjust and improper to permit Mr. Jarvis to testify then after the close of the case and in the absence of those whom the petitioner had had present to testify concerning this subject-matter. And this was especially so because the Erie Railroad Company had produced Mr. Jarvis as its own witness on the preceding day and had examined him. So that it is the fact that the testimony of Schafer and his son is uncontradicted. 10

These negotiations, which took place, as has been before stated, in January of 1903, culminated in the sending by Schafer to Mrs. Jarvis, who had gone to Europe, of a satisfaction piece of the mortgage, to be executed by her, and, upon the return of that instrument, his delivering the same to Mr. Jarvis. 20

There is no clear testimony as to when this delivery took place. It was either before the 19th day of February, 1903, or on that date.

On that date Mr. Jarvis delivered to Mr. Schafer for Mrs. Jarvis, a note of seven thousand dollars, executed in the name of the company by Jarvis and his son, the President and Treasurer of the Company, payable in sixty days, and seventy shares of the capital stock of the Company. The note recites that these seventy shares are deposited as collateral with it. 30

Mr. Schafer testifies that Mr. Jarvis explained to him that the bonds of the company were not yet available, and hence he could not deliver them as agreed, and that he delivered the stock as a temporary collateral. 40

This note was renewed as it became due from time to time through seven renewals. These renewals took place at intervals of sixty days up to August 19th, 1903, and thereafter at intervals of thirty days, the last renewal note being dated November 23rd, 1903.

No other collateral was ever substituted for the stock. And on the 8th day of June, 1904, there was
 10 filed with the receivers a claim on behalf of Mrs. Jarvis, sworn to by her, setting forth her claim. She states therein that "Relying upon these representations, I consented to discharge said mortgage and
 "to satisfy same of record, and to take in lieu thereof of the sum of seven thousand dollars cash and a
 "note of seven dollars, dated February 19, 1903,
 "payable in sixty days, and bearing interest at the
 "rate of five per cent. per annum, with seventy shares
 "of the stock of defendant as collateral, which note
 20 "given with the said collateral I still hold, and no
 "part of said note has been paid."

She thereon claimed to be preferred upon the ground that the representations were false, and that she was entitled to be paid before any other creditors excepting the bondholders whose claims she admitted to the amount actually paid by them for their bonds.

As this claim was filed out of time, application was made to this court and by order, dated July 18, 1904,
 30 leave was given to her to file the claim as if within time.

The trust mortgage, of which mention has been made, was dated the Second day of February, 1903, and was made by the Jarvis Company to the Commercial Trust Company as trustee, was for the amount of one hundred and fifty thousand dollars, securing one hundred and fifty bonds of a thousand dollars each, was proved on February 20, 1903, and was recorded on the 21st day of February, 1903, at
 40 11:59 A.M.

At exactly the same time and date there was also recorded the satisfaction piece executed by Nathalie Jarvis as aforesaid which was dated February 5th, 1903.

Under the provisions of the Trust mortgage \$125,000 of bonds, or 125 bonds, were to be executed, certified by the Trustee, and delivered to the company for the purpose of building the plant. This was done, and these bonds, as appears from the 10 proofs, were taken by persons who had subscribed to them even before their authorization, and who paid for them at the rate of eighty-eight cents on the dollar:

Under this mortgage the remaining 25 bonds could be used by the company for additions and extensions, and provision is made for a certain certificate to be executed by the company and sworn to and delivered to the Trustee, who must then certify the 20 bonds.

This was done about the twenty second day of December, 1903, and these additional 25 Bonds were issued and delivered to the Company.

On the Sixteenth of December, 1903, as a result of negotiations carried on between Mr. Jarvis for the company and representatives of the Erie Railroad Company, a mortgage was executed by the Jarvis Company to the Erie Railroad Company for \$16,500. This mortgage is made expressly subject to the trust mortgage of one hundred and fifty thousand 30 dollars, whether all the bonds were at that time issued or not.

It appears that there were unsatisfied obligations of the Jarvis Company arising out of its building and equipping its plant; that money was needed to pay these, and that it was computed how much would be required to pay the existing bills of this nature, and after it was ascertained that \$16,500 was the amount required for this purpose the Erie Railroad Company agreed to advance the money to pay these 40

bills provided it was secured by the mortgage in question.

The twenty-five thousand dollars of bonds issued under the addition and extension clause as above described, were taken by Mr. Jarvis to the United States Mortgage and Trust Company of New York for the purpose, Mr. Jarvis says, of having that company either sell the same, buy them or make a loan upon them.

At that time the relations between the Jarvis Company and the Trust Company were these: The Trust Company had advanced, on November 10th, and November 20th, 1903, to the Jarvis company, in the sums of ten thousand dollars each, a total of twenty thousand dollars. For this it had received a note of the Jarvis Company for Twenty thousand dollars, dated November 10th, 1903, secured by the subscription agreement of those who had agreed to

All told, the United States Mortgage and Trust Company had received from the subscribers to stock the sum of forty-five hundred dollars, leaving fifteen thousand five hundred dollars still due upon this note.

At the United State Mortgage and Trust Company, on the date in question, when Mr. Jarvis went there with the twenty-five bonds as aforesaid, he saw Mr. Cumming, the Vice-President of the Company, Mr. Jarvis testifies that he stated to Mr. Cumming the object of his visit, and produced the bonds, and that Mr. Cumming said that he would submit the matter to his committee and let Mr. Jarvis know what the result was.

Subsequently Mr. Jarvis and Mr. Cumming met, and Mr. Cumming informed Mr. Jarvis that since Mr. Jarvis had sent to the Trust Company and gotten the subscription agreement (it appears for the purpose of having additional names subscribed) and had not returned it, that the Trust Company

would keep the bonds as additional security to the loan.

Jarvis protested, but the company retained the bonds.

Some time after this, by agreement between Jarvis and the Trust Company, the latter surrendered five of these bonds to the Crane Company, a creditor of the Jarvis Company, which first-named company took them as collateral for its debt, and afterwards sold the same at auction, after notice, and realized some twenty-five hundred dollars thereon. 10

Subsequently the Executive Committee of the Jarvis Company—which committee consisted of Mr. Case, Mr. Bumsted and Mr. Jarvis—went to the office of the United States Mortgage and Trust Company and discussed the matter with Mr. Cumming. They protested against the right of the Trust Company to retain these bonds as additional security, and Mr. Case testifies that they agreed with the Trust Company to put up twelve thousand five hundred dollars of their stock with the Trust Company if that company would, in addition to what it had already advanced, advance sufficient money to enable the Jarvis Company to pay its interest on the one hundred and twenty-five thousand dollars of bonds. The trust company did so advance the money, and it was used to pay the interest due February 1st, 1904. 20

The total amount of overdraft, including the money used to pay this interest was in the neighborhood of \$4,600. 30

I think it clear that the net result of the various happenings with respect to these bonds was that it was understood and agreed that the Trust Company might keep the same as additional collateral to the existing indebtedness if it would advance the additional money needed for coupon interest. This it did, as heretofore stated.

The mortgage company retained the bonds down 40

to the time that Young and Irvin acquired the same from it.

On the 28th of March, 1904, the proceedings in insolvency in this suit were commenced.

In May of that year the receivers reported to the Court and requested leave to sell the property, and on the 23rd of May, 1904, an order was made for the sale of the property free and clear of the liens. The 10 liens, as at that time appeared were the \$150,000 trust mortgage, the \$16,500 Erie Railroad mortgage, and nine mechanics liens, which had been filed against the property aggregating \$45,000.

In this order of May 23rd, there was a minimum limit placed upon the property of \$190,000.

At the sale no bid arising to the minimum limit being made, the receivers reported that fact to the court, and, on the 20th of June, 1904, the receivers were ordered to sell as aforesaid without restriction 20 as to price.

It was provided in the order of June 20, 1904, that the purchaser must agree to pay of the purchase price at least \$25,000 in cash, and that he might secure the payment of the balance by depositing with the receivers bonds and mechanics liens to the amount stated in that order.

On the 26th of June, 1904, the sale was had, and the property was purchased by Daniel E. Cleary, Charles E. Cassidy and Gustav W. Lembeck, a com- 30 mittee of the bondholders, for \$135,000. This sale was confirmed by an order dated July 5, 1904.

On the 26th of July, 1904, the purchasers deposited with the receivers \$75,000 in bonds, and enough cash, together with that which they had already paid, to make \$25,000 in cash.

On the 26th of August, 1904, John Alvin Young and Richard Irvin made an agreement with Cleary, Cassidy and Lembeck by which it was agreed that they should pay down ten thousand dollars—should 40 thereafter pay \$16,989.33 in cash and any excess of

expenditures over receipts in the current running of the business, and also accrued interest on the bonds from February 1904, to September 1, 1904, and give in exchange, bond for bond, new bonds in the new company called the Union Terminal Cold Storage Company.

For this consideration the purchasers at the sale assigned their bid and the bonds deposited with the Committee and all their rights in the premises. 10

On the 13th of September, 1904, Young and Irvin petitioned this court that a deed from the receivers might be made to the Union Terminal Cold Storage Company.

On the 19th of September, 1904, an order was made, consented to by all counsel present, among whom was counsel for Mrs. Jarvis. In this order it is recited that Young and Irvin held all of the 150 bonds and had assignments of all of the mechanics' claims and liens aggregating \$45,000. and that such 20 bonds, liens, and claims were valid and prior liens at least to the extent of the unpaid part of the purchase money, namely, \$110,000 and might be turned in as such payment.

On the 8th of October, 1904 the final report of the receiver was filed and an order to show cause granted. In this report the amount due upon the 125 bonds sold for cash and the 5 pledged with the Crane Company is adjudicated and determined to be \$135,129.32. The receivers did not allow the claim 30 on the 20 bonds held by the United States Mortgage and Trust Company.

With respect to the claim of Nathalie Jarvis, they adjudicate it to be a general unpreferred claim. No appeal was taken by her from this determination of the receivers.

On the 17th of October, 1904, a hearing was had, at which counsel for Nathalie Jarvis was present, the final report was confirmed and certain payments were authorized to be made out of the moneys in 40

hand, and the balance ordered paid into Court. It was ordered that nothing in the receivers' report or in this order should be deemed to be an adjudication or determination of the rights of the Commercial Trust Company, Trustee, Young, Irvin, The Erie Railroad Company and Nathalie Jarvis in the balance, but that they have leave to apply by petition or otherwise to determine their rights in said fund.

1c It was not until after this and on December 5, 1904, in her petition with respect to the fund, that Mrs. Jarvis ever disclosed her claim to be a bondholder or to be considered as a bondholder.

The net amount deposited by the receivers under this order was, as has been before stated, \$7,668.28.

Nathalie Jarvis claims that by reason of the negotiations between her agent, Schafer, and Jarvis an agreement was reached that she should have, as collateral security for the seven thousand dollars
20 unpaid to her, seven of the bonds of this one hundred and fifty thousand dollar issue; and that she is therefore entitled now to be considered as having seven of such bonds and to receive the pro rata distribution thereon.

The Erie Railroad Company, the holder of the second mortgage, can only succeed in its claim by diminishing the amount to be paid to the bondholders of the first mortgage.

The Union Terminal Cold Storage Company and
30 Young and Irvin claim that they hold the whole one hundred and fifty thousand dollars of these bonds, and also hold the mechanics' liens and claims, and that the money in court is insufficient to meet the prior lien of the bonds, even if only 130 thereof are adjudged to be issued and outstanding. They therefore insist that Mrs. Jarvis, in view of the circumstances is estopped now to claim, as against them, any rights as a bondholder.

There is no occasion for the citation of any author-
40 ities since the only principle involved is the thor-

oughly settled one of estoppel, and the sole question is whether the facts call for the application of that principle.

I find that with respect to Mrs. Jarvis, that whatever may be the proper determination with regard to her claim that she was promised seven of the bonds,— and even assuming that she might, by acting promptly, have compelled the Company to issue the same to her,—she is now estopped, as against 10 the parties herein, to claim to be a bondholder to the extent of seven bonds, or to be treated as if she was such holder.

My reasons for this, briefly stated, are that the bargain,—assuming it to be as she now insists it was,—was made in February of 1903, and there is no pretense on her part that it was disclosed or stated or insisted upon by her until she filed the petition herein on the 5th of December, 1904. During that time, as has been stated more in detail above, the 20 new issue of one hundred and fifty bonds was made, one hundred and twenty-five of such bonds were sold to subscribers, five of such bonds were placed with the Crane Company, and twenty with the United States Mortgage and Trust Company. These parties either had an absolute right to hold these bonds as collateral security for past advances or for future advances, or in any event, were so situated with respect to them that they could and did retain possession of the bonds until they were satisfied in some 30 way and were by some consideration induced to relinquish them. Mechanics liens, aggregating forty-five thousand dollars, were filed against the real estate, and, either for their face value or for little less than their face value, have been paid for and acquired by other parties.

The Erie Railroad Company advanced its money during this period.

The persons who bid at the sale and the re-organizers who purchased their bid and took their 40

place, had each the right in any view, to be bound only by that which an examination of the proceedings would show.

Such an examination would show nothing with respect to the claim of Nathalie Jarvis to bonds. Her filed claim, dated June 6, 1903, stated the bargain—that she was to have stock and took that as collateral for the money owed her by the Company.

- 10 I think that the parties in interest had a right to rest secure, with respect to the existing encumbrances, upon any one of various hypotheses, all of which were exclusive of Mrs. Jarvis as a bondholder.

They had a right either to assume that the only bondholders were those who held the one hundred and twenty-five thousand dollars of bonds first issued, or those, plus the five thousand pledged to the Crane Company; or those, plus the twenty thousand lodged with the United States Mortgage and Trust Com-
20 pany.

Since they advanced their money and irrevocably changed their position by purchasing all of these bonds, and by paying the mechanics liens, and by getting rid of the obligations with the United States Mortgage and Trust Company and with Crane & Co., I can see no equitable view which entitles Mrs. Jarvis after nearly two years of silence, to claim now that she was a bondholder or was entitled to be treated as such.

- 30 With Mrs. Jarvis's claim out of the way, there is no necessity for a specific holding as to the other parties. Because I find that the surplus in court is not sufficient to pay to Irvin and Young or the Union Terminal Cold Storage Company, whichever now owns the same, the prior liens due them.

The Erie Railroad Company can take nothing because the prior liens to it will not be paid in full, and there is therefore nothing to which its lien attaches.

Hence, I find that the sum in court is payable to
40 the Union Terminal Cold Storage Company, or to

Young and Irvin, and that the other parties are without claim thereto, excepting the Commercial Trust Company. That Company is entitled to be paid certain sums out of the fund as follows:

\$814.25, the aggregate of insurance premium, paid by it as Trustee, on the mortgaged premises, with interest from the date of payment.

\$300 compensation for acting as trustee under the mortgage, in accordance with provision thereof allowing compensation;

\$150 for certification of bonds, which is a prior lien under the mortgage.

\$200 for counsel fee paid by the Trust Company to its counsel, and made a prior lien in accordance with the terms of the mortgage.

I will advise a decree in accordance with these conclusions.

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FINAL DECREE ADJUDICATING LIENS.

This matter coming on to be heard on the petition of Nathalie Jarvis, the answer and cross petition of John Alvin Young and Richard Irvin, the answer and cross petition of Commercial Trust Company of New Jersey, Trustee, the answer of Union Terminal Cold Storage Company and the answer of the Erie Railroad Company, in the presence of Grey, McDermott and Enright, of counsel with the petitioner Nathalie Jarvis; Pierre F. Cook, of counsel with John Alvin Young and Richard Irvin and Union Terminal Cold Storage Company; William Brinkerhoff, of counsel with Commercial Trust Company of New Jersey, Trustee, and Collins and Corbin of counsel with Erie Railroad Company, and upon reading the pleadings and upon taking proofs offered by the respective parties, whereby it appears that John W. Hardenbergh and Palmer Campbell, late receivers of the defendant corporation, heretofore by order

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of the court in this cause, dated May twenty-third, nineteen hundred and four, and subsequent orders supplemental thereto, sold the lands of the defendant Company, situated on Provost, Twelfth and Thirteenth streets, Jersey City, New Jersey, and the Cold storage plant thereon erected, including machinery and fixtures and trackage rights in adjacent streets clear of all mortgages, mechanics and other
 10 liens on said property, which sale was thereafter and by order of this court, dated July fifth, nineteen hundred and four, confirmed; and that by further order herein, dated October seventeenth, nineteen hundred and four, the final accounts of the said receivers were approved and allowed, and the said receivers were ordered, after making the several payments in the said order ordered to be made, to pay to the Clerk of this Court the balance of moneys then remaining in their hands there to remain subject to
 20 the further order of the court, and that said receivers thereafter and on the twenty-seventh day of October, nineteen hundred and four, did pay to the Clerk of this court such balance of moneys so remaining in their hands, amounting to seventy-six hundred and sixty-eight dollars and twenty-eight cents; and it further appearing that the defendant corporation executed and delivered to Commercial Trust Company of New Jersey as Trustee, an indenture of mortgage, dated February second, nine-
 30 teen hundred and three, recorded in the Hudson County Register's office February twenty-first, nineteen hundred and three in Book 486 of Real Estate Mortgages, page 391, and in Book 207 of Chattel Mortgages, page 416, to secure an issue of corporate bonds in the aggregate amount of one hundred and fifty thousand dollars, with interest thereon at the rate of six per centum per annum, payable February and August first in each year which mortgage was a lien upon the lands, premises and property of the defendant corporation, sold by the receivers by
 40 order of the court as hereinbefore recited, and that

the defendant corporation executed and delivered to the Erie Railroad Company an indenture of mortgage, dated December sixteenth, nineteen hundred and three, recorded in the Hudson County Register's office December eighteenth, nineteen hundred and three in Book 504 of Mortgages, page 633, to secure the payment of sixteen thousand five hundred dollars in one year from its date, with interest at the rate of five per centum per annum, payable semi-¹⁰ annually, which mortgage was a lien upon the lands and real estate of the defendant corporation sold by the receivers by order of the court as hereinbefore recited; and it further appearing that Commercial Trust Company of New Jersey, Trustee under the aforesaid mortgage has advanced and paid certain moneys for fire insurance premiums on the building erected on the mortgaged premises and has rendered certain services, and has employed counsel to represent it under said mortgage, for which it claims re-²⁰ imbursement and compensation; and the court having considered the said pleadings, proofs and the arguments of the respective counsel:—

It is thereupon on this seventh day of June, nineteen hundred and five, by his Honor, William J. Magie, Chancellor of the State of New Jersey, and on the motion of William Brinkerhoff, of counsel with Commercial Trust Company of New Jersey, Trustee, ORDERED, ADJUDGED AND DECREED:—³⁰

FIRST. That the petitioner, Nathalie Jarvis, has no claim or lien upon the aforesaid fund now remaining on deposit with the Clerk of this court, and that the petition of the said Nathalie Jarvis be dismissed and the relief prayed for therein be denied.

SECOND. That the cross petitioner, the Erie Railroad Company, has no claim or lien upon the aforesaid fund now remaining on deposit with the Clerk of this court, because the prior liens thereon will not be paid in full.⁴⁰

THIRD. That the cross petitioner, the Commercial Trust Company of New Jersey, as Trustee, under the mortgage of Jarvis Terminal Cold Storage Company, dated February second, nineteen hundred and three, has a first and prior lien upon the aforesaid fund now remaining on deposit with the Clerk of this court.

That said Commercial Trust Company of New Jersey is entitled to receive and retain to its own use out of said fund so to be paid to it the following sums:—

The sum of eight hundred and fourteen dollars and twenty-five cents, together with interest thereon from March seventeenth, nineteen hundred and four to date of payment, being the amount of money advanced and paid by it as Trustee for premiums on fire insurance policies on the mortgaged premises.

The sum of three hundred dollars as compensation for acting as Trustee under the trust mortgage, in accordance with the provisions thereof allowing compensation.

The sum of one hundred and fifty dollars for certifying bonds issued under the trust mortgage, which sum is a prior lien under the mortgage.

The sum of two hundred dollars for counsel fee paid to William Brinkerhoff for legal services rendered to the Trustee and made a prior lien under the trust mortgage.

30 That after payment to it of the sums of money aforesaid, the cross petitioners, John Alvin Young and Richard Irvin, or the Union Terminal Cold Storage Company, or their or its assignees are entitled to receive from the Commercial Trust Company of New Jersey, Trustee, the balance of the deposited fund to be received by it.

FOURTH. That the Clerk of this Court, after deducting the commissions allowed to him upon the said sum of seventy-six hundred and sixty-eight dollars and twenty-eight cents now on deposit with him

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in this cause, do pay the remainder thereof to Commercial Trust Company of New Jersey, Trustee, under the mortgage of Jarvis Terminal Cold Storage Company, dated February second, nineteen hundred and three, together with the accumulation on said deposit, according to the rules of this court.

FIFTH. That the parties to this proceeding each pay her or their costs.

Respectfully advised.

W. J. MAGIE, 10
C.

LINDLEY W. GARRISON
V. C.

NOTICE OF APPEAL

of

ERIE RAILROAD COMPANY. 20

The Erie Railroad Company hereby APPEALS to the Court of Errors and Appeals in the last resort in all causes from the final decree and from the whole and every part thereof made in this court in the above matter on the 7th day of June, Nineteen Hundred and Five, which ORDERS, ADJUDGES and DECREES that the Erie Railroad Company, the appellant, has no claim or lien upon the fund referred to in said decree on deposit with the Clerk of this Court because the prior liens thereon will not be paid in full; and that the petitioner, the Commercial Trust Company of New Jersey, as Trustee under the mortgage of Jarvis Terminal Cold Storage Company, dated February Second, Nineteen Hundred and Three, has a first and prior lien upon the said fund and that the said Commercial Trust Company of New Jersey is entitled to receive and retain to its own use out of said fund the following sums:— 30

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The sum of eight hundred and fourteen dollars and twenty-five cents, together with interest thereon from March seventeenth, Nineteen Hundred and Four, to date of payment, being the amount of money advanced and paid by it as Trustee for premiums on fire insurance policies on the mortgaged premises.

10 The sum of three hundred dollars as compensation for acting as Trustee under the trust mortgage, in accordance with the provisions thereof allowing compensation.

The sum of one hundred and fifty dollars for certifying bonds issued under the trust mortgage, which sum is a prior lien under the mortgage.

The sum of two hundred dollars for counsel fee paid William Brinkerhoff for legal services rendered to the Trustee and made a prior lien under the trust mortgage; and that after payment of the sums of
20 money aforesaid, the petitioners, John Alvin Young and Richard Young, or the Union Terminal Cold Storage Company or their or its assignees, are entitled to receive from the Commercial Trust Company of New Jersey, Trustee, the balance of the deposited fund to be received by it; and that the Clerk of this Court after deducting the commissions allowed to him upon the said sum of Seven Thousand Six Hundred and Sixty-eight Dollars and Twenty-eight cents (\$7668.28) now on deposit with him do
30 pay the remainder thereof to said Commercial Trust Company of New Jersey, Trustee under the said mortgage, together with the accumulation on said deposit.

Dated, June 9, 1905.

Collins & Corbin,
Solicitors of Erie Railroad Company
Appellant.
Geo. S. Hobart,
of Counsel.

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

Geo. S. Hobart,
Of Counsel with Erie Railroad Company,

NOTICE OF APPEAL

of

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NATHALIE JARVIS.

IN CHANCERY OF NEW JERSEY.

_____	o		
Between	)		
	)		
GUSTAV W. LEMBECK,	)	On Bill, &c.	20
	)		
Complainant,	)	On Petition and	
	)		
and	)	Cross-Petitions.	
	)		
JARVIS TERMINAL COLD	)	NOTICE OF	
	)		
STORAGE COMPANY,	)	APPEAL.	
	)		
Defendant.	)		
_____	o		30

Nathalie Jarvis hereby appeals from so much of the final decree made in this Court in the above-stated cause on the seventh day of June, nineteen hundred and five, as orders, adjudges and decrees—

That the petitioner, Nathalie Jarvis, has no claim or lien upon the fund now remaining on deposit with the Clerk of this Court, representing the balance of moneys remaining in the hands of John W. Hardenbergh and Palmer Campbell, Receivers of the defend- 40

ant corporation, paid to the clerk of this Court under an order made in said cause bearing date the seventeenth day of October, nineteen hundred and four, and that the petition of the said Nathalie Jarvis be dismissed and the relief prayed for therein be denied;

That the cross-petitioner, the Commercial Trust Company of New Jersey as Trustee, under the mortgage of Jarvis Terminal Cold Storage Company, dated February second, nineteen hundred and three, has a first and prior lien upon the aforesaid fund now remaining on deposit with the Clerk of this Court;

That after payment to said Commercial Trust Company of New Jersey of certain sums of money the cross-petitioners John Alvin Young and Richard Irvin or the Union Terminal Cold Storage Company, or their or its assignees, are entitled to receive from the Commercial Trust Company of New Jersey, Trustee, the balance of the deposited fund to be received by it;

That the Clerk of this Court, after deducting the commissions allowed to him upon the said sum of seventy-six hundred and sixty-eight dollars and twenty-eight cents now on deposit with him in this cause, do pay the remainder thereof to Commercial Trust Company of New Jersey, Trustee, under the Mortgage of Jarvis Terminal Cold Storage Company, dated February second, nineteen hundred and three, together with the accumulation on said deposit according to the rules of this Court;

To the Court of Errors and Appeals in the last resort in all causes.

Dated June 10, 1905.

Grey, McDermott & Enright,
Solicitors of Nathalie Jarvis.

I conceive there is good cause for appeal by Nathalie Jarvis in the above-stated cause.

John M. Enright,
Of Counsel with Nathalie Jarvis.

PETITION OF APPEAL

10

OF

ERIE RAILROAD COMPANY.

To The Honorable,
The Court of Errors and Appeals, in the Last
Resort in all Causes.

Your Petitioner, Erie Railroad Company, the ap- 20
pellant herein, respectfully shows:—

That your petitioner finds itself aggrieved by a final decree made in the Court of Chancery, by His Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the seventh day of June, nineteen hundred and five, wherein the said Gustav W. Lembeck was complainant and the said Jarvis Terminal Cold Storage Company was defendant, and wherein your petitioner, Erie Railroad Com- 30
pany, was an interested party in this respect, to wit: that the said decree adjudges that your petitioner, the Erie Railroad Company has no claim or lien upon the fund referred to in said decree on deposit with the Clerk of the Court of Chancery, because the prior liens thereon will not be paid in full; and that the Commercial Trust Company of New Jersey, as trustee, under the mortgage of the Jarvis Terminal Cold Storage Company, dated February second, nineteen hundred and three, has a first and prior lien upon the said fund, and that the said Commercial 40

Trust Company of New Jersey is entitled to receive and retain to its own use out of said fund the following sums, to wit:

The sum of eight hundred and fourteen dollars and twenty-five cents, together with interest thereon from March seventeenth, nineteen hundred and four, to date of payment, being the amount of money advanced and paid by it as trustee for premiums on fire ¹⁰ insurance policies on the mortgaged premises.

The sum of three hundred dollars as compensation for acting as trustee under the trust mortgage, in accordance with the provisions thereof, allowing compensation.

The sum of one hundred and fifty dollars for certifying bonds issued under the trust mortgage, which sum is a prior lien under the mortgage.

The sum of two hundred dollars for counsel fee paid to William Brinkerhoff, for legal services rendered to the trustee and made a prior lien under the ²⁰ trust mortgage.

And that after payment of the sums of money aforesaid, the petitioners, John Alvin Young and Richard Young or the Union Terminal Cold Storage Company, or their or its assignees are entitled to receive from the Commercial Trust Company of New Jersey, trustee, the balance of the deposited fund to be received by it; and that the Clerk of the Court of Chancery, after deducting the commission allowed to ³⁰ him upon said sum of seven thousand six hundred and sixty-eight dollars and twenty-eight cents (\$7,668.28) now on deposit with him, do pay the remainder thereof to said Commercial Trust Company of New Jersey, trustee under the said mortgage, together with the accumulation on said deposit.

Your petitioner humbly appeals from that part of said decree which decrees as aforesaid upon the ground that the same is erroneous for that the said Chancellor should have adjudged that your ⁴⁰ petitioner the Erie Railroad Company has a first and

prior lien upon the said fund on deposit with the Clerk of the Court of Chancery and that the said Commercial Trust Company of New Jersey as trustee, has no lien upon the said fund prior to the lien of your petitioner, and that the said Commercial Trust Company is not entitled to receive and retain to its own use the aforesaid sums of money, and that the said Clerk of the Court of Chancery, after deducting the commissions allowed by law, do pay to your petitioner, the Erie Railroad Company, the said sum of money on deposit, to wit, the sum of seven thousand six hundred and sixty-eight dollars and twenty-eight cents (\$7,668.28), together with the accumulation thereon. 10

Your petitioner therefore prays that the decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet. 20

COLLINS & CORBIN,

Solicitors and Counsel of Erie
Railroad Company Appellant.

(Formal answer filed.)

PETITION OF APPEAL

30

OF

NATHALIE JARVIS.

To the Honorable,

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

The petition of Nathalie Jarvis, the Appellant in the above cause, respectfully shows: 40

That your petitioner finds herself aggrieved by the final decree made in the Court of Chancery by His Honor William J. Magie, Chancellor of the State of New Jersey, bearing date the seventh day of June, nineteen hundred and five, wherein the said Gustav W. Lembeck was complainant and Jarvis Terminal Cold Storage Company was defendant, in this respect, to wit:

- 1c That the said decree orders, adjudges and decrees that the petitioner, Nathalie Jarvis, has no claim or lien upon the fund now remaining on deposit with the Clerk of said Court, representing the balance of moneys remaining in the hands of John W. Hardenbergh and Palmer Campbell, Receivers of the defendant corporation, paid to the Clerk of said Court under an order made in said cause bearing date the seventeenth day of October, nineteen hundred and four, and that the petition of the said Nathalie Jarvis be dismissed and the relief prayed for therein be denied.

That the cross-petitioner, the Commercial Trust Company of New Jersey, as Trustee, under the mortgage of Jarvis Terminal Cold Storage Company, dated February second, nineteen hundred and three, has a first and prior lien upon the aforesaid fund now remaining on deposit with the Clerk of said Court of Chancery.

- 30 That after payment to said Commercial Trust Company of New Jersey of certain sums of money, the cross-petitioners, John Alvin Young and Richard Irvin, or the Union Terminal Cold Storage Company, or their or its assignees, are entitled to receive from the Commercial Trust Company of New Jersey, Trustee, the balance of the deposited fund to be received by it.

That the Clerk of said Court, after deducting the commissions allowed to him upon the said sum of seventy-six hundred and sixty-eight dollars and
40 twenty-eight cents now on deposit with him in said

cause, do pay the remainder thereof to Commercial Trust Company of New Jersey, Trustee, under the mortgage of Jarvis Terminal Cold Storage Company, dated February second, nineteen hundred and three, together with the accumulation on said deposit, according to the rules of said Court.

And your petitioner humbly appeals from that part of the said decree which decrees as aforesaid, upon the ground that the same is erroneous, for that the 10 Chancellor should have decreed that your petitioner, Nathalie Jarvis, had a first and prior lien upon the aforesaid fund remaining on deposit with the Clerk in Chancery, as the holder of seven bonds secured by the above-mentioned mortgage, and that the relief prayed for in her petition should be granted, and that the Commercial Trust Company of New Jersey, as Trustee under the mortgage aforesaid, had not a first and prior lien upon the aforesaid fund, and should have decreed that the cross-petitioners, John 20 Alvin Young and Richard Irvin, or the Union Terminal Cold Storage Company, or their or its assignees, were not entitled to receive from the Commercial Trust Company of New Jersey, Trustee, the balance of the deposited fund to be received by it, and should have decreed that the Clerk of said Court of Chancery pay out of the said fund on deposit with him in said cause to your petitioner, the amount found due her as aforesaid, with her costs.

Your petitioner, therefore, prays that the said de- 30 cree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

GRAY, McDERMOTT & ENRIGHT,
Solicitors for and of Counsel with Appel-
lant, Nathalie Jarvis.

(Formal answer filed.)

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CONTENTS
ORIGINAL ARTICLES
The Problem of the
American Medical
Association
The
Medical
Profession
and
the
Public
The
Medical
Profession
and
the
Public
The
Medical
Profession
and
the
Public

DEPARTMENTS
The
Medical
Profession
and
the
Public
The
Medical
Profession
and
the
Public
The
Medical
Profession
and
the
Public

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and
the
Public
The
Medical
Profession
and
the
Public

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Profession
and
the
Public
The
Medical
Profession
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