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Amended Bill of Complaint.

(Filed June 12, 1926.)

In Chancery of New Jersey

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

The complainant, The Central Railroad Company of New Jersey, a corporation of the State of New Jersey, having its principal office for the transaction of business in the City of Jersey City, County of Hudson, and State of New Jersey, respectfully shows that:

I. Complainant is and was at all of the times hereinafter mentioned a corporation of the State of New Jersey and a common carrier by railroad of passengers and freight between the State of New Jersey and various other states, as well as between points within the State of New Jersey. Its line of railroad extends and at all of the times hereinafter mentioned extended through Freneau, New Jersey, at which point it maintains and maintained a freight station, at which station it, during all of the times hereinafter mentioned, held for delivery and made delivery of freight transported by it in its aforesaid capacity of common carrier, both in carload lots and less than carload lots.

II. The defendant Gallena-Poole, Inc., is a corporation duly organized and existing under the laws of the State of New Jersey, and is and was during all of the times hereinafter mentioned engaged in the contracting business, and particularly in the construction, alteration and repair of roads, streets and highways.

III. The defendant Jannarone Contracting Company is a corporation duly organized and ex-

isting under the laws of the State of New Jersey, and is and was during all of the times hereinafter mentioned engaged generally in the business of contracting, and also in the business of performing cement and concrete work and the renting and furnishing of appliances for the performance of such work.

IV. The defendant Stulz-Sickles Company is a corporation duly organized and existing under the laws of the State of New Jersey, and is and was during all of the times hereinafter mentioned engaged in the business generally of the sale of hardware, lumber, iron and steel.

V. The defendant T. J. M. Contracting Company is a corporation duly organized and existing under the laws of the State of New Jersey, and is and was during all of the times hereinafter mentioned engaged generally in the business of contracting, building, performance of concrete work and the furnishing of materials for concrete work.

VI. The defendant Arthur Stryker, trading as and under the name of the Stryker Transportation and Contracting Company, is and was during all of the times hereinafter mentioned engaged in the City of Trenton, County of Mercer and State of New Jersey, generally in the business of transportation and trucking, and the furnishing of trucks for hire.

VII. The defendant Archibald T. Golden is and was during all of the times hereinafter mentioned engaged in the Borough of Princeton, County of Mercer and State of New Jersey, generally in the business of making or manufacturing concrete and furnishing concrete.

VIII. The defendant Clifford W. Hulsart, doing business under the trade name of Bailey's Hardware, is and was during all of the times hereinafter mentioned carrying on a general hardware and lumber business at Matawan in the County of Monmouth and State of New Jersey.

IX. The defendant Robert Height is and was during all of the times hereinafter mentioned engaged generally in the business of carting and trucking at Freehold, in the County of Monmouth and State of New Jersey.

X. The defendant County of Monmouth is and was at all of the times hereinafter mentioned a municipality of the State of New Jersey, the county seat and the principal offices of said county being situate in the Borough of Freehold in said county.

XI. The defendant Bound Brook Crushed Stone Company is a corporation duly organized and existing under the laws of the State of New Jersey, and is and was during all of the times hereinafter mentioned, engaged generally at Bound Brook, in the county of Somerset and State of New Jersey, in the business of making, preparing, selling and dealing in crushed stone.

XII. The defendant F. R. Upton, Inc., is a corporation duly organized and existing under the laws of the State of New Jersey, and is and was during all of the times hereinafter mentioned engaged generally at Trenton, in the county of Mercer and State of New Jersey, in the business of making, preparing, selling and dealing in crushed stone.

XII. (A) The defendant Dunlop & Lisk Pottery Company is a corporation duly organized

and existing under the laws of the State of New Jersey, and is and was during all of the times hereinafter mentioned engaged generally at Matawan, in the county of Monmouth and State of New Jersey, in the business of selling at wholesale and retail, drain pipes, tiling, flower pots, pipes generally used and required for plumbing purposes, and pottery and clay products of a general nature.

XII. (B) The defendant John Moore is and was during all of the times hereinafter mentioned, so complainant is informed and believes, engaged at Matawan in the county of Monmouth and State of New Jersey, in the business of building, contracting, plumbing, and a performance of general labor.

XIII. On September 3, 1924, the said defendant Gallena-Poole, Inc. made and entered into a certain contract with the defendant County of Monmouth in the State of New Jersey, for the construction, alteration or repair by the said defendant Gallena-Poole, Inc. of a certain public road or highway situate in the County of Monmouth in the State of New Jersey, and commonly known as the Old Bridge-Matawan Road No. 66.

XIV. Thereafter, and in accordance with and under the terms, conditions and provisions of said contract, the said defendant Gallena-Poole, Inc. commenced and proceeded with the work of the construction, alteration or repair of said road or highway.

XV. Thereafter, to wit, in the months of September, October, November and December, 1924, and January, 1925, complainant performed for the said defendant Gallena-Poole, Inc., the contractor aforesaid, and by which complainant was

employed, labor which was actually performed in the execution and completion of the aforesaid contract for the construction, alteration or repair, as aforesaid, of the said road or highway.

XVI. The labor which was so performed by complainant consisted in transporting as a common carrier, over its line of railroads to its freight station at Freneau, New Jersey, during the months of October, November and December, 1924, at the rates fixed and provided for in its tariffs duly filed with the Interstate Commerce Commission and published in the manner prescribed by law, certain cars containing materials used by the said defendant Gallena-Poole, Inc. in the execution and completion of the aforesaid contract; and in holding for delivery in the months of September and December, 1924, and January, 1925, at or near its freight station at Freneau aforesaid, subject to demurrage charges in accordance with its tariffs duly filed with the Interstate Commerce Commission and published in the manner prescribed by law, certain cars containing materials used by the said defendant Gallena-Poole, Inc. in the execution and completion of the aforesaid contract, which materials had been transported by complainant over its line of railroad as a common carrier.

XVII. The lawful charges for the said transportation of said cars, under and by virtue of the aforementioned tariffs, amounted to the sum of One Thousand Nine Hundred Eighteen Dollars and Four Cents ($1,918.04).

XVIII. The lawful demurrage charges for the said detention of said cars, under and by virtue of the aforementioned demurrage tariffs,

amounted to the sum of Two Thousand Two Hundred Twenty-six Dollars ($2,226.00).

XIX. The said indebtedness of the said defendant Gallena-Poole, Inc. to the complainant, which indebtedness comprises the said transportation charges and the said demurrage charges, amounts to the total sum of Four Thousand One Hundred Forty-four Dollars and Four Cents ($4,144.04), and is a lien upon any and all moneys in the control of the said defendant County of Monmouth due or to grow due under the aforesaid contract, by virtue of the Act of the Legislature of the State of New Jersey, entitled "An Act to secure the payment of laborers, mechanics, merchants, traders and persons employed upon or furnishing materials toward the performing of any work in cities, towns, townships and other municipalities in this State" (Chapter 280, Laws of 1918).

XX. The whole work required by said contract to be performed by the defendant Gallena-Poole, Inc. for the said defendant County of Monmouth in connection with the construction, alteration or repair of said road or highway has not yet been accepted by resolution of the said defendant County of Monmouth.

XXI. Pursuant to the terms and provisions of the aforesaid statute, the complainant filed a written notice, duly verified by its Treasurer, of its claim of said lien for said amount of Four Thousand One Hundred Forty-four Dollars and Four Cents ($4,144.04) with the Treasurer of the said defendant County of Monmouth on July 25, 1925. On said date of July 25, 1925, it also filed a like notice of claim with the Clerk of the Board of Freeholders of the said defendant County of Mon-

mouth. On July 28, 1925, it filed a like notice of claim with the County Clerk of the said defendant County of Monmouth.

XXII. On June 1, 1925, the defendant Jannarone Contracting Company filed with the County Treasurer of the said defendant County of Monmouth a written notice of its claim of lien in the amount of Four Hundred Ninety-five Dollars ($495.00) upon the moneys due and to grow due under said contract, from the said defendant County of Monmouth to the said defendant Gallena-Poole, Inc.

XXIII. On said date of June 1, 1925, the defendant Arthur Stryker, trading as and under the name of the Stryker Transportation and Contracting Company, filed with said Treasurer of said defendant County of Monmouth a written notice of his claim of lien upon said moneys in the amount of Two Thousand Sixteen Dollars and Sixteen Cents ($2,016.16).

XXIV. On June 2, 1925, the defendant Archibald T. Golden filed with the County Treasurer of the defendant County of Monmouth a written notice of his claim upon said moneys in the amount of Eight Hundred Ninety-six Dollars and Nine Cents ($896.09).

XXV. On June 15, 1925, the defendant T. J. M. Contracting Company filed with said County Treasurer of said defendant County of Monmouth a written notice of its claim of lien upon said moneys in the amount of One Hundred Seventy-five Dollars ($175.00).

XXVI. On July 27, 1925, the defendant Robert Height filed with said County Treasurer of said defendant County of Monmouth a written notice

of his claim upon said moneys in the amount of Thirty-five Dollars ($35.00).

XXVII. On August 25, 1925, the defendant Stulz-Sickles Company filed with said County Treasurer of said defendant County of Monmouth a written notice of its claim of lien upon said moneys in the amount of One Thousand One Hundred Forty-one Dollars and Sixty-five Cents ($1,141.65).

XXVIII. On July 1, 1925, the defendant Clifford W. Hulsart, doing business under the trade name of Bailey's Hardware, filed with said County Treasurer a written notice of his claim of lien upon said moneys in the amount of Twenty-nine Dollars and Fifty-three Cents ($29.53).

XXIX. On September 21, 1925, defendant Bound Brook Crushed Stone Company filed with said County Treasurer a written notice of its claim of lien upon said moneys in the amount of Two Thousand Two Hundred Eighty Dollars ($2,280.00).

XXX. On September 21, 1925, the defendant F. R. Upton, Inc. filed with said County Treasurer a written notice of its claim of lien upon said moneys in the amount of One Hundred Sixteen Dollars and Thirty-three Cents ($116.33).

XXX. (A) On or about June 30, 1925, the defendant Dunlop & Lisk Pottery Company filed with said County Treasurer or said Board of Chosen Freeholders of said County of Monmouth a written notice of its claim of lien upon said moneys in the amount of Sixty-three Dollars and Seventy Cents ($63.70).

XXX. (B) On or about June 22, 1925, the defendant John Moore filed with said County Treasurer or with the Board of Chosen Freeholders of the County of Monmouth, his claim of lien upon said moneys in the amount of One Hundred Sixty-two Dollars and Fifty-six Cents ($162.56).

XXXI. Complainant is informed and believes that there are due and will grow due under said contract between the said defendant County of Monmouth and the said defendant Gallena-Poole, Inc. moneys sufficient for the payment in full of the aforementioned lien of the complainant.

Complainant is without adequate remedy at law, and therefore prays:

1. That Gallena-Poole, Inc.; Jannarone Contracting Company; Stulz-Sickles Company; T. J. M. Contracting Company; Arthur Stryker, trading as and under the name of the Stryker Transportation and Contracting Company; Archibald T. Golden; Clifford W. Hulsart, doing business under the trade name of Bailey's Hardware; Robert Height; Bound Brook Crushed Stone Company; F. R. Upton, Inc.; Dunlop & Lisk Pottery Company; John Moore, and the County of Monmouth, who are the defendants to this suit, may answer this amended bill of complaint and each statement therein made.

2. That this Honorable Court shall determine the validity of the lien of the complainant and the defendants, and of all other liens which may be filed within the time prescribed by law, and that the Court shall further determine the amount due from the said defendant County of Monmouth to the said defendant Gallena-Poole, Inc. under the

contract aforesaid, and also the amount due from said defendant Gallena-Poole, Inc. to complainant, as well as to each of the defendants, and also to any and all other claimant or claimants who may have a lien upon the moneys due under said contract from said defendant County of Monmouth to said defendant Gallena-Poole, Inc., and who shall file answer or answers in this suit within the time provided by law, setting up his or their claim or claims.

3. That a decree be made directing the said defendant County of Monmouth, out of the moneys due from it to the said defendant Gallena-Poole, Inc., to pay over to the complainant and the other said claimants the sums found to be due to them respectively, with interest and costs upon claims adjudged to be valid under the aforesaid Act, for work done or materials furnished in the execution of said contract between the said defendant County of Monmouth and the said defendant Gallena-Poole, Inc.; and if the amount due from the said defendant County of Monmouth to the said defendant Gallena-Poole, Inc. be found to be insufficient to make such payments in full, that in such event a decree be made directing a distribution to be made ratably without regard to the priority in filing any claims.

4. That a writ of subpoena may issue, commanding said defendants to answer this amended complaint, and to abide by such decree as this Court may make in the premises.

William A. Barkalow,
Solicitor for and Counsel with
Complainant.

Answer of Defendant F. R. Upton, Inc., to Amended Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

(Filed June 30, 1926.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Complainant, *v.* GALLENA-POOLE, INC., COUNTY OF MONMOUTH, *et als.*, Defendants.	On Bill, &c. Answer of Defendant F. R. Upton, Inc., to Amended Bill of Complaint.

Defendant F. R. Upton, Inc., a corporation of the State of New Jersey, having a principal office in the City of Newark, Essex County, New Jersey, answering the Amended Bill of Complaint herein, says that:

(1) Defendant has not sufficient knowledge of the allegations of Paragraph 1 of the Amended Bill of Complant to form a belief, and therefore leaves complainant to make such proof thereof as it may be advised is necessary.

(2) Defendant has not sufficient knowledge of the allegations contained in Paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the Amended Bill of Complaint to form a belief, and therefore leaves complainant to make such proof thereof as it may be advised is necessary.

(3) Defendant admits Paragraph 10 of the Amended Bill of Complaint.

(4) Defendant has not sufficient knowledge of the allegations contained in Paragraph 11 of the Amended Bill of Complaint to form a belief, and therefore leaves complainant to make such proof thereof as it may be advised is necessary.

(5) Defendant admits Paragraph 12 of the Amended Bill of Complaint, but says that its principal office is in the City of Newark, in the County of Essex, and State of New Jersey, and that it is not more generally engaged in business at Trenton, in the County of Mercer and State of New Jersey than elsewhere in said State.

(6) Defendant has not sufficient knowledge of the allegations contained in Paragraphs 12(a) and 12(b) of the Amended Bill of Complaint to form a belief, and therefore leaves complainant to make such proof thereof as it may be advised is necessary.

(7) Defendant admits Paragraphs 13 and 14 of the Amended Bill of Complaint.

(8) Defendant denies Paragraphs 15, 16, 17, 18, 19 and 20 of the Amended Bill of Complaint.

(9) Defendant has not sufficient knowledge of the allegations contained in Paragraphs 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the Amended Bill of Complaint to form a belief, and therefore leaves complainant to make such proof thereof as it may be advised is necessary.

(10) Defendant admits Paragraph 30 of the Amended Bill of Complaint, but says that its said claim was filed on September 19th, 1925, and not on September 21st, 1925, as mentioned in said Amended Bill of Complaint.

Answer of Defendant F. R. Upton, Inc., to Amended Bill of Complaint.

(11) Defendant has not sufficient knowledge of the allegations contained in Paragraphs 30(a), 30(b) and 31 of the Amended Bill of Complaint to form a belief, and therefore leaves complainant to make such proof thereof as it may be advised is necessary.

And defendant F. R. Upton, Inc., a corporation, further answering the Amended Bill of Complaint filed herein, says that:

(12) On September 19, 1925, under the contract between said Gallena-Poole, Inc., a corporation, and the County of Monmouth, in the State of New Jersey, mentioned in Paragraph 13 of the Amended Bill of Complaint, and within the time required by law defendant did file a duly verified lien or claim, in the sum of $116.33 with B. P. Newcomb, Director of the Board of Chosen Freeholders of the County of Monmouth, and C. E. Coles, Clerk of said Board, setting forth the indebtedness of Gallena-Poole, Inc., a corporation, to it, which lien claim did state that the place of business of this defendant; the amount claimed by it; from whom due; the amount of the demand after deducting all just credits and offsets; the name of the person or corporation by whom this claimant was employed and to whom the materials were sold and delivered; and that the person or corporatoin to which the materials were sold and delivered was the contractor with the municipality; the general nature of the public work to which the contract related; and did give the name of the contractor with the municipality; and did further state that the said labor performed and the said materials furnished to the said contractor were actually performed and used in the

execution and completion of the said contract with the said municipality, and did in all other respects comply with the requirements of the statute as to such notice of claim.

(13) This defendant shows, and expressly charges, that by reason of the filing of its lien claim as aforesaid, and the instituting of this suit in this court, as aforesaid, it is entitled to have and receive, out of the money in the hands of the County of Monmouth due to said Gallena-Poole, Inc., a corporation, under its said contract, the full amount due it under its said claim, namely, $116.33, or such ratable proportion or part thereof as it may be justly entitled to have and receive in connection with the claims of complainant herein and of the other defendants to this suit, provided said claims are valid and just and comply in all respects, as to form and filing of the same, with the statute in such case made and provided.

(14) This defendant does not by its answer necessarily admit the extent, validity or correctness of complainant's claim or of the claims of the other defendants to this suit.

SAMUEL D. WILLIAMS,
Solicitor for and of Counsel with
Defendant F. R. Upton, Inc.

Answer of John Moore.

IN CHANCERY OF NEW JERSEY.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Complainant, *vs.* GALLENA-POOLE, INC., COUNTY OF MONMOUTH, *et als.*, Defendants.	On Bill, &c. Answer of John Moore.

JOHN MOORE, one of the defendants herein, answering the amended bill of complaint of the complainant, says that:

1. This defendant, John Moore, admits the allegations set forth in paragraph one of the complainant's amended bill of complaint.

2. Answering paragraphs two, three, four, five, six, seven, eight and nine of the complainant's amended bill of complaint, this defendant says that he has no knowledge or information sufficient to form a belief of the allegations set forth in said paragraphs, but leaves the complainant to prove the same.

3. Answering paragraph ten of the complainant's amended bill of complaint, says that he admits the allegations set forth in said paragraph.

4. Answering paragraphs eleven, twelve, twelve (A) of the complainant's amended bill of complaint, this defendant says he has no knowledge or information sufficient to form a belief of

the allegations set forth in said paragraphs, but leaves the complainant to prove the same.

5. Answering paragraph twelve (B) of the complainant's amended bill of complaint, this defendant says that he admits said paragraph.

6. Answering paragraph thirteen of the complainant's amended bill of complaint, says that he admits the allegations set forth in said paragraph.

7. Answering paragraph fourteen of the complainant's amended bill of complaint, says that he admits the allegations set forth in said paragraph.

8. Answering paragraphs fifteen, sixteen, seventeen, eighteen and nineteen of the complainant's amended bill of complaint, says that he has no knowledge or information sufficient to form a belief of the allegations set forth in said paragraphs, but leaves the complainant to prove the same.

9. Answering paragraph twenty of the complainant's amended bill of complaint, this defendant admits the allegations therein set forth.

10. Answering paragraph twenty-one of the complainant's amended bill of complaint, this defendant says he has no knowledge or information sufficient to form a belief of the allegations set forth in said paragraph, but leaves the complainant to prove the same.

11. Answering paragraphs twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty (A) of the complainant's amended bill of complaint this defendant says he believes that the

matters contained in said paragraphs are true, but leaves the same to be proven by the persons and corporations whose claims are stated therein as this court shall direct. That this defendant is ready to prove as this court shall direct that at the time he filed and served notice with the said County Treasurer or with the Board of Chosen Freeholders of the County of Monmouth, that he had a lien claim for work done and performed and materials supplied in the construction of the public road or highway known as the Matawan-Old Bridge Road for the amount of One Hundred and sixty-two dollars and fifty-six cents ($162.56) and that his claim or lien upon said moneys in said account has never been paid, nor any part thereof, nor has he ever received any notice disputing the amount of his said claim, or his right to said lien since the filing thereof.

12. Answering paragraph thirty-one of the complainant's amended bill of complaint this defendant admits the allegations set forth in said paragraph on information and belief.

13. Wherefore, this defendant joins in the prayer of the complainant in its amended bill of complaint that this Honorable Court shall determine the validity of each of the respective claims of the complainant and of the defendants, and all other claims which may be filed within the time prescribed by this Act, and the amount due from the defendants, and the Board of Chosen Freeholders of the County of Monmouth to the said defendant, Gallena-Poole, Inc., and who shall file answer or answers in this suit within the time prescribed by law, setting up his or their claim or claims, and shall make a decree directing the Board of Chosen Freeholders of the County of

Monmouth, out of the moneys due from it to the contractor, to pay over to the complainant and the other claimants the sum found to be due to them respectively, with interest and costs upon claim adjudged to be valid under the aforesaid Act, for work done or materials furnished in the execution of said contract between the defendant, County of Monmouth, and the defendant, Gallena-Poole, Inc., and that if the amount due from the defendant, County of Monmouth, to the said defendant, Gallena-Poole, Inc., be found to be insufficient to make such payments in full, that in such event a decree be made directing a distribution to be made ratably without regard to the priority in filing any claims.

And that the said John Moore, defendant herein, may have such further relief as shall be equitable and just.

JOHN P. LLOYD,
Solicitor for and of counsel with
defendant, John Moore.

Answer of Archibald T. Golden.

IN CHANCERY OF NEW JERSEY.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Complainant, *vs.* GALLENA-POOLE COMPANY, INC., COUNTY OF MONMOUTH, *et als.*, Defendants.	On Bill, &c. Answer of Archibald T. Golden.

ARCHIBALD T. GOLDEN, one of the defendants, answering the amended bill of complaint of the complainant, says that:

1. The defendant, Archibald T. Golden, admits the allegations set forah in paragraph one of the complainant's bill of complaint.

2. Answering paragraphs two, three, four, five and six of the complainant's amended bill of complaint this defendant says that he has no knowledge or information sufficient to form a belief of the allegations set forth in said paragraphs, but leaves the complainant to prove the same.

3. Answering paragraph seven of the complainant's amended bill of complaint, this defendant says he admits the allegations set forth in said paragraph.

4. Answering paragraphs eight and nine of the complainant's amended bill of complaint this defendant says that he has no knowledge or information sufficient to form a belief of the allegations

set forth in said paragraphs, but leaves the complainant to prove the same.

5. Answering paragraph ten of the complainant's amended bill of complaint this defendant says that he admits the allegations as set forth in said paragraph.

6. Answering paragraphs eleven, twelve, twelve (A) and twelve (B) of the complainant's amended bill of complaint, this defendant says he has no knowledge or information sufficient to form a belief of the allegations set forth in said paragraphs, but leaves the complainant to prove the same.

7. Answering paragraphs thirteen and fourteen of the complainant's amended bill of complaint, defendant says he admits the allegations set forth in said paragraphs.

8. Answering paragraphs fifteen, sixteen, seventeen, eighteen and nineteen of the complainant's amended bill of complaint defendant says, that he has no knowledge or information sufficient to form a belief of the allegations set forth in said paragraphs, but leaves the complainant to prove the same.

9. Answering paragraph twenty of the complainant's amended bill of complaint, this defendant admits the allegations set forth in said paragraph.

10. Answering paragraph twenty-one of the complainant's amended bill of complaint, this defendant says he has no knowledge or information sufficient to form a belief of the allegations therein set forth, but leaves the complainant to prove the same.

Answer of Archibald T. Golden.

11. Answering paragraphs twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty (A) of the complainant's amended bill of complaint this defendant says he believes that the matters contained in said paragraphs are true, but leaves the same to be proven by the persons and corporations whose claims are stated therein as this court shall direct. That this defendant is ready to prove as this court shall direct that at the time he filed and served notice with the said County Treasurer or with the Board of Chosen Freeholders of the County of Monmouth, that he had a lien claim for work done and performed and materials supplied in the construction of the public road or highway known as the Matawan-Old Bridge Road for the amount of Eight Hundred and Ninety-six dollars and five cents ($896.05) and that his claim or lien upon said moneys in said amount has never been paid, nor any part thereof, nor has he ever received any notice disputing the amount of his said claim, or his right to said lien since the filing thereof.

12. Answering paragraph thirty-one of the complainant's amended bill of complaint this defendant admits the allegations set forth in said paragraph on information and belief.

13. Wherefore, this defendant joins in the prayer of the complainant in its amended bill of complaint that this Honorable Court shall determine the validity of each of the respective claims of the complainant and of the defendants, and all other claims which may be filed within the time prescribed by this Act, and the amounts due from the defendants, and the Board of Chosen Freeholders of the County of Monmouth to the said

defendant, Gallena-Poole, Inc., and who shall file answer or answers in this suit within the time prescribed by law, setting up his or their claim or claims, and shall make a decree directing the Board of Chosen Freeholders of the County of Monmouth, out of the moneys due from it to the contractor, to pay over to the complainant and the other claimants the sum found to be due to them respectively, with interest and costs upon claim adjudged to be valid under the aforesaid Act, for work done or materials furnished in the execution of said contract between defendant, County of Monmouth, and the defendant, Gallena-Poole, Inc., and that if the amount due from the defendant, County of Monmouth, to the said defendant, Gallena-Poole, Inc., be found to be insufficient to make such payments in full, that in such event a decree be made directing a distribution to be made ratably without regard to the priority in filing any claims.

And that the said Archibald T. Golden, defendant herein, may have such further and other relief as shall be equitable and just.

John P. Lloyd,
Solicitor for and of counsel with
defendant, Archibald T. Golden.

Answer of Stulz-Sickles Company.

(Filed October 21, 1925.)

(By stipulation deemed as answer to Amended Complaint.)

IN CHANCERY OF NEW JERSEY.

Between THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Complainant, *and* GALLENA-POOLE, INC., COUNTY OF MONMOUTH, *et als.*, Defendants.	On Bill to Enforce Municipal Lien. Answer.

The answer of Stulz-Sickles Company, a corporation of the State of New Jersey, with its principal office in the City of Newark.

Stulz-Sickles Company as an answer to the bill of complaint filed in this cause says:

1. It admits paragraphs one and two.

2. It has no information sufficient to form a belief as to paragraph three.

3. It admits paragraph four.

4. It has no information sufficient to form a belief as to paragraphs five to twelve, inclusive.

5. It admits paragraphs thirteen and fourteen.

6. It has no information sufficient to form a belief as to paragraphs fifteen to nineteen, inclusive.

7. It admits paragraph twenty.

8. It has no information sufficient to form a belief as to paragraphs twenty-one to twenty-six, inclusive.

9. It admits paragraph twenty-seven.

10. It has no information sufficient to form a belief as to paragraphs twenty-eight to thirty-one, inclusive.

FIRST DEFENSE.

1. This defendant filed a further and formal notice of lien claim with the Clerk of the Board of Freeholders in the County of Monmouth on October 8th, 1925, pursuant to the statute in such case made and provided, alleging that there is due to the said defendant from the defendant Gallena-Poole, Inc., the sum of One Thousand One Hundred and Forty-one Dollars and Sixty-five Cents ($1,141.65) for material furnished and actually used in connection with the construction of the road referred to in paragraph thirteen of the bill of complaint. A copy of the said notice is attached hereto and made a part hereof.

2. This defendant herein alleges that there is due to it from the said Gallena-Poole, Inc., the sum of One Thousand One Hundred and Forty-one Dollars and Sixty-five Cents ($1,141.65) for material furnished by this defendant and actually used by the said Gallena-Poole, Inc., in connection with the construction of the said road and in performance by the said Gallena-Poole, Inc., of the contract referred to in paragraph thirteen of the bill of complaint filed herein.

3. That defendant joins with the complainant in its prayer that this Honorable Court determine the validity of the lien of this defendant and

of the complainant and other defendants who have filed claims, and determine the amount due from the defendant, County of Monmouth, to the said defendant Gallena-Poole, Inc., under the contract aforesaid and the amount due from the said Gallena-Poole, Inc., to this defendant and all other claimants who have filed a notice of lien and that a decree be made directing the said County of Monmouth out of the monies due from it to the said Gallena-Poole, Inc., to pay over to this defendant as well as to all other claimants, the sum found to be due to them with interest and costs for work done or materials furnished in the execution of the said contract between the defendant County of Monmouth and defendant Gallena-Poole, Inc.

OSBORNE, CORNISH & SCHECK,
Solicitors and Counsel for Stulz-Sickles Company.

Answer of Stulz-Sickles Company.

To the Board of Chosen Freeholders of the County of Monmouth, New Jersey:

PLEASE TAKE NOTICE that Stulz-Sickles Company, a corporation of New Jersey, having its principal office in the City of Newark, Essex County, New Jersey, furnished material for Gallena-Poole, Inc., a corporation of New Jersey, in connection with the building of a road on Main Street, Matawan, Monmouth County, New Jersey.

Said Gallena-Poole, Inc., erected the said road under contract with you, and the material furnished by Stulz-Sickles Company was actually used in the execution of the said contract.

There is due to the said Stulz-Sickles Company for the said materials the sum of Eleven Hundred Forty-one Dollars and Sixty-five Cents ($1141.65).

We therefore notify you to retain the said amount out of the money owing by you or to grow due from you to the said Gallena-Poole, Inc., and to pay the same to the said Stulz-Sickles Company.

STULZ-SICKLES COMPANY,

By: GUSTAVUS SICKLES L. S.
Secretary & Treasurer.

Dated: October 7th, 1925.

Answer of Stulz-Sickles Company.

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

GUSTAVUS A. SICKLES, being duly sworn on his oath according to law deposes and says: I am the Secretary and Treasurer of Stulz-Sickles Company, a corporation of New Jersey, claimant in the above notice of claim, and am familiar with the transactions between said Stulz-Sickles Company and Gallena-Poole, Inc., relating to the material which we furnished to the Gallena-Poole, Inc., for the erection of a road on Main Street, Matawan, Monmouth County, New Jersey.

There is due to the said Stulz-Sickles Company from the Gallena-Poole, Inc., the sum of Eleven Hundred Forty-one Dollars and Sixty-five cents ($1141.65) for the said material, all of which was actually used in the erection of the said road.

The said Gallena-Poole, Inc., is not entitled to any credit or set off.

GUSTAVUS SICKLES L. S.

Sworn and subscribed to before me,
this 7th day of October, 1925.

M. ETHEL HEDGES
A Notary Public
of N. J.

Amendment to Answer.

IN CHANCERY OF NEW JERSEY.

Between

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Complainant,

and

GALLENA-POOLE, INC., COUNTY OF MONMOUTH, *et als.*,
Defendants.

On Bill.

Amendment of Answer.

Stultz-Sickles Company, a corporation of New Jersey, amends the answer filed by it in the above matter in the following particulars:

1. In paragraph one of the first defense the defendant states that it filed an amended notice of lien claim with the Board of Chosen Freeholders October 20th, 1925, changing the amount claimed to be due from Eleven Hundred Forty-one Dollars and Sixty-five Cents ($1141.65) to Five Hundred Dollars ($500).

2. In paragraph two of the first defense by changing the amount claimed from Eleven Hundred Forty-one Dollars and Sixty-five Cents ($1141.65) to Five Hundred Dollars ($500).

OSBORNE, CORNISH & SCHECK,
Attorneys for Defendant
Stulz-Sickles Company.

A True Copy
THOMAS BARBER
Clerk

Answer of County of Monmouth.

(By stipulation deemed as answer to Amended Complaint.)

IN CHANCERY OF NEW JERSEY.

Between THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Complainant, *and* GALLENA-POOLE, INC., COUNTY OF MONMOUTH, *et als.*, Defendants.	On Bill, &c. Answer.

The answer of the defendant County of Monmouth, a Municipal Corporation of the State of New Jersey, answering the bill of complaint, says that:

1. It has no knowledge or information sufficient to form a belief as to the statements in Paragraphs I, II, III, IV, V, VI, VII, VIII, IX, XI, XII, XV, XVI, XVII, XVIII and XIX.

2. It admits Paragraphs X, XIII, XIV, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, and XXX.

3. In addition to the lien claimants who have filed liens against the defendant Gallena-Poole, Inc., as recited in the bill of complaint, one Dunlop, Lisk Pottery Co., of Matawan, N. J., has filed a claim against said defendant contractor in the sum of $63.70, and likewise one John Moore has

filed a claim for $162.56, both of which said claimants should be made parties and brought in to answer said bill of complaint and to abide by such decree as may be directed for the distribution ratably of the money due to said contractor from the defendant County of Monmouth, pursuant to the terms of its contract with said defendant Gallena-Poole, Inc.

4. Answering Paragraph XX, defendant did, on July 22, 1925, accept the work required to be done under the terms of the contract on the recommendation of the County Engineer in charge of the work upon the filing of a maintenance bond by the contractor in the sum of 5% of the contract, as required by the specifications, and subject, nevertheless, to the approval of the State Highway Commission, the maintenance bond required to be filed and the approval of the State Highway Commission having not yet been received.

5. Answering Paragraph XXXI, this defendant denies that there is sufficient money due the Contractor to make payment in full of the aforementioned lien of complainant, but is ready to pay, as may be directed by this Honorable Court, the balance found to be due the contractor to be disbursed as this Honorable Court may order and direct.

WILLIAM A. STEVENS,
Solicitor of Defendant
County of Monmouth.

Answer of Defendant Arthur Stryker.

(By stipulation deemed as answer to Amended Complaint.)

IN CHANCERY OF NEW JERSEY.

Between THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, a corporation, Complainant, *and* GALLENA-POOLE, INC., *et als.*, Defendants.	On Bill, &c. Answer of Defendant Arthur Stryker.

ARTHUR STRYKER, trading under the name of the Stryker Transportation and Contracting Company, and having his principal place of business at 2053 South Broad Street, in the City of Trenton, County of Mercer and State of New Jersey, in answer to the complainant's bill of complaint, says:

1. He admits Paragraph 1 of the bill.

2. He admits Paragraph 2 of the bill.

3. He has no knowledge or information as to the facts alleged in Paragraph 3 of the bill, but leaves complainant to its proof thereon.

4. He has no knowledge or information as to the facts alleged in Paragraph 4 of the bill, but leaves complainant to its proof thereon.

5. He has no knowledge or information as to the facts alleged in Paragraph 5 of the bill, but leaves complainant to its proof thereon.

Answer of Defendant Arthur Stryker.

6. He admits Paragraph 6 of the bill.

7. He has no knowledge or information as to the facts alleged in Paragraph 7 of the bill, but leaves complainant to its proof thereon.

8. He has no knowledge or information as to the facts alleged in Paragraph 8 of the bill, but leaves complainant to its proof thereon.

9. He has no knowledge or information as to the facts alleged in Paragraph 8 of the bill, but leaves complainant to its proof thereon.

10. He admits Paragraph 10 of the bill.

11. He has no knowledge or information as to the facts alleged in Paragraph 11 of the bill, but leaves complainant to its proof thereon.

12. He has no knowledge or information as to the facts alleged in Paragraph 12 of the bill, but leaves complainant to its proof thereon.

13. He admits Paragraph 13 of the bill.

14. He admits Paragraph 14 of the bill.

15. He has no knowledge or information as to the facts alleged in Paragraph 15 of the bill, but leaves complainant to its proof thereon.

16. He has no knowledge or information as to the facts alleged in Paragraph 16 of the bill, but leaves complainant to its proof thereon.

17. He has no knowledge or information as to the facts alleged in Paragarph 17 of the bill, but leaves complainant to its proof thereon.

18. He has no knowledge or information as to the facts alleged in Paragraph 18 of the bill, but leaves complainant to its proof thereon.

19. He has no knowledge or information as to the facts alleged in Paragraph 19 of the bill, but leaves complainant to its proof thereon.

20. He believes the allegations in Paragraph 20 of the bill to be true, and admits the same.

21. He has no knowledge or information as to the facts alleged in Paragraph 21 of the bill, but leaves complainant to its proof thereon.

22. He has no knowledge or information as to the facts alleged in Paragraph 22 of the bill, but leaves complainant to its proof thereon.

23. He admits Paragraph 23 of the bill, with the exception that the date on which this answering defendant filed his lien with the Clerk of the Board of Chosen Freeholders of Monmouth County was May 21st, 1925, instead of June 1st, 1925.

24. He is without information as to the facts alleged in Paragraph 24 of the bill, but leaves complainant to its proof thereon.

25. He is without information as to the facts alleged in Paragraph 25 of the bill, but leaves complainant to its proof thereon.

26. He is without information as to the facts alleged in Paragraph 26 of the bill, but leaves complainant to its proof thereon.

27. He is without information as to the facts alleged in Paragraph 27 of the bill, but leaves complainant to its proof thereon.

28. He is without information as to the facts alleged in Paragraph 28 of the bill, but leaves complainant to its proof thereon.

Answer of Defendant Arthur Stryker.

29. He is without information as to the facts alleged in Paragraph 29 of the bill, but leaves complainant to its proof thereon.

30. He is without information as to the facts alleged in Paragraph 30 of the bill, but leaves complainant to its proof thereon.

31. He admits Paragraph 31 of the bill.

And this defendant further answering the Bill of Complaint says:

1. He is engaged under the name and style of the Stryker Transportation and Contracting Company, in the business of general contracting, and particularly of hauling and transporting materials for contractors engaged in construction work.

2. On or about September 3rd, 1924, the Board of Chosen Freeholders of Monmouth County entered into an agreement with Gallena-Poole, Inc., for the building of a road known as the Matawan-Old Bridge Road, as alleged in Paragraph 2 of the Bill of Complaint. In the course of construction of said road, the said Gallena-Poole, Inc., employed this defendant to haul and transport dirt, gravel, sand, cement, stone, and other materials used by the said Gallena-Poole, Inc., in the construction of said road, at unit prices then and there agreed upon between this defendant and the said Gallena-Poole, Inc.; and pursuant to the terms of said employment this defendant did transport, haul and deliver for and on behalf of the said Gallena-Poole, Inc., large quantities of the said materials, and performed the work and labor, and completed the transporting and hauling of the same, as required by the Gallena-Poole,

Inc., for and in connection with the construction of the said Matawan-Old Bridge Road, by Gallena-Poole, Inc., as aforesaid. An itemized statement of the work and labor performed and the transportation furnished as aforesaid, is attached hereto and made a part hereof, from which it appears that the said Gallena-Poole, Inc., became and was indebted to this defendant for such services in the sum of Thirty-four Hundred Thirty-two Dollars and Forty Cents ($3,432.40) and is entitled to credits by payments, and otherwise, amounting to Fourteen Hundred and Sixteen Dollars and Twenty-four Cents ($1,416.24) leaving the balance due to this defendant and unpaid the sum of Two Thousand and Sixteen Dollars and Sixteen Cents ($2,016.16).

3. That before the whole work to be performed by the said contractor was completed and accepted as required by statute, this defendant did on May 21st, 1925, cause to be served on Charles E. Cole, Clerk of the Board of Chosen Freeholders of Monmouth County, a notice of this defendant's claim against the said Gallena-Poole, Inc., in the amount of Two Thousand and Sixteen Dollars and Sixteen Cents ($2,016.16), that being the amount due from the said contractor to this defendant, which notice was duly verified by the oath of John R. LaRue, as by reference to the said original notice will more fully appear, and which notice this defendant begs leave to make reference to, if necessary to do so, and a copy of which notice is hereto attached and made a part hereof.

4. That at the time of the filing and serving of said lien claim notice on Monmouth County by this defendant, there was a large amount of money due or to grow due to the said Gallena-Poole, Inc., in

the hands of the Board of Chosen Freeholders of Monmouth County, and which was liable to the payment of the labor and materialmen who were entitled to be paid under the statute.

5. This defendant further says that he has not received any notice disputing the amount of his lien claim or his right to the said lien, and that he has complied with all the requirements of the Statute to perfect his said lien.

This defendant is without adequate remedy in the Courts of Law, and therefore prays:

1. That this Court shall determine the validity of the lien of this defendant, and all other liens which may be filed within the time prescribed by this act, and the amount due from the Board of Chosen Freeholders of Monmouth County to the said Gallena-Poole, Inc., and shall make a decree directing the Board of Chosen Freeholders of Monmouth County out of the money due from it to the contractor on account of the contract aforesaid, to pay over to this defendant the sum found due, with interest and costs, and this Court may decide all other questions which it may deem pertinent and proper, by virtue of the provisions of an act entitled "An Act to secure the payment of laborers, mechanics, merchants, traders and persons employed upon or furnishing materials toward the performing of any work in cities, towns, townships and other municipalities in this State (Revision of 1918)", approved March 5th, 1918, and known as Chapter 280, Pamphlet Laws of 1918.

2. That a decree of this Court should be made making proper accounting and distribution of all of said money, with interest and costs.

3. That a decree shall be made by this Court requiring Gallena-Poole, Inc., to pay this defendant any deficiency that there may be in the amount due it after the distribution of the said moneys.

4. That this defendant may have such other and further relief as shall be equitable and just.

FREDERIC R. BRACE,
Solicitor of the defendant
Arthur Stryker.

To the Clerk of the Board of Chosen Freeholders of Monmouth County, New Jersey:

Take Notice:

That Arthur Stryker, trading as the Stryker Transportation and Contracting Company, having his principal place of business at 2053 South Broad Street, Trenton, New Jersey, claims a lien of the amount of Two Thousand Sixteen Dollars and Sixteen Cents ($2,016.16) upon moneys due or to grow due from the County of Monmouth to Gallena-Poole, Inc., on account of the construction by the said Gallena-Poole, Inc., of thirty-three hundred feet of road, starting at the Matawan-Freneau Road, and running in the direction of Old Bridge, under the contract between Gallena-Poole, Inc., and the County of Monmouth, dated on or about the 3rd day of September, 1924.

The name of the person by whom this claimant was employed and to whom materials were furnished, and for whom the labor was performed, is Gallena-Poole, Inc., who is the principal contractor with the County of Monmouth for the construction of said road.

The nature of the public work to which the contract relates is the construction as a county road all that public road beginning at the Middlesex County line at a point in the Matawan-Freneau Road, and running thence thirty-three hundred feet, more or less, in the direction of Old Bridge.

The labor and material on which this claim is based were furnished by the claimant to the contractor for the construction of said road, and were actually used in the execution and completion of the said contract with the said County of Monmouth.

The amount of the claimant's demand, after the deduction of just credits and setoffs, is the sum of Two Thousand Sixteen Dollars and Sixteen Cents ($2,016.16), which is the amount claimed as justly due and owing to the claimant from the said Gallena-Poole, Inc., the contractor.

For the full value of said material furnished and labor performed by the claimant, a lien is claimed upon the moneys in the control of and now due or to grow due from the Monmouth County Board of Chosen Freeholders, under or on account of the said contract to the said Gallena-Poole, Inc.

Attached hereto and made a part hereof is an itemized statement of the labor and material furnished to the said Gallena-Poole, Inc., by the claimant, at prices agreed upon between the claimant and the said contractor by contract.

ARTHUR STRYKER, trading as the
STRYKER TRANSPORTATION AND
CONTRACTING COMPANY,

by JOHN R. LARUE,
Attorney-in-fact.

Answer of Defendant Arthur Stryker.

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

JOHN R. LARUE, being duly sworn, deposes and says, that he is the general manager of the business and affairs of the Stryker Transportation and Contracting Company, acting under the authority of a power of attorney given to him by Arthur Stryker, proprietor of the said business; that he is personally familiar with the matters and facts alleged in the foregoing claim; that he has read the foregoing claim, and the matters and things therein alleged and stated are true to his personal knowledge.

Subscribed and sworn to before me }
this day of January, 1925. }

JOHN R. LARUE.

FREDERIC R. BRACE,
M. C. C. of N. J.

Answer of Defendant Arthur Stryker.

GALLENA-POOLE, INC.
Trenton, N. J.
Copy.

#794.
Nov. 30th, 1924.

Nov. 21 to 30 incl., 1924—Freneau Job.

To unloading and hauling Sand & Gravel—
Stone ..... 536.05 tons
Sand ..... 477.80 tons

Total ..... 1,013.85 tons
@ 92½¢ per net ton..... $ 937.81

To hauling Cement—
162.62 tons
@ 67½¢ per net ton..... 109.77

$1,047.58

GALLENA-POOLE, INC.
Trenton, N. J.
Copy.

#799.
Nov. 30th, 1924.

Time Work—Freneau Job.

11/20—1 truck—Hauling Dirt on road—
6 hrs. @ $3.00 per hour..... $ 10.00

GALLENA-POOLE, INC.
Trenton, N. J.
Copy.

#816.
Dec. 15th, 1924.

Dec. 1 to 15 incl., 1924—Freneau Job.

To unloading and hauling Sand & Gravel—
Stone ..... 1,327.35 tons
521.85 tons

1,849.20 tons
@ 92½¢ per net ton..... $1,710.51

To hauling Cement—
195.14 tons
@ 67½¢ per net ton..... 131.72

$1,842.23

Answer of Defendant Arthur Stryker.

GALLENA-POOLE, INC.
Trenton, N. J.

Copy.

#835.
Dec. 31st, 1924.

Dec. 16 to 31 incl., 1924—Freneau Job.

To unloading and hauling Sand & Gravel—

Stone	397.10		
Sand	230.15		
	627.25 tons		
@ 92½¢ per net ton		$580.21	580.21
Less material not hauled—			
Stone	220.00		
Sand	69.04		
	289.04 tons		
@ 67½¢ per net ton		195.10	
Less material hauled by you—			
Stone	133.65		
Sand	27.00		
	160.65 tons		
@ 67½¢ per net ton		108.44	303.54
			276.67
To hauling Cement—			
less 346 bags	65.05 tons		
still in car	16.26 "		
	48.79 tons		
@ 67½¢ per net ton		32.93	32.93
			309.60

Answer of Defendant Arthur Stryker.

GALLENA-POOLE, INC.
Trenton, N. J.

#860.
Jan. 23rd, 1925.

Credit Memo.

Hauling 2256 lbs. Cement—
1.13 tons @ 67½¢ per net ton..... 0.76

omitted from your debit note of 10/23/24.

GALLENA-POOLE, INC.
Trenton, N. J.

Copy.

#958.
April 15th, 1925.

Apr. 3/4—Hauling Sand & Gravel in batches on Freneau job, 45½ loads at 7 tons each—

318½ tons @ 67½¢ per net ton..... $214.99

GALLENA-POOLE, INC.
Trenton, N. J.

May 20th, 1925.

Statement Freneau Job (Monmouth Co. portion).

1924				
Nov. 30	Invoice 794.....		$1,047.58	
Nov. 30	Invoice 799.....		18.00	
Dec. 15	Invoice 816.....		1,842.23	
Dec. 31	Invoice 835.....		309.60	
1925				
Apr. 15	Invoice 958.....		214.99	$3,432.40
	Less paid 18/23/24.....		1,065.40	
	Less paid 1/20/25.....		350.00	
	Credit Memo. #860—			
	1/25/25		.76	1,416.24
				$2,016.16

Replication.

IN CHANCERY OF NEW JERSEY.

(Filed January 25, 1927.)

Between

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Complainant,

and

GALLENA-POOLE, INC., COUNTY OF MONMOUTH, *et als.*,
Defendants.

On Bill to Enforce Municipal Mechanic's Lien.

Replication.

The complainant joins issue on the answers of the defendants County of Monmouth; Stulz-Sickles Company; Arthur Stryker, trading as and under the name of the Stryker Transportation and Contracting Company; Bound Brook Crushed Stone Company; F. R. Upton, Inc.; Archibald T. Golden, and John Moore.

WM. A. BARKALOW,
Solicitor for Complainant.

Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

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

The complainant T. J. M. Contracting Company, a corporation of the State of New Jersey, having its principal office in the City of New Brunswick, in the County of Middlesex and State of New Jersey, respectfully shows:

1. The complainant is engaged in general contracting business in the State of New Jersey.

2. On September 3, 1924, the Board of Chosen Freeholders of the County of Monmouth, New Jersey, entered into a contract with Gallena-Poole, Inc., contractor, for the building of a road known as the Matawan-Old Bridge Road; that said Board of Chosen Freeholders was authorized by law to make said contract.

3. On or about April 6, 1925, complainant entered into an agreement with Gallena-Poole, Inc., to furnish road-building machinery to be used in the building and constructing of said Matawan-Old Bridge Road. The said Gallena-Poole, Inc., agreed to pay the sum of Fifty Dollars ($50.00) per day for each day that said machinery was in use by it, and the sum of Twenty-five Dollars ($25.00) per day cost of moving the machinery from Freneau to New Brunswick.

4. Complainant further says that it has furnished the machinery as ordered, and that the amount of One Hundred and Seventy-five Dollars ($175.00) is now due and owing to complainant from Gallena-Poole, Inc.

5. That before the whole work to be performed by the said contractor was completed and accepted, as required by statute, the said complainant did on June 15, 1925, serve on Charles E. Cole, Clerk of the Board of Chosen Freeholders of the County of Monmouth, New Jersey, a notice of complainant's claim against the said Gallena-Poole, Inc., in the amount of One Hundred and Seventy-five Dollars ($175.00), being the amount due to complainant from the said Gallena-Poole, Inc., which notice was fully verified by the oath of Philip L. Mackinson, reference to the said original notice will more fully appear, and complainant begs leave to refer to the same, if necessary so to do, a copy of which notice is hereto attached and made a part hereof.

6. That at the time of the filing and serving of the said lien claim notice by complainant, there was a large amount of money due or to grow due to the said Gallena-Poole, Inc., in the hands of the Board of Chosen Freeholders of the County of Monmouth, New Jersey, and liable to the payment of the labor and material-men who were entitled to be paid under the statute.

7. The complainant further says that the following stop notices have been filed with the officers of the Board of Chosen Freeholders of the County of Monmouth, New Jersey:

Name of Claimant	*Amount*
Stryker Transportation Co.	$2,016.16
Jamarone Construction Co.	495.00
A. T. Golden	896.09
Central Railroad Company of New Jersey	4,144.04
Bailey Hardware Company	29.53

8. Complainant further says that it has never received any notice disputing the amount of its lien claim or its right to said lien, and that it has complied with all the requirements of the statute to perfect its said lien.

9. The defendants in this suit are the Board of Chosen Freeholders of the County of Monmouth, New Jersey, Arthur Stryker, The Stryker Transportation Company, Gallena-Poole, Inc., Jamarone Construction Co., Central Railroad Company of New Jersey, Golden and The Bailey Hardware Co.

10. The complainant and the other creditors of Gallena-Poole, Inc., the contractor, are without adequate remedy in the courts of law and therefore pray:

1. That all the defendants may answer this bill of complaint, without oath, and each statement thereon.

2. That this court shall determine the validity of the lien of the complainant and defendants and all other liens which may be filed within the time prescribed by this act, and the amount due from the defendants and the Board of Chosen Freeholders of the County of Monmouth to the contractor or sub-contractors and shall make a decree directing the Board of Chosen Freeholders of the County of Monmouth, out of the moneys due from it to the contractor, to pay over to the said claimants the sum found due to them respectively with interest and costs adjudged to be just and valid for work done and materials furnished in the execution of the contract and every other question directed to be decided by Chapter 280 of the session Laws of 1918.

3. That a decree of this Court shall be made making proper accounting and distribution of said moneys with interest and costs.

4. That the decree of this Court shall be made requiring Gallena-Poole, Inc., to pay to the complainant any deficiency that there may be in the amount due it after the distribution of the said moneys.

5. That such other and further relief may be granted as shall be equitable and just.

6. That a writ of subpoena may issue commanding said defendants to answer this Bill of Complaint, and to abide by such decree as this Court may make in the premises.

EDMUND A. HAYES,
Solicitor for and of Counsel with
Complainant.

Amended Bill of Complaint.

(Filed September 16, 1925.)

IN CHANCERY OF NEW JERSEY.

Between

T. J. M. Contracting Co., a corporation of the State of New Jersey,

Complainant,

and

Gallena-Poole Inc., *et als.*,

Defendants.

On Bill, etc., Amended Bill.

The bill filed in the foregoing entitled cause is amended by inserting in the place and stead of paragraph nine of said bill of complaint, the following paragraph:

"The defendants in this suit are the Board of Chosen Freeholders of the County of Monmouth, New Jersey, Archibald T. Golden, Arthur Stryker, trading as The Stryker Transportation Company, Gallena-Poole Inc., Jamarone Construction Co., Central Railroad of New Jersey, and the Bailey Hardware Co."

Edmund A. Hayes,
Solicitor for and of Counsel with
Complainant.

Answer of Jannarone Construction Company.

IN CHANCERY OF NEW JERSEY.

Between T. J. M. Contracting Co., a corporation of New Jersey. Complainant, *and* Gallena-Poole, Inc., *et als.*, Defendants.	On Bill, &c. Answer.

The Jannarone Construction Company, a corporation of the State of New Jersey, and one of the defendants herein, answering the complainant's bill of complaint, says:

1. This defendant, the Jannarone Construction Company, admits the allegations set forth in Paragraph 1 of the complainant's bill of complaint.

2. Answering Paragraph 2 of the complainant's bill of complaint, this defendant, the Jannarone Construction Company, has no knowledge or information sufficient to form any belief of the allegations set forth in said paragraph, but leaves the complainant to prove the same.

3. Answering Paragraph 3 of the complainant's bill of complaint, this defendant, the Jannarone Construction Company, has no knowledge or information sufficient to form any belief of the allegations set forth in said paragraph, but leaves the complainant to prove the same.

4. Answering Paragraph 4 of the complainant's bill of complaint, this defendant, the Jannarone Construction Company, has no knowledge or information sufficient to form any belief of the allegations set forth in said paragraph, but leaves the complainant to prove the same.

5. Answering Paragraph 5 of the complainant's bill of complaint, this defendant, the Jannarone Construction Company, has no knowledge or information sufficient to form any belief of the allegations set forth in said paragraph, but leaves the complainant to prove the same.

6. Answering Paragraph 6 of the complainant's bill of complaint, this defendant, the Jannarone Construction Company, admits the allegations therein set forth.

7. Answering Paragraph 7 of the complainant's bill of complaint, this defendant, the Jannarone Construction Company, admits that the said Jannarone Construction Company, at the time the complainant filed and served notice, had a lien claim for work and labor done and performed and material supplied in the construction of the Matawan-Old Bridge Road at the request of Gallena-Poole, Inc., and that such material was delivered and accepted by the said Gallena-Poole, Inc., and that no part of the same was paid, but that the full amount is still due and owing; and that a lien claim was duly filed by this defendant, the Jannarone Construction Company, in accordance with the statute made and provided in such case; and that this defendant, the Jannarone Construction Company, never received any notice disputing the amount of its claim or its right to the said lien, since the filing of said lien claim.

Answer of Jannarone Construction Company.

This defendant, the Jannarone Construction Company, further answering said Paragraph 7 of the complainant's bill of complaint, as to the claims of the Stryker Transportation Company, A. T. Golden, Central Railroad Company of New Jersey and Bailey Hardware Company, has no knowledge or information sufficient to form any belief as to the correctness of such claims, but this defendant, the Jannarone Construction Company, avers that if there are any such claims, the claim of the Jannarone Construction Company is prior and paramount to such other claims.

8. Answering Paragraph 8 of the complainant's bill of complaint, this defendant, the Jannarone Construction Company, has no knowledge or information sufficient to form any belief of the allegations set forth in said paragraph, but leaves the complainant to prove the same.

9. Answering Paragraph 10 of the complainant's bill of complaint, this defendant, the Jannarone Construction Company, admits the allegations therein set forth.

Wherefore, this defendant, the Jannarone Construction Company, prays:

That this Court shall determine the validity of each of the respective claims of the defendants and all other claims which may be filed within the time prescribed by this act, and the amount due from the defendants and the Board of Chosen Freeholders of the County of Monmouth to the contractor or sub-contractors and shall make a decree directing the Board of Chosen Freeholders of the County of Monmouth, out of the moneys due from it to the contractor, to pay over to the said claimants the sums found due to them respectively with interest and costs adjudged to be

just and valid for work done and materials furnished in the execution of the contract and every other question directed to be decided by Chapter 280 of the Session Laws of 1918;

That a decree of this Court shall be made requiring Gallena-Poole, Inc., to pay to the complainant any deficiency that there may be in the amount due it after the distribution of the said moneys;

And that the Jannarone Construction Company may have such other and further relief as shall be equitable, and just.

WILLIAM GREENFIELD
Solicitor for and of counsel with the
Jannarone Construction Company.

Answer of The Board of Chosen Freeholders of the County of Monmouth.

IN CHANCERY OF NEW JERSEY.

Between

T. J. M. CONTRACTING Co., a corporation of New Jersey,
Complainant,

and

GALLENA-POOLE, INC., *et als.*,
Defendants.

On Bill, &c.,
Answer.

The answer of the defendants, The Board of Chosen Freeholders of the County of Monmouth, and County of Monmouth, a Municipal Corporation of the State of New Jersey, answering the bill of complaint, says that:

1. They have no knowledge or information sufficient to form a belief as to the statements in Paragraphs 1, 3 and 4.

2. They admit Paragraphs 2, 5, 6 and 7.

3. They neither admit nor deny Paragraph 8.

4. Further answering the bill of complaint, defendants The Board of Chosen Freeholders of the County of Monmouth, and County of Monmouth, say that in addition to the defendants named in the bill of complaint, E. R. Upton, Inc., of No. 9 Clinton St., Newark, N. J., has filed a claim against said defendant contractor, Gallena-Poole, Inc., claiming $116.33; Bound Brook Crushed Stone Co., of Bound Brook, N. J., has

filed a claim against said defendant contractor, Gallena-Poole, Inc., claiming $2,280.00; Stulz-Sickles Company, of Newark, N. J., has filed a claim against said defendant contractor claiming $1,141.65; Dunlop, Lisk Pottery Co., of Matawan, N. J., has filed a claim against said Gallena-Poole, Inc., claiming $63.70; John Moore, of Matawan, N. J., has filed a claim against said defendant contractor, Gallena-Poole, Inc., claiming $162.56, and Robert Height has likewise filed a claim against said defendant contractor, Gallena-Poole, Inc., claiming $35.00.

5. These defendants further answering the bill of complaint say that there is not sufficient money due the contractor to make payment in full of the aforementioned lien claims, but are ready and tender themselves to pay, as may be directed by this Honorable Court, the balance found to be due the contractor under the terms of said contract in the manner as this Honorable Court may order and direct.

WILLIAM A. STEVENS,
Solicitor of Defendants, The Board of Chosen Freeholders of the County of Monmouth and County of Monmouth.

Answer.

IN CHANCERY OF NEW JERSEY.

Between

T. J. M. CONTRACTING Co.,
Complainant,

and

THE BOARD OF CHOSEN FREEHOLDERS OF MONMOUTH COUNTY, *et als.*,
Defendants.

On Bill, etc.

Answer of Defendant, Arthur Stryker.

(The answer of this defendant herein filed is in substance similar to its answer filed in the suit in which Central Railroad of New Jersey is complainant. That answer has been fully set out above. The appellant in preparing this state of the case therefore omits the printing of this answer in order to avoid repetition.)

Order Admitting Party.

IN CHANCERY OF NEW JERSEY.

Between

T. J. M. CONTRACTING Co., a corporation of the State of New Jersey,

Complainant,

and

GALLENA-POOLE, INC., *et als.*,

Defendants.

On Bill, &c.

On Petition of Commercial Casualty Insurance Company, a Corporation, to be Admitted a Party Defendant.

Order Admitting.

Upon reading and filing the duly verified petition of the Commercial Casualty Insurance Company, body corporate of the State of New Jersey, praying admission as a party defendant in the above entitled suit; and it appearing thereby that the said petitioner should be admitted as a party defendant to this suit; and it further appearing by the consent of the complainant hereinunder written that the complainant agrees to the making of this order;

It is on this 16th day of March, 1926, on motion of Samuel D. Williams, solicitor of the said petitioner ORDERED that the said Commercial Casualty Insurance Company, a body corporate, be and it hereby is admitted as a party defendant in the above entitled suit with leave to appear and answer, or take such other action in respect to said bill of complaint as it may be advised within five days from the date of this order.

E. R. WALKER,
C.

Respectfully advised
M. L. BERRY, V. C.

Consent is hereby given to the entry of the foregoing order.

EDMUND A. HAYES,
Solicitor of Complainant,
T. J. M. Contracting Co.

Answer of Defendant Commercial Casualty Company.

58-644

IN CHANCERY OF NEW JERSEY.

Between

T. J. M. CONTRACTING Co., a corporation of the State of New Jersey,

Complainant,

and

GALLENA-POOLE, INC., *et als.*,

Defendants.

On Bill, &c.

Answer of Commercial Casualty Insurance Company.

The answer of the defendant, Commercial Casualty Insurance Company, a body corporate of the State of New Jersey, with principal offices in the city of Newark, County of Essex, and State aforesaid.

This defendant answering the Bill of Complaint, says that:

(1) This defendant has no knowledge or information sufficient to form a belief as to the statements contained in Paragraph 1.

(2) It admits the allegations contained in Paragraph 2.

(3) This defendant has no knowledge or information sufficient to form a belief as to the statements contained in Paragraphs 3-4-5-6-7 and 8.

(4) This defendant admits the allegations contained in Paragraph 9 of the Bill of Complaint as amended.

SAMUEL D. WILLIAMS,
Solicitor of Defendant Commercial
Casualty Insurance Company.

Order of Consolidation.

(Filed .....)

IN CHANCERY OF NEW JERSEY.

Between T. J. M. Contracting Company, a corporation, Complainant, *and* Gallena-Poole, Inc., *et al.*, Defendants.	On Bill, etc. Docket 58, Page 644.
The Central Railroad Company of New Jersey, Complainant, *and* Gallena-Poole, Inc., County of Monmouth, *et als.*, Defendants.	On Bill, etc. (Suit No. 2) Docket 59, Page 120. Order of Consolidation.

This matter being opened to the Court by Samuel D. Williams, solicitor of the defendant, Jannarone Contracting Co., Inc., a body corporate of the State of New Jersey, and it appearing to the satisfaction of the Court that in each of the two causes of action above entitled, the parties and subject matters are the same, both being suits brought for the enforcement of lien claims under the provisions of the "Municipal Mechanics Lien Law (Revision of 1918)";

It is on this 30th day of ..... 1929, on motion of Samuel D. Williams, aforesaid, and upon the

written consent of the defendants named in the two foregoing Bills of Complaint, ORDERED that the two said causes of action entitled as above, be and the same are hereby consolidated in one cause of action and to be entitled "T. J. M. Contracting Company, a corporation, complainant, and Board of Chosen Freeholders of the County of Monmouth, New Jersey, *et als.*, defendants", and that all further pleadings, notices or other proceedings in the said two causes of action entitled as above be entitled in the name herein designated as aforementioned as the title of the consolidated causes of action as hereinabove designated.

(NOTE: The foregoing was duly consented to by the solicitors of the parties to these suits and was duly filed.)

Minutes of Hearing.

(September 23, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

The Central Railroad Company of New Jersey,
Complainant,

and

Gallena-Poole, Inc., *et als.*,
Defendants.

On Bill, &c.

Transcript of shorthand notes taken on final hearing in above stated cause, this 23d day of September, 1930, at Chancery Chambers, Jersey City, before his Honor James F. Fielder, Vice-Chancellor.

Appearances:

Mr. Edward F. Smith and Mr. Raymond Dawson, for Complainant.

Mr. Samuel D. Williams, for Defendants Commercial Casualty Company, F. R. Upton, Richard T. Golden and Jannarone Contracting Company.

Messrs. Osborne, Cornish & Scheck, for Defendant Stulz-Sickles.

Messrs. Harrison & Roche, for Bound Brook Crushed Stone Company.

Mr. Cassell R. Ruhlman, for Defendant Arthur Stryker.

Mr. John R. McElheaney, for Defendant T. J. M. Contracting Company.

(After consultation and argument among counsel.)

Mr. Williams: It is agreed that the following is a list of the claims filed, with the date of filing and amount claimed:

F. R. Upton, filed September 19, 1925, for $116.33;

Richard T. Golden, filed June 2, 1925, for $896.05;

Stulz-Sickles Company, filed October 20, 1925, for $500;

Bound Brook Crushed Stone Company, filed September 19, 1925, for $2,280.

Arthur Stryker, filed June 1, 1925, for $2,016.10;

T. J. M. Contracting Company, filed June 15, 1925, for $175;

Jannarone Contracting Company, filed June 1, 1925, for $495;

Central Railroad Company of New Jersey, filed July 31, 1925, for $2,501.86.

The Court: That agreement is not complete. That agreement is on the part of counsel, as I understand it, that those are the debts on which claims were filed and those are the correct amounts of the claims of each of those claimants. The right, however, of the Central Railroad Company to share in the fund is disputed, as is also the claim of the Bound Brook Crushed Stone Company. As to all of the other claims it is admitted that they share in the fund for the amounts stated.

The claim of the Central Railroad Company, it is admitted, is based on a charge for freight and demurrage. The claim is made up of transportation charges on materials used in the performance of the Monmouth County contract and in addition thereto includes demurrage charges on cars

loaded with materials delivered on the siding—demurrage charges for cars held because of failure of the Gallena-Poole Company to unload the cars. The demurrage charge is $2,223 and the charge for freight is $278.86.

That is all I am going to need for the purpose of decision?

Mr. Dawson: Yes, your Honor.

The Court: The validity of the claim of the Bound Brook Crushed Stone Company is disputed on the ground that the claim has been paid by the contractor, and upon that question it is agreed by counsel that the transcript of testimony taken in a case brought by the Bound Brook Crushed Stone Company against Commercial Casualty Insurance Company in the Essex County Circuit Court shall be submitted to the Court and the question in dispute on that claim determined from such testimony.

Where is this money? Who has it?

Mr. Williams: Let it appear on the record that there is in the hands of the County Treasurer of the County of Monmouth the sum of $3,457.27.

The Court: Is there anybody here for the County?

Mr. Williams: Mr. Leonard.

Mr. Leonard: I have a statement signed by the County Treasurer—$3,457.27.

Mr. Dawson: That is the amount due Gallena-Poole under this contract?

Mr. Leonard: Yes.

The Court: Counsel for the County of Monmouth states the willingness of the County to pay that fund in its hands to the claimant or claimants entitled thereto under a decree of this Court.

Final Decree.

(Filed Nov. 26, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, a corporation,
Complainant,

and

GALLENA-POOLE, INC., *et als.*,
Defendants.

Final Decree.
On Bill, &c.

T. J. M. CONTRACTING COMPANY, a corporation,
Complainant,

and

GALLENA-POOLE, INC., *et als.*,
Defendants.

CONSOLIDATED.

This matter coming on to be heard on final hearing before Honorable James F. Fielder, in the presence of Edmund A. Hayes, solicitor for the complainant, T. J. M. Contracting Company, and the defendant County of Middlesex; Edwards, Smith & Dawson, solicitors for the complainant, The Central Railroad Company of New Jersey; Harrison & Roche, solicitors for the defendant Bound Brook Crushed Stone Company; Frederic R. Brace, solicitor for the defendant Arthur Stryker, trading as The Stryker Transportation & Contracting Company; William A. Stevens (appearing by Lester C. Leonard), solicitor for the defendant County of Monmouth; Samuel D. Wil-

liams, solicitor for the defendants Jannarone Construction Company, Gallena-Poole, Inc., F. R. Upton, Inc., Archibald T. Golden, and Commercial Casualty Insurance Company; Osborne, Cornish & Scheck, solicitors for the defendant Stulz-Sickles Company; and the defendants John Moore, Clifford W. Holsart, doing business under the name of Bailey Hardware Co., Robert Height, and Dunlop, Lisk Pottery Co., not appearing;

And it appearing that by virtue of an order of this Court the above entitled cases were duly consolidated;

And it further appearing to the satisfaction of the Court, that on the 3rd day of September, 1924, Gallena-Poole, Inc., made and entered into a contract with the defendant, County of Monmouth, for the construction, alteration or repair of a certain public road or highway in the County of Monmouth, commonly known as the Matawan-Old Bridge Road No. 66;

And it further appearing that upon the completion of the said contract certain labor and material bills arising out of the same remained unpaid by the defendant, Gallena-Poole, Inc., and that as a result thereof notices of lien were filed with the Board of Freeholders of the County of Monmouth by the complainants, T. J. M. Contracting Company, and The Central Railroad Company of New Jersey, and the defendants Arthur Stryker, trading as The Stryker Transportation & Contracting Company, Jannarone Construction Company, Archibald T. Golden, Clifford W. Holsart, doing business under the name of Bailey Hardware Co., F. R. Upton, Inc., Stulz-Sickles Company, Bound Brook Crushed Stone Company, Robert Height, Dunlop, Lisk Pottery Co., and John Moore;

And it further appearing that thereafter suits were commenced in this Court for the enforcement of the liens of the complainants The Central Railroad Company of New Jersey, and T. J. M. Contracting Company, in either or both of which all of the other defendants hereinabove named, save the defendant Commercial Casualty Insurance Company, were made parties. That subsequently the defendant Commercial Casualty Insurance Company was, upon its own motion, made a party, and thereafter, and on or about the 12th day of March, 1930, the two suits were consolidated.

And it further appearing that at the final hearing above referred to the validity and amounts of the claims of the defendants and complainants F. R. Upton, Inc., Archibald T. Golden, Stulz-Sickles Company, Arthur Stryker, trading as The Stryker Transportation & Contracting Company, T. J. M. Contracting Company, and Jannarone Construction Company, were stipulated by all of the parties then appearing or represented before the Court, and that it was stipulated and agreed that the amount of the claim of The Central Railroad Company of New Jersey should be reduced to $2,501.86, of which $2,223.00 was for demurrage and $278.86 for freight, and that if the claim of Bound Brook Crushed Stone Company was to be allowed at all it would be allowed in the sum of $2,280.00, and it being further stipulated and agreed that the amount upon deposit with the County of Monmouth, for distribution among the claimant is the sum of $3,475.27.

And it further appearing that it was stipulated and agreed that the respective solicitors of The Central Railroad Company of New Jersey, Bound Brook Crushed Stone Company, and Commercial

Casualty Insurance Company, submit to the Court, within the time then specified, briefs or memorandums in support of and in objection to the claims of The Central Railroad Company of New Jersey and Bound Brook Crushed Stone Company.

And it further appearing that the Court, after the receipt and consideration of those briefs and memorandums, including a transcript of the testimony heretofore taken in a law action in the Essex County Circuit Court between Bound Brook Crushed Stone Company and Commercial Casualty Insurance Company, involving the validity of the claim of Bound Brook Crushed Stone Company, having filed an opinion denying the right of the defendant, Bound Brook Crushed Stone Company, to participate in the fund, upon the ground that it had already been paid the amount of its claim for materials furnished for this contract by the defendant Commercial Casualty Insurance Company, and that the Court had further, by its conclusion, decided that the claim of The Central Railroad Company of New Jersey, insofar as it was for demurrage, was not a proper charge upon the fund, and should be disallowed, and that its claim was valid only in the sum of $278.86, for freight;

And it further appearing that the defendants Clifford W. Hulsart, doing business under the name of Bailey Hardware Co., Robert Height, Dunlop, Lisk Pottery Co., and John Moore, neither filed answers in either of the suits above entitled, nor did they appear at the final hearing;

IT IS THEREUPON, on this 26th day of November, Nineteen Hundred and Thirty, ORDERED, ADJUDGED and DECREED, as follows:

That there remains in the hands of the Board of Freeholders of the County of Monmouth, be-

longing to lien claimants under its contract with Gallena-Poole, Inc., the sum of $3,475.27.

That by virtue of the stipulation and agreement of the parties before the Court, it satisfactorily appears to the Court that the following named parties have furnished labor or materials, or both, to the contract of Gallena-Poole, Inc., for the prosecution of that contractor's work under its contract hereinabove referred to with the Board of Freeholders of the County of Monmouth, and have, by virtue of proceedings taken by them under the Municipal Lien Law, become entitled to liens against the fund remaining in the hands of the County of Monmouth as aforesaid, in the following amounts:

T. J. M. Contracting Company, by virtue of its lien claim filed June 15, 1925	$175.00
The Central Railroad Company of New Jersey, by virtue of its lien claim filed July 31, 1925	$278.86
Jannarone Construction Company, by virtue of its lien claim filed June 1, 1925	$495.00
Arthur Stryker, trading as The Stryker Transportation & Contracting Company, by virtue of its lien claim filed June 1, 1925	$2,016.16
Stulz-Sickles Company, by virtue of its lien claim filed October 20, 1925	$500.00
Archibald T. Golden, by virtue of his lien claim filed June 2, 1925	$896.05
F. R. Upton, Inc., by virtue of its lien claim filed September 19, 1925	$116.33

And it being further stipulated and agreed by the parties before the Court, and thereby appear-

ing to the satisfaction of the Court, that the claims of Jannarone Construction Company, Archibald T. Golden, and F. R. Upton, Inc. have been assigned to and have become the property of the defendant, Commercial Casualty Insurance Company.

And it further appearing that the claims aforesaid are just and valid, under and by virtue of an Act entitled "An Act to secure the payment of laborers, mechanics, merchants, traders and persons employed upon or furnishing materials toward the performing of any work in cities, towns, townships, and other municipalities in this State (Revision of 1918)", said validity and amounts being stipulated and agreed, except as to the claim of The Central Railroad Company of New Jersey, which has been the subject of adjudication by this Court:

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the sum of $3,475.27 due from the County of Monmouth to Gallena-Poole, Inc., a body corporate of the State of New Jersey, under said contract entered into between said County and the said Gallena-Poole, Inc., and from the contractor or subcontractor to the respective claimants aforementioned, be paid by the County of Monmouth, and the said County of Monmouth is hereby directed to distribute the same ratably to the said claimants T. J. M. Contracting Company, Arthur Stryker, trading as The Stryker Transportation & Contracting Company, Stulz-Sickles Company, Archibald T. Golden, The Central Railroad Company of New Jersey, Jannarone Construction Company, and F. R. Upton, Inc., making payment of the shares due Archibald T. Golden, Jannarone Construction Company, and F. R. Upton, Inc., to

Commercial Casualty Insurance Company, said checks to be made to the solicitors for the various claimants, and in the following amounts:

T. J. M. Contracting Company	$135.82
The Central Railroad Company of New Jersey	216.43
Jannarone Construction Company	384.21
Arthur Stryker, trading as the Stryker Transportation & Contracting Company	1,564.92
Stulz-Sickles Company	388.09
Archibald T. Golden	695.50
F. R. Upton, Inc.	90.30
Total	$3,475.27

Respectfully advised,

Petition of Appeal.

(Filed May 6, 1931.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, a corporation,
Complainant-Appellant,

vs.

GALLENA-POOLE, INC., a corporation, *et als.*,
Defendants-Appellee.

T. J. M. CONTRACTING CO., a corporation,
Complainant-Appellant,

vs.

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MONMOUTH, NEW JERSEY, *et als.*,
Defendants-Appellee.

On Appeal From Court of Chancery.

Petition of Appeal.

To the Honorable Court of Errors and Appeals, the Last Resort in all Causes:

The petition of the Central Railroad Company of New Jersey, appealing in the above-entitled cases, respectfully shows that:

1. The petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the

State of New Jersey bearing date the 26th day of November, 1930, in a certain cause in said Court of Chancery wherein the said Central Railroad Company of New Jersey was complainant and the said Gallena-Poole, Inc. and others were defendants in this respect, to wit: that said decree adjudges in part that the claim of the Central Railroad Company of New Jersey for a lien under the municipal Mechanic's Lien Law for demurrage charges to the extent of Twenty-two Hundred Twenty-three Dollars ($2,223) is disallowed.

2. And petitioner appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that the claim of the Central Railroad Company of New Jersey for a lien under the Municipal Mechanic's Lien Law for demurrage charges to the extent of Twenty-two Hundred and Twenty-three Dollars ($2,223) should have been allowed.

Petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as this Court shall deem proper.

EDWARDS, SMITH & DAWSON,
Solicitors for and of Counsel
for Appellant.

New Jersey Court of Errors and Appeals

Between

CENTRAL RAILROAD COMPANY OF NEW JERSEY, a corporation,
Complainant-Appellant,

and

GALLENA-POOLE, INC., *et als.*,
Defendants-Appellees.

On Bill, etc.

On Appeal from the Court of Chancery.

T. J. M. CONTRACTING COMPANY,
a corporation,
Complainant-Appellee,

and

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MONMOUTH, NEW JERSEY, *et als.*,
Defendants-Appellees.
(Consolidated)

Brief for Defendant-Appellee, Stulz-Sickles Company and Complainant-Appellee, T. J. M. Contracting Company.

Statement.

This is an appeal by the Central Railroad Company of New Jersey from a decree of the Court of Chancery advised by Vice Chancellor Fielder disallowing the claim of the railroad company for a municipal mechanics' lien for demurrage charges.

The only question presented by this appeal is whether a municipal mechanics' lien can be had —not for transportation or freight charges—but for penalties and storage charges, in other words, for demurrage.

Demurrage Is Not the Proper Subject of a Municipal Mechanics' Lien.

Counsel for appellant argue at great length in their attempt to stretch the term "transportation" to include "demurrage", but there is a fundamental difference which cannot be disregarded.

This distinction is concisely stated in 10 C. J. 464, "Carriers":

> "Demurrage charges are not part of and are separate and distinct from transportation charges and do not arise, if at all, until the transportation is ended. These charges it may be said are closely analogous to storage charges, the right to which is nowhere denied, the only difference being that, in the latter instance, the goods are removed from the car by the carrier's agents and placed in warehouses, while in the former they remain in the car until unloaded by the owner."

A consideration of the purposes of demurrage demonstrates its difference from transportation charges. They are clearly stated by Mr. Justice Brandeis in *Pennsylvania R. Co.* v. *Kittanning I. & S. Mfg. Co.*, 253 U. S. 319, 64 L. ed. 928, and in *Turner, D. & L. Lumber Co.* v. *Chicago M. & St. P. R. Co.*, 271 U. S. 259, 70 L. ed. 934. In the latter case the learned Justice said:

> "All demurrage charges have a double purpose. One is to secure compensation for the use of the car and of the track which it occupies. The other is to promote car efficiency

> by providing a deterrent against undue detention. Pennsylvania R. Co. *v.* Kitanning Iron & Steel Mfg. Co., 253 U. S. 319, 323, 64 L. Ed. 928, 930, 40 Sup. Ct. Rep. 532; Edward Hines Yellow Pine Trustee *v.* United States, 263 U. S. 143, 68 L. Ed. 216, 219, 44 Sup. Ct. Rep. 72."

In the Pennsylvania Railroad Company case, *supra,* the same Justice stated:

> "The purpose of demurrage charges is to promote car efficiency by *penalizing* undue detention of cars. The duty of loading and of unloading carload shipments rests upon the shipper or consignee. To this end he is entitled to detain the car a reasonable time without any payment in *addition* to the published freight rate."

A railroad company, in charging for demurrage, is in fact not actually charging for transportation, but is charging the shipper or consignee, as the case may be, a penalty for detaining its cars and for storage of merchandise. It steps out of its character as a carrier and becomes a warehouseman. This was judicially recognized by Mr. Justice Brandeis in *Turner, D. & L. Lumber Co.* v. *Chic., M. & St. P. R. Co., supra,* when he stated:

> "One cause of undue detention is lack of promptness in loading at the point of origin or in unloading at the point of destination. Another cause is diversion of the car from its primary use as an instrument of transportation by *employing it as a place of storage,* either at destination or at re-consignment points, for a long period while seeking a market for the goods *stored therein. To permit a shipper so to use freight cars is obviously beyond the ordinary duties of a carrier."*

The distinction between demurrage and transportation charges was recognized by the common

law. Thus it was well settled that a carrier had a specific lien for freight charges, *Hartshorne* v. *Johnson,* 7 N. J. L. 108.

On the other hand, in the absence of a statutory enactment, giving a right to a lien a carrier has no lien for demurrage. 10 C. J. 470, "Carriers":

> "* * * in the absence of usage, statute, or contract providing for it, a carrier, although entitled to charge demurrage for unreasonable delay in unloading cars, has no lien for such demurrage."

In *Wallace* v. *B. & O. R. Co.,* 65 Atl. (Pa.) 665, it was said:

> "The appellant had no lien upon the cars taking from the siding for demurrage."

To the same effect is the leading case of *Nicollette Lumber Co.* v. *People's Coal Co.,* 213 Pa. 379, 62 Atl. 1060, 3 L. R. A. (N. S.) 327, 110 A. S. R. 550.

Again the essential difference between the services for which demurrage is charged and the services giving rise to freight charges is recognized in cases involving the liability of the railroad for loss or injury to goods entrusted to its care. Thus it scarcely requires citation of authority for the proposition that a railroad is liable for all loss or destruction of or injury to goods in its possession as carrier, not occasioned by the act of God or of the public enemy. *Dudley* v. *Camden and Philadelphia Ferry Co.,* 45 N. J. L. 368.

But where the goods arrive safely at their destination and the consignee fails to remove them and they are stored in cars for more than a reasonable time necessary for their removal (the service for which demurrage is charged) then the railroad is no longer subject to such a stringent liability; the liability as a carrier ceases, and be-

comes that of a warehouseman, responsible only for ordinary neglect. *Morris & Essex R. Co.* v. *Ayres,* 29 N. J. L. 393.

It is thus apparent that the railroad acts in a dual role, carrier and warehouseman, and the cases cited by counsel for appellant recognize that dual function.

Thus in *Cleve. & St. L. Ry. Co.* v. *Dettleback,* 239 U. S. 588, cited by appellant, Mr. Justice Pitney said:

> "And that this, as a mere matter of construction, applied to the relation of warehouseman as well as to the strict relation of carrier, is manifest from the further provision that property not removed within 48 hours after notice of arrival may be kept 'subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only'. Thus 'any loss or damage for which any carrier is liable' includes not merely the responsibility of carrier, strictly so-called, but 'carrier's responsibility as warehouseman' also."

Counsel quote at great length and cite numerous cases by which they hope to establish their proposition, but upon examination it is found that these cases involve the question of the right of governmental agencies, such as the Interstate Commerce Commission, to regulate demurrage charges under statutes providing for the regulation of transportation charges. The fact that these cases decided that demurrage is within the purview of the regulatory acts is no basis for the statement by counsel for appellant that "demurrage" must be understood in a different light from that which it conveyed prior to the passage of the Interstate Commerce Act.

The fact that for the purposes of the Interstate Commerce Act "transportation" has been con-

strued to include "demurrage" cannot change the *character* of the services for which demurrage is exacted; and it is the *character of the services* which must control in determining whether the railroad in this case is entitled to a municipal mechanics' lien.

Under the statute, P. L. 1918, Ch. 280, it is necessary to have performed labor or furnished material toward the performance or completion of any contract for any public improvement in order to be entitled to a lien.

Certainly the railroad furnished no material. It can only claim a lien for labor performed. *Davis* v. *Mial,* 86 N. J. L. 167. What labor did it perform toward the "performance or completion of" the contract between Monmouth County and Gallena-Poole Co.? Conceding that it performed the labor of transporting materials it was allowed a lien claim to the extent of its charges for such labor.

But after the goods arrived at their destination the *labor* of transporting them was ended and the services for which demurrage is charged commenced. These services consisted in the furnishing by the railroad of storage facilities, in other words, the furnishing by the railroad of *instrumentalities,* its cars and tracks, for the storage of the goods. Demurrage charges for which the lien is sought, are for the use of these instrumentalities.

It is firmly established in this State that one cannot have a mechanics' lien for the compensation or penalties due for use of instrumentalities furnished to the contractor.

In *Delaware, etc., Co.* v. *Mercer Freeholders,* 88 N. J. Eq. 506, 508, Vice-Chancellor Backes held:

> "The furnishing of instrumentalities to a contractor and used by him in the performance of a contract, does not constitute 'labor'

> within the scope and purview of the statute. * * * Here the contractor did the work with claimant's trucks and drivers. The undertaking of Holbrook corporation did not involve the performance of any part of the municipal contract. It was in no sense a subcontractor. Its drivers, like the trucks, were instrumentalities furnished to the contractor. There is a marked distinction between a charge for rental of instrumentalities used by the contractor and a claim for labor performed by the lienor by means of instrumentalities. In the latter instance, as remarked in the last-cited case, the claimant 'is entitled to a lien for the value of the labor so performed and this value is merely increased by the instrumentalities used in this labor.' The nature of the engagement is the controlling element."

In *Cope* v. *C. B. Walton Co.*, 77 N. J. Eq. 512, 522, Vice-Chancellor Walker disallowed the claim of one whose bill was for the board of laborers who did the actual work.

In *Cramer* v. *Salem Freeholders,* 147 Atl. 639 (not officially reported), this Court affirmed Vice-Chancellor Ingersoll, who held that the furnishing of automobile trucks and drivers to a road contractor does not give a claim for "labor" within the Municipal Lien Law; that they are mere instrumentalities.

Again, in *West Jersey, etc., R. Co.* v. *Cape May County,* 105 N. J. Eq. 457, the claim was for the rental of a barge alleged to be used in the contract. The claim was not allowed, the Court citing *Delaware, etc., Co.* v. *Mercer Freeholders, supra,* and *Cramer* v. *Salem Freeholders, supra.*

Conclusion.

Upon a consideration of the authorities and the reasoning on which they are based the conclusion

is inevitable that the claim of the railroad for demurrage is not the proper subject of a municipal mechanics' lien. The character of the services for which it is claimed is clearly different from transportation for which a lien is allowed as "labor". It is a claim for the use of instrumentalities for which no lien can be had.

It is therefore respectfully submitted that the decree of the Court of Chancery should be affirmed.

Osborne, Cornish & Scheck,
Solicitors for and of Counsel with Defendant-Appellee, Stulz-Sickles Company.

Edmund A. Hayes,
Solicitor for and of Counsel with Complainant-Appellee, T. J. M. Contracting Company.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

CENTRAL RAILROAD COMPANY OF NEW JERSEY, a corporation,
Complainant-Appellant,

and

GALLENA-POOLE, INC., *et als.*,
Defendants-Appellees.

T. J. M. CONTRACTING COMPANY, a corporation,
Complainant-Appellee,

and

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MONMOUTH, NEW JERSEY, *et als.*,
Defendants-Appellees.
(Consolidated.)

On Appeal from the Court of Chancery.

BRIEF FOR COMMERCIAL CASUALTY INSURANCE COMPANY, in its own right, and as assignee of F. R. Upton, Inc., Archibald T. Golden, and Jannarone Contracting Company; and Arthur Stryker, trading as Stryker Transportation and Contracting Company,
Defendants-Appellees.

The appellant, Central Railroad Company of New Jersey, seeks to establish a lien upon a fund in the hands of the Board of Freeholders of the County of Monmouth, representing the balance due Gallena-Poole, Inc., general contractor, under a contract for the construction of a road known

as the Old Bridge-Matawan Road, as a public improvement.

The sum for which the Railroad claims a lien is $2,501.86, of which $278.86 is for freight, and $2,223.00 for demurrage.

The amount of the fund is $3,457.27 (State of Case, p. 62) and the sum total of the claims other than that of the Railroad (excluding Bound Brook Crushed Stone Company, whose claim was not allowed by Vice-Chancellor Fielder) is $4,198.48 (State of Case, p. 61).

The Railroad transported materials, used in the performance of the work, to sidings in the vicinity of the site of the improvement (State of Case, pp. 61-62).

The right of the Railroad to a lien against the fund, either for freight or for demurrage, was resisted by other claimants in the lien claim proceedings before Vice-Chancellor Fielder, and he filed an opinion, reported in 152 Atl. Rep. 251, allowing the Railroad Company a lien for the freight, amounting to $278.86, and denying their right to a lien for demurrage.

On this opinion the decree appealed from was entered (State of Case, pp. 63-69).

The Act under the provisions of which the lien is claimed is Chapter 280 of the Laws of 1918, entitled "An Act to secure the payment of laborers, mechanics, merchants, traders and persons employed upon or furnishing materials toward the performing of any work in cities, towns, townships and other municipalities in this State (Revision of 1918)." (P. L. 1918, p. 1041; Vol. I, Cum. Sup. 1911-1924, p. 1859.)

The first section of the Act is as follows:

> "Any person who as laborer, mechanic, merchant or trader or subcontractor, shall hereafter, in pursuance of or conformity with the terms of any contract for any public improvement made between any person or corporation and any county, city, town, township, public commission, public board or other municipality in this State authorized by law to make contracts for the making of any public improvement, perform any labor or furnish any materials toward the performance or completion of any such contract shall, on complying with the provision of the second section of this act, have a lien for the value of such labor or materials, or both, upon the moneys in the control of said municipality due or to grow due under said contract to the full value of such claim or demand, and these liens may be filed, and to the extent of the amount due or to grow due under said contract, become absolute liens to the full or par value of all such work and materials in favor of every person and his representatives and assigns who shall be employed by or furnish materials to the contractor or to any subcontractor under him; provided, that no such municipality shall be required to pay a greater amount than the contract price of the work and materials furnished or the value thereof when no specific contract is made with respect to the same by the contractor or subcontractor, respectively."

It would seem that the question for decision is as to whether or not the Court of Chancery is wrong in holding that demurrage is not properly the subject of a lien under the Municipal Lien Law.

The appellant takes the position that the respondents having failed to appeal from that part of the decree of the court below allowing the claim for freight, have in some way not

explained by the appellant put themselves in a position where they can not successfully resist its attempt to fasten upon the fund a lien for demurrage.

In order to sustain this position appellant argues that demurrage is but an incidental feature of the service furnished by a common carrier in transporting merchandise, the compensation for which is freight, and that if this is so, and conceding the court below to be right in allowing a claim for freight, it must of necessity be wrong in disallowing a claim for demurrage.

It is submitted that this argument is based upon two premises, which are neither sound nor supported either by facts or by authority. The first of these premises is that because the respondents didn't appeal the allowance of freight that allowance was of necessity legally correct; and the second is that assuming, but not conceding, demurrage to be an integral part of transportation that it follows that it is the proper subject of a lien under the Municipal Lien Law.

The appellant spends much effort, and devotes practically its entire brief in the effort to demonstrate that various Federal courts and commissions, in dealing with the Interstate Commerce Act, have construed the phrase of that Act "delivery, storage and handling" to be broad enough to include demurrage, and also to a demonstration of the proposition that the term "transportation" under that Act includes the service for which demurrage is charged.

It is submitted that that is not the question here, and that the question here is, is demurrage lienable? Is it the proper subject of a lien under our Municipal Lien Law? On this question the

appellant has not quoted or referred to a single authority holding in the affirmative.

The Circuit Court of Appeals for the Third Circuit, in the case of *Mandel* v. *United States, to the Use of the Wharton and Northern Railroad, et als.* (4 Fed. Rep., 2nd Series, 629) has, it is respectfully submitted, furnished authority against the contention of the appellant. It was a suit by the Railroad Company and others against sureties, on the bond of the contractor, and the Railroad Company's claims were for freight and for demurrage. The bond was a statutory bond conditioned that the contractors

> "shall promptly make payments to all persons supplying them labor and materials in the prosecution of the work provided for in such contract."

And the court says, as respects the claim of the Railroad Company for freight and demurrage:

> "The words 'labor and materials' are plain words of well-understood meaning and in the common use and acceptance car demurrage and car freight are not described or embraced by the words 'labor and material.'"

And further says:

> "Moreover, there is no call for the exercise of judicial construction to give to demurrage and freight the protection of this statutory bond. There was a real hardship to labor and material men who worked upon or furnished material for a structure or improvement on government property. They could have no lien and no way of protecting themselves. Accordingly, the statute required from the contractor a statutory bond and approved surety responsible for the protection of unprotected labor and material. But the railroad required no such protection. It could refuse to deliver to the contractor until both freight and demurrage

> were paid. Hence, neither the words of the bond allow, nor the spirit and purpose of the law require, that judicial construction to enlarge or construe the words 'labor and materials' so as to include freight and demurrage. We agree with what was said by the Circuit Court of Appeals of the Fifth Circuit in *United States* v. *Hyatt* (92 Fed. 445; 34 C. C. A. 447):
>
> 'Congress could not have intended to include in the term "labor" as used in this Act, the freight charges of a railroad on materials carried by it. The railroad is abundantly protected by its lien on freight.' "

While the above case treats of a claim under a statutory bond, it is respectfully submitted that the reasoning of the court is equally applicable to the instant case in which the same words are used in the statute defining those claimants for whose protection the Act was passed; namely, those who "perform any labor or furnish any materials," and that the attempt to enforce a recovery under the bond construed in the case above is in effect the same as the effort here to enforce a lien against the fund.

Vice-Chancellor Fielder in the case at bar was very evidently reluctant to extend the benefits of this Law to the appellant, to the extent of allowing its claim for freight, for he says in his opinion:

> "It seems that our courts have applied this act and the Mechanics' Lien Act (Comp. Stat. 3290) to the limit by holding that transporting material to a job is performing labor within the meaning of those statutes * * * and following those precedents I must hold that the Central Railroad Company * * * is entitled to payment for its freight charges out of the fund in question."

The appellant argues (using the case of *Davis* v. *Mial,* 86 N. J. L. 167 as authority for the argu-

ment) that the language of the statute is broad and comprehensive enough to indicate a legislative intent to afford protection to all who contribute labor, services, or material toward the performance of public contracts.

Judge Speer, in deciding the case of *Davis* v. *Mial,* was dealing with the General Lien Law and his conclusion, affirmed by this court, seems to have been based upon the theory that had the transportation charge been included in the price of the goods furnished that cost would have been included in the protection afforded by the statute through the medium of a lien for the price of the goods, and that it was common knowledge that where the manufacturer fixes his price at so much delivered at the job he included in the price an allowance for cartage.

Vice-Chancellor Ingersoll, in the case of *West Jersey & Seashore Railroad Company* v. *the County of Cape May,* 100 N. J. Eq. 181, it seems to the writer bases his decision allowing a lien to a railroad company for freight upon the decision in the Mial case, affirmed by this court, but curiously enough, in what appears to be another report of the same case, reported in 148 Atl., p. 401, Vice-Chancellor Ingersoll denies the right to a lien for the rental of a barge used in performance of the work.

Vice-Chancellor Backes, in the case of *Delaware River Quarry and Construction Company* v. *the Board of Chosen Freeholders of the County of Mercer,* 80 Eq., p. 506, it seems to the writer distinguishes those cases where transportation should properly be the subject of a lien under the Municipal Lien Law, and where they should not.

In the latter case the Holbrook Corporation rented automobile trucks, with drivers, which

were used by the contractor in hauling material from its place to the work, just as in the case at bar the Railroad Company rented for freight and demurrage its cars, engines and train crews to transport materials from various distant points to stations on its railroad nearest and most convenient to the work in hand, and store them there. The Vice-Chancellor says that the Holbrook Corporation had no hand in the work, nor did it undertake to perform any part of the contract. This is also true of the Central Railroad Company in this case. Then he says, at page 508:

> "The furnishing of instrumentalities to a contractor and used by him in the performance of a contract, does not constitute labor within the scope and purview of the statute."

And at page 509, he says:

> "It seems to me that had the claimant *contracted* to carry the material from the contractor's plant to the work, by means of its trucks and drivers, there could have been no doubt that its claim would have been within the provisions of the Act."

This was the Mial case, and this case he cites as support for this conclusion, and then he says, on the same page:

> "In this connection it is to be observed that the Act is not inclusive of all labor, even though it be manual and personal, but extends to such only as is engaged by the contractor or subcontractor, and it would therefore appear that the drivers of the claimant would not have been entitled to liens, although admittedly they performed labor towards the completion of the contract."

So that it would seem the Mial case is not authority for the proposition for which it is cited by the appellant.

Demurrage, as we understand it, is the charge made to recompense the Railroad Company for the use of its facilities beyond that reasonable period when those facilities should be used by the shipper or the consignee in the ordinary course of the transportation business. While it is commonly spoken of as a penalty, it is not inherently or exclusively such, and the principal effect of the use made of its facilities by the consignee or the shipper, out of which this charge arises, is a temporary use by the shipper or the consignee of those facilities for housing or storage purposes.

For instance, it might well be conceived that Gallena-Poole, Inc., not having erected at various convenient points along the line of its work adequate storage sheds, had concluded it would be cheaper to permit cement shipped to it to remain in the railroad box cars, or other materials upon its freight cars, where they would be protected against theft, and, to some extent, against the elements, and in return for that use or convenience to pay the demurrage charges, assuming that it was responsible for the demurrage charges, rather than provide those facilities for itself. In such event the Railroad would be in much the same position as the owner of a storehouse or warehouse, and can it well be argued that the owner of such storehouse or warehouse could establish a lien for rent? Or, supposing the Railroad maintained for the use of its customers storage facilities on vacant land upon which its consignees might store materials shipped to them, but for which they had no present use, at a fixed charge called "demurrage," can it well be argued that the use of those materials subsequently in a public improvement would support the right of a railroad to a

lien upon the fund arising out of the performance of that municipal improvement for the payment of those charges? In other words, and upon such a theory, is the furnishing of those facilities, for the consideration now called demurrage, the furnishing of labor or materials under the Municipal Lien Law?

We respectfully urge that to so decide is to extend the benefits of the Municipal Lien Law far beyond the scope, to a class and for a recovery never intended by the Legislature.

Again, if it be argued that demurrage is a penalty accruing to the Railroad for the failure of the consignee to promptly remove his materials from the property of the Railroad Company, then it may well be answered that equity does not favor penalties and that unless there is a showing by the Railroad Company that the amount of the penalties bears a just and fair relation to the damage accruing to the Railroad Company by the alleged default of the consignee its right to recover would fall, even were its enforcement directed against the person or corporation contracting for the service. And again, if it is to be considered as a penalty for the failure for the contractor to promptly remove his materials from the cars of the Railroad, then it may well be argued that this default on the part of the contractor is not such a default as binds the other claimants, nor such a one as entitles the Railroad Company to participate in this fund to the detriment or prejudice of other claimants innocent of the faults or omissions of the general contractor in this respect, and that a penalty is not "labor or materials" under the Municipal Lien Law.

It is respectfully submitted that the benefits of this Municipal Lien Law should not be extended beyond the scope intended by the Legislature; namely, the protection of those furnishing labor or materials, as Chancellor Walker says in the Mial case above referred to, and referring to the General Lien Law:

"a needy and most meritorious class of persons"

and that the Act should receive such construction as will further the benign purposes which the Legislature had in view.

It is true that Chancellor Walker was speaking of the General Lien Law, but, it is respectfully submitted, the same views might well be expressed with respect to the Municipal Lien Law, and that it was the intention of the Legislature to protect exactly the same class of persons, and that the Railroad Company is not among that needy and most meritorious class, and particularly, and most emphatically, is not within that class as respects its attempt to enforce against this fund, to the detriment of those for whose protection this law was designed, a claim in the nature of a penalty for defaults upon the part of the general contractor.

Finally, it is submitted that the appellant having elected to abandon the lien given it by virtue of the sixth subdivision of the Railroad and Canal Act (par. 170-47, Vol. 2, Cum. Sup. 1911-1924, p. 2916) upon the goods transported by it, and which it might have enforced irrespective of the rights of those claiming liens under the Municipal Lien Law, is estopped by its election.

If, having this lien, it abandoned it or failed to avail itself of it, will it now be permitted by this court to assert that claim, when a necessary

consequence of its successful assertion would be a very considerable depletion of the fund to be distributed to those other claimants whose right thereto, or to any part thereof, is based solely upon the benefits conferred by the Municipal Lien Law—a privileged class; namely, those furnishing labor or materials in the performance of a municipal improvement.

It is submitted that to permit the Railroad to pursue this course would be inequitable; that it would be unconscionable; and that having permitted the goods or materials transported by it to go beyond its reach or control, so that its lien was destroyed, it should not now attempt to participate in the division of the meagre fund remaining, but should be held to its election.

We, therefore, submit that the decree appealed from should be affirmed and the appellant's appeal dismissed.

Respectfully submitted,

WILLIAMS & LEONARD,
Attorneys for Commercial Casualty Insurance Company, in its own right, and as assignee of F. R. Upton, Inc., Archibald T. Golden and Jannarone Contracting Company.

FREDERIC R. BRACE,
Attorney for Arthur Stryker, trading as Stryker Transportation and Contracting Company.

SAMUEL D. WILLIAMS,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

CENTRAL RAILROAD COMPANY OF NEW JERSEY, a corporation,
Complainant-Appellant,

and

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T. J. M. CONTRACTING COMPANY,
a corporation,
Complainant-Appellant,

and

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MONMOUTH, NEW JERSEY, *et als.*,
Defendants-Appellees.

(Consolidated)

BRIEF OF COMPLAINANT-APPELLANT.

Statement.

This case arose out of the following state of facts:

The Gallena-Poole Co. had a general contract for the construction and completion of the Monmouth County portion of the Old Bridge-Matawan Road. It, of course, had many sub-contractors in the performance of this work and the Central

Railroad Company of New Jersey was one of these.

In August of 1925 it became apparent that the Gallena-Poole Co. could not pay the various people to whom it owed money by reason of this work. Many of the sub-contractors, including the Central Railroad Company of New Jersey, thereupon filed notices of claim under the Municipal Mechanic's Lien Law, Laws of 1918, Chapter 280. These claims were directed against the fund due or to grow due to Gallena-Poole Co. from the County of Monmouth, by reason of the contract above mentioned.

Suit was then instituted by the Central Railroad Co. of New Jersey by virtue of the provisions of Chapter 280, Laws of 1918, Sec. 8 (Municipal Mechanic's Lien Act) to have its claim as against the said fund adjudicated a lien. The railroad company impleaded as defendants the various other claimants, as well as the County of Monmouth and the Gallena-Poole Co. Some time prior to the institution of this suit by the railroad company, the claimant T. J. M. Contracting Co. had instituted a similar suit to enforce its alleged claims under the statute as a lien. These two suits were consolidated by stipulation duly filed, and the consolidated case came on for trial at the Court of Chancery at Jersey City on September 23, 1930. No testimony was taken, and the case was submitted to the Court on the pleadings and on a statement which was read into the minutes.

The claim of the Central Railroad Company was one of those ruled upon in said case.

The Claim of Central Railroad Company.

The claim of the Central Railroad Company of New Jersey is based upon its charges for having railroaded to this job most of the material that

went into it, through its freight station at Freneau, N. J. The amount of the claim of the railroad company is admitted to be *$2,501.86*. This is made up as follows:

(a) Transportation, *$278.86*.

(b) Demurrage, *$2,223.00*.

The total amount of all the claims filed, and agreed upon as to amounts, is $10,642.58. This amount is made up as follows:

R. F. Upton	$ 116.33
Archibald T. Golden	896.05
Stutz-Sickles Stone Co.	500.00
Bound Brook Crushed Stone Co.	2,280.00
Arthur Stryker	2,016.16
C. R. R. Co. of N. J.	2,501.86
T. J. M. Contracting Co.	175.00
Jarrone Construction Co.	495.00

The right of the railroad as a lien claimant under the Act in question was challenged.

The Ruling on the Claim of the Central Railroad.

The Court of Chancery in its decree (advised by Fielder, V. C.—opinion reported at 107 N. J. Eq. 267) disallowed the railroad company its claim for a lien to the extent of that part of its charge made up of demurrage. This item amounted to $2,223.00. The railroad company in said decree was allowed a lien to the extent of $278.86 comprising that part of its charge made up of freight charges.

The railroad company has appealed from that part of the decree of the Court of Chancery which disallows its claim for a lien to the extent of the demurrage charge.

No appeal has been taken by the defendants.

This appeal therefore presents the single question—to wit, whether under the Municipal Lien Law (P. L., 1918, Chapt. 280) a railroad company may have a lien for demurrage charges under the circumstances of this case.

The Claim for Demurrage is Lienable Under Chapter 280, Laws 1918.

The demurrage out of which the claim of the Central Railroad Company of New Jersey arises accrued in connection with cars which contained (and in which had been transported) materials consigned to, and which were used by, Gallena-Poole, Inc., in the construction, erection, alteration or repair of the public work in question.

The Municipal Mechanic's Lien Act under which this proceeding has been instituted uses this language:

> (Chap. 28, P. L., 1918.) "Any person who as laborer, mechanic, merchant or trader or sub-contractor, shall hereafter, * * * perform any labor or furnish any material toward the performance or completion of any such contract shall * * * have a lien."

It has been established that demurrage charges are part and parcel of the transportation charges of a railroad and are covered by the same rules of law; they are part of the tariff and must be collected from the shipper or consignee of the freight to the same extent as the charge for carriage.

> *Hines, Director General* vs. *Richardson, Jr., Inc., et als.,* 290 Fed. Rep. 162;
> *Davis, Director General, etc.* vs. *Timmonsville Oil Company,* 285 Fed. Rep. 470;

Procter & Gamble vs. *United States,* 281 Fed. Rep. 1070.

See also

Erie Railroad Co. vs. *Wanaque Lumber Co.,* 75 N. J. L. 878.

Under the Interstate Commerce Act, the term "Transportation" includes the use of locomotives, cars and other vehicles * * * and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported.

In the case of *Michie* vs. *N. Y., N. H. & H. R. R. Co.,* 151 Fed. Rep. 694, the point was raised that the Interstate Commerce Act did not include demurrage, but the Court said (p. 695):

> "The phrase of the statute 'delivery, storage and handling' is broad enough to include demurrage."

In the case of *Hines, Director General* vs. *W. F. Richardson, Jr., Co., Inc., et als.,* 290 Fed. Rep. 162, suits were brought for the recovery of amounts alleged to have been due for demurrage on loaded cars consigned to defendants in the years 1918 and 1919. The answers of the defendants raised the question that the suits were brought for penalties and not on contract and were therefore barred by the Virginia statute of limitations of one year. The Circuit Court of Appeals, Fourth Circuit, rejected this contention, holding that the demurrage charges were not penalties, but part of the transportation charges and that the three year limitation applicable to contracts applied. At page 162, we find the following language:

> "It seems clear both on principle and authority that the defendants by acceptance of the cars became bound by the terms of the bills of lading, and contracted to pay the reasonable demurrage charge provided for therein as a *part of the transportation charges.* Section 1 of the Interstate Commerce Act (Comp. St. Section 8563) provides that 'transportation' shall include 'all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported'. Reasonable rates to be approved by the Interstate Commerce Commission are required for all these services, including 'handling and storage'. By section 6 (Comp. St., Sec. 8569) the carrier is required to file schedules which shall state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require. The statute could hardly more clearly express the intention to put terminal and storage charges on the same basis as freight, and to make them as much a part of the contract of transportation as the freight. It has been so held by the Supreme Court of the United States and by this Court. Southern Ry. Co. *vs.* Prescott, 240 U. S. 632, 36 Sup. Ct. 469, 60 L. Ed. 836; Davis *v.* Timmonsville Oil Co., 285 Fed. 470."

Speaking again of the demurrage charge, the Court said at page 164:

> "It was approved by the Interstate Commerce Commission and incorporated in the bills of lading along with the freight as a part of the transportation charges. When the defendants accepted the cars, they impliedly contracted to pay all these transportation charges. Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. *vs.* Find, 250 U. S. 577."

In the case of *Turner, Dennis & Lowry L. Co.* vs. *Chicago, M. & S. P. Ry. Co.,* 2 Fed. (2d) 291, we find the following language, at page 293:

"Under the act to regulate commerce, as amended by the Hepburn Act of 1906, the term 'transportation' embraces all services in connection with the shipment, including storage of goods after arrival at destination; 'and so far as interstate carriers by rail were concerned the entire body of such services should be included together under the single term "transportation" and subjected to the provisions of the act respecting reasonable rates and the like'. Cleveland, C., C. & St. Louis Ry. *v.* Dettleback, 239 U. S. 588, 36 S. Ct. 177, 60 L. Ed. 453. And, accordingly, it is made 'the duty of all common carriers subject to the * * * act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs,' and it is the duty of the carrier to have just and reasonable rules and regulations in all matters relating to or connected with the receiving, handling, transporting, storing and delivering of property subject to the act. Section 1, par. 6, Interstate Commerce Act, 41 Stat. L. 474 (Comp. St. Ann. Supp. 1923, Sec. 8563)."

This case was affirmed by the United States Supreme Court in 271 U. S. 259; see also *Cleve. & S. L. Ry. Co.* vs. *Dettleback,* 239 U. S. 588, wherein the Court, speaking through Justice Pitney, uses the following language, speaking of the bill of lading:

"The provision that we have quoted from the contract is to the effect that 'every service to be performed hereunder' is subject to the conditions contained in it. One of these conditions is, in substance, that where a valuation has been agreed upon between the shipper and the carrier such value shall be the maximum amount for which any carrier may be held liable, whether or not the loss or dam-

age occurs from negligence. And that this, as a mere matter of construction, applied to the relation of warehouseman as well as to the strict relation of carrier, is manifest from the further provision that property not removed within 48 hours after notice of arrival may be kept 'subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only'. Thus, 'any loss or damage for which any carrier is liable' includes not merely the responsibility of carrier, strictly so-called, but 'carrier's responsibility as warehouseman' also."

"And this is quite in line with the letter and policy of the Commerce Act, and especially of the amendment of June 29, 1906, known as the Hepburn Act (34 Stat. 584, c. 3591), which enlarged the definition of the term 'transportation', (this, under the original act, included merely 'all instruments of shipment or carriage') so as to include 'cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, *and all services in connection with* the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration, or icing, *storage,* and hauling *of property transported;* and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto. All charges made for *any service rendered or to be rendered in the transportation* of passengers or property *as aforesaid, or in* connection therewith, shall be just and reasonable; and every unjust and unreasonable charge *for such service or any part thereof* is prohibited and declared to be unlawful" (page 593).

It can be seen from the foregoing that the term "demurrage" is really comprised within the term "transportation". The reason why this has been

brought about, not only by legislative expression, but also by judicial determination is apparent. A railroad cannot render transportation service without incidentally rendering demurrage service. No shipment can be undertaken by any railroad unless demurrage is charged for as well as transportation. This is made mandatory under the Interstate Commerce Act. (See paragraph 6 of the Interstate Commerce Act, Sections 1 and 7.)

Cases in which these two sections of paragraph 6 of the Interstate Commerce Act have been construed by the Courts are collected in United States Code Annotated, Title 49, on page 266. We set forth in detail the following quotation taken from the foregoing work:

> "Demurrage charges are part of transportation and are required to be filed with the commission. Lehigh Valley R. Co. *v.* U. S. (Pa. 1911) 188 F. 879, 110 C. C. A. 513 (affirming (D. C. 1910) 184 F. 543), wherein the Court said: 'That the commerce act requires that every common carrier engaged in interstate commerce shall file with the Interstate Commerce Commission, and publish and keep open for public inspection, all rates, fares, and charges, stating separately all terminal charges, and that such terminal charges include demurrage charges, is established (1) by the words of the act; (2) by the decisions of the Interstate Commerce Commission; and (3) by the rulings of the federal courts. (1) Section 1 of the Act to regulate commerce of February 4, 1887, as amended by the subsequent acts, defines transportation as including, "all the instrumentalities and facilities of shipment or carriage * * * and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported". Section 6 of the act of 1887, as amended by the act of 1889 and by the act of 1906, provides: "That every common carrier subject to the provisions of this

act shall file with the Commission created by this act and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation.'' The section further provides that the schedules 'shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered, to the passenger, shipper or consignee.' Thus we see that by the language of the act transportation is defined to include terminal charges. It must be conceded that demurrage, being a charge for the detention of a car because of the use of the car and track until unloaded, is a terminal charge. (2) It has been uniformly held by the Interstate Commerce Commission that demurrage charges are part of transportation, and are required to be filed with the Commission. 'Beyond all possibility of doubt, therefore, the duty of regulating terminal charges when related to interstate transportation has been lodged with the Interstate Commerce Commission, and federal courts have so held.' Wilson Produce Co. *v.* Pennsylvania R. Co. (1908) 14 I. C. R. 170, 174. 'It does not appear to be necessary to do more than refer to the decision of the Commission in Wilson Produce Co. *v.* Pennsylvania R. Co. (1908), 14 I. C. R. 170, in which it was held that the duty of regulating terminal charges, when related to traffic between states, has been lodged with the Commission, and cases therein cited.' Peale *v.* Central R. Co. (1910), 18 I. C. R. 25, 33. (3) The federal courts have so held. In Michie *v.* New York, N. H. & H. R. Co. (C. C. Mass. 1907), 151 F. 694, Judge Lowell said: 'The phrase of the statute ''delivering, storage or handling'' is broad enough to include demurrage.' In U. S. *v.* Standard Oil Co. (D. C. Ill. 1907), 148 F. 719, 722, Judge Landis said: 'The law

> requires the published tariff to show everything in the way of terminal regulations which in any way affects the cost of the service rendered by the carrier, and such published terminal charge is no less binding on the parties than is the tariff specified for the transportation.' "

May we also cite the case of *Davis* vs. *Timmonsville Oil Co.* (C. C. A. S. C. 1922), 285 Fed. 470, in which the Court held:

> "Demurrage charges are part and parcel of the transportation charges and are governed by the same rules of law. They are a part of the tariff and must be collected from the shipper or the consignee of the freight to the same extent as the charge for carriage."

We submit that the demurrage was a service which the railroad company performed in connection with the shipments of the materials which went over its road, which were hauled by its locomotives, were handled by its men, and which ultimately went into the public work in this case. We submit that for this reason the claim for demurrage is lienable within the provisions of the act. The language of the statute in this respect is broad and comprehensive and the legislative intent, manifestly, was to afford protection to all, within the statutory category, who contribute labor, services or material towards the performance of public contracts, whether it be rendered personally or through agencies. *Davis* vs. *Mial,* 86 N. J. L. 167.

This view of the remedial nature of mechanic's lien legislation was long ago recognized by this Court in the case of *Mutual Benefit Life Insurance Co.* vs. *Rowand,* 26 N. J. Eq. 391. In that case it was held that an architect who drew plans in connection with the erection of a building was entitled to a lien. The Court said:

> "His claim is within the letter and the spirit of the mechanic's lien law. The Act gives a lien to any person for labor performed or materials furnished for the erection and construction of the building. The man who draws the plans and superintends and directs the construction is clearly within the provisions."

On this point see annotation at 60 A. L. R. 1257.

As was well stated by Judge Speer in *Davis* vs. *Mial, supra,* the labor or services need not necessarily enter *into* the erection or construction. It is sufficient if it be *for* the erection or construction. The argument of Judge Speer in the *Davis* case might well be used in the question *sub judice.*

It seems to us that in view of Paragraph 6, Sections 1 and 7 of the Interstate Commerce Act and of the judicial construction given to these paragraphs by the Court, that the term "demurrage" must be understood in a different light from that which it conveyed prior to the passage of the Interstate Commerce Act. Unquestionably the Interstate Commerce Act places demurrage in the same category with transportation. As a matter of fact, the term "demurrage" is now included and comprised within the term "transportation". It is governed by the same regulations and by the same rules of law. The reasons why a railroad is allowed a lien as against a public work for transportation are very cogent and clear. The service of the railroad company through its employees, through its cars, through its tracks, and through its facilities, goes directly into the construction of the public work. The very same reasons exist when a charge for demurrage accrues. That charge is for a service which is rendered by the railroad in connection with the transportation of the building materials in question.

The Interstate Commerce Act and the cases which have construed the same indicate that the legislative intent is that materials shall be deemed to be in course of transportation from the moment that the shipment is begun to the moment when the materials are unloaded from the cars of the railroad. During this process, the charges of the railroad, whether they be for the actual hauling of the material or for the use of the cars while the material is waiting to be unloaded, are governed by the Interstate Commerce Act and regulated by the provisions of that law.

It therefore is apparent that, since the passage of the Interstate Commerce Act, transportation and demurrage are inseparable and must be deemed as being in the same category.

We therefore submit, on behalf of the appellant Central Railroad Company of New Jersey that the rule of the Court of Chancery denying to it a lien for the demurrage charge was erroneous and that, therefore, the decree of said Court in that particular should be reversed.

Respectfully submitted,

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